

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20A-0300E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF WILDFIRE MITIGATION PLAN AND WILDFIRE PROTECTION RIDER.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ROBERT I. GARVEY
GRANTING APPLICATION
AND DENYING RIDER**

Mailed Date: February 26, 2021

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I. STATEMENT

1. On July 17, 2020, Public Service Company of Colorado (Public Service or the Company) filed with the Colorado Public Utilities Commission (Commission), a Verified Application (Application) for approval of its proposed Wildfire Mitigation Plan (WMP) and Wildfire Protection Rider (WPR).

2. In the Application, Public Service requests that the Commission: (1) approve the proposed WMP provided in Attachment SLJ-1 to the Application as reasonable and in the public interest; (2) authorize Public Service to implement its proposed WPR consistent with the terms and conditions reflected in the illustrative WPR tariff (Attachment BAT-2); (3) approve the Company’s revenue requirement calculation as reflected in Attachment APF-1 (which will be used for the first annual WPR true-up adjustment), and approve the calculated 2021 WPR revenue requirement of \$17,185,038 (contained in Attachment APF-1); (4) authorize the Company to file a compliance advice letter within 20 days of the effective date of a final order in this proceeding, but on not less than 15 days’ notice, with WPR tariff sheets reflecting all terms and conditions that are approved as a result of this proceeding; and (5) authorize Public Service to defer the expenses incurred in connection with this proceeding

into a regulatory asset without interest until they are included as expenses in its next Phase I electric rate case.¹

3. During the Commission's weekly meeting held on August 26, 2020, the Application was deemed complete for purposes of § 40-6-109.5, C.R.S. (2019), and was referred to an Administrative Law Judge (ALJ) for disposition.

4. On July 30, 2020, the Colorado Office of Consumer Counsel (OCC) filed a Notice of Intervention of Right, Request for Hearing, and Entry of Appearance (OCC's Intervention). The OCC's Intervention is of right and identified twelve issues it may address regarding the Application.²

5. On August 24, 2020, Trial Staff of the Colorado Public Utilities Commission (Staff) filed a Notice of Intervention as of Right by Staff, Entry of Appearance, Notice Pursuant to Rule 1007(a) and Rule 1401, and Request for Hearing (Staff's Intervention). Staff's Intervention is of right and identified four specific issues it will raise and address in this proceeding.³

6. On August 14, 2020, Colorado Energy Consumers (CEC) filed a Motion to Permissively Intervene and Request for Hearing, pursuant to Rule 1401(c) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1. On August 17, 2020, CEC filed an Amended Motion to Permissively Intervene and Request for Hearing (collectively, CEC's Motion to Intervene) to add the conferral report required by Rule 1400(a) of the Rules of Practice and Procedure, 4 CCR 723-1.

¹ Application, pp. 1-2.

² OCC's Intervention, pp. 2-3.

³ Staff's Intervention, pp. 1-2.

7. On September 15, 2020, by Decision No. R20-0663-I, CEC's Motion to Intervene was granted, and a prehearing conference was scheduled for September 29, 2020.

8. On September 24, 2020, Public Service filed its Unopposed Motion to Approve Procedural Schedule, Vacate Prehearing Conference And Request Waiver of Response Time.

9. On October 2, 2020, by Decision No. R20-0705-I, the prehearing conference was vacated, and a procedural schedule was adopted.

10. On January 7, 2021, Staff, the OCC and CEC (collectively, the Intervenors) filed their Joint Motion to Modify Procedural Schedule for Leave to File Additional Testimony (Joint Motion).

11. On January 11, 2021, the Intervenors filed their Unopposed Joint Motion to Modify Procedural Schedule for Leave to File Additional Testimony (Unopposed Joint Motion)

12. On January 14, 2021, the above-captioned proceeding was called via video conferencing at 9:00 a.m.⁴ At the start of the hearing, the Joint Motion was denied, and the Unopposed Joint Motion was granted.

