

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23AL-0325G

IN THE MATTER OF ADVICE NO. 1016 - GAS FILED BY PUBLIC SERVICE COMPANY OF COLORADO TO REVISE ITS COLORADO PUC NO. 6 - GAS TARIFF TO PROPOSE MODIFICATIONS TO PORTIONS OF ITS GAS COST ADJUSTMENT TO MAKE IT ABUNDANTLY CLEAR THAT THE COMPANY MAY SEEK THE RECOVERY OF THE COMMODITY COSTS OF LIQUIFIED NATURAL GAS AND COMPRESSED NATURAL GAS THROUGH THE GAS COST ADJUSTMENT, TO BECOME EFFECTIVE JULY 17, 2023.

**RECOMMENDED DECISION OF ADMINISTRATIVE
LAW JUDGE CONOR F. FARLEY PERMANENTLY
SUSPENDING TARIFF SHEET, REQUIRING FILING, AND
CLOSING PROCEEDING**

Mailed Date: January 25, 2024

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I. PROCEDURAL BACKGROUND

1. On June 16, 2023, Public Service Company of Colorado (Public Service) filed Advice Letter No. 1016 with a tariff sheet with proposed modifications to portions of its Gas Cost Adjustment (GCA) for effect July 17, 2023 (Advice Letter). Public Service also filed the direct testimony of Alexander G. Trowbridge in support of its proposed modifications to the GCA (Hearing Exhibit 101).

2. On June 27, 2023, the Office of the Utility Consumer Advocate (UCA) filed a protest to Advice Letter No. 1016 (Protest).

3. On July 11, 2023, Public Service filed a response to UCA's Protest.

4. On July 14, 2023, the Commission issued Decision No. C23-0459 that suspended the effective date of the tariff sheets filed with Advice Letter No. 1016 until November 14, 2023, or until further order of the Commission. The Commission also established an intervention period until August 11, 2023. Finally, the Commission referred the proceeding to an Administrative Law Judge (ALJ). The proceeding was subsequently assigned to the undersigned ALJ.

5. On July 27, 2023, the ALJ issued Decision No. R23-0495-I that scheduled a remote prehearing conference for August 24, 2023; required the parties to confer regarding a schedule for this proceeding and any discovery procedures that are inconsistent with the Commission's rules governing discovery; and specified the method by which the hearing should be conducted. Decision No. R23-0495-I also required Public Service to file a report of the conferral by August 21, 2023.

6. On July 27 and August 11, 2023, UCA and Trial Staff of the Commission filed their Notices of Intervention as of Right in this proceeding, respectively.

7. On August 18, 2023, Public Service filed the report required by Decision No. R23-0495-I.

8. On August 23, 2023, the ALJ issued Decision No. R23-0563-I that vacated the remote prehearing conference, extended the statutory suspension period for the effective date of the tariff sheets, scheduled the remote hearing in this proceeding for November 14, 2023, and established a procedural schedule including October 3, 2023 and October 24, 2023 deadlines for answer and rebuttal testimony, respectively, and a December 8, 2023 deadline for Statements of Position (SOPs).

9. On August 30, 2023, the ALJ sent an email to all counsel of record in this proceeding stating that the ALJ had a scheduling conflict with the November 14, 2023 hearing. The ALJ further requested that the parties confer and determine the best alternative date for the remote hearing from the following available dates on the ALJ's calendar: November 1-2, 6-8, 20-21, and 28-30, 2023.

10. On September 1, 2023, counsel for the parties responded, stating that November 20, 2023, was the best date for the rescheduled remote evidentiary hearing. Counsel for the parties also requested that, in light of the change to the hearing date, the deadline for SOPs be changed to January 5, 2024. The disproportionate length of the requested SOP deadline extension resulted from the change in hearing date and party scheduling issues during the holiday season.

11. On September 11, 2023, the ALJ issued Decision No. R23-0596-I that vacated and reset the remote hearing to November 20, 2023, and set the deadline for SOPs to January 5, 2024.

12. On October 3, 2023, Staff filed the answer testimony of Bridget A. McGee (Hearing Exhibit Exhibit 300) and UCA filed the answer testimony of Cory Skluzak (Hearing Exhibit 400).

