

**BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION
NASHVILLE, TENNESSEE**

IN RE:

**RESPONSE OF ATMOS ENERGY)
CORPORATION TO THE COMMISSION'S)
ORDER OPENING AN INVESTIGATION) DOCKET NO. 18-00034
AND REQUIRING DEFERRED)
ACCOUNTING TREATMENT)**

**REBUTTAL TESTIMONY OF JENNIFER K. STORY
ON BEHALF OF ATMOS ENERGY CORPORATION**

I. INTRODUCTION OF WITNESS

1 **Q. PLEASE STATE YOUR NAME, POSITION AND BUSINESS ADDRESS.**

2 A. My name is Jennifer K. Story. My business address is 5420 LBJ Freeway, Suite
3 1600, Dallas, TX 75240. I am employed by Atmos Energy Corporation ("Atmos
4 Energy" or the "Company") as Director of Regulatory Reporting.

5 **Q. ARE YOU THE SAME JENNIFER STORY WHO FILED PRE-FILED**
6 **TESTIMONY IN THIS PROCEEDING?**

7 A. Yes.

8 **Q. HAVE YOU REVIEWED THE TESTIMONY FILED BY CONSUMER**
9 **ADVOCATE WITNESS DAVID N. DITTEMORE IN THIS CASE?**

10 A. Yes, I have reviewed Mr. Dittimore's testimony.

11 **II. PURPOSE AND SUMMARY OF TESTIMONY**

12 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

13 A. I rebut the arguments raised in the direct testimony of Consumer Advocate witness
14 David Dittimore regarding his proposal to flow back excess deferred income taxes
15 ("EDIT") related to the Company's tax repairs deduction over three years.

1 I will describe the normalization requirements of the Internal Revenue Code
2 (“IRC”) and demonstrate that adoption of Mr. Dittemore’s proposal puts the
3 Company at risk of violating these provisions. Atmos Energy Tennessee and its
4 customers could face severe consequences if the Tennessee Public Utility
5 Commission (“Commission”) were to adopt Mr. Dittemore’s proposal and a
6 normalization violation were to be asserted by the Internal Revenue Service
7 (“IRS”). In addition, I will describe the intergenerational inequity that would result
8 from Mr. Dittemore’s proposed rapid flow-back of plant-related EDIT. Finally, I
9 will explain why adopting Mr. Dittemore’s proposal could result in economic harm
10 to the Company and its customers.

11 In addition, I rebut Mr. Dittemore’s arguments regarding his proposal to
12 require the Company to recalculate a hypothetical Tennessee-only net operating
13 loss carryforward (“NOLC”) balance for Tennessee rate making. In my testimony
14 I explain the income tax filing requirements for Atmos Energy. I demonstrate that
15 Atmos Energy complies with the Treasury Regulations that prescribe the
16 calculation of taxable income for members of a consolidated filing group. I
17 establish that the NOLC ADIT included in Atmos Energy Tennessee’s filing results
18 directly from calculations required by the IRS and has been accepted in every
19 jurisdiction the Company files in, including Tennessee. Mr. Dittemore’s
20 recommendation that the Company perform a hypothetical computation of the
21 NOLC ADIT for Tennessee in this filing is without merit, statutory guidance or
22 Commission precedent and should be rejected.

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A. The Company agrees with the proposal by the Consumer Advocate to eliminate certain excess ADIT items in order to synchronize the ADIT balance associated with certain expenses (Rate Base adjustment No. 1¹). I also note that the Consumer Advocate has agreed with the Company's methodology and timing for the reflection in customer rates of the reduction to income tax expense and the Company's required use of the Reverse South Georgia Method ("RSGM") and the timing over which to flow back certain excess deferred income taxes ("EDIT") to customers.

A. There are four areas of disagreement between the Company and Consumer Advocate. First, the Company believes that it is important to use of the RSGM to flow-back all plant-related EDIT balances, including those relating to the repairs deduction, to customers. Second, the Company believes that the methodology used to determine the appropriate NOLC balance to include in Tennessee ADIT and EDIT is appropriate and follows our ARM tariff. Third, the Company believes that the appropriate reflection of amortization expense related to EDIT is in income tax expense. The Consumer Advocate has proposed that it should be a credit to

¹ Docket No. 18-00034, Direct Testimony of Mr. David Dittemore at page 4, line 10 and following.

1 amortization expense. Fourth, the Company disagrees with the Consumer
2 Advocate's proposal that the Company should be required to upgrade its plant
3 accounting accumulated reserve records in order to calculate EDIT amortization
4 using the Average Rate Assumption Method ("ARAM") in the future.

5 **IV. TAX NORMALIZATION**

6 **Q. WHAT IS MEANT BY TAX NORMALIZATION?**

7 A. There are a myriad of differences between the rules governing the recognition of
8 income and expense for tax purposes versus the recognition of those same items for
9 financial statement purposes. These differences result in both the acceleration and
10 deferral of income tax payments when compared to the income tax expense
11 recorded on a company's financial statements. The difference between tax expense
12 per the financial statements and the tax paid to the taxing authorities generally
13 results in a deferral of tax. Said differently, current taxes paid to the government are
14 less than the tax expense on the books and records. The government has provided
15 a cost-free loan to the utility by the enactment of favorable tax provisions.

