

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.

**COMMISSION DECISION ADDRESSING EXCEPTIONS
TO RECOMMENDED DECISION NO. R25-0215 AND
ADOPTING RULE AMENDMENTS,
WITH MODIFICATIONS**

Issued Date: May 16, 2025
Adopted Date: May 7 & 14, 2025

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I. BY THE COMMISSION**A. Statement**

1. This matter comes before the Commission for consideration of the exceptions filed by rulemaking participants to Recommended Decision No. R25-0215, issued by the administrative law judge (“ALJ”) on March 28, 2025 (“Recommended Decision”). The Recommended Decision adopts amendments to 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 Practice and Procedure Rules 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 customers; § 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 prohibited from recovery in utility rates.

2. On April 17, 2025, the following rulemaking participants filed exceptions to the Recommended Decision, pursuant to § 40-6-109(2), C.R.S., in which they challenge portions of the Recommended Decision and request clarifications or modifications to the ALJ’s recommended rule amendments: Atmos Energy Corporation (“Atmos”); the Energy and Policy Institute (“EPI”); Public Service Company of Colorado (“Public Service”); and the Office of the Utility Consumer Advocate (“UCA”).

3. By this Decision, we grant, in part, and deny, in part, the exceptions filed to the Recommended Decision. We adopt the Recommended Decision and the ALJ's recommended rule amendments, with certain adjustments to the rule language responsive to the filed exceptions along with modifications on our own motion, which are discussed and explained further below and are shown in redline format in Attachments A, C, and E to this Decision and in final format in Attachments B, D, and F to this Decision.

B. Background

4. The Commission initiated this matter on April 30, 2024, by issuing a Notice of Proposed Rulemaking ("NOPR") and referred the matter to an ALJ for disposition. The NOPR was published in the May 10, 2024 edition of *The Colorado Register* and on the Commission's website.

5. The purpose of this Proceeding is to amend the Electric Rules, Gas Rules, and Practice and Procedure Rules in order to implement certain statutory provisions enacted by SB 23-291. The statutory authority for these rule amendments 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), and, specifically, in SB 23-291, as codified at §§ 40-3-102.5 and 40-3-114, C.R.S.

6. Public hearings were conducted by the ALJ on the proposed rules on June 3, 2024, and November 19, 2024. The ALJ also solicited and received several rounds of written comments from rulemaking participants.

7. On March 28, 2025, the ALJ issued the Recommended Decision and recommended adoption of the amendments to the Electric Rules, Gas Rules, and Practice and Procedure Rules set forth in the attachments to the Recommended Decision.

8. On April 17, 2025, Atmos, EPI, Public Service, and UCA each filed exceptions to the Recommended Decision. On May 1, 2025, Atmos, Black Hills, and Public Service filed responses to the exceptions.

9. The Commission deliberated at its May 7 and 14, 2025, Commissioners' Weekly Meetings. The Commission granted, in part, and denied, in part, the exceptions, and adopted the Recommended Decision and the recommended rule amendments with the changes identified and explained below and shown in the attachments to this Decision.

C. Discussion, Findings, and Conclusions

10. Under § 40-6-109(2), C.R.S., and Rule 1505(a), 4 CCR 723-1, whenever an ALJ issues a recommended decision in a rulemaking, the record is transmitted to the Commission, and rulemaking participants may file exceptions. Responses are permitted with 14 days following service of the exceptions. If exceptions are timely filed, the recommended decision is stayed until the Commission rules upon them. When ruling on exceptions, the Commission may adopt, reject, or modify the ALJ's findings of fact and conclusions and may enter its own decision.

11. Below, we address the filed exceptions and any resulting adjustments to the ALJ's recommended rule amendments along with our additional modifications. Any arguments in the exceptions that are not specifically addressed in the discussion below, have been considered and rejected.

a. Rule 3351/4351: Prohibited Costs and Utility Reporting

12. Through SB 23-291, the legislature identified certain types of costs to be expressly prohibited from recovery from a utility's customers. Section 40-3-114(2), C.R.S., specifies that a utility shall not recover any of these identified costs from its customers, whether as part of proposed base rate costs, a rider, or other charges. The legislature also enacted a reporting

requirement. Section § 40-3-114(5), C.R.S., requires the Commission to “require a utility to file an annual report with the commission to ensure the utility’s compliance with this section.” The statute specifies this report “must include the purpose, payee, and amount of any expenses associated with the costs and activities that are not permitted to be recovered from customers pursuant to this section.”

13. In the NOPR, the Commission proposed the following implementing rule for consideration and comment:

On or before April 30th of each year, each investor-owned utility shall file with the Commission a report that demonstrates compliance with prohibitions of costs recoverable through the utility’s rates in accordance with § 40-3-114, C.R.S. The report must include the purpose, payee, and amount of any expenses associated with the costs and activities that are not permitted to be recovered from customers. The report shall be filed concurrently with and in the same proceeding as the investor-owned utility’s annual report filed in accordance with rule 3006.

Given the divergence of views expressed during the pre-rulemaking outreach on this reporting requirement, the NOPR expressly invited comment on this proposed language along with any additional proposals or clarifications from rulemaking participants to implement this statutory prohibition of recovery of certain types of costs.

