

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.

**COMMISSION DECISION ADDRESSING EXCEPTIONS
TO DECISION NO. R24-0682 AND ADOPTING RULES**

Issued Date: January 6, 2025
Adopted Date: December 30, 2024

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I. BY THE COMMISSION

A. Statement

1. On April 30, 2024, the Colorado Public Utilities Commission issued a Notice of Proposed Rulemaking (“NOPR”) 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. The proposed amendments to the Gas Rules are intended to protect Colorado gas utility customers while also improving the gas utilities’ management of fuel costs. The proposed rules 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 proposed amendments to the Gas Rules attached to the NOPR would continue the utilities’ implementation of gas risk management plans and would replace the requirements for the Gas Performance Incentive Mechanism (“GPIM”) established in Proceeding No. 21R-0314G with a new incentive mechanism in accordance with SB 23-291. The NOPR also designated Chairman Eric Blank as Hearing Commissioner, pursuant to § 40-6-101(2)(a), C.R.S., for this rulemaking proceeding.

2. By Decision No. R24-0682 (“Recommended Decision”), issued on September 23, 2024, Hearing Commission Blank adopted amendments and additions to the Gas Rules governing the Gas Cost Adjustment (“GCA” or “GCA Rules”), set forth in the Gas Rules at 4 CCR 723-4-4600 through 4610.

3. By this Decision, the Commission addresses the exceptions to the Recommended Decision and adopts, with modifications, the rules established by the Recommended Decision. The adopted changes to the Gas Rules are set forth in legislative (*i.e.*, strikeout and underline) format in Attachment A to this Decision, and in final format in Attachment B to this Decision.

B. Background

4. The Recommended Decision provides a detailed description of the relevant provisions in SB 23-291 that required this rulemaking and its procedural history.

5. As relevant to our consideration of the exceptions to the Recommended Decision, Section 4 of SB 23-291 required each investor-owned gas utility to file with the Commission, on or before November 1, 2023, a Gas Price Risk Management Plan (“GPRMP”) to address the volatility of fuel costs recovered from the utility’s customers pursuant to the utility’s GCA filings. A GPRMP was established for each of Colorado’s four investor-owned gas utilities through utility application proceedings that concluded in November 2023. Section 4 also required the Commission 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.”

6. The Recommended Decision explains that 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 Recommended Decision further adopts a

modified GPIM, to further align the investor-owned utility's financial 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 Recommended Decision concludes that 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.

7. Consistent with the NOPR, the Recommended Decision explains that adopted revisions to the GCA Rules comprise two primary elements: 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.

8. Paragraph 4603(g) adopted by the Recommended Decision 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 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.

9. 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.

10. Exceptions to the Recommended Decision were timely filed on October 14, 2024, by Public Service Company of Colorado ("Public Service"), Atmos Energy Corporation ("Atmos"), and Black Hills Colorado Gas, Inc. ("Black Hills"). The Colorado Office of the Utility Consumer Advocate ("UCA") filed a response to those exceptions on October 28, 2024.

11. In brief, the three utilities filing exceptions object to the historic baseline proposed to be used for the GPIM. They further seek clarification on the GPIM's deadband, on the cap on GPIM incentives and penalties, and on the carryforward provisions of penalties and incentives when the utility's GPRMP is in operation. In addition, Atmos seeks additional rule language regarding force majeure, and Public Service seeks a one-year trial period for the GPIM before incentives or penalties are applied.

12. UCA responds to the utilities' exceptions by stating that it supports the Recommended Decision without modification because it embraces the intent of SB 23-291 and § 40-3-120, C.R.S.

13. On October 29, 2024, Durango Mountain Utilities, LLC ("DMU") filed a motion for leave to file out-of-time exceptions to the Recommended Decision. DMU explains that it is a propane utility that does not supply natural gas or other fuels to its customers and accordingly, it did not actively engage in this rulemaking proceeding. However, after realizing the implications of the proposed rules to be adopted by the Recommended Decision, DMU worked diligently to

prepare and file its own exceptions. DMU argues that good cause exists in this instance for the Commission to grant leave to file exceptions to the Recommended Decision out-of-time because no other similarly situated small propane utility has filed comments into this Proceeding or otherwise participated in this rulemaking thus far. DMU also notes that none of the other utilities or entities that have participated in the rulemaking will be impacted or prejudiced by DMU's proposed exceptions to the Recommended Decision.

