

IN THE TENNESSEE PUBLIC UTILITY COMMISSION
AT NASHVILLE, TENNESSEE

IN RE:

RESPONSE OF ATMOS ENERGY
CORPORATION TO THE
COMMISSION'S ORDER OPENING
AN INVESTIGATION AND
REQUIRING DEFERRED
ACCOUNTING TREATMENT

DOCKET NO.
18-00034

AFFIDAVIT

I, David N. Dittemore, Financial Analyst, on behalf of the Consumer Advocate Division of the Attorney General's Office, hereby certify that the attached Direct Testimony represents my opinion in the above-referenced case and the opinion of the Consumer Protection and Advocate Division.



David N. Dittemore
DAVID N. DITTEMORE

Sworn to and subscribed before me this 20th day of December, 2018.

Emily Knight
NOTARY PUBLIC

My commission expires: May 6, 2019

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

3 **A1.** My name is David N. Dittmore. My business address is Office of the Tennessee
4 Attorney General, War Memorial Building, 301 6th Ave. North, Nashville, TN
5 37243. I am a Financial Analyst employed by the Consumer Advocate Unit of the
6 Tennessee Attorney General's Office (Consumer Advocate).

7 **Q2. PLEASE PROVIDE A SUMMARY OF YOUR BACKGROUND AND**
8 **PROFESSIONAL EXPERIENCE.**

9 **A2.** I received a Bachelor of Science Degree in Business Administration from the
10 University of Central Missouri in 1982. I am a Certified Public Accountant licensed
11 in the state of Oklahoma (#7562). I was previously employed by the Kansas
12 Corporation Commission (KCC) in various capacities, including Managing Auditor,
13 Chief Auditor and Director of the Utilities Division. For approximately four years,
14 I was self-employed as a Utility Regulatory Consultant representing primarily the
15 KCC Staff in regulatory issues. I also participated in proceedings in Georgia and
16 Vermont, evaluating issues involving electricity and telecommunications regulatory
17 issues. Additionally, I performed a consulting engagement for Kansas Gas Service
18 (KGS), my subsequent employer during this time frame. For eleven years I served
19 as Manager and subsequently Director of Regulatory Affairs for KGS, the largest
20 natural gas utility in Kansas serving approximately 625,000 customers. KGS is a
21 division of One Gas, a natural gas utility serving approximately two million
22 customers in Kansas, Oklahoma and Texas. I joined the Tennessee Attorney
23 General's Office in September, 2017 as a Financial Analyst. Overall, I have thirty
24 years' experience in the field of public utility regulation. I have presented testimony
25 as an expert witness on a number of occasions. Attached as Exhibit DND-1 is a
26 detailed vita of my background.

1 **Q3. HAVE YOU PREVIOUSLY PROVIDED TESTIMONY BEFORE THE**
2 **TENNESSEE PUBLIC UTILITY COMMISSION (TPUC)?**

3 **A3.** Yes. I have submitted testimony in TPUC Docket Nos. 17-00014, 17-00108, 17-00138,
4 17-1124, 17-00143, 18-00017, 18-00022, 18-00038 and 18-00067.

5 **Q4. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

6 **A4.** The purpose of my testimony is to offer the Consumer Advocate's recommendations on
7 the appropriate ratemaking treatment resulting from the federal Tax Cut and Jobs Act
8 (TCJA) for Atmos Energy Corporations' Tennessee division (Atmos).

9 **I. FINANCIAL IMPLICATIONS OF TCJA ON UTILITIES**
10

11 a. Cash flow negative for utilities

12 b. Rate Base will increase, increasing Atmos earnings

13 **Q5. WHAT ARE THE IMPLICATIONS OF THE TCJA ON UTILITIES CASH FLOW?**

14 **A5.** The provisions of the TCJA are cash flow negative for utilities.¹ The provisions of the
15 TCJA no longer permit Bonus Depreciation, which historically² has allowed utilities to
16 deduct fifty percent of the costs of capital expenditures from taxable income. The
17 availability of this deduction, coupled with the effective requirement to normalize income
18 taxes³ at a 35% federal tax rate, resulted in collections from ratepayers for income taxes
19 that were not remitted to the Internal Revenue Service (IRS), creating favorable cash flows
20 for utilities, including Atmos. With the significant reduction in the federal tax rate, a
21 portion of the tax prepayments collected from ratepayers are effectively cancelled and
22 ratepayers' funds will be returned over an extended period, translating to a cash outflow.
23 The effective cancellation of a portion of these pre-payments is referred to as 'excess'
24 Accumulated Deferred Income Taxes (ADIT).

¹ Atmos Response to CPAD No. 1-11, Attachment 1, TPUC No. 18-00034, (Nov. 5, 2018).

² Bonus Depreciation was available beginning May 6, 2003. Bonus Depreciation was extended under the Job Creation Act of 2010.

³ The normalization concept will be explained later in my testimony.

1 However, these cash flow impacts should be put in context. The normalization requirement
2 remains in the tax code and coupled with the availability of accelerated tax depreciation
3 ensures cash flow from Operation will remain strong, albeit not as strong as they were with
4 availability of Bonus Depreciation.

5 **Q6. WHAT ARE THE IMPLICATIONS OF THE TCJA ON UTILITIES EARNINGS?**

6 **A6.** The TCJA will result in an increase in utility earnings, including Atmos, in the long-run.
7 The amount of prepaid taxes collected from ratepayers will not be as great as it has
8 historically as a result of the reduction in the tax rate. The tax pre-payments are reflected
9 within the balance of ADIT and are a reduction to rate base. Also, this balance will be
10 reduced as ratepayer funds are returned to them through the amortization of the excess
11 deferred taxes, thus increasing rate base. In summary, the rate of growth in the ADIT
12 balance will not be as great as it has been historically, resulting in an increase in rate base.
13 As rate base increases, earnings will increase.

14 **II. OVERVIEW OF ATMOS PROPOSAL**
15

16 **Q7. WHAT IS ATMOS' PROPOSAL WITH RESPECT TO ADDRESSING THE**
17 **EXCESS ADIT ASSOCIATED WITH THE TCJA?**

18 **A7.** Atmos proposes to amortize all excess ADIT, regardless of whether they are Protected, or
19 Unprotected, over a twenty-eight-year period, the estimated book life of the assets.⁴ Atmos
20 has indicated that it's Unprotected excess ADIT is an asset, rather than a liability.

21

⁴ Jennifer K. Story Direct Testimony, p. 14, lines 12-16, TPUC Docket No. 18-00034 (Oct. 8, 2018).

III. CONSUMER ADVOCATE BALANCES OF PROTECTED AND UNPROTECTED ADIT

Q8. PLEASE COMPARE THE ATMOS PROPOSED ADIT BALANCES WITH THOSE OF THE CONSUMER ADVOCATE

A8. Below, Table DND-1 compares the Atmos and Consumer Advocate proposed balances of excess ADIT. The adjustments I'm supporting to the Atmos excess ADIT are discussed later in my testimony.

Comparison of Atmos vs Consumer Advocate Excess ADIT		Table DND-1		
		Reclassify Repair to	Eliminate ADIT Associated w Excluded O&M	Consumer Advocate Excess ADIT Balances
	Atmos \1	Unprotected ADIT /2		
Protected	29,697,498	(10,617,470)		19,080,029
Unprotected	(672,969)	10,617,470	218,668	10,163,169
Total	29,024,530	0	218,668	29,243,198
\1 Atmos Updated Financials Filed 11/21/18				
\2 Exhibit DND-2				
\3 Table DND-2				

III. IDENTIFICATION OF TCJA IMPACTS

- a. Income Tax Expense
- b. Accumulated Deferred Income Tax
 - i. Protected
 - ii. Unprotected
- c. Amortization Methodology applicable to Protected excess ADIT

a. TCJA IMPACTS ON INCOME TAX EXPENSE

Q9. DISCUSS THE IMPLICATIONS OF THE TCJA ON A UTILITY'S INCOME TAX EXPENSE

A9. The largest impact of the TCJA is simply the reduction in Income Tax Expense resulting from the reduction in the federal income tax rate from 35% to 21%. The computation of the reduction in Income Tax expense is relatively straight-forward. In the present Atmos

1 reconciliation case⁵, covering a non-calendar year period resulting in a hybrid tax rate, the
2 Income Tax Savings are nearly \$1.6 million.⁶ Based upon data provided in the current
3 Docket, if the lowered tax rate had been in effect for the entire true-up period the reduction
4 in Income Tax Expense would have been nearly \$3.9 million.⁷

5 **Q10. WILL THE ANNUAL RATE MECHANISM (ARM) IN PLACE FOR ATMOS**
6 **CAPTURE THESE TAX SAVINGS FOR THE BENEFIT OF RATEPAYERS?**

7 **A10.** Yes.

8 **Q11. DOES THE COMMISSION NEED TO TAKE ANY ACTION WITH RESPECT TO**
9 **THE INCOME TAX EXPENSE SAVINGS RESULTING FROM THE TCJA?**

10 **A11.** No. The Commission need not take any explicit action regarding the Income Tax Expense
11 savings in this docket as they will accrue to ratepayers through a true-up of actual results
12 consistent with the terms of the Atmos ARM.⁸ The partial year's benefit resulting from
13 the reduction in Income Tax Expense accruing through May 31, 2018 is addressed in
14 Docket No. 18-00097. Atmos is unique among TPUC jurisdictional utilities in that it is
15 the only utility with a comprehensive ARM mechanism which ensures the recovery of tax
16 expense from ratepayers using the lower statutory rate effective January 1st.⁹

17 **b. TCJA IMPACTS ON ACCUMULATED DEFERRED INCOME TAXES**
18 **(ADIT)**
19
20

⁵ *In Re: Atmos Energy Corporation Annual Reconciliation of Annual Review Mechanism*, TPUC Docket No. 18-00097.

⁶ The \$1.6 million in savings is calculated by simply comparing the Income Tax Expense calculated at the former 35% federal rate with the composite 29% rate as shown on WP 10-1 of Exhibit GKW-1 in Docket No. 18-00097.

⁷ The \$3.9 million in savings is calculated by simply comparing the Income Tax Expense calculated at the former 35% federal rate with the composite 21% using data contained in WP 10-1 of Exhibit GKW-1 in Docket No. 18-00097.

⁸ Jennifer K Story Direct Testimony, p. 10, lines 13-15, TPUC Docket No. 18-00034 (Oct. 8, 2018).

⁹ Atmos' fiscal period ends September 30, while the new tax rate became effective January 1, 2018. Atmos has used a hybrid tax rate within the calculation of Income Tax Expense in Docket No. 18-00097, based upon the number of days the two tax rates were in effect during the attrition period.

Q12. DISCUSS THE IMPLICATIONS OF THE TCJA ON A UTILITY'S ACCUMULATED DEFERRED INCOME TAX BALANCE (ADIT).

A12. The more complex TJCA issue is the quantification of the impact of the tax rate change on the utility's ADIT Balance and how the cancellation of these prepaid taxes should be treated for ratemaking purposes. The balance of ADIT represents taxes that have been provided by ratepayers within base rates, but which the utility will not pay until some point in the future.¹⁰ Because these balances represent funds provided by ratepayers, they have a zero cost to the utility. These customer-provided funds finance rate base and are properly reflected as a reduction in rate base since it reduces the funds necessarily provided by the utility to finance the remainder of its rate base. The reduction in the tax rate effectively cancels a portion of these future tax payments. The reduction in these future tax obligations is referred to as excess ADIT, since the funds are no longer required to pay future taxes.

Q13. ARE THERE DIFFERENT TYPES OF EXCESS ADIT?

A13. Yes. There are two categories of excess ADIT, "Protected" and "Unprotected". "Protected" excess ADIT relates to book and tax timing differences associated with Depreciation Expense. The tax code requires that for ratemaking purposes, the lower depreciation expense, relying upon lower regulatory-determined depreciation rates, be used within the calculation of Income Tax Expense¹¹ included in the determination of rates. With respect to ratemaking, the use of a lower book expense within the income tax calculation, yields a higher taxable income for ratemaking purposes, resulting in a higher level of Income Tax Expense included in base rates. This calculation contrasts with the calculation of taxable income for federal income tax payment purposes, which permit much higher depreciation rates and historically permitted Bonus Depreciation¹² generally resulting in a tax deduction equal to fifty percent of capital expenditure in the year the asset was placed in service. All

¹⁰ The timing of if and when future payment of taxes may occur is not certain, which will be discussed later in my testimony.

¹¹ IRC § 168 (i)(9).

¹² Bonus Depreciation is no longer available under the TCJA; however, it is still relevant due to its historic impact on balances of ADIT, including excess ADIT, the subject of this docket. <https://www.irs.gov/newsroom/new-rules-and-limitations-for-depreciation-and-expensing-under-the-tax-cuts-and-jobs-act>

1 of the large Tennessee jurisdictional utilities are in a Net Operating Loss (NOL) position,
2 meaning they have not paid Income Taxes in some time.¹³ Thus ratepayers have been pre-
3 funding Income Tax Expense that will not be paid for an indefinite period.

4 The 'Unprotected' aspect of ADIT refers to that ADIT whose treatment is not specified
5 within the TCJA. 'Unprotected' excess ADIT is comprised of all other book tax timing
6 differences other than Depreciation.

7 **Q14. WHAT IS THE SIGNIFICANCE OF THE EXCESS ADIT CATEGORIES**
8 **PROTECTED VERSUS UNPROTECTED ADIT?**

9 **A14.** The language of the TCJA prescribes how the excess 'Protected' ADIT may be treated in
10 the ratemaking process.¹⁴ The TCJA requires that the balance of the 'Protected' ADIT
11 must be amortized as a reduction to the revenue requirement using the Average Rate
12 Assumption Method (ARAM). If the utility's records are insufficient to use the ARAM
13 method, it must rely upon the Reverse South Georgia Method (RSGM).¹⁵ Both methods
14 result in an amortization of the excess over the life of the assets giving rise to the liability,
15 although the amortization amount will vary year to year with the ARAM methodology,
16 while the annual amortization is constant under the RSGM method.

17 The 'Unprotected' excess ADIT, comprised of all book/tax timing differences other than
18 Depreciation, may be amortized over a period determined at the discretion of the state
19 utility regulatory body.

20 **c. AMORTIZATION METHODOLOGY APPLICABLE TO PROTECTED**
21 **EXCESS ADIT**

¹³ I discuss the payment of federal taxes and NOL positions later in my testimony. See p. 11, lines 8-15.

¹⁴ *Tax Cuts and Jobs Act*, Pub. L. No. 115-97, § 1561(d)(1) (2017).

¹⁵ *Tax Cuts and Jobs Act*, Pub. L. No. 115-97, § 1561 (d)(2)(2017).

1 **Q15. WHAT METHODOLOGY IS ATMOS PROPOSING TO USE TO AMORTIZE**
2 **THIS EXCESS ADIT TO CUSTOMERS?**

3 **A15.** The Company will be using the RSGM method as it has indicated it does not possess the
4 necessary vintage plant records necessary to use the more sophisticated ARAM
5 methodology.¹⁶ Atmos is the only investor-owned utility within the jurisdiction of TPUC
6 which has confirmed it will use the RSGM amortization methodology.¹⁷ Both
7 methodologies flow back the balance of Protected excess ADIT to ratepayers over the
8 remaining life of the utility's assets. However, as I will discuss later in my testimony,
9 Atmos claims that the TCJA contains two distinct definitions of Protected ADIT depending
10 upon whether the utility qualifies for the ARAM or RSGM amortization methodologies.¹⁸
11 We disagree with this position and therein lies one of the controversies in this case, which
12 I will discuss later.

13 **V. IMPLICATIONS OF TAX NORMALIZATION REQUIREMENTS**
14

15 **Q16. DO YOU HAVE COMMENTS ON THE TESTIMONY OF JENNIFER STORY**
16 **WITH REGARD TO NORMALIZATION REQUIREMENTS?**

17 **A16.** Yes. While I agree with certain aspects of Ms. Story's testimony concerning the definition
18 of Deferred Tax assets and liabilities¹⁹, I believe certain statements in her testimony
19 warrant additional information or context.

20 **Q17. DO YOU AGREE WITH MS. STORY'S RESPONSE THAT DEFERRED TAXES**
21 **REPRESENT A SOURCE OF COST-FREE FINANCING PROVIDED BY THE**
22 **GOVERNMENT?**

¹⁶ Jennifer K. Story Testimony, p. 12, lines 15-19, TPUC Docket No. 18-00034 (Oct. 8, 2018).

¹⁷ Chattanooga Gas Company, Kingsport Power and Piedmont Natural Gas have confirmed they will use the ARAM methodology. Tennessee American Water has not confirmed which of the two methods it will use to amortize its Protected Excess Deferred Income Taxes. Direct Testimony of Rachel D. Johnson, p. 4, lines 17-20, TPUC Docket No. 18-00017 (Feb. 15, 2018); William K. Castle Direct Testimony, KgPCO Exhibit No. 1, p. 4, n. 1, TPUC Docket No. 18-00038 (Sept. 25, 2018); Piedmont Response to CPAD No. 1-22, TPUC Docket No. 18-00040 (Nov. 21, 2018).

¹⁸ Atmos Response to CPAD No. 1-14, TPUC Docket No. 18-00067 (Aug. 14, 2018).

¹⁹ Jennifer K. Story Direct Testimony, p. 4 line 8 – p. 6, line 5, TPUC Docket No. 18-00034 (Oct. 8, 2018).

1 **A17.** No. Deferred Taxes represent the pre-payment of a utility's Income Tax obligation paid
2 by ratepayers. That is, ratepayers compensate the utility through base rates for its income
3 tax obligation that will not be paid until some distant future date. This prepayment results
4 from the requirement in the tax code that the calculation of Income tax expense
5 incorporated into a utility's revenue requirement must be 'normalized'.

6 **Q18. CAN YOU EXPLAIN THE DISTINCTION BETWEEN THE TERMS**
7 **NORMALIZED AND FLOW-THROUGH?**

8 **A18.** Yes. In this context, normalization refers to the requirement that the deduction for
9 Depreciation Expense used to compute Income Tax Expense within the revenue
10 requirement calculation must be determined using the same depreciation method and life
11 as is used to determine Depreciation Expense²⁰ used within the ratemaking process. This
12 requirement ensures the benefit of Bonus Depreciation and Accelerated Depreciation are
13 not 'flowed-through' to ratepayers within the Income Tax Expense component within the
14 ratemaking calculation. Instead, the benefits of IRS approved Bonus Depreciation and
15 Accelerated Depreciation are 'normalized' to ratepayers over the life of the underlying
16 assets giving rise to Depreciation Expense. The TCJA normalization requirement is like
17 that found in the 1986 Tax Act.²¹ The fact that Congress has weighed in on the
18 normalization issue is somewhat unique in that retail ratemaking matters fall within the
19 jurisdiction of the states.

