

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22AL-0348G

IN THE MATTER OF ADVICE LETTER NO. 584 FILED BY ATMOS ENERGY CORPORATION TO REVISE ITS COLORADO P.U.C. NO. 7 TARIFF TO PLACE INTO EFFECT CHANGES TO THE COMPANY’S ANNUAL REVENUES AND RECOVERY OF RATE CASE EXPENSES, TO BECOME EFFECTIVE SEPTEMBER 5, 2022.

**COMMISSION DECISION GRANTING, IN PART, AND
DENYING, IN PART, EXCEPTIONS TO
RECOMMENDED DECISION NO. R23-0181 AND
REQUIRING COMPLIANCE FILING**

Mailed Date: May 4, 2023
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I. BY THE COMMISSION

A. Statement

1. On August 5, 2022, Atmos Energy Corporation (Atmos or Company) filed Advice Letter No. 584 with tariff sheets for its base rate schedules for natural gas utility service to Colorado customers.

2. On March 15, 2023, Administrative Law Judge (ALJ) Conor F. Farley issued Recommended Decision No. R23-0181 (Recommended Decision) permanently suspending the effective date of the tariff sheets filed with Advice Letter No. 584. The Recommended Decision establishes modified base rates and authorizes the Company’s System Safety and Integrity Rider (SSIR) to continue for an additional two years through 2025.

3. This Decision addresses the exceptions to the Recommended Decision filed by Atmos, Staff of the Colorado Public Utilities Commission (Staff), the Colorado Office of the

Utility Consumer Advocate (UCA), and Energy Outreach Colorado (EOC). After considering the filed exceptions, the responses thereto, and the evidentiary record in this Proceeding, we grant, in part, and deny, in part, the exceptions. We further uphold the Recommended Decision except as modified by this Decision.

B. Background

4. Through Advice Letter 584, Atmos sought a net annual increase in its overall annual base rate revenue of some \$7.7 million. The Company also sought to roll into base rates approximately \$56.75 million of costs presently recovered on an annual basis through its SSIR. The cost of service study (COSS) supporting the proposed revenue requirement used a test year ending March 31, 2022, a year-end valuation of rate base, and a weighted average cost of capital (WACC) of 8.17 percent. Atmos' proposed capital structure included an equity component of about 61 percent and an authorized return on equity (ROE) of 10.95 percent. Atmos also requested a five-year extension of its SSIR, through 2028.

5. Advice Letter No. 584 further included the Company's base rate tariff schedules with new base rates calculated using an update to Atmos' class cost of service study (CCOSS). Atmos further proposed to mitigate the impact of the updated cost allocations to the Residential rate class so that Residential customers would see a typical bill increase of 8 percent to 9 percent and non-Residential rates would remain largely unchanged.

6. By Decision No. C22-0514, issued September 1, 2022, the Commission set the tariff pages filed with Advice Letter No. 584 for hearing pursuant to § 40-6-111(1), C.R.S., and referred this Proceeding to an ALJ.

7. The Recommended Decision rejects the base rates Atmos filed with Advice Letter 584 and establishes alternative base rates the ALJ determines are just and reasonable.

8. With respect to Phase I-related findings and directives, Atmos' new base rates would be based on a revenue requirement that reflects a WACC of 7.0 percent, with a range for the authorized ROE extending from 9.3 percent to 9.6 percent and a range for the equity component of the Company's capital structure extending from 55 percent to 58 percent. The base rate revenue requirement also would reflect a test year ending March 31, 2022, as proposed by the Company, but with a 13-month average valuation for the associated rate base. The Recommended Decision rejects the Company's proposed \$1.1 million in annual depreciation expenses and authorizes recovery of actual rate case expenses, capped at \$650,000 and amortized over three years with no return.

9. With respect to Phase II-related findings and directives, the Recommended Decision requires an updated CCOSS without the minimum distribution system (MDS) methodology for the allocation of costs to the Company's rate classes. The Recommended Decision also maintains the current levels of the Company's monthly service and facilities (S&F) charges.

10. The Recommended Decision further authorizes an additional two years for the Company's SSIR, through 2025. The ALJ indicates his expectation that all high-risk projects would be completed within the two years.

11. On April 4, 2023, Atmos, Staff, UCA, and EOC filed exceptions seeking to reverse or modify portions of the Recommended Decision. Notably, Atmos explains in its exceptions that if the Recommended Decision were adopted by the Commission without modifications, the result would be lower base rates to customers from those currently being charged. The Recommended

Decision directed Atmos to include in its exceptions filing an updated calculation of the base rate revenue requirement using the Company's COSS, an updated COSS, updated calculations of the General Rate Schedule Adjustment (GRSA) intended to recover certain costs in addition to the costs recovered through the established base rates, and corresponding bill impacts, all reflecting the findings and directives made in the Recommended Decision.

12. On April 11, 2023, responses to the exceptions were filed by Atmos, Staff, and UCA.

C. Discussion

13. We have examined the Recommended Decision in the broad context of guiding regulatory principles and reviewed the array of decisions the ALJ applied as the trier of the facts in this Proceeding. We conclude that the Recommended Decision, with only certain modifications, results in the proper balance between customer and investor interests. We likewise find the result of the ALJ's rulings in this Proceeding, as modestly revised by this Decision, to be fair and just.

1. Rate Base Valuation

a. Recommended Decision

14. The Recommended Decision adopts a 13-month average for determining rate base. In arriving at this conclusion, the ALJ cites the Commission:

In previous decisions, the Commission has stated that in most cases average rate base more accurately reflects the relationship between test year investments, revenues, and expenses than a year-end rate base. However, the Commission also has acknowledged in prior decisions that the use of year-end rate base may be proper in special circumstances, for example, to combat some potential sources of attrition beyond control of the Company, such as growth in plant, especially plant that is non-revenue producing[.]¹

¹ Decision No. C93-1346 issued in Proceeding No. 93S-001EG on October 27, 1993 at ¶ 39.

