

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19AL-0309G

IN THE MATTER OF ADVICE LETTER NO. 949-GAS FILED BY PUBLIC SERVICE COMPANY OF COLORADO TO REQUEST APPROVAL TO ELIMINATE THE CURRENTLY EFFECTIVE 24.19 PERCENT GENERAL RATE SCHEDULE ADJUSTMENT (“GRSA”) AND PLACE INTO EFFECT REVISED BASE RATES FOR ALL GAS RATE SCHEDULES THAT WILL REPLACE AND SUPERSEDE THE CURRENTLY EFFECTIVE BASE RATES TO BECOME EFFECTIVE JULY 1, 2019.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
STEVEN H. DENMAN
APPROVING STIPULATION AND
SETTLEMENT AGREEMENT,
PERMANENTLY SUSPENDING
FILED TARIFFS, AND ORDERING
FILING OF COMPLIANCE TARIFFS**

Mailed Date: January 22, 2020

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I. STATEMENT

1. This Recommended Decision approves the comprehensive Stipulation and Settlement Agreement (Settlement Agreement) filed by Public Service Company of Colorado (Public Service or Company) on September 18, 2019 without material modifications, permanently suspends the tariffs filed with Advice Letter No. 949-Gas on May 31, 2019, and orders Public Service to file compliance tariffs consistent with the findings, discussion, and conclusions in this Recommended Decision.

A. Procedural History.

2. On May 31, 2019, Public Service filed with the Colorado Public Utilities Commission (Commission), Advice Letter No. 949-Gas, accompanying tariff sheets, and supporting testimony and attachments. The proposed effective date on the tariff sheets was July 1, 2019. This filing commenced Public Service's 2019 Gas Phase II Rate Case.¹

3. On May 31, 2019, Public Service also filed a Motion for Alternative Form of Notice, seeking Commission approval of certain alternative forms of notice to apply to the Company's Advice Letter No. 949-Gas. In Decision No. C19-0484-I (mailed on June 11, 2019),

¹ Public Service has referred to this Gas Phase II Rate Case as a "Gas Phase II rate review" in the Advice Letter, in testimony, and in the Settlement Agreement. The term "rate review" implies regulatory review of a rate filed without litigation and adjudication, whereas when a rate filing is set for hearing and suspended, pursuant to § 40-6-111, C.R.S., the filing is litigated by the parties and adjudicated by the Commission. Hence, the term "rate case" more accurately describes such an adjudicatory proceeding. In none of the major decisions in the Gas Phase I Rate Case (Proceeding No. 17AL-0363G) did the Administrative Law Judge or the Commission use the term "rate review." See e.g. Decision Nos. R18-0318-I (mailed May 11, 2018), C18-0736-I (mailed August 29, 2018), C18-0977-I (mailed November 6, 2018), and C18-1158 (mailed December 21, 2018) in Proceeding No. 17AL-0363G. Historically this Commission has not used the term "rate review" in rate case parlance. In order to be consistent with past Commission practice, as well as to be more accurate, this Decision will use the term "rate case."

the Commission approved Public Service's request to use the proposed alternative forms of notice to affected customers.²

4. In the Advice Letter, Public Service stated that the primary purposes of this filing were: to eliminate the currently effective 24.19 percent General Rate Schedule Adjustment (GRSA)³ and place into effect revised base rates for all gas rate schedules that will replace and supersede the currently effective base rates in the Company's Colorado P.U.C. No. 6 – Gas Tariff;⁴ to implement other revised rates and charges, including transportation-related rates and charges; to add charges for customer data privacy reports to the Schedule of Charges for Rendering Service; to revise and update the transportation terms and conditions and related rate schedule provisions in order to better align with industry standards and Public Service's operational requirements, including the addition of National American Energy Standards Board nomination procedures, a new Shipper Daily Balancing option, and Monthly Cashout requirements; and to make other changes to the Company's Gas Tariff.⁵

5. Public Service stated that the base rate revenue deficiency approved after the conclusion of the Tax Cut and Jobs Act phase of the Company's 2017 Phase I Gas Rate

² On June 18, 2019, Public Service filed an Affidavit of Completion of Notice, confirming that the legal notice approved by Decision No. C19-0484-I had been published in the Legal Classified Section of *The Denver Post* on June 9 and 16, 2019.

³ During the course of the proceeding, the GRSA was reduced temporarily to 16.04 percent to refund excess provisional rates collected during the earlier portion of the Company's 2017 Gas Phase I rate case (Proceeding No. 17AL-0363G). (See Proceeding No. 19AL-0215G, Advice No. 946 – Gas, in which the GRSA was reduced to 16.04 percent by operation of law, effective on June 1, 2019.) However, this temporary refund period expired at the end of 2019, when the GRSA was increased to 24.19 percent, effective on January 1, 2020. (See Proceeding No. 19AL-0669G, Advice Letter No. 959 – Gas, in which the temporary GRSA of 16.04 percent was allowed, by operation of law, to increase to 24.19 percent, effective on January 1, 2020.) Hence, when final rates in this Phase II Gas Rate Case become effective, the GRSA will have been restored to 24.19 percent.

