ADVANCE SHEET HEADNOTE
January 13, 2025

2025 CO 1

No. 24SA46, *Holcim U.S. Inc. v. Colorado Public Utilities Commission* —Utility Regulation —Just and Reasonable Rates.

In this appeal taken pursuant to section 40-6-115(5), C.R.S. (2024), appellant contends that the Colorado Public Utilities Commission (the "PUC") (1) set an unjust and unreasonable charge for electricity over a five-day period because the charge allegedly had no relationship to the electricity that appellant used during that period and disproportionately allocated utility costs to appellant and (2) committed a taking in violation of the Fifth Amendment when it purportedly set this charge.

The supreme court now concludes that the charge that the PUC imposed was just and reasonable and that, although appellant did not adequately develop its takings claim, it did present a due process claim. As to that claim, the court concludes that Holcim did not establish a violation of its due process rights.

Accordingly, the court affirms the district court's judgment upholding the PUC's determination in this case.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2025 CO 1

Supreme Court Case No. 24SA46
Appeal from the District Court
District Court, City and County of Denver, Case No. 22CV30911
Honorable Andrew J. Luxen, Judge

Petitioner-Appellant:

Holcim U.S. Inc.,

v.

Respondents-Appellees:

Colorado Public Utilities Commission, Eric Blank, Megan M. Gilman, and John Gavan,

and

Intervenors-Appellees:

Black Hills Colorado Electric LLC and Office of the Utility Consumer Advocate.

Judgment Affirmed
en banc
January 13, 2025

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JUSTICE GABRIEL delivered the Opinion of the Court, in which **CHIEF JUSTICE MÁRQUEZ**, **JUSTICE BOATRIGHT**, **JUSTICE HOOD**, **JUSTICE HART**, **JUSTICE SAMOUR**, and **JUSTICE BERKENKOTTER** joined.

JUSTICE GABRIEL delivered the Opinion of the Court.

¶1 In this appeal taken pursuant to section 40-6-115(5), C.R.S. (2024), the appellant, Holcim U.S. Inc., contends that the Colorado Public Utilities Commission (the "PUC") (1) set an unjust and unreasonable charge for electricity over a five-day period because the charge allegedly had no relationship to the electricity that Holcim used during that period and disproportionately allocated utility costs to Holcim and (2) committed a taking in violation of the Fifth Amendment when it purportedly set an excessive charge for Holcim without evidence that the charge reflected the cost of service rendered by the electric utility, Black Hills Colorado Electric LLC.

¶2 Applying the deferential standard of review that we afford the PUC, we now conclude that the charge that the PUC imposed was just and reasonable. We further conclude that although Holcim did not adequately develop its takings claim, it did present a due process claim. As to that claim, we conclude that Holcim did not establish a violation of its due process rights here.

¶3 Accordingly, we affirm the district court's judgment upholding the PUC's determination in this case.

I. Facts and Procedural History

¶4 From February 13 through February 17, 2021, Black Hills and other utilities serving Colorado customers faced a severe arctic cold weather event that came to

be called "Winter Storm Uri." During this weather event, natural gas wells and production and processing facilities in certain parts of the United States froze off, taking a major portion of the nation's gas supply offline. At the same time, the record-breaking cold temperatures led to increased demand for natural gas.

¶5 To ensure sufficient natural gas supplies to allow it to continue providing electric service to its customers during the extreme weather event, on February 12, 2021, Black Hills made spot market purchases for the four-day period beginning on February 13 (Black Hills ultimately did not make any daily gas purchases on February 16 for delivery on February 17). Due to the extreme and persistent cold temperatures, Black Hills made these purchases based on the highest of its forecasted requirements for the ensuing four-day period.

¶6 The interplay of the extreme cold, freeze-offs of natural gas production, and high customer demand for natural gas greatly impacted natural gas prices during this period. Before February 12, daily natural gas prices hovered around $3 per dekatherm ("Dth"). During the day on February 12, in contrast, daily prices for gas to be delivered on February 13 began spiking, resulting in midpoint settlement prices ranging from $187.69 to $224.56 per Dth. Prices remained at heightened levels through February 18.

¶7 As a result of these price increases, the average price that Black Hills paid for its baseload and daily gas purchases for Winter Storm Uri was $106.32 per Dth,

resulting in total natural gas costs of $23,188,089 for the five-day period from February 13 through February 17, 2021. Black Hills then sought to recover these extraordinary costs.

¶8 In order to mitigate "rate shock" to customers and to assess whether Black Hills and other utilities prudently incurred these kinds of extraordinary costs, the PUC ordered the utilities to delay charging customers for their natural gas purchases during the extreme weather event and to submit an application to the PUC for approval of a cost recovery method.

¶9 In accordance with the PUC's order, Black Hills filed a verified application to recover the extraordinary costs that it had incurred. PUC Trial Staff, the Colorado Office of the Utility Consumer Advocate, and the Colorado Energy Office then intervened as of right in the proceeding that Black Hills had initiated, Holcim permissively intervened, and the PUC referred the matter to an administrative law judge ("ALJ") for consideration.

¶10 Subsequently, all of the parties to the proceeding except Holcim entered into a proposed settlement agreement, which they presented to the ALJ for approval. This settlement agreement proposed an Extraordinary Gas Cost Recovery Rider ("Recovery Rider") that would be charged to Black Hills customers on a volumetric basis in the same way that Black Hills's usual cost recovery method, the "Energy Cost Adjustment" ("ECA"), is applied to customers.

¶11 Black Hills ordinarily recovers its natural gas costs through the ECA. The ECA is a volumetric charge applicable to all rate schedules, meaning that Black Hills charges its customers a uniform per-kilowatt-hour rate on their electricity usage. In imposing this charge, Black Hills directly passes on the costs of natural gas to customers and does not profit from this pass through. This type of rate structure is known as a "fuel adjustment clause," and it is common throughout the United States. *See* Sandra L.K. Davidson, Annotation, *Validity of "fuel adjustment" or similar clauses authorizing electric utility to pass on increased cost of fuel to its customers*, 83 A.L.R.3d 933, § 2(a) (1978); 64 Am. Jur. 2d *Public Utilities* § 111 (2024).

¶12 The settlement agreement proposed that Black Hills would pass the extraordinary gas costs that it incurred during Winter Storm Uri on to its customers through a similar uniform volumetric rate applicable to all rate schedules. The principal difference was that Black Hills proposed to pass on the extraordinary costs over a longer period of time. Specifically, whereas under the ECA, Black Hills would have passed these costs on to customers over a twelve-month period, under the Recovery Rider, Black Hills would amortize these costs over a two-year period, lessening the "rate shock" that customers would have experienced had Black Hills sought to recover the extraordinary costs over the shorter period of time.

¶13 Holcim, which, at the time, was among Black Hills's largest retail electric customers, alone opposed this proposed settlement. In its view, the proposed Recovery Rider would have required it to pay more than its fair share of the costs associated with Winter Storm Uri because it claimed to have conserved energy during that weather event and thus used substantially less electricity during that period than it did in the ensuing ten days. According to Holcim, this resulted in almost $2.57 million in avoided fuel costs, exclusive of carrying costs.

¶14 Holcim further claimed that applying a single volumetric rate to it would be unfair and would violate the principle that rates should be based on cost-causation principles to the extent possible. A more equitable design, Holcim asserted, would allocate the costs that Black Hills had incurred in connection with the weather event based on the proportional energy use of Black Hills's retail customers during that event, as opposed to during the ensuing two years. Holcim thus proposed an alternative rate design under which volumetric rates would have varied by customer class (e.g., residential, small general service, large general service, large power service, and lighting). Under Holcim's proposal, approximately $2 million of Black Hills's extraordinary costs would have shifted to the residential class, while the costs to be paid by Holcim would have decreased substantially.

