

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

June 13, 2016

IN RE:)	
)	
PETITION OF ATMOS ENERGY CORPORATION)	DOCKET NO. 16-00013
FOR APPROVAL OF ITS 2016 ANNUAL RATE)	
REVIEW FILING PURSUANT TO TENN.)	
CODE ANN. § 65-5-103(d)(6))	

ORDER APPROVING 2016 ANNUAL RATE REVIEW FILING

This matter came before Chairman Herbert H. Hilliard, Vice Chairman David F. Jones and Director Robin L. Morrison of the Tennessee Regulatory Authority (“TRA” or the “Authority”), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on May 9, 2016, for consideration of the 2016 Annual Rate Review Mechanism (“ARM”) tariff filing (“*Petition*” or “2016 ARM Filing”) of Atmos Energy Corporation (“Atmos” or the “Company”).

BACKGROUND AND 2016 ARM FILING

In Docket No. 14-00146, the Authority approved a *Stipulation and Settlement Agreement* between Atmos and the Consumer Protection and Advocate Division of the Office of the Attorney General and Reporter (“Consumer Advocate”) implementing an ARM under Tenn. Code Ann. § 65-5-103(d)(6) for Atmos.¹ This mechanism allows for annual rate reviews by the Authority in lieu of a general rate case.² Pursuant to the *Order Approving Settlement*, the twelve-

¹ See *In re: Petition of Atmos Energy Corporation for a General Rate Increase under T.C.A. 65-5-103(a) and Adoption of an Annual Rate Review Mechanism Under T.C.A. 65-5-103(d)(6)*, Docket No. 14-00146, *Order Approving Settlement* (November 4, 2015) (hereinafter *Atmos Rate Case*, *Order Approving Settlement*).

² Tenn. Code Ann. § 65-5-103(d)(6).

month period ending September 30th of each year prior to the annual ARM filing date of February 1 is to be used 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.³ Additionally, the *Order Approving Settlement* required that the Company use the authorized return on equity as established in Docket No. 14-00146 or any subsequent general rate case.⁴

As part of the *Stipulation and Settlement Agreement* in Docket No. 14-00146, the Company agreed to submit with its annual ARM filing an attestation from a Company officer affirming the following:

1. That the Company's Annual ARM filing has been prepared in accordance with the methodologies approved in the *Stipulation and Settlement Agreement*, or that any deviation from them has been disclosed and explained in a document attached to an affidavit;
2. That the use of any new methodologies has been disclosed;
3. That all new matters have been disclosed;
4. That the Variance Report will identify and explain all rate differences between the current year and the prior year exceeding 5% and \$30,000 and will contain all matters required by the *Stipulation and Settlement Agreement*;
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 of any account or subaccount utilized in the filing.⁵

³ *Atmos Rate Case, Order Approving Settlement*, pp. 5-6 (November 4, 2015).

⁴ *Id.*

⁵ *Id.* at 6.

In addition to the annual rate review filing by no later than February 1 of each year, the Company must also file an Annual Reconciliation to the authorized return on equity by September 1st of each year.⁶ This filing is required to reconcile actual amounts to the Company's authorized return on equity for the forward-looking test year that immediately completed, inclusive of interest at the overall cost of capital compounded for two years.⁷ The resulting rates will be effective on bills rendered on or after June 1st.⁸

Pursuant to the requirements of the *Order Approving Settlement* in Docket No. 14-00146, Atmos filed its 2016 ARM filing on February 1, 2016. On February 8, 2016, the voting panel assigned to the docket voted unanimously to convene a contested case proceeding and appointed the Authority's General Counsel or her Designee to act as Hearing Officer to prepare the matter for a hearing before the panel, including establishing a procedural schedule, entering a protective order, and ruling on intervention requests and discovery issues.⁹ On February 17, 2016, the Consumer Advocate filed a *Petition to Intervene* in the Docket which was granted by the Hearing Officer in an Order dated February 25, 2016. On March 8, 2016, the Hearing Officer issued her *Order Establishing Procedural Schedule*, and the parties engaged in discovery.

POSITION OF THE PARTIES

Atmos

In its 2016 ARM Filing, Mr. J. Kevin Akers, President, Kentucky and Mid-States Division, attested to the following:

The ARM was prepared and filed in accordance with the approved methodologies as contained in the tariff of the company in Section III. G, Tariff Sheet No. 34.1. The filing is

⁶ *Id.* at 5.

⁷ *Id.*

⁸ *Id.* at 7.

⁹ *Order Convening a Contested Case and Appointing a Hearing Officer* (February 10, 2016).

compliant with Section 13(g-m) of the *Stipulation and Settlement Agreement* approved in Docket No. 14-00146 with the exception of the Accumulated Deferred Income Tax (“ADIT”) deviation.¹⁰

Mr. Akers explained that the *Stipulation and Settlement Agreement* requires that “with the exception of fixed asset ADIT balances, all other ADIT balances shall be held constant from the end of the Historic Base Period.”¹¹ In order to be compliant with the Internal Revenue Code, Atmos calculated an ADIT change of \$9,225,758, due to its Net Operating Loss Carryforward (“NOLC”), which must be included in rate base. According to Mr. Akers, this change will not have an effect on ratepayers because the NOLC will also be included in the Annual Reconciliation filing for Atmos.¹²

Atmos further attested that no new matters that would directly affect the ARM have occurred and that all matters required by Section IX of the ARM tariff are included in the Variance Report.¹³ Additionally, no disallowed items have been included in this filing.¹⁴ Finally, Attachment B to the *Petition* includes all additions, deletions, and/or modifications to the accounts or subaccounts from those included in Docket 14-00146; and there has been no change in the method of accounting or estimation in these accounts.¹⁵

In this filing, Atmos asserts a net revenue deficiency for the twelve-months ended May 31, 2017, of \$4,887,864 and includes a rate design to recover this revenue shortfall.¹⁶ Schedules and work papers supporting the calculations were provided.

¹⁰ *Petition*, Certificate (February 1, 2016).

¹¹ *Id.* at Attachment A.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at Schedule 1.

Consumer Advocate

The Consumer Advocate, through its expert witness William H. Novak, brings forth a threshold issue involving the use of methodologies adopted in Docket No. 14-00146 in the present docket.¹⁷ Mr. Novak contends that in Docket No. 14-00146, the *Order Approving Settlement* stated that any methodologies adopted in that docket could only be used in that docket.¹⁸ Therefore, the Company should not be able to use those methodologies in this docket. The Consumer Advocate requests that the Authority address this as a preliminary issue in this docket.¹⁹ In order to proceed with his pre-filed testimony, Mr. Novak assumed that the Authority will resolve this threshold issue in a manner that allows the Company to use the calculation methodologies utilized in the *Stipulation and Settlement Agreement* in Docket No. 14-00146, but that this assumption does not bind the Consumer Advocate from a recommendation on how the calculation methodologies should be resolved in this or future dockets.²⁰

While qualifying that he did not perform an audit, Mr. Novak states that he did review the calculations supporting the proposed base rates in this filing and his conclusion is that the calculations are reasonable, logical, and reflective of the methodologies adopted in Docket No. 14-00146, with the following exceptions:²¹

First, Mr. Novak takes issue with the lack of Company testimony supporting the prudence of the requested revenue increase and that the proposed rates are just and reasonable.²² Mr. Novak admits that the ARM tariff does not require testimony, but he asserts that the Company may not have met its burden of proof without it and the docket should be held in

¹⁷ *Direct Testimony of William H. Novak*, pp. 4-5 (April 11, 2016).

¹⁸ *Atmos Rate Case, Order Approving Settlement*, pp. 4-5 (November 4, 2015).

¹⁹ *Direct Testimony of William H. Novak*, p. 5 (April 11, 2016).

²⁰ *Id.* at 5-6.

²¹ *Id.* at 10.