⁴ According to the Company, this excluded Schedule TF-FRP Surcharge and Schedule TI-FRP Surcharge. Advice Letter No. 949-Gas, p. 14, Fn. 2.

⁵ Advice Letter No. 949-Gas, p. 14.

Case was \$21,982,981.⁶ The associated revenue requirement from the 2017 Phase I Gas Rate Case was \$474,187,044, which was based on a 2016 Historical Test Year. With the addition of the Pipeline Safety Integrity Adjustment Projects Base Amount of \$4,263,980, established in the Company's 2015 Phase I Gas Rate Case (Proceeding No. 15AL-0135G), the total net revenue requirement included in the updated Class Cost of Service Study (CCOSS) in this filing was \$473,771,840.⁷ The current Commission-approved GRSA of 24.19 percent included \$4,544,839 more annually than required to collect the Company's revenue requirement, with this additional amount applied to the Company's legacy prepaid pension asset. According to the Company, this additional amount would no longer be collected from customers when the final Phase II gas rates go into effect.⁸

6. The revised gas base rates were based on an updated CCOSS, and on rate design principles explained in the Company's supporting Direct Testimony and Attachments, which accompanied the Rate Case filing. According to the Company, the rate design has not fundamentally changed from the rate design underlying current gas base rates, with the exception that the Company proposed to require its transportation customers to contribute to the Public Service Gas Affordability Program (GAP). Indeed, the Service and Facilities charges for each transportation rate schedule included a monthly GAP charge designed to contribute an additional amount of approximately \$150,000 annually to the GAP program.⁹

⁶ *Id.*, p. 14, Fn. 3. See Decision No. C18-1158 issued in Proceeding No. 17AL-0363G, at paragraph 76.

⁷ According to the Company, the total net revenue requirement included in the updated CCOSS does not include Other Revenues of \$4,679,184. Advice Letter No. 949-Gas, p. 14, Fn. 4.

⁸ This statement is based on a requested March 1, 2020 effective date. Advice Letter No. 949-Gas, p. 15, Fn. 5.

⁹ *Id.*, p. 15.

7. The broader tariff changes proposed by the Company in this filing appeared in the tariff sheets attached to the Advice Letter and were supported by the Direct Testimony and Attachments of its witnesses. According to the Company, it has been many years since the transportation portions of the Gas Tariff were updated, and the majority of the proposed tariff changes are transportation-related. The revisions to the transportation-related portions of the Gas Tariff range from substantive operational and service-related changes to clarifying and housekeeping changes, intended to streamline, reorganize, and simplify the transportation tariffs. The Company also proposed additional non-transportation related tariff changes.¹⁰

8. By Decision No. C19-0541 (mailed on June 20, 2019), pursuant to § 40-6-111(1), C.R.S. (2019), the Commission set for hearing the tariffs filed with Advice Letter No. 949-Gas and thereby suspended their effective date for 120 days from the proposed effective date, or until October 29, 2019. The Decision also referred the matter to an Administrative Law Judge (ALJ) for disposition. Subsequently, the undersigned ALJ was assigned to preside over this Proceeding.

9. Pursuant to § 40-6-111(1)(b), C.R.S., as amended in 2019, Decision No. R19-0622-I (mailed on July 22, 2019), suspended the effective date of the tariff sheets filed with Advice Letter No. 949-Gas for an additional 130 days, or until March 7, 2020.

10. Decision No. R19-0622-I also acknowledged the interventions as of right filed by the Colorado Office of Consumer Counsel (OCC) on July 1, 2019, and filed by Trial Staff of the Colorado Public Utilities Commission (Staff) on July 9, 2019. Decision No. R19-0622-I granted

¹⁰ See *Id.*, pp. 16 and 17.

the Motion to Intervene permissively filed by Energy Outreach Colorado (EOC) on July 5, 2019. Finally, Decision No. R19-0622-I scheduled a prehearing conference for August 1, 2019 at 1:30 p.m.

11. Decision No. R19-0628-I (mailed on July 24, 2019) established procedures for the presentation of evidence at the hearing through electronic exhibits to the fullest extent possible, with the exception of exhibits used to attempt impeachment or any other exhibits admitted into evidence in paper form by the ALJ during the hearing.

12. Decision No. R19-0636-I (mailed on July 26, 2019) granted the motions for permissive intervention filed by Atmos Energy Corporation (Atmos) on July 11, 2019; by WoodRiver Energy, LLC (WoodRiver) on July 16, 2019; by Black Hills Colorado Gas, Inc. (Black Hills) on July 18, 2019; by Colorado Natural Gas, Inc. (CNG) on July 19, 2019; by Tiger Natural Gas, Inc. (Tiger) on July 19, 2019; and by Climax Molybdenum Company (Climax) on July 19, 2019.

13. The Parties to this Proceeding are Public Service, OCC, Staff, EOC, Atmos, WoodRiver, Black Hills, CNG, Tiger, and Climax.

