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Sharla Dillon
Dockets Manager
Tennessee Public Utility Commission
500 Deaderick Street, 4th Floor
Nashville, TN 37242

VIA E-MAIL AND HAND DELIVERY

RE: Atmos Energy Corporation – 2017 Reconciliation Filing
TPUC Docket No. 17-00091

Dear Ms. Dillon:

Attached are the Rebuttal Testimony of Gregory Waller and Jennifer Story to be filed on behalf of Atmos Energy Corporation in the referenced matter. Also attached in Excel format is Exhibit GKW-R-1 to the Rebuttal Testimony of Gregory Waller for use by TPUC staff. The hard copies of this filing will be filed tomorrow, December 21.

Best regards.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Scott Ross', with a stylized, flowing script.

A. Scott Ross

ASR:prd

Enclosures

cc: Wayne M. Irvin, Esq.

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

IN RE:

ATMOS ENERGY CORPORATION)	
ANNUAL RECONCILIATION)	DOCKET NO. 17-00091
OF ANNUAL REVIEW MECHANISM)	

**PRE-FILED REBUTTAL TESTIMONY OF JENNIFER K. STORY
ON BEHALF OF ATMOS ENERGY CORPORATION**

I. INTRODUCTION OF WITNESS

1 **Q. PLEASE STATE YOUR NAME, POSITION AND BUSINESS ADDRESS.**

2 A. My name is Jennifer K. Story. My business address is 5430 LBJ Freeway, Suite
3 700, Dallas, TX 75240. I am employed by Atmos Energy Corporation (“Atmos
4 Energy” or the “Company”) as Director of Income Tax.

5 **Q. ARE YOU THE SAME JENNIFER STORY WHO FILED PRE-FILED**
6 **TESTIMONY IN THIS PROCEEDING?**

7 A. Yes.

8 **Q. HAVE YOU REVIEWED THE INTERVENOR TESTIMONY FILED BY**
9 **CONSUMER PROTECTION AND ADVOCATE DIVISION WITNESS**
10 **WILLIAM H. NOVAK IN THIS CASE?**

11 A. Yes, I have reviewed Mr. Novak’s testimony.

1 **II. PURPOSE AND SUMMARY OF TESTIMONY**

2 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

3 A. I rebut the arguments raised in the direct testimony of Consumer Protection and
4 Advocate Division (“CPAD”) witness William H. Novak regarding his proposal to
5 include per books income tax expense for the twelve months ending September 30,
6 2016 in cost of service for the period ending May 31, 2017. I will explain the
7 normalization requirements of the Internal Revenue Code (“IRC”) and demonstrate
8 that Mr. Novak’s proposal would clearly violate these rules. I also rebut his
9 assertion that the Company should seek a Private Letter Ruling from the Internal
10 Revenue Service (“IRS” or “Service”) regarding the normalization issue, as the
11 issue is clearly addressed on the face of the Treasury Regulations. I will also explain
12 why the Company’s methodology of allocating the federal net operating loss
13 carryforward is reasonable and rebut Mr. Novak’s proposal to require the Company
14 to calculate a Tennessee specific net operating loss carryforward (“NOLC”) for
15 inclusion in rate base. Finally, I will discuss the tax implications of the alternative
16 solution Mr. Novak discusses on page 19 of his testimony.

17 **Q. PLEASE PROVIDE AN OVERVIEW OF YOUR REBUTTAL TESTIMONY**
18 **ADDRESSING MR. NOVAK’S PROPOSAL TO INCLUDE PER BOOKS**
19 **INCOME TAX EXPENSE IN THE ARM RECONCILIATION MODEL**

20 A. As described in my direct testimony on page 4, lines 3-11, The Annual
21 Reconciliation Revenue Requirement (“ARRR”) model is a component of the
22 Annual Review Mechanism (“ARM”) in which the Company reconciles actual
23 results to the authorized return on equity for the Forward Looking Test Year

1 immediately completed. The inclusion of income tax expense using the statutory
2 income tax rate, as the Company has proposed and which I describe in detail in my
3 direct testimony, results in the inclusion of both current and deferred income taxes
4 resulting from revenue requirement reflected in this filing. This calculation aligns
5 the income tax liability incurred by the Company with the operations included in
6 the revenue requirement for the Test Year ended May 31, 2017 and therefore results
7 in matching of the income tax included in this filing with the revenues that gave
8 rise to the income tax liability. By its very definition, this calculation of income tax
9 expense meets the definition of “actual results” as required by the Settlement
10 Agreement for the ARRR.¹ Mr. Novak’s proposal to require the Company to
11 include the per books income tax expense from a prior period would not result in
12 actual results being substituted in place of forecasted amounts for the reconciliation
13 filing. His proposal neither meets the stated requirements nor the spirit of the
14 Settlement Agreement.

