

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20V-0159EG

IN THE MATTER OF THE JOINT PETITION OF ATMOS ENERGY CORPORATION, COLORADO NATURAL GAS, PUBLIC SERVICE COMPANY OF COLORADO, BLACK HILLS COLORADO GAS, INC., BLACK HILLS COLORADO ELECTRIC, INC., AND ROCKY MOUNTAIN NATURAL GAS LLC FOR AUTHORIZATION TO TRACK EXPENSES RESULTING FROM THE EFFECTS OF COVID-19 AND RECORD AND DEFER SUCH EXPENSES INTO A REGULATORY ASSET.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
SCHEDULING REMOTE EVIDENTIARY HEARING, AND
ESTABLISHING PROCEDURES AND DEADLINES**

Mailed Date: June 2, 2020

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I. STATEMENT, BACKGROUND, FINDINGS, AND CONCLUSIONS

A. Background

1. Only the procedural history necessary to understand this Decision is included.

This matter concerns the above-captioned Joint Petition which Atmos Energy Corporation, Colorado Natural Gas, Inc., Public Service Company of Colorado, Black Hills Colorado Gas,

Inc., Black Hills Colorado Electric, Inc., and Rocky Mountain Natural Gas LLC (collectively, Joint Petitioners), filed on April 7, 2020.

2. Colorado Public Utilities Trial Staff and the Office of Consumer Counsel are the only interveners in this proceeding; both request a hearing on the Joint Petition.

3. In anticipation of a hearing on the Joint Petition, the Administrative Law Judge (ALJ) scheduled a remote prehearing conference per Rule 1409(a), 4 *Code of Colorado Regulations* 723-1, of the Commission's Rules of Practice and Procedure for May 28, 2020 at 10:30 a.m. Decision No. R20-0360-I. On May 28, 2020 at 9:43 a.m., the parties filed a "Notice of Joint Proposed Procedural Schedule, Procedures, and Stipulations" (Notice). The Notice states that all parties agree to the proposed procedural schedule, procedures, and stipulations in the Notice.

4. The ALJ called the matter for a prehearing conference as noticed. All parties appeared. During the prehearing conference, the ALJ approved the parties' proposals in their Notice, with the exception of the proposed hearing dates and deadline for statements of position. The ALJ explained that it is currently unknown when in-person hearings at the Commission's offices will be authorized. Given that the parties proposed hearing dates for four months from now, the ALJ asked the parties whether they wish to preserve the ability to hold an in-person hearing should that be authorized before the hearing. Multiple parties replied in the affirmative. And, the parties' Notice states that they agree to an electronic evidentiary hearing via video-conference if in-person hearings are not permitted at the time of the hearing. Notice at ¶ 5. The ALJ explained that the proposed hearing dates in the Notice would not accomplish this due to a scheduling conflict. As such, the parties agreed to different hearing dates than proposed in their Notice, and a different deadline for statements of position to accommodate the approved

hearing dates. The hearing dates and complete procedural schedule are detailed in the ordering paragraphs below.

5. Given that in-person hearings at the Commission's offices are currently not permitted, the ALJ finds that at this time, it is in the parties' interests to plan and prepare for a remote video-conference evidentiary hearing. Doing so is also consistent with public health advisories to prevent the spread of COVID-19.

6. This Decision and Attachment A hereto includes requirements to facilitate holding the hearing remotely using electronic exhibits. These requirements are intended to ensure that the remote evidentiary hearing proceeds efficiently without technical problems. Attachment A includes important requirements and technical information on participating in the evidentiary hearing through GoToMeeting. As such, it is vitally important that the parties carefully review and follow all requirements in this Decision and Attachment A.

7. This Decision also includes additional requirements relating to exhibits that are intended to ensure the hearing goes smoothly. For example, the ALJ is setting a deadline to file and serve exhibits, in addition to deadlines to file and serve written testimony and attachments. The ALJ acknowledges that in proceedings like this, parties often use written testimony and attachments as their exhibits. But parties also often offer other exhibits that may not be included as an attachment to written testimony. To ensure that all parties have full disclosure of such exhibits, and that the hearing may proceed without unnecessary delay caused by parties who fail to pre-file all exhibits they intend to introduce, parties will be required to file and serve all exhibits they intend to introduce into evidence during the hearing. This *explicitly includes* filing exhibits that parties intend to use on cross-examination. But, the parties are not required to pre-file exhibits that may be used *solely* for impeachment, to refresh recollection, or for rebuttal.

