

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22AL-0426G

IN THE MATTER OF ADVICE LETTER NO. 126 FILED BY ROCKY MOUNTAIN
NATURAL GAS LLC D/B/A BLACK HILLS ENERGY TO INCREASE ITS BASE RATES
FOR ALL NATURAL GAS SERVICES.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ALENKA HAN,
GRANTING MOTION FOR APPROVAL OF
SETTLEMENT, MODIFYING AND APPROVING
SETTLEMENT AGREEMENT**

Mailed Date: May 19, 2023

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I. STATEMENT

A. Summary

1. This decision grants the Joint Motion of Rocky Mountain Natural Gas LLC, doing business as Black Hills Energy (RMNG or the Company), Staff of the Colorado Public Utilities

Commission (Staff, Commission Staff, or Trial Staff), and A M Gas Transfer Corporation (AM Gas) to Approve Settlement Agreement, approving of the Settlement Agreement, and setting an effective date for implementation of the Settlement Agreement.

2. In accordance with § 40-6-109, C.R.S., the Administrative Law Judge (ALJ) now transmits to the Commission the record in this proceeding and recommends that the Commission enter the following order.

B. Evidentiary Hearing and Closing Statements of Position

3. A hybrid evidentiary hearing in this proceeding was held in person in Commission Hearing Room B and via Zoom on April 11-13, 2023.

4. Appearing on behalf of RMNG at the hearing were Emmanuel T. Cocian, Associate General Counsel of Black Hills Corporation and James D. Albright, Law Offices of James D. Albright.

5. Kevin Opp, Special Assistant Attorney General with Dill Dill Carr Stonbraker & Hutchings P.C. appeared on behalf of Commission Staff.

6. Mark T. Valentine, Keyes & Fox, LLP, appeared on behalf of AM Gas.

7. Appearing on behalf of the Office of the Utility Consumer Advocate (UCA) were Gregory E. Bunker, Senior Assistant Attorney General, and Thomas F. Dixon, First Assistant Attorney General.

8. At the evidentiary hearing, the following witnesses appeared and presented testimony on behalf of RMNG:

- a) Michael J. Harrington, Director of Regulatory and Finance for Black Hills Service Company, LLC;¹
- b) Thomas A. Warnes, Senior Pricing Manager for RMNG² and Manager of Gas Operations;³ and,
- c) Samantha Johnson, Senior Manager of Regulatory and Finance for Black Hills Service Company.⁴

9. The following witness appeared and presented testimony on behalf of Commission Staff:

- a) Fiona Sigalla, Senior Economist with the PUC⁵.

10. Last, the following witnesses appeared and presented testimony on behalf of UCA:

- a) Dr. Scott England, Economist with UCA;⁶
- b) Cory Skluzak, Rate/Financial Analyst with UCA.⁷

11. Although no witnesses appeared on behalf of AM Gas at the evidentiary hearing, AM Gas had previously filed the prefiled testimony of Barton J. Levin, which was admitted at the evidentiary hearing as Hearing Exhibit 400.

12. In addition to Hearing Exhibit 400, the following Hearing Exhibits were offered and admitted at the evidentiary hearing:

RMNG's Exhibits:

100 with attachments

101 with attachments

102 with attachments

¹ Transcript of April 11, 2023, Hearing, p. 14, lines 16-21.

² Transcript of April 11, 2023, Hearing, p. 83 lines 5-10.

³ Hearing Exhibit 102, Direct Testimony of Thomas A. Warnes, p. 5, lines 4-9.

⁴ Transcript of April 12, 2023, Hearing, p. 11, lines 5-18.

⁵ Hearing Exhibit 200, Answer Testimony of Fiona Sigalla, p. 4, lines 2-11.

⁶ Hearing Exhibit 301C, Answer Testimony of Dr. Scott England, p. 4, lines 1-4.

⁷ Transcript of April 12, 2023, Hearing, p. 148, lines 8-22.

103 with attachments
104 with attachments
105 with attachments
106 with attachments
107 with attachments
108
109 with attachments
110 with attachments
111 with attachments
112 with attachments
113 with attachments
114
115
116
117
119
120
121
124
127
128
129
130
132
133

Commission Staff's Exhibits:

200 with attachments
201 with attachments
202 with attachments
203 with attachments
204 with attachments
205 with attachments

UCA's Exhibits:

- 301 with attachments
- 302 with attachments
- 303
- 304
- 305 A & B
- 308
- 307
- 310
- 311, page 103
- 314
- 315
- 316
- 317

AM Gas' Exhibits:

- 400 with attachments

General Exhibits:

- 500

- 13. The parties filed Statements of Position on April 27, 2023.

C. Issue Presented

- 14. Whether the Commission should approve the Settlement Agreement reached by RMNG, Commission Staff, and AM Gas (the Settling Parties)?

II. BACKGROUND AND FACTUAL FINDINGS

A. Procedural Background

15. On October 7, 2022, RMNG commenced this Proceeding by filing Advice Letter No. 126 seeking approval of a rate increase of 39.1 percent.⁸ In the Advice Letter, RMNG proposed rolling the costs of investments being recouped through the System Safety and Integrity Rider (SSIR) into the new base rates because the SSIR is scheduled “to terminate upon the effective date of the revised base rates.”⁹

16. The UCA filed a Protest to RMNG’s Advice Letter on October 17, 2022. UCA raised nineteen “specific issues” concerning RMNG’s Advice Letter.¹⁰

17. By Decision No. C22-0684 mailed on November 3, 2022, the Commission suspended the effective date of the tariff sheets filed with RMNG’s Advice Letter for 120 days, or up to and including March 7, 2023. The Commission also ordered that any Interventions be filed within 30 days, or on or before December 3, 2022. Finally, the Commission referred the matter to an Administrative Law Judge (ALJ) for disposition.

18. UCA filed its Notice of Intervention as a Matter of Right on November 16, 2022. Commission Staff filed a Notice of Intervention of Right on November 21, 2022. On November 28, 2022, AM Gas filed a Motion to Intervene seeking permissive intervention in the Proceeding. The undersigned ALJ issued Decision No. R22-0821-I granting AM Gas’s motion for permissive intervention on December 19, 2022.

⁸, Advice Letter No. 126, issued by Rocky Mountain Natural Gas LLC, d/b/a Black Hills Energy, filed Oct. 7, 2022.

⁹ *Id.* at p. 4.

¹⁰ Utility Consumer Advocate’s Protest, ¶ 6(a)-(s), filed Oct. 17, 2022.

19. Consequently, the parties to this Proceeding are RMNG, UCA, AM Gas, and Commission Staff.

20. By Decision No. R23-0036-I, issued January 13, 2023, the undersigned ALJ scheduled a hybrid evidentiary hearing to be held April 11-13, 2023. Decision No. R23-0036-I also established a procedural schedule and further extended the suspension an additional 130 days, up to and including July 15, 2023.¹¹

21. On April 5, 2023, Mr. Cocian informally advised the undersigned ALJ that three of the four parties had reached a settlement agreement. He requested additional time to try to reach a global settlement.

22. By Decision No. R23-0238-I, issued April 7, 2023, the undersigned ALJ modified the procedural schedule to allow the parties until the end of the day on April 7, 2023, to file their respective Witness Order and Cross Examination Matrix, as well as any stipulations and/or settlement agreements.

23. On the evening of April 7, 2023, Mr. Cocian informally advised the undersigned ALJ that the parties were unable to reach a global settlement as the fourth party, UCA, declined to join in the settlement agreement.

24. The remaining three parties — RMNG, AM Gas, and Commission Staff — filed a joint Motion to Approve Settlement Agreement and for Waiver of Response Time on April 7, 2023 (Motion to Approve Settlement Agreement). A fully executed copy of the Settlement

¹¹ See § 40-6-111(1)(b), C.R.S.

