

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21A-0472G

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF
COLORADO FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
FOR THE WEST METRO GAS PROJECT.

**COMMISSION DECISION DENYING EXCEPTIONS TO
RECOMMENDED DECISION NO. R22-0457**

Mailed Date: December 6, 2022
Adopted Dates: October 26 & November 16, 2022

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I. BY THE COMMISSION

A. Statement

1. Through this Decision, the Commission denies the Exceptions to Recommended Decision No. R22-0457 (Exceptions) that the Colorado Office of the Utility Consumer Advocate (the UCA), the Colorado Public Utilities Commission Staff (Staff), and the Southwest Energy Efficiency Project (SWEEP) filed on August 24, 2022.

2. In addition, through this Decision the Commission articulates various policy concerns regarding the regulation of the natural gas system of Public Service Company of Colorado (Public Service or the Company) as Colorado moves ahead with emission reduction goals.

B. Procedural History

3. On October 8, 2021, Public Service filed its Application for a Certificate of Public Convenience and Necessity (CPCN) to construct the West Metro Gas Project (the Project). Public Service asserts that the Project is necessary to address current and anticipated peak demand gas capacity shortfalls in the Sloan’s Lake neighborhood in Denver. The Project will provide additional capacity for portions of the Inches Highland System (Highlands System) and the Pounds Low System (collectively, the Project Area). The Company would acquire this additional capacity

by installing approximately 8,500 feet of new 12-inch intermediate pressure (IP) pipe to bring higher pressure gas supply to the Project Area, connecting this IP pipe to a new regulator station, and installing larger distribution mains.¹ Public Service estimates that the Project will cost \$27.15 million, excluding an allowance for funds during construction.²

4. The UCA and Staff both filed timely notices of intervention of right. In addition, SWEEP timely filed a Motion to Intervene November 8, 2021.³

5. On December 21, 2021, the Commission referred this matter to an Administrative Law Judge (ALJ).⁴ In its referral decision, the Commission noted the gas rulemaking proceeding, Proceeding No. 21R-0449G, (Gas Rulemaking Proceeding or the pending or ongoing Rulemaking Proceeding) and requested that the ALJ consider the draft rules as relevant background and context and asked the ALJ to note any issues of concern in the Application.⁵

6. On December 29, 2021, the assigned ALJ granted SWEEP's Motion to Intervene.⁶

7. The ALJ held an evidentiary hearing on April 4 and 5, 2022. After the parties filed statements of position (SOPs), the ALJ issued Recommended Decision No. R22-0457 on August 4, 2022 (Recommended Decision). The Recommended Decision recommends that the Commission grant the CPCN Application.

8. On August 24, 2022, Staff, UCA, and SWEEP each timely filed Exceptions to the Recommended Decision. All three intervenors argue in their Exceptions that the Commission

¹ Recommended Decision, pp. 11-12.

² Hearing Exhibit 102, pp. 8, 46 (Table SGM-D-4).

³ See Decision No. C21-0804-I, issued December 21, 2021.

⁴ Decision No. C21-0804-I, p. 5.

⁵ Decision No. C21-0804-I, p. 7.

⁶ Decision No. R21-0831-I at 2, issued December 29, 2021.

should reject the Recommended Decision and deny the Company's CPCN Application. On September 7, 2022, Public Service filed its Combined Response to the Exceptions (Response). In its Response, Public Service asks that the Commission reject the Exceptions and uphold the Recommended Decision.

C. Summary of Recommended Decision

9. The Recommended Decision notes that the Commission has specific authority over the Application under § 40-5-101(1)(a), C.R.S., under which a utility may not begin construction of a new facility or system, or extend the same without first obtaining a certificate that the present or future public convenience and necessity requires or will require the construction or extension, except that a CPCN is not required for an extension necessary in the ordinary course of business within a territory that the utility already serves.⁷

10. The Recommended Decision summarizes the statutory and regulatory requirements for the issuance of a CPCN and concludes the utility must establish the following by preponderance of the evidence:⁸ (a) a present or future need for the facility or improvements thereto;⁹ (b) that the existing facilities are not reasonably adequate and available to meet that need;¹⁰ and (c) that the utility has evaluated alternatives to the proposed facility or improvements thereto.¹¹ As to this last

⁷ Recommended Decision, ¶ 11.

⁸ § 24-4-105(7), C.R.S.; Rule 1500, 4 CCR 723-1; *Swain v. Colo. Dep't of Revenue*, 717 P.2d 507, 508 (Colo. App. 1985) (preponderance standard); *Schocke v. Dep't of Revenue*, 719 P.2d 361, 363 (Colo. App. 1986); *City of Boulder v. Pub. Utils. Comm'n*, 996 P.2d 1270, 1278 (Colo. 2000) (evidence must be substantial).

⁹ § 40-5-101(1)(a), C.R.S.; *Pub. Serv. Co. of Colo. v. Pub. Utils. Comm'n*, 350 P.2d 543, 550-51, *cert. denied*, 364 U.S. 820 (1960); *Western Colo. Power Co. v. Pub. Utils. Comm'n*, 411 P.2d 785, 791-94 (Colo. 1966).

¹⁰ See *Western Colorado Power Co. v. Pub. Utils. Comm'n*, 411 P.2d 785, 791-94 (Colo. 1966).

¹¹ Rule 4102(b)(VII), 4 CCR 723-4; see Decision No. C13-1549, ¶ 13, Proceeding No. 12A-1264ST (mailed December 18, 2013) (C13-1549); Decision No. R14-0885, 8-9 (mailed July 25, 2014), Proceeding No. 14A-0153G, *aff'd* by Decision No. C14-1188 (mailed September 17, 2014).

factor, the Recommended Decision notes that the utility must evaluate “feasible alternatives, rather than all conceivable alternatives.”¹²

11. As explained in the Recommended Decision, Public Service filed the CPCN Application because of the Commission’s interest in gas utility system planning, especially in light of state greenhouse gas emission reduction targets arising out of SB 21-264. Public Service takes the position, however, that the Commission’s rules and statutes (as they existed when Public Service filed the Application) do not require a CPCN for the Project because (1) the Project is located within the Company’s existing service territory and (2) the Project is necessary in the ordinary course of business to continue to provide safe and reliable service to its customers.¹³

12. The Recommended Decision finds that the preponderance of the evidence establishes that there is a *present* need for the Project due to an existing aggregate peak demand capacity shortfall of 40 Dekatherms (Dth) per hour in the Project Area.¹⁴ The ALJ found the evidence that Public Service put forth establishing this existing capacity shortfall to be credible, noting that the Company used industry standard hydraulic modeling software. The Recommended Decision goes on to conclude that “nothing in the law requires the Company to show *both* an existing *and* future need for the Project” and that it is unnecessary to determine whether the Company established a future need for the Project.¹⁵

13. The Recommended Decision rejects arguments that the Company failed to establish that existing facilities are inadequate or unavailable because compressed natural gas (CNG) can

¹² Recommended Decision, ¶ 11.