14. For the reasons stated therein we find good cause to grant DMU's motion and to consider its exceptions to the Recommended Decision.

C. Discussion, Findings, and Conclusions

15. 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.

16. Consistent with the discussion below, we adopt the Recommended Decision with revisions based on our findings and analysis of the issues raised in the exceptions.

1. Rule 4602 – Schedule for Filings by Utilities

a. Propane Utility Exemption from GPRMP Requirements

17. 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.

18. In its exceptions to the Recommended Decision, DMU asks the Commission to exempt it from the requirement to file a GPRMP.

19. We agree with DMU that a GPRMP should not apply to a propane utility and therefore modify paragraph 4602(f) to exempt propane utilities from the GPRMP requirements.

b. Utility-Specific GPIM Applications

20. In response to the gas utilities' requests in written comments and at the rulemaking hearing on July 11, 2024, the Recommended Decision adopts provisions where each gas utility files an application to modify its GCA tariff sheets to implement a GPIM that is suited to the specific characteristics of that utility. However, each utility must adhere to basic framework for a GPIM as a rule-based framework as contemplated in Section 4 of SB 23-291.

21. Paragraph 4602(h) adopted by the Recommended Decision requires the utilities to file an application to include a GPIM within their GCA tariff sheets 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. Modifications to a GPIM, once initially established, will also be accomplished by an application filing separate from the normal implementation of the GCA.

22. Based upon our review of the utilities' exceptions, and in accordance with the discussion below regarding Rule 4607, we adopt the GPIM application process in paragraph 4602(h) with certain modifications. Each utility with more than 50,000 customers providing natural gas commodity shall file an application to modify its GCA tariff sheets to include a GPIM. However, consistent with the discussion below, for utilities with more than 50,000 but

less than 500,000 full service customers (such as Atmos and Black Hills), the GPIM application will rely on the GPIM framework currently in the GCA Rules. In contrast, the GPIM application from a utility with more than 500,000 full service customers (such as Public Service) will rely on a modified GPIM framework in accordance with the GPIM developed in the NOPR, adopted by the Recommended Decision, and further modified by this Decision.

c. Review of GPIM

23. Public Service requests in its exceptions that the Commission adopt a trial period for the implementation of the modified GPIM framework, where the first twelve months after Commission approval of a utility's GPIM serves only as a reporting year to ensure the mechanism works as intended. Public Service suggests that if the first year were to be a test period, a utility could transact financial hedges and fixed-price contracts as appropriate without reservation as to the unknown (and untested) efficacy of such tools within the GPIM. Public Service also notes that the natural gas commodity market has experienced an atypical year in 2024 where prices have been very low. Public Service flatly states that a test year would have the "benefit" of removing this extremely low-priced period from the baseline for comparison in any GPIM.

24. In lieu of a trial period as suggested by Public Service, we will instead reestablish a comprehensive review process for the GPIM similar in form to the process contemplated in paragraph 4602(i) in the existing GCA Rules. Paragraph 4602(i) will require each utility to file an application for a renewal of its GPIM no later than 90 days after the conclusion of the first full heating season covered by the utility's GPIM. The rule specifies that the implementation of any already-established GPIM shall continue until the renewed GPIM goes into effect. The rule further requires the renewal application for the utilities with an initial GPIM based on the framework set forth in paragraph 4607(a) to present an analysis of the implementation of the utility's initial GPIM

as approved by the Commission and an analysis of GPIM benchmark gas rate and GPIM sharing amount in paragraph 4607(b) as if they had instead been implemented over the same period as the initial GPIM. Finally, we affirm that the utility may also propose in its renewal application to implement a modified GPIM provided that the Commission determines the modified GPIM comports with the requirements of SB 23-291 and specifically § 40-3-120, C.R.S.

2. Rule 4607 – Gas Performance Incentive Mechanism

25. Paragraph 4607(a) in the Recommended Decision (“GPIM Rule”) sets forth the new symmetric sharing mechanism contemplated in § 40-3-120(2), C.R.S. As explained in the Recommended Decision, paragraph 4607(a) was intended to replace most of rule 4607 adopted in Proceeding No. 21R-0314G.