16 A normalization method of accounting for income taxes in its simplest terms
17 strives to keep this incremental cash received from the cost-free loan at the utility
18 level where Congress intended. Tax expense in cost of service and rate filings are
19 normalized and not artificially lowered for the cash tax savings. In other words, tax
20 expense is calculated at the statutory rate. A reserve is recorded against rate base in
21 the amount of the accumulated tax deferred. Such an approach is mutually
22 beneficial both for customers and the utility. Customers are not paying a return on

1 rate base financed with the cost-free loan that the utility receives from the
2 government.

3 **Q. WHAT ARE THE TAX DEPRECIATION NORMALIZATION RULES?**

4 A. Accelerated depreciation was enacted by Congress as an investment incentive for
5 businesses. In a regulated environment, Congress was concerned that the tax
6 savings from accelerated depreciation would be flowed through to customers
7 thereby negating the incentive it sought to create. To discourage utilities and
8 commissions from flowing the incentive through to customers, Congress enacted
9 the depreciation normalization rules. The tax depreciation normalization rules
10 mandate the normalization process I previously described for all items associated
11 with tax depreciation. In other words, deferred accounting must be utilized and the
12 balance of deferred taxes must be adjusted out of rate base.

13 **Q. HOW DOES TAX DEPRECIATION NORMALIZATION WORK?**

14 A. As defined under Treas. Reg. §1.167(l)-1(h), in order to use a normalized method
15 of accounting, the public utility must use the “same method” of depreciation to
16 compute both its tax expense and its depreciation expense for purposes of
17 establishing its cost of service for ratemaking purposes and for reflecting operating
18 results in its regulated books of account. Further, if in computing its allowance for
19 tax depreciation for purpose of filing its tax returns, the taxpayer uses a depreciation
20 method other than that used for establishing its cost of service for ratemaking
21 purposes and for reflecting operating results in its regulated books of account, the
22 utility must make adjustments to an accumulated deferred federal income tax

1 reserve to reflect the deferral of taxes resulting from the use of the different methods
2 of depreciation. (Treas. Reg. §1.167(l)-1(h)(1)(i)(a) and (b)).

3 The established reserve must be used in ratemaking proceedings to reduce
4 the utility's rate base upon which the rate of return is applied. A taxpayer does not
5 use a normalization method if, for ratemaking purposes, the amount of the
6 accumulated deferred federal income tax reserve which is excluded from rate base
7 exceeds the amount in the reserve for deferred taxes for the period used in
8 determining the taxpayer's cost of service. (Treas. Reg. §1.167(l)-1(h)(6)(i))

9 **Q. DO YOU AGREE WITH MR. DITTEMORE'S INTERPRETATION OF THE**
10 **TAX NORMALIZATION RULES?**

11 A. I agree with his conclusion that the tax normalization rules require the use of book
12 depreciation in the computation of income tax expense for rate making². I do not
13 agree with his interpretation of the rationale for the corresponding requirement to
14 include the reserve for deferred taxes as a reduction to rate base³. In addition, Mr.
15 Dittemore fails to describe the rate making treatment in Tennessee for all deferred
16 tax items, including the repairs deduction.

17 **Q. DO CUSTOMERS PROVIDE THE COST-FREE LOAN TO UTILITIES, AS**
18 **MR. DITTEMORE CLAIMS⁴?**

19 A. No, as I have stated, the government provides the cost-free loan by enacting
20 favorable tax provisions. As I have also described, Congress enacted the
21 normalization provisions to ensure that this cost-free loan provided by the

² Docket No. 18-00034, Direct Testimony of Mr. David Dittemore at page 8, lines 15-19.

³ Docket No. 18-00034, Direct Testimony of Mr. David Dittemore at page 12, lines 8-10.

⁴ Docket No. 18-00034, Direct Testimony of Mr. David Dittemore at page 8, line 20 through page 9 line 5.

1 government is not flowed through to customers. The customers are simply paying
2 the tax liability created by the utility's operations in the year that service is
3 provided.

4 **Q. WHICH TAX ITEMS ARE NORMALIZED IN THE COMPANY'S FILINGS**
5 **IN TENNESSEE?**

6 A. All tax items are normalized in the Company's filings in Tennessee. In other words,
7 tax expense is computed using the statutory rate and rate base is reduced by the
8 balance of all of the Company's deferred taxes. No tax deductions are flowed-
9 through as Mr. Dittemore describes in this testimony⁵. In fact, this is how rate
10 making is done in the Company's filings in every jurisdiction it operates in.

11 **Q. PLEASE DESCRIBE THE DIFFERENCE BETWEEN THE RATEMAKING**
12 **DESCRIBED IN THE FLOW-THRU METHODOLOGY MR. DITTEMORE**
13 **DESCRIBES AND THE COMPANY'S RATEMAKING IN TENNESSEE.**

14 A. The Company is required to fully normalize taxes in every jurisdiction it operates
15 in, including Tennessee. What this means is that for rate making purposes the
16 statutory tax rate is used to calculate income tax expense. ADIT is included as a
17 reduction to rate base so that customers do not pay a return on the cost-free loan
18 from the government realized by the Company as a result of accelerated tax
19 deductions. This ADIT reduction to rate base includes the ADIT resulting from the
20 Company's tax repairs deduction. Unlike the Company's rate making in Tennessee,
21 the rate making described by Mr. Dittemore as "flow-thru" includes the calculation

⁵ Docket No. 18-00034, Direct Testimony of Mr. David Dittemore at page 9 line through page 10 line 2.

1 of tax expense using a rate other than the statutory rate and does not include ADIT
2 as a reduction to rate base.

