

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 00L-697G

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR AN ORDER AUTHORIZING IT TO EFFECT CERTAIN REVISIONS IN GAS RATES UPON LESS THAN STATUTORY NOTICE.

**COMMISSION ORDER AUTHORIZING
UPWARD REVISIONS OF GAS RATES**

Mailed Date: January 5, 2001
Adopted Date: January 5, 2001

T A B L E O F C O N T E N T S

I. BY THE COMMISSION: 1
A. Statements 1
B. Findings of Fact 2
II. ORDER 19
A. The Commission Orders That: 19
B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING 20

I. BY THE COMMISSION:

A. Statements

1. On December 22, 2000, Public Service Company of Colorado ("Public Service", "Applicant", or "Company") filed a verified application. Applicant seeks a Commission order authorizing it, without formal hearing and on less-than-statutory notice, to place into effect on January 6, 2001, tariffs resulting in an increase to its existing natural gas rates now on file with the Commission.

2. In addition, pursuant to Rule 4 *Code of Colorado Regulations* ("CCR") 723-8-7 of the Gas Cost Adjustment ("GCA") Rules, Public Service has filed under seal an original and six copies of GCA Exhibit No. 2 containing material that is highly confidential, proprietary, and market-sensitive. In accordance with GCA Rule 4 CCR 723-8-7.2, Public Service moves the Commission to issue a protective order for extraordinary protection governing GCA Exhibit No. 2.

3. The proposed tariffs are attached to the application, and affect Applicant's customers in its Colorado certificated areas on file with the Commission.

4. This application for authority to increase rates is made under § 40-3-104(2), C.R.S., and Rule 41, Commission's Rules of Practice and Procedure, 4 CCR 723-1.

B. Findings of Fact

1. Applicant is an operating public utility subject to the jurisdiction of this Commission and is engaged, *inter alia*, in the purchase, transmission, distribution, transportation, and resale of natural gas in various certificated areas within the State of Colorado.

2. Applicant's natural gas supplies for sale to its residential, commercial, industrial and resale customers, are purchased from numerous producer/suppliers located inside and outside of the State of Colorado. The rates and charges incident

to these purchases are established through contracts between Applicant and the various producer/suppliers.

3. These gas supplies are either delivered directly into Applicant's natural gas pipeline system or through several interstate pipeline and/or storage facilities with which Applicant is directly connected. The transportation of these gas supplies is made pursuant to service agreements between Applicant and upstream pipeline service providers based upon Applicant's system requirements for the various pipeline services, such as gathering, storage, and transportation. These upstream pipeline service providers include: Colorado Interstate Gas Company ("CIG"); Wyoming Interstate Company, Ltd. ("WIC"); Kinder Morgan Interstate Gas Transmission Company ("KMI"); Williams Gas Pipelines Central, Inc. ("Williams"); and Young Gas Storage Company, Ltd. ("Young").

4. CIG, WIC, KMI, Williams, and Young are natural gas companies under the provisions of the Natural Gas Act, as amended, and the rates and charges incident to the provision of the various pipeline delivery services to Applicant are subject to the jurisdiction of the Federal Energy Regulatory Commission. This Commission has no jurisdiction over the pipeline delivery rates of CIG, KNI, WNG, and Young, but it expects Applicant to negotiate the lowest prices for supplies of natural gas that are consistent with the provisions of the Natural Gas Policy Act of 1978, 15 U.S.C. §§ 3301-3432 (Public Law 95-621) and applicable

federal regulations, or determinations made under applicable federal regulations.

5. The Commission's Gas Cost Adjustment Rules require that Applicant revise its GCA rates to be effective on October 1 of each year. See 4 CCR 723-8-2.1. Rule 4 CCR 723-8-4.2 provides, in pertinent part, that if the projected gas costs, such as the cost of gas commodity or Upstream Services, changes from those used to calculate the currently effective Current Gas Cost, or if the utility's Deferred Gas Cost balance increases or decreases sufficiently, the utility may file an application to revise its currently effective GCA to reflect such changes, provided that the resulting change to the GCA equates to at least one cent (\$0.01) per Mcf or Dekatherm ("Dth"). The recent increases in gas prices and gas price forecasts necessitate the instant interim GCA filing.

