

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.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
APPROVING SETTLEMENT IN PART AND
PERMANENTLY SUSPENDING EFFECTIVE
DATE OF PROPOSED TARIFF SHEETS**

Mailed Date: October 21, 2014

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I. STATEMENT

1. On April 1, 2014, Public Service Company of Colorado (Public Service, Company, or PSCo) filed Advice Letter No. 861 - Gas (Advice Letter) to revise the current General Rate Schedule Adjustment (GRSA) in the Company's Colorado PUC No. 6-Gas tariff.

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 expense 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. On June 3, 2014, Decision No. R14-0589-I further suspended the effective date of the tariffs that accompanied the Advice Letter.

3. In Decision No. C14-0443, the Commission referred this proceeding to an Administrative Law Judge (ALJ).

4. On July 9, 2014, Public Service filed its Advice Letter No. 861 - Gas Amended (Amended Advice Letter). Appended to the Amended Advice Letter are proposed tariff sheets that contain a proposed effective date of June 1, 2014 and that are otherwise identical to the proposed tariff sheets appended to the Advice Letter. On July 10, 2014, by Decision No. R14-0798-I, the ALJ suspended, the June 1, 2014 proposed effective date of the proposed tariff sheets appended to the Amended Advice Letter. The ALJ further suspends the effective date of the proposed tariff sheets appended to the Amended Advice Letter. If no new rates are established by the Commission on or before December 27, 2014, the tariff sheets that accompany the Amended Advice Letter may become effective.

5. On May 8, 2014, Trial Staff of the Commission (Staff) timely filed (in one document) a Notice of Intervention as of Right, Entry of Appearance, Notice Pursuant to Rule 1007(a) and Rule 1401, and Request for Hearing. Staff is an intervenor and a party.

6. On May 14, 2014, the Colorado Office of Consumer Counsel (OCC) timely filed (in one document) a Notice of Intervention as of Right and Entry of Appearance. OCC is an intervenor and a party.

7. Public Service, OCC, and Staff, collectively, are the Parties in this Proceeding.

8. On June 11, 2014, the ALJ held a prehearing conference in this matter.

9. On June 20, 2014, by Decision No. R14-0668-I, the ALJ *inter alia* established the scope of this Proceeding; adopted a procedural schedule; and scheduled an evidentiary hearing in this Proceeding. By subsequent Interim Decision, the ALJ modified the procedural schedule and changed the hearing dates to August 25 and 26, 2014.

10. On June 18, 2014, Public Service filed the Direct Testimony and Exhibits of Marcy A. McKoane.

11. On June 27, 2014, Public Service filed the Supplemental Direct Testimony and Exhibits of Marcy A. McKoane.

12. On July 18, 2014, Public Service filed (in one document) an Unopposed Motion to Vacate the Remaining Procedural Schedule, to Reserve Hearing Date for Hearing on Settlement Agreement, and to Waive Response Time to This Motion. On July 21, 2014, by Decision No. R14-0854-I, the ALJ granted that motion; vacated the procedural schedule; and reserved August 25, 2014 as the hearing date on the settlement agreement.

13. On July 28, 2014, the Parties filed the Settlement Agreement (Settlement) in this Proceeding.

14. The ALJ had questions about the Settlement. On August 20, 2014, by electronic mail, the ALJ informed the Parties of her questions and requested that the Parties present at the evidentiary hearing one or more witnesses prepared to respond to the questions.

15. On August 22, 2014, Public Service filed the Corrected Direct Testimony and Exhibits of Marcy A. McKoane.

16. On the date, at the time, and at the place scheduled, the ALJ called this matter for hearing. The Parties were present, were represented, and were prepared to proceed.

17. At the hearing, the ALJ heard the testimony of one witness in support of the Settlement: Ms. Marcy A. McKoane. Ms. McKoane's testimony provided a sufficient response to the questions posed in the ALJ's August 20, 2014 electronic mail sent to the Parties. All Parties supported Ms. McKoane's testimony.

18. Three hearing exhibits were marked, offered, and admitted. Hearing Exhibit No. 1 is the public version of the Corrected Direct Testimony and Exhibits of Marcy A. McKoane. Confidential Hearing Exhibit No. 1A is the confidential version of the Corrected Direct Testimony and Exhibits of Marcy A. McKoane.¹ Hearing Exhibit No. 2 is the Supplemental Direct Testimony and Exhibits of Marcy A. McKoane. Hearing Exhibit No. 3 is the Settlement Agreement.

