

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

November 4, 2015

IN RE:)	
)	
PETITION OF ATMOS ENERGY CORPORATION)	DOCKET NO.
FOR A GENERAL RATE INCREASE UNDER T.C.A.)	14-00146
65-5-103(a) AND ADOPTION OF AN ANNUAL RATE)	
REVIEW MECHANISM UNDER T.C.A. 65-5-103(d)(6))	

ORDER APPROVING SETTLEMENT

This matter came before Vice Chairman David F. Jones, Director Kenneth C. Hill and Director Robin Bennett of the Tennessee Regulatory Authority (the “Authority” or “TRA”), the voting panel assigned to this docket, at a scheduled Hearing held on May 11, 2015 for consideration of the *Stipulation and Settlement Agreement* (“*Settlement Agreement*” or “*Agreement*”) filed on April 29, 2015, by Atmos Energy Corporation (“Atmos” or the “Company”) and the Consumer Advocate and Protection Division of the Office of the Attorney General (“Consumer Advocate”).

BACKGROUND AND PETITION

On November 25, 2014, Atmos filed a *Petition* requesting a general rate increase and Authority approval of an annual rate review mechanism pursuant to Tenn. Code Ann. § 65-5-103(d)(6).¹ The Company’s previous rate case in Docket No. 12-00064 was resolved by a settlement agreement between Atmos and the Consumer Advocate, which was approved by the Authority.² The previous rate case in Docket No. 12-00064 was resolved prior to the General Assembly’s enactment of 2013 Tenn. Pub. Acts 245, which provided, among other things,

¹ *Petition*, pp. 1-2 (November 25, 2015).

² See *In re: Petition of Atmos Energy Corporation for a General Rate Increase*, Docket 12-00064, *Order Approving Settlement* (December 4, 2012).

specific statutory requirements for alternative ratemaking mechanisms. In Docket No. 14-00081, the Company sought to implement an alternate annual rate adjustment mechanism utilizing the previous rate case settlement in Docket No. 12-00064 as an underlying basis for rate adjustments going forward.³ Following the filing of a motion to dismiss by the Consumer Advocate and subsequent hearing, the Authority dismissed the Company's request as the settlement agreement in Docket No. 12-00064 did not provide for the adoption of any ratemaking methodology or agreed upon formulas that would allow for the establishment of an annual rate review mechanism in accordance with Tenn. Code Ann. § 65-5-103(d)(6).⁴

The *Petition* in this docket was filed by the Company to set rates utilizing and adopting methodologies so as to allow the implementation of an annual rate review mechanism in accordance with statutory requirements.⁵ The *Petition* sought an increase in rates of \$5.89 million within the confines of a traditional rate case based in part upon a request for an authorized return on equity of 10.7%.⁶ The *Petition* further requested approval of a proposed Annual Review Mechanism tariff ("ARM tariff") to implement procedures for an annual rate review mechanism pursuant to Tenn. Code Ann. § 65-5-103(d)(6). The Company proposed to make its first annual review filing in September of 2015 with any rate adjustment going into effect on January 1, 2016, and each January 1 thereafter.⁷

At the regularly scheduled Authority Conference held on December 1, 2014, the panel voted unanimously to convene a contested case proceeding and to appoint the Authority's General Counsel or her designee to act as Hearing Officer to prepare this matter for hearing, including establishing a procedural schedule, entering a protective order, and ruling on

³ See *In Re: Petition of Atmos Energy Corporation to Establish An Annual Rate Review Mechanism Pursuant to Tenn. Code Ann. § 65-5-103(d)(6)*, Docket No. 14-00081, *Petition*, pp. 2-4 (August 28, 2014).

⁴ *Id.*, *Order Granting Consumer Advocate's Motion to Dismiss*, pp. 15-18 (December 8, 2014).

⁵ *Petition*, p. 1 (November 25, 2014).

⁶ *Id.* at 4.

⁷ *Id.* at 4-5.

intervention requests and discovery issues. The Consumer Advocate filed a petition to intervene on December 23, 2014, which was subsequently granted on January 7, 2015.⁸

The initial filing of the *Petition* initiating a general rate case while seeking the approval and implementation of the ARM tariff simultaneously raised an issue of conflicting statutory deadlines.⁹ Under Tenn. Code Ann. § 65-5-103(a) and (b), a general rate case has a statutory deadline requiring resolution by the Authority within six months with an allowance of an additional three months during which time the public utility may seek to place the proposed rates into effect under bond pending a decision by the Authority. On the other hand, alternative ratemaking proposals filed pursuant to Tenn. Code Ann. § 65-5-103(d)(6)(C) such as the Company's ARM tariff, must be considered by the Authority within 120 days of filing, a statutory deadline the Hearing Officer concluded cannot be waived.¹⁰ Thus, the deadline for the Authority's consideration of the ARM tariff would conclude prior to the Authority's consideration of the *Petition's* request for rate relief in a rate case and subsequent adoption of rate-making methodologies, placing the ARM tariff proposed in the *Petition* in the same circumstances as found in Docket No. 14-00081.