6. Applicant's currently effective GCA, placed into effect October 1, 2000, as authorized by the Commission in Docket No. 00L-526G (Decision No. C00-1095, mailed September 28, 2000), was based on a forecasted producer/supplier rate of \$4.0034 Dth. This rate was based on data provided to Public Service by Standard and Poor's, the publisher of the *DRI Monthly Natural Gas Price Outlook*, ("*DRI Outlook*"), in *DRI Outlook's* preliminary September 2000 forecast, coupled with the terms of the contracts under which Applicant purchases natural gas. The instant GCA includes a revised composite forecasted commodity cost of gas from

the various producers/suppliers of \$6.0941 per Dth for the period January 1, 2001 through December 31, 2001, as compared to the \$4.0034 per Dth weighted-average forecasted price reflected in Applicant's October 1, 2000 GCA application.

7. In addition to a projected increase in the commodity cost of gas, Applicant has included in the instant filing projections of costs for upstream pipeline service from CIG, WIC, KNI, Williams, and Young, based upon the rates and charges anticipated to be in effect on and after January 6, 2001, applied to the various transportation and storage services to be provided by each company.

8. Public Service proposes to reduce the Deferred Gas Cost Account (Account No. 191) balance by an amount attributable to certain refunds received by Public Service from various interstate pipeline suppliers, as discussed in more detail below, along with accumulated interest thereon. If this reduction is approved, Public Service states that its general body of gas sales customers will be credited with these refunds in the most efficient and expeditious manner at a time when consumer gas prices are at an all time high. In the event the Commission determines not to approve the credit to flow these refunds to Public Service's customers, Public Service has attached alternative tariff sheets and exhibits as part of this application which reflect the appropriate GCA rates without the effect of the proposed credit.

9. Pursuant to Public Service's GCA tariff and Rules 4 CCR 723-8-3.6 and 4 CCR 723-8-4.2 of the Commission's GCA Rules, the full amount of the deferred account balance as of November 30, 2000, as adjusted pursuant to the discussion below, is included by Public Service in the calculation of the Deferred Gas Cost component of the GCA rates to provide for the recovery of these amounts. Thus, Applicant is including the effect of under-recovered gas costs of \$115,088,261 reflected in its Deferred Gas Cost balance at November 30, 2000, as adjusted by a credit of \$9,787,104 attributable to net refunds in Public Service possession, as discussed in detail below. The resulting adjustment for Deferred Gas Costs reflects a net under-collection of \$105,301,157. The magnitude of the Deferred Gas Cost balance reflects the substantial under-recovery of gas costs since August 31, 2000, even taking into account the effect of the increase in Applicant's GCA which was placed into effect on October 1, 2000.

10. Applicant, in accordance with the Treatment of Refund tariff provisions set forth on Sheet 50E of Applicant's gas tariff, is proposing to credit net refunds to the deferred account (Account No. 191) as an alternative method for the distribution of refunds, subject to Commission approval. Applicant represents that this method of distributing these refunds is the most logical based on the period to which the refunds relate and the amount of dollars involved. Applicant

states that the test period for the Kansas *ad valorem* tax refunds is October 4, 1983 through June 28, 1988, and that customer data relating to this test period no longer exists. Therefore, developing and processing a refund on this test period would be virtually impossible and, at the very least, would not be a cost-effective way to process the Kansas *ad valorem* tax refunds received. In addition, part of the basis for the settlement¹ in the CIG Kansas *ad valorem* tax refund proceeding was the need to have refunds paid to Public Service and the other local distribution companies so that they could be used to help offset customers' high winter heating bills resulting from high gas prices. An attempt to identify Public Service's and Western Gas Supply Company's ("WestGas") customers from the 1980's would not only be costly, it would take many months to accomplish. Accordingly, Public Service submits that the most cost-efficient

¹ As the result of a settlement among Public Service, CIG, other CIG customers and numerous gas producers in Federal Energy Regulatory Commission ("FERC") Docket No. R98-54-000 and other proceedings, Public Service received approximately \$11.8 million in refunds on December 20, 2000, associated with overcharges by gas producers under the Natural Gas Policy Act attributable to Kansas *ad valorem* taxes during the period 1983 to 1988. The FERC issued its order approving the settlement on November 21, 2000. Colorado Interstate Gas Co., 93 FERC ¶ 61,185 (2000).

and timely mechanism to credit the accumulated refunds to its gas sales customers is through a credit to the Deferred Gas Cost account.

