

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24R-0192G

IN THE MATTER OF THE PROPOSED AMENDMENTS TO THE COMMISSION’S RULES REGULATING GAS UTILITIES, 4 CODE OF COLORADO REGULATIONS 723-4, TO IMPLEMENT CERTAIN PROVISIONS IN SENATE BILL 23-291 ADDRESSING MECHANISMS TO ALIGN THE FINANCIAL INCENTIVES OF INVESTOR-OWNED GAS UTILITIES WITH THE INTERESTS OF THE UTILITY’S CUSTOMERS REGARDING INCURRED FUEL COSTS.

**RECOMMENDED DECISION OF
HEARING COMMISSIONER
ADOPTING RULES**

Issued Date: September 23, 2024

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I. STATEMENT

1. On April 30, 2024, the Commission issued a Notice of Proposed Rulemaking (“NOPR”) through Decision No. C24-0278 to amend the Commission’s Rules Regulating Gas

Utilities, 4 *Code of Colorado Regulations* (“CCR”) 723-4 (“Gas Rules”), to implement certain provisions in § 40-3-120, C.R.S., enacted by Senate Bill (“SB”) 23-291.

2. This Decision adopts amendments and additions to the Commission Rules governing Gas Cost Adjustments (“GCA” or “GCA Rules”), set forth in the Gas Rules at 4 CCR 723-4-4600 through 4610, for the purpose of protecting Colorado gas utility customers while also improving the gas utilities’ management of fuel cost in accordance with § 40-3-120, C.R.S. The adopted rules require the continued implementation of Gas Price Risk Management Plans (“GPRMPs”) and further establish a symmetrical incentive mechanism that aligns the financial incentives of the gas utilities with the interests of their customers regarding incurred fuel costs. Specifically, the adopted amendments to the GCA Rules replace the requirements for the Gas Performance Incentive Mechanism (“GPIM”) established in Proceeding No. 21R-0314G with a new incentive mechanism as required by SB 23-291.

II. BACKGROUND

A. Senate Bill 23-291

3. As explained in the NOPR, Colorado legislators convened a Joint Select Committee on Rising Utility Rates (“Joint Select Committee”) during the first regular session of the 2023 General Assembly. The Joint Select Committee was charged with investigating the root cause of the recent increases in utility rates facing Coloradans and with considering potential policy interventions. The Joint Select Committee sought to better understand current utility rates and customer bills, how rates and bills increased to current levels, and various policy means to prevent future unexpected and steep utility rate increases. The efforts of the Joint Select Committee culminated in the passage and enactment of SB 23-291.

4. Section 4 of SB 23-291 required each investor-owned gas utility to file with the Commission, on or before November 1, 2023, a GPRMP to address the volatility of fuel costs recovered from the utility's customers pursuant to the utility's GCA filings.¹ A GPRMP was established for each of Colorado's four investor-owned gas utilities through utility application proceedings that concluded in November 2023.²

5. Section 4 also requires the Commission to adopt rules, on or before January 1, 2025, to establish, in addition to the GPRMPs, "mechanisms that align an investor-owned utility's financial incentives with the financial interests of its customers regarding incurred fuel costs."³

B. Modifications to the GCA Rules Presented in the NOPR

6. The proposed revisions to the GCA Rules set forth in the NOPR comprise two primary elements: proposed paragraph 4603(g) incorporates the utilities GPRMPs as a permanent feature of gas cost recovery through the GCA, while proposed Rule 4607 establishes a new mechanism that shares as a financial incentive a portion of decreases and increases in gas commodity prices reflected in the utilities' GCAs.

7. Proposed paragraph 4603(g) is based on the language in § 40-3-120(1), C.R.S., such that the calculation of the GCA is subject to a maximum cap based on a set percentage of an average of the utility's historical GCAs and to a minimum threshold based on a set percentage of an average of the utility's historical GCAs. Costs above the maximum cap are recorded in a deferred balance that is recoverable and amortized over an appropriate timeline of no more than five years with financing costs. Collections at the minimum threshold are recorded in a reserve

¹ § 40-3-120(1), C.R.S.

² See, Proceeding No. 23A-0533G for Public Service Company of Colorado; Proceeding No. 23A-0538G for Colorado Natural Gas, Inc.; Proceeding No. 23A-0539G for Atmos Energy Corporation; and Proceeding No. 23A-0540G for Black Hills Colorado Gas, Inc.

³ § 40-3-120(2), C.R.S.

fund to offset any deferred balance of prudently incurred costs above the maximum cap. The rule essentially defines the essence of a utility's GRPMP, and the rule is implemented through utility-specific provisions in their GCA tariff sheets.

8. Proposed Rule 4607 defines the new financial incentive mechanism—a modified GPIM—to align the utility's financial incentives with the financial interests of customers as also required by SB 23-291. In essence, the proposed mechanism calculates the difference in gas costs between a recently concluded quarter and the same three months in the prior year, splitting a portion of the difference, subject to a deadband, either as a cost born by the utility's shareholders when there is an increase in gas costs or as a share of the savings in the form of earnings for the utility's shareholders. The proposed rule outlines a general structure for the modified GPIM. Certain other proposed rules, such as new definitions in Rule 4601, support the provisions set forth in proposed Rule 4607.

C. Procedural History

9. The Commission discussed the opening of this Proceeding at its weekly business meeting on April 3, 2024. At that same weekly meeting, the Commission closed Proceeding No. 23M-0493EG, the precursor proceeding conducted prior to this rulemaking. The NOPR was then issued on April 30, 2024. The NOPR designated Eric Blank as Hearing Commissioner pursuant to § 40-6-101(2)(a), C.R.S.

