

Decision No. R23-0428-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22AL-0235G

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.

**INTERIM DECISION OF ADMINISTRATIVE LAW JUDGE
CONOR F. FARLEY
SETTING SHORTENED NOTICE AND INTERVENTION
PERIOD, SHORTENING TIME TO FILE OPPOSITION TO
MOTION(S) TO PERMISSIVELY INTERVENE,
SCHEDULING REMOTE PREHEARING CONFERENCE,
AND REQUIRING PARTIES TO CONFER AND ATMOS
TO FILE REPORT OF CONFERRAL BEFORE THE
REMOTE PREHEARING CONFERENCE**

Mailed Date: June 27, 2023

I. STATEMENT

A. Procedural Background

1. On August 5, 2022, Atmos filed Advice Letter No. 584 with tariff sheets for its base rate schedules for natural gas utility service to Colorado customers.

2. 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.

3. On March 15, 2023, the ALJ issued Recommended Decision No. R23-0181 (Recommended Decision) permanently suspending the effective date of the tariff sheets filed with Advice Letter No. 584. The Recommended Decision establishes modified base rates and authorizes the Company's System Safety and Integrity Rider (SSIR) to continue for an additional two years through 2025. The Recommended Decision also authorized Atmos to: (a) recover the cost of stored gas through the Gas Cost Adjustment (GCA) and to earn a return on that cost at Atmos' cost of short-term debt until it is recovered; and (b) earn a return on SSIR costs at Atmos' weighted average cost of debt until the costs are recovered through the SSIR rider.

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

5. On May 4, 2023, the Commission issued Decision No. C23-0293, upholding the Recommended Decision's authorization of a 13-month average rate base valuation, reversing the Recommended Decision's denial of a \$1.1 million depreciation adjustment requested by Atmos, and confirming that Atmos could file a modified GCA tariff and new GCA rates for recovery of gas storage costs.

6. 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 a May 13, 2023, effective date of the tariff sheets. The Advice Letter initiated Proceeding No. 23AL-0235G.

7. On May 11, 2023, UCA filed a protest to Advice Letter No. 595 in Proceeding No. 23AL-0235G, contending that Atmos improperly added 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 Gas Cost Adjustment (GCA) for hearing and to suspend those tariff pages.

8. On May 12, 2023, Staff filed a protest letter in Proceeding No. 23AL-0235G raising the same concern as UCA. Staff recommends the Commission set for hearing the GCA provisions subject to refund if the GCA provisions are determined to be not just and reasonable, or to suspend the tariffs and set the matter for hearing.

9. 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.

10. On May 24, 2023, Atmos, Staff, and UCA each filed their Applications 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 “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.”¹

11. 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.²

¹ UCA RRR at 26.

² Decision No. C23-0374 at 2 (¶ 5).

12. 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, consolidating Proceeding Nos. 22AL-0348G and 23AL-0235G, and remanded the issues of the appropriate method for calculating: (a) the short-term debt rate that the Recommended Decision permitted Atmos to earn on the cost of gas kept in storage recovered through the GCA rider; and (b) the weighted average cost of debt that the Recommended Decision permitted Atmos to earn on the SSIR costs recovered through the SSIR.

B. Intervention Period

13. An intervention period must be established in this consolidated proceeding. A pleading to intervene may be filed by any person, firm, or corporation desiring to be a party and fully participate in this proceeding, as ordered below. The filing of any other document protesting the tariff sheets shall not allow participation as an intervenor in this matter.

14. The Commission suspended the tariff sheets that are at issue in this consolidated proceeding almost 1.5 months ago, but did not set an intervention period. As a result, there is less time post-referral than is typical to complete this type of proceeding. For this reason, the ALJ finds and concludes that there is good cause to shorten the notice and intervention period. Requests for intervention, including a notice of intervention by right, shall be due by July 11, 2023.

15. In addition, § 40-3-104(1)(c)(I)(E), C.R.S. and Rule 1207(b) of the Commission's Rules of Practice and Procedure³ allow alternative forms of notice of a tariff change. The ALJ finds that the alternative forms of notice of posting a customer notice and Decision No. C23-0320 on Atmos' website and serving both on all parties in Proceeding No. 22AL-0348G, will provide

³ 4 *Code of Colorado Regulations* 723-1.

sufficient notice to Atmos' customers and other potential intervenors and will do so efficiently. The ALJ thus finds and concludes that there is good cause to approve the foregoing alternative forms of notice.

C. Remote Prehearing Conference

16. It is appropriate to hold a remote prehearing conference in this proceeding. Accordingly, a remote prehearing conference shall be scheduled for July 20, 2023, at 10:30 a.m. The remote prehearing conference will be conducted over the Zoom videoconferencing platform. The ALJ or a member of Commission Staff will email the log-in information in advance of the hearing.

