

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF ATMOS ENERGY	)	
CORPORATION TO MODIFY ITS	)	
DEMAND-SIDE MANAGEMENT	)	CASE NO. 2010-00305
PROGRAM AND COST RECOVERY	)	
MECHANISM	)	

ORDER

On July 26, 2010, Atmos Energy Corporation (“Atmos”) filed an application requesting approval to modify its Demand-Side Management Program (“DSM”). Atmos proposes that it be allowed to reduce its per-household weatherization assistance from \$3,000 to \$2,500 and that its weatherization budget be capped at \$350,000 per year. The Attorney General, by and through his Office of Rate Intervention (“AG”), was granted intervention in the proceeding on August 9, 2010. On January 6, 2011, Atmos and the AG filed a Joint Settlement, Stipulation and Recommendation (“Joint Settlement”), which is attached as an Appendix hereto and which we approve by this Order.

Atmos’s current DSM program was approved in Case No. 2008-00499<sup>1</sup> and expires on December 31, 2011. The Commission’s approval in that case included, among other things, Atmos’s request that it be allowed to increase its per-household

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<sup>1</sup> Case No. 2008-00499, Application of Atmos Energy Corporation to Modify and Extend its Demand-Side Management Program and Cost Recovery Mechanism (Ky. PSC Sept. 2, 2009 and Oct. 12, 2009).

weatherization assistance from \$1,500 to \$3,000 without a cap on the weatherization budget. Upon final Order in that case, the AG filed an action for review in the Franklin Circuit Court. Atmos and the AG continued to discuss the per-household weatherization level as well as the weatherization budget. As a result of those discussions, Atmos and the AG moved the Court to enter an Agreed Order dismissing the action with prejudice and Atmos filed this request for modification. Atmos requests that the record in Case No. 2008-00499 be incorporated by reference into this case.

#### JOINT SETTLEMENT

Under the provisions of the Joint Settlement, which is appended hereto, the parties agree that Atmos's proposed modifications are reasonable and should be approved. They state that they have agreed to the modifications in order to increase the market penetration rate while at the same time achieving an even greater amount of energy efficiency. They also state that they believe the decrease in the maximum amount of funds available per household will not significantly affect the energy efficiency that can be reached per household and that a greater overall efficiency will be achieved by spreading the available funds to more households. According to the parties, at the proposed annual cap of \$350,000 and the currently approved per-household amount of \$3,000, the weatherization program would reach a maximum of 117 homes annually, while the modification from \$3,000 to \$2,500 per home would expand the maximum number of homes to 140. This presumes that the Commission approves the modification to cap the low-income weatherization budget at \$350,000. Atmos states in the Joint Settlement that it believes it will be able to comply with the \$2,500 limit without materially impairing its ability to provide reasonable weatherization to qualifying homes

and that it will not experience a demand from its qualifying customers greater than \$350,000, but if it does, it will seek approval to increase the maximum. It states that its agreement to the lower limit for the per-household amount and capping the entire fund amount satisfies the AG's concern and avoids unnecessary litigation costs.

To determine the effect that the requested decrease in the weatherization program may have, Atmos was requested to provide information on the administration of its weatherization program from September 2009 through December 31, 2010. Atmos provided the following information:

- 171 households were provided weatherization assistance from September 2009 through December 2010.
- \$358,965.72 was spent on the weatherization program from September 2009 through December 2010.
- The range of expenditures per household was \$114 to \$3,000, or \$131.10 to \$3,450 including the administering agency's fee.
- The average expenditure per household was \$2,099.21, including the administrative fee.

#### SUMMARY

After careful review of the Joint Settlement, an examination of the record and being otherwise sufficiently advised, the Commission finds that:

1. Atmos's request that Case No. 2008-00499 be incorporated into this proceeding by reference should be granted.
2. Paragraph 3 of the Joint Settlement is not factually correct in that Atmos's original application in Case No. 2008-00499 did not include a request for a maximum

budget for the low-income weatherization component of Atmos's DSM program. However, this incorrect statement should not prohibit the Commission from considering the reasonableness of the Joint Settlement.

3. The modifications to Atmos's DSM program as agreed to by the parties in the Joint Settlement should not impair Atmos's ability to provide reasonable weatherization to its qualifying customers and the Joint Settlement should be approved.

4. In addition to the information the Commission previously directed Atmos to file with its next DSM case; i.e, cumulative program participation totals, estimated savings per program and costs associated with each program, Atmos should also include in its next DSM filing the following information:

a. The number of households provided weatherization assistance from \$1 to \$1,500 and \$1,500 to \$2,500;

b. The number of households that received \$3,000 in assistance from September 2, 2009 through the date of this Order; and

c. The number of households that were eligible for \$3,000 from the date of this Order to the date of the next application.

