

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

PROCEEDING NO. 22A-0140G

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IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR AUTHORIZATION PURSUANT TO COMMISSION RULES 4103 AND 4104 TO ABANDON FOUR GAS GATHERING SYSTEMS IN GARFIELD, MESA, AND RIO BLANCO COUNTIES, COLORADO, AND SELL THEM TO UGC MIDSTREAM LTD, LLC.

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**RECOMMENDED DECISION OF  
ADMINISTRATIVE LAW JUDGE  
CONOR F. FARLEY GRANTING-IN-PART AND  
DENYING-IN-PART APPLICATION, ORDERING  
REPORTING, ADDRESSING TRANSACTION COSTS, AND  
CLOSING PROCEEDING**

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Mailed Date: November 07, 2022

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**I. STATEMENT**

**A. Procedural Background**

1. On March 30, 2022, Public Service Company of Colorado (Public Service) filed a Verified Application (Application) seeking authorization to abandon and permanently retire from public utility service four gas gathering systems and related assets located in the Colorado counties of Garfield, Mesa, and Rio Blanco, as described in more detail below (Gas Gathering Assets) and, to the extent deemed necessary, further authorization consistent with C.R.S. § 40-5-105 and Gas Rules 4002(a)(V) and 4104,<sup>1</sup> to sell the Gas Gathering Assets to UGC Midstream Ltd, LLC (UGC Midstream) pursuant to the terms and conditions of a Gas Gathering Assets Purchase and Sale Agreement (PSA). With the Application, Public Service filed the direct testimony and attachments of Alexander G. Trowbridge, Laura L. Roberts, and Laurie J. Wold.

2. On March 31, 2022, the Commission issued a notice of the Application.

3. On April 21 and 28, 2022, Trial Staff of the Commission and the Office of the Utility Consumer Advocate filed notices of intervention by right, respectively.

4. On May 4, 2022, the Commission deemed the Application complete and referred the proceeding to an Administrative Law Judge (ALJ) by minute entry. The proceeding was subsequently assigned to the undersigned ALJ.

5. On June 27, 2022, the ALJ issued Decision No. R22-0389-I that scheduled a remote prehearing conference for July 13, 2022, required the parties to confer regarding a procedural schedule and discovery procedures, and instructed Public Service to file a report of the conferral by July 1, 2022.

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<sup>1</sup> 4 *Colorado Code Regulations* (CCR) 723-4.

6. On July 1, 2022, Public Service and UCA filed reports of the conferral between the parties. All parties agreed that the hearing should be conducted remotely, workpapers will be provided two business days after the filing of testimony, and that Rule 1405 of the Commission's Rules of Practice and Procedure<sup>2</sup> will govern discovery. However, Public Service and Staff, on the one hand, and UCA, on the other hand, proposed different procedural schedules.

7. On July 13, 2022, the remote prehearing conference took place at which the parties agreed to a schedule for the proceeding.

8. On July 15, 2022, UCA filed a Motion for Summary Judgment (MSJ).

9. On July 18, 2022, the ALJ issued Decision No. R22-0415-I that established the agreed-upon procedural schedule and scheduled the remote hearing for September 1-2, 2022.

10. On July 25, 2022, Staff filed the answer testimony of Fiona Sigalla and Marianne Wills Ramos, and the UCA filed the answer testimony of Cory Skluzak.

11. On July 29, 2022, Public Service filed a Response to the Motion (Response to MSJ).

12. On August 12, 2022, the UCA filed a Motion for Leave to File a Reply Brief in Support of its MSJ (Motion for Leave). The UCA filed its proffered Reply Brief with its Motion (Reply in Support of MSJ).

13. On August 19, 2022, Public Service filed the rebuttal testimony of Mr. Trowbridge, Ms. Roberts, and Mark P. Moeller.

14. On August 26, 2022, Public Service filed a Response to UCA's Motion for Leave.

15. On August 29, 2022, the ALJ issued Decision No. R22-0505-I that denied-in-part and granted-in-part the Motion for Leave, denied the MSJ, and extended the statutory deadline.

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<sup>2</sup> 4 Code of Colorado Regulations 723-1.

16. The hearing took place on September 1, 2022. Hearing Exhibits 107 through 112, 125, 127, 139, 145, 156, 202 through 203, 302 through 348 Rev. 1, 355 through 378, 379 through 381, and 400 (including the hearing exhibits and attachments listed therein) were admitted into evidence. At the end of the hearing, the ALJ closed the evidentiary record.

17. On September 15, 2022, Public Service filed its Statement of Position (SOP).

18. On September 16, 2022, Staff and UCA each filed a SOP.

**B. Background of Gas Gathering Assets At-Issue in this Proceeding**

19. The Gas Gathering Assets that are the subject of the Application are: (a) the Baxter Gas Gathering System located in Garfield County (Baxter System), including the separate products extraction and compression facilities located at Baxter Station; (b) the Hunter Canyon Gas Gathering System located in Mesa County (Hunter Canyon System), including the separate dehydration and compression facilities located at Hunter Canyon Station; (c) the Indian Valley Gas Gathering System located in Rio Blanco County (Indian Valley System); and (d) the North Douglas Gas Gathering System located in Rio Blanco County (North Douglas System) (collectively, Gas Gathering Assets).<sup>3</sup>

20. Western Slope Gas Company (WestGas), Public Service's former intrastate pipeline subsidiary, constructed these four gas gathering systems decades ago.<sup>4</sup> In 1992, Public Service and WestGas filed a joint application requesting Commission authorization to, among other things, merge WestGas into Public Service and transfer certain gas gathering assets from WestGas to Public Service and vice versa pursuant to § 40-5-105 C.R.S. The intervenors, which included Staff and the predecessor to the UCA, raised the question of "whether the Public

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<sup>3</sup> Hearing Exhibit 100, Rev. 1 at 2 (Application).

<sup>4</sup> Hearing Exhibit 100, Rev. 1 at 2-3 (Application).

Utilities Commission has jurisdiction over the gathering assets proposed to be transferred.”<sup>5</sup> The parties entered into a Stipulation and Agreement in which they agreed that the Commission had jurisdiction over one of the gathering systems (the Tiffany Gathering System) “because the system is currently owned by WestGas, a regulated public utility, and is included in WestGas’ rate base.”<sup>6</sup> However, the parties also preserved their rights to argue later that “[gas] gathering is or is not subject to the jurisdiction of the Colorado Public Utilities Commission.”<sup>7</sup> The Commission approved the merger, which led to Public Service’s ownership of the four gas gathering systems at issue in this proceeding.<sup>8</sup> In so ruling, the Commission stated that “[t]he Commission’s jurisdiction over the Ignacio Gathering System assets [including the Tiffany Gathering System assets] shall be as set forth in the Stipulation and Agreement.”<sup>9</sup>

21. Public Service has booked the assets in the Hunter Canyon, North Douglas, and Indian Valley Systems to FERC gas plant accounts within the “Production and Gathering” functional category under the Uniform System of Accounts.<sup>10</sup> While the Baxter System includes assets booked to the “Production and Gathering” functional category, it also includes processing and compression facilities that Public Service has recorded to the “Products Extraction” and “Transmission” functional categories, respectively, in the FERC gas plant accounts.<sup>11</sup>

22. The Baxter, Hunter Canyon, North Douglas, and Indian Valley Systems transport raw and unprocessed gas. Public Service “does not purchase any gas from the production wells

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<sup>5</sup> MSJ, Attach. UCA-3 at 4 (¶ 6(c)).

