

Decision No. R23-0755

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.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
CONOR F. FARLEY
DENYING MOTION FOR APPROVAL OF
NON-UNANIMOUS STIPULATION AND SETTLEMENT
AGREEMENT BETWEEN ATMOS AND STAFF,
REJECTING SETTLEMENT AGREEMENT, REQUIRING
FILING, AND CLOSING PROCEEDING**

Mailed Date: November 9, 2023

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I. PROCEDURAL BACKGROUND

1. On August 5, 2022, Atmos Energy Corporation (Atmos) filed Advice Letter No. 584 with tariff sheets for its base rate schedules for natural gas utility service to Colorado customers. Atmos’ filing initiated Proceeding No. 22AL-0348G.

2. The parties to Proceeding No. 22AL-0348G were Atmos, Trial Staff of the Commission (Staff), the Colorado Office of the Utility Consumer Advocate (UCA), and Energy Outreach Colorado (EOC).

3. By Decision No. C22-0514, issued September 1, 2022, the Commission set the tariff pages filed with Advice Letter No. 584 for hearing pursuant to § 40-6-111(1), C.R.S., and referred this Proceeding to an administrative law judge (ALJ). The proceeding was subsequently assigned to the undersigned ALJ.

4. On March 15, 2023, the ALJ issued Decision No. R23-0181 (Recommended Decision) permanently suspending the effective date of the tariff sheets filed with Advice Letter No. 584. The Recommended Decision established modified base rates for Atmos to place into effect instead of the rates riled with Advice Letter No. 584 and authorized Atmos’ System Safety and Integrity Rider (SSIR) to continue for an additional two years through 2025. The

Recommended Decision also authorized Atmos to: (a) “recover its stored gas costs through the [Gas Cost Adjustment rider (GCA)] and earn a return at the cost of short-term debt;”¹ and (b) obtain from ratepayers “a return at the weighted average cost of long-term debt on costs incurred during the [SSIR] extension period.”²

5. On April 4, 2023, Atmos, Staff, UCA, and Energy Outreach Colorado (EOC) filed Exceptions seeking to reverse or modify parts of the Recommended Decision.

6. On May 4, 2023, the Commission issued Decision No. C23-0293 that ruled on the Exceptions.

7. On May 10, 2023, Atmos filed Advice Letter No. 595 to make the changes to its Tariffs in Colo. P.U.C. No. 7 Gas, authorized by the decisions issued in Proceeding No. 22AL-0348G, with May 13, 2023 being the effective date of the tariff sheets. The filing of Advice Letter No. 595 initiated Proceeding No. 23AL-0235G.

8. On May 11, 2023, UCA filed a protest to Advice Letter No. 595 in Proceeding No. 23AL-0235G, contending that Atmos improperly added a state and federal tax gross-up to the cost of financing gas storage inventories, and asking the Commission to set the tariff pages pertaining to the GCA for hearing and to suspend those tariff pages.

9. On May 12, 2023, Staff filed a protest letter in Proceeding No. 23AL-0235G raising the same concern as UCA. Staff also asserted that Atmos improperly added credit facility costs to the cost of financing gas storage inventories. Staff recommended the Commission set for hearing the GCA provisions subject to refund if the GCA provisions are determined to not be just and reasonable, or to suspend the tariffs and set the matter for hearing.

¹ Recommended Decision at 30 (¶ 70).

² *Id.* at 21-22 (¶ 51).

10. On May 12, 2023, the Commission issued Decision No. C23-0320 in Proceeding No. 23AL-0235G that suspended the effective date of Tariff Sheet Nos. 5, 6, and 6A filed with Advice Letter No. 595 until September 10, 2023, or until further order of the Commission.

11. On May 24, 2023, Atmos, Staff, and UCA each filed an Application for Rehearing, Reargument, or Reconsideration of Decision No. C23-0293 (RRR Applications) in Proceeding No. 22AL-0348G. In addition to the argument it made in its protest to Advice Letter No. 595 in Proceeding No. 23AL-0235G, UCA also requested in its RRR Application “clarification from the Commission that cost recovery of Atmos’ weighted average cost of debt for its SSIR rate starting on January 1, 2024, shall not include a tax gross-up, but shall simply recover the interest costs, without facility fees, on Atmos’ weighted average cost of debt.”³ UCA also requested a correction in Atmos’ cost of service study (COSS) to use the correct Colorado income tax rate of 4.4 percent, not the 4.55 percent used by Atmos.⁴

12. On June 5, 2023, the Commission issued Decision No. C23-0374 granting Atmos’ RRR Application “for the sole purpose of tolling the [30-day] statutory time limit” for the Commission to decide the RRR Applications.⁵

13. On June 21, 2023, the Commission issued Decision No. C23-0414 that granted the RRR Applications of Atmos and Staff, granted-in-part and denied-in-part the RRR Application of UCA, consolidated Proceeding Nos. 22AL-0348G and 23AL-0235G, and remanded the issues of the appropriate method for calculating: (a) the short-term debt rate applied to the gas storage costs for purposes of recovery through the GCA rider; and (b) the weighted average cost of debt applied

³ UCA RRR at 26.

⁴ *Id.* at 2.

⁵ Decision No. C23-0374 at 2 (¶ 5).

to the costs recovered through the SSIR (Remand Decision).⁶ Decision No. C23-0414 also denied UCA's request for a correction to the Colorado income tax rate "because the impact of the change is so small as to have no material impact on the volumetric rate."⁷

14. On June 27, 2023, the ALJ issued Decision No. R23-0428-I that set a shortened notice and intervention period, shortened the time within which to file opposition to any motion to permissively intervene, scheduled a remote prehearing conference for July 20, 2023, and required the parties to confer and Atmos to file a Report of Conferral by July 18, 2023. Decision No. R23-0428-I required Atmos to provide notice of the proceeding by posting a customer notice and Decision No. C23-0320 on Atmos' website, serving both on all parties in Proceeding No. 22AL-0348G.

