

**BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION  
NASHVILLE, TENNESSEE**

IN RE: )  
)  
ATMOS ENERGY CORPORATION )  
ANNUAL RECONCILIATION ) **DOCKET NO. 17-00091**  
OF ANNUAL REVIEW MECHANISM )

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**CONSUMER PROTECTION AND ADVOCATE DIVISION'S RESPONSES TO  
FIRST DISCOVERY REQUESTS OF ATMOS ENERGY CORPORATION**

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The Consumer Protection and Advocate Division of the Office of the Attorney General (Consumer Advocate or CPAD), pursuant to the Order Establishing Procedural Schedule entered by the Tennessee Public Utility Commission (TPUC or Commission) Hearing Officer in this Docket on October 27, 2017, hereby submits its responses to the discovery requests of Atmos Energy Corporation (Atmos or Company) to the Consumer Advocate filed on December 8, 2017. With respect to requests within the scope of his testimony in this Docket, the responsible witness for these responses is William H. Novak.

Atmos' Discovery Requests and the Consumer Advocate's Responses

1. Admit that the approved Settlement Agreement in Docket No. 14-00146 defines the forward-looking test year as the twelve months beginning June 1 of each calendar year.

**RESPONSE:**

Admit, but only to the extent that the request asks the Consumer Advocate to confirm that Atmos has accurately cited the referenced definition in the Settlement Agreement at page 8.

2. Admit that the methodology for calculation of income tax expense for the

forward-looking test year is not specifically described in the text of the approved Settlement Agreement in Docket No. 14-00146.

**RESPONSE:**

Deny because, in the Consumer Advocate's view, the methodology for calculation of income tax expense for the forward-looking test year is specifically described by permitted utilization and incorporation of the methodology used in the Company's revenue requirement model and supporting workpapers and relied-upon files in Docket No. 14-00146 into the text of the approved Settlement Agreement in Docket No. 14-00146 (at page 25).

Further, with reference to the reconciliation process, the Settlement Agreement in Docket No. 14-00146 (at page 26) provides that actual results are to be substituted in place of the previously forecasted data in the budget filing. Also, the Commission Order in Docket No. 14-00146 (at page 5), which specifically approves, adopts, and incorporates the Settlement Agreement into that Order, particularly notes the following:

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. The changes to the ARM tariff provided in the Settlement Agreement include a reconciliation process utilizing actual expenses and capital investments.

And it should be pointed out that the Parties affirmed this methodology by calculating income tax expense using the actual booked income tax expense – and agreed to a Settlement Agreement using that methodology – in Docket No. 16-00105. The Commission approved that affirmation and agreement in its Order (at page 4) in that Docket:

In their proposed Settlement Agreement, the Parties asked the Authority to approve Atmos' annual reconciliation filing of its approved ARM tariff as revised by the Settlement Agreement. After review and consideration of the evidentiary record in this proceeding, including all testimony, data responses and the supporting schedules and workpapers submitted with the Settlement Agreement, the voting panel found that the methodologies used by the parties in calculating the Revenue Deficiency pursuant to the ARM are consistent with those established by the Authority in TRA Docket No. 14-00146.

3. Admit that the Atmos Energy revenue requirement model utilized in Docket No. 14-00146 calculated income tax expense for the forward-looking test year based upon statutory tax rates.

**RESPONSE:**

Admit, but only to the extent that this request is interpreted to ask about the budget filing made on February 1 of each year in which the statutory rate is used only for forecast calculations.

4. Admit that the Annual ARM Filing being reconciled in this docket is the one that was submitted and approved in Docket No. 16-00013.

**RESPONSE:**

The Consumer Advocate admits that Docket No. 17-00091 reconciles (using actual amounts) Atmos' budget filing in Docket No. 16-00013.

5. Admit that the forward-looking test year being reconciled in this docket is the twelve-month period June 1, 2016, through May 31, 2017.

**RESPONSE:**

The Consumer Advocate admits that this Docket No. 17-00091 is reconciling (using actual amounts) Atmos' budget filing (Docket No. 16-00013) covering the period June 1, 2016 through May 31, 2017.

6. Admit that the approved Settlement Agreement in Docket No. 14-00146 includes the following provision in paragraph 14(b): "The annual reconciliation shall include a calculation of actual cost of service, determined in accordance with the Approved Methodologies, for the Forward Looking Test Year immediately completed; using the same revenue requirement model used in each Annual ARM Filing, substituting actual results in place of previously forecasted data for all aspects of cost of service, excluding revenue calculations."

**RESPONSE:**

Admit, but only to the extent that the request asks the Consumer Advocate to confirm that Atmos has accurately quoted a part of a section of the Settlement Agreement at page 26.

7. Admit that the terms of the approved Settlement Agreement in Docket No. 14-00146 do not specify how to determine "actual results" for income tax expense.