13. Hearing Exhibits 100-111, 113-19, 300, 500-514 were admitted by stipulation of the parties. Hearing Exhibits 112, 130, 305, 310, 314, 320-322, 324-327, 400-40 were admitted during the hearing. Administrative notice was taken of paragraph 68 of Decision No. C21-0017 in Proceeding No. 20A-0204E.

14. Public Service offered the testimony of Ms. Brooke Trammel, Ms. Sandra Johnson, Mr. Steven Rohling, and Mr. Randy Lyle. Staff offered the testimony of Mr. Gene

⁴ The hearing was held via video conferencing due to the Covid-19 pandemic.

Camp, and the OCC offered the testimony of Dr. Scott England. At the conclusion of the evidence, the record was closed. The matter was then taken under advisement.

15. Pursuant to § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record of the hearing and a written recommended decision in this proceeding.

II. FINDINGS OF FACT

16. The Partial Wildfire Mitigation Settlement Agreement (Wildfire Mitigation Settlement) in the Company's 2019 Electric Rate Case specified that if Public Service did not file a Phase I rate case on or before August 1, 2020, the Company would file a separate application to present its comprehensive WMP on or before that date.⁵

17. Areas where forests meet the edges of urban areas, referred to as the wildland urban interface, face an increased threat from wildfires due to increased human interaction, activities that could result in the ignition of a fire, and the presence of substantial surface fuel.⁶

18. The WMP at issue encompasses the Company's completed activities in 2019 and 2020, along with the activities planned through 2025.⁷

19. The primary actions contained in the Company's WMP include:

- a) Accelerated and enhanced equipment and vegetation inspections and replacements, system protection and wind strength modeling programs, and asset data gathering;
- b) System protection enhancements;
- c) Expanded and incremental vegetation management;
- d) Repair and replacement activities of equipment identified through inspections, system protection, and wind modeling programs;
- e) Metrics, tracking, and reporting;

⁵ Hearing Exhibit 101, p. 17:11-14.

⁶ Hearing Exhibit 101, p. 14:6-10.

⁷ Hearing Exhibit 101, p. 32:13-14.

- f) Community and stakeholder outreach; and
- g) Ongoing assessment of other activities for future consideration.

III. ISSUES

- 20. Should Public Service’s WMP be approved?
- 21. Should Public Service’s proposed WPR be implemented?

IV. APPLICABLE LAW

22. As the proponent of a Commission order, Public Service has the burden of persuasion in this proceeding pursuant to Rule 1500, 4 CCR 723-1, of the Commission’s Rules of Practice and Procedure.

23. The evidence must be “substantial evidence,” which is defined by the Colorado Supreme Court as: “such relevant evidence as a reasonable [person’s] mind might accept as adequate to support a conclusion ... it must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury.” *City of Boulder v. Colorado Public Utilities Commission*, 996 P.2d 1270, 1278 (Colo. 2000) (quoting *CF&I Steel, L.P. v. Public Utilities Commission*, 949 P.2d 577, 585 (Colo. 1997)). The preponderance standard requires the finder of fact to determine whether the existence of a contested fact is more probable than its non-existence. *Swain v. Colorado Department of Revenue*, 717 P.2d 507 (Colo. App. 1985). A party has met this burden of proof when the evidence, on the whole and however slightly, tips in favor of that party.

24. The Commission has an independent duty to determine matters that are within the public interest. *See Caldwell v. Public Utilities Commission*, 692 P.2d 1085, 1089 (Colo. 1984).

V. ARGUMENTS OF THE PARTIES**A. Public Service****1. Wildfire Mitigation Plan**

25. Public Service points out that the Intervenors support the WMP and agree that it is reasonable and appropriate to provide safe, proper, adequate, and sufficient service to customers.⁸

26. In addition, Public Service states that no party contests the reasonableness of the WMP budget, Wildfire Risk Model, or the reasonableness of the Wildfire Risk Zone.⁹

27. Public Service urges the Commission to approve the WMP and find that it is reasonable and in the public interest, and to authorize the Company to recover eligible wildfire transmission costs through the Transmission Cost Adjustment (TCA).

