

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

PROCEEDING NO. 20V-0159EG

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IN THE MATTER OF THE JOINT PETITION OF ATMOS ENERGY CORPORATION, COLORADO NATURAL GAS, PUBLIC SERVICE COMPANY OF COLORADO, BLACK HILLS COLORADO GAS, INC., BLACK HILLS COLORADO ELECTRIC, LLC, AND ROCKY MOUNTAIN NATURAL GAS LLC FOR AUTHORIZATION TO TRACK EXPENSES RESULTING FROM THE EFFECTS OF COVID-19 AND RECORD AND DEFER SUCH EXPENSES INTO A REGULATORY ASSET.

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**RECOMMENDED DECISION OF  
ADMINISTRATIVE LAW JUDGE  
MELODY MIRBABA  
APPROVING SETTLEMENT AGREEMENT**

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Mailed Date: August 14, 2020

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**I. STATEMENT AND BACKGROUND****A. Summary.**

1. This Decision grants the Unopposed Joint Motion to Approve Unanimous and Comprehensive Stipulation and Settlement Agreement and Vacate Procedural Schedule and Request for Waiver of Response Time (Motion to Approve Settlement Agreement or Motion) and approves the Unanimous and Comprehensive Stipulation and Settlement Agreement (Settlement Agreement or Agreement).<sup>1</sup>

**B. Procedural History.**

2. A more robust procedural history can be found in prior Decisions and is repeated here only as necessary to provide context. On April 7, 2020, Atmos Energy Corporation (Atmos), Public Service Company of Colorado (Public Service), Colorado Natural Gas, Inc., (CNG), Black Hills Colorado Gas, Inc. and Black Hills Colorado Electric, LLC (collectively, Black Hills), and Rocky Mountain Natural Gas, LLC (Rocky Mountain), (collectively, Petitioners or the Utilities), initiated this matter by filing a Joint Petition For Authorization to Track Expenses Resulting From the Effects of COVID-19 and Record and Defer Such Expenses into a Regulatory Asset (Petition).

3. On April 15, 2020, the Commission provided public notice of the Joint Petition. *Id.* Decision No. C20-0260-I.

4. The Colorado Public Utilities Commission Trial Staff (Staff) and the Office of Consumer Counsel (OCC) both timely intervened in this matter, and are the only interveners.

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<sup>1</sup> In reaching this Decision, the ALJ has considered the entire record, including all arguments, allegations, public comments, and evidence, whether discussed or not. The topic headings in this Decision are for ease of reference only.

5. During its weekly meeting on May 6, 2020, the Commission referred this matter to an Administrative Law Judge (ALJ) for disposition.

6. After the matter was referred, the ALJ established a procedural schedule and set a hearing on the merits of the Petition. Decision No. R20-0414-I, issued June 2, 2020. Based upon the parties' unopposed motions indicating they reached a settlement agreement, the ALJ modified the procedural schedule, vacated testimony deadlines, and established deadlines to file a settlement agreement and supporting motion, and testimony in support of the settlement agreement. Decision Nos. R20-0458-I issued June 23, 2020, and R20-0489-I issued July 2, 2020.

7. The parties timely filed their Motion to Approve Settlement Agreement and their Settlement Agreement, which is Attachment A to the Motion. The Motion seeks a recommended decision approving the Settlement Agreement without an evidentiary hearing.

8. On July 31, 2020, Public Service, Black Hills, Rocky Mountain, Atmos, CNG, Staff, and the OCC filed testimony in support of the Settlement Agreement. *See* Hearing Exhibits 101, 300, 400, 500, 600, and 700.

9. Many public comments were filed after the Settlement Agreement was submitted. Some comments generally oppose creating a regulatory asset because this will benefit Black Hills's investors. *See* Public Comments filed on August 3 and 4, 2020. Other commenters submit that if a regulatory asset is created, it is more equitable to also require the Utilities to create a regulatory liability to track all cost savings, reduced interest costs, reduced taxes, and other pandemic-related benefits resulting from laws. *See* Public Comments filed on August 4, 5, 6, and 11, 2020. One comment expresses dissatisfaction with Black Hills's past actions, distrust of Black Hills, and generally disagrees that a regulatory asset should be created in order to benefit investors while placing all risk on customers. *See* Public Comments filed on August 5, 2020.

**II. PETITION, SETTLEMENT AGREEMENT, AND TESTIMONY****A. Petition.**

10. The Petition seeks Commission approval for each of the Utilities to track, record as a regulatory asset, and defer expenses resulting from the Utilities' response to the COVID-19 outbreak (the pandemic) from March 1, 2020 to December 31, 2020. Petition, 1–2. In support of the Petition, the Utilities state that the socioeconomic impacts of the pandemic's health crisis have significant operational and negative financial impacts on Colorado's regulated public utilities. *Id.* at 3. The Utilities explain that they are undertaking extraordinary actions and incurring extra costs to maintain vital utility service during the pandemic. *Id.* They seek relief based on: the unforeseen events surrounding the pandemic; Governor Polis's March 20, 2020 Executive Order D 2020-012; and the anticipated need to continue ongoing pandemic-related efforts. *Id.* The Utilities submit that seeking such relief also ensures continued service during and after the public health emergency. *Id.*

11. While the Utilities support Governor Polis's efforts to ensure that no customer is left without critical utility service during the pandemic, they also expect that suspending service disconnections, as required by Executive Orders, and the economy's overall deterioration may lead to a significant increase in arrearages and uncollectable expenses in the future. *Id.* at 7. They anticipate increases in administrative and financing costs, an increased need for outside services, and additional purchases of tools, materials, and supplies. *Id.* At the same time, they expect decreased revenues. They do not seek a lost revenue recovery mechanism through this proceeding. *Id.*

**B. Settlement Agreement.**

12. The Settlement Agreement is unanimous. Attachment A to Motion, Settlement Agreement, 1. As such, it is unopposed. The parties explicitly agree that the Settlement Agreement resolves all issues that were raised or could have been raised in this proceeding, is a just and reasonable resolution, and is in the public interest. *Id.* at 2.

**1. Expense Tracking, Deferral, and Recovery.**

13. The parties agree that only incremental bad debt expenses experienced in comparison to normal periods are eligible for deferral, tracking, and recording as a regulatory asset. *Id.* at 8. The parties agree that: (1) “bad debt expense” is defined as expenses recorded to FERC Account 904 (bad debt expense); (2) the baseline bad debt expense amount will be a three-year average of the amount recorded in FERC Account 904 in the Utilities’ 2017, 2018, and 2019 annual appendix A filings (baseline amount); and (3) the incremental bad debt expense will be the amount of bad debt expense recorded in FERC Account 904 from January 1, 2020 through June 30, 2021 that is over the full baseline amount for 2020 and half of the baseline amount for the period running from January 1, 2020 to June 30, 2021. *Id.* The baseline amount for each impacted Petitioner is in Attachment 1 to the Settlement Agreement. *Id.*

14. Under the Agreement, no carrying costs, interest, or a return may be applied to the incremental bad debt expense in the deferred account. *Id.* at 9.

15. The parties also agree that only Public Service, Atmos, Black Hills, and CNG (the Affected Petitioners) may defer, track, and record incremental bad debt expense in a regulatory asset per the Agreement’s terms. Rocky Mountain does not seek, and is not permitted, under the terms of the Agreement to defer, track, and record incremental bad debt expense in a regulatory asset. *Id.* at 8-9.

16. The Agreement provides that no other capital costs, operation and maintenance (O&M) costs, or other savings resulting from the Utilities' response to the pandemic are eligible to track or defer for the period covered by the Agreement for any of the Petitioners. *Id.* at 9.

17. Per the Agreement, no prudence presumption for any incremental bad debt expenses attaches, and prudence will be determined when the Affected Petitioners bring the incremental bad debt expenses forward for recovery in the future. Each Affected Petitioner seeking to recover the deferred expenses must bring a separate proceeding relevant to each of them. *Id.* The Affected Petitioners must document the incremental bad debt expenses and prove prudence of such expenses when seeking cost recovery in future proceedings. *Id.*

## **2. Reporting and Filing Requirements.**

18. The Agreement requires the Affected Petitioners to provide the OCC and Staff quarterly reports showing the total amount of incremental bad debt expenses by customer class which were recorded into the regulatory asset, as compared to the baseline amount. The Affected Petitioners must report to the OCC and Staff no later than 45 days after the end of the quarter being reported on. In 2020, if the incremental bad debt expenses exceed three times the baseline amount, and in 2021, if the incremental bad debt expenses exceed one and one half times the baseline amount, the respective Petitioner will meet with Staff and the OCC to discuss the costs. *Id.* at 10. This reporting must include any late or disconnection fees. *Id.*

19. In addition, when an Affected Petitioner files its federal income taxes for a tax year during which the deferral is in effect for any portion of the year, the Affected Petitioner must make an informational filing with the Commission that indicates whether there are any provisions in a COVID-19 relief package that have impacted its liability. If so, the Affected Petitioner must quantify and explain the impact. *Id.*

### 3. Timing and Subsequent Events.

20. The parties request that the Commission issue a decision approving the Agreement at the earliest opportunity. The Agreement states that it does not foreclose any of the Petitioners from seeking relief for periods or events not otherwise covered by the Agreement. *Id.* at 11.

#### C. Settlement Testimony.

21. Mr. Steven P. Berman, Public Service's Director of Regulatory Administration, provided written testimony on behalf of Public Service in support of the Settlement Agreement. Hearing Exhibit 101, 5: 3-10. Public Service joined the Petition based on the unexpected and unprecedented pandemic. *Id.* at 9: 14-16. Public Service's operations and finances have been impacted by federal and state regulatory actions responding to the pandemic. Mr. Berman states that Public Service has taken extraordinary actions and incurred extra costs to maintain utility service while complying with federal and state public health guidance and directives. *Id.* at 9: 20-23. Public Service anticipates an on-going need to continue to take pandemic-related actions. *Id.* at 9: 18-20.

22. The federal and state actions impacting Public Service first started on March 10, 2020 when Colorado Governor Jared Polis declared a State of Emergency due to the pandemic, followed by a proclamation declaring a National Emergency on March 13, 2020.<sup>2</sup> *Id.* at 10: 1-6.

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<sup>2</sup> Public Service cites to: Colorado Executive Order D 2020 003, and *Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak* (Mar. 13, 2020): <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

Both the federal and state government identified utility service as an essential or critical service.<sup>3</sup> *Id.* at 10: 8-11. On March 20, 2020, Governor Polis issued Executive Order D 2020 012 requiring the Commission to work with the State's public utilities to: (1) suspend service disconnections for delayed or missed payments from residential or small business consumers related to the pandemic's impact; (2) waive reconnection fees and suspend late payment fee accrual for residential or small business consumers most burdened by the pandemic's impact and make reasonable efforts to reinstate service for customers whose service was then disconnected for nonpayment or arrearage related to the pandemic's impact; (3) develop and provide payment assistance programs, particularly for customers qualified for the Low-Income Energy Assistance Program; and (4) provide guidance on prioritizing payment assistance, and collect and monitor data from public utilities relating to statewide measures taken to implement the Executive Order and report such information to the Governor's office weekly, and post the information on the Commission's website. *Id.* at 12: 14-19—13: 1-16. Executive Order D 2020 012 also required Colorado Energy Office (CEO) to work with providers, trade associations, and consumers of propane heating across the State to evaluate and report recommendations to the Governor on the pandemic's impact and actions to mitigate those impacts. *Id.* at 13: 17-20. Executive Order D 2020 012 was extended and modified several times. *Id.* at 11: 1-2; *see* Executive Orders 2020 031 and 051. Executive Order D 2020 088 extended multiple Executive Orders, and expressly extended the limitations on public utility disconnections through June 13, 2020. Hearing Exhibit 101, 14: 5-7.

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<sup>3</sup> Public Service cites to Colorado Department of Health and Public Environment (CDPHE) Public Health Order 20-24 and U.S. Department of Homeland Security's March 19, 2020 Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response:

<https://www.cisa.gov/publication/guidance-essential-criticalinfrastructure-workforce#download>.

23. On June 12, 2020, Governor Polis issued Executive Order D 2020 098 providing additional reconnection and late payment relief for certain customers impacted by the pandemic; this was extended through August 10, 2020 by Executive Order D 2020 132. *Id.* at 11: 3-7.

24. Public Service anticipates that the most likely and potentially most significant pandemic-related expense it faces is increased bad debt expense arising from non-payment of utility bills, changes in the disconnection process resulting from the various Executive Orders, and changes to Public Service's collections process. *Id.* at 17: 5-11.

25. Mr. Berman explains that the Agreement allows bad debt expenses to be tracked through June 30, 2021 because Public Service's typical collection processes can take as long as nine months. *Id.* at 27: 17-20. That typical nine-month period could be extended as much as an additional 12 months based on the various Executive Orders discussed above. *Id.* at 27: 20-23. Mr. Berman states that this means that Public Service could be experiencing pandemic-related bad debt expenses into 2022. *Id.* at 27: 23—28: 1-2.

26. Mr. Berman also states that the parties agreed to use the average of the most recent past three years of bad debt expense recorded in FERC Account 904 because that is representative of a typical annual level of bad expense. *Id.* at 28: 5-8.

27. Public Service believes the Settlement Agreement is in the public interest because deferring the potentially most significant pandemic-related costs into a regulatory asset provides needed financial support at a time "when all aspects of the economy, including utilities, are facing stress but also when the operational responsibilities of Colorado's regulated public utilities remain critical." *Id.* at 25: 11-14. In addition, Mr. Berman submits that the Agreement materially limits the areas of potential cost recovery by excluding other capital costs, O & M costs, carrying costs, interest, or a return on the bad debt expenses tracked in the deferred account.

*Id.* at 28: 9-19. The Agreement also allows Staff and the OCC to review the incremental bad debt expenses before they are reported. *Id.* at 30: 9-11. For all of these reasons, Public Service believes that the Settlement Agreement provides reasonable safeguards around the limited scope of the Affected Petitioners' potential future recovery. *Id.* at 30: 13-15.

28. Mr. Berman also states that the reporting requirements provide granularity and transparency. *Id.* at 32: 8-9. Because the pandemic is not yet resolved and circumstances surrounding it continue to evolve, Public Service believes that the Agreement's terms allowing Affected Petitioners to make future filings to address pandemic-related issues is reasonable and in the public interest. *Id.* at 33: 1-7.

29. Ms. Jennifer K. Story, Atmos's Director of Regulatory Reporting, provided written testimony on behalf of Atmos in support of the Settlement Agreement. Hearing Exhibit 300, 2: 2-6 and 2: 21-23. Ms. Story explains that Atmos has been directly impacted by Governor Polis's Executive Orders limiting public utility disconnections and the collection of fees for late payments and service reconnection. *Id.* at 3: 6-9, *citing* Executive Orders D 2020 012, D 2020 031, D 2020 051, D 2020 088, D 2020 098, and D 2020 132. When the Petition was filed, there was significant uncertainty about how the pandemic and Executive Order D 2020 012 would impact utilities and customers. *Id.* at 3: 17—4: 1-2. Atmos believes that without an accounting order, the parties may not have been able to appropriately address the extraordinary circumstances related to the pandemic. *Id.* at 4: 2-4. Ms. Story states that many of the jurisdictions in which Atmos operates, including Louisiana, Kansas, Mississippi, Texas, and Virginia, have issued orders allowing for the creation of regulatory assets (arising out of the pandemic). *Id.* at 4: 11-16.

30. Ms. Story explains that the Agreement focuses on bad debt expenses because Executive Order 2020 012 prevented utilities from disconnecting customers for nonpayment and directed the Commission to work with utilities on waiving late and reconnection fees. *Id.* at 5: 1-4. This creates a situation where unpaid customer bills exceed normal levels while, at the same time, utilities cannot collect Commission-approved fees that would otherwise offset costs associated with unpaid bills. *Id.* at 5: 4-7. As a result, Atmos anticipates having exceptional bad debt levels. *Id.* at 5: 7-8. Ms. Story submits that the Agreement is in the public interest because it balances the need to preserve utilities' opportunity to seek recovery of the extraordinary expenses associated with bad debt with customers' interests in limiting deferred costs to amounts reasonably calculable with a limited scope. *Id.* at 8: 6-11.

