

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24R-0168EG

IN THE MATTER OF THE PROPOSED AMENDMENTS TO THE COMMISSION’S RULES REGULATING ELECTRIC UTILITIES, 4 CODE OF COLORADO REGULATIONS 723-3, AND ITS RULES REGULATING GAS UTILITIES, 4 CODE OF COLORADO REGULATIONS 723-4, TO IMPLEMENT CERTAIN PROVISIONS IN SENATE BILL 23-291 ADDRESSING TARIFF FILINGS, RATE TREND REPORTS, COSTS PROHIBITED FROM RATES, AND BASE RATE PROCEEDINGS.

**RECOMMENDED DECISION
ADOPTING RULES AND CLOSING PROCEEDING**

Issued Date: March 28, 2025

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I. BY THE COMMISSION

A. Statement

1. On April 30, 2024, the Colorado Public Utilities Commission issued a Notice of Proposed Rulemaking (“NOPR”) that commenced this proceeding to amend the Commission’s Rules Regulating Electric Utilities, 4 *Code of Colorado Regulations* (“CCR”) 723-3 (“Electric Rules”), its Rules Regulating Gas Utilities, 4 CCR 723-4 (“Gas Rules”), and its Rules of Practice and Procedure, 4 CCR 723-1 (“Practice and Procedure Rules”), to implement certain statutory provisions enacted by Senate Bill (“SB”) 23-291. The proposed amendments to the Electric Rules, Gas Rules, and Rule of Practice and Procedure are intended to implement the following recently-enacted statutory provisions: § 40-3-102.5(1)(a), C.R.S., requiring the Commission to promulgate rules to limit the amount of rate case expenses that a utility may recover

from its ratepayers; § 40-3-102.5(1)(b), C.R.S., requiring the filing of certain information with a utility's base rate tariff filing made to the Commission; § 40-3-102.5(2)(a), C.R.S., requiring the filing of rate trend reports when an electric or gas utility seeks to increase a rate or charge; and § 40-3-114, C.R.S., addressing certain costs that are prohibited from utility rates.

2. Being fully advised in this matter and consistent with the discussion below, in accordance with § 40-6-109, C.R.S., the Administrative Law Judge now transmits to the Commission the record in this proceeding, along with a written recommended decision.

3. The recommended amendments to the Electric Rules are set forth in legislative (*i.e.*, strikeout and underline) format in Attachment A to this Decision, and in final format in Attachment B to this Decision. The recommended amendments to the Gas Rules are set forth in legislative (*i.e.*, strikeout and underline) format in Attachment C to this Decision, and in final format in Attachment D to this Decision. The recommended amendments also include modifications to the Commission's Rules of Practice and Procedure, 4 CCR 723-1, which are set forth in legislative format in Attachment E to this Decision and in final format in Attachment F to this Decision.

B. Procedural History

4. SB 23-291 became effective on August 7, 2023, the day following the expiration of the 90-day period after final adjournment of the Colorado General Assembly.

5. Through Decision No. C23-0538, issued on August 14, 2023, the Commission adopted temporary rules to implement a subset of the provisions in SB 23-291 relating to utility rates and tariff filings. The temporary rules were adopted without compliance with the rulemaking procedures prescribed in § 24-4-103, C.R.S., in order to provide necessary continuity in the process by which electric and gas utilities change their rates for providing service to their Colorado customers after the statutory provisions enacted by SB 23-291 took effect. The temporary rules

further set forth annual reporting provisions on certain costs prohibited from utility rates pursuant to a directive from the Commission.

6. As discussed in Decision No. C23-0714, issued on October 20, 2023, Public Service Company of Colorado (“Public Service”), Black Hills Colorado Electric, LLC (“Black Hills Electric”), and Black Hills Colorado Gas, LLC (“Black Hills Gas”) (collectively, the “Utilities”) filed an application for rehearing, reargument, or reconsideration of Decision No. C23-0538 (“RRR Application”). The Utilities favored a more limited set of procedures to implement the rate-related provisions in SB 23-291, based on the philosophy that the temporary rules are only intended to bridge the gap until permanent rules are established through a more participatory rulemaking process.¹ They also claimed that certain provisions in the temporary rules are not “imperatively necessary in order to comply with SB 23-291 or for the preservation of public health, safety, or welfare.”²

7. The Utilities primarily objected to the certification process for the completeness of a base rate filing (*i.e.*, the filing of a new rate case) as set out in the temporary rules in paragraph 3109(f). They requested that the temporary rules instead implement a minimal three-point check on whether the utility’s initial rate case filing includes: (1) a cost of service study for a historic test year (2) in executable format (3) with workpapers.³ They likewise objected to the Commission determining on a case by case basis what other information must be included in its base rate tariff filing before certifying the filing as complete.⁴

¹ RRR Application, p. 3.

