

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0204G

IN THE MATTER OF VERIFIED APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR APPROVAL OF A MODIFIED GAS METER SAMPLING AND PERIODIC TESTING PROGRAM, PROCESS FOR EXCHANGE OF METERS IN FAILED LOTS, AND WAIVER OF COMMISSION RULES 4304(D)(I)-(IV) AND (VI) AS NECESSARY.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
AVIV SEGEV
GRANTING UNOPPOSED JOINT MOTION TO APPROVE
SETTLEMENT AGREEMENT, ACCEPTING
SETTLEMENT AGREEMENT, GRANTING APPLICATION
AS AMENDED BY SETTLEMENT AGREEMENT,
VACATING HEARING, AND CLOSING PROCEEDING**

Mailed Date: September 12, 2023

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I. PROCEDURAL BACKGROUND

1. On April 25, 2023, Public Service Company of Colorado (Public Service or Company) filed with the Public Utilities Commission (Commission) a Verified Application (Application), seeking approval to continue its existing meter sampling and periodic testing program with modifications and related revisions to its Colo. PUC No. 6-Gas Tariff as well as the process for continued replacement of meters in failed lots and for a waiver from Commission Rules 4304(d)(I) through (IV) and (VI). This filing commenced Proceeding No. 23A-0204G.

2. On April 26, 2023, the Commission issued a Notice of Application Filed (Notice). The Notice advised interested persons, firms, and corporations of the Application and that the Applicant seeks a Commission decision within 120 days and established a 30-day intervention period for intervenors to file appropriate pleadings to become parties to this Proceeding.

3. On May 11, 2023, the Office of the Utility Consumer Advocate (UCA) filed its Notice of Intervention of Right and Entry of Appearance of the Office of Utility Consumer Advocate (UCA’s Notice of Intervention).

4. On May 26, 2023, Trial Staff of the Public Utilities Commission (Staff) filed its Notice of Intervention of Right by Trial Staff of the Commission, Entry of Appearance, Notice Pursuant to Rule 1007(a) and Rule 1401, and Request for Hearing (Staff's Notice of Intervention).

5. On May 31, 2023, the Commission deemed the Application complete and referred this Proceeding to an Administrative Law Judge (ALJ). The proceeding was subsequently assigned to the undersigned ALJ.

6. By Decision No. R23-0450-I, issued July 10, 2023, the undersigned ALJ acknowledged the interventions of UCA and Staff, extended the deadline for a Commission decision by an additional 130 days pursuant to § 40-6-111(1)(b), C.R.S., up to and including February 5, 2024, adopted a procedural schedule, scheduled a remote evidentiary hearing for September 20-21, 2023.

7. On August 3, 2023, Public Service filed its Notice of Joint Comprehensive Settlement in Principle, Joint Motion to Modify Procedural Schedule and Set Settlement Deadlines, and Request for Waiver of Response Time (Notice of Settlement and Joint Motion to Modify).

8. By Decision No. R23-0529-I, issued August 9, 2023, the undersigned ALJ granted the Notice of Settlement and Joint Motion to Modify, required the parties to file the settlement agreement, motion for approval of the settlement agreement, and supporting settlement testimony by August 16, 2023, and vacated the remaining procedural deadlines. The scheduled evidentiary hearing dates remained as scheduled for a possible settlement hearing.

9. On August 16, 2023, Public Service filed its Joint Motion for Approval of Unanimous Settlement Agreement (Joint Motion) with attachments A through E thereto, a copy of

the Comprehensive Settlement Agreement (Settlement Agreement),¹ and the Settlement Testimony of Alexander G. Trowbridge with attachments.²

10. On August 16, 2023, UCA filed the Settlement Testimony of Chris Neil with attachments³ and Staff filed the Settlement Testimony of Nardos Ghebregziabher with attachments⁴ (together, UCA's and Staff's Settlement Testimony).

II. SETTLEMENT AGREEMENT AND TESTIMONY

A. Settlement Testimony

11. UCA's and Staff's Settlement Testimony indicates that UCA and Staff support the Settlement Agreement, and that the approval of the Settlement Agreement is in the public interest.⁵

B. Terms of the Settlement Agreement

12. The Settlement Agreement, attached to this Recommended Decision as Appendix A, explains that it is intended to resolve all issues that were or could have been raised in this proceeding with respect to Public Service's Application.