2. Wildfire Protection Rider

28. Public Service argues the scope of work, timeline, and costs associated with the WMP are not in the ordinary course of business. These projects are either new or accelerated from the routine operation.¹⁰ Because these activities are not in the ordinary course of business, the WPR is necessary.

29. Public Service states that the WPR would have multiple guardrails to protect ratepayers and points out that Staff acknowledged that it is likely all capital investments would be granted in its next electric rate case.

⁸ Public Service's Statement of Position, p. 8 (citing the Intervenor's Stipulation at p. 2).

⁹ *Id.* at pp. 9-12.

¹⁰ Public Service's Statement of Position, p. 13.

30. In addition, the WPR would include a true-up provision to ensure the Company does not recover costs that it did not incur in any given year, and that there is no over- or under-recovery of costs incurred under the WMP.

31. Finally, Public Service argues that the WPR will streamline the issues presented for review in an electric rate case and smooth out bill impacts rather than resulting in a relatively larger one-time bill increase for the WMP-associated costs after a rate case.

32. In the alternative, given the current economic crisis due to the worldwide pandemic, Public Service provides a deferred accounting proposal.

33. Public Service's deferred accounting proposal calls for the following:

- a) Authorize the deferral of costs for a duration aligned with the timeline of the WMP, with the opportunity to review costs as part of a Phase I rate case filed during the five-year term;
- b) Establish two deferred accounting mechanisms: one to defer monthly depreciation expense and interest associated with the full level of distribution capital placed into service through December 31, 2025, and the second to defer incremental distribution operations and maintenance O&M for calendar years 2021-2025; and
- c) Authorize accrual of interest on the deferred account related to distribution capital at the Company's after-tax WACC (with no return on the deferred account related to distribution O&M).

34. Public Service argues that the Intervenors' deferred accounting proposal is unreasonable because it would apply to less than five percent of the total uncontested capital additions in the WMP.

35. Public Service believes that operations and maintenance costs (O&M) should not be excluded from the authorized deferral and points out that O&M has been included in previous riders. In addition, concerns about double recovery and the ability to track and audit have been addressed by the Company.

36. Finally, Public Service urges the Commission to authorize a return on the deferred account equal to the Company's after-tax weighted average cost of capital (WACC), which would be consistent with the rate of return authorized in its 2019 Phase one Electric Rate Case.

B. Intervenor

37. The Intervenor filed a Joint Stipulation (Stipulation) concerning the issues in this proceeding. Their arguments will be considered as one.

1. Wildfire Mitigation Plan

38. The Intervenor each agree that the WMP should be adopted in its entirety.

39. The Intervenor agree that the planned activities are reasonable and appropriate to provide safe proper, adequate and sufficient service to customers pursuant to § 40-4- 101(1), C.R.S.

2. Wildfire Protection Rider

40. All Intervenor oppose the WPR. The Intervenor argue that the WPR would be an extraordinary cost recovery that is not warranted in the instant case.

41. The Intervenor argue that the Company has stated with or without the approval of the WPR, the WMP will be undertaken and the speed with which it is implemented will not be affected. Thus, the need for this extraordinary recovery has not been shown by the Company.

42. In addition, no other public utility in the West has sought to recover the costs of a wildfire mitigation plan through a rider.¹¹

43. The Intervenor recognize the need to implement the WMP but believe these actions are in the ordinary course of business. In recognizing the public need for the WMP, the

¹¹ CEC's Statement of Position, p. 9.

