

Decision No. C23-0670

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23M-0493EG

IN THE MATTER OF THE COMMISSION'S CONSIDERATION OF MODIFICATIONS TO EXISTING RULES GOVERNING THE GAS COST ADJUSTMENT OF GAS UTILITIES, 4 CCR 723-4-4600 THROUGH 4610, AND OF NEW RULES GOVERNING FUEL COST RECOVERY THROUGH THE RATE ADJUSTMENT MECHANISMS OF ELECTRIC UTILITIES, 4 CCR 723-3, IN PREPARATION FOR FUTURE RULEMAKING PURSUANT TO SECTION 40-3-120(2), C.R.S, AND SENATE BILL 23-291.

**COMMISSION DECISION
OPENING PROCEEDING, SOLICITING COMMENTS,
AND DESIGNATING CHAIRMAN ERIC BLANK
HEARING COMMISSIONER**

Mailed Date: October 6, 2023
Adopted Date: September 20, 2023

I. BY THE COMMISSION

A. Statement

1. Senate Bill (SB) 23-291 became effective August 7, 2023 thereby enacting § 40-3-120, C.R.S. The new statute requires the four Colorado investor-owned gas utilities¹ to file, on or before November 1, 2023, a gas price risk management plan (GPRMP) that includes proposals for leveling or reducing the volatility of fuel costs that are recovered pursuant to the utility's Gas Cost Adjustment (GCA) filings. The new statute also requires the Commission to adopt new or modified rules, on or before January 1, 2025, governing each gas utility's GCA and

¹ The four investor-owned natural gas utilities in Colorado include: Public Service Company of Colorado (Public Service); Atmos Energy Corporation; Black Hills Colorado Gas, LLC.; and Colorado Natural Gas, Inc.

each investor-owned electric utility's rate adjustment mechanism used for fuel-cost recovery² for the purpose of aligning the financial incentives of the utility with the interests of its customers.³

2. By this Decision, we open a proceeding to serve as a repository for comments, suggestions, and proposals for modifications to the Commission's Rules Regulating Gas Utilities, 4 *Code of Colorado Regulations* (CCR) 723-4, and specifically modifications to the GCA Rules at 4 CCR 723-4-4600, *et seq.*, and for the development of new rules in the Commission's Rules Regulating Electric Utilities, 4 CCR 723-3, to govern fuel cost recovery. This proceeding is intended to inform the development of one or more Notices of Proposed Rulemaking (NOPRs) to implement § 40-3-120(2), C.R.S.

3. We designate Chairman Eric Blank as Hearing Commissioner, pursuant to § 40-6-101(2), C.R.S.

B. Relevant Provisions in SB 23-291

4. Section 40-3-120(1), C.R.S., requires each investor-owned gas utility's GPRMP to include a maximum monthly fuel cost that can be automatically recovered through the GCA. The maximum fuel cost must account for price fluctuations based on seasonality. The statute requires the Commission to allow the utility to record costs incurred above the monthly maximum fuel cost in a deferred account for later recovery from over a period of no more than five years. The Commission may determine the period of recovery not to exceed five years as well as any recoverable financing costs. In addition, the GPRMP may include other mechanisms for leveling

² The two investor-owned electric utilities in Colorado include Public Service and Black Hills Colorado Electric, LLC (BHE). Public Service recovers fuel costs for electricity generation through its Electric Commodity Adjustment. Black Hills recovers fuel costs for electricity generation through its Energy Cost Adjustment.

³ Section 40-3-120(2), C.R.S., also requires the Commission to adopt rules governing the fuel clause adjustment mechanisms of the Colorado's two investor-owned electric utilities. The Commission intends to address the necessary changes to its Rules Regulating Electric Utilities, 4 CCR 723-3, in separate proceedings.

or reducing the volatility of fuel costs, such as physical hedging, financial hedging, fuel storage, or long-term contracting.⁴

5. Relatedly, § 40-3-120(2), C.R.S., requires the Commission to adopt new or modified rules to establish “risk-mitigation mechanisms” that achieve the alignment of the financial incentives of the utility with the interests of its customers, so long as these mechanisms protect customers and improve the utility’s management of fuel costs. Section 40-3-120(2), C.R.S., further requires the Commission to adopt rules to establish mechanisms regarding incurred fuel costs for Colorado two investor-owned electric utilities.