Agreement reached by these three parties (the Settling Parties) was filed with the Motion to Approve Settlement Agreement.¹²

25. UCA opposes the Settlement Agreement.

B. Factual Background

26. For the sake of clarity, the factual background provided here is limited to those facts relevant to the issue(s) addressed at the evidentiary hearing and is not intended as a summation of all the evidence presented by the parties in this Proceeding or at the hearing.

27. RMNG, doing business as Black Hills Energy, is an intrastate natural gas pipeline providing gas transportation and storage services to shippers in central and western Colorado.¹³ With the exception of one large customer, RMNG does not serve end-use customers.¹⁴ One of RMNG's customers is Black Hills Colorado Gas, Inc. (BHCG). BHCG provides natural gas distribution service to customers throughout Colorado and as such is subject to the Commission's jurisdiction.¹⁵

28. Both RMNG and BHCG are wholly-owned subsidiaries of Black Hills Corporation (BHC).¹⁶

29. AM Gas supplies natural gas "to more than fifty" end users on Colorado's Western Slope downstream from RMNG by purchasing gas from producers and marketers and shipping it "across" RMNG.¹⁷ AM Gas considers itself to be a customer of RMNG because it

¹² See Hearing Exhibit 114.

¹³ Hearing Exhibit 101, Direct Testimony of Michael J. Harrington, p. 8, lines 4-13; Transcript of April 11, 2023, Hearing, p. 16, lines 5-10.

¹⁴ Hearing Exhibit 101, Direct Testimony of Michael J. Harrington, p. 8, lines 4-13; Transcript of April 11, 2023, Hearing, p. 16, lines 5-10.

¹⁵ Hearing Exhibit 101, Direct Testimony of Michael J. Harrington, p. 8, lines 4-8.

¹⁶ Hearing Exhibit, 101, Direct Testimony of Michael J. Harrington, p. 6, lines 8-12, and p. 8, lines 6-8.

¹⁷ Hearing Exhibit 400, Answer Testimony of Barton J. Levin, p. 4, lines 14-18.

holds a transportation contract on RMNG on which it ships gas, and because it receives invoices from RMNG for services delivered to it under the contract.¹⁸ However, Barton J. Levin, former President and a current consultant of AM Gas, who offered Answer Testimony on AM Gas's behalf, indicated that, in RMNG's view, AM Gas is "merely [an] agent[] for our customers who are shippers on [RMNG]."¹⁹

30. RMNG initiated this Proceeding by filing an Advice Letter and accompanying Tariff Sheets requesting permission to raise its base rate.²⁰ Overall, RMNG requested an increase of \$12,302,874 or 39.1 percent over its *pro forma* annual base rate currently in effect, which then included revenues collected through its System Safety and Integrity Rider (SSIR).²¹ RMNG represented that the increase would be "revenue neutral" to the change because the SSIR surcharge will "terminate upon the effective date of the revised base rates."²²

31. In particular, RMNG requested that it be granted a return on equity (ROE) of 12.25 percent, a cost of long-term debt of 4.03 percent, and a capital structure of 52 percent equity and 48 percent debt.²³ RMNG represented that its need to increase its base rate revenues was attributable to the following factors:

- (1) the significant capital investments made since the Company's last rate review in 2017, and the exclusion from recovery under the SSIR of safety and integrity projects placed in service after December 31, 2021;
- (2) increases in operating expenses since the last rate review; and

¹⁸ Hearing Exhibit 400, Answer Testimony of Barton J. Levin, p. 4, line 20 – p. 5, line 1.

¹⁹ Hearing Exhibit 400, Answer Testimony of Barton J. Levin, p. 5, lines 2-3.

²⁰ Advice Letter No. 126, filed Oct. 7, 2022.

²¹ *Id.* at p. 4.

²² *Id.*

²³ *Id.*

(3) increased financing costs resulting from changes in the cost of long-term debt and a capital structure that has gradually been deleveraged since the last rate review.²⁴

32. RMNG last requested a rate increase in Proceeding No. 17AL-0654G. The Colorado Office of Consumer Counsel (OCC)²⁵, Commission Staff, and AM Gas all intervened in that Proceeding. No other parties intervened. Thus, the parties in Proceeding No. 17AL-0654G were identical to the parties here.

33. In Proceeding No. 17AL-0654G, the parties reached a global settlement agreement which the Commission approved.²⁶ The parties agreed to an ROE of 9.9 percent, which represented a compromise falling between the 12.25 percent ROE RMNG requested, the 9.60 percent ROE Commission Staff recommended, and the 9.0 percent ROE sought by OCC.²⁷ In addition, the parties agreed to a cost of debt of 3.92 percent; and a capital structure of 46.64 percent equity and 53.37 percent long-term debt.²⁸

34. As discussed above, here, RMNG, AM Gas, and Commission Staff agreed to a settlement resolving their disputed issues, but UCA has not agreed to several of the settlement terms. Primarily, UCA contends that the Settlement Agreement does not adequately address affordability for ratepayers.²⁹ UCA's witness, Dr. Scott England, elaborated at the hearing that UCA "was not able to sign on to the final Settlement Agreement, because [UCA] believe[d] more could be done to address the issue of affordability."³⁰

²⁴ *Id.*

²⁵ UCA was then known as the Colorado Office of Consumer Counsel (OCC).

²⁶ See Decision No. R18-0263, in Proceeding No. 17AL-0654G, issued April 16, 2018.

²⁷ *Id.* at ¶¶ 29-31, p. 6.

²⁸ *Id.* at ¶¶ 32-34, p. 6.

²⁹ See UCA's Statement of Position, pp. 5-8.

³⁰ Transcript of April 12, 2023, Hearing, p. 84, lines 8-16.

35. Ms. Sigalla testified on behalf of Commission Staff that, in her opinion, the Settling Parties each made concessions to reach the Settlement Agreement.³¹ She noted that RMNG “worked . . . cooperatively with [Commission Staff] to find solution that could make all parties feel, if not 100 percent whole, then at least that we are moving in the right direction so that our next rate case should be easier.”³² She noted that the Weighted Average Cost of Capital (WACC) agreed to by the Settling Parties was “slightly below” the WACC “recently approved for Atmos Energy by the Commission.”³³ She further testified that the Settlement Agreement was just and reasonable³⁴ and recommended that the Commission approve the Settlement Agreement.³⁵

C. Terms of Settlement Agreement³⁶

36. The specific terms reached by the Settling Parties are addressed below, starting with the terms related to the Settled Revenue Requirement and Roll-in of SSIR Costs. The Settled Revenue Requirement incorporates the roll-in of investments that had been recovered through the now-terminated SSIR into RMNG’s new base rates. The “net base rate revenue increase resulting from the Settled Revenue Requirement and roll-in of SSIR investments is \$8,159,924.”³⁷ The increase is based on a Settled Revenue Requirement of \$39,541,091 on test year revenues of \$31,381,167.³⁸ RMNG’s initially-filed Advice Letter requested an increase of

³¹ Transcript of April 12, 2023, Hearing, p. 58, lines 1-10; p. 60, line 3 – p. 61, line 14.

³² Transcript of April 12, 2023, Hearing, p. 61, lines 9-14.

³³ Transcript of April 12, 2023, Hearing, p. 60, lines 16-20.

³⁴ Transcript of April 12, 2023, Hearing p. 56, lines 23-25.

³⁵ Transcript of April 12, 2023, Hearing, p. 79, lines 21-24.

³⁶ The ALJ notes that the Settling Parties’ Settlement Agreement incorporates each parties’ pre-settlement positions and the settled resolution.

³⁷ Hearing Exhibit 114, Settlement Agreement, ¶ 9, p. 6.

³⁸ *Id.* at ¶ 41, pp. 17-18.