15. On June 28, 2023 and July 11, 2023, UCA and Staff filed Notices of Intervention by Right, respectively.

16. On July 18, 2023, Atmos filed the Conferral Report stating that the parties had not reached a consensus schedule.

17. On July 20, 2023, the remote prehearing conference took place. The ALJ suspended the effective date of the tariff page for an additional 130 days, extended to January 18, 2024, and adopted Atmos' proposed schedule with the addition of a September 22, 2023 deadline for responses to prehearing motions. The adopted schedule is:

⁶ Decision No. C23-0414 at 8 (¶ 28), 10 (Ordering ¶ 5).

⁷ *Id.* at 9 (¶ 32).

<u>Event</u>	<u>Deadline</u>
Direct Testimony	July 28, 2023
Answer Testimony	August 25, 2023
Rebuttal/Cross-Answer Testimony	September 8, 2023
Prehearing Motions	September 15, 2023
Settlement Agreement(s) and Supporting Testimony Cross-Examination Matrix Corrections to Written Testimony and Exhibits Responses to Prehearing Motions	September 22, 2023
Remote Hearing	September 29, 2023
Statements of Position (SOP)	TBD

18. On July 26, 2023, the ALJ issued Decision No. R23-0484-I that memorialized the decisions made at the remote prehearing conference.

19. On July 28, 2023, Atmos filed a Motion for Approval of Non-Unanimous Stipulation and Settlement Agreement (Remand Settlement Agreement) between Atmos and Staff (Remand Settlement Motion). UCA did not join the Settlement Agreement.

20. The Atmos, Staff and UCA, and UCA filed direct, answer, and cross-answer testimony, respectively, on the deadlines specified in Decision No. R23-0484-I.

21. On September 22, 2023, Atmos, Staff, and the UCA filed an Unopposed Joint Motion to Vacate Hearing, Admit Exhibits Into Evidence, and Set Briefing Deadline (Unopposed Joint Motion). In the Unopposed Joint Motion, the parties stated that they “have agreed that the issues in this proceeding have been sufficiently addressed through the pre-filed testimony and responses to discovery.”⁸ Towards that end, the parties (a) waive cross-examination of the

⁸ Unopposed Joint Motion at 5 (¶ 19).

witnesses; and (b) stipulate to the admission of: (i) the direct, answer, and cross-answer testimony and attachments filed in this proceeding; and (ii) Atmos' responses to UCA's discovery requests marked as Hearing Exhibit 406 and filed with the Unopposed Joint Motion as Attachment A. Finally, the parties request that October 17, 2023 be set as the deadline for SOPs.

22. On September 27, 2023, the ALJ issued Decision No. R23-0644-I that granted the Unopposed Joint Motion.

23. On October 17, 2023, Atmos, Staff, and UCA filed their SOPs.

II. PROCEEDING NO. 22AL-0348G

A. Decision No. R23-0181 (Recommended Decision)

1. Gas in Storage

a. Parties' Positions

24. In Proceeding No. 22AL-0348G, Atmos included the average balance of gas it stores underground in rate base, which would allow Atmos to earn its weighted average cost of capital (WACC) on such inventories. As support, Atmos cited multiple Commission decisions allowing stored gas to be included in rate base. Because ratepayers pay for gas when it is consumed, Atmos asserted that allowing it to recover its costs based on the WACC would "allow the Company a reasonable opportunity to recover the costs of carrying those balances."⁹ However, if the recovery on stored gas is limited to the cost of short-term debt, "then Atmos Energy should recover actual debt costs, including short-term debt facility costs, instead of an index rate," as proposed by Staff and UCA.¹⁰

⁹ Atmos' SOP at 16 (filed in Proceeding No. 22AL 0348G).

¹⁰ *Id.* at 18.

25. Staff and UCA both argued that Atmos' gas storage costs should be recovered through the GCA, not through base rates resulting from placing the value of stored gas in rate base. Staff and UCA both argued that Atmos should be able to recover the gas storage costs at the cost of short-term debt because stored gas "is by its nature a short-term asset, and the return earned by the Company should reflect that nature."¹¹ Finally, Staff argued that an index of short-term debt should be used to determine Atmos' recoverable costs of short-term debt, instead of Atmos' actual costs of debt. Specifically, Staff proposed to use "the average daily rates for Commercial Paper, Financial, 3-Month rates, published by the United States Federal Reserve Board H.15 report."¹² UCA argued that Atmos' recovery should be its actual cost of stored gas.¹³

26. No party addressed whether the rate used for "earning" or "recovery of costs" should be grossed up for taxes.

b. Recommended Decision

27. The Recommended Decision stated:

The ALJ finds and concludes that Atmos' stored gas should be recovered through the GCA and Atmos should earn a return thereon at the cost of short-term debt. Staff and UCA have established that the value of stored gas is temporary and volatile. The Commission's statement in Decision No. C22-0804 applies equally here: the dollar value of stored gas "fluctuates primarily on gas commodity costs and any given value of the asset is thus temporary and thus best addressed by short-term debt as argued by Staff. Moreover, a key feature of ratemaking for gas utilities in Colorado is that they earn no return on gas commodity costs." Accordingly, it is just and reasonable and in the public interest for Atmos to recover its stored gas costs through the GCA and earn a return at the cost of short-term debt.¹⁴

¹¹ Staff's SOP at 16.

¹² Hearing Exhibit 302 at 17:12-14 (Answer Testimony of Mr. Kunzie in Proceeding No. 22AL-0348G); Staff's SOP at 18 (filed in Proceeding No. 22AL-0348G).

¹³ UCA's SOP at 16-17 (filed in Proceeding No. 22AL-0348G).

¹⁴ Decision No. R23-0181 at 29-30 (¶ 70).

The Recommended Decision acknowledged but did not otherwise explicitly address Atmos's argument that, if the ALJ decided that the recovery on stored gas would be at the short-term debt rate, credit facility costs should be recovered as well.¹⁵ The Recommended Decision did not address whether the rate used for "earning" or "recovery of costs" should be grossed up for taxes.