14. During the rulemaking, the utilities raised concerns about the Commission adopting prescriptive reporting rules that would inappropriately delve into the utilities’ affairs regarding the communications they engage in as well as their internal practices and principles around lobbying. In contrast, other rulemaking participants urged adoption of detailed reporting requirements so that costs could be examined more granularly than is often done in a base rate proceeding. There was no apparent dispute among the utilities and other rulemaking participants that, even in total, the prohibited expenses do not amount to significant rate impacts; but the utilities expressed concern

about the time and expense required to separate out recoverable versus non-recoverable activities to comply with reporting requirements.

15. The Recommended Decision fundamentally concludes: “that a base rate proceeding is where [the Commission] and interested parties should prevent the recovery of prohibited costs in rates.”¹ It then explains that Public Service’s recent gas rate case, Proceeding No. 24AL-0049G, supports the conclusion that the annual reports contemplated by SB 23-291 can address Commission findings, conclusions, and directives regarding prohibited costs to properly ensure compliance with § 40-3-114, C.R.S.

16. Along these lines, the ALJ modified the rules proposed with the NOPR as shown in bold font below, and recommended the following reporting rule (as paragraph 3351(b) of the Electric Rules and paragraph 4351(b) of the Gas Rules):

Reporting. For the purpose of demonstrating compliance with § 40-3-114, C.R.S., On or before April 30th of each year, each investor-owned utility shall file with the Commission a report that identifies any costs prohibited by paragraph 3351(a) that the utility sought to include in base rates or in a rate adjustment mechanism but the commission found, in a written decision, are not permitted to be recovered from customers demonstrates compliance with prohibitions of costs recoverable through the utility’s rates in accordance with § 40-3-114, C.R.S. The report must include, for each prohibited cost required to be reported, the purpose of the expenses, corresponding to subparagraphs 3351(a)(i) through (xiv), and the payee, and amount of any the expenses associated with the costs and activities that the Commission found are not permitted to be recovered from customers. The report shall be filed concurrently with and in the same proceeding as the investor-owned utility’s annual report filed in accordance with rule 3006.

(1) EPI Exceptions

17. EPI continues to argue for a requirement that utilities list each of their business units that employ personnel who conducted work associated with expenses prohibited from

¹ Recommended Decision at ¶ 75.

recovery. EPI contends the approach recommended by the ALJ will result in less transparency and will not meet what EPI claims to be a statutory requirement that every utility must, each year, disclose in an annual report the purpose, payee, and amount of any expenses associated with the costs and activities that are not permitted to be recovered from customers.

18. EPI further contends the Recommended Decision gets the purpose of the statute backwards. EPI argues the Commission's decisions in Public Service's recent gas rate case, Proceeding No. 24AL-0049G, confirm it is necessary for utilities to provide detailed reports annually and that Commissioners and staff will "not always have the capacity to dig into a few hundred thousand dollars here, or a million dollars there, of potentially non-recoverable costs" in a base rate case.² EPI states the Commission, in that case, lacked the information it needed from Public Service to support discrete adjustments and therefore ordered Public Service to update its 2023 annual report "showing the portion of total compensation of Xcel Energy employees, by employee, that corresponds to their time spent on lobbying," and to track the same data for 2024 and each calendar year through the next rate case, for a possible refund."³ According to EPI, these remedies "track closely with what EPI suggests the Commission require of all utilities annually, and they demonstrate why itemization by employee and vendor is so critical."⁴

19. EPI concludes that adoption of its version of the reporting rule will make it less likely that utilities will attempt to include lobbying, investor relations, or other prohibited costs in rates; better equip the Commission to identify the potential compliance failure, without relying on questioning of utility witnesses; and save customers money on a more timely basis "without setting

² EPI Exceptions at p. 9.

³ EPI Exceptions at p. 7.

⁴ EPI Exceptions at p. 8.

up regulatory trackers and retroactive and prospective reporting requirements”⁵ but instead ordering adjustments to rates in the rate case.

20. EPI also states the Recommended Decision does not address its proposal that annual reports be publicly available. EPI states: “The utilities’ insistence on confidentiality raises the question of what they are trying to hide.”⁶

(2) UCA Exceptions

21. UCA also addresses the reporting provisions for prohibited costs in its exceptions. UCA argues that the proposed reporting rule has not properly codified the Commission’s mandate in Public Service’s recent gas rate case, Proceeding No. 24AL-0049G, that a utility track and report the compensation for every employee engaged in lobbying. UCA recommends revising the rule to require that a utility include all lobbying costs it incurred and not just those lobbying costs it chose to exclude. UCA adds this language need not be confined to lobbying costs but to all of the prohibited costs categories including investor relations expenses.

(3) Responses

22. Atmos, Black Hills, and Public Service each responded opposing the changes proposed by EPI and UCA in their exceptions.

23. Atmos explains, if a utility did not propose any changes to base rates, a rider, or other charges within a given year, then there would be nothing to report on that year, as the statute says the purpose of this report is “to ensure the utility’s compliance” with the prohibition on cost recovery. Atmos concludes, without any proposed change in rates, there is no risk of a utility recovering any of the prohibited costs and thus no report should be required for that year.

⁵ EPI Exceptions at p. 10.

⁶ EPI Exceptions at p. 12.

Accordingly, Atmos agrees with the ALJ's rationale for adopting the recommended rule. Atmos states the ALJ properly requires the annual reporting to focus on findings coming out of a rate proceeding where the utility was found to have proposed recovery of the prohibited costs.

