

**IN THE TENNESSEE PUBLIC UTILITY COMMISSION
AT NASHVILLE, TENNESSEE**

IN RE:)	
)	
PETITION OF ATMOS ENERGY)	
CORPORATION ANNUAL)	Docket No. 17-00091
RECONCILIATION OF ANNUAL)	
RATE REVIEW MECHANISM)	

MOTION FOR LEAVE TO FILE SUPPLEMENTAL TESTIMONY

The Consumer Protection and Advocate Division of the Office of the Attorney General (Consumer Advocate) respectfully asks the Tennessee Public Utility Commission (TPUC or Commission) to grant its request for leave to file the Supplemental Testimony of William H. Novak (attached as Exhibit A). This Supplemental Testimony has come about from the additional arguments made, positions taken, and proposals made in the rebuttal testimonies filed by Atmos in this Docket. Those arguments, positions, and proposals were not made in Atmos' Petition or in the direct testimonies filed by Atmos' witnesses. The rebuttal testimonies state and purport to support Atmos' contention that the current reconciliation treatment of income taxes in the Settlement Agreements in TPUC Docket Nos. 14-00146 and 16-00105 has constituted and would constitute in the future a normalization violation under the Internal Revenue Code and related regulations. Those testimonies also provide a new proposal to deal with the alleged normalization violation by Atmos. As a result of the additional arguments and information and the new proposal, Mr. Novak's Direct Testimony in this Docket must be supplemented to address that additional information provided by Atmos and to respond to Atmos' new proposal.

For cause, the Consumer Advocate would show:

1. As background, in TPUC Docket No. 14-00146, the Parties entered into a Settlement Agreement that, among other things, reflected agreed methodologies that could be used in an annual review mechanism (ARM) under Tenn. Code Ann. § 65-5-103(d)(6). That Settlement Agreement, along with the agreed methodologies, was approved by the Commission.¹

2. The Settlement Agreement in TPUC Docket No. 14-00146 required a true-up or reconciliation mechanism using actual results for the period that the Company had previously been permitted to implement budgeted rates.² Among the items to be trued-up or reconciled were and are income taxes.

3. In TPUC Docket No. 16-00105, Atmos filed the first annual reconciliation filing under Atmos' ARM. TPUC Docket No. 16-00105 was resolved by a Settlement Agreement between the Parties, which was approved by Commission.³

4. The agreed and approved Settlement Agreement in TPUC Docket No. 16-00105 used the actual results for income taxes per Atmos' books at the September 30th prior to the date TPUC Docket No. 16-00105 was filed, thus confirming that actual results in the Settlement Agreement in TPUC Docket No. 14-00146 had been agreed by the Parties to mean actual results per Atmos' books.⁴

5. In the current TPUC Docket No. 17-00091, Atmos has filed its second reconciliation of its ARM.

¹ See Order Approving Settlement, filed on November 4, 2015, in TPUC Docket No. 14-00146 (which incorporated by reference the Stipulation and Settlement Agreement between the Parties in that Docket).

² Stipulation and Settlement Agreement between the Parties in TPUC Docket No. 14-00146, Pages 25-27.

³ See Order Approving Settlement, filed on February 2, 2017, in TPUC Docket 16-00105 (which incorporated by reference the Settlement Agreement between the Parties in that Docket).

⁴ See Order Approving Settlement in TPUC Docket No. 16-00105, Page 4 ("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 [TPUC] Docket No. 14-00146.").

6. In TPUC Docket No. 17-00091, Atmos has proposed, among other things, an adjustment to the ARM calculation that would not use the agreed and approved methodology that reconciled income taxes using the actual amounts on Atmos books, but would use a new methodology that calculates income taxes by means of statutory rates and required revenue.⁵

7. In Atmos' Petition and the direct testimonies filed by its witnesses, Atmos provides a timing-based rationale for its proposal to not use the previously agreed and approved methodology concerning income taxes.⁶

8. In response to discovery requests by the Consumer Advocate, Atmos responded with a wholly new theory for its proposal concerning the reconciliation calculation of income taxes – that is, that the current calculation had been and would continue to be a normalization violation under the Internal Revenue Code and related regulations.⁷

9. The Consumer Advocate filed Direct Testimony in the current Docket⁸ without the benefit of sworn testimony by Atmos' witnesses setting out Atmos position and support for Atmos' new position that the current income tax reconciliation methodology had to change because Atmos was violating and continues to violate the normalization rules.

10. Atmos filed rebuttal testimony (a) setting out its position and support for Atmos' position that the current income tax reconciliation methodology had to change because Atmos was and continues to violate the normalization rules⁹ and (b) providing a proposal it claims would

⁵ See Pre-Filed Testimony of Gregory K. Waller on Behalf of Atmos Energy Corporation, filed in TPUC Docket No. 17-00091, Page 19, lines 3-4.

