

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0632G

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

**RECOMMENDED DECISION
GRANTING UNOPPOSED MOTION TO APPROVE
STIPULATION, APPROVING SETTLEMENT
AGREEMENT, AND GRANTING APPLICATION, AS
MODIFIED BY SETTLEMENT AGREEMENT**

Issued Date: October 14, 2024

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I. PROCEDURAL BACKGROUND

1. On December 29, 2023, Atmos Energy Corporation (“Atmos Energy,” “Applicant,” or “Company”) filed with the Commission its Verified Application (“Application”)

seeking approval of its initial Clean Heat Plan (“CHP”). With the Application, Atmos Energy filed testimony and related exhibits. This filing commenced Proceeding No. 23A-0632G.

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

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

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

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

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

7. By Decision No. R24-0571-I, issued August 8, 2024, the undersigned ALJ admitted all pre-filed testimony and attachments as evidence and vacated the evidentiary hearing in this Proceeding.

8. By Decision No. R24-0592-I, issued August 15, 2024, the undersigned ALJ, among other things, directed the Settling Parties to file by August 30, 2024 (as appropriate), written responses to certain questions/requirement posed in ¶12 of that Decision, or file a revised version of the Unanimous and Comprehensive Stipulation and Settlement Agreement (“Settlement Agreement”), filed by Atmos Energy on August 1, 2024—and/or file revised Settlement Testimony for the Settlement Agreement. Decision No. R24-0592-I also scheduled a hearing on the Settlement Agreement on September 5, 2024.

9. On August 30, 2024, Atmos Energy and Staff filed their respective Supplemental Settlement Testimony, and UCA filed its Notice of Supplemental Information and Support for the Responses Filed by Atmos and Trial Staff in response to the questions/requirement set forth in Decision No. R24-0592-I.

10. By Decision No. R24-0630-I, issued September 3, 2024, the undersigned ALJ vacated the hearing on the Settlement Agreement that was scheduled for September 5, 2024, by Decision No. R24-0592-I.

II. BACKGROUND FOR THIS PROCEEDING

11. Atmos Energy is a natural gas-only distributor, headquartered in Dallas, Texas, that serves more than three million customers in over 1,400 communities in eight states, including Colorado.¹ Atmos Energy has six utility operating divisions. The offices of the Colorado-Kansas Division are located in Denver, Colorado.² Atmos Energy also has an intrastate pipeline division, the Atmos Pipeline-Texas, which is based in Dallas, Texas.³

¹ See Hearing Exhibit 101, Direct Testimony of Kathleen R. Ocanas, p. 7:8-1.

² See, *id.*, p. 7:11-13.

³ See, *id.*, p. 7:16-17.

12. This Proceeding concerns Atmos Energy's Initial CHP, filed pursuant to 40-3.2-108, C.R.S. and Rules 4002, 4728, and 4731 of the Rules Regulating Gas Utilities, 4 *Code of Colorado Regulations* ("CCR") 723-4.4 In the Application, Atmos Energy stated that its preferred CHP portfolio includes increased energy efficiency ("EE") measures, targeted purchases of recovered methane ("RM"), and two pilot programs to deliver cost-effective greenhouse gas ("GHG") emissions reductions during the CHP action period within the \$3.4 million estimated annual retail cost cap applicable to the Company's CHP.⁵ The Application further set forth details about: Atmos Energy's baseline level of GHG emissions; several variations of forecasts relating to Atmos Energy's customers, load, and emissions; three CHP portfolios, (subject to certain parameters); summary of Atmos Energy's Direct Testimony; clean heat targets; proposed clean cleat cost recovery mechanism; potential changes to depreciation and other actions to align the Atmos Energy's cost recovery with statewide policy goals and details about the Applicant.

III. TERMS OF THE SETTLEMENT AGREEMENT⁶

13. The term of Atmos Energy's initial CHP is through December 31, 2027.⁷

14. Atmos Energy's stipulated CHP portfolio shall consist of Atmos Energy's Preferred Portfolio, as modified by the Settlement Agreement, in addition to incremental energy efficiency from the Emissions Target Portfolio. The stipulated CHP portfolio shall not include electrification, RM, or thermal energy networks. The total estimated cumulative GHG emissions reductions from

⁴ Application at 1.

