

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 18A-0918G

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL TO REPLACE THE COMPANY’S GAS QUALITY OF SERVICE PLAN TO BE EFFECTIVE THROUGH DECEMBER 31, 2021.

DECISION ADDRESSING JOINT EXCEPTIONS

Mailed Date: September 3, 2019
Adopted Date: August 21, 2019

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I. BY THE COMMISSION

A. Statement

1. This Decision addresses the Joint Exceptions to Decision No. R19-0565 (Recommended Decision) filed by Public Service Company of Colorado (Public Service or Company) and Staff of the Colorado Public Utilities Commission Staff (Staff) on July 23, 2019 (Joint Exceptions).

2. As discussed below, we grant, in part, and deny, in part, the Joint Exceptions. We deny the preferred request in the Joint Exceptions to implement positive financial incentives in the Quality of Service Plan for the Company's gas utility operations (Gas QSP), which were proposed in the Revised Settlement Agreement entered into by Public Service and Staff (Settling Parties), but rejected by the Recommended Decision. However, we grant the alternative request in the Joint Exceptions to eliminate the "ratchet-up mechanism," as discussed below.

B. Background

3. On December 31, 2018, Public Service filed its Verified Application with testimony, exhibits and proposed tariff sheets for Colo. PUC No. 6-Gas, seeking Commission approval to replace its prior Gas QSP with a new one for three years, from January 1, 2019 through December 31, 2021.

4. On March 15, 2019, the Settling Parties filed a Joint Motion for Approval of Settlement Agreement along with the proposed settlement agreement (Initial Settlement). The Initial Settlement proposed a \$250,000 positive and negative financial incentive for exceeding or failing to meet each of the performance bands for certain metrics addressing safety and reliability. Positive financial incentives over the three-year Gas QSP therefore could accumulate to a possible annual total of \$750,000 in positive financial incentives.

5. The Colorado Office of Consumer Counsel (OCC), the only other party to the proceeding, opposed the Initial Settlement, in part. The OCC objects to the provisions allowing Public Service to earn a positive financial incentive for performance above the Gas QSP's standards. In addition, the OCC recommends that the Commission require Public Service to report additional data relating to two metrics (*i.e.*, damage prevention and emergency response

time). The OCC also opposes that a decision in this Gas QSP proceeding declare that this QSP or others should require continuous improvement.

6. The parties timely filed answer testimony, testimony in support of the Initial Settlement, and rebuttal testimony (all with attachments), prior to the hearing held on May 13, 2019.

7. On May 28, 2019, Public Service and Staff filed a Joint Statement of Position and a Revised Settlement Agreement that incorporates minor changes to the Initial Settlement. The Revised Settlement Agreement continues to include both positive and negative financial incentives for performance that exceeds or fails to meet the proposed performance bands. Pursuant to Decision No. R19-0451-I, issued by the Administrative Law Judge (ALJ) on May 30, 2019, Staff and Public Service submitted additional filings, including a fully executed Revised Settlement Agreement.

8. On July 3, 2019, ALJ Mirbaba issued the Recommended Decision approving the Revised Settlement Agreement, with modifications, including that the ALJ recommends rejecting the Settling Parties' proposed positive incentives.

9. In the Recommended Decision, the ALJ identifies the "most significant" dispute in the proceeding relates to whether the positive financial incentive structure should be approved.¹ Through careful consideration of the arguments before her, the ALJ finds that the evidence suggests the Company is already incentivized to perform at an optimal level. Within her findings, she opines that it would not be just and reasonable to allow a positive financial

¹ Recommended Decision No. R19-0565, at ¶ 54.

incentive for improvement resulting, at least in part, from the Pipeline Safety Integrity Adjustment (PSIA) mechanism.²

10. Further still, the ALJ considers OCC's argument that QSPs historically have not included a positive financial incentive, and have instead focused on protecting consumers from potential degradation in service resulting from a merger. Within its discussion regarding the history of QSP proceedings as it relates to the specific facts in this Proceeding, the Recommended Decision discusses these arguments, and notes that "no Commission precedent exists allowing positive financial incentives in the context of a QSP."³

11. The ALJ concludes that the proposed positive financial incentives are not just, reasonable, or in the public interest. She therefore does not approve the proposed positive financial incentives.

12. While the Recommended Decision rejects the proposed positive financial incentives, the ALJ does recommend approving the negative incentive proposed through the Revised Settlement Agreement. In addition, among her findings, the Recommended Decision approves the Settling Parties' proposed mechanism to "ratchet-up" the individual requirements each year as performance improves.

13. By Decision No. C19-0619-I, issued July 19, 2019, the Commission stayed the Recommended Decision pursuant to Rule 1505, 4 *Code of Colorado Regulations* 723-1 of the Rules of Practice and Procedure. The Commission retained the July 23, 2019 filing date for exceptions pursuant to § 40-6-109(2), C.R.S., but also shortened response time to any exceptions

² The PSIA rider was extended in Proceeding No. 18A-0422G. *See Id.*, at fn 15 (citing Hearing Exhibit 200, at 11:15-16).

³ *Id.*, at ¶ 67.

filed to seven days. The Settling Parties timely filed the Joint Exceptions, and OCC timely filed a response.

C. Joint Exceptions

14. In their Joint Exceptions, Public Service and Staff again advocate for positive financial incentives and performance bands, consistent with the parties' positions in the Revised Settlement Agreement. The Settling Parties request the Commission reject the ALJ's decision to adopt baseline performance thresholds for safety and reliability metrics with associated penalties but without the positive incentives.

15. Alternately, if the Commission upholds the ALJ's decision to reject the positive financial incentives proposal, the Settling Parties request that the Commission eliminate the ratchet-up mechanism the ALJ adopts for the metrics, despite the Settling Parties advocating in favor of those ratchet-up provisions during the proceeding. The Settling Parties explain that that ratchet-up mechanism would raise thresholds for acceptable performance on an annual basis whenever the Company's performance exceeds its historical baseline, thus making it increasingly more difficult for the Company to avoid a penalty. Without associated positive financial incentives for continuous improvement, the Settling Parties request the Commission not adopt the proposed ratchet-up mechanism.

16. On July 30, 2019, OCC filed its response to the Joint Exceptions again opposing the proposed bands with positive financial incentives. In general, OCC disagrees with the Settling Parties' proposal to significantly modify the framework of the Company's most recent Gas QSP that expired on December 31, 2018, to include positive financial incentives and continuous improvements within the context of the Gas QSP.

D. Findings and Conclusions

17. We deny the Settling Parties' request to implement positive incentives through the Company's Gas QSP in this proceeding and, instead, uphold the Recommended Decision on this issue raised in the Joint Exceptions. The ALJ provides reasoning and support, both through analysis of past Commission decisions and through the record of this Proceeding, in finding that the Revised Settlement Agreement should be approved with the removal of the positive incentive mechanisms. We agree with the Recommended Decision's finding that there is no Commission "policy" supporting continuous improvement or positive financial incentives in QSPs. We further agree with the ALJ that the record in this Proceeding does not support approval of the associated ratepayer cost increase from the positive financial incentives.

18. The preferred request in exceptions jointly filed by the Settling Parties is therefore denied.

19. However, we grant the Settling Parties' alternative request to eliminate the ratchet-up mechanisms adopted in the Recommended Decision. For the metrics adopted in the Recommended Decision, we approve the overall baseline negative incentive performance thresholds as established in the Revised Settlement Agreement, but without the positive incentives or ratchet-up mechanisms. Therefore, the negative incentive performance thresholds shall be static over the three-year Gas QSP period, thereby financially encouraging the utility to avoid service degradation.

II. ORDER

A. The Commission Orders That:

1. The Joint Exceptions to Decision No. R19-0565 filed by Public Service Company of Colorado and the Staff of the Colorado Public Utilities Commission on July 23, 2019, are granted, in part, and denied, in part, consistent with the above discussion.

2. The 20-day time period provided pursuant to § 40-6-114, C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the effective date of this Decision.

3. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
August 21, 2019.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

FRANCES A. KONCILJA

JOHN GAVAN

Commissioners