3 **Q. IS MR. DITTEMORE'S EXPLANATION OF THE FLOW-THROUGH**
4 **METHODOLOGY RELEVANT TO ATMOS ENERGY TENNESSEE OR**
5 **THIS DOCKET?**

6 A. No. Since this flow-through methodology is not a settled practice in Tennessee, the
7 methodology Mr. Dittmore has described is not relevant. As Mr. Dittmore
8 acknowledges in his testimony⁶, the Commission has not historically employed this
9 methodology of ratemaking. As I noted previously the Company does not use this
10 method of ratemaking in any of the jurisdictions it operates in.

11 **V. AMORTIZATION OF PLANT-RELATED EDIT**

12 **Q. HOW HAS THE COMPANY PROPOSED TO AMORTIZE EXCESS**
13 **DEFERRED INCOME TAXES TO TENNESSEE CUSTOMERS IN THIS**
14 **FILING?**

15 A. As described in detail in my direct testimony, the Company is using the RSGM to
16 amortize EDIT. The Company proposed to amortize all EDIT, both plant and non-
17 plant related, using RSGM in this and all filings the Company has made in each of
18 the jurisdictions it operates in. For Tennessee EDIT, the estimated amortization
19 period is 28 years.

⁶ Docket No. 18-00034, Direct Testimony of Mr. David Dittmore at page 9, footnote 22.

1 **Q. HAS THIS METHODOLOGY OF AMORTIZING ALL EDIT USING RSGM**
2 **BEEN APPROVED IN OTHER JURISDICTIONS THE COMPANY**
3 **OPERATES IN?**

4 A. Yes. As I previously stated, the Company has proposed to amortize all EDIT using
5 RSGM in every jurisdiction it operates in. This methodology has been approved in
6 six of the eight jurisdictions the Company operates in - Louisiana, Colorado,
7 Kentucky, Kansas, Mississippi and Texas.

8 **Q. WHAT DOES MR. DITTEMORE PROPOSE WITH REGARD TO THE**
9 **COMPANY'S AMORTIZATION OF EXCESS DEFERRED INCOME**
10 **TAXES?**

11 A. Mr. Dittmore agrees with the Company's use of RSGM and the resulting
12 amortization period of 28 years for amounts he believes are "protected" by the IRS
13 normalization provisions. However, Mr. Dittmore's position differs from the
14 Company's with respect to the treatment of EDIT resulting from certain plant-
15 related cost basis adjustments, specifically the Company's tax deduction for
16 repairs⁷. In his testimony he states that the EDIT resulting from the repairs
17 deduction is not subject to the normalization provisions and should be flowed back
18 to customers over three years rather than twenty-eight. In a seeming
19 acknowledgment that the Company's books and records do not contain the level of
20 detail necessary to identify the EDIT for this basis adjustment, he has provided a

⁷ For tax, pursuant to Treas. Reg. §1.162-4, the cost of incidental repairs that neither materially add to the value of the property nor appreciably prolong its life, but keep it in an ordinarily efficient operating condition, may be deducted as an expense. The rules for financial reporting differ from tax and these same costs are treated as a capital asset.

1 calculation to support the amount that he believes represents the EDIT related to
2 tax repairs.⁸

3 **Q. DO YOU AGREE WITH THIS PROPOSAL?**

4 A. No, I do not.

5 **Q. WHY NOT?**

6 A. I do not agree with this proposal because: (1) adoption of this proposal would put
7 the Company and its customers at risk of committing a normalization violation; (2)
8 the proposed flow back of plant-related EDIT would result in intergenerational
9 inequity between customers today and customers in the future who will pay a rate
10 of return on the assets for which the tax deductions were taken; (3) the rapid flow-
11 back of these amounts would invalidate the economics underlying investment
12 decisions the Company has made; and (4) the proposal is inconsistent with the
13 approach taken in the Company's other jurisdictions.

14 **Q. WHY DO YOU BELIEVE MR. DITTEMORE'S PROPOSAL COULD**
15 **RESULT IN A NORMALIZATION VIOLATION?**

16 A. As described in my Direct Testimony⁹, section 13001(d) of the TCJA addresses the
17 return of excess deferred income taxes. Specifically, utilities are prohibited from
18 reducing the reserve for "protected" EDIT more rapidly or to a greater extent than
19 such reserve would be reduced under either the ARAM or the RSGM. Section
20 13001(d)(3)(C) outlines the requirements for use of the alternative method, or
21 RSGM. This is the method prescribed when a utility lacks the data necessary to

⁸ See Exhibit DND-3 to Mr. Dittmore's testimony regarding his calculation of the basis adjustment.

⁹ Story Direct Testimony, page 12, lines 1-10.

1 calculate amortization using the ARAM. Under this method a taxpayer computes
2 the excess tax reserve on all public utility property included in the plant account
3 and amortizes such reserve on the basis of the weighted average life or the
4 composite rate used to compute depreciation for regulatory purposes. There appears
5 to be no disagreement between Mr. Dittmore and the Company about the
6 requirement that Atmos must use the RSGM since the Company's records lack the
7 vintage level book accumulated depreciation necessary to use the ARAM.
8 Likewise, the Company's records lack the detail necessary to separately identify
9 EDIT related to specific plant-related basis adjustments, such as the repairs
10 deduction¹⁰.

