

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

IN RE:)	
)	
ATMOS ENERGY CORPORATION)	
FOR APPROVAL OF ITS 2021 ANNUAL)	DOCKET NO. 21-00019
RATE REVIEW FILING PURSUANT)	
TO TENN. CODE ANN. § 65-5-103(d)(6))	
)	

**CONSUMER ADVOCATE’S RESPONSES TO
ATMOS’ FIRST SET OF DISCOVERY REQUESTS**

To: Erik Lybeck, Esq.
Neal & Harwell, PLC
1201 Demonbreun Street, Suite 1000
Nashville, TN 37203
Email: elybeck@nealharwell.com

Herbert H. Slatery III, Attorney General and Reporter for the State of Tennessee, by and through the Consumer Advocate Unit in the Financial Division of the Office of the Tennessee Attorney General (“Consumer Advocate”), pursuant to Rules 26, 33, and 34 of the Tennessee Rules of Civil Procedure, Tennessee Public Utility Commission (TPUC or The “Commission”) Rule 1220-1-2-.11, and the Agreed Procedural Schedule entered by the Hearing Officer in this Docket, hereby submits its responses to the *First Set of Discovery Request of Atmos Energy Corporation* (“Atmos” or “Company”) filed on April 6, 2021.

General Objections

All of the General Objections made herein are applicable to and are hereby incorporated into each and every response herein, and each response herein is made subject to and without waiver of these General Objections.

A. The Consumer Advocate objects to each of the Company’s requests on the grounds

that each is overly broad, unduly burdensome, and oppressive.

- B. The Consumer Advocate objects to the Company's discovery requests to the extent that they purport to impose the obligations upon the Consumer Advocate beyond those contemplated by the Tennessee Rules of Civil Procedure, TPUC Rules, and Tennessee law.
- C. The Consumer Advocate objects to each of the Company's requests to the extent that each purports to call for information and/or documents prepared in anticipation of litigation, and/or information and/or documents protected by the attorney-client privilege, the work product doctrine, the common-interest doctrine, or any other applicable protection or privilege.
- D. The Consumer Advocate objects to each of the Company's requests to the extent that they are not applicable in the context of a proceeding before the TPUC, cite an incorrect legal conclusion, or mischaracterize or improperly summarize statements made by the Consumer Advocate's expert witnesses in their pre-filed direct testimonies.
- E. By providing the objections contained herein, the Consumer Advocate does not waive or intend to waive, but rather, intends to preserve, all objections with regard to competence, relevance, materiality, and admissibility of the discovery information or documents in any subsequent proceeding on the related subject matter. Moreover, the Consumer Advocate intends by this set of responses to preserve all objections to vagueness, ambiguity, and undue burden in connection with requests to produce documents, including those that are not in the Consumer Advocate's possession, custody, or control.
- F. The responses made herein are made to the best of Consumer Advocate's present knowledge after a reasonably diligent search for responsive information. The Consumer Advocate will supplement its responses in line with the requirements of the Tennessee Rules of Civil Procedure as well as TPUC Rules and expressly reserves its right to supplement or amend its answers, if and as appropriate, including with respect to objections that may arise at a later time than this filing.

Without waiving these General Objections as they apply to each individual request, the Consumer Advocate presents the following responses:

CONSUMER ADVOCATE'S RESPONSES

1-01.

- a. **Referring to your statement that New Matters can reduce the revenue requirement, could a New Matter also increase the revenue requirement? (Reference Page 7, Q15 & A15).**

- b. Could a New Matter have no impact on the revenue requirement? (Reference Page 7, Q15 & A15).**

RESPONSE:

- a. Hypothetically a New Matter could increase the revenue requirement, though we believe those situations would be rare.
- b. Yes.

- 1-02. Referring to your statement that the COVID-19 Pandemic constituted a “New Matter” would the subsidence of the COVID-19 Pandemic also constitute a “New Matter?” (Reference Pages 7-8, Q16 & A16).**

RESPONSE:

No.

- 1-03. Referring to your statement that the gain at issue is so low as to not be material enough to warrant extending the recovery period beyond one year, at what level is a gain significant enough to extend the recovery period beyond one year? (Reference Page 12, Q32 & A32).**

RESPONSE:

This is a matter of judgement, but gains in excess of \$1 million may warrant extending recovery in excess of one year.

- 1-04. Regarding the sale of an asset, in your testimony, you argue that the gain from the sale of the asset should be assigned to the ratepayer. Should any losses from sales of assets similarly be assigned to the ratepayers? Please explain your answer. (Reference Page 13, Q34 & A34)**

RESPONSE:

The determination of whether the loss from the sale of a utility asset should be borne by ratepayers or shareholders should depend on the unique factors of the particular transaction. One issue that should be considered is whether the Company’s actions or inactions led to a diminished asset value. Under the existing utility accounting procedures, the early retirement of mass assets

prior to the end of their book life results in a cost that is borne by ratepayers. This is an example of a loss borne by ratepayers.

1-05. If the Company were to incur expenses in September 2021 and pay those expenses in October 2021, in which ARM filing should it reflect those expenses? (Reference Page 19, Q45 & A45).

RESPONSE:

Accrued expenses should be recorded within the period in which they are incurred. Accruals recorded at the end of a fiscal period (or in the ratemaking process, the end of the test period which happens to match the Company's fiscal period) should be reversed the following month and any true-up between estimated costs and actual payments should be booked in October.

1-06. If the Company were to incur expenses in September 2021 and pay those expenses in January 2022, in which ARM filing should it reflect those expenses? (Reference Page 20, Q47 & A47).

RESPONSE:

See Response to Atmos DR 1-05.

1-07.

- a. Your testimony describes a 501(c)(6) organization as a "charitable organization." Please admit or deny that organizations eligible to be 501(c)(6) organizations are "Business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual." If your answer is anything but an unqualified, admission, please explain your answer. (Reference Page 20, Q52 & A52).**
- b. Please admit or deny that charitable organizations are classified as 501(c)(3). If your answer is anything but an unqualified, admission, please explain your answer. (Reference Page 20, Q52 & A52).**

RESPONSE:

- a. The Consumer Advocate admits that “[t]rade associations that meet the requirements of Internal Revenue Code section 501(c)(6) are exempt from federal income tax as *business leagues*. The same provision extends exemption to chambers of commerce, real estate boards, boards of trade, and professional football leagues.”¹ In its testimony, the Consumer Advocate used the terminology “charitable organization” generically to refer to nonprofits under Internal Revenue Code section 501, which aligns with the language of the Commission’s Order in TRA Docket No. 14-00121.² In this Order, the Commission held:

“In addition, the panel voted unanimously to *disallow the Chamber of Commerce and STEM donations* totaling \$45,000. The panel found that while these donations may have indirectly contributed to economic growth in the Company’s service territory, these donations are not the type of “expansion of infrastructure” that is contemplated by the statute. Further, disallowance of these donations is consistent with the Authority’s *long-standing policy of disallowing charitable contributions and donations for ratemaking purposes as they do not satisfy the guiding principle of necessity and reasonableness, nor is it apparent that they provide a clear benefit to ratepayers.*” (emphasis added)³

The Commission’s disallowance of the donations to the Chamber of Commerce in Docket No. 14-00121 was not rooted in the technicalities of which subsection of IRC § 501 the particular nonprofit relied upon for tax-exempt status. Instead, the Commission recognized that contributions and donations should not be allowed unless they are necessary, reasonable, and clearly provide a benefit to ratepayers. This “guiding principle” applies squarely here.

- b. The Consumer Advocate admits that the term “charitable organizations” is commonly used for organizations described in section 501(c)(3).⁴ For such charitable organizations, “none of its earnings may inure to any private shareholder or individual.”⁵

1-08. Under your belief that it is in the public interest to revisit settled issues to continue to evaluate the reasonableness and accuracy of ARM calculations, what is the significance of whether something is a “New Matter” or not? (Page 24, Q62 & A62).

RESPONSE:

¹ Life Cycle of a Business League (Trade Association) (Page Last Reviewed or Updated: 06-May-2020), www.irs.gov/charities-non-profits/other-non-profits/life-cycle-of-a-business-league-trade-association.

² *Order Granting, In Part, and Denying, In Part, Petition*, pp. 14-15, TRA Docket No. 14-00121 (February 1, 2016).

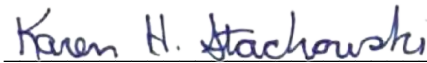
³ *Id.*

⁴ Exemption Requirements - 501(c)(3) Organizations (Page Last Reviewed or Updated: 04-Mar-2021), www.irs.gov/charities-non-profits/charitable-organizations/exemption-requirements-501c3-organizations.

⁵ *Id.*

The compressed timeline of the ARM mechanism does not allow for a comprehensive review of all aspects of utilities financial results. One purpose of the New Matter section is to alleviate the burden on intervenors from conducting the type of broad review necessary to reveal whether there are any unique transactions embedded within the test period financial results of the utility. One benefit of an ARM mechanism is increased transparency of the financial results of the utility. Adherence to the intent of the New Matters clause is one component of the transparency benefit which supported the adoption of the ARM mechanism. Additionally, the New Matters clause encourages collaboration and cooperation by requiring attempts to resolve the New Matter by the Company, TPUC Staff, and the Consumer Advocate prior to seeking a decision by the Commission.

RESPECTFULLY SUBMITTED,



KAREN H. STACHOWSKI (BPR #019607)

Assistant Attorney General

VANCE L. BROEMEL (BPR #011421)

Senior Assistant Attorney General

Office of the Tennessee Attorney General

Financial Division, Consumer Advocate Unit

P.O. Box 20207

Nashville, Tennessee 37202-0207

Phone: (615) 741-1671

Facsimile: (615) 532-2910

Karen.Stachowski@ag.tn.gov

Vance.Broemel@ag.tn.gov

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via U.S. Mail or electronic mail upon:

Erik Lybeck, Esq.
Neal & Harwell, PLC
1201 Demonbreun Street, Suite 1000
Nashville, TN 37203
Email: elybeck@nealharwell.com

This the 9th day of April, 2021.



KAREN H. STACHOWSKI

Assistant Attorney General