

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

September 14, 2022

IN RE:	)	
	)	
PETITION OF ATMOS ENERGY CORPORATION	)	DOCKET NO.
FOR APPROVAL OF ITS 2022 ANNUAL RATE	)	22-00010
REVIEW FILING PURSUANT TO TENN. CODE	)	
ANN. § 65-5-103(d)(6)	)	

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ORDER APPROVING 2022 ANNUAL RATE REVIEW FILING  
AS REVISED IN REBUTTAL TESTIMONY

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This matter came before Chairman Kenneth C. Hill, Vice Chairman Herbert H. Hilliard, Commissioner Robin L. Morrison, Commissioner John Hie, and Commissioner David F. Jones,<sup>1</sup> 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 June 20, 2022, for consideration of the *Petition* (“*Petition*”) filed by Atmos Energy Corporation (“Atmos,” “Atmos Energy,” or the “Company”) as revised by the Company’s pre-filed rebuttal testimony filed on April 18, 2022.

**BACKGROUND**

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 (“Consumer Advocate”) implementing an Annual Rate

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<sup>1</sup> Commissioner Jones was not present and did not vote in this matter.

Review Mechanism (“ARRM”) pursuant to Tenn. Code Ann. § 65-5-103(d)(6) for Atmos.<sup>2</sup> This mechanism allows for annual rate reviews by the Commission in lieu of a general rate case.<sup>3</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 ARRM 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>4</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>5</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 ARRM 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>6</sup> This filing was required to reconcile actual amounts to the Company’s authorized return on equity for the forward-looking test year that was immediately completed; inclusive of interest, at the overall cost of capital compounded for two years.<sup>7</sup> The resulting rates would be effective on bills rendered on or after June 1<sup>st</sup>.<sup>8</sup>

Docket No. 18-00112 was opened to explore modifications of the Company’s ARRM 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

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<sup>2</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>3</sup> Tenn. Code Ann. § 65-5-103(d)(6).

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

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

<sup>6</sup> *Id.* at 5.

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

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

approved the settlement and found that the terms and procedures of the modified ARRM 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>9</sup> In addition, the Commission found that the modified ARRM 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>10</sup> The Company's previous ARRM filing was approved in Docket No. 21-00019.<sup>11</sup>

### **THE PETITION**

Atmos submitted the *Petition*, including the Pre-Filed Direct Testimony of William D. Matthews, Manager of Rates and Regulatory Affairs, on February 1, 2022. Mr. Matthews presented the Company's calculations for the Historic Test Period ending September 30, 2021, and the resulting revenue requirement needed in order for the Company to earn its authorized return on equity ("ROE") for the Historic Test Period ending September 30, 2021.<sup>12</sup>

Mr. Matthews attested that the Revenue Requirement Models (Schedules 1-11) were made in accordance with approved methodologies and that the Company's total cost of service for the historic test period ended September 30, 2021, is \$146,363,004.<sup>13</sup> The Company's revenue, using its previously approved rates and actual historical normalized billing determinants, is \$141,610,603, resulting in a revenue deficiency of \$4,752,401 for the historic period ending

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

<sup>11</sup> *In re: Petition of Atmos Energy Corporation for Approval of Its 2021 Annual Rate Review Filing Pursuant to Tenn. Code Ann. 65-5-103(d)(6)*, Docket No. 21-00019, *Order Approving Stipulation and Settlement Agreement* (July 19, 2021).

<sup>12</sup> William D. Matthews, Pre-Filed Direct Testimony, pp. 3-4 (February 1, 2022).

