

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23AL-0579G

IN THE MATTER OF ADVICE LETTER NO. 605 FILED BY ATMOS ENERGY CORPORATION TO ELIMINATE THE CONSTRUCTION ALLOWANCES CURRENTLY INCLUDED IN C O LORADO P.U.C. NO. 7, TO BECOME EFFECTIVE JANUARY 1, 2024.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
PERMANENTLY SUSPENDING TARIFF SHEETS,
APPROVING SETTLEMENT AGREEMENT AND
REQUIRING COMPLIANCE TARIFF FILING**

Mailed Date: March 19, 2024

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I. STATEMENT AND PROCEDURAL HISTORY

A. Statement and Summary

1. This Decision grants the Unopposed Motion for Approval of Unanimous Comprehensive Stipulation and Settlement Agreement and For Waiver of Response Time filed February 27, 2024 (Motion to Approve Agreement); approves the Stipulation and Settlement Agreement filed February 27, 2024 (Settlement Agreement or Agreement); addresses all outstanding Motions; permanently suspends the Tariff Sheets associated with Advice Letter No. 605 filed November 30, 2023; requires a compliance tariff filing to implement the terms of the approved Agreement; and closes this Proceeding.

B. Procedural History

2. On November 30, 2023, Atmos Energy Corporation (Atmos or the Company) filed Advice letter No. 605 (Advice Letter) along with the associated Tariff Sheet No. 7 (Tariff Sheets) with a January 1, 2024 effective date.

3. On December 15, 2023, Colorado Public Utilities Commission Trial Staff (Staff) filed a Protest Letter, protesting the Advice Letter and Tariff Sheets.

4. On December 22, 2023, Colorado Natural Gas, Inc. (CNG) filed Protest Letter, protesting the Advice Letter and Tariff Sheets.

5. On December 29, 2023, the Colorado Public Utilities Commission (Commission) suspended the effective date of the Tariff Sheets to April 30, 2024; established a January 29, 2024 deadline to file interventions; and set the matter for a hearing per § 40-6-111(1), C.R.S.¹

¹ Decision No. C23-0872 (mailed December 29, 2023).

6. On January 11, 2024, the Colorado Office of the Utility Consumer Advocate (the UCA) filed a “Notice of Intervention as a Matter of Right, Request for Hearing, and Entry of Appearances of the Office of the Utility Consumer Advocate” (UCA’s Intervention).

7. On January 29, 2024, Staff filed a “Notice of Intervention of Right by Trial Staff of the Commission, Entry of Appearance, Notice Pursuant to Rule 1007(a) and Rule 1401, and Request for Hearing (Staff’s Intervention).

8. On February 20, 2024, the Commission waived the December 31, 2024 deadline for Atmos to comply with Rule 4210(d) of the Commission’s Rules Regulating Gas Utilities, 4 *Code of Colorado Regulations* (CCR) 723-4 and referred this matter to an Administrative Law Judge (ALJ) for disposition.²

9. On February 27, 2024, Atmos filed an Unopposed Motion for Variance and Request to Waive Response Time (Motion for Variance or Motion). Also on February 27, 2024, Atmos filed the Motion to Approve Settlement Agreement and the Settlement Agreement.

II. DISCUSSION AND FINDINGS

A. Relevant Law

10. The Commission has broad constitutional and statutory authority to regulate public utilities and has jurisdiction to enforce statutes affecting public utilities.³ Under § 40-3.2-104.3(1)(c) and (2)(c), C.R.S., gas utilities over which the Commission has authority to regulate rates and charges must file with the Commission an updated tariff to remove any incentives for an

² Decision No. C24-0106-I (mailed February 20, 2024). In an ordering paragraph, Decision No. C24-0106-I refers to a December 1, 2024 deadline in Rule 4210(d), 4 CCR 723-4, but in several other areas, the Decision refers to a December 31, 2024 deadline. *Id.* at 2, 3 and 6. Moreover, Rule 4210(d), 4 CCR 723-4 establishes a December 31, 2024 deadline. For all these reasons, the ALJ construes references to a December 1, 2024 deadline in Decision No. C24-0106-I as inadvertent errors that should reference December 31, 2024.