Parties seeking to admit exhibits that are not pre-filed for impeachment or to refresh recollection *must establish* that the exhibits are being used for those purposes. Otherwise, the exhibits may not be admitted based on the parties' failure to pre-file the exhibits as required by this Decision. As such, the ALJ encourages the parties to review foundational requirements to impeach and refresh recollection with a document.

8. The Commission will use the web-hosted video conferencing service GoToMeeting to hold the remote evidentiary hearing. Video-conference participation allows for evidence to be presented in a manner most similar to that which occurs during in-person hearings. For example, participating by video-conference allows parties and witnesses to view and display exhibits on the video-conference screen while the exhibits are being testified to and offered into evidence. To minimize the potential that the video-conference hearing may be disrupted by non-participants, the link and meeting ID or access code will be provided to the parties by email before the hearing, and the parties and witnesses will be prohibited from distributing that information to anyone not participating in the hearing.¹

II. **ORDER**

A. **It Is Ordered That:**

1. Consistent with the above discussion, except for the proposed hearing dates and deadline to file statements of position, the parties' proposed procedural schedule, procedures, and stipulations in their "Notice of Joint Proposed Procedural Schedule, Procedures, and Stipulations" filed on May 28, 2020 are approved.

¹ The ALJ anticipates that the hearing will be webcast, consistent with Commission practice; this means that those wishing to observe the hearing may do so without the need to join the hearing as a participant.

2. A remote evidentiary hearing on the above-captioned Joint Petition is scheduled as follows:

DATES: October 20, 21, and 23, 2020
TIME: 9:00 a.m. each day
METHOD: Join by video-conference online at the meeting link to be sent to parties before the hearing.

3. The parties and witnesses may not distribute the GoToMeeting link, access, or ID code to anyone not participating in the hearing. Unless otherwise ordered, the parties and witnesses may not appear in person at the Commission for the above-scheduled hearing. Instead, parties and witnesses will participate in the hearing from remote locations, consistent with the requirements of this Decision.

4. All participants must comply with the requirements in Attachment A to this Decision, which is incorporated herein.

5. **Video-Conference Participation.** The parties and witnesses are required to participate in the evidentiary hearing by video-conference using GoToMeeting. The parties must ensure they are ready and able to participate in the evidentiary hearing by video-conference, including presenting evidence electronically during the hearing using GoToMeeting. Parties whose witnesses will participate in the hearing by video-conference are also responsible for ensuring their witnesses are ready and able to use GoToMeeting. To join the hearing by video-conference, participants must use a computer with a microphone, video camera, and internet access.

6. **Evidence Presentation at the Evidentiary Hearing.** Because the hearing will be held remotely by video-conference, all evidence must be presented electronically. The parties are

responsible for ensuring witnesses have access to all pre-filed exhibits. Any party wishing to use exhibits or documents for impeachment, to refresh recollection, or for rebuttal that are not pre-filed must: (a) have an electronic copy of such exhibits available during the hearing; (b) pre-mark the electronic document with a hearing exhibit number within the parties' assigned exhibit number blocks; and (c) be prepared to email such exhibits to all parties during the hearing, and to electronically file with the Commission's E-Filing System *during or immediately after the hearing*.

7. Unless good cause is shown, exhibits which are not pre-filed as required by this Decision may not be admitted into evidence during the hearing, except that nothing in this Decision requires the parties to pre-file exhibits that may be used solely for impeachment, to refresh recollection, or for rebuttal.

8. **Written Testimony.** Joint Petitioners must file and serve direct testimony by June 25, 2020. The parties must file and serve answer testimony by August 24, 2020, and rebuttal and cross-answer testimony by September 15, 2020.

9. **Corrections, Modifications, and Amendments to Written Testimony.** The parties may make corrections to written testimony and attachments thereto without filing a motion seeking leave to do so. Corrections include minor changes, such as fixing typographical errors. Corrections do not include material or substantive changes. Material or substantive changes to a hearing exhibit or attachment amount to amending or modifying such documents. Any party wishing to amend or modify an exhibit or attachment thereto must file a motion establishing good cause; such a motion must be filed as soon as the party becomes aware of the need to amend or modify the filing. The parties must confer with each other prior to filing such a motion. Unreasonable delay in filing such a motion is grounds to deny the motion. On or by

October 7, 2020, the parties must file and serve any corrected, modified, or amended written testimony and attachments; a notice identifying changes in the latest revision as compared to the most recent version; and a motion to amend or modify, if the party seeks to amend or modify testimony or attachments. Such testimony or attachments to testimony must be filed in a redlined or similar format that highlights the changes as compared to the most recent version.² Parties filing more than one revision to an exhibit or attachment must ensure that the redlined version also shows changes as compared to the original version. If this Decision requires the corrected, modified, or amended exhibit or attachment to be filed in its executable format (*e.g.*, a spreadsheet with formulae), the parties are only required to file a redlined version to the extent practicable.

