(Decision No. C94-1340)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN RE: THE INVESTIGATION AND SUSPENSION OF TARIFF SHEETS FILED BY GREELEY GAS COMPANY WITH ADVICE LETTER NO. 371.	)	DOCKET NO. 93S-555G
IN RE: THE INVESTIGATION AND SUSPENSION OF TARIFF SHEETS FILED BY GREELEY GAS COMPANY WITH ADVICE LETTER NO. 374.	)	DOCKET NO. 93S-688G

COMMISSION DECISION ON EXCEPTIONS

Mailed Date: October 18, 1994
Adopted Date: June 8, 1994

I. **BY THE COMMISSION:**

A. This matter comes before the Colorado Public Utilities Commission ("Commission") for consideration of exceptions to Decision No. R94-172 and No. R94-467. In those decisions, an Administrative Law Judge ("ALJ") for the Commission, in part, recommended that Greeley Gas Company ("Greeley" or "Company") be allowed to adopt Financial Accounting Standard No. 106 ("FAS 106") for regulatory purposes.[1] The Colorado Office of Consumer Counsel ("OCC"); the Cities of Canon City, Craig, and Florence, and the County of Fremont ("Cities") filed exceptions to the ALJ's recommended decisions, pursuant to the provisions of § 40-6-109(2), C.R.S. Greeley has filed responses to the exceptions. Now being duly advised in the matter, we will deny the exceptions and affirm the ALJ's decisions in their entirety for the reasons stated in the recommended decisions, as well as those discussed in this order.

B. This proceeding was initiated by the Company's filing of Advice Letter No. 371 on September 1, 1993 and Advice Letter No. 374 on November 9, 1993. In those filings, Greeley proposed to increase its annual revenues by $4,526,663. One of the principal justifications for the rate increase was the Company's request to provide for post-retirement benefits other than pensions ("OPEB") on the accrual method of accounting as required by FAS 106, instead

[1] FAS 106 establishes accrual accounting of post-retirement benefits other than pensions for financial reporting purposes. *See* discussion, *infra*.

of continuing with the pay-as-you-go ("PAYGO") accounting method. In accordance with the provisions of § 40-6-111, C.R.S, the Commission suspended the effective date of the tariffs proposed by Greeley and set a hearing before the ALJ. *See* Decision No. C93-1210 and No. C93-1485.

C. The ALJ conducted hearings in this matter on January 18 and 19, 1994. As a preliminary matter, Greeley, Staff of the Commission ("Staff"), the OCC, and the Colorado Business Alliance for Cooperative Utility Practices presented a stipulation for consideration by the Commission. That stipulation resolved all issues between the settling parties except those related to OPEB accounting treatment. Under the settlement, Greeley's revenue requirement was to be increased by $2,113,853 annually. No other party opposed the stipulation, and it was approved by the ALJ. The matter proceeded to hearing on OPEB issues; as a result of his determination that the Company should adopt the accrual method of accounting for OPEBs for regulatory purposes, the ALJ recommended an additional annual revenue increase of $1,129,888 for Greeley. These recommendations and findings were made in Decision No. R94-172.

D. The OCC and the Cities filed exceptions to Decision No. R94-172 on March 10, 1994. In part, the OCC argued that the ALJ had erred in excluding from evidence Exhibit 15, Actuarial Standard of Practice No. 6. In Decision No. C94-456, dated April 12, 1994, we agreed with the OCC that the ALJ had committed error in refusing to admit the Exhibit. We, therefore, remanded this matter to the

ALJ with directions that Exhibit 15 be admitted into evidence, and that additional cross- and redirect- examination of a Company witness be allowed.[2] The ALJ conducted the hearing on remand on April 14, 1994. On April 18, 1994, the ALJ issued Decision No. R94-467, affirming Decision No. R94-172 in its entirety. The OCC and the Cities timely filed exceptions to the April 18, 1994 Recommended Decision. In essence, those exceptions reaffirm the positions and arguments made in the first set of exceptions. We now issue our decision denying the exceptions by the OCC and the Cities.