11. In addition, as reflected in Rule 4 CCR 723-4-32.7 of the Commission's Rules Regulating the Service of Gas Utilities, the Commission has the authority under § 40-8-101(2), C.R.S., to order up to 90 percent of any undistributed refund be paid to the Colorado Energy Assistance Foundation ("CEAF"). These undistributed amounts usually result from the Company's inability to locate customers who have left no forwarding address or who have not cashed their refund check. Except for Public Service's proposal to offset the refund against the under-recovered deferred account balance, Public Service could conceivably be ordered by the Commission to make a separate customer-by-customer refund (albeit with a more recent test period due to the lack of historical customer data), Public Service is proposing that the Commission approve the carving out of a portion of the CIG refund to be donated directly to CEAF. In Docket No. 98L-409G, concerning Public Service's October 1, 1998 GCA Application, Public Service proposed and the Commission approved a 25 percent carve out and payment to CEAF of the total Kansas *ad valorem* tax refunds received by Public Service in 1998. Applicant requests that the Commission approve the carving out of 25 percent of the net amount of the CIG Kansas *ad valorem* tax refund, including interest thereon, for CEAF. Doing so

acknowledges CEAF's forgone interest in Public Service otherwise going through the process of making a separate refund which, if it could be made at all, would likely be made during the Spring of 2001, considering the period of time it would take for Public service to develop and acquire customer data. Public Service is proposing, therefore, that the Commission authorize the Company to set aside \$3,262,368 of the amount received from CIG as a donation to CEAF.

12. In addition, for purposes of Public Service's obligation to match customer donations pursuant to Decision No. C95-52, adopted by the Commission in Docket No. 94A-679EG, on January 13, 1995, Public Service states that it will consider the \$3,262,368 carved out of the total CIG refund as customer donations toward meeting the \$500,000 threshold for the purposes of matching by Public Service.

13. To allow the Commission flexibility in this docket to approve Public Service's proposal to set aside a portion of the accumulated refunds for payment to CEAF, Public Service is tendering as part of this filing alternative tariff sheets. The Primary tariff sheets reflect the setting aside of \$3,262,368 of the CIG Kansas *ad valorem* tax refund and other accumulated refunds for CEAF prior to application of the refund against the under-recovered deferred balance. The Alternate tariff sheets do not credit any of the accumulated refunds against the under-recovered deferred balance. Thus, these Alternate sheets reflect

the use of a deferred Gas Cost account balance of \$115,088,261. Should the Commission determine not to carve out a portion of the CIG Kansas *ad valorem* tax refund for CEAF, Public Service requests that it be permitted to place the alternative tariff sheets into effect on January 6, 2001.

14. A share of the refund principal and interest equal to \$392,005 of the CIG Kansas *ad valorem* tax refunds received by Public Service relates to sales for resale to other Colorado gas utilities by WestGas, a former intrastate pipeline company affiliate of Public Service. WestGas merged with Public Service effective January 1, 1993. Applicant proposes to reduce the current amount of these refunds available for a credit to sales gas customers by \$392,005 and will file an application with the Commission to refund these amounts back to the former WestGas sales for resale customers at a later date.

15. The following is a detailed description of the amounts accumulated by Public Service, including the recent receipt of Kansas *ad valorem* tax refunds, which it proposes herein to credit to its gas sales customers through a reduction in the Deferred Gas Cost account:

a. In Decision No. C95-905, mailed on September 14, 1995 in Docket No. 95A-409G, the so-called 1995 CIG Mass Refund docket, the Commission ordered the Company to retain for inclusion in a future refund any amounts less than or equal to \$1.50 per customer. In its Final Refund Report in that docket, Public Service reported that these undistributed funds totaled \$50,222 including interest through November 1, 1995. Further, in Decision No. C97-139 mailed on February 14, 1997 in Docket No. 95A-409G, the

Commission ordered the Company to retain for inclusion in a future refund 10% of the unclaimed refunds totaling \$218,705, which included interest through November 1, 1995. The total of these two amounts of \$268,927, plus interest through December 31, 2000 of \$71,827, equals \$340,754. Applicant proposes to carve out 25% of this total, or \$85,189, for CEAF and credit the remaining \$255,566 to the Deferred Account.

b. On January 29, 1998 and April 8, 1998, Public Service received \$974 and \$1,159 respectively from Williams Gas Pipelines Central, Inc. in Kansas *ad valorem* tax refunds. Interest from the time of receipt of this refund through December 31, 2000 is \$299. This results in a total of principal and interest of \$2,432. Applicant proposes to carve out 25% of this total, or \$608, for CEAF and credit the remaining \$1,824 to the Deferred Account.

c. On April 15, 1998, July 17, 1998, and September 29, 1998, Public Service received \$29,796, \$155,901, and \$41,269 respectively from KN Interstate Gas Transmission Gas Company in Kansas *ad valorem* tax refunds. Interest from the time of receipt of these refunds through December 31, 2000 is \$26,931. This results in a total of principal and interest of \$253,896. Applicant proposes to carve out 25% of this total, or \$63,474, for CEAF and credit the remaining \$190,422 to the Deferred Account.

d. Remaining from the 1998 CIG Kansas *ad valorem* tax refund is \$390,222, plus interest through December 31, 2000 of \$42,664. This results in a total of principal and interest of \$432,886. This amount includes the \$326,900 that Public Service held in escrow for legal expenses. Applicant no longer desires to seek reimbursement of these legal expenses and proposes not to retain these funds. Applicant proposes to carve out 25% of this total, or \$108,221, for CEAF and credit the remaining \$324,665 to the Deferred Account.

e. On March 16, 2000, Public Service received \$198,574 in refunds from Kinder Morgan Interstate Gas Transmission LLC pursuant to the Settlement and Agreement as approved by FERC on December 22, 1999 in Docket Nos. RP98-117, et. al. Interest from the time of receipt of these refunds through December 31, 2000 is \$7,147. This results in a total of principal and interest of \$205,721. Applicant proposes to carve out 25% of this total, or \$51,430, for CEAF and credit the remaining \$154,291 to the Deferred Account.

f. In 1998, Public Service received CIG Kansas *ad valorem* tax refunds that relate to sales of gas for resale by WestGas which, including interest through September 30, 1998, totals \$82,569. Again, on December 20, 2000, Public Service received 2000 CIG Kansas *ad valorem* tax refunds of \$299,999 that relate to sales of gas for resale on WGS. Interest from the time of receipt of both these refunds through December 31, 2000 is \$9,437. This results in a total of principal and interest of \$392,005. Since these monies pertain to sales for resale made by Colorado gas utilities to their gas customers, Public Service proposes that these amounts be flowed back to these former WestGas sales for resale customers. These sales for resale customers include Citizens Utilities, ComFurT Gas, Greeley Gas Company, Rocky Mountain Natural Gas Company, the Town of Center and the Town of Nunn, and/or their respective successors and assigns. As noted above, Applicant proposes to retain this amount with additional interest for future refund to these customers at a later date.

g. On December 20, 2000, Public Service received \$11,797,676 from CIG 2000 Kansas *ad valorem* tax refunds. Interest from the time of receipt of these refunds through December 31, 2000 is \$16,106. This results in a total of principal and interest of \$11,813,783. Applicant proposes to carve out 25% of this total, or \$2,953,446, for CEAF and credit the remaining \$8,860,337 to the Deferred Account.

16. Because CEAF will gain a more immediate benefit from the method Public Service is proposing, as well as the fact that the Company will avoid future costs associated with processing a separate refund, which would reduce the amount available for refunding, the \$3,262,368 proposed to be transferred to CEAF is a fair and equitable resolution of the refund issue.

17. This acceptance for filing of the refund plan and related set aside for allocated legal expenses and contribution to CEAF within the GCA application shall not be construed as

constituting approval of the underlying filing or of any rate, charge, classification, or any rule, regulation, or practice affecting such rate or service; nor shall such acceptance be deemed as recognition of any claimed contractual right or obligation associated therewith; and such acceptance is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against Public Service.

18. The net effect of the revision in the GCA on an annual basis would be to increase revenues by \$361,646,861 above that yielded by the currently effective GCA, based on the projected transportation volumes and forecasted sales volumes for the period January 6, 2001 through September 30, 2001.

19. The proposed tariffs attached as Appendix A will increase annual revenues by \$361,646,861, which is an increase of 36.88 percent.

20. Applicant's last authorized rate of return on rate base was 9.43 percent, and its last authorized rate of return on equity was 11.25 percent. If this increase is approved, Applicant's rate of return on rate base will be 9.95 percent and rate of return on equity will be 12.32 percent. Without the increase, Applicant's rate of return on rate base would be (16.69) percent and its rate of return on equity would be (39.11) percent.

21. The filing of this application was brought to the attention of Applicant's affected customers by publication in *The Denver Post*, a newspaper of general circulation in the areas affected.

22. In paragraph d of Section 6, Part C, of the Commission's Decision No. C95-796 (page 13), the Commission imposed the following requirements after asserting its concern that transportation discounts could possibly have an adverse impact on the cost of gas collected through the GCA:

Therefore, the Company will be ordered to report in each of its GCA applications the calculation of the revenue effect of transportation discounts on sales in the GCA. This report shall include any discounts which are provided to any affiliated company. (Footnote omitted.)

23. Consequently, Applicant was required to report in its GCA Application the following two issues: (i) the revenue effect of any transportation discounts on sales in the GCA; and (ii) any transportation discounts provided to any affiliated company.

24. Applicant states that the GCA is currently not impacted by transportation commodity discounts as all discounted transportation commodity rates are in excess of the current gas cost portion of the transportation charge (balancing costs). Accordingly, Applicant represents that the GCA applicable to sales customers will not be affected by transportation discounts.

25. Public Service states that Exhibit 2 of the instant application contains highly market-sensitive and

proprietary information which, if disclosed to the public, would likely adversely impact the cost of gas to Colorado gas consumers. Rule 4 CCR 723-8-7 of the GCA Rules specifically provides that "[a] Commission protective order in the same form as contained in 4 CCR 723-10 shall govern access to all information ... in the utility's GCA." After initially asking for "extraordinary" protection, Public Service requests that the Commission enter a protective order in this docket adopting the provisions set forth in Exhibit 1 of 4 CCR 723-10.

26. The proposed increase in rates will substantially recover only Applicant's increased cost of gas.

27. Good cause exists to allow the proposed increases on less-than-statutory notice.

28. On January 4, 2001, Public Service filed its Motion for Extension of Time prescribed under Rule 4 CCR 723-1-41.5.3 for Publication of Notice and Request for Waiver of Response Time. The motion points out that Public Service did not publish notice of this application in a newspaper of general circulation within three days of the filing of the application, as required by Rule 41.5.3. Notice was published six days after the application was filed. According to the motion, a timely request for publication was submitted to *The Denver Post*. However, due to a shortage of available staff at *The Denver Post* as a result of the holidays, publication of the notice did not occur within three days of the filing of the application. The

motion also points out that the public received timely notice of the application even in light of the late publication of the Rule 41.5.3 notice. In particular, news of the application appeared in *The Denver Post* and *The Rocky Mountain News* as early as December 23, 2000, the day after the filing of the application. As such, the public has not been prejudiced by late publication of the Rule 41.5.3 notice. Good cause having been stated, we will waive response time and grant the motion.

29. On January 3, 2001, the Colorado Office of Consumer Counsel ("OCC") filed its Notice of Intervention of Right, Entry of Appearance and Request for Hearing. In that pleading, the OCC requests that we set this application for hearing, and that any GCA increase resulting from the application be delayed until October 1, 2001 and recovered over a three-year period. We deny these requests.

30. We note that less-than-statutory ("LSN") applications under § 40-3-104(2), C.R.S., and Rule 41.5 may be denied, if good grounds exist, but may not be set for hearing. The relief requested in LSN applications is that the public utility be permitted to implement new rates on less than 30 days notice and without hearing. See Rule 41.5.1. In this case, Public Service's application requests that it be permitted to implement new GCA rates on January 6, 2001. Therefore, the setting of a hearing on the LSN request would be equivalent to denial of the application without an express ruling of denial.

This would be improper and would violate the intent of § 40-3-104(2), C.R.S., and Rule 41.5.² In addition, in light of our findings that Public Service's present request complies with the GCA Rules, setting the application for hearing would violate those rules.

31. We also reject the request that any GCA increase be delayed and recovered over a three-year period. We recognize that the rate increase proposed in the application will result in hardship for some ratepayers. However, the Commission established the GCA process to allow utilities to timely recover expenses over which they have little or no control, recognizing that, without timely cost recovery of GCA expenses, regulated gas utilities could suffer serious financial damage. Such damage could jeopardize a public utility's ability to continue to serve the public. The OCC's proposal violates the intent of the GCA process and the rules.

32. Moreover, the proposal to phase in new GCA increases over a three-year period is short-sighted and imprudent. Public Service is experiencing increased gas costs now. Delaying recovery of those costs for up to three years would risk imposing even greater burdens upon ratepayers in the future. Additionally, such delay would certainly result in significant inequities for many of Public Service's customers. Specifically: Ratepayers now on Public Service's system would

² This interpretation of the statute and the rule is consistent with the

avoid paying some of the increased costs now being incurred when they move out of Public Service's service area in the future (*i.e.*, during the three-year period) even though they used gas in this GCA period. Similarly, persons who are not now on Public Service's system but move into the area in the future would pay the costs being incurred now, even though they did not use gas in the present GCA period. For these reasons, the OCC's proposal, in addition to violating the GCA Rules, is unwise public policy.

II. ORDER

A. The Commission Orders That:

1. A. Public Service Company of Colorado is authorized to file on January 5, 2001, the tariffs attached as Appendix A and made a part of this Order. These tariffs shall be effective for actual gas sales on or after their effective date on January 6, 2001.

2. The Commission's acceptance of the proposed refund plan within the instant Gas Cost Adjustment application of refund monies received to date from various Federal Energy Regulatory Commission dockets does not constitute approval of, or precedent regarding, any principle or issue in any gas cost adjustment, refund, or rate case dockets.

3. Confidential information submitted separately under seal as part of the instant application shall be treated

Commission's long-standing practice regarding LSN applications.

under the protective order as set forth in 4 *Code of Colorado Regulations* 723-10.

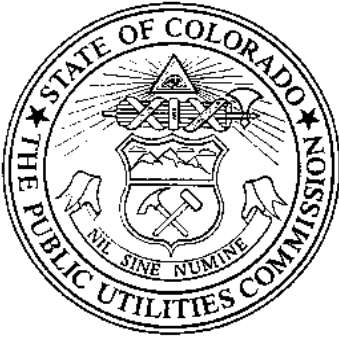
4. The Request for Hearing filed by the Colorado Office of Consumer Counsel on January 3, 2001 is denied.

5. The Motion for Extension of Time Prescribed under Rule 4 *Code of Colorado Regulations* 723-1-41.5.3 for Publication of Notice and Request for Waiver of Response Time filed by Public Service Company of Colorado on January 4, 2001 is granted.

6. This Order is effective on its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING January 5,
2001.

(S E A L)



ATTEST: A TRUE COPY

Bruce N. Smith
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

RAYMOND L. GIFFORD

ROBERT J. HIX

POLLY PAGE

Commissioners