²² *Id.* at 10-11.

abeyance until testimony is provided.²³

Second, Mr. Novak objects to the Company's proposal to change base rates and, instead, suggests that the Company should implement an ARM surcharge.²⁴ He argues that changing base rates is inconsistent with the approach adopted for other Tennessee utilities using an alternative regulation mechanism and diffuses the rate change, eliminating any transparency for customers.²⁵ He argues that it also presents a potential problem when the Company files to true-up the rate.²⁶ Additionally, Mr. Novak points out the incremental revenue change for customers' range from 0.00% to 9.22% with no justification for the varying increases.²⁷ Mr. Novak recommends the Authority require Atmos to implement a single surcharge applicable to all customers; disclose to the Authority the specific accounts that will be used to determine the ARM surcharges and reconciliations; and demonstrate to the Authority how the ARM surcharge will be presented on the customers' bill.²⁸ Again, the Consumer Advocate argues, this docket should be held in abeyance until the Company develops and presents an ARM surcharge for approval by the Authority.²⁹

Finally, Mr. Novak states that it appears that the Company has changed calculation methodologies from that used in its previous ARM filing.³⁰ Mr. Novak specifically refers to the NOLC used to offset ADIT which appears to be contrary to the *Stipulation and Settlement Agreement*.³¹ Based on his assertion that there is no testimony to support this calculation and the responses to the informal data request do not provide an adequate explanation, Mr. Novak again

²³ *Id.*

²⁴ *Id.* at 11-12.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 12.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 13.

³¹ *Id.*

recommends that this matter be held in abeyance pending submission of testimony and allowing the Consumer Advocate to properly analyze this issue.³²

Atmos' Pre-filed Testimony

In its rebuttal testimony, Atmos contends that the methodologies adopted in Docket No. 14-00146 pursuant to the *Stipulation and Settlement Agreement*, and which resulted in an approved ARM tariff, are applicable in this case.³³ Mr. Gregory K. Waller, Rates and Regulatory Affairs Manager for Atmos, references the current ARM tariff and emphasizes that it does not require testimony be filed with the Company's annual ARM filing.³⁴ He asserts that the Company filed an appropriate Attestation addressing all issues as required by the ARM tariff.³⁵ Additionally, he notes that the Consumer Advocate has sought information through discovery to which the Company has appropriately responded.³⁶ Further, Mr. Waller states that the company filed proof of public notice on April 4, 2016 regarding the proposed rate changes.³⁷

The Company argues that recovery of costs through the proposed change to base rates, rather than through a separate charge, is consistent with Section VI of the ARM tariff.³⁸ Further, he testifies that the ARM tariff is derived from a different section of the Tennessee Code than other utilities operating in Tennessee.³⁹ It is therefore not comparable to the alternative regulation mechanisms adopted for Piedmont and Tennessee American Water.⁴⁰

Atmos contends that it has complied with its tariff and with the *Stipulation and Settlement Agreement* in Docket 14-00146 by disclosing the deviation to the approved

³² *Id.* at 13-14.

³³ *Rebuttal Testimony of Gregory K. Waller on behalf of Atmos Energy Corporation*, pp. 3-4 (April 14, 2016).

³⁴ *Id.* at 6-7.

³⁵ *Id.*

³⁶ *Id.* at 7-8.

³⁷ *Id.* at 8-9.

³⁸ *Id.* at 9-10.

³⁹ *Id.* at 10.

⁴⁰ *Id.*

methodologies of NOLC in Attachment A to the *Petition*.⁴¹ Mr. Waller asserts that the reference in the *Stipulation and Settlement Agreement* to “other ADIT balances” includes NOLC balances which are directly related to fixed assets and, therefore, this is not a “new matter” as Mr. Novak alleges.⁴² Mr. Waller asserts that this is merely a change in the forecast methodology for ADIT NOLCs as required in IRS rulings issued subsequent to the Company’s original ARM filing.⁴³ Further, he contends, when the true-up occurs in the Company’s September filing, there will be no ultimate impact on ratepayers.⁴⁴

THE HEARING

The Hearing in this matter was held before the voting panel during the regularly scheduled Authority Conference on May 9, 2016, as noticed by the Authority on April 29, 2016. On April 4, 2016, A. Scott Ross, Esq., Attorney for Atmos, filed with the Authority a Notice demonstrating the Company’s compliance with the notice requirements of TRA Rule 1220-04-01-.05. Participating in the Hearing were:

Atmos Energy Corporation – A. Scott Ross, Esq., Neal & Harwell, 2000 One Nashville Place, 150 Fourth Avenue North, Nashville, Tennessee 37219-2498; Kevin Akers, President of Kentucky/Mid-States Division, and Greg Waller, Manager of Rates and Regulatory Affairs, 5420 LBJ Freeway, Suite 1600, Dallas, Texas 75420.

Consumer Protection and Advocate Division – Wayne M. Irvin, Esq., Office of the Attorney General and Reporter, Post Office Box 20207, Nashville, Tennessee 37202-0207 and William H. Novak, President, WHN Consulting, 19 Morning Arbor Place, The Woodlands, Texas, 77381.

During the Hearing, Mr. Novak and Mr. Waller ratified, then summarized their pre-filed testimony and were subject to cross-examination by opposing counsel and questioning before the panel. Mr. Akers did not pre-file testimony in the docket, but was subject to cross-examination

⁴¹ *Id.* at 11-12.

⁴² *Id.*

⁴³ *Id.* at 12.

⁴⁴ *Id.* at 15.

by the Consumer Advocate as well as questioning before 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 conclusion of the hearing, the panel considered the 2016 ARM filing of Atmos Energy Corporation. Thereafter, based upon the pleadings, testimony and the administrative record as a whole, the panel made the following findings:

1. The methodologies adopted by the Authority in the Company's most recent general rate case, Docket No. 14-00146, are applicable to the Company's ARM filing made in this docket. The *Stipulation and Settlement Agreement*, approved by the Authority in Docket No. 14-00146, stated "The Parties jointly request that the Authority adopt the ratemaking methodologies set forth in this Settlement Agreement for the limited purpose of implementing an annual review mechanism under Tenn. Code Ann. § 65-5-103(d)(6) under this Docket, and approve the annual review mechanism and ARM tariff consistent with the terms and requirements established by this Settlement Agreement."⁴⁵ The methodologies adopted in Docket No. 14-00146 are applicable for the purpose of implementing the Company's approved ARM. The *Petition* is an annual ARM filing made pursuant to the *Stipulation and Settlement Agreement*, as approved by the Authority, and the docket number assigned to it is not controlling or of consequence to the issue.

2. The form of the *Petition* and ARM filing, including the filing of the attestation and proof of public notice, are compliant with the requirements of the *Stipulation and Settlement Agreement* and ARM tariff approved in Docket No. 14-00146;

⁴⁵ *Atmos Rate Case, Stipulation and Settlement Agreement*, p. 29 (April 29, 2015).

3. As noted by the Consumer Advocate's witness in his pre-filed testimony, the calculations supporting the ARM filing are reasonable and reflect the methodologies established and approved in Docket No. 14-00146;

4. The calculations supporting inclusion of NOLC in the ARM filing are reasonable and consistent with the methodologies established and approved in Docket No. 14-00146; and

5. The rate design proposed in the ARM filing, including the proposed adjustments to monthly service rates, reflects the methodologies established and approved in Docket No. 14-00146 and is just, reasonable and in the public interest.

Finally, Atmos is strongly recommended and encouraged to file pre-filed testimony in support of its annual filings due February 1st of each year and with its reconciliation filings ending September 30th of each year.

IT IS THEREFORE ORDERED THAT:

1. The 2016 Annual Rate Review Mechanism filing and related tariffs filed by Atmos Energy Corporation are approved.

2. Approval of Atmos Energy Corporation's 2016 Annual Rate Review Mechanism Filing and tariffs does not preclude or limit substantive review of the Annual Reconciliation to the Authorized Return on Equity to determine the reasonableness and prudence of expenses and costs recovered under the Annual Rate Review Mechanism and to ensure that service rates established by Atmos Energy Corporation pursuant to the Annual Rate Review Mechanism remain just, reasonable and in the public interest.

3. Any person who is aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within fifteen days from the date of this Order.

4. Any person who is aggrieved by the Authority's decision in this matter has the right to judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty days from the date of this Order.

Chairman Herbert H. Hilliard, Vice Chairman David F. Jones, and Director Robin L. Morrison concur.

ATTEST:

A handwritten signature in cursive script, appearing to read "Earl Taylor", written in black ink.

Earl R. Taylor, Executive Director