208 P.U.R.4th 322, 2001 WL 574577 (Colo.P.U.C.)

(Publication page references are not available for this document.)

Re Public Service Company of Colorado
Docket No. 00S-422G
Decision No. C01-231

Colorado Public Utilities Commission
March 15, 2001

ORDER authorizing a natural gas local distribution company (LDC) to increase its rates by $14.2 million, reflecting an authorized rate of return on equity of 11.25% and an overall rate of return of 9.33%.

The LDC is permitted to implement general rate schedule adjustment riders in the amount of 5.23% applicable to all sales customers and in the amount of 6.3% applicable to all transportation customers.

Commission approves a cost recovery mechanism for funds expended by the LDC to modify its system to allow aggregated load balancing for transportation customers. Specifically, the commission approves the recovery of $460,000 in costs over a 21-month period through a rate schedule adjustment rider applicable to gas transportation rate schedules.

Commission adopts a proposal by its staff for implementing the vintage group average service life procedure, with the remaining life technique, for calculating depreciation expense and the annual flow back of excess accumulated depreciation reserve.

A proposal by the LDC to include some $13.46 million recorded as construction work in progress (CWIP) in rate base is rejected notwithstanding the LDC's claims that most of the plant associated with the CWIP was actually in service by the close of the test year. In rejecting the proposed CWIP adjustment, the commission finds that it would violate the matching principle inasmuch as any cost savings associated with the new plant were not included in the rate filing. Moreover, it finds that the LDC failed to identify the allowance for funds used during construction associated with the CWIP.

The LDC is found to have abused commission rules governing the allocation of costs between regulated and non-regulated activities. Accordingly, the commission directs the LDC to file a revised cost allocation manual together with a fully distributed cost study.

1. RATES, § 120.1

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[COLO.] Reasonableness -- Test period -- Historic test year -- Accounting and regulatory adjustments -- Out-of-period adjustments -- Natural gas rate proceeding.

2. RETURN, § 26.1

[COLO.] Reasonableness -- Capital structure -- Debt/equity ratio -- Natural gas local distribution company.

3. RETURN, § 26.4

[COLO.] Reasonableness -- Cost of equity -- Estimation methodologies -- Discounted cash flow analyses -- Interest premium check -- Capital asset pricing model -- Natural gas local distribution company.

4. RETURN, § 15

[COLO.] Reasonableness -- Balancing investor and consumer interests -- Legal standard.

5. RETURN, § 26.4

[COLO.] Reasonableness -- Cost of equity -- Estimation methodology -- Discounted cash flow model -- Appropriate comparison group -- Combination electric and gas utility -- Natural gas rate proceeding.

6. RETURN, § 24

[COLO.] Reasonableness -- Factors considered -- Maintenance of financial integrity -- Attraction of capital -- Natural gas rate proceeding.

7. VALUATION, § 290

[COLO.] Cash working capital -- Method of calculation -- Inclusion of test-year purchased gas costs -- Exclusion of deferred and projected gas costs -- Natural gas local distribution company.

8. VALUATION, § 309

[COLO.] Particular allowances -- Natural gas local distribution company -- Inclusion of test-year purchased gas costs -- Exclusion of deferred and projected gas costs.

9. VALUATION, § 224

[COLO.] Property included or excluded -- Construction work in progress -- Factors considered -- Natural gas local distribution company.

10. EXPENSES, § 125

(Publication page references are not available for this document.)

[COLO.] Natural gas local distribution company -- Aggregated transportation load balancing -- Recovery of system modification costs -- Rate rider to transportation schedules.

11. RATES, § 384

[COLO] Natural gas -- Transportation service -- Adjustment for aggregated load balancing -- Recovery of system modification costs -- Rate rider -- Local distribution company.

12. EXPENSES, § 125

[COLO.] Natural gas local distribution company -- Administrative and general expenses -- Amortization of historically recoverable and previously approved costs -- General rate schedule adjustment rider.

13. RATES, § 373

[COLO] Natural gas -- Adjustment for historically recoverable and previously approved costs -- Rate rider -- Local distribution company.

14. EXPENSES, § 125

[COLO.] Natural gas local distribution company -- Lost revenue relating to commission ruling on weather normalization -- General rate schedule adjustment rider.

15. RATES, § 373

[COLO] Natural gas -- Adjustment for lost revenue relating to commission ruling on weather normalization -- Rate rider -- Local distribution company.

16. EXPENSES, § 26

[COLO.] Advertising -- Standard for recovery -- Ratepayer benefits.

17. EXPENSES, § 26

[COLO.] Advertising -- Overlap with unregulated business -- Cost allocation -- Local distribution company.

18. EXPENSES, § 19

[COLO.] Depreciation -- Plant added during test year -- Inclusion of one-half year of depreciation -- Natural gas local distribution company.

19. EXPENSES, § 19

[COLO.] Depreciation -- Method of calculation -- Vintage group average service life procedure -- Natural gas local distribution company.

20. DEPRECIATION, § 28

[COLO.] Calculation of expense -- Vintage group average service life procedure -- Natural gas local distribution company.

21. DEPRECIATION, § 55

[COLO.] Gas plant -- Vintage group average service life procedure -- Local distribution company.

22. DEPRECIATION, § 37

[COLO.] Reserves and funds -- Flow back of excess accumulated reserve -- Natural gas local distribution company.

23. VALUATION, § 107

[COLO.] Accumulated depreciation reserve -- Flow back of excess -- Natural gas local distribution company.

24. EXPENSES, § 126

[COLO.] Natural gas local distribution company -- Gas costs -- Interest on unrecovered balances -- Grounds for exclusion.

25. AUTOMATIC ADJUSTMENT CLAUSES, § 54

[COLO.] Interest on undercollections -- Prohibition on recovery -- Gas cost adjustment clause -- Local distribution companies.

26. EXPENSES, § 19

[COLO.] Depreciation -- Property to be decommissioned in near future -- Accelerated recovery -- Natural gas local distribution company.

27. EXPENSES, § 125

[COLO.] Natural gas local distribution company -- Property to be decommissioned in near future -- Accelerated depreciation -- Natural gas local distribution company.

28. EXPENSES, § 33

[COLO.] Capital amortization -- Property to be decommissioned in near future -- Natural gas local distribution company.

29. PROCEDURE, § 32

[COLO.] Request for rehearing, reargument or reconsideration -- Interim order -- Request construed as motion to modify interim decision.

30. RATES, § 649

[COLO.] Practice and procedure -- Hearing and notice -- Due process.

31. RATES, § 234

[COLO.] Initiation of rates and rate changes -- Tariff filings -- Hearing and notice -- Due process.

32. EXPENSES, § 52

[COLO.] Nonutility business -- Avoiding ratepayer subsidies of unregulated activities -- Cost allocation rules -- Need for fully distributed cost study -- Natural gas local distribution company.

33. APPORTIONMENT, § 43

[COLO.] Joint expenses -- Avoiding ratepayer subsidies of unregulated activities -- Cost allocation rules -- Need for fully distributed cost study -- Natural gas local distribution company.

I. BY THE COMMISSION:

A. Statement

1. This matter is before the Commission to consider Public Service Company of Colorado's ('Public Service' or 'Company') request to implement two General Rate Schedule Adjustment ('GRSA') riders. These riders would be applied to base rates under the Company's gas service rate schedules. If granted, the riders would yield an annual increase in jurisdictional gas department revenues of approximately $39.78 million. Also before the Commission is what Public Service references as its application for rehearing, reargument, or reconsideration ('application for RRR') of Decision No. C01-0015 striking the construction allowance testimony and issue from this docket.

2. Public Service contends that the requested rate increase is necessary to recover the capital and operating costs associated with the Company's gas infrastructure investments used to provide natural gas distribution services to the Company's growing market. Public Service states that it has made approximately $154.2 million in relevant capital investments since the end of the test year in its last gas rate case (December 31, 1995). During the same time, Public Service added 57,781 new gas customers, a 5.8% increase. One result of this growth is the persistent inability of the Company to earn its authorized rate of return on

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equity, sometimes referenced as earnings attrition or, simply, attrition. Public Service cites attrition as a prime concern in this docket.

3. Public Service filed Advice Letter No. 566 -- Gas and supporting direct testimony on July 17, 2000. On July 28, 2000, the Commission suspended the effective date of the tariffs for 120 days and set the matter for hearing. Decision No. C00-8226; § 40-6-111(1), C.R.S. The Commission expanded the suspension period an additional 90 days on December 15, 2000, to March 15, 2001. Decision No. C00-1380.