<sup>6</sup> *Id.* at 5 (¶ 8(a)).

<sup>7</sup> *Id.* at 11 (¶ 13).

<sup>8</sup> Decision No. R92-1526 issued in Proceeding No. 92A-352G on December 10, 1992 (Attach. UCA-2 to MSJ).

<sup>9</sup> *Id.* at 6 (¶ 19).

<sup>10</sup> Hearing Exhibit 103 at 7:18-8:2 (Direct Testimony of Ms. Wold).

<sup>11</sup> Hearing Exhibit 102 at 9:7-10 (Direct testimony of Ms. Wold).

connected to these systems for the purpose of gas supply.”<sup>12</sup> As a result, they “are not a source of gas supply for the Company in providing gas sales service to its customers.”<sup>13</sup> Put differently, Public Service does not directly provide end-use customers gas deliveries from the Baxter, Hunter Canyon, North Douglas, and Indian Valley Systems.

23. However, Public Service provides gas transportation services over the Gas Gathering Assets pursuant to its jurisdictional Commission tariff.<sup>14</sup> Moreover, all of the assets of the Baxter, Hunter Canyon, North Douglas, and Indian Valley Systems have been in Public Service’s rate base approved by the Commission “for decades.”<sup>15</sup> In fact, in Public Service’s most recent rate case, the Commission approved the inclusion of the Gas Gathering Assets, as well as new depreciation rates applicable to Public Service’s assets, including the Gas Gathering Assets.<sup>16</sup>

### **C. Proposed Transaction and Relief Sought in Application**

24. In the Application, Public Service seeks Commission authorization to: (a) abandon and retire the Gas Gathering Assets and, if the Commission deems it necessary, authorize Public Service to sell the Gas Gathering Assets to UGC Midstream pursuant to the terms of the PSA; and (b) “express” approval of the Transaction

as an ordinary retirement for regulatory accounting and future cost recovery purposes, such that the affected gas plant accounts (Account 101 – Gas Plant In-Service) and the associated depreciation reserve (Account 108 – Accumulated Provision for Depreciation) will be reduced by the original cost of the assets (gross plant) and all of the net proceeds received from the sale will be credited to the depreciation reserve as salvage, as is standard practice for assets accounted for

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<sup>12</sup> Hearing Exhibit 101, Rev.1, at 9:22-10:1 (Direct Testimony of Mr. Trowbridge).

<sup>13</sup> *Id.* at 22:20-23.

<sup>14</sup> Hearing Transcript at 38:12-24.

<sup>15</sup> Haring Exhibit 104 at 17:5-6 (Rebuttal Testimony of Mr. Trowbridge).

<sup>16</sup> Hearing Transcript at 29:5-8 (Mr. Trowbridge testifying that the Gas Gathering Assets were a part of rate base in the settlement agreement that was approved in the 2020 rate case); 24:7-25:18 (Mr. Trowbridge discussing certain depreciation rate changes associated with Production and Gathering accounts).

using the group depreciation method. Under this method, there will be no gain or loss recognized on the Transaction. The net effect of Transaction is to reduce net plant by the amount of sales proceeds received from UGC Midstream. Any remaining unrecovered net book costs attributable to the Gas Gathering Assets will continue to be recovered through depreciation expense accrued over the remaining lives of assets in these accounts that are not being sold.<sup>17</sup>

Such regulatory and cost recovery accounting would result in ratepayers paying \$5,239,178 in undepreciated value in the gas Gathering Assets. Public Service originally paid just under \$11 million for the Gas Gathering Assets in the early 1990s.<sup>18</sup>

## **II. PARTIES' POSITIONS**

### **A. Public Service**

25. Public Service asserts that the sale of the Gas Gathering Assets to UGC Midstream is the most prudent course of action for Public Service and its ratepayers. Specifically, Public Service asserts that the sale will save ongoing operation and maintenance expenses, future capital expenditures, and end-of-life abandonment and decommissioning costs, all of which Public Service would need to incur if it were to retain the assets. Moreover, the Purchase and Sale Agreement with UGC Midstream provides for the sale of the assets in their “as-is, where-is” condition and thus disclaims Public Service and its customers from any environmental liabilities (including site restoration).<sup>19</sup> While the purchase price of the Gas Gathering Assets is \$600,000, Public Service has quantified all of the benefits to customers as approximately \$18.5 million.<sup>20</sup> Public Service concludes that the sale is in the public interest and should be approved.

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<sup>17</sup> Hearing Exhibit 100, Rev. 1 at 8-9 (¶ 9).

<sup>18</sup> Staff’s SOP at 11; *see also* Hearing Exhibit 200 at 12 (Table FDS-1), 14 (Table FDS-2).

<sup>19</sup> Public Service’s SOP at 1.

<sup>20</sup> Hearing Exhibit 101, Rev. 1 at 26:6-8 (Direct Testimony of Mr. Trowbridge).

26. Public Service also seeks Commission approval of its preferred accounting treatment of the transaction “as an ordinary retirement for regulatory accounting and future cost recovery purposes.”<sup>21</sup> Pursuant to that treatment,

the affected gas plant accounts (Account 101 – Gas Plant In-Service) and the associated depreciation reserve (Account 108 – Accumulated Provision for Depreciation) will be reduced by the original cost of the assets (gross plant) and all of the net proceeds received from the sale will be credited to the depreciation reserve as salvage, as is standard practice for assets accounted for using the group depreciation method. Under this method, there will be no gain or loss recognized on the Transaction. The net effect of Transaction is to reduce net plant by the amount of sales proceeds received from UGC Midstream. Any remaining unrecovered net book costs attributable to the Gas Gathering Assets will continue to be recovered through depreciation expense accrued over the remaining lives of assets in these accounts that are not being sold.<sup>22</sup>

Granting the requested treatment would result in ratepayers paying \$4,628,960 in the undepreciated net book value of the Gas Gathering Assets plus earnings calculated on that amount based on Public Service’s weighted average cost of capital.<sup>23</sup> Public Service asserts that approving its proposed accounting treatment of the transaction now will provide it with “certainty regarding how it will account for the Transaction” and serve “[a]dministrative efficiency.”<sup>24</sup> According to Public Service, “there is no need or benefit to requiring the parties to start over, incur additional litigation costs, and develop a new record in a future rate case, where numerous additional and complex ratemaking issues will be at issue.”<sup>25</sup> Public Service contends that two previous Commission decisions addressing the sale of streetlighting facilities support Public Service’s requested accounting relief.<sup>26</sup>

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<sup>21</sup> Hearing Exhibit 100, Rev. 1 at 8 (¶ 9).

<sup>22</sup> *Id.* at 8-9 (¶ 9).

<sup>23</sup> UCA’s SOP at 25-26; Hearing Transcript at 84:12-18.

