

Decision No. C23-0414

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 22AL-0348G

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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.

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PROCEEDING NO. 23AL-0235G

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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.

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**COMMISSION DECISION GRANTING, IN PART, AND DENYING, IN PART, APPLICATIONS FOR REHEARING, REARGUMENT, OR RECONSIDERATION, CONSOLIDATING PROCEEDING NOS. 22AL-0348G AND 23AL-0235G, DENYING APPLICATION FOR REHEARING, REARGUMENT, OR RECONSIDERATION, AND REMANDING THE PROCEEDING TO THE ADMINISTRATIVE LAW JUDGE.**

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Mailed Date: June 21, 2023

Adopted Date: June 21, 2023

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**I. BY THE COMMISSION**

**A. Statement**

1. On May 24, 2023, Atmos Energy Corporation (Atmos or Company) filed an Application for Rehearing, Reargument, or Reconsideration of Decision No. C23-0293, seeking clarification of the cost of short-term debt as authorized in Decision No. C23-0293 for the cost of gas in storage recovered through the gas cost adjustment (GCA).

2. On May 24, 2023, Staff of the Commission (Staff) filed an Application for Reconsideration of Decision No. C23-0293, raising concerns about including a tax gross-up in Atmos’ short-term cost of debt calculation for the GCA rate.

3. On May 24, 2023, the Colorado Office of Utility Consumer Advocate (UCA) filed an Application for Rehearing, Reargument, or Reconsideration of Decision No. C23-0293 requesting, 1) clarification as to whether the short-term debt rate applied to stored gas recovered through the GCA includes credit facility fees and a tax gross-up factor, 2) clarification that the correct Colorado income tax rate is 4.4 percent, not 4.55 percent as used in the Company’s cost of service study (COSS) and requesting the Commission take administrative notice of the correct Colorado income tax rate and, 3) seeking rehearing, reargument, or reconsideration (RRR) of the Commission’s findings and conclusions allowing the inclusion of a \$1.1 million depreciation expense adjustment in rate base.

4. Through this Decision we grant the request of all three parties to clarify the components of the cost of short-term debt in the GCA and remand the issue to the administrative law judge (ALJ). In doing so, we consolidate this proceeding with Proceeding No. 23AL-0235G, the proceeding in which Atmos filed its GCA tariff sheets.

5. We deny UCA's request for clarification as to the correct Colorado income tax rate and request to take administrative notice of that tax rate.

6. We grant UCA's request to reverse the allowance of a \$1.1 million depreciation adjustment.

**B. Background**

7. 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.

8. 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).

9. On March 15, 2023, ALJ Conor F. Farley 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.

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

11. 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 and allowing a \$1.1 million depreciation adjustment, and confirming that Atmos could file a modified GCA tariff and new GCA rates for recovery of gas storage costs.

12. On May 10, 2023, Atmos Filed Advice Letter No. 595 in Proceeding No. 23AL-0235G to make changes to its tariffs in Colo. P.U.C. No. 7 Gas in accordance with Decisions issued in Proceeding No. 22AL-0348G, with a May 13, 2023, effective date of the tariff sheets.

13. On May 11, 2023, UCA filed a protest to Advice Letter No. 595, contending that Atmos as 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.

14. On May 12, 2023, Staff filed a protest letter raising the same concerns 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.

15. By Decision No. C23-0320, the Commission 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.

16. On May 24, 2023, Atmos, Staff, and UCA each filed their Applications for Rehearing, Reargument, or Reconsideration of Decision No. C23-0293.

## C. Applications for RRR

### 1. Depreciation Adjustment

17. In its Application for RRR, UCA questions the Commission's findings and conclusions in Decision No. C23-0293 allowing the inclusion of a \$1.1 million depreciation expense adjustment in rate base. UCA notes that as the trier of fact in this Proceeding, the ALJ had the best understanding of the evidence and that § 24-4-105(15)(b), C.R.S. requires that findings of evidentiary fact cannot be set aside on review unless such findings are contrary to the weight of evidence. UCA states that the Commission's Decision on Exceptions made no findings and conclusions on the Recommended Decision's finding that Atmos failed to carry its burden of proof on this issue; instead, the Commission considered the \$1.1 million depreciation expense adjustment in the context of inputs to the COSS. Thus, according to UCA, the Commission ignored the ALJ's factual lack of evidence finding and used the depreciation expense to support a return of rate base calculation. Specifically, UCA faults the Commission for using the depreciation adjustment to balance against the use of a 13-month average rate base.

18. UCA questions the Commission's rationale of alignment with state decarbonization policies as basis for allowing the \$1.1 million depreciation expense adjustment. UCA says that it supports a policy direction of accelerating depreciation but argues that that is not the issue in this proceeding. Rather, the issue is the proper methodology for calculating depreciation expense in order to establish new base rates. UCA finds incongruity in the Commission's reversal of the ALJ's disallowance of the depreciation adjustment while leaving undisturbed the ALJ's finding that Atmos failed to meet its burden.

19. UCA contends that the calculation of depreciation expense is separate from acceleration of depreciation expense because the accounting book accrual rates for depreciation

and accumulated depreciation are unchanged by the Commission's decision. That is, accelerated depreciation is accomplished through using shorter service lives or determined through a depreciation study; neither of these are realized through the Commission's decision to reverse the Recommended Decision.

