

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.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ALENKA HAN
APPROVING UNANIMOUS NON-COMPREHENSIVE
STIPULATION AND SETTLEMENT AGREEMENT,
DENYING REQUEST TO ADD BENEFICIAL
ELECTRIFICATION PROPOSAL TO NEXT DSM, AND
GRANTING APPLICATION**

Mailed Date: January 9, 2024

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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, in Proceeding No. 22A-0579G “for the development and approval of DSM energy savings targets, estimated budgets, and cost recovery procedures, and DSM bonus structure.”² The Company sought approval of its plans for energy savings and peak demand reduction goals; its estimated budget for its DSM program; its proposal to include modifying factors in its total resource cost (TRC) test to account for non-energy societal benefits; its proposed funding and cost-recovery mechanisms; its proposed financial bonus structure for its DSM programs; and its proposed cost effectiveness methodology.³

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.⁴

3. The following 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; and

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

² Notice of Application Filed, May 3, 2023.

³ Verified Application, § II, pp. 2-3.

⁴ *Id.*

- Commission Trial Staff filed a Notice of Intervention as of Right on May 25, 2023.

4. The Colorado Energy Office (CEO) also filed an Intervention of Right on June 1, 2023, but withdrew it on July 12, 2023.⁵

5. In addition, two entities moved to intervene in this Proceeding:

- 1) Southwest Energy Efficiency Project (SWEEP) filed its Motion to Intervene on June 1, 2023; and,
- 2) Energy Outreach Colorado (EOC) filed an Unopposed Motion to Intervene on June 2, 2023.

Decision No. R23-0476-I, issued July 27, 2023, granted both Motions to Intervene.

6. The parties to this Proceeding therefore are Atmos, UCA, SWEEP, EOC, and Trial Staff.

7. 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.

8. In compliance with the Commission's Notice of Application Filed, the parties submitted the following pre-filed testimony, along with attached exhibits:

- 1) Atmos filed Hearing Exhibit 100, the direct testimony of Ken Fogle, its Vice President of Marketing, on June 30, 2023;
- 2) On August 18, 2023, Intervenors filed the following Answer Testimony:
 - a) Trial Staff filed Hearing Exhibit 200, the answer testimony of Seina Soufiani, Chief Engineer/Section Chief of the Commission's Engineering Section in Fixed Utilities; and Hearing Exhibit 201, the answer testimony of Aaron Moseley, Professional Engineer with the PUC;
 - b) UCA filed Hearing Exhibit 300, the answer testimony of Chris Neil, a rate/financial analyst with UCA; and,
 - c) SWEEP filed Hearing Exhibit 500, the testimony of Justin Brant, its Utility Program Director.

⁵ See Notice of Withdrawal of Intervention by Right of the Colorado Energy Office, July 12, 2023.

- 3) Finally, on September 22, 2023, the parties filed their respective Cross-Answer and Rebuttal Testimony:
 - a) Atmos filed Hearing Exhibit 101, the rebuttal testimony of Ken Fogle, and Hearing Exhibit 102, the rebuttal testimony of Kathleen Ocanas, Atmos' Vice President of Rates and Regulatory Affairs;
 - b) UCA filed Hearing Exhibit 301, the cross-answer testimony of Chris Neil;
 - c) EOC filed Hearing Exhibit 400, the cross-answer testimony of Andrew Bennett, its Vice President of Advocacy; and
 - d) SWEEP filed Hearing Exhibit 501, the cross-answer testimony of Justin Brant.

9. Decision No. R23-0476-I adopted a procedural schedule to which the parties had agreed and scheduled an evidentiary hearing for November 16 and 17, 2023.

10. On October 31, 2023, counsel for Atmos, Nikolas Stoffel, advised the undersigned ALJ that the parties (hereinafter referred to Settling Parties) had reached a settlement agreement in principle with respect to all but one issue. The Settling Parties filed their Unanimous Non-Comprehensive Stipulation and Settlement Agreement on November 2, 2023.