10. In accordance with the suggested filing deadlines within the NOPR, initial written comments addressing the proposed revisions to the GCA Rules were submitted by Colorado Natural Gas, Inc. ("CNG"), Black Hills Colorado Gas, Inc. ("Black Hills"), Atmos Energy

Corporation (“Atmos”), Public Service Company of Colorado (“Public Service”), and the Colorado Office of the Utility Consumer Advocate (“UCA”).

11. Written comments responsive to the initial comments were later filed by UCA, Atmos, and Public Service.

12. The Hearing Commissioner held a public hearing on the proposed rules July 11, 2024.

13. Post-hearing comments were filed by Black Hills, Atmos, and Public Service.

III. DISCUSSION, FINDINGS, AND CONCLUSIONS

14. The Commission promulgates rules under its legislative function that are necessary and proper for the proper administration and enforcement of the Public Utilities Law (*i.e.*, Articles 1 through 7 of Title 40 of the Colorado Revised Statutes) and within the Commission’s broad Constitutional and statutory authority to regulate utilities. *See* Article XXV of the Colorado Constitution and § 40-2-108(1), C.R.S. In the regulation of public utilities, the Commission has broad authority unless and until the General Assembly expressly acts to restrict the Commission’s authority.

15. In rendering this Decision, the Hearing Commissioner has carefully reviewed and considered all participant comments in this Proceeding, whether filed in writing or provided orally at the July 11, 2024, public comment hearing, even if this Decision does not specifically address every comment made.

A. Modified GPIM Requirements per SB 23-291

16. Atmos, Black Hills, and Public Service each strongly objects to the implementation of the proposed GPIM as set forth in the NOPR.⁴ Atmos and Black Hills ask that the Commission instead find that rule 4607 currently in the GCA Rules (“Existing GPIM Rule”) satisfies the requirements of SB 23-291 and allow individual utility GPIM filings to move forward under those terms established in Proceeding No. 21R-0314G.⁵ Public Service does not oppose the implementation of the Existing GPIM Rule, but it also puts forward an alternative to the GPIM set forth in the NOPR (*i.e.*, Public Service’s “Primary Proposal”).

17. Atmos argues that the proposed GPIM creates arbitrary outcomes for both the utilities and their customers. Atmos opposes a GPIM benchmark based on preceding GCA filings, stating that the utility makes gas purchasing decisions based on current and expected market conditions and not based on historical periods.⁶ Atmos also argues that nothing in SB 23-291 requires the Commission to adopt a mechanism such as proposed in the NOPR, which Atmos states would fail to satisfy the requirements in SB 23-291 both to protect customers and to improve the utility’s management of fuel costs. Atmos further states that disallowing recovery of a legitimate and prudently incurred cost of providing service merely because the market price of gas has increased would be confiscatory and contrary to a utility’s right to a reasonable opportunity to recover its cost of providing service. Atmos also contends that § 40-3-120(2), C.R.S., as enacted by SB 23-291 did not modify a utility’s fundamental right to a reasonable opportunity to recover its cost of providing service to customers in Colorado.⁷

⁴ CNG supports the proposed exclusion of CNG from the proposed requirements for the GPIM as proposed in the NOPR. CNG Initial Comments, p. 2.

⁵ Atmos Post-Hearing Comments, p. 3.

⁶ Atmos Initial Comments, p. 10.

⁷ Atmos Post-Hearing Comments, p. 2.

18. Black Hills likewise argues that the proposed GPIM is wholly inappropriate and does nothing to manage fuel costs but is instead “simply a mechanism to punish gas utilities.”⁸ Black Hills suggests that the Commission should not “rush through a rulemaking” after spending almost two years developing the Existing GPIM Rule. Black Hills concludes that if the Commission seeks to develop mechanisms to align the financial incentives of the utilities with the interests of customers regarding fuel costs, the pass-through nature of the GCA should be abandoned and the Commission instead should allow utilities to markup the cost of gas and actually have some opportunity for financial gain before any alignment can occur.⁹

19. Echoing Atmos and Black Hills, Public Service argues that the modified GPIM in the NOPR would not meet the intent of SB 23-291 of protecting customers and improving the utility’s management of fuel costs due primarily to its reliance on using historical gas commodity costs as the relevant price benchmark. Public Service notes, for instance, that had the revised GPIM been in place prior to Storm Uri, Colorado utilities would have incurred significant penalties. Yet following Storm Uri, the utilities would have received significant gains due to the drop in gas commodity market prices without “having done anything to influence or manage the price change.”¹⁰ Public Service further notes that such losses and gains increase risk and volatility, contrary to the intent of SB 23-291.

20. Public Service’s Primary Proposal replaces the use of an historical baseline with baseline calculations using current index prices, which Public Service argues would help further incent cost-minimizing purchasing behaviors by the utilities to the benefit of their customers.¹¹

⁸ Black Hills Post-Hearing Comments, p. 2

⁹ Black Hills Post-Hearing Comments, p. 4.

¹⁰ Public Service Initial Comments, pp. 13-14.

¹¹ Public Service Initial Comments, pp. 26-27.

Public Service stresses that its Primary Proposal does not involve forward looking assumptions, but instead relies on current market prices as the benchmark, comparing actual monthly costs to published monthly prices reported in industry trade publications. Public Service argues that by comparing actual costs to “transparent market prices,” its alternative mechanism would better measure the effectiveness of the utility’s fuel procurement practices by comparing prices paid by the utility to prices paid by all other market participants. According to Public Service, its alternative approach would give the utility an opportunity to earn an incentive by beating the market or charge a penalty when the utility underperforms. For the sake of simplicity, Public Service proposes to use monthly index prices for each gas purchasing region when comparing actual monthly costs.¹² Public Service further demonstrates how its Primary Proposal would have functioned in the eight previous heating seasons. Public Service concludes that its proposed alternative approach results in a modest penalty or incentive in most years.¹³

21. While Black Hills “does not detract” from the Public Service’s call for use of published index prices at purchase locations as a means of establishing the foundation for a market benchmark price, it does not agree that Public Service’s Primary Proposal should become a Commission rule to be implemented by each gas utility. Black Hills states that while the proposal may work for some utilities, it may not appropriately work for all utilities. For instance, Black Hills states that a published monthly index does not take into account several factors that may influence the actual purchase cost, or market value, of gas commodity supply at any given time and location, such as liquidity, purchasing power, and supply and demand, among other factors.¹⁴

¹² Public Service Initial Comments, p. 29.