\$12,302,874 based on an overall revenue requirement of \$43,754,207 on test year revenues of \$31,451,333.³⁹

1. Test Year

37. RMNG proposed using a Future Test Year (FTY) to calculate its revenue requirement. Commission Staff and UCA requested that the calculations be made based upon a Historical Test Year (HTY).⁴⁰

38. The Settling Parties agreed that RMNG's rates will be based on an HTY based on the 12-month period ending December 31, 2022.⁴¹

2. Method of Calculating Rate Base

39. RMNG initially proposed using the 13-month average for calculating the rate base for its informational Current Test Year (CTY) revenue requirement but argued that the year-end rate base valuation method was appropriate if the Commission adopted an HTY revenue requirement. Commission Staff and UCA countered that the 13-month average method should be used, rather than the year-end calculation method.⁴²

40. The Settling Parties agreed to use the year-end calculation method and noted that the year-end rate base amount as of December 31, 2022, is \$209,294,542.⁴³

3. Capital Structure

41. As noted above, RMNG proposed a pro forma capital structure of 52 percent equity and 48 percent long-term debt based on a 13-month average capital structure for RMNG

³⁹ *Id.*

⁴⁰ *Id.* at ¶¶ 10-12, pp. 7-8.

⁴¹ *Id.* at ¶ 13, pp. 8-9.

⁴² *Id.* at ¶ 14, p. 9.

⁴³ *Id.* at ¶ 15, p. 9.

during the FTY. Commission Staff recommended adoption of a capital structure of 39.05 percent common equity and 60.95 percent long-term debt. UCA's proposal fell between RMNG's and Commission Staff's and recommended a capital structure of 41.94 percent common equity and 58.06 percent long-term debt.⁴⁴

42. The Settling Parties agreed to a range of 50 to 52 percent for RMNG's common equity and 50 to 48 percent for its long-term debt.⁴⁵

4. ROE

43. RMNG proposed an ROE of 12.25 percent; Commission Staff recommended 9.20 percent; and UCA recommended 9.22 percent.⁴⁶

44. The Settling Parties agreed to an ROE range of 9.5 to 9.7 percent.⁴⁷

5. Cost of Long-Term Debt

45. In its direct case, RMNG proposed a cost of long-term debt of 4.03 percent. RMNG later revised the figure upward, to 4.37 percent, to reflect a new bond issuance which occurred on March 7, 2023. Commission Staff and UCA both recommended adoption of a cost of long-term debt for RMNG of 3.91 percent.⁴⁸

46. The Settling Parties agreed to a cost of long-term debt of 4.15 percent, "which is based on the weighted average cost of long-term debt as of April 1, 2023, and includes the refinancing that occurred on March 7, 2023."⁴⁹

⁴⁴ *Id.* at ¶ 16, p. 9.

⁴⁵ *Id.* at ¶ 17, p. 10.

⁴⁶ *Id.* at ¶ 18, p. 10.

⁴⁷ *Id.* at ¶ 19, p. 10.

⁴⁸ *Id.* at ¶ 20, p. 10.

⁴⁹ *Id.* at ¶ 21, p. 10.

6. WACC

47. As with its proposed cost of long-term debt, RMNG adjusted its proposed WACC figure upward to reflect updated 2023 refinancing information. Initially, RMNG proposed 8.3 percent, but adjusted that upward to 8.47 percent. Commission Staff, in contrast, recommended a WACC of 5.97 percent, while UCA recommended 6.15 percent.⁵⁰

48. The Settling Parties agreed to set RMNG's WACC at 6.93 percent and noted that the figure was calculated using a capital structure of 48 percent long-term debt, 52 percent equity, and an ROE of 9.5 percent, all of which fall within the ranges agreed to by the Settling Parties for long-term debt and ROE.⁵¹

7. Inclusion of Gas Plant Investments in Rate Base

49. Commission Staff, UCA, and AM Gas all opposed some or all of the amounts RMNG sought to recoup and incorporate into its proposed rate base. UCA objected to the inclusion of \$1.1 million of capital additions made by RMNG in its gas gathering facilities since its 2017 rate case. Commission Staff recommended "suspend[ing]" \$850,000 in 2022 project costs associated with the Rifle Processing Plant; \$1.2 million in 2023 Rifle Plant project costs; "\$16.3 million of certain non-SSIR capital additions put into commercial operation prior to December 31, 2021"; and "\$26.0 million of capital additions put into commercial operation in 2022 pending the submission of additional supporting information by RMNG." Commission Staff also recommended the disallowance of recovery for all requested capital investments with dates of operation after December 31, 2022.⁵²

⁵⁰ *Id.* at ¶ 22, pp. 10-11.

⁵¹ *Id.* at ¶ 23, p. 11.

⁵² *Id.* at ¶ 24, p. 11.

50. The Settling Parties agreed that the Revenue Requirement base rate will include “all investment reflecting RMNG’s actual plant in-service as of December 31, 2022, with no disallowances.”⁵³

8. Annual Depreciation Expenses

51. RMNG took the position that employing a 13-month method to calculate depreciation expense “was incorrect” for an HTY revenue requirement, and instead proposed calculating annual depreciation expense based on year-end plant in-service balances.⁵⁴

52. Commission Staff and AM Gas agreed to calculate annual depreciation expense “based on a full year of depreciation on plant in-service balances as of December 31, 2022.”⁵⁵

9. Commission Regulatory Fees Tracker

53. RMNG proposed a deferred accounting mechanism to track and recover its annual Commission fees paid to the Colorado Department of Revenue. In its Rebuttal case, RMNG set the base level amount for Commission regulatory fees to be included in the Settlement Revenue Requirement at \$9,943.⁵⁶

54. The Settling Parties agreed to the creation of a fee tracking system and to the inclusion of \$9,943 in the Settlement Revenue Requirement as the annual base amount for Commission fees.⁵⁷

⁵³ *Id.* at ¶ 25, p. 11.

⁵⁴ *Id.* at ¶ 26, p. 12.

⁵⁵ *Id.* at ¶ 27, p. 12.

⁵⁶ *Id.* at ¶ 28, p. 13.

⁵⁷ *Id.* at ¶ 29, p. 13.

10. Pension and Retiree Healthcare Expenses

55. In its direct case, RMNG sought to include its forecasted pension and retiree healthcare expenses in its FTY revenue requirement, along with RMNG's allocated portion of the remaining "legacy regulatory asset" for pensions recorded "at the time of the SourceGas acquisition." Including these figures in the FTY revenue requirement resulted in a proposed net reduction of \$723,224 to the rate base. In response, Commission Staff countered that RMNG should "establish a deferred accounting mechanism to track annual pension and retiree healthcare expenses using the calendar year 2022 pension and retiree healthcare expenses as the base level of expense. . . [] eliminate the remaining amortizations associated with the legacy SourceGas regulatory assets, and [] remove the legacy SourceGas regulatory assets from rate base."⁵⁸

56. RMNG agreed to some of Commission Staff's recommendations in its rebuttal case. In the end, the Settling Parties agreed that RMNG will establish a deferred accounting mechanism to track the annual costs related to pension and retiree healthcare expenses. The annual base level for pension and retiree healthcare expenses "shall be set at the 2023 expense accrual amounts in the Settlement Revenue Requirement." The ongoing pension regulatory asset amortization shall be included in the Settlement Revenue Requirement "with any over/under recovery flowing through the pension/retiree healthcare tracker." The Settlement Agreement also set the following base levels:⁵⁹

- Pension Expense: \$46,134
- Retiree Healthcare Expense: \$78,804

⁵⁸ *Id.* at ¶ 30, pp. 13-14.

⁵⁹ *Id.* at ¶ 31, p. 14.

