Decision No. C20-0505

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19AL-0268E

IN THE MATTER OF ADVICE LETTER NO. 1797 FILED BY PUBLIC SERVICE COMPANY OF COLORADO TO RESET THE CURRENTLY EFFECTIVE GENERAL RATE SCHEDULE ADJUSTMENT ("GRSA") AS APPLIED TO BASE RATES FOR ALL ELECTRIC RATE SCHEDULES AS WELL AS IMPLEMENT A BASE RATE KWH CHARGE, GENERAL RATE SCHEDULE ADJUSTMENT-ENERGY ("GRSA-E") TO BECOME EFFECTIVE JUNE 20, 2019.

DECISION ADDRESSING APPLICATIONS FOR REHEARING, REARGUMENT, OR RECONSIDERATION; ADDRESSING RELATED MOTIONS; AND CONDITIONALLY REQUIRING A COMPLIANCE TARIFF FILING

Mailed Date: July 14, 2020
Adopted Date: May 13, 2020

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I. BY THE COMMISSION

A. Statement

1. This Decision addresses the Applications for Rehearing, Reargument, or Reconsideration of Decision No. C20-0096 (RRR) filed separately by Public Service Company of Colorado (Public Service or Company), Staff of the Colorado Public Utilities Commission (Staff), the Colorado Office of Consumer Counsel (OCC), and the Colorado Energy Consumers (CEC).

2. As discussed in detail below, we grant, in part, and deny, in part, each of the RRRs.

3. Public Service shall file a compliance tariff filing to modify its rates in the event that the findings, conclusions, and directives set forth in this Decision cause a material change to the rates established by Decision No. C20-0096.

B. Procedural Background

4. On May 20, 2019, Public Service filed Advice Letter No. 1797 with supporting attachments and pre-filed testimony as a Phase I rate proceeding.

5. By Decision No. C20-0096, issued on February 11, 2020, the Commission permanently suspended the tariff sheets filed with Advice Letter No. 1797 and authorized Public

Service to increase its base rate revenues. The Commission established new base rates for the Company consistent with the allowed increase in base rate revenue and approved, with modifications, various changes to other rates and tariffs.

6. On February 18, 2020, Public Service made a compliance tariff filing in Proceeding No. 20AL-0061E to put into place rates calculated in accordance with the findings, conclusions, and directives in Decision No. C20-0096. The new base rates submitted with Advice Letter No. 1818 became effective on February 25, 2020.

7. On March 2, 2020, the Applications for RRR were filed by Public Service, Staff, the OCC, and CEC.

8. On March 20, 2020, by Decision No. C20-0185, the Commission granted the Applications for RRR filed on March 2, 2020 for the sole purpose of tolling the 30-day statutory time limit in § 40-6-114(1), C.R.S.

9. Also on March 20, 2020, Public Service filed a Motion for Partial Variance from Decision No. C20-0096 requesting that the Commission modify the May 1, 2020 deadline for certain filings regarding the required submittal of a Phase II rate case.

10. By Decision No. C20-0200, issued on March 26, 2020, the Commission directed Public Service to file no later than 60 days following the issuance of its decision on the Applications for RRR either a Phase II rate case or a binding commitment to filed a combined Phase I and II rate case by August 1, 2020.

11. On June 18, 2020, Public Service filed a second Motion for Partial Variance seeking to amend the filing deadline extended by Decision C20-0200 and giving notice that it would be filing a Phase II rate case. The Commission granted the Motion on June 29, 2020, resetting the

filing deadline to "60 days from the date of implementation of changed rates associated with the advice letter compliance filing" that is required by this Decision.

C. Motions Addressing the Applications for RRR

12. In its RRR, Public Service seeks reconsideration of the Commission's determinations in the following ten areas: (1) the valuation of the test year rate base; (2) the authorized return on equity; (3) the cost of long-term debt; (4) the data used for weather normalization; (5) the implementation of a revenue decoupling adjustment; (6) the treatment of the gains and losses on asset sales; (7) the return on the Company's prepaid pension asset; (8) the return on the Company's prepaid retiree medical asset; (9) the disallowance of costs for certain investments in the Comanche 3 generation unit; and (10) the disallowance of certain Colorado tax-related expenses.

13. The OCC seeks reconsideration in four areas by its RRR: (1) the cost of short-term debt; (2) the state income tax rate used for determining base rate revenue requirements; (3) Board equity compensation; and (4) the allocation of oil and gas royalties between ratepayers and the Company.

14. CEC seeks reconsideration in two areas by its RRR: (1) the form of continued cost recovery of the Rush Creek Wind Project, and (2) the treatment of a pension expense deferral for 2019.

15. In its RRR, Staff seeks reconsideration in two areas: (1) the valuation of the test year rate base, and (2) the state income tax rate used for determining base rate revenue requirements.

16. On March 10, 2020, Sierra Club filed a Motion for Leave to File a Response to Public Service's RRR. Sierra Club seeks leave to respond solely on the issue of the investment

cost disallowance for the replacement finishing superheater for the Comanche 3 generation unit. Sierra Club states that it was the primary intervening party that submitted testimony on this issue and that the Commission would benefit from Sierra Club's response.

17. On March 11, 2020, the International Brotherhood of Electrical Workers, Local 111 (IBEW) filed a Motion for Leave to Respond to, and in Partial Support of, Public Service's RRR. IBEW states that the Commission's acceptance of the arguments of Staff and the OCC against inclusion of the prepaid pension asset and retiree medical asset in the rate base is premised on fundamental errors in each of those parties' arguments and analysis, and works to the detriment of those employees that IBEW represents and has represented for many decades.

18. On March 12, 2020, Energy Outreach Colorado (EOC) filed a Motion for Leave to File a Response to the CEC's RRR. EOC argues that CEC's RRR raises material misrepresentations of facts in the record with respect to the General Rate Schedule Adjustment-Energy (GRSA-E). EOC contends that, contrary to CEC's position, the GRSA-E preserves, and does not change, existing cost allocations because there is no cost causation analysis in this Phase I rate case. EOC also argues that CEC makes incorrect statement of law by attempting to argue that the Colorado Supreme Court decision in *Mountain States Legal Foundation vs. Public Utilities Commission*, 197 Colo. 56, 59, 590 P.2d 495, 497 (Colo. 1979) applies to the Commission's decision on the GRSA-E.

19. In general, Rule 1506(b) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, requires parties to file a motion for leave to respond to an application for RRR. That rule also requires that the motion must demonstrate a "material misrepresentation of a fact in the record; an incorrect statement or error of law; an attempt to introduce facts not in evidence; accident or surprise, which ordinary prudence could not have

guarded against; or newly discovered facts or issues material for the moving party which that party could not, with reasonable diligence, have discovered prior to the time the application for RRR was filed."

20. Sierra Club, IBEW, and EOC fail to offer the required demonstrations in support of their motions for leave to responds to the application for RRR. However, in this instance, we find good cause to waive Rule 1506(b) and accept the responses filed by Sierra Club, IBEW, and EOC. This Proceeding is complex, involving many discrete issues, parties, and witnesses, and we therefore grant the motions for leave to respond for the sake of efficiency and for the usefulness of the information provided in the responses.

21. On March 17, 2020, IBEW filed a Motion to Supplement. IBEW brings to the Commission's attention the recent district court decision that overturned the Commission's disallowance of a return on the Company's prepaid pension asset in Public Service's Phase I gas rate case in Proceeding No. 17AL-0363G.[1]

22. We grant IBEW's motion to supplement the record. The Commission and the parties are aware of the recent district court decision. We conclude that including the court order in the record of this Proceeding does not substantially change what approaches the Commission can take with respect to issues presented in the RRRs.