¹³ Recommended Decision, ¶ 26 (citing Hearing Exhibit 101, 31: 16-20—32: 1-8; 33: 1-6).

¹⁴ Recommended Decision, ¶ 44.

¹⁵ Recommended Decision, ¶ 48 (emphasis in original).

be used. The Recommended Decision reasons that indefinite or long-term CNG use is not in the public interest and does not present a feasible alternative to the Project.¹⁶

14. As for the alternatives analysis, the Recommended Decision finds that—with respect to the current need for the Project—there are no feasible alternatives. The proposed alternatives that the Recommended Decision evaluates, and rejects include aggressive demand side management (DSM) programs, gas demand response programs, combined DSM, and beneficial electrification, and moving more customers from firm to interruptible service.¹⁷

15. Similarly, the Recommend Decision rejects arguments that the Project is incompatible with a clean heat future or statutory emission reductions goals. At a high level, the Recommended Decision reasons that due process prohibits applying the proposed gas rule changes to Public Service’s Application and that factors such as the recently enacted laws establishing emission reduction goals might impact future need but do not obviate the present need for the Project.¹⁸ The Recommended Decision further concludes that it is unnecessary to determine whether the Company established a future need for the Project because the Company met its burden to show an existing need for the Project.¹⁹

16. The Recommended Decision also addresses the Commission’s request for the ALJ to note issues of concern or issues that may require further review in the pending Rulemaking Proceeding.²⁰

¹⁶ Recommended Decision, pp. 21-23, 28-29.

¹⁷ Recommended Decision, ¶¶ 76, 92, 110, 113.

¹⁸ Recommended Decision, ¶¶ 131-141.

¹⁹ Recommended Decision, ¶ 48.

²⁰ Recommended Decision, pp. 70-72.

D. Policy Concerns

17. In many ways, this case exemplifies the difficult decisions that must be made as we move forward with the energy transition while balancing environmental, economic, and reliability concerns. As set forth below, on this record and under existing rules, the Company has met its burden to obtain a CPCN for the Project. However, this case raises important questions and concerns about the regulation of Public Service's natural gas system moving forward. As acknowledged in this proceeding, Colorado is moving rapidly towards implementation of a statutory Clean Heat Standard, as well as implementation of an enhanced and proactive infrastructure planning process. However, at present, these rules are not finalized, and we have to determine how to best move forward serving existing need under the currently applicable rules, knowing full well that the future likely holds major changes for this industry, as well as the regulatory structure that surrounds it. Therefore, we have applied the current framework, as did the ALJ, but have also made several findings that relate to this work moving forward.

18. First, efforts to meet Colorado's emission reduction goals could have a significant impact on throughput in the gas system. The Company recognizes that reductions in greenhouse gas emission will be achieved at least partly through voluntary customer adoption of beneficial electrification and efficiency measures, which will decrease throughput on the natural gas system.²¹ In the past, new infrastructure investments were funded in part by a corresponding increase in throughput on the gas system, which lead to increased revenue as a result of the project. There exist clear economic concerns with a scenario in which capacity expansion projects are not financially supported by increases in throughput, especially as throughput declines may be a direct outcome of statutory decarbonization efforts, as many intervenors suggest. In this particular

²¹ Hearing Exhibit 105, Rev. 1, pp. 28, 30-31.

example, the Commission finds itself reviewing an approximately \$27M project, not including allowance for funds used during construction, serving an area with only 6,800 customers. Continuing business-as-usual investments in the gas system without additional throughput to financially support them creates a major economic friction moving forward and could eventually impact the Company's ability to continue to deliver service at rates that are just and reasonable. The size of the required investment as compared to the relatively limited number of new customers that appear to benefit from it also may raise cross subsidization concerns. The question arises whether we are socializing costs across the entire system that are perhaps more properly attributable to a narrow range of new customers.

19. Second, this Proceeding highlights the importance of understanding system peak demand as a driver of infrastructure investments and rate base expansion. As noted above, the Project is expected to cost approximately \$27 million.²² As the Company acknowledges, however, this investment is not being driven by increased throughput but by the need to expand capacity to meet peak design day demand.²³ Thus, this case highlights the importance of better understanding the drivers, inputs and metrics of system peak demand and identifying potential capacity needs as early as possible to avoid a situation like this, where meaningful alternatives to meet the capacity need are not able to be fully considered because their development takes time.

20. Third, Rule 4102(b)(VII), 4 CCR 723-4, already requires the utility seeking a CPCN to put forth information regarding feasible alternatives. As set forth more below, the Company examined alternatives and concluded that none of them would be feasible alternatives to the Project given the existence of a current capacity shortfall. While we affirm the

²² Hearing Exhibit 102, p. 8.

²³ Public Service SOP, p. 4.

Recommended Decision's conclusion that there are no feasible alternatives to the Project on this record, it would be concerning if in future cases the Company put forth a similar level of detail and rigor for its analysis of non-pipelines alternatives. In future proceedings, the Commission looks forward to a more robust analysis of feasible alternatives. For example, we would like to see going forward a more data-driven approach to understanding upcoming capacity additions based on actual building codes and projections that properly account for significant movement to beneficial electrification in both new and existing buildings in line with the arguments put forth by intervenors.

21. Finally, because the Company filed the Application when there was already a near-term capacity need, the options for addressing the need were significantly constrained from a timing perspective. The timing issues are especially concerning given that this need was identified as long ago as the 2019 heating system. Since alternatives may take some time to be developed or implemented, it seems inappropriate to only bring forth proposed needs for expansion when those needs are so immediate that no options can realistically be considered. This basic timing issue with the Company's application and alternatives analysis needs to be significantly improved in the future and should not be repeated. . Going forward, the Commission will not look favorably on delayed applications that are timed such that meaningful alternatives analysis is infeasible. In the future, the Company's analysis into alternatives should be fulsome and consider many of the features discussed by SWEEP in Answer Testimony, including the latest in gas demand response, complex building modeling and the possibility of targeted incentives to provide the appropriate level of review of options to offset major capital expenditures. Such an analysis should include far more specific data about actual gas usage, housing stock and consumption patterns in a certain area to complete robust analytics on alternatives, rather than basic narratives.

