

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24AL-0049G

IN THE MATTER OF ADVICE LETTER NO. 1029 - GAS FILED BY PUBLIC SERVICE COMPANY OF COLORADO TO REVISE ITS COLORADO P.U.C. NO. 6 - GAS TARIFF TO INCREASE JURISDICTIONAL BASE RATE REVENUES, IMPLEMENT NEW BASE RATES FOR ALL GAS RATE SCHEDULES, AND MAKE OTHER PROPOSED TARIFF CHANGES, TO BECOME EFFECTIVE FEBRUARY 29, 2024.

INTERIM COMMISSION DECISION: (1) EXTENDING THE STATUTORY DEADLINE AN ADDITIONAL 130 DAYS; (2) ESTABLISHING PARTIES; (3) SCHEDULING PREHEARING CONFERENCE; (4) REQUIRING PARTIES TO CONFER ON A PROCEDURAL SCHEDULE THAT INCLUDES SUPPLEMENTAL DIRECT TESTIMONY; (5) GRANTING MOTION FOR EXTRAORDINARY PROTECTION; AND (6) REFERRING DISCOVERY DISPUTES AND FURTHER MOTIONS FOR PROTECTIVE ORDERS TO AN ADMINISTRATIVE LAW JUDGE

Mailed Date: April 16, 2024

Adopted Date: April 10, 2024

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I. BY THE COMMISSION

A. Statement

1. On January 29, 2024, Public Service Company of Colorado (Public Service or Company) filed Advice Letter No. 1029-Gas with tariff sheets to revise base rate revenue for all natural gas sales and transportation services in the Company’s Colorado P.U.C. No. 6-Gas Tariff along with certain other changes to this tariff. Public Service seeks a net annual increase in base rate revenue; the proposed General Rate Schedule Adjustment would generate an approximate \$171 million increase in the Company’s base rate revenues as compared to the revenue requirement calculated in Company’s last gas rate case in Proceeding No. 22AL-0046G. Public Service proposes to make its new base rates effective November 1, 2024, but to delay billing customers on this new rate until after the Extraordinary Gas Cost Recovery Rider expires in February 2025.

2. By Decision No. C24-0129, issued on February 28, 2024, the Commission set for hearing and suspended the effective date of the tariff sheets filed with Advice Letter No. 1029-Gas for 120 days, to June 28, 2024, pursuant to § 40-6-111(1), C.R.S. By the same Decision, the Commission established a 30-day notice and intervention period ending on March 29, 2024.

3. This Decision suspends the effective date of the tariff sheets filed with Advice Letter No. 1029-Gas for an additional 130 days, to November 5, 2024, pursuant to § 40-6-111(1), C.R.S.

4. The Commission grants the requests for permissive intervention filed by Atmos Energy Corporation (Atmos Energy), Colorado Natural Gas (CNG), Climax Molybdenum

Company (Climax), City of Pueblo (Pueblo), Tiger Natural Gas, Inc. (Tiger), and WoodRiver Energy, LLC (WoodRiver). The Commission acknowledges the notices of intervention of right filed by Trial Staff of the Commission (Staff) and the Colorado Office of the Utility Consumer Advocate (UCA).

5. The Commission sets a prehearing conference for April 29, 2024, and requires Public Service to confer with the established parties and file a proposed procedural schedule no later than April 19, 2024. The proposed procedural schedule should address discovery processes and accommodate the filing of Supplemental Direct Testimony, which will be addressed in a separate decision.

6. The Commission grants the Unopposed First Motion for a Protective Order Affording Extraordinary Protection for Highly Confidential Information (Motion for Protective Order) filed by Public Service on March 18, 2024, and waives remaining response time.

7. In addition, the Commission refers to an administrative law judge any discovery disputes in this matter and any further motions for protective orders filed by Public Service or any other party.

B. Parties to the Proceeding

1. Interventions of Right

8. Staff and the UCA filed timely notices of intervention by right on February 29, 2024. In their filings, they outline several issues they plan to address in this Proceeding and request a hearing.

