

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20AL-0049G

IN THE MATTER OF ADVICE LETTER NO. 961 FILED BY PUBLIC SERVICE COMPANY OF COLORADO TO INCREASE RATES FOR ALL NATURAL GAS SALES AND TRANSPORTATION SERVICES TO BECOME EFFECTIVE MARCH 7, 2020.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
STEVEN H. DENMAN
APPROVING AMENDED SETTLEMENT AGREEMENT,
PERMANENTLY SUSPENDING FILED
TARIFF SHEETS, AND ORDERING
FILING OF COMPLIANCE TARIFFS**

Mailed Date: September 22, 2020

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I. STATEMENT

A. Summary.

1. This Recommended Decision approves the Unopposed and Comprehensive Amended Stipulation and Settlement Agreement (Amended Settlement Agreement) filed on July 29, 2020 without material modifications, permanently suspends the tariffs filed with Advice Letter No. 961-Gas on February 5, 2020, and orders Public Service Company of Colorado (Public Service) to file compliance tariffs consistent with the findings, discussion, and conclusions in this Recommended Decision.

B. Procedural History.

2. On February 5, 2020, Public Service filed with the Colorado Public Utilities Commission (Commission), Advice Letter No. 961-Gas and accompanying tariff sheets. Public Service also filed the supporting direct testimony and attachments of 16 witnesses. This filing is a combined Phase I and Phase II natural gas rate case (Phase I and Phase II Gas Rate Case).

3. In the Advice Letter, Public Service asserts that its present base rates are deficient as a result of investments and changes to costs incurred since 2016. Public Service seeks a total increase in base rate revenues of approximately \$144.5 million premised on a test year ending September 30, 2020. Excluding the \$17.7 million revenue requirement effects of costs currently being recovered through Public Service's Pipeline System Integrity Adjustment (PSIA), the net increase in revenues is approximately \$126.7 million.

4. The average monthly bill impacts of Public Service's proposed rate increase amount to a 15.9 percent increase for residential customers, or \$6.44 per month; and an 11.7 percent increase for small commercial customers, or \$19.51 per month.

5. Public Service explained that its proposed test year for establishing new rates starts with the historical 12 months ending September 30, 2019. That historical test year was then adjusted for known and measurable cost changes through September 30, 2020. Public Service stated that, in recognition that the rate request is based on some forecasted information, Public Service was prepared to provide actual plant closing, cost of debt, capital structure, revenue, and potentially other information in discovery to demonstrate the reasonableness of the estimates provided.

6. The Cost of Service Study for the test year reflected Public Service's proposal to recover and amortize property taxes, pension expense, manufactured gas plant costs, rate case

expenses, and damage prevention expenses over a 36-month period and to earn a return on the unamortized balances. The rate case expenses included \$1.6 million of projected expenses associated with this Proceeding and \$226,000 associated with Public Service's 2019 Phase II rate case (settled in Proceeding No. 19AL-0309G).¹ The proposed revenue requirement also included Public Service's proposal to amortize a second legacy prepaid pension asset over a ten-year period. The Cost of Service Study further implemented updated depreciation rates resulting from Public Service's depreciation study.

7. Public Service sought an authorized return on equity (ROE) of 9.95 percent and a rate of return on rate base (*i.e.*, the Weighted Average Cost of Capital or WACC) of 7.33 percent.

8. Additional requests by Public Service *inter alia* included:

- Changing the word "customer" to "service meter" in the sales rate schedules, so that the same terminology is used in both the sales and transportation rate schedules;
- Revising the PSIA rates to reflect the transfer of PSIA projects completed as of December 31, 2018 into base rates and the transfer of the current PSIA in base amount into the PSIA rider; and
- Continuing certain existing deferrals and trackers.

9. The proposed effective date on the tariffs filed with Advice Letter No. 961-Gas was March 7, 2020, although Public Service expected the Commission would set the filing for hearing and suspend the effective date of the tariffs. The 250-day statutory suspension period pursuant to § 40-6-111(1), C.R.S. (2019), would extend through November 12, 2020. However, Public Service sought a final decision establishing new base rates prior to that date in order for the rates to become effective on November 1, 2020.

¹ Decision No. R20-0046 (issued on January 22, 2020) approved the Stipulation and Settlement Agreement in Proceeding No. 19AL-0309G without material modifications.

10. On February 5, 2020, Public Service also filed a Motion for Commission Approval of an Alternative Form of Notice, seeking Commission approval of certain alternative forms of notice to apply to Public Service's Advice Letter No. 961-Gas.² In Decision No. C20-0113-I (issued on February 20, 2020), the Commission approved the request to use the following alternative forms notice to affected customers by: (a) publishing a legal notice (attached to the motion as Attachment A) in *The Denver Post* on two consecutive Sundays (February 16 and 23, 2020); (b) posting a copy of the 2020 Gas Rate Case filing on Public Service's website; (c) providing a customer bill onsert to Public Service's retail natural gas customers with all mailed and e-billed customer bills; and (d) providing an email within the first 20 days of the 30-day noticing period to all retail natural gas customers for whom Public Service has an email address and who have elected to receive email notifications.³

11. By Decision No. C20-0112 (issued on February 20, 2020) (Suspension Decision), and pursuant to § 40-6-111(1), C.R.S. (2019), and Rule 1305(c) of the Rules of Practice and Procedure. 4 *Code of Colorado Regulations* (CCR) 723-1, the Commission set for hearing the tariffs filed with Advice Letter No. 961-Gas and thereby suspended their effective date for 120 days from the proposed effective date, or until July 5, 2020. The Suspension Decision

² On February 10, 2020, Public Service filed an Amended Motion for Commission Approval of an Alternative Form of Notice, updating the dates for newspaper publication of the legal notice.

³ On February 28, 2020, Public Service filed an Affidavit of Publication, confirming that the legal notice approved by Decision No. C20-0113-I had been published in *The Denver Post* on February 16 and 23, 2020.

commenced this Proceeding.⁴ Decision No. C20-0112 also established an intervention deadline for 30 days after its issue date, or no later than March 23, 2020.⁵ The Suspension Decision also referred the matter to an Administrative Law Judge (ALJ) to set hearing dates, to rule on interventions, and to establish other procedures by separate decisions. Subsequently, the undersigned ALJ was assigned to preside over this Proceeding.

12. Pursuant to § 40-6-111(1)(b), C.R.S. (2019) by Decision No. R20-0145-I (issued on March 5, 2020), the ALJ suspended the tariff sheets filed with Advice Letter No. 961-Gas for a total of 250 days, or until November 12, 2020.

13. Decision No. R20-0145-I acknowledged the Notice of Intervention as of Right by Staff, Entry of Appearance, Notice Pursuant to Rule 1007(a) and Rule 1401 and Request for Hearing filed by Trial Staff of the Colorado Public Utilities Commission (Staff) on February 28, 2020. Decision No. R20-0179-I (issued on March 17, 2020) acknowledged the Notice of Intervention by Right, filed by the Colorado Office of Consumer Counsel (OCC) on March 9, 2020.

14. Decision No. R20-0179-I also granted Public Service's Motion for a Protective Order Affording Extraordinary Protection for Highly Confidential Individual Employee Salary and other Compensation-related Information, filed on March 10, 2020. Decision No. R20-0302-I

⁴ Rule 1300(d) of the Rules of Practice and Procedure. 4 CCR 723-1, provides that: "Proceedings before the Commission may be commenced *only* through one of the following: ... (d) a decision suspending and setting for hearing a proposed tariff, price list, or time schedule;" (emphasis added). All Commission decisions are effective on their mailed date; that is, on the date they are issued. See Rule 1203 of the Rules of Practice and Procedure, 4 CCR 723-1.

⁵ Since the 30-day deadline for filing interventions, ordered in Decision No. C20-0112, fell on Saturday, March 21, 2020, the deadline was extended by operation of law until the next business day, or until Monday, March 23, 2020. Section 40-6-121, C.R.S.

(issued on April 28, 2020) granted Public Service's Unopposed Second Motion for a Protective Order Affording Extraordinary Protection for Highly Confidential Information.

15. Decision No. R20-0145-I also scheduled a prehearing conference for March 26, 2020 at 1:30 p.m.; encouraged the Parties to discuss a consensus procedural schedule, hearing date(s), and other procedural matters; and encouraged Public Service to file a report on any such agreements by Noon on March 25, 2020.

16. However, on March 10, 2020, Governor Jared Polis issued a State of Emergency Order to address impacts of the novel coronavirus pandemic (COVID-19). Because of the Emergency Order and the Commission's related restrictions on in-person hearings and meetings, Decision No. R20-0183-I (issued on March 18, 2020) vacated the prehearing conference and rescheduled it for April 21, 2020 at 1:30 p.m. as a telephonic hearing. The due date for Public Service's report on any procedural agreements was extended to Noon on April 3, 2020.

17. Due to impacts of the COVID-19 pandemic the ALJ also implored Public Service to delay this Proceeding:

Given the November 12, 2020 end of the 250-day suspension period, the ALJ strongly encourages Public Service to give serious attention and consideration to filing an amended Advice Letter and tariffs with a new effective date on the filed tariff to allow the ALJ to extend the suspension period, and the time for litigation and decisions by the ALJ and the Commission to a minimum of an additional 90 to 120 days, or to waiving the statutory suspension period.⁶

18. Public Service did not acknowledge the ALJ's admonition nor did it file the amended advice letter and tariffs with a new effective date, as suggested by the ALJ.