E. The Need for the Project and the Lack of Feasible Alternatives

1. Deployment of CNG

22. All three intervenors argue in Exceptions that the use of CNG in the Project Area can delay or obviate the need for the Project. UCA asserts that Public Service failed to satisfy its burden to prove that the existing resources, including CNG, are not adequate and available to provide reliable natural gas service to the Project Area for the time period between now and the Company's filing of its Clean Heat Plans. UCA characterizes Public Service's testimony as stating that with the injection of CNG, Public Service can reliably serve the Project Area's peak needs.²⁴ Although UCA agrees that "injecting CNG into the gas storage system each year to address capacity shortfall is not a long-term solution," UCA notes that Public Service has not yet needed to inject CNG—even when temperatures reached negative 11 degrees Fahrenheit in February of 2022. UCA thus argues that instead of expanding its gas pipeline infrastructure now, the Company should wait to determine how to address capacity need after completing its Clean Heat Plan.²⁵

23. In its Exceptions, Staff argues that the Recommended Decision rests on a logical fallacy in that the current capacity shortfall in the Company's gas system could be addressed through CNG but still found that there is a present need for the Project. Specifically, Staff argues that the following conclusion in the Recommended Decision is erroneous: "because 'CPCNs are about constructing or extending long-lived assets, it makes little sense to . . . require a utility to establish that short-term or temporary resources are inadequate or unavailable' in order to establish a 'present need.'"²⁶ Staff argues that this conclusion is contrary to the plain language of

²⁴ UCA Exceptions, p. 7 (citing Hearing Exhibit 101, Rev. 1, pp. 4, 21).

²⁵ UCA Exceptions, pp. 7-8.

²⁶ Staff Exceptions, p. 10 (citing Recommended Decision, ¶ 45).

§ 40-5-101(a), C.R.S., which requires the utility to show that the “present or future convenience or necessity require, or will require, the construction or extension” at issue.²⁷ Staff asserts that new projects are not required when there are short-term solutions such as CNG that alleviate the need for such projects.

24. In addition, Staff argues that the Recommended Decision conflates future and present uses of CNG. Staff argues that it is inconsistent for the Recommended Decision to implicitly acknowledge that the Company could use CNG for the next couple of heating seasons but also reject intervenors’ contentions that CNG could be used to alleviate any present need for the Project. Staff asserts that the Recommended Decision impermissibly shifts the burden of proof in that it requires intervenors to demonstrate the availability of long-term alternatives to the Project.²⁸

25. Ultimately, Staff asserts that there is no present need for the Project because CNG alleviates any current capacity shortfall.²⁹ Staff requests that the Commission reverse the Recommended Decision and deny the Company’s application for a CPCN, with leave to re-file a new application after the pending gas rulemaking in Proceeding No. 21R-0449G and DSM/beneficial electrification (BE) Strategic Issues proceedings are complete and the Company fully considers non-pipeline alternatives and updates its peak demand growth estimates using actual meter data.³⁰

²⁷ Staff Exceptions, p. 10.

²⁸ Staff Exceptions, p. 11.

²⁹ As discussed more below, Staff also argues that the Company failed to establish a future need for the Project.

³⁰ Staff Exceptions, pp. 12-13, 16.

26. Turning to SWEEP's Exceptions, SWEEP asserts that the Commission should not give undue weight to Public Service's claims regarding the potential for CNG siting limitations. SWEEP asserts that the Company's warnings are speculative and were not raised until Rebuttal Testimony. Moreover, SWEEP argues that Public Service created any timing issues in that it first identified the capacity shortfall for the 2019/2020 winter but failed to implement DSM or BE measures to reduce peak demand.

27. In its Response, Public Service largely reiterates the analysis put forth in the Recommended Decision to support its contention that there is a present need for the Project and the use of CNG is not a feasible alternative.³¹

2. Findings and Conclusions regarding Deployment of CNG

28. The Commission agrees with the analysis in the Recommended Decision regarding CNG in that Public Service's efforts to use temporarily sited CNG to prevent service disruptions do not obviate the need for the Project. In arguing that there is no present need for the Project because of the ability to use CNG, the intervenors assume that Public Service can rely on CNG to serve the Project Area safely and reliably for several more years. These arguments seem to disregard Rebuttal Testimony from Public Service stating that "it is likely that we will no longer have CNG as a viable option to support the Highlands System as soon as the 2023/2024 heating season" and that intervenors' suggestions to continue to utilize CNG indefinitely into the future suggests that the interveners do not understand the "inherent limitations and associated risks of CNG."³² Public Service estimates that it will take approximately 18 months to complete the Project and that if the Commission defers approval until several years from now as intervenors argue, "we

³¹ See Public Service Response, pp. 15-17.

³² Hearing Exhibit 106, Rev. 1, pp. 41-42.

will have been relying on CNG support – for a known capacity shortfall – for far too long.”³³ Indeed, at hearing, Staff witness Ms. Ramos characterized five years of CNG as “long term” at which point it would be better to install new pipelines.³⁴

29. The Recommended Decision analyzed how long the Company has been relying on CNG to provide capacity in the event of a Design Day temperature and when the Project could be completed if the Commission grants the CPCN Application:

The Company has already deployed CNG as a short-term solution over the last three heating seasons, starting in the 2019 to 2020 heating season. That amounts to approximately three years of CNG deployment before this Decision issues. The Company estimates that it will take 18 months to complete the Project, which means that the Company will have to deploy CNG for one or two more heating seasons before a known long-term solution (the Project) can be in service. That puts the Company at approximately four to five years of CNG deployment, which already pushes the limits of what could reasonably be considered short-term CNG deployment. Even so, under this approach, at least there is a known timeline by which a long-term solution (the Project) will be in-service. The same cannot be said for other unknown alternatives to the Project that may be identified in the years to come.³⁵

30. In short, if we defer granting the CPCN until after Public Service’s Clean Heat Plan (as UCA argues) or after the pending gas rulemaking and DSM/BE Strategic Issues proceedings (as Staff argues), Public Service will essentially be required to rely on CNG to meet its capacity shortfalls for longer than what can be considered short term. Indeed, if the Project is denied, Public Service would essentially be required to use CNG to meet its capacity needs until DSM and BE reduce peak capacity need below its current levels. While the parties put forth varying estimates

³³ *Id.* at 34.

³⁴ Hrg. Trn. (April 5, 2022), p. 207 (“The trailers, over time, have maintenance issues. Moving things in and out can be an issue. Things, like I say, in the long term, five or 10 years, 50 years, it’s much better to just try to put the pipe in.”); *see also* Hrg. Trn. (April 5, 2022), p. 199 (“[R]ight now, the risk associated with [CNG] is less—and we can talk about safety and risk. But two to five years. Two years, I don’t think there’s a problem. Five years, you know, that’s going pretty far out.”).

³⁵ Recommended Decision, ¶ 60 (internal citations omitted).

of future demand for gas, we note that SWEEP recommended a one percent annual growth rate, while Staff recommended a two percent annual growth rate.³⁶ Thus, even under Staff and SWEEP's projections, gas demand will continue to increase before it starts to decline—prolonging the time period in which CNG is required. However, we find merit in some of the reasons for the varying projections put forth by SWEEP and Staff. While those do not change the outcome in this proceeding due to the present need, these comments likely have merit and may fundamentally challenge some of Public Service's modeling for other projects where justification is made on future need alone.

