

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

* * * * *

**IN THE MATTER OF ADVICE LETTER)
NO. 119 - STEAM OF PUBLIC SERVICE) PROCEEDING NO. 12AL-1269ST
COMPANY OF COLORADO.)**

**JOINT RESPONSES OF PUBLIC SERVICE COMPANY OF COLORADO AND THE
COMMISSION STAFF TO QUESTIONS OF THE ADMINISTRATIVE LAW JUDGE
SET FORTH IN INTERIM DECISION NO. R13-1053-I
REGARDING SETTLEMENT AGREEMENT**

Public Service Company of Colorado (“Company” or “Public Service”) and Staff of the Colorado Public Utilities Commission (“Staff”) (collectively, the “Respondents”) herewith submit their responses to the questions posed by the presiding Administrative Law Judge (“ALJ”) in Interim Decision No. R13-1053-I, issued August 23, 2013, regarding the Settlement Agreement by and between Public Service and Staff filed on August 19, 2013 in the captioned proceeding. Public Service and Staff provide the following joint responses:

A. “Just and Reasonable Rates” Versus Legal Rates.

In paragraph 5.a. of Interim Decision No. R13-1053-I, the ALJ asks several clarifying questions regarding the difference, if any, between the Settlement Agreement’s reference to “just and reasonable rates” and legal rates, referring specifically to the statement, “This single GRSA shall establish the just and reasonable rates for steam service on and after January 1, 2014, subject to the Commission’s authority to establish future just and reasonable rates by subsequent order, after a hearing, upon the Company filing a new steam rate case or other party

filing a complaint pursuant to Section 40-6-108, C.R.S.” Respondents interpret the term “legal rates” to mean any and all rates that may lawfully be charged by a public utility for service to its customers under the Colorado Public Utilities Law, §§ 40-1-101, C.R.S., *et seq.*

Respondents state that the phrase “just and reasonable rates” in the context of the Settlement Agreement has the same meaning accorded to that term under the Colorado Public Utilities Law and, in particular, to those rates established pursuant to the Commission’s powers under § 40-6-111(2)(a), C.R.S., which states, “If a hearing is held thereon, whether completed before or after the expiration of the period of suspension, the [C]ommission shall establish the rates, fares, tolls, rentals, charges, classifications, contracts, practices, rules, or regulations proposed, in whole or in part, or others in lieu thereof, ***which it finds just and reasonable.***” Thus, the distinguishing factor in the use of this term for purposes of the Settlement Agreement, as compared to other legal rates, is the existence of an affirmative determination by the Commission in a written decision that the approved steam rates resulting from the Settlement Agreement are just and reasonable. Other rates that may lawfully be charged for steam service to customers by Public Service do not necessarily come attached with such a Commission determination, such as: (1) rate changes that may be filed by the Company that are not suspended by the Commission pursuant to § 40-6-111(1)(a), C.R.S., and thereby allowed to go into effect by operation of law; (2) interim rates authorized by the Commission pursuant § 40-6-111(1)(d), C.R.S.; (3) rates that are subject to refund, such as the refund condition provided pursuant to Section III.5 of the Settlement Agreement; or (4) rates implemented pursuant to an automatic adjustment mechanism,

such as the Steam Cost Adjustment reflected in the Company's steam tariff, which go into effect subject to subsequent true up and prudence review determinations.

In this sense, the Settlement Agreement's use of the term "just and reasonable rates" was intended to mean that such rates are final, Commission-approved rates, subject to no conditions other than the future exercise of the Commission's powers to establish just and reasonable rates on a prospective basis, after a hearing, either upon the Company's filing of a new rate case pursuant to § 40-3-104, C.R.S., a third-party complaint filed pursuant to § 40-6-108, C.R.S., or a show cause proceeding initiated by the Commission on its own motion pursuant to § 40-6-108, C.R.S.

B. Settlement Provisions If a Hybrid Test Year is Adopted in the Gas Rate Case in Docket No. 12AL-1268G

In paragraph 5.b. of Interim Decision No. R13-1053-I, the ALJ poses a hypothetical where the Commission adopts a hybrid test year -- i.e., part Historic Test Year ("HTY") and part Forward Test Year ("FTY") in the Company's gas rate case in Docket No. 12AL-1268G, and asks what would occur in this proceeding. Respondents state that the Settlement Agreement, as currently written, does not provide for a resolution in such an eventuality. Thus, without further agreement among the settling parties as to how such a hybrid test year decision in Docket No. 12AL-1268G should be applied for purposes of determining the test year for developing steam rates in this proceeding, additional procedures would have to be established to resolve the issue of the appropriate test year and likely other revenue requirements issues in this proceeding. Respondents stipulate that, if such eventuality came to pass, both Public Service and Staff would be willing to agree to extend the refund condition established in this docket for a reasonable period beyond the current sixty (60) day period from and

after January 1, 2014, commensurate with the delay in the procedural schedule resulting from this “blind spot” in the Settlement Agreement.

