

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19A-0425E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR AN ORDER APPROVING EXPENSES INCURRED FOR THE PERIOD JANUARY 2018 THROUGH DECEMBER 2018 THAT ARE RECOVERED THROUGH THE ELECTRIC COMMODITY ADJUSTMENT AND APPROVING THE CALCULATION OF 2018 SHORT TERM SALES MARGINS.

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

Mailed Date: March 9, 2020

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I. STATEMENT

1. On August 1, 2019, Public Service Company of Colorado (Public Service or the Company) filed its Verified Application (Application) for approval of fuel, purchased energy, and purchased wheeling expenses incurred from January 1, 2018 through December 31, 2018, that have been reflected in the Company's Electric Commodity Adjustment (ECA). Public Service also applied for approval of the Company's calculation of the 2018 Short-Term Sales Margins that have been used to adjust the 2019 ECA Deferred Account Balance.

2. On August 27, 2019, the Colorado Office of Consumer Counsel (OCC) filed its Notice of Intervention of Right, Entry of Appearance, and Request for Hearing. The OCC is an intervenor as of right and a party in this proceeding.

3. On August 29, 2019, Trial Staff of the Commission (Staff) timely filed its Notice of Intervention as of Right, Entry of Appearance, Notice Pursuant to Rule 1007(a) and Rule 1403(b), and Request for Hearing. The intervention is of right, and Staff is a party in this matter.

4. On August 30, 2019, Ms. Leslie Glustrom, a residential electric customer, filed a Request for Deliberation and Questions Related to Future Electronic Commodity Expenses or in the Alternative Petition to Intervene *pro se*. Ms. Glustrom explains that she is a customer of Public Service and believes her interests cannot be represented by any other party.

5. On September 11, 2019, by minute order, Proceeding No. 19A-0425E was referred to an Administrative Law Judge (ALJ).

6. On September 13, 2019, Public Service filed its Response and Objection to Ms. Leslie Glustrom's Intervention.

7. On September 17, 2019, by Decision No. R19-0767-I, the intervention of Ms. Glustrom was denied and a prehearing conference was set for October 8, 2019.

8. On October 2, 2019, Public Service filed its Unopposed Motion to Vacate Prehearing Conference, Establish a Procedural Schedule and Waive Response Time.

9. On October 4, 2019, by Decision No. R19-0820-I, the prehearing conference was vacated, the proposed procedural schedule was adopted, and an evidentiary hearing was scheduled for January 28 and 29, 2020.

10. On January 23, 2020, Staff filed its Notice of Withdrawal of Intervention (Withdrawal). In the Withdrawal, Staff stated that because all issues with Public Service had been resolved, Staff no longer objected to the Application and would not participate in the hearing scheduled for January 28, 2020.

11. On January 28, 2020, the evidentiary hearing was held. The ALJ heard testimony from Public Service witnesses Ms. Brooke Trammell,¹ Mr. Mark Schultz,² Mr. Hari Singh,³ and OCC witness Mr. Chris Neil.⁴ The pre-filed testimonies of Public Service witnesses Ms. Dolores Basquez,⁵ Mr. Matthew Conger,⁶ and Mr. Jeffrey D. Ishee⁷ were admitted into evidence, but these witnesses did not testify during the evidentiary hearing.

12. Hearing Exhibits 100 through 106, 400, and 500 through 510 were offered and admitted into evidence.

¹ Ms. Trammell is the Regional Vice President, Rates and Regulatory Affairs for Public Service.

² Mr. Schultz is a Power Operations Manager for Public Service.

³ Mr. Singh is a Principal Engineer in Transmission Operations for Public Service.

⁴ Mr. Neil is a rate/financial analyst for the Colorado Office of Consumer Counsel.

⁵ Ms. Basquez is a Pricing Consultant for Public Service.

⁶ Mr. Conger is a Manager in Public Service's Accounting Department.

⁷ Mr. Ishee is a Manager of Gas Supply and Planning for Public Service.

13. At the conclusion of the hearing, the evidentiary record was closed and the ALJ took the matter under advisement.

14. On February 20, 2020, Public Service⁸ and the OCC filed Statements of Position. Staff did not participate in the hearing and did not file a Statement of Position.