¶15 The ALJ rejected Holcim's proposal, concluding that it was not in the public interest. The ALJ reached this conclusion for six primary reasons. First, the ALJ

observed that the PUC had previously decided that Black Hills must recover fuel costs through the ECA, and the PUC had suggested that a similar mechanism should be used to recover the extraordinary costs incurred during Winter Storm Uri. Second, adopting Holcim's approach would call into question the ECA, which the PUC had already decided was in the public interest. Third, the proceeding before the ALJ was not a "Phase II rate proceeding," in which Black Hills's costs would have been allocated based on a class cost of service study and in which the rate would have been determined based on such cost allocations. Here, the ALJ noted, because no class cost of service study had been conducted, there was no evidence from which the ALJ could determine whether it would be proper to reallocate costs between ratepayer classes. Fourth, the evidence did not establish any efforts by Holcim to conserve electricity during the weather event. Fifth, Holcim had proposed a rate based on the principle of cost causation that applied only to it, while failing to propose individual rates for other ratepayers who had consumed less electricity than normal during Winter Storm Uri. In the ALJ's view, such a result would not be just and reasonable. Finally, Holcim's approach would likely have required extending the amortization period beyond two years, but, the ALJ noted, this would not have been acceptable to Black Hills because it would have extended Black Hills's carrying costs.

¶16 In contrast, the ALJ determined that the compromises reached by the settling parties in the proposed settlement agreement produced a just and equitable result for Black Hills, its ratepayers, and the other parties to the proceeding. In particular, the ALJ found that the Recovery Rider's volumetric rate, as agreed to by the parties to the settlement agreement, was just and reasonable.

¶17 Holcim then filed exceptions to the ALJ's ruling with the PUC. In its exceptions, Holcim reiterated its argument that the Recovery Rider did not reflect the costs of service and was not just and reasonable because it resulted in Holcim's paying over $2.6 million more than it believed was appropriate based on its electricity usage during the weather event. Holcim also argued, for the first time, that the rate proposed in the settlement agreement and approved by the ALJ amounted to an unconstitutional taking without due process because, in Holcim's view, the ALJ's decision was not supported by sufficient findings and explanation.

¶18 The PUC rejected Holcim's arguments and approved the settlement agreement.

¶19 Regarding Holcim's contentions as to its electricity use during the weather event, the PUC concluded:

> Holcim's (or any individual ratepayer's) actual use over [the weekend of the weather event] had no bearing on the costs Black Hills incurred. The record indicates that Black Hills went to market to procure natural gas based not on a real-time assessment of use during the weekend, but rather based on its two-day-ahead forecasts. Those forecasts were completed before the weather event had begun.

> Therefore, the record indicates that Holcim's actual usage (or any other individual customer's actual usage) was not a cause of Black Hills incurring the extraordinary fuel costs. The determination to incur those costs had taken place prior to and independent of Holcim's use during the event.
>
> . . . There was also no evidence that at any point prior to or during the extreme weather event that Holcim notified Black Hills that it was going to conserve energy. The record shows that the expert witness Holcim hired did not know why the company's usage was lower than might be projected for that holiday weekend. And Staff and Black Hills witnesses testified that it would be imprudent for Black Hills to reduce the amount it was purchasing without firm indications of how much conservation would be taking place. So, neither Holcim's actual use nor its actions impacted Black Hills' need to incur the extraordinary fuel costs.

(Footnotes omitted.)

¶20 Regarding Holcim's proposed rate structure, the PUC concluded that Holcim's proposal would have constituted an illegal preferential rate for Holcim, in violation of section 40-3-106(1)(a), C.R.S. (2024).

¶21 Finally, the PUC considered and rejected each of Holcim's constitutional claims. As to Holcim's takings claim, the PUC concluded, contrary to Holcim's underlying premise, that there is no constitutional right to a just and reasonable rate. Even if there were, however, the PUC concluded that the Recovery Rider did not violate any such right. And as to Holcim's claim that its due process rights were violated because the ALJ allegedly did not make sufficient findings or provide sufficient reasons to support his conclusions, the PUC determined that whatever shortcomings Holcim perceived with the ALJ's decision, the PUC had

remedied them by directly addressing Holcim's arguments. Specifically, the PUC observed that it had explained why Holcim's proposed rate design was unworkable and why the Recovery Rider was appropriate. As a result, the PUC concluded that Holcim was not deprived of any due process rights.

¶22 Holcim then sought judicial review of the PUC's decision in the district court, and that court ultimately affirmed the PUC's decision. The court found, among other things, that "a rate which treats all customers the same and reflects cost causation, the total customer usage forecast, is just and reasonable and is not arbitrary." *Holcim U.S. Inc. v. Colo. PUC*, No. 22CV30911, at *11 (Dist. Ct., City & Cnty. of Denver, Dec. 17, 2023). In addition, the court rejected Holcim's constitutional claims, finding that Holcim had not shown how the PUC's ratemaking constituted an unconstitutional taking and had not established any violation of its due process rights. *Id.* at *13–15.

¶23 Holcim now appeals to this court.

II. Analysis

¶24 We begin by setting forth the applicable standard of review and basic principles concerning the PUC's rate-making authority. We then address whether the PUC adopted a just and reasonable rate when it approved the Recovery Rider, and we conclude that it did. Last, we consider and reject Holcim's constitutional claims.

A. Standard of Review and Applicable Legal Principles

¶25 Colorado law vests in the PUC the authority to regulate rates charged by public utilities for service in this state. Colo. Const. art. XXV; § 40-3-102, C.R.S. (2024). The PUC "exists to protect consumers while affording monopoly status to the utility provider. To further this purpose, and pursuant to its constitutional and statutory mandate, the Commission's essential function is to ensure that all rate charges are fair and reasonable to ratepayers and the utility." *Pub. Serv. Co. of Colo. v. Pub. Utils. Comm'n*, 26 P.3d 1198, 1204 (Colo. 2001).

¶26 Judicial review of PUC rate decisions is relatively narrow, and courts extend considerable deference to the PUC's factual determinations. *CF&I Steel, L.P. v. Pub. Utils. Comm'n*, 949 P.2d 577, 584 (Colo. 1997); *Colo.-Ute Elec. Ass'n v. Pub. Utils. Comm'n*, 760 P.2d 627, 640 (Colo. 1988). In addition, this court has recognized that "[r]ate making is not an exact science but a legislative function involving many questions of judgment and discretion." *City of Montrose v. Pub. Utils. Comm'n*, 629 P.2d 619, 623 (Colo. 1981). Thus, courts review PUC decisions solely to determine whether (1) the PUC "has regularly pursued its authority," including a determination as to whether the PUC decision at issue violates any rights of the petitioner under the United States or Colorado Constitutions; (2) the PUC's decision is "just and reasonable"; and (3) the PUC's "conclusions are in accordance with the evidence." § 40-6-115(3).

¶27 Here, Holcim alleges that the Recovery Rider is not just and reasonable because it does not charge Holcim for the actual electricity that it consumed during the weather event. Accordingly, we will focus on the "just and reasonable" requirement.

¶28 In the context of reviewing a PUC rate-setting decision, we explained:

> Under the prevailing norms of utility regulation, rates are to be set at a level that covers the utility's legitimate costs and expenses in providing service to the public and a reasonable rate of return on its investment. Accordingly, the primary matters for PUC determination in the public interest are: (1) sufficiency of the rates to recompense the utility and maintain its operational viability for the purpose of serving the public; and (2) distribution of the revenue requirement between the various customer classes in a just and reasonable manner.