Following the status conference on January 7, 2015, and at the suggestion of the Hearing Officer, the Company filed a notice to temporarily withdraw the ARM tariff from consideration without prejudice.¹¹ On February 18, 2015, Atmos filed a notice reinstating the *Petition's* request for the Company's proposed ARM tariff in anticipation of the Authority's scheduled deliberations on June 15, 2015.¹² During the course of the proceeding, the Consumer Advocate

⁸ *Order Granting Consumer Advocate's Petition to Intervene*, pp. 3-4 (January 7, 2015).

⁹ *Order Establishing Procedural Schedule*, pp. 2-3 (January 12, 2015).

¹⁰ *Id.* at 3.

¹¹ *Notice of Withdrawal Without Prejudice For Later Reinstatement of Certain Portions of Petition and ARM Tariff* (January 13, 2015).

¹² *Reinstatement of Certain Portions of Petition and ARM Tariff Previously Withdrawn Without Prejudice For Later Reinstatement* (February 18, 2015).

and the Company engaged in discovery and filed pre-filed testimony in anticipation of a contested hearing before the panel scheduled for May 11, 2015.

On April 29, 2015, the Company and the Consumer Advocate filed the *Settlement Agreement*. The TRA Staff issued data requests and received responses from both parties concerning different aspects of the *Agreement*.

THE SETTLEMENT AGREEMENT

I. The Rate Case

The Company's *Petition* requested an increase in rates of \$5.89 million. The *Settlement Agreement* reduces the attrition period revenue deficiency from \$5.9 million (an increase in revenue of 3.9%) to \$.71 million (an increase in revenue of 0.5%).¹³ An outline of the overall consensus of the *Agreement* resulting in the agreed upon deficiency is presented as follows:

1. Required operating income of \$19,167,175;
2. Rate base of \$247,958,277;
3. Overall rate of return of 7.73% on rate base;
4. Return on common equity of 9.80%;
5. Capital structure consisting of 5.01% short-term debt, 41.86% long-term debt, and 53.13% equity;
6. Cost of short-term debt of 1.07%;
7. Cost of long-term debt of 5.90%; and
8. Attrition period revenue deficiency of \$711,472.¹⁴

Schedules outlining the revenues and cost of service components agreed to by the Parties are attached as Attachment A to the *Settlement Agreement*. The schedules are supported by workpapers outlining the methodology employed in arriving at the attrition year revenue and cost components. Attachment B of the *Agreement* contains the proposed tariff rates with an effective date of June 1, 2015. The Parties agree the revenue deficiency and rates reflected in Attachments A and B are appropriate and reasonable for the limited purpose of resolving the proceeding.¹⁵

¹³ *Settlement Agreement*, p. 3 (April 29, 2015).

¹⁴ *Id.* at 4; *Joint Response to TRA First Data Request to Atmos Energy Corporation and Consumer Advocate and Protection Division of the Office of the Attorney General*, p. 2 (May 1, 2015).

¹⁵ *Id.*

The Company and the Consumer Advocate state that the *Settlement Agreement* is the product of “give and take” negotiations and agree that the Settlement Agreement shall not have any precedential effect.¹⁶ The Parties further jointly requested that the Authority adopt the methodologies used in the *Settlement Agreement* for the limited purpose of implementing an annual rate review mechanism pursuant to Tenn. Code Ann. § 65-5-103(d)(6).

II. The ARM Tariff

The Parties agreed upon the terms of the ARM tariff as reflected in the revised ARM tariff page 34.5 submitted on May 1, 2015, superseding the tariff page 34.5 filed in Attachment C of the *Settlement Agreement*.¹⁷ The *Petition*’s original proposed ARM tariff was based on the Company’s budgeted information, with no reconciliation between budgeted and actual information in future filings.¹⁸ The changes to the ARM tariff provided in the *Settlement Agreement* include a reconciliation process utilizing actual expenses and capital investments.¹⁹ The Company will make an Annual Filing no later than February 1 of each year. On or before September 1st of each year the Company will file an Annual Reconciliation to the Authorized Return on Equity. The proposed reconciliation will true-up actual amounts to the Company’s authorized return on equity for the forward-looking test year that immediately completed and include interest at the overall cost of capital compounded for two years.²⁰

The *Settlement Agreement* imposes requirements for reviewing both the Annual ARM tariff and the reconciliation. As part of the *Settlement Agreement*, the Company is required to file a Variance Report which would identify and explain differences between the current year and the

¹⁶ *Id.* at 30.

¹⁷ *Joint Response to TRA First Data Request to Atmos Energy Corporation and Consumer Advocate and Protection Division of the Office of the Attorney General*, p. 3 (May 1, 2015).

¹⁸ William H. Novak, Pre-filed Direct Testimony, p. 40 (April 7, 2014).

¹⁹ *Settlement Agreement*, p. 26 (April 29, 2015).

²⁰ *Id.* at 25-27.

prior year exceeding 5% and \$30,000.²¹ From this Variance Report, the CAPD and/or the Authority can request additional information and an explanation from the Company which will be provided by the Company within ten business days.²²

As part of the *Agreement*, an attestation is required from a Company officer affirming 1) that the Company's Annual ARM Filing has been prepared in accordance with the Approved Methodologies, or that any deviation from or the resolution of any ambiguities in the Approved Methodologies has been affirmatively disclosed and explained in a document attached to an affidavit; 2) disclose any new methodologies it has used; 3) that all new matters have been disclosed; 4) that the Variance Report, described above, includes all matters required; 5) that no disallowed items have been included in the filing; 6) that there have been no additions, deletions or modifications to the accounts or subaccounts; and 7) that there have been no changes in the method of accounting or estimating any account or subaccount.²³

As modified, the ARM filing will use the twelve-month period ending September 30th of each year prior to the Annual Filing Date as the test year with rates to be established based on a forward-looking test year for the twelve-month period ending May 31st of each following year.²⁴ As required by Tenn. Code Ann. § 65-5-103(d)(6)(C), the Parties agreed that the Company will use the authorized return on equity as established in this docket. As part of the *Agreement*, the Parties agreed that Atmos Energy may opt into an annual review of its rates pursuant to Tenn. Code Ann. § 65-5-103(d)(6), with the ARM tariff as the method for purposes of resolving this proceeding.²⁵

²¹ *Id.* at 27-28.

²² *Id.* at 28.

²³ *Id.* at 6-7.

²⁴ *Id.* at 4-5, 8.

²⁵ *Id.* at 4.

The *Settlement Agreement* proposes that any rate adjustments resulting from an ARM filing go into effect for bills rendered on or after June 1st.²⁶ The *Agreement* proposes any revenue deficiency or sufficiency shall be distributed proportionate to the current margin of each class with the current base and volumetric rates consistent with Schedule 11-3 of the *Settlement Agreement*, excluding Special Contract customers.²⁷ The *Agreement* requires the Company to notify the Authority and the Consumer Advocate at least 120 days prior to any termination, renewal or rate related alteration of any Special Contract and seek approval for any such change.²⁸

The *Settlement Agreement* further provides that Atmos may file a depreciation study with the Authority for review and request that the depreciation rates proposed therein be included in the Company's next ARM filing.²⁹ The *Agreement* proposes that in the event the Company conducts a depreciation study, the study will be provided to the Consumer Advocate and filed with the Authority within thirty (30) days of completion of the study rather than submitting the study concurrent with or as part of an ARM filing.³⁰ The Parties agree that following appropriate discovery and the opportunity for rebuttal by any intervening party and consideration for approval by the Authority, any new depreciation rates approved by the Authority shall be applied in the Company's next subsequent ARM filing.³¹

THE HEARING

The Hearing in this matter was held before the voting panel on May 11, 2015, as noticed by the Authority on April 30, 2015. Participating in the Hearing were the following parties and their respective counsel:

²⁶ *Id.* at 5-6.

²⁷ *Id.* at 8.

²⁸ *Id.*

²⁹ *Id.* at 18-19.

³⁰ *Id.* at 18.

³¹ *Id.* at 18-19.

Atmos Energy Corporation – A. Scott Ross, Esq., Neal and Harwell, PLC, 2000 One Nashville Place, 150 Fourth Ave. North, Nashville, TN 37219.

Consumer Advocate and Protection Division – Wayne Irvin, Esq. and Vance Broemel, Esq., Office of the Attorney General, 425 5th Ave. North, John Sevier Building, P.O. Box 20207, Nashville TN 37202.

During the Hearing, Atmos and the Consumer Advocate indicated they were in agreement with the *Settlement Agreement* and the *Agreement* was presented to the panel. Members of the public were given an opportunity to offer comments, but no one sought recognition to do so.

FINDINGS AND CONCLUSIONS

Following the Hearing on the proposed *Settlement Agreement*, the panel deliberated the matter on May 11, 2015. Based upon the evidence in the record and the agreed upon terms of the *Settlement Agreement*, the panel found that the overall rate increase of \$711,000 annually proposed by the Parties is just and reasonable and provides the necessary level of revenues to allow Atmos to continue to provide safe and reliable service. Furthermore, the panel found that the underlying methodologies employed by the parties in the *Settlement Agreement*, as reflected in the workpapers and schedules contained in Attachment A of the *Agreement*, as a whole are based upon sound ratemaking principles applicable to the unique circumstances and settlement of this case. The panel noted that the average customer's bill will increase by \$0.26 per month.

