

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0216G

IN THE MATTER OF ATMOS ENERGY CORPORATION’S APPLICATION TO OPEN
DEMAND-SIDE MANAGEMENT STRATEGIC ISSUES PROCEEDING.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
ALENKA HAN
GRANTING PERMISSIVE INTERVENTION,
SETTING PROCEDURAL SCHEDULE,
AND SCHEDULING EVIDENTIARY HEARING**

Mailed Date: July 27, 2023

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I. STATEMENT AND PROCEDURAL BACKGROUND

1. On May 1, 2023, Atmos Energy Corporation (Atmos or the Company), commenced this Proceeding by filing a Verified Application to open a demand-side management (DSM) strategic issues proceeding.¹ The Company filed the application as required by § 40-3.2-103(1), C.R.S., and Decision No. C23-0116, issued February 21, 2023, “for the

¹ Atmos Energy Corporation’s Verified Application, May 1, 2023.

development and approval of DSM energy savings targets, estimated budgets, and cost recovery procedures, and DSM bonus structure.”²

2. The Commission’s Notice of Application Filed noted that Atmos had not filed testimony with its Application, that Atmos was seeking a Commission decision within 250 days of the Application being deemed complete, and that Atmos would be required to file its prefiled testimony within 60 days of the filing of its Application.³

3. Subsequently, several entities filed interventions as of right:

- The Office of the Utility Consumer Advocate (UCA) filed its Notice of Intervention of Right on May 15, 2023;
- Commission Trial Staff filed a Notice of Intervention as of Right on May 25, 2023; and
- The Colorado Energy Office (CEO) filed its Intervention of Right on June 1, 2023, which it withdrew on July 12, 2023.⁴

4. In addition, on June 1, 2023, Southwest Energy Efficiency Project (SWEEP) moved to intervene in this proceeding, and on June 2, 2023, Energy Outreach Colorado (EOC) filed an Unopposed Motion to Intervene.

5. The Commission automatically deemed the application complete as of June 17, 2023, and referred the matter to an administrative law judge (ALJ) for disposition. The proceeding was subsequently assigned to the undersigned ALJ.

II. INTERVENTIONS

6. The ALJ acknowledges the interventions as of right filed by Commission Staff and UCA. Both Commission Trial Staff and UCA are parties to this proceeding.

² Notice of Application Filed, May 3, 2023.

³ *Id.*

⁴ See Notice of Withdrawal of Intervention by Right of the Colorado Energy Office, July 12, 2023.

7. The ALJ also acknowledges the intervention as of right and subsequent withdrawal of that intervention filed by CEO. CEO is consequently not a party to this proceeding.

8. Two entities have moved to intervene in this proceeding: Energy Outreach Colorado (EOC) and Southwest Energy Efficiency Project (SWEEP).

9. On June 2, 2023, EOC filed an unopposed motion to intervene. EOC represented that it had conferred with Atmos, UCA, and SWEEP about its motion and that all three indicated they do not oppose EOC's intervention. Further, EOC indicated, Commission Trial Staff and CEO took no position with respect to EOC's motion to intervene. Thus, EOC's motion to intervene is unopposed.

10. EOC also addressed the grounds upon which it believes it should be permitted to intervene. It noted that it has a "vested interest in ensuring that the interests of [income-qualified (IQ)] customers and disproportionately impacted communities of Colorado utilities are recognized in Commission proceedings and in ensuring that utility rates are just and reasonable such that EOC is not burdened with increased assistance payments and other crisis mitigation disbursement."⁵ EOC pointed out that it "routinely" participate in DSM proceedings before the Commission.⁶ And, EOC advised that, since 2012, it has partnered with Atmos "in the administration of portions of the Company's DSM programs targeted at income-qualified customers."⁷

⁵ Energy Outreach Colorado's Unopposed Motion to Intervene and Entry of Appearance, ¶ 2, p. 2, filed June 2, 2023.

⁶ *Id.*, ¶ 3, p. 2.

⁷ *Id.*, ¶ 4, p. 2.

