

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

December 4, 2018

IN RE:)	
)	
PETITION OF ATMOS ENERGY CORPORATION)	DOCKET NO. 18-00067
FOR APPROVAL OF ITS 2018 ANNUAL RATE)	
REVIEW FILING PURSUANT TO TENN.)	
CODE ANN. § 65-5-103(d)(6))	

ORDER APPROVING 2018 ANNUAL RATE REVIEW FILING

This matter came before Vice Chair Kenneth C. Hill, Commissioner Herbert H. Hilliard and Commissioner David F. Jones of the Tennessee Public Utility Commission (“TPUC” or the “Commission”), the voting panel assigned to this docket, at a regularly scheduled Commission Conference held on October 15, 2018, for consideration of the 2018 Annual Rate Review Mechanism (“ARM”) tariff filing (“*Petition*” or “2018 ARM Filing”) of Atmos Energy Corporation (“Atmos” or the “Company”).

BACKGROUND AND 2018 ARM FILING

In Docket No. 14-00146, the Commission approved a *Stipulation and Settlement Agreement* between Atmos and the Consumer Protection and Advocate Division of the Office of the Attorney General and Reporter (“Consumer Advocate”) implementing an ARM under Tenn. Code Ann. § 65-5-103(d)(6) for Atmos.¹ This mechanism allows for annual rate reviews by the Commission in lieu of a general rate case.² Pursuant to the *Order Approving Settlement*, the twelve-month period ending September 30th of each year prior to the annual ARM filing date of February 1 is to be used

¹ See *In re: Petition of Atmos Energy Corporation for a General Rate Increase under T.C.A. 65-5-103(a) and Adoption of an Annual Rate Review Mechanism Under T.C.A. 65-5-103(d)(6)*, Docket No. 14-00146, *Order Approving Settlement* (November 4, 2015) (hereinafter *Atmos Rate Case*, Docket No. 14-00146, *Order Approving Settlement*).

² Tenn. Code Ann. § 65-5-103(d)(6).

as the test year, with rates to be established based on a forward-looking test year for the twelve-month period ending May 31st of each following year.³ Additionally, the *Order Approving Settlement* required that the Company use the authorized return on equity as established in Docket No. 14-00146 or any subsequent general rate case.⁴

As part of the *Stipulation and Settlement Agreement* in Docket No. 14-00146, the Company agreed to submit with its annual ARM filing an attestation from a Company officer affirming the following:

1. That the Company's Annual ARM filing has been prepared in accordance with the methodologies approved in the *Stipulation and Settlement Agreement*, or that any deviation from them has been disclosed and explained in a document attached to an affidavit;
2. That the use of any new methodologies has been disclosed;
3. That all new matters have been disclosed;
4. That the Variance Report will identify and explain all rate differences between the current year and the prior year exceeding 5% and \$30,000 and will contain all matters required by the *Stipulation and Settlement Agreement*;
5. That no disallowed items have been included in the filing;
6. That there have been no additions, deletions or modifications to the accounts or subaccounts; and
7. That there have been no changes in the method of accounting or estimating of any account or subaccount utilized in the filing.⁵

In addition to the annual rate review filing by no later than February 1 of each year, the Company must also file an Annual Reconciliation to the authorized return on equity by

³ *Atmos Rate Case*, Docket No. 14-00146, *Order Approving Settlement*, pp. 5-6 (November 4, 2015).

⁴ *Id.*

⁵ *Id.* at 6.

September 1st of each year.⁶ This filing is required to reconcile actual amounts to the Company's authorized return on equity for the forward-looking test year that immediately completed, inclusive of interest at the overall cost of capital compounded for two years.⁷ The resulting rates will be effective on bills rendered on or after June 1st.⁸

On June 15, 2018, Atmos submitted the *Petition* attesting its compliance with its tariff approved in Docket No. 14-00146 with the filing of budget forecasts projecting operating results for the forward-looking test year ending May 31, 2019 and the additional revenue needed in order for the Company to earn its authorized Return on Equity ("ROE") for that test year.

Included with this filing are: (1) Certification with Attachments A and B; (2) Testimonies of Gregory K. Waller and Jennifer Story; (3) List of Dockets Utilizing Approved Methodologies; (4) Revenue Requirement Schedules; (5) Relied-Upons; (6) Weather Normalization; (7) Minimum Filing Requirement #38; (8) Trial Balance; (9) General Ledger; (10) Variance Report; and (11) Proposed tariff. The Commission held the February 1st filing deadline in abeyance pending the conclusion of Docket No. 17-00091.⁹ Thus, the filing of the *Petition* on June 15, 2018, was timely under the provisions of the ARM tariff.

