

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24A-0561G

IN THE MATTER OF THE VERIFIED JOINT APPLICATION OF BLACK HILLS COLORADO GAS, INC. AND ROCKY MOUNTAIN NATURAL GAS LLC FOR A COMMISSION DECISION APPROVING QUALITY OF SERVICE PLANS

**RECOMMENDED DECISION GRANTING PARTIES’
JOINT MOTION TO APPROVE THE SETTLEMENT
AGREEMENT, APPROVING SETTLEMENT
AGREEMENT, VACATING HEARING AND ASSOCIATED
DEADLINES, AND CLOSING PROCEEDING**

Issued Date: May 20, 2025

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I. STATEMENT AND PROCEDURAL HISTORY

A. Statement

1. This Decision grants the parties’ joint motion to approve their settlement agreement; approves the parties’ settlement agreement; vacates the May 22-23, 2025 hearing and associated deadlines; and closes the proceeding.¹

B. Procedural History

2. On December 20, 2024, Black Hills Colorado Gas, Inc., doing business as Black Hills Energy (“Black Hills”) and Rocky Mountain Natural Gas LLC (“RMNG”) (collectively “Joint Applicants”) filed a joint application for approval of Quality of Service Plans (“QSP”) with testimony (“Application”).

3. On February 12, 2025, the Colorado Public Utilities Commission (“Commission”) deemed the Application complete and referred this proceeding to an ALJ by minute entry.

4. In addition to Joint Applicants, the following entities are parties to this proceeding: Colorado Public Utilities Commission Trial Staff (“Staff”) and the Colorado Office of the Utility Consumer Advocate (“UCA”) (collectively “the Parties”).²

5. On May 6, 2025, the Joint Applicants on behalf of the Parties filed a Joint Motion to Approve the Unanimous Settlement Agreement, to Modify Procedural Schedule, and for Waiver of Response Time (“Joint Motion to Approve”). The Joint Applicants also filed a Unanimous Settlement Agreement (“Settlement Agreement”). The Parties requested that all filed testimony and attachments be admitted to this Proceeding’s record.

¹ In reaching this Decision, the Administrative Law Judge (“ALJ”) has reviewed and considered all arguments and evidence filed into the record. Although this Decision does not include significant discussion of all the terms of the Parties’ settlement agreement, the ALJ has fully considered all relevant issues, including the impact on the public interest.

² Decision No. R25-0188-I (issued March 28, 2025).

6. On May 9, 2025, the Joint Applicants and UCA filed testimony in support of the Settlement Agreement. Staff did not file any Settlement Agreement testimony.

II. FINDINGS, ANALYSIS, AND CONCLUSIONS

A. Relevant Law

7. The Commission has broad constitutional and statutory authority to regulate public utilities, including jurisdiction to enforce statutes affecting public utilities.³ As relevant here, the Commission has authority to require utilities to meet service standards through a QSP based on its “very extensive and broad regulatory powers” over public utilities.⁴ Indeed, Colorado public utilities must provide service “as shall promote the safety, health, comfort, and convenience” of its customers and the public, and that is in all respects “adequate, efficient, just and reasonable.”⁵ The Commission may fix just and reasonable standards, practices, and measurements for public utilities to follow, as well as “adequate and serviceable standards” to measure the “quality . . . [of] service furnished or rendered by any such public utility.”⁶ QSPs are a mechanism for the Commission to do this on a case-by-case basis, considering the unique facts and circumstances relevant to a particular utility.

8. As far back as 1996, QSPs have served the purpose of safeguarding ratepayers from potential or actual degradation in service quality arising from a public utility’s merger with or acquisition of another company.⁷ Moreover, in 2019, the Commission agreed that “there is no

³ Colo. Const. art. XXV; §§ 40-1-103(1)(a)(I); 40-3-102; 40-7-101, C.R.S. See *Pub. Serv. Co. of Colo. v. Pub. Utilis. Comm’n*, 350 P.2d 543, 549 (Colo. 1960), *cert. denied*, 364 U.S. 820 (1960).

⁴ See *Pub. Serv. Co. of Colo.*, 350 P.2d at 549. See also Colo. Const. art. XXV; §§ 40-3-102, 40-7-101, C.R.S.

⁵ § 40-3-101(2), C.R.S.

⁶ § 40-4-108, C.R.S.