⁶ Decision No. R20-0183-I, Paragraph 13 at page 4. See "Xcel pushes natural gas rate hike for Colorado customers even as regulators ask for coronavirus-related delay," *The Colorado Sun*, published May 1, 2020.

19. Decision No. R20-0208-I (issued on April 1, 2020) acknowledged the Notice of Intervention by Right filed by the Colorado Energy Office (CEO) on March 23, 2020.

20. Decision No. R20-0208-I granted motions for permissive intervention filed on March 6, 2020 by Atmos Energy Corporation (Atmos); on March 11, 2020 by the Federal Executive Agencies (FEA); on March 16, 2020 by Energy Outreach Colorado (EOC); on March 18, 2020 by Black Hills Colorado Gas, Inc., doing business as Black Hills Energy (BH Colorado Gas); on March 20, 2020 by WoodRiver Energy, LLC (WoodRiver); on March 23, 2020, by Colorado Natural Gas, Inc. (CNG); and on March 23, 2020 by Climax Molybdenum Company (Climax).

21. Decision No. R20-0208-I denied the Petition for Leave to Intervene filed by AARP⁷ and the Petition for Leave to Intervene by the International Brotherhood of Electrical Workers, Local 111 (Local 111), both filed on March 12, 2020, on the grounds that each Petition failed to satisfy the requirements in Rule 1401(c) of the Rules of Practice and Procedure, 4 CCR 723-1, for permissive interventions.⁸ AARP and Local 111 were, however, *each* granted leave to participate in this Proceeding as an *amicus curiae*, pursuant to Rule 1200(c) of the Rules of Practice and Procedure, 4 CCR 723-1.

22. Decision No. R20-0223-I (issued on April 6, 2020) *inter alia* adopted a consensus procedural schedule by which Answer Testimony and attachments were due May 13, 2020 and Rebuttal

⁷ In 1999, the American Association of Retired Persons changed its name simply to “AARP.” AARP Petition for Leave to Intervene, Fn. 1 at page 1. Hence, the decisions in this Proceeding have referred to this organization as AARP.

⁸ Rule 1401(c), 4 CCR 723-1, requires requests for permissive intervention to be by motion, not petition. The petitions for leave to intervene filed by AARP and Local 111 were construed by the ALJ as motions for permissive intervention.

and Cross-answer Testimony and attachments were due on June 8, 2020, and set this rate case for hearing on July 7 through 10 and 13 through 17, 2020.

23. Decision No. R20-0278-I (issued on April 22, 2020) granted in part and denied in part Motions to Set Aside or Modify Interim Decision No. R20-0208-I, filed by the Local 111 on April 3, 2020, and by AARP on April 6, 2020. After reconsideration, Decision No. R20-0278-I granted permissive interventions to Local 111 and AARP.

24. The Parties to this Proceeding are Public Service, Staff, OCC, CEO, Atmos, EOC, FEA, BH Colorado Gas, WoodRiver, CNG, Climax, Local 111, and AARP.

25. Decision No. R20-0345-I (issued on May 6, 2020) established procedures for the presentation of evidence at the evidentiary hearing through electronic exhibits to the fullest extent possible, with the exception of exhibits used for impeachment, to refresh recollection, or for any other exhibits admitted in paper form during the hearing. Decision No. R20-0345-I also assigned blocks of hearing exhibit numbers to the Parties

26. Decision No. R20-0395-I (issued on May 26, 2020) granted the Verified Motion of John B. Coffman for Admission *Pro Hac Vice* in this Proceeding as counsel for AARP. Decision No. R20-0456-I (issued on June 23, 2020) granted the Verified Motion to Appear *Pro Hac Vice* of Major Scott L. Kirk, Captain Robert J. Friedman, and Thomas A. Jernigan, as counsel for the FEA.

27. Pursuant to deadlines established in Decision No. R20-0223-I, intervenors filed extensive answer testimony and attachments of nine witnesses on May 13, 2020. Public Service filed extensive rebuttal testimony and attachments of 14 witnesses on June 8, 2020. FEA, Atmos, and CEO each filed the cross-answer testimony and attachments of one witness on June 8, 2020.

28. In its Rebuttal testimony, Public Service updated its cost of service study to include its actual capital additions, cost of debt, capital structure, revenue, and billing determinants through April 2020, as well as an adjustment to incorporate favorable long-term debt issuances in May 2020. Public Service updated its requested net base rate revenue increase to \$117,167,114, after all PSIA transfers.⁹ In response to socio-economic impacts of the COVID-19 pandemic, Public Service proposed an alternative rate implementation plan to delay the effect of the proposed rates on customers until April 1, 2021, after the conclusion of the 2020 to 2021 heating season.¹⁰

29. Pursuant to Executive Orders issued by Governor Jared Polis and the emergency remote-workforce plan issued by the Department of Regulatory Agencies in response to the COVID-19 pandemic, Decision No. R20-0463-I (issued on June 24, 2020) converted the in-person evidentiary hearing in this Proceeding, set for July 7 through 10 and 13 through 17, 2020, into a remote videoconference hearing.

30. Decision No. R20-0483-I (issued on July 2, 2020) scheduled a remote public comment hearing for July 16, 2020 between 4:00 and 6:00 p.m. The Commission also issued a press release to give broad public notice of the comment hearing. The remote public comment hearing was called to order as scheduled. No customers of Public Service appeared to submit public comments. The ALJ has reviewed the written public comments filed in this Proceeding.

⁹ In her Rebuttal Testimony, Ms. Brooke A. Trammell identified the requested net base rate revenue increase as \$121,431,094 after transfer of certain projects from the PSIA to base rates. *See* Hearing Exhibit 117, at pages 13 and 22. However, after transferring the \$4,263,980, reflecting the current amount of PSIA projects in base rates (PSIA Projects Base Amount) from base rates to the PSIA, the resulting requested increase net of all PSIA transfers was \$117,167,114. Hearing Exhibit 131, Paragraph 6 Fn. 2, at page 6.

¹⁰ *See* Hearing Exhibit 117, at pages 14 – 15 and 35 – 49.

31. During the afternoon of July 2, 2020, Public Service, Staff, OCC, CEO, Atmos, FEA, EOC, BH Colorado Gas, WoodRiver, CNG, Climax, Local 111, and AARP filed a Notice of Unopposed Comprehensive Settlement in Principle (Notice) and Unopposed Motion to Vacate Procedural Schedule and Set Settlement Deadlines (Unopposed Motion to Vacate). The Notice advised the ALJ that a comprehensive, unopposed settlement in principle had been reached that morning. The Unopposed Motion to Vacate requested that the evidentiary hearing set for July 7 through 10 and 13 through 17, 2020 be vacated, along with the remaining procedural deadlines. It also requested modification of the procedural schedule to set dates for filing the written settlement agreement, a motion for approval of the settlement agreement, and settlement testimony, and to schedule a hearing on the settlement agreement. All Parties (*i.e.*, Public Service, Staff, OCC, CEO, Atmos, FEA, EOC, BH Colorado Gas, WoodRiver, CNG, Climax, Local 111, and AARP) joined the Unopposed Motion to Vacate. Because the relief requested was unopposed, the Parties requested a waiver of response time to the Unopposed Motion to Vacate.¹¹

32. Decision No. R20-0488-I (issued on July 6, 2020) waived response time to the Unopposed Motion to Vacate; vacated the remote evidentiary hearing set for July 7 through 10 and 13 through 17, 2020; vacated the remaining deadlines in the procedural schedule; modified to July 10, 2020 the date for filing the written settlement agreement; set July 20, 2020 as the

¹¹ Unopposed Motion to Vacate, at pages 1 and 2.

deadline for filing testimony in support of approving the settlement agreement; and scheduled a hearing on the settlement agreement for August 13 and 14, 2020.¹²

33. On July 10, 2020, Public Service, Staff, OCC, CEO, FEA, EOC, Atmos, Local 111, and AARP (collectively, Settling Parties) filed an Unopposed Joint Motion to Approve Unopposed and Comprehensive Stipulation and Settlement Agreement and Request for Waiver of Response Time (Unopposed Joint Motion) and attached the Comprehensive Stipulation and Settlement Agreement (Settlement Agreement or Settlement). The Settling Parties requested that the Commission issue a decision approving, without modification, the Unopposed and Comprehensive Stipulation and Settlement Agreement (Settlement Agreement) settling this Phase I and Phase II Gas Rate Case. The Unopposed Joint Motion stated that the remaining parties to this Proceeding (*i.e.*, WoodRiver, Climax, BH Colorado Gas, and CNG) did not oppose the Settlement Agreement and did not oppose the relief requested by the Unopposed Joint Motion. Hence, the Settlement Agreement is unopposed.¹³ Since all Parties to this Proceeding were either Settling Parties or did not oppose the Settlement Agreement, the Settling Parties also requested a waiver of response time to the Unopposed Joint Motion.¹⁴ The ALJ took

¹² The Unopposed Motion to Vacate was filed at 2:25 p.m. on Thursday, July 2, 2020. Because Friday, July 3, 2020 was the 4th of July Holiday, during which Commission offices were closed, July 6, 2020 was the earliest date that Decision No. R20-0488-I could be issued by the ALJ. Counsel were advised informally on July 2, 2020 that the Unopposed Motion to Vacate would be granted, but that an interim decision could not be issued until July 6, 2020.

¹³ Public Service, Staff, OCC, EOC, FEA, and AARP joined all parts of the Settlement Agreement. CEO and Atmos joined the introductory, background, and general provisions of this Settlement Agreement, as well as Sections III.S and III.T and did not oppose the remainder of the Settlement Agreement. Local 111 joined the introductory, background, and general provisions of this Settlement Agreement, as well as Sections III.H, III.I, and III.K with respect to qualified pension matters, and did not oppose the remainder of the Settlement Agreement. Finally, WoodRiver, Climax, BH Colorado Gas, and CNG did not oppose any provision of the Settlement Agreement. *See* Hearing Exhibit 131, at page 2.

¹⁴ Unopposed Joint Motion, Paragraphs 1 – 3 and 6 at pages 1 – 3. The Joint Movants supported the Unopposed Joint Motion, while WoodRiver, Climax, BH Colorado Gas, and CNG did not oppose the Unopposed Joint Motion, or the relief requested. Hence, the Unopposed Joint Motion was unopposed.

the Unopposed Joint Motion and the Settlement Agreement under advisement, pending the hearing on the Settlement.

34. On July 20, 2020, Public Service, Staff, OCC, CEO, Atmos, and Local 111 filed the written testimony and attachments of eight witnesses supporting approval of the Settlement Agreement.

35. On July 29, 2020, the Settling Parties filed an Unopposed Amended Joint Motion to Approve Unopposed and Comprehensive Amended Stipulation and Settlement Agreement and Request for Waiver of Response Time (Amended Joint Motion), as well as an Amended Settlement Agreement and corrected Settlement Attachments. The purpose of the Amended Settlement Agreement and corrections to all the Settlement Attachments was to reflect accurately a corrected Settled Revenue Requirement that properly incorporates the settled Test Year qualified and non-qualified pension expense set forth in Section III.K.1 of the Settlement Agreement, rather than the expense amounts as of September 30, 2020. The Amended Joint Motion and the Amended Settlement Agreement were unopposed.¹⁵ The ALJ took the Amended Joint Motion and Amended Settlement Agreement under advisement, pending the hearing on the Settlement.

36. In summary, the Amended Settlement Agreement resolves the following major issues, as well as all issues that were or could have been raised in this Proceeding: (1) Public Service's revenue requirement; (2) the test year and Public Service's rate base methodology; (3) Public Service's weighted average cost of capital; (4) the transfer of certain PSIA project costs to base rates and the transfer of certain PSIA projects in base rates to the PSIA; (5) property tax

¹⁵ The positions of the Parties on the Amended Joint Motion and the Amended Settlement Agreement filed on July 29, 2020 were the same as previously described for the Unopposed Joint Motion and Settlement Agreement.

expense; (6) rate case expense; (7) other test year adjustments; (8) existing trackers and deferrals; (9) regulatory assets; (10) equity compensation; (11) pension and retiree medical expense; (12) test year revenue; (13) class cost classifications, allocations, and revenue distribution; (14) Service and Facilities (S&F) charges by customer class; (15) rate implementation and tariff changes; and (16) natural gas infrastructure planning and reporting.

37. On July 31, 2020, Public Service filed a Notice of Filing Corrections to Settlement Testimony and Attachments of Public Service Company of Colorado, along with revised Settlement Testimonies and certain revised attachments of its witnesses Brooke A. Trammell, Deborah Blair, and Steven W. Wishart.

38. The hearing on the Amended Settlement Agreement was held before the presiding ALJ on August 13, 2020.¹⁶ Counsel for WoodRiver did not appear for the hearing. Counsel for all other Parties appeared. Hearing Exhibit 131 is the Amended Settlement Agreement and the corrected Settlement Attachments.¹⁷ Hearing Exhibit 1500, Revision 2, is a spreadsheet that reflects the most recent filed versions of all Hearing Exhibits, as they appear in the Commission's administrative record for this Proceeding; a title reference for the Hearing Exhibits that would be utilized during the hearing; and the titles of the Hearing Exhibits as reflected in the administrative record. Hearing Exhibit 1500, as well as the contents of the latest versions of the listed Hearing Exhibits that had been filed electronically in the Commission's administrative record, were admitted into evidence by administrative notice without objection.¹⁸ Late-filed

¹⁶ After commencement of the Settlement Hearing, the oral motion of Local 111 to admit Hearing Exhibit 1301, the testimony of Richard A. Meisinger, without the appearance of the witness and cross-examination, was granted without objection. Counsel for Local 111 was also excused from attending the remainder of the hearing.

¹⁷ This Decision will refer to the Amended Settlement Agreement and the Settlement Attachments, as corrected, collectively as the Amended Settlement Agreement, unless it is necessary to discuss an individual Settlement Attachment separately.

¹⁸ See Rule 1500(c) of the Rules of Practice and Procedure, 4 CCR 723-1.

Exhibits 703 (Affidavit of Andrew Bennett to Answer Testimony and Attachments) and 704 (Affidavit of William Marcus to Answer Testimony, Cross-answer Testimony, and Attachments) were also admitted into evidence.

39. The following witnesses testified for Public Service in support of approval of the Amended Settlement Agreement: Ms. Brooke A. Trammell, Regional Vice-president of Rates and Regulatory Affairs (Hearing Exhibit 132); Ms. Deborah A. Blair, Director of Revenue Analysis (Hearing Exhibit 133); and Mr. Steven W. Wishart, Director of Pricing and Planning (Hearing Exhibit 134). The following witnesses also testified in support of approval of the Amended Settlement Agreement: Ms. Erin T. O'Neill, Staff's Chief Economist, (Hearing Exhibit 307); Mr. Keith M. Hay, CEO's Director of Policy, (Hearing Exhibit 501); Mr. Jared N. Geiger, Vice President of Rates and Regulatory Affairs for Atmos, (Hearing Exhibit 601); and Dr. Scott E. England, the OCC's Economist (Hearing Exhibit 404). Each witness answered questions from the ALJ regarding their Settlement Testimony and/or the Amended Settlement Agreement.

40. This Recommended Decision will adjudicate the merits of the Amended Settlement Agreement and Settlement Attachments, as corrected.

II. DISCUSSION AND FINDINGS

A. The Rate Setting Process.

41. The Commission's authority to regulate Public Service's natural gas rates, facilities, and operations derives from Article XXV of the Colorado Constitution. The Commission is charged with ensuring the provision of safe and reliable utility service at just and reasonable rates for customers pursuant to §§ 40-3-101, 40-3-102, 40-3-111, and 40-6-111, C.R.S.

42. The act of establishing rates for the provision of public utility services is a legislative function delegated to the Commission.¹⁹ The process of litigating proposed rates and tariffs in a rate case before the Commission is an adjudication to which the protections of procedural due process of law may attach.²⁰ In rate cases, the Commission's function is to adopt rates and rate structures that are fair and reasonable. Ratemaking "is not an exact science but a legislative function involving many questions of judgment and discretion."²¹ Charged with the responsibility of setting rates, the Commission must consider the interests of both the utility and its investors on the one hand and the consumers on the other hand. Sound judgment in the balancing of these respective interests is how the Commission reaches a ratemaking decision, rather than by use of a mathematical or legal formula.²² The Commission must also consider whether the rates and charges, taken together, are likely to generate sufficient revenue to ensure a financially viable public utility, which is in the interests of both the ratepayers and the investors.²³ In other words, the Commission must balance protecting the interests of the utility's customers from excessive and burdensome rates against the utility's rights to adequate revenues and

¹⁹ *City and County of Denver v. Public Utilities Comm'n.*, 129 Colo. 41, 43, 266 P.2d 1105, 1106 (1954).

²⁰ *Colorado Office of Consumer Counsel v. Mountain States Tel. and Tel. Co.*, 816 P.2d 278, 284 (Colo. 1991), agency proceedings which affect a specific party and resolve particular issues of disputed fact by applying previously determined rules or policies to the circumstances of the case are adjudicatory proceedings. See *Public Service Company of Colorado v. Public Utilities Comm'n.*, 653 P.2d 1117, 1120-1121 and Footnote 2 (Colo. 1982), procedural due process rights may attach in a rate case proceeding if a party has a protected interest within the ambit of the due process clause of the 14th Amendment and Article II, Section 25, of the Colorado Constitution.

²¹ *Integrated Network Services, Inc. v. Public Utilities Comm'n.*, 875 P.2d 1373, 1381 [citations omitted] (Colo. 1994).

²² *Public Utilities Comm'n v. Northwest Water Corp.*, 168 Colo. 154, 173, 551 P.2d 266, 276 (1963).