13. On October 24, 2023, Public Service filed the rebuttal testimony of Jason J. Peuquet (Hearing Exhibit 102).

14. On November 20, 2023, the remote evidentiary hearing took place. Hearing exhibits 100, 103, 104, 105, 106, 108, 109, 401, 403, 406, 408, 409, 411, 414, 415, 416, 417, 418, 420, 500, and the exhibits listed in exhibit 500 were entered into the evidentiary record. At the conclusion of the hearing, the ALJ closed the evidentiary record and stated that he would take the matter under advisement and issue a Recommended Decision after receipt of the parties' SOPs.

15. On January 5, 2024, Public Service, Staff, and UCA each filed an SOP.

II. SUBSTANTIVE BACKGROUND

A. Proceeding No. 23L-0040G

16. On January 17, 2023, Public Service filed a Verified Application (Application) for: (a) approval to revise its GCA rate downward on less-than-statutory notice (Application); and (b) a variance "from the currently effective Sheets of the Colo. PUC No. 6 Gas Tariffs relating to the GCA [], so that the costs of procurement of liquefied natural gas [(LNG)] services can be recovered through the GCA."¹ LNG is natural gas that is liquefied by cooling it to a temperature below its boiling point. When it is needed to inject into Public Service's pipeline system, it is converted back to its gaseous state through the use of vaporizers. LNG requires far less volume and space to store than natural gas in its gaseous state.²

17. As justification for its request for a variance, Public Service stated that "[t]o the extent that the Company is unable to procure traditional third-party pipeline services in constrained areas of the system, it is necessary to procure liquefied natural gas commodities and services to

¹ Application at 2.

² Public Service's SOP at 3.

ensure reliability of its service to customers.”³ However, Public Service neither identified the constrained areas of the system, nor explained why it could not “procure traditional third-party pipeline services” in those areas.⁴ As to the “LNG and related delivery costs,” Public Service stated that they were already recoverable through the GCA. As a result, the requested variance applied solely to “the costs of procurement of liquefied natural gas services,” which amounted to approximately \$4 million.⁵

18. On January 23, 2023, UCA filed a Protest to the Application identifying the following concerns:

- Given that this is the first time that the Company has apparently employed LNG, and, admittedly, the first time it has sought cost recovery for LNG costs, it believes that this issue and the incumbent cost recovery should be reviewed in a thoughtful and deliberate manner;
- The Company’s statement explaining its request for the LNG that: “To the extent that the Company is unable to procure traditional third-party pipeline services in constrained areas of the system, it is necessary to procure liquefied natural gas commodities and services to ensure reliability of its service to customers;”
- Questions whether the use of LNG represents support for capacity or energy needs, and whether accelerated cost recovery is appropriate under the circumstances given UCA’s belief that operational challenges for the Company are not appropriate for recovery in the GCA;
- Public Service states the cost of the LNG was \$4,039,792, but does not provide a volume quantity. Thus, there are insufficient facts presented to determine the per MMBtu price of the LNG gas;

³ Application at 3 (¶ 2).

⁴ *Id.*

⁵ *Id.* (“The Company believes that liquefied natural gas, and related delivery costs, are broadly includable for recovery through the GCA under the Commission’s rules. To the extent that the tariff does not appear to accommodate the costs of procurement of liquefied natural gas services for recovery, the Company is seeking a variance of the tariff definitions to reflect the realities of the market and of Company operations. The Company is requesting a variance to the GCA tariff in this application to reflect costs related to procurement of liquefied natural gas commodities and services of \$4,039,792 million.”). *But see* Amendment of Verified Application filed in Proceeding No. 23L-0040G on January 24, 2023 (lowering amount from \$4,039,792 to \$3,622,382.).

- There is insufficient detail provided to determine if this use of LNG is prudent, particularly considering that the market price of LNG gas is generally higher than conventionally procured gas;
- There is no explanation in the Application where the implied supply constraints are located and why such constraints have or will occur;
- There is no explanation in the Application explaining why conventional gas supplies were unavailable;
- There are no details in the Application on who the supplier of the LNG is and the cost of transporting such gas;
- There is no disaggregation of the LNG costs included in the Application for the “procurement of liquefied natural gas commodities and services.” It is unknown what portion of this amount is for just the gas, what portion is for transportation, what portion is for conversion of LNG to usable natural gas, what portion is for “services” (as well as what “services” consist of), and other costs’
- Public Service does not provide any information on the extent or duration of these LNG supplies. This leads to a number of further questions such as: will Public Service be using more LNG in the future months, will LNG costs be going up, will LNG be used only in peak winter months, and will LNG continue to be used for years to come — or is this a one-time, one-month change?⁶

