

Decision No. C24-0106-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23AL-0579G

IN THE MATTER OF ADVICE LETTER NO. 605 FILED BY ATMOS ENERGY CORPORATION TO ELIMINATE THE CONSTRUCTION ALLOWANCES CURRENTLY INCLUDED IN COLORADO P.U.C. NO. 7, TO BECOME EFFECTIVE JANUARY 1, 2024.

**INTERIM COMMISSION DECISION
WAIVING DEADLINE IN COMMISSION'S GAS RULES
AND REFERRING MATTER TO AN
ADMINISTRATIVE LAW JUDGE**

Mailed Date: February 20, 2024
Adopted Date: February 14, 2024

I. BY THE COMMISSION

A. Statement

1. Senate Bill (SB) 23-291 includes provisions that require each of Colorado's four investor-owned gas utilities to file with the Commission, no later than December 31, 2023, an updated tariff to reflect the removal of any incentives for establishing gas service. Specifically, § 40-3.2-104.3, C.R.S., states that a gas utility shall not provide "a person that requests natural gas service and that owns the real property requiring the service" an incentive, including a line extension allowance, to establish gas service to a property. SB 23-291 further defines a line extension allowance to mean: "a bundle of costs that includes construction allowances for new service lines, meters, and other infrastructure associated with the addition of a new customer to a gas utility's distribution system."

2. On November 30, 2023, Atmos Energy Corporation (Atmos or Company) filed Advice Letter No. 605 with modified tariff sheets addressing its Service Line and Main Extension

Policy for effect January 1, 2024. The proposed changes to the tariff sheets include: (1) the elimination of the construction allowance as a defined term; (2) the striking of the dollar amounts of the allowances for service lines and main extensions; and (3) the removal of the provisions governing construction payment refunds and additional construction allowance payments pursuant to an applicable Main Extension Agreement. Atmos's advice letter is brief, and the filing includes no Direct Testimony in support of the proposed tariff changes.

3. By Decision No. C23-0872, issued on December 29, 2023, the Commission set for hearing the tariff sheets filed under Advice Letter No. 605 and suspended their effective date to April 30, 2024.

4. Consistent with the discussion below, this Decision waives, on the Commission's own motion, the December 31, 2024 deadline in paragraph 4210(d) of the Commission's Rules Regulating Gas Utilities, 4 *Code of Colorado Regulations* (CCR) 723-4 (Gas Rules).

5. This matter is also referred to an Administrative Law Judge (ALJ) for a recommended decision pursuant to § 40-6-109(2), C.R.S.

B. Discussion

1. Commission Rules Addressing Line Extension Policies

6. The Commission recently examined gas utility line extension policies in its comprehensive rulemaking in Proceeding No. 21R-0449G.

7. By Decision Nos. C22-0760, issued on December 1, 2022, and C23-0117, issued on February 24, 2023, the Commission modified its Gas Rules by adding two new paragraphs under Rule 4210 Line Extensions. Paragraph 4210(c) states: "Line extension policies, procedures, and conditions shall be based on the principle that the connecting customer pays its share of the estimated full incremental cost of growth, including any costs associated with increases in design

day peak demand.” Paragraph 4210(d) states: “Line extension allowances shall be updated pursuant to paragraph 4210(c) in a base rate proceeding, or in a separately filed application, as required, but should be implemented no later than December 31, 2024. If a utility utilizes standardized costs in calculating one or more portions of its line extension policies, the standardized costs must be updated in a base rate proceeding, utilizing the average actual cost across the applicable customer class and line extension type for the most recent consecutive 12-month period for which compiled cost data is available. Exemptions from updated line extension allowances and standardized costs shall not extend to applications for line extensions submitted after May 1, 2023.”

8. The Commission explained that these new rules were not intended to result in the immediate elimination of construction allowances for line extensions or for the imposition of any barriers to the installation of gas service lines to any new structure. The Commission further stated that a utility’s line extension policies, procedures, and conditions would continue to be administered through tariff filings and that such tariff filings will now be considered as Colorado progresses towards meeting its greenhouse gas reduction goals.¹

9. With respect to the new provision in paragraph 4210(c), the Commission explained that the intent was to ensure that when the Commission reviews for approval the utility’s tariffs for their line extension policies, procedures, and conditions—most likely in a base rate proceedings—the Commission will base its review, in part, on the principle that new customers will be responsible for covering their contribution towards the cost of growth and in a way that also incorporates the additional net revenues associated with new customer growth with appropriate consideration of the impacts of policy and efficiency on those projections.

¹ Decision No. C22-0760, issued December 1, 2022, ¶ 101, p. 45.