³ Colo. Const. art. XXV; and §§ 40-1-103(1)(a)(I); 40-3-102; 40-7-101, C.R.S.

applicant to establish gas service to a property by December 31, 2023. This gives the Commission specific authority and jurisdiction over tariffs filed per § 40-3.2-104.3, C.R.S.

11. In addition, under § 40-3.2-104.3(2)(d), C.R.S., a utility may exempt from the updated tariff required in § 40-3.2-104.3(2)(c) C.R.S., any applicant for natural gas service who: has already submitted an application that has been approved or is pending as of August 7, 2023; can demonstrate or attest that the applicant has submitted a permit application to the local government with permitting authority and that such application is either approved or pending as of August 7, 2023; or can demonstrate or attest that the applicant has submitted to a local government a site development plan or plat that is either approved or pending as of August 7, 2023, except that an applicant that has submitted a site development plan or plat for which a permit application to the local government has not been approved on or before December 31, 2204 is not exempt.

12. Per Rule 1401(e), 4 CCR 723-1 of the Commission's Rules of Practice and Procedure, Staff may intervene of right in any Commission proceeding. Any other person or entity wishing to intervene of right must identify the basis for the legally protected right that may be affected by the proceeding.⁴

13. When exercising any power granted to it, the Commission must give the public interest first and paramount consideration.⁵

14. The Commission has discretion to determine whether to hold a hearing on a tariff filing; this also means that the Commission may decide not to hold a hearing on a tariff filing.⁶

⁴ Rule 1401(b), 4 CCR 723-1.

⁵ § 40-3-101(1), C.R.S.; *Pub. Serv. Co. of Colo. v. Pub. Utilis. Comm'n*, 350 P.2d 543, 549 (Colo. 1960), *cert. denied*, 364 U.S. 820 (1960).

⁶ *Colorado Office of Consumer Counsel v. Pub. Utilis. Comm'n*, 752 P.2d 1049, 1053-54 (Colo. 1988). See § 40-6-111(1)(a), C.R.S.; Rule 1305(c), 4 CCR 723-1.

15. As the proponents of an order, parties to the Settlement Agreement bear the burden of proof by a preponderance of the evidence that the Agreement should be approved.⁷ This standard requires the fact finder to determine whether the existence of a contested fact is more probable than its nonexistence.⁸ 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.⁹

16. The Commission encourages settlement of contested proceedings.¹⁰

17. The ALJ assesses the Settlement Agreement and issues in this Proceeding with these principles and legal standards in mind.

B. Commission Jurisdiction, Interventions, and Need for Hearing

18. The Company filed the Advice Letter and Tariff Sheets to remove language in its Tariff that include construction allowances for new main and service line installations as required by § 40-3.2-104.3(2)(c), C.R.S.¹¹ Based on the record and the authorities discussed above, the ALJ concludes that the Commission has specific jurisdiction over this matter per § 40-3.2-104.3, C.R.S. As such, the Commission has jurisdiction and authority over this Proceeding, including over whether to approve the Settlement Agreement.

19. Atmos has not objected to the Interventions.¹² Based on this, their Interventions, and the above authorities, the ALJ concludes that Staff and the UCA have properly intervened of

⁷ § 24-4-105(7) C.R.S.; Rule 1500, 4 CCR 723-1.

⁸ *Swain v. Colorado Dep't of Revenue*, 717 P.2d 507, 508 (Colo. App. 1985).

⁹ *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).

¹⁰ Rule 1408(a), 4 CCR 723-1.

¹¹ Advice Letter at 1; Settlement Agreement at 1.