24. Atmos further argues that requiring utilities to prepare annual reports with the level of detail urged by EPI and UCA, without a direct connection to any actual proposed change in rates, would increase the cost of compliance for utilities and infringe on utilities' freedom of speech and association without any relationship to the utilities' proposed base rate costs, riders, or other charges where the prohibition on cost recovery could be violated. Atmos contends that requiring detailed information regarding lobbying, organizational dues, influencing public opinion, and charitable giving is not narrowly tailored to achieve the public policy purpose of SB 23-291 of prohibiting recoverability through rates of monies being spent on these activities.

25. In its response, Black Hills characterizes EPI's proposed reporting requirements as: "a solution in the absence of any demonstrated problem" and claims they would improperly "shift ... the burden of proof to show improper prohibited costs from parties making this allegation to the utility."⁷ Black Hills contends that EPI's proposed language would impose an extreme expense on utilities without conducting any cost/benefit analysis. Black Hills argues that EPI's claim to know the inner workings of utilities is devoid of any actual experience or knowledge, whereas compiling the information demanded by EPI for employees and vendors on a line-by-line basis would require hundreds of hours of employee time, toward no compelling purpose. Black Hills adds that, while it maintains records to comply with the accounting standards of the Federal Energy Regulatory Commission, such accounting is not at the granular level of reporting proposed by EPI. Black Hills concludes that the additional data collection and reporting would be highly impractical

⁷ Black Hills Response to Exceptions at pp. 6-7.

for utilities to provide, would likely lead to increased rates, and would only serve to provide additional information about expenses that are already excluded from rate calculations.

26. Public Service similarly concludes that EPI's exceptions provide no valid reason for reversing the Recommended Decision. Public Service argues that the rule recommended by the ALJ is consistent with SB 23-291, contrary to EPI's allegations.

27. Like Black Hills, Public Service cautions that EPI's proposed language would shift the burden of proof to show improper prohibited costs from the challengers to the utility, which it says would be unconstitutional. Public Service explains, for instance, EPI's rule would force utilities to speculate in the annual report about costs that are only suspected to be prohibited. Then, in a subsequent rate case, opponents could argue these speculations are admissions by the utility of including prohibited costs in the revenue requirement. Public Service states the Recommended Decision avoided this potential constitutional problem by requiring reporting on prohibited costs only when such costs have been adjudicated as prohibited in a rate case and after the Commission has found they are not permitted to be recovered from customers. Public Service likewise adds that EPI's approach would have the Commission inappropriately prejudge legitimate disagreements in a rate case over whether costs are legally prohibited and the amount of prohibited costs by forcing pre-adjudication reporting of suspected prohibits costs.

28. Public Service also raises concern that EPI's proposed language includes what it sees as an overly broad, expanded list of itemized information about individual utility employees. Public Service explains that, without an adjudication in a rate case that such costs for employees (whose costs may or may not be prohibited) are actually prohibited by statute and without a determination of the costs to be excluded from rates, EPI's proposed reporting rule would rely on speculation about alleged or suspected activities. Public Service also argues that the detailed

itemizations in EPI's pre-rate case reporting requirement will lead to an invasion of the rights to privacy of employees of Colorado utilities.

(4) Findings and Conclusions

29. The Commission grants, in part, and denies, in part, these exceptions. We uphold the Recommended Decision, which tailors the annual reporting to what is necessary based on a comprehensive rate case review. This approach best ensures that rate case expenses are minimized, because it retains party discovery and case presentation to balance the costs and benefits to ratepayers in the enforcement of the cost recovery prohibitions in SB 23-291. We find no requirement in the plain language of § 40-3-114(5), C.R.S., that the Commission must require all utilities to file annual reports for every year, in the way that EPI contemplates. Instead, the statute says: “the Commission shall require a utility to file an annual report ... to ensure compliance with this section” (emphasis added). And the term “this section” refers to § 40-3-114, C.R.S., which provides that utilities shall not recover these specified prohibited costs from customers through proposed base rate costs, a rider, or other charges. Accordingly, we read this statute to afford the Commission discretion in implementing the reporting requirement so as to require reports as needed to ensure compliance with § 40-3-114, C.R.S.

30. Nonetheless, we remain concerned by the dearth of information that utilities have claimed to be able to provide to the Commission and intervenors in recent rate cases supporting their claim that they have excluded all of these prohibited costs from their required revenue calculations and hence rates. And we are concerned that, without rules requiring the production of such information outside of rate cases, utilities may once again come to the next rate case claiming they simply do not have this information available. Accordingly, we find it appropriate to identify in rule the information and level of detail that is necessary for utilities to produce when they do

come forward with a proposed base rate cost, rider, or other charge so that we can indeed ensure compliance with the statutorily prohibited costs.

