

Decision No. C24-0174

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23AL-0325G

IN THE MATTER OF ADVICE NO. 1016 - GAS FILED BY PUBLIC SERVICE COMPANY OF COLORADO TO REVISE ITS COLORADO PUC NO. 6 - GAS TARIFF TO PROPOSE MODIFICATIONS TO PORTIONS OF ITS GAS COST ADJUSTMENT TO MAKE IT ABUNDANTLY CLEAR THAT THE COMPANY MAY SEEK THE RECOVERY OF THE COMMODITY COSTS OF LIQUIFIED NATURAL GAS AND COMPRESSED NATURAL GAS THROUGH THE GAS COST ADJUSTMENT, TO BECOME EFFECTIVE JULY 17, 2023.

**COMMISSION DECISION DENYING EXCEPTIONS TO
RECOMMENDED DECISION NO. R24-0059**

Mailed Date: March 19, 2024

Adopted Date: March 6, 2024

I. BY THE COMMISSION

A. Statement

1. Through this Decision, the Commission denies the exceptions filed by the Office of the Utility Consumer Advocate (UCA) to Recommended Decision No. R24-0059, issued January 25, 2024, by Administrative Law Judge (ALJ) Conor Farley (Recommended Decision). The Recommended Decision granted Public Service Company of Colorado's (Public Service or the Company) request in Advice Letter No. 1016 (Advice Letter) to modify language in its Colorado PUC No. 6 Gas Tariff (Tariff) to permit the recovery of commodity costs of compressed natural gas (CNG) and liquified natural gas (LNG) through its Gas Cost Adjustment (GCA).

B. Background

2. On June 16, 2023, Public Service filed the Advice Letter, requesting modifications to portions of its GCA to "make it abundantly clear that [Public Service] may seek recovery of the commodity costs of [LNG] and [CNG] through the GCA." Public Service also requested, if the

GCA tariff is amended to allow the recovery of CNG and LNG commodity costs, that the “costs of procurement” of CNG and LNG services be recoverable through the GCA as well because they are encompassed within the definition of “upstream services” in Commission Rule 4601(gg), 4 *Code of Colorado Regulations* (CCR) 723-4.¹

3. The ALJ explains that, in prior Decision No. C23-0059 in Proceeding No. 23L-0040G, the Commission denied Public Service’s previous attempt to recover LNG procurement costs through the GCA. In this prior decision, the Commission stated that a decision allowing procurement costs for LNG to be recovered through the GCA would need to be based on a more robust record than what had been developed in that proceeding. A record to support the recovery of procurement costs for LNG, the Commission continued, would need to address questions and concerns raised by UCA in its protest letter in the proceeding, as well as additional safety concerns.

4. In the Recommended Decision issued in the current proceeding, the ALJ states that Public Service, by contending the procurement costs of LNG should be recoverable through the GCA as well if commodity costs are found to be recoverable, presented the same issue as in Proceeding No. 23L-0040G, but through a different procedural avenue. Additionally, in this proceeding, Public Service also seeks the recovery of CNG commodity and procurement costs through the GCA, which was not requested in the prior proceeding.

5. The ALJ found Public Service’s evidence pertaining to CNG and LNG procurement costs in the current proceeding to be general and lacking in detail. For example, the ALJ found the current record lacking information regarding the Company’s reliance on CNG and LNG in the

¹ “Upstream services” means all transmission, gathering, compression, balancing, treating, processing, storage, and like services performed by others under contract with the utility for the purpose of effectuating delivery of gas commodity to the utility’s jurisdictional gas facilities.

future, the short- and long-term financial consequences of the CNG and LNG services, and safety concerns surrounding CNG and LNG in the way the Company proposes to use it. Ultimately, the ALJ concluded that the current record was insufficient to support the request by Public Service to recover both the commodity and procurement costs of CNG and LNG through the GCA. Instead, the ALJ found that the Company could recover the commodity costs only.

6. Accordingly, the ALJ granted Public Service's request in its Advice Letter to modify the tariff language to permit recovery of the commodity costs of CNG and LNG services through the GCA. The ALJ specified that the "procurement costs" identified by the Company in prior Proceeding No. 23L-0040G and again in this proceeding, do not qualify as "upstream costs" under Commission Rule 4601(gg) and are not recoverable through the GCA.²

7. Pursuant to § 40-6-109(2), C.R.S., and 4 CCR 723-1-1505(a) of the Commission's Rules of Practice and Procedure, UCA timely filed exceptions to the Recommended Decision. Public Service timely filed a Response to the exceptions.

C. Exceptions to the Recommended Decision

1. Interpretation of the Recommended Decision

8. UCA argues the Recommended Decision is inconsistent. Specifically, UCA refers to the following:

Based on the foregoing, the ALJ finds and concludes that the record insufficiently supports the request by Public Service to recover through the GCA both the commodity and upstream costs of CNG and LNG.³

9. UCA contends the "plain language" of this sentence supports UCA's position that *neither* the commodity *nor* upstream costs of CNG and LNG should be recoverable through the GCA. UCA argues this statement is inconsistent with statements in the same paragraph that

² *Id.* at ¶ 34.