¹² As Atmos filed no motion to strike either intervention, the ALJ deems the Interventions confessed and therefore unopposed. See Rule 1401(b) (a party objecting to an intervention as of right may do so by filing a motion to strike), 4 CCR 723-1.

right. As such, they are acknowledged as parties to this Proceeding.¹³ Based on the foregoing, the parties to this Proceeding are Atmos, Staff and the UCA.¹⁴

20. Atmos, Staff and the UCA all entered into the Settlement Agreement, which is intended to be a comprehensive resolution of all issues in this Proceeding.¹⁵ Since all parties to this Proceeding are signatories to the Settlement Agreement, it is unopposed. The parties agree that the Settlement Agreement should be approved without a hearing.¹⁶ The ALJ has reviewed the Agreement and has not identified any issues that require a hearing. Given that the Agreement is unanimous and comprehensive, the parties do not request a hearing and one is not otherwise required, the ALJ finds that a hearing is not necessary.¹⁷ For these reasons, the ALJ will decide this matter based on the record without a hearing.

C. Settlement Agreement

21. As noted, the Settlement Agreement is unopposed, and is intended to comprehensively resolve all issues that were or could have been raised in this Proceeding.¹⁸ The Agreement includes the proposed amended Tariff Sheets associated with the Advice Letter (proposed Amended Tariff Sheets) reflecting the Agreement's suggested tariff changes, and a work

¹³ See Staff's and the UCA's Interventions and Rule 1401(b), 4 CCR 723-1.

¹⁴ Although CNG filed a Protest Letter, it did not file a motion to intervene. As such, it is not a party to this Proceeding.

¹⁵ Settlement Agreement at 1.

¹⁶ *Id.* at 3.

¹⁷ *Colorado Office of Consumer Counsel*, 752 P.2d at 1053-54. See § 40-6-111(1)(a), C.R.S.; Rule 1305(c), 4 CCR 723-1.

¹⁸ *Infra*, ¶¶ 19-20. The Agreement includes numerous general provisions common in settlement agreements before the Commission. Settlement Agreement at 4-6. This Decision does not outline those provisions, as unnecessary.

paper supporting the same as Attachments thereto.¹⁹ The changes reflected in the proposed Amended Tariff Sheets are intended to make clear that those initiating service to a new location will be required to pay the cost for any main extensions, the service line, regulator, and meter.²⁰ The proposed Amended Tariff Sheets do this by eliminating current language for the Company's Service Line and Main Extension Policy that allows for a construction allowance for construction costs for main and service lines, and requires that persons or entities requesting service be responsible for costs of main and service line extensions and meters.²¹ The proposed Amended Tariff Sheets define construction costs for main and service line extensions to "include the Company's costs, together with all incidental expenses connected therewith, necessary to the Main Extension and/or reinforcement or Service Line Extension."²² The Agreement requires that the Company charge persons or entities requesting service the actual costs of the equipment and installation for any main extensions, the service line, and regulator.²³

22. As to meters, the Agreement provides that the Company will charge persons or entities requesting service based on the Company's costs to purchase and install the meter.²⁴ Those costs are identified in the proposed Amended Tariff Sheets. Specifically, the Company will charge the following amounts to purchase and install a meter: \$276 for residential customers; \$443 for

¹⁹ See Settlement Agreement at 2-3. All Attachments to the Agreement were filed as one document with the Agreement, rather than separate filings, but the Attachments are not marked with consecutive page numbers. For ease of reference, this Decision cites to the electronic page numbers in the Agreement for each Attachment. Attachment A is found at electronic pages 9 to 29 of the Agreement and includes the following three versions of the tariff sheets: redlined proposed Amended Tariff Sheets showing Agreement changes as compared to those filed with the Advice Letter (pages 9-15); redlined proposed Amended Tariff Sheets showing Agreement changes as compared to currently effective tariff sheets (pages 16-23); and clean proposed Amended Tariff Sheets reflecting Agreement changes (pages 24-29). Attachment B is found at electronic pages 30 to 31 of the Agreement and is the work paper supporting the proposed Amended Tariff Sheets. Attachment C is found at electronic pages 32 to 35 of the Agreement and is the currently effective Tariff Sheets. The Agreement and Attachments are included as a single document as Appendix A to this Decision, with all pages marked with a consecutive page number.

²⁰ Settlement Agreement at 2.

²¹ Settlement Agreement at 11, 13, 18, 22, 26, 28 (Attachment A).

²² *Id.* at 11 and 26 (Attachment A).