15. Additionally, the ALJ finds that the Commission has pointed to the existence of inflation and capital growth beyond the control of the utility as potential additional justifications for using the year-end method of calculating rate base.²

16. With this guidance, the ALJ finds that Atmos has not satisfied its burden establishing circumstances that justify a year-end rate base valuation. The ALJ further finds that Atmos did not rely on inflation as a basis in arguing that the Company is suffering earnings attrition and the Company recovers SSIR expense in full and non-SSIR growth is within control of the Company.

b. Exceptions

17. Atmos contends in its exceptions that the 13-month average rate base methodology adopted by the Recommended Decision ignores both evidence in the record in this Proceeding and Decision No. C22-0642 in Proceeding No. 22AL-0046G, the recently concluded gas rate case of Public Service of Colorado (Public Service). Atmos argues that its case parallels the Public Service case and the same rationale for the use of a year-end rate base applies: a year-end valuation more accurately and completely incorporates into rates investment that is used and useful, reduces regulatory lag, and allows the Company an opportunity to earn its authorized rate of return. Atmos also references Public Service's 2019 Phase I electric rate case, Proceeding No. 19Al-0268E, in which the Commission authorized the use of an average rate base for determining base rate revenue requirements but also included a non-historic current test year with some \$5 billion in investment. Atmos contends that in their testimony Staff and UCA misconstrued prior Commission decisions, and that prior rate case precedent actually supports year-end rate base methodology.

² Recommended Decision at ¶ 59.

18. Atmos argues that it should be treated consistently with other utilities and maintains that the 13-month average rate base methodology does not allow it the opportunity to earn its authorized return. Specifically, the Company maintains that a 13-month average rate base excludes some \$24 million investment that has been in service for more than a year and that neither Staff nor UCA challenge as plant in service as of March 31, 2022.

19. Atmos also notes that while the Recommended Decision states the Company does not rely on inflation as a basis for its earnings attrition argument, there is substantial evidence describing the current economy as “an inflationary environment” with “increasing inflation,” which drive increased costs. Atmos states that the Commission has previously found a year-end rate base to be appropriate based on economic conditions of attrition beyond the control of the utility, inflation, and growth.

c. Responses

20. In response to Atmos’ request in its exceptions for the valuation of rate base to be made at the end of the test year, Staff disagrees that Atmos is suffering earnings attrition that would warrant a year-end valuation of rate base and that any earnings attrition has resulted from increased capital expenditures because of higher than budgeted growth, public improvement projects, and other non-SSIR system integrity projects that the Company could have addressed had it filed a rate case earlier. Therefore, Staff argues, any earnings attrition has been within the control of the Company.

21. Staff also argues that average rate base better represents plant being placed into and taken out of service over the test year, while year-end is limited to a snapshot of plant at one point in time, which can create an incentive to maximize the value of that data point.

22. Staff disagrees with the applicability of the Commission's decision in Public Service's 2022 gas rate case, arguing that the decision in that case was based on the type of investments in Public Service's historic test year and a WACC and authorized ROE that were relatively lower than what may be authorized in this Proceeding.

23. UCA responds to Atmos exceptions addressing rate base valuation. UCA argues that the use of average rate base is supported by the regulatory matching principle of maintaining the relationship between investments, revenues, and expenses and citing Atmos witness Christian's agreement at hearing that the approved test period rate base methodology should adhere to the matching principle. UCA therefore contends that the evidentiary record supports the Recommended Decision's approval of a 13-month average rate base.

24. UCA disagrees that the approval of a 13-month average rate base methodology is "at odds" with recent Commission decisions. UCA notes that for at least 23 years, the Commission has authorized a 13-month average rate base for Atmos and disagrees that the two decisions referenced by Atmos support a 13-month average rate base in this proceeding. UCA argues that the Commission's decision in Public Service's 2022 gas rate case³ was specific to the evidentiary record of that proceeding, and in its 2019 decision, the Commission wrote that "using a 13-month average rate base serves to increase the precision of the rate base and best adheres to the matching principle."⁴

25. Like Staff, UCA disagrees with Atmos' assertion that its earnings attrition is beyond its control, contending that Atmos failed to substantiate the reason for its under earnings nor explain the large attrition in March 2022. Furthermore, although regulatory lag can result in under

³ Proceeding No. 22AL-0046G.

⁴ Proceeding No. 19AL-0268E, Decision No. C20-0096 at ¶ 70.

earnings, UCA maintains that regulatory lag benefits ratepayers, as the Commission has acknowledged. Finally, UCA asserts that the continuation of the SSIR will allow Atmos to mitigate regulatory lag.

26. Finally, UCA argues that Atmos failed to provide justification of a year-end rate base and raised the issue of inflation in its Exceptions. This was contrary to the Recommended Decision's finding that "As to inflation, Atmos does not rely on it as a basis for its attrition argument."⁵

d. Findings and Conclusions

27. With respect to the calculation of the value of the rate base by which the Company's authorized return is multiplied for the calculation of base rate revenue requirements in the COSS, we conclude that Atmos did not provide compelling evidence to sway from the ALJ's application of the 13-month average convention for the selected test year. The ALJ reasonably referred to prior Commission guidance as well as the fact that an average test year valuation has been applied in Atmos rate cases for at least 23 years. We also find the ALJ accurately determined that Atmos did not sufficiently justify that it does not have control over its own expenditures so that it may earn a return on rate base valued at the end of the selected test year.

28. We also note that, as UCA argues, the equity ratio portion of the capital structure is relatively high when compared to other utilities in Colorado and across the country. We find that the capital structure can act as a balancing mechanism to other facets of a rate case, and as mentioned above, must be contemplated in the context of the broad and competing consumer and investor interests at play. While we discuss the specifics of capital structure below, we conclude

⁵ Recommended Decision, ¶ 60.

here that the ALJ's finding of a relatively high equity ratio balances the use of average rate base, and results in just and reasonable rates from a wholistic perspective and given the various regulatory principles that guide this Commission's decision-making. Accordingly, for those aforementioned reasons, we reject Atmos' request for exceptions with respect to calculating the value of the test year at year end for the purpose of calculating returns in the Company's base rate revenue requirement.