31. More fundamentally, the Commission disagrees with the arguments that Public Service has not established a current need. The fact that Public Service testifies that it cannot rely on its system of pipelines and regulator stations to serve customers in the event of Design Day temperatures shows there is a current need for the Project; this meets the Company's burden under Rule 4102(b)(II) to show that a CPCN is necessary.³⁷ While Staff and UCA essentially argue that there cannot be a current need so long as a temporary solution such as CNG exists, adopting such arguments would be both risky and inconsistent with current industry practice and norms.³⁸ Under such arguments, before Public Service could establish a current need for new facilities, the system would need to fail such that—even with the use of temporary solutions—customers lose service. Given the reality of how long it takes the Company to obtain regulatory approval and construct new facilities, waiting until system failure is unwise. Short of system failure, the deployment of

³⁶ SWEEP Exceptions, p. 17 (citing Hearing Exhibit 300, p. 24; Hearing Exhibit 500, p. 16).

³⁷ Relatedly, we reject Staff's brief "burden shifting" argument, which on its own boils down to an argument that Public Service should somehow bear the burden of providing evidentiary support for intervenors' proposals for alternative projects or approaches.

³⁸ Contrary to Staff's arguments, the Recommended Decision does not hold that "short term alternatives are irrelevant" to a present need determination under § 40-5-101(a), C.R.S. The Recommended Decision simply indicates that the availability of temporary stopgap solutions does not negate a showing that the Company's current facilities are generally inadequate.

CNG for the purpose of “buying time” for localized DSM and BE to reduce peak capacity in the Project Area would mark a significant departure from standard operating and planning practices used in the gas utility industry. Public Service further notes the potential logistical necessity of implementing a gas service moratorium in the Project Area, as early as the 2022/2023 heating season for the Highlands System, and as early as the 2025/2026 heating season for the Pounds Low System.³⁹ However, as planning processes for the natural gas industry are implemented moving into the future, we expect few, if any, projects to show a current or immediate need without first coming before the Commission at a stage early enough to look at feasible alternatives.

32. Finally, the Commission also find SWEEP’s arguments on this point to be unpersuasive. The difficulties and risks of relying on CNG year-after-year in a densely populated area to fill the Company’s capacity shortfall are not speculative. None of the parties’ advocate using CNG as a long-term solution. As for SWEEP’s implication that Public Service should have begun using DSM and BE to reduce peak demand earlier, this argument does not address how Public Service should meet its currently existing capacity shortfall. We agree with Public Service that the ALJ correctly found both that use of CNG does not negate the current need for the Project under Rule 4102(b)(II) and that CNG is not a viable alternative to the Project under Rule 4102(b)(VII).

3. Alternatives to the Project such as DSM, Demand Response, and BE

33. SWEEP argues that the CPCN should be rejected because Public Service’s analysis of alternatives to the Project is flawed. First, SWEEP asserts that the non-pipelines alternatives analysis is based on the erroneous assumption that peak demand will continue to grow by

³⁹ Hearing Exhibit 106, p. 7.

4.4 percent. SWEEP asserts that this exaggerated growth rate “tipped the scales against non-pipeline alternatives.”⁴⁰ SWEEP claims that this 4.4 percent growth rate is based on the unreasonable assumption that future growth will be identical to historical growth and ignored multiple state laws and local ordinances that will likely reduce customers’ peak demand for gas in the future. SWEEP notes that it recommends a one percent annual growth rate while Staff recommends a two percent annual growth rate.⁴¹

34. SWEEP goes on to argue that Public Service underestimated the ability of DSM and demand response to reduce customers’ peak demand for gas. To begin, SWEEP asserts that the Company assumed the historical DSM savings would continue unchanged, without accounting for the more ambitious goals included in the 2021-2022 DSM Plan and the likely changes resulting from the Clean Heat Act and HB 21-1238 (the statute that amends DSM programing). Public Service did not consider, SWEEP contests, offering enhanced rebates to increase customer participation in the Project Area, using RFPs to identify opportunities to reduce peak demand, or creating new DSM programs or rebates targeted at decreasing peak demand. Rather, Company’s “enhanced” DSM efforts consisted merely of spending an additional \$232,000 per year on DSM marketing. Moreover, SWEEP argues that the Company should have accounted for the local ordinances that Denver, Edgewater, and Lakewood recently enacted to update building codes and reduce GHG emissions and energy use. Likewise, the Company’s gas demand response pilot in Summit and Grand Counties does not, SWEEP asserts, substitute for an analysis of how the Company could increase demand response in the actual Project Area.⁴²

⁴⁰ SWEEP Exceptions, p. 15.

⁴¹ *Id.* at 16-17.

⁴² *Id.* at 22-24.

35. SWEEP also takes issue with Public Service's analysis of BE as an alternative in part because Public Service did not analyze electrifying new homes, despite the fact that the Company stated new construction and redevelopment is the primary cause of the capacity shortfall. Similarly, SWEEP contests that the Company's conclusion that ground source heat pumps are too costly erroneously failed to consider significant federal incentives.⁴³

36. SWEEP goes on to argue that the Company ignored the climate and equity benefits of implementing non-pipeline alternatives in the Project Area and focused only on the costs. For instance, SWEEP asserts that the Company eliminated full electrification via cold climate electric heat pumps with electric resistance backup heating as well as ground source heat pumps as a feasible alternative due in part to the high costs. However, Public Service did not quantify the GHG reductions that would occur under the non-pipeline alternatives and did not use the social cost of carbon or the social cost of methane. Likewise, SWEEP argues that Public Service's non-pipeline alternatives analysis does not include how the specific disproportionately impacted communities in the Project Area will benefit if the Company offers enhanced DSM and BE measures in these communities.⁴⁴

37. SWEEP also argues that the Commission should—at the least—overturn the Recommended Decision's conclusion that DSM and BE measures are not feasible alternatives. SWEEP reasons that under the Recommended Decision's rationale, DSM and BE may never be considered feasible. The Recommended Decision questions the prudence of relying on DSM programs because customers, rather than Public Service, control their own voluntary participation

⁴³ *Id.* at 25-26.

