

**BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS**

<b>In the Matter of the Application</b>	)	
<b>of Atmos Energy Corporation For</b>	)	
<b>The Recovery of Qualified</b>	)	<b>22-ATMG-538-TAR</b>
<b>Extraordinary Costs and Issuance</b>	)	
<b>of a Financing Order.</b>	)	

**DIRECT TESTIMONY**

**PREPARED BY**

**JUSTIN T. GRADY**

**UTILITIES DIVISION**

**KANSAS CORPORATION COMMISSION**

**August 26, 2022**

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1 **I. Introduction, Qualifications, Purpose of Testimony**

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

4 A. My name is Justin T. Grady and my business address is 1500 Southwest Arrowhead  
5 Road, Topeka, Kansas, 66604.

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

7 A. I am employed by the Kansas Corporation Commission (KCC or Commission) as the  
8 Chief of Revenue Requirements, Cost of Service and Finance.

9 **Q. Please summarize your educational and employment background.**

10 A. I earned a Master of Business Administration degree, with a concentration in General  
11 Finance which includes emphases in Corporate Finance and Investment Management, from  
12 the University of Kansas in December of 2009. I also hold a Bachelor of Business  
13 Administration degree with majors in Finance and Economics from Washburn University.  
14 I have been employed by the KCC in various positions of increasing responsibility within  
15 the Utilities Division since September 2002. I have been a Section Head in the Utilities  
16 Division since May 2012, and have been employed in my current capacity since August  
17 2020.

18 While employed with the Commission, I have participated in and directed the  
19 review of various tariff/surcharge filings and rate case proceedings involving electric,  
20 natural gas distribution, water distribution, and telecommunications utilities. In my current  
21 position, I have supervisory responsibility for the activities of the Commission's Audit  
22 section within the Utilities Division. In that capacity, I plan, manage, and perform audits  
23 relating to utility rate cases, tariff/surcharge filings, fuel cost recovery mechanisms,

transmission delivery charges, alternative-ratemaking mechanisms, class cost of service studies, and other utility filings that may have an impact on utility rates in Kansas including mergers, acquisitions, and restructuring filings.

**Q. Have you previously submitted testimony before this Commission?**

A. Yes. I have submitted written and oral testimony before this Commission on multiple occasions regarding various regulatory accounting and ratemaking issues. This work includes testimony filings in 74 dockets, including this one. A list of the other dockets that encompass this experience is readily available upon request.

**Q. What is the purpose of your testimony in the review of the Atmos Energy Corporation (Atmos) Application for approval of the recovery of Qualified Extraordinary Costs and the issuance of a Financing Order that would allow for the issuance of securitized bonds to recover costs associated with Winter Storm Uri?**

A. In the testimony that follows, I will present and support Staff's positions regarding the following topics, in the order that they will appear in my testimony:

1. A review of the updated Qualified Extraordinary Costs (QECs) related to Winter Storm Uri, with an explanation as to how these costs have changed since the Commission approved the Financial Plan Settlement in Docket No. 21-ATMG-333-GIG;<sup>1</sup>
2. A review of the net quantifiable rate benefits, and associated net present value (NPV) of revenue requirements, associated with the issuance of securitized bonds to finance the QECs, as presented in the Direct Testimony of Kathleen R. Ocanas and Jason L Schneider;

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<sup>1</sup> See March 24, 2022, Order Approving Unanimous Settlement Agreement on Atmos Energy Corporation's Financial Plan, <https://estar.kcc.ks.gov/estar/ViewFile.aspx/20220324102715.pdf?Id=a5b88cfd-87b2-4f84-8f1a-1753cf72b2f8>

- 1           3.     An update of movement in interest rates since Atmos filed its Application, and the  
2                 potential impact of those movements on the cost of securitization, and impact to  
3                 customer bills;
- 4           4.     A review of an alternative form of ratepayer recovery, in the event interest rates  
5                 rise to the point that securitization no longer offers net quantifiable rate benefits or  
6                 the Commission denies the issuance of securitized bonds;
- 7           5.     Staff's recommended pre-issuance review process, which will ensure that the  
8                 Commission's Designated Representative will be in a position to provide an  
9                 opinion to the Commission on the reasonableness of the pricing, terms and  
10                conditions of the securitized bonds during the issuance advice letter process;
- 11          6.     A review of the form and mechanics (including fixed versus variable charge, semi-  
12                 annual true up, and allocation of cost responsibility) of the securitized utility tariff  
13                 charge proposal, titled the Winter Event Securitized Charge Rider (WESCR);
- 14          7.     A review of the settlement fee (for sales customers who wish to switch to  
15                 transportation service) proposed by Atmos;
- 16          8.     A review of the reconciliation process described in Atmos witness Ocanas's  
17                 testimony, including a recommendation to account for variances in Atmos's upfront  
18                 and ongoing costs;
- 19          9.     A review of Atmos's recommended treatment of investment earnings on the capital  
20                 sub account;
- 21          10.    A review of the communication plan discussed by Atmos witness Ocanas; and

1 11. A review of Atmos's request for a waiver of Section 4.B.2 of its General Terms and  
2 Conditions (GT&C), to allow securitized charges to take priority over other bill  
3 elements.

## 4 **II. Executive Summary**

5

6 **Q. Please provide an executive summary of your testimony.**

7 A. In the testimony that follows, I will present and support the following conclusions:

- 8 • The Commission should authorize Atmos to recover an estimated \$118,514,030 in  
9 Qualified Extraordinary Costs (QEC's) associated with Winter Storm Uri, through the  
10 issuance of securitized ratepayer backed bonds, that currently have an estimated initial  
11 principal amount of \$92,684,233, prior to all illustrative interest expenses relating to  
12 securitization and Operation and Admin / Net Reserve Funding Costs (Ongoing Costs),  
13 as authorized by the Kansas Utility Financing and Securitization Act, K.S.A. 66-1,240,  
14 *et seq.* (the Act).<sup>2</sup>;
- 15 • The issuance of securitized bonds to recover the QECs from Winter Storm Uri is  
16 expected to provide net quantifiable rate benefits to customers, estimated in the range  
17 of \$8.5 to \$11.5 million based on the most recent Atmos estimates of securitized bond  
18 interest rates;<sup>3</sup>

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<sup>2</sup> \$118,514,030 represents the most recently updated calculation of extraordinary gas cost purchases and Atmos's share of the penalties (negotiated gas cost payments) to KGS in Docket No. 21-KGSG-332-GIG. It also includes legal/consulting fees incurred by Atmos thus far, and projected carrying costs through March 2023. Lastly, it includes estimated interest costs to be incurred on the securitized bonds, issuance costs expected to be incurred on securitized bonds, and ongoing operating and administration costs expected to be incurred during the term of securitization. As discussed in more detail later in my testimony, the estimated principal amount of the securitization at this point is expected to be approximately \$92,684,233.

<sup>3</sup> These net quantifiable rate benefits are calculated by comparing the anticipated net present value of revenue requirements for a 10-year and a 15-year securitization, respectively, to the net present value of revenue requirements associated with traditional ratemaking recovery over five-years.

- 1       • Despite significant volatility in United States (US) Treasury rates since Atmos filed its  
2       Application, there still appears to be a significant benefit to Atmos customers from  
3       issuing securitized bonds to finance Winter Storm Uri costs over 10 to 15 years, instead  
4       of using traditional ratemaking methods to collect these costs;
- 5       • In the event that the Commission declines to approve Atmos’s request for a Financing  
6       Order to issue securitized bonds for the recovery of Winter Storm Uri costs, Staff  
7       recommends that the Commission approve Atmos’s recovery of these costs over a five-  
8       year period, with Atmos’s weighted average cost of capital (WACC) of 8.396% as a  
9       carrying cost. While this is not Staff’s primary recommendation, because it is more  
10      costly to customers than securitization (at least at current interest rates) it is important  
11      that the Commission knows Staff’s position for an alternative recovery mechanism,  
12      should Atmos’s request for securitization be denied.
- 13      • In order to ensure that the securitization process results in the “lowest securitized utility  
14      tariff charges, consistent with market conditions...,” Staff recommends that the  
15      Commission require a pre-issuance review process in which the Commission’s  
16      Designated Representative, including their legal and investment banking advisors, are  
17      able to oversee all facets of the securitization process, including the structuring,  
18      marketing, and pricing of the securitized bonds. In making this recommendation, Staff  
19      envision a comprehensive collaborative process, in which the Commission’s  
20      Designated Representative (and advisors) are able to review, confer, and consult with  
21      Atmos on all material terms of the issuance of the securitized bonds as discussed in  
22      more detail later in my testimony;



- Staff has reviewed, and recommends approval of, the Winter Event Securitized Charge Rider (WESCR) tariff recommended by Atmos witness Ocanas, with one minor addition.<sup>4</sup> Staff finds that the fixed per customer charge is reasonable in that it will assist in the establishment of the highest possible bond ratings for the securitized bonds, and will allow customers to budget with certainty what their costs will be associated with Winter Storm Uri. Additionally, Staff has reviewed and recommends approval of the allocation of Winter Storm Uri costs between the customer classes, as recommended by Atmos witness Ocanas. Lastly, Staff recommends approval of the semi-annual (if not needed more frequently) true-up adjustment mechanism recommended by Atmos. This mechanism will also assist in the establishment of the highest possible bond ratings for the securitized bonds, and therefore, it is worth whatever administrative burden will result (as compared to an annual true-up);
- Staff recommends approval of the settlement fee recommended by Atmos to be charged to any sales customer that wants to switch to transportation service during the term of the WESCR tariff being charged. Staff's review has found that this settlement fee will be calculated as the NPV of the remaining customer obligations to pay for the WESCR, using a discount rate equal to the weighted average interest rate of the securitized bonds;
- Staff recommends approval of the reconciliation process described in Atmos witness Ocanas's testimony, whereby the final amount of QECs is compared to the final amount

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<sup>4</sup> Late in the process of reviewing KGS's proposed WESCR tariff in Docket No. 22-KGSG-466-TAR, it was revealed that there should be a clarification added to the tariff so that it matched the financing order. The clarification entailed adding "+ Replenishments to the Capital Subaccounts if Needed" to the definition of the Revenue Requirement. Staff agreed that this was a helpful addition/clarification, so we are also recommending this change to the Atmos WESCR tariff.