19. On January 26, 2023, the Commission issued Decision No. C23-0059, denying the Application. In that Decision, the Commission stated that it “share[d] the concerns raised by the UCA in its protest letter along with additional concerns surrounding the safety of LNG in the selected areas” and further explained that “it is not in the public interest to approve unanticipated costs through the GCA that have not been fully explained and supported or previously addressed in other proceedings.”⁷ The Commission stated that “[i]f Public Service wishes to include them in its GCA, we instruct the Company that such inclusion must be based on substantially more

⁶ UCA’s Protest at 3-5 (¶¶ 6-15).

⁷ Decision No. C23-0059 at 8 (¶ 24).

information than presented in this record. Accordingly, we deny the Company's request for variance and the application."⁸

B. Advice Letter 1016

20. In this proceeding, Public Service requests "modifications to portions of its [GCA] to make it abundantly clear that [Public Service] may seek the recovery of the **commodity costs** of [LNG] and Compressed Natural Gas ("CNG") through the GCA."⁹ CNG is natural gas stored in containers under high pressures that can reduce the volume of gas to one percent of the volume the gas would occupy at normal atmospheric pressure. As a result, whereas the Application focused on a **variance** from the GCA tariff to collect through the GCA "the **costs of procurement of LNG services**," the Advice Letter in this proceeding focuses on recovery through the GCA of the **commodity costs** of LNG **and** CNG. If the GCA tariff is amended to allow the recovery of LNG and CNG commodity costs, then Public Service contends that "the costs of procurement" of the LNG and CNG commodity are recoverable through the GCA, because they are encompassed within the definition of "upstream services" in Commission Rule 4601(gg).¹⁰

21. This distinction is not inconsequential, because the "upstream costs" of LNG and CNG are significantly higher than the commodity costs. According to Public Service, "[a]ctual LNG costs from the 2022-2023 winter season (October 2022-April 2023) were \$5,984,173

⁸ *Id.* at 8-9 (¶ 24).

⁹ Advice Letter at 1 (emphasis added).

¹⁰ Public Service's SOP at 15 ("The broad definition [of upstream services in Rule 4601(gg)] encompasses third-party LNG/CNG upstream costs."); 17 ("The Commission's GCA Rules pose no barrier to the recovery of third-party LNG/CNG costs through the GCA."). See also Commission Rule 4600 ("The purpose of the Gas Cost Adjustment is to enable utilities, on an expedited basis, to reflect in their rates for gas sales and gas transportation services, as applicable, the increases or decreases in gas costs, including (but not limited to) gas commodity costs and upstream services costs."); 4601(gg), 4 *Code of Colorado Regulations* (CCR) 723-4 ("Upstream services' means all transmission, gathering, compression, balancing, treating, processing, storage, and like services performed by others under contract with the utility for the purpose of effectuating delivery of gas commodity to the utility's jurisdictional gas facilities.").

(of which \$108,100 represents commodity costs).¹¹ In the 2022-2023 winter season, therefore, LNG commodity costs were 1.8 percent of the total LNG costs.¹²

22. The changes Public Service seeks to make to its gas tariff are as follows (with underlining showing additions and strikethroughs showing deletions):

DEFINITIONS

....

Actual Gas Cost. The amount recorded as Well Head Purchases in Account 1800, Field Line Purchases - 1801, Gasoline Outlet Purchases - 1802, Transmission Line Purchases - 1803, City Gas Purchases - 1804, Exchange Gas - 1806, Kansas Storage Taxes in Account 1807-51, Gas Price Management Costs in Account 1807-54*, Gas Withdrawn from and Delivered to Storage - 1808, Gas Used for Products Extraction - 1811, Take/Pay Buy-out payments in Account 1813-12, ~~and~~ Storage Gas Lost and Unaccounted in Account 1823-, Liquefied Natural Gas Purchase in Account 804.1, and Other Gas Purchases in Account 805. In accordance with the authorizations granted in Docket Nos. 99S-293G and 12A-240G, Gas Price Management Costs recorded in Account 1807-54 shall include only those premiums or settlement costs incurred by the Company in connection with its use of the following financial instruments as part of its most-recently filed Gas Price Volatility Mitigation Plan: fixed-for-float swaps (a financial fixed price agreement for deliveries at a location other than the Henry Hub), New York Mercantile Exchange (“NYMEX”) futures contracts in conjunction with market basis (between Colorado Interstate Gas Company, Northwest Pipeline Company, Henry Hub, or other monthly indices in the areas where the Company regularly procures its natural gas supplies), call options, put options and costless collars.

