

Decision No. C24-0108

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.

**COMMISSION DECISION ADDRESSING EXCEPTIONS
TO RECOMMENDED DECISION NO. R24-0016
AND MODIFYING CERTAIN PROVISIONS OF THE
SETTLEMENT AGREEMENT**

Mailed Date: February 22, 2024

Adopted Date: February 14, 2024

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I. BY THE COMMISSION**A. Statement**

1. Through this Decision, the Commission addresses the exceptions filed to Recommended Decision No. R24-0016, issued January 9, 2024, by Administrative Law Judge (ALJ) Alenka Han. The Recommended Decision approves the Unanimous Non-Comprehensive Stipulation and Settlement Agreement (Settlement Agreement) filed November 2, 2023, and finds that Atmos Energy (Atmos or the Company) will not be required to address beneficial electrification (BE) in its next DSM Plan Application.

2. Through its exceptions, the Southwest Energy Efficiency Project (SWEET) seeks to reverse the ALJ's determination that the Company need not address BE in its next DSM Plan. After considering the filed exceptions, and the Company's responses thereto, and the evidentiary record in this Proceeding, we deny SWEET's exceptions.

3. In addition, on its own motion, the Commission finds that the DSM bonus mechanism established in the Settlement Agreement is not in the public interest and modifies that mechanism to bring it into conformance with recent Commission policy, bringing it into better alignment with the public interest.

B. Background

4. Pursuant to § 40-3.2-103(1), C.R.S., and Decision No. C23-0116, issued February 21, 2023, in Proceeding No. 22A-0579G, Atmos filed its Application to open a demand-side management (DSM) strategic issues (SI) proceeding on May 1, 2023.

5. On June 21, 2023, the Commission referred the Proceeding to the above-mentioned ALJ by minute entry, and the following entities became parties: the Colorado

Public Utilities Commission Trial Staff (Staff), The Office of the Utility Consumer Advocate (UCA) SWEEP, and the Environmental Justice Coalition (EJC).

6. The Settling Parties filed their Unanimous Non-Comprehensive Stipulation and Settlement Agreement on November 2, 2023. On the same date, Atmos filed an Unopposed Motion to Modify Procedural Schedule, Admit Exhibits into Evidence, and for Approval of Stipulation. In the Unopposed Motion, Atmos explained that the Settling Parties had resolved all but one of the “disputed issues in this proceeding.” SWEEP and Atmos dispute whether Atmos must include beneficial electrification (BE) in the Company’s next DSM plan. Decision No. R23-0756-I approved the Unopposed Motion and set December 1, 2023 as the deadline for SWEEP and the Company to file briefs addressing their positions on the BE issue.

7. On November 14, 2023, by Decision No. R23-0762-I, the ALJ vacated the hearing and issued a set of questions requiring the parties to provide clarity on certain aspects of the Settlement Agreement by December 1, 2023. Atmos filed responses to these questions on behalf of the Settling Parties.

8. On January 9, 2024, the ALJ issued Decision No. R24-0016 (the Recommended Decision) approving the Settlement Agreement and finding that the Company would not be required to file a proposal to implement a BE program in its next DSM Plan Application.

9. At the Commissioners’ Weekly Meeting on January 24, 2024, the Commissioners stayed the Recommended Decision on its own motion.

10. SWEEP filed exceptions to RD24-0016 on January 29, 2024. No other party filed exceptions. Atmos filed its response to the SWEEP exceptions on February 5, 2024.

11. At its February 14, 2024 Commissioners’ Weekly Meeting, the Commission conducted live deliberations on the Exceptions and on the DSM bonus mechanism established by

the Settlement Agreement, resulting in this Decision denying SWEEP's exceptions and requiring modification of the DSM bonus mechanism as discussed below. Except as expressly modified by this Decision, the Commission upholds the Recommended Decision.

C. Exceptions

1. Recommended Decision

12. In her Recommended Decision, ALJ Han finds that Atmos should not be required to include or address BE in its next DSM Plan for three reasons: 1) per § 40-3.2-103(3.5)(a), C.R.S., the legislature permits, but does not require gas-only utilities such as Atmos to offer BE incentives; 2) it is unclear whether the out-of-state gas utilities implementing BE programs that SWEEP cites in its brief are doing so voluntarily or in response to a regulatory mandate; and 3) if Atmos were to offer a BE program, the related incentive payments would be paid by non-electrifying customers whose rates would be increased as a result of the reduced consumption of BE program participants.¹ On this last point, ALJ Han observed that if it were required to implement a BE program, "Atmos and its customers could be placed in the tenuous position of billing customers for a service from which they do not benefit, which may violate the mandate that all utility charges "be just and reasonable.""²

2. SWEEP's Exceptions

13. In its Exceptions, SWEEP argues that although the legislature has not mandated that gas-only utilities must implement BE programs, it has certainly opened the door to that by expanding the definition of DSM to include BE, by designating BE a clean heat resource, and by requiring the Commission to allow gas utilities to field BE programs. SWEEP argues that the

¹ Recommended Decision, ¶¶50-¶52.