11. At the Settling Parties' request, the undersigned ALJ issued Decision No. R23-0739-I on November 1, 2023, granting the Settling Parties up to and including November 9, 2023, within which to file testimony supporting their settlement.

12. Subsequently, on November 2, 2023, 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, issued November 14, 2023, granted the Settling Parties' request to modify the current procedural schedule to allow them up to and including December 1, 2023, to file briefs addressing their respective

positions regarding the BE issue, which would have been the deadline for submitting Statements of Position had this matter proceeded to an evidentiary hearing.

13. Decision No. R23-0756-I also admitted into evidence the exhibits and pre-filed testimony the parties had submitted by November 2, 2023.

14. On November 9, 2023, Atmos and Trial Staff filed testimony in support of the settlement. Specifically, the following settlement testimony was filed:

- Hearing Exhibit 103, Settlement Testimony of Ken Fogle;
- Hearing Exhibit 202, Settlement Testimony of Seina Soufiani; and
- Hearing Exhibit 203, Settlement Testimony of Aaron Moseley.

15. Contemporaneously with its Motion to Modify the Procedural Schedule, Atmos moved for approval of the Unanimous Non-Comprehensive Stipulation and Settlement Agreement (Settlement Agreement). In its Motion for Approval of Stipulation, Atmos represented that all parties to this Proceeding believe that the settlement is in the public interest and that the Settlement Agreement should be approved without modification.

16. As noted above, one issue raised in this Proceeding remains unresolved. SWEEP and the Company were unable to come to an agreement regarding Atmos' obligations in its next DSM Plan application. Specifically, SWEEP maintains that Atmos should be required to formulate a plan for providing incentives for BE in its next DSM proceeding; Atmos objects to this proposal. This issue will be addressed below.

17. The undersigned ALJ now considers the Settling Parties' proposed Unanimous Non-Comprehensive Stipulation and Settlement Agreement.

II. TERMS OF THE SETTLEMENT AGREEMENT

18. The Settlement Agreement includes the following terms and conditions:

A. DSM Savings Goal⁶

19. The Settling Parties agree that Atmos' next DSM Plan "will be designed to reach an annual savings goal of approximately 64,051 Dekatherms [(Dth)] per year." The specifics of how Atmos will attain its savings goal will be included in Atmos' 2024-2027 DSM Plan.⁷ This savings goal was proposed by Mr. Fogle in his Rebuttal Testimony.

B. DSM Budget⁸

20. The Settling Parties agree that Atmos' next DSM Plan "will be designed to reach annual expenditures on DSM of approximately \$2 million."⁹ Mr. Fogle suggests that this budget will cover Atmos' expenses in attaining its DSM savings goals. This budget was likewise proposed by Mr. Fogle in his Rebuttal Testimony and is acceptable to all the Settling Parties.

C. Calculation of Benefits for DSM Bonus¹⁰

21. The Settling Parties agree that the benefits for any DSM bonus Atmos may receive will be calculated pursuant to Rules 4760(f) and 4753(o) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-4, and will include the Social Cost of Emissions (SCE) and Non-Energy Benefit (NEB) adders.

22. Although the inclusion of SCE and NEBs in Atmos' bonus calculation is permitted under the Commission's recently-adopted Gas Rules, it is a novel approach and results in the potential for an increased bonus for the Company. The Settling Parties were asked to clarify the bonus structure and provided a chart illustrating and comparing Atmos's actual 2022 benefits and

⁶ Rebuttal Testimony of Ken Fogle, p. 4, lines 15-18.

⁷ Unanimous Non-Comprehensive Stipulation and Settlement Agreement (Settlement Agreement), ¶ 12.a., p. 3.

⁸ Rebuttal Testimony of Ken Fogle, p. 4, lines 15-18.

