

IN THE TENNESSEE PUBLIC UTILITY COMMISSION  
AT NASHVILLE, TENNESSEE

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IN RE: )  
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RESPONSE OF ATMOS ENERGY ) Docket No. 18-00034  
CORPORATION TO THE )  
COMMISSION'S ORDER OPENING )  
AN INVESTIGATION AND REQUIRING )  
DEFERRED ACCOUNTING )  
TREATMENT )

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**JOINT PETITION TO APPROVE STIPULATION AND SETTLEMENT AGREEMENT**

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The Parties jointly request approval of the Stipulation and Settlement Agreement (Settlement Agreement) filed in the above-referenced Docket and in Docket No. 18-00097 on March 25, 2019. The Stipulation and Settlement Agreement is incorporated in its entirety by reference herein. While the Parties request approval as written of all provisions of the entire Settlement Agreement in both dockets, for ease of reference, and at the request of the Hearing Officer, the Parties submit the following excerpted provisions from the Settlement Agreement. Subject to all of the terms and conditions of the Settlement Agreement, including provisions not reproduced below, the Settlement Agreement includes the following resolution of issues in this Docket 18-00034 (as excerpted from the Settlement Agreement):

**Reduction in Federal Income Tax Rate**

16.<sup>1</sup> The issue in this subsection concerning the reduction in federal income tax rates under the TCJA was raised in both TPUC Docket Nos. 18-00034 and 18-00097.

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<sup>1</sup> For ease of reference, paragraph numbering from the Settlement Agreement has been maintained. Footnote number from the Settlement Agreement has not been maintained. Footnote number 1 was not in the original text.

17. The Parties agree that the recommendation set out in Consumer Advocate witness Novak's Direct Testimony in the ARM Reconciliation Docket for a pro forma blended federal tax rate that reflects a systematic adjustment from the pre-2018 tax rate to the current rate is the correct tax rate for purposes of the ARM Reconciliation Docket.<sup>2</sup> Mr. Novak's recommendation was to agree with and accept the Company's proposed tax rate calculation.<sup>3</sup> Specifically, the Parties agree, and recommend that the Commission approve, a blended rate of 29.26%. Further, such blended rate shall be used in the ARM Reconciliation Docket to take into account the income tax savings from the TCJA's reduction of the federal corporate tax rate from 35% to 21%.

18. For TPUC Docket No. 18-00034, the Parties agree that going forward Atmos Energy's annual review mechanism (ARM) as established in TPUC Docket No. 14-00146 provides the mechanism to address the Income Tax Savings from the TCJA's reduction of the federal corporate tax rate from 35% to 21%.

#### **Synchronization of Accumulated Deferred Income Tax (ADIT)**

30. The issue in this subsection concerning the synchronization of ADIT was raised in both TPUC Docket Nos. 18-00034 and 18-00097.

31. The Parties agree that in order to properly synchronize certain operating and maintenance (O&M) costs for ratemaking certain adjustments must be made to Atmos Energy's ADIT balance. The Parties agree that the recommendation of Consumer Advocate witness Dittemore to remove certain amounts (Pension Expense, Restricted Stock Program, Restricted Stock – MIP,

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<sup>2</sup> Novak Direct Testimony, TPUC Docket No. 18-00097, pg. 4, lines 19-21.

<sup>3</sup> *Id.*

MIP/VPP Accrual) from the Atmos Energy's ADIT accounts (with the exception of certain Directors Stock Award amounts) for ratemaking purposes is the correct methodology. Thus, the Parties agree to the adjustments described in the table below.<sup>4</sup>

Line	Description	Attrition Year 13 Month Average
1	Accumulated Deferred Income Tax	(41,695,007) A/
	<b>Adjustments</b>	
2	To Remove Pension Expense	(679,249) B/
3	To Remove Restricted Stock Program	93,067 B/
4	To Remove Restricted Stock- MIP /C	480,664 B/
6	To Remove MIP/VPP Accrual /C	(28,606) B/
7	<b>Total Adjustments</b>	<b>(134,123)</b>
8	<b>Adjusted Total</b>	<b>(41,560,884)</b>

A/ Attrition Period Trial Balance 5.31.18.xlsx from TPUC Docket No. 18-00097

B/ ADIT 06-30-18.xlsx from TPUC Docket No. 18-00097

C/ Management Incentive Plan/Variable Pay Plan from TPUC Docket No. 18-00097

The Parties agree that the appropriate modification to the Atmos Energy proposed ADIT balance associated with synchronizing components of the ADIT with their corresponding treatment within Operating and Maintenance costs reduces the ADIT balance \$134,123.

### **Classification of the Repair Deduction**

37. The issue in this subsection concerning the classification of the Repair Deduction was raised in TPUC Docket No. 18-00034.

<sup>4</sup> The original table is set out in Dittmore Direct Testimony, pg. 5, TPUC Docket No. 18-00097 (January 9, 2019). The table in this Settlement Agreement has been revised with the removal of "line 5" which is the Director's Stock Award as described in Story Rebuttal Testimony, pg. 4, line 14, through pg. 5, line 9 and fn. 3, TPUC Docket No. 18-00097 (February 6, 2019).

38. The Repair Deduction results from the current deduction for certain costs as incurred in computing federal taxable income, while those same costs are capitalized as plant-in-service for financial reporting purposes and included in rate base for ratemaking purposes.<sup>5</sup> Although the Parties agree to the current estimate of total Excess ADIT, there is a difference of opinion on the categorization of the Repair Deduction as either Protected<sup>6</sup> or Unprotected Excess ADIT<sup>7</sup> as reflected in the testimonies of Mr. Dittemore and Ms. Story in the Tax Docket. The Parties agree to resolve the issue of the classification of the Repair Deduction in TPUC Docket 18-00034 through the Private Letter Ruling (PLR) Process with the Internal Revenue Service (IRS) in accordance with Rev Proc 2019-1 or its successor.

39. Atmos Energy hereby represents that it does not have the vintage plant books and records that would be required to calculate the reversal of excess ADIT under the Average Rate Assumption Method (ARAM); therefore, Atmos Energy is utilizing the Reverse South Georgia Method (RSGM).

40. The Parties agree that the question posed to the IRS within the PLR is whether a Company utilizing RSGM, due to lack of vintage plant records, must normalize Excess ADIT associated with the Repair Deduction or whether Excess ADIT associated with the Repair Deduction may be flowed back to ratepayers over an amortization period determined by the state utility regulatory agency.

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<sup>5</sup> Dittemore Direct Testimony at pg. 16, lines 2-6.

<sup>6</sup> For discussion of Protected Excess ADIT, see the testimony of the Consumer Advocate witness, Mr. Dittemore, TPUC Docket No. 18-00034, pg. 6, line 13 – pg. 7, line 3.

<sup>7</sup> For discussion of Unprotected Excess ADIT, see the testimony of the Consumer Advocate witness, Mr. Dittemore, TPUC Docket No. 18-00034, pg. 7, lines 4-6.

41. The Parties agree to continue their strong, collaborative working relationship during this process of resolving the classification of the Repair Deduction. This includes collaboration and information-sharing, in good faith, during the drafting of the PLR request prior to Atmos Energy's formal submittal of the PLR request to the Commission. Accordingly, Atmos Energy agrees to (a) provide a draft copy of the PLR to the Consumer Advocate a reasonable period of time before any filing of such draft at the Commission or IRS to permit review and comment by the Consumer Advocate; (b) in good faith consider such comment and input from the Consumer Advocate into such draft; (c) provide prompt notice to the Consumer Advocate of each interaction, teleconference, or meeting with the Commission or IRS related to the PLR, and (d) to not object to the participation by the Consumer Advocate in any proceeding, teleconference, or meeting with the Commission or IRS related to the PLR, as permitted by Rev Proc 2019-1 or its successor.

42. Within 90 days of the Commission's written approval of this Settlement Agreement, Atmos Energy shall submit its draft PLR request to the Commission for review of the request to determine whether it is adequate and complete with a copy provided to the Consumer Advocate concurrently therewith. Atmos Energy agrees to provide prior notice to the Consumer Advocate of any meeting or telephone conference with Commission staff concerning such submission (along with a copy of any documents or materials pertinent to such meeting or telephone conference) and, further, Atmos Energy agrees not to object to the intervention or participation of the Consumer Advocate in any proceeding

related to such submission. Within 30 days of the Commission's determination of whether the request is adequate and complete the Company shall submit its PLR request to the IRS.

43. Within five business days of the IRS publishing the PLR, Atmos Energy will file a copy in TPUC Docket No. 18-00034 for review and consideration by the Commission of issues, including but not limited to, a determination of the balances of Protected and Unprotected Excess ADIT and their corresponding amortization periods.

44. If for any reason the IRS declines to address the issue presented, Atmos Energy will file notice of such decision within five business days. Within 60 days of this notice, the Parties will submit their position to the Commission in TPUC Docket No. 18-00034 for review and consideration by the Commission of issues, including but not limited to, a determination of the balances of Protected and Unprotected Excess ADIT and their corresponding amortization periods.

45. The Parties agree that Atmos Energy will continue, on an interim basis, to amortize its balance of Unprotected ADIT – as Atmos Energy has defined such balances – until resolution of the appropriate Unprotected ADIT balance and amortization period is determined.