⁵ *Id.* at 1-2.

⁶ The following is intended as a summary of the main terms of the Settlement Agreement, rather than a full recitation of the same.

⁷ Settlement Agreement at 3.

the stipulated CHP portfolio are approximately 40 percent higher than Atmos Energy's original Preferred Portfolio over the same 3.25-year period.⁸

15. At least 25 percent of overall residential CHP expenditures, including expenditures for income qualified ("IQ") customers, shall be targeted to residential IQ customers.⁹

16. The Stipulated CHP Portfolio budget includes \$50,000 per year for outreach to community-based organizations ("CBOs") in Atmos Energy's service territories.¹⁰

17. The Natural Gas Heat Pump Pilot shall not be included in the Stipulated CHP Portfolio. The Manufactured Home Early Retirement Pilot shall be included in the Stipulated CHP Portfolio, with the following modifications:

- i. Initial budget of \$200,000 per year in 2025, 2026, and 2027.
- ii. If Atmos Energy provides rebates for five home replacements in 2026 or 2027, then an additional \$200,000 is available for up to five additional home replacements in each of those years. If additional funding is available pursuant to the terms of the Settlement Agreement, those amounts shall be recovered through a true-up to the CHP Rider or from other unused CHP funds but cannot cause the total expenditures contemplated in Section 10(f) of the Settlement Agreement to increase.¹¹

18. Total expenditures for the Stipulated CHP Portfolio shall not exceed \$11,907,500, divided roughly by year, as follows:

- i. \$207,500 in 2024;
- ii. \$1,350,000 in 2025;

⁸ *Id.* The Settlement Agreement further notes that the total estimated cumulative greenhouse gas emissions reductions from the Stipulated CHP Portfolio are 4,343 metric tons ("MT") CO₂ compared to 3,103 MT CO₂ cumulative greenhouse gas emissions reductions over the same 3.25-year time period under Atmos Energy's original Preferred Portfolio.

⁹ Settlement Agreement at 3.

¹⁰ *Id.* at 4.

¹¹ *Id.*

- iii. \$3,725,000 in 2026; and
- iv. \$6,625,000 in 2027.

CHP expenditures in 2027 shall not bind Atmos Energy to continue spending at those levels after 2027.¹²

19. **CHP Collections:** Annual CHP cost recovery shall be within the statutory cost cap as calculated in Atmos Energy's rebuttal testimony. The following amounts shall be recovered through the CHP Rider (discussed below) in each applicable year (regardless of CHP expenditures in that year) and shall not, cumulatively, exceed \$11,907,500:

- i. i. \$877,500 in 2024;
- ii. ii. \$3.51 million in 2025;
- iii. iii. \$3.76 million in 2026; and
- iv. iv. \$3.76 million in 2027.¹³

20. **Relationship Between CHP Cost Recovery and CHP Expenditures:** The stipulated budget amount shall be recovered from customers each year, with any excess collections recorded in a regulatory liability for future use on CHP resources. For this initial CHP, expenditures are expected to increase through 2027 as energy efficiency expenditures ramp up.¹⁴ Atmos Energy will address any surplus or deficit of CHP collections relative to expenditures in its next CHP application, which will be filed by May 1, 2027.¹⁵

¹² *Id.*

¹³ *Id.* at 4-5.

¹⁴ *Id.* at 5.

¹⁵ Hearing Exhibit 117 at 7.

21. **Cost Recovery:** The CHP Rider proposed by Atmos Energy shall be approved with the CHP costs allocated between customer classes as recommended by Atmos Energy but recovered through volumetric charges only.¹⁶ When asked if the parties had considered the potential cost impacts of the volumetric approach to the CHP rider on IQ customers, customers in disproportionately impacted (“DI”) communities, and/or customers living in homes that are less weatherized or efficient and whose energy use might be above average for that reason compared to similar homes, the Settling Parties referred to Staff for further explanation.

22. Staff stated that there is no evidence in this proceeding that there is a correlation between energy usage and income or residency in a DI community, that energy consumption is a poor proxy for income, and that the Commission should support income-qualified ratepayers and DI communities directly and not “through rate design using assumptions with poor empirical support.”¹⁷

23. **Lost Revenues:** Atmos Energy shall be allowed to recover one year of lost revenues for new energy efficiency measures installed under the Stipulated CHP Portfolio, consistent with the stipulation in the Company’s last Demand-Side Management Strategic Issues (“DSM SI”) proceeding.¹⁸ The Company will calculate lost revenues the same way that it does for its DSM program. Lost revenues are calculated on a dollar-per-therm rate which is applied to the actual therms saved in the prior year.¹⁹ The Company also explains that lost revenues from measures installed in Year 1 and in operation over Year 2 will be recovered through the CHP Rider effective in Year 3.²⁰

¹⁶ Settlement Agreement at 5.

¹⁷ Hearing Exhibit 204 at 6-7.

¹⁸ *Id.*, citing Proceeding No. 23A-0216G.

¹⁹ Hearing Exhibit 117 at 9.

²⁰ Hearing Exhibit 117 at 9.

24. **CHP and DSM SI:** Atmos Energy’s next CHP and DSM SI filings shall be filed together by May 1, 2027. Under this approach, the sequence for future Atmos Energy DSM and CHP filings would be: 1) 2026 DSM Plan (based on 2023 DSM SI and 2024 CHP); 2) 2027 DSM SI and CHP application; and 3) 2028 DSM Plan (based on 2027 DSM SI & CHP application).²¹

IV. ANALYSIS

A. **Burden of Proof**

25. Except as otherwise provided by statute, the Administrative Procedure Act imposes the burden of proof in administrative adjudicatory proceedings upon “the proponent of an order.”²² The Settling Parties filed the Joint Motion and, as a result, bear the burden of proof.²³ The Settling Parties must establish by a preponderance of the evidence that the Settlement Agreement is just and reasonable and in the public interest. The Commission has an independent duty to determine matters that are within the public interest.²⁴

B. **Modified Procedure**

26. The Application, as modified by the Settlement Agreement, is uncontested. The Settlement Agreement was executed by each of the Settling Parties and is otherwise unopposed as is the Motion.²⁵ In addition, the parties agree that an evidentiary hearing is unnecessary.²⁶ Finally, the Application and Settlement Agreement are supported by sworn testimony and attachments that verify sufficient facts to support the Application and Settlement Agreement. Accordingly, pursuant to § 40-6-109(5), C.R.S. and Rule 1403 of the Rules of Practice and Procedure, 4 CCR 723-1, the

²¹ Settlement Agreement at 5.

²² Section 24-4-105(7), C.R.S.

²³ Section 24-4-105(7), C.R.S.; § 13-25-127(1), C.R.S.; and Rule 1500 of the Rules of Practice and Procedure, 4 CCR 723-1.

²⁴ See *Caldwell v. Public Utilities Commission*, 692 P.2d 1085, 1089 (Colo. 1984).

²⁵ Motion at 1.

²⁶ *Id.*

Application, as modified by the Settlement Agreement, will be considered under the modified procedure, without a formal hearing.

C. Terms of the Settlement Agreement

27. Based upon substantial evidence in the record as a whole, the ALJ finds and concludes that the Settlement Agreement is just and reasonable and not contrary to the public interest. The ALJ shall approve the Settlement Agreement without material modifications and shall grant the Application, as modified by the Settlement Agreement and clarified by the Settlement Testimony²⁷ in the record in this Proceeding.

28. Pursuant to the Settlement Agreement, the Stipulated term of Atmos Energy's CHP is December 31, 2027. The ALJ finds that this stipulated term supports administrative efficiency in that it would allow for concurrent filings of Atmos Energy's DSM SI and CHP proceedings in 2024-2027, is otherwise reasonable, and is not contradictory to the public interest.