⁹ Settlement Agreement, ¶ 12.b., p. 3.

¹⁰ *Id.* ¶ 12.c., p. 3.

savings with its planned 2026 benefits and savings. Notably, the comparison chart shows an increase in total mTRC net benefits from the 2022 actual amount of \$420,022 to a 2026 projected amount of \$5,792,253. This reflects an increase over ten-fold. The projected net benefits bonus skyrockets from the 2022 actual amount of \$266,252 to \$5,792,253. And the final bonus, once all factors are calculated and bonus cap implemented, rises from the 2022 actual of \$52,450 to a projected 2026 value of \$500,000. When broken down to the amount of bonus per annual Dth, the increase is clear: from an actual 2022 figure of \$1.26 per Dth to a projected 2026 value of \$7.81 per Dth.¹¹

23. Atmos has also estimated that its bonus will hit the statutory maximum of 25 percent of DSM expenditures when it reaches “96% goal attainment or 61,500 Dekatherms, *assuming benefits scale proportionally with annual savings.*”¹² (Emphasis added.) As the graph the Settling Parties provided with their Joint Responses to the undersigned ALJ’s posed questions illustrates, the bonus would increase exponentially in the absence of a bonus cap.¹³

24. Yet, having unanimously agreed to this provision – paragraph 12.c — of the Settlement Agreement, none of the Settling Parties object to this financial structure or bonus calculation. Atmos noted in its Joint Response to the undersigned ALJ’s posed questions, that its 2026 proposal shifts “towards measures with higher costs and higher lifetime savings. This combined with the addition of greenhouse gas benefits as required by Rule 4760(f), has resulted in higher benefits and net benefits per first year therm, resulting in a higher bonus.”¹⁴ Indeed, Atmos explicitly stated that the potential for this higher bonus from “increased DSM

¹¹ Joint Responses to Decision No. R23-0762-I, Response to Question 1, pp. 1-3.

¹² *Id.* at Response to Question 2, p. 3.

¹³ *Id.* at p. 4.

¹⁴ *Id.* at p. 3.

expenditures and targets” incentivized it to “agree to a single year of lost revenues” and reach the Settlement Agreement with the Settling Parties.¹⁵

25. The ALJ finds and concludes that incentivizing Atmos to reach its DSM goals warrants the higher bonus structure contemplated by paragraph 12.c of the Settling Parties’ Settlement Agreement.

26. More importantly from a regulatory compliance perspective, as noted above, amendments adopted in the Gas Rules anticipate and permit this bonus structure. The applicable Rules to which the Settlement Agreement refers provide as follows:

Rule 4760:

(e) For the purposes of calculating the bonus, the costs and benefits associated with an income-qualified DSM program may be excluded from the calculation of the net economic benefits for the entire DSM portfolio if the modified TRC value for the income-qualified program is below 1.0. If the modified TRC value for the income-qualified program is above 1.0, the Commission may exclude the net economic benefits attributable to income-qualified programs from the bonus if the utility has met its targets for income-qualified programs.

(f) *For the purpose of calculating the bonus, the modified TRC shall be calculated in accordance with paragraph 4753(o), unless otherwise specified in paragraph 4760(e).*

Rule 4753:

(o) For the purposes of calculating and reviewing a modified TRC, the following components shall be included. Forecasted DSM costs and benefits are used to estimate the cost-effectiveness of DSM measures to develop a cost-effective DSM portfolio.

(I) Benefits shall include, but are not limited to, as applicable: the utility’s avoided transmission and distribution capital cost savings associated with reductions or limited growth in design peak demand; energy costs; the participant’s avoided operating and maintenance costs; the valuation of avoided greenhouse gas emissions; and non-energy benefits, as set forth in this rule 4753. *The valuation of avoided greenhouse gas emissions shall*

¹⁵ *Id.*

include the social cost of carbon dioxide and the social cost of methane, consistent with rule 4528.