23. On March 27, 2020, Sierra Club filed an Application for Rehearing, Reargument, or Reconsideration of Commission of Decision No. C20-0185. The Commission did not take up the merits of Sierra Club's application within 30 days from its filing and it was thus denied by operation of § 40-6-114(1), C.R.S., on April 26, 2020. Sierra Club's unusual filing to a decision

[1] *Public Service Company of Colorado v. Public Utilities Commission of the State of Colorado*, Case No. 19CV31427 (Denver Dist. Ct., March 12, 2020).

that did nothing but toll a statutory deadline largely restates the Sierra Club's substantive response to Public Service's RRR filed on March 10, 2020.

24. On April 9, 2020, Public Service filed a Motion for Leave to File a Response to Sierra Club's Application for Rehearing, Reargument, or Reconsideration of Decision No. C20-0185. Because Sierra Club's application was denied on April 26, 2020, Public Service's motion is denied.

D. Applications for RRR

1. Valuation of Rate Base

25. In Decision No. C20-0096, the Commission explains that it sought to balance the agreement reached between Public Service and Staff regarding the adoption of what they called a "2019 Current Test Year" and the advocacy of the OCC, CEC, and the Department of Energy on behalf of the Federal Executive Agencies (DOE) who favor the historic test year for the twelve calendar months of 2018. The Commission concludes that the cost of service information available through August 2019 supports the adoption of a current test year (CTY) consisting of the 12-month period ending August 31, 2019.

26. In its Application for RRR, Public Service explains that while the Company and Staff agreed in this instance to adopt a 13-month average rate base convention with respect to the forecasted rate base in the CTY, the historical periods prior to the CTY period were maintained at year-end rate base. The Company claims that Decision No. C20-0096 is silent on how Public Service must treat the rate base for the period prior to the approved CTY. Public Service requests that the Commission clarify its intention to adopt year-end rate base for the rate base before the 12-month period ending August 31, 2019.

27. Staff similarly requests in its Application for RRR that the Commission direct Public Service to calculate rate base using a 13-month average for the period August 1, 2018 through August 31, 2019 and using the beginning plant balance on a year-end basis prior to August 1, 2018. Staff states that such an approach is consistent with the CTY convention Staff and the Company advocated in their testimonies.

28. In light of the combination of findings, conclusions, and directives the Commission has rendered in this Proceeding, we approve the 13-month average method for calculating the value of the test year rate base proposed jointly by Public Service and Staff. The modified calculation better reflects the compromise reached by Public Service and Staff. The modified calculation also retains an appropriate balance vis-à-vis the advocacy of the other parties who favor the use of the 2018 historic test year.

2. Return on Equity

29. By Decision No. C20-0096, the Commission explained that, in determining an ROE, it is the application of informed judgment, not the precision of financial models that is the fundamental determinant in selecting a specific ROE. The Commission stated that the models serve as a rough gauge of the realm of reasonableness in setting the ROE and concluded that the results from the rate-of-return models entered into the record in this Proceeding have been applied to inform the Commission's judgment.

30. The Commission further concluded that the evidence establishes that Public Service's risk profile is relatively low compared to other utilities and places the Company in a sound position to raise capital. The Commission noted that Public Service has several cost recovery mechanisms that reduce regulatory lag and collect approximately 70 percent of the requested base rate increase in this Proceeding. The Commission stated that the adoption of the

2019 current test year further introduced hundreds of millions of dollars in additional investment into rate base as eligible for cost recovery through the rates. The Commission stated that capital market conditions have also been favorable to Public Service.

31. Consistent with these determinations, the Commission adopted a just and reasonable range for an authorized ROE for Public Service's electric utility operations extending from 9.20 percent to 9.63 percent. The Commission stated that the low end of the range reflects the intervening parties' compelling support for a downward adjustment from the Company's currently authorized ROE of 9.83 percent. The Commission further stated that, in a show of the "gradualism" sought by the Company and recognized by certain intervening parties, Public Service's strong financial condition, its solid credit rating, its recent success in securing low-cost debt, its favorable cost recovery mechanisms, and the approval of a current test year support its conclusion that the authorized ROE for Public Service should not exceed 9.63 percent, the value of the Regulatory Research Associates national average for electric ROEs awarded by state utility regulatory commissions in the first three quarters of 2019.

32. For determining the Company's revenue requirement and establishing new rates, the Commission directed Public Service to use an ROE of 9.30 percent. The Commission stated that a 9.30 percent ROE is reasonably sufficient to assure confidence in the financial soundness of Public Service and to maintain an investment grade credit rating while balancing the interests between shareholders and ratepayers.

33. In its RRR, Public Service seeks rehearing of the Commission's decision to establish 9.30 percent ROE and instead approve an ROE commensurate with the 9.63 percent national average authorized ROE cited in Decision No. C20-0096. According to the Company, the 9.30 percent ROE approved by the Commission is unreasonable, inequitable, and unsupported by

substantial evidence because it: (1) fails to satisfy minimum standards regarding comparability of returns; (2) disregards the Commission's long-standing gradualism policy; and (3) ignores and undermines the Company's leadership role in advancing the state's clean energy goals. Public Service states that the 9.30 percent ROE was the product of an arbitrary decision-making process that failed to consider the relative risk of Public Service or the policy implications of setting the ROE for the Company as the lowest for any regulated utility in Colorado.

34. Public Service contends that the Commission's reasons for adopting the 9.30 percent ROE are unsupported by substantial evidence and fail to achieve the public interest standard to which the Commission is held. Public Service argues that the comparison of Public Service's "strong financial position relative to other utilities" is fatally flawed as a justification for the disparity between the 9.63 percent ROE national average and the 9.30 percent ROE awarded to the Company in this rate case. The Company likewise argues that the favorable capital market conditions cited by the Commission in justifying the 9.30 percent ROE are likewise flawed. More generally, Public Service faults the Commission for confusing Public Service for its parent company, Xcel Energy.

35. Public Service argues that by acknowledging that a 9.63 percent ROE would be consistent with the gradualism policy, and then by reducing the authorized ROE by another 33 basis points, the Commission effectively admitted that it did not follow the gradualism policy in this case. Public Services goes on to fault the Commission for failing "to outline its reasons for abandoning the long-standing gradualism policy, given the Colorado Supreme Court's holding that agencies are allowed to depart from established practice as long as they have a reasonable basis for doing so."[2] Public Service adds that if rating agencies and investors perceive that this

[2] Public Service Application for RRR, p. 8.

Commission's policy is unmoored from any guiding principles concerning utility authorized ROEs, including gradualism, unfavorable ratings and outlooks from the rating agencies will lead to higher costs of capital for Colorado customers.

36. Public Service further states that the Company's opportunity to the reduce carbon emissions of its generation fleet requires the support of its investors, yet the 9.30 percent ROE sends to the Company's equity investors the message of "Don't bother."[3] The Company adds that the message a 9.30 percent ROE sends to Xcel Energy management is that dollars currently spent on clean energy initiatives in Colorado might be better allocated to some other jurisdiction with an authorized ROE that is closer to the returns available from commensurate investments. Public Service concludes that the evidence in this proceeding establishes that the Company is leading the transition to a clean-energy economy and that the Commission should recognize and reward Public Service's achievements with an ROE that is at the high end of the Commission's range of reasonable returns.

37. Our decision directing Public Service to use a 9.30 percent ROE for determining the Company's revenue requirement and to establish new rates is well grounded in the regulatory principles set forth in Decision No. C20-0096. To summarize, setting just and reasonable rates involves a balancing of investor and consumer interests.[4] Rates are just and reasonable when they protect the right of a utility and its investors to earn a return reasonably sufficient to maintain the utility's financial integrity, and when they protect the right of consumers to pay a rate that accurately reflects the cost of service rendered.[5] Ratemaking is an exercise in reasoned judgment[6]

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[3] Public Service Application for RRR, p. 9.