² RRR Application, p. 8.

³ RRR Application, Attachment 1, pp. 9-10.

⁴ RRR Application, pp. 6-7 and 9.

8. The Utilities further wanted the temporary rules to limit the Commission's determination of the completeness of a base rate tariff filing only to filings where a utility seeks to change base rates based on its presentation of a higher overall revenue requirement.⁵ The Utilities' proposed certification process would also not involve any protests from ratepayers or reviews by the Staff of the Colorado Public Utilities Commission and the Colorado Office of the Utility Consumer Advocate ("UCA") as set forth the subparagraph 3109(f)(II).⁶ Moreover, their certification process would not have any impact on the 30-day window between the filing of the rate case and the effective date of the tariff sheets or on the 250-day statutory suspension period in § 40-6-111, C.R.S.⁷ Their proposals for the temporary rules further entail a written order issued by the Commission ten days prior to the filed effective date, with those ten days available to the utility to remedy any alleged absence of an item from the three-point check.⁸

9. The Utilities also faulted the temporary rules for failing to account for filings intended to amend existing tariffs that are non-rate-related or textual.⁹

10. With respect to the temporary rule implementing § 40-3-102.5(2)(a), C.R.S., the Utilities objected to preparing rate trend reports for rates that apply to non-residential customers as required by paragraph 3109(e).¹⁰ They argued that most of their customers are residential customers and that the multitude of rates for the non-residential rate classes makes the rate trend reports burdensome and confusing.

⁵ RRR Application, Attachment 1, pp. 9-10.

⁶ RRR Application, p. 9.

⁷ RRR Application, p. 7.

⁸ RRR Application, Attachment 1, p. 10.

⁹ RRR Application, p. 5.

¹⁰ RRR Application, Attachment 1, p. 6.

11. The Utilities also illustrated in legislative format more than twenty specific modifications they seek to the rule language of the temporary rules.¹¹ These changes generally support the three main objections raised in their RRR Application, but also include: modifications to definitions and the addition of new terms¹² and the removal of the provision in subparagraph 3109(f)(III)(C) that: “The Commission may suspend the proposed tariff’s effective date by ordering that a hearing be held on the certification of the utility base rate tariff filing in accordance with § 40-6-111(1), C.R.S.”¹³

12. The Commission denied the Utilities’ RRR Application by Decision No. C23-0714. However, the Commission stated that it intended to address the issues and concerns raised by the Utilities in the forthcoming rulemaking to adopt permanent rules to replace the temporary rules.

13. The temporary rules adopted through Decision No. C23-0538 were in effect through March 11, 2024, or 210 days from the effective date of that decision. *See* § 40-2-108(2), C.R.S. On March 6, 2024, the Commission issued Decision No. C24-0139 in Proceeding No. 24R-0107EG, adopting the same rules on a temporary basis to maintain the necessary continuity in the processes by the electric and natural gas utilities change their rates for the provision of service to their customers as well as to maintain the annual reporting provisions required by statute. On August 14, 2023, the Commission issued Decision No. C23-0538 in Proceeding No. 23R-0408EG, adopting the same rules on a temporary basis, again for the purpose of maintaining the necessary continuity in the processes by the electric and natural gas utilities change their rates for the provision of service to their customers as well as to maintain the annual reporting provisions required by statute. The Commission re-issued identical rules by Decision No. C24-0139, issued

¹¹ RRR Application, Attachment 1.

¹² RRR Application, Attachment 1, pp. 3-4.

¹³ RRR Application, Attachment 1, p. 10.

