

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21R-0314G

IN THE MATTER OF THE PROPOSED RULES ADDRESSING GAS COST ADJUSTMENT APPLICATIONS FILED PURSUANT TO THE RULES REGULATING GAS UTILITIES, 4 CODE OF COLORADO REGULATIONS (CCR) 723-4.

**COMMISSION DECISION ADOPTING MODIFIED RULES
ADDRESSING THE GAS COST ADJUSTMENT**

Mailed Date: January 17, 2023
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I. BY THE COMMISSION

A. Statement

1. On June 30, 2021, the Colorado Public Utilities Commission opened this Proceeding by issuing a Notice of Proposed Rulemaking (NOPR) as Decision No. C21-0385 to amend the Commission’s Rules Regulating Gas Utilities, 4 *Code of Colorado Regulations* (CCR) 723-4. The proposed amendments revise provisions in the rules governing the gas cost adjustment (GCA) at 4 CCR 723-4-4600, *et seq.* (GCA Rules).

2. The NOPR stated that the purpose of the rulemaking is to address, on a prospective basis, the recovery of gas costs incurred by Colorado natural gas utilities. The Commission explained that in the wake of the extremely cold weather beginning February 13, 2021, when Colorado, as well as much of the central United States, experienced unprecedented natural gas commodity prices, a realignment of incentives related to gas cost recovery may be necessary. The Commission specifically set out to examine whether a modified GCA framework is required, where utilities are guaranteed less than full recovery of incurred gas costs in exchange for potential profits when savings in gas costs are achieved. The Commission posited that the guarantee of full cost recovery may have resulted in market conditions where the natural gas commodity industry was allowed to fail to deliver natural gas at a reasonable price, in part, because the utilities lacked sufficient motivation to demand from that industry more responsive pricing products and market

mechanisms due to the long-standing assurance that state utility regulators would allow for full cost recovery regardless of the price set by the market.

3. During the course of this rulemaking proceeding, the Commission adopted a two-step approach for the rulemaking participants to develop and propose modified GCA Rules. The first step examined process and procedural changes to the GCAs (*e.g.*, filing type and frequency), whereas the second step focused on alternative performance incentive-based structures for GCAs and any other necessary changes to the GCA Rules. Staff of the Colorado Public Utilities Commission (Staff) filed a set of consensus rules in accordance with this two-step approach on November 3, 2022.

4. By this Decision, and consistent with the discussion below, we adopt modified rules governing the GCA based on the consensus rules filed by Staff.

B. Discussion

1. Initial Responses to the NOPR

5. In the NOPR, the Commission proposed to introduce an incentive mechanism within the calculation of the deferred gas costs recovered through the GCA. If the gas utility achieves savings relative to forecast natural gas costs, it would be permitted to retain, as earnings, a portion of the difference. The responsibility of addressing the payment of costs in excess of forecasts would be shared between ratepayers and utility shareholders. The most substantial modification to the GCA Rules was the introduction of Proposed Rule 4605 (Calculation of Costs Eligible for GCA Recovery).

6. Prior to the public comment hearing scheduled to be held on August 26, 2021, written comments were filed by each of the investor-owned gas utilities in Colorado, including

Public Service Company of Colorado (Public Service), Atmos Energy Corporation (Atmos), Black Hills Colorado Gas, Inc. (Black Hills), and Colorado Natural Gas, Inc. (CNG). The utilities opposed the proposed changes to the Gas Rules set out in the NOPR. They also raised timing concerns, specifically noting that any new GCA rules should not apply to the upcoming 2021 to 2022 heating season, since the utilities had already entered into gas supply contracts for that period and thus had limited ability to adapt to the proposed rule changes. Written comments were also submitted by the Colorado Office of the Utility Consumer Advocate (UCA),¹ the Colorado Energy Office (CEO), and Durango Mountain Utilities, LLC.

7. In Decision No. C21-0512-I, issued on August 20, 2021, the Commission announced its intention to continue the public comment hearing scheduled for August 26, 2021, to accommodate the development, release, and review of further modified rule changes as well as the solicitation of additional written comments and the scheduling of another public comment hearing at a future date. The Commission further clarified that any rule changes adopted in this Proceeding will not apply to the 2021 to 2022 heating season.

2. Supplemental Notice of Proposed Rulemaking (Supplemental NOPR)

8. By Decision No. C21-0829-I, issued on December 28, 2021, the Commission issued a Supplemental Notice of Proposed Rulemaking (Supplemental NOPR) to schedule a continued rulemaking hearing to be held on February 4, 2022. Additional proposed amendments to the rules governing the GCA were attached to the Supplemental NOPR.