11. With respect to the specific grounds which must be weighed when considering a request to intervene, EOC noted that Atmos proposes to increase its DSM expenditures significantly, by as much as 90 percent compared to Atmos' 2022 DSM budget, and is seeking "a financial bonus for its IQ DSM program which would allow the Company to earn at least 10 [percent] of the program spend."⁸ Because the increased cost of Atmos' DSM programs could impact EOC's IQ constituency, EOC argues that it has "a tangible and pecuniary interest in ensuring that its services are not required for a growing number of Colorado citizens and the needs of its constituency are not expanded."⁹ Further, EOC contends, because it is unique in that it administers statutorily-mandated energy assistance contributions, no other party will be able to adequately represent EOC's interests in this proceeding.¹⁰ Finally, it notes, its presence in this proceeding will not "unduly broaden" the issues presented.¹¹

12. SWEEP likewise seeks permission to intervene in this proceeding. Its motion does not represent whether it conferred with other parties to this proceeding, including with the Company, before filing its motion. However, the ALJ notes that SWEEP filed its Motion to Intervene and Entry of Appearance on June 1, 2023.¹² To date, the Commission has not received any objections to SWEEP's Motion to Intervene.

13. Pursuant to Rule 1400(b) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, responding parties "have 14 days after service of the motion . . . in which to file a response." Given that SWEEP filed its Motion to Intervene on

⁸ *Id.*, ¶ 5, p. 3; *see also* Verified Application, p. 13.

⁹ EOC's Unopposed Motion to Intervene, ¶ 9, p. 4.

¹⁰ *Id.*, ¶ 10, p. 4.

¹¹ *Id.* ¶ 11, p. 4.

¹² Southwest Energy Efficiency Project's Motion to Intervene and Entry of Appearance, filed June 1, 2023.

June 1, the deadline to file a responsive pleading has long since expired. The undersigned ALJ consequently presumes that no party opposes SWEEP's Motion to Intervene.

14. In its Motion to Intervene, SWEEP represents that its mission is “to advance energy efficiency and clean transportation, and to expand the economic and environmental benefits that energy efficiency and electric vehicles provide.”¹³ It pursues its mission by participating “in utility regulatory proceedings and other public policy forums in Colorado, Arizona, Nevada, New Mexico, Utah, and Wyoming.”¹⁴ SWEEP notes that, in this vein, it has intervened in numerous DSM proceedings before the Commission involving other utilities, such as Public Service Company of Colorado and Black Hills Energy.¹⁵

15. SWEEP contends whatever decision the Commission reaches in this proceeding, its “goals and mission” will be impacted.¹⁶ It argues that it has a “tangible interest in maximizing” the Company's energy savings goals and wants to ensure that Atmos is put “on the path toward greater energy savings from gas energy efficiency.”¹⁷ Further, it notes, this proceeding will address “important policy issues” pertaining to “the appropriate cost-benefit methodology and assumptions, cost recovery mechanisms, developing appropriate financial incentives to reward the Company for superior performance, and income-qualified DSM program options.”¹⁸ SWEEP argues that because its interests and mission — *i.e.* pursuing energy efficiency and electrification — differ from other parties to this proceeding, no party can adequately represent its interests here.

¹³ *Id.*, ¶ 1, p. 1.

¹⁴ *Id.*

¹⁵ *Id.*, ¶ 2, p. 2.

¹⁶ *Id.*, ¶ 7, p. 5.

¹⁷ *Id.*, ¶ 8, p. 6.

¹⁸ *Id.*, ¶ 9, p. 6.

16. Two classes of parties may intervene in proceedings such as this: parties with a statutory right or a legally protected right that may be impacted by the proceeding (intervention of right), and parties with pecuniary or tangible interests that may be substantially impacted by the proceeding and would not otherwise be adequately represented (permissive intervention). Rule 1401(b) and (c), of the Commission's Rules of Practice and Procedure, 4 *Code of Colo. Regulations* (CCR) 723-1; *see also* § 40-6-109(1), C.R.S., *RAM Broadcasting of Colo. Inc., v. Pub. Utils. Comm'n*, 702 P.2d 746, 749 (Colo. 1985) ("This provision creates two classes that may participate in [Commission] proceedings: those who may intervene as of right and those whom the Commission permits to intervene.").