March 6, 2024, in Proceeding No. 24R-0107EG, and again by Decision No. C24-0705, issued September 30, 2024, in Proceeding No. 24R-0414EG. Similarly, on November 5, 2024, the Commission issued Decision No. C24-0789 in Proceeding No. 24R-0469EG, adopting the same rules on a temporary basis.

14. The changes to the Electric Rules and Gas Rules proposed in the attachments to the NOPR largely incorporate the changes accomplished by the temporary rules described above. However, the permanent rules proposed in the NOPR and adopted by this Decision include certain modifications to some of the temporary rules as well as certain additions that stem from provisions in SB 23-291 that were not necessary to implement on a temporary basis.

15. The NOPR provides a substantive description of each of the proposed amendments to the three sets of rules—the Electric Rules, the Gas Rules, and the Rules of Practice and Procedure.

16. Written comments were filed in this Proceeding by Public Service; Atmos Energy Corporation (“Atmos”); Back Hills Electric and Black Hills Gas (together “Black Hills”); Colorado Natural Gas, Inc. (“CNG”); UCA; Colorado Energy Consumers Group (“CEC”); the Energy Policy Institute (“EPI”); the City of Boulder (“Boulder”); legislative sponsors of SB 23-291; AARP; and from the public.

17. The undersigned conducted a remote public hearing on the proposed rules on June 3, 2024, 12 speakers gave oral comment. The hearing was continued to allow additional written comments to be filed and an additional hearing to be conducted.

18. By Decision No. R24-0804-I, issued on November 6, 2024, the undersigned put forward further proposed modifications to the Commission’s rules based on the written comments

filed in this Proceeding and the oral comments delivered at the public hearing on June 3, 2024.

The undersigned also scheduled a second public hearing on November 19, 2024.

19. Prior to the second public comment hearing, additional written comments were submitted by UCA and EPI.

20. The undersigned conducted the second remote public hearing on the proposed rules on November 19, 2024.

21. Atmos filed additional comments following the second public hearing on December 4, 2024.

II. DISCUSSION, FINDINGS, AND CONCLUSIONS

22. In rendering this Recommended Decision, the undersigned has reviewed the record in this Proceeding and has evaluated and considered all written and oral comments submitted by the participants, even if such comments are not specifically addressed in this Decision. The undersigned has further considered all arguments presented by the participants, including those arguments not specifically addressed in this Decision.

23. This Decision does not specifically address every comment or every proposed amendment to the rules.

24. The statutory authority for the proposed rules is found generally at § 40-1-103.5, C.R.S. (authorizing the Commission to promulgate implementing rules) and § 40-2-108, C.R.S. (authorizing the Commission to promulgate rules necessary to administer and enforce Title 40). The statutory authority for these rules is also set forth specifically in SB 23-291, as codified at §§ 40-3-102.5 and 40-3-114, C.R.S.

25. For these reasons and authorities, and based on the requirements of SB 23-291, the undersigned concludes that the Commission has authority to promulgate the rules that this Decision adopts.

26. When exercising any power granted to it, the Commission must give the public interest “first and paramount consideration.”¹⁴ In assessing the proposed rules, the undersigned is mindful of the impact of the modifications of the rules on the public interest.

A. Applicability

27. Section 40-3-102.5(1)(d), C.R.S., defines “utility” to mean “an investor-owned electric or gas utility.” In accordance with SB 23-291, these rules apply to the investor-owned electric and gas utilities subject to the Commission’s Electric Rules or Gas Rules.

B. Definitions

28. As explained in the NOPR, § 40-3-102.5(1)(d), C.R.S., introduces new defined terms that are commonly used in electric and gas proceedings before the Commission but are absent from the Electric Rules and the Gas Rules.

29. SB 23-291 defines a “base rate” to mean: “charges used to recover costs of utility infrastructure and operations, including a return on capital investment, not otherwise recovered through a utility rate rider or rate adjustment mechanism.”¹⁵

30. The rules attached to this Decision retain from the temporary rules presently in effect the definition for the term “base rate” within Rule 3001 of the Electric Rules and within Rule 4001 of the Gas Rules.

¹⁴ *Pub. Serv. Co. of Colo. v. Pub. Utilis. Comm’n*, 350 P.2d 543, 549 (Colo. 1960) *cert. denied*, 364 U.S. 820 (1960).