C. Use of CNG and LNG

23. During the 2022-2023 winter season, Public Service deployed CNG in six locations on its system in Colorado, including Denver, Boulder (two locations), Grand Lake, Pagosa Springs, and Mead. Public Service deployed its first LNG project in Breckenridge, Colorado, during the same winter season.¹³ As of Fall 2023, Public Service planned to stage LNG near the town of Breckenridge again for the 2023-2024 winter season, and CNG at several locations. The estimated

¹¹ Hearing Exhibit 101 at 17:21-23 (Direct Testimony of Mr. Trowbridge).

¹² See *id.* at 17:21-18:4.

¹³ *Id.* at 12:8-16

cost of third-party CNG services for the 2023-2024 heating season is \$1,080,000.¹⁴ The estimated cost of third-party LNG services and commodities for the 2023-2024 heating season is approximately \$6 million, which is similar to the actual costs of the 2022-2023 winter season.¹⁵

III. PARTIES' ARGUMENTS

A. Public Service's Argument

24. Public Service makes the following four primary arguments in support of its request for the Commission approving its proposed tariff changes “to clarify the permissibility of the recovery of third-party LNG/CNG costs through the GCA.”¹⁶

25. First, Public Service asserts that the approval of the tariff change “reflects the Colorado policy landscape that favors the Company’s usage of LNG/CNG resources.”¹⁷ In fact, “[t]he Colorado policy landscape is the primary motivating factor for the Company’s usage of third-party LNG/CNG resources.”¹⁸ As support, Public Service points to House Bill 19-1261 and Senate Bills 21-264 and 23-016; as well as various other unidentified “legislation that addresses [greenhouse gas] reductions in specific sectors, including natural gas utilities;” statutory and rule-based requirements for Clean Heat Plans; Demand-Side Management; and Gas Infrastructure Plans (GIPs).¹⁹ According to Public Service, use of LNG/CNG resources serves these policy ends by “allow[ing] [Public Service] to mitigate capacity constraints, including during design-day conditions, and at the same time permit the study or implementation of longer-term solutions to the capacity constraint, such as through non-pipeline alternatives.”²⁰

¹⁴ *Id.* at 18:13-21.

¹⁵ *Id.* at 19:1-6.

¹⁶ Public Service’s SOP at 7.

¹⁷ *Id.*

¹⁸ *Id.* at 9.

¹⁹ *Id.* at 7-8.

²⁰ *Id.* at 9.

26. Second, Public Service asserts that approval of the proposed tariff change will encourage use of LNG/CNG resources, without negative impacts to customers. As support, the Company argues that, because its use of LNG and CNG is “at a relatively early state, [] it is thus likely that these resource costs may change year-to-year.”²¹ For example, Public Service’s current base rates include \$1.3 million of third-party CNG costs that were set based on a test year that ended December 31, 2021. However, in the 2022-23 heating season, Public Service’s CNG costs were approximately \$940,000.²² As a result, depending on how long the base rates are in effect, Public Service may recover more than their CNG costs, which is a “negative impact” to ratepayers. In contrast, use of the GCA to recover CNG and LNG costs would limit Public Service’s recovery to its actual costs. In addition, if Public Service responded to the capacity constraints that have led to its use of CNG and LNG by upgrading its pipelines, those upgrades would be included in rate base on which Public Service would earn its weighted average cost of capital for their useful life. By using CNG and/or LNG, Public Service “is seeking to defer, mitigate, or avoid entirely the more traditional pipeline upgrades,” which Public Service suggests will result in cost savings over the long-term.²³

27. Third, Public Service’ argues that its proposed tariff changes are consistent with the Commission’s GCA Rules. Specifically, Public Service’s proposed changes are consistent with the purpose of the GCA and the definitions of “gas commodity costs” and “upstream services.”²⁴

28. Finally, Public Service has taken the path recommended, and provided the information sought, by the Commission in Decision No. C23-0059. In addition, Proceeding Nos. 23M-0234G (Gas Infrastructure Plan (GIP) Proceeding) and 23P-0287G (Gas Purchase Plan

²¹ *Id.* at 10.