17. Commission Rule 1401(c) of the Rules of Practice and Procedure, 4 CCR 723-1, requires persons seeking permissive intervention to show the following:

A motion to permissively intervene shall state the specific grounds relied upon for intervention; the claim or defense within the scope of the Commission's jurisdiction on which the requested intervention is based, including the specific interest that justifies intervention; and why the filer is positioned to represent that interest in a manner that will advance the just resolution of the proceeding. The motion must demonstrate that the subject proceeding may substantially affect the pecuniary or tangible interests of the movant (or those it may represent) and that the movant's interests would not otherwise be adequately represented. . . . The Commission will consider these factors in determining whether permissive intervention should be granted. Subjective, policy, or academic interest in a proceeding is not a sufficient basis to intervene. Anyone desiring to respond to the motion for permissive intervention shall have seven days after service of the motion, or such lesser or greater time as the Commission may allow, in which to file a response. The Commission may decide motions to intervene by permission prior to expiration of the notice period.

18. The requirement in Rule 1401(c) requiring persons or entities seeking permissive intervention in a proceeding to demonstrate that their interests "would not otherwise be adequately represented" is similar to Colorado Rule of Civil Procedure 24(a), which provides that even if a party seeking intervention in a case has sufficient interest in the case, intervention

is not permitted if the interest is adequately represented by the existing parties. *See Clubhouse at Fairway Pines, L.L.C. v. Fairway Pines Owners Ass'n*, 214 P.3d 451, 457 (Colo. App. 2008). This is true even if the party seeking intervention will be bound by the case's judgment. *See Denver Chapter of the Colo. Motel Ass'n v. City & Cnty. of Denver*, 374 P.2d 494, 495-96 (Colo. 1962) (affirming the denial of an intervention by certain taxpayers because their interests were already represented by the city). The test for adequate representation is whether there is an identity of interests, rather than a disagreement over the discretionary litigation strategy of the representative. The presumption of adequate representation can be overcome by evidence of bad faith, collusion, or negligence on the part of the representative. *Id.*; *Estate of Scott v. Smith*, 577 P.2d 311, 313 (Colo. App. 1978).

19. The ALJ finds and concludes that EOC and SWEEP have both demonstrated that they have tangible interests in this proceeding. EOC has also shown that it has a pecuniary interest in this proceeding's outcome. The ALJ further finds that no other parties to this proceeding will adequately represent EOC's or SWEEP's interests.

20. Therefore, the ALJ will grant EOC's Unopposed Motion to Intervene and SWEEP's Motion to Intervene. Both EOC and SWEEP are parties to this proceeding.

III. PROCEDURAL SCHEDULE AND EVIDENTIARY HEARING

21. On July 12 and July 17, 2023, the parties conferred by email with undersigned ALJ regarding a proposed, unopposed procedural schedule to govern this Proceeding.

22. Atmos, UCA, SWEEP, EOC, and Commission Staff unanimously agreed to the following proposed procedural schedule:

Answer Testimony	August 18, 2023
Rebuttal/Cross Answer Testimony	September 22, 2023
Prehearing Motions	October 26, 2023
Settlement & Supporting Testimony	November 2, 2023
Corrections, Witness Matrices, & Exhibit Lists	November 9, 2023
EVIDENTIARY HEARING	November 16-17, 2023
Statements of Position	December 1, 2023

23. Through Atmos' counsel, the parties requested a fully remote hearing. The undersigned ALJ will therefore schedule a fully remote hearing. If at some time in the future the parties desire a different hearing format, they may so request by motion to be determined by the ALJ.

24. The ALJ notes that the Commission can conduct in-person, remote, or hybrid hearings. A remote hearing is one in which all of the participants appear and participate from remote locations over the Zoom web conferencing platform. A hybrid hearing involves the ALJ and at least one party and/or witness participating from one of the Commission's hearing rooms in Denver, and the remaining party(ies) and witness(es) participating from one or more remote locations using the Zoom web conferencing platform. An in-person hearing is one in which the ALJ and all parties and witnesses participate in the hearing at the same location.

