

Decision No. C04-0719

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03A-436E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR AN ORDER AUTHORIZING IT TO IMPLEMENT A PURCHASED CAPACITY COST ADJUSTMENT RIDER IN ITS PUC NO. 7 - ELECTRIC TARIFF.

ORDER DENYING, IN PART, APPLICATION FOR REHEARING, REARGUMENT, OR RECONSIDERATION

Mailed Date: June 29, 2004

Adopted Date: June 8, 2004

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of the Application for Rehearing, Reargument, or Reconsideration (RRR) to Decision No. C04-0476 filed by Public Service Company of Colorado (Public Service or Company) on June 1, 2004. In Decision No. C03-0670, we granted in part, Public Service's application to implement a Purchased Capacity Cost Adjustment Rider (PCCA). Specifically, Public Service requests rehearing and reconsideration of the Commission's decisions to cap PCCA cost recovery and to require reporting of monthly reductions in amounts of purchased capacity cost itemized by contract and listing the reason for each reduction. Public Service also requests clarification for purposes of calculation of the PCCA of: 1) the use of projected versus allowed purchased capacity costs; 2) the amount of the Air Quality Improvement Rider (AQIR) recovery credit for 2004; and 3) the treatment of the Platte River Power Authority contract and other contract renewals.

2. Now being duly advised in the matter, the Commission denies, in part, Public Service's Application for RRR.

B. RRR Issues: Request to Modify the Cap and Request for Clarification of Projected Versus Allowed Purchased Capacity Costs

3. Public Service requests that our decision to limit PCCA cost recovery to the allowed purchased capacity costs identified in hearing Exhibit 17 for specific contracts¹ be modified to authorize Public Service to recover actual purchased capacity costs that Public Service pays under the "allowed contracts."² Public Service requests clarification of the Decision No. C04-476, paragraph 54 sentence:

We generally approve the PCCA formula proposed by Public Service except that allowed purchased capacity costs shall be used instead of "projected" purchased capacity costs.

Public Service also urges clarification that the PCCA rate required to be filed each November should be calculated using the Company's best projections of the purchased capacity cost for the allowed contracts. Public Service also requests clarification of our order that the Company record in the PCCA deferred account the actual purchased capacity costs and actual PCCA revenues.

4. Public Service asserts that contractual obligations may require it to pay more than the amounts listed in Exhibit 17. Additionally, Public Service contends that no party advocated that cost recovery be limited to the Exhibit 17 amounts. Rather, the parties took issue with which

¹ See Decision No. C04-0476, paragraph 52.

² The "allowed contracts" are the contracts that are currently reflected in the Company's base rates plus the contracts for the resources approved by the Commission in the Company's 1999 Electric Resource Plan.

contracts would be eligible for PCCA cost recovery. According to the Company, the Exhibit 17 amounts are merely best estimates of what Public Service expects to pay.

5. Public Service further argues that because projected amounts for revenues and jurisdictional split percentages will be used in calculating the PCCA, a hard dollar cap on purchased capacity costs will be difficult to apply.

6. According to Public Service the wording in the sentence in paragraph 54 causes confusion since the Company had proposed to record in the deferred account, only the actual purchased capacity costs and actual PCCA revenues.

7. We discuss the request to modify the cap and the request to clarify the sentence in paragraph 54 together because our decision on the RRR request will have a corollary impact on our decision on the clarification request. We deny Public Service's request for rehearing and reconsideration of the decision to limit the PCCA. Our decision to cap the amount strikes a reasonable balance between our decision to allow, outside of a rate case, cost recovery of increased purchased capacity costs with our preference to provide certainty for ratepayers on the maximum amount to be collected through the PCCA.