²³ *Public Utilities Comm'n. v. Northwest Water Corporation*, 168 Colo. 154, 181, 451 P.2d 266, 279 (Colo. 1969).

financial health.²⁴ The final test is that the rates must be “just and reasonable.”²⁵ In ratemaking, it is the result reached, not the method employed that is controlling.²⁶

43. The Commission encourages the settlement of contested proceedings, as provided in Rule 1408 of the Rules of Practice and Procedure, 4 CCR 723-1. In reviewing a settlement agreement and in deciding whether to approve a settlement, the “Commission has broad[] authority and responsibility for all classes of customers, to insure a settlement meets the public interest standard and will result in just and reasonable rates.”²⁷

B. The Settlement Agreement.

44. Through extensive negotiations, discussions, and compromises, the Settling Parties reached a settlement of all issues that have been raised or could have been raised in this rate case. The final, specific terms of the settlement were included in the Amended Settlement Agreement and corrected Settlement Attachments, Hearing Exhibit 131. As described previously, the other Parties either joined in parts of the Amended Settlement Agreement or did not object to the Amended Settlement Agreement, which is unopposed. In the Amended Settlement Agreement and corrected Settlement Attachments, the Settling Parties have proposed a comprehensive settlement resolving all of the issues raised, or which could have been raised, in this Phase I and Phase II Gas Rate Case.

²⁴ *Public Utilities Comm’n v. District Court*, 186 Colo. 278, 234, 527 P.2d 233, 282 (1974).

²⁵ *Id.*; see *Integrated Network Services, Inc. v. Public Utilities Comm’n.*, 875 P.2d at 1381 (“[I]t is the function of the [Commission] to adopt rate structures that are fair and reasonable.”)

²⁶ *Federal Power Comm’n v. Hope Natural Gas Co.*, 320 U.S. 591, 602 (1944).

²⁷ Decision No. R09-0252 (issued March 10, 2009), Paragraph 47 at page 12, in Docket Nos. 08S-290G and 08S-430G, quoting Decision No. C07-0677 (issued August 9, 2007), Paragraph 16 at page 5, in Docket No. 06S-656G.

45. The Amended Settlement Agreement, which includes five Settlement Attachments, is attached to this Decision as Appendix A. The five Settlement Attachments are: (1) Settlement Attachment 1, Revenue Requirement Summary; (2) Settlement Attachment 2, Class Cost of Service Study (CCOSS) Summary; (3) Settlement Attachment 3, Rate Comparisons by Rate Class; (4) Settlement Attachment 4, Bill Impacts by Rate Class; and (5) Settlement Attachment 5, Revenue Proof.²⁸

46. The Amended Settlement Agreement and Settlement Attachments do not include settled tariffs, setting forth the rates, terms, and conditions for providing natural gas service that result from the settlement. Instead the Amended Settlement Agreement states that the Settling Parties “anticipate and acknowledge” that revisions to Public Service’s Colorado PUC No. 6-Gas Tariff (Gas Tariff) will be necessary to reflect the Amended Settlement Agreement, if approved. Public Service “anticipates submitting revised tariff sheets as part of a compliance filing upon receipt of a final decision from the Commission, with additional compliance filings as needed to implement the alternative rate implementation discussed in Sections III.Q and R” of the Amended Settlement Agreement.²⁹

C. Settled Phase I Issues.

1. Revenue Requirement.

47. The Settling Parties agreed to a settled base rate revenue requirement of \$591,688,303, excluding costs collected through the Gas Cost Adjustment (GCA), costs collected through the Gas Demand Side Management Cost Adjustment, and costs that will continue to be

²⁸ Settlement Attachment 5, Revenue Proof, also includes both public and confidential versions. The only data deemed confidential in Settlement Attachment 5C are the Test Year Billing Determinants for the IG rate class.

²⁹ Hearing Exhibit 131, Paragraph 12 at page 8.

collected through the PSIA, and subject to true-up of rate case expenses as noted in Section III.F of the Amended Settlement Agreement.

48. Unless otherwise specified in the Amended Settlement Agreement, and consistent with the settled Test Year and Rate Base discussed below, the settled revenue requirement model is based on the informational historical test year set forth in Attachment DAB-2 to the Direct Testimony of Ms. Deborah A. Blair. A summary of the Settled Revenue Requirement is included in the Amended Settlement Agreement as Settlement Attachment 1.

49. Compared to Public Service's current base rate revenue of \$497,528,825, as set forth in Section III.L of the Amended Settlement Agreement, and subject to the rate case expense true-up, the settled revenue requirement results in a revenue deficiency of \$94,159,478, or \$77,316,710 net of the PSIA amount of \$16,842,768 transferred into base rates.

50. The Settling Parties agreed that this overall base rate revenue requirement of \$591,688,303, and resulting increase of \$94,159,478 over current annual base rate revenue of \$497,528,825, is just and reasonable.

2. Test Year and Rate Base.

51. The Settling Parties agreed that the test year is the 12-month period ended September 30, 2019 (Test Year), as presented in Attachment DAB-2 to the Direct Testimony of Ms. Blair and adjusted by the terms of the Amended Settlement Agreement. The Settling Parties agreed that the settled revenue requirement will be calculated based on year-end rate base and incorporate a known and measurable post-Test Year adjustment for the annualized revenue requirement associated with the Tungsten to Blackhawk capital project investment as of April 30, 2020 (Tungsten). Public Service will have the right to seek recovery for the remainder of the Tungsten project in a future proceeding.

3. Weighted Average Cost of Capital.

52. The Settling Parties agreed to a settled overall WACC of 6.84 percent, which includes a capital structure based on the average of the month-end values for the 13 months ended September 30, 2019, as follows: 55.62 percent equity, 42.72 percent long-term debt, and 1.66 percent short-term debt. The settled short-term cost of debt of 3.41 percent is derived from the same 13-month average cost. The settled cost of long-term debt of 3.89 percent is the April 30, 2020 point-in-time cost reflecting a known and measurable adjustment for the cost of long-term debt issuances in May of 2020. The settled ROE is 9.20 percent.

53. In sum, the settled WACC is as follows:

Table 1: Settled WACC

	Ratio	Rate	Weighted Cost
Long-Term Debt	42.72%	3.89%	1.66%
Short-Term Debt	1.66%	3.41%	0.06%
Equity	55.62%	9.20%	5.12%
Total Cost			6.84%

4. PSIA Roll-in.

54. The Settling Parties agreed to include PSIA projects in the cost of service to the extent the PSIA projects were completed and in-service as of December 31, 2018 and have been through a prudence review in the annual PSIA report, consistent with the settlement agreement related to the PSIA extension approved in Decision No. C18-0983 (issued on November 6, 2018) in Proceeding No. 18A-0422G. At the same time, the PSIA Projects Base Amount will be transferred to the PSIA.

55. Public Service will adjust the PSIA and base rates simultaneously to transfer the foregoing PSIA projects from the PSIA to base rates and to move the PSIA Projects Base Amount to the PSIA, to ensure no double-recovery in the PSIA or base rates. These adjustments to the PSIA and base rates will occur at the time the base rate change is implemented on customer bills on April 1, 2021 under the agreed alternative rate implementation, which is discussed below.

56. The Settling Parties recognized that the changes to the WACC identified in the Amended Settlement Agreement will also need to be applied to the PSIA at the time Settled Rates take effect in November 2020. Any true-up to the 2020 PSIA from the November rate-effective date through the end of 2020 will be captured and implemented in conjunction with the annual PSIA rider true-up process, which Public Service will file on April 1, 2021.

5. Property Tax Expense.

57. The Settling Parties agreed to set the retail property tax expense in the cost of service at the 2020 forecasted expense level (\$53,681,524 based on 2019 plant balances). This 2020 forecasted expense level will also serve as the baseline for the continuing Property Tax tracker, as discussed further in Section III.H of the Amended Settlement Agreement.

6. Rate Case Expenses.

58. Public Service will include its estimated rate case expenses in the settled revenue requirement, subject to true-up to actual amounts incurred through a final Commission decision in this Proceeding. The Settling Parties agreed to total estimated rate case expenses of \$1,732,332.86, representing an estimated \$1,506,350.00 for this rate case (which excludes meal expenses in the amount of \$2,947 and regulatory support in the amount of \$74,880), plus the final

2019 Gas Phase II rate case expense amount of \$225,982.86.³⁰ Actual recovery will not exceed Public Service's total original estimate for both this rate case and the 2019 Gas Phase II rate case of \$1,810,159.86. Any true-up to actual rate case expenses will occur in conjunction with initial collection of the regulatory asset established as a result of Public Service's alternative rate implementation discussed in Sections III.Q and R of the Amended Settlement Agreement. The amortization of rate case expenses is discussed below.

7. Other Test Year Adjustments.

59. The Settling Parties agreed to the following miscellaneous adjustments to the cost of service:

60. Corrections. The settled revenue requirement will include the following corrections to the cost of service (Attachment DAB-1 to Ms. Blair's Direct Testimony):

- a) Eliminate \$412 of non-regulated non-commodity uncollectible account expense from FERC Account 904;
- b) Eliminate the amounts recorded as Contractor Retentions to FERC Account 232 in the Test Year;
- c) Eliminate the Materials and Supplies balance recorded to FERC Account 163;
- d) Adjustments to Reserve for Depreciation and Amortization, Accumulated Deferred Income Taxes, and Deferred Taxes to eliminate the software allocation that were made with the incorrect sign; and

³⁰ Decision No. R20-0046 (issued January 22, 2020), Paragraphs 46 and 57 at pages 18 and 20, Ordering Paragraph 3 at pages 21 and 22, in Proceeding No. 19AL-0309G.