5. Atmos's next DSM application should be filed no later than October 1, 2011.

6. Atmos and the AG should keep in mind that we have consistently approved cost-effective DSM programs in order to benefit utility customers through decreases in energy usage and bills. The collaborative process used in Atmos's future filings for changes to its DSM program should seek the maximum benefit to all customers, but not ignore the neediest consumers for whom an investment in cost-

effective DSM would result in the greatest improvement in living conditions and financial situations.

7. Our approval of this Joint Settlement should not be considered a precedent for limiting future DSM programs and should not prevent Atmos from proposing cost-effective programs that provide a wider range of benefits to its customers if it determines such programs are reasonable.

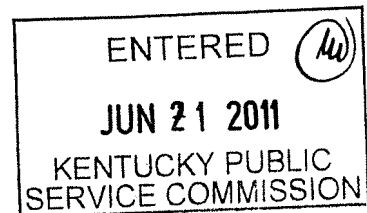
IT IS THEREFORE ORDERED that:

1. Atmos's proposed DSM Program modifications as set forth in the Joint Settlement are approved through December 31, 2011.

2. Atmos's next DSM filing shall include the information set forth in finding paragraph 4 above.

3. Atmos's next DSM application shall be filed with this Commission no later than October 1, 2011.

By the Commission.



ATTEST:

*Stephanie Bell for Jeff Deraven*  
Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2010-00305 DATED **JUN 21 2011**

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

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PUBLIC SERVICE  
COMMISSION

In the Matter of:

APPLICATION OF ATMOS ENERGY CORPORATION	)	
TO MODIFY ITS DEMAND SIDE MANAGEMENT	)	Case No.
PROGRAM AND COST RECOVERY MECHANISM	)	2010-00305
AS AMENDED	)	

**JOINT SETTLEMENT STIPULATION AND RECOMMENDATION**

Come now the parties in the above-styled action, Atmos Energy Corporation ["Atmos"] and the Attorney General of the Commonwealth of Kentucky ["Attorney General"], each by counsel, and hereby advise the Commission that on this \_\_\_ day of January, 2011, they have entered into a Settlement Stipulation and Recommendation in this action, the terms of which are as follows:

**WHEREAS**, on July 26, 2010 Atmos filed with the Kentucky Public Service Commission ("Commission") its Application to Modify its Demand Side Management Program, in a case styled Application Of Atmos Energy Corporation To Modify Its Demand Side Management Program And Cost Recovery Mechanism As Amended, Case No. 2010-00305; and,

**WHEREAS**, the Attorney General is authorized to represent the interests of utility ratepayers before the Commission pursuant to KRS 367.150(8), and is further authorized pursuant to KRS 278.285 to participate in the design of utility company demand side management programs; and

**WHEREAS**, the Attorney General was granted intervention by Order of the Commission in this proceeding; and,

**WHEREAS**, the parties have expended considerable efforts and resources to reach the terms that form the basis of this Settlement Stipulation and Recommendation, including litigation in Case No. 2008-00499 and a subsequent appeal in the Franklin Circuit Court, a more detailed history of which is set forth in Atmos' application in this instant action and which is incorporated by reference as if fully set forth herein; and,

**WHEREAS**, the Parties hereto desire to fully settle the issues pending before the Commission in the above-referenced proceeding; and,

**WHEREAS**, the adoption of this Settlement Stipulation and Recommendation will decrease the need for the Commission and the parties to expend unnecessary resources litigating these proceedings; and, further, will greatly reduce the possibility of, and any need for, rehearing or appeals of the Commission's final order herein; and,

**WHEREAS**, it is understood by all Parties hereto that this Settlement Stipulation and Recommendation is subject to the approval of the Commission, insofar as it constitutes an agreement by the parties for settlement, and, absent express agreement stated herein, does not represent agreement on any specific claim, computation, formula, allegation, assertion, contention, methodology, theory or ratemaking principle supporting the appropriateness of any proposed or recommended adjustments to Atmos' rates, terms, and conditions; and,



**WHEREAS**, the Parties, representing diverse interests and divergent viewpoints, agree that this Settlement Stipulation and Recommendation, viewed in its entirety constitutes a fair, just and reasonable resolution of all issues in this proceeding; and,

