

Decision No. R23-0762-I

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
POSING QUESTIONS REGARDING SETTLEMENT, AND
VACATING HEARING**

Mailed Date: November 14, 2023

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

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

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

² Notice of Application Filed, May 3, 2023.

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. 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
- 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, 2023.⁴

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

- 1) Southwest Energy Efficiency Project (SWEET) 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, SWEET, 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;

³ *Id.*

⁴ *See* Notice of Withdrawal of Intervention by Right of the Colorado Energy Office, July 12, 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.
- 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. Under the current procedural schedule, the parties' post-hearing Statements of Position (SOPs) are due by December 1, 2023.

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

11. At the parties' request, the undersigned ALJ issued Decision No. R 23-0739-I on November 1, 2023, granting the 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 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 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. Given the parties’ settlement, no party is expected to file an SOP.

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 Siena Soufiani; and
- Hearing Exhibit 203, Settlement Testimony of Aaron Moseley.

II. UNOPPOSED MOTION FOR APPROVAL OF SETTLEMENT

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). Atmos represents that all parties to this Proceeding believe that the settlement is in the public interest and that this Proceeding can be resolved without a hearing.

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

- 1) Atmos' next DSM Plan "will be designed to reach an annual savings goal of approximately 64,051 Dekatherms [(Dth)] per year." The specifics will be included in Atmos' 2024-2027 DSM Plan;
- 2) Atmos' next DSM Plan "will be designed to reach annual expenditures on DSM of approximately \$2 million";
- 3) 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) 723-1. and will include the Social Cost of Emissions (SCE) and Non-Energy Benefit (NEB) adders;
- 4) The parties have agreed to a graduated recovery scheme under which the amount of Atmos' net benefits recovery will be set at 6 percent for meeting 80 percent of its annual DSM savings goal; increase by 0.2 percent of net benefits for each 1 percent of additional goal attained up to 100 percent; and increase 0.4 percent of net benefits for each additional 1 percent of goal attainment achieved from 100 to 125 percent;
- 5) Atmos has agreed to forego a separate bonus for Income Qualified (IQ) expenditures;
- 6) The 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, "there will be no change to the calculation of benefits for any DSM bonus for Atmos";
- 7) Atmos will use a methane leakage rate of 2.2 percent for its DSM Plan;
- 8) 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;
- 9) 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;;
- 10) 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."

17. The ALJ has reviewed the Settlement Agreement, settlement testimony, and Atmos' Unopposed Motion.

18. Based on this review, the ALJ finds that a hearing to answer questions about the Settlement Agreement is not necessary at this time, although a hearing may later be necessary to resolve remaining issues between the parties.

19. Nevertheless, the Settlement Agreement raises some immediate questions. The ALJ finds that it is in the public interest for the parties to clarify certain terms in the Settlement Agreement reached thus far. Therefore, the ALJ will order the parties to file, on or before **December 1, 2023**, written responses to the questions posed in this Order. Should the parties determine that amending the Settlement Agreement will respond to the ALJ's questions, the parties may file, on or before December 1, 2023, an Amended Settlement Agreement in lieu of, or in addition to, providing written responses to the questions posed.

20. The parties are directed to respond to the following questions:

- 1) With respect to Paragraphs 12.c and 12.d of the Settlement Agreement, please provide a quantitative comparison of the DSM bonus mechanism presented in paragraphs 12.c and 12.d of the Settlement Agreement with the bonus mechanism established for the Company's currently operating DSM programs (*i.e.*, the mechanism approved by Decision R19-0754, issued September 16, 2019, in Proceeding No. 19A-0224G). This comparison should include an analysis of estimated bonus per Dth of estimated first-year savings using the cost and savings projections presented in each case.
- 2) In addition, assuming the bonus mechanism proposed in the Settlement Agreement is adopted, please provide an estimate of the savings level, both in absolute terms and as a percentage of the proposed annual savings goal of 64,051 Dth, at which Atmos will hit the bonus cap of 25 percent of DSM expenditures set by Rule 4760(g), 4 CCR 723-1.
- 3) With respect to Paragraph 12(h) of the Settlement Agreement, do the parties anticipate using different NEBs multipliers in a future DSM Plan if the Commission were to adopt different values in the next Public Service Company of Colorado 2024-2026 DSM Plan?
- 4) With respect to Paragraph 12(j), how do the parties define "back-up fuel" and what is the minimum fraction of the annual heating load that must be provided by another heating source for gas to be considered a "back-up fuel"? Can any heating source — including wood, propane, or electric resistance — serve as the primary heating source for purposes of receiving

an incentive? And how do the parties define “gas appliances” and what “gas appliances” do the parties envision being incorporated into an incentive program?

21. It may be the parties’ opinion that some of the ALJ’s questions are not relevant either to this Proceeding or to the review of the Settlement Agreement. The parties nonetheless shall respond to the ALJ’s questions. If the parties believe that a question is not relevant, they may explain the basis for that belief or opinion in their responses.

22. If, after considering the ALJ’s questions, the parties believe that written responses will not allow them to respond adequately to the ALJ’s questions, the parties may request an evidentiary hearing in order to present testimony in support of the Settlement Agreement and to respond to the ALJ’s questions.

23. If the ALJ has additional or unresolved questions about the Settlement Agreement after receiving and reviewing the parties’ responses to the questions posed above, the ALJ may hold an evidentiary hearing in order to ensure that the ALJ understands the Settlement Agreement

III. VACATING HEARING

24. In light of the parties’ settlement and the ALJ’s determination that a hearing is not necessary at this time to explain the Settlement Agreement, the ALJ will vacate the evidentiary hearing scheduled for November 16-17, 2023.

A. It Is Ordered That:

1. Consistent with the discussion above, on or before December 1, 2023, Atmos Energy Corporation, Trial Staff, the Office of the Utilities Consumer Advocate, Southwest Energy Efficiency Project (SWEEP), and Energy Outreach Colorado (EOC) shall file written responses to the questions posed in this Order.

2. The evidentiary hearing scheduled for November 16 and 17, 2023, is vacated.
3. 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