- e) The Prepaid Pension Asset balance for the Pension Tracker credit balance from Proceeding No. 17AL-0363G and increase of the Pension Tracker regulatory asset balance by the same amount. (The amortization of the Pension Tracker regulatory asset balance is also impacted by this correction).

61. Demand Response Management System (DRMS). The DRMS capital project will be removed from the cost of service.

62. Gas Operations Incremental Operations and Maintenance (O&M) Adjustments. The settled revenue requirement will reflect the removal of approximately \$2.9 million in known and measurable incremental Gas Operations O&M adjustments from the cost of service.

63. California State Income Tax. The California state income tax will be removed from the composite tax rate.

8. Trackers and Deferrals.

64. The Settling Parties agreed that Public Service will continue to maintain its existing trackers for Property Tax (baseline \$53,681,524), Damage Prevention (baseline \$17,301,954), and Pension Expense (baseline of \$8,388,413 for qualified and non-qualified pension expense). Public Service will also continue the previously-approved deferred accounting related to manufactured gas plants (MGP).

9. Regulatory Assets.

65. The settled revenue requirement will include the following regulatory assets, which will be amortized over 36 months without a return: Damage Prevention, Property Tax, Unamortized MGP Asset Balances reflected in Public Service’s Rebuttal Testimony,

Pension Expense Deferral Amortization, and Rate Case Expenses. The balances to be amortized are:

Table 2: Regulatory Asset Amortizations

Regulatory Asset	Balance to Amortize Over 36 Months
Damage Prevention	\$7,339,486
Property Taxes	\$38,313,334
Unamortized MGP	\$4,329,288
Pension Expense Deferral Amortization	\$2,418,738
Rate Case Expenses	\$1,732,333

66. Public Service will implement a negative General Rate Schedule Adjustment (GRSA) to cease collection of rate case expenses if Public Service does not file a Phase I natural gas rate case before expiration of the 36-month amortization period.

10. Compensation.

67. The settled revenue requirement will include 50 percent of the Equity Compensation expense, for a total of \$87,359, and will not include the time-based Long-Term Incentive.

11. Pension and Retiree Medical.

68. Public Service will include Test Year qualified pension expense and non-qualified pension expense in the settled revenue requirement subject to the 15 percent limitation on Annual Incentive Program compensation, calculated on an employee-by-employee basis, for totals of \$8,230,556 and \$157,857 (Total Company Gas), respectively.

69. The Legacy Prepaid Pension Asset, the New Prepaid Pension Asset, and the Retiree Medical Asset balances as of September 30, 2019, are included in rate base with a return at the cost of long-term debt.

70. Public Service will continue the 15-year amortization of the Legacy Prepaid Pension Asset as approved in Proceeding No. 15AL-0135G.

12. Weather-normalized Test Year Revenue.

71. The Settling Parties agreed to reflect Test Year revenue as the weather-normalized actual revenue for the 12-month period ended September 30, 2019, with a year-end customer adjustment. The Settling Parties agreed to a ten-year weather normalization adjustment to Test Year revenue as discussed by Company witness Ms. Jannell E. Marks in her Rebuttal Testimony but including the Test Year weather normalization data in the ten-year period ending September 30, 2019, producing Test Year revenue of \$497,528,825.

72. The ALJ finds that the resolution of the Settled Phase I issues, reflected in the Amended Settlement Agreement, is just and reasonable and will be approved without material modification.

D. Settled Phase II Issues.

1. Class Cost of Service Study.

73. The Settling Parties agreed to a Settled CCOSS, which uses the same model and principles as Public Service's Rebuttal CCOSS, including the proposed class classification, allocation, and resulting revenue distribution. A summary of the CCOSS and resulting revenue distribution by class is included in Settlement Attachment 2 to the Amended Settlement Agreement. The Settling Parties agreed that the use of methods employed in the Settled CCOSS, as well as the manner of resolution of other cost classification and allocation issues as

part of the Settlement, are solely for the purposes of settlement and do not constitute a settled practice or otherwise have precedent-setting value in any future proceedings.

2. Service and Facilities (S&F) Charges and Settled Base Rates.

74. The Settling Parties agreed to a settled residential S&F charge of \$12.00/month (\$12.21 with Gas Affordability Program [GAP] charge), small commercial sales service S&F charge of \$43.00/month (\$43.88 with GAP charge), and small transportation service (TFS) S&F charge of \$43.00/month (plus \$0.88 GAP charge and \$24.00 transportation adder for a total TFS S&F charge of \$67.88). These settled S&F charges are the same as those currently in effect for these customer classes, except that the increase in the transportation adder for small transportation (TFS) customers results in an increased overall S&F charge from their currently-effective \$58.88 S&F charge.

75. Other than the specified S&F charges noted above, the Settling Parties agreed that Public Service's proposed rate design will be applied to the settled revenue requirement for purposes of establishing remaining base rates and charges for all customer classes.

76. The Settling Parties agreed to the Settled Rates reflected in Attachment 3 to the Amended Settlement Agreement. The Settling Parties noted that they agreed to the settlement rates and rate design solely for the purposes of settlement and do not constitute a settled practice or otherwise have precedent-setting value in any future proceedings.

77. The estimated bill impacts of the Settled Rates, as compared to Public Service's rates and charges currently in effect with riders held constant as of filing, are reflected in Attachment 4 to the Amended Settlement Agreement. Settlement Attachment 5 to the Amended Settlement Agreement is a Revenue Proof, which reflects that the Proposed Charges, Test-year

Billing Determinants, and Proposed Test-year Revenue by customer class would approximately produce the settled base rate revenue requirement.

3. Tariff Changes.

78. The Amended Settlement Agreement and Settlement Attachments do not include settled tariffs, setting forth the rates, terms, and conditions for providing natural gas service that result from the Settlement. Instead, the Amended Settlement Agreement states that the Settling Parties “anticipate and acknowledge” that revisions to Public Service’s Gas Tariff will be necessary to reflect the Amended Settlement Agreement, if approved. Public Service “anticipates submitting revised tariff sheets as part of a compliance filing upon receipt of a final decision from the Commission, with additional compliance filings as needed to implement the alternative rate implementation discussed in Sections III.Q and R” of the Amended Settlement Agreement.³¹

79. Further, the Settling Parties acknowledged and agreed that the effect of the Amended Settlement Agreement is to modify the tariff sheets that Public Service filed on February 5, 2020, with Advice No. 961-Gas. The Amended Settlement Agreement then stated: “Except as modified in this Settlement Agreement, Commission approval of this Settlement Agreement shall constitute Commission approval of all tariff modifications as filed by [Public Service].”³² This statement is inconsistent with, and contradicts, the previously quoted statement from Paragraph 12 at page 8 of the Amended Settlement Agreement. Moreover, the phrase “of all tariff modifications as filed by Public Service” is vague and ambiguous. Does it mean tariff modification contemplated by the Amended Settlement Agreement? Or does it mean the

³¹ Hearing Exhibit 131, Paragraph 12 at page 8.

³² Hearing Exhibit 131, Section O. at page 17.

proposed tariffs filed with Advice No. 961-Gas? Finally, for the ALJ to conclude that approval of the Amended Settlement Agreement will constitute approval of tariffs that have not yet been filed would not only be unwise, it could violate the Public Utilities Law.³³

80. Therefore, the ALJ will resolve this inconsistency and contradiction by rejecting and not approving this problematic sentence in Section O at page 17 of the Amended Settlement Agreement. For the reasons stated in the foregoing Paragraphs 79 and 80 of this Decision, the following sentence from Section O at page 17 of the Amended Settlement Agreement (Hearing Exhibit 131, Appendix A to this Decision) is rejected and not approved: “Except as modified in this Settlement Agreement, Commission approval of this Settlement Agreement shall constitute Commission approval of all tariff modifications as filed by Public Service.” The ALJ’s rejection of this inconsistent, contradictory, and problematic sentence is not a material modification to the Amended Settlement Agreement because such rejection removes the inconsistency and contradiction with Paragraph 12 at page 8 of the Amended Settlement Agreement.

81. Instead, Public Service will be ordered to file compliance tariffs to implement new base gas rates and charges that result from the Amended Settlement Agreement and the corrected Settlement Attachments on not less than 14 calendar days’ notice, so that the Settling Parties, the other Parties, and the Advisory Staff would have adequate time to review them for compliance with the Amended Settlement Agreement and with this Decision. The compliance filing requirement is discussed in more detail in the Conclusions Section of this Decision.

³³ Section 40-6-111(2)(a)(I), C.R.S., provides: “If a hearing is held ... [on filed tariffs], whether completed before or after the expiration of the period of suspension, the commission shall establish the rates, fares, tolls, rentals, charges, classifications, contracts, practices, or rules proposed, in whole or in part, or others in lieu thereof, that it finds just and reasonable.”