CF&I Steel, 949 P.2d at 584; *see also Pub. Serv. Co. of Colo. v. Pub. Utils. Comm'n*, 644 P.2d 933, 939 (Colo. 1982) (noting that "[t]he fixing of 'just and reasonable' rates involves a balancing of investor and consumer interests" and that "[t]he PUC must therefore set rates which protect both: (1) the right of the public utility company and its investors to earn a return reasonably sufficient to maintain the utility's financial integrity; and (2) the right of consumers to pay a rate which accurately reflects the cost of service rendered").

¶29 We have also made clear that, "[s]ince rate setting is a legislative function which involves many questions of judgment and discretion, courts will not set aside the rate methodologies chosen by the PUC unless they are inherently unsound." *CF&I Steel*, 949 P.2d at 584; *see also Pub. Utils. Comm'n v. Nw. Water*

Corp., 451 P.2d 266, 275 (Colo. 1969) ("[I]n a question of rate-making there is a strong presumption in favor of the conclusions reached by an experienced administrative body after a full hearing.") (quoting *Darnell v. Edwards*, 244 U.S. 564, 569 (1917)).

¶30 "The objecting party has the burden of proving that the PUC's decision is unlawful." *CF&I Steel*, 949 P.2d at 585.

B. The Recovery Rider Is Just and Reasonable

¶31 The first question before us is whether, in approving the Recovery Rider, the PUC adopted a just and reasonable rate. The question is not whether Holcim's alternative proposal was reasonable or provided a preferable recovery method.

¶32 As noted above, a rate is just and reasonable when it protects the right of utility customers to pay a rate that accurately reflects the cost of service rendered, distributes costs among the customer base in a just and reasonable manner, and protects the utility's and its investors' rights to earn a return that is reasonably sufficient to maintain the utility's financial integrity. *See CF&I Steel*, 949 P.2d at 584; *Pub. Serv. Co.*, 644 P.2d at 939. The Recovery Rider satisfies each of these criteria.

¶33 The Recovery Rider accurately reflects the cost of service because, as discussed above, the PUC concluded, with ample record support, that Black Hills had purchased natural gas based on total forecasted customer need, not based on

actual individual consumption during Winter Storm Uri. This court has explained that "[a] major operating expense which the PUC must necessarily consider in arriving at a just and reasonable rate is the cost which [a utility] must pay to acquire natural gas from their suppliers." *Pub. Serv. Co.*, 644 P.2d at 939. Here, Black Hills forecasted its customer needs during Winter Storm Uri using industry-standard methods that no party has contested. Moreover, it appears undisputed that Black Hills's natural gas purchases enabled it to provide to its customers uninterrupted service at normal usage volumes throughout the weather event, which was the very purpose for Black Hills's advance purchases. Accordingly, we conclude that the PUC reasonably determined that the Recovery Rider accurately reflects the cost of service rendered during Winter Storm Uri.

¶34 We further conclude that the Recovery Rider distributes costs among Black Hills's customer base in a just and reasonable manner. As noted above, Black Hills incurred the extraordinary costs at issue based on its total forecasted load, to ensure that all of its customers had access to their normal volume of electricity during the storm; Black Hills's costs were not based on any individual customer's actual consumption during the storm. Black Hills then proposed distributing the costs that it had incurred on a volumetric basis applicable to all rate schedules. This, in turn, would allow Black Hills to recover the extraordinary costs that it had incurred in anticipation of Winter Storm Uri in exactly the same way that it

recovers its normal fuel costs through the ECA, which method the PUC has long determined is in the public interest. Accordingly, in approving the cost recovery design that Black Hills and the other parties to the settlement agreement had proposed, the PUC applied the Recovery Rider among all of Black Hills's customers in a just and reasonable manner.

¶35 On this point, as Black Hills and the PUC noted in their briefing to us, the facts at issue in this case are in stark contrast with the facts in *City of Montrose v. Public Utilities Commission*, 590 P.2d 502, 504–05 (Colo. 1979). There, we determined that a utility's action in imposing on municipal, but not non-municipal, residents the costs of utility franchise charges was unjust and discriminatory because it resulted in municipal customers subsidizing and paying higher rates than non-municipal customers who were receiving the same service. *Id.* Here, in contrast, Black Hills's customers will be charged an *identical* rate, and customers' ultimate billing will appropriately be based on their individual usage. *See Integrated Network Servs., Inc. v. Pub. Utils. Comm'n*, 875 P.2d 1373, 1383–84 (Colo. 1994) (distinguishing *City of Montrose* on the ground that, unlike in that case, the rates ordered to be paid by the petitioning parties in the case before the court would be "charged based upon usage," and no evidence showed that the petitioning parties would be subsidizing other customers).

¶36 Finally, no party has asserted that the Recovery Rider fails to provide Black Hills with a reasonable rate of return, and given that Black Hills agreed to the Recovery Rider in the settlement agreement, we presume that it was satisfied with the rate of return provided thereby.

¶37 For all of these reasons, we conclude that the rate established by the Recovery Rider is just and reasonable.

¶38 We are not persuaded otherwise by Holcim's arguments that the rate does not reflect "cost causation" and that it charges Holcim a disproportionate amount.

¶39 For the reasons discussed above, the Recovery Rider *does* reflect cost causation because Black Hills incurred the costs at issue based on its total forecasted load during the winter storm, and it is these costs that are being passed through to Black Hills's customers. As the PUC concluded below, Holcim's actual use during Winter Storm Uri had no bearing on the costs that Black Hills had incurred.

¶40 Moreover, Holcim has not established that the Recovery Rider imposes disproportionate charges on it. Holcim's argument in this regard appears to be based on its incorrect assumption that the costs that Black Hills incurred were the result of customers' actual usage during the storm. As noted above, however, the costs at issue resulted from Black Hills's *forecasted* needs, which were determined *prior to* the extreme weather event.

¶41 Additionally, to the extent that Holcim is relying on its claim that it had conserved electricity during the storm, as the ALJ found, no evidence established that Holcim's usage during the storm was reduced as a result of any intentional conservation efforts on its part. Nor does any evidence in the record show that Holcim advised Black Hills in advance that it planned to lessen its electricity needs during the storm, which could potentially have impacted Black Hills's forecasted needs (as PUC Trial Staff and Black Hills witnesses testified, however, absent an indication of how much conservation would occur, it would have been imprudent for Black Hills to reduce the amount of natural gas that it was purchasing). Instead, Black Hills proceeded based on its forecasts, and all Black Hills customers, including Holcim, were able to satisfy their normal electricity needs throughout the storm.

¶42 We are also unpersuaded by Holcim's apparent assumption that the question of a just and reasonable rate turns exclusively on the cost of service. As we said three decades ago, "[W]hile cost-of-service may be a factor, it is certainly not the exclusive factor to be considered in a ratemaking decision of the PUC. Indeed, if such were the case, the PUC would have little ratemaking discretion; rather, it would become a rubber stamp relegated to examining cost studies of utilities." *Id.* at 1383. Here, the record demonstrates that the PUC considered all of the relevant facts before it, including the parties' desires to avoid "rate shock,"

ensure rate stability by maintaining a similar rate design for similar costs, and provide for equal treatment of all of Black Hills's customers. *See id.*

¶43 Finally, we note that Holcim cites no applicable authority prohibiting the type of uniform, volumetric rate for the recovery of fuel costs that the PUC imposed here. To the contrary, Colorado utilities have used fuel adjustment clauses like that at issue for at least fifty years. *See Colo. Energy Advoc. Off. v. Pub. Serv. Co. of Colo.*, 704 P.2d 298, 300 (Colo. 1985). And other states' courts that have considered challenges to similar rate structures likewise have upheld them, further supporting our conclusion that the PUC adopted a just and reasonable rate in this case. *See, e.g.*, *Gulf Power Co. v. Fla. Pub. Serv. Comm'n*, 487 So. 2d 1036, 1036 (Fla. 1986); *Archer-Daniels-Midland Co. v. Ill. Com. Comm'n*, 704 N.E.2d 387, 397 (Ill. 1998); *City of Chicago v. Ill. Com. Comm'n*, 150 N.E.2d 776, 778–80 (Ill. 1958); *State ex rel. Utils. Comm'n v. Edmisten*, 230 S.E.2d 651, 662–63 (N.C. 1976); *City of Norfolk v. Va. Elec. & Power Co.*, 90 S.E.2d 140, 141, 149–50 (Va. 1955).

¶44 For these reasons, we conclude that Holcim has not met its burden of proving that the PUC's methodology was "inherently unsound." *CF&I Steel*, 949 P.2d at 584. The PUC chose a rate that mirrors the structure that has been used to recover fuel costs in Colorado and throughout the United States for decades. Moreover, in allowing Black Hills to recover its extraordinary fuel costs while distributing those costs among all customers over a two-year period via a uniform,

volumetric rate, the PUC reasonably balanced customer interests, utility interests, and relevant factors such as cost causation, avoiding "rate shock," and rate stability.

¶45 Accordingly, we conclude that the Recovery Rider that the PUC adopted in this case was just and reasonable.

C. Holcim's Constitutional Claims

¶46 Holcim next purports to assert two constitutional claims. First, it contends that the Recovery Rider constitutes an unconstitutional taking in violation of the Fifth Amendment. Second, Holcim argues that the PUC has violated Holcim's due process rights because, it asserts, the PUC's decision was not sufficiently supported by the evidence. We are not persuaded.

¶47 Regarding Holcim's claim that the Recovery Rider constitutes an unconstitutional taking, Holcim presents no facts or law to support such a claim. Instead, it asserts, in conclusory fashion, that the Recovery Rider is so unreasonable that it constitutes a taking in violation of the Fifth Amendment. Such a conclusory statement does not suffice to develop a viable claim for appellate consideration, and we therefore decline to address that claim. *See, e.g.*, *Comm. for Better Health Care for All Colo. Citizens v. Meyer*, 830 P.2d 884, 890 (Colo. 1992) (concluding that a claim was not properly presented for appellate review when, among other things, the party's arguments "were stated in conclusionary form

[and] were not accompanied by citations to any authority"); *Middlemist v. BDO Seidman, LLP*, 958 P.2d 486, 495 (Colo. App. 1997) (concluding that certain claims were not properly presented for appeal when the appellant had "fail[ed] to identify any specific errors committed by the trial court . . . and provide[d] no legal authority to support an allegation that the trial court erred in making its rulings").

¶48 As for Holcim's due process claim, we note that in the context of rate-making, the Supreme Court has stated, "When the rate-making agency of the state gives a fair hearing, receives and considers the competent evidence that is offered, affords opportunity through evidence and argument to challenge the result, and makes its determination upon evidence and not arbitrarily, the requirements of procedural due process are met. . . ." *R.R. Comm'n v. Pac. Gas & Elec. Co.*, 302 U.S. 388, 393–94 (1938). For the reasons set forth at length above, we conclude that the PUC has satisfied each of these requirements and that substantial evidence in the record supported the PUC's decision.

¶49 Accordingly, Holcim has not established a violation of its due process rights in this case.

III. Conclusion

¶50 For these reasons, we conclude that, in approving the Recovery Rider, the PUC set a just and reasonable charge for the recovery of Black Hills's extraordinary

natural gas costs. We further conclude that Holcim has not established either an unconstitutional taking or a violation of its due process rights.

¶51 Accordingly, we affirm the district court's judgment upholding the PUC's decision in this case.