

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22AL-0187E

IN THE MATTER OF ADVICE LETTER NO. 1886 - ELECTRIC FILED BY PUBLIC SERVICE COMPANY OF COLORADO TO REVISE ITS COLORADO P.U.C. NO. 8 ELECTRIC TARIFF TO REVISE ITS REVENUE DECOUPLING ADJUSTMENT PILOT TARIFF (RDA PILOT TARIFF), TO BECOME EFFECTIVE JUNE 1, 2022.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
CONOR F. FARLEY
GRANTING JOINT MOTION TO APPROVE
SETTLEMENT AGREEMENT, ACCEPTING
SETTLEMENT AGREEMENT, PERMANENTLY
SUSPENDING TARIFF SHEET, REQUIRING FILING OF
NEW TARIFF SHEET, AND CLOSING PROCEEDING**

Mailed Date: December 29, 2022

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I. STATEMENT

A. Procedural Background

1. On April 29, 2022, Public Service Company of Colorado (Public Service) filed Advice Letter No. 1886-Electric. Public Service seeks to adjust its Revenue Decoupling Adjustment (RDA) for Residential and Small Commercial customers. The effective date of the tariffs filed with Advice Letter No. 1886-Electric is June 1, 2022.

2. On the same day, Public Service filed a Motion for Approval of Alternative Forms of Notice (Motion for Alternative Forms of Notice).

3. On May 9, 2022, the Commission issued Decision No. C22-0284-I that granted Public Service’s Motion for Alternative Forms of Notice.

4. On May 19, 2022, the Colorado Office of the Utility Consumer Advocate (UCA) filed a Letter of Protest. UCA seeks a hearing in this matter and requests that the Commission suspend the effective date of the RDA filed with Advice Letter No. 1886-Electric.

5. On May 24, 2022, Public Service filed a response to UCA’s Letter of Protest.

6. On May 27, 2022, the Commission issued Decision No. C22-0331 that set for hearing the tariffs filed under Advice Letter No. 1886-Electric, suspended their effective date to September 29, 2022, and referred the proceeding to an Administrative Law Judge (ALJ). The proceeding was subsequently assigned to the undersigned ALJ.

7. On May 31, 2022 and June 16, 2022, the UCA and Staff of the Colorado Public Utilities Commission (Staff) filed Notices of Intervention as of Right, respectively.

8. On July 1, 2022, the ALJ issued Decision No. R22-0402-I that acknowledged the interventions of Staff and UCA, set a remote prehearing conference for July 20, 2022, directed Public Service to confer with intervenors about a procedural schedule and discovery procedures, and directed Public Service to file a report by July 15, 2022, detailing the results of the conferral.

9. On July 11, 2022, counsel for Public Service sent an email to the undersigned ALJ that copied all other counsel of record in this proceeding. In the email, Public Service summarized the conferral process to that date and requested an extension of the deadline to file the conferral report to July 18, 2022, because a Staff witness was out of the country until then. The ALJ responded by email to all counsel stating that the requested extension was granted.

10. On July 18, 2022, Public Service filed a Report on an Unopposed Motion to Approve Procedural Schedule, Establish Procedures for Discovery, and Request for Waiver of Response Time (Report). In the Report, Public Service stated that the parties had agreed to the following procedural schedule for the proceeding (Consensus Schedule):¹

¹ Report at 5.

<u>Event</u>	<u>Deadline</u>
Amended Advice Letter with Effective Date of August 1, 2022	July 20, 2022
Direct Testimony	September 28, 2022
Answer Testimony	October 28, 2022
Rebuttal Testimony and Cross-Answer Testimony	November 22, 2022
Corrected Testimony and Attachments	November 30, 2022
Prehearing Motions Stipulations/Settlement Agreements Cross-Examination Matrix	December 7, 2022
Remote Evidentiary Hearing	December 14-15, 2022
Statements of Position	January 6, 2023
Requested Decision Deadline	February 16, 2023

Public Service also stated that the parties agreed that Rule 1405 will govern discovery in this proceeding, except for the following proposed modifications: (a) discovery requests and responses will be served to all Parties electronically; (b) all responses to an individual set of discovery will be provided in a single, combined document following the completion of all responses in the set; and (c) all highly confidential and confidential documents and discovery responses (and any requests containing confidential or highly confidential information) will be served only on parties that have executed the appropriate nondisclosure agreements, and all nonconfidential requests and responses will be served on all parties.²

11. On July 19, 2022, the ALJ responded by email to the counsel included on the previous email as follows:

² *Id.* at 6.

I have reviewed the Unopposed Motion filed yesterday. I will grant-in-part the Unopposed Motion and vacate the remote prehearing conference scheduled for July 20. I will make two modifications to the schedule proposed by the parties. First, I will add a deadline for responses to prehearing motions, which will be December 12, 2022 at 12:00 p.m. Second, I will change the deadline for Statements of Position (SOP) to December 28, 2022. January 6, 2023 as the deadline for SOPs would seriously compromise the Commission's ability to comply with the decision deadline. An interim decision addressing the Unopposed Motion and vacating the remote prehearing conference will issue as soon as reasonably possible.

My decision to grant the Unopposed Motion with the modifications noted above is based on the statement in the July 11, 2020 email that the amended advice letter will have an effective date of August 1, 2022, which I do not believe is expressly addressed in the Unopposed Motion. If my understanding regarding the effective date of the amended advice letter is incorrect, please let me know as soon as possible.

Thank you for the hard work in putting together the proposed schedule and other proposals in the Unopposed Motion.

12. On July 19, 2022, counsel for Public Service stated in an email sent to the ALJ and copying all counsel of record as follows:

If we were to amend the [Advice Letter] to have an effective date of August 15, 2022 (instead of August 1, 2022); would it be possible for the parties to have until January 6, 2023 for SOPs?

13. The ALJ responded by email on July 20, 2022 that the proposal in the preceding email regarding changing the effective date of the proposed Amended Advice Letter to August 15, 2022 was acceptable.

14. On July 20, 2022, Public Service filed an Amended Advice Letter No. 1886-Electric. The effective date of the tariffs filed with Amended Advice Letter No. 1886-Electric is August 15, 2022.

15. On July 26, 2022, the ALJ issued Decision No. R22-0434-I that vacated the remote prehearing conference, extended the effective date of the tariff sheets filed with the

Advice Letter to April 22, 2023, assigned exhibit blocks, and adopted the following pre- and post-hearing schedule:

<u>Event</u>	<u>Deadline</u>
Direct Testimony	September 28, 2022
Answer Testimony	October 28, 2022
Rebuttal Testimony and Cross-Answer Testimony	November 22, 2022
Corrected Testimony and Attachments	November 30, 2022
Prehearing Motions Stipulations/Settlement Agreements Cross-Examination Matrix	December 7, 2022
Responses to Prehearing Motions	December 12, 2022
Remote Evidentiary Hearing	December 14-15, 2022
Statements of Position	January 6, 2023

16. On September 28, 2022, Public Service filed the Direct Testimony and Attachments of Steven W. Wishart.

17. On October 28, 2022, Staff filed the Answer Testimony of Erin T. O’Neill and UCA filed the Answer Testimony of Dr. Scott E. England.

18. On November 22, 2022, counsel for Public Service sent an email to the ALJ stating that the parties had agreed to a settlement of the dispute in the proceeding and would file the settlement documents with the Commission before the deadline for doing so.

19. On November 29, 2022, the parties filed a Joint Motion to Approve Settlement Agreement and Request for Waiver of Response Time (Joint Motion). The parties filed the Settlement Agreement as Attachment A to the Joint Motion.

B. RDA Background

20. The RDA Pilot and associated RDA Pilot Tariff became effective on April 1, 2020, in compliance with Decision No. C20-0096 issued in Proceeding No. 19AL-0268E (the 2019 Phase I Electric Rate Case). The RDA Pilot applies to Residential and Small Commercial customers, and it measures the difference between a baseline of fixed cost recovery authorized by the Commission and actual fixed costs recovered in base rates (the difference being the Decoupling Amount). Over or under recovery of fixed costs is then translated into a surcharge or credit for Residential and Small Commercial customers, as applicable (RDA Rate). The period during which an RDA Rate is, in effect, the Recovery Period.

21. Baseline sales are the weather-normalized sales volumes that were used in the Company's previous Phase I Electric Rate Case. The test year ending August 2019 from the 2019 Phase I Electric Rate Case was used as the RDA baseline for 2020, 2021, and part of 2022. The 2021 Test Year from Proceeding No. 21AL-0317E was used as the RDA baseline beginning April 1, 2022, which is when the 2021 Phase I Electric Rate Case rates went into effect.

22. The RDA Pilot is subject to a three percent symmetrical cap of the forecasted base rate revenue for the applicable Recovery Period of each respective rate schedule, which is referred to as the Soft Cap. Amounts (both positive and negative) that exceed the Soft Cap are deferred for "up to two (2) years"³ and are included in the calculation of subsequent RDA Rates (RDA Deferral). The Soft Cap is calculated by determining the average monthly customer bills for each rate schedule during the Recovery Period and calculating the dollar per kWh RDA Rate that results in no more than a three percent increase or decrease to these bills, by rate schedule.

³ RDA Pilot Tariff, Sheet No. 133F.

23. Public Service calculates the RDA Rate using a first-in-first-out rule, meaning amounts carried forward from prior periods are given priority. For example, in calculating the RDA Rate for the 2022 Recovery Period, the RDA Deferral for 2020 would be given priority over 2021 amounts.

24. In 2020 and 2021, Public Service recovered \$51.1 and \$49.9 million in fixed costs over the baseline, respectively. Public Service explained the high level of recovery over the baseline from the residential class in its 2021 annual report as follows: “In 2021, similar to 2020, Residential sales volumes were higher than in the 2018/19 Baseline test year for a variety of reasons, including weather, new customer additions, and the effects of the COVID-19 pandemic, and more customers working from home.”⁴ Due to the soft cap, approximately \$9.6 million was refunded to residential customers during the 2021 refund period, which left an RDA deferred balance of \$41.5 million. Application of the soft cap to the 2022 over-recovery results in \$12 million cap in refunds.⁵

25. In the Settlement Agreement in the proceeding addressing the recovery of the amounts expended by Public Service during Winter Storm URI (Proceeding No. 21A-0192EG), Public Service agreed to return, on an accelerated basis, the \$41.5 million in RDA deferred balance (as of end of year 2020) in excess of the established three percent soft cap that as part of a global settlement of issues in that proceeding.⁶ The Settlement Agreement states that the refunded balance would be “included in the soft cap calculation as if returned over a pro-rated two-year period.”⁷ The parties in the Winter Storm Uri proceeding agreed to create an

⁴ Hearing Exhibit 300, Attach. ETO-1 at 8 (Answer Testimony of Ms. O’Neill) (2021 RDA Annual Report).

⁵ Hearing Exhibit 300 at 7:9-10 (Answer Testimony of Ms. O’Neill).

⁶ Hearing Exhibit 102, Attach. SWW-2 at 9-10 (§ V.A.) (Direct Testimony of Stephen Wishart).

⁷ *Id.*

“Extraordinary Gas Cost Recovery Ride” (EGCRR) through which the costs of the Winter Storm URI costs would be recovered. The Settlement Agreement stated that the \$41.5 million in 2020 year-end RDA deferred balance would be returned to residential customers by deducting it from the amount that otherwise would have been collected from residential ratepayers through the EGCRR.⁸ The Recommended Decision issued in the Winter Storm Uri proceeding (Decision No. R22-0279) approved these portions of the Settlement Agreement.⁹

26. The UCA filed exceptions on Decision No. R22-0279 issued in the Winter Storm URI proceeding. UCA argued therein as follows:

The text of the [Winter Storm Uri] Settlement Agreement states that it affects only RDA Year 2020.[14] However, on April 29, 2022, the Company filed an advice letter stating that its refund rate for 2022, based on RDA Year 2021, will be set to zero as a result of the settlement. The advice letter seems to argue that the Settlement Agreement not only dealt with RDA Year 2020, but also *sub silentio* traded away ratepayers’ right to the \$49.9 million overcollection for RDA Year 2021. The Commission should explicitly state in its decision [on exceptions in Proceeding No. 21A0192EG] that the nonunanimous Settlement Agreement does not affect RDA Year 2021 in any way, so that UCA can litigate its protest of the RDA advice letter in [Proceeding] No. 22AL-0187E.

The Commission denied UCA’s exceptions.¹⁰

II. PRE-SETTLEMENT POSITIONS AND SETTLEMENT AGREEMENT

A. Application and Direct Testimony

27. In the Advice Letter, tariff sheets, and Mr. Wishart’s Direct Testimony, Public Service requested that it be permitted to establish a Residential RDA rate of \$0.00 and establish a Small Commercial RDA rate of \$0.00267 per kWh, both through May 31, 2023. According to Public Service, the effect of its proposal would: (a) have zero impact on average Residential

⁸ *Id.*

⁹ Decision No. R22-0279 issued in Proceeding No. 21A-0192EG on May 11, 2022 at 51 (¶ 114)

electric bills due to the \$0.00 RDA rate being implemented for each Residential rate schedule; (b) decrease the electric bills for average Small Commercial on Schedules C and C-TOU by \$1.53 per month; and (c) increase Public Service’s revenues by \$2,340,197.¹¹ Public Service also requested that the Commission decide in this proceeding that “RDA balances remaining after the two-year deferral period provided for under the RDA Pilot Tariff shall neither be recovered from nor returned to customers in subsequent years.”¹² In Mr. Wishart’s Revised Testimony filed on October 21, 2022, Public Service withdrew its request for the Commission to decide in this proceeding how to treat RDA balances remaining after the two-year deferral period provided for under the RDA Pilot Tariff.¹³ Public Service stated that it would file a request for a declaratory order in Proceeding No. 16A-0546E addressing that question.¹⁴

B. Answer Testimony

1. Staff

28. In its Answer Testimony, Staff stated that “[i]n proposing to set the residential RDA to \$0/kWh in the instant proceeding, Public Service correctly implemented the provisions of the Settlement in Proceeding No. 21A-0192EG.”¹⁵ For that reason, and because Public Service withdrew its request for the Commission to decide in this proceeding the “dispute regarding the treatment of any ending RDA balance remaining after being deferred for three years,” Staff stated that “[t]he Commission should approve the Advice Letter filed by Public

¹⁰ Decision No. C22-0413 issued in Proceeding No. 21A-0192EG on July 14, 2022 at 41 (Ordering ¶ 2).

¹¹ Advice Letter No. 1886-Electric at 3.

¹² Hearing Exhibit 102 at 22:5-7 (Direct Testimony of Mr. Wishart).

¹³ Hearing Exhibit 102, Rev. 1 at 6:6-8, 19:1-20:13, 22:5-7 (Direct Testimony of Mr. Wishart).

¹⁴ Public Service’s Notice of Filing Revisions to Testimony at 1-2 (filed on October 21, 2022).

¹⁵ Hearing Exhibit 300 at 5:10-12 (Answer Testimony of Ms. O’Neill).

Service in this proceeding in order to implement the Non-Unanimous Comprehensive Settlement Agreement that the Commission previously approved in Proceeding No. 21A-0192EG.”

2. UCA

29. In its Answer Testimony, UCA requested that the Commission: (a) “[b]egin refunding monies immediately back to the Residential class through the RDA for the 2021 RDA year over collection of \$49.9 million;” (b) “[a]cknowledge the over-collected balances from the Residential portion of the RDA were \$51.1 million and \$49.9 million in RDA years 2020 and 2021 respectively and are due to be refunded through the EGCR (for the 2020 balance) and the RDA (for the 2021 balance);” (c) “[a]cknowledge that the Storm Uri Settlement Agreement did not state that the over collection from the Residential class stemming from RDA year 2021 should not begin being refunded in 2022;” (d) “[a]cknowledge that the Storm Uri Settlement Agreement states that ‘All other issues related to the post-2020 RDA balance remain unresolved until a future proceeding;’” (e) “[a]cknowledge that forecasts regarding balances in 2022 and 2023 are not relevant in this proceeding dealing with the necessary refunding of RDA balance from RDA year 2021, and reject any attempt to include projected balances for any other RDA years in the calculation for Residential ratepayers for refunds stemming from 2021;” and (f) “[a]cknowledge that the RDA tariff is not explicit as to what will happen to monies left over after the three-year refund/surcharge period for each RDA year is over, take no action regarding any factual or legal issues regarding that topic in this proceeding, and order the Company to file a separate declaratory order action on that subject.”¹⁶

¹⁶ Hearing Exhibit 400 at 5:14-6:16 (Answer Testimony of Dr. England).

C. Settlement Agreement

30. All of the parties in this proceeding entered into the Settlement Agreement. The parties agreed that: (a) the residential and Small Commercial RDA rates will be as proposed by Public Service, namely, \$0.00 and \$0.00267 per kWh from January 1, 2023 to May 31, 2023, respectively;¹⁷ (b) “[t]he approximately \$41.5 million associated with the 2020 Residential RDA Deferral is to be included in the RDA Pilot Soft Cap calculations for Residential customers (approximately \$20.75 million for each of the 2022 and 2023 Recovery Periods);”¹⁸ (c) “[b]ased on current projections of the soft cap applicable to the Residential class, it is anticipated the Residential RDA Rate will be \$0.00 per kWh for the 2023 Recovery Period;”¹⁹ (d) “[t]he 2021 Residential RDA Deferral of approximately \$49.9 million shall be available for inclusion for the first time in calculation of RDA Rates for the 2024 Recovery Period;”²⁰ and (e) Public Service “will file a petition for declaratory order on or before April 3, 2023 requesting a decision on or before December 31, 2023 regarding treatment of RDA balances remaining after the two-year deferral period provided for under the RDA Pilot Tariff, including the approximately \$49.9 million Residential RDA Deferral associated with the 2021 Current Year (less any amounts refunded under the Soft Cap).”²¹

¹⁷ Joint Motion, Attach. A at 4.

¹⁸ *Id.* at 5.

¹⁹ *Id.* at 5-6.

²⁰ *Id.* at 6.

²¹ *Id.* at 6-7.

III. ANALYSIS

A. Burden of Proof

31. Except as otherwise provided by statute, the Administrative Procedure Act imposes the burden of proof in administrative adjudicatory proceedings upon “the proponent of an order.”²² The parties filed the Joint Motion and, as a result, bear the burden of proof.²³ The parties must establish by a preponderance of the evidence that the Settlement Agreement is just and reasonable and in the public interest. The Commission has an independent duty to determine matters that are within the public interest.²⁴

B. Modified Procedure

32. The Application, as modified by the Settlement Agreement executed by all of the parties in this proceeding, is uncontested. Moreover, the parties agree that a hearing is unnecessary. Finally, the Application and Settlement Agreement are supported by sworn testimony and attachments that verify sufficient facts to support the Application and Settlement Agreement. Accordingly, pursuant to § 40-6-109(5), C.R.S. and Commission Rule 1403,²⁵ the Application, as modified by the Settlement Agreement, will be considered under the modified procedure, without a formal hearing.

C. Analysis

33. Based upon substantial evidence in the record as a whole, the ALJ finds and concludes that the Settlement Agreement is just and reasonable and not contrary to the public

²² § 24-4-105(7), C.R.S.

²³ 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.

²⁴ See *Caldwell v. Public Utilities Commission*, 692 P.2d 1085, 1089 (Colo. 1984).

²⁵ 4 CCR 723-1.

interest. The ALJ shall approve the Settlement Agreement without material modification and grant the Joint Motion.

IV. RECOMMENDED DECISION

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

V. ORDER

A. The Commission Orders That:

1. For the reasons stated above, the Joint Motion to Approve Settlement Agreement and Request for Waiver of Response Time filed on November 29, 2022, is granted.

2. The Settlement Agreement is approved, consistent with the discussion above. The Settlement Agreement is attached to this Decision as Appendix A.

3. The tariff sheet filed by Public Service Company of Colorado (Public Service) pursuant to Advice Letter No. 1886-Electric is permanently suspended.

4. Public Service shall file on not less than five days' notice to the Commission, an advice letter compliance filing to modify the tariff sheet consistent with the terms of the Settlement Agreement. Public Service shall file the compliance tariff sheet in a separate proceeding. 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.

5. Proceeding No. 22AL-0187E is closed.

6. 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.

7. 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 within 20 days after service, 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.

8. 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.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CONOR F. FARLEY

Administrative Law Judge

ATTEST: A TRUE COPY

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

G. Harris Adams,
Interim Director