1 of securitized bond issuance, and the difference is refunded to customers through the  
2 Purchased Gas Adjustment (PGA) process. Additionally, Staff recommends that any  
3 profit margin that is included in the upfront or ongoing financing cost paid to Atmos as  
4 part of its servicing or administration obligations under the securitization, be recorded  
5 to a regulatory liability, so that it can be credited to customers in the next base rate case;

- 6 • Staff recommends that the Financing Order make clear that Atmos will credit the  
7 investment earnings on the Capital Sub Account to retail customers, by way of transfer  
8 of these investment earnings, to the Excess Funds Sub Account;
- 9 • Staff has reviewed and recommends approval of the communication plan presented by  
10 Atmos to inform and educate Atmos customers about the purpose for, and the benefits  
11 of, the issuance of securitized bonds;
- 12 • Staff has reviewed, and recommends the Commission approve, Atmos's requested  
13 waiver of Section 4.B.2 of its GT&C. This will allow the payment of securitized bonds  
14 to take priority over the rest of the customer bill in the event of partial customer  
15 payment. Staff views this waiver as supportive of the highest bond ratings possible for  
16 the securitized bonds, and therefore, a benefit to customers.

1    **III.    Staff’s Review of QECs from Winter Storm Uri**

2            **A.        Changes in QECs since Financial Plan Filing**  
3

4    **Q.        Have there been any changes in the total amount of extraordinary costs incurred by**  
5            **Atmos related to Winter Storm Uri since the Commission approved the Unanimous**  
6            **Settlement Agreement on the Financial Plan presented in Docket No. 21-ATMG-333-**  
7            **GIG (21-333 Docket)?**

8    A.        Yes, Appendix A to the Settlement Agreement in the 21-333 Docket contained a total of  
9            \$102,517,847 in QECs, which included the accumulation of carrying charges at a 2%  
10           annual rate, as allowed by the Commission in the 21-333 Docket, but only through August  
11           31, 2022. It also included estimated interest costs to be incurred during the term of  
12           securitization, based on estimates available at the time, but it did not include estimated  
13           issuance costs (Upfront Financing Fees) or operations and administration costs (Ongoing  
14           Financing Fees) to be collected during the term of securitization.

15                    The best estimate of QECs at the estimated time of securitization (March. 2023) is  
16           currently \$118,514,030, as follows:

<b>QUALIFIED EXTRAORDINARY COST DESCRIPTION</b>	<b>AMOUNT</b>
Gas Costs	\$76,652,625
Carrying Costs – at 2% through March 31, 2023	\$210,388
Docket Cost, Including Customer Education	\$779,000
Atmos Energy Penalties from Docket 21-333	\$9,559,372
Credit for Passthrough Penalties to 3 <sup>rd</sup> Parties	(\$334,521)
Legal/Consulting Fees (excluding financing fees)	\$2,885,000
<b>Total Amount to be Securitized</b>	<b>\$92,684,223</b>
Illustrative Interest Expense Relating to Securitization	\$22,157,796
Operation & Admin/ Net Reserve Funding Costs (Ongoing Costs)	\$3,672,001
<b>Total Qualified Extraordinary Costs</b>	<b>\$118,514,030</b>

1 It is important to note here that the increase in QEC's (since the 21-333 Docket) is not due  
2 to changes in the amount of extraordinary gas costs that Staff reviewed in the 21-333  
3 Docket. The change in total QEC's is due to the inclusion of additional categories of  
4 anticipated costs associated with securitization in the aggregate, and an update of the  
5 expected amount of interest expense to be incurred on the securitized bonds during the term  
6 of securitization. Staff views these updates and changes as providing additional  
7 transparency, in the interests of full disclosure.

8 **Q. How have the major components of these QECs changed since the approval of the**  
9 **Financial Plan Settlement in the 21-333 Docket?**

10 A. Since the Commission approved the Financial Plan settlement, there have been no changes  
11 in the extraordinary gas cost calculations, but there has been a revision to reflect the pass  
12 through of some of the Negotiated Gas Cost Penalty (hereinafter "Penalties") amounts  
13 approved by the Commission in the 21-332 Docket Waiver Proceeding, to Atmos's  
14 transportation customers. This is reflected as a new line item, and results in a reduction of  
15 \$334,521 in total QECs to be securitized.

16 There have also been updates to the category of "Illustrative Interest Expense  
17 Relating to Securitization", which is actually anticipated interest to be incurred by Atmos  
18 during the term of the securitization. Importantly, this estimated change will not affect the  
19 principal amount of the bond issuance. Additionally, legal, consulting, Docket, and  
20 operations and administration costs were updated to reflect Atmos's most recent estimates  
21 of the amounts likely to be incurred related to the securitization process and carrying  
22 charges have been calculated through March 2023. These carrying charges were calculated  
23 at a 2% annual rate through the estimated time of securitization.

1           While Atmos has estimated \$118,514,030 in total QEC costs to be incurred through  
2           the expected term of securitization, the principal amount of the issuance itself is expected  
3           to be \$92,684,233. This consists of all categories in the table on the previous page except  
4           for Illustrative Interest Expense Relating to Securitization and Operation and Admin / Net  
5           Reserve Funding Costs (Ongoing Costs), totaling together \$25,829,797.

6           **B.     Staff's Review of the QECs**  
7

8   **Q.     Has Staff been able to review the reasonableness of the updated QECs, and do you**  
9           **recommend approval of these costs from customers?**

10   A.    Yes. These updated costs have been the subject of discovery and discussion through the  
11          course of this Docket so far. Staff has been provided detailed invoice support,  
12          reconciliations, work papers, calculation support, etc. I have personally reviewed this  
13          information and I did not find anything objectionable about recovering these costs from  
14          customers. That being said, Staff recommends that the estimated securitization issuance  
15          costs (\$2,885,000) and the estimated Operation and Admin / Net Reserve Funding Costs  
16          (\$3,672,001) be subject to the pre-issuance review process of the Designated  
17          Representative, as discussed below.

18   **Q.     Do you recommend that the entire \$118,514,030 in QECs be recovered through the**  
19           **issuance of securitized ratepayer backed bonds?**

20   A.    No. As discussed above, the total QECs includes estimated costs (interest and other  
21          ongoing financing costs) expected to be incurred by Atmos customers during the entire  
22          term of the securitized bonds. The best estimate at this time of the level of QECs that will  
23          be financed through securitized ratepayer backed bonds is \$92,684,233, as provided in  
24          Atmos witness Jason Schneider's Revised Direct Testimony. Accordingly, I recommend

1 that \$92,684,233 be recovered through the issuance of securitized ratepayer backed bonds.  
2 The other \$25,829,797 will be recovered over time as part of the charges collected through  
3 the WESCR tariff.

#### 4 **IV. Staff's Recommendation to Issue Securitized Bonds**

##### 5 **A. Net Quantifiable Rate Benefits** 6

7 **Q. Why does Staff recommend that the Commission approve a Finance Order, thus**  
8 **approving the process to begin the issuance of securitized ratepayer backed bonds?**

9 A. Staff supports the issuance of securitized ratepayer backed bonds because it will result in  
10 net quantifiable rate benefits for Atmos retail customers. This can be seen when looking  
11 at the projected monthly bill impacts associated with the various recovery options that  
12 Atmos evaluated, as discussed in Atmos witness Ocanas's testimony, or it can be evaluated  
13 from a NPV of revenue requirements approach, as discussed in Atmos witness Schneider's  
14 testimony. Because the information included in these Atmos witnesses' testimony was  
15 based off of the interest rate information available on May 9, 2022, I will provide an  
16 updated view of each here for the Commission's consideration.

17 In Atmos witness Jason Schneider's Revised Direct Testimony, filed on July 22,  
18 2022, he provided the Commission with Atmos's updated view of the interest rates that  
19 could be expected for securitization bonds with 10 and 15-year terms. He then compared  
20 these options to traditional ratemaking recovery options over five years, with a variety of  
21 assumed discount rates from 5% to 20% to represent different customer circumstances.  
22 Mr. Schneider concluded that securitization of Winter Storm Uri costs would result in a  
23 NPV benefit to customers between \$1.3 million to \$17.3 million for a 10-year bond, and a

NPV benefit (detriment) of between \$(5.3) million and \$23.5 million for a 15-year bond. These calculations were based on U.S. Treasury rates and Atmos-sourced indicative spreads for securitized bonds on July 20, 2022.

Additionally, as discussed in the Direct Testimony of Atmos witness Ocanas, the bill impact to residential customers is more manageable with securitization as well, ranging from \$5.87/month for a 10-year securitization to \$4.67/month for a 15-year securitization, as compared to five-year traditional rate recovery of \$10.55/month. This can be seen in the following updated tables KRO-2 and KRO-3 from Atmos witness Ocanas' testimony:

**Table KRO-2**

**Securitization – 10 Year Customer Impact**

<b><u>Customer Class</u></b>	<b><u>Annual \$ Allocated to Class</u></b>	<b><u>Monthly Fixed Charge</u></b>
Residential Sales Service	\$9,027,864	\$5.87
Commercial/Public Authority	\$2,908,377	\$24.44
School Sales Service	\$31,750	\$42.68
Industrial Sales Service	\$19,232	\$114.47
Small Generator	\$12	\$0.01
Irrigation Engine	\$47,436	\$16.20
Total	\$12,034,675	

**Securitization – 15 Year Customer Impact**

<b><u>Customer Class</u></b>	<b><u>Annual \$ Allocated to Class</u></b>	<b><u>Monthly Fixed Charge</u></b>
Residential Sales Service	\$7,179,360	\$4.67
Commercial/Public Authority	\$2,312,871	\$19.44
School Sales Service	\$25,249	\$33.94
Industrial Sales Service	\$15,294	\$91.04
Small Generator	\$9	\$0.01
Irrigation Engine	\$37,723	\$12.88
Total	\$9,570,507	

**Table KRO-3**

**Traditional Ratemaking – 5 Year Customer Impact**

<u>Customer Class</u>	<u>Annual \$ Allocated to Class</u>	<u>Monthly Fixed Charge</u>
Residential Sales Service	\$16,209,359	\$10.55
Commercial/Public Authority	\$5,221,935	\$43.89
School Sales Service	\$57,007	\$76.62
Industrial Sales Service	\$34,530	\$205.54
Small Generator	\$21	\$0.02
Irrigation Engine	\$85,171	\$29.09
Total	\$21,608,023	

**B. Staff's Response to Atmos's Net Quantifiable Rate Benefits**

**Q. How does Staff respond to Atmos's presentation of Net Quantifiable Rate Benefits associated with securitization of Winter Storm Uri costs?**

A. While Staff appreciates Mr. Schneider's evaluation of a range of discount rates between 5% and 20% to evaluate the NPV benefit of securitization, Staff recommends that this calculation be performed with a discount rate of 8.396%, which represents the current pre-tax WACC of Atmos. Staff makes this recommendation because it is common in regulatory proceedings to substitute the utility's WACC as a proxy for ratepayers' discount rate. As well, there are several examples in rate cases where customers receive the company's pre-tax WACC as compensation for time value of money, for instance when Accumulated Deferred Income Taxes or Regulatory Liabilities are deducted from Rate Base. The end result is that customers are receiving compensation for the time value of their money at the utility's pre-tax WACC, so it is very reasonable to assume this as the appropriate customer discount rate in order to determine the Net Quantifiable Rate Benefits of securitization.



1           Based on the financial analysis included in Mr. Schneider's Revised Direct  
2           Testimony (July 22, 2022), if we assume a ratepayer discount rate of 8.396%, the NPV  
3           benefit to customers associated with a 10-year securitization comes out to \$7.3 million for  
4           10-year securitization and \$6.6 million for a 15-year period. It should be noted that these  
5           savings estimates appear conservative to Staff because Atmos's estimated securitization  
6           rates include spreads over U.S. Treasuries that are much higher in this revised testimony  
7           than in Mr. Schneider's original Direct Testimony.

8           During the technical conferences on July 9<sup>th</sup> and July 19<sup>th</sup> in this Docket, Staff  
9           requested, and Atmos agreed, to provide regular updates to its estimated securitization  
10          interest rates, NPV of revenue requirements, and residential bill impact calculations.  
11          Accordingly, on August 17, 2022, Atmos provided updates to the values discussed above.  
12          With these updates of JLS-1 and JLS-3 provided to Staff, Atmos reported lower U.S  
13          Treasury rates for 10 and 15-year periods, with slightly lower spreads for the 10-year  
14          securitization and slightly higher spreads for the 15-year securitization.

15          The net result was a decrease in the indicative interest rates expected for both 10  
16          and 15-year securitizations, as compared to Mr. Schneider's Revised Direct Testimony  
17          from July 22, 2022. This increased the NPV benefit to customers associated with a 10-  
18          year securitization to \$8.5 million and the NPV benefit associated with a 15-year  
19          securitization increased to \$11.5 million. This reduction in interest rates also reduced the  
20          estimated residential customer impact calculations to \$5.78/month for 10 years or  
21          \$4.40/month for 15 years.

1       **C.     Staff's Recommended Term Length of Bonds**  
2

3       **Q.     Given the most recent estimated interest rates for securitized bonds, the NPV savings**  
4       **associated with the different alternatives, and the anticipated customer bill impact**  
5       **data, what is your recommendation with regard to the issuance of securitized bonds**  
6       **to finance the costs of Winter Storm Uri?**

7       A.     Staff recommends that Atmos be allowed to issue securitized bonds with a scheduled final  
8       maturity of between 10 to 12 years, subject to the pre-issuance review process discussed  
9       later in this testimony. At this point Staff does not support financing these costs much  
10      beyond 10 years, and a targeted securitization of 15 years should be avoided in my opinion.  
11      One reason for this is that there does not appear to be significant increases in NPV benefit  
12      or reductions in customer bills associated with moving to a 15-year securitization as  
13      compared to a 10-year period. For instance, based on Mr. Schneider's Revised Direct  
14      Testimony, the NPV benefit of the 15-year securitization is actually less than the 10-year.  
15      While the August 17, 2022, update showed a higher NPV benefit to the 15-year term (35%  
16      higher than 10-years), the customer bill impact only reduced by \$1.38/month (23.8% lower  
17      than 10-years). While that \$1.38/month would certainly benefit customers, in Staff's  
18      opinion, it is not worth adding five years (50% increase) to the securitization term to realize  
19      these benefits.

20             Increasing the recovery of these costs longer than 10 years increases the likelihood  
21      of intergenerational inequities, and increases the likelihood that customers would be faced  
22      with paying off multiple securitizations (from extraordinary weather or market events) at  
23      the same time. While it is not dispositive, it is nonetheless noteworthy that 10 years was  
24      also the maximum time period that the Kansas Legislature allowed municipalities with

1 extreme Winter Storm Uri costs to finance these costs.<sup>5</sup> Staff's proposed revisions to the  
2 Financing Order recognizes that some flexibility on the maximum 10-year bond term must  
3 be provided in the event that the ratings agencies require this change in order to rate the  
4 securitized bonds as AAA. Staff also recognizes that the final legal maturity of the  
5 securitized bonds will likely be longer than the scheduled final maturity.

6 **D. Rising Interest Rates**  
7

8 **Q. Have U.S. Treasury rates continued to increase since Mr. Schneider filed his Revised**  
9 **Direct Testimony?**

10 A. Not necessarily, however, U.S. Treasury rates have been quite volatile in the last several  
11 months. From the time that Mr. Schneider filed his Revised Direct Testimony on July 22,  
12 2022, which referenced the 10-year U.S. Treasury rate as of July 20, 2022, to the update  
13 Atmos provided to Staff on August 17, 2022, the 10-year U.S. Treasury rate declined from  
14 3.03% to 2.89%. As I write this testimony, the 10-year U.S. Treasury rate is trading in the  
15 3.11% range.

16 **Q. Do these movements in U.S. Treasury rates cause you concern that securitization of**  
17 **Winter Storm Uri costs will still provide net quantifiable rate benefits for Atmos**  
18 **customers?**

19 A. While these interest rate movements are concerning, I do not have a concern at this point  
20 that these interest rate movements will fully erode the benefits of securitization for Atmos  
21 customers. First, as stated earlier, the indicative interest rate spreads that Mr. Schneider

---

<sup>5</sup> City Utility Low Interest Loan Program--House Substitute for Senate Bill 88, the program allowed for the State Treasurer to distribute up to \$100 million in loans for the purpose of providing loans to cities for extraordinary natural gas costs incurred during the 2021 Winter Weather Event.

1 used in his Revised Direct Testimony are significantly higher than in his original Direct  
2 Testimony, and significantly higher than realized spreads achieved in other recent utility  
3 securitizations. Accordingly, from Staff's perspective there was a cushion built into the  
4 NPV and customer bill impact analyses presented thus far. Second, I have stressed these  
5 interest rate assumptions with another full percentage point increase in rates for the 10-year  
6 and 15-year securitization scenarios, and there is still a NPV and customer bill benefit  
7 associated with securitization of Atmos's Winter Storm Uri balances. Another factor to  
8 consider is that sustained interest rate increases would likely lead to at least some increase  
9 in the WACC of Atmos as well, a factor which confirms the relative rate benefits provided  
10 by securitization.

11 **Q. What if interest rates continue to rise, beyond the point at which there is no longer a**  
12 **benefit to customers associated with securitization?**

13 A. If that happens, Atmos and Staff, working together with our respective financial advisors,  
14 will make the decision to not move forward with securitization, and instead pursue one of  
15 the traditional ratemaking recovery options for these costs. The Commission can be  
16 assured that the Pre-Issuance Review process and the Issuance Advice Letter process  
17 contained in Staff's proposed Financing Order will require Atmos and Staff to confirm that  
18 there are net quantifiable benefits to customers, or the securitization will not go forward.

1       **E.       Alternative to Securitization**  
2

3       **Q.       What traditional ratemaking recovery option would you recommend in the event that**  
4       **the Commission denies the use of securitization, or in the event that securitization**  
5       **rates rise to the point that it no longer makes financial sense to securitize these Winter**  
6       **Storm Uri costs?**

7       A.       My recommendation would be to allow Atmos to recover these costs over five years, with  
8       WACC for the carrying charge. While other settlements pertaining to the recovery of  
9       Winter Storm Uri costs have contained lower interest rates, those settlements occurred  
10       during a period of much lower and more stable interest rates (or so we thought at the time).  
11       They also generally covered a recovery period shorter than contemplated here for these  
12       costs.

13       **V.       Staff's Recommended Pre-Issuance Review Process**

14       **A.       Pre-Issuance Review Process**  
15  
16

17       **Q.       What recommended changes is Staff making to the proposed Financing Order as it**  
18       **pertains to the pre-issuance review process?**

19       A.       Staff is recommending changes to the Financing Order to clarify the role of the  
20       Commission's Designated Representative, as advised by financial advisors and legal  
21       counsel, to observe and fully participate in all facets of the securitization process, including  
22       the structuring, marketing, and pricing of the securitization bonds. The goal here is to  
23       collaborate and consult with Atmos towards the shared goal of achieving the lowest  
24       possible bond costs, and securitized utility tariff charges, consistent with market conditions

1 at the time the securitized utility tariff bonds are priced (the lowest cost standard as stated  
2 in the Act). The most significant changes to the proposed Financing Order pertaining to  
3 the pre-issuance review process appear in paragraphs 14, 15 and 130. Staff recommends  
4 paragraph 14 of the proposed Financing Order be revised to read:

5  
6 As the actual structure and pricing of the Securitized Utility Tariff Bonds  
7 will not be known at the time this Financing Order is issued, the Act  
8 provides for the Commission to provide additional provisions related to the  
9 Issuance Advice Letter process as the Commission considers appropriate.  
10 The Commission finds a pre-issuance review process is necessary to  
11 approve the Financing Order and to meet the requirement that the financing  
12 can be expected to result in the lowest securitized utility tariff charges,  
13 consistent with market conditions at the time the securitized utilities bonds  
14 are priced. As such, following the approval of the Financing Order, Atmos  
15 Energy shall be subject to the review of the Designated Representative of  
16 the Commission Staff, including its legal and investment banking advisors,  
17 who shall have all authority to review and observe all facets of the process  
18 undertaken by Atmos Energy to place the Securitized Utility Tariff Bonds  
19 to market so the Commission's Designated Representative can be prepared,  
20 if requested, to provide the Commission with an opinion on the  
21 reasonableness of the pricing, terms, and conditions of the Securitized  
22 Utility Tariff Bonds on an expedited basis. The Designated Representative  
23 shall have the authority to review, confer, and consult with Atmos Energy  
24 regarding the proposals of Atmos Energy, including but not limited to, the  
25 structuring, marketing, and pricing of the Securitized Utility Tariff Bonds  
26 to achieve the Act's statutory requirements. Any costs incurred by  
27 Designated Representative in connection with its review would be treated  
28 as a financing cost of the securitized utility tariff bonds and shall be included  
29 in the securitized utility tariff charge or as otherwise required by the Act.  
30

31 Additionally, Staff recommends a new paragraph 15 which reads as follows:

32 The Designated Representative will have all authority to review, confer, and  
33 consult with Atmos Energy and its underwriters on all facets of the  
34 securitization process, including but not limited to all material terms of the  
35 Securitized Bonds and other items it determines appropriate to perform its  
36 role, which may include, without limitation, (1) the underwriter and

