

Decision No. R24-0592-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0632G

IN THE MATTER OF THE APPLICATION OF ATMOS ENERGY CORPORATION FOR APPROVAL OF ITS 2024-2028 CLEAN HEAT PLAN.

**INTERIM DECISION
POSING QUESTIONS REGARDING SETTLEMENT AND
SCHEDULING A HEARING ON THE SETTLEMENT**

Issued Date: August 15, 2024

I. PROCEDURAL BACKGROUND

1. On December 29, 2023, Atmos Energy Corporation (“Atmos Energy”) filed with the Commission its Verified Application (“Application”) seeking approval of its initial Clean Heat Plan (“CHP”). With the Application, Atmos Energy filed testimony and related exhibits. This filing commenced Proceeding No. 23A-0632G.

2. On January 17, 2024, the Office of Utility Consumer Advocate (“UCA”) timely noticed its intervention of right.

3. On February 2, 2024, Trial Staff of the Public Utilities Commission (“Staff”) timely noticed its intervention of right.

4. By Decision No. C24-0149-I, issued March 8, 2024, the Commission, among other things, referred this Proceeding to an Administrative Law Judge (“ALJ”).

5. By Decision No. R24-0208-I, issued April 3, 2024, the ALJ, among other things, adopted a procedural schedule to govern this Proceeding and scheduled an evidentiary hearing for August 13-16, 2024.

6. On August 1, 2024, Atmos Energy filed its Unopposed Motion to Modify Procedural Schedule, Admit Exhibits into Evidence, and for Approval of Stipulation (“Motion”). In the Motion, Atmos Energy stated that Atmos Energy, Staff, and UCA (the “Settling Parties”) entered into a Stipulation and Settlement Agreement, and requested that the evidentiary hearing be vacated, all pre-filed testimony and attachments in this Proceeding be admitted as evidence, and the Settlement Agreement be approved without modification by the Commission.

7. By Decision No. R24-0571-I, issued August 8, 2024, the undersigned ALJ admitted all pre-filed testimony and attachments as evidence in this Proceeding, vacated the evidentiary hearing, and requested that the parties maintain their availability on August 16, 2024 for a possible hearing on the settlement. Decision No. R24-0571-I further stated that the remaining relief requested in the Motion will be addressed by a separate decision.

II. ALJ’S QUESTION ON THE SETTLEMENT AGREEMENT AND HEARING ON THE SETTLEMENT AGREEMENT

A. ALJ’s Question regarding the Settlement Agreement

8. The Settlement Agreement states that it comprises a just and fair resolution of all issues between all parties in this Proceeding.¹ All parties in this Proceeding support the Settlement Agreement and request that the Commission approve it without modifications.²

¹ Settlement Agreement at 1, 3.

² *Id.* at 6; *see also generally*, Hearing Exhibit 116 (Settlement Testimony of Kathleen R. Ocanas Submitted on Behalf of Atmos Energy Corporation), Hearing Exhibit 203 (Eric Haglund Settlement Testimony Staff of the Colorado Public Utilities Commission), and Hearing Exhibit 301 (Testimony in Support of the Settlement of Dr. Scott E. England for the Office of the Utility Consumer Advocate).

9. As pertinent herein, the Settlement Agreement contains the following terms:
- The term of Atmos Energy’s initial CHP shall be through December 31, 2027.³
 - The Stipulated CHP Portfolio shall consist of Atmos Energy’s Preferred Portfolio, as modified below, plus incremental energy efficiency from the Emissions Target Portfolio (focused on the most cost-effective energy efficiency or conservation measures and Manufactured Home Early Retirement Pilot, as modified below). The Stipulated CHP Portfolio shall not include electrification, recovered methane, or thermal energy networks. The total estimated cumulative greenhouse gas emissions reductions from the Stipulated CHP Portfolio are approximately 40 percent higher than Atmos Energy’s original Preferred Portfolio over the same 3.25-year period.⁴
 - At least 25 percent of overall residential CHP expenditures, including expenditures for Income-Qualified (“IQ”) customers, shall be targeted to residential IQ customers.⁵
 - Total expenditures for the Stipulated CHP Portfolio shall not exceed \$11,907,500, divided roughly by year, as follows:
 - i. \$207,500 in 2024;
 - ii. \$1,350,000 in 2025;
 - iii. \$3,725,000 in 2026; and
 - iv. \$6,625,000 in 2027.⁶
 - CHP expenditures in 2027 shall not bind Atmos Energy to continue spending at those levels after 2027.

³ *Id.* at 3.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 4.

- Annual CHP cost recovery shall be within the statutory cost cap as calculated in Atmos Energy’s rebuttal testimony. The following amounts shall be recovered through the CHP Rider (discussed below) in each applicable year regardless of CHP expenditures in that year and shall not, cumulatively, exceed \$11,907,500:
 - i. \$877,500 in 2024;
 - ii. \$3.51 million in 2025;
 - iii. \$3.76 million in 2026; and
 - iv. \$3.76 million in 2027.⁷
- The stipulated budget amount shall be recovered from customers each year, with any excess collections recorded in a regulatory liability for future use on CHP resources. For this initial CHP, expenditures are expected to increase through 2027 as energy efficiency expenditures ramp up.⁸
- The CHP Rider proposed by Atmos Energy shall be approved with the CHP costs allocated between customer classes as recommended by Atmos Energy but recovered through volumetric charges only.⁹
- Atmos Energy shall be allowed to recover one year of lost revenues for new energy efficiency measures installed under the Stipulated CHP Portfolio, consistent with the stipulation in the Company’s last Demand Side Management (“DSM”) SI (“_____”) proceeding.¹⁰
- No miscellaneous proceeding shall be established to evaluate cost allocation and depreciation issues; those issues can be addressed in the next Atmos Energy rate case that includes a depreciation study.¹¹

10. The Commission must have an evidentiary record upon which to determine whether Commission approval of the Settlement Agreement is just and reasonable and in the public interest.¹² The undersigned ALJ requires additional information to ascertain whether the terms of the Settlement Agreement are just and reasonable and in the public interest. The ALJ

⁷ *Id.* at 4-5.

⁸ *Id.* at 5.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² See Rule 1408(b) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (“CCR”) 723-

finds and concludes that it is appropriate to expand the evidentiary record relevant to obtain more information on certain terms of the Settlement Agreement. Therefore, the ALJ will pose the questions/requirement listed below and conduct the hearing on the Settlement Agreement, as scheduled below

11. Consistent with the above, the ALJ will order the parties to file, on or before August 30, 2024, written responses to the questions posed in this Order. Should the parties determine that amending the Settlement Agreement would satisfactorily respond to the ALJ's questions/requirement, the parties may file on or before August 30, 2024, an amended settlement agreement (and/or amended settlement testimony), or in addition to, or in lieu of, providing written responses to the questions/requirement posed below.

12. The Settling Parties are directed to respond to the following questions on or before August 30, 2024:

- a) CHP Portfolios¹³: Please update Table 8 and Table 9 that appear in Attachment KRO-2 to Hearing Exhibit 101 to match the terms of the Settlement Agreement.¹⁴
- b) CHP Expenditures/Collections¹⁵: If by the end of the term of Atmos Energy's initial CHP (December 31, 2027), the CHP funds collected by Atmos Energy do not match Atmos Energy's CHP expenditures, how will any surplus or deficit of the amount collected by Atmos Energy be treated, and what impact might such surplus or deficit have on ratepayers during the term of Atmos Energy's initial CHP and/or thereafter.
- c) Cost Recovery¹⁶: Rule 4732(b)(II) states that in evaluating whether the clean heat plan is in the public interest, the Commission shall consider whether the plan can be implemented at the lowest reasonable cost and rate impact, taking into account savings to customer bills resulting from investments made pursuant to the plan. Have the parties considered the potential cost impacts of the volumetric approach to the CHP rider on income qualified customers,

¹³ See *id.*, at ¶10.b.

¹⁴ It appears that all but two of the columns of Table 8 and Table 9 in Attachment KRO-2 do not match the terms of the Settlement Agreement.

¹⁵ See Settlement Agreement, at ¶¶10.f.-h.

¹⁶ See *id.*, at ¶10.i.

customers in disproportionately impacted communities, and/or customers living in homes that are less weatherized or efficient and whose energy use might be above average compared to similar homes for that reason? If so, what were the results of that such considerations? If not, please share why the Settling Parties believe this rate design to be in the public interest?

d) Lost Revenues¹⁷:

- i. How is lost revenue calculated?
- ii. When and how is it determined for which year the term of Atmos Energy's initial CHP losses would be recovered?
- iii. The Settlement Agreement states that Atmos shall be allowed to recover one year of lost revenues for new energy efficiency measures installed under the Stipulated CHP Portfolio, consistent with the stipulation in the Company's last DSM SI proceeding, Proceeding No. 23A-0216G. Given that the facts, circumstances, and condition giving rise to the recovery of lost revenue pursuant to the stipulation in Proceeding No. 23A-0216G are different than in this Proceeding, the reference in the stipulation in Proceeding No. 23A-0216G appears to add unnecessary confusion to the Settlement Agreement. Therefore, please fully explain how recovery of lost revenues is contemplated in this Proceeding.

e) Miscellaneous Proceeding/Cost Allocation¹⁸:

- i. Have the parties considered adding a concrete deadline for when cost allocation by Atmos Energy will be addressed in the future? If so, what were the results of such considerations?

B. Hearing on the Settlement Agreement

13. As mentioned above, by Decision No. R24-0571-I, issued August 8, 2024, the evidentiary hearing scheduled for August 13-16, 2024 was vacated and the parties were requested that the parties maintain their availability on August 16, 2024 for a possible hearing on the settlement. In lieu of the questions/requirement posed herein, the parties need not maintain their availability for a hearing on the Settlement Agreement on August 16, 2024. However, this Decision schedules a remote hearing on the Settlement Agreement on September 5, 2024, which

¹⁷ See *id.*, at ¶10.j.

¹⁸ See *id.*, at ¶10.l.

the ALJ may vacate, depending on his assessment of the responses to the questions/requirement posed herein.

14. Although the parties did not specify their preferred hearing format, the ALJ notes that the previously-scheduled evidentiary hearing was set to be held in a remote format based on the parties' preference. Given the parties' preference for the formerly-scheduled evidentiary hearing to be held in a remote format, the ALJ will schedule the hearing on the Settlement Agreement on September 5, 2024 as a remote hearing.

15. The ALJ expects the parties to follow the requirements as set forth in Decision No. R24-0208-I regarding participation in the remote hearing on the Settlement Agreement.

16. 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 (<https://puc.colorado.gov/pucrules>).

17. The parties are on notice that failure to appear at the scheduled hearing on the Settlement Agreement may result in decisions adverse to the parties' interests.

III. ORDER

A. It Is Ordered That:

1. Consistent with the discussion above, on or before August 30, 2024, Atmos Energy Corporation (“Atmos Energy”), Trial Staff of the Colorado Public Utilities Commission, and the Office of the Utilities Consumer Advocate (the “Settling Parties”), shall file, as appropriate, written responses to the questions/requirement posed in ¶12 of this Decision, or file a revised version of the Unanimous and Comprehensive Stipulation and Settlement Agreement (“Settlement Agreement”), filed by Atmos Energy on August 1, 2024, and/or file revised Settlement Testimony for the Settlement Agreement.

2. A remote hearing on the Settlement Agreement is scheduled as follows:

DATE: September 5, 2024

TIME: 11:30 a.m. to 5:00 p.m.

WEBCAST: Commission Hearing Room B

METHOD: Join by video conference using Zoom at the link to be provided in an email from the Administrative Law Judge OR Commission Staff.¹⁹

¹⁹ Additional information about the Zoom platform and how to use the platform are available at: <https://zoom.us/>. All are strongly encouraged to participate in a test meeting prior to the scheduled hearing. See <https://zoom.us/test>.

3. This Decision shall be effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

AVIV SEGEV

Administrative Law Judge

ATTEST: A TRUE COPY

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

Rebecca E. White,
Director