31. We therefore adopt, as new paragraph (b) in Rule 3351 of the Electric Rules and Rule 4351 of the Gas Rules, express rule language requiring that a utility provide disaggregated data for both individual employees and outside vendors who conducted activities during the test year period that are prohibited for recovery. This new paragraph (b) is shown in Attachments A and B (Electric Rules) and C and D (Gas Rules) to this Decision (along with our renumbering of existing paragraphs (b) through (d)).

b. Rule 3351(c)/4351(c): Civil Penalties for Improper Recovery of Costs

(1) UCA Exceptions

32. In its exceptions, UCA suggests the Commission add to this rule that addresses civil penalties certain additional language that refers to a utility's failure to provide a sufficient level of detail in a required annual report. UCA states the ALJ's recommended rule amendments do not provide a remedy for a utility's failure to provide the statutorily mandated level of detail. UCA thus recommends adding the language shown in bold font below:

Penalties. If the Commission determines that an investor-owned utility improperly recovered through rates any of the prohibited costs or expenditures listed in paragraph 3353(a), **or if a utility failed to provide a sufficient level of detail in its annual report as referenced in paragraph 3353(b)**, the Commission may assess a civil penalty against the utility pursuant to rules 3009 and 3010.

(2) Responses

33. Black Hills responds that UCA's additional language is unnecessary, as the Commission's existing rules already allow for penalties for violation of Commission rule or order, or Colorado statute, referencing, for example, Rule 3976 of the Electric Rules and Rule 4976 of

the Gas Rules.⁸ Public Service further argues that the term “sufficient level of detail” in UCA’s proposed rule language should be rejected as unconstitutionally vague.

(3) Findings and Conclusions

34. The Commission denies these exceptions.⁹ We find the rule language that UCA offers is far too discretionary to be workable in a civil penalty rule. We also find it unnecessary to add language to this rule referring expressly to reporting. Consistent with the ALJ’s finding that utilities will be prohibited from recovering prohibited costs from ratepayers in rate case proceedings, illegal attempts to recover prohibited expenses will result in cost disallowances and penalties pursuant to paragraph 3351(c) of the Electric Rules and paragraph 4351(c) of the Gas Rules.

c. Rule 3109(c)/4109(c): Rate Trend Reports

35. New § 40-3-102.5(2)(a), C.R.S., enacted in SB 23-291, provides as follows:

At the time of filing a request to increase any rate, charge, fee, fare, toll, rental, or classification, the utility shall provide the Commission a rate trend report for the previous ten years regarding any historical increases or decreases of the rate, charge, fee, fare, toll, rental, or classification, including:

- (I) the amount of each approved increase or decrease;
- (II) the incremental increase or decrease from the most recent approved change;
- (III) the dates that each approved increase or decrease went into effect;
- (IV) the proceeding no. related to each approved increase or decrease;
- (V) a chart, graph, or other visualization demonstrating the 10-year historical trend regarding each rate, charge, fee, fare, toll, rental, or classification, including all utility bill line items such as rates and rate riders;
- (VI) for each of the 10 years, the annual total amount of the rate, charge, fee, fare, toll, rental, or classification.

⁸ These are the civil penalty provisions for the electric and gas utilities. The rule states: “An admission to or Commission adjudication for liability for an intentional violation of the following may result in the assessment of a civil penalty of up to \$2,000.00 per offense. Fines shall accumulate up to, but shall not exceed, the applicable statutory limits set in § 40-7-113.5, C.R.S.”

⁹ We make the correction to paragraph 4351(b) identified in Atmos’ exceptions (*i.e.*, change the erroneous reference to paragraph 3351(a), which is in the Electric Rules, to refer to the Gas Rules’ paragraph 4351(a)).

36. Paragraph 3109(c) of the Electric Rules and paragraph 4109(c) of the Gas Rules, attached to the NOPR, correspond directly to the language in this statute, however some terms are modified to match the common ratemaking lexicon of the Commission, the utilities, and the parties to rate cases.

(1) Scope of Rate Trend Report

37. The NOPR solicited comment on whether the statute permits the Commission to limit the rate trend report to rates, charges, etc., that apply to residential and small commercial customers only, largely at the request of the utilities who had raised the concept in response to the Commission's temporary rules implementing the SB 23-291 rate trend reporting requirements. The Recommended Decision finds at ¶ 47 that the plain language of SB 23-291 does not limit the rate trend report to only the class with the most affected customers. The ALJ concludes that, instead, the statutory language is very expansive in the requirements of the rate trend report. The ALJ further disagrees with Public Service that rate trend reports would only be required when a filing results in an overall increase in rates. The ALJ finds that, again, the plain language of SB 23-291 does not provide an exception in that situation, and, instead, SB 23-291 states the rate trend report is required when a filing creates "any" increase. The ALJ thus concludes a subcomponent part that has an increase would be an increase that triggers the requirement for a rate trend report, even if the overall filing did not result in an increase.

(a) Public Service Exceptions

38. Public Service requests the Commission clarify that the ten-year rate trend report required in subparagraph 3109(c)(V) of the Electric Rules and subparagraph 4109(c)(V) of the Gas Rules, as recommended by the ALJ, is limited either to *only* residential rates or to *one representative* rate per customer class (e.g., Residential, Small Commercial, etc.).

39. Public Service raises both practical and policy concerns with this requirement. Public Service explains that it offers many rate schedule options to its customers, some of which have multiple components, such that producing a rate trend report that addresses every single rate component included in its electric and gas tariffs would be voluminous and burdensome. Public Service states its electric tariff has approximately 500 separate charges and its gas tariff has approximately 60 individual charges. Public Service further explains that compiling this history for every single rate component in its electric and gas tariffs, so that it is available for reporting, would require a significant and time-consuming research effort and thereby significantly delay its ability to produce these rate trend reports. Public Service contends there would be little value to the Commission or customers in viewing this detailed history for every rate component, as many of the tables in the report would display largely identical information with only the specific rate varying from table to table. Public Service urges the rate trend report can provide adequate information on rate trends for each customer class without this detailed reporting for each rate component.