⁴⁴ *Id.* at 19-21.

in DSM programs.⁴⁵ The Recommended Decision also finds that non-existent DSM programs are not a feasible alternative to address an existing need.⁴⁶ SWEEP argues that upholding this language “would significantly undercut Colorado’s strategy for decarbonizing the buildings sector” and would result in utilities rarely, if ever, implementing non-pipeline alternatives because DSM and BE rely on voluntary customer actions and will necessarily take time to implement.⁴⁷

38. SWEEP concludes that the Commission should reject the CPCN Application and instead require Public Service to immediately develop and offer (1) enhanced gas DSM programs for existing customers in the Project Area, and (2) electrification with cold climate heat pumps and heat pump water heaters for new construction in the Project Area. SWEEP also asks that the Commission require Public Service to issue an RFP for non-pipeline alternatives targeted at reducing peak demand from larger commercial and multifamily customers.⁴⁸ In the alternative, SWEEP argues that if the Commission grants the CPCN, it should still strike the language in the Recommended Decision dismissing DSM and BE as infeasible because these measures involve voluntary customer actions and can take time to fully implement.⁴⁹

39. Similar to SWEEP, UCA argues that the Commission must deny the Project because the Company failed to incorporate the natural gas use reductions expected from DSM and BE between now and 2025, now and 2030, and now and 2050, into its analysis of how to address the perceived shortfall in capacity over the next ten years for the Project Area.⁵⁰

⁴⁵ Recommended Decision, ¶ 75.

⁴⁶ *Id.* at ¶ 73.

⁴⁷ SWEEP Exceptions, pp. 26-28.

⁴⁸ *Id.* at 28-29.

⁴⁹ *Id.* at 28.

⁵⁰ UCA Exceptions, pp. 16.

40. In its Response, Public Service largely reiterates the reasoning and arguments put forth in the Recommended Decision.⁵¹

4. Findings and Conclusions regarding DSM, demand response, and BE as Alternatives

41. The Commission rejects the intervenors' arguments that the CPCN Application should be denied because non-pipeline alternatives such as DSM and BE, by themselves or in combination, are feasible alternatives to the Project.

42. To begin, while there are valid reasons to doubt Public Service's 4.4 percent growth rate, we disagree with the contention that an inflated growth rate tipped the scales against a finding that there was a current need for the project. Even with the one or two percent growth rates that SWEEP and Staff advance,⁵² the existing capacity shortfall is set to increase for years. Indeed, SWEEP's proposal to use a one percent annual growth rate over the next ten years appears to assume that all residential new construction in the Project Area within Denver (*i.e.*, the eastern portion of the Project Area) is fully electrified by 2024 or sooner and the more stringent building codes in Lakewood and Edgewater (*i.e.*, the western portion of the Project Area) further reduce peak demand.⁵³ Thus, even factoring in these local ordinances, SWEEP's base forecast shows gas use increasing for another decade. As discussed above, waiting for DSM and BE to slow the growth rate and eventually reverse it until the existing capacity shortfall is eliminated would require the use of CNG past what can be considered to be short-term. Thus, what tips the scales against non-pipeline alternatives in this particular situation is the fact that there is a current capacity shortfall—one that even SWEEP's base forecast shows is likely to grow.

⁵¹ See Public Service Response, pp. 17-22.

⁵² Hearing Exhibit 300, p. 24; Hearing Exhibit 500, p. 16.

⁵³ Hearing Exhibit 300, pp. 24-25.

43. For similar reasons, the intervenors' arguments that the CPCN should be denied because Public Service underestimated the ability of non-pipeline alternatives such as DSM, demand response, and BE to reduce peak demand is also unconvincing. Even assuming that Public Service did underestimate the future impact of non-pipeline alternatives, the preponderance of the record does not support the conclusion that non-pipeline alternatives will resolve the existing capacity shortfall in the near term.⁵⁴ That said, as noted above, going forward the Commission looks forward to a more robust analysis of non-pipeline alternatives that can preemptively resolve capacity shortfalls. Many of the shortcomings of the analysis in this proceeding, as pointed to by SWEEP, Staff and UCA, are concerning and point to a need for a much more thorough analysis by Public Service for any future filings.

44. As for the arguments that the Company failed to properly account for the climate and equity benefits of non-pipeline alternatives, the Commission finds these to be misplaced. Approving the Project does not mean that the Commission cannot or will not require Public Service to aggressively pursue non-pipeline alternatives like DSM and BE. Indeed, the Company will likely need to pursue such efforts to meet its statutorily mandated emission reduction goals. The Company implicitly recognizes this fact when it argues that the Project does not necessarily equate to increased throughput on the system.⁵⁵ Thus, we reject the requests to deny the CPCN Application and require Public Service to develop enhanced DSM, BE, and other non-pipeline alternatives in specific response to this Project need. In the appropriate separate proceedings, the Commission will be able to evaluate the extent to which Public Service should develop non-pipeline

⁵⁴ See Recommended Decision, ¶ 73.

⁵⁵ Public Service SOP, p. 4 ("The Project is a capacity project that will enable the Company to meet peak demand in the Project Area on the coldest days of the year. The Project will not itself increase throughput on the Highlands and Pounds Low Systems in the Project Area....").

alternatives, and the approval of the Project does not eliminate the benefits of non-pipeline alternatives.

45. And finally, we find that it is unnecessary to strike the Recommended Decision's language regarding DSM and BE. SWEEP does not put forth reasons why the Recommended Decision's findings are incorrect—DSM and BE programs are voluntary and take time to implement. Rather, SWEEP seems to argue that if the Commission recognizes these facts, it will somehow impede the growth of DSM and BE programs. In reality, the Recommended Decision's language regarding DSM and BE cannot be read so broadly. The language at issue applies to the approval of the West Metro Project and does not set precedent for future Commission decisions involving DSM and BE. Moreover, approval of the Project does not impact Public Service's statutorily mandated emission reduction goals, nor will it eliminate the benefits of non-pipeline alternatives like DSM and BE. Even though the presented DSM and BE programs were not feasible alternatives to address the existing capacity shortfall in this Proceeding, proactively implemented non-pipeline alternatives could still eliminate the need for future capacity expansion projects. We expect that, outside of extraordinary circumstances, future applications will start being brought to the Commission prior to the existence of a current or immediate need, allowing time for development of alternatives, making the realities of the challenges of customer adoption and implementation timelines a less significant hurdle.

F. The Project's Compatibility with a Clean Heat Future

1. Interveners' Exceptions

46. In their Exceptions, UCA and SWEEP argue that the Project is incompatible with Colorado's plans for emissions reductions (including the Clean Heat Act). UCA asserts that the CPCN Application is erroneously based on an over-estimation of the annual peak average demand

growth for the Project Area, arguing that the Company's case is "predicated upon cost and growth forecasts that likely will not prove to be accurate."⁵⁶ UCA further argues that the new statutory mandates (*e.g.*, the Clean Heat Act) require a forward-looking test of cost-effectiveness for gas expansion that prioritizes clean heat resources and non-pipeline alternatives and warns that some or all of the Project could become stranded as Colorado pursues aggressive emission reduction goals.⁵⁷ UCA also asserts that the Project is incompatible with a decarbonized future and that the Company failed to analyze the impact of stranded assets for low-income Coloradoans. UCA warns that Colorado's most vulnerable ratepayers will likely end up paying for unnecessary infrastructure as "they are forced to remain on an outdated system," in violation of § 40-3.2-108(1)(c)(II) and (III).⁵⁸ More fundamentally, UCA argues that Public Service has a poor history of forecasting and that the studies and analyses that Staff and SWEEP performed confirm that the Company's projections for a 4.4 percent annual growth rate are significantly overstated.⁵⁹

47. Staff likewise argues that the Company failed to establish a future need for the Project given the uncertainties with the emissions reduction statutes and the pending gas rulemaking and DSM/BE Strategic Issues proceedings.⁶⁰

48. SWEEP makes similar arguments, asserting that based on the GHG Roadmap, the total energy demand on the gas system in 2050 will be far less than today. Noting that the current depreciation schedules for the Project components range from 50 to 72 years, SWEEP asserts that Public Service will likely be recovering Project costs for decades after 2050.⁶¹ SWEEP

⁵⁶ UCA Exceptions, pp. 8-9.

⁵⁷ *Id.* at 9.

⁵⁸ *Id.* at 11-12.

⁵⁹ *Id.* at 9-10.

⁶⁰ Staff Exceptions, pp. 12-13.

⁶¹ SWEEP Exceptions, pp. 5-7.

acknowledges that no state laws require the elimination of the gas system but argues that this fact “has little bearing on whether it is in the public interest to expand the gas system in the West Metro area given Colorado’s 2050 climate goals.”⁶²

49. SWEEP also takes issue with the Recommended Decision’s focus on whether there is an existing need for the Project. SWEEP urges the Commission to clarify that approval of new gas infrastructure does not rest solely on whether the utility has established a current need. Instead, SWEEP asserts that the Commission must determine whether there is a present or future need *and* whether the project is in the public interest. This public interest inquiry allows the Commission to consider the larger policy context, and SWEEP contends that the Recommended Decision’s failure to consider this is arbitrary and capricious.⁶³ Moreover, because of this public interest inquiry, SWEEP asserts that there are no due process concerns with applying pre-existing statutes and state policies (such as the Clean Heat Act and the GHG Roadmap) in this Proceeding.⁶⁴ In addition, SWEEP argues that upholding the Recommended Decision with its overly narrow focus on the present need would essentially give utilities unfettered ability to expand gas infrastructure despite Colorado’s decarbonization efforts.⁶⁵

50. SWEEP goes on to assert that the Recommended Decision’s conclusion that the Project is necessary to meet an existing capacity shortfall does not fully reflect the facts of the case. SWEEP states that the Project is designed to support two separate portions—the Highlands System and the Pounds Low System—but the Company only identified a current capacity shortfall in the Highlands portion of the system. SWEEP argues that if a present need for a *portion* of a

⁶² *Id.* at 8.

⁶³ *Id.* at 11.

⁶⁴ *Id.* at 14.

⁶⁵ *Id.* at 12.

project is all that a utility must demonstrate, the Commission “risks approving significant overinvestment in the gas system to serve projected growth that may never materialize.”⁶⁶

51. Like UCA, SWEEP argues that the Recommended Decision downplays significant risks that the Project will result in stranded assets. SWEEP states that deferring consideration of stranded assets to a future proceeding encourages overbuilding the gas system, especially if a utility is only required to show a current capacity shortfall to obtain a CPCN. SWEEP acknowledges that a CPCN proceeding is different than a cost recovery proceeding but maintains that the Commission should not “willfully ignore the likelihood that new gas infrastructure projects will become stranded assets when it reviews a project.”⁶⁷

2. Public Service Response

52. In its Response, Public Service reiterates that while its gas utility business is evolving, it is still statutorily required to provide safe and reliable service pursuant to § 40-3-101(2), C.R.S. According to the Company, the Recommended Decision recognizes that-while Public Service must account for the Project’s impact on its overall greenhouse gas emissions in its anticipated Clean Heat Plan statutory emission reduction targets—there is a present capacity shortfall in the Project Area that could cause service outages.⁶⁸

53. The Company asserts that the intervenors’ reliance on recent statutory enactments requiring emissions reductions and the GHG Roadmap disregards the fact that these statutes do not require the elimination or reduction of gas distribution systems, nor do they relieve gas utilities of their obligations to provide safe and reliable service. Public Service specifically calls out

⁶⁶ *Id.* at 13.

⁶⁷ *Id.* at 14.

⁶⁸ Public Service Response, pp. 4-5.

SWEEP’s argument that while the new statutes do not require the elimination of the gas system, which has no bearing on whether *expansion* of the gas system is in the public interest. Public Service asserts that nothing in HB 19-1261, SB 21-264, or HB 21-1238 prohibits the expansion of the gas system, and notes that gas utilities must include in their Clean Heat Plans “a forecast of potential new customers and system growth or expansion of the gas system for the applicable plan period, including projected greenhouse gas emissions related to that growth.”⁶⁹

54. Public Service also argues that the interveners are inappropriately attempting to revise the criteria for granting a CPCN. The Company argues that—as recognized in the Recommended Decision—imposing new standards and requirements for a CPCN in this Proceeding would violate due process.⁷⁰ The Company similarly argues that the Commission must reject arguments that a CPCN should not be awarded solely because there is a present need.⁷¹

55. Responding to interveners’ arguments that the Project will result in stranded assets; Public Service reiterates that the recent statutory enactments do not require the elimination or reduction of the gas system and that decreased throughput should not be conflated with decreased capacity. Moreover, the Company asserts that these cost recovery considerations “are not at issue in this proceeding and are not ripe for resolution.”⁷² Quoting paragraph 137 of the Recommended Decision, Public Service states that the ALJ correctly determined that “[i]t is the Commission’s prerogative to determine in an appropriate future proceeding that the Company should bear the risk of the asset becoming stranded should the Company prove wrong about future need.”⁷³

⁶⁹ *Id.* at 8-9, fn. 29 (quoting § 40-3.2-108(4)(c)(IX)). Public Service also asserts that the Project does not technically “expand the gas system” but is a capacity relief project that seeks to ensure reliable service to customers already served in the Project Area. (Public Service Response, p. 9).

⁷⁰ *Id.* at 10.

⁷¹ *Id.* at 11.

⁷² *Id.* at 25.

⁷³ *Id.* (quoting Recommended Decision, ¶ 137) (internal quotations omitted).

3. Findings and Conclusions regarding the Project and a Clean Heat Future

56. The Commission rejects the various arguments that the Project should be denied because it is inconsistent with a clean heat future.

