

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

IN RE:

**PETITION OF ATMOS ENERGY
CORPORATION FOR APPROVAL OF
2017 ANNUAL RECONCILIATION
FILING**

and

**ATMOS ENERGY CORPORATION
REQUEST TO CHANGE CERTAIN
ARM DATES**

DOCKET NO. 17-00091

DOCKET NO. 18-00003

POST-HEARING BRIEF OF THE CONSUMER ADVOCATE

The Consumer Protection and Advocate Division of the Office of the Attorney General (Consumer Advocate) respectfully submits this Post-Hearing Brief on Atmos Energy Corporation's Motion to Resubmit Reconciliation and Change Dates (Motion) in Tennessee Public Utility Commission (Commission or TPUC) Docket No. 17-00091, Petition of Atmos Energy Corporation for Approval of 2017 Annual Reconciliation Filing; and on the Petition of Atmos Energy Corporation (Budget-Date Petition) in TPUC Docket No. 18-00003, Atmos Energy Corporation Request to Change Certain ARM Dates. The Consumer Advocate recommends that the Commission deny the Motion and Budget-Date Petition.

I. INTRODUCTION

Atmos Energy Corporation (Atmos or Company) is a public utility regulated by the Commission and provides natural gas service to customers in Tennessee.

This Motion and Budget-Date Petition arise from Atmos' attempt to revisit the dates, time periods, and methodologies that had been approved in its last general rate case and

subsequent dockets without establishing the potentially significant impact those changes could have on consumers or determining that each is in the public interest. Events leading up to this latest attempt originated in August of 2014, in TPUC Docket No. 14-00081, in which Atmos unsuccessfully sought to opt-in to Tennessee's annual review mechanism (ARM) under Tenn. Code Ann. § 65-5-103(d)(6). That Code section requires that Atmos' most recent general rate case establish the methodologies to be used in the ARM.¹ However, since TPUC Docket No. 12-00064 did not establish such methodologies, Atmos' first effort failed to meet the statutory requirements and Atmos was not able to opt-into the ARM at that time.

Atmos again sought to opt-into an ARM in TPUC Docket No. 14-00146. Docket No. 14-00146 sought to remedy the lack of methodologies through a two-part filing – a general rate case part and an ARM opt-in part. Both parts were resolved through a Stipulation and Settlement Agreement (14-00146 Settlement Agreement). That settlement agreement was approved by the Commission and incorporated into its Order in its entirety.

Since the approval of the 14-00146 Settlement Agreement, there have been six filings under Atmos' ARM. Two of those filings permitted Atmos to put its budget for the upcoming year into rates,² and one reconciled the original amounts put into rates in TPUC Docket No. 14-00146.³ In the initial reconciliation docket, Atmos and the Consumer Advocate entered into a Settlement Agreement (16-00105 Settlement Agreement) that reflected certain adjustments to the ARM, and the Commission's Order confirmed that the methodologies used reflected the methodologies in the 14-00146 Settlement Agreement. In the current reconciliation docket, Atmos again seeks to reconcile its actual results to its budget filing.⁴

¹ At that time, Atmos' most recent rate case was TPUC Docket No. 12-00064.

² TPUC Docket Nos. 16-00013 and 17-00012.

³ TPUC Docket No. 16-00105.

⁴ The budget filing to which the current Docket is being reconciled is TPUC Docket No. 16-00013.

In seeking to reconcile its actual results to the budget, Atmos' current reconciliation filing originally sought to change the income tax expense methodology that had been approved in Docket No. 16-00105 to reflect a calculation that essentially multiplied Atmos' required revenue amount by Atmos' statutory federal tax rate.⁵ The potential rate impact on consumers from this change is significant.⁶ Atmos' original rationale for changing that methodology was so that Atmos could align its income tax expense year as used in projecting the budget with the actual expense year in the reconciliation year, but that reason appears to have given way to an apparent discovery of a tax normalization violation by Atmos under the Internal Revenue Code.⁷ After disagreement arose about whether a tax normalization violation exists and Atmos' original proposed methodology to fix it, and rebuttal and supplemental testimony were filed, Atmos filed the Motion and Budget-Date Petition to ask for approval to change Atmos' ARM budget and reconciliation years to be the same as its corporate fiscal year.⁸

Specifically, Atmos' Motion asks that the Commission approve a shift in the ARM reconciliation period to cover the period from June 1, 2016 through September 30, 2017, (a 16-month reconciliation period) and that "the specific methods by which Atmos Energy proposes to reconcile the 16-month reconciliation period would be reserved, to be addressed in the

⁵ Pre-Filed Testimony of Gregory K. Waller (Waller Direct Testimony), filed in TPUC Docket No. 17-00091, Page 18, line 18, through Page 19, line 10 (referencing the Pre-Filed Testimony of Jennifer K. Story (Story Direct Testimony), filed in TPUC Docket 17-0091).