[4] *Public Service Company of Colorado v. Pub. Utils. Comm'n.* 644 P.2d at 939.

[5] *Public Utilities Commission v. District Court*, 527 P.2d 233 (Colo. 1974).

[6] *See Mountain States Tel. & Tel. Co. v. Pub. Utils. Comm'n.*, 513 P.2d 721, 726 (Colo. 1973).

and is a legislative function[7] rather than an exact science.[8] Consequently, the Commission "may set rates based on the evidence as a whole" and "need not base its decision on specific empirical support in the form of a study or data."[9] In the end, "it is the result reached, not the method employed, which determines whether a rate is just and reasonable."[10]

38. In this case, the Commission rendered its decision using informed judgment upon careful consideration of various factors affecting the adoption of an ROE for Public Service. Contrary to Public Service's embellished pleading, the concept of gradualism was considered and applied along with other various factors gleaned from the entire record. We examined the ROE model results offered by the Company and by the intervening parties, assessed their relative strengths based on inputs and assumptions, and reached the sensible and supported conclusions regarding the authorized ROE.

39. We find no reason to change either the reasonable range for the authorized ROE from 9.20 percent to 9.63 percent or the directive to use an ROE of 9.30 percent for calculating the revenue requirement and setting rates as set forth in Decision No. C20-0096. Our decision reflects the well-supported recommendations of the intervening parties who highlight the downward trend in approved ROEs over the past decade, strong utility stock prices, low interest rates, and ROE model results that are significantly below the results highlighted by the Company in its attempt to secure an ROE of 10.2 percent, which is well outside the zone of reasonableness

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[7] *City and County of Denver v Pub. Utils. Comm'n.*, 226 P.2d 1105 (Colo. 1954).

[8] *Pub. Utils. Comm'n. v. Northwest Water Corporation*, 551 P.2d 266 (Colo. 1963); *see also Colo. Office of Consumer Counsel v. Pub. Utils. Comm'n.*, 752 P.2d 1049, 1058-59 (Colo. 1988); *Montrose v. Pub. Utils. Comm'n.*, 629 P.2d 619, 623 (Colo. 1981); *Colorado Ute Elec. Ass'n. v Public Utilities Commission*, 602 P.2d at 864 (Colo. 1979); *Public Util. Comm'n. v. Northwest Water Corp.*, 451 P.2d 266 (Colo. 1969).

[9] *Colorado Office of Consumer Counsel v. Pub. Utils. Comm'n.*, 275 P.3d 656, 660 (Colo. 2012); *see also Colorado Municipal League v. Pub. Utils. Comm'n.*, 473 P.2d 960, 971 (Colo. 1970).

[10] *Glustrom v. Colorado Public Utilities Commission*, 280 P.3d 662, 669 (Colo. 2012).

suggested by the evidence presented in this Proceeding. Regulated electric utilities have a low business risk profile nationally as compared to other industries and, as Staff and DOE point out, the Company's level of risk is equal to or less than all of the regulated utilities in the ROE proxy groups. We see no signs that Public Service will face difficulty securing capital at a reasonable cost as a result of implementing rates calculated using on a 9.30 percent ROE.

40. Contrary to the tone of the Company's RRR, Public Service enjoys a supportive regulatory environment in Colorado, as recognized by the rating agencies and as documented in the record for this Proceeding. We therefore take specific issue with Public Service's contention that the Commission fails to account for Company's leadership role in meeting Colorado's clean energy goals and driving state energy policy. Compliance with statutory requirements, particularly those set in the laws that a utility helps craft with the lawmakers, is not a basis for supporting an ROE higher than otherwise supported by an evidentiary record.

3. Cost of Long-Term Debt

41. Decision No. C20-0096 directs Pubic Service to use a cost of long-term debt of 4.09 percent. The Commission states that this value reflects known issuances of debt made in March and August 2019.

42. In its RRR, Public Service argues that the 4.09 percent cost of long-term debt does not appropriately weigh the Company's cost of financial capital against the investment capital for which it is being allowed recovery. The Company argues that all other elements of the Company's plant and financing to support that plant are based on averages over the several months leading into the current test year ending in August 2019. In contrast, Public Service describes the 4.09 percent cost value as representing the cost at specific point in time in August 2019. According to Public Service, the matching principle emphasized in Decision No. C20-0096E favors an average

value of long-term debt costs, or 4.22 percent. Public Service states that a 4.22 percent cost of long-term debt is the result of a 13-month average, matching the capital structure approved by the Commission. Public Service adds that the means to calculate the 4.22 percent cost of long-term debt is the same approach used for the cost of short-term debt based upon a 13-month average.

43. Public Service argues that if the Commission does not reconsider the 4.09 percent cost of long-term debt by adopting the 4.22 percent average value sought by the Company, the Commission should instead allow the Company to use year-end August 2019 values for rate base notwithstanding its pleading described above. According to Public Service, the record establishes that the new debt issued in August 2019 will help finance investments that go through the end of August 2019 and beyond. Public Service concludes that convention used for valuing rate base should align with the convention used for establishing the cost of long-term debt.

44. We deny Public Service's request. The 4.09 percent cost of long-term debt reasonably reflects the cost of debt to Public Service during the time when the base rates established in this Proceeding are in effect. In point of fact, the cost of debt value as of August 2019 reflects an actual cost value corresponding to important debt issuances occurring within the adopted current test year, as thoroughly explained in Decision No. C20-0096. Moreover, as stated in Decision No. C20-0096E, the determination of the cost of debt should take into account the way related items in the cost of service are calculated. Our Decision does both.[11]

45. Public Service's plea for consistency would have been more availing if, for instance, the valuation of the test year rate base was a conventional calculation of a 13-month average instead of the alternate method that Public Service requests in its RRR. Furthermore, the

[11] *See CF&I Steel, L.P. v. PUC*, 949 P.2d 577, 586–87 (Colo.1997) (stressing that the PUC need not adopt the position of any particular party, but exercises reasoned judgment, based on the evidence as a whole, in setting rates).

reason for using a 13-month average for calculating the cost of short-term debt differs from the reason that Public Service seeks to use a 13-month average for long-term debt: short term debt is continually fluctuating whereas long-term debt does not change to the same degree.

4. Capital Structure and Cost of Short-Term Debt

46. In Decision No. C20-0096, the Commission approves a capital structure for determining Public Service's revenue requirement of 55.61 percent equity, 42.72 percent long-term debt, and 1.67 percent short-term debt, consistent with Public Service's request. The Commission notes that the Company represents this capital structure as the Company's actual structure based on month-end percentages for long-term debt, short-term debt, and common equity for the period ending August 31, 2019. The Commission notes that the adopted capital structure is based on a 13-month average of those percentages, which the Company argues avoids the risk of setting a capital structure based on a point-in-time. The Commission also finds in Decision No. C20-0096 that including short-term debt in the Company's capital structure is reasonable in this rate case, agreeing in principle with Staff that "money is fungible"[12] and all sources of debt contribute to fund the rate base including short-term debt. Accordingly, the Commission directs Public Service to use a cost of short-term debt of 3.33 percent. The Commission notes that Staff had asserted in the proceeding that using a 13-month average is appropriate for short-term debt due to its consistently fluctuating levels and associated costs. The Commission also noted that because the short-term debt balances are averaged in the capital structure, the inclusion of short-term debt alleviates DOE's concern as to the variability of the balances that may render its inclusion undesirable.

[12] Peuquet Answer, p. 7.