14. Decision No. R19-0652-I (mailed on July 31, 2019) granted an unopposed Motion for a Protective Order Affording Extraordinary Protection for Highly Confidential Customer Information, filed by Public Service on May 31, 2019. Decision No. R19-0652-I deemed the following to be Highly Confidential Information in this Proceeding: customer-specific information of individual customers who take natural gas service from Public Service and gas transportation agent (or aggregator)-specific information, including billing, usage, and other volumetric information. The Decision limited access to, and disclosure of, the Highly Confidential Information to the Commissioners, the ALJ presiding over this Proceeding, the

Commission's Advisory Staff and Advisory Attorneys, Trial Staff and its attorneys, and the OCC and its attorneys, who had signed and filed the appropriate Highly Confidential Non-Disclosure Agreements when necessary.¹¹

15. Pursuant to Decision No. R19-0622-I, the prehearing conference was held on August 1, 2019. Decision No. R19-0660-I (mailed on August 2, 2019), adopted a consensus procedural schedule for the litigation of this Proceeding, set an evidentiary hearing for November 14, 15, and 18, 2019 (with November 19th reserved if needed), and addressed other procedural matters. Decision No. R19-0660-I noted that the ALJ would consider the Parties' request for a December 5 and 6, 2019 hearing on a settlement, only if the Parties reached an unopposed, comprehensive settlement of all the issues and filed the written Settlement Agreement by the October 30, 2019 deadline.¹²

16. None of the intervenors filed answer testimony on or before the September 18, 2019 due date.

17. On September 18, 2019, Public Service filed an Unopposed Joint Motion for Approval of Settlement Agreement without Modification, to Modify Procedural Schedule, and Request for Waiver of Response Time (Unopposed Joint Motion) and attached the comprehensive Settlement Agreement. The Settlement Agreement included three attachments: (1) Attachment 1, a Rate Comparison; (2) Attachment 2, Bill Impacts; and (3) Attachment 3, Revenue Proof.

18. All Parties to this Proceeding joined the Unopposed Joint Motion and signed the Settlement Agreement, including Public Service, Staff, OCC, EOC, WoodRiver, Tiger, Climax, Atmos, Black Hills, and CNG (collectively, the Settling Parties).

¹¹ Decision No. R19-0652-I, ¶¶ 17 and 19 and Ordering Paragraphs 2 and 3 at page 8.

¹² Decision No. R19-0660-I, ¶¶ 14 and 15 at pages 5 and 6.

19. Decision No. R19-0818-I (mailed on October 4, 2019) granted the Unopposed Joint Motion in part by vacating the evidentiary hearing scheduled for November 14, 15, and 18, 2019 (with November 19, 2019 reserved); scheduled a hearing on the Settlement Agreement for December 5, 2019 (with December 6, 2019 reserved); and vacated the remaining filing deadlines, except for filing final electronic versions of Hearing Exhibits. Decision No. R19-0818-I also granted *nunc pro tunc* the request to permit the filing of Settlement Tariff Sheets and testimony in support of the Settlement Agreement on October 3, 2019.¹³

20. On October 3, 2019, Public Service filed an Addendum and Corrections to Stipulation and Settlement Agreement (Addendum), including Attachment 4, Summary of Tariff Changes; Attachment 5, Redlined Settlement Tariffs; and Attachment 6, Clean Settlement Tariffs. The purpose of the Addendum was to file clean and redlined versions of the Settlement Tariffs, as well as to correct the text of Paragraph III.C.8.d of the Settlement Agreement, because that Paragraph inadvertently failed to reflect the agreement of the Settling Parties accurately. That Paragraph was corrected to state:

The ~~Company~~ Shipper or Receiving Party shall provide a ~~Shipper or the Shipper's Agent~~ the Company with 15 days' notification prior to conversion of a transportation customer from transport to sales service, with the change effective on the first of the next month. The Receiving Party's Agent will notify the ~~customer~~ Receiving Party of this change and. The Shipper or Receiving Party shall provide the Company with responsible party information, if known.

21. Also on October 3, 2019, Public Service, Staff, OCC, EOC, and Black Hills each filed testimony in support of approval of the Settlement Agreement and Settlement Tariffs.

¹³ The Deadline for filing final electronic versions of Hearing Exhibits was extended to November 21, 2019. See Decision No. R19-0818-I, ¶¶ 17 through 22 at pages 5 and 6.

22. Decision No. R19-0967-I (mailed on December 3, 2019) granted EOC's Unopposed Motion to be Excused from [the] December 5, 2019 Hearing, filed on December 2, 2019, and excused from appearing at the hearing counsel for EOC and its witness, Andrew Bennett, who had pre-filed testimony supporting approval of the Settlement Agreement.