⁶ Atmos' original request in this reconciliation docket was a rate **increase** of \$850,177 using its new proposed income tax expense calculation, while the amount that Atmos would have requested using the income tax expense methodology in the prior reconciliation docket would have been a **refund** of \$2,525,475. Contrast Schedule 1 of Exhibit GWK-1 with Schedule 1 of GWK-2, as both are attached to the Waller Direct Testimony.

⁷ In view of Atmos' rebuttal testimony about the seriousness of a potential normalization violation and the discovery of the violation during the preparation of this current reconciliation filing, it is perhaps significant that Atmos would totally omit the potential normalization violation from its original petition, the Waller Direct Testimony, and the Story Direct Testimony. See Pre-Filed Rebuttal Testimony of Jennifer K. Story (Story Rebuttal Testimony), filed in TPUC Docket No. 17-00091, Page 11, lines 8-9 ("The Company identified the [normalization] issue during the preparation of the current filing"), and Page 12, line 19, through Page 13, line 3.

⁸ Atmos provides the underlying reason for Motion and Budget-Date Petition as being a solution to the income tax issue or, as otherwise generally known in the context of Atmos' date change request, the tax normalization issue. Motion, Page 2, in the first sentence, and Budget-Date Petition, Page 2, Paragraphs 5 and 6.

Company's new reconciliation filing[.]” The Budget-Date Petition, as referenced in the Motion and filed in TPUC Docket No. 18-00003, asks the Commission for approval to delay its upcoming budget filing to June 1, to change the budget period from October 1 through September 30, and to make new rates effective October 1, 2018. There is no mention of methodologies in the Budget-Date Petition.⁹

The current filings focus on resubmitting the reconciliation filing and changing certain dates, but provide no methodologies. The precise procedural posture and the basis upon which the Motion and Budget-Date Petition are brought are not clear from the face of either,¹⁰ as the hearing (a week and a day after each was filed) on the Motion demonstrated. For those reasons, the Consumer Advocate recommends that the Commission consider a number of tests as it evaluates these two filings.¹¹ First, has Atmos shown that there is a tax normalization violation that would provide an underlying reason for granting the Motion and Budget-Date Petition? Second, even if Atmos has a tax normalization violation problem, which party bears responsibility for the problem and what would be the best solution? Third, has Atmos shown that the resubmission and new dates would solve Atmos' “actual results” and tax normalization

⁹ Atmos incorporates the Rebuttal Testimony of Gregory K. Waller (Waller Rebuttal Testimony), as filed in Docket 17-00091, in support of the Budget-Date Petition, but the extent of that incorporation is not clear and, further, it is not referenced in any of the specific requests made by Atmos. Budget-Date Petition, Page 3.

¹⁰ No statutory provision is cited in either the Motion or Budget-Date Petition as the basis for Atmos' requests. Atmos' counsel, at the hearing, asserted that Tenn. Code Ann. § 65-5-103(d)(6)(D)(iii) provides that “the Commission, or public utility, may propose a modification to the approved annual review plan...” Hearing Transcript, Page 80, line 24, through Page 81, line 4.

¹¹ The Consumer Advocate notes that under the Tennessee Code subsection cited by Atmos' counsel and Section 16 of the 14-00146 Settlement Agreement, there does not appear to be a question that Atmos, the Commission, or the Consumer Advocate can ask for a modification. The question is what is required in connection with such a modification. Under Tenn. Code Ann. § 65-5-103(d)(6)(D)(iii) there would be a public interest analysis. If the Commission determines that the precise procedural posture and basis for Atmos' Motion and Budget-Date filing are Tenn. Code Ann. § 65-5-103(d)(6)(D)(iii), the Consumer Advocate respectfully requests that all of its analysis and arguments in this Post-Hearing Brief be considered as supporting the position that the grant of the Motion and Budget-Date Petition would not be in the public interest.

problems? And finally, are the resubmission and date changes in the “public interest”¹² as pervasively required by Tenn. Code Ann. § 65-5-103(d)(6)?

II. SUMMARY

The Consumer Advocate contends that Atmos has not shown that there is a tax normalization violation and that, even if Atmos has such a problem, Atmos has not shown that the resubmission of the reconciliation with new dates and currently unknown methodologies would be the best way to solve the problem – or even that the resubmission and date changes would solve such problem. Further, neither the Motion nor Budget-Date Petition is in the public interest because they (A) would create a methodology, regulatory accounting, and process quagmire, (B) do not address the rate impact on consumers, and (C) would result in conflicts with other Tenn. Code Ann. § 65-5-103(d)(6) provisions. Consequently, the Consumer Advocate respectfully recommends that the Commission deny Atmos’ Motion and Budget-Date Petition.

III. ATMOS HAS NOT SHOWN THAT THERE IS A TAX NORMALIZATION VIOLATION AND, THUS, THERE IS NO UNDERLYING REASON FOR THE MOTION AND BUDGET-DATE PETITION

Atmos has not shown that there is a normalization violation. In neither pre-filed rebuttal testimony nor hearing testimony, neither Atmos’ witness Story nor Atmos’ witness Waller provides quantitative support for Story’s assertion that Atmos’ treatment of income tax expense in the current reconciliation docket “is clearly a normalization violation.”¹³ Story’s assertion appears to be based on her interpretation of the standard set out in Internal Revenue Service (IRS) Treas. Reg. § 1.167(1)-1(h)(6)(i). That standard provides that:

¹² At a minimum, in the Consumer Advocate’s view, this would question whether Atmos’ proposal would (i) create a methodology, regulatory accounting, and process quagmire, (ii) not address the rate impact on consumers, and (iii) result in conflicts with other Tenn. Code Ann. § 65-5-103(d)(6) provisions.

