

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19A-0471E

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR DEFERRED ACCOUNTING TREATMENT FOR ELECTRIC VEHICLE MAKE-READY INFRASTRUCTURE PROJECTS.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
CONOR F. FARLEY
GRANTING UNOPPOSED JOINT MOTION
TO APPROVE STIPULATION AND SETTLEMENT
AGREEMENT, APPROVING APPLICATION AS
MODIFIED BY THE STIPULATION AND SETTLEMENT
AGREEMENT, AND CLOSING PROCEEDING**

Mailed Date: March 2, 2020

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I. STATEMENT

1. On August 29, 2019, Public Service Company of Colorado (PSCo) filed an Application seeking Commission approval for deferred accounting for up to \$9 million in capital costs and incremental operations and maintenance expenditures (O&M) that will be incurred in make-ready projects to develop electric vehicle charging infrastructure (Application). PSCo states that these costs are not included in its current base rates and will not be included in the base rates that will be approved in its current Phase I rate case (Proceeding No. 19AL-0268E) because that proceeding, initiated on May 20, 2019, uses a 2018 Test Year. PSCo therefore requests deferred accounting through a regulatory asset that would be evaluated for inclusion in its base rates in its next Phase I rate case.

2. PSCo is required by § 40-5-107, C.R.S., to file a Transportation Electrification Plan (TEP) on or before May 15, 2020. PSCo states that it will not be able to file its TEP “until the spring of 2020.”¹ According to PSCo, its “customers’ transportation electrification initiatives have such significant momentum of community and policymaker support that they call for more prompt action.”² In the Application, PSCo seeks to accommodate its customers while preserving its ability to seek recovery of the costs of doing so through base rates.

3. Of the \$9 million PSCo requests for deferred accounting in this proceeding, approximately \$3.6 million is designated for known projects that PSCo is currently discussing with the State of Colorado, the City and County of Denver, the Regional Transportation District (RTD), and the City of Lone Tree. PSCo requests that the Commission approve “up to an additional \$5.4 million in total capital and incremental O&M” costs for currently undefined

¹ Application at 3.

² *Id.*

projects that PSCo nevertheless believes will take shape based on “the known interest of customers and communities in its service territory and anticipation that they will not be willing to wait until the TEP is fully processed to commence their projects.”³

4. The Commission issued a Notice of the Application on August 30, 2019.

5. Trial Staff of the Colorado Public Utilities Commission (Staff), the Office of Consumer Counsel (OCC), and the Colorado Energy Office (CEO) each timely filed a notice of intervention by right.

6. ChargePoint, Inc. (ChargePoint), Colorado Energy Consumers (CEC), and Western Resource Advocates (WRA) each timely filed a motion to permissively intervene.

7. On October 9, 2019, the Commission deemed the Application complete and referred the proceeding to an Administrative Law Judge (ALJ). The proceeding was subsequently assigned to the undersigned ALJ.

8. On October 18, 2019, the ALJ issued Decision No. R19-0848-I that extended the statutory deadline pursuant to § 40-6-109.5(1), C.R.S., and scheduled a prehearing conference for October 30, 2019 at 1:30 p.m.

9. The prehearing conference took place starting at 1:30 p.m. on October 30, 2019. PSCo, Staff, the OCC, CEO, ChargePoint, CEC, and WRA attended and presented two proposed stipulated prehearing schedules and hearing dates.

10. On November 13, 2019, the undersigned ALJ issued Decision No. R19-0921-I that granted the motions to permissively intervene of ChargePoint, CEC, and WRA, and established the schedule for this proceeding. Among other things, Decision No. R19-0921-I scheduled the hearing in this proceeding for February 19 and 20, 2020.

³ *Id.* at 9.

11. On January 16, 2020, PSCo filed a Notice of Settlement in Principle and Unopposed Motion to Amend the Procedural Schedule and Request for Waiver of Response Time (Unopposed Motion to Amend). PSCo stated in the Unopposed Motion to Amend that “there is a settlement in principle among nearly all Parties in this proceeding. Any party not joining the settlement has disclosed that, subject to client approval, they will not oppose the settlement.”⁴ PSCo requested that the procedural schedule be vacated, a deadline of January 29, 2020 be established for the parties to file the settlement documents including supporting testimony, and that February 19, 2020 be reserved for an evidentiary hearing on the settlement if the ALJ determines it was necessary. PSCo stated that no party opposed the Unopposed Motion.

12. On January 21, 2020, the ALJ issued Decision No. R20-0043-I that granted the Unopposed Motion to Amend. Decision No. R20-0043-I maintained the hearing dates and instructed the parties that “[i]f the[y] [] believe after drafting the settlement documents and supporting testimony that any evidentiary hearing addressing the settlement will take only one day and/or that the evidentiary hearing should take place before February 19 and 20, 2020, they can state as much in the documents filed on January 29, 2020.”⁵

13. On January 29, 2020, PSCo, Staff, CEO, WRA, and ChargePoint filed an Unopposed Joint Motion to Approve the Settlement Agreement (Unopposed Joint Motion to Approve) and the Settlement Agreement. In the Unopposed Joint Motion to Approve, PSCo stated that the parties believe a hearing on the settlement agreement is unnecessary.⁶ From January 29 through 31, 2020, the parties filed testimony and exhibits in support of the settlement

⁴ Unopposed Motion at 1 (Footnote 1 omitted).

⁵ Decision No. R20-0043-I at 3 (¶ 5).

⁶ Unopposed Motion to Approve at 2 (¶ 1).

agreement. PSCo filed the Stipulation and Settlement Agreement (Settlement Agreement) as Hearing Exhibit 102.

14. On February 13, 2020, the ALJ issued Decision No. R20-0101-I that vacated the hearing in light of the Unopposed Motion to Approve and the testimony and other evidence submitted in support thereof.

II. ANALYSIS

A. Application

15. As noted above, in the Application PSCo seeks deferred accounting for up to \$9 million in capital costs and incremental O&M that will be incurred in “EV make-ready infrastructure projects in calendar year 2020 and 2021 through the approval date of the TEP.”⁷ “EV supply infrastructure includes new service panels, conduit, and wiring up to the charger stub. EV make-ready infrastructure encompasses both EV supply infrastructure and also a line extension for EV charging, including necessary transformer upgrades, the service conductors, and a new meter.”⁸ The Application seeks deferred accounting for EV make-ready infrastructure for the projects identified in the Application except for the line extensions, which “will be initiated under the Company’s Electric Distribution Line Extension Policy.”⁹

16. As noted above, approximately \$3.6 million of the \$9 million is designated for known projects with the State of Colorado, the City and County of Denver, RTD, and the City of Lone Tree. PSCo estimates that the approximately \$3.6 million designated for those projects

⁷ Application at 6.

⁸ *Id.* at 5.

⁹ *Id.* at 6. *See also* Hearing Exhibit 103 at 7:18-21 (“EV supply infrastructure does not include the line extension for EV charging, and the line extension portion of the EV make-ready infrastructure is not included in the scope of the Company’s Application or deferred accounting request.”) (Testimony in Support of Settlement of Jack W. Ihle).

consists of \$3.56 million in capital costs and \$52,000 in O&M costs that will be incurred in 2020.¹⁰ The remainder of the \$9 million (\$5.4 million) is for currently-undefined projects that PSCo believes will take shape and be implemented before the TEP is approved. PSCo's belief is based on "the known interest of customers and communities."¹¹

17. In the Application, PSCo seeks deferred accounting for the entirety of the \$9 million, including both capital costs and incremental O&M costs for projects completed consistent with the Application.¹² PSCo also requests the Commission to make "findings consistent with the following:"

The Commission approves deferred accounting for the 2020 and 2021 capital and incremental operations and maintenance costs that Public Service incurs to complete the electric vehicle infrastructure projects and additional investment described in its Application. These costs shall be allowable costs in establishing future electric rates. Public Service is authorized to create a regulatory asset in accordance with Generally Accepted Accounting Principles. The amortization period for the future recovery of these costs through base rates will be determined in the next Electric Phase I rate case.

