

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.

**INTERIM DECISION OF ADMINISTRATIVE LAW JUDGE
CONOR F. FARLEY SHORTENING TIME TO FILE
OPPOSITION TO MOTION(S) TO PERMISSIVELY
INTERVENE, DENYING UCA'S REQUEST FOR
SUPPLEMENTAL DIRECT TESTIMONY AND MOTION
FOR LEAVE TO REPLY TO ATMOS' RESPONSE TO
UCA'S PROTEST, SCHEDULING REMOTE PREHEARING
CONFERENCE, AND REQUIRING PARTIES TO CONFER
AND ATMOS TO FILE REPORT OF CONFERRAL
BEFORE THE REMOTE PREHEARING CONFERENCE**

Mailed Date: September 30, 2022

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I. STATEMENT**A. Procedural Background**

1. On August 5, 2022, Atmos Energy Corporation (Atmos) filed Advice Letter No. 584 with tariff sheets for its base rate schedules for natural gas utility service to Colorado customers. Through Advice Letter No. 584, Atmos seeks a net annual increase in base rate revenue of approximately \$7.7 million, a recovery of an estimated \$750,000 of rate case expenses, and an extension of its System Safety and Integrity Rider for five additional years through 2028. The residential class would bear responsibility for all of the revenue increase, which would cause residential annual bills to increase by approximately 8 to 9 percent.

2. On August 17, 2022, Trial Staff of the Colorado Public Utilities Commission (Staff) filed a protest to Atmos' Advice Letter No. 584. In its protest, Staff specified several issues raised by Advice Letter No. 584 that it intends to examine in the proceeding. Staff also requested that the Commission consider requiring Atmos to file Supplemental Direct Testimony that provides Atmos' 10-year investment plans and resulting rate impacts.

3. 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.

4. On August 15, 2022, the Colorado Office of the Utility Consumer Advocate (UCA) filed a protest to Atmos' Advice Letter No. 584 (UCA's Protest). Like Staff, UCA identified several issues that it intends to explore in this proceeding. UCA also argued that House Bill (HB) 21-1266

requires Atmos to address the impact of its proposed rates on income qualified and disproportionately impacted communities and that Atmos failed to do so. UCA requested 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.

5. On August 25, 2022, Atmos filed a response to this aspect of UCA's protest. Atmos stated 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 argued that, contrary to UCA's argument, 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 concluded 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.

6. UCA filed a Motion for Leave to Reply to Atmos' Response (Motion for Leave) on August 26, 2022. UCA questioned the propriety of Atmos' filing a response to a protest in light of the Commission's Rules of Practice and Procedure. More substantively, UCA repeated 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.

7. By Decision No. C22-0514 issued September 1, 2022, the Commission set the tariff pages for hearing pursuant to § 40-6-111(1), C.R.S., which suspended their effective date through January 3, 2023, and referred this proceeding to an ALJ for disposition. The proceeding was subsequently assigned to the undersigned ALJ. Decision No. C22-0514 also set October 3, 2022 as the deadline for filing a pleading to intervene in this matter, and granted Staff's request to order

Atmos to file Supplemental Direct Testimony addressing its 10-year investment plans and resulting rate impacts. Finally, Decision No. C22-0514 directed the undersigned ALJ to: (a) establish the deadline for the filing of the Supplemental Direct Testimony requested by Staff; (b) address UCA's request for Supplemental Testimony addressing the impact of its proposed rates on income-qualified customers and disproportionately impacted communities; and (c) rule on UCA's Motion for Leave.

B. Remote Prehearing Conference

8. It is appropriate to hold a remote prehearing conference in this proceeding. Accordingly, a remote prehearing conference shall be scheduled for October 14, 2022, at 9:00 a.m. The remote prehearing conference will be conducted over the Zoom videoconferencing platform. The ALJ or a member of Commission Staff will email the log-in information in advance of the hearing.

9. Atmos shall confer with the other parties in advance of the remote prehearing conference regarding a schedule for this proceeding (including the Supplemental Direct Testimony addressing Atmos' 10-year investment plans and resulting rate impacts ordered in Decision No. C22-0514), any discovery procedures that are inconsistent with the Commission's rules governing discovery, and the method by which the hearing should be conducted. The Commission can conduct in-person, remote, or hybrid hearings. A remote hearing is one in which all of the participants appear and participate from remote locations over the Zoom web conferencing platform. A hybrid hearing involves the ALJ and at least one party and/or witness participating from one of the Commission's hearing rooms in Denver, and the remaining party(ies) and witness(es) participating from one or more remote locations using the Zoom web conferencing

platform. An in-person hearing is one in which the ALJ and all parties and witnesses participate in the hearing at the same location.