25. The Parties are further advised and are on notice that this proceeding is governed by the Rules of Practice and Procedure found at 4 CCR 723-1. The ALJ expects the Parties to be

familiar with and to comply with these rules. The rules are available on the Commission's website (<http://www.dora.colorado.gov/puc>).

26. The parties are also on notice that failure to appear at the scheduled evidentiary hearing may result in decisions adverse to their interests, including granting the complete relief opposing parties seek, dismissing interventions, and dismissing or granting the Application.

27. The ALJ has reviewed the parties' proposed schedule and finds that it is reasonable. It will be adopted, as order below.

28. **Informal Video-Conference Practice Session:** The ALJ will hold an informal practice video-conference session if requested by any party to give the parties an additional opportunity to practice using Zoom and box.com before the hearing.

29. The parties may contact a Commission Legal Assistant by email at casey.federico@state.co.us or stephanie.kunkel@state.co.us, to schedule an informal practice video-conference session.

30. The parties will receive information and a link to participate in the informal practice session by email.

IV. ORDER

A. It Is Ordered That:

1. Energy Outreach Colorado's Unopposed Motion to Intervene and Entry of Appearance, filed on June 2, 2023, is granted. Energy Outreach Colorado is a party to this proceeding.

2. Southwest Energy Efficiency Project's Motion to Intervene and Entry of Appearance, filed June 1, 2023, is granted. Southwest Energy Efficiency Project is a party to this proceeding.

3. A **fully remote** hearing is scheduled as follows:

Date: **November 16-17, 2023**

Time: **9:00 a.m.**

Location: Commission Hearing Room
1560 Broadway, Suite 250
Denver, Colorado

METHOD: By videoconference using Zoom at the link to be provided to counsel and the parties via email prior to the hearing.

All parties and witness must participate remotely by joining a video conference using Zoom at the link provided to the established parties in an e-mail prior to the scheduled hearing, as addressed above.¹⁹

4. The parties and witnesses may not distribute the Zoom link and access code to anyone not participating in the remote hearing.

5. The following procedural schedule is adopted:

Answer Testimony	August 18, 2023
Rebuttal/Cross Answer Testimony	September 22, 2023
Prehearing Motions	October 26, 2023
Settlement & Supporting Testimony	November 2, 2023
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¹⁹ Instructions for using the Zoom videoconferencing platform are provided in Attachment A to this Decision.

Statements of Position	December 1, 2023
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6. **Video-Conference Participation.** Counsel for the parties, parties, and witnesses are to participate in the evidentiary hearing by videoconference using the Zoom platform.

7. **Evidence Presentation at the Evidentiary Hearing.** Because the hearing will be held remotely by videoconference, all evidence must be presented electronically. Each party is responsible for ensuring that they and their respective witnesses: (a) have access to all pre-filed exhibits; and (b) can download and view documents available from box.com during the hearing.

8. The parties shall adhere to the following numbering system for their respective exhibits:

- | | | |
|----|--|--------------------------|
| a. | Atmos Energy Corporation: | Hearing Exhibits 100-199 |
| b. | Commission Staff: | Hearing Exhibits 200-299 |
| c. | The Office of the Utility Consumer Advocate: | Hearing Exhibits 300-399 |
| d. | Energy Outreach Colorado: | Hearing Exhibits 400-499 |
| e. | Southwest Energy Efficiency Project: | Hearing Exhibits 500-599 |

9. **The ALJ will hold an informal Zoom practice session upon request.**

10. **Instructions for Preparation and Presentation of Exhibits at Hearing:** In addition to other requirements of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1 (e.g., Rule 1202 regarding pre-filed testimony), detailed additional instructions governing the preparation and presentation of exhibits at the hearing are set out in Attachment B to this order, which is incorporated into and made part of this order.

11. **Instructions for Remote Hearings Via Zoom:** Detailed instructions governing participation in and procedures for remote hearings conducted via Zoom are set out in Attachment A to this order, which is incorporated into and made part of this order.

12. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES
COMMISSION
OF THE STATE OF COLORADO

ALENKA HAN

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads 'Rebecca E. White'.

Rebecca E. White,
Director