

STATE OF TENNESSEE

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November 22, 2016

David Foster, Chief  
Utilities Division  
c/o Ms. Sharla Dillion, Docket Manager  
Tennessee Regulatory Agency  
600 Deaderick Street, 4<sup>th</sup> Floor  
Nashville, Tennessee 37242-0001

**RE: Petition of Atmos Energy Corporation for Approval of 2016 Annual Reconciliation Filing ("ARM") Under T.C.A. § 65-5-103(d)(6), TRA Docket No. 16-00105**

Dear Mr. Foster:

In response to your data request dated November 15, 2016, to the Consumer Advocate:

1. The approved annual rate review mechanism for Atmos allows the Company to adjust its rates annually in order to allow the Company to earn its authorized return on equity. Since this adjustment fully incorporates all revenue changes, please explain the Consumer Advocate's position as to why the WNA should continue rather than adjust all revenue changes in the ARM Reconciliation Filing? Discuss all benefits of continuing the WNA, especially in light of legislation and recent TRA dockets aimed at streamlining and simplifying regulation.

RESPONSE:

At the outset, the Consumer Advocate notes that the Weather Normalization Adjustment ("WNA") was included in the Stipulation and Settlement Agreement ("Settlement Agreement") as a result of the "give and take" negotiations that occurred in the context of TRA Docket 14-00146 (see Sections 7, 18, 19, 20, 21, 22, and 24 of the Settlement Agreement). Thus, the Consumer Advocate would continue to support the continuation of the WNA in the context of implementing the Settlement Agreement on the assumption that all such sections that resulted from such "give and take" negotiations are still in effect. As discussed below, however, it does not appear that all of those sections are still effective, which in turn raises doubts about whether the methodologies

David Foster, Chief  
Utilities Division  
c/o Ms. Sharla Dillion, Docket Manager  
Tennessee Regulatory Agency  
November 22, 2016  
Page 2 of 4

in the Settlement Agreement are still effective, especially in view of the section requiring the annual review mechanism be implemented in Docket 14-00146 as provided for in the Settlement Agreement.

As it is, the first annual reconciliation of the annual review mechanism (as filed in this Docket 16-00105) is not being implemented in Docket 14-00146. This means that at least one section that was important in the negotiations that resulted in the Settlement Agreement (and the TRA's order) in that Docket is being disregarded. To focus on that section, Section 22 of the Settlement Agreement assures that the Settlement Agreement would have precedential value and that the methodologies to which the parties agreed (and that were approved by the TRA) could be used in the implementation of an annual review mechanism. Section 22 provides as follows:

22. Except to the limited extent necessary to allow the Authority to implement an annual review mechanism under Tenn. Code Ann. § 65-5-103(d)(6) in this Docket (and, for the avoidance of doubt, only in this Docket 14-00146), the Parties acknowledge and agree as follows:

- a. This Settlement Agreement shall not have any precedential effect in any other proceeding or be binding upon any of the Parties in this or any other jurisdiction;
- b. None of the signatories hereto shall be deemed to have acquiesced in any ratemaking or procedural principle, including without limitation, any cost of service determination or cost allocation or revenue related methodology,
- c. No provision of this Settlement Agreement shall be deemed an admission of any Party.

Thus, Section 22 clearly establishes the consequences of not implementing an annual review mechanism in Docket 14-00146.

In the context of applying Section 22, it appears clear that the consequences of the use of Docket 16-00105 to purportedly implement the annual reconciliation of an annual review mechanism are that: (i) the Settlement Agreement (that the TRA ordered be incorporated in to its order in its entirety) does not have "precedential effect;" and (ii) no methodology has been deemed to have been "acquiesced in" by the parties for use in the current Docket 16-00105. In other words, no methodology that was adopted in Docket 14-00146 appears to remain effective to implement an annual review mechanism in Docket 16-00105.

Notwithstanding a plain reading and application of that language, though, TRA orders related to the annual review mechanism since Docket 14-00146 have essentially disregarded Section 22, without providing a clear rationale. The orders appear to simply use the methodologies established in Docket 14-00146 in dockets other than Docket 14-00146 that purport to implement

David Foster, Chief  
Utilities Division  
c/o Ms. Sharla Dillion, Docket Manager  
Tennessee Regulatory Agency  
November 22, 2016  
Page 3 of 4

an annual review mechanism. From its filings in the relevant dockets, Atmos appears to have essentially followed the lead of the TRA on this issue in disregarding Section 22 (or arguing that compliance with that section did not matter). It is worth emphasizing that there has not appeared to be a clear rationale articulated in the TRA's orders, or by Atmos, as to why a section in a Settlement Agreement (that was fully incorporated into a TRA order) may be disregarded without due process. The question appears to continue to be open as to the authority for disregarding Section 22 -- and, if one assumes that it may be disregarded (while apparently other sections remain viable), which provisions of the Settlement Agreement continue to be effective.

The Consumer Advocate is reluctant to appear to have given up on upholding (and supporting) the terms of the Settlement Agreement, especially in view of the TRA's order that approved the Settlement Agreement in its entirety. That said, the Consumer Advocate does not wish to be the only one that is upholding a shell Settlement Agreement, the provisions of which may be disregarded without clear rationale. And if there is a permissible basis for the TRA and Atmos to disregard Section 22, then there would appear to be a permissible basis for the TRA to disregard other provisions of the Settlement Agreement (or incorporate other provisions, including those that might reflect other revenue sources that could be added to satisfy the Company's revenue requirement) that the Consumer Advocate would like to reconsider or recommend. In practical terms relevant to your request, if the TRA is justifiably permitted to disregard Section 22 in Docket 16-00105, then it would logically follow that the WNA methodology (and any other methodology) may be similarly permitted to be disregarded.

With the above in mind and with the understanding that the Consumer Advocate is making an assumption that there is some clear (but unknown at this point) basis for disregarding a section of the Settlement Agreement, and focusing on the policy aspects of your request, please refer to the direct testimony of Consumer Advocate witness William H. Novak in Docket 14-00146 that is related to your request and which reads as follows:

Third, if the TRA does elect to approve an ARM based on the Company's entire capital and operating budget, I would recommend that the TRA consider terminating the Company's existing WNA mechanism. The WNA trues up the sales and transportation volumes approved in the last rate case to the actual weather experienced, while the ARM would true up the rate of return to the Company's actual results of operations. Since the ARM would true-up the Company's entire cost of service, it seems that a WNA mechanism would be redundant and unneeded.<sup>1</sup>

While Mr. Novak's recommendation to eliminate the WNA mechanism was removed in settlement negotiations between the Consumer Advocate and the Company, the Consumer

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<sup>1</sup> Direct Testimony of William H. Novak regarding the Petition of Atmos Energy Corporation for a General Rate Case and to Adopt an Annual Review Mechanism and ARM Tariff in TRA Docket 14-00146, as dated and filed on April 7, 2015, page 42.

David Foster, Chief  
Utilities Division  
c/o Ms. Sharla Dillion, Docket Manager  
Tennessee Regulatory Agency  
November 22, 2016  
Page 4 of 4

Advocate still stands by (with respect to the relevant policy aspects of your request) Mr. Novak's testimony that the WNA mechanism is now "redundant and unneeded." Specifically, as noted in the TRA's request, the ARM now encompasses all revenue changes – including those caused by weather. Therefore, any revenue change caused by the elimination of the WNA mechanism would automatically be included in the ARM.

The single advantage of the WNA mechanism is that it surcharges or refunds the impact of actual weather on the customer's current monthly bill, whereas the change from an ARM surcharge could take a year or longer to be properly credited to the customer's bill. However, this "real time" billing advantage is completely overshadowed by the audit and regulatory burden of continually reviewing a separate billing mechanism that is no longer necessary.

We have enclosed an original and four copies of this response to be filed in the above-referenced docket.

Sincerely,



Wayne M. Irvin  
Assistant Attorney General  
615-532-5512

cc: all parties of record