

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.

**COMMISSION DECISION SUSPENDING EFFECTIVE
DATE OF TARIFF SHEETS, REFERRING THE MATTER
TO AN ADMINISTRATIVE LAW JUDGE, AND
ESTABLISHING NOTICE AND INTERVENTION PERIOD**

Mailed Date: September 1, 2022
Adopted Date: August 31, 2022

IMPORTANT NOTICE: ANY PERSON DESIRING TO PARTICIPATE ONLY BY MAKING A STATEMENT MAY DO SO BY SUBMITTING A WRITTEN COMMENT THROUGH <https://puc.colorado.gov/> INDICATING PROCEEDING NO. 22AL-0348G. IF YOU DESIRE TO ASK QUESTIONS OF A WITNESS OR OTHERWISE PARTICIPATE AS A PARTY IN THIS MATTER, YOU MUST REQUEST PERMISSION FROM THE COMMISSION TO BE AN INTERVENOR (EVEN IF YOU HAVE ALREADY FILED AN OBJECTION). ANYONE DESIRING TO INTERVENE MUST CAREFULLY FOLLOW THE LAW AND COMMISSION RULES FOR BECOMING AN INTERVENOR. FOR FURTHER INFORMATION ON HOW TO INTERVENE, CALL (303) 894-2070 (PUC EXTERNAL AFFAIRS OFFICE).

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I. BY THE COMMISSION

A. Statement

1. On August 5, 2022, Atmos Energy Corporation (Atmos or Company) filed Advice Letter No. 584 with tariff sheets for its base rate schedules for natural gas utility service to Colorado customers.

2. This Decision sets for hearing the tariff sheets filed under Advice Letter No. 584 and suspends their effective date to January 3, 2023.

3. We refer the matter to an Administrative Law Judge (ALJ).

4. A pleading to intervene in this matter may be filed by any person, firm, or corporation desiring to be a party and fully participate in this Proceeding no later than October 3, 2022.

5. Consistent with the discussion below, Atmos shall file Supplemental Direct Testimony addressing its 10-year investment plans and resulting rate impacts.

B. Discussion

1. Atmos Rate Case

6. Through Advice Letter No. 584, Atmos seeks a net annual increase in base rate revenue of approximately \$7.7 million. The net increase in base rates accounts for a roll-in of approximately \$56.75 million in annual revenue requirement presently recovered through the Company's System Safety and Integrity Rider (SSIR).

7. Advice Letter No. 584 is accompanied by the Direct Testimony of nine Atmos witnesses.

8. Atmos supports its proposed rate increases with a cost of service study (COSS) using a test year ending March 31, 2022, a year-end valuation of rate base, and a weighted average cost of capital (WACC) of 8.17 percent. The requested WACC comprises a capital structure with an equity component of just under 61 percent and an authorized return on equity (ROE) of 10.95 percent.

9. As explained in Advice Letter No. 584 and the Company's Direct Testimony, the primary driver of the proposed base rate increase is the investment not recoverable through the Company's SSIR (*i.e.*, plant investment of approximately \$33.4 million causing an annual revenue requirement of approximately \$6.3 million).

10. Atmos explains that its operation and maintenance (O&M) costs in the test year have also increased by approximately \$2.9 million per year over the test year levels in the last rate case, Proceeding No. 17AL-0429G. The increase is primarily caused by labor and benefits, as well as increases to an uncollectable accounts expense related to higher gas commodity costs.

11. Atmos further seeks to recover an estimated \$750,000 of rate case expenses associated with this Proceeding.

12. Atmos filed an updated study to support an annual depreciation expense of \$14.5 million, unchanged from the Company's last rate case. Atmos notes that its depreciation study actually suggests a decrease in annual expenses due to the longer lives for certain assets. However, Atmos instead proposes no reduction to its current annual depreciation expenses due to the

“uncertainty” caused by Colorado legislation “regarding the future of Atmos’ infrastructure.”¹ Atmos states that it opposes any accelerated depreciation until after the Commission has considered the Company’s first Clean Heat Plan filing pursuant to § 40-3.2-108, C.R.S.

13. Through Advice Letter No. 584, Atmos also seeks to extend the SSIR for five additional years through 2028. Atmos states that the SSIR allows the eligible “capital investment to continue while reducing investor and market concerns related to regulatory lag” while the Company accelerates the replacement of infrastructure and increases residential customers’ bills up to 2.5 percent per year.² Atmos is proposing no changes to how the annual SSIR revenue requirement is calculated or recovered.

14. Atmos states in Direct Testimony that it conducted stakeholder outreach pursuant to the terms of the Stipulation and Settlement Agreement the Company reached in its Storm Uri cost recovery proceeding (Proceeding No. 21A-0186G) and determined, based on that outreach, not to begin offering interruptible sales services to its customers. Atmos states that it based this decision on the need for firm service for most customers in Colorado due to the climate and its experience in other states where most interruptible sales customers are industrial users.

15. In terms of the Phase II rate design component of its case, Atmos claims that there is support for the residential rate class to be allocated an annual rate increase of \$10.3 million, which is more than the overall \$7.7 million requested. Atmos instead proposes to maintain a level of interclass subsidies flowing to the residential customers from non-residential customers such that residential rate classes simply become responsible for the overall \$7.7 million increase sought in this case. Thus, Atmos’ proposed rates would cause residential annual bills to increase by

¹ Direct Testimony of Bart Armstrong, p. 7, ll. 1-5.

² Direct Testimony of Joe Christian, p. 7, ll. 15-19.

approximately 8 to 9 percent, while, in contrast, the proposed rates for non-residential customers remain essentially unchanged except for certain impacts from the SSIR roll-in.

2. Protests and Related Filings.

16. Trial Staff of the Colorado Public Utilities Commission (Trial Staff) filed a protest to Atmos' Advice Letter No. 584 on August 17, 2022.

17. Trial Staff states that it seeks to examine: the prudence and reasonableness of the Atmos' infrastructure plant investments since its last rate case; the Company's COSS calculations, including the choice in test year and rate base valuation; the Company's proposed capital structure, ROE at 10.95 percent, and cost of debt; the proposed five-year extension of the SSIR; the consolidation of the base rate and SSIR protected Excess Deferred Income Taxes amortization within a General Rate Schedule Adjustment; the updated depreciation rate study and the Company's proposal not reflect the resulting updated depreciation rates in this proceeding; the O&M costs included in the COSS, including employee compensation; the rate case expenses; the Company's response to offering interruptible service, in accordance with the Stipulation and Settlement Agreement in Atmos' Storm Uri cost recovery proceeding; and the Phase II cost and revenue allocations to rate classes and the design of proposed rate structures for each class.

18. At the end of its protest, Trial Staff adds: "Additionally, [Trial] Staff respectfully requests the Commission consider requiring the Company to file Supplemental Direct Testimony that provides the Company's 10-year investment plans and resulting rate impacts."

19. On August 26, 2022, Atmos filed a response to this statement in Trial Staff's protest, arguing that the suggestion for Supplemental Direct Testimony should be denied. Atmos explains its decision to file a historic test year for the purpose of minimizing controversy in this rate case by reducing the use of forecasts and questions the relevance of the suggested forecast to the setting

of base rates in this Proceeding. Atmos further states that it does not have capital investment forecasts beyond five years.

20. The Colorado Office of the Utility Consumer Advocate (UCA) filed a protest to Atmos' Advice Letter No. 584 on August 15, 2022. UCA states that Atmos' proposals in this rate case will cause a "pancaking" of rate increases in the wake of the implementation of the Company's rate rider recovering the costs associated with Storm Uri in 2021. UCA also lists in its protest several of the same areas of interest Trial Staff identifies for further examination.

21. UCA further alleges that Atmos failed to address the impact of its proposed rates on income qualified and disproportionately impacted communities it argues is required by House Bill (HB) 21-1266. UCA requests that the Commission direct Atmos to file Supplemental Direct Testimony describing the outreach it conducted with such communities prior to submitting Advice Letter No. 584.

22. On August 25, 2022, Atmos filed a response to this aspect of UCA's protest. Atmos states that it welcomes the opportunity to collaborate with the Commission, the UCA, and other parties to aid the Commission in its compliance with HB 21-1266 and § 40-2-108(3)(b), C.R.S., in this adjudicatory proceeding. However, Atmos argues that contrary to UCA's protest, HB 21-1266 did not impose any requirements on utilities like Atmos to address the effect of its proposed rates, terms, and conditions on income qualified and disproportionately impacted communities. Atmos concludes that it is inappropriate and inconsistent with the law to shift the Commission's responsibilities to Atmos or to impose pre- or post-filing requirements that do not exist.

23. UCA filed a motion for leave to reply to Atmos' response on August 26, 2022. UCA questions the propriety of Atmos' filing a response to a protest in light of the Commission's Rules

of Practice and Procedure. More substantively, UCA repeats its argument that § 24-4-109, C.R.S., applies to this case and that Atmos' omission of this alleged legal requirement is a misstatement of law that merits a response.

C. Conclusions and Findings

24. Pursuant to § 40-6-111(1), C.R.S., the Commission may suspend tariff sheets for 120 days. We find good cause to suspend the tariff sheets submitted with Advice Letter No. 584 for 120 days through January 3, 2023 and set the matter for hearing.

25. We refer this matter to an Administrative Law Judge (ALJ).

26. A pleading to intervene may be filed by any person, firm, or corporation desiring to be a party and fully participate in this proceeding, as ordered below. The filing of any other document protesting the tariff sheets shall not allow participation as an intervenor in this matter.

27. We agree with Staff that the record in this Proceeding would be enhanced with information on Atmos' 10-year investment plans and resulting rate impacts. We therefore direct Atmos to submit Supplemental Direct Testimony presenting and explaining a 10-year projection of its capital investments, the associated revenue requirements, and impacts associated with the investments on rates and bills, as well as overall bill projections for each rate class over the same 10-year period. We acknowledge that Atmos plans its investments out five years instead of ten years. Atmos shall use its best efforts to extend its 5-year investment plans using reasonable assumptions for the purpose of complying with this directive. With respect to overall bill impacts, Atmos shall present illustrative rate projections equal to total applicable revenue requirements – including SSIR revenue, all other riders, and fixed charges—divided by sales. Atmos shall explain the inputs and assumptions for all of these projections. The deadline for the submission of the Supplemental Direct Testimony shall be established by the ALJ.

28. Atmos states that, in this Proceeding, the Company is proposing to update its base rates to reflect changes in non-SSIR investment. However, the tariff sheets submitted with Advice Letter No. 584 do not include the Company's Service Line and Main Extension Policy. We further note that, based on our review of Atmos' advice letter filings and effective tariff sheets in its Colorado P.U.C. No. 7 Tariff, the line extension policy tariff sheets and the construction allowances now in effect were last updated in February 2014 through an advice letter compliance tariff filing in Proceeding No. 14AL-0186G.

29. Although we decline to direct Atmos to submit Supplemental Direct Testimony with regard to its line extension policy, we encourage parties in this Proceeding to address and discuss the issues surrounding the Company's line extension policy and its associated construction allowances through testimony in the course of this Proceeding. We ask that Atmos and the parties also speak to the necessary steps that the Company should take to update the Company's construction allowances and other provisions of its line extension policy to address the issues developed in this Proceeding.

30. UCA's request that the Commission direct Atmos to file additional Supplemental Direct Testimony to address the impact of its proposed rates on income-qualified customers and disproportionately impacted communities shall be addressed by the ALJ by separate decision. Likewise, the ALJ shall rule on UCA's motion of August 26, 2022 for leave to reply to Atmos' August 25, 2022 response to UCA's protest.

31. Although we refer UCA's request for Supplemental Direct Testimony to the ALJ, we are nonetheless interested in understanding how UCA will itself serve as a conduit for feedback and input from income-qualified customers and disproportionately impacted communities through its advocacy in this Proceeding. We therefore request that UCA address in its intervention pleading

its efforts in outreach and obtaining feedback from income-qualified customers and disproportionately impacted communities for the development and presentation of its case pursuant to § 40-6.5-104, C.R.S.

II. ORDER

A. The Commission Orders That:

1. The proposed September 5, 2022 effective date of the tariff sheets filed with Advice Letter No. 584 filed by Atmos Energy Corporation (Atmos) on August 5, 2022, is suspended until January 3, 2023, or until further order of the Commission.

2. The matter is referred to an Administrative Law Judge (ALJ). The ALJ shall set a hearing date, rule on interventions, and establish other procedures by separate decision(s).

3. Any person, firm, or corporation, including any who have previously filed a document protesting the proposed tariff pages, who desire to intervene and participate as a party in this proceeding shall file a motion to intervene with the Commission no later than October 3, 2022 and shall serve a copy of the notice or motion on Atmos' attorney of record.

4. The request of the Colorado Office of the Utility Consumer Advocate (UCA) in its protest filed on August 15, 2022 that the Commission direct Atmos to submit Supplemental Direct Testimony addressing income-qualified customers and disproportionately impacted communities shall be addressed by the ALJ by separate decision. Likewise, the ALJ shall rule on UCA's related motion for permission to reply to Atmos' response to UCA's protest filed on August 26, 2022.

5. Atmos shall submit Supplemental Direct Testimony addressing its 10-year investment plans and resulting rate impacts, consistent with the discussion above

6. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
August 31, 2022.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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JOHN GAVAN

MEGAN M. GILMAN

Commissioners