Intervenors propose the following deferred accounting treatment as contained in the Stipulation filed the week of the evidentiary hearing:

[The Intervenors] recommend that Public Service be allowed to book into a deferred account only the monthly depreciation expenses related to the following capital investments placed in service (moved into rate base) for two (2) years for the calendar years 2021 and 2022:

(1) Distribution and Pole Repair or Replacements, Overhead Rebuilds, or Repair or Replace Components identified by infrared inspection that are located within the Wildfire Risk Zones designated as “Highest” or “High Risk” demarcated with a (5) and (4) ranking in the Company’s direct testimony and exhibits and

(2) all other distribution capital investments proposed with exception of the ADMS Enhanced Circuit Breaker Functionality program. The annual amount of capital expenses for which depreciation can be deferred is limited to no more than 100 percent of the Company’s proposed spending for each specific WMP measure completed in each of the calendar years 2021 and 2022 for these “Highest” and “High Risk” projects.¹²

44. The Intervenors also request that Public Service be required to include in its TCA filings, identification of wildfire capital for which TCA recovery is being sought, and detail the amounts expended for each of the five (5) wildfire risk zones.

45. The Intervenors also request the establishment of Wildfire Mitigation Key Performance Indicators to be filed in this proceeding on or before April 1, 2022, for the calendar year 2021, and on or before April 1, 2023, for the calendar year 2022.

VI. DISCUSSION

A. Wildfire Mitigation Plan

46. The experience of numerous wildfires over the past few years, and the last year in particular, show the ever-present need to be prepared for wildfires in the State of Colorado. Working to avoid these disasters is a vital service the Commission can provide to the citizens of

¹² Stipulation, p. 3 (footnotes omitted).

Colorado. The State, and this Commission in particular, should not engage in or encourage a policy of waiting until a utility-caused wildfire before taking preventive measures.

47. An active program by a public utility to curb wildfires and hopefully lessen the severity of wildfires has a benefit to the utility but also to all residents of the State of Colorado. Public Service should be commended for addressing this potential risk.

48. The experience of the nation in the past few years concerning wildfires and other natural disasters has shown the importance and necessity of preventative measures.

49. There is no question the WMP at issue in the instant case is in the public interest and should and will be approved.

B. Wildfire Protection Rider

50. The central question in this proceeding concerns recovery for these necessary measures. The Company favors a rider that will be added to the bills of ratepayers and followed by a true-up provision.

51. The Intervenors object to the WPR with the primary focus being that this work is in the ordinary course of business and should not receive extraordinary treatment.

52. If approved, the WPR would create a new line item charge for all ratepayers of Public Service. Presently, while this proceeding is at issue, there is a global pandemic which has been on-going for more than one year. This pandemic has caused financial hardship for much of this state and much of the country.

53. Under these circumstances, it is difficult to approve an additional charge on ratepayers' bills when so many are facing disconnection for failure to pay their utility bill. The economic conditions of the State cannot be ignored and must be taken into account.

54. In addition, although only proposed to be a five-year rider, the undersigned ALJ is concerned that it may extend beyond that period. As the questioning of Mr. Camp indicated, many riders that are approved for a time certain are extended indefinitely.¹³

55. The undersigned ALJ believes that in order to approve a rider and allow for this extraordinary cost recovery, there either needs to be a statutory provision or an emergency situation or near-emergency situation. At all times, the needs and effect on the ratepayers must be balanced with those of the utility.

56. In the instant case, Public Service has indicated that it intends to move forward with the measures in the WMP at the same pace regardless of whether there is an approved rider.¹⁴ Given this admission, there is very little to no benefit to the ratepayers for an immediate bill increase. With the current economic conditions, and muted benefit to ratepayers but clear benefit to the utility, the addition of a rider is not warranted and would not be just or reasonable.

57. Although there is insufficient evidence to allow for the approval of the WPR, there is a need for the Commission to show its support for enactment of the WMP. The WMP is part of the Wildfire Mitigation Settlement in Proceeding No. 19AL-0268E. The Commission has ordered this plan, and although the costs would be recoverable in the Company's next rate case, it is appropriate to provide an incentive for Public Service to implement this plan as quickly as possible.

¹³ Hearing Transcript Vol II, pp. 76-83.

¹⁴ Hearing Transcript Vol. I, p. 176:5-15.

58. Although Public Service indicates the WMP will be timely enacted, the risk of a wildfire and its collateral damage is too great not to provide a financial incentive to ensure these measures are taken in a timely manner.¹⁵

59. The deferred accounting proposals by Public Service and the Intervenors provide the financial incentive to the utility without an immediate increase to the ratepayers' bills. The deferred accounting strikes a proper balance of an incentive to the Company, but not at the cost of an immediate burden on the ratepayers.

60. During the hearing, Public Service described the Intervenors' deferred accounting proposal in the Stipulation as addressing only a "sliver" of the cost of the WMP.¹⁶

61. The Intervenors regarded their deferred accounting proposal as "significant movement and compromise."¹⁷

62. There are points of contention within each of the deferred accounting proposals. Each point of contention will be reviewed to craft a deferred accounting treatment that balances the needs of the utility with those of the ratepayers.

1. Capital Eligibility Threshold

63. Public Service argues that the Stipulation limits eligibility for deferred treatment for the cost of pole replacement to only those poles designated a (4) or (5), which is defined as

¹⁵ The recent winter weather events in the State of Texas show that without proper incentive, there is the risk of the utility failing to enact proper preventative measures which could lead to a disaster. The undersigned ALJ believes that with the proper incentive, the utility should and will work to avoid these risks.

¹⁶ Hearing Transcript Vol I. p. 35:5-11.

¹⁷ Stipulation, p. 2.

being in high risk or highest risk locations, respectively. The Company argues that a pole's designation is determined by its location, rather than the actual condition of the pole. It argues a pole listed as a (2) or (3), in fact, could be in worse condition than a pole listed as a (4) or (5).

64. Public Service points to the admission by Staff witness Camp that poles listed as a (3) could be in worse condition than poles listed as a (4) or (5).¹⁸

65. Staff in its Statement of Position argues that moderate risk poles (designated as a (1), (2), or (3)) do not represent an exceptional fire risk. In addition, Staff believes that the elimination of these poles will lessen the possibility Public Service will exceed its projected cost estimates.¹⁹

66. The OCC argues that nothing prevents the Company from recovery of these lesser risk poles in a general rate case.²⁰

67. CEC argues that the pole limitation is just and reasonable and consistent with prior limitations on approved deferred accounting. CEC believes that a limitation such as this is necessary to counterbalance single-issue ratemaking mechanisms such as deferred accounting treatment.²¹

68. This limitation on recovery appears to be arbitrary and unnecessary. As pointed out by the Company, it is only the location, not the condition of the pole, that determines whether the pole is designated as high-risk. The condition of a moderate risk pole could be worse than a high-risk pole, yet it would not be subject to deferred accounting treatment. The limitation proposed by the Intervenors shall be rejected.

¹⁸ Hearing Transcript Vol II. pp. 55:23-56:22.

¹⁹ Staff's Statement of Position, pp. 8-9.

²⁰ OCC's Statement of Position, p. 5.

²¹ CEC's Statement of Position, p. 7.

2. O&M Costs

69. Public Service argues that the O&M costs should be included for deferred accounting treatment. The Company provides numerous examples of Commission approval of O&M costs being included in approved riders and deferred accounting mechanisms.²²

70. The Company also points out that Staff witness Camp, after being informed that all incremental O&M was incurred pursuant to contracts, stated that the concern of double recovery would be removed.²³

71. The only support given by Staff for this disallowance is found in Mr. Camp's pre-filed testimony:

Second, the Stipulating Parties recommend the Commission deny deferred accounting treatment for O&M activities that are incremental to those used to establish rates in the Company's last rate proceeding. This recommendation is consistent with the Commission's treatment for O&M expense incurred above and beyond what is included in base rate.²⁴

72. During his cross-examination, Mr. Camp did not give specifics as to why the O&M should not be included in the deferred accounting, stating that he did not think it was "necessary."²⁵

73. When pressed as to why O&M recovery through the deferred accounting mechanism is not necessary in the instant case, Mr. Camp stated:

Well, one, I think the standard treatment is to bring forward these types of expenses in a rate case and then demonstrate that in a rate proceeding what's appropriate going forward. I think anything that the Commission would offer over and above ordinary course of treatment is extraordinary rate treatment. That's why I don't think it's necessary, considering that the Commission is essentially granting a presumption of prudence with regard to need for over \$500 million worth of investment here.

²² Public Service Statement of Position, p. 22.

²³ Hearing Transcript Vol. II, at pp. 62:25-63:6.

²⁴ Hearing Exhibit 503, pp. 25:19-26:2.

²⁵ Hearing Transcript, Vol. II, p. 63:6-7.

So, I think the Commission has a lot of discretion from giving no extraordinary treatment up to what the Company has asked. And it's our opinion that it's not necessary to go as far as giving O&M treatment as far as cost recovery or deferred accounting.²⁶

74. When pressed as to why deferred accounting is necessary in this matter, Mr. Camp indicated that the reason the Stipulation includes a deferred accounting treatment, yet there is reluctance to include O&M, was simple negotiations:

Q: Why is it necessary to give deferred accounting, then?

A: Well, one, I think we had -- I'm not sure that it's necessary. We wanted to move off of the position that we have in the answer case, at least from Staff's perspective.²⁷

75. It appears that there is no real reason not to include the O&M expense, other than a position taken in negotiations. The undersigned ALJ is persuaded by the recent Commission decisions mentioned by Public Service and given that all incremental O&M was incurred pursuant to contract labor, which Mr. Camp testified would alleviate Staff's concerns of double recovery.²⁸

76. In order to craft a decision which is both fair to ratepayers and creates an incentive for the utility, incremental O&M shall be included in the deferred accounting mechanism.

3. Carrying Costs

77. Public Service requests a carrying charge on the deferred account equal to its after-tax WACC, as authorized in its most recent Phase I rate case, Proceeding No. 19AL-0680E.

²⁶ *Id.* at p. 88:12-89:7.

²⁷ *Id.* at p. 89:8-13.

²⁸ *Id.* at p. 63:1-6.

Public Service does not request a return on the deferred account associated with distributed O&M.

78. Public Service maintains that the WACC is appropriate because it reflects the actual cost that Public Service will incur to finance the WMP investments. Additionally, Public Service states that as part of the Wildfire Mitigation Settlement approved by Decision No. C20-0096E, wildfire mitigation capital was placed into rate base, therefore the WMP investments at issue in this proceeding should also be allowed to earn the WACC.

79. The Intervenors recommend that Public Service be allowed a rate equal to its long-term cost of debt, also established in Proceeding No. 19AL-0680E, adjusted monthly. The Intervenors state that when Public Service files its next Phase I rate case, it will be able to incorporate its WMP investments into rate base, in which they can earn the WACC.

80. Staff and the OCC state that shareholders will benefit from the WMP through reduction of potential liability associated with a wildfire and will also benefit because the investments made in the WMP will add to rate base, leading to long-term shareholder profit. Staff states that it is reasonable to expect Public Service to help finance the investments because it will benefit from increased rate base and from decreased risk of wildfire-associated liability.

81. CEC states that allowing special cost recovery such as a deferred asset should be done only sparingly and that a return equal to the WACC would unreasonably reward Public Service. CEC notes that Public Service agreed to a deferred asset without any return in Proceeding No. 19A-0471E.

