

BEFORE THE PUBLIC UTILITIES COMMISSION

STATE OF COLORADO

Proceeding No. 20V-0159EG

NOTICE OF INTERVENTION AS OF RIGHT BY STAFF, ENTRY OF APPEARANCE AND NOTICE PURSUANT TO RULE 1007(a) AND RULE 1401

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

Trial Staff of the Colorado Public Utilities Commission (Staff), through its counsel, the Colorado Attorney General, intervenes in the above-captioned proceeding. In accordance with Rule 1401 and Rule 1007(a) of the Commission's Rules of Practice and Procedure, as amended, Staff states:

1. Staff will participate in the above-captioned proceeding and requests a hearing pursuant to Commission Rule 1401(a).

2. Staff has determined the following are among the issues it will raise and address:

a. Whether a “petition” under Commission Rule 1304 is the appropriate procedural vehicle for Joint Petitioners’ request;¹

¹ The Commission may find it helpful to seek input from the intervenor parties on the best procedural path forward and the challenges inherent to this case.

b. Whether this proceeding is the appropriate place to address the numerous issues raised and implicated by Joint Petitioners' request, or if those issues are best addressed through another procedural vehicle. The COVID-19 crisis is significant, unique, and still unfolding. Therefore, it is unnecessary to rush this proceeding. The Commission used a statewide miscellaneous docket to address the effects of the Tax Cuts and Jobs Act on Colorado public utilities in conjunction with other proceedings specific to individual utility companies. That experience may be instructive as the Commission acts to protect the utilities and ratepayers under its jurisdiction from the effects of the current pandemic;

c. If the Commission finds that this is an appropriate proceeding to address this request, which of the identified expenses, if any, are appropriate for deferred accounting treatment. Although a Commission order approving deferred accounting is separate from Commission approval of *recovery* for the costs deferred, that does not mean that the Commission should simply grant Joint Petitioners' request without careful review and consideration. Joint Petitioners are asking to defer what appears to be an unbounded scope of incremental operations and maintenance expenses, administrative and general expenses, labor and benefits expenses, certain capital expenses, expenses for outside services, and expenses for "other things" with no explanation of how the expenses will be demonstrated to be incremental and due to COVID-19. Among the included proposed expenses are:

- "implementing technology to enable larger portions of utility workforce to work from home";

- “paid time off to employees in alignment with self-quarantine guidance”;
- “additional personal protective equipment”;
- “suspension of disconnections”;
- “the increase in arrearages and uncollectible expense”;
- “increases in administrative and financing costs associated with arrearages and uncollectible expenses”;
- “increased need for outside services”;
- “tools”;
- “materials”;
- “supplies”; and
- “other things.”²

If the Commission allows Joint Petitioners to defer this broad scope of expenses, it will be noticed by financial reporting companies and other important third parties. And if the Commission then denies recovery of deferred costs for lack of supporting evidence that the expenditures were prudent, then that, too, would have inadvertent but real consequences for the Joint Petitioners.

d. What criteria should be used to determine or demonstrate that the expenses the utilities seek to defer are “incremental” as compared to those that would have been expended in the normal course of business had the COVID-19

² Joint Petition at 7.

crisis not occurred. It is noteworthy that the Joint Petitioners have not proposed any such criteria;

e. The extent to which utilities should be “made whole” based on the known and estimated impacts of COVID-19, particularly given the fact that any deferred costs may be approved for recovery through rates from ratepayers who will also be profoundly impacted by COVID-19;

f. If a deferred accounting order is appropriate, what guardrails and limitations are necessary to limit accounting and recovery to any Commission-approved expenses;

g. If a deferred accounting order is appropriate, when and how those costs may be recovered and from whom, and when those determinations for cost recovery will be made if not in this proceeding;

h. Whether there are opportunities to defer any countervailing cost reductions or savings such as debt refinancing, offsetting stimulus funds, or beneficial tax treatment as a result of the COVID-19 crisis and related economic downturn. The Joint Petitioners have not offered to defer any countervailing cost reductions or savings;

i. If tracked through deferred accounting, whether the net effect of COVID-19 plus the counterbalancing measures of the CARES Act and other legislation intended to help blunt COVID-19’s economic impact of might create regulatory liabilities as well as regulatory assets for Joint Petitioners;

j. How the provisions of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) impact the participating utilities. Staff is investigating the effects of the CARES Act on utility operations in other proceedings pending before the Commission and believes that the specific impact on this case could be complex. Staff is aware that there are provisions of the CARES Act that could have varied impacts on the utilities to the extent that they are able to take advantage of these provisions. These provisions include, but are not limited to:

- payroll tax deferrals and employee retention credits;
- net operating loss (NOL) carry-backwards provisions for 2018, 2019, and 2020.

k. The impact and effect of Colorado Governor Polis's Emergency Order D 2020 012 on the participating utilities. The utilities are not necessarily all similarly situated regarding COVID-19 responses and incremental costs. The Colorado Governor's Emergency Order D 2020 012 directed utilities to stop disconnections, waive late fees and reconnection fees, and to otherwise assist residential and small commercial customers due to the COVID-19 crisis.³ While most of the utilities have filed for temporary tariff waivers in response to the Colorado Governor's Emergency Order D 2020 012,⁴ Rocky Mountain Natural Gas, which does not directly serve any residential or small commercial customer, has not. Granting a deferred accounting order to all utilities without details from the

³ See Emergency Order D 2020 012.

⁴ See, e.g. Proceeding No. 20V-0133G and Proceeding No. 20V-0150EG.

utilities on which specific incremental expenses are being incurred (and which of the utilities are actually incurring these expenses) would not be prudent;

l. Whether the scope of relief that the Joint Petitioners are asking for corresponds to the specific direction of Governor Polis's emergency executive orders. The Commission should not grant deferred accounting for an unbounded scope of so-called incremental expenses in every category of utility expense;

m. The timing of this request and any relevant issues with notice. Additionally, the timing of the request may not be appropriate in terms of the March 1st start date. While the utility tariff waiver petitions have generally been granted *nunc pro tunc* to March 20, 2020 (the date of the Governor's Executive Order 2020 D 012), the Petition requests deferred accounting treatment from March 1, 2020. In addition to the mismatch with the Executive Order, this choice of date raises public notice issues;

n. The impact of any future federal or state legislation addressing the COVID-19 crisis on the Joint Petitioners and any incremental costs Joint Petitioners attribute to the effects of the COVID-19 crisis; and

o. Any and all other issues not raised herein that, after investigation and analysis, are worthy of consideration by the Commission, are in the public interest, and are likely to assist the Commission to render its decision in this proceeding.

3. Pursuant to Rule 1007(a) of the Commission's Rules of Practice and Procedure, as amended, notice is hereby given that staff members Gabe Dusenbury,

Karl Kunzie, Fiona Sigalla, Rebecca Lim, Gene Camp and Erin O'Neill have been assigned trial advocacy (litigation) staff in the above-captioned proceeding. Staff members Ron Davis and Ellie Friedman have been assigned as advisory staff. First Assistant Attorney General Paul Gomez (Commission Counsel) is assigned as advisory counsel to the Commission.

4. Contact with any member of the testimonial (litigation) staff by counsel for any party in interest must be initiated through the undersigned counsel.

5. Please note the service requirements contained within Rule 1205 of the Commission's Rules of Practice and Procedure, as amended.

6. The undersigned Assistant Attorneys General Lauren E. S. Caliendo and Charlotte M. Powers enter their appearance in the above-captioned proceeding on behalf of Staff. *In addition, please send any electronic documents, including discovery, to Melvena Rhetta-Fair at melvena.rhetta-fair@coag.gov*

7. Please provide copies of filings to Commission litigation and advisory staff via the Commission's E-Filings system or at this address: 1560 Broadway, Suite 250, Denver, Colorado 80202.

8. Please do not provide copies of non-filed documents, including discovery, to Commission advisory staff, Commission counsel, Administrative Law Judges, or to the Commission.

9. Please provide copies of filings, correspondence, and any other document(s) to Staff counsel via e-mail, through the Commission's E-Filing system, or at this address: 1300 Broadway, 8th Floor, Denver, Colorado 80203.

DATED April 24, 2020.

Respectfully submitted,

PHILIP J. WEISER
Attorney General

/s/ Lauren E. S. Caliendo
Charlotte M. Powers, 47909*
Lauren E. S. Caliendo, 50144*
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CERTIFICATE OF SERVICE

This is to certify that on April 24, 2020, I have duly served the within **NOTICE OF INTERVENTION AS OF RIGHT BY STAFF, ENTRY OF APPEARANCE AND NOTICE PURSUANT TO RULE 1007(a) AND RULE 1401** upon all parties herein via the Commission's E-Filing system to:

_____/s/ *Melvena Rhetta-Fair*_____