

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

<b>IN RE:</b>	)	
	)	
<b>ATMOS ENERGY CORPORATION</b>	)	
<b>TENNESSEE DIRECT, KENTUCKY/MID-</b>	)	<b>DOCKET NO. 23-00050</b>
<b>STATES DIVISION, AND SHARED</b>	)	
<b>SERVICES UNIT DEPRECIATION STUDY</b>	)	

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**CONSUMER ADVOCATE’S POST HEARING BRIEF**

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The Consumer Advocate Division of the Office of the Tennessee Attorney General (“Consumer Advocate”) submits this post-hearing brief in TPUC Docket No. 23-00050 pursuant to the *Pre-Hearing Order* entered November 3, 2023, by the Hearing Officer. For the reasons set forth herein, the Consumer Advocate respectfully requests that the Tennessee Public Utility Commission (“TPUC” or the “Commission”) adopt the recommendations of the Consumer Advocate regarding the Atmos Energy Corporation (“Atmos” or the “Company”) Notice of Filing Depreciation Study and Request for Approval of New Depreciation Rates contained in both the *Direct Testimony of Michael J. Majoros, Jr.* filed September 22, 2023 and the *Supplemental Testimony of Michael J. Majoros, Jr.* filed October 26, 2023, and presented again at the November 6, 2023 hearing in this matter. The Consumer Advocate’s recommendation will ensure that the Company’s rates are just and reasonable.

**INTRODUCTION**

In TRA<sup>1</sup> Docket No. 14-00146, the Commission approved Tariff Sheet No. 34.5, which specifically relates to depreciation rates and their incorporation in future Annual Rate Review

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<sup>1</sup> The Tennessee Regulatory Authority, or TRA, is the predecessor agency to the TPUC, just as the Tennessee Public Service Commission predated the TRA. While the nomenclature has changed, the scope and function of these entities have remained essentially the same.

Mechanism (“ARM”) proceedings.<sup>2</sup> Depreciation expense is recoverable from Tennessee ratepayers through such ARM proceedings. Depreciation is generally the utility’s expenses associated with the original cost of an asset spread over the life of that asset to account for a decline in that property’s usefulness through wear and tear over time until the property is no longer serviceable.<sup>3</sup> More specifically, depreciation assigns a portion of a property unit’s net cost to each year of its life such that over the life of the property the utility should recover the full net cost of the property unit.<sup>4</sup> Depreciation rates based on costs necessarily include the calculations of the service of life of utility property, salvage value, and the cost of removal for the property unit.

On June 29, 2023, the Company filed its request for approval of new depreciation rates.<sup>5</sup> The Company seeks (1) approval of such rates based on a study resulting in an increase of at least approximately \$823,000 in depreciation expense for the Tennessee Direct Property, (2) implementation of such rates upon approval, and (3) incorporation of such rates into the revenue requirement for the Company’s Annual Rate Review Mechanism for the coming year.<sup>6</sup> This is the Company’s first request for approval of new depreciation rates since the adoption of an ARM process in 2014. In direct testimony filed with its request, the Company explains the “[calculation of] depreciation rates are based on the average service life procedure, remaining life technique, and straight-line method. The recommended service life estimates are based on informed

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<sup>2</sup> *Atmos Energy Corporation Tennessee Direct, Kentucky/Mid-States Division, and Shared Services Unit Depreciation Study and Request for Approval of New Depreciation Rates*, p. 1, TPUC Docket No. 23-00050 (June 29, 2023).

<sup>3</sup> *See Revenue Requirement*, Public Service Commission of Wisconsin, <https://psc.wi.gov/Pages/ServiceType/Water/RevenueRequirement.aspx> (last visited July 12, 2023); *See also* Transcript of Proceedings (“Transcript”) at 7:13-19.

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

<sup>5</sup> *Atmos Energy Corporation Tennessee Direct, Kentucky/Mid-States Division, and Shared Services Unit Depreciation Study and Request for Approval of New Depreciation Rates*, TPUC Docket No. 23-00050 (June 29, 2023).

<sup>6</sup> *Id.* at 2; *Direct Testimony of Ned W. Allis, Vice President Gannett Fleming Valuation and Rate Consultants, LLC on Behalf of Atmos Energy Corporation*, at 4: 13-14, TPUC Docket No. 23-00050 (June 29, 2023).

judgment that incorporates actuarial life analysis based on the retirement rate method and the net salvage estimates are based on widely used methods.”<sup>7</sup>

After multiple rounds of formal discovery and informal discussions, the Consumer Advocate filed testimony and recommendations of depreciation expert Michael J. Majoros concerning the calculation of both (1) the service lives of various assets, and (2) the allocation of the actual replacement plant additions to the cost of removal.