1 syndication group sizes, selection process for the lead underwriter, co-lead  
2 underwriter, and all other underwriters (the foregoing constitutes the  
3 (“Underwriter Selection Process”) involved in the securitization process  
4 review and criteria, participants, allocations, and economics; (2) the  
5 structure of the Securitized Bonds and compliance with the requirements;  
6 (3) the marketing process, including the Securitized Bonds’ credit rating  
7 agency application, the underwriters’ preparation, marketing, and  
8 syndication of the Securitized Bonds; (4) the pricing of the Securitized  
9 Bonds and certifications provided by the issuer and underwriter(s); (5) all  
10 associated Securitized Bond costs (including Bond Issuance Costs and other  
11 Financing Costs), servicing and administrative fees; (6) maturities; (7)  
12 reporting templates; (8) the amount of equity contribution to the related  
13 SPE; (9) overcollateralization and other credit enhancements; and (10) the  
14 initial calculation of the related Fixed Recovery Charges. Whenever this  
15 Finance Order provides the Designated Representative will review and  
16 observe any matter, that means that the Designated Representative’s review  
17 includes, and it has all of the authority to, review, confer, consult with  
18 Atmos Energy and its underwriters regarding the matter or proposal being  
19 reviewed, including the provision of substantive input and advice as needed  
20 without further explanation or expansion at each reference. Atmos Energy  
21 shall endeavor in good faith to provide as much notice as possible to the  
22 Commission’s Designated Representative, including its legal and  
23 investment banking advisors, when meeting with investors or ratings  
24 agencies on the Securitized Utility Tariff Bonds. Atmos Energy shall  
25 provide this notice to the Commission’s Designated Representative through  
26 email, unless the Designated Representative requests otherwise. The  
27 Commission recognizes meetings with investors or ratings agencies may  
28 occur with very little or no notice. Provided Atmos Energy operates in good  
29 faith to inform the Designated Representative of such meetings, Atmos  
30 Energy shall not be required to wait for the Designated Representative prior  
31 to meeting with investors or ratings agencies. The Designated  
32 Representative, including its legal and investment banking advisors, shall  
33 be allowed to listen in on meetings with investors or ratings agencies, but  
34 shall not be allowed to speak or otherwise take an active role in such  
35 meetings.  
36

1 Finally, Staff recommends a change to paragraph 130 of the proposed Financing Order  
2 (originally paragraph four of the Ordering Paragraphs section of Atmos's proposed  
3 Financing Order), so that it now reads:

4 **Provision of Information.** Atmos Energy shall take all necessary steps to  
5 ensure that the Commission or its Designated Representative is provided  
6 sufficient and timely information to allow the Commission or its Designated  
7 Representative to fully participate in and exercise its decision-making  
8 authority concerning the proposed securitization as provided in this  
9 Financing Order. Atmos Energy shall collaborate, confer, and consult with  
10 the Designated Representative of the Commission, including its legal and  
11 investment banking advisors, to review and observe all facets of the  
12 structuring, marketing, and pricing of the securitization bonds following  
13 approval of the Financing Order. The Designated Representative's review  
14 shall be conducted with a goal of achieving the lowest cost standard as  
15 provided in the Act, and shall reflect the input and collaboration of the  
16 Designated Representative of steps necessary to ensure the statutory  
17 objective is achieved and minimize risk the Issuance Advice Letter is  
18 rejected.

19 **B. Support for Staff's Recommended Pre-Issuance Review Process**  
20

21 **Q. Why does Staff contend these changes to the Financing Order are necessary?**

22 A. Staff is recommending these changes to the Financing Order after consultation with, and  
23 advice from, its financial advisors and legal counsel in this Docket.<sup>6</sup> These changes are all  
24 made with the intention of ensuring that the securitization process provides maximum

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<sup>6</sup> Staff is advised by Foulston Siefkin LLP and Ducera Partners, LLC (Ducera). Ducera is a boutique investment bank that specializes in advising clients on situations involving a broad range of constituents with varying and often conflicting motivations and goals, including extensive experience advising constituencies relevant to the KCC. Ducera's directly relevant experience includes advising public entities and regulators (such as public utilities commissions) on complex corporate advisory transactions across M&A, financing, strategic advisory and restructuring transactions. Such experience involving complex financial advisory transactions includes advising on utility securitization across the United States, including most recently in 2022 advising on financing orders and/or securitization transactions in four states, involving over ten utilities and over \$10 billion of securitization transaction volume. Ducera's professionals have advised on a multitude of other transactions involving utilities and completed more than \$550 billion in deal volume since inception. Providing unconflicted advisory services, (e.g., Ducera does not engage in underwriting) with a seasoned team of professionals that have collaborated together for nearly three decades.



1 benefit for Atmos's customers, in compliance with the lowest cost standard as required by  
2 the Act.

3 Additionally, Staff contends that these recommended changes to the Financing  
4 Order provide helpful context and clarification to the expected oversight role of the  
5 Commission's Designated Representative in the securitization process. These changes will  
6 reduce the risk that the Designated Representative would need to recommend that the  
7 Commission issue a disapproval letter directing that the bonds not be issued because they  
8 do not meet the lowest cost standard required by the Act.

9 **Q. Do you believe Staff's recommended changes to the Financing Order are consistent**  
10 **with Atmos's expectations in this Docket?**

11 A. Generally, yes. Staff's intention here is to be involved in all facets of the securitization  
12 process, to collaborate, consult, and review material terms of the securitized bonds such  
13 that we will be in a position to ensure that the securitized bonds result in the lowest possible  
14 securitized utility tariff charges, consistent with market conditions at the time of issuance.  
15 This process, I would contend, should not be materially different than what Atmos was  
16 intending with the language in its proposed Financing Order, which read:

17  
18 Atmos Energy shall take all necessary steps to ensure that the Commission  
19 or its designated representative is provided sufficient and timely  
20 information to allow the Commission or its designated representative to  
21 fully participate in and exercise its decision-making authority concerning  
22 the proposed securitization as provided in this Financing Order.  
23

24 Additionally, Atmos witness Ocanas, on page eight of her Direct Testimony, states the  
25 following:

1 Like other stakeholders, and consistent with Commission comments in the  
2 21-333 Docket, the Company believes recovery of the Winter Event's  
3 Qualified Extraordinary Costs should be a collaborative process. This  
4 collaboration requires working together on items beyond the Act's  
5 application requirements.  
6

7 Staff agrees with the sentiments presented in these passages of Atmos testimony  
8 and the proposed Financing Order. It is in Atmos's interest, and its Retail Customers'  
9 interests, for any securitized bonds issued as part of this process to be the highest quality,  
10 lowest cost bonds possible. Staff shares that desire, and my recommendations are  
11 necessary to ensure that the securitized bonds meet the lowest cost standard as defined in  
12 the Act. Staff's recommended pre-issuance review process, and the corresponding changes  
13 to the Financing Order to effectuate that process, were made with this common goal in  
14 mind.

## 15 **VI. Staff's Review of the Winter Event Securitized Charge Rider**

### 16 **A. Atmos's requested WESCR** 17

#### 18 **Q. Has Staff reviewed Atmos's requested Winter Event Securitized Charge Rider** 19 **(WESCR) tariff?**

20 A. Yes. Staff has reviewed the form and substance of Atmos's requested WESCR tariff,  
21 attached as Exhibit KRO-1 to the Direct Testimony of Atmos witness Kathleen R. Ocanas.  
22 Additionally, Staff has reviewed the form and substance of Atmos's Adjustment  
23 Mechanism, attached Exhibit KRO-2 to the Direct Testimony of Atmos witness Ocanas,  
24 which is the semi-annual true-up component of the WESCR. The primary substantive  
25 components of the WESCR which I will discuss here are: (1) the allocation of QECs across

1 the different customer classes; (2) the semi-annual true-up calculation; (3) the request to  
2 establish a fixed charge for the recovery of securitized bonds (instead of a volumetric rate);  
3 and (4) the settlement fee proposed to be charged to sales customers that desire to switch  
4 to Transportation service; and (5) Staff's recommended edit to Atmos's WESCR tariff to  
5 clarify the requirement to replenish the Capital Sub Account.

6 **B. Allocation of QECs Across Rate Classes**

7  
8 **Q. Has Staff reviewed Atmos's requested allocation of costs to the different rate classes,**  
9 **as part of the WESCR?**

10 **A.** Yes. Staff has reviewed the requested allocation of Winter Storm Uri costs to the different  
11 rate classes of customers. This allocation is discussed on pages 25 and 26 of Ms. Ocanas's  
12 Direct Testimony. Atmos recommends allocating the WESCR charges across the different  
13 rate classes based on an estimate of how these customers contributed to the company's  
14 total gas usage during the month of February 2021. In order to arrive at this estimate,  
15 Atmos averages the consumption for February 2021 and March 2021, by customer class.  
16 The result appears in Table KRO-4 of Ms. Ocanas's testimony as follows:

1

**Table KRO-4**

<u>Customer Class</u>	<u>Estimated February 2021 Volume (Ccf)</u>	<u>Allocation %</u>
Residential Sales Service	23,505,675	75.015%
Commercial/Public Authority	7,572,483	24.167%
School Sales Service	82,668	0.264%
Industrial Sales Service	50,073	0.160%
Small Generator	31	0.0001%
Irrigation Engine	123,509	0.394%
Total	31,334,439	100%

2

3

**C. Staff's Recommended Allocation Method**

4

5 **Q. Does Staff recommend Commission approval of this allocation of the WESCR**  
6 **charges?**

7 A. Yes. Staff has reviewed the requested allocation of Winter Storm Uri costs to the different  
8 rate classes of customers, and finds it a reasonable method of allocating these costs. This  
9 allocation method is also consistent with the method used by KGS in its securitization filing  
10 in Docket No. 22-KGSG-466-TAR, which was recently approved by the Commission.

11 **D. Semi-Annual Adjustment Mechanism (True-Up)**  
12

13 **Q. Has Staff reviewed Atmos's requested semi-annual adjustment mechanism?**

14 A. Yes. Staff has reviewed Atmos's requested adjustment mechanism (true-up) that will be  
15 mandatory every six months, unless Atmos (or alternative company acting in the capacity  
16 of servicer) determines that a more frequent true-up is necessary. It is also contemplated

1 that the adjustment mechanism will be filed quarterly during the last year that the  
2 securitized bonds are outstanding.

3 **E. Staff's Recommendation on True-Up**  
4

5 **Q. What is Staff's recommendation with regard to the semi-annual true-up?**

6 A. Staff recommends the Commission approve the form and substance of Atmos's  
7 recommended semi-annual adjustment mechanism (true-up). Atmos witness Schneider  
8 testifies that a semi-annual adjustment mechanism is an important component of the  
9 strategy of achieving the highest possible bond rating for the securitized bonds, and Staff  
10 agrees that this is an important element of the credit support strategy for these bonds.  
11 Because the semi-annual true-up will assist in the securitized bonds receiving the highest  
12 possible bond rating, customers will ultimately benefit from this true-up process.  
13 Additionally, the credit enhancement benefits of this proposal justify any added  
14 administrative burden on the Commission Staff associated with reviewing this true-up  
15 filing every six months.