31. Mr. Matthew S. Kaply, Senior Director of Regulatory Affairs and Rates with Summit Utilities, Inc., CNG's parent company, provided written testimony on behalf of CNG in support of the Settlement Agreement. Hearing Exhibit 500, 3: 3-8; and 4: 16-19. CNG explains that as the State's smallest investor-owned utility, it recognized early on that the COVID-19 pandemic could impact it and its customers in many ways, including overwhelming CNG's resources. *Id.* at 5: 2-8. After Governor Polis issued Executive Order D 2020 012, CNG, along with other investor-owned utilities decided to seek the Commission's approval to create a regulatory asset. *Id.* at 5: 11-20. CNG submits that the Settlement Agreement is in the public interest because: it significantly narrows the scope of the costs to be recorded in the regulatory asset; there is no prudence presumption attached to such costs; the Agreement merely allows the identified costs to be tracked; and the reporting process and provisions requiring the Affected Petitioners to seek cost recovery in a separate proceeding allow Staff and the OCC ample opportunity to evaluate the prudence and recoverability of the tracked costs. *Id.* at 8: 8-16.

32. Mr. Christopher M. Otto provided written testimony on behalf of Black Hills and Rocky Mountain. Hearing Exhibit 400, 3: 10-13. Mr. Otto explains that Rocky Mountain joined the Petition at a time when it was unknown how the pandemic would impact operations, and what incremental expenses could be incurred to support the transmission system safety and reliability. *Id.* at 8: 3-7. Since then, Rocky Mountain has become more informed of the pandemic's cost impact. *Id.* at 8: 7-8. And, while it has incurred additional expenses (such as the expense for personal protective equipment), Rocky Mountain does not believe these costs are significant enough to warrant a regulatory asset. *Id.* at 8: 8-10. Mr. Otto also explains that Rocky Mountain is not in the same position as the Affected Petitioners because, as an interstate natural gas pipeline, it does not have retail customers. *Id.* at 8: 10-12. For all those reasons, Rocky Mountain agreed to be excluded from being granted the right to track bad debt expenses, per the parties' Agreement.

33. Black Hills joined the Petition for many of the same reasons the other Utilities joined. Black Hills was concerned that Executive Orders relating to the pandemic, and the deterioration in the general economy may lead to a significant increase in arrearages and uncollectible expenses. *Id.* at 5: 2-6. Black Hills has already accrued additional bad debt expense within FERC Account 904 as a direct result of increases in arrearages. *Id.* at 5: 6-8. Black Hills attributes this increase to suspensions of payment-related disconnections. Black Hills obtained Commission waivers of tariff provisions in order to suspend such disconnections; those waivers expire on September 7, 2020. *Id.* at 5: 8-10—6: 1-2.

34. Black Hills believes the Agreement is in the public interest for several reasons. First, the Agreement creates a framework that allows Black Hills to extend new payment plans that benefit customers, provides Black Hills more time to work with customers on delinquencies,

and gives Black Hills more flexibility to be creative in addressing delinquencies. *Id.* at 9: 7-18. Without the Agreement, Black Hills would likely follow tariff policies to initiate bill collection, which may include disconnection, after September 7, 2020 when the tariff waivers expire. *Id.* at 9: 20-22.

35. Mr. Gabe Dusenbury, Section Head of the Rate Financial Analysts for Commission Staff, provided written testimony on behalf of Staff in support of the Settlement Agreement. Hearing Exhibit 600, 4: 2-10. According to Mr. Dusenbury, the Agreement satisfies the concerns that Staff raised in its Intervention. *Id.* at 5: 1-5. Mr. Dusenbury believes the Agreement strikes a fair balance between the Affected Petitioners' interest in mitigating some of the financial impact of the pandemic with ratepayers' interest in ensuring that cost recovery be just and reasonable. *Id.* at 5: 11-14. Mr. Dusenbury explains that deferred accounting is a regulatory tool that allows utilities to track and later seek to recover expenses through a ratemaking proceeding that are otherwise outside the test period. *Id.* at 6: 12-15. He states that the Commission has used this tool sparingly in the past to give a utility the opportunity to recover unanticipated and significant costs where the circumstances warrant deferred accounting treatment without filing a ratemaking proceeding.<sup>4</sup> *Id.* at 7: 6-11.

36. As explained, the baseline amounts are an average of the past three years of the Affected Petitioners' bad debt expenses. Because those amounts assume an average full year of bad debt expenses, Mr. Dusenbury believes that tracking bad debt expenses starting January 1, 2020 is a more practical approach that allows for an apples-to-apples comparison between the baseline amount and the bad debt expenses that will be tracked under the Agreement.

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<sup>4</sup> Mr. Dusenbury relies on Decision No C12-0103, ¶¶ 17-18, in Proceeding No. 12A-066E, which is Attachment GAD-1 to Hearing Exhibit 600.

*Id.* at 10: 16-21—11: 1. Mr. Dusenbury also explains that bad debt is already an ex Affected Petitioners can and do include in their customers' cost of service, and as such, ratepayers should already know that such expenses may be socialized and collected through rates or other revenue recovery tools. *Id.* at 11: 1-4.

37. Staff supports tracking through June 30, 2021 because the Affected Petitioners have extended their customer repayment programs for up to 12 months, which means that it will take longer for arrearages to become bad debt than in normal circumstances. *Id.* at 11: 9-13. Staff also supports using an average of the last three years of bad debt expense as the baseline amount because the smaller of the Affected Petitioners experience a fair amount of variation from year to year. As such, using an average is more accurate as it prevents outlier years from having an overly significant influence on the baseline amount. *Id.* at 13: 1-15.

38. Mr. Dusenbury explains that the Agreement's requirement to report bad debt by customer class provides information on how bad debt is affecting different customer classes over time. *Id.* at 14: 15-17.

39. Mr. Ronald Fernandez, a Rate and Financial Analyst with the OCC, provided written testimony on behalf of the OCC in support of the Settlement Agreement. Hearing Exhibit 700, 3: 2-5; and 3: 15-18. Mr. Fernandez believes the Agreement creates a just and reasonable outcome because it: narrows the type of expenses that can be deferred and tracked; creates a measurable and trackable method to determine the incremental bad debt expense for the Affected Petitioners; limits the timeframe for tracking and deferral; and requires the Affected Petitioners to meet with Staff and the OCC if the incremental bad debt expenses exceed the baseline amounts. *Id.* at 4: 18-23—5: 1-6. It also creates reporting mechanisms that allow interested parties to evaluate the recoverability of the costs in a future proceeding. *Id.* at 5: 10-12.

40. Mr. Fernandez submits that the Agreement is in the public interest because it limits tracking and deferral to incremental bad debt expenses; does not allow a return on the regulatory asset (*i.e.*, no interest will be earned); and there is no prudency presumption attached. *Id.* at 5: 19-23—6: 1-3.

### **III. RELEVANT LAW, FINDINGS, DISCUSSION, AND CONCLUSIONS.**

#### **A. Relevant Law.**

41. The Commission has jurisdiction over this matter based on its very extensive and broad regulatory powers over public utilities. Colo. Const. art. XXV; §§ 40-3-101–103, C.R.S.; *Public Serv. Co. of Colo. v. Public Util. Comm’n*, 350 P.2d 543, 549 (Colo. 1960) *cert. denied*, 364 U.S. 820 (1960). More specifically, the relief sought here ties into the Commission’s authority to ensure that public utilities’ rates are just and reasonable, and to generally supervise and regulate the state’s public utilities per §§ 40-3-101–102, C.R.S.

42. When exercising any power granted to it, the Commission must give the public interest “first and paramount consideration.” *Public Serv. Co. of Colo.*, 350 P.2d at 549.

43. The proponent of an order carries the burden of proof by a preponderance of the evidence that the requested relief should be granted. § 24-4-105(7), C.R.S.; Rule 1500, 4 *Code of Colorado Regulations* (CCR) 723-1. The preponderance standard requires the fact finder to determine whether the existence of a contested fact is more probable than its non-existence. *Swain v. Colo. Dep’t of Revenue*, 717 P.2d 507, 508 (Colo. App. 1985). A party has met this burden when the evidence, on the whole, tips in favor of that party. *Schocke v. Dep’t of Revenue*, 719 P.2d 361, 363 (Colo. App. 1986).

44. The Commission may decide a matter under a modified procedure, without a hearing, if the relief sought is unopposed. *See* Rule 1403(a), 4 CCR 723-1. Because the

Settlement Agreement is unanimous, unopposed, supported by sworn testimony verifying sufficient facts that adequately support the requested relief, and no hearing is requested or required, the ALJ will decide whether to approve the Settlement Agreement based on the record, without a hearing. *Id.*

45. Based on the foregoing, the ALJ reviews the Settlement Agreement in the context of the unique facts and circumstances here, to determine whether the preponderance of the evidence establishes that the relief sought is just, reasonable, and in the public interest.

**B. Findings, Discussions, and Conclusions.**

46. Nationwide, states and utilities face unprecedented circumstances and consequences resulting from the pandemic. As the parties explained in their testimony, Colorado Governor Polis declared a state of emergency due to the pandemic, and issued numerous executive orders aimed at mitigating the impact of the pandemic. Many of these executive orders directly impact Colorado public utilities' operations and finances. *See e.g.*, Executive Orders D 2020 012, D 2020 031, D 2020 051, D 2020 088, D 2020 098, and D 2020 132. Public utility operations were declared critical or essential work or functions. CDPHE Public Health Order 20-24. Indeed, Colorado public utilities must provide and maintain adequate, just, and reasonable service for the benefit of the public. § 40-3-101(2), C.R.S. The pandemic has created extraordinary circumstances and challenges which utilities must overcome to continue to provide adequate, just, and reasonable service to the public; among these are planning for and managing increased and unforeseen utility expenses.

47. While the Petition broadly seeks to track, record as a regulatory asset, and defer undefined expenses resulting from the Affected Utilities' response to the pandemic, the Settlement Agreement significantly narrows that request to incremental bad debt expenses

recorded to FERC Account 904. The Agreement therefore, eliminates the Petition's request to track, record, and defer a broad and undefined category of expenses, while also defining a single, narrow category of expenses to be covered.

48. Deferring prudence determinations on bad debt expenses to future proceedings for each separate Affected Petitioner allows the Commission and interested parties to closely evaluate that question, and reach a determination based on each utility's unique circumstances. This is a critical element of the Agreement, because it means that allowing the bad debt expenses to be tracked, recorded, and deferred as requested does not automatically render those expenses recoverable.

49. The Agreement's reporting requirements create ongoing transparency that includes an appropriate level of detail that helps Staff and the OCC evaluate the data before the Affected Petitioners seek to recover the relevant costs in a future proceeding. And, the Agreement's informational filing requirements create more context for the pandemic-related impacts given that the Affected Petitioners are required to report on pandemic-related benefits.

50. The Agreement includes a time-frame limitation and excludes an earning component on the expenses placed into the regulatory asset. This balances the need to preserve the Affected Petitioners' opportunity to seek recovery of the extraordinary expenses associated with bad debt with customers' interests in limiting deferred costs to amounts reasonably calculable with a limited scope. It also ensures that the tracked, recorded, and deferred costs are not unnecessarily increased by an earning component, while giving the Affected Petitioners some relief from the financial impacts of the pandemic.

51. For all these reasons, the ALJ concludes that the parties established by a preponderance of the evidence that the Settlement Agreement is just, reasonable, and in the

public interest. As such, the ALJ recommends that the Commission approve the Settlement Agreement without modification.

52. Granting the Agreement's requested accounting order is consistent with prior Commission practice because the circumstances here are extraordinary, unique, involve potentially significant unforeseen expenses, and warrant the sparing use of the relevant accounting tool. *See* Decision No. C12-0103 in Proceeding No. 12A-066E issued January 27, 2012. The accounting order granted here preserves the Affected Petitioners' *opportunity* to seek to recover those expenses in separate, future proceedings and does not automatically render those expenses recoverable.

53. The ALJ transmits the record of this proceeding, this recommended decision containing findings of fact and conclusions thereon, and a recommended order to the Commission as provided under § 40-6-109, C.R.S.

#### **IV. ORDER**

##### **A. The Commission Orders That:**

1. Consistent with the above discussion, the Unopposed Joint Motion to Approve Unanimous and Comprehensive Stipulation and Settlement Agreement and Vacate Procedural Schedule and Request for Waiver of Response Time filed on July 16, 2020 is granted. The Unanimous and Comprehensive Stipulation and Settlement Agreement and attachments thereto filed on July 16, 2020 is approved without modification.

2. The remote evidentiary hearing in this matter scheduled for October 20, 21, and 23, 2020 is vacated.

3. Proceeding No. 20V-0159EG is closed.

4. This Recommended Decision will 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.

5. As provided by § 40-6-106, C.R.S., copies of this Recommended Decision will be served upon the parties, who may file exceptions to it.

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

7. If a party seeks to amend, modify, annul, or reverse a basic finding 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 Recommended Decision are filed, they may 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

MELODY MIRBABA

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Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,  
Director