40. Public Service also states that, even with its requested adjustment, it will require a phase-in period of 90 days to compile this data. And if its exceptions are denied, that is, if the Commission requires this ten-year historical reporting be available for all 500+ rate components included in Public Service's electric and gas tariffs, then the Company's ability to comply with these expanded rate trend reporting requirements will be delayed by nine months.

(b) Responses

41. Black Hills responds that it fully agrees with Public Service's exceptions. Black Hills argues that producing a rate trend report that addresses every single rate component included in its electric and gas tariffs would be extremely burdensome and voluminous—to the

point of being unnecessary and providing little value. Black Hills offers that the Commission just made clear in its recent electric rate case proceeding that the utility should seek to limit its spending going forward, which this would not accomplish.

(c) Findings and Conclusions

42. The Commission denies these exceptions. Public Service’s arguments do not overcome that the legislature has given a clear directive here, which the Commission cannot waive or alter, even for good cause. We acknowledge the utilities’ practical concerns that this voluminous reporting will come at a cost that may outweigh the intended benefit, but this is an instance where the legislature has decided to enact a very prescriptive statute and that statute controls. The legislature, for instance, did not afford the Commission opportunity to exercise discretion to consider the policy and practical considerations being raised by the utilities in their exceptions in how to best design and implement this rate trend report requirement. The plain language of § 40-3-102.5(2)(a), C.R.S., requires that, at the time of filing a request “to increase any rate, charge, fee, fare, toll, rental, or classification,” the utility shall provide the Commission a ten-year rate trend report “regarding any historical increases or decreases of the rate, charge, fee, fare, toll, rental, or classification.” Thus, the language employed by the legislature is simple and broad and refers to “any rate.” We therefore agree with the ALJ’s finding at ¶ 47 of the Recommended Decision that the plain statutory language is “expansive” and does not limit the rate trend report to only the classes with the most affected customers or in any other way.

43. That said, the Commission is aware that full compliance with the statute may indeed require the 500+ scenario Public Service describes. Consequently, pending any modification to the statute, we find good cause to establish the following phase-in requirements. First, continuation of the current rate trend reports being filed pursuant to the temporary rules now in effect through the

time modified when rate trend reports are implemented based on “one representative rate per customer class” as requested by Public Service in its exceptions. Second, the use of the “one representative rate” approach would be used only as an interim step and will be initiated with utility rate filings beginning 90 days from the effective date of these rules. The interim step will bridge the current reports to fully compliant reports, with a deadline for the fully compliant report set at one year after the effective date of these rules.

(2) Utility Website Posting of Rate Trend Report

(a) UCA Exceptions

44. UCA urges the Commission to adopt the more detailed requirements for website posting that it proposed in comments. UCA states it provided this suggested language along with comments explaining the difficulty of locating Public Service’s rate trend report on its parent company’s website. UCA’s language would require, specifically, that “any visualization must include all utility bill line items, including all rates and rate riders” and “the rate trend report shall be posted in a conspicuous location on its website and can easily be found with minimal key strokes.”¹⁰ UCA maintains its proposed language adheres more closely to the statute, is more transparent and usable for customers and others who seek out utilities’ rate trend reports, and captures the practical frustration of customers when trying to find something on complicated utility websites.

(b) Responses

45. Atmos, Black Hills, and Public Service each responded with opposition to UCA’s additional language in this rule. Atmos responds that whether information is in a “conspicuous location” or “can easily be found with minimal key strokes” is a subjective standard and would

¹⁰ UCA Exceptions at p. 3.

likely lead to disputes regarding compliance, particularly given the differences between the Colorado utilities' ownership structures and utility websites. Black Hills and Public Service similarly argue that UCA's proposed rule language is unconstitutionally vague as a utility cannot know ahead of time whether it meets such an ambiguous standard, leading to arbitrary enforcement.

(c) Findings and Conclusions

46. The Commission denies these exceptions. We are satisfied that the version of paragraph 3405(d) of the Electric Rules and paragraph 4405(d) of the Gas Rules adopted by the Recommended Decision comports with the essential requirements of SB 23-291. We also agree with the utilities that UCA's proposed modifications to the rule language are vague, and it is difficult to see how that modified rule would be effectively implemented and enforced. That said, we expect the utilities will not bury this on their website.

(3) Representation of Inflation in Rate Trend Report

47. On our own motion we find good cause to incorporate in this rule a requirement that the charts, graphs, or other visualizations the utility presents in its rate trend report include a representation of what total rates would have been had they increased at the rate of inflation during the preceding ten years. We find that including this additional data point will provide useful context for customers and other interested persons when reviewing these reports. As explained in the NOPR, the additional information is also consistent with the interests of the Joint Select Committee on Rising Utility Rates whose efforts culminated in the passage and enactment of SB 23-291, to facilitate a better understanding of current utility rates and customer bills and how rates and bills increased to current levels. To that end, we modify paragraph 3109(c) of the Electric Rules and

paragraph 4109(c) of the Gas Rules as shown in Attachments A and B (Electric Rules) and C and D (Gas Rules) to this Decision.

d. Rule 3353/4353: Rate Case Procedures

48. The NOPR explains that one objective of the stakeholder outreach conducted prior to commencing this rulemaking was the solicitation of ideas or vetting of ideas for reducing the costs incurred by the utility and other parties to base rate proceedings. Rule 3353 of the Electric Rules and Rule 4353 of the Gas Rules attached to the NOPR reflected the suggestions discussed with stakeholders and were intended to solicit further ideas and comments for consideration in the rulemaking.

49. The NOPR also fulfilled the Commission's obligation to specifically consider certain procedures that the General Assembly put forward in SB 23-291 as potential means to reduce rate case expenses. These include, for instance, requiring the utility to convene a technical conference with intervening parties (§ 40-3-102.5(1)(a)(V), C.R.S.); establishing discovery parameters (§ 40-3-102.5(1)(a)(IV), C.R.S.); and specifying what information in a base rate proceeding must be disclosed to intervenors or to the Commission to reduce time and costs associated with a lengthy discovery process (§ 40-3-102.5(1)(a)(IV), C.R.S.). The rules attached to the NOPR proposed to implement each of the provisions that SB 23-291 required the Commission to consider in this rulemaking.

50. In the Recommended Decision, the ALJ states the underlying goal for this rulemaking is to reduce rate case expenses. The ALJ concludes that, despite there being an opportunity for proponents of the provisions set forth in SB 23-291 or gleaned from the pre-rulemaking outreach to demonstrate in this rulemaking that the required procedures could

possibly reduce time and costs, no such showing was made. The ALJ thus concludes that none of the proposed provisions should be adopted.

(1) UCA Exceptions

51. UCA argues that the Recommended Decision “flouts” the Commission’s initial input on the provisions governing procedural schedules and discovery in the proposed rules attached to the NOPR.¹¹ UCA urges the rationale provided by the Commission in the NOPR for these rules is persuasive and remains relevant. UCA further argues the Recommended Decision ignores that the comments filed jointly by participating utilities did not object to these provisions.¹² UCA further contends the Recommended Decision “objectively ignores” UCA’s arguments in favor of these rules, as modified by UCA including an argument concerning the Public Utility Holding Company Act of 2005.¹³ UCA thus asks the Commission to adopt the procedural schedule and discovery provisions proposed in the NOPR, with UCA’s modifications to the joint utilities’ blue-line edits.¹⁴

(2) Responses

52. Atmos and Public Service filed responses opposing UCA’s exceptions. Atmos states it supports the ALJ’s decision to not include the set of requirements proposed in the NOPR based on both the intent of SB 23-291 and Commission practice. Atmos adds that Colorado has a well-established and functioning rate case filing and discovery process. Public Service echoes Atmos’ response as to supporting the ALJ’s rationale. Public Service also specifically responds to

¹¹ UCA Exceptions at pp. 3-4.

¹² We note the utilities state in their comments: “Due to the impacts of this rulemaking on fundamental rate making processes for Colorado regulated utilities, among other things, the Joint Utilities respectfully suggest that additional rounds of comments and public comment hearings will be necessary.” Joint Utilities’ Supplemental Comments and Blue-line Edits, filed July 25, 2024.

¹³ UCA Exceptions at p. 4.

¹⁴ Additional Comments Authorized by Decision No. R24-0804-I, filed November 15, 2024, by UCA.

UCA's claim that the ALJ "flouted" the Commission's initial input, countering that UCA's argument fundamentally misunderstands the rulemaking process. Public Service explains the rules originally proposed with a NOPR are intended as a starting point from which the participants and decision-maker will then evaluate the appropriateness and lawfulness of those rules for actual adoption. Public Service states the purpose of written comments by participants and the rulemaking hearing is to refine and revise the proposed rules into proper, lawful rules. Public Service thus concludes the ALJ's rejection of UCA's arguments and revisions is not a valid reason for reversal of the Recommended Decision.

(3) Findings and Conclusions

53. The Commission grants, in part, and denies, in part, these exceptions. Although we understand the ALJ's reasoning for striking these provisions, and while we recognize that compiling and filing certain disclosures will come at a cost of time and expense to the utility, we continue to find it warranted to include at least some of our proposed disclosure requirements in the rules to ensure this information is timely filed in rate case proceedings so as to better inform our decision-making. Consistent with § 40-3-102.5(1)(a)(IV), we conclude it is reasonable to require certain specified information be disclosed by utilities through filings in base rate proceedings, particularly when timely access to this information should be available to the parties to prepare their positions and adjudicate the rate case. We further rely on the set of potential disclosures set forth in the NOPR that was based on pre-rulemaking stakeholder feedback, including suggestions from members of Commission Staff who intervene in rate cases, and on our own attempts to secure this information through directives to file Supplemental Direct Testimony or requests for data made during the course of evidentiary hearings. Accordingly, we adopt modified rule language as paragraph 3352(d) of the Electric Rules and paragraph 4352(d) of the

Gas Rules as shown in Attachments A and B (Electric Rules) and C and D (Gas Rules) to this Decision.

e. Rule 3350/4350: Rate Case Expenses

54. Section 40-3-102.5(1)(a), C.R.S., enacted in SB 23-291, suggests the Commission consider rules that either implement a symmetrical incentive to motivate the utility to limit expenses or instead that impose a cap on the amount of the utility's rate case expenses that are recoverable from customers. 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.