(II) Costs shall include utility and participant costs. The utility costs shall include the net present value of costs incurred in accordance with the budget set forth in rule 4753. For comparative purposes, in addition to this base case calculation of cost-effectiveness, the utility may also provide a case that does not include the social costs of carbon dioxide and methane. Forecasted DSM costs and benefits are used to estimate the cost effectiveness of DSM measures to develop a cost-effective DSM portfolio.

(III) The initial TRC ratio, which excludes consideration of societal benefits, shall be multiplied by a factor established by the Commission in the utility's strategic issues proceeding to reflect the value of the societal and non-energy benefits. The result shall be the modified TRC. A utility may propose for approval a different factor for societal impacts, but must submit documentation substantiating the proposed value.

(IV) A determination of cost-effectiveness using the modified TRC test by the Commission will ultimately be measured at the DSM portfolio level.

(V) For purposes of evaluating a gas DSM program or measure that incorporates innovative technologies with the potential for significant impact, such as energy-saving technologies that go beyond what is achievable using energy efficiency measures alone, the Commission may find the program or measure cost-effective, even if its initial benefit-cost ratio is not greater than 1.0 when calculated using currently available data and assumptions

(Emphasis added.) Thus, because SCE was included in the TRC, Rule 4760(f) permits SCE to be included in the bonus calculation.

27. For these reasons, the ALJ finds and concludes that paragraph 12.c should be approved without modification.

D. DSM Bonus Structure¹⁶

28. The Settling Parties have agreed to a graduated recovery scheme under which the amount of Atmos' net benefits recovery will be set at six (6) percent for meeting 80 percent of its annual DSM savings goal; increase by 0.2 percent of net benefits for each one (1) percent of

¹⁶ Settlement Agreement, ¶ 12.d, p. 3.

additional goal attained up to 100 percent; and increase 0.4 percent of net benefits for each additional one (1) percent of goal attainment achieved from 100 to 125 percent. This structure was proposed and articulated by UCA. As noted above, the potential bonus generated could be substantially greater than the bonus Atmos had previously enjoyed, but should provide incentives for it to meet its DSM goals.

E. Income Qualified (IQ) Bonus:¹⁷

29. Atmos has agreed to forego a separate bonus for Income Qualified (IQ) expenditures.

F. Adjustment for Lost Revenues (ALR):¹⁸

30. The Settling Parties have agreed to a method for Adjusting for Lost Revenues (ALR) dependent upon the undersigned ALJ's determination of the BE issue. If Atmos is not required to include BE in its next DSM Plan, it "will be allowed to recover ALR for one year." If, on the other hand, it is required to include BE and its application for decoupling is approved, "there will be no change to the calculation of benefits for any DSM bonus for Atmos." Put differently, if Atmos is permitted to decouple it will not seek an additional bonus; but if decoupling is barred, it will be able to recover some of its resulting lost revenues through a bonus. The BE issue will be addressed below.

G. Methane Leakage Rate:¹⁹

31. Atmos will use a methane leakage rate of 2.2 percent for its DSM Plan. This figure represents a compromise on Atmos's part, which had originally sought a zero percent methane

¹⁷ Settlement Agreement, ¶ 12.e, p. 4.

¹⁸ *Id.* at ¶ 12.f, p. 4.

¹⁹ *Id.* at ¶ 12.g, p. 4.

leakage rate. The agreed-upon methane leakage rate of 2.2 percent was recently adopted by the Commission in Public Service's most recent strategic issues proceeding.

H. NEB Multipliers:²⁰

32. The Settling Parties have agreed that Atmos will use NEB adders of 1.1 for market programs and 1.5 for IQ programs in its DSM Plan but will not apply NEB adders to SCE benefits.

