Decision No. C23-0117

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21R-0449G

IN THE MATTER OF THE PROPOSED AMENDMENTS TO THE COMMISSION'S RULES REGULATING GAS UTILITIES, 4 CODE OF COLORADO REGULATIONS 723-4, RELATING TO GAS UTILITY PLANNING AND IMPLEMENTING SB 21-264 REGARDING CLEAN HEAT PLANS AND HB 21-1238 REGARDING DEMAND SIDE MANAGEMENT.

COMMISSION DECISION ADDRESSING APPLICATIONS FOR REHEARING, REARGUMENT, OR RECONSIDERATION OF DECISION NO. C22-0760

Mailed Date: February 24, 2023
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I. BY THE COMMISSION

A. Statement

1. Through Decision No. C22-0760 (Gas Rulemaking Decision), the Commission adopted new and amended Commission Rules Regulating Gas Utilities found at 4 *Code of Colorado Regulations* (CCR) 723-4.

2. Through this Decision, the Commission addresses the six applications for rehearing, reargument, or reconsideration of the Gas Rulemaking Decision (RRR Applications) filed on December 21, 2022 by each of Natural Resources Defense Council, Western Resource Advocates, and Southwest Energy Efficiency Project, (jointly the Conservation Advocates); the Colorado Energy Office (CEO); Colorado Natural Gas, Inc (CNG); Atmos Energy Corporation (Atmos); Public Service Company of Colorado (Public Service); and Black Hills Colorado Gas, Inc. (Black Hills).

3. Consistent with the discussion below grant, the Commission grants in part and denies, in part, the RRR Applications.

4. Through this Decision, the Commission adopts new and amended Commission Rules Regulating Gas Utilities found at 4 CCR 723-4. The adopted rules are attached to this Decision in legislative format (*i.e.,* strikeout/underline) as Attachment A, and in final format as Attachment B.

B. Background

5. On October 1, 2021, the Commission commenced this rulemaking by a Notice of Proposed Rulemaking (NOPR) issued as Decision No. C21-0610.

6. On December 1, 2022, the Commission issued the Gas Rulemaking Decision which amended the Commission's Rules Regulating Gas Utilities, 4 CCR 723-4 (Gas Rules). The amendments add to as well as revise the existing provisions of the Commission's Gas Rules in seven areas: (1) the General Provision rules (General Provisions) at 4 CCR 723-4-4000 *et seq*.; (2) the Operating Authority rules (CPCN Rule) at 4 CCR 723-4-4102; (3) the Facilities rules (Line Extension Rule) at 4 CCR 723-4-4210; (4) the rules governing calculation of Greenhouse Gas

Emissions (Greenhouse Gas Emission Rules) at 4 CCR 723-4-4526 *et seq*.; (5) the rules governing Gas Infrastructure Planning (Gas Infrastructure Planning Rules) at 4 CCR 723-4-4550 *et seq*.; (6) the rules governing Clean Heat Plan (Clean Heat Plan Rules) at 4 CCR 723-4-4725 *et seq*.; and (7) the rules governing Demand Side Management (DSM Rules) at 4 CCR 723-4-4650 *et seq*.

7. On January 17, 2022, the Commission granted the RRR Applications for the sole purpose of tolling the 30-day statutory time limit in § 40-6-114(1), C.R.S., to act upon such applications through Decision No. C23-0039. In that decision, we stated that a future order ruling upon the merits of the RRR Applications was forthcoming.

C. Discussion, Findings, and Conclusions

1. Rule 4001: Definitions

c. Rule 4001(r)—Definition of "design day peak demand"

8. In the Gas Rules Decision, the Commission adopted a definition of "design day peak demand" for use in several other rules, including the Line Extension Rule as well as in 4553, Contents of a Gas Infrastructure Plan, and in 4731(a), which specifies requirements for initial forecasts under a clean heat plan. The Commission defined "design day peak demand" in Rule 4001(r) to mean "the highest hourly natural gas flow rate projected for a utility system, or a portion thereof, based on relevant 1-in-30-year low temperature data."

9. In response, each of Black Hills, Atmos, and Public Service requested changes to the definition of "design day peak demand" in their respective RRR Applications. Public Service states that the Commission's definition appears to conflate the concepts of pipeline capacity needed to serve peak demand in geographically specific areas as determined by hydraulic modeling and peak system supply. Public Service also states that the Commission's definition is not aligned with

how the utility determines design day requirements for purposes of capacity planning because Public Service bases its approach on the probability of a 1-in-30-year occurrence of an expected low temperature, rather than the 1-in-30 year low temperature data, contemplated in the Commission's definition. Public Service suggests changing the definition to refer to the "highest hourly natural gas flow rate projected for a utility system, or a portion thereof…"[1] Black Hills requests the Commission provide stakeholders the opportunity to explore design day peak demand and pressure district definitions since they were introduced late in the proceeding to ensure that the rules adopt an accurate definition that is applicable to utility operations. Atmos believes that the Commission was interested in identifying the maximum estimated hourly throughput over relevant sections of a utility's system or portion thereof in a 1-in-30-year occurrence, regardless of whether that throughput was attributable to sales gas or transportation gas. To remove confusion over the mixed usage of "day" and "hour," and to not to change the alphabetical order of the proposed rules, Atmos believes the term should be changed to "design hourly peak demand."[2]

10. We recognize the concerns raised by Atmos and Public Service that defining "design day peak demand" to reference an hourly flow rate is confusing. We are also cognizant of the concerns raised by utilities that each utility may employ slightly different approaches to calculating design day peak demand. At this juncture, we see value in retaining a flexible definition that allows utilities to present their methodology as currently employed to the Commission. We expect that in future gas infrastructure plan filings, the Commission will gain an understanding of the underlying data and factors that a utility uses to determine design day peak

[1] Public Service RRR Application, p. 3.
[2] Atmos RRR, pp. 2-3.

demand. We adopt in part the definitions presented by Public Service and Atmos and incorporate in the Gas Rules the following definition for design peak demand:

> "Design peak demand" refers to the maximum gas flow rate projected for a utility system, or a portion thereof, which is utilized by a utility for infrastructure capacity planning.

11. We reject Black Hills' request to provide additional opportunity to comment on this definition. The NOPR proposed in Rule 4553(b) a requirement that utilities prepare forecasts of capacity on a design or peak day requirement basis. While the definition in the Gas Rules Decision was not put forth in original NOPR, the Commission expressed its interest in exploring the design day concept, at least for forecasting purposes, as far back as October 2021. Further, we find that the added flexibility in the above definition should alleviate concerns expressed by utilities regarding their use of differing methodologies that could have potentially required additional opportunities for refinement through comment. We also make the change universally in the Gas Rules to reflect "design peak demand" instead of "design day peak demand" as the defined term.

d. Rule 4001(q)—Definition of "dedicated recovered methane pipeline"

12. In the Gas Rules Decision, the Commission adopted a definition of "dedicated recovered methane pipeline" in 4001(q). CEO requests the Commission use the defined term "dedicated pipeline," which is used by the Air Quality Commission (AQCC) as well as Senate Bill (SB) 21-264, rather than the term "dedicated recovered methane pipeline" found in the Gas Rules Decision to prevent any confusion.

13. Similarly, CEO suggests the Commission revise the provision found in Rule 4731(f)(I)(B) that currently requires a utility to report the gross quantity of green hydrogen "to be injected" on an annual basis if its clean heat plan includes the purchase of development of green hydrogen. CEO suggests, instead of requiring reporting of injection of green hydrogen, the

Commission should require reporting of the quantity of green hydrogen "transported by a common carrier or dedicated pipeline."[3] CEO suggests this would ensure accurate accounting of all green hydrogen conveyed throughout the utility's service territory.

14. We do not find it necessary to incorporate CEO's request to change "recovered methane dedicated pipeline" to "dedicated pipeline" at this time. We think the more specific term is more suitable for the Gas Rules and may well avoid future confusion that the more general terminology could cause.

15. We adopt CEO's suggestion regarding 4731(f)(I)(a); we agree that the rule should ensure that all green hydrogen, whether transported via the common carrier pipeline system or not, should be reported.

e. Rule 4001(nn)—Definition of "pressure district"

16. The Gas Rules Decision adopted a definition for the term "pressure district" to mean an area within a utility's service territory with a distinct pressure environment from neighboring regions. The pressure district concept is intended to provide a useful geographic specificity to understand capacity constraints and other project needs at a level that the Commission understands to be, in most cases, looser than the regulator station requirement, but more granular than a town border station or citygate, which the Commission feels is an appropriate level of granularity for our first efforts at gas infrastructure planning. It was intended to provide continuity within the localized level at which system forecasting and planned needs are being expressed. Public Service and Atmos each suggest modifications to the definition of "pressure district." Atmos suggests modifying the definition to mean "a utility system or portion of a utility

[3] CEO RRR, pp. 12-13.

system with a distinct pressure profile."[4] Atmos states that its definition captures what it believes the Commission is interested in knowing about—which is pipeline systems, or portions of pipeline systems that have a distinct pressure profile. Atmos states the current definition is confusing because an "area" does not have a specific gas pressure and a "neighboring region" could be interpreted to refer to other utilities' nearby systems, since it is not clearly tied to neighboring regions within the same utility service territory. Public Service raises similar concerns that the definition requires further clarification and suggests the term be defined as "means a localized area within a utility's service territory with a distinct pressure profile."[5]

17. Black Hills requests the Commission provide stakeholders the opportunity to explore design day peak demand and pressure district definitions since they were introduced late in the proceeding to ensure that the rules adopt an accurate definition that is applicable to utility operations.