16 **F. Atmos's Request to Establish Fixed Monthly Charges for the WESCR**  
17

18 **Q. Has Staff reviewed Atmos's request to establish fixed per-customer monthly charges**  
19 **for the WESCR?**

20 A. Yes. Staff has reviewed Atmos's requested rate design which utilizes a fixed, per-customer  
21 monthly charge. Atmos's rationale and support for this request is found in Atmos witness  
22 Ocanas's Direct Testimony at page 27, as well as the testimony of Mr. Schneider at pages  
23 22-23. Atmos contends that a fixed per-customer charge for the WESCR will result in bill

1 certainty for customers, and will assist in the securitized bonds receiving the highest  
2 possible bond ratings during the ratings process.

3 **G. Staff's Response to Atmos's Request to Establish Fixed Monthly**  
4 **Charges for the WESCR**  
5

6 **Q. What is Staff's recommendation with regard to Atmos's request to establish a fixed,**  
7 **per-customer monthly charge for the WESCR?**

8 A. Staff supports Atmos's requested fixed per-monthly charge for the WESCR rate. While  
9 this is largely a policy decision of the Commission, there are several reasons why this rate  
10 design makes sense in this case. First, in my opinion, the Commission's overarching goal  
11 in this case should be to achieve the highest possible bond ratings for the securitized bonds,  
12 in order to maximize the savings and minimize the bill impacts to Atmos customers  
13 associated with the repayment of Winter Storm Uri costs. Staff agrees that the  
14 establishment of a fixed per-customer monthly charge contributes to this goal. Second,  
15 Staff recognizes that a fixed per-customer charge will make it easier for customers to  
16 anticipate, and budget for, their Winter Storm Uri costs. While there are ways to reduce  
17 bill volatility in the event that the Commission prefers this charge to be volumetric instead,  
18 that requires the customer to take the proactive step of signing up for level pay billing.  
19 With a fixed per-customer monthly charge as recommended here, Retail Customers will  
20 have increased stability and certainty about what their securitized utility tariff charges will  
21 be from month-to-month.  
22  
23

1       **H.       Recommended Settlement Fee for Conversion to Transportation**  
2

3       **Q.       Has Staff evaluated Atmos's requested Settlement Fee, which would be payable in the**  
4       **event that a Retail Customer elected to convert to Transportation Service instead?**

5       A.       Yes. Atmos witness Ocanas discusses the proposed Settlement Fee on page 21 of her  
6       Direct Testimony. The Settlement Fee discussed by Ms. Ocanas was contemplated when  
7       the Commission approved the Financial Plan settlement in the 21-333 Docket. This  
8       Settlement Fee requires a Retail Sales Customer (that desires to switch to Transportation  
9       service) to pay for the present value of all securitized utility tariff charges (the WESCR in  
10      this Docket) that the customer would have incurred if the customer had remained a sales  
11      customer.

12      **Q.       What is Staff's recommendation with regard to Atmos's request to establish a**  
13      **Settlement Fee for Sales to Transport conversion?**

14      A.       Staff supports Atmos's request to establish a Settlement Fee for Retail Sales Customers  
15      that wish to switch to Transportation service. The establishment of this Settlement Fee  
16      prevents these customers from attempting to bypass their portion of the Winter Storm Uri  
17      charges by converting to Transportation service. It also ensures that these customers only  
18      pay their fair share of the costs that they otherwise would have paid, had they remained a  
19      Retail Sales Customer. Additionally, Staff supports Atmos's recommendation that the  
20      discount rate used to calculate the Settlement Fee be based on the weighted average cost  
21      of securitization bonds outstanding at the time the Settlement Fee is calculated.

22      **I.       Recommended Addition to the WESCR Tariff**  
23

24      **Q.       Is Staff's recommending a change to Atmos's WESCR Tariff?**

1 A. Yes. Late in the process of reviewing KGS's proposed WESCR tariff in Docket No. 22-  
2 KGSG-466-TAR, it was revealed that there should be a clarification added to the tariff so  
3 that it matched the proposed Financing Order. The clarification entailed adding "+  
4 Replenishments to the Capital Subaccounts if Needed" to the definition of the Revenue  
5 Requirement in the WESCR tariff. Staff agreed that this was a helpful  
6 addition/clarification in the KGS Docket, so we are also recommending this change to the  
7 Atmos WESCR tariff.

## 8 **VII. Staff's Review of Atmos's Recommended Reconciliation Proposal**

### 9 **A. Atmos's Reconciliation Proposal**

10

11 **Q. Has Staff evaluated Atmos's requested reconciliation proposal, in which the final**  
12 **QECs incurred by Atmos will be reconciled with the amount of QECs that are**  
13 **financed by the Securitized Bonds?**

14 A. Yes. Atmos witness Ocanas discusses the proposed reconciliation proposal beginning on  
15 page 36 of her Direct Testimony. Ms. Ocanas explains that the Act allows for the  
16 reconciliation of QECs financed by the issuance of Securitized Bonds, and the QECs  
17 actually incurred by Atmos. As required by the Act, this reconciliation process cannot  
18 affect the amount of the Securitized Utility Tariff Charges, therefore the reconciliation has  
19 to occur through a traditional ratemaking mechanism. Ms. Ocanas recommends that this  
20 reconciliation process occur through the use of the PGA/ACA process on a yearly basis.  
21 Atmos proposes to use the reconciliation process to true-up changes in estimated QECs,  
22 deferred tax impacts, or profit disgorgements received by Atmos. Ms. Ocanas describes



that any increases or decreases due to this reconciliation process will be amortized over the life of the Securitized Bonds, and will pass through the company's PGA/ACA.

**B. Staff's Recommendation on Reconciliation Proposal**

**Q. What is Staff's recommendation pertaining to Atmos's requested reconciliation process?**

A. Staff supports Atmos's requested reconciliation process, as it accomplishes the true-up required by the Act without influencing the amount of the securitized utility tariff charges, the amount of the securitized utility tariff bonds, or the securitized utility tariff property. However, Staff recommends that the Commission require an additional reconciliation process pertaining to costs that Atmos will incur as a result of the Securitization process.

**Q. What additional reconciliation process does Staff recommend be included in Atmos's proposal?**

A. Staff recommends that Atmos be required to track its actual incremental costs/revenues pertaining to the following categories of upfront Issuance Costs: Servicer Set-up Fees and SPV Set-up Fee. As well, Staff recommends that Atmos be required to track its actual incremental costs/revenues pertaining to Servicing Fees and Administration Fees that are part of the Ongoing Financing Costs estimated by Atmos (See JLS-2 attached to Atmos witness Schneider's Revised Direct Testimony).

**Q. Why is Staff making this recommendation?**

A. These categories of costs are anticipated to include at least some Atmos internal labor costs, and may also include some outside vendors. It is unclear to Staff whether Atmos plans to include its actual incremental Issuance Costs in the Securitization Bond financing, or whether Atmos plans to include an estimate of what these costs will be in the Securitized

1 Bond amount. If Atmos only includes actual incremental costs in the Securitized Bond  
2 financing, then there will not be a need to reconcile these amounts using the reconciliation  
3 process. However, if Atmos includes estimated costs in the Securitized Bond financing, or  
4 internal labor costs that are currently being recovered through base rates, then there will be  
5 a need to true-up these costs/revenues to ensure that Atmos ratepayers don't overpay for  
6 these costs.

7 The same concept applies to Atmos's estimated Ongoing Financing Costs. If  
8 Atmos plans to track its actual incremental costs associated with providing servicing and  
9 administration services, and that is what Atmos intends to submit for collection as part of  
10 the Ongoing Financing Costs included in the WESCR, then there will be no reconciliation  
11 that needs to occur. However, if Atmos includes estimated costs for servicing and  
12 administration fees in the Ongoing Financing Costs, or internal labor costs that are  
13 currently being recovered through base rates, then there will be a need to true-up these  
14 costs/revenues to ensure that Atmos ratepayers don't overpay for these costs.

15 Staff recommends that any profit margin that is included in the Upfront or Ongoing  
16 Financing Cost paid to Atmos as part of its servicing or administration obligations under  
17 the securitization, be recorded to a regulatory liability, so that it can be credited to  
18 customers in the next base rate case.

## **VIII. Capital Sub Account Investment Earnings**

### **A. Atmos's Proposal Regarding Subaccount Investment Earnings**

#### **Q. What is the capital subaccount?**

A. Atmos witnesses Schneider discusses the capital subaccount, which represents the equity capital of the Special Purpose Entity (SPE) that will hold the securitized utility tariff property. These funds are available to the Trustee to ensure timely payment of principal and interest of the Securitized Bonds, if needed. The source of these funds will be provided by Atmos, and will represent .50% of the initial Securitized Utility Tariff Bond balance.

Pursuant to K.S.A. 66-1,241(e)(14), the Financing Order is required to allow Atmos to earn a return on this equity contribution equal to "the cost of capital authorized from time to time by the Commission in the public utility's rate proceedings." As discussed by Mr. Schneider's Direct Testimony, Atmos believes that rate for Atmos is 8.39%. Staff agrees. Accordingly, Atmos will be allowed to earn its WACC (8.396%) on the funds remaining in the capital subaccount. This will become part of the Ongoing Financing Costs associated with the securitization.

#### **Q. What is Atmos's position with regard to the investment earnings (interest) earned by the funds in the capital subaccount?**

A. While the capital subaccount funds are not being used to ensure the timely payment of principal and interest on the securitized bonds, these funds may be invested in short-term high-quality investments. Atmos's position, as represented by its proposed Financing Order, is that Atmos should receive both the WACC return on its equity infusion (the capital subaccount) *and* the short-term investment earnings that the capital produces while it is being held by the Trustee.

1       **B.     Staff's Recommendation Regarding Capital Subaccount Investment**  
2       **Earnings**  
3

4   **Q.     What is Staff's recommendation for the treatment of the Capital Subaccount**  
5       **investment earnings?**

6   A.     Staff contends that ratepayers should be given credit for these investment earnings  
7       associated with the idle funds in the Capital Subaccount. The Act requires that Atmos be  
8       allowed to earn its WACC return on the funds in the Capital Subaccount. But it shouldn't  
9       also earn the investment earnings associated with the funds as well. Staff's  
10      recommendation is that the Commission explicitly recognize that the investment earnings  
11      associated with the Capital subaccount will credited to customers by virtue of the  
12      investment earnings being transferred to the Excess Funds Subaccount. Staff's edits to the  
13      proposed Financing Order accomplishes this.

14   **IX.    Customer Education/Communication Plan**

15       **A.     Proposed Customer Education/Communication Plan**  
16

17   **Q.     Has Staff reviewed Atmos's recommended Customer Education/Communication**  
18       **Plan?**

19   A.     Yes. Atmos witness Ocanas sponsors a general Customer Education and Communication  
20      Plan that involves a collaborative process between Atmos, Staff, and CURB to provide  
21      timely and comprehensive information to Atmos customers regarding the purpose of, and  
22      benefits stemming from, the issuance of Securitized Bonds to pay for costs associated with  
23      Winter Storm Uri. Staff agrees that Atmos has the start of a good communication plan and

1 we will continue to work together with Atmos and CURB to provide customers with the  
2 information needed for them to understand the purpose of this new charge and why it is  
3 being used to recover Winter Storm Uri costs.

4 **X. Partial Payment Priority/Waiver**

5 **A. Atmos Proposed WESCR Priority for Partial Payment**  
6

7 **Q. Has Staff reviewed Atmos's recommended prioritization of partial customer**  
8 **payments, such that the first priority will be given to WESCR payments, before the**  
9 **rest of the customer bill?**

10 A. Yes. Staff has reviewed this portion of Atmos's request. Atmos requests this priority for  
11 partial customer payments at page 35 of Atmos witness Ocanas's testimony. Atmos also  
12 requests a waiver of Section 4.B.2 of its General Terms and Conditions, if necessary to  
13 effectuate this request.

14 **B. Staff's Response to Atmos's Requested Priority for Partial Payment**  
15

16 **Q. What is Staff's recommendation with regard to Atmos's requested priority for partial**  
17 **customer payment?**

18 A. Staff supports this explicit waiver of Section 4.B.2 of Atmos's General Terms and  
19 Conditions to make it clear that, in the event a customer makes a partial payment for natural  
20 gas service, the first priority for the customer's partial payment should be WESCR. Staff  
21 views this as an additional credit support feature that should help the Securitized Bonds get  
22 the highest possible bond ratings, at the lowest possible costs for customers. Accordingly,

1 establishing the WESCR as taking priority over any partial payment is in customers' best  
2 interests.

## 3 **XI. Conclusions**

4 **Q. Mr. Grady, please restate the conclusions you have reached in this Direct Testimony.**

5 A. Certainly. I support each of the following conclusions with this testimony:

- 6 • The Commission should authorize Atmos to recover an estimated \$118,514,030 in  
7 Qualified Extraordinary Costs (QEC's) associated with Winter Storm Uri, through the  
8 issuance of securitized ratepayer backed bonds, that currently have an estimated initial  
9 principal amount of \$92,684,233, prior to all illustrative interest expenses relating to  
10 securitization and Operation and Admin / Net Reserve Funding Costs (Ongoing Costs),  
11 • as authorized by the Kansas Utility Financing and Securitization Act, K.S.A. 66-1,240,  
12 et seq. (the Act). ;  
13 • The issuance of securitized bonds to recover the QECs from Winter Storm Uri is  
14 expected to provide net quantifiable rate benefits to customers, estimated in the range  
15 of \$8.5 to \$11.5 million based on the most recent Atmos estimates of securitized bond  
16 interest rates;  
17 • Despite significant volatility in United States (US) Treasury rates since Atmos filed its  
18 Application, there still appears to be a significant benefit to Atmos customers from  
19 issuing securitized bonds to finance Winter Storm Uri costs over 10 to 15 years, instead  
20 of using traditional ratemaking methods to collect these costs;  
21 • In the event that the Commission declines to approve Atmos's request for a Financing  
22 Order to issue securitized bonds for the recovery of Winter Storm Uri costs, Staff

1 recommends that the Commission approve Atmos's recovery of these costs over a five-  
2 year period, with Atmos's weighted average cost of capital (WACC) of 8.396% as a  
3 carrying cost. While this is not Staff's primary recommendation, because it is more  
4 costly to customers than securitization (at least at current interest rates) it is important  
5 that the Commission knows Staff's position for an alternative recovery mechanism,  
6 should Atmos's request for securitization be denied.

- 7 • In order to ensure that the securitization process results in the "lowest securitized utility  
8 tariff charges, consistent with market conditions...", Staff recommends that the  
9 Commission require a pre-issuance review process in which the Commission's  
10 Designated Representative, including its legal and investment banking advisors, are  
11 able to oversee all facets of the securitization process, including the structuring,  
12 marketing, and pricing of the securitized bonds. In making this recommendation, Staff  
13 envisions a comprehensive collaborative process, in which the Commission's  
14 Designated Representative (and their advisors) are able to review, confer, and consult  
15 with Atmos on all material terms of the issuance of the securitized bonds as discussed  
16 in more detail later in my testimony;
- 17 • Staff has reviewed, and recommends approval of, the Winter Event Securitized Charge  
18 Rider (WESCR) tariff recommended by Atmos witness Ocanas, with one minor  
19 addition. Staff finds that the fixed per customer charge is reasonable in that it will  
20 assist in the establishment of the highest possible bond ratings for the securitized bonds,  
21 and will allow customers to budget with certainty what their costs will be associated  
22 with Winter Storm Uri. Additionally, Staff has reviewed and recommends approval of  
23 the allocation of Winter Storm Uri costs between the customer classes, as

recommended by Atmos witness Ocanas. Lastly, Staff recommends approval of the semi-annual (if not needed more frequently) true-up adjustment mechanism recommended by Atmos. This mechanism will also assist in the establishment of the highest possible bond ratings for the securitized bonds, and therefore, it is worth whatever administrative burden will result (as compared to an annual true-up);

- Staff recommends approval of the settlement fee recommended by Atmos to be charged to any sales customer that wants to switch to transportation service during the term of the WESCR tariff being charged. Staff's review has found that this settlement fee will be calculated as the NPV of the remaining customer obligations to pay for the WESCR, using a discount rate equal to the weighted average interest rate of the securitized bonds;
- Staff recommends approval of the reconciliation process described in Atmos witness Ocanas's testimony, whereby the final amount of QECs is compared to the final amount of securitized bond issuance, and the difference is refunded to customers through the Purchased Gas Adjustment (PGA) process. Additionally, Staff recommends that any profit margin that is included in the upfront or ongoing financing cost paid to Atmos as part of its servicing or administration obligations under the securitization, be recorded to a regulatory liability, so that it can be credited to customers in the next base rate case;
- Staff recommends that the Financing Order make clear that Atmos will credit the investment earnings on the Capital Sub Account to retail customers, by way of transfer of these investment earnings, to the Excess Funds Sub Account;



- Staff has reviewed and recommends approval of the communication plan presented by Atmos to inform and educate Atmos customers about the purpose for, and the benefits of, the issuance of securitized bonds;
- Staff has reviewed, and recommends the Commission approve, Atmos's requested waiver of Section 4.B.2 of its GT&C. This will allow the payment of securitized bonds to take priority over the rest of the customer bill in the event of partial customer payment. Staff views this waiver as supportive of the highest bond ratings possible for the securitized bonds, and therefore, a benefit to customers.

**Q. Has Staff prepared a revised proposed Financing Order that contains the edits necessary to effectuate the recommendations contained in this testimony?**

A. Yes. Staff has prepared a revised proposed Financing Order that addresses each of the recommendations in this testimony, which is attached to this Testimony as Exhibit JTG-1. While every attempt has been made to ensure that this document is accurate and contains the appropriate suggested revisions, Staff reserves the right to suggest additional changes as necessary, and as this proceeding progresses.

**Q. Does that conclude your testimony?**

A. Yes.

**BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS**

Before Commissioners:      Dwight D. Keen, Chair  
                                     Susan K. Duffy  
                                     Andrew J. French

**In The Matter of The Application of      )  
Atmos Energy Corporation For the      )  
Recovery of Qualified Extraordinary      )  
Costs and Issuance of a Financing      )  
Order.      )**

**DOCKET NO. 22-ATMG-~~538~~-  
TAR**

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Appendix A Form of Issuance Advice Letter

Appendix B Form of Tariff (Winter Event Securitized Cost Recovery Rider)

Appendix C Form of True-Up Letter

Appendix D Form of Securitized Utility Tariff Property Servicing Agreement

Appendix E Form of Securitized Utility Tariff Property Purchase and Sale Agreement

Appendix F Customer Communications Plan

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Appendix J Glossary of Terms

**BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS**

Before Commissioners:      Dwight D. Keen, Chair  
   Susan K. Duffy  
   Andrew J. French

**In The Matter of The Application of  
Atmos Energy Corporation for the  
Recovery of Qualified Extraordinary  
Costs and Issuance of a Financing  
Order.**

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**DOCKET NO. 22-ATMG-~~538~~-  
TAR**

**FINANCING ORDER**

This Financing Order addresses the Application for Financing Order (the “Application”) of Atmos Energy Corporation (“Atmos Energy” or the “Company”), under the Utility Financing and Securitization Act<sup>1</sup> (the “Act”): (1) ~~to securitize the Company’s Qualified Extraordinary Costs<sup>2</sup> of \$111,809,422<sup>3, 4</sup> currently estimated to be \$118,514,030,<sup>5</sup> which will be finalized and set forth in the Issuance Advice Letter;~~ (2) ~~for approval of to approve~~ the proposed securitization financing structure; and (3) ~~for approval of to approve~~ the creation of Securitized Utility Tariff Property<sup>6</sup> consisting of the right to impose and collect Securitized Utility Tariff Charges<sup>7</sup> sufficient

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<sup>1</sup> K.S.A. §§ 66-1,240 - 66-1,253

~~<sup>2</sup> K.S.A. § 66-1,240(b)(21) defines Securitized Utility Tariff Costs as either Energy Transition Costs or Qualified Extraordinary Costs.~~

~~<sup>3</sup> See Direct Testimony of Kathleen R. Ocanas, Docket No. 22-ATMG-~~538~~-TAR, p. 13 (May 25, 2022).~~

~~<sup>4</sup> K.S.A. § 66-1,240(b)(21) defines Securitized Utility Tariff Costs as either Energy Transition Costs or Qualified Extraordinary Costs.~~

~~<sup>5</sup> See Revised Direct Testimony of Kathleen R. Ocanas, Docket No. 22-ATMG-538-TAR, p. 4 (July 22, 2022), as further amended by Direct Testimony of Justin T. Grady, filed on August 26, 2022.~~

<sup>6</sup> K.S.A. § 66-1,240(b)(22).

<sup>7</sup> K.S.A. § 66-1,240(b)(20).

to repay, finance or refinance Securitized Utility Tariff Bonds<sup>8</sup>, including ~~upfront and ongoing~~Upfront Financing Costs<sup>9</sup>, ~~and Ongoing Financing Costs.~~<sup>10</sup>

The Commission approves Atmos Energy's Application, as modified by this Financing Order. The Commission also finds that the securitization approved in this Financing Order meets all applicable requirements of the Act. —Accordingly, the Commission: (1)~~-approves the securitization of Qualified Extraordinary Costs, including upfront and ongoing Financing Costs;~~ (2)~~-~~ authorizes, subject to the terms of this Financing Order, the issuance of Securitized Utility Tariff Bonds in an aggregate amount not to exceed the ~~sum of the~~ Qualified Extraordinary Costs and Financing Costs; (3)~~-approves the structure of the proposed securitization financing through an Issuance Advice Letter process;~~ (4)~~-2~~ approves the creation of Securitized Utility Tariff Property consisting of the right to impose and collect Securitized Utility Tariff Charges in an amount to be calculated as provided in this Financing Order; ~~and (5)~~(3) approves the form of tariff, as provided in this Financing Order, to implement those Securitized Utility Tariff Charges, (4) approves the securitization of Qualified Extraordinary Costs, including Upfront Financing Costs and Ongoing Financing Cost estimates (subject to review of the Designated Representative); and (5) approves the review of the structure of the proposed securitization financing through a pre-issuance review and ultimate Issuance Advice Letter process.

In order to approve the securitization~~of the Qualified Extraordinary Costs~~, the Commission must make certain findings, among them:~~(1)~~, that: (1) the Securitized Utility Tariff Charges will be just and reasonable; (2) ~~that~~ the issuance of Securitized Utility Tariff Bonds and the imposition

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<sup>8</sup> ~~K.S.A. § 66-1,240(b)(19)(A)(ii).~~

<sup>9</sup> ~~K.S.A. § 66-1,240(b)(10).~~

<sup>10</sup> K.S.A. § 66-1,240(b)(19)(B).

and collection of a Securitized Utility Tariff Charge are expected to provide net quantifiable rate benefits to customers as compared to the traditional methods of financing and recovering Securitized Utility Tariff Costs from customers or would avoid or mitigate rate impacts to customers; and (3) ~~that~~ the structuring, pricing and Financing Costs of the Securitized Utility Tariff Bonds are expected to result in the lowest Securitized Utility Tariff Charges, consistent with market conditions at the time the Securitized Utility Tariff Bonds are priced and the terms of the Financing Order.<sup>11</sup> Based on the evidence submitted by Atmos Energy, the Commission Staff and CURB, the Commission finds that the proposed securitization warrants such findings.

Considering the magnitude of the benefits provided, the Commission declines to determine a particular number for each benefit conferred by the securitization. Accordingly, in quantifying the benefit to ~~ratepayers~~Retail Customers as a result of this securitization, the Commission refers to the ranges of benefits calculated under Atmos Energy's proposed securitization structure presented in Atmos Energy Witness Jason L-~~Schneider's testimony~~, Schneider's Revised Direct Testimony, and confirmed by Staff witness Justin Grady Direct Testimony.

Based on the evidence submitted by Atmos Energy and Commission Staff, the Commission finds that as a result of the securitization approved by this Financing Order, ~~customers~~Customers in Atmos Energy's service area will realize benefits currently estimated to be a range of approximately \$~~22.8-million~~5million to \$~~31.311.5~~ million on a present value basis, depending on the securitization or conventional financing options to be compared.<sup>12</sup> -The Commission concludes that the benefits for ~~customers~~Customers set forth in Atmos Energy's and Commission Staff's

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<sup>11</sup> See K.S.A. §§ 66-1,241(d) and (e)(5). For purposes of this Order, the Commission has concluded the term "customer" as reflected in this particular statutory provision has the same meaning as Retail Customer, as hereinafter defined in the Glossary.

<sup>12</sup> See K.S.A. §§ 66-1,240 - 66-1,253; ~~Application Exhibit JLS-3~~Jason L Schneider Revised Direct, July 22, 2022; Justin T. Grady Direct, August 26, 2022.

evidence are ~~fully~~ indicative of the benefits that ~~customers~~Customers will realize from the securitization approved in this Financing Order ~~and will avoid and mitigate rate impacts to customers~~; however, the pre-issuance review and Issuance Advice Letter will require Atmos Energy to update the benefit analysis (subject to review of the Designated Representative) to verify that the final structure of the securitization satisfies the statutory financial tests.

Atmos Energy provided a ~~general~~ description of the proposed transaction structure in its Application, as supported by the testimony and accompanying exhibits. The proposed transaction structure does not contain every relevant detail and, in certain places, uses only approximations of certain costs and requirements. The final transaction structure will depend, in part, upon the considerations of the nationally ~~recognized~~ credit rating agencies that rate the Securitized Utility Tariff Bonds and, in part, upon the market conditions that exist at the time the Securitized Utility Tariff Bonds are taken to the market.

While the Commission recognizes the need for some degree of flexibility with regard to the final details of the securitization transaction approved in this Financing Order, its primary focus is on the statutory requirements that must be met prior to issuing a ~~financing order~~Financing Order. By statute, the Commission must adopt the following findings of fact, in accordance with K.S.A. § 66-1,~~241~~240(e):

- a) The amount of Securitized Utility Tariff Costs to be financed using Securitized Utility Tariff Bonds;<sup>13</sup>
- b) An approved customer billing mechanism for Securitized Utility Tariff Charges, including a specific methodology for allocating the necessary Securitized Utility Tariff Charges among the different customer classes;<sup>14</sup>

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<sup>13</sup> K.S.A. § 66-1,241(e)(1).

<sup>14</sup> K.S.A. § 66-1,241(e)(2)(A).



- c) A finding that the proposed issuance of Securitized Utility Tariff Bonds and the imposition and collection of a Securitized Utility Tariff Charge are expected to provide net quantifiable rate benefits to customers as compared to the traditional methods of financing and recovering Securitized Utility Tariff Costs from customers or would avoid or mitigate rate impacts to customers;<sup>15</sup>
- d) An approved plan for the public utility, by means other than on the monthly bill, to provide information regarding the benefits of securitization obtained for customers through the Financing Order;<sup>16</sup>
- e) A finding that the structuring, pricing and financing costs of the Securitized Utility Tariff Bonds are expected to result in the lowest Securitized Utility Tariff Charges, consistent with market conditions at the time the Securitized Utility Tariff Bonds are priced and the terms of the Financing Order;<sup>17</sup>
- f) ~~a~~A requirement that, for so long as the Securitized Utility Tariff Bonds are outstanding and until all financing costs have been paid in full, the imposition and collection of Securitized Utility Tariff Charges authorized under a Financing Order shall be nonbypassable;<sup>18</sup>
- g) ~~an~~An Adjustment Mechanism;<sup>19</sup>
- h) A description of the Securitized Utility Tariff Property that is, or shall be, created in favor of a public utility, or its successors and assignees, and that shall be used to pay and secure the payment of Securitized Utility Tariff Bonds and all financing costs authorized in the Financing Order;<sup>20</sup>
- i) A statement specifying the degree of flexibility to be afforded to the public utility in establishing the terms and conditions of the Securitized Utility Tariff Bonds, including, but not limited to, repayment schedules, expected interest rates and other financing costs;<sup>21</sup>

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<sup>15</sup> K.S.A. § 66-1,241(e)(3).

<sup>16</sup> K.S.A. § 66-1,241(e)(4).

<sup>17</sup><sup>17</sup> K.S.A. § 66-1,241(e)(5).

<sup>18</sup> K.S.A. § 66-1,241(e)(6).

<sup>19</sup> K.S.A. § 66-1,241(e)(7).

<sup>20</sup> K.S.A. § 66-1,241(e)(8).

<sup>21</sup> K.S.A. § 66-1,241(e)(9).

- j) Authorization for the applicant public utility to finance Securitized Utility Tariff Costs through the issuance of one or more series of Securitized Utility Tariff Bonds;<sup>22</sup>
- k) A requirement that, after the final terms of an issuance of Securitized Utility Tariff Bonds have been established and before the issuance of Securitized Utility Tariff Bonds, the public utility determines the resulting initial Securitized Utility Tariff Charge is in accordance with the Financing Order and that such initial Securitized Utility Tariff Charge be final and effective upon the issuance of such Securitized Utility Tariff Bonds without further Commission action so long as the Securitized Utility Tariff Charge is consistent with the Financing Order;<sup>23</sup>
- l) A method of tracing funds collected as Securitized Utility Tariff Charges, or other proceeds of securitized utility tariff property, demonstrating that such method shall be deemed the method of tracing such funds and determining the identifiable cash proceeds of any securitized utility tariff property subject to a Financing Order under applicable law;<sup>24</sup>
- m) A statement specifying a future rate-making process to reconcile any differences between the actual Securitized Utility Tariff Costs financed by Securitized Utility Tariff Bonds and the final Securitized Utility Tariff Costs incurred by the utility or assignee provided that any such reconciliation shall not affect the amount of Securitized Utility Tariff Bonds or the associated security tariff charges paid by customers;<sup>25</sup>
- n) A procedure that allows the public utility to earn a return, at the cost of capital authorized from time to time by the Commission in the public utility's rate proceedings, on any moneys advanced by the public utility to fund reserves, if any, or capital accounts established under the terms of any Indenture, ~~ancillary agreement~~Ancillary Agreement or other financing documents pertaining to the Securitized Utility Tariff Bonds;<sup>26</sup>
- o) A date, not earlier than one year after the date that the Financing Order is no longer subject to appeal, when the authority to issue Securitized Utility Tariff Bonds granted in such Financing Order shall expire;<sup>27</sup> and

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<sup>22</sup> K.S.A. § 66-1,241(e)(10).

<sup>23</sup> K.S.A. § 66-1,241(e)(11).

<sup>24</sup> K.S.A. § 66-1,241(e)(12).

<sup>25</sup> K.S.A. 66-1,241(e)(13).

<sup>26</sup> K.S.A. 66-1,241(e)(14).

<sup>27</sup> K.S.A. 66-1,241(e)(17).

- p) Any other conditions that the Commission deems appropriate and that are consistent with this section.<sup>28</sup>

The Commission finds that Atmos Energy's Application, testimony, and accompanying exhibits, which the Commission has reviewed and evaluated, provides support for findings on each of these requirements. The findings themselves and the basis for each are set out in this Financing Order.

Finally, the Commission has established certain criteria in this Financing Order that must be met ~~in order~~ for the approvals and authorizations granted in this Financing Order to become effective. The authority and approval granted in this Financing Order is effective only upon Atmos Energy filing with the Commission an Issuance Advice Letter, in the form as set forth in Appendix A hereto, demonstrating compliance with the provisions of this Financing Order. If market conditions make it desirable to issue the Securitized Utility Tariff Bonds in more than one series, then the authority and approval granted in this Financing Order is effective as to each issuance upon, but only upon, Atmos Energy filing with the Commission a separate Issuance Advice Letter for that issuance demonstrating compliance of that issuance with the provisions of ~~this~~the Financing Order.