<sup>24</sup> Public Service’s SOP at 19.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 9-10 (citing Decision No. R20-0106 issued in Proceeding No. 19A-0534E on February 18, 2020; Decision No. C19-0113 issued in Proceeding No. 18A-0083E on January 28, 2019).

**B. Intervenors****1. Staff**

27. Staff agrees that the sale of the Gas Gathering Assets to UGC Midstream should be approved. However, it argues that Public Service's requested accounting treatment should be denied.<sup>27</sup> As support, Staff asserts that such accounting treatment and recovery would be a windfall to Public Service given that the Gas Gathering Assets have already been in rate base for an extended period, they are being sold "as-is" and not decommissioned, and Public Service held onto the Gas Gathering Assets long past the time at which they were still useful to ratepayers.<sup>28</sup> As to the first point – that the Gas Gathering Assets have already been in rate base for an extended period – Staff argues that "Public Service does not know if ratepayers have fully paid for these assets already."<sup>29</sup> As support, Staff points out that "the estimated net book value of \$5,228,960 was a *theoretical construct* achieved through a calculation that assigned an amount of depreciation reserve to assets based on an averaging convention."<sup>30</sup> Staff also points out that the estimated net book value estimated by Public Service is approximately 50 percent of the original value of the Gas Gathering Assets when Public Service acquired them in 1982.<sup>31</sup> If that net book value is correct, Staff argues that Public Service has under depreciated the assets.<sup>32</sup> Staff concludes that Public Service has mismanaged the Gas Gathering Assets resulting in stranded costs for which ratepayers should not pay.<sup>33</sup>

28. Staff also requests that Public Service be required to make periodic filings that identify its remaining gas gathering, gas production, gas compression, and liquid extraction

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<sup>27</sup> Staff's SOP at 1, 13-14

<sup>28</sup> *Id.* at 3-14.

<sup>29</sup> *Id.* at 11.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 7-8.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 8-10.

assets and identify how it intends to treat those assets going forward.<sup>34</sup> The content and format of the filings should be developed by Public Service, Staff, and UCA and should include

the location and value of all of the Company's remaining gas gathering, gas production, gathering compression and liquid extraction facilities, with appropriate indications of current financial prudence of each "area-location" and functional grouping of assets, including a Net Present Value calculation based on expected useful life, five years of future capital investments, annual O&M expenditures, and anticipated revenue offsets from liquid sales, and off sets from transport fees.<sup>35</sup>

According to Staff, such required filings will "ensure [Public Service]'s remaining gas gathering, gas processing, gas compression, and products extraction assets are managed appropriately and prudently and in a manner that prevents further stranded assets in the future when the remaining assets are sold or retired."<sup>36</sup>

## 2. UCA

29. UCA reiterates its argument that the Commission does not have jurisdiction over the Baxter, Hunter Canyon, North Douglas, and Indian Valley Systems because they are not public utility assets under §§ 40-3-103(1)(a)(I), 40-3-105, C.R.S. UCA contends that the Gas Gathering Assets are not "used by [Public Service] to supply service to the public" and are not "directly tied to regulated gas sales or gas transportation services provided by a public utility."<sup>37</sup> According to UCA, "even when gas gathering systems are used for tariffed transportation services, they are not subject to the Commission's authority."<sup>38</sup> As support, UCA cites 1988 and 2003 Commission decisions in support of the assertion that the Commission "has expressly exempted [from Commission jurisdiction] those portions of [a] pipeline primarily used for

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<sup>34</sup> *Id.* at 2.

<sup>35</sup> *Id.* at 14.

<sup>36</sup> *Id.* at 1.

<sup>37</sup> UCA's SOP at 9.

<sup>38</sup> *Id.*

storage or gathering or low-pressure distribution of natural gas.”<sup>39</sup> UCA also argues that the Colorado Supreme Court’s decision in *Mountain States Tel. & Tel. Co. v. PUC*, 763 P.2d 1020 (Colo. 1988) – that the ALJ cited and relied upon in denying summary judgment – was legislatively overruled in its entirety.<sup>40</sup>

30. If the Commission denies its jurisdictional argument, UCA argues that the Commission should deny the Application for three additional reasons. First, UCA argues that the Rules and statutory provision cited by Public Service in its Application do not support the relief sought in the Application. Specifically, UCA asserts that Rules 4002(a)(IV) and 4103 of the Commission’s Gas Rules and § 40-5-105, C.R.S. do not apply to the retirement, regulatory accounting treatment, or cost recovery resulting from the sale of Gas Gathering Assets sought by Public Service here. Instead, the cited authority only allows the Commission to address in the context of the Application whether Public Service can abandon the Gas Gathering Assets. As a result, the Commission should limit itself to that question.<sup>41</sup>

31. Second, the Commission’s decisions in Proceeding Nos. 94A-447G, 15A-0260G, 18A-0083E, and 19A-0534E are inapposite and should not be relied upon to approve Public Service’s proposed accounting treatment or cost recovery in this Proceeding.<sup>42</sup>

32. Third, Public Service’s requests for approval of its regulatory accounting treatment and cost recovery constitute ratemaking and should be addressed in a rate case, not in this Proceeding.<sup>43</sup>

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<sup>39</sup> *Id.* at 12-13.

<sup>40</sup> *Id.* at 10-11.

<sup>41</sup> *Id.* at 13-17.

<sup>42</sup> *Id.* at 17-19.

<sup>43</sup> *Id.* at 20-22.

33. Finally, if the Commission approves PSCo's accounting treatment, UCA asserts that the Commission should not go further and approve the treatment for "regulatory" accounting purposes.<sup>44</sup> Instead, the Commission's decision should "include some sort of prophylactic language to expressly provide a 'heads-up' that the decision is not intended to pre-determine cost recovery in a future rate case."<sup>45</sup>

**C. Public Service's Response to Intervenors' Arguments**

34. In response to UCA's jurisdictional argument, Public Service states that it is a public utility<sup>46</sup> and that the Baxter, Hunter Canyon, North Douglas, and Indian Valley Systems "are currently in rate base, and they have been included in rate base for decades."<sup>47</sup> In addition, the depreciation rates approved by the Commission in Public Service's last rate case apply to the Gas Gathering Assets.<sup>48</sup> As a result, the gas Gathering Assets are a component of Public Service's current Commission-approved cost of service used to determine current rates.<sup>49</sup> The Commission thus has exercised jurisdiction over the Gas Gathering Assets for decades.

35. Further, the Gas Gathering Assets are a component of Public Service's integrated pipeline network over which Public Service provides "jurisdictional transportation services" to the public pursuant to its tariff.<sup>50</sup> In addition, Public Service does not provide a standalone gas gathering service. Instead, the Gas Gathering Assets are part of Public Service's transportation service. Finally, during Public Service's ownership of the Gas Gathering Assets, they have produced liquids and byproducts that have been sold and thereby produced revenues that Public

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<sup>44</sup> *Id.* at 22-27.

<sup>45</sup> *Id.* at 23.

<sup>46</sup> *Id.* at 27-28.

<sup>47</sup> Public Service's SOP at 21.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 21-22.

<sup>50</sup> *Id.* at 5.