The Consumer Advocate filed a *Petition to Intervene* which was granted on August 28, 2018.¹⁰ A procedural schedule was established for the provision of discovery and pre-filed testimony in anticipation of a hearing.¹¹ In addition, the procedural schedule provided the parties the

⁶ *Id.* at 5.

⁷ *Id.*

⁸ *Id.* at 7.

⁹ *In re: Atmos Energy Corporation-2017 ARM Reconciliation Filing*, Docket No. 17-00091, *Order Denying Atmos Energy Corporation's Motion to Resubmit Reconciliation and Change Dates*, p. 15 (April 5, 2018); *Final Order*, p. 14 (August 1, 2018).

¹⁰ *Order Granting the Petition to Intervene Filed by the Consumer Advocate* (August 28, 2018).

¹¹ *Order Establishing Procedural Schedule* (August 28, 2018).

opportunity to respond to a series of specific questions by the Commission Staff outlining the initial position of the parties to possible modifications of the ARM.¹²

POSITIONS OF THE PARTIES WITH RESPECT TO THE BUDGET FILING

Atmos

Mr. J. Kevin Dobbs, President, Kentucky Mid-States Division, certifies this filing is compliant with the approved methodologies, with the exception of certain deviations that are outlined in Attachment A to this Certificate.¹³ These deviations, explained in detail in the pre-filed testimony of Jennifer Story, relate to the Tax Cuts and Jobs Act of 2017 (“TCJA”) signed into law on December 22, 2017.¹⁴

Mr. Gregory K. Waller submits testimony supporting the revenue requirement schedules, relied-upon files and other contents of the filing. Mr. Waller attests to a total revenue sufficiency of \$5,031,996 for the attrition year ending May 31, 2019. Other than the deviations discussed later in his testimony, Mr. Waller asserted all calculations are consistent with previously approved methodologies.¹⁵ In support of Atmos’ request, Mr. Waller relied upon Schedules 1 through 11 which provide the historic base year and forward-looking attrition year cost of service, revenues, gas cost expense, Operation and Maintenance (“O&M”) expense, taxes other than income taxes, depreciation and amortization expense, return on rate base, excise and income tax, cost of capital, rate of return, and proof of revenues and calculation rates.¹⁶

Atmos forecasts \$132,279,331 in revenue for the attrition year ending May 31, 2019, with a cost of service of \$127,853,476 for the year.¹⁷ O&M expenses are forecasted at \$21,369,012 for the

¹² *Id.* at 1-2.

¹³ J. Kevin Dobbs, Pre-Filed *Certificate* (June 15, 2018).

¹⁴ *Id.*, Attachment A.

¹⁵ Gregory K. Waller, Pre-Filed Direct Testimony, pp. 2-4 (June 15, 2018).

¹⁶ *Id.* at 6.

¹⁷ *Id.* at 3.

attrition year.¹⁸ Rate base for the attrition period is based upon a thirteen month average of the cost of plant, accumulated depreciation, storage gas investment, materials and supplies, accumulated deferred income tax (“ADIT”), customer deposits, customer advances and accumulated interest on customer deposits. The Company submits the major reason for the increase in rate base from the historic period to the attrition period is due to additional capital investments in an effort to enhance the safety and reliability of the system.¹⁹

The Company’s working capital requirement was based upon the lead-lag study prepared in Docket No. 14-00146.²⁰ Cost of Capital is based on the capital structure, debt cost and a 9.80% rate of return. Further, in accordance with Approved Methodologies, the actual equity balance and long-term debt balance at the end of September 30, 2017 and a twelve-month average of the short-term debt balance for the twelve months ending September 30, 2017 is utilized.²¹ Finally, the approved Annual Reconciliation Revenue Requirement from Docket No. 17-00091 and the Annual Reconciliation Revenue Requirement for the forward-looking test year ending May 31, 2019 are distributed to all customer classes and rate schedules consistent with the ARM Tariff and the Approved Methodologies. Mr. Waller affirms that all expenses included in the historical and forecasted Cost of Service are prudent and have been handled consistent with the ARM Tariff.²²

Ms. Jennifer K. Story’s pre-filed testimony explains the effect of the TCJA on the Company’s taxes and customer rates which impacts the Company in two major ways. The first is that there has been a decrease in the tax liability on current earnings affecting cost of service. The second is that there has been a decrease in future tax liabilities for which the Company has already

¹⁸ *Id.* at 7.

¹⁹ *Id.* at 9.

²⁰ *Id.* at 10.

²¹ *Id.* at 11.

²² *Id.* at 11-12.

set up deferred taxes. As the amount recorded for deferred taxes now exceeds the expected future balance, the extra amount is now recorded as excess deferred taxes.²³

The Company has estimated the excess deferred tax liability at \$27.7 million and the period for amortizing this liability at twenty-eight (28) years. These numbers are only estimates because the Company calculates the ADIT based on the Company's fiscal year, which ends September 30. The TCJA was signed into law in December of 2017, during the first quarter of the Company's year. The Company will "refine" its estimate for the excess deferred taxes in October of 2018 when it calculates its annual tax provision, but the Company will not have actual amounts until after the Company's fiscal year has ended and it has filed its federal tax return in July of 2019.²⁴

The gross ADIT balances at September 30, 2017 were revalued with the new tax rate in December 2017 and were projected beyond the Historic Base Period to "reflect the amortization of these amounts to customers."²⁵

Consumer Advocate

Based upon Mr. William H. Novak's review of the filing, the Consumer Advocate has no objection to the ARM budget filing being approved. The Consumer Advocate recommends future budget filings contain testimony disclosing the methodology utilized to bridge the gap between the budget period ending September 30th and the ARM period ending May 31st.²⁶

With this filing, Atmos proposes to reduce base revenues by approximately \$5.032 million. This reduction includes the \$382,182 previously approved by the Commission in Docket No. 17-00091 and the impact resulting from implementation of the Federal 2017 TCJA. Without the inclusion of these two reductions, Atmos would have proposed to increase base rates by

²³ Jennifer K. Story, Pre-filed Direct Testimony, p. 3 (June 15, 2018).

²⁴ *Id.* at 6-7.

²⁵ *Id.* at 9-11.

²⁶ William H. Novak, Pre-filed Direct Testimony, pp. 2-4 (September 17, 2018).

approximately \$0.561 million.²⁷ The Consumer Advocate notes that the most significant change is in rate base, which has increased approximately \$123 million since Atmos' last rate case.

The Consumer Advocate highlights that the Company's internal budgets are for the twelve months ending September 30, 2018 which is outside of the ARM budget through May 31, 2019 by eight months. Mr. Novak is concerned that the filing did not outline the methodologies utilized by Atmos to extend the budget eight months. For this reason, he recommends that in future filings Atmos provide an explanation of how it extended its budget.²⁸

Atmos Rebuttal Testimony

In pre-filed rebuttal testimony, Mr. Waller disagrees with the Consumer Advocate that future filings include capital budget testimony.²⁹ Mr. Waller asserts that he has provided testimony on the Company's budget process many times before this Commission and the budget process is compliant with the Approved Methodologies of the ARM.³⁰

POSITIONS OF THE PARTIES CONCERNING POSSIBLE MODIFICATIONS TO THE ARM PROCESS

In the Hearing Officer's *Order Establishing Procedural Schedule* issued on August 28, 2018, the parties were asked to respond to three specific questions concerning modifications to the ARM mechanism. Both Atmos and the Consumer Advocate submitted pre-filed testimony in response to the questions posed to the parties concerning possible modification to the ARM process. The Company does not oppose modifications to its ARM that would result in a single filing per year as long as there is a mechanism to eliminate the regulatory lag. Mr. Waller believes this would best be achieved through a collaborative effort involving all interested parties.³¹

²⁷ *Id.* at 5.

²⁸ *Id.* at 9-10.

²⁹ Gregory K. Waller, Pre-filed Rebuttal Testimony, p. 2 (September 26, 2018).

³⁰ *Id.* at 6-9.

³¹ Gregory K. Waller, Pre-Filed Direct Testimony Regarding Staff Questions, pp. 3, 11-12 (September 17, 2018).

Based upon his review of the Consumer Advocate's proposed modifications, Mr. Waller is concerned that regulatory lag would not be eliminated. For this and other reasons he recommends the parties work together, outside of this docket, to find a solution that is agreeable to everyone.³²

The Consumer Advocate is not opposed to the consideration of modifications of the ARM process. On behalf of the Consumer Advocate, Mr. Dittmore testifies that after reviewing the two-step ARM process in practice in the years it has been in effect, it is apparent that elimination of the budget filing process would have several advantages.³³ Mr. Dittmore made specific modification proposals, including the elimination of the budget filing, and modifying existing methodologies. The parties have jointly informed the Commission that both Atmos and the Consumer Advocate are open to continuing discussions of possible modifications to the ARM and that they "await further direction from the Commission."³⁴

THE HEARING

The Hearing in this matter was held before the voting panel during the regularly scheduled Commission Conference on October 15, 2018, as noticed by the Commission on October 5, 2018. Prior to the hearing, the parties jointly notified the Commission that there were no outstanding procedural issues and that the parties agreed that the *Petition* should be granted while the parties indicated a willingness to continue discussions concerning modification of the ARM process.³⁵

Participating in the Hearing were:

Atmos Energy Corporation – A. Scott Ross, Esq., Neal & Harwell, 2000 One Nashville Place, 150 Fourth Avenue North, Nashville, Tennessee 37219-2498.

Consumer Protection and Advocate Division – Vance Broemel, Esq. and Karen Stachowski, Esq., Office of the Attorney General and Reporter, Post Office Box 20207, Nashville, Tennessee 37202-0207.

³² Gregory K. Waller, Pre-filed Rebuttal Testimony, pp. 2-6 (September 26, 2018).

³³ David Dittmore, Pre-filed Direct Testimony Regarding Staff Questions, p. 4 (September 17, 2018).

³⁴ *Joint Letter of the Parties to the Chairman* (October 4, 2018).

³⁵ *Id.*

During the Hearing, Mr. Gregory K. Waller, Mr. William H. Novak and Mr. David Dittmore summarized their pre-filed testimony. Ms. Jennifer Story was made available by phone for questions during the hearing. Members of the public were given an opportunity to offer comments, but no one sought recognition to do so.

FINDINGS AND CONCLUSIONS

Following the conclusion of the hearing, the panel considered the 2018 ARM Filing of Atmos Energy Corporation. Upon review of the evidentiary record in this matter, the panel found that Atmos' *Petition*, including accompanying tariffs, is consistent with the previously approved methodologies, compliant with the provisions of Tenn. Code Ann. § 65-5-103(d)(6) and is in the public interest. Thereafter, the panel voted unanimously to approve Atmos' *Petition* resulting in a revenue surplus of \$5,031,996 for the attrition year ending May 31, 2019, consisting of (1) a revenue surplus of \$4,425,855 for the forward-looking test year ending May 31, 2019; (2) a revenue deficiency of \$382,182 approved in Commission Docket No. 17-00091; and (3) an expense credit of \$988,324 resulting from the amortization of excess deferred income tax. The revenue surplus will reduce overall residential rates by 6.5% as presented in the tariffs accompanying Atmos' *Petition*.

The panel further found that, as recommended by the Consumer Advocate, future annual reconciliation filings should provide testimony concerning the methodology utilized to extend the fiscal budget to the budget period of the annual reconciliation filing.

Additionally, in response to Staff questions regarding potential changes and/or modifications to Atmos' existing annual rate review mechanism, both parties state a willingness to explore options for replacing the current two-step budget and reconciliation process and replacing it with a more efficient and transparent one-step annual review process. While agreeing to explore a one-step process, however, the parties present different views as to the overall plan and tariff modifications necessary to implement a one-step process.

While taking no position on whether the current two-step process should be modified, the panel found it compelling to explore changes and/or modifications to Atmos' existing annual rate review mechanism in an effort to refine and streamline the current process. Any modification should result in a mechanism and process that is fair to both customers and the company, and remains in the public interest. Accordingly, the panel voted unanimously to open a new docket to examine and consider a one-step approach for Atmos' annual rate review mechanism and other changes and/or modifications necessary to implement a more streamlined and transparent annual rate review mechanism.

IT IS THEREFORE ORDERED THAT:

1. The 2018 Annual Rate Review Mechanism filing and revised rates filed by Atmos Energy Corporation, are approved.

2. A new docket shall be opened to examine and consider a one-step approach for Atmos Energy Corporation's annual rate review mechanism and other changes and/or modifications necessary to implement a more streamlined and transparent annual rate review mechanism. General Counsel or her designee shall be appointed as Hearing Officer to prepare the matter for hearing before the panel, with authority to handle all preliminary matters, including but not limited to, the establishment of a procedural schedule, requests for intervention and discovery, and the issuance of a protective order, as needed.

3. Approval of Atmos Energy Corporation's 2018 Annual Rate Review Mechanism Filing and tariffs does not preclude or limit substantive review of the Annual Reconciliation to the Authorized Return on Equity to determine the reasonableness and prudence of expenses and costs recovered under the Annual Rate Review Mechanism and to ensure that service rates established by Atmos Energy Corporation pursuant to the Annual Rate Review Mechanism remain just, reasonable and in the public interest.

4. Any person who is aggrieved by the Commission's decision in this matter may file a Petition for Reconsideration with the Commission within fifteen days from the date of this Order.

5. Any person who is aggrieved by the Commission's decision in this matter has the right to judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty days from the date of this Order.

Vice Chair Kenneth C. Hill, Commissioner Herbert H. Hilliard and Commissioner David F. Jones concur.

ATTEST:



Earl R. Taylor, Executive Director