

Decision No. R14-0618-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14AL-0300G

IN THE MATTER OF ADVICE LETTER NO. 511 FILED BY ATMOS ENERGY CORPORATION TO PLACE INTO EFFECT TARIFF SHEET CHANGES TO BE EFFECTIVE ON MAY 5, 2014.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
SCHEDULING HEARING,
ESTABLISHING HEARING PROCEDURES
AND DEADLINES**

Mailed Date: June 10, 2014

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I. STATEMENT, FINDINGS, AND CONCLUSIONS

1. On April 2, 2014, Atmos Energy Corporation (Atmos) filed Advice Letter No. 511 (Advice Letter) seeking to place in effect tariff sheet changes on May 5, 2014. That same day, Atmos filed Direct Testimony and Exhibits to the Direct Testimony.

2. During its weekly meeting held April 30, 2014, the Commission referred this matter to an Administrative Law Judge (ALJ) for disposition. Decision No. C14-0452. At the same time, the Commission suspended the proposed effective date of the tariff page(s) filed by Atmos with Advice Letter for 120 days until September 2, 2014, or until further order of the Commission. *Id.* The Commission ordered that anyone wishing to intervene in this proceeding file a motion to intervene with the Commission within 30 days after the mailing date of Decision No. C14-0452. The Decision was mailed on May 2, 2014. Interventions were due by June 1, 2014.

3. On May 9, 2014, the ALJ scheduled a prehearing conference in this matter to take place on June 5, 2014. Decision No. R14-0494-I. The same Decision further suspended the effective date of the tariff to December 1, 2014.

4. The Colorado Office of Consumer Counsel (the OCC) and Public Utilities Commission trial Staff (Staff) timely intervened of right. Staff and the OCC request an evidentiary hearing on the Advice Letter and tariff sheets.

5. On May 14, 2014, Energy Outreach Colorado (Energy Outreach) filed a Motion to Intervene (Motion), seeking permissive intervention in this proceeding. No party filed an objection to the Motion.

6. On June 5, 2014, the prehearing conference was held. Decision No. R14-0494-I. Atmos appeared through counsel, Mr. Emanuel Cocian; Staff appeared through counsel Mr. Scott Dunbar and Mr. Dave Nocera; the OCC appeared through counsel, Mr. Greg Bunker; and Energy Outreach appeared through counsel, Mr. Jeffery Pearson.

7. During the hearing, the parties agreed to, and the ALJ approved a hearing date, public comment hearing dates, and procedural deadlines.

8. This Decision reflects the matters addressed during the prehearing conference.

A. Energy Outreach's Motion to Intervene.

9. During the prehearing conference, Atmos, the OCC and Staff each indicated they do not object to Energy Outreach's Motion seeking to intervene. For good cause shown in the Motion, and because no party objects to the Motion, the ALJ grants Energy Outreach's Motion. Energy Outreach is an intervener in this proceeding.

10. The parties to this proceeding are: Atmos, the OCC, Staff, and Energy Outreach.

B. Presentation of Exhibits Electronically During Evidentiary Hearing.

11. As discussed during the prehearing conference, the presentation of evidence at the hearing shall be done through electronic exhibits to the fullest extent possible, with the exception of exhibits used for impeachment or rebuttal. If a pre-filed hearing exhibit marked for identification is admitted into evidence, it is anticipated that the electronic copy in the Commission's file will be admitted by administrative notice, in lieu of receiving the identical paper copy (*e.g.*, the fact administratively noticed is that the copy on file is the content of the otherwise-admissible hearing exhibit).

12. To facilitate the presentation of electronic exhibits, all pre-marked and electronically filed exhibits shall be available through a linked spreadsheet during the

evidentiary hearing. The linked spreadsheet shall be created by Commission administrative personnel and given to the parties by August 8, 2014. The spreadsheet will include links to the exhibits the parties file in this proceeding, as required by this Decision. The spreadsheet will list the titles of exhibits as filed by the parties with the Commission, and direct links to those documents. The spreadsheet shall be marked for identification as Hearing Exhibit 1. A Commission staff member, Ms. Alison Torvik, shall pull up and display exhibits from the spreadsheet as necessary during the hearing.¹ Should the parties have technical questions relating to the electronic presentation of exhibits, they may contact Ms. Torvik at (303) 894-2885.

13. The parties are advised and on notice that if changes must be made to the spreadsheet based upon filings made after the spreadsheet has been provided to the parties, that the parties shall be responsible for updating their own spreadsheets to include those changes. The deadline for corrections to exhibits is August 6, 2014; thus, all final versions of the exhibits should be filed before the spreadsheet is created and sent to the parties.