2. SSIR

a. Parties' Positions

28. Atmos advocated for a continuation of the SSIR as-is, which meant that SSIR costs would be recovered at Atmos' WACC, not at Atmos' cost of long-term debt.¹⁶ UCA argued the opposite – that Atmos be permitted to "earn" a "return" on its SSIR balances at its cost of long-term, not its WACC.¹⁷ Although unclear, it appears that Staff argued that if the SSIR was extended, Atmos should "earn" its WACC on SSIR costs.¹⁸

29. Like with the SSIR, no party addressed whether the rate used for "earning" or "recovery of costs" should be grossed-up for taxes.

b. Recommended Decision

30. In the Recommended Decision, the ALJ held:

The ALJ finds and concludes that it is in the public interest for Atmos to earn at the weighted average cost of long-term debt for SSIR costs incurred during the extension. The UCA is correct that the SSIR benefits Atmos by reducing regulatory lag and the risk of disallowances, which decreases Atmos' risk of not recovering costs. Atmos has enjoyed, and will continue to enjoy, a WACC return on costs incurred during the current phase of the SSIR. However, the ALJ finds and concludes that limiting Atmos to a return at the weighted average cost of long-term debt on costs incurred during the

¹⁵ *Id.* at 27 (¶ 64).

¹⁶ Atmos' SOP at 7 (filed in Proceeding No.22AL 0348G).

¹⁷ UCA's SOP at 13-14 (filed in Proceeding No.22AL 0348G); HE 400 at 36:17-37:12 (Answer Testimony of Mr. Skluzak); HE 401 at 79:12-17 (Answer Testimony of Mr. Fernandez).

¹⁸ Staff's SOP at 26 (filed in Proceeding No.22AL 0348G); HE 307 at 60:5-6 (Testimony of Mr. Fuller).

extension period will fairly balance the interests of ratepayers and shareholders and will yield just and reasonable rates.¹⁹

31. Again, the Recommended Decision did not address whether the rate used for “earning” or “recovery of costs” should be grossed up for taxes.

B. Decision No. C23-0414 (Remand Decision)

32. The Remand Decision stated that “Atmos seeks clarification regarding the cost of short-term debt as authorized for the cost of gas in storage recovered through the gas cost adjustment (GCA).”²⁰ It then noted that “the Recommended Decision concludes that Atmos’ stored gas should be recovered through the GCA at a return equal to the Company’s short-term cost of debt. However, the Recommended Decision does not define how the cost of short-term debt is to be calculated.”²¹ Similarly, the Remand Decision noted that “UCA also requests [] clarification as to the correct determination of the weighted average cost of debt for Atmos’ SSIR rate beginning on January 1, 2024, as authorized in the Recommended Decision.”²² The Remand Decision then concluded that “there is insufficient evidence in the record in this proceeding to determine a calculation of short-term debt and so we remand this issue, along with the weighted average cost of debt for Atmos’ SSIR rate, to the ALJ.”²³

33. Based on the foregoing, ordering paragraph 5 of the Remand Decision stated that “[t]he issues of the short-term cost of debt for recovery of costs of gas in storage through the GCA and the weighted average cost of debt for recovery through the SSIR are remanded to the ALJ in this Proceeding.”²⁴

¹⁹ Decision No. R23-0181 at 21-22 (¶ 51).

²⁰ Decision No. C23-0414 at 6 (¶ 22).

²¹ *Id.* at 7 (¶ 22).

²² *Id.* at 8 (¶ 27).

²³ *Id.* at 8 (¶ 28).

²⁴ *Id.* at 10 (Ordering ¶ 5).

III. REMAND SETTLEMENT AGREEMENT BETWEEN ATMOS AND STAFF

34. As noted above, Atmos and Staff entered into the Remand Settlement Agreement of the remaining disputes in this proceeding. Specifically, Atmos and Staff agreed: (a) that updates will be made to Atmos' short-term debt calculation applied to the average monthly storage gas balances; (b) to a procedure to adjust customer rates to reflect the state income tax reduction to 4.40 percent; and (c) that there are no disputes between Atmos and Staff related to the calculation of the return on the 2024-2025 SSIR investments and no disputes with the SSIR tariffs filed and approved by operation of law on May 13, 2023. As to the first term of the Remand Settlement Agreement, Atmos agreed to update its calculation of short-term debt to exclude a weighting of all the Debt Facilities as well as reflect the current state income tax rate in the gross up step. This lowers the short-term debt rate from 4.574 percent to 4.482 percent after-tax and from 6.057 percent to 5.935 percent grossed up for income taxes.²⁵

35. As to the second item of the Remand Settlement Agreement, the procedure agreed to by Atmos and Staff is that after the final Commission decision approving the Remand Settlement Motion, Atmos will file an advice letter with an effective date of January 1, 2024 to: (a) adjust the General Rate Schedule Adjustments (GRSAs) to return to customers, through May 12, 2026, the excess deferred income tax (EDIT) resulting from the lower Colorado state tax rate from the effective time of the lower state income tax rate for Atmos Energy (October 1, 2022) through September 30, 2023, with interest at Atmos Energy's cost of short-term debt, as calculated pursuant to the Remand Settlement Agreement but without the tax gross up; and (b) to lower Residential volumetric base rates, through a new GRSA rate, to reflect the difference in the test period revenue requirement as a result of the 4.40 percent Colorado state tax rate. If the GRSA billed for the

²⁵ Hearing Exhibit 135 at 21:5-18 (Remand Direct Testimony of Mr. Christian).