26. The GPIM benchmark gas rate defined in 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 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. 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.*, four percent as shown in the rules attached to this Decision) 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.

a. Atmos’ Exceptions

27. Atmos argues that the GPIM Rule fails to meet the criteria in SB 23-291 that modified Commission rules must align the financial incentives of the utility with the interests of

its customers regarding incurred fuel costs. Atmos contends that by comparing current gas costs against a historical benchmark, the GPIM Rule creates “a penalty and reward system” that will require utility customers to pay incentives based on market price changes having nothing to do with utility management and will fail to improve a utility’s management of fuel costs. Atmos argues that the proposed rule arbitrarily adds risk for both the utility and its customers. Atmos alleges that “the goal of the Recommended Decision is for the gas utilities to suffer financial harm if gas prices rise” and thus provides perverse incentives—rather than trying to minimize gas prices, the utility will instead work to lock in fixed prices to the extent possible to avoid incurring financial harm. Atmos goes on to state that the GPIM Rule would deprive a utility of a reasonable opportunity to recover its prudently incurred costs based solely on a comparison to historical gas costs, rather than the actual gas procurement decisions made by the utility considering current market conditions.

28. Atmos further argues that the Recommended Decision lacks analysis regarding how a utility’s current financial incentives conflict with the interests of its customers regarding incurred fuel costs, or how the historical benchmark adopted in the Recommended Decision will align the utility’s incentives with the interests of its customers as required by § 40-3-120(2), C.R.S. Atmos states that the record in this rulemaking shows that utilities have faced political and financial consequences for high gas costs that are outside of their control and that there are other customer interests regarding fuel costs and utility rates that go beyond trying to keep gas costs constant year over year. For instance, Atmos contends that the Recommended Decision ignores customer interest in receiving accurate price signals based on competitive markets. Instead, Atmos suggests customers could end up making decisions contrary to their long-term interests because they are not seeing the price impacts of market changes in the cost of gas. Atmos likewise contends

that the GPIM Rule ignores customer interest in reasonable base rate stability, because the automatic reductions to a utility's earned rate of return due to market increases in gas commodity costs will cause the utilities to file more frequent rate cases and higher capital costs.

29. More generally, Atmos critiques the GPIM Rule by arguing that an incentive can only work if “the thing being measured is something within a person’s control,” yet nothing in the Recommended Decision explains or analyzes how natural gas utilities in Colorado can control the market price of natural gas. In theory, however, what the utilities can do to mitigate their risk from the GPIM Rule is to change their gas procurement strategies to ensure a greater share of gas transportation and commodity prices are locked in at levels comparable to the levels from the year before. According to Atmos, that approach is contrary to optimizing prices based on current market conditions.

30. Atmos thus asks the Commission to modify the GPIM in in the final GCA Rules to use a relevant and contemporaneous market index prices as the benchmark rather than a benchmark based on the prior year’s gas costs. According to Atmos, this modification will achieve the statutory goals of aligning customer interests and utility incentives regarding fuel costs. Atmos adds that this different approach will also allow the GPIM to be compatible with the utilities’ actual gas procurement activities in competitive markets and suggests that if the GPIM benchmark is based on an index reflecting contemporaneous market prices, utilities will be motivated to manage gas costs, to the extent they can, to moderate but not eliminate market price changes.

b. Black Hills’ Exceptions

31. Black Hills echoes Atmos’ concerns that the proposed GPIM Rule fails to meet the intent SB 23-291. Black Hills adds because the GPIM Rule provides no financial incentive for

utilities with respect to gas purchases, it fails “to further align the investor-owned utility’s financial incentives with the financial interests of its customers regarding incurred fuel costs beyond what is achieved through the existing GCA framework” (citing the Recommended Decision) and is not based on the reality of those gas purchases. And like Atmos, Black Hills concludes that the GPIM Rule “is nothing more than a mechanism to punish gas utilities,” because it would disallow recovery of a legitimate and prudently incurred cost of providing service merely because the market price of gas has increased as compared to the prior calendar year.

