

Decision No. C22-0830-I

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

PROCEEDING NO. 22AL-0531E

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IN THE MATTER OF ADVICE LETTER NO. 1907 - ELECTRIC FILED BY OF PUBLIC SERVICE COMPANY OF COLORADO TO REVISE ITS COLORADO P.U.C. NO. 8 - ELECTRIC TARIFF TO INCREASE THE ELECTRIC COMMODITY ADJUSTMENT FACTORS APPLICABLE TO ALL ELECTRIC BASE RATE SCHEDULES, TO BECOME EFFECTIVE JANUARY 1, 2023.

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**INTERIM COMMISSION DECISION ADDRESSING  
ADVICE LETTER NO. 1907-ELECTRIC AND  
THE ELECTRIC COMMODITY ADJUSTMENT  
FOR EFFECT JANUARY 1, 2023**

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Mailed Date: December 22, 2022  
Adopted Date: December 21, 2022

**I. BY THE COMMISSION**

**A. Statement**

1. On November 30, 2022, Public Service Company of Colorado (Public Service or Company) filed Advice Letter No. 1907-Electric with tariff sheets to revise its Electric Commodity Adjustment (ECA) for effect January 1, 2023.

2. This Decision addresses Advice Letter No. 1907-Electric and specifically the ECA deferred account balance as of October 31, 2022. Consistent with the discussion below, we permit Public Service to file an amended Advice Letter No. 1907-Electric to isolate that deferred account balance totaling approximately \$123 million as of October 2022 for consideration in a separate proceeding before those costs are recovered from ratepayers. Such action would allow for an updated ECA to take effect on January 1, 2023 as sought by Public Service without the

Commission having to exercise its authority under § 40-6-111(1), C.R.S., to set the first quarter 2023 ECA tariff sheets for hearing and to suspend their effective date.

3. The deadline for an amended Advice Letter No. 1907-Electric is noon on Tuesday, December 27, 2022. Given the proposed effective date of the updated ECA of January 1, 2023, we will take up the matter again at our December 28, 2022 weekly meeting.

## **B. Discussion**

4. As explained in Advice Letter No. 1907-Electric, Public Service seeks to increase its ECA for the three months beginning January 1, 2023. The Company projects that the revised ECA factors will result in an increase in revenues for the period January through March 2023 of approximately \$47.5 million. The estimated bill impacts from this increase in the ECA next month will be 4.5 percent for average residential electric bills (an increase of about \$4 per month).

5. Public Service states that Advice Letter No. 1907-Electric was filed in compliance with Decision No. C09-1446 in Proceeding No. 09AL-299E that requires quarterly revision to the ECA as set forth on Tariff Sheet Nos. 143 and 143A. The Company explains that this particular ECA filing reflects: projected fuel, purchased energy, Owned Wind Production Tax Credits, Rush Creek Capital Cost Sharing, Deferred Tax Asset Revenue Requirements, Renewable\*Connect subscription payments, and purchased wheeling expenses for the upcoming calendar quarter beginning January 1, 2023, and ending March 31, 2023. Public Service requests that the Commission approve the revisions to the ECA to take effect January 1, 2023 without hearing.

6. In addition to Advice Letter No. 1907-Electric, Public Service also filed a Motion for Partial Waivers from Electric Tariff Sheet Nos. 143D and 143E (Waiver Motion) on November 30, 2022. First, Public Service requests a partial waiver from certain ECA tariff provisions to exclude costs associated with an outage at Pueblo Unit 3 from January 28, 2022 through June 12,

2022. Public Service states that, although not required by a Commission decision to do so, the Company voluntarily proposes to exclude the Unit 3 outage costs from customer bills. Public Service explains that similar requests were previously approved in Proceeding No. 22AL-0235E, Decision No. C22-0396 (for the 2022 third quarter ECA) and Proceeding No. 22AL-0379E, Decision No. C22-0576 (for the 2022 fourth quarter ECA). Second, Public Service seeks a waiver from provisions on those tariff sheets to exclude half of the current ECA deferred account balance as of October 31, 2022 from the calculation of the ECA revenue requirement for the first quarter of 2023. Public Service explains that as of October, the ECA is approximately \$123 million under-recovered. Public Service states that un-forecasted cost increases raised the Company's ECA under-recovery from approximately \$50 million as of July 2022.

7. In its pleadings, Public Service explains that the present under-recovery is primarily driven by: (1) natural gas prices exceeding the Company's forecast during the second quarter of 2022, and (2) national railroad issues resulting in under-deliveries of coal to the Company's coal-fired power plants beginning in August 2022. The Company proposes to include half of the \$123 million to moderate the effect of the under-recovery balance on customer bills and expects to recover the remainder of the under-recovery balance, along with any other changes to the ECA deferred account balance, in the second quarter of 2023. Public Service states that it has met with Trial Staff of the Colorado Public Utilities Commission (Trial Staff) and the Colorado Office of the Utility Consumer Advocate (UCA) on this issue multiple times and has provided a variety of written documentation on such in advance of these requests in the Waiver Motion.