29. The Stipulated CHP Portfolio, as set forth in the Settlement Agreement,²⁸ provides for: the inclusion of incremental EE Manufactured Home Early Retirement Pilot (as previously included in the Application in Atmos Energy's Emissions Target Portfolio²⁹); the elimination from the stipulated CHP Portfolio of electrification, recovered methane, or thermal energy networks; and an increase in the estimated cumulative GHG emissions reductions of approximately 40 percent as compared with Atmos Energy's original Preferred Portfolio.³⁰

30. The ALJ finds that the stipulated CHP portfolio, as set forth in the Settlement Agreement, and further detailed in Hearing Exhibit 117, Supplemental Settlement Testimony of

²⁷ *I.e.*, Hearing Exhibits 116, 117, 203, and 204.

²⁸ *See* Settlement Agreement at pp. 3, 5.

²⁹ *See* Application at pp. 2-3.

³⁰ *Compare* Hearing Exhibit 104, Direct Testimony of Atmos Witness Engwall, Attachments SRE-3 and SRE-10 with Hearing Exhibit 117 at 5.

Kathleen R. Ocanas,³¹ appropriately addresses Staff's and UCA's concerns regarding Atmos Energy's estimated CO₂ emissions,³² is reasonable, and is not contradictory to the public interest.

31. The Settlement Agreement provides for a minimum spending of 25 percent of Atmos Energy's total CHP expenditures on IQ customers. The ALJ finds and concludes that this minimum spending provision is reasonable and is not contradictory to the public interest.

32. The Settlement Agreement provides that the stipulated CHP portfolio would include a budget of \$50,000 per year for outreach to community-based organizations in Atmos Energy's service territory. The ALJ finds and concludes that this stipulated budget allotment provision is reasonable and is not contradictory to the public interest.

33. The Settlement Agreement provides for the elimination from the stipulated CHP Portfolio of the natural gas heat pump pilot, and the inclusion in the stipulated CHP Portfolio of the Manufactured Home Early Retirement Pilot, with the following modifications: an initial budget of \$200,000 per year in 2025-2027, and an additional \$200,000 budget for up to five additional home replacements in 2026 or 2027, if Atmos Energy provides rebates for five home replacements in those years. If additional funding is available pursuant to the Settlement Agreement, those amounts could be recovered through a true-up to the CHP Rider or from other unused CHP funds, but such additional funding would be capped pursuant to the maximum expenditures criteria set forth in Paragraph 10.f. of the Settlement Agreement. The ALJ finds and concludes that these stipulated provisions are reasonable, and not contradictory to the public interest.

³¹ See Hearing Exhibit 117, Supplemental Settlement Testimony of Kathleen R. Ocanas at 4:13-5:3.

³² See Hearing Exhibit 200, Direct Testimony of Staff Witness Eric Haglund, at pp. 17:4-18; 18:4-9; 18:12-17; 19:3-13; and Hearing Exhibit 300, Answer Testimony of UCA's Witness Dr. Scott E. England, at pp. 5:10-6:6; 6:19-7:1; 10:4-11; 11:4-9.

34. The Settlement Agreement provides that the total expenditures for the Stipulated CHP Portfolio would not exceed \$11,907,500, roughly divided by year as follows: \$207,500 in 2024; \$1,350,000 in 2025; \$3,725,000 in 2026; and \$6,625,000 in 2027. The ALJ finds and concludes that these stipulated maximum expenditure criteria are reasonable and not contradictory to the public interest.

35. The Settlement Agreement provides that Atmos Energy will recover, through the CHP Rider³³ in each applicable year—regardless of Atmos Energy’s CHP expenditures in that year—\$877,500 in 2024, \$3.51 million in 2025, \$3.76 million in 2026, and \$3.76 million in 2027 (not to cumulatively exceed \$11,907,500). The ALJ finds and concludes that the stipulated CHP recovery method and amounts, as detailed in Hearing Exhibit 117, Supplemental Settlement Testimony of Kathleen R. Ocanas³⁴ are reasonable and not contradictory to the public interest.

36. The Settlement Agreement provides that the stipulated recovery amounts shall be recovered from customers each year, with any excess collections recorded in a regulatory liability for future use on CHP resources. The Settlement Agreement also provides that expenditures are expected to increase through 2027 as EE expenditures increase. The Settlement Agreement further provides that The CHP Rider proposed by Atmos Energy shall be approved with the CHP costs allocated between customer classes as recommended by Atmos Energy,³⁵ but recovered through volumetric charges only. The Volumetric approach to CHP cost recovery deviates from Atmos Energy’s original CHP rider structure.³⁶ However, the ALJ is satisfied by Staff’s conclusion that the benefits of a volumetric recovery of CHP costs outweigh the speculative concern that such a

³³ See Settlement Agreement at ¶ 10.i.