2. Depreciation

a. Recommended Decision

29. The Recommended Decision adopts the use of Atmos' proposed depreciation rates, as modified by Staff, for the derivation of the depreciation expense to be reflected in the Company's base rate revenue requirement. However, the ALJ further finds that Atmos had not carried its burden with respect to an adjustment of \$1.1 million to the depreciation expense included in the COSS.

b. Exceptions

30. In its exceptions, Atmos argues that the depreciation expense for the selected test year increased should be applied to include known and measurable investments, and requests that the Commission set aside the ALJ's rejection of the Company's depreciation expense adjustment. Instead, Atmos contends, the Commission should approve Atmos' calculation of depreciation expense regardless of the methodology approved for the valuation of the Company's test year rate base. Atmos further contends that the investments made in the test year were not challenged as imprudent and that those investments are used and useful in serving its customers, but that the

Recommended Decision's denial of adjusted depreciation expense means that the Company is prevented from recovering the costs of those investments through base rates.

31. Additionally, Atmos contends in its exceptions that the Company accepted Staff's proposal to accelerate depreciation in certain accounts, but the ALJ's rejection of its adjustment to the test year depreciation expense means that about half of Staff's recommended modification will not be reflected in rates.

32. Atmos further objects to the finding that "direct and rebuttal testimony do not provide sufficient explanation for the proposed adjustment" and that Atmos' witness' oral testimony on redirect at hearing "was insufficiently clear."⁶

c. Responses

33. In response to Atmos' exceptions related to depreciation expenses, UCA contends that the \$1.1 million adjustment should be denied because the regulatory principle of matching requires that depreciation expense calculation match the approved return on rate base methodology. UCA notes that Atmos acknowledges this principle when the Company requests that the Commission approve its depreciation expense calculation "regardless of the rate base methodology approved."

d. Findings and Conclusions

34. We find good cause to grant Atmos' exceptions related to the Recommended Decision's rejection of the adjustment to the annual depreciation expense. We agree with the Company that its adjustment to the annual depreciation expense in the COSS properly accounts for the recovery of the costs of the investments used to provide service when the new base rates

⁶ Proceeding No. 19A-0425E, Decision No. R20-0144 ¶ 29.

are in effect. We further agree with Atmos that when establishing rates, the Commission considers both the return “on” rate base, calculated by multiplying the return or WACC to the determined value of the rate base as discussed above, and the return “of” the rate base as achieved through the annual depreciation expense reflected in the COSS.

35. In this Proceeding, upon the examination of the numerous and variable inputs and assumptions required to complete the COSS and to establish base rates, we reject the UCA’s rationale for objecting to Atmos’ proposed depreciation adjustment based on the “matching principle.” As stated above, our decision to adopt the 13-month average approach for calculating the value of the test year rate base is supported, in part, on the relatively high range ultimately adopted for the equity component of the Company’s capital structure. Our findings and directives related to the calculation of the return on rate base in the COSS combine with our findings on the amount of depreciation expenses also reflected in the COSS in the overall determination of just and reasonable rates.

36. We also note that Atmos suggested in its Direct Testimony that the Company’s depreciation expenses in this Proceeding not be reduced to reflect longer lives for certain assets considering Colorado legislation and potential uncertainty regarding the future of infrastructure investments.⁷ In light of the potential outcomes of this case if the Recommended Decision is adopted, or if certain of Atmos’ exceptions to that decision are granted as demonstrated in the attachment to Atmos’ exceptions, we also find it reasonable to adopt the higher level of depreciation expenses calculated upon granting Atmos’ request to adjust its depreciation expense by approximately \$1.1 million. The adjusted level of annual depreciation expenses better aligns

⁷ Hearing Exhibit 101 at 16:23-17:5 (Direct Testimony of Mr. Armstrong).

with state policies related to the depreciation of gas utility investments⁸ and may be reasonably reflected in the new level of base rates that will take effect as a result of this Proceeding.

3. Capital Structure

a. Recommended Decision

37. The Recommended Decision authorizes a range of 55 to 58 percent for the equity component in the Company's capital structure and removes from the capital structure debt resulting from Winter Storm Uri in 2021. The ALJ concludes that the authorized equity range is sufficient for Atmos to maintain its credit rating and access debt markets at the lowest reasonable cost, while generating just and reasonable rates for ratepayers.

b. Exceptions

38. In its exceptions, UCA recommends that the Commission adopt a capital structure in the COSS that reflects the Company's actual capital structure as of March 2022: 53 percent equity and 47 percent debt. The amount of debt at that time includes some \$800 million associated with Winter Storm Uri.

39. In general terms, UCA contends that in the Recommended Decision, the ALJ contradicts his own capital structure findings and conclusions.⁹ UCA maintains that an equity ratio of 45 to 55 percent is sufficient to maintain financial integrity.

40. UCA specifically argues that the ALJ erred in excluding from Atmos' capital structure the debt incurred as a result of Winter Storm Uri. UCA contends that because Atmos admits that the debt was medium term (two-year maturity), and securitized by a Texas state agency

⁸ § 40-3.2-108(4)(c)(XII), C.R.S.

⁹ Recommended Decision ¶ 93.

before the end of 2022, the total amount of debt is speculative and should not be used as a basis to authorize a capital structure that is significantly higher in equity.

41. If the Commission determines that a range of equity is appropriate, UCA recommends a range of 52 to 55 percent, consistent with what was authorized in Proceeding No. 22AL-0046G, Public Service of Colorado's most recent gas rate case.

c. Response

42. Atmos responds to UCA's requests related to capital structure by arguing that including the Winter Storm Uri debt is central to the UCA's argument, but that the Recommended Decision was correct in excluding such debt because it was for gas purchased for customers in other states.