55. The NOPR explains the pre-rulemaking stakeholder outreach revealed that few stakeholders warmed to the implementation of a symmetrical incentive, and all recognized the challenge of establishing a proper baseline for shared savings or unrecoverable amounts, particularly given the unique aspects of each base rate proceeding and the uncertainties surrounding the efforts necessary to resolve disputed issues through settlements versus protracted litigation.

56. The pre-rulemaking stakeholder outreach also revealed no consensus on the approach the Commission should take with respect to an overall cap on recoverable rate case expenses, expressed either as a percentage or an absolute dollar amount. Certain stakeholders expressed support for limits on the recovery of utility rate case expenses for outside experts, consultants, and attorneys; however, others raised doubts about fairness and due process as well as about such limits potentially favoring less efficient insourcing of various rate case specialties within the utility's own ranks.

57. The rules attached to the NOPR included no specific rule language. Instead, the Commission stated it intended to further explore the use of caps and other limits to recoverable rate case expenses, given that caps and limits have been proposed by certain intervening parties in past utility rate cases. The Commission anticipated this rulemaking may provide the opportunity to develop a record to help establish potential rules for either overall expenditure limits or targeted allocations of costs borne by ratepayers versus the utility's shareholders. The Commission likewise solicited further comment.

58. The Recommended Decision adopts Rule 3350 of the Electric Rules and Rule 4350 of the Gas Rules to implement § 40-3-102.5(1)(a), C.R.S., based on the conclusion that SB 23-291 specifically permits the Commission to establish recoverable rate case expenses below the total amount that is incurred by the utility in litigating before the Commission. The rules recognize that 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 the base rate case.

(1) Public Service Exceptions

59. Public Service asks the Commission to modify this rule to more clearly allow for case-specific inquiries when considering recovery of rate case expenses. Public Service proposes the additional rule language shown in bold font below:

The Commission may limit the amount of a utility's rate case expenses that are recovered through rates. When limiting recoverable expenses, the Commission shall consider **the presented facts and circumstances, including, but not limited to**, the associated benefits that accrue to the utility's shareholders and whether the sharing of costs motivates the utility to limit expenses. Limits may apply either to overall expenses or to expenses for outside experts, consultants, and legal resources.

60. Public Service argues that its clarifying adjustment is consistent with the ALJ's intent that any limits on the amount of rate case expenses recoverable through rates must consider

the specific facts and arguments presented in the base rate proceeding. Public Service further states its proposed text is both consistent with the language of § 40-3-102.5(1)(a), C.R.S., and will give the Commission more flexibility when deciding on the amount of recoverable rate case expense in base rate cases.

(2) Responses

61. No responses were filed directly supporting or objecting to Public Service's proposed additional rule language.

(3) Findings and Conclusions

62. The Commission grants these exceptions. Although we do not see this additional language as entirely necessary, we find that Public Service's additions align with the intended purpose of the rule and will therefore be adopted. This change to Rule 3350 of the Electric Rules and Rule 4350 of the Gas Rules is shown in Attachments A and B (Electric Rules) and C and D (Gas Rules) to this Decision.

f. Rule 1207(a): Utility Notice of Tariff Change

63. The rules attached to the NOPR included a proposed modification to paragraph 1207(a) of the Practice and Procedure Rules. That rule 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 notice requirements codified in § 40-3-104, C.R.S., and it further addresses utility notice for compliance tariff filings that implement Commission decisions. The NOPR explains the proposed modifications are intended to clarify that application filings in which a proposed tariff change will impact customer bills if the application is approved require notice just like an advice letter filing would require if the utility had chosen that method for submitting the change in rate, etc., for Commission consideration and review.

64. The Recommended Decision adopts the same modifications to paragraphs 1207(a) and (g) as set forth in the rules attached to the NOPR.

(1) Atmos Exceptions

65. Atmos argues the Commission should decline to adopt the ALJ's recommended modifications to paragraph 1207(a). First, it contends the reference to § 40-6-109, C.R.S., added to paragraph 1207(a), is flawed because that statute does not address application filings. Second, it argues the rule does not distinguish between a utility's application to change base rates and an application to implement a tariff change on less than statutory notice. Atmos states, as a result, the rule would require a utility to provide notice in accordance with § 40-3-104(1)(C)(I), C.R.S., when it files an application to change a tariff on less than statutory notice under § 40-3-104(2), C.R.S., which Atmos states would eliminate the very purpose of that type of filing. Third, Atmos urges the Commission should not now deviate from the findings and conclusions in Proceeding No. 21R-0327ALL. According to Atmos, in that proceeding, the Commission concluded that when a utility files an advice letter and proposed tariffs, that filing includes a proposed effective date and that the notice requirements in paragraph 1207(a) follow the statutory notice required for tariffs under § 40-3-104(1)(c)(I), C.R.S., which are based on the proposed effective date and do not translate to applications.

(2) Responses

66. Black Hills agrees with Atmos that the Commission should strike from paragraph 1207(a) the phrase: "or through an application filed pursuant to § 40-6-109, C.R.S..." According to Black Hills, the ALJ's recommended rule would have the effect of preventing utilities from filing any application to change a rate on less than 30 days' statutory notice, and this position was rejected by the Commission in Proceeding No. 21R-0327ALL.

