

Decision No. C21-0237

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20A-0300E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF
COLORADO FOR APPROVAL OF WILDFIRE MITIGATION PLAN AND WILDFIRE
PROTECTION RIDER.

**DECISION DENYING IN PART PUBLIC SERVICE
COMPANY OF COLORADO’S EXCEPTIONS, DENYING
THE OFFICE OF CONSUMER COUNSEL’S EXCEPTIONS,
AND MODIFYING RECOMMENDED DECISION**

Mailed Date: April 16, 2021

Adopted Date: April 14, 2021

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I. BY THE COMMISSION**A. Statement**

1. This Decision denies Exceptions to Decision No. R21-0109 filed by Public Service Company of Colorado (Public Service or the Company) and the Office of Consumer Counsel (OCC), and modifies paragraph 93 of that Decision.

B. Discussion

2. On July 17, 2020, Public Service filed a Verified Application (Application) for approval of its proposed Wildfire Mitigation Plan (WMP) and Wildfire Protection Rider (WPR). Public Service proposed cost recovery through a five-year rider with a carrying cost equal to Public Service's weighted average cost of capital (WACC).

3. At the Commission's August 26, 2020, weekly meeting the Application was deemed complete for purposes of § 40-6-109.5, C.R.S. (2020), and was referred to an Administrative Law Judge (ALJ) for disposition.

4. Staff of the Commission (Staff), the OCC, and Colorado Energy Consumers (CEC) intervened and on January 8, 2021, filed a non-unanimous Stipulation; Public Service did not join in the Stipulation. The Stipulation recommended cost recovery for two years through a deferred regulatory asset, with an interest rate equal to Public Service's long-term cost of debt.

5. On February 26, 2021, the ALJ issued Decision No. R21-0109 (Recommended Decision). The ALJ denied Public Service's request for a rider, but the Recommended Decision provides for cost recovery for three years through a deferred regulatory asset, with a carrying charge equal to Public Service's long-term cost of debt. The Recommended Decision notes that investments made in the WMP will result in a significant increase to Public Service's rate base, and will likely earn a return at the Company's WACC when those investments are included in

rate base in Public Service's next Phase I rate case. Therefore, a carrying charge set at long-term cost of debt strikes a balance between benefiting ratepayers and providing investment incentive for the Company.

6. Decision No. R21-0109 also allows inclusion of incremental operation and maintenance (O&M) expenses in the deferred account, noting that no evidence was presented that would warrant disallowing these expenses.

7. On March 18, 2021, Public Service and the OCC each filed Exceptions to Recommended Decision No. R21-0109.

8. On March 25, 2021, Staff filed its Response to Public Service's Exceptions. On April 1, 2021, OCC and CEC jointly filed their Response to Public Service's Exceptions, and Public Service filed its Response to OCC's Exceptions.

C. Exceptions to Decision No. R21-0109

1. Long-Term Cost of Debt

9. In its Exceptions, Public Service states that it does not take exception to the use of a regulatory asset for cost recovery nor to the Recommended Decision's conclusion that the regulatory asset strikes a balance between incentive for Public Service and minimizing ratepayer burden. However, Public Service contends that setting the carrying charge at less than the WACC precludes Public Service from recovering its full and actual costs of making these investments. Public Service asserts that "this amounts to a disallowance on investments that are squarely aligned with the public interest and is unnecessary given the bill-impact mitigation already achieved by converting the Company's rider request into a deferral."¹

¹ Public Service's Exceptions at p. 2.

10. Public Service maintains that a carrying charge earning the Company's full WACC is necessary because the financing costs for its capital expenditures are real costs that it must incur, and they are no less real than costs for physical assets. Public Service states that the balance of the Company's need to recover its actual costs of investments and concern for ratepayer economic hardship in the ongoing pandemic is served by the use of a regulatory asset instead of a rider, and that it is not necessary to limit the carrying cost on that rider to the cost of long-term debt.

11. Public Service also provides examples of proceedings in which the Commission has approved an after-tax WACC as the carrying charge on a recovery mechanism: Advanced Grid Intelligence and Security deferral (Proceeding No. 16A-0588E), Innovative Clean Technology program deferral (Proceeding No. 19AL-0268E), Gas Demand-Side Management Cost Adjustment (DSMCA) (4 *Code of Colorado Regulations* 723-4-4757(k), Rules Regulating Gas Utilities and Pipeline Operators), and Accelerated Depreciation/Renewable Energy Standard Adjustment (RESA) Reduction deferral (Proceeding No. 17A-0797E).

12. Alternatively, Public Service requests that should the Commission decline to reverse the Recommended Decision on this point, the Commission states that the approval of a carrying charge at the Company's cost of long-term debt does not establish a precedent.

13. Staff responds to Public Service's Exceptions by stating that the Recommended Decision properly found that the Company would be unreasonably rewarded by authorizing a carrying charge equal to the Company's WACC. Staff points out that Public Service agreed to a deferred asset without any return in the EV Infrastructure Projects proceeding (Proceeding No. 19A-0471E), and that the Commission applied long-term cost of debt to the prepaid pension asset in both the Company's most recent Phase I electric case (Proceeding No. 19AL-0268E) and

Phase I gas case (Proceeding No. 20AL-0049G). Staff notes that although Public Service appealed to District Court on several issues in its gas rate case (Proceeding No. 20AL-0049G), it did not appeal the issue of cost of debt applied to the prepaid pension asset.