33. While the NEB adders accepted by the Settling Parties are in line with values retained by the Commission in Decision No. C23-0413, in Proceeding No. 23A-0309EG, issued June 22, 2023, the undersigned ALJ notes that these values may need to be reduced in the future. To compensate for the legislatively-mandated inclusion of the social costs of methane and carbon (SCM and SCC) in NEBs, the NEB adder value may need to be adjusted downward. The Commission so recognized when it instructed Public Service in Decision No. C23-0413, "to raise this issue in its next DSM plan filing where we intend to request that the parties work together to further explore this issue."²¹

34. Likewise here, should the set values for NEB adders be altered in the future, Atmos is directed to address this issue in its next DSM Plan filing. Atmos acknowledged as much in its Joint Responses to Decision No. R23-0762-I when it noted that "NEB multipliers for Atmos Energy's future DSM filings can be addressed in Atmos Energy's next DSM strategic issues proceeding, which will apply to Atmos Energy's subsequent DSM plan application."²²

²⁰ *Id.* at ¶ 12.h, p. 4.

²¹ Decision No. C23-0413, Proceeding No. 23A-0309EG, ¶ 121, p. 48, issued June 22, 2023.

²² Joint Responses to Decision No. R23-0762-I, Response to Question 3, p. 4.

I. Discount Rates:²³

35. The Settling Parties agree that Atmos will present financial analyses of its proposed DSM portfolio using both a discount rate of 2.5 percent and its weighted average cost of capital (WACC) for comparison in future DSM filings. Atmos will use its WACC in the calculation of the net economic benefits used to determine any DSM bonus.

J. DSM Program Offerings:²⁴

36. For new residential construction, incentives will only be available for properties using gas as a back-up fuel, and any incentives offered will “go toward the cost of gas appliances or building shell measures only.”

37. In their Joint Responses to questions posed by the undersigned ALJ, the Settling Parties clarified that “references to gas appliances was understood to refer to gas furnaces.” The Settling Parties expect that in residential construction in which gas is used as a back-up fuel, heat pumps would be “the primary source” providing the “heating needs for the majority of the year” at the residence. The Settling Parties concurred that further details about such incentive plans “would be determined in Atmos Energy’s next DSM Plan proceeding.”²⁵

III. BENEFICIAL ELECTRIFICATION (BE)²⁶

38. The final issue raised in this Proceeding is whether the Commission should mandate that Atmos address BE in its next DSM Plan proceeding. SWEEP maintains that Atmos should be required to include a plan for BE incentives in its next DSM Plan. Atmos disagrees. Both Atmos

²³ Settlement Agreement, ¶ 12.i, p. 4.

²⁴ *Id.* at ¶ 12.j, pp. 4-5.

²⁵ Joint Responses to Decision No. R23-0762-I, Response to Question 4, p. 5.

²⁶ Settlement Agreement ¶ 12.k, p. 5.

and SWEEP have filed briefs detailing their positions and arguments. Trial Staff, UCA, and EOC take no position on the issue and have not filed briefs.

K. SWEEP's Contentions

39. SWEEP argues that BE is one of the “pillars” of the State’s Greenhouse Gas Pollution Reduction Roadmap (Roadmap), first approved by the Governor and the State in 2021.²⁷ As SWEEP explains, the Roadmap envisions a 26 percent reduction in greenhouse gas emissions by 2025; 50 percent by 2030; and 90 percent by 2050.²⁸ It noted, too, that in 2023, the General Assembly revised these goals upward, pushing the State to achieve a 90 percent reduction in greenhouse gas emissions by 2045 and 100 percent by 2050.²⁹ To achieve this goal, the Roadmap relies on five “pillars” — energy efficiency; decarbonization of the electrical supply; reduction of non-combustion emissions; use of low-carbon fuels; and *electrification*.³⁰ Thus, SWEEP argues, to comply with the Roadmap’s mandate, Atmos should not be exempt from the State’s electrification pillar.