82. At the hearing on the Amended Settlement Agreement, Ms. Trammell testified that Public Service had no objection to changing the Amended Settlement Agreement regarding the notice period for filing compliance tariffs from 2 days' notice to 14 or 30 days' notice. This longer notice period would provide the Settling Parties and Commission Advisory Staff an adequate opportunity to review the compliance tariffs to ensure compliance with the Amended Settlement Agreement.³⁴

83. The ALJ finds that the resolution of the Settled Phase II issues, described in the Amended Settlement Agreement, as revised in the foregoing Paragraphs 77 through 81, is just and reasonable and will be approved without material modification.

4. Implementation of Rate and Tariff Changes.

84. Rate Effective Date. The tariff sheets filed with Advice Letter No. 961-Gas were suspended for the 250-day statutory suspension period, pursuant to § 40-6-111(1), C.R.S. (2019). The Settling Parties recognized that compliance tariffs would be scheduled to become effective on November 12, 2020, after the end of the suspension period. However, the Settling Parties supported a rate-effective date of November 1, 2020. If it were not possible to render a final decision on the Amended Settlement Agreement in sufficient time to make the Settled Rates effective on November 1, 2020, the Settling Parties supported a rate effective date as soon thereafter as possible (but no later than November 12, 2020).³⁵

³⁴ See Settlement Hearing Transcript (Tr.) 8/13/2020, page 27, l. 2 – page 29, l. 12. Ms. Trammell also noted that some of the compliance tariffs would be unchanged from the initially filed tariffs. Tr. 8/13/2020, page 29, ll. 6-9.

³⁵ Hearing Exhibit 131, Section P. at pages 17 and 18. The November 2020 date on which Public Service would have the right to change its rates and charges and begin billing accordingly is referred to in the Amended Settlement Agreement as the “Rate Effective Date.” *Id.*

85. This Decision will be issued in sufficient time for the compliance tariffs to be filed, reviewed, and become effective before the Rate Effective Date of November 1, 2020.

86. Rate Implementation. In recognition of the current global COVID-19 pandemic and the associated challenges, the Settling Parties agreed that an alternative rate implementation process is appropriate. Therefore, the Settling Parties agreed to the following, which will delay the effect of the rate changes on customer bills until after the upcoming 2020 to 2021 heating season. The Settling Parties acknowledged and agreed that Public Service would not be foregoing any incremental revenue under this alternative rate implementation which it otherwise would recover. The Settling Parties agreed to the following alternative rate implementation process:

- a) Without changing the Rate Effective Date or [Public Service's] right to recover incremental revenue as of the Rate Effective Date, [Public Service] will delay the implementation of the approved rate changes on customer bills until April 1, 2021 (the "Rate Implementation Date");
- b) The amount of incremental revenue for the period between the Rate Effective Date and the Rate Implementation Date (the "Deferred Incremental Revenue") will be deferred and recorded in a regulatory asset, with no return on the asset;
- c) The amount of Deferred Incremental Revenue will be determined for each customer class by multiplying the Settled Rates by actual monthly billing determinants, as available.
- d) The Deferred Incremental Revenue by customer class will subsequently be billed by customer class through a GRSA-like mechanism ("Surcharge") within 24 months of November 1, 2020, and subject to a final true-up by customer class to ensure that [Public Service] recovers, by customer class, no more and no less than it would have recovered had the Settled Rates changed on customer bills on the Rate Effective Date rather than April 1, 2021. The Surcharge will apply to all base rate charges and shall be billed over the shoulder months of March to May and September to November, beginning on the Rate Implementation Date (April 1, 2021) and concluding by no later than October 31, 2022. The period from the Rate Implementation Date (April 1, 2021) through October 31, 2022 is referred to as the "Incremental Revenue Recovery Period;"

- e) After conclusion of the Incremental Revenue Recovery Period, the amount of Deferred Incremental Revenue will be trued-up by customer class based on actual billing determinants in the Incremental Revenue Recovery Period, and will be applied by customer class to the GCA deferred balance, beginning with the GCA to become effective on January 1, 2023[.]³⁶

5. Filing of Compliance Tariffs.

87. As found in Paragraphs 77 through 81 of this Decision, the notice period for Public Service to file compliance tariffs was revised, without objection from Public Service, from 2 days' notice to 14 days' notice.

88. The ALJ approves the Amended Settlement Agreement regarding Implementation of Rate and Tariff Changes, with the revised notice period for filing compliance tariffs. On not less than 14 calendar days' notice prior to the Rate Effective Date, and in lieu of the rates and other tariff changes originally proposed by Public Service in the tariff sheets filed with Advice Letter No. 961-Gas, Public Service will make a compliance advice letter and tariff filing. The purpose of this compliance advice letter and tariff filing will be to place into effect, on the Rate Effective Date:

- a) a tariff provision confirming Public Service's right to track and defer the Deferred Incremental Revenue, and to ultimately collect the Deferred Incremental Revenue between the Rate Implementation Date and October 31, 2022 in accordance with the terms of this Settlement Agreement; and
- b) the tariff language changes agreed to by the Amended Settlement Agreement.

89. On April 1, 2021, Public Service will file its annual PSIA true-up filing and will incorporate into that PSIA filing any amounts owed for the change in WACC applicable to the PSIA between the Rate Effective Date and December 31, 2020.

³⁶ See Hearing Exhibit 131, Section Q. at pages 18 and 19.

90. On or before March 15, 2021, Public Service will make a compliance advice letter and tariff filing to be effective on the Rate Implementation Date, in order to accomplish the following:

- a) Place into effect on customer bills the Settled Rates, if approved by the Commission, as well as to adjust the PSIA rate;
- b) Place into effect the Surcharge, inclusive of the actual rate case expense true-up;
- c) This advice letter filing will include supporting workpapers for calculation of the PSIA rate and the Surcharge (including the rate case expense true-up). Upon filing this compliance advice letter, Public Service will share it with all parties to this proceeding.

91. Public Service will make a compliance advice letter and tariff filing, on not less than five business days' notice, to remove the Surcharge, effective November 1, 2022.³⁷

92. The ALJ finds that the resolution of the Implementation of Rate and Tariff Changes and the Filing of Compliance Tariffs, described in the Amended Settlement Agreement and as revised in the foregoing Paragraphs 86 through 90, is just and reasonable and will be approved without material modifications.

E. Natural Gas Infrastructure Planning and Reporting.

93. In the Amended Settlement Agreement, the Settling Parties also agreed to establish processes outside of a rate case with respect to planning for and reporting to the Commission regarding Colorado gas utilities' natural gas infrastructure. These agreements concerned different processes for short-term gas infrastructure planning and for longer term gas

³⁷ See Hearing Exhibit 131, Section R. at pages 19 and 20. The Amended Settlement Agreement uses the phrase "advice letter filing." The ALJ believes that the phrase "advice letter and tariff filing" is more correct, because advice letter filings are accompanied by proposed or compliance tariffs. This corrected textual change is not a material modification to the Amended Settlement Agreement.

infrastructure planning, as well as certain agreements regarding rate case implications of these natural gas infrastructure planning and reporting agreements.³⁸

1. Short-Term Gas Infrastructure Planning Process.

94. The Settling Parties agreed to the following, with respect to short-term gas infrastructure planning.

95. Staff, Public Service, the natural gas utility intervenors in this rate case, CEO, and other interested parties, agreed to meet to discuss processes for regular reporting to the Commission regarding Colorado short-term (five-year) natural gas utility Transmission and Distribution³⁹ capacity and infrastructure planning (ST GIP Process). The ST GIP Process will be an informal negotiation.⁴⁰

96. The Settling Parties agreed that the purpose of the ST GIP Process is to collaborate on a rulemaking related to the following topics: (i) reviewing individual planned Transmission and Distribution capacity and infrastructure projects (*i.e.*, excluding programs of work) greater than \$15 million for Public Service or as may be agreed for other natural gas utilities; (ii) determining parameters under which a CPCN⁴¹ may be required for such projects; and (iii) the appropriate consideration of enacted beneficial electrification laws, rules, and regulations as they relate to these projects. The participants will also collaborate on identifying additional conditions (such as pounds of force per square inch [psi] minimums, for example) that

³⁸ See Hearing Exhibit 131, Sections S, T, and U, at pages 20 through 24.

³⁹ The Settling Parties agreed that, “‘Transmission’ and ‘Distribution’ shall be as defined by U.S. Department of Transportation regulations.” Hearing Exhibit 131, Fn. 5, at page 20. The Settling Parties did not provide a citation to the Department of Transportation regulations to which they referred.

⁴⁰ Tr. 8/13/2020, page 110, l. 23 – page 111, l. 7. The Amended Settlement Agreement does not identify the “other interested parties.”

⁴¹ While not defined in the Amended Settlement Agreement, the ALJ construes the term “CPCN” as used there to mean Certificate of Public Convenience and Necessity. See § 40-5-101, C.R.S. (2019); Rules 4102 and 4103 of the Rules Regulating Gas Utilities and Pipeline Operators, 4 CCR 723-4 (2017).

would need to be met before including these projects in any regular reporting or filing requirement. The scope of the ST GIP Process will not include mandatory relocations or work submitted for reimbursement under the Pipeline System Integrity Rider.