4. Colorado Oil and Gas Association; the City and County of Denver; Brush Cogeneration Partners; Conoco, Inc.; HS Energy Services, Inc.; Western Natural Gas, LLC ('Western'); the Colorado Business Alliance for Cooperative Utility Practices ('Business Alliance'); Multiple Intervenors; [FN1] Colorado Interstate Gas Company; Home Builders Association of Metro Denver ('HBA') and Melody Homes, Inc.; [FN2] and the Colorado Energy Assistance Foundation, Catholic Charities, and Alma Krabbe filed petitions for intervention. The Colorado Office of Consumer Counsel ('OCC') and Staff of the Commission ('Staff ') each intervened as a matter of right.

5. At a prehearing conference on August 31, 2000, the Commission granted all petitions to intervene and established the procedural schedule. Decision No. C00-981. Staff, OCC, Western, HBA, and the Business Alliance timely filed answer testimony.

6. On November 16, 2000, HBA filed a motion to dismiss the construction allowance issue and to update certain tariff calculations. Decision No. C00- 1408 denied the motion on December 12, 2000. On December 1, 2000, Public Service filed a motion to strike testimony regarding HBA's proposal that developers and homebuilders be allowed to control planning, design, and installation of main, trunk, and lateral gas lines. HBA responded on December 5 and 11, 2000. The Commission granted Public Service's motion on December 15, 2000. Decision No. C00-1433. Thereafter, the Staff's motion to file cross-answer testimony regarding the HBA proposal was denied as the subject HBA testimony had been stricken. Decision No. C00-1463.

7. In its rebuttal testimony, Public Service proposed yet another method of calculating construction allowances. In response, HBA filed a motion to strike all testimony related to the construction allowance issue. The Commission granted HBA's motion to strike on January 5, 2001. Decision No. C01-15. Public Service filed its application for RRR on January 29, 2001.

8. On December 28, 2000, Public Service filed motion for admission pro hac vice of J. Patrick Nevins. The Commission approved the motion at the prehearing conference on January 4, 2001.

9. The hearing commenced on January 8, 2001, and continued to January 11, 2001. In response to the order striking testimony about the construction allowance issue, the parties submitted a stipulation specifically identifying the testimony to be

stricken. The Commission accepted the stipulation. A stipulation between the Business Alliance and Public Service regarding facts relating to the allocation of costs was accepted by the Commission without objection. Public Service, OCC, Western, the Business Alliance, and Staff offered prefiled testimony and exhibits of witnesses. The Commission admitted these into evidence as Exhibits A through X. Additional exhibits, marked as Exhibits 1 through 9 and 11 through 24, were admitted into evidence during the course of the hearing. Exhibit 10 was offered by Public Service, but rejected by the Commission.

10. The public testimony hearing was held as scheduled at 4 p.m. on January 11, 2001, and gave the public an opportunity to comment. Approximately 35 citizens spoke. None of the speakers favored the requested rate increase, and many spoke strongly against the increase. The Commission closed the record following the public hearing, reserving only the possibility of a technical conference regarding the models used by the parties.

11. The OCC, Staff, and the Business Alliance timely filed statements of position on January 29, 2001. Public Service filed its statement of position one day late, accompanied by a motion out-of-time for permission to file one day late. The motion is granted, the statement of position was accepted and considered.

12. Before deliberations, the Commission set an on-the-record technical conference before an Administrative Law Judge regarding the electronic model filed by Public Service. All parties were notified, but only Public Service, Staff, OCC, and Commission Advisory Staff appeared for the technical conference. At the technical conference, Public Service supplemented its electronic model with an expanded version. Technical Conference Exhibit 1. No party objected. The OCC and Staff affirmatively endorsed the expanded version. No new data was entered; the expansion allows for data manipulations not available with the earlier model.

13. The Commission conducted deliberations on February 9, 2001, and now issues its written order.

B. Introduction

[1] 1. The rate setting process begins with the selection of a test year. A test year is a 12-month period in which the interrelationships of revenue, expense, and investment are evaluated and adjusted, and then become a model for setting new rates. The purpose of a test year is to provide, as closely as possible, an interrelated picture of revenue, expense, and investment reasonably representative of the interrelationships that will be in place during the time the newly proposed rates will be in effect.

2. A test year is defined by the interaction of its component parts; no single component stands alone. Built into the test year are input and output quantities for the designated period and how they affect or are affected by the operations of the utility; these interrelationships are often referred to as the matching principle. The absolute quantities of input and output, and certainly prices, will

change when the test year has ended and the new rate year arrives, but the key to test year integrity is the interrelationship of these items, not the individual dollar quantities designated for each.

3. The historic test year proposed by Public Service and accepted by the parties and the Commission is the calendar year 1999. The 1999 historic book numbers are adjusted first by removing items which are recorded in the test year, but which apply to previous periods, including items applicable to the test year that were not recorded in the test year, and reclassification of items between and among departments, etc. After these accounting adjustments are made, 'Commission' adjustments, such as disallowances for certain expenses, are made. Then, pro forma adjustments are made to the test year. These adjustments largely consist of annualizing price changes that occurred within the test year (in-period adjustments) or outside the test year (out-of-period adjustments). According to Commission policy, the cutoff period for inclusion of out-of-period adjustments is one-year after the test year ends. A one-year cutoff permits adjustments outside the test year, but does not distort the matching and interrelationships of the test year components. Further, these out-of-period adjustments should be known and measurable.

C. Capital Structure

[2] 1. Public Service proposed the following capital structure in this proceeding:

Long-term Debt	$1,727,398,207	49.60%
Common Equity	$1,755,295,677	50.40%
Total	$3,482,693,884	100.00%

2. Staff and the OCC accepted this capital structure, and based their cases on this capital structure. No party objected. We accept the Company's proposed capital structure.

D. Rate of Return on Equity

[3] As in all general revenue requirement cases, the Commission must determine the proper return-on-equity ('ROE') for the Company's gas department. Three witnesses presented testimony concerning the ROE to be authorized by the Commission in this proceeding. Their ROE recommendations were as follows:

Public Service Company	12.5%
OCC	10.75%
Staff	11.46%

1. Dr. Charles Olson for Public Service Company

a. Dr. Charles Olson testified for Public Service about the appropriate ROE that Public Service should earn. He performed two Discounted Cash Flow ('DCF ') analyses: one on seven gas utility companies, and one on five combination utility companies. His range for the gas group was 11.63% to 12.15%, while his DCF range for the combination group was 10.52% to 11.04%.

b. Dr. Olson argued that while the DCF model for gas companies indicates that investors expect a return on market value of 11.63% to 12.15%, this return level requires a return on book value of approximately 15%. He based this argument on the prevailing market-to-book ratios. He similarly concluded that while the DCF model for combination companies indicates that investors expect a return on market value of 10.52% to 11.04%, it actually requires a return on book value of 14%to 14.5%. Dr. Olson argues that 'investors have come to rationally expect returns above book values' and argues that the Commission would be punishing Public Service if it authorized a return that could drive the market-to-book ratio down to one. He concludes that the Commission should authorize a ROE of 12.5%, which would result in a market to book ratio of approximately 1.15 to one. He further supports his conclusion by saying that the higher ROE will help offset the attrition problem in the gas department.

c. To confirm the reasonableness of his recommended return, Dr. Olson performed an Interest Premium Check which indicated an investor-required return of approximately 13.9%, and an analysis using the Capital Asset Pricing Model ('CAPM') which indicated a return of 13.2%. Dr. Olson cautioned, however, that the CAPM has several inherent weaknesses, and should be used only with care.

2. Basil Copeland for the OCC

a. Basil Copeland testified for the OCC about the appropriate authorized ROE for Public Service. He concluded that the cost of equity for Public Service is currently between 10.5% and 11.0%.

b. Mr. Copeland performed a comparative DCF analysis on 24 combination electric and gas utilities. He also performed a Discounted Dividend Model ('DDM'), a more general form of the DCF, as a check of reasonableness to his recommended return. His DDM analysis determined a median return for the 24 combination utilities of 10.51% and a mean return of 10.36%. He made no adjustments or specific allowances for coverage considerations as did Dr. Olson. Based upon all of his analysis, he concluded that a reasonable ROE for Public Service would be 10.75%.

c. Mr. Copeland also discussed Dr. Olson's recommendation of a 12.5% ROE. He notes first that, before adjustments, Dr. Olson's DCF conclusion for combination companies is 10.52% to 11.04%, almost exactly the same as Mr. Copeland's. Mr. Copeland disagrees with the adjustment method used by Dr. Olson.

d. Dr. Olson argued that his DCF results mirrored expected market return, not the return on book value. He contends that investors have come to reasonably expect returns on book value in excess of market return. In this case, he argues that those investor expectations increase the DCF results by a factor of 1.33.

e. Mr. Copeland argues there are two basic flaws with the theory: one, having to do with mathematical relationships among various returns and costs, and, two, practically speaking, this sort of adjustment 'renders the whole purpose of rate of return regulation superfluous ... .' That is, the adjustment would appear to allow investors' desires, rather than requirements, to increase the ROE. Based upon these arguments, Mr. Copeland argues that the ROE requested by Public Service should be denied.