8. Public Service explains at a high level the suspected causes of the \$123 million ECA deferred account balance. With respect to the underestimated gas costs, Public Service states that actual gas was approximately \$3.73/MMBtu greater than previously forecasted. With respect

to coal impacts, Public Service states that the railroads under contract to deliver coal to the Company's coal-fired power plants are experiencing labor shortages and have reduced contracted deliveries, noticeably in the third and fourth quarter of 2022. The Company states that, in order to maintain coal inventories at levels needed for reliability, both at the time of the deliveries and for the upcoming winter season, the Company implemented, and is implementing, measures to reduce coal use at its coal-fired power plants. The reduced coal power plant output was replaced, in part, with natural gas-fired generation at a higher cost than coal-fired generation.

9. Public Service also reports that the coal supply situation has improved and that the Company worked proactively with the railways to address supply issues and was able to improve deliveries.

10. In an amended version of the Waiver Motion filed on December 13, 2022, Public Service provides additional details on the coal supply and railroad issues, similar to what was provided to Trial Staff and UCA in meetings and presentations in October and November. The Company also clarifies, upon the request of Trial Staff, that by not contesting the amended Waiver Motion and otherwise not protesting the proposed increase to ECA rates, parties to the future 2022 ECA prudence review proceeding are in no way waiving their rights to challenge carrying costs associated with the "under recovery deferral balance as of October 31, 2022" waiver or other costs reflected in the ECA in 2022.<sup>1</sup>

11. On December 13, 2022, UCA filed a protest to Advice Letter No. 1907-Electric. UCA raises several concerns about how Public Service arrived at a \$123 million under-recovery of ECA costs and the steps the Company is taking to prevent the situation from recurring. UCA

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<sup>1</sup> Amended Waiver Motion, p. 2.

asks that the Commission discuss this matter and take any appropriate oversight steps it deems necessary.

12. In its protest, UCA questions whether the Company's actions were prudent and in the public interest, asking:

- Why Public Service was unable to obtain adequate coal for its plants;
- When the Company became aware of potential disruptions in rail transportation, and whether the actions the Company took to obtain additional rail transportation for its coal supplies were sufficient and prudent;
- Whether some of the under-recovery should be paid by shareholders, given that maintaining an adequate coal supply is the Company's responsibility over which ratepayers have no control;
- Whether the Company has provided full and transparent information to the Commission regarding the issues with its coal supplies, including if the Company should have reported the situation to the Commission: (1) in its August 31, 2022 filing for the 2022 fourth quarter ECA in Proceeding No. 22AL-0379E; (2) in its September 16, 2022 filing in Proceeding No. 22M-0342E; and (3) in an interim ECA adjustment given its knowledge of the situation;
- Whether the Company's decision not to file an interim ECA adjustment resulted in additional carrying charges the Company intends to pass to customers;
- Whether the Company's coal inventories and fuel oil inventories are adequate for this winter season; and
- Whether the Company exhausted all of its remedies under its contracts with coal transporters.

13. Notwithstanding these concerns, UCA neither requests that the proposed tariff be suspended nor requests an evidentiary hearing on this matter.

14. In a response to UCA's protest filed on December 14, 2022, Public Service argues that the issues raised by the UCA are appropriate for study in Public Service's 2022 ECA prudence review to be filed in August 2023. Public Service states that the disputed costs can be analyzed in that later proceeding in the full context of overall ECA costs and operations for 2022. Public Service also states that the Company has not yet quantified the specific dollar impact of the national

railroad issues on its coal supply and that a complex study would be required to quantify this dollar impact.

15. Public Service urges the Commission to approve its revised ECA rates to be effective January 1, 2023 because the proposed ECA rate increase is needed to reduce the under-recovery balance and the resulting interest charges included on that under-recovery balance. Public Service also states that it is disappointed that the UCA filed the protest before meeting with the Company on its contents, especially after the Company attempted, in good faith, to avoid the filing of a protest.

### **C. Conclusions and Findings**

16. We are troubled by the magnitude of the ECA deferred account balance and are not satisfied with the Company's proposal to begin recovery of the \$123 million before we can consider additional information about the causes of the under-recovery along the lines of UCA's concerns in its protest. We are further disturbed about the delay and procedures associated with the ECA annual prudence review process that Public Service wants us to use to examine these issues, likely after the Company has already recovered the disputed costs from its customers.