²³ *Id.* at 2-3.

²⁴ *Id.* at 3; 13 (Attachment A); and 28 (Attachment C).

small commercial customers; \$1,766 for commercial customers; and \$1,766 for irrigation customers.²⁵ The work paper supporting the charges for new meters is included as Attachment B to the Agreement.²⁶

23. The proposed Amended Tariff Sheets refer to the “subscriber” as the person or entity responsible for costs associated with main and service line extensions, regulator, and meter installations.²⁷ The proposed Amended Tariff Sheets define “subscriber” as the individual or entity that requests a main extension and/or service line extension.²⁸ To be consistent with the statutory definition of “applicant” under § 40-3.2-104.3(1)(a), C.R.S., the ALJ construes “subscriber” in the proposed Amended Tariff as the person or entity requesting service and who either owns the property or has legal authority over the property, including but not limited to a developer, builder or legal entity.²⁹

24. The Agreement provides that gas main and service line installations that qualify for the exemption from the proposed Amended Tariff Sheets per § 40-3.2-104.3(2)(d), C.R.S., will be subject to the terms and conditions in Attachment C, the Company’s currently effective Tariff Sheet No. R23, Fourth Revised Tariff Sheet No. R25, and Original Tariff Sheet No. R26.³⁰ The Agreement clarifies that this means that the proposed Amended Tariff Sheets approved as a result of this Proceeding will not apply to gas main and service line installations qualifying for the exemptions in § 40-3.2-104.3(2)(d), C.R.S.³¹

²⁵ *Id.* at 13 (Attachment A).

²⁶ *Id.* at 3.

²⁷ *Id.* at 27-28 (Attachment A).

²⁸ *Id.*

²⁹ The ALJ does not amend the definition of “subscriber,” as unnecessary. Indeed, it is reasonable to presume that the Company only engages in construction on a property for main and line extensions or to install a meter based upon a request from a person or entity with authority to agree to such construction.

³⁰ *Id.*

³¹ *Id.*

25. The Agreement states that the effective date of Tariff Sheet Nos. R23 and R25 filed with the Advice Letter should be permanently suspended, and that no later than five days after the Commission's final decision approving the Settlement Agreement is issued, Atmos will file a new compliance advice letter with the proposed Amended Tariff Sheets included with the Agreement as Attachment A.³²

26. The Agreement requires the Company to file a motion seeking a variance from its current tariff so that it may no longer provide construction allowances to persons or entities seeking to establish gas service to a property while waiting for the proposed Amended Tariff Sheets to become effective.³³ The Company filed the required Motion for Variance when it filed the Agreement.

27. The parties agree that the Settlement Agreement serves the public interest by meeting the General Assembly's statutory intent and requirements. And, given that the Agreement resolves the disputes in this Proceeding, the parties submit that approving the Settlement Agreement will avoid litigation and result in judicial economy.³⁴

28. The ALJ finds that by filing the Advice Letter and associated tariff sheets before the end of 2023, the Company complied with the requirement in § 40-3.2-104.3(2)(c), C.R.S., to file tariff sheets by December 31, 2023 that remove incentives to establish new service to a property. The ALJ concludes that the Agreement and the proposed Amended Tariff Sheets effectuate a plain language application of § 40-3.2-104.3, C.R.S., and thus are consistent with the statutory requirements therein. That includes statutory provisions in § 40-3.2-104.3(2)(d), C.R.S.,

³² *Id.* at 2.

³³ *Id.* at 3.

³⁴ *Id.* at 4.

allowing a utility to exempt a person or entity from the updated tariff sheets (the proposed Amended Tariff Sheets) when the person or entity meets the requirements in that statute.

29. The ALJ finds that the proposed Amended Tariff Sheets' charges for new meters are supported by the Company's work papers, found in Attachment B to the Agreement.³⁵ The Agreement and proposed Amended Tariff Sheets ultimately require that those who cause Atmos to incur costs for new service lines, meters and other infrastructure associated with adding a new customer to its distribution system will pay those costs, rather than spreading those costs among ratepayers who do not receive service through such additions or changes. This is consistent with cost-causation principles. For these reasons, and because the Agreement and resulting proposed Amended Tariff Sheets effectuate a plain language application of § 40-3.2-104.3, C.R.S., the ALJ concludes that the Agreement serves the public interest, and results in just and reasonable rates, services and charges to customers that are not discriminatory. For the reasons discussed, the ALJ approves the Settlement Agreement without modification.