² Recommended Decision, ¶ 52.

Commission has the authority to require Atmos to field a BE program, and that not doing so gives the Company veto power in contravention of the legislature's clearly expressed intent to begin the process of decarbonizing gas utilities, in part via BE.³

14. SWEEP contends that the RD's concern about unjust rates due to the potential impact on non-participating customers is based on an incorrect characterization of beneficial electrification programs, emphasizing that most customers who receive incentives are likely to remain Atmos customers and continue purchasing gas. SWEEP challenges Atmos' argument that charging gas customers for incentives to convert others to electric service would be unfair, pointing out that the impact on utility revenues from beneficial electrification programs is analogous to other DSM programs that reduce gas usage and overall sales.⁴

15. SWEEP also refers to recent experiences in Utah and Vermont, where gas-only utilities have successfully implemented beneficial electrification programs, and states that ALJ Han's expressed concern about whether these programs were voluntary or mandated is irrelevant to the Commission's decision, which should instead focus on the evidence that gas-only utilities can effectively offer beneficial electrification incentives, as these states demonstrate.⁵

16. In sum, SWEEP contends that the Commission should amend and reverse the Recommended Decision, asserting its authority to direct Atmos in proposing beneficial electrification incentives.⁶

³ SWEEP Exceptions to Recommended Decision No. 24-0016, at 18-20.

⁴ *Id.*, pp. 20-24.

⁵ *Id.*, pp. 24-25.

⁶ *Id.*, p. 26.

3. Atmos Energy's Response

17. In its Response to SWEEP's Exceptions, Atmos contends that SWEEP's exceptions brief itself admits that Colorado law authorizes but does not require gas utility Clean Heat Plans to include BE, and the RD therefore properly found that Atmos should not be required to provide incentives for BE.⁷

18. In response to SWEEP's arguments about legislative intent, Atmos contends that if the legislature had intended that the Commission require gas utilities to engage in BE, it certainly could have included that requirement in its legislation, but it chose not to.⁸

19. Atmos states that SWEEP ignores the very different impacts that BE has on the revenues of combined vs. gas-only utilities. The Company states that requiring it to provide incentives for BE would unlawfully require gas customers to in effect make transfer payments via the DSMCA to customers no longer served by Atmos because they have converted to electricity. This would violate the statutory provision (§ 40-3-101, C.R.S.) that "[a]ll charges made, demanded, or received by any public utility for any rate, fare, product, or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge made, demanded, or received for such rate, fare, product or commodity, or service is prohibited and declared unlawful." Atmos argues that requiring its customers to pay to convert some customers, in whole or part, to electric customers would be inconsistent with the principle that rates must reflect the cost of providing service and would therefore not be just and reasonable.⁹

⁷ Atmos Energy's Response to SWEEP's Exceptions, pp. 1-2.

⁸ *Id.*, p. 2.

⁹ *Id.*, pp. 2-4.

20. Atmos contends further that not all electrification is environmentally beneficial. To meet the statutory definition of BE, it must reduce net GHG emissions. The Company argues that SWEEP failed to identify any of the electric suppliers in Atmos Energy's service territories or the carbon intensity of their supply, so there is no evidence that conversions to electricity would actually reduce emissions.¹⁰

21. Atmos also contends that the Recommended Decision makes the proper determination regarding BE on policy as well as legal grounds. It argues that a requirement to implement BE would have a detrimental effect on the Company's ability to recover its fixed costs, resulting in the need to decouple rates, file a rate case or both, thereby raising rates for remaining customers. Atmos argues that it should not be required to fund incentives for BE given the detrimental effect electrification will have on its business and its customers.¹¹

22. The Company concludes that to the extent that electrification meets the statutory definition of BE, incentives for electrification should come from electric utilities. It states that "[i]t is unlawful and unfair to require Atmos Energy's customers to fund incentives for BE, given the impact electrification is expected to have on gas utility rates," and urges the Commission to confirm the RD.¹²

4. Commission Findings and Conclusions

23. The Commission denies SWEEP's Exceptions and upholds the Recommended Decision on this point. We agree with the ALJ that statute provides no mandate for gas-only utilities to implement BE programs and see no reason to require this in the context of a DSM Plan proceeding. However, while we decline to overturn the Recommended Decision, we note

¹⁰ *Id.*, pp. 4-5.

¹¹ *Id.*, pp. 5-6.

¹² *Id.*, p. 6.

that gas-only utility implementation of BE may be entirely appropriate in the context of either Clean Heat Plan or Gas Infrastructure Plan proceedings, where BE could well present cost-effective opportunities for decarbonization or non-pipeline alternatives. Our Decision here should in no way be interpreted as a statement that BE should not or will not be considered in these other contexts.