C. Requirements.

1. General Requirements.

14. To facilitate the presentation of electronic exhibits during the hearing, the parties must electronically file all their exhibits with the Commission's e-filing system; spreadsheets or tables (that are exhibits or attachments to exhibits) should be filed in their underlying executable electronic format.²

¹ Exhibits shall be displayed on large monitors in the hearing room.

² All spreadsheets should have the various cell formula or links left intact; *i.e.*, cell formulas should not be converted to values. To the extent that such exhibits cannot be provided in an executable electronic format, the party should provide a list of such exhibits. In order to minimize the size and allow electronic text searches of the PDF files, all PDF files should be generated from the electronic base format where possible, but can be generated as a scanned image if the base document is not available electronically.

15. Unless otherwise ordered, a sponsoring party shall ensure that one paper copy of the pre-filed hearing exhibit is available at hearing. Any paper copy provided at hearing shall be marked with the identification appearing in the Commission's file. The sponsoring party shall assure that, when offered as an exhibit at hearing, the paper copy of the hearing exhibit is identical to the pre-filed electronic version.

2. Identification and Filing Requirements for Hearing Exhibits.

16. The below filing requirements are mandatory to ensure the efficient presentation of the evidence at the hearing. As stated above, during the evidentiary hearing, the documents will be pulled up for use according to the titles that are input by the parties when e-filing the document with the Commission's e-filing system. Thus, if a party does not correctly title the document, this will create problems with pulling up the exhibits during the hearing.

17. The parties shall use a unified numbering system for all hearing exhibits. Each party is assigned a block of hearing exhibit numbers. Atmos is assigned hearing exhibit numbers 2 to 99. Staff is assigned hearing exhibit numbers 100-199; Energy Outreach is assigned hearing exhibit numbers 200-299; and the OCC is assigned hearing exhibit numbers 300-399. If a party does not utilize all of the exhibit numbers assigned to its pre-filed exhibits, and adds an exhibit at the time of the hearing in the course of impeachment or rebuttal, the party shall number such exhibit to be the next unused exhibit number in its assigned block sequence; otherwise, the party may use the next unassigned set of exhibit numbers (*e.g.*, exhibit numbers 400-499).

18. Exhibits shall be marked to include the following information: exhibit number, proceeding number, name of the witness who will testify to the exhibit's foundation, and the date of the hearing.

19. If any exhibit is longer than two pages, the party offering the exhibit shall sequentially number *each page* of the exhibit.

20. All hearing exhibits, including attachments must be titled to start with “Hearing Exhibit [#].” This shall be done on the document itself, and in the title the party inputs when e-filing the document with the Commission.

21. The title of any attachments to hearing exhibits shall include both “Hearing Exhibit [#]” and identification of the attachment number, (*e.g.*, Hearing Exhibit 3, Attachment 1). Again, this format for the title must appear both in the document itself, and in the title that the party inputs when e-filing the document with the Commission.

22. Each type of a witness’s testimony, including attachments to the testimony, (*e.g.*, direct, answer, rebuttal, and cross-answer) shall be marked as one hearing exhibit. The title of such exhibits should also include the type of testimony and the name of the witness. For example, if Hearing Exhibit 2 is the direct testimony of witness John J. Doe, the following title should be used “Hearing Exhibit 2, Direct Testimony of John J. Doe.” This title formatting should be used both on the document itself and when inputting the title into the Commission’s e-filing system when the party files the document.

23. Anything accompanying pre-filed written testimony (*e.g.*, exhibits, appendices, or attachments) shall be identified as an “attachment” to that hearing exhibit and shall include the witnesses’ initials, (*e.g.*, Hearing Exhibit 2, Attachment JJD-1). This shall be done on the document itself, and in the title input when e-filing the document with the Commission.

24. Any party wishing to admit any document used for impeachment or rebuttal, may do so by presenting a paper copy of the document at the time of the hearing.³ In such a circumstance, the party offering the document into evidence is responsible for ensuring the exhibit is identified in accordance with this Decision, and that there are an appropriate number of paper copies available at the time of the hearing. In addition to an original, copies for the other parties, and a copy for the witness, the parties should bring a copy for the ALJ and for the ALJ's advisor.

25. Should a party need to modify, amend, supplement, or correct a previously identified hearing exhibit or attachment, the party shall file both: its revised hearing exhibit showing all changes in redline or strikeout format, and its revised hearing exhibit with all changes made but without a redline or strikeout format. The parties shall utilize the original title for the revised hearing exhibit or attachment, except that the party must add to the title the version number, and "redlined" if it is the redlined version. For example, if Hearing Exhibit 2 is revised once, the redlined version should be titled (both in the document itself and in the e-filed title), "Hearing Exhibit 2, Direct Testimony of John J. Doe, Rev. 1, Redlined" and the non-redlined version should be titled, "Hearing Exhibit 2, Direct Testimony of John J. Doe, Rev. 1." If an additional revision is later filed, it would be filed as "Hearing Exhibit 2, Direct Testimony of John J. Doe, Rev. 2."⁴ The filing with the redlined modification should show changes as compared to the original version instead of redlined changes only as compared to the prior revision. Further, the title of any revision should not contain the word "corrected" even if the revision corrects the prior filing.

³ To be clear, the parties are not required to pre-file documents to be used solely for impeachment or rebuttal.

⁴ The original exhibit shall not be titled to include "rev 1" because "rev" stands for revision.

26. The most recent version of the exhibit with all changes made (non-redlined) shall be the version utilized during the evidentiary hearing.

27. Any pre-filed hearing exhibit or attachment to a pre-filed hearing exhibit filed in accordance with the Standards of Conduct in the Commission's Rules of Practice and Procedure which contains confidential information, shall be pre-marked for identification by the same hearing exhibit number within the assigned block identifying the portion in the public record and shall be designated with a "C" following the number of the hearing exhibit or attachment. For example, a witness's pre-filed written testimony might be identified as Hearing Exhibit 2 Direct Testimony of John J. Doe. If portions of the testimony in Hearing Exhibit 2 are claimed to be confidential, those portions would be filed in accordance with the Standards of Conduct and identified as Hearing Exhibit 2C. Hearing Exhibit 2 would remain in the public record (but should be redacted to exclude confidential material). Further, if portions of Attachment JJD-1 to Hearing Exhibit 2 are claimed to be confidential, those portions would be filed in accordance with the Standards of Conduct and identified as Attachment JJD-1C. Attachment JJD-1 would remain in the public record (but should be redacted to exclude confidential material). Comparably, should any highly confidential protections be afforded, the hearing exhibit number would be designated with a "D" following the number.

28. When filing any confidential or highly confidential exhibits, the parties shall include on the exhibit's cover page a listing of the parties who are entitled to have access to those exhibits.

D. Changes to Testimony Citations Not Required.

29. To facilitate the presentation of electronic exhibits, Atmos will be required to re-file the testimony and attachments thereto that it filed with its Application, if Atmos wishes to

offer those documents into evidence at the evidentiary hearing. The testimony and attachments shall be marked for identification and titled as required by this Decision.⁵ The direct testimony currently on file is accompanied by attachments to the testimony which are identified as “exhibits” to the testimony. This Decision requires that attachments to exhibits be titled as an “Attachment” and not as an “Exhibit.” Nevertheless, Atmos may, but is not required to change citations or references in its testimony from an “exhibit” to an “attachment.” If Atmos chooses not to make such changes, any references in the body of its Direct Testimony to “exhibits” attached to Direct Testimony are stricken and replaced with references to “attachments” (e.g., references in testimony to Exhibit No. AEB-1 are replaced with references to Attachment AEB-1).

30. Likewise, the ALJ will not require the parties to amend references in testimony to obsolete versions of other testimonies; such references will be construed to refer to the latest filed version of such testimony, unless otherwise specified. Although corresponding page and line references may reasonably be affected by such construction, corrected references will not be necessary so long as the reference remains in reasonable proximity to the referenced material. Thus, the witness’s answer testimony referring to page 10, line 5 of another witness’s direct testimony need not revise their answer testimony when a revision to such direct testimony is filed so long as page 10, line 5 is still an approximate reference.

E. Best Practices.

31. The following practices are encouraged to maximize efficiency in the presentation of evidence at hearing:

- a) Slip sheets referred to in Rule 1202(g) shall be blank pieces of paper.

⁵ Because this will be the original filing of the hearing exhibit identified in accordance with this Decision, it will be treated as an original document rather than a revision.

- b) The first page of any page-numbered document shall be page 1, with each additional page numbered in succession (to best coincide with page number references with electronic file page references).
- c) Pages numbers should be included in the header of each page-numbered document.
- d) A person may modify formatting options in revisions to filed documents in order to minimize the resulting impact to page and line references (*e.g.*, widen a paragraph margin to insert a word).