⁶ See Pre-Filed Testimony of Jennifer K. Story on Behalf of Atmos Energy Corporation, filed in TPUC Docket No. 17-00091, Page 5, lines 9-16.

⁷ See, for example, Atmos' response to Discovery Request 1-03 in TPUC Docket No. 17-00091.

⁸ See the Direct Testimony of William H. Novak on Behalf of the Consumer Advocate, filed in TPUC Docket No. 17-00091, on December 4, 2017.

⁹ See Pre-Filed Rebuttal Testimony of Jennifer K. Story on Behalf of Atmos Energy Corporation, filed in TPUC Docket No. 17-00091, Pages 8-13.

resolve its problem with the alleged normalization violation.¹⁰ Atmos omitted from its rebuttal testimonies a revised Exhibit reflecting the inclusion of a per-books income tax expense amount, as had been requested by TPUC Staff and provided by Atmos in connection with the Company's original filings.

11. As more fully set out in Mr. Novak's attached (and incorporated herein) Supplemental Testimony, the granting of this Motion would provide Mr. Novak with the opportunity to respond to the additional information and proposal provided by Atmos' witnesses, and thereby more accurately and in a more complete manner provide his position to the Commission. In addition, Mr. Novak provides a summary of the status of the issues in this Docket and the effect of the inclusion of a per-books income tax expense amount.

12. Mr. Novak, at the end of his pre-filed direct testimony, reserved "the right to incorporate any new information that may subsequently become available."¹¹ As demonstrated above, additional information and a new proposal has become available that Mr. Novak must incorporate into his previously filed testimony in this Docket by means of his Supplemental Testimony, and the Consumer Advocate believes that this would be more efficiently and more completely done through Mr. Novak's Supplemental Testimony instead of during any summary (with appropriate additions and changes) of his direct testimony.

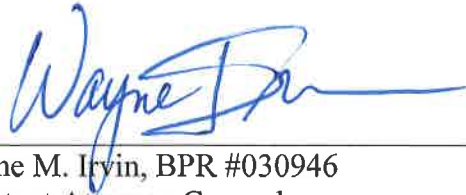
13. The granting of the Consumer Advocate's Motion for leave to file Mr. Novak's Supplemental Testimony would further enable the Consumer Advocate to carry out its statutory duty to represent the interests of Tennessee consumers.

¹⁰ See Pre-Filed Rebuttal Testimony of Gregory K. Waller on Behalf of Atmos Energy Corporation, filed in TPUC Docket No. 17-00091, Pages 14-17.

¹¹ Novak Pre-filed Direct Testimony, Page 30, lines 20-22.

Therefore, and for the forgoing reasons, the Consumer Advocate respectfully requests that the Commission grant its Motion for Leave to File Supplemental Testimony.

RESPECTFULLY SUBMITTED,



Wayne M. Irvin, BPR #030946
Assistant Attorney General
Daniel P. Whitaker, III, BPR #035410
Assistant Attorney General
Office of the Attorney General
Consumer Protection and Advocate Division
P.O. Box 20207
Nashville, Tennessee 37202-0207
615-532-5512
wayne.irvin@ag.tn.gov
daniel.whitaker@ag.tn.gov

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:

A. Scott Ross, Esq.
Blind Akrawi, Esq.
Neal & Harwell, PLC
1201 Demonbreun Street, Suite 1000
Nashville, TN 37203
sross@nealharwell.com
bakrawi@nealharwell.com

Mr. Mark Martin
VP, Regulatory Affairs
Atmos Energy Corporation
3275 Highland Pointe Drive
Owensboro, KY 42303
mark.martin@atmosenergy.com

Douglas C. Walther, Esq.
Associate General Counsel
Atmos Energy Corporation
P.O. Box 650205
Dallas, TX 75265-0205
douglas.walther@atmosenergy.com

This the 4th day of January, 2018.



Wayne M. Irvin
Assistant Attorney General

EXHIBIT

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)	
Petition of Atmos Energy Corporation for)	
Approval of 2017 Annual Reconciliation)	Docket No. 17-00091
Filing)	
)	
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ON BEHALF OF
THE CONSUMER PROTECTION AND ADVOCATE DIVISION
OF THE
TENNESSEE ATTORNEY GENERAL'S OFFICE

January 4, 2018

IN THE TENNESSEE PUBLIC UTILITY COMMISSION
AT NASHVILLE, TENNESSEE

IN RE:

PETITION OF ATMOS ENERGY
CORPORATION ANNUAL
RECONCILIATION OF ANNUAL
RATE REVIEW MECHANISM

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Docket No. 17-00091

AFFIDAVIT

I, William H. Novak, CPA, on behalf of the Consumer Advocate Division of the Attorney General's Office, hereby certify that the attached Supplemental Direct Testimony represents my opinion in the above-referenced case and the opinion of the Consumer Advocate Division.


