

Decision No. R15-1251

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 15AL-0233E

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IN THE MATTER OF ADVICE LETTER NO. 1692 FILED BY PUBLIC SERVICE COMPANY OF COLORADO TO REVISE STREET LIGHTING SERVICE TO BECOME EFFECTIVE MAY 14, 2015.

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**RECOMMENDED DECISION OF  
ADMINISTRATIVE LAW JUDGE  
ROBERT I. GARVEY  
APPROVING STIPULATION AND  
SETTLEMENT AGREEMENT;  
VACATING HEARING; PERMANENTLY  
SUSPENDING TARIFFS; AND REQUIRING  
THE FILING OF NEW TARIFFS**

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Mailed Date: November 24, 2015

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**I. STATEMENT**

1. On April 13, 2015, Public Service Company of Colorado (Public Service or Company) filed Advice Letter No. 1692.

2. By Decision No. C15-0458, issued May 13, 2015, the effective date of the tariff was suspended and the matter was referred to an administrative law judge (ALJ) for disposition.

3. On May 26, 2015, Southwest Energy Efficiency Project (SWEEP) filed its Petition to Intervene. On May 26, 2015, the City and County of Denver, Colorado (Denver) filed its Motion to Intervene.

4. On June 11, 2015, the Cities of Arvada, Aurora, Black Hawk, Centennial, Commerce City, Englewood, Glendale, Golden, Lafayette, Lakewood, Littleton, Northglenn, Thornton and Westminster, and the Town of Superior (collectively the Municipalities) filed their Motion to Intervene.

5. On June 17, 2015, Public Service filed its Unopposed Motion for Approval of Consensus Procedural Schedule, to Vacate Pre-hearing Conference and for Waiver of Response Time to the Motion.

6. On June 19, 2015, by Decision No. R15-0583-I, the interventions of SWEEP, Denver, and the Municipalities were granted and a procedural schedule was adopted. The procedural schedule called for settlement agreements to be filed by October 2, 2015 and an evidentiary hearing to be held on October 8 and 9, 2015.

7. On October 2, 2015, Public Service filed its Unopposed Motion to Extend the Deadline for Submission of Stipulations and Settlement Agreements, to Vacate the Hearings Scheduled for October 8 and 9, 2015, and to Modify the Procedural Schedule as Described in the Motion and for Waiver of Response Time.

8. On October 22, 2015, the parties filed their Stipulation and Settlement (Settlement) and Unopposed Joint Motion to Approve Stipulation and Settlement.

9. On November 12, 2015, Public Service filed its Unopposed Motion for Leave to Make Supplemental Filing.

## **II. DISCUSSION**

### **A. Initial Proposal and Testimony**

10. In Public Service's initial advice letter filing, Public Service filed the Advice Letter to introduce four new Light Emitting Diode (LED) lighting options as part of the street lighting service provided under their tariff.

11. In testimony filed on June 23, 2015, Public Service requested approval of an optional program to convert over a period of five years, 100 percent of the existing high pressure sodium (HPS) and metal halide (MH) cobra-head street lights with one of four new LED street light choices and to implement new rate schedules applicable to the LED fixtures.

12. Public Service proposed to incur 100 percent of the incremental cost of the conversion itself and to recover this cost, plus the cost of retiring the existing lamps through an LED conversion charge. The proposed LED conversion program incorporated the LED energy savings and provided for reduced rates for each of the four new street light choices.

13. The Intervenors filed testimony on August 18, 2015. In the testimony the Intervenors raised issues regarding the reasonableness of the new rates proposed by the Company and the terms and conditions under which the Company proposed to allow municipalities to participate in the LED conversion program.

14. Among the concerns of the Intervenors was an inability for municipalities to pay the incremental cost of conversion to LED street lights themselves and thereby pay a lower

monthly rate for the new LED options than if 100 percent of the incremental cost were incurred by Public Service; the lack of a 70 watt equivalent LED option; the imposition of a conversion cost charge on newly installed LED street lights; and, an objection to the requirement that participating municipalities agree to convert 100 percent of existing HPS and MH cobra-head street lights.

15. On September 17, 2015, Public Service filed Rebuttal testimony. In the Rebuttal testimony, Public Service introduced a second-rate option under which its street light customers could pay 50 percent of the incremental cost themselves. Public Service also proposed a 70 watt equivalent LED street lighting choice. Public Service made no other adjustment to the program.

#### **B. Terms of the Settlement**

16. The Settlement, attached to this Decision as Attachment A, explains that the parties propose a negotiated resolution of the disputed issues in the case. It further explains that the agreements are all compromises of the filed positions of the parties. Below is a summary of the terms agreed to by the parties.

##### **1. LED Conversion Program**

17. Public Service shall file tariffs on or before two days after final Commission approval of this Settlement, to be effective January 1, 2016, to implement an LED Conversion Program under which the Company will offer five new LED street light choices under Schedule SL to replace existing HPS and MH cobra-head street lights.

18. The five new LED street light options shall include 70, 100, 150, 250, and 400 watt HPS equivalent LED fixtures to replace HPS and MH lamps and associated fixtures in cobra-head lights and shall be provided under two conversion options, Option A and Option B.

19. Public Service will contact all municipal street lighting customers to determine the municipalities' election to participate in the Company's LED conversion program under Option A or Option B. Interested municipalities will be asked to respond in writing within one year following issuance of a final Commission decision approving the LED tariffs indicating their desired option so that Public Service can plan the most efficient implementation schedule. If a municipality later decides to participate in the LED conversion program, the municipality may later elect to participate under Option B or Option A.