15 **Q. PLEASE PROVIDE AN OVERVIEW OF YOUR REBUTTAL TESTIMONY**
16 **DESCRIBING WHY ADOPTION OF MR. NOVAK’S PROPOSED**
17 **METHODOLOGY WOULD RESULT IN A NORMALIZATION**
18 **VIOLATION.**

19 A. The Company is required to comply with the tax normalization provisions of the
20 IRC. In my testimony I will describe these rules. I will also establish that the
21 adoption of Mr. Novak’s proposal would clearly violate these provisions. I will

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*, p. 10 (November 4, 2015); see also Exhibit A to *Order Approving Settlement*, p. 26 (November 4, 2015).

1 describe the severe consequences that Atmos Energy Tennessee and its customers
2 would face if the Tennessee Public Utility Commission (“Commission”) were to
3 adopt Mr. Novak’s proposal to use September 30, 2016 per books income tax
4 expense in the Company’s ARM reconciliation filing.

5 **Q. PLEASE PROVIDE A SUMMARY OF YOUR REBUTTAL TESTIMONY**
6 **REGARDING MR. NOVAK’S PROPOSAL THAT THIS COMMISSION**
7 **REQUIRE ATMOS ENERGY TO SEEK A PRIVATE LETTER RULING**
8 **FOR THE NORMALIZATION ISSUE.**

9 A. As I will describe in my testimony, Treas. Reg. §1.167(1)-1 (h)(6)(i) is very clear
10 that the time period for which income tax expense and accumulated deferred federal
11 income taxes (“ADIT”) included in the Company’s rate filings must be the same.
12 The Company has complied with this requirement by including calculated income
13 tax expense for the period ending May 31, 2017 using statutory rates in this filing.
14 Mr. Novak’s proposal results in a misalignment by including income tax expense
15 for the year ended September 30, 2016 with accumulated deferred federal income
16 taxes for the period ended May 31, 2017. There is no ambiguity requiring further
17 clarification from the IRS. The process for requesting a Private Letter Ruling is
18 costly and time-consuming, and the result would not be in doubt that a
19 normalization violation would exist under Mr. Novak’s proposal. With nothing to
20 be gained from doing so, Mr. Novak’s proposal should be rejected.

1 **Q. PLEASE PROVIDE AN OVERVIEW OF YOUR REBUTTAL TESTIMONY**
2 **REGARDING MR. NOVAK’S PROPOSAL TO REQUIRE THE COMPANY**
3 **TO RECOMPUTE THE NOLC ADIT FOR TENNESSEE DIRECT.**

4 A. In my testimony I explain the income tax filing requirements for Atmos Energy. I
5 demonstrate that Atmos Energy complies with the Treasury Regulations that
6 prescribe the calculation of taxable income for members of a consolidated filing
7 group. I establish that the NOLC ADIT included in Atmos Energy Tennessee’s
8 filing results directly from calculations required by the Internal Revenue Service
9 and has been accepted in every jurisdiction the Company files in, including
10 Tennessee. Mr. Novak’s recommendation that the Company perform a hypothetical
11 computation of the NOLC ADIT for Tennessee in this filing is without merit,
12 statutory guidance or Commission precedent and should be rejected.

13 **Q. PLEASE PROVIDE AN OVERVIEW OF YOUR REBUTTAL TESTIMONY**
14 **REGARDING MR. NOVAK’S ALTERNATIVE SOLUTION MENTIONED**
15 **ON PAGE 19 OF HIS TESTIMONY.**

16 A. On page 19 of Mr. Novak’s testimony he suggests an alternative solution for the
17 income tax expense issue. He suggests moving the test period to align with the
18 Company’s fiscal year end of September 30. Company witness Mr. Greg Waller
19 discusses this solution in detail in his rebuttal testimony. The Company has given
20 this solution consideration and believes it would eliminate the normalization issue
21 that exists in Mr. Novak’s primary proposal as it would align both per books income
22 tax expense for September 30 and the accumulated deferred federal income tax
23 reserve for the same period in each ARM filing.

1 **III. INCLUSION OF ACTUAL INCOME TAX EXPENSE IN ARM**
2 **RECONCILIATION MODEL**

3 **Q. WHAT AMOUNT DOES MR. NOVAK PROPOSE TO INCLUDE FOR**
4 **INCOME TAX EXPENSE IN THIS RECONCILIATION FILING?**

5 A. Mr. Novak proposes to include the per-books income tax expense balance for
6 September 30, 2016.

7 **Q. DO YOU AGREE WITH THIS PROPOSAL?**

8 A. No, I do not.

9 **Q. WHY NOT?**

10 A. As stated in my direct testimony, page 7 lines 10-15, income tax expense for the
11 period ending September 30, 2016 does not relate to the cost of service included in
12 the test year, which is the twelve months ending May 31, 2017. Income tax expense
13 recorded to the Company's general ledger for a prior period is not "actual" income
14 tax expense for purposes of the reconciliation filing.

15 **Q. DOES MR. NOVAK GIVE ANY REASONING FOR WHY TAXES**
16 **RECORDED TO THE GENERAL LEDGER FOR THE PERIOD ENDING**
17 **SEPTEMBER 30, 2016 ARE A BETTER MEASURE OF ACTUAL TAX**
18 **FOR THE TEST PERIOD ENDING MAY 31, 2017?**

19 A. No, he does not.

20 **Q. WHAT REASONS DOES MR. NOVAK GIVE FOR USING THE**
21 **SEPTEMBER 30, 2016 INCOME TAX EXPENSE AMOUNT IN THIS**
22 **FILING?**

23 A. Mr. Novak states in his testimony on page 11, lines 12-15 that the "income tax
24 methodology set out in the settlement agreements in Docket Nos. 14-00146 and 16-

1 00105 aligns the tax items in accordance with the budget and reconciliation
2 amounts in relevant periods.” In other words, he believes a tax normalization
3 violation does not exist. Mr. Novak appears to rely on this reasoning for his
4 proposal to include the per-books income tax expense amount in this reconciliation
5 filing.

6 **Q. DO YOU BELIEVE THIS REASONING IS SOUND?**

7 A. No I do not.

8 **Q. WHY NOT?**

9 A. The Company’s first reconciliation filing after approval of the ARM mechanism
10 was Docket 16-00105. As I have described in my direct testimony on page 4 lines
11 12-23, page 5 lines 1-23 and page 6 lines 1-5, in that filing the Company
12 erroneously and improperly included the September per books income tax expense
13 amount. This error was realized while the Company was preparing the current
14 filing. The Company seeks to utilize the correct income tax figures in this and
15 subsequent reconciliation filings. These corrected figures would both align with
16 the relevant test period, as well as avoid a tax normalization violation.

17 **Q. WHY WAS IT NOT APPROPRIATE TO INCLUDE THE SEPTEMBER**
18 **PER-BOOKS INCOME TAX EXPENSE IN DOCKET 16-00105?**

19 A. Utilization of the per books income tax expense amount in Docket 16-00105
20 resulted in a clear misalignment between income tax expense included in the filing
21 and the forecasted and reconciliation amounts. The forecasted income tax expense
22 amount was calculated, using statutory rates, for the test period ending May 31,
23 2016. The per books income tax expense amount used in the reconciliation filing

1 came from the general ledger and represented tax expense for the twelve months
2 ended September 30, 2015. Mr. Novak's assertion that the inclusion of per books
3 income tax expense in Docket 16-00105 resulted in an alignment of the forecasted
4 and reconciliation amounts for the relevant period is without merit. Inclusion in the
5 filing of a per books tax expense associated with a time period eight months prior
6 to the end of the test period in no way aligns tax expense with the revenue and
7 expense included in the filing.

8 **IV. TAX NORMALIZATION**

9 **Q. WHAT IS MEANT BY TAX NORMALIZATION?**

10 A. There are a myriad of differences between the rules governing the recognition of
11 income and expense for tax purposes versus the recognition of those same items for
12 financial statement purposes. These differences result in both the acceleration and
13 deferral of income tax payments when compared to the income tax expense
14 recorded on a company's financial statements. The difference between tax expense
15 per the financial statements and the tax paid to the taxing authorities generally
16 results in a deferral of tax. Said differently, current taxes paid to the government are
17 less than the tax expense on the books and records. The government has provided
18 a cost-free loan to the utility by the enactment of favorable tax provisions.

19 A normalization method of accounting for income taxes in its simplest terms
20 strives to keep this incremental cash received from the cost-free loan at the utility
21 level where Congress intended. Tax expense in cost of service and rate filings are
22 normalized and not artificially lowered for the cash tax savings. In other words, tax
23 expense is calculated at the statutory rate. A reserve is recorded against rate base in

1 the amount of the accumulated tax deferred. Such an approach is mutually
2 beneficial both for customers and the utility. Customers are not paying a return on
3 rate base financed with the cost-free loan that the utility receives from the
4 government.

5 **Q. WHAT ARE THE TAX DEPRECIATION NORMALIZATION RULES?**

6 A. Accelerated depreciation was enacted by Congress as an investment incentive for
7 businesses. In a regulated environment, Congress was concerned that the tax
8 savings from accelerated depreciation would be flowed through to customers
9 thereby negating the incentive it sought to create. To discourage utilities and
10 commissions from flowing the incentive through to customers, Congress enacted
11 the depreciation normalization rules. The tax depreciation normalization rules
12 mandate the normalization process I previously described for all items associated
13 with tax depreciation. In other words, deferred accounting must be utilized and the
14 balance of deferred taxes must be adjusted out of rate base.

15 **Q. HOW DOES TAX DEPRECIATION NORMALIZATION WORK?**

16 A. As defined under Treas. Reg. §1.167(l)-1(h), in order to use a normalized method
17 of accounting, the public utility must use the “same method” of depreciation to
18 compute both its tax expense and its depreciation expense for purposes of
19 establishing its cost of service for ratemaking purposes and for reflecting operating
20 results in its regulated books of account. Further, if in computing its allowance for
21 tax depreciation for purpose of filing its tax returns, the taxpayer uses a depreciation
22 method other than that used for establishing its cost of service for ratemaking
23 purposes and for reflecting operating results in its regulated books of account, the

1 utility must make adjustments to an accumulated deferred federal income tax
2 reserve to reflect the deferral of taxes resulting from the use of the different methods
3 of depreciation. (Treas. Reg. §1.167(l)-1(h)(1)(i)(a) and (b)).

4 The established reserve must be used in ratemaking proceedings to reduce
5 the utility's rate base upon which the rate of return is applied. A taxpayer DOES
6 NOT use a normalization method if, for ratemaking purposes, the amount of the
7 accumulated deferred federal income tax reserve which is excluded from rate base
8 exceeds the amount in the reserve for deferred taxes for the period used in
9 determining the taxpayer's cost of service. (Treas. Reg. §1.167(l)-1(h)(6)(i))

10 **Q. DOES MR. NOVAK'S PROPOSAL TO INCLUDE PER-BOOKS INCOME**
11 **TAX EXPENSE FROM A PRIOR PERIOD VIOLATE THE**
12 **NORMALIZATION PROVISIONS?**

13 A. Yes. The adoption of Mr. Novak's proposal would certainly result in a
14 normalization violation.

15 **Q. WHY WOULD THIS RESULT IN A NORMALIZATION VIOLATION?**

16 A. Mr. Novak proposes to include in this filing a per-books number reflecting tax
17 expense for the period ended September 30, 2016 and a per-books number
18 reflecting accumulated deferred income tax for the period ending May 31, 2017.
19 Adopting Mr. Novak's proposal would result in the inclusion of eight additional
20 months of deferred federal income tax reserve as compared to included income tax
21 expense. September 30, 2016 book depreciation would be included in the
22 calculation of income tax expense, yet May 31, 2017 temporary differences related
23 to book and tax depreciation would be included in the calculation of deferred

1 federal income tax reserve. Therefore, the accumulated deferred federal income
2 tax reserve would certainly exceed the amount in the reserve for deferred taxes. As
3 I have stated in answers to discovery requests in this case, this is clearly a
4 normalization violation outlined in Treas. Reg. §1.167(l)-1(h)(1)(i)(a) and (b).

5 **Q. DID THE INCLUSION OF SEPTEMBER 30, 2015 PER BOOKS INCOME**
6 **TAX EXPENSE IN DOCKET 16-00105 VIOLATE THE NORMALIZATION**
7 **RULES?**

8 A. Yes, for the reasons I have described above. The Company identified this issue
9 during preparation of the current filing.

10 **Q. HAS THE IRS PROVIDED GUIDANCE FOR ADDRESSING A PRIOR**
11 **NORMALIZATION VIOLATION?**

12 A. Yes the IRS has issued guidance for addressing inadvertent normalization
13 violations. On September 7, 2017 the IRS issued Revenue Procedure (Rev Proc)
14 2017-47 which outlines the safe harbor procedures for addressing prior inadvertent
15 normalization violations. If this safe harbor applies, the IRS will not assert that the
16 inadvertent use of an inconsistent practice or procedure constitutes a violation of
17 the normalization rules.

18 **Q. WHAT PROCEDURES ARE OUTLINED IN THIS REV PROCEDURE?**

19 A. Revenue Procedure 2017-47 requires any taxpayer who has identified an
20 inadvertent normalization violation to change its practice to be consistent with the
21 normalization provisions at the next available opportunity, which is defined as the
22 first rate proceeding following identification of the error. The taxpayer must
23 abandon the incorrect methodology and comply with the normalization

1 requirements immediately. The safe harbor applies if the taxpayer does so and the
2 taxpayer's regulator adopts or approves the change.