¹³ Pre-Filed Rebuttal Testimony of Jennifer K. Story (Story Rebuttal Testimony), as filed in TPUC Docket No. 17-00091, Page 10, line 16 through Page 11, line 4.

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

In other words, Story argues that “Treas. Reg. § 1.167(1)-1 (h)(6)(i) is very clear that the time period for which income tax expense and accumulated deferred federal income taxes ... included in the Company’s rate filings must be the same.”¹⁴ In spite of that standard, though, neither Story nor Waller provided any data in their rebuttal testimony or hearing testimony that would demonstrate how Atmos meets the tax normalization violation standard. In fact, in response to a question from Commissioner Jordan at the hearing on the Motion, Story admitted she did not know—and stopped her analysis before she knew—the amounts in Atmos’ filings that would have been used to determine whether a tax normalization violation exists.¹⁵

Similarly, Atmos’ admission that it has not followed the IRS Regulations¹⁶ requiring notice to the IRS of a tax normalization violation calls into question whether Atmos believes its own claim.¹⁷ Story, in her rebuttal testimony and hearing testimony, says that Atmos had 90 days, from the date Atmos believed that its method of accounting is not a normalized method, to notify the IRS District Director.¹⁸ Story admits that it has been more than 90 days and that the IRS District Director has not been notified.¹⁹ Story attempts to use an IRS Revenue Procedure to say that the 90 days would not start until its requirements are met, but finally admits that the 90-

¹⁴ Story Rebuttal Testimony, Page 4, lines 9-11. Note that apparently any time period will do under Story’s analysis, as long as they are the same. Hearing Transcript, Page 117, line 9, through Page 118, line 16.

¹⁵ Hearing Transcript, Page 114, line 25, through Page 115, line 11.

¹⁶ Story was unable to provide a citation for the 90-day requirement. Hearing Transcript, Page 110, lines 2-20.

¹⁷ Curiously, there is no evidence in the docket that Atmos has availed itself of the Revenue Procedure with respect to TPUC Docket No. 16-00013, in which Atmos also raised the tax normalization issue.

¹⁸ Hearing Transcript, Page 108, line 23, through Page 109, line 6.

¹⁹ Hearing Transcript, Page 110, line 25, through Page 111, line 8.

day requirement is not in the Revenue Procedure.²⁰ Thus, the Revenue Procedure is independent of the 90-day requirement and if Atmos believed it had committed a tax normalization violation, it should have filed the notification with the IRS. Atmos did not file, so there is at least a question about whether Atmos believes there is in fact a tax normalization violation.

In the absence of support or consistent action, Atmos cannot be said to have shown that a normalization violation exists and, thus, that there is a reason for bringing the Motion and Budget-Date Petition. The Motion and Budget-Date Petition should not be granted on this basis.

IV. EVEN IF ATMOS HAS A TAX NORMALIZATION PROBLEM, ATMOS BEARS RESPONSIBILITY FOR THE PROBLEM AND THE SIMPLEST AND HENCE BEST SOLUTION WOULD BE FOR ATMOS TO DO WHAT IT AGREED TO DO – AND DID IN THE PRIOR RECONCILIATION DOCKET – BY USING PER-BOOKS ACTUAL RESULTS

Atmos has not explained – and should, before any request is granted – how Atmos missed²¹ what Atmos now claims is a serious tax normalization violation. As background, the 14-00146 Settlement Agreement requires that “actual results” be used to reconcile the prior budget that has been put into rates by Atmos under the ARM.²² Subsequently, Atmos used per-books amounts in TPUC Docket 16-00105 and the Commission Order in that Docket “found that the methodologies used by the parties in calculating the Revenue Deficiency pursuant to the ARM are consistent with those established by the [Commission] in [TPUC] Docket No. 14-00146.”²³

²⁰ Hearing Transcript, Page 108, line 23, through Page 111, line 21.

²¹ As discussed above, the Consumer Advocate believes that to the extent there is a tax normalization violation, any such violation was solely within the control of Atmos to identify and prevent. As an example of the extent to which Atmos analyzed and reviewed the tax normalization issue in Docket No. 14-00146, see the Rebuttal Testimony of Pace McDonald, as filed in TPUC Docket 14-00146, as referenced in the Supplemental Testimony of William H. Novak (Novak Supplemental Testimony), as filed in TPUC Docket 17-00091, Page 10, line 8, through Page 11, line 2, and noting footnote 13.

²² See 14-00146 Settlement Agreement, Page 26.

²³ Order Approving Settlement Agreement, in TPUC Docket No. 16-00105, Page 4.