19. At the conclusion of the hearing, the evidentiary record was closed. The ALJ took the matter under advisement.

¹ Confidential Hearing Exhibit No. 1A contains two documents: (a) Confidential Exhibit No. MAM-3; and (b) Confidential Exhibit No. MAM-6. Each of these documents is an exhibit to the Corrected Direct Testimony and Exhibits of Marcy A. McKoane (Hearing Exhibit No. 1).

20. In accordance with § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record in this proceeding, including the exhibits, along with a written recommended decision.

II. FINDINGS, DISCUSSION, AND CONCLUSION

21. The Commission has jurisdiction over the subject matter of this Proceeding and *in personam* jurisdiction over the Parties.

22. Public Service is a public utility that, as pertinent here, provides regulated natural gas service to its ratepayers in Colorado. As a public utility, Public Service provides regulated natural gas service pursuant to tariffs on file with the Commission.

23. Intervenor OCC is a Colorado state agency established pursuant to § 40-6.5-102, C.R.S. Its charge is set out in § 40-6.5-104, C.R.S.

24. Intervenor Staff is litigation Staff of the Commission as identified in the Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1007(a)² notices filed in this Proceeding.

25. In 2012, Public Service filed a natural gas rate case (*i.e.*, an Advice Letter and proposed tariff sheets) to establish a GRSA in the Company's Colorado PUC No. 6-Gas tariff; that filing commenced Proceeding No. 12AL-1268 (2012 PSCo rate case). On October 22, 2013, by Decision No. R13-1307 and as pertinent here, the ALJ: (a) using a Historic Test Year (HTY), determined the Company's revenue requirement; (b) authorized a GRSA to recover the HTY-based revenue requirement; (c) determined that the Company-presented 2012 PSCo rate case expenses of \$ 1,286,216 were "a reasonable initial input into the HTY" (Decision No. R13-1307 at ¶ 440) and included that sum in the revenue requirement to be recovered through the GRSA; and (d) because there likely would be additional 2012 PSCo rate case

² This Rule is found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations* 723.

expenses and “[t]o assure that the actual rate case expenditures are recovered” through the GRSA (*id.* at ¶ 447), directed the Company, OCC, and Staff “to review the final natural gas rate case expenditures” and directed the Company “to file, no later than April 1, 2014, a GRSA tariff that adjusts the final rate case expenses to actuals” (*id.*)(footnote omitted). *See also* Decision No. C13-1568³ at ¶¶ 67-70 (upholding decision on recovery of rate case expenses and the April 1 filing).

26. On April 1, 2014, the Company filed the Advice Letter and proposed tariff sheets to adjust the 2012 PSCo rate case expenses to actuals. The Company stated that its final and actual 2012 PSCo rate case expenses totaled \$ 1,839,431, which is \$ 553,215 more than the 2012 PSCo rate case expenses included in the revenue requirement being recovered through the GRSA. The Company sought to revise the GRSA to recover the additional \$ 553,215 in 2012 PSCo rate case expenses.

27. Both OCC and Staff contested the proposed revision to the GRSA. To determine the additional amount (if any) of 2012 PSCo rate case expenses that should be recovered through the GRSA, the Commission set the proposed tariff sheets for investigation and hearing.

28. The \$ 1,286,216 in 2012 PSCo rate case expenses included in the revenue requirement recovered through the GRSA included both actual expenses in the HTY study and estimated costs for the remainder of the 2012 PSCo rate case. For the reasons stated in Decision No. R14-0668-I, the ALJ determined that “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.” Decision No. R14-0668-I at ¶ 17 (emphasis in original).

³ This Decision was issued in this Proceeding on December 23, 2013.

29. After the Company filed its direct testimony and exhibits, the Parties proposed the Settlement. Neither OCC nor Staff filed testimony in this Proceeding.

A. Burden of Proof and Other Applicable Principles.

30. The Parties are proponents of the Settlement and seek a Commission decision approving the Settlement. As a result, they bear the burden of proof to establish by a preponderance of the evidence that the Settlement -- both *in toto* and each portion -- is just, is reasonable, and is in the public interest. Section 24-4-105(7), C.R.S.; § 13-25-127(1), C.R.S.; Rule 4 CCR 723-1-1500. This burden of proof is met when the evidence, on the whole and however slightly, tips in the proponents' favor.