- Amortization expense for the pension regulatory asset included in the Settlement Revenue Requirement: \$28,782⁶⁰

However, the legacy SourceGas regulatory assets for both pension and retiree healthcare will be removed from rate base.⁶¹

11. Operating and Maintenance (O&M) Expenses

57. The Settling Parties agreed to use the adjustments to O&M expenses “as shown on Statement H in the Settlement Revenue Requirement Study, with the exception of the items identified in” the section addressing “Other Expense Adjustments Settled Together.”⁶²

12. Other Expense Adjustments Settled Together

58. The Settling Parties could not reach a resolution regarding the specific reductions to be taken for RMNG’s expenses related to the following issues:

- Employee Compensation — Equity Compensation and the Long-Term Incentive Plan
- Employee Compensation — Geographic Pay Differential
- Employee Compensation — Bonus Pay
- Board of Directors Expenses
- Rate Case Expenses

59. In order to resolve these remaining issues, the Settling Parties agreed that “the test year O&M expenses will be reduced by an additional \$250,000 in settlement of the above issues taken together.” The Settling Parties agreed that although they were unable to agree on the

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.* at ¶ 33, p. 15.

specific treatment of each of the above items, the overall agreed-to reduction amount of \$250,000 “represents a just and reasonable resolution of these disputed issues.”⁶³

13. Settled Functional Cost of Service and Rate Design

60. The Settled Revenue Requirement, as modified by the Settlement Agreement, shall be incorporated into RMNG’s Functional Class Cost of Service Study, and is set out in Appendix 1 attached to the Settlement Agreement. The Settled Base Rates are reflected in Table 2 of the Settlement Agreement and in the tariff sheets attached as Appendices 2 and 3 attached to the Settlement Agreement.⁶⁴ The Settling Parties agreed to the following specific rates and calculation methods:

- a) The Straight Fixed-Variable method will be used for designing RMNG’s base rates.⁶⁵
- b) The Revenue Adjustment Mechanism (RAM) shall be revised “to reflect a 15% /85% (Company/shipper) sharing. RMNG will modify the RAM sharing percentages for Market Center Service (MCS) revenue in its next rate case “to reflect a 10% /90% (Company/shipper) sharing.” The current RAM sharing for “incremental off-system transportation revenues shall be revised to reflect a 60% /40% (Company/shipper) sharing.” Finally, the Settling Parties agreed that the Rifle Plant liquids processing revenue requirement benchmark will be set at \$336,000.⁶⁶
- c) Resulting Base Rates: Table 2 in the Settlement Agreement, ¶ 47, pp. 19-20, sets out the current, proposed and settled rates RMNG will charge shippers. The table is replicated below:

⁶³ *Id.* at ¶ 40, p. 17.

⁶⁴ *Id.* at ¶ 42, p. 18.

⁶⁵ *Id.* at ¶ 43-44, p. 18.

⁶⁶ *Id.* at 46, p. 19.

| | Current Rates | Proposed Rates | Settled Rates | Difference |
|-------------------|----------------------|-----------------------|----------------------|-------------------|
| FTS – reservation | \$15.5744 | \$27.8643 | \$25.3873 | \$9.8129 |
| FTS – commodity | \$0.0307 | \$0.1233 | \$0.1038 | \$0.0731 |
| NNS | \$12.5828 | \$29.1434 | \$25.0905 | \$12.5077 |
| SSIR | \$6.0872 | \$0 | \$0 | \$(6.0872) |

Table 3 in the Settlement Agreement, ¶ 47, p. 20, sets out the Settled Revenue Requirement and revenue increase for each base rate component. Table 3 is replicated below:

| | Annual Revenues Under Current Rates | Annual Revenues - Proposed | Annual Revenues – Settled | Difference | Percent Increase |
|-------------------|--|-----------------------------------|----------------------------------|---------------------|-------------------------|
| FTS – reservation | \$21,201,094 | \$37,820,458 | \$34,458,356 | \$16,619,364 | |
| FTS – commodity | \$357,333 | \$1,476,213 | \$1,242,849 | \$1,118,880 | |
| NNS | \$1,933,754 | \$4,441,450 | \$3,823,799 | \$2,507,697 | |
| SSIR | \$7,702,655 | \$0 | \$0 | \$(97,702,655) | |
| Total | \$31,194,836 | \$43,738,121 | \$39,525,003 | \$12,543,285 | 26.70% |

14. Effective Date

61. The Settling Parties proposed that the new rates resulting from the approval of the Settlement Agreement take effect on June 1, 2023. Under the proposed date, RMNG would file its compliance tariff on or before May 29, 2023.

15. Other Issues

62. **Gas Gathering and Gas Processing Assets:** RMNG agreed to study the options associated with gathering assets for future consideration and to work with Commission Staff on the specific contents of the analysis. RMNG will also analyze options for the future operation of

the Rifle Processing Plant and will “reach out” to Public Service Company of Colorado, which jointly owns the plant with RMNG, to discuss “long-term plans associated with additional investments” at the plant.⁶⁷

63. **Wolf Creek Storage Facility:** RMNG will conduct an engineering study to assess capacity storage expansion opportunities, the findings of which will be reported to the Commission within twelve months of a final Commission decision in this Proceeding.

64. **Depreciation Study for RMNG’s Next Rate Case:** RMNG will conduct a new depreciation study for all its gas plant assets in its next rate review and will present an analysis of the “Equal Life Group method.”⁶⁸

65. **Modification of RMNG’s Quality of Service Plan (QSP):** RMNG will work with Commission Staff to include a greenhouse gas reduction metric in its existing QSP; a revised QSP will be filed with the Commission on or before December 31, 2024.

66. **Termination of the SSIR:** The SSIR terminated pursuant to the terms and conditions of RMNG’s SSIR tariff. The Settling Parties agreed that the SSIR will not be extended.⁶⁹

67. **RMNG Tariff Changes:** The Settling Parties agreed to RMNG’s implementation of the Settled Base Rates and associated tariff sheets. The proposed *pro forma* Tariff Sheets set forth in Appendix 2 to the Settlement Agreement incorporate the changes contemplated by the Settlement Agreement.⁷⁰ Changes to the Tariff Sheets include the following⁷¹:

⁶⁷ *Id.* at ¶ 50, p. 21.

⁶⁸ *Id.* at ¶ 54, p. 22.

⁶⁹ *Id.* at ¶¶ 57-58, p. 22.

⁷⁰ *Id.* at ¶ 59, p. 23.

⁷¹ *Id.* at ¶ 60, pp. 23-24.

- a) Resetting the Rifle Processing Plant liquids processing revenue requirement benchmark on Tariff Sheet No. 143 at \$336,000.
- b) Removing tariff language in the RAM pertaining to the now-decommissioned Piceance Processing Facility on Tariff Sheet No. 144.
- c) Resetting the base contract dates in the RAM on Tariff Sheet No.141 for off-system transportation shippers.
- d) Revising the description of the “interim” RAM filing on Tariff Sheet No. 141 to implement revised RAM credits to reflect the updated base contract dates.
- e) Removing SSIR tariff language from Tariff Sheet Nos. 24 and 146 through 149.
- f) Revising and/or eliminating outdated tariff language, such as references to Grandfathered Contracts.
- g) “General housekeeping tariff revisions.”
- h) “Additional textual changes of a conforming and clarifying nature.”

III. UCA’S OBJECTIONS TO THE SETTLEMENT AGREEMENT

68. UCA has not agreed to the above-described settlement terms. It challenges several of the specific terms agreed to by the Settling Parties. Its objections are anchored in its contention that “more could have been done” in reaching the Settlement Agreement “with respect to the capital structure and ROE” which would have resulted in an Agreement that promotes more affordable rates.⁷² It argues that additional cost savings could have been achieved through several means, which would, in turn, lower costs for consumers and RMNG’s customers. In particular, UCA points to the following provisions which could be adjusted to decrease RMNG’s base rate, thereby achieving savings for customers and consumers:

- a) Calculating rate base and annual depreciation expense using the 13-month average method rather than the year-end method as agreed to by the Settling Parties.
- b) Employing an ROE of 9.22 percent and a WACC adjusted for the increased cost of debt of 6.28 percent to determine RMNG’s capital structure.

