20180327103301
Kansas Corporation Commission

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners: Shari Feist Albrecht, Chair
Jay Scott Emler
Pat Apple

In the Matter of a General Investigation Regarding the Effect of Federal Income Tax Reform on the Revenue Requirements of Kansas Public Utilities and Request to Issue an Accounting Authority Order Requiring Certain Regulated Public Utilities to Defer Effects of Tax Reform to a Deferred Revenue Account.	)	Docket No. 18-GIMX-248-GIV

ORDER GRANTING JOINT MOTION FOR APPROVAL OF ATMOS' TAX REFORM PLAN

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the file and records, and being properly advised, the Commission finds:

I. Background

1. On December 14, 2017, Commission Utilities Staff (Staff) filed a Motion to Open a General Investigation and Issue Accounting Authority Order Regarding Federal Tax Reform (Motion).[1]

2. On December 22, 2017, the Citizens Utility Ratepayer Board (CURB) filed a Petition to Intervene and a Response in Support of Staff's Motion to Open a General Investigation and Issue Authority Order Regarding Federal Tax Reform and Report and Recommendation.[2]

[1] Staff's Motion to Open a General Investigation and Issue Accounting Authority Order Regarding Federal Tax Reform (Dec. 14, 2017) (Staff's Motion).
[2] CURB's Petition to Intervene was granted by the Commission on March 13, 2018.

3. On January 18, 2018, the Commission issued an Order Opening General Investigation and Issuing Accounting Authority Order Regarding Federal Tax Reform.[3]

4. On March 9, 2018, Atmos Energy (Atmos), Staff and CURB (collectively the Movants) filed a Joint Motion for Approval of Atmos Energy's Tax Reform Plan (Motion). The Motion included a Settlement Agreement, the key provisions of which include the following:

a. Reduction in federal income tax expense included in Atmos' cost of service resulting from the Tax Cut and Jobs Act's lowering of the federal income tax rate from 35% to 21 %;

b. Annual Tax Reform Credit amount to Atmos Energy's Customers;

c. Tax Savings Relating to Excess Accumulated Deferred Income Tax (ADIT);

5. On March 14, 2018, Atmos filed Testimony in Support of the Settlement Agreement.[4]

6. On March 14, 2018, Staff filed Testimony in Support of Atmos' Settlement Agreement.[5]

7. On March 15, 2018, CURB filed Testimony in Support of Atmos' Settlement Agreement.[6]

II. Legal Standard

8. Every public utility in Kansas is required to provide reasonably efficient and sufficient service and establish just and reasonable rates.[7] Just and reasonable rates are those that

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[3] Order Opening General Investigation and Issuing Accounting Authority Order Regarding Federal Tax Reform (Jan. 18, 2018) (Order).
[4] Testimony of Jennifer G. Ries in Support of the Settlement Agreement on Behalf of Atmos Energy Corporation (Mar. 14, 2018) (Ries Direct).
[5] Staff Testimony in Support of Atmos Energy's Settlement Agreement (Mar. 15, 2018) (Jackson Direct).
[6] Stacy Harden's Testimony in Support of Atmos Energy's Settlement Agreement on behalf of CURB, (Mar. 14, 2018) (Harden Direct).
[7] K.S.A. 66-101b.

fall within a "zone of reasonableness," which balances the interests of present and future ratepayers, and the public interest.[8] The Kansas Supreme Court has recognized that "the touchstone of public utility law is the rule that one class of consumers shall not be burdened with costs created by another class."[9] The Commission may in addition to cost-causation, consider matters of public policy, such as gradualism to minimize rate shock, revenue stability for the company, economic development, and energy efficiency.[10] Both federal and state courts have been clear that rates must be based on costs and supported by substantial competent evidence.[11] Substantial competent evidence is that which possesses something of substance and relevant consequence, and which furnishes a substantial basis of fact from which the issues can reasonably be resolved.[12] A decision of the Commission is unsupported by substantial competent evidence "only when the evidence shows the [Commission's] determination 'is so wide of the mark as to be outside the realm of fair debate.'"[13] The Kansas Supreme Court has also stated that the Commission "is not obligated to render its finding of fact in minute detail … [h]owever, we require its findings to be specific enough to allow judicial review of the reasonableness of the order."[14]

9. The law generally favors the compromise and settlement of disputes.[15] However, the Commission must make an independent finding that the settlement is supported by substantial

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[8] *Kansas Gas and Elec. Co. v. Kansas Corp. Comm'n.*, 239 Kan. 483, 488 (1986).
[9] *Jones v. Kansas Gas & Electric Co.*, 222 Kan. 390, 401 (1977).
[10] Docket No. 12-KCPE-764-RTS (Aug. 22, 2012); Docket No. 16-KCPE-446-TAR (Jun. 22, 2017); *See* also, *Midwest Gas Users Ass'n v. Kansas Corp. Comm'n,* 3 Kan. App.2d 376, 380 (1979).
[11] *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944); *Kansas Gas and Electric Co.*, 239 Kan. At 501; *Zinke & Trumbo, Ltd. v. State Corp. Comm'n,* 242 Kan. 470, 475 (1988).
[12] *Farmland Indus., Inc. v. Kansas Corp. Comm'n.*, 25 Kan.App.2d 849, 852 (1999).
[13] *Zinke & Trumbo, Ltd. v. Kansas Corp. Comm'n*, 242 Kan. 470, 474 (1988) (quoting *Kansas-Nebraska Natural Gas Co. v. Kansas Corp. Comm'n*, 217 Kan. 604, 617).
[14] *Id.* at 475.
[15] *Krantz v. Univ. of Kansas*, 271 Kan. 234, 241-42 (2001).

competent evidence in the record as a whole, that the settlement will establish just and reasonable rates, and the settlement is in the public interest.[16]

10. The Commission has established a five-part test to determine the reasonableness of proposed settlement agreements. The five parts are rooted in the Commission's organic statutes,[17] the Kansas Administrative Procedure Act,[18] and the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions.[19] The five parts are:

a. Whether there was an opportunity for the opposing party to be heard on their reasons for opposition to the stipulation and agreement;

b. whether the stipulation and agreement is supported by substantial competent evidence;

c. whether the stipulation and agreement conforms with applicable law;

d. whether the stipulation and agreement results in just and reasonable rates;

e. whether the results of the stipulation and agreement are in the public interest, including the interest of the customers represented by the party not consenting to the agreement.[20]

III. Findings and Conclusions

11. The Commission reviewed the Settlement Agreement utilizing the Commission's five-part analysis of settlement agreements and finds as follows:

Whether there was an opportunity for the opposing party to be heard on their reasons for opposition to the stipulation and agreement?

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[16] *Citizens' Utility Ratepayer Board v. Kansas Corp. Comm'n.*, 28 Kan.App.2d 313, 316, (2000) *rev. denied* March 20, 2001.
[17] *See* K.S.A. 66-101b (providing the Commission with the power to "require all electric public utilities governed by this act to establish and maintain just and reasonable rates").
[18] *See,* K.S.A. 77-501 *et seq.*
[19] *See,* K.S.A. 77-601 *et seq.*
[20] Order Approving Contested Settlement Agreement, Docket No. 08-ATMG-280-RTS, p. 5 (May 12, 2008).

12. The Settlement Agreement is a unanimous agreement which addresses all the issues between the moving the parties.[21] Because there are no other interested parties in the docket who are not also signatories to the Settlement Agreement,[22] the Commission finds there was opportunity for any party to be heard on their reasons for opposition to the agreement and no party elected to oppose the Settlement Agreement.

Whether the stipulation and agreement is supported by substantial competent evidence?

13. The Settlement Agreement is supported by the Direct Testimony of Jennifer G. Ries, the Direct Testimony of Andria Jackson and the Direct Testimony of Stacy Harden, and addresses the following substantive issues:

a. Reduction in Federal Income Tax Expense Included in Atmos' Cost of Service Resulting from the Tax Cut and Jobs Act's Lowering of the Federal Income Tax Rate from 35% to 21%.

(1) Deferred Revenue Account

14. In its Order Opening General Investigation the Commission directed all regulated public utilities that are taxable at the corporate level, to accrue monthly, in a deferred revenue account, the portion of its revenue representing the difference between: (1) the cost of service as approved by the Commission in its most recent rate case or KUSF determination proceeding; and (2) the cost of service that would have resulted had the provision for federal income taxes been based upon the corporate income tax rate approved in the Tax Cuts and Jobs Act.[23]

15. The Commission finds that Atmos complied with that direction and has included the calculation in Appendix 1 to the Settlement Agreement.[24] Atmos' calculation, which has been

[21] Ries Direct, p. 13; Harden Direct, p. 11; Jackson Direct, p. 8.
[22] Ries Direct, p. 13; Harden Direct, p. 11; Jackson Direct, p. 8.
[23] Order, p. 5.
[24] Ries Direct, p. 6.

confirmed by Staff,[25] results in an estimated amount to be accrued in the Deferred Revenue Account shall be $1.13 million, including interest,[26] for the period of January 1, 2018 thru March 31, 2018.[27] The Movants further agreed that the disposition of the amount in the Deferred Revenue Account, plus interest, shall be included in the Tax Reform Credit Tariff for a one-year period.[28] Atmos reserved the right in its next general rate case to provide the Commission with such information and supporting data to show other components of its cost of service have offset the decrease in its income tax expenses during the Accrual Period. and its right to request that all or a portion of the Deferred Revenue Account being credited to customers under the Settlement Agreement be credited back to Atmos in some fashion for the other components of its cost of service that offset the decrease in its income tax expenses.[29]

(2) Tax Reform Credit Tariff/Annual Tax Reform Credit Amount

16. The Movants proposed a Tax Reform Credit Tariff, which includes the difference between the cost of service as approved by the Commission in Atmos' most recent rate case and the cost of service that would have resulted had the provision for federal income taxes been based upon the corporate income tax rate approved in the Tax Cut and Jobs Act.[30] The tariff also includes a credit to reflect the tax rate change for the Gas Safety and Reliability Surcharge (GSRS). Under the tariff, the cost of service credit is approximately $3,002,308 and the annual GSRS credit is approximately $75,210.[31] The total credit amount will be allocated among Atmos Energy's customer classes based upon the customer class allocations approved in Atmos Energy's last rate

[25] Ries Direct, p. 6; Jackson Direct, p. 8.
[26] The interest rate applied is the interest paid on customer deposits, which is currently 1.62%.
[27] Ries Direct, p. 5; Harden Direct, p. 7; Jackson Direct, p. 4.
[28] Ries Direct, p. 5; Harden Direct, p. 7; Jackson Direct, p.4.
[29] Ries Direct, p. 6; Harden Direct, p. 8; Jackson Direct, pp. 4-5.
[30] Ries Direct, p. 6; Harden Direct, p. 8; Jackson Direct p. 5.
[31] Ries Direct, pp. 6-7; Harden Direct, p. 8; Jackson Direct, pp. 4-5.

case and shall be allocated between a fixed credit and volumetric credit.[32] The Tax Reform Credit Tariff shall include an annual true-up provision and the amount in the Deferred Revenue Account shall be credited to customers beginning April 1, 2018, and be returned on a monthly basis through March 31, 2019 under the Tax Reform Credit Tariff, using the same allocation method.[33]

b. Annual Tax Reform Credit Amount to Atmos Energy's Customers

17. The Settlement Agreement also includes a fixed monthly separate line bill credit beginning in April, 2018 for 54% of the tax savings, and a separate line volumetric credit for the remaining 46% of the Cost of Service Credit rate relating to the annual tax savings, so that Cost of Service Credit from April 2018 forward would be reflected on the customer bill until the tax savings are reflected in base rates following a final order in a general rate case filing.[34]

18. The Commission finds the refund amount is reasonable because it is derived from Atmos' rates, which were approved by the Commission in Docket No. 16-ATMG-079-RTS.[35] Furthermore, the Commission finds the proposed allocations are reasonable because they are roughly commensurate to the percentage allocations in Atmos' last rate case for the amount of total non-gas or non-PGA costs recovered through the monthly customer charge and the amount of total costs recovered through the commodity charge, and between the different customer classes.[36]

c. Tax Savings Relating to Excess ADIT

19. Regarding the issue of ADIT the Movants agreed that Atmos shall establish a regulatory liability account for the purpose of accounting for and capturing tax savings related to

[32] Ries Direct, p. 7; Harden Direct, p. 8; Jackson Direct, p. 5.
[33] Ries Direct, p. 7; Harden Direct, p. 8; Jackson Direct, pp. 5-6.
[34] Ries Direct, pp. 7-8; Harden Direct, pp. 8-9; Jackson Direct pp. 5-6.
[35] Ries Direct, p. 5; Jackson Direct, p. 9.
[36] Ries Direct, pp. 7-8; Jackson Direct, p. 6 fn 4.

excess ADIT.[37] Atmos will utilize a methodology that is consistent with the tax normalization requirements specified by IRS normalization rules.[38] However, the Movants also agreed Atmos' ADIT, as of December 31, 2017, will not be amortized for ratemaking purposes until the excess ADIT is reflected in base rates approved by the Commission in Atmos' next general rate case filing and any issues regarding the amount of tax savings related to excess ADIT and how those savings should be passed on to customers will be deferred to Atmos' next general rate case.[39]

20. Furthermore, the Movants agreed that all fixed assets related excess deferred taxes (both protected and unprotected) shall be reflected in rates utilizing the Reverse South Georgia Method.[40] Also, the Movants agreed that with respect to excess deferred taxes, it may be appropriate in accounting for the excess deferred taxes that Atmos Energy book an estimate of the excess deferred taxes that can then be trued-up after the end of Atmos' fiscal year.[41] The Commission finds this approach is reasonable as it ensures that customers will continue to realize the benefits associated with the excess deferred taxes as an offset to rate base and will continue to receive the time value of money associated with the excess deferred taxes until the excess deferred taxes are reflected in Atmos' next rate case.[42]

Whether the stipulation and agreement results in just and reasonable rates?

21. The Commission finds the Settlement Agreement appropriately accounts for the reduction in federal income tax expense included in Atmos' current cost of service and passes those cost savings to Atmos' customers.[43] Furthermore, the Commission finds the Settlement Agreement appropriately balances the interests between the utility's investors and ratepayers, and

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[37] Ries Direct, p. 9; Harden Direct, p. 9.
[38] Ries Direct, pp. 9-10; Jackson Direct, pp. 10-11; Harden Direct p. 9.
[39] Ries Direct p. 10; Jackson Direct, pp.5-6; Harden Direct, p. 9.
[40] Ries Direct, p. 9.
[41] *Id.*
[42] Jackson Direct, p. 11; Harden Direct pp. 12-13.
[43] Jackson Direct, pp. 13-14; Harden Direct p. 12.

present and future ratepayers.[44] The Commission therefore finds that the total effect of the Settlement Agreement results in just and reasonable rates.

Whether the results of the stipulation and agreement are in the public interest, including the interests of the customers represented by the party not consenting to the agreement?

22. Because the Settlement Agreement expedites the reduction in over-collection of federal income tax[45] whilst balancing the interests of the company, the customers, and the public generally,[46] the Commission finds the Settlement Agreement is in the public interest.

Whether the stipulation and agreement conforms with applicable law?

23. In light of the Commission's above findings that the Settlement Agreement results in just and reasonable rates and is supported by substantial competent evidence, the Commission finds the Settlement Agreement conforms with applicable Kansas law.

24. The Commission finds that the Settlement Agreement satisfies the five-part analysis the Commission has used when reviewing proposed settlements. Therefore, the Commission finds the Joint Motion for Approval of Atmos Energy's Tax Reform Plan should be granted.

THEREFORE, THE COMMISSION ORDERS:

A. The Joint Motion for Approval of Atmos Energy's Tax Reform Plan is granted.

B. The parties have 15 days from the date this Order was electronically served to petition for reconsideration.[47]

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[44] Jackson Direct, pp. 13-14.
[45] Jackson Direct, p. 15.
[46] *Id.*
[47] K.S.A. 66-118b; K.S.A. 77-529(a)(1).

C. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further orders as it deems necessary.

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Apple, Commissioner

Dated: 03/27/2018

Lynn M. Retz
Secretary to the Commission

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CERTIFICATE OF SERVICE

18-GIMX-248-GIV

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of electronic service on 03/27/2018.

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