Decision No. R14-1027

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14AL-0300G

IN THE MATTER OF ADVICE LETTER NO. 511 FILED BY ATMOS ENERGY CORPORATION TO PLACE INTO EFFECT TARIFF SHEET CHANGES TO BE EFFECTIVE ON MAY 5, 2014

RECOMMENDED DECISION OF ADMINISTRATIVE LAW JUDGE MELODY MIRBABA APPROVING STIPULATION AND SETTLEMENT AGREEMENT

Mailed Date: August 26, 2014

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I. STATEMENT

1. This matter comes before the Commission for consideration of the Stipulation and Settlement Agreement filed on August 8, 2014 (Settlement Agreement), in the above-captioned rate case proceeding initiated by Atmos Energy Corporation (Atmos Energy or the Company). The Settlement Agreement (including Attachments 1, 2, and 3 thereto), attached hereto as Appendix A, is signed by Atmos Energy, Trial Staff for the Public Utilities Commission of the State of Colorado (Staff), the Colorado Office of Consumer Counsel (OCC), and Energy Outreach Colorado, (EOC), (collectively, the Parties and individually a Party). The Settlement Agreement is unopposed.

2. Now being fully advised in the matter, and for the reasons and authorities set forth herein, the Administrative Law Judge (ALJ) finds that the resolution of this proceeding, as achieved by the Settlement Agreement, is just and reasonable, and in the public interest, and that the Settlement Agreement results in just and reasonable rates that are nondiscriminatory for the utility service provided by the Company in Colorado. For the reasons set forth below,

the ALJ approves the resolution of the proceeding as agreed to by the Parties and reflected in the Settlement Agreement, since it is consistent with the standards of § 40-3-101, C.R.S.

A. Procedural Background.

3. On April 2, 2014, Atmos Energy filed Advice Letter No. 511 (Advice Letter) to implement an increase in its gas base rates. Atmos Energy requested that the tariffs become effective on May 5, 2014. Atmos Energy filed Direct Testimony and Exhibits with the Advice Letter, proposing an increase to the Company's annual revenues by $4,847,370, or approximately 4.43 percent, based on the 12 months ended on December 31, 2013.

4. During its weekly meeting held April 30, 2014, the Commission referred this matter to an ALJ for disposition. Decision No. C14-0452. At the same time, the Commission suspended the proposed effective date of the tariff page(s) filed by Atmos Energy with the Advice Letter for 120 days until September 2, 2014, or until further order of the Commission. *Id*. The Commission ordered that anyone wishing to intervene in this proceeding file a motion to intervene with the Commission within 30 days after the mailing date of Decision No. C14-0452. The Decision was mailed on May 2, 2014. Interventions were due by June 1, 2014.

5. On May 9, 2014, the ALJ scheduled a prehearing conference in this matter to take place on June 5, 2014. Decision No. R14-0494-I. The same Decision further suspended the effective date of the tariff page(s) to December 1, 2014.

6. The OCC and Staff timely intervened of right. Staff and the OCC requested an evidentiary hearing on the Advice Letter and tariff sheets.

7. On May 14, 2014, EOC filed a Motion to Intervene, seeking permissive intervention in this proceeding. By Decision No. R14-0618-I, the ALJ granted EOC's Motion to Intervene.

8. On June 5, 2014, the prehearing conference was held. During the hearing, the Parties agreed to, and the ALJ approved, hearing dates, public comment hearing dates, and procedural deadlines. Decision No. R14-0618-I.

9. On June 17, 2014, Atmos Energy re-filed its Direct Testimony as Hearing Exhibits 2 through 13.

10. On July 8, 2014, Answer Testimony was submitted by Staff as Hearing Exhibits 100 through 104, the EOC as Hearing Exhibits 200 through 201, and the OCC as Hearing Exhibits 300 through 301. Additionally, the OCC submitted its Intervention as Hearing Exhibit 302.

11. On July 28, 2014, Atmos Energy submitted its Rebuttal Testimony as Hearing Exhibits 14 through 20. The Rebuttal Testimony of the Company resulted in a lowering of the requested revenue requirement increase from $4,847,370 to $4,431,533.

12. On July 30, 2014, the Parties participated in a settlement conference.

13. On August 1, 2014, EOC filed a "Motion to Strike Certain Rebuttal Testimony" (Motion to Strike).

14. On August 8, 2014, Atmos Energy, Staff, EOC, and the OCC filed the Settlement Agreement which resolved all of the issues that were raised by all of the Parties in this proceeding. Pursuant to the terms of the Settlement Agreement, the Parties agreed to the admission of all pre-filed testimony and exhibits filed in this proceeding and waived cross-examination on such pre-filed testimony and exhibits.

15. Simultaneously with the Settlement Agreement, Atmos Energy filed an "Unopposed Joint Motion to Approve Stipulation and Settlement Agreement, to Modify Procedural Schedule and For Waiver of Response Time" (Unopposed Joint Motion).

16. Decision No. R14-0976-I granted the Unopposed Joint Motion in part, vacating the remaining procedural deadlines, vacating the final prehearing conference, vacating the deadline to respond to EOC's Motion to Strike, vacating the hearing scheduled for August 13 and 15, 2014, but retaining the August 14, 2014 hearing date.

17. On August 14, 2014, the Parties appeared for an evidentiary hearing to provide testimony in support of the Settlement Agreement pursuant to Decision No. R14-0976-I. During the course of the hearing, the Parties provided additional testimony in support of the Settlement Agreement (Appendix A). In particular, Mr. Christian, Mr. Kunzie, Mr. Arnold, and Mr. Skluzak testified at the hearing.

18. During the course of the hearing, the following exhibits were admitted into evidence by administrative notice: Hearing Exhibits 2 through 22; Hearing Exhibits 100 through 104; Hearing Exhibits 200 through 201; and Hearing Exhibits 300 through 302, including all attachments to such Hearing Exhibits.[1] Hearing Exhibit 1 was also admitted into evidence, (but not by administrative notice).

II. PUBLIC COMMENTS

19. Based on its long-standing practice, the Commission invited public comment on the issues presented in this matter. The Commission believes that, although institutions such as the OCC represent the interests of certain consumers before the Commission, it is important to have a direct connection to interested and affected individuals and groups.

[1] With the exception of Hearing Exhibit 1, the electronic, pre-filed copies in the Commission's administrative record of all Hearing Exhibits were admitted by administrative notice. The fact administratively noticed is that the electronic pre-filed copy in the administrative record is the content of the otherwise admissible hearing exhibit.

20. In this Proceeding, the Commission received 53 written comments. The topics include general opposition to the increase, the poor economy and ratepayers' inability to pay for an increase, the difference in the proposed increase for residential customers versus commercial customers, and the low price of natural gas.

21. Two public comment hearings were held in this proceeding. On June 19, 2014, several people attended the Greeley public comment hearing although no one chose to speak. The second public comment hearing was held in Canon City on July 1, 2014, but no members of the public attended.

22. As is the Commission's practice, the ALJ read and considered the written comments from members of the public.

III. FINDINGS AND DISCUSSION

A. Summary of the Pre-Filed Testimony.

1. Atmos Energy

23. Along with its Advice Letter, Atmos Energy filed the direct testimony of seven witnesses, which are summarized below:

- Karen P. Wilkes: Introduced the Company's other witnesses, provided an overview of the Company's operations, and discussed the principal factors leading Atmos Energy to make the rate filing.
- Joe T. Christian: Discussed the basis for the 2014 rate filing; sponsored the revenue requirements, the Company's cost of service studies, projected operation and maintenance (O&M) as well as the taxes (other than income taxes), included in the cost of service studies; explained the inclusion of all AMI investment in base rates; supported the Company's proposed capital structure and imbedded cost of debt; and updated the proposed construction allowances to reflect the updated imbedded cost of mains and services.
- Ann E. Bulkley: Provided a recommendation regarding the need for a fair and reasonable return on equity.

- Paul H. Raab: Presented and supported the Company's class cost of service study and proposed cost allocation, rate design, and the proposed rates.

- Thomas H. Petersen: Discussed the Company's rate base calculation and the calculation of depreciation expense and cash working capital.

- Jared N. Geiger: Presented the Company's billing determinants in support of the respective base rate revenue increases over the test period.

- Jason L. Schneider: Provided support for the Company's historic books and records, sponsored the Company's cost assignment and allocation manual, and presented the methodology for cost allocation and the shared services allocations.

2. Commission Staff

24. In response to Atmos Energy's direct testimony, Staff filed answer testimony of five witnesses, which are summarized below:

- Karlton Kunzie: Introduced Staff's other witnesses and addressed the timing of the Company's rate filing, the Company's proposed rate base calculation, the Company's proposal for inclusion of AMI costs, the Company's proposal to include gas storage inventory costs in rate base, the Company's proposal for inclusion of construction work in progress in rate base, the Company's proposal to amortize a one-time increase in executive retirement expenses, the Company's proposal on rate case expenses, and Staff's recommended revenue requirement increase.

- Dr. Scott E. England: Discussed the Company's requested capital structure and rate of return on rate base; provided Staff's recommended rate of return on equity and the proper level of debt and cost of debt to use in the overall rate of return; and provided Staff's recommended return on rate base (or weighted average cost of capital) for Staff's test period.

- Richard Reis: Addressed the Company's cost classification and allocation methodology and discussed the Company's proposal to increase the facility charge for residential customers from the existing $10.75 per bill to $15.75.

- Sandi M. Kahl: Categorized and summarized more than 50 public comments received regarding this proceeding.

- William W. Harris: Addressed weather normalized billing determinants, the Company's proposal on the use of a declining usage factor, and the associated revenues for Staff's revenue requirement.

3. OCC

25. In response to Atmos Energy's direct testimony, the OCC filed answer testimony of two witnesses, which are summarized below:

- Cory Skluzak: Introduced the OCC's other witness; addressed the Company's history of rate increases, their impact on ratepayers, the recently concluded 2013 rate case proceeding, the Company's adjusted historic test year (HTY) rate base and income statement items; recommended numerous adjustments to the Company's rate base and income statement as well as several conditional recommendations; sponsored the OCC's revenue requirement model; and addressed the Company's Phase II proposals regarding cost allocation and rate design change to increase the fixed customer charge.

- Ronald Fernandez: Addressed adjustments to the OCC's revenue requirement model for the HTY ending December 31, 2013 on rate of return issues, including the OCC's recommended capital structure and return on equity proposals.

4. EOC

26. In response to Atmos Energy's direct testimony, EOC filed answer testimony of two witnesses, which is summarized below:

- William B. Marcus: Identified and addressed certain incentive compensation and other head office cost issues related to the Company's proposed revenue requirement; sponsored a cost of service study that reduced both the allocation of costs to the residential class and the residential customer cost; and addressed the Company's proposal to increase the residential customer charge.

- Sanders Arnold: Provided information regarding the demographics and usage characteristics of the low-income utility customer population and the impact on such customers of the Company's proposed residential customer charge.

5. Atmos Energy's Rebuttal

27. In addition to the direct and answer testimony filed in this proceeding, Atmos Energy filed the rebuttal testimony of seven witnesses, which is summarized below:

- Joe T. Christian: Introduced the Company's other rebuttal witnesses; responded to issues raised by the OCC and Staff related to the Company's

proposed capital structure and adjustments to certain income statement expenses; responded to issues raised by the OCC and EOC regarding incentive compensation; and commented on Staff's testimony related to the public comments filed in this proceeding.

- Ann E. Bulkley: Responded to Staff and the OCC as it relates to the just and reasonable return on equity and the appropriate capital structure for Atmos Energy in Colorado.
- Paul H. Raab: Responded to Staff, OCC, and EOC's assertions related to the Company's class cost of service study, implied class revenue responsibility, proposed rate design and the relationship between income and usage; presented and supported the Company's final class cost of service study and resulting rate designs, based on a revised revenue requirement that reflects a Staff O&M adjustment and to reflect the adjustment to rate case expense disclosed in discovery.
- Thomas H. Petersen: Responded to the OCC and Staff regarding the Company's rate base calculation, the calculation of depreciation expense, and the cash working capital.
- Jared N. Geiger: Responded to Staff and the OCC regarding the proration adjustment to bills, weather normalization, and the declining usage adjustment.
- John M. Robbins: Responded to the OCC and EOC regarding Atmos Energy's incentive compensation plans.
- John R. Ellerman: Further responded to the OCC and EOC regarding Atmos Energy's incentive compensation plans.

28. At the hearing on August 14, 2014, Mr. Christian, Mr. Kunzie, Mr. Arnold, and Mr. Skluzak testified in support of the Settlement Agreement. *Supra,* ¶¶ 49-56.

B. Summary of the Contested Issues.

29. The Parties' initial positions on the issues relevant to the Settlement Agreement are summarized below.

1. Return on Equity and Capital Structure.

30. Atmos Energy identified 10.00 to 10.75 percent as a reasonable range for its Return on Equity (ROE) and proposed an authorized ROE of 10.40 percent. The Company proposed a capital structure consisting of 55.78 percent common equity and 44.22 percent

long-term debt, based on the end of the period, February 28, 2014. Staff recommended a capital structure of 48.76 percent debt and 51.24 percent equity and an authorized ROE of 9.57 percent. The OCC recommended an ROE for Atmos Energy of 9.20 percent and a test period end capital structure of 52.01 percent equity and 47.99 percent debt.

2. End of Year v. 13-Month Average Rate Base.

31. The Company used end of year rate base (as of December 31, 2013) to prepare the baseline cost of service study. Staff and OCC both recommended that the Commission reject Atmos Energy's use of year-end rate base and use of 13-month average rate base instead.

3. Gas Storage Inventory and Working Capital.

32. Atmos Energy proposed to include net plant in service, storage gas, accumulated deferred income tax, customer advances, customer deposits, prepaid pension, other prepayments, and cash working capital requirements in rate base. Staff and the OCC recommended that gas storage inventory should be removed from rate base and a carrying charge based upon short-term interest rates should be collected in the Gas Cost Adjustment (GCA). The OCC also recommended adjustments due to the inclusion of prepayments in working capital and cash requirements in cash working capital.

4. Residential Facilities Charge.

33. Atmos Energy proposed to increase the residential facilities charge (also known as fixed facilities charge or services and facilities charge) from $10.75 per month to $15.75 per month, an increase of approximately 47 percent. Staff, EOC, and the OCC recommended that the Commission deny the Company's proposal to increase the facilities charge for residential customers. Staff recommended a General Rate Schedule Adjustment (GRSA) of 2.36 percent be

applied to all base rates for all services and to both the facilities charge and the usage charge to account for the class cost of service results.

5. Operation and Maintenance (O&M) and Administrative and General Expenses.

34. Staff recommended, in its Answer Testimony, a correction reducing rate case expense by $251,733, and that the Company use actual rate case expenses rather than projected or estimated rate case expenses. The OCC recommended, based on the Company's admission in a discovery response, a correction reducing rate case expense by $251,733. Further, the OCC recommended that the Company's proposed rate case expense for this proceeding of $553,466 be reduced to $310,455, and that the reduced rate case expense amount be amortized over three years.

35. The OCC recommended reversing and removing $333,333 from O&M as a result of the data integration (GIS) project. As a conditional recommendation, the OCC recommended that, if the Commission accepts the inclusion of $333,333 for the GIS project, that $130,378 of savings associated with this project should be applied as an offset.

36. Staff recommended a denial of one-time retirement cost adjustment of $88,124. The OCC recommended a denial of one-time retirement cost adjustment of $88,124 and recommended a denial of certain of the Company's incentive compensation programs and associated expense. EOC recommended executive compensation disallowance as follows: (1) short term incentives – disallow $715,016 in expenses and $361,352 in capitalized incentives; (2) long term incentives – disallow $484,931 expense that is allocated to Colorado; (3) supplemental executive retirement program – disallow $197,544 in test year expenses;

(4) disallow pensions for board of directors of $49,539 allocated to Colorado; and (5) disallow $23,727 of directors' and officers' liability insurance.

6. Test Year Revenues.

37. Staff recommended denying a Company adjustment that decreased revenues by $373,793 related to a declining usage projection. The OCC supports a revenue reduction of $341,684 based on its weather normalization methodology.

C. The Settlement Agreement.

38. The Settlement Agreement (Appendix A) is incorporated by reference in this Decision as if fully set forth herein and is summarized below.[2]

39. The Parties stipulate the Settlement Agreement proposes a resolution to all of the issues raised in this proceeding. Atmos Energy will be authorized a rate increase in annual base revenues of $2,400,000 (Settlement Rate Increase). The Company states this is an overall increase to customer bills of 2.11 percent. Attachment 1 to the Settlement Agreement (Appendix A) provides the calculations supporting the Settlement Rate Increase.

40. The revenue requirement is based on a historic test period of the 12 months ending December 31, 2013 (Settlement Test Period). The Settlement Rate Increase is calculated based on a rate base of $111,296,658 using the 13-month average methodology for the 2013 Historical Test Period.

41. A rate of return (ROR) on equity of 9.72 percent was utilized, which is the same percentage authorized in Proceeding No. 13AL-0496G. The capital structure consists of the

[2] The description of the Settlement Agreement is not intended to be a full and complete description of the entire Settlement Agreement. The Settlement Agreement speaks for itself and is incorporated by reference in this Decision as Appendix A.

actual test period year-end percentages of 48 percent debt and 52 percent equity. This results in a weighted average cost of capital of 8.04 percent. The Parties agreed that Atmos Energy's authorized ROR on equity for the purposes of any earnings evaluation and calculations in Atmos Energy's annual filing pursuant to Rule 4006(a) of the Rules Regulating Gas Utilities and Pipeline Operators, 4 *Code of Colorado Regulations* (CCR) 723-4, (also known as an Appendix A filing), until the effective date of rates in the next rate case shall be any ROR on equity determined to be within the range of 9.5 percent to 10 percent.

42. The Settlement Agreement addresses the revenue impact of all of Atmos Energy's per book investments associated with its statewide deployment of Advanced Metering Infrastructure (AMI). For purposes of this proceeding only, the Parties have agreed to a negative adjustment to the revenue requirement in this case to reflect imputed cost savings associated with Atmos Energy's AMI program in the amount of $624,000. This adjustment does not specifically accept or reject any particular adjustment or regulatory principle proposed by any of the Parties to this proceeding. The Parties intend that the imputed annual savings stated above shall accrue to customers by being reflected in rates at least through December 31, 2015.

43. The Settlement Agreement reflects rate case expenses of $350,000 for this proceeding and amortizes those expenses over two years. Atmos Energy agreed that it will not seek to reflect in its revenue requirement in any future rate case any unamortized balance of rate case expenses associated with this proceeding or Atmos Energy's last general rate case (Proceeding No. 13AL-0496G).

44. The Settlement Rate Increase includes a decrease in test year revenue of $341,684 associated with the adoption of the Weather Normalization Adjustment that uses the weather

normalization methodology from Atmos Energy's prior rate case (Proceeding No. 13AL-0496G) as described in Answer Testimony of OCC Witness Cory Skluzak.

45. As stated in the Settlement Agreement, the Settlement Rate Increase is allocated to the customer classes by increasing the non-gas revenues collected from each customer class (residential, small commercial and commercial, irrigation service, and transportation service) by a uniform 7.11 percent. Atmos Energy states the overall impact of the $2.4 million increase in annual base revenues will be an increase to customers' bills of 2.11 percent. Each class's rates were designed and included in the tariffs as Attachment 3 to the Settlement Agreement (Appendix A).

46. The Settlement Rate Increase shall go into effect as soon as practical but no later than November 1, 2014. Support for the calculation of the agreed-upon base rate increase and the derivation of the specific distribution system rates is provided in Attachment 2 to the Settlement Agreement (Appendix A). Upon approval of the Settlement Agreement, Atmos Energy will make a compliance Advice Letter filing on no less than two-day notice to implement tariff sheets included in Attachment 3 to the Settlement Agreement (Appendix A).

47. The Parties also reached agreements relating to Atmos Energy's future rate case filings. In particular, Atmos Energy agreed that any general rate case filed on or before December 31, 2015: (a) will be limited to revenue requirement issues (*i.e.,* will not include any class cost of service issues, also known as rate design issues and "Phase II" issues); and (b) will include a proposal by Atmos Energy that any Commission-approved revenue increase be implemented through a GRSA that applies a uniform percentage increase to all non-gas facilities charges and distribution system rates.

48. In addition, in any future rate case setting rates effective on or after January 1, 2016, the Staff, the OCC, and EOC each agree that they: (a) will not propose any adjustment to Atmos Energy's per book investments included as of December 31, 2013 associated with Atmos Energy's statewide deployment of AMI; and (b) will not propose any negative adjustment to Atmos Energy's revenue requirement to reflect imputed cost savings associated with the costs incurred and as reflected in Atmos Energy's per book investments associated with Atmos Energy's AMI program as of December 31, 2013. Finally, the Parties agreed that Atmos Energy shall use the regulatory principles reflected in their Settlement Agreement for purposes of Atmos Energy's Annual Reports, GCA calculations, and its annual filing pursuant to Rule 4006(a), 4 CCR 723-4, (also known as an "Appendix A" filing).

D. Hearing Testimony in Support of Settlement Agreement.

1. Atmos Energy.

49. Mr. Christian testified on behalf of Atmos Energy in support of the Settlement Agreement. Mr. Christian testified that the Settlement Agreement (as a whole) reflects consideration of all the Parties' positions on the issues in this proceeding, and strikes a fair balance between the Parties. He testified that the Settlement Agreement fairly represents the interests of EOC, OCC and Staff's constituencies, while also striking a balance with Atmos Energy's interests. Mr. Christian testified that because the comprehensive Settlement Agreement considers and balances all Parties' interests, it results in just and reasonable rates that are in the public interest.

50. Mr. Christian explained how the Parties calculated the agreed-upon $2.4 million increase to the Company's annual revenues. Starting with the revenue requirement presented in the Company's rebuttal testimony, the Parties made various adjustments addressing the contested

issues, with the goal of reaching the $2.4 million figure. *See* Attachment 1 to Appendix A. The Parties did not apply a strict formula to reach the $2.4 million figure.

51. Mr. Christian explained Hearing Exhibit 22. Hearing Exhibit 22 (Table 1) depicts the average monthly bill for each ratepayer class, and provides an uncomplicated picture of the impact the proposed increase will have on a monthly basis for each ratepayer class, based on their average monthly bill. It illustrates how the overall 2.11 percent increase is allocated to customers in Atmos Energy's four rate areas. For example, based on the average monthly bill, residential ratepayers will see an increase of 2.43 percent, or approximately $1.47 (per month); commercial ratepayers will see an increase of 1.55 percent or approximately $4.15 (per month); irrigation ratepayers will see an increase of 1.16 percent or approximately $12.28 (per month); and transportation ratepayers will see an increase of 6.87 percent or approximately $35.98 (per month). Hearing Exhibit 22, Table 1. Similarly, Table 2 of Hearing Exhibit 22 illustrates the impact of the proposed increase based upon the average bill for each ratepayer class during a peak usage month (January 2013). The overall percentage increase anticipated by the Settlement Agreement is less than half of the increase Atmos Energy originally requested.

2. EOC.

52. Mr. Arnold testified on behalf of EOC in support of the Settlement Agreement. He believes the Settlement Agreement represents a fair compromise of the issues presented in this proceeding. From the perspective of EOC, the Settlement Agreement is just, reasonable, nondiscriminatory, and in the public interest because it protects its constituency -- low income households -- from a disparate impact of the rate increase. Mr. Arnold believes the cap on the increase to the residential facilities charge (also known as the fixed facilities charge or the services and facilities charge), and the $0.25 increase to residential rate payers (as opposed to the

$5 increase originally sought by Atmos Energy) is especially beneficial to low income households based upon historical data. In addition, EOC also believes the Settlement Agreement's provision spreading the rate increase evenly across ratepayer classes further supports a finding that the Agreement is just, reasonable, nondiscriminatory, and in the public interest. Finally, from the EOC's perspective, the moratorium on the Company filing a rate case raising "Phase II" issues (until December 31, 2015) benefits the public interest.

3. Staff

53. Mr. Kunzie testified on behalf of Staff in support of the Settlement Agreement. He agreed with Mr. Christian's testimony. In addition, Staff supports the Settlement Agreement because Atmos Energy did experience increased costs to provide its service which had not been recovered. Those increased costs, in Mr. Kunzie's view, justify the rate increase proposed by the Settlement Agreement. Mr. Kunzie explained that it is in the public interest to ensure that a utility is able to recover the costs for the service it provides, which includes expenses and an opportunity to earn a reasonable return on its investment. Indeed, recovery of costs and opportunity to earn a reasonable return on its investment enables utilities to continue to provide reliable and safe service. Mr. Kunzie believes the Settlement Agreement accomplishes these goals. And, according to Mr. Kunzie, the Settlement Agreement evenly increases rates across all classes of ratepayers, rather than focusing its increase on residential ratepayers (as originally proposed by Atmos Energy). This demonstrates that the rates resulting from the revenue requirement increase are nondiscriminatory. This is an additional reason Mr. Kunzie believes the Settlement Agreement results in just, reasonable, and nondiscriminatory rates that are in the public interest. Mr. Kunzie also pointed out that the agreed-upon revenue increase ($2.4 million) is close to the figure Staff proposed in response to Atmos Energy's original position.

4. OCC

54. Mr. Skluzak testified in support of the Settlement Agreement on behalf of the OCC. He testified that the Settlement Agreement is the result of negotiations between the parties wherein they all represented their best interests or their constituencies' best interests. He believes the Settlement Agreement represents a fair and complete resolution of the issues presented through the testimony filed by the Parties in this proceeding. The overall increase in rates is less than half of that requested originally by Atmos Energy. Mr. Skluzak highlighted this as a reason the OCC supports the Settlement Agreement. And, the Settlement Agreement results in lower litigation costs to all Parties and eliminates the uncertainty created by litigating all disputed issues. Mr. Skluzak also believes the Settlement Agreement is in the public interest because it spreads the rate increase evenly across all classes of ratepayers, as opposed to allocating the majority of the increase on residential ratepayers, as Atmos Energy originally proposed.

55. In addition, Mr. Skluzak believes the OCC's constituency receives another benefit from the Settlement Agreement's moratorium (until December 31, 2015) against Atmos Energy filing a rate case that raises "Phase II" issues. That moratorium allows the OCC in a future rate proceeding to focus its limited resources on the Company's request for a revenue increase, rather than divert resources to "Phase II" issues. For that reason, Mr. Skluzak believes the moratorium is in both in the public interest and the best interests of the OCC's constituency. Moreover, Mr. Skluzak also agreed with Mr. Kunzie's testimony that the Settlement Agreement is in the public interest because it allows Atmos Energy to recover its investment related costs, operating expenses, and to have an opportunity to earn a reasonable return on those investments.

56. Mr. Skluzak testified that the resulting rates from the increased revenue requirement reflect the Company's cost of service, and are just, reasonable, nondiscriminatory, and in the public interest. An important factor in the OCC signing onto the Settlement Agreement—and one which supports a conclusion that the rates are just, reasonable, nondiscriminatory, and in the public interest—is that it proposes a uniform increase among all rate classes for base non-gas revenues. In addition, the Settlement Agreement caps the increase to the fixed facilities customer charge at $11 for residential ratepayers, and allows for a small increase of $0.25 to residential ratepayers, as opposed to the Company's original request for a $5 increase. Mr. Skluzak believes these terms of the Settlement Agreement further support a conclusion that the resulting rates are just, reasonable, nondiscriminatory, and in the public interest.

E. Applicable Regulatory Principles and Governing Law.

57. The Commission must ensure that all rates charged by public utilities, including Atmos Energy, are just, nondiscriminatory, and reasonable. §§ 40-3-101 and 102, C.R.S. The Commission's determination as to what is a fair, just, and reasonable rate is a matter of discretion. *Consumer Counsel v. Public Utils. Comm'n,* 786 P.2d 1086, 1097 (Colo. 1990), citing *Mountain States Telephone & Telegraph Co. v. Public Utils. Comm'n,* 182 Colo. 269, 279-80, 513 P.2d 721, 726 (1973). In exercising this discretion, the Commission's findings and conclusions must be based on substantial evidence. *See Pub. Serv. Co. of Colo. v. Trigen-Nations Energy Co.,* 982 P.2d 316, 322 (Colo. 1999) (*en banc*).

58. The Commission must exercise reasoned judgment in setting rates. Ratemaking is a legislative function and not an exact science. *Public Utils. Comm'n v. Northwest Water Corporation*, 168 Colo. 154, 173, 551 P.2d 266, 276 (1963); *City and County of Denver v. Public*

Utils. Comm'n, 129 Colo. 41, 43, 266 P.2d 1105, 1106 (1954). As a consequence, the Commission "may set rates based on the evidence as a whole" and "need not base its decision on specific empirical support in the form of a study or data." *Colorado Office of Consumer Counsel v. Public Utils. Comm'n*, 275 P.3d 656, 660 (Colo. 2012).

59. Under the just and reasonable standard, the Commission has the primary responsibility for balancing "the investor's interest in avoiding confiscation and the consumer's interest in prevention of exorbitant rates" (*Colorado Municipal League v. Public Utils. Comm'n*, 687 P.2d 416, 418 (Colo. 1984)), and for setting rates that "protect both (1) the right of the public utility company and its investors to earn a return reasonably sufficient to maintain the utility's financial integrity; and (2) the right of consumers to pay a rate which accurately reflects the cost of service rendered." *Public Service Company of Colorado v. Public Utils. Comm'n*, 644 P.2d 933, 939 (Colo. 1982). The utility's right to earn a reasonable return incorporates the principle that the Commission-authorized rate of return ("ROR") is a return that the utility has a reasonable opportunity to realize, and is not an ROR that the utility is guaranteed to realize.

60. The Commission has supported the approval of ranges for the authorized ROE. Decision No. C13-1568, in Proceeding No. 12AL-1268G, issued December 11, 2013; Decision No. C11-1373, in Consolidated Proceeding No. 11AL-382E and 11AL-387E, issued December 6, 2011. Allowing a range for the authorized ROE allows the utility to maintain its financial integrity and to attract capital in today's market.

61. In the context of ratemaking, the Colorado Supreme Court recently reiterated "that 'it is the result reached, not the method employed, which determines whether a rate is just and reasonable.'" *Glustrom v. Public Utils. Comm'n*, 280 P.3d 662, 669 (Colo. 2012), quoting *Colorado Ute Electric Association, Inc. v. Public Utils. Comm'n*, 198 Colo. 534, 539, 602 P.2d

861, 864 (1979)(citing *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 602 (1944)).

62. Moreover, it is recognized that "[t]he public and judicial policies in Colorado" favor settlement. *Colorado Ins. Guar. Ass'n v. Harris*, 872 P.2d 1139, 1142 (Colo. 1992) (*en banc*), citing *Davis v. Flatiron Materials Co.*, 511 P.2d 28, 32 (Colo. 1973).

F. Conclusions.

63. The Parties' witnesses provided substantial credible evidence that the Settlement Agreement results in rates that are just, reasonable, nondiscriminatory, and in the public interest. *Supra,* ¶¶ 49-56. The following are several examples of that evidence: the $2.4 million decrease in the Company's original rate increase request of $4.8 million; the cap on fixed facilities charges to residential customers; the $0.25 increase on fixed facilities charges to residential customers (as opposed to the $5 across the board increase originally proposed); the uniform increase of non-gas revenue across all classes of ratepayers; the moratorium on filing a rate case raising "Phase II" issues until after December 31, 2015; and the increased revenue requirement in an amount which allows Atmos Energy to recover its costs to provide safe, reliable and efficient service, while also having an opportunity to earn a reasonable return on its investment. The Settlement Agreement embodies compromises, which resolve the Parties' disputes in a manner that is in the public interest. The ALJ finds that the Settlement Agreement (Appendix A) represents a just, equitable, and reasonable resolution of issues that were contested among the Parties in this proceeding.

64. All of the Parties support approval of the Settlement Agreement without modification. Based on the record in this proceeding, including the testimony, attachments, the Settlement Agreement, (Appendix A), and as oral testimony presented at the evidentiary hearing,

the ALJ finds that the terms, conditions, and rates contained in the Settlement Agreement comport with Commission standards.

65. For the foregoing reasons and authorities, the ALJ finds that the terms, conditions, and rates contained in the Settlement Agreement and are just, reasonable, nondiscriminatory, and in the public interest. Approval of the Settlement Agreement is in the public interest and will result in just, reasonable, and nondiscriminatory rates consistent with §§ 40-3-101 and 102, C.R.S. Therefore, the terms and conditions of the Settlement Agreement will be approved and adopted without modification.

66. In accordance with § 40-6-109(2), C.R.S., it is recommended that the Commission enter the following order.

IV. ORDER

A. The Commission Orders That:

1. The Settlement Agreement and Attachments 1 through 3 thereto (attached to this Decision as Appendix A), executed by Atmos Energy Corporation (Atmos Energy), Trial Staff for the Public Utilities Commission of the State of Colorado, the Colorado Office of Consumer Counsel, and Energy Outreach Colorado, are incorporated by reference as if fully set forth herein.

2. The Settlement Agreement (Appendix A), is approved in its entirety and without modification.

3. The tariff sheets filed on April 2, 2014 with Advice Letter No. 511 are permanently suspended.

4. Atmos Energy shall make a compliance Advice Letter filing to implement the rates set forth in the Settlement Agreement and the attachments thereto (Appendix A) on not less

than two business days' notice. The advice letter and tariff shall be filed as a new advice letter proceeding and shall comply with all applicable rules. In calculating the proposed effective date, the date the filing is received at the Commission is not included in the notice period, and the entire notice period must expire prior to the effective date. The advice letter and tariff must comply in all substantive respects with this Decision in order to be a compliance filing on shortened notice.

5. Energy Outreach Colorado's "Motion to Strike Certain Rebuttal Testimony" is denied as moot.

6. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

7. 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 ALJ and the Parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

8. 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.

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

Doug Dean,
Director