## **2. Terms and Conditions Applicable to Option A**

20. Under Option A, Public Service shall pay 100 percent of the cost to convert existing HPS and MH cobra-head fixtures to the new LED fixtures and shall recover the cost of the conversion plus the cost to retire the existing fixtures that have been replaced through an Option A LED Service Option Charge.

21. Once the new LED street lights are operational, the customer shall pay on a monthly basis the base rate for the applicable LED Service size to reflect the energy savings associated with the LED street light service plus the Option A LED Service Option Charge.

22. Municipal customers participating in Option A shall be required to convert at least 90 percent of the HPS and MH cobra-head street lights existing within the municipality.

23. Public Service will work with each municipal customer participating in Option A to develop an efficient conversion schedule that includes reasonable accommodations for the particular needs of participating customers.

## **3. Terms and Conditions Applicable to Option B**

24. Under Option B, the customer shall be required to pay 100 percent of the cost to convert the new LED fixtures plus the cost of retiring existing HPS and MH lamps as a

non-refundable contribution in aid of construction, to be billed to the customer after commencement of the conversion project at 90-day intervals.

25. The conversion cost shall be calculated using the labor, materials, and vehicle charges specified in Public Service's electric tariff governing Maintenance Charges for Street Lighting Service including the reasonable and customary additional costs Public Service incurs to accomplish the conversion, including, but not limited to, the cost of the new fixture, traffic control, lodging and meals, or the conversion cost shall be based on more favorable unit pricing that may be negotiated by Public Service once the scope of work under Option B has been determined.

**4. Terms Governing Installations of New LED Street Lights Served Under Schedule SL**

26. Public Service will withdraw its proposal for a new higher construction allowance applicable to Schedule SL with new LED Street Lighting.

27. New, as opposed to converted HPS and MH cobra-head street lights, LED street lights shall be governed by the terms of the Company's Service Lateral Extension and Distribution Line Extension Policy applying the construction allowance in effect at the time of the installation applicable to lighting equipment in effect at the time of the conversion.

28. Once new LED street lights are operational, the customer shall pay on a monthly basis the new base rate for the applicable LED Service size that reflects the energy savings associated with the LED street lights.

### III. CONCLUSIONS AND FINDINGS

29. The parties have the burden of proving by a preponderance of the evidence that the Settlement is just and reasonable.<sup>1</sup> In reviewing the terms of the Settlement, the ALJ applied the Commission's direction and policy with respect to review of settlement agreements as found in, *e.g.*, Decision No. C06-0259, Proceeding No. 05S-264G issued March 20, 2006.

30. Section 40-3-101, C.R.S., contains the standard against which the Commission judges proposed rates and charges: All rates and charges must be "just and reasonable." In addition, the Colorado Supreme Court lists these factors:

Those charged with the responsibility of prescribing rates have to consider the interests of both the investors and the consumers. Sound judgment in the balancing of their respective interests is the means by which a decision is reached rather than by the use of a mathematical or legal formula. After all, the final test is whether the rate is "just and reasonable." And, of course, this test includes the constitutional question of whether the rate order "has passed beyond the lowest limit of the permitted zone of reasonableness into the forbidden reaches of confiscation."

*Public Utilities Commission v. Northwest Water Corporation*, 168 Colo. 154, 173, 451 P.2d 266, 276 (Colo. 1969) (*Northwest Water*) (citations omitted). Further, the Commission must consider whether the rates and charges, taken together, are likely to generate sufficient revenue to ensure a financially viable public utility, which is in both the ratepayers' interest and the investors' interest. Finally, the Commission must consider the ratepayers' interest in avoiding or minimizing rate shock because the monopoly which a utility enjoys cannot be exerted, to the public detriment, to impose oppressive rates. *Northwest Water*, 168 Colo. at 181, 451 P.2d at 279. The Commission balances these factors and considerations when reviewing proposed rates and charges.

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<sup>1</sup> Section 13-25-127(1), C.R.S., and Rule 4 *Code of Colorado Regulations* 723-1-1500 establish the burden of proof for a party which asks the Commission to adopt its advocated position. Decision No. C06-0786, Proceeding No. 05A-072E issued July 3, 2006 at ¶ 40 & n. 23.

31. Public Service bears the burden of proving by a preponderance of the evidence that the proposed rates meet this standard.

32. Based on the entire record, the ALJ finds that the parties have established by a preponderance of the evidence that the Settlement is just, is reasonable, and should be accepted by the Commission. The record supports each aspect of the Settlement without modification.

**IV. ORDER**

**A. The Commission Orders That:**

1. The evidentiary hearing scheduled for December 7 and 8, 2015 in this proceeding is vacated.

2. The Joint Motion to Approve Settlement Agreement filed by Public Service Company of Colorado (Public Service) on October 22, 2015 is granted, consistent with the discussion above.

3. The Settlement Agreement filed by Public Service on October 22, 2015 and attached to this Decision as Attachment A, is approved, consistent with the discussion above.

4. The tariff sheets filed on October 14, 2015 with Advice Letter No. 1692 are permanently suspended.

5. After this Recommended Decision becomes the Decision of the Commission, if that is the case, Public Service shall file a new advice letters and tariffs consistent with the directives above. The advice letters and tariffs shall be filed as new advice letter proceedings and shall comply with all applicable rules. The advice letter filing shall be made no later than 60 days after this Recommended Decision becomes the Decision of the Commission, if that is the case, and the tariffs shall be filed on not less than 10 business days' notice. The advice letters and

tariffs must comply in all substantive respects to this Decision in order to be filed as a compliance filing on shortened notice.

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

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

8. Response time to exceptions shall be shortened to seven days.

9. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the recommended decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

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

11. 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

ROBERT I. GARVEY

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Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,  
Director