²² *Id.* at 10-11.

²³ *Id.* at 11-12.

²⁴ *Id.* at 14-17.

(GPP) proceeding) have provided and will continue to provide opportunities for the Commission to address Public Service's use of CNG and LNG. The same is true with respect to Public Service's: "(1) annual GPP filings; (2) quarterly GCA filings; (3) annual Gas Purchase and Deferred Balance Reports; (4) gas rate cases; and (5) future GIP filings."²⁵ "The Commission should not consider this more limited tariff proceeding as being its sole opportunity to consider Company use of LNG/CNG, but instead as an opening dialogue on these resources and their importance to address pipeline constraints and to facilitate study and deployment of non-pipeline alternatives."²⁶

B. Staff's Argument

29. In its SOP, Staff "recommends the Commission define what costs may be recovered through the GCA and, after making this determination, the Commission should then decide to either approve or disallow the changes proposed by PSCo."²⁷ However, in her testimony, Ms. McGee states that "[t]he inclusion of non-commodity and upstream service costs violate the purpose of the GCA."²⁸ Ms. McGee identifies "[s]ite preparation fees, rental fees, and security costs" as non-commodity and upstream costs that should not be recovered through the GCA.²⁹ As a result, Staff contends that only the commodity costs of CNG and LNG and certain "upstream commodity costs" can be recovered through the GCA. While it is not clear, it appears that Staff believes that non-rental transportation and storage costs are the "upstream commodity costs" Staff believes are appropriate for recovery through the GCA.³⁰

²⁵ *Id.* at 19.

²⁶ *Id.*

²⁷ Staff's SOP at 1.

²⁸ Hearing Exhibit 300 at 8:8-10 (Answer Testimony of Ms. McGee).

²⁹ *Id.* at 8:12-15.

³⁰ *Id.* at 7:12-8:13:16.

C. UCA's Argument

30. UCA makes two primary arguments in opposition to the tariff changes proposed by Public Service. First, Public Service has not provided the Commission with the additional information it stated that it needed in Decision No. C23-0059 in order to determine whether, or to what extent, CNG and LNG costs should be recoverable through the GCA. In that decision, the Commission denied Public Service's request for a variance from the GCA to allow recovery of LNG upstream or procurement costs, because there was insufficient information overall in the record regarding LNG, and specifically regarding the safety of LNG. Public Service has not provided the requested information in this proceeding.³¹ UCA contends that Public Service's change in focus between Proceeding NO. 23L-0040G (request for a variance from the GCA tariff to collect through the GCA LNG upstream costs) and this proceeding (requesting amendment of the GCA tariff language to permit the recovery of only the commodity costs of LNG and CNG, while contending that upstream costs would then be recoverable pursuant to Rule 4601(gg)), has deprived the Commission of a "comprehensive review of GCA recovery for LNG costs."³²

31. Second, UCA contends that "LNG/CNG deployment costs are operational costs incurred in response to a perceived capacity shortfall unlike typical commodity and transportation costs recovered through the GCA."³³ UCA thus concludes that CNG/LNG costs are ill-suited for the type of cursory review afforded by the GCA process, which could "motivate PSCo to rely more heavily on LNG to address capacity shortfalls even though it is more expensive than natural gas delivered through the traditional pipeline distribution system."³⁴ Instead, the recovery of LNG/CNG costs is best determined with the more robust prudence review afforded by a Phase I

³¹ UCA's SOP at 3-10.

³² *Id.* at 8.

³³ *Id.* at 11.