23. The hearing on the Settlement Agreement was held before the presiding ALJ on December 5, 2019.¹⁴ The following witnesses testified in support of approval of the Settlement Agreement: Ms. Brooke Anne Trammell, Regional Vice-president of Rates and Regulatory Affairs, on behalf of Public Service (Hearing Exhibit 106);¹⁵ Dr. Scott England, an OCC Economist (Hearing Exhibit 300); Mr. Gabe Dusenbury, Section Head of the Rate Financial Analysts, on behalf of Staff (Hearing Exhibit 400); and Christopher M. Otto, Director – Regulatory & Finance, on behalf of Black Hills (Hearing Exhibit 800). The following exhibits were introduced into evidence without objection: Hearing Exhibit No 900, a spreadsheet listing the most recent versions of pre-filed electronic hearing exhibits; and Hearing Exhibit No. 901, an affidavit attesting to the pre-filed direct testimony of Public Service witness, Ms. Joni Zich. The pre-filed electronic testimonies and attachments listed in Hearing Exhibit No 900 were admitted into evidence by administrative notice, pursuant to Rule 1500(c) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1 (2015).¹⁶ Among those exhibits listed in Hearing Exhibit 900 were the Settlement Agreement, as well as the Addendum, which along

¹⁴ After commencement of the Settlement Hearing, counsel for WoodRiver, Tiger, and Climax were excused from attending the remainder of the hearing.

¹⁵ Pursuant to Public Service's Notice of Substitution of Witness and Adoption of Settlement Testimony filed on November 21, 2019, Ms. Trammell adopted the pre-filed Settlement Testimony of Michelle Moorman Applegate.

¹⁶ While the instant Proceeding was pending, the Commission commenced a rulemaking to amend the Rules of Practice and Procedure. *See* Proceeding No. 19R-0483ALL. While this Recommended Decision was being written, Chief ALJ G. Harris Adams issued a Recommended Decision adopting certain amendments

with their Attachments were included in Hearing Exhibit 105. (Henceforth, this Decision will refer to the Settlement Agreement, Addendum, and their Attachments collectively as the Settlement Agreement, unless it is necessary to discuss an individual Attachment separately.)

24. This Decision will adjudicate the merits of the Settlement Agreement and the proposed Settlement Tariffs.

II. FINDINGS AND DISCUSSION

A. The Rate Setting Process.

25. The Commission's authority to regulate Public Service's natural gas rates, facilities, and operations derives from Article XXV of the Colorado Constitution. The Commission is charged with ensuring the provision of safe and reliable utility service at just and reasonable rates for customers pursuant to §§ 40-3-101, 40-3-102, 40-3-111, and 40-6-111, C.R.S.

26. The act of establishing rates for the provision of services of public utilities is a legislative function delegated to the Commission. *City and County of Denver v. Public Utilities Comm'n.*, 129 Colo. 41, 43, 266 P.2d 1105, 1106 (1954). In rate cases, the Commission's function is to adopt rates and rate structures that are fair and reasonable. *See Integrated Network Services, Inc. v. Public Utilities Comm'n.*, 875 P.2d 1373, 1381 (Colo. 1994). Ratemaking "is not an exact science but a legislative function involving many questions of judgment and discretion." *Integrated Network Services, Inc. v. Public Utilities Comm'n.*, 875 P.2d at 1381 [citations omitted]. Charged with the responsibility of setting rates, the Commission must consider the interests of both the utility and its investors on one hand and the consumers on the other hand. Sound judgment in the balancing of these respective interests is how the Commission reaches a ratemaking decision, rather than by use of a mathematical or legal

formula. *Public Utilities Comm'n v. Northwest Water Corp.*, 168 Colo. 154, 173, 551 P.2d 266, 276 (1963). Stated differently, in setting rates, the Commission must balance protecting the interests of the utility's customers from excessive and burdensome rates against the utility's rights to adequate revenues and financial health. *Public Utilities Comm'n v. District Court*, 186 Colo. 278, 234, 527 P.2d 233, 282 (1974). The final test is that the rates must be "just and reasonable." *Id.*; see *Integrated Network Services, Inc. v. Public Utilities Comm'n.*, 875 P.2d at 1381 ("[I]t is the function of the [Commission] to adopt rate structures that are fair and reasonable.") In ratemaking, it is the result reached, not the method employed that is controlling. *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 602 (1944).

27. The Commission encourages the settlement of contested proceedings. Rule 1408 of the Rules of Practice and Procedure, 4 CCR 723-1.

B. The Settlement Agreement.

28. Through negotiation, discussion, and compromise, the Settling Parties reached a consensus to settle all the disputed issues in this rate case. The specific terms of the settlement were included in the written Settlement Agreement and Addendum, Hearing Exhibit 105, which is unanimous and thus unopposed. In the Settlement Agreement and Addendum, the Settling Parties have proposed a comprehensive settlement addressing all contested issues in the Phase II Gas rate case.

29. The Settlement Agreement includes six attachments. Attachment 1 shows a comparison of Current Rates with Settled Rates, including a comparison of individual rate elements. Attachment 2 shows impacts of the Settled Rates on each Customer Class. Confidential Attachment 3C shows Proof of Revenues; that is, it depicts settled test-year revenues by rate component for each Customer Class, based on the historical test-year of the

12 months ending December 31, 2016.¹⁷ Attachment 4 is a summary of the changes in the Settled Tariffs compared to the current tariffs. Attachment 5 contains the Redlined Settlement Tariffs, showing the changes to the current tariffs resulting from the Settlement. Attachment 6 contains the Clean Settlement Tariffs. The Settlement Agreement and its six attachments are included in Appendix A to this Decision.

