

Decision No. R23-0846

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0339E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF DEFERRED ACCOUNTING TREATMENT FOR INCREMENTAL, NON-ROUTINE, AND EXTRAORDINARY COSTS INCURRED IN ACCORDANCE WITH COAL COMBUSTION RESIDUAL REGULATIONS.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
G. HARRIS ADAMS
GRANTING UNOPPOSED JOINT MOTION TO APPROVE
SETTLEMENT AGREEMENT, APPROVING
SETTLEMENT AGREEMENT, GRANTING APPLICATION
AS AMENDED BY SETTLEMENT AGREEMENT**

Mailed Date: December 20, 2023

I. PROCEDURAL BACKGROUND

1. On June 28, 2023, Public Service Company of Colorado (Public Service or the Company) filed its Verified Application (Application) requesting that the Public Utilities Commission (Commission) approve deferred accounting of the incremental, non-routine, and extraordinary costs relating to the Environmental Protection Agency's (EPA) Coal Combustion Residuals (CCR) regulations. Public Service included the Direct Testimonies of Michael R. Grubert, Jeffrey L. West, and Mark P. Moeller in support of the Application.

2. On July 5, 2023, the Commission issued a Notice of Application Filed (Notice) establishing deadlines for the filing of intervention pleadings. Interested persons were to file motions to intervene within 30 days. Trial Staff of the Public Utilities Commission (Staff) had seven additional days to file a notice of intervention of right. The Notice also stated that

Public Service had filed testimony with the Application and was seeking a Commission decision within 120 days.

3. On July 10, 2023, the Office of the Utility Consumer Advocate (UCA) timely filed its Notice of Intervention as a Matter of Right, Requests for Hearing, and Entry of Appearances of the Office of the Utility Consumer Advocate. On August 7, 2023, Staff timely filed its Notice of Intervention as of Right by Trial Staff of the Commission, Entry of Appearance, Notice Pursuant to Rule 1007(a) and Rule 1401, and Request for Hearing.

4. On August 9, 2023, the Commission deemed the Application complete by minute entry and referred it to an Administrative Law Judge (ALJ).

5. By Decision No. R23-0638-I, issued September 21, 2023, the interventions of the UCA and Staff were noted, a procedural schedule was adopted, and an evidentiary hearing was scheduled to commence on December 4, 2023.

6. On November 9, 2023, Public Service filed its Notice of Comprehensive Settlement in Principle, Unopposed Motion to Amend Procedural Schedule, and Request for Waiver of Response Time and Expedited Decision (Notice and Unopposed Motion to Modify). The Unopposed Motion to Modify stated that Public Service, UCA, and Staff (collectively, the Settling Parties) reached a comprehensive settlement in principle resolving all issues in the proceeding and requested that the procedural schedule be amended in order for the Settling Parties to focus on the preparation of a written settlement agreement. Specifically, Public Service requested that the November 9, 2023, deadline for the filing of rebuttal and cross-answer testimony be extended until November 22, 2023, that the deadline for the filing of the written settlement agreement be extended until November 22, 2023, and the deadline for the filing of settlement testimony be extended until November 30, 2023. The Company also requested to vacate the first

day of the evidentiary hearing, December 4, 2023. Finally, it requested that the ALJ waive response time to the Unopposed Motion to Modify.

7. By Decision No. R23-0761-I, issued November 14, 2023, the Unopposed Motion to Modify was granted. The December 5, 2023, date of the hearing remained scheduled.

8. On November 20, 2023, Public Service filed its Unopposed Motion to Approve Unanimous Comprehensive Settlement Agreement and Request for Waiver of Response Time and Forthwith Decision (Unopposed Motion). The Unanimous Comprehensive Settlement Agreement was Attachment A to the Unopposed Motion.

9. On November 30, 2023, settlement testimony was filed by Michael R. Grubert, on behalf of Public Service;¹ Kerry Kuykendoll, on behalf of UCA;² and Dipesh Dipu, on behalf of Staff.³

10. By Decision No. R23-0805-I, issued December 4, 2023, the undersigned ALJ waived response time to the Unopposed Motion, vacated the remaining procedural schedule, and vacated the evidentiary hearing. The ALJ also stated that the remainder of requested relief from the Unopposed Motion would be ruled upon by a separate decision.

II. SETTLEMENT AGREEMENT AND TESTIMONY

A. Deferred Accounting Treatment

11. The Settling Parties agree that, for a period of 12 years following approval of the Settlement Agreement, Public Service shall be permitted to defer all known and future incremental, non-routine, and extraordinary costs relating to EPA's CCR regulations into a regulatory asset (Regulatory Asset). After the deferred accounting has been in operation for the aforementioned

¹ See Hearing Exhibit 104.

² See Hearing Exhibit 201.

³ See Hearing Exhibit 301.

12 years, Public Service shall initiate a proceeding to review the deferral request and may propose an extension of the deferred accounting treatment. The Regulatory Asset will not earn a return.

12. Mr. Grubert explains that normal routine CCR regulatory activities at active, regulated CCR units, and activities already fully covered by existing base rates are not included in the deferral request. Illustratively, non-routine costs subject to deferral include: groundwater monitoring and other data gathering activities at inactive or closed CCR units; investigation and remediation related costs at active, inactive, or closed CCR units; removal and related reclamation, restoration, and closure obligations for CCR landfills that are active, inactive, or closed; and removal and related reclamation, restoration, and closure obligations at previously closed CCR surface impoundments.

13. Mr. Dipu supports the Company not earning a return on any recovery and points out that such treatment will reduce the burden on ratepayers and further the public interest.

