Decision No. C25-0050

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.

COMMISSION DECISION GRANTING, IN PART, AND DENYING, IN PART, APPLICATIONS FOR REHEARING, REARGUMENT, OR RECONSIDERATION OF DECISION NO. C24-0778 AND AUTHORIZING FURTHER ADJUSTMENTS TO BASE RATES

Issued Date: January 23, 2025
Adopted Date: December 17, 18 & 20, 2024

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I. BY THE COMMISSION

A. Statement

1. Through Decision No. C24-0778 ("Rate Case Decision"), issued in this Proceeding on October 25, 2024, the Commission established new base rates for utility natural gas service provided by Public Service Company of Colorado ("Public Service" or "Company"). By this Decision, the Commission addresses the various issues raised in the three applications for rehearing, reargument, or reconsideration of the Rate Case Decision ("RRR" or "RRR Applications"), which were filed on November 14, 2024 by the following parties to this Proceeding: (1) Public Service; (2) Trial Staff of the Commission ("Staff"); and (3) the Office of the Utility Consumer Advocate ("UCA"). Consistent with the discussion below, we either grant or deny, in whole or in part, these RRR Applications. We further direct Public Service to make a compliance tariff filing to implement further adjustments to base rates consistent with this Decision.

B. Procedural Background

2. On January 29, 2024, Public Service filed Advice Letter No. 1029-Gas with revised tariff sheets to increase its base rate revenue collections for all natural gas sales and transportation services and to make certain other changes to the Company's Colorado P.U.C. No. 6-Gas Tariff.

3. The Rate Case Decision provides a full procedural background from the initial advice letter filing through the issuance of the Rate Case Decision on October 25, 2024.

4. Following issuance of the Rate Case Decision, Public Service filed on October 31, 2024, Advice Letter No. 1042-Gas in Proceeding No. 24AL-0475G with the compliance tariffs setting forth the new base rate effective November 5, 2024, in accordance with the findings and directives in the Rate Case Decision.

5. On November 14, 2024, Public Service, Staff, and UCA filed their RRR Applications, each requesting certain clarifications or modifications to the findings and directives in the Rate Case Decision, as discussed below.

6. On October 25, 2024, by Decision No. C24-0778, so that they would not be denied by operation of law, the Commission granted the RRR Applications for the sole purpose of tolling the 30-day statutory time limit in § 40-6-114(1), C.R.S., for the Commission to act upon such applications. The Commission indicated that, due to the number and complexity of the issues presented in the RRR Applications, as well as the press of business at the Commission, the Commission required further time to consider the RRR Applications and to prepare its written decision on the merits. The Commission indicated this grant was procedural and undertaken only to prevent denial by operation of law of the three RRR Applications and that it would separately take up the merits of the RRR Applications.

7. On December 17, 2024, the Commission deliberated on the RRR Applications at a public Commissioners' Deliberations Meeting convened for that purpose. The Commission further deliberated on the RRR Applications at its public December 18, 2024 Commissioners' Weekly Meeting and at a public December 20, 2024 Commissioners' Deliberations Meeting. Those deliberations resulted in this Decision.

C. Legal Standard

8. As acknowledged by the Commission in its Rate Case Decision, the setting of just and reasonable rates, both as to level and design, goes to the very essence of the Commission's powers and duties.[1] The Rate Case Decision more fully addresses the foundational principles that underly the Commission's ratemaking authority and determinations in this Proceeding,[2] underscoring the interrelated considerations necessary for the Commission to make its final decisions setting rates.

9. As discussed in the Rate Case Decision, under the just and reasonable standard, the Commission considers both the utility investors' interest in avoiding confiscation and the utility customers' interest in preventing exorbitant rates.[3] This requires the Commission to protect the public interest by ensuring that a utility's rates are not excessive, burdensome, or unjustly discriminatory while also protecting the right of the utility and its investors to earn a fair return reasonably sufficient to attract capital and maintain the utility's financial integrity. So far as the utility is concerned, it must have adequate revenues for operating expenses and to cover the capital costs of doing business, and its revenues must be sufficient to assure confidence in its financial integrity so as to maintain credit and to attract capital. This ratemaking function involves the making of pragmatic adjustments and there is no single correct rate.

10. The Rate Case Decision reiterates that ratemaking is not an exact science, and that, when it sets rates, the Commission necessarily exercises judgment rather than complete reliance on a mathematical or legal formula to establish just and reasonable rates that balance the interests

[1] *Colorado-Ute Elec. Ass'n, Inc. v. Pub. Utils. Comm'n*, 760 P.2d 627, 638 (Colo. 1988); *see* §§ 40-3-101, 40-3-102, 40-3-111, and 40-6-111, C.R.S. (Commission is charged with ensuring that utilities provide safe and reliable service to customers at just and reasonable rates).

[2] Decision No. C24-0778 at ¶¶ 23-31.

[3] *Fed. Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944); *Colo. Mun. League v. Pub. Utils. Comm'n*, 687 P.2d 416, 418 (Colo. 1984).

of both the utility investors and customers.[4] Accordingly, our decision-making in this rate case inherently involves myriad interrelated legal conclusions, factual findings, and policy decisions—all of which contribute to our final determination of what constitutes just and reasonable rates—and to disturb one factor considered by the Commission in setting the final rates risks upsetting the careful balance achieved by the Commission in this process.

11. We also reiterate here our discussion of the burden of proof from the Rate Case Decision.[5] As the party seeking Commission approval or authorization, Public Service bears the burden of proof with respect to the relief sought;[6] intervenors bear the burden of proof with regard to each of their proposals advanced in their answer testimony. The burden of proof is by a preponderance of the evidence.[7] A party has satisfied its burden under this standard when the evidence, on the whole, tips in favor of that party. The evidence must be "substantial evidence," which is defined 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."[8] In rate cases, after the utility proposing a tariff change presents its case-in-chief, putting forth evidence to justify its requested rate increase, the burden of going forward shifts to intervenors who then have the opportunity to provide evidence either rebutting the proponent's evidence or

[4] *Pub. Utils. Comm'n v. Nw. Water Corp.*, 451 P.2d 266, 276 (Colo. 1963).

[5] Decision No. C24-0778 at ¶ 22.

[6] *See* Rule 1500, 4 *Code of Colorado Regulations* 723-1 (burden of proof and initial burden of going forward shall be on the party that is the proponent of a decision, *i.e.*, the regulated entity proposing a tariff change) and § 24-4-105(7), C.R.S. (proponent of order has burden of proof).

[7] *See* § 13-25-127(1), C.R.S. (burden of proof in any civil action shall be by a preponderance of the evidence).

[8] *City of Boulder v. Pub. Utils. Comm'n*, 996 P.2d 1270, 1278 (Colo. 2000) (quoting *CF&I Steel, L.P. v. Pub. Utils. Comm'n*, 949 P.2d 577, 585 (Colo. 1997)).

supporting intervenors' own arguments. The Commission has an independent duty to determine matters that are within the public interest.[9]

D. Commission Review of Rate Case Decision RRR Applications

12. In considering the RRR Applications, we hold to the same principles as applied when establishing rates through the Rate Case Decision. Our evaluation of the various requests set forth in the RRR Applications is therefore made upon consideration of the record as a whole. Discrete decision points on numerous issues, in sum, amount to just and reasonable rates overall. Should any one material finding or conclusion change, we must reconsider whether the material revision effects the entirety of the case and make revisions accordingly.

1. Weighted Average Cost of Capital

a. Return on Equity

13. In the Rate Case Decision, the Commission found it necessary to establish the following three principles to guide the setting of an overall weighted average cost of capital ("WACC") for Public Service in this Proceeding:

> First, we find it appropriate to evaluate the components of Public Service's authorized WACC in a combined, holistic manner to better understand the key interactive effects of [the authorized return on equity ("ROE")] and capital structure, as well as the effects of depreciation and other elements in the establishment of the target base rate revenue increase. We undertake this holistic approach instead of evaluating these factors in isolation.
>
> Second, in addition to traditional analyses of ROE and capital structure as presented in the parties' testimonies, we find it reasonable and appropriate to place meaningful weight on the revenues necessary to maintain Public Service's financial integrity, and to carefully consider analyses of Public Service's credit metrics as quantifiable, objective and specific measures of financial integrity.
>
> Third, we conclude that Public Service should be evaluated as consistently as reasonably possible as an operating company, as there are important distinctions between an operating company and a holding company,

[9] *Caldwell v. Pub. Utils. Comm'n,* 692 P.2d 1085, 1089 (Colo. 1984).

evidenced by the unique attributes of Public Service and its parent holding company, Xcel Energy.[10]

14. The Commission later determined that a WACC value of 7.0 percent will result in just and reasonable rates that are in the public interest.[11] The Commission also concluded that the pre-existing ROE range from 9.2 percent to 9.5 percent and the equity ratio range from 53 percent to 55 percent are well within the credible record evidence presented in this Proceeding and, based on evaluation through two unique models, fully support the Company's financial health current credit rating.[12] The Commission further found that, while the ROE and equity ratio are highly interrelated and both impactful to Public Service's financial health, the equity ratio has an oversized impact on the Company's credit metrics, and thus provided the Company an opportunity to set its equity ratio as high as 55 percent, as Public Service management deems necessary in order to help maintain the Company's financial integrity. The Commission also specifically denied UCA's proposed 52 percent equity ratio with the intent to further reduce the Company's equity ratio in future proceedings, as it could potentially place financial strain on the Company.[13]

15. In its RRR Application, Public Service contends the Commission's ROE findings reflect no increase in the range adopted since the Company's previous rate case in Proceeding No. 22AL-0046G ("2022 Gas Rate Case") "even though all market evidence (and all parties') models indicate an increase is warranted."[14] The Company therefore requests the Commission increase the floor of the ROE range to at least 9.4 percent. Public Service suggests there is no credible evidence in the record supporting an ROE range of 9.2 to 9.5 percent. Public Service also contends the

[10] Decision No. C24-0778 at ¶¶ 70-74.
[11] Decision No. C24-0778 at ¶ 117.
[12] Decision No. C24-0778 at ¶¶ 117-18.
[13] Decision No. C24-0778 at ¶ 118.
[14] Public Service RRR Application at p. 8.

Rate Case Decision does not undertake the required inquiry of whether the authorized rate of return is a reasonable rate of return for utility companies of comparable risk as the seminal *Hope* and *Bluefield* cases require.[15] In addition, Public Service contends that authorized ROEs have increased substantially since the Company's 2022 Gas Rate Case. Public Service argues the ROE authorized for the Company should therefore be materially higher than in the 2022 Gas Rate Case with a floor no lower than 9.4 percent.

16. With respect to Staff's analysis, Public Service contends the Rate Case Decision does not reflect the fact that Staff witness Dr. Dipu rejected his own Constant Growth Discounted Cash Flow (or "CGDCF") model of 9.6 percent.[16] The Company also suggests Dr. Dipu applied outdated stock price data and inappropriate growth rates to his Multi-Stage DCF (or "MS-DCF") models, and then ignored the results of that model since they were too low to account for investor expectations or peers' authorized ROEs. Public Service suggests that simply fixing Dr. Dipu's errors increases Staff's average DCF to just over 10 percent.[17]

17. With respect to UCA's analysis, Public Service suggests the Rate Case Decision fails to reflect that UCA witness Fernandez admitted at hearing that his ROE modeling suggests a range of 9.4 to 9.7 percent, even before corrections related to his proxy group criteria. Once the proxy group is corrected, Public Service suggests witness Fernandez's models support a higher range of 9.7 to 9.8 percent ROE.[18]

18. **The Commission denies Public Service's RRR on this issue.** We find the Company's arguments on RRR are incorrect and not persuasive. We also find, as explained below,

[15] Public Service RRR Application at p. 9 (citing *Fed. Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944) and *Bluefield Waterworks & Improvement Co. v. Pub. Serv. Comm'n of W. Va.*, 262 U.S. 679 (1923)).

[16] Public Service RRR Application at p. 10.

[17] Public Service RRR Application at p. 10.

[18] Public Service RRR Application at p. 10.

that the record evidence clearly supports the ROE range approved in the Rate Case Decision, and that when considered in concert with capital structure—as required in our first principle discussed above—the authorized range adequately supports the Company's financial health and its ability to attract capital.

19. First, with respect to Public Service's claims that Staff witness Dr. Dipu rejected his own CGDCF model results, the Commission notes that Dr. Dipu merely cautioned "there are dangers in analyzing any single firm's stock with the constant-growth DCF formula."[19] He then opined that using the MS-DCF model is more reliable on account of flaws he perceives in the CGDCF model. However, we find such caveats and opinions do not render Dr. Dipu's CGDCF model results irrelevant. Also, notably, Dr. Dipu conducted his CGDCF model on several stock price variants applied to both the gas utility proxy group and the diversified utility proxy group identified by Public Service. Through those exercises, he calculated average ROEs between 8.9 percent and 9.27 percent, thus fully supporting the Commission's authorized range.