6. In adopting the new or modified GCA Rules and new rules for fuel cost recovery for electric utilities, SB 23-291 requires the Commission to consider results from the risk-mitigation mechanisms, including: (1) symmetrically allocating an amount of fuel price risk to the utility, (2) a range of outcomes within which no risk sharing occurs, and (3) a cap on any incentive or “cost share.” The statute further requires the Commission to tailor the rules to apply to different utilities based on a utility’s size or ability to implement the mechanisms and to consider the financial health of the utility and corresponding impacts on customer affordability as well as each utility’s ability to make investments to achieve the state’s energy policy objectives in an affordable manner for customers.

⁴ The Commission recently promulgated rules in Proceeding No. 21R-0314G requiring gas utilities to file for approval a Gas Performance Incentive Mechanism (GPIM). The GPIM is intended to serve as an incentive mechanism to share the risk of commodity natural gas prices between gas utilities and ratepayers. The rulemaking that will follow this Proceeding is expected to reconcile the GPIM filing requirements in the GCA Rules currently in effect with the new statutory requirements for gas utilities to file applications for approval of a GPRMP and the expected other modifications to the GCA required by SB 23-291.

C. Utility Bill Increases and Gas Commodity Costs Experienced During 2022-2023 Winter

7. When Coloradans began experiencing historically high utility bills last winter, the Commission engaged the Staff of the Colorado Public Utilities Commission (Staff) to analyze factors driving the higher bills. Staff's analysis culminated in two presentations: one before the Commission on January 25, 2023 as part of its regular business meeting, and the other before the Joint Select Committee on Rising Utility Rates on March 7, 2023.

8. According to Staff, utility bills for natural gas service for many Colorado customers more than doubled from the previous year in November through December of 2022. During this period, the Commission and the Colorado utilities received an unprecedented number of calls and complaints. The comments from customers expressed deep concern about high utility bills at a time when many other costs were increasing across the entire economy.

9. Staff's analysis revealed that bills for customers of Public Service Company of Colorado, for example, were much higher than they were in prior years. In December, the typical customer experienced an increase in electric bills of approximately 25 percent compared to the previous year and an increase of 75 percent in gas bills. Staff explained that conditions were similar across all Colorado utilities.

10. Staff determined that four principal factors explain these bill increases. First, the cost of natural gas fuel increased roughly 40 percent compared to the previous year. Second, gas usage increased by approximately 30 percent due to substantially colder weather as compared to December 2021 since most Coloradans use gas as their primary heating fuel. Third, recovery of the extraordinary gas cost related to Winter Storm Uri from February of 2021 began just prior to

the 2022-2023 Winter. Fourth, other increases in bills unrelated to prevailing gas costs also began prior to the 2022-2023 winter heating season.

11. Staff's analysis showed that charges for the recovery of gas commodity costs are the largest component of gas utility bills, at the time comprising more than half of the total bill. Staff explained that: gas fuel charges for all Colorado gas utilities have increased substantially in recent years; Colorado utilities do not earn profits on fuel charges; natural gas markets have been deregulated in the United States since 1985; and while prices vary geographically across the country, the market for natural gas is national and increasingly international due to Liquefied Natural Gas (LNG) exports. Staff stressed that although the Commission approves changes in the Colorado utilities Gas Cost Adjustment (GCA)—the item on the customer bills used to recover prevailing gas commodity costs—the Commission in no way regulates the natural gas market.

12. Staff's analysis emphasized that GCA rates in Colorado reflected the price trends in the unregulated natural gas market. Before Winter Storm Uri in February 2021, market natural gas prices had been relatively low and stable for several years. However, starting with Winter Storm Uri, gas commodity prices have been higher and more volatile than previous periods. Staff's analysis determined that during the 2022-2023 Winter, GCA rates reflected the \$0.6/therm to \$0.8/therm pricing available in the market plus delivery charges. Staff's analysis further cited Energy Information Administration data that showed that high commodity prices in the first part of the 2022-2023 Winter were driven by high LNG exports combined with low domestic storage inventories over the summer of 2022.