Colorado income tax EDIT amounts exceed or fail to recover the total approved amount by May 13, 2026, Atmos Energy will file an advice letter to refund or collect amounts if the difference is +/- \$5,000 from the actual amount.²⁶

36. On the issues addressed in this Recommended Decision, and as to the third item of the Remand Settlement Agreement, Staff accepted Atmos' proposals for the combined income tax gross-up for storage gas and for the future SSIR, and also agreed to the inclusion of credit facility fees in the calculation of the short-term debt rate.²⁷

IV. PARTIES' POSITIONS IN THIS REMAND PROCEEDING

A. Atmos

37. Atmos argues it properly interpreted and followed the Recommended Decision in performing a tax gross-up of the short-term and long-term debt rates to be used in the GCA to recover the costs of stored gas and in the SSIR for recovery of expenditures on high-risk projects. Atmos contends that by using words like "earn" and "return" in the discussions of stored gas and the SSIR in Decision No. R23-0181, the ALJ intended Atmos to use two separate "hypothetical capital structures" to determine GCA and SSIR rates. These "hypothetical capital structures" assumed that Atmos would finance stored gas and SSIR investments with short-term debt²⁸ and long-term debt,²⁹ respectively. Use of these hypothetical capital structures means that Atmos was "required" to replace the equity component in its capital structure with the short-term debt rate for gas storage costs and the long-term debt rate for SSIR investments. And this, in turn, required the short-term and long-term debt rates to be grossed-up for taxes because they replaced the equity

²⁶ *Id.* at 21:22-23:12.

²⁷ Settlement Agreement at 4 (¶ 17(a)), 5 (¶ 17(e)).

²⁸ Atmos' SOP at 1.

²⁹ *Id.* at 2.

component that is, and always has been, so grossed-up.³⁰ According to Mr. Christian, “[u]tilizing a debt rate as a proxy for an equity return results in a lower overall return, and it is necessary to gross-up for income taxes in order to be able to earn at the rates identified in” the Recommended Decision.³¹ As a result, by using “earn” and “return” in the context of stored gas and the SSIR, the Commission required Atmos to use hypothetical capital structures and thereby further required “the equity portion of the debt return . . . to be grossed up for taxes to provide the Company a reasonable opportunity to recover the ‘return’ at the debt rate.”³²

38. Atmos understands that the Recommended Decision does not require Atmos to finance the purchase and storage of gas with short-term debt or SSIR expenditures with long-term debt.³³ Instead, the Recommended Decision required the use of the short-term debt rate and the weighted average cost of long-term rate as proxies for the actual financing used for stored gas and SSIR expenditures.³⁴ These proxies were to be used, in turn, as “substitute[s] for return on equity.”³⁵

39. According to Atmos, if tax gross-ups are not used, there will be important consequences. Atmos’ “cost of financing gas in storage is the Company’s WACC, and by ordering a return at the cost of short-term debt the Commission deprived Atmos Energy the opportunity to

³⁰ *Id.* at 6 (“The Settlement supports calculating the return on Stored Gas using Atmos Energy’s actual cost of short-term debt, including the cost of maintaining short-term debt facilities, and recognizes that the return on Stored Gas should be grossed-up for taxes due to the hypothetical capital structure being used for ratemaking. The Settlement affirms the Company’s interpretation and implementation of the Commission’s decisions in Proceeding No. 22AL-0348G”), 8 (“When preparing the SSIR tariffs for its compliance filing, the Company understood that the debt return on future SSIR investments using the weighted average cost of debt required Atmos Energy to replace the equity cost rate in its capital structure with the rate for long-term debt. Under that approach, the debt portion of the capital structure is not grossed up for taxes, as it generally reflects the amount of actual debt in the Company’s capital structure. However, the “equity” portion must still be grossed up in order for Atmos Energy to have an opportunity to earn that return, albeit a return based on the lower cost of long-term debt.”).

³¹ Hearing Exhibit 136 at 8:8-10 (Remand Rebuttal Testimony of Mr. Christian).

³² Atmos’ SOP at 6.

³³ Hearing Exhibit 136 at 18:3-5 (Remand Rebuttal Testimony of Mr. Christian).

³⁴ *Id.* at 18:5-7.

³⁵ *Id.* at 18:7-8.

recover its actual cost.”³⁶ If the tax gross-up of the stored gas return is not permitted, Atmos will not earn the allowed cost of debt “return,” thus magnifying the deprivation of Atmos’ opportunity to recover its actual cost.³⁷ As to the use of the weighted average cost of long-term debt without a tax gross-up on SSIR expenditures, Atmos states that “[t]o move from a WACC, grossed-up for income taxes, to having zero return on its SSIR investment is a very dramatic change in the return on investment and thus ignores gradualism.”³⁸

40. According to Atmos, its interpretation of the Recommended Decision is validated by Public Service Company of Colorado’s (Public Service) GCA tariff. In Proceeding No. 22AL-0348G, UCA argued that Atmos should recover its cost of financing gas in storage “as PSCo-Gas does.”³⁹ In its ruling on the recovery of stored gas costs, the Recommended Decision quoted from the Commission’s decision in the PSCo-Gas case “the dollar value of stored gas ‘fluctuates primarily on gas commodity costs and any given value of the asset is thus temporary and thus best addressed by short-term debt as argued by Staff. Moreover, a key feature of ratemaking for gas utilities in Colorado is that they earn no return on gas commodity costs.’”⁴⁰ In determining how to comply with the Recommended Decision, therefore, Atmos used as a guide Public Service’s GCA tariff and recent GCA filings, which include a tax gross-up.⁴¹

41. Atmos concludes as follows:

The case boils down to one of Commission intent. Does the Commission intend to permit a utility to earn a return at the rate that it authorizes, even when substituting a debt rate for a return on equity rate derived from a

³⁶ Hearing Exhibit 136 at 10:4-7 (Remand Rebuttal Testimony of Mr. Christian).

³⁷ *Id.* at 16:15-18 (“Confining any ‘return’ on an investment to an after-tax number will not permit the Company to have a reasonable opportunity to earn that return without it being grossed up for taxes.”).

³⁸ *Id.* at 20:10-13.

³⁹ Hearing Exhibit 400 at 49:4-7 (Answer Testimony of Mr. Skluzak) (Proceeding No. 22AL-0348G).

⁴⁰ Decision No. R23-0181 at 29-30 (¶ 70) (quoting Decision No. C22-0804 issued in Proceeding No. 22AL-0046G on December 13, 2022 at 30 (¶ 92)).