Nevertheless, Atmos now claims that it had not contemplated what “actual results” meant in the course of reviewing, analyzing, and negotiating the 14-00146 Settlement Agreement. Specifically, Waller, in response to a question at the hearing about whether Atmos agreed to the 14-00146 Settlement Agreement knowing it required income tax “actual results” entries as of May 31, stated that Atmos “had not – we had not contemplated exactly how we were going to make the true-up entries related to income taxes of the day – on the day we signed the settlement agreement in [TPUC Docket No. 14-00]146.”²⁴ Yet in the first reconciliation docket,²⁵ Atmos apparently understood that actual results meant per-books amounts.²⁶ Despite this, Atmos has now proposed more than one approach and more than one rationale for changing the definition. Those differing approaches and rationales appear to create a lack of clarity for Atmos, but not for the Consumer Advocate or apparently the Commission.

The clear meaning of “actual results” as a per-books approach is reflected in the 14-00146 Settlement Agreement, the application of that settlement agreement in the first reconciliation docket, and the Commission’s Order confirming that application. To the extent that Atmos now believes it has a problem, Atmos bears sole responsibility for not being aware of the meaning and implications of using “actual results” as it appears all the parties understood it was going to be used – at least up to the filing of the current reconciliation Docket. And it follows directly that Atmos bears responsibility for not continuing to follow through in this Docket to use “actual results” as was intended with the fiscal periods and deadlines that were agreed to and ordered in Docket Nos. 14-00146 and 16-00105.

²⁴ Hearing Transcript, Page 56, lines 13-17.

²⁵ TPUC Docket 16-00105 was the first reconciliation docket under the ARM.

²⁶ Compare 16-00105 Settlement Agreement, Schedule 8, with Pre-Filed Testimony of Gregory K. Waller, Schedule 8, as filed in TPUC Docket 16-00105.

The Consumer Advocate believes that the simplest and best solution would be for the Commission to require Atmos to follow through with the terms of 14-00146 Settlement Agreement and use a May 31 per-books tax expense amount in its reconciliation filings. Given Atmos vast accounting and tax expertise, it does not appear credible that Atmos could not make the usable per-books tax entries as of May 31. This solution would resolve the “actual results” issue, and likewise would resolve the tax normalization issue. Atmos’ own witness Waller acknowledged as much in response to a question at the hearing about whether this approach would work – Waller responded “[i]f it were possible to make entries, tax expense entries, on the same month end as the test period, then you’re correct; that would – that would not cause a normalization violation if those entries were – if it was possible to make those entries that would be appropriate for ratemaking.”²⁷

Interestingly, Waller stated that Atmos makes monthly depreciation entries²⁸ and apparently inaccurate monthly tax entries,²⁹ with the tax entries only being recorded once a year at the state level.³⁰ As noted above, the Consumer Advocate believes that the logical next step in the solution would be for Atmos to make accurate monthly tax entries as well. But Waller, who is Atmos’ Manager, Rates and Regulatory Affairs, stated that he does not know if it would be possible for Atmos to make the accurate tax entries,³¹ and deferred that question to Story. Story stated that Atmos makes monthly income tax entries, but that they are not accurate – based on the methodology that Atmos uses to calculate them.³² Left unsaid is whether a change to that

²⁷ Hearing Transcript, Page 56, line 24, through Page 57, line 14.

²⁸ Hearing Transcript, Page 58, line 23, through Page 59, line 15.

²⁹ Hearing Transcript, Page 55, lines 4-15.

³⁰ Hearing Transcript, Page 59, lines 16-24.

³¹ Hearing Transcript, Page 55, lines 16-20. Waller implies that income taxes are the only account that is not accounted for in a manner that would enable a monthly, and hence May 31, calculation of actual results on a per books basis.

³² Hearing Transcript, Page 104, line 20, through Page 105, line 18. And all of this raises an additional question – what is the point of calculating the monthly tax amounts if Atmos believes that they are not accurate?

methodology would enable Atmos to make useable tax entries. When pressed, Story was not able to say, without qualification, that making the actual results entries would not be possible.³³ With that in mind, and again considering the extensive resources and regulatory accounting and tax expertise of Atmos, it seems untenable to say that Atmos could not make the tax expense entries if it chose to make them. Thus, it would be appropriate for the Commission to require Atmos to do what Atmos agreed to do and make the monthly tax entries – and that would be the simplest and hence best way to solve the problem of Atmos’ own creation.

V. ATMOS FAILS TO SHOW THAT THE RESUBMISSION AND CHANGING OF THE DATES WOULD SOLVE ITS “ACTUAL RESULTS” AND TAX NORMALIZATION PROBLEMS

Atmos has simply not demonstrated, and should before any request is granted, that the dramatic change it is proposing with respect to the resubmission and changing of the dates would reflect “actual results” and would solve what Atmos claims is a tax normalization problem. In what appears to be a direct refutation of Atmos’ requests in the Motion and Budget-Date Petition, Story stated that September 30 per-book amounts are not trued-up for 9-10 months after the fiscal year-end, are merely estimates of income tax expense for the prior period, and would not be an appropriate amount to include as actual tax expense for the reconciliation revenue requirement.³⁴ Specifically, Story testified:

Q. WHAT ARE THE GAAP REQUIREMENTS FOR THE ACCRUAL OF FEDERAL AND STATE INCOME TAX EXPENSE?

A. GAAP requires the accrual of current and deferred federal and state income tax expense on the Company's books and records, using currently enacted income tax rates. At its fiscal year-end in September the Company is required to record a provision for the income taxes resulting from operations for the year ending September 30. When the Company files its income tax returns, which are generally due 9-10 months after year end, the Company is required to record a true-up for final income tax expense resulting from the filed income tax returns.

