

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19A-0224G

IN THE MATTER OF THE APPLICATION OF ATMOS ENERGY CORPORATION FOR AN ORDER APPROVING ITS 2020-2022 NATURAL GAS DEMAND-SIDE MANAGEMENT PLAN.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ROBERT I. GARVEY
ESTABLISHING NATURAL GAS DEMAND-SIDE
MANAGEMENT PLAN FOR 2020 THROUGH 2022,
APPROVING SETTLEMENT AGREEMENT,
GRANTING APPLICATION, VACATING
HEARING, AND WAIVING RESPONSE TIME**

Mailed Date: September 16, 2019

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I. STATEMENT

1. On May 1, 2019, Atmos Energy Corporation (Atmos or Company) filed an Application for approval of its 2020-2022 Natural Gas Demand Side Management Plan (2020-2022 DSM Plan) under § 40-3.2-103, C.R.S., and Commission Rules 4002 and 4752, 4 *Code of Colorado Regulations* (CCR) 723-4 of the Rules Regulating Gas Utilities and Pipeline Operators. Atmos sought approval of the following: (1) the Verified Application; and (2) the 2020-2022 DSM Plan. Atmos filed its Direct Testimony and Attachments with its Application.

2. On May 29, 2019, Trial Staff of the Public Utilities Commission (Staff) filed a Notice of Intervention, Entry of Appearance and Request for a Hearing. Staff listed two issues it intends to raise in discovery and at any hearing.

3. On June 3, 2019, the Office of Consumer Counsel (OCC) filed an intervention by right and a request for hearing in this matter. The OCC stated three areas it intends to raise in discovery and at any hearing.

4. On June 6, 2019, by minute entry, the Commission referred the matter to an Administrative Law Judge (ALJ).

5. On June 11, 2019, by Decision No. R19-0498-I, a prehearing conference was scheduled to be held on July 1, 2019, at 10:00 a.m.

6. On June 21, 2019, the Company filed its Unopposed Motion to Adopt Procedural Schedule, Vacate Prehearing Conference, and for Waiver of Response Time (Unopposed Motion to Adopt Procedural Schedule).

7. The Unopposed Motion to Adopt Procedural Schedule stated that counsel for the Company, Staff, and the OCC (collectively, the Parties) negotiated a proposed procedural schedule.

8. On June 26, 2019, by Decision No. R19-0547-I, the Unopposed Motion to Adopt Procedural Schedule was granted, and a procedural schedule was adopted.

9. On July 29, 2019, the Parties filed an Unopposed Motion to Modify Procedural Schedule and for Waiver of Response Time, stating that the Parties have reached an agreement in principal and requesting that the procedural schedule be modified as proposed by the Parties.

10. On July 30, 2019, by Decision No. R19-0650-I, the Unopposed Motion to Modify Procedural Schedule and for Waiver of Response Time was granted, and the undersigned ALJ noted that if a hearing on the settlement was not necessary, the ALJ would *sua sponte* vacate the October 3, 2019 hearing date.

11. On August 15, 2019, the Parties filed an Unopposed Motion for Approval of Stipulation and Settlement Agreement (Unopposed Motion), as well as the Stipulation and Settlement Agreement and Attachment A thereto summarizing the changes to the 2020-2022 DSM Plan as a result of the stipulation reached by the Parties (Settlement Agreement). Additionally, each of the Parties supplemented the record by filing testimony in support of the Settlement Agreement.

II. DISCUSSION

A. Testimony and Terms of the Settlement Agreement

12. The Settlement Agreement, attached to this Decision as Attachment A, explains that the Parties negotiated a resolution of all disputed issues in this proceeding. The Parties assert that the 2020-2022 DSM Plan, as modified by the terms of the Settlement Agreement, is in the public interest and supported by the testimony of the Parties. Below is a summary of some of the terms agreed upon by the Parties.

1. Natural Gas Energy Savings Goals

13. In the 2020-2022 DSM Plan filed with its Application, the Company proposed the following natural gas energy efficiency goals: 28,674 dekatherms (Dth) in 2020, 27,652 Dth in 2021, and 26,589 Dth in 2022, totaling 82,915 Dth over the three-year period.

14. Staff's Settlement Testimony explains that this total goal is approximately 10 percent lower than the total natural gas energy efficiency goal of 92,626 Dth in the Company's current 2017-2019 DSM Plan.

15. In its Settlement Testimony, the Company explains that it initially proposed a lower overall savings target because it is progressively more difficult for Atmos to cost-effectively increase Dth savings. Atmos asserts that this difficulty arises from it being a natural gas-only utility that has a less densely populated service territory and relatively small customer base in Colorado. The Company maintains that the 2020-2022 DSM Plan still represents a Dth savings over the savings achieved during the 2017-2019 Plan cycle.

