

IN THE TENNESSEE PUBLIC UTILITY COMMISSION  
AT NASHVILLE, TENNESSEE

IN RE: )  
)  
TENNESSEE PUBLIC UTILITY )  
COMMISSION INVESTIGATION OF )  
IMPACTS OF FEDERAL TAX REFORM ) Docket No. 18-00034  
ON THE PUBLIC UTILITY REVENUE )  
REQUIREMENTS )  
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STIPULATION AND SETTLEMENT AGREEMENT

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In a compromise and settlement of the outstanding issues in this matter, Tennessee Public Utility Commission (“TPUC” or “Commission”) Docket No. 18-00034, the Consumer Advocate Unit of the Financial Division of the Office of the Attorney General (“Consumer Advocate”) and Atmos Energy Company (“Atmos Energy” or the “Company”) (collectively, the “Parties”), respectfully submit this Stipulation and Settlement Agreement (“Settlement Agreement”).

**BACKGROUND**

1. On December 22, 2017, President Trump signed into law the Tax Cuts and Jobs Act (“TCJA”). Among other provisions, the TCJA lowered the federal corporate tax rate from 35% to 21%.<sup>1</sup>

2. In the public utility context, regulated utilities realized significantly reduced federal income tax expense as a result of the TCJA.<sup>2</sup> Further, as a result of the lower federal tax rate, utilities experienced excess deferred tax reserves.<sup>3</sup> These reserves accumulated funds for the

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<sup>1</sup> Act to Provide for Reconciliation Pursuant to Titles II and V of the Concurrent Resolution on the Budget for Fiscal Year 2018. Pub. L. No. 116-97, 133 Stat. 2054 (Dec. 22, 2017).

<sup>2</sup> *Order Opening an Investigation and Requiring Deferred Accounting Treatment, In Re: Tennessee Public Utility Commission Investigation of Impacts of Federal Tax Reform on the Public Utility Revenue Requirements*, TPUC Docket No. 18-00001, pp. 2, 4 (February 6, 2018) (hereinafter “Tax Order”).

<sup>3</sup> Tax Order at p. 4.

future payment of federal income tax. Effective with implementation of a lower federal income tax rate, a portion of these future obligations, paid by ratepayers, was effectively cancelled. Funding for these cancelled obligations was provided by ratepayers, and such funds should be returned to ratepayers.<sup>4</sup>

3. On February 6, 2018, the Commission issued its Tax Order in TPUC Docket No. 18-00001 opening an investigation into the effects of the TCJA on certain public utilities.<sup>5</sup> The Tax Order required Tennessee's five largest public utilities – Tennessee American Water Company, Piedmont Natural Gas, Kingsport Power Company, Atmos Energy Corporation, and Chattanooga Gas Company – to file reports with the Commission by March 31, 2018 regarding the impact of the TCJA.<sup>6</sup>

4. Further, each of these utilities was directed to include three subject areas in the reports: (a) the portion of revenue representing the difference between the cost of service in the utility's most recent rate case and the cost of service if the tax rate had been 21% rather than 35%; (b) the excess deferred tax reserve caused by the reduction in the corporate tax rate; and (c) any other tax effects experienced by the utility resulting from the TCJA.<sup>7</sup>

5. On March 29, 2018, Atmos Energy filed its report in Response to the Tax Order.<sup>8</sup> In response to Atmos Energy's filing, the Commission opened the present TPUC Docket 18-00034

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<sup>4</sup> *Consumer Advocate's Petition to Intervene, In Re: Tennessee Public Utility Commission Investigation of Impacts of Federal Tax Reform on the Public Utility Revenue Requirements*, TPUC Docket No. 18-00001, p. 2, ¶3 (March 13, 2018).

<sup>5</sup> TPUC Docket No. 18-00001 was first set on the TPUC Conference Agenda on January 16, 2018. During this January Conference, the TPUC voted to open an investigation into the impacts of the recent federal tax reform and directed action by both utilities and the TPUC staff. Transcript, pp. 8-12. The Commission issued its written order on February 6, 2018.

<sup>6</sup> Tax Order at pp. 5-6.

<sup>7</sup> Tax Order at pp. 4-5.