32. Black Hills also argues that the Recommended Decision conflates the GPRMPs with GPIMs whereas SB 23-291 sets out different requirements for the two mechanisms. According to Black Hills, the GPRMPs are intended to level or reduce the volatility of fuel costs, while GPIMs are intended to protect customers and improve the utility’s management of fuel costs. Black Hills notes that the Recommended Decision specifically admits that 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.” Black Hills concludes that if the GPRMP and GCA framework already protects customers and improves the utility’s management of fuel costs, there is no basis to implement the GPIM.

33. Black Hills states that it favors a forward-looking benchmark that allows for flexibility to adapt to factors that influence usage and price levels (which are out of a utility’s control) to better align with a utility’s purchase activity. Black Hills further clarifies that it objects to a benchmark based on a published monthly index as proposed by Public Service. Black Hills argues that a published index price does not accurately reflect the market value of the utility gas commodity supply, which could be represented as an index price plus a premium or minus a

discount, depending on location liquidity, purchasing power, supply and demand among other factors. Black Hills further argues that solely using a published monthly index rate would fail to account for intra-month purchase requirements, price movement, or the fact that intra-month purchases may not correlate with an established monthly index price. Rather than a published market index baseline, Black Hills suggests implementing a forward-looking approach that offers each utility the flexibility to tailor its GPIM structure, including the benchmark gas rate, to account for its portfolio design and purchasing requirements across various gas purchase locations.

c. Public Service's Exceptions

34. Public Service also objects to the use of a historical baseline in the GPIM Rule. Public Service instead recommends the use of published monthly prices reported in industry trade publications, which it says are indicative of current market prices.

35. Public Service argues that an historical baseline does not adequately reflect current market conditions. It further argues that an historical baseline creates an arbitrary outcome for both the Company and its customers—"one that is up to chance whether the Company or customers will receive a penalty or an incentive." Public Service states that an historical baseline that uses year-old price data prevents the utility from respond to price signals in any meaningful way. Public Service also notes that while the Commission has made a point to limit volatility experienced by customers, pegging any penalty or incentive to a single-period historical baseline would exacerbate volatility associated with gas commodity markets.

36. Public Service therefore asks the Commission to modify the GPIM in the final GCA Rules to use a current gas price index for the GPIM baseline. Public Service argues that if the baseline used current market prices, it is more likely the utility could successfully purchase gas at a favorable cost using purchasing and hedging strategies. Public Service also states that a current

index baseline would also better align the utility's financial incentives with the financial interest of its customers and would better incentivize the utility to "beat the market," because under that construct there would be a realistic opportunity to do so.

37. In the alternative, Public Service suggests that a multi-year historical period be used for the benchmark in the GPIM Rule. Specifically, the Company suggests that average prices over the previous four years be used as a historical baseline instead of only the previous year's historical prices. Public Service argues that a multi-year period of historical prices would provide a more stable and accurate benchmark, reducing the risk of significant penalties or incentives due to market fluctuations.

d. GPIM Benchmark Gas Rate

38. As stated above, the Recommended Decision establishes the GPIM benchmark gas rate as the actual total gas cost divided by the actual total gas quantity for the most recently concluded quarterly period in the previous calendar year.

39. Upon consideration of the utilities' exceptions to the Recommended Decision, we are sympathetic to their concerns about unintended consequences. We further see merit in adopting the modified GPIM proposed in the NOPR on a slower, more deliberate schedule by modifying the modified GPIM in certain specific ways as suggested in the exceptions and by limiting the initial applicability of the historic benchmark to utilities with more than 500,000 full service customers. This revised approach to introducing the modified GPIM is directly supported by SB 23-291, which requires the Commission to tailor the mechanisms to apply to different utilities based on a utility's size or ability to implement the mechanisms, as well as the comments offered throughout this Proceeding.