II. <u>DISCUSSION</u>

A. Introduction

1. In December 1990, the Financial Accounting Standards Board adopted FAS 106. FAS 106 requires certain companies, for financial reporting purposes, to record OPEB costs for employees and their beneficiaries on an accrual basis. Prior to the adoption of FAS 106, companies generally recorded OPEB expenses as they were actually incurred (*i.e.*, the PAYGO method).[3] Greeley has not yet adopted FAS 106 for financial reporting purposes, and is not required to do so until January 1, 1995.

[2] The exceptions to Decision No. R94-172 by the OCC and the Cities raised a number of arguments in addition to that relating to Exhibit 15. Given our decision to remand the case to the ALJ, we reserved ruling on all other issues.

[3] The change to accrual accounting was the result of the Financial Accounting Standards Board's desire to provide users of financial statements with better information regarding the financial status of a particular company. Notably, the change to accrual accounting was not the result of any regulatory requirement.

2. The accrual method is based upon the assumption that post-retirement benefits are earned currently by employees, and therefore, in the case of Greeley, present utility customers should pay the costs currently incurred in rendering service, including post-retirement benefits earned by employees as they provide service today. The PAYGO method is based upon the premise that OPEB expenses should be recognized as they are paid by the employer. Under PAYGO, post-retirement benefits received by Greeley's current employees would be paid for by future customers, not those who are actually benefitting from the service provided by current employees. The Company argues, and we agree, that the accrual method mandated by FAS 106 will correct the mismatch inherent under PAYGO. We also note--there is apparent agreement between the parties to this case--that a change from PAYGO to accrual accounting for OPEB costs will not affect Greeley's OPEB obligation in the long run. That is, the post-retirement costs for the Company will be the same under either method of accounting. The issue here is simply one of timing (*i.e.*, when the obligation is recognized for financial reporting and ratemaking purposes).

3. Changing to accrual accounting for OPEB expenses raises an issue concerning the transition from PAYGO to the accrual method. Specifically, under accrual accounting the Company must amortize past OPEB costs which have not yet been accounted for. These past unamortized costs are known as the transition obligation, and represent a "catch-up" amount. The transition obligation is the difference between the accumulated

post-retirement benefit obligation and the fair value of plan assets as of the beginning of the year in which FAS 106 is first applied. In this case, the Company requested permission to implement FAS 106 for ratemaking purposes on a going-forward basis and to amortize the transition obligation over a 20-year period. The OCC advocated the continuation of PAYGO. However, in the event the Commission approved the change to accrual accounting, the OCC contended that the transition obligation ought to be amortized over a 40-year period. *See* discussion, *infra*.

4. The Company emphasized, and it is significant to our decision, that FAS 106 calculations contain a self-correcting mechanism in the event actual results differ from estimated results. Specifically, the valuation of Greeley's post-retirement plans and the resulting FAS 106 calculations were performed by witness Jensen, an actuary with William M. Mercer, Inc. As explained by Ms. Jensen and other Greeley witnesses, the FAS 106 calculations are required to be updated annually. This will be done by an independent actuary. This mechanism will adjust the FAS 106 calculations to account for variations between actuarial assumptions and experience, changes in assumptions, plan modifications, etc., on an ongoing basis. If necessary, fluctuations between estimated and actual results can be amortized over time.[4]

---

[4] The OCC expressed concern that the self-correcting mechanism operates on a prospective basis only. In particular, the OCC emphasized, to the extent excess revenues are collected from ratepayers, these revenues will not be subject to refund. We note that it is the nature of ratemaking to apply rates prospectively only. A contrary practice would result in unlawful retroactivity.

5. We also note the consequences of a Commission decision not consistent with FAS 106 standards. The record indicates that the Company will be required to take a charge against earnings unless the Commission's order provides that FAS 106 costs, including amortization of the transition obligation, will be included in rates within approximately 5 years from adoption of FAS 106; and, that the total transition obligation will be fully recovered over approximately 20 years from adoption of FAS 106. In the absence of such an order (*e.g.*, if the Commission were to agree with the OCC's exceptions), Greeley would be required to take charges against earnings, and such charges could adversely impact the Company's cost of capital to the detriment of ratepayers.