40. Underlying SWEEP’s argument is its belief that to achieve these goals all components of the energy grid and fuel supply chain, including utilities that do not provide electricity, must be encouraged to move toward electrification. It contends that Atmos can more efficiently achieve its own DSM goals by incentivizing its customers to electrify their homes by moving away from gas appliances to heat pumps and heat pump water heaters.³¹

41. In support of its contention, SWEEP points to numerous statutory provisions that permit — or at least do not exclude — gas utilities from electrification incentives. For example,

²⁷ Colorado Greenhouse Gas Pollution Reduction Roadmap, Jan. 14, 2021.

²⁸ Southwest Energy Efficiency Project’s Brief Regarding Beneficial Electrification, p. 2., Dec. 1, 2023.

²⁹ *Id.* at p. 2, n.1; *see also* § 25-7-102(2)(g)(I)(E) and (F), C.R.S.

³⁰ SWEEP’s Brief, p. 3.

³¹ *Id.* at pp. 8-9.

SWEEP cites to the definition of DSM programs for gas utilities, which the General Assembly amended in 2021 to expressly include beneficial electrification in DSM programs.³² Even more explicitly, the General Assembly enacted a provision expressly barring the Commission from “prohibit[ing] gas utilities from offering programs or incentives that encourage customers to replace gas-fueled appliances with efficient electric appliances.”³³ This, SWEEP argues, demonstrates that the legislature did not intend to exempt gas-only utilities such as Atmos from advancing BE.

42. SWEEP further argues that “gas-only utilities in other jurisdictions currently offer beneficial electrification incentives to their customers as part of existing DSM programs, including in Utah and Vermont.”³⁴ SWEEP’s Utility Program Director, Justin Brant, explained the out-of-state incentive programs in his Answer Testimony:

Leading gas utilities are beginning to offer beneficial electrification measures, either alone or in collaboration with electric utilities. For example, Vermont Gas currently offers incentives for heat pumps and heat pump water heaters to customers within its service territory. This gas-only utility is offering dual fuel heat pump, gas furnace systems for lease and sales to its customers as a way to reduce emissions, while also developing new revenue streams. Similarly, Dominion Energy in Utah offers incentives for dual fuel heating systems to its customers. For both of these gas-only utilities, customers can combine rebates from the gas utility with heat pump rebates from the electric utility or the state, to further bring down equipment costs.³⁵

However, Mr. Brant does not indicate whether the gas-only utilities he references were ordered to provide such incentives by their respective state public utilities commissions or if these highlighted utilities did so voluntarily and willingly.

³² § 40-1-102(6)(d), C.R.S.

³³ § 40-3.2-103(3.5)(a), C.R.S.

³⁴ SWEEP’s Brief, p. 8.

³⁵ Hearing Exhibit 500, Answer Testimony of Justin Brant, p. 19, lines 1-9.

43. Regardless, SWEEP maintains that Atmos will have difficulty reducing its emissions if it does not incentivize its customers to move away from gas appliances to more efficient electrical appliances.

44. Finally, SWEEP emphasizes that it is not seeking a specific incentive or target program for Atmos to adopt. Rather, SWEEP simply seeks to require that Atmos address the issue in its next DSM Plan application. The amount of incentive to be offered, when it would be offered, and how to would be implemented, would be up to Atmos to propose in its next filing.

L. Atmos's Contentions

45. In response to SWEEP's arguments, Atmos argues that requiring it to provide incentives to its customers for BE would impose an unfair burden on its gas-only customers. It contends that "it is unjust and unreasonable to charge the Company's gas customers for incentives that will not provide any direct benefits to those customers which are not associated with the costs to provide the utility service those customers are purchasing."³⁶ In other words, Atmos indicates that any BE incentives it offers would have to be garnered from an increase in its rates, which would be borne by its existing customers. Thus, those customers would be burdened with funding *other* customers' electrification.

