

Decision No. C24-0221

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 GRANTING APPLICATION
FOR REHEARING, REARGUMENT, OR
RECONSIDERATION OF DECISION NO. C24-0108**

Mailed Date: April 9, 2024

Adopted Date: April 3, 2024

I. BY THE COMMISSION

A. Statement

1. Through this Decision, the Commission addresses Atmos Energy Corporation's Application for Rehearing, Reargument or Reconsideration (RRR) to Decision No. C24-0108, issued February 22, 2024 (the Decision). Among other things, the Decision directs Atmos to calculate the net economic benefits from its DSM programs excluding the value of the social cost of emissions.

2. Through its RRR, the Company asks the Commission to reverse that directive, or in the alternative to provide additional process within this Proceeding to evaluate other modifications to the Settlement to fairly rebalance the outcome of this proceeding. After considering the RRR, we grant the Company's application.

B. Background

3. 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 2, 2023.

4. On June 21, 2023, the Commission referred the Proceeding to an Administrative Law Judge (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 Energy Outreach Colorado (EOC).¹

5. 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 disputed 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.

6. On November 14, 2023, by Decision No. R23-0762-I, issued by ALJ, Alkena Han, 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.

¹The Company points out the Commission erred in its prior decision by listing the Environmental Justice Coalition (EJC) as a party to this Proceeding rather than Energy Outreach Colorado (EOC). We regret the error.

7. 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.

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

9. SWEEP filed exceptions to R24-0016 on January 29, 2024. No other party filed exceptions. Atmos filed its response to the SWEEP exceptions on February 5, 2024.

10. 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 Decision No. C24-0108. Decision No. C24-0108 denied SWEEP's exceptions and required modification of the DSM bonus mechanism removing the social cost of emissions (SCE) from the calculation of the net economic benefits upon which the Company's DSM bonus is to be calculated. The Commission found that the bonus mechanism proposed by the Settlement offered the Company a DSM bonus that was on the order of six times the bonus it is eligible for under its prior DSM Plan on a dollar per dekatherm (Dth) basis, and that the proposed mechanism would likely result in the bonus hitting the statutory cap of 25 percent of program expenditures even before the Company achieved 100 percent of the savings goal established by the same Settlement. Referencing a similar directive in the recently concluded DSM SI proceeding for Public Service Company of Colorado (PSCo) (Proceeding No. 22A-0309EG), the Commission also found that the Company's Clean Heat Plan Proceeding (Proceeding 23A-0632G) was the proper place to consider a unified performance incentive mechanism (PIM) focusing on emissions reduction for the Company that would incorporate emission reductions from DSM implementation as well as those from other clean heat resources.

For these reasons, the Commission rejected the inclusion of the SCE in the calculation of net economic benefits and waived Rule 4760(f).

11. Atmos filed its Application for Rehearing, Reargument or Reconsideration (RRR) of Decision C24-0108 on March 13, 2024. In its filing, Atmos urges the Commission to reverse its decision on the exclusion of the SCE from net benefits, stating that the exclusion of the SCE “creates unattainable expectations” for DSM performance and is inconsistent with the Commission’s new DSM rules. It asks the Commission to reverse itself so that a common basis is used for the determination of DSM cost-effectiveness and the Company’s DSM performance. Alternatively, the Company proposes that the Commission provide for additional process in this proceeding to evaluate other modifications to the Settlement to fairly rebalance the outcome of this Proceeding.

C. Atmos’s Application for Rehearing, Reargument or Reconsideration

12. Atmos makes two arguments in support of its request that the Commission reverse itself and approve the Settlement. These are:

- 1.) The Settlement is consistent with the Commission’s policy regarding the calculation of net benefits for gas DSM programs, including the DSM bonus, and
- 2.) The Settlement is in the public interest.

13. In support of its first argument, the Company notes that the Settlement is consistent with Rule 4760(f) as adopted in proceeding 21R-0449G, which amended the gas DSM Rules to, among other things, include the SCE in the net economic benefits used to calculate a utility’s DSM bonus. In response to the Commission’s stated interest in taking up an overarching emissions reduction PIM in the Company’s CHP proceeding, Atmos claims that the unique circumstances around the role of the SCE in any DSM bonus in PSCo’s DSM Strategic Issues proceeding do not apply for Atmos, because 1) Atmos is a gas only utility (so there is no electric

affiliate that might have increased emissions due to BE, as there is for PSCo), and 2) there is no ongoing stakeholder process to assess emission reductions across the Company's activities. Moreover, it notes that it has not proposed an emissions reduction PIM in its CHP application, and that none is contemplated in the CHP statute. The Company contends that "[u]nlike PSCo, there is no risk that '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),' as no other proposed incentive mechanisms for Atmos Energy are currently pending before the Commission in any other proceeding."