III. RULING ON EXCEPTIONS

A. Motion for Directed Verdict

1. The OCC first argued, in its March 10, 1994 exceptions, that the ALJ erred as a matter of law by failing to grant its motion for "directed verdict." That motion was made at

---

The possibility that a utility may recover revenues in excess of actual expenses is not unique to OPEBs using the FAS 106 method. This possibility exists whenever the Commission allows any expense into rates. Conversely, the utility may recover less revenues than actual expenses. (In that case, the rule against retroactive ratemaking places the risk upon the utility and its shareholders.) This applies for OPEBs as well as any other expense. We find that OPEB costs under the FAS 106 method are reasonably measurable, and the self-correcting mechanism will ensure that these estimates will be updated in a timely manner. We are confident, especially since the Commission and the OCC itself both have the authority to initiate rate proceedings against the Company, that rates will also be adjusted in a timely manner. The OCC's apparent request for a guarantee that revenues will not exceed actual expenses is impractical and unlawful. Just as the Commission cannot provide such a guarantee with respect to any other expense, neither can we provide such a guarantee in this proceeding.

the close of Greeley's direct case. According to the exceptions, the Company failed to establish a *prima facie* case in its direct testimony, and the testimony presented on rebuttal (*i.e.*, the testimony by Ms. Jensen), could not be considered by the ALJ in ruling upon the request for a directed verdict. The OCC contended that allowing the Company to wait until rebuttal to present its "real" case would be prejudicial to the parties.

2. In its May 9, 1994 exceptions, the OCC characterized its request as being motions to dismiss and/or motions for a directed verdict. The subsequent exceptions reaffirmed the arguments previously made. In addition, the OCC suggested that the Company failed to meet its burden of proof even with the testimony by Ms. Jensen. Specifically, the OCC observed that Ms. Jensen was not testifying as an expert in ratemaking. Therefore, the exceptions asserted, no Company witness testified that the rates resulting from adoption of accrual accounting for OPEB costs would be just and reasonable. We disagree with these arguments.

3. First, the OCC was incorrect in portraying its request as one for a "directed verdict." Assuming the Colorado Rules of Civil Procedure apply to this issue in this proceeding, a hearing before an ALJ is not a jury trial but, rather, is similar to a trial before the court as the trier of fact. Further, when the court is the trier of fact, a motion for directed verdict is actually a motion to dismiss pursuant to C.R.C.P. 41(b). *Frontier Exploration v. American National Fire Insurance Co.*, 849 P.2d 887 (Colo. App. 1992). Rule 41(b) provides:

> After the plaintiff, in an action tried by the court without a jury, has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff **or may decline to render judgment until the close of all the evidence.**

Emphasis added.

4. Therefore, assuming that the Company had not established a *prima facie* case with Mr. Minor's testimony, as the OCC contends, it was appropriate for the ALJ to defer a ruling on OPEB issues until all evidence, including the testimony and exhibits of the OCC witness McDaniel and Greeley witnesses Bickerstaff and Jensen, had been received.[5] In short, the OCC is simply incorrect that the testimony of Mr. Minor only may be considered in ruling upon the motion to dismiss. It is appropriate to consider **all testimony** offered into evidence in ruling upon the motion, and we do so here.[6]

5. That evidence demonstrates that the Company met its burden of proof with respect to OPEB issues, and the ALJ's findings

---

[5] We note that, consistent with standard practice before the Commission, Greeley prefiled all testimony in question-and-answer form before the hearing. In particular, the rebuttal testimony by witnesses Bickerstaff and Jensen was filed with the Commission and hand-delivered to the parties on January 14, 1994, four days before the hearing. Where testimony, including rebuttal, is prefiled sufficiently in advance of hearing, we conclude that Commission ALJs ought to defer ruling on motions to dismiss until the close of all evidence.