On October 26, 2023, the Parties filed supplemental testimony resolving the service lives recommendation. Thus, the Parties proceeded on the issue of cost of removal at hearing and have elected to submit these post hearing briefs in lieu of closing statements.<sup>8</sup>

The Consumer Advocate submitted at hearing that the sole issue in this Docket concerns the calculation of the cost of removal for retirement-replacement projects within depreciation rates and that the Commission should use its plenary authority to ensure that consumers are not unjustly or unreasonably being charged depreciation rates based on the subjective “best efforts” of the Company to apportion cost of removal.<sup>9</sup>

## **ARGUMENT**

### **I. The Commission has the authority and discretion to determine accounting principles for ratemaking proceedings.**

The Commission possesses broad power and discretion in designing just and reasonable rates.<sup>10</sup> This authority includes the ability to consider, follow, or depart from accounting principles

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<sup>7</sup> Direct Testimony of Ned W. Allis, Vice President Gannett Fleming Valuation and Rate Consultants, LLC on Behalf of Atmos Energy Corporation at 4: 1-5, TPUC Docket No. 23-00050 (June 29, 2023).

<sup>8</sup> Pre-Hearing Order, p. 3, TPUC Docket No. 23-00050 (Nov. 11, 2023).

<sup>9</sup> Transcript of Proceedings (“Transcript”) at 18:20-19:25, 45:9-13, TPUC Docket No. 23-00050 (Nov. 6, 2023).

<sup>10</sup> Joint Request of Chattanooga Gas Co. & Kordsa, Inc. for Approval of Special Contract, p. 8, TPUC Docket No. 21-00094 (May 13, 2022).

established by entities other than the Commission itself.<sup>11</sup> The Commission has exercised these broad powers in determining treatment for accounting in special contracts, the treatment of pension, and OPEB and other related accruals.<sup>12</sup>

Here, the Commission has that same broad power and discretion to adopt a measurable, simplified method of accounting for cost of removal. The Commission is not bound, and indeed would be unwise, to approve a self-imposed limitation on its ratemaking authority in general and in depreciation cases, such that it is not able to consider alternative methods or accounting principles that may result in just and reasonable rates.<sup>13</sup> The Consumer Advocate's recommendation does not call for the Commission to depart from its prior ratemaking policy, from the Uniform System of Accounts ("USoA"), or from its own regulations.

**II. Tenn. Comp. R. & Regs. 1220-04-01-.11 regulates the practices of the Company, not the decision-making of the Commission.**

The Consumer Advocate's recommendation of the adoption of Mr. Majoros' method of accounting for the cost of removal does not require the Commission to violate or disregard its own rules, contrary to the Company's suggestion at hearing by invocation of Tenn. Comp. R. & Regs. 1220-04-01-.11.<sup>14</sup>

Tenn. Comp. R. & Regs. 1220-04-01-.11 states that the USoA "will be followed by utilities and other companies making periodic reports to the Commission..." This directive is tailored to regulate the reporting practices of the Company. At hearing, the Company suggested that this rule is determinative of the outcome in this docket and binds the Commission in deciding how

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<sup>11</sup> See *Petition of Chattanooga Gas Company for Approval of an Adjustment in Rates and Tariff; the Termination of the AUA Mechanism and the Related Tariff Changes and Revenue Deficiency Recover; and Annual Rate Review Mechanism*, p. 46, TPUC Docket No. 18-00017 (Jan. 15, 2019).

<sup>12</sup> See generally TPUC Docket No. 18-00017; TPUC Docket No. 21-00135; and TPUC Docket No. 21-00094.

<sup>13</sup> *Joint Request of Chattanooga Gas Co. & Kordsa, Inc. for Approval of Special Contract* at 8, TPUC Docket No. 21-00094 (May 13, 2022).

<sup>14</sup> Transcript at 12:20-13:12.

depreciation rates should be calculated. But this argument conflates the obligations of the Company with the duties of the Commission. Tenn. Comp. R. & Regs. 1220-04-01-.11 merely states that the Company is to keep its books in a certain manner. Read together with the statute it was promulgated to implement—Tenn. Code Ann. § 65-4-111(a)<sup>15</sup>—the rule clearly demonstrates that the Commission sought to have a uniform system in place for companies such that it would be easier for staff to review various types of utilities’ filings in any given docket. In fact, Tenn. Comp. R. & Regs. 1220-04-01-.11 is contained in its own subchapter of the regulatory scheme, separate and apart from subchapters discussing Commission’s revision of rates, tariff changes, special contracts, etc. Thus, the purpose of the rule is solely to make it easier for the Commission to carry out its duty to determine just and reasonable rates for utilities. Tenn. Comp. R. & Regs. 1220-04-01-.11 by no means should be read to limit or constrain the Commission’s own decision-making processes in determining just and reasonable rates.