⁷² UCA’s Post-Hearing Statement of Position, p. 7; Transcript of April 12, 2023, Hearing, p. 84, line 21 – p. 86, line 17.

- c) Disallowing an additional \$1.1 million for RMNG's gas gathering assets, particularly for the Centerline Survey Project and the Keystone Ranch Exposes Pipeline Project that UCA characterizes as imprudently incurred.
- d) Increasing the "black box" amount of \$250,000 to which the Settling Parties agreed to adjust for items such as employee compensation, board of directors' expenses, and rate case expenses to \$400,000.

69. UCA also challenges the June 1, 2023, effective date for new rates set forth in the Settlement Agreement. It notes that if June 1, 2023, were to be the effective date of any new rates, its time period for filing exceptions to any Commission decision addressing the Settlement Agreement would be "eliminate[d]."⁷³

70. Finally, UCA reiterates an objection it first raised at the prehearing conference held on April 10, 2023, the day before the evidentiary hearing commenced. UCA argues that including language in the Settlement Agreement permitting any of the Settling Parties to withdraw from the Settlement Agreement should the Commission alter any of the terms of the Agreement, improperly denies it an opportunity afforded the Settling Parties. It contends that this provision permits one of the Settling Parties to proceed to an evidentiary hearing regarding any contested settlement terms, but, because it is not a "Settling Party," it is prejudicially denied this opportunity.

IV. RELEVANT LAW

A. Commission Jurisdiction

71. The Commission's authority to regulate RMNG's gas utility rates, services, and facilities derives from Article XXV of the Colorado Constitution. The Commission is charged with ensuring the provision of safe and reliable utility service at just and reasonable rates for customers pursuant to §§ 40-3-101, 40-3-102, 40-3-111, and 40-6-111, C.R.S.

⁷³ UCA's Post-Hearing Statement of Position, p. 26.

72. Pursuant to § 40-3-101(1), C.R.S., “[a]ll charges made, demanded, or received by any public utility for any rate, fare, product, or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable.” In interpreting that statute, the Colorado Supreme Court has held that the primary purpose of utility regulation is to ensure that the rates charged are not excessive or unjustly discriminatory.⁷⁴

73. Further, § 40-3-102, C.R.S., states that “[t]he power and authority is hereby vested in the public utilities commission of the state of Colorado and it is hereby made its duty to adopt all necessary rates, charges, and regulations to govern and regulate all rates, charges, and tariffs of every public utility of this state to correct abuses; to prevent unjust discriminations and extortions in the rates, charges, and tariffs of such public utilities of this state.”

74. The decision to establish rates that will be charged by public utilities is a legislative function that has been delegated to the Commission.⁷⁵ The Commission must adopt rates and rate structures that are fair and reasonable.⁷⁶ Setting rates “is not an exact science but a legislative function involving many questions of judgment and discretion.”⁷⁷

75. In setting rates, the Commission must consider the interests of both the utility’s investors and its consumers. Sound judgment in the balancing of their respective interests is how the ratemaking decision is reached rather than by use of a mathematical or legal formula.⁷⁸ Consequently, the Commission “may set rates based on the evidence as a whole” and “need not base its decision on specific empirical support in the form of a study or data.”⁷⁹ In setting rates,

⁷⁴ *Cottrell v. City & Cnty. of Denver*, 636 P.2d 703 (Colo. 1981).

⁷⁵ *City & Cnty. of Denver v. Pub. Utils. Comm’n.*, 266 P.2d 1105, 1106 (1954).

⁷⁶ *Integrated Network Servs., Inc. v. Pub. Utils. Comm’n.*, 875 P.2d 1373, 1381 (Colo. 1994).

⁷⁷ *Id.*; see also *Pub. Utils. Comm’n. v. Nw. Water Corporation*, 168 Colo. 154, 551 P.2d 266 (1963).

⁷⁸ *PUC v. Northwest Water Corp.*, 551 P.2d 266, 276 (1963).

⁷⁹ *Colo. Office of Consumer Counsel v. Pub. Utils. Comm’n.*, 275 P.3d 656, 660 (Colo. 2012).

the Commission must balance “the investor’s interest in avoiding confiscation and the consumer’s interest in prevention of exorbitant rates,”⁸⁰ and set rates that “protect both: (1) the right of the public utility company and its investors to earn a return reasonably sufficient to maintain the utility’s financial integrity; and (2) the right of consumers to pay a rate which accurately reflects the cost of service rendered.”⁸¹

76. The Commission establishes rates to recover the utility’s revenue requirements using a test year selected by the Commission. The revenue requirement is the total revenues required by the utility to cover both its expenses and to have a fair or reasonable opportunity to earn a fair rate of return (ROR). While the utility has a reasonable opportunity to realize the ROR set by the Commission, the ROR is not guaranteed.

77. In an appeal from a Commission rate case decision, the Colorado Supreme Court “reiterated that ‘it is the result reached, not the method employed, which determines whether a rate is just and reasonable.’”⁸² Moreover, the Colorado Supreme Court has consistently held that the doctrine of *stare decisis* does not apply to Commission decisions, and that the Commission’s prior decisions cannot be applied as binding precedent in future proceedings involving the same utility or to any other utility. The Commission’s decision in each new proceeding must be based upon new, substantial evidence in the record of the new case.⁸³ Consistent with this principle, the Colorado Supreme Court has noted that:

Since rate setting is a legislative function which involves many questions of judgment and discretion, courts will not set aside the rate

⁸⁰ *Colo. Mun. League v. Pub. Utils. Comm’n.*, 687 P.2d 416, 418 (Colo. 1984).

⁸¹ *Pub. Serv. Co. of Colo. v. Pub. Utils. Comm’n.*, 644 P.2d 933, 939 (Colo. 1982).

⁸² *Glustrom v. Pub. Utilis. Comm’n.*, 280 P.3d 662, 669 (Colo. 2012), (quoting *Colo. Ute Electric Ass’n, Inc., v. Pub. Utils. Comm’n.*, 198 Colo. 534, 602 P.2d 861, 864 (Colo. 1979) (citing *Fed. Power Comm’n v. Hope Nat. Gas Co.*, 320 U.S. 591, 602 (1944))).

⁸³ See *Colo. Office of Consumer Counsel v. Pub. Serv. Co.*, 877 P.2d 867, 876 (Colo. 1994); *Colorado-Ute, Inc. v. Pub. Serv. Co.*, 602 P.2d at 865; *B&M Services, Inc. v. PUC*, 429 P.2d 293, 295 (Colo. 1967).

methodologies chosen by the PUC unless they are inherently unsound. The Commission is not bound by a previously utilized methodology when it has a reasonable basis, in the exercise of its legislative function, to adopt a different one.⁸⁴

B. Legal Standards

78. Rule 1408(a) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, encourages parties to settle contested proceedings. Settlement agreements are to be reduced to writing and must be filed with a motion seeking approval of the settlement.⁸⁵ The Commission may, within its discretion, approve, disapprove, or modify any settlement agreement reached by the parties.⁸⁶

79. In prior settled rate cases, the Commission has evaluated the settlement terms to determine whether “the settlement will result in rates that are just and reasonable.”⁸⁷ The Commission has stated that it believes it has an “has an obligation to review all the terms contained in a settlement agreement to ensure that they comply to the greatest extent possible with applicable regulatory principles, and are just and reasonable.”⁸⁸ Further, the Commission has considered whether the agreed-upon rates “within the range of recommended increases proposed by the parties . . . and reflect[] a meaningful reduction in the proposed rates compared with” those initially sought by the utility in the proceeding.⁸⁹ The Commission has also considered whether a proposed settlement is in the public interest.⁹⁰

⁸⁴ *CF&I Steel, L.P. v. Pub. Utils. Comm’n*, 949 P.2d 577, 584, (Colo. 1997).