3. Sandra Johnson Jones for the Staff

a. Sandra Johnson Jones testified for Staff about the appropriate authorized ROE for Public Service. Ms. Jones performed a DCF analysis for six combination electric and gas utilities. The median result of her DCF analyses of the six companies was 11.46%, her final recommendation for the appropriate ROE. Before making her recommendation, Ms. Jones examined the impact of her recommended ROE on the gas department's ability to contribute to the Company's current dividend and to provide sufficient earnings to meet the Company's bond requirements.

b. Ms. Jones examined LG&E Energy ('LG&E') as one utility in her DCF group . At the time of Ms. Jones's analysis, an acquisition of LG&E was pending; the sale was consummated by the time of hearing. Public Service has argued that the pending acquisition affected the stock's price, distorted Ms. Jones's DCF analysis, and lowered the return. Public Service argued that LG&E should be removed from Ms. Jones's analysis. Without LG&E, Ms. Jones's recommended ROE would rise to 11.63%.

c. Ms. Jones disagreed with Public Service during her cross-examination, and argued that at the time of the analysis, LG&E was a reasonable company to include in her study. That a merger was pending might have excluded it from the appropriate pool for comparisons a few years ago, but that argument has weakened of late because of the rash of mergers. An overall evaluation of LG&E showed it to be a company with a risk profile similar to Public Service.

d. Staff presented criticisms of Public Service's recommendations. Staff notes first, that of the five combination companies used by Public Service in its DCF analysis, four used nuclear generation. Staff argues that the presence of nuclear generation causes greater risk and distinguishes the companies from Public Service.

e. Staff also argues against the Company's attempt to use pure gas companies in its DCF analysis. Staff notes first that this Commission has used combination companies in the past. Further, Staff argues that Public Service is treated by the rating agencies and investors as a combination utility company with the associated lower risks. Finally, because of the mergers in the industry, pure gas companies are becoming fewer, and reasonable comparisons are becoming scarce.

f. Staff also disagreed with Dr. Olson's attempts to adjust the DCF outcomes with his beliefs about market expectations. After doing her analysis, Ms. Jones saw no need to make any upward adjustments for market expectations. She notes in her testimony that to adopt the adjustment created by Dr. Olson would build in a premium that might serve so long as attrition existed, but would simply become a bonus thereafter. Staff argued that Public Service's proposed ROE should be rejected by the Commission.

4. Commission Discussion

[4-6] a. The Commission is charged with determining just and reasonable rates. This requires the balancing of investor and consumer interests. Federal Power v. Hope Natural Gas, 320 U.S. 591, 603 (1944). This is a standard that refers to the required ROE, not the hoped-for ROE. We must consider these issues carefully, because the differences among required, hoped-for and expected ROEs quickly become circular in nature. The market expects what a commission authorizes, and a commission authorizes what the market expects.

b. Before proceeding, the Commission must consider whether the risks faced by Public Service's shareholders are most appropriately gauged by comparisons with stand alone gas distribution utilities as advocated by Dr. Olson, or combination electric and gas utilities as advocated by witnesses Copeland and Jones. As a general proposition, the Commission concurs with Mr. Copeland's and Ms. Jones's position that the risks faced by Public Service are those of a combination electric and gas utility. Shareholders do not separately invest in the operations of Public Service's gas or electric departments. They invest in the entire company. Thus, shareholder perceptions concerning the risk of Public Service are based not merely on the perceived risk of Public Service's gas department operations, but on the perceived risk of the entire holding company.

c. In this proceeding the Company, Staff, and the OCC all used the DCF model. [FN3] Past Commissions have adopted this as an appropriate method for judging ROE, and we concur. Further, for the reasons given by the OCC and Staff, Public Service's arguments and proposals for an adjusted DCF model do not persuade us. First, we disagree with Public Service's use of combination companies that use nuclear generation. Nuclear generation creates, at least, the perception of greater risk, a factor driving any ROE upward. We recognize that Northern States Power ('NSP'), an affiliate of Public Service, does employ significant nuclear generation resources. However, the Commission required that NSP nuclear-related cost exposure be separated from Public Service as a condition of approval of the merger between NSP and Public Service. Public Service does not rely on or have risk exposure from nuclear generation, and comparing Public Service with nuclear generation companies is not appropriate for our purposes here.

d. More importantly, we are not persuaded by Dr. Olson's arguments that the DCF determined ROE should necessarily be adjusted by market expectations. We agree with Staff that this simply builds in a premium above the return indicated by DCF analyses. We agree with the OCC that the adjustment essentially defeats the DCF attempts at mathematical objectivity. We find the evidence from the OCC and Staff to be the more credible. We place less weight on Public Service's request for a

ROE of 12.5%. Our emphasis therefore lies with the OCC's recommendation of 10.75% ROE and Staff's recommendation of 11.46% ROE. We turn, then, to the recommendations of Staff and OCC.

e. During this proceeding there was cross-examination of Staff's witness, Ms. Jones, on her inclusion of LG&E as one of the comparable companies. Public Service argues that it should be excluded because a pending merger skewed the results of Staff's DCF analysis. Such an adjustment is unnecessary.

f. Ms. Jones testified that she was aware of the pending merger and considered that in using LG&E. She argued that because mergers and acquisitions in the utility industry are so common in today's market, the merger related fluctuations in the relevant figures did not adversely affect the reliability of her DCF calculations. She maintained her choice of LG&E as a proper utility for comparison.

g. We are not persuaded by Public Service's arguments here. We note in Ms. Jones's testimony that she confirmed the reasonableness of her DCF analysis using other tools. We will accept Ms. Jones's judgment that LG&E is properly part of her pool of comparable companies.

h. The issue now is the appropriate ROE that the Commission should authorize for the Company. Public Service is presently authorized to earn 11.25%. The OCC and Staff provided us with a range between 10.50% to 11.0% from the OCC to 11.46% from Staff. Both parties provide well-founded evidence and arguments supporting their positions. Supporting OCC's arguments that the process must balance the consumer and utility interests was significant testimony from the public that, especially given the effect of the current state of natural gas prices on consumers, the Company should not be granted any increase in its authorized ROE absent clear justification under the present legal standards.

i. In determining the authorized ROE for Public Service in this case, the Commission must consider the financial integrity concerns expressed by the cost of capital witnesses. Indeed, consideration of such concerns is required under Federal Power Commission v. Hope Natural Gas. The Commission also recognizes that it has broad discretion to take actions which appropriately balance the needs of both ratepayers and shareholders.

j. As pointed out by Ms. Jones, with an authorized ROE of 11.25% Public Service has been able to issue bonds at the some of the lowest available coupon rates. The present authorized ROE thus does not appear to hamper Public Service's ability to attract capital. Through reasonable analyses of the present market, we have evidence that a decrease in the authorized ROE would still attract sufficient capital to keep Public Service healthy. However, we also have significant evidence that a ROE increase should be granted.

k. We have three choices: to maintain, to lower, or to raise the authorized rate of return. All three seem reasonable choices that would meet the standards of Federal Power Commission v. Hope Natural Gas. The Commission finds that maintaining the authorized ROE of 11.25% will provide a fair and reasonable return to shareholders, maintain financial integrity, and ensure the Company's continued ability to raise equity capital. The present ROE stands squarely within the range established by the credible experts before us, and fairly balances the interests of the Company and the ratepayers.

