

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

DOCKET NO. 00P-304G

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IN THE MATTER OF THE GAS PURCHASE PLAN OF PUBLIC SERVICE COMPANY OF  
COLORADO FOR THE GAS PURCHASE YEAR JULY 1, 2000 THROUGH JUNE 30, 2001.

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**COMMISSION DECISION DENYING EXCEPTIONS**

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Mailed Date: June 6, 2003  
Adopted Date: April 9, 2003

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**I. BY THE COMMISSION**

**A. Statement**

1. This matter comes before the Colorado Public Utilities Commission (Commission) for consideration of exceptions to Decision No. R03-154 (Recommended Decision). Staff of the Commission (Staff) filed exceptions to the Recommended Decision on

March 7, 2003. Public Service Company of Colorado (Public Service, or the Company) filed its response on March 31, 2003.

2. Now being duly advised, we deny Staff's exceptions and affirm the Recommended Decision.

**B. Statement of the Case**

3. In compliance with the Commission's Gas Cost Adjustment (GCA) Rules, 4 *Code of Colorado Regulations* (CCR) 723-8, Public Service, on June 1, 2000, filed its Gas Purchase Plan for the natural Gas Purchase Year of July 1, 2000 through June 30, 2001. On September 17, 2001, Public Service filed its Gas Purchase Report pursuant to the requirements of the GCA Rules. After the Commission set the matter for hearing, Public Service filed its direct testimony.

4. In its answer testimony, Staff challenged the prudence of Public Service's actions with respect to the Gas Purchase Year and recommended a disallowance of approximately \$6,000,000. Staff addressed three issues.<sup>1</sup> First, Staff claimed that Public Service improperly allowed former Western Natural Gas (WNG) customers to switch from transportation service to sales service, causing other sales service customers to incur higher gas costs. Second, Staff claimed that Public Service failed to cash-out transportation imbalances pursuant to the 25 percent threshold established in Public Service's tariff, resulting in increased rates to sales service customers. Finally, Staff argued that the Commission should lower the current transportation imbalance threshold of 25 percent to zero.

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<sup>1</sup> Staff initially raised one additional issue related to interruptible back-up supply for certain transportation customers, but withdrew this issue at hearing.

5. In its rebuttal testimony, Public Service argued that all three issues were outside the scope of a GCA prudence review proceeding. Furthermore, assuming the issues are within the scope of this docket, Public Service responded to each of Staff's arguments on the merits.

6. In the Recommended Decision, the Administrative Law Judge (ALJ) found that Staff's first issue, relating to the conversion of former WNG customers to sales service, was within the intended scope of the GCA prudence review proceeding. The ALJ ruled that Public Service's actions were prudent with respect to this issue. The ALJ then found that Staff's second and third issues relating to transportation imbalance cash-out provisions were outside the intended scope of a GCA prudence review proceeding.

7. In its exceptions, Staff argues that the Commission should find that the two issues related to transportation imbalance cash-outs are within the scope of a GCA prudence review proceeding, and find in favor of Staff on all three issues with respect to the merits, resulting in a disallowance of \$6,068,529 to Public Service. We deny Staff's exceptions in their entirety.

### **C. Discussion**

#### **1. Scope of the GCA Prudence Review.**

8. The Recommended Decision states that Staff's argument relating to conversion of WNG customers to sales service falls within the intended scope of the GCA prudence review proceeding. Staff's claim is that the conversion required Public Service to acquire additional gas supply at a point in time when gas prices were high, resulting in increased gas acquisition costs to be borne by all sales customers. This issue directly impacts GCA costs. The Recommended Decision then states that Staff's issues relating to transportation imbalance cash-out provisions are not within the intended scope of a GCA prudence review proceeding. The ALJ recognized that Staff's claim of an approximate \$3.1 million revenue deficiency associated with the

imbalance cash-outs may be a significant amount of money, and if cashed out the revenue would reduce the overall GCA gas rate. However, the decision found that the imbalances at issue are not directly related to GCA costs that should be offset by cash-outs, but are largely penalty measures designed to minimize imbalances. Similarly, the Recommended Decision rules that Staff's proposed reduction of the 25 percent tariff cash-out level is outside the scope of this docket because it addresses a transportation tariff issue related to incentives to minimize imbalances. The decision states that this issue should be addressed in a proceeding where transportation costs, along with all issues of customer class equity, are considered.