That being said, Respondents note that no party in Docket No. 12AL-1268G advocated for adoption of a hybrid test year and, as such, the Commission would have to formulate the inputs for its own hybrid test year from the available evidence contained in the record in that proceeding; for example, the various rate base, revenues and expense items embedded in the HTY and FTY revenue requirements studies admitted into evidence in that proceeding. Respondents submit that Public Service has filed (and not withdrawn) in this steam rate case proceeding a similar HTY revenue requirements study (i.e., for the 12-month period ending September 30, 2012) and FTY revenue requirements studies for calendar years 2013 and 2014, as filed and entered into evidence in the gas rate case proceeding in Docket No. 12AL-1268G. Accordingly, Respondents believe that most, if not all, of the various possible hybrid test years that could be adopted by the Commission in Docket No. 12AL-1268G can also be accommodated by similar inputs and adjustments to the corresponding test year revenue requirements studies that have been submitted in this steam rate case proceeding. As such, if a hybrid test year were adopted by the Commission in Docket No. 12AL-1268G, Respondents state that the parties would likely have sufficient opportunity to fully analyze the application of a similar hybrid test year determination in this steam rate case proceeding in order to explore a potential settlement among the parties. At this time, however, Respondents have not discussed the various possible outcomes if the Commission were to adopt a hybrid test year in Docket No. 12AL-1268G.

C. Clarification of the Compliance Filing under Section III.7 of the Settlement Agreement

In paragraph 5.c. of Interim Decision No. R13-1053-I, the ALJ asks several clarifying questions regarding the Compliance Filing provided for in Section III.7 of the Settlement Agreement. Respondents clarify that the Compliance Filing will be submitted in Docket No. 12AL-1269ST. Respondents view the review and verification of the Compliance Filing provided for under the Settlement Agreement to be substantially similar to review and verification process employed by the Commission Staff when Public Service files revised rates in compliance with other Commission decisions establishing just and reasonable rates, but for which some calculations to implement the Commission's specific determinations must be made. Typically, such review and verification process must occur within a few business days after the Commission decision is issued. Respondents submit that there is substantial agreement between Public Service and Staff as to how the revenue requirements models operate and how the various types of adjustments necessary to implement the Commission's specific determinations on the various issues identified in Section III.4 of the Settlement Agreement would flow through the revenue requirements models. Historically, any calculation discrepancies that have arisen between the Company and Staff with respect to the implementation of Commission rate case decisions are of a technical nature, and reflect either incorrect inputs or incorrect application of the revenue requirements model. Accordingly, Respondents do not expect any serious calculation discrepancies that would need to be resolved outside of the normal collaborative process to resolve these types of technical issues. Respondents also note that the settlement limited the test year adjustments in this period to the choice of test

year and eight adjustments around which there is substantial testimony in Docket No. 12AL-1268G.

Respondents provided for a 30-day period within which to resolve “calculation discrepancies” under the Settlement Agreement in recognition that such review and verification process would have to follow in sequence a similar review and verification process to implement the Commission’s gas rate case determinations in Docket No. 12AL-1268G for purposes of the compliance filing in that proceeding, as well as the fact that additional interpretations may be necessary to apply those determinations to this steam rate case proceeding. Respondents recognize that these additional complexities exist and that it is possible that Staff and Public Service may not be able to resolve their differences of opinion as to how the Commission’s gas rate case determinations should be applied to this steam rate case proceeding within the allotted 30-day period. In that event, additional clarification from the Commission may be necessary to resolve the dispute. In order to obtain any such necessary clarification, Respondents would propose a procedure in which the parties jointly file a motion in Docket No. 12AL-1269ST requesting that the Commission suspend the tariff sheets included in the Compliance Filing through the end of the Refund Period (i.e., until March 2, 2014) and that the Commission issue a decision providing the clarification necessary to resolve the dispute before that time. The tariff changes provided for under Section III.8 of the Settlement Agreement would continue in effect until tariff changes consistent with the Commission’s decision clarifying the proper application of its previous decision(s) could be filed and placed into effect.¹ Although the parties did not feel the need to provide for

¹ Respondents note that one possibility resulting from such a Commission decision would be that the Compliance Filing made by Public Service should be adopted and allowed to go into effect on

this procedure under the Settlement Agreement, Respondents do not oppose this procedure being adopted in conjunction with the Commission's approval of the Settlement Agreement.

D. Clarification of the Verification Process under Section III.7 of the Settlement Agreement

In paragraph 5.d. of Interim Decision No. R13-1053-I, the ALJ asks several clarifying questions regarding the Verification Process provided for in Section III.7 of the Settlement Agreement, particularly centering on whether persons in addition to Staff may review the Company's Compliance Filing. Respondents do not believe that persons who are not parties to this proceeding, other than the Commission and the Commission's advisory staff, counsel, and ALJ, should be afforded an opportunity to participate in the formal review and verification of the Compliance Filing contemplated under the Settlement Agreement. All customers and interested persons were provided notice of this steam rate case and were given the opportunity to intervene and become a party to this proceeding. By electing not to become a party, any such person relinquished its right to be involved in any aspect of this proceeding, including the right to review and verify the Company's Compliance Filing provided for under the Settlement Agreement.

Respondents note that the other parties to this proceeding that could potentially have the right to participate in a Compliance Filing review and verification process are the Colorado Office of Consumer Counsel ("OCC") and Colorado Energy Consumers ("CEC"). As explained in footnote 1 of the Settlement Agreement, approval of the Settlement Agreement should result in the OCC no longer having any interest in this

March 2, 2014. Such a determination would not affect Public Service's obligation to make refunds for the period beginning January 1, 2014, through the date the Compliance Filing becomes effective.

proceeding and withdrawing its intervention. With respect to CEC, the Settlement Agreement addresses only the rights and obligations of the parties to the Settlement Agreement, and CEC had not elected to join in the Settlement Agreement that was filed on August 19, 2103. If CEC elects to join in the Settlement Agreement, Respondents do not oppose providing CEC the same review and verification rights provided to Staff under Section III.7, subject to any procedures adopted by the Commission for purposes of resolving any subsequent disputes that cannot be resolved among the parties within the 30-day period allotted.

E. Appropriateness of Permanent Suspension of the Tariff Sheets Filed With Advice Letter No. 119-Steam Amended to Be Replaced on January 1, 2014 Pursuant to Section III.8 of the Settlement Agreement

In paragraph 5.e. of Interim Decision No. R13-1053-I, the ALJ asks whether Respondents would “object to the permanent suspension of the proposed tariff sheets that were filed with the Amended Advice Letter and that are red-lined on Pro Forma Sheet No. 2 in Appendix A to the Settlement Agreement.” Respondents assume that, for purposes of this question, the ALJ intended to reference all three pro forma tariff sheets included in Appendix A to the Settlement Agreement – Pro Forma Sheet No. 2, Pro Forma Sheet No. 3 and Pro Formal Sheet No. 8. Respondents also interpret the ALJ’s questions as referring to the corresponding tariff sheets (Sheet Nos. 2, 3 and 8) that were filed by Public Service with Advice Letter No. 119-Steam Amended and that have been suspended by the ALJ’s interim decisions in this proceeding and that are currently scheduled to come out of suspension by operation of law on January 1, 2014. Based on these interpretations, Respondents have no objection to the filed tariff sheets being permanently suspended if the Commission

approved the Settlement Agreement and authorized the settlement tariff sheets to go into effect on January 1, 2014. Respondents further note that, whether or not the Commission elects to permanently suspend those tariff sheets, they would have no practical effect on the steam rates that Public Service could lawfully charge its steam customers. This is because, if those tariff sheets were not permanently suspended and were allowed to come out of suspension by operation of law on January 1, 2014, they would be immediately replaced and superseded by the three tariff sheets to be filed by Public Service in accordance with Section III.8 of the Settlement Agreement. The result would be that they were effective only for legal purposes and only for an instant, but not for any measurable period of time.

DATED this 6th day of September, 2013.

Respectfully submitted,

/s/ James D. Albright

James D. Albright, # 18685
Wilkinson Barker Knauer LLP
1755 Blake Street, Suite 470
Denver, Colorado 80202-3160
Telephone: (303) 626-2325
Fax: (303) 623-2351
E-mail: jalbright@wbklaw.com

**ATTORNEYS FOR PUBLIC SERVICE COMPANY
OF COLORADO**

JOHN W. SUTHERS
Attorney General



Michael J. Santisi, #29673*
Scott C. Dunbar, #44521*
Assistant Attorneys General
Anne K. Botterud, #20726*
First Assistant Attorney General
Revenue and Utilities Section

**COUNSEL FOR STAFF OF THE
PUBLIC UTILITIES COMMISSION**

1300 Broadway, 8th Floor
Denver, Colorado 80203
Telephone: 720.508.6330 (Santisi)
720.508.6334 (Botterud)
Facsimile: 720.508.6038
Email: michael.santisi@state.co.us
anne.botterud@state.co.us
*Counsel of Record