43. Atmos further argues that an equity range of 55 to 58 percent is important for the Company to maintain its current credit rating and access to capital markets at favorable rates in an inflationary environment that could exacerbate earnings attrition beyond the Company's control. Atmos maintains that the result of the Recommended Decision is a revenue decrease and an overall 55 basis point decrease in the Company's authorized rate of return, so the 55 to 58 percent equity range is important for the Company to maintain its financial health.

d. Findings and Conclusions

44. We reject UCA's request for exceptions on the issue of capital structure. Consistent with the discussion above, capital structure is one of many decision points in a rate case proceeding—one that must be considered wholistically in the broader context of overall revenue requirements and the competing interests of a utility's customers and its investors.

45. While the range of the equity ratio component of the authorized capital structure is relatively high when compared to Colorado and national gas utilities, as explained above, the authorized capital structure as determined by the ALJ reasonably balances the competing interests of customers and investors, and leads to just and reasonable rates.

46. We further agree with the Recommended Decision that there is no basis to include the debt Atmos incurred to finance its Winter Storm Uri expenses when establishing the Company's capital structure, because that was an extraordinary event in every sense, and does not represent the Company's long-term capital structure.

4. Rate Case Expenses

a. Recommended Decision

47. The Recommended Decision authorizes recovery of rate case expenses up to \$650,000, amortized over three years, with no return. The ALJ commended Atmos for controlling rate case expenses in this proceeding, particularly in comparison with recent rate cases. The ALJ also rejected UCA's contention that Atmos failed to provide proper notice for its requested recovery.

b. Exceptions

48. UCA raises three challenges to the Recommended Decision and argues that Atmos should not be able to recover rate case expenses. First, UCA argues that the approval of \$650,000 for rate case expenses relies on a factual error because Atmos reduced its rate case expense estimate to \$600,000 in Rebuttal Testimony and during the evidentiary hearing noted that a reduction in travel expenses would decrease rate case expenses even further. Second, UCA contends that Atmos' notice of this rate case failed to meet the requirements of Rule 1207(f), and therefore it

should be denied recovery of rate case expenses because they are above and beyond the amount listed for recovery in the notice. Third, UCA recommends that the Commission apply the “lodestar” method to evaluate rate case expenses and argues that Atmos did not carry its burden that expenses are just and reasonable because the Company failed to provide factual support demonstrating that the expenses were prudently incurred.

49. UCA also maintains that if Atmos submits unredacted invoices supporting its rate case expense claims, the Parties must have an opportunity to review the invoices and conduct discovery, and that a hearing on rate case expenses should be held if necessary and if requested by a party. UCA also takes exception to the ALJ’s commendation of Atmos for controlling rate case expenses, noting that in Atmos’ last rate case in 2017, it was awarded \$350,000 in rate case expenses.

c. Responses

50. Atmos responds that UCA has misunderstood the Recommended Decision because the ALJ authorized recovery of actual rate case expenses not to exceed \$650,000, not recovery of \$650,000 regardless of actual expenses. Atmos further contends that it has provided substantial support that its rate case expenses were reasonable and prudently incurred, and has provided updated expense estimates.

51. As to UCA’s concern that the notice met Commission rule requirements, Atmos argues that it provided adequate information to enable interested persons to be reasonably informed as to the matter noticed. Atmos maintains that the Recommended Decision’s finding is correct that it is unlikely an interested party would not have intervened in the proceeding based on the notice.

52. Atmos argues that UCA seeks a higher legal standard for Atmos with the “lodestar” method, noting that the Commission has not applied that method in 20 years. Atmos offers that the appropriate legal standard, consistent with Colorado Supreme Court and Commission precedent, applies a presumption of prudence for utility expenses. Atmos maintains it has met its burden by providing updates on rate case expense and UCA has failed to show that Atmos’ rate case expense is unreasonable.

d. Findings and Conclusions

1. As to UCA’s first issue, we agree with Atmos that the Recommended Decision sets a cap of \$650,000 for rate case expense recovery and only allows recovery of actual expenses incurred. UCA’s exceptions portray the Recommended Decision as setting the allowed rate case expenses equal to \$650,000, whereby the company can recover that amount regardless of how much it spends on this proceeding. However, we read the decision as only authorizing the actual expenses incurred for this proceeding. Because the Recommended Decision does not operate in the way UCA describes, and because we find that amortizing rate case expenses over three years with no return is consistent with the record in this proceeding and with our determinations in other rate proceedings, we decline to disturb the Recommended Decision on these grounds.

2. As to the notice issue, UCA disagrees with the ALJ’s finding that “UCA’s notice-based argument is unavailing,”¹⁰ and raises again its view that Atmos did not provide proper notice regarding rate case expenses. Before the ALJ, UCA argued that Atmos’ notice for this rate case violated 4 Colorado Code of Regulations (CCR) 723-1-1207(f), which requires notice to “contain adequate information to enable interested persons to be reasonably informed of the

¹⁰ Recommended Decision ¶ 143.

purpose of the matter noticed.” Specifically, UCA argues that because Atmos stated in its notice that the annual revenue increase “reflects the increase to base rates and the proposed recovery of Rate Case Expenses,” a reasonable interpretation would be that the total recovery included rate case expenses, and therefore any recovery above that amount (in this instance, rate case expenses) should be disallowed.

3. We have reviewed the notice and find that the notice makes clear that the purpose of the proceeding is to increase rate recovery by roughly \$7.6 Million and that Atmos also seeks to recover rate case expenses. As UCA points out, the notice can be read to indicate that the roughly \$7.6 Million includes rate case expenses. However, the notice also provides that the rates ultimately authorized may not be the same as those proposed, and, crucially, that the final rates may be higher or lower than Atmos’ proposal. In our view, a reasonable person reading the notice would know (1) that this is a rate case, (2) Atmos is seeking to increase recovery, (3) proposing to do so by roughly \$7.6mm, (4) rate case expenses are sought for recovery, and (5) the ultimate increase in revenue may be more or less than the \$7.6mm Atmos asked for. We conclude that this would make them reasonably informed about the purpose of this proceeding, which is the standard set forth in Rule 1207(f). Accordingly, we decline to deny rate case expense recovery on these grounds.

