

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14M-0241EG

IN THE MATTER OF COMMISSION CONSIDERATION OF MULTI-YEAR RATE PLAN
ADVICE LETTER FILINGS AND TARIFF SHEETS.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
ADDRESSING INTERVENTIONS,
SCHEDULING PREHEARING CONFERENCE,
AND CONTAINING ADVISEMENTS**

Mailed Date: April 30, 2014

I. STATEMENT

1. On March 21, 2014, by Decision No. C14-0302, the Commission opened this Proceeding and referred it to an Administrative Law Judge (ALJ).

2. In Decision No. C14-0302, the Commission explained that Proceeding No. 12AL-1268G is the genesis of this Proceeding; that in that Proceeding, Public Service Company of Colorado (Public Service)

requested three separate rate increases in the form of a General Rate Schedule Adjustment for 2013, 2014, and 2015 ... pursuant to a Multi-Year Plan (MYP) tariff[.]

A legal dispute arose regarding whether the Commission may suspend the base rate increases proposed for 2014 and 2015 for a total of up to 210 days after these increases otherwise would go into effect (210 days after January 1, 2014 and January 1, 2015) or whether the Commission is limited to a single suspension period for all base rate increases set forth on the MYP tariff sheet (210 days after January 12, 2013). The parties disagreed on the interpretation of § 40-6-111(1)(b), C.R.S., other statutes in Title 40, and applicable Commission Rules.

* * *

We reaffirm [the conclusion reached in Proceeding No. 12AL-1268G] that a resolution of these legal issues will benefit the Commission, regulated utilities, ratepayers, and other stakeholders. We therefore find good cause to open a proceeding on our own motion to consider these matters.

* * *

We refer this proceeding to an Administrative Law Judge (ALJ) for issuance of a recommended decision. We direct the ALJ to address the legal disputes addressed in the [legal briefs of which administrative notice was taken] and to address whether the Commission should open a rulemaking to codify its rulings on the merits of those legal issues.

Decision No. C14-0302 at ¶¶ 1- 2, 4, and 6.

3. The Commission opened the present Proceeding as

an *adjudicatory proceeding* to consider whether, pursuant to § 40-6-111(1)(b), C.R.S., and other law: (1) an electric or natural gas public utility may propose, as part of a tariff with a single effective date, to change its rates for service over time based on a succession of multiple stepped changes occurring on specific dates in the future (*i.e.*, pursuant to a multi-year rate plan); and (2) the Commission has the authority to order a distinct suspension period for each proposed rate increase in a multi-year rate plan.

Decision No. C14-0302 at Ordering Paragraph No. 1 (emphasis supplied).

4. In addition, in Decision No. C14-0302, the Commission: (a) took administrative notice of -- and, thus, made part of the record in the instant Proceeding -- the initial briefs on the MYP issue filed in Proceeding No. 12AL-1268G on September 20, 2013 and the reply briefs on the MYP issue filed in that Proceeding on October 4, 2013; (b) designated four necessary parties (*i.e.*, Public Service, Climax Molybdenum Company (Climax), the Colorado Office of Consumer Counsel (OCC), and Trial Staff of the Commission (Staff));¹ and (c) established an intervention period. The intervention period has expired.

¹ These are the entities that submitted the legal briefs of which the Commission took administrative notice.

A. Interventions.

5. On April 23, 2014, Atmos Energy Corporation (Atmos) timely filed a Motion to Intervene (Atmos Motion). In that filing, Atmos establishes that this case may substantially affect its pecuniary or tangible interests; that its interests are not otherwise adequately represented; and that its participation will not broaden the issues in this case. Atmos has met the requirements for intervention by permission set out in Rule 4*Code of Colorado Regulations* (CCR) 723-1-1401(c).² By this Decision, the ALJ will grant the Atmos Motion. Atmos is an intervenor and a party in this Proceeding.

6. On April 23, 2014, Black Hills/Colorado Electric Utility Company, L.P. (Black Hills/Electric), timely filed a Motion to Intervene (Black Hills/Electric Motion). In that filing, Black Hills/Electric establishes that this case may substantially affect its pecuniary or tangible interests; that its interests are not otherwise adequately represented; and that its participation will not broaden the issues in this case. Black Hills/Electric has met the requirements for intervention by permission set out in Rule 4CCR 723-1-1401(c). By this Decision, the ALJ will grant the Black Hills/Electric Motion. Black Hills/Electric is an intervenor and a party in this Proceeding.

7. On April 23, 2014, Black Hills/Colorado Gas Utility Company, L.P. (Black Hills/Gas),³ timely filed a Motion to Intervene (Black Hills/Gas Motion). In that filing, Black Hills/Gas establishes that this case may substantially affect its pecuniary or tangible interests; that its interests are not otherwise adequately represented; and that its participation will not broaden the issues in this case. Black Hills/Gas has met the requirements for intervention by

² This Rule is found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations* 723.