The Commission further explained that when line extension policies are examined in a rate proceeding, the presentation of incremental costs of growth will include the additional net revenues as well as all the costs of new services, meters, and certain other distribution system costs. The Commission concluded that limiting the scope of costs to only the most locationally or temporally adjacent infrastructure upgrades likely obscures the total costs of growth, which cumulatively lead to system capacity expansions and drive investments that may not have previously been included in the calculations but should rightfully be considered.²

10. With respect to the new provision in paragraph 4210(d), the Commission concluded that, as a general matter, each gas utility must update its line extension policies in accordance with all the provisions in Rule 4210 through a tariff filing submitted for effect no later than January 1, 2025. The Commission further concluded that standardized costs used in a line extension policy also must be updated in each base rate proceeding and should be calculated using the most recent consecutive 12 months of data that is available to the utility at the time of the calculation.³

2. Protests and Intervention Pleadings

11. On December 15, 2023, Staff of Colorado Public Utilities Commission (Staff) filed a protest to Advice Letter No. 605. Staff claimed that while Atmos' filing eliminates the Company's construction allowances for service lines from its tariff, the construction allowances for service lines constitute only one component of the incentives that must be removed from a gas utility's tariff pursuant to SB 23-291. Staff stated that it is concerned that Atmos's filing may not satisfy the statutory requirement to file an "updated tariff to reflect the removal of any incentives

² Decision No. C22-0760, issued December 1, 2022, ¶¶ 110-112, pp. 50-51.

³ Decision No. C22-0760, issued December 1, 2022, ¶¶ 120-121, pp. 53-54.

for an applicant to establish gas service to a property.” § 40-3.2-104.3(2)(c), C.R.S. For example, according to Staff, Atmos’s proposed tariff revisions do not include removal of the incentives of a utility-provided meter and other infrastructure associated with the addition of a new customer, such as a service regulator. Staff thus requested that the Commission suspend the tariff sheets and set the matter for hearing to provide ample opportunity for the Commission to consider this question of statutory compliance.

12. On January 11, 2024, the Colorado Office of the Utility Consumer Advocate (UCA) filed a notice of intervention as of right and request for hearing. UCA states that it has concerns similar to those raised by Staff in its protest and recognized by the Commission in Decision No. C23-0872.

13. Staff also timely filed a notice of intervention as of right and request for hearing on January 29, 2024. Staff repeats its concerns that Atmos’s advice letter filing, by eliminating only the Company’s construction allowances for service lines and main line extensions from its tariff, may not satisfy the statutory requirements of § 40-3.2-104.3, C.R.S., which also prohibits utilities from providing new customers with “meters” and “other infrastructure associated with the addition of a new customer to a gas utility’s distribution system.” Staff further states that it may seek to address whether Atmos may provide the incentives prohibited by § 40-3.2-104.3, C.R.S. during the pendency of this proceeding, and if so, the regulatory treatment of the costs of such incentives.

C. Conclusions and Findings

14. Due to the passage and enactment of SB 23-291 following the promulgation of the new provisions governing line extensions in the Gas Rules, we find good cause to waive the December 1, 2024 deadline in 4 CCR 723-4-4210(d) pursuant to Commission Rule 4 CCR 723-4-1003(a). The statutory requirement for gas utilities to eliminate incentives for establishing

gas service is a continual process best examined in base rate proceedings, and certain provisions related to new gas services in SB 23-291 do not neatly match the December 31, 2024 deadline contemplated in paragraph 4210(d) of the Commission's Gas Rules. The Commission therefore finds good cause to waive the December 1, 2024 deadline because it will allow for more effective implementation of the policies found in Rule 4 CCR 723-4-4210(d) and in SB 23-291.

15. We clarify, however, that the waiver of the December 31, 2024 deadline does not affect the purpose of or other requirements in paragraphs 4210(c) and (d) such that a complete review of Atmos' Service Line and Main Extension Policy remains a requirement in any base rate proceeding in accordance with both the Gas Rules and the requirements in SB 23-291.

16. We refer this matter to an ALJ for a recommended decision pursuant to § 40-6-109(2), C.R.S. We encourage the assigned ALJ to adopt procedures that support the issuance of a recommended decision that addresses whether the Advice Letter No. 605 filing fully implements the statutory requirement that new gas utility customers no longer receive an incentive relative to the costs of new service lines, meters, and other infrastructure when establishing gas service pursuant to the Company's Service Line and Main Extension Policy. The December 31, 2023 filing deadline in SB 23-291 reflects an expectation that incentives that offset the costs of new service lines, meters, and other infrastructure are removed from Atmos' Service Line and Main Extension Policy as promptly as possible.

II. ORDER

A. The Commission Orders That:

1. Consistent with the discussion above, the December 1, 2024 deadline in 4 *Code of Colorado Regulations* 723-4-4210(d) is waived with respect to Atmos Energy Corporation.

2. This matter is referred to an Administrative Law Judge, consistent with the discussion above.

3. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
February 14, 2024.**

(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

ERIC BLANK

MEGAN M. GILMAN

TOM PLANT

Commissioners