⁸⁵ Rule 1408(a) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

⁸⁶ Rule 1408(b), 4 CCR 723-1.

⁸⁷ Decision No. C09-0595, ¶ 81, issued June 9, 2009, in Proceeding No. 08S-0520E.

⁸⁸ Decision No. C06-0259, ¶ 10, issued Mar. 15, 2006, in Proceeding No. 05S-0264G.

⁸⁹ Decision No. C09-0595, ¶ 81.

⁹⁰ See Decision No. R15-1292, ¶ 165, issued Dec. 8, 2015, in Proceeding No. 15A-0424E.

80. The parties have the burden of proving by a preponderance of the evidence that the Settlement is just and reasonable.⁹¹

V. DISCUSSION, ANALYSIS, AND CONCLUSIONS

81. In rendering this Decision, the ALJ has carefully reviewed and considered all the evidence introduced by the Parties during the hearing, including the testimony and hearing exhibits, even if this Decision does not specifically address all of the evidence presented, or every nuance of each party's position on each issue. Moreover, the ALJ has considered all the legal arguments set forth in the post-hearing statements of position, even if the Decision does not explicitly address every legal argument. In rendering this Decision, the ALJ has evaluated the credibility of all the witnesses and hearing exhibits and weighed the evidence.

A. UCA's Objections

82. As addressed above, UCA objects to the Settlement Agreement because, in its view, the agreement does not adequately address or consider the issue affordability. UCA has stressed the importance of considering affordability in this Proceeding.⁹² It noted that the Commission, too, recently highlighted the importance of affordability when it expressly found that "it is increasingly critical to consider each decision the Commission makes from the perspective of its impact on affordability."⁹³ By UCA's calculations, certain deductions and calculations could reduce "the \$8.1 million settled revenue requirement by about \$3.4 million,

⁹¹ § 13-25-127(1), C.R.S., and Rule 1500, 4 CCR 723-1, establish the burden of proof for a party which asks the Commission to adopt its advocated position. *See also*, Decision No. C06-0786, ¶ 40 and n.23, issued July 3, 2006, in Proceeding No 05A-072E.

⁹² *See, e.g.*, Hearing Exhibit 302, Answer Testimony of Cory Skluzak, p. 8, lines 1-6.

⁹³ Decision No. C23-0083, ¶ 24, issued Feb. 6, 2023, in Proceeding No. 19A-0369E.

i.e. a total RMNG revenue requirement after such reductions of approximately \$4.7 million.”⁹⁴ UCA’s proposed additional reductions to the agreed-upon settled values will be addressed below.

1. Year-End versus Average Base Rate Calculation

83. UCA first challenges the Settling Parties’ agreement to use a year-end calculation method. It points out that instead using the 13-month average method to calculate average rate base reduces the increase in RMNG’s settled net base rate revenue of \$8.1 by approximately \$1.4 million.⁹⁵ Indeed, two of RMNG’s witnesses — Mr. Harrington and Ms. Johnson — and its illustrative exhibit 116 confirm that there is a differential of nearly \$1.4 if the 13-month average calculation method is employed rather than the year-end methodology.⁹⁶

84. Similarly, UCA contends that using the 13-month average method to calculate an annual depreciation expense reduces the revenue requirement by approximately \$500,000.⁹⁷ Both Mr. Harrington and Ms. Johnson confirmed the accuracy of this differential, as well, noting that by their calculations, using the 13-month average method resulted in a difference in the annual depreciation expense of “about \$475,000.”⁹⁸

85. Mr. Skluzak testified on behalf of the UCA that the \$8.1 million increase in the base revenue requirement represents an increase of nearly 27 percent⁹⁹, which is corroborated by the percentage increase set out in table 3 above and in the Settlement Agreement.

⁹⁴ UCA’s Post-Hearing Statement of Position, p. 8.

⁹⁵ UCA’s Post-Hearing Statement of Position, p. 9.

⁹⁶ Transcript of April 11, 2023, Hearing, p. 48, line 25 – p. 52, line 4; Transcript of April 12, 2023, Hearing, p. 28, line 3 – p. 29, line 18; and, Hearing Exhibit 116.

⁹⁷ UCA’s Post-Hearing Statement of Position, p. 14.

⁹⁸ Transcript of April 11, 2023, Hearing, p. 33, line 11 - p. 34, line 9; Transcript of April 12, 2023, Hearing, p. 40, line 5 - p. 41, line 15; Hearing Exhibit 117.

⁹⁹ Transcript of April 12, 2023, Hearing, p. 151, lines 1-3.

86. The ALJ finds that using the 13-month average method to calculate the net base rate and annual depreciation would reduce the agreed-upon additional revenue requirement of \$8.1 million by almost \$2 million.

87. However, when reviewing the settled rate, the question to be answered is not whether RMNG's revenue requirement would or could be made lower, it is, rather, whether the agreed-upon rate increase of \$8.1 million is "fair and reasonable."¹⁰⁰ In considering whether the proposed \$8.1 million increase is "fair and reasonable," consumers' interests in not being charged exorbitant rates must be balanced against RMNG's need to be financially solvent and stable.¹⁰¹

88. Further, as three of the parties to this Proceeding have reached an amicable settled agreement, the question to be determined is whether the proposed settled amount is just and reasonable.¹⁰²

89. When assessing a settlement agreement, it is also incumbent upon the Commission to adhere to its own mandate encouraging settlement. The Commission's Rules explicitly encourage parties to settle.¹⁰³ Tossing out settlement agreements reached through compromise and active negotiation can have the chilling effect of disincentivizing parties and utilities from reaching settlements in future proceedings.

¹⁰⁰ *Integrated Network Servs.*, 875 P.2d at 1381 ("[I]t is the function of the PUC to adopt rate structures that are fair and reasonable.").

¹⁰¹ *CF&I Steel*, 949 P.2d at 584 ("[T]he primary matters for PUC determination in the public interest are: (1) sufficiency of the rates to recompense the utility and maintain its operational viability for the purpose of serving the public; and (2) distribution of the revenue requirement between the various customer classes in a just and reasonable manner.").

¹⁰² See, e.g., Decision No. R18-0263, ¶ 41, issued April 16, 2018, in Proceeding No. 17AL-0645G.

¹⁰³ See Rule 1408(a), 4 CCR 723-1.

90. Although UCA maintains that affordability was not adequately addressed in the agreement, the Settling Parties suggest otherwise. AM Gas, which considers itself to be a customer of RMNG, has agreed to the Settlement Agreement and accepted all of the Agreement's terms, including the base rate increase and use of the year-end calculation method. In doing so it has implied that it considers the increase affordable.

91. Fiona Sigalla led the settlement negotiations on behalf of Commission Staff.¹⁰⁴ She noted that the settled rates were based on "an HTY with actual data . . . as opposed to forecasted data . . . [which] staff believes provides the best basis for setting rates."¹⁰⁵ The Settlement Agreement, she testified, "embodie[s] the belief of Commission Staff "that rates need to be set with actual data and known and measurable data that we have before us."¹⁰⁶ Further, she testified that she "felt comfortable" that the settled rates reached by the parties through their negotiations and compromises were "just and reasonable."¹⁰⁷

92. In his answer testimony, Mr. Skluzak explained that unlike the year-end method which looks only at "the end of the test year," the 13-month methodology "more appropriately matches the relationship among investments, revenues, and expenses because it spans the same time period in which the revenues were earned, and the expenses were incurred over the test year."¹⁰⁸ He criticized using a year-end calculation method as contrary to the Commission's standard practices, characterizing a prior Commission decision adopting the method as "an outlier."¹⁰⁹ Yet, as demonstrated by Decision Nos. C93-1346¹¹⁰, C13-1568¹¹¹, and C22-0642¹¹²,

¹⁰⁴ Transcript of April 12, 2023, Hearing, p. 56, lines 5-8.