20 All deductions, other than Depreciation Expense, included within a utility's tax return may
21 also be used as deductions in computing Income Tax Expense for ratemaking purposes.²²

²⁰ IRC § 168(i)(9)(A)(i).

²¹ Maintaining the normalization requirement within the TCJA was an important issue to the Edison Electric Institute, the electric utility trade association as identified on its website (<http://www.eei.org/issuesandpolicy/finance/Pages/taxreform.aspx>). In addition, the American Gas Association identified normalization of depreciation as an important concept to maintain in the consideration of tax reform in 2013 <https://www.aga.org/sites/default/files/legacy-assets/our-issues/taxes/Documents/130415%20Comments%20of%20the%20American%20Gas%20Association%20to%20Way%20and%20Means%20Energy%20Tax%20Reform%20Working%20Group.pdf>.

²² While the flow-through method may be used for all book tax timing differences other than Depreciation Expense, it is my understanding that TPUC has historically employed a full normalization approach for all such differences in the determination of Income Tax Expense within the ratemaking calculation. For example, see Schedule 8 within Exhibit GKW-1 within Docket No. 18-00097.

1 This use of federal income tax deductions to compute income taxes for ratemaking
2 purposes is referred to as the 'flow-through' method.

3 **Q19. WHAT IS THE PRACTICAL RESULT OF THE REQUIREMENT TO**
4 **NORMALIZE DEPRECIATION FOR PURPOSES OF CALCULATING INCOME**
5 **TAX EXPENSE?**

6 **A19.** The use of the lower "book" depreciation expense within the ratemaking calculation of
7 income tax expense produces a greater level of tax expense than is paid to the IRS. In an
8 environment where natural gas utilities are expanding their capital expenditure programs,
9 it is likely this historical trend will continue.²³ Therefore, ratepayers are providing positive
10 cash flow to Atmos for Income Tax Expense that does not translate to actual tax payments
11 to the IRS.

12 **Q20. WHAT IS THE SCOPE OF TAX DEDUCTIONS THAT ARE REQUIRED TO BE**
13 **'NORMALIZED' FOR RATEMAKING PURPOSES?**

14 **A20.** The IRS normalization requirements are limited to the depreciation methods and lives
15 applied to utility assets.²⁴ In other words, the normalization requirements relate to
16 Depreciation. This expense item is very significant for utilities; however, it is important
17 to understand that the normalization requirement does not extend to any other difference
18 between generally accepted accounting principles and tax deductions.²⁵

²³ *With CapEx Programs Moving Apace, Gas Utilities Seen as Attractive M&A Targets*", S&P Global Market Intelligence, November 12, 2018.

(<https://www.snl.com/web/client?auth=inherit#news/article?id=47863385&KeyProductLinkType=2, subscription required>). Increased levels of capital expenditures will ensure continued growth in accelerated tax depreciation, thereby reducing taxable income and likely delaying income tax payments even further.

²⁴ IRC §168 (i)(9)(A)(i).

²⁵ There are many differences between "book" expenses and tax expenses including the appropriate measurement of pension expense, incentive compensation and other accrued expenses. Also, there are significant differences between the cost basis of assets for book purposes and tax purposes. Certain cost items are capitalized pursuant to generally accepted accounting principles that are not eligible for capitalization for tax purposes.

1 **Q21. HAS ATMOS PAID FEDERAL INCOME TAX IN RECENT YEARS?**

2 **A21.** No. Atmos Energy has not remitted a federal income tax payment since its fiscal year
3 2007.²⁶ Further, as of May 2018 the Company has unused NOL associated with utility
4 operations of \$462 Million²⁷ that may be used to offset future taxable income prior to
5 incurring any obligation to pay income taxes.

6 **Q22. ARE YOU AWARE OF THE LAST TIME OTHER TPUC JURISDICTIONAL**
7 **UTILITIES ACTUALLY PAID FEDERAL INCOME TAXES?**

8 **A22.** American Water Company, parent of Tennessee American Water Company, estimated it
9 had not paid federal income taxes since 2003 or 2004.²⁸ Piedmont Natural Gas has not
10 incurred a federal tax payment obligation since its tax year ending October 31, 2011.²⁹ I
11 am not aware of the last date that the Southern Company (parent company of Chattanooga
12 Gas Company) or AEP (American Electric Power, parent company of Kingsport Power)
13 paid federal income taxes; however, both are in NOL positions.

14 **Q23. IS IT A CERTAINTY, AS INDICATED BY MS. STORY³⁰, THAT ATMOS WILL**
15 **PAY FEDERAL INCOME TAXES IN THE FUTURE?**

16 **A23.** I don't believe it's an absolute certainty that Atmos will pay federal taxes at least in the
17 near-term. Atmos continues to spend significant amounts of capital on system assets,
18 which should generate significant deductions for tax depreciation in the calculation of
19 taxable income. However, to the extent that Atmos has positive taxable income in the
20 future, it will incur at least a modest federal income tax payment as the TCJA contains a
21 limitation on the application of NOL's of 80%.³¹ In other words, if Atmos has taxable

²⁶ Atmos Response to CPAD No. 1-1, TPUC Docket No. 18-00034 (Nov. 5, 2018).

²⁷ Gregory K. Waller Direct Testimony, Exhibit GKW-1, Workpaper 7-1, TPUC Docket No. 18-00097 (Aug. 31, 2018). See also Jennifer K. Story Rebuttal Testimony, p. 21, lines 11– 3, KY PSC Case No. 2017-00349 (Feb. 2, 2018).

²⁸ Transcript, p. 30, lines 16-22, *In Re: Petition of Tennessee American Water Company in Support of the Calculation of the 2018 Capital Recovery Riders Reconciliation*, TPUC Docket No. 18-00022 (September 21, 2018).

²⁹ Piedmont Response to CPAD No. 1-3, TPUC Docket No. 18-00040. Duke Energy last paid federal income taxes in 2015 for the 2014 tax year; however, this predates Duke's acquisition of Piedmont Natural Gas. *Id.* at CPAD No. 1-2.

³⁰ Jennifer K. Story Direct Testimony, p. 6, lines 2-3, TPUC Docket No. 18-00034 (Oct. 8, 2018).

³¹ See Section 13302(a)(2) of the TCJA.

1 income of \$50 million, it could apply NOL offsets of up to 80% (or \$40 million) to arrive
2 at a net taxable income of \$10 million. In theory, Atmos will pay federal taxes in the future,
3 however, that premise has been in place for quite some time and it has been over ten years
4 since Atmos incurred a federal income tax obligation.

5 **Q24. DO RATEPAYERS RECEIVE A BENEFIT FROM COMPENSATING THE**
6 **UTILITY FOR INCOME TAX EXPENSE THAT EXCEEDS INCOME TAX**
7 **PAYMENTS?**

8 **A24.** Yes. These deferred taxes (or tax prepayments) are used by utilities to finance capital
9 expenditures.³² This customer pre-funding is reflected in the balance of ADIT and is an
10 offset to rate base. The ADIT balances have grown quite large with the availability of
11 Bonus Depreciation³³ and the Repair Deduction³⁴. Ratepayers receive a return of 9.8%
12 from an avoided cost standpoint, which represents the agreed upon rate of return for Atmos
13 with the equity portion grossed-up for taxes using the lower 21% federal income tax rate.³⁵

14 **Q25. IS THERE A DETRIMENT TO RATEPAYERS FROM THEIR FUNDING OF**
15 **UTILITY ASSETS?**

16 **A25.** Yes. Ratepayers do not have access to their funds that could be put to a use of their
17 choosing. Many customers are undoubtedly in a constrained financial situation and may
18 place a great value on their personal cash flow.

³² This funding is distinct from the funding provided by customers through base rate, which covers the costs of operating the utility, including a return on invested capital.

³³ Bonus Depreciation is no longer available for assets initiated after January 1, 2018.

³⁴ The Repair Deduction permits the expensing of certain expenditures for tax purposes that are capitalized for book purposes.

³⁵ The fact that this 9.8% pre-tax return is identical to the return on equity agreed to in Docket No. 14-0146 is coincidental.

Q26. AS A MATTER OF PUBLIC POLICY, WHAT IS THE CONSUMER ADVOCATE RECOMMENDATION REGARDING THE FLOWBACK OF EXCESS ADIT TO CUSTOMERS?

A26. The Consumer Advocate believes as a matter of public policy that ratepayer funds (excess ADIT) should be returned to customers as soon as reasonably possible. I suspect most utility customers understand they finance utility operations, but I suspect few understand they also finance a portion of utility capital expenditures.

Q27. WHAT IS THE BALANCE OF ATMOS' EXCESS DEFERRED INCOME TAXES?

A27. In updated financial data provided November 21, 2018, Atmos indicates its total excess Deferred Tax Liability is \$29,024,530.

Q28. WHAT IS THE APPROXIMATE AMOUNT OF UNPROTECTED EXCESS ADIT APPLICABLE TO EACH RESIDENTIAL CUSTOMER OF ATMOS?

A28. The approximate excess ADIT calculated on a per customer basis by customer class is shown on Table DND-2 below:

Table DND-2				
Class of Customer	Class Excess Accumulated Deferred Income Taxes Amount	Customer Count	Average Excess Accumulated Deferred Income Taxes per Customer	
Residential	\$ (14,641,844)	127,021	\$ (115)	
Commerical	\$ (8,636,268)	16,547	\$ (522)	
Industrial	\$ (1,200,167)	352	\$ (3,409)	
Public Authority	\$ (91,623)	697	\$ (131)	
Transportation	\$ (4,454,628)	117	\$ (38,210)	
Total Excess ADIT	\$ (29,024,530)	144,733	\$ (201)	

Q29. WHAT IS A TAX NORMALIZATION VIOLATION?

A29. A tax normalization violation results from the implementation of a practice or methodology which is inconsistent with ratemaking methodologies set forth in the Internal Revenue Code (IRC). A normalization violation could occur through an accounting methodology utilized by the utility, or through implementation of a ratemaking methodology required by a state regulator. A clear hypothetical example of one such methodology would be to incorporate the tax depreciation deduction within the calculation of Income Tax Expense for ratemaking purposes.³⁶ There are other potential violations that are not so clear.

Q30. WHAT ARE THE IMPLICATIONS OF A TAX NORMALIZATION VIOLATION?

A30. If the IRS finds that a normalization violation has occurred, and not subsequently addressed by a regulatory authority, the utility would lose its ability to claim accelerated tax depreciation. The loss of accelerated tax depreciation would harm the utility, and to a lesser extent, its ratepayers.

Q31. IF THE COMMISSION RENDERS A TAX RELATED DETERMINATION WHICH ATMOS BELIEVES IS INCONSISTENT WITH THE NORMALIZATION REQUIREMENTS OF THE IRC IS THERE AN ADMINSTRATIVE AVENUE TO BE PURSUED THAT WOULD ENSURE ATMOS' CONTINUED ABILITY TO CLAIM ACCELERATED TAX DEPRECIATION ON ITS RETURN?

A31. Yes. In the fall of 2017 the IRS issued Revenue Procedure 2017-47, which sets out Safe Harbor provisions which allow utilities to continue to claim accelerated tax depreciation while alleged normalization violations are being addressed. I have attached these procedures as Exhibit DND-2. In this interim period, the utility can submit a formal request with the IRS for a Private Letter Ruling (PLR). After formal submission and consideration, an IRS representative would issue a finding with respect to whether the specific situation constitutes a normalization violation.

³⁶ IRC §168(i)(9)(A)(i).

1 **VI. AREAS OF AGREEMENT**

2 **Q32. IDENTIFY THE ASPECTS OF THIS DOCKET WHERE THERE IS**
3 **AGREEMENT.**

4 **A32.** The areas of agreement with Atmos include:

- 5 a. The manner and timing of the reduction in Income Tax Expense that will accrue to
6 the benefit of Atmos ratepayers.
- 7 b. Based upon Atmos' statement, Atmos does not have sufficiently sophisticated records
8 to rely upon the ARAM amortization method used to flow back Protected excess
9 ADIT.
- 10 c. The period used by Atmos to amortize its Protected excess ADIT back to ratepayers.

11 **VII. AREAS OF DISAGREEMENT**

12 **Q33. IDENTIFY AREAS OF DISAGREEMENT IN THIS DOCKET BETWEEN THE**
13 **CONSUMER ADVOCATE AND ATMOS.**

14 **A33.** The areas of disagreement with Atmos include:

- 15 a. The Classification of the Repair Deduction between Protected and Unprotected ADIT,
16 resulting in a disagreement over the relative balances of Protected and Unprotected
17 ADIT.
- 18 b. Notwithstanding the classification of the Repair Deduction, the Consumer Advocate
19 supports the elimination of certain excess ADIT items that are necessary to properly
20 synchronize the ADIT balance associated with certain expenses with the corresponding
21 ratemaking treatment adopted for these items.
- 22 c. The method used by Atmos to determine the appropriate NOL balance associated with
23 Tennessee operations that is incorporated into the excess ADIT balance.
- 24 d. The resulting period that should be used to amortize Unprotected excess ADIT back to
25 ratepayers.

a. CLASSIFICATION OF THE REPAIR DEDUCTION AS PROTECTED

Q34. WHAT IS THE REPAIR DEDUCTION?

A34. The Repair Deduction is permitted under IRC Section 162 and allows utilities to deduct certain costs as incurred in computing taxable income. These costs are capitalized as plant in service for financial reporting purposes and included in Rate Base for ratemaking purposes.

Q35. IS THE REPAIR DEDUCTION MATERIAL?

A35. Yes. Information provided by Atmos indicates that the total repair deductions taken associated with Tennessee assets was over \$68 million for the tax periods covering 2010 through 2017 (twelve-month periods ending 9/30/10 through 9/30/17, respectively).³⁷

Q36. WHAT IS YOUR ESTIMATE OF THE IMPACT OF THE REPAIR DEDUCTION ON THE BALANCE OF EXCESS ADIT?

A36. The estimated revenue requirement impact of the Repair Deduction is \$10,617,470 as shown on Exhibit DND-3. This calculation represents the net of the Tennessee Repair Deductions taken on the Atmos IRS returns net of annual book depreciation taken on the underlying assets. Once this net balance was determined it was applied to the effective tax rates at the 35% and 21% federal rates, respectively. The net of these two calculations yields the net change in the liability balance which is then grossed-up for revenue requirement purposes to recognize the tax savings which will result from the negative amortization. The result is the balance of excess ADIT which should be reclassified from Protected to Unprotected.

Q37. DISCUSS YOUR CONCERN WITH THE ATMOS CLASSIFICATION OF THE REPAIR DEDUCTION AS PROTECTED.

A37. IRC §§ 167 and 168 requires normalization of depreciation deductions. The Repair Deduction is not depreciation; therefore, it is outside the normalization requirements

³⁷ Atmos Response to CPAD No. 2-5, Attachment 1, TPUC Docket No. 18-00067 (Aug. 8, 2018).

1 contained in the IRC. Further, Atmos acknowledges that flow through of this item was
2 permitted historically and is permitted prospectively.³⁸ Essentially, Atmos is arguing that
3 flow-through, while permitted for this item historically and prospectively, is not eligible
4 for this item as of the date the TCJA was implemented.

5 **Q38. WHAT IS THE IMPLICATION RESULTING FROM ATMOS'**
6 **CLASSIFICATION OF THE REPAIR ALLOWANCE AS PROTECTED?**

7 **A38.** The TCJA specifies the methodology to be used to return Protected ADIT back to
8 ratepayers. However, the Unprotected excess ADIT is left to the discretion of state utility
9 regulators. Classifying the book/tax timing differences associated with the Repair
10 Deduction as Protected effectively results in a twenty-nine-year payback of ratepayer
11 funding. If the Repair Allowance is considered Unprotected, the period of time by which
12 ratepayer funds may be returned may be significantly shorter, to be determined by TPUC.

13 **Q39. WHAT IS THE BASIS FOR ATMOS CONCLUSION THAT THE REPAIR**
14 **DEDUCTION IS PROTECTED?**

15 **A39.** The Company's position on this issue is set forth in the Company's response to Consumer
16 Advocate Discovery Request No. 1-13³⁹:

17 The Company believes that all plant-related EDIT must be
18 amortized using the RSGM in order to ensure that a normalization
19 violation does not occur. This conclusion is drawn both from the
20 language included in Section 13001(d)(3)(C) of the TCJA as well as
21 the Company's lack of vintage level book accumulated depreciation
22 resulting in the requirement to amortize EDIT using the RSGM.

23 Section 13001(d)(3)(C) of the Tax Cuts and Jobs Act outlines the
24 requirements for use of the RSGM. This is the method prescribed
25 when a utility lacks the data necessary to calculate amortization
26 using the ARAM. Under this method a taxpayer computes the
27 excess tax reserve on all public utility property included in the plant
28 account and amortizes such reserve on the basis of the weighted
29 average life or the composite rate used to compute depreciation for
30 regulatory purposes.

³⁸ Atmos Response to CPAD Nos. 1-13 and 1-14, TPUC Docket No. 18-00034 (Nov. 5, 2018).

³⁹ Atmos Response to CPAD No. 1-13, TPUC Docket No. 18-00034 (Nov. 5, 2018).

1 **Q40. DO YOU AGREE WITH THIS INTERPRETATION OF THE TAX CODE?**

2 **A40.** No. I do not agree with the Atmos conclusion that the language referenced above requires
3 the classification of the Repair Deduction as Protected. The reference to the word 'Plant'
4 is undefined. The Repair Deduction results in the classification of certain costs as an
5 expense for tax purposes, but for book purposes the cost is considered an asset. Items that
6 are classified as 100% deductions (such as the Repair Deduction) are not considered 'Plant'
7 for tax purposes.

8 **Q41. DO YOU BELIEVE THIS INTERPRETATION OF THE TAX CODE IS**
9 **LOGICAL?**

10 **A41.** No. The interpretation by Atmos is counter-intuitive. It is Atmos' view that those utilities
11 with more sophisticated plant records, which are thereby required to use the ARAM
12 methodology, may be required to flow back the portion of their Unprotected ADIT
13 represented by the Repair Deduction over a short period. Conversely it is Atmos' position
14 that the same deduction for companies with less sophisticated plant records are required to
15 use the RSGM method, which contains an expansive definition of Protected excess ADIT
16 and eliminates the ability of a state regulatory jurisdiction to exercise authority to flow-
17 back excess ADIT over a period of its choosing. The result of Atmos' interpretation is that
18 companies with less sophisticated plant accounting records are required to retain ratepayer
19 funding associated with the Repair Deduction, while companies with more sophisticated
20 plant accounting records are not mandated by the IRC to retain such funds. If TPUC adopts
21 the Atmos position, Atmos arguably would benefit from its lack of sophisticated plant
22 accounting records.