⁷ See *e.g.*, Decision No. C96-1235 (mailed November 29, 1996) in Proceeding No. 95A-531EG.

Commission ‘policy’ supporting continuous improvement or positive financial incentives in QSPs.”⁸

9. As with the Commission’s exercise of any power granted to it, when determining the nature and scope of a QSP, the Commission must give the public interest “first and paramount consideration.”⁹ In addition, § 40-2-108(3), C.R.S., expresses the Colorado General Assembly’s intent that in all of its work, the Commission consider how best to provide equity, minimize impacts, and prioritize benefits to disproportionately impacted (“DI”) communities and address historical inequities, as possible.¹⁰

10. The proponents of an order bear the burden of proof by a preponderance of the evidence that their requested relief should be granted.¹¹ This standard requires the fact finder to determine whether the existence of a contested fact is more probable than its nonexistence.¹² The preponderance of the evidence standard requires substantial evidence, which is such relevant evidence as a reasonable person’s mind might accept as adequate to support a conclusion.¹³

11. The Commission encourages settlement of contested proceedings.¹⁴

12. The ALJ assesses the Parties’ proposed QSP and requested relief with these principles and legal standards in mind.

⁸ Decision No. C19-0728, ¶ 17 (mailed September 3, 2019) in Proceeding No. 18A-0918G.

⁹ *Pub. Serv. Co. of Colo.*, 350 P.2d at 549.

¹⁰ *See* § 40-2-108(3)(a)(II), C.R.S.

¹¹ § 24-4-105(7) C.R.S.; Rule 1500 of the Commission’s Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (“CCR”) 723-1.

¹² *Swain v. Colorado Dep’t of Revenue*, 717 P.2d 507, 508 (Colo. App. 1985).

¹³ *City of Boulder v. Pub. Utilis. Comm’n.*, 996 P.2d 1270, 1278 (Colo. 2000), quoting *CF&I Steel, L.P., v. Pub. Utilis. Comm’n.*, 949 P.2d 577, 585 (Colo. 1997).

¹⁴ Rule 1408(a), 4 CCR 723-1.

B. Background

13. Black Hills is a natural gas utility that provides natural gas service to approximately 200,000 residential, commercial, industrial, and agricultural gas customers in Colorado.¹⁵ RMNG is a natural gas utility is an intrastate transmission pipeline that does not provide service directly to end users.¹⁶ The Joint Applicants implemented their five-year QSP on January 1, 2020, in compliance with Decision No. C19-1040.¹⁷ The Joint Applicants' proposed QSP sets forth certain quality of service metrics, annual goals, and negative financial incentives if the Joint Applicants do not meet their performance standards in the form of bill credits to customers.¹⁸

14. Staff represents the interests of the Commission overall. In its intervention, Staff raised four distinct concerns with Joint Applicants' proposed QSP: (a) whether the Commission should consider the joint application since Black Hills and RMNG serve different customers with different needs; (b) whether Black Hills obtained adequate stakeholder input for the QSP's metrics, performance goals, and negative financial incentives; (c) whether Black Hills proposed metrics and negative financial incentives sufficiently incorporated equitable access to DI communities, and whether they fairly represented the impact poor performance imparts to all customer classes; and (d) whether the proposed QSP complied with past Commission decisions and/or the United States Department of Transportation Pipeline and Hazardous Materials Administration Pipeline Safety Regulations.¹⁹ In addition, Staff listed a general concern for any other potential issue that would be in the public interest.

¹⁵ Hearing Exhibit ("HE") 100 at. 4-5.

¹⁶ HE 105 at 4.

¹⁷ *Id.* at 1.

¹⁸ *Id.*; *see also* Decision No. C19-1040.

¹⁹ *See* Staff's Intervention at pgs. 2-3.

15. The UCA represents the public interest in Commission proceedings.²⁰ In its intervention, UCA raised four distinct concerns with Joint Applicants' proposed QSP: (a) whether the proposed QSP's negative financial incentives must be increased for inflation since 2020; (b) whether the proposed QSP metric categories continue to be relevant; (c) whether additional metrics should be added to the proposed QSP; and (d) whether the proposed QSP metrics should be further adjusted. UCA also listed a general concern for any other potential issue.

C. Jurisdictional Findings

16. The Joint Applicants are regulated entities subject to the Commission's jurisdiction and authority under title 40 of the Colorado Revised Statutes.²¹ This Proceeding pertains to Joint Applicants establishing service standards and measurements that they will follow and which will measure the Joint Applicants' service quality. Consequently, the ALJ finds that the Commission has jurisdiction over this matter.²²

III. UNANIMOUS SETTLEMENT AGREEMENT

17. The Parties agree that the Application²³ should be approved with some modification. These modifications include but are not limited to the items discussed below. The Parties also agree that all filed testimony and attachments should be included in the Proceeding's record.²⁴

18. The Parties intend for the Settlement Agreement to be a comprehensive resolution to this Proceeding that settles all relevant issues.²⁵ The Parties believe that approval of the

²⁰ C.R.S. § 40-6.5-104(1).

²¹ Colo. Const. art. XXV; §§ 40-1-103(1)(a)(I), C.R.S.

²² See Section 2(A) above.

²³ HE 100.

²⁴ See also Rule 1403(a), 4 CCR 723-1.

²⁵ See HE 104 at 2.

Settlement Agreement is in the public interest.²⁶ The Settlement Agreement includes provisions related to the QSP's term, removing rolling averages for determining whether a negative financial incentive is imposed, annual QSP reporting dates, the QSP's intent, and negative financial incentive amounts.²⁷ The Settlement Agreement also includes reporting requirements with no associated negative financial incentives.

A. QSP Term

19. The Joint Applicants initially sought a five-year term for the QSP.²⁸ Both Staff and UCA recommended a three-year term.²⁹ The Parties now propose that the QSP's term will run from January 1, 2025 to December 31, 2027.³⁰ The Joint Applicants will convene a meeting with interested parties six months before the end of the QSP to discuss any updates to metrics or performance goals. The Joint Applicants reserve the right to argue that a QSP is no longer necessary in all future filings.³¹

B. Rolling Averages

20. The Joint Applicants initially proposed a three-year rolling average to determine whether a negative financial is imposed.³² Both Staff and UCA recommended that metric performance be defined as actual performance during a single calendar year and not a multi-year rolling average.³³ The Parties now propose that the Joint Applicants will utilize the annual actual performance to determine whether the incentive is imposed.³⁴

²⁶ *Id.*

²⁷ *Id.* at 3-8.

²⁸ HE 100 at 1.

²⁹ *See* HE 300 at 5 and HE 200 at 3.

³⁰ *Id.* at 3.

³¹ *Id.*

³² HE 100 at 2.

³³ *See* HE 300 at 5 and HE 200 at 4.

³⁴ HE 104 at 3.

C. Filing Dates

21. The Joint Applicants initially proposed to report QSP results annually on May 15 for the prior year's data.³⁵ Staff requested that the QSP include an alternative annual reporting date of April 1.³⁶ The Parties now propose that the Joint Applicants will submit the annual QSP reporting by April 1 of the year following the measurement period, or the year following the calendar year in which the metrics were measured.³⁷

D. QSP Intent

22. The Parties agree that the intent of the QSP is to ensure no degradation of service.³⁸

E. Black Hills' QSP Metrics³⁹

23. In the Joint Applicants' proposed QSP, Black Hills included five QSP metrics with negative financial incentives, three of which were safety-related and two of which were related to adequate service.⁴⁰ All five included a negative financial incentive of \$22,500.⁴¹ Both Staff and UCA advocated for higher negative financial incentive amounts, and UCA recommended that the 2025 Denver Metropolitan Statistical Area Consumer Price Index be used for this analysis.⁴² The Parties now propose a negative financial incentive of \$40,000 for most metrics and a \$57,600 incentive for the reliability-outage frequency metric, with the incentive amounts being derived in part from UCA's requested inflation adjustment.⁴³ The negative financial metrics will be provided

³⁵ HE 100 at 2.

³⁶ See HE 300 at 5.

³⁷ HE 104 at 4.

³⁸ *Id.*

³⁹ The analysis in Section III does not include all aspects of the Joint Applicants' proposed QSP or all the details of the Settlement Agreement's terms.

⁴⁰ HE 100 at 2.

⁴¹ *Id.*

⁴² See HE 300 at 5 and HE 200 at 14-15.

