

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24D-0220G

IN THE MATTER OF THE VERIFIED PETITION OF PUBLIC SERVICE COMPANY OF COLORADO FOR A DECLARATORY ORDER DETERMINING WHETHER A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY IS REQUIRED FOR COMPLETION OF THE CLARKSON SYSTEM SAFETY AND INTEGRITY PROJECT.

**RECOMMENDED DECISION ADDRESSING PETITION
FOR DECLARATORY ORDER AND CLOSING
PROCEEDING**

Issued Date: January 21, 2025

TABLE OF CONTENTS

I. STATEMENT.....	2
A. Procedural Background	2
B. Background to Petition	3
1. Clarkson Street Project.....	3
2. Proceeding No. 21A-0071G.....	4
3. Proceeding No. 23M-0234G	6
4. Proceeding No. 24AL-0049G	7
II. PARTIES' POSITIONS	8
A. Public Service.....	8
B. Staff	10
III. QUESTION PRESENTED.....	11
IV. LEGAL STANDARD	12
A. Section 40-5-101(a), C.R.S.	12
B. Commission Rule 4102	12
V. ANALYSIS.....	13
VI. ORDER.....	17

A. The Commission Orders That:	17
--------------------------------------	----

I. STATEMENT

A. Procedural Background

1. On May 21, 2024, Public Service Company of Colorado (“Public Service” or the “Company”) filed the Petition for Declaratory Order (“Petition”) that initiated this proceeding. The Petition seeks a declaratory order that Public Service is not required to obtain a Certificate of Public Convenience and Necessity (“CPCN”) for its Clarkson Street Main Renewal Project (“Clarkson Street Project”).

2. On June 10, 2024, the Commission issued Decision No. C24-0399-I that accepted the Petition, issued notice of the Petition, set a 30-day intervention period, and referred the proceeding to an Administrative Law Judge (“ALJ”). The proceeding was subsequently assigned to the undersigned ALJ. The 30-day intervention period ended on July 10, 2024.

3. On June 24, 2024, the ALJ issued Decision No. R24-0444-I that scheduled a remote prehearing conference for July 31, 2024, required the parties to confer regarding a schedule for this proceeding, and for Public Service to file a conferral report by July 26, 2024.

4. On July 10, 2024, Trial Staff of the Commission (“Staff”) filed a Notice of Intervention as of Right, Entry of Appearance, and Request for Hearing.

5. On July 26, 2024, Public Service filed the Conferral Report in which the parties jointly proposed the following schedule:

<u>Event</u>	<u>Deadline</u>
Staff's Response to the Petition	September 27, 2024
Public Service's Reply in Support of the Petition	October 25, 2024
Joint Motion Regarding Oral Argument	November 8, 2024

6. On July 30, 2024, the ALJ issued Decision No. R24-0548-I that adopted the schedule proposed by the parties.

7. The parties filed the response and reply briefs on the deadlines established in Decision No. R24-0548-I.

8. The parties did not request oral argument on the Petition.

B. Background to Petition

1. Clarkson Street Project

9. The Clarkson Street Project is replacing a coated steel gas main in Denver along Clarkson Street from 20th Avenue to Fifth Avenue. The existing gas main was installed in the late 1940s and, according to Public Service, is past its useful life. Specifically, Public Service states that, due to the age of the pipe and the use of compression couplings in its construction, the existing main is at risk “of leaks at the fittings and a risk of blowing gas if the fittings failed.”¹ Public Service views the existing main as “high risk to the gas system” and “due to the large

¹ Petition at p. 7 (¶ 13).

diameter of certain portions and the densely populated urban area surrounding the pipeline, there would be a large impact to customers should failure occur.”²

10. Public Service divided the Clarkson Street Project into four phases. Public Service completed the first phase in 2022, which extended from 9th Avenue to 14th Avenue along North Clarkson Street.³ The cost of the first phase was approximately \$4.1 million.⁴