10. Atmos shall file a report of the results of the conferral. If there is agreement on a schedule, including dates for the hearing, discovery procedures that are inconsistent with the Commission's rules governing discovery, and/or the method for conducting the hearing (*i.e.*, remote, hybrid, or in-person), the report shall state as much and detail the stipulated procedural schedule, discovery procedures, and/or method for conducting the hearing. If no agreement is achieved, the report shall state as much and identify the competing schedules, discovery procedures, and/or methods for conducting the hearing proposed by the parties. The parties are on notice that the ALJ will retain the discretion to change the method by which the hearing will be conducted.

11. The parties are urged to review the Commission's public calendar to identify suitable days for the hearing in this proceeding and propose more than one date or consecutive dates for the hearing. The latest date on which the hearing can conclude is January 11, 2023, which assumes that the effective date of the tariff sheets filed with Advice Letter No. 584 will be extended an additional 130 days pursuant to § 40-6-111(1), C.R.S. The deadline for Atmos to file the report is October 11, 2022.

12. All parties must appear at the remote prehearing conference. Failure to attend or to participate in the remote prehearing conference is a waiver of any objection to the rulings made, to the procedural schedule established, and to the hearing dates scheduled during the remote prehearing conference.

C. Responses to Motions to Permissively Intervene Filed After September 29, 2022

13. Decision No. C22-0514 established a deadline of October 3, 2022 for any person, firm, or corporation to file a motion to permissively intervene in this proceeding. Under Rule 1401(b) of the Commission’s Rules of Practice and Procedure,¹ the deadline to file a response in opposition to any motion filed on October 3, 2022 is October 17, 2022. However, the deadline to file a response in opposition to motions to permissively intervene filed after September 29, 2022, shall be shortened to October 11, 2022. Atmos and all individuals or entities who seek to permissively intervene must be prepared to present oral argument concerning any disputed motion to permissively intervene at the prehearing conference on October 14, 2022.

D. UCA’s Request for Supplemental Testimony

14. UCA’s request in its Protest for supplemental direct testimony addressing the outreach Atmos conducted before filing this proceeding to determine the impact of its proposed rates on income qualified and disproportionately impacted communities shall be denied. As support for its request, UCA refers to and cites to the “Legislative Declaration” section of HB 21-1266 and §§ 24-4-109(1), 24-4-109(2)(b)(III) of HB 21-1266, both of which became effective and codified on June 8, 2022. In its Protest, UCA concluded that these sections of HB 21-1266 “clearly require[] the Commission to include and engage these income qualified and disproportionately impacted communities more fully.”² UCA thus concludes that Atmos should be required to file the supplemental direct testimony described above to aid the Commission in this requirement.

15. However, in Proceeding No. 22A-0315EG, the Commission concluded on September 8, 2022 that the “Legislative Declaration” section of HB 21-1266 and §§ 24-4-109(1)

¹ 4 *Code of Colorado Regulations* 723-1.

² UCA’s Protest at 4 (¶ 8).

& (2)(b)(III), C.R.S. do not apply to the Commission.³ In that Proceeding, Public Service Company of Colorado (Public Service) filed an application requesting the Commission’s approval of Public Service’s proposed 2023 Electric and Natural Gas Demand-Side Management and Beneficial Electrification Plan. After intervening in the proceeding, UCA filed a motion requesting that the Commission order Public Service to file supplemental direct testimony addressing, among other things, Public Service’s outreach in income qualified and disproportionately impacted communities. As support, UCA made the same argument as it has here, namely, that the “Legislative Declaration” section of HB 21-1266 and §§ 24-4-109(1) & (2)(b)(III), C.R.S. “require[] the Commission, as a state agency, to include and engage with these income qualified and disproportionately impacted communities more fully.”⁴

16. In Decision No. C22-0530-I issued in Proceeding No. 22A-0315EG on September 8, 2022, the Commission considered UCA’s argument and held:

Section 24-4-109(2)(b), C.R.S. explicitly defines “agency” as used in that []section to “mean [] the air quality control commission created in [§ 25-7-104, C.R.S.]” HB 21-1266 further established the Environmental Justice Action Task Force (“Task Force”) to discuss, among other items, whether “agency” should include entities in addition to those identified in § 24-4-109(2)(b), C.R.S., and make recommendations to the general assembly on potential modifications to definitions established in statute. The Commission and other entities are currently participating in ongoing Task Force processes. We therefore find that the reasoning in UCA’s motion seeking to require supplemental direct based on HB 21-1266 is premature given the ongoing Task Force processes, and inconsistent with § 24-4-109(2)(b), C.R.S.⁵

³ Decision No. C22 -0530-I issued in Proceeding No. 22A-0315EG on September 8, 2022 at 10-11 (¶ 43).

⁴ Unopposed Motion Requesting the Filing of Supplemental Direct Testimony filed in Proceeding No. 22A-0315EG on August 25, 2022 at 3 (¶ 4).

⁵ Decision No. C22 -0530-I issued in Proceeding No. 22A-0315EG on September 8, 2022 at 10-11 (¶ 43).

While the Commission denied UCA's request, it invited the "parties to this proceeding, including UCA, [to] pursue relevant issues through discovery processes and testimony filings"⁶ and "to argue these and other issues [of] importance and relevance throughout the proceeding."⁷

17. Here, UCA is making the same argument rejected by the Commission in Decision No. C22-0530-I. UCA recognizes this, stating in its Intervention:

with all due respect to the Commission's decision, UCA nonetheless contends that [§ 24-4-109(1), C.R.S.] is applicable to the Commission. Further the definition of "proposed state action" used in [§ 24-4-109(1), C.R.S.] and defined [in [§ 24-4-109(2)(b)(III), C.R.S.] also does not contain the defined term "Agency" so UCA contends it is also relevant here. Thus, the goal and requirements contained in §24-4-109(1), C.R.S. and the definition of "proposed state action" are applicable to the Commission.⁸

18. The ALJ finds the UCA's interpretation of § 24-4-109(1), C.R.S. unpersuasive. The goal of statutory interpretation is to give effect to the intent of the General Assembly. The language of the statute must be read and considered as a whole, and it should be construed to give consistent, harmonious, and sensible effect to all its parts.⁹ Words and phrases must be given their plain and ordinary meaning.¹⁰ Where statutory language is unambiguous, resort to other rules of statutory interpretation is unnecessary and the language is applied as written.¹¹

19. If the statutory language is ambiguous, however, additional tools of statutory construction are employed.¹² These tools include the consequences of a given construction, the

⁶ *Id.* at 11 (¶ 44).

⁷ *Id.* at 11 n. 3.

⁸ UCA's Intervention at 3-4 (¶ 8) (footnotes omitted).

⁹ *Safehouse Prog. Alliance for Nonviolence, Inc. v. Qwest Corp.*, 174 P.3d 821, 826 (Colo. App. 2007).

¹⁰ *In re Miranda*, 289 P.3d 957, 960 (Colo. 2012).

¹¹ *Foiles v. Whittman*, 233 P.3d 697, 699 (Colo. 2010).

¹² *Larriue v. Best Buy Stores, L.P.*, 303 P.3d 558, 561 (Colo. 2013).

end to be achieved by the statute, and the circumstances surrounding the statute's adoption.¹³ One of the best guides is the context in which the statutory provisions appear.¹⁴

20. A statute is ambiguous if it is reasonably susceptible to multiple interpretations that lead to different results.¹⁵ “The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.”¹⁶

21. Here, the ALJ concludes that § 24-4-109, C.R.S. unambiguously does not include the Commission within its ambit. Section 24-4-109(1), C.R.S. provides the broad goal of the statute and does not impose any duties and/or responsibilities on any governmental entities. Instead, § 24-4-109(3), C.R.S. establishes those duties and responsibilities and specifies that they apply only to an “agency” when it considers a “proposed state action.”¹⁷ Section 24-4-109(2)(b)(i), C.R.S. defines “agency” for purposes of § 24-4-109, C.R.S., as the Air Quality Control Commission. It does not list any other agencies to which the requirements in § 24-4-109, C.R.S. apply. Finally, § 24-4-109(4), C.R.S. specifies that the general goal defined in § 24-4-109(1), C.R.S., and the more specific duties and responsibilities created in § 24-4-109(3), C.R.S., apply to the Division of Parks and Wildlife when it conducts public outreach regarding the Keep Colorado Wild Pass. As a result, the language and context of § 24-4-109, C.R.S. unambiguously establishes that the duties and responsibilities established therein do not apply to the Commission.