15. In reaching this Recommended Decision, the ALJ has considered all arguments presented by the parties, including those arguments not specifically addressed in this Decision. Likewise, the ALJ has considered all evidence presented at the hearing, even if the evidence is not specifically addressed in this Decision.

II. FINDINGS OF FACT

16. The ECA is the mechanism that allows Public Service to collect its energy costs.⁹

17. The ECA that was in effect during 2018 was established by the Settlement Agreement dated October 20, 2006 in Proceeding No. 06S-234EG, approved by Commission Decision No. C06-1379 dated December 1, 2006, as modified by Commission Decision No. C09-1446 dated December 24, 2009 in Proceeding No. 09AL-299E, and the Settlement Agreement dated April 2, 2012 in Proceeding No. 11AL-947E, approved by Commission Decision No. C12-0494 dated May 9, 2012, as modified by Commission Decision No. C15-0292 dated March 31, 2015 in Proceeding No. 14AL-0660E.¹⁰

⁸ Public Service attempted to file its Statement of Position of February 20, 2020, but due to problems with the Commission's E-Filings system, it was not filed until February 21, 2020. Public Service served its Statement of Position to the ALJ and the OCC via e-mail on February 20, 2020.

⁹ Hearing Exhibit 101 at 6:9-10.

¹⁰ *Id.* at 6:10-18.

18. The actual energy costs for Public Service in 2018 are provided in Attachments DRB-1, DRB-2, and DRB-3 to Hearing Exhibit 101.

19. The OCC does not contest the accuracy of the figures in Attachments DRB-1, DRB-2, and DRB-3 to Hearing Exhibit 101.

20. Transmission Operations are posted in Public Service's Open Access Same Time Information System (OASIS).¹¹

21. A "must-run" instruction is a version of a posting on the OASIS system used to communicate local reliability needs, transmission outages, or a number of pieces of information that due to the sensitivity of that information and the relative commercial value of that information is required to be posted publicly to all parties at the same time. The reliability must-run instruction indicates that to maintain reliable operations of the Public Service region, the particular unit instructed is required to be online and generating for the period specified in the posting on OASIS.¹²

22. During 2018, a "must-run" instruction was given to the Cherokee 4 plant. The must-run instruction was given due to transmission capacity degradations in the metro-area transmission system – specifically: (1) scheduled outages and the derated Daniels Park – Arapahoe 230 KiloVolt line; and (2) stressed operating conditions characterized by high generation injections at metro-area delivery points and near-peak system load.¹³

¹¹ Hearing Exhibit 106 at 5:21-22.

¹² Hearing Transcript at 54:6-22.

¹³ Hearing Exhibit 106 at 6:1-7, 9:19-10:18, 11:7-14:17.

23. Public Service's Federal Energy Regulatory Commission (FERC) 2018 Form 1 indicates that the production cost for Cherokee 4 was \$0.0534 per kilowatt hour. The per kilowatt rate was higher than 16 other Public Service power plants.¹⁴

III. APPLICABLE LAW

A. Prudence

24. A definition of prudence, as related to the ECA, is not contained within the Commission's rules or State statutes.

25. The Gas Commodity Adjustment (GCA) recovery referenced in Rule 4607(c) of the Rules Regulating Gas Utilities and Pipeline Operators, 4 *Code of Colorado Regulations (CCR)* 723-4, is analogous to the ECA recovery at issue. Rule 4706(c) sets forth a prudence review standard for purposes of GCA recovery. This standard has been used in previous ECA prudence review proceedings,¹⁵ and it shall be the prudence review standard applied in this proceeding. The prudence review standard used in GCA proceedings is as follows:

For purposes of GCA recovery, the standard of review to be used in assessing the utility's action (or lack of action) in a specific gas purchase year is: whether the action (or lack of action) of a utility was reasonable in light of the information known, or which should have been known, at the time of the action (or lack of action).¹⁶

26. The undersigned ALJ agrees that the GCA is analogous to the ECA and the definition of prudence found in Rule 4607(c), 4 *CCR* 723-4, is the appropriate prudence review standard to apply in this proceeding.