³³ Hearing Transcript, Page 106, line 14, through Page 107, line 14.

³⁴ See Story Direct Testimony, Page 6, line 7, through Page 7, line 15.

Q. WHAT DOES THE INCOME TAX EXPENSE RECORDED ON THE BOOKS AND RECORDS AT SEPTEMBER 30, 2016 REPRESENT?

A. Amounts recorded at September 30, 2016 represent the provision, or estimate, of income tax expense resulting from operations occurring during the period October 1, 2015 through September 30, 2016 plus any true-ups for periods prior to October 1, 2015.

Q. DO THESE AMOUNTS REFLECT ACTUAL INCOME TAX EXPENSE AS REQUIRED BY THE COMPANY'S APPROVED ARM TARIFF?

A. No. These amounts represent estimates of income tax expense for a prior period, which will be trued-up in the future when the Company files its income tax returns for the period ending September 30, 2016.

Q. WOULD THE AMOUNT RECORDED ON THE BOOKS SEPTEMBER 30, 2016 BE AN APPROPRIATE AMOUNT TO INCLUDE AS ACTUAL INCOME TAX EXPENSE FOR THE RECONCILIATION REVENUE REQUIREMENT?

A. No, it would not.

Q. WHY NOT?

A. The [Annual Reconciliation Revenue Requirement] model reconciles forward-looking amounts to actuals for the test year ending May 31, 2017. Income tax expense recorded on the Company's books for the period ending September 30, 2016 in no way relates to the cost of service included in the Test Year.³⁵

Further, Atmos' more recent rebuttal testimony and hearing testimony are contradictory.³⁶ In her rebuttal testimony, Story references Waller and Novak,³⁷ indicates she has reviewed Waller's proposal,³⁸ and states that Waller's proposal would eliminate the normalization violation issue because "the reserve and expense would be included for the same time period, the twelve months ending September."³⁹ In contrast, in her hearing testimony, Story

³⁵ Story Direct Testimony, Page 6, line 7, through Page 7, line 15.

³⁶ In rebuttal testimony, Waller raises the income tax expense issue, notes the Consumer Advocate's concerns, and asserts that moving the dates would "allow for the use of per-books income tax expense . . . that is synchronized with the end of the test period." Waller Rebuttal Testimony, Page 14, lines 1-18. In contrast, in hearing testimony, Waller, was unwilling to respond to specific questions about income tax expense or even whether Atmos could make the accounting adjustments it had agreed to make in the settlement agreement in Docket No. 14-00146.

³⁷ Waller Rebuttal Testimony and Novak Supplemental Testimony.

³⁸ Waller Rebuttal Testimony, Pages 14-17.

³⁹ Story Rebuttal Testimony, Page 13, line 13 through Page 14, line 17. Also, note Story's use of the annual period for her analysis and that her statement referencing the twelve months ending in September does not match the budget period described by Waller.

was not able to state without qualification that Waller's proposal would solve the tax normalization issues.⁴⁰ Story's rationale at the hearing was that the methodology by which the reconciliation period would be calculated has not been finalized, so it would depend on the methodology and calculations.⁴¹

Given Story's testimony, from the Consumer Advocate's perspective, the September 30 year-end amounts that Atmos is proposing in the Motion and Budget-Date Petition at the very least appear no better than the May 31 amounts. Both amounts appear to require scrutiny, evaluation, and adjustment before they would be useful.⁴² And in view of the apparent 9-10 month delay that would be required for useable September 30 amounts as described by Story's direct testimony, using properly accounted for May 31 amounts would be a more workable and realistic solution.

In short, Story's direct, rebuttal, and hearing testimony refute Atmos' position that resubmitting the reconciliation and changing the dates would solve the "actual results" and tax normalization issues. Since Atmos' witnesses refute and do not otherwise provide adequate support, there is no basis for Atmos' Motion and Budget-Date Petition – and they should be denied.⁴³

⁴⁰ Hearing Transcript, Page 122, line 4 through Page 123, line 3.

⁴¹ *Id.*

⁴² As discussed above, Atmos says that it cannot record accurate monthly income tax amounts because they are estimates. However, Story's direct testimony says the amount that Atmos actually records at year end is also inaccurate and will need to be trued-up 9–10 months later. Therefore, a logical question would be that if all the estimates would require a trued-up, then why not record the monthly estimates as well as the eventual true-ups?