¹³ Public Service Initial Comments, pp. 29-31.

¹⁴ Black Hills Post-Hearing Comments, p. 12.

22. In its responsive written comments, UCA acknowledges that the utilities see no reason to modify the Existing GPIM Rule. However, UCA states that it does not believe that the General Assembly intended the Commission to retain the Existing GPIM Rule but instead expected the rule to be modified in a manner that is consistent with what the Commission proposed in the NOPR.¹⁵

23. Black Hills counters that there is no way the General Assembly could have intended to undo the Existing GPIM Rule because it was never implemented to see how it would work. Black Hills further states that the Existing GPIM Rule already contemplates all the same factors referenced in SB 23-291.¹⁶

24. The Hearing Commissioner agrees with UCA regarding the General Assembly's expectation that the Commission revisit the GCA Rules notwithstanding its recent adoption of the Existing GPIM Rule. Section 4 of SB 23-291 requires the gas utilities to implement a GPRMP subject to a financial incentive mechanism.

25. The adoption of rules that integrate the GPRMPs into the Commission's GCA framework satisfies much of the requirement in SB 23-291 that the Commission protect Colorado gas utility customers while also improving the gas utilities' management of fuel cost. The GPRMPs, in combination with other actions taken by the utilities in accordance with their Gas Purchase Plans ("GPPs") pursuant to Rules 4605 and 4606 and with their financial hedging strategies addressed separately by application, will serve to reduce the volatility of fuel costs passed on to customers. The Hearing Commission further adopts the modified GPIM, with certain revisions addressed by this Decision, to further align the investor-owned utility's financial

¹⁵ UCA Response Comments, pp. 1 and 4.

¹⁶ Black Hills Post-Hearing Comments, p. 8.

incentives with the financial interests of its customers regarding incurred fuel costs beyond what is achieved through the existing GCA framework and the recently established GPRMPs for each utility. The modified GPIM, as developed in Rule 4607, is the approach that is most suited to align the Commission's goals with the requirements of SB 23-291.

B. Changes to the GCA Rules

1. Rule 4600 – Overview and Purpose

26. Rule 4600 is modified in the NOPR to expand the stated purpose of the GCA Rules in accordance with SB 23-291 and to remove references to GPIM applications associated with the Existing GPIM Rule.

27. Upon consideration of the comments filed in this Proceeding and the incorporation within the Commission's GCA framework of both the GPRMPs and the modified GPIM, the Hearing Commissioner adopts similar modifications to Rule 4600 to address these key elements of SB 23-291 in the statement of the purpose of the GCA Rules.

2. Rule 4601 – Definitions

28. The NOPR proposed to add two new defined terms used in the modified GPIM: "Actual Total Gas Cost" in proposed paragraph 4601(b) and "Actual Total Gas Quantity" in proposed paragraph 4601(c).

29. In its initial comments, Public Service seeks clarification that the phrase "appropriate adjustments" in definition of Actual Total Gas Costs, is intended to accommodate exclusions of certain expenditures so that the GPIM complements the gas utility's efforts to smooth and reduce the volatility of fuel costs passed on to customers. Public Service likewise asks that the Commission modify the definition of Actual Total Gas Quantity to exclude storage injections and

withdrawals, financial hedging, quantities subject to longer-term fixed price contracts and other nonstandard costs. Public Service suggest that these modifications to the defined terms that support the modified GPIM prevent perverse incentives to deploying tools that help mitigate the volatility of fuel prices.¹⁷

30. Atmos states in its initial comments that it is appropriate for Actual Total Gas Costs to exclude upstream transportation costs. However, Atmos wants the Commission to affirm that Actual Total Gas Costs as defined in the NOPR would include storage and hedging costs.¹⁸ Atmos further suggests that instead of using the word “Actual” in the two new definitions for the GCA Rules, the acronym “GPIM” be used instead to avoid confusion with other terms in the Gas Rules.

31. In response to Atmos’ comments, Public Service repeats its suggestion that storage costs or hedging costs should not be included in the definition of Actual Total Gas Costs.¹⁹ Public Service states, for example, that inclusion of storage costs may incent utilities to pursue lower costs at the risk of jeopardizing reliability, contrary to the public interest. Likewise, the inclusion of hedging costs could cause utilities to spend less money on financial products in the name of cost reduction, exposing customers to greater price volatility in the future. Public Service also notes that hedging programs are generally reviewed and approved by the Commission as stand-alone programs independent of the GCA framework.

32. The Hearing Commissioner adopts revisions to the definitions of “Actual Total Gas Cost” and “Actual Total Gas Quantity” based on the comments filed by the utilities. As explained elsewhere in this Decision, it is necessary for certain details of the GPIM to be designed relative to the specific gas supply arrangements and options for each utility and to the different geographic

¹⁷ Public Service Initial Comments, pp. 15-20.

¹⁸ Atmos Initial Comments, p. 8.

¹⁹ Public Service Response Comments, pp. 6-8.

areas that correspond to separate GCAs or purchasing regions within a utility's service area. Those details will best be considered in follow-on application proceedings that introduce the GPIM within the utility's GCA tariff sheets consistent with the revisions to rule 4607 as discussed below. Accordingly, the defined terms related to the GPIM are more general than as proposed in the NOPR and are further tied to the utility's GCA tariff sheets. The Hearing Commissioner further agrees with Atmos that "Actual" should be modified in both definitions; therefore, the new defined terms within the GCA Rules shall be "GPIM Total Gas Costs" and "GPIM Total Gas Quantities."