11. Public Service completed the second phase in 2023. It extended from 20th and Downing St. to 18th and Clarkson Street.⁵ The cost of the second phase was \$5.8 million.⁶

12. The third and fourth phases will be from 14th to 18th Avenues on Clarkson and 5th and 9th Avenues on Clarkson, respectively. Public Service plans to commence the third and fourth phases in 2025 and 2026, respectively.⁷ The estimated costs of the third and fourth phases are unknown (other than that neither phase will exceed \$12 million).⁸

2. Proceeding No. 21A-0071G

13. On February 9, 2021, Public Service filed in Proceeding No. 21A-0071G an Application to Extend the Company’s Pipeline System Integrity Adjustment (“PSIA”) Rider for Certain Projects through 2024, with Subsequent Wind-Down of the Rider (“Application”). The PSIA rider allowed for contemporaneous cost recovery of certain system integrity investments in Public Service’s gas infrastructure. The Commission first approved the PSIA in Decision No. R11-0743 in Proceeding No. 10AL-963G for an initial period of 2012 to 2014.

² *Id.* at p. 8 (¶ 14).

³ Staff’s Response, Attach. A.

⁴ Public Service’s Reply at p. 6 n.10.

⁵ *Id.*

⁶ *Id.*

⁷ Petition at p. 9 (¶ 17).

⁸ *Id.* (“the estimated costs for Phases 3 and 4 have not been determined”); Public Service’s Reply at p. 4 (“The Company does not expect that either of the remaining phases will exceed \$12 million.”).

Prior to the filing of the Application, the Commission granted Public Service's requests to extend the PSIA three times, the last time through December 31, 2021.

14. As noted, the Application requested another extension of the PSIA through 2024 to recover the capital costs for five categories of projects, including the Distribution Integrity Management Program ("DIMP") Programmatic Risk-based Pipe Replacement Program ("PPRP"). For the DIMP PPRP, Public Service estimated that the capital expenditures for 2022, 2023, and 2024 would be \$43.9, \$44.9, and 44.9 million, respectively. Staff, the Office of the Utility Consumer Advocate ("UCA"), and the Colorado Energy Office ("CEO") intervened in the proceeding and opposed the Application.

15. On September 3, 2021, Public Service, Staff, and CEO filed a Non-Unanimous Comprehensive Settlement Agreement ("2021 Settlement") resolving the issues raised in Proceeding No. 21A-0071G with a proposal to establish a process to wind-down and transfer to base rates charges then recovered through the PSIA. UCA did not join the 2021 Settlement. The 2021 Settlement proposed to close the PSIA Rider to new investment as of December 31, 2021 and establish a capital-only PSIA deferral mechanism for 2022 by which Public Service would track the depreciation expense associated with new capital investments in specified categories of high-risk PSIA Projects placed in service during 2022, and defer these expenses for review and recovery in a future Phase I rate case ("PSIA Deferral").⁹ The categories identified in the 2021 Settlement included "DIMP – PPRP – Coupled IP & Vintage Steel."¹⁰ The capital expenditure amount included in the PSIA Deferral would be capped at \$143.1 million.¹¹ Finally, the 2021 Settlement proposed several filings, including PSIA Deferral Reports, the first of which

⁹ 2021 Settlement at pp. 6-8 (¶¶ 13-17) (filed on Sept. 3, 2021 as Hearing Exhibit 112, Attach. A in Proceeding No. 21A-0071G).

¹⁰ *Id.* at p. 8 (Table 1).