⁴¹ Atmos’ SOP at 1, 4.

financial model? Or does the Commission intend to dictate the actual financing of specific portions of a utility's operations?⁴²

42. Atmos also argues that it should be able to recover an allocation of short-term debt facility costs to its Colorado ratepayers.⁴³ According to Atmos, "the cost of maintaining the availability of short-term debt is not included in the Company's rates, because short-term debt is not used in the Company's capital structure for setting base rates in Colorado."⁴⁴ If stored gas is to be financed with short-term debt, then the short-term debt facility costs must be recoverable because they are incurred to provide service to ratepayers.⁴⁵

43. Atmos requests the Commission to approve the Remand Settlement Agreement with Staff because it: (a) adopts the correct "approach to implementing the Commission's decisions regarding the recovery of the debt returns on Stored Gas and future SSIR investments;" (b) adopts "the lower Colorado income tax rate through a process that is well-established and efficient;" and (c) "[w]hen considered in the context of the Commission's other decisions in Proceeding No. 22AL-0348G that lowered Atmos Energy's overall revenue requirement, the Commission should find that the Settlement is in the public interest and will result in just and reasonable rates."⁴⁶

B. Staff

44. Staff states that it entered into the Remand Settlement Agreement based on its adherence to the principle that "a utility should recover its prudently incurred costs."⁴⁷ Staff argues that the Remand Settlement Agreement allows Atmos to do so. Staff urges that, in analyzing the

⁴² *Id.* at 21:14-18.

⁴³ Atmos' SOP at 5; Hearing Exhibit 135 at 11:14-12:23 (Remand Direct Testimony of Mr. Christian); Hearing Exhibit 404, Rev. 1 at 42:10-19 (Remand Answer Testimony of Mr. Skluzak).

⁴⁴ Hearing Exhibit 135 at 13:3-5 (Remand Direct Testimony of Mr. Christian).

⁴⁵ Atmos' SOP at 5.

⁴⁶ Atmos' SOP at 10.

⁴⁷ Staff's SOP at 2.

Remand Settlement Agreement, “[e]ach part of the settlement should not be viewed in isolation, and the settlement on remand should not be divorced from the overall rate proceeding.”⁴⁸ According to Staff, once that is done, the natural conclusion is that the Remand Settlement Agreement leads to just and reasonable rates.⁴⁹

45. Specifically, the Remand Settlement Agreement requires Atmos to exclude the weighting of the debt facilities and to use the state income tax rate of 4.4 percent, not 4.55 percent.⁵⁰ As explained above, Atmos weighted its debt facilities and used a tax rate of 4.55 percent to calculate the GCA and SSIR rates included in its Advice Letter No. 595 filed on May 10, 2023 to make the changes to its tariffs in Colo. P.U.C. No. 7 Gas based on the decisions in Proceeding No. 22AL-0348G. These changes lower the short-term debt rate from 6.057 percent to 5.935 percent, which makes the resulting rates just and reasonable.⁵¹

46. As to the short-term debt facilities, they “contain provisions that include fees paid when a Debt Facility is utilized.”⁵² Because the Recommended Decision requires Atmos to use those debt facilities to finance stored gas, it follows that Atmos should be permitted to recover those costs. According to Staff, the short-term debt facility costs are “real costs that Staff believes Atmos should recover.”⁵³

47. As to the tax gross-up issue, Staff points to the language in the Recommended Decision that Atmos is permitted to “earn” on its cost of gas in storage and on its SSIR investments, which makes a tax gross-up reasonable.⁵⁴ Staff states that UCA is incorrect in arguing that that the

⁴⁸ *Id.*

⁴⁹ *Id.* at 3.

⁵⁰ *Id.* at 4.

⁵¹ *Id.*

⁵² *Id.* at 5.

⁵³ *Id.* at 4.

⁵⁴ *Id.* at 5.

proposed income tax gross-up is not appropriate (for the SSIR or the GCA) because it violates a fundamental regulatory principle “that income taxes be included for a regulated company’s revenues.”⁵⁵ According to Staff,

if Atmos is to recover its costs, it must have revenues. Atmos incurs costs when it takes on short-term debt. It must pay credit facility fees, and it must pay interest on that short-term debt. If it is to recover those costs, it must have revenue to do so, which means it must pay taxes on that revenue. That in turn requires the revenue for Atmos’ tax expense, or revenues will not be sufficient to cover costs. . . . Accordingly, applying the gross up to that revenue does not violate the regulatory principle discussed by [UCA] because there is revenue to cover the cost of the debt.⁵⁶

48. Finally, Staff repeatedly emphasizes that the Remand Settlement Agreement cannot be divorced from the broader context of this proceeding. According to Staff:

The settlement filed by Staff and Atmos must be viewed in the context of the larger rate case of which it is an integral part. The result of the first phase of this proceeding was a rate decrease for Atmos, after Atmos sought an increase of over \$1 million dollars. The small amounts that Atmos gains through the settlement will not lead to some outrageous increase in rates. But that is the tone of the Utility Consumer Advocate’s testimony opposing the settlement.

. . . .

This settlement . . . leads to just and reasonable rates. It is in the public interest and should be approved. . . . The settlement concerns a very small portion of a much larger rate proceeding, one in which Atmos received a rate decrease, and the use of short-term debt will lead to a lower revenue than if the more typical weighted average cost of capital were used simply because the interest rate paid by Atmos is lower.

. . . .

This remand case is part of a larger rate proceeding, and if the settlement is approved, Atmos’s revenue will remain quite far indeed from its filed case.

. . . .

The question presented is whether the overall settlement results in just and reasonable rates in this proceeding. In this case, Staff believes the give and take on all issues in light of the larger case lead to a fair result. . . Staff

⁵⁵ *Id.* at 7 (quoting Hearing Exhibit 404, Rev. 1 at 30:15-16) (Remand Answer Testimony of Mr. Skluzak).