20. UCA further faults the Commission for adjusting only the depreciation expense in the Recommended Decision's shift from a 13-month average rate base to a year-end rate base; UCA contends that similar adjustments should have been made to annualized revenue or accumulated depreciation. Citing the matching principle, both in ratemaking and accrual accounting, UCA asserts that the mismatch between only modifying the depreciation expense but leaving the rest of the components of the revenue requirement untouched benefits Atmos at the cost of ratepayers and does not result in just and reasonable rates.

21. We grant UCA's request on this issue and reverse that element of Decision No. C23-0293 to disallow the \$1.1 million depreciation adjustment. Upon 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. However, we note that the larger policy issue of accelerating depreciation remains, and we hope it will be addressed in future proceedings.

## **2. Cost Debt for Stored Gas Cost Recovery Through the GCA**

22. In its Application for RRR, 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). Although 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. Atmos maintains that the actual cost includes the cost of the short-term debt facility itself.

23. Additionally, Atmos notes that Staff and UCA argued in this proceeding that the carrying cost of gas storage should be recovered consistent with the method of calculation used by Public Service; Atmos states that it followed Public Service's GCA tariff and included a gross-up on gas storage for taxes when preparing its compliance tariff, filed with Advice Letter No. 595 filed in Proceeding No. 23AL-0235G on May 13, 2023.

24. In its Application for RRR, Staff raises concerns about including a tax gross-up in Atmos' short-term cost of debt calculation for the GCA rate because doing so increases the short-term cost of debt from 3.8 percent to 4.57 percent. Staff notes that this is higher than the Company's long-term cost of debt of 3.97 percent. Staff further objects to the tax gross-up factor of 1.32616321, which increases the short-term cost of debt to 6.067 percent.

25. Staff argues that the inclusion of the credit facility fees and tax gross-up is beyond what was contemplated by the ALJ in the Recommended Decision and because Atmos did not raise the issue of including the fees and tax gross-up in its exceptions, despite the ALJ rejecting the Company's position, the Company's short-term debt calculation should be rejected here.

26. Through its Application for RRR, UCA also requests clarification as to whether the short-term debt rate applied to stored gas recovered through the GCA includes credit facility fees and a tax gross-up factor. UCA notes that in exceptions Atmos did not challenge the ALJ's finding and incorporation of the Commission's previous decision that gas utilities earn no return on gas commodity costs. UCA notes that it filed a protest in Proceeding No. 23AL-0235G, contesting the compliance filings offered by Atmos, which included a cost of debt that includes credit facility fees and a tax gross-up. UCA argues that inclusion of the credit facility fees and the tax gross-up

are inappropriate and should be disallowed and requests the phrase “earn a return at the cost of short-term debt” in Paragraph 70 of the Recommended Decision be modified to “Atmos should cost recover only an interest component on short-term debt.

27. UCA also requests seeks 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.

28. We find 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.

29. Because the short-term debt issue was presented in Proceeding No. 23AL-0235G, we consolidate the two proceedings.

30. We also deny Atmos’ RRR filed in Proceeding No. 23AL-0235G because the short-term debt issue raised in Atmos’ RRR is now live in the rate case proceeding (Proceeding No. 22AL-0348G) and will be addressed through the remand.

### **3. Tax Rate in Cost of Service Study**

31. In its Application for RRR, UCA requests clarification that the correct Colorado income tax rate is 4.4 percent, not 4.55 percent and requests the Commission take administrative notice of the correct Colorado income tax rate. UCA further asks the Commission to direct Atmos to use the 4.40 percent tax rate and re-run its revenue requirement models for base rate calculations, its System Safety and Integrity Rider (SSIR), and for the stored gas component of its GCA.

32. We note that all parties to the proceeding advocated test years with the 4.55 percent income tax rate and acknowledge that the Colorado income tax rate later changed to 4.4 percent.

However, we decline to grant UCA's request that the revenue requirements be re-run because the impact of the change is so small as to have no material impact on the volumetric rate.

## II. ORDER

### A. The Commission Orders That:

1. The Application for Rehearing, Reargument, or Reconsideration of Decision No. C23-0293, filed by Atmos Energy Company on May 24, 2023, is granted, consistent with the discussion above.

2. The Application for Reconsideration of Decision No. C23-0293, filed by Staff of the Commission on May 24, 2023, is granted, consistent with the discussion above.

3. The Application for Rehearing, Reargument, or Reconsideration of Decision No. C23-0293, filed by the Colorado Office of Utility Consumer Advocate on May 24, 2023, is granted, in part, and denied, in part, consistent with the discussion above.

4. Atmos shall file modified tariff sheets consistent with Recommended Decision No. R23-0181 as modified by this Decision. Atmos shall file the compliance tariff sheets in a separate proceeding and on not less than five business days' notice. The advice letter and tariff sheets shall be filed as a new advice letter proceeding and shall comply with all applicable rules. 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 effective date of the newly filed tariff sheets shall be July 1, 2023.

5. The 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.

6. Proceeding Nos. 22AL-0348G and 23AL-0235G are consolidated. Proceeding No. 22AL-0348G shall serve as the primary proceeding.

7. The Application for Rehearing, Reargument, or Reconsideration of Decision No. C23-0320, filed by Atmos Energy on May 16, 2023, is denied consistent with the discussion above.

8. The 20-day time period provided pursuant to § 40-6-116, C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the effective date of this Decision.

9. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
June 21, 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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Commissioners