18. The Commission introduced the concept of pressure districts to facilitate planning processes based on appropriately-sized geographic regions. From the start of this proceeding, the Commission has expressed an interest in identifying an appropriate geographic area upon which to base localized forecasting and planning. The utilities explained that planning to the regulator station level would be burdensome. The Commission understands pressure districts as localized areas within utility service territories which have unique minimum and maximum pressure ranges, are fairly static in shape and size, and reasonably-sized by which to conduct and convey planning practices and results. We modify the definition slightly in order to improve the understanding of the concept to "Pressure district means a localized area within a utility's service territory whereby

[4] Atmos RRR, p. 3.
[5] Public Service RRR, p. 4.

an established minimum and maximum pressure range can be maintained, which is distinct from neighboring zones." If a utility continues to believe the concept of pressure districts does not apply to their service territory, it should plan to thoroughly explain the operation of its system in its informational gas infrastructure plan application(s) and present reasonably-sized localized zones within which to present forecasting and planning, so the Commission better comprehend such operations and rule on utility-appropriate geographic designations in subsequent applications.

f. Rule 4001(qq)—Definition of "recovered methane"

19. In its RRR Application, Public Service suggests altering "customer end use" with the "customer's meter" in Rule 4527(b)(I) and in the definition of "recovered methane." Public Service asserts that this change will better align the rules with the language used by the AQCC in its recovered methane credit accounting and tracking regulations. Doing so, according to Public Service, will "avoid ambiguity and potential regulatory conflict."[6]

20. CNG continues to argue that the Commission's definition of "recovered methane" should include sources located outside of Colorado. It states that by the plain language of § 40-3.2-108(3)(e), C.R.S., recovered methane that is delivered to or within Colorado is eligible. It urges the Commission to not rely on AQCC's draft rules and that AQCC reached an erroneous conclusion regarding the statutory interpterion. CNG also argues that emission reduction generally, even if occurring outside of Colorado, further the goals of the Colorado Legislature. CNG urges the Commission to retain flexibility in this instance to ensure recovered methane sourced outside of Colorado remains an option for clean heat plans.

[6] Public Service RRR, pp. 17-18.

21. We reject Public Service's RRR request to change "customer end use" with "customer's meter" in the definition of "recovered methane" found in 4001(qq) and corresponding language in Rule 4527(b)(I). As we discussed in the Gas Rules Decision, consideration of behind the meter emissions is something the Commission and the Air Pollution Control Division of CDPHE (the Division) intend to explore further in the future. While we generally see benefit in alignment between the Commission's Rules and the AQCC's Rules, Public Service does not give a specific reason why it is necessary to use the same phrasing in this instance. Further, the term "customer's end use" is used within SB 21-264 and we find it appropriate to use the same terminology as § 40-3.2-108, C.R.S.

22. We also reject the request by CNG to remove from the definition of "recovered methane" the requirement that recovered methane must be sourced in Colorado. We continue to find that it furthers the legislative purposes of SB 21-264 to ensure that only recovered methane sourced in Colorado may be utilized to meet clean heat targets. For example, a purpose outlined in SB 21-264 is to "achieve Colorado's science-based greenhouse gas emission reduction goals…" and the listed means to do so include "improving the energy efficiency of Colorado's buildings."[7] The statutory purpose also emphasizes that "there is significant potential to reduce emissions of methane…especially in rural Colorado."

23. While CNG is correct that the statute states that recovered methane can be delivered "to or within Colorado through a dedicated pipeline" or "physically flows within Colorado or toward the end user in Colorado," we also note that the statutory definition of recovered methane requires it to be "located in Colorado."[8]

[7] § 40-3.2-108(1)(b)(I), C.R.S.
[8] § 40-3.2-108(2)(n), C.R.S.

24. Additionally, we continue to see importance in aligning the Commission's rules with the AQCC rules. It is important for the Commission's Gas Rules to work in conjunction with the AQCC's recovered methane credit and tracking system. In the AQCC rules, recovered methane is defined as "located in Colorado…and is delivered to or within Colorado through a dedicated pipeline or through a common carrier…"[9] Further, the rules require "proof that the recovered methane project is located in Colorado," which must include a physical street address.[10] For these reasons, we deny CNG's request to reconsider allowing use of recovered methane that is sourced outside of Colorado to meet clean heat targets within Colorado.

g. Rule 4001(ss)—Definition of "sales customer"

25. In its RRR Application, Atmos states that it has some customers that take sales service at one meter but use transportation service to another meter. Atmos argues that to the extent the customer is taking sales service through a meter, they should fall under the definition of "sales customer" and be eligible for inclusion in demand side management programs. Accordingly, Atmos asks that the Commission modify the definition of "sales customer" to state, "means a customer who receives sales service from a utility and is not served under a utility's gas transportation service rate schedules at that same meter."[11]

26. Regarding Atmos' request to modify the definition of "sales customer" in Rule 4001(ss), the Commission grants this RRR request. We find that the modification requested by Atmos will clarify distinctions between transport and sales customers and therefore adopt the definition of "sales customer" suggested by Atmos in its RRR Application.

[9] 5 CCR 1001-26 I.B.15.
[10] 5 CCR 1011-26 I.D.1.d.
[11] Atmos RRR, p. 4.

2. Rule 4102: Certificate of Public Convenience and Necessity for Facilities

a. Commission Authority

27. Rule 4102 implements § 40-5-101, C.R.S., for certificates of public convenience and necessity (CPCN) for operation or extension or expansion of facilities. In the Gas Rules Decision, we adopted new provisions in Rule 4102 that require utilities to apply for a CPCN for projects above certain monetary thresholds of utility capital investment by customer size. We also updated the CPCN application requirements to require a utility to present similar information to the filing requirements in Rule 4553.

28. Black Hills, CNG, and Public Service each argue that the Commission's adopted CPCN Rule impermissibly expand the Commission's authority under § 40-5-101, C.R.S.

29. CNG contends that by establishing cost thresholds over which the Commission mandates the filing of a CPCN, the Commission assumes authority to make a ruling whether or not projects are in the ordinary course of business, so the rules circumvent the absolute exclusions afforded in § 40-5-101(1)(a)(I), (II), and (III), C.R.S. CNG argues that the Commission must recognize that public utilities have an "obligation to serve" customers requesting service established by statute, specifically § 40-3-101(2) and 40-4-101(2), C.R.S., and case law.[12] CNG maintains that the Commission's approval of a utility's expansion of the system is only required in limited circumstances under § 40-5-101(1)(a)(I)-(III), C.R.S. CNG argues that the Commission's policy determination in the adopted rules unlawfully places conditions on the utilities' statutory ability to extend their facilities without having to seek a CPCN.

[12] CNG RRR, pp. 4-6.

30. Black Hills makes a similar argument that Rule 4102(a) unlawfully conflicts with § 40-5-101, C.R.S. Black Hills contends that, per the statute, a project that is not in the ordinary course of business, but is within a city in which the utility has already lawfully commenced operations, is exempt from any further CPCN requirements.[13] In its RRR Application, Black Hills requests the Commission reassess the project cost thresholds found in paragraphs 4102(b), (c), and (d) for the same reasons.

31. Public Service reiterates its concerns about the breadth of Rule 4102 and the monetary threshold above which it must obtain a CPCN. Public Service states it does not take issue with the threshold in and of itself; however, it continues to have concerns that the broad applicability of this rule could create conflict with its statutory obligation to serve under § 40-3-101(2), C.R.S.[14]

32. The Commission denies the utilities' RRR on this issue. We continue to find that adopting the CPCN Rule as presented in the Gas Rules Decision (with minor modifications discussed below) is a lawful exercise of the Commission's authority and furthers several important policy purposes. As we stated in the Gas Rules Decision, the changing regulatory environment for gas utilities (*i.e.,* SB 21-264 and House Bill (HB) 21-1238), and the issues arising in recent Commission proceedings, demonstrate the pressing need for more prospective review of significant utility projects prior to cost recovery.[15]

33. As a threshold matter, the Commission has the regulatory authority to require greater preplanning and approval of utility expenditures of capital for utility investments in new

[13] Black Hills RRR, pp. 3-4.
[14] Public Service RRR, pp. 4-7.
[15] Gas Rules Decision, ¶ 83.

facilities or extension or expansion of facilities. Rates and charges for utility service are to be just and reasonable pursuant to § 40-3-101(1), C.R.S. The Colorado Supreme Court has held that it is the primary purpose of utility regulation to ensure that the rates charged are not excessive or unjustly discriminatory.[16] Further, § 40-3-101(2), C.R.S., requires a utility to furnish, to provide, and to maintain such service, instrumentalities, equipment, and facilities as shall promote the safety, health, comfort, and convenience of its patrons, employees, and the public, and as shall in all respects be adequate, efficient, just, and reasonable. *See also* § 40-3-111, C.R.S. The Colorado Constitution charges the Commission with the duty of regulating the rates of public utilities and ensuring that rates are just and reasonable. Similarly, under § 40-4-101, C.R.S., the Commission is charged with prescribing rules and regulations to ensure that electric and gas utility service in Colorado is furnished in a manner that is adequate, reliable, and promotes the health, safety, and welfare of the citizens of Colorado.