8. Public Service explains in the affidavit of Karen Hyde that the Company made assumptions concerning the likely availability of each resource due to forced outages, as well as other factors when it develops estimates for contract payments. The Company asserts that its estimates are sometimes low because sellers outperform the Company's assumptions for the contracts. It is difficult for us to understand how sellers might outperform Public Service's best estimates for these contracts. These contracts are within the control of the Company. The

Exhibit 17 amounts that underlie our decision to limit PCCA cost recovery were developed by Public Service; they are not projections made by other parties in this case. Further, we have not modified the amounts listed on Exhibit 17. The Exhibit 17 amounts are what we expect Public Service to incur for purchased capacity payments based on the Company's own representation that the purpose of the PCCA rider is to recover "known and measurable" capacity payments.

9. We also deny Public Service's suggested clarification. Rather, given our decision on the request to modify the cap, we clarify that the deferred purchased capacity cost balance will reflect the amount allowed. This is to include either the allowed contract amounts from Exhibit 17, or the actual amount, if the actual amount is less than the Exhibit 17 allowed contract amounts. Actual PCCA revenues will also be reflected in the deferred purchased capacity cost balance. Further, we clarify that the allowed contract amounts projected in Exhibit 17 for 2004, 2005, and 2006 are to be used in the calculation of the PCCA. Public Service is not allowed to "re-project" these amounts.

C. RRR Issue: Request to Modify Reporting Requirements

10. Public Service requests that we eliminate the requirement to track and provide the monthly reductions in amounts of purchased capacity costs itemized by contract and listing the reason for each reduction. According to Public Service, this requirement is burdensome. The Company contends that the Commission or its Staff can request this information through audit.

11. We deny in part this request to eliminate the reporting requirement. We consider it reasonable to require Public Service to provide such information in light of the amount of cost

recovery allowed in the PCCA. However, we note that there could be a wide range in monthly payment amounts and that information for small reductions might not be useful. Therefore, we modify the requirement so that Public Service is only required to track and provide monthly reductions in amounts of purchased capacity of \$100,000 or more, itemized by contract. Public Service shall also be required to provide the reason for the reduction. The Company shall produce similar information for other reductions of the monthly payment amounts if requested by audit.

D. RRR Issue: Request for Clarification of Calculation of the AQIR Recovery in the 2004 PCCA

12. Public Service requests clarification that the AQIR credit amount be prorated for 2004 since the PCCA will only be in effect for part of 2004. According to the Company, the \$1,800,000 AQIR credit amount represents costs recovered for the entire year and should be prorated for 2004 since the PCCA will not be in effect for the entire year.

13. We deny this request to prorate the AQIR credit amount for the 2004 PCCA. We clarify that the full \$1,800,000 credit amount be used in the 2004 PCCA calculation. We note that the \$1,800,000 AQIR credit amount was used by Public Service witness Darnell in his calculation of the 2004 PCCA percentage. Mr. Darnell further indicated that the \$1,800,000 AQIR credit amount was the actual amount that would be used in the PCCA filing.³ Had Public Service wanted the AQIR credit amount to be prorated, it should have proposed at hearing that this amount be prorated for 2004. We find it inappropriate to make such a request on RRR without input during the proceeding from the other parties in this docket.

³ April 14, 2004 transcript page 210 lines 7 through 20.

14. Public Service filed a PCCA tariff under Advice Letter No. 1415 – Electric on May 28, 2004, with an effective date of June 1, 2004. According to the application for RRR, Public Service assumed that the Commission would agree that for 2004 a prorated AQIR credit amount is appropriate. The Company explains it prorated the AQIR credit amount used in the tariff by taking 7/12 of the annual \$1,800,000 (or \$1,050,000) to reflect that the PCCA rider for 2004 will be in effect for the seven months June through December. Public Service states that if the Commission does not agree with the request for clarification to prorate the AQIR credit amount, then the Company will account for the remaining 5/12 of the \$1,800,000 amount (or \$750,000) when it determines the PCCA deferred balance used to calculate the 2005 PCCA rider.

15. We reject Public Service’s proposal to correct for the prorated AQIR credit amount when it calculates the 2005 PCCA rate. Even though we are allowing Advice Letter No. 1415 to go into effect on June 1, 2004, we will require Public Service to file another advice letter no later than July 1, 2004. In that advice letter Public Service shall modify the PCCA tariff such that the entire \$1,800,000 AQIR credit will be accounted for in the PCCA rate that will be in effect for the remainder of 2004.

E. RRR Issue: Request for Clarification of Treatment of the Platte River Power Authority Contract and Other Contract Renewals

16. Public Service requests that the Commission clarify the mechanics of how to remove the disallowed contract renewals from the PCCA calculation. The Company proposes that the Commission clarify that the base purchased capacity cost percentage be recalculated to remove the cost of the contract when it expires. Alternatively, the Company proposes that the Commission clarify that if the cost of an expired contract is not removed from the base purchased

capacity cost percentage, then the cost of the replacement contract should be authorized cost recovery in the PCCA.

17. Public Service argues that if the cost of an expired contract remains in the base purchased capacity cost percentage calculation, the base percentage will be artificially high for future periods. According to the Company, this means that it will not fully recover the incremental costs allowed for in the PCCA.

18. We deny the clarifications proposed by Public Service. The base purchase capacity cost percentage to be used for the PCCA calculation is 20.0365 percent. The record reflects that this is the cost relationship between purchased capacity costs and the revenues for the *pro forma* adjusted test year approved in the most recent Phase I rate case, Docket No. 02S-315EG. The appropriate base percentage was an issue in that proceeding. We determined there that the base percentage for purposes of calculating the PCCA should be 20.0365 percent. Of note, Public Service is projecting that the costs for replacement contracts will be lower than the costs for the existing contracts. If Public Service is correct, then the Company will be over-recovering these costs through base rates. The earnings test may or may not return part of the amount over recovered. Our approval of the PCCA allows the Company a reasonable opportunity to earn its authorized amount, but it does not guarantee dollar-for-dollar cost recovery.

II. ORDER

A. The Commission Orders That:

1. Public Service Company of Colorado's request for modification of the Purchased Capacity Cost Adjustment Rider cap amount is denied consistent with the discussion above.

2. Public Service Company of Colorado's request for clarification regarding the use of projected purchase capacity costs versus allowed purchased capacity costs is denied consistent with the discussion above.

3. Public Service Company of Colorado's request to modify its reporting requirement obligations is denied in part consistent with the discussion above.

4. Public Service Company of Colorado's request for clarification that the calculation of the Air Quality Improvement Rider recovery in the 2004 Purchased Capacity Cost Adjustment Rider be prorated is denied consistent with the discussion above.

5. Public Service Company of Colorado's request for clarification for specific treatment of the Platte River Power Authority contract and other contract renewals is denied consistent with the discussion above.

6. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
June 8, 2004.**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners

CHAIRMAN GREGORY E. SOPKIN
CONCURRING, IN PART, AND
DISSENTING, IN PART.

III. CHAIRMAN GREGORY E. SOPKIN CONCURRING, IN PART, AND DISSENTING, IN PART:

1. I concur with sections I(A), I(C) and I(E) of the majority's decision. I dissent from sections I(B) and I(D).

2. In Decision No. C04-0476 (May 10, 2004), we allowed the Purchased Capacity Cost Adjustment Rider (PCCA) mechanism to go into effect for Public Service Company of Colorado (Public Service or Company) to recover the capacity costs of the contracts ordered by the Commission during the 1999 Integrated Resource Plan (IRP) proceedings. We did this because such costs "constitute an extraordinary and unique set of costs," are "substantial," and "comprise a sudden increase in capacity costs that Public Service could not have recovered in the last rate case."⁴ Both Commission Staff (Staff) and the Office of Consumer Counsel (OCC) supported the PCCA, as limited to the 1999 IRP-imposed set of costs, and expiring at the end of 2006.