33. In addition to those revisions, the Hearing Commissioner concludes that the GPRMP should also be identified as a defined term within the GCA Rules. The Hearing Commissioner further refines the definition of the GPIM consistent with the modifications to Rule 4607 discussed below. The definitions required for the Existing GPIM Rule are further removed.

3. Rule 4602 – Schedule for Filings by Utilities

a. Gas Price Risk Management Plan

34. In the rules attached to the NOPR, proposed paragraph 4602(f) requires the utility's GCA to include a GPRMP as initially implemented by the utilities through the 2023 application filings required by § 40-3-120(1), C.R.S. The proposed rule further specifies that modifications to a utility's GPRMP must be accomplished through an application proceeding separate from a GCA filing.

35. The Hearing Commissioner adopts paragraph 4602(f) in the modified GCA Rules. This new provision in rule 4602 is further consistent with the adoption of paragraph 4603(g), as explained below.

36. In its initial comments, Black Hills notes that the rule mistakenly uses the term “gas risk management plan” instead of GPRMP. The error is corrected in the modified GCA Rules attached to this Decision.

b. Small Utility Exemption from GPIM Requirements

37. Proposed paragraph 4602(g) in the NOPR exempts utilities with fewer than 50,000 full-service customers from the GPIM requirements.

38. CNG states that it fully supports the Commission’s proposal to exclude utilities with less than 50,000 customers from the GPIM.²⁰

39. The Hearing Commissioner finds good cause to preserve the GPIM exemption for the smallest of the state’s gas utilities.

c. Utility-Specific GPIM Applications

40. Proposed paragraph 4602(h) in the NOPR requires utilities with more than 50,000 full-service customers to include a GPIM in the next GCA filing after the effective date of the rules adopted in this Proceeding.

41. In its initial comments, Atmos argues that it is not appropriate to litigate GPIMs in quarterly GCA filings. Atmos suggests that each utility instead should file an application to establish its GPIM and that the rule should specify a filing date for such applications following the effective date of the GCA Rules adopted in this Proceeding. Atmos further suggests that a GPIM should be crafted for each of the utility’s GCA areas based on the specific gas supply arrangements and options for those different geographic areas.²¹

²⁰ CNG Initial Comments, p. 2.

²¹ Atmos Initial Comments, p. 8.

42. Black Hills similarly argues that the one-sized fits all approach in proposed Rule 4607 fails to “tailor the mechanisms to apply to different utilities based on a utility’s size or ability to implement the mechanisms” as required by SB 23-291. Black Hill argues that the only way to ensure that the mechanisms are appropriately tailored is to retain the Existing GPIM Rule or specifically carve out the nuances associated with each utility based on its size. Black Hills notes that the Existing GPIM Rule already provides the framework that allows for each utility to file an application for Commission approval of a GPIM, where that application would be tailored to each utility’s specific size and abilities.²² Therefore, consistent with Atmos’ position, Black Hills states that each utility should be provided with the flexibility to file an application that is tailored to its business, customer base, geographic purchase requirements and gas supply challenges.²³

43. In its post-hearing comments, Public Service also observes that the filed comments underscore differences amongst the utilities. Public Service this also suggests that each utility submit a GPIM application for Commission approval prior to implementation.²⁴

44. The Hearing Commissioner agrees with the utilities that it is necessary to establish certain details of the GPIM for each utility based on its specific characteristics. However, each utility must adhere to basic framework for a GPIM as a rule-based framework is contemplated by Section 4 of SB 23-291. Paragraph 4602(h) therefore requires the utilities to file an application to include a GPIM within their GCA tariff sheets pursuant to Rule 4607 within 60 days of the effective date of these modified GCA Rules. Once established, the GPIM shall be implemented through the utility’s GCA in accordance with the utility’s GCA tariff sheets in effect.

²² Black Hills Post-Hearing Comments, pp. 7-8.

²³ Black Hills Post-Hearing Comments, p. 3.

²⁴ Public Service Post-Hearing Comments, p. 5.

Modifications to a GPIM once initially established will also be accomplished by an Application filing separate from the normal implementation of the GCA.

45. Consistent with the proposed rule changes in the NOPR, the Hearing Commissioner also removes from Rule 4602 the legacy filing requirements that were intended to support the Existing GPIM Rule.

4. Rule 4603 – Gas Cost Adjustment

a. Asymmetric Interest

46. Black Hills notes in its initial comments that the GPRMP in paragraph 4603(g) and the GPIM sharing amounts in proposed in Rule 4607 may result in a utility's GCA deferred balance being partially subject to asymmetric interest and partially subject to symmetric interest.²⁵ Black Hills suggests that if the net interest in Account 191 is positive, it should be included in the calculation of deferred gas costs.

47. In its initial comments, Atmos provides a summary of the Commission's promulgation of GCA Rules including the history of the specific provisions that address the application of interest to deferred balance amounts. Atmos notes that when the GCA Rules were initially crafted in more-or-less their current form, the Commission held that deferred costs for net over-recoveries shall include interest, but that net under-recoveries shall not, finding that "asymmetrical treatment of interest" was warranted because utilities have "some control over these costs through additional GCA filings" while customers have "no recourse if the GCA rates cause an over-recovery."²⁶ Atmos goes on to state that the Commission retained the asymmetric

²⁵ Black Hills Initial Comments, p. 6.