34. The CPCN and Gas Infrastructure Plan Rules further both purposes of Commission regulation of ensuring just and reasonable rates and adequate service. Under the Commission's ratemaking authority, and in fulfilling its duty to ensure just and reasonable rates and adequate service, the Commission has authority to require greater preplanning and approval of utility expenditures through the adopted Rule 4102 and Rule 4550 *et seq*. This heightened process for preplanning provides a needed opportunity to scrutinize costly projects before they are undertaken,

[16] *See, Colo. Office of Consumer Counsel*, 275 P.3d at 660-61; *Pub. Serv. Co. v. Pub. Utils. Comm'n*., 26 P.3d 1198, 1207-08 (Colo. 2001) (holding that the Commission acted reasonably in its legislative capacity to accomplish its ratemaking function when it required Public Service to include a merger savings adjustment to benefit ratepayers because there was sufficient support in the record); *CF&I Steel, L.P*., 949 P.2d at 586-87; *Colo. Office of Consumer Counsel v. Pub. Utils. Comm'n.*, 786 P.2d 1086, 1095-97 (Colo. 1990) (holding that the Commission did not act arbitrary or capriciously in setting rates, even though it did not accept any of the experts' opinions in full); *Pub. Serv. Co. v. Pub. Utils. Comm'n*., 653 P.2d 1117, 1120 (Colo. 1982) (holding that the Commission did not abuse its discretion when it chose not to include out-of-test year debt cost because the decision was reasonable and based on the record).

and before the utility incurs costs it may later seek to recover from its customers. Greater emphasis on preplanning infrastructure investment provides greater consumer protection and supports planning for emissions reductions as well.

35. Additionally, a utility is required under § 40-5-101, C.R.S., to apply for a CPCN before beginning construction of a new facility, plant, or system or the extension of its facility, plant, or system. While § 40-5-101, C.R.S., governs CPCNs for both authorizations to serve a service territory as well as constructing or extending facilities, Rule 4102 implements § 40-5-101, C.R.S., for review of the facility-related investment. The Commission has additional rules for CPCNs for service territory expansion that are not at issue here.

36. We find no merit to the contention of CNG and Black Hills that, once a utility has a CPCN for a particular service territory, then the utility's further activities within that service territory are entirely excepted from any requirement for a CPCN. In many instances, for example transmission projects and the West Metro CPCN proceeding,[17] the Commission considers applications for CPCNs to build specific facilities or extension of facilities within existing service territories of a utility. We therefore reject this contention as legally unsound and, as a practical matter, inconsistent with recent cases.

37. We also find significant that the Legislature did not prescribe a definition for the term "ordinary course of business" in § 40-5-101(a), C.R.S. As a result, it is the Commission's task, in implementing this provision, to attach the proper meaning to this term. Given this discretion, we reject the utilities' contention that Rule 4102 and Rule 4550 *et seq*. contravene § 40-5-101(a), C.R.S. We find instead that our adopted rules lawfully implement the statutory CPCN

[17] *See e.g.,* 21AL-0096E; 21AL-0091E; 21A-0472G.

requirement. The Commission can place reasonable limits on where and how it reviews infrastructure investments. Further, SB21-264 and HB21-1238 indicate a desire of the Legislature for the Commission to review system growth more meaningfully and indicate a need for changes to historical practices of gas utilities (*i.e.*, greater emphasis on pre-construction review). These new authorities provide even more cause for the Commission to adopt an updated approach to implementing § 40-5-101(a), C.R.S., that requires more preplanning for significant utility expenditures.

38. Finally, as we stated in the Gas Rules Decision, the stakeholders' initial petition for a rulemaking on short-term gas infrastructure planning and reporting, submitted in April 2021 provided a valuable starting point for the CPCN thresholds proposed in this rulemaking.[18] While the Commission denied the petition in order to open a more comprehensive rulemaking, we note that Black Hills, CNG, Atmos, and Public Service each at that time *supported* a monetary threshold approach for certain utility infrastructure capital projects. We therefore give less weight to their contention now that this approach is unlawful.

39. In sum, we find that the Commission has the authority to implement additional infrastructure investment review processes and that doing so through the adopted Gas Infrastructure Plan Rules and the CPCN Rule is a lawful and viable approach to implementing additional review. We therefore deny the RRR Applications by Public Service, CNG, and Black Hills to the extent that they recommend the Commission decline to adopt these rules or contend that the Commission is acting outside its authority.

[18] Gas Rules Decision, ¶ 80.

3. Rule 4102(f): CPCN Filing Requirements

40. Public Service requests the Commission make several changes to Rule 4102(f). First, it requests that the Commission modify where and how it requests Pipeline and Hazardous Materials Safety Administration (PHMSA)-related project information. In 4102(f)(IV), Public Service suggests adding the PHMSA code requirement, Public Service requests that the Commission allow utilities to use a utility-developed cost estimate classification index. Public Service explains that it has invested a lot of time and resources into its classification methodology.[19]

41. We adopt these requests by Public Service. We find each adds clarity to the respective rule provisions.

42. Additionally, Public Service requests that the Commission remove "utility-wide" from the greenhouse gas reporting requirement in Rule 4102(f)(XV).

43. We decline to adopt this change regarding utility-wide changes in greenhouse gas emissions in Rule 4102(f)(XV). Because CPCN applications are likely to be some of a utility's largest projects, we find that calculating greenhouse gas emissions on a utility-wide basis is appropriate and in line with other state policy objectives related to greenhouse gas emission reductions.

44. Additionally, Public Service requests in Rule 4102(f)(X), the Commission add language to the mapping requirement provision that it is subject to necessary and appropriate confidentiality provisions. We adopt this change which aligns Rule 4102(f)(X) with Rule 4553(c)(I)(J).[20]

[19] Public Service RRR, pp. 14-15.

[20] Commissioner Gilman dissents from this decision.

45. In its RRR Application, Black Hills argues that the requirements of Rule 4102(f) and related provisions increases the administrative burden significantly and will result in more regular rate case filings, which will ultimately increase costs to customers. As such, Black Hills suggests that the Commission take this opportunity to "institute real change with respect to the regulatory process and adopt in this rulemaking proceeding language allowing for concurrent recovery of costs associated with any projects approved through the multitude of new rules."[21]

46. Black Hills also requests the Commission exclude new business projects from the CPCN requirement in Rule 4102(f)(XVI). Black Hills argues that by virtue of developers or other customers requesting gas service, the threshold of "convenience and public necessity" has been achieved.[22] It argues that developing an analysis of alternatives is not appropriate for new business projects because a developer would have already considered alternatives, including electrifying the development, prior to requesting natural gas service from a utility. Black Hills states that energy efficiency and demand response measures are the only non-pipeline alternatives available to gas-only utilities and either would not avoid the need to install a new business service lateral. Black Hills again notes that electrification is not a non-pipeline alternative option for gas-only utilities. It suggests corresponding changes to Rule 4102(f)(XVI) to implement excluding new business projects from CPCN requirements.

47. Public Service similarly requests that the Commission remove any reference to new business projects in 4102(f) and (g). Public Service argues that the CPCN rules should be limited to capacity expansion projects, and suggests removing integrity projects from CPCN oversight as

[21] Black Hills RRR, p. 8.
[22] Black Hills RRR, p. 8.

well as 4102(f)(XVII) which requires that a utility must provide the risk ranking and associated methodology to conduct risk ranking associated with integrity projects.

48. We decline to modify for which projects a utility must seek a CPCN under Rule 4102. As we stated above, the Commission has the authority and finds that it is important to have a better understanding of utility investment prior to construction of major projects. This need for greater preplanning and review of investment includes new business projects as well as other types of major investments gas utilities make on behalf of existing and new customers. The Commission denies both Public Service and Black Hills' requests to limit the applicability of the CPCN Rule.

c. Public Service Waiver Proposal

49. Public Service requests the Commission incorporate an expedited waiver process into Rule 4102 which it states will enable it to serve and maintain safety and reliability where time is of the essence. Public Service proposes re-incorporating the Commission's original waiver proposal from the October 2021 proposed rules to this effect as Rule 4102(i).

50. In Decision C22-0427-I, we proposed for comment striking this language based of comments from the Colorado Utility Consumer Advocate that the proposed waiver language was duplicative of the Commission's existing Rules of Practice and Procedure, 4 CCR 723-1 and that waivers for good cause should require a showing of more than just a statement that safety or reliability is at issue. While we emphasize the importance of safety and reliability and recognize that utilities have an obligation to serve, we find that Commission Rule 1003 already establishes a process to address situations Public Service seeks to address by adding waiver language to Rule 4102(i). We therefore decline to reincorporate the waiver language into Rule 4102, but reiterate that a utility may always request a waiver or variance under existing Commission regulations when

it believes good cause exists for such request, and particularly in situations where safety or service reliability are at issue.