67. Public Service also agrees with Atmos' exceptions. Public Service notes, for instance, the text of paragraph 1207(a) conflicts with the text of subparagraph 1207(a)(I), which provides: "A utility ... filing to change any rate, fare, toll, rental, charge, classification, or service on less than statutory notice shall provide notice in accordance with the requirements of § 40-3-104(2), C.R.S." Public Service further argues that SB 23-291, and specifically § 40-3-102.5(2)(a), C.R.S., does not provide the proper statutory authority to adopt the proposed amendment to paragraph 1207(a). Public Service goes on to argue that the Recommended Decision did not mention Proceeding No. 21R-0327ALL nor acknowledge the compelling reasoning and logic in Decision Nos. R21-0801 and C22-0102 for rejecting the proposed addition of applications to rule 1207(a) of notice methods from § 40-3-104(1)(c)(I), C.R.S.

(3) Findings and Conclusions

68. The Commission grants, in part, and denies, in part, these exceptions. We understand Atmos' objections and agree that the proposed modifications to paragraph 1207(a) may not align with the necessary noticing procedures for applications filed requesting changes to tariffs on less than statutory notice. We therefore agree with Atmos that the changes adopted by the Recommended Decision to paragraph 1207(a) should not be made and the paragraph should be returned to its pre-NOPR language.

69. However, to strive to address this notice issue, we find it better suited to modify paragraph 1207(g). Consistent with the scope of the NOPR and the specific intent to address notice to customers when the utility files an application to change a rate (other than an application for a tariff change on less than statutory notice), our modifications to paragraph 1207(g) will ensure that customers receive notice of a change in rates in accordance with § 40-3-104, C.R.S. We are

concerned that, at present, utilities may avoid telling customers that their rates will increase due to a statutory technicality regarding effective dates on tariff sheets.

70. Therefore, we adopt a new version of paragraph 1207(g). The first part of the revised rule continues to address compliance filings as they are typically done today for advice letter tariff proceedings and less than statutory notice applications to change rates. The second part of the revised rule addresses the instances where a utility files an application with a new tariff that will go into effect after the case concludes but where the proposed tariff has no specific effective date. This new provision basically states that a utility will not be afforded the ability to put such a rate into effect through a compliance filing similar to a compliance filing made after an advice letter proceeding or after Commission approval of a less than statutory notice application unless the utility has provided notice to customers in accordance with § 40-3-104, C.R.S. The third part of the revised rule contains the bulk of the existing rule in paragraph 1207(g). It sets forth requirements for the actual filing of compliance tariffs. There are no changes to those requirements.

71. The modified rule language in paragraph 1207(g) of the Practice and Procedure Rules is shown in Attachments E and F to this Decision.

72. Finally, we find no merit to Public Service's argument that § 40-3-102.5(2)(a), C.R.S., does not provide the proper statutory authority to adopt the proposed amendments to Rule 1207 in this rulemaking. Public Service may disagree that SB 23-291 supports a reformulation of the Commission's rules governing utility notice. Regardless, the NOPR and the proposed amendments to Rule 1207 attached to the NOPR provide the required notice of the potential change in the rules governing utility notice to customers and the Commission has the authority to change its rules to ensure utility compliance with § 40-3-104(1), C.R.S., provided that the rulemaking meets the requirements of the Colorado Administrative Procedure Act.

II. ORDER

A. The Commission Orders That:

1. The exceptions to Recommended Decision No. R25-0215 filed on April 17, 2025, by Atmos Energy Corporation are granted, in part, and denied, in part.

2. The exceptions to Recommended Decision No. R25-0215 filed on April 17, 2025, by the Energy and Policy Institute are granted, in part, and denied, in part.

3. The exceptions to Recommended Decision No. R25-0215 filed on April 17, 2025, by Public Service Company of Colorado are granted, in part, and denied, in part.

4. The exceptions to Recommended Decision No. R25-0215 filed on April 17, 2025, by the Office of the Utility Consumer Advocate are granted, in part, and denied, in part.

5. Recommended Decision No. R25-0215 is adopted and modified by this Decision, consistent with the discussion above.

6. The amendments to the Commission's Rules Regulating Electric Utilities in 4 *Code of Colorado Regulations* ("CCR") 723-3 attached to this 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.

7. The amendments to the Commission's Rules Regulating Gas Utilities in 4 *Code of Colorado Regulations* ("CCR") 723-4 attached to this Decision as Attachments C and D are adopted. Attachment C is in legislative (*i.e.*, strikeout and underline) format, and Attachment D is in final format.

8. Commission's Rules of Practice and Procedure in 4 *Code of Colorado Regulations* ("CCR") 723-1 attached to this Decision as Attachments E and F are adopted. Attachment E is in legislative (*i.e.*, strikeout and underline) format, and Attachment F is in final format.

9. 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

10. The 20-day period provided for in § 40-6-114, C.R.S., within which to file an Application for Rehearing, Reargument, or Reconsideration, begins on the first day following the effective date of this Decision.

11. This Decision is effective immediately upon its Issued Date.

**B. ADOPTED IN COMMISSIONERS’ WEEKLY MEETINGS
May 7, 2025 & May 14, 2025.**

(S E A L)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ERIC BLANK

MEGAN M. GILMAN

TOM PLANT

Commissioners

Rebecca E. White,
Director