³ *Id.*

“approve the change in the tariff language proposed by Public Service with the understanding that it will permit Public Service to recover through the GCA *only* the commodity costs of CNG and LNG.”⁴ Based on these perceived inconsistencies, UCA asks that the Commission address what UCA argues is an apparent conflict and disallow recovery for both commodity and upstream costs.

10. Public Service disagrees with UCA’s claim that the Recommended Decision is internally inconsistent. The Company argues the Recommended Decision is clear and intentional in its approval of the Company’s recovery of commodity costs of CNG and LNG services through the GCA. Public Service asserts UCA misread the Recommended Decision and that there is no dispute that the ALJ intended to permit the recovery of commodity costs. The Company quotes language from the opening line of the Recommended Decision’s analysis, which states:

The ALJ will grant Public Service’s request in the Advice Letter to modify the tariff language to permit the recovery of the commodity costs of CNG and LNG through the GCA, but also specify that the other costs incurred to deploy CNG and LNG identified by Public Service are not recoverable through the GCA.⁵

11. Accordingly, Public Service argues that the ALJ explicitly concluded that the proposed tariff modification is approved to the extent it permits recovery of the commodity costs of CNG and LNG through the GCA. Addressing the statement in paragraph 40 of the Recommended Decision that UCA points to, Public Service contends UCA’s interpretation is incorrect and, by plain language, the ALJ’s use of “both” and “and” makes clear the ALJ intended to prohibit the Company from recovering through the GCA commodity costs and upstream costs together.

12. We agree with Public Service that the ALJ’s approval of recovery of commodity costs through the GCA for CNG and LNG services is deliberate throughout the Recommended

⁴ *Id.* (emphasis in original).

⁵ *Id.* at ¶ 34.

Decision. Public Service correctly points out that the ALJ explicitly states, in paragraph 34 of the decision, that only recovery of commodity costs is permitted and the request for recovery of procurement costs through the GCA for CNG and LNG services is specifically denied. The ALJ again makes this clear, as UCA acknowledges, in paragraph 40 of the decision where he states that the change in tariff language is approved “with the understanding that it will permit Public Service to recover through the GCA *only* the commodity costs of CNG and LNG.”⁶

13. We further agree with Public Service that UCA misreads the ALJ’s statement in paragraph 40—the ALJ states that “the record insufficiently supports the request by Public Service to recover through the GCA both the commodity and upstream costs of CNG and LNG.” The plain language of the sentence, read within the context of the decision, states that recovery through the GCA for both commodity and procurement costs is not allowed, but recovery for commodity costs, by itself, is permitted. This interpretation is further bolstered by the fact that the ALJ states this plainly elsewhere in the decision. If the ALJ intended to deny recovery of all costs, he certainly could have included explicit language that *neither* commodity *nor* procurement costs are recoverable.

14. We therefore deny UCA’s exceptions that argue the Recommended Decision is unclear and that requests we interpret it to deny all recovery through the GCA.

2. Disallowance of Commodity Costs

15. In the alternative, UCA argues that the GCA is an inappropriate mechanism through which to grant recovery for CNG and LNG services. UCA asserts that the record is insufficient to support recovery through the GCA given the Commission’s instructions in prior Proceeding No. 23L-0040G to “provide substantially more information” to recover LNG costs through the GCA.

⁶ *Id.* at ¶ 40 (emphasis in original).

UCA argues that the Company never addressed the safety concerns surrounding the use and storage of CNG or LNG, as identified in Decision No. C23-0059 of Proceeding No. 23L-0040G. UCA points out that in paragraph 21 of Decision No. C23-0059, the Commission denied “the Company’s request for variance related to the LNG costs,” and noted separately that the requested variance “include[d] LNG commodities and services” as recovered through the GCA.⁷

16. UCA requests the Commission make clear that this prior denial of LNG costs in Proceeding No. 23L-0040G applied to both procurement and commodity costs and asserts that to justify the recovery of commodity costs in the current proceeding the Company would need to develop a far more robust record than was established in the prior proceeding.

17. In response, Public Service contends UCA mischaracterizes the Commission’s Decision No. C23-0059 in Proceeding No. 23L-0040G. The Company argues that while the Commission was persuaded in that prior non-litigated proceeding by certain concerns raised in UCA’s protest letter, there was no statement by the Commission, or any other requirement, that obligates the Company to address UCA’s specific concerns raised in that prior proceeding.