¹⁴ Hearing Exhibit 400 at 6.

¹⁵ See Proceeding No. 13A-0869E.

¹⁶ Rule 4607(c), 4 *CCR* 723-4.

B. Burden of Proof

27. Although Public Service bears the ultimate burden of proof, utility expenditures have a rebuttable presumption of prudence and thus, any party contesting such costs bears the burden of making a *prima facie* case of imprudence.¹⁷

28. The instant proceeding is an application. The burden of proof and the burden of going forward are on the applicant in any application.

29. The initial burden is met by the applicant with the filing of testimony and exhibits in support of the application. After this filing, the burden of going forward, not the burden of proof, shifts to the intervenor to contest the prudence of any or all of the actions of the applicant. An intervenor may not present a blanket objection to the prudence of fuel, purchased energy, and purchased wheeling costs. Rather, an intervenor must present evidence identifying the specific actions that were not prudent. If the evidence is sufficient to bring into question the prudence of actions taken or not taken by the utility, the burden of going forward then shifts back to the utility to show that the questioned action or lack of action was prudent.

30. Here, the initial burdens of Public Service were met by the filing of testimony and exhibits in support of the Application. To meet the burden of going forward, the OCC must provide sufficient specific evidence that the expenditures of Public Service were not prudent.

¹⁷ See Commission Decision No. C12-0159 in Proceeding No. 11A-325E issued February 14, 2012. In Decision No. C12-0159, the Commission found that expenditures to install emission controls at the Pawnee unit would be given a “general presumption of prudence” when the issue of the prudence of those expenditures was taken up in a future rate case. The Commission also stated that the utility carries the burden of proof and that the general presumption of prudence is rebuttable.

IV. DISCUSSION

A. Argument of the OCC

31. The OCC asserts that a total partial disallowance of \$21,206,208 is appropriate and supported by the evidentiary record in this proceeding.¹⁸ Specifically, the OCC summarized its recommended disallowances as follows:

- a) A partial disallowance of \$17,911,915 for the Cherokee 4 gas-fired generating unit is warranted because that unit should have been operated at a lower capacity level and the unit was placed unnecessarily in a must-run situation that was avoidable.
- b) A partial disallowance of \$959,083 for the Ft. St. Vrain 5 and 6 gas-fired generating units is appropriate to reflect costs that would have been saved if [Public Service] had operated those Ft. St. Vrain units **more** in 2018, based, in part, on the operation of those units from 2014 through 2017.
- c) A partial disallowance of \$659,972 is justified to reflect costs that should have been saved, and to support State environmental goals, by operating the Craig and Hayden coal-fired generating units **less** in 2018.
- d) A partial disallowance of \$1,675,238 for the Plains End gas-fired plant is warranted because that unit should have operated **more** in 2018 because more frequent usage of Plains End was a more cost-effective generating resource.¹⁹

32. The OCC generally argues that the Company's actions were imprudent because "regardless of the 'must-run' instruction and the dispatch cost adder for these units," there were alternative generating options available to Public Service in 2018 that "would have provided the power in a less expensive manner that still would have been prudent, safe, reliable and would have resulted in just and reasonable costs that would be reflected in rates."²⁰ The OCC contends

¹⁸ OCC's Statement of Position at 3.

¹⁹ *Id.* at 3-4.

²⁰ *Id.* at 4, 6.

that in its Answer Testimony, Mr. Neil considered factors beyond “the lowest cost alternatives,” such as:

reliability, use of other units in [Public Service’s] power generation fleet, the MW capacity and kWh production costs of other generating units that were potential options, the proximity of other generating units, the recognition of environmental concerns such as high emissions and utilization of wind and gas-fired generation and facilities that could have been used to address a potential problem that [Public Service] described as the need to push back generation in the location of Cherokee 4.²¹

33. The OCC asserts that while Public Service focused on safety and reliability “as more important considerations” than costs and environmental concerns, these factors are “all equally important” considerations in this prudence review.²² The OCC further emphasizes that “the evidentiary record does not demonstrate that the lower cost generating options the OCC recommended in conjunction with its partial disallowances would have resulted in an unsafe or unreliable system.”²³

34. With respect to its recommendation of a \$17.9 million partial disallowance for Cherokee 4, the OCC focuses on the difference in the 2018 projected and actual capacity factors. Specifically, the OCC states that the actual capacity factor in Public Service’s 2018 FERC Form 1 data, 41.7 percent, is “a very different result” than the 2018 projected capacity factor, 5.07 percent, in the Company’s 2016 Electric Resource Plan (ERP).²⁴ The OCC further asserts that “Cherokee 4 was not the lower cost option in all circumstances” and that there

²¹ *Id.* at 5.