⁴³ Alternatively, Atmos could be given the additional opportunity, before Atmos could receive approval to change its ARM, to provide clear and ambiguous support for the position that changing the dates would demonstrably solve its "actual results" and tax normalization violation.

VI. THE RESUBMISSION AND DATE CHANGES REQUESTED IN ATMOS' MOTION AND BUDGET-DATE PETITION ARE NOT IN THE PUBLIC INTEREST BECAUSE THEY WOULD CREATE A METHODOLOGY, REGULATORY ACCOUNTING, AND PROCESS QUAGMIRE, WOULD NOT ADDRESS THE RATE IMPACT ON CONSUMERS, AND WOULD RESULT IN CONFLICTS WITH OTHER PROVISIONS OF TENN. CODE ANN. § 65-5-103(d)(6)

A. Atmos' Motion and Budget-Date Petition Would Create a Methodology, Regulatory Accounting, and Process Quagmire.

The Motion and Budget-Date Petition would create more problems than they would purportedly solve. Those unsolved problems include confusion and ambiguity about methodologies in the proposed new 16-month reconciliation docket – as well as in the presumably 16-month budget to which the “actual results” in that new 16-month reconciliation would be reconciled. Further, there would be confusion and ambiguity about the methodologies that would be implemented in the new budget filing that would follow the new reconciliation filing. The new reconciliation filing likewise would create regulatory accounting issues that may not only present problems of their own, but would also require Atmos to make adjustments that would belie Story's claims about the ability of Atmos' accounting function to make the entries that it agreed to make in the 14-00146 Settlement Agreement. Together or separately, these methodology, regulatory accounting, and process issues would create a quagmire.

1. Methodology Quagmire. Atmos' request for a virtually open-ended order with respect to methodologies⁴⁴ would lead to confusion and ambiguity. As summarized by Waller, “[w]e are asking to move the dates and to deal with the methods by which we calculate the 16-month reconciliation in the docket we would file when, and if, we are ordered to do so.”⁴⁵ Yet Atmos provides no guidance, on the face of neither the Petition nor Budget-Date Petition, about which methodologies from the 14-00146 Settlement Agreement would survive intact,

⁴⁴ Motion, Page 2, second and third bullet points. The Budget-Date Petition raises similar issues.

⁴⁵ Hearing Transcript, Page 91, line 24, through Page 92, line 3.

which would be modified and in what manner, and which would go by the wayside. And neither the rebuttal testimony nor hearing testimony by Waller or Story alleviated that confusion and ambiguity. In response to questions at the hearing, Waller reinforces this uncertainty with respect to several critical aspects of the methodologies that would be used. Among the methodologies that would be uncertain until Atmos filed its new reconciliation docket include how billing determinants would be applied,⁴⁶ how rate base would be calculated,⁴⁷ the adjustments that would be required to take into account the initial reconciliation docket (that is, Docket No. 16-00105),⁴⁸ and the accounting that would be required to avoid double counting.⁴⁹ Uncertainty at this level is the definition of a quagmire.

2. Regulatory Accounting Quagmire. The regulatory accounting uncertainty would result from problems in matching up relevant budget and reconciliation periods. For example, if there is a 16-month reconciliation period to be accounted for, there would seem as a matter of logic to be a requirement of a 16-month budget period to be accounted for. Waller disagreed – insisting in his hearing testimony that the requirement is for a 12-month budget period and a 4-month stub period.⁵⁰ More specifically, Waller asserted “[i]f we moved the dates to align with the fiscal year of the September end, there ultimately is what we deem to be a stub period, a 4-month stub period. But that stub period overlaps with the existing forward looking filings and existing reconciliations that have been done already.”⁵¹ But that overlap presents a problem, in that it requires allocations of budget items and reconciliation items, using as-yet unknown and as-of-yet-unapproved methodologies, in order to create the fiction of a 12+4 or

⁴⁶ Hearing Transcript, Page 78, line 11, through Page 79, line 9.

⁴⁷ Hearing Transcript, Page 92, line 12, through Page 95, line 2.

⁴⁸ Hearing Transcript, Page 95, line 3, through Page 96, line 12. These examples are not intended to be an exhaustive list.

⁴⁹ Hearing Transcript, Page 88, line 6, through Page 91, line 19.

⁵⁰ Hearing Transcript, Page 64, line 21, through Page 66, line 15.

⁵¹ Hearing Transcript, Page 65, lines 14-20.

4+12 month reconciliation period that would be reconciled to a 12+4 or 4+12 month budget period. Creating the fiction of that stub period, in particular, would require as-yet unknown and unapproved allocations of accounts.

Moreover, Atmos accounting group apparently has the capability to determine accurately the amounts needed to calculate on a monthly basis all of Atmos accounts, as discussed above, except for a useful income tax account that would come into play in the 12-month and 4-month periods, or however the 16-month period would be arranged and allocated. Thus, the only account that would require allocation among those periods would be the controversial income tax account.⁵² In light of these circumstances, the Consumer Advocate questions whether the allocation of income tax expense that would be required with respect to the 16-month reconciliation period, however allocated among the months in that period, would create the same sort of problem that Ms. Story described in her rebuttal testimony, namely, the problem that an allocation of such income tax expense as of May 31 purportedly creates. In other words, would the tax accounts match up using the allocations that Atmos would be forced to use? Those issues would define a quagmire as well.