13. In addition to the specific provisions discussed below, Public Service, UCA, and Staff (the Settling Parties) also agreed to a number of general provisions which are set forth in Section IV of the Settlement Agreement. These general provisions include the statement:

The Settling Parties agree the provisions of this Settlement Agreement, as well as the negotiation process undertaken to reach this Settlement Agreement, are just, reasonable, and consistent with and not contrary to the public interest and should be approved and authorized by the Commission.⁶

¹ Hearing Exhibit 103.

² Hearing Exhibit 104.

³ Hearing Exhibit 200.

⁴ Hearing Exhibit 301.

⁵ See Hearing Exhibit 200 at 4-5, 7, 10-13, and 15 and Hearing Exhibit 301 at 5, 6, 14, 16-21, 23-26, 28-30, 32, 34-35, 37, 38-39, 40, and 42.

⁶ Hearing Exhibit 103 at 18, ¶66.

C. Amended Gas Meter Sampling and Periodic Testing Program

14. The Settling Parties agree to revise the Gas Meter Sampling and Periodic Testing Program (“Gas Meter Test Program” or “New Program”) to reflect the Settlement Agreement. The parties agree that only diaphragm meters are subject to random sample testing under the New Program and the remaining meter types continue to remain subject to periodic testing, as reflected in Attachment A to the Settlement Agreement.

15. The New Program includes six primary provisions, discussed in further detail below.

1. Homogenous Diaphragm Meter Lots and Random Selection Methodology

16. The Settling Parties agree that the homogeneity of meter lots (“lot” or “lots”) is key in meeting the ANSI/ASQ Z1.9-2003 standard, which applies to both the current and New Program. Public Service is transitioning to the SAP module Industry Specific Utilities (“IS-U”) platform in order to manage its gas meter test program.

17. Beginning in 2024, Public Service will transition from original lot groupings (“Parent Lot Groupings”) to the lot groupings defined under the New Program. The goal is for Public Service to transition Parent Lot Groupings into new lot groupings with tightened homogeneity. The new lot groupings are discussed in more detail in paragraph 16 of the Settlement Agreement.

2. Testing Exemption Period

18. The Settling Parties agree to continue sampling diaphragm meters beginning in the fifteenth year after purchase/year of manufacture, as applicable. If Public Service believes, based

on information received regarding meter performance, that earlier testing is required, Public Service will take actions to evaluate affected meter groups and explain this action in its Gas Meter Test Program Annual Report (“Annual Report”).

3. Diaphragm Meter Sample Selection Protocol

19. Sample diaphragm meters are randomly selected for testing. The Monitoring Device Management System (“MDMS”) program (or IS-U module, once the Company transitions) will generate a random sample list during the lot’s annual run, typically at the beginning of the test cycle. Inoperative or damaged meters will continue to be excluded from the statistical analysis.

20. Random gas meters that arrive at the gas meter shop for reasons other than that a work order for random sampling was generated by MDMS (or IS-U) during the meter lot’s annual run may be used to supplement or displace randomly selected meters within their respective lots. Public Service will not rely on these meters for its New Program, except to the extent that they can be used to supplement a small number (under 30 percent of the total sample size) of the total meters required by the annual test sample. Public Service will adhere to this threshold beginning in the 2024 cycle.

21. Random gas meters that were not selected by the lot’s annual run may be used in the New Program, provided the removal reason is eligible for inclusion. A chart of removal reasons that are eligible for the inclusion in the New Program is included in ¶ 22 of the Settlement Agreement.

22. The number of meters tested must meet the sample size determined in the statistical analysis. Where Public Service has more test results than necessary for its random sample, random selection of those tests results will be used in order to meet the required sample size.

23. In the unusual event that Public Service is not able to obtain enough test results to meet the required sample size, dependent on the circumstances, the Company will re-test in the following test cycle, or retire the lot, as applicable. The Company will explain treatment of such lots in its Annual Report.

4. Diaphragm Meter Sampling Testing Protocol

24. Lots are initially subject to random sample testing under normal testing protocols. A random sample from each lot is selected in accordance with ANSI/ASQ Z1.9-2003 Tables A-1, A-2 and B-3 to the for an Acceptance Quality Limit (“AQL”) of 10 and Inspection Level II, normal inspection, tested, and statistically analyzed twice, once for fast meters and once for slow meters, in accordance with Example B-2 for a single specification limit, variability unknown, standard deviation method. The AQL level 10 has a specified acceptance quality limit (by sample size) as specified in the ANSI standard while in normal status and another set of acceptance quality limits while in tightened status.

25. In both normal and tightened inspection, Public Service will take into consideration meter testing results that would be considered as outliers in the New Program through the implementation of the Chauvent Rule. The Chauvenet Rule and its application to Public Service’s testing procedures are described in paragraph 27 of the Settlement Agreement.

26. Public Service will continue using the Average Test methodology in which each sample meter is tested at both open rate (approximately 100 percent of badged capacity) and check rate (approximately 20 percent of badged capacity), and the average percentage error is calculated as (open rate error + check rate error) /2.

27. The acceptance tolerance for meters running fast (over measuring) will continue to be + two percent average error; meters testing two percent fast or less would be acceptable in Public Service's statistical analysis.

28. The specification limit for meters running slow (under measuring) will be adjusted from -two percent to -three percent average error beginning with the 2024 test cycle, with acceptable tolerance such that meters testing three percent slow or less would be acceptable.

29. Under ANSI/ASQ Z1.9-2003, if a lot meets statistics for a given test cycle, it skips the next test cycle. If a meter lot experiences two consecutive statistical non-acceptances, tightened inspection is instituted in compliance with ANSI/ASQ Z1.9-2003 section A10. Once in tightened status, the maximum allowable percent of nonconformance is reduced, making it harder to meet statistics once in tightened inspection.

30. Under tightened testing protocols, lots will be broken down into sub-lots, by year (manufactured/purchase year) and potentially other unique attributes. To be sub-lotted, the initial or Parent Lot Grouping must have at least 100 qualified meters at the time of sub-lotting.

31. If a lot does not meet statistics for five consecutive test cycles in tightened inspection, the lot is deemed failed.

32. An illustrative example of the testing timeline before a lot reaches failed status is included in paragraph 35 of the Settlement Agreement.

5. Failed Lot Removal Protocol

33. Lots that fail tightened inspection will be removed from service and replaced as appropriate.

34. Public Service will prioritize the replacement of meters in failed lots and will generally attempt to prioritize the replacement of lots in the following order: 1) lots statistically running fast on average; 2) lots with the worst performing meters (in other words, the lots with the highest estimate percent of nonconformance over-measurement or under-measurement); and 3) lots running on average slow. Other factors that will shape replacement priority include geographic grouping, logistics efficiency, and affordability, should Public Service have a significant number of meters to replace under the sampling program.

35. Public Service will evaluate the feasibility of first replacing “running fast” failed meters in disproportionately impacted communities in order to help reduce the possibility of overbilling economically disadvantaged customers. The results of this evaluation, along with the resulting plan, will be presented in the Annual Report, as described below.

6. Adding Alternate Design Meters to the Existing Gas Meter Types and Periodic Testing

36. The periodic testing requirements are attached to the Settlement Agreement as Attachment A.

37. Public Service’s request to add alternate design ultrasonic gas meters and rotary gas meters to expand the type of meters used under its program will be withdrawn, without prejudice to making a new request in the future. The Settling Parties agree that there is insufficient information in this Proceeding to justify the use of alternate design ultrasonic gas meters and rotary gas meters that generally cost more than the other meter types that Public Service currently uses.

D. Transition Protocol for Meter Groups that Currently Have at Least Five Consecutive Statistical Non-Acceptance Test Results

38. Recognizing that a number of the Parent Lot Groupings identified under the current meter sampling program have failed several years of testing, the Settling Parties agree to adopt a faster tightened testing protocol for certain lots.

39. Taking into consideration the updated lot grouping procedures, meter sample selection protocols, and meter sample testing protocols outlined in the Settlement Agreement, a faster tightened two-year testing protocol will be applied for any homogenous meter types identified under the current meter sampling program that were part of prior groupings with non-conformance of 30 percent or greater or meter groups that are fast running. Non-conformance of 30 percent or greater lots that were part of prior groupings are defined as meter groups who in five years, under tightened testing, had non-conformance, either under or over measuring of 30 percent or greater. Fast running lots that were part of prior groupings are defined as meter groups who in at least four out of five years, under tightened testing, had an “Estimate Percent Nonconforming in Lot—Meter Over-Measuring” which was greater than the “Estimate Percent Nonconforming in Lot—Meter Under-Measuring.” If a lot in this transition protocol meets statistics, it will skip a year of testing; if a lot in this transition protocol does not meet statistics, the lot will be rested the following year. If a lot in this transition protocol does not meet statistics for two consecutive statistical non-acceptance test results, the lot will be deemed failed and subject to replacement. Meter groups that do not meet the foregoing thresholds for the tightened two-year testing protocol would be subject to the five-year tightened testing under the New Program.

40. The Settling Parties recognize that Public Service has not been able to fully evaluate the total number of lots that would be subject to this transition protocol and will need time to

ramp-up this testing; Public Service may implement testing of all lots subject to this tightened two-year testing protocol over five years, beginning with the 2024 test cycle.

E. Annual Reporting and Meetings

41. Public Service will provide annual random sample test reports by May 15 of the following calendar year and will submit executable attachments along with the Annual Report, which will be filed in this Proceeding.

42. In addition to the currently-required reporting on the results of Public Service's annual testing, the Annual Report will include various other information as described in paragraph 46 of the Settlement Agreement.

43. The Settling Parties agree to meet annually prior to the filing of the May 15 Annual Report (unless otherwise agreed) to discuss the results of the prior year's Gas Meter Test Program, including, but not limited to, the new definition of homogeneous lot and tightened inspection, enhanced procedures and considerations to the accuracy, efficiency, and cost of the New Program, and pace of replacement of failed meters (with a consideration focused on affordability).

44. The annual meeting will also allow Public Service to present its Annual Report to Staff and the UCA and provide additional details on the types of meters that are failing/passing, provide a listing of the meters tested for random reasons outside the New Program, any considerations made for lot testing where Public Service was unable to obtain the sample target quantity, etc. The Settling Parties will meet for five years following approval of the Settlement Agreement, and further upon mutual agreement.

45. Public Service agrees to explore a weighted average methodology, as described in paragraph 49 of the Settlement Agreement, on a sample basis and discuss results and potential merits of adopting the alternative methodology during the annual meetings.

F. Ability to Provide Written Comments Regarding Company's Annual Report

46. Should Staff or the UCA have concerns regarding Public Service's Annual Report, the Settling Parties agree to a 30-day comment process beginning with the filing of the May 2025 Annual Report, and any such comments will be filed in this Proceeding.

47. If such comments are filed, Public Service will confer with Staff and/or the UCA within 30 days of receiving the comments and will work to resolve concerns raised through comments. Public Service will thereafter file a response to the comment clarifying how the issue was resolved. If not resolved, Public Service will file testimony on the disputed issue in the next Gas Phase I rate case.

48. If the Settling Parties reach consensus on modifications related to the New Program or the Annual Report during the annual review and comment process, they will file with the Commission the agreed-upon modifications, as well as any needed waiver or variance requests. If they do not reach a consensus, the Settling Parties agree to litigate concerns raised in Public Service's following Gas Phase I rate case filing.

49. The described comment process is not intended to: 1) alter the Commission-approved New Program unless agreed by the parties and filed with the Commission; 2) determine cost recovery associated with the New Program; and/or 3) affect or limit any party's ability to review and challenge the pace of failed meter replacement and cost recovery issues associated with the New Program in a Phase I rate case proceeding. Additionally, lack of comments by either Staff

or the UCA has no precedential value and shall not be construed as a waiver of either party's rights, or those of Public Service.