D. Potential Risk-Mitigation Mechanism

13. The Commission discussed potential reforms to the GCA as part of its discussions surrounding high utility bills during the 2022-2023 Winter prior to the passage of SB 23-291. At

the Commission's March 8, 2023 weekly business meeting, Chairman Eric Blank proposed to the Commission a potential framework for GCA reform in the form of a spreadsheet model. The Commissioners continued their discussion on potential GCA reform at its weekly business meetings on April 5, 2023 and April 26, 2023. By late April, the Commission recognized that the Colorado General Assembly might cause legislation that would guide such reform efforts as part of the efforts of the Joint Select Committee on Rising Utility Rates. Section 40-30-120, C.R.S., was the culmination of the legislative efforts with respect to GCA reform in SB 23-291.

14. After a review of various risk-mitigation mechanisms in other states, an approach that may be suited to Colorado as envisioned in SB 23-291 is implemented by Hawaiian Electric Company (HECO) through its Energy Cost Recovery Clause (ECRC).⁵

15. The Hawaii Public Utilities Commission adopted the ECRC to provide HECO with "some 'skin in the game' by exposing HECO to risks in fuel cost changes" and "at least some incentive to manage and avoid risks associated with fossil fuel price volatility".⁶ Under this clause, 98 percent of the difference between the baseline fossil cost and the monthly fossil cost is recovered from customers, subject to a +/- \$2.5 million annual revenue exposure cap. The baseline fossil cost is the actual fossil fuel costs in the first applicable month of the year divided by the actual million Btu for that fossil fuel type.

16. For the purpose of spurring rigorous debate among the stakeholders before the issuance of a NOPR pursuant to § 40-3-120(2), C.R.S., a spreadsheet model representing certain core tenants of the ECRC framework as it might be applied to a Colorado utility is attached to this

⁵https://www.hawaiianelectric.com/documents/billing_and_payment/rates/hawaiian_electric_rates/heco_rates_ecrc.pdf

⁶ Public Utilities Commission of the State of Hawaii, Docket No. 2016-0328, Final Decision and Order No. 35545, filed June 22, 2018, at 62-63.

Decision as Attachment A.⁷ The potential risk-mitigation measure represented in Attachment A is intended to align incentives such that the utilities “win when customers win and vice versa.” The mechanism is further intended to provide the Commission with early warning signals about increases in gas commodity market price such as experienced during the 2022-2023 Winter. The mechanism moves away from the current approach of the GCA and the electric utilities’ fuel-cost recovery mechanisms that allows for 100 percent of the utility’s incurred costs of market purchases of gas. The mechanism also limits accelerated cost recovery based on the pricing of forward natural gas contracts.

E. Solicitation of Comments and Proposals for Modifications to the GCA Rules

17. We open this proceeding to solicit comments from stakeholders and other interested participants about the necessary additions and modifications to the Commission’s rules in accordance with § 40-3-120(2), C.R.S. The proceeding will serve as a repository for information regarding those suggestions as well as for reports, decisions of other state public utility commissions, and draft rule language.

18. We invite stakeholders and other interested participants to submit initial comments and rule change proposals no later than December 1, 2023. Responsive comments may be filed no later than January 19, 2024.

F. Proceeding Structure

19. This Proceeding will commence as a non-adjudicatory, miscellaneous proceeding and there will be no parties. Therefore, we do not anticipate any motions to be filed in this

⁷ An executable version of the spreadsheet is available by request through email to: jemima.arthur-asmah@state.co.us.

proceeding. All filings in this proceeding should be made pursuant to subparagraph 1204 of the Commission's Rules of Practice and Procedure, 4 CCR 723-1.

20. We designate Chairman Eric Blank as Hearing Commissioner.

II. ORDER

A. The Commission Orders That:

1. The Commission opens this miscellaneous proceeding to serve as a repository for data and information related to potential revisions to the provisions governing the Gas Cost Adjustment in the Commission's Rules Regulating Gas Utilities in 4 *Code of Colorado Regulations* (CCR) 723-4, and for the development of new rules in the Commission's Rules Regulating Electric Utilities, 4 CCR 723-3, to govern fuel cost recovery, consistent with the discussion above.

2. This proceeding is designated as an administrative proceeding under 4 CCR 723-1-1004(b). This Proceeding shall continue as an administrative proceeding unless and until the Commission designates it to be an adjudicated proceeding.

3. Pursuant to § 40-6-101(2), C.R.S., Chairman Eric Blank is designated as the Hearing Commissioner.

4. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
September 20, 2023.**

(S E A L)



ATTEST: A TRUE COPY

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

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

MEGAN M. GILMAN

TOM PLANT

Commissioners