9. Staff argues that the two issues related to transportation imbalance cash-outs are within the intended scope of GCA prudence review proceedings. Staff states that since the GCA cost recovery mechanism was established as a derivative of a comprehensive rate case, a GCA proceeding is the most logical forum in which to address these issues.

10. Public Service responds that the transportation imbalance issues are not within the intended scope of a GCA prudence review proceeding. Public Service states that the Commission set forth the scope of this proceeding in Decision No. C01-1153 as being the reasonableness of the actual gas costs and upstream pipeline service costs incurred by Public Service during the Gas Purchase Year. The Company then states that this proceeding is limited to an evaluation of the prudence of the Company's decisions in procuring natural gas supplies and upstream pipeline services, and its gas purchasing practices as they impact the Gas Purchase Year.

11. Public Service argues that the Commission established GCA true-up and prudence review provisions where the utility has the burden of proof because of special circumstances

associated with expedited cost recovery under the GCA mechanism. The Company contends that this shift of the burden of proof to the utility applies only to the purchased gas costs recovered through the GCA, and that Staff's recommended disallowance for transportation imbalances relates exclusively to penalties under the transportation tariff. Public Service argues that the penalties do not compensate the Company for any gas costs incurred, but rather operate as a deterrent to certain actions (relating to gas imbalances) under the tariff. Public Service then contends that even though the recommended disallowance would ultimately affect the GCA rate, allowing any issue that implicates the level of sales revenues collected will bring virtually every utility management decision within the purview of the GCA prudence review. Public Service argues that Staff's recommended disallowance on this issue amounts to a re-allocation of costs between classes of customers, and should be addressed in a comprehensive rate proceeding where all facts concerning cost causation are considered.

12. We deny Staff's Exceptions regarding the scope of this proceeding. We first note, however, that we agree with the ALJ's rejection of Public Service's argument that the GCA prudence review should be limited only to specific gas purchasing decisions. The Recommended Decision discusses the application of the GCA rules, 4 CCR 723-8, regarding this issue. The decision states:

The GCA mechanism, 4 CCR 723-8 provides for pooled resources and pooled costs. The utility does not purchase GCA gas supply for any single customer nor does it directly charge an individual customer for specific gas supply purchases. Although Public Service's transportation tariffs contain provisions to charge individual customers for specific purchasing costs or index prices in unusual circumstances, the GCA is designed to pool costs to all customers. Thus, the GCA prudence review must address the overall level of GCA costs, and it cannot be limited only to specific purchasing costs or purchasing decisions.

13. We agree with this analysis. While Public Service did not file exceptions to the Recommended Decision, the Company, in its response to Staff's exceptions, reasserts its argument that the scope of the GCA should be limited to gas purchasing decisions. Public Service states: "*The decisions challenged by Staff as imprudent are not gas procurement decisions, or in any way affect the cost of actual gas costs or upstream pipeline service costs incurred by Public Service;*"<sup>2</sup> and "*Staff presents no evidence of imprudence on the part of the company as it relates to its gas purchase decisions or any of its actual gas costs incurred during the Gas Purchase Year*"<sup>3</sup> (emphasis added). We clarify here that the scope of the GCA is not limited to specific purchasing decisions, but includes decisions that affect the overall level of GCA costs.

14. The Recommended Decision found the issue concerning conversion of WNG customers to sales service to be within the intended scope of the GCA prudence review proceeding. Staff raised this issue based on the general argument that gas index prices were higher than the sales rate paid by WNG customers, thus potentially causing harm (*i.e.*, raising costs) to existing sales customers. Staff did not raise this issue based on a specific purchasing decision. Rather, Staff argued that the index price that Public Service used in gas purchasing was substantially higher than rates charged to the former WNG customers under sales service. We concur with the Recommended Decision that the primary issue raised by Staff here directly impacts GCA costs. The Recommended Decision appropriately clarifies that specific purchasing details could be used to identify the magnitude of a potential disallowance, but the scope is not necessarily limited to purchasing decisions.

