

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 12AL-1269ST

IN THE MATTER OF ADVICE LETTER NO. 119 - STEAM OF PUBLIC SERVICE
COMPANY OF COLORADO.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
GRANTING JOINT MOTION, APPROVING
AMENDED SETTLEMENT AGREEMENT,
ORDERING COMPLIANCE FILING, ADDRESSING
TARIFF FILING, AND ADDRESSING MOTIONS**

Mailed Date: November 6, 2013

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I. STATEMENT

1. On December 13, 2012, Public Service Company of Colorado (Public Service, PSCo, or Company), filed Advice Letter No. 119 - Steam (Advice Letter) to implement a General Rate Schedule Adjustment (GRSA) to the base rates for its steam service. Accompanying the Advice Letter were tariff sheets that, if in effect, would put into effect a Multi-Year Plan (MYP) by means of GRSA's that would become effective in 2013, in 2014, and in 2015 and would put into effect an Earnings Sharing Mechanism. That filing commenced this Proceeding.

2. On January 11, 2013, by Decision No. C13-0068, the Commission suspended the effective date of the tariff sheets that accompanied the Advice Letter. By that Decision, the Commission suspended the effective date of the tariff sheets until May 12, 2013.

3. By Decision No. C13-0068, the Commission referred this Proceeding to an Administrative Law Judge (ALJ).

4. On January 9, 2013, Trial Staff of the Commission (Staff) timely intervened as of right. Pursuant to Rules 4 *Code of Colorado Regulations* (CCR) 723-1-1007(a) and 723-1-1403(b),¹ that filing identifies litigation staff and advisory staff. Staff filed amended Notices Pursuant to Rule 1007(a) and entries of appearance.

5. On January 17, 2013, Colorado Energy Consumers (CEC) filed a Motion to Intervene. On February 5, 2013, by Decision No. R13-0168-I, the ALJ granted that motion and permitted CEC to intervene.

6. On January 25, 2013, the Colorado Office of Consumer Counsel (OCC) timely intervened as of right.

7. CEC, OCC, and Staff, collectively, are the Intervenors. Public Service and the Intervenors, collectively, are the Parties. All Parties are represented by legal counsel.

8. On February 5, 2013, by Decision No. R13-0168-I, the ALJ scheduled a February 13, 2013 prehearing conference in this matter.

9. The ALJ held the prehearing conference as scheduled and in conjunction with a prehearing conference in Proceeding No. 12AL-1268G. The ALJ made several rulings during the

¹ These Rules are found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations* 723.

course of that prehearing conference. Decision No. R13-0303-I, issued on March 11, 2013, memorializes the rulings.

10. On December 13, 2012, the Company filed the direct testimony and exhibits of 16 witnesses. As filed, those testimonies and exhibits supported both the proposed tariff sheets filed in this Proceeding (Steam Rate Case) and the tariff sheets at issue in Proceeding No. 12AL-1268G, *In the Matter of Advice Letter No. 830 - Gas of Public Service Company of Colorado, with Accompanying Tariff Sheets Concerning Implementing a General Rate Schedule Adjustment (GRSA), to Become Effective January 12, 2013* (Gas Rate Case).

11. On February 22, 2013, and in accordance with the rulings made during the prehearing conference, the Company filed the direct testimonies and exhibits that support its MYP, the three Forecasted Test Years (FTYs), the rates for steam service, and the proposed tariff sheets filed in this Proceeding. Deborah A. Blair,² Scott B. Brockett, Robert B. Hevert, Karen T. Hyde, Kimberly S. Locker,³ Jannell E. Marks, Mark R. McCloskey,⁴ Mark P. Moeller, Lisa H. Perkett, Paul A. Simon, Amy L. Stitt, and Dane A. Watson filed direct testimony.

12. On February 14, 2013, and in accordance with the Stipulation Regarding Filing of Historic Test Year Requirements Study, which stipulation the ALJ approved, the Company filed the Supplemental Direct Testimony of Deborah A. Blair. In the Company's view, this supplemental direct testimony complies with the requirements of Decision No. C13-0064, issued on January 11, 2013 in the Gas Rate Case. Pursuant to Decision No. R13-0303-I, the conditions

² Exhibit DAB-14 is a Highly Confidential Exhibit as it contains information that, on April 29, 2013 in Decision No. R13-0501-I, the ALJ determined is highly confidential.