11 **Q. DO YOU AGREE WITH MR. DITTMORE'S ASSERTION THAT TAX**
12 **REPAIR DEDUCTIONS ARE NOT "PLANT" FOR TAX PURPOSES¹¹ AND**
13 **THEREFORE WOULD NOT BE SUBJECT TO THE REQUIREMENT FOR**
14 **COMPUTATION OF THE EXCESS RESERVE DESCRIBED ABOVE?**

15 A. No. The tax repairs deduction is taken for property included in the plant account.
16 The tax basis difference is tracked in the tax fixed asset system and the related ADIT
17 item is recorded with all other plant-related basis adjustments, including bonus
18 depreciation. In addition, in order to calculate this basis adjustment amount Mr.
19 Dittmore calculates the deduction net of related book depreciation, further
20 demonstrating that this is certainly a plant item.

¹⁰ I will discuss the Company's record keeping and plant-related basis adjustments after I describe Mr. Dittmore's proposed adjustment.

¹¹ Docket No. 18-00034, Direct Testimony of Mr. David Dittmore at page 18 lines 2-7.

1 **Q. HOW HAS MR. DITTEMORE CIRCUMVENTED THE LACK OF DETAIL**
2 **NECESSARY TO IDENTIFY THE BASIS ADJUSTMENT RESULTING**
3 **FROM THE COMPANY’S TAX REPAIRS DEDUCTION?**

4 A. Mr. Dittimore has performed a calculation using the tax repairs deductions taken
5 for Tennessee assets included on the FY 2010 – FY2017 consolidated tax returns.
6 He reduced these amounts for book depreciation that he derived using the approved
7 depreciation rates for each year to arrive at an amount he believes to represent the
8 EDIT relating to the tax repairs deduction.

9 **Q. IS HIS CALCULATION SUPPORTED BY THE BOOKS AND RECORDS**
10 **OF THE COMPANY?**

11 A. No. Mr. Dittimore’s calculation is not supported by the Company’s books and
12 records nor is it supported by precedent or the IRC. Therefore, if his proposal were
13 adopted, it is not certain that the Company would be able support its compliance
14 with the normalization provisions to its external auditors or to the IRS because the
15 Company would not have in its books and records the detail necessary to
16 demonstrate that it was not returning plant-related EDIT back more rapidly or to a
17 greater extent than it would be using the RSGM. The only way to ensure a
18 normalization violation does not occur is to amortize all plant-related EDIT using
19 the RSGM, as the Company has proposed and has been accepted in six other
20 jurisdictions in which the Company operates.

1 **Q. PLEASE DESCRIBE HOW THE COMPANY’S BOOKS AND RECORDS**
2 **ARE KEPT.**

3 A. For financial statement purposes, plant-related investment costs are recorded and
4 tracked by vintage. As permitted by the Uniform System of Accounts, accumulated
5 depreciation is calculated using group depreciation rates and therefore not
6 calculated or tracked at an individual asset level by vintage. For tax purposes, the
7 Company tracks the cumulative difference between tax depreciation (excluding
8 bonus depreciation) and book depreciation in the ADIT item FXA02 – Fixed Asset
9 Depreciation. The Company tracks all other plant-related basis adjustments,
10 including bonus depreciation, in the ADIT item FXA01 – Fixed Asset Cost. The
11 amount included in the ADIT item FXA02 for depreciation includes both
12 method/life differences as well as depreciation related to cost basis differences.

13 **Q. IS IT POSSIBLE TO IDENTIFY THE ADIT RELATED TO A SPECIFIC**
14 **COST BASIS ADJUSTMENT, SUCH AS THE REPAIRS DEDUCTION,**
15 **USING THE COMPANY’S BOOKS AND RECORDS?**

16 A. No. The determination of the cumulative ADIT and EDIT for a cost basis
17 adjustment, such as the repairs deduction, requires book cost and accumulated
18 depreciation by vintage, as well as the tax deduction amount and related tax
19 depreciation (if any) by vintage. For the repairs basis adjustment, amounts are
20 immediately deducted for tax purposes so no tax depreciation is computed.

21 **Q. WHAT DOES THIS MEAN?**

22 A. What this means is that in order to calculate and track this cumulative basis
23 adjustment and resulting ADIT and EDIT, book cost and accumulated depreciation

1 for the assets for which the tax deduction was taken, as well as the tax deduction
2 itself, must be identified. The absence of book accumulated depreciation at this
3 level of detail prevents the accurate calculation and tracking of these amounts in
4 the Company's books and records.

5 **Q. DOES MR. DITTEMORE ACKNOWLEDGE THIS IN HIS DIRECT**
6 **TESTIMONY?**

7 A. Mr. Dittmore acknowledges this by agreeing that the Company's records do not
8 contain the necessary data to utilize the ARAM to flow back EDIT¹². In addition,
9 his manual calculation of proposed EDIT relating to the repairs deduction would
10 not be necessary if the Company's books and records contained the necessary
11 information to calculate and track these amounts.

12 **Q. HOW THEN DOES MR. DITTEMORE PROPOSE TO IDENTIFY THE**
13 **AMOUNT RELATED TO THE REPAIRS DEDUCTION?**

14 A. Despite Mr. Dittmore's acceptance that the Company must use RSGM for
15 amortization purposes and that plant-related EDIT must be depreciated on a
16 straight-line basis pursuant to the RSGM, Mr. Dittmore proposes to estimate a
17 portion of the Company's plant-related ADIT and EDIT that is related to tax repairs.
18 Mr. Dittmore has performed a calculation, using the tax deduction by year
19 (vintage) for repairs and applied the approved book depreciation rate each year to
20 this amount to arrive at a hypothetical net ADIT amount. He has then remeasured
21 this amount, using the new federal tax rate to calculate EDIT resulting from the
22 repairs deduction.

¹² Docket No. 18-00034, Direct Testimony of Mr. David Dittmore at page 15 lines 7-9.

