

Decision No. C23-0253-I

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.

**INTERIM COMMISSION DECISION GRANTING
MOTION FOR EXTRAORDINARY PROTECTION,
WAIVING RESPONSE TIME, AND ORDERING ATMOS
TO MAKE A FILING**

Mailed Date: April 17, 2023
Adopted Date: April 12, 2023

I. BY THE COMMISSION

A. Statement

1. By this Decision, the Commission grants the Unopposed Motion for Extraordinary Protection of Highly Confidential Information filed by Atmos Energy Corporation (“Atmos”) on April 10, 2023 (“Motion”). Through the Motion, Atmos requests extraordinary protection for redacted invoices from outside legal counsel that have been requested by the Office of the Utility Consumer Advocate (“UCA”). Atmos represents that the motion is unopposed. Since the Motion is unopposed, we find good cause to waive the remaining response time and take up the matter expeditiously. Upon review of the Motion, the Commission finds good cause to grant the requested relief. We also order Atmos to file certain information into this proceeding.

B. Discussion

2. This Proceeding is before the commission *en banc* after an evidentiary hearing and Recommended Decision. While parties have filed exceptions to the Recommended Decision, this Decision addresses a much narrower issue: whether to grant Atmos' motion for extraordinary protection. Through the Motion, Atmos explains that discovery request Staff 1-12 sought receipts for rate case expenses that Atmos sought to recover in this proceeding. While Atmos has supplemented its response four times with updated expenses, after the evidentiary hearing in this proceeding, UCA asked Atmos to also provide its outside legal invoices showing the hourly rates and amount of time worked on tasks. Atmos notes that it wishes to be responsive to UCA's request and so seeks to redact certain information from the legal invoices.

3. In particular, Atmos seeks to protect information that would disclose confidential attorney-client communications, confidential litigation strategy, or other privileged attorney work product. Atmos points out that it negotiates its rates for legal services and would be at a disadvantage in those negotiations if the rates were disclosed publicly. It proposes to limit access to the Commissioners, the administrative law judge assigned to this matter, the Commission's advisory staff and advisory attorneys, Trial Staff, and attorneys for Trial Staff, and the UCA and attorneys for the UCA.

4. Atmos states the requested extraordinary protections will strike the appropriate balance between the need for reasonable disclosure and the need to protect access to this information.

5. Atmos prepared non-disclosure agreements for attorneys and subject matter experts, as required by Rule 1101(b) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1. Atmos also provided the affidavit of Shelly Bass,

identifying the employees in groups with access to the highly confidential information. The affidavit requests the extraordinary protection remain in place indefinitely, and that any party provided access to the information shred or destroy it upon the conclusion of the proceeding.

6. Atmos also states the requested relief is unopposed by the parties to this Proceeding.

C. Findings and Conclusions

7. When presented with a motion for extraordinary protection of claimed highly confidential information, the Commission determines whether the information is, in fact, highly confidential, the level of extraordinary protection that may be warranted, and to whom access should be granted.

8. The operative language in Rule 1101(b)(IV) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1, which concerns motions requesting highly confidential protection, requires that the motion:

shall include a showing that the information for which highly confidential protection is sought is highly confidential; that the protection afforded by the Commission's rules for furnishing confidential information provides insufficient protection for the highly confidential information; and that, if adopted, the highly confidential protections proposed by the movant will afford sufficient protection for the highly confidential information

9. We find the reasoning and arguments in the Motion persuasive. The Motion states good cause to grant the relief sought under Rule 1101, 4 CCR 723-1. The Commission further finds the requested protections are appropriate, are reasonable, and are consistent with the Commission's Rules and past practice.

10. Based on the foregoing, we grant the Motion and approve the non-disclosure agreements. And we waive any remaining response time because the Motion is unopposed.

11. Access to the highly confidential information shall be limited as requested in the Motion.¹

12. Additionally, we direct Atmos to file the billing information it seeks to disclose to UCA into this record by Tuesday, April 18, 2023, so that the Commissioners and advisory staff have access.

13. We remind counsel and the parties that individuals permitted access to the highly confidential information may use it only for purposes of this Proceeding, consistent with the Commission's confidentiality rules. The protected highly confidential information may not be disclosed to any unauthorized persons. Further, Public Service bears responsibility to ensure that parties' access is restricted consistent with the protections ordered in this Decision and that, following conclusion of this Proceeding, the information is appropriately destroyed.

II. ORDER

A. The Commission Orders That:

1. The Unopposed Motion for Extraordinary Protection of Highly Confidential Information, filed by Atmos Energy Corporation on April 10, 2023, is granted.

2. Upon the Commission's own motion, remaining response time to the unopposed motion is waived.

3. Atmos is directed to file the information it intends to disclose to UCA by April 18, 2023.

¹ The Commissioners, Commission advisory staff, Commission advisory counsel, administrative law judges, Trial Staff, and Trial Staff counsel sign annual non-disclosure agreements covering all confidential and highly confidential information filed with the Commission and are not required to sign separate agreements in individual cases. See Rule 1100(i) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1.

4. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
April 12, 2023.**

(S E A L)



ATTEST: A TRUE COPY



G. Harris Adams,
Interim Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

TOM PLANT

Commissioners