18. Public Service argues UCA’s interpretation implies that the Company has a legal obligation to address concerns raised in a prior Commission decision. Public Service rejects this implication for two reasons. First, in a recent decision, the Commission explained that the Colorado Supreme Court has consistently held that the doctrine of stare decisis does not apply to Commission decisions and that decisions in each new proceeding must be based upon new, substantial evidence in the record.⁸ In light of this, Public Service states there could not have been any legal obligations imposed on the Company from the Commission’s prior decision.

⁷ Proceeding No. 23L-0040G, Decision No. C23-0059, at ¶¶ 17 and 36.

⁸ Decision No. R23-0336, Proceeding No. 22AL-0426G, ¶ 77 (citing *Glustrom v. Pub. Utilis. Comm'n*, 280 P.3d 662, 669 (Colo. 2012)).

Further, Public Service argues that the current proceeding has been fully litigated and UCA has had the opportunity to investigate any concerns through discovery and other processes.

19. Second, Public Service contends it has nevertheless complied with the Commission's prior directive to furnish a record based on "substantially more information," by providing in the current proceeding robust testimony on, among other things, the scope of the Company's recent uses CNG and LNG, related costs, potential impacts to customers, and how these efforts are consistent with the Company's greenhouse gas reduction goals.

20. Public Service states that the current proceeding is only one of many ongoing and upcoming Company filings that address the use of CNG and LNG, and the Commission should not consider this tariff proceeding as being the only opportunity to consider the Company's use of CNG and LNG. Rather, Public Service asserts that this proceeding should be viewed as opening a dialogue on the Company's use of these CNG and LNG services.

21. We agree with Public Service that this proceeding was fully litigated, and that each new proceeding must be based on its own new and substantial evidence in the record. In this proceeding, the ALJ found that while the record was insufficient to approve the recovery of both commodity and procurement costs, it was sufficient to allow recovery through the GCA for commodity costs only. The ALJ's decision is soundly reasoned and based on the record here.

22. We disagree with UCA's assertion in its exceptions that a conclusion reached in a prior decision necessarily affects the ALJ's judgment in the current proceeding. UCA fails to point out any deficiencies in the current proceeding that would necessitate the reversal of the ALJ's finding or any indication that the ALJ's approval of the Company's recovery of commodity costs was based on an insufficient record. Accordingly, we agree with Public Service that the ALJ's

Recommended Decision was clear, based on a sufficient record, and provided adequate evidence to support the approval of commodity cost recovery for CNG and LNG services through the GCA.

D. Examination of the Use of CNG and LNG

23. Ongoing and future proceedings present appropriate opportunities to consider deployment of CNG and LNG services. As the Company notes, this proceeding should mark the continuation of a dialogue on the Company's use of CNG and LNG. Among other things, we expect the Company to elaborate fully on its anticipated uses of CNG and LNG, where these projects are to be located and how long they are expected to last for, and safety concerns associated with the deployment and operation of CNG and LNG services.

24. In their testimonies, both parties identified Public Service's Gas Infrastructure Plan proceedings to be the appropriate venue in which to address these and other concerns regarding the Company's use of CNG and LNG.⁹ We reiterate our expectation that Public Service will address its use of CNG and LNG services more thoroughly and completely in ongoing and subsequent proceedings, including without limitation through Gas Infrastructure Planning.

25. While we deny exceptions and uphold the Recommended Decision, we appreciate UCA probing into appropriate recovery and raising valid concerns about the Company's current and intended use of CNG and LNG services. Although commodity costs may be recovered as addressed in this proceeding, we agree with the ALJ that Public Service has not developed the robust record needed to decide whether CNG and LNG procurement costs should be recovered

⁹ See Hearing Exhibit 40 at 13:7-13 (Answer Testimony of UCA Witness Cory Skluzak) ("PSCo's LNG and CNG deployments, and all attendant details, should be included in PSCo's Gas Infrastructure Planning ("GIP") process. . . . From an overall view, I believe that the Commission's GIP process is the correct proceeding for these deployments to be discussed, analyzed, and compared to other alternatives."); Hearing Exhibit 102 at 19:12-20 (Rebuttal Testimony of Public Service Witness Jason J. Peuquet) ("I can confirm that the use of LNG and CNG are in fact addressed in the GIP filing, at issue in Proceeding No. 23M-0234G. The GIP filing explains why the Company can rely on LNG/CNG as supplemental supply resources and as part of an interim solution. . . . Moreover, to the extent the UCA has concerns or questions on how the Company reflected LNG/CNG resources in its GIP, then the UCA should raise its concerns in the proper proceeding: the GIP filing in Proceeding No. 23M-0234G.").

through the GCA. We continue to emphasize our expectation for future information and clarity regarding the Company's use of CNG and LNG in appropriate proceedings.

II. BY THE COMMISSION

A. The Commission Orders That:

1. The exceptions to Decision No. R24-0059 filed by the Office of the Utility Consumer Advocate on February 14, 2024, are denied consistent with the discussion above.

2. 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.

3. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
March 6, 2024.**

(S E A L)



ATTEST: A TRUE COPY

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

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

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Commissioners