16. The Company, however, further states that because the Commission's policy presently disfavors lowering savings goals without sufficient explanation and support for the reduction, Atmos has agreed to revise the goals originally proposed in the 2020-2022 DSM Plan and it will strive to achieve the overall target proposed in the Settlement Agreement.

17. Specifically, the Settlement Agreement proposes the following revised natural gas energy efficiency goals: 31,982 Dth in 2020, 30,889 Dth in 2021, and 29,755 Dth in 2022, totaling 92,626 Dth over the three-year period.

18. Put simply, the Settlement Agreement proposes maintaining the same total energy efficiency goal for the 2020-2022 DSM Plan as the Company currently has in its 2017-2019 DSM Plan. Accordingly, as noted in Staff's Settlement Testimony, the proposed total

goal of 92,626 Dth has already been found to be in the public interest when the Commission approved the Company's 2017-2019 DSM Plan.

19. Staff further states the Commission should not be concerned that the Settlement Agreement does not propose an increase to the Company's total natural gas energy efficiency goal in the existing 2017-2019 DSM Plan. Specifically, Staff explains that even without an increase, the proposed total goal (92,626 Dth for 2020 through 2022) satisfies the Commission's expectation to consistently pursue all cost-effective DSM. Further, because Atmos has not yet achieved 100 percent of its goal in the 2017-2019 DSM Plan, Staff recognizes that it would be neither fair nor appropriate to increase the Company's goal at this juncture. The OCC, in its Settlement Testimony, noted that the stipulated overall natural gas savings target of 92,626 Dth, over the three years of the DSM Plan is approximately 12 percent higher than in the originally filed 2020-2022 DSM Plan, and therefore, concurs that the goals proposed in the Settlement Agreement are appropriate.

20. In its Settlement Testimony, Staff explains that because the price of natural gas is low, and because it has fewer avoided costs, natural gas DSM is more difficult than electric DSM. Staff specifically explains that due to this difficulty, in 2017, the Company achieved only 46 percent of its total goal by using 88 percent of its budget, resulting in a non-cost-effective Modified Total Resource Cost (MTRC) ratio of 0.85. In 2018, however, the Company improved by reaching 86 percent of its goal while using 71 percent of its budget, which netted a cost-effective MTRC ratio of 1.36.

21. Staff further explains that the proposals in the Settlement Agreement forecast an increased cost-effective MTRC ratio of 1.22, as compared to the originally-filed 2020-2022 DSM Plan's MTRC ratio of 1.13.

2. Budgets

22. In the 2020-2022 DSM Plan filed with its Application, the Company proposed the following budgets: \$934,628 for 2020, \$945,273 for 2021, and \$979,920 for 2021, totaling \$2,859,822 over the three-year period.

23. Staff's Settlement Testimony explains that this total budget is approximately 10 percent higher than the budget in the Company's current 2017-2019 DSM Plan, which includes a total budget of \$2,596,132 for the three-year period. Put simply, as noted by Staff, Atmos initially requested an increased budget to achieve reduced natural gas energy efficiency goals.

24. The Settlement Agreement, on the other hand, proposes the following revised budgets: \$955,532 in 2020, \$966,627 in 2021, and \$1,001,724 in 2022, totaling \$2,923,884 over the three-year period. This revised total budget is approximately 2 percent more than the originally-proposed budget, and 12.6 percent more than the currently-approved total budget in the Company's 2017-2019 DSM Plan, according to Staff's Settlement Testimony.

25. Atmos asserts that this proposed budget meets the requirements of Commission Rule 4753(h)(I), 4 CCR723-4, and § 40-3.2-103(2)(a), C.R.S. In its Settlement Testimony, the Company specifically states:

[T]he Atmos DSM budget for 2020 of \$955,532 represents 2.1 percent of base rate revenues (exclusive of commodity costs) and 0.98 percent of total operating revenues from calendar year 2018 customer sales. The budget for 2021 of \$966,627 represents 2.2 percent and 0.99 percent of the base rate revenues (exclusive of commodity costs) and total operating revenues, respectively. Last, the 2022 budget of \$1,001,724 represents 2.2 percent of base rate revenues (exclusive of commodity costs) and 1.02 percent of total operating revenues from calendar year 2018 customer sales.

Testimony of Rob Leivo

3. Programs

26. As explained in the Company's Settlement Testimony, the Efficient Natural Gas Rebate Program, Income Qualified Program, Energy-Efficiency Kits, Custom Program, and Home Energy Report Program will continue to be offered under the stipulated 2020-2022 DSM Plan.

27. The only program that will be discontinued is the Energy Audit Program. Specifically, the Company explains that this program was the smallest by budget and by reallocating those dollars to the remaining programs, the overall DSM Plan could generate more savings. The Company also states that eliminating this program improves the overall total resource cost analysis of the DSM Plan.

4. Low-Income Customers

28. In its Settlement Testimony, Atmos notes that it reached out to Energy Outreach Colorado and determined that its DSM Plan revisions will have no detrimental impact on its low-income and near low-income customers.

III. FINDINGS AND CONCLUSIONS

29. The parties have the burden of proving by a preponderance of the evidence that the Settlement is just and reasonable.¹ In reviewing the terms of the Stipulation and Settlement

¹ Section 13-25-127(1), C.R.S., and Rule 4 *Code of Colorado Regulations* 723-1-1500 of the Commission's Rules of Practice and Procedure, establish the burden of proof for a party which asks the Commission to adopt its advocated position. Decision No. C06-0786, Proceeding No 05A-072E issued July 3, 2006 at ¶ 40 and n.23.

Agreement, the ALJ applied the Commission's direction and policy with respect to review of settlement agreements as found in, *e.g.*, Decision No. C06-0259 in Proceeding No. 05S-264G issued March 20, 2006.

30. The Commission has an independent duty to determine matters that are within the public interest. *See Caldwell v. Public Utilities Commission*, 692 P.2d 1085, 1089 (Colo. 1984).

31. The undersigned ALJ has reviewed the Direct Testimony filed by Atmos and the recitations of the Parties in the Unopposed Motion, Settlement Agreement, and supplemental Settlement Testimony. The ALJ has duly considered the positions of all parties in this matter.

32. Based on the entire record, the ALJ finds that approval of the 2020-2022 DSM Plan, as modified by the terms of the Settlement Agreement, is in the public interest.

33. The ALJ further finds that the parties have established by a preponderance of the evidence that the Settlement Agreement is just, is reasonable, and should be accepted by the Commission. Based on the discussion above, it is in the public interest to establish natural gas energy efficiency goals of 31,982 Dth in 2020, 30,889 Dth in 2021, and 29,755 Dth in 2022, totaling 92,626 Dth over the three-year period, as well as an overall budget of \$2,923,884, consisting of approximately \$955,532 in 2020, \$966,627 in 2021, and \$1,001,724 in 2022.

34. Atmos shall file for purposes of the record, the final 2020-2022 DSM Plan as modified by the terms of the Settlement Agreement and approved by this Decision.

35. Atmos shall file a compliance Advice Letter within 90 days of the date of the final Commission Decision in this matter, on not less than two days' notice, with revised DSM Cost Adjustment tariff sheets reflecting all changes approved by this Decision.

IV. ORDER**A. The Commission Orders That:**

1. The Unopposed Motion for Approval of Stipulation and Settlement Agreement (Unopposed Motion), filed by the Parties² on August 15, 2019, is granted.

2. Response time to the Unopposed Motion is waived.

3. The hearing on the settlement scheduled for October 3, 2019, is vacated.

4. The Stipulation and Settlement Agreement and Attachment A thereto (Settlement Agreement), attached to and incorporated into this Decision as Attachment A, is approved.

5. The Application filed by Atmos Energy Corporation (Atmos) on May 1, 2019, seeking approval of its Natural Gas Demand Side Management Plan for program years 2020, 2021, and 2022 (2020-2022 DSM Plan), is granted, as modified by the Settlement Agreement.

6. Atmos shall comply with the Settlement Agreement and this Decision as discussed above.

7. Atmos shall use its best efforts to achieve, at a minimum, the DSM goals (or targets) in 2020, 2021, and 2022, consistent with the Settlement Agreement and this Decision.

8. Atmos shall make any and all filings and reports required by the Settlement Agreement and this Decision, including: (1) the final 2020-2022 DSM Plan as modified by the terms of the Settlement Agreement and approved by this Decision, and (2) a compliance Advice Letter within 90 days of the date of the final Commission Decision in this matter, on not less than two days' notice, with revised Demand Side Management Cost Adjustment tariff sheets reflecting all changes approved by this Decision.

² The Parties are Atmos Energy Corporation, Trial Staff of the Commission, and the Office of Consumer Counsel.

9. Atmos shall implement the processes and programs and shall give the notices that it agreed to give, as those processes and programs and notices are described in the Settlement Agreement and this Decision.

10. 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.

11. As provided by § 40-6-106, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

12. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the recommended 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.

13. If a party seeks to amend, modify, annul, or reverse a basic finding 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.

14. If exceptions to this Recommended 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

ROBERT I. GARVEY

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director