D. DSM Bonus Mechanism

1. Settlement Provisions

24. Paragraph 12.c. of the Settlement Agreement provides that the benefits for any DSM bonus for Atmos Energy will be calculated pursuant to Rule 4760(f) including the Social Cost of Emissions (“SCE”) and Non-Energy Benefit (“NEB”) adders. Paragraph 12.d. establishes the structure for calculating the DSM bonus, providing that Atmos will be allowed to recover 6 percent of net benefits for meeting 80 percent of the annual DSM savings goal, that the bonus will increase 0.2 percent of net benefits for each 1 percent of additional goal attainment up to 100 percent of goal, and will increase by 0.4 percent of net benefits per 1 percent of additional goal attainment from 100 percent to 125 percent of goal, thereby reaching 20 percent of net benefits at 125 percent of goal.

2. Analysis

25. Incorporating the SCE into the net economic benefits on which the DSM Bonus is calculated, as is directed by Rule 4760(f), increases those benefits dramatically. According to the analysis required by ALJ Han and conducted by the Company, the annual greenhouse gas-related benefits of the DSM plan presented in the Settlement Agreement accounts for over \$4.9 million of the nearly \$5.8 million net benefits expected for 2026 program implementation—nearly 86 percent of total net benefits. This fact has two unfortunate impacts on the DSM bonus as

compared to the bonus structure that Atmos currently operates under. First, by Atmos's calculations, if it achieves its 2026 goal exactly, the bonus it will be entitled to will amount to \$500,000, equivalent to \$7.81 per Dth of first-year energy savings. This compares to \$1.26 per Dth of first year savings that the Company was awarded for its DSM performance in the 2022 program year.¹³ The record of this case includes no testimony from any party suggesting why an increase of this magnitude is warranted or deserved.

26. Secondly, the Company's calculations also demonstrate that its projected 2026 bonus would be even larger, but is limited by the statutory provision that the DSM bonus cannot exceed 25 percent of program expenditures. The calculations demonstrate that under the bonus structure established by the Settlement Agreement, the Company will achieve its maximum bonus—25 percent of expenditures—at just 96 percent of the Dth savings goal the Settlement Agreement establishes.¹⁴

3. Commission Findings and Conclusions

27. While we are reluctant to require such a significant change to a Settlement Agreement that enjoys unanimous support, we are even more reluctant to accept a DSM bonus structure that suffers from the two shortcomings discussed above. We find that it would not be in the public interest to approve the bonus structure that the Settlement Agreement would establish. Should any party find it necessary to submit RRR in response to this Decision, we invite such party to include in its pleading an argument supporting the notion that the proposed DSM bonus mechanism does not suffer from these shortcomings and is, in fact, in the public interest.

¹³ Atmos Energy's Joint Response to Decision R23-0762, response to question 1.

¹⁴ *Id.*, responses to questions 1 and 2.

28. Additionally, we find that the Company's currently ongoing Clean Heat Plan Proceeding (Proceeding 23A-0632G) is the proper place to consider a unified performance incentive mechanism focusing on emissions reduction for the Company that would incorporate emission reductions from DSM implementation as well as those from other clean heat resources. As we stated in Decision C23-0413 in Public Service Company's recently concluded DSM Strategic Issues Proceeding (22A-0309EG):¹⁵

With respect to the Gas energy efficiency PIM, for the reasons referenced in the discussion of the electric energy efficiency PIM, above, we find it necessary to reject the inclusion of SCE in the PIM calculation. Although the stakeholder process initiated in the Company's ERP proceeding relates only to emissions from electric generation technologies, as Staff points out, the Company will be similarly evaluating system-wide emissions due to its gas operations as part of its upcoming Clean Heat Plan, due later this year. We find that filing is the appropriate venue to evaluate, and potentially incentivize, overall emission reductions associated with the transmission, distribution, and combustion of gas by the Company's gas customers. While DSM programs play an important role in emission reductions associated with certain customers (*i.e.*, its DSM participants), the Company is statutorily required to reduce emissions for all customers based on a 2015 baseline, and any incentive should be tied to those broader goals and avoid a situation where multiple incentives could overlap for the same activity or outcome.

29. We reject the inclusion of the SCE in the calculation of net economic benefits here for the same reasons we rejected it in Proceeding 22A-0309EG: including the SCE here would set up a potential conflict where multiple incentive mechanisms could be established focusing on the same desired behavior (emissions reduction).

30. Accordingly, we reject inclusion of the SCE in the calculation of the net economic benefits used in the determination of the Company's DSM bonus. In order to effectuate these changes, we waive Rule 4760(f). For clarity, non-energy benefits unrelated to the social cost of emissions are to be included in the calculation of net economic benefits.

¹⁵ Proceeding 22A-0309EG, Decision No. C23-0413, ¶ 256.

II. ORDER

A. The Commission Orders That:

1. The exceptions to Recommended Decision No. R24-0016, filed January 9, 2024, by the Southwest Energy Efficiency Project, are denied, consistent with the discussion above.
2. The calculation of net economic benefits resulting from the Company's forthcoming DSM Plan shall exclude the social cost of emissions but include the value of other non-energy benefits, consistent with the discussion above.
3. Commission Rule 4760(f) is waived, consistent with the discussion above.
4. The 20-day time period provided pursuant to § 40-6-116, C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the effective date of this Decision.
5. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
February 14, 2024.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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Commissioners