20. Second, Dr. Dipu also conducted the Capital Asset Pricing Model ("CAPM") model and raised important questions with respect to Beta, representing the measure of a stock's price volatility, and the risk-free rate. In particular, Staff presented considerable evidence that Beta *itself* is quite volatile depending on three key facets of how it was measured: the length of the historical data, the frequency of the sampling, and the market index the analysis was conducted on. Notably, Public Service witness Bulkley conducted her CAPM modeling on two sources of Beta: Value Line and Bloomberg. Staff presented three additional sources of Beta: S&P, Yahoo finance, and Zack's—all credible sources—that indicate Beta is at least one-third lower

[19] Hr. Ex. 402, Dipu Answer Testimony, p. 34.

than that suggested by Value Line and Bloomberg for each member of the proxy group.[20] Dr. Dipu also calculated his own Beta by applying *daily data*.[21] Public Service disavowed Dr. Dipu's approach, arguing that utilities are too thinly traded to rely on daily data and that Value Line and Bloomberg are highly reputable and widely used sources.[22]

21. The Commission notes that, even ignoring Staff's own Beta calculation, the CAPM results are highly variable based on the Beta selected. Applying the three sources of Beta that Public Service excluded produces an ROE of 9.0 percent. Applying all five sources of Beta produces an ROE of 9.36 percent (median) to 9.52 percent (average), which is well within the range authorized by the Commission. With respect to the risk-free rate, in her Rebuttal Testimony, Public Service witness Bulkley indicated that an updated risk-free rate, sourced from Blue Chip Financial, was 4.32 percent.[23] If that risk-free rate is incorporated and all five sources of Beta are applied within the CAPM analysis, the Commission calculates an average ROE of 9.34 percent and a median ROE of 9.17 percent, essentially at or below the ROE range authorized in the Rate Case Decision.

22. Third, with respect to UCA witness Fernandez's modeling results, we note that Answer Testimony indicated his constant growth and MS-DCF models produce results as low as 8.4 percent and 7.8 percent, respectively. Witness Fernandez also indicated that witness Bulkley's DCF models produce results as low as 9.16 percent which is, again, slightly below the Commission's applied range. Accordingly, we believe UCA presented evidence that supports the ROE range adopted by the Commission, if not even lower.

[20] Hr. Ex. 402, Dipu Answer Testimony, pp. 16-19, Table DD-1.
[21] Hr. Ex. 402, Dipu Answer Testimony, pp. 18-21.
[22] Hr. Ex. 125, Bulkley Rebuttal Testimony, p. 40.
[23] Hr. Ex. 125, Bulkley Rebuttal Testimony, p. 37.

23. Fourth, the Commission incorporated into this record Public Service's parent's recent communications to the investor community.[24] In this document, Xcel Energy clearly suggests a return of 9 to 11 percent, based on 3 to 4 percent dividends and 6 to 8 percent earnings growth, often referred to as "guidance."[25] In an earlier investor presentation from 2023, Xcel Energy suggested to investors that its stock can offer a total range of 8 to 10 percent return.[26] Even with the more robust returns offered in the more recent investor presentation, the Commission's 9.2 percent to 9.5 percent authorized ROE in the instant proceeding is well within the range communicated to the investor community to raise capital. Notably, Xcel Energy suggests its return or "performance" guidance is highly accurate as the actual stock return has fallen within the guidance range consistently for the last 20 years.[27] Importantly, Xcel Energy's return on equity communications are based on the holding company which maintains far higher debt levels than Public Service, an operating company.[28] Such higher proportions of debt capital allow parent Xcel Energy to leverage the earnings received and report a higher ROE than if debt proportions were consistent with Public Service or the other operating companies that comprise Xcel Energy.[29]

24. Fifth, and finally, the expert analyses on the WACC entered in this Proceeding, including the proxy groups selected by witnesses Bulkley and Fernandez, were comprised of *holding* companies. As the Commission stated in its third principle, holding companies are distinct from operating companies, and our analysis of the record must take that into consideration. In particular, holding companies generally maintain higher proportions of debt than *operating*

[24] Hr. Ex. 1100, Xcel Energy, Steel for Fuel 2.0, September Investor Meetings (September 2024).
[25] Hr. Ex. 1100, Xcel Energy, Steel for Fuel 2.0, September Investor Meetings (September 2024), p. 6.
[26] Hr. Ex. 1100, Xcel Energy, Steel for Fuel 2.0, September Investor Meetings (September 2024), p. 6.
[27] Hr. Ex. 1100, Xcel Energy, Steel for Fuel 2.0, September Investor Meetings (September 2024), p. 7.
[28] Hr. Ex. 1100, Xcel Energy, Steel for Fuel 2.0, September Investor Meetings (September 2024), p. 40.
[29] Hr. Ex. 1100, Xcel Energy, Steel for Fuel 2.0, September Investor Meetings (September 2024), p. 54.

companies such as Public Service, and thus are somewhat riskier investments. Accordingly, a direct comparison must be taken with that important caveat and/or Public Service should present appropriate adjustments to its ROE calculations to account for the higher proportions of equity capital it seeks from the Commission.

25. For those reasons, the Commission finds that the ROE range adopted in the Rate Case Decision is consistent with the record evidence, is consistent with the rates of return for utility companies facing similar or comparable risk in accordance with the standards of *Hope* and *Bluefield*, facilitates the Company's financial integrity and capital formation, and is consistent with our established principles. Accordingly, we deny Public Service's RRR arguments and affirm the ROE range established in the Rate Case Decision.

b. Actual Capital Structure

26. As mentioned above, in the Rate Case Decision, the Commission determined "the pre-existing ROE range from 9.2 percent to 9.5 percent and the equity ratio range from 53 percent to 55 percent are well within the credible record evidence presented by the parties in this Proceeding."[30]

27. In its RRR Application, Public Service contends the Rate Case Decision does not align with case law requiring use of *actual* capital structure. Specifically, Public Service claims the WACC should be updated to reflect a 55.0 percent equity ratio "in alignment with Colorado Supreme Court decisions about using the utility's actual capital structure," citing *Peoples Natural Gas v. Pub. Utils. Comm'n,* 567 P.2d 377 (Colo. 1977).

28. **The Commission denies Public Service's RRR on this issue.** First, we note the Company's "actual capital structure" simply means the capital structure the Company endeavors

[30] Decision No. C24-0778 at ¶ 118.

to maintain according to prior Commission orders. Accordingly, the phrase "actual capital structure" is somewhat of a misnomer and as the Company proposes its implementation, in essence, means the previously approved capital structure.

29. Second, we note the *Peoples* decision suggests capital structure should be left as a matter of management discretion "[u]nless it has been demonstrated by a substantial showing that rate payers are materially prejudiced by the actual capital structure which finances utility operations."[31] In the instant case, we are not overriding management so as to impose some hypothetical alternative capital structure that we believe will better serve Public Service's customers. To the contrary, we have granted the Company's requested equity ratio of 55 percent. But we also have made clear that capital structure and ROE are inextricably linked, and they must be evaluated in concert and not in isolation. The authorized ranges allow for management discretion to balance creditworthiness and financial stability with the opportunity to improve profitability, should the opportunity arise. We find our initial decision carefully balanced capital structure and return on equity consistent with the principles we established and consistent with the management discretion requirements of the Colorado Supreme Court in the *Peoples Natural Gas* case.

c. Debt Costs

30. In the Rate Case Decision, the Commission adopted Public Service's suggested cost of long-term debt (4.27 percent) even though that measure included debt issuances in 2024 that occurred after the test year period. The Commission reasoned that debt issuances that are known and quantifiable are generally appropriate for inclusion in the cost of debt calculation, and that this should remain true in periods where the marginal cost of debt is higher than the average, as in this

[31] *Peoples*, 567 P.2d at 379.

Proceeding, as well as when the marginal cost of debt is lower than the average. As a result, the Commission found Public Service's calculation of its long-term debt costs reasonable and appropriate.[32]

31. With respect to short-term debt, the Commission declined to adopt UCA's suggestion to eliminate short-term debt from the capital structure, explaining as follows:

> … short-term debt represents an ongoing and legitimate source of capital necessary for the Company to operate its business for the benefit of ratepayers. We further agree with Public Service that UCA's proposed rate of 1.0 percent is neither a realistic nor reasonable representation of the Company's cost to acquire such capital in the current market or over the expected period these rates will be in effect. However, we agree with UCA that using a cost of short-term debt at the 5.81 percent level as proposed by the Company based on the cost of such capital acquired during the test-year is not reasonably representative of the cost of short-term debt going forward, given recent actions and indications by the Federal Reserve to reduce interest rates. Because we expect the cost of short-term debt incurred by the Company to be below the 5.81 percent level when the new base rates established by this Decision take effect, the full use of the authorized ranges for ROE and the equity ratio will mathematically support the calculation of the authorized WACC at 7.0 percent.[33]

32. In its RRR Application, Public Service contends the Company requires an established cost of short-term and long-term debt in order to calculate its revenue requirement. The Company maintains there is no data in the record of this Proceeding that would give rise to a known and measurable adjustment to the Company's actual 2023 cost of short-term debt. Public Service thus seeks clarification whether the Commission intended to approve the Company's actual cost of short-term debt at 5.81 percent, or to modify the short-term debt rate "to an arbitrary number such that all facets of the WACC are within the specific costs and ranges adopted by the Commission."[34]

[32] Decision No. C24-0778 at ¶ 120.
[33] Decision No. C24-0778 at ¶ 121.
[34] Public Service RRR Application at p. 9.

33. UCA also challenges the cost of debt findings in its RRR Application. UCA claims the Commission was inconsistent in the manner in which it treated the costs of long-term and short-term debt. UCA notes that, in its Answer Testimony, UCA had recommended a long-term cost of debt of 4.04 percent for the 2023 test period, which is based on Public Service's actual cost of debt as of the end of 2023.[35] UCA opines that, if the Commission is inclined to accept 4.27 percent for the cost of long-term debt due to the new "post-test year" debt issuance of $1.2 billion, then the cost of short-term debt should also be updated and reduced to no higher than 5.18 percent, which it claims was "unrefuted testimony provided during the Hearing."[36]

34. **The Commission denies Public Service's RRR on this issue and grants UCA's RRR on this issue.** The Commission agrees with UCA that, per the matching principle, long-term debt and short-term debt should be treated with reasonable consistency. In the Rate Case Decision, we found it appropriate to update the cost of long-term debt based on post-test year information. We also recognized the test year data regarding the cost of short-term debt was likely out-of-date. We find UCA witness Fernandez's citation to short-term treasury yields at the time of the hearing in this case represents a reasonable data point for the small proportion of capital being provided as short-term debt. We also note that short-term debt is highly variable and subject to recent adjustments in the Federal Reserve Rate. Nonetheless, we find 5.18 percent, as proposed by UCA, represents a reasonable estimate of the Company's actual cost of short-term debt as it provides gas services following the conclusion of this rate case.

[35] UCA RRR Application at p. 7.
[36] UCA RRR Application at p. 3.

d. WACC Calculation Based on Component Findings

35. In the Rate Case Decision, the Commission authorized a 7.0 percent WACC based on a range of 9.2 percent to 9.5 percent for the authorized ROE and a range of 52 percent to 55 percent for the equity ratio. The remaining percentages were allocated to long-term and short-term debt.

36. In its RRR Application, Public Service raises concern that, mathematically, the Commission's 7.0 percent WACC does not enable the Company to adopt a 55 percent equity ratio, its actual costs of debt, and an ROE within the 9.2 percent to 9.5 percent range. According to the Company, putting the pieces together leaves the ROE at 9.17 percent, meaning that a 7.0 percent WACC does not even fully account for the increases in the cost of debt since the Company's 2022 Gas Rate Case.[37]

37. **The Commission grants, in part, Public Service's RRR on this issue.** We agree that the ranges provided should mathematically facilitate the 7.0 percent WACC established in the Rate Case Decision and reaffirmed in this Decision. We note the adjustment to the cost of short-term debt, discussed above, modifies the calculation slightly. We also note, as the Commission has authorized in this Decision consistent with the *Peoples* case law, capital structure is best left to management discretion within reasonable bounds. Accordingly, we expand the equity ratio authorized through our decision from 51.9 percent equity to slightly above 55 percent equity as prudent management sees fit. Again, the rates designed in this Proceeding will be established based on a 7.0 percent WACC. Finally, we reiterate this Commission has flexibility in ratemaking and is not bound to "the use of any single formula or combination of formulae in determining

[37] Public Service RRR Application at pp. 8-9.

rates."[38] Our ratemaking is outcome focused. Under the standard of "just and reasonable" it is the "result reached not the method employed which is controlling," and it "is not theory but the impact of the rate order which counts."[39]

2. Rate Base Valuation

38. In the Rate Case Decision, the Commission explained the holistic approach that we took in rendering our decisions in this Proceeding. The Commission stated that it approached "each interrelated decision cognizant that, as the revenue requirement increases, so do rates, and thus each decision requires balancing of a fair return for the company with reasonable rates for customers."[40]

39. In that vein, the Commission found that a 13-month average rate base valuation is appropriate for the reasons set forth by Staff and UCA in this Proceeding. The Rate Case Decision also states that, except for the specific findings in the 2022 Gas Rate Case, the Commission has consistently authorized a 13-month average methodology. The Commission indicated it was further unpersuaded to adopt the year-end convention, finding that Public Service had not provided sufficient evidence to support its contention that a year-end methodology is necessary to advance the public interest.