³ Exhibit KSL-2A is a confidential exhibit as it contains information that the Company claims is confidential.

⁴ Exhibit MRM-1 is a confidential exhibit as it contains information that the Company claims is confidential.

on the burden of going forward and the burden of proof established in Decision No. C13-0064 apply in the instant Proceeding.

13. On March 6, 2013, Public Service filed Advice Letter No. 119 - Steam Amended (Amended Advice Letter). Appended to that filing are the proposed tariff sheets appended to the Advice Letter with a proposed effective date of June 5, 2013.

14. By Decision No. R13-0303-I, the ALJ: (a) suspended, through and including October 3, 2013, the effective date of the proposed tariff sheets appended to the Amended Advice Letter; (b) memorialized rulings made on the then-pending motions; (c) scheduled the evidentiary hearing in this Proceeding for September 23 through 27, 2013; (d) established the procedural schedule; and (e) addressed other matters.

15. On April 29, 2013, by Decision No. R13-0501-I, the ALJ further suspended, through and including January 1, 2014, the effective date of the proposed tariff sheets appended to the Amended Advice Letter.

16. On July 25, 2013, upon motion and by Decision No. R13-0913-I, the ALJ vacated the scheduled evidentiary hearing dates and vacated the procedural schedule. In addition, the ALJ required the Parties to file, no later than August 12, 2013, a comprehensive settlement agreement. On motion, the ALJ later changed the filing date to August 19, 2013.⁵

17. On August 19, 2013, the Parties filed an Unopposed Joint Motion for Decision Scheduling Hearing and Adopting Procedural Schedule and Discovery Cut-Off Dates. By this Decision, the ALJ will deny this motion as moot.

⁵ On August 12, 2013, Public Service filed an Unopposed Motion for Extension of Time to Comply with Decision No. R13-0913-I. By electronic mail sent on August 13, 2013, the ALJ granted this motion. This Decision memorializes that ruling.

18. On August 19, 2013, Public Service, OCC, and Staff filed an Unopposed Joint Motion for Decision Establishing Refund Condition, Approving Stipulated Withdrawal of Certain Rates and Tariff Change Proposals, and Authorizing Tariff Changes Conditionally to be Implemented on January 1, 2014. By this Decision, the ALJ will grant this motion on the sole condition that the Commission does not approve the Settlement Agreement, as amended, discussed below. If the condition is met, the ALJ will order Public Service to implement the motion in accordance with its terms.

19. If the Commission allows this Decision to become a Commission decision by operation of law or issues a decision that approves the Settlement Agreement, as amended, discussed below, then the Unopposed Joint Motion for Decision Establishing Refund Condition, Approving Stipulated Withdrawal of Certain Rates and Tariff Change Proposals, and Authorizing Tariff Changes Conditionally to be Implemented on January 1, 2014 will be denied as moot.

20. On August 19, 2013, Public Service and Staff filed a Settlement Agreement (Settlement Agreement).⁶ No motion to accept the Settlement Agreement accompanied this filing.

21. Public Service and Staff are the signatories to that Settlement Agreement. The Settlement Agreement states, at 2 & n.1, that, “if the Commission approves [the] Settlement Agreement, and particularly the terms providing for removal of the 2015 rate change, the OCC will withdraw its intervention in this proceeding.” The Settlement Agreement also states (at *id.*) that, as of the date on which the Settlement Agreement was filed, CEC was analyzing information and considering its position with respect to the agreement.

⁶ This document is appended to this Decision as Attachment A.

22. On August 23, 2013, by Decision No. R13-1053-I, the ALJ posed questions to Public Service, OCC, and Staff concerning some of the Settlement Agreement's provisions.

23. On September 6, 2013, Public Service and Staff filed their Joint Responses to Questions of the Administrative Law Judge Set Forth in Interim Decision No. R13-1053-I Regarding Settlement Agreement.⁷ The ALJ finds that the responses answer fully the questions posed and clarify the Settlement Agreement.

24. CEC did not sign the Settlement Agreement. On September 12, 2013, by Decision No. R13-1123-I, the ALJ required CEC to file, no later than September 18, 2013, a statement concerning CEC's position on the Settlement Agreement.