¹⁰⁵ *Id.* at p. 60, lines 5-10.

¹⁰⁶ *Id.* at p. 57, lines 10-13.

¹⁰⁷ *Id.* at p. 56, lines 23-25.

¹⁰⁸ Hearing Exhibit 302, Answer Testimony of Cory Skluzak, p. 45, lines 12-20.

¹⁰⁹ Transcript of April 13, 2023, Hearing, p. 42, line 24 – p. 43, line 4.

¹¹⁰ Decision No. C93-1346, issued Oct. 27, 1993, in Docket No. 93S 001EG.

the Commission has previously adopted the year-end calculation method in rate cases, noting that the year-end method “may be proper in special circumstances, for example, to combat some potential sources of attrition beyond control of the Company, such as growth in plant, especially plant that is non-revenue producing like the Customer Information System (‘CIS’).”¹¹³ The method was also adopted by the Commission in Decision No. C13-1568¹¹⁴. Mr. Skluzak characterized the Commission’s discussions leading up to that decision as “horsetrading”¹¹⁵ and relied upon his contemporaneously-written notes to show the extent of the Commission’s discussions¹¹⁶, but it is nonetheless undisputed that the Commission rejected the use of the 13-month method in Decision No. C13-1568 and instead adopted the year-end methodology. If anything, Mr. Sluzak’s handwritten notes illustrate that the Commission reached its decision to adopt the year-end method after careful consideration and vibrant discussion of the issue.

93. Based on these factors, the ALJ finds and concludes that although UCA has shown that the agreed-upon increase in revenue requirement could be less, it has not demonstrated the settled figure to be either unjust or unreasonable. The settled figure is further based on a methodology that has previously been used by the Commission.

94. Accordingly, the ALJ finds and concludes that use of the year-end method to calculate RMNG’s base rate revenue requirement and annual depreciation is just and reasonable.

¹¹¹ Decision No. C13-1568, issued Dec. 23, 2013, in Proceeding No. 12AL-1268G.

¹¹² Decision No. C22-0642, issued Oct. 25, 2022, in Proceeding No. 22AL-0046G.

¹¹³ Decision No. C93-1346, p. 42.

¹¹⁴ Decision No. C13-1568, issued Dec. 23, 2013, in Proceeding No. 12AL-1268G.

¹¹⁵ Transcript of April 13, 2023, Hearing, p. 42, lines 17-23.

¹¹⁶ Hearing Exhibit 317.

2. Capital Structure

95. UCA also challenges the capital structure agreed to by the Settling Parties. As outlined above, under the Settlement Agreement, the Settling Parties agreed that RMNG's WACC will be set at 6.93 percent, its capital structure shall comprise a balance of 48 percent long-term debt and 52 percent equity, and it shall employ an ROE of 9.5 percent. These figures fall within the range the Settling Parties set for both capital structure and ROE: equity range of 50 to 52 percent; long-term debt range of 50-48 percent; and ROE range of 9.5 to 9.7 percent.

96. UCA maintains that these ranges could have been lowered and specifically argues that the Settling Parties should have agreed to an ROE of 9.22 percent and a WACC of 6.28 percent as UCA proposed. This capital structure, UCA points out, would mirror that of its parent company, BHC, and would reduce RMNG's revenue requirement an additional \$500,000.¹¹⁷

97. Yet, UCA offers little else in support of adopting its proposed figures beyond its assertion that using its capital structure numbers would have reduced the revenue requirement figure more. As has already been found, though, the mere fact that the final figures could have been even more consumer-friendly does not, in and of itself, warrant jettisoning the Settlement Agreement.

98. In contrast, Ms. Sigalla testified credibly and persuasively that after active negotiations with RMNG, some of which were contentious, the Company made considerable concessions and agreed to a WACC substantially less than it requested.

99. In addition, she described the Settlement Agreement as "forward-looking" because RMNG has agreed to "review . . . issues" with Commission Staff and "potentially file

¹¹⁷ UCA's Post-Hearing Statement of Position, pp. 15-17.

something else with the Commission” in the future.¹¹⁸ She suggested that the agreed-upon capital structure represented compromises Commission Staff made in exchange for RMNG’s promises to work closely with the Commission moving forward.¹¹⁹ Indeed, she noted, that is the very nature of a settlement: “we all compromise. The company compromises, and the intervenors compromise. And we try to find an agreement that benefits the Commission because the Commission encourages settlements, but also benefits rate payers by providing just and reasonable rates that are sufficient to keep the utility healthy.”¹²⁰

100. The ALJ therefore finds and concludes that the capital structure set by the Settling Parties in the Settlement Agreement is just and reasonable.

3. ROE

101. Like its challenge to the agree-upon capital structure, UCA maintains that the settled ROE range of 9.5 to 9.7 percent could have been lower, and that the Settling Parties should have adopted UCA’s proposed figure of 9.22 percent.

102. In its initial Advice Letter filing, RMNG requested an ROE of 12.25 percent. The compromised figure represents a reduction in ROE of nearly three full percentage points on RMNG’s part, but a figure that is only 0.3 to 0.5 percentage points higher than UCA’s recommended ROE.

103. The ALJ finds and concludes that RMNG has moved considerably from its initial ROE, while the settled ROE range is only marginally more than that proposed by UCA. The ALJ therefore finds and concludes that the ROE range set forth in the Settlement Agreement is just and reasonable.

¹¹⁸ *Id.* at p. 57, lines 3-13.

¹¹⁹ *Id.* at p. 56, line 20 – p. 57, line 2.

¹²⁰ *Id.* at p. 58, lines 4-10.

4. \$1.1 million disallowance for RMNG's Gas Assets

104. UCA next objects to Settlement Agreement's inclusion of approximately \$1.1 million in funds RMNG may recover to compensate it for expenses it incurred for its "gas gathering assets," — specifically the Centerline Survey Project and the Keystone Ranch Exposed Pipeline Project — which are essentially expenses RMNG incurred upgrading some of its gas pipelines. UCA argues that the expenses were unnecessary and should not be borne by ratepayers. UCA asserts that the gas pipelines continued to function well despite being old, the projects were not mandated by the Pipeline and Hazardous Materials Safety Administration, and buried exposed pipes were in rural rather than "high consequences" areas.

105. Evidence in the record supports RMNG's actions, however. Images of the exposed pipes admitted as evidence show the pipes essentially strung between two hills.¹²¹ Thomas Warnes, a Senior Pricing Manager with RMNG, testified that "transmission pipelines are not intended to be spanned in this fashion"¹²² and that getting them "below grade . . . [is] the best management practice."¹²³ He also testified that, although they do not show evidence of rust, the pipes are at least 50-60 years old.¹²⁴ In addition, Mr. Warnes explained that burying the pipes was a means of mitigating potential risks, including risks posed to exposed pipes by weather, mudslides, rockslides, gunshots, or bad actors who could intentionally damage the pipes.¹²⁵ He also noted that leaving pipes exposed above grade can potentially cause environmental damage or fire.¹²⁶

¹²¹ Hearing Exhibit 109, Rebuttal Testimony of Thomas A. Warnes, p. 14, Figure TAW-8.

¹²² Transcript of April 11, 2023, Hearing, p. 140, lines 15-16.

¹²³ *Id.* at p. 145, lines 13-14.

¹²⁴ *Id.* at p. 125, line 6 – p. 126, line 22.