4. We turn next to UCA’s evidentiary challenge to rate case expense recovery. UCA contends that the Commission should analyze rate case expenses by applying the legal test courts use when awarding attorney fees to winning parties. It refers to this as the “lodestar test.” However, that test is misplaced in this context. Rate cases create a model of the utility, including the utility’s various costs. Rate case expenses are one of those costs. Determining whether those costs were prudently incurred (which is our charge in a rate case) is a different inquiry than

determining whether the winning party in a court case incurred a reasonable amount of attorney fees (that the losing side must pay). Therefore, we decline to apply the “lodestar test” to determine whether the legal and consulting fees—one of the utility’s operating expenses—were prudently incurred so as to be recoverable in utility rates.

5. UCA next argues that the Commission should not allow recovery of attorney fees, consultant spend, and travel expenses incurred in preparing this rate case because the data provided in support of those expenses is not sufficiently granular. UCA argues that to determine prudence the Commission must know the hourly rates and how much time was spent on each aspect of the rate case, and it also argues that Atmos’ travel expenses incurred to prepare for this rate case were imprudent because the hearing was held virtually.

6. In our view, UCA is arguing that this Commission cannot determine whether a utility’s incurred cost is prudent unless the record contains near-perfect evidence in support of that cost. But this goes far beyond the preponderance standard that governs our rate cases¹¹ and so is well beyond what is sufficient to support a prudence finding. As it is, the Commission has long experience with rate cases and can determine based on the size, scope, and procedural history of the case, along with the record evidence, what level of rate case expenses would be reasonable to recover. The Commission is in the best position, as is the ALJ, to determine how contentious and wide ranging a rate case is.

7. Having reviewed the procedural history of this proceeding, the record and testimony, the Hearing Exhibit¹² that shows Atmos’ actual rate case expenses for its last four rate cases, along with the recently filed legal invoices and itemized rate case expenses, we conclude

¹¹ See § 24-4-105(7), C.R.S.; § 13-25-127(1), C.R.S.

¹² HE 400 Attachment CWS-17.

that a cap on expenses of \$650,000 as set by the ALJ is a reasonable way to control rate case expenses while permitting recovery for an actual cost incurred by the utility. We reiterate that we are allowing Atmos to recover its actual expenses, which, as UCA indicates in its exceptions, are likely to fall well below \$650,000. In reaching this conclusion we note the cap is similar to the rate case expenses that Atmos incurred in its 2013 rate case, and that the figures included in that Hearing Exhibit are not adjusted for inflation. Our review of the recently-filed legal invoices has not revealed any rates that strike us as imprudent, nor do any of the itemized expenses appear disproportionate to expenditures in other rate cases. That, and the size of this proceeding, leads us to conclude that it is more likely than not that a cap of \$650,000 would result in recovery of only those costs prudently incurred in the preparation and presentation of this case.

8. Finally, we decline to accept the UCA's argument that travelling to prepare a complex and involved filing such as a rate case is imprudent simply because the rate case may later be heard virtually. When a rate case (or any application) is filed, the filing party, and later the intervening parties, do not know whether the case will be heard in person or virtually. We decline to adopt a one-size-fits-all approach in this proceeding that would preclude recovery of modest travel expenses to prepare for a proceeding of this magnitude.

9. We therefore deny UCA's exceptions on this issue and uphold the Recommended Decision.

5. Class Cost of Service Study and Rate Design

a. Recommended Decision

10. Consistent with the ALJ's finding that Atmos did not carry its burden to establish that the Minimum Distribution System (MDS) methodology accurately allocates costs in the

Company's class cost of service study (CCOSS), the Recommended Decision directs Atmos to re-calculate its CCOSS without the MDS.

11. When turning from the updated CCOSS results to the design of base rates, the ALJ finds that keeping the monthly S&F charge at its current level for the Residential rate class is in the public interest. The Recommended Decision thus directs Atmos to recalculate its overall revenue deficiency and recalculate the volumetric Residential rate with the S&F charge set at that current level. The ALJ goes on to specify that base rates would be designed so that no rate class would see a rate decrease.

b. Exceptions

12. In its exceptions, Atmos notes that the result of the Recommended Decision is an overall decrease in the Company's revenue requirement and requests Commission clarification of the directive that no customer class realize a rate decrease. Atmos also requests that the Commission affirm that the current Residential S&F charge be maintained and not decreased as a result of the net decrease in the Company's revenue requirement.

13. UCA requests modification of the Recommended Decision to allow the Residential class to receive the full benefit of the revenue requirement reduction. UCA also points out that the Answer Testimony of UCA Witness Peterson included a CCOSS without using the MDS approach, which the ALJ had directed Atmos to file.

14. Staff recommends the overall decrease in base rate revenues be implemented based on the CCOSS and rate design adopted by the Commission in this Proceeding. Staff recommends that the Commission hold a technical conference to confirm the re-calculations.

c. Responses

15. In its response to exceptions related to the establishment of new base rates, Atmos agrees with UCA's recommendation to allocate the revenue requirement decrease to the Residential class and agrees that the CCOSS without the MDS has been admitted into the record.

16. In its response to exceptions, UCA agrees with Atmos' request to maintain the Residential customer charge at its present level as supported by the record in this Proceeding.

d. Findings and Conclusions

17. We agree that it is appropriate for the Residential customer class to benefit from any decrease in Atmos' overall annual revenue requirement resulting from the Recommended Decision as modified by this Decision. Therefore, we modify the Recommended Decision at Paragraph 185 to clarify that the Residential class can be provided with a rate decrease. We also agree that it is appropriate to maintain the S&F charge at its current level when designing the new reduced base rates for the Residential rate class.

18. We are not persuaded that a technical conference is needed to implement the Recommended Decision as modified by this Decision. The attachments to Atmos' exceptions indicate that modified base rates developed in accordance with the directives and clarifications in this Decision can be implemented in a straightforward manner. We nonetheless direct Atmos to confer with Staff and UCA before the Company submits in compliance tariff filing to review the updated calculations using the COSS, the updated CCOSS results, the design of the modified base rates, and all of the other necessary changes to the Company's tariff sheets that result from this Proceeding.