Service has applied as a credit to decrease both Public Service's cost of service and the rates charged to ratepayers.<sup>51</sup>

36. Public Service reiterates that the way in which it has accounted for the Gas Gathering Assets currently and over time has been consistent with FERC's Uniform System of Accounts and applicable depreciation principles approved by the Commission. As to the former, no gain or loss should be recognized on the sale of the Gas Gathering Assets, and they should be treated as fully depreciated for regulatory accounting purposes.<sup>52</sup> As to the latter, Public Service has followed the Commission-approved group depreciation method for the Gas Gathering Assets, which results in "any remaining unrecovered net book costs that may be attributable to the Gas Gathering Assets will continue to be reflected within the depreciation reserve and will effectively be recovered through future depreciation expense accrued over the remaining lives of the assets that remain in the affected accounts following the sale."<sup>53</sup>

37. Finally, Public Service repeats that approval of its requested accounting treatment is important for certainty and administrative efficiency. As to the former, Public Service states that not granting its requested accounting treatment will "[l]eav[e] the Company with no direction how to record the Transaction will also inject unnecessary uncertainty into the Company's accounting for the Transaction and, in turn, the presentation of its financial statements until the accounting issue is resolved."<sup>54</sup> As to the latter, Public Service argues that "[a]dministrative efficiency is best served by not requiring the parties to develop a new record

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<sup>51</sup> *Id.* at 22 n.82 (citing Hearing. Ex. 101, Rev. 1 at 24:19-23 (Direct Testimony of Mr. Trowbridge); Hearing Transcript at 40:6-10).

<sup>52</sup> *Id.* at 8-9.

<sup>53</sup> *Id.* at 9.

<sup>54</sup> *Id.* at 19.

and re-litigate the accounting issue in a future proceeding before the Commission.”<sup>55</sup> According to Public Service, it “is not requesting that the Commission predetermine rate recovery issues that may be raised on the Transaction in a rate case. Rather, [it] is requesting approval of the accounting treatment of the Transaction as outlined above which, in turn, will inform the ratemaking process in future rate cases.”<sup>56</sup> Public Service concludes that it is in the public interest to grant the Application in its entirety.

### **III. ANALYSIS**

#### **A. Legal Standard**

38. Section 40-5-105, C.R.S. states:

(1) The assets of any public utility, including any certificate of public convenience and necessity or rights obtained under any such certificate held, owned, or obtained by any public utility, may be sold, assigned, or leased as any other property, but only upon authorization by the commission and upon such terms and conditions as the commission may prescribe; except that this section does not apply to assets that are sold, assigned, or leased:

(a) In the normal course of business; or

(b) That are owned by a telecommunications service provider and:

(I) Are not used in the provision of regulated telecommunications services; or

(II)

(A) Are land and support assets and are not directly used in the provision of regulated telecommunications services.

(B) A telecommunications service provider shall provide notice to the commission of transactions subject to this subparagraph (II), along with the associated accounting entries on the provider’s books and records, to permit the commission to determine, if necessary, the disposition of any gain or loss from the transaction.

39. Commission Rule 4104 states in relevant part that:

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<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at 17.

(b) An application to transfer a certificate of public convenience and necessity, to transfer or obtain a controlling interest in a utility, or to transfer assets subject to the jurisdiction of the Commission shall include, in the following order and specifically identified, the following information, either in the application or in appropriately identified attachments:

. . . .

(IV) all facts showing that the transaction which is the subject of the application is not contrary to the public interest;<sup>57</sup>

40. No party contends that the proposed transaction is in the normal course of business, or that a telecommunications service provider owns the Gas Gathering Assets. Accordingly, Public Service must establish that approving the sale of the Gas Gathering Assets is not contrary to the public interest. As to all other issues, Public Service must establish good cause for its requested relief.

**B. Burden of Proof**

41. Public Service bears the burden of proof by a preponderance of the evidence in this proceeding.<sup>58</sup> The evidence must be “substantial evidence,” which is defined as “such relevant evidence as a reasonable person’s mind might accept as adequate to support a conclusion ... it must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury.”<sup>59</sup> A party has satisfied its burden under this standard when the evidence, on the whole, tips in favor of that party.

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<sup>57</sup> 4 CCR 723-4.

<sup>58</sup> Section 24-4-105(7), C.R.S.; § 13-25-127(1), C.R.S.; Rule 1500 of the Rules of Practice and Procedure, 4 CCR 723-1.

<sup>59</sup> *City of Boulder v. PUC*, 996 P.2d 1270, 1278 (Colo. 2000) (quoting *CF&I Steel, L.P. v. PUC*, 949 P.2d 577, 585 (Colo. 1997)).

## C. Findings and Conclusions

### 1. Jurisdiction

42. The ALJ concludes that the Commission has jurisdiction to decide the issues raised by the Application. The evidence establishes that: (a) the Baxter, Hunter Canyon, North Douglas, and Indian Valley Systems have been included in Public Service's Commission-approved rate base for decades;<sup>60</sup> (b) the Gas Gathering Assets have produced liquids and byproducts that have produced revenues that Public Service has applied as a credit to decrease both Public Service's cost of service and the rates charged to ratepayers;<sup>61</sup> (c) Public Service has provided transportation services over the Gas Gathering Assets pursuant to its regulated transportation tariff and it is the only service provided by Public Service over the Gas Gathering Assets;<sup>62</sup> (d) Public Service does not have a gas gathering rate and thus does not offer stand-alone gas gathering service on the Gas Gathering Assets;<sup>63</sup> (e) the Baxter and Hunter Canyon Systems are part of Public Service's integrated pipeline system into which shippers can deliver gas and have Public Service transport that gas across its system and deliver it to end users on other parts of its system.<sup>64</sup> These facts establish that the Commission has jurisdiction over the Gas Gathering Assets and to provide the relief sought in the Application.

43. The Colorado Supreme Court's decision in *Mountain States Tel. & Tel. Co. v. PUC*, 763 P.2d 1020 (Colo. 1988) supports this conclusion. There, the Commission invalidated the transfer of Mountain Bell's directory publishing assets to one of its subsidiaries. While not directly used in the provision of utility service, Mountain Bell included the depreciated Yellow

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<sup>60</sup> Hearing Exhibit 104, Rev. 1 at 17:5-7 (Rebuttal Testimony of Mr. Trowbridge).

<sup>61</sup> *Id.* at 22 n.82 (citing Hearing. Ex. 101, Rev. 1 at 24:19-23 (Direct Testimony of Mr. Trowbridge); Hearing Transcript at 40:6-10).

<sup>62</sup> Hearing Exhibit 102 at 20:19-21:5, 38:12-24 (Direct Testimony of Ms. Roberts).

<sup>63</sup> Hearing Transcript at 20:22-25, 69:18-20.

<sup>64</sup> Hearing Exhibit 102 at 12:8-18 (Direct Testimony of Ms. Roberts).