E. Rate Base

1. Cash Working Capital and Gas Costs

[7, 8] a. As part of its original case and testimony, Public Service did not include the test year purchased gas cost as part of the calculation of cash working capital ('CWC'). The OCC initially argued that purchased gas cost, as well as deferred gas cost, should be included in the calculation of CWC. In addition, the OCC advocated using the gas costs projected in the Company's September 2000, Gas Cost Adjustment ('GCA') filing in calculating CWC. The OCC's total proposal would increase the gas cost component of the CWC by over 60% when compared to actual test year purchase gas expense. Staff took no position on these issues.

b. In its rebuttal testimony, Public Service amended its position to include test year purchased gas cost. Public Service agreed that it would be fair and more representative of the Company's cash outlays to include the current test year gas cost, excluding deferred gas cost. This conceded amendment reduced base rates, thereby reducing Public Service's filed revenue requirement by approximately $1.9 million. The Company did not include the test-year deferred gas costs which the OCC's later witness acknowledged should be excluded from the CWC calculation. This agreement between the Company and the OCC on the treatments of test-year purchased and deferred gas costs did not resolve whether the projected purchased gas cost in Public Service's September 2000, GCA filing should be used in calculating the CWC.

c. Public Service argues in rebuttal that OCC's proposed September 2000, GCA adjustment to CWC would not be based on actual cash flows during the test period, but, rather, would be speculative projections of future gas costs applicable to a period 9 to 21 months outside the test year. In addition, the Company notes that the OCC's proposal is a significant departure from the Commission's historic treatment of this issue and violates the general principle that out-of-period adjustments should be known and measurable. The Company also argues that this adjustment reaches more than one year outside the test period, another general principle violation. Finally, going more than one year beyond the test period also violates the very basic matching principle that within the test period, revenues, expenses, and investments should match the cost for providing service to the ratepayer.

d. This Commission is persuaded by Public Service's argument for not including the September 2000, purchase gas costs for CWC and rejects the OCC's adjustment. The Commission agrees with the Company that the costs are not known and measurable, are too far outside the test period, and would violate the matching principle. The Commission adopts the inclusion of test year purchased gas costs in calculating

CWC as proposed by the OCC and adopted by the Company in its rebuttal case.

2. Inclusion of Certain Construction Work In Progress

[9] a. Public Service proposes including $13.46 million of Construction Work In Progress ('CWIP') as Plant in Service for the calculation of its rate base. Public Service argues that while this amount was recorded as CWIP at the test year end, it was in service by the end of April, 2000. The Company characterizes this adjustment as a minimal, but necessary, attrition-alleviating measure. It characterizes at least $11 million of the adjustment as a mere bookkeeping adjustment. The OCC and the Staff object.

b. The actual amounts at issue highlighted the problems with the requested adjustment. While all discovery and Public Service's case-in-chief addressed $13.46 million of CWIP in service by April's end, at hearing, Public Service testified that $11 million of the $13.46 million was actually in service by December 31, 1999. Further, Public Service said that the number was really $19 million, but that included revenue producing plant, and it was standing by the original request of $13.46 million in non-revenue producing plant. Finally, Public Service admitted that the Allowance for Funds Used During Construction ('AFUDC') associated with the proposal was not clearly known.

c. The OCC argues against the proposal. The OCC first notes that if the Company had been properly following the Uniform System of Accounts ('USOA'), this issue would never have arisen. The USOA instructions for the relevant account reads:

> At the end of the year ...this account [106] shall include the total of the balances of work orders for gas plant which have been completed and placed in service but which work orders have not been classified for transfer to the detailed gas plan accounts.

Hearing Exhibit 4. If the Company had followed the USOA procedures properly, the OCC argues, these CWIP issues would not have arisen.

d. The OCC points to the unknown or roughly estimated figures inherent in the proposal. While Public Service proposes to have the ratepayers pay for only new, non-revenue producing plant, it is not willing to reduce its pro forma operating expenses to recognize expected cost reductions from these new plant additions. In addition, the OCC argues that most, if not all, of the post-year additions will have some unknown impact on the Company's financial statements. Another unknown, or only roughly estimated, factor is the associated AFUDC.

e. AFUDC is the opportunity cost the investor is allowed to recover for the time the construction work is in progress until the time the CWIP becomes plant in service and earns a return. To prevent current earnings on CWIP, an offset of AFUDC is made to the Company's income statement. While Public Service admits that some of these projects conceivably continued to accrue AFUDC during the record-keeping delay, it argues that little or no AFUDC would have been incurred because there would be no charges to the projects after completion. The monthly AFUDC amount in January to April would be, at most, in the range of the December figures and decreasing every month, resulting in a maximum total offset of, perhaps, $200,000. But, as noted, these are all estimates and guesses.

f. The Commission rejects this proposed CWIP adjustment. First, the Company should have had proper record keeping so this adjustment would not have been debated at the 11th hour with the parties not having time to examine the new information. Second, this violates the matching principle because any cost savings associated with this plant were not included. The Company in the CWC adjustment is a proponent of the matching principle and argues against going outside the test year period for inclusion of the September 2000 purchased gas cost adjustment. Here, the Company ignores the matching principle. In addition, if the Commission were to accept this adjustment there is still a problem with the AFUDC calculation. The Company admits it cannot identify the actual AFUDC number for the CWIP; it provides only an estimate. It is only under the rarest of circumstances that the Commission approves adjustments that are not known and measurable. The Commission rejects the Company's CWIP proposal.

F. Income Statement

1. Adjustment for Aggregated Load Balancing

[10, 11] a. Public Service Company asks that the Commission approve a cost recovery mechanism that would provide funds to modify the system used to monitor transportation customer accounts. These modifications would allow the aggregation of transportation customers' loads for the purpose of determining imbalances. Public Service proposes to recover from its transportation customers $460,000 of related costs amortized over 21 months. This adjustment will affect only the GRSA rider applicable to gas transportation rate schedules.

b. Public Service argues that aggregated load balancing will provide benefits to Public Service, marketers, and the market. Donald Basler, a Public Service witness, best describes the system and benefits:

Aggregated balancing is a system of managing transportation customer imbalances that recognizes receipts, deliveries and nominations of a transportation customer across multiple service agreements in an operational area. It allows a shipper or nominating agent to combine the imbalances it incurs under the gas transportation service agreements it holds or controls within an operational area, and to calculate an overall imbalance based on the difference between the total receipts and deliveries for those combined agreements. The shipper or nominating agent will than be assessed an imbalance penalty based on that final combined, or aggregated, imbalance volume. This aggregation will more appropriately and accurately reflect the level of imbalances actually attributable to the shipper's or nominating agent's activities within an operational area than the method currently in effect, which calculates imbalances only on an individual contract basis.

Hearing exhibit G, Basler testimony at 2-3. Western's filed testimony specifically supports the proposal; no party objects.

c. The proposal was made originally in the last Phase II rate case, Docket No. 99S-609G. The parties to that case, including Staff, the OCC, Western, and numerous other transportation firms, stipulated to support this aggregated load balancing proposal. The Company has agreed to accept a mechanism to stop the recovery of these costs after 21 months, regardless of whether another rate case is filed at that time as expected.

d. The Commission finds that this proposal is in the public interest and should be granted. The Commission approves the recovery of $460,000 in costs over a 21-month period. The appropriate GRSA rider shall be adjusted at the end of 21 months or the recovery of the stated costs, whichever is earlier.

2. Amortization of Certain A & G Expenses

[12, 13] a. Public Service proposes to recover certain historically recoverable and previously approved administrative and general expenses. Those expenses include: the unamortized balance of environmental clean-up costs totaling $697,500 approved in Docket No. 98S-518G.; the unamortized rate case costs remaining from Docket No. 98S-518G; the estimated incremental costs of preparing, filing and litigating this rate case totaling $786,810; and the unamortized merger costs totaling $1,230,030. Because the Company expects the rates in this case to become effective on or about April 1, 2001, and anticipates filing a combined electric and gas rate case no later than May 1, 2002, Public Service proposes an amortization period of 21 months.

b. We accept the proposal. The costs are either historically recoverable or already approved. No party challenged the recovery of these costs or the 21- month recovery period. The Commission will grant the Public Service proposal to amortize the above named administrative and general expenses over a 21-month period. Public Service shall file a decrease to the rate rider authorized by this Decision upon full recovery or the completion of the 21-month amortization period, whichever is earlier.