3. Rule 4210: Line Extension

51. In the Gas Rules Decision, the Commission adopted an amended version of Rule 4210, which governs gas utility line extension policies. The adopted Line Extension Rule established a requirement that utilities present updated line extension policies by December 31, 2024, in a base rate proceeding or separately filed application. It also requires that line extension policies, procedures, and conditions shall be based on the principle that the connecting customer pays its share of the estimated full incremental cost of growth, including any costs associated with increases in design day peak demand. We also emphasized in the Gas Rules Decision that line extension tariff filings will now be considered as Colorado progresses towards meeting its greenhouse gas reduction goals and reflected this in Rule 4210(e), that states that line extension policies, procedures, and conditions shall generally align with the greenhouse gas emission reduction goals established in § 25-7-102(2)(g), C.R.S.

a. Requests for RRR

52. Black Hills continues to "be concerned that proposed Rule 4210 modifies a cost allocation principle on regulated utility service that has been in place for decades."[23] Black Hills continues to advocate that the Commission reconsider its modifications to Rule 4210, and institute a specific rulemaking to address only Rule 4210 so that a uniform policy can be developed that will be applicable to all utilities – both gas and electric. It also raises concerns that the term "standardized costs" is vague and ambiguous and that it is unsure how the construction allowance

[23] Black Hills RRR, p. 9.

calculation would change, if at all, compared to the current construction allowance calculation used by Black Hills.

53. In its RRR Application, Conservation Advocates continue to urge the Commission to explicitly eliminate gas line extension allowances through this proceeding. They argue that the version of Rule 4210 adopted by the Gas Rules Decision is ambiguous and risk prolonging the base rate proceedings in which updated line extension rules would be established. Conservation Advocates states that eliminating gas line extension allowances now would provide affordability benefits for existing gas customers, climate benefits for all Coloradans, and certainty to the builders and the gas workforce.

54. If the Commission declines to eliminate line extension allowances entirely, Conservation Advocates argue that in the alternative, the Commission should at minimum clarify the rule language to streamline future proceedings and ensure that gas utilities adopt uniform line extension policies. Conservation Advocates recommend that the Commission should clearly define the "full incremental cost of growth" and ensure that it explicitly includes the cost of greenhouse gas emissions attributable to a new connection using the social cost of carbon and social cost of methane. Conservation Advocates also argue that the Commission should remove the word "generally" from Rule 4210(e) which currently reads that "[l]ine extension policies . . . shall generally align with greenhouse gas emission reduction goals . . ."

55. Rule 4210(d) establishes that exemptions from updated line extension allowances and standardized costs shall not extend to applications for line extensions submitted after May 1, 2023. The Gas Rules Decision stated that the changes to Rule 4210 are not intended to result in the immediate elimination of construction allowances for line extensions or for the imposition of any barriers to the installation of gas service lines to any new structure. We also recognized the

need to allow for the phase in of changes in standardized costs and construction allowance values to avoid interfering with existing contractual agreements for new service and to preserve, within reason, the economics of existing developments that may be relying upon the existing policy. To that end, we established an exemption from updated policies for those customers or prospective customers with executed contractual arrangements for new line extensions prior to May 1, 2023. CNG seeks clarification as to whether a contract executed sometime after the exemption period ending May 1, 2023, but prior to the adjudication of either an application or base rate case addressing line extension policy, would still be subject to the utility's existing tariffed line extension policy. If the terms and conditions of the existing line extension policy would still apply after May 1, 2023, it is unclear to CNG what the purpose of ending the "grandfathering" is on that date. In CNG's view, the "grandfather" period should coincide with the effective date of the change to the policy pursuant to either the base rate proceeding or separate application, which must be implemented no later than December 31, 2024.

56. The Gas Rules Decision adopted the language that if a utility uses standardized costs to calculate a portion of its line extension policy, then, the utility must use the "average actual cost across the applicable customer class and line extension type for the most recent consecutive 12-month period for which compiled cost data is available." In its RRR Application, Atmos offers an adjustment to the standardized cost calculation to allow a utility to use cost data no older than the "most recent consecutive 12-month period for which compiled cost data is available at the time it initiates a base rate proceeding."[24]

57. Public Service raises two issues with Rule 4210 in its RRR Application. First, it seeks clarification that the rule requires utilities to make a filing that allows for the implementation

[24] Atmos RRR, p. 4.

of these rules by the end of 2024, but that the form of that filing is in the discretion of the utility. Second, Public Service raises concerns about potential disparity between utility gas line extension policies. It argues that such disparate treatment could cause competitive harm to customers and providers. Public Service proposes an addition to Rule 4210 that "will ensure consistency amongst line extension policies across utilities."[25]

a. Findings and Conclusions

58. We reject the requests by both Black Hills and Conservation Advocates to reconsider the entirety of Rule 4210. The Commission finds the parties' arguments on RRR do not provide persuasive grounds to further adjust or refine this rule. We continue to find the final language adopted by the Gas Rule Decision strikes the right balance in how we approach this issue in terms of evaluating the costs and benefits of new customer growth. Conservation Advocate's argument to remove line extensions fully is based on the concept that clean heat targets can only be met by reducing throughput. We find that eliminating line extension policies at this juncture prejudges the outcome of the clean heat plan process; we do not yet know whether utilities may present a viable approach to statutory emission reduction requirements that supports continued expansion of the system.[26] We also do not see merit in ensuring consistency of line extension policies between electric and gas utilities, which is not currently the case either. As such, we decline to eliminate line extension allowances entirely at this time and reject Conservation Advocates' request. Although we reject Conservation Advocates' suggested edits, we recognize that the interaction between the state's greenhouse gas reduction policy and line extension allowances will remain important to consider and expect that utilities will present information

[25] Public Service RRR, p. 17.
[26] Gas Rules Decision, ¶ 254.

identifying the environmental costs, including the social costs of emissions, associated with new gas customers, such that that information can be considered by the Commission. We also decline to reconsider Rule 4210 to implement uniform policies for gas and electric utilities as requested by Black Hills.

59. We also reject Public Service's request to add language ensuring the consistency amongst line extension policies across utilities. Utilities do not have consistent policies now, and differences between utilities, including in service territory areas, customer bases, and geographic characteristics may require the Commission to take unique approaches to line extension allowances and policies among utilities.

60. We confirm Public Service's understanding that the form of filing (whether by standalone advice letter or via full a full base rate case) is under the discretion of the utility in Rule 4210(c).

61. With respect to Black Hills' argument that the concept of standardized costs is vague and ambiguous, and that they are uncertain how that construction allowance calculation would change, if at all, the Commission notes that if a utility does not incorporate standardized costs of service lines to calculate its line extension allowances, it need not alter its calculation approach. However, if a utility does incorporate the standardized cost of service lines to calculate line extension allowances, then the Commission's decision in our final order was clear and with sufficient guidance. Accordingly, we reject Black Hills' suggestion to institute a specific rulemaking to address Rule 4210 so that a uniform policy can be developed.

62. With respect to Atmos' suggestion that the Commission should clarify the historical period by which standardized costs are calculated to the most recent consecutive 12 month period for which compiled data is available at the time it initiated a base rate proceeding, the Commission

agrees and adopts this clarification to our rules, but modifies it slightly so that it may be applicable to a base rate proceeding or a stand-alone proceeding to implement the line extension allowances, as either type of proceeding is available to utilities to implement the new line extension allowance policy.

63. With respect to CNG's request to clarify whether a contract executed after the exemption period ending May 1, 2023, but prior to the adjudication of line extension policy would still be subject to the utility's existing tariffed line extension policy, the Commission believes the policy, as implemented is appropriate. Line extension contracts signed after May 1, 2023, will be subject to the line extension allowance tariff in place when the work is completed.

4. Rule 4409: Restoration of Service

64. Atmos[27] and Public Service both request the Commission not adopt the changes to Rule 4409 (b), (c), and (d) that were presented in the attachments to the Gas Rules Decision. Both point out that these substantive changes were not deliberated upon or discussed throughout Proceeding No. 21R-0449G and as such should not be included in the adopted rules.

65. The Commission updated Rule 4409 by Decision No. C21-0765 in Proceeding No. 20R-0349EG, issued October 29, 2021. We grant this RRR request by Atmos and Public Service and ensure that the final Gas Rules reflect only those changes to Rule 4409 adopted by Decision No. C21-0765.

5. Rule 4527: Measurement and Accounting

66. *Weather Normalization*. The Gas Rules Decision declined to adopt a mechanism for weather normalization of the baseline a utility presents for greenhouse gas accounting

[27] Atmos RRR, p. 4.

purposes. Public Service notes that the lack of a weather normalized baseline makes the clean heat targets more stringent "in a material way."[28] Public Service requests that at the utility's discretion, it may provide a sensitivity analysis in the first clean heat plan that illustrates the emission reductions demonstration for portfolios under a weather-normalized baseline and target. Public Service requests that the Commission find the "discretionary sensitivity approach is permissible and clarify that it has discretion under the Rules to weather normalize the baseline and Clean Heat target in future proceedings if conditions warrant such action."[29]

67. In the Gas Rules Decision, we declined to adopt a mechanism for weather normalization of the baseline, which we found in line with the Division's methodology and SB 21-264. While a utility may submit sensitivity analyses that are in addition to the required materials, we decline to make a finding as requested by Public Service regarding weather normalization on RRR.