30. The Settling Parties agree to the Company's proposed CCOSS for settlement purposes, including the proposed class classification, allocation, and revenue distribution.¹⁸

31. The Settling Parties agree to the implementation of the Company's new base rates, as set forth in the Settlement Agreement, and that the rates for each customer class are designed to recover the class-specific revenue requirement and additional costs of serving that class. Indeed, the Settling Parties agree to the following monthly rates and charges that differ from the Company's initially-proposed base rates and charges:

- a) For Residential customers (Rate Schedule RG): Set the monthly Service and Facilities (S&F) charge to \$12.00 per month plus the GAP surcharge of \$0.15 for a total of \$12.15 and set Schedule RG customers' usage charge to \$0.13268 per Therm to permit the Company to recover the remaining portion of the costs of serving these customers.
- b) For Small Commercial customers (Schedule CSG): Set the monthly S&F charge to \$43.00 per month plus the monthly GAP charge of \$0.58, for a total of \$43.58, and set Schedule CSG customers' usage charge to \$0.11585 per Therm.
- c) For Small Firm Transportation customers (Schedule TFS): Set the S&F charge to \$43.00 per month (equal to the Schedule CSG S&F charge), plus a transportation adder of \$15.00 per month and a monthly GAP

¹⁷ Attachment 3C also proves that the Settled Rates will approximately generate the revenue requirement adjudicated in the Phase I Gas Rate Case, Proceeding No. 17AL-0363G.

¹⁸ Hearing Exhibit 105, Paragraph A.1 at page 8. The Settling Parties agree that the use of methods employed in the CCOSS, as well as the manner of resolution of other cost classification and allocation issues as part of the settlement, is solely for the purposes of settlement and does not constitute a settled practice or otherwise have precedent-setting value in any future proceedings. *Id.*

charge of \$0.58, for a total of \$58.58, and set the Schedule TFS monthly usage charge to \$1.1585 per Dekatherm (Dth).¹⁹

32. The Settling Parties intend that Public Service will set the GRSA to 0 percent as of the rate effective date of this Proceeding, and that Public Service will update the GRSA tariff sheet to reflect the proper GRSA as of the effective date of rates adjudicated in this Proceeding.²⁰

33. The Settlement Agreement, however, states that, “the settled S&F and usage charges set forth in this Agreement are settlement amounts and are not based on costs classified in the CCOSS.”²¹ The ALJ was concerned that this statement may indicate that the settled S&F charges deviate from the fundamental ratemaking principle that a utility’s rates should accurately reflect the utility’s actual cost of providing service to its customers.²²

34. At the hearing on the Settlement Agreement, Ms. Trammell explained that the Settling Parties utilized Public Service’s CCOSS as a starting point to allocate the revenue requirement by class, which they all agreed was reasonable. The Settled Rates started with the CCOSS and the Settling Parties made appropriate rate design adjustments to the proposed rates in order to develop the settled S&F charges and the other components of the Settled Rates. The Settling Parties also determined that the Settled Rates would generally recover the appropriate class revenue requirements and the total adjudicated revenue requirement.²³

¹⁹ Hearing Exhibit 105, Paragraphs B.1 – 5 at pages 8 – 10; and Attachment 1.

²⁰ *Id.*, Paragraph B.6 at page 10.

²¹ *Id.*, Paragraph B.7 at page 10.

²² *Colorado-Ute Electric Ass’n., Inc. et al. v. Public Utilities Comm’n.*, 760 P.2d 627, 642-643 (Colo. 1988) (affirming the Commission’s adoption of demand-energy rates as the most cost tracking rates when compared to flat-energy rates).

²³ See Settlement Hearing Transcript (Tr.) 12/5/2019, page 19, l. 4 – page 22, l. 20; see also Hearing Exhibit 105, Attachment 3, Revenue Proof.

35. While the cost of service, reflected in a class cost of service study, is an important consideration in setting just and reasonable utility rates, it is not the exclusive factor for the Commission to consider in its rate setting decision.²⁴

36. The ALJ finds that the Settled Rates, including the S&F charges, were based upon Public Service's CCOSS, revenue allocations per class, and rate design principles, with rate design adjustments negotiated during the settlement process. Based upon the Settlement Agreement and Attachments and the testimony in support of the settlement, the ALJ finds that the Settled Rates are just, reasonable, and nondiscriminatory.