The *Settlement Agreement* also proposed an annual rate review tariff pursuant to Tenn. Code Ann. § 65-5-103(d)(6). The panel considered the proposed ARM tariff as modified by the *Settlement Agreement*. Tenn. Code Ann. § 65-5-103(d)(6) states:

(6)(A) A public utility may opt to file for annual review of its rates based upon the methodology adopted in its most recent rate case pursuant to § 65-5-101 and subsection (a), if applicable.

(B) In order for a public utility to be eligible to make an election to opt into an annual rate review, the public utility must have engaged in a general rate case pursuant to § 65-5-101 and subsection (a) within the last five (5) years; provided, however, that the authority may waive such requirement or increase the eligibility period upon a finding that doing such would be in the public interest.

(C) Pursuant to the procedures set forth in subdivision (d)(1), the authority shall review the annual filing by the public utility within one hundred twenty (120) days of receipt and order the public utility to make the adjustments to its tariff rates to provide that the public utility earns the authorized return on equity established in the public utility's most recent general rate case pursuant to § 65-5-101 and subsection (a).

(D)(i) A public utility may terminate an approved annual review plan only by filing a general rate case pursuant to § 65-5-101 and subsection (a).

(ii) The authority may terminate an approved annual review plan only after citing the public utility to appear and show cause why the authority should not take such action pursuant to the procedures in § 65-2-106.

(iii) The authority or the public utility may propose a modification to the approved annual review plan for consideration by the authority. The authority shall determine whether any proposed modification is in the public interest and should be approved within the time frame set forth in subdivision (d)(6)(C). If the authority denies a modification to the approved annual review plan, the authority shall set forth with specificity the reasons for its denial.

The Authority must determine whether a proposed annual review mechanism before it meets the statutory requirements, including whether a mechanism is in public interest. The panel found that the *Settlement Agreement* contains several modifications to the ARM tariff Atmos originally proposed, including a true-up mechanism to reconcile the Company's budgets with actual results. The panel found that with the true-up mechanism in place to reconcile the Company's budgets and projections with actual results, Atmos will be able to recover its reasonably and prudently incurred expenses and costs of capital investment each year, allowing the Company to maintain its authorized return on equity through the agreed upon annual rate and reconciliation filings, without the filing of formal rate cases. The panel found that, as revised, the ARM tariff meets the requirements and fulfills the purpose of Tenn. Code §65-5-103(d)(6) and is in the public interest.

In addition, the panel found that, in accepting the *Settlement Agreement*, the Authority maintains the authority to review the reasonableness and prudence of the Company's expenses and capital investments included in the annual rate and reconciliation filings and make adjustments as required by the public interest and directed the Authority staff to perform such

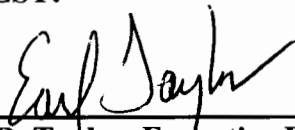
reviews.³² The Parties have confirmed through data requests that neither the *Settlement Agreement* nor the terms of the ARM tariff expands or limits the annual rate review statute or the Authority's rate-setting powers and discretion.³³ Therefore, the *Settlement Agreement* and the ARM tariff are consistent with the statute's intent to make reasonable annual tariff rate adjustments necessary to provide that the Company earns the authorized return on equity established by this Authority. Based on the foregoing findings and conclusions, the panel voted unanimously to approve the *Settlement Agreement*, including all attachments thereto, and the revised original tariff sheet 34.5 submitted on May 1, 2015.

IT IS THEREFORE ORDERED THAT:

1. The *Stipulation and Settlement Agreement*, including all attachments thereto, a copy of which is attached to this Order as Exhibit A, and the revised tariff sheet 34.5 submitted on May 1, 2015, attached as Exhibit B, is approved, adopted and incorporated into this Order.
2. The settlement of any issue pursuant to the *Stipulation and Settlement Agreement* shall not be cited by Atmos Energy Corporation, the Consumer Advocate and Protection Division of the Office of the Attorney General or any other entity as binding precedent in any other proceeding before the Authority or any court, state or federal.

Vice Chairman David F. Jones, Director Kenneth C. Hill and Director Robin Bennett concur.

ATTEST:



Earl R. Taylor, Executive Director

³² Transcript of Hearing, p. 16 (May 11, 2015).

³³ *Joint Response to TRA First Data Request to Atmos Energy Corporation and Consumer Advocate and Protection Division of the Office of the Attorney General*, p. 5 (May 1, 2015).