23 **b. ADJUSTMENTS TO REMOVE ADIT COMPONENTS NOT INCLUDED IN**
24 **THE REVENUE REQUIREMENT**

25 **Q42. OTHER THAN THE RECLASSIFICATION ADJUSTMENT REFERENCED**
26 **EARLIER IN YOUR TESTIMONY, DO YOU HAVE OTHER ADJUSTMENTS TO**
27 **THE BALANCE OF EXCESS ADIT PROPOSED BY ATMOS?**

1 **A42.** Yes. Identified below in Table DND-3 are those components of ADIT that should be
2 eliminated from the determination of Excess ADIT.

Table DND-3			
Updated Atmos Excess ADIT			29,024,530
To Remove Pension Expense			(277,258)
To Remove Restricted Stock Program			29,291
To Remove Restricted Stock- MIP			292,150
To Remove Director's Stock Award			146,934
To Remove MIP/VPP Accrual			27,551
Additional Excess ADIT (Unprotected)			218,668
Adjusted Excess ADIT			29,243,198

3
4 **Q43. PLEASE EXPLAIN WHY THE ADJUSTMENT TO EXCESS ADIT IS**
5 **NECESSARY?**

6 **A43.** The adjustment to Unprotected ADIT is necessary to eliminate the ADIT impacts for those
7 items that are excluded from the Atmos revenue requirement. Therefore, the adjustment is
8 necessary to properly synchronize the Atmos Rate Base with Operating and Maintenance
9 costs used for ratemaking.

10 **c. NOL ALLOCATION**

11 **Q44. HOW DOES THE NOL ASSIGNED TO TENNESSEE OPERATIONS IMPACT**
12 **THIS DOCKET?**

13 **A44.** The reduction in the federal tax rate impacts the NOL balance which then impacts the net
14 excess ADIT liability balance.

15 **Q45. DO YOU TAKE ISSUE WITH THE METHOD ATMOS EMPLOYS TO ASSIGN**
16 **THE NOL ASSET TO TENNESSEE?**

17 **A45.** Yes.

Q46. IS THE ATMOS NOL ASSIGNMENT MATERIAL?

A46. Yes. The post TCJA NOL Atmos Energy corporate asset was \$462⁴⁰ million as of May, 2018, resulting in an allocated Atmos Tennessee asset of \$20 million included in the revenue requirement. The size of this asset justifies the attention and focus of Atmos in arriving at the state jurisdictional assignment. The calculation of state taxable income should be determined based upon the direct assignment of Tennessee specific information to the greatest extent possible.

Q47. WHAT IS THE BASIS ATMOS USES TO ALLOCATE ITS UTILITY NOL TO ITS TENNESSEE JURISDICTION?

A47. Atmos allocates its NOL to each state based upon the composite average of that state's percentage of Gross Direct Property Plant and Equipment, number of customers and total direct O&M expense, all as a percentage of the totals in all utility operating divisions.

Q48. PLEASE FURTHER EXPLAIN YOUR CONCERN WITH ATMOS ALLOCATION APPROACH?

A48. Atmos' balance of its ADIT Liability included in the ratemaking process includes the book/tax timing differences specific to Tennessee investment and operations (Division 093), which is offset by an allocation of Net Operating Losses (Division 02). The Division 093 ADIT balance appropriately incorporates tax depreciation specific to Tennessee capital expenditures. However, rather than determining the NOL specific to Tennessee operations, Atmos allocates a portion of its utility tax losses to Tennessee rather than a process that specifically identifies the losses attributable to Tennessee operations. The allocation of losses, by definition, means that this portion of the ADIT balance is not based upon Tennessee tax depreciation, but instead an allocation of total utility tax depreciation allocated to Tennessee. This mismatch of tax depreciation amounts is incorporated within the same net ADIT balance included in the revenue requirement. Therefore, there is

⁴⁰ Gregory K. Waller Direct Testimony, Exhibit GKW-1, Workpaper 7-1, TPUC Docket No. 18-00097 (Aug. 31, 2018). *See also* Jennifer K. Story Rebuttal Testimony, p. 21, lines 11– 3, KY PSC Case No. 2017-00349 (Feb. 2, 2018).

1 inconsistency within the determination of the appropriate reserve balance within the
2 revenue requirement calculation.

3 **Q49. WHAT IS THE PRACTICAL RATEMAKING IMPLICATION OF THE USE OF**
4 **AN ALLOCATED NOL METHODOLOGY?**

5 **A49.** The use of an allocated NOL suggests that Tennessee ratepayers may be paying a return
6 on tax losses incurred in another state such as Kansas or Colorado.

7 **Q50. DO YOU BELIEVE ITS LIKELY THAT ATMOS' TENNESSEE RATEPAYERS**
8 **ARE PROVIDING ATMOS WITH A RETURN ON TAX LOSSES ACTUALLY**
9 **INCURRED IN OTHER ATMOS STATES?**

10 **A50.** Yes. The Atmos Annual Rate Mechanism (ARM) ensures the company incurs no
11 Regulatory Lag. Regulatory Lag represents the time period between when a change in
12 costs are incurred and when the corresponding revenue associated with the change in costs
13 may be recorded. The ARM permits Atmos to avoid regulatory lag in Tennessee and
14 therefore differs from the level of regulatory lag in certain of its other states, like Kansas,
15 Colorado and Kentucky. A state in which there is no regulatory lag, with virtual certain of
16 earning its authorized return on equity like Tennessee, is much more likely to have higher
17 earnings than a state whose regulatory framework has embedded regulatory lag. Although
18 there are a number of factors that impact taxable income within a given state, a state with
19 higher relative earnings is less likely to incur taxable losses which give rise to NOL's than
20 operations within a state with lower earnings.

21 **Q51. DOES ATMOS' APPROACH USED TO IDENTIFY THE TENNESSEE NOL**
22 **DIFFER FROM THAT USED BY PIEDMONT NATURAL GAS EMBEDDED**
23 **WITHIN ITS EXCESS ADIT PENDING IN DOCKET NO. 18-00040?**

24 **A51.** Yes. In response to Consumer Advocate request 1-8, Piedmont indicates that "The
25 consolidated NOL is allocated pro-rata to all loss companies based upon their separate
26 company losses." The response goes on to indicate that the Company has a Tax Sharing

1 Agreement in place and had a similar agreement in place when Piedmont was an
2 independent company. Further, Piedmont states⁴¹:

3 The Tennessee-specific income tax return is calculated by taking the
4 Piedmont Federal Income Tax Return for each tax year and
5 assigning it into buckets for each jurisdiction. To the extent a
6 component of the return (components are pre-tax book income
7 adjusted of permanent and temporary tax items to arrive at taxable
8 income) can be directly assigned to a jurisdiction, such as TN, it is
9 directly assigned.

10 The response continues by explaining that tax deductions are assigned directly to
11 jurisdictions where possible, while other deductions are allocated using factors that relate
12 to the specific deduction in question such as those related to Tennessee plant are directly
13 assigned. The vast majority of plant deductions would be determined in this manner since
14 Tennessee direct plant is the larger component of Plant in Service compared with joint
15 plant (that plant used to provide service in North Carolina and/or South Carolina). For
16 joint plant related tax deductions, a joint factor is developed and assigned to that joint plant.
17 Once the Tennessee taxable income is developed in this manner, it is compared with
18 taxable income across the system and the balance of NOL is assigned accordingly.

19 **Q52. DO YOU BELIEVE THE PIEDMONT METHODOLOGY OF DETERMINING**
20 **NOL ASSOCIATED WITH A GIVEN STATE TO BE SUPERIOR TO THAT OF**
21 **ATMOS?**

22 **A52.** Yes. The Piedmont methodology assures there is not cross-subsidization between states in
23 terms of the NOL component in Rate Base. The Atmos method of NOL allocation does
24 not provide that assurance.

25 **Q53. IF THE COMMISSION ENDORSES THE ATMOS NOL ALLOCATION**
26 **METHODOLOGY WOULD IT ESSENTIALLY BE ENDORSING CONFLICTING**
27 **ACCOUNTING METHODS BETWEEN UTILITIES?**

28 **A53.** Yes.

⁴¹ Piedmont Response to CPAD No. 1-8, TPUC Docket No. 18-00040 (Nov. 21, 2018).

1 **Q54. DO YOU BELIEVE THE ATMOS METHODOLOGY IS APPROPRIATE FOR**
2 **RATEMAKING PURPOSES?**

3 **A54.** No. Standard cost allocation principles require the direct assignment of a cost, or asset, to
4 a particular jurisdiction when possible. In this instance, tracking taxable income by state
5 is possible and is the logical allocator to use in assigning the total corporate NOL's to each
6 state. This method is much more precise than the current general allocation method used
7 by Atmos. which is simply to allocate the NOL to each state based upon the composite
8 average of that state's percentage of Gross Direct Property Plant and Equipment, number
9 of customers and total direct O&M expense, all as a percentage of the totals in all utility
10 operating divisions.

11 **d. AMORTIZATION PERIOD OF UNPROTECTED ADIT**

12 **Q55. WHAT IS AN APPROPRIATE PERIOD BY WHICH TO FLOW BACK THE**
13 **UNPROTECTED EXCESS ADIT BALANCE?**

14 **A55.** I believe a three-year amortization of the Unprotected excess ADIT balance is reasonable
15 as it provides ratepayers with a relatively short return of their funding, while not posing an
16 undue hardship on the Company's cash flow. The excess ADIT is ratepayer funding that
17 is rightfully due them and should be returned to them as quickly possible as a matter of
18 responsible public policy. Further, a more rapid return to ratepayers provides a better
19 matching of the refund with those customers providing the source of the excess ADIT
20 funding.

