

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14AL-0309G

IN THE MATTER OF ADVICE LETTER NO. 861 - GAS FILED BY PUBLIC SERVICE COMPANY OF COLORADO IN COMPLIANCE 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.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
ESTABLISHING SCOPE OF THIS PROCEEDING,
SCHEDULING EVIDENTIARY HEARING,
ESTABLISHING PROCEDURAL SCHEDULE,
SHORTENING RESPONSE TIME TO MOTIONS
PERTAINING TO DISCOVERY, SHORTENING
RESPONSE TIME TO EXCEPTIONS, AND
ADDRESSING OTHER MATTERS**

Mailed Date: June 20, 2014

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I. STATEMENT

1. On April 1, 2014, Public Service Company of Colorado (Public Service, PSCo, or Company) filed Advice Letter No. 861 - Gas (Advice Letter) to revise the General Rate Schedule Adjustment (GRSA). Accompanying the Advice Letter are proposed tariff sheets that, if in effect, would revise the GRSA upward in order to recover the Company's rate case expenses for Proceeding No. 12AL-1268G. The proposed tariff sheets have a May 1, 2014 effective date.

2. On April 30, 2014, by Decision No. C14-0443, the Commission set this matter for hearing, thus suspending the effective date of the tariffs that accompanied the Advice Letter. The initial suspension period expires on August 29, 2014.

3. On June 3, 2014, Decision No. R14-0589-I further suspended the effective date of the tariffs that accompanied the Advice Letter. The extended suspension period expires on November 27, 2014.¹ If the Commission does not establish new rates by November 27, 2014, the tariff sheets that accompanied the Advice Letter may become effective.

4. The Colorado Office of Consumer Counsel (OCC) intervened as of right and is a party.

5. Trial Staff of the Commission (Staff) intervened as of right and is a party.

6. OCC and Staff, collectively, are the Intervenors. Public Service and the Intervenors, collectively, are the Parties.

7. By Decision No. C14-0443, the Commission referred this Proceeding to an Administrative Law Judge (ALJ).

¹ November 27, 2014 is Thanksgiving Day and is a Colorado state holiday. This does not affect the tariffs' becoming effective if the Commission has not permanently suspended them by that date.

8. By Decision No. R14-0589-I, the ALJ scheduled a June 11, 2014 prehearing conference in this matter.

9. The ALJ convened the prehearing conference on the date, at the time, and in the place scheduled. All Parties were present, were represented, and participated.

10. At the prehearing conference, OCC stated that, as of the date of the prehearing conference, it contests the proposed tariff sheets at issue in this Proceeding.

11. At the prehearing conference, Staff stated that, as of the date of the prehearing conference, it contests the proposed tariff sheets at issue in this Proceeding.

A. Scope of Proceeding.

12. At the prehearing conference, the ALJ heard argument with respect to the scope of this Proceeding. The ALJ made a bench ruling on that issue, and this Interim Decision memorializes that ruling.

13. The Commission stated the following with respect to the issues to be addressed in this Proceeding:

The ALJ determined the \$1,286,216 estimate in rate case expenses was only a reasonable *initial* input, not a final one. Likewise, the ALJ ruled the Company has the right to recover for all *prudent* 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.**

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 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.

Decision No. C14-0443 at ¶¶ 11-12 (emphasis in original; bolding added) (footnotes omitted).

The decisions referenced by the Commission are Decisions No. R13-1307 and No. C13-1568.²

14. The Parties disagreed about the meaning of Decision No. C14-0443 at ¶¶ 11-12. Thus, the ALJ must determine the scope of the issues in this Proceeding.

15. Public Service made this argument: (a) in Decision No. R13-1307, the ALJ found that \$ 1,286,216 is a reasonable initial input into the Company's Historical Test Year (HTY) revenue requirement, and the Commission did not disturb this finding; (b) Public Service is collecting that sum through the GRSA now in effect, and the GRSA went into effect by operation of law; (c) in this Proceeding, the Commission suspended for hearing the tariff sheets that seek to increase the rate case expenses to be recovered through the GRSA from \$ 1,286,216 to \$ 1,839,431.27, which is an increase of \$ 553,215.27 over the amount now being collected through the GRSA; (d) the Advice Letter and its attachments establish that the Company had actual rate case expenses of more than \$ 1,286,216; (e) none of the \$ 1,286,216 is not at issue in this Proceeding because the Commission has determined that \$ 1,286,216 is a reasonable initial input into the Company's HTY revenue requirement and, provided the Company's actual rate case expenses are equal to or more than \$ 1,286,216, the Commission does not wish to have the Parties relitigate in this Proceeding the \$ 1,286,216 in rate case expenses already determined to be an initial reasonable input into the Company's HTY revenue requirement; and (f) the result is that, in Decision No. C14-0443, the Commission limited the amount at issue in this Proceeding