57. Intervenors essentially argue that the recent statutory directives calling for emissions reductions mean that demand for gas will drop, and the Project will eventually no longer be necessary, resulting in stranded assets. However, no party—including the Company—argues that this Proceeding decides issues of cost recovery of stranded assets. Indeed, in its Response, Public Service explicitly agrees with the Recommended Decision’s statement that in future proceedings the Commission could determine that “the Company should bear the risk of the asset becoming stranded should the Company prove wrong about future need.”⁷⁴

58. We agree with SWEEP that the Commission should not “willfully ignore” the possibility of assets becoming stranded during CPCN proceedings, and we acknowledge that the intervenors have raised legitimate concerns about the long-term need for Project and who will ultimately pay for the associated assets if more customers electrify. However, these concerns do not require denial of a CPCN application where—as here—the utility has established an existing need.⁷⁵ That said, we reaffirm the notion raised in the Recommended Decision that, if a future need for the Project fails to materialize as argued by intervenors in this Proceeding, it is the Commission’s prerogative to determine in an appropriate future proceeding how to deal with the issues surrounding the risk of the asset becoming stranded, especially considering that Public Service is fully aware of the challenges to its growth projections and alternative analysis brought

⁷⁴ *Id.*(quoting Recommended Decision, ¶ 137) (internal quotations omitted).

⁷⁵ In Exceptions, the intervenors continue to raise various arguments regarding the estimated growth rate for gas demand. Consistent with the Recommended Decision, we find these arguments unpersuasive given the established existing need for the Project.

forth by multiple Intervenor prior to investing in the Project. The Commission shares concerns about the potential for future stranded assets and has expressed interest in continuing to investigate potential avenues to align the interests of the Company with the interests of ratepayers related to the risk associated with the future need, or lack thereof, of new investments.

59. For similar reasons, the Commission finds the UCA's arguments regarding § 40-3.2-108(1)(c)(II) and (III), C.R.S., to be misplaced. UCA seems to argue that approval of the Project could contribute to the most vulnerable ratepayers being forced to pay for stranded assets in violation of § 40-3.2-108(1)(c)(II) and (III), C.R.S. Section 40-3.2-108(1), C.R.S., is the legislative declaration for the Clean Heat Act and is reproduced in relevant part below:

(II) Colorado is focused on a transition to a decarbonized economy that recognizes the historic injustices that impact lower-income Coloradans and Black, Indigenous, and other people of color who have borne a disproportionate share of environmental risks while also enjoying fewer environmental benefits;

(III) The commission must maximize greenhouse gas emission reductions and benefits to customers, with particular attention to residential customers who participate in income-qualified programs, while managing costs and risks to customers, including stranded-asset cost risks, and in a manner that supports family-sustaining jobs; and

60. These provisions of the legislative declaration of the Clean Heat Act do not prohibit the granting of the CPCN Application. This is especially so given that this Proceeding is not a cost recovery proceeding, and a decision granting the CPCN Application in no way prohibits the Commission from determining in a future proceeding how to address the risk of the asset becoming stranded.

61. We also find unpersuasive SWEEP's assertion that the Recommended Decision is arbitrary and capricious because it failed to consider whether there is a present need as well as whether the Project is in the public interest. As a general matter, the Recommended Decision notes in its overview of relevant law that "[w]hen exercising any power granted to it, the Commission

must give the public interest first and paramount consideration and must ensure that public utility rates are just and reasonable.”⁷⁶ The Recommended Decision applies this legal standard throughout its analysis and in its conclusion clearly establishes that granting this CPCN is in the public interest:

Granting the CPCN serves the public, who have little or no choice in selecting a utility provider. Indeed, during the transition to a clean heat future, utilities must continue to ensure that they provide service “as shall promote the safety, health, comfort, and convenience” of their customers and the public, and that is in all respects “adequate, efficient, just and reasonable.” Granting the CPCN helps ensure that Coloradans in the Project Area may continue to heat their homes and businesses during the transition to a clean heat future.⁷⁷

62. More specifically, contrary to SWEEP’s implications, the Recommended Decision does analyze the new state and local laws and policies that are projected to drive future emissions reductions.⁷⁸ However, the Recommended Decision concludes that the impact of these new laws on things like peak demand for gas will not be known for years and that to find otherwise would require significant speculation.⁷⁹ Support for this conclusion includes that the Clean Heat Act anticipates that utilities may need to expand their gas systems to account for growth, HB 21-1238 explicitly prohibits the Commission from requiring removal of gas-fueled appliances or from banning the installation of gas service lines to any new structure, and Denver’s new ordinance does not mandate full electrification of all natural gas heating appliances.⁸⁰

63. In short, SWEEP’s assertion that the Recommended Decision ended its analysis once it found an existing need is incorrect. The Recommended Decision examined the potential

⁷⁶ Recommended Decision, ¶ 10 (citing § 40-3-101(1), C.R.S.; *Public Serv. Co. of Colo. v. Public Util. Comm’n*, 350 P.2d 543, 549 (Colo. 1960), *cert. denied*, 364 U.S. 820 (1960)).

⁷⁷ *Id.* at ¶ 154 (internal footnotes omitted).

⁷⁸ *See id.* at ¶¶ 133-41.

⁷⁹ *Id.* at ¶ 136.

⁸⁰ *Id.* at ¶¶ 134-35.

impacts of the new state and local laws and policies that are projected to drive future emissions reductions but ultimately rejected arguments that the Project was not in the public interest.⁸¹

64. Turning to SWEEP's argument that the Recommended Decision does not fully reflect the facts of the case regarding the separate components of the Project, SWEEP is correct that Highlands portion of the Project Area is the portion that is experiencing current capacity shortfalls. This does not mean, however, that approving the Project sets a bad precedent in which the Commission will approve significant overinvestment in the gas system to serve projected growth that might never materialize.

65. To begin, the Project Area is comprised of both the Highlands system and the Pounds system, and the Project is designed to serve both. Key components of the Project, such as the regulator station and the IP pipeline, are designed to serve the entire Project Area.⁸² SWEEP does not argue—much less establish through evidence—that it would be better to redesign the Project to only serve the Highlands system and then design a separate project that only serves the Pounds system. Such an approach could require two separate regulator stations and IP pipelines and might significantly increase costs. In addition, while the Pounds system is not currently experiencing capacity shortfalls, the Company predicts that there will be capacity shortfalls beginning in 2024. The Company further testifies that CNG might not be an option on the Pounds system as soon as the 2026/2027 heating season, which might require a moratorium for new service requests by the 2025/2026 heating season.⁸³ Given this testimony and the amount of time it would

⁸¹ The Commission also disagrees with SWEEP's argument that the Recommended Decision's focus on the present need essentially gives utilities unfettered ability to expand gas infrastructure.

⁸² See Hrg. Trn. (April 4, 2022), pp. 217-19.

⁸³ Hearing Exhibit, Rev. 1, pp. 6-7.

take to obtain regulatory approval and construct a Pounds-specific project, the Commission rejects SWEEP's arguments on this point.

