

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

IN RE:

**ATMOS ENERGY CORPORATION
FOR APPROVAL OF ITS 2018 ANNUAL
RATE REVIEW FILING PURSUANT TO
TENN. CODE ANN. § 65-5-103(d)(6)**

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DOCKET NO. 18-00067

REBUTTAL TESTIMONY

OF

DAVID DITTEMORE

September 26, 2018

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

A.2 My name is David N. Dittmore. I am a Financial Analyst employed by the Consumer Protection and Advocate Division within the Office of the Tennessee Attorney General (Consumer Advocate). My business address is Office of the Tennessee Attorney General, UBS Tower, 315 Deaderick Street, Nashville, TN 37243.

Q.3 ARE YOU THE SAME DAVID N. DITTEMORE WHO PREVIOUSLY FILED DIRECT TESTIMONY IN THIS PROCEEDING?

A.3 Yes, I am.

Q.4 PLEASE STATE THE PURPOSE OF YOUR TESTIMONY.

A.4 The purpose of my testimony is to address the testimony of Mr. Waller (Waller's Testimony) submitted on September 17, 2018, in response to questions included in the Order establishing the procedural schedule in this Docket (Procedural Order).

Q.5 COULD YOU PLEASE SUMMARIZE YOUR TESTIMONY?

A.5 Yes. The points I address include the following:

1. Atmos has failed to provide complete responses to the questions posed by the Staff of the Tennessee Public Utility Commission (TPUC Staff). Specifically, Atmos has failed to provide any proposed tariff edits or revised methodologies as requested in Question #1. The Consumer Protection and Advocate Division (Consumer Advocate) requests the opportunity to address the Atmos proposed tariff and methodology changes if such information is contained in its Supplemental Response in this Docket.
2. The general parameters for an acceptable single filing mechanism outlined in the Atmos response are met by the Consumer Advocate's proposal.
3. The Consumer Advocate disagrees with various characterizations regarding the intent and interpretation of the statute governing annual rate reviews and legislation referenced by Waller's Testimony.

FAILURE TO RESPOND

Q.6 BEGIN BY ADDRESSING YOUR FIRST POINT THAT ATMOS HAS FAILED TO PROVIDE COMPLETE RESPONSES TO THE QUESTIONS POSED IN THE PROCEDURAL ORDER. DISCUSS THE DEFICIENCIES IN THE ATMOS RESPONSE.

A.6 Within the first question the Commission requested the detailed tariff and/or Approved Methodology changes required if the Forward-Looking Test Year filings are eliminated. Waller's Testimony did not respond to this important portion of Question #1. Waller's Testimony discusses his general policy concerns with moving away from a Forward-Looking Test-Year concept; however, Waller Testimony fails to provide the requested detailed tariff and methodology changes required if the Forward-Looking filing is eliminated.

Q.7 DID THE CONSUMER ADVOCATE PROVIDE THE DETAILED TARIFF AND METHODOLOGY CHANGES AS REQUESTED IN THE PROCEDURAL ORDER?

A.7 Yes.

Q.8 IS THE CONSUMER ADVOCATE DISADVANTAGED BY THE FAILURE OF ATMOS TO RESPOND TO THIS PORTION OF QUESTION #1?

A.8 Potentially, yes. If Atmos provides the detail that was ordered by TPUC to be filed on September 17, 2018 in its Supplemental Response to be filed on September 26, 2018, the Consumer Advocate would not be afforded an opportunity to address the Atmos proposal. Further, the Consumer Advocate's timely response has provided Atmos an opportunity to respond to the Consumer Advocate's proposal. Unfortunately, the Consumer Advocate does not have that same opportunity, given Atmos' failure to respond as required by TPUC.

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2 **Q.9 IF ATMOS, IN ITS SUPPLEMENTAL RESPONSE FILED SEPTEMBER**
3 **26, 2018, PROVIDES THE INFORMATION REQUESTED ON**
4 **SEPTEMBER 17, WHAT IS AN APPROPRIATE REMEDY?**

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6 **A.9** The Consumer Advocate should be afforded an opportunity to respond to any
7 information provided by Atmos that should have been timely provided within its
8 September 17, 2018 filing. The Consumer Advocate should not be disadvantaged
9 due to Atmos' failure to respond timely as required within the Order.