[6] In light of its incorrect characterization of its motion as one for directed verdict, the OCC's fundamental argument in its first exceptions was that Mr. Minor's testimony was insufficient to establish a *prima facie* case and the filing, therefore, should be dismissed. No argument was made regarding the sufficiency of the Company's case considering the testimony by witnesses Bickerstaff and Jensen. It was not until the second exceptions that the OCC advanced its argument that, even with Ms. Jensen's testimony, Greeley failed to meet its burden of proof.

and conclusions regarding OPEB should be affirmed. In part, Mr. Minor testified that Greeley's requested rate increase included an adjustment to reflect increased OPEB costs due to the change to accrual accounting. The testimony identified the specific amount of the adjustment. Mr. Minor stated that the change in accounting methodology was necessitated by FAS 106, which required employers to utilize accrual accounting for OPEB expenses. Furthermore, the witness testified that Greeley had retained William M. Mercer, Inc., to determine the Company's annual expense and total liability anticipated for financial reporting purposes after adoption of FAS 106.

6. Ms. Jensen provided further explanation of FAS requirements. For example, the witness gave specific reasons for changing to accrual accounting for OPEB expenses. These included: post-retirement benefits are part of current employees' compensation, and, therefore, accrual accounting more accurately reflects a company's financial obligations as compared to PAYGO; changing to accrual accounting earlier rather than later advances the goal of intergenerational equity; the method of calculating FAS 106 costs contains a self-correcting mechanism; etc. Ms. Jensen also explained, in comprehensive detail, the manner in which she developed FAS 106 valuation results, and how these results were consistent with FAS 106 requirements.

7. Finally, Mr. Bickerstaff, a witness with substantial ratemaking experience, submitted rebuttal testimony responding to witnesses who opposed the Company's proposal. In general, this

witness explained why adoption of accrual accounting for OPEBs was appropriate for ratemaking purposes. As part of that testimony, Mr. Bickerstaff responded to the contentions of the OCC (many of which were argued in the exceptions).

8. The OCC, in its May 9, 1994 exceptions, appears to suggest that the Company failed to meet its burden of proof inasmuch as no witness spoke the words, "The rates [resulting from the Company's proposal] would be just and reasonable." We reject this argument. Generally, the Company's evidence adequately demonstrated: (1) the reasons for adopting the accrual method for OPEBs are valid; (2) the FAS 106 valuation results (*i.e.*, the quantification of OPEB costs under the accrual method) are reasonable; and (3) the OPEB expenses quantified under Ms. Jensen's methodology are legitimate ratemaking expenses and should be collected in rates. It was unnecessary for Greeley's witnesses to utter the incantation that the resulting rates would be just and reasonable. This was the clear import of the Company's case, and we find that the burden of proof was met.

9. We finally address the OCC's argument that allowing a filing utility to make its "real" case in rebuttal is prejudicial to intervenors (*e.g.*, intervenors are unable to adequately respond to eleventh-hour testimony).[7] The Commission agrees that, as a matter of fairness, intervenors must be given sufficient notice of a filing utility's case, and, in some instances, perfunctory direct

[7] The Cities agree with the OCC's objection to using rebuttal as a substitute for a direct case.

testimony with extensive rebuttal may not comport with notions of basic fairness. We find that intervenors were not prejudiced by the circumstances existing in this case. As stated above, Greeley's rebuttal testimony was prefiled four days before the hearing in this matter. Notably, no intervenor requested additional time to prepare for cross-examination on the Company's rebuttal. No intervenor requested additional time or additional opportunity to respond to Greeley's rebuttal. Moreover, the Company pointed out that the Mercer study, the critical document in this case, was made available to intervenors in discovery well before the hearing. (Indeed, Mr. Minor, in his direct testimony, expressly stated that the Mercer firm had been retained to quantify FAS 106 expenses.) In these circumstances we conclude that intervenors were not prejudiced in the manner in which the Company presented its case.