31. In addition, there are regulatory principles pertaining to review of proposed tariffs or a stipulation, or both.

32. *First*, the proposed tariff sheets are matters that are within the public interest. The Commission has an independent duty to determine matters that are within the public interest. *Caldwell v. District Court*, 692 P.2d 1085, 1089 (Colo. 1984). As a result of that independent duty, the Commission is not bound by the proposals made by the Parties; and the Commission may set the conditions or may establish the limitations that the Commission deems necessary to assure that the final result is just, is reasonable, and is in the public interest provided the evidentiary record supports the result and provided the reasons for the choices made are stated.

33. *Second*, the Commission has an independent duty to review a settlement. The Commission has stated that it

has a long standing policy of encouraging settlements. In particular [in] Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1408, the Commission encourages settlements by parties. ... [T]he same rule allows the Commission to approve, deny, or require a modification of the settlement. Moreover, in [Rule] 4 CCR 723-1-1407(a), the ability of this Commission to require a

modification of a stipulation, in addition to approving or denying, is explicitly permitted. The intent of [Rule 4 CCR 723-1-1408], while encouraging settlement, is not to grant *carte blanche* approval of such agreements, no matter the policy implications. Such a reading of the rule would be wholly contrary to [the Commission's] public interest charge to ensure just and reasonable rates to the citizens of Colorado.

... [A]ll settlements in matters before the Commission are negotiated under the premise that [the Commission] possess[es] the authority to deny, or make changes, to [*sic*] a settlement as [the Commission] deem[s] necessary. Notably, such authority may also encourage parties to adopt reasonable positions in their work towards a settlement.

... [T]he Commission has broad[] authority and responsibility for all class[es] of customers, to insure a settlement meets the public interest standard and will result in just and reasonable rates. [The Commission] ... may ... review the settlement as a whole, and [may] order any changes to fit the broader issue of the public interest for all classes of customers.

Decision No. C07-0677⁴ at ¶¶ 14-16. When necessary and prudent to do so, the Commission will not hesitate to modify the terms of a settlement presented to it. *See also* Decision No. C03-0670⁵ at ¶ 16 (“Notwithstanding the parties’ agreement to resolve this case as set forth in the Settlement, it is the Commission’s independent obligation to review the Settlement to ensure it is just and reasonable, in light of ratepayers’ interests”).

34. With these standards and principles in mind and in light of the evidentiary record, the ALJ considered the Settlement in this case.

B. Settlement Agreement.

35. The Settlement contains two sections: (a) the 2012 PSCo rate case expenses; and (b) a process for determining, and the treatment of, actual rate case expenses in future

⁴ This Decision was issued on August 9, 2007 in Proceeding No. 06S-656G, *Re: The Investigation and Suspension of Tariff Sheets Filed by Public Service Company of Colorado for [sic] Advice Letter No. 690-Gas.*

⁵ This Decision was issued on June 26, 2003 in Proceeding No. 02S-315EG, *Re: The Investigation and Suspension of Tariff Sheets Filed by Public Service Company of Colorado [with] Advice Letter No. 1373-Electric, Advice Letter No. 593-Gas, and Advice Letter No. 80-Steam.*

Public Service rate cases. For the reasons discussed below, the ALJ will approve the Settlement in part. The ALJ will order Public Service to comply with the terms of this Decision and the approved terms of the Settlement.

1. 2012 Public Service Natural Gas Rate Case Expenses.

36. In the Settlement at 4-5, the Parties agree that PSCo should recover \$ 1,286,216 in 2012 PSCo rate case expenses through the GRSA and in accordance with the procedures established in Decision No. R13-1307. In addition, the Company has agreed not to pursue the additional \$ 553,215 in 2012 PSCo rate case expenses.

37. The ALJ finds that this provision is supported by the record as the Company has established the actual 2012 PSCo rate case expenses. The ALJ finds that approving this portion of the Settlement will not change the existing just and reasonable rates (*i.e.*, the current GRSA). The ALJ finds that this provision is reasonable, is just, and is in the public interest.

38. The ALJ will approve this provision of the Settlement. To effectuate this ruling, the ALJ will suspend permanently the effective date of the proposed tariff sheets filed on April 1, 2014 with the Advice Letter and will suspend permanently the effective date of the proposed tariff sheets filed on July 9, 2014 with the Amended Advice Letter.