WILLIAM H. NOVAK

Sworn to and subscribed before me this 4 day of JAN, ^{2018.}~~2017.~~


NOTARY PUBLIC

My commission expires: 12-23-2021



1 ***Q1. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND***
2 ***OCCUPATION FOR THE RECORD.***

3 ***A1.*** My name is William H. Novak. My business address is 19 Morning Arbor Place,
4 The Woodlands, TX, 77381. I am the President of WHN Consulting, a utility
5 consulting and expert witness services company.
6

7 ***Q2. ARE YOU THE SAME WILLIAM H. NOVAK WHO PRESENTED PRE-***
8 ***FILED TESTIMONY IN THIS DOCKET?***

9 ***A2.*** Yes.
10

11 ***Q3. WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL TESTIMONY?***

12 ***A3.*** The purpose of my supplemental testimony is to address the new – or at least
13 memorialized – positions taken in the testimony of the two Atmos’ witnesses in
14 this Docket that were filed on December 20, 2017. Specifically, my supplemental
15 testimony addresses the following:

- 16 1. Page 2, line 1 through page 23, line 19 of the Pre-Filed Rebuttal Testimony of
17 Jennifer K. Story on behalf of Atmos Energy Corporation, and
18 2. Page 2, lines 15-17; page 3, line 4 through page 6, line 5; page 9, line 1
19 through page 10, line 4; and page 14, line 1 through page 18, line 12
20 (including Exhibit GKW-R-1 which is referenced and attached therein), of the
21 Pre-Filed Rebuttal Testimony of Gregory K. Waller on behalf of Atmos
22 Energy Corporation.

1 In the interest of economy of analysis and for ease of consideration and reference,
2 I have separated the remaining disputed matters of this Docket into the following
3 two categories:

- 4 1. Income Tax Reconciliation; and
- 5 2. Alternative ARM Calculation Proposal.

6 I have also included a brief discussion, along with a revised revenue deficiency
7 calculation, that reflects those areas on which the Consumer Advocate and the
8 Company now appear to agree and those that remain in dispute.

1 INCOME TAX RECONCILIATION

2

3 ***Q4. FOR CONTEXT, DID ATMOS MAKE ANY OF THE ARGUMENTS***
4 ***THAT ARE DESCRIBED IN ITS WITNESSES' REBUTTAL TESTIMONY***
5 ***RELATED TO AN INCOME TAX NORMALIZATION VIOLATION***
6 ***WITHIN THEIR PRE-FILED DIRECT TESTIMONY OR IN ANY***
7 ***COMMUNICATION WITH THE CONSUMER ADVOCATE PRIOR TO***
8 ***FILING THEIR DISCOVERY RESPONSES?***

9 A4. No.

10

11 ***Q5. IN THEIR REBUTTAL TESTIMONY, DO EITHER OF ATMOS'***
12 ***WITNESSES EXPLAIN WHY NO STATEMENT REGARDING A***
13 ***POTENTIAL INCOME TAX NORMALIZATION VIOLATION WAS***
14 ***MADE IN ATMOS' PETITION OR THEIR DIRECT TESTIMONY?***

15 A5. No.

16

17 ***Q6. DOES ATMOS INDICATE THAT A NORMALIZATION VIOLATION***
18 ***WOULD BE A VERY SERIOUS MATTER?***

19 A6. Yes.

20

21 ***Q7. DOES ATMOS STATE THAT IT VIOLATED THE INCOME TAX***
22 ***NORMALIZATION RULES IN TPUC DOCKET NO. 16-00105, AND***

1 ***THAT THE COMPANY IDENTIFIED THIS ISSUE DURING THE***
2 ***PREPARATION FOR THE FILING OF THIS DOCKET NO. 17-00091?***

3 A7. Yes.¹

4

5 ***Q8. HAS ATMOS PROVIDED INFORMATION RELATED TO THE***
6 ***NOTIFICATION REQUIREMENTS TO THE INTERNAL REVENUE***
7 ***SERVICE (IRS) FOR AN INCOME TAX NORMALIZATION***
8 ***VIOLATION THAT IT ALLEGES HAS OCCURRED?***

9 A8. Yes. Atmos Witness Story states that:

10 If a utility believes its method of accounting is not a normalized method or
11 is compelled by a regulatory body to adopt a method which is not
12 normalized, the utility must notify the Service's District Director within 90
13 days and file amended returns which re-compute its tax liability for any
14 affected taxable years.²

15

16 ***Q9. HOW MANY DAYS HAVE ELAPSED SINCE ATMOS FIRST LEARNED***
17 ***OF THE ALLEGED INCOME TAX NORMALIZATION VIOLATION?***

18 A9. At least 126 days, based on Ms. Story's statement that "[t]he Company identified
19 this issue during the preparation of the current filing."³

20

21 ***Q10. IS THERE ANY EVIDENCE IN THIS DOCKET THAT ATMOS FILED***
22 ***THE REQUIRED NOTICE TO THE SERVICE'S DISTRICT DIRECTOR***
23 ***WITHIN THE REQUIRED 90 DAYS?***

24 A10. No.

¹ Story Rebuttal Testimony, Page 11, lines 5-9.