The approval of deferred accounting for these activities does not preclude a future examination of these costs to determine whether they were prudently incurred. Public Service shall retain the burden of proof in the rate case on all issues dealing with the prudence of these expenditures.¹³

B. Settlement Agreement

18. PSCo, Staff, CEO, WRA, and ChargePoint are parties to the Settlement Agreement. The OCC and CEC are not parties to the Settlement Agreement, but do not oppose it.¹⁴

¹⁰ Application at 7-8.

¹¹ *Id.* at 9.

¹² *Id.* at 4-5 ("Public Service [] seeks deferred accounting treatment for the capital investment and incremental O&M expenses associated with the EV make-ready infrastructure projects it plans to undertake in calendar years 2020 and 2021 until approval of its TEP, as described below, for recovery in rates approved as part of the Company's next Electric Phase I rate case.").

¹³ *Id.* at 11 (emphasis Omitted).

¹⁴ Settlement Agreement at 1.

19. The Settlement Agreement states that it “is a full and complete resolution of Public Service’s Application (“Application”) for deferred accounting treatment for the costs associated with the electric vehicle (“EV”) supply infrastructure component of EV make-ready infrastructure projects.”¹⁵ “EV supply infrastructure” is defined in the Settlement Agreement as “new service panels, conduit, and wiring up to the charger stub” and “does not include the line extension for EV charging.”¹⁶ The Settlement Agreement further confirms statements in the Application to the effect that “[t]he line extension portion of the make-ready infrastructure is not included in the scope of the Company’s Application or deferred accounting request.”¹⁷

20. The Settlement Agreement states that it serves “the limited purpose of guarding against challenges that Public Service is impermissibly seeking to recover prior period costs in the context of an electric rate review.”¹⁸ Toward that end,

the Settling Parties support the Commission’s approval of deferred accounting for Public Service’s capital depreciation expenses and incremental third-party operations and maintenance (“O&M”) costs related to the following projects, if the projects are commenced (i.e., when a work order is issued for a project that has been selected) prior to the effective date of Public Service’s Transportation Electrification Plan: 1) the EV supply infrastructure projects identified in the Company’s Application; and 2) additional EV supply infrastructure projects that the Company undertakes for non-residential customers (“Additional Projects”) pursuant to the application process and criteria outlined below (collectively, the “Projects”).¹⁹

Limitations identified in the Settlement Agreement on the deferred accounting agreed to by the parties include: (a) “[t]he total investment, inclusive of capital expenditures and O&M, associated with the Projects shall not exceed \$9 million;”²⁰ (b) PSCo “may only defer the O&M

¹⁵ *Id.*

¹⁶ *Id.* at 3 (¶ 3).

¹⁷ *Id.*

¹⁸ *Id.* at 5 (¶ 13).

¹⁹ *Id.*

²⁰ *Id.* at 5 (¶ 14).

and capital depreciation expenses associated with the Projects, up to an aggregate deferred amount for the Projects of \$1.5 million;”²¹ (c) “the depreciation expense associated with the Projects’ capital and O&M will accrue in the regulatory asset from the time each project is placed in service until rates are effective as part of the next Phase I electric rate review following completion of all of the Projects[] [a]t [which time] the deferred account established here will be terminated and no additional funds will be added;”²² and (d) no presumption of prudence attaches to the costs included in the deferred accounting; instead, in a future proceeding, PSCo will “affirmatively bear the burden of demonstrating whether the Company incurred [the costs] prudently.”²³

21. The Settlement Agreement also includes provisions addressing the project application process for Additional Projects, vendor-neutral education, outreach, and advisory services that PSCo will provide to customers, and the reporting that PSCo will provide to the Commission concerning the projects subject to deferred accounting.²⁴ As to the project application process, the Settlement Agreement specifies both topics that must be addressed in the application form and requirements to which customers must agree, and requires PSCo to file the application form in this proceeding after giving “the Settling Parties the opportunity to review the customer application form prior to the initial application period and provide input that [PSCo] may or may not incorporate.”²⁵ As to the reporting, the Settlement Agreement requires PSCo to provide: (a) a report “summarizing its project selection process, no later than 60 days after project selection and customer contracting has been completed;” and (b) a separate report

²¹ *Id.* at 6 (¶ 15).

²² *Id.* at 6 (¶ 16).

²³ *Id.* at 7 (¶ 19).

²⁴ *Id.* at 8 – 13 (¶¶ 23-34).

²⁵ *Id.* at 11 (¶ 27).

addressing a range of topics specified in the Settlement Agreement concerning projects that exist as of May 15, 2021.²⁶ The second report is due “no later than May 15, 2021.”²⁷ However, if the report is “impractical as of that time,” PSCo must “provide an update on the status of the report and estimated date for completion.”²⁸ The Settlement Agreement specifies that the reports will be filed in this proceeding.²⁹

22. Finally, the Settlement Agreement states that the Application’s “suggested order language” quoted at paragraph 17 above “is no longer applicable.”³⁰

C. Analysis

1. Jurisdiction.

23. PSCo is a public utility that provides regulated electric service to its ratepayers in Colorado. As a public utility, PSCo provides regulated natural gas service pursuant to tariffs on file with the Commission. Accordingly, the Commission has jurisdiction over the subject matter of this Proceeding. Likewise, the Commission has jurisdiction over the intervening parties.

2. Modified Procedure

24. The Application, as modified by the Settlement Agreement executed by all of the parties in this proceeding, is uncontested. Moreover, the parties agree that a hearing is unnecessary. Finally, the Application and Settlement Agreement are accompanied by sworn testimony and attachments that verify sufficient facts to support the Application and Settlement Agreement. Accordingly, pursuant to § 40-6-109(5), C.R.S., and Commission Rule 1403,³¹ the

²⁶ *Id.* at 12-13 (¶¶ 30-31).

²⁷ *Id.* at 12 (¶ 31).

²⁸ *Id.*

²⁹ *Id.* at 13 (¶ 33).

³⁰ *Id.* at 8 (¶ 20).

³¹ Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1.

Application, as modified by the Settlement Agreement, will be considered under the modified procedure, without a formal hearing.

3. Stipulation and Settlement Agreement

25. Based upon substantial evidence in the record as a whole, the ALJ finds and concludes that the Settlement Agreement is just and reasonable and not contrary to the public interest. The ALJ shall approve the Settlement Agreement without material modification and shall grant the Application, as modified and clarified by the Settlement Agreement.

26. In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following Order.

III. ORDER

A. The Commission Orders That:

1. The Unopposed Joint Motion to Approve Stipulation and Settlement and Request for Waiver of Response Time (Unopposed Joint Motion) filed on January 29, 2020 by Public Service Company of Colorado (PSCo), Trial Staff of the Colorado Public Utilities Commission (Staff), Colorado Energy Office (CEO), ChargePoint, Inc. (ChargePoint), and Western Resource Advocates (WRA) is granted, consistent with the discussion above.

2. Response time to the Unopposed Joint Motion is waived.

3. Consistent with the findings, discussion, and conclusions in this Decision, the Stipulation and Settlement Agreement between PSCo, Staff, CEO, ChargePoint, and WRA filed as Hearing Exhibit 102 on January 31, 2020, is approved without material modification. The Stipulation and Settlement Agreement is attached to this Decision as Appendix A.

4. The Application filed on August 29, 2019 by PSCo for an order authorizing PSCo's deferred accounting for the electric vehicle make-ready infrastructure projects and

additional investment described in the Application, as modified by the Stipulation and Settlement Agreement, is granted.

5. Proceeding No. 19A-0471E is closed.

6. 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.

7. As provided by § 40-6-109, 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 decision is stayed by the Commission upon its own motion within 20 days after service, 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 basic findings 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.

8. If exceptions to this 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

CONOR F. FARLEY

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director