82. Public Service suggests the Commission look to other jurisdictions to see how cost recovery of wildfire mitigation measures could be handled, noting recent proceedings in Idaho and Oregon. Staff, the OCC, and CEC each note that while Idaho implemented a deferred

asset, no carrying charge was allowed on that regulatory account. Oregon has yet to authorize a recovery methodology, requiring additional “guardrails” to ensure that the investments are effective.

83. At hearing, Public Service witness Trammel stated that the Company will carry out its WMP, regardless of whether it is allowed special recovery for its investments through this proceeding. The WMP will benefit citizens of Colorado through decreased risk of wildfires, but it will also benefit Public Service’s shareholders through decreased potential liability. And, the WMP “includes approval to proceed with roughly \$458.5 million in capital investments,”²⁹ which will likely be included in Public Service’s next rate base earning the WACC, further benefiting shareholders. The allowance of a return on the deferred asset at the cost of Public Service’s long-term debt will recognize the benefit of the decreased wildfire risk resulting from the WMP. Public Service will benefit in the long term as its investments are incorporated into rate base.

84. In addition, the nature of the investments associated with the WMP are long-term investments consistent with long-term debt. Though a full analysis of debt and equity will be undertaken when a rate case is filed, long-term debt represents a conservative return amount that is appropriate in this situation to offset other factors such as single-issue ratemaking and Public Service’s high degree of certainty of cost recovery in the next rate case.

85. Further, the Wildfire Mitigation Settlement approved by Decision No. C20-0096E addresses only the 2019 Distribution capital additions and 2019 Distribution and Transmission

²⁹ Staff Statement of Position, p. 3.

O&M, and specifically states that Public Service's 2020-2023 WMP will be addressed in a separate filing, whether as part of a Phase I rate case or separate application. The Wildfire Mitigation Settlement as approved sets no guidelines on what, if any, carrying cost shall be authorized for the 2020-2023 WMP.

86. Given that the investments made in the WMP will result in a significant increase to Public Service's rate base, and will be subject to the WACC when those investments are included in rate base in Public Service's next Phase I rate case, the Intervenor's recommendation that the deferred asset be afforded a carrying charge equal to Public Service's long-term cost of debt, is appropriate and will be granted. Denial of the Company's request for a carrying charge equal to its WACC strikes a balance between benefiting the ratepayers and providing an incentive to the Company.

C. Other Issues

1. Legal and Regulatory Expenses

87. Public Service requests that the Commission authorize the Company to defer to its next Phase I electric rate case the review, approval, and recovery of its legal and regulatory expenses incurred in litigating this proceeding.³⁰

88. Public Service argues that it is not seeking recovery of legal and regulatory expenses through this proceeding but simply requesting authority to track and defer these expenses for consideration in a future rate case filing.³¹

³⁰ Public Service Statement of Position, p. 27.

³¹ *Id.*

89. The Intervenors generally view this request as single issue rate making³² and/or as providing too much of a benefit to the Company at the expense of the ratepayers.³³

90. The undersigned ALJ agrees with the Intervenors. The deferral of legal expenses incurred in this proceeding does not speed up implementation of the WMP. Granting this request provides no benefit to the ratepayers, only to the Company. Granting the deferred accounting treatment is intended to show support for the program while also providing an incentive for the quick implementation of the WMP. Granting deferral of the legal and regulatory expenses would be counter to those goals and unjustly enrich the Company at the expense of the ratepayers.

2. Transmission Costs

91. All parties are in agreement concerning transmission costs.³⁴

92. Prudently incurred capital costs associated with the transmission programs outlined in the WMP are recoverable through the TCA.

93. In its TCA filings, the Company shall identify wildfire capital for which TCA recovery is being sought and detail the amounts expended for each of the five (5) wildfire risk zones.

3. Key Performance Indicators

94. The parties also agree to the Key Performance Indicators as stated in the Stipulation. The following indicators are approved and adopted:

Vegetation Management Maintenance Cycle: During each of the calendar years 2021 and 2022 Public Service will maintain vegetation around all distribution and transmission assets in the Company's identified Wildfire Risk Zone ("WRZ") on at least a 90 percent completion of cycle basis. As set forth below,

³² EOC Statement of Position, pp. 11-12.