40. The Commission further explained that, although it does not modify the components of the rate base used by Public Service in its cost of service study to establish a base rate revenue target, it was disappointed by the slow pace of change in the Company's investment practices since the start of the energy transition, as acknowledged by the Company in its closing statement of position. The Commission concluded that Public Service now operates in a

[38] *Federal Power Commission v. Hope Natural Gas Co.,* 320 U.S. 591, 602 (1944).
[39] *Id*.
[40] Decision No. C24-0778 at ¶ 31.

constrained budget environment but has yet to show any meaningful restraint in capital spending. The Commission stated it has strong concerns that continued capital spending at similar or even higher levels on behalf of the Company could hasten increases in rates in the coming years, which are already expected to be significant due to the Company's high level of spending and an expectation that sales may flatten or decline in the coming years, leading to significantly more fixed cost spread across a lower sales volume. The Commission pointed out these rate impact concerns have been exacerbated in this Proceeding by the Company's uncertainty and changing assumptions in providing a rate projection model that accurately reflects the Company's proposed capital investment and other plans, despite the Commission's clear request for information to assist in examining long-term rate impacts.

41. In its RRR Application, Public Service explains the Company voluntarily brought forth a historical test year for the Commission's use in the case instead of a future test year despite incurring rising costs to serve customers presently and relating to "transitioning" its gas service.[41] Public Service requests, consistent with the Commission's decision in the 2022 Gas Rate Case, the Commission adopt a year-end test year methodology to reflect investments that are fully in service at the time rates are placed in effect. Public Service argues that the only basis provided by Staff and UCA for the adoption of a 13-month average is their contention that the Commission has consistently authorized a 13-month average methodology. Public Service contends it has instead demonstrated that the Commission has been deploying a year-end methodology for roughly 40 years including in more than a dozen contested cases and has deployed average rate base in only a few litigated cases over that same time period. Public Service further argues the degree of regulatory lag in the previous gas rate case was nearly identical to the degree of lag that is occurring

[41] Public Service RRR Application at p. 5.

in this case. Likewise, the Company identifies similar levels of earnings attrition in both cases, and neither the matching principle nor arguments about "lumpiness" of investments are applicable.[42]

42. Public Service goes on to state that, if the Commission is disinclined to use a year-end rate base, then the Commission could instead implement a prorated year-end rate base that would reflect investments placed in service through the end of 2023, but with a weighted averaging of the revenue requirement difference between year-end and 13-month average rate base to reflect a September 2023 rather than mid-year average. The Company states, while this would still be inconsistent with prior practice and would result in material and unnecessary regulatory lag, it would somewhat mitigate the full negative impact of 13-month average rate base.[43]

43. **The Commission denies Public Service's RRR on this issue.** As explained in Paragraph 31 of the Rate Case Decision, the Commission rendered findings in this Proceeding in consideration of an overall final determination of what constitutes just and reasonable rates. The Commission adopted the 13-month average approach for valuing the test year rate base as one of the many interrelated determinations regarding the components of the cost of service study underlying the calculation of a target base rate revenue requirement. Public Service's arguments on RRR do not persuade us that we must revisit our finding that the use of a 13-month average results in overall just and reasonable rates.

44. We see as further support for adoption of the 13-month average approach for valuing the test year rate base the positive incentive that regulatory lag produces for management to streamline operations and reduce costs. For instance, we note that the concept of spending discipline, especially under flat or declining sales growth, is particularly important and something

[42] Public Service RRR Application at p. 6.
[43] Public Service RRR Application at p. 6.

we expect to focus on going forward due to fundamental long-term rate impacts. In its RRR Application, Public Service points out that total gas sales increased in every category for a total average growth rate of 0.7 percent between 2017 and 2022. Based on Public Service's own testimony, the Company's capital spending increased by a compound annual growth rate of 7 percent from 2017 to 2023. From 2020 to 2023, the compound growth rate was 9.3 percent, and over the last 2 years it was 12 percent. We see a troubling mismatch between the comparative growth in capital spending and the growth in sales and revenues. Accordingly, the adoption of the 13-month average approach for valuing the test year rate base and the associated regulatory lag produces a positive incentive for management to streamline operations and reduce costs. As the Commission has expressed on several occasions in the past, we are concerned that a continued business as usual approach to investment and management of the gas system is untenable as the long-term rate impacts will become increasingly more challenging to manage the longer it takes to bring spending and revenues closer together, especially given policy and market pressures which may lead to declining sales.

3. Questar Supply Project: Joint Study of Rifle Processing Plant

45. The Commission denied Staff's request to exclude the Questar Supply Project from the calculation of the target revenue requirement in the Rate Case Decision. The Commission agreed with Public Service that the Commission rule that may have required Public Service to secure a certificate of public convenience and necessity for the project is not applicable in this instance, primarily due to the timing of its construction. The Commission was also left unpersuaded by Staff's argument that further review of the project is necessary and instead found Public Service has satisfied its burden to show the project is permitted to be included in the target revenue requirement in this Proceeding. In addition, Paragraph 217 of the Rate Case Decision

states: "For clarity, all requests raised by intervening parties through written testimony or [statements of position] directed at the calculation of the test year revenue requirement but not addressed by this Decision are denied."

46. In its RRR Application, Staff contends the Commission overlooked providing an explicit ruling on Staff's recommendation to require the Company's participation in a joint study on the broader long-term plans for the Rifle Processing Plant. And according to Staff, if the Commission intended for the term "review" in Paragraph 58 of the Rate Case Decision to be more encompassing, then this portion of the Rate Case Decision still lacks clarity regarding Staff's recommendation for a joint study. Staff states it recommended the Commission order Public Service to participate in a joint study because the Questar Pipeline has the potential to impact the Rifle Processing Plant in many ways that are currently unknown. According to Staff, while the Commission in Proceeding No. 22AL-0426G ordered Rocky Mountain Natural Gas to study options for the future of the Rifle Processing Plant and to reach out to Public Service to discuss long-term plans associated with additional investments at the plant, Public Service has not meaningfully engaged in those efforts. Staff argues that, without a Commission order, it is unlikely Public Service will work with Rocky Mountain Natural Gas on this study going forward. Staff thus asks the Commission to issue a specific ruling on Staff's joint study recommendation.[44]

47. **The Commission denies Staff's RRR on this issue.** After considering Staff's arguments on RRR, we still find it reasonable to refrain from directing Public Service to complete the joint study that Staff recommends. Most troubling, Staff's claimed need for the study is the speculation that the Questar Supply Project *could* affect the Rifle Processing Plant in admittedly unknown ways. Yet Public Service explained that it fully owns and operates the Questar Supply

[44] Staff RRR Application at p. 3.

Project, the cost of which is at issue in this rate case because it will be part of the test year rate base. We find the Company has sufficiently justified the need for the project to address current supply constraints.

4. Private LTE Project

48. In the Rate Case Decision, the Commission agreed with Public Service that the Private LTE Project meets the definitional requirements of plant held for future use ("PHFU") for the purpose of establishing the target revenue requirement in this Proceeding. The Commission stated it was satisfied that the project will be used in the future as described by Public Service, again agreeing with Public Service that it is reasonable for the Company to develop its own network because this private network for resiliency and security of its Supervisory Control and Data Acquisition ("SCADA") system will be the primary system once deployed and the addition of devices on the private network will be without cost, reducing the cost of the third-party network. The Commission went on to express frustration, however, with the absence of key information about any potential future costs associated with the project and the cost share between the gas and electric operating companies. The Commission concluded, while the intent of the project appears to be worth the investment contained herein, additional future costs may cause concern and could alter the Commission's view of the appropriateness of investments in this area, since those costs remain unknown or undisclosed by the Company at this time. The Commission concluded the costs of the project thus deserve further scrutiny in the future when the investment becomes operational on the Company's gas system and is no longer being held for future use.

49. In its RRR Application, UCA argues that the record in this Proceeding supports the removal of $3.5 million from the rate base for PHFU for wireless spectrum licenses and the Private LTE Project. UCA repeats its allegations that the project is actually intended for the Company's

electric service and is not "used and useful." UCA also questions again the need for the project and its inclusion in rate base while customers still pay existing third-party telecom companies to serve as backup. UCA goes on to contend there is confusion in the Rate Case Decision regarding which communications system will be the backup system. UCA further argues that, although the Private LTE Project may meet the definitional requirements of PHFU (itself pointing to the Company's reliance on the Federal Energy Regulatory Commission's Uniform Systems of Accounts), such accounting "does **not** govern a regulator's treatment for ratemaking purposes."[45] UCA then faults the Commission for not presenting an analysis of its regulatory authority to the "recoverability" of costs in a rate case. UCA concludes the investment in the Private LTE Project is imprudent and that inclusion of $3.5 million associated with the project in rate base is neither just nor reasonable "while customers still pay existing third-party telecom companies to serve as 'backup.'"[46]

50. **The Commission denies UCA's RRR on this issue.** When rendering the Rate Case Decision, the Commission fully considered, and denied, the arguments that UCA raises again in its RRR Application. We affirm that, in the Rate Case Decision, the Commission properly concluded the Private LTE Project qualifies as PHFU for the purpose of establishing the target revenue requirement in this Proceeding. We find UCA has not sufficiently refuted that the project will not be used for the Company's gas operations, as Public Service has explained.[47] Public Service has further sufficiently supported the need for the project for its gas operations.[48]

[45] UCA RRR Application at p. 16.
[46] UCA RRR Application at p. 16.
[47] We further note that case law affirms the "used and useful" standard is one permissible tool of ratemaking and not one that must be employed in every instance—because it is the result reached and not the method employed that is controlling. *E.g.*, *Glustrom v. Pub. Utils. Comm'n*, 280 P.3d 662, 669 (2012) (finding Commission did not err in allowing utility to include power plant's construction costs in customer rates *before* the plant became "used and useful" and rejecting contention that such rates automatically were not "just and reasonable").
[48] Commissioner Gilman dissents from this portion of the Decision as reflected in her attached dissent.

51. UCA is correct, however, that the Rate Case Decision should be modified to properly identify the system that will serve as the backup system. We agree with UCA that the record indicates that the third-party provided system will serve as the backup system after the Private LTE Project is operational.

5. Vacant Positions

52. In the Rate Case Decision, the Commission disallowed the costs associated with vacant positions from being included in the calculation of the base rate revenue target. We agreed with Staff's reasoning that shareholders should not enjoy all of the benefits from the Company's efforts to cull its payroll in terms of earnings at the expense of ratepayers. We also concluded it is reasonable to expect Public Service to determine whether certain vacant positions should be reflected in the cost of service study based on expected business needs rather than to rely on a flawed blanket assumption that a previously filled position will continue to be necessary. Consequently, the Commission directed Public Service to remove from the revenue requirement target calculation the full annual compensation assigned to the Company for the 207 positions opened from involuntarily terminations and the 419 positions opened from the acceptance of a Voluntary Retirement Package ("VRP") in 2023.

53. In its RRR Application, Public Service challenges the Commission's directive to remove the costs associated with any position that was temporarily vacant in the test year. The Company's primary request is for the Commission to reverse itself and allow the revenue requirement target to be based on the labor costs the Company actually incurred in 2023.[49]

54. Public Service argues the evidence in the record of this Proceeding—specifically, that the Company was seeking to realign its employees and job positions to better meet its

[49] Public Service RRR Application at p. 10.

customers' and the Company's needs in an inflationary environment establishes—does not support a reduction to the Company's future labor costs. Public Service points to an analysis in its Rebuttal Testimony showing gas jurisdiction labor expenses to be higher in the first six-months of 2024 than any other prior six-month period going back to January 2022. Public Service likewise states a significant portion of positions have since been backfilled and that beyond headcount, labor costs reflect salary and base pay amounts, benefits, and payroll taxes, which are affected by the individuals in various positions and changes in job duties and not just number of employees.

55. Public Service further points to its Rebuttal Testimony to explain that only one of the 419 VRP departures was a Public Service gas employee and only four were gas employees at Xcel Energy Services. The Company further states, of the 207 involuntary employee departures, 90 were part of the normal course of business terminations for poor performance, such that the remaining 117 involuntary departures were a result of 2023 year-end reorganization programs.[50]

56. If the Commission declines to reconsider this determination, then Public Service requests the Commission modify the required adjustments in the following two ways. First, the disallowance should reflect only the number of open positions that were not backfilled (323 positions instead of 626 positions), or a $2.3 million reduction to the target revenue requirement calculation as opposed to a $4.6 million reduction. Second, the test year cost of service should include $4.9 million costs associated with implementing the Company's reorganization programs in 2023. Public Service states these adjustments could increase the target base rate revenue requirement as a whole, unlike its primary request to use the labor costs that the Company actually incurred in 2023.[51]

[50] Public Service RRR Application at p. 12.
[51] Public Service RRR Application at pp. 13-14.