17. The ECA deferred balance of \$123 million is significant. Total ECA revenue requirements for the entire first quarter of 2023 are \$271.8 million excluding the \$61.6 million sought by the Company to be recovered starting January 1, 2023 to address the deferred account balance. Monthly total actual energy costs recovered through the ECA in 2022 ranged from \$72.2 million in January to \$127 million in August.

18. As referenced by Public Service in Advice Letter No. 1907-Electric, the ECA as currently implemented was established by Decision No. C09-1446 in Proceeding No. 09AL-299E,

a previous base rate proceeding. That decision extended the quarterly ECA was set to expire when Pueblo Unit 3 was set to go into service, or December 31, 2009, whichever occurred first. The ECA extended in that 2009 base rate proceeding adopted many of the same features of the ECA that began on January 1, 2017 pursuant to a comprehensive Settlement Agreement approved in the Company's 2006 base rate case in Proceeding No. 06S-234EG. The 2006 base rate proceeding established both that the ECA is forward-looking, subject to true-up through the use of a deferred account, and that it would change quarterly. The Settlement Agreement further continued the process for the Company to file by August 1 of each calendar year an annual review of the ECA costs. In the event a party requests a hearing on the annual filing, the adjudication serves as the Company's ECA annual after-the-fact prudence review.

19. In accordance with those general procedures for the ECA established more than a decade ago, certain costs have been challenged in each of the past three ECA prudence review applications. The scope of the recent proceedings has grown each year.

20. In Proceeding No. 20A-0327E for the 2019 ECA, the parties addressed: the circumstances surrounding Rush Creek Wind Project that provided 14 percent less generation than had been forecast; controversies surrounding certain "must run" designations where large and expensive coal units were operated for system reliability reasons; and emerging renewable curtailment issues. The case culminated in a Settlement Agreement.

21. In Proceeding No. 21A-0370 for the 2020 ECA, Public Service also reached settlement and: (1) credited to customers \$2 million in recognition of construction-related considerations and associated wind production impacts at Rush Creek Wind Project; and (2) voluntarily "absorbed" \$14.4 million of costs related to Pueblo Unit 3 replacement power costs.

22. In ongoing Proceeding No. 22A-0345E for the 2021 ECA, where Public Service is sponsoring six witnesses and hearings are scheduled in February 2023, Trial Staff's and UCA's requests for hearing in that prudency review were premised on concerns about: curtailments; the performance of both the Cheyenne Ridge Wind Project and Rush Creek Wind Project; the extended outages at the Cabin Creek pumped-hydro facility; 2021 "must run" unit designations; and further outages at Pueblo Unit 3.

23. In light of this recent history of ECA prudency reviews, we question the merits of Public Service's proposal to grant the amended Motion for Waivers in whole and then to postpone the examination of the issues surrounding the coal impacts until the 2022 ECA prudency review. However, we also seek to avoid the potential compounding of under-recoveries of forward-looking costs that could result from the suspension of the 2023 ECA pursuant to § 40-6-111(1), C.R.S. We further share the concerns of both Public Service and Trial Staff (implied in the amended Motion for Waivers) that the carrying costs associated with the under-recoveries is a key consideration in this matter.

24. In order to allow for an updated rates to take effect in accordance with the forward-looking aspects of Public Service's quarterly ECA, we permit the Company to file a restrictive amendment to Advice Letter No. 107-Electric to remove the \$123 million deferred balance from the ECA revenue requirement used to calculate the rates proposed for effect January 1, 2023. Such action would permit an updated 2023 first quarter ECA to take effect in accordance with the ECA's normal operations, provided that Public Service also altered the relief it seeks in the amended Waiver Motion. Public Service may separately propose discrete methods for cost recovery of the \$123 million deferred balance amount by filing an application in a new proceeding. Public Service may propose expedited procedures for the consideration and approval of that

application both to permit the Commission to more fully examine the issues raised by UCA in its protest as well as other relevant issues raised by parties to that the new and separate proceeding, and to mitigate the time-related impacts of the substantial level of under-recoveries. The deadline for the filing of the amendment to Advice Letter No. 107-Electric is noon on Tuesday, December 27, 2022.

25. Because the tariff sheets Public Service filed with Advice Letter No. 107-Electric are proposed for effect January 1, 2023, we will take up the matter again at our December 28, 2022 weekly meeting.

## **II. ORDER**

### **A. It is Ordered That:**

1. Consistent with the discussion above, Public Service Company of Colorado is permitted to file an amended Advice Letter No. 1907-Electric no later than noon on December 27, 2022.

2. The Commission will address this matter at its December 28, 2022 weekly meeting.

3. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
December 21, 2022.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script, appearing to read 'G. Harris Adams'.

G. Harris Adams,  
Interim Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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JOHN GAVAN

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Commissioners