9. At the end of the hearing on February 4, 2022, the Commission invited the rulemaking participants to submit recommendations on procedures for the advancement of this

¹ At the time of the filings, the UCA was named the Colorado Office of the Consumer Counsel.

rulemaking to be filed by February 11, 2022. The rulemaking participants were also offered the opportunity to supplement their written and oral comments with post-hearing comments to be filed no later than February 28, 2022.

3. Two-Step Process for Developing Consensus Rules

10. By Decision No. C22-0198-I, issued on March 29, 2022, the Commission adopted a “two-step process” for this rulemaking as proposed by the participants in their procedural comments filed after the February 4, 2022 hearing. Step 1 of this process would focus on near-term process changes to the GCAs, and the issues identified for the first stage in the procedural comments. In Step 2, intended to conclude before the end of 2022, the rulemaking participants would evaluate data and potential alternative performance incentive-based structures for GCAs and any other changes to the GCA Rules. The Commission requested that the rulemaking participant submit a set of consensus rules or a document outlining the contents of consensus rules and a summary of areas in which the participants have reached consensus and areas in which there is not consensus, if any. The Commission set July 1, 2022 as the deadline for a Step 1 consensus filing and November 1, 2022 for the Step 2 consensus filing. The Commission also required Staff to file a status report on June 1, 2022.

11. Staff timely filed the status report on June 1, 2022, in accordance with Decision No. C22-0198-I. Staff indicated the rulemaking participants were continuing to work on providing the Commission the Step 1 consensus redline rules by the proposed deadline of July 1, 2022. Staff reported there was consensus on some of the potential rule changes to be addressed through Step 1 and that it was optimistic that stakeholders will be able to meet the Commission’s deadline for consensus rules to be submitted by July 1, 2022.

12. By Decision No. C22-0354-I, issued on June 9, 2022, the Commission scheduled a remote public comment hearing for the purpose of receiving oral comment on rule changes to be proposed by the rulemaking participants as part of the Step 1 process adopted by Decision No. C22-0198-I to be held on July 29, 2022.

13. On July 1, 2022, Staff filed comments and a set of Step 1 changes to the GCA Rules developed on a consensus basis with the Colorado gas utilities, UCA, and CEO.

14. The Commission conducted the public comment hearing on the proposed Step 1 changes to the GCA Rules on July 29, 2022, as scheduled.

15. By Decision No. C22-0461, issued on August 4, 2022, the Commission scheduled a workshop on August 10, 2022 to address Step 2 topics as suggested by Staff in its June 1, 2022 and July 1, 2022 comments. Staff was directed to invite presenters and preparing an agenda for the workshop. Invited speakers at the scheduled August 10, 2022 workshop included: staff on the utility regulatory commissions in Wisconsin and Oregon; Richard Derryberry, Director of Gas Supply and Resource Planning for Public Service; and Kenny Malter, Director of Gas Supply and Services for Atmos. Representatives from each gas utility also participated in the workshop.

16. On November 3, 2022, Staff filed a notice with proposed consensus rules consistent with Step 2. The consensus rules filed on November 3, 2022 with Step 2 changes incorporate all of the Step 1 consensus redlines filed on July 1, 2022.²

² Durango Mountain Utilities, a small propane distribution company, also participated in the development of the consensus rules in Step 2.

C. Findings and Conclusions

1. Adoption of Proposed Consensus Rules

17. We conclude that it reasonable to adopt, with some minor modifications, the consensus rules filed on November 3, 2022. The consensus redlines to the GCA Rules reflect the combined efforts of the key rulemaking participants in accordance with the two-step process adopted for this rulemaking proceeding. The consensus rules provide a path for the continued examination of performance incentive mechanisms to achieve the goal of realigning the risks borne by the Colorado natural gas utilities' shareholders and their customers consistent with the primary purpose of this rulemaking as stated in the NOPR and the Supplemental NOPR.

18. We are nonetheless disappointed that the consensus rules largely postpone to future proceedings the implementation of any performance incentive-based structures for GCAs, and the corresponding realignment of risks and rewards presented by natural gas commodity costs. We are frustrated that the consensus rules do not themselves address the underlying problems we sought to address after the significant amount of time that has elapsed since the NOPR was issued. The timely development of performance incentive mechanism which meaningfully shifts to a structure of shared risks and rewards in accordance with the modified rule provisions nevertheless appears to represent the best opportunity for achieving the realignment of incentives related to gas cost recovery.

19. The statutory authority for the rules adopted by this Decision is found at: §§ 29-20-108, 40-2-108, 40-3-101, 40-3-102, 40-3-103, 40-3-104, 40-3-106, 40-3-111, 40-3-114, 40-4-101, 40-4-106, and 40-4-108, C.R.S.

20. We adopt the rule revisions shown in legislative (*i.e.*, strikeout/underline) format (Attachment A) and final format (Attachment B) attached to this Decision, consistent with the discussion above.

2. Modifications to GCA Rules

a. 4600. Overview and Purpose.

21. The proposed consensus redlines highlight the deferred balance component of the GCA and introduce the Gas Performance Incentive Mechanism (GPIM), the purpose of which is to “establish a gas cost benchmark and apply a risk sharing mechanism.”

22. We adopt the proposed consensus redlines with some minor rewording of the added sentence regarding the GPIM.

b. 4601. Definitions.

23. The consensus redlines introduce the following terms related to the GPIM:

- “Gas Performance Incentive Mechanism Benchmark” or GPIM Benchmark means a benchmark calculated based on verifiable, reported market indices, with a reasonable adjustment, for comparison with actual commodity costs incurred by an LDC.
- “Gas Performance Incentive Mechanism” or GPIM means a risk-sharing incentive mechanism established through a Gas Performance Incentive Mechanism Application to share the risk of commodity natural gas prices between LDCs and ratepayers.
- “Gas Performance Incentive Mechanism Application” or GPIM Application means an application establishing a GPIM.

24. The consensus redlines also propose adjustments to the following defined terms:

- “Account No. 191” is refined in the consensus redlines to reflect GCA revenue collections as well as GCA-assigned costs.
- Hedging costs are identified as a component of “Forecasted commodity costs.”

- A “GCA Rate Area” recognizes that some utilities have distinct gas commodity profiles based on geographic parameters.
- “Long-term contracts” mean firm, fixed-price supply contracts with an initial term of 12 months or more in duration.

25. With respect to Durango Mountain Utilities, a new definition is proposed: “Propane utility” means a public utility as defined in § 40-1-103, C.R.S., that operates for the purpose of supplying the public propane but does not supply natural gas or other fuels.

26. We adopt the consensus redlines for Rule 4601 with some minor rewording of the added definitions associated with the GPIM and by reordering and renumbering the defined terms per the Commission’s protocols.

c. 4602. Schedule for Filings by Utilities.

27. The proposed consensus redlines embody much of the Step 1 efforts of the rulemaking participants. Rule 4602 also includes Step 2-related provisions associated with the utilities’ GPIMs.

28. In the proposed consensus redlines, paragraph 4602(a) requires quarterly GCAs for Public Service, Atmos, and Black Hills. Paragraph 4602(b) requires quarterly or semi-annual GCAs for CNG.³

29. We adopt the schedule in the consensus redlines with some minor rewording of the proposed changes to the existing provisions in (a) and (b).

30. Paragraph 4602(e) in the consensus redlines sets October 1 as the deadline for the filing of the Gas Purchase and Deferred Balance Reports (GPDBR) for the potential launch of a GCA prudence review pursuant to Rule 4608.

³ Durango Mountain Utilities may file an annual GCA pursuant to paragraph 4602(c).

31. We again adopt the October 1 filing date for the GPDBRs.⁴

32. Paragraph 4602(f) in the consensus redlines sets the schedule for GPIM applications. Public Service's application would come first, two months after the new GCA Rules take effect. Black Hills and Atmos would file their GPIM application in September 2023. GPIM application would recur every three years. A GPIM application would be optional for CNG.

33. We adopt the filing schedule and requirements for the new GPIM applications, with Public Service filing its application first and the smaller utilities following. We further adopt exemption from filing GPIM applications for CNG and propane utilities. However, we also make some minor modifications to these proposed provisions. First, we will require reports on GPIM performance from all utilities. The Commission must be informed about how these mechanisms are working from the beginning of their implementation. We further delete from the rule language the word "detailed" because it is ambiguous and prone to dispute. Second, we move the concept that the utility may "petition the Commission to evaluate the GPIM" from this rule to Rule 4607 as paragraph (e). The intent of the consensus redlines appears to be to compel utilities to implement the GPIM for several years after these modified GCA Rules take effect, and we conclude that the requirement to file GPIM applications will suffice for that purpose and also will allow for the Commission to terminate a GPIM that proves to be flawed. We agree with the consensus redlines that a comprehensive review of the GPIM approach is warranted at some point before January 1, 2030.

⁴ We likewise approve the new provision for propane utility GCA filings.

d. 4603. Gas Cost Adjustments.

34. No new requirements would be introduced for general filings to adjust the GCA in accordance with the proposed consensus redlines. Paragraph 4603(g), however, would introduce GPIM-related adjustments to the GCA rates in accordance with the Step 2 recommendations.