1 **Q. WHAT IS YOUR IMPRESSION OF THIS METHODOLOGY?**

2 A. While I agree with Mr. Dittmore's conclusion that the Company's tax repairs
3 deduction results from IRC section 162, rather than sections 167 or 168 to which
4 the normalization rules generally apply¹³, the language describing use of the RSGM
5 in Section 13001(d)(3)(C) of the TCJA prescribes that "under this method a
6 taxpayer computes the excess tax reserve on all public utility property included in
7 the plant account and amortizes such reserve on the basis of the weighted average
8 life or the composite rate used to compute depreciation for regulatory purposes."
9 Further, while I acknowledge that Mr. Dittmore's approach appears to be a simple
10 and reasonable way to estimate the ADIT and resulting EDIT related to tax repairs,
11 it is not supported by amounts contained in the Company's actual books and records
12 - specifically book accumulated depreciation. Since the data included in the
13 Company's books and records determines whether the Company is required to use
14 the ARAM or the RSGM, it is clear that the books and records are what the IRS
15 looks to in determining whether a utility is complying with the normalization
16 provisions. Therefore, a normalization violation could be asserted by the IRS if Mr.
17 Dittmore's proposal were adopted since the calculation is not supported by the
18 Company's books and records. The standard required by the normalization
19 provisions is that EDIT is not returned more rapidly than it would be using the
20 ARAM or the RSGM.

¹³ Docket No. 18-00034, Direct Testimony of Mr. David Dittmore at page 16 lines 2-6 and 24-25.

1 **Q. IS THERE ANY WAY TO DEMONSTRATE THAT THE COMPANY IS**
2 **COMPLYING WITH IRC PROVISIONS USING MR. DITTEMORE’S**
3 **CALCULATION METHODOLOGY?**

4 A. No. There is no way to prove that the Company is complying with these provisions
5 if the underlying calculations are not supported by or aligned with the Company’s
6 books and records. In addition, Mr. Dittmore’s approach does not align with the
7 language in Section 13001(d) requiring the calculation of excess deferred taxes to
8 be made using all utility property. Even if the normalization rules did not
9 specifically apply to the repairs deduction at issue in this proceeding, because this
10 estimate is not supported by the Company’s books and records, it would be difficult
11 for the Company to establish that it was only passing back this amount rather than
12 amounts related to protected plant-related EDIT.

13 **Q. ARE YOU AWARE OF ANY IRS PRIVATE LETER RULINGS (“PLRS”)**
14 **THAT MIGHT BE RELEVANT TO EITHER MR. DITTEMORE’S**
15 **POSITION OR TO THE COMPANY’S POSITION?**

16 A. No. The IRS has issued some PLRs related to the RSGM but I am not aware of any
17 PLRs that speak to this specific point.

18 **Q. TURNING NOW TO THE INTERGENERATIONAL ISSUE YOU RAISED**
19 **IN YOUR INITIAL SUMMARY, PLEASE DESCRIBE THE**
20 **INTERGENERATIONAL INEQUITY PROBLEM RESULTING FROM**
21 **ADOPTION OF MR. DITTEMORE’S PROPOSAL.**

22 A. The Company’s proposal is to flow-back these excess deferred taxes ratably over
23 the lives of the assets giving rise to the deferred taxes. In addition to the tax reasons

1 I have described above, this is the proper ratemaking treatment for these amounts,
2 as it ensures that customers that receive a benefit from long-lived assets that
3 generated the EDIT pay an appropriate amount of the costs of such assets. To
4 accelerate the flow-back of these amounts over three years as Mr. Dittmore has
5 proposed would result in customers receiving the benefits associated with these
6 assets over the next three years, even though the assets themselves will be used for
7 significantly longer than three years. Thus, customers in the future would continue
8 to pay for these assets but would not receive the benefits of any of the deductions
9 associated with these assets. The Company's proposed amortization period of
10 twenty-eight years aligns the costs and benefits associated with these assets. The
11 Company's proposed ratemaking treatment would flow-back these excess deferred
12 taxes ratably over the life of the asset giving rise to the deferred taxes in order to
13 avoid inter-generational inequity between customers today and customers in the
14 future. Mr. Dittmore's proposal would effectively penalize future customers by
15 shifting their benefits to current customers.

16 **Q. PLEASE DESCRIBE WHY YOU BELIEVE ADOPTION OF MR.**
17 **DITTEMORE'S PROPOSAL WOULD RESULT IN ECONOMIC HARM TO**
18 **THE COMPANY AND ITS CUSTOMERS.**

19 A. Prior to tax reform, the Company made investment decisions, taking into account
20 the cash flow for the payment of taxes. Tax deductions, such as the repairs
21 deduction, resulted in the deferral of taxes and a cost-free loan from the
22 government. Requiring a utility to flow-back the EDIT for these amounts more
23 quickly than the previously anticipated tax liability would have been paid,

1 invalidates the economics underlying those investment decisions which have
2 already been made by the Company.

3 **Q. WHAT IS THE COMPANY REQUESTING?**

4 A. The Company is requesting that the Commission approve the amortization of all
5 EDIT using the RSGM, as the Company has proposed in this filing.