46. In addition, Atmos points out that incentivizing its existing gas customers to convert to electric appliances would likely increase remaining customers' rates and expenses. As Atmos notes, certain of its expenses are fixed costs that would have to be distributed among an ever-smaller customer pool.³⁷ Consequently, in addition to an increase in rates to cover any

³⁶ Atmos Energy's Brief Regarding Beneficial Electrification, p. 3, Dec. 1, 2023.

³⁷ *Id.* at p. 4.

incentives, Atmos' remaining customers may also be burdened with a larger piece of the fixed cost pie should it lose customers to electrification.

47. In Atmos's view, the structure SWEEP is proposing is not anticipated by the General Assembly's recent statutory amendments, either. While it is true, as SWEEP points out, that the legislature did not expressly exclude gas-only utilities from BE and, in fact, does not permit the Commission to prohibit gas-only utilities from offering BE incentives,³⁸ it is also true that the statute addressing BE only applies to electric utilities. Section 40-3.2-109, C.R.S., governs "*electric utilities*" plans to increase BE in residential properties. Under that statute, enacted in 2021 and amended in both 2022 and 2023, the General Assembly now requires *electric utilities* to file a BE plan with the Commission at least every three years and enumerates a litany of items and information that must be included in the plans.³⁹ However, § 40-3.2-109 makes no mention of gas-only utilities and does not apply to them.

48. Finally, Atmos argues that requiring it to incentivize its customers to move away from gas appliances to electric ones essentially forces it to, in the words of UCA's Chris Neil, "pay to put [itself] out of business."⁴⁰ Contrary to SWEEP's position, UCA expressly "disagree[d] with SWEEP and agree[d] with Atmos in this respect. . . . [G]as-only utilities should [not] be required to provide incentives for converting from natural gas to electric."⁴¹

M. No Mandate to Cover BE in Next DSM Plan

49. Having reviewed the positions of SWEEP and Atmos thoroughly and carefully, the ALJ is persuaded that requiring Atmos to address BE in its next DSM Plan is not appropriate. As SWEEP argues, the General Assembly has made clear that time is short to move completely to

³⁸ See § 40-3.2-103(3.5)(a), C.R.S.

³⁹ See § 40-3.2-109(2), C.R.S.

⁴⁰ Hearing Exhibit 301, Cross-Answer Testimony of Chris Neil, p. 9, lines 1-2.

⁴¹ *Id.* at p. 8, line 19 – p. 9, line 1.

renewable and/or no emissions energy sources. It therefore might behoove Atmos to consider incorporating incentives for BE in its next DSM Plan as a means of helping it attain and achieve its emissions reduction goals. However, mandating the inclusion of BE in its DSM Plan is not warranted.

50. First, although the legislature permits gas-only utilities to offer BE incentives, it did not mandate them to do so. Arguably, the legislature even *encourages* gas-only utilities such as Atmos to offer BE incentives — *i.e.* the legislature banned the Commission from prohibiting gas utilities from offering such incentives⁴² — but that is not a mandate that they do so. Nothing in the statutes requires gas-only utilities to offer BE incentives, and SWEEP has not — and cannot — point to such a legislative or regulatory mandate.

51. Second, it is unclear if SWEEP's exemplar out-of-state gas utilities are acting at the behest of a regulatory agency. SWEEP has offered examples of gas-only utilities in Utah and Vermont offering BE incentives to their customers. While this is surely laudatory, SWEEP's explanation suggests that these out-of-state utilities are offering these incentives voluntarily rather than in response to a governmental or regulatory mandate that they do so. In fact, SWEEP has not offered any examples of gas utilities being required to include BE in their DSM plans.

52. Third, the ALJ is persuaded that requiring Atmos to include a plan for BE incentives in its next DSM Plan could negatively impact Atmos's existing customers. If, as Atmos indicates, any incentives it offers would come from a rate increase, its residential customers would bear the brunt of that increased expense with higher gas utility bills. Moreover, customers paying the higher bills — *i.e.* those customers who continue to use gas appliances and therefore require natural gas service — would not benefit from the electrification. As Atmos's Vice President of Rates and

⁴² See § 40-3.2-103(3.5)(a), C.R.S.

