

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

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) Docket No. 18-GIMX-248-GIV
Accounting Authority Order Requiring Certain)
Regulated Public Utilities to Defer Effects of)
Tax Reform to Deferred Revenue Account.)

TESTIMONY IN SUPPORT OF SETTLEMENT AGREEMENT

STACEY HARDEN

ON BEHALF OF

THE CITIZENS' UTILITY RATEPAYER BOARD

MARCH 14, 2018

1 **I. INTRODUCTION AND BACKGROUND**

2 **Q. Please state your name and business address.**

3 A. My name is Stacey Harden. My business address is 1500 SW Arrowhead Road, Topeka,
4 KS 66604.

5

6 **Q. By whom are you employed and in what capacity?**

7 A. I am employed by the Citizens' Utility Ratepayer Board ("CURB") as a Senior Regulatory
8 Analyst.

9

10 **Q. Please describe your education background.**

11 A. I earned a Bachelor of Business Administration degree from Baker University in 2001. I
12 earned a Master of Business Administration from Baker University in 2004.

13

14 **Q. Please summarize your professional experience in the utility industry.**

15 A. I served as a Regulatory Analyst for CURB from February 2008 until March 2016. I
16 rejoined the CURB Staff in September 2017 as a Senior Regulatory Analyst.

17

18 **Q. Have you previously testified before the Commission?**

19 A. Yes. I have provided both written and live testimony in several proceedings before the
20 Kansas Corporation Commission ("Commission"). Additionally, I have authored Report
21 and Recommendations to the Commission in three dockets.

22

23

1 **Q. What is the purpose of your testimony?**

2 A. The purpose of my testimony is to provide support to a Settlement Agreement
3 (“Agreement”) between Atmos Energy Corporation (“Atmos”), the Staff of the Kansas
4 Corporation Commission (“Staff”), and CURB. My testimony will be divided into four
5 sections:

6 1. First, I will briefly summarize the Tax Cuts and Jobs Act and the Commission’s
7 Order in this general investigation docket.

8 2. Second, I will provide a review of the Agreement, including Atmos’
9 calculations and support for the amount of the monthly credits being provided
10 to Atmos’ customers.

11 3. Third, I will provide testimony that the Agreement reached by the parties in this
12 proceeding addresses the concerns of CURB in Docket No. 18-GIMX-273-
13 COM.

14 4. Finally, I will address the Commission’s standard of review for Settlement
15 Agreements that was established in Docket No. 08-ATMG-280-RTS.
16

17 **II. GENERAL INVESTIGATION REGARDING THE TAX CUTS AND JOBS ACT**

18 **Q. Please provide a brief background of the Commission’s General Investigation in this**
19 **proceeding as it relates to the Tax Cuts and Jobs Act “(TCJA)”.**

20 A. On December 14, 2017, Staff filed a Motion to Open a General Investigation and Issue
21 Accounting Authority Order Regarding Federal Tax Reform ("Staff Motion"). Staff
22 attached a Report and Recommendation ("Staff's R&R") to the Staff Motion, which
23 recommended the Commission issue an Order addressing the following:

1 a. Opening a general investigation for the purpose of examining the financial
2 impact of anticipated federal income tax reform on regulated public utilities
3 operating in Kansas;

4 b. Requiring, through the use of an Accounting Authority Order ("AAO"),
5 certain regulated public utilities that are taxed at the corporate level, which included
6 Atmos, to track and accumulate in a deferred revenue account, with interest
7 compounded monthly at the most current Commission-approved customer deposit
8 interest rate, the reduction in their regulated cost of service that would occur in the
9 event that a new lower federal income tax rate is signed into law. These deferrals
10 should take effect at the same time as the new federal corporate tax rate change and
11 the calculations should be performed using the cost of service data that was used to
12 set the utilities' last Commission-approved revenue requirement (including any
13 line-item surcharges that contain a provision for regulated income tax expense);
14 and

15 c. Confirming that the Commission's intention regarding the AAO is to
16 preserve any potential tax benefits so that they may be evaluated in the context of
17 a comprehensive evaluation of the reasonableness of the utilities' rates as well as
18 notifying utilities that this portion of their rates should be considered interim subject
19 to refund until the Commission has the opportunity to review the reasonableness of
20 the utilities' rates on a comprehensive and case-by-case basis and confirming that
21 the Commission intends to capture the reduction in Accumulated Deferred Income
22 Tax ("ADIT") balances that will occur in the event that a lower corporate federal

1 income tax rate takes effect, over time, in a manner that comports with Internal
2 Revenue Services ("IRS") Tax Normalization Rules.