47. In its RRR, the OCC disagrees with the Commission's directive to Public Service to use a 3.33 percent cost of short-term debt. The OCC argues that by approving a 3.33 percent cost of short-term debt, the Commission will allow Public Service to overstate short-term debt cost in its revenue requirement and inflate customer rates. The OCC asks the Commission to establish the cost of short-term debt rate to be 2.21 percent, which is the cost of short-term debt as of December 31, 2018, or some lower value. The OCC suggests, for instance, that setting the cost of short-term debt at 1.46 percent would consider the known and measurable changes in short-term interest rates made by the Federal Reserve in 2019.

48. The OCC further argues against using a 13-month average to set the Pubic Service's short-term debt costs, favoring instead the method Commission used for setting the Company's long-term cost of debt (as described above). The OCC also argues that the 13-month average rate of 3.33 percent is neither reflective of the current short-term debt rates nor of future short-term debt rates that the Company will incur when these rates go into effect. The OCC further notes that a 3.33 percent cost of short-term debt is higher than the Company's recent 30-year long-term debt issued at 3.20 percent.

49. In the alternative, the OCC asks the Commission to reverse its approval of Public Service's proposal to include short-term debt in the Company's capital structure.

50. We uphold the use of a capital structure that includes short-term debt. As explained in Decision No. C20-0096, the capital structure of 55.61 percent equity, 42.72 percent long-term debt, and 1.67 percent short-term debt reflects a measure of the Company's actual capital structure based on averaging the month-end percentages for the period ending August 31, 2019 which corresponds with adopted the test year. In paragraph 119 of Decision No. C20-0096 we found that averaging short-term debt balances alleviates DOE's concern as to the variability of the balances,

agreed in principle with Staff that all sources of debt contribute to fund the rate base including short-term debt, and found that short-term project costs in the CWIP balance should also be included, but with an AFUDC offset to earnings, which is an established regulatory principle that prevents double recovery of the balance. The RRRs do not convince us that the findings on which we based our conclusions should be disturbed.

51. We further deny OCC's request to modify the calculation of the cost of short-term debt of 3.33 percent. The calculation of short-term debt using a 13-month average is well supported in Decision No. C20-0096 and is based on the evidence in this Proceeding. Using a 13-month average is appropriate for short-term debt due to its consistently fluctuating levels and associated costs.

5. Equity Compensation (Board of Directors)

52. The Commission explains in Decision No. C20-0096 that Xcel Energy and its operating companies are required to have a Board and that Board members should be compensated for their efforts. The Commission concludes that the costs associated with equity compensation to members of the Board are reasonable for recovery from ratepayers. The Commission also notes that there was no showing in the record that the level of compensation received by the Board is unreasonable.

53. In its RRR, the OCC disagrees with the inclusion of Board equity compensation in the Company's revenue requirement. The OCC also contends that Board members have a fiduciary duty to investors, not ratepayers, and therefore, equity compensation programs are designed to align management and Board members with stockholder interests, and not the interests of ratepayers. The OCC further notes that the Commission's ruling in this case is inconsistent with its ruling on Board equity compensation in Public Service's last litigated Phase I gas rate case

which allowed for only a 50 percent recovery of these amounts from ratepayers. The OCC argues that the Commission's decision in this Proceeding should be consistent with that recent decision regarding recovery of Board equity compensation.

54. We find merit in the splitting of Board equity compensation costs between Public Service and ratepayers on a 50-50 basis. By granting the OCC's RRR on this point, we achieve a more reasonable outcome in this Proceeding and align our findings with respect to Board compensation with other recent decisions in similar rate cases. We agree with the OCC that equity compensation programs are designed to align management and Board members with stockholder interests. We conclude that it is reasonable for half of the proposed total costs associated with equity compensation to be paid by ratepayers. We thus grant, in part, the OCC's Application for RRR on this point.

6. Finishing Superheater at Comanche 3

55. In Decision No. C20-0096, the Commission determines that Sierra Club had made a persuasive case in support of a disallowance of $11.7 million of investment costs associated with a replacement finishing superheater (FSH) installed on the Comanche 3 generation unit. The Commission agrees with Sierra Club that Public Service should have recognized the flaw in the design of the FSH before Comanche 3 was completed, specifically that the FSH would be prone to exfoliation because of the use of T-91 and T-92 alloys based on a June 2007 EPRI study. The Commission states that while Public Service mitigated the potential financial consequence of a later cost disallowance by securing a substantial discount from Alstom for the FSH replacement, that action alone does not suffice to show that Public Service's actions with respect to the original FSH were prudent. The Commission states that embracing state-of-the art design comes with risk,

and the financial consequences of problems stemming from such risk should not be assumed to be the exclusive burden of ratepayers.

56. In its RRR, Public Service requests that the Commission reconsider its disallowance of the investment costs to replace FSH for the Comanche 3 generating unit. The Company principally argues that the Commission is overly reliant on a single piece of evidence "produced in a dynamic environment as the Company was evaluating its approach to replace the FSH."[13] Public Service states that Sierra Club failed to demonstrate that the EPRI study was conclusive and thus the study does not constitute evidence to demonstrate that Public Service's actions regarding the original FSH were imprudent. The Company further states that the 2007 EPRI study itself indicates that further research was needed and that the then-current level of understanding was not sufficiently developed for events to be predicted.

57. We grant Public Service's RRR on this issue and permit the Company to recover the $11.7 million investment in the replacement FSH at Comanche 3 through rates. While Sierra Club put forth compelling testimony, we agree with Public Service that Sierra Club's argument largely hinges on the 2007 EPRI report that, upon reconsideration, does not conclusively state that the alloys are problematic or should be avoided.

58. The 2007 EPRI report sets off from an understanding that oxidation of "engineering alloys is a thermodynamically expected and unavoidable phenomenon." It characterizes the authors' endeavor as gathering data on various alloys with the goal of eventually creating a predictive mathematical model that could predict oxidation rates and failures, though the authors recognize that more data was needed to reach that goal. So, while the report collects data on

[13] Public Service Application for RRR, p. 25.

expected oxidation of the alloys used in steam boilers, it does not and was not intended to evaluate whether or how those alloys should continue to be used in steam boilers.

59. With respect to the T-91 alloy, the report observes that there were some reports from Japan of scale exfoliation occurring from alloy T-91. However, on the same page it states that other field experience in Japan with T-91 suggested a much lower tendency for exfoliation than for the lower-Cr ferritics, and that no exfoliation was observed from T-91 and T-122 alloys for up to five years of service. It also noted that some T-91 tubes "removed from reheater service after long [service periods]" showed scale patterns that led to short-term overheating. In short, the report briefly describes results from installations with the newer T-91 alloy but does not suggest or conclude that its use is discouraged or should be avoided in steam boilers. No similar qualitative discussion was provided for T-92 alloy.

60. In its response to Public Service's RRR, Sierra Club points out that the EPRI report cites other reports that discuss the T-91 and T-92 alloys. But those other reports are not within this record and the Commission cannot rely on information that is not within the record of this Proceeding.

61. In the end, we find the evidence and testimony on this issue is inconclusive. It does not show that at the time Comanche 3 was designed and constructed Public Service should have known that the T-91 alloy would be a poor choice for the finishing superheater at Comanche 3. And we are not fully convinced that decision was so deficient that we should disallow cost recovery.

62. However, our decision to allow Public Service to recover through rates the $11.7 million investment in the replacement FSH at Comanche 3 is made with reluctance. The Commission's records show a continuing history of construction and operational problems with

the Comanche 3 unit that have forced the Commission to exercise careful scrutiny of the Company's investments in the plant and its ongoing operations.