3 **Q. HAS THE COMPANY FOLLOWED THESE PROCEDURES IN THIS**
4 **FILING?**

5 A. Yes. The Company has complied by including calculated income tax expense using
6 statutory rates in this filing.

7 **Q. IF MR. NOVAK'S PROPOSAL TO USE SEPTEMBER 30 PER BOOKS**
8 **INCOME TAX EXPENSE IN THIS FILING WERE APPROVED, WOULD**
9 **THE SAFE HARBOR PROCEDURES BE AVAILABLE TO THE**
10 **COMPANY?**

11 A. No. The safe harbor relief would not be available to the Company because the error
12 would no longer be considered to be inadvertent. Revenue Procedure 2017-47,
13 Section 3(4.02) states that "a taxpayer's Inconsistent Practice or Procedure is
14 neither inadvertent nor unintentional if the Taxpayer's Regulator specifically
15 considered and specifically addressed the application of the Normalization Rules
16 to the Inconsistent Practice or Procedure in establishing or approving the taxpayer's
17 rates even if at the time of such consideration the Taxpayer's Regulator did not
18 believe the practice or procedure was inconsistent with the Normalization Rules."

19 **Q. WHAT IS THE IMPACT TO A UTILITY IF IT DOES NOT MAINTAIN A**
20 **NORMALIZED METHOD OF ACCOUNTING?**

21 A. If a utility believes its method of accounting is not a normalized method or is
22 compelled by a regulatory body to adopt a method which is not normalized, the
23 utility must notify the Service's District Director within 90 days and file amended

1 returns which re-compute its tax liability for any affected taxable years.
2 Prospectively, the utility would lose the ability to claim accelerated tax depreciation
3 on future tax returns. (Treas. Reg. §1.167(l)-1(h)(5))

4 **Q. WHAT EFFECT WOULD A NORMALIZATION VIOLATION HAVE ON**
5 **ATMOS ENERGY TENNESSEE AND ITS CUSTOMERS?**

6 A. A violation of the tax depreciation normalization provisions is a serious matter
7 under the IRC and a violation would have devastating financial implications.
8 Compliance with these rules is not optional and the Company is not allowed to
9 violate them either directly or indirectly. Such a violation would create severe
10 detriment for both Atmos Energy Tennessee and its Customers as the Company
11 would lose the ability to claim accelerated depreciation.

12 **V. ALTERNATIVE SOLUTION**

13 **Q. DOES MR. NOVAK REFERENCE A POSSIBLE SOLUTION TO THE**
14 **INCOME TAX EXPENSE ISSUE IN HIS TESTIMONY?**

15 A. Yes, on page 19 of Mr. Novak's testimony he suggests that a possible alternative
16 could be to move the test period in the ARM tariff to align with the Company's
17 fiscal year ending September 30. However that is not his recommendation for the
18 current filing test period.

19 **Q. WHAT IS THE PURPOSE OF THE ALTERATIVE SOLUTION**
20 **PROPOSED?**

21 A. It is my understanding that this solution, more fully described by Company witness
22 Mr. Greg Waller in Section VIII of his testimony, would permit the use of a per-

1 books income tax expense in this and future reconciliation filings while eliminating
2 the normalization issues I have described.

3 **Q. DO YOU BELIEVE THIS WOULD ELIMINATE THE NORMALIZATION**
4 **ISSUE THAT CURRENTLY EXISTS IN THE FILING?**

5 A. Yes I do.

6 **Q. WHY?**

7 A. A full and detailed calculation of income tax is performed at the Company's fiscal
8 year-end. Since all facts are known and the books have closed for the year, the year-
9 end calculation for income taxes is much more precise than the income tax
10 estimates recorded at other time points during the fiscal year. Income tax expense
11 as well as ADIT are recorded to each operating division. Unlike Mr. Novak's
12 recommendation for the current filing test period, the use of per-books income tax
13 expense and accumulated federal deferred tax reserve as of September 30 would
14 not result in the accumulated deferred federal income tax reserve exceeding the
15 amount in reserve for deferred tax expense. Both the reserve and the expense would
16 be included for the same time period, the twelve months ending September.
17 Therefore, the Company would be compliant with the normalization provisions.

18 **VI. PRIVATE LETTER RULING**

19 **Q. DO YOU AGREE WITH MR. NOVAK'S PROPOSAL THAT THE**
20 **COMMISSION REQUIRE THE COMPANY TO SEEK A PRIVATE**
21 **LETTER RULING ON THE NORMALIZATION ISSUE?**

22 A. No I do not.

1 **Q. WHY NOT?**

2 A. Seeking a Private Letter Ruling (“PLR”) from the IRS is a costly and time-
3 consuming undertaking. As I have described in my rebuttal testimony and in
4 answers to discovery questions, the Treasury Regulations governing the
5 normalization rules clearly address the normalization issue at hand; therefore,
6 investing the resources necessary to obtain a PLR would not provide any benefit to
7 the customer.

8 **Q. WHAT DOES MR. NOVAK PROPOSE THAT THE COMMISSION**
9 **SHOULD ORDER WITH REGARD TO PARTICIPATION OF THE TPUC**
10 **STAFF AND CONSUMER ADVOCATE IN A PLR REQUEST BY ATMOS**
11 **ENERGY?**

12 A. Mr. Novak proposes that Atmos Energy should be ordered to permit the full
13 participation of the Commission Staff and CPAD in the process of analyzing,
14 drafting and communicating with the IRS concerning any request for a PLR.

15 **Q. DO YOU AGREE WITH THIS PROPOSAL?**

16 A. No I do not.

17 **Q. WHY NOT?**

18 A. The IRS has defined procedures for ruling on requests for proposed or issued rate
19 orders and compliance with the normalization provisions of the IRC. These
20 procedures are outlined in Revenue Procedure 2017-1. These procedures do not
21 accommodate full participation by consumer advocates and staff in private ruling
22 requests as Mr. Novak has suggested.

1 **Q. WHAT ARE THE PROCEDURES OUTLINED IN REVENUE**
2 **PROCEDURE 2017-1?**

3 A. The request for a Private Letter Ruling is made by the taxpayer. Drafting of such a
4 request is done by the taxpayer and the taxpayer alone. The company requesting
5 the PLR is required to include two statements with the request. The first statement
6 declares whether the regulatory authority responsible for establishing the
7 taxpayer's rates has reviewed the request and believes it to be adequate and
8 complete. The second statement declares whether the taxpayer will permit the
9 regulatory authority to participate in any Associate office conference concerning
10 the request.

11 Once the request is submitted to the IRS, the consumer advocate and
12 regulatory authorities are permitted to communicate with the Service regarding the
13 request via mail.

14 Rev. Proc. 2017-1, Appendix E, Section .01 states:

15 If the taxpayer or the regulatory authority informs a consumer
16 advocate of the request for a letter ruling and the advocate wishes to
17 communicate with the Service regarding the request, any such
18 communication should be sent to: Internal Revenue Service,
19 Associate Chief Counsel (Procedure and Administration), Attn:
20 CC:PA:LPD:DRU, P.O. Box 7604, Ben Franklin Station,
21 Washington, DC 20044 (or, if a private delivery service is used:
22 Internal Revenue Service, Associate Chief Counsel (Procedure and
23 Administration), Attn: CC:PA:LPD:DRU, Room 5336, 1111

1 Constitution Ave., NW, Washington, DC 20224). These
2 communications will be treated as third party contacts for purposes
3 of IRC § 6110.

4 **VII. NET OPERATING LOSS CARRYFORWARD**

5 **Q. HOW DOES THE COMPANY REPORT ITS TAXABLE INCOME TO THE**
6 **INTERNAL REVENUE SERVICE?**

7 A. The Company reports its taxable income on a consolidated basis and files a
8 consolidated Form 1120 - U.S. Corporation Income Tax Return ("Form 1120").

9 **Q. WHAT IS A CONSOLIDATED FILING?**

10 A. The IRC and related regulations provide special rules for the taxation of
11 corporations under common control. An affiliated group of corporations may join
12 in the filing of a consolidated tax return in which the taxable income of the affiliated
13 group is reported on a consolidated basis.

14 **Q. IS ATMOS ENERGY A MEMBER OF A CONSOLIDATED GROUP?**

15 A. Yes. Atmos Energy is the common parent of an affiliated group of companies.

16 **Q. WHAT OTHER COMPANIES ARE IN THE AFFILIATED GROUP AND**
17 **JOIN IN THE FILING OF THE CONSOLIDATED RETURN?**

18 A. All legal entities that are under the common control of the parent corporation,
19 Atmos Energy, join together in the filing of the consolidated return. This filing
20 includes both the utility and non-utility legal entities of the Company.

1 **Q. HOW IS TAXABLE INCOME OR LOSS COMPUTED FOR THE**
2 **CONSOLIDATED TAX RETURN?**

3 A. Treasury Reg §1.1502-11 outlines the requirements for computing taxable income
4 for a consolidated group. This regulation requires that the consolidated taxable
5 income for a consolidated return year is determined by taking into account the
6 separate taxable income of each member of the group. Certain specific items such
7 as charitable contributions, capital gains and losses, and the deduction of net
8 operating losses from carryback or carryforward periods are then determined on a
9 consolidated basis.

10 **Q. HOW IS THE SEPARATE TAXABLE INCOME OF EACH MEMBER OF**
11 **THE AFFILIATED GROUP CALCULATED?**

12 A. Treasury Reg §1.1502-1 defines a member of a consolidated group as a corporation
13 that is included in the group. Treasury Reg §1.1502-12 requires that the separate
14 taxable income for each member must be calculated as if the member was a separate
15 corporation, and not part of a consolidated group. For each member of the affiliated
16 group, a pro forma standalone tax return is prepared. This tax return is prepared as
17 if each of these members were individual and separate taxpayers filing its own tax
18 return. All items of income and deductions are calculated on a standalone basis
19 without regard to other members of the group.

20 **Q. ARE THESE COMPUTATIONS OF SEPARATE TAXABLE INCOME**
21 **COMBINED TO ARRIVE AT CONSOLIDATED TAXABLE INCOME OR**
22 **LOSS?**

23 A. Yes.

1 **Q. DOES THE COMPANY CALCULATE THE TAXABLE INCOME OF THE**
2 **UTILITY OPERATIONS SEPARATE FROM THE NON-UTILITY**
3 **OPERATIONS?**

4 A. Yes. As required by the Treasury regulations, the Company is required to compute
5 the separate taxable income of each member of the affiliated group. The utility
6 operations of the Company are contained solely and entirely within the Atmos
7 Energy Corporation legal entity. Atmos Energy Corporation is a separate and
8 distinct member of the affiliated group. Therefore, a separate calculation of the
9 taxable income and deductions for Atmos Energy Corporation is performed
10 annually. In preparing the annual tax calculations, the Company's tax department
11 prepares a separate pro forma tax return (Form 1120) for each member of the
12 affiliated group, including Atmos Energy. This pro forma tax return reflects the
13 income, deductions and taxable income or loss for that particular member as if it
14 were separate and distinct from the group.

15 **Q. DO THESE ANNUAL CALCULATIONS ALLOW THE COMPANY TO**
16 **BIFURCATE ITS ANNUAL TAXABLE INCOME OR LOSS BETWEEN**
17 **UTILITY AND NON-UTILITY OPERATIONS?**

18 A. Yes. Since all items are calculated separately, the Company is able to clearly
19 identify taxable income and losses generated by utility operations and those
20 generated by non-utility operations.

1 **Q. DOES ATMOS ENERGY’S SEPARATE COMPANY TAXABLE INCOME**
2 **OR LOSS CALCULATION FOR UTILITY OPERATIONS INCLUDE THE**
3 **ATMOS ENERGY TENNESSEE OPERATIONS?**

4 A. Yes.

5 **Q. IS A SEPARATE CALCULATION OF TAXABLE INCOME PREPARED**
6 **FOR INDIVIDUAL OPERATING DIVISIONS SUCH AS ATMOS ENERGY**
7 **TENNESSEE?**

8 A. No. As I have described, the Treasury Regulations are very clear in their
9 requirements and the methodology for calculating taxable income for a
10 consolidated group such as Atmos Energy. The calculation of taxable income is
11 made for each member of a consolidated group.

12 **Q. DOES ATMOS ENERGY COMPUTE TAXABLE INCOME FOR**
13 **OPERATING DIVISIONS SUCH AS ATMOS ENERGY TENNESSEE?**

14 A. No. Atmos Energy calculates taxable income in compliance with the Treasury
15 Regulations described above.

16 **Q. WHAT IS AN INCOME TAX NET OPERATING LOSS CARRYFORWARD?**

17 A. The Company computes its taxable income in accordance with the IRC. Depending
18 on the income and deductions reported on the Company’s tax return, either taxable
19 income or a taxable loss is reported on the tax return. Taxable income will result
20 in the imposition of tax at the applicable tax rate. A taxable loss creates an NOL.
21 Under §172 of the IRC, a tax NOL may first be carried back to offset taxable income
22 (generally to the two preceding years). Any loss remaining after the carryback is
23 available to carry forward for up to 20 years and reduce taxable income in a future

1 period. The amount available to carry forward and offset future taxable income is
2 the NOLC.

3 **Q. WHAT ARE THE CONSEQUENCES OF AN NOLC?**

4 A. An NOLC represents deductions that were claimed on a prior tax return but not
5 used to offset the tax liability in the period claimed. An NOLC therefore has the
6 effect of moving those unused deductions forward to a subsequent year to offset the
7 tax liability of the future period.

8 **Q. HAVE ATMOS ENERGY CORPORATION'S REGULATED UTILITY**
9 **OPERATIONS RESULTED IN TAXABLE INCOME OR LOSSES?**

10 A. For the past eight fiscal years, the separate taxable income computations for the
11 utility operations have reflected large taxable losses due to significant deductions
12 associated with bonus depreciation, accelerated depreciation and the deduction of
13 capital expenditures as repairs for tax purposes.

14 **Q. HAVE THESE LOSSES RESULTED IN A NOLC FOR THE COMPANY?**

15 A. Yes.

16 **Q. IS THE COMPANY ABLE TO ACCURATELY IDENTIFY THE AMOUNT**
17 **OF TAXABLE NOLC GENERATED BY THE UTILITY?**

18 A. Yes. By reviewing the separate pro forma tax returns and taxable income
19 computations for each member of the affiliated group, the Company is able to
20 identify that portion of the consolidated tax NOL resulting from utility operations
21 and the portion resulting from non-utility operations.

1 **Q. WHERE IS THIS NOLC RECORDED ON THE COMPANY’S BOOKS AND**
2 **RECORDS?**

3 A. The NOLC is recorded at the Shared Services division.

4 **Q. HOW DOES THE COMPANY ATTRIBUTE NOLC TO OPERATING**
5 **DIVISIONS SUCH AS ATMOS ENERGY TENNESSEE?**

6 A. The NOLC is allocated in the same manner as other shared rate base items recorded
7 at the Shared Services division.

8 **Q. WHY IS THE COMPANY’S METHOD OF ALLOCATING THE NOLC**
9 **REASONABLE?**

10 A. The Company’s method of allocation is reasonable for several reasons. It begins
11 with an established NOLC amount that can be reconciled and verified with the
12 Company’s tax filings. This number is derived based on guidance from the Treasury
13 Regulations so its computation is consistent and repeatable in future years. The
14 allocation of the utility NOLC to Tennessee is done so with allocation factors that
15 are utilized in many other areas of this filing. The use of those factors result in
16 consistency throughout the filing.

17 **Q. WHAT DOES MR. NOVAK PROPOSE THAT THE COMMISSION ORDER**
18 **WITH REGARD TO THE COMPANY’S CALCULATION OF THE NOLC?**

19 A. Mr. Novak has proposed that the Commission order the Company to calculate a
20 separate NOLC for Atmos Energy Tennessee for inclusion in future ARM filings.

21 **Q. DO YOU AGREE WITH THIS PROPOSAL?**

22 A. No I do not.

1 **Q. WHY NOT?**

2 A. As I have explained, the Company does not calculate taxable income for separate
3 operating divisions. Such a hypothetical calculation would not render an accurate
4 result. Estimates and allocations would necessarily be included in the calculated
5 amount and assumptions would have to be made about how to calculate it. Using
6 such a hypothetical calculation would introduce another allocation methodology
7 into the filing when it is unnecessary to do so. The Treasury Regulations are clear
8 in how taxable income should be computed for members of a consolidated group.
9 No such guidance exists for calculations of operating divisions within a legal entity.
10 Furthermore, such a calculated amount would be inconsistent with the Company's
11 methodology for the inclusion of the NOLC in rates in this and other jurisdictions.

12 **Q. IN WHAT JURISDICTIONS DOES ATMOS ENERGY INCLUDE THE**
13 **ALLOCATED NOLC?**

14 A. Atmos Energy includes the allocated NOLC as described above in every
15 jurisdiction in which it operates.

16 **Q. HAS THIS METHODOLOGY BEEN APPROVED IN THESE**
17 **JURISDICTIONS?**

18 A. Yes, this methodology has been approved in every jurisdiction, including Tennessee
19 and is part of the Approved Methodologies.

20 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

21 A. Yes.

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

IN RE:

ATMOS ENERGY CORPORATION)
ANNUAL RECONCILIATION)
OF ANNUAL REVIEW MECHANISM)

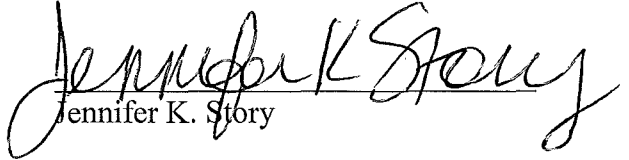
Docket No. 17-00091

VERIFICATION

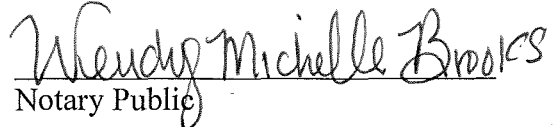
STATE OF TEXAS)

COUNTY OF DALLAS)

I, Jennifer K. Story, being first duly sworn, state that I am Director Income Tax for Atmos Energy Corporation, that I am authorized to testify on behalf of Atmos Energy Corporation in the above referenced docket, that the Rebuttal Testimony of Jennifer K. Story in support of Atmos Energy Corporation's filing is true and correct to the best of my knowledge, information and belief.


Jennifer K. Story

Sworn and subscribed before me this 20 day of December, 2017.


Notary Public

My Commission Expires: March 31, 2018