68. *Implementation of Advanced Leak Detection*. In the Gas Rules Decision, the Commission established through Rule 4527(a) that if a utility seeks to implement an advanced leak detection program, then it may petition the Commission for a one-time adjustment to its baseline for greenhouse gas emission calculations. Rule 4527(a)(I)(A) requires that the petition include the measured leakage data utilizes advanced leak detection technologies and approaches, as certified by the Division or the Commission. Public Service requests the Commission replace "certify" with "consistent with the directives from" the Division with respect to utility petitions to adjust its emission baseline after implementing advanced leak detection technologies.

[28] Public Service RRR, pp. 18-19

[29] *Id.*

69. We adopt this change as requested by Public Service and incorporate into Rule 4527(a) that petitions for adjustments to the emission baseline for implementation of advanced leak detection technologies should be consistent with directives, if any, from the Division.

6. Rule 4528: Social Cost of Carbon and Social Cost of Methane

70. *Net Present Value Calculations*. Rule 4528(b) and 4528(d) requires a utility to use a discount rate equal to the lesser of 2.5 percent or the discount rate established by the federal technical support document for net present value calculations of the social cost of carbon dioxide emission and social cost of methane emissions, respectively. Public Service requests an addition to include a new Rule 4528(e) that clarifies that, "[f]or net present value calculations of portfolios of resources presented pursuant to rules governing clean heat plans or any type of DSM plan, the utility shall also present net present value calculations using the utility's weighted average cost of capital universally on all costs included within the relevant portfolio."[30] Public Service asserts that this approach will allow for presentations using differentiated discount rates across cost streams and net present value calculations that use a single uniform discount rate, *i.e.*, the utility's weighted average cost of capital. We note that § 40-3.2-107(2)(c), C.R.S., requires the Commission to use a discount rate for future cost streams, other than the discount rate for cost of methane emissions, that considers the parties responsible for financing or paying for future costs and requires the Commission to give consideration to discounting those costs with a stable long-term inflation rate that, in the commission's judgment, accurately represents the net present value of future cash flows experienced by ratepayers. Presentation of additional information, including presenting the net present value calculations in numerous ways, including using the utility weighted average cost of capital as the discount mechanism, could aid the Commission in determining appropriate discount

[30] Public Service RRR, p. 19

rates for other cost streams. Utilities may opt to provide additional discount rate options to present to the Commission, even when not explicitly required by rule. We find it appropriate to adopt this change requested by Public Service.[31] We understand Public Service's additional language to only require utilities to file the net present value calculations in numerous ways, including using the utility weighted average cost of capital as the discount mechanism.

7. Rule 4550: Gas Infrastructure Plans, Overview and Purpose

71. Black Hills requests that the Commission remove the provision in Rule 4550 that specifies that the Gas Infrastructure Plan Rules apply to the examination of capital investment of jurisdictional utilities. Black Hills instead requests that the rule specify that it applies to "gas distribution" utilities.[32] It argues that the term jurisdictional gas utility is not used in § 40-3.2-108, C.R.S., and is not defined in the Commission's Gas Rules.

72. We agree with Black Hills and incorporate this change to Rule 4550.

8. Rule 4551: Definitions

73. *Utility Capital Spend.* The Gas Rules Decision established that threshold assessments for utility investment found in the CPCN, and Gas Infrastructure Plan Rules should be based on utility investment alone and exclude any investment by customers or other parties.[33] Atmos,[34] Black Hills,[35] and Public Service[36] each request that the Commission clarify in 4551(f) that the monetary thresholds for a "planned project" are based on utility capital investment. Each

[31] Commissioner Gilman dissents from this decision.
[32] Black Hills RRR, p. 10.
[33] Gas Rules Decision, ¶ 203.
[34] Atmos RRR, p. 5.
[35] Black Hills RRR, p. 11.
[36] Public Service RRR, p. 11.

point out that this is congruent with the CPCN thresholds in Rule 4102 and in line with the Commission's statements in the Gas Rules Decision. We find this change reasonable and adopt it in the attached.

74. *Specifying At-Risk Meters*. Black Hills and Public Service each suggest adding "at-risk" to the definition of "defined programmatic expense" in Rule 4551(b). Black Hills argues that as currently written, "relocation or replacement of meters" could also mean meters being replaced for reasons other than at-risk meters that were located at the property line and needed to be moved to the structure. Black Hills suggests that, as written, meters replaced for other reasons, including a Commission-approved Gas Meter Sampling Program, and that such an outcome would be an absurd result and result in an unintended consequence.[37]

75. The Commission notes that meters are replaced under numerous utility programs, and that such expense program may not be fully understood by the Commission or intervening parties. The Commission finds that specifying Defined Programmatic Expense to include "at-risk" meter replacement programs may inappropriately limit our oversight function. Accordingly, the Commission declines to include the phrase "at-risk" to describe the meter replacement programs subject to Commission oversight under Defined Programmatic Expenses.

9. Rule 4552: Filing Form and Schedule

76. *Initial Filings.* CEO proposes that the Commission modify the rules adopted by the Gas Rules Decision to consider new business for smaller, gas-only utilities in a fully-litigated proceeding prior to March 2028. CEO suggests that there are two paths to achieve this—either reduce the number of informational gas infrastructure plan filings in Rule 4552(c) or include new

[37] Black Hills RRR, p. 18; Public Service RRR, p. 11.

business considerations as a clean heat plan application requirement in Rule 4731(i). CEO requests this change because it is concerned that the Commission and stakeholders will not have the opportunity to examine utility customer and capacity additions to the gas system in a litigated proceeding for smaller utilities until March 2028.

77. In their RRR Application, Conservation Advocates request the Commission reconsider allowing Atmos, Black Hills, and CNG to file two less-than-fully adjudicated applications per Rule 4552(b). Conservation Advocates notes that this request came late in the proceeding, and as such, they and other participants were unable to comment on the proposal from Atmos. Further, Conservation Advocates suggests that Atmos' suggestion that smaller utilities can file two informational filings in contradiction with the joint comments filed earlier in the proceeding. Conservation Advocates are concerned that Atmos' request for two informational gas infrastructure plan filings is inadequately justified, unnecessary on its own terms, and contradictory to consensus comments that Atmos submitted previously with other parties. Conservation Advocates suggest that the Commission reconsider its decision to grant Atmos' request, and recommend modifying Rule 4552(c) to eliminate the carve-out that permits smaller utilities make two informational filings.

78. Public Service also requests the Commission add "informational" to Rule 4552(b) to specify that the non-litigated gas infrastructure plan filings are only for informational purposes. Public Service also requests that the phrase "to the extent practicable and applicable" be added to the filing requirements found in Rule 4552(b)(I). Public Service notes that May 1, 2023, is quickly approaching so flexibility in filing requirements would be helpful.

79. We deny each of these RRR requests to Rule 4552 regarding the non-adjudicated filings. We find that the process established by the Gas Rules Decision strikes a reasonable balance

by allowing two non-litigated filings prior to a litigated gas infrastructure plan for smaller utilities. While it is true that the Commission and stakeholders will not litigate new business investment for small gas-only utilities until 2028, the Commission will be reviewing these investments via the gas infrastructure plan filings, reviewing their progress to meet clean heat goals via fully-adjudicated clean heat plan filings, and overseeing additions to rate base through rate case proceedings in this interim period. Through the envisioned structure, the Commission can make findings that could include ordering reasonable adjustments to processes or information for upcoming filings, allowing improvements throughout these initial filings.

80. We see no need to specify that the filings are "informational" and anticipate issuing important guidance to utilities through our decisions approving gas infrastructure plans to guide future adjudicated filings. While we do not plan these initial filings to be fully adjudicated, there will likely be important roles for other stakeholders to play in their review, so a description of "informational" may not fully encompass the review and adjustments likely to be made as part of the process. Finally, while we are cognizant of Public Service's concerns regarding the timing of the first gas infrastructure plan filing, it is more appropriate for a utility to request a rule waiver if it finds it cannot include all the filing requirements in its first filing, rather than to address that through rule language.

81. *Filing Requirements*. Conservation Advocates also request the Commission establish a more defined process and role for intervenors in non-litigated proceedings. They point to the Commission's Rule regarding Generation and Transmission Associations in Rule 3605(a)(I) as a viable example for discovery procedures for informational gas infrastructure plan filings. Conservation Advocates recommend changes to Rule 4552(b)(II) that specifies that the Commission will set a calendar for written comments from parties to the proceeding and that

parties may conduct discovery on the filing and on any prefiled testimony submitted with the filing.[38]

82. We agree with Conservation Advocates that it is helpful to acknowledge through rule in a general manner, which can be supplemented in more detail through a decision in a gas infrastructure plan proceeding docket, that there will be some opportunity for discovery and written comments.

83. We also agree with Public Service that a miscellaneous proceeding (M-docket) opened by the Commission will be the best forum for the initial gas infrastructure plan filings.

84. *Cost Recovery*. Black Hills suggests the Commission should take this opportunity to allow concurrent recovery through a rider, especially for projects nearing construction for which total project cost estimates and associated annual revenue requirements have been provided.[39] Black Hills did not offer specific language to implement this.

85. We decline to adopt Black Hills' request on this matter. While a utility may always propose opportunities or new avenues for cost recovery, specific mechanisms for cost recovery for projects proposed through a gas infrastructure plan is beyond the scope of what was considered in this rulemaking.