19. We further acknowledge that a CCROSS without MDS methodology has been filed in the record of this Proceeding.

6. SSIR

a. Recommended Decision

20. The Recommended Decision grants a two-year extension of the SSIR, noting that this limited extension recognizes that contemporary cost recovery of utility investments should be reserved for extraordinary circumstances and should incentivize the Company to prioritize the projects creating those extraordinary circumstances. The ALJ goes on to state an expectation “that all high-risk projects will be completed with this two-year extension.”¹³

b. Exceptions

21. In its exceptions, Atmos maintains that the record does not support the ALJ’s expectation that all high-risk projects be completed in two years because the evidence shows that Atmos’ polyvinyl chloride (PVC) and bare steel projects cannot all be replaced until 2036. Atmos therefore requests an extension of the SSIR through 2028 in order to complete its replacement of its high-risk pipe.

c. Responses

22. Staff recommends rejecting Atmos’ exceptions related to a five-year SSIR extension, arguing that the two-year extension approved by the Recommended Decision will allow Atmos to transition away from its reliance on the rider. Staff contends that the Company has, based on its own scoring system, addressed its most pressing safety concerns and that the ten years

¹³ Recommended Decision ¶ 50.

the Company will have had an SSIR is sufficient for it to replace its most risky pipes. Staff maintains that the rider is not intended to replace rate case filings and the Company has not demonstrated otherwise. In support of its position, Staff references the Commission's recent decision in Public Service's last rate case declining to extend Public Service's pipeline safety rider: "again, Public Service retains the right to file another base rate case should it be required based on priorities for necessary investment."¹⁴

23. In its response to Atmos' exceptions, UCA contends the record fully supports the Recommended Decision's finding that continuing the SSIR for two years is in the public interest. UCA rejects Atmos' argument that a five-year extension to continue replacing infrastructure quickly is in its customers' best interest, because the extension comes with direct costs to customers and may become stranded investment as Colorado adjusts its state policies regarding natural gas distribution. UCA asserts that the environmental benefit of reducing gas leaks through the SSIR must be weighed against policies to contain or shrink gas distribution companies' investment in gas infrastructure.

24. UCA also counters Atmos' argument that a five-year extension is required to meet the ALJ's expectation that the Company will complete all high-risk pipe projects within two years, noting that this statement was the opinion of the ALJ and that the paragraph that includes that opinion begins "The ALJ is not going to order Atmos....," and "There is not a sufficient record upon which to base such a decision..."¹⁵ UCA emphasizes that the ALJ's expectation is not

¹⁴ Proceeding No. 22AL-0046G, Decision No. C22-0642 ¶ 86.

¹⁵ Recommended Decision ¶ 50.

included in the SSIR findings and conclusions¹⁶ or in the summary paragraph of that section in the Recommended Decision.¹⁷

d. Findings and Conclusions

25. We find that its appropriate to begin winding down the SSIR and support the Recommended Decision's extension of the SSIR for two years. This limited extension will provide discipline for the Company as it addresses system safety and integrity projects, ensuring that ratepayers' dollars are used efficiently and effectively. We anticipate that Atmos will prioritize its highest risk pipeline replacement projects over the next two years; but we further agree with UCA that the Recommended Decision does not order that this be accomplished. We therefore reject Atmos' exceptions on this issue.

7. Interruptible Services

a. Recommended Decision

26. In accordance with the terms of the settlement agreement approved by the Commission in relation to its recovery of costs related to Storm Uri,¹⁸ Atmos agreed to conduct a stakeholder meeting to discuss interruptible services and report the outcome of the meeting, as well as address issues related to interruptible rates, in its next general rate case filing.

27. In this Proceeding, Atmos filed testimony stating that the Company had conducted the required stakeholder meeting and that it had determined that it would be inappropriate to introduce interruptible service in this rate case, concluding that no customers would be interested in taking interruptible service. Atmos also determined that interruptible services could lead to

¹⁶ Recommended Decision ¶ 49.

¹⁷ Recommended Decision ¶ 51.

¹⁸ Proceeding No. 21A-0186G.

greater gas usage, adding to greenhouse gas emissions, and that if customers switched to interruptible service, system costs would be shifted to other customers.

28. Staff disagreed with Atmos in its Answer Testimony, arguing that Atmos did not thoroughly assess the benefits of interruptible services and that significant interruptible sales load could help the Company manage its capacity load for reliability and during an economic emergency. Staff found that there was insufficient record to require Atmos to develop interruptible services in this Proceeding but requested that the Commission require a thorough assessment and development of interruptible services in the Company's next gas rate case filing.

29. In the Recommended Decision, the ALJ agrees with Staff and directs Atmos to assess the benefits, develop interruptible services, and present that information in the Company's next gas rate case filing or in another appropriate filing.

b. Exceptions

30. In its exceptions, Atmos requests that the Commission reverse the Recommended Decision on this issue. Atmos argues that it has completed the required assessment and has determined that providing such a service will potentially benefit only a few transportation customers and is not likely to meaningfully reduce overall system gas costs. Additionally, the Company maintains that interruptible service would allow for more overall gas usage, which would also increase gas emissions from the Company's system.

c. Findings and Conclusions

31. We uphold the Recommended Decision on this issue and direct Atmos to include an analysis of interruptible services and an interruptible tariff proposal in its next general rate case or in a separate filing, as is appropriate.

32. We find that Atmos' testimony on this issue takes a very narrow view of the potential benefits of interruptible services and inadequately describes the results of the stakeholder meeting. We also find that a more robust analysis of interruptible service options remains necessary and therefore direct the Company to complete the assessment as ordered in the Recommended Decision. This assessment shall include an analysis of interruptible services: 1) for its smaller customers; 2) under various economic conditions; 3) in the context of Atmos' business in Colorado, not in comparison with larger utilities; 4) during emergencies such as Winter Storm Uri; 5) as part of Colorado's transition to a Clean Heat future;¹⁹ 6) as part of increasing customer choice; and 7) as part of increasing Atmos' revenues. We anticipate that Atmos will bring creativity and innovation to this forthcoming analysis.

33. We also direct Atmos to provide more detail as to how it conducted its analysis and provide information on the stakeholder meeting, including the number of customers attending and the questions and discussions of that meeting as compared to the information provided in this Proceeding. We further direct Atmos to hold additional stakeholder meetings as necessary to complete its analysis.

8. Line Extension Policy

a. Recommended Decision

34. With respect to Atmos' line extension policy, the Recommended Decision rejects Staff's recommendations set forth in Answer Testimony that (1) new customers bear some portion of upfront costs of meters and regulators and (2) Construction Allowances be equal to the lower of the net average embedded cost (AEC) methodology or the current Construction Allowance. The

¹⁹ §40-3.2-108, C.R.S.

ALJ instead agrees with Atmos' argument that it is inappropriate to address the Company's line extension policy in this Proceeding, finding that the record does not offer support for changes to the line extension policy. The ALJ further agrees with Atmos that, consistent with recently promulgated rules in Proceeding No. 21R-0449G, Atmos must implement a new line extension policy by December 31, 2024.

b. Exceptions

35. In its exceptions, Staff notes that the Commission invited parties to submit testimony on Atmos' line extension policies in this Proceeding and that Staff was the only party that provided such testimony. Staff concedes that waiting for the 2024 filing is one approach the Commission can take but disagrees that the record does not support adoption of Staff's recommendations. Referencing the Answer Testimony of its witness Eric Haglund, Staff concludes that should the Commission wish to move toward increased customer responsibility for gas service, the record in this Proceeding will allow it to do so.

c. Responses

36. Atmos disagrees with Staff's request related to its line extension policies, stating that Staff's recommendation was conditioned on a determination that Atmos' construction allowance should be adjusted yet the Recommended Decision declined to do that. Atmos states that Staff did not propose any specific adjustments to the amounts paid by customers or paid by the Company. Atmos also argues that requiring changes now to the Company's line extension policies would be inefficient, because the modified Rules Regulating Gas Utilities from Proceeding No. 21R-0449G will require utilities to update their line extension policies by December 31, 2024.

37. UCA likewise recommends upholding the Recommended Decision on this issue because Atmos' line extension policy will need to be updated again when the new rules become effective. However, UCA further notes that the Recommended Decision did not include UCA's position on line extensions, contained in the Answer Testimony of Cory Skluzak, that new customers should bear the costs of line extensions, as UCA had advocated in Proceeding No. 21R-0449G.

d. Findings and Conclusions

38. We appreciate Staff Witness Haglund's testimony and efforts to re-examine line extension and construction allowance policies. However, we now affirm that 4 CCR 723-4-4210(d), once it takes effect, will require Atmos to update its line extension policies by the end of next year. In the interest of administrative efficiency and in anticipation of a more thorough record, we find that the Recommended Decision is correct in declining require Atmos to file updated tariffs for its line extension policies at this time. We therefore deny Staff's exceptions on this issue.

9. Quality of Service Plan

a. Recommended Decision

39. The Recommended Decision declines to accept Staff's request that Atmos be required to file tariff sheets at the end of this Proceeding to implement a Quality of Service Plan (QSP). The ALJ finds that Staff failed to establish that its proposed QSP is appropriate at this time, concluding that there are too many questions as to whether the QSP would achieve its goal or have unintended consequences. Noting that a carefully crafted QSP would be valuable to Atmos and its ratepayers, the ALJ directs Atmos to work with Staff to create a QSP.

b. Exceptions

40. In its exceptions, Staff requests that the Commission order Atmos to file an application for approval of a QSP within 90 days of the Commission's final decision in this Proceeding and require the Company to work with Staff to develop specific QSP metrics along the lines described in Staff's Answer Testimony as well as any other appropriate metrics.

c. Responses

41. In response, Atmos recommends rejection of Staff's proposed QSP metrics because they are unreasonable and not supported by evidence. Atmos commits to working with Staff to develop a QSP but maintains that developing a QSP will take more than 90 days. The Company requests that if the Commission sets a deadline for a QSP application, it should be no sooner than 180 days from the Commission's final order in this Proceeding.

d. Findings and Conclusions

42. Staff's concern that Atmos have an appropriate QSP is well-placed, but the details of that QSP as proposed by Staff need to be better developed in a reasonable timeline. We therefore deny Staff's exceptions on this issue and uphold the Recommended Decision with the modification that a QSP application be filed no later than 180 days after the effective date of this Decision.

10. Charges for Rendering Service**a. Recommended Decision**

43. As explained in its Direct Testimony, Atmos proposed eliminating a number of charges for rendering service, including a late payment fee of 1.5 percent per month on the outstanding balance of a customer's bill. Atmos asserted that by including the associated costs in the derivation of base rates but without the charges would promote equity and assist

disproportionately impacted communities. Atmos explained that from 2017 to 2019, these charges averaged \$67,000 per year.

44. In its Answer Testimony, Staff and UCA recommended maintaining these charges, based on cost causation principles, rather than socializing the costs in base rates. In its Rebuttal Testimony, Atmos withdrew its proposal to eliminate charges for rendering service. The Recommended Decision did not adopt the proposal to eliminate these charges.

b. Exceptions

45. In its exceptions, EOC opposes the Company's withdrawal of its proposal to eliminate charges for rendering service, particularly the late payment fee, because of the impact to of those charges on income-qualified ratepayers. EOC argues that late fees are regressive and harmful to customers who are struggling with their bills, serving as a penalty instead of as an incentive for making timely payments. EOC also states that at the hearing, Atmos' Witness Armstrong could not say whether revenue collected through late fees was equal to the costs incurred. Additionally, UCA's Witness England stated that UCA does not object to the elimination of the late payment fee.

46. If the Commission upholds the Recommended Decision on this issue, EOC requests in the alternative that the collected late fees be donated to EOC.

c. Responses

47. Atmos responds that there is no dispute that the Company incurs a cost when providing service to customers who do not pay their bills. Atmos also claims that EOC presented no evidence that the carrying cost for unpaid bills is less than 1.5 percent. Noting that the Commission has previously found the late payment fee to be just and reasonable, Atmos requests

that if the Commission now finds the fee is not just and reasonable, it should either eliminate or reduce the fee and allow Atmos to recover the amount in base rates, as initially proposed by the Company. Atmos further contends that the Commission cannot order Atmos to collect the fee and then donate it to EOC, because that is not the purpose of the late fee. The Company notes that it has other programs designed to support EOC's customer assistance programs.

48. In its response to EOC's exceptions, UCA counters that UCA Witness Scott England recommended keeping customer charges as they are and not rolling them into base rates, so that Atmos recovers only what it needs to recover the costs associated with the charges. Dr. England maintained that including these charges in base rates would lead to inexact recovery, so if the Commission determines a late payment charge should be collected, it should be collected from the delinquent ratepayer, not from ratepayers as a whole.

d. Findings and Conclusions

49. We deny EOC's exceptions on this point, although we agree with EOC that late payment charges can be harmful to certain customers. We are also concerned about the lack of clarity as to how the late charges have been developed and specifically whether the amount customers pay in late fees is representative of the Company's costs. However, as noted by Atmos, the existing late payment fee has previously been found to be just and reasonable and the associated revenue is not substantial in light of the Company's overall base rate revenue requirements. We direct Atmos to support the use and level of late payment fees in its next rate case filing.

11. Requests for Clarification**a. SSIR**

50. Atmos requests confirmation that its compliance tariff filing as a result of this Proceeding can include updated SSIR rates reflecting the transition of SSIR investments through 2021 into base rates, as approved by the Recommended Decision.

51. We confirm that Atmos's compliance filing shall include updated SSIR rates.

b. Underground Gas Storage

52. The Recommended Decision orders Atmos to recover gas storage costs through the Gas Cost Adjustment (GCA) at the cost of short-term debt instead of through base rates.

53. In its exceptions, Atmos requests confirmation that Company's GCA tariffs and rates can be included with the compliance filing as a result of this Proceeding.

54. We confirm that Atmos may file a modified GCA tariff and new GCA rates, as necessary, to comply with the Recommended Decision with respect to the recovery of gas storage costs.

c. General Rate Schedule Adjustment (GRSA)

55. Although this case involves the resetting of base rates with both Phase I and II components, Atmos seeks to implement a GRSA for three special purposes: 1) the temporary recovery of rate case expenses (for a three-year amortization), 2) the continuing amortization of certain pension-related costs, and 3) to address Excess Deferred Income Taxes (EDIT).

56. In its exceptions, Atmos requests clarification that the GRSA is limited to three years for rate case expense recovery but can continue as necessary for EDIT and pension amortization purposes.

57. We clarify that the GRSA authorized in this Proceeding shall be used for three years for the recovery of rate case expenses and can continue beyond those three years, as necessary, for EDIT and pension amortization purposes.

d. Test Year

58. In its response to exceptions, UCA points out that the period of the test year is defined as March 1, 2021, to March 31, 2022, in paragraphs 34 and 52 of the Recommended Decision. However, UCA states that parties agreed to a 12-month test year beginning April 1, 2021, and ending March 31, 2022. UCA requests the Recommended Decision be modified to reflect the agreed upon test year of April 1, 2021, through March 31, 2022.

59. We agree that the test year approved in this proceeding is the 12-month period beginning April 1, 2021, and ending March 31, 2022, and modify the Recommended Decision accordingly.

II. ORDER

A. The Commission Orders That:

1. The exceptions to Recommended Decision No. R23-0181, filed by Atmos Energy Company (Atmos) on April 4, 2023, are granted, in part, and denied, in part, consistent with the discussion above.

2. The exceptions to Recommended Decision No. R23-0181 filed by Staff of the Colorado Public Utilities Commission (Staff) on April 4, 2023, are granted, in part, and denied, in part, consistent with the discussion above.

3. The exceptions to Recommended Decision No. R23-0181 filed by the Colorado Office of Utility Consumer Advocate (UCA) on April 4, 2023, are granted, in part, and denied, in part, consistent with the discussion above.

4. The exceptions to Recommended Decision No. R23-0181 filed by Energy Outreach Colorado on April 4, 2023, are denied, consistent with the discussion above.

5. The effective date of the tariff sheets filed by Atmos with Advice Letter No. 584 on August 5, 2022, is permanently suspended, and shall not be further amended.

6. The tariff sheets filed by Atmos with to Advice Letter No. 584 are permanently suspended and shall not be further amended.

7. Atmos shall file modified tariff sheets consistent with Recommended Decision No. R23-0181 as modified by this Decision. Atmos shall file the compliance tariff sheets in a separate proceeding and on not less than two business days' notice. The advice letter and tariff sheets shall be filed as a new advice letter proceeding and shall comply with all applicable rules. The date the filing is received at the Commission is not included in the notice period and the entire notice period must expire prior to the effective date. The effective date of the newly filed tariff sheets shall be May 13, 2023.

8. The advice letter and tariff must comply in all substantive respects to this Decision in order to be filed as a compliance filing on shortened notice. Consistent with the discussion

above, Atmos is ordered confer with Staff and UCA on the updated calculations supporting the development of the compliance tariff filing.

9. Atmos shall include an analysis and interruptible services tariff proposal in its next general rate case or in a separate filing, consistent with the discussion above.

10. Atmos shall file an application for approval of a Quality of Service Plan no later than 180 days following the effective date of this Decision, consistent with the discussion above.

11. The 20-day time period provided pursuant to § 40-6-116, 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.

12. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' DELIBERATIONS MEETING
April 21, 2023.**

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

MEGAN M. GILMAN

TOM PLANT

Commissioners

ATTEST: A TRUE COPY

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

Rebecca E. White,
Director