17. Atmos shall confer with the other parties or those entities seeking to intervene in advance of the remote prehearing conference regarding a schedule for this proceeding, any discovery procedures that are inconsistent with the Commission's rules governing discovery, and the method by which the hearing should be conducted. The Commission can conduct in-person, remote, or hybrid hearings. A remote hearing is one in which all of the participants appear and participate from remote locations over the Zoom web conferencing platform. A hybrid hearing involves the ALJ and at least one party and/or witness participating from one of the Commission's hearing rooms in Denver, and the remaining party(ies) and witness(es) participating from one or more remote locations using the Zoom web conferencing platform. An in-person hearing is one in which the ALJ and all parties and witnesses participate in the hearing at the same location.

18. Atmos shall file a report of the results of the conferral. If there is agreement on a schedule, including dates for the hearing, discovery procedures that are inconsistent with the Commission's rules governing discovery, and/or the method for conducting the hearing (*i.e.*, remote, hybrid, or in-person), the report shall state as much and detail the stipulated procedural

schedule, discovery procedures, and/or method for conducting the hearing. If no agreement is achieved, the report shall state as much and identify the competing schedules, discovery procedures, and/or methods for conducting the hearing proposed by the parties. The parties are on notice that the ALJ will retain the discretion to change the method by which the hearing will be conducted.

19. The parties are urged to review the Commission's public calendar to identify suitable days for the hearing in this proceeding and propose more than one date or consecutive dates for the hearing. The latest date on which the hearing can conclude is September 29, 2023, which assumes that the effective date of the tariff sheets filed with Advice Letter No. 584 will be extended an additional 130 days pursuant to § 40-6-111(1), C.R.S. The deadline for Atmos to file the report is July 18, 2023.

20. All parties must appear at the remote prehearing conference. Failure to attend or to participate in the remote prehearing conference is a waiver of any objection to the rulings made, to the procedural schedule established, and to the hearing dates scheduled during the remote prehearing conference.

D. Responses to Motions to Permissively Intervene Filed After July 7, 2023

21. The deadline for any person, firm, or corporation to file a motion to permissively intervene in this proceeding is July 11, 2023. Under Rule 1401(b) of the Commission's Rules of Practice and Procedure,⁴ the deadline to file a response in opposition to any motion to intervene filed on July 11, 2023 is July 25, 2023. Because the remote prehearing conference is scheduled for July 20, 2023, the deadline to file a response in opposition to motions to permissively intervene

⁴ 4 Code of Colorado Regulations 723-1.

filed after on or after July 5, 2023 will be shortened to July 18, 2023. Atmos and all individuals or entities who seek to permissively intervene must be prepared to present oral argument concerning any disputed motion to permissively intervene at the prehearing conference on July 20, 2023.

II. ORDER

A. It Is Ordered That:

1. Atmos Energy Corporation (Atmos) shall post the alternative forms of notice described above forthwith.

2. The notice and intervention period are shortened for the reasons stated above.

3. Any person, firm, or corporation, including any who have previously filed a document protesting the proposed tariff pages, who desire to intervene and participate as a party in this proceeding shall file a motion to intervene with the Commission no later than July 11, 2023 and shall serve a copy of the notice or motion on the attorney of record for Atmos Energy Corporation (Atmos). Alternatively, persons who do not wish to intervene or become a party, but desire to file comments, may send written comments through the Commission's comment portal at <https://puc.colorado.gov/puccomments>. All persons who file a notice of intervention as of right, motion to permissively intervene, or any other appropriate pleading shall do so in accordance with the instructions set forth in the Commission's Rules of Practice and Procedure and this Decision.

4. A remote prehearing conference in this proceeding is scheduled as follows:

DATE: July 20, 2023

TIME: 10:30 a.m.

WEBCAST: Hearing Room B

METHOD: Join by video conference using Zoom at the link to be provided in an email from the Administrative Law Judge⁵

5. Nobody should appear in-person for the remote prehearing conference.
6. Atmos shall file the report of the conferral identified above on or before July 18, 2023.
7. The deadline to file a response in opposition to any motion to permissively intervene filed on or after July 5, 2023, shall be shortened to July 18, 2023.
8. This Decision is effective immediately.

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO



CONOR F. FARLEY

Administrative Law Judge

ATTEST: A TRUE COPY

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

Rebecca E. White,
Director

⁵ Additional information about the Zoom platform and how to use the platform are available at: <https://zoom.us/>. All are strongly encouraged to participate in a test meeting prior to the scheduled hearing. See <https://zoom.us/test>.