10. Rule 4553: Contents of a Gas Infrastructure Plan

86. *System Mapping*. In CEO's RRR Application, it reiterates its request from earlier comment that the Commission should require utilities to present a system-wide map showing age and type of pipe in Rule 4553. CEO suggests the Commission incorporate this requirement

[38] Conservation Advocates RRR, p. 13.
[39] Black Hills RRR, p. 14.

because having this type of information available would help the Commission and stakeholders evaluate whether certain investments in future system planning are in the public interest. In the alternative, if the Commission continues to agree with utilities that they currently do not have information needed to produce system mapping, CEO asks the Commission to direct utilities to compile this information by a date certain—such as the date of a utility's first litigated gas infrastructure plan application.

87. CEO makes two main arguments regarding the importance of age and type of pipe information. First, it asserts that utilities likely already have this information because it is required by federal PHMSA standards. Second, it asserts that SB 21-108 requires the Commission to incorporate the most current federal regulations and that it allows the Commission to require mapping more stringent than federal standards. CEO also states that filings in other proceedings suggest that utilities may already have sufficiently sophisticated mapping systems to identify projects based on age or type of pipe.

88. The Commission recently issued a NOPR in 22R-0491GPS to implement SB21-108; this proceeding is before an administrative law judge. We do not have the record before us to implement mapping requirements to show age or type of pipe in this proceeding. CEO or others may consider providing relevant comments in the pipeline docket 22R-0491GPS, where the Commission is considering implementing similar requirements. Accordingly, we deny CEO's request at this juncture. However, the Commission expects that general and specific improvements in a utility's mapping capabilities, including the comprehension of pipeline material and age, due to separate GPS proceedings pursuant to 22R-0491GPS, or other efforts, should reasonably be incorporated into the utility's subsequent GIP filing in order to further the broad goals of the GIP process.

89. Black Hills requests that to alleviate the administrative burden, both Rule 4553(c)(I)(J) and Rule 4102(f)(X) should be modified to reflect that any maps provided by the utilities will be designated and treated as highly confidential without requiring utilities to incur the additional administrative burden and expense of preparing and filing a Motion for Extraordinary Protection for every filing.[40] We decline to make this determination by rule at this time that filing motions for extraordinary protection will be unnecessary. The Commission can rule on confidentiality efficiently within proceedings and with specific facts in front of it.

90. *Alternatives Analysis.* In their RRR Application, Conservation Advocates request that the Commission provide more specific criteria for the thresholds pertaining to projects that will require an alternatives analysis in litigated gas infrastructure plans. Conservation Advocates recommend the Commission adopt an unambiguous threshold for projects that require consideration of alternatives, instead of allowing the utility the discretion to only consider alternatives for limited number of projects. Conservation Advocates suggest modifications to Rule 4553(c)(I)(P) that would require a utility to conduct an alternatives analysis for all new business and capacity expansion projects that qualify as planned projects unless otherwise ordered by the Commission previously.

91. Public Service requests the opposite as Conservation Advocates: to limit the total number of alternatives analysis in fully adjudicated gas infrastructure plan proceedings based on the guidelines adopted for the informational filings (five projects for utilities over 500,000 customers, two projects for utilities between 50,000 and 500,000 customers, and one project for utilities less than 50,000 customers), unless otherwise ordered by the Commission. Public Service also suggests modifications to 4553(c)(I)(P) and 4553(c)(I)(Q) that would limit the alternatives

[40] Black Hills RRR, p. 14.

analysis in fully adjudicated gas infrastructure plan filings to capacity expansion projects. Public Service also proposes a new section 4553(c)(I)(Q) wherein the utility "shall report on alternatives evaluations with potential customers for any new business planned projects…" which has the effect of reporting on new business projects separately and outside the confines of the alternatives analyses.

92. The Commission rejects suggestions by both Conservation Advocates and Public Service to modify the number of alternatives analysis for fully-litigated gas infrastructure plan applications. The Commission deliberated on this issue thoroughly, and determined that the insights gained during the initial, non-adjudicated filings would provide valuable guidance for purposes of the fully-litigated applications. In essence, the Commission is taking a wait-and-learn approach to this issue, and nothing raised in the RRR applications persuades us to alter that approach.

93. *Stakeholder Participation.* The Commission established that utilities must collaborate with stakeholders prior to a gas infrastructure plan filing and hold one or more public workshops to educate and facilitate feedback from stakeholders prior to filing. Conservation Advocates suggest that the Commission clarify the requirements for public input prior to a gas infrastructure plan filing found in Rule 4553(a)(VII). They specifically suggest that the Commission require each utility to allow for written feedback for up to two weeks following each workshop and that a utility must summarize and respond to the feedback received at each workshop.[41] We agree with Conservation Advocates that requiring responses to stakeholder participation will make the process more meaningful and adopt Conservation Advocate's request in Rule 4552(d)(IV).

[41] Conservation Advocates RRR, p. 15.

94. Public Service requests limiting stakeholder participation in Rule 4553(a)(VII) to projects in the action period (it characterizes this as the first three years including the application year). Public Service contends that this approach would actually result in more manageable, targeted, and robust engagement for these projects.[42] We decline to limit stakeholder participation in the manner requested by Public Service. The record before us suggests that meaningful alternatives analysis typically occurs on a longer-term basis than a three-year period, and getting communities involved in planning at an early stage is imperative.

95. *Updates to Design Day Temperature.* Rule 4553(c)(IX) requires a utility to update the design day temperature assigned to unique segments of the utility system as part of its gas infrastructure plan filing. Public Service proposes to provide "the then-current" rather than "update" design day temperatures and adds "used for capacity planning."[43] Public Service argues that "this requirement does not align with the Company's practices (or determination of design day as noted earlier in this ARRR in the discussion regarding the proposed definition for "design day peak demand")".[44]

96. This section of the rules is designed to facilitate the Commission's comprehension of the conditions, and the development of those conditions, by which utilities plan their peak throughput requirements. Public Service suggests the gas infrastructure plan process should not be used to update those planning conditions, but only report on them. The Commission recognizes the data may not require updating. However, we reject Public Service's suggestion that the gas infrastructure plan would only require a reporting and not an update to the data or calculation

[42] Public Service RRR, p. 13.
[43] Public Services RRR, p. 13.
[44] *Id*.

approach, if necessary. Accordingly, we modify the rule language so that utilities are required to "provide and support the design day temperatures used for capacity planning."

97. *Planned Project Information.* Public Service requests several other changes to Rule 4553 related to planned project information that a utility must present in a gas infrastructure plan. First, Public Service requests that the Commission make two changes related to presentation of PHMSA regulations. We adopt and incorporate these changes in 4553(c)(1)(C) and 4553(c)(I)(K). Public Service also requests the Commission make minor changes to 4553(c)(I)(O) and 4553(c)(I)(R) which we incorporate in the attached.

98. *Existing Infrastructure Reporting.* Public Service requests the Commission add the phrase "if applicable and to the extent known" to Rule 4553(d) so that a utility is only required tor report to the extent it knows any information required in (I) and (II) related to customer-owned yard lines, hydrogen compatibility, and advanced leak detection, respectively. We decline to make this change which would make the overall existing infrastructure assessment reporting less meaningful.

11. Rule 4554: Interim Gas Infrastructure Plan Reporting

99. Public Service requests that interim filings under Rule 4554(a) should be due May 1 to align with regular filings which are also due on May 1.[45] We have incorporated this change in the attached Gas Rules.

12. Rule 4555: Approval of a Gas Infrastructure Plan

100. Public Service requests the Commission formalize language found in the Gas Rules Decision by also incorporating it in the Gas Rules. Specifically, Public Service requests that the

[45] Public Service RRR, pp. 15-16.

following statement from the Gas Rules Decision be added to Rule 4555: "The utility bears the ultimate responsibility to serve its customers reliably, and these rules should not interfere with or otherwise impede a utility's ability to meet that core obligation. Accordingly, if the utility needs to invest in infrastructure other than what is authorized through its approved gas infrastructure plan, it should do so and intend to fully justify the circumstances of such when it seeks cost recovery in a subsequent base rate proceeding."[46]

101. We do not find that adding this language to the Gas Rules is appropriate. The Commission's rules are intended to instruct the utilities how to comply with statute and Commission directives, and this language does not further that purpose. The statement in the Gas Rules Decision is for the purpose of context and explanation and not intended as rule language.

13. Rule 4726: Applicability

102. Rule 4726 establishes the applicability of the Clean Heat Plan Rules and specifies that they apply to all jurisdictional gas utilities. Black Hills requests that the Commission reconsider and strike Rule 4726(a) because SB 21-264 specifically references and defines "gas distribution utility," "municipal gas distribution utility," and "small gas distribution utility." However, the statute does not reference jurisdictional gas utilities. We find this change reasonable and therefore strike 4726(a) from the attached Gas Rules.

14. Rule 4727: Definitions

103. The Gas Rules Decision explained that implementing an informational period, action period, and total period approach furthers the goal of SB 21-264 that clean heat plans will aid the State of Colorado in achieving its greenhouse emission reduction goals by ensuring that

[46] Public Service RRR, p. 10.

each plan looks out at least to 2050. To that end, Rule 4527 includes a definition for each "clean heat plan action period," "clean heat plan informational period," and "clean heat plan total period."

104. Public Service requests that the Commission clarify that the Clean Heat Plan total period goes through 2050 unless 20 calendar years takes the plan filing past 2050 (in other words, for a 2031 Clean Heat Plan, the "total period" would go to 2051).

