

Decision No. C14-0443

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14AL-0309G

IN THE MATTER OF ADVICE LETTER NO. 861 FILED BY PUBLIC SERVICE COMPANY OF COLORADO WITH DECISION NOS. R13-1307 AND C13-1568 IN PROCEEDING NO. 12AL-1268G TO REVISE THE GENERAL RATE SCHEDULE ADJUSTMENT TO BECOME EFFECTIVE MAY 1, 2014.

**DECISION SUSPENDING EFFECTIVE DATE
OF TARIFFS AND REFERRING THE MATTER
TO AN ADMINISTRATIVE LAW JUDGE**

Mailed Date: April 30, 2014
Adopted Date: April 30, 2014

IMPORTANT NOTICE: ANY PERSON DESIRING TO PARTICIPATE ONLY BY MAKING A STATEMENT MAY DO SO BY APPEARING AT THE HEARING. IF YOU DESIRE TO ASK QUESTIONS OF A WITNESS OR OTHERWISE PARTICIPATE AS A PARTY IN THIS RATE MATTER, YOU MUST REQUEST PERMISSION FROM THE COMMISSION TO BE AN INTERVENOR (EVEN IF YOU HAVE ALREADY FILED AN OBJECTION). ANYONE DESIRING TO INTERVENE MUST CAREFULLY FOLLOW THE LAW AND COMMISSION RULES FOR BECOMING AN INTERVENOR. FOR FURTHER INFORMATION ON HOW TO INTERVENE, CALL (303) 894-2070 (PUC EXTERNAL AFFAIRS OFFICE).

I. BY THE COMMISSION

A. Statement

1. Public Service Company of Colorado (Public Service or Company) filed Advice Letter No. 861-Gas and accompanying tariffs on April 1, 2014. The purpose of the Advice Letter is to revise the General Rate Schedule Adjustment, to become effective May 1, 2014. According to Public Service, the Advice Letter contains tariffs reflecting rate case expenses incurred in Proceeding No. 12AL-1268G, the Company's most recent Phase I gas rate case.

2. Staff of the Colorado Public Utilities Commission (Staff) and the Colorado Office of Consumer Counsel (OCC) timely filed protests and requests for hearing. Staff and the OCC

ask the Commission to suspend the Advice Letter and set it for hearing. Staff and the OCC state the requested amount of rate case expenses is \$1,839,431.27, exceeding the estimated rate case expenses of \$1,286,216 presented in Proceeding No. 12AL-1268G by \$553,215.27, or 43 percent.

3. Public Service responded in opposition to protests and requests for hearing on April 22, 2014, arguing the Advice Letter fully complies with Commission decisions issued in Proceeding No. 12AL-1268G.

4. Consistent with the discussion below, we suspend the Advice Letter and refer the matter to an administrative law judge.

B. Background

5. By Decision No. R13-1307, mailed October 22, 2013 in Proceeding No. 12AL-1268G, Administrative Law Judge Mana L. Jennings-Fader (ALJ) found \$1,286,216 in rate case expenses was a “reasonable initial input” into the historic test year (HTY) revenue requirement.¹ This amount was based on actual expenses in the HTY study, but a portion was based on estimated costs for the remainder of the then-pending rate case.²

6. The ALJ agreed with Public Service that it has the right to seek rate recovery for all prudent business expenses.³ Relying on a previous Commission decision, the ALJ found that recovery of rate case expenses is a normal and legitimate activity for a regulated utility and that the better course for controlling expenses is rigorous oversight rather than splitting costs between a utility’s shareholders and ratepayers.⁴

¹ Decision No. R13-1307, ¶ 440.

² *Id.*, ¶ 435.

³ *Id.*, ¶ 442.

⁴ *Id.*, ¶ 443, citing Decision No. C09-1446, at ¶ 129 (internal quotations omitted).