## **I. Discussion and Statutory Overview**

In mid-February 2021, Kansas experienced sub-zero temperatures brought by Winter Storm Uri (the "Winter Event"), which led to a significant increase in demand for electricity and natural gas. -On February 14, 2021, Governor Laura Kelly declared a State of Disaster Emergency ~~was issued by Governor Kelly~~ due to expected prolonged low temperatures and the strain on

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<sup>28</sup> K.S.A. 66-1,241(e)(18).

natural gas and utility providers; at the time, wholesale natural gas prices were reflecting increases from 10 to 100 times their normal rates.

On February 15, 2021, pursuant to K.S.A. § 77-536(a), the State Corporation Commission of the State of Kansas (“Commission”) issued an Emergency Order in Docket No. 21-GIMX-303-MIS ~~(“Docket 21-303”)~~, directing jurisdictional natural gas utilities to take all reasonably feasible, lawful, and appropriate actions to ensure adequate transportation of natural gas to interconnected, non-jurisdictional Kansas utilities.<sup>29</sup> Jurisdictional natural gas utilities were ordered to do everything necessary to ensure that natural gas service continued to be provided to their customers in Kansas.<sup>30</sup> The Commission authorized every jurisdictional natural gas distribution utility to defer extraordinary costs incurred during the Winter Event to a regulatory asset account.<sup>31</sup> By September 14, 2021, Atmos Energy had incurred and deferred approximately \$87,880,622 ~~million~~ of extraordinary gas costs, exclusive of carrying costs, related to the Winter Event.<sup>32</sup> This amount was later estimated as \$89,799,233, including estimated carrying costs of 2%, through March 31, 2023.<sup>33</sup>

The Act was enacted, in part, in response to the extraordinary costs experienced by Atmos Energy and other gas utilities due to the Winter Event. The Act refers to these costs as “Qualified Extraordinary Costs,” and defines them to include,

costs the public utility has incurred before, on or after the effective date of this act of an extraordinary nature that would cause extreme customer rate impacts if recovered through customary rate-making, including, but not limited to, purchases

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<sup>29</sup> Emergency Order, 21-GIMX-303-MIS (21-303 Docket), p. 2, ¶3 (Feb. 15, 2021) (Emergency Order).

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

<sup>31</sup> *Id.* at ¶4.

<sup>32</sup> See Direct Testimony of Kathleen R. Ocanas, Docket No. 21-ATMG-333-GIG, p. 5 (Feb. 24, 2022).

<sup>33</sup> See Revised Direct Testimony of Kathleen R. Ocanas, Docket No. 22-ATMG-538-TAR (July 22, 2022).

of gas supplies, transportation costs, fuel and power costs, including carrying charges incurred during anomalous weather events.<sup>34</sup>

The Commission further identified possible costs to be deferred including, but,

not limited to the cost of procuring and transporting natural gas supplies for jurisdictional utility customers, costs associated with jurisdictional utilities coordinating and assisting non-jurisdictional utilities with the transportation of gas supplies, and any other reasonable costs necessary to ensure stability and reliability of natural gas and electric service. -These deferred costs may also include carrying costs at the utility's weighted average cost of capital.<sup>35</sup>

As shown in the testimony and exhibits filed in support of its Application, Atmos Energy incurred costs as a result of the Winter Event that meet the definition of Qualified Extraordinary Costs and should be included in the costs to be recovered by Atmos Energy.

~~To allow for a securitization of~~To securitize a utility's Qualified Extraordinary Costs, the Commission may authorize the issuance of securities known as Securitized Utility Tariff Bonds. Securitized Utility Tariff Bonds are evidence of indebtedness or ownership that are issued under a ~~financing order~~Financing Order, are limited to a term of ~~not~~no longer than 32 years, and are secured by or payable from Securitized Utility Tariff Property.<sup>36</sup> The net proceeds from the sale of the Securitized Utility Tariff Bonds must be used to directly or indirectly ~~to~~ recover, finance or refinance Commission-approved Qualified Extraordinary Costs.<sup>37</sup> If Securitized Utility Tariff Bonds are approved and issued, ~~retail customers~~Retail Customers (including bills to special contract customers) must pay the principal, interest, and related charges of the Securitized Utility Tariff Bonds through Securitized Utility Tariff Charges.<sup>38</sup> Securitized Utility Tariff Charges are

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<sup>34</sup> K.S.A. § 66-1,240(b)(18).

<sup>35</sup> Emergency Order, Page 2, paragraph 4.

<sup>36</sup> K.S.A. § 66-1,240(b)(19)(A).

<sup>37</sup> *Id.*

<sup>38</sup> K.S.A. § 66-1,240(b)(20).

~~nonbypassable~~Nonbypassable charges that will be paid by all existing or future ~~retail customers~~Retail Customers receiving natural gas service from the public utility or its successors or assignees under Commission-approved rate schedules or under special contracts, even if a ~~retail customer~~Retail Customer elects to purchase natural gas from an alternative natural gas supplier following a fundamental change in regulation of public utilities in Kansas.<sup>39</sup> Securitized Utility Tariff Charges are to be billed, collected and remitted by Atmos Energy as Servicer, or a successor Servicer, in full, separate and apart from Atmos Energy's base rates.<sup>40</sup>

The rights to impose, collect, and receive Securitized Utility Tariff Charges (including all other rights of a utility under the Financing Order) are only contract rights until such rights (which may relate to all or, if more than one series of Securitized Utility Tariff Bonds are issued due to market conditions, a portion of the Qualified Extraordinary Costs) are first transferred to an assignee or pledged in connection with the issuance of Securitized Utility Tariff Bonds.<sup>41</sup> Upon the transfer or pledge of those rights, they become Securitized Utility Tariff Property and, as such, are afforded certain statutory protections to ensure that the charges are available for the payment of principal and interest on the ~~Securitized Utility Tariff Bonds~~bonds and other related costs.<sup>42</sup>

This Financing Order includes a mandatory semi-annual formula-based rate Adjustment Mechanism requiring that Securitized Utility Tariff Charges be reviewed by the Servicer and adjusted at least semi-annually, to correct any overcollections or under-collections during the preceding six months and to ensure the expected recovery of amounts sufficient to timely provide all payments of debt service and other required amounts and charges in connection with the

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<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> K.S.A. § 66-1,246(c).

<sup>42</sup> *See* K.S.A. § 66-1,246.

Securitized Utility Tariff Bonds.<sup>43</sup> In addition to ~~the~~ required semi-annual reviews, the Servicer may implement more frequent reviews at any time to ensure that the amount of the Securitized Utility Tariff Charges matches the funding requirements approved in this Financing Order. Atmos Energy, as Servicer, or a ~~substitute~~Substitute Servicer, may modify the Adjustment Mechanism in the event it finds that the Adjustment Mechanism will not provide Securitized Utility Tariff Charges sufficient to meet the funding requirements for its next two scheduled principal and interest payments and related ~~ongoing~~Ongoing Financing Costs. These provisions will help to ensure that the amount of Securitized Utility Tariff Charges paid by ~~sales—customers~~Retail Customers is equal to, but does not exceed, the amount necessary to cover the costs of this securitization. ~~This~~The Financing Order also reflects other statutory benefits and assurances that are necessary for securitization.

The Commission may adopt a ~~financing order~~Financing Order only if it finds that the proposed issuance of Securitized Utility Tariff Bonds and the imposition and collection of Securitized Utility Tariff Charges are expected to provide net quantifiable rate benefits to customers when compared to the costs that would result from the ~~Application~~application of the traditional method of financing and recovering the Securitized Utility Tariff Costs with respect to Qualified Extraordinary Costs or ~~that would~~ avoid or mitigate rate impacts to customers.<sup>44</sup> To make that determination, the Commission must review a comparison between the net present value of the costs to customers that are estimated to result from the issuance of Securitized Utility Tariff Bonds and the costs that would result from the ~~Application~~application of traditional methods of

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<sup>43</sup> K.S.A. § 66-1,240(b)(2).

<sup>44</sup> K.S.A. § 66-1,241(d)(2).

financing and recovery of such Qualified Extraordinary Costs, which Atmos Energy has included in its Application.<sup>45</sup>

Economic benefits—~~also~~ depend upon a favorable financial market—one in which Securitized Utility Tariff Bonds may be sold at an interest rate lower than the carrying costs of the assets being securitized. The precise interest rate at which Securitized Utility Tariff Bonds can be sold in a future market, however, is not yet known. Nevertheless, benefits can be calculated based upon certain known facts (*e.g.*, the amount of assets to be securitized and the cost of the alternative to securitization) and assumptions (*e.g.*, the interest rate of the Securitized Utility Tariff Bonds, the term of the Securitized Utility Tariff Bonds). By analyzing the proposed securitization based upon those facts and assumptions, a determination can be made as to whether net quantifiable benefits result. To ensure that benefits are realized, an Issuance Advice Letter must be presented to the Commission after pricing of the Securitized Utility Tariff Bonds demonstrating that the actual structure and costs of the Securitized Utility Tariff Bonds will provide net quantifiable benefits to customers.

Atmos Energy's financial analysis, as confirmed by Commission Staff, shows that securitizing the Qualified Extraordinary Costs will produce an economic benefit to ~~ratepayers~~Retail Customers currently estimated to be a range of approximately ~~\$22.8.5~~ million to ~~\$31.3 million~~11.5million on a present value basis, depending on the securitization or conventional financing options to be compared.<sup>46</sup> Before the Securitized Utility Tariff Bonds may be issued, Atmos Energy must submit to the Commission an Issuance Advice Letter that indicates the final structure of the Securitized Utility Tariff Bonds and provides the best available estimate of total

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<sup>45</sup> See K.S.A. § 66-1,241(c)(9)(B).

<sup>46</sup> See K.S.A. §§ 66-1,240 - 66-1,253; Application Exhibit JLS-3.



~~ongoing~~Ongoing Financing Costs.<sup>47</sup> An example Form of Issuance Advice Letter is attached to this Financing Order as Appendix A.

The State of Kansas and its agencies, including the Commission, have pledged and agreed that the state and its agencies shall not:

- Alter the statute that authorizes the Commission to create an irrevocable contract right or chose in action by the issuance of a Financing Order, to create ~~securitized utility tariff property~~Securitized Utility Tariff Property and to make the Securitized Utility Tariff Charges imposed by a Financing Order irrevocable, binding or nonbypassable charges for all existing and future retail customers within the service area of the public utility;
- Take any action that would impair the value of Securitized Utility Tariff Property or the security for the Securitized Utility Tariff Bonds, or revises the Securitized Utility Tariff Costs for which recovery is authorized;
- Impair the rights and remedies of the bondholders, assignees and other financing parties in any way; or
- Except for changes made pursuant to the Adjustment Mechanism expressly allowed by law, reