

Decision No. R04-0141

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03A-484G

IN THE MATTER OF THE JOINT APPLICATION OF ATMOS ENERGY CORPORATION AND COMFURT GAS, INC., FOR THE APPROVAL OF THE TRANSFER OF CERTAIN FACILITIES AND PROPERTIES FROM COMFURT GAS, INC., TO ATMOS ENERGY CORPORATION AND AUTHORIZING THE TRANSFER OF ALL CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY ISSUED TO COMFURT GAS, INC., FOR SAID NATURAL GAS FACILITIES AND PROPERTIES ON AN EXPEDITED BASIS PURSUANT TO THE COMMISSION'S MODIFIED PROCEDURES.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
ACCEPTING STIPULATION AND
GRANTING JOINT APPLICATION**

Mailed Date: February 5, 2004

Appearances:

Thomas R. O'Donnell, Esq., of the Law Firm of Holland and Hart, Denver, Colorado, for Atmos Energy Corporation;

Alvin J. Meiklejohn, Jr., Esq., of the Law Firm of Jones & Keller, P.C., Denver, Colorado, for ComFurT Gas, Inc.; and

Michael J. Santisi, Esq., and John J. Roberts, Esq., Assistant Attorneys General, Denver, Colorado, for Staff of the Commission.

I. STATEMENT

1. On November 4, 2003, Atmos Energy Corporation (Atmos) and ComFurT Gas, Inc. (ComFurT) (collectively, Applicants), filed their Verified Joint Application (Application) for the approval of the transfer of certain facilities and properties and of all certificates of public convenience and necessity (CPCNs) associated with those facilities and properties from

ComFurT to Atmos.¹ The Application commenced this proceeding. Atmos submitted the Direct Testimony of David L. Anglin,² and ComFurT submitted the Testimony of Randy A. Crane.³

2. On November 5, 2003, the Commission issued its Notice of the Application, which gave public notice of the Application.

3. On November 24, 2003, Staff of the Commission (Staff) filed its Notice of Intervention, Entry of Appearance and Request for Hearing (Notice of Intervention). Staff is the only intervenor.

4. On December 4, 2003, the Commission mailed Decision No. C03-1353, by which the Commission deemed the Application complete. In addition, the Commission provided guidance regarding the scope of the issues to be addressed at hearing. *See id.* at ¶¶ 3 and 4. One of the governing decisions⁴ cited by the Commission uses the producer and consumer welfare maximization standard for the purpose of approving mergers⁵ but makes clear that there is no limit as to settlement of disputed issues.

5. On December 10, 2003, the undersigned Administrative Law Judge (ALJ) issued Decision No. R03-1384-I, which vacated the then-existing procedural schedule in this matter and scheduled a prehearing conference.

¹ The Application and its non-confidential exhibits are Hearing Exhibit No. 4. The Asset Sale and Purchase Agreement, which was Confidential Exhibit 3 to the Application, is Confidential Hearing Exhibit No. 4A. There has been no amendment, modification, or alteration to the Asset Sale and Purchase Agreement since it was filed with the Commission.

² This testimony is Hearing Exhibit No. 2.

³ This testimony is Hearing Exhibit No. 5.

⁴ Decision No. C99-1052 at ¶ 11.

⁵ Atmos and ComFurT do not consider Atmos's purchase of ComFurT's natural gas facilities and properties as contemplated by the Asset Sale and Purchase Agreement to be a merger. They have agreed not to challenge a review of the proposed transaction under the producer and consumer welfare maximization standard.

6. On December 17, 2003, Atmos and ComFurT filed a Motion for Leave to File Supplemental Direct Testimony and Exhibits. With that motion Atmos and ComFurT filed the Supplemental Direct Testimony of Mr. David L. Anglin on behalf of Atmos⁶ and the Supplemental Testimony of Mr. Randy A. Crane on behalf of ComFurT.⁷

7. On December 18, 2003, the ALJ convened a prehearing conference. On January 6, 2004, the ALJ issued Decision No. R04-0009-I, in which she established procedural and hearing dates; established certain discovery response and motion times; and narrowed the issues to be considered in connection with this matter.⁸ In that decision the ALJ also addressed the context in which producer and consumer welfare maximization standard would be considered in this proceeding. *See id.* at ¶ 8 and n. 1.

8. On January 27, 2004, Applicants and Staff (collectively, Parties) filed a Joint Motion to Approve Stipulation and Agreement in Resolution of Proceeding. A Stipulation and Agreement in Resolution of Proceeding (Stipulation)⁹ accompanied the filing. Pursuant to Decision No. R04-0063-I, the hearing on the Stipulation was scheduled for February 3, 2004.

9. On January 30, 2004, the ALJ issued Decision No. R04-0119-I, in which she set out questions regarding the Stipulation for the Parties to answer at hearing.

10. The evidentiary hearing on the Stipulation was held on the date and at the time scheduled. The ALJ heard extensive testimony from representatives of the Parties in support of

⁶ This testimony is Hearing Exhibit No. 3.

⁷ This testimony is Hearing Exhibit No. 6.

⁸ Decisions No. R04-0063-I and No. R04-0100-I subsequently amended the procedural schedule.

⁹ The Stipulation is Hearing Exhibit No. 1. Hearing Exhibit No. 14 (Comparison of Rates between ComFurT and Atmos's Northwest/Central Rate Area) is a revised and updated Attachment 2 to the Stipulation. Thus, the Stipulation approved by, and attached to, this Decision is Hearing Exhibit No. 1, as revised by and containing Hearing Exhibit No. 14.

the proffered Stipulation. Hearing Exhibits No. 1 through 14 were offered and admitted into evidence. The testimony addressed, *inter alia*, the matters set out in Decision No. R04-0119-I. At the conclusion of the evidentiary hearing, the ALJ took this matter under advisement.

11. In accordance with § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record and exhibits of this proceeding along with a written recommended decision.

II. FINDINGS AND CONCLUSION

12. ComFurT Gas is a Colorado corporation in good standing. It is an operating public utility, subject to the Commission's jurisdiction, which provides retail natural gas sales and transportation services to residential, commercial, and interruptible customers in the service territory shown in Exhibit 4 to the Application.¹⁰ ComFurT operates its natural gas business pursuant to a CPCN issued pursuant to Decision No. C99-1161 and a CPCN issued pursuant to Decision No. C00-0594.

13. Atmos is a Texas and Virginia corporation authorized to do business in Colorado and is in good standing. Atmos is an operating public utility, subject to the Commission's jurisdiction, which provides retail natural gas utility services within its certificated territory in Colorado.

14. ComFurT is a small family-owned business with a total of five full-time employees and one part-time employee carrying out the natural gas utility operations. ComFurT's President, Mr. Randy A. Crane, has primary responsibility for all of the day-to-day operations of ComFurT, including matters such as natural gas purchasing, system design and

¹⁰ ComFurT also operates a propane distribution business in Colorado. This business is non-jurisdictional to this Commission and will continue after the transfer which is the subject of the Application.

construction, system maintenance and operations, regulatory oversight and compliance, employment, personnel matters, and office and accounting functions.

15. For approximately 50 years, ComFurT has operated as a public utility providing natural gas utility service to customers in the Town of Buena Vista, Colorado, and in areas in Chaffee County, Colorado adjacent to the Town. ComFurT's natural gas public utility operations are conducted pursuant to a franchise issued by the Town of Buena Vista and authorities issued by the Commission. Today, ComFurT provides natural gas utility service to approximately 1,800 residential, commercial, and interruptible customers pursuant to its CPCNs and authorizations. ComFurT provides service to these customers through approximately 265,039 feet of underground natural gas mains and approximately 126,050 feet of service lines.

16. ComFurT has determined that it is not of a size sufficient to allow it to continue to operate effectively and efficiently given the business and regulatory environments that exist today for natural gas utilities. For example, because of its small size, ComFurT has experienced increasing difficulty acquiring natural gas supplies for its customers directly from the producer or supplier. ComFurT has been forced to deal with intermediary brokers of natural gas, thus raising concerns of price and reliability.

17. In addition, ComFurT has determined that it is not of a sufficient size to allow it to maintain the in-house expertise that will ensure that ComFurT is in compliance with the increasing range of safety and operational regulatory requirements for natural gas utilities, including but not limited to, those promulgated by the U.S. Department of Transportation, the U.S. Environmental Protection Agency, the U.S. Occupational Safety and Health Administration, and the U.S. Department of Homeland Security. Finally, ComFurT has determined that it is

likewise not of a sufficient size to allow it to keep up with the substantial advances in technology that affect virtually every aspect of its natural gas distribution business.

18. In the face of these developments and to operate effectively and efficiently going forward, ComFurT would need to hire additional full-time highly skilled employees and/or to engage the services of outside consultants. Effective and efficient operation would require substantial additional investment in equipment. The ownership of ComFurT determined that this is not a feasible option, particularly in light of the relatively small number of customers over which these substantial new costs would be spread.

19. Thus, after careful analysis and extensive consideration, the family that owns ComFurT determined that it would divest the natural gas utility business. ComFurT then negotiated the sale to Atmos of all of ComFurT's natural gas facilities and properties, and associated CPCNs, within Colorado. The result of these negotiations is the Asset Sale and Purchase Agreement, dated October 16, 2003 (*see* Confidential Hearing Exhibit No. 4A).

20. Atmos currently serves approximately 104,000 customers within Colorado. Atmos's existing service area and customer base include customers in and around Chaffee County, Colorado, and up to within two miles to the south and west of ComFurT's service area. No other utility has a service area as reasonably close to ComFurT's service territory. As a result, Atmos is uniquely situated to integrate ComFurT's customers¹¹ and service area into the

¹¹ As used in this Decision, "ComFurT's customers" or any similar phrase refers to those served by the facilities which are the subject of this proceeding and includes both current customers and future customers served by those facilities until such time as the ComFurT facilities are directly connected to, and integrated into, Atmos's distribution system.

Atmos system with minimal difficulty. This acquisition by Atmos should benefit Atmos's existing customers by adding to Atmos's economies of scope and scale.¹²

21. There are benefits from the asset transfer which should accrue to ComFurT's customers. Upon becoming Atmos customers, the ComFurT customers will become a part of a much larger organization that has more stability and that already has in place an extensive operational and administrative infrastructure that it uses to ensure that it provides safe, reliable, and reasonably priced¹³ natural gas utility service to all of its customers. As discussed above, ComFurT could not duplicate this operational and administrative infrastructure without significant expense, which ultimately would result in increased rates for its customers.

22. As part of the Atmos system, the ComFurT customers should experience customer benefits, or "welfare maximization," in at least three overarching areas: customer service, operations, and financial functions.

23. Relative to the customer service function, Atmos has in place a centralized network for administrative support, including a customer support center, billing system, and bill payment processing system. Through these systems, ComFurT customers will have access to customer service support 24 hours a day, 7 days a week, 365 days a year. They will also have access to a variety of billing and payment options from which they may choose. As Atmos customers, the former ComFurT customers should benefit from the immediate availability of a number of advanced technologies that ComFurT would find difficult and expensive to deploy,

¹² Because there is no guarantee that these benefits will occur, the ALJ uses "should" here and elsewhere in this decision. Only time will tell if the cited benefits in fact accrue. This uncertainty, however, need not stand in the way of, or otherwise delay, approval of the Application because, based on the evidence presented, the ALJ finds that accrual of these benefits is probable (that is, more likely to occur than not).

¹³ Because Atmos provides natural gas service at rates which are on file with the Commission, those rates may be presumed to be reasonable until a Commission determination to the contrary.

including without limitation, technologies that support the electronic metering, service order, dispatching and records keeping functions. These advanced technologies, which are now available to Atmos customers and will become available to ComFurT customers after the transaction closes, will eliminate the manual transactions which ComFurT employs today; should greatly reduce the possibility of error in customers bills; and should ensure the provision of more timely and more efficient service to customers going forward.

24. Relative to the operations function, Atmos's size, scope, and national presence result in significant economies of scale relative to its operations. As a result, it is better able to meet the increasing operational and regulatory demands that appear to be overwhelming ComFurT. The systems, processes, expertise, and personnel necessary to comply with federal regulations, for example, are already in place for Atmos but, as discussed, would need to be implemented by ComFurT, probably at substantial expense.

25. Atmos will bring the benefits associated with significant purchasing power in the natural gas markets (and other markets) to bear for the ComFurT customers. For example, because of its national presence and in contrast to ComFurT, Atmos has access to numerous natural gas suppliers. In addition, Atmos maintains a staff of professional personnel that oversee both the purchasing and delivery functions. In view of the proximity of Buena Vista to Atmos's service area of Salida in Atmos's Northwest/Central rate division and in view of the fact that Buena Vista and the Northwest/Central rate division share one interconnecting pipeline company, Atmos can arrange for the delivery of natural gas supplies necessary to serve the additional load associated with the ComFurT customers with no additional resources.

26. Relative to the financial function, as of September 2003, Atmos has \$2.5 billion of assets and \$857.7 million of shareholders' equity. In addition, Atmos is investment grade rated by Standard & Poors Corporation, Fitch Ratings, and Moody's Investors Services. Atmos has a commercial paper program and access to significant lines of credit, all of which demonstrate that Atmos is a strong and financially worthy company for the purposes of owning and operating the ComFurT natural gas system into the indefinite future.

27. The size, scope, and national presence of Atmos's operations translate into a higher level of total costs (albeit spread over more service areas and customers) than that of ComFurT. Nevertheless, the substantial costs that ComFurT likely would incur to address the challenges facing it relative to its customer service, operations, and financial functions exceed the allocation of a portion of Atmos's total costs to the ComFurT customers, thus resulting in a net benefit to ComFurT customers. Atmos's acquisition of ComFurT's natural gas facilities and properties should result in a variety of welfare gains (such as economies of scope and scale, cost savings, more favorable access to markets, more rapid deployment of technology, and increased efficiencies, as articulated in Decision No. C03-1353) to ComFurT customers.

28. Atmos's acquisition of the ComFurT facilities and properties within Colorado will be consummated pursuant to the terms and conditions of the October 16, 2003, Asset Sale and Purchase Agreement. The facilities and properties being acquired will be recorded on Atmos's books at original cost less depreciation, or book value. Atmos is not seeking in this proceeding to change the rates or the terms and conditions under which ComFurT currently provides natural gas service to its customers. For some time into the future, Atmos intends to continue to provide service to the ComFurT customers pursuant to the rates and terms and conditions of service

contained in ComFurT's Colorado PUC No. 1 Gas Tariff on file with and approved by the Commission as of the closing date of the acquisition.

29. In its Notice of Intervention, Staff set out a number of issues¹⁴ surrounding the proposed transfer of the ComFurT facilities and properties, and associated CPCNs, that Staff sought to investigate more closely, including: (1) whether the sales and transfer are “not contrary to public interest”; (2) the price paid by Atmos for ComFurT's assets; (3) whether the price paid by Atmos for the assets is justified and prudent; (4) the amount, reasonableness, and proposed treatment of any acquisition premium; (5) whether the transfer will result in synergy and savings to customers of ComFurT; (6) whether the savings should be captured in rates for the benefit of ComFurT's customers; (7) whether it is appropriate for Atmos simply to adopt ComFurT's tariffs as to rates, terms, and conditions of service; (8) whether it is appropriate for Atmos not to state any commitment as to the length of time for such adoption; (9) the proper length of time for such adoption; (10) the accounting entries for the transaction; (11) whether reporting requirements should be imposed upon the closing of the transaction and, if so, what those should be; and (12) “other issues identified during the course of Staff audit and investigation.”

30. Based on the issues raised by Staff and consideration of the benefits of the transfer of the facilities, properties, and CPCNs from ComFurT to Atmos, the Parties reached the Stipulation now under consideration.

31. With regard to Staff issue 1 (whether the sale and transfer is “not contrary to public interest”), Paragraph No. 16 of the Stipulation provides that the signatories have applied

¹⁴ By Decision No. R03-0009-I, the ALJ determined that Staff issues 3 and 4 are outside the scope of this proceeding. As a result, except as noted, these issues were not addressed by the Parties and are not addressed in this Decision. Decision No. R03-0009-I, at ¶ 10, specifically deferred consideration of these issues to another and subsequent proceeding.

the principles contained in Decision Nos. C99-1052 and C99-1147 and that they agree that the sale and transfer is not contrary to the public interest. Based on the evidence presented, including responses to the questions posed in Decision No. R04-0119-I and responses to questions posed by the ALJ at the hearing, the ALJ agrees with the Parties.

32. With regard to Staff issue 2 (the price Atmos paid for ComFurT's assets) and issue 4 (the amount and the proposed treatment of acquisition premium), Paragraph No. 17 of the Stipulation provides that Atmos will not seek to recover, in this or any future proceeding, any premium above depreciated book value that it may pay to ComFurT for the purchase of ComFurT's natural gas facilities and properties within Colorado as contemplated by the Asset Sale and Purchase Agreement.

33. With regard to Staff issue 5 (whether the transfer will result in synergy and savings to customers of ComFurT), Paragraph No. 18 of the Stipulation states that the costs ComFurT would otherwise incur to improve its operations exceed the increased cost allocations from Atmos. This paragraph of the Stipulation further states that the transfer of assets described in the Application does not represent a situation in which two similar organizations are coming together to consolidate duplicative infrastructure to save costs. Instead, the transfer of assets is reflective of a small family-run business seeking to fold its utility operations into an established neighboring utility in order to avoid the substantial cost of building the infrastructure required to

operate in today's market and regulatory environment. For this reason, the proposed transaction is not a merger of equals in which one would expect to see merger-related synergies achieved.¹⁵

34. With respect to Staff issue 7 (whether it is appropriate for Atmos simply to adopt ComFurT's tariffs), issue 8 (whether it is appropriate for Atmos not to state any commitment as to the length of time for such adoption), and issue 9 (the proper length of time for such adoption), Paragraph No. 19 of the Stipulation provides that Atmos will not seek to change the Local Distribution Company (LDC) rates (sometimes referred to as base rates) currently in effect for the ComFurT customers until January 1, 2006. In addition, the paragraph provides that any filing to change the LDC rates will use a test period ending no earlier than the 12 months ending December 31, 2005. Paragraph No. 19 also provides that the ComFurT LDC rates that Atmos agrees to maintain in place are the base rates that are specifically set forth in ComFurT's Colorado PUC No. 1 Gas Tariff, on file with and approved by the Commission and in effect on the closing date of the transaction between Atmos and ComFurT. At the hearing, Atmos clarified that this paragraph means that the residential, commercial, and interruptible rates shown on the ComFurT line in the columns labeled "Monthly" and "LDC" on Attachment 2 to the Stipulation will not change until January 1, 2006, at the earliest.

35. Paragraph No. 20 of the Stipulation provides that the Stipulation does not limit or otherwise restrict in any way Atmos's ability to file a rate case relative to all or any portion of its existing systems within Colorado.

¹⁵ In a merger of equals, the superior aspects of each organization's systems will survive while the inferior aspects of each organization's systems will be eliminated. Thus, each contributes to make the total system better and more efficient than either would be alone. As detailed above, this is not a merger of equals. ComFurT may individually be incapable of adding the requisite infrastructure, while Atmos already has such infrastructure in place. In this situation, ComFurT does not contribute to the synergy.

36. In Paragraph No. 21, the Stipulation provides that Atmos's agreement to maintain the current ComFurT LDC rates does not apply to the changes in Gas Cost Adjustment (GCA) rates applicable to the ComFurT customers. The Commission GCA rules require that GCA rates be changed at least annually. With respect to calculation of GCA rates, this paragraph provides that Atmos will include the ComFurT service area within Atmos's Northwest/Central rate division for purposes of developing and implementing the GCA rate to be charged ComFurT customers in any future GCA filing by Atmos relative to its Northwest/Central rate division, but in no event later than in its next annual GCA filing to be effective November 1, 2004. At the hearing Atmos stated that it will keep separate the ComFurT Account 191 and the Atmos Account 191 to assure that one company's customers will not absorb the Account 191 over- or under-recoveries of the other company. Atmos pledged to work with Staff to address any equity concerns which may arise when it makes its first GCA filing after the transaction is completed.

37. Paragraph No. 22 of the Stipulation states that, except as otherwise provided in Paragraphs No. 19 through 21 of the Stipulation, the tariff of rates, charges, rules, and regulations embodied by ComFurT's Colorado PUC No. 1 Gas Tariff on file with and approved by the Commission as of the date of closing of the transaction contemplated by the Application will become the tariff of rates, charges, rules, and regulations of Atmos relative to the ComFurT customers, until such time as they may be changed by Atmos in accordance with law and the Commission's rules and regulations. At the hearing, Atmos testified that it does not foresee any difficulty or significant expense associated with administering and implementing two different tariffs for persons within the same rate class. The ALJ will set a deadline for Atmos's filing adopting ComFurT's tariff.

38. With regard to Staff issue 10 (accounting entries for the transaction), Attachment 3 to the Stipulation contains proposed journal entries on a *pro-forma* basis. In Paragraph No. 23 Atmos agrees to true up these proposed journal entries after the transaction closes.

39. With regard to Staff issue 11 (reporting requirements) and issue 12 (other issues identified during the course of Staff audit and investigation), Paragraph No. 24 of the Stipulation provides that Atmos and ComFurT shall file accounting entries evidencing consummation of the transaction contemplated by the Application within 30 days after the closing of the transaction. These accounting entries will comply in all respects with the Commission's applicable rules. This provision of the Stipulation is consistent with the relief requested in the Application relative to submission of a late-filed Exhibit 6 to the Application which would contain Applicants' final accounting entries.

40. Paragraph No. 24 of the Stipulation also provides that Atmos shall maintain accounting information down to the sub-account level of detail relative to direct cost of service expenses incurred in conjunction with its acquisition of the ComFurT natural gas facilities and properties. This will be accomplished by establishing a separate "rate division" within Atmos's chart-of-accounts for cost of service expenses associated with the ComFurT customers, facilities, and properties. Furthermore, Atmos shall allocate indirect cost of service expenses relative to the acquisition of the ComFurT natural gas facilities and properties in the same manner as Atmos allocates such indirect expenses for its Northwest/Central rate division.

41. Based on the evidence (both testimonial and documentary) presented at the hearing, on the Application and its supporting documentation, and on review of the Stipulation and its attachments (Hearing Exhibits No. 1 and No. 14), the ALJ finds that the Stipulation is

just, is reasonable, and is in the public interest. The testimony more than adequately answered the questions posed and addressed the issues raised in Decision No. R04-0119-I.

42. The Stipulation will be accepted without modification.

43. Atmos is fit, willing, and able, financially and otherwise, to operate the natural gas facilities and properties to be acquired from ComFurT and to perform the service authorized and set forth in the CPCNs to be acquired from ComFurT.

44. Based on the foregoing, the ALJ finds and concludes that the transfer of ComFurT's facilities, properties, and CPCNs (as they are more fully described in the Application and its supporting documents) is not contrary to the public interest.

45. The Application will be granted, subject to the terms of this Order and of the Stipulation.

46. In accordance with § 40-6-109, C.R.S., the ALJ recommends that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. The Stipulation and Agreement in Resolution of Proceeding (Hearing Exhibit No. 1, as modified by Hearing Exhibit No. 14) is accepted.

2. The Stipulation and Agreement in Resolution of Proceeding (Hearing Exhibit No. 1, as modified by Hearing Exhibit No. 14), a copy of which is attached to this Order as Appendix A, is incorporated by reference into this Order as if fully set forth.

3. The Verified Joint Application filed by Atmos Energy Corporation and ComFurT Gas, Inc., for the approval of the transfer of certain facilities and properties and of all certificates of public convenience and necessity associated with those facilities and properties from ComFurT Gas, Inc., to Atmos Energy Corporation is granted, subject to the provisions of this Order and of the Stipulation and Agreement in Resolution of Proceeding.

4. ComFurT Gas, Inc., is authorized to transfer to Atmos Energy Corporation the natural gas distribution systems, facilities, real property, personal property, and all other assets, tangible and intangible, which are identified in the Verified Joint Application and, more specifically, in the October 16, 2003, Asset Sale and Purchase Agreement, *provided* the transfer occurs in accordance with the provisions of the October 16, 2003, Asset Sale and Purchase Agreement. Upon closing of the transaction contemplated by the Asset Sale and Purchase Agreement, ComFurT Gas, Inc., is relieved of its public utility obligation to continue providing the natural gas service which ComFurT Gas, Inc., currently provides.

5. Atmos Energy Corporation is authorized to acquire from ComFurT Gas, Inc., the natural gas distribution systems, facilities, real property, personal property, and all other assets, tangible and intangible, which are identified in the Verified Joint Application and, more specifically, in the October 16, 2003, Asset Sale and Purchase Agreement, *provided* the transfer occurs in accordance with the provisions of the October 16, 2003, Asset Sale and Purchase Agreement. A map showing the ComFurT Gas, Inc., service area within the State of Colorado which is to be transferred to Atmos Energy Corporation is attached to the Verified Joint Application as Exhibit 4 and is incorporated here by reference.

6. ComFurT Gas, Inc., is authorized to transfer, and Atmos Energy Corporation is authorized to acquire, all certificates of public convenience and necessity issued to ComFurT Gas, Inc., by the Commission. Upon the closing of the transaction contemplated by the October 16, 2003, Asset Sale and Purchase Agreement, the referenced certificates of public convenience and necessity are transferred to Atmos Energy Corporation, *provided* the transaction occurs in accordance with the provisions of the October 16, 2003, Asset Sale and Purchase Agreement.

7. Upon the closing of the transaction contemplated by the October 16, 2003, Asset Sale and Purchase Agreement, Atmos Energy Corporation is authorized to install, to maintain, and to operate all facilities reasonably necessary, in its normal course of business, to continue natural gas service to all areas currently being served by ComFurT Gas, Inc., as identified in the Verified Joint Application and its attachments. This authority does not exempt Atmos Energy Corporation from, *inter alia*, the requirements of § 40-5-101, C.R.S.

8. Upon the closing of the transaction contemplated by the October 16, 2003, Asset Sale and Purchase Agreement, Atmos Energy Corporation is authorized to provide service from the facilities acquired from ComFurT Gas, Inc., pursuant to the rates and terms and conditions of service set forth in ComFurT Gas, Inc.'s existing Colorado PUC No. 1 Gas Tariff.

9. Within 60 days of the date of the transaction contemplated by the October 16, 2003, Asset Sale and Purchase Agreement, Atmos Energy Corporation shall file on not less than one day's notice, in its own name and citing this Order as authority, a tariff containing rates and terms and conditions of service identical to the rates and terms and conditions of service set forth

in as ComFurT Gas, Inc.'s existing Colorado PUC No. 1 Gas Tariff. Upon motion and for good cause, the Commission may extend this time period.

10. Within 30 days of the closing of the transaction authorized by this Order, Atmos Energy Corporation and ComFurT Gas, Inc., shall file, as a late-filed Exhibit No. 6 to the Application, their final Accounting Entries as contemplated by Paragraph No. 24 of the Stipulation and Agreement in Resolution of Proceeding (Hearing Exhibit No. 1, as modified by Hearing Exhibit No. 14). Upon motion and for good cause, the Commission may extend this time period.

11. Atmos Energy Corporation and ComFurT Gas, Inc., shall comply with all terms of the Stipulation and Agreement in Resolution of Proceeding (Hearing Exhibit No. 1, as modified by Hearing Exhibit No. 14).

12. 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.

13. 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.

a) 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.

b) 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.

14. 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.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge