

Decision No. C25-0132

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 24R-0192G

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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.

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**COMMISSION DECISION DENYING APPLICATION FOR  
REHEARING, REARGUMENT, OR RECONSIDERATION**

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Issued Date: February 25, 2025

Adopted Date: February 19, 2025

**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 Commissioner 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 Decision No. C25-0005, issued on January 6, 2025, the Commission addressed the exceptions to the Recommended Decision and adopted, with modifications, the rules established by the Recommended Decision.

4. On January 27, 2025, Public Service Company of Colorado (“Public Service” or the “Company”) filed an Application for Rehearing, Reargument, or Reconsideration (“Application for RRR”) to Decision No. C25-0005. Public Service requests that the Commission further revise the baseline used in the GPIM applicable to the Company from a three-year historical average measure to a current market measure. Public Service also asks the Commission to reset the maximum penalty or incentive caused the new GPIM to be a quarterly limit instead of an annual cap.

5. By this Decision, consistent with the discussion below, we deny Public Service’s Application for RRR.

#### **B. Gas Performance Incentive Mechanism**

6. Paragraph 4607(b) in the rules adopted by Decision No. C25-0005 sets forth the new symmetric sharing mechanism contemplated in § 40-3-120(2), C.R.S., as applicable to Public Service.

7. The GPIM benchmark gas rate defined in subparagraph 4607(b)(I) equals the average of the GPIM total gas cost for a given quarter in the previous three years divided by the GPIM total gas quantity for the same quarters in the previous three years. Subparagraph 4607(b)(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(b)(III) then defines the GPIM sharing amount to be four percent of the difference between the two rates defined in the previous two subparagraphs of the proposed rule multiplied by the actual total gas quantity purchased.

8. In its Application for RRR, Public Service states that it has continued concerns with a historical baseline, and requests that a benchmark comparing real-time purchases against published monthly prices as reported in industry trade publications, which it asserts is indicative of current market indices, be adopted instead of the three-year average set forth in subparagraph 4607(b)(I). Additionally, Public Service states it does not have an ability to influence the market, and it is not appropriate to subject the Company to a different benchmark in the Gas Rules than that applicable to the other investor-owned gas utilities (“LDCs”) in Colorado.<sup>1</sup> The Company requests that it and the other LDCs should be treated in a consistent manner. Otherwise, Public Service believes the adopted rules will be unlawfully discriminatory.

9. Public Service also takes aim at the justification for treating it differently than the other LDCs. In Decision No. C25-00005, the Commission noted that SB 23-291 directs the Commission to take into consideration the different sizes and ability of the utilities to implement the symmetrical incentive mechanism. And, in light of the concerns about unintended

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<sup>1</sup> Colorado Natural Gas, Inc. is excluded from the GPIM requirements by provisions in Rule 4607 as adopted by Decision No. C25-0005, whereas Black Hills Colorado Gas, Inc. and Atmos Energy Corporation are subject to the GPIM requirements set forth in paragraph 4607(a).

consequences raised by the utilities, the Commission decided to take a slower, more deliberate approach to rolling out the GPIM by applying the historical baseline only to utilities with more than 500,000 customers. Public Service argues that this approach is unclear, without a substantive rationale for treating the Company differently than the other gas utilities. Public Service asserts that to the extent the Commission believes that the Company's size means that it can influence the natural gas spot market, the Commission is incorrect. Public Service argues that no Colorado investor-owned gas utility can influence the gas commodity market, and that its size relative to the other utilities does not mean it has enhanced ability to implement the GPIM better than those utilities. Public Service therefore argues that all three Colorado gas utilities with more than 50,000 customers should operate under the same market-based benchmark.

10. Public Service raises four arguments in its Application for RRR contesting the adopted rules as unlawful. First, Public Service argues that there was no notice that the Company or any of the gas utilities would be treated differently than any of the others. Second, the Company argues that nothing in the record supports treating Public Service differently from the other utilities. Third, the Company argues that treating Public Service differently from the other utilities is unlawfully discriminatory under § 40-3-106(1), C.R.S. and certain case law. Fourth, Public Service argues that the adopted rules conflict with the SB 23-291 because they do not protect customers or "improve the utility's management of fuel costs."

11. Public Service ultimately requests that: "Rules 4602(h)<sup>2</sup> and 4607(a) and (b) be revised to delete the un-noticed additional language that is not supported by the record and that

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<sup>2</sup> Paragraph 3602(h) cross-references the disputed provisions in paragraphs 3607(a) and 3607(b). "The initial GPIM for utilities with more than 50,000 but less than 500,000 full service customers shall be established in accordance with paragraph 4607(a). The initial GPIM for utilities with more than 500,000 full service customers shall be established in accordance with paragraph 4607(b). Once established by application, the utility shall implement a GPIM through their GCA filings. Modifications to a GPIM shall be accomplished through an application filing separate from a GCA filing."

would create disparate and preferential regulatory treatment for certain Colorado LDCs, that unduly discriminates against Public Service.”

12. The Commission’s ability to adopt different GPIMs for different utilities is affirmed by § 40-3-120(2)(b), C.R.S., the statute that directs us to undertake this rulemaking. Although Public Service contends that no evidence supports different regulatory treatment for itself, that statute requires the Commission to “tailor the mechanisms to apply to different utilities based on a utility’s size or ability to implement the mechanisms.” In our view, Public Service’s larger sales volume potentially gives the Company more market leverage to implement alternative hedging and other mechanisms that may not be as readily available to smaller gas utilities, but once demonstrated could be extended. Likewise, Public Service has a larger sales and employee base to spread the fixed costs of developing new approaches in ways that the smaller utilities may not.