21 **Q56. HOW DOES A MORE RAPID CUSTOMER REFUND OF UNPROTECTED**
22 **EXCESS ADIT PROVIDE A BETTER MATCH WITH THOSE CUSTOMERS**
23 **PROVIDING THE SOURCE OF EXCESS ADIT FUNDING?**

24 **A56.** The source of the excess ADIT are the historic tax pre-payments made by customers. Most
25 of these excess balances represent customer contributions associated with plant investment.
26 It is historic customers who provided this funding. The sooner the refunds are made the
27 greater likelihood that those customers who funded the excess ADIT will receive the
28 benefit. Under the Atmos proposal, the excess ADIT would be flowed back over the life

1 of the remaining assets, approximating twenty-nine years and would thus benefit a different
2 generation of customers than those who were the source of the excess ADIT.

3 **Q57. IS THERE ANY EVIDENCE PROVIDED BY ATMOS TO SUPPORT A CLAIM**
4 **THAT IT WILL EXPERIENCE A FINANCIAL HARDSHIP IF THE**
5 **COMMISSION ADOPTED A SHORTER AMORTIZATION PERIOD FOR**
6 **UNPROTECTED ADIT?**

7 **A57.** No. Consumer Advocate Request 1-11 requests analysis and supporting documentation
8 for its claims that it would suffer negative cash flow implications which could result in
9 credit degradation. Atmos provided no such analysis, nor documentation supporting this
10 contention. Atmos did provide a document issued by Moody's Investors Service issued in
11 January 2018 indicating it was changing its outlook on twenty-five utilities to negative
12 from stable. However, Atmos was not one of the utilities listed within the report. Atmos
13 has the burden to substantiate its claims with evidence. Atmos has not provided any
14 supporting evidence that the flow-back of its Unprotected Excess ADIT balance (as defined
15 by the Consumer Advocate) would pose a threat to its financial stability.

16 **VIII. TPUC JURISDICTIONAL UTILITY PROPOSALS REGARDING EXCESS ADIT**

17 **Q58. PLEASE IDENTIFY THE OTHER UTILITY PROPOSALS TO RETURN EXCESS**
18 **UNPROTECTED ADIT TO RATEPAYERS.**

19 **A58.** In Docket No. 18-00017, Chattanooga Gas Company proposed a five-year amortization of
20 its Unprotected excess ADIT.⁴² The Consumer Advocate proposed a three-year
21 amortization. TPUC made a verbal decision in that case on October 11, 2018 however, a
22 written order has not been issued so as of this writing there is no final ruling.

23 In Docket No. 18-00038, Kingsport Power and the Consumer Advocate have entered into
24 a Stipulation and Agreement whereby the Unprotected EDIT would be flowed back to

⁴² Gary A. Tucker Rebuttal Testimony, p. 38, lines 12-17, TPUC Docket No. 18-00017, (Aug. 3, 2018).

1 ratepayers immediately through the elimination of deferred storm damage costs and the
2 reduction of its unrecovered fuel cost balance.⁴³

3 In Docket No. 18-00039 Tennessee American Water Company (TAWC) has indicated
4 once it determines its balance of excess ADIT it will propose appropriate amortization
5 periods.⁴⁴ Presumably this would include the portion of excess ADIT that is Unprotected.
6 TAWC has indicated it believes the amortization of excess ADIT should be used to offset
7 charges under its capital rider program.⁴⁵

8 In Docket No. 18-00040 Piedmont Natural Gas (Piedmont) recommends that excess ADIT,
9 including Unprotected excess ADIT be deferred (delayed amortization) until Piedmont's
10 next base rate case at which time appropriate amortization periods would be determined.⁴⁶

11 In both the TAWC and Piedmont dockets, the Consumer Advocate has yet to file testimony
12 outlining its position.

13 **IX. IDENTICAL ISSUE BEFORE THE VIRGINIA CORPORATION COMMISSION**

14 **Q59. HAS THE ISSUE OF WHETHER THE REPAIR DEDUCTION FALLS UNDER**
15 **THE DEFINITION OF PROTECTED OR UNPROTECTED BEEN RAISED IN**
16 **ANOTHER STATE IN WHICH ATMOS OPERATES?**

17 **A59.** Yes. The Staff of the Virginia Corporation Commission in Case No. PUR-2018-00014,
18 argued that the Repair Deduction did not fall within the category of Protected excess ADIT
19 and that the Unprotected excess ADIT should be amortized over a five-year period.⁴⁷

20 **Q60. HAVE THE PARTIES RESOLVED THIS ISSUE?**

21 **A60.** The parties to the case have reached agreement on how this issue will be addressed and the
22 Stipulation and Agreement is pending before the Virginia Corporation Commission as of
23 the date of this writing. In pertinent part, the parties agree to seek a PLR from the IRS to

⁴³ Stipulation and Settlement Agreement, pp. 9-10, ¶ 20, TPUC Docket No. 18-00038 (Dec. 7, 2018).

⁴⁴ John. R. Wilde Direct Testimony, p. 7, line 18 – p. 8, line 7, TPUC Docket No. 18-00039 (Apr. 2, 2018).

⁴⁵ Linda C. Bridwell Direct Testimony, p. 8, lines 14-18 TPUC, Docket No. 18-00039 (Apr. 2, 2018).

⁴⁶ Pia K. Powers Direct Testimony, p. 7, lines 1-7, TPUC Docket No. 18-00040 (Oct. 5, 2018).

⁴⁷ Kent Peterson Direct Testimony, p. 7, line 7 – p. 8, line 7, SCC Va. Case No. PUR-2018-00014 (Oct. 10, 2018).

1 address whether the Repair Deduction for Atmos (with its use of the RSGM) is Protected
2 under the provisions of the TCJA. The parties agreed that if the IRS declined to address
3 the issue the (Virginia) Commission could reopen this docket for the limited purpose of
4 deciding on the issue based upon the pre-filed testimony.

5 **VIII. RECOMMENDATIONS**

6

- 7 1. The balance of Protected Excess ADIT, as identified by the Consumer Advocate
8 should be amortized over an approximate twenty-eight-year period, according to
9 the RSGM method. This amortization should be used as a credit to Amortization
10 Expense within the Atmos ARM mechanism. The appropriate amortization amount
11 once determined should be reconciled in a subsequent ARM docket.
- 12 2. The Commission should require Atmos to upgrade its plant accounting records and
13 all other necessary accounting data on a prospective basis such that Atmos could
14 implement the ARAM methodology resulting from any subsequent federal tax rate
15 change.
- 16 3. The Consumer Advocate recommends the Commission require Atmos to modify
17 its NOL Accounting allocation methodology to assign the Tennessee jurisdictional
18 NOL balance on a direct assignment basis, or if that is not available it should use
19 an appropriate causal allocator. The Commission should reject the Atmos
20 methodology of using a general allocator to assign the NOL to Tennessee.
- 21 4. The Consumer Advocate believes there is sufficient evidence to support a
22 determination that the excess ADIT associated with the Repair Allowance is
23 Unprotected and that it should be amortized over a three-year period. However, out
24 of an abundance of caution, the Consumer Advocate recommends the Commission
25 require Atmos to obtain a Private Letter Ruling seeking clarification from the IRS
26 on whether the excess ADIT associated with the Repair Deduction is Protected for
27 companies, like Atmos, using the RSGM. The PLR request should be initially
28 drafted by Atmos, and reviewed/edited by both the Consumer Advocate and TPUC
29 Staff. The final submission should be jointly approved by the three parties and be

1 submitted to the IRS no later than April 30th. This recommendation is similar to
2 the terms of the Stipulation and Agreement in Virginia Corporation Commission
3 Case No. PUR-2018-00014. Depending upon the outcome of the IRS ruling, the
4 issue of an appropriate amortization period and how such credits should be reflected
5 in rates and whether to display on customer bills may be addressed by the
6 Commission. The Accounting that Atmos is currently using to address excess
7 ADIT should continue until resolution of this issue at which time appropriate
8 accounting/ratemaking true-ups would be made reflecting the IRS ruling.

- 9 5. Notwithstanding the Private Letter Ruling recommendation above, the Consumer
10 Advocate recommends the Commission find that the total Unprotected ADIT
11 balance is \$11,040,063, while the total Protected ADIT balance is \$19,080,029.
12

13 **Q61. DO YOU HAVE A DISCLAIMER ASSOCIATED WITH YOUR TESTIMONY?**

14 **A61.** Yes. Anything not specifically identified within my testimony does not necessarily
15 constitute agreement with Atmos proposals.

16 **Q62. DOES THIS CONCLUDE YOUR TESTIMONY?**

17 **A62.** Yes.

David Dittmore

Experience

Areas of Specialization

Approximately thirty-year experience in evaluating and preparing regulatory analysis, including revenue requirements, mergers and acquisitions, utility accounting and finance issues and public policy aspects of utility regulation. Presented testimony on behalf of my employers and clients in natural gas, electric, telecommunication and transportation matters covering a variety of issues.

Tennessee Attorney General's Office; **Financial Analyst September, 2017 – Current**
Responsible for evaluation of utility proposals on behalf of the Attorney General's office including water, wastewater and natural gas utility filings. Prepare analysis and expert witness testimony documenting findings and recommendations.

Kansas Gas Service; **Director Regulatory Affairs 2014 – 2017; Manager Regulatory Affairs, 2007 – 2014**

Responsible for directing the regulatory activity of Kansas Gas Service (KGS), a division of ONE Gas, serving approximately 625,000 customers throughout central and eastern Kansas. In this capacity I have formulated strategic regulatory objectives for KGS, formulated strategic legislative options for KGS and led a Kansas inter-utility task force to discuss those options, participated in ONE Gas financial planning meetings, hired and trained new employees and provided recommendations on operational procedures designed to reduce regulatory risk. Responsible for the overall management and processing of base rate cases (2012 and 2016). I also played an active role, including leading negotiations on behalf of ONE Gas in its Separation application from its former parent, ONEOK, before the Kansas Corporation Commission. I have monitored regulatory earnings, and continually determine potential ratemaking outcomes in the event of a rate case filing. I ensure that all required regulatory filings, including surcharges are submitted on a timely and accurate basis. I also am responsible for monitoring all electric utility rate filings to evaluate competitive impacts from rate design proposals.

Strategic Regulatory Solutions; 2003 -2007

Principal; Serving clients regarding revenue requirement and regulatory policy issues in the natural gas, electric and telecommunication sectors

Williams Energy Marketing and Trading; 2000-2003

Manager Regulatory Affairs; Monitored and researched a variety of state and federal electric regulatory issues. Participated in due diligence efforts in targeting investor owned electric utilities for full requirement power contracts. Researched key state and federal rules to identify potential advantages/disadvantages of entering a given market.

MCI WorldCom; 1999 – 2000

Manager, Wholesale Billing Resolution; Manage a group of professionals responsible for resolving Wholesale Billing Disputes greater than \$50K. During my tenure, completed disputes increased by over 100%, rising to \$150M per year.

Kansas Corporation Commission; 1984- 1999

Safe Harbor for Inadvertent Normalization Violations

Rev. Proc. 2017-47

SECTION 1. PURPOSE

This revenue procedure provides a safe harbor concerning inadvertent or unintentional uses of a practice or procedure that is inconsistent with §§ 50(d)(2) and 168(i)(9) of the Internal Revenue Code of 1986, as amended (Code), which require the use of the Normalization Rules (as defined in section 4.04 of this revenue procedure). If the safe harbor under section 5 of this revenue procedure applies, the Internal Revenue Service (Service) will not assert that a taxpayer's inadvertent or unintentional use of a practice or procedure that is inconsistent with §§ 50(d)(2) and 168(i)(9) of the Code constitutes a violation of the Normalization Rules. This revenue procedure does not limit or change the process by which a taxpayer may request a letter ruling or a referral for a technical advice memorandum that the taxpayer's proposed practice or procedure is consistent or inconsistent with the Normalization Rules.

SECTION 2. BACKGROUND

In general, normalization is a system of accounting used by regulated public utilities to reconcile the tax treatment of the Investment Tax Credit (ITC) or accelerated depreciation of public utility assets with their regulatory treatment. Under normalization, a utility receives the tax benefit of the ITC or accelerated depreciation in the early years

of an asset's regulatory useful life and passes that benefit on to ratepayers ratably over the regulatory useful life in the form of reduced rates. The remainder of this section 2 describes the intent of Congress in adopting the Normalization Rules and their operation under the Code and Income Tax Regulations.

.01 Congressional Intent. Congress had two principal objectives in adopting the Normalization Rules. The first objective was to preserve the utility's incentive to invest. Congress enacted the ITC and accelerated depreciation to stimulate investment. These incentives were not intended to subsidize the consumption of any products or services, including utility products or services. Recognizing that public utility rates are set based on the utility's costs incurred to provide the utility service, including federal income tax expense, Congress enacted a set of rules to assure that some or all of the value of the incentives it provided for utility capital investment would not be diverted from investment by utilities to lower prices for consumption by customers of utilities.

The second objective was to protect the government's tax revenue. Congress reasoned that when a utility elected accelerated depreciation and its regulator lowered rates to reflect the resulting tax benefit, the federal government would experience a reduction in tax revenue twice: once from the added accelerated depreciation deductions taken by the utility, and again from the decline in the revenue received by the utility as a result of its lower rates. See S. Rep. No. 91-552, at 17 (1969). The same impact results if a utility is permitted to flow through the benefit of its ITC to customers.

.02 Depreciation. Section 168 of the Code provides taxpayers generally with the

benefits of the accelerated cost recovery system in the computation of their depreciation deduction for federal income tax purposes. Section 168(f) provides the description of certain property for which the benefits of § 168 do not apply. Section 168(f)(2) provides that § 168 does not apply to any public utility property, as defined in § 168(i)(10), if the taxpayer does not use a normalization method of accounting. In general, § 168(i)(10) defines “public utility property” as property used predominantly in the trade or business of furnishing or selling (A) electrical energy, water, or sewage disposal services, (B) gas or steam through a local distribution system, (C) certain communications services, or (D) the transportation of gas or steam by pipeline, if rates for such furnishing or sale are established or approved by a State (including the District of Columbia) or political subdivision thereof, any agency or instrumentality of the United States, or a public service or public utility commission or other body of any State or political subdivision thereof.

Section 168(i)(9) describes what constitutes a “normalization method of accounting.” The rules provided in § 168(i)(9) recognize that the rates a regulated public utility is permitted to charge its customers are established or approved by regulators based on the utility's cost of service taking into account the depreciation of assets and federal income tax expense. The Normalization Rules under § 168(i)(9)(A)(i) require the taxpayer to compute the federal income tax expense taken into account in setting its rates using a depreciation method that is the same as, and a depreciation period that is no shorter than, the method and period used to compute the depreciation expense for purposes of computing rates. Under § 168(i)(9)(A)(ii), a taxpayer must account for any

difference between its federal income tax expense taken into account in computing its rates and the actual federal income tax it pays as a reserve for deferred taxes. If the taxpayer uses estimates or projections in determining for rate-making purposes its tax expense, depreciation expense, or reserve for deferred taxes, the Normalization Rules under § 168(i)(9)(B) require the use of consistent estimates or projections with respect to the other two items and rate base.

Section 1.167(l)-1(a)(1) of the Income Tax Regulations provides that the normalization requirements for public utility property pertain only to the deferral of federal income tax liability resulting from the use of an accelerated method of depreciation for computing the allowance for depreciation under § 167 of the Code and the use of straight-line depreciation for computing tax expense and depreciation expense for purposes of establishing cost of services and for reflecting operating results in regulated books of account.

.03 Investment Tax Credit. Section 46 of the Code sets forth certain investment credits against income tax. Section 50(d) provides special rules for certain taxpayers to qualify for those credits, including § 50(d)(2), which provides that rules similar to the limitations provided under former § 46(f) applicable to public utility property prior to the enactment of the Revenue Reconciliation Act of 1990, Pub. L. No. 101-508, Title XI, 104 Stat. 1388, shall apply to certain regulated companies. The Tax Reform Act of 1986, Pub. L. No. 99-514, 100 Stat. 2085, repealed the ITC generally with respect to public utility property placed in service after 1985; however, due to the long useful life of much public utility property, these provisions retain their vitality.

Under the general rule of former § 46(f), those regulated companies are not entitled to the ITC if either the taxpayer's cost of service or rate base for ratemaking purposes is reduced by any portion of the credit. However, the statute provides important exceptions. Former § 46(f)(1) provides that the ITC may not be used to reduce the taxpayer's cost of service, but may be used to reduce rate base, if such reduction is restored not less rapidly than ratably. Former § 46(f)(2) provides an election under which a taxpayer is permitted to take into account a ratable portion of the ITC for purposes of determining cost of service, but is not permitted to reduce the base to which the taxpayer's rate of return for ratemaking purposes is applied by any portion of the credit. A utility taxpayer elects either former § 46(f)(1) or former § 46(f)(2) and that choice applies to all public utility property of the taxpayer. A taxpayer that does not specifically elect former § 46(f)(2) is subject to the general rule of former § 46(f)(1).

Former § 46(f)(6) provides that for purposes of determining ratable portions, the period of time used in computing depreciation expense for purposes of reflecting operating results in the taxpayer's regulated books of account is to be used. Under § 1.46-6(g)(2) of the Income Tax Regulations, "ratable" is determined by considering the period of time actually used in computing the taxpayer's regulated depreciation expense for the property for which a credit is allowed. "Regulated depreciation expense" is the depreciation expense for the property used by a regulatory body for purposes of establishing the taxpayer's cost of service for ratemaking purposes.

.04 Application of Sanctions for Failure to Use a Normalization Method of Accounting. Former § 46(f)(4)(A) provides that there is no disallowance of a credit

before the first final inconsistent determination is put into effect for the taxpayer's former § 46(f) property. Section 1.46-6(f)(4) provides that the ITC is disallowed for any former § 46(f) property placed in service by a taxpayer (a) before the date a final inconsistent determination by a regulatory body is put into effect, and (b) on or after such date and before the date a subsequent consistent determination is put into effect.

Section 1.46-6(f)(7) provides that the term "determination" refers to a determination made with respect to former § 46(f) property (other than property to which an election under former § 46(f)(3) applies) by a regulatory body described in former § 46(c)(3)(B) that determines the effect of the credit (a) for purposes of former § 46(f)(1), on the taxpayer's cost of service or rate base for ratemaking purposes, or (b) for a taxpayer that made an election under former § 46(f)(2), on the taxpayer's cost of service, for ratemaking purposes or in its regulated books of account, or on the taxpayer's rate base for ratemaking purposes.

Section 1.46-6(f)(8)(i) provides that "inconsistent" refers to a determination that is inconsistent with former § 46(f)(1) or former § 46(f)(2). For example, a determination to reduce the taxpayer's cost of service by more than a ratable portion of the ITC would be a determination that is inconsistent with former § 46(f)(2). Section 1.46-6(f)(8)(ii) provides that the term "consistent" refers to a determination that is consistent with former § 46(f)(1) or former § 46(f)(2). Section 1.46-6(f)(8)(iii) provides that the term "final determination" means a determination by a regulatory body with respect to which all rights of appeal or to request a review, a rehearing, or a redetermination have been exhausted or have lapsed.

The Senate Finance Committee Report to the Tax Reduction Act of 1975 addressed the importance of the final determination by stating that "if a regulatory agency requires the flowing through of a company's additional investment credit at a rate faster than permitted, or insists upon a greater rate base adjustment than is permitted, the additional investment credit is to be disallowed, but only after a final determination . . . is put into effect." S. Rep. No. 94-36, at 44-45 (1975).

Unlike most tax provisions the sanctions imposed under the Normalization Rules were not intended to directly increase or decrease federal tax revenues. They were intended to discourage the flow through of tax benefits to customers in order to allow utilities to benefit from the underlying depreciation and ITC provisions and prevent the loss of revenue the federal government would suffer if the benefits were flowed through to customers.

In addition, in discussing the limitations on the ratemaking treatment of the ITC under § 46(e)(1) and (e)(2), the Senate Finance Committee Report concerning the Revenue Act of 1971, P.L. 92-178, 85 Stat. 497, indicates that the Committee hoped that the sanctions of disallowance of the ITC would not have to be imposed. S. Rep. No. 92-437, at 41 (1971).

SECTION 3. SCOPE

.01 This revenue procedure applies to a taxpayer that:

- (1) owns Public Utility Property (as defined in section 4.03 of this revenue procedure);
- (2) has inadvertently or unintentionally failed to follow a practice or procedure that

is consistent with the Normalization Rules (as defined in section 4.04 of this revenue procedure) in one or more years;

(3) upon recognizing its failure to comply with the Normalization Rules, the taxpayer changes its Inconsistent Practice or Procedure (as defined in section 4.06 of this revenue procedure) to a Consistent Practice or Procedure (as defined in section 4.05 of this revenue procedure) at the Next Available Opportunity (as defined in section 4.07 of this revenue procedure) in a manner that totally reverses the effect of the Inconsistent Practice or Procedure, provided the Taxpayer's Regulator (as defined in section 4.01 of this revenue procedure) adopts or approves the change; and

(4) retains contemporaneous documentation that clearly demonstrates the effects of the Inconsistent Practice or Procedure and the change to a Consistent Practice or Procedure adopted or approved by the Taxpayer's Regulator.

.02 For purposes of section 3.01(2) of this revenue procedure, a taxpayer's Inconsistent Practice or Procedure is neither inadvertent nor unintentional if the Taxpayer's Regulator specifically considered and specially addressed the application of the Normalization Rules to the Inconsistent Practice or Procedure in establishing or approving the taxpayer's rates even if at the time of such consideration the Taxpayer's Regulator did not believe the practice or procedure was inconsistent with the Normalization Rules.

SECTION 4. DEFINITIONS

.01 Taxpayer's Regulator

Taxpayer's Regulator means a State (including the District of Columbia) or political

subdivision thereof, any agency or instrumentality of the United States, or a public service or public utility commission or other body of any State or political subdivision thereof that establishes or approves the rates of the taxpayer.

.02 Rate Proceeding

Rate Proceeding means a proceeding in which the Taxpayer's Regulator establishes or approves the taxpayer's rates.

.03 Public Utility Property

Public Utility Property has the meaning provided in former § 46(f)(5) or in § 168(i)(10), and the applicable Income Tax Regulations.

.04 Normalization Rules

The Normalization Rules mean, in the case of the ITC, the rules provided by former § 46(f), as in effect on the day before the date of enactment of the Revenue Reconciliation Act of 1990, and the Income Tax Regulations thereunder, and, in the case of the accelerated cost recovery system for depreciation, the rules provided by § 168(i)(9), as in effect on the day before the date of enactment of the Revenue Reconciliation Act of 1990, and the Income Tax Regulations thereunder.

.05 Consistent Practice or Procedure

A Consistent Practice or Procedure means a practice or procedure followed by the taxpayer and the Taxpayer's Regulator that is consistent with the Normalization Rules.

.06 Inconsistent Practice or Procedure

An Inconsistent Practice or Procedure means a practice or procedure followed by the taxpayer and the Taxpayer's Regulator that is inconsistent with the Normalization Rules.

.07 Next Available Opportunity

(1) In the case of a taxpayer without a Rate Proceeding pending before the Taxpayer's Regulator, the Next Available Opportunity means the next Rate Proceeding.

(2) In the case of a taxpayer with a Rate Proceeding currently pending before the Taxpayer's Regulator, the Next Available Opportunity means the currently pending proceeding, unless the rules of the Taxpayer's Regulator or applicable state or federal law (at the time the Inconsistent Practice or Procedure is identified) preclude the taxpayer from initiating a change from an Inconsistent Practice or Procedure to a Consistent Practice or Procedure in the currently pending proceeding, in which case the currently pending proceeding shall not be the Next Available Opportunity, and the Next Available Opportunity means the next Rate Proceeding.

(3) If, at the conclusion of a Rate Proceeding, the taxpayer has a private letter ruling request pending before the Service to address whether or not a practice or procedure addressed in the Rate Proceeding is a Consistent Practice or Procedure, and the Taxpayer's Regulator later establishes or approves rates subject to adjustment from the effective date of the unadjusted rates in order to conform to the Service's ruling, the taxpayer shall have corrected its Inconsistent Practice or Procedure at the Next Available Opportunity.

SECTION 5. APPLICATION

.01 For any taxpayer described in section 3 of this revenue procedure, the Service will not assert that the Inconsistent Practice or Procedure constitutes a violation of the Normalization Rules and will not deny that taxpayer the benefits of the ITC and/or

accelerated depreciation. In any tax year ending after the taxpayer has identified an Inconsistent Practice or Procedure, but in which the taxpayer has not changed to a Consistent Practice or Procedure because the taxpayer has not reached the year that presents the taxpayer with its Next Available Opportunity, the taxpayer must include in its return a statement described in section 5.02 of this revenue procedure. If the taxpayer makes the representation described in section 5.02(3) of this revenue procedure, the Service will not assert that the Inconsistent Practice or Procedure is a violation of the Normalization Rules and will not challenge the taxpayer's use of the identified Inconsistent Practice or Procedure unless the taxpayer does not change to a Consistent Practice or Procedure at the Next Available Opportunity.

.02 A statement is described in this section 5.02 if:

- (1) The top of the statement is marked "FILED PURSUANT TO REV. PROC. 2017-47";
- (2) The statement identifies the taxpayer's Inconsistent Practice or Procedure; and
- (3) The statement includes a representation by the taxpayer of its intention to change to a Consistent Practice or Procedure at the Next Available Opportunity.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective for taxable years ending on or after December 31, 2016. However, the Service will not challenge any Inconsistent Practice or Procedure in any earlier taxable year provided that the requirements of sections 3 and 5 of this revenue procedure are satisfied by the taxpayer with respect to the

Inconsistent Practice or Procedure in such taxable year.

SECTION 7. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-2276.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information are in sections 3 and 5 of this revenue procedure and are required for a taxpayer to apply the safe harbor provided by this revenue procedure. This information is required to be collected and retained to clearly demonstrate the effects of a taxpayer's Inconsistent Practice or Procedure and the taxpayer's change to a Consistent Practice or Procedure adopted or approved by the Taxpayer's Regulator. The taxpayer must also include a statement in its federal income tax return identifying the Inconsistent Practice or Procedure and representing its intention to change to a Consistent Practice or Procedure at the Next Available Opportunity. The likely respondents are corporations or partnerships that are regulated public utilities.

The estimated total annual reporting burden is 1,800 hours.

The estimated annual burden per respondent varies from 10 hours to 14 hours, depending on individual circumstances, with an estimated average burden of 12 hours to collect and retain contemporaneous documentation and to complete the statement required under this revenue procedure. The estimated number of respondents is 150.

The estimated annual frequency of responses is on occasion.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by § 6103.

SECTION 8. DRAFTING INFORMATION

The principal author of this revenue procedure is Jennifer C. Bernardini of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this revenue procedure contact Ms. Bernardini on (202) 317-6853 (not a toll free call).

Atmos Energy Corporation**Docket No. 18-00067****Calculation of EDIT Associated with Repair Allowance****Exhibit DND-3**

Tax Period	A/ Annual Repair Deduction	Annual Book Depreciation
9/30/2010	5,780,634	87,796
9/30/2011	6,508,106	285,317
9/30/2012	6,186,775	499,238
9/30/2013	6,104,295	724,386
9/30/2014	12,072,097	1,106,480
9/30/2015	11,142,193	1,533,525
9/30/2016	8,771,959	1,876,703
9/30/2017 **	11,683,343	2,223,093
Total	68,249,402	8,336,538
Excess Repair Deduction over Book Depreciation	59,912,864	
Effective Tax Rate @ 35% Federal Income Tax Rate	39.23%	
Effective Tax Rate @ 21% Federal Income Tax Rate		26.14%
ADIT Associated with Repair Deduction	23,500,821	15,658,227
Difference	7,842,594	
Divided by Reciprocal Tax Factor	73.87%	
Excess ADIT Gross of Tax	10,617,470	
Annual Amortization - 5 years	2,123,494	

A/ CPAD_2-05_Att1 - Repair Deduction in Div 093