

Decision No. C22-0512

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

PROCEEDING NO. 21A-0192EG

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IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF COLORADO FOR RECOVERY OF COSTS ASSOCIATED WITH THE FEBRUARY 2021 EXTREME WEATHER EVENT FOR ITS ELECTRIC AND GAS UTILITIES.

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**COMMISSION DECISION ADDRESSING APPLICATIONS  
FOR REHEARING, REARGUMENT, OR  
RECONSIDERATION OF  
COMMISSION DECISION NO. C22-0413**

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Mailed Date: September 1, 2022  
Adopted Date: August 24, 2022

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**I. BY THE COMMISSION**

**A. Statement**

1. Through this Decision, the Commission addresses the Application for Rehearing, Reargument, or Reconsideration of Decision No. C22-0413 (UCA RRR) filed August 3, 2022, by the Office of the Utility Consumer Advocate (UCA). Consistent with the discussion below, the Commission denies UCA's RRR.

2. Also through this Decision, the Commission addresses the Application for Rehearing, Reargument, or Reconsideration of Decision No. C22-0413 (Public Service RRR) filed on August 3, 2022, by Public Service Company of Colorado (Public Service or Company). Consistent with the discussion below, the Commission denies the Company's RRR.

3. This Decision also addresses and grants in part, consistent with the discussion below, the Motion for Variance from Electric and Gas Tariffs (Variance Motion) filed by Public Service on May 28, 2021.

**B. Discussion**

4. As discussed in Decision No. C22-0413, Public Service initiated this Proceeding on May 17, 2021, by filing its Verified Application for Recovery of Costs Associated with the February 2021 Extreme Weather Event for Its Electric and Gas Utilities (Application).

5. On May 11, 2022, Administrative Law Judge (ALJ) Melody Mirbaba issued Recommended Decision No. R22-0279 (Recommended Decision).

6. By Decision No. C22-0413, the Commission addressed exceptions filed to the Recommended Decision. The Commission granted in part and denied in part the numerous exceptions to the Recommended Decision filed by the UCA and Tiger Natural Gas, Inc. (Tiger).

7. On August 3, 2022, both the Company and UCA timely filed Applications for RRR. In conjunction with its RRR, the Company also filed a Motion to Implement Rates to Recover Extraordinary Gas Costs effective August 15, 2022 and Unopposed Request for Shortened Response Time to August 8, 2022 (Effective Date Motion). The Commission granted the Effective Date Motion in Decision No. C22-0477-I, and the Company subsequently made the requisite filings to begin cost recovery under its electric and gas tariffs.<sup>1</sup>

8. By Decision No. C22-0497-I, the Commission denied Tiger's Motion for Leave to Respond to the UCA RRR.

**C. Shipper Penalty Provisions**

9. In the Recommended Decision at Paragraphs 63-80, the ALJ describes the Company's tariffs and procedures regarding shippers at length. Public Service has customers under several tariffs, including the Firm Gas Transportation Services – Small (TFS), Firm Gas Transportation Services – Large (TFL), and Interruptible Gas Transportation Service (TI) tariffs, that contain a provision that addresses the penalty for unauthorized overruns. Public Service must ensure that the correct balance of gas flows through its system to maintain reliable service to customers. Because shippers use the same pipeline system that the Company uses to transport natural gas, it must ensure that an appropriate amount of natural gas flows through its system, accounting for volumes that shippers are also transporting, so that there is sufficient pressure for the gas to flow to customers, and to avoid gas volumes that exceed pipeline capacity. During Storm Uri, the Company issued Operational Overflow Orders (OFOs) which require shippers to add the correct volume of gas to achieve this balance. (Recommended Decision, ¶ 72). OFOs also come

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<sup>1</sup> See Proceeding Nos. 22AL-0354G and 22AL-0353E.

with financial penalties intended to incentivize shippers to adjust their gas nominations as the Company deems necessary. (Recommended Decision, ¶ 64).

10. The ALJ determined that the Company's tariff authorizes the Company to charge shippers the penalty noticed in its shipper OFOs during the extreme weather event, that is, the average CIG Index daily market price plus \$25 per decatherm (Dth). However, the ALJ also found that the circumstances warrant limiting the penalty to the CIG daily market price per Dth, resulting in shipper OFO penalties calculated per Dth of their shortfalls, which total \$10,670,776. The ALJ finds that the Company acted within its authority under the tariff, but that the circumstances in this instance, including the extraordinary and unprecedented natural gas prices, do not warrant charging shippers a penalty above the average CIG Index daily market price per Dth.

11. Because the ALJ understood the tariff language to allow the Company to charge the penalty noticed in the shipper OFOs and requested in the Settlement Agreement, she determined that the variance requested by the Company in its Variance Motion and in the Settlement Agreement for the Application in this instant Proceeding was unnecessary.