<sup>8</sup> *Response of Atmos Energy Corporation to the Commission Order Opening an Investigation and Requiring Deferred Accounting Treatment*, TPUC Docket No. 18-00034 (March 29, 2018).

separate from the original docket and separate from the other utilities previously named in the Tax Order.<sup>9</sup>

6. On April 24, 2018, the Consumer Advocate filed a Petition to Intervene in this Docket.<sup>10</sup> The intervention petition was subsequently granted without objection.<sup>11</sup>

7. On October 8, 2018, Atmos Energy's Witness, Jennifer K. Story, filed testimony in support of Atmos Energy's Response to the Tax Order.<sup>12</sup>

8. On November 21, 2018, Atmos Energy filed updated financials based upon the fiscal year ending September 30, 2018.

9. On December 21, 2018, the Consumer Advocate's witness, David N. Dittmore, filed testimony.<sup>13</sup>

10. On January 23, 2019, Atmos Energy's Witness, Jennifer K. Story, filed rebuttal testimony.<sup>14</sup>

11. On March 25, 2019, the Parties filed a Stipulation and Settlement Agreement (2019 Settlement) with the Commission.

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<sup>9</sup> E-mail from Kelly Cashman-Grams, General Counsel, Tenn. Public Utility Comm. to Roberta Davis, Paralegal, Hunter, Smith & Davis, LLP (March 29, 2018, 1:41PM CT). In this e-mail, Ms. Cashman-Grams advised that compliance filings in response to TPUC Docket No. 18-00001 of each utility should be made in a separate docket from TPUC Docket No. 18-00001.

<sup>10</sup> *Consumer Advocate's Petition to Intervene, In Re: Response of Atmos Energy Corporation to the Commission's Order Opening an Investigation and Requiring Deferred Accounting Treatment*, TPUC Docket No. 18-00034 (April 24, 2018).

<sup>11</sup> *Order Granting the Petition to Intervene Filed by the Consumer Advocate, In Re: Response of Atmos Energy Corporation to the Commission's Order Opening an Investigation and Requiring Deferred Accounting Treatment*, TPUC Docket No. 18-00034 (June 11, 2018).

<sup>12</sup> *Pre-Filed Testimony of Jennifer K. Story on Behalf of Atmos Energy Corporation, In Re: Response of Atmos Energy Corporation to the Commission's Order Opening an Investigation and Requiring Deferred Accounting Treatment*, TPUC Docket No. 18-00034 (October 8, 2018).

<sup>13</sup> *Direct Testimony of David Dittmore, In Re: Response of Atmos Energy Corporation to the Commission's Order Opening an Investigation and Requiring Deferred Accounting Treatment*, TPUC Docket No. 18-00038 (December 21, 2018).

<sup>14</sup> *Rebuttal Testimony of Jennifer K. Story on Behalf of Atmos Energy Corporation, In Re: Response of Atmos Energy Corporation to the Commission's Order Opening an Investigation and Requiring Deferred Accounting Treatment*, TPUC Docket No. 18-00034 (January 23, 2019).

12. On June 24, 2019, the Commission entered an *Order Approving Joint Petition to Approve Stipulation and Settlement Agreement (Settlement Order)*, which implemented the Parties' agreed-upon resolution of certain issues regarding the effect of reduced federal income tax under the TCJA in both this Docket and TPUC Docket No. 18-00097.

13. Under the terms of the Commission's *Settlement Order*, the Parties agreed to resolve certain issues regarding proper classification of Excess Accumulated Deferred Income Tax ("ADIT") through use of the Private Letter Ruling ("PLR") process with the Internal Revenue Service ("IRS"), although the IRS indicated that it would not address a PLR until the IRS issued additional guidance on TCJA-related changes. This Docket was left open to resolve certain outstanding issues related to the anticipated guidance from the IRS.

