

Decision No. R20-0888

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20A-0268E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF
COLORADO FOR APPROVAL OF ITS ZUNI STATION DECOMMISSIONING PLAN.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ROBERT I. GARVEY
GRANTING MOTION TO APPROVE
SETTLEMENT AND GRANTING APPLICATION**

Mailed Date: December 14, 2020

I. STATEMENT

A. Background

1. On June 19, 2020, Public Service Company of Colorado (Public Service) filed its Verified Application for approval of its decommissioning plan for its Zuni Electric Generating Station.

2. On July 14, 2020, the Colorado Office of Consumer Counsel (OCC) filed its Notice of Intervention of Right, Entry of Appearance, and Request for Hearing. The OCC is an intervenor as of right and a party in this proceeding.

3. On July 21, 2020, Trial Staff of the Colorado Public Utilities Commission (Staff) timely filed its Notice of Intervention as of Right, Entry of Appearance, Notice Pursuant to Rule 1007(a) and Rule 1403(b), and Request for Hearing. The intervention is of right, and Staff is a party in this matter

4. On July 29, 2020, by minute order, Proceeding No. 20A-0268E was referred to the undersigned Administrative Law Judge (ALJ).

5. On August 5, 2020, by Decision No. R20-0572-I, a prehearing conference was scheduled for August 25, 2020.

6. On August 19, 2020, Public Service filed its Unopposed Motion to Adopt a Consensus Procedural Schedule and Vacate Prehearing Conference (Unopposed Motion). In the Unopposed Motion, the parties stated they had agreed upon a procedural schedule in the above captioned proceeding and requested that the prehearing conference be vacated.

7. On August 20, 2020, by Decision No. R20-0614-I, an evidentiary hearing was scheduled for December 15 & 16, 2020.

8. On December 4, 2020, the Parties filed their Joint Motion for Commission Decision Approving Unanimous and Comprehensive Settlement Agreement, Vacating Procedural Schedule and Hearing Dates and Waiver of Response Time and Settlement Agreement (Joint Motion).

9. On December 8, 2020, by Decision No. R20-0860-I, the remaining procedural schedule and hearing dates were vacated.

II. DISCUSSION

A. Testimony and Terms of Settlement Agreement

10. The Settlement Agreement, attached to this Decision as Attachment A, explains that Public Service, Staff, and the OCC (Settling Parties) have negotiated a resolution of all disputed issues in this proceeding. The Settling Parties assert that the Settlement Agreement represents a compromise in the positions of all Settling Parties and has been negotiated as a comprehensive settlement. Further, the Settling Parties contend that Settlement Agreement is in the public interest.

11. The Settlement Agreement represents the result of settlement negotiations by the Settling Parties. Below is a summary of the terms agreed upon by the Settling Parties.

B. Resolved Issues

Specifically, the Settling Parties' request approval of the following aspects of the Zuni decommissioning plan, each of which is discussed in greater detail in the Settlement Agreement attached to this Decision.

1. Scope of Proceeding: The scope of this proceeding is limited by the terms of the settlement approved in Proceeding No. 09AL-299E
2. Cost Cap: The regulatory accounting and cost recovery mechanism previously approved for Zuni decommissioning costs in Proceeding No. 16A-0231E and implemented in Proceeding No. 19AL-0268E shall not be modified for purposes of this proceeding.
3. Apportionment of Zuni Decommissioning Costs to Steam Customers: The OCC withdraws its recommendation that the Commission apportion Zuni decommissioning costs to the Company's steam service customers in this proceeding.
4. Conditions Applicable to Future Sales of Zuni Station Land: The Parties acknowledge the public interest concerns regarding Public Service's potential future sale, assignment or lease of Zuni Station land and its potential exposure for environmental liability associated with former utility operations, but acknowledge that this limited scope proceeding does not provide an adequate forum for such issues to be fully vetted and resolved.
5. Conditions Applicable to Potential Future Sale of Zuni Station Water Rights: The Parties acknowledge the public interest concerns regarding Public Service's potential future disposition of Zuni Station water rights but acknowledge that this limited scope proceeding does not provide an adequate forum for such issues to be fully vetted and resolved.
6. Valuation of Scrap Materials Under the Demolition Contract: Public Service agrees to make certain additional changes to the demolition contract to assure that more accurate scrap values are used in the determination of salvage credits.
7. Presentation of Actual Incurred Zuni Decommissioning Costs in Future Rate Case: Public Service agrees to make a presentation in direct testimony in its next Phase I electric rate case to provide an update on the progress of completing actual decommissioning of Zuni as it relates to the current amortization recovery approved.

III. FINDINGS AND CONCLUSIONS

12. The parties have the burden of proving by a preponderance of the evidence that the Settlement Agreement is just and reasonable. In reviewing the terms of the Settlement Agreement, the undersigned applied the Commission's direction and policy with respect to reviews of settlement agreements as found in, *e.g.*, Decision No. C06-0259 in Proceeding No. 05S-264G issued March 20, 2006.

13. The Commission has an independent duty to determine matters that are within the public interest. *See, Caldwell v. Public Utilities Commission*, 692 P.2d 1085, 1089 (Colo. 1984).

14. The undersigned has reviewed the Direct, Rebuttal, the Answer testimony of all Intervenors; and the recitations of the Settling Parties in the both the Joint Motion and Settlement Agreement. The undersigned has duly considered the positions of all parties in this matter.

15. Based on this review of the entire record, the undersigned finds that approval of the Application filed in this proceeding consistent with the Settlement Agreement, is in the public interest.

16. The ALJ further finds that the parties have established by a preponderance of the evidence that the Settlement Agreement is just, is reasonable, and should be accepted by the Commission

IV. ORDER

A. It Is Ordered That:

1. The Joint Motion for Approval the Settlement Agreement filed by Public Service Company of Colorado (Public Service) on December 4, 2020, is granted consistent with the discussion above.

2. The Settlement Agreement filed by Public Service on December 4, 2020, and attached to this Decision as Attachment A, is approved, consistent with the discussion above.

3. The Verified Application for approval of its decommissioning plan for its Zuni Electric Generating Station filed by Public Service on June 19, 2020, is granted, consistent with the discussion above.

4. 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.

5. 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.

6. 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

ROBERT I. GARVEY

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director