B. Prudence, Recovery of the Regulatory Asset, and Amortization Period

14. The prudence of the costs, recovery of unamortized balance in rate base, and the period for the future amortization of this Regulatory Asset will be determined in a future rate case or other appropriate Commission proceeding. In any future rate case or other Commission proceeding, in addressing the deferred costs, Public Service shall calculate and provide the customer rate impact associated with amortization periods of 18 months, 5 years, 10 years, and 15 years.

C. Reporting

15. Mr. Grubert addresses reporting provisions included within the settlement. Public Service will file detailed annual reports into this Proceeding that contain information on the costs, projects, and actions required by the CCR regulations relating to the deferred costs. The detailed

annual reports shall include, at a minimum, provisions detailing the total costs related to groundwater remediation at each location and provisions detailing the total costs of coal ash remediation at each location. For any related cost recovery proceeding, Public Service will provide a cumulative presentation of all costs related to coal ash remediation activities including, but not limited to, coal ash remediation, groundwater testing, and administrative costs, and identify any proceeding that approved the prudence of costs.

16. Public Service will provide an update on any new significant developments regarding the CCR regulations and their potential impacts to Public Service. The reporting will begin in 2025 and will be filed annually on or before July 15th of every year. The first report will contain all deferred costs through December 31, 2024, with subsequent annual reports containing information from the previous calendar year.

17. Separately from the annual report agreed to and discussed above, Public Service will use a filing in this proceeding to inform the Commission and the parties promptly of cost overruns for the total estimates of coal ash remediation and groundwater remediation costs that would exceed 20 percent of the budget estimates included in the Application and any production issues brought to Public Service's attention with a potential impact on the contract for Charah Solutions, Inc.'s reclamation and recycling of CCR ash material.

D. Approval of the Settlement Agreement and Granting Application

18. The Settlement Parties agree that the Company's Application should be approved as modified and clarified by the Settlement Agreement. A copy of the Settlement Agreement, attached to this Recommended Decision as Appendix A, explains that it represents a comprehensive resolution of the issues in this Proceeding.

19. In addition to the specific agreements, the Settling Parties also agreed to numerous General Provisions, found in Section IV of the Settlement Agreement, including that the provisions of the Settlement Agreement and the negotiation process undertaken to reach it are just, reasonable, and consistent with and not contrary to the public interest, supporting approval by the Commission.

20. Mr. Grubert opines that the 12-year period is reasonable and will ensure that the Company is able to recover its reasonable and necessary expense amounts for compliance with the EPA's CCR regulations for environmental remediation of coal ash sites at electric generation plants. Agreed reporting will inform issues around prudence and recovery that will more appropriately be deferred to a later proceeding.

21. Ms. Kuykendoll testified that the UCA supports approval of the Settlement Agreement because it reasonably resolves concerns raised regarding prudence review, reporting, and customer rate impact requirements. She also agrees that the greater transparency of the settled reporting will be beneficial in considering recovery in a future proceeding.

22. On behalf of Staff, Mr. Dipu analyzed information provided by the Company and agrees that 12 years is a reasonable period for coal ash removal and groundwater remediation. He notes that further cost implications may also result from additional changes in the EPA regulations. Staff agrees that the settled 12-year period for reviewing and revisiting the deferred accounting treatment mechanism is reasonable and that issues of prudence and amortization are better deferred to a later proceeding. He also agrees that more detailed reporting will aid the Commission in future decision making.

23. All of the Settlement Testimony filed by the parties states that the sponsored witness supports the Settlement Agreement and that the Settlement Agreement is in the public interest.

The Settlement testimony filed by Public Service and Staff also states that the Settlement Agreement is just and reasonable.

III. FINDINGS AND CONCLUSIONS

24. The Settling Parties have the burden of proving by a preponderance of the evidence that the Settlement Agreement is just and reasonable and in the public interest. In reviewing the terms of the Settlement Agreement, the ALJ applies the Commission's directions and policy with respect to a review of settlement agreements as found in, *e.g.*, Decision No. C06-0259 in Proceeding No. 05S-264G issued March 20, 2006.

25. 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).

26. The undersigned ALJ has reviewed the full administrative and evidentiary record, including: the direct testimony filed by Public Service, the UCA, and Staff; the settlement testimony filed by the individual Settling Parties; and the terms and conditions of the Settlement Agreement. The ALJ has duly considered the position of all parties in this matter and weighed the evidence presented.

27. Based on the entire record, the ALJ finds that the Settlement Agreement provides a just, reasonable, and timely resolution of all contested issues and substantial evidence shows that its terms will benefit Public Service, the Settling Parties, and customers. The Settlement Agreement is in the public interest and will be approved without modification.

IV. ORDER

A. The Commission Orders That:

1. The Unopposed Motion to Approve Unanimous Comprehensive Settlement Agreement and Request for Waiver of Response Time and Forthwith Decision (Unopposed Motion) filed on November 20, 2023, is granted, consistent with the discussion above.

2. Consistent with the findings, discussion, and conclusions in this Recommended Decision, the Settlement Agreement filed as Attachment A to the Unopposed Motion on November 20, 2023 (Settlement Agreement), is approved without modification. The Settlement Agreement is attached to this Recommended Decision as Appendix A and incorporated herein by reference. All parties shall comply with the terms thereof.

3. The Verified Application filed herein by Public Service Company of Colorado on June 28, 2023, as modified and superseded by the Settlement Agreement, is granted.

4. 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.

5. 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 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.

6. 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

G. HARRIS ADAMS

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,
Director