12. In the Commission's Decision on exceptions (Decision No. C22-0413), the Commission agreed with the interpretation of the tariff language put forth by Tiger and disagreed with the conclusion of the Recommended Decision. As a result, the Commission limited the Company to charging shippers a maximum unauthorized overrun penalty of \$25/Dth, which totals approximately \$2,074,825. The Commission declined to address Tiger's arguments on exceptions related to the Company's variance request because we did not understand the Recommended Decision to grant the Company a variance of the tariff language at issue.

13. In the Company's Variance Motion, it requests the Commission allow it to assess natural gas Shippers operating under Schedules TFS, TFL, or TI a gas transportation penalty equal

to the market price of natural gas plus \$25 per Dth for noncompliance with the OFO issued during the Extreme Weather Event, to be credited back to the Company's firm sales customers. The Company argues in its Variance Motion that a gas transportation penalty at this level was appropriate and necessary in light of the extraordinary circumstances to ensure Shippers would cover the full price of the gas used by their customers and avoid negative impacts to the reliability of service to the Company's firm gas customers. In its Variance Motion, the Company notes that its Gas Transportation Terms and Conditions require it to cover any supply shortfalls resulting from Shipper imbalances, and because the Gas Transportation tariffs do not provide for daily imbalance penalties, Shippers can typically repay these daily imbalances through later in-kind repayment of gas. However, during the extreme event of Storm Uri, it knew that shippers were likely to short the system and determined that issuance of an OFO (and related penalties for non-compliance) pursuant to Sheet No. T46 of its Gas Tariffs was necessary to maintain reliable service. It notified shippers that the Company was setting the penalty for non-compliance with the OFO for all imbalances outside a tolerance band of ten percent for under delivery, and that this penalty would be set at the market price of gas (per the CIG Rockies Index price) plus \$25 per Dth.

14. After consideration of UCA's arguments in its RRR filing and revisiting the ALJ's discussion of the need to avoid subsidization amongst classes in situations such as Storm Uri, we find that granting the Company's request for a variance of the tariff language to allow it to charge shippers the CIG daily market price per Dth as a penalty is appropriate; this grants the variance as requested by the Company in part. The average CIG Index price for the gas days of February 13, 14, and 16, 2021 was \$172.945 per Dth; \$78.20 per Dth for the February 17, 2021 gas day; and \$19.525 per Dth for the February 18, 2021 gas day. The shipper OFO penalties during the extreme

weather event are limited to these amounts, per Dth of their shortfalls, which total \$10,670,776. These gas daily market gas prices, particularly the Monday and Tuesday prices, are extraordinary and justify a penalty level directly connected to the severity of circumstances of the Storm Uri event.

15. Commission Rule 1003, of the Commission's Rules of Practice and Procedure 4 *Code of Colorado Regulations* 723-1, addresses requests for waivers or variances, providing that, for good cause shown, the Commission may grant a waiver or variance from its tariffs. Rule 1003(a) provides that "[i]n making its determination [whether to grant a waiver or variance] the Commission may take into account, but is not limited to, considerations of hardship, equity, or more effective implementation of overall policy on an individual basis." We find Public Service has shown good cause to grant the variance in this instance. We further find that the penalty level established by the ALJ of the CIG daily market price per Dth, is an appropriate penalty level for the shippers noncompliance with the OFOs in this instance. The requested revision will more equitably address the costs incurred by the Company to maintain reliable service during the Storm Uri event by ensuring that subsidization among classes does not occur and that the rates under the EGCR are just and reasonable for all classes. We further find that the variance will allow for more effective implementation of the Company's tariff penalty provisions to ensure the magnitude of the penalty is in line with the severity of the event.

16. We therefore grant the Company's request for a variance to allow it to charge the market price per Dth (CIG daily market price) for noncompliance with the OFO orders and order the Company to flow back these OFO penalties to customers subject to a true-up, as proposed in the Settlement Agreement at page 8. This variance is for the events related to this Proceeding only; we agree with the ALJ that the ongoing Public Service gas rate case (Proceeding No. 22AL-0046G)

is the more appropriate forum to address the Company's request to permanently amend its tariff as to shipper and curtailment penalties.

**D. UCA RRR**

**1. \$10.7 Million Caused by Shipper Shortages**

17. In its RRR, UCA states that the Company agreed that \$10.7 million represents the excess amount that the Company had to pay to make up the difference from the shippers shorting the system while the OFO was in place.<sup>2</sup> UCA requests the Commission order that this \$10.7 million may not be allocated to the residential and small commercial classes. UCA states it is unlawful to require the residential and small commercial classes to pay for the \$10.7 million because these costs are attributable only to the actions of the transportation class. While UCA reiterates that it does not agree with the Commission's understanding of the OFO penalty language, it states that the question of whether the \$10.7 million should be collected from the transportation class recipient-customers, rather than from other retail customers is a separate question. It argues that cost-causation principles and fairness require that these costs not be paid by residential and small commercial classes. Finally, UCA claims that shifting these costs to the residential and small commercial customer classes is particularly unfair considering that the transportation shippers and recipient-customers are sophisticated players in the natural gas business with access to economic information to take advantage of this type of situation.

18. We deny UCA's RRR on this point. In light of our decision regarding the Company's Variance Motion and the discussion above, UCA's request on this issue is moot. Because we find that the Commission may institute a penalty in accordance with the

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<sup>2</sup> See UCA RRR, at p. 5 quoting Company Witness Zich, Jan. 28 Tr. at 116:5-9.

Recommended Decision, the \$10.7 million that UCA purports is inappropriately allocated to the small commercial and residential classes will be collected directly from shippers.

## 2. Prudency Findings

19. UCA reiterates from its filing on exceptions several reasons why it believes Public Service's "actions and failures to act in periods prior to and during Winter Storm Uri were imprudent."<sup>3</sup> In addition to reasserting its arguments regarding prudency on four issues, UCA requests the Commission state how it evaluates prudence so that utilities, government agencies, and the public may understand the basis for its conclusions in this case and in future prudence-review cases.

20. First, UCA reasserts its argument that the Company failed to adequately plan for the use of fuel oil, failed to refill its fuel oil tanks and the demineralized water tank at Blue Spruce, and failed to execute a plan to run fuel oil during the storm and thus the Commission should find the Company was not prudent and determine appropriate disallowances.

21. Second, UCA requests that the Commission should calculate a disallowance for the failure to issue conservation messaging based on the evidence in the record, separate from the disallowances relating to fuel oil and interruptible customers.

22. Third, UCA requests the Commission reverse its conclusion that the Company acted prudently with respect to its management of interruptible customers and determine the appropriate amount of disallowance.

23. Finally, UCA reasserts its argument that a disallowance of \$1,657,812 based on Public Service's costs for injecting into storage high-priced gas on February 19, 2021 is

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<sup>3</sup> UCA RRR, at p. 10.

appropriate. It notes that the Company and Commission Staff's response in exceptions related to gas purchases on February 12, 2021, and as a result, the Company failed to address or excuse the \$1.658 million injection of high-cost gas on February 19, 2021.

24. The Commission denies UCA's RRR on these issues. The Commission has already addressed the appropriate prudence standard in Decision No. C22-0413, as did the ALJ in Recommended Decision No. R22-0279. As stated in Paragraph No. 11 of Decision No. C22-0413, the appropriate prudence standard for this Proceeding is the prudence standard of review for Gas Cost Adjustment (GCA) recovery proceedings found in Commission Rule 4 CCR 723-4-4607(c). The standard requires an inquiry as to whether a utility's actions or inactions were reasonable in light of the information known or should have been known at the time. We also do not find it necessary to pass on or reconsider the Commission's findings and conclusions with respect to the Company's actions before and after storm Uri related to its dual-fuel oil plants, conservation messaging, its management of interruptible customers, or the February 19, 2021 gas injections.

## **E. Issues Raised in Public Service's RRR Application**

### **1. Effective Date of Decision**

25. In its RRR, the Company requests removal of the following sentence in Ordering Paragraph 3 of Decision No. C22-0413: "In the event of an appeal, we anticipate issuing a stay of the effectiveness of the tariffs in the subsequent new advice letter proceeding until the judicial review process concludes."<sup>4</sup> Public Service requests the removal of this sentence because it argues it would suffer the consequences of delayed implementation and cost recovery if any party files for RRR or a judicial appeal. According to Public Service, it filed its RRR in conjunction with its

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<sup>4</sup> Public Service RRR Application at p. 3, quoting Decision No. C22-0413, at Ordering ¶ 3.

Effective Date Motion “out of an abundance of caution” because the Effective Date Motion requests a modification of Decision No. C22-0413.

26. We deny the Company’s RRR. We granted Public Service’s Effective Date Motion and the Company has begun cost recovery through the EGCR. Accordingly, we already determined the substance of Public Service’s request on this issue and need not readdress the matter here.

## **II. ORDER**

### **A. The Commission Orders That:**

1. The Application for Rehearing, Reargument, or Reconsideration of Decision No. C22-0413, filed by Public Service Company of Colorado (Public Service) on August 3, 2022, is denied, consistent with the discussion above.

2. The Application for Rehearing, Reargument, or Reconsideration of Decision No. C22-0413, filed by the Office of the Utility Consumer Advocate on August 3, 2022, is denied, consistent with the discussion above.

3. The Motion for Variance from Electric and Gas Tariffs filed by Public Service on May 28, 2021 is granted in part, consistent with the discussion above.

4. The 20-day time period provided by § 40-6-114, C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the effective date of this Decision.

5. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
August 24, 2022.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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JOHN GAVAN

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MEGAN M. GILMAN

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Commissioners