

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13AL-0496G

IN THE MATTER OF ADVICE LETTER NO. 497, FILED BY ATMOS ENERGY CORPORATION TO PLACE INTO EFFECT TARIFF SHEET CHANGES TO BE EFFECTIVE ON JUNE 10, 2013.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
G. HARRIS ADAMS
APPROVING STIPULATION
AND SETTLEMENT AGREEMENT**

Mailed Date: February 24, 2014

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I. STATEMENT

1. This matter comes before the Commission for consideration of the Stipulation and Settlement Agreement filed on January 15, 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 and 2 thereto), attached hereto as **Appendix A**, is signed by Atmos Energy; the Trial Staff of 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, 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 for the utility service provided by the Company in Colorado. For the reasons set forth below, the ALJ approves the resolution of the proceeding agreed to by the Parties and as reflected in the Settlement Agreement, since it is consistent with the standards of § 40-3-101, C.R.S.

A. Procedural History

3. On May 8, 2013, Atmos Energy filed Advice Letter No. 497 to implement an increase in its gas department base rates.¹ Atmos Energy requested that the tariffs become effective on June 10, 2013. Atmos Energy filed testimony with Advice Letter No. 497 and proposed a multi-year rate plan (MYP) based on Forecasted Test Years (FTYs) for 2014 through 2016. The Company sought a rate increase of approximately \$10.4 million over three years.

4. On May 24, 2013, by Decision No. C13-0620, the Commission suspended the proposed effective date of the proposed tariff sheets filed with Advice Letter No. 497 until October 9, 2013, set the matter for hearing pursuant to § 40-6-111(1), C.R.S., and referred the matter to the undersigned ALJ for a recommended decision.

B. Staff and the OCC Timely Intervened of Right.

5. Decision No. R13-1022-I, issued on August 19, 2013, granted EOC and Public Service Company of Colorado (Public Service) intervenor status; further suspended the proposed effective date of the tariff sheets filed with Advice Letter No. 497 until December 31, 2013; established a procedural schedule; and approved an across-the-board General Rate Schedule Adjustment (GRSA) of 12.85 percent to be placed in effect on January 1, 2014, subject to a refund condition and subject to whether or not the Commission established new rates by that date.

¹ An amended Advice Letter No. 497 was filed on May 9, 2013, to correct clerical errors.

6. Decision No. R13-1301-I, issued October 17, 2013, modified the procedural schedule to allow additional time in the schedule for the intervenors to file Answer Testimony. On November 12, 2013, Staff, EOC, and the OCC filed Answer Testimony. On December 17, 2013, by Decision No. R13-1547-I, Public Service's request to withdraw its intervention in this proceeding was granted. Public Service is no longer a party to the proceeding.

7. On December 20, 2013, Atmos Energy, Staff, and EOC filed a Stipulation and Settlement Agreement (Partial Settlement Agreement). Decision No. R13-1593-I, issued December 24, 2013, modified Decision No. R13-1022-I to reflect a GRSA of 5.14 percent to go into effect on January 1, 2014 subject to a refund condition, and permitted the filing of testimony in support of the Partial Settlement Agreement.

8. On December 26, 2013, Atmos Energy filed Advice Letter No. 506 with its accompanying tariff sheets to reflect the 5.14 percent GRSA in Proceeding No. 13AL-1377G and such went into effect on January 1, 2014 pursuant to Commission Decision No. R13-1583-I issued December 24, 2013.

9. On January 8, 2014, Atmos Energy filed Rebuttal Testimony. On January 8, 2014, Atmos Energy, Staff, and EOC filed Direct Testimony in support of the Partial Settlement Agreement.

10. On January 15, 2014, Atmos Energy, Staff, EOC, and the OCC filed the Settlement Agreement, which sought to replace the Partial Settlement Agreement and resolved all of the issues that were raised by all of the Parties in this proceeding.

11. On January 21, 2014, Decision No. R14-0075-I modified Decision No. R13-1583-I, and authorized Atmos Energy to make a compliance filing changing the GRSA to 4.06 percent subject to a refund condition, to become effective March 1, 2014 consistent with

the provisions of the Settlement Agreement. Also on January 21, 2014, by Decision No. R14-0078-I, the procedural schedule was modified, the continued hearing dates of February 13 and 14, 2014 were vacated, and a single day of hearing on the Settlement Agreement was scheduled for February 12, 2014.

12. On February 7, 2014, by Decision No. R14-0156-I, the hearing scheduled to commence on February 12, 2014 was vacated. Pursuant to the terms of the Settlement Agreement, the Parties waived cross-examination and agreed to the admission of all pre-filed testimony and exhibits filed in this proceeding, as corrected on February 5, 2014. Such pre-filed testimony and exhibits will be admitted and relied upon for determination of the pending motion.

II. DISCUSSION

A. **Summary of the Pre-Filed Testimony**

1. **Atmos Energy**

13. Along with Advice Letter 497, Atmos Energy filed the direct testimony of ten witnesses, which is summarized below:

- Karen P. Wilkes: Introduced the Company's other witnesses, provided an overview of the Company and the proposed MYP, setting forth the principal factors requiring Atmos Energy to file the rate application, and summarizing: (1) the Company's request for a statewide Gas Cost Adjustment (GCA); (2) the Company's request to recover its investment in Advanced Metering Infrastructure (AMI); (3) the Company's proposed approach to recover infrastructure investments related to the System Safety and Integrity Program (SSIP); (4) the Company's request to recover gas and non-gas components of uncollectible accounts in base rates; and (5) the Company's request for additional tariff revisions associated with this filing.
- Joe T. Christian: Discussed the MYP and associated earnings test, the Company's MYP cost of service studies, projected operation and maintenance as well as the taxes -- other than income taxes -- included in the FTY cost of service studies, the inclusion of all AMI investment in base rates, and the importance and recovery of the Company's proposed SSIP.

- John M. Willis: Described the Company's Colorado gas system and pipeline safety, overall capital spending included in the proposed MYP, and the SSIP.
- Ann E. Bulkley: Provided a recommendation regarding the need for a fair and reasonable return on equity and the Company's proposed capital structure to be used for ratemaking purposes.
- William H. Meckling: Presented and supported the Company's proposed cost allocation, rate design, the proposed rates, and changes to the Company's construction allowance.
- Thomas H. Petersen: Discussed the Company's rate base calculation and the calculation of depreciation expense and Cash Working Capital, and presented the Company's Class Cost of Service Study.
- Ryan C. Hockin: Presented the Company's MYP revenues and associated billing determinants in support of the respective base rate revenue increases over each of the three FTY periods.
- 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.
- John C. Johnson: Presented the Shared Services Depreciation Study as well as the current and proposed depreciation rates applicable to the Company's Shared Services assets.
- Jared N. Geiger: Discussed the need for consolidation of Atmos Energy's GCA rates and the request for a single statewide GCA rate, applicable to all rate areas within Atmos Energy's Colorado Service Area.

2. Commission Staff

14. 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 Company's proposed FTYs and MYP, 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, and provided Staff's recommended revenue requirement increase based on Staff's historic test year (HTY).

- 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, provided Staff's recommended return on rate base (or weighted average cost of capital) for Staff's HTY, provided Staff's recommended return on rate base for each of the Company's FTYs, and discussed the earnings test and Staff's recommendation that it be rejected.
- Richard Reis: Addressed the Company's proposal to consolidate its existing GCA zones from four into one average system-wide calculation and rate, discussed the Company's proposal to increase the facility charge for residential customers from the existing \$10.00 per bill to \$16.10, and provided Staff's analysis regarding certain rate case expenses.
- Sandi M. Kahl: Addressed the Company's proposal to include estimated capital investment in each of the FTYs and provided Staff's recommendations on the proper rate case expense recovery mechanism.
- William W. Harris: Addressed weather normalized billing determinants and the associated revenues for Staff's HTY and the Company's FTYs.

3. OCC

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

- Cory Skluzak: Introduced the OCC's other witnesses and addressed the Company's MYP proposal, the Company's baseline test year which was the starting point for the OCC's recommended HTY, the OCC's 19 proposed adjustments to the Company's adjusted baseline test year rate base and income statement which were used to develop the OCC's HTY recommended revenue requirement, the OCC's HTY revenue requirement model, the Company's Phase II proposals regarding cost allocation and rate design change to increase the fixed customer charge, and the Company's proposal to consolidate the GCA rates and areas into a single GCA.
- Thomas Dixon: Addressed historic and FTY issues in general, the Company's proposal to use three future test years, and the OCC's recommendation to continue using an HTY approach to establish the Company's revenue requirement.
- Ronald Fernandez: Addressed adjustments to the OCC's revenue requirement model for the HTY on rate of return issues, including the OCC's recommended capital structure and return on equity proposals, and

addressed the Company's earnings sharing and stay-out provision proposals that were included as part of the Company's MYP.

16. In response to Atmos Energy's direct testimony, EOC filed answer testimony of one witness, which is summarized below:

4. EOC

- William B. Marcus: Identified and addressed issues with the Company's proposed revenue requirement and cost of service study that reduce both the residential class allocation and the residential customer cost and addressed the Company's proposal to increase the residential customer charge.

17. In addition to the direct and answer testimony filed in this proceeding, Atmos Energy filed the rebuttal testimony of seven witnesses (Ms. Wilkes, Mr. Christian, Mr. Willis, Ms. Bulkley, Mr. Meckling, Mr. Petersen, and Mr. Hockin). The Company (Ms. Wilkes), Staff (Mr. Kunzie), and the EOC (Mr. Arnold) all provided additional testimony in support of the Partial Settlement Agreement. The Company (Ms. Wilkes), EOC (Mr. Arnold), and the OCC (Mr. Skluzak) all provided additional testimony in support of the Settlement Agreement.

B. Summary of the Contested Issues

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

C. Test Year

19. Atmos Energy proposed the implementation of an MYP based on FTYs for 2014 through 2016. The Company sought a rate increase of approximately \$10.4 million over three years. The MYP included earnings test and "stay-out" provisions. Staff recommended that the Commission reject the FTYs and MYP as proposed by Atmos Energy and advocated for the use of the 2012 historic test year (HTY), with adjustments. The OCC recommended that the

Commission reject the FTYs and MYP based on the FTYs and adopt an HTY for the 12 months ended December 31, 2012, as adjusted by the OCC.

D. Return on Equity and Capital Structure

20. Atmos Energy identified 10.25 to 10.75 percent as the range of reasonableness for its Return on Equity (ROE) and proposed an authorized ROE of 10.50 percent. The Company proposed a capital structure consisting of 52.68 percent common equity and 47.32 percent long-term debt, based on the historical period ending December 31, 2012. For the HTY, Staff recommended a capital structure of 47.43 percent debt and 52.57 percent equity and an authorized ROE of 9.42 percent. The OCC recommended that if the Commission utilized an HTY, then the Commission should adopt an authorized ROE for Atmos Energy of 9.0 percent and a capital structure of 52.7 percent equity and 47.3 percent debt.

E. End of Year vs. 13 Month Average Rate Base

21. The Company used an end of year rate base (as of December 31, 2012) to prepare the baseline cost of service study (referred to as the “HTY”). Staff and OCC both recommended that the Commission reject Atmos Energy’s use of year-end rate base and use a 13-month average rate base instead.

F. Gas Storage Inventory

22. 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 (CWC) 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 CWC and the absence of interest on long-term debt in CWC.

G. GCA Rate Areas

23. Atmos Energy requested authority to transition to a single statewide GCA, rather than continuing the use of four separate rate zones and GCAs. Staff and the OCC recommended that the Commission deny the Company's proposal to consolidate its four GCA rate zones into a single statewide GCA.

H. Advanced Metering Infrastructure

24. Atmos Energy requested authority to include all of its investment in Advanced Metering Infrastructure (AMI) in rate base and the discontinuation of the Advanced Metering Infrastructure Surcharge (AMIS). The OCC recommended that the Commission reject Atmos Energy's proposal to include all of the investment in AMI in rate base and recommended that recovery of the investment in the Greeley Pilot Project be continued through the existing AMIS mechanism. Staff recommended that the Commission eliminate all investment and depreciation expenses related to the investment in AMI, except for the costs associated with the Greeley Pilot Project, from the revenue requirement calculation. EOC did not believe that the benefits of the Greeley Pilot Project were commensurate with its costs, causing customer costs to increase.

I. System Safety and Integrity Program

25. Atmos Energy requested authority to implement a System Safety and Integrity Program (SSIP) to address the accelerated replacement of all unprotected bare steel and PVC pipeline and services over a ten-year period, along with an approach to recovering infrastructure investments related to the SSIP. Both Staff and the OCC recommended that the Commission reject the SSIP.

J. Data Integration Project

26. Atmos Energy requested authority to conduct a three-year program to convert historic records to current GIS systems, at a cost of \$1 million (\$333,333 per FTY period). Staff and the OCC recommended that the Commission reject the data integration project.

K. Building Projects

27. Atmos Energy requested authority to pursue three significant capital building projects as part of the MYP, consisting of the Greeley Building Project, the Cañon City Building Project, and the Salida and Gunnison Building Project. Staff recommended that the Commission should remove the estimated capital expense for the proposed building projects (totaling \$13,857,000) from rate base. The OCC recommended that the Commission reject the capital building projects.

L. Residential Facilities Charge

28. Atmos Energy proposed to increase the Residential Facilities Charge from \$10 per month to \$16.10 per month. Staff, EOC, and the OCC recommended that the Commission deny the Company's proposal to increase the Facilities Charge for Residential customers.

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

29. Staff recommended removing the Company's projected rate case expenses from the Company's requested revenue requirement for base rates and replacing the projection with actual rate case expenses, and recommended that rate case expenses be recovered through a separate GRSA mechanism based upon a 36-month amortized period. Staff also recommended that the requested rate case expense for Mr. Meckling be disallowed.

30. EOC recommended that the Commission reduce the Company's administrative and general expenses by \$808,000 in areas relating to the compensation of executives and

directors. EOC also recommended that the Commission reduce Atmos Energy's labor and payroll tax costs by \$62,000 to correct an error in calculation of benefits from AMI. EOC recommended that the Commission should change Atmos Energy's cost allocation to allocate each type of distribution O&M expense by each type of distribution plant instead of all expenses by all plant; to allocate gas supply and transportation administration costs separately from other administration and general expenses; and to make other smaller changes.

31. The OCC recommended that construction work in progress (CWIP) not be included in the HTY rate base due to a significant imbalance (known as "slippage") between the amount of and return on CWIP, and the amount of and return on allowance for funds used during construction and which would result in a decrease in rate base of \$5,407,823. The OCC also recommended that \$450,000 in rate case expense be shared equally between shareholders and ratepayers, which would result in \$225,000 being amortized over three years (or \$75,000 per year).

N. The Settlement Agreement

32. The Settlement Agreement proposes the following resolution to all of the issues which were raised in this proceeding:

- (1) The Parties agreed that Atmos Energy should be authorized a rate increase in annual base revenues consisting of two steps. Regarding the first step, for January through February 2014 Atmos Energy should be authorized an increase in annual base revenues of \$1,644,000 (First Settlement Rate Increase). Regarding the second step, for the period of March 1, 2014 onwards, the authorized annual base revenue of \$1,644,000 discussed in the first step should be reduced by \$344,000 and Atmos Energy should be authorized an increase in annual base revenues of \$1,300,000 (Second Settlement Rate Increase) as measured against the base revenues existing prior to January 1, 2014. Attachment 1 to the Settlement Agreement (pages 16-20 of Attachment A) provides the calculations supporting the First Settlement Rate Increase and Attachment 2 to the Settlement Agreement (pages 21-25 of Attachment A) provide the calculations supporting the Second Settlement Rate Increase.

- (2) To calculate the First and Second Settlement Rate Increases, the Parties utilized a historic test period of the twelve months ending December 31, 2012 (the Settlement Test Period) and calculated the Settlement Test Period Rate Base using the 13-month average methodology.
 - (3) Both the First and Second Settlement Rate Increases utilized a rate of return on equity of 9.72 percent and a weighted average cost of capital of 8.07 percent. The rate of return calculations are set forth in greater detail in the Settlement Agreement at Attachment 1 (Schedule 2 Return on Rate Base) and Attachment 2 (Schedule 2 Return on Rate Base) (pages 17 and 22 of Attachment A). The Parties agreed that Atmos Energy's authorized rate of return on equity going forward shall be any rate of return on equity within the range of 9.5 percent to 10 percent.
 - (4) The Parties agreed that both Settlement Rate Increases include the revenue impact of including all of Atmos Energy's per book investments in AMI as of December 31, 2012 in base rates rather than reflecting these costs in a separate rate rider. In conjunction with the implementation of interim GRSA rates on January 1, 2014, Atmos Energy set the AMIS at \$0.00. The Parties agreed that as part of the compliance filing following approval of the Settlement Agreement, Atmos Energy will discontinue the existing AMIS. Within 60 days following the final approval of the Settlement Agreement, Atmos Energy will file a final reconciliation of the AMIS through the end of 2013 as well as a proposed mechanism, if necessary, to account for any over or under collected amounts that may exist.
 - (5) The Parties agreed that both Settlement Rate Increases reflect the inclusion of average gas storage inventory costs during the Settlement Test Period in base rates as proposed by Atmos Energy rather than reflecting these costs in Atmos Energy's GCA mechanism. However, Staff, EOC, and the OCC specifically reserved the right to argue in a future proceeding that a different treatment of gas storage costs is appropriate.
33. Both Settlement Rate Increases reflect adjustments to the Company's filed

Operations and Maintenance Expense. Specifically:

- (1) The Parties agreed that authorized rate case expenses should be reduced by \$100,000 (from \$450,000 to \$350,000) and amortized over three years.
- (2) The Parties accepted Atmos Energy's proposal to include \$333,333 in the revenue requirement in this case as a known and measurable adjustment to the Settlement Test Period expenses associated with Atmos Energy's data integration project which will convert Atmos Energy's historic records of its pipeline system into a geo-coded digital format. Without agreeing to the prudence of specific future expenditures for this project, the Parties agreed that the data integration project is reasonable and should proceed forward.

- (3) The Parties agreed to a negative adjustment to the revenue requirement in this case to reflect imputed cost savings associated with Atmos Energy's AMI program. Atmos Energy's filing included \$310,741 in AMI savings in the historic test period which decreased the proposed overall revenue requirement. In the First Settlement Rate Increase calculation, those imputed savings are increased by \$289,259 to a total of \$600,000 in the Settlement Test Period. In the Second Settlement Rate Increase calculation, those imputed savings are increased by an additional \$344,000 to a total of \$944,000 in the Settlement Test Period.
- (4) The Parties agreed to a negative adjustment of \$107,330 to the revenue requirement in this case based on unspecified adjustments.
- (5) The Settlement Test Period O&M Expense adjustments are set forth in greater detail in the Settlement Agreement at Attachment 1 (Schedule 3 Adjustments to Operation and Maintenance Expense) and Attachment 2 (Schedule 3 Adjustments to Operation and Maintenance Expense) (pages 18 and 23 of Attachment A).

34. Both Settlement Rate Increases reflect the Parties' agreement with respect to the Settlement Test Period Rate Base. Specifically:

- (1) The Parties agreed, except for the OCC who does not contest, that Atmos Energy's investments in the statewide AMI deployment are reasonable and prudent. Therefore, both Settlement Rate Increases reflect the inclusion of the per book AMI investments as of December 31, 2012 in the Settlement Test Period Rate Base.
- (2) Both Settlement Rate Increases also reflect the inclusion of Atmos Energy's gas storage costs in Rate Base.
- (3) The parties agreed to remove from Rate Base the post-test period changes in net plant in service that were proposed by Atmos Energy.
- (4) The Rate Base agreement and adjustments are set forth in greater detail in the Settlement Agreement at Attachment 1 (Schedule 4 Adjustments to Rate Base) and Attachment 2 (Schedule 4 Adjustments to Rate Base) (pages 19 and 24 of Attachment A).

35. Both Settlement Rate Increases are proposed to be implemented in customer rates as follows:

- (1) The Parties agreed to a Residential monthly Facilities Charge of \$10.75. With respect to the other customer classes, the Settling Parties agreed to the monthly Facilities Charges reflected in the Settlement Agreement at

Attachment 1 (Proof of Rates) and Attachment 2 (Proof of Rates) (pages 20 and 25 of Attachment A).

- (2) The Parties agreed to utilize Atmos Energy's filed Class Cost of Service Study to calculate each customer class' revenue requirement and the Distribution System Rates for each customer class.
- (3) The parties agreed to maintain Atmos Energy's four separate GCA rate areas.
- (4) The specific rate changes that would result from the Settlement Agreement are set forth in greater detail in the Settlement Agreement at Attachment 1 (Proof of Rates) and Attachment 2 (Proof of Rates) (pages 20 and 25 of Attachment A). Upon approval of the Settlement Agreement, Atmos Energy has committed to make a compliance Advice Letter filing to implement the rates set forth in the Settlement Agreement at Attachment 2 (Proof of Rates) (page 25 of Attachment A) and to discontinue the GRSA. To the extent a Commission Decision approving the Settlement Agreement is issued with sufficient time to allow Atmos Energy to place the approved rates into effect prior to March 1, 2014, Atmos Energy will withdraw its interim 4.06 percent GRSA rate and discontinue the GRSA.
- (5) Pursuant to Commission Decision No. R13-1583-I, Advice Letter No. 506 implementing a GRSA of 5.14 percent went into effect on January 1, 2014. The GRSA of 5.14 percent is consistent with the level of the First Settlement Rate Increase. Consistent with the level of the Second Settlement Rate Increase, the parties agreed that Atmos Energy shall make an Advice Letter filing to reflect a 4.06 percent GRSA proposed to become effective on March 1, 2014. Both GRSA's shall continue to be subject to the refund conditions set forth in Advice Letter Nos. 497, 505, and 506. Both Settlement Rate Increases went into effect as interim rates so that if the Settlement Rate Increases are approved without modification, the refund conditions will not be applicable.

36. The parties agreed with the proposed modifications to Atmos Energy tariff sheets R18 (regarding Interruptible customers), R25 (regarding construction allowances), sheet 23 (deleting an unnecessary footnote), and sheets 27 and 28 (regarding the elimination of the AMIS).

37. The Parties agreed that Atmos Energy shall utilize the depreciation rates set forth in the 2010 SSU (Shared Services Unit) Depreciation Rate Study attached to the Direct Testimony and Exhibits of Mr. John C. Johnson. The Parties also agreed that the depreciation rates for the remaining rate base assets are as approved in Proceeding No. 09AL-507G.

38. Atmos Energy committed to apply for a Certificate of Public Convenience and Necessity for the Greeley Building Project, the Canon City Building Project, and the Salida and Gunnison Building Project prior to commencing construction.

39. Notwithstanding Atmos Energy's agreement in this case not to move forward with a multiyear plan, Atmos Energy reserved the right to seek deferred accounting treatment, new rate riders, or other alternative regulatory mechanisms to recover the costs associated with the building projects and Atmos Energy's SSIP. Neither Staff, the OCC, nor EOC agreed to any position regarding any such future filing.

40. Finally, the parties agreed that Atmos Energy shall use the specific regulatory principles reflected in the Settlement Agreement for purposes of Atmos Energy's Annual Reports, Appendix A, and GCA calculations.

III. REGULATORY PRINCIPLES

41. Under §§ 40-3-101 and 102, C.R.S., it is the Commission's duty to ensure that all rates charged by public utilities, such as Atmos Energy, are just and reasonable. The Commission's determination as to what is a fair, just, and reasonable rate is a matter of discretion. *Consumer Counsel v. P.U.C.*, 786 P.2d 1086 (Colo. 1990). 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*).

42. The Commission must exercise reasoned judgment in setting rates. Ratemaking is a legislative function (*City and County of Denver v. Public Utilities Commission*, 129 Colo. 41, 266 P.2d 1105 (1954)) and not an exact science (*Public Utilities Commission v. Northwest Water Corporation*, 168 Colo. 154, 551 P.2d 266 (1963)). 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. Colorado Public Utilities Commission*, 275 P.3d 656, 660 (Colo. 2012).

43. 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 Utilities Commission*, 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 Utilities Commission*, 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.

44. 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. Colorado Public Utilities Commission*, 280 P.3d 662, 669 (Colo. 2012), quoting *Colorado Ute Electric Association, Inc. v. Public Utilities Commission*, 198 Colo. 534, 602 P.2d 861, 864 (Colo. 1979) (citing *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 602 (1944)).

45. Furthermore, 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)). All of the Parties support approval of the Settlement Agreement without modification. The undersigned ALJ finds that the Settlement Agreement represents a just, equitable, and reasonable resolution of issues that were contested among the Parties in this proceeding. The Settlement Agreement should be and will be accepted as filed and without modification.

IV. CONCLUSION

46. Based on the record in this proceeding, including the testimony, attachments, and Settlement Agreement, the ALJ finds that the terms, conditions, and rates contained in the Settlement Agreement comport with Commission standards.

47. The ALJ further finds that the terms, conditions, and rates contained in the Settlement Agreement are just and reasonable and in the public interest. Approval of the Settlement Agreement is in the public interest and will result in just and reasonable rates consistent with §§ 40-3-101 and 102, C.R.S. The compromises agreed to by each of the Settling Parties as well as the testimony in support of the terms of the Settlement Agreement provide a strong basis to find that the terms of the Settlement Agreement are in the public interest.

Therefore, the terms and conditions of the Settlement Agreement will be approved and adopted without modification.

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

V. ORDER

A. The Commission Orders That:

1. The Settlement Agreement filed on January 15, 2014 by Atmos Energy Corporation (Atmos Energy), Staff of the Public Utilities Commission, Energy Outreach Colorado, and the Colorado Office of Consumer Counsel (attached to this Decision as **Appendix A**) is admitted into evidence in this proceeding.

2. All pre-filed testimony and attachments thereto, as corrected on February 5, 2014, are admitted into evidence in this proceeding.

3. The tariff sheets filed on May 8, 2013 with Advice Letter No. 497, as amended on May 9, 2013, are permanently suspended.

4. The Settlement Agreement filed on January 15, 2014 is approved in its entirety and without modification.

5. Atmos Energy shall make a compliance Advice Letter filing to implement the rates set forth in the Settlement Agreement on Attachment 2 (Proof of Rates) (page 25 of Attachment A) and to discontinue the GRSA on not less than two business days' notice. The advice letter and tariff shall be filed as a new advice letter proceeding. 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 to this Decision in order to be filed as a compliance filing on shortened notice.

6. The Settlement Agreement being approved without modification, the refund conditions set forth in Commission Decision Nos. R13-1022-I, R13-1583-I, and R14-0075-I are no longer applicable.

7. Within 60 days following the effective date of this Decision, Atmos Energy shall file a final reconciliation of the Advanced Metering Infrastructure Surcharge through the end of 2013 as well as a proposed mechanism, if necessary, to account for any over or under collected amounts that exist.

8. 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.

9. 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.

10. 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

G. HARRIS ADAMS

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director