97. The Settling Parties agreed that the first meeting ST GIP Process would take place no later than 30 days after a final Commission decision in this Proceeding.⁴²

98. The Settling Parties agreed that on or before April 30, 2021:

- a) Participants in the “ST GIP Stakeholder Process” will submit a petition for rulemaking under Commission Rule 1306 to address short-term gas capacity and infrastructure planning. To the extent there is agreement regarding the scope of the proposed rulemaking and agreed processes for future reporting and planning, the filing will include such joint recommendations to the Commission. The petition will also describe the participants’ areas of disagreement so that they can be addressed in the rulemaking.
- b) Other [interested] parties may file responsive comments within 30 days of the petition filing, or upon a schedule to be determined by the Commission.

99. The Settling Parties agreed that, prior to a final Commission decision on the rulemaking petition following from the ST GIP Process, Public Service would file a CPCN for any planned individual Transmission or Distribution capacity or infrastructure project (*i.e.*, excluding programs of work as well as new business and mandatory relocation projects) over \$15 million and initiated after January 1, 2021.

100. Pending the Commission’s final determination on the rulemaking petition referenced in Section III.S.4 of the Amended Settlement Agreement, Public Service would

⁴² This Decision does not compel Colorado Local Distribution Companies (LDCs), which were intervenors in this Proceeding but did not sign or join the Amended Settlement Agreement, to participate in the ST GIP Process. Counsel for CEO and OCC agreed that participation was voluntary. Tr. 8/13/2020, page 88, l. 3 – page 90, l. 6; page 103, ll. 14 – 21.

further commit to meet with Staff, CEO, and other interested participants in the fourth quarter of each year to provide updates on pending and planned Transmission and Distribution projects under the parameters set forth in Sections III.S.1 and S.2 of the Amended Settlement Agreement.⁴³

101. During the Settlement Hearing, the ALJ asked counsel about the intent of the CPCN filing agreement in this part of the Amended Settlement Agreement. Counsel for Public Service clarified that the CPCN filing agreement was intended to be temporary pending the Commission's final determination of the petition for rulemaking and not to supplant any legal requirements under § 40-5-101, C.R.S. (2019), regarding when Public Service would be legally required to file an application for a CPCN to construct a gas infrastructure project. None of the Settling Parties disputed this interpretation by counsel for Public Service. Counsel also stated that if the Commission adopted rules on short-term natural gas utility capacity and infrastructure planning, Public Service would follow the rules.⁴⁴

102. Therefore, the ALJ construes this CPCN filing agreement in Section S of the Amended Settlement Agreement to be an agreement by Public Service to make the agreed upon CPCN filings for the specified projects initiated after January 1, 2021. Public Service's obligations under this CPCN filing agreement will terminate upon the effective date of a final Commission decision on the petition for rulemaking.

⁴³ See Hearing Exhibit 131, Section S, at pages 20 through 22 (footnotes omitted). For purposes of making this Decision clearer and grammatically correct, some minor textual edits have been made to the text of the Amended Settlement Agreement. The word "Stakeholder" was omitted from the phrase "ST GIP Process" for the sake of consistency with the phrase "LT GIP Process," discussed below, and because it was thereby superfluous. These textual edits are not a material modification to the Amended Settlement Agreement.

⁴⁴ Tr. 8/13/2020, page 40, l. 14 – page 42, l. 11. Ms. Trammell added that the CPCN filing agreement would end if the Commission denied the Petition for Rulemaking.

103. The ALJ finds that the resolution of issues related to the short-term gas infrastructure planning process, described in Section S of the Amended Settlement Agreement, is just and reasonable and will be approved without material modifications.

2. Final Rules – Natural Gas Infrastructure and End Use Emissions.

104. The Settling Parties agreed that if a rule is adopted by the Colorado Department of Public Health and Environment or the Air Quality Control Commission addressing greenhouse gas emissions from Public Service’s natural gas infrastructure or from the end-use of Public Service’s gas commodity, pursuant to House Bill 19-1261,⁴⁵ then following from the first of those Rule(s) to be adopted (the Rule):⁴⁶

- a) [Public Service] will begin preparation of a new depreciation study within no more than three months from the effective date of the Rule and will file that depreciation study with the Commission for approval upon completion. Changes in depreciation rates as a result of Commission approval of that depreciation study, unless approved as part of a Phase I rate case, will go into effect through an existing rider mechanism or GRSA. Nothing shall preclude Public Service from filing an updated depreciation study before any such Rule(s) are adopted;
- b) Staff, Public Service, natural gas utility intervenors in Public Service’s rate case, CEO, and other interested parties, will meet to discuss processes for regular reporting to the Commission regarding Colorado long-term (10-20 years) natural gas utility Transmission and Distribution capacity and infrastructure planning (“LT GIP Process”), consistent with the Rule; and⁴⁷
- c) Within three (3) months after the effective date of the Rule, ... [participants] in the LT GIP Process will submit a petition for rulemaking under Commission Rule 1306 to address long-term gas capacity and infrastructure planning. To the extent there is agreement regarding the scope of the proposed rulemaking and agreed processes for future reporting and planning, the filing will include such joint recommendations to the

⁴⁵ Codified as § 25-7-102, C.R.S. (2019), effective May 30, 2019.

⁴⁶ At the time of the Settlement Hearing, neither the CDPHE nor the AQCC had commenced rulemakings in accordance with House Bill 19-1261. *See* Tr. 8/13/2020, page 42, l. 17 – page 44, l. 6; page 80, ll. 10 – 18. House Bill 19-1261 does not require this Commission to engage in any rulemakings.

⁴⁷ The LT GIP Process will be an informal negotiation. Tr. 8/13/2020, page 110, l. 23 – page 111, l. 7. This Decision does not compel Colorado LDCs, which were intervenors in this Proceeding but did not sign or join the Amended Settlement Agreement, to participate in the LT GIP Process. Counsel for CEO and OCC agreed that participation was voluntary. Tr. 8/13/2020, page 88, l. 3 – page 90, l. 6; page 103, ll. 14 – 21.

Commission. The petition will also describe the parties' areas of disagreement so that they can be addressed in the rulemaking.⁴⁸

105. The ALJ finds that the resolution of the long-term gas infrastructure planning, described in Section T of the Amended Settlement Agreement, is just and reasonable and will be approved without material modifications.

3. Rate Case Implications of Natural Gas Infrastructure Agreements.

106. The Settling Parties also agreed that Public Service's proposed depreciation study, included as Attachment DAW-1 to the Direct Testimony of Dane A. Watson, will be accepted for purposes of this rate case, including recovery of the depreciation study costs, and the depreciation rate changes will be accepted and incorporated into the settled revenue requirement.

107. The Settling Parties agreed that Public Service will transition from a five-year rolling leak survey cycle to a three-year leak survey cycle. Public Service shall include in the settled revenue requirement in this rate case incremental Gas Operations O&M in the amount of \$0.2 million, as a known and measurable adjustment to the Test Year, to allow for transition to the three-year leak survey schedule.

108. The Settling Parties agreed that, as part of conducting its rolling three-year leak survey cycle and beginning January 1, 2021, Public Service will identify and track customer

⁴⁸ See Hearing Exhibit 131, Section T, at pages 22 and 23 (footnotes omitted). For purposes of making this Decision clearer and grammatically correct, some minor textual edits have been made to the text of the Amended Settlement Agreement. For example, the word "parties" was changed to "participants," because the informal, non-adjudicatory process contemplated does not have parties; it has participants. These textual edits are not a material modification to the Amended Settlement Agreement.

owned piping (customer-owned yard lines [COYLs]) located within Public Service's service territory. In addition, the Settling Parties agreed:

- a) On an annual basis over the course of the leak survey cycle, Public Service will file with the Commission in this proceeding a report on its findings including, at a minimum, the number of COYLs, the geographic location of such lines, and the prior calendar year system average cost to replace a gas service line. At the conclusion of this three-year cycle, Public Service will provide Staff with a final report on its findings through a filing in this proceeding.
- b) On an annual basis over the three-year leak detection cycle, Public Service shall notify individual customers of the existence of a COYL on their premises, notify customers that Public Service does not provide leak detection or maintenance for such lines, and provide customers information regarding [Public Service's] terms and conditions in its existing line extension policy related to a customer's request for a change in service.⁴⁹

109. Finally, the Settling Parties agreed to the following: Any further rate case recommendations in this Proceeding relating to a Gas Infrastructure Planning process, beneficial electrification considerations, longer-term forecasting or investment planning reports, retroactive CPCNs or retroactive informational filings, or any other gas infrastructure-related informational filings or reports to be made outside of a rate case, are considered removed from the rate case and resolved for purposes of the rate case as part of the Amended Settlement Agreement. Subject to the processes agreed to in this Settlement, the Settling Parties reserve the right to address gas infrastructure issues in any future proceeding.