² Story Rebuttal Testimony, Page 12, line 21, through Page 13, line 1.

³ Story Rebuttal Testimony, Page 11, lines 8-9.

1

2 ***Q11. DOES MS. STORY PROVIDE ANY BASIS UPON WHICH ATMOS***
3 ***WOULD NOT HAVE TO FILE THE MANDATORY NOTICE TO THE***
4 ***SERVICE'S DISTRICT DIRECTOR WITHIN THE REQUIRED 90 DAYS?***

5 A11. No.

6

7 ***Q12. MR. NOVAK, WITH REFERENCE TO MS. STORY'S TESTIMONY ON***
8 ***THE INCLUSION OF ACTUAL INCOME TAX EXPENSE IN THE ARM***
9 ***RECONCILIATION MODEL, DOES ATMOS AGREE WITH***
10 ***INCLUDING THE TRUE-UP OF CALCULATED TAXES TO ACTUAL***
11 ***TAXES PAID FOR THE ARM CALCULATION?***

12 A12. Not any longer. In Docket No. 16-00105, the Company included a true-up of
13 income taxes with the ARM reconciliation. However, in the current Docket,
14 Company witness Story states that "...the Company erroneously and improperly
15 included the September per books income tax expense amount" in the previous
16 filing.⁴

17

18 ***Q13. MR. NOVAK, IS IT CLEAR FROM THE SETTLEMENT AGREEMENTS***
19 ***IN DOCKET NOS. 14-00146 AND 16-00105 THAT "ACTUAL RESULTS"***
20 ***MEANS PER-BOOKS INCOME TAX EXPENSE?***

21 A13. Yes. As I mentioned in my direct testimony, the true-up to actual recorded
22 amounts on Atmos' books is a core concept of certain portions of the 14-00146

⁴ Story Rebuttal Testimony, Page 7.

1 Settlement Agreement.⁵ And it is a similar core concept within the Settlement
2 Agreement in Docket No. 16-00105. Atmos is now proposing to change the
3 terms of the 14-00146 Settlement Agreement (as those terms were confirmed in
4 Docket No. 16-00105) to better suit themselves. Further, Ms. Story's claim that
5 the "calculation of income tax expense meets the definition of actual results" is
6 without foundation in the history of these proceedings.⁶ While it may be
7 appropriate to apply an income tax rate for a forecasted budget, from my
8 recollection – and in my opinion – the 14-00146 Settlement Agreement always
9 envisioned truing up income taxes to the actual amounts recorded during the
10 reconciliation process. Further, it strains rational thought to conclude that
11 calculated income tax expense based on statutory rates would mean the same as
12 actual results.

13
14 ***Q14. ARE THERE PARTS OF THE 14-00146 SETTLEMENT AGREEMENT***
15 ***THAT, IF YOU HAD THE OPPORTUNITY, YOU WOULD***
16 ***RECOMMEND THAT THE COMMISSION CHANGE AND FOR WHICH***
17 ***YOU COULD OFFER A PLAUSIBLE RATIONALE?***

18 A14. Yes. There are certainly portions of the 14-00146 Settlement Agreement that I
19 would now like to revisit, but I recognize that this was the agreement that both
20 Parties made at the time and that the Parties asked the Commission to approve.⁷

⁵ Direct Testimony of William H. Novak, Page 18.

⁶ See Story Rebuttal Testimony, Page 3, lines 8-10.

⁷ The elimination of the Weather Normalization Adjustment (WNA) and the use of a surcharge on customers' bills to reflect the adjustment to base rates outside of a rate case for ARM filings are just two items that come to mind.

1 However, changing a core concept of the 14-00146 Settlement Agreement for the
2 benefit of one party would seem to require revisiting every other issue that was
3 resolved within that Settlement Agreement.

4
5 ***Q15. MR. NOVAK, IS THE COMPANY'S ASSERTION THAT THE CURRENT***
6 ***METHODOLOGY VIOLATES THE TAX NORMALIZATION RULES OF***
7 ***THE IRS VALID?***

8 A15. Only the IRS can say for certain through a private letter ruling or the audit
9 process. With that said, Ms. Story's main argument for the Company's position
10 appears to be that "Treas. Reg. § 1.167(l)-1 (h)(6)(i) is very clear that the time
11 period for which income tax expense and accumulated deferred federal income
12 taxes ("ADIT") included in the Company's rate filings must be the same."⁸ For
13 comparison and ease of reference, here is that regulation:

14 (i) Notwithstanding the provisions of subparagraph (1) of this
15 paragraph, a taxpayer does not use a normalization method of
16 regulated accounting if, for ratemaking purposes, the amount of the
17 reserve for deferred taxes under section 167(l) which is excluded
18 from the base to which the taxpayer's rate of return is applied, or
19 which is treated as no-cost capital in those rate cases in which the
20 rate of return is based upon the cost of capital, exceeds the amount
21 of such reserve for deferred taxes for the period used in determining
22 the taxpayer's tax expense in computing cost of service in such
23 ratemaking.⁹

24 From my perspective, the regulation appears to require some analysis and support
25 for clarity. It is also worth emphasizing that Atmos bears the burden of
26 demonstrating that a change should be made to the agreed methodologies in the

⁸ Story Rebuttal Testimony, Page 4, lines 9-11.

⁹ For a paraphrase of the regulation, see Story Rebuttal Testimony, Page 10, lines 5-9.

1 Settlement Agreement (as confirmed in Docket No. 16-00105) and that a
2 normalization violation would occur under the facts in this Docket No. 17-00091.
3

4 ***Q16. WITH REFERENCE TO TREAS. REG. § 1.167(1)-1 (h)(6)(i), DOES MS.***
5 ***STORY OR MR. WALLER PROVIDE “THE AMOUNT OF THE***
6 ***RESERVE FOR DEFERRED TAXES UNDER SECTION 167(1) THAT IS***
7 ***EXCLUDED FROM THE BASE TO WHICH THE TAXPAYER’S RATE***
8 ***OF RETURN IS APPLIED, OR THAT IS TREATED AS NO-COST***
9 ***CAPITAL IN THOSE RATE CASES IN WHICH THE RATE OF RETURN***
10 ***IS BASED UPON THE COST OF CAPITAL” IN THIS DOCKET?***

11 A16. No.
12

13 ***Q17. WITH REFERENCE TO TREAS. REG. § 1.167(1)-1 (h)(6)(i), DOES MR.***
14 ***STORY OR MR. WALLER PROVIDE “THE AMOUNT OF SUCH***
15 ***RESERVE FOR DEFERRED TAXES FOR THE PERIOD USED IN***
16 ***DETERMINING THE TAXPAYER’S TAX EXPENSE IN COMPUTING***
17 ***COST OF SERVICE” IN THIS DOCKET?***

18 A17. No.
19

20 ***Q18. IF NEITHER MS. STORY NOR MR. WALLER PROVIDES THE***
21 ***INFORMATION REQUIRED TO DETERMINE WHETHER A***
22 ***NORMALIZATION VIOLATION HAS OCCURRED UNDER TREAS.***

1 **REG. § 1.167)-1 (h)(6)(i), THEN WHAT IS THE APPARENT BASIS FOR**
2 **ATMOS' CLAIM?**

3 A18. Company witness Story appears to fault my testimony holding Atmos to its
4 agreements and course of dealing. Specifically, Ms. Story states:

5 Mr. Novak proposes to include in this filing a per-books number
6 reflecting tax expense for the period ended September 30, 2016 and
7 a per-books number reflecting accumulated deferred income tax for
8 the period ending May 31, 2017. Adopting Mr. Novak's proposal
9 would result in the inclusion of eight additional months of deferred
10 federal income tax reserve as compared to included income tax
11 expense. September 30, 2016 book depreciation would be included
12 in the calculation of income tax expense, yet May 31, 2017
13 temporary differences related to book and tax depreciation would be
14 included in the calculation of deferred federal income tax reserve.
15 Therefore, the accumulated deferred federal income tax reserve
16 would certainly exceed the amount in the reserve for deferred taxes.
17 As I have stated in answers to discovery requests in this case,^[10] this
18 is clearly a normalization violation outlined in Treas. Reg.
19 §1.167(l)-1(h)(1)(i)(a) and (b).¹¹

20 As shown above, Ms. Story attempts to find fault with my testimony for
21 “proposing” (without the benefit of any prior income tax normalization violation
22 testimony by any Atmos witness at that time) that the Parties follow the
23 methodology agreed and approved in Docket No. 14-00146 and later followed by
24 the Parties in Docket No. 16-00105. The implications of Ms. Story's argument
25 would be that, notwithstanding the Parties' prior agreement and course of dealing,
26 that Atmos may unilaterally change the methodologies previously agreed to and
27 followed by the Parties and that the Consumer Advocate and Commission should
28 simply acquiesce based on Atmos' unsubstantiated analysis and conclusions.

¹⁰ Ms. Story provides no citation or specific reference with respect to Atmos' discovery responses here.

¹¹ Story Rebuttal Testimony, Page 10, line 16 through Page 11, line 4.

1 ***Q19. DOES MS. STORY OR MR. WALLER QUANTIFY ANY OF THE***
2 ***AMOUNTS THAT WOULD BE REQUIRED TO SUPPORT MS. STORY'S***
3 ***ARGUMENTS IN THE ABOVE QUOTE FROM PAGE 10, LINE 16***
4 ***THROUGH PAGE 11, LINE 4 OF MS. STORY'S REBUTTAL***
5 ***TESTIMONY?***

6 A19. No.

7
8 ***Q20. SO WHAT SUPPORT DOES MS. STORY OR MR. WALLER PROVIDE***
9 ***FOR MS. STORY'S CONCLUSION THAT "...THE ACCUMULATED***
10 ***DEFERRED FEDERAL INCOME TAX RESERVE WOULD CERTAINLY***
11 ***EXCEED THE AMOUNT IN THE RESERVE FOR DEFERRED***
12 ***TAXES"?¹²***

13 A20. None, other than setting out the agreement and course of dealing of the parties, as
14 that agreement and course of dealing were vetted by the Parties in prior dockets.
15 And I would respectfully point out that Atmos appeared in Docket No. 14-00146
16 to thoroughly vet the tax implications of its positions in that Docket.¹³ It would
17 strain credibility at this point to assert that Atmos was not counseled by
18 competent tax counsel and accountants who were and continue to be fully versed
19 with respect to Atmos' tax positions, including without limitation its positions on

¹² Story Rebuttal Testimony, Page 11, lines 1-2.

¹³ See the Rebuttal Testimony of Pace McDonald on behalf of Atmos Energy Corporation, as filed on April 27, 2015, in TPUC Docket No. 14-00146.

1 the normalization requirements of the Internal Revenue Code and related
2 authorities.¹⁴

3
4 ***Q21. OTHER THAN TREAS. REG. § 1.167(1)-1 (h)(6)(i), DOES MS. STORY OR***
5 ***MR. WALLER PROVIDE ANY IRS REVENUE RULINGS, PRIVATE***
6 ***LETTER RULINGS, OR OTHER AUTHORITATIVE TAX MATERIALS***
7 ***IN SUPPORT FOR MS STORY'S CONCLUSION THAT "THIS IS***
8 ***CLEARLY A NORMALIZATION VIOLATION"?***

9 A21. No.

10
11 ***Q22. IN VIEW OF THE LACK OF IRS REVENUE RULINGS, PRIVATE***
12 ***LETTER RULINGS, OR OTHER AUTHORITATIVE TAX MATERIALS***
13 ***WITH RESPECT TO TAX NORMALIZATION REQUIREMENTS IN***
14 ***THIS AREA, AND THE COMPANY'S APPARENT INABILITY OR***
15 ***UNWILLINGNESS TO PROVIDE SUFFICIENT DATA OR***
16 ***INFORMATION IN ITS TESTIMONY, IS MS. STORY OPEN TO ATMOS***
17 ***SEEKING A PRIVATE LETTER RULING ON THIS ISSUE?***

18 A23. Unfortunately, Ms. Story all but rules out this avenue for resolution in her
19 Rebuttal Testimony.¹⁵

20

¹⁴ I would respectfully note that I disagreed – and continue to disagree – with Mr. McDonald's analysis and conclusions in Docket No. 14-00146.

¹⁵ Story Rebuttal Testimony, Page 4, lines 16-20.

1 ***Q24. HAVE ANY OTHER TENNESSEE UTILITIES EXPRESSED THIS SAME***
2 ***CONCERN OF AN IRS TAX NORMALIZATION VIOLATION?***

3 A24. No. It would seem that a tax normalization violation from the alternative rate
4 mechanism for one utility would equally apply to all other utilities. However, no
5 other Tennessee utilities have come forward with this same concern in spite of
6 informal inquiries on this issue. With that in view – along with the lack of
7 sufficient data and support for her position, and her unwillingness to seek a
8 private letter ruling – Ms. Story’s characterization that the true-up of income taxes
9 “clearly violates these rules” appears to be a bit of an over-statement.¹⁶

10

11 ***Q25. MR. NOVAK, DID ATMOS PROVIDE ANY DATA, ANALYSIS OR***
12 ***OTHER SUPPORT IN REBUTTAL TESTIMONY THAT WOULD CAUSE***
13 ***YOU TO CHANGE YOUR POSITION ON THE TREATMENT OF***
14 ***INCOME TAXES IN THIS RECONCILIATION DOCKET?***

15 A25. No. While I appreciate the testimony filed by Atmos on the treatment of income
16 taxes in this reconciliation Docket, my position on that issue remains unchanged.
17 However, I believe it has been important to supplement my testimony on this
18 issue in view of the rebuttal testimony filed by Ms. Story and Mr. Waller.

19

¹⁶ See Story Rebuttal Testimony, Page 2, line 8.

1 ALTERNATIVE ARM CALCULATION PROPOSAL

2
3 ***Q26. MR. NOVAK, IN MS. STORY'S STATEMENT CONCERNING THE USE***
4 ***OF THE COMPANY'S PREFERRED SEPTEMBER 30 DATE FOR THE***
5 ***ARM RECONCILIATION (ON PAGE 14 OF HER REBUTTAL***
6 ***TESTIMONY), DOES SHE INDICATE ANY REASON THAT ATMOS***
7 ***COULD NOT DETERMINE AN ACCURATE PER-BOOKS INCOME***
8 ***TAX EXPENSE AMOUNT AS OF MAY 31?***

9 A26. No.

10
11 ***Q27. JUST TO CONFIRM, ATMOS ADVOCATED AND ACCEPTED***
12 ***SPECIFIC TERMS IN THE SETTLEMENT AGREEMENT IN TPUC***
13 ***DOCKET NO. 14-00146 THAT THE TWELVE-MONTHS ENDING MAY***
14 ***31 WOULD BE THE RELEVANT REVIEW PERIOD WITH RESPECT***
15 ***TO THE ANNUAL ARM RECONCILIATION?***

16 A27. Yes.

17
18 ***Q28. AND NOW ATMOS PROPOSES TO ADJUST THAT TWELVE-MONTH***
19 ***PERIOD TO END ON SEPTEMBER 30, IN CONNECTION WITH***
20 ***APPARENTLY EXTENDING THE PROCEDURAL SCHEDULE OF THIS***
21 ***DOCKET?***

22 A28. Yes.

1 ***Q29. IS THE PROPOSAL BY ATMOS TO EXTEND THE SCHEDULE OF THE***
2 ***CURRENT DOCKET AND CHANGE THE ARM RECONCILIATION***
3 ***PERIODS A REASONABLE RESOLUTION TO THIS ISSUE?***

4 A29. Possibly. There would be a number of significant and time-intensive issues¹⁷ that
5 would have to be resolved. Among those issues would be exactly how such a
6 change could take into account a 16-month reconciliation that would then be
7 applied for recovery over 12 months and would result in double counting of
8 certain items such as income taxes paid in September 2016 and September 2017.
9 At this time, it is unclear exactly how such a reconciliation would be calculated
10 and applied.¹⁸

11
12 ***Q30. DO YOU HAVE ANY SPECIFIC RECOMMENDATIONS IF ATMOS'***
13 ***PROPOSAL TO EXTEND THE ARM RECONCILIATION TO***
14 ***SEPTEMBER 30 IS CONSIDERED?***

15 A30. Yes. To begin with, I would want additional time to consider the timing
16 implications that I allude to above, and to know if Atmos could provide the data
17 and other support to complete the analysis and calculations that would be needed
18 under that approach. With that said, if the Commission were to consider Mr.
19 Waller's proposal to extend the ARM Reconciliation to September 30th, I would
20 recommend that the Commission simply order the change in dates (along with an

¹⁷ Respectfully, the Consumer Advocate would need more time than the time constraints of this Docket permit to review and resolve those issues.

¹⁸ While I appreciate Mr. Waller's efforts to craft a potential methodology (and the Company's willingness to discuss and provide information about his methodology) on how to deal with a 16-month reconciliation period, the time constraints of the current procedural schedule in this Docket have not permitted the level of analysis, and potential further discovery, that would be needed to provide a recommendation on the specifics of his proposal.

1 adjustment to take into account Docket No. 16-00105) and require Atmos to file
2 for the 16-month reconciliation without a specific methodology to address how
3 that true-up is to be calculated. The Consumer Advocate and the Commission
4 could then review and consider Atmos' proposed calculation methodology.
5
6

1 STATUS OF THE REMAINING ISSUES IN THIS DOCKET

2
3 ***Q31. MR. NOVAK, HAVE YOU REVIEWED THE EXHIBIT PRESENTED BY***
4 ***ATMOS ALONG WITH ITS REBUTTAL TESTIMONY?***

5 A31. Yes. The Company's Exhibit recalculates the revenue requirement of the ARM
6 reconciliation for various adjustments outlined in Mr. Waller's testimony and
7 results in a revenue deficiency of \$382,182.¹⁹ In that Exhibit, the Company
8 unfortunately omitted the true-up to income taxes required by the Settlement
9 Agreement in Docket No. 14-00146 (as confirmed in Docket No. 16-00105).

10
11 ***Q32. IN ATMOS' EXHIBIT, WHAT ADJUSTMENTS FROM THE***
12 ***CONSUMER ADVOCATE'S EXHIBIT HAS THE COMPANY MADE?***

13 A32. In addition to the adjustment to true up income taxes, Atmos has proposed the
14 following adjustments to the Consumer Advocate's filings:

- 15 • Rejection of the prospective adjustment for the allocation of Net Operating
16 Loss Carryforward (NOLC) as proposed by the Consumer Advocate.²⁰
- 17 • Acceptance of an adjustment to the Rate Base allocation methodology
18 proposed by the Consumer Advocate that takes into account certain internal
19 recalculations for the impact of acquisitions.²¹ However, the Company
20 excludes the impact to depreciation expense from this adjustment to the
21 allocation methodology.

¹⁹ Atmos Rebuttal Exhibit GKW-R-1, Schedule 1.

²⁰ Waller Rebuttal Testimony, Page 3.

²¹ Waller Rebuttal Testimony, Page 6.

- 1 • Acceptance of an adjustment to the gas storage allocation methodology as
2 originally proposed by the Consumer Advocate.²²
- 3 • Acceptance of an adjustment to the pension expense methodology as
4 originally proposed by the Consumer Advocate.²³

5

6 ***Q33. WHAT IS THE IMPACT OF THE COMPANY'S ADJUSTMENTS?***

7 ***A33.*** As mentioned above, the Company has calculated a new **revenue deficiency** of
8 \$382,182 exclusive of its adjustment for income taxes which I discuss below.
9 Atmos' new revenue deficiency represents an increase of \$281,545 from the
10 comparable \$100,637 revenue deficiency that was calculated in the Consumer
11 Advocate's amended filing which excludes the true-up for actual income taxes
12 paid.

13

14 ***Q34. DO YOU AGREE WITH THE COMPANY'S ADJUSTMENTS?***

15 ***A34.*** Not entirely. However, I do believe that these adjustments fairly reflect
16 consideration for a number of issues (except for the income tax true-up issue) and
17 result in a revenue deficiency difference (\$281,545 as mentioned above) that is
18 relatively inconsequential in rate design. Therefore, in order to facilitate a
19 reasonable and timely resolution to these issues, I am prepared to not contest
20 Atmos' position on the above issues (except for the income tax true-up issue) in
21 this Docket, which would result in the Company's proposed revenue deficiency of
22 \$382,182 (exclusive of the income tax true-up), with the remaining issue being

²² Waller Rebuttal Testimony, Page 10.

²³ Waller Rebuttal Testimony, Pages 11-12.

1 the amount of income taxes that should be included in this ARM reconciliation
2 Docket.²⁴
3

4 ***Q35. WHAT IS THE IMPACT ON THE ARM RECONCILIATION OF***
5 ***ACTUAL INCOME TAXES ON THIS REVENUE DEFICIENCY?***

6 A35. After truing-up to the actual income tax expense, the revenue deficiency of
7 \$382,182 becomes a revenue surplus of \$-2,923,963 as shown in Table 1 below.
8

²⁴ This no contest position should not be construed to establish any precedent or to mean that these issues will not again be contested or objected to in future dockets. In future dockets, the Consumer Advocate would expect to challenge appropriate issues.

Table 1 – Revenue Surplus Calculation Including Reconciliation of Actual Income Tax Expense	
Proposed Revenue Required to Earn Authorized Return ²⁵	\$330,900
Proposed Income Deficiency ²⁶	202,658
Increase in Income Taxes	\$128,242
Increase in Income Taxes	\$128,242
Calculated Excise Taxes ²⁷	1,543,435
Calculated Federal Income Taxes ²⁸	7,770,603
Total Calculated Income Taxes	\$9,442,280
Total Calculated Income Taxes	\$9,442,280
Actual Income Taxes Expense ²⁹	6,579,767
Income Tax True-Up	\$-2,862,513
Proposed Revenue Required to Earn Authorized Return ³⁰	\$330,900
Income Tax True-Up	-2,862,513
Revenue Surplus After Income Tax True-Up	\$-2,531,613
Revenue Surplus After Income Tax True-Up	\$-2,531,613
Carrying Costs ³¹	-392,350
Total Revenue Surplus	\$-2,923,963

1

2 ***Q36. DOES THIS COMPLETE YOUR SUPPLEMENTAL TESTIMONY?***

3 A36. Yes, it does. However, I reserve the right to incorporate any new information that
4 may subsequently become available.

²⁵ Atmos Rebuttal Exhibit GKW-R-1, Schedule 1.

²⁶ Atmos Rebuttal Exhibit GKW-R-1, Docket No. 14-00146 Format, Schedule 1.

²⁷ Atmos Rebuttal Exhibit GKW-R-1, Docket No. 14-00146 Format, Schedule 6.

²⁸ Atmos Rebuttal Exhibit GKW-R-1, Docket No. 14-00146 Format, Schedule 6.

²⁹ Atmos Original Direct Exhibit, Schedule 1.

³⁰ Atmos Rebuttal Exhibit GKW-R-1, Schedule 1.

³¹ Cost of Capital of 7.47% per Atmos Rebuttal Exhibit GKW-R-1, Schedule 9 compounded for 2 years.