

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

June 22, 2023

IN RE:)	
)	
PETITION OF ATMOS ENERGY)	DOCKET NO.
CORPORATION FOR APPROVAL OF ITS 2023)	23-00008
ANNUAL RATE REVIEW FILING PURSUANT)	
TO TENN. CODE ANN. § 65-5-103(d)(6))	

**ORDER APPROVING 2023 ANNUAL RATE REVIEW FILING
AS REVISED IN REBUTTAL TESTIMONY**

This matter came before Vice Chairman David F. Jones, Commissioner Robin L. Morrison, Commissioner Kenneth C. Hill,¹ Commissioner David Crowell, 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 May 8, 2023, for consideration of the *Stipulation and Settlement Agreement* (“*Settlement Agreement*”) filed by Atmos Energy Corporation (“Atmos,” “Atmos Energy,” or the “Company”) and the Consumer Advocate Division within the Financial Division of the Tennessee Attorney General and Reporter (“Consumer Advocate”) on May 1, 2023.

BACKGROUND

In Docket No. 14-00146, the Commission approved a settlement agreement between Atmos and the Consumer Advocate implementing an Annual Rate Review Mechanism (“ARRM”) pursuant

¹ Commissioner Kenneth C. Hill was absent from the May 8, 2023 Commission Conference and did not participate in the deliberations or vote in this docket.

to Tenn. Code Ann. § 65-5-103(d)(6) for Atmos.² This mechanism allows for annual rate reviews by the Commission in lieu of a general rate case.³ Pursuant to the *Order Approving Settlement* in Docket No. 14-00146, the twelve-month period ending September 30th of each year prior to the annual ARRM filing date of February 1st 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 31st of each following year.⁴ 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.⁵

In addition to the annual rate review filing by no later than February 1st of each year, a second step of the ARRM also required the Company to file an Annual Reconciliation (“ARRR”) to the authorized return on equity by September 1st of each year.⁶ This filing was 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.⁷ The resulting rates would be effective on bills rendered on or after June 1st.⁸

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 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

² 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*).

³ Tenn. Code Ann. § 65-5-103(d)(6).

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

⁵ *Id.*

⁶ *Id.* at 5.

⁷ *Id.*

⁸ *Id.* at 7.

transition schedule from two annual filings to a single filing was reasonable and appropriate.⁹ In addition, the Commission found that the modified ARRM continues to be in the public interest and allows Atmos to timely recover its investment and operating expenses, while continuing to provide safe and reliable service to its customers.¹⁰

The Company's previous ARRM filing was approved in Docket No. 22-00010.¹¹

THE 2023 TENNESSEE ANNUAL RATE REVIEW FILING

Atmos submitted the *2023 Tennessee Annual Rate Review Filing* ("2023 ARRM" or "*Petition*"), including the pre-filed direct testimony of William D. Matthews, Manager of Rates and Regulatory Affairs, on January 31, 2023. Mr. Matthews presented the Company's calculations for the Historic Test Period ending September 30, 2022, 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, 2022.¹² Mr. Matthews testified Atmos' total cost of service for the Historic Test Period ended September 30, 2022, is \$206,337,490. The Company's revenue, utilizing current tariff rates along with actual historical billing determinants that are normalized for weather, is \$201,313,275, resulting in a revenue deficiency for the Historic Test Period ending September 30, 2022, of \$5,024,215.¹³

According to Mr. Matthews, the ARRR, which compares actual cost of service excluding gas cost from the historic test period with actual gross margin from the same period, results in a revenue sufficiency of \$393,912. In calculating the Total Revenue Deficiency (Sufficiency), Mr. Matthews

⁹ *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).

¹⁰ *Id.*

¹¹ *In Re: Petition of Atmos Energy Corporation For Approval of Its 2022 Annual Rate Review Filing Pursuant to Tenn. Code Ann. 65-5-103(d)(6)*, Docket No. 22-00010, *Order Approving Stipulation and Settlement Agreement*, (September 14, 2022).

¹² William D. Matthews, Pre-Filed Direct Testimony, pp. 2-3 (January 31, 2023).