110. The ALJ finds that this final provision of the Amended Settlement Agreement is significant. The issues raised by some Parties in their answer testimony and/or cross-answer testimony, relating to gas infrastructure planning, beneficial electrification considerations, longer-term forecasting or investment planning reports, retroactive CPCNs or retroactive

⁴⁹ *Id.* at p. 24.

informational filings, or any other gas infrastructure-related informational filings or reports to be made outside of a rate case, were not among the issues usually litigated before this Commission in a Phase I or Phase II natural gas rate case. These issues increased the complexity of this rate case, likely increased the volume and nature of discovery conducted by the Parties, and thereby increased the expense in legal and expert witness costs to litigate this rate case. The Settling Parties and other Parties who joined portions of the Amended Settlement Agreement are commended for resolving the complex issues in this rate case through a comprehensive unopposed Settlement.

111. Witnesses for the Settling Parties all supported approval of the Amended Settlement Agreement. Ms. Trammell, Ms. Blair, Mr. Wishart, Ms. O'Neill, and Dr. England each testified that the Amended Settlement Agreement is in the public interest and that the resulting revenue requirement, rates, terms, and conditions in the Amended Settlement Agreement are just and reasonable.⁵⁰ Witnesses for the other Parties, who joined only portions of the Amended Settlement Agreement supported approval of those portions of the Amended Settlement Agreement as just and reasonable.⁵¹

112. The Unopposed Joint Motion and the Amended Joint Motion are both unopposed. The times for filing Responses to the Unopposed Joint Motion and to the Amended Joint Motion will be waived. The Unopposed Joint Motion and the Amended Joint Motion will be granted.

⁵⁰ See Hearing Exhibit 132 (Settlement Testimony of Ms. Trammell); Hearing Exhibit 133 (Settlement Testimony of Ms. Blair); Hearing Exhibit 134 (Settlement Testimony of Mr. Wishart); Hearing Exhibit 307 (Settlement Testimony of Ms. O'Neill); and Hearing Exhibit 404 (Settlement Testimony of Dr. England).

⁵¹ See Hearing Exhibit 501 (Settlement Testimony of Mr. Hay for CEO); Hearing Exhibit 601 (Settlement Testimony of Mr. Geiger for Atmos); and Hearing Exhibit 1301 (Settlement Testimony of Mr. Meisinger for Local 111).

III. CONCLUSIONS

113. The Commission has jurisdiction over the subject matter of this Proceeding, pursuant to §§ 40-1-103(1), 40-3-102 and 40-6-111, C.R.S., and over the Parties.

114. Public Service provided timely and adequate notice to its affected customers of the filing of the tariff sheets accompanying Advice Letter No. 961-Gas, as required by § 40-3-104, C.R.S. (2019).

115. The Amended Settlement Agreement is in the public interest, and is just, reasonable, and not discriminatory. The Amended Settlement Agreement reflects a just and reasonable compromise between the Settling Parties to settle all issues that have been raised, or could have been raised, in this rate case. The resulting rates, terms, and conditions in the Amended Settlement Agreement and corrected Settlement Attachments will result in just and reasonable rates, conditions, and terms of service for Public Service's Colorado customers.

116. Any revisions or corrections to the terms or text of, or timing of filings required by, the Amended Settlement Agreement do not constitute material modifications of the terms, text, or timing of filings in the Amended Settlement Agreement.

117. Consistent with the discussion, findings, and conclusions in this Decision, the Amended Settlement Agreement, as revised by this Decision, and corrected Settlement Attachments are just, reasonable, and non-discriminatory and will be approved.

118. The ALJ finds and concludes that the resolutions, terms, and conditions in the Amended Settlement Agreement, as revised by this Decision, as well as in the corrected Settlement Attachments not specifically discussed in this Decision are just and reasonable, non-discriminatory, and in the public interest. The ALJ will approve them as well.

119. Consistent with the discussion, findings, and conclusions in this Decision, the ALJ will approve the Amended Settlement Agreement, as revised by this Decision, without material modifications. The Amended Settlement Agreement, including the corrected Settlement Attachments, is Appendix A to this Decision.

120. The Parties will be ordered to abide by the requirements, terms, and conditions of the Amended Settlement Agreement, as revised by this Decision, and with this Decision.

121. The tariffs filed by Public Service with Advice Letter No. 961-Gas on February 5, 2020, will be permanently suspended and will not become effective.

122. Public Service will be ordered to file compliance tariffs to implement new base gas rates and charges that result from the Amended Settlement Agreement and the corrected Settlement Attachments on not less than 14 calendar days' notice, so that the Settling Parties, the other Parties, and the Advisory Staff would have adequate time to review them for compliance with the Amended Settlement Agreement and with this Decision. Public Service will be ordered to make the compliance tariff filing no more than five calendar days after this Recommended Decision becomes the Decision of the Commission, if that is the case.

123. The ALJ concludes that this review by the Settling Parties, the other Parties, and the Advisory Staff could be completed in sufficient time for the compliance tariffs to be placed into effect by Public Service on November 1, 2020, but no later than November 12, 2020.

124. No later than five calendar days after Public Service files the compliance tariffs pursuant to this Decision, the Parties will be ordered to file, if they wish, written comments in the new advice letter proceeding on whether the compliance tariffs comply with the Amended Settlement Agreement, as revised by this Decision, and with this Decision.

125. If the filed comments on the compliance tariffs do not raise any material or compelling inconsistency with the Amended Settlement Agreement, as revised by this Decision, and with this Decision, the compliance tariffs will become effective by operation of law pursuant to § 40-3-103(2), C.R.S (2019).⁵² If the filed comments do raise any material or compelling inconsistency with the Amended Settlement Agreement, as revised by this Decision, and with this Decision, the Commission may set the compliance tariffs for hearing and suspend their effective date, pursuant to § 40-6-111, C.R.S. (2019).

126. In accordance with § 40-6-109, C.R.S., the ALJ hereby transmits to the Commission the record of this Proceeding, and a written Recommended Decision containing findings of fact, conclusions of law, and a recommended order.

IV. ORDER

A. The Commission Orders That:

1. The Unopposed Joint Motion to Approve Unopposed and Comprehensive Stipulation and Settlement Agreement and Request for Waiver of Response Time (Unopposed Joint Motion), filed on July 10, 2020 by Public Service Company of Colorado (Public Service); Trial Staff of the Colorado Public Utilities Commission; the Colorado Office of Consumer Counsel; Colorado Energy Office; Federal Executive Agencies; Energy Outreach Colorado; Atmos Energy Corporation; the International Brotherhood of Electrical Workers, Local 111; and AARP (collectively, the Settling Parties), and the Unopposed Amended Joint Motion to Approve Unopposed and Comprehensive Amended Stipulation and Settlement Agreement and Request for Waiver of Response Time (Amended Joint Motion), filed by the Settling Parties on

⁵² See also Rule 1207(g) of the Rules of Practice and Procedure, 4 CCR 723-1 (filing of compliance tariffs); Public Utilities Comm'n. v. District Court, 527 P.2d 233, 234-235 (Colo. 1974).

July 29, 2020, are granted consistent with the findings, discussion, and conclusions in this Decision.

2. Response times to the Unopposed Joint Motion and the Amended Joint Motion are waived, pursuant to Rule 1308(c) of the Rules of Practice and Procedure. 4 *Code of Colorado Regulations* 723-1.

3. The tariff sheets filed by Public Service with Advice Letter No. No. 961-Gas on February 5, 2020, are permanently suspended, may not be further amended, and shall not become effective.

4. Consistent with the findings, discussion, and conclusions in this Decision, the second sentence of Section O at page 17 of the Unopposed and Comprehensive Amended Stipulation and Settlement Agreement (Amended Settlement Agreement), filed on July 29, 2020 by the Settling Parties, is not approved and is stricken: “Except as modified in this Settlement Agreement, Commission approval of this Settlement Agreement shall constitute Commission approval of all tariff modifications as filed by Public Service.”

5. The Amended Settlement Agreement, filed on July 29, 2020 by the Settling Parties, as revised by this Recommended Decision, is approved without material modification, consistent with the findings, discussion, and conclusions in this Recommended Decision.

6. The Amended Settlement Agreement, including the corrected Settlement Attachments, is Appendix A to this Recommended Decision.

7. No later than five calendar days after this Recommended Decision becomes the Decision of the Commission, if that is the case, Public Service shall file a new advice letter and tariffs on not less than 14 calendar days’ notice in order to place the compliance Tariff Sheets into effect on November 1, 2020, but no later than November 12, 2020, consistent with the

findings, discussion, and conclusions in this Decision. The advice letter and tariff shall be filed as a new advice letter proceeding and shall comply with all applicable Commission rules. In calculating the proposed effective date, the date the filing is received at the Commission is not included in the notice period and the entire notice period must expire prior to the effective date. The advice letter and tariffs must comply in all substantive respects to this Decision in order to be filed as a compliance filing on shortened notice.

8. No later than five calendar days after Public Service files compliance tariffs pursuant to this Decision, the Parties shall file written comments in the new advice letter proceeding on whether the compliance tariffs comply with the Amended Settlement Agreement and with this Decision.

9. Public Service shall comply with this Decision and with the terms and provisions of the Amended Settlement Agreement, as revised by this Decision.

10. The Settling Parties shall abide by the terms of the Amended Settlement Agreement and with this Decision.

11. Proceeding No. 20AL-0049G shall be closed.

12. 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.

13. 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 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.

14. 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

STEVEN H. DENMAN

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director