³⁴ *Id.* at 16.

rate case.³⁵ UCA thus requests the Commission to “deny PSCo’s proposed modification to its GCA tariff regarding cost recovery of LNG/CNG commodity costs” and “order that cost recovery for LNG/CNG deployment must be addressed in a rate case and accomplished through base rates.”³⁶

IV. FINDINGS AND CONCLUSIONS

A. Analytical Approach

32. In rendering this Decision, the ALJ has carefully reviewed and considered all the evidence introduced by the Parties during the hearing, including the testimony and hearing exhibits, even if this Decision does not specifically address all of the evidence presented, or every nuance of each party’s position in each issue. Moreover, the ALJ has considered all the legal arguments set forth in the SOPs, even if the Decision does not explicitly address every legal argument. In rendering this Decision, the ALJ has weighed the evidence and evaluated the credibility of all the witnesses and hearing exhibits.³⁷

B. Burden of Proof

33. Except as otherwise provided by statute, the Administrative Procedure Act imposes the burden of proof in administrative adjudicatory proceedings upon “the proponent of an order.”³⁸ As the parties to the Settlement Agreement, Public Service and Staff bear the burden of proof.³⁹ Public Service and Staff must establish by a preponderance of the evidence that the Settlement Agreement is just and reasonable and in the public interest. The evidence must be “substantial

³⁵ *Id.* at 17-19.

³⁶ *Id.* at 19-20.

³⁷ See *Durango Transportation, Inc. v. Colorado Public Utilities Comm’n.*, 122 P.3d 244, 252 (Colo. 2005); *RAM Broadcasting of Colo., Inc. v. Public Utilities Comm’n.*, 702 P.2d 746, 750 (Colo. 1985).

³⁸ § 24-4-105(7), C.R.S.

³⁹ Section 24-4-105(7), C.R.S.; § 13-25-127(1), C.R.S.; Rule 1500 of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1.

evidence,” which is defined as “such relevant evidence as a reasonable person’s mind might accept as adequate to support a conclusion ... it must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury.”⁴⁰ A party has satisfied its burden under this standard when the evidence, on the whole, tips in favor of that party. The Commission has an independent duty to determine matters that are within the public interest.⁴¹

C. Analysis

34. The ALJ will grant Public Service’s request in the Advice Letter to modify the tariff language to permit the recovery of the commodity costs of CNG and LNG through the GCA, but also specify that the other costs incurred to deploy CNG and LNG identified by Public Service are not recoverable through the GCA. As explained above, in Decision No. C23-0059, the Commission denied Public Service’s previous attempt to recover CNG and LNG procurement costs through the GCA. In so doing, the Commission stated that such a decision charting a new path for the GCA could only be justified (if at all) based on a far more robust record than had been developed in that proceeding (Proceeding NO. 23L-0040G). Any record justifying the recovery of LNG procurement costs would need to provide answers to the questions raised by the UCA in its protest letter, and address the safety of LNG when used in the manner proposed by Public Service.

35. Here, Public Service has indirectly presented the same issue in this proceeding, but through a different procedural vehicle. Specifically, as explained above, while Public Service is seeking in this proceeding to amend the GCA tariff to make LNG commodity costs recoverable

⁴⁰ *City of Boulder v. PUC*, 996 P.2d 1270, 1278 (Colo. 2000) (quoting *CF&I Steel, L.P. v. PUC*, 949 P.2d 577, 585 (Colo. 1997)).

⁴¹ See *Caldwell v. Public Utilities Commission*, 692 P.2d 1085, 1089 (Colo. 1984).

through the GCA, it has also stated that, if the tariff changes are approved, then the procurement costs that were the subject of the Application in Proceeding No. 23L-0040G are recoverable as upstream costs pursuant to Rule 4601(gg)). Public Service thus seeks to achieve the same end as in Proceeding No. 23L-0040G, namely recovery of commodity and procurement costs of LNG through the GCA.

36. In addition, Public Service also seeks in this proceeding recovery of CNG commodity and “procurement/upstream costs” through the GCA. Public Service did not include the costs of CNG in its request for a variance in Proceeding No. 23L-0040G. Thus, the changes sought by the Advice Letter in this proceeding are more far-reaching and arguably more complicated than the issues presented in Proceeding No. 23L-0040G.