**RESPONSE:**

Deny because, in the Consumer Advocate's view, the terms of the Settlement Agreement specify how to determine "actual results" when taken in the context of the language of the Settlement Agreement, the Commission Order approving the Settlement Agreement, and the interpretation and manner of implementation of the determination by the Parties in Docket No. 16-00105. The Settlement Agreement states:

The annual reconciliation shall include a calculation of actual cost of service, determined in accordance with the Approved Methodologies, for the Forward Looking Test Year immediately completed; using the same revenue requirement model used in each Annual ARM Filing, substituting actual results in place of previously forecasted data for all aspects of cost of service, excluding revenue calculations.

The Commission Order in Docket No. 14-00146, which specifically approves, adopts, and incorporates the Settlement Agreement into that Order, particularly specifies the following:

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. The changes to the ARM tariff provided in the Settlement Agreement include a reconciliation process utilizing actual expenses and capital investments.

And the Parties affirmed how "actual results" are to be determined by calculating— and agreeing to a Settlement Agreement that calculated — income tax expense using the actual booked income tax expense in Docket No. 16-00105. That affirmation and agreement was approved by the Commission in its Order in that Docket:

In their proposed Settlement Agreement, the Parties asked the Authority to approve Atmos' annual reconciliation filing of its approved ARM tariff as revised by the Settlement Agreement. After review and consideration of the evidentiary record in this proceeding, including all testimony, data responses and the supporting schedules and workpapers submitted with the Settlement Agreement, the voting panel found that the methodologies used by the parties in calculating the Revenue Deficiency pursuant to the ARM are consistent with those established by the Authority in TRA Docket No. 14-00146.

8. Admit that the revenue requirement model utilized in the Annual ARM Filing in Docket No. 16-00013 calculated income tax expense for the forward-looking test year based upon statutory tax rates, as set-forth in the schedule headed "Tennessee Distribution System

Computation of State Excise and Federal Income Taxes for Sch 10 Twelve Months Ended May 31, 2017” (Wp 10-1) (attached to the Petition in that docket).

**RESPONSE:**

Admit, but only to the extent that this request is interpreted to ask about the budget filing that was the subject of Docket No. 16-00013.

9. Admit that Atmos Energy has been through one annual reconciliation proceeding, in Docket No. 16-00105.

**RESPONSE:**

Admit that Atmos has been through one completed annual reconciliation process in the referenced Docket. The Consumer Advocate would note that Atmos is going through its second annual reconciliation docket in the current Docket No. 17-00091.

10. Admit that the approved Settlement Agreement in Docket No. 16-00105 includes the following provisions:

18. This Settlement Agreement shall not have any precedential effect in any future proceeding or be binding on any of the Parties in this or any other jurisdiction except to the limited extent necessary to implement the provisions hereof.

19. The Parties agree and request the TRA to order that the settlement of any issue pursuant to this Settlement Agreement shall not be cited by the Parties or any other entity as binding precedent in any other proceeding before the TRA or any court, state or federal except to the limited extent necessary to implement the provisions hereof.

**RESPONSE:**

Admit, but only to the extent that the request asks the Consumer Advocate to confirm that Atmos has accurately quoted the referenced two sections of the Settlement Agreement in Docket No. 16-00105 (at page 9).

11. Reference is made to Section V of Mr. Novak’s Direct Testimony in this Docket relating to pension expense, and specifically to Mr. Novak’s recommendation that Atmos Energy be required to change its annual loading rates to remove the accrued portion of pension

expense from capitalized construction projects. Admit that Mr. Novak's recommended approach would differ from the way this item was handled in Docket 14-00146.

**RESPONSE:**

Deny because, after a review of Docket No. 14-00146, the Consumer Advocate did not find that forecasted pension expense was included in the revenue requirement and related documentation in that Docket and, thus, was not handled in that Docket.

12. Reference is made to Section VI of Mr. Novak's Direct Testimony in this Docket relating to net operating loss allocation methodology, and specifically to Mr. Novak's recommendation that Atmos Energy be required to change how the Company calculates and allocates the NOL balance to Tennessee. Admit that Mr. Novak's recommended approach would differ from the way this item was handled in Docket 14-00146.

**RESPONSE:**

Deny because Mr. Novak does not propose a change in the calculation methodology. The Consumer Advocate notes that Mr. Novak's recommendation with respect to a potential modification of the allocation approach for the NOL balance would only potentially apply to future dockets, and any such modification or resulting adjustment would require additional documentation from the Company and further appropriate review and analysis as noted in his testimony.

13. Admit that in Docket 16-00105 CPAD advocated that Atmos Energy be required to change the methodology by which certain items were allocated to rate base to remove capitalized incentive compensation from rate base.

**RESPONSE:**

To the extent reflected in the Direct Testimony of William H. Novak in Docket 16-00105, the Consumer Advocate admits that Mr. Novak's testimony advocated the long-standing Commission policy of excluding incentive compensation from rates. This policy was correctly applied to the Company's O&M expenses, but through an oversight was omitted in regard to capitalized incentive compensation. In the Consumer Advocate's view, the Settlement Agreement and Commission's decision in Docket 16-00105 were an affirmations of existing policy and how it should be applied.

14. Admit that methodology changes addressing this capitalized incentive compensation issue were approved by the TPUC (TRA) in Dockets 16-00105 and 17-00012.

**RESPONSE:**

The Consumer Advocate respectfully objects to this request because the request is ambiguous, vague, and requires clarification as to which methodology changes are being referred to and the methodologies that were approved. Without waiving the objections, the Consumer Advocate would point out that the changes in addressing incentive compensation were made to affirm existing TPUC policy. The Commission has had a long-standing policy of excluding incentive compensation from rates. This policy was correctly applied to the Company's O&M expenses, but through an oversight was omitted in regard to capitalized incentive compensation. The Commission's decisions in Dockets 16-00105 and 17-00012 were affirmations of its existing policy and how it should be applied.

15. Admit that the CPAD supported these methodology changes and their approval in Dockets 16-00105 and 17-00012.

**RESPONSE:**

The Consumer Advocate respectfully objects to this request because the request is ambiguous, vague, and requires clarification as to which methodology changes are being referred to and the methodologies that were approved. Without waiving the objections, the Consumer Advocate would point out that, to the extent reflected in the Direct Testimony of William H. Novak in Docket Nos. 16-00105 and 17-00012, Mr. Novak's testimony affirms the long-standing Commission policy of excluding incentive compensation from rates.

16. Admit that these changes in methodology addressing capitalized incentive compensation were changes to the methodologies utilized in Docket 14-00146.

**RESPONSE:**

The Consumer Advocate respectfully objects to this request because the request is ambiguous, vague, and requires clarification as to which methodology changes are being referred to and the methodologies that were approved. Without waiving the objections, the Consumer Advocate would point out that the changes in addressing incentive compensation were made to affirm existing TPUC policy. The Commission has had a long-standing policy of excluding incentive compensation from rates. This policy was correctly applied to the Company's O&M expenses, but through an oversight was omitted in regard to capitalized incentive compensation. The Commission's decisions in

Dockets 16-00105 and 17-00012 were an affirmation of its existing policy and how it should be applied.

17. Reference is made to Mr. Novak's Direct Testimony in this Docket at page 17 lines 2-3. Explain the basis for Mr. Novak's expressed belief "that any differences would generally be reconciled in the following period." Provide any calculations or other materials that support Mr. Novak's expressed belief.

**RESPONSE:**

Refer to the Company's response to CPAD data request 1-3b which reads in part as follows:

While the Company admits that the Settlement agreement in Docket No 16-00105 contains such statements, and admits that the Company was striving to comply fully and fairly with the terms of the Settlement Agreement and the Approved Methodologies, and continues to do so, the Company now understands that its choice in that docket to utilize September 30 per books figures for income tax expense (a choice that was not dictated by any specific requirement of the Settlement Agreement) was an error because the September 30 per books income tax figure does not fairly represent actual results for the period ending May 31 of the following year.

It is Mr. Novak's interpretation from this statement that items not reflected in income tax expense for the twelve months ending September 30<sup>th</sup> will be reflected in the ARM filing in the subsequent period. Therefore, any differences in income tax expense due to the different filing periods between the ARM and the Company's income tax return only represent a timing difference that will be reconciled in the immediate following period.

18. If the CPAD's response to any request for admission in this Docket is anything other than a complete and unqualified admission, then, separately for each such request for admission response, provide a full explanation of the grounds for the CPAD's position and the factual and legal support for it.

**RESPONSE:**

See each specific response.

19. Produce all work-papers and calculations generated by each of your witnesses



in this matter in Excel working format with numbers, formulas and linked files provided.

**RESPONSE:**

The Consumer Advocate has previously provided to Atmos (by e-mail on December 5, 2017) such workpapers and calculations. The workpapers previously provided to Atmos will be provided (by e-mail) to TPUC Staff concurrently with the filing of this document.

20. Produce all documents that have been referenced or relied upon by each of your witnesses in this matter.

**RESPONSE:**


The documents referenced and relied upon by Mr. Novak consist of the petitions, testimony, workpapers, discovery responses, orders, and other filings in TPUC Docket No. 17-00091 and related TPUC Dockets.

21. Produce all hearing exhibits and other documents that you plan to introduce, use, or reference at the hearing on the merits in this matter.

**RESPONSE:**

The Consumer Advocate has not yet made a determination as to hearing exhibits and other documents that are planned to be introduced, used, or referenced at the hearing on the merits on this matter.

RESPECTFULLY SUBMITTED,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via U.S. Mail or electronic mail upon:

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This the 14<sup>th</sup> day of December, 2017.



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Wayne M. Irvin