63. In Proceeding No. 09AL-299E, the rate case in which Public Service initially sought recovery of the costs of Comanche 3 through base rates, extensive testimony addressed problems with welds on a material that "becomes very brittle when it's heated up."[14] At one of the hearings in the case, the plant expert testifying on behalf of Public Service was asked by a Commissioner about possibilities that, when Comanche 3 was up and running, problems would again arise. As part of this questioning, the Commissioner posited that from an engineering perspective, Public Service would want to make sure that the plant was operating correctly and that the tube failures being addressed were "not going to come back and bite [the Company] later, because [the Company] moved too quickly in accepting it."[15] The Commission contrasted those engineering concerns with the financial decision-making with regard to how fast the Company took possession of the Comanche 3 plant for cost recovery purposes. In response, the witness admitted to the Commissioner knowledge from Alstom that comparable problems occurred on similar boilers built in China and Taiwan. The witness also was aware of the potential need for "long-term, warranty-related" discussions with Alstom.[16]

64. In Decision No. C10-0255, issued in Proceeding No. 09AL-299E in March of 2010, the Commission noted that one of the major issues in the docket was the timing of cost recovery for the Comanche 3 generating unit. The Commission summarized that the timing issue arose because Comanche 3 was not ready to be declared in-service and placed in rate base as a used and useful generation asset on or before December 31, 2009. The Commission stated that since issuing

[14] Proceeding No. 09A-299E, Hearing Transcript, December 16, 2009, Excerpt p. 5.
[15] Proceeding No. 09A-299E, Hearing Transcript, December 16, 2009, Excerpt p. 17.
[16] Proceeding No. 09A-299E, Hearing Transcript, December 16, 2009, Excerpt p. 16.

December 2009, Public Service had filed ten weekly updates concerning Comanche 3 but that due to media reports, letters from county commissioners, and information received at a Commissioners' Informational Meeting, the Commission became informed about a new issue associated with noise from Comanche 3. The Commission concluded that this noise problem might bear on the Commission's consideration of Comanche 3's satisfaction of the standard for rate base inclusion.[17]

65. A 2013 report prepared by Commission Staff in Proceeding No. 13I-0215E disclosed that for its first two years of operation, Comanche 3 lost 38 percent of its capacity due in part to planned outages associated with the "weld techniques used during the construction of the unit."[18] Two major outages, one from September 10, 2011 to December 23, 2011 and another from January 1, 2012 to January 7, 2012, were used to correct welding issues in the boiler. Staff observed in its report that the plant was still experiencing limited outages in 2013 as the "welding issue continued toward resolution."[19] Staff further reported that in addition to the weld problems, unplanned outages in the boiler's pendant section were the result of slagging problems caused by water cannon malfunctions during the startup of the unit. Staff also noted that during operating months 13 to 24, Public Service, utilizing economic dispatch, experienced a four-month period of time where gas-fired units were dispatched ahead of Comanche 3 and all other coal units because of low gas prices.

66. Problems at Comanche 3 have not ended. After issuing Decision No. C20-0096, we were informed that the unit was again not operating due to necessary repairs of failed

[17] Decision No. C10-0255, issued March 22, 2010, Proceeding No. 09AL-299E.

[18] Staff of the Commission's Investigation of the Historic and Expected Use of Public Service Company of Colorado's Existing Generation Resources, Proceeding No. 131-0215E, p. 14.

[19] Staff of the Commission's Investigation of the Historic and Expected Use of Public Service Company of Colorado's Existing Generation Resources, Proceeding No. 131-0215E, p. 14.

equipment. The informal briefing of the Commissioners was later raised in public comments offered at an April 23, 2020 hearing in the Commission's ongoing rulemaking in Proceeding No. 19R-0096E. In that proceeding, the Commission is considering new provisions for the assessment of existing generation resources in an electric resource plan (ERP) proceeding including the benchmarking of existing units such as Comanche 3 to other generation options available in the market to gauge their performance against potential alternatives and to examine early plant retirements. Public Service's next ERP, expected to be filed in 2021, must also include the presentation of a Clean Energy Plan pursuant to § 40-2-125, C.R.S., enacted by the 2019 General Assembly and signed into law by Governor Polis. The new statute requires Public Service, by 2030, to reduce the carbon dioxide emissions associated with electricity sales to its customers by 80 percent from 2005 levels. Such emission reductions are expected to be achieved, at least in part, through accelerated retirement of existing generating facilities.

67. Based on the foregoing, we intend to discuss further the merits of opening an investigation into the history and continuing operations of Comanche 3, particularly as Colorado utilities consider various measures for reducing emissions of carbon dioxide and other greenhouse gas emissions.

7. Gains on Asset Sales

68. In Decision No. C20-0096, the Commission adopts the same treatment of the gains on the sale of the Green/Clear Lakes property as was decided in Decision Nos. R18-0318-I and C18-0736-I in Proceeding No. 17AL-0363, the Company's most recent gas Phase I rate case. The Commission also assigns to the Company's shareholders 100 percent of the loss attributed to the Cameo land sale as recommended by the OCC. More generally, the Commission rejects Public

Service's proposal to differentiate the treatment on the gain and loss on the sale of assets between depreciable assets and non-depreciable assets.

69. In its RRR, Public Service argues that the Commission took two countervailing positions on a single issue in order to ensure that customers retain all gains on asset sales but not any losses. The Company states that the outcome is not only inequitable but is unsupported by the record.

70. For instance, Public Service notes that the Commission awarded customers the gain attributable to the Green/Clear Lakes land, which never belonged to Public Service, and was never in rate base. Public Service notes that if the Commission accepts the OCC's argument that the Company sold the property for less than its true value, the rationale used by the Commission cannot stand. The Company restates that it accepted the price that it was able to negotiate with a potential buyer, given the brownfield status of the site and the encumbrances on the land, which included environmental covenants and retained easements for utility uses.

71. Finally, Public Service provides examples of returns on land assets to make its point. The Company cites the East Substation Land Sale that produced a gain of $478,185, while in contrast Public Service earned a return on the original purchase price which was $526.53. The Company also cites the Tollgate Substation Land Sale that produced a gain on sale of $97,115, but for which Public Service earned a return on the original purchase price of $289.

72. We deny Public Service's RRR on these points. Consistent with our determinations in Decision No. C20-0096, we remain unpersuaded to deviate from the same treatment on the gains and losses on the sale of assets in place since at least Proceeding No. 14AL-0660E. Public Service is sufficiently compensated with respect to assets on which the Company earns a return. Over

time, ratepayers are held responsible for covering various significant expenses, such as the property taxes, and, in the case of depreciable assets, for depreciation.

73. Accordingly, all of the net gains from the sale of non-depreciable assets should be allocated to ratepayers and amortized over three years. Likewise, we see no reason to deviate from the treatment of the gains on the sale of the Green/Clear Lakes property as was decided by the Commission in Proceeding No. 17AL-0363G. Finally, there is a sound basis for assigning to shareholders all of the losses attributed to the Cameo land sale as explained in Decision No. C20-0096.

8. Prepaid Pension Asset

74. Decision No. C20-0096 rejects Public Service's proposed inclusion of its prepaid pension asset in rate base, which denies the Company from earning a return on the asset balance. The Commission finds the positions of Staff and the OCC to be persuasive in support to the exclusion of the prepaid pension asset from rate base. The Commission also states that the removal of the pre-paid pension asset from rate base ensures consistent treatment as compared to other Colorado utilities' pension assets.

75. In its RRR, Public Service argues that the reasons cited in Decision No. C20-0096 for excluding the pre-paid pension asset from rate base are not justified "in light of the benefits that customers realize as a result of the pension asset."[20] Public Service argues that customers benefit from the pension asset because the Company reduces its annual pension expense by the amount of earnings it expects to receive on the assets in the pension trust each year, including the prepaid portion of the assets in the trust. According to the Company, the expected return on the pension asset reduced the pension expense charged to customers in this case by millions of dollars.