¹¹ *Id.* at pp. 7-8 (¶ 17).

would be filed in November 2021. The November 2021 report would “forecast the coming year” and be “informational only.”¹²

16. On November 12, 2021, the Commission approved the 2021 Settlement in Decision No. C21-0715. The record in Proceeding No. 21A-0071G did not include any specific reference to, or estimate of, the Clarkson Street Project. Instead, the record appears to refer only to the DIMP PRPP projects in the aggregate.¹³

17. On November 15, 2021 (three days after the Commission approved the 2021 Settlement), Public Service filed its first 2022 PSIA Deferral Report. Attachment A to that Report identified the Clarkson Street Project as one of the “DIMP PPRP” “Vintage Steel” projects included in the PSIA Deferral. It further stated that the Clarkson Street Project would have four annual phases that would be completed by the end of 2025. The 2022 PSIA Deferral report projected that the first phase would be completed in 2022 at an estimated cost of \$5 million.¹⁴

3. Proceeding No. 23M-0234G

18. Public Service filed its first gas infrastructure plan (“GIP”) on May 18, 2023. Commission Rules 4550-4555, implemented on May 15, 2023, required the filing. The purpose of the filing was to provide the information necessary to allow the Commission to exercise “appropriate oversight of long-term and costly investments in gas system infrastructure.”¹⁵ Public Service included in the filing detailed information regarding the second phase of the Clarkson Street Project. Details regarding Phases 3 and 4, including cost estimates, were not

¹² *Id.* at pp. 9-10 (¶ 20).

¹³ Staff’s Response at pp. 5-6 (citing Hearing Exhibit 102 at p. 46:7-8 filed in Proceeding No. 21A-0071G).

¹⁴ PSIA 2022 Deferral Report, Attach. A at pp. 5-8, 11 (filed on November 15, 2021 in Proceeding No. 21A-0071G).

¹⁵ Decision No. C24-0092 adopted on Feb. 23, 2024 in Proceeding No. 23M-0234G at p. 5 (¶ 13).

included.¹⁶ In its Decision, the Commission “address[ed] the adequacy of Public Service’s Initial GIP and the methods and processes used to formulate the Initial GIP and provide[d] guidance for the preparation of Public Service’s future GIP filings.”¹⁷ The Commission did not expressly address, or otherwise approve, the second phase of the Clarkson Street Project.

4. Proceeding No. 24AL-0049G

19. Proceeding No. 24AL-0049G was a Phase I rate proceeding filed by Public Service on January 29, 2024. Public Service sought an increase in its base rate revenues “driven by plant investments since the Company’s previous rate case.”¹⁸ Included in the “plant investments” were the first two phases of the Clarkson Street Project, the costs of which amounted to approximately \$10 million. Staff opposed the inclusion, arguing, among other things, that “large diameter pipe replacements in a densely populated urban area are not normal course of business operations and maintenance” and “breaking the project up into phases circumvents CPCN filing rules.”¹⁹

20. In granting Public Service’s request, the Commission stated:

We indeed share many of Staff’s concerns that large projects can potentially evade critical regulatory and planning requirements when divided into portions to be completed over time and that viewing such projects only as their subcomponents can obscure holistic considerations of alternatives. The Commission has, on multiple occasions, clarified that the gas planning rules, whether for inclusion in a Gas Infrastructure Plan or CPCN proceeding, intend to consider all related investments needed to ultimately serve the same need as part of one larger project for the purpose of identifying what projects must be reported within certain cost thresholds. Notwithstanding those general concerns, we make the limited finding on this record that the Company has met its burden to demonstrate the need for and prudence of these initial phases of the Clarkson Street

¹⁶ Public Service’s Initial 2023-2028 Gas Infrastructure Plan, Attach. A.2 at p. 7 of 9 (filed on May 18, 2023).

¹⁷ Decision No. C24-0092 adopted on Feb. 23, 2024 in Proceeding No. 23M-0234G at pp. 2-3 (¶ 2).

¹⁸ Decision No. C24-0778 issued on October 25, 2024 in Proceeding No. 24AL-0049G at p. 4 (¶ 4).

¹⁹ *Id.* at p. 24 (¶ 59).