9. Pursuant to Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1401(b) of the Commission's Rules of Practice and Procedure, no decision is required in response to appropriately

filed notices of intervention by right. We acknowledge the notices of intervention of right, and that Staff and the UCA are parties to this Proceeding.

2. Permissive Interventions

10. The following entities filed timely requests for permissive intervention: Atmos Energy, CNG, Climax, Pueblo, Tiger, and WoodRiver.

11. Atmos Energy states it is a natural gas distribution company providing gas distribution and transportation services to retail customers across Colorado. It obtains delivery of a portion of its natural gas system supplies over Public Service's facilities. Atmos Energy states this Proceeding will substantially affect its pecuniary or tangible interests on grounds that, as one of Public Service's largest natural gas transportation customers, the requested increase in revenue requirement and rates will have a direct and substantial impact on Atmos Energy and its customers, which interests cannot be adequately represented by any other party.

12. CNG states it is a natural gas distribution company providing gas distribution and transportation services to its retail customers across Colorado. CNG receives a portion of its natural gas system supplies over Public Service's facilities. CNG states it is a gas transportation customer under Public Service's Large Firm Transport and, if an interruption event were to occur, the Interruptible Transport rate class schedules. CNG claims the requested increase in rates and allocation of Public Service's overall revenue requirement in this Proceeding will substantially affect the pecuniary or tangible interests of CNG and its customers and these interests cannot be adequately represented by any other party.

13. Climax states that it operates molybdenum mines and related facilities near Leadville and Empire, Colorado. Climax states that it receives interruptible natural gas transportation service from Public Service under Schedule TI at its facilities and is a substantial

customer of Public Service. Climax claims that the rate case proposal in this Proceeding will substantially affect Climax's tangible and pecuniary interests by directly and substantially affecting its natural gas transportation costs that are necessary for mining and milling molybdenum. Climax states that its facilities are unique among Public Service's transportation customers and, consequently, its interest will not be adequately represented unless it is allowed to intervene.

14. Pueblo states that it and its residents are natural gas sales customers of Public Service. Pueblo contends that it has a pecuniary or tangible interest in this Proceeding because the proposed rate increase may greatly impact Pueblo and its residents' economic status. Pueblo states that the interests of the city and its residents cannot be adequately represented by any other party.

15. Tiger states that it is a natural gas provider that supplies natural gas and electricity to retail chains, restaurants, manufacturers, hospitals, hotels, and city facilities in many states including Colorado. Tiger states that, as one of Public Service's largest Colorado customers, Tiger procures natural gas for customers in all of the Company's gas transportation customer classes, and partners with the Company to distribute the gas to Tiger's customers. Tiger asserts that it has a tangible and pecuniary interest in this Proceeding to ensure that the Company's proposed Revenue Deferral Surcharge and the Revenue Stability Mechanism Adjustment do not adversely impact Colorado's competitive landscape for shippers, such as Tiger, and their customers who prefer to obtain gas from a third party. Tiger adds that, at minimum, its participation in this Proceeding will explore the anticipated impacts on shippers and other transportation customers.

16. WoodRiver states that it is a transportation customer of Public Service. WoodRiver states that it provides gas commodity service to approximately 500 commercial and industrial customers on Public Service's gas system under applicable transportation tariffs for such service.

WoodRiver states that the increase to base rate revenues proposed by the Company will substantially increase the rates for transportation service paid by WoodRiver and its customers. WoodRiver concludes that the proposed increase in the gas transportation rates will substantially affect the pecuniary or tangible interests of WoodRiver and that its interests are not adequately represented by any other party in this Proceeding.

17. On April 5, 2024, Public Service filed a Response to Motions for Permissive Interventions (Response). The Company states that while it does not oppose the interventions, it filed the Response “to highlight related considerations that may affect the remainder of this proceeding.”¹ Public Service questions whether the interests of Tiger, Pueblo, and WoodRiver are represented by parties that have already moved to intervene, namely Atmos Energy, Climax, and CNG. Additionally, Public Service asserts these motions do not conform to the Commission’s requirements in Rule 1401(a), 4 CCR 723-1, and, in the case of Pueblo, do not include an explanation why the customers’ interests cannot be adequately represented by the UCA per Rule 1401(c), 4 CCR 723-1. Public Service further notes the addition of each new party will increase the scope of the case by increasing the amount of discovery, testimony, etc., which may consequently affect the efficiency of the proceeding.

18. Rule 1401(c) sets forth the standard for permissive intervention and states, in relevant part:

A motion to permissively intervene shall state the specific grounds relied upon for intervention; the claim or defense within the scope of the Commission’s jurisdiction on which the requested intervention is based, including the specific interest that justifies intervention; and why the filer is positioned to represent that interest in a manner that will advance the just resolution of the proceeding. The motion must demonstrate that the subject proceeding may substantially affect the pecuniary or tangible interests of the movant (or those it may represent) and that the movant’s interests would not otherwise be adequately represented.

¹ Public Service Response, p. 2.

Under this standard, the test for adequate representation is whether there is an identity of interests, rather than a disagreement over the discretionary litigation strategy of the representative.

19. In addition, Rule 1401(c) requires that a movant who is a residential consumer, agricultural consumer, or small business consumer discuss whether the distinct interest of the consumer is either not adequately represented by the UCA or inconsistent with other classes of consumers represented by the UCA. As set forth in § 40-6.5-104, C.R.S., the UCA has a statutory mandate to represent the public interest and, to the extent consistent therewith, the specific interests of residential consumers, agricultural consumers, and small business consumers by appearing in proceedings before the Commission.

20. We find that, as required by Rule 1401(c), 4 CCR 723-1, each entity discussed above that seeks to permissively intervene has sufficiently demonstrated that this Proceeding may substantially affect its pecuniary or tangible interests and that its interests would not otherwise be adequately represented in this Proceeding. Although we acknowledge the considerations highlighted in Public Service's Response, we find no compelling basis in the Response for denial of these interventions; we also note Public Service does not specifically request that the Commission deny the interventions. Therefore, we grant all of the requests for permissive intervention. In doing so, we direct the parties to work together where their interests align to maximize efficiency.

21. The following are parties to this Proceeding: Public Service, Staff, UCA, Atmos Energy, CNG, Climax, Tiger, Pueblo, and WoodRiver.

C. Supplemental Direct Testimony

22. The Commission will through a separate order direct Public Service to file Supplemental Direct Testimony responding to outstanding questions the Commission may

identify. We request that parties accommodate a tentative date for filing Supplemental Direct Testimony in their proposed procedural schedule.

D. Prehearing Conference and Conferral

23. The Commission schedules a remote prehearing conference for April 29, 2024, from 10:30 a.m. to 12:00 p.m. At the remote prehearing conference, an evidentiary hearing will be scheduled, and other procedural deadlines will be established.

24. A party's failure to appear at the prehearing conference may result in decisions adverse to their interests. The Commission deems any party's failure to appear at the prehearing conference to be a waiver of that party's objection to the rulings made during the prehearing conference.

25. We direct Public Service to confer with the parties to develop a proposed procedural schedule, including provisions for discovery and for the filing of Supplemental Direct Testimony, consistent with the discussion above. The proposed procedural schedule should set the deadline for filing any settlement agreement to ensure that the Commission receives the terms of the settlement agreement and any supporting testimony no less than two weeks prior to the start of the evidentiary hearing. Further, we advise parties that the Commission prefers the evidentiary hearing in this matter be conducted over consecutive days, concluding no later than September 12, 2024. Public Service shall file either a conferral report describing the efforts to reach consensus on a proposed procedural schedule or a motion to approve a proposed procedural schedule no later than 5:00 p.m. on April 19, 2024. Providing the Commission substantially approves the proposed schedule, the Commission may vacate the scheduled prehearing conference.

E. Extension of Time for Commission Decision

26. As noted above, the Commission set the tariff sheets submitted with Advice Letter No. 1029-Gas for hearing and suspended the effective date for 120 days through June 28, 2024. Section 40-6-111(1), C.R.S., provides the Commission may, in its discretion, by a separate decision, suspend the effective date of the tariff page(s) for an additional 130 days.

27. Here, in light of the time available, the expected procedural schedule, and the need for the Commission to have adequate time to deliberate the issues presented in this matter, it is necessary to extend the effective date of the tariff sheets filed with the Advice Letter for an additional 130 days pursuant to § 40-6-111(1), C.R.S. The new effective date of the Advice Letter and accompanying tariff sheets, after suspension, is November 5, 2024.

F. Motion for Protective Order**1. Public Service Motion**

28. In its Motion for Protective Order, filed March 18, 2024, Public Service requests extraordinary protection of rate case expense information related to its invoices for outside legal counsel fees, which do not redact rate related information and hours spent on tasks in preparing for, participating in, and/or prosecuting this Proceeding on behalf of Public Service. Public Service states certain information on these invoices also will be redacted that would otherwise disclose privileged and highly confidential attorney-client communications, litigation strategy, or other attorney work product. Public Service states this request includes any documents or information discussing or identifying any of the indicated highly confidential information, including all testimony, discovery responses (including attachments), and any other associated documents containing such types of information as may be provided throughout the course of this Proceeding.

29. Public Service states its practice is to provide these legal counsel invoices to parties, on a confidential basis, redacted to maintain privileged attorney-client communications, protect privileged litigation strategy, and protect the confidentiality of privileged attorney work product, in addition to other privileged confidential information. Public Service states it redacts hourly billing rates and rate-related information, as well as the time spent on each item included on an invoice in order to protect competitively sensitive information.

30. Public Service states it has received a request through discovery in this Proceeding for legal fee support. Public Service explains, in past cases where this type of request was made, the Commission authorized Public Service to treat such legal invoices as highly confidential and to limit disclosure as requested in the instant motion. Public Service states, to provide timely responses to these and other requests, it seeks extraordinary protection to provide the subject legal invoices as unredacted with the rate-related and the amount of time worked on tasks designated as highly confidential. Public Service states it will still redact the invoices to avoid revealing privileged and highly confidential attorney-client information, litigation strategy, and/or attorney work product. Public Service states it will make these highly confidential invoices, as so redacted, available to Staff and the UCA, and remaining parties will continue to receive the further redacted, confidential versions of the legal invoices if an appropriate non-disclosure agreement has been filed.

31. To support its request, Public Service states that it negotiates its rates for legal services separately with each individual legal service provider and thus derives a competitive advantage from maintaining the confidentiality of these rates for legal services. Public Service states the protections afforded by the Commission's rules governing ordinary confidentiality would provide insufficient protection for this competitively sensitive information and that extraordinary

protection is warranted in order to prohibit public disclosure of this rate case expense information. Public Service concludes that the extraordinary protections it requests strike the appropriate balance between the need for disclosure and the need to protect the interests of Public Service.

32. Public Service requests that access to this claimed highly confidential information be limited to the Commissioners, any assigned administrative law judge, the Commission's advisory staff and advisory attorneys, Staff and attorneys for Staff, and the UCA and attorneys for the UCA.

33. Public Service prepared non-disclosure agreements for attorneys and subject matter experts, as required by Rule 1101(b) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1. Public Service also provided the affidavit of Steven H. Denman, identifying the employees in groups with access to the highly confidential information and attesting that this information must remain protected as highly confidential indefinitely.

34. Public Service represents that it conferred with Staff and the UCA, the established parties at the time it filed the Motion for Protective Order, and they do not oppose the requested relief.

35. Public Service states that timing is of the essence in receiving a decision on the Motion for Protective Order, as the subject claimed highly confidential information has been requested in discovery. For this reason, and because Staff and UCA do not oppose the requested relief, Public Service requests that the Commission waive response time.

2. Findings and Conclusions

36. When presented with a motion for extraordinary protection of claimed highly confidential information, the Commission determines whether the information is, in fact, highly

confidential, the level of extraordinary protection that may be warranted, and to whom access should be granted.

37. The operative language in Rule 1101(b)(IV) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1, which concerns motions requesting highly confidential protection, requires that the motion:

shall include a showing that the information for which highly confidential protection is sought is highly confidential; that the protection afforded by the Commission's rules for furnishing confidential information provides insufficient protection for the highly confidential information; and that, if adopted, the highly confidential protections proposed by the movant will afford sufficient protection for the highly confidential information ...