10 **ATMOS PARAMETERS MET BY CONSUMER ADVOCATE'S PROPOSAL**
11

12 **Q.10 PLEASE IDENTIFY THE PARAMETERS OF AN ANNUAL MECHANISM**
13 **OUTLINED BY ATMOS.**

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15 **A.10** Waller's Testimony makes the following statements that are addressed in the
16 Consumer Advocate's proposal:
17

- 18 1. "The single filing mechanism however, if adopted, must include a single filing
19 that eliminates regulatory lag either through forward looking treatment or some
20 other means so as to allow the Company to earn its authorized return on
21 equity..."¹
22
- 23 2. "If a company must invest capital, experience depreciation on its investment,
24 and support a given level of operating expenses in one time-period but wait
25 until a future time-period to recover those costs, it cannot mathematically cover
26 its total cost of service (including return) in a timely fashion."²
27
- 28 3. "The single filing mechanism, however, if adopted, must include a single filing
29 that eliminates regulatory lag either through a forward looking treatment or
30 some other means".³
31
- 32 4. "If the forward looking treatment designed into the ARM tariff were eliminated,
33 the interest applied in some form would make up a much more significant piece

¹ Waller Direct Testimony, pg. 2, lines 19-22.

² Waller Direct Testimony pg. 6, lines 5 – 8.

³ Waller Direct Testimony pg. 7, lines 5-7.

as it would become (in some form or fashion) the primary instrument used to eliminate regulatory lag.”⁴

Q.12 PLEASE ADDRESS HOW THE CONSUMER ADVOCATE’S PROPOSAL IS CONSISTENT WITH THESE PARAMETERS CONTAINED IN WALLER’S TESTIMONY.

A.12 The primary goal of Atmos is to have the benefit of an ARM that eliminates Regulatory Lag. The proposal contained in my testimony eliminates Regulatory Lag by providing a return on any deficiency (or sufficiency) from the mid-point of the historic base period through the date when new rates are approved,⁵ coupled with the ability to defer any revenue requirement shortfall or sufficiency.⁶ The ability of Atmos to defer its revenue requirement shortfall in a regulatory asset eliminates Regulatory Lag in that Atmos would accrue revenue for any shortfall, or conversely record a liability for any revenue excess. The cash collection (or cash refund) would occur after the conclusion of the true-up case. The Consumer Advocate’s proposal includes the application of interest to any shortfall or excess, which Mr. Waller refers to as the ‘primary instrument’ to eliminate Regulatory Lag. While the Consumer Advocate’s proposal adopts the application of interest as referenced in Waller’s testimony, it is the ability to defer any shortfall in earnings that is the primary tool used in the elimination of Regulatory Lag within the Consumer Advocate’s proposal.

STATUTORY AND LEGISLATIVE INTERPRETATION

Q.13 DO YOU AGREE WITH THE MR. WALLER’S CONCLUSIONS REGARDING STATUTORY INTERPRETATION AND LEGISLATIVE INTENT?

A.13 No.

⁴ Waller Direct Testimony pgs. 9-10, lines 22 – 2.

⁵ Dittmore Direct Testimony pgs. 26-27, lines 16 – 2.

⁶ Attachment DND-4, sheet 34.1(a) Section H.

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2 **Q.14 PLEASE EXPLAIN YOUR CONCERNS WITH MR. WALLER'S COMMENTS**
3 **ON THE ALTERNATIVE REGULATION STATUTE AND THE LEGISLATIVE**
4 **INTENT REGARDING THIS LEGISLATION.**
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6 **A.14** Mr. Waller testifies that “[a]s a result” of Forward-Looking methodology being applied
7 since Docket No. 14-00146, “Tenn. Code Ann. § 65-5-103(d)(6) requires that Forward-
8 Looking methodologies be utilized in the Company’s annual review mechanism.”⁷
9 Initially in my analysis of Waller’s Testimony, I reviewed the statute cited by Mr. Waller.
10 While I am not an attorney, I found no statutory language requiring the use of Forward-
11 Looking methodologies.
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13 In my further review of Waller’s Testimony, he cites to language within Tenn. Code Ann.
14 § 65-5-103(d)(6)(A) which provides that a public utility may opt to file for an annual
15 review of its rates based upon methodology adopted in its most recent rate case.⁸ However,
16 this language does not prohibit the Commission from modifying methodologies in an
17 annual review mechanism. In fact, the Commission made clear that its general rate-setting
18 powers and discretion “to investigate, review and adjust the rates requested by the annual
19 ARM filings”⁹ were not limited (or expanded) by the Settlement Agreement nor the terms
20 of the ARM Tariff in Docket No. 14-00146.¹⁰ Furthermore, the then TRA Chairman Jim
21 Allison testified before the Tennessee Legislature that the statutory provision authorizing
22 an annual review mechanism was “procedural in nature. It does not substantively change
23 what the TRA can do or not do.”¹¹ Accordingly, the Commission’s “wide discretion with