3. Recovery of Lost Revenue Relating to Commission Ruling on Weather Normalization

[14, 15] a. Public Service proposes recovering lost revenues totaling $1,398,376 attributed to a Commission ruling on weather normalization in Docket No. 96S-290G. At that time, the Commission rejected the weather normalization method, utilized for at least 20 years before that time, to determine pro forma test year revenues.

b. On June 9, 1997, Public Service filed a writ of certiorari in Denver District Court, Civil Action No. 97CV-3653, requesting, among other things, judicial review of Commission Decision Nos. C97-118 and C97-478 in Docket No. 96S-290G concerning the calculation of the rate rider effect on the weather normalization adjustment adopted by the Commission. On December 16, 1999, the District Court set aside the

Commission's decision and remanded the issue of weather normalization back to the Commission. The Commission has not yet taken action on this remanded issue. However, Public Service returned to the previously rejected weather normalization method in Docket No. 98S-518G and the same method is used without objection in the present case.

c. No party challenged the proposal to recover the lost revenues attributed to the weather normalization decision in Docket No. 96S-290G. Our own review of the issue supports the Company's position. The Commission will grant Public Service's proposal to recover the lost revenues over a 21-month period. Public Service shall file a decrease to the rate rider authorized by this Decision after the completion of the 21-month amortization period or upon full recovery, whichever is earlier.

4. Recovery of Advertising Expenses

[16, 17] a. The Commission historically has allowed utilities to recover expenses for advertising directly benefiting the ratepayer, i.e., energy conservation, safety, customer programs, and service messages. Public Service originally proposed recovering $336,702 for advertising expenses argued to benefit the ratepayer. Staff disagreed in part and recommended disallowing the costs of seven separate items, totaling $56,741. Staff argued that the seven items were not related to energy conservation, safety, customer programs, or service messages.

b. In rebuttal, Public Service agrees with Staff on four of the proposed adjustments, totaling $34,989. Of the disputed three items, totaling $21,752, one is an advertisement promoting the benefits of construction of energy-efficient housing in Colorado ('Built Green Ad'). Staff argues that the advertisement is image-related and the costs associated with it should not be recovered through rates. Public Service asserts that the Built Green Ad promotes energy conservation.

c. The remaining two disputed advertisements are from the Company's Update, a monthly bill insert. One advertisement raises the safety issues of faulty gas connectors and recommends that a qualified heating contractor check the connection. The advertisement states that qualified heating contractors can be found in the Yellow Pages or the customer can then call Public Service Appliance Repair at the telephone numbers listed. Public Service Appliance Repair is a non-regulated business of Public Service.

d. The second Update advertisement details the dangers of carbon monoxide poisoning in the home and recommends inspection of heating and venting systems along with all natural gas appliances. This advertisement also suggests that qualified heating contractors can be found in the Yellow Pages and provides the telephone numbers for Public Service Appliance Repair.

e. Staff argues that the Update costs should be disallowed because the text of the advertisements includes the telephone numbers for Public Service's Appliance Repair. Public Service responds that both advertisements are directly related to consumer safety. Further, to the extent that there is any connection to the unregulated Appliance Repair business, Public Service argues that an allocation between regulated and non-regulated businesses already has been made in accord with its Cost Allocation Manual.

f. The Commission agrees with Public Service on the three disputed advertisements. The Built Green Ad addresses energy conservation while the Update advertisements address serious safety issues. Moreover, any overlap with the non-regulated businesses is accounted for through the cost allocation process. The Commission will grant the recovery of $301,713 in advertising expenses.

5. Inclusion of a Full Year's Depreciation on Added Plant in Service

[18] a. Historically, the Commission has allowed Public Service a half-year of depreciation on plant added during the test year. The Company asks in this filing for a full year of depreciation on its entire year-end plant balance. Public Service contends that this adjustment would more accurately match depreciation expenses with the level of the plant in service when the rate approved goes into effect. Again, the Company argues that this is an attrition alleviating adjustment.

b. The OCC opposes this adjustment with much the same rationale as it used to oppose the inclusion of CWIP. The OCC argues the matching principle again is violated because the Company does not recognize full-year benefits or cost reductions resulting from new plant additions. The OCC believes that none of the costs associated with these facilities should be recognized unless all the benefits are fully recognized as well. Staff's statement of position echoes the OCC's position.

c. The Commission agrees with the Staff and the OCC. This proposed adjustment violates the matching principle of the test year concept and should be rejected. Though the Company wants to bring forward depreciation expenses, it fails to bring forward any changes in revenue, expenses, and investment that would occur in the future. The adjustment for full year depreciation on year-end plant balances is rejected.

6. Depreciation

a. Introduction

[19-23] (1) The USOA prescribed by this Commission for Colorado gas utilities defines depreciation as the loss in service value not restored by current maintenance, incurred in connection with consumption or prospective retirement of gas plant in the course of service from causes which are known to be in current operations and against which the utility is not protected by insurance. Among the causes to be given consideration are wear and tear, decay, action of the elements, inadequacy, obsolescence, technology changes, changes in demand and requirements of public authorities, and, in the case of natural gas companies, the exhaustion of natural resources. 18 C.F.R., Pt. 201, ¶ 12.B. Depreciation, as used in accounting, is a method of distributing fixed capital costs, less net salvage,

over a period of time by allocating annual amounts to expense. Normally, the period of time over which the fixed capital cost is allocated to the cost of service is equal to the period of time over which the asset renders service, i.e., its service life.

(2) Life analysis and life estimation are terms used to describe the two-step process for estimating the mortality characteristics of tangible capital asset, or plant. Life analysis is generally a mechanical process using statistical techniques to describe life characteristics. The mathematical expressions used to describe the life characteristics are known as survivor curves. The second step, life estimation, is the prediction of the expected remaining life of the plant.

(3) The most critical element in the measurement of the consumption of service value of an asset or a group of assets is the method of allocating the service value over the service life. The straight-line method of allocation, which assumes that an asset renders approximately equal amount of service in each year of its service life, is almost universally accepted for accounting and ratemaking purposes.

(4) Depreciation techniques describe the life statistic, or life span, used in a depreciation system. A life statistic, or life span, is the time from installment of the asset to its retirement, usually measured in years. The most common techniques are whole life and remaining life. The whole life technique results in the allocation of gross plant base over the total life of the assets. Under the remaining life technique, the undepreciated original cost of the asset, less net salvage, is depreciated over the remaining life of the asset.

(5) The depreciation procedure identifies the level of grouping or subgrouping within a particular depreciation category, usually a plant account or subaccount, that is combined with the depreciation method to produce a weighted average accrual for the plant account. The selection of the group procedure is a means for weighting the lives of the individual units within a group. The three most common group procedures are at issue in this proceeding: the Broad Group, the Vintage Group, and the Equal Life Group.

(6) Under the Broad Group average service life procedure, all units of plant within a particular depreciation category, usually a plant account or subaccount, are considered to be one group. The Vintage Group ('VG') average service life procedure divides plant into vintages according to the year the plant was added. Each vintage group is analyzed separately to determine its average life. All vintages are combined to produce the average service life for the plant class. In the Equal Life Group ('ELG') procedure, the property group or account is subdivided into groups of equal life based on the estimated survivor characteristics of the account. The depreciation for each group of equal life is based on the straight-line method, that is, an equal amount of the group's service value is recorded as depreciation in each year of service. The total depreciation for the account is the summation of the depreciation for each equal life group.

(7) The current depreciation rates applicable to the Company were, for the most part, determined based on the straight-line, whole life method using the Broad Group procedure. The normal procedure at this Commission for requesting a change in depreciation methods, rates and salvage value is, and has been, to submit a letter with the full depreciation study to the Chief of the Utilities Section before a rate case. Then, Staff, the utility, and other appropriate parties can work out the details over a six-month period. Once the details are worked out, or the disputed issues are narrowed, the Chief of the Utilities Section sends a letter to the utility setting the method of depreciation, the lives, and salvage values which Staff believes are reasonable. The letter does not bind the Commission for rate proceedings. However, this process reduces the time spent in a rate case hearing on depreciation issues. Public Service's choice to fully litigate all depreciation issues here unnecessarily consumed considerable hearing time.

b. Public Service

The current depreciation rates applicable to the Company are, for the most part, determined based on the straight line, whole life method using the Broad Group procedure. Public Service asks the Commission to allow a change to newly calculated average service lives and net salvage values applied to the ELG procedure with a straight-line remaining life method. The Company argues, primarily, that ELG will more accurately reflect actual plant depreciation. Public Service acknowledges that ELG will account for more depreciation in the early years, but contends that remaining life technique provides proper recovery over time. In support, the Company presents its recent, comprehensive depreciation study. Exhibit K, Stout Testimony, exhibit WMS-1.

c. Staff

(1) The Staff vigorously objects. While acknowledging that ELG mathematically provides a better matching of the life of the individual units of plant within the determination of the expected service life, the Staff does not believe the procedure is appropriate in practice for Public Service's gas plant. Staff notes that the actual and theoretical reserve balances do not indicate a need for ELG. There are presently, in fact, excess depreciation balances. All parties agree that shifting to ELG would create even more excess depreciation in the short run. Public Service argues that the excess will even out in the long run, but Staff contends that the long run could be as long as 30 years. All parties agree that ELG has not been widely adopted for gas plant.