3. Process Quagmire. The absence of approved methodologies will likely give rise to complex and time-consuming issues that would run counter to the public interest in a more streamlined and efficient alternative ratemaking process. If the Motion and Budget-Date Petition were granted, the Commission could essentially face a mini-general rate case at the new reconciliation filing (that took the place of Docket No. 17-00091) and at the new budget filing (in Docket No. 18-00003 or its successor), especially if a party was permitted to simply propose,

⁵² It would appear that the four-month (or however many it ends up being) allocation will only arbitrarily match up the relevant accounts in the allocation process. So how would Atmos be able to determine if this approach satisfied the normalization rules, since those rules require specific accounts be evaluated in terms of specific amounts? And if this approach works to allocate accounts to a four-month period, why could not Atmos use this same approach in an allocation resulting a year end at May 31?

as Atmos does here, that certain dates change without proving that they need to change, and that they do so without any methodologies specified, and without reasonably detailed information about how the process would work and what the effect would be on rates. That approach would appear to be fraught with issues – and would be fairly described as a quagmire.⁵³

B. Atmos' Motion and Budget-Date Petition Do Not Address the Rate Impact on Consumers.

Atmos' latest filing in TPUC Docket No. 17-00091 states that consumers would pay an **additional** \$382,182 in rates using its new methodology to resolve the income tax issue.⁵⁴ Atmos does not provide information as to the impact on consumer's rates under Waller's alternative proposal, as described in his rebuttal testimony,⁵⁵ or under the Motion or Budget-Date Petition. In contrast, in the Consumer Advocate's Supplemental Testimony of William H. Novak, Novak stated that consumers would receive a **refund** of \$2,923,963 if Atmos continued using the same methodology as was used in the prior reconciliation docket. Confusingly, in a brief discussion towards the end of the hearing on the Motion, Atmos indicated its' apparent belief at that time that the resubmission and date changes could result in an unspecified rate reduction to consumers, and with the Consumer Advocate indicating that there could be a rate reduction, but that the reduction would be less of a rate reduction, and perhaps significantly less.⁵⁶ In other words, it would likely be fair at this point to say that no one really knows what customers' new rates would be. The absence of a reasonably known rate impact on consumers weighs heavily against the Motion and Budget-Date Petition being in the public interest.

⁵³ And it is worth noting again that much remains unclear about the requests made by the Motion and Budget-Date Petition. For example, there is no language in the Motion or Budget-Date Petition even suggesting the methodologies and calculations within existing documents that would be changed as a result of the requested resubmission and date changes.

⁵⁴ Waller Rebuttal Testimony, Page 18, lines 7-12.

⁵⁵ Waller Rebuttal Testimony, Page 14, line 1, through Page 17, line 8.

⁵⁶ See Hearing Transcript, Page 123, line 8, through Page 125, line 22.

C. **The Resubmission and Date Changes that Atmos Proposes Would Result in Conflicts with Other Provisions of Tenn. Code Ann. § 65-5-103(d)(6)**

1. **Conflict with Tenn. Code Ann. § 65-5-103(d)(6)(A) and Commission Precedent Requiring Methodologies in an ARM.** In order to satisfy the Tennessee statute and function effectively, an ARM requires established methodologies. In particular, an ARM requires methodologies established in the most recent rate case.⁵⁷ In Atmos' ARM, those methodologies were adopted in TPUC Docket No. 14-00146, and they have been clarified and adjusted over time as a result of agreements and recommendations by Atmos or the Consumer Advocate.⁵⁸

However, the resubmission and date changes requested by Atmos here go beyond the clarifications and adjustments made in prior dockets because the specific methodologies by which Atmos proposes to reconcile the 16-month reconciliation period would be reserved and then addressed in the Company's new ARM reconciliation filing.⁵⁹ In other words, Atmos is asking the Commission to approve a wholly open-ended order that only shifts certain dates and essentially grants to Atmos the ability to adjust and fill in what it considers to be missing or incomplete methodologies. Just as methodologies were missing in Docket No. 12-00064 and resulted in the dismissal of Atmos' initial ARM opt-in effort in Docket No. 14-00081, methodologies are missing in this Docket No. 17-00091. Therefore, just as the Commission declined to give Atmos' an order that failed to specify methodologies in Docket No. 14-00081,

⁵⁷ As the Commission found in its Order Granting the Consumer Advocate's Motion to Dismiss in TPUC Docket 14-00081, at Page 13:

In accordance with Tenn. Code Ann. § 65-5-103(d)(6)(A), implementation of an annual rate review mechanism also requires the adoption of a ratemaking methodology. For annual rate review to work as intended under the statute, an adopted ratemaking methodology must be used to compute the changes in a public utility's annual costs of providing public utilities services.

⁵⁸ See, for example, the clarifications and adjustments reflected in the 16-00105 Settlement Agreement.

⁵⁹ Curiously, Atmos adds that "[a]ll other issues raised in this docket would be reserved for resolution in the new reconciliation docket, or in another docket, and this docket [17-00091] would be closed." Motion, at Page 3, third bullet point. The Consumer Advocate believes leaving the reconciliation in the current Docket would suffice.

so should it reject the wholly open-ended order requested in its Motion and Budget-Date Petition.

It also is worth noting that, if the Motion that Atmos seeks here were granted, Atmos could propose its new 16-month reconciliation using virtually a blank slate,⁶⁰ and that virtually blank slate of methodologies would then form the basis for the methodologies used in Atmos' next budget filing.⁶¹ If adopted, Atmos' proposal could result in a long, drawn-out, complicated process – that could resemble a new general rate case. In practical terms, after Atmos and the Consumer Advocate had established their respective positions, the Commission would be left with the unenviable task of reconciling the competing views of how as-yet-unknown and unapproved methodologies would work and be applied not only in the new reconciliation docket (reconciling to an as-yet-unknown and not approved budget docket), but also to the next budget filing. This uncertainty regarding methodologies in an open-ended order would conflict with the requirements of Tenn. Code Ann. § 65-5-103(d)(6)(A).

2. Conflict with Tenn. Code Ann. § 65-5-103(d)(6)(C) Concerning the Calculation of the Annual Return on Equity, Annual Rate of Return, and Rate Base.

Another express requirement of Tenn. Code Ann. § 65-5-103(d)(6)(C) is “the commission . . . shall review the annual filing by the public utility . . . and order the public utility to make the adjustments to its tariff rates to provide that the public utility earns the authorized return on equity established in the public utility's most recent general rate case.” That requirement is followed in the reconciliation docket.⁶² The difficulty presented by the Motion is how an annual return on equity (that is used in the calculation of rate of return) would be used in a 16-month

⁶⁰ Neither the Motion nor the Budget-Date Petition provide guidance as to the methodology for arriving at the 16-month period to which the new reconciliation docket would be reconciled.

⁶¹ And it is worth noting that neither would have been approved by the Commission before being used.

⁶² 14-00146 Settlement Agreement, Page 26.

reconciliation filing. Atmos says nothing about how this difficulty would be resolved in its filings. When Atmos' witness Waller was asked about this issue at the hearing, he said "the methodologies will be determined in the [reconciliation] filing, and then will be subject to review and discovery by all the parties after we make that filing."⁶³ Such testimony suggests that Atmos wants a wholly open-ended order on how return on equity will be calculated – in addition to the wholly open-ended order with respect to methodologies.

Atmos also neglects to explain the calculation of the required average rate base. When asked how it would be calculated, Waller said "[t]he answer is we don't know yet. That's why we're asking to only move the dates and to deal with the methods by which we calculate the 16-month reconciliation in that docket – the new docket."⁶⁴ This is simply another area in which Atmos is asking for a wholly open-ended order.

The determination of return on equity and average rate base – and the related methodologies and calculations – were intended to be the results of substantial analysis and review in a general rate case. That analysis and review would be short changed if the Motion and Budget-Date Petition were granted. The statute requires more than leaving these important determinations to Atmos through an open-ended grant of the Motion and Budget-Date Petition. Thus, the Motion and Budget-Date Petition cannot be said to reflect the requirement of Tenn. Code Ann. § 65-5-103(d)(6)(C).

3. Conflict with the Annual Filing Requirements Under Tenn. Code Ann. § 65-5-103(d)(6)(A) et. seq. Atmos essentially asks the Commission to grant it a waiver from the explicit language in the alternative regulation statute that rates be reviewed annually under Tenn. Code Ann. § 65-5-103(d)(6)(A) et. seq. Every subsection of Tenn. Code Ann. § 65-

⁶³ Hearing Transcript, Page 94, lines 15-23. Waller also confirmed that the only approved rate of return is an annual rate of return. Hearing Transcript, Page 94, line 24, through Page 95, line 2.

⁶⁴ Hearing Transcript, Page 93, lines 19-22.

5-103(d)(6) uses the words – and requires – an annual period for the review of rates. Even the subsection on which Atmos implicitly relies in its Motion asking for a 16-month reconciliation period states that “the commission or public utility may propose a modification to the approved annual review plan. . .”⁶⁵ Thus, the Motion seeks to violate an express requirement of the subsection of the statute it apparently indirectly seeks to invoke. Consequently, the Motion and the Budget-Date Petition would conflict with Tenn. Code Ann. § 65-5-103(d)(6)(A) *et. seq.*

VII. CONCLUSION

For the foregoing reasons, the Consumer Advocate recommends that Atmos’ Motion and Budget-Date Petition be denied. Further, the Advocate recommends that the Commission order Atmos to adopt the accounting methods and fiscal periods that Atmos agreed to use in the 14-00146 Settlement Agreement.

RESPECTFULLY SUBMITTED,



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⁶⁵ Tenn. Code Ann. § 65-5-103(d)(6)(D)(iii).

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 9th day of February, 2018.



Wayne M. Irvin