10. **Prehearing Motions.** The parties must file and serve any pre-hearing motions by October 7, 2020.

11. **Joint Witness Testimony Matrix.** On or by October 7, 2020, the parties must submit a joint witness testimony matrix listing all the witnesses the parties anticipate will testify at the hearing, and the anticipated amount of time each party will use to examine the witnesses. To the extent practicable, the witnesses should be listed in the order in which they will be called.

12. **Hearing Exhibits, Hearing Exhibit Lists, and Witness Lists.** Consistent with the above discussion, the parties must file and serve hearing exhibits, hearing exhibit lists, and witness lists by October 9, 2020. Written testimony and attachments which have already been filed consistent with the above deadlines do not need to be filed again, but must be included on hearing exhibit lists. Parties are also not required to pre-file and serve hearing exhibits which will be used solely for impeachment, to refresh recollection, or for rebuttal. Any party may use any

² Filing a “clean” version is not necessary and is discouraged.

other party's hearing exhibits during the course of the hearing and need not file them separately. Witness lists must include a brief description of the witnesses' anticipated testimony and the witnesses' contact information. Exhibit lists must identify the hearing exhibit number and the title of each hearing exhibit and provide a brief description of each hearing exhibit the party intends to offer into evidence during the evidentiary hearing.

13. **Stipulations and Settlement Agreements.** The parties must file and serve any stipulations and settlement agreements by October 9, 2020.

14. **Statements of Position.** In lieu of a verbal closing argument, the parties may submit written statements of position. Any party wishing to do so must file a statement of position by November 6, 2020.

15. **Hearing Exhibit Number Block Assignments.** Public Service is assigned hearing exhibit numbers 100 to 299. All other parties are assigned a sequential block of 100 exhibit numbers starting with hearing exhibit 300, in the order that their notices of intervention or motions to intervene were filed as reflected in the Commission's E-Filings System.

16. **Hearing Exhibit Identification and Filing Requirements.**

a. **General Identification Requirements – All Types of Exhibits.** The parties must sequentially number each hearing exhibit within their assigned hearing exhibit number blocks. Parties must conspicuously mark for identification each exhibit as a "hearing exhibit" with its corresponding hearing exhibit number, and a brief description of the document, such as the document's substantive title. This means that any party offering witness testimony as an exhibit must include the specific type of witness testimony (*e.g.*, direct or rebuttal) as its brief description. For example, if Hearing Exhibit 1 is John J. Doe's direct testimony, the party

offering the exhibit must mark the exhibit for identification as follows: “Hearing Exhibit 1, John J. Doe’s Direct Testimony.”

b. Identification Requirements for Attachments to Exhibits. Parties offering written testimony with attachments as an exhibit must mark the entirety of the witnesses’ testimony including all attachments, with one hearing exhibit number. In addition, the parties must mark all attachments to witness testimony as an “attachment” to the testimony with the relevant hearing exhibit number, the witness’s initials, and a sequential number sequence.³ For example, if John J. Doe’s direct testimony includes an attachment, the party must mark the attachment as follows: “Hearing Exhibit 1, Attachment JJD-1.”

c. Identification Requirements for Executable Exhibits. When a party files an executable version of a hearing exhibit as required by this Decision, the party must mark the exhibit for identification using the exact same title as the non-executable version (as provided above), with the addition of the word “Executable” immediately after the hearing exhibit number.⁴ For example, an executable attachment to John J. Doe’s Testimony should be marked for identification as, “Hearing Exhibit 1, Executable Attachment JJD-1.” Likewise, an executable version of an exhibit titled “Hearing Exhibit 2, Costs” should be marked as, “Hearing Exhibit 2, Executable Costs.”

d. Identification Requirements for Confidential and Highly Confidential Exhibits. The parties must mark confidential or highly confidential hearing exhibits and attachments for identification using the exact same title as the non-confidential version

³ Because attachments to a hearing exhibit are part of the hearing exhibit, it must not be marked with a separate hearing exhibit number, or as an appendix or other like title to the hearing exhibit.