B. **Generally Accepted Actuarial Standards**

1. The OCC suggested in its exceptions that FAS 106 requirements are inconsistent with generally accepted actuarial standards, as represented in Actuarial Standard of Practice No. 6 ("ASOP No. 6"), and consequently the valuation prepared by Greeley's actuary, Ms. Jensen, was unreasonable.[8] Specifically,

[8] In its first exceptions, the OCC disputed the ALJ's exclusion of ASOP No. 6 from evidence, and his concomitant limitation of cross-examination based on the standard. As noted above, we agreed with the OCC and remanded this matter with specific directions that ASOP No. 6 be admitted into evidence, and that further cross-examination of Ms. Jensen be allowed. This particular contention, therefore, was resolved. *See* Decision No. C94-456.

the OCC takes issue with: (1) Ms. Jensen's failure to consider the impacts of potential changes in government-sponsored programs (*e.g.*, Medicare) on Greeley's OPEB expenses; (2) Ms. Jensen's assumption that there would be no changes in the Company's retiree benefits plan; (3) Ms. Jensen's assumption of a 100 percent participation rate in Greeley's retirement plan; and (4) Ms. Jensen's assumed health care cost trend rates. We disagree with these arguments.

2. In the first place, Ms. Jensen explained that FAS 106 is generally consistent with ASOP No. 6. Ms. Jensen further testified that, while being more prescriptive than ASOP No. 6, FAS 106 did not require any assumptions inconsistent with her actuarial experience and expertise. This testimony, which directly contravenes the OCC's position, was unrebutted.

3. With respect to estimating **potential** changes to government health care programs such as Medicare, in her valuation, Ms. Jensen pointed out that FAS 106 prohibits such consideration and ASOP No. 6 does not require it. We determine that, contrary to the OCC's argument, ASOP No. 6 does not require guesses about future possibilities which might affect OPEB costs. Potential future reforms in government programs and their effects on the Company's OPEB costs are speculative at this point in time, as Greeley notes. Moreover, we are also persuaded by the Company's argument that changes in government health care programs will be properly reflected in the self-correcting mechanism. In short, the possibility--indeed the probability--that there will be changes in

government plans and policies in the future and that such reforms will affect Greeley's OPEB expenses, is no reason to reject FAS 106 for ratemaking purposes. Ms. Jensen's valuation of Greeley's OPEB costs is reasonable given present information. Furthermore, we find that ratepayers will be afforded sufficient protection against future occurrences with the self-correcting mechanism.

4. As for Ms. Jensen's assumption that there would be no changes to the Company's retiree benefits plan, we also agree with Greeley that this approach was reasonable. The Company again noted that FAS 106 required this assumption in these circumstances (*e.g.*, where there was no evidence that Greeley intended to change its plan), and ASOP No. 6 is not inconsistent with this requirement. Ms. Jensen specifically testified that in the exercise of her actuarial expertise, she would not have tried to take into account future changes in Greeley's plan unless they were imminent and the extent of the changes were known. Future changes in the Company's retiree benefits plan will be appropriately accounted for in future valuations.

5. The OCC's next contention concerned Ms. Jensen's assumption of a 100 percent retiree participation rate in the Company's retirement plan. We again reject the OCC's argument for the reasons articulated by Greeley. In particular, the Company's testimony explained that the retiree contribution under Greeley's plan is very low, almost non-contributory. Additionally, Ms. Jensen observed, that in her experience, the elderly have a

tendency to over-insure. Ms. Jensen testified that this assumption was reasonable, and the OCC presented no evidence to the contrary.

6. Finally, the OCC disputed the reasonableness of the Company's assumed health care cost trend rate. Greeley assumed a rate of 14 percent for 1993, 12 percent for 1994, and a trend downward to 7.5 percent in the year 2000 (to continue thereafter). The evidence in this proceeding persuades us that these assumptions are reasonable in light of current information, as reflected in the record (*e.g.*, the testimony by Ms. Jensen). As Greeley points out, future rates may very likely differ from those assumed by Ms. Jensen. However, the self-correcting mechanism will adequately ensure that ratepayers are protected when actual events diverge from those projected by Ms. Jensen.