Project, which were conducted prior to implementation of Rule 4102. For one, Public Service has shown that the Clarkson Street Project conducted up to and including the 2023 test year has been consistent with how other large projects in urban areas have been undertaken in the past to address safety concerns and other system factors. We therefore find it appropriate to allow Public Service to include the costs associated with the Clarkson Street Project prior to implementation of Rule 4102 in the calculation of the base rate revenue target in this Proceeding.²⁰

II. PARTIES' POSITIONS

A. Public Service

21. The Petition requests that a declaratory order issue holding that Public Service is not required to obtain a CPCN for its Clarkson Street Project in its entirety, or any portion thereof. As support, Public Service offers four reasons.

22. First, the Clarkson Street Project is a multi-year project that commenced under the PSIA Deferral. By approving the 2021 Settlement containing the PSIA Deferral in Proceeding No. 21A-0071G, the Commission “pre-authorized” the entire Clarkson Street Project.²¹ Therefore, a CPCN approving the Clarkson Street Project is unnecessary.

23. Second, the Commission’s newly modified Rule 4102 of the Commission’s Rules Regulating Gas Utilities,²² which requires a utility to seek a CPCN for any project that is estimated to cost \$12 million or more, did not go into effect until May 15, 2023, long after initiation of the Clarkson Street Project. According to Public Service, application of new Rule 4102 to the Clarkson Street Project would be an unconstitutional retroactive application of the rule to vested rights.²³

²⁰ *Id.* at pp. 25-26 (¶ 63).

²¹ Public Service’s Reply at p. 14 (“this multi-year project was authorized and commenced under the 2022 PSIA deferral. . . . [It] was *pre-authorized important safety work.*”) (emphasis in original).

²² 4 *Code of Colorado Regulations* (CCR) 723-4.

²³ Petition at pp. 11-12 (¶ 23); Public Service’s Reply at pp. 11-13.

24. Third, if the Commission decides that current Rule 4102 applies to the remaining two phases of the Clarkson Street Project, then no CPCN is required because neither phase will exceed the \$12 million threshold.²⁴ Public Service offers this argument in the alternative “if the Commission both views each remaining Phase to be an individual project” and decides that Rule 4102 applies to Phases 3 and 4.²⁵ According to Public Service,

it would not be appropriate to consider Phases 3 and 4 to be “one” project, as they are only components of the overall project that commenced in 2022. Thus, even if those two Phases combined exceeded the CPCN threshold, which is possible, a CPCN cannot properly be required for combined Phases 3 and 4 under the presented circumstances.²⁶

25. Finally, because of the high risk of the gas main being replaced in the Clarkson Street Project, “it is imperative to continue this work without the delay of regulatory CPCN processes, and it is not desirable or prudent to leave the identified safety work in a partially-remediated state.”²⁷ According to Public Service, “replacement of aging infrastructure to improve safety, reliability, and to reduce emissions from leaks is considered normal course of business, and work we complete on a daily basis.”²⁸ Therefore, a CPCN is not required.

26. In summary, Public Service asserts that it should prevail because the Clarkson Street Project “is either one large multi-year project (as conceded by Staff) that commenced prior to the effective date of the new CPCN rules, or four separate individual projects,” each of which is below the \$12 million threshold in Rule 4102.²⁹

²⁴ Public Service’s Reply Brief at p. 4 (“The Company does not expect that either of the remaining phases will exceed \$12 million.”) (emphasis in original).

²⁵ Petition at p. 12 (¶ 23).

²⁶ *Id.* at p. 12 n. 17.

²⁷ Petition at p. 9 (¶ 18).

²⁸ Public Service’s Reply Brief at p. 7.

²⁹ Public Service’s Reply Brief at p. 15.

