

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

**August 25, 2020**

<b>IN RE:</b>	)	
	)	
<b>ATMOS ENERGY CORPORATION – 2019 ARM</b>	)	<b>DOCKET NO.</b>
<b>RECONCILIATION FILING</b>	)	<b>19-00076</b>
	)	

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**ORDER APPROVING REVISED PETITION**

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This matter came before Chair Robin L. Morrison, Vice Chair Kenneth C. Hill, and Commissioner John Hie of the Tennessee Public Utility Commission (“TPUC” or the “Commission”), the voting panel assigned to this docket, during a regularly scheduled Commission Conference held on June 15, 2020, for consideration of the *Petition of Atmos Energy Corporation for the Approval of 2019 ARM Reconciliation Filing* (“*Petition*”), filed on August 30, 2019 by Atmos Energy Corporation (“Atmos” or the “Company”).

In summary, the Company’s *Petition*, as revised and corrected, was approved by the Commission resulting in a revenue deficiency of \$713,614 for the attrition period ending May 21, 2019.

**BACKGROUND AND PETITION**

In Docket No. 14-00146, the Commission approved a *Stipulation and Settlement Agreement* between Atmos and the Consumer Advocate Unit in the Financial Division of the Office of the Tennessee Attorney General and Reporter (“Consumer Advocate”) implementing an Annual Rate

Review Mechanism (“ARM”) pursuant to Tenn. Code Ann. § 65-5-103(d)(6) for Atmos.<sup>1</sup> This mechanism allows for annual rate reviews by the Commission in lieu of a general rate case.<sup>2</sup> Pursuant to the *Order Approving Settlement* in Docket No. 14-00146, the twelve-month period ending September 30<sup>th</sup> of each year prior to the annual ARM filing date of February 1<sup>st</sup> was to be used as the test year, with rates to be established based on a forward-looking test year for the twelve-month period ending May 31<sup>st</sup> of each following year.<sup>3</sup> Additionally, the Company was required to use the authorized return on equity as established in Docket No. 14-00146 or any subsequent general rate case.<sup>4</sup>

In addition to the annual rate review filing by no later than February 1<sup>st</sup> of each year, the second step of the ARM also required the Company to file an Annual Reconciliation to the authorized return on equity by September 1<sup>st</sup> of each year.<sup>5</sup> 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.<sup>6</sup> The resulting rates would be effective on bills rendered on or after June 1<sup>st</sup>.<sup>7</sup>

As the Commission considered the Company’s 2018 ARM Filing in Docket No. 18-00067, in response to formal Staff questions regarding potential changes and/or modifications to Atmos’ existing ARM, both parties stated a willingness to explore options for replacing the two-step budget and reconciliation process and replacing it with a more efficient and transparent one-step annual

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<sup>1</sup> 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*).

<sup>2</sup> Tenn. Code Ann. § 65-5-103(d)(6).

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

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 5.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 7.

review process.<sup>8</sup>

While agreeing to explore a one-step process, however, the parties indicated different views as to the overall plan and tariff modifications necessary to implement a one-step process. As a result, in its *Final Order* in Docket No. 18-00067, the Commission ordered that a new docket be opened to examine and consider a one-step approach for Atmos Energy Corporation's annual rate review mechanism.<sup>9</sup>

Docket No. 18-00112 was opened to explore modifications of the Company's ARM and included the participation of the Consumer Advocate and Commission Party Staff ("Party Staff"). The Company, Consumer Advocate, and the Party Staff reached an agreement in Docket No. 18-00112 and filed the *Stipulation and Settlement Agreement* on October 2, 2019. The Commission approved the settlement and found that the terms and procedures of the modified ARM were reasonable and consistent with the provisions of Tenn. Code Ann. § 65-5-103(d)(6), and that the transition schedule from two annual filings to a single filing was reasonable and appropriate.<sup>10</sup> In addition, the Commission found that the modified ARM continues to be in the public interest and will allow Atmos to timely recover its investment and operating expenses while continuing to provide safe and reliable service to its customers.<sup>11</sup>

Several modifications and deadlines set in the *Stipulation and Settlement Agreement* in Docket No. 18-00112 impact the requirements in this Docket:

- September 1, 2019 - The ARM reconciliation for the Forward-Looking Test Year June 1, 2018 through May 31, 2019, that was filed to determine Annual Reconciliation Revenue Requirement under the existing ARM Tariff shall proceed. The reconciliation in Docket No.

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<sup>8</sup> *In Re: Petition of Atmos Energy Corporation for Approval of Its 2018 Annual Rate Review Filing Pursuant to Tenn. Code Ann. § 65-5-103(d)(6)*, Docket No. 18-00067, *Order Approving 2018 Annual Rate Review Filing*, p. 7 (December 4, 2018).

<sup>9</sup> *Id.* at 10.

<sup>10</sup> *In Re: Docket to Investigate and Consider Modifications to Atmos Energy Corporation's Annual Rate Review Mechanism Under Tenn. Code Ann. § 65-5-103(d)(6)*, Docket No. 18-00112, *Order Approving Stipulation and Settlement Agreement*, pp. 9-10 (December 16, 2019).

<sup>11</sup> *Id.*

19-00076 will determine the Annual Reconciliation Revenue Requirement under the existing ARM Tariff with three exceptions. First, Atmos will be permitted to include its 2019 Annual Pension contribution; second, Atmos is authorized to include the resulting Annual Reconciliation Revenue Requirement in rates effective June 1, 2020 without a February 1 ARM filing; and third, the gross up factor shall be determined using total revenues in the denominator of the Forfeited Discounts component and actual gross margin shall be used in the denominator of the Uncollectible Ratio component.

- February 1, 2020 – Atmos will not make an annual ARM filing.
- June 1, 2020 – Atmos will implement new rates removing the previous Annual Reconciliation Revenue Requirement from Docket No. 18-00097 and implement the Annual Reconciliation Revenue Requirement that resulted from the proceeding in Docket No. 19-00076. These rates shall remain in effect through May 31, 2021.

Prior to the filing and subsequent hearing to consider the *Stipulation and Settlement Agreement*, the Company submitted the *Petition* on August 30, 2019 in this docket for the annual reconciliation of the Company's actual results to the originally filed Forward-Looking Test Year ending May 31, 2019. In anticipation of the proceedings in Docket No. 18-00112 resulting in a one-step process, the Company netted out the review which would normally have taken place with the February 1st ARM filing as approved previously in Docket No. 14-00146.<sup>12</sup>

Included with the *Petition* was the testimony of Mr. Gregory K. Waller, the sponsor of Exhibit GKW-1 consisting of 12 Schedules and supporting workpapers used to calculate the Annual Reconciliation Revenue Requirement and Exhibit GKW-2, a proposed tariff with an effective date of June 1, 2020. A list of prior ARM filing dockets that utilize the methodologies originally approved by the Commission in Docket No. 14-00146 and the Attestation of Richard M. Thomas, a Vice-President and Controller for Atmos, certifying that the historical information contained in the schedules are accurate and complete, and reflect actual account balances found on the books and records of the Company were also included with the *Petition*. Mr. Waller, in his attached Exhibit GKW-1 (Schedule 1), presented Atmos' Cost of Service and a calculation of the \$726,325 revenue

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<sup>12</sup> Gregory K. Waller, Pre-Filed Direct Testimony, pp. 9-10 (August 30, 2019).

deficiency. The revenue deficiency was later revised to \$713,614 in order to correct errors related to short-term debt, gas inventory, and working capital.<sup>13</sup>

The Consumer Advocate sought intervention on October 29, 2019, which was granted by the Hearing Officer on November 6, 2019. Pursuant to a procedural schedule issued by the Hearing Officer, on January 17, 2020, the Consumer Advocate filed the direct testimony of William H. Novak laying out a number of contested issues on February 18, 2020. On March 19, 2020, Atmos filed the Pre-Filed Rebuttal Testimony of Jennifer K. Story in response to Mr. Novak's pre-filed testimony.<sup>14</sup>

#### **DIRECT TESTIMONY OF THE CONSUMER ADVOCATE**

On behalf of the Consumer Advocate, Mr. William H. Novak submitted Pre-Filed Direct Testimony on February 18, 2020. Mr. Novak's review determined that overall, Atmos' filing appropriately reconciled the actual revenues, expenses and net investments to the amounts recorded on the Company's ledger and that the reconciliation generally reflected the methodologies established in Docket Nos. 14-00146 and 18-00112.<sup>15</sup> Nevertheless, Mr. Novak recommended the following:

1. Commission should reject Atmos' inclusion of approximately \$825,000 in net Tennessee allocated pension funding for recovery through the ARM reconciliation;
2. Commission should adopt the Consumer Advocate's revenue surplus calculation of \$244,136 as shown on Attachment WHN-2 for the 12 months ended May 31, 2019;<sup>16</sup> and
3. Commission should adopt the Consumer Advocate's rate design, effective June 1, 2020, as shown on Attachment WHN-7 that reflects a reduction in rates of \$244,136.

Mr. Novak's recommendations centered on Atmos' \$15.5 million funding committed to its pension plan during the ARM reconciliation period.<sup>17</sup> Of the total amount, \$1,092,288 was allocated by the

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<sup>13</sup> William H. Novak, Pre-Filed Direct Testimony, p.6 (February 18, 2020).

<sup>14</sup> Jennifer K. Story, Pre-Filed Rebuttal Testimony (March 23, 2019): Ms. Story adopted the earlier Pre-Filed Direct Testimony of Greg Waller following Mr. Waller's departure from employment with Atmos.

<sup>15</sup> William H. Novak, Pre-Filed Direct Testimony, p. 9 (February 18, 2020).

<sup>16</sup> The Consumer Advocate's revenue surplus is based on the Company's updated revenue model submitted in response to the Consumer Advocate Discovery Request No. 2-1, Schedule 1. The updated Company calculation resulted in a revenue deficiency of \$713,614 and the removal of pension funding.

<sup>17</sup> William H. Novak, Pre-Filed Direct Testimony, pp. 10-11 (February 18, 2020).

Company to Tennessee. A portion was capitalized resulting in a net funding amount of \$824,764. Atmos included this amount in its O&M expenses within the ARM reconciliation.

While Mr. Novak acknowledged that the Company in fact funded this amount, he took issue with the Company seeking to recover this funding from ratepayers through its ARM tariff. Mr. Novak asserted the Company's pension plan was overfunded by \$26,972,000 at September 30, 2018, and that the Company's actuary recommended a minimum required contribution of \$0 for 2019.<sup>18</sup> For this reason, Mr. Novak excluded the entire pension funding amount in this ARM reconciliation.

The Consumer Advocate relies in part upon the Commission's decision in the Chattanooga Gas Company's most recent rate case in Docket No. 18-00017. Mr. Novak contended the Commission has been clear in stating its policy regarding the recovery and limitation of pension costs to the minimum required contribution recommended by the Company's actuary. Therefore, Mr. Novak recommends the Commission exclude all pension funding from this ARM reconciliation filing.<sup>19</sup> Based upon his recommendation to exclude the pension expense, Mr. Novak proposed a rate design using the same billing determinants used by Atmos in their proposed rate design, which would result in removing the revenue surplus of \$244,136.<sup>20</sup>

#### **REBUTTAL TESTIMONY OF ATMOS**

Jennifer K. Story, Director of Regulatory Reporting for Atmos, submitted Rebuttal Testimony on March 19, 2020. Ms. Story adopted the previous Pre-Filed Direct Testimony of Gregory K. Waller after Mr. Waller left the employment of the Company.<sup>21</sup> The Company indicated agreement with the adjustments and corrections involving short-term debt, gas inventory, and

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<sup>18</sup> *Id.* at 11.

<sup>19</sup> *Id.* at 11-13.

<sup>20</sup> *Id.* at 14.

<sup>21</sup> Jennifer K. Story, Pre-Filed Direct Testimony, p. 3 (March 19, 2020).

working capital made to the reconciliation by Mr. Novak, which according to Mr. Novak changed the Company's calculated revenue requirement from \$726,325 to \$713,614.<sup>22</sup>

The Company indicated the primary contested issue remaining in the docket is Mr. Novak's recommendation to remove the pension expense. Ms. Story claimed Mr. Novak's recommendations are inconsistent with the stated intent of the ARM to allow Atmos the opportunity to achieve its approved rate of return and the plain language of the settlement agreement in Docket No. 14-00146, which allows Atmos to recover the actual contributions to the pension plan through the ARM.<sup>23</sup>

The Company claims Mr. Novak's characterization of Commission policy is flawed since the Commission decisions he referenced dealt with traditional ratemaking and not annual rate mechanisms. Mr. Novak's reliance upon previous Commission decisions concerned projections of contributions for setting rates in rate cases and not actual contributions. Further, Mr. Novak does not rely upon any cases in which a Variable Rate Premium ("VRP") was charged by the Pension Benefit Guaranty Corporation ("PBGC").<sup>24</sup>

Ms. Story testified that the Company made pension contributions at the level reflected in this filing to avoid a VRP required payment of \$330,000 in 2019 and a projected required payment of \$1,000,000 in 2020.<sup>25</sup> The VRP is a form of tax paid to PBGC to ensure that pension plan participants ultimately receive their benefits. Ms. Story testified that the VRP is not a new concept although recent regulatory changes have dramatically increased VRP obligations.<sup>26</sup> According to the Company, it is not unusual to have a fully funded pension plan and still have to pay VRP.

VRP obligations are calculated based on a value of vested benefits derived from interest rates published by the PBGC rather than a calculation for the purpose of determining mandatory

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<sup>22</sup> *Id.* at 4.

<sup>23</sup> *Id.* at 5.

<sup>24</sup> *Id.* at 6-9.

<sup>25</sup> *Id.* at 6.

<sup>26</sup> *Id.* at 6-7.

minimum contributions.<sup>27</sup> Even if the mandatory VRP is less than the amount the Company must contribute to the plan to avoid the VRP, customers would not benefit from payment of a VRP, but contributions increase the balance in the pension plan which will reduce future years' required contributions.<sup>28</sup>

Ms. Story noted that "forecasted" pension contributions for a forward-looking test year in a rate case is distinguishable from pension payments in the ARM docket that are actually paid by Atmos during the period. This is an important distinction, since the level of forecasted pension contributions approved in a rate case would be recovered in rates each year until the next rate case.<sup>29</sup> With an ARM, there is no incentive for a utility to overfund its pension plan, since pension expense is reviewed annually which ensures the Company is not over- or under- earning. Ms. Story asserted that if the Commission decided to disallow the Company's actual contributions in excess of the minimum required contribution, in order to match current pension expense with current customers, it would have to allow the Company a credit for the avoided VRP that would have been required.<sup>30</sup>

In conclusion, Ms. Story reiterated that Atmos made actual contributions to its pension plan to avoid having to pay VRP. Mr. Novak did not dispute the amount of contributions or challenge the prudence of having to pay VRP tax to the PBGC.<sup>31</sup> Ms. Story opined that disallowance would permanently disallow the recovery of prudently incurred pension expenses. For those reasons, Ms. Story requested that the Commission approve the ARM filing and the revised calculated revenue requirement of \$713,614.

#### **THE FILING OF JOINT LETTER OF THE PARTIES**

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<sup>27</sup> *Id.* at 7.

<sup>28</sup> *Id.* at 7-8.

<sup>29</sup> *Id.* at 9.

<sup>30</sup> *Id.* at 11.

<sup>31</sup> *Id.* at 12-13.

On April 15, 2020, in recognition of the COVID-19 public health emergency, Atmos and the Consumer Advocate indicated in a *Joint Letter* filed with the Commission that the parties were fully persuaded the pre-filed testimony in the docket was sufficient for the Commission to resolve the case without a live contested hearing. The parties further indicated they waived opening and closing statements and any right to cross-examination.

### **THE HEARING**

The hearing in this matter was noticed by the Commission on May 29, 2020 and held during the regularly scheduled Commission Conference on June 15, 2020. The hearing was held electronically via WebEx. Pursuant to Executive Order No. 16 issued by Governor Bill Lee on March 20, 2020, the Commission met electronically, without a physical quorum. Electronic access to the hearing was made available to the parties and the public. Appearances were made by the following:

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

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

The Parties waived cross-examination. Members of the public were given an opportunity to offer comments, but no one sought recognition to do so.

### **FINDINGS AND CONCLUSIONS**

Upon review of the evidentiary record in this matter, the panel found unanimously that Atmos Energy Corporation's petition for approval of its annual reconciliation filing, as revised for errors, including accompanying tariffs, is consistent with the previously approved methodologies, complies with the provisions of Tenn. Code Ann. § 65-5-103(d)(6), and is in the public interest. Atmos' revised exhibits calculating its annual reconciliation revenue requirement results in a revenue deficiency of \$713,614 for the attrition year ending May 31, 2020, consisting of (1) a revenue surplus of \$3,340,370 including carrying costs for the forward-looking test year ending

May 31, 2019 and (2) a revenue deficiency of \$4,053,984 from Commission Docket No. 18-00097. The revenue deficiency will increase residential rates approximately 2.79% as presented in the revised exhibits of the Company.

With respect to the previous pension decisions relied upon by the Consumer Advocate, there is an important distinction to note. The Commission rate case decisions referenced in this docket addressed “forecasted” pension contributions through such means as an actuarial report and were required contributions for a forward-looking test year. As with all other rate elements in a traditional rate case, the level of forecasted pension contributions approved in the attrition year would be reflected in rates *each* year until the next rate case, regardless of whether a pension contribution was made every year the rates were in effect. Thus, it is reasonable in rate cases to limit pension expense to the minimum contribution so as not to avoid setting inflated rates, which may not be reviewed for years. In contrast, the ARM of the Company recovers only those pension expenses that are incurred during the period and can be adjusted when no pension expense is paid. The fundamental nature of the ARM allows for such adjustments within reason.

Based on the facts presented in the record, the panel concluded that the cash pension contributions made by Atmos in September 2018 and September 2019 in this ARM filing were reasonable and should be included for recovery. The Commission’s decisions with respect to forecasted pension contributions in traditional rate cases remain undisturbed.

**IT IS THEREFORE ORDERED THAT:**

1. The *Petition of Atmos Energy Corporation for the Approval of 2019 ARM Reconciliation Filing* submitted by Atmos Energy Corporation filed on August 30, 2019 is approved as revised and corrected.

2. Residential rates shall be adjusted based on a revenue deficiency of \$713,614 for the attrition year ending May 31, 2020, consisting of a revenue surplus of \$3,340,370 including carrying costs for the forward-looking test year ending May 31, 2019 and a revenue deficiency of \$4,053,984 from Commission Docket No. 18-00097.

3. Atmos Energy Corporation shall file tariffs reflecting this decision.

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.

**Chair Robin L. Morrison, Vice Chair Kenneth C. Hill, and Commissioner John Hie concur.<sup>32</sup>**

**ATTEST:**



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**Earl R. Taylor, Executive Director**

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<sup>32</sup> As noted, Commissioner Robin L. Morrison voted in agreement with the decision when it was considered by the Commission. Nevertheless, because Commissioner Morrison's appointed term expired on June 30, 2020, she was unavailable for review of this written order.