¹⁵ § 40-3-102.5(1)(d)(I), C.R.S.

31. The rules also retain from the temporary rules the definition of “rate adjustment mechanism” for clarity, since the term is used in the rule provisions that relate to the filing of utility rates and charges in both the Electric Rules and the Gas Rules. The definition of rate adjustment mechanism derives from § 40-3-114(6)(i), C.R.S., also enacted by SB 23-291. Based on comments in this Proceeding, the definition includes the clarification that a rate adjustment mechanism is adjusted on a regular or periodic basis outside of a base rate proceeding.

32. In the temporary rules, the Commission also added to Rules 3001 and 4001 the term “test year” as defined by SB 23-291 to mean: “a twelve-month period that is examined to determine a utility’s costs of service in a rate case.”¹⁶ In the rules attached to this Decision, the term is also retained.

33. Finally, based on comments in this Proceeding, the rules attached to this Decision modify the definition of “utility” in paragraph 3001(xx) and paragraph 4001(xx) to include a reference to § 40-3-102.5(1)(d)(III), C.R.S.

C. New or Changed Tariffs/Rate Trend Reports

34. The temporary rules included several modifications to Rules 3109 and 4109 that address new or changed tariff sheets. As explained in Decision No. C23-0538 that first adopted the temporary rules, the filing mechanism for an electric or gas utility to modify its base rates is an advice letter tariff filing.¹⁷ Advice letter tariff filings for rates and charges are governed by several statutes in Title 40 and by provisions in the Commission’s rules that are separate from the statutes and provisions applicable to application filings with the Commission.

¹⁶ § 40-3-102.5(1)(d)(II), C.R.S.

¹⁷ 4 CCR 723-1-1210.

35. In consideration of the adoption of permanent rules to implement the rate-related provisions in SB 23-291, the rules attached to the NOPR modified Rules 3109 and 4109 to reflect the potential development of proposed Rules 3350 through 3355 and 4350 through 4355 that would govern base rate proceedings.¹⁸ Furthermore, as explained in the NOPR, the streamlined approach to Rules 3109 and 4109 requires modifications to paragraph 1207(a) of the Commission's notice requirements for utilities as set forth in the Rules of Practice and Procedure, 4 CCR 723-1. Paragraph 1207(a) governs the utility's notice of a change to any rate, fare, toll, rental, charge, classification, or service or in any privilege or facility in accordance with the requirements of § 40-3-104(1)(c)(I), C.R.S.

1. Utility Notice

36. The proposed rules attached to the NOPR included potential modifications to paragraph 1207(a) of the Commission's Rules of Practice and Procedure. That rule governs the utility's notice to customers of a change to any rate, fare, toll, rental, charge, classification, or service or in any privilege or facility in accordance with the requirements of § 40-3-104(1)(c)(I), C.R.S.

37. In accordance with the proposal in the NOPR, the modifications to the Commission's Rules of Practice and Procedure adopted by this Decision clarifies that application filings in which a proposed tariff change will impact customer bills require utility notice to customers just like an advice letter filing would require notice to customers if the utility had chosen that method for submitting the change in rate, etc., for Commission consideration and review.

¹⁸ The development of Rules 3350 through 3355 explain the striking of paragraph 3109(f) of the temporary rules.

2. Utility Filing Options for New or Changed Tariffs

38. Paragraphs 3109(b) and 4109(b) govern the processes by which a utility introduces or changes a tariff. Utilities generally file advice letters to introduce or change a tariff, but on occasion, a utility will file an application to change a tariff on less than statutory notice.

39. The proposed language in paragraphs 3109(b) and 4109(b) contained the word “shall.” Black Hills and Atmos request that the word “shall” be replaced with may since tariffs may be filed pursuant to an advice letter or an application. The undersigned agrees that the word “may” better reflects that a utility is permitted to file tariffs pursuant to advice letters or applications.

40. The incorrect cross reference to Rule 1206 in subparagraph 4109(b)(I) has been changed with the correct cross-reference to Rule 1207.

41. The Administrative Law Judge (“ALJ”) agrees with Atmos that the references to Rule 1207 in the proposed language subparagraphs 3109(b)(II) and 4109(b)(II) is confusing as to the type of notice required. The last sentence of the paragraph shall be stricken to eliminate the confusion.

3. Rate Trend Reports

42. As explained in the NOPR, § 40-3-102.5(2), C.R.S., requires electric and gas utilities to provide a “rate trend report” when filing any request to increase a rate, charge, fee, fare, toll, rental, or classification. A rate trend report presents changes in the rate, charge, etc., over the previous ten years and includes: (1) the amount of increase relative to the amount in effect on the date of the utility’s filing; (2) the “annual total amount” of the rate, charge, etc.; and (3) a chart, graph, or “other visualization” of each of the utility’s rates, charges, etc., including the total of all utility bill line items such as base rates and rate adjustment mechanisms, for the ten years prior to

the date of the utility filing. In addition, a rate trend report must include, for the same rate, charge, etc., over the ten years prior to the date of the utility's filing: (1) the dates when a previous increase or decrease went into effect; (2) the amount of the rate, charge, etc., before a previous increase or decrease went into effect; (3) the amount of increase or decrease relative to the amount before the previous increase or decrease went into effect; and (4) the proceeding number for the tariff filing where the rate, charge, etc., either was allowed to go into effect by operation of law or was approved by the Commission.

43. Section 40-3-102.5(2)(b), C.R.S., emphasizes the role that the rate trend report plays in informing the public about potential increases in utility rates and about the historical context for such rate increases. The utility is required to post on its website the rate trend report data, including the chart, graph, or pictographic demonstration for the ten-year historical trend submitted as part of each filed rate trend report.

44. This Decision adopts paragraph 3109(c) within the Electric Rules and paragraph 4109(c) within the Gas Rules to implement the rate trend report provisions in § 40-3-102.5(2)(a), C.R.S.

a. Limits to Rate Trend Reporting

45. In accordance with § 40-3-102.5(2)(a), C.R.S., a rate trend report is required only in instances where a utility files a request to increase any rate, charge, etc.

46. Public Service asks that the rate trend report be produced only for the class with the most affected customers and then, only for the single largest rate schedule within that customer class. Public Service believes that rate trend reports for all classes would be administratively burdensome and costly to produce, potentially delaying and increasing the cost of rate filings.

47. The plain language of SB 23-291 does not limit the rate trend report to only the class with the most effective customers. In fact, the language of SB 23-291 is very expansive in the requirements of the rate trend report.

48. In addition, Public Service does not provide sufficient basis for the limits they seek. The arguments provided by Public Service are that the burden would be too high and that the too much information can be confusing. Without any cost estimates, the burdensome argument is not persuasive, especially when it conflicts with a plain reading of SB 23-291. Additional transparency and more information are preferable than less transparency and insufficient information.

49. The ALJ does not agree with Public Service that rate trend reports are only required when the filing results in an overall increase in a rate. Again, the plain language of SB 23-291 does not provide an exception for this situation. SB 23-291 states that the rate trend report is required when a filing creates “any” increase. A subcomponent part that has an increase, as referenced by Public Service in its comments, would be an increase to rate even if the overall filing did not result in an increase.

b. Charts, Graphs, and Other Visualizations

50. The ALJ finds that using language closer to § 40-3-102.5(2)(a)(V), C.R.S., in the subparagraphs under paragraphs 3109(c) and 4109(c) will provide clarity. The ALJ agrees with Atmos that a chart or graph is required for each of the utility’s rates. While many utility bill line items track the rates, charges, fee, fare, etc., the statute also requires a presentation of all utility bill line items regarding aggregated amounts.

51. A utility bill item chart or graph also aligns with AARP’s suggestion that the rules should provide customers with information to better understand changes in their bills. While the

statute is prescriptive in the sense that it requires the presentation of every charge and every line item, it provides discretion to the utility regarding the type of presentation provided in the report.

c. Historical Proceeding Numbers

52. The ALJ shall adopt the version of subparagraphs 3109(c)(V)(E) and 4109(c)(V)(E) as reflected in the ALJ Interim Decision that incorporated CEC's request relating to historical proceeding numbers. It is reasonable for the utility to identify the original proceeding where a rate was initially proposed and makes the rate trend report more useful.