¹²⁵ *Id.* at p. 139, line 23 – p. 141, line 7; p. 144, line 22 – p. 145, line 14.

¹²⁶ *Id.* at p. 140, lines 11-14.

106. The ALJ finds and concludes that the repair work and work done to bury at grade 60-year-old pipes is reasonable and prudent. Dangerously exposed pipes — straddling two hills and completely exposed — strike this ALJ as an invitation for bad actors or natural disasters to damage the pipes, especially on aged pipes that may have suffered wear and tear, with potentially catastrophic consequences. As Colorado’s back country sees an every-increasing number of visitors, the safer option is to bury the pipes.

107. Accordingly, the ALJ finds and concludes that including \$1.1 million in funds in the settled revenue requirement and, thus, permitting RMNG to recoup these expenses, is just and reasonable.

5. “Black Box” Deduction for Other Expense Adjustments Settled Together

108. Next, UCA contends that the \$250,000 disallowance for “other expense adjustments settled together” could be increased to \$400,000. UCA calculates that the five items included in this disallowance total \$400,000, all of which, it argues, should be deducted from the settled base rate revenue.¹²⁷

109. It is true that the disallowance figure could be increased to \$400,000 from the agree-upon \$250,000, but UCA offers no support showing that the \$250,000 disallowance is unjust or unreasonable. Simply because the amount disallowed could have been greater, does not establish that it was either unjust or unreasonable. In a settlement each party compromises and nothing UCA has argued in this regard demonstrates that the amount agreed to by the parties is in any way unreasonably low. As Ms. Sigalla testified, the settled amount represents a

¹²⁷ UCA’s Post-Hearing Statement of Position, p. 23.

compromise reached by the parties. The difference of only \$150,000 between the agreed-to amount and that proposed by UCA does not warrant rejecting this provision.

110. Accordingly, the ALJ finds and concludes that the \$250,000 disallowance for “other expense adjustments settled together” is just and reasonable.

6. Provision Permitting Withdrawal from the Settlement Agreement by Settling Parties

111. UCA also objects to a provision included in the Settlement Agreement permitting Settling Parties “to withdraw from this Agreement and proceed to hearing on the issues that may be appropriately raised by that Party in this proceeding.”¹²⁸ As the ALJ understands UCA’s contention, it argues that because it is not a “Settling Party” it, unlike the Settling Parties, is deprived of the opportunity to proceed to hearing on a disputed issue in the event the Commission rejects or modifies a provision in the Settlement Agreement.

112. UCA’s contention, however, ignores the reality that it *has* proceeded to a three-day hearing on issues it disputes in the Settlement Agreement. Rather than being deprived of the opportunity to proceed to hearing, the ALJ notes that UCA has fully taken advantage of the opportunity to challenge the Settlement Agreement at an evidentiary hearing.

113. Moreover, UCA’s exclusion from the Settlement Agreement does not prevent it from pursuing other relief. The ALJ notes that UCA is still a party to this Proceeding and enjoys all the rights and benefits afforded a party to a litigated dispute before the Commission.

¹²⁸ Hearing Exhibit 114, Settlement Agreement, ¶ 63, p. 25.

114. Finally, identical provisions have been approved and included in settlements in other litigated matters before the Commission.¹²⁹ The provision is standard and is routinely incorporated into settlement agreements.

115. Accordingly, the ALJ finds and concludes that the provision permitting Settling Parties to withdraw should settlement terms be modified by the Commission is just and reasonable and should remain a term in the Settlement Agreement.

7. Effective Date of Tariff Sheets

116. As UCA points out, and the Settling Parties concur, the effective date for new rates as set forth in the Settlement Agreement is unrealistic in light of the need for Commission approval, final decision, and time for exceptions. RMNG, AM Gas, and Commission Staff acknowledged that the agreed-upon date of June 1, 2023, for the Settled Base Rates to become effective cannot be met.¹³⁰ The Settling Parties point out, though, that imposing six-week delay in implementing the Settled Rates could cost RMNG \$1 million.¹³¹

117. Regardless of the financial implications to RMNG caused by delaying the effective date of the new rates, a delay is unavoidable. The ALJ notes that the evidentiary hearing addressing approval of the settlement was held April 11-13, 2023; the parties filed Statements of Position on April 27, 2023; a timely decision was issued in due course; and no rates calculated in accordance with the Settlement Agreement can go into effect until the period for exceptions and responses has expired — seven days after the issuance of this Decision — and

¹²⁹ See, e.g., Decision No. C06-0259.

¹³⁰ See Hearing Exhibit 114, ¶ 48, p. 20; Joint Post-Hearing Statement of Position of RMNG, Commission Staff and AM Gas, p. 29.

¹³¹ Transcript of April 11, 2023, Hearing, p. 43, lines 2-7; Joint Post-Hearing Statement of Position of RMNG, Commission Staff and AM Gas, p. 30.

the Commission has had an opportunity to rule on any exceptions. Approximately six weeks is necessary to allow that process to run its course.

118. Therefore, the effective date of the rates ultimately established by the Commission will be determined upon the filing of the compliance tariff filing made pursuant to the decisions of the Commission in this Proceeding.

B. Settlement Agreement Is in the Public Interest and Is Just and Reasonable

119. In reviewing the terms of the Settlement Agreement¹³², the ALJ applied the Commission's direction and policy with respect to review of settlement agreements as found in, *e.g.*, Decision No. C06-0259 in Proceeding No. 05S-264G issued March 20, 2006.

120. Based on the entire record, the ALJ finds that, with the exception of the effective date, the Settling Parties have established by a preponderance of the evidence that the Settlement is just, is reasonable, is in the public interest, and should be accepted by the Commission.

C. Conclusion

121. The joint Motion to Approve Settlement Agreement and for Waiver of Response Time will be granted. The undersigned ALJ approves the Settlement Agreement between RMNG, AM Gas, and Commission Staff with the exception of the effective date of the Agreement. As noted above and as acknowledged by all parties, an effective date of June 1, 2023, for new rates does not permit sufficient time for the Commission to review this Recommended Decision or for the parties to file exceptions to this Decision. The remaining provisions of the Settlement Agreement are approved.

¹³² Hearing Exhibit 114.

VI. ORDER:**A. The Commission Orders That:**

1. The joint Motion to Approve Settlement Agreement filed by Rocky Mountain Natural Gas LLC, doing business as Black Hills Energy (RMNG), Trial Staff of the Colorado Public Utilities Commission, and A M Gas Transfer Corporation (Settling Parties) is granted.

2. With the exception of section C, paragraph 48, the Settlement Agreement filed by the Settling Parties on April 7, 2023, and attached to this Decision as Attachment A, is approved, consistent with the discussion above.

3. The effective date of the tariff sheets filed on October 7, 2022, with Advice Letter No. 126 is permanently suspended and shall not be further modified.

4. The tariff sheets filed on October 7, 2022, with Advice Letter No. 126 are permanently suspended and shall not be further modified.

5. After this Recommended Decision becomes the Decision of the Commission, if that is the case, RMNG shall file modified tariff sheets consistent with this Decision. RMNG shall file the compliance tariff sheets in a separate proceeding and on not less than two business days' notice. The advice letter and tariff sheets shall be filed as new advice letter proceedings and shall comply with all applicable rules. The date the filing is received at the Commission is not included in the notice period and the entire notice period must expire prior to the effective date. The advice letters and tariffs must comply in all substantive respects to this Decision in order to be filed as a compliance filing on shortened notice.

6. This Recommended Decision will be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

7. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

- a. If no exceptions are filed within 7 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.
- b. If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

8. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



ATTEST: A TRUE COPY

122. THE PUBLIC UTILITIES
COMMISSION
OF THE STATE OF COLORADO

ALENKA HAN

Administrative Law Judge

Rebecca E. White,
Director