Pages assets in its rate base and credited the associated revenues for ratemaking purposes.<sup>65</sup> Nevertheless, Mountain Bell argued that Commission jurisdiction did not extend to its Yellow Pages business because it was a private venture,<sup>66</sup> and, on judicial review, urged the Court to limit the phrase “assets of any public utility” in § 40-5-105, C.R.S. to those assets that are “essential” to providing the utility service in question.<sup>67</sup>

44. In its decision upholding the Commission’s decision, the Colorado Supreme Court declined to so limit § 40-5-105, C.R.S. In so doing, the Colorado Supreme Court first held that “the PUC's authority under article XXV is not narrowly confined but extends to incidental powers which are necessary to enable it to regulate public utilities.”<sup>68</sup> The Colorado Supreme Court then stated that § 40-5-105:

applies to assets transfers which are not in the ordinary course of business. It is undisputed that the publishing assets were assets of Mountain Bell, and we will not read into the statute the qualifying language proposed by Mountain Bell. To take the position urged by Mountain Bell would restrict unreasonably the PUC's ability to oversee assets transfers and would place the PUC in the untenable position of relying on the truth of a utility’s representation that the assets in question do not affect its provision of services or the rates charged to ratepayers. Our statutory scheme does not cast the PUC in such a restricted role. Section 40-5-105 requires the PUC to review *any* proposed transfer of public utility assets not done in the ordinary course of business and allows a transfer to proceed only if the PUC so authorizes and on the terms which the PUC may impose.<sup>69</sup>

The Colorado Supreme Court concluded that the Commission had jurisdiction over the transfer under § 40-5-105, C.R.S.

45. Here, as in *Mountain States*, there is no dispute that Public Service is a public utility. In addition, the depreciated assets of the Baxter, Hunter Canyon, North Douglas, and

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<sup>65</sup> 763 P.2d at 1026.

<sup>66</sup> *Id.* at 1024-1025.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.* at 1025.

<sup>69</sup> *Id.* at 1026 (emphasis added) (footnotes omitted).

Indian Valley Systems have been included in Public Service's rate base since Public Service took ownership of them. Finally, Public Service contends that it uses the Baxter, Hunter Canyon, North Douglas, and Indian Valley Systems to provide jurisdictional transportation service. As a result, *Mountain States* establishes that the Commission has jurisdiction over the transfer of the Baxter, Hunter Canyon, North Douglas, and Indian Valley Systems.

46. UCA's argument that *Mountain States* was legislatively overturned in its entirety by the change to § 40-5-105, C.R.S. in 2004 is unavailing. The goal of statutory interpretation is to give effect to the intent of the General Assembly. The language of the statute must be read and considered as a whole, and it should be construed to give consistent, harmonious, and sensible effect to all its parts.<sup>70</sup> Words and phrases must be given their plain and ordinary meaning.<sup>71</sup> Where statutory language is unambiguous, resort to other rules of statutory interpretation is unnecessary and the language is applied as written.<sup>72</sup>

47. If the statutory language is ambiguous, however, additional tools of statutory construction are employed.<sup>73</sup> These tools include the consequences of a given construction, the end to be achieved by the statute, and the circumstances surrounding the statute's adoption.<sup>74</sup> One of the best guides is the context in which the statutory provisions appear.<sup>75</sup> A statute is ambiguous if it is reasonably susceptible to multiple interpretations that lead to different results.<sup>76</sup> "The plainness or ambiguity of statutory language is determined by reference to the language

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<sup>70</sup> *Safehouse Prog. Alliance for Nonviolence, Inc. v. Qwest Corp.*, 174 P.3d 821, 826 (Colo. App. 2007).

<sup>71</sup> *In re Miranda*, 289 P.3d 957, 960 (Colo. 2012).

<sup>72</sup> *Foiles v. Whittman*, 233 P.3d 697, 699 (Colo. 2010).

<sup>73</sup> *Larrieu v. Best Buy Stores, L.P.*, 303 P.3d 558, 561 (Colo. 2013).

<sup>74</sup> *Bostelman v. People*, 162 P.3d 686, 690 (Colo. 2007); *Williams v. Kunau*, 147 P.3d 33, 36 (Colo. 2006).

<sup>75</sup> *St. Vrain Valley Sch. Dist. RE-1J v. A.R.L.*, 325 P.3d 1014, 1019 (Colo. 2014).

<sup>76</sup> *See A.M. v. A.C.*, 296 P.3d 1026, 1030 (Colo. 2013).

itself, the specific context in which that language is used, and the broader context of the statute as a whole.”<sup>77</sup>

48. Here, the ALJ concludes that the change to § 40-5-105, C.R.S. unambiguously did not overturn the *Mountain States*’ decision in its entirety. The version of § 40-5-105, C.R.S. that the *Mountain States* court construed read as follows:

The assets of any public utility, including any certificate of public convenience and necessity or rights obtained under any such certificate held, owned, or obtained by any public utility, may be sold, assigned, or leased as any other property other than in the normal course of business but only upon authorization by the commission and upon such terms and conditions as the commission may prescribe.<sup>78</sup>

The statute was amended in 2004 and currently reads:

(1) The assets of any public utility, including any certificate of public convenience and necessity or rights obtained under any such certificate held, owned, or obtained by any public utility, may be sold, assigned, or leased as any other property, but only upon authorization by the commission and upon such terms and conditions as the commission may prescribe; except that this section does not apply to assets that are sold, assigned, or leased:

- (a) In the normal course of business; or
- (b) That are owned by a telecommunications service provider and:
  - (I) Are not used in the provision of regulated telecommunications services; or
  - (II)
    - (A) Are land and support assets and are not directly used in the provision of regulated telecommunications services.
    - (B) A telecommunications service provider shall provide notice to the commission of transactions subject to this subparagraph (II), along with the associated accounting entries on the provider's books and records, to permit the commission to determine, if necessary, the disposition of any gain or loss from the transaction.<sup>79</sup>

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<sup>77</sup> *People v. Diaz*, 347 P.3d 621, 625 (Colo. 2015).

<sup>78</sup> UCA SOP at 10.

<sup>79</sup> *Id.* at 11.

49. UCA asserts that:

The Legislature adopted these amendments specifically to overrule *Mountain States*. The amendments undo the holding in *Mountain States* to narrowly construe the Commission's regulation of public utility assets that are (directly) used in the provision of regulated telecommunications services.

In other words, the Legislature agreed with the arguments made by Mountain Bell, that §40-5-105, C.R.S. is limited to those assets which are "essential" to providing the utility service in question. Because ALJ Farley relied heavily on this case to deny UCA's Motion for Summary Judgment, UCA respectfully requests that the ALJ revisit the ruling in light of the fact that *Mountain States* has been overruled by the Legislature and is no longer "good law."<sup>80</sup>

50. The ALJ disagrees. As an initial matter, the *Mountain States* decision did not limit its holding to telecommunications utilities, either expressly or by implication. In fact, the Colorado Supreme Court repeatedly referred in its holding to "utilities" and "public utilities." As a result, the *Mountain States* holding unambiguously applied to *all* public utilities, not just to *telecommunications* utilities.

51. The 2004 legislative change to § 40-5-105, C.R.S. removed the sale, assignment, or leasing of certain assets owned by *telecommunications service providers* from the jurisdiction of the Commission. As to those assets owned by telecommunications service providers, therefore, the legislative change undid the holding in *Mountain States*. However, the 2004 changes did not impact the remainder of the *Mountain States*' holding that applies to all other public utilities.<sup>81</sup> As a result, the *Mountain States*' holding construing the Commission's jurisdiction over the sale, assignment, or leasing of assets by public utilities other than telecommunications service providers was not affected by the 2004 legislative amendment and remains good law.