¹³ *Id.* at 3-4.

included an expense credit of \$4,603,469 for the amortization of excess deferred income tax, with a resulting total revenue deficiency of \$26,834.¹⁴

Mr. Matthews provided an explanation of the supporting schedules included with the *Petition* and an attestation that any adjustments included in the schedules are consistent with previously approved methodologies. According to Mr. Matthews, the Company has several software packages that are purchased as a service (termed the “Cloud Projects”). Expenditures for software as a service are recorded to Other Regulatory Assets, rather than recorded to plant in service since there is no asset. Mr. Matthews testified it is appropriate to include these Cloud Projects in rate base because the benefit of these expenditures extends beyond the current period in which the payment is made to the vendor.¹⁵

An adjustment for Excess Deferred Income Tax (“EDIT”) includes additional amortization as reflected in the approved settlement agreement resolving Commission Docket No. 18-00034 concerning the impact of the 2017 Tax Cuts and Job Act on public utility rates.¹⁶ This adjustment was also included and approved in the Company’s filings in Dockets 21-00019 and 22-00010.¹⁷

The Company updated the amortization period of the protected portion of the EDIT Amortization from 29 years to 35 years. According to Mr. Matthews, this change is a result from a series of Private Letter Rulings (“PLRs”) issued by the Internal Revenue Service (“IRS”) addressing whether Cost of Removal (“COR”) is subject to the normalization rules and whether it should be included in the normalization calculation. Mr. Matthews, quoting PLR 202211004, states “that taxpayers that have COR embedded in their property-related EDIT do not need to extract COR from the calculation...however, any component of book depreciation includes COR, then taxpayers should

¹⁴ *Id.*

¹⁵ *Id.* at 12.

¹⁶ *See In Re: Response of Atmos Energy Corporation to the Commission’s Order Opening an Investigation and Requiring Deferred Accounting Treatment*, Commission Docket No. 18-00034, *Order Approving November 2020 Stipulation and Settlement Agreement*, (April 22, 2021).

¹⁷ William D. Matthews, Pre-Filed Direct Testimony, p 13 (January 31, 2023).

consider modifying the calculation to exclude any book depreciation associated with COR.”¹⁸ Due to the modified calculation by excluding the COR from the book depreciation, Atmos updated its amortization year to 35 years, to avoid violation of the normalization rules.¹⁹

Mr. Matthews attested that the Company included an adjustment to remove \$2.2 billion of debt associated with Winter Storm Uri. The Company anticipates a similar adjustment to Accumulated Deferred Income Tax (“ADIT”) and capital structure will be required in next year’s filing.²⁰ In order to reflect the new lease accounting standard, the Company has included an update to utilize long-term debt balances before considering the impact of long-term debt recorded on the Company’s books. The update is necessary in order to ensure there is no related lease asset or liability included in rate base, rather expenses continued to be charged to the same accounts as before the adoption of the new lease standard.²¹ Mr. Matthews asserted that the Company is proposing to recover the revenue deficiency from all billing determinants consistent with the ARRM tariff and approved methodologies.²²

POSITION OF THE CONSUMER ADVOCATE

On behalf of the Consumer Advocate, Mr. William H. Novak submitted pre-filed direct testimony. Based upon his review, Mr. Novak testified that the Company correctly reconciled the actual revenues, expenses and net investment as recorded on the Company’s ledger and found the filing reflects the approved methodologies.²³ However, Mr. Novak asserted the Company’s filing contains some errors and miscalculations. First, the Company included an incorrect amount for common gross plant in service for August 2022, resulting in a needed correction of \$5,030 in the

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 14-15.

²¹ *Id.* at 15.

²² *Id.* at 16.

²³ William H. Novak, Pre-Filed Direct Testimony, pp. 6-7 (April 4, 2023).

revenue deficiency.²⁴ Second, the Company miscalculated common equity in the lead/lag resulting in a needed correction of \$-3,163. Mr. Novak asserted this occurred because the Company did not properly include an amount for Interest Expense on Short-Term Debt when calculating the Return on Common Equity.²⁵

Third, the Company incorrectly calculated the allocation factors for 2022 in Divisions 02 and 12. Mr. Novak asserted this error affects several aspects of the ARRM calculation, including common net investment and expenses. While the Company asserted the impact of this error is a change in the revenue deficiency of \$20,924, Mr. Novak calculated an impact in the revenue deficiency of \$-416,017.²⁶

Fourth, Mr. Novak asserted Atmos has never reimplemented its tariff charges related to forfeited discounts and miscellaneous service charges related to the Commission's initial suspension and eventual lifting of a moratorium on service cut-offs due to COVID-related shutdowns.²⁷ Mr. Novak testified that the Company's failure to reimplement tariff charges effectively allowed Atmos to recover its Other Revenues through the ARRM surcharge instead of through the tariff rate provisions.²⁸ To correct this error, Mr. Novak recommended the Commission adopt Other Revenue of \$1,239,248 from the Company's last rate case and adopt a forfeited discount rate 1.0971% from the last rate case as a component of the revenue conversion factor in the current ARRM reconciliation filing. Additionally, Mr. Novak recommended the Commission order Atmos to reimplement its tariff rates for Other Revenues simultaneously with the new rates from this ARRM filing.²⁹

²⁴ *Id.* at 8.