⁴³ HE 201 at 6.

through bill credits to be paid at various times.⁴⁴ The Parties all agreed to the following adjusted metrics and negative financial incentive amounts:

QSP Metric	Annual Average Goal	Negative Financial Incentive
Safety – Damage Prevention	No more than 2.5 pipe hits per 1,000 locates	\$40,000
Safety – Emergency Response Time	No less than 97% responded to within 60 minutes	\$40,000
Safety – Grade 2 Leak Repair Time	No more than 50.0 days average repair time	\$40,000
Adequate Service – CSAT Survey Results – Contact Center Interaction, Field Interaction and Relationship Survey	No less than 4.4 out of 5.0 results	\$40,000
Adequate Service – On-time rate for Non-Emergency Calls	No less than 87% responded to within appointment time	\$40,000
Reliability – Outage Frequency	No unplanned outages impacting 25 or more customers	\$57,060

24. The Parties also agree to two metrics with no associated negative financial incentive. First, Black Hills’ annual report will retain the existing adequate service metric for average time to answer customer calls with a performance goal of no more than a 40-second answer time for informational purposes.⁴⁵ Second, Black Hills will investigate and report metrics on a DI/Non-DI community basis.⁴⁶

F. RMNG’s QSP Metrics

25. In the Joint Applicants’ proposed QSP, RMNG included three QSP metrics with negative financial incentives, two of which were safety-related and one of which was related to reliability of service.⁴⁷ All three included a negative financial incentive of \$5,000.⁴⁸ Both Staff and

⁴⁴ HE 104 at 5 and 6.

⁴⁵ HE 104 at 6.

⁴⁶ *Id.*

⁴⁷ HE 100 at 3.

⁴⁸ *Id.*

UCA advocated for higher negative financial incentive amounts, and UCA recommended that the 2025 Denver Metropolitan Statistical Area Consumer Price Index be used for this analysis.⁴⁹ The Parties now propose a negative financial incentive of \$6,340 for all metrics, with the incentive amount being derived in part from UCA’s requested inflation adjustment.⁵⁰ The Parties all agreed to the metrics and negative financial incentive amounts:

QSP Metric	Annual Average Goal	Negative Financial Incentive
Safety – Damage Prevention	Less than 1.0 pipe hits per 1,000 locates	\$6,340
Safety – Greenhouse Gas Emissions Reduction	Capture 90% or greater of planned pipeline blow downs by volume	\$6,340
Reliability – Outage Frequency	Less than 1.0 outages per year	\$6,340

IV. CONCLUSION

26. The ALJ finds that the preponderance of the evidence establishes that the above Settlement Agreement terms reflect a just and reasonable compromise among the Parties; are in the public interest; and are just and reasonable.⁵¹ For all these reasons, and because these provisions are unopposed, the ALJ grants the Parties’ Joint Motion to Approve and approves the Settlement Agreement. As such, the ALJ recommends that Application be granted as modified by the Settlement Agreement.

27. In accordance with § 40-6-109, C.R.S., the ALJ transmits to the Commission the record in this Proceeding along with this written recommended decision and recommends that the Commission enter the following order.

⁴⁹ See HE 300 at 5 and HE 200 at 14-15.

⁵⁰ HE 201 at 6.

⁵¹ See §§ 40-3-101(2); 40-2-108(3)(b); 40-4-108, C.R.S.

V. ORDER**The Commission Orders That:**

1. The Joint Motion to Approve the Unanimous Settlement Agreement (“Settlement Agreement”), to Modify Procedural Schedule and for Waiver of Response Time filed May 6, 2025 is granted.

2. The Settlement Agreement, attached to and incorporated in this Decision as Attachment A, is approved.

3. The above-captioned Application seeking approval of Black Hills Colorado Gas, Inc.’s and Rocky Mountain Natural Gas LLC’s quality of service plan, as amended by the Settlement Agreement, is granted.

4. All parties must follow the terms of the Settlement Agreement.

5. All filed testimony and attachments are admitted in this Proceeding.

6. The evidentiary hearing in the above captioned proceeding, scheduled for May 22-23, 2025, is vacated. All remaining procedural deadlines are vacated.

7. Proceeding No. 24A-0561G is closed.

8. This Recommended Decision shall 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.

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

a. 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 shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b. 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 administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

10. If exceptions to this Decision are filed, they shall 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

KELLY A. ROSENBERG

Administrative Law Judge

ATTEST: A TRUE COPY

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

Rebecca E. White,
Director