⁵⁶ *Id.* at 7-8.

believes that the new Atmos rates, as impacted by the settlement, are just and reasonable.⁵⁷

Based on the foregoing, Staff asserts that the Remand Settlement Agreement should be approved.

C. UCA

49. UCA argues that, in the Recommended Decision, the ALJ limited Atmos to recovery of debt costs (referred to as a debt-only recovery) on gas storage and SSIR expenditures, and that references to “earn,” “earning,” and “return” in the context of gas storage and the SSIR in the Recommended Decision were not intended to indicate that a tax gross-up is appropriate.⁵⁸ Further, the Recommended Decision stated that “a key feature of ratemaking for gas utilities in Colorado is that they earn no return on gas commodity costs.”⁵⁹ According to UCA, this finding provides further support that the Recommended Decision authorized a debt-only recovery. UCA argues that because neither Atmos nor Staff contested this finding on exceptions, the finding cannot be changed now.⁶⁰

50. According to UCA, Atmos’ requested income tax gross-up is contrary to the basic regulatory principle that an income tax gross-up should not be employed for debt-only cost recovery.⁶¹ As support, UCA cites a treatise also cited by Atmos stating that “[i]ncome taxes (state and federal) are directly related to and dependent upon the realization of income, and hence are allowed in the rates as an addition to the return.”⁶² Further, “grossing up’ the net rate of return is intended to provide an allowance for income taxes on the taxable portion of the return, *i.e.*, the

⁵⁷ *Id.* at 1-2, 3, 6, and 7.

⁵⁸ Hearing Exhibit 404, Rev. 1 at 17:13-19, 26:3-5, 27:8-30:12 (Remand Answer Testimony of Mr. Skluzak); UCA’s SOP at 8.

⁵⁹ UCA’s SOP at 8 (quoting Decision No. R23-0181 at 29-30 (¶ 70), which quoted from Decision No. C22-0804 issued in Proceeding No. 22AL-0046G on December 13, 2022 at 30 (¶ 92)).

⁶⁰ *Id.*

⁶¹ *Id.* at 7

⁶² Hearing Exhibit 404, Rev. 1 at 30:17-19 (Remand Answer Testimony of Mr. Skluzak) (quoting *The Process of Ratemaking* at 710).

equity portion of a return.”⁶³ Because “[t]he costs of Atmos’ debt are not revenue, but expenses,” “[t]here are no income taxes applied to debt expenses,” and “the ‘return’ or cost recovery for Atmos’ stored gas contains no equity portion,” it is inappropriate to apply a tax gross-up to debt expenses.⁶⁴ UCA states that there is nothing in the record of this proceeding that supports Atmos’ proposed hypothetical capital structures involving the replacement of the equity component in Atmos’ capital structure with the short-term debt rate for gas storage costs and the long-term debt rate for SSIR investments.⁶⁵ Finally, UCA asserts that the use of an income tax gross-up for Atmos’ future SSIR calculation is contrary to the approach employed by the only other Colorado gas utility, Black Hills Colorado Gas, with an SSIR with a debt-only return.⁶⁶

51. UCA also argues that credit facility fees should not be included in Atmos’ debt-only return for its stored gas because a “debt-only” return should be limited to interest expenses.⁶⁷

According to UCA,

the inclusion of credit facility costs are outside the scope of what the Commission approved, there was no specific approval or mention of the inclusion of these costs in the section of the Recommended Decision expressing the approved recovery treatment, and had Atmos needed further clarification on the ALJ’s decision on this matter, Atmos had the opportunity to raise this in its exceptions prior to presenting this on its compliance filing and chose not to do so.⁶⁸

UCA also notes that Atmos’ calculation of the overall pre-allocated credit facility costs has increased from \$4.2 million in the proceeding leading up to the Recommended Decision to \$5.3 million in this remand proceeding, resulting in the allocation of those costs to Colorado

⁶³ *Id.* at 30:20-21.

⁶⁴ *Id.* at 31:7-8, 32:1-2.

⁶⁵ UCA’s SOP at 10-11.

⁶⁶ UCA’s SOP at 15; Hearing Exhibit 404, Rev. 1 at 34:14-35:5 (Remand Answer Testimony of Mr. Skluzak); Hearing Exhibit 405, Rev. 1 at 21:10-26:6 (Remand Cross-Answer Testimony of Mr. Skluzak).

⁶⁷ *Id.* at 4, 16-17.

⁶⁸ Hearing Exhibit 404, Rev. 1 at 43:20-44:4 (Remand Answer Testimony of Mr. Skluzak).

increasing from \$117,300 to \$174,876. UCA asserts that Atmos has not provided any explanation for the increases.⁶⁹

52. For the foregoing reasons, UCA request that the ALJ reject: (a) the Remand Settlement Agreement; (b) Atmos' proposals for tax gross-ups of its recovery of the interest component of debt for its SSIR expenditures and stored gas inventories; and (c) inclusion of credit facility fees in calculating Atmos' cost recovery for storage gas inventories. Instead, UCA asserts that Atmos should recover only the interest expense on the permitted debt for both stored gas and SSIR expenditures.⁷⁰

53. Finally, UCA equivocates about whether Atmos' actual cost of short-term debt should be used in the calculation of short-term debt costs or a proxy. In Proceeding No. 22AL-0046G, Public Service used the average daily rates for Commercial Paper as a proxy for its short-term debt rate. In his Answer Testimony in this Remand Proceeding, Mr. Skluzak argued in favor of using the same proxy as Public Service for the cost of short-term debt. As support, Mr. Skluzak stated that "[u]sing the same proxy that PSCo uses has the benefit of consistency between PSCo and Atmos, simplifies what short-term debt should be used, and moots the issue of whether credit facility fees should be included."⁷¹ An additional reason why Mr. Skluzak took this position is because Atmos testified in this proceeding that it has not used its short-term debt to finance the purchase of stored gas.⁷²

54. In his Cross-Answer testimony, however, Mr. Skluzak noted that Atmos stated in Proceeding No. 22AL-0348G that it "finances stored gas through retained earnings (*i.e.*, equity)

⁶⁹ Hearing Exhibit 404, Rev. 1 at 42:10-43:10 (Remand Answer Testimony of Mr. Skluzak).