40. Accordingly, we further modify Rule 4607. First, for the utilities with more than 50,000 but less than 500,000 full service customers, the applications to modify the utility's GCA tariff sheets will introduce a GPIM in accordance with the GPIM provisions currently within the GCA Rules. This framework for the GPIM is organized within paragraph 4607(a). Second, the modified GPIM proposed in the NOPR and modified by the Recommended Decision is housed within paragraph 4607(b) that will initially apply only to utilities with more 500,000 full service customers. By launching the introduction of the GPIM as soon as practicable for the utilities in this matter, we fulfill the intent of SB 23-291 to put in place the new financial alignment mechanism without the delay that would otherwise be caused by a trial period as suggested by Public Service in its exceptions. We further establish procedural means to address the concerns of the utilities regarding the immediate implementation of a GPIM using an historic benchmark.

41. In addition, we revise the historic GPIM benchmark gas rate in subparagraph 4607(b)(I) to be calculated as an average of the historic rates for same quarter in the prior three years as suggested as an alternative by Public Service in its exceptions. We expect that this approach will provide greater stability for the utilities and their customers.

e. GPIM Sharing Amount

42. The Recommended Decision 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.*, four percent as shown in the rules attached to this Decision) multiplied by the actual total gas quantity purchased. The rule includes a deadband provision, where the GPIM sharing amount shall be zero if the difference between the GPIM benchmark gas rate and the GPIM actual gas rate is less than \$0.50 per Mcf or Dth.

43. Public Service seeks clarity with respect to the deadband, asking the Commission to state whether the rule applies “marginally” or “fully.” Through a marginal application, the difference between a calculated GPIM Actual Gas Rate less the GPIM Benchmark Gas Rate is reduced by the \$0.50/Dth deadband prior to being eligible for sharing. In contrast, the full application would subject the full \$0.50/Dth to sharing without being netted against the deadband amount. Public Service states that the marginal method would provide gradualism, such that sharing amounts would begin at \$0.01/Dth multiplied by the other sharing parameters, after netting out the deadband amount. A full method would “eliminate gradualism” as sharing amounts would begin at \$0.51/Dth multiplied by other factors in the equation set forth in the rule. Public Service presents an analysis of the two approaches and concludes that from 2016 through the first quarter of 2024, a “full” deadband would result in awarded cumulative incentives of approximately \$5.7 million, while a “marginal” deadband would result in awarded incentives of approximately \$5.5 million. While the analysis is indeed “interesting” in terms of cumulative effects, Public Service portrays the full method as a “cliff, potentially leading to inequitable incentives or penalties, especially for amounts only slightly outside the deadband.”

44. Atmos and Black Hills also ask the Commission to clarify the implementation of the deadband for sharing amounts in their exceptions.

45. Public Service also requests the Commission confirm that the calculation of the sharing amount based on the equity portion of the utility’s rate base in Rule 4607(c) should not be “grossed-up” for income tax expense.

46. We agree with the utilities that it is necessary to clarify that the deadband shall be implemented such that the GPIM sharing amounts apply to the amounts of the differences between the applicable benchmark and the GPIM actual gas rate excluding the amount of the deadband (or,

in the words of Public Service, the sharing amount is calculated “marginally” instead of “fully”). We likewise introduce a provision under subparagraph 4607(b)(III) to accomplish this clarification.

47. We also agree with Public Service that the calculation of the sharing amount should not be “grossed-up” for income tax expenses.

f. Maximum Sharing Amount

48. The Recommended Decision sets a cap on aggregate GPIM sharing amounts at an amount equal to a 30 basis point pre-tax return on the equity share of the utility’s rate base determined on a twelve-month rolling basis.

49. In its exceptions, Public Service asks that the cap instead be implemented on a quarterly basis, set at 7.5 basis points per quarter or the 30 basis points divided by four quarters. According to Public Service, this modified cap would reduce risk exposure and provide greater operational flexibility to the utility. Public Service states that an annual maximum cap on penalties and incentives can swing by up to 60 basis points between quarters (even if restricted to 30 basis points over a rolling 12-month period), potentially creating significant earnings volatility. Public Service also asks that the Commission strike “pre-tax” from the provisions establishing the cap, in accordance with its other recommendation that the Commission clarify that sharing amounts would not be grossed up for income taxes.

50. Black Hills and Atmos ask the Commission to clarify that the GPIM cap should be allocated to the utility’s different GCA areas (or purchasing regions) so that the cap for each area is not equal to the 30-basis point return on total rate base.