d. Residential Sales and Revenues

53. The ALJ shall not adopt the provision in NOPR under paragraphs 3109(c) and 4109(c) addressing residential sales and revenues, consistent with the rules attached to the ALJ Interim Decision. The elimination of the subparagraph did not prompt any objections. The ALJ agrees with Black Hills that there appears to be no benefit from including this information in the report along with the other items statutorily required.

e. Inflation

54. The UCA's request that a rate trend report identify inflationary impacts on rates is rejected. The ALJ agrees with utilities that inflation is not applicable to a rate trend report. While a comparison of changes in bills as compared to a general measure of inflation might be of interest to some customers and potential litigants in a rate case, not required in a rate trend report.

f. Website Posting

55. A modified version of paragraphs 3405(d) and 4405(d) in the NOPR and the rules attached to the ALJ Interim Decision shall be adopted. The modifications relate to the clarified provisions governing the charts, graphs, visualizations required in the rate trend report. The ALJ agrees with utilities that UCA's proposed modifications should not be adopted.

4. Certification of Completeness

56. The certification of completeness approach within Base Rate Proceeding section of the Electric Rules and Gas Rules attached to the NOPR shall be rejected. Instead, proposed rules 3352 and 4352 shall be replaced with new paragraphs 3109(d) and 4109(d) more closely following the language in § 40-3-102.5(1)(b), C.R.S., as enacted by SB 23-291.

57. The ALJ agrees with the utilities that SB 23-291 did not modify § 40-6-111, C.R.S., the statute that principally governs the administration of the utility filings that cause changes in rates, charges, etc. The determination of completeness would instead only be in instances where the utility filed an application to change base rates in accordance with the plain language of § 40-3-102.5(1)(b), C.R.S.

58. With this simplified completeness determination there is no need to distinguish between Phase I and Phase II in the rules.

D. Rate Proceedings

59. In the rules attached to the NOPR, the Commission proposed a full set of provisions governing utility filing requirements and procedures for base rate tariff filings with the intent to examine whether such provisions would lead to a reduction in incurred rate case expenses in accordance with SB 23-291.

60. The simplification of the completeness determination renders the proposed provisions in Rules 3352 and 4352 unnecessary. Consistent with the discussion above, the entire proposed Rules 3352 and 4352 shall be eliminated.

61. In Decision No. R24-0804-I, much of proposed Rules 3353 and 4353 was removed. The underlying goal for this Proceeding is to reduce rate case expenses. The ALJ concluded that in some cases the original proposed rules could reduce costs, in other cases making many of the

provisions mandatory could increase rate case costs. As stated in the ALJ Interim Decision, these actions have not been taken by participants in previous rate cases. Since the NOPR, procedures and schedules were developed in four significant litigated base rate proceedings Proceeding No. 23AL-0231G, Proceeding No. 23AL-0243E, Proceeding No. 24AL-0049G, and Proceeding No. 24AL-0275E. Parties were directed in each of those proceedings to confer and bring forward consensus provisions. A consensus proposal was adopted in each case, mostly without modification by the Commissioners or by an ALJ. With the exception of certain actions related to the preparation and presentation of “a historic test year,” none of the consensus proposals matched either the general provisions the Commission was required to consider in this proceeding pursuant to SB 23-291 or the proposed rules in the NOPR that were intended to implement such general provisions.

62. Several participants commented that the proposed rules attached to the NOPR were unnecessary, burdensome without any even purported benefits, or even likely to have an effect opposite from “limiting rate case expenses.”

63. Despite there being an opportunity to demonstrate in this rulemaking that required disclosures could have possibly reduced time and costs associated with lengthy discovery, no such showing was made. Moreover, base rates in each proceeding were established by the Commission using a test year revenue requirement grounded not on forecasts or what the utilities describe as “future test years,” but instead on actual, booked accounts, or, in other words, a form of an historic test year.

64. Using the factors stated in the Interim Decision issued prior to the final hearing and the actions of parties in litigated matters since the NOPR, the ALJ concludes that none of the provisions in Rules 3353 and 4353 should be adopted.

65. The ALJ further concludes that this section of Electric Rules and Gas Rules only entails two sets of provisions (*i.e.*, Recovery of Rate Case Expenses and Costs Prohibited from Rates), therefore there is no need for Rules 3350 and 4350 Overview and Purpose and no need for Rules 3351 and 4351 Definitions as proposed in the NOPR.