**WHEREAS**, it is the position of the Parties hereto that the terms about which they have agreed as reflected in this Settlement Stipulation and Recommendation are supported by sufficient and adequate data and information, and should be approved in their entirety by the Commission; and,

**NOW, THEREFORE**, for and in consideration of the good-faith negotiations entered into by the parties and the terms and conditions set forth herein, the Parties hereby stipulate and agree as follows:

1. Atmos' application in the above-styled matter is incorporated by reference as if fully set forth herein, with the exception that paragraph 6 is hereby modified to read as follows: "In accordance with the agreement reached between the Attorney General and Atmos, Atmos agreed to file an application with the Commission requesting certain modifications to its DSM Program. Specifically, that \$2,500.00 per home be set as the maximum amount Atmos can expend under the low income weatherization component of Atmos' DSM program and that the maximum budget for the low-income weatherization component of Atmos' DSM Program be set at a maximum of no more than \$350,000.00 per year."
2. The purpose of the above-referenced modification the parties are asking the Commission to approve is to increase the market penetration rate while at the same time achieving an even greater amount of energy efficiency. Moreover, the

parties believe that decreasing the maximum amount of funds available per household will not affect the energy efficiency that could have otherwise been reached on a per household basis; indeed, the parties believe quite the opposite would be achieved by meeting a greater overall energy demand on the *entire* system. Specifically, the parties believe that spreading the available funds to even *more* households will further enhance the amount of energy efficiency that will be accomplished. Under the plan in its current form, only a maximum of 116.67 homes could be reached; however, the modification the parties urge the Commission to approve would expand the maximum number of homes that could be reached to 140.

3. Atmos' original application, in Case No. 2008-00499, requested a per home maximum of \$3,000.00 for the low-income weatherization component of its DSM program, with a maximum budget for the low-income weatherization component of Atmos' DSM Program to be set at no more than \$300,000.00. The Commission, in its Order dated Sept. 2, 2009, approved Atmos' original DSM plan.
4. Atmos, in Case No. 2008-00499 subsequently filed a motion to clarify the Commission's Sept. 2, 2009 Order to remove the maximum budget for the low-income weatherization component of its DSM program, which the Commission approved by way of Order dated Oct. 12, 2009. Atmos' intent in so requesting was merely to avoid placing an artificial limit on the number of customers who

could benefit by participating in the low-income weatherization component of its DSM program. Atmos believes that it will not experience a demand from its qualifying customers for more than the sum of \$350,000.00. In the event that should prove to be inaccurate, Atmos would, based on new evidence that the demand is exceeding \$350,000, seek approval of the Commission to increase the maximum.

5. Atmos believes it will be able to comply with the \$2,500.00 per house limit on its low income weatherization component without materially impairing its ability to provide reasonable weatherization to qualifying low income homes. The \$3,000.00 limit originally proposed by Atmos and approved by the Commission in Case No. 2008-00499 was the upper end limit that could be spent on a qualifying home. While Atmos continues to believe \$3,000.00 is a reasonable limit, nonetheless it believes the \$2,500 limit is also reasonable because this lower limit would likewise yield cost effective and fuel efficient weatherization during the 2011 heating season. Accordingly, and as set forth more fully in other paragraphs in this Joint Settlement Stipulation and Recommendation, Atmos agreed to the \$2,500 per home limit for 2011 in order to resolve the Attorney General's appeal of the Commission's Order in Case No. 2008-00499 and thereby avoid the costs of unnecessary litigation, which would have been borne by Atmos' ratepayers.

6. Likewise, and again, to avoid the cost of unnecessary litigation with the Attorney General, Atmos agreed to the annual cap of \$350,000. Based on historical participation in its DSM Program, the \$350,000 cap is not expected to be an obstacle to Atmos in providing weatherization to all qualifying homes requesting assistance at the \$2,500 per home limit.
7. Except as specifically stated otherwise in this Settlement Stipulation and Recommendation, the Parties agree that making this Settlement Stipulation and Recommendation shall not be deemed in any respect to constitute an admission by any party hereto that any computation, formula, allegation, assertion, contention, methodology, or ratemaking principle otherwise made by any other party in these proceedings is true or valid.
8. The Parties hereto agree that the foregoing stipulations and agreements represent a fair, just, and reasonable resolution of the issues addressed herein and request the Commission to approve the Settlement Stipulation and Recommendation.
9. The Parties hereto agree that this Settlement Stipulation and Recommendation is subject to the acceptance of and approval by the Commission. The Parties hereto further agree to act in good faith and to use their best efforts to recommend to the Commission that this Settlement Stipulation and Recommendation be accepted and approved.
10. If the Commission issues an order adopting this Settlement Stipulation and Recommendation in its entirety, each of the Parties agrees that it shall file neither

an application for rehearing with the Commission, nor an appeal to the Franklin Circuit Court with respect to such order.

