

Decision No. C22-0738

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19AL-0268E

IN THE MATTER OF ADVICE LETTER NO. 1797 FILED BY PUBLIC SERVICE COMPANY OF COLORADO TO RESET THE CURRENTLY EFFECTIVE GENERAL RATE SCHEDULE ADJUSTMENT (“GRSA”) AS APPLIED TO BASE RATES FOR ALL ELECTRIC RATE SCHEDULES AS WELL AS IMPLEMENT A BASE RATE KWH CHARGE, GENERAL RATE SCHEDULE ADJUSTMENT-ENERGY (“GRSA-E”) TO BECOME EFFECTIVE JUNE 20, 2019.

**DECISION ON REMAND FROM DISTRICT COURT
ADDRESSING GAINS AND LOSSES ON CERTAIN ASSET
SALES AND REQUIRING COMPLIANCE TARIFF FILING**

Mailed Date: November 28, 2022
Adopted Date: October 26, 2022

I. BY THE COMMISSION

A. Statement

1. This Proceeding returns to us from review in the Denver District Court. The court determined that this Commission must reconsider the allocations of gains and losses from the asset sales that were at issue in this base rate case. The Commission requested briefing on the issue and having reviewed the briefs and the district court’s order, we now adopt the allocation methodology proposed by Public Service Company of Colorado (Public Service or the Company). We further direct Public Service to make a compliance tariff filing to modify its electric base rates in accordance with the implementation of that allocation methodology.

B. The District Court's Order

2. The procedural history and description of the issue at hand are well set out in the Commission's previous decisions in this proceeding and in the briefs filed by the Colorado Office of the Utility Consumer Advocate (UCA) and Public Service. For the sake of clarity, we note that our final decision allocated gains and losses from asset sales largely to ratepayers and did not differentiate allocation methodologies based on whether the asset sold was depreciable or non-depreciable.

3. The reviewing court disagreed with this approach, relying on foreign case law to conclude that allocation of gains and losses from asset sales must be differentiated by whether the asset was depreciable or not. The court concluded that when it comes to sales of land, the gain or loss recognized by the sale should be allocated to the utility unless the Commission can, with some specificity, determine to what extent ratepayers' payment of property taxes and operating and maintenance (O&M) expenses contributed to the increase in value of the land.

4. The court remanded the proceeding to us to reallocate the gains and losses from the asset sales consistent with its order.

C. Briefing on Remand

5. We asked the parties for briefing on the allocation question once the proceeding had been remanded. Three parties responded: Staff of the Colorado Public Utilities Commission (Trial Staff), UCA, and Public Service. All three appear to agree in their interpretations of the district court's holding. That is, they recognize that the district court's order requires us to allocate the gains and losses from the land sales to Public Service unless we can link the payment of property taxes and O&M expenses to the increase in value of the land when it was sold.

6. Trial Staff, recognizing that the record in this proceeding does not include any evaluation of how payment of property taxes and O&M expenses impacted land values, suggests that we should require Public Service to file an advice letter or an application for the limited purpose of obtaining such information. The trouble we see with this proposal is that we must make decisions based on the evidence in *this* proceeding, and Trial Staff's proposal would result in evidence being introduced into entirely new proceedings. These proposals do suggest to us that the appropriate venue to address these allocation methodologies more generally may be in a future proceeding.

7. UCA also recognizes the lack of evidence in this record linking ratepayers' payment of property taxes and O&M costs to the increase in the value of the land that was sold. UCA proposes that the Commission remedy this by ordering Public Service to file additional information in this record. In particular, UCA proposes that we order Public Service to quantify the amounts that ratepayers spent on property taxes, O&M, and any other associated expense for each of the land sales at issue in this proceeding. UCA also proposes several thoughtful approaches to allocating gains and losses from non-depreciable asset sales.

8. Public Service argues that the allocation it proposed in its direct case is the only allocation methodology that both comports with the district court's order and enjoys record support. The Company contends that gains and losses from the sales on non-depreciable assets should be assigned to the Company, while the gains on sales of depreciable assets should be allocated based on how much of the original cost ratepayers had paid in depreciation expense at the time of sale.

D. Findings and Conclusions

9. While we appreciate UCA's thoughtful presentation of various approaches to allocating gains and losses from asset sales, a general ruling on allocation of gains and losses is best done on a record where the Commission's ultimate allocation methodology finds support in the record. In this instance, the record in this proceeding closed more than two years ago, and we do not discern any mandate in the district court's order to reopen the record after so long. Therefore, we will decline to reopen the record to entertain additional evidence at this late date. We do, however, agree with UCA that finding a "general rule" of allocation for gains and losses on asset sales such as those at issue here will help streamline this aspect of future rate cases.

10. In our view, we ought to act upon the record evidence in this proceeding, guided by the district court's order, in determining how to allocate these gains and losses in this particular rate case on remand. Given that the district court agreed with Public Service's contentions with respect to non-depreciable assets, it is of little surprise that the Company's allocation approach, at least with respect to land sales, accords with the district court's order. And because Public Service presented this approach in its direct case, this allocation methodology is supported by the record. Therefore, we find that allocating the gains and losses from all non-depreciable asset sales to Public Service is appropriate in these circumstances.

11. We also agree with Public Service that the allocation it proposes for depreciable assets generally aligns with the district court's order. While the court did not address depreciable asset sales in any depth, it did require the Commission to allocate gains on the sale of depreciable assets consistent with the discussion in its order. Public Service's position that the gain on the sale of the Green and Clear Lakes improvements should be allocated based on how much of the asset ratepayers had paid in depreciation expense at the time of sale can be seen as an extension of the

policy embraced by the district court. Therefore, we conclude that for the purposes of this rate case it is appropriate to allocate the gains of the Green and Clear Lakes improvements 59 percent to ratepayers and 41 percent to Public Service.

12. Finally, we wish to express our disappointment at Public Service's recent turn to an overly litigious approach to rate cases. It appears to be the norm now that at the conclusion of Public Service's rate cases the company cherry picks a handful of lightly litigated issues for district court review. Combined, these issues amount to a tiny fraction of the total rate base in question. But the approach serves to undermine the ratemaking authority vested in this Commission by treating the Commission's determination of just and reasonable rates as a floor, ratcheting up rates for customers and increasing the overall amount the company spends (and that customers may eventually pay) for these proceedings. In our view, this is an inefficient approach to the regulatory relationship.

E. Compliance Procedures

13. Public Service shall file an advice letter compliance filing to modify its tariff sheets consistent with the recalculation of its revenue requirements to include the higher costs resulting from the new allocation of gains and losses on certain asset sales adopted in this proceeding.

14. 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.

II. ORDER

A. The Commission Orders That:

1. Public Service is ordered to make a compliance tariff filing in a new advice letter proceeding on not less than two business days' notice, consistent with the discussion above.

2. 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.

3. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
October 26, 2022.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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JOHN GAVAN

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Commissioners