1. Recovery of Rate Case Expenses

66. Section 40-3-102.5(1)(a), C.R.S., suggests that the Commission consider the adoption of rules that either implement a symmetrical incentive to motivate the utility to limit expenses or instead cap the amount of the utility's rate case expenses that are recoverable. The limits could be specific to certain types of costs incurred (*e.g.*, for outside experts, consultants, and legal resources), or the limits could take the form of a cap on the overall amount of the utility's expenses in a rate case that are recoverable.

67. The ALJ shall adopt Rules 3350 and 4350 to implement § 40-3-102.5(1)(a), C.R.S., as shown in the attachments to this Decision. SB 23-291 permits the Commission to establish recoverable rate case expenses below the total amount incurred by the utility in litigating before the Commission and it is reasonable for the Commission to limit the amount of rate case expenses recoverable through rates by considering the specific facts and arguments presented in a base rate proceeding.

68. No participant proposed or otherwise addressed the introduction of a symmetrical incentive as referenced in § 40-3-102.5 (1)(a)(I), therefore no rule establishing such an incentive will be adopted.

69. In Proceeding No. 24AL-0049G, the Commission limited the amount recoverable rate case expenses associated with outside experts as contemplated by § 40-3-102.5 (1)(a)(II), C.R.S. The Commission demonstrated that it may find a reasonable basis for splitting cost

responsibility between a utility's ratepayers and its shareholders according to the evidence and arguments raised in the base rate proceeding.

70. Rate cases are case-specific and fact intensive nature of a determination of the reasonable amount of rate case expenses that are recoverable through rates. The ALJ does not believe that arbitrary limits will lead to a fair and just result. The ALJ declines to adopt a rule that summarily limits a percentage of recoverable expenses. A broad limitation to cost recovery could lead to unintended consequences, such as diminished records or perverse workarounds.

71. The rules proposed by the UCA also shall not be adopted because: (1) recoverable rate case expenses can be reasonably determined before the conclusion of the litigation, at the time when the Commission establishes a revenue requirement target and rates; (2) it is unnecessary and practically infeasible to establish recoverable expenses through a post-final-decision technical conference process; and (3) the determination of recoverable expenses is fact and case specific and cannot be determined through the promulgation of a rule of general applicability.

72. The request that the Commission deny expenses related to utility requests not granted is contrary to the due process that must be afforded to a regulated entity and there is no evidence that utilities make requests that have been previously denied with prejudice.

2. Costs Prohibited from Rates

73. The rules attached to the NOPR address provisions in SB 23-291 intended to ensure that utilities do not recover through rates certain "prohibited expenses."¹⁹ Specifically, paragraphs 3354(a) and 4354(a) list the costs and expenditures that are prohibited from rates, corresponding to the excluded costs listed in §§ 40-3-114(2)(a) through (1), C.R.S.

¹⁹ § 40-3-114(2), C.R.S.

74. In accordance with those provisions in SB 23-291, paragraphs 3351(a) and 4351(a) adopted by this Decision state that base rates and rate adjustment mechanisms shall not recover the prohibited costs.

75. The Commission establishes rates in a base rate proceeding, and the Commission's recent actions in Proceeding No. 24AL-0049G support the conclusion that a base rate proceeding is where it and interested parties should prevent the recovery of prohibited costs in rates. As explained further below, when revenue requirements and rates are established in a base rate proceeding, the annual reports contemplated by SB 23-291 can then address Commission findings, conclusions, and directives regarding prohibited costs to properly ensure compliance with § 40-3-114, C.R.S.

76. SB 23-291 does not require the Commission to promulgate rules to implement § 40-3-114, however the record in this Proceeding supports the adoption of a rule to properly implement that § 40-3-114(5), C.R.S. addressing annual reporting, tying such reporting to the Commission's established base rate proceeding processes.

a. Marketing Expenses

77. The subparagraph concerning marketing expenses presented in NOPR and in the rules attached to the ALJ Interim Decision, with an error corrected, are adopted.

b. Investor Relations

78. The subparagraph concerning investor relations expenses presented in NOPR and in the rules attached to the ALJ Interim Decision are adopted. The findings and conclusions in Proceeding No. 24AL-0049G were that the term "investor-relation expenses" is unambiguous and there is no uncertainty regarding what is considered investor-relation expenses in a rate case. The Commission declined to find that these costs were a legitimate cost of doing business.

Neither SB 23-291 nor any another other provision in Title 40 exempts any type of investor-relation expense from the prohibition.

c. Lobbying

79. The subparagraph concerning lobbying expenses presented in NOPR and in the rules attached to the ALJ Interim Decision is adopted. Proceeding No. 24AL-0049G demonstrates that the prohibition of lobbying expenses from rates is best ensured in a base rate proceeding where, as in that case, the Commission clarified that it is necessary for a utility track and report the portion of total compensation for any employees who engage in lobbying as defined by SB 23-291.

d. Dues

80. The subparagraph concerning organizational dues presented in NOPR and in the rules attached to the ALJ Interim Decision is adopted. In Proceeding No. 24AL-0049G, the Commission concluded that SB 23-291 makes it clear that if an organization or other entity engages in lobbying, dues or fees paid by the utility to that organization or other entity are not to be included in revenue requirements and rates, even if such organizations and entities also perform other services and functions besides lobbying

e. Board Expenses

81. The subparagraph concerning board expenses presented in the NOPR and in the rules attached to the ALJ Interim Decision, are adopted modified consistent with suggestions from Atmos and the new formulation of paragraphs 3351(a) and 4351(a).

f. Reporting

82. A rate proceeding is where the Commission reviews an inventory of costs that are lawfully recoverable through rates. For some types of prohibited expenses, the Commission may

determine in the rate proceeding that it is necessary and reasonable for the utility to itemize the purpose, payee, and amount of expenses for activities that are not recoverable through rates, both to ensure that rates are established properly and to address unpreventable situations where the penalty and refund provisions in SB 23-291 might apply subsequent to a rate proceeding.

83. The Commission's actions in Proceeding No. 24AL-0049G show that for the Commission to reasonably prevent a utility from including prohibited costs for certain cost categories in a rate proceeding, new presentations and analyses of costs may be necessary. When the Commission determines in a rate proceeding that the utility is or may be including in its rates certain costs that are prohibited, the Commission may require the production of additional information to bring the utility into compliance with the prohibitions in SB 23-291. It is in these situations, after determinations addressing prohibited costs, a utility must include in its annual report the payee and amounts associated with prohibited costs and expenditures.

84. Paragraphs 3351(b) and 4351(b) are therefore adopted to allow for these occasions when the Commission determines that prohibited costs may have been included in its rates.

g. Penalties and Refunds

85. The rules attached to this Decision include the provisions that were missing from the rules attached to the NOPR with an error corrected (as in the rules attached to the ALJ Interim Decision).

E. Conclusion

86. Being fully advised in this matter and consistent with the above discussion, in accordance with § 40-6-109, C.R.S., the undersigned transmits to the Commission the record in this Proceeding along with this written recommended decision and attachments.

III. ORDER**A. The Commission Orders That:**

1. The amendments to the Commission's Rules Regulating Electric Utilities in 4 *Code of Colorado Regulations* ("CCR") 723-3 attached to this Recommended Decision as Attachments A and B are adopted. Attachment A is in legislative (*i.e.*, ~~strikeout~~ and underline) format, and Attachment B is in final format.

2. The amendments to the Commission's Rules Regulating Gas Utilities in 4 CCR 723-4 attached to this Recommended Decision as Attachments C and D are adopted. Attachment C is in legislative format, and Attachment D is in final format.

3. The amendments to the Commission's Rules of Practice and Procedure in 4 CCR 723-1 attached to this Recommended Decision as Attachments E and F are adopted. Attachment E is in legislative format, and Attachment F is in final format.

4. The adopted rules are also available in the Commission's E-Filings system at:
https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=24R-0168EG

5. Proceeding No. 24R-0168EG is closed.

6. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

7. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

8. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

9. If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

10. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

11. This Decision is effective upon its Issued Date.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT I. GARVEY

Administrative Law Judge

ATTEST: A TRUE COPY

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

Rebecca E. White,
Director