#### **Amortization Periods of Excess ADIT**

46. The issue in this subsection concerning amortization of Excess ADIT was raised in TPUC Docket No. 18-00034.

47. The Parties recognize that the current amounts of Excess ADIT are estimates and cannot be finalized until after Atmos Energy files its federal income tax return for its prior fiscal year.

48. The Parties also recognize that the specific amounts for Unprotected and Protected Excess ADIT cannot be finalized until after resolution of the classification of the Repair Deduction as agreed to in Section II.H. above.

49. The Parties agree that the Company's expenses related to the PLR Request that are recoverable from ratepayers are capped at \$100,000.

50. The Parties agree that due to the uncertainty regarding the resolution of the status of the Repair Deduction, the classification between Protected and Unprotected of the Excess ADIT between Protected and Unprotected cannot be determined at this time and is not defined in this Settlement Agreement.

51. The Parties agree that the appropriate estimated amortization period for Protected ADIT is 28 years, relying upon the RSGM method.

52. Despite the lack of agreement regarding the classification of Protected and Unprotected Excess ADIT, the Parties agree that the total rate base deduction for ADIT, is \$48,514,590 (13 month average as of May 31, 2018 which is the test period for the Reconciliation docket) and the estimate of total Excess ADIT as of May 31, 2018 is \$29,232,886.

53. The Parties agree that the Commission should reevaluate the matter of the appropriate amortization period for Unprotected Excess ADIT upon resolution of the dispute involving classification of the Repair Deduction.<sup>8</sup>

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<sup>8</sup> The Company commenced 28 year amortization of Protected and Unprotected Excess ADIT on October 15, 2018.

54. The Parties agree that the amortizations of both the Protected and Unprotected Excess ADIT should be credited to Income Tax Expense.

**Appropriate Net Operating Loss (NOL) Balance Methodology  
for the Excess ADIT**

59. The issue in this subsection concerning the method of determining the appropriate NOL balance for Excess ADIT was raised in TPUC Docket No. 18-00034.

60. The Parties agree that, solely for the purpose of resolving this issue in the Atmos Energy Tax Docket, Atmos Energy will not be required to identify the Tennessee specific NOL. The Parties agree, however, that the Consumer Advocate has not waived its right to challenge such methodology in future dockets. The resolution of this issue has no precedential impact on positions that any Party may take regarding this issue in an existing or future Atmos Energy docket.<sup>9</sup>

**Atmos Energy's Plant Accounting Accumulated Reserve Records**

61. The issue in this subsection was raised in TPUC Docket No. 18-00034.

62. The Parties agree that for the purpose of resolving this issue in the Atmos Tax Docket, Atmos Energy will not be required to upgrade its plant accounting accumulated reserve records or modify its accounting systems to accommodate ARAM.

63. The Parties agree, however, that the Consumer Advocate has not

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<sup>9</sup> The Consumer Advocate likewise reserves the right to challenge any other methodology incorporated in or position taken by Atmos in the Tax Docket or the ARM Reconciliation Docket in future dockets. The resolution of the issues in this Settlement Agreement has no precedential impact on any position that any Party may take in any future Atmos docket.



waived its right to challenge such methodology in future dockets. The resolution of this issue has no precedential impact on positions that any Party may take regarding this issue in an existing or future Atmos Energy docket.

The above provisions, excerpted from the Settlement Agreement, are subject to all of the terms and conditions of the Settlement Agreement, including those not reproduced herein.

Based upon the entirety of the record, the Parties respectfully request approval of the Settlement Agreement in this Docket No. 18-000034 and in Docket No. 18-00097.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been served, via the method(s) indicated below, on the following counsel of record, this the 11<sup>th</sup> day of April, 2019.

<input type="checkbox"/> Hand	Vance Broemel, Esq.
<input type="checkbox"/> Mail	Wayne Irvin, Esq.
<input type="checkbox"/> Fax	Daniel P. Whitaker, III, Esq.
<input type="checkbox"/> Fed. Ex.	Karen H. Stachowski, Esq.
<input checked="" type="checkbox"/> E-Mail	Assistant Attorneys General Office of Tennessee Attorney General Financial Division, Consumer Advocate Unit War Memorial Building, 2 <sup>nd</sup> Floor 301 6th Avenue North Nashville, TN 37243 <a href="mailto:vance.broemel@ag.tn.gov">vance.broemel@ag.tn.gov</a> <a href="mailto:Wayne.irvin@ag.tn.gov">Wayne.irvin@ag.tn.gov</a> <a href="mailto:Daniel.whitaker@ag.tn.gov">Daniel.whitaker@ag.tn.gov</a> <a href="mailto:Karen.stachowski@ag.tn.gov">Karen.stachowski@ag.tn.gov</a>