2. Treatment of Rate Case Expenses in Future Public Service Rate Cases.

39. In the Settlement at 5-9, the Parties agree to a process for presenting and determining rate case expenses. The proposed process includes: (a) the presentation of known and estimated rate case expenses in testimony; (b) the review during the evidentiary hearing of the rate case expenses known at the time of the testimony or hearing; (c) the process to be used in the event the final rate case expenses (*i.e.*, the total rate case expenses determined following

final billings) prove to be greater than the amount of the rate case expenses known at the time of the hearing and included in the Commission-determined revenue requirement; and (d) the process to be used in the event the final rate case expenses (*i.e.*, the total rate case expenses determined following final billings) prove to be less than the amount of the rate case expenses known at the time of the hearing and included in the Commission-determined revenue requirement.

40. During the evidentiary hearing on the Settlement, the Parties clarified that, if approved, the proposed rate case expense-related process would apply only in Proceeding No. 14AL-0660E.

41. During the evidentiary hearing, the Parties stated that, irrespective of the decision in this Proceeding on the proposed rate case expenses-related process: (a) the Settlement is a binding contract as among and between them; (b) they will abide by the terms of the Settlement during Proceeding No. 14AL-0660E and, insofar as they are able to do so, will implement the proposed process in that Proceeding; and (c) when Proceeding No. 14AL-0660E is concluded, they will consider whether the process should be used in other rate case proceedings and, based on their conclusion, will take appropriate action in the future.

42. The Settlement contains general terms and conditions. One of those terms and conditions, in pertinent part, states:

[i]n the event the Commission issues a decision approving this Settlement, but modifying it in a manner unacceptable to any Party [to the Settlement], that Party shall have the right to withdraw from this Settlement Agreement.

Settlement at 10-11. During the evidentiary hearing and in response to a question from the ALJ, the Company, OCC, and Staff each stated that it would not exercise its right to withdraw from

the Settlement if the Commission did not approve the Settlement at 5-9 (*i.e.*, the rate case expenses-related process).

43. The ALJ finds it inappropriate to approve in the instant Proceeding a detailed rate case expenses-related process to be used in Proceeding No. 14AL-0660E.⁶ The Commission *en banc* is hearing that Proceeding and will determine the filings to be made and the processes to be used in that case. In addition, the other Proceeding No. 14AL-0660E parties, who potentially will be affected by the process, have had no opportunity to review and to comment on the process. Further, irrespective of whether the process is approved in this Proceeding, the Parties to the Settlement will use the process outlined in the Settlement in Proceeding No. 14AL-0660E.⁷ Finally, the Company, OCC, and Staff are parties in Proceeding No. 14AL-0660E and have the opportunity to propose in that Proceeding that the process set out in the Settlement be used; thus, there is another avenue available by which PSCo, OCC, and Staff may obtain permission to use the process.

44. The ALJ will not approve the Review of Rate Case Expenses in Rate Case Filings section of the Settlement at 5-9.

45. **The Parties are advised and are on notice that** they will be held to the representations they made during the evidentiary hearing.

46. In accordance with § 40-6-109, C.R.S., the Administrative Law Judge recommends that the Commission enter the following order.

⁶ The decision not to approve this portion of the Settlement is not, and is not intended to be, a determination on the merits of the proposed process. In addition, the decision not to approve this portion of the Settlement should not be taken as an indication of the ALJ's views on the merits of the proposed process.

⁷ During the evidentiary hearing, the Parties acknowledged that, even if the ALJ approves the process in this Proceeding, implementation of the complete process in Proceeding No. 14AL-0660E may require the filing of one or more motions in Proceeding No. 14AL-0660E.

III. ORDER

A. The Commission Orders That:

1. Consistent with the discussion above, the Settlement Agreement filed on July 28, 2014 is approved in part and is not approved in part.

2. Public Service Company of Colorado shall continue to recover through the current General Rate Schedule Adjustment the \$ 1,286,216 in rate case expenses as set out in Decision No. R13-1307.

3. The effective date of the tariff sheets filed with Advice Letter No. 861 - Gas on April 1, 2014 is permanently suspended and shall not be further amended.

4. The effective date of the tariff sheets filed with Advice Letter No. 861 - Gas Amended on July 9, 2014, is permanently suspended and shall not be further amended.

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

6. Public Service Company of Colorado shall comply with the approved terms of the Settlement Agreement and with this Decision.

7. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

8. As provided by § 40-6-106, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the recommended decision is stayed by the Commission

upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse a basic finding of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge; and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

9. If exceptions to this Recommended Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(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