6 **Q. YOU PREVIOUSLY INDICATED THAT THE IRS HAS NOT ISSUED A**
7 **PLR DIRECTLY ON POINT TO THESE CIRCUMSTANCES, WOULD**
8 **THE COMPANY BE WILLING TO SEEK CLARIFICATION ON THIS**
9 **ISSUE BY REQUESTING A PRIVATE LETTER RULING FROM THE IRS?**

10 A. Yes. While the Company maintains that the appropriate way to reflect amortization
11 of EDIT in rates is to amortize all plant-related EDIT over the period determined
12 by RSGM, we would be willing to ask the IRS for clarification. As I have described
13 in my rebuttal testimony, the Company's proposed methodology is the proper rate
14 making treatment and ensures that a normalization violation does not occur. If the
15 Commission desires further clarification, the Company is willing to seek a PLR
16 from the IRS. The PLR would be filed in accordance with Revenue Procedure 2019-
17 1 or its successor, and would request a ruling to determine whether a normalization
18 violation could occur if the Commission were to adopt Mr. Dittimore's proposed
19 methodology for amortization of EDIT.

1 **Q. WHAT DOES MR. DITTEMORE PROPOSE WITH REGARDS TO**
2 **SEEKING A PLR?**

3 A. Mr. Dittmore proposes that the Company request a PLR to address whether the
4 Repair Deduction (using RSGM) is protected under the provisions of the TCJA¹⁴.

5 **Q. IS THERE A DISTINCTION BETWEEN THE PLR THE COMPANY**
6 **DESCRIBES AND THAT WHICH MR. DITTEMORE’S PROPOSES?**

7 A. Yes. The Company states that it does not have the vintage level accumulated
8 depreciation detail in its books and records necessary to compute the amount of
9 EDIT resulting from the repairs deduction. It is therefore necessary, in order to
10 ensure that a normalization violation does not occur, to amortize all plant-related
11 EDIT over the same period using RSGM. In contrast, Mr. Dittmore’s proposal is
12 not specific to the Company’s facts. He proposes to ask the IRS whether the repairs
13 deduction is protected if using RSGM. It is important to clarify that it is not possible
14 to identify all amounts related to this basis adjustment within the Company’s
15 records because of the lack of vintage level depreciation information. It is also
16 important to note that Mr. Dittmore is proposing to calculate an amount to
17 amortize outside of the Company’s books and records. The Company believes the
18 request should specifically address whether a normalization violation could occur
19 if the Company were to use Mr. Dittmore’s calculation, rather than amounts
20 calculated and tracked in its books and records.

¹⁴ Docket No. 18-00034, Direct Testimony of Mr. David Dittmore at page 26 lines 1-2.

1 **Q. WHY IS IT IMPORTANT FOR THE PLR REQUEST TO SPECIFICALLY**
2 **ADDRESS MR. DITTEMORE’S PROPOSED CALCULATION?**

3 A. PLR Requests must be very specific. The PLR process results in a written statement
4 issued to a taxpayer that interprets and applies tax laws to the taxpayer's represented
5 set of facts. If the Company fails to present precisely the relief requested by Mr.
6 Dittemore, there is a chance that the PLR will not be reliable for the purposes of
7 applying the relief that the Consumer Advocate is seeking.

8 **Q. DO YOU AGREE WITH MR. DITTEMORE’S PROPOSAL THAT THE**
9 **COMPANY SHOULD BE REQUIRED TO UPGRADE ITS PLANT**
10 **ACCOUNTING RECORDS IN ORDER TO IMPLEMENT THE ARAM IF**
11 **ANOTHER FEDERAL TAX RATE CHANGE OCCURS¹⁵?**

12 A. No. Such a requirement would be very costly and time consuming. These costs
13 would ultimately be borne by customers. The IRS does not impose such a
14 requirement and instead requires utilities to use the RSGM if their records do not
15 contain the detail required for the ARAM. I am not aware of any benefits that would
16 outweigh the considerable additional expense required to completely revise the
17 Company’s recordkeeping processes. Also, no other jurisdiction has requested such
18 a change in response to the TCJA.

¹⁵ Docket No. 18-00034, Direct Testimony of Mr. David Dittemore at page 26 lines 12-15.

1 **VI. NET OPERATING LOSS CARRYFORWARD**

2 **Q. HOW DOES THE COMPANY REPORT ITS TAXABLE INCOME TO THE**
3 **INTERNAL REVENUE SERVICE?**

4 A. The Company reports its taxable income on a consolidated basis and files a
5 consolidated Form 1120 - U.S. Corporation Income Tax Return ("Form 1120").

6 **Q. WHAT IS A CONSOLIDATED FILING?**

7 A. The IRC and related regulations provide special rules for the taxation of
8 corporations under common control. An affiliated group of corporations may join
9 in the filing of a consolidated tax return in which the taxable income of the affiliated
10 group is reported on a consolidated basis.

11 **Q. IS ATMOS ENERGY A MEMBER OF A CONSOLIDATED GROUP?**

12 A. Yes. Atmos Energy is the common parent of an affiliated group of companies.

13 **Q. WHAT OTHER COMPANIES ARE IN THE AFFILIATED GROUP AND**
14 **JOIN IN THE FILING OF THE CONSOLIDATED RETURN?**

15 A. All legal entities that are under the common control of the parent corporation,
16 Atmos Energy, join together in the filing of the consolidated return. This filing
17 includes both the utility and non-utility legal entities of the Company.

18 **Q. HOW IS TAXABLE INCOME OR LOSS COMPUTED FOR THE**
19 **CONSOLIDATED TAX RETURN?**

20 A. Treasury Reg §1.1502-11 outlines the requirements for computing taxable income
21 for a consolidated group. This regulation requires that the consolidated taxable
22 income for a consolidated return year is determined by taking into account the
23 separate taxable income of each member of the group. Certain specific items such

1 as charitable contributions, capital gains and losses, and the deduction of net
2 operating losses from carryback or carryforward periods are then determined on a
3 consolidated basis.