(2) While Staff reviewed and relied, in part, on the Public Service study, it made its own judgments and calculations, and completed its own depreciation study in preparation for hearing. Key points of difference between the two studies are the estimated survivor curves and net salvage percents for individual plant accounts. While the Staff agreed with Public Service in over 90% of the calculations, there are significant differences on the remaining few survivor curves and salvage calculations.

(Publication page references are not available for this document.)

(3) Based upon its own study, and its review of the Company's study, Staff argues that Public Service's levels of retirement are relatively low. Because of the mathematical and statistical nature of ELG, low retirement levels jeopardize its accuracy. In this same vein, the Staff argues that ELG demands complete and complex plant records, records not kept by Public Service.

(4) In conclusion, the Staff argues that the more appropriate technique is the VG procedure. Staff argues that VG is an improvement on the Broad Group procedure presently used by the Company because it better matches the plant to its actual depreciation. The Staff argues, too, that the Company does have the records to move to VG, and VG would not increase excess depreciation reserves. The Staff argues that the Commission should adopt Staff's survivor curves and salvage calculations, adopt VG procedure, and adjust the depreciation balances to account for the admitted over-accrual.

d. OCC

The OCC also objects to the Company's proposed shift to ELG. It argues first that there is no provable basis for the claim that the ELG provides a better match between cost recovery and capital consumption. Second, it argues that ELG is more sensitive to the shape of the survivor curve. Lastly, the property records of Public Service are inadequate for ELG. The OCC prefers the Broad Group procedure, believing it is more forgiving of errors in selecting the survivor curves.

e. The Commission

(1) The Commission agrees with the Staff, for the reasons put forward by Staff, and will adopt the VG procedure. One of the most striking points for rejecting ELG is the Company's lack of adequate records. A simple example from the Company is illustrative.

(2) At hearing we asked the Public Service witness whether various plant items were separated by material. For example, distribution pipe has changed over the years from cast iron, to millwrap steel, to polyethylene. Mains have changed as well. Notwithstanding these clear differences that affect service life, the Company made no distinctions in its records or in its depreciation study.

(3) We will adopt also the adjustment to depreciation reserves proposed by the Staff. As argued by the Staff, and admitted by Public Service, the present depreciation reserves are somewhat high. What that indicates, essentially, is that the Company has unintentionally overcollected from the present ratepayers. While, ELG could smooth out this reserve situation over the next 30 years, that is too long. By adopting VG we can avoid compounding the problem, and by adopting the suggested depreciation adjustment, we can bring the accounts back in line sooner.

(4) In summary, the Commission adopts Staff's proposals for implementing the VG procedure with the remaining life technique for calculating depreciation expenses and the flow back of the excess accumulated depreciation reserve. Further, based

on the record as a whole, the Commission finds that the survivor curves, service life, and net salvage estimates made by Staff are just and reasonable and are adopted by the Commission. For accounting purposes, Public Service shall book the new depreciation method and rates effective January 1, 2001.

(5) Public Service shall submit to the Chief of Utilities within six years of the final order in this docket, but no earlier than four years, a letter with a depreciation study to review its depreciation method, lives and salvage as well as all associated matters.

7. Recovery of GCA Interest

[24, 25] a. Public Service proposes a $1,063,638 addition to Administrative and General Expense for the interest expense related to unrecovered balances of gas costs in Account No. 191. Public Service states that these costs are not recoverable through the gas cost recovery mechanism established under the Gas Cost Adjustment ('GCA') Rules, 4 CCR 723-8. Specifically, Rule 4 CCR 723- 8-4.5 requires that Public Service pay interest for over-recovery of gas costs, but prohibits recovering interest for under-recovery of gas costs. Public Service argues that the interest expense is a legitimate expense incurred in the test year, and concludes that this 'asymmetrical' treatment is unfair.

b. Staff and the OCC recommend that the Commission reject the recovery of this interest expense. Staff argues that recovery is specifically prohibited by the GCA Rules, and that Public Service could recover these costs through the GCA mechanisms by: (1) making more frequent GCA filings, (2) obtaining a waiver of the existing interest recovery rule, or (3) petitioning the Commission to open a new rulemaking docket to address the issue. Staff further contends that it would be inappropriate to place this item in base rates, especially, when Public Service recently removed all GCA-related costs from base rates in its last Phase II rate case, Docket No. 99S-609G.

c. The OCC points out that the Commission denied Public Service's request for interest on under-recovery in the past, stating '...while significant under-recoveries have occurred in the past, the Commission finds that the utility has some control over these costs through additional GCA filings. Customers, however, have no recourse if the GCA rates cause an over-recovery.' The OCC argues that this reasoning is still sound. (Hearing exhibit R, page 18, lines 20-23, citing Decision No. C97-376, Docket No. 96R-089G). The OCC further argues that the GCA rules allow Public Service to make as many interim filings as the Company deems appropriate. The OCC also argues that Public Service's proposal would embed a specific interest charge in base rates that would remain in effect until new base rates are set in the future, regardless of whether it over-or under-recovered costs in that period.

d. Public Service's proposal to include interest from GCA under-recoveries in this base rate proceeding is denied. We find that if this adjustment were included, all rates until the next rate case would improperly include an allowance for this magnitude of under-recovery, whether Public Service is actually under-recovering or over-recovering. GCA rates were correctly separated from base rates in the last Phase II rate case, and this proposal would again cross these issues. In addition, Public Service was unable to identify specific interest charges actually incurred as the basis for their proposal.

e. We find that 'asymmetrical' treatment of interest on under/over-recovery of gas costs is appropriate. This 'asymmetrical' treatment of interest is based on symmetrical principles. Under the GCA rules the utility has an incentive to neither under-forecast as it will not receive interest payments, nor over-forecast as it will pay interest charges. Public Service has a degree of control over its costs through expedited GCA filings, forecasting, and volatility mitigation measures. Customers, on the other hand, have no control over GCA rates.

f. This structure is one of the few incentives in the GCA Rules that causes utilities to strive accurately to match gas purchase and resale prices. Given the gas price volatility we have experienced in recent years, it is important to signal customers about market prices through the timing of price increases and decreases. Prior Commission orders clearly address these issues, and the Commission affirms its rationale and position relative to recovery of these costs by Public Service. The proposal to recover the unrecovered balances of gas costs in Account No. 191 is denied.

8. Costs Associated With Leyden

[26-28] a. Public Service proposes depreciating the Leyden storage field and related facilities ('Leyden') over the coming five years because it intends to decommission Leyden in the near future. Public Service also proposes the recovery of estimated decommissioning costs of approximately $8.6 million as negative future net salvage over the same period. Finally, the Company proposes to recover Leyden-related engineering buffer study costs of $1,228,269 and compensatory damages of $2,392,782 [FN4] over a 21-month amortization.

b. The OCC argues that the Commission should deny all of Public Service's proposed cost recovery associated with decommissioning of the Leyden facility in this docket. The OCC contends that it would be more appropriate to consider all of the cost recovery issues related to Leyden decommissioning in a single and separate proceeding.

c. Staff opposes the recovery and amortization of costs related to compensatory damages in the Leyden litigation because of the courts' categorization of these costs as arising from 'willful, wanton, or reckless disregard.' Staff recommends excluding the engineering buffer study costs because they were incurred, largely, outside the test year. Lastly, Staff recommends that the Commission deny recovery of the decommissioning costs because of the level of uncertainty about the amount of those costs. Staff concurs with a five-year depreciation of current Leyden plant.

d. The Commission agrees with a five-year depreciation of current Leyden plant. Public Service shall file a decrease to the rate rider authorized by this Decision upon full recovery or the completion of the five-year amortization period, whichever is earlier. Further, Public Service shall note on a preface page in its tariffs, that the associated GRSA rider 'includes accelerated Leyden depreciation and is valid through [date, not to exceed five years].'

e. The Commission finds that Public Service's proposed recovery of costs for decommissioning, the engineering buffer study, and compensatory damages are not appropriate in this docket. The engineering buffer study costs are not appropriately contained in the test year, the decommissioning costs are highly speculative, and the compensatory damages would be more appropriately recovered, if at all, in a docket addressing the prudence of cost recovery for Leyden.