² These Decisions were issued in Proceeding No. 12AL-1268G, *In the Matter of Advice Letter No. 830-Gas of Public Service Company of Colorado, with Accompanying Tariff Sheets Concerning Implementing a General Rate Schedule Adjustment (GRSA), to Become Effective January 12, 2013*. Decision No. R13-1307 was mailed on October 22, 2013. Decision No. C13-1568 was mailed on December 23, 2013.

to the amount *in excess of* the \$ 1,286,216 found to be a reasonable initial input into the Company's HTY revenue requirement. Thus, the Company asserts, the amount at issue in this Proceeding is \$ 553,215.27.

16. OCC and Staff made this argument: (a) in the evidentiary record in Proceeding No. 12AL-1268G are rate case expenses that were actual and known at the time of the hearing and rate case expenses that were estimated at the time of the hearing; (b) the \$ 1,286,216 found to be a reasonable initial input into the Company's HTY revenue requirement contains both the actual rate case expenses and the estimated rate case expenses; (c) the Commission has determined that the amounts that were actual and known at the time of the hearing in Proceeding No. 12AL-1268G are the rate case expenses that may not be litigated in this Proceeding because they were litigated in Proceeding No. 12AL-1268G; (d) the portion of the \$ 1,286,216 that was estimated at the time of the hearing in Proceeding No. 12AL-1268G *and* the additional \$ 553,215.27 identified in the Advice Letter are the rate case expenses that are at issue in this Proceeding because the Commission has not had the opportunity to make a prudence determination with respect to these rate case expenses; and (e) as a result, in the instant Proceeding, the Commission should examine both whether each rate case expense was prudent and whether the dollars spent for each rate case expense were prudently incurred. Thus, from OCC's and Staff's perspective, the total amount at issue in this Proceeding is not known at present but can be determined or calculated from the evidentiary record in Proceeding No. 12AL-1268G.

17. After consideration of the language of Decision No. C14-0443 (quoted above), the rate case expenses discussion in the Decisions issued in Proceeding No. 12AL-1268G, and the argument of counsel, the ALJ finds that the scope of this Proceeding is this: at issue in this

Proceeding are *both* the portion of the \$ 1,286,216 that was estimated at the time of the hearing in Proceeding No. 12AL-1268G *and* the additional \$ 553,215.27 identified in the Advice Letter.

18. First, the \$ 1,286,216 found to be a reasonable initial input into the Company's HTY revenue requirement, and now being collected through the GRSA, is based on the evidentiary record in Proceeding No. 12AL-1268G and contains both actual rate case expenses and estimated rate case expenses. The ALJ finds that the close of the evidentiary record, rather than the mailed date of either Decision No. R13-1307 or Decision No. C13-1568, is the appropriate point at which to determine the actual rate case expenses and the estimated rate case expenses presented in Proceeding No. 12AL-1268G that resulted in the finding that \$ 1,286,216 is a reasonable initial input into the Company's HTY revenue requirement. The Decisions in that case were based on the evidence presented during the hearing, and the Parties could present evidence about the actual rate case expenses and the estimated rate case expenses only during the hearing.

19. Second, the Commission has determined that the actual rate case expenses known at the time of the hearing in Proceeding No. 12AL-1268G are the rate case expenses that may not be litigated in this Proceeding because: (a) those rate case expenses were known and actual numbers that were litigated, or that could have been litigated, in Proceeding No. 12AL-1268G; and (b) given that it has had the opportunity to review their reasonableness, the Commission has made a prudency determination as to the actual rate case expenses known at the time of the hearing in Proceeding No. 12AL-1268G. The scope of this Proceeding as determined by the ALJ recognizes and implements this restriction.