³ Unless the context indicates otherwise, Black Hills/Electric and Black Hills/Gas, collectively, are Black Hills.

permission set out in Rule 4 CCR 723-1-1401(c). By this Decision, the ALJ will grant the Black Hills/Gas Motion. Black Hills/Gas is an intervenor and a party in this Proceeding.

8. On April 23, 2014, Rocky Mountain Natural Gas LLC (RMNG) timely filed a Motion to Intervene (RMNG Motion). In that filing, RMNG establishes that this case may substantially affect its pecuniary or tangible interests; that its interests are not otherwise adequately represented; and that its participation will not broaden the issues in this case. RMNG has met the requirements for intervention by permission set out in Rule 4 CCR 723-1-1401(c). By this Decision, the ALJ will grant the RMNG Motion. RMNG is an intervenor and a party in this Proceeding.

9. On April 23, 2014, SourceGas Distribution LLC (SourceGas) timely filed a Motion to Intervene (SourceGas Motion). In that filing, SourceGas establishes that this case may substantially affect its pecuniary or tangible interests; that its interests are not otherwise adequately represented; and that its participation will not broaden the issues in this case. SourceGas has met the requirements for intervention by permission set out in Rule 4CCR 723-1-1401(c). By this Decision, the ALJ will grant the SourceGas Motion. SourceGas is an intervenor and a party in this Proceeding.

10. As of the Date of this Interim Decision, no other person has filed to intervene in this Proceeding. As of the date of this Interim Decision, no person has filed for permission to intervene out of time.

11. Atmos, Black Hills/Electric, Black Hills/Gas, Climax, OCC, Public Service, RMNG, SourceGas, and Staff, collectively, are the Parties. Each party is represented by legal counsel.

B. Prehearing Conference.

12. By this Interim Decision, the ALJ will schedule a **May 14, 2014** prehearing conference to determine the nature of this Proceeding, the process to be used in this Proceeding, and to establish a procedural schedule. At the prehearing conference, the Parties must be prepared to discuss the matters identified below.

13. *At the prehearing conference*, Atmos, Black Hills/Electric, Black Hills/Gas, RMNG, and SourceGas each must be prepared to state whether it supports, opposes, or takes no position with respect to the position taken by Climax, OCC, and Staff as stated in their joint briefs on the MYP issues.⁴

14. *At the prehearing conference*, Atmos, Black Hills/Electric, Black Hills/Gas, RMNG, and SourceGas each must be prepared to state whether it supports, opposes, or takes no position with respect to the position taken by Public Service as stated in its briefs on the MYP issues.⁵

15. By Decision No. C14-0302, the Commission opened this Proceeding as an adjudication. Review of the filings that are administratively noticed reveals that they *may* address only legal issues.⁶ In light of this and the language in Decision No. C14-0302, the ALJ wonders whether this Proceeding is more like a declaratory order proceeding than an adjudicatory proceeding. *At the prehearing conference*, the Parties must be prepared to discuss whether this Proceeding is an adjudication (*i.e.*, requires fact-finding for resolution); is a

⁴ One does not need to agree with the arguments presented. The ALJ seeks to know the general position of the intervening parties.

⁵ One does not need to agree with the arguments presented. The ALJ seeks to know the general position of the intervening parties.

⁶ The ALJ had made no decision on -- and the statement above provides no indication of the ALJ's view with respect to -- whether, in fact, this Proceeding addresses only legal issues. The ALJ will make that determination at a later point, after hearing the Parties' positions on the issue.

declaratory order-type proceeding (*i.e.*, presents legal questions only and requires no fact-finding for resolution); or is another type of proceeding that may/may not require fact-finding. A party that takes the position that this Proceeding requires fact-finding must be prepared to identify the types of facts that the party believes are necessary in order to resolve the issues in this Proceeding.

16. Rule 4 CCR 723-1-1500 provides:

The burden of proof and the initial burden of going forward shall be on the party that is the proponent of a decision, unless previously agreed to or assumed by a party. The proponent of the order is that party commencing a proceeding, except that in the case of suspension of a proposed tariff, price list, or time schedule, the regulated entity shall bear the burden of proof.

In this case, the Commission commenced the proceeding. *At the prehearing conference*, the Parties must be prepared to discuss who (if anyone) bears the burden of proof in this Proceeding.

17. *At the prehearing conference*, assuming that *no evidentiary hearing is necessary*, the Parties must be prepared to discuss: (a) the date by which opening legal briefs will be filed;⁷ (b) the date by which response legal briefs will be filed;⁸ and (c) the date for an oral argument.

18. *At the prehearing conference*, assuming that *an evidentiary hearing is necessary*, the Parties must be prepared to discuss: (a) the date by which direct testimony and exhibits will be filed (and by whom); (b) the date by which answer testimony and exhibits will be filed (and by whom); (c) the date by which rebuttal testimony and exhibits will be filed (and by whom); (d) the date by which cross-answer testimony and exhibits will be filed (and by whom);⁹ (e) the date by which each party will file its corrected testimony and exhibits; (f) the date by which each

⁷ This includes supplemental briefing by Climax, OCC, Public Service, or Staff, if any wishes to do so.

⁸ This includes supplemental briefing by Climax, OCC, Public Service, or Staff, if any wishes to do so.

⁹ Cross-answer testimony responds only to the answer testimony of another intervenor.

party will file its prehearing motions;¹⁰ (g) whether a final prehearing conference is necessary and, if it is, the date or dates for that prehearing conference; (h) the date by which the Parties will file any stipulation or settlement reached;¹¹ (i) the date(s) for the evidentiary hearing; and (j) the date by which each party will file its post-hearing statement of position, to which (absent further order) no response will be permitted.

19. *At the prehearing conference*, the Parties must be prepared to discuss discovery if the procedures and timeframes contained in Rule 4 CCR 723-1-1405 are not sufficient.

20. *At the prehearing conference*, the Parties must be prepared to discuss any matter pertaining to the treatment of information claimed to be confidential if the procedures and timeframes contained in Rules 4 CCR 723-1-1100 and 723-1-1101 are not adequate.

21. *At the prehearing conference*, a party may raise any additional issue.

22. **The Parties are advised, and are on notice, that** the ALJ will deem the failure to attend or to participate in the prehearing conference to be a waiver of objection to the rulings made, the procedural schedule (if any) established, and the hearing date(s) (if any) established at the prehearing conference.

C. Advisements.

23. **The Parties are advised, and are on notice, that** they must be familiar with, and must abide by, the Rules of Practice and Procedure, 4 CCR 723 Part 1. These Rules are available on-line at www.dora.colorado.gov/puc.

¹⁰ This date **must** be at least seven calendar days before the final prehearing conference or, if there is no final prehearing conference, **must** be at least ten calendar days before commencement of the hearing.

¹¹ This date **must** be at least five business days before the first day of hearing.

24. The ALJ calls counsel's attention to Rule 4 CCR 723-1-1202(d), which requires that

[e]very pleading of a party represented by an attorney shall be signed by the attorney, and *shall state* the attorney's address, telephone number, *e-mail address*, and attorney registration number.

(Emphasis supplied.) **The Parties are advised, and are on notice, that** filings must comply with this requirement.¹²

II. ORDER

A. It Is Ordered That:

1. The Motion to Intervene filed on April 23, 2014 by Atmos Energy Corporation is granted.

2. Atmos Energy Corporation is a party in this Proceeding.

3. The Motion to Intervene filed on April 23, 2014 by Black Hills/Colorado Electric Utility Company, L.P., is granted.

4. Black Hills/Colorado Electric Utility Company, L.P., is a party in this Proceeding.

5. The Motion to Intervene filed on April 23, 2014 by Black Hills/Colorado Gas Utility Company, L.P., is granted.

6. Black Hills/Colorado Gas Utility Company, L.P., is a party in this Proceeding.

7. The Motion to Intervene filed on April 23, 2014 by Rocky Mountain Natural Gas LLC is granted.

8. Rocky Mountain Natural Gas LLC is a party in this Proceeding.

¹² During the course of this Proceeding, the ALJ may have occasion to inform counsel, on short notice, of rulings. The ALJ will make such notifications by e-mail and will rely solely on signature blocks for the appropriate e-mail addresses. Thus, if no e-mail address is provided, counsel may not receive notice of rulings.

9. The Motion to Intervene filed on April 23, 2014 by SourceGas Distribution LLC is granted.

10. SourceGas Distribution LLC is a party in this Proceeding.

11. A prehearing conference in this Proceeding is scheduled for the following date, time, and place:

DATE: May 14, 2014

TIME: 10:00 a.m.

PLACE: Commission Hearing Room
1560 Broadway, Suite 250
Denver, Colorado

12. Consistent with the discussion above, at the prehearing conference, the Parties shall be prepared to discuss the identified matters.

13. A party's failure to attend or to participate in the prehearing conference is deemed to be a waiver of objection to the rulings made during the prehearing conference, the procedural schedule established as a result of the prehearing conference, and the hearing date (if any) scheduled as a result of the prehearing conference.

14. The Parties are held to the advisements contained in Interim Decisions issued in this Proceeding.

15. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director