²² *Id.*

²³ *Id.* at 5-6. (Bolding Omitted)

²⁴ *Id.* at 7.

were other options for providing reliability in the Cherokee area “at a lower cost than Cherokee 4.”²⁵

35. With respect to its recommendation of a \$959,083 partial disallowance for the Ft. St. Vrain 5 and 6 units, the OCC asserts that these units should have been operated more in 2018. In support of this contention, the OCC relies upon a drop in the average capacity factor in 2018 as compared to previous years. Specifically, the OCC states that the average capacity factor was 6.3 percent for 2014 through 2017, whereas it was 1.9 percent in 2018.²⁶ The OCC further argues, “the result using the *de minimis* corrected NERC GADS data versus the filed FERC Form 1 data demonstrates basically the same result, i.e., the 2018 calculated capacity factor for Ft. St. Vrain 5 and 6 was lower than the 2014-2017 average.”²⁷ Put simply, the OCC contends that these units “should have been operated at the average generation level of the previous four years,” regardless of the data set considered.²⁸

36. With respect to its recommendation of a \$659,972 partial disallowance for the Craig and Hayden units, the OCC argues that these units should have been operated less in 2018 based upon both cost and environmental considerations. Specifically, the OCC contends “the Rush Creek wind project came online in 2018 and, second, low natural gas prices resulted in gas-fired generation having lower costs than either Craig or Hayden.”²⁹ The OCC also asserts that “20 percent of the operation of the Craig and Hayden units in 2018 was not required to meet the operating agreements requirements” discussed by Mr. Schultz in his Rebuttal Testimony.³⁰

²⁵ *Id.* at 14. (Emphasis Omitted)

²⁶ *Id.* at 19.

²⁷ *Id.* at 22.

²⁸ *Id.*

²⁹ *Id.* at 24.

³⁰ *Id.* at 25.

37. With respect to its recommendation of a \$1,675,238 partial disallowance for the Plains End plant, the OCC contends that this unit should have been operated more in 2018. The OCC specifically asserts that “Plains [End] provides a quick start option with a good heat rate and at a lower cost that would have been even more cost effective if it had only been used more and as an option to using other units.”³¹ The OCC further argues, “Plains End is a valuable generating resource that could have been utilized more frequently in 2018, particularly due to the presence of and the Company’s reliance on Comanche 3 for its reserve requirement.”³²

B. Argument of Public Service

38. Public Service argues that the use of the Cherokee 4 plant in 2018 was the result of a “must run” instruction being issued due to local reliability needs.³³ In addition, the cost of starting up lower cost-per-kilowatt-hour power plants would have been less cost efficient than the continued use of Cherokee 4.³⁴

39. Public Service also argues that the projections in the ERP are simply projections and not an accounting for day-to-day operations.³⁵ Further, the difference between projections in an ERP proceeding and actual power plant usage has never been, nor should be, considered to determine prudence.³⁶

³¹ *Id.* at 26.

³² *Id.* at 27.

³³ Public Service’s Statement of Position at 8.

³⁴ *Id.* at 9.

³⁵ *Id.* at 9-10.

³⁶ *Id.*

40. Public Service argues that Fort St. Varian (FSV) Units 5 and 6 were operated at the appropriate level in 2018 for required system support, load and resource balance, and system reliability.³⁷

41. Public Service also argues that the OCC fails to take into consideration the “complex suite of air quality regulations, among different environmental and other laws” that can limit the use of a generator.³⁸

42. Public Service argues that the OCC again, looks only at a cost capacity factor review and evaluation of production costs while ignoring the costs of starting another generator versus increasing capacity at Craig and Hayden.³⁹

43. Public Service also argues that the OCC fails to take into consideration design differences between Plains End and Arapahoe facilities.⁴⁰

C. Analysis

44. The disallowances advocated by the OCC are based on simplistic formulas that take a small glimpse at how *potentially* alternate generation may have resulted in a lower cost.

45. One formula is based upon which of Public Service’s units were the least expensive to run and posits that because more expensive units were run, the use of those more expensive units was not prudent. End of analysis.

46. Another formula is simply that since a plant was used more in previous years, it should have been run in 2018.

³⁷ *Id.* at 10.

³⁸ *Id.* at 12.

³⁹ *Id.*

⁴⁰ *Id.* at 14.

47. At no time is safety or reliability of the service or any other factor included or considered in either of these analyses.

48. The utility has a presumption of prudence. Thus, the intervenor bears the burden of presenting a *prima facie* case to show that the costs at issue were not prudent.

49. In her testimony during the evidentiary hearing, Ms. Trammell was quite generous in explaining her understanding of the process used by the OCC, calling it a “reasonable first screen.”⁴¹

50. In his pre-filed testimony, Mr. Schultz listed the following factors that the OCC failed to take into consideration:

- a) compliance with operating instructions issued by Transmission Operations with respect to Cherokee 4 commitment and dispatch;
- b) overall electric system dynamics as it concerns FSV 5&6 operations;
- c) contractual obligations as it concerns the operation of the Craig and Hayden units; and
- d) mandatory reliability standards and Company assigned reserve levels as it concerns the operation of the FSV 5&6 and Plains End generating units.⁴²

51. No explanation was given as to why the OCC failed to consider any of these other factors, even after agreeing that they exist.

52. The OCC presented no evidence, nor any argument, that a “must-run” order is not normal in the ordinary course of business. Yet when provided the information that the use of Cherokee 4 was due to a “must-run” order, the OCC did not include this information in its

⁴¹ Hearing Transcript at 29:2.

⁴² Hearing Exhibit 105 at 7:9-15.

calculation of the disallowance.⁴³ Rather, the entire analysis was formulated using only one factor. Specifically, during the hearing, Mr. Neil testified:

As has been discussed, I used the FERC Form 1 and looked at the cost of the units and saw that the overall system cost that fed to the ECA would be lower if [Public Service] had not run some of the more expensive units as much as they did and had run lower-cost units more.⁴⁴

53. Much of the additional disallowance proposed by the OCC is based upon looking at past performance of units without adjusting for any factors present in 2018. Put simply, the OCC's approach is simplistic as it does not consider any reasonable considerations, such as the cost to start up a different generator, must-run orders, or pollution standards.

54. With the shallow "first screen" approach used by OCC Witness Mr. Neil, the OCC has failed to make the *prima facie* case and meet the burden of going forward.

D. Conclusions

55. Public Service has met its burden to show that its actions were prudent with respect to fuel, purchased energy, and purchased wheeling costs as it relates to the ECA.

56. The OCC has failed to meet its burden going forward to establish that Public Service's actions were not prudent with respect to fuel, purchased energy and purchased wheeling costs as it relates to the ECA.

V. ORDER

A. The Commission Orders That:

1. The Verified Application filed by Public Service Company of Colorado on August 1, 2019 seeking Commission approval of fuel, purchased energy, and

⁴³ Hearing Transcript at 94:8-14.

⁴⁴ *Id.* at 93:12-17.

purchased wheeling expenses incurred from January 1, 2018 through December 31, 2018 that are recovered through the Electric Commodity Adjustment (ECA) clause and calculation of the 2018 Short-Term Sales Margins that have been used to adjust the 2019 ECA Deferred Account Balance is granted.

2. 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.

3. 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.

4. Responses to exceptions shall be due within seven calendar days from the filing of exceptions.

5. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the recommended 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.

6. If a party seeks to amend, modify, annul, or reverse a basic finding 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.

7. 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)



ATTEST: A TRUE COPY

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

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT I. GARVEY

Administrative Law Judge