G. Cost Recovery

50. The Settling Parties agree that this Proceeding is not a cost recovery proceeding for meters or the New Program. The costs associated with the purchase, replacement, or sampling of gas meters are subject to review in a rate proceeding.

51. The Settling Parties note that the Commission approved depreciation expense and a return on rate base in the test year for recovery of meter-related costs in Public Service's last gas rate case, Proceeding No. 22AL-0046G. The Commission approved replacement of meters in failed lots that were included in Public Service's 2021 Historical Test Year revenue requirement, required the filing of this case, and did not order Public Service to cease replacement of meters in failed lots in the interim.

52. The Settling Parties also note that the Company has continued to replace meters in failed lots since the conclusion of the 2021 Test Year in that case through 2023, with changes as agreed herein effective on January 1, 2023. Neither Staff nor the UCA will contest cost recovery of the meters replaced through 2023.

53. The Settling Parties agree that Public Service will provide testimony regarding the amount being recovered for meter-related costs in its next gas rate filing, including but not limited to costs associated with meter purchases, meter replacement, and meter depreciation expenses.

54. Further information on Public Service's meter depreciation procedures was attached to the Settlement Agreement as Attachment C, for informational purposes only.

H. Rule Waivers

55. The Settling Parties seek a permanent waiver from Rules 4304(d)(I) through 4304(d)(III) by requesting the Commission approve the New Program.

56. The Settling Parties also request a permanent waiver of Rule 4304(d)(IV) to allow Public Service to periodically test rotary meters having a rated capacity of more than 5,000 cubic feet per hour at a differential not to exceed two inches water column, every five years.

57. The Settling Parties request that the Commission grant any other waivers from Commission Rules to the extent necessary to approve the New Program and Settlement Agreement.

I. Tariff Changes

58. The Settling Parties agree to the Gas Tariff changes as reflected in redline in Attachment D to the Settlement Agreement, and in clean format in Attachment E. Upon approval of the Settlement Agreement, Public Service requests to place the revised tariff changes into effect on not less than two business days' notice through a compliance advice letter filing, as contemplated by Rule 1207(g).

III. FINDINGS AND CONCLUSIONS

59. 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.⁷ The Commission is not bound by the Settling Parties' agreement. The Commission may do what the Commission

⁷ See Decision No. R17-0028 in Proceeding No. 16A-0512EG, issued January 12, 2023 at 23.

deems necessary to ensure that the result in a Commission proceeding is just, reasonable, and in the public interest, provided the record supports the result.⁸

60. The Commission has an independent duty to determine matters that are within the public interest.⁹

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

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

63. Accordingly, the ALJ will recommend that the Commission exercise its legislative function by granting the Joint Motion and approving the Settlement Agreement without modification.

64. Because the Joint Motion was jointly filed by the parties and the response time for the same has passed, Applicant's request to waive response time will be denied as moot, as ordered below.

⁸*Id.* at 23-24.

⁹ See *Caldwell v. Public Utilities Commission*, 692 P.2d 1085, 1089 (Colo. 1984).

65. Based on the foregoing, the ALJ believes that is unnecessary to hold the remote evidentiary hearing scheduled for September 20-21, 2023. Accordingly, the hearing will be vacated.

IV. **ORDER**

A. **The Commission Orders That:**

1. The Joint Motion for Approval of Unanimous Comprehensive Settlement Agreement, Including Rule Waivers, and Request for Waiver of Response Time (Joint Motion) filed on August 16, 2023, is granted, consistent with the discussion above.

2. Consistent with the findings, discussion, and conclusions in this Decision, the Settlement Agreement filed as Hearing Exhibit 103 on August 16, 2023, is approved without modification. The Settlement Agreement filed as Hearing Exhibit 103, and its attachments, are attached to this Decision as Appendix A.

3. The request to waive response time to the Joint Motion is denied as moot.

4. The remote evidentiary hearing scheduled for September 20-21, 2023, is vacated.

5. Proceeding No. 23A-0204G is closed.

6. 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.

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 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.

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

AVIV SEGEV

Administrative Law Judge

ATTEST: A TRUE COPY

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

Rebecca E. White,
Director