[20] Public Service Application for RRR, p. 21.

Public Service states that because customers realize a significant and tangible benefit as a result of the pension asset, and because it is undisputed that Public Service's investors contributed the money that created the pension asset, those investors are entitled to a return on their investment.

76. Public Service goes on to argue that Decision No. C20-0096's reliance on "the arguments of Staff and the OCC" is arbitrary and capricious and that those arguments are misguided and irreconcilable. Public Service contends that Staff is wrong to conclude that the asset fails to benefit ratepayers. Public Service further argues that the record in this proceeding does not support Staff's conclusion that the Company is motivated to grow the pension asset in order to earn a return on it, principally because the fund is not as fully funded as it could be. The Company further argues that it is simply asking to earn a return on the dollars that created the pension asset, just like the Company seeks a return on the dollars invested to create other assets such as transmission lines. Public Service explains that allowing a return on the pension asset is not supposed to improve the funded status of the pension plan or to fund the pension benefit; instead, the Company's contributions to the pension trust and the market returns on the assets in the pension trust are intended to accomplish those things.

77. In its RRR, CEC states that the Commission misstated CEC's position on the 2019 pension deferral in in paragraph 214 of Decision No. C20-0096. CEC explains that its position is that the excluded 2019 pension expense deferral would have benefitted customers if it were included in rates in this case. CEC states that it supports recovery and amortization of the 2015 through 2018 deferred amount of the pension expense, as well as the 2019 amount, through the revenue requirement in this case. CEC seeks the negative balance of $6,168,104 to be included in

"rate base"[21] and amortized over three years, consistent with Public Service's proposal for the 2015 through 2018 pension expense deferrals.

78. We agree to strike the first sentence from paragraph 214 of Decision No. C20-0096 to remedy the flaw pointed out by CEC. However, we deny CEC's request to include in the revenue requirement the negative deferral of $6,168,104, amortized over three years. Notwithstanding CEC's position, the record demonstrates that the derivation of second legacy prepaid pension asset captures all pension expense and pension contributions occurring on and after January 1, 2015 through December 31, 2019.[22] The "New Prepaid Pension Asset," which at the end of 2019 totals approximately a negative $52 million, appears to include the amount that CEC seeks to treat discretely as a revenue requirement offset. As explained in paragraphs 217 through 225 of Decision No. C20-0096, the Commission approves the creation of this "second legacy" prepaid pension asset, to be amortized over five years.

79. With respect to Public Service's RRR, we conclude that absent a finding that it was improper to maintain the prepaid asset for a certain period of time, allowing a return on the prepayment amounts is warranted.[23] We therefore adopt CEC's proposal in this Proceeding to set the return on the Current Prepaid Pension Asset at the Company's cost of long-term debt established by Decision No. C20-0096. As Mr. Higgins points out in his answer testimony, asking ratepayers to give Public Service a 9.57 percent return on the prepaid asset so that the Company can invest the funds in the asset at a projected return to ratepayers of 6.84 percent is a poor deal

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[21] CEC Application for RRR, p. 5.

[22] Schrubbe Rebuttal, Table RRS-R-1, Second Legacy Prepaid Pension Asset Balance at December 31, 2019, p. 14.

[23] *Public Service Company of Colorado v. Public Utilities Commission of the State of Colorado*, Case No. 19CV31427 (Denver Dist. Ct., March 12, 2020).

for ratepayers.[24] We agree with Mr. Higgins' suggestion to set the Company's return on the prepaid pension asset equal to the cost of long term debt. Compared to the Company's proposal, this approach reallocates ratepayer funds away from providing a profit for the Company and toward pension funding. And, it balances the Company's right to earn a return on the capital it invests with the ratepayers' right to just and reasonable rates.[25]

9. Retiree Medical Expense and Asset

80. In Decision No. C20-0096, the Commission also denies the inclusion of the prepaid retiree medical asset in rate base to be consistent with its decision in Proceeding No. 17AL-0363G, Public Service's last Phase I gas rate case. By excluding the asset from rate base, the Commission denies Public Service a return on the asset.

81. In its RRR, Public Service argues that the Commission erred by denying a return on the prepaid retiree medical asset for the same reasons it erred by denying a return on the pension asset: the medical asset benefits customers by reducing the amount of retiree medical expense included in rates, and it is undisputed that investors contributed the funds that created the medical asset. Public Service further argues that the Commission's reason for denying a return on the medical asset—that the asset has never been included in rate base before—is not compelling, because the Company's electric department had never had a medical asset before this case.

82. In accordance with our decision to allow Public Service to earn a return on the prepaid pension asset, we conclude that absent a finding that it was improper to maintain this other

[24] Corrected Answer Testimony and Attachments of Kevin C. Higgins — Rev. 1, pp. 63–64 (arguing that a return at the Company's WACC grossed up for taxes is unreasonable, and further pointing out that in 2018 the pension plan investments returned a negative four percent return, rather than the positive 6.48 percent return Public Service proposes in this case).

[25] We also note that this approach has been acceptable to stakeholders in the past, as it mirrors the return provided pursuant to the terms of the 2014 electric rate case settlement in Proceeding No. 14AL-0660E. *See* Decision No. C15-0292, Exhibit A, Settlement Agreement, Proceeding Nos. 14AL-0660E and 14A-0680E, p. 9.

prepaid asset for a certain period of time, allowing a return on the prepayment amounts is warranted.[26] We allow Public Service to earn a return on the prepaid medical asset calculated at the Company's cost of long-term debt as established by Decision No. C20-0096.

10. State Tax Rate

83. In this Phase I rate case, Public Service proposes to use a "blended" state income tax rate of 4.66 percent to calculate its revenue requirement rather than only the Colorado state income tax rate of 4.63 percent. Public Service's proposal reflects a weighted average calculation including California's 8.64 percent rate. The Company explains that it trades energy in California, which requires the Company to file and pay taxes in California.

84. By Decision No. C20-0096, the Commission grants Public Service's request to include the California tax rate in a weighted average calculation, resulting in the rate of 4.66 percent, for use in the Company's cost of service study.

85. In its RRR, the OCC maintains that Public Service's proposed blended state income tax rate is not supported by the evidence and will not result in just and reasonable rates because it would improperly increase the Company's overall revenue requirement. The OCC argues that energy trading is volatile and can change significantly between periods—the amount of energy, if any, that Public Service will sell to California utilities in the future is not known and measurable. The OCC further argues that recovering this type of expense through the income tax rate can result in significantly over recovering this cost over time. If the Commission elects to allow Public Service to use the hypothetical state income tax rate to calculate its state income tax expense, the

[26] *Public Service Company of Colorado v. Public Utilities Commission of the State of Colorado*, Case No. 19CV31427 (Denver Dist. Ct., March 12, 2020).

OCC suggests that the Commission direct the Company to remove the impact from the revenue multiplier in the revenue requirement.

86. According to Staff, it is confusing to use different state tax rates for different calculations and, at worst, it may result in over or under collection. In its RRR, Staff suggests that recovery of California state income tax costs would more appropriately treated as expenses rather than reflected in the state tax rate. Staff recommends that the Commission direct the Company to treat the taxes incurred from wholesale trading as a trading expense to achieve the Commission's goal of allowing the Company to recover these trading expenses while avoiding any unintended tax implications.

87. We agree with Public Service that Colorado ratepayers have benefited from the Company's energy trading in California. California taxes constitute a prudent expense. But we are also persuaded by the arguments of the OCC and Staff as raised in their respective RRRs. Consistent with Staff's recommendations, we direct the Company to recover the taxes applied to trades as expenses rather than accounting for the taxes through an adjustment to the state tax rate. We therefore grant the RRR of Staff and the OCC, consistent with the discussion above.