51. We deny Public Service’s request to modify the twelve-month rolling cap into a quarterly measure. We are specifically concerned that a cap set at a 7.5 basis point return will

substantively diminish the intended alignment of the GPIM vis-à-vis the utilities given the volatile nature of the gas commodity market during heating seasons.

52. However, we find good cause to remove the “pre-tax” qualifier from the cap as suggested by Public Service consistent with our earlier clarification that GPIM sharing amounts will not be “gross-up” for income tax purposes. We also clarify, as requested by Black Hills and Atmos in their exceptions, that the overall cap is not intended to apply to each GCA rate area of each purchasing region. If necessary, the allocation of the overall cap can be addressed in the application proceedings contemplated in paragraphs 4602(h) and 4602(i).

g. Carry Forward Provisions

53. As explained in the Recommended Decision, the utilities asked the Hearing Commissioner to reconcile the implementation of the GPRMP and the GPIM, particularly considering the maximum caps and minimum thresholds in the GPRMP. The Recommended Decision largely adopts the proposal put forward by Public Service for addressing the interaction of the GPRMP and GPIM with respect to the GCA deferred cost calculation.

54. In their exceptions, Atmos and Black Hills ask that the Commission modify the provisions for carrying forward GPIM Rule incentives or penalties so that they are symmetrical, or, in other words, either by removing the expiration of carried forward incentives or by causing carried forward penalties to expire after a set amount of GCA quarterly filings.

55. We find good cause to modify the carry forward provisions by eliminating the expiration of the carried forward amounts. Carried forward amounts shall not expire after four GCA quarterly filings but shall carry forward indefinitely. This feature of the GPIM may be addressed in the GPIM renewal application proceedings contemplated in paragraph 4602(i).

h. Force Majeure Events

56. The Recommended Decision introduces a force majeure provision within the rules governing the implementation of a utility's GPIM using rule language proposed by Public Service.

57. In its exceptions, Atmos asks the Commission to expand the definition of force majeure in Rule 4607(d) to include force majeure events as defined in the utility's upstream gas supply, storage, and transportation agreements and tariffs.

58. We grant Atmos' request and modify the force majeure provisions in subparagraph 4607(b)(IV). However, because the intent of SB 23-291 is to preserve an alignment of incentives when gas commodity fuel costs rise and fall, we also replace "shall" with "may" in the second sentence of the rule to read: "The force majeure exception may allow the utility to exclude costs from the GPIM..."

II. ORDER

A. The Commission Orders That:

1. The exceptions to Decision No. R24-0682, filed by Public Service Company of Colorado on October 14, 2024, are granted, in part, and denied, in part, consistent with the discussion above.

2. The exceptions to Decision No. R24-0682, filed by Atmos Energy Corporation on October 14, 2024, are granted, in part, and denied, in part, consistent with the discussion above.

3. The exceptions to Decision No. R24-0682, filed by Black Hills Colorado Gas, Inc. on October 14, 2024, are granted, in part, and denied, in part, consistent with the discussion above.

4. The motion for leave to file out-of-time exceptions to Decision No. R24-0682, filed by Durango Mountain Utilities, LLC ("DMU") on October 29, 2024, is granted.

5. The exceptions to Decision No. R24-0682, filed by DMU on October 29, 2024, are granted, consistent with the discussion above.

6. The Commission adopts the rules recommended in Decision No. R24-0682, in their entirety, except for the modifications identified in this Decision.

7. The Rules Regulating Gas Utilities in 4 *Code of Colorado Regulations* 723-4, attached to this Decision in legislative/strikeout format as Attachment A, and in final format as Attachment B, are adopted, and are available in the Commission's Electronic Filing System at:

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

8. Subject to a filing of an application for rehearing, reargument, or reconsideration, the opinion of the Attorney General of the State of Colorado shall be obtained regarding constitutionality and legality of the rules as finally adopted.

9. A copy of the final, adopted rules shall be filed with the Office of the Secretary of State. The rules shall be effective 20 days after publication in *The Colorado Register* by the Office of the Secretary of State

10. 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.

11. This Decision is effective upon its Issued Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
December 30, 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

ERIC BLANK

MEGAN M. GILMAN

TOM PLANT

Commissioners