4 **Q. HOW IS THE SEPARATE TAXABLE INCOME OF EACH MEMBER OF**
5 **THE AFFILIATED GROUP CALCULATED?**

6 A. Treasury Reg §1.1502-1 defines a member of a consolidated group as a corporation
7 that is included in the group. Treasury Reg §1.1502-12 requires that the separate
8 taxable income for each member must be calculated as if the member was a separate
9 corporation, and not part of a consolidated group. For each member of the affiliated
10 group, a pro forma standalone tax return is prepared. This tax return is prepared as
11 if each of these members were individual and separate taxpayers filing its own tax
12 return. All items of income and deductions are calculated on a standalone basis
13 without regard to other members of the group.

14 **Q. ARE THESE COMPUTATIONS OF SEPARATE TAXABLE INCOME**
15 **COMBINED TO ARRIVE AT CONSOLIDATED TAXABLE INCOME OR**
16 **LOSS?**

17 A. Yes.

18 **Q. DOES THE COMPANY CALCULATE THE TAXABLE INCOME OF THE**
19 **UTILITY OPERATIONS SEPARATE FROM THE NON-UTILITY**
20 **OPERATIONS?**

21 A. Yes. As required by the Treasury regulations, the Company is required to compute
22 the separate taxable income of each member of the affiliated group. The utility
23 operations of the Company are contained solely and entirely within the Atmos

1 Energy Corporation legal entity. Atmos Energy Corporation is a separate and
2 distinct member of the affiliated group. Therefore, a separate calculation of the
3 taxable income and deductions for Atmos Energy Corporation is performed
4 annually. In preparing the annual tax calculations, the Company's tax department
5 prepares a separate pro forma tax return (Form 1120) for each member of the
6 affiliated group, including Atmos Energy. This pro forma tax return reflects the
7 income, deductions and taxable income or loss for that particular member as if it
8 were separate and distinct from the group.

9 **Q. DO THESE ANNUAL CALCULATIONS ALLOW THE COMPANY TO**
10 **BIFURCATE ITS ANNUAL TAXABLE INCOME OR LOSS BETWEEN**
11 **UTILITY AND NON-UTILITY OPERATIONS?**

12 A. Yes. Since all items are calculated separately, the Company is able to clearly
13 identify taxable income and losses generated by utility operations and those
14 generated by non-utility operations.

15 **Q. DOES ATMOS ENERGY'S SEPARATE COMPANY TAXABLE INCOME**
16 **OR LOSS CALCULATION FOR UTILITY OPERATIONS INCLUDE THE**
17 **ATMOS ENERGY TENNESSEE OPERATIONS?**

18 A. Yes.

19 **Q. IS A SEPARATE CALCULATION OF TAXABLE INCOME PREPARED**
20 **FOR INDIVIDUAL OPERATING DIVISIONS SUCH AS ATMOS ENERGY**
21 **TENNESSEE?**

22 A. No. As I have described, the Treasury Regulations are very clear in their
23 requirements and the methodology for calculating taxable income for a

1 consolidated group such as Atmos Energy. The calculation of taxable income is
2 made for each member of a consolidated group.

3 **Q. DOES ATMOS ENERGY COMPUTE TAXABLE INCOME FOR**
4 **OPERATING DIVISIONS SUCH AS ATMOS ENERGY TENNESSEE?**

5 A. No. Atmos Energy calculates taxable income in compliance with the Treasury
6 Regulations described above.

7 **Q. WHAT IS AN INCOME TAX NET OPERATING LOSS CARRYFORWARD?**

8 A. The Company computes its taxable income in accordance with the IRC. Depending
9 on the income and deductions reported on the Company's tax return, either taxable
10 income or a taxable loss is reported on the tax return. Taxable income will result
11 in the imposition of tax at the applicable tax rate. A taxable loss creates an NOL.
12 Under §172 of the IRC, tax NOLs generated prior to tax reform, such as those
13 included in the Company's NOLC ADIT, may first be carried back to offset taxable
14 income (generally to the two preceding years). Any loss remaining after the
15 carryback is available to carry forward for up to 20 years and reduce taxable income
16 in a future period. The amount available to carry forward and offset future taxable
17 income is the NOLC.

18 **Q. WHAT ARE THE CONSEQUENCES OF AN NOLC?**

19 A. An NOLC represents deductions that were claimed on a prior tax return but not
20 used to offset the tax liability in the period claimed. An NOLC therefore has the
21 effect of moving those unused deductions forward to a subsequent year to offset the
22 tax liability of the future period.

1 **Q. HAVE ATMOS ENERGY CORPORATION'S REGULATED UTILITY**
2 **OPERATIONS RESULTED IN TAXABLE INCOME OR LOSSES?**

3 A. For the past nine fiscal years, the separate taxable income computations for the
4 utility operations have reflected large taxable losses due to significant deductions
5 associated with bonus depreciation, accelerated depreciation and the deduction of
6 capital expenditures as repairs for tax purposes.

7 **Q. HAVE THESE LOSSES RESULTED IN A NOLC FOR THE COMPANY?**

8 A. Yes.

9 **Q. IS THE COMPANY ABLE TO ACCURATELY IDENTIFY THE AMOUNT**
10 **OF TAXABLE NOLC GENERATED BY THE UTILITY?**

11 A. Yes. By reviewing the separate pro forma tax returns and taxable income
12 computations for each member of the affiliated group, the Company is able to
13 identify that portion of the consolidated tax NOL resulting from utility operations
14 and the portion resulting from non-utility operations.

15 **Q. WHERE IS THIS NOLC RECORDED ON THE COMPANY'S BOOKS AND**
16 **RECORDS?**

17 A. The NOLC is recorded at the Shared Services division.

18 **Q. HOW DOES THE COMPANY ATTRIBUTE NOLC TO OPERATING**
19 **DIVISIONS SUCH AS ATMOS ENERGY TENNESSEE?**

20 A. The NOLC is allocated in the same manner as other shared rate base items recorded
21 at the Shared Services division.

1 **Q. WHY IS THE COMPANY’S METHOD OF ALLOCATING THE NOLC**
2 **REASONABLE?**

3 A. The Company’s method of allocation is reasonable for several reasons. It begins
4 with an established NOLC amount that can be reconciled and verified with the
5 Company’s tax filings. This number is derived based on guidance from the Treasury
6 Regulations so its computation is consistent and repeatable in future years. The
7 allocation of the utility NOLC to Tennessee is done so with allocation factors that
8 are utilized in many other areas of this filing. The use of those factors result in
9 consistency throughout the filing.

10 **Q. WHAT DOES MR. DITTEMORE PROPOSE THAT THE COMMISSION**
11 **ORDER WITH REGARD TO THE COMPANY’S CALCULATION OF THE**
12 **NOLC?**

13 A. Mr. Dittmore has proposed that the Commission order the Company to calculate a
14 separate NOLC for Atmos Energy Tennessee for purposes of computing the related
15 EDIT and inclusion in future ARM filings.

16 **Q. DO YOU AGREE WITH THIS PROPOSAL?**

17 A. No I do not.

18 **Q. WHY NOT?**

19 A. As I have explained, the Company does not calculate taxable income for separate
20 operating divisions. Such a hypothetical calculation would not render an accurate
21 result. Estimates and allocations would necessarily be included in the calculated
22 amount and assumptions would have to be made about how to calculate it. Using
23 such a hypothetical calculation would introduce another allocation methodology

1 into the filing when it is unnecessary to do so. The Treasury Regulations are clear
2 in how taxable income should be computed for members of a consolidated group.
3 No such guidance exists for calculations of operating divisions within a legal entity.
4 Furthermore, such a calculated amount would be inconsistent with the Company's
5 methodology for the inclusion of the NOLC in rates in this and other jurisdictions.

6 **Q. IN WHAT JURISDICTIONS DOES ATMOS ENERGY INCLUDE THE**
7 **ALLOCATED NOLC?**

8 A. Atmos Energy includes the allocated NOLC as described above in every
9 jurisdiction in which it operates.

10 **Q. HAS THIS METHODOLOGY BEEN APPROVED IN THESE**
11 **JURISDICTIONS?**

12 A. Yes, this methodology has been approved in every jurisdiction, including Tennessee
13 and is part of the Approved Methodologies.

14 **Q. WHAT IS YOUR IMPRESSION OF MR. DITTEMORE'S ASSERTION**
15 **THAT TENNESSEE RATEPAYERS ARE PROVIDING ATMOS ENERGY**
16 **WITH A RETURN ON TAX LOSSES INCURRED IN OTHER STATES?**¹⁶

17 A. Mr. Dittemore presents an interesting hypothesis but provides no quantitative
18 evidence to support this claim. Moreover, Mr. Dittemore's hypothetical scenario
19 ignores the differences legal structure between Atmos Energy and Piedmont. As I
20 have noted previously, Atmos Energy calculates taxable income in compliance with
21 the Treasury Regulations described above.

¹⁶ Docket No. 18-00034, Direct Testimony of Mr. David Dittemore at page 21 lines 7-20.

1 **Q. PLEASE EXPAND ON THE RELEVANT DISTINCTIONS BETWEEN**
2 **ATMOS ENERGY AND THE METHODOLOGY HE DESCRIBES**
3 **PIEDMONT USING?**

4 A. Mr. Dittmore fails to describe relevant distinctions between Atmos Energy's and
5 Piedmont's organizational structure. Piedmont is a subsidiary of Duke Energy. In
6 contrast, all Atmos Energy utility operations are included within one corporation.
7 In addition, Mr. Dittmore refers to Piedmont's tax sharing agreement.¹⁷ As a result
8 of the Company's corporate structure, Atmos Energy has no such agreement in
9 place. Mr. Dittmore's conclusion that it is possible for the Company to calculate
10 taxable income by state¹⁸ is incorrect and fails to contemplate the significant
11 differences between Atmos Energy and Piedmont.

12 **Q. DO YOU AGREE WITH MR. DITTEMORE THAT CONTINUED**
13 **APPROVAL OF THE COMPANY'S METHODOLOGY FOR**
14 **ALLOCATING NOLC WOULD RESULT IN THE COMMISSION**
15 **ENDORSING CONFLICTING ACCOUNTING METHODS BETWEEN**
16 **UTILITIES?**

17 A. No, I do not. As I have described, there are differences between the corporate
18 structures that warrant and necessitate unique methodologies to arrive at the
19 appropriate inclusion of NOLC in ratemaking. This Commission has approved
20 Atmos' methodology since the Company began incurring taxable losses.

¹⁷ Docket No. 18-00034, Direct Testimony of Mr. David Dittmore at page 21 line 26 and page 22 lines 1-2.

¹⁸ Docket No. 18-00034, Direct Testimony of Mr. David Dittmore at page 23 lines 4-5.

1 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

2 A. Yes.