

Decision No. C23-0534

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.

PROCEEDING NO. 23AL-0235G

IN THE MATTER OF COMPLIANCE ADVICE LETTER NO. 595 FILED BY ATMOS ENERGY CORPORATION IN COMPLIANCE WITH DECISION NO. C23-0293 IN PROCEEDING NO. 22AL-0348G TO IMPLEMENT A BASE RATE REVENUE REQUIREMENT TO DECREASE EXPENSES, TO BECOME EFFECTIVE MAY 13, 2023.

**COMMISSION DECISION DENYING
ATMOS ENERGY'S APPLICATION FOR REHEARING,
REARGUMENT, OR RECONSIDERATION.**

Mailed Date: August 10, 2023
Adopted Date: August 2, 2023

I. BY THE COMMISSION

A. Statement

1. On July 11, 2023, Atmos Energy Corporation (Atmos or Company) filed an Application for Rehearing, Reargument, or Reconsideration (RRR) of Decision No. C23-0414, asking the Commission to adopt Atmos' proposed depreciation expense adjustment. By this Decision the Commission denies Atmos' RRR.

B. Background

2. The history of this proceeding is thoroughly set forth in Decision No. C23-0414. That decision addressed the first round of RRR filings and remanded this proceeding to the administrative law judge (ALJ) to address two unresolved issues related to the Gas Cost Adjustment and System Safety and Integrity Rider. As relevant here, that decision also determined that Atmos' proposed depreciation expense adjustment, which this Commission had adopted on exceptions, was unsupported by the record.

3. As the company points out in its RRR, Atmos first presented its depreciation expense adjustment in the pre-filed direct testimony of its witness Mr. Christian. This came in Attachment JTC-3 to Mr. Christian's testimony which included a line item titled "adjustment to year end level current depreciation expense." Atmos next addressed the issue in its rebuttal testimony, arguing that the depreciation expense adjustment should be adopted as a known and measurable adjustment because its depreciation expense at test-year-end was higher than that reflected in a 13-month average, and that the company would not have a reasonable opportunity to recover that higher expense if the adjustment was not made.¹

4. The ALJ's recommended decision denied Atmos' proposed adjustment. The ALJ concluded that Atmos had provided insufficient explanation for the adjustment in either its direct or rebuttal testimony, and that the justification for the adjustment Atmos attempted to elicit from its witness during redirect questioning at the hearing was insufficiently clear to determine whether the adjustment was in the public interest.² The ALJ also found that providing an explanation on redirect was being prejudicial to the parties, Commission, and ratepayers.

¹ Hearing Exhibit 112, pp. 22-23.

² Decision No. R23-0181 at ¶ 131.

5. Atmos raised this issue to the Commission *en banc* through its exceptions, once again arguing that its depreciation expense adjustment should be adopted. The Commission, through Decision No. C23-0293, granted Atmos' exceptions on this issue and concluded that the adjustment should be adopted as it would support the return "of" rate base investments and would support the state's policies related to depreciation of gas utility investments.³

6. The depreciation expense adjustment was one of the many issues presented to the Commission for reconsideration by the parties' applications for RRR. As explained in Decision No. C23-0293, the Commission's approach on exceptions was driven by two things: a state policy rationale, which favors shorter rather than longer depreciation periods, and a ratemaking rationale, which was to address the recovery of plant used by Atmos when the rates from this Proceeding would be in effect. On RRR, however, the Office of the Utility Consumer Advocate argued that broader state policy goals (which it agreed with) should not play a role in the ratemaking process based on the record in this Proceeding. It further emphasized the ALJ's finding that the record contained insufficient explanation for the proposed adjustment. Upon reconsideration of the record, the Commission recognized that the record did not contain sufficient explanation of the adjustment to apply it in the cost-of-service calculation of revenue requirements for establishing rates and granted UCA's RRR on that point.

C. Atmos' Second Application for Rehearing, Reargument, and Reconsideration

7. In its second Application for RRR, Atmos puts forth three reasons why the Commission should grant its request for the depreciation expense adjustment. First, it argues that

³ Decision No. C23-0293 at ¶¶ 34-36.

the record supports its request. Second, it contends that in its 2018 rate case a similar adjustment was made. Third, it argues that accelerated depreciation supports the Commission's policy goals.

8. The crux of Atmos' first argument is that its depreciation expense adjustment is a "known and measurable" adjustment like those that are made in many rate cases. Atmos argues that because the amount of the depreciation expense is known and measurable it makes sense to modify these figures to describe the overall cost of service more accurately. Additionally, Atmos argues that because there was testimony discussing the proposed modification, and the record indicates what the amount would be, there is evidence in the record to support the proposed adjustment. We disagree.

9. Atmos attempts to describe the adjustment as a *fully supported* "known and measurable" adjustment, but the Commission has agreed with the ALJ that it is not supported. Here, it is notable that the ALJ did not reject the depreciation adjustment because it did not qualify as a potential known and measurable adjustment. Instead, he concluded that "Atmos has not carried its burden with respect to its proposed approximately \$1.1 million adjustment. Atmos' direct and rebuttal testimony do not provide sufficient *explanation* for the proposed adjustment."⁴ In the first round of RRR we agreed with the ALJ, concluding that "[u]pon reconsideration, we agree with the UCA and the ALJ that the record is insufficient to support a departure from using a 13-month average period in calculating the depreciation expense." In sum, the testimony and evidence in the record fell short of providing any details or analysis showing why the line item titled "depreciation adjustment"—which is a departure from the 13-month average period used elsewhere in this case—is otherwise reasonable or warranted.

⁴ Decision No. R23-0181 at ¶ 131 (emphasis added).

10. At its core, the issue with the proposal is that there is insufficient explanation for the amount of the adjustment as put forward by Atmos: we perceive nothing in the record that shows how the amount was derived and why that amount properly addresses the recovery of depreciation expenses in base rates.⁵ Nor is there sufficient analysis and discussion in this record to allow us to conclude that the proposed adjustment—which would significantly increase the amount of money Atmos’ customers pay—would lead to a reasonable balance between the utility and its customers.

11. The same problem plagues the third issue Atmos raises on RRR, that its proposal for a year-end depreciation expense is warranted because it meets Commission policy objectives and would match higher depreciation rates with its books. However, its legal argument on RRR cannot correct what the ALJ and now the Commission have determined, that the record evidence does not explain how the depreciation adjustment properly satisfied those or any other objectives. Put another way, the lack of details or analysis here falls short of allowing the Commission to determine whether the adjustment as proposed fulfils the purpose of adjusting the depreciation expense in rates so that the utility is recovering what is being expensed on its books as depreciation, or any other purpose.

12. Finally, Atmos argues that the Commission should adopt its proposed depreciation expense adjustment because a similar adjustment was made in its 2018 rate case. However, there

⁵ We note that the amount of the adjustment fluctuated between nearly \$1.1 Million and something much less as the various components of the rate case were resolved. Yet in marshalling record evidence to support its proposal here on RRR, Atmos points us to no discussion describing how the adjustment would change in relation to other components of the rate case. This lack of description further supports the ALJ’s conclusion that the proposal was not sufficiently developed.

is no stare decisis among PUC decisions.⁶ Each rate case is unique and the Commission makes its decision on the facts and in the context before it. Atmos' 2018 rate case did see the ALJ make a similar adjustment, but the adjustment was never raised to the full Commission for consideration. Either way, that it was done five years ago does not mean we must do the same thing in this rate case. And on the facts before us, as we have articulated above, we are unconvinced that this adjustment is warranted.

13. For these reasons we deny Atmos Energy's Application for Rehearing, Reargument, and Reconsideration.

II. ORDER

A. The Commission Orders That:

1. The Application for Rehearing, Reargument, or Reconsideration of Decision No. C23-0414, filed by Atmos Energy Company on July 11, 2023, is denied, consistent with the discussion above.

⁶ See *Colorado Ute Electric Association v. Public Utilities Commission*, 602 P.2d 861 (1979) (due to the legislative character of rate-making, the Commission is not bound by its prior decisions or by any doctrine similar to stare decisis).

2. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' DELIBERATIONS MEETING
August 2, 2023.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

TOM PLANT

Commissioners