²⁶ Atmos Initial Comments, pp. 16-17, citing Decision No. C97-376, issued April 8, 1997, in Proceeding No. 96R-089G.

application of interest in its 2005 rulemaking because it represented “one of the few incentives in the GCA rules that causes utilities to strive accurately to match gas purchase and resale prices.”²⁷

48. The Hearing Commissioner declines to make any modifications to the general asymmetric approach to applying interest to a utility’s GCA deferred balance. This well-established feature of the Commission’s GCA Rules will remain, and its continued presence has been factored into the adoption of the modified GCA Rules by this Decision.

b. Financial Hedging

49. Modifications to paragraph 4603(e) in the rules attached to the NOPR clarify that the costs associated financial gas commodity hedging may recovered through a utility’s GCA if such hedging is allowed by tariffs or by Commission decision.

50. The Hearing Commissioner finds good cause to adopt these uncontested revisions to paragraph 4603(e).

c. GPRMP Requirements

51. As explained in the NOPR, proposed paragraph 4603(g) requires the utility’s GCA to be subject to the principal requirements of GPRMP as set forth in SB 23-291. The proposed rule further requires that the GPRMP include a minimum threshold, consistent with the gas utility applications approved by the Commission in November 2023 pursuant to § 40-3-120(1), C.R.S.

52. The Hearing Commissioner adopts the addition of paragraph 4603(g) within the GCA Rules. The utility’s continual implementation of its GPRMP serves to satisfy the requirement in SB 23-291 that modified GCA Rules protect Colorado gas utility customers while also improving the gas utilities’ management of fuel cost.

²⁷ Atmos Initial Comments, pp. 16-17, citing Decision Nos. R05-0523, issued May 6, 2005, in Proceeding No. 03R-0520G.

5. Rule 4604 – Contents of GCA Filings**a. GPRMP and GPIM Information in GCA Filings**

53. Proposed paragraph 4604(d) in the rules attached to the NOPR requires the utility's GCA filing to include information on the utility's GPRMP and GPIM within the presentation of its GCA deferred gas cost calculation. The proposed rule also requires the information on the symmetric sharing amount of the GPIM to be provided as an executable work paper.

54. In its post-hearing comments, Public Service suggests that the Commission replace the phrase "GPIM performance results" in paragraph 4604(d) with "GPIM sharing amounts."²⁸ Public Service further proposes the addition of paragraph 4604(k) to require an Attachment 10 to the utility's GCA filing, where the new attachment would detail the calculation of GPIM sharing amounts.²⁹

55. The Hearing Commissioner adopts the modifications to paragraph 4604(d) consistent with the rule language proposed in the NOPR and Public Service's suggested revision. The Hearing Commissioner further adopts Public Service's recommendation to require a specific attachment to the utility's GCA filing (*i.e.*, GCA attachment No. 10) that would detail the calculation of the GPIM sharing amounts. With this addition, the data requirements proposed in the NOPR for GCA attachment A related to the GPIM are moved to the new additional attachment devoted to the GPIM in paragraph 4604(k).

b. GCAs Billed to Customers

56. Subparagraph 4604(g)(II) as proposed in the NOPR recognizes that the amount of the GCA to be billed to customers upon the Commission's approval of a GCA filing may be subject to the terms of the utility's GPRMP and GPIM.

²⁸ Public Service Post-Hearing Comments, Supplemental Bluelines, p. 7.

²⁹ Public Service Post-Hearing Comments, Supplemental Bluelines, p. 8.

57. The Hearing Commissioner adopts the modifications of subparagraph 4604(g)(II) consistent with the rule language proposed in the NOPR.

6. Rule 4607 – Gas Performance Incentive Mechanism

a. Adoption of GPIM with Modifications

58. Proposed paragraph 4607(a) in the rules attached to the NOPR sets forth the new symmetric sharing mechanism contemplated in § 40-3-120(2), C.R.S., replacing most of Rule 4607 as adopted in Proceeding No. 21R-0314G.

59. The GPIM benchmark gas rate defined in proposed subparagraph 4607(a)(I) equals the actual total gas cost divided by the actual total gas quantity for the most recently concluded quarterly period in the previous calendar year, while proposed subparagraph 4607(a)(II) defines the GPIM actual gas rate to equal the actual total gas cost divided by the actual gas quantity purchased in the most recently concluded quarterly period. Proposed subparagraph 4607(a)(III) then defines the GPIM sharing amount to be a percentage of the difference between the two rates defined in the previous two subparagraphs of the proposed rule (*i.e.*, five percent as shown in the rules attached to the NOPR) multiplied by the actual total gas quantity purchased. Subparagraph 4607(a)(IV) further provides that the quarterly sharing amount will be recovered through the utility's GCA deferred account balance. In essence, the proposed rule provides symmetric sharing at five percent of the difference between the GPIM benchmark gas rate and the GPIM actual gas rate. Subparagraph 4607(a)(III)(A) provides a deadband whereby no sharing occurs (unless the difference between the GPIM benchmark and GPIM actual gas rate is greater than 20 cents per dekatherm), where the proposed deadband of \$0.20 per dekatherm is intended to account for the natural fluctuation of gas commodity prices. Subparagraph 4607(a)(III)(B) likewise sets a

cumulative rolling twelve-month cap on the symmetric sharing amount equal to a 40-basis point pre-tax return on the most recent Commission approved rate base for each utility (akin to change in the utility's Weighted Average Cost of Capital but without the need to use a full cost of service model to derive a fraction of a base rate revenue requirement).

60. The Hearing Commissioner finds that GPIM framework defined by Rule 4607 reasonably aligns the investor-owned utility's financial incentives with the financial interests of its customers who pay the GCA when further adjusted in the specific areas addressed below. The GPIM framework established by this Decision is most suited to satisfying the requirements of SB 23-291 when also implemented with the GPRMPs and the majority of the existing provisions in the Commission's GCA Rules that will remain without modification.

b. GCA Tariff Sheets to Implement the PIM

61. As explained above, paragraph 4602(h) as adopted by this Decision requires the utilities to file an application to include a GPIM within their GCA tariff sheets pursuant to Rule 4607 within 60 days of the effective date of these modified GCA Rules.

