

Decision No. C04-0253

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03A-489EG

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF
COLORADO FOR APPROVAL OF ITS 2003-2004 GAS PRICE VOLATILITY
MITIGATION PLAN

**ORDER APPROVING STIPULATION,
WITH CLARIFICATION**

Mailed Date: March 11, 2004
Adopted Date: February 25, 2004

I. BY THE COMMISSION

A. Statement

1. On November 7, 2003, Public Service Company of Colorado (Public Service or Company) filed an application for approval of its 2003-2004 Gas Price Volatility Mitigation Plan (PVM Plan) for its electric department. The PVM Plan sets forth the Company's gas price hedging plan for 2003-2004, that is, the plan for mitigating gas costs for its electric department. Public Service points out that it filed this application pursuant to a requirement in the April 4, 2003 Rate Case Settlement Agreement approved by the Commission in Docket No. 02S-315EG, Decision No. C03-0670.

2. Staff of the Commission (Staff) and the Colorado Office of Consumer Counsel (OCC) intervened in the docket, and the Commission set the matter for hearing in Decision No. C04-0028.

3. Public Service, Staff, and OCC filed a Stipulation and Settlement Agreement (Stipulation) on February 4, 2004. The parties state that the Stipulation resolves all issues in this Docket. On February 10, 2004, the Commission held a hearing on the Stipulation.

4. On February 13, 2004, Public Service filed its motion to accept a late-filed correction to Hearing Exhibit 4, and the revised page 9 of 11 to that exhibit.

5. Since neither Staff nor the OCC objects to the late-filed revision, we find that response time to the motion should be waived. Further, we find that Public Service's late-file exhibit is a correction that is consistent with statements made at hearing. Therefore, we grant the motion.

6. Now being duly advised in this matter, we approve the Stipulation with the clarifications discussed here.

7. In Paragraph 1 of the Stipulation, the parties request that we accept the PVM Plan for 2003-2004 for Commission files and close the docket. That is, the parties agree that by approving the Stipulation we are not approving the Company's 2003-2004 PVM Plan. The Stipulation proposes this action (*i.e.*, acceptance but not approval of the PVM Plan) because, due to the timing of the filing of this first PVM Plan, Public Service has already executed its hedging contracts for 2003-2004. We accept this proposal. Therefore, we are only receiving the 2003-2004 PVM Plan for Commission files, and do not make any determinations regarding its merits. Although the Stipulation states that the Parties stipulate and agree that the activity set forth on Confidential Settlement Exhibit 1 is prudent, the Commission is not determining prudence at this time.

8. The Stipulation, in Settlement Exhibit 2, specifies the format--that is, the information--in which the Company will make its future annual PVM Plan filings. The information in the annual filings will include the Company's hedging strategy for the upcoming year and the implementation plan; the volume of gas to be hedged; the timing of the hedges; the types of hedging instruments to be used by the Company; the floor price for determining the costs related to the hedging cost cap; and the maximum hedging budget. According to the Stipulation, Public Service will not request that the Commission approve the precise hedging instruments to be employed at various gas price levels. In each annual filing, the Company will segregate in a separate confidential exhibit the specific activity for which it seeks Commission approval. We agree with these proposals, and we specifically approve the standard template to be used in future filings as shown in Settlement Exhibit 2.

9. For this PVM Plan Public Service proposes a floor price (for determining costs related to the hedging cost cap) of \$2.75 per Dth and hedging budget of \$15,000,000. Both of these components of the Plan were set in the Rate Case Settlement Agreement in Docket No. 02S-315EG.

10. We clarify the footnote on page 7 of the Stipulation as follows: parties must raise any potential conflict between this Stipulation and the Rate Case Settlement Agreement with the Commission first, and then may appeal any Commission decision to a court of law consistent with statutory procedures.

11. The Stipulation (page 6) proposes specific procedures for Commission consideration of future PVM Plan filings. Notably, the parties propose that the notice period for all future PVM Plan applications shall be shortened to ten days. We find that the accelerated

schedule in these dockets necessitates a shortened notice period, and we adopt the proposed ten-day notice period for all future PVM Plan Applications. In addition, we require Public Service to state in each application that the notice period has been reduced to ten days, as specified in this decision.

12. With respect to the second procedural proposal on page 6, the parties request that we now specify that a hearing shall take place in the last week in February of each year. We modify this proposal. Specifically, we require Public Service to propose in its PVM Plan Application a hearing date in the last week of February. Any party can suggest other dates as circumstances warrant. The Commission will then decide on a hearing date that is consistent with its calendar and considering other comments.

13. We add two additional requirements not contained in the Stipulation. First, we require Public Service to file eight copies of all confidential exhibits and testimony with each PVM Plan application. Given the accelerated schedule associated with PVM Plans, the Commission needs the extra copies to be able to review the application in a timely manner.

14. Second, we clarify that where conditions change to the point where an update to a PVM Plan is warranted after a Plan has been approved, Public Service or any other party may request that the Commission modify an approved PVM Plan. Although unlikely given the comprehensive approach Public Service has presented for its PVM Plans, an approved PVM Plan should be subject to change where circumstances require. When requesting a change to an approved PVM Plan, the party requesting such change will have the burden of proof and the burden of going forward. We recognize that the reason for establishing this pre-approval procedure is to give Public Service certainty that the actions it takes to mitigate gas price

volatility will be deemed prudent. Pre-approval of PVM Plans also provides a means for other parties to have input to the PVM Plans before actions are taken. However, Public Service and interested parties should have the opportunity to request modification of an approved PVM Plan where circumstances change and the Company is still able to modify its actions in a timely manner. Given the importance of providing certainty to Public Service and interested parties and the difficulty in implementing subsequent changes, the Commission will require substantial justification for changing an approved PVM Plan.

II. ORDER

A. The Commission Orders That:

1. The Stipulation and Settlement Agreement filed by Public Service Company of Colorado, Staff of the Commission, and the Office of Consumer Counsel on February 4, 2004 is approved consistent with the above discussion.
2. The motion to accept a late-filed correction to page 9 of Hearing Exhibit 4, and to waive response time by Public Service Company of Colorado is granted.
3. The 20-day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the Mailed Date of this Decision.
4. This Order is effective on its Mailed Date.

B. ADOPTED IN COMMISSIONERS' DELIBERATION MEETING February 25, 2004.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners