

Decision No. C14-1188

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0153G

IN THE MATTER OF THE APPLICATION OF ATMOS ENERGY CORPORATION FOR AN ORDER GRANTING IT A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO IMPLEMENT THE GREELEY BUILDING PROJECT.

**DECISION GRANTING MOTION FOR
LEAVE TO FILE RESPONSE TO
EXCEPTIONS AND DENYING EXCEPTIONS**

Mailed Date: October 1, 2014
Adopted Date: September 17, 2014

I. BY THE COMMISSION

A. Statement

1. On August 21, 2014, Atmos Energy Corporation (Atmos or Company) filed exceptions to Decision No. R14-0885 (Recommended Decision). Atmos requests the Commission overturn the Recommended Decision denying the Application for a Certificate of Public Convenience and Necessity to Implement the Greeley Building Project (Application) or, in the alternative, remand the Application back to the Administrative Law Judge (ALJ) for further hearings.

2. On September 2, 2014, the Colorado Office of Consumer Counsel (OCC) filed an Unopposed Motion for Leave to File Responses to Exceptions (Motion), requesting an extension in the filing deadline. On September 4, 2014, OCC filed a response opposing Atmos' exceptions. We find good cause to grant the Motion as it is unopposed.

B. Discussion

3. On February 19, 2014, Atmos filed an Application requesting a Certificate of Public Convenience and Necessity (CPCN) for its Greeley Building Project. Atmos proposes to build and own new facilities in west Greeley to replace its 53 year-old business office and 42 year-old service center facilities, which are currently in separate leased facilities in downtown Greeley. Atmos asserts that combining the two functions will improve business efficiency and explains the existing facilities are located in an area where it is not feasible to make necessary expansions. Atmos states the new facilities will also resolve employee safety and maintenance issues.

4. In addition to the CPCN, Atmos seeks a presumption of prudence for an estimated range of costs for the project, of \$8.87 million, plus or minus 10 percent.

5. The Application and CPCN request are filed pursuant to the terms of a Stipulation and Settlement Agreement approved by the Commission in Decision No. R14-0198, issued February 24, 2014, in Proceeding No. 13AL-0496G.

6. In the Recommended Decision, the ALJ found Atmos did not meet its burden of proof and therefore denied the CPCN. The ALJ found Atmos did not adequately investigate potential alternatives to the Greeley Building Project and did not provide a cost analysis for the option of updating the existing buildings, which she determined could be leased at a fraction of the new building costs. The ALJ found the proposed project would cost at least \$1.1 million more per year than extending the lease on the current facilities and concluded these additional costs would be borne by ratepayers for decades. Because she denied Atmos the requested CPCN, the ALJ denied Atmos' requested presumption of prudence for the project's costs as moot.

7. Atmos requests the Commission reverse the Recommended Decision and grant the Company a CPCN for the Greeley Building Project and a presumption of prudence for the \$8.87 million estimated building cost, plus or minus 10 percent. Atmos argues the ALJ improperly relied on the testimony of an OCC witness, who has never been to the facilities, and disregarded the first-hand knowledge and experience of qualified witnesses from Atmos. Atmos argues the Recommended Decision ignores or discounts legitimate qualitative reasons that justify the Greeley Building Project, such as increased efficiencies and employee safety. Finally, Atmos argues the ALJ overstepped her authority and failed to allow the utility to manage its business.

8. Alternatively, if the Commission does not grant the Application upon consideration of the exceptions, Atmos requests that the Commission identify the studies or analyses that are necessary to support a CPCN for the project and remand the proceeding back to the ALJ for additional findings.

9. In its response to Atmos' exceptions, OCC asserts the ALJ properly found the Company failed to meet its burden to demonstrate by a preponderance of the evidence that the present or future public convenience and necessity requires, or will require, the Greeley Building Project.

C. Conclusions and Findings

10. We deny Atmos' exceptions and uphold the Recommended Decision. We agree with OCC that the ALJ correctly denied the CPCN for the Greeley Building Project based on the evidentiary record. The ALJ considered all evidence in the record in making her determinations.¹

¹ Recommended Decision, at ¶ 78.

The ALJ is also not required to recite the entire record or facts from which inferences contrary to her own might be drawn.²

11. We further agree with the ALJ that the estimated cost for the Greeley Building Project is significant, and Atmos failed to consider and present viable alternatives. Atmos did not meet its burden to show the Greeley Building Project is in the public interest. Similarly, we find dismissal, rather than remand, is the correct remedy here, because Atmos had the opportunity to present its case to the ALJ and failed to meet its burden.

12. In consideration of the Application, we must make determinations based upon our examination of the details of the Company's proposed business decisions. Its request for a predetermination of prudence further requires us to assess such business decisions to determine if the costs would be recoverable in the event Atmos completes the Greeley Building Project as proposed. Atmos did not meet its burden to receive a CPCN in this instance. Therefore, the ALJ found the Company's request for a presumption of prudence moot for purposes of cost recovery on the proposed business decisions based on the facts and evidence presented.

13. This Decision does not conflict with cases standing for the proposition that the Commission's power to regulate does not "confer the power to manage."³ The cases cited by Atmos relate to ratemaking. Even if relevant, they fail to address the more recent case *Colorado-Ute Elec. Ass'n. v. Pub. Utils. Comm'n*, 760 P.2d 627, 640 (Colo. 1988). In *Colorado-Ute*, the Commission ruled that a cooperative association's setting of an all-energy electricity rate design failed to account for capacity costs. The Colorado Supreme Court rejected

² See, *Aspen Airways, Inc. v. PUC*, 453 P.2d 789, 792 (Colo. 1969).

³ Atmos' Exceptions, at 15 (citing *Denver Union Stock Yard Co. v. United States*, 57 F.2d 735, 749 (D. Colo. 1932); and *Missouri ex rel. Sw. Bell Tel. Co. v. Pub. Serv. Comm'n*, 262 U.S. 276, 288 (1923)).

an argument contending that the Commission's ruling constituted an unauthorized intrusion into the cooperative's management: "[I]t has never been the law in Colorado that rate-making is solely a matter within the domain of management, such that [Commission] involvement is triggered only following an abuse of that discretion." *Id.*, at 639.

14. We clarify that, by ruling on Atmos' proposed building CPCN application, we are not setting a precedent that requires or encourages utilities to file CPCN applications for office buildings or other similar facilities that are not necessary to supply, extend, or connect a utility's services or required for reliability and public safety. However, Atmos filed the application for a CPCN pursuant to the terms of an approved Stipulation and Settlement Agreement in Proceeding No. 13AL-0496G.

15. As stated in Rule 1408 of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1, the Commission encourages settlement in contested proceedings. However, the CPCN proceeding that evolved from the settlement consumed significant resources on behalf of all parties, and yet the parties are no closer to achieving a reasonable outcome than they were before Proceeding No. 13AL-0496G. We encourage the parties to reassess the objectives of the Stipulation and Settlement in Proceeding No. 13AL-0496G and to work to achieve a solution that meets the needs of the utility and ratepayers for the Company's building projects.

II. ORDER

A. The Commission Orders That:

1. The Unopposed Motion for Leave to File a Response to Exceptions filed on September 2, 2014, by the Colorado Office of Consumer Counsel is granted.

2. The Exceptions to Decision No. R14-0885 filed by Atmos Energy Corporation on August 21, 2014, are denied, consistent with the discussion above.

3. The 20-day time period provided by § 40-6-114(1), C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the Commission mails or serves this Decision.

4. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
September 17, 2014.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

PAMELA J. PATTON

GLENN A. VAAD

Commissioners