14. Excess ADIT resulted from the reduction in the corporate income tax rate applied to previous balances collected from ratepayers for the reimbursement of future Atmos tax payments. With the reduction in rates, those future obligations were permanently eliminated. There are two categories of Excess ADIT – Protected and Unprotected.<sup>15</sup> Protected Excess ADIT "relates to book and tax timing differences associated with depreciation expense,"<sup>16</sup> and the "TCJA specifies the methodology to be used to return Protected ADIT back to the ratepayer."<sup>17</sup> Unprotected Excess ADIT is comprised of all other book tax timing differences other than depreciation."<sup>18</sup> The methodology to return Unprotected Excess ADIT to ratepayers is not specified within the TCJA and is left to the discretion of state utility regulators.<sup>19</sup>

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<sup>15</sup> Dittmore Direct Testimony at p. 5, ln. 14.

<sup>16</sup> *Id.* at p. 6, ll. 14-16.

<sup>17</sup> *Id.* at p. 17, ll. 7-8.

<sup>18</sup> *Id.* at p. 7, ll. 5-6.

<sup>19</sup> *Id.* at p. 17, ll. 8-9.

15. The Consumer Advocate's expert testified that the Repair Deduction<sup>20</sup> should be classified as Unprotected and thus eligible to be flowed to customers over a shorter time-frame.<sup>21</sup> Atmos Energy contends that the Company's books and records do not contain sufficient vintage level accumulated depreciation detail to compute the amount of EDIT resulting from the Repairs Deduction.<sup>22</sup> The initial balance of Unprotected Excess ADIT identified by Atmos Energy was \$672,969, while the corresponding balance supported by the Consumer Advocate was \$10,163,169.<sup>23</sup>

16. The IRS issued guidance on August 14, 2020. *See Exhibit 1*, IRS Rev. Proc. 2020-039.

17. Although the Parties agree that this guidance does not definitively resolve the remaining issues in this matter, the Parties have continued their discussions in light of this guidance and have reached an agreement that will not require them to submit the PLR Request contemplated in their prior settlement agreement. Importantly, the Parties agree that as a result of the IRS guidance and the methodology the Company has proposed for computing the excess deferred taxes related to the Repair Deduction, the previous concerns related to a potential normalization violation have been alleviated.

## II. SETTLEMENT AGREEMENT TERMS

18. The Parties to this Settlement Agreement have undertaken discussions to resolve the remaining disputed issues in this case. As a result of the information obtained during the discussions between the Parties, and for the purpose of avoiding further litigation and resolving

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<sup>20</sup> The Repair Deduction permits the expensing of certain expenditures for tax purposes that are capitalized for book purposes. Dittmore Direct Testimony at p. 12, fn. 34

<sup>21</sup> *Id.* at 16, ln. 1 – p. 18, ln. 22.

<sup>22</sup> Story Rebuttal Testimony at p. 19 ll. 7-11

<sup>23</sup> Dittmore Direct Testimony at p. 4, Table DND-1.

this matter upon acceptable terms, the Parties have reached this Settlement Agreement. Subject to the TPUC's approval, in furtherance of this Settlement Agreement, the Parties have agreed to the settlement terms set forth below:

19. The parties agree that Unprotected Excess ADIT associated with the Repair Deduction and with the Corporate Overhead deduction may be amortized over a period at the discretion of the Commission. The parties recommend that such amortization period shall be 3 years.

20. Amortization of Unprotected Excess ADIT shall not be subject to an IRS normalization violation, and such amortization shall be reflected as a reduction in the Company's revenue requirement and the Amortization Expense credit shall be reflected as such on the books of the Company beginning with the first month subsequent to approval of this Agreement by the Commission..

21. The Company shall treat \$15,528,180 in Excess ADIT, stated on a gross of tax basis, as unprotected repairs-related expenses associated with the Repair Deduction.

22. The Company shall treat \$3,326,055 in Excess ADIT as unprotected corporate overhead.

23. The total unprotected excess ADIT stated on a gross of tax basis is \$18,854,236. The protected excess ADIT stated on a gross of tax basis is \$10,483,029.

24. The excess NOL are assigned to protected excess ADIT, and as such, that asset will be used to reduce the amortization of protected excess ADIT over the lives of existing assets using the Reverse South Georgia Method ("RSGM").

25. In light of these agreements, the Company will not be required to submit a PLR Request to the IRS regarding these issues.

26. All pre-filed discovery (formal and informal), testimony, and exhibits of the Parties will be introduced into evidence without objection, and the Parties waive their right to cross-examine all witnesses with respect to all such pre-filed testimony. However, if questions should be asked by any person, including a Commissioner, the Parties may present testimony and exhibits to respond to such questions and may cross-examine any witnesses with respect to such testimony and exhibits. The Parties would ask to permit any out-of-town witnesses to be available by telephone to reduce the costs associated with such appearance.

27. After the filing of this Settlement Agreement, the Parties agree to support this Settlement Agreement before the TPUC and in any hearing, proposed order, or brief conducted or filed in this Docket. The provisions in this Settlement Agreement do not necessarily reflect the positions asserted by any Party. None of the Parties to this Settlement Agreement shall be deemed to have acquiesced in or agreed to any ratemaking or accounting methodology or procedural principle except for the limited extent necessary to implement the provisions hereof.

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

29. The Parties request the Commission to order that the settlement of any issue pursuant to this Settlement Agreement shall not be cited by the Parties or any other entity as binding precedent in any other proceeding before TPUC, or any court, state or federal, except to the limited extent necessary to implement the provisions hereof and for the limited purpose of enforcement should it become necessary.

30. The terms of this Settlement Agreement have resulted from extensive

negotiations between the signatories and the terms hereof are interdependent. The Parties jointly recommend that TPUC issue an order adopting this Settlement Agreement in its entirety without modification.

31. If the Commission does not accept the settlement in whole, the Parties are not bound by any position or term set forth in this Settlement Agreement. In the event that TPUC does not approve this Settlement Agreement in its entirety, each of the signatories to this Settlement Agreement retains the right to terminate this Settlement Agreement by giving notice of the exercise of such right within 15 business days of the date of such action by TPUC; provided, however, that the signatories to this Settlement Agreement could, by unanimous consent, elect to modify this Settlement Agreement to address any modification required by, or issues raised by, TPUC within the same time frame. Should this Settlement Agreement terminate, it would be considered void and have no binding precedential effect, and the signatories to this Settlement Agreement would reserve their rights to fully participate in all relevant proceedings notwithstanding their agreement to the terms of this Settlement Agreement.

32. By agreeing to this Settlement Agreement, no Party waives any right to continue litigating this matter should this Settlement Agreement not be approved by TPUC in whole or in part.

33. No provision of this Settlement Agreement shall be deemed an admission of any Party. No provision of this Settlement Agreement shall be deemed a waiver of any position asserted by a Party in these two Dockets or any other docket.

34. The Consumer Advocate's agreement to this Settlement Agreement is expressly premised upon the truthfulness, accuracy and completeness of the information provided by Atmos Energy to TPUC and the Consumer Advocate throughout the course



of these two Dockets, which information was relied upon by the Consumer Advocate in negotiating and agreeing to the terms and conditions of this Settlement Agreement.

35. The acceptance of this Settlement Agreement by the Attorney General shall not be deemed approval by the Attorney General of any of Atmos Energy's acts or practices.

36. Each signatory to this Settlement Agreement represents and warrants that it/he/she has informed, advised and otherwise consulted with the Party for whom it/he/she signs regarding the contents and significance of this Settlement Agreement and has obtained authority to sign on behalf of such Party, and based upon those communications, each signatory represents and warrants that it/he/she is authorized to execute this Settlement Agreement on behalf of its/his/her respecting Party.

37. This Settlement Agreement shall be governed by and construed under the laws of the State of Tennessee, Tennessee choice of law rules notwithstanding.

38. Nothing herein limits or alters the Sovereign Immunity of the State of Tennessee or any of its entities or subdivisions.

39. The Parties agree that approval of the Settlement Agreement will become effective upon the oral decision of TPUC.


The foregoing is agreed and stipulated to this 3<sup>rd</sup> day of November 2020.

*[Parties' signature pages follow – remainder of page intentionally left blank]*

Stipulation and Settlement Agreement  
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Atmos Energy Corporation Signature Page

ATMOS ENERGY CORPORATION.

HAVE SEEN AND AGREED.

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*[additional signature page follows – remainder of page intentionally left blank]*


Stipulation and Settlement Agreement  
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Attorney General's Signature Page



FINANCIAL DIVISION, CONSUMER ADVOCATE UNIT

HAVE SEEN AND AGREED.

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