⁷⁰ *Id.* at 18:10-18.

⁷¹ *Id.* at 45:18-20.

⁷² Hearing Exhibit 135 at 14:11-13 (Remand Direct Testimony of Mr. Christian).

and short-term debt in the same way it finances pipe in the ground.”⁷³ UCA now states that, if this latter statement is correct, “then the ALJ should use Atmos’ short-term debt.” Regardless, UCA requests that Atmos should be limited to recovering the interest portion of whatever short-term debt rate is used.⁷⁴

V. ANALYSIS

A. Analytical Approach

55. In rendering this Decision, the ALJ has carefully reviewed and considered all the evidence introduced by the Parties during the hearing, including the testimony and hearing exhibits, even if this Decision does not specifically address all of the evidence presented, or every nuance of each party’s position in each issue. Moreover, the ALJ has considered all the legal arguments set forth in the SOPs, even if the Decision does not explicitly address every legal argument. In rendering this Decision, the ALJ has weighed the evidence and evaluated the credibility of all the witnesses and hearing exhibits.⁷⁵

B. Calculation of Cost of Short-Term Debt for Stored Gas Recovered Through the GCA

1. Tax Gross-Up

56. The ALJ finds and concludes that it would be inappropriate for Atmos to apply a tax gross-up to the short-term debt rate applied to gas storage costs. The Commission was correct when it stated in Proceeding No. 2AL-0046G that “a key feature of ratemaking for gas utilities in

⁷³ Hearing Exhibit 405, Rev. 1 at 28:1-12 (Remand Cross-Answer Testimony of Mr. Skluzak). See Atmos’ SOP at 17 (filed on January 30, 2023 in Proceeding No. 22AL-0348G).

⁷⁴ UCA’s SOP at 17.

⁷⁵ See *Durango Transportation, Inc. v. Colorado Public Utilities Comm’n.*, 122 P.3d 244, 252 (Colo. 2005); *RAM Broadcasting of Colo., Inc. v. Public Utilities Comm’n.*, 702 P.2d 746, 750 (Colo. 1985).

Colorado is that they earn no return on gas commodity costs.”⁷⁶ In fact, neither Atmos nor Staff have disputed that the Commission’s statement is a fundamental principle of the regulatory compact. The ALJ concludes that, at a minimum, grossing-up the short-term debt costs for taxes impermissibly crosses the line from pure cost recovery to earning a return on gas commodity costs.

57. The arguments by Atmos and Staff that Atmos should be permitted to gross-up for taxes the short-term debt rate used to collect Atmos’ gas storage costs are unavailing. Neither the Recommended Decision nor the Commission’s decisions on Exceptions or RRR instructed Atmos to replace the equity portion of its capital structure with the short-term debt rate. Nor did they imply that such a substitution should take place. The ALJ concludes that the argument is designed to place the desire to earn a return on gas commodity costs in the most favorable light.

58. The ALJ understands and appreciates that the language in the Recommended Decision to the effect that Atmos could “earn” a “return” on the stored gas costs opened the door to the question of how to calculate the “return.” The ALJ did not intend to contravene the fundamental principle of utility regulation noted above that gas utilities do not earn a return on gas commodity costs.

59. The ALJ also understands and appreciates that, given the references in the Recommended Decision to Decision No. C22-0804 in Public Service’s rate case (Proceeding No. 22AL-0046G), Atmos reviewed Public Service’s GCA tariff filing to determine how to calculate the GCA rate in this proceeding. In Public Service’s rate case, the Commission instructed Public Service to employ its short-term cost of debt to determine the GCA rate for recovering Public Service’s costs of stored gas. The fact that Public Service in its GCA tariff performed a tax gross

⁷⁶ Decision No. C22-0804 issued in Proceeding No. 22AL-0046G on December 13, 2022 at 30 (¶ 92).

up of its short-term debt cost then served as the basis, at least in part, for Atmos doing the same here.

60. However, the ALJ is not convinced that the Commission knowingly approved Public Service's tax gross up of the interest component of its short-term debt cost. Public Service introduced the tax gross-up when it filed its compliance tariffs at the conclusion of the Public Service rate proceeding. Under these circumstances, the fact that Public Service has been performing a tax gross-up of its approved short-term debt rate recovery of its stored gas costs is not a compelling argument that Atmos should be permitted to do the same here.

61. For the foregoing reasons, the ALJ finds and concludes that the interest component of Atmos' short-term debt costs should not be grossed-up for taxes.

2. Debt Facility Costs

62. The ALJ finds and concludes that it is appropriate for Atmos to include debt facility costs in the calculation of its short-term debt rate applied to its gas storage costs. The inclusion of an allocation of such costs to Colorado results in a reasonable measure of the short-term debt costs incurred by Atmos. Moreover, Atmos contends that "the cost of maintaining the availability of short-term debt is not included in [its] rates, because short-term debt is not used in [its] capital structure for setting base rates in Colorado."⁷⁷ UCA has not contested this statement. Accordingly, the ALJ finds persuasive Atmos' conclusion that, if the Commission requires Atmos to finance stored gas with short-term debt, then the short-term debt facility costs must be recoverable.⁷⁸

⁷⁷ Hearing Exhibit 135 at 13:3-5 (Remand Direct Testimony of Mr. Christian).

⁷⁸ Atmos' SOP at 5.

63. That Public Service does not include short-term debt facility fees in its recovery of short-term debt costs through its GCA is not dispositive on this issue, as UCA asserts.⁷⁹ The record in this proceeding does not reflect whether Public Service recovers those debt facility costs elsewhere. Nor has any party cited to the record in Proceeding No. 22AL-0046G to provide an answer to that question. As a result, the ALJ cannot conclude that Public Service's non-recovery of such costs through the GCA is analogous to the situation here.