13. Public Service’s contention that the adoption of the provisions in GCA Rules applicable to the Company is unlawfully discriminatory under § 40-3-102 and -106, C.R.S., is also unpersuasive. The case law Public Service cites hold that the Commission cannot approve rates that discriminate between groups of customers. Critically, none of the cases address regulations that treat utilities differently. Furthermore, Public Service fails to provide support for its theory that the Commission cannot promulgate regulations that treat different utilities differently.

14. With respect to notice, Public Service alleges that the NOPR fell short of the requirement in the Administrative Procedure Act that a NOPR state “either the terms or the substance of the proposed rule or a description of the subjects and issues involved.” In making this argument Public Service overlooks that the NOPR repeated the provision in SB 23-291 directing the Commission to consider tailoring these rules based on utility size. The NOPR also highlighted

both how Atmos Energy Corporation argued for utility-specific GPIMs, and how Colorado Natural Gas, Inc. approved of the Commission's proposal to exclude utilities with fewer than 50,000 customers. In sum, the NOPR provided the terms, the substance, and a description of the issues involved.

15. Finally, we note, and as also explained in the Recommended Decision, that SB 23-0291 was enacted when a GPIM based on price indices was in place in the GCA Rules applicable to Public Service and yet the legislation required the Commission to conduct this new rulemaking to "establish mechanisms to align the financial incentives of an investor-owned electric or gas utility with the interests of the utility's customers regarding incurred fuel costs." This particular provision in SB 23-291 was a direct response to the sustained gas price increases during the last nine months of 2022, prompting legislators to address the frustration experienced by gas utility customers through very large and unpredictable bill increases, whereas the utilities were essentially held harmless financially.

16. Public Service may wish this Commission had developed more prescriptive rules for its management of fuel costs. But these rules are designed to provide an incentive for LDCs, including Public Service, to develop approaches to improve the utility's management of fuel costs. As a sophisticated company that engages the markets for natural gas, Public Service is well equipped to develop tailored approaches to do so. We reference some potential options for Public Service in Paragraph 12 of this Decision.

17. We therefore conclude that paragraph 4607(b) in the rules adopted by Decision No. C25-0005 properly fulfills the purpose of SB 23-291, aligning utility and customer incentives such that if there were large future changes in gas commodity prices, Public Service would do better financially, to a modest extent, when its customers did better financially, and vice versa.

**C. Maximum Sharing Amount**

18. Subparagraph 4607(b)(III)(C) sets a cap on aggregate GPIM sharing amounts for Public Service 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.

19. In its Application for RRR, Public Service largely repeats its arguments raised in exceptions to the Recommended Decision that set the GPIM cap at an amount equal to the equity portion of a 30 basis point return on the utility's rate base, measured on a 12-month rolling basis. Public Service asks that the 30 basis points instead be divided by 4 and the maximum sharing amounts be applied as a "firm cap" each calendar quarter.

20. In its Application for RRR, Public Service demonstrates how the "rolling-off" of penalties from previous quarters could result in incurred penalties or incentives being higher than the simple calculation of the equity portion of a 30 basis point return on its rate base, or roughly \$5 million.

21. Public Service argues that a quarterly cap set at 7.5 basis points, or \$1.25 million per quarter, will prevent quarter-over-quarter "flips" to have a cumulative impact exceeding the 30 basis point figure. Public Service also argues that a quarterly cap "allows for participation of all quarters" whereas the rolling average cap could cause quarters subsequent to capped levels not to accrue. Public Service further argues that the quarterly cap better aligns with the intent of the GPIM sharing mechanism and the cadence of GCA filings.

22. As an alternative to the 7.5 basis point quarterly cap, Public Service proposes a weighted quarterly cap to address the seasonality of gas purchases (and hence the seasonality of GPIM penalties or incentives) as addressed by the Commission in Decision No. C25-0005. Public Service suggests that the 30 basis points could be apportioned across the four quarters based

on purchase quantities. Public Service suggests that the apportionment could be reset each year based on purchased quantities reflected in its Gas Purchase and Deferred Balance Report. Public Service states that this would retain the 30-basis point “annual cap” but would implement it in a way that the highest caps on incentives or penalties would apply in the first and fourth quarters of each year (*i.e.*, the highest caps would apply in the heating season months).

23. We deny Public Service’s request to modify the cap on the GPIM incentives or penalties established by subparagraph 4607(b)(III)(C). We are unpersuaded by Public Service’s presentation of how the rolling-average approach in the adopted rules will result in an unintended maximum incentive or penalty resulting from the implementation of the GPIM. We continue to uphold the Recommended Decision that states: “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.”

## II. ORDER

### A. The Commission Orders That:

1. The Application for Rehearing, Reargument, or Reconsideration of Decision No. C25-0005, filed by Public Service Company of Colorado on January 27, 2025, is denied, consistent with the discussion above.

2. The Rules Regulating Gas Utilities, 4 *Code of Colorado Regulations* 723-4, contained in legislative format in Attachment A to this Decision and final format in Attachment B to this Decision, are adopted. The attachments are publicly 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](https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=24R-0192G)

3. The Opinion of the Attorney General of the state of Colorado shall be obtained regarding the constitutionality and legality of the rules as finally adopted. A copy of the final, adopted rules shall be filed with the Office of the Secretary of State. The rules shall be effective 20 days after publication in the *Colorado Register* by the Office of the Secretary of State.

4. This Decision is effective upon its Issued Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
February 19, 2025.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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Commissioners