G. Construction Allowance

[29-31] 1. On January 29, 2001, Public Service filed an application for RRR of Decision No. C01-15. On February 6, 2001, HBA filed a motion for leave to respond with an attached response to the application for RRR.

2. Advice Letter 566-Gas, as filed, includes certain replacement tariff sheets. One of those replacement sheets is Second Revised Colorado P.U.C. Sheet No. R43-Construction Allowances by Service Class, canceling First Revised Colorado P.U.C. Sheet No. R43. The Advice Letter did not include a proposed replacement for the present Sheet No. R34 of the Public Service tariff describing the method for determining the construction allowances even though the method contemplated by the replacement Sheet No. R43 is new.

3. On November 16, 2000, HBA filed a motion to dismiss the construction allowance issue, arguing that proper notice of the calculation method change had not been provided. The Commission denied the motion, finding that under all attendant circumstances the notice provided met the statutory standard. Commission Decision No. C00-1408.

4. HBA and Staff filed answer testimony on or before November 16, 2000. Both parties attacked Public Service's proposed calculation method set forth in Public Service's testimony, a method contrary to the relevant, present tariff page. On December 19, 2000, Public Service filed further testimony about the calculation of construction allowances. Public Service acknowledged many of the criticisms of its proposed method of calculating the construction allowance, and proposed yet another method. No party had notice of the new proposal before the December 19, 2000, filing.

5. HBA moved to strike all testimony related to the construction allowance issue. HBA argued that the new method relied upon documents as old as 1995. HBA said it did not have enough information and needed further discovery to make needed calculations and analysis before responding. HBA argued that it would not have a full and fair opportunity to deal with the new calculation method, and asked that

the issue be stricken from the docket.

6. Public Service acknowledged that HBA 'has not had a full opportunity to respond to Public Service's alternative Construction Allowance methodology ... .' Public Service argued that the Commission could remedy the situation by providing for further discovery. Public Service concluded that by adopting discovery and filing alternatives, HBA could receive fair notice and a reasonable opportunity to be heard. The Commission disagreed.

7. The Commission granted HBA's motion finding that '[t]he changing premise of Public Service's construction allowance testimony warrants removing it from this proceeding. HBA, Staff, and other parties cannot be expected to hit a moving target. Implicit was the finding that the constantly shifting position would deprive the HBA of its due process rights to a full and fair opportunity to be heard. All testimony, and consequently the issue, regarding the construction allowance was stricken from the docket. Decision No. C01-15. Public Service then filed what it called an application for RRR.

8. Procedurally, Public Service's filing is not an application for RRR. Decision No. C01-15 is an interim order not subject to an application for RRR. Section 40-6-114, C.R.S., regarding applications for RRR, clearly contemplates final applicable orders, as evidenced by § 40-6-114 (5), C.R.S., allowing a district court to stay a Commission decision pursuant to § 40-6-116, C.R.S. We construe the Company's filing as a motion to modify an interim decision. Commission's Rules of Practice and Procedure, 4 CCR 723-1-86. As such, the motion for leave to file a response is unnecessary; the response will be accepted and considered.

9. Public Service argues that 'once the Commission has exercised its authority to suspend a proposed rate or tariff change, it is limited' to having a full hearing on each change or allowing the changes to go into effect. There are no alternatives.

10. HBA strikes at the heart of the matter, saying: 'the Commission was confronted with a major due process problem created by PSCo's own conduct.' HBA continues, arguing that 'PSCO ...failed to support its original proposal, with full notice to all interested parties.' We agree with HBA.

11. We note first that Public Service fails to acknowledge that it failed to file a replacement tariff sheet R34 explaining the calculation of the construction allowances. Leaving R34 in place, but naming new allowances in R43 conflicting with R34, creates notice problems even without the Company's shifting theories.

12. However, when this issue of conflicting tariffs first was raised, the Commission looked at the totality of the record to determine whether the notice rights of the parties and statutory requirements had been met. Section 40-3-104(1), C.R.S. (regulates the nature and timing of tariff change notice); Decision No. C00-1408. We found that given all attendant circumstances at the time of the first motion to dismiss, notice of the allowance changes and the method changes

had been provided. That is no longer the case.

13. As noted in Decision No. C01-15, the parties cannot reasonably be expected to continue chasing, let alone hitting, a moving target. The Commission cannot procedurally allow any party to continuously shift positions to the detriment of other parties. All parties by constitution and statute are entitled to fair notice and a full and fair opportunity to meet the opposition. The last shift in theories by Public Service denied the other parties a full and fair opportunity to meet the construction allowance issue. To go forward would have been a denial of the due process rights of the parties.

14. HBA also argues that the Company's last shift in theory leaves the original tariff sheet without support. HBA is correct. Public Service admits that its originally proposed method was flawed. It essentially admits that tariff sheet R43 is without support. Tariff sheet R43 also conflicts with R34 which was never amended by the Company to conform to the evidence.

15. Based upon the record as a whole, including the testimony, the admission, and the arguments, we find that substitute page R43 filed with Advice Letter 566-Gas fails to meet the statutory notice requirements of § 40-3-104(1), C.R.S. We find, that to go forward with with the construction allowance issue would have been a denial of the due process rights of the parties. Given that substitute page R43 is unsupported by any evidence and the Company admits its underlying calculation method is flawed, we find that the tariff is not just and reasonable. Finally, we find that to the extent that the admittedly unsupported R43 tariff sheet is in conflict with second R34 tariff, it is not just and reasonable, and violates the basic tenets of due process. The tariff sheet in question, Second Revised Colorado P.U.C. Sheet No. R43-Construction Allowances by Service Class, canceling First Revised Colorado P.U.C. Sheet No. R43, is rejected, and all attendant testimony as stipulated is stricken.

H. Cost Allocation Rule Issues

[32, 33] 1. The Business Alliance raises issues related to Cost Allocation Rules, 4 CCR 723-47 ('Cost Allocation Rules'). The Cost Allocation Rules were adopted in Decision No. C97-306, modified on rehearing in Decision No. C97-485, to address cost allocation of regulated and non-regulated utility services, and related issues. The Cost Allocation Rules require that each utility file a Cost Allocation Manual ('CAM') disclosing how costs are allocated between regulated and unregulated functions, and providing a detailed method showing how specific costs are allocated. Pursuant to the Cost Allocation Rules, Public Service filed its CAM under Docket No. 98A-297EG, which was approved by Decision No. C00-154.

2. The Business Alliance contends that Public Service has not complied with the Cost Allocation Rules. First, it argues that Public Service has not properly identified cost allocations in its CAM. The Business Alliance claims that Public Service presented costs in its CAM as 'direct billed' when they are actually being allocated pursuant to an undisclosed formula. Second, the Business Alliance points

(Publication page references are not available for this document.)

out that Public Service did not provide cost studies as a part of this rate proceeding as required by the Cost Allocation Rules. The Business Alliance asks that the Commission: (1) find that Public Service did not correctly interpret the Cost Allocation Rules; (2) require that Public Service re-file its CAM; and (3) re-calculate the revenue requirement established in this proceeding and refund any excess revenues to ratepayers, as appropriate.

3. Public Service claims that it is in compliance with the Cost Allocation Rules. Public Service argues that its practice of directly assigning a cost, where a specific cost attributable to a non-regulated service or activity is readily ascertainable from the source documentation, meets the requirements of the Cost Allocation Rules and is preferable to allocation.

4. The Business Alliance and Public Service jointly filed a Stipulation of Facts outlining general information about Public Service's CAM and cost allocation principles. The stipulation also presents three issues of law, to be determined by the Commission:

a) Whether the apportionment of costs at the time of posting to certain Federal Energy Regulatory Commission ('FERC') accounts is a 'direct assignment' or an 'allocation' within the meaning of the Cost Allocation Rules;

b) Whether the recording in FERC accounts of certain costs on the basis of preset use fees or charges is a 'direct assignment' or an 'allocation' within the meaning of the Cost Allocation Rules; and

c) Whether Rule 723-47-5.1.2 is applicable to the publishing costs related to Update and other vendor charges that are directly charged to Account 417-50 at the time costs are recorded in the FERC accounts.

We agree with the Business Alliance position with respect to each of these three issues.

5. Public Service operates as if the Cost Allocation Rules do not apply to how costs are first booked in the Company's FERC accounts. Rather, it believes that the rules only apply to how costs in the booked FERC accounts are subsequently allocated. We disagree.