⁴ Filing executable exhibits may result in the automatic creation of a corresponding PDF version in the Commission’s E-Filing System. That PDF will be disregarded for all purposes, including reference and display during hearing.

(as provided above), and must add a “C” for confidential or “HC” for highly confidential immediately following the exhibit or attachment number. For example, John J. Doe’s confidential or highly confidential direct testimony should be marked as “Hearing Exhibit 1C, John J. Doe’s Direct Testimony,” or “Hearing Exhibit 1HC, John J. Doe’s Direct Testimony,” respectively.

e. Identification and Filing Requirements for Corrected, Modified, and Amended Hearing Exhibits. Parties must mark corrected, modified, and amended hearing exhibits and attachments for identification using the exact same title as the original version of the exhibit or attachment (as explained above), immediately followed by “Rev.” to indicate a revision, with the revision number. For example, John J. Doe’s corrected direct testimony should be marked as “Hearing Exhibit 1, John J. Doe’s Direct Testimony, Rev. 1.” Likewise, a modified attachment to John J. Doe’s Direct Testimony should be marked as “Hearing Exhibit 1, Attachment JJD-1, Rev. 1.” The same requirements apply to revised executable exhibits and attachments. For example, a revised executable attachment to John J. Doe’s testimony should be marked for identification as, “Hearing Exhibit 1, Executable Attachment JJD-1, Rev. 1.” Parties *may not* mark such exhibits as “corrected,” “modified,” “amended,” or any like title.

f. General Requirements for Titling Exhibits When Filing in the Commission’s E-Filing System. When filing hearing exhibits and attachments in the Commission’s E-Filing System, the parties must enter the document title using the exact same information used to mark the hearing exhibit or attachment for identification as required by this Decision. For example, the title entered into the Commission’s E-Filing System for John J. Doe’s direct testimony should be “Hearing Exhibit 1, John J. Doe’s Direct Testimony,” or if it is corrected testimony, “Hearing Exhibit 1, John J. Doe’s Direct Testimony, Rev. 1.” Likewise, the

title entered into the Commission's E-Filing System for John J. Doe's confidential direct testimony should be "Hearing Exhibit 1C, John J. Doe's Direct Testimony."

17. **Hearing Exhibit Page Numbering.** The parties must sequentially number each page of each hearing exhibit and attachment starting with the first page, regardless of the first page's content. For example, if the first page of the hearing exhibit is a cover page, that page must be marked as page number 1, and all pages to follow (including tables of contents, executive summaries, intentionally blank pages and the like) must be sequentially page-numbered.

18. **PDF and Executable Exhibit Filing Requirements.** To minimize electronic file size and allow electronic text searches, parties filing hearing exhibits and attachments in PDF or similar format, must ensure that the filed PDF is generated from the native executable electronic file format when possible. For example, when possible, parties must file a PDF exhibit created by electronically converting a Word document, rather than a PDF exhibit created by printing a Word document and electronically scanning it. Parties offering hearing exhibits or attachments created from a spreadsheet or which rely on a foundation not viewable in the filed version must simultaneously file the hearing exhibit or attachment in its native executable electronic format. The parties must leave all cell formulae or links intact, and must not convert cell formulae to values in the executable version or exhibits.

19. **Managing Multiple Versions of Exhibits.** During the evidentiary hearing, so long as the corrected, modified, and amended exhibits or attachments are permitted, only the most recent revision of a hearing exhibit or attachment will be used. References in hearing exhibits and attachments (*e.g.*, written testimony) to obsolete versions of hearing exhibits and attachments will be construed as referring to the latest filed version of the hearing exhibit or

attachment, unless otherwise ordered. Hearing exhibits and attachments whose page and line citations are affected by corrected, modified, or amended exhibits will be construed as citing to the new location (and citation), provided that the prior citation is in reasonable proximity⁵ to the new citation.⁶ In such circumstances, the parties should not submit revised exhibits merely to correct page and line citations. This also applies to discovery requests or responses referring to an obsolete exhibit or attachment.

20. 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

⁵ For example, answer testimony citing to page 10, line 5 of an obsolete version of direct testimony is within reasonable proximity to the new citation when it is still on page 10.

⁶ The parties may modify the formatting for revised hearing exhibits to minimize the impact to page number and line references and citations (*e.g.*, widen a margin to insert a word without changing the line reference or page number where the modification appears).