38. We find persuasive the reasoning and arguments in the Motion for Protective Order. The motion states good cause to grant the relief sought under Rule 1101. The Commission further finds the requested protections are appropriate, are reasonable, and are consistent with the Commission's Rules and past practice. We agree that Public Service's plan to redact certain information on the requested invoices, which would otherwise reveal confidential attorney-client communications, confidential litigation strategy, or other privileged attorney work product, is reasonable and prudent.

39. Based on the foregoing, we grant the Motion for Protective Order and approve the non-disclosure agreements. Access to the highly confidential information shall be limited to the Commissioners, any assigned administrative law judge, the Commission's advisory staff and advisory attorneys, Staff and attorneys for Staff, and the UCA and attorneys for the UCA.²

² The Commissioners, Commission advisory staff, Commission advisory counsel, administrative law judges, Trial Staff, and Trial Staff counsel sign annual non-disclosure agreements covering all confidential and highly confidential information filed with the Commission and are not required to sign separate agreements in individual cases. *See* Rule 1100(i) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1.

40. We remind counsel and the parties that individuals permitted access to the highly confidential information may use it only for purposes of this Proceeding, consistent with the Commission's confidentiality rules. The protected highly confidential information may not be disclosed to any unauthorized persons.

G. Discovery Disputes and Protective Orders

41. We refer to an administrative law judge any discovery disputes in this matter and any further motions for protective orders filed by Public Service or any other party.³

II. ORDER

A. It Is Ordered That:

1. The effective date of the tariff sheets filed with Advice Letter No. 1029-Gas, filed by Public Service Company of Colorado (Public Service) on January 29, 2024, is suspended until November 5, 2024.

2. The notices of intervention filed by Trial Staff of the Commission and the Colorado Office of the Utility Consumer Advocate on February 29, 2024, are acknowledged.

3. The Motion to Intervene filed on March 6, 2024, by Colorado Natural Gas, is granted.

4. The Motion to Intervene filed on March 18, 2024, by Atmos Energy Corporation, is granted.

5. The Motion to Intervene filed on March 21, 2024, by Climax Molybdenum Company, is granted.

6. The Motion to Intervene filed on March 29, 2024, by the City of Pueblo, is granted.

³ This referral includes disposition of the Unopposed Second Motion for a Protective Order Affording Extraordinary Protection for Highly Confidential Information, filed by Public Service on April 9, 2024.

7. The Motion to Intervene filed on March 29, 2024, by Tiger Natural Gas, Inc., is granted.

8. The Motion to Intervene filed on March 29, 2024, by WoodRiver Energy, LLC, is granted.

9. The parties to this Proceeding are: Public Service, Trial Staff of the Commission, the Colorado Office of the Utility Consumer Advocate, Atmos Energy Corporation, Colorado Natural Gas, Climax Molybdenum Company, City of Pueblo, Tiger Natural Gas, Inc., and WoodRiver Energy, LLC.

10. Public Service is directed to confer with the established parties to this Proceeding in order to develop a proposed procedural schedule, consistent with the discussion above. Public Service shall file a report addressing its conferral with the parties regarding a procedural schedule or a motion to approve a consensus procedural schedule no later than **April 19, 2024**.

11. A remote prehearing conference is scheduled as follows:

DATE: April 29, 2024

TIME: 10:30 a.m. to 12:00 p.m.

PLACE: By video conference using Zoom at a link to be provided to parties by email and webcast to the public from Hearing Room A.

12. The Unopposed First Motion for a Protective Order Affording Extraordinary Protection for Highly Confidential Information, filed on March 18, 2024, by Public Service is granted, consistent with the discussion above. Remaining response time to this motion is waived.

13. Any discovery disputes in this matter and any further motions for protective orders filed by Public Service or any other party are referred to an administrative law judge.

14. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
April 10, 2024.**

(S E A L)



ATTEST: A TRUE COPY

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

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

MEGAN M. GILMAN

TOM PLANT

Commissioners