57. **The Commission denies Public Service's RRR on this issue.** We find it appropriate, however, to clarify that the Commission did not require Public Service to remove from the cost of service study all costs associated with the positions made vacant across Xcel Energy's system from the VRP and the involuntary separations. It was clear from Staff's Answer Testimony and Public Service's Rebuttal Testimony that the 207 positions opened from involuntarily terminations and the 419 positions opened from the acceptance of the VRP were corporate-wide figures. Hence, the Rate Case Decision specified the revenue requirement for Public Service's gas operations should include the costs of the vacant positions *assigned to the Company*. We find this directive is not unreasonable and should have been anticipated by Public Service as a potential outcome of the litigation over the issue in this Proceeding.

6. Executive Compensation

58. In its RRR Application, UCA contends the Rate Case Decision fails to state any findings or conclusions with respect to UCA's recommended executive compensation disallowance. UCA faults the Rate Case Decision for not discussing executive compensation outside of the investor-relation expense context and requests the Commission reconsider and specifically address "this $1.6 million issue."[52]

59. **The Commission denies UCA's RRR on this issue.** As an initial matter, we reiterate that Paragraph 217 of the Rate Case Decision states: "For clarity, all requests raised by intervening parties through written testimony or [statements of position] directed at the calculation of the test year revenue requirement but not addressed by this Decision are denied." In any event, we are not persuaded by UCA's arguments on RRR that we are in a position in this Proceeding to rely upon the Drucker Compensation Principle as the basis for disallowing a portion of the

[52] UCA RRR Application at p. 22.

$1.6 million executive compensation expense reflected in the 2023 test year cost of service. For its part, Public Service provided credible evidence in its Rebuttal Testimony that this principle has not been applied in this context, so we would need to further explore this issue and develop a record to inform our decision-making, were we to use this principle in this way. We find it unfortunate that such a record was not adequately established where we could establish a principle or standard for compensation review. We also note that in the record of this Proceeding, UCA itself characterizes its proposed $1.6 million disallowance as a "rough estimate"[53] because it did not have detailed compensation data.

60. However, we do see a clear need on a going-forward basis to further scrutinize this issue, which will require more information from Public Service regarding measures of reasonableness regarding ratepayer responsibilities to cover the costs associated with executive compensation. Pertinent metrics could aid the determination of what level of compensation falls on shareholders versus customers and what percentage of compensation is provided through stock options and not through collections from ratepayers. With more information and a better record from the Company and intervenors, we expect to be better positioned to find that a certain level of compensation is a reasonable amount to attribute to ratepayers as part of just and reasonable rates tied to providing utility service, and that compensation above that amount should be borne by shareholders. Inherently, a number of the responsibilities carried out by executive employees serves most directly shareholders. At this time, we do not have a division of time and compensation, or a basis for that division, absent something like the Drucker Compensation Principle. Accordingly, in the next rate case, it would be appropriate for Public Service as well as intervenors to come forward with a proposal for how this issue should be better addressed within

[53] Hr. Ex. 501, Fernandez Answer Testimony, pp. 124-25.

the ratemaking process. In addition, we expect the Senate Bill ("SB") 23-291 compliance reporting that we have ordered in this Decision will also provide more clarity as relates to prohibited expenses that might impact executive compensation.

7. Liquefied Natural Gas

61. The Commission concluded in the Rate Case Decision that it was unpersuaded by UCA's arguments in favor of a disallowance of liquefied natural gas ("LNG") costs and instead found Public Service had provided enough support to satisfy its burden of proof to support the inclusion of third-party vendor support and materials and labor expenses of approximately $366,000 for compressed natural gas and approximately $5.4 million for LNG in the 2023 test year revenue requirement.

62. Nonetheless, the Commission stated in the Rate Case Decision that it shared many of UCA's concerns about Public Service's decision to deploy LNG in Breckenridge. The Commission cited Decision No. C24-0092, where it had concluded LNG can serve as a temporary solution, potentially as a chosen non-pipeline alternative technology in place of an infrastructure project, if short-term use of such strategies is necessary.[54] The Commission stated, however, the record in this Proceeding raises doubts about both the temporary nature of the LNG deployed in Breckenridge and the presence of any broader non-pipeline alternative effort planned when the LNG was originally deployed in Breckenridge. The Commission further noted that Public Service did not appear to have identified the capacity need much before it became a major

[54] The questions we raise here about deployment in Breckenridge are not intended to contravene the statement in our initial Gas Infrastructure Plan decision that temporary solutions such as CNG and LNG may be appropriate if short-term use of such strategies is necessary in order to make an NPA a feasible alternative. Decision No. C24-0092 at ¶ 104 in Proceeding No. 23M-0234G (February 23, 2024). As we said in the Rate Case Decision at ¶ 176: "Yet the record in this Proceeding raises doubts about both the temporary nature of the LNG deployed in Breckenridge and the presence of any broader non-pipeline alternative effort planned when the LNG was originally deployed in Breckenridge."

shortfall, which potentially limited the options and increased the price of a remedy, nor did the Company appear to undertake any preemptive actions to potentially avoid the $5.4 million per year expense for a service serving only a narrowly confined portion within the Company's system. The Commission concluded: "It is our hope and expectation that such failures in planning and alternative analysis will be significantly improved through the Commission's relatively new Gas Infrastructure Planning rules, which intend to require significantly more proactive planning than was displayed in this situation."[55]

63. In its RRR Application, UCA contends that the Commission's many stated concerns about Public Service deploying LNG in Breckenridge support an opposite result than implemented by the Rate Case Decision. UCA contends these statements and the record of this Proceeding support UCA's request on RRR that the Commission reverse this determination and instead deny Public Service's request to include these LNG expenses in the 2023 test year. UCA reasons: "The Commission needs to signal to [Public Service] that it will no longer tolerate its 'business as usual' approach."[56]

64. To support its RRR argument on LNG, UCA contends the record "demonstrates poor system planning and analysis by [Public Service] resulted in an expensive and imprudent deployment of about $5.2 million worth of third-party LNG services for the town of Breckenridge."[57] UCA contends Public Service failed to show that it adequately evaluated alternative and more cost effective ways to address design day conditions, including the use of CNG. UCA also points to the testimony of its witness that the commodity costs of LNG are

[55] Decision No. C24-0778 at ¶ 176.
[56] UCA RRR Application at p. 14.
[57] UCA RRR Application at p. 3.

583 percent larger than those of CNG, which Public Service did not contest.[58] UCA further contends it refuted Public Service's claim that space constraints made it impractical to instead deploy compressed natural gas ("CNG") and notes that, in discovery, Public Service admitted it did not research the availability of land. UCA characterizes this investment as the Company purchasing an overly expensive insurance policy to address potential design day conditions in Breckenridge, which went unused. UCA points out that Public Service never injected LNG into the system other than to empty the tanks holding LNG in order to move them. UCA points to the testimony of its witness at hearing that the costs of deploying LNG in Breckenridge amounted to a subsidy paid to customers with multi-million dollar homes.[59] Finally, UCA maintains that Public Service failed to provide information on the record to address safety concerns. UCA argues, the Commission has expressed its concern regarding LNG's safety, and yet Public Service failed in this Proceeding to comply with Commission requests to provide evidence in any proceeding regarding the use and storage of LNG.

65. **The Commission grants, in part, UCA's RRR on this issue.** After considering UCA's arguments on RRR and reviewing the record of this Proceeding, we find it appropriate to reconsider this issue and to ultimately exclude these LNG deployment costs from the 2023 test year revenue requirement. We find Public Service did not meet its burden to put forth adequate evidence to justify inclusion of this expense in the 2023 test year.[60]

66. As an initial matter, Public Service has not adequately explained why this particular expense, which it admits will not recur going forward, is a cost that should be represented in the test year used in this rate case. To the contrary, Public Service conceded at hearing that, on a

[58] UCA RRR Application at p. 12 (citing UCA Statement of Position at p. 37).
[59] UCA RRR Application at p. 13 (citing Hr. Tr. September 12, 2024, p. 92:1-7).
[60] Chairman Blank dissents from this portion of the Decision as reflected in his attached dissent.

forward-looking basis, the annual expense to deploy LNG in Breckenridge will be a fraction of what the Company is requesting be included in the target revenue requirement in this Proceeding.[61] At hearing, Public Service confirmed that, beginning this heating season,[62] it will be transitioning from using third-party vendors for LNG to Company-owned equipment.[63] Public Service stated it purchased its own LNG equipment this year at a cost of $3.6 million, for which, as purchases made in 2024, it would seek cost recovery in a future proceeding.[64] The Company explained that, going forward, it intends to use this purchased equipment in Breckenridge instead of relying upon third-party rental equipment as it has done the past two heating seasons.[65] UCA confirmed at hearing that the Company's expected revenue requirement associated with the purchase of this Company-owned LNG equipment will be a fraction of the annual operations and maintenance expense that Public Service has requested in this rate case.[66] At hearing, Public Service's proffered reason for modelling this expense, despite the fact that the third-party vendors will no longer be used is, "all the other ways our gas operations O&M are increasing."[67] Public Service stated, given those other increases, "we still believe that the revenue requirement in our test year is representative of costs we will be facing moving forward."[68] Given the admitted mismatch between the costs the Company incurred the prior two heating seasons to deploy LNG in Breckenridge and the costs it will incur going forward, we are not persuaded by Public Service's advocacy in this case that this is a legitimate cost to represent in the test year going forward, nor is it appropriate to include significant costs for a specific purpose that are known to have already

[61] Hr. Tr. September 10, 2024, p. 62:1-6.
[62] Public Service's winter heating season runs from November 1 to March 31.
[63] Hr. Tr. September 10, 2024, p. 61:3-8.
[64] Hr. Tr. September 6, 2024, pp. 137:3-9, 138:10-12, 139:21-23.
[65] Hr. Tr. September 6, 2024, pp. 139:15-17, 140:3-5.
[66] Hr. Tr. September 10, 2024, p. 62:17-24.
[67] Hr. Tr. September 10, 2024, p. 63:6-8.
[68] Hr. Tr. September 10, 2024, p. 63:9-11.

ceased in future rates as a proxy for unidentified and unquantified other expenditures simply at the Company's insistence that such costs may materialize elsewhere.

67. Even if we were to put aside this threshold question of whether these vendor costs are truly representative costs that warrant inclusion in the target revenue requirement, upon our reconsideration of this issue and the record of this Proceeding, we are not satisfied by the evidence and answers provided by Public Service that the process, planning and analysis that lead to the Company's projection of a local shortfall and the highly expensive remedy that the Company chose has been adequately shown to represent prudent decision-making that should be borne by ratepayers. As we stated in the Rate Case Decision, it appears Public Service failed to identify the capacity need in Breckenridge much before their analysis, which is not included in this record, determined it to be a major shortfall. The lack of proactive identification potentially limited the options and increased the price of a remedy. It is also clear on this record that the Company did not appear to undertake preemptive actions to potentially avoid this significant expense for a service serving only a narrowly confined portion within the Company's system.[69] Along those same lines, UCA argues on RRR that the record here demonstrates poor system planning and analysis by Public Service resulted in an expensive and imprudent deployment of third-party LNG services. UCA also makes the valid points that Public Service has failed to demonstrate it adequately explored less-costly alternatives, that Public Service never injected any of this LNG into its system, raising doubts about the appropriateness of the underlying assumptions as to the need, and that Public Service failed to provide information to address the Commission's previously articulated safety concerns.

[69] Decision No. C24-0778 at ¶ 176.

68. To the question of planning, at hearing, Public Service witness Gilliland admitted this capacity shortfall "was just identified prior to the '22/'23 winter season."[70] She was not aware of how many years of growth, or what growth assumptions were made, with regard to the sizing of this replacement of traditional infrastructure.[71] "Not to her knowledge" had the Company begun, either when the need was identified, or any time in the interim, to begin any specific efforts to explore or research the capacity growth rate in this area of concern.[72] She could not describe, geographically, where all of the area of concern is, in terms of use, that leads to the capacity shortfall.[73] And as far as she knew, the Company had not pursued or proposed a moratorium in the area to slow or stop growth to address this shortfall.[74]

69. To the question of alternatives, at hearing, Public Service witness Gilliland admitted: "LNG is typically—it could be more costly than CNG, depending on how much usage is completed."[75] She had no answer to UCA's point on cross-examination that, by prior decision, the Commission had recognized the upstream costs and the total costs of LNG are substantially higher than the same costs for the delivery of non-CNG/LNG natural gas, which impacts the affordability of utility service.[76] Witness Gilliland conceded that Public Service did not evaluate the space needed for CNG in Breckenridge.[77] She could not answer whether Public Service had attempted to use the existing gas demand-response pilot program in Summit County to try to minimize the shortfalls in this area of concern.[78] She admitted the Company had not conducted

[70] Hr. Tr. September 6, 2024, pp. 163:25–164:2.
[71] Hr. Tr. September 6, 2024, p. 165:17-21.
[72] Hr. Tr. September 6, 2024, p. 166:4-9.
[73] Hr. Tr. September 6, 2024, p. 166:11-18.
[74] Hr. Tr. September 6, 2024, p. 166:19-22.
[75] Hr. Tr. September 6, 2024, pp. 121:24–122:1.
[76] Hr. Tr. September 6, 2024, pp. 125:19–126:2.
[77] Hr. Tr. September 6, 2024, p. 130:15-17.
[78] Hr. Tr. September 6, 2024, p. 164:12-19.

any analysis to see if there were revenue, from the gas sales in Summit County, to offset these costs.[79] And she admitted these new customers who have been added in an area that the Company appears to contend their system cannot reliably serve are not paying the full cost that they are imposing on the system.[80]

70. Likewise, Public Service witness Peuquet left many questions unanswered at hearing. Contradicting witness Gilliland, he said the need to alleviate capacity constraints in Breckenridge was something the Company "ha[s] known about for years."[81] He could not answer whether the Company began pursuing any demand reductions through other means in the interim years since the need was initially identified.[82] He could not speak to the particulars of the geographic constraint and how extensive it is.[83] And he could not speak to the Company's existing gas demand response pilot, being conducted in Summit County, or whether any results for the pilot have been compiled.[84]

71. The record is absent any meaningful information to further describe the calculations or needs that fed into the capacity shortfall, nor any forecasts or calculations buttressing the need for the expensive remedy chosen by the Company. Given this void in the record and the Company's inability to answer our questions at hearing, it is not possible for the Commission to verify that adequate system management and planning could not have avoided this eventual costly LNG deployment. We are left looking at a planning process, or lack thereof, which on its face appears to have many shortcomings and falls short of meeting the Company's burden to show, not just that the ultimate decision to deploy LNG in Breckenridge was prudent, but that the entirety of

[79] Hr. Tr. September 6, 2024, p. 168:20-25.
[80] Hr. Tr. September 6, 2024, p. 169:13-18.
[81] Hr. Tr. September 10, 2024, pp. 76:23–77:11.
[82] Hr. Tr. September 10, 2024, pp. 77:12–78:2.
[83] Hr. Tr. September 10, 2024, p. 78:3-8.
[84] Hr. Tr. September 10, 2024, p. 78:9-19.

the actions or inactions that led to this expensive solution were prudent and would constitute a just and reasonable expense to the ratepayers.

72. That we would scrutinize these LNG deployment expenses in this base rate proceeding should not come as a surprise to Public Service. Previously, the Commission denied Public Service's application in Proceeding No. 23L-0040G to recover the costs of LNG procurement services through the Company's gas cost adjustment mechanism ("GCA"), which were incurred in November and December of 2022 and forecast to continue through the GCA period of March 2023. There, the Commission said it shared the concerns raised by UCA in its protest letter along with additional concerns surrounding the safety of LNG in the selected areas.[85] In that proceeding, UCA raised some of the same concerns as in this case, including that Public Service had not provided sufficient detail to determine if this use of LNG is prudent, especially considering the relatively high cost of LNG and where the supply constraints are located, and why such constraints have or will occur.[86] The Commission instructed Public Service that if it wishes to include these costs in the GCA, "such inclusion must be based on substantially more information than presented in this record."[87] When the Company then sought to modify its GCA in Proceeding No. 23AL-0325G, it again was denied for failure to provide sufficient justifying information. The Commission found Public Service's evidence to be general, and thus lacking in detail.[88] The Commission concluded it was unclear the extent to which Public Service intended to rely on CNG and LNG in the future to address constraints in its pipeline system or otherwise, which it deemed important "given that the upstream costs and total cost of LNG are

[85] Decision No. C23-0059 at ¶ 24 issued in Proceeding No. 23L-0040G (January 26, 2023).
[86] Decision No. C23-0059 at ¶ 20.
[87] Decision No. C23-0059 at ¶ 24.
[88] Decision No. R24-0059 at ¶ 38 issued in Proceeding No. 23AL-0325G (January 25, 2024).

substantially higher than the same costs for the delivery of non-CNG/LNG natural gas[.]"[89] The Commission also noted the record was silent on the question of the safety of CNG and LNG in the way Public Service proposes to use it. The Commission raised concern that, "While Public Service often repeats in its testimony and SOP that it must provide safe and reliable service to its ratepayers, it never addresses the relative safety of storing and using CNG or LNG to address pipeline constraints versus the conventional method of alleviating pipeline constraints and delivering natural gas to ratepayers."[90] The Commission noted that record deficiency was notable given the Commission had specifically requested such evidence in its prior Decision No. C23-0059.[91] Despite these past Commission statements that Public Service's explanation of its CNG and LNG use must be supported by more information, the record in this Proceeding is similarly deficient on the Company's analysis of less expensive alternatives to LNG deployment and the aforementioned safety concerns. These shortcomings are not being newly identified here and should come as no surprise to the Company, yet they still failed to adequately address them on this record.

73. Also, the Company referenced the Commission's previous determination that LNG or CNG could be part of future non-pipeline alternative ("NPA") solutions to avoid traditional infrastructure upgrades. While this is accurate, it is important to note that the LNG expense included herein has not been included as part of any proposed or approved NPA before the Commission. There is no evidence on this record that the deployment of LNG in this location is part of a broader strategy building to a more cost-effective solution. In fact, the record indicates the opposite – that deployment of LNG in this instance may have been a result of a lack of planning

[89] Decision No. R24-0059 at ¶ 38.
[90] Decision No. R24-0059 at ¶ 39.
[91] Decision No. R24-0059 at ¶ 39.

or strategy, which is distinctly different that the Commission's view that LNG or CNG could be part of a broader cost-effective NPA strategy or suite of strategies.

74. To be clear, we certainly are mindful that Public Service has an obligation to serve customers in its exclusive territory and that it is expected to make the necessary investments in order to fulfill that obligation and provide safe and reliable service. However, that mandate is not a blank check to serve customers using costly methods without considering less expensive options nor does it appear to require the Company to hook up new customers before its infrastructure is capable of reliably serving the loads, as the Company contends is the case in this circumstance. Our scrutiny of utility investments is a critical check on utility management decisions, and the utility is responsible for making all reasonable efforts to gather relevant information and to respond appropriately. Here, we cannot complete that scrutiny given the lack of evidentiary support for the LNG expense and thus we will not allow these costs to be represented in the target revenue requirement. Public Service did not provide the necessary evidence into the record explaining these expenses and, at hearing, was unable to answer the foundational questions posed to it about how this capacity shortfall came to be and why this costly LNG deployment was selected as the only solution. Within the record of this case, it is the utility's responsibility to demonstrate reasonableness of an expense for the commission to determine that it is just and reasonable to recover costs from ratepayers. Public Service has fallen substantially short in that effort. We find it is a legitimate question whether and how Public Service adequately managed and planned its system to find itself in a costly crisis situation at the precipice of the '22/'23 heating season—and yet again the next heating season with apparently no intervening mitigation. By failing to answer these questions, the Company failed to meet its burden of proof in this case.

8. SB 23-291: Prohibited Recovery of Investor-Relation Expenses

75. Pursuant to § 40-3-114(2)(c), C.R.S., enacted in SB 23-291 and effective August 7, 2023: "A utility shall not recover … from its customers, whether as part of proposed base rate costs, a rider, or other charges: … Investor-relation expenses[.]" The term "investor-relation expenses" is not further defined in SB 23-291 nor is it used elsewhere in Title 40 or state law. In the Rate Case Decision, the Commission agreed with UCA that the prohibition in SB 23-291 of recovering "investor-relation expenses" is unambiguous and concluded there is no uncertainty regarding what is considered investor-relation expenses as the scope of investor-relation expenses has been raised in many of the Company's previous rate cases. The Commission therefore directed Public Service to remove from its revenue requirement calculations all investor-relations expenses accounted for in the Company's 2023 test year revenue requirement calculation as investor-relation expenses.

a. Recovery of Certain Investor Relation Expenses

76. In its RRR Application, Public Service asks the Commission to reconsider the decision to exclude from the revenue requirement securities filing and related expenses as prohibited "investor-relation expenses." The Company repeats its arguments that SB 23-291 does not define this term and does not include the word "all." The Company urges that the Commission should identify what specific types of costs constitute "investor-relation expenses" for purposes of this prohibition in SB 23-291. The Company also repeats its argument that broadly interpreting the statute and "simply removing whatever costs are included in a particular Public Service cost center" is inconsistent with how investor relation expenses have been treated historically.[92] The Company contends this determination departs from the Commission's prior decisions on this

[92] Public Service RRR Application at p. 15.

issue without a reasoned explanation for doing so. The Company also argues that disallowing recovery of costs that are a legitimate and unavoidable cost of providing utility service is not consistent with settled law in Colorado. The Company concludes the Rate Case Decision disallowed costs that are "unquestionably necessary for Public Service to provide utility service, they are by definition prudent and should be recoverable."[93]

77. **The Commission denies Public Service's RRR on this issue.** We are unpersuaded by Public Service's arguments on RRR that we must reconsider this determination. Accordingly, we uphold our decision to direct Public Service to remove from its revenue requirement calculations all investor- relation expenses accounted for in the Company's 2023 test year revenue requirement calculation as investor-relation expenses.

78. As a practical matter, the implementation of the new statutory prohibition on the recovery of investor-relation expenses in this Proceeding, prior to the conclusion of the Commission's ongoing rulemaking in Proceeding No. 24R-0168EG, is to eliminate from the target revenue requirement calculation all costs that are accounted for as "investor-relation expenses." Public Service rested its case assuming the costs it had identified as investor relations expenses that are subtracted from or additions to the revenue requirement calculation properly satisfied the provisions in SB 23-291. We find there is insufficient transparency of the additions to or subtractions from the Company's revenue requirement calculations, and there is also insufficient record to identify, as Public Service requests in its RRR Application, the specific types of investor relations costs that "fit the statutory language."[94]

[93] Public Service RRR Application at p. 16.
[94] Public Service RRR Application at p. 15.

79. We also find Public Service's legal arguments unavailing. First, we disagree with Public Service that our reading of the statute adds the word "all" and thereby changes its meaning. The most natural reading of the statute is that it means what it says: "A utility shall not recover … from its customers, whether as part of proposed base rate costs, a rider, or other charges: … Investor-relation expenses[.]" There is no qualification in the statute on what type of investor-relation expenses must be excluded, so the statute necessarily refers to *all* investor-relation expenses. Conversely, Public Service's interpretation seems to read into the statute limitations to the term "investor-relation expenses," that are not there. We see no reason for adopting this narrow construction. If the legislature had intended to further limit the type of investor-relation expenses to which this applied, it would have done so.[95]

80. Second, Public Service's claim that the Commission departed from its past practice without explanation ignores that the General Assembly enacted SB 23-291 in the interim and used the broad term "investor-relation expenses," without limitation. As Public Service concedes, the Commission is not bound by its prior decisions or any doctrine similar to *stare decisis*, particularly when it is engaging in the legislative function of ratemaking.[96] This is a practical necessity for an agency like the Commission because it makes its decisions based on the record of each case. As the Colorado Supreme Court has instructed, "while consistency in administrative rulings is considered essential … the appearance of arbitrariness is dispelled when new findings are made … on the basis of new evidence and a new record."[97] Here, the express changed circumstance of a change-in-law through SB 23-291 is sufficient cause for the Commission to re-evaluate how it

[95] *See Town of Telluride v. Lot Thirty-Four Venture, L.L.C.*, 3 P.3d 30, 35 (Colo. 2000), *as modified on denial of reh'g* (Feb. 26, 2000) (instructing not to "read a statute to create an exception that the plain language does not suggest, warrant, or mandate").

[96] *E.g.*, *Colorado Ute Electric Ass'n v. Public Util. Comm'n,* 198 Colo. 534, 540–41, 602 P.2d 861, 865 (1979).

[97] *Id*.

treats these expenses. While it has been common for the Commission to consider requests from intervenors to modify a utility's proposal to recover certain cost components under the umbrella of investor relations expenses, the lack of any qualification on what type of investor-relation expenses must be excluded pursuant to SB 23-291 is a substantive change.

81. Finally, we decline to take up Public Service's contention that the excluded investor-relation expenses cannot be disallowed from rates because they are a legitimate cost of providing utility service. We find the record lacks the nuanced detail of these expenses, and developed arguments in support, that would allow us to undertake this legal examination at this late point in the proceeding. Public Service's case in chief presents investor-relation expenses as generally recoverable without the analysis and detailed support necessary to counter the lack of any qualification on what type of investor-relation expenses must be excluded pursuant to SB 23-291. Thus, to the extent Public Service has a claim that the statute overreaches and that the statute's prohibition on recovery of these expenses interferes with constitutional or statutory rights or obligations, Public Service does not sufficiently raise this claim in this Proceeding.

b. Demonstration of Cost Removal

82. In its RRR Application, UCA explains that it argued against the inclusion of some $142,214 of investor-relation expenses in the determination of base rates and that, in its Rebuttal Testimony, Public Service added this same amount back into its cost of service study, stating only that during its review of investor-relation expense exclusions, it determined "certain expenses necessary to comply with applicable legal requirements or otherwise necessary for public capital markets were inadvertently excluded."[98] UCA requests that Public Service demonstrate the

[98] UCA RRR Application at p. 19 (citing Hr. Ex. 136, Freitas Rebuttal Testimony, p. 8:17-23).

$142,214 was removed from the Company's revenue requirement calculation and that any other investor-relation expenses were also removed.

