

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

IN RE:)	
)	
ATMOS ENERGY CORPORATION)	
FOR APPROVAL OF ITS 2019 ANNUAL)	
RATE REVIEW FILING PURSUANT TO)	DOCKET NO. 19-00018
TENN. CODE ANN. § 65-5-103(d)(6))	
)	

DIRECT TESTIMONY

OF

DAVID N. DITTEMORE

April 8 , 2019

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

IN RE:

**ATMOS ENERGY CORPORATION
FOR APPROVAL OF ITS 2019 ANNUAL
RATE REVIEW FILING PURSUANT
TO TENN. CODE ANN. § 65-5-103(d)(6)**

DOCKET NO. 18-00009

AFFIDAVIT

I, David Dittmore, on behalf of the Consumer Advocate Unit 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 Advocate Unit.



David N. Dittmore
DAVID N. DITTEMORE

Sworn to and subscribed before me
this 8 day of April, 2019.

Terra Allen
NOTARY PUBLIC

My commission expires: September 28, 2022

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

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

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

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

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

A3. Yes. I have submitted testimony in a number of dockets before TPUC.

Q4. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

1 **A4.** The purpose of my testimony is to offer the Consumer Advocate's recommendations on
2 the appropriate budget revenue requirement to put in place in TPUC Docket No.19-00018.
3 The proposal by Atmos Energy Corporation (Atmos or Company) would increase rates
4 \$861,355. My recommendation is an increase in rates of \$27,196, for a difference of
5 \$834,159. The results are summarized in Exhibit DND-2.

6 **Q5. PLEASE HIGHLIGHT THE ISSUES YOU WILL ADDRESS IN TESTIMONY.**

7 **A5.** My testimony covers three areas. The first impacts the Consumer Advocate's revenue
8 requirement proposal in this Docket, while the other two issues do not result in an
9 adjustment to the proposed revenue requirement. The issues I will address include the
10 following:

- 11 1. The Annual Review Mechanism (ARM) Reconciliation Amount, a component in
12 the determination of the revenue requirement in this Docket, is updated to reflect
13 the results of the Settlement Agreement in TPUC Docket No. 18-00097.
- 14 2. The lack of consistency in the use of the Tennessee State Income Tax rate within
15 the revenue requirement results in an understated balance of Accumulated Deferred
16 Income Taxes (ADIT).
- 17 3. Related to the issue above, the Net Operating Loss Carryforward (NOLC) forecast
18 is calculated inconsistently with the methodology used by the Company to identify
19 its NOLC Asset within its reconciliation filings.

20 **Q6. BEGIN WITH A DISCUSSION OF THE ADJUSTMENT TO THE RESULTS OF**
21 **THE ARM RECONCILIATION IN TPUC DOCKET NO. 18-00097.**

22 **A6.** The ARM mechanism requires that the actual revenue requirement results be trued-up with
23 the budgeted results, with such true-up included in the subsequent budget docket results.
24 In TPUC Docket No. 18-00097 the Company and the Consumer Advocate reached
25 agreement that the appropriate true-up is (\$4,053,984), a reduction in the revenue
26 requirement.

27 **Q7. HOW DOES THIS BALANCE COMPARE WITH THE BALANCE ATMOS HAS**
28 **INCLUDED IN THIS BUDGET FILING?**

29 **A7.** Atmos' revenue deficiency filed in TPUC Docket No. 18-00097 was (\$3,219,825), a
30 revenue reduction. The difference between the initial estimated revenue deficiency

1 included by Atmos and the revenue deficiency pursuant to the Settlement Agreement
2 submitting in TPUC Docket No. 18-00097 is (\$834,159), representing an increase in the
3 proposed rate reduction. In accordance with standard ARM principles, the true-up
4 reconciliation of actual results in the preceding historic base period are incorporated into
5 the subsequent ARM budget filing.

6 **Q8. TURN TO YOUR SECOND ISSUE, REGARDING THE COMPANY'S LACK**
7 **OF CONSISTENCY IN ITS USE OF THE STATE EXCISE TAX RATE WITHIN**
8 **VARIOUS COMPONENTS OF THE REVENUE REQUIREMENT.**

9 **A8.** The ADIT balance represents the account that reconciles Income Tax Expense recorded
10 pursuant to Generally Accepted Accounting Principles (GAAP) and Income Taxes paid
11 to state and federal taxing authorities. The ADIT account is a credit balance, which
12 indicates that on a cumulative basis, Income Tax Expense stated on a GAAP basis has
13 exceeded Income Taxes paid to taxing authorities. This liability represents positive cash
14 flow to the Company provided by ratepayers and is available to finance utility assets.
15 Therefore, it is typically a reduction to Rate Base¹, reflecting the portion of Rate Base
16 financed by ratepayers. Thus, the net Rate Base reflects that level of investment
17 provided by investors.

