

(Decision No. C93-1509){PRIVATE }

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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THE APPLICATION OF ATMOS ENERGY)	
CORPORATION & GREELEY GAS)	DOCKET NO. 93A-352G
COMPANY AND GREELEY GAS ACQUISSI-	
TION CORPORATION FOR APPROVAL OF)	ORDER DENYING MOTION
THE MERGER OF UTILITY ASSETS AND)	FOR ISSUANCE OF INITIAL
OPERATIONS.)	COMMISSION DECISION

Mailed Date: December 10, 1993
Adopted Date: December 1, 1993

STATEMENT

BY THE COMMISSION:

On November 9, 1993, Greeley Gas Company, Greeley Gas Acquisition Corporation, and Atmos Energy Corporation ("Applicants") filed their Motion for the Issuance of an Initial Commission Decision and for Waiver of Response Time to Motion. Applicants request that the Commission issue the initial decision in this matter pursuant to the provision of § 40-6-109(6), C.R.S. (Commission may make the initial decision where an administrative law judge has presided at the taking of evidence, where due and timely execution of its functions imperatively and unavoidably so require). On November 16, 1993, Applicants filed their Supplement to Motion for the Issuance of an Initial Commission Decision. Intervenor City of Lamar ("Lamar") filed a response to the initial motion by Applicants on November 18, 1993, and a response to Applicant's supplemental motion on November 23, 1993. Lamar opposes the motion for an initial decision by the Commission. Now being duly advised in the matter, we deny the motion.

Applicants request an initial Commission decision in hopes of obtaining final administrative approval of the merger transaction and completing the merger by December 31, 1993. However, Lamar pointed out in its responses to the motions that Applicants' agreement requires, as a condition to closing, that all necessary approvals of the Commission shall have been granted by final order not subject to further administrative or judicial review. We agree with Lamar that even if we were to dispense with the Administrative Law Judge's ("ALJ") Recommended Decision, as requested in the motion, the time for potential administrative and judicial review would not have expired by December 31, 1993. In particular, § 40-6-114(1), C.R.S., allows parties 20 days after a Commission decision within which to file applications for rehearing, reargument, or reconsideration. Section 40-6-115(1), C.R.S., allows an additional 30 days following a ruling on applications for rehearing, reargument, or reconsideration to file a complaint for judicial review. Therefore, even if we were to issue the initial decision in this case, there is no assurance that these proceedings would be final. In addition, Applicants have not pointed to any legal or contractual provision which absolutely compels completion of the merger by December 31, 1993.

In light of these findings, we cannot conclude that due and timely execution of our functions imperatively and unavoidably require us to make the initial decision in this case. We acknowledge Applicant's desire to obtain a final decision in this matter as expeditiously as possible. We are informed that the ALJ has already issued a

Recommended Decision. By statute, the parties have 20 days to file exceptions to the ALJ's decision. In order to expedite these proceedings, we direct that response time to exceptions be shortened to seven days.

The initial motion by Applicants also requested that response time to the motion be waived. Since we allowed the regular response time, this request is denied as being moot.

THEREFORE THE COMMISSION ORDERS THAT:

1. The motion for issuance of an initial Commission decision is denied.
2. Response time to any exceptions to the Recommended Decision is hereby shortened to seven days.
3. The request for waiver of response time to the motion is denied as being moot.

This Order is effective on its Mailed Date.

ADOPTED IN OPEN MEETING December 1, 1993.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners

COMMISSIONER CHRISTINE E. M. ALVAREZ
ABSENT BUT CONCURRING.