25. On September 18, 2013, CEC filed its Responses to Questions of the Administrative Law Judge Set Forth in Decision No. R13-1123-I. In that filing, CEC stated that it opposed the Settlement Agreement as filed; that it had reached an agreement in principle with Public Service and Staff to amend the Settlement Agreement; and that an amended settlement agreement would satisfy CEC's concerns.

26. On October 7, 2013, by Decision No. R13-1260-I, the ALJ required Public Service, CEC, and Staff to file, no later than October 11, 2013, an amended settlement agreement, provided one had been reached between those parties.

27. On October 11, 2013, Public Service, CEC, and Staff filed a Joint Motion for Approval of Amended Settlement Agreement (Motion to Approve).⁸ In the Motion to Approve at 1 & n.1, "the OCC represents that, if the Commission approves this Settlement Agreement, as amended, and particularly the terms providing for removal of the 2015 rate change, the OCC will

⁷ This document is appended to this Decision as Attachment B.

⁸ This is the first motion filed in this Proceeding to approve a settlement agreement.

withdraw its intervention in this proceeding.” An Amendment to Settlement Agreement (Amendment)⁹ accompanied that filing.

28. In accordance with § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record in this Proceeding along with a written recommended decision.

II. FINDINGS, DISCUSSION, AND CONCLUSION

29. Public Service is a public utility that, as pertinent here, provides regulated steam service to its customers in Colorado. As a public utility, Public Service provides regulated steam service pursuant to tariffs on file with the Commission.

30. Intervenor CEC is an unincorporated association of Public Service customers. For purposes of this Proceeding, CEC’s membership consists of the Denver Metro Building Owners and Managers Association and its constituent members that purchase steam and related energy services from Public Service.

31. Intervenor OCC is a Colorado state agency established pursuant to § 40-6.5-102, C.R.S. Its charge is as set out in § 40-6.5-104, C.R.S.

32. Intervenor Staff is trial Staff of the Commission as identified in the Rule 4 CCR 723-1-1007(a) notice filed in this proceeding.

33. The record establishes, and the ALJ finds, that the Commission has subject matter jurisdiction over this case.

34. The record establishes, and the ALJ finds, that the Commission has personal jurisdiction over Public Service and Intervenor.

⁹ This document is appended to this Decision as Attachment C.

35. To provide evidentiary support for the Settlement Agreement, as amended, the Parties have agreed that the direct testimony filed in this Proceeding by Public Service may be admitted into evidence without cross-examination. Joint Motion at 2. Based on the Parties' agreement, the ALJ considers the Company's direct testimony for the sole purpose of providing evidentiary support for the Settlement Agreement, as amended.

36. The Company, CEC, and Staff are the Signatories to the Settlement Agreement, as amended.

37. In this Decision, the ALJ will discuss some, but not all, of the provisions of the Settlement Agreement, as amended. *See* Attachments A and C to this Decision for all provisions.

38. The principal test year-related terms and the principal revenue requirement-related terms of the Settlement Agreement, as amended, are: (a) the proposed 2015 GRSA and the 2015 FTY are withdrawn from consideration in this Proceeding¹⁰ (Settlement Agreement at 8-9); (b) the MYP and the stay-out provision are removed from consideration in this Proceeding (*id.* at 9-10); (c) the type of test year (*i.e.*, Historical Test Year (HTY) or FTY) selected by the Commission in the Gas Rate Case will be the type of test year used to calculate the revenue requirement in this Steam Rate Case (*id.* at 10, as modified by the Amendment at 2); (d) the eight revenue requirement adjustments to the Company's filed test year revenue requirement, which eight adjustments are in the Settlement Agreement at 11, as modified by the Amendment at 3,¹¹ will receive the same treatment in this Steam Rate Case as they receive in the Gas Rate Case

¹⁰ With respect to the withdrawal of the 2015 FTY and the 2015 GRSA, the Settlement Agreement states: "The Company agrees to withdraw its request for a stepped GRSA increase proposed to be effective January 1, 2015, and for consideration of its calendar year 2015 FTY cost of service study from the Steam Rate Case, without prejudice to the Company seeking prospective rate relief at any time through the filing of a future steam rate case. This withdrawal effectively removes all consideration of costs in this Steam Rate Case associated with the proposed Sun Valley Steam Center that is at issue in" Proceeding No. 12A-1264ST. Settlement Agreement at 9.

¹¹ These are the Settlement Adjustments.

(i.e., the same treatment will apply in both cases) (Settlement Agreement at 11); (e) the Settlement Adjustments aside, components of the cost of service study filed by the Company

will continue to be included in the final test year revenue requirement calculation as currently on file in this proceeding[.] ... The Company shall not be entitled to include any updates, corrections or other changes to the inputs to its HTY and FTY revenue requirements studies filed in this proceeding other than as required to incorporate the Commission's determinations in the Gas Rate Case with respect to the ... Settlement Adjustments

(Settlement Agreement at 11 as modified by the Amendment at 3); and (f) following determination of the revenue requirement (including incorporation of the treatment of the Settlement Adjustments), the Company will determine whether it is in a net operating loss position and, if it is, "will calculate and include the impact on revenue requirements associated changes consistent with full normalization in accordance with the procedures set forth in" the Gas Rate Case Rebuttal Testimony of Public Service witness Deborah A. Blair (Hearing Exhibit No. 7) at Exhibit DAB-27 (Settlement Agreement at 12).

39. There are specific provisions addressing implementation of the new rates and the filing of pertinent tariff sheets. The new rates will take effect on January 1, 2014 (Settlement Agreement at 12-13), subject to a verification process (Settlement Agreement at 12 and 13-14, as modified by the Amendment at 3). Importantly, there is a refund condition:

The [Signatories] acknowledge that a final Commission decision in the Company's Gas Rate Case may not be issued early enough to allow for the necessary Staff [and CEC] review and verification, as detailed in Section 7 [of the Settlement Agreement, as amended], to be completed before the expiration of the suspension period applicable to this Steam Rate Case on January 1, 2014. As a consequence, the [Signatories] agree that, to the extent necessary and subject to Section 7 of Part II [of the Settlement Agreement, as amended], the tariff changes proposed by Public Service with [the Amended Advice Letter] and suspended by the Commission in this docket will come out of suspension on January 1, 2014 and will become an effective part of Public Service's Colorado PUC steam tariff. To allow for the Verification Process to be completed after January 1, 2014, Public Service shall be subject to the following refund condition for the period beginning January 1, 2014, and continuing until the earlier of (a) the date on

which a revised general rate schedule adjustment (GRSA) is placed into effect after the Verification Process or (b) March 1, 2014 (“Refund Period”).

If the rates established by the Commission in its final order in this docket are lower than the rates resulting from the GRSA placed into effect on January 1, 2014, Public Service agrees to return to customers on their utility bills through a one-time bill credit the difference between the amount that would have been billed to such customer under the final approved rates and the amount actually billed such customer for the Refund Period based on the GRSA placed into effect on January 1, 2014, with interest calculated at the average bank loan prime rate reported by the Federal Reserve for the Refund Period, currently 3.25%.

Settlement Agreement at 12-13.

40. Section 7 of the Settlement Agreement, as amended (Settlement Agreement at 13-14, as modified by the Amendment at 3), describes the Company’s compliance filing and the verification process. The verification process allows a 30-day time period for CEC and Staff to review the Company’s compliance filing, to verify the Company’s calculations, and to meet with the Company to resolve any calculation discrepancies.

41. If the verification process in Section 7 of the Settlement Agreement, as amended, is not completed before January 1, 2014, the Settlement Agreement, as amended, describes the process by which the Company will withdraw the tariff sheets that were filed with the Amended Advice Letter and that provide for an MYP and the Earnings Sharing Adjustment and also will modify the tariff sheets that were filed with the Amended Advice Letter to be consistent with the corresponding *pro forma* tariff sheets attached as Appendix A to the Settlement Agreement, as amended. The Settlement Agreement, as amended, at 14-16 describes this process.

42. Finally, the Settlement Agreement states at 13: “This Settlement establishes no rate case principles beyond what may be established by the Commission in the Gas Rate Case.”

43. The ALJ has reviewed and considered the Settlement Agreement, as amended. In addition, the ALJ has reviewed the entire record in this matter. Based on that review, the ALJ

finds that the Settlement Agreement, as amended, is clear; is reasonable; will result in just, reasonable, and not unduly discriminatory rates; and, thus, is in the public interest. The ALJ will approve the Settlement Agreement, as amended, and will order Public Service to make filings that comply with the Settlement Agreement, as amended.