62. Consistent with that approach for launching the GPIM, the introductory paragraph to Rule 4607 shall be modified to reiterate that the implementation of the GPIM shall be done by each utility, as applicable, consistent with the provisions for the GPIM within the utility's GCA tariff sheets.

c. GPIM for Each GCA Division or Rate Area

63. Atmos and Black argue that a GPIM should be crafted for each of a utility's separate GCA rate areas based on the specific gas supply arrangements and options for those different

geographic areas.³⁰ Public Service similarly argues that a GPIM should be established for separate “purchase regions” as identified in its Gas Purchase Plan (“GPP”).³¹

64. The Hearing Commissioner agrees with the utilities that separate GPIMs are necessary for each GCA rate area or purchase region due to the differences in incurred commodity gas costs. The introductory paragraph to Rule 4607 is therefore modified to specify that a GPIM shall be established, as necessary, for each GCA rate area served by the utility or by separate purchase regions, as applicable.

d. GCA Rate Area/Division Exclusions

65. Atmos argues that two of its three GCA divisions have fewer than 50,000 full-service customers and should also be excluded from GPIM requirements due to the small size of these distinct areas.³²

66. The Hearing Commissioner agrees that GCA rate areas with fewer than 50,000 full-service customers should be excluded from GPIM requirements just as utilities with fewer than 50,000 full-service customers are also excluded from GPIM requirements pursuant to paragraph 4602(g).

e. Adjustments for General Price Information

67. Public Service suggests that differences in the price levels (*i.e.*, the historic price and the price in the last recently completed quarter) be adjusted for “the mere existence of inflation” during the intervening time period.³³ Public Service specifically recommends that the

³⁰ Atmos Initial Comments, p. 8. Black Hills Post-Hearing Comments, pp. 7-8.

³¹ Public Service Initial Comments, pp. 28-29.

³² Atmos Response Comments, p. 5.

³³ Public Service Initial Comments, p. 34.

inflation adjustment be accomplished using the U.S. Consumer Price Index for all urban customers as maintained by the U.S. Bureau of Labor Statistics.

68. The Hearing Commissioner declines to adopt Public Service's requested inflation modification to the GPIM proposed in the NOPR. The primary means of aligning the utility's financial experience to the customer's experience in paying the GCA is by basing the negative or positive sharing amount on the recently concluded quarter's GCA commodity costs and on the costs in the same quarter in the prior year. Adjustments for general inflation would weaken such alignment and would not be reasonable given the other adjustments to the GPIM adopted by this Decision.

f. Four Year Average for Previous Quarter Price Benchmark

69. Public Service suggests that the historic GPIM price benchmark represent an average over the previous four years instead of the price level in the immediately preceding historic period. Public Service explains that the average will smooth out some of the volatility of the gas commodity market and clarifies that the averaging should also include the adjustments for inflation (as discussed immediately above).³⁴

70. The Hearing Commissioner again declines to adopt Public Service's requested modification to the GPIM proposed in the NOPR. The use of a four-year average would weaken the alignment sought by the GPIM between the utility and its customers with respect to gas commodity costs and would not be reasonable given the other adjustments to the GPIM as adopted by this Decision.

³⁴ Public Service Initial Comments, p. 35.

g. GPIM Sharing Amount

71. Public Service seeks a reduction in the GPIM sharing amount from five percent as proposed in the NOPR in subparagraph 4607(a)(III) to two or three percent. Public Service argues that the lower sharing percentages “more closely match several other risk-sharing incentive mechanisms around the country” and help limit risk exposure to the utilities, such as impacts on authorized rates of return.³⁵ Public Service further argues that lower percentages are reasonable in relationship to the overall cap when extreme volatility is considered, such as the price spike associated with Storm Uri. Public Service states that a five percent risk-sharing percentage with the modified GPIM in place prior to Storm Uri would have led it to reach the maximum penalty cap in the first quarter of that year, “rendering any impacts that a mechanism could have on the Company’s purchasing behaviors largely moot.”³⁶

72. Black Hills states that, to the extent the Commission decides a sharing percentage is required, the Company supports Public Service’s proposal to reduce the risk sharing percentage to three percent.³⁷

73. The Hearing Commissioner agrees with Public Service and Black Hills that a reduction in the sharing percentage is warranted based on a review of the information presented in the utilities’ comments. The sharing amount is therefore reduced from five percent to four percent as set forth in paragraph 4607(c).

h. Price Deadband

74. Public Service suggests that the deadband around the difference in prices in subparagraph should be widened from \$0.20/Dth to at least \$0.50/Dth. Public Service argues that

³⁵ Public Service Initial Comments, p. 36.

³⁶ Public Service Initial Comments, p. 37.

³⁷ Black Hills Post-Hearing Comments, p. 13.

a deadband of \pm \$0.50/Dth roughly represents the 25th percentile of changes in prices over the recent historical period.³⁸ Public Service states that a \$0.50/Dth amount translates to roughly \$3.00 per month when compared to average annual usage of about 749 therms, or just about five percent of an average monthly residential bill.

75. Black Hills supports the implementation of a deadband, provided that each utility is afforded the flexibility to account for their unique purchase locations and market conditions. If the Commission decides that a deadband is required, Black Hills supports Public Service's proposal to increase the deadband to at least \$0.50/Dth.³⁹

76. The Hearing Commission agrees that the deadband around the difference between the GPIM benchmark gas rate and the GPIM actual gas rate should be increased to \$0.50/Dth. The analysis presented by Public Service in its comments supports this change to rule presented in the NOPR and adopted as subparagraph 4607(c)(I).

i. Maximum Sharing Amount

77. Public Service suggests that the Commission remove references to a specific cap on the maximum "penalty amount" in the GPIM provisions within the GCA Rules. Public Service argues that the Commission and the utilities would benefit from having more flexibility to set the cap and adjust it, if necessary, over time as conditions change or as new regulatory frameworks evolve.⁴⁰ Public Service further argues that it will be more administratively efficient for the cap to be established and then modified over time through utility filings instead of through additional rulemakings.

³⁸ Public Service Initial Comments, p. 38.

³⁹ Black Hills Post-Hearing Comments, p. 13.

⁴⁰ Public Service Initial Comments, p. 33.

78. If the Commission decides to adopt a specific cap established by Rule, Public Service recommends a reduction “to something at or below \$5 million”⁴¹ or, instead, 2.5 basis points applied to the utility’s rate base on a quarterly basis, as opposed to the 40 basis points suggested in subparagraph 4607(a)(III)(B) in the rules attached to the NOPR.⁴² Public Service states that this lower proposed cap still scales relative to a utility’s size and allows for “reasonably balanced incentives and penalties.” Likewise, in its post-hearing comments, Public Service explains that with gas commodity prices recently settling at approximately \$3.00/Dth, the asymmetric nature of gas prices causes a “resulting reality that penalties may be limitless, while incentives would be limited.”⁴³ Public Service thus states it is important for the Commission to retain a symmetrical approach when establishing the cap.

79. Black Hills supports Public Service’s proposal to limit the cap to 2.5 basis points.⁴⁴

80. Atmos argues that if a cap on the GPIM cost sharing is going to be established using a basis point reduction to the pre-tax return on rate base, it should solely be to the equity share of the capital structure used to set the pre-tax return on rate base, rather than the overall weighted average cost of capital or rate of return on rate base.⁴⁵

81. Black Hills supports Atmos’s proposal that if a cap on the GPIM cost share is going to be established using a basis point reduction to the pre-tax return on rate base, it should solely be to the equity share of the capital structure used to set the pre-tax return on rate base, rather than the overall weighted average cost of capital or rate of return on rate base.⁴⁶

⁴¹ Public Service Initial Comments, p. 33.

⁴² Public Service Post-Hearing Comments, p. 6 and Attachment A, p. 11.

⁴³ Public Service Post-Hearing Comments, p. 6.

⁴⁴ Black Hills Post-Hearing Comments, p. 13.

⁴⁵ Atmos Initial Comments, p. 10.

⁴⁶ Black Hills Post-Hearing Comments, p. 13.

82. The Hearing Commissioner declines to adopt Public Service's request that the overall cap on GPIM costs to the utility be established for each utility in its GPIM application instead of by rule. However, the Hearing Commissioner agrees that it is reasonable to reduce the GPIM cap set forth in the GCA Rules by lowering the basis points applied to the utility's rate base. As opposed to the 40 basis points suggested in the rules attached to the NOPR, the cap is reduced to 30 basis points. This revised cap level is reasonable in that it preserves the intended alignment between the utility's financial experience to the customer's experience in paying the GCA while not unduly affecting the utility's overall financial risk. The Hearing Commissioner further agrees that cap on the sharing amounts should be determined in consideration of only the equity share of the capital structure. Hence, the Hearing Commission adopts subparagraph 4607(c) (II) as follows:

the utility's cumulative quarterly GPIM sharing amounts summed across all GCA rate areas or purchasing regions, positive or negative, shall be capped over a rolling twelve-month period at an amount equal to a 30 basis point pre-tax return on the utility's rate base as established by the Commission in the utility's most recent base rate proceeding, set solely on the equity share of the utility's capital structure.

j. Force Majeure Events

83. In its initial comments, Public Service argues that extreme changes in gas commodity costs present asymmetric risks and that the Commission should thus exclude "large price breakthrough events" outside of the utility's control.⁴⁷ Public Service argues that excluding costs associated with a "force majeure" event—defined as a period of time where prices rise greater than a certain multiple of average prices—would nonetheless align with the requirement in SB 23-291 for an incentive mechanism with symmetrical risk and reward. Alternately, Public Service states that the incentive mechanism cap could be set to \$2.5 million annually, which

⁴⁷ Public Service Initial Comments, p. 31.

would exclude the financial impact of those price breakthrough events from providing an outsized impact to the incentive penalty amount.

84. Black Hills supports the recommendation that any GPIM must allow for force majeure exclusions for events outside of the utility's control.⁴⁸

85. The Hearing Commission agrees that a force majeure provision should be included within the rules governing the implementation of a utility's GPIM. Paragraph 4607(d) is therefore introduced based on the rule language proposed by Public Service:

The utility may request, and the Commission may grant, a force majeure exception upon good cause shown after such an event has occurred. The force majeure exception will allow the utility to exclude costs from the GPIM that are deemed to be associated with the force majeure event as defined by the utility's tariffs on file with the Commission.

k. Reconciliation of GPRM and GPIM Amortizations

86. In its initial comments, Black Hills explains that it is necessary for the Commission to reconcile the implementation of the GPRMP and the adopted GPIM, particularly in light of the maximum caps and minimum thresholds in the GPRMP.⁴⁹ Atmos similarly argues in its initial comments that the rules should allow flexibility to implement a GPRMP surcharge consistent with the utility's existing GPRMP.⁵⁰ Atmos further agrees with Black Hills and Public Service that the potential interaction of the GPIM with the GPRMP will need to be resolved.⁵¹

87. In its post-hearing comments, Public Service offers recommended additional provisions intended to harmonize the operation of the utility's GPRMP with the GPIM. Public Service states that it is reasonable from a customer bill mitigation perspective for the

⁴⁸ Black Hills Post-Hearing Comments, p. 13.

⁴⁹ Black Hills Initial Comments, p. 5.

⁵⁰ Atmos Initial Comments, p. 9.