F. Miscellaneous Matters.

32. During the prehearing conference, the parties agreed that Rule 1100, 4 *Code of Colorado Regulations* CCR 723-1 of the Commission's Rules of Practice and Procedure is adequate in terms of information claimed to be confidential in this proceeding. Likewise, the parties also agreed that procedures and timeframes contained in Rule 1405, 4 CCR 723-1 are sufficient.

33. This Decision shall not be construed to prohibit a party from sponsoring an exhibit that was pre-filed by another party. Indeed, parties should not duplicate hearing exhibits or attachments previously filed by another party because any hearing exhibit filed may be used by any parties.

G. Public Comment Hearings.

34. The ALJ will issue separate decisions concerning the public comment hearings that will be held in this proceeding.

35. The parties agreed to the following public comment hearing dates: June 19, 2014 in Greeley, Colorado and July 1, 2014 in Canon City, Colorado. Separate decisions shall issue concerning these public comment hearings once the locations for the hearings are confirmed.

36. The below ordering paragraphs reflect the hearing date and procedural deadlines agreed-upon and approved at the prehearing conference.

II. ORDER

A. It Is Ordered That:

1. A final prehearing conference shall be held at the following date, time, and place:

DATE: August 8, 2014

TIME: 10:00 a.m.

PLACE: Commission Hearing Room
1560 Broadway, Suite 250
Denver, Colorado

2. A hearing on the merits of Atmos Energy Corporation's (Atmos) Advice Letter

No. 511 shall be conducted at the following dates, times, and location:

DATES: August 13, 14, and 15, 2014

TIME: 9:15 a.m. each day, except on August 13, 2014, hearing shall commence at 10:00 a.m.

PLACE: Commission Hearing Room
1560 Broadway, Suite 250
Denver, Colorado

3. Energy Outreach Colorado's (Energy Outreach) Motion to Intervene is granted.

4. Paragraphs 11 to 30 above are hereby ordered.

5. In addition to other requirements of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1 (e.g., Rule 1202 regarding pre-filed testimony), all pre-filed hearing exhibits shall be filed through the Commission's E-Filing System and marked for identification in accordance with this Decision.

6. The parties should not duplicate hearing exhibits or attachments previously filed by another party; any hearing exhibit filed may be used by any party.

7. On or before June 17, 2014, Atmos Energy Corporation (Atmos) shall file and serve its direct testimony and attachments thereto, that must be pre-marked and titled in the

Commission's e-filing system as exhibits and attachments thereto, as required by this Decision. For purposes of this Decision, these filings shall be treated as the original filing of Atmos's exhibits.

8. The Colorado Office of Consumer Counsel, the Colorado Public Utilities trial Staff, and Energy Outreach (collectively, the interveners), shall file and serve their answer testimony and attachments thereto by 5:00 p.m. on July 8, 2014. The answer testimony and attachments must be pre-marked and titled in the Commission's e-filing system as exhibits and attachments thereto, as required by this Decision.

9. Atmos shall file its rebuttal testimony and attachments thereto by 5:00 p.m. on July 28, 2014. The rebuttal testimony and attachments must be pre-marked and titled in the Commission's e-filing system as exhibits and attachments, as required by this Decision.

10. Each intervener shall file and serve its cross-answer testimony and attachments thereto by 5:00 p.m. on July 28, 2014. The cross-answer testimony and attachments must be pre-marked and titled in the Commission's e-filing system as exhibits and attachments, as required by this Decision.

11. All parties have agreed to participate in a settlement conference on July 30, 2014, which shall be coordinated and arranged by the parties.⁶

12. The parties shall file any prehearing motions by August 1, 2014.

13. All parties shall file any corrections to hearing exhibits and attachments thereto by 5:00 p.m. on August 6, 2014. Corrected exhibits and attachments thereto must be pre-marked and titled in the Commission's e-filing system as required by this Decision.

⁶ During the prehearing conference, the parties requested that this be included in this Decision.

14. By 5:00 p.m. on August 8, 2014, Atmos shall file, on behalf of all parties, a joint witness list that includes the order in which each witness will be called, along with an estimated amount of time each party anticipates for the examination of each identified witness.

15. All parties shall file their post-hearing statements of position, to which no response will be permitted, by 5:00 p.m. on August 29, 2014.

16. At the hearing, the parties shall bring one paper copy of the pre-marked exhibits they intend to introduce, along with a completed exhibit list in the format set forth in Appendix A to this Decision. Appendix A includes examples to illustrate its proper use.

17. This Decision shall be effective immediately.

(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 'Doug Dean'.

Doug Dean,
Director