⁷ Waller Direct Testimony, pg. 2, lines 5-7. *See also* Waller Direct Testimony, pg. 4, line 19 – pg. 5, line 2.

⁸ Waller Direct Testimony, pg. 5, lines 10-13.

⁹ *Joint Response to the TRA First Data Request to Atmos Energy Corporation and Consumer Advocate and Protection Division of the Office of the Attorney General*, pg. 5 (May 1, 2015).

¹⁰ *In Re: Petition of Atmos Energy Corporation for a General Rate Increase Under T.C.A. § 65-6-103(a) and Adoption of an Annual Rate Review Mechanism Under T.C.A. § 65-5-103(d)(6)*, Order Approving Settlement, TPUC Docket No. 14-00146, pg. 10 (Nov. 4, 2015).

¹¹ Before the House Business and Utilities Committee, 108th General Assembly (March 6, 2013)(statement of Jim Allison, Chairman of the Tennessee Regulatory Authority on House Bill 191). Minute 32:22/59:17 at http://tnga.granicus.com/MediaPlayer.php?view_id=269&clip_id=7320.

1 regard to setting rates and the manner in which it utilizes test periods”¹² has not changed
2 with such alternative regulatory methods as an annual review. Chairman Allison confirmed
3 this interpretation of the alternative regulatory methods legislation when he testified before
4 the House Senate Finance, Ways and Means Committee.¹³

5 Mr. Waller also highlights statutory language involving the authorized return on equity.¹⁴
6 It is well settled that when exercising its discretion in ratemaking, the Commission will
7 “approve rates that provide regulated utilities the opportunity to earn a just a reasonable
8 return on their investments”¹⁵(emphasis added). No utility is guaranteed a return on
9 investments. As previously discussed, the Commission’s authority and discretion was not
10 changed by the authorization of alternative ratemaking methods, such as annual reviews,
11 under Tenn. Code Ann. § 65-5-103.¹⁶

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13 **Q.15 DOES THIS CONCLUDE YOUR TESTIMONY?**

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15 **A.15** Yes.

¹² *In Re: Petition of Tennessee Wastewater Systems, Inc. For Approval of Adjustment of Its Rates and New Tariff*, Final Order Denying Petition, TPUC Docket No. 16-00139, pg. 4 (Nov. 2, 2017).

¹³ Before the House Senate Finance, Ways and Means Committee, 108th General Assembly (April 2, 2013)(statement of Jim Allison, Chairman of the Tennessee Regulatory Authority on Senate Bill 197). Hour 1:12:51/1:32:12 at http://nga.granicus.com/MediaPlayer.php?view_id=269&clip_id=7685. Specifically, Chairman Allison testified “We [TRA] will have a great deal of discretion just as we do now in general rate cases. It-it’s just-it’s a procedural change in how you go about doing things. But we have to -- our overall objective is to balance the interest of the consumers with the companies operating in those environments.” *Id.*

¹⁴ Waller Direct Testimony, pg. 5, lines 20-21; pg. 8, line 16-18; pg. 9, lines 13-15. The statutory provision highlighted by Mr. Waller is Tenn. Code Ann. § 65-5-103(d)(6)(C) which states:

Pursuant to the procedures set forth in subdivision (d)(1), the commission shall review the annual filing by the public utility within one hundred twenty (120) days of receipt and order the public utility to make the adjustments to its tariff rates to provide that the public utility earns the authorized return on equity established in the public utility's most recent general rate case pursuant to § 65-5-101 and subsection (a).

¹⁵ *In Re: Petition of Tennessee Wastewater Systems, Inc. For Approval of Adjustment of Its Rates and New Tariff*, Final Order Denying Petition, TPUC Docket No. 16-00139, pg. 4 (Nov. 2, 2017).

¹⁶ See above pg. 5, line 14 – pg. 6, line 8.