14. In support of its contention that the Settlement is in the public interest, the Company claims that the bonus mechanism in the Settlement is part of a package of tradeoffs that Company and Staff testimony demonstrated is in the public interest. It notes Staff testimony that the bonus is justified in the context of the Company's proposal on direct to recover lost revenues for the full lifetimes of installed DSM measures rather than the single year allowed by the Settlement. The Company also cites its own testimony that the larger potential bonus was a factor in its agreement to settle for a single year of lost revenues. The Company argues that the Commission failed to take this broader perspective on the Settlement, focusing exclusively on the bonus calculation. When its provisions are considered as a package, the Company argues, the Settlement is in the public interest.

15. The Company also argues that if the Commission does not reconsider its Decision, it should provide for additional process in this proceeding to evaluate other appropriate changes to the Settlement to rebalance the outcome. Here the Company argues that by removing the SCE from the net benefit evaluation without making compensating adjustments to other Settlement provisions, the Commission "deprived Atmos Energy a significant benefit of the

bargain it negotiated in the uncontested Settlement.” It suggests that such additional adjustments could include lower annual DSM savings goals and budget and allowing recovery of additional years of lost revenues for DSM measures with longer lives.

D. Commission Findings and Conclusions

16. While we remain extremely concerned about the internal inconsistency that the Settlement establishes between the bonus mechanism and the annual savings goal (*i.e.*, that the Company projects its DSM bonus hitting the maximum allowed 25 percent of expenditures even prior to achieving 100 percent of its savings target), we find that the Company’s RRR filing provides a modicum of additional insight into the nature of the compromises the parties made in arriving at the Settlement, and are persuaded that there is sufficient reason to overturn our prior Decision. It is clear that the inclusion of the SCE in cost-effectiveness analysis expands the range of cost-effective measures, some of which will continue providing savings for decades and possibly contributing to higher levels of lost revenues than is the case for Atmos’s current DSM programs. The RRR application clarifies that the Company’s willingness to modify its direct case position regarding lost revenues (proposing that it should be allowed to collect lost revenues for the lives of the installed DSM measures rather than solely for their first-year savings) was conditioned upon the substantially more generous bonus that the Settlement provides for. As is the nature of cases that settle, we have little to no insight into the other tradeoffs that the parties worked through in coming to the agreements embodied in the Settlement.

17. If we were to reject the RRR outright or to reject it in part and grant the Company’s request for additional process in this Proceeding, all parties would, as the Company contends, be required to relitigate at least some of the issues they worked through in the process of developing the Settlement. Arriving at a bonus consistent in magnitude to the Company’s

historic bonuses would almost certainly involve concessions regarding the savings goal, lost revenue compensation, or both. Although we remain highly dissatisfied with the perverse incentive created by the bonus mechanism, we find that the potential benefit of resolving the issues posed by the Settlement would almost certainly come at the expense of additional lost revenue compensation and significant additional litigation costs for the parties and for the Commission. On balance, we find that upholding the directives in Decision No. C24-0108 regarding the inclusion of the SCE in the calculation of net economic benefits would create little if any additional benefit for Atmos ratepayers, and therefore would not be in the public interest. Accordingly, we grant the Company's RRR, reverse Decision No. C24-0108 on this matter, and uphold ALJ Han's Recommended Decision.

18. While we are granting the Company's RRR, we wish to emphasize that the parties to this Proceeding presented the Commission with a Settlement suffering evident shortcomings, but without evident countervailing benefits. As discussed above, the Settlement is internally inconsistent in that the bonus mechanism hits a cap before the Company achieves its savings goal. While we are accepting this situation in this particular case as a pragmatic resolution of other issues, we are unlikely to accept such internal inconsistencies in the future. We direct the Company, and encourage all parties, to avoid such problematic settlement provisions in the future.

II. ORDER

A. The Commission Orders That:

1. The Company's Application for Rehearing, Reargument or Reconsideration of Decision No. C24-0108, filed March 13, 2024, is granted, consistent with the above discussion.

2. The 20-day time period provided pursuant to § 40-6-114, 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.

3. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
April 3, 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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MEGAN M. GILMAN

TOM PLANT

Commissioners