Decision No. C23-0549

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23V-0381G

IN THE MATTER OF THE JOINT PETITION OF ATMOS ENERGY CORPORATION AND BLACK HILLS COLORADO GAS, INC. FOR APPROVAL OF A VARIANCE FROM RULE 4602(H).

COMMISSION DECISION GRANTING PARTIAL VARIANCE OF RULE 4602(H)

Mailed Date: August 17, 2023
Adopted Date: August 16, 2023

I. BY THE COMMISSION

A. Statement

1. This Decision grants Atmos Energy Corporation and Black Hills Colorado Gas, Inc. (Joint Petitioners) a partial variance from the Gas Performance Incentive Mechanism (GPIM) filing deadline set forth in paragraph 4602(h) of the Commission's Rules Regulating Gas Utilities, 4 *Code of Colorado Regulations* (CCR) 723-4, consistent with the discussion below.

B. Discussion

2. On July 21, 2023, Joint Petitioners filed a Petition for a Variance from Rule 4602(h) and Request for Shortened Notice and Intervention Period (Petition). Joint Petitioners request either a partial variance delaying the filing of their initial Gas Purchase Incentive Mechanism (GPIM) applications until 90 days after Public Service Company files its initial GPIM, consistent with the filing procedures set out in Rule 4602, or a full variance if the Commission ultimately grants Public Service's request for a full variance in Proceeding No. 23V-0241G.

3. Rule 4602(h) requires in relevant part that "Utilities with more than 50,000 full-service customers but fewer than 500,000 full-service customers shall file an initial GPIM application pursuant to Rule 4607 no later than September 1, 2023, for a period extending through the gas purchase year ending in June 2026."

4. Joint Petitioners state that the recently modified Gas Cost Adjustment (GCA) rules include a new requirement for natural gas utilities to file a GPIM to establish a gas cost benchmark using market indices and apply a risk sharing mechanism under Rule 4601(q). The GCA rules also introduce several new terms and definitions related to the GPIM. Those rules became effective April 14, 2023. The modified GCA rules adopted a staggered approach for the jurisdictional gas utilities to file GPIM applications. Public Service Company of Colorado (Public Service) was to file its GPIM two months after the new GCA rules take effect, with the Joint Petitioners filing their GPIM applications in September 2023.

5. Joint Petitioners also note that SB23-291, which was introduced in this most recent legislative session, impacts gas utilities by requiring utilities to file Gas Price Risk Management Plans (GPRMP) by November 1, 2023 to level or reduce the volatility of fuel costs that are recovered pursuant to utilities' gas cost adjustment filings (*codified at*, § 40-3-120(1)(a), C.R.S.), and that the Commission initiate a rulemaking in order to align the financial incentives of an investor-owned electric or gas utility with the interests of the utility's customers regarding incurred fuel costs (*see*, § 40-3-120(2)(a), C.R.S.). Joint Petitioners are of the opinion that in future proceedings and the future rulemaking, those statutory directives may conflict or overlap with the Commission's existing rules regarding GPIMs.

6. By Decision No. C23-0456 in Proceeding No. 23V-0241G, issued July 18, 2023, the Commission granted Public Service's request for a temporary waiver of the June 13, 2023,

GPIM filing deadline. The temporary waiver is to be in place pending a final decision on whether a permanent waiver is appropriate.

7. Pending the outcome of the permanent waiver for Public Service, Joint Petitioners request a variance of the requirement of Rule 4602(h) requiring initial GPIM applications to be filed no later than September 1, 2023. Similar to Public Service's arguments in its petition for temporary variance, Joint Petitioners argue that the Commission is required to adopt rules to establish mechanisms to align the financial incentives of an investor-owned electric or gas utility with the interests of the utility's customers regarding incurred fuel costs. Several elements of the financial incentive rules appear to overlap with the requirements for the GPIM applications.

8. Because the GPIM requirements and SB23-291 both undertake to align incentives and introduce risk sharing for commodity costs, Joint Petitioners fear a potential for overlap of issues that may be litigated in the GPIM application proceeding and that will be addressed in the financial incentive and risk-mitigation mechanism rulemaking. It is also possible, Joint Petitioners argue that the rulemaking requirement of SB23-291 could displace the GPIM application filing requirements in Rules 4602(h) and 4607.

9. As a result, Joint Petitioners request either (1) a partial variance delaying the filing of their initial GPIM applications until 90-days after Public Service files its initial GPIM, consistent with the staggered filings in Rule 4602; or (2) a full variance if the Commission ultimately grants Public Service's request for a full variance in Proceeding 23V-0241G.

10. By Decision No. C23-0517-I, issued August 4, 2023, we shortened the notice and intervention period in this Proceeding to five days from the effective date of that decision or to August 9, 2023. No party intervened.

C. Findings and Conclusions

11. Paragraph 1403(a) of Rule 4 CCR 723-1-1403 of the Commission's Rules of Practice and Procedure states that the Commission may determine any petition without a hearing and without further notice if the petition is uncontested or unopposed. Joint Petitioners' request for a temporary waiver of the GPIM filing deadline under Rules 4602(h) is unopposed.

12. We find good cause, pursuant to Rule 1003, to grant Joint Petitioners' request for a partial variance from the GPIM filing deadline required by Rule 4602(h). Joint Petitioners are granted a partial variance which delays the filing of their respective, initial GPIM applications until 90 days after Public Service files its initial GPIM application, if that is the case.

II. ORDER

A. The Commission Orders That:

1. The Unopposed Joint Petition filed by Atmos Energy Corporation and Black Hills Colorado Gas, Inc. (Joint Petitioners) for a Variance from Rule 4602(h) on July 21, 2023, is granted consistent with the discussion above.

2. Joint Petitioners are granted a partial variance delaying the filing of their respective, initial Gas Purchase Incentive Mechanism (GPIM) applications until 90 days after Public Service Company of Colorado files its initial GPIM application, if that is the case.

3. This Decision is effective upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING August 16, 2023.

(S E A L)

ATTEST: A TRUE COPY

Rebecca E White

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

MEGAN M. GILMAN

TOM PLANT

Commissioners