<sup>13</sup> *Id.*

September 30, 2021.<sup>14</sup>

After comparing the actual cost of service, less gas cost, from the historic period with the actual gross margin from the same period, the Company claimed a revenue deficiency of \$3,662,160. Mr. Matthews asserted this amount includes the net revenue deficiency of \$713,614, as approved by the Commission in TPUC Docket No. 19-00076, and the expense credit of \$6,112,798 for the amortization of excess deferred income tax, as determined and in accordance with a settlement approved by the Commission in Docket No. 18-00034.<sup>15</sup>

Mr. Matthews confirmed there are no adjustments due as a result of the Coronavirus and that the ARRM remains in the public interest as determined by the Commission in Docket No. 18-00112.<sup>16</sup> Mr. Matthews affirmed the methodologies utilized in this filing are consistent with those approved by this Commission and requested approval of the Company's 2022 ARM filing and the calculated revenue requirement.<sup>17</sup>

#### **REVISIONS TO THE *PETITION***

On March 1, 2022, Atmos revised its Revenue Deficiency to \$2,269,523 in response to the first data request of the Consumer Advocate.<sup>18</sup> The adjustment represented a \$1,392,637 reduction from the initially filed revenue deficiency that included removal of Winter Storm Uri's impact from state-net operating loss, removal of Supplemental Executive Retirement Plan ("SERP") and Supplemental Executive Benefit Plan ("SEBP") items from Accumulated Deferred Income Taxes ("ADIT"), exclusion of interest and Removal Work in Progress ("RWIP") interest from average

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

<sup>15</sup> *Id.* at 4; *See In re: Response of Atmos Energy Corporation to the Commission's Order Opening an Investigation and Requiring Deferred Accounting*, Docket No. 18-00034, *Order Approving November 2020 Stipulation and Settlement Agreement* (April 22, 2021).

<sup>16</sup> *Id.* at 6.

<sup>17</sup> *Id.* at 15.

<sup>18</sup> Atmos Response to the Consumer Advocate Data Request No. 1-09 (March 1, 2022).

regulatory assets, adjustment to short-term debt rate, removal of legal fees not related to Tennessee operations, and removal of capitalized SERP costs.

#### **POSITION OF THE CONSUMER ADVOCATE**

On behalf of the Consumer Advocate, Mr. David N. Dittmore submitted pre-filed direct testimony in support of a revenue requirement of \$1,059,620 based on the Company's updated revenue requirement reflecting three adjustments to the Company's revised requirement, which included an adjustment to Rate Base, Operating Expenses, and a modification to the Capital Structure.<sup>19</sup> In his first adjustment, Mr. Dittmore removed \$4,300,525 from the cash working capital component of the rate base. He asserted the Company included non-cash items such as depreciation and return on equity in the lead/lag computations. Mr. Dittmore noted that while Atmos calculated cash working capital consistent with the methodology used in prior dockets, it is in the public interest to continue to evaluate the reasonableness and accuracy of the ARRM calculations. Furthermore, Mr. Dittmore noted that the Kentucky Public Service Commission has addressed this issue and ordered the removal of non-cash items from the lead/lag study.<sup>20</sup>

Mr. Dittmore's second adjustment removed \$8,620 from Operating and Maintenance ("O&M") Expenses, specifically the SERP administrative fees. He asserted the Company identified and acknowledged this amount should be removed from the revenue requirement in its response to the Data Request No. 2-18.<sup>21</sup> Mr. Dittmore's third and final adjustment proposed to reduce the overall cost of capital from 7.46% to 7.43% for the historic period. According to Mr. Dittmore, the Company included short-term debt at a cost rate associated with its balance of

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<sup>19</sup> David N. Dittmore, Pre-Filed Direct Testimony, p. 2 (April 4, 2022).

<sup>20</sup> *Id.* at 8-10.