B. Staff

27. Staff disagrees that the Commission “pre-authorized” the entire Clarkson Street Project or any portion of it. According to Staff, in Proceeding No. 21A-0071G, “the DIMP PPRP was allowed to temporarily continue as part of the 2022 PSIA Deferral, but neither the Commission nor the interested parties were ever afforded the opportunity to scrutinize the individual project expenditures of any future project set forth within the DIMP PPRP, including any expenditures to be made for the Clarkson Street Renewal Project.”³⁰ Further, according to Staff, “[t]he PSIA Deferral was meant to provide an avenue for the Company to wind-down the PSIA Rider, not give tacit approval for all projects occurring over the subsequent five years.”³¹

28. Staff contends that Public Service should be ordered to apply for a CPCN for the Clarkson Street Project, including Phases 1 and 2. According to Staff, all four phases should be treated as one project for purposes of determining whether Public Service must seek a CPCN for the Clarkson Street Project. The fact that “each Phase is one portion of the larger, steel main along Clarkson Street” underscores that it is a single project that Public Service has phased for “internal” reasons.³² Phases 1 and 2 of the Clarkson Street Project cost approximately \$10 million. Public Service did not include any estimates of the costs of Phases 3 and 4 in the Petition or its Reply Brief, so there is no evidence about whether the entire project will exceed \$12 million in cost.³³ Nevertheless, the Commission should require Public Service to file an application for a CPCN because the Clarkson Street Project “is a significant project that requires Commission oversight of priorities and expenditures.”³⁴ The application should seek a CPCN

³⁰ Staff’s Response at p. 5.

³¹ *Id.* at p. 7.

³² Staff’s Response at p. 10.

³³ *Id.* at pp. 12-13.

³⁴ *Id.* at p. 13.

“for the entire Clarkson Street Project or even the remaining portion of the Clarkson renewal work.”³⁵

29. Staff contends that such an outcome does not violate the general prohibition against the retroactive application of current Rule 4102. As support, Staff cites *City of Montrose v. PUC*, 629 P.2d 619, 624 (Colo. 1981) and *Boulder v. PUC*, 996 P.2d 170 (Colo. 2000). Staff asserts that these cases recognize the Commission’s broad authority to require Public Service to apply for a CPCN for the Clarkson Street Project, including the first two phases that have already been concluded, to protect the public interest.³⁶

30. Finally, Staff asserts it would be a “slippery slope” to allow Public Service to chop up the Clarkson Street Project that surpasses the \$12 million threshold in Rule 4102 into phases that individually do not. Based on such an outcome, other utilities to which Rule 4102 applies will likely copy Public Service’s example to circumvent the threshold and thereby avoid filing for CPCNs. Such utilities would then evade Commission oversight of significant expenditures that the utilities will later request to recover from ratepayers.³⁷

III. QUESTION PRESENTED

31. Under Colorado law and applicable Commission rules, is Public Service required to obtain a CPCN for the Clarkson Street Project in its entirety or for the remaining phases of the project?

³⁵ *Id.* at p. 12.

³⁶ *Id.* at pp. 11-14.

³⁷ *Id.* at p. 10.

IV. LEGAL STANDARD

A. Section 40-5-101(a), C.R.S.

32. Section 40-5-101(a), C.R.S. states that “[a] public utility shall not begin the construction of a new facility, plant, or system or the extension of its facility, plant, or system without first obtaining from the commission a certificate that the present or future public convenience and necessity require, or will require, the construction or extension.” A public utility need not obtain a CPCN for a project that would be undertaken “in the ordinary course of business.”³⁸

B. Commission Rule 4102

33. The version of Rule 4102(a) in effect from June 30, 2018, to May 14, 2023, stated:

A utility seeking authority to construct and to operate a facility or an extension of a facility pursuant to § 40-5-101, C.R.S., shall file an application pursuant to this rule. The utility need not apply to the Commission for approval of construction and operation of a facility or an extension of a facility which is in the ordinary course of business. The utility shall apply to the Commission for approval of construction and operation of a facility or an extension of a facility which is not in the ordinary course of business.

34. The version of Rule 4102(b) that went into effect on May 15, 2023 states:

For a utility with 500,000 full-service customers or more, the utility shall apply to the Commission for issuance of a certificate of public convenience and necessity for construction and operation of a facility, or an extension or expansion of a facility, where the total utility capital investment value is greater than \$12 million in 2020 dollars, unless the utility has already received approval by the Commission pursuant to paragraph 4555(c).

³⁸ § 40-5-101(a)(III), C.R.S.

V. ANALYSIS

35. The ALJ concludes that, under the unique circumstances presented in this proceeding, Public Service is not – at this late stage of the Clarkson Street Project – required to seek a CPCN for the project. As an initial matter, the ALJ concludes that the Clarkson Street Project is one project for purposes of analyzing whether a Commission-issued CPCN is required before commencing the project.³⁹ While Public Service has broken up the project into subparts, the subparts address the same or similar contiguous infrastructure located in the same location for the same purpose. Public Service is free to segment projects if the segmentation is consistent with the public interest, but such intra-public utility administrative decisions are not dispositive in determining whether such a project requires a CPCN. The ALJ finds and concludes that the Clarkson Street Project is a single project regardless of Public Service’s decision to segment it into four subparts or phases.

36. As noted, the PSIA Deferral was included in the 2021 Settlement in Proceeding No. 21A-0071G, but the specific projects included in the PSIA Deferral were not identified in the 2021 Settlement. Instead, the Commission did not become aware that the Clarkson Street Project was included in the PSIA Deferral until after it approved the 2021 Settlement. Specifically, in the report filed three days after the Commission approved the 2021 Settlement, Public Service identified the Clarkson Street Project as one of the projects included in the PSIA Deferral, but the report merely stated that the Clarkson Street Project would have four annual phases, and estimated that the first phase would cost \$5 million.⁴⁰ It did not include an estimated cost for the three remaining phases or detail regarding any of the phases.

³⁹ For this reason, and because of the outcome of this Decision, the ALJ declines to address Public Service’s argument that application of current Rule 4102 to the Clarkson Street Project would be an unconstitutional retroactive application of the rule.

⁴⁰ PSIA 2022 Deferral Report, Attach. A at pp. 5-8, 11 (filed on November 15, 2021 in Proceeding No. 21A-0071G).

37. Public Service did include information regarding the second phase of the Clarkson Street Project in Proceeding No. 23M-0234G, but not for the third and fourth phases. The Commission’s decision in Proceeding No. 23M-0234G did not expressly address the Clarkson Street Project because the purpose of the proceeding was to “address the adequacy of Public Service’s Initial GIP and the methods and processes used to formulate the Initial GIP and provide guidance for the preparation of Public Service’s future GIP filings.”⁴¹ The proceeding’s purpose was not to provide approval for any particular project identified therein. As a result, the Commission never reviewed and approved the details of the first two phases of the Clarkson Street Project before Public Service started those phases.

38. The Commission addressed the first two phases of the Clarkson Street Project in Proceeding No. 24AL-0049G, but only after they were completed. As noted, in that proceeding Public Service requested to place into rate base the investment in the first two completed phases of the Clarkson Street Project. While the Commission expressed reservations “that large projects [like the Clarkson Street Project] can potentially evade critical regulatory and planning requirements when divided into portions to be completed over time and that viewing such projects only as their subcomponents can obscure holistic considerations of alternatives,”⁴² it approved Public Service’s request.⁴³ In so doing, the Commission stated that Public Service: (a) “has met its burden to demonstrate the need for and prudence of these initial phases of the Clarkson Street Project;” and (b) established that the first two phases were undertaken “consistent with how other large projects in urban areas have been undertaken in the past to address safety concerns and other system factors.”⁴⁴

⁴¹ Decision No. C24-0092 at pp. 2-3 (¶ 2).

⁴² Decision No. C24-0778 issued in Proceeding No. 24AL-0049G on Oct. 25, 2024 at p. 25 (¶ 63).

⁴³ *Id.* at p. 26.