7. Further, the ALJ agreed with Staff that the use of estimates for rate case expenses was problematic and that, where possible, the Company should include actual rate case expenses in its revenue requirement.⁵ The ALJ noted that, shortly after the end of Proceeding No. 12AL-1268G, Public Service was expected to have actual rate case expenses for the entire proceeding.⁶

8. To assure recovery of actual rate case expenses, the ALJ directed Public Service to meet with Staff and the OCC to review the final rate case expenses no later than February 28, 2014.⁷ The ALJ directed Public Service to file a tariff that adjusts the final rate case expenses to actuals no later than April 1, 2014.⁸ The full Commission upheld the ALJ's Decision on recovery of rate case expenses in its subsequent decisions.⁹

C. Discussion

9. The Commission may suspend a tariff filing containing any new or changed rate or charge and to have a hearing concerning the propriety of such rate or charge if it believes that such a hearing is required and that such rate or charge may be improper.¹⁰ The Commission also may suspend a compliance filing if it believes the filing may not be in compliance with prior Commission decisions.

⁵ *Id.*, ¶ 446.

⁶ *Id.*

⁷ *Id.*, ¶ 447.

⁸ *Id.*

⁹ Decision No. C13-1568, Proceeding No. 12A-1268G, mailed December 23, 2013 (decision addressing exceptions to Decision No. R13-1307) and Decision No. C14-0152, Proceeding No. 12A-1268G, mailed February 10, 2014 (decision denying applications for rehearing, reargument, or reconsideration to Decision No. C13-1568).

¹⁰ Section 40-6-111(1)(a), C.R.S. Under that statute, the Commission may suspend filed tariffs for 120 days from the proposed effective date, in this case August 29, 2014. The Commission may, by a separate order, suspend the effective date of the tariff page(s) for an additional 90 days, in this case November 27, 2014.

10. Public Service argues that Decision No. R13-1307 permits recovery of all rate case expenses actually incurred in Proceeding No. 12AL-1268G, regardless of the degree of deviation from the \$1,286,216 estimated in that proceeding. Public Service further argues Staff and the OCC had multiple opportunities to object to “the potential amounts of the Company’s actual rate case expenses”¹¹ in Proceeding No. 12AL-1268G. Public Service contends Staff and the OCC collaterally attack the Commission’s rulings in that proceeding.

11. We disagree. The ALJ determined the \$1,286,216 estimate in rate case expenses was only a reasonable *initial* input,¹² not a final one. Likewise, the ALJ ruled the Company has the right to recover for all *prudent*¹³ business expenses, not all actual expenses. To the extent this \$1,286,216 was based on actual expenses, the reasonableness of these actuals may not be re-litigated. However, to the extent the requested amount of \$1,839,431.27 in rate case expenses is based on amounts estimated when Decision No. R13-1307 was issued, Staff, the OCC, and the Commission did not have an opportunity to review their reasonableness. Thus, these amounts may be reviewed in this proceeding without collaterally attacking prior Commission decisions. To rule otherwise would eliminate the rigorous oversight envisioned by the ALJ in Decision No. R13-1307.¹⁴

12. An increase of 43 percent, or over half a million dollars, from estimates presented in Proceeding No. 12AL-1268G is substantial. We find good cause to suspend Advice Letter No. 861-Gas and set it for hearing. We refer the matter to an ALJ. The reasonableness of only

¹¹ Public Service’s response in opposition to protests and requests for hearing, p. 5.

¹² Decision No. R13-1307, ¶ 440 (emphasis added).

¹³ *Id.*, ¶ 442 (emphasis added).

¹⁴ *Id.*, ¶ 443.

those expenses estimated at the time of Decision No. R13-1307 is at issue in this proceeding. We direct the ALJ to set a hearing date and establish other procedures by separate order.

II. ORDER

A. The Commission Orders That:

1. The proposed effective date, May 1, 2014, of the tariff page(s) filed by Public Service Company of Colorado (Public Service) with Advice Letter No. 861-Gas is suspended for 120 days until August 29, 2014, or until further order of the Commission.

2. The tariff pages filed by Public Service with Advice Letter No. 861-Gas and attached to this Decision as Appendix A are set for hearing before an Administrative Law Judge (ALJ). The ALJ shall set a hearing date and establish other procedures by separate decision.

3. Any person, firm, or corporation, including any who have previously filed a document protesting the proposed tariff page(s), who desire to intervene and participate as a party in this proceeding shall file a motion to intervene with the Commission within 30 days after the mailing date of this Decision, and shall serve a copy of the motion on Public Service's attorney of record.

4. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
April 30, 2014.**

(S E A L)



ATTEST: A TRUE COPY

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

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

PAMELA J. PATTON

GLENN A. VAAD

Commissioners