

Decision No. R14-0288-I

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
VACATING PROCEDURAL SCHEDULE AND
SCHEDULING PREHEARING CONFERENCE**

Mailed Date: March 14, 2014

I. STATEMENT, FINDINGS, AND CONCLUSIONS

1. On February 19, 2014, Atmos Energy Corporation (Applicant) filed an Application for an Order Granting It a Certificate of Public Convenience and Necessity (CPCN) to Implement the Greeley Building Project (Application). In addition to seeking a CPCN, the Application also seeks: an order granting a presumption of prudence of the estimated costs of the Greeley Building Project; that the Commission waive the requirements of Rule 4002(b)(IX) of the Commission's Rules Regulating Gas Utilities and Pipeline Operators, 4 *Code of Colorado Regulations* (CCR) 723-4, to provide specific audited financial information; that the Application be expedited through a shortened notice period of ten days; and that the Application be granted through modified procedures without a hearing.

2. On February 26, 2014, the Commission granted Applicant's request for a shortened notice period, requiring that all interventions, including any intervention filed by the Commission's Staff be filed by March 10, 2014. Decision No. C14-0206-I.

3. The Commission gave public Notice of the Application on February 26, 2014. That same day, the Commission gave an Updated Notice of the Application (Updated Notice). The Updated Notice requires that any party wishing to intervene, including Public Utilities Commission Staff, must file its intervention by March 10, 2014.

4. The Updated Notice also requires that any intervener file its testimony and exhibits within 90 days of the filing of the Application. This Decision will vacate and reschedule those deadlines. The Updated Notice notes that Applicant filed testimony and exhibits with its Application and is seeking a Commission decision within 120 days.

5. On March 10, 2014, the Colorado Office of Consumer Counsel (the OCC) filed a “Notice of Intervention of Right, Entry of Appearance and Request for Hearing”. In that filing, the OCC objects to Applicant’s request for an order granting a presumption of prudence of the estimated costs of the Greeley Building Project. The OCC argues that approval of a CPCN authorizing Applicant to proceed with construction of the Greeley Building Project is a separate and distinct issue from a presumption of prudence of the estimated costs for the project, and that Applicant carries the burden to demonstrate the actual prudence of the expenditures in a future rate case proceeding.

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

A. Time for Commission Decision.

7. The Commission deemed the Application to be complete within the meaning of § 40-6-109.5, C.R.S., on March 12, 2014.

8. Because Applicant filed testimony and exhibits with its Application, § 40-6-109.5(1), C.R.S., requires that a Commission decision should be issued within 120 days

of March 12, 2014, absent an order extending this deadline by 90 days. For the reasons stated below, the ALJ finds that more time is necessary; the ALJ will extend the deadline for a Commission decision to issue by 90 days.¹ § 40-6-109.5(1), C.R.S. This extension is necessary to allow time to hold a hearing, allow the parties to file testimony and exhibits (including any supplemental direct testimony and exhibits, answer testimony, and rebuttal testimony) and statements of position, for a recommended decision, exceptions, responses to exceptions, and a Commission decision on exceptions.

9. Under the extended deadline, the Commission should issue its decision on the Application on or before **October 8, 2014**.

B. Prehearing Conference.

10. A prehearing conference is necessary to address the matters identified below and to establish a procedural schedule and evidentiary hearing date in this matter. The ALJ will schedule a prehearing conference in this matter to be held on **March 21, 2014**.

11. *At the prehearing conference*, the parties must be prepared to discuss *At the prehearing conference*, the parties must be prepared to discuss:

- the parties must be prepared to discuss the scope of this proceeding (*e.g.*, Applicant's request for an order granting a presumption of prudence of the estimated costs of the Greeley Building Project);
- Applicant's request for waiver of the requirements of Rule 4002(b)(IX), 4 CCR 723-4, to provide specific audited financial information;
- date by which Applicant will file supplemental direct testimony and exhibits (if necessary);
- date by which the OCC will file its answer testimony and exhibits;
- date by which Applicant will file its rebuttal testimony and exhibits;

¹ Pursuant to § 40-6-109.5(4), C.R.S., the Commission may extend the time for decision an additional 90 days upon a finding of extraordinary circumstances.