³³ Hearing Exhibit 503, p. 26:4-14.

³⁴ Stipulation, p. 4; Public Service Statement of Position, p. 29.

the Company will provide annual reporting on this metric, including its progress on achieving the 90 percent targets.

Work Completion: During each of the calendar years 2021 and 2022, Public Service will complete 90 percent of its scheduled work annually as proposed in the Company's WMP. As set forth below, the Company will provide annual reporting on this metric, including its progress on achieving this target.

Work Completion Ratio (WCR): During the calendar years 2021 and 2022, Public Service will complete system hardening Repair/Replacement and System Protection programs to the percent of actual spend as compared to budget, across the entire WRZ, equal to or exceeding 0.900 and report the actual WCR by county in the WRZ. If the WCR is less than 0.900 then the Company will report WCR by system hardening program repaired or replaced for each county within the WRZ.

If these metrics are not achieved in a particular program year, the Company will provide detailed testimony and/or evidence explaining why it did not achieve the applicable target(s) at the time or times the Company seeks base rate cost recovery for distribution WMP costs and/or transmission WMP capital.

4. Reporting of Key Performance Indicators

95. The parties agree that the Key Performance Indicators will include the following metrics for each calendar year:

- The number of ignitions associated with electric overhead power lines within the WRZ;
- The number of downed transmission and distribution wires within the WRZ;
- The number of Red Flag Warning Days in Colorado;
- The communities or areas which experienced Red Flag Warnings, as well as the dates they occurred;
- The total number of wildfires in the Company's service territory;
- The annual WCR, as set forth in Section 2 above;
- The annual budgeted and planned distribution and transmission spend by WMP program for each county in the WRZ;
- The total actual annual distribution and transmission investment by WMP program for each county in the WRZ;

- Balances and monthly detail of the deferred accounts identified in Item 4 (Cost Recovery) above;
- The Company's progress on executing equipment upgrades, major line rebuilds, small conductor replacement, covered conductor, and overhead rebuilds with a summary of work completed and remaining work to be completed; and
- Percentage on-cycle vegetation management activities for transmission and distribution assets in WRZ.

96. The filings reporting the Key Performance Indicators shall be made annually in May in this proceeding. The first of these reports shall be filed within 45 days of a final Commission decision in this proceeding and shall cover the calendar year 2020.

5. Time Period for the Deferred Accounting Treatment

97. The deferral period begins January 1, 2021, with the depreciation expense for 2019 and 2020 capital additions to be included at the level of January 1, 2021, on a going-forward basis.

98. The deferral account treatment shall last three (3) years. It shall cover the years of 2021, 2022, and 2023.

99. The Company may defer monthly depreciation expense and interest associated with distribution capital placed into service through the term of the approved deferral (2021-2023).

VII. ORDER

A. It Is Ordered That:

1. The Wildfire Mitigation Plan (WMP) Application filed by Public Service Company of Colorado on July 17, 2020, is approved.

2. The WMP is supplemented by the reporting requirements stated above.

3. The Wildfire Protection Rider filed by Public Service Company of Colorado on July 17, 2020, is denied.

4. A deferred account mechanism is authorized for the years 2021, 2022, and 2023, as stated above.

5. A Technical Conference shall be scheduled after there is a final Commission decision in this proceeding. The parties shall informally contact the undersigned ALJ to schedule the Technical Conference.

6. This Recommended Decision shall be effective the day it becomes the Decision of the Commission, if that is the case, and is entered as of the Mailed Date above.

7. As provided by § 40-6-109, 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 authorized extended period of time, or unless the decision is stayed by the Commission upon its own motion, this 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, this proceeding is bound by the facts set out by the Administrative Law Judge.

8. If exceptions to this 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

ROBERT I. GARVEY

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director