³⁴ See Hearing Exhibit 117, Supplemental Settlement Testimony of Kathleen R. Ocanas at 5:4-6:8.

³⁵ See Hearing Exhibit 101, Direct Testimony of Kathleen R. Ocanas, p. 19:1-4, Table KRO-4: CHP Cost Allocations.

³⁶ See *id.*, p. 19:9-10, Table KRO-4: CHP Rider Rate Impact.

rate design may disproportionately impact IQ ratepayers and DI communities.³⁷ Therefore, the ALJ finds and concludes that the stipulated terms pertaining to excess recovery of CHP expenditures and the volumetric approach for recovery of CHP expenditures are reasonable and not contradictory to the public interest.

37. The Settlement Agreement provides that Atmos Energy would be allowed to recover one year of lost revenues for new energy efficiency measures installed under the Stipulated CHP Portfolio, consistent with the stipulation in the Company's last DSM SI proceeding. The ALJ is satisfied by the explanation provided by the Company as to the calculation of lost revenues for energy efficiency measures installed under the CHP.³⁸ However, the Settlement Agreement does not fully set forth the calculation of lost revenues for EE measures installed under the CHP. Therefore, Attachment KRO-6 to Hearing Exhibit 117, Supplemental Settlement Testimony of Kathleen R. Ocanas, which fully sets forth how Atmos Energy's tariffed distribution variable rates are used to calculate lost revenues, shall be incorporated by reference into the Settlement Agreement, as ordered below. Therefore, the ALJ finds and concludes that the stipulated lost revenue provision is reasonable and not contradictory to the public interest.

38. The Settlement Agreement provides that Atmos Energy's next CHP and DSM SI filings shall be filed together by May 1, 2027, and the sequence for future DSM and CHP filings shall be: 2026 DSM Plan; 2027 DSM SI and CHP application; 2028 DSM Plan. The ALJ finds and concludes that the stipulated DSM SI and CHP filings provision is reasonable and not contradictory to the public interest.

³⁷ See Hearing Exhibit 204, Staff Witness Eric Haglund's Supplemental Settlement Testimony at 8:11-9:3.

³⁸ Hearing Exhibit 117, Supplemental Settlement Testimony of Kathleen R. Ocanas at 8:10-9:11.

39. The Settlement Agreement provides that no miscellaneous proceedings shall be established to evaluate cost allocation and depreciation issues, as these issues can be addressed in the next Atmos Energy rate case that includes a depreciation study. The ALJ finds and concludes that this stipulated provision regarding miscellaneous proceedings is reasonable and not contradictory to the public interest.

V. ORDER

A. It Is Ordered That:

1. For the reasons stated above, the Unopposed Motion to Modify Procedural Schedule, Admit Exhibits into Evidence, and for Approval of Stipulation (“Motion”), filed by Atmos Energy Corporation (“Atmos Energy”) on August 1, 2024, is granted as to the request for approval of the Stipulation.³⁹

2. The Unanimous and Comprehensive Stipulation and Settlement Agreement (“Settlement Agreement”), filed August 1, 2024, is approved, consistent with the discussion above. The Settlement Agreement is attached to this Decision as Appendix A.

3. Consistent with the discussion above, Attachment KRO-6 to Hearing Exhibit 117, Supplemental Settlement Testimony of Kathleen R. Ocanas is incorporated by this reference into the Settlement Agreement and is included as Appendix B to this Decision.

4. The Verified Application (“Application”) seeking approval of its initial Clean Heat Plan, filed by Atmos Energy on December 29, 2023, as modified by the Settlement Agreement, is approved.

³⁹ The remainder relief sought in the Motion was previously addressed by the undersigned Administrative Law Judge in Decision No. R24-0571-I.

5. 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.

6. 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.

7. 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)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

AVIV SEGEV

Administrative Law Judge

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

Rebecca E. White,
Director