7. In summary, we conclude that ASOP No. 6 is not inconsistent with FAS 106 requirements. Furthermore, Greeley's testimony convinces us that the FAS 106 valuation made in this case is reasonable. It was not necessary for Ms. Jensen to speculate about future events which might affect the Company's OPEB costs, when those events and their likely impact are unknown at the present time. Furthermore, the self-correcting mechanism provides sufficient assurance that ratepayers will not be harmed in the event the future proves to be different from Greeley's projections.

C. OPEBs as Known and Measurable Expenses

1. Both the OCC and the Cities disputed the ALJ's finding that FAS 106 expenses are sufficiently known and measurable

for ratemaking purposes. Both parties argued that these expenses ought not to be included in cost-of-service for recovery in rates. Many of the OCC's reasons underlying its conclusion that FAS 106 costs are not known and measurable are the same ones advanced in its argument that Ms. Jensen did not utilize generally accepted actuarial standards (*i.e.*, that FAS 106 did not allow for potential modifications of Greeley's retiree benefits plan; that Ms. Jensen did not account for potential changes in governmental health care programs such as Medicare; that Ms. Jensen assumed unreasonable health care cost trend rates; and that Ms. Jensen improperly assumed a 100 percent participation rate in Greeley's plan). These specific arguments were addressed in the foregoing discussion. The OCC also suggested that FAS 106 expenses are not sufficiently known and measurable for ratemaking purposes for additional reasons: (1) post-retirement benefits do not vest if the employee leaves company service prior to retirement; (2) Greeley management retains the right to change the level of post-retirement benefits at any time; and (3) there is a high level of volatility in the estimated annual OPEB expense accrual under Ms. Jensen's method of calculating costs. These factors, as well as the others previously discussed, led the OCC to conclude that FAS 106 costs are not known and measurable.

2. The Cities agreed, but advanced a different rationale. According to the Cities, the OPEB costs calculated by Ms. Jensen are essentially an out-of-period adjustment to the test year. The Cities asserted, that in order to allow such an

adjustment, the "known and measurable" standard requires Greeley to prove that the expenditure would actually occur, and in the amount of the expenditure. The Cities maintained that the OPEB expenses may not actually occur, inasmuch as they are not vested and management may modify its plan at any time. In addition, the Cities argued that FAS 106 expenses are not subject to effective measurement since estimation of these expenses requires many assumptions regarding the future (*e.g.*, future health care costs, life expectancy of employees, levels of plan participation, etc.). The Cities suggested that estimates of future events do not satisfy the known and measurable standard.

3. We reject these arguments, and affirm the ALJ's conclusion that FAS 106 expenses are sufficiently known and measurable for ratemaking purposes. We agree that there are some uncertainties associated with FAS 106 costs. We also acknowledge that the future will undoubtedly be different, to one degree or another, from present estimates, such as those made by Ms. Jensen. Nevertheless, we find that Ms. Jensen's calculation was reasonable. Greeley points out that the OCC witness agreed that Ms. Jensen's estimates were probably the best available based on the existing plan. In large measure, Ms. Jensen's calculation was based upon presently existing circumstances (*e.g.*, Greeley's existing plan),

and reasonable actuarial assumptions.[9] We find that no credible evidence was presented to dispute Ms. Jensen's assumptions.

4. The OCC and the Cities advocated the continued use of PAYGO, apparently because this accounting methodology involves no estimates of future events. To the extent the OCC and the Cities object to the use of cost estimates in ratemaking (as is required under accrual accounting for OPEBs), we find the accrual method better than PAYGO for matching cost-of-service and recovery of costs in rates. Employee post-retirement benefits are earned by employees during their working careers, not after they retire. While PAYGO requires no estimates of costs, the method uses the inappropriate premise that future customers should pay retiree benefit costs for current employees. FAS 106, even if it requires estimates of future events, is based upon the correct principle that post-retirement benefits earned by current employees ought to be paid by current customers.[10]

5. It is also significant to us that the self-correcting mechanism assures that variances between OPEB estimates and actual events will continue to be reflected in future valuations. Therefore, at the time of Greeley's next rate case, these lower

[9] As noted in the above discussion regarding Ms. Jensen's compliance with generally accepted actuarial standards, the OCC's suggestion that the witness should have tried to anticipate future possibilities (*e.g.*, unknown potential changes to Greeley's plan and unforeseeable governmental reforms in the distant future) was itself contrary to FAS 106 requirements and was unreasonable.

[10] Similarly, Greeley points out, and we agree, that the Cities are inaccurate in characterizing FAS 106 as an out-of-period adjustment to the test year. An out-of-period adjustment involves a change to test year expenses. On the other hand, the present proceeding involves a change in accounting methodologies for OPEB expenses.

valuations will then be incorporated into the rates charged to customers. Concomitantly, there is no good reason to deny rate recovery of OPEB costs based upon the accrual method even though the method involves estimates of future events.

6. As for the OCC's and the Cities' observations that post-retirement benefits are not vested prior to retirement and that management retains the prerogative to eliminate benefits at any time, we note that the ALJ recommended that the Company be ordered to fund OPEBs in an external funding vehicle. In the event Greeley cancels its OPEBs plan, the funds would be refunded to ratepayers in a manner directed by the Commission.[11] Greeley has not objected to this recommendation, and we approve it in this order. Therefore, ratepayers are protected against the possibility of overpayment in the event the Company eliminates portions or all of its benefit plan in the future.

D. Transition Obligation

1. The change from PAYGO to accrual accounting for OPEBs results in a transition obligation for previously deferred expenses. Specifically, FAS 106 requires that the previously deferred OPEB obligation be amortized over three possible time periods: (1) the Company may immediately recognize the entire transition obligation; (2) the Company may amortize transition expenses over the remaining working life of the existing workforce

[11] Under the Recommended Decision, termination of portions of Greeley's plan would require an application to the Commission for a determination whether any refund is necessary.

(in Greeley's case, approximately 10 years); or (3) the Company may amortize the transition obligation over a 20-year period. In this case, Greeley proposed recovery of transition expenses over 20 years, the FAS 106 option which results in the least impact upon existing ratepayers. The OCC and the Cities, for various reasons, objected to this proposal.

2. The OCC contended that FAS 106, because of the transition obligation, does not result in a better match between OPEB costs and cost recovery as compared to PAYGO. In particular, the OCC argued that the goal of intergenerational equity requires that the transition obligation be amortized over two generations of ratepayers. According to this argument, a 20-year amortization period would require the current generation of customers to pay the entirety of the deferred OPEB obligation. The OCC concluded that it is inequitable to impose this burden upon a single generation of ratepayers. Consequently, the OCC suggested that, if accrual accounting is adopted, transition expenses be amortized over 40 years.

3. The Cities similarly opposed the Company's request with respect to the transition obligation. Specifically, the Cities argued that recovery of transition expenses constitutes unlawful retroactive ratemaking, inasmuch as Greeley proposes to recover past expenses from current and future ratepayers. The Cities concluded that FAS 106 benefits the investment community, not customers. Therefore, the Cities suggested that shareholders pay all or a portion of the transition obligation.

4. We affirm the ALJ's Recommended Decision on the issue of transition obligation. First, Greeley noted that once the transition obligation is amortized there will be an appropriate match between costs and cost recovery on a going-forward basis. As the Company also observed, the transition obligation is a consequence of changing to accrual accounting. Our decision here points out that adoption of accrual accounting is preferable to continuation of PAYGO. Maintaining the present accounting treatment for OPEBs will exacerbate the mismatch between costs and cost recovery over time so that burdens inappropriately would accrue to future ratepayers.

5. We also reject the OCC's suggestion that transition expenses be amortized over 40 years for reasons of intergenerational equity. The ALJ found, and we agree, that the shorter the amortization period, the more likely it is that the transition obligation will be paid by those customers who received service when the obligation was incurred. Therefore, a 20-year period is more likely to advance the goal of intergenerational equity than the longer period advocated by the OCC.

6. Moreover, if the Commission were to adopt the OCC's position, Greeley would not be in compliance with FAS 106 requirements. *See* discussion, *supra* (amortization period for the transition obligation may not exceed 20 years). As a result, the Company would be required to take a charge against earnings. This event could raise the Company's cost of capital, to the detriment of ratepayers. Given the options provided for by FAS 106, the

Company proposed that option which would have the least effect on current customers.

7. As for the Cities' suggestion that recovery of transition expenses constitutes unlawful retroactive ratemaking, we disagree. These expenses are the result of the change in accounting methodology for OPEBs. We find that current recovery of previously deferred expenses, as a consequence of changing accounting methods, is not the equivalent of recovery of past expenditures in current rates. Therefore, the Cities' contention is erroneous.

8. With respect to the Cities' argument that shareholders pay all or a portion of the transition expense, we note that there has been no suggestion by the Cities or the OCC that the Company's OPEB costs were unreasonable. There is no evidence in the present record that any portion of these costs is not legitimate ratemaking expense. Therefore, we reject the Cities' suggestion.

9. For the foregoing reasons, we affirm the Recommended Decision, and approve Greeley's proposal to amortize the transition obligation over a 20-year period.

E. Attribution Period

1. Finally, the OCC asserted that if the Commission adopts FAS 106 for ratemaking purposes, the attribution period[12]

---

[12] The attribution period is the period over which the OPEB obligation is accrued as to each employee.

should be extended from the date the employee is eligible to retire with full benefits to the employee's expected date of retirement. We agree with the ALJ's decision, and deny this request.

2. Greeley pointed out that FAS 106 requires that OPEB obligations be accrued by the date an employee is first eligible to retire with full benefits. Inasmuch as the Company's obligation does not increase after that time, it is logical that the accrual be completed by then. Moreover, Ms. Jensen testified that the fact that many employees may not retire when first eligible was reflected in her FAS 106 valuation. We therefore affirm the Recommended Decision.

F. Interim Rider

1. The Cities challenged the ALJ's recommendation that the interim rider (*i.e.*, the rider which reflects the new revenue requirement established in the present proceeding) be spread on a variable, non-uniform basis to each of Greeley's seven operating divisions. In the stipulation between the Company, Staff, the OCC, and the Colorado Business Alliance, the parties agreed that the increased revenue requirement, including any increase attributable to the decision on OPEBs, would be allocated to Greeley's operating divisions on the basis of their relative contribution to Greeley's revenue deficiency. The Cities opposed this allocation in its exceptions, arguing that the interim rider should be applied on a uniform basis to all divisions pending Phase II proceedings. According to the Cities' argument, it is long-standing Commission

practice to apply Phase I riders in such a manner. We disagree with these contentions.

2. Unlike the filings of utilities such as Public Service Company of Colorado,[13] Greeley's filing in the present case was based upon a summation of the different rate increases sought for each of its separate operating divisions. Those differential rate increases were, in turn, based upon the records which the Company maintains for each division. The Company pointed out that it separately records operating expenses, rate base, etc. for each division. In the past (*e.g.*, in Decision No. C93-1346), we have approved of uniform interim riders, inasmuch as we lacked sufficient information to draw rate distinctions between different classes of service prior to Phase II proceedings. No such impediment exists here, given the nature of the Company's record-keeping. Therefore, we reject the Cities argument, and approve the ALJ's recommendation.

IV. **<u>THE COMMISSION ORDERS THAT</u>:**

1. The exceptions filed by the Colorado Office of Consumer Counsel are denied.

2. The exceptions filed by the Cities of Canon City, Craig and Florence and the County of Fremont are denied.

3. The 20-day period provided for in § 40-6-114(1), C.R.S. within which to file applications for rehearing, reargument, or

[13] The precedent cited by the Cities in support of a uniform Phase I rider primarily concerned Public Service.

reconsideration begins on the first day following the Mailed Date of this Decision.

This order is effective upon its Mailed Date.

ADOPTED IN OPEN MEETING June 8, 1994.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Christine E.M. Alvarez

Vincent Majkowski

Commissioners

CHAIRMAN ROBERT J. HIX
NOT PARTICIPATING.