

Decision No. R23-0484-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.

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
SUSPENDING EFFECTIVE DATE OF TARIFF SHEETS BY
AN ADDITIONAL 130 DAYS, SCHEDULING REMOTE
HEARING, ASSIGNING EXHIBIT BLOCKS, AND
ESTABLISHING PRE-HEARING PROCEDURAL
SCHEDULE**

Mailed Date: July 26, 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 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.

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 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.”¹

11. On June 5, 2023, the Commission issued Decision No. C23-0374 in Proceeding No. 23AL-0235G 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.

13. 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 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 and serving both on all parties in Proceeding No. 22AL-0348G.

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

15. On July 18, 2023, Atmos filed the Conferral Report stating that the parties had not reached a consensus schedule. Specifically, Atmos proposed the following schedule, which is supported by Staff:

<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

<u>Event</u>	<u>Deadline</u>
Settlement Agreement(s) and Supporting Testimony Cross-Examination Matrix Corrections to Written Testimony and Exhibits	September 22, 2023
Hearing	September 29, 2023
Statements of Position	TBD

Atmos also proposed that workpapers be produced within three business days and responses to discovery be served within seven business days. UCA agreed with Atmos’ proposals for the deadlines for the production of workpapers, response times to discovery, settlement and settlement testimony, cross-examination matrix, and corrections to written testimony and exhibits. As to the other deadlines, UCA made a proposal based on its contention that both Atmos and Staff/UCA have “an equal burden of going forward” on the issues in this proceeding.³ UCA’s counterproposal on those deadlines was as follows:

<u>Event</u>	<u>Deadline</u>
Direct Testimony	August 4, 2023
Answer Testimony	September 1, 2023
Hearing	September 29, 2023
Statements of Position	TBD

16. On July 20, 2023, the remote prehearing conference took place. As an initial matter, counsel for Atmos confirmed that Atmos complied with the requirement in Decision No. R23-0428-I to provide notice of the proceeding by posting a customer notice and Decision No. C23-0320 on Atmos’ website and serving both on all parties in Proceeding No. 22AL-0348G. Next, the ALJ heard oral argument from the parties about the appropriate schedule for this

³ Conferral Report at 2.

proceeding. Based on that oral argument, the ALJ adopted Atmos' proposed schedule with the addition of a September 22, 2023 deadline for responses to prehearing motions. The UCA conceded that Atmos bears the burden of proof in this proceeding, and did not convince the ALJ that its alternative schedule should be adopted based on the likelihood that it would yield a more fulsome record. The ALJ stated that the decision would be memorialized in a written interim decision.

B. Suspension of Effective Date of Tariff Sheets by An Additional 130 Days

17. As noted above, the Commission set the tariff pages for hearing, which suspended their effective date for 120 days from the proposed effective date (May 13, 2023) to September 10, 2023.

18. Section 40-6-111(1), C.R.S., provides that the Commission may, in its discretion, by a separate decision, suspend the effective date of the tariff page(s) for an additional 130 days. Thus, the Commission has the power and authority to suspend the effective date of the tariff pages for a maximum of 250 days.

19. Here, in light of the time available, the schedules proposed by the parties, the time necessary to address other pending matters, and the need for the Commission to have adequate time to deliberate the issues presented in this matter, it is not feasible for a final Commission decision to issue by September 10, 2023. Accordingly, it is necessary to extend the effective date of the tariff sheets filed with the Advice Letter for an additional 130 days pursuant to § 40-6-111(1), C.R.S. The new effective date of the Advice Letter and accompanying tariff sheets, after suspension, is January 18, 2024.

C. Pre-Hearing Schedule

20. As stated at the remote prehearing conference on July 20, 2023, Atmos’ proposed schedule, and the parties’ agreed deadlines to produce workpapers and to produce responses to discovery will be adopted. In addition, a deadline of September 22, 2023 for responses to prehearing motions shall be established. Accordingly, the schedule for the proceeding is as follows:

<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	TBD

21. In order to efficiently organize the numbering and preparation of exhibits for the hearing, all parties must use a unified numbering system for all hearing exhibits. Blocks of hearing exhibit numbers are assigned as follows:

- Atmos is assigned hearing exhibit numbers 100 to 199;
- Staff is assigned hearing exhibit numbers 200 to 299; and
- UCA is assigned hearing exhibit numbers 300 to 399.

D. Remote Hearing

22. As proposed by the parties, the evidentiary hearing will be held remotely, which means that the participants will appear from remote locations. The participants may not appear at the hearing in-person. The remote evidentiary hearing will be held using the web-hosted service, Zoom. This Decision and Attachments A and B provide critical information and instructions to facilitate holding the hearing by video-conference, which all parties must follow.

23. To minimize the potential that the video-conference hearing may be disrupted by non-participants, the link, meeting ID code, and passcode to attend the hearing will be provided to the participants by email before the hearing, and the participants will be prohibited from distributing that information to anyone not participating in the hearing.

24. Attachment A to this Decision provides the information addressing how to use the Zoom platform for participating in the remote hearing. Attachment B outlines procedures and requirements for marking and formatting exhibits to facilitate the efficient and smooth electronic evidence presentations at the remote hearing. It is extremely important that the parties carefully review and follow all requirements in this Decision and Attachments A and B.

II. ORDER**A. It Is Ordered That:**

1. For the reasons stated above, the effective date of Tariff Sheet Nos. 5, 6, and 6A filed with Advice Letter No. 595 is suspended for an additional 130 days pursuant to § 40-6-111(1), C.R.S.
2. The pre-hearing and post-hearing schedule stated in paragraph 23 above is adopted.
3. A remote evidentiary hearing in this proceeding is scheduled as follows:

DATE: September 29, 2023
TIME: 9:00 a.m. to 5:00 p.m.
METHOD: By video conference: using the Zoom web conferencing platform at a link be provided to the participants by email.⁴

4. 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

⁴ Additional information about the Zoom platform and how to use the platform are available at: <https://zoom.us/>. All participants are strongly encouraged to participate in a test meeting prior to the scheduled hearing. See <https://zoom.us/test>.