- date by which each party will file its corrected testimony and exhibits;
- date by which each party will file its prehearing motions;²
- whether a final prehearing conference is necessary and, if it is, the date for that prehearing conference;
- date by which the parties will file any stipulation or settlement reached;³
- date(s) for the evidentiary hearing; and
- date by which each party will file its post-hearing statement of position, to which no response will be permitted.

12. In considering hearing dates, the parties are reminded that, absent an enlargement of time or a waiver under § 40-6-109.5(4), C.R.S., the Commission decision in this matter should issue on or before October 8, 2014. To allow time for statements of position, recommended decision, exceptions, responses to exceptions, and a Commission decision on exceptions, the **evidentiary hearing must be concluded no later than July 5, 2014.**

13. *At the prehearing conference*, the parties must be prepared to discuss any matter pertaining to discovery if the procedures and timeframes contained in Rule 1405, 4 CCR 723-1⁴ are not sufficient.

14. *At the prehearing conference*, the parties must be prepared to discuss any matter pertaining to information claimed to be confidential if Rule 4 CCR 723-1-1100 is not adequate.

15. *At the prehearing conference*, a party may raise any additional issues.

16. The parties must confer with each other prior to the prehearing conference with respect to the matters identified in this Decision. The ALJ will order Applicant to coordinate the discussions.

² This date **must** be at least seven days before the final prehearing conference or, if there is no final prehearing conference, **must** be at least ten days before commencement of the hearing.

³ This date **must** be at least three business days before the first day of hearing.

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

17. The ALJ expects the parties to come to the prehearing conference with proposed dates for the procedural schedule and the evidentiary hearing. To that end, the ALJ will require Applicant to file a proposed procedural schedule on or by 4:00 p.m. on March 20, 2014.

18. **The parties are advised, and are on notice, that** the ALJ will deem a party's failure to attend or to participate in the prehearing conference to be a waiver of objection to the decisions or rulings made during, the procedural schedule established during, and the hearing date(s) and prehearing conference date scheduled as a result of the prehearing conference.

C. Additional Advisements.

19. **The parties are advised, and are on notice, that** they must be familiar with, and abide by, the Rules of Practice and Procedure, 4 CCR 723 Part 1.⁵

20. **The parties are advised, and are on notice, that** they must be familiar with the Rules Regulating Gas Utilities and Pipeline Operators, 4 CCR 723 Part 4.⁶

21. **The parties are advised, and are on notice, that** timely filing with the Commission means *receipt* by the Commission by 5:00 p.m. MST, on the due date. Thus, if a document is placed in the mail on the date on which the document is to be filed, then the document is *not* filed timely with the Commission.

22. **The parties are advised, and are on notice, that** the Commission has an E-Filing System available. One may learn about, and may register to use, the E-Filing System at dora.colorado.gov/puc. Registering to use the E-Filing System is not mandatory.

⁵ These Rules are available on-line at dora.colorado.gov/puc.

⁶ These Rules are available on-line at dora.colorado.gov/puc.

II. ORDER

A. It Is Ordered That:

1. Consistent with the above discussion, the deadline for a Commission decision to issue is extended by 90 days, pursuant to § 40-6-109.5(1), C.R.S.

2. The procedural schedule for filing testimony and exhibits established in the Updated Notice of Application Filed dated February 26, 2014 is vacated.

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

DATE: March 21, 2014
TIME: 9:15 a.m.
PLACE: Commission Hearing Room
1560 Broadway, Suite 250
Denver, Colorado

4. The matters identified above will be discussed at the prehearing conference. Those attending the prehearing conference must be prepared to discuss the matters identified above and must have authority to agree to a procedural schedule and evidentiary hearing date.

5. Failure to attend or to participate in the prehearing conference shall be deemed a waiver of objection to the decisions and rulings made during, the procedural schedule established during, and the hearing date(s) and the prehearing date scheduled at the prehearing conference.

6. The Parties shall consult prior to the prehearing conference with respect to the matters discussed and identified above. Atmos Energy Corporation (Applicant) shall coordinate the discussions.

7. Applicant shall file a proposed procedural schedule on or by 4:00 p.m. on March 20, 2014.

8. The parties shall be held to the advisements in this Decision.

9. 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