83. **The Commission grants, in part, UCA's RRR on this issue.** We find that, considering the RRR pleadings and specifically the requirement in this Decision to remove the costs associated with the deployment of LNG from the 2023 test year revenue requirement calculation, it is reasonable to instruct Public Service to include in its compliance tariff filing the updated cost of service study in an executable format and, due to the limitations of the Commission's E-filings system, to serve that executable copy of the updated cost of service study on the intervening parties.

9. SB 23-291: Prohibited Recovery of Lobbying Expenses

84. Pursuant to § 40-3-114(2)(e), C.R.S., also enacted in SB 23-291 and effective August 7, 2023: "A utility shall not recover … from its customers, whether as part of proposed base rate costs, a rider, or other charges: … Expenses for lobbying or other activities meant to influence the outcome of any local, state, or federal legislation, ordinance, resolution, or ballot measure." The term "lobbying" is defined in § 40-3-114(6)(g), C.R.S., to mean: "directly, or through the solicitation of others, communicating with a person that is in a position to make a policy decision in order to influence the outcome of local, state, or federal legislation."

85. In Paragraph 171 of the Rate Case Decision, the Commission expressed concern that Public Service may not be accounting for the cost of time by employees who are not registered lobbyists who nonetheless engage in "lobbying or other activities" within the meaning of this statutory prohibition. In response, the Commission directed Public Service to take three actions: (1) file an update to its 2023 annual report in Proceeding No. 24M-0010EG showing the portion of total compensation of Xcel Energy employees, by employee, that corresponds to their time spent

on lobbying, as defined in § 40-3-114 (2)(e) and (6)(g), C.R.S., after the effective date of SB 23-291; (2) track and report the portion of total compensation for calendar year 2024 and each calendar year through the next rate case for any employees who engage in lobbying as defined by SB 23-291; and (3) track these internal employee lobbying expenses in a regulatory account starting January 1, 2024, for review in the Company's next rate case establishing base rate revenue requirements, at which time the Commission will consider the question of whether refunds to customers are warranted.

a. Setting Aside Requirements and Define Recoverable Expenses

86. Public Service asks in its RRR Application that the Commission reconsider these three requirements. Public Service argues that by requiring the Company to take these actions, the Commission expands the definition of lobbying in SB 23-291 "beyond the letter and spirit of the law."[99] The Company further argues that "*only* communications with legislators specifically to influence legislation constitute 'lobbying' for which cost recovery of related expenses is disallowed."[100] Public Service alleges the Commission's application of SB 23-291 pursuant to Paragraph 171 would potentially cover a host of activities by non-lobbyist employees that do not fall within the statutory prohibition, such as time spent analyzing the potential impacts of legislation to the utility or its customers, as well as any interactions with policymakers regardless of the purpose. Public Service also raises that the costs of tracking and reporting time for each employee could be substantial and potentially outweigh any direct savings to customers from excluding such costs in rates, contrary to the intent of SB 23-291.

[99] Public Service RRR Application at p. 17.
[100] Public Service RRR Application at p. 17.

87. **The Commission grants Public Service's RRR on this issue, in part.** We see cause to clarify these directives so that the Company can better understand what we are ordering them to do as to these expenses. However, we are by no means eliminating these directives. While we acknowledge that the prescriptive statutory language enacted by the legislature controls when the Commission administers a statute, we do not find Public Service's arguments on RRR warrant a significant change to what we already decided in the Rate Case Decision.

88. We continue to view Public Service's interpretation as overly focused on the single word "communicating" in the definition of "lobbying" in § 40-3-114(6)(g), C.R.S., to support its relatively narrow interpretation that only communications directly with a legislator specifically to influence legislation constitute a prohibited lobbying expense. Yet, the plain statutory language in the definition of lobbying contemplates that such "communicating" could be done "directly, or through the solicitation of others" and the plain statutory language in § 40-3-114(2)(c), C.R.S., prohibits recovery from customers of expenses for lobbying "or other activities or other activities meant to influence the outcome of any local, state, or federal legislation, ordinance, resolution, or ballot measure." When interpreting statutes, particularly prescriptive statutes such as this one, we are cognizant that each word should be given effect.[101]

[101] *City of Florence v. Bd. of Waterworks of Pueblo*, 793 P.2d 148, 151 (Colo. 1990); *see also Dep't of Transp. v. Stapleton,* 97 P.3d 938, 943 (Colo. 2004) (noting that "we presume that the General Assembly understands the legal import of the words it uses and does not use language idly, but rather intends that meaning should be given to each word").

89. Accordingly, we clarify that Public Service is required to track and report the portion of total compensation for calendar year 2024 and each calendar year through the next rate case for the time spent by any employees who:

(a) engage in activities constituting "lobbying" pursuant to the Company's proffered interpretation of the prohibited expenses in SB 23-291;

(b) engage in activities constituting "through the solicitation of others, communicating with a person that is in a position to make a policy decision in order to influence the outcome of local, state, or federal legislation" under SB 23-291; and

(c) engage in activities constituting "other activities meant to influence the outcome of any local, state, or federal legislation, ordinance, resolution, or ballot measure" under SB 23-291.

90. The purpose here is to capture the potential additional expense for employee time that Public Service witness Peuquet could not speak to at hearing. When asked if employees other than the registered lobbyists "track any time that relates to kind of interaction with those individuals that could relate to lobbying on the Company's behalf," witness Peuquet could not definitively answer the question; he did respond that the excluded expense as reported by the Company for 2023 in its annual report to the Commission filed in Proceeding No. 24M-0010EG "was just the folks who engage on this [lobbying] as a regular part of their job."[102]

91. We expect to use these reports, whether in the next rate case or other applicable proceeding, to determine whether these additional employee compensation costs should be excluded from base rates or take other appropriate action. We anticipate in that proceeding that Public Service as well as any intervenors would have opportunity to advocate for which of the tracked time it believes meets the statutory definition. We acknowledge the Company's concern that this additional administrative tracking may come at a cost, but we find the benefit of building a record upon which to better scrutinize these expenses outweighs the cost, so that we may more

[102] Hr. Tr. September 10, 2024, p. 97:8-9.

fully evaluate compliance with this aspect of the prohibited expenses in SB 23-291.

b. Timing of Tracking Requirements

92. In its RRR Application, Public Service raises several concerns about the directive in the Rate Case Decision for the Company to update its 2023 prohibited expenses report and to begin tracking costs from January 1, 2024. Public Service maintains that, until the Commission issued the Decision, the Company had no notice that it would be required to track and report non-lobbyist employee compensation for ratemaking purposes, was not required to do so under the statute, and was not able to expand its tracking in that manner. Public Service requests the Commission modify this directive to require it to track time for employees who engage in lobbying beginning with the effective date of rates in this Proceeding (*i.e.*, November 5, 2024).[103]

93. **The Commission grants Public Service's RRR on this issue.** Although we are frustrated with this request by the Company, we recognize that the practical considerations raised in the RRR make our directive unworkable. Accordingly, although not ideal, we modify our directive so as to order that Public Service track all potential compensation as November 5, 2024.

c. Adjustments to Revenue Requirement

94. UCA requests in its RRR Application that the Commission clarify whether any adjustments are required to the revenue requirement used to establish rates in this Proceeding.[104]

95. **The Commission denies UCA's RRR on this issue.** We decline to order on RRR that Public Service must now adjust the base rates that took effect on November 5, 2024, pursuant to the Rate Case Decision to ensure that no prohibited lobbying expenses are included in the

[103] Public Service RRR Application at pp. 18-19.
[104] UCA RRR Application at p. 20.

calculation of the underlying target revenue requirement. The provisions in Paragraph 171 of the Rate Case Decision recognize that in this Proceeding, Public Service may have unlawfully proposed to include prohibited lobbying expenses in the base rates. However, as Public Service states in its RRR Application, the Company has not begun to track and report non-lobbyist employee compensation for ratemaking purposes. It is therefore not possible for the Commission to require an adjustment as UCA contemplates in its RRR Application. Instead, the reporting requirements in the Rate Case Decision are intended to provide information that can be relied upon by parties such as UCA in seeking relief in the future pursuant to § 40-3-114(4), C.R.S.

10. Rate Case Expenses

96. The Rate Case Decision notes that SB 23-291 provides direction from the legislature to the Commission to examine rate case expenses with more scrutiny. The decision further states the intent of the new statute is clear in that the amount of rate case expenses that a utility may recover from ratepayers may be limited by Commission. The Rate Case Decision concludes that, in consideration of the record specific to this rate case, Public Service is authorized to recover an amount not to exceed the total estimated costs put forward in its Rebuttal Testimony of approximately $1.6 million, less $130,000, an amount equal to one-half of the $260,000 incurred for the two outside consultants used by the Company in this rate case. In addition, Paragraph 217 of the Rate Case Decision states: "For clarity, all requests raised by intervening parties through written testimony or [statements of position] directed at the calculation of the test year revenue requirement but not addressed by this Decision are denied."

97. In its RRR Application, UCA contends that further reductions in recoverable rate case expenses are warranted. First, UCA argues that the Rate Case Decision fails to fully comply with legislative directives with respect to limiting the amount of rate case expenses that a utility

may recover from ratepayers because it failed to state findings or conclusions, or to limit the amount of rate case expenses for outside legal expenses.[105] UCA thus renews its request for a disallowance of 50 percent of the Company's outside legal costs. Second, UCA contends the record supports further reducing the $130,000 amount for consulting expenses to zero, because "the veracity, reliability and merit of the recommendations of each witness regarding the ROE and revenue decoupling issues, respectively, were undercut by substantial evidence in the record and each witness' recommendations were soundly rejected by the Commission."[106] Third, UCA asks the Commission to render a specific finding disallowing recovery of some $16,855 of "loading expenses" included in the Company's proposed rate case expenses for recovery.[107]

98. **The Commission denies UCA's RRR on this issue.** We retain the findings and directives related to rate case expenses as set forth in the Rate Case Decision. The Rate Case Decision established the rate case expense to be used in the test year cost of service study in consideration of the record specific to this case. The Commission considered the same requests put forth by UCA when authorizing Public Service to recover an amount not to exceed the total estimated costs put forward in Rebuttal Testimony less half of the $260,000 incurred for the two outside consultants used by the Company in this rate case. Section 40-3-102.5, C.R.S., enacted in SB 23-291, directs the Commission to limit the amount of rate case expenses that a utility may recover from ratepayers through the adoption of rules. In this case, by a decision rendered prior to the enactment of the rules contemplated in SB 23-291, the Commission has limited the rate case expenses included in the test year revenue requirement based upon its full consideration of the evidence offered by the parties.

[105] UCA RRR Application at pp. 17-18.
[106] UCA RRR Application at p. 18.
[107] UCA RRR Application at p. 19.

11. Gas Storage Inventory Cost

99. The Commission declined in the Rate Case Decision to reverse its recent decision to set the carrying cost for gas inventories held in storage at Public Service's short-term debt rate. The Commission stated that the appropriate Gas Storage Inventory Cost ("GSIC") was fully examined by the Commission in the Company's recent 2022 Gas Rate Case.[108] The Commission further agreed with intervenors Staff and UCA that nothing has changed since that previous case to warrant reconsideration at this time of the Commission requiring the GSIC to be set at a short-term debt rate.

100. Notably, the Rate Case Decision directs Public Service not to modify Sheet No. 50C, thereby preserving the status quo. The short-term debt rate defined on Sheet No. 50C is "the monthly interest rate equal to the average of the daily rates for Commercial Paper, Financial, 3-Month rates, published by the United States Federal Reserve H.15 report." In addition, the tariff states that: "The return will be adjusted for income taxes before being multiplied by the Average Gas Storage Inventory."

a. Return at WACC

101. In its RRR Application, Public Service again asks the Commission to reconsider its decision to set the return for the calculation of the GSIC at the cost of short-term debt instead of the WACC. Public Service contends the Commission's prior decision on GSIC, rendered in the 2022 Gas Rate Case, is not supported by the record here. Public Service also alleges the Commission's finding that the GSIC is a temporary or short-term asset is unsupported. Public Service argues that, while the amount of gas storage may fluctuate as gas is injected and withdrawn seasonally, the Company must invest capital on an ongoing basis due to the continuing

[108] Decision No. C22-0642 at ¶ 381 in Proceeding No. 22AL-0046G (October 25, 2022).

need for gas storage to serve customers. Public Service argues that gas storage inventory is a service-producing asset that is entitled to a WACC return. Public Service also maintains it is constitutionally entitled to a reasonable return on the GSIC, and that a denial of such return would reach a result that is unjust, unreasonable, and confiscatory.[109]

102. **The Commission denies Public Service's RRR on this issue.** We already fully considered, and denied, the arguments raised by Public Service in its RRR Application when rendering the findings and conclusions on the GSIC issue in the Rate Case Decision. We find no reason on RRR to revisit our determination that the matter was recently examined and resolved by the Commission in the 2022 Gas Rate Case, and that nothing has changed since that previous case to warrant reconsideration of the Commission requiring the GSIC to be set at a short-term debt rate.

b. Tax Gross Up of Short-Term Debt "Return"

103. Public Service further asks in its RRR Application that, if the Commission affirms the Company's cost of short-term debt will serve as the GSIC, then the Commission should specifically address UCA's recommendation to deny a tax gross-up on the GSIC when it is used as the carrying cost for gas storage inventories. Public Service states that grossing-up carrying costs set at the Company's cost of short-term debt is necessary to provide Public Service "any equity return at all on the GSIC."[110]

104. **The Commission denies Public Service's RRR on this issue.** Again, we find it appropriate here to continue to preserve the status quo. The Rate Case Decision maintains the short-term debt rate as currently defined on Sheet No. 50C of the Company's tariff: "the monthly

[109] Public Service RRR Application at pp. 22-24.
[110] Public Service RRR Application at p. 24.

interest rate equal to the average of the daily rates for Commercial Paper, Financial, 3-Month rates, published by the United States Federal Reserve H.15 report." An unmodified Sheet No. 50C also retains the tax gross up for the GSIC calculation. We are unpersuaded by Public Service's arguments on RRR that we must reverse this determination. Moreover, we find it significant that neither Staff nor UCA filed RRR on the GSIC determinations in the Rate Case Decision.

c. Removal of Short-Term Debt from Capital Structure

105. If the Commission affirms that Public Service's cost of short-term debt will serve as the GSIC, then Public Service also requests the Commission remove the GSIC portion of short-term debt from the calculation of the Company's overall WACC because, it claims, that short-term debt would no longer be available to finance other assets.[111]

106. **The Commission denies Public Service's RRR on this issue.** By maintaining the status quo with Sheet No. 50C, the Commission did not require Public Service to use the cost of short-term debt established for the determination of the WACC as a component of the GSIC. We find the record in this Proceeding does not adequately support the link that Public Service asks the Commission to make between actual uses of the short-term debt acquired by the Company and included in the determination of its capital structure and the financing of gas inventories. By maintaining the status quo with Sheet No. 50C, we find that, for cost recovery purposes, it is appropriate to include a carrying charge for gas inventories based on the published Commercial Paper rate. We add that we have issued no findings or directives regarding exactly how Public Service must finance its gas inventory purchases or otherwise spend the funds it acquires as short-term debt.