37. Except as modified in the Settlement Agreement, the Settling Parties agree to the proposals and tariff modifications contained in the Company's direct case, as originally filed on May 31, 2019, including but not limited to:

- a) Insertion of provisions related to data privacy and requests for customer data;
- b) Updated volume adjustments and billing error provisions;
- c) Changes to the GCA tariff provisions;
- d) Updates to the flexible pricing policy provisions;
- e) Changes to the provisions on gas quality and gas pressure;
- f) Updated nomination and confirmation procedures including five-cycle nomination procedures;
- g) Daily gas balancing, including a new Shipper Daily Balancing option;
- h) Other updates throughout the Gas Transportation Terms and Conditions to reflect new system capabilities, industry direction, and Company operational requirements; and

²⁴ *Integrated Network Services, Inc. et al. v. Public Utilities Comm'n.*, 875 P.2d 1373, 1388 (Colo. 1994); *see also CF&I Steel, L.P. et al. v. Public Utilities Comm'n.*, 949 P.2d 577, 588 (Colo. 1997) ("Although cost of service is an important consideration in setting an appropriate utility rate, ... the PUC's ratemaking discretion includes the reasoned use of various other factors which are rationally related to legitimate utility regulatory purposes".)

- i) Miscellaneous updates and other changes of a general clarifying or housekeeping nature.

38. Moreover, the Settling Parties agree to the following additional changes to the Company's Gas Transportation charges and terms of service, as compared to those set forth in the Company's initial filing in this Proceeding:

- a. For Small Firm Transportation customers (Schedule TFS), the Minimum Rate for the Unauthorized Overrun Penalty and the Backup Sales Supply Charge will be \$1.1585 per Dth.
- b. The Maximum Unauthorized Overrun Penalty for Schedule TFS, Large Firm Transportation customers (Schedule TFL), and Interruptible Transportation customers (Schedule TI) will be set at \$25 per Dth unless CIG calls a Critical Condition, in which case the maximum rate will be the greater of \$25 or the CIG Rate Schedule TF-1 Daily Unauthorized Overrun Rate as contained in the CIG FERC Gas Tariff.
- c. The Company shall allow a 30-day period in which Shippers under Schedules TFS, TFL, and TI may cure communication issues before the Company moves the customer to backup supply sales service.
- d. The Shipper or Receiving Party shall provide the Company with 15 days' notification prior to conversion of a transportation customer from transport to sales service, with the change effective on the first of the next month. The Receiving Party's Agent will notify the Receiving Party of this change. The Shipper or Receiving Party shall provide the Company with responsible party information, if known.²⁵
- e. Further, pending completion of the Shipper Stakeholder Evaluation process contemplated in the Settlement Agreement, the Settling Parties agree that the Company will maintain:
 - i. The Company's existing process allowing a 30-day carryover of Shipper month-end imbalances but allowing Shippers to cure with a 5 percent imbalance rather than the existing 20 percent imbalance. The change from 20 percent to 5 percent will take effect April 1, 2020; and
 - ii. The Company's current receipt points, delivery area, and aggregated balancing as currently provided under the Gas Transportation Terms and Conditions in the Company's Gas Tariff in effect at the initiation of this 2019 Gas Phase II.

²⁵ This subparagraph incorporates the corrected language to Paragraph III.C.8.d of the Settlement Agreement from Paragraph 4, page 2, of the Addendum.

39. The Settling Parties further agreed to initiate a “Local Distribution Company (“LDC”) Stakeholder Evaluation Process” within 120 days after filing of the Settlement Agreement, in which interested Settling Parties will, as set forth in more detail in the Settlement Agreement, evaluate class allocation of distribution and transmission costs with respect to LDC customers in the context of the CCOSS and rate design, as applicable to LDC customers. The LDC Stakeholder Evaluation Process will conclude no later than December 31, 2020. The Settling Parties neither committed to make any specific proposal nor are they precluded from taking any position during or following the LDC Stakeholder Evaluation Process, including in any subsequent Gas Phase II rate case.²⁶

40. Public Service agrees to file its next Gas Phase II rate case no later than August 1, 2021.²⁷

41. Additionally, the Settling Parties agree to establish a “Shipper Stakeholder Evaluation Process” by which they will work toward resolution of certain Settling Parties’ concerns regarding the Company’s proposed Monthly Cashout process and receipt pools, aggregate balancing, and telemetry requirement for small transportation customers. The Settling Parties agree to commence the Shipper Stakeholder Evaluation Process within 60 days of the effective date of rates established in this Proceeding, unless the Settling Parties mutually agree to an earlier date. The Settling Parties neither committed to make any specific proposal nor are they precluded from taking any position during or following the Shipper Stakeholder Evaluation Process, including in any subsequent Gas Phase II rate case.²⁸

²⁶ Hearing Exhibit 105, Paragraphs F.18 – 21 at pages 15 – 17.

²⁷ Hearing Exhibit 105, Paragraphs E.15 at page 14.

²⁸ Hearing Exhibit 105, Paragraphs E.12 – 17 at pages 14 and 15.