37. However, Public Service has not developed the robust record identified by the Commission in Proceeding No. 23L-0040G as necessary to decide the question of whether LNG (and now CNG) “procurement costs” or “procurement/upstream costs” should be recoverable through the GCA. In its testimony, Public Service has explained the general similarities and differences between CNG and LNG.⁴² Similarly, Public Service has explained that it uses CNG and LNG to mitigate constraints on its pipeline system that threaten the delivery of safe and reliable gas service to ratepayers. By doing so, Public Service can – at a minimum – delay expensive capital projects to reinforce its pipeline system to eliminate the constraints.⁴³ According to Public Service, this delay is important because the Commission is attempting to decrease overall natural gas consumption to achieve greenhouse gas reductions consistent with House Bill 19-1261 and Senate Bills 21-264 and 23-016. By delaying capital projects designed to increase throughput and

⁴² Hearing Exhibit 101 at 8:13-9:5 (Direct Testimony of Mr. Trowbridge).

⁴³ Public Service’s SOP at 7-10; Hearing Exhibit 101 at 11:17-12:3 (Direct Testimony of Mr. Trowbridge).

thereby facilitate increased consumption of natural gas, the use of CNG and LNG buys the Commission time to figure out how to comply with the General Assembly's legislative directives.⁴⁴

38. Nevertheless, Public Service's evidence in this proceeding is general, and thus lacking in detail. For example, it is not clear the extent to which Public Service intends to rely on CNG and LNG in the future to address constraints in its pipeline system or otherwise. This is an important question given that the upstream costs and total cost of LNG are substantially higher than the same costs for the delivery of non-CNG/LNG natural gas,⁴⁵ and the Commission has emphasized the need to carefully consider the impact of its decisions on the affordability of utility service.⁴⁶ The lack of evidence in the record regarding the short- and long-term financial consequences of Public Service's proposal is problematic.

39. Moreover, the record is silent on the question of the safety of CNG and LNG in the way Public Service proposes to use it. While Public Service often repeats in its testimony and SOP that it must provide safe and reliable service to its ratepayers, it never addresses the relative safety of storing and using CNG or LNG to address pipeline constraints versus the conventional method of alleviating pipeline constraints and delivering natural gas to ratepayers. This deficiency in the record is notable given that the Commission specifically requested such evidence in Decision No. C23-0059.⁴⁷

40. Based on the foregoing, the ALJ finds and concludes that the record insufficiently supports the request by Public Service to recover through the GCA both the commodity and upstream costs of CNG and LNG. Such a decision could incentivize Public Service to expand its

⁴⁴ *Id.* at 7-8.

⁴⁵ Hearing Exhibit 400 at 16:19-18:2 (Answer Testimony of Mr. Skluzak).

⁴⁶ *See id.*, Attach. CWS-3 at 11 (¶ 24).

⁴⁷ Decision No. C23-0059 at 8 (¶ 24).

use of CNG and LNG,⁴⁸ which is not justified based on the record in this proceeding in which the potential financial and safety consequences of doing so have not been adequately fleshed out. The ALJ will approve the change in the tariff language proposed by Public Service with the understanding that it will permit Public Service to recover through the GCA **only** the commodity costs of CNG and LNG. The ALJ specifically finds and concludes that the “procurement costs” identified by Public Service in Proceeding No. 23L-0040G and in this proceeding do not qualify as “upstream costs” under Rule 4601(gg) that can be recovered through the GCA. The ALJ further finds and concludes that this decision does not mitigate, or otherwise impact, Public Service’s duty as a public utility to take all reasonable actions to maintain safe and reliable service to its ratepayers.

41. In accordance with § 40-6-109, C.R.S., the ALJ recommends the Commission enter the following order.

V. ORDER

A. The Commission Orders That:

1. For the reasons stated above, the effective date of Tariff Sheet No. 50 filed with Advice Letter No. 1016 by Public Service Company of Colorado (Public Service) on June 16, 2023, is permanently suspended and shall not be further amended.

2. No later than five calendar days after this Recommended Decision becomes the Decision of the Commission, if that is the case, Public Service shall file a new advice letter and modified Tariff Sheet No. 50 on not less than two days’ notice to place the compliance tariff sheet 50 of P.U.C. No. 6 Gas Tariff into effect, consistent with the findings, discussion, and conclusions

⁴⁸ See SOP at 16.

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

3. Proceeding No. 23AL-0325G is closed.
4. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be made available to all parties in the proceeding, who may file exceptions to it.
 - a. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.
 - b. If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

5. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CONOR F. FARLEY

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads 'Rebecca E. White'.

Rebecca E. White,
Director