20. Third, the scope of this Proceeding as determined by the ALJ implements the Commission's discussion in ¶¶ 11 and 12 of Decision No. C14-0443. In each of these

paragraphs, the Commission differentiates between the actual rate case expenses and the estimated rate case expenses that, together, constitute the \$ 1,286,216 found to be a reasonable initial input into the Company's HTY revenue requirement in Proceeding No. 12AL-1268G. The Commission is clear that it and the Parties must have an opportunity to review the reasonableness of any rate case expense not previously reviewed for reasonableness (that is, the estimated rate case expenses). The scope of this Proceeding as determined by the ALJ provides that opportunity.

21. Fourth and finally, the ALJ observes that determining the scope of this Proceeding is challenging. The ALJ finds that the argument made by OCC and Staff is consistent with the Commission's discussion in ¶¶ 11 and 12 of Decision No. C14-0443 and is the more persuasive argument.

22. After the ALJ made her bench ruling on the scope of this Proceeding, Public Service stated that it would provide in its direct testimony and exhibits the following information: (a) the rate case expenses that were known and actual numbers at the time of the hearing in Proceeding No. 12AL-1268G; and (b) where in the evidentiary record in Proceeding No. 12AL-1268G those numbers are found. By bench ruling, the ALJ ordered Public Service to provide those data in its direct testimony and exhibits.

B. Evidentiary Hearing, Procedural Schedule, and Related Matters.

23. At the prehearing conference, the Parties proposed a procedural schedule and evidentiary hearing dates that are satisfactory to the Parties. As discussed above, a Commission decision in this Proceeding must issue not later than November 27, 2014. The proposed hearing dates and the proposed procedural schedule permit the Commission to issue its decision by that date.

24. The ALJ finds to be acceptable, and will adopt, the following procedural schedule: (a) not later than **June 18, 2014**, Public Service will file its direct testimony and exhibits; (b) not later than **July 11, 2014**, each intervenor will file its answer testimony and exhibits; (c) not later than **July 24, 2014**, Public Service will file its rebuttal testimony and exhibits; (d) not later than **July 24, 2014**, each intervenor will file its cross-answer testimony and exhibits;³ (e) not later than **August 4, 2014**, each party will file its corrected testimony and exhibits; (f) not later than **August 8, 2014**, each party will file its prehearing motions; (g) not later than **August 8, 2014**, the Parties will file any stipulation or settlement reached; (h) the evidentiary hearing will be held on **August 14 and 15, 2014**; (i) not later than **August 22, 2014**, each party will file its post-hearing statement of position, to which (absent a further order) no response will be permitted;⁴ and (j) not later than **August 29, 2014**, each party will file its response to the post-hearing statements of position filed by the other parties.⁵

25. **The Parties are advised, and are on notice, that**, absent a showing of unusual circumstances, the ALJ will not permit a party to ask its witness, as part of the witness's oral testimony, to make one or more corrections to the witness's prefiled testimony or to an exhibit appended to the witness's prefiled testimony. **The Parties are advised, and are on notice, that** the ALJ requires a sponsoring party to assure that: (a) all corrections to each of its witnesses' testimony and exhibits have been prefiled in accordance with the procedural schedule; and (b) when offered as an exhibit at hearing, each witness's testimony and exhibits are as prefiled and include all corrections filed pursuant to the procedural schedule.

³ Cross-answer testimony responds only to the answer testimony of another intervenor.

⁴ The circumstances under which a party may seek leave to file a response to a post-hearing statement of position are discussed *infra* at ¶ 29.

⁵ This is a modification of the Parties' proposed procedural schedule.

26. *With respect to witness testimony and exhibits that contain highly confidential information⁶ or confidential information,⁷ or both:* (a) if an entire document is not confidential, each portion that contains confidential information must be clearly marked (*e.g.*, shaded), and each page must state at the top (*e.g.*, in the heading): “This page contains confidential information as shown”; (b) any portion of a witness’s testimony and exhibits that contains highly confidential information must be clearly marked (*e.g.*, shaded), and each page must state at the top (*e.g.*, in the heading): “This page contains highly confidential information as shown”; (c) if the same page contains *both* confidential information *and* highly confidential information, the highly confidential information must be differentiated from the confidential information (*e.g.*, by use of different shading), and each page must state at the top (*e.g.*, in the heading): “This page contains highly confidential information and confidential information as shown”; and (d) the public version of a document that contains confidential information or highly confidential information, or both, must identify (*e.g.*, in the heading) each page on which that confidential information or highly confidential information appears.

27. Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1101(a)⁸ requires the cover page of a document to state that the document contains confidential information and to identify where in the document the confidential information is found. The same notice requirement applies to a document that contains highly confidential information.

⁶ As used in this Interim Decision, highly confidential information is information that, in this Proceeding, the Commission or the ALJ has determined is highly confidential and that is subject to an interim decision affording extraordinary protection.

⁷ As used in this Interim Decision, confidential information is information that a party claims is confidential and that is filed under seal with the Commission.

⁸ This Rule is found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations* 723.

28. For clarity of the evidentiary record and to assist the ALJ and the Parties during the hearing, a sponsoring party must assure that the page numbers and the line numbers are the same on the public version of a document, the confidential version of the document, and the highly confidential version of the document.

29. **The Parties are advised, and are on notice, that** a party may file a motion for leave to file a response to a post-hearing statement of position if: (a) the party seeks to respond to an issue raised in a statement of position that the party could not reasonably have anticipated; (b) the motion is accompanied by the response that the party seeks to file; and (c) the party files the motion no later than **noon on August 29, 2014**. By this Interim Decision, the ALJ will *shorten, to two business days, the response time to a motion for leave to file a response to a post-hearing statement of position.*

30. **The Parties are advised, and are on notice, that** the time within which to file a response to exceptions to the recommended decision issued in this Proceeding will be ordered to be shortened to seven calendar days.

C. Discovery-related Matters.

31. Except as modified by this Interim Decision, Rule 4 CCR 723-1-1405 will govern discovery in this Proceeding.

32. Subject to the provisions of Rules 4 CCR 723-1-1100 and 723-1-1101, discovery requests and discovery responses will be served on all Parties.

33. Parties may serve discovery no later than 5:00 p.m. Mountain Time (MT) on Monday through Thursday (other than July 3, 2014) and may serve discovery no later than 3:00 p.m. MT on a Friday or on July 3, 2014. Discovery served later than these stated times will be deemed to be served on the next business day.

34. Motions pertaining to discovery may be filed at any time. Unless otherwise ordered, responses to motions pertaining to discovery will be written and will be filed within *three business days of service of the motion*.⁹ If necessary, the ALJ will hold a hearing on a discovery-related motion as soon as practicable after the motion is filed.

D. Confidential Information and Highly Confidential Information.

35. Rules 4 CCR 723-1-1100 and 723-1-1101 will govern the treatment of information claimed to be confidential and will govern motions for extraordinary protection of highly confidential information.

36. **The Parties are advised, and are on notice, that** information in this Proceeding will not be highly confidential information *unless* a party has filed in this Proceeding, and the ALJ has granted, a motion seeking extraordinary protection for the information that is claimed to be highly confidential.

E. Additional Matters Pertaining to Hearing Exhibits.

37. Each type of a witness's testimony and the accompanying exhibits (*e.g.*, direct, answer, rebuttal, cross-answer) will be one hearing exhibit.

38. Hearing exhibits will be marked numerically and sequentially, beginning with the number 1, irrespective of the sponsoring party.

39. Prefiled testimonies and exhibits will be the first hearing exhibits and will be given hearing exhibit numbers such that all the testimonies and exhibits sponsored by one witness are together. As an example, assume that OCC witness Smith prefiles answer testimony and cross-answer testimony; her testimonies would be marked as Hearing Exhibits No. 20 (answer) and No. 21 (cross-answer).

⁹ By this Interim Decision, the ALJ will shorten response time to discovery-related motions.

40. *With respect to marking hearing exhibits that contain highly confidential information or confidential information, or both:* (a) any portion of a witness's testimony and exhibits that contains *confidential information* will be marked as Confidential Hearing Exhibit No. XXA and, at the hearing, will be in a separate and sealed envelope marked in accordance with Rule 4 CCR 723-1-1101(a)(III);¹⁰ (b) any portion of a witness's testimony and exhibits that contains *highly confidential information* will be Highly Confidential Hearing Exhibit No. XXB and, at the hearing, will be a separate and sealed envelope marked in accordance with Rule 4 CCR 723-1-1101(a)(III);¹¹ (c) if a page contains both confidential information and highly confidential information, the highly confidential information will be redacted from the page in the Confidential Hearing Exhibit; and (d) if a page contains both confidential information and highly confidential information, the highly confidential information will be differentiated (e.g., by different shading) from the confidential information in the Highly Confidential Exhibit.