D. Motion for Variance

30. The Motion for Variance seeks a temporary variance from the Company's current tariffs while this matter is pending so that it may immediately discontinue providing construction allowances to persons or entities requesting new main and service extensions that do not qualify for the exemption in § 40-3.2-104.3(2)(d), C.R.S.³⁶ The Motion explains that § 40-3.2-104.3, C.R.S., does not identify a date by which the required updated tariff filing must take effect, but that the General Assembly's intent is that the statutory mandate be implemented as quickly as possible.³⁷ For these reasons, the Motion asserts that it is appropriate for the Company to promptly

³⁵ *Id.* at 31 (Attachment B to Agreement).

³⁶ Motion for Variance at 1-3.

³⁷ *Id.* at 3.

stop providing construction allowances that would otherwise be required under the current tariffs while the Commission considers and decides the Settlement Agreement in this Proceeding.³⁸

31. The Motion does not identify a timeframe or process to implement the proposed variance. Nor does it explain how such a variance would be managed after the Settlement Agreement is approved through a final Commission decision and the proposed Amended Tariff Sheets are implemented. Given this, and the fact that this Decision approves the Agreement and proposed Amended Tariff Sheets, the ALJ is concerned that granting a variance will create unnecessary confusion. Moreover, this Decision is being issued without delay, thereby effectuating a timely implementation of § 40-3.2-104.3, C.R.S. For the reasons discussed, the Motion is denied.

32. Denying the Motion does not impact the Settlement Agreement, as the Company fulfilled its obligation in the Agreement to file the Motion.

III. CONCLUSIONS

33. For the reasons and authorities discussed, the ALJ finds that the preponderance of the evidence establishes that the Settlement Agreement reflects a just and reasonable compromise between the parties to resolve all issues that have been or could have been raised here; is in the public interest; and is just and reasonable and not discriminatory. The ALJ concludes that the Agreement's resulting rates, terms, and conditions will result in nondiscriminatory just and reasonable rates, conditions, and terms of service for the Company's customers.

34. 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.

³⁸ *Id.*

IV. ORDER**A. The Commission Orders that:**

1. The Colorado Office of the Utility Consumer Advocate (UCA) and the Colorado Public Utilities Commission Trial Staff (Trial Staff) properly intervened as of right and are acknowledged as parties to this Proceeding. As a result, Atmos Energy Corporation (Atmos or the Company), the UCA and Staff are the parties to this Proceeding.

2. The Unopposed Motion for Variance and Request to Waive Response Time filed on February 27, 2024 is denied, consistent with the discussion above.

3. The Unopposed Motion for Approval of Unanimous Comprehensive Stipulation and Settlement Agreement and For Waiver of Response Time filed February 27, 2024 is granted.

4. The Settlement Agreement is approved without modification. The Settlement Agreement and attachments thereto are included with this Decision as Appendix A.

5. The Tariff Sheets associated with Advice Letter No. 605 filed on November 30, 2023 are permanently suspended and may not be further amended.

6. No more than seven days after this Recommended Decision becomes a Commission Decision, if that is the case, Atmos must file compliance advice letter and tariff sheets that comport with the Settlement Agreement, in substantially the same form as the Tariff Sheets in Attachment A to the Agreement, on not less than two business days' notice. The compliance filings must be made in a new advice letter proceeding and comply with all applicable rules. In calculating the proposed effective date, the date the filing is received at the Commission is not included in the notice period and the entire notice period must expire before the effective date. The advice letter and tariff sheets must comply in all substantive respects to this Decision to be filed as a compliance filing on shortened notice.

7. Proceeding No. 23AL-0579G 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.
10. 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.
11. 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.

12. 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

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

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

Rebecca E. White,
Director