[111] Public Service RRR Application at p. 24.

12. Information Technology Cost Study

107. In its RRR Application, UCA contends the Rate Case Decision does not state any findings or conclusions with respect to UCA's recommendation that the Commission investigate Public Service's information technology costs. UCA states it raised concerns in its Answer Testimony and its closing statement of position about Public Service's increased spending on technology services, especially in the context of the changing environment for natural gas utilities in Colorado. UCA requests the Commission open a separate proceeding to investigate information technology costs, either in an investigatory or miscellaneous proceeding.[112]

108. **The Commission denies the UCA's RRR on this issue.** This proposed study, along with any other intervenor requests not expressly addressed within the Rate Case Decision, were denied in Paragraph 217 of the Rate Case Decision, which states: "For clarity, all requests raised by intervening parties through written testimony or [statements of position] directed at the calculation of the test year revenue requirement but not addressed by this Decision are denied." In consideration of the new arguments on RRR, we remain unconvinced that a rate case fails to offer the parties and the Commission sufficient opportunity to review the issues surrounding the procurement and financing of utility information technology investments.

13. Gas Quality of Service Plan

109. The Rate Case Decision authorizes the continuation of Public Service's existing Quality of Service Plan ("QSP") measures with the same penalty levels through December 31, 2026. While the Commission expressed appreciation for Staff's efforts in seeking improvements to the QSP, we found the Company's responses objecting to Staff's proposals compelling, particularly regarding timing the proposed changes in the immediate wake of this rate

[112] UCA RRR Application at p. 22.

case. Instead of adopting immediate changes to the QSP as recommended by Staff, the Commission required Public Service to make a future filing sufficiently before the expiration of the authorized extension for the purpose of undertaking a more comprehensive review of the QSP for the Company's gas operations to consider such modifications to existing measures as advanced by Staff in this Proceeding and to consider new metrics related to greenhouse gas emission reductions and gas planning procedures. The Commission agreed with Staff that such a review would be best accomplished in a stand-alone proceeding filed well before the new expiration of the existing QSP on December 31, 2026.

a. Grade 2 Leak Repair Metric

110. In its RRR Application, Staff asks the Commission to reconsider its decision not to modify any of the QSP measures at this time and instead adopt a 40-day Grade 2 leak repair metric for the Company's current gas QSP as the Company proposed in Rebuttal Testimony when responding to Staff's advocacy in its Answer Testimony. Staff argues in its RRR Application that the Company's position in its Rebuttal Testimony "clearly demonstrates its ability and willingness to accomplish stricter Grade 2 repair metrics."[113] Staff reasons that adopting a 40-day Grade 2 leak repair metric would reduce the duration of harmful leaks on the Company's gas system and act to prevent additional methane release into the environment.

111. **The Commission denies Staff's RRR on this issue.** After considering Staff's arguments on RRR, we continue to believe that the best course of action, and one that will further regulatory efficiency, is to approve the extension of the current QSP with no modifications. The proposed rulemaking by the federal Pipeline and Hazardous Materials Safety Administration ("PHMSA") regarding leak detection, repair, maintenance, and reporting, and the Commission's

[113] Staff RRR Application at p. 5.

rulemaking on leak detection reporting,[114] along with the Commission's Advanced Mobile Leak Detection pilot in the Company's Clean Heat Plan and the Company's Gas Infrastructure Plan should be considered when setting an appropriate metric for Grade 2 leak repairs. The consultative stakeholder sessions contemplated in the Rate Case Decision will further generate more thorough discussions and solutions to be incorporated in the next QSP filing.

b. Stakeholder Process Requirements

112. Staff also asks in its RRR Application that the Commission clarify its expectations for process and timing of the required QSP filing to ensure the stakeholder process provides meaningful results. Staff specifically seeks a requirement for at least four stakeholder meetings with input in several phases and specific deadlines for the next QSP filing.

113. **The Commission grants, in part, Staff's RRR on this issue.** We clarify that the Commission supports a robust stakeholder process for improving the Company's gas QSP. While we are not persuaded by Staff's arguments on RRR that we should order at least four stakeholder meetings, we certainly expect there should be multiple opportunities (or "phases") for Staff and stakeholders to provide input. We adopt a filing deadline of June 1, 2025, for Public Service to file the next QSP. We note that, by starting the formal review of the proposed QSP in mid-2025, it could be possible for Public Service to implement a one-year credit payout-free trial period from January 1, 2026 through December 31, 2026, as suggested by Staff.[115]

14. Decoupling

114. In the Rate Case Decision, the Commission declined to approve Public Service's proposed Revenue Stability Mechanism ("RSM"), which the Company described

[114] *See* Proceeding No. 22R-0491GPS.
[115] Hr. Ex. 404, Ramos Answer Testimony, p. 64:7-14.

as a "full" decoupling mechanism that completely disconnects its marginal revenue from sales volumes, without weather normalization. The Commission concluded that the Company's own testimony supports the conclusion that the primary issue the mechanism is attempting to resolve is one of rate design, and this is not a rate design proceeding. The Commission also agreed with UCA's observation that it was necessary to consider how decoupling alters Public Service's risk profile and hence the appropriate ROE to be established by the Commission. The Commission concluded that review of the RSM or any other decoupling mechanism requires the full context of a combined Phase I and Phase II gas rate case.

a. Approval of RSM

115. In its RRR Application, Public Service argues that its proposed RSM is designed to work within the current rate design and does not constrain any future rate design options. The Company argues further that delaying a decision on decoupling to a combined Phase I and II gas rate case would only delay the benefits of the RSM at a key time when Public Service is beginning to implement its first Commission-approved Clean Heat Plan pursuant to § 40-3.2-108, C.R.S.[116] The requirement, Public Service also contends, inappropriately restricts its opportunity to bring forward this type of proposal in the future. Public Service asks the Commission to adopt the proposed RSM in this Proceeding on grounds that it is premised on the total revenues to be established in this rate case and is not dependent on any particular rate design. Public Service adds that adoption of the RSM would not preclude changes in rate design while the RSM remains in place.[117]

[116] Public Service RRR Application at pp. 19-20.
[117] Public Service RRR Application at p. 20.

116. **The Commission denies Public Service's RRR on this issue.** We are not persuaded by Public Service's arguments on RRR to revisit our findings and determinations on this issue. To that end, we affirm the Rate Case Decision properly concludes it is not possible to properly render a decision the Company's RSM proposal in the absence of a simultaneous consideration of potential modifications to class cost allocations and rate design that would alter the appropriate elements of any decoupling proposal. We further affirm the Rate Case Decision further establishes that, in combination with potential changes in class cost allocations and rate design, it is necessary to consider how decoupling might alter the Company's risk profile and hence the appropriate ROE to be established by the Commission.

b. Proposal in a Phase II Only Rate Case

117. Public Service also seeks authority to propose approval of the RSM in a stand-alone Phase II gas rate case. Public Service contends it would be inappropriate for the Commission to adjust the Company's authorized ROE due to the adoption of the RSM. Public Service argues, when the ROE is established using returns for "proxy peers," the establishment of a decoupling mechanism for Public Service would make it more like "87 percent of utility operating subsidiaries of the natural gas proxy group companies" and would thus not serve as a basis for adjustments to the ROE analysis presented by Public Service witness Bulkley.[118]

118. **The Commission denies Public Service's RRR on this issue.** As explained above, the Rate Case Decision properly concludes that it is not possible to properly render a decision on a decoupling proposal without the simultaneous consideration of potential modifications to class cost allocations and rate design and of how potential changes in class cost allocations and rate

[118] Public Service RRR Application at p. 20.

design, when combined with decoupling, might alter the Company's risk profile and hence the appropriate ROE to be established by the Commission.

15. Depreciation Trust

119. In the Rate Case Decision, the Commission found it necessary to limit ratepayer's exposure to uncertain future asset retirement liabilities by requiring Public Service to establish a separate trust account to begin to better address the anticipated costs of removal. The Commission directed Public Service to place $15 million per year, collected through the depreciation expense as presently calculated and included in the calculation of the test year revenue requirement, into a separate trust account. The Commission directed the trust should be managed in a manner so that the funds are roughly expected to grow annually at or close to the established WACC. The Commission further directed that funds in the trust are to be held for future asset retirement obligations and can be released for that purpose only when, over a continuous twelve-month period, retirement expenses (*i.e.*, removal costs incurred) exceed the portion of funds received through base rate revenue collections for removals. Simultaneously, to help offset the loss to free cash flow available to the Company through funding of the trust, the Commission authorized Public Service to increase the annual depreciation expense used to calculate the annual target revenue requirement by $15 million.

a. Regulatory Liability

120. In its RRR Application, Public Service does not object to the Commission's directive to establish the trust. However, it requests approval to maintain a regulatory liability specifically reflecting amounts to be invested in the trust, which it reasons would provide the Company time to develop a proposal for the form and investment strategy of the trust. Public Service states it needs sufficient time to establish an appropriate trust and fund investment

strategy, arguing the creation and management of a new type of trust is highly unusual and complex for natural gas assets. Public Service states the trust will be a new legal entity and significantly more complex than a relatively simple investment account. Public Service points out the trust requires an Investment Policy Statement, identifying the objective, mission, investment time horizon, investment goals, and risk tolerances for the trust. Public Service notes the trust also requires a legal agreement as well as specific tax-related planning and goals, possibly requiring determinations from the U.S. Internal Revenue Service. Public Service states the regulatory liability will include a WACC return on the initial deposits until the trust is created.[119]

121. **The Commission grants Public Service's RRR on this issue.** We recognize that the development and implementation of the depreciation trust is a significant new endeavor. We conclude the establishment of a regulatory liability would serve to implement the intent of the Rate Case Decision with respect to the "net salvage value" issue during the period when Public Service develops, and the Commission later considers the additional requirements for, the trust in a future proceeding.

b. Proposal with Next Depreciation Study

122. The Rate Case Decision directs Public Service to address several topics in its forthcoming depreciation study. Public Service proposes to bring forth a proposal to the Commission for the form and investment strategy of the trust with the filing of its next depreciation study.[120]

123. **The Commission grants Public Service's RRR on this issue.** Again, we recognize that the development and implementation of the depreciation trust is a significant new

[119] Public Service RRR Application at pp. 25-26.
[120] Public Service RRR Application at p. 26.

endeavor. Consequently, we find it reasonable for the Company to develop a more detailed proposal for the trust and to present it in the already-planned depreciation study proceeding.

16. Depreciation Study Filing Deadline

124. In Paragraph 123 of Rate Case Decision, the Commission discusses Staff's position on the depreciation issues in this case and identifies the deadline for the new depreciation study as February 2025.

125. In its RRR Application, Public Service requests an extension of time to file its upcoming depreciation study, to March 31, 2025, roughly a month later than planned after the first Clean Heat Plan decision. Public Service explains this extension would enable the Company to account for the several additional requirements identified in the Rate Case Decision including: a 25-year executable forecast of future annual decommissioning costs; annual retirement depreciation expense accrued; total cost of removal (decommissioning) reserve; other extended forecast items with sufficient flexibility in the forecast to incorporate various scenarios; specific scenarios regarding potential reductions in natural gas throughput and associated customer response and rate impacts; and detailed assumptions and a "full analysis" of unspecified changes in asset life on projected net salvage costs.[121] Public Service clarifies it does not oppose the Commission's directives, but rather seeks sufficient time to prepare quality responses in a format that enables evaluation of additional scenarios or questions the Commission may wish to pursue.