The Instant case illustrates this notion. The Company’s request to change depreciation rates arises pursuant to a tariff provision approved by the Commission in the Company’s last general rate case.<sup>16</sup> The tariff’s approval was a ratemaking decision by the Commission, within which the Commission was free to consider alternative approaches to methodologies and calculations that would best result in just and reasonable rates.<sup>17</sup> Likewise, here, the Company asks the Commission to make a determination of the reasonableness of changing its depreciation rates. Such a request necessarily entails the risk that the Commission may determine a better or otherwise more just or reasonable way to account for those changes in depreciation. Plainly, the

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<sup>15</sup> T.C.A. § 65-4-111(a) “The commission has the power, ... to require every public utility as defined in § 65-4-101 to keep its books, records, and accounts so as to afford an intelligent understanding of the conduct of its business...The accounting system shall conform, where applicable, to any system adopted or approved by the interstate commerce commission.”

<sup>16</sup> See TPUC Docket No. 14-00146.

<sup>17</sup> See TPUC Docket No. 18-00017 (Commission declined to follow GAAP in considering employment benefits expense).

Company cannot use its own burden of reporting to constrain the Commission's authority to adopt differing accounting methodologies when determining just and reasonable rates.

Even if Tenn. Code Ann. § 65-4-111(a) applied to ratemaking purposes, it states that the Commission has the power to require every public utility to adopt a uniform system of accounting. This statute is a grant of authority to the Commission to bind the utilities. This particular statute, which Tenn. Comp. R. & Regs. 1220-04-01-.11 further details to be the USoA as adopted by the National Association of Railroad and Utilities Commissioners, is an affirmative exercise of discretionary power over the utilities. The statute is an exercise of the Commission's power to require utilities to provide a uniform accounting report. The statute does not bind the Commission regarding the use of that uniform accounting report in determining ratemaking methodologies. Therefore, neither the enabling statute nor Tenn. Comp. R. & Regs. 1220-04-01-.11 itself can be read to be a limit on the Commission in a case where a uniform system of accounts is at issue.

### **III. The Consumer Advocate's recommendation comports with a holistic reading of the USoA.**

The Commission need not depart from the USoA in this case. The USoA specifically provides for the treatment of the Consumer Advocate's recommendation in this matter by first understanding the definitions before proceeding to the gas plant instructions.

Mr. Majoros reiterated on cross exam at hearing that the Uniform System of Accounts has both definitions and instruction components.<sup>18</sup> Definitions naturally tell what something means in a given context, while instructions are a directive or call to act in compliance. Without first knowing what is meant, one cannot act. The Consumer Advocate's recommendation merely suggests that utilities should follow the instructions contained in USoA before proceeding to do it.

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<sup>18</sup>

Transcript at 55:15-56:10.

Definition 32A informs the reading and interpretation of each general and gas plant instruction contained within the USoA. This definition plainly states that replacements include “the construction or installation of gas plant *in place of property retired, together with the removal of the property retired.*”<sup>19</sup> In this case, the Company has proposed to apportion a percentage of costs associated with retirement-replacement assets to cost of removal for the old or “retired” asset.<sup>20</sup> This action is squarely at odds with the meaning of “replacements” as stated above. The starting point should be an understanding that the replacement includes the removal of the retired property; therefore, there should be no apportionment or allocation<sup>21</sup> of percentages to the cost of removal to the old asset then factored into the depreciation rates. Thus, the Commission may follow the plain terms of the USoA and arrive at the Consumer Advocate’s recommendation.

The Company argues that Instruction 10B(2) is controlling.<sup>22</sup> The Consumer Advocate does not disagree. The Consumer Advocate takes issue with the Company’s reading of Instruction 10B(2) in conjunction with Definition 32A above. By missing the mark on the baseline definition of replacement, the Parties ultimately arrive at an ambiguous reading of Instruction 10B(2). Resolution of this ambiguity first falls precisely within the power of the Commission to determine as stated in the previous section of this brief and second does not compel departure from the plain terms of the USoA to resolve.

Instruction 10(B)2 states that when a “retirement unit is retired from gas plant, *with or without replacement*, the book cost thereof shall be credited to the gas plant account in which it is included... The cost of removal and the salvage shall be charged or credited, *as appropriate*, to

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<sup>19</sup> 18 CFR Ch. 1, Subchapter F, Part 201, Definition 32.

<sup>20</sup> Transcript at 25:17-26:15.

<sup>21</sup> Experts for the Company and for the Consumer Advocate disagree on the nomenclature for the action of placing this percentage with the old plant. Both terms will be used throughout to note that Company and Consumer Advocate are talking about the same action and percentage. (Transcript at 45:3-8).

<sup>22</sup> Transcript at 13:13-17.

such depreciation account.”<sup>23</sup> The phrase “with or without replacement” is where the Company seems to hang its hat in allocating or apportioning the percentage of cost of removal in retirement-replacement projects with the old or “retired” asset. According to its interpretation, the Company believes it has properly allocated or apportioned the cost of removal to its depreciation account. However, the Company also ignores the phrase “as appropriate.” Drafters of the USoA easily could have repeated the phrase “with or without replacement” as they stated earlier in the definition with regard to where the cost of removal should be charged; they did not. They chose a wholly contradictory and different phrase “as appropriate,” which necessarily denotes that there are projects where cost of removal should not be booked to such a depreciation account. This is where The Consumer Advocate points to Definition 32A. The Consumer Advocate reads Instruction 10(B)2 in conjunction with Definition 32A as a situation where it would not be appropriate to place the cost of removal into the depreciation account because the cost should already be included with the cost of the replacement project.

The Consumer Advocate is recommending the Commission adopt a ratemaking treatment when setting just and reasonable depreciation rates that takes *all* sections of the USoA into account, rather than simply act on an instruction without regard for the definition.

#### **IV. The Consumer Advocate’s recommendation is a more objective standard and is therefore just and reasonable.**

Lastly, the Consumer Advocate’s recommendation is reasonable because it employs a simplified, more objective determination of depreciation rates.

At hearing, the Company’s expert described the allocation or estimation of the cost of removal percentage it assigns to the retired asset as an action that calls for “best effort” and “doing

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<sup>23</sup> 18 CFR Ch. 1, Subchapter F, Part 201, Gas Plant Instruction 10(B)2. (emphasis added).



your best to determine” costs.<sup>24</sup> These best efforts to calculate, predict, and determine which costs are appropriately booked are ultimately subjective matters of opinion.<sup>25</sup> These opinions may be well-informed and detailed, shown by the voluminous Alliance Studies; but such opinions nevertheless involve the examination of many variable elements, and opportunities for excessive allowances are present, even under a correct system of accounting.<sup>26</sup>

For example, at hearing the Consumer Advocate pointed out that the allocation or apportionment of 5% of replacement costs as incremental cost of removal is not an exact number.<sup>27</sup> This 5% is an estimate based on a large sample of projects.<sup>28</sup> The Company’s best efforts in conducting the study, determining what percentage of costs in a vast number of projects is solely related to pure cost of removal actions, and then coming up with a flat 5% to generally apportion to all projects going forward may result in both exaggerated depreciation and under-depreciation of any asset because each project and each asset is different.<sup>29</sup> The Consumer Advocate’s recommendation is to take the guesswork out of this example by eliminating the need to determine what actions are pure, incremental costs of removal and what actions are pure replacement actions. The Consumer Advocate’s approach also eliminates the need to determine a workable percentage that could apply to many different types of projects. The Consumer Advocate is recommending that the Company wait until the end of the life of the asset, when the cost to remove it is known and objectively measurable, and book that cost of removal wholly to the new plant account. Such a simplified method is both more objective in the present when determining the actual cost of

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<sup>24</sup> Transcript at 45:9-13.

<sup>25</sup> *See Lindheimer v. Illinois Bell Tel. Co.*, 292 U.S. 151, 169 (1934).

<sup>26</sup> *Id.* at 169-170.

<sup>27</sup> Transcript at 14:19-21, 51: 8-13, and 52:22-3.

<sup>28</sup> Transcript at 25: 22- 26:1.

<sup>29</sup> Transcript at 26:1-15.

removal and in the future because looking at the actual cost at the time of removal negates the risk of over or under depreciating any particular asset group.

The Consumer Advocate's recommendation seeks to eliminate the subjective nature used in calculating depreciation expenses ultimately recoverable from consumers. These apportionments or allocations are the best efforts of the Company. Best effort is simply not the controlling standard in this Docket. The controlling standard here is whether the rate changes sought by the Company are just and reasonable. The Commission should not credit subjective opinions or best efforts as more reasonable or just for consumers when an alternative method employing objective standards is not only readily available but recommended.

### **CONCLUSION**

The Consumer Advocate respectfully requests that the Commission find the Consumer Advocate's recommendation as to the treatment of cost of removal in this docket just and reasonable because it (1) fits squarely within the authority of the Commission to decide, (2) comports more holistically with the USoA, and (3) is a more objective method using known and measurable costs than the Company's efforts to determine and apportion such costs to each part of the deprecation account. Such a decision will ensure that costs are objectively applied to each account in a retirement-replacement situation and will ultimately result in more accurate, measurable, and transparent rates for consumers.

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Respectfully Submitted,

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*TPUC Docket No. 23-00050*

*Consumer Advocate Post Hearing Brief*

**CERTIFICATE OF SERVICE**

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

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This the 22<sup>nd</sup> day of November 2023.



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