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<sup>80</sup> *Id.*

<sup>81</sup> *Mountain States*, 763 P.2d at 1026.

52. Similarly, UCA's argument that the 1989 and 2003 Commission decisions it cites establish that the Commission does not have jurisdiction over the Gas Gathering Assets in this proceeding is unpersuasive. As an initial matter, the decisions are not in this proceeding's evidentiary record, which makes it difficult for the ALJ to assess the cited portions thereof in light of the entirety of each decision. In the portions of the 1989 decision that are in the record, the Commission held that the Commission has jurisdiction over gas transportation service except for "any part of any pipeline *primarily* used for . . . gathering . . . of natural gas." The portion of the 2004 decision in the record states that "pipelines . . . used *exclusively* for . . . gathering . . . are not jurisdictional to this Commission." These excerpts do not agree as to the degree to which a portion of a pipeline must provide gas gathering services before it falls outside of the Commission's jurisdiction, or how to measure the degree to which a portion of a pipeline is used for gas gathering versus transportation services. Nor do they address whether the Commission has jurisdiction over a portion of a utility's integrated pipeline system that gathers gas but then transports the gas over the utility's pipeline system pursuant to the utility's transportation service, has been in the utility's rate base for an extended period, has produced revenues that decreased the rates of the utility's ratepayers during the period in which it has been in a utility's rate base, and the utility does not offer a stand-alone gas gathering service.

53. Here, the Gas Gathering Assets are used *exclusively* for transportation service. In fact, the record establishes that Public Service does not even offer gas gathering services. In addition, the Gas Gathering Assets have been in Public Service's rate base for decades and have generated revenues used to decrease the rates of Public Service's gas ratepayers. While the record in this proceeding does not include the identities of any current customers that employ Public Service to transport gas across the Gas Gathering Assets, that does not mean that there are

no such customers. Regardless, Public Service testified that it stands ready and willing to provide such service to a customer.<sup>82</sup> Finally, it is well-established that prior Commission decisions are not binding precedent in future proceedings.<sup>83</sup> Accordingly, the limited and incomplete portions of the decision cited by UCA do not convince the ALJ that the Commission does not have jurisdiction over the Gas Gathering Assets at issue in this proceeding.

54. Based on the foregoing, the ALJ finds and concludes that, based on the unique facts and circumstances in this proceeding, the Commission has jurisdiction to address the relief sought in the Application.

## 2. Sale of Gas Gathering Assets

55. The ALJ finds and concludes that there is insufficient evidence in this record upon which to conclude that granting Public Service's request to sell the Gas Gathering Assets to UGC Midstream is inconsistent with the public interest or otherwise inconsistent with the provisions or purpose of § 40-5-105, or Rule 4104(b)(IV) of the Gas Rules.<sup>84</sup> On this point, the Company put forth substantial evidence supporting its request to approve the sale of the Gas Gathering Assets. For example, the record conclusively establishes that Public Service no longer needs the Gas Gathering Assets. Public Service has not recently used the Gas Gathering Assets to supply gas to its ratepayers because Public Service has a sufficient gas supply from other resources. In any event, Public Service could still receive gas from the Gas Gathering Assets after the sale because Public Service "will continue to maintain all of its facilities that connect to the Baxter and Hunter Canyon Stations and will stand ready to receive gas from UGC Midstream for subsequent

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<sup>82</sup> Hearing Transcript at 143:15-23.

<sup>83</sup> See *Colorado-Ute Electric Ass'n. v. Public Util. Comm'n.*, 602 P.2d 861, 865 (Colo. 1979); *B&M Services, Inc. v. Public Util. Comm'n.*, 429 P.2d 293, 295 (Colo. 1967).

<sup>84</sup> 4 CCR 723-4.

downstream transportation.”<sup>85</sup> Similarly, Public Service’s transportation customers who have employed the Gas Gathering Assets to transport their gas can continue to do so with UGC Midstream.<sup>86</sup>

56. In addition, Public Service will avoid the O&M expenses, anticipated future capital expenditures, and decommissioning costs associated with the Gas Gathering Assets.<sup>87</sup> While the parties dispute the amount and proper characterization of these avoided costs, the record establishes that they would not be insignificant.

57. Finally, the proposed sale would protect Public Service and its ratepayers from all liability associated with the Gas Gathering Assets because the assets are being sold in their “as-is, where-is” condition.<sup>88</sup> This means that Public Service will not be financially responsible for any decommissioning and remediation costs associated with the Gas Gathering Assets.<sup>89</sup> While such costs have not been estimated, they could be substantial, which may explain, at least in part, the purchase price of \$600,000 that on the surface appears to be relatively low.<sup>90</sup> The fact that the Baxter system requires significant repairs likely contributed to the relatively low purchase price as well.<sup>91</sup>

58. Staff does not oppose the sale.<sup>92</sup> UCA’s position is less clear. At the hearing, Mr. Skluzak testified that UCA would not oppose the sales transaction if the ALJ “finds and

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<sup>85</sup> Hearing Exhibit 101, Rev. 1 at 31:18-32:7 (Direct Testimony of Mr. Trowbridge).

<sup>86</sup> *Id.* at 23:5-18.

<sup>87</sup> Hearing Exhibit 102 at 18:1-21:11 (Direct Testimony of Ms. Roberts).

<sup>88</sup> Hearing Exhibit 101, Attach. AGT-1 at 5 (Article 3.1(e)), 7-8 (Article 10.1).

<sup>89</sup> Hearing Exhibit 104, Rev. 1 at 6:18-7:1 (Rebuttal Testimony of Mr. Trowbridge).

<sup>90</sup> *Id.* at 45: 17-23.

<sup>91</sup> Hearing Exhibit 101, Rev. 1 at 30:5-31:17 (Direct Testimony of Mr. Trowbridge).

<sup>92</sup> Staff’s SOP at 13-14.

concludes that [it] is in the public interest.”<sup>93</sup> Mr. Skluzak later testified that, while it opposes the accounting treatment and classification of the transaction as a retirement of the Gas Gathering Assets proposed by Public Service, UCA takes no position with respect to the sales transaction.<sup>94</sup> However, in its SOP, UCA does not state whether it supports the sale transaction separate and apart from the requested retirement of the Gas Gathering Assets and accounting treatment. Instead, UCA makes statements like “[a]t a minimum, the Commission should deny [Public Service’s] retirement, accounting treatment, and cost recovery proposals because of the significant harm that they would cause to ratepayers.”<sup>95</sup> The ALJ interprets the positions taken by Staff and UCA as agreement that the sale of the Gas Gathering Assets taken in isolation is in the public interest.

59. Based on the foregoing, the ALJ finds and concludes that Public Service’s request to sell the Gas Gathering Assets to UGC Midstream is not inconsistent with the public interest or otherwise inconsistent with the provisions or purpose of § 40-5-105, or Rule 4104(b)(IV) of the Gas Rules.

### 3. Requested Regulatory Accounting Treatment

60. The ALJ will deny the regulatory accounting treatment requested by Public Service. The ALJ finds and concludes that Public Service has not satisfied its burden of establishing that there is good cause to grant the requested relief. The ALJ concludes that the question of whether ratepayers will pay the undepreciated net book value of the Gas Gathering

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<sup>93</sup> Hearing Transcript at 242:8-15.

<sup>94</sup> *Id.* at 242:18-23.

<sup>95</sup> UCA’s SOP at 27. *See id.* at 26 (“Accordingly, at a minimum, PSCo’s proposed accounting treatment and cost recovery mechanisms must be denied.”); 28 (“if the Commission finds that it has jurisdiction over the Gas Gathering Assets, the Commission should, at a minimum, reject the Company’s requests for approval of its proposals for retirement, regulatory accounting treatment, and cost recovery.”).

Assets should be made in the context of a rate case, when the Commission can review the issue in the context of the entirety of Public Service's revenues and costs.

61. Public Service contends that granting its requested accounting relief will provide "necessary guidance to [Public Service] to proceed with the Transaction with UGC Midstream."<sup>96</sup> Conversely, not granting its requested accounting treatment will "[l]eav[e] the Company with no direction how to record the Transaction will also inject unnecessary uncertainty into the Company's accounting for the Transaction and, in turn, the presentation of its financial statements until the accounting issue is resolved."<sup>97</sup> However, Public Service has not contended that it cannot account for the transaction in the absence of approval of its requested accounting treatment. In fact, although Public Service argues in its SOP that its requested accounting relief will provide "necessary guidance," in discovery Public Service admits that "the Company could have requested that the Commission defer its ruling on the accounting and cost recovery issue until a future rate case."<sup>98</sup> Moreover, prior proceedings addressing the proposed sale of other Public Service gas gathering assets indicate that Public Service can perform the necessary accounting in the absence of the requested relief. Indeed, in those proceedings, Public Service did not even request the accounting relief sought in this proceeding.<sup>99</sup>

62. Public Service also asserts that granting its requested accounting relief "will not predetermine cost recovery issues in a future rate case."<sup>100</sup> However, if the requested accounting treatment is granted here, it goes without saying that in the future rate case Public Service will

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<sup>96</sup> Public Service's SOP at 7.

<sup>97</sup> *Id.* at 19.

<sup>98</sup> Hearing Exhibit 345 at 1 (PSCo Response to UCA 5-7); *see also* Hearing Transcript at 92:1-25, 93:1-2.

<sup>99</sup> Public Service's SOP at 11 ("The Company acknowledges that it did not previously request Commission approval of its proposed accounting in two prior applications where the Company sought authorization to abandon, retire, and sell certain other gas gathering facilities.") (citing Decision No. C94-1278 issued in Proceeding No. 94A-447G on Sept. 29, 1994 and Decision No. C15-0528 issued in Proceeding No. 15A-0260G on Jun. 4, 2015).

<sup>100</sup> *Id.*

attach significance to this decision and argue that the Commission need not reevaluate the decision because it was correct and made based on a full record. Public Service will also likely assert in a future rate case that administrative efficiency dictates the Commission not revisit the issue, at least not in depth.<sup>101</sup>

63. UCA has raised legitimate questions about Public Service's proposed accounting treatment in which no loss is recognized on the sale at least in part because the sale is not "for a whole operating system or operating unit."<sup>102</sup> UCA argues that this regulatory approach paves the way for Public Service to require ratepayers to bear the cost of the undepreciated net book value of the Gas Gathering Assets.<sup>103</sup> Public Service appears to concede that additional accounting considerations are triggered when an entire functional group of assets are retired but argues that such considerations are inapplicable here because "\$800,000 of assets will remain in the Production and Gathering functional category after the sale of the Gas Gathering Assets to UGC Midstream."<sup>104</sup> Yet, Public Service has at least suggested elsewhere that the sale of the Gas Gathering Assets to UGC Midstream will "remov[e] the Production and Gathering class of assets from its fleet."<sup>105</sup> The future rate case will provide the opportunity for additional evidence to be gathered regarding any assets that may remain in the Production and Gathering functional category at that time, which may better inform the determination of whether Public Service's

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<sup>101</sup> Cf. Public Service's SOP at 2 ("Given that Staff and the UCA have not shown an error in the Company's accounting, the Company respectfully requests the Commission approve the accounting in this proceeding, avoiding the need for the parties and the Commission to re-litigate the same issues in a future proceeding (as the UCA requests), which represents a waste of resources and fails to further the goals of administrative and regulatory efficiency."); 4 ("To provide necessary clarity, avoid administrative waste, and assist customers in receiving the benefits of the Transaction, the Commission should address the Company's accounting."); 19 ("Administrative efficiency is best served by not requiring the parties to develop a new record and re-litigate the accounting issue in a future proceeding before the Commission.").

<sup>102</sup> UCA's SOP at 26-27.

<sup>103</sup> *Id.*

<sup>104</sup> Public Service's SOP at 16.

<sup>105</sup> Hearing Exhibit 103, Rev. 1 at 9:10-11 (Direct Testimony of Ms. Wold).

proposed accounting treatment to not recognize a loss on the sale is correct. This could ultimately impact whether ratepayers should pay the undepreciated net book value of the Gas Gathering Assets.

64. Finally, the future rate case will provide important context that will better inform the decision about whether ratepayers should pay the substantial undepreciated net book value of the Gas Gathering Assets. In setting rates in a rate case, the Commission must consider the interests of both the utility's investors and ratepayers and consider "the evidence as a whole."<sup>106</sup> The future rate case will provide a more robust evidentiary record of Public Service's overall revenue requirement and the interests of its investors and ratepayers, which will allow the Commission to make a more informed decision about whether ratepayers should pay the undepreciated net book value of the Gas Gathering Assets.

65. For similar reasons, the ALJ will reject Staff's arguments to deny the Company's requested cost recovery.<sup>107</sup> Staff argues that ratepayers should not be asked to pay more than they already have for the assets. The main thrust of Staff's argument, however, rests on issues that are more appropriately decided in a rate case (*e.g.*, some of the Gas Gathering Assets are no longer used and useful,<sup>108</sup> Public Service has under depreciated the Gas Gathering Assets,<sup>109</sup> and the Company mismanaged the assets<sup>110</sup>). The ALJ declines to grant such arguments in this Proceeding, which is focused on whether the Commission should authorize the sale of the Gas Gathering Assets. Staff may raise these arguments in a future rate case in which the Company is actually seeking cost recovery for the sale of the Gas Gathering Assets.

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<sup>106</sup> *Colorado Office of Consumer Counsel v. PUC*, 275 P.3d 656, 660 (Colo. 2012).

<sup>107</sup> Staff's Statement of Position at- 15.

<sup>108</sup> *Id.* at 13.

<sup>109</sup> *Id.* at 11-12.

<sup>110</sup> *See id.* at 8.

66. The decisions cited by Public Service in the proceedings addressing the sale of Public Service's streetlighting facilities do not mandate a different result. Neither decision specifically approved any accounting treatment or cost recovery by Public Service. Rather, they approved only the sales of the street lighting facilities.<sup>111</sup> To the extent that the decisions address the proposed accounting treatment, they merely recite Public Service's statement about how it would account for the proceeds of the sales.<sup>112</sup> Neither decision thus supports Public Service's request for approval of its proposed accounting treatment in this proceeding.

67. Based on the foregoing, the ALJ concludes that Public Service has not satisfied its burden of establishing good cause to approve its requested accounting treatment for the sale of the Gas Gathering Assets. Public Service can raise the issue again in its next rate case.

#### **D. Transactions Costs**

68. In the Application and its supporting direct testimony, Public Service proposed to recover its \$100,000 in transaction costs from the \$600,000 sales price, resulting in net proceeds from the sale \$500,000.<sup>113</sup> In its rebuttal testimony, Public Service agreed not to recover its transaction costs or otherwise reduce the purchase price by \$100,000.<sup>114</sup> The ALJ finds and concludes that there is good cause to adopt Public Service's rebuttal position and not deduct the \$100,000 in transaction costs from the sales proceeds.

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<sup>111</sup> Decision No. R20-0106 issued in Proceeding No. 19A-0534E on February 18, 2020 at 1 (¶ 2), 3 (¶ 8), 5-6 (¶ 13), 6 (Ordering 1); Decision No. C19-0113 issued in Proceeding No. 18A-0083E on January 28, 2019 at 1-2 (¶ 3), 3 (¶ 11), 4 (Ordering ¶ 1).

<sup>112</sup> See Decision No. R20-0106 issued in Proceeding No. 19A-0534E on February 18, 2020 at 4-5 (¶ 11); Decision No. C19-0113 issued in Proceeding No. 18A-0883E on January 28, 2019 at 2 (¶ 6). See also Hearing Exhibits 380 (Public Service's Verified Application in Proceeding No. 19A-0543E limiting request for relief to approval of sale); 381 (Public Service's Marci McKoane's Supplemental Direct Testimony in Proceeding No. 19A-0543E showing that Public Service did not request approval of any accounting treatment or cost recovery).

<sup>113</sup> Hearing Exhibit 103, Rev. 1 at 13:13-16 (Direct Testimony of Ms. Wold).

<sup>114</sup> Hearing Exhibit 104, Rev. 1 at 46:1-47:2 (Rebuttal Testimony of Mr. Trowbridge).

**E. Reporting**

69. Staff requests the Commission order the Company to open a new proceeding in which “the prudence and future regulatory treatment associated with continuing to own, operate, repair, and replace any remaining gas gathering, production, and product extraction assets after the sale requested in this proceeding.”<sup>115</sup> Staff requests this filing be made within six months of a decision. Ms. Ramos identifies information she suggests be included in the filing.

70. In its rebuttal testimony and SOP, Public Service states that Staff’s request is overly broad and will force Public Service “to incur substantial litigation costs.”<sup>116</sup> Instead, Public Service offers to file a report within six months of a final Commission decision in this proceeding “[t]o provide more transparency on [its] remaining assets” that are “functionalized as Production and Gathering. . . . and provide a plan for the future.”<sup>117</sup> “The report will provide the status of the remaining assets and propose a plan for their future, including whether they are necessary to be retained, can be reclassified, or if they should be retired.”<sup>118</sup> According to Public Service, “[t]his report will provide the transparency that Staff seeks, without overburdening the [Public Service].”<sup>119</sup> Its report proposal is “a more efficient, economical, and narrowly-tailored method to address the root of Staff’s concerns.”<sup>120</sup>

71. In its SOP, Staff agrees with the reporting proposal, but wants Public Service to file a report not just once, but semi-annually.<sup>121</sup> Staff also wants the ALJ to order Public Service to meet with Staff “and other interested intervenors”

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<sup>115</sup> Hearing Exhibit 201 at 40:15-41:24 (Answer Testimony of Ms. Ramos).

<sup>116</sup> Public Service’s SOP at 33.

<sup>117</sup> Hearing Exhibit 104, Rev. 1 at 49:1-5 (Rebuttal Testimony of Mr. Trowbridge).

<sup>118</sup> *Id.* at 49:5-8.

<sup>119</sup> *Id.* at 8-9.

<sup>120</sup> Public Service’s SOP at 34.

<sup>121</sup> Staff’s SOP at 14.

to cooperatively develop a reporting format that provides the commission with a clear indication of the location and value of all of the Company's remaining gas gathering, gas production, gathering compression and liquid extraction facilities, with appropriate indications of current financial prudence of each "area-location" and functional grouping of assets, including a Net Present Value calculation based on expected useful life, five years of future capital investments, annual O&M expenditures, and anticipated revenue offsets from liquid sales, and off sets from transport fees. Other accounting concepts like depreciation and taxes should also be part of any analysis.

If the Company and intervenors should not be able to come to consensus on the format of the required reporting, then leeway should be given to allow intervenor and Staff concerns to be presented to the ALJ or Commissioners.<sup>122</sup>

Staff contends that such "financial reporting . . . will act as an important foundational information" in any future proceeding addressing any remaining gas gathering assets owned by Public Service.<sup>123</sup>

72. The ALJ will order a single report to be filed within six months of a final Commission decision in this proceeding. Public Service shall meet with Staff to discuss the content of the report and include in the report a description of the meeting(s) with Staff, the report content proposed by both parties, and the content of the report as filed. Both Staff and UCA have raised legitimate concerns regarding Public Service's continued ownership of gas gathering assets like those addressed in this proceeding. The report should include sufficient information to allow the Commission and Staff to understand why Public Service continues to own such assets, its plan for the remaining gas gathering assets, and why the plan is in the public interest. The ALJ finds and concludes that such a report will provide useful information in any future proceeding addressing any remaining gas gathering assets owned by Public Service.

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<sup>122</sup> *Id.*

<sup>123</sup> *Id.* at 14-15.

**F. Recommended Decision**

73. In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following Order.

**IV. ORDER**

**A. The Commission Orders That:**

1. For the reasons stated above, the Verified Application filed by Public Service Company of Colorado (Public Service) on March 30, 2022 that initiated this proceeding is granted-in-part and denied-in-part, consistent with the discussion above.

2. Public Service is authorized to sell the four gas gathering systems and related assets located in the Colorado counties of Garfield, Mesa, and Rio Blanco described in the Application to UGC Midstream Ltd, LLC pursuant to the terms and conditions of the Gas Gathering Assets Purchase and Sale Agreement in the evidentiary record of this Proceeding.<sup>124</sup>

3. The specific accounting treatment requested by Public Service in the Application and supporting testimony is denied for the reasons stated above.

4. Public Service shall not recover its transaction costs from the sales price of the transaction.

5. Within six months of the final Commission decision in this Proceeding, Public Service will file the Report described above.

6. Proceeding No. 22A-0140G is closed.

7. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

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<sup>124</sup> Hearing Exhibit 101, Attach. AGT-1.

8. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the Recommended Decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

9. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.
10. Response time to any exceptions shall be shortened to ten days.

(S E A L)



THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

CONOR F. FARLEY

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Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,  
Director