41. As an example of hearing exhibit marking, assume that PSCo witness Jones-Smith files direct testimony and exhibits that contain confidential information and highly confidential information and files rebuttal testimony and exhibits that contain highly confidential information. His direct testimony and exhibits are given one hearing exhibit number (in the example, Hearing Exhibit No. 4); the confidential information is Hearing Exhibit No. 4A; and the highly confidential information is Hearing Exhibit No. 4B. His rebuttal testimony and exhibits are given one hearing exhibit number (in the example, Hearing Exhibit No. 5); and the highly confidential information is Hearing Exhibit No. 5B.

¹⁰ The Parties are to disregard the reference to filing through the E-Filings System.

¹¹ The Parties are to disregard the reference to filing through the E-Filings System.

II. ORDER

A. It Is Ordered That:

1. The scope of this Proceeding is determined in this Interim Decision.
2. The evidentiary hearing in this Proceeding is scheduled for the following dates, at

the following times, and in the following location:

DATES: August 14 and 15, 2014

TIME: 9:00 a.m. each day

PLACE: Commission Hearing Room
1560 Broadway, Suite 250
Denver, Colorado

3. The following procedural schedule is adopted: (a) not later than June 18, 2014, Public Service Company of Colorado (Public Service), shall file its direct testimony and exhibits; (b) not later than July 11, 2014, each intervenor shall file its answer testimony and exhibits; (c) not later than July 24, 2014, Public Service shall file its rebuttal testimony and exhibits; (d) not later than July 24, 2014, each intervenor shall file its cross-answer testimony and exhibits; (e) not later than August 4, 2014, each party shall file its corrected testimony and exhibits; (f) not later than August 8, 2014, each party shall file its prehearing motions; (g) not later than August 8, 2014, the Parties shall file any stipulation or settlement reached; (h) not later than August 22, 2014, each party shall file its post-hearing statement of position, to which (absent further order) no response will be permitted; and (i) not later than August 29, 2014, each party shall file its response to the post-hearing statements of position filed by the other parties..

4. Except as modified by this Interim Decision, Rule 4 *Code of Colorado Regulations* 723-1-1405 shall govern discovery.

5. Subject to the provisions of Rules 4 *Code of Colorado Regulations* 723-1-1100 and 723-1-1101, discovery requests and responses shall be served on all Parties.

6. Unless otherwise ordered, response to a motion pertaining to discovery shall be filed within three business days of service of the motion.

7. Consistent with the discussion above, Parties shall identify, as described above, confidential information and highly confidential information contained in testimony and exhibits and other documents filed in this Proceeding.

8. Parties shall comply with the notice requirements established in Rule 4 *Code of Colorado Regulations* 723-1-1101(a)(I).

9. Not later than noon on August 29, 2014, a party may file a motion for leave to file a response to a post-hearing statement of position. The motion shall conform to ¶ 29, above.

10. The time within which to file a response to a motion for leave to file a response to a post-hearing statement of position is shortened to two business days.

11. The time within which to file a response to exceptions to the recommended decision issued in this Proceeding is shortened to seven calendar days.

12. Except as modified by this Interim decision, Rule 4 *Code of Colorado Regulations* 723-1-1405 shall govern discovery in this Proceeding.

13. The provisions of ¶¶ 31-34, above, shall govern discovery in this Proceeding.

14. The response time to a motion pertaining to discovery in this Proceeding is shortened to five business days.

15. Rules 4 *Code of Colorado Regulations* 723-1-1100 and 723-1-1100 shall govern treatment of information claimed to be confidential in this Proceeding.

16. Rule 4 *Code of Colorado Regulations* 723-1-1101 and this Interim Decision shall govern motions for extraordinary protection of information claimed to be highly confidential in this Proceeding.

17. The Parties are held to advisements contained in the Interim Decisions issued in this Proceeding.

18. This Interim Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director