<sup>21</sup> *Id.*

69.89%, which is unreasonable. Therefore, the Consumer Advocate sought to remove this component from the capital structure.<sup>22</sup>

Based upon the testimony of the Company, Mr. Dittmore did not find sufficient justification to include 69.89% cost rate to the corporate balance of Short-Term debt. According to Mr. Dittmore, the percentage of short-term debt included in the historic period capital structure is very small at .05%, yet the adjustment is material when applied to the 69.89% cost rate. For this reason, Mr. Dittmore eliminated the portion of short-term debt and reallocated this level of financing between equity and long-term debt while keeping these two components in the same proportion. Based upon this elimination and re-allocation, the cost of capital is 7.44% in the historic period and 7.49% for the rate reset period.<sup>23</sup>

Mr. Dittmore set forth his proposed rates in Schedule 11-3 and asserted he used the same allocation of total revenue by class and cost assignment between the customer charge and commodity rates used by Atmos.<sup>24</sup>

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

In pre-filed rebuttal testimony filed on April 18, 2022, Mr. Matthews submitted updated schedules and workpapers supporting a revenue requirement of \$2,465,759. The revised revenue requirement includes the following adjustments to the original filing, which total \$1,392,637:

Description	Revenue Impact
Adjust State-Net Operating Loss to remove Winter Storm Uri Impact	\$(1,022,001)
Remove SEBP/SERP items from ADIT	(169,111)
Exclude interest and RWIP Interest from avg. Reg. Asset	(69,542)
Short-Term Debt Rate Adjusted	(0)
Remove legal fees not related to TN	(1,677)
Remove capitalized SERP costs	(130,306)
<b>TOTAL</b>	<b>\$(1,392,637)</b>

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<sup>22</sup> *Id.* at 11.

<sup>23</sup> *Id.* at 11-13.

<sup>24</sup> *Id.* at 13.

Mr. Matthews asserted the Company and the Consumer Advocate agree with these adjustments and their revenue impact except for the Uri impact.<sup>25</sup> In addition, Atmos removed administration fees related to SERP with a revenue impact of \$18,388. Along with the Federal Benefit of State Net Operating Loss (“NOL”) of \$214,624, the adjustments resulted in the revised revenue request of \$2,465,759 (\$3,662,160 original amount requested; less \$1,392,637; less \$18,388; plus \$214,624).<sup>26</sup> Mr. Matthews testified that the Company’s adjustments do not include the recommended adjustments to cash working capital and capital structure proposed by the Consumer Advocate.<sup>27</sup>

Mr. Joe T. Christian submitted pre-filed rebuttal testimony regarding the inclusion of depreciation and ROE in the computation of net expense lead days in the lead/lag analysis. Mr. Christian echoed the Company’s response to Data Request No. 1-30, asserting the methodology utilized in the lead/lag is consistent with the agreed methodology used in Commission Docket Nos. 14-00146 and 18-00112. Therefore, Mr. Christian concluded there is no basis or justification to abandon this methodology.<sup>28</sup>

According to Mr. Christian, the payment for an asset precedes the receipt of service from the asset and the recording of depreciation expense. While this lag in payment and the recording of depreciation expense is recognized by including the net plant in service in the rate base, it does not account for depreciation’s entire lag. He asserted that depreciation expense should be included in the lead/lag study with a zero expense lag to recognize the subsequent revenue lag on recovering cash related to investment in plant assets.<sup>29</sup> Simply put, according to Mr. Christian, the recording

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<sup>25</sup> William D. Matthews, Pre-Filed Rebuttal Testimony, pp. 3-5 (April 18, 2022).

<sup>26</sup> *Id.* at 5.

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

<sup>28</sup> Joe T. Christian, Pre-Filed Rebuttal Testimony, pp. 3, 6-7 (April 18, 2022).

<sup>29</sup> *Id.* at 7-8.

of depreciation expense removes the asset from the rate base with no cash being received to pay for the services provided by the asset. Therefore, the lead/lag study must include the revenue lag in cash working capital.<sup>30</sup> Mr. Christian testified the inclusion of depreciation expense in the lead/lag study recognizes that investor funding has occurred and the cumulative depreciation expense is a measure of the total consumption of capital investment to date.<sup>31</sup>

Mr. Christian disagreed with the Consumer Advocate's application of "The Process of Ratemaking Vol. II" with respect to a lead/lag study. Mr. Christian asserted that there is an impact to the Company's cash working capital between the day a bill is rendered and payment is received from the customer. The bill to the customer includes the recovery of depreciation expense, and for this reason inclusion in the revenue lag portion of the lead/lag study is appropriate.<sup>32</sup> Mr. Christian disagreed with the Consumer Advocate's reference to Docket No. 18-00017, a litigated rate case and the Columbia case in Kentucky, which was resolved by a settlement. Mr. Christian opined that it is not appropriate for the Consumer Advocate to cherry-pick issues from other cases when the methodology of the Company's ARRM is based on methodologies approved in a prior rate case.<sup>33</sup>

With respect to the Consumer Advocate's Short-Term Debt adjustment, Atmos argued that the market for long-term debt has proven more generous for ratepayers and the Company, resulting in short-term debt having less of an impact. Mr. Christian noted that the Consumer Advocate's response to a data request demonstrates that it is not recommended to permanently exclude short-term debt from the capital structure nor eliminate short-term debt when the cost of short-term debt

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

<sup>31</sup> *Id.* at 8.

<sup>32</sup> *Id.* at 9.

<sup>33</sup> *Id.* at 9-10.



exceeds the cost of long-term debt. Instead, Mr. Christian asserted the issue is whether a 69% cost rate for short-term debt is a reasonable cost to be recovered by customers.<sup>34</sup>

Mr. Christian asserted the recommendation of the Consumer Advocate to exclude the Company's actual cost of short-term debt ignores the changes to the Company's cost of long-term debt and the overall cost of capital over the past three ARRM filings which have benefited customers.<sup>35</sup> The use of short-term debt falls within the overall consolidated capital structure of Atmos Energy Corporation. Additionally, the capital markets have experienced historically low coupon rates for long-term debt which the Company took advantage of with frequent financing of long-term debt while the conditions were favorable. Additionally, the Company entered into forward starting interest rate swaps to effectively fix the treasury yield component associated with \$1.850 billion of planned issuances over the next five years.<sup>36</sup>

Mr. Christian testified that in response to the discovery of the Consumer Advocate, the Company found that it had not properly removed the impact of winter storm Uri on the TN State-Net Operating Loss (NOL) and therefore revised its requested amount of state NOL from \$11.5 million to \$4.9 million as reflected in Mr. Matthews' Exhibit WDM-R-1. Further, Atmos discovered it had not correctly accounted for the interplay between Federal NOL and State NOL. Therefore, after proper accounting (as part of the approved methodology), the State NOL should have been adjusted up 21%, thereby resulting in a \$6.6 million deferred tax asset rather than the revised \$4.9 million deferred tax asset, also demonstrated on Exhibit WDM-R-1.<sup>37</sup>

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<sup>34</sup> *Id.* at 13-14.

<sup>35</sup> *Id.* at 14.

<sup>36</sup> *Id.* at 14-15.

<sup>37</sup> *Id.* at 17-18.

## **PRE-HEARING MOTION**

On April 29, 2022, the Consumer Advocate and the Company submitted the *Joint Motion to Limit Scope of Cross-Examination* (“*Motion*”) to simplify preparations for the hearing. In the *Motion*, the parties reiterated they were in agreement regarding the Company’s revised calculations with the exception of three issues: (1) whether to include depreciation and a return on equity, non-cash items, in a lead-lag study for use in including a cash working capital allowance in rate base; (2) whether the Company’s short-term debt cost of 69.89% is reasonable, and (3) whether the Company properly excluded its State Net Operating Loss associated with Winter Storm Uri net of the Federal Benefit. As such, the parties sought to limit the scope of cross-examination to those issues. The parties expressed they did not seek to limit the scope of any questions by the hearing panel or Commission Staff.<sup>38</sup>