64. The ALJ's conclusion does not mean that the entirety of Atmos' debt facility costs should be recovered from Atmos' Colorado-based ratepayers through the GCA. Atmos asserts that it has already properly allocated to Colorado the appropriate amount of short-term debt facility costs given that those debt facilities are used for all of Atmos' operations.⁸⁰ Nevertheless, UCA has questioned why Atmos' calculation of the overall credit facility costs have increased from \$4.2 million in the proceeding leading up to the Recommended Decision to \$5.3 million in this remand proceeding, resulting in the allocation of those costs to Colorado increasing from \$117,300 to \$174,876.⁸¹ The ALJ urges the parties to work together to develop an understanding of the basis for the allocation of debt facility costs to Colorado in the compliance tariff filings at the conclusion of this proceeding.

3. Actual Versus Proxy Short-Term Debt Costs

65. The ALJ finds and concludes that use of Atmos' actual short-term debt costs, rather than a proxy, is most appropriate. As summarized above, the record in this proceeding is not clear

⁷⁹ Haring Exhibit 404, Rev. 1 at 44:13-45:20 (Remand Answer Testimony of Mr. Skluzak).

⁸⁰ Atmos' SOP at 5; Hearing Exhibit 135 at 11:14-12:23 (Remand Direct Testimony of Mr. Christian); Hearing Exhibit 404, Rev. 1 at 42:10-19 (Remand Answer Testimony of Mr. Skluzak).

⁸¹ Hearing Exhibit 404, Rev. 1 at 42:10-43:10 (Remand Answer Testimony of Mr. Skluzak).

as to whether Atmos has employed its short-term debt facilities to finance the cost of stored gas.⁸² Regardless, the ALJ finds and concludes that the use of Atmos' actual short-term debt costs will yield just and reasonable rates.

C. Calculation of Weighted Cost of Long-Term Debt for SSIR Cost Recovery

66. For the same reasons noted above with respect to calculation of short-term debt, the ALJ finds and concludes that the interest component of Atmos' weighted average cost of long-term debt should not be grossed-up for taxes. In addition, the record establishes that the only other Colorado gas utility with an SSIR with a debt-only return, Black Hills Colorado Gas, does not employ a tax gross-up of the interest component of the return.⁸³ Finally, Atmos' SSIR has been approved for another two-years during which it is expected that the SSIR will be wound down. As noted above, Atmos asserts that "[t]o move from a WACC, grossed-up for income taxes, to having zero return on its SSIR investment is a very dramatic change in the return on investment and thus ignores gradualism."⁸⁴ The change a WACC return with a tax gross-up to recovery of the interest component of the weighted average cost of long-term debt should incentivize Atmos to wind-down the SSIR efficiently by completing all high-risk projects within the two-year extension. The ALJ finds that limiting Atmos to recovery of the interest component of the weighted average cost of long-term debt fairly balances the interest of ratepayers and shareholders and will yield just and reasonable rates.

⁸² Compare Hearing Exhibit 135 at 14:11-13 (Remand Direct Testimony of Mr. Christian) ("Although Atmos Energy has not relied upon short-term borrowing, I am able to derive a short-term debt cost utilizing the Company's actual Debt Facilities information.") with Atmos' SOP at 17 (filed on January 30, 2023 in Proceeding No. 22AL-0348G) ("The Company finances stored gas through retained earnings (*i.e.*, equity) and short-term debt in the same way it finances pipe in the ground.").

⁸³ UCA's SOP at 15; Hearing Exhibit 404, Rev. 1 at 34:14-35:5 (Remand Answer Testimony of Mr. Skluzak); Hearing Exhibit 405, Rev. 1 at 21:10-26:6 (Remand Cross-Answer Testimony of Mr. Skluzak).

⁸⁴ *Id.* at 20:10-13.

D. Settlement Agreement

67. For the foregoing reasons, the ALJ will deny the Remand Settlement Motion and not approve the Remand Settlement Agreement. The ALJ finds and concludes that approval of the Remand Settlement Agreement is not in the public interest. Instead, the decisions made above will yield just and reasonable GCA and SSIR rates.

VI. RECOMMENDED DECISION

68. In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following Order.

VII. ORDER**A. The Commission Orders That:**

1. For the reasons stated above, the Motion for Approval of Non-Unanimous Stipulation and Settlement Agreement between Atmos Energy Corporation and Trial Staff of the Commission Staff filed on July 28, 2023 by Atmos Energy Corporation (Atmos) is denied.

2. The Settlement Agreement submitted with the Motion is not accepted.

3. The effective date of Tariff Sheet Nos. 5, 6, and 6A filed with Advice Letter No. 595 by Atmos on May 10, 2023, is permanently suspended and shall not be further amended.

4. Proceeding No. 22AL-0348G & 23AL-0235G is closed.

5. No later than five (5) calendar days after this Recommended Decision becomes the Decision of the Commission, if that is the case, Atmos shall file a new Advice Letter and modified Tariff Sheet Nos. 5, 6, and 6A on not less than two (2) days' notice in order to place the compliance tariff sheets P.U.C. No. 7 Tariff into effect, consistent with the findings, discussion, and conclusions in this Decision. The advice letter and tariff shall be filed as a new advice letter

proceeding and shall comply with all applicable Commission 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 prior to the effective date. The advice letter and tariffs must comply in all substantive respects to this Decision in order to be filed as a compliance filing on shortened notice.

6. No later than ten (10) calendar days after this Recommended Decision becomes the Decision of the Commission, if that is the case, Atmos shall file a new advice letter and modified tariffs for its System Safety and Integrity Rider on not less than 30 days' notice, consistent with the findings, discussion, and conclusions in this Decision.

7. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be made available to all parties in the proceeding, who may file exceptions to it.

- a) 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.
- b) 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.

8. Response time to any exceptions that may be filed is shortened to seven (7) days.
9. 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)



ATTEST: A TRUE COPY

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

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CONOR F. FARLEY

Administrative Law Judge