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July 1, 2020

Tory Lawless  
Dockets Manager  
Tennessee Public Utility Commission  
502 Deaderick Street, Fourth Floor  
Nashville, TN 37242

**VIA E-MAIL AND U. S. MAIL**

[tpuc.docketroom@tn.gov](mailto:tpuc.docketroom@tn.gov)

RE: Comments of Atmos Energy Corporation  
Docket No. 20-00025

Dear Ms. Lawless:

Enclosed with this letter are the original and four copies of the following documents to be filed on behalf of Atmos Energy Corporation:

1. Comments of Atmos Energy Corporation with Exhibits 1 through 12;
2. Atmos Energy Corporation's Redlines to Proposed Rules.

Electronic copies of those documents have been provided by email.

Please let me know if you have any questions.

Sincerely,



Erik C. Lybeck

Enclosures

Rule 1220-04-01 *General Public Utilities Rules* is amended by adding the following language in its entirety:

Rule 1220-04-01-. 14 Definitions.

- (1) "Acquiring utility" means a public utility subject to the jurisdiction of the Commission.
- (2) "Acquisition ~~premium~~adjustment" means all or a portion of the purchase price ~~in excess of the net book value of the assets purchased from the selling utility~~that differs from the amount that is added to the acquiring utility's ratemaking rate base pursuant to Rule 1220-04-01.16(2).
- (3) "Acquired customers" means all customers of all classes served by the selling utility that will be served by the acquiring utility in the event the Commission approves the application for acquisition.
- (4) "Existing customers" means all customers of all classes served by the acquiring utility immediately prior to the Commission's hearing and consideration of the application for acquisition.
- ~~(4)~~(5) "Negotiated sale price" means the purchase price of utility assets that the acquiring utility and the selling utility agree upon through voluntary, arm's-length negotiations.
- ~~(5)~~(6) "Net ~~book~~ value" means the ~~original selling utility's assets' reproduction cost of the selling utility's assets~~new less ~~accumulated depreciation less unamortized contributions in aid of construction or the acquiring utility's average embedded cost~~.
- (7) "Ratemaking rate base" means the value of the selling utility's assets that ~~is the Commission determines should be~~ incorporated into the acquiring utility's rate base for ratemaking purposes.
- ~~(6)~~(8) "Reproduction cost new less depreciation" means an estimate of the cost to construct, at current prices, an exact duplicate or replica of the utility assets, without regard to the original sources of funding for those assets, using the same material, construction standards, design, layout, and quality without adjustment for deficiencies, and obsolescence of those assets, less depreciation.
- (9) "Selling utility" means any provider of gas, water, or waste-water public utilities services owned by a political subdivision in Tennessee that is being purchased, or whose assets are being purchased, by an acquiring utility as a result of a voluntary arm's-length transaction .
- ~~(7)~~(10) "Average embedded cost" means an acquiring utility's utility plant in service, less associated accumulated reserve as recorded in the Uniform System of Accounting for the type of utility plant being acquired from the selling utility divided by the acquiring utility's existing customers.

Authority : T.C.A. §§ 65-2-102 and 65-5-101 *et seq.*

Rule 1220-04-01-.15 Powers and Standard of Review.

- (1) The Commission retains its regulatory authority, jurisdiction, and discretion as provided under Title 65 including as follows:
  - (a) The Commission has the authority after public notice and hearing to approve an acquiring utility's purchase of a selling utility upon finding the acquisition to be in the public interest.
  - (b) The Commission shall maintain its existing statutory authority to set rates for the selling utility's system after it is purchased by the acquiring utility .
  - (c) The Commission shall have the discretion to classify the acquired system as a separate entity for ratemaking purposes if such classification is in the public interest.

Authority : T.C.A. §§ 65-2-102 and 65-5-101 *et seq.*

Rule 1220-04-01-.16 Ratemaking Rate Base.