¹³ *Bostelman v. People*, 162 P.3d 686, 690 (Colo. 2007); *Williams v. Kunau*, 147 P.3d 33, 36 (Colo. 2006).

¹⁴ *St. Vrain Valley Sch. Dist. RE-IJ v. A.R.L.*, 325 P.3d 1014, 1019 (Colo. 2014).

¹⁵ *See A.M. v. A.C.*, 296 P.3d 1026, 1030 (Colo. 2013).

¹⁶ *People v. Diaz*, 347 P.3d 621, 625 (Colo. 2015).

¹⁷ § 24-4-109(3)(a), C.R.S. (“To promote the goal of state engagement of disproportionately impacted communities, **an agency** shall strive to create new ways to gather input from communities across the state, using multiple languages and multiple formats and transparently sharing information about adverse environmental effects from its **proposed state action**.”); 24-4-109(3)(b), C.R.S. (“When conducting outreach to and engagement of disproportionately impacted communities regarding a **proposed state action**, **the agency** shall . . .”) (emphases added).

22. It is irrelevant that, as the UCA correctly points out, §§ 24-4-109(1), 24-4-109(2)(b)(III), C.R.S. do not contain “agency.” Neither of those subsections of § 24-4-109, C.R.S. define the duties and responsibilities imposed by the statute. Instead, as noted above, the duties and responsibilities are found in § 24-4-109(3), C.R.S., and the statute, read and considered as a whole, makes clear that those duties and responsibilities are imposed only on the Air Quality Control Commission when it considers proposed state action, and the Division of Parks and Wildlife when it conducts public outreach regarding the Keep Colorado Wild Pass.¹⁸

23. Of course, § 24-4-109, C.R.S. could be amended in the future to apply to the Commission. As noted by the Commission in Decision No. C22-0530-I, in promulgating HB 21-1266, the General Assembly created the Task Force to discuss, among other things, whether the definition of “agency” should be expanded to include other governmental entities, such as the Commission. If added, the requirements of § 24-4-109, C.R.S. will apply to the Commission. However, the current version of § 24-4-109, C.R.S. unambiguously does not.

24. Based on the foregoing, the ALJ will deny UCA’s request for supplemental direct testimony. However, the ALJ invites the parties to this proceeding, including UCA, to conduct discovery, and submit testimony, regarding any relevant issues.

E. UCA’s Motion for Leave

25. UCA’s Motion for Leave filed on August 26, 2022 shall be denied. For the reasons stated above, UCA’s stated basis for the need to reply – that § 24-4-109, C.R.S., applies to this case and Atmos’ omission of this alleged legal requirement is a misstatement of law that merits a response – is rejected for the reasons stated above.

¹⁸ §§ 24-4-109(2)(b)(i), 24-4-109(4), C.R.S.

II. ORDER

A. It is Ordered That:

1. The Request for Supplemental Testimony made by the Colorado Office of the Utility Consumer Advocate (UCA) in its protest to Atmos' Advice Letter No. 584 filed on August 15, 2022 is denied.

2. The Motion for Leave to Reply to Atmos' Response filed by UCA on August 26, 2022 is denied.

3. A remote prehearing conference in this proceeding is scheduled as follows:

DATE: October 14, 2022

TIME: 9:00 a.m.

WEBCAST: Hearing Room B

METHOD: Join by video conference using Zoom at the link to be provided in an email from the Administrative Law Judge¹⁹

4. Nobody should appear in-person for the remote prehearing conference.

5. Atmos Energy Corporation (Atmos) shall file the report of the conferral identified above on or before 9:00 a.m. on October 11, 2022. As stated above, the report should include information concerning the deadline for the filing of the supplemental direct testimony addressing Atmos' 10-year investment plans and resulting rate impacts ordered in Decision No. C22-0514 that issued on September 1, 2022.

6. The deadline to file a response in opposition to any motion to permissively intervene filed after September 29, 2022, shall be shortened to October 11, 2022.

¹⁹ Additional information about the Zoom platform and how to use the platform are available at: <https://zoom.us/>. All are strongly encouraged to participate in a test meeting prior to the scheduled hearing. See <https://zoom.us/test>.

7. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CONOR F. FARLEY

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean, Director