18 **Q9. HOW IS THE BALANCE OF ADIT CALCULATED?**

19 **A9.** First, it is important to understand that the rules governing the calculation of Net Income
20 pursuant to GAAP and which is then incorporated into official financial statements
21 provided to the Securities and Exchange Commission (SEC), are different from the rules
22 set forth by the Internal Revenue Service (IRS) and state taxing authorities in the
23 calculation of taxable income.

24 The ADIT balance is determined by identifying those accounting differences between
25 GAAP and IRS defined taxable income, and then multiplying these differences by a
26 combined federal/state tax rate. This process is necessary to reflect Income Tax Expense
27 per SEC reporting purposes in a consistent manner with the remaining GAAP mandated

¹ The other option available to regulators is to reflect the liability balance as zero cost capital within the capital structure. However, this generally involves some measurement issues as the ADIT balance is typically identified on a jurisdictional basis, while the Capital Structure is stated on a total corporate basis (not on a state jurisdictional basis).

1 accounting principles. The difference between taxes paid and Income Tax Expense
2 recorded pursuant to GAAP requirements is recorded to the ADIT liability account. The
3 ADIT balance at any point in time represents these cumulative differences applied to an
4 overall tax rate, and in theory represents taxes collected from ratepayers in base rates, but
5 which have not been paid to taxing jurisdictions.

6 **Q10. IDENTIFY YOUR CONCERN WITH THE COMPANY'S IDENTIFICATION OF**
7 **THE APPROPRIATE ADIT BALANCE.**

8 **A10.** The Company has used two different state tax rates: (1) the Tennessee State Excise Tax
9 rate of 6.5% is used within the Income Tax Expense Calculation²; and (2) the application
10 of a composite state tax rate to a number of the book and tax timing differences that
11 comprise the ADIT balance. In other words, Atmos has been inconsistent in how it defines
12 the state tax rate used within the calculation of Income Tax Expense and its tax liability
13 account.

14 **Q11. EXPLAIN WHAT THE COMPOSITE STATE TAX RATE IS AND HOW IT IS**
15 **USED.**

16 **A11.** The composite state tax rate of 2.3%³ is a weighted average state tax rate across the entire
17 Atmos Energy System. The composite rate is applied to the various Atmos division
18 book/tax timing differences in arriving at its ADIT balances, a significant offset to Rate
19 Base. The inconsistent use of a state tax rate of 6.5% in the computation of Income Tax
20 Expense with the use of the 2.3% state tax rate within the Division 093 Tennessee specific
21 ADIT poses an obvious inconsistency in the development of the Atmos revenue
22 requirement.

23 **Q12. WHAT IS THE RELATIONSHIP BETWEEN THE INCOME TAX EXPENSE**
24 **CALCULATION AND THE BALANCE OF ADIT?**

25 **A12.** The two accounts are related. As I discussed earlier in my testimony, the ADIT balance
26 represents the account that reconciles Income Tax Expense recorded pursuant to GAAP
27 and Income Taxes paid to state and federal taxing authorities.

² See Exhibit GKW-1, WP 8-2, line no. 11 in Docket 19-00018.

³ See Company's Response to CA Request No. 1-3, Attachment 6, tab 093 within TPUC Docket No. 18-00067.

1 **Q13. WHAT IS THE PRACTICAL EFFECT OF ATMOS USING ONE RATE TO**
2 **COMPUTE INCOME TAX EXPENSE AND ANOTHER RATE TO**
3 **DETERMINE THE APPROPRIATE AMOUNT OF ADIT THAT IS A RATE**
4 **BASE OFFSET?**

5 **A13.** The practical result of this inconsistent treatment is either an Income Tax Expense that
6 is excessive, or an understated ADIT that results in an overstated rate base. From either
7 perspective, the revenue requirement is overstated due to this inconsistency. There are
8 arguments for using a Tennessee specific state tax rate within the revenue requirement
9 or a composite state tax rate, but I don't believe there is any rational argument for using
10 one state rate within the expense calculation and another rate within the Tennessee
11 specific ADIT calculation. In summary, Atmos-Tennessee ratepayers are paying a state
12 income tax component of 6.5%, but only receiving credit for a composite rate of 2.3%.

13 **Q14. HAS THE COMMISSION ACCEPTED THIS ADJUSTMENT AS OF THE DATE**
14 **OF THIS TESTIMONY?**

15 **A14.** No. However, the concept underlying this adjustment is contained within the single
16 Settlement Agreement pending before the Commission in TPUC Docket Nos. 18-00034
17 and 18-00097.⁴

18 **Q15. ARE YOU PROPOSING AN ADJUSTMENT IN THIS PROCEEDING FOR THIS**
19 **ISSUE?**

20 **A15.** No, I am not. I will explain why I am not supporting an adjustment to the Company's
21 ADIT balance, after discussing my third issue related to the Company's methodology for
22 computing its NOLC Asset balance.

23 **Q16. TURN TO THE THIRD ISSUE, THE INCONSISTENCY REGARDING THE**
24 **COMPANY'S FORECAST OF ITS NOLC ASSET RELATIVE TO HOW ITS**
25 **NOLC ASSET IS DETERMINED WITHIN THE RECONCILIATION DOCKET.**
26 **FIRST BEGIN BY DEFINING THE NOLC ASSET.**

27 **A16.** The NOLC Asset represents the cumulative tax losses that have yet to be used to offset
28 taxable income. Notwithstanding any number of potential complicating and over-riding

⁴ Stipulation and Settlement Agreement, pgs. 9-10 ¶¶ 32-36, TPUC Docket Nos. 18-00034 and 18-00097 (March 25, 2019).

factors, the NOLC Asset may be properly included in Rate Base in order to reflect that a portion of the ADIT liability balance has not been monetized for the benefit of the Company. In other words, the NOLC Asset represents that portion of the ADIT liability for which the Company has yet to receive a cash-benefit in the form of a reduction in Income Tax payments.

Q17. DO YOU HAVE CONCERNS WITH HOW ATMOS DETERMINES ITS NOLC ASSET TO BE INCLUDED IN ITS TENNESSEE JURISDICTIONAL RATE BASE?

A17. Yes. I have previously discussed this issue in TPUC Docket No. 18-00034.⁵ The Company develops a general allocator comprised of the average ratios of Tennessee Direct Property Plant and Equipment, average number of customers, and total O&M Expenses as a percentage of total company data and applies this average ratio to the total Utility balance of its NOLC Asset.⁶ In my view there are more appropriate ways to assign such a significant asset balance to the Tennessee jurisdictional Rate Base, other than the use of a general allocator. Standard allocation principles indicate that a general allocator should only be used when direct assignment is not possible, or when an appropriate causal allocator is not available.

Q18. IS THE BALANCE OF THE ADIT LIABILITY RELATED TO THE BALANCE OF THE NOLC ASSET?

A18. According to the Company, any change in the ADIT liability balance would have an offsetting impact in the balance of the NOLC Asset. In response to the Consumer Advocate's Request No. 2-6 in this Docket, the Company states that "[a]ny change to the deferred tax balances, including a modification not reflecting the Tennessee specific excise tax rate, would result in a change to the NOLC activity calculated at the bottom of WP 7-1."

⁵ David N. Dittmore Direct Testimony, pgs. 19-23, TPUC Docket No. 18-00034 (December 21, 2108).

⁶ See file FY 19 Composite Factors, '3-Factor Composite FY 19 tab. See Also, Exhibit GW-1, WP 7-1. The gross asset balance on WP 7-1 is forecasted at \$640 Million.

1 **Q19. DO YOU AGREE WITH THE GENERAL PROPOSITION THAT AN**
2 **ADJUSTMENT TO THE ADIT BALANCE SHOULD HAVE AN IMPACT ON THE**
3 **BALANCE OF THE NOLC ASSET?**

4 **A19.** Not necessarily, and definitely not in the present case.

5 **Q20. WHAT IS YOUR SPECIFIC CONCERN WITH THE RESPONSE OF THE**
6 **COMPANY TO CONSUMER ADVOCATE REQUEST NO. 2-6?**

7 **A20.** The Company is inconsistent in its arguments on how an NOLC should be forecast. On
8 one hand, adjusting the forecasted NOLC Asset balance to reflect impacts of changes in
9 the Tennessee specific ADIT balances is appropriate if the NOLC Asset is identified
10 specifically to Tennessee operations. However, as discussed above and in TPUC Docket
11 No. 18-00034, the NOLC Asset balance is allocated to Tennessee and is not based upon
12 the specific taxable loss associated with Tennessee operations. Therefore, a modification
13 to the Tennessee Division 003 ADIT balance should not have any material impact on the
14 allocation of the NOLC Asset to Tennessee. However, the Company takes the opposite
15 position, arguing in its Response to the Consumer Advocate's Request No. 2-6 that the
16 NOLC Asset must be adjusted by a corresponding amount to comply with normalization
17 provisions of the Internal Revenue Code (IRC).

18 Simply stated, the Company is mixing methodologies with respect to identification of the
19 NOLC Asset. In this Docket, it argues that a modification to Tennessee specific ADIT
20 balance necessitates an adjustment to the NOLC Asset balance. However, there is no one-
21 to-one relationship that exists between the ADIT and NOLC balances if you accept Atmos'
22 arguments that the NOLC is best defined for Tennessee using a general allocation
23 methodology.

24 Furthermore, the recognition of Tennessee's direct (Division 093) ADIT balance using a
25 Tennessee State tax rate does not impact the total corporate balance of ADIT, nor of its
26 NOLC balance. Instead, the use of the Tennessee state specific tax rate reassigns a portion
27 of the Atmos ADIT balances within its system. The adjusted Division 093 ADIT balance
28 does not then create an increased balance of an NOLC Asset balance that is required to be
29 assigned to Tennessee.

1 The Company is essentially arguing for a direct assignment of an NOLC Asset that equals
2 the adjustment amount of the Division 093 ADIT liability (should such an adjustment be
3 made), while at the same time including a base amount of an NOLC Asset that is allocated
4 to Tennessee using a general allocator, resulting in a mixing of methodologies in arriving
5 at its NOLC balance included in this application.

6 **Q21. HOW DOES THE COMPANY'S REVENUE REQUIREMENT MODEL FOR THE**
7 **BUDGETED ARM MODIFY THE NOLC BALANCES?**

8 **A21.** The model used by Atmos in this budgeted ARM docket modifies the NOLC balance by
9 an identical amount for any modification to the Division 093 ADIT balance.

10 **Q22. EARLIER YOU INDICATED YOU WERE NOT MAKING AN ADJUSTMENT TO**
11 **THE ADIT BALANCE. GIVEN YOUR POSITION ON THE ADIT ISSUE WHY**
12 **DID YOU NOT ELECT TO ADJUST RATE BASE FOR ATMOS' INCONSISTENT**
13 **USE OF THE TENNESSEE STATE TAX RATE?**

14 **A22.** The controversy regarding whether to adjust the NOLC Asset balance issue is unique to
15 the budget filing. While I continue to have concerns with the use of a general allocator to
16 define the Tennessee jurisdictional NOLC Asset, the true-up filing will not contain the
17 multiple NOLC Asset methodologies present in the budget ARM. Instead, the
18 reconciliation will contain historic values for the NOLC Asset applied against a general
19 allocator to arrive at the NOLC Asset included in the reconciliation Rate Base.

20 Further, the Company has indicated such an adjustment to the ADIT balance without
21 recognizing an offsetting NOLC Asset adjustment would pose tax normalization issues.
22 Rather than revisiting Atmos' claims of a normalization violation once again, the
23 Consumer Advocate has decided to simply note its concern with this issue and await the
24 natural resolution of this issue within the reconciliation docket.

25 One important takeaway associated with this issue is the challenges associated with the use
26 of a forecasted test period. Due to complexities of adequately reviewing forecasts, the
27 move to the use of historic data within ARM reconciliations would be in the public interest.

28 **Q23. DOES THIS CONCLUDE YOUR TESTIMONY?**

29 **A23.** Yes.

David Dittimore

Experience

Areas of Specialization

Approximately thirty-years 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

Utilities Division Director - 1997 - 1999; Responsible for managing employees with the goal of providing timely, quality recommendations to the Commission covering all aspects of natural gas, telecommunications and electric utility regulation; respond to legislative inquiries as requested; sponsor expert witness testimony before the Commission on selected key regulatory issues; provide testimony before the Kansas legislature on behalf of the KCC regarding proposed utility legislation; manage a budget in excess of \$2 Million; recruit professional staff; monitor trends, current issues and new legislation in all three major industries; address personnel issues as necessary to ensure that the goals of the agency are being met; negotiate and reach agreement where possible with utility personnel on major issues pending before the Commission including mergers and acquisitions; consult with attorneys on a daily basis to ensure that Utilities Division objectives are being met.

Asst. Division Director - 1996 - 1997; Perform duties as assigned by Division Director.

Chief of Accounting 1990 - 1995; Responsible for the direct supervision of 9 employees within the accounting section; areas of responsibility included providing expert witness testimony on a variety of revenue requirement topics; hired and provided hands-on training for new employees; coordinated and managed consulting contracts on major staff projects such as merger requests and rate increase proposals;

Managing Regulatory Auditor, Senior Auditor, Regulatory Auditor 1984 - 1990; Performed audits and analysis as directed; provided expert witness testimony on numerous occasions before the KCC; trained and directed less experienced auditors on-site during regulatory reviews.

Amoco Production Company 1982 - 1984

Accountant Responsible for revenue reporting and royalty payments for natural gas liquids at several large processing plants.

Education

- B.S.B.A. (Accounting) Central Missouri State University
- Passed CPA exam; (Oklahoma certificate # 7562) – Not a license to practice

Office of the Tennessee Attorney General
Consumer Advocate Unit
Re: Atmos Energy Corporation Docket #19-00018
Detail of adjustments to Revenue Requirement

Exhibit DND-2

Company's Stated Total Revenue Deficiency	\$ 861,355	Waller Testimony, page 4
Adjustments:		
Adjustment to 18-00097 Reconciliation Amount	(834,159)	
Consumer Advocate Proposed Revenue Deficiency	<u>\$ 27,196</u>	