3. We restricted Public Service's PCCA recovery to "allowed" instead of "projected" purchased capacity costs for each contract, as set forth in Hearing Exhibit 17.⁵ We did this to "limit the incentive or any opportunity for Public Service to over-collect beyond any natural over-collection resulting from differences in projected revenues and actual revenues due to variation in customer monthly usage."⁶ We also held that the allowed purchased capacity cost for each contract "shall be reduced by any reduction in payment made to the purchased capacity supplier,"

⁴ See ¶ 25 of Decision No. C04-0476.

⁵ See ¶¶ 52 and 54 of Decision No. C04-0476.

⁶ See ¶ 56 of Decision No. C04-0476.

for example when payments to the supplier may be reduced for failure to perform under the terms of the contract.⁷

4. Public Service's Rehearing, Reargument, and Reconsideration (RRR) on this issue requests that our original decision be modified to authorize the Company to recover through the PCCA the *actual* purchased capacity cost that it pays under the "allowed" contracts. The Company notes that it may contractually be required to pay more under the allowed contracts than is set forth on Hearing Exhibit 17 because sellers sometimes do outperform the Company's budget estimates, and also because the projected PCCA calculations have projections concerning base rate revenue from sales, the retail/wholesale jurisdictional split and deferred balances, which can change over time.

5. Public Service suggests that the Commission may have been under the incorrect impression that Hearing Exhibit 17 set forth the maximum amounts payable under the allowed contracts. The reason the Company did not more fully explain the significance of the amounts listed in Hearing Exhibit 17 is because no party had proposed a cap on recovery to those amounts; it was advisory staff that made the proposal, after the close of record evidence.

6. As a sequitur to its RRR request, Public Service seeks clarification that, as part of the annual true-up, it can record in the deferred PCCA account only the actual purchased capacity costs and actual PCCA revenues (instead of "allowed" costs).

7. In section I(B) of today's decision, the majority denies the RRR and clarification requests. The reasons are: (1) the cap on recovery "strikes a reasonable balance between our

⁷ See ¶ 53 of Decision No. C04-0476.

decision to allow, outside of a rate case, cost recovery of increased purchased capacity costs with our preference to provide certainty for ratepayers on the maximum amount to be collected through the PCCA”; (2) it is “difficult for us to understand how sellers might outperform Public Service’s best estimates for these contracts,” as they are “within the control of the company”; and (3) the Exhibit 17 amounts were developed by Public Service as its own representation of “known and measurable” capacity payments. I disagree with the majority.

8. Staff and OCC agreed that the PCCA should be granted to allow Public Service to recover those capacity costs that were imposed by this Commission as a result of the 1999 IRP, and the Commission concurred. Once this principle is established, there is no “balance” to be struck with allowing recovery prior to the next rate case. The *entire purpose* of the PCCA is to allow such recovery, so it makes no sense to temper that recovery with the condition: you can only recover *estimated* amounts even though the *actual* amounts cannot be known at this time and, if you pay more, you will not recover, but if you pay less, you will reap no benefit.

9. I had thought that the issue of balance was more than adequately addressed when the Commission disallowed over \$30 Million of Public Service’s original PCCA request. We were concerned that allowing the PCCA would provide a disincentive for the Company to become more efficient (reduce expenses) and make better purchases going forward. Since we allowed only expenses related to the 1999 IRP capacity contracts, and disallowed expenses related to other capacity contracts that were considered part of the Company’s ordinary course of business, a balance was struck. The Company would receive cost recovery for costs that are “extraordinary,” “unique,” “substantial,” and “sudden” – meaning, the 1999 IRP costs. The

majority has not explained how *actual* costs can somehow be differentiated from estimated costs when applying this rationale.