42. These two evaluation processes would be conducted under the aegis of this Proceeding.²⁹ Each evaluation process contains similar language about confidentiality: (1) at the outset, the Settling Parties will establish parameters to facilitate and protect the exchange of data and develop an evaluation process consistent with Commission Rules; (2) use of the data exchanged during the evaluation process is subject to the agreed upon data confidentiality and protection parameters; and (3) the data exchanged during the evaluation can be used by any Settling Party in a follow-on Gas Phase II Rate Case to support or refute any position taken.³⁰

43. Rule 1101(h) of the Rules of Practice and Procedure, 4 CCR 723-1, provides that: “All confidential information made available by a party ... shall not be used or disclosed for purposes of business or competition or for any purpose other than for purposes of the proceeding in which the information is produced.” The language in the Settlement Agreement regarding use of confidential information obtained in either evaluation process appears to conflict with the prohibition in Rule 1101(h) that confidential information obtained in the instant proceeding cannot be used by the Settling Parties (except Staff and OCC) in other proceedings.³¹

44. During the Settlement Hearing, the ALJ asked several witnesses about the intent of the confidentiality provisions in the two evaluation processes. Ms. Trammell testified that the Settling Parties never intended to violate any Commission rule.³² Instead, there are other ways a Settling Party could bring confidential information from the evaluations processes into the subsequent Gas Phase II rate case, such as through discovery in the subsequent rate case.³³

²⁹ Settlement Hearing Tr., 12/5/2019, page 29, ll. 8 – 15.

³⁰ Hearing Exhibit 105, Paragraphs E.1 – 5 at pages 8 – 10; and Attachment 1.

³¹ Rule 1101(h) allows Staff to use confidential information obtained in a specific proceeding in other proceedings. The OCC can use confidential information from one proceeding in another proceeding, or for a purpose unrelated to the proceeding, only if the Commission grants a motion for that purpose.

³² Settlement Hearing Tr., 12/5/2019, page 26, l. 17 – page 27, l. 6.

³³ See Settlement Hearing Tr. 12/5/2019, page 42, l. 15 – page 44, l. 19.

45. Dr. England of the OCC agreed that there was no intent in the Settlement Agreement to violate or to skirt a Commission Rule. He also testified that a decision clarifying the Settlement Agreement, such as use of confidential information obtained in an evaluation process, would not be a material modification.³⁴ Mr. Otto of Black Hills also agreed that a decision clarifying the Settlement Agreement, regarding the use of confidential information obtained in an evaluation process, would not be a material modification.³⁵

46. The Settlement Agreement also provides that deferred accounting treatment is reasonable and appropriate for actual rate case expenses Public Service incurs related to this Gas Phase II Rate Case, for recovery in the Company's Next Gas Phase I Rate Case. No later than 60 days after the effective date of rates established in this Proceeding, Public Service will advise the Settling Parties of its actual 2019 Gas Phase II Rate Case expenses through a filing in this Proceeding in a format like Table BAT-D-9 in the Direct Testimony of Company witness Brooke A. Trammell (Hearing Exhibit 100).

47. Finally, the Settling Parties agree that the Commission should issue a decision permanently suspending the tariff sheets filed with Advice Letter No. 949-Gas to allow an effective implementation date of March 1, 2020 for the Settled Rates. In lieu of the rates and other tariff changes originally proposed in the tariff sheets filed with Advice Letter No. 949-Gas, the Company will make a compliance advice letter and tariff filing on not less than two business days' notice to place the Settlement Tariff Sheets into effect on March 1, 2020.

³⁴ Settlement Hearing Tr., 12/5/2019, page 53, l. 15 – page 54, l. 4.

³⁵ Settlement Hearing Tr., 12/5/2019, page 65, ll. 2 – 17.

48. Witnesses for the Settling Parties all supported approval of the Settlement Agreement. Ms. Trammell, Dr. England, and Mr. Dusenbury each testified that the Settlement Agreement is in the public interest and that the resulting rates, terms, and conditions in the Settlement Agreement are just and reasonable.³⁶

III. CONCLUSIONS

49. The Commission has jurisdiction over the subject matter of this proceeding, pursuant to §§ 40-1-103(1), 40-3-102 and 40-6-111, C.R.S., and over the Parties.

50. The Settlement Agreement is in the public interest, and is just, reasonable, and not discriminatory. The Settlement Agreement reflects a reasonable compromise between the Settling Parties. The resulting rates, terms, and conditions in the Settlement Tariffs represent just and reasonable rates, conditions, and terms of service for the Company's customer classes. The additional evaluation processes will benefit the public and the customers potentially affected by those processes.

51. In implementing the LDC Stakeholder Evaluation Process and Shipper Stakeholder Evaluation Process, the Settling Parties are directed to establish parameters to facilitate and to protect the exchange of confidential data and documents in a manner consistent with the Commission's Rules, especially the Confidentiality Rules in the Rules of

³⁶ See Hearing Exhibit 106 (Settlement Testimony adopted by Ms. Trammell), at page 6, l. 22 – page 7, l. 21; Hearing Exhibit 300 (Settlement Testimony of Dr. England), at page 7, l. 14 – page 8, l. 3; Hearing Exhibit 400 (Settlement Testimony of Mr. Dusenbury), at page 5, l. 7 – page 12, l. 6. Black Hills supported approval of the Settlement Agreement because of Public Service's commitment to the LDC Stakeholder Evaluation Process. Hearing Exhibit 800 (Settlement Testimony of Mr. Otto), at page 6, l. 10 – page 9, l. 11. Mr. Andrew Bennett, who did not testify in person, filed testimony supporting the Settlement Agreement primarily because of the settlement on the Residential S&F charge, but he agreed that the remainder of the Settlement Agreement is in the public interest. Hearing Exhibit 500 (Settlement Testimony of Mr. Bennett), at page 10, l. 18 – page 12, l. 2. In approving the Settlement Agreement, the ALJ did not rely upon Section II of Mr. Bennett's written testimony (Hearing Exhibit 500, at page 6, l. 6 – page 9, l. 6), which does not support approval of the Settlement Agreement.