G. The Application's Impact on Members of Income Qualified and Disproportionately Impacted Communities

66. UCA argues that the Commission should deny the CPCN Application because Public Service failed to put forth evidence on how the Project would impact members of income qualified and disproportionately impacted communities. Citing HB 21-1266, the Environmental Justice Act, UCA asserts that the Commission must include and engage with these income qualified and disproportionally impacted communities. To facilitate this statutory requirement, UCA argues that the Company should have presented factual evidence describing any outreach it conducted in income qualified and disproportionally impacted communities prior to filing.

67. In its Response, Public Service states that the arguments UCA now makes in Exceptions regarding HB 21-1266 were not previously mentioned in UCA's testimony or SOP. The Company next argues that HB 21-1266 does not apply to the Commission in the manner UCA suggests, noting that the statute defines "Agency" as the "Air Quality Control Commission created in Section 25-7-104." Public Service further argues that nothing in HB 21-1266 changes the statutory standard in § 40-5-101(1)(a), C.R.S., governing CPCNs.⁸⁴

68. In addition, Public Service notes that while the Recommended Decision does not expressly address issues related to disproportionately impacted communities, it does find that the Project will serve the public interest and recognizes that approximately 30 percent of customers in

⁸⁴ Public Service Response, p. 26.

the Project Area are income qualified.⁸⁵ Finally, the Company asserts that it did address these issues in its rebuttal and oral testimony, establishing:

[T]he Company makes DSM resources available to income-qualified customers, that the Project was the low cost option to provide continued reliable heating service to the residents in the Project Area (making it the most affordable alternative), that the Company would continue to offer beneficial electrification and DSM incentives to residents in the Project Area with enhanced marketing initiatives for these offerings, and that the Company had considered community impacts, from an operational perspective, in the development of the Project.⁸⁶

1. Findings and Conclusions on the Application's impact on Income Qualified and Disproportionately Impacted Communities

69. The Commission agrees with Public Service that HB 21-1266 does not provide a basis to reject the Company's CPCN Application. The Commission and other entities are currently participating in ongoing processes to implement HB 21-166.⁸⁷ Section 24-4-109(2)(b), C.R.S. explicitly defines "agency" as used in that subsection to "mean [] the air quality control commission created in [§ 25-7-104, C.R.S.]." HB 21- 1266 further established the Environmental Justice Action Task Force to discuss, among other items, whether "agency" should include entities in addition to those identified in § 24-4-109(2)(b), C.R.S., and make recommendations to the general assembly on potential modifications to definitions established in statute.

70. In addition, as discussed above, the Recommended Decision does analyze the Project's potential impacts on emissions and stranded assets/rates and concludes that the Project is in the public interest.⁸⁸ Moreover, approving the Project does not mean that the Commission cannot direct Public Service in a future proceeding to pursue DSM and BE programs with a particular focus on income qualified and disproportionately impacted communities.

⁸⁵ *Id.* at 26-27 (citing Recommended Decision, p. 64, fn. 362).

⁸⁶ *Id.* at 27.

⁸⁷ See Proceeding No. 22A-0309EG, Decision No. C22-0548-I, p. 3.

⁸⁸ Recommended Decision, pp. 59-65.

H. Staff's Statements regarding Ratepayer Safety

71. In its Exceptions, Staff makes a standalone argument that the Commission should disavow the portion of the Recommended Decision that critiques Staff's position regarding rolling blackouts as an alternative to the Project. Staff argues that even if the Commission approves the Company's CPCN Application, the Commission should reject paragraphs 142-152 of the Recommended Decision. In particular, Staff calls out statements in the Recommended Decision that "Staff did not express concern about public health and safety risks associated with blackouts during peak gas demand" and that Staff "expressed a disquieting lack of concern" and "apparent apathy" for public safety.⁸⁹

72. Staff asserts that the findings in the Recommended Decision are at odds with Staff's position, noting that Ms. Ramos's Answer Testimony specified that any outages should be "designed to be of long enough duration to shave the needle peak gas demand but still brief enough to minimize any discomfort to customers, freezing concerns and pilot relights associated with loss of gas supply."⁹⁰ Staff also argues that the findings fail to account for Staff's long track record of advocating for the welfare of utility customers. Staff states that it was unnecessary for the Recommended Decision to discuss rolling outages because "Staff effectively abandoned that proposal by declining to include it in their Post-Hearing Statement of Position after the Company raised safety concerns in its Rebuttal Testimony."⁹¹

73. For context, in its Rebuttal Testimony, Public Service acknowledges that it could technically manage gas pressure with rolling blackouts, but stressed that "because of its adverse

⁸⁹ Staff Exceptions, p. 13 (quoting Recommended Decision, ¶¶ 143, 150).

⁹⁰ *Id.* at 14 (quoting Hearing Exhibit 502, p. 25).

⁹¹ Staff Exceptions, p. 15.

consequences it would be highly inappropriate to do so as a planning tool.”⁹² Public Service also states that it is unclear how long an electric service interruption would need to be maintained for the gas pressures to adequately return and that the blackout could last for hours and deenergizing and reenergizing multiple facilities on the electric system in extreme cold could risk extended electric outages.⁹³

1. Findings and Conclusions on Staff’s Statements regarding Ratepayer Safety

74. We acknowledge Staff’s statements in Exceptions that it “effectively abandoned” its proposal for controlled blackouts after the Company raised safety concerns in Rebuttal Testimony. It would have been more appropriate, however, for Staff to expressly state this in its SOP or acknowledge during the evidentiary hearing that there would be public safety concerns if the blackouts were “several hours long” and the Company did not have much control over them. Staff did neither of these.

75. In light of Ms. Ramos’s responses to the ALJ’s questions during the hearing and the fact that Staff never clarified its position in its SOP, it is difficult for the Commission to fault the Recommended Decision’s statements that Staff expressed a lack of concern about the potential public health and safety risks of extended, uncontrolled blackouts. For these reasons, we acknowledge that Staff ultimately abandoned its proposal for rolling blackouts based on Public Service’s safety concerns, but we will refrain from disavowing the relevant portion of the Recommended Decision.

⁹² Hearing Exhibit 107, p. 8.

⁹³ *Id.* at 12.

II. ORDER**A. It is Ordered That:**

1. The Exceptions to Recommended Decision No. R22-0457 (Recommended Decision) that the Colorado Office of the Utility Consumer Advocate filed on August 24, 2022, are denied, consistent with the above discussion.

2. The Exceptions to Recommended Decision that the Colorado Public Utilities Commission Staff filed on August 24, 2022, are denied, consistent with the above discussion.

3. The Exceptions to Recommended Decision that the Southwest Energy Efficiency Project filed on August 24, 2022, are denied, consistent with the above discussion.

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

5. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETINGS
October 26 and November 16, 2022.**

(S E A L)



ATTEST: A TRUE COPY

G. Harris Adams,
Interim Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

JOHN GAVAN

MEGAN M. GILMAN

Commissioners