11. Colorado State Tax Violations

88. In Decision No. C20-0096, the Commission agrees with the OCC about the purpose of fees, penalties, and interest related to Colorado tax violations—they are intended to punish a tax filer for violating the law, even if the alleged violations are inadvertent. The Commission thus adopts the OCC's and CEC's position that such fees, interest and penalties lodged against Public Service relate to tax violations, however they may have occurred, and should not be recovered from ratepayers.

89. In its RRR, Public Service argues that the Commission relied upon a flawed premise, specifically that fees, penalties, and interest related to tax violations are intended to punish a tax filer for violating the law, even if the alleged violations are inadvertent. The Company reiterates that it had an agreement with the Colorado Department of Revenue regarding remitting sales tax for certain cities and counties as a result of past audits and practices, and that and the agreement changed unexpectedly. Public Service states that these taxes support the provision of utility service and utility operations, and the Company's requested amortization of these past due amounts should be included in the cost of service.

90. We deny Public Service's RRR on this point. The fees, penalties, and interest for tax code infractions are intended to punish a tax filer for violating the code, even if, as Public Service claims, the alleged violations were inadvertent, or resulting from changed agreements with the Colorado Department of Revenue.

12. Oil and Gas Revenues

91. In Decision No. C20-0096, the Commission agrees with the intervening parties that both Public Service and its customers should share in the benefits of the oil and gas royalty revenues. The Commission directs Public Service to maintain the current 50/50 split in its cost of service study.

92. In its RRR, the OCC requests reconsideration of the percentage of revenue allocated to Public Service and to customers and requests that the Commission order Public Service to allocate 90 percent of the revenues from the royalties to customers. The OCC argues that it, CEC, and DOE all provided extensive evidence and sound argument in this Proceeding to support a finding that the sharing percentage allocated to customers should be increased so as to provide a more equitable arrangement. The OCC notes that it addressed the benefit to the Company and

recognized that there is managerial involvement in the oil and gas leases and, accordingly, recommended that the Company receive ten percent sharing (with the remaining 90 percent credits to ratepayers) similar to other sharing arrangements.

93. We deny the OCC's RRR on this point and retain the current 50/50 split between the Company and the customers. This longstanding sharing arrangement reflects a reasonable compromise that evolved over time and is an appropriate split of the associated financial benefits.

13. Weather Normalization

94. Decision No. C20-0096 rejects Public Service's proposed weather normalization adjustments based on 30-year or 20-year averages of weather data and instead adopts, for this Proceeding, the OCC's suggested method for applying a ten-year average for weather normalization including the actual weather data entered into the record through August 31, 2019. The Commission notes that Public Service objects to the OCC's suggested approach for weather normalization because it includes the test period in calculating the ten-year normal. The Commission also notes that WRA supports the ten-year weather normalization period proposed by OCC, because, according to WRA, using a ten-year weather normalization period will better reflect weather conditions and the associated electricity sales the Company can reasonably expect to experience.

95. In its RRR, Public Service does not challenge the ten-year weather normalization adopted by the Commission. However, Public Service argues that it is necessary for the Commission "to align its decision with foundational statistical principles" by excluding the test year from the ten-year normalization period from the weather normalization adjustment.[27] Public Service claims that the Commission did not address this issue in Decision No. C20-0096, but

[27] Public Service Application for RRR, p. 13.

nonetheless included language directing that the Company use "the actual weather data entered into the record of this proceeding through August 31, 2019."[28]

96. Public Service takes the position that the time period being normalized should be independent of the period used to determine the normal so that bias is not introduced into the analysis. More specifically, Public Service explains that to weather normalize the test year sales, the inputs to the analysis of trends in the weather and calculation of normal weather should end in August 2018 prior to the test year, consistent with the revenue requirement model the Company presented at the Technical Conference on December 16, 2019.[29] The Company argues that no party addressing weather normalization brought forward substantial evidence supporting the proposition that including the test year data within the period being normalized was statistically appropriate or refuted the Company's conclusion that its inclusion introduces bias into the analysis.

97. Public Service further explains that the Company excluded the test year data from its revenue requirement model developed for the Technical Conference because it was not clear form the Commission deliberations whether the test year data (*i.e.*, data through August 2019) should be included in the analysis. In its RRR, Public Service states if the test year months of data are incorporated into the weather normalization calculation, the result is a further reduction to the base rate revenue increase of approximately $5.5 million.

98. We deny Public Service's RRR on this point. When adopting Decision No. C20-0096, we were fully aware that Public Service objected to the inclusion of data within the test year for purposes of determining weather normalization averages over ten years as proposed by the OCC. We were not persuaded by Public Service's criticisms of the OCC's approach to calculating

[28] Public Service Application for RRR, p. 13.

[29] Decision No. C20-0096 addresses the Technical Conferences on pages 131 and 132.

the ten-year weather normalization averages at the time it adopted the approach in Decision No. C20-0096 and Public Service simply repeats its objections to the approach again in its Application for RRR.

99. Contrary to Public Service's position, bias caused by the selection of data inputs to a calculation is not as simple to identify or define as the Company suggests in its RRR. It is insufficient for a party to simply claim bias in certain weather data without making a showing of the bias. In her Rebuttal Testimony, Public Service witness Jannell Marks fails to cite any statistical reference or authority to support her contention that the time period used to define a normal should never include the time period that subsequently will be normalized or to substantiate that the inclusion of such data must result in bias. Ms. Marks simply prefers that normal conditions "be determined first, and then the actual observations can be compared to the normal."[30]

14. Decoupling

100. Decision No. C20-0096 directs Public Service to submit, no later than 30 days following the compliance tariff filing submitted to implement final rates in this Proceeding, a compliance tariff filing to implement the Revenue Decoupling Adjustment (RDA) as directed by the Commission in Proceeding No. 16A-0546E.[31] The Commission further reiterates that Public Service shall study the implementation of the RDA through the period starting with the effective date of the RDA and ending December 31, 2023. In support of these directives, the Commission agrees with the intervening parties, including Staff, CEO, WRA, Vote Solar, and SWEEP, that Public Service failed to put forward in this Proceeding a sufficient evidentiary basis to justify its

[30] Marks Rebuttal, p. 15.

[31] In accordance with Decision No. C20-0096, on March 17, 2020, Public Service submitted a compliance tariff filing to implement the RDA for effect April 1, 2020 through Advice Letter No. 1821 filed in Proceeding No. 20AL-0106E.

request to defer implementation of decoupling to a future time. The Commission finds that none of the various and changing rationales for postponing the implementation of the approved RDA at different points in this Proceeding were persuasive and that Public Service fails to justify delaying or re-litigating the previously approved RDA mechanism.

101. In its RRR, Public Service again argues that the RDA is a flawed mechanism that financially penalizes the Company for any incremental growth experienced on its system, including future growth tied to beneficial electrification. The Company also states that the immediate implementation of the RDA will likely increase the number and frequency of the comprehensive base rate case proceedings Public Service files with the Commission. Public Service states that the Company understands why the Commission may want the RDA to be implemented as a matter of process, but argues that process implementation is not a sufficient reason to push forward a "broken tool."[32]

102. The Company clarifies that it does not seek to reach back to the decision ordering the implementation of decoupling in Proceeding No. 16A-0546E; rather, the Company asks that the Commission consider both the current and future public policy landscape in deciding whether implementation of the RDA is in the best interest of the Company's customers and is consistent with Colorado's energy policy goals. Public Service argues, for instance, that when the RDA was approved, there was no requirement for the Company to submit a Colorado Energy Plan, no announced carbon emission reduction objectives from Xcel Energy, no Senate Bill 19-236 with its clean energy targets and other major energy policy components, and no Senate Bill 19-077 to cause an infrastructure build out to support electric vehicles (EVs).