⁵¹ Atmos Response Comments, p. 5.

utilities to defer any positive GPIM sharing amounts accrued during periods when the GCA rises above the GPRMP upper bound.⁵² In other words, when GCA rates are constrained by a maximum cap pursuant to the GPRMP, any positive GPIM sharing amounts would be deferred, while negative GPIM sharing amounts will be recognized and offset against any previously deferred positive GPIM sharing amounts, pending certain circumstances. Public Service explains that when the GCA calculation plus any GPIM sharing amount is above the GPRMP cap level, the GPIM sharing amount would not be accounted for in the deferred GCA account but would instead be recorded elsewhere, eligible to offset any negative GPIM sharing amounts accrued, for up to four GCA quarterly periods (initial GCA period + subsequent three GCA periods). If there is any remaining GPIM carryforward amounts after four GCA periods, those sharing amounts would expire and no longer be available to offset any future GPIM sharing amounts. Public Service argues that this approach balances customer bill impact sensitivity experienced during prolonged periods of high gas prices with the eligibility of incentives to the utility during such periods.⁵³

88. Public Service goes on to explain that, in a scenario where the GCA less a negative GPIM sharing amount is below the GPRMP minimum level, the utility would still account for the sharing amount in the GCA deferred cost calculation until a subsequent GCA calculation results in a rate above the minimum limit level. Public Service explains that any deferred sharing amount would be made available for an indefinite period under this proposal.⁵⁴

89. The Hearing Commission appreciates Public Service's proposed framework for addressing the interaction of the GPRMP and GPIM with respect to the GCA deferred cost calculation. The proposal fosters the necessary integration of the two mechanisms required by

⁵² Public Service Post-Hearing Comments, p. 7.

⁵³ Public Service Post-Hearing Comments, p. 10.

⁵⁴ Public Service Post-Hearing Comments, pp. 11-12.

SB 23-291. Subparagraphs 4607(e)(I) and (II) are therefore introduced based on the rule language proposed by Public Service.

I. GPIM Test Period

90. In the conclusion of its initial comments, Public Service suggests that, regardless of the final structure of the GPIM adopted in this rulemaking, the Commission should make the first year of the mechanism a “test period and report year.”⁵⁵ Public Service anticipates that the new elements to the GPIM will likely cause complications, such that the first year should be dedicated to implementation and adjustments to the GPIM as well as “proofing of the reporting process.” Public Service further suggests that the Commission may wish to revise its plans after “real-life experience with the new mechanism.”

91. The Hearing Commissioner declines to adopt Public Service’s request for an initial year of testing the utility’s GPIM before sharing amounts are implemented in the GCA deferred cost calculation. The proposed GPIM has been carefully vetted in this rulemaking and the precursor pre-rulemaking proceedings. Furthermore, each utility required to implement a GPIM must file an application to introduce GPIM provisions in its GCA tariff sheets. That additional review combined with the significant modifications to the GPIM made in accordance with this Decision sufficiently mitigates against the unexpected complications predicted by Public Service.

7. Rule 4608 – Gas Purchase and Deferred Balance Reports and Prudence Reviews

92. Rule 4608 in the GCA Rules generally sets forth the filing requirements and prudence review procedures for the Utility Gas Purchase and Deferred Balance Report (GPDBR).

⁵⁵ Public Service Initial Comments, p. 40.

The modifications to Rule 4608 presented in the NOPR remove provisions that relate to the Existing GPIM Rule.

93. The Hearing Commission adopts the revisions to Rule 4608 set forth in the NOPR, consistent with the modifications to the GPIM addressed above.

8. Rule 4609 – Contents of the GPDBR

a. Attachment 1 to the GPDBR

94. Proposed paragraph 4609(a) requires each gas utility to provide in Attachment 1 to the GPDBR a description and explanation of: the volumes and costs associated with fixed-price, long-term supply contracts; the volumes and costs associated with storage injections and withdrawals, including both physical and contract storage; and the volumes and costs associated with associated with financial hedging.

95. In its initial comments, Black Hills suggests that the Commission correct a clerical error in the proposed rules by removing the repeated words “associated with” in subparagraph 4609(a)(III).

96. The error in rule 4609(a)(II) shall be corrected and the proposed rule revisions shall otherwise be adopted.

b. Attachment 6 to the GPDBR

97. The NOPR also included proposed revisions to paragraph 4609(f) addressing Attachment 6 to the GPDBR. The GPIM results include the calculations to determine GPIM benchmark gas rates and GPIM actual gas rates, quarterly and cumulative GPIM amounts, and the value of the cap, as shown in proposed paragraph 4609(f).

98. The Hearing Commission largely adopts the modifications to paragraph 4609(f) consistent with the modifications to the GPIM addressed above.

IV. CONCLUSION

99. The statutory authority for the rules adopted by this Decision is found generally at § 40-1-103.5, C.R.S. (authorizing the Commission to promulgate implementing rules) and more specifically in § 40-3-120(2), C.R.S., as enacted by SB 23-291.

100. For the reasons discussed above, the Hearing Commissioner adopts modified GCA Rules as set forth in legislative format (Attachment A) and final format (Attachment B) attached to this Decision.

101. Being fully advised in this matter and consistent with the above discussion, in accordance with § 40-6-109, C.R.S., the Hearing Commissioner now transmits to the Commission the record in this proceeding along with this Recommended Decision and attachments.

V. ORDER

A. It Is Ordered That:

1. Consistent with the above discussion, the Rules Regulating Gas Utilities, 4 *Code of Colorado Regulations* 723-4, attached to this Recommended Decision as Attachments A and B are adopted.

2. The rules in redline (Attachment A) and final format (Attachment B), are available through the Commission's E-Filings system at:

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=24R-0192G

3. 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.

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

5. If no exceptions are filed within 20 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 will become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

6. 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 Hearing Commissioner and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

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

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

Hearing Commissioner

ATTEST: A TRUE COPY

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

Rebecca E. White,
Director