3
4 **Q. Did CURB express support for Staff's motion to open a general investigation?**

5 A. Yes. On December 22, 2017 – the same day the Tax Cut and Jobs Act was signed into law
6 – CURB filed a response in support of Staff's motion to open a general investigation
7 regarding tax reform, determining that Staff's motion was both reasonable and in the best
8 interest of Kansas residential and small commercial ratepayers.

9
10 **Q. Please describe the Commission's Order opening this general investigation.**

11 A. On January 18, 2018, the Commission issued its *Order Opening General Investigation and*
12 *Issuing Accounting Authority Order Regarding Federal Tax Reform* ("Order"). In said
13 Order the Commission made the following findings and conclusions:

14 a. The TCJA has the potential to significantly reduce the cost of service for
15 many utilities operating in Kansas since tax expenses are recovered in rates.

16 b. A significant reduction to the corporate tax rate may also impact the ADIT
17 Liabilities and Assets on the regulated books of utilities.

18 c. An investigation into the impact of the TCJA on utility rates is warranted.

19 d. The 1987 Order issued by the Commission relating to the effects of the
20 Federal Tax Reform Act of 1986, is informative but not precedential.

21 e. The purpose of the investigation is to quantify the economic impacts of the
22 new lower tax rates on Kansas utilities, and where appropriate, direct that any cost
23 savings be passed on to Kansas utility customers.

1 f. All regulated public utilities that are taxable at the corporate level are
2 directed to accrue monthly, in a deferred revenue account, the portion of its
3 revenues representing the difference between (1) the cost of service approved by
4 the Commission in its most recent rate case; and (2) the cost of service that would
5 have resulted had the provision for federal income taxes been based upon the
6 corporate income tax rate approved in the TCJA.

7 g. Taxable utilities operating in Kansas are notified that the portion of their
8 regulated revenue stream that reflects higher corporate tax rates should be
9 considered interim and subject to refund, with interest calculated at the rate being
10 used for interest paid on customer deposits, until the Commission can more fully
11 evaluate on a case-by-case basis the impact of the TCJA.

12 h. Upon the Commission completing its case-by-case evaluation, if it is
13 determined that a rate decrease is proper and would have been proper as of the
14 January 1, 2018, being the effective date of the TCJA, any excessive collections in
15 the deferred revenue subaccount, or other appropriate tracking mechanism
16 approved by the Commission, with appropriate adjustments, shall be refundable to
17 customers with interest. Any balance remaining in the account shall be credited to
18 the utility's operating revenue.

19 i. The Commission intends to capture excess ADIT for the benefit of
20 customers using a methodology that is consistent with the tax normalization
21 requirements specified in the tax legislation or IRS Tax Normalization Rules, as
22 applicable.

1 j. Any affected utility that believes other components of their cost of service
2 have more than offset the decrease in its income tax expenses will have the ability
3 to file such information and supporting data with the Commission, to be considered
4 on a case-by-case basis. The Commission's intention here is not to materially
5 impact any regulated utilities' profitability, but rather, ensure that the affected
6 utilities are neither positively nor negatively impacted by the passage of federal
7 income tax reform.

8 k. The Commission adopts the Staff's December 14, 2017 report and
9 recommendation and incorporates it into the Order.

10
11 **III. DESCRIPTION OF THE SETTLEMENT AGREEMENT**

12 **Q. Please describe the provisions of the Agreement.**

13 A. The Agreement, in agreement with the Commission's order, provides the following:

- 14 • Atmos will accrue in a Deferred Revenue Account, the difference between: (1) the cost
15 of service as approved by the Commission in its most recent rate case, Docket No. 16-
16 ATMG-079-RTS ("079 Docket"), and (2) the cost of service that would have resulted
17 had the provision for federal taxes been based upon the corporate income tax rate
18 approved in the TCJA, plus interest. The accrual period, presuming a Commission
19 order is issued in late March 2018, is January, February, and March of 2018. The
20 Deferred Revenue Account credit of \$1,131,090 will be provided to customers as part
21 of Atmos' proposed Tax Reform Credit Tariff over a twelve month period beginning
22 in April 2018.

- 1 • Atmos reserves its right to provide information and supporting data to the Commission
2 in its next general rate case to show that other components of its cost of service offset
3 the decrease in its income tax expenses during the accrual period (January 1 – March
4 31, 2018). Atmos reserves its right to request that all or a portion of the deferred revenue
5 account being credited to customers under the Agreement be credited back to Atmos if
6 the Commission concludes in Atmos' next general rate case that other components of
7 Atmos' cost of service offset the decrease in its income tax expenses. Staff and CURB
8 reserve their rights to challenge any effort made by Atmos during its next general rate
9 case to offset the decrease in Atmos' income tax expenses during the deferred revenue
10 accrual period.
- 11 • Atmos will refund customers \$3,002,308, in order to reflect the difference between: (1)
12 the cost of service as approved by the Commission the 079 Docket, and (2) the cost of
13 service that would have resulted had the provision for federal taxes been based upon
14 the corporate income tax rate approved in the TCJA. The Cost of Service credit will be
15 provided to customers as part of Atmos' proposed Annual Tax Reform Credit Tariff,
16 beginning in April 2018.
- 17 • Atmos will refund customers an additional \$75,210 in tax savings associated with
18 Atmos Gas System Reliability Surcharge ("GSRs"). The GSRs credit will be provided
19 to Atmos' customers as part of and included in the fixed monthly separate line credit
20 and referred to on the bill as the "Tax Reform Credit."
- 21 • Atmos' Tax Reform Credit Tariff will be allocated among Atmos' customer classes
22 based upon the customer class allocations approved in the 079 Docket and shall be
23 allocated between a fixed credit (54% of total credit) and volumetric credit (46% of

1 total credit). Each of Atmos' residential customers will receive an average annual
2 reduction or credit of \$18.56 for the Annual Tax Reform Credit and an average
3 reduction or credit of \$6.86 for the one-year Deferred Revenue Account. The Tax
4 Reform Credit Tariff includes an annual true-up provision and shall be reset to zero
5 when Atmos' base rates are reset to account for the difference between the 35% and
6 21% tax rate in its next general rate case.

- 7 • Atmos will establish a regulatory liability to account for and capture the savings
8 relating to excess ADIT for the benefit of customers using a methodology that is
9 consistent with the tax normalization requirements specified in the tax legislation or
10 IRS normalization rules. As part of this Agreement, parties have agreed to defer any
11 issues regarding the amount of tax savings relating to excess ADIT and how those
12 savings should be passed on to customers in Atmos' next general rate case filing, with
13 the understanding that Atmos customers are entitled to the benefits of the tax savings
14 relating to the utility's excess ADIT.

15

16 **Q. Do the terms of this agreement conform to the Commission's findings and conclusions**
17 **in this general investigation?**

18 A. Yes. The Agreement contains several provisions that are consistent with the Commission's
19 Order.

20

21 **Q. Are the terms of this Agreement binding upon Staff, CURB or the Commission?**

22 A. No. The terms in the Agreement are only applicable to Atmos tax refund plan and

1 shall not be binding on Staff, CURB or the Commission in reviewing or approving any
2 TCJA tax refund plan submitted by any other public utility.

3
4 **IV. CURB'S COMPLAINT IN DOCKET NO. 18-GIMX-273-COM**

5 **Q. Can you describe the complaint filed by CURB in Docket No. 18-GIMX-273-COM**
6 **(“Complaint”)?**

7 A. Yes. On December 29, 2017, CURB filed a complaint against all regulated electric, natural
8 gas, water and telecommunications public utilities operating in Kansas (identified in Staff's
9 December 14, 2017 report and recommendation in this proceeding). CURB's complaint
10 was filed prior to the Commission's Order in this proceeding. It expressed a concern that,
11 absent a Commission directive requiring utilities to amend tariffs prospectively to reflect
12 the cost of service reduction caused by the TCJA, some could argue that it is unlawful to
13 require the utilities to refund to customers the cost of service reductions caused by the
14 TCJA. On March 6, 2018, the Commission issued an order adopting CURB's complaint
15 and ordered that the complaint be served upon all public utilities operating in Kansas. The
16 same order also directed Staff to investigate the matter and submit a report and
17 recommendation to the Commission.

18
19 **Q. Does this Agreement resolve CURB's concerns as stated in its Complaint?**

20 A. For Atmos, yes. CURB's filed Complaint was delivered to all regulated public utilities
21 in Kansas. CURB's support for Atmos' Agreement does not provide the relief requested as
22 to the other utilities named in CURB's Complaint, and CURB reserves its right to dispute
23 all issues raised as to the other named parties in its Complaint.

1 **V. EVALUATION OF SETTLEMENT AGREEMENTS**

2 **Q. Are you familiar with the standards used by the Commission to evaluate a settlement**
3 **that is proposed to the Commission?**

4 A. Yes, I am. The Commission has adopted five guidelines for use in evaluating settlement
5 agreements. These include: (1) has each party had an opportunity to be heard on its
6 reasons for opposing the settlement? (2) is the agreement supported by substantial
7 evidence in the record as a whole? (3) does the agreement conform to applicable law? (4)
8 will the agreement result in just and reasonable rates? (5) are the results of the agreement
9 in the public interest, including the interests of customers represented by any party not
10 consenting to the agreement?

11
12 **Q. Has each party had an opportunity to be heard on its reasons for opposing the**
13 **Settlement Agreement?**

14 A. Yes. Settlement discussions were conducted with Atmos, Staff, and CURB on February 8,
15 2018. There were no other parties present during this discussion. Because all issues were
16 resolved as a part of the February 8, 2018 settlement discussion, this factor has been met
17 as all parties with an interest in Atmos' TCJA tax savings plan were present, were heard,
18 and were able to participate.

19
20 **Q. Is the Settlement supported by substantial evidence in the record as a whole?**

21 A. Yes. There is substantial evidence in the record to support the Agreement. The Annual Tax
22 Reform Credit calculations were performed using Atmos most recent base rate case
23 (Docket No. 16-ATMG-079-RTS), as adjusted for the change in the corporate tax rate

1 change. Additionally, the GSRS refund amounts were calculated using Atmos most recent
2 Commission-approved GSRS application (Docket No. 18-ATMG-218-TAR).

3

4 **Q. Does the agreement conform to applicable law?**

5 A. I am not an attorney, however, it is my understanding that the Agreement has been drafted
6 to ensure it conforms to applicable law. At the request of the Commission, a CURB
7 attorney will provide a response to the question of whether the Agreement does indeed
8 conform to applicable law.

9

10 **Q. Will the Settlement Agreement result in just and reasonable rates?**

11 A. Yes. The calculation of Atmos' deferred revenue and cost of service credits are based upon
12 the Commission-approved rates in Atmos most recent general rate proceeding, which at
13 the time of approval were deemed just and reasonable. As part of this Agreement, Atmos
14 will file the Tax Reform Credit tariff with the Commission. This tariff will pass the tax
15 savings associated with the TCJA on to Atmos customers over a twelve month period. At
16 the end of each twelve month period until Atmos' base rates are changed as part of a general
17 rate case filing, the Tax Reform Credit tariff will be trued-up. Therefore, it is my opinion
18 that Atmos rates will continue to be just and reasonable.

19

20 **Q. Should the deferral of the excess ADIT until the next general rate case cause Atmos
21 current rates to be deemed unreasonable?**

22 A. In my opinion, no. As part of the Agreement, Atmos, Staff and CURB have agreed to defer
23 the excess ADIT issues until Atmos next general rate case. However, Atmos will

1 immediately establish a regulatory liability to account for and capture the tax savings that
2 are related to its excess deferred taxes. Further, Atmos has agreed that the tax savings
3 captured as a result of excess ADIT will not be amortized until the next base rate case and
4 that these savings will be applied for the benefit of its customers.

5

6 **Q. Are the results of the Settlement Agreement in the public interest, including the**
7 **interests of customers represented by any party not consenting to the agreement?**

8 A. Yes. I believe the Agreement is in the public interest.

9

10 **VI. RECOMMENDATION**

11 **Q. What do you recommend?**

12 A. I recommend that the Commission find that all parties had the opportunity to participate
13 in the settlement process, that the Settlement Agreement is supported by substantial
14 evidence in the record, that the Settlement Agreement will result in just and reasonable
15 rates, and that the Settlement Agreement is in the public interest. Therefore, I recommend
16 that the Commission approve the Settlement as filed.

17


18 **Q. Does this conclude your testimony?**

19 A. Yes.

VERIFICATION

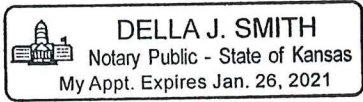
STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

I, Stacey Harden, of lawful age and being first duly sworn upon my oath, state that I am a Senior Regulatory Analyst for the Citizens' Utility Ratepayer Board; that I have read and am familiar with the above and foregoing document and attest that the statements therein are true and correct to the best of my knowledge, information, and belief.



Stacey Harden

SUBSCRIBED AND SWORN to before me this 14th day of March, 2018.





Notary Public

My Commission expires: 01-26-2021.

CERTIFICATE OF SERVICE

18-GIMX-248-GIV

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was served by electronic service on this 14th day of March, 2018, to the following:

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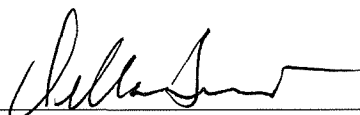
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