- (1) The acquiring utility ~~shall incorporate the acquired assets of and~~ the selling utility ~~into the acquiring utility's rate base at the lesser of the purchase price or the net book value of the acquired assets.~~ may propose a negotiated sale price for the selling utility's assets that is in accordance with net value. The applicants will present evidence of how the net value is derived (selling utility's assets' reproduction cost new less depreciation or acquiring utility's average embedded cost) in the application for approval of the acquisition.
- ~~(2) The Commission shall consider the addition of an acquisition premium to the acquiring utility's rate base in accordance with Rule 1220-04-01-.17 below. The Commission shall establish the ratemaking rate base at the lesser of the negotiated sale price or the net value of the acquired assets as determined and in accordance with subdivision (1) of this subsection. To the extent the negotiated sale price does not exceed net value in accordance with subdivision (1) of this subsection and is approved by the Commission, then the negotiated sale price shall be recorded on the acquiring utility's books as though the assets are being recorded for the first time (i.e. as first dedicated to public utility service with no acquisition adjustment).~~
- ~~(3) If the acquiring utility has an approved alternative regulatory method to allow for recovery in lieu of a general rate case proceeding in accordance with Tenn. Code Ann. § 65-5-103(d) then the acquiring utility shall incorporate all ratemaking rate base and/or operational expenses associated with the acquired assets as appropriate under the acquiring utility's approved methodology. Otherwise, the ratemaking rate base and operational expenses shall be included in an acquiring utility's next rate filing adjusting rates in accordance with any section under Tenn. Code Ann. § 65-5-103.~~
- ~~(2)~~(4) If the acquiring utility and the selling utility propose a negotiated sale price that is not in accordance with subdivision (1) of this subsection, the Commission shall upon request by the acquiring utility consider the addition of an acquisition adjustment to the acquiring utility's rate base in accordance with Rule 1220-04-01-.17 below and in accordance with the Uniform System of Accounts.

~~(3)~~(5) The normal rules of depreciation shall apply to the acquiring utility's ratemaking rate base upon acquisition ~~unless otherwise expressly approved by the Commission.~~

Authority : T.C.A. §§ 65-2-102 and 65-5-101 *et seq.*

**Rule 1220-04-01-.17 Acquisition ~~Premium~~Adjustment.**

- (1) ~~If the acquiring utility and the selling utility propose a negotiated sale price that is not in accordance with net value, u~~Upon request by the acquiring utility, the Commission may ~~allow the acquiring utility to recover~~approve the addition or subtraction of an acquisition ~~premium adjustment to or from the acquiring utility's ratemaking rate base from acquired and/or existing customers~~if the Commission determines that such ~~recovery~~adjustment will not result in unjust or unreasonable rates and charges.
- (2) The Commission may consider the following factors when determining whether an acquisition ~~premium~~adjustment should be allowed:
  - (a) Cost savings resulting from consolidation of the selling utility's system into the acquiring utility's operations;
  - (b) Improvements in public utilities services resulting from the acquisition;
  - (c) Remediation of public health, safety, and welfare concerns of the selling utility's system resulting from the acquisition;
  - (d) Incentives for acquisition of a financially or operationally troubled system, which may be demonstrated by bankruptcy, receivership, financial distress, notice of violation, order of abatement, or inability to continue as a going concern of the selling utility; and
  - (e) Any other known and measurable benefits inuring to the acquired and/or existing customers resulting from the acquisition.
- (3) The acquiring utility shall have the burden of showing:
  - (a) The existence of one or more factors supporting the proposed acquisition ~~premium~~adjustment;
  - (b) The reasonable value of each factor supporting the proposed acquisition ~~premium~~adjustment; and
  - (c) that the proposed acquisition ~~premium~~adjustment will not result in unjust or unreasonable rates and charges.
- (4) The Commission shall allow the acquiring utility to amortize any acquisition ~~premium~~adjustment over a reasonable period of time which shall not exceed ~~the remaining useful life of the underlying assets acquired from the selling utility unless otherwise expressly approved by the Commission~~fifteen (15) years.

