Decision No. C03-1401

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

DOCKET NO. 03A-286G

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IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR AN ORDER APPROVING ITS REFUND PLAN, AUTHORIZING IT TO CREDIT THE COST OF GAS FOR A SUPPLIER'S REFUND RECEIVED AND THE FURTHER DISTRIBUTION OF SAID REFUND.

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**ORDER GRANTING APPLICATION IN PART**

Mailed Date: December 15, 2003
Adopted Date: December 3, 2003

## I. BY THE COMMISSION

### A. Statement

1. This matter comes before the Commission for consideration of an application filed by Public Service Company of Colorado (Public Service or Company) on July 7, 2003 seeking authority to distribute monies to its gas ratepayers resulting from a supplier's refund.

2. At the Commissioners' Weekly Meeting on August 20, 2003, the Commission deemed the application complete. The Commission set the matter for hearing by Decision No. C03-1021. In that decision, the Commission provided a series of questions for Public Service to be ready to answer at the September 22, 2003 hearing.

3. On September 1, 2003, the Colorado Office of Consumer Counsel (OCC) late-filed its request for intervention. Within its intervention, the OCC stated that it supports the refund application as filed and initially had no reason to intervene. However, because the Commission set the application for hearing to determine the significant policy issues surrounding

the refund, OCC filed an intervention request. On September 5, 2003, the Staff of the Colorado Public Utilities Commission (Staff) also filed its intervention.

4. On September 17, 2003, Staff filed an unopposed motion to reset the hearing date. The Colorado Energy Assistance Foundation (CEAF) filed its intervention on September 18, 2003.[1] By Decision No. C03-1064, we granted interventions for OCC, Staff, and CEAF. The decision also granted the motion to vacate the September 22, 2003 hearing. In Decision No. C03-1130, we set November 4, 2003, as the new hearing date.

5. The Commission conducted the hearing and received testimony from three witnesses: Frederic Stoffel of Public Service, Ken Reif of the OCC, and Skip Arnold of CEAF. At the conclusion of the evidentiary portion of the hearing, the parties presented oral closing arguments. The Commission took the matter under advisement. It conducted public deliberations on the merits of the application at its Weekly Meeting on December 3, 2003.

**B. Findings**

6. The Company's application seeks to refund through a credit to the deferred gas cost account (Account 191), as of September 30, 2003, $2,862,974.73, and to "carve-out" a direct payment of $390,405.65 to CEAF. The genesis for this refund is a payment Public Service received from Colorado Interstate Gas (CIG), one of its suppliers, for certain pipeline services.[2] The costs associated with these pipeline services were collected from Public Service's gas customers during the period of October 1, 2001 to September 30, 2002, through its Gas Cost Adjustment (GCA) mechanism.

[1] CEAF recently changed its name to Energy Outreach Colorado.

[2] The refund resulted from a Stipulation and Agreement resolving CIG's request to increase rates in Federal Energy Regulatory Commission Docket No. RP01-350. The CIG refund was subsequently reduced by $61,175.12 because CIG had over-refunded monies to Public Service. Public Service returned $61,175.12 on April 21, 2003.

7. In addition to the actual refund payment from CIG, the Company has accrued interest on the refund at the Commission-established customer deposit interest rate through September 30, 2003.[3] Under the Company's proposal, the refund and any accrued interest would be transferred into Account 191 upon approval of the application.

8. According to the application, any return of refunds directly to customers may be accompanied by a solicitation to customers that would allow them to contribute all or a portion of their refund to CEAF. Because the Company is proposing to credit the deferred gas cost account, no solicitation of gas customers would be conducted on behalf of CEAF. In addition, the application notes that the Commission has authority under § 40-8-101(2), C.R.S., to order up to 90 percent of any undistributed refund paid to CEAF. These undistributed amounts usually result from the Company's inability to locate customers who have left no forwarding address or who have not cashed their refund check.

9. Public Service explains that the 12 percent "carve-out" to CEAF is based on the last refund, which had a CEAF solicitation, conducted in 1995. Excluding the impact of Public Service's matching, that solicitation resulted in a transfer of 12.1 percent of the total amount available to CEAF.

