

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0153G

IN THE MATTER OF THE APPLICATION OF ATMOS ENERGY CORPORATION FOR AN ORDER GRANTING IT A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO IMPLEMENT THE GREELEY BUILDING PROJECT.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
SHORTENING RESPONSE TIME
TO MOTION IN LIMINE**

Mailed Date: May 15, 2014

I. STATEMENT, FINDINGS, AND CONCLUSIONS

1. Only those portions of the procedural history necessary to understand this Decision are included.

2. On February 19, 2014, Atmos Energy Corporation (Atmos) filed an Application for an Order Granting It a Certificate of Public Convenience and Necessity to Implement the Greeley Building Project.

3. The Colorado Office of Consumer Counsel (the OCC) timely intervened in this proceeding.

4. On March 12, 2014, by Minute Order, the Commission referred this matter to an Administrative Law Judge (ALJ) for disposition.

5. The ALJ established a procedural schedule on March 24, 2014 after the prehearing conference. Decision No. R14-0322-I. Consistent with the procedural schedule,

the OCC filed its Answer Testimony on April 22, 2014, and Atmos filed Rebuttal Testimony on May 8, 2014.

6. On May 13, 2014, the OCC filed a “Motion in Limine to Exclude New Evidence on Rebuttal and Request for Shortened Response Time” (Motion). That same day, Atmos filed a “Response to Request for Shortened Response Time to the Motion in Limine” (Response).

7. This Decision will only address the OCC’s request for a shortened response time to its Motion.

8. The OCC requests that the response time to the Motion be shortened from 14 days to 3 days. *See* Rule 1400(b) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1. As grounds, the OCC argues that the hearing is scheduled for May 28, 2014, and that additional time is necessary both for the ALJ to rule on the Motion and for the OCC to prepare for the hearing.

9. Atmos responds that shortening the response time to three days would unduly prejudice it. In its Response, Atmos argues it cannot devote the resources necessary to respond to the Motion by May 16, 2014 because it is also in the process of responding to the OCC’s discovery requests, which are due on May 15, 16, and 19, 2014. Atmos offered a shortened response time to May 21, 2014. Atmos conferred with the OCC regarding this offer, but the OCC objects to a response deadline of May 21, 2014.

10. The ALJ finds that a shortened response time of three days, particularly given that Atmos is responding to discovery and preparing for the evidentiary hearing in this proceeding, is not reasonable and may prejudice Atmos. The ALJ rejects the OCC’s request to shorten the response time to May 16, 2014.

11. However, the ALJ agrees that a shortened response time is appropriate under the circumstances. Under Rule 1400(b), responses to motions are due within 14 days of service of the motion. This would not allow time for the ALJ to rule on the Motion prior to the hearing, or for the parties to prepare for the hearing based upon the ALJ's ruling. To allow the ALJ time to rule on the Motion, and for the parties to prepare for the hearing based upon the ALJ's ruling, the ALJ will shorten the response time to the Motion to May 20, 2014 at 7:00 p.m. Atmos may only take advantage of the 7:00 p.m. deadline if it electronically files its response with the Commission's e-filing system. If Atmos paper-files its response, it must be filed by 5:00 p.m.¹

12. In allowing Atmos to electronically file its response at 7:00 p.m. on May 20, 2014, the ALJ is also waiving Rule 1204(b), 4 CCR 723-1, as it applies to any response to the Motion that is electronically filed.

II. ORDER

A. It Is Ordered That:

1. The response time to the Office of Consumer Counsel's "Motion in Limine to Exclude New Evidence on Rebuttal and Request for Shortened Response Time" (Motion) is shortened to May 20, 2014, at 7:00 p.m. if electronically filed, and 5:00 p.m. if paper-filed.

2. Rule 1204(b) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1 is waived as it pertains to any response to the Motion that is filed electronically.

¹ Thus far, Atmos has made all filings electronically. The ALJ expects the response will also be filed electronically, but Atmos may certainly elect to file its response in paper if it so desires.

3. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director