44. As discussed above, OCC withdraws its intervention in this Proceeding as a result of the approval of the Settlement Agreement, as amended, which withdrew the proposed 2015 GRSA and the 2015 FTY from consideration in this Proceeding. The ALJ will dismiss OCC as a party in this Proceeding.

45. Pursuant to § 40-6-109(2), C.R.S., the Administrative Law Judge recommends that the Commission enter the following Order.

III. ORDER

A. The Commission Orders That:

1. The Settlement Agreement filed on August 19, 2013 by Public Service Company of Colorado and Staff of the Commission is appended to this Decision as Attachment A and is incorporated here by reference as if fully set out.

2. The Joint Responses to Questions of the Administrative Law Judge Set Forth in Interim Decision No. R13-1053-I Regarding Settlement Agreement, which responses were filed on September 6, 2013 by Public Service Company of Colorado and Staff of the Commission, are appended to this Decision as Attachment B and are incorporated here by reference as if fully set out.

3. The Amendment to Settlement Agreement filed on October 11, 2013 by Public Service Company of Colorado, Colorado Energy Consumers, and Staff of the Commission is

appended to this Decision as Attachment C and is incorporated here by reference as if fully set out.

4. The Settlement Agreement filed on August 19, 2013, as modified by the Amendment to Settlement Agreement filed on October 11, 2013 (Settlement Agreement, as amended), is approved, subject to the conditions stated below.

5. Approval of the Settlement Agreement, as amended, is subject to the following condition: Public Service Company of Colorado shall comply with all provisions and terms of the Settlement Agreement, as amended.

6. Approval of the Settlement Agreement, as amended, is subject to the following condition: within 14 days of the effective date of the Commission decision approving the Settlement Agreement, as amended, or of the effective date of the Commission's decision in Proceeding No. 12AL-1268G, whichever is later, or such other date as the Commission may order, Public Service Company of Colorado shall make a filing that complies with the Settlement Agreement, as amended, at 13-14.

7. Approval of the Settlement Agreement, as amended, is subject to the following condition: to place rates for steam service in effect no later than January 1, 2014, Public Service Company of Colorado shall make a tariff filing that complies with the Settlement Agreement, as amended. The tariff filing that Public Service Company of Colorado shall make depends on whether the verification process described in the Settlement Agreement, as amended, has been completed.

8. The intervention of the Colorado Office of Consumer Counsel is withdrawn, and the Colorado Office of Consumer Counsel is not a party in this Proceeding.

9. The Unopposed Joint Motion for Extension of Time to Comply with Decision No. R13-0913-I, which motion was filed on August 12, 2013, is granted.

10. The Unopposed Joint Motion for Decision Scheduling Hearing and Adopting Procedural Schedule and Discovery Cut-Off Dates, which motion was filed on August 19, 2013, is denied as moot.

11. The Unopposed Joint Motion for Decision Establishing Refund Condition, Approving Stipulated Withdrawal of Certain Rates and Tariff Change Proposals, and Authorizing Tariff Changes Conditionally to be Implemented on January 1, 2014, which motion was filed on August 19, 2013, is granted subject to the following condition: this motion is granted *only* if the Commission does not approve the Settlement Agreement, as amended.

12. If the condition established in Ordering Paragraph No. 11 is met so that the Unopposed Joint Motion for Decision Establishing Refund Condition, Approving Stipulated Withdrawal of Certain Rates and Tariff Change Proposals, and Authorizing Tariff Changes Conditionally to be Implemented on January 1, 2014 is granted, then Public Service Company of Colorado immediately shall take action to implement the terms and conditions of the Unopposed Joint Motion so that the procedures, the refund condition, and the specific tariff changes discussed in that filing become effective on January 1, 2014.

13. If the Commission allows this Decision to become a Commission decision by operation of law or issues a decision that approves the Settlement Agreement, as amended, then the Unopposed Joint Motion for Decision Establishing Refund Condition, Approving Stipulated Withdrawal of Certain Rates and Tariff Change Proposals, and Authorizing Tariff Changes Conditionally to be Implemented on January 1, 2014 is denied as moot.

14. 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.

15. 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.

16. 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)



ATTEST: A TRUE COPY

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

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

Administrative Law Judge