10. At the hearing, Mr. Stoffel presented testimony in response to the questions posed in Decision No. C03-1021 as well as other information. He stated that the Company estimates that if these refund monies are returned to ratepayers through a traditional refund method (a

[3] The refund balance accruing interest has been adjusted for the $61,175.12 retuned to CIG on April 21, 2003.

customer-specific bill credit based on actual volumetric consumption, along with an effort to locate customers who have subsequently left the system and mailing refund checks to them) the total administrative cost would be on the order of $750,000. The cost associated with locating customers who had left the system was estimated to be $500,000 alone. According to the Company, the effect of its proposal on the average residential customer is estimated to be the equivalent of a one-time bill credit of $1.87. In Mr. Stoffel's opinion, Public Service would look foolish giving a $1.87 one-time bill credit in light of the Company's recent increases in its GCA rates.[4]

11. During the hearing, Mr. Stoffel acknowledged that under the Company's proposal the matching principle would not be strictly adhered to because any customers who left the system would not receive any portion of this refund. He also stated that the matching principle is just one facet of ratemaking.

12. The Company contends that its approach is administratively efficient because customers receive the full amount of the refund and interest. If a traditional refund were conducted, all costs of performing the refund (computer programming of the billing system, postage, and employees' payroll costs, for example) would be deducted from the refund before the remaining balance is distributed to ratepayers. In this case, the Company has estimated that those administrative costs could be as high as $750,000. If this were the result, the one-time bill credit to the average residential customer is reduced to $1.64.[5]

[4] Effective March 21, 2003, the average residential customer's monthly bill increased by $9.82 (Docket No. 03L-086G) and effective October 1, 2003, the average residential customer's monthly bill increased by another $4.70 (Docket No. 03L-400G).

[5] Under this approach there would be no "carve-out" since customers would be solicited on whether or not and how much they would want to contribute to CEAF.

13. Mr. Stoffel stated that the money is currently residing in an interest-bearing account and would remain there until the Commission approves the application. Upon approval, the money would be transferred into Account 191.[6]

14. Both Mr. Reif and Mr. Arnold spoke in favor of the refund application. Mr. Reif stated that the application is a good proxy for the refund, but without incurring $750,000 of costs. He questioned whether the $250,000 for providing only bill credits to existing customers, without trying to locate customers who had left the system, is worth the purity of the matching principle.

15. Mr. Arnold believes that the 12 percent "carve-out" might be lower than what actually might occur if a traditional refund method was used, which allows customers to choose whether to donate their bill credit to CEAF instead of receiving it themselves. He acknowledged that the benefits to his organization of this application include the certainty of the amount to be received and being able to use the money this heating season. This latter benefit is important to Mr. Arnold because, in light of the recent, relatively large increase in gas rates, he anticipates that this year more Colorado families will need assistance from his organization than other years.

16. During the hearing, counsel for Staff questioned the accuracy of the Company's $750,000 cost estimate. In response, Mr. Stoffel explained that the Company looked at previous refund reports to determine its estimate and then adjusted the figure based on a normalized

[6] The interest rate is based on the Customer Deposit Interest Rate, which is annually set by the Commission. It is currently 2.18 percent and scheduled to decrease to 1.30 percent effective January 1, 2004.

number of customers and higher postage costs. Counsel for Staff provided copies of two previous Commission decisions in connection with Docket No. 95A-380G. The first decision, C95-833, stated that Public Service estimated the cost of performing that refund at $300,250. The second decision, C96-769, which was based on the Company refund report, showed the actual cost of performing that refund was $159,918. In that decision, the Commission stated that the lower cost figure was primarily due to savings in labor costs resulting from the account analysis and customer "skip-tracing" which had been performed for another recent gas refund case, Docket No 95A-409G. Staff counsel also contended that in Docket No. 95A-409G, the Company estimated the cost of performing the refund to be $628,000 but, according to the refund report subsequently filed by Public Service, the actual cost for that refund was $480,822.

17. During closing arguments, Staff counsel asked the Commission to deny the application and order a traditional refund. Staff believes that it is inappropriate treatment to use Account 191 and that the "carve-out" does not approximate what could result from § 40-8-101(2), C.R.S., for possible unclaimed monies to be given to CEAF. Taken together, counsel posits that this proposed methodology could result in retroactive ratemaking.

**C. Conclusions**

18. We adopt the Company's proposal with one modification. Under the Company's proposal, monies currently accruing interest are immediately transferred into an account and not returned to ratepayers until the next GCA filing. We heard testimony that the monies transferred into Account 191 likely will not earn any interest until the next GCA filing. Account 191 accrues interest to ratepayers only when the account is over-collected. At the hearing, Mr. Stoffel indicated that Account 191 was under-collected by some $39 million dollars as of August 31, 2003. The balance of Account 191 as of October 31, 2003 was $69.7 million.

19. In order to provide the benefit of interest to ratepayers, we order Public Service to keep the refund monies in an interest-bearing account at the Commission's customer deposit interest rate until it makes its next GCA filing. The Company can transfer the refund along with accrued interest into Account 191 in that GCA filing.