14. Staff states that other commissions do not allow the WACC on cost recovery mechanisms for wildfire mitigation measures, citing specifically to Idaho, which allowed no carrying charge, and Oregon, in which the utility must expend funds for investment before requesting cost recovery.

15. Staff further notes that Public Service will benefit from the WMP through a reduction of potential liability associated with wildfires.

16. In response to Public Service's citing of proceedings in which the WACC was allowed, OCC and CEC note that the cost recovery for DSMCA is statutorily mandated, a condition that does not apply to the WMP regulatory asset, and that the Advance Grid Intelligence and Security deferral and the Innovative Clean Technology program were the result of settlement agreements. OCC notes that the Accelerated Depreciation/RESA Reduction deferral was granted based on the Commission's calculation that the regulatory asset would be less expensive than paying for the continued operation of Comanche 1 and 2.

17. We deny Public Service's Exceptions on this point. We find that the Recommended Decision strikes an appropriate balance between financial incentive for the Company and minimizing customer rate impact. Public Service does not provide evidence that the ALJ erred in determining that cost recovery through a deferred regulatory asset is extraordinary in and of itself, nor that the full WACC is necessary in the case of such extraordinary cost recovery. In fact, in other such cost recovery mechanisms, the Commission has authorized a return equal to the long-term cost of debt. As Public Service notes, these assets

will likely be included in rate base in the next rate case filing and at that time would earn a return at the Company's full WACC.

18. We note that, consistent with all Commission decisions, this does not set precedent for future treatment of regulatory assets.

2. O&M Expenses

19. The OCC requests that the Commission reverse the Recommended Decision's inclusion of O&M expenses in the deferred account. To support this request, the OCC contends that since O&M was excluded from the deferred account for the PSIA, those expenses should likewise be excluded from the Wildfire Mitigation deferred account. The OCC states that these costs can be recovered base rates and that Public Service did not provide evidence that the O&M costs associated with the WMP are significant, volatile, or out of the utility's control, thus the costs do not warrant inclusion in the deferred asset.

20. The OCC further contends that where Public Service has been allowed to include O&M in a cost recovery mechanism, the allowance has either been by statute, as in the Clean Air Clean Jobs Act rider and the DSMCA, or by settlement, as in previous rate cases.

21. Public Service refutes the OCC's statement that Public Service did not provide evidence that Public Service did not provide evidence that the O&M costs associated with the WMP are significant, volatile, or out of the utility's control. Public Service states that, while such a finding is not necessary for inclusion of O&M in a deferred asset, Company witness Brooke Trammel's direct testimony did in fact present evidence that the costs are volatile and out of the Company's control. Public Service maintains that the OCC's arguments are inconsistent and ignore the Recommended Decision's persuasive explanations and evidentiary support for including incremental wildfire O&M expenses in the deferred account.

22. Public Service asserts that the OCC's comparison of the WMP with the PSIA is incorrect, because the PSIA is not a deferred accounting mechanism and because the O&M costs in the PSIA proceeding were included in base rates. Public Service notes that a similar inclusion of O&M expenses in the WMP would not be possible because they would be considered out of period expenses and would therefore go unrecovered, if not included in the deferred asset.

23. Public Service holds that the Recommended Decision was based on the evidentiary record of this proceedings and that previous proceedings based on settlements are immaterial here.

24. We deny OCC's exceptions on this point. The inclusion of these O&M expenses in the deferred asset will allow them to be evaluated in the next rate case as to their appropriateness for inclusion in rate base. The OCC does not refute that the Settling Parties' witness, as quoted in the Recommended Decision, stated that there was no issue with including the O&M expenses at question in the deferred asset. Furthermore, the OCC's contention that Public Service did not provide evidence that O&M costs are significant, volatile, or out of the utility's control is not supported in the record. The OCC does not offer sufficient evidence to overturn the Recommended Decision's finding that the WMP is a benefit to the State of Colorado and the inclusion of O&M expenses in the deferred asset helps to strike a balance between financial incentive for the utility without an immediate ratepayer burden.

3. Clarification of Paragraph 93.

25. The Recommended Decision requires Public Service to provide reports on expenses for recovery of transmission capital expenditures through the Transmission Cost Adjustment (TCA). Paragraph 93 of the Recommended Decision directs Public Service to "detail the amounts expended for each of the five (5) wildfire risk zones."

26. Public Service requests modification of this paragraph to reflect that each Wildfire Risk Zone is a single zone, assigned a “risk score” of 3, 4, or 5. That is, no separate zones exist within a Wildfire Risk Zone, therefore the Company cannot report on “each of the five (5) wildfire risk zones.”

27. Public Service requests that Paragraph 93. be modified as:

93. In its TCA filings, the Company shall identify wildfire capital for which TCA recovery is being sought and detail the amounts expended for the ~~each of the five (5)~~ wildfire risk zones.

28. Public Service states that since the Recommended Decision requires robust reporting, this modification will not compromise the transparent and granular reporting on wildfire mitigation costs.

29. We grant Public Service’s request and modify Paragraph 93 of the Recommended Decision consistent with Public Service’s proposal.

II. ORDER

A. The Commission Orders That:

1. Decision No. R21-0109, issued on February 26, 2021, is adopted as modified by this Decision, consistent with the discussion above.

2. The Exceptions to Decision No. R21-0109 filed by Public Service Company of Colorado on March 18, 2021 are granted, in part, and denied, in part, consistent with the discussion above.

3. The Exceptions to Decision No. R21-0109 filed by the Office of Consumer Counsel on March 18, 2021 are denied.

4. 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.

5. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
April 14, 2021.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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Commissioners