Practice and Procedure, 4 CCR 723-1. This directive does not constitute a material modification of the terms of the Settlement Agreement.

52. The new rates, terms, and conditions of service in the Settlement Tariffs (Attachment 6 to the Settlement Agreement) are just, reasonable, and non-discriminatory and will be approved.

53. The ALJ finds and concludes that the rates, terms, conditions, and Attachments in the Settlement Agreement not specifically discussed in this Decision are just and reasonable, and the ALJ approves them as well.

54. The ALJ will approve the Settlement Agreement without material modifications. The Settlement Agreement, including its Attachments, is Appendix A to this Decision.

55. The Parties will be ordered to abide by the terms and conditions of the Settlement Agreement and of this Decision.

56. The tariffs filed by Public Service with Advice Letter No. 949-Gas on May 31, 2019, will be permanently suspended and will not become effective.

57. Deferred accounting treatment is reasonable and appropriate for the actual rate case expenses Public Service incurs related to this Gas Phase II Rate Case, and for recovery in Public Service's next Gas Phase I Rate Case. No later than 60 days after the effective date of the rates established in this Proceeding, Public Service will advise the Settling Parties of its actual 2019 Gas Phase II Rate Case expenses through a filing in this Proceeding in a format like Table BAT-D-9 in the Direct Testimony of Company witness Brooke A. Trammell (Hearing Exhibit 100).

58. Public Service will be ordered to file compliance tariffs to implement the new base gas rates and charges approved in this Decision, on not less than two business days' notice in order to place the Settlement Tariff Sheets into effect on March 1, 2020.

59. In accordance with § 40-6-109, C.R.S., the ALJ hereby transmits to the Commission the record of this proceeding, a written recommended decision containing findings of fact and conclusions of law, and a recommended order.

IV. **ORDER**

A. **The Commission Orders That:**

1. The undecided portion of the Unopposed Joint Motion for Approval of Settlement Agreement without Modification, to Modify Procedural Schedule, and Request for Waiver of Response Time, filed on September 18, 2019 by Public Service Company of Colorado (Public Service), Trial Staff of the Colorado Public Utilities Commission, the Colorado Office of Consumer Counsel, Energy Outreach Colorado, WoodRiver Energy, LLC, Tiger Natural Gas, Inc., Climax Molybdenum Company, Atmos Energy Corporation, Black Hills Colorado Gas, Inc., and Colorado Natural Gas, Inc. (collectively, the Settling Parties), is granted consistent with the findings, discussion, and conclusions in this Decision.

2. The Settlement Agreement filed on September 18, 2019 by the Settling Parties is approved without material modification, consistent with the findings, discussion, and conclusions in this Decision.

3. Deferred accounting treatment for the actual rate case expenses Public Service incurs related to this Proceeding is approved and shall be recovered consistent with the evidence presented in Public Service's next Gas Phase I Rate Case. No later than 60 days after the effective date of the rates established in this Proceeding, Public Service shall

advise the Settling Parties of its actual 2019 Gas Phase II Rate Case expenses through a filing in this Proceeding, consistent with the findings, discussion, and conclusions in this Decision.

4. The tariffs filed by Public Service on May 31, 2019, with Advice Letter No. 949-Gas are permanently suspended and shall not become effective.

5. Public Service shall file compliance tariffs to implement the new base gas rates, charges, and tariffs approved by this Decision on not less than two business days' notice in order to place the Tariff Sheets into effect on March 1, 2020, consistent with the findings and discussion in this Decision. Public Service shall make this compliance filing within ten days after this Recommended Decision becomes the effective Decision of the Commission, or within ten days after the effective date of the Commission's final Decision, if applicable.

6. Public Service shall file its next Gas Phase II Rate Case no later than August 1, 2021.³⁷

7. Public Service shall comply with the terms and provisions of the Settlement Agreement, which is attached to this Decision as Appendix A, and with this Decision.

8. The Settling Parties shall abide by the terms of the Settlement Agreement and with this Decision.

9. Proceeding No. 19AL-0309G shall remain open to receive compliance filings and then shall be closed.

10. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

³⁷ Hearing Exhibit 105, Paragraphs E.15 at page 14.

11. As provided by § 40-6-106, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

- a. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the Recommended Decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.
- b. If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the Administrative Law Judge and the Parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

12. If exceptions to this Recommended Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

STEVEN H. DENMAN

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director