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<sup>2</sup> Response, page 17

<sup>3</sup> Response, page 18

15. We further agree with the Recommended Decision that Staff's proposed \$3.1 million disallowance related to Public Service's failure to cash-out certain transportation imbalances is outside the intended scope of the GCA prudence review proceeding.<sup>4</sup> Staff based its recommended disallowance on tariffed cash-out provisions, which essentially allow for sales of gas to transportation customers at 125 percent of index price for under-deliveries, and for purchases of gas from transportation customers at 75 percent of index price for over-deliveries. Staff's issue is based on the penalty premium that would result from the cash-out. The ALJ correctly determined that the issue does not directly impact GCA costs. Rather, the cash-outs are largely penalty measures that provide an incentive to transportation customers to minimize imbalances. Staff did not raise the issue based on additional costs incurred by sales customers as a result of transportation customers' imbalances. Although the cash-out penalty amounts would affect gas sales *revenues* and result in reduced GCA rates, the issue is not directly related to GCA *costs* that should be offset by the penalty-based revenues. Further, the ALJ's decision explains that transportation tariffs explicitly allow a certain level of imbalance, and the \$3.1 million revenue stream represents only one component of a balance of several inter-class equity issues. The ALJ correctly determined that this issue should be addressed in a proceeding where all issues of equity between customer classes are considered.

16. Similarly, Staff's proposal to reduce the imbalance cash-out threshold from 25 percent to zero is outside the scope of this docket. Again, the issue here does not directly impact GCA costs. While gas sales revenues and GCA rates in the future could be impacted indirectly by reducing the cash-out threshold, this issue addresses the overall balance of costs

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<sup>4</sup> We note that the amount of the requested disallowance is large, but the amount of a proposed disallowance in and of itself is not relevant to whether the subject issue is within the scope of the proceeding.

between sales and transportation classes; it does not directly impact GCA costs. Moreover, Staff's suggestion does not concern the prudence of the Company's actions in the GCA review period at issue here. Rather, it is a suggestion that we change Public Service's tariff for the future. We agree with the Recommended Decision that such a suggestion should be considered, if ever, in a proceeding where the Commission can consider all issues of equity between customers.

17. We also agree with Public Service that Staff should normally have the burden of proof in cases involving the Company's compliance with tariffs. The GCA prudence review places the burden of proof on the utility. However, the GCA review proceeding is not a general rate case, where a public utility would normally have the burden of proof in a wide range of issues. We, therefore, agree with Public Service that the two issues related to transportation imbalances belong in a proceeding where Staff has the burden of proof. By this ruling we are not precluding parties from raising such issues in a rate case or other forum where the utility has the burden of proof, if the issue is raised in a manner appropriate for the scope of such a proceeding. We point out that the Commission may initiate show-cause proceedings, where Staff has the burden of proof, to address tariff compliance issues if a rate case is not applicable or does not address the matter in a timely manner.

18. We note that our ruling regarding the scope of the GCA prudence review here is limited to the specific issues, facts, and circumstances raised in this docket. The distinction made in this case is between decisions that affect the overall level of natural gas costs—which are within the scope of a gas prudence review—and those that implicate gas sales revenues instead of costs. An issue is not within the scope of a prudence review merely because it somehow affects gas sales revenues or the ultimate GCA rate.



**2. Merits of Converting WNG Customers to Sales Service:**

19. As discussed above, we agree with the Recommended Decision that the issue regarding conversion of WNG customers to sales service is within the scope of this docket. We further agree that Public Service's actions were prudent with respect to this issue.

20. Staff first argues that, in allowing the former WNG customers to switch to sales service on January 1, 2001, Public Service improperly waived the provision requiring 30 days' notice of termination of the contract as contained in its transportation tariff. Staff states that the tariff requires a 30-day notice period, and that Public Service does not have the authority to waive tariff requirements. Staff further states that waiver language in this portion of the tariff does not apply to the 30-day notice period. Public Service responds that the Recommended Decision correctly denies Staff's argument, ruling that the plain reading of the tariff gives Public Service the discretion to waive the 30-day requirement. Public Service states that the 30-day notice requirement was intended only to accommodate administrative needs, and the waiver language was designed to allow the Company to waive the notice requirement in this type of situation.

21. We agree with the Recommended Decision's ruling that the tariff allows Public Service the discretion to waive the 30-day notice period under the circumstances presented in this case. The tariff begins, "[u]nless otherwise mutually agreed ...," plainly indicating that the parties can agree to terms other than 30 days' notice. The tariff allows flexibility where the transportation customer needs to switch to sales service on short notice, which is exactly what happened in this case.

22. Next, Staff argues that Public Service's index-based gas purchase price was substantially higher than its GCA sales rate at the time the WNG customers were allowed to

switch to sales service, potentially causing other sales customers to pay higher costs. Public Service requires the transportation customers to keep on sales service for a minimum of one year, and projected that over that year the former WNG customers would pay the costs to serve them. Indeed, over the one-year term the WNG customers did pay for more than the cost to serve them, as found in the Recommended Decision. However, in its Exceptions Staff argues that the ALJ misapplied the Prudence Review Standard. Staff contends that Public Service's decision to convert the WNG customers to sales service was imprudent and unreasonable when Public Service made its decision in late December 2000, because gas prices at that time were extremely volatile and were climbing to unprecedented levels. Staff contends that Public Service should have sought Commission guidance on this issue by making an appropriate filing. Public Service responds that the ALJ correctly applied the Prudence Review Standard in considering the Company's forecast and one-year contract term, which demonstrate that its decision to allow the WNG customer conversion was prudent.

23. The GCA Prudence Review Standard is set forth in Rule 4 CCR 723-8-8:

For purposes of GCA recovery, the standard of review to be utilized by the Commission in assessing the action (or lack of action) of a utility in a specific Gas Purchase Year shall be whether the action (or lack of action) of a utility was reasonable in light of the information known, or which should have been known, at the time of the action (or lack of action).

24. We find that the ALJ properly applied this standard to the WNG customer conversion issue. The Recommended Decision found that: (1) Public Service had reasonably projected that the former WNG customers would pay at least the costs to serve them over a one-year term; and (2) Public Service contracted with these customers for a one-year minimum term. We agree with these findings. Further, we disagree with Staff's contention that PSCo's actions were not reasonable because gas prices were volatile and climbing to unprecedented levels. In

accordance with the Prudence Review Standard, we assess the merits of this issue based on whether Public Service's decision was reasonable in light of the information known, or which should have been known, at the time. The Recommended Decision found that Public Service acted prudently in its forecast of future gas prices, and in its consideration of other economic impacts such as upstream pipeline costs and the inclusion of deferred costs from a prior period in the rates to be paid by the former WNG customers. This forecast information, in conjunction with the one-year term, resulted in a reasonable and prudent decision to allow the WNG customer conversion.

25. After-the-fact results also demonstrate that Public Service's forecast was reasonable. Though a hindsight analysis is not appropriate for determining the prudence of a utility's actions under the Prudence Review Standard, a hindsight review should be used to determine whether ratepayers suffered any harm as a result of a utility's imprudent actions. In determining harm, Staff would artificially limit the period of inquiry to a shorter time frame in which only losses would be calculated. However, the relevant time frame in this case is the one-year period in which transportation customers were bound to sales service, because that is the time period over which Public Service could recoup any losses suffered when gas prices were high. Ratepayers in fact benefited from adding the transportation customers to sales service over the one-year period, demonstrating no cause for disallowance.

26. As for Staff's contention that Public Service should have sought guidance from the Commission, we note that such pre-approval is not required by the GCA Rules.

27. Further, we find that in allowing the WNG customers to convert to sales service, Public Service responded appropriately to avert a potential crisis. Public Service considered the

economic and operational facts and implemented a reasonable solution to minimize the risks of system supply failure by taking assignment of the WNG supply contracts. This decision by the Company provided greater system supply certainty and provided stable supply to the former WNG customers, while benefiting other sales customers.

28. Staff finally claims that the ALJ overlooked the tariff provisions requiring Public Service to impose on the shipper – that is, WNG – “any costs” incurred as a result of a prematurely terminated transportation agreement. We find this argument to be moot, since the former WNG customers did not impose any costs on other sales customers, as explained in the discussion above. We also find that Public Service’s interpretation of the tariff—that a shipper is responsible for only direct and immediate costs for facilities that may be incurred by the Company due to contract termination—to be more reasonable than Staff’s interpretation. Staff’s contention that Public Service should charge terminating customers for costs of future gas supply differentials is unreasonable, because no transportation customer would ever switch to sales service if it would thereby face such unknown and unlimited liability. As discussed above, both transportation customers and ratepayers benefited from the switch made by WNG.

#### **D. Conclusion**

29. For the reasons stated above, we deny Staff’s Exceptions. The Recommended Decision is affirmed in its entirety.

## **II. ORDER**

### **A. The Commission Orders That:**

1. The Exceptions filed by Staff of the Commission on March 7, 2003, are denied.

2. The 20-day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the Mailed Date of this Decision.

3. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
April 9, 2003.**

(S E A L)



ATTEST: A TRUE COPY

Bruce N. Smith  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

GREGORY E. SOPKIN

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JIM DYER

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Commissioners