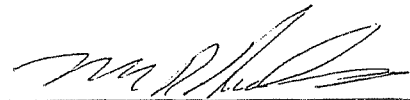
11. The Parties hereto agree that, if the Commission does not accept and approve this Settlement Stipulation and Recommendation in its entirety, then: (a) this Settlement Stipulation and Recommendation shall be void and withdrawn by the parties hereto from further consideration by the Commission and none of the parties shall be bound by any of the provisions as modified herein, provided that no party is precluded from advocating any position contained in this Settlement Stipulation and Recommendation; and (b) neither the terms of this Settlement Stipulation and Recommendation nor any matters discussed or raised during the settlement negotiations shall be binding on any of the Parties to this Settlement Stipulation and Recommendation, be construed against any of the Parties in any fashion, nor be the subject of cross-examination in any subsequent court or administrative proceeding.
12. The Parties hereto agree that, should the Settlement Stipulation and Recommendation be voided or vacated for any reason after the Commission has approved the Settlement Stipulation and Recommendation, then the parties shall be returned to the *status quo* existing at the time immediately prior to the execution of this agreement.

13. The Parties hereto agree that this Settlement Stipulation and Recommendation shall in no way be deemed to divest the Commission of jurisdiction under Chapter 278 of the Kentucky Revised Statutes.
14. The Parties hereto agree that this Settlement Stipulation and Recommendation shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns.
15. The Parties hereto agree that this Settlement Stipulation and Recommendation constitutes the complete agreement and understanding among the parties hereto, and any and all oral statements, representations or agreements made prior hereto or contained contemporaneously herewith shall be null and void and shall be deemed to have been merged into this Settlement Stipulation and Recommendation.
16. The Parties hereto agree that, for the purpose of this Settlement Stipulation and Recommendation only, the terms are based upon the independent analysis of the parties to reflect a fair, just, and reasonable resolution of the issues herein and are the product of compromise and negotiation.
17. The Parties hereto agree that neither the Settlement Stipulation and Recommendation nor any of the terms shall be admissible in any court or administrative proceeding except insofar as such court or administrative body is addressing litigation arising out of the implementation of the terms herein or the approval of this Settlement Stipulation and Recommendation. This Settlement

Stipulation and Recommendation shall not have any precedential value in this jurisdiction.

18. The signatories hereto warrant that they have appropriately informed, advised, and consulted their respective Parties in regard to the contents and significance of this Settlement Stipulation and Recommendation and based upon the foregoing are authorized to execute this Settlement Stipulation and Recommendation on behalf of their respective Parties.
19. The Parties hereto agree that this Settlement Stipulation and Recommendation is a product of negotiation among both parties hereto, and no provision of this Settlement Stipulation and Recommendation shall be strictly construed in favor of or against any party.
20. The Parties hereto agree that this Settlement Stipulation and Recommendation may be executed in multiple counterparts.

**IN WITNESS WHEREOF**, the parties have hereunto affixed their signatures:



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MARK R. HUTCHINSON  
Wilson, Hutchinson, Poteat & Littlepage  
611 Frederica Street  
Owensboro, KY 42301  
COUNSEL FOR ATMOS ENERGY CORPORATION

*Dennis G. Howard, II* / *D.G. Howard*

DENNIS G. HOWARD, II  
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1024 Capital Center Drive, Ste. 200  
Frankfort, KY 40601  
COUNSEL FOR THE ATTORNEY GENERAL



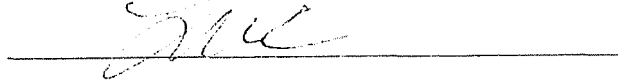
*Certificate of Service and Filing*

Counsel certifies that an original and ten photocopies of the foregoing were served and filed by hand delivery to Jeff Derouen, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601; counsel further states that true and accurate copies of the foregoing were mailed via First Class U.S. Mail to:

Mark R. Hutchinson  
Wilson, Hutchinson, Poteat & Littlepage  
611 Frederica Street  
Owensboro, KY 42301

Mark Martin  
VP Rates & Regulatory Affairs  
Atmos Energy Corporation  
3275 Highland Pointe Drive  
Owensboro, KY 42303

this 6<sup>th</sup> day of Jan., 2011



Assistant Attorney General

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