Authority: T.C.A. §§ 65-2-102 and 65-5-101 *et seq.*

**Rule 1220-04-01-.18 Post-Acquisition Capital Investments.**

- (1) Post-acquisition capital investments in property, plant, and equipment attributable to the selling utility's system or service area shall be reasonable, prudent, and used and useful in the provisioning of public utilities services.
- (2) Post-acquisition capital investments shall be depreciated ~~over the economically useful lives of the assets placed in service using the straight-line~~ in accordance with the acquiring utility's most recent depreciation ~~method unless another method is expressly~~ rates approved by the Commission.
- ~~(3) In cases when the costs of necessary post-acquisition capital investments are too great to be recovered from customers due to rate shock or rate affordability concerns, the Commission may allow the acquiring utility to defer all or a portion of such costs into a regulatory asset account for probable future recovery.~~
- ~~(4)~~(3) Upon request of the acquiring utility, the Commission shall allow cost recovery of post-acquisition capital investments through an alternative regulatory method pursuant to T.C.A. § 65-5-103(d) or through another alternative regulatory method that the Commission, after public notice and hearing, finds to be in the public interest. If the acquiring utility has an approved alternative regulatory method to allow for recovery in lieu of a general rate case proceeding in accordance with Tenn. Code Ann. § 65-5-103(d) then the acquiring utility shall incorporate all post-acquisition capital investments as appropriate under the acquiring utility's approved methodology.
- ~~(5)~~(4) The acquiring utility's return on post-acquisition capital investments shall be the rate of return approved by the Commission at the acquiring utility's most recent general rate ~~case unless otherwise expressly approved by the Commission.~~

Authority : T.C.A. §§ 65-2-102 and 65-5-101 *et seq.*

**Rule 1220-04-01-.19 Regulatory, Transaction, and Closing Costs.**

- (1) All regulatory, transaction, and closing costs related to the acquiring utility's purchase of the selling utility shall be reasonable and prudent.
- ~~(2) For purposes of setting post-acquisition rates and charges, the Commission may in the exercise of its lawful discretion allocate the regulatory, transaction, and closing costs between the acquiring utility's owners/shareholders and its customers in recognition of the relative benefits of the acquisition to each and in consideration of the affordability of post-acquisition rates.~~
- ~~(3)~~(2) The Commission shall allow reasonable and prudent regulatory, transaction, and closing costs recoverable from customers to be deferred into a regulatory asset account and included as a regulatory asset in the acquiring utility's rate base for future recovery by the acquiring utility unless such costs are to be recovered through another method approved by the Commission.

~~(4)~~(3) The Commission shall allow the acquiring utility to amortize any deferred regulatory, transaction, and closing costs included as a regulatory asset in the acquiring utility's rate base over a reasonable period of time which shall not exceed ~~the remaining useful life of the underlying assets acquired from the selling utility unless otherwise expressly approved by the Commission~~ fifteen (15) years.

~~(5)~~(4) Regulatory, transaction, and closing costs related to an acquisition application that is withdrawn by the acquiring utility or denied by the Commission shall not be recoverable from the acquiring utility's existing customers.

Authority : T.C.A. §§ 65-2-102 and 65-5-101 *et seq.*

#### **Rule 1220-04-01-.20 Post-Acquisition Rates and Charges.**

~~(1) The Commission shall have the authority, after public notice and hearing, to fix post-acquisition rates and charges for acquired customers and existing customers. Unless the applicants propose otherwise and subject to subsection (2) below, the rates and charges for acquired customers shall be fixed at the rates and charges for the acquiring utility's existing customers.~~

~~(2) Post-acquisition rates and charges shall be just and reasonable.~~

~~(3) In fixing post-acquisition rates and charges, the Commission may in the exercise of its lawful discretion allocate the recovery of costs between the acquired customers and existing customers on a rational basis that may, among other things, consider the relative benefits, costs, and intrinsic value of service.~~

~~(4) Costs that may be rationally allocated between acquired and existing customers for purposes of fixing post-acquisition rates and charges include, but are not confined to the following:~~

~~(a) — Cost of service;~~

~~(b) — Return on post-acquisition capital investments;~~

~~(c) — Acquisition premium; and~~

~~(d) — Regulatory, transaction, and closing costs related to the acquisition.~~

~~(5)~~2 The Commission may in the exercise of its lawful discretion require the phase in of post-acquisition rates and charges for the acquired customers over a reasonable period of time in circumstances when post-acquisition rates and charges are substantially higher than pre-acquisition rates and charges or in consideration of affordability concerns.

Authority : T.C.A. §§ 65-2-102 and 65-5-101 *et seq.*

#### **Rule 1220-04-01-.21 Application for Acquisition and Filing Requirements.**

(1) The Commission shall approve or deny an application for acquisition within 120 days of the filing of a complete application by the acquiring utility .

- (2) An application for acquisition shall, at a minimum, contain all the following information prior to such application being deemed complete unless ~~otherwise determined by the Commission~~  
provision is waived:
- (a) A fully executed acquisition agreement, including all attachments, reflecting the terms and provisions of the acquisition;
  - (b) Financial statements, including a balance sheet and income statement of the selling utility's three most recently completed fiscal years or reporting periods at the time the application for acquisition is filed;
  - (c) All tariffs, schedules, or lists detailing the rates, charges, and terms of service in effect for the selling utility at the time the application for acquisition is filed;
  - (d) A schedule detailing the number of customers by customer class served by the selling utility at the time the application for acquisition is filed;
  - (e) A statement and, if available, maps that comprehensively describe the service area of the selling utility;
  - (f) A forecasted income statement detailing the projected operating revenues, expenses, taxes, and net income attributable to the selling utility's operations for the twelve-month period following the estimated closing date of the acquisition transaction ;
  - (g) ~~Anticipated c~~Capital budgets based on due diligence detailing by project all projected post-acquisition capital investments in property, plant, and equipment attributable to the selling utility's system or service area for the three-year period following the estimated closing date of the acquisition transaction;
  - (h) A schedule detailing the computation of regulatory, transaction, and closing costs related to the proposed acquisition;
  - (i) A schedule detailing the computation of the pro-forma accounting entries, including if applicable any proposed acquisition ~~premium~~adjustment;
  - (j) A statement discussing the factor(s) supporting any proposed acquisition ~~premium~~adjustment, including the particular benefits or cost savings, if any, that inure to the benefit of
    1. Acquired customers and/or
    2. Existing customers;
  - ~~(k) A statement discussing the methodology and rate design used to recover any proposed~~
    - ~~1. Acquisition premium and/or~~
    - ~~2. Costs of post-acquisition capital investments and/or~~

~~3.—Regulatory, transaction, and closing costs from—~~

~~4.—Acquired customers and/or~~

~~5.—Existing customers;~~

(k) A schedule detailing the computation of the net ~~book~~-value of the assets being acquired from the selling utility ~~as determined by the books and records of the selling utility or, if such books and records are unavailable or insufficient, by a study of the selling utility's plant in service performed by a consultant approved by the Commission;~~

(l) A schedule detailing the computation of the acquiring utility's post-acquisition ratemaking rate base;

(m) A schedule detailing the computation of post-acquisition rates and charges proposed for acquired customers by customer class;

(n) A schedule comparing the pre-acquisition and proposed post-acquisition rates and charges for acquired customers by customer class;

(o) A schedule detailing the computation of post-acquisition rates and charges proposed for existing customers by customer class; and

(p) A schedule comparing the pre-acquisition and proposed post-acquisition rates and charges for existing customers by customer class.

(3) The acquiring utility shall possess a Certificate of Public Convenience and Necessity (CCN) or demonstrate its eligibility for a CCN to operate the selling utility's system in accordance with applicable statutory law and Commission rules and regulations.

(4) The acquiring utility shall file a proposed tariff incorporating the acquired customers into the acquiring utility's rates, charges, and terms of provisioning public utilities services.

(5) The acquiring utility shall file a copy of a notice published in the area where the selling utility operates informing the public of the acquiring utility's proposed acquisition of the selling utility, the terms of the acquisition, and the date(s) and location(s) of the public meeting(s) scheduled to be held on the acquisition .

(6) The acquiring utility shall furnish any other pertinent information ~~as determined and in the discovery phase of the proceeding as~~ requested by ~~the~~ Commission Staff or Intervenors.

(7) The Commission shall approve the acquiring utility's acquisition of the selling utility if, after public notice and hearing, the Commission finds the acquisition to be in the public interest.

*Authority:* T.C.A. §§ 65-2-102 and 65-5-101 *et seq.*