The *Motion* was subsequently granted. In granting the *Motion*, the Hearing Officer also concluded that the substantial changes made to the Company’s *Petition* were sufficient to warrant treating the Company’s revisions as a new petition for purposes of calculating the statutory 120-day deadline required for adjudication of annual rate review petitions.<sup>39</sup>

## **THE HEARING ON THE MERITS**

The hearing on the merits was noticed by the Commission on April 29, 2022 and held during the regularly scheduled Commission Conference on May 9, 2022. Appearances were made by the following:

Atmos Energy Corporation. – Erik Lybeck Esq., Neal & Harwell, 1201 Demonbreun Street, Suite 1000 Nashville, Tennessee 37203.

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<sup>38</sup> *Joint Motion to Limit Scope of Cross-Examination*, p. 2 (April 29, 2022).

<sup>39</sup> *Order Granting Motion to Limit Cross-Examination, Acknowledging Filing As New Petition and Setting New Statutory Deadline*, pp. 2-3 (May 31, 2022).

Consumer Advocate Unit – Vance Broemel, Esq. and Karen Stachowski, Esq.  
Financial Division of the Office of the Tennessee Attorney General and Reporter,  
Post Office Box 20207, Nashville, Tennessee, 37219.

The Hearing Panel heard testimony by Mr. William D. Matthews and Mr. Joe T. Christian, on behalf of the Company, and Mr. David N. Dittmore on behalf of the Consumer Advocate. Members of the public were given an opportunity to offer comments, but no one sought recognition to do so. At the conclusion of the hearing, the Hearing Panel indicated it would deliberate at a future date. Subsequently, deliberations took place at the Commission's Conference on June 20, 2022.

### **FINDINGS & CONCLUSIONS**

After reviewing the evidentiary record, the Hearing Panel found unanimously that Atmos Energy's Annual Rate Review Mechanism methodologies approved in Docket Nos. 14-00146 and 18-00112 should not be modified at this time. In so finding, the Hearing Panel noted that the Commission is not precluded from ordering modifications or parties to future ARRM proceedings from recommending proposed modifications to previously approved ARRM methodologies or procedures to ensure the mechanism remains in the public interest.

The Hearing Panel further found that the calculations contained in Atmos Energy's *Petition*, as revised in the Company's pre-filed rebuttal testimony, to be consistent with the methodologies approved in Docket No. 14-00146 and subsequent Commission orders. The Hearing Panel further found that the final revised revenue requirement deficiency contained in rebuttal testimony of \$2,465,759 for the Historic Test Year ended September 30, 2021 to be reasonable. The Hearing Panel found that the rate design attached to the Rebuttal Testimony of Company Witness William D. Matthews to be reasonable and consistent with the methodologies set forth in Atmos Energy's approved tariffs.

Finally, the Hearing Panel found that the ARRM continues to be in the public interest and allows Atmos Energy to timely recover its investment and operating expenses, while continuing to provide safe and reliable service to its customers. The Hearing Panel voted unanimously to approve the Atmos Energy's 2022 Annual Rate Review filing as revised in Rebuttal Testimony.

**IT IS THEREFORE ORDERED THAT:**

1. The *Petition* filed by Atmos Energy Corporation as revised by Rebuttal Testimony on April 18, 2022, is APPROVED.
2. Atmos Energy Corporation shall file tariffs reflecting this decision.
3. Any party aggrieved by the Commission's decision in this matter may file a Petition for Reconsideration with the Commission within fifteen (15) days from the date of this Order.
4. Any party 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 (60) days from the date of this Order.

**FOR THE TENNESSEE PUBLIC UTILITY COMMISSION:**

**Chairman Kenneth C. Hill  
Vice Chairman Herbert H. Hilliard  
Commissioner Robin L. Morrison, and  
Commissioner John Hie, concurring.**

None dissenting.

**ATTEST:**



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**Earl R. Taylor, Executive Director**