6. The Commission promulgated the Cost Allocation Rules in response to § 40-3-114, C.R.S.: 'The [C]ommission shall ensure that regulated electric and gas utilities do not use rate payer funds to subsidize nonregulated activities.' The Commission ensures against this subsidization through the application of cost allocation principles. Neither the statute nor the Cost Allocation Rules limit the application of cost allocation principles to certain areas of accounting. Public Service itself acknowledges that shared costs are 'directly assigned' on the basis of preset use fees or accounting subsystems, the preset use fees or subsystems are allocation methods that this Commission requires be established in the utility's CAM.

7. The apportionment of costs at the time of posting to FERC accounts is an 'allocation' within the meaning of the Cost Allocation Rules, and the recording in FERC accounts of costs on the basis of preset use fees or charges is an allocation method within the meaning of the Cost Allocation Rules. The Business Alliance is not 'raising issues of semantic hair-splitting,' as Public Service argues. Rather, the Business Alliance is pointing out areas where Public Service has grossly abused Commission rules.

8. We also disagree with Public Service's interpretation that because an outside vendor is contracted to produce Update, the costs billed by the vendor are 'direct assignments.'Update is produced under Public Service's or its affiliate's direction, and the service is shared by regulated and unregulated entities. The record in this docket does not establish whether 'columnar inches' is a proper allocation method, but, again, this is clearly a cost allocation between regulated and nonregulated entities that this Commission has mandated be established under the Cost Allocation Rules.

9. Next, we agree with the Business Alliance that the Cost Allocation Rules require that Public Service file a Fully Distributed Cost ('FDC') study in this proceeding. Specifically, Rules 4 CCR 723-47-3 and 4 state: 'If cost allocation is at issue in a formal Commission proceeding, the utility shall: ... . If the utility has the burden of proof in the proceeding, perform a fully distributed cost study ... .' The Business Alliance states that it intervened and sought discovery in Public Service's recent Phase II gas rate case, Docket No. 99S-609G. The Business Alliance claims that Public Service took the position that the cost allocation the Business Alliance was interested in is actually done in Phase I. Public Service did not refute this claim. We find that cost allocation was properly at issue in this proceeding, and the Cost Allocation Rules obligated Public Service to perform an FDC study in this proceeding. Though Public Service did not request a waiver of Rule 4 CCR 723-47-3 and 4, we find it necessary to waive these rules in this proceeding.

10. Public Service shall re-file its CAM. In addition, we find that Public Service's failure to perform an FDC study as a part of this proceeding warrants requiring that Public Service file an FDC study with its re-filed CAM. We recognize that a CAM approval proceeding realistically cannot be completed prior to the next Phase I rate case scheduled for 2002. Therefore, Public Service shall file its revised CAM, with an FDC study, six months before filing the 2002 Phase I gas rate case. Approval of the CAM will then be addressed as a part of the rate case pursuant to Rule 4 CCR 723-47-6.3.

11. The Business Alliance asked that the Commission recalculate the revenue requirement established in this proceeding and refund any excess revenues to the ratepayers. The Business Alliance could have argued for disapproval of accounts or costs and associated dollar amounts where Public Service did not meet its burden. This it did not do. To ask the Commission to attempt to address the problem after the fact is not practical. The request of the Business Alliance is denied.

I. Attachment A

A detailed presentation of the Commission's specific findings regarding the Company's gas department operating statement, rate base, and rider determination are set forth in Attachment A to this Order. As discussed in this Order, the Commission finds that the appropriate overall rate of return, based on an 11.25% cost of equity is 9.33%; the appropriate jurisdictional rate base is $827,102,629; and the appropriate net operating earnings after granting a $14,216,694 rate increase to the gas department are $77,168,675. Finally, the general rate schedule adjustment rider for sales gas customers is 5.23% and the general rate schedule adjustment rider for transportation customers is 6.30%.

II. ORDER

A. The Commission Orders That:

1. The tariff sheets filed by Public Service Company of Colorado pursuant to Advice Letter No. 566-Gas, filed on July 17, 2000, are permanently suspended.

2. Public Service Company of Colorado is permitted to file, on the effective date of this order, appropriate tariff sheets to reflect General Rate Schedule Adjustment riders in the amount of 5.23% applicable to all sales gas customers and in the amount of 6.30% applicable to all transportation customers. The General Rate Schedule Adjustment riders may be filed to become effective on one-day notice. The General Rate Schedule Adjustment riders shall be applied to customer classes consistent with this Decision. To the extent that certain authorized recoveries discussed above are embedded in rates with specific amounts or recovery times, e.g., aggregated load balancing costs, certain administrative and general costs, weather normalization lost revenue, and costs associated with Leyden, Public Service Company of Colorado shall note on a preface page in its tariffs the outside allowable ending date, and adjust the rider accordingly at the appropriate time.

3. The motion of the Public Service Company of Colorado for admission pro hac vice of J. Patrick Nevins is granted.

4. The motion of Public Service Company of Colorado to file its statement of position one day out of time is granted.

5. The motion of Home Builders Association of Metro Denver for leave to respond to the application for rehearing, reargument, or reconsideration is denied as moot.

6. The motion of the Public Service Company of Colorado to modify Decision No. C01-15 is denied in accordance with the above discussion.

7. This Decision and Order shall be considered a final decision subject to the provisions of §§ 40-6-114 and 40-6-115, C.R.S.

8. The 20-day time period provided for in § 40-6-114(1), C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the mailing or serving of this Decision.

9. This Order is effective upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING March 7, 2001.

Attachment A
Public Service Company of Colorado
Gas Department -- General Rate Schedule Adjustment Rider
12 Months Ended December 31, 1999

Line No.	Item	Jurisdictional Sales Service	Jurisdictional Transportation Service	Total
1	Pro Forma Base Rate Revenue	$242,278,419	$24,401,115	$266,679,534
2				
3	Required Revenue Increase			$14,216,694
4				
5	Required Revenue Increase --			
6	Directly Assigned (GMS)	$0	$259,389	$259,389
7				
8	Required Revenue Increase			
9	Allocated	$12,680,215	$1,277,090	$13,957,305
10				
11	Percent of Base Rate Revenue	5.23%	5.23%	5.23%
12				
13	Total Required Revenue Increase			
14	Allocated and	$12,680,215	$1,536,479	$14,216,694

	Assigned		
15			
16	Percent Rider	5.23%	6.30%

FOOTNOTES

FN1 At the time Multiple Intervenors filed its petition, the group was comprised of Anheuser Busch Co., Coors Brewing Company, Duke Energy Field Services, Inc., Greeley Gas Company, Holnam, Inc., and Lockheed Martin Astronautics, individually and collectively.

FN2 By Decision No. C00-1262, dated November 9, 2000, the Commission granted a motion filed by Melody Homes, Inc., to withdraw intervention.

FN3 Public Service submitted information regarding pure gas companies, but as noted, under these circumstances, it is appropriate to give the greater weight to combination companies.

FN4 The compensatory damages were awarded in Jefferson County District Court case number 96CR2215 against Public Service. The trial court decision was upheld on appeal. 98CA1950.

EDITOR'S APPENDIX

PUR Citations in Text

U.S.Sup.Ct.] Federal Power Commission v. Hope Nat. Gas Co., 51 PUR NS 193, 320 U.S. 591, 88 L.Ed.2d 333, 64 S.Ct. 281 (1944).

END OF DOCUMENT

September __, 2006

Consumer name
address
City and State, Zip code

RE: ***State of Tennessee v. Fairfield Glade Community Club,*** Dkt. No. 06C2575, Circuit Court, Part 2, Davidson County

Dear Consumer:

The Tennessee Attorney General's Office and the Tennessee Division of Consumer Affairs, have, in the public interest, entered into an Assurance of Voluntary Compliance with the Fairfield Glade Community Club, the property home owners' association for Fairfield Glade Resort near Crossville, Tennessee. The Community Club has been responsive to this Office's concerns.

The State is pleased to inform you that the Community Club has agreed to forgive your delinquent accounts and to credit your account accordingly, as of the date of the entry of the Assurance of Voluntary Compliance. The total amount of forgiven assessments for all consumers is approximately $_,___,___.00. Further, you have the opportunity to have a credit report corrected if a negative entry has been made. In order to correct a credit report, notify _____at the Community Club who will correct any negative credit report derived from your delinquent club member account at Fairfield Glade Community Club **by (insert date).**

If you have any questions regarding this settlement, please call, toll free XXXXXX.

Sincerely,

MICHAEL E. MOORE
Acting Attorney General

99303ic02mdv

cc: Meredith DeVault