105. We confirm that Public Service's understanding is correct.

15. Rule 4730: Clean Heat Resources

106. In the Gas Rules Decision, the Commission adopted a modified version of CEO's proposal that allowed for utilities to count recovered methane credits generated since the last clean heat target year towards compliance with the next target, assuming the credit is only used once.[47] In its RRR, CEO states that "after further internal deliberations" it changed its position and no longer supports Rule 4730(a)(II)(D) which allows utilities to bank credits in years leading up to compliance years for use in demonstrating compliance with Clean Heat targets.[48] CEO states it was mistaken about the role of annual emission credits in mass-based targets because it contends that the statute requires emission reductions to occur in specific compliance years (*i.e.,* 2025 and 2030), so the utilities must demonstrate that they have reduced greenhouse gas emissions in those years. Despite concerns that this could reduce incentives to creation of a robust recovered methane market, CEO argues that following the purpose of the clean heat statute is of paramount importance in the Commission's rules.

[47] Gas Rules Decision, ¶ 309.
[48] CEO RRR, pp. 11-12.

107. Conservation Advocates request the same change as CEO and indicate they supports CEO's propose redline to rule 4730(a)(II)(D). Conservation Advocates assert that § 40-3.2-108(3)(b)(II), C.R.S. requires a clean heat plan to achieve the required level of emission reductions in the target year, which would prevent "banking" as allowed in the current rule. Conservation Advocates further supports this position by arguing that the interim year reporting requirements found in § 40-3.2-108(7)(b), C.R.S. do not contemplate credit banking, nor does the definition of "clean heat resource." Finally, Conservation Advocates argues that recovered methane credit banking would overcount actual emission reductions and weaken clean heat targets. Per Conservation Advocates' math, if a utility is allowed to bank credits, it effectively only needs one-fifth as many recovered methane credits to meet the recovered methane cap, and the total emission reduction would only be 18%, rather than 22%.[49]

108. The Commission originally adopted CEO's updated proposal in the Gas Rules Decision and with CEO's updated position expressed in its RRR filing, no participant in this Proceeding continues to support that approach. As such, we adopt CEO's proposal and reflect such in 4730(a)(II)(D) which now reads:

> A utility may count emissions reductions represented by the retirement of a recovered methane credit only if the credit was retired in its clean heat target year. A utility may only count emissions reductions represented by a methane credit one time toward achieving any clean heat target.

109. We believe the legislature intended emission reductions to occur every year, not just in target years. Therefore, the Commission encourages utilities to provide suggestions to facilitate a stable, long-term market for recovered methane projects within their clean heat plan filings or elsewhere.

[49] Conservation Advocates RRR, pp. 16-19.

16. Rule 4731: Clean Heat Plan Application Requirements

110. *Forecasting.* Rule 4731(a) establishes the initial forecasts that a utility must present as part of a clean heat plan application. As we noted in the Gas Rules Decision, all long-term forecasting is presented in a utility's clean heat plan, but will also be utilized as part of a utility's gas infrastructure plan. Subparagraph (a)(I) requires a utility, for the low and high forecast, to incorporate alternative projections of customer growth and sales, and any underlying supporting assumptions, to assess a reasonable range of variation surrounding the reference (base) forecast. A utility must present forecasts of sales, customer counts, system-wide capacity (design peak demand) requirements, throughput by Btus and volumes of green hydrogen, recovered methane, and total gas, and system-wide greenhouse gas emissions.

111. In its RRR Application, Public Service requests several changes to Rule 4731(a)(I) which it contends makes the forecasting rule "manageable, actionable, and efficient."[50] First, it requests that the Commission modify the disaggregation rule for use in clean heat plans to have the disaggregation occur at a geographical segmentation level only, as opposed to using pressure districts or unique planning zones requiring a distinct design day. Public Service requests that the Commission require forecast disaggregation occur at a geographical segmentation level instead of using pressure districts. It states that while the concept of pressure district is applicable to localized gas capacity planning covered by the Gas Infrastructure Planning Rules, they are not applicable to the volumetric and sales forecasts required by clean heat plans. Public Service maintains that, rather than delineating forecasts by pressure, geographical segmentation for clean heat forecasts is more appropriate. Public Service argues this change will make the forecasting requirement more manageable for clean heat purposes. Second, Public Service requests that the factors accounted

[50] Public Service RRR, p. 21.

for in clean heat plan forecasting, listed in Rule 4731(a)(I)(E) be considered "in the aggregate."[51] Finally, Public Service requests that "gas supply" be added in Rule 4731(a)(I)(E), which provides that forecasts should include "other known factors affecting sales and capacity needs."[52] Public Service believes it is consistent with the thrust of the clean heat plan process, where clean heat plans focus on long-term system and supply issues and with the gas infrastructure plan process which focuses on shorter-term infrastructure needs. Public Service states that this clarification will ensure there is clarity about what type of "capacity needs" are potentially being considered in the context of forecasting.

112. As we stated in the Gas Rules Decision, continuity between forecasting performed for clean heat plans and gas infrastructure plans is important. Utilizing the same forecasts lessens some of the administrative burden of the filings and will create more consistent results from the respective processes. While we agree with Public Service that forecast disaggregation at the pressure district level is particularly important for gas infrastructure planning, we continue to believe it is also an appropriate level of geographic specificity for forecasting for clean heat plan purposes. Further, we find that the wording of Rule 4731(a)(I)(B) provides utilities enough flexibility already to implement forecasting at a specificity level that provides the Commission with the information needed to make decisions on clean heat plans and gas infrastructure plans while avoiding unnecessary specificity. With the exact timing and sequencing of proceedings also in flux, we find that the forecasting requirements are sufficiently flexible to develop and refine forecasting approaches through both the clean heat plan and gas infrastructure plan processes. We

[51] Public Service RRR, p. 22.
[52] Public Service RRR, p. 22.

therefore decline to make Public Service's requested change to remove pressure district from the forecasting requirements in Rule 4731.

113. We similarly decline to change in Rule 4731(a)(I)(E) that the factors listed should all be considered "in the aggregate" as requested by Public Service. To make such a change would remove needed specificity on a geographic basis for forecasted future changes. With respect to Public Service's suggestion to refer to forecast factors "in the aggregate," we find this modification appropriate for line extension policies. However, with respect to other factors required, the Commission rejects Public Service's suggestion. If a utility is to conduct an aggregation of such information, for example, local building codes, it must also comprehend the individual components in order to conduct such an aggregation. The Commission finds that the records in future CHP applications will benefit from the provision of the detailed information rather than an opaque aggregation that requires further investigation.

114. We agree with Public Service that specifying "gas supply" capacity needs are a reasonable clarification and reflect such in Rule 4731(a)(I)(E)(v). We also add the clarification requested in 4731(f) to ensure that green hydrogen projects proposed in coordination with the State of Colorado, to secure benefits under a federal law, are exempt from Rule 4731(f).

115. *Cost Recovery*. Rule 4731(g) implements § 40-3.2-108(6)(b), C.R.S., and allows a utility to propose a rate adjustment clause that provides for recovery of the utility's clean heat plan costs, or any costs prudently incurred to meet additional emission reduction requirements under § 25-7-105(1)(e)(X.7), C.R.S. Public Service seeks a minor revision to Rule 4731(g)(I) for purposes of consistency with § 40-3.2-108(6)(b), C.R.S., and adds that the Commission may approve a

utility's proposed rate adjustment clause "or structure."[53] We find this change reasonable and adopt it as reflected in the attached Gas Rules.

17. Rule 4734: Small Utility Clean Heat Plan

116. CNG requests the Commission clarify its expectations on the filing of a small utility clean heat plan pursuant to Rule 4734. CNG requests clarification that as a utility with less than 90,000 retail customers in Colorado, the filing of a clean heat plan under Rule 4734 or otherwise is not required but is at the option of the utility. Second, with regard to Rule 4734(a), CNG seeks clarification that if a small clean heat plan is filed, it may set a target for 2025 or 2030, but need not both, in the first plan.

117. Pursuant to § 40-3.2-108(4), C.R.S., clean heat plans must be submitted by all "gas distribution utilities" which is defined as those serving more than 90,000 customers. Pursuant to § 40-3.2-108(a), C.R.S. a "small gas distribution utility" may file a clean heat plan under the process for "gas distribution utilities" or it may file a clean heat plan pursuant to the small utility emission reduction plan section in § 40-3.2-109, C.R.S., which is implemented through Commission Rule 4734. A small gas distribution utility, such as CNG, does not need to file a clean heat plan pursuant to either Rule 4734 or otherwise. However, if a small gas distribution utility chooses to file a clean heat plan, it need not file a small gas distribution utility clean heat plan under Rule 4734 if it prefers to use the process in Rule 4730 for gas distribution utility clean heat plans instead. For plans filed under Rule 4734, it must propose a clean heat target for both 2025 and 2030 at once pursuant to the requirements in Rule 4734(a) and § 40-3.2-109(b)(I), C.R.S.

[53] Public Service RRR, p. 21.