20. We find that this Commission has the authority to allow the $390,405.65 "carve-out" to CEAF. We disagree with Staff that we do not possess the jurisdiction or power to order the Company's plan as proposed. We further find that *Colorado Office of Consumer Counsel v. Public Service Company of Colorado*, 877 P.2d 867 (Colo. 1994) is inapposite to the facts of this case.

21. Section 40-8-101(2), C.R.S., provides that we may order that "all or part of the undistributed balance of a refund be paid by the utility in an equitable manner to the general body of utility customers. …" Additionally, we may order a gas or electric utility to pay up to "ninety percent of the undistributed balance of a refund into the fund established by the Colorado commission on low income energy assistance …" Nothing in that statute requires us to employ a "matching" principle in ordering a refund so long as our chosen method is equitable, *i.e.*, a reasonable proxy for the direct refund method. Rather, the plain language of § 40-8-101(2), C.R.S., means that we have reasonable discretion to order a utility to pay all or part of a refund to its "general body of customers." We also find it discretionary to employ a reasonable proxy method to allow a gas or electric utility to pay up to 90 percent of the undistributed balance of the refund to CEAF. Consequently, we find that we have the discretion to authorize the Company to utilize a proxy refund plan where (as here) we have evidence that the cost of implementing a "matching" plan of refunding specific overcharges to specific customers would be cost-prohibitive and work to substantially deplete the refund pool. If we accepted Staff's

reasoning, we would be required to utilize the matching principle even if the costs of such a plan would deplete the refund pool to negligible amounts. We decline to adopt such a policy.

22. Nor are we convinced that the use of Account 191 is inappropriate here. Staff argues that Account 191 is only to be used in extraordinary circumstances, without elaborating on what those circumstances may be. We find that the Company's proposed use of Account 191 is appropriate and pragmatic given the relatively small amount of refund money at issue in this case. In another case with different facts, we might find the cost of implementing a matching plan reasonable under the circumstances. This is not that case.

23. We also are not persuaded that adopting the Company's plan constitutes retroactive ratemaking. By adopting this plan, we are not reaching back to alter past rates, nor does the plan impair a vested right or impose a new duty with respect to past transactions. We are merely acting pursuant to a statute that specifically authorizes us to order refunds in an equitable manner when excess charges are collected. To the extent that Staff relies on *Colorado Office of Consumer Counsel, supra,* to support its contention, we find that case inapposite. There, the court held that, because Public Service failed to return all the CIG refund money to its customers, and the Commission allowed the Company to keep as a bonus a portion of the amounts charged by CIG, rates in effect were retroactively raised which constituted retroactive ratemaking. *Id.* at 870. That is not the case here. The Company is not keeping any of the refund money for itself, but is merely acting as a conduit to refund the money to the body of its ratepayers, with a carve out of approximately 12 percent for CEAF. More importantly, the proxy method we employ -- Account 191 -- is reasonable because it roughly approximates the end result of a client "matching" refund. A customer who was overcharged should receive a refund approximate to a direct refund via Account 191 so long as his or her consumption behavior has

not radically changed. If the Commission adopted a proxy method that yielded no relation to the amount a customer was overcharged, an argument based on retroactive ratemaking or the filed rate doctrine could be asserted. But that is not the case here. Nothing in the plan we adopt today implicates retroactive ratemaking.

24. We therefore approve the Company's plan consistent with the discussion and caveat above. Thus, the application to refund to its gas customer through a credit to the Company's deferred gas costs is granted with the modification that Public Service keep the refund monies in an interest-bearing account at the Commission's customer deposit interest rate until it makes its next GCA filing. The Company is allowed to make a one-time contribution of $390,405.65 to CEAF, as soon as is practicable.

25. In approving this application, we wish to make clear that this decision should not be interpreted as a statement that customer-specific refunds are no longer appropriate. As in this case, given the relative size of the administrative costs to the size of the refund, nearly 18 percent, there can be times when customer-specific refunds are inappropriate. Given the relative timeliness of when overcharges were collected from ratepayers to the time the refund is returned to ratepayers, we believe the Company proposal is reasonable.

26. Likewise, we also wish to make clear to Public Service that it should not make a GCA filing for the sole reason of avoiding the accrual of additional interest on the refund.

## II. ORDER

### A. The Commission Orders That:

1. The application to refund to gas customers money as filed by Public Service Company of Colorado is approved, in part, consistent with the above discussion.

2. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING December 3, 2003.**

(S E A L)

ATTEST: A TRUE COPY

Bruce N. Smith
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GREGORY E. SOPKIN

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Commissioners

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