²⁵ *Id.* at 7-8.

²⁶ *Id.* at 9-11.

²⁷ See *In Re: Emergency Petition of the Consumer Advocate Unit of the Financial Unit of the Office of the Attorney General*, Commission Docket No. 20-00047, *Order Lifting Suspension of Disconnections of Service For Lack of Payment With Conditions, Effective August 29, 2020* (September 15, 2020).

²⁸ William H. Novak, Pre-Filed Direct Testimony, p. 11 (April 4, 2023).

²⁹ *Id.* at 11-13.

Fifth, Mr. Novak recommended the Commission accept the Consumer Advocate's proposed adjustment to Operation and Maintenance ("O&M") Expenses as proposed by Consumer Advocate witness, Mr. Alex Bradley.³⁰ Finally, Mr. Novak recommended miscellaneous adjustments to change the revenue deficiency by \$-807.³¹ According to Mr. Novak, the proposed corrections and recommendations result in a revenue surplus of \$1,598,019 for the 12 months ended September 30, 2022.³²

Also on behalf of the Consumer Advocate, Mr. Alex Bradley provided pre-filed testimony that recommended the Commission disallow the inclusion of association dues related to the Gas Technology Institute ("GTI"). According to Mr. Bradley, the Company included association dues for GTI in the common costs which were allocated to the Company related to the 'Low-Carbon Resource Initiative' ("LCRI") of GTI.³³ Mr. Bradley testified that the costs related to decarbonization are not necessary for the Company to provide natural gas service and should therefore be removed. Mr. Bradley asserted this adjustment changes the proposed revenue deficiency by \$-9,363.³⁴

In addition, Mr. Bradley recommended a docket be opened in the future to study and consider changes, including changes to supporting schedules.³⁵ As part of his review, Mr. Bradley selected a number of sub-accounts to review based on year-over-year changes in subaccount balances. According to Mr. Bradley, the Company determined during discovery that the supporting schedules are not entirely representative of the actual charges used in the calculation of the Company's Tennessee jurisdictional rates.³⁶ Mr. Bradley testified that this makes it difficult to use year-over-year trend analysis in reviewing the expenses contained within the ARRM.³⁷ After discussions with

³⁰ *Id.* at 13.

³¹ *Id.* at 4.

³² *Id.* at 13-15.

³³ Alex Bradley, Pre-Filed Testimony, pp. 2-3 (April 4, 2023).

³⁴ *Id.* at 4.

³⁵ *Id.* at 6.

³⁶ *Id.* at 4.

³⁷ *Id.* at 5.

the Company, Mr. Bradley recommended that the Company should request the Commission open a docket to modify the relied upon schedules of the ARRM and to eliminate any supporting schedules which are no longer useful.³⁸

REBUTTAL TESTIMONY OF THE COMPANY

In pre-filed rebuttal testimony filed on April 18, 2023, Mr. Matthews concurred, in part, with some of the Consumer Advocate's recommendations. The Company adjusted its proposed rate increase of \$42,761 based upon the following corrections totaling \$15,927:

- Acceptance of Mr. Novak's adjustment for common gross plant in service for August 2022 for a correction of \$5,030.
- Acceptance of Mr. Novak's adjustment to common equity in the lead/lag for a correction of \$(3,162).
- Amendment of the General Office and Customer Support O&M allocation rates resulting in a correction of \$30,875; and
- Removal of some legal expense as referenced in data response DR 1-23 resulting in a correction of \$(16,816).³⁹

With respect to Mr. Novak's adjustment and allocation factors for 2022 in Divisions 02 and 12, Mr. Matthews testified that it was his understanding, after discussions with the Consumer Advocate, that Mr. Novak intended to submit supplemental testimony revising the Consumer Advocate's proposed adjustment. However, in an abundance of caution, Mr. Matthews testified that Mr. Novak made an incorrect adjustment to the General Office O&M Allocation factor for rate base in his original direct testimony. Mr. Matthews asserted the Company complied with the approved methodologies and used its Cost Allocation Manual ("CAM") in its ARRM filing.⁴⁰ The Company did, however, find a negligible error in its Shared Services -Customer Support ("SSU") Allocation of General Office and Customer Support Cost Centers to Tennessee. According to the Company, it correctly allocated using the 3-factor composite rate of 3.90% for 02 SSU and 4.74% for 012 SSU.

³⁸ *Id.* at 4-5.

³⁹ William D. Matthews, Pre-Filed Rebuttal Testimony, pp. 2-4 (April 18, 2023).

⁴⁰ *Id.* at 5-6.

Mr. Matthews testified that General Office O&M and Rate Base do not use the same allocation factor. The Company has updated 002 SSU O&M to reflect the correction to the test period and the 012 SSU has been updated to reflect the correction allocation rate resulting in an O&M adjustment of \$30,875.⁴¹

With respect to Mr. Novak's adjustment to Other Revenues, Mr. Matthews asserted due to the moratorium issued by the Commission, the Company discontinued charging late payment, disconnection, and reconnection fees until February 26, 2021.⁴² According to the Company, the Commission's directives and orders in TPUC Docket No. 20-00047, did not address resuming certain related fees, and the Company has not resumed many of those fees. Therefore, Mr. Matthews argued that the Company's filing accurately reflects the amount of Other Revenues actually received during the test period. Mr. Matthews asserted the computation of Other Revenues in this docket is consistent with its previous ARRM filing in TPUC Docket No. 22-00010.⁴³

The Company disagreed with the Consumer Advocate's adjustment to remove GTI dues for LCRI. Mr. Matthews testified that the LCRI focuses on low-carbon energy carriers and is critical to ensuring that technology continues to advance in reducing emissions, which creates economic development opportunities. According to Mr. Matthews, the Company believes investments such as LCRI furthers the public interest.⁴⁴ Finally, the Company asserts there is no supporting details regarding Mr. Novak's "Other Miscellaneous Adjustments" recommendation and should be excluded.⁴⁵

⁴¹ *Id.* at 7-8.

⁴² *Id.* at 8.

⁴³ *Id.* at 8-9.

⁴⁴ *Id.* at 11.

⁴⁵ *Id.* at 12.

CONSUMER ADVOCATE SUPPLEMENTAL TESTIMONY

On April 20, 2023, Mr. Novak submitted supplemental testimony to revise the Consumer Advocate's recommended revenue deficiency and related rate design due to changes in the allocation factors for common costs assigned to Tennessee. Based upon the Company's response to Mr. Novak's data request and his review of Commission Dockets 14-00146 and 18-00112, Mr. Novak accepted the Company's SSU 02 and 012 allocation factors.⁴⁶ Based upon his acceptance of these factors, Mr. Novak's revised Revenue Requirement is a surplus of \$1,156,523.⁴⁷

SETTLEMENT AGREEMENT

On May 1, 2023, the parties filed the *Settlement Agreement*, in which the Company and the Consumer Advocate agreed to six adjustments reducing the originally proposed revenue increase of \$26,384 to a net revenue decrease of \$1,156,523.⁴⁸ The *Settlement Agreement* incorporated four adjustments agreed upon by the Company and the Consumer Advocate in their respective pre-filed rebuttal and supplemental testimony. In addition, the parties agreed to a one-time miscellaneous adjustment to O&M costs of \$17,909, including removal of \$9,363 in association dues related to GTI. The Company agreed to resume collection of forfeited discounts and other miscellaneous service charges which constitute "Other Revenues." The parties agreed to reduce the original revenue requirement proposed by the Company by \$1,181,375. Further, the *Settlement Agreement* indicates other revenues in future ARRM filings will be determined based upon actual revenues.⁴⁹ The table below summarizes the six adjustments agreed upon by the parties:

1. Error in Computation of Rate Base (Plant in Svc)	\$ 5,030
2. Change in Computation of Return on Equity	(3,162)
3. Correction of Common-cost Allocation Factors	30,875
4. Remove Unrelated Legal Expenses	(16,816)
5. GTI Dues and Other Misc. Adjustments to O&M	(17,909)

⁴⁶ William H. Novak, Pre-Filed Supplemental Testimony, pp. 3-4 (April 20, 2023).

⁴⁷ *Id.* at 5.

⁴⁸ *Settlement Agreement*, p. 2 (May 1, 2023).

⁴⁹ *Id.* at 3.

6. Imputation of Other Revenues	(1,181,375)
Total Adjustments	(1,183,357)

Applying these adjustments to the originally filed revenue deficiency of \$26,834, results in a revenue sufficiency of \$1,156,523.⁵⁰

THE HEARING

The hearing on the merits was first noticed by the Commission on April 28, 2023. After the filing of the *Settlement Agreement*, the hearing was noticed a second time on May 1, 2023, and held during the regularly scheduled Commission Conference on May 8, 2023. Appearances were made by the following:

Atmos Energy Corporation. – Erik Lybeck Esq., Sims & Funk, PLC, 3322 West End Ave., #200 Nashville, Tennessee 37203.

Consumer Advocate Division – Vance Broemel, Esq. and Victoria Glover, Esq. Consumer Advocate Division of the Office of the Tennessee Attorney General and Reporter, Post Office Box 20207, Nashville, Tennessee, 37219.

The panel heard testimony by Mr. William D. Matthews concerning the *Settlement Agreement*. Members of the public were given an opportunity to offer comments, but no one sought recognition to do so.

FINDINGS & CONCLUSIONS

After reviewing the evidentiary record, the panel unanimously voted to approve the *Stipulation and Settlement Agreement* as filed by the parties on May 1, 2023, including the parties' agreed-upon \$1,156,523 net revenue decrease presented in Schedule 1 of the settlement's supporting exhibits and the proposed rate design presented in Exhibit B. This amount consists of (1) a net revenue deficiency of \$3,834,624 per the company's annual rate review mechanism for the year ending September 30, 2022; (2) an offset of \$4,603,469 amortization of excess accumulated deferred

⁵⁰ *Id.* at Exhibit A.

income taxes associated with the 2017 Tax Cuts and Jobs Act; and (3) a sufficiency of \$387,678 resulting from the annual reconciliation revenue requirement calculation.

Also, in accordance with the *Settlement Agreement*, the Company shall reinstate its late-payment fees, disconnection fees, reconnection fees, and any other miscellaneous fees as specified in its tariff effective with customer bills issued June 1, 2023, and after. In addition, the Company was directed to provide immediate notification to its customers of its reinstatement of these fees. If, in the event the Company has already issued bills for June before information could be provided to customers, the Company may delay reinstatement of late-payment fees, disconnection fees, reconnection fees, and any other miscellaneous fees as specified in its tariff effective until July 1, 2023, in order to provide customers with notice. The Company was also directed to file a letter in the docket indicating whether such tariff rates were implemented on June 1, 2023 or July 1, 2023.

Further, the panel directed the Company to carefully review its relied-upon schedules each year prior to making its annual rate review filing to ensure all provided materials properly support its proposed cost of service and related customer-class allocations. The exhibits, schedules, workpapers, testimonies, and any other supporting materials ultimately filed with the Commission in its annual rate review filing shall provide the requisite information necessary for properly deriving the Company's proposed costs and allocations for the period under consideration.

Finally, the panel found that the Company's annual rate review filing continues to be in the public interest and allows Atmos Energy Corporation to timely recover its investment and operating expenses, while continuing to provide safe and reliable service to its customers.

IT IS THEREFORE ORDERED THAT:

1. The *Stipulation and Settlement Agreement* filed by Atmos Energy Corporation and the Consumer Advocate Division of the Tennessee Attorney General and Reporter on May 1, 2023, is APPROVED.

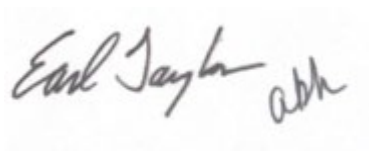
2. Atmos Energy Corporation shall file tariffs reflecting this decision.
3. Atmos Energy Corporation shall file a letter in the docket memorializing whether late-payment disconnection fees, reconnection fees, and any other tariff based miscellaneous fees were reinstated on June 1, 2023, or July 1, 2023.
4. Any party 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 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 days from the date of this Order.

FOR THE TENNESSEE PUBLIC UTILITY COMMISSION:

**Vice Chair David F. Jones,
Commissioner Robin L. Morrison,
Commissioner David Crowell, and
Commissioner John Hie concurring.**

None dissenting.

ATTEST:

A handwritten signature in dark ink, appearing to read "Earl Taylor" followed by a smaller, less legible signature or initials "abh".

Earl R. Taylor, Executive Director