126. **The Commission grants Public Service's RRR on this issue.** Specifically, we grant the Company's request for an extension of time to file its depreciation study. We find the short extension to March 31, 2025, is reasonable given the scope of what the study needs to address and given the addition of a proposal for the depreciation trust to be presented in the same filing.

[121] Public Service RRR Application at pp. 27-28.

17. Phase II Rate Case Filing Deadline

127. The Rate Case Decision requires Public Service to file a Phase II gas rate case within nine months (*i.e.*, no later than July 25, 2025). The Rate Case Decision specifies this filing must include the entire set of tariff sheets that comprise the Company's line extension policy and any other policy that may dictate cost allocation of new or upgraded facilities needed to serve new or increased load.

128. In its RRR Application, Public Service asks to extend this deadline to the end of 2025. Public Service states the additional time will accommodate the meaningful development of the filing in accordance with the directives of the Commission as set forth in the Rate Case Decision. Public Service notes there are several proceedings anticipated for next year, including the 2025 Gas Infrastructure Plan, the gas depreciation study, and the electric Distribution System Plan, for example. Public Service also points to the SB 23-291 "cost causation proceeding" (*i.e.*, Proceeding No. 24M-0492G), which the Company seeks to be developed before preparing and filing the Phase II gas rate case.

129. **The Commission grants Public Service's RRR on this issue**. Specifically, we grant the Company's request for a deadline of December 31, 2025, for the filing of a gas rate case with a Phase II component and that includes a full review of the Company's line extension policy, consistent with the Rate Case Decision. We find the Company's request for additional time is reasonable given the scope of the Commission's filing requirements.

18. Demonstration of Final Revenue Requirement Calculation

130. The Rate Case Decision permanently suspended the tariff sheets filed with Advice Letter No. 1029 – Gas and required Public Service to file new rates based on the conclusions and

findings in the Rate Case Decision for new base rates effective on November 5, 2024, the date when the suspension of the initially filed rates would otherwise end.

131. In its RRR Application, UCA states it was unable to definitively determine if Public Service correctly implemented the Commission's directives and conclusions in the Rate Case Decision in arriving at its approximate $131 million base rate revenue increase that served as the basis for the compliance tariff filing made in Proceeding No. 24AL-0475G.[122] Consequently, UCA asks the Commission to direct Public Service to file an explanation of how it calculated and implemented the decisions rendered through the Rate Case Decision affecting its revenue requirement so that it and Staff can verify those amounts. The required filing would be submitted in this Proceeding as well as in the compliance tariff proceeding (Proceeding No. 24AL-0475G).[123]

132. **The Commission grants UCA's RRR on this issue, in part.** As explained above, Public Service is directed by this Decision to file a compliance tariff advice letter. We thus direct Public Service to include in that compliance tariff filing the updated cost of service study in an executable format. .

19. Post-Deliberations Compliance Tariff Filing Process

133. Ordering Paragraph 2 of the Rate Case Decision directs Public Service to file an advice letter compliance filing consistent with the findings, conclusions, and directives in the order. The Commission specified that the compliance tariff filing must include a revised Sheet No. 48 setting forth a General Rate Schedule Adjustment for effect November 5, 2024, calculated to recover the annual revenue requirement based on the findings and conclusions of the

[122] UCA RRR Application at p. 24.
[123] UCA RRR Application at pp. 24-25.

decision. The Commission stated the compliance tariff filing must also include other tariffs, modified as necessary, to take effect on November 5, 2024, in accordance with this Decision.

134. In its RRR Application, UCA also faults the Commission for not requiring Public Service to provide the calculations it made to complete the compliance tariff filing. UCA contends it is necessary for Public Service to provide the calculations in an executable format so that the Commission and the parties can determine whether the compliance tariff filing reflects all ordered adjustments to the revenue requirement. UCA recommends a directive to provide the calculations should be made in orders in future rate cases.[124]

135. **The Commission denies UCA's RRR on this issue.** Although we agree with UCA that review of final rate calculations are useful for regulatory efficiency, a decision on RRR to a specific decision rendered in a single rate case is not helpful for advancing a general directive. Absent a Commission rule, such directives should be made on a case-by-case basis. Parties could request the Commission render such directives in their closing statements of position. In proposing procedural schedules, they could also ensure the Commission has sufficient time to conduct post-deliberations technical conferences accompanied by filings of updated revenue requirement and rate calculations in an executable format as is often done in rate proceeding when time permits at the end of a case. It is also useful to secure commitments from the Company on conferrals and document reviews to foster uncontested compliance tariff filings.

[124] UCA RRR Application at pp. 23-24.

II. ORDER

A. The Commission Orders That:

1. The Application for Rehearing, Reargument, or Reconsideration of Decision No. C24-0778, filed on November 14, 2024, by Public Service Company of Colorado ("Public Service"), is granted, in part, and denied, in part, consistent with the discussion above.

2. The Application for Rehearing, Reargument, or Reconsideration of Decision No. C24-0778, filed on November 14, 2024, by Trial Staff of the Commission, is granted, in part, and denied, in part, consistent with the discussion above.

3. The Application for Rehearing, Reargument, or Reconsideration of Decision No. C24-0778, filed on November 14, 2024, by the Office of the Utility Consumer Advocate, is granted, in part, and denied, in part, consistent with the discussion above.

4. Public Service shall file an advice letter compliance filing to modify the tariff sheets in its Colorado P.U.C. No. 6 - Gas Tariff consistent with the findings, conclusions, and directives in this Decision. Public Service shall file the compliance tariff sheets in a separate proceeding and on not less than two business days' notice. The advice letter and tariff sheets shall be filed as a new advice letter proceeding and shall comply with all applicable rules. In calculating the proposed effective date, the date the filing is received at the Commission is not included in the notice period and the entire notice period must expire prior to the effective date. The advice letter and tariff must comply in all substantive respects to this Decision in order to be filed as a compliance filing on shortened notice.

5. The 20-day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration, begins on the first day following the effective date of this Decision.

6. This Decision is effective immediately on its Issued Date.

B. ADOPTED IN COMMISSIONERS' DELIBERATIONS MEETING AND COMMISSIONERS' WEEKLY MEETING DECEMBER 17, 18 & 20, 2024.

(S E A L)

ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

MEGAN M. GILMAN

TOM PLANT

Commissioners

III. COMMISSIONER MEGAN M. GILMAN DISSENTING, IN PART

1. I hereby concur in the majority decision except for the decision to include in the 2023 test year the expense for the Private Long-Term Evolution ("LTE") Project. I dissent as to this aspect of the majority decision for the following reasons.

2. Upon reconsideration and review of the Commission's own strong concerns expressed about this project within the Rate Case Decision, I find the Office of the Utility Consumer Advocate's ("UCA") perspective compelling and therefore dissent from the majority's decision to include the LTE Project costs in the test year and cost of service.

3. Throughout this Proceeding, significant attention was paid to the particulars of accounting treatment related to the ability to treat the project as plant held for future use. While it may well be proper for accounting purposes, there is a far more fundamental issue at play here, which challenges the ability to include this project in the establishment of the target base rate revenue. Simply put, the Company has not met their burden to show the prudence of the investment in the Private LTE Network and, therefore, it is improper to include it in rates at this time. As this Commission recently remarked[125] (in the context of assessing need for a utility's requested certificate of public convenience and necessity), the need for a project and its appropriateness to be passed on to ratepayers should necessarily include consideration of the cost of the project. A project that may be determined necessary and appropriate at one price may not be determined to be so at another, significantly higher price. Indeed, as each investment and expense has the likelihood to raise rates for ratepayers and this impact must be balanced with the value of each investment and expense in meaningful and analytical way, the Commission must be provided with substantial evidence as to the necessity and prudency of each investment in order for it to be

[125] *E.g.*, Decision No. C22-0270 at ¶ 63 issued in Proceeding No. 21A-0096E (June 2, 2022).

recoverable from ratepayers. Along the same lines, it is fair in this rate case to expect the Company to provide a clear picture of the overall project and its cost so that we can accurately assess the prudency of the costs to date that it seeks to include in rates and to have some confidence that the overall project is understood and appears to be appropriate to proceed with.

4. In this case, the Company simply failed to meet their burden to show that these investments, to date, in the LTE Project comprise prudent utility investments that should fairly be attributed to ratepayers. At this time, the Commission is left with far more questions than answers. What is the total expected cost of the project? What is the expected cost of operations of the network? What is the cost allocation and related methodology between the gas and electric operating companies? What is the cost of maintaining a backup network with an existing provider, as the Company has indicated it intends to do? None of these questions were suitably answered within this Proceeding. Intervenors, including UCA, engaged on this topic in testimony and hearing and the Company, despite opportunities to do so, did not fill in the gaps nor provide enough evidence to meet their burden.

5. While the Commission indicated rightly so in its Rate Case Decision that the costs of the project require further scrutiny in the future when the investment becomes operational, upon reconsideration, I do not believe such a backstop goes far enough in protecting ratepayers. This method will immediately place into rates the cost of the initial expenditures without any confidence from the Commission that the ultimate project and its total cost should be borne by ratepayers. Importantly, we have no indication or assurance from the Company as to what the total price tag will be, when it will be known, or how it will present itself. However, if the Commission, in several years, after another rate case, determines that the total cost goes too far and the project is not worthwhile once the total costs are actually understood, this would mean that ratepayers

would have paid, for years, costs for a project, which was not actually prudent once all of the facts and circumstances of the actual project were understood. This would be an unacceptable outcome. The time for the Company to meet their burden to show these costs are prudent and therefore should be in rates is *before* any of those costs appear in rates and, on this record, the Company has failed to do so.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MEGAN M. GILMAN

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Commissioner

IV. CHAIRMAN ERIC BLANK DISSENTING, IN PART

1. I hereby concur in the majority decision except for the decision to exclude from the 2023 test year the expense for liquefied natural gas ("LNG") deployment in Breckenridge. I dissent as to this aspect of the majority decision for the following reasons.

2. For me, there are a couple of critical elements to properly implement a substantial change in approach. One key component is to ground the decision in the record, and carefully balance utility and other interests, for the primary purpose of providing just and reasonable rates for customers. I believe the majority has generally done that here.

3. But a second part of implementing significant change in approach is to signal it in advance, do it thoughtfully, and at the right time, in the right case, in the right way, and through a unanimous decision on the right issue. I do not think that the majority has done that here.

4. First, I believe a significant change in our approach to prudency is being proposed on this issue. Before this deliberation, this Commission (rightly or wrongly) has been very cautious about disallowing utility investments, absent compelling evidence that the utility failed to act reasonably. And this cautious approach to prudency was established long before any of us were Commissioners and has continued to be implemented during my tenure.

5. The majority is now proposing—in this case, on this issue, at this stage—what I would view as a fundamental shift in our approach to prudency requiring the utility to, in effect, meet a materially higher standard. .

6. Overall, I am generally supportive of considering ways in which we can, and should, enhance the scrutiny of the reasonableness of utility management's decision to incur costs that customers will bear, especially in the current climate. Capital spending in

Colorado—including in this case—has grown so much faster than sales and revenues I believe that there is now a major mismatch that is putting substantial upward pressure on long-term rates.

7. I think that this mismatch between capital spending and revenue growth is clear on this record and one reason I voted to move forward with a 13-month average rate base approach. But, from where I sit, this Commission reversing itself on rehearing, reargument, or reconsideration at this late point in the Proceeding, after a prior Commission decision has already deemed this investment prudent, and in a way that seeks to establish a new prudency review standard is not the right policy call.

8. For one, the majority's expectation that Public Service must have shown that, even with more planning, it could have avoided this LNG deployment, comes late in the case and with no notice that a shift in our approach to prudency was contemplated. As such, this shift seems to have come out of nowhere, with little opportunity for individual commissioners, the utility, or the other parties to appropriately react and develop a better record. I believe some notice that the Commission intends to implement a significant change in approach is critical.

9. Second, the LNG deployment appears to have been undertaken to avoid a potentially catastrophic winter event like Storm Uri in Texas where over 200 people died. As such, the majority's approach may be moving us toward substituting our judgement for that of the utility on reliability, and I do not understand why this Commission would choose this type of fact situation and critical reliability spending in seeking to change its approach to prudency.

10. Third, I'm not clear what action the majority expected to the utility to undertake. The only alternative for the utility of not making this LNG investment may have been to impose a moratorium or otherwise refuse to serve customers. Coupling a major change in approach where

the alternative may involve a substantial modification to the obligation to serve does not seem like a useful fact pattern to evolve our approach to prudency.

11. Fourth, unlike many other utility rate base investments, this LNG investment is an expense item and does not involve any utility profit motive or perverse incentive. Unlike capital spending, which is growing far more quickly, the growth in total expense seems modest.

12. In sum, I think this decision is a mistake. It seeks to implement a material shift in approach to prudency on a critical reliability issue, at the very end of the case, with a divided commission, and with inadequate support and notice.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

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Commissioner