Regulatory Affairs, Kathleen Ocanas, put it: “If some customers choose to electrify their gas appliances, the remaining gas customers will already bear the impact associated with recovering systemwide costs over fewer customers and lower volumes. These same customers should not be required to fund the cost of electrification too.”⁴³ Thus, 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.”⁴⁴

53. For the above-stated reasons, the ALJ finds and concludes that Atmos should not be required to include or address BE in its next DSM Plan. Atmos is free to include such a discussion in its next DSM Plan and has license to offer such incentives in the future if it so chooses, but it will not be *required* to include BE in its next DSM Plan.

IV. FINDINGS AND CONCLUSIONS

54. The Settling Parties have the burden of proving by a preponderance of the evidence that the Settlement Agreement is just and reasonable. In reviewing the terms of the Settlement Agreement, the undersigned ALJ applied the Commission’s direction and policy with respect to reviews of settlement agreements as found in, *e.g.*, Decision No. C06-0259 in Proceeding No. 05S-264G, issued March 20, 2006.

55. The Commission has an independent duty to determine matters that are within the public interest.⁴⁵

56. The undersigned ALJ has reviewed the full administrative and evidentiary record, including: the direct, answer, and rebuttal testimony filed by the Settling Parties; the terms and conditions of the Unanimous Non-Comprehensive Stipulation and Settlement Agreement; the

⁴³ Hearing Exhibit 102, Rebuttal Testimony of Kathleen R. Ocanas, p. 14, lines 18-21.

⁴⁴ § 40-3-101(1), C.R.S.

⁴⁵ *See, Caldwell v. Pub. Utils. Comm’n*, 692 P.2d 1085, 1089 (Colo. 1984).

settlement testimony; the Unopposed Motion for Approval of Stipulation; Atmos's Joint Responses to Decision No. R23-0762-I answering the questions posed by the undersigned ALJ; SWEEP's Brief on BE; and Atmos's Brief on BE. Further, the ALJ has duly considered the positions of the Settling Parties in this matter and weighed the evidence presented.

57. Based on a review of the entire record, the undersigned finds that approval of the Application filed in this Proceeding is consistent with the Unanimous Non-Comprehensive Stipulation and Settlement Agreement and is in the public interest. The Unanimous Non-Comprehensive Stipulation and Settlement Agreement proposes a fair and timely resolution of all but one of the contested issues raised in this Proceeding, and substantial evidence shows that its terms will benefit the Settling Parties and Atmos's customers.

58. The ALJ further finds that the Settling Parties have established by a preponderance of the evidence that the Unanimous Non-Comprehensive Stipulation and Settlement Agreement is just, reasonable, in the public interest, and should be accepted by the Commission.

V. ORDER

A. It Is Ordered That:

1. The Unopposed Motion for Approval of Stipulation filed by Atmos Energy Corporation (Atmos) on November 2, 2023, on behalf of all parties to this Proceeding is granted, consistent with the discussion above.

2. The Verified Application seeking approval of its Demand-Side Management (DSM) Strategic Issues Plan (DSM SI Plan), filed by Atmos on May 1, 2023, is granted and approved as amended by the Unanimous Non-Comprehensive Stipulation and Settlement Agreement and this Decision, consistent with the discussion above.

3. The Unanimous Non-Comprehensive Stipulation and Settlement Agreement filed by the Settling Parties on November 2, 2023, and attached to this Decision as Attachment A, is approved, consistent with the discussion above.

4. Atmos will not be required to include a discussion addressing beneficial electrification in its next DSM Plan.

5. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b. If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

6. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

7. Response time to any exceptions filed is shortened to seven (7) days.

8. Proceeding No. 23A-0216G is closed.

(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