⁴⁴ *Id.*

39. Given the Commission’s decision in Proceeding No. 24AL-0049G, it would make little sense to require Public Service to return to the Commission to obtain a CPCN for the first two phases of the Clarkson Street Project that have already been completed and the investment has been deemed prudent and included in rate base. Moreover, no party to this proceeding has asserted that the final two phases should not be completed, or that the entirety of the Clarkson Street Project, or any portion thereof, is/was unnecessary. Instead, all parties appear to agree that the Clarkson Street Project must be completed. For this reason, and because the Commission has already found that it was prudent to undertake the first two phases of the Clarkson Street Project and the costs thereof were sufficiently reasonable to include in rate base, the ALJ will not require Public Service to halt the project to file an application for a CPCN, which would take at least several months to reach a final Commission decision if it was opposed. On this point, the ALJ agrees with Public Service that it is important to continue the Clarkson Street Project without delay, and not “leave the identified safety work in a partially-remediated state.”⁴⁵

40. Citing the recent amendments to the Commission’s gas rules, Staff states that “forward-looking analysis of proposed significant projects is needed to provide oversight of priorities and expenditures.”⁴⁶ Staff further argues that CPCN proceedings “allow[] the Commission to evaluate potential alternative solutions.”⁴⁷ As noted above, however, the Clarkson Street Project is a single project—despite the Company’s segmentation of it into phases—and significant portions of the Clarkson Street Project are already completed and included in rate base. Staff has not articulated how a retroactive alternative analysis in a CPCN

⁴⁵ Petition at p. 9 (¶ 18).

⁴⁶ Staff’s Response at p. 5.

⁴⁷ *Id.* at p. 13.

proceeding would further the public interest in this circumstance, especially given the safety concerns the Company raises.

41. The ALJ passes no judgment on the prudence of undertaking the final two phases of the Clarkson Street Project or the estimate of the costs of their completion. In fact, Public Service has not provided even a rough estimate of the costs of Phases 3 and 4, instead stating that those costs “have not been determined.”⁴⁸ This is puzzling because Phases 1 and 2 are complete and their costs are known, which should have allowed Public Service to provide a relatively accurate estimate of the costs of Phases 3 and 4. Nevertheless, given the decisions made by Public Service with respect to the Clarkson Street Project, no presumption of prudence attaches to the costs of Phases 3 and 4 and Public Service thus assumes the risk that, when it completes the final two phases and requests to place their costs into rate base, the Commission will deny Public Service’s request. The ALJ recommends that, if Public Service makes such a request in its next Phase I ratemaking proceeding, the Commission take a hard look at the Phase 3 and 4 costs in that proceeding.

42. The ALJ reiterates that this is a unique situation. As Staff states, the Clarkson Street Project arose at “a unique confluence of procedural factors including the end of the PSIA, the Gas Rule changes, the filing of the Company’s GIP, and the Company’s most recent rate case.”⁴⁹ As a result, the Clarkson Street Project has evaded the regulatory review and approval process contemplated by § 40-5-101(a), C.R.S. and Rule 4102 for these types of significant projects that are not undertaken in the ordinary course of business. Based on the limited review that has taken place to date (most notably in Proceeding No. 24AL-0049G) and the apparent

⁴⁸ Petition at p. 9 (¶ 17).

⁴⁹ Staff’s Response at pp. 13-14.

agreement by Staff regarding its necessity, the ALJ is confident that the completion of the Clarkson Street Project as scheduled is in the public interest. Accordingly, under the unique circumstances of this proceeding, the ALJ will not issue a declaratory judgment that results in Public Service halting work on the remaining phases of the Clarkson Street Project to seek a CPCN from the Commission for that work.

VI. ORDER

A. The Commission Orders That:

1. The Petition for Declaratory Order filed by Public Service Company of Colorado on May 21, 2024, is granted consistent with the discussion and conclusions in this Decision.
2. Proceeding No. 24D-0220G is closed.
3. 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.
4. 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, 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.

5. 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 "Rebecca E. White".

Rebecca E. White,
Director