[32] Public Service Application for RRR, p. 17.

103. Public Service again requests that the Commission defer implementation of the RDA and direct the Company to work with parties to modify the RDA in the Company's upcoming rate case as ordered to be filed following this Proceeding or another future proceeding if the Commission deems a different proceeding more appropriate. Public Service states it is willing to work with interested parties to develop and implement a decoupling mechanism that works with Colorado's public policy goal, but concludes that the current RDA approved three years ago is not that tool.

104. As noted in Decision No. C20-0096, Public Service provides several different reasons why the Commission should delay, modify, or not implement the RDA. In its Direct Testimony, the Company states that since the RDA was supposed to begin in 2018 and it is set to end in 2023, the RDA will not be in place as long as originally intended. Public Service argues that it was appropriate to implement decoupling only after the Company makes the filing related to its residential time-of-use rate trial rates. In response to a discovery request from the Colorado Energy Office, Public Service states that a delay in its advanced metering infrastructure deployment schedule also would affect whether decoupling would be in the public interest. Public Service further testifies in this Proceeding that the "Polis Administration's Roadmap to 100% Renewable Energy by 2040 and Bold Climate Action" and Senate Bill 19-077's EV-related requirements both could affect the need for a decoupling adjustment.

105. While it is clear that Public Service is dissatisfied with the approved RDA, we remain convinced that none of the reasons the Company provides in its case and now in its RRR are sufficient grounds to delay the implementation of an RDA. Public Service was well aware of the trends regarding clean energy and beneficial electrification when it filed its decoupling proceeding in 16A-0546E. We are unconvinced that the RDA as approved for implementation as

a pilot will present an obstacle to the Company in meeting its emission reduction, EV, or other policy goals in the meantime. We are also not persuaded that the RDA will cause rate cases to be filed sooner than they otherwise would be submitted. Furthermore, the RDA is being implemented as a pilot to be re-evaluated after 2023. The Company will be able to show the impact of RDA it claims to be flawed to its preferred form of decoupling in that future proceeding.

15. Rush Creek Wind Project

106. The Commission agrees with Public Service in Decision No. C20-0096 that it does not make sense to change the allocation of the costs of the Rush Creek Wind Project temporarily by collecting such costs by means of a traditional GRSA that applies to all components of the Company's base rates. The Commission further notes the impact that a traditional GRSA would have on residential and small commercial customers in comparison to the current form of cost recovery used for the Rush Creek Wind Project through the Company's Electric Commodity Adjustment (ECA). Absent a Phase II record, the Commission adopts the use of an energy-based GRSA-E that mirrors ECA cost allocation for the uninterrupted recovery of Rush Creek Wind Project costs until the completion of the Company's next Phase II rate case.

107. In its RRR, CEC requests that the Commission reconsider its decision to approve the GRSA-E to allocate and recover the revenue requirement for Rush Creek on an all energy basis. CEC argues that the record shows that it is uncontested that the Rush Creek Wind Project provides both energy and capacity. CEC further argues that the allocation and recovery of Rush Creek Wind Project costs on an energy-only basis through the ECA was intended to be temporary until those costs were rolled into base rates in this case. CEC further argues that allocating the Rush Creek Wind Project costs on an energy-only basis is unduly discriminatory and may be in violation of Colorado Public Utilities Law. CEC requests that the Commission preserve "previous

Phase II allocations" by using a traditional GRSA to allocate the entire incremental base rate revenue requirement approved in this proceeding until a comprehensive cost allocation is presented in a Phase II proceeding.[33]

108. We deny CEC's RRR on this point. As explained in Decision No. C20-0096E, the use of the GRSA-E was adopted as a temporary measure to maintain status quo cost recovery treatment for the Rush Creek Wind Project until the conclusion of a Phase II rate proceeding. While CEC is correct that wind generation facilities provide some capacity value to Public Service's system, that capacity value has no bearing on costs fixed monthly customer charges to which a traditional GRSA would be applied.

E. Compliance Procedures

109. We direct Public Service to determine whether the findings, conclusions, and directives in this Decision cause a material change in the rates the Company calculated in accordance with Decision No. C20-0096 and put into effect on February 25, 2020 through Advice Letter No. 1818.

110. If the change in calculated rates is material, Public Service shall submit, no later than 30 days after the Mailed Date of this Decision, a compliance advice letter filing in accordance with Decision No. C20-0096 as modified by this Decision. Public Service shall confer with Staff regarding whether the change in rates is material prior to submitting the compliance advice letter filing. Public Service shall file the advice letter compliance filing on not less than two business days' notice.

[33] CEC Application for RRR, p. 5.

II. ORDER

A. The Commission Orders That:

1. The Application for Rehearing, Reargument, or Reconsideration of Decision No. C20-0096 filed by Public Service Company of Colorado (Public Service) on March 2, 2020 is granted, in part, and denied, in part, consistent with the discussion above.

2. The Application for Rehearing, Reargument, or Reconsideration of Decision No. C20-0096 filed by Staff of the Colorado Public Utilities Commission on March 2, 2020 is granted, consistent with the discussion above.

3. The Application for Rehearing, Reargument, or Reconsideration of Decision No. C20-0096 filed by the Colorado Office of Consumer Counsel on March 2, 2020 is granted, in part, and denied, in part, consistent with the discussion above.

4. The Application for Rehearing, Reargument, or Reconsideration of Decision No. C20-0096 filed by the Colorado Energy Consumers on March 2, 2020 is granted, in part, and denied, in part, consistent with the discussion above.

5. The Motion for Leave to File a Response to Public Service Company of Colorado's Application for Rehearing, Reargument, or Reconsideration of Decision No. C20-0096 filed by Sierra Club on March 10, 2020 is granted.

6. The Motion for Leave to Respond to, and in Partial Support of, Public Service Company of Colorado's Application for Rehearing, Reargument, or Reconsideration of Decision No. C20-0096 filed International Brotherhood of Electrical Workers, Local 111 (IBEW) on March 11, 2020 is granted.

7. The Motion for Leave to File a Response to the Colorado Energy Consumers' Application for Rehearing, Reargument, or Reconsideration of Decision No. C20-0096 filed by Energy Outreach Colorado on March 12, 2020 is granted.

8. The Motion to Supplement filed by the IBEW on March 17, 2020 is granted.

9. The Application for Rehearing, Reargument, or Reconsideration of Commission Decision No. C20-0185 filed by Sierra Club on March 27, 2020 was denied by operation of § 40-6-114(1), C.R.S., on April 26, 2020.

10. The Motion for Leave to File a Response to Sierra Club's Application for Rehearing, Reargument, or Reconsideration of Decision No. C20-0185 filed by Public Service on April 9, 2020 is denied.

11. Consistent with the discussion above, Public Service shall file an advice letter compliance filing to modify the tariff sheets in Colorado PUC No. 8 if the findings, conclusions, and directives in this Decision result in a material change in the rates established by Decision No. C20-0096. Public Service shall file the compliance tariff sheets in a separate proceeding and on not less than two business days' notice, as necessary. The advice letter and tariff sheets shall be filed as a new advice letter proceeding and shall comply will all applicable rules. In calculating the proposed effective date, the date the filing is received at the Commission is not included in the notice period and the entire notice period must expire prior to the effective date. The advice letter and tariff must comply in all substantive respects to this Decision and Decision No. C20-0096 in order to be filed as a compliance filing on shortened notice.

12. The 20-day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration, begins on the first day following the effective date of this Decision.

13. This Decision is effective upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING May 13, 2020.

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

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JOHN GAVAN

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Commissioners

COMMISSIONER MEGAN M. GILMAN NOT PARTICIPATING.

ATTEST: A TRUE COPY

Doug Dean,
Director