10. I am not aware of any automatic adjustment mechanism that penalizes a company for failing to estimate with 100 percent accuracy that which it cannot know. The incentive cost adjustment, interim adjustment clause, electric commodity adjustment (ECA), and gas cost adjustment all allow(ed) for the Company to estimate the expenses going forward, recover them in rate riders, and then true-up the amounts after actual costs are known.⁸ Some of these mechanisms have incentives for the Company to improve its performance over past baseline costs, but not for those items beyond the Company's control. For example, the ECA does not penalize the Company for the commodity cost of natural gas, since the Company cannot control wholesale gas prices. With respect to the PCCA, it is undisputed that Public Service has no control over the level at which a supplier performs. Since it has no control, and there is no way to "game" its recovery, we should not disallow recovery of the actual amounts the Company must pay to its suppliers. In short, the rate case principle of regulatory lag does not apply to an automatic adjustment mechanism capable of being trued-up with actual costs.

11. The majority seeks to estop Public Service from deviating from its estimate of contract costs, since it presented them as "known and measurable." However, Public Service is correct that no party presented this issue – *i.e.*, imposing a cap on recovery to the amounts listed on Exhibit 17 – during the evidentiary phase of this proceeding. Although those amounts were developed by Public Service as its best estimate of "known and measurable" amounts, it is not

⁸ Similarly, the Qualifying Facilities Capacity Cost Adjustment, upon which the PCCA is largely based, applied actual costs in determining the amount of recovery.

reasonable to prevent it from now asserting something not considered by the Commission – that the Exhibit 17 amounts are not certain exactly because they are estimates.

12. In my view, it makes no sense to penalize Public Service for having agreed to performance incentives in a contract when, at the time the contracts were negotiated, it could have no clue that the Commission would, years later, disallow any payments made as a result of those incentives. If we were conducting a prudency review, we would have no basis to exclude recovery of such a payment – yet the Commission does so *a priori* now. I would further note that the effect of this decision is to encourage the Company to no longer include performance incentives in future contracts, but rather pay a higher fixed rate to suppliers. In the long run, this only harms ratepayers.

13. The majority professes difficulty in understanding how a contract might provide for increased payments based on a supplier's performance level. Assuming that to be the case, there is a resolution available to the Commission that both cures this lack of understanding and falls far short of the drastic remedy of disallowing recovery: the Commission can simply grant rehearing to explore the relevant contract terms.⁹ Such a hearing could be limited to the purpose of presenting exemplar contracts to show that the Company must, indeed, pay higher amounts for certain levels of performance.

14. If the lost revenue to the company at issue in Section I(B) seems unjust, the lost revenue at issue in Section I(D) is wholly excessive. The issue is whether the \$1.8 Million Air

⁹ During deliberations, the Commission discussed this possibility, but there was uncertainty as to whether the Company would want a rehearing if that resulted in deferring the effective date of the PCCA rider. At present, it is unclear to me whether a rehearing would affect prior cost recovery through the PCCA.

Quality Improvement Rider (AQIR) credit should be prorated for 2004. The purpose of applying the credit is to disallow double recovery. Since the PCCA was not in effect during the months of January through May 2004, there could be no double recovery via the AQIR mechanism during those months. As a matter of substantive principle, then, there is no question that the AQIR credit should be prorated 7/12ths for 2004 to represent the months the PCCA *is* in effect, June through December.

15. The majority disallows the prorating of the AQIR credit because Public Service mistakenly did *not* prorate the credit in its testimony and exhibits during the hearing. For this, the Company is fined approximately three quarters of a million dollars. I disagree with this levy for what amounts to a clerical error. The Commission has taken administrative notice in the past when simple calculations were performed incorrectly, and allowed a correction. There is no reason why we should not do so here.

16. The majority accurately points out that the other parties did not have a chance to provide input during the proceeding. Given the fact that neither the Commissioners nor its advisors could think of one substantive flaw in prorating the AQIR credit, it seems unlikely that any party was denied due process. If a party does have a criticism, it could make its argument via a request for RRR.

17. As an alternative, if the Commission is truly concerned over due process, a simple resolution is available: we can hold a hearing on whether prorating the AQIR credit makes

sense.¹⁰ This is a much less drastic, and more just, remedy than disallowing the entire adjustment.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioner

¹⁰ Again, it is not clear whether the Company desires a rehearing if that affects the effective date of the PCCA or past recovery through the PCCA.