18. Rule 4753: DSM Plan

118. Black Hills requests that a DSM plan for utilities that are allowed to combine DSM plans with DSM strategic issues applications pursuant to statute be allowed to cover a 4-year period. The Gas Rules Decision stated that no one opposed a change to a 2-year filing cadence (proposed by Public Service), but Black Hills states in its initial filings it suggested a 4-year DSM plan filing cadence.[54]

119. Black Hills asserts that modifying Rule 4753 to allow smaller utilities to file DSM Plan filings every four years aligns with the statutory carve out that the Commission may establish energy savings targets, expenditures, cost-recovery mechanisms, and bonus structures for utilities with fewer than two hundred fifty thousand customers in the same proceeding in which the DSM Plan is submitted for approval.[55]

120. We reject Black Hills' request to set a 4-year filing cadence for DSM plan filings in Rule 4753. We believe that a 2-year filing cadence, with DSM strategic issue filings every four years, reflects a reasonable approach. While the Commission may establish the energy savings targets, expenditures, cost-recovery mechanisms, and bonus structures for utilities in a DSM plan filing, doing so every four years with a typical DSM plan filing every two years will ensure that policy determinations from a strategic issues filing are implemented in a timely manner.

121. Public Service points out that the Gas Rules Decision misstated that cost-effectiveness will be measured at the DSM program level, while Rule 4753(o)(IV) says it will be measured at the portfolio level.[56] We affirm that the decision reached by the Commission is that

[54] Black Hills RRR, p. 17.
[55] § 40-3.2-103(2.5), C.R.S.
[56] Public Service RRR, p. 25.

cost-effectiveness will be measured at the portfolio level. To the extent that the Gas Rules Decision misstated this, we grant Public Service's RRR request.

122. Rule 4753(h)(IX) requires utilities to provide, as part of its DSM plan, "a narrative discussion showing that the DSM measures and programs, particularly in new construction, do not discourage otherwise economic beneficial electrification." Public Service argues that this essentially creates a burden for all DSM programs to overcome, when DSM programs should be evaluated on their respective metrics understanding they are an important contributor, and one of the tools that can be deployed now, to reduce emissions on LDC systems.[57] Black Hills argues similarly that as a gas-only utility, it does not offer beneficial electrification and cannot provide electric service to customers. It reiterates its duty to serve and requests the Commission add "if applicable" to 4753(h)(IX).[58]

123. We continue to find that an analysis showing that DSM measures and programs are not discouraging economic beneficial electrification in new construction is an important analysis and consideration when approving DSM plans. We decline to remove this provision from the Gas Rules.

19. Rule 4754: Annual DSM Report

124. The Gas Rules Decision adopted a proposal by the City and County of Denver to require reporting of DSM program participation levels by the census block or zip code. Public Service requests the Commission eliminate the option to report by zip code when restrictions apply at the census block group. Public Service requests the zip code option be eliminated because it

[57] Public Service RRR, p. 27.
[58] Black Hills RRR, p. 18.

believes the use of census block groups is more appropriate than zip codes.[59] Black Hills suggests eliminating the concept entirely. It contends that this requirement would be burdensome for utilities and likely result in erroneous data given the lack of required detail in census block data.[60]

125. We reject both Public Service's and Black Hills' requests on this issue. Rule 4754(a) already reflects that reporting on a zip code basis is only one option and not required, so keeping it retains flexibility in rule. Further, we note that reporting by census block was a proposal put forth by the City and County of Denver, who proposed this reporting would support municipal efforts and help ensure funds are being equitably distributed, which are helpful goals.

20. Rule 4756: General Provisions Concerning Cost Allocation and Recovery

126. Rule 4756(d) implements § 40-3.2-103(5)(b), C.R.S. in the Gas Rules. Public Service requests two changes to the decoupling provision found in Rule 4756(d) which it asserts are required to align the rule provision more closely with the statutory provision. First, it recommends removing "or other appropriate decoupling metric" because it states the statute specifically cites "revenue per customer" as the relevant metric. Second, it requests the Commission add the phrase "nor shall the Commission reduce a gas utility's return on equity based solely on approval of a revenue decoupling mechanism" to Rule 4756(d)(II) because § 40-3.2-103(5)(b)(III), C.R.S., contains this prohibition.[61] We find it appropriate to implement Public Service's first request and therefore eliminate "or other appropriate decoupling metric" from the attached Rule 4756(d). However, while Public Service is correct that § 40-3.2-103(5)(b)(III), C.R.S., contains the prohibition that the Commission shall not reduce a gas

[59] Public Service RRR, p. 22.
[60] Black Hills RRR, p. 19.
[61] Public Service RRR, pp. 23-24.

utility's return on equity based solely on approval of a revenue decoupling mechanism, this is an unnecessary addition to the Gas Rules which regulate gas utilities and not the Commission.

21. Rule 4760: Gas DSM Bonus (G-DSM Bonus)

127. Rule 4760(i) provides that "[a]ny combined electric and gas utility seeking a G-DSM bonus for new residential or commercial construction shall provide a narrative discussion that explains why that gas DSM program does not incent additional gas usage as compared to a beneficial electrification alternative." Public Service argues this rule implicates the same issues as 4753(h)(IX), and in practice may encourage less efficient construction by creating a counterfactual that lacks consistency with the one considered by developers and builders. Public Service requests both provisions be removed from the Gas Rules.

128. We decline to remove this provision from the Gas Rules. It is important for the Commission to have information available to consider impacts of gas DSM programs on overall gas usage. This requirement simply requires utilities to provide relevant information, does not require the utility to make an evidentiary showing, and as such does not prevent a utility from receiving a bonus as a result of the outcome of the narrative discussion.

22. Rule 4761: Filing of DSM Strategic Issues Applications

129. CNG seeks clarification from the Commission as to the expectations with respect to timing of the Company's DSM plan. In its RRR Application, CNG states that while it intends to file a strategic issues application by the end of 2022,[62] it will not be able to include the requirements of Rule 4761 in its filing. CNG prefers to file its new DSM Plan and a supplement to its Strategic Issues that includes the details required by rule 4761(b) on July 1, 2022. If the

[62] Proceeding No. 22A-0577G

Commission finds this approach acceptable, CNG seeks clarification as to whether another request for an extension is needed, or whether the need for the extension is superseded by the rule permitting the Plan to be filed on July 1.

130. Black Hills encourages the Commission to allow some flexibility with respect to the DSM filings that they characterized as likely to be rushed to be completed and filed no later than December 31, 2022. Black Hills is intending to file a strategic issues proceeding in April 2023 along with its next DSM plan. It states that it is illogical to require Black Hills to file a stand-alone strategic issues filing only a few months before its next regularly scheduled DSM plan filing.[63]

131. Black Hills, CNG, and Atmos each filed on December 30, 2022, their respective DSM strategic issues applications.[64] The timing and status of those applications is unclear, as is the timing that the final Gas Rules will go into effect. If a rule waiver is necessary, it is premature to discuss at this juncture, and the more appropriate forum would likely be within the utility's respective strategic issue proceedings. Similarly, requests by the utility for more time or for direction on filing deadlines are more appropriately handled outside the rulemaking proceeding.

[63] Black Hills RRR, p. 20.

[64] Proceeding No. 22A-0580G, 22A-0577G, 22A-0579G, respectively.

II. ORDER

A. It is Ordered That:

1. The application for rehearing, reargument, or reconsideration of Decision No. C22-0760 filed on December 21, 2022, by Black Hills Colorado Gas, Inc., is granted in part and denied in part, consistent with the discussion above.

2. The application for rehearing, reargument, or reconsideration of Decision No. C22-760 filed on December 21, 2022, by Natural Resources Defense Council, Western Resource Advocates, and Southwest Energy Efficiency Project, jointly the "Conservation Advocates," is granted in part and denied in part, consistent with the discussion above.

3. The application for rehearing, reargument, or reconsideration of Decision No. C22-0760 filed on December 21, 2022, by the Colorado Energy Office, is granted in part and denied in part, consistent with the discussion above.

4. The application for rehearing, reargument, or reconsideration of Decision No. C22-0760 filed on December 21, 2022, by Colorado Natural Gas, Inc., is granted in part and denied in part, consistent with the discussion above.

5. The application for rehearing, reargument, or reconsideration of Decision No. C22-0760 filed on December 21, 2022, by the Atmos Energy Corporation, is granted in part and denied in part, consistent with the discussion above.

6. The application for rehearing, reargument, or reconsideration of Decision No. C22-0760 filed on December 21, 2022, by Public Service Company of Colorado, is granted in part and denied in part, consistent with the discussion above.

7. Amendments to the Commission's Rules Regulating Gas Utilities, 4 Code of Colorado Regulations (CCR) CCR 723-4, contained in legislative (i.e., strikeout/underline) format as Attachments and final format as Attachments B are adopted, and are available through the Commission's Electronic Filings system at: https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=21R-0449G

8. Subject to a filing of an application for rehearing, reargument, or reconsideration, the opinion of the Attorney General of the State of Colorado shall be obtained regarding the constitutionality and legality of the rules as finally adopted. A copy of the final, adopted rules shall be filed with the Office of the Secretary of State. The rules shall be effective 20 days after publication in The Colorado Register by the Office of the Secretary of State

9. The 20-day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration, begins on the first day following the effective date of this Decision.

10. This Decision is effective upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING February 1, 2023.

(S E A L)

ATTEST: A TRUE COPY

G. Harris Adams,
Interim Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

Commissioners

COMMISSIONER JOHN GAVAN'S
TERM EXPIRED FEBRUARY 3, 2023.