35. We largely adopt the modifications to this rule in the consensus redlines, and, in certain instances, add headings to paragraphs for consistency. However, we conclude that the proposed addition of paragraph 4603(g) in the consensus redlines is misplaced. Rule 4603 addresses GCA filings (that change the GCA tariff or the GCA rate) but not the other filings that also relate to the overall GCA mechanism (like the Gas Purchase Plan and the GPDBR). We agree with the consensus redlines that Commission review and approval of the GCA deferred balance is necessary. Therefore, the proposed provisions in the consensus redlines for paragraph 4603(g) are fully incorporated in paragraph 4608(a) that addresses the GPDBR.

e. 4604. Contents of GCA.

36. Most of the proposed changes to this rule in the consensus redlines are clean-up according to the Step 1 review of the GCA rules.

37. We adopt the modifications to this rule in the consensus redlines. For instance, we agree with the detailed requirements addressing executable files for the attachments and work-papers and with the deletion of attachments 10-12, as they are now unnecessary for a GCA filing.

38. We also make one minor addition to the first sentence of paragraph 4604(d) so that GCA attachment No. 3 contains the details of the utility's actual gas purchase costs, the calculation

of deferred gas cost, and the calculation of the GPIM sharing amount, as approved by the Commission.

f. 4605. Gas Purchase Plans.

39. Gas Purchase Plans and the associated procedures were left intact in the consensus redlines in both Steps 1 and 2.

40. We adopt the minor modification to paragraph (f) in the consensus redlines.

g. 4606. Contents of the GPP.

41. No changes are proposed to this rule in the consensus redlines, and we agree that no changes are required.

h. 4607. Gas Performance Incentive Applications.

42. The proposed consensus redlines introduce an entirely new rule setting the generally applicable parameters for a GPIM application, as this new Rule 4607 embodies the primary results from Step 2. The GPIM application would address: a benchmark in paragraph 4607(a); the applicable volumes of the gas commodity addressed by the GPIM in paragraph 4607(b); the applicable costs in paragraph 4607(c); and the allocation and sharing of risk in paragraph 4607(d)—not specific amounts but requirements that the utilities make proposals for the Commission to assess.

43. We adopt the consensus redlines. These are the specific provisions that provide a path for the continued examination of performance incentive mechanisms to achieve the goal of realigning the risks borne by the Colorado natural utilities' shareholders and their customers with respect to gas commodity costs. As shown in the attachments to this Decision, we reword some of the proposed language in Rule 4607 to be consistent with the Commission's rule conventions,

and, for consistency, we adopt the same language used in Rule 4604 in this Rule 4607 regarding executable files for the attachments and work-papers.

44. As explained above, we move the proposed paragraph 4603(d) in the consensus redlines to become paragraph 4607(e).

i. 4608. Gas Purchase and Deferred Balance Reports and Prudence Reviews.

45. In the proposed consensus redlines, paragraph 4608(b) requires the results of the GPIM to be part of the annual report. For the prudence review standard in paragraph 4608(c), the following is added to the rule: “In making [a] determination [whether the action (or lack of action) of a utility was reasonable in light of the information known, or which should have been known, at the time of the action (or lack of action)], the Commission may consider, as appropriate: whether the utility employed carefulness, precaution, attentiveness, and good judgment.”

46. Paragraph 4608(d) allows the utility to retain shared savings related to the GPIM.

47. We adopt the consensus redlines with minor rewording of provisions, consistent with other changes we make by this Decision. In paragraph (a), the adopted rules cross-reference the provisions in Rule 4602. As explained above, this rule is crafted to incorporate the notion of the approval of the deferred GCA balance that is proposed for paragraph 4603(g) of the consensus redlines.

j. 4609. Contents of the GPDBR.

48. Provisions are added to this rule to address reporting on the implementation of a Commission-approved GPIM.

49. We adopt the consensus redlines, with some minor rewording and reorganizing of provisions, consistent with other modifications to the GCA Rules caused by this Decision.

k. 4610. Confidentiality.

50. The consensus redline rules include two changes to these “General Provisions.” First, a standard non-disclosure process is added to paragraph 4610(a). Second, the provision in paragraph 4610(b) addressing the utility monitoring of its Account 191 balances is removed. This provision is no longer necessary.

51. We adopt the suggested changes to this rule in the consensus redlines. Because the consensus redline rules now focus on provisions addressing confidential information, we rename the rule to “Confidentiality.”

II. ORDER

A. The Commission Orders That:

1. The Commission’s Rules Regulating Gas Utilities, 4 *Code of Colorado Regulations* (CCR) 723-4, contained in redline and strikeout format attached to this Decision as Attachment A, and in final format attached as Attachment B, are adopted and are available in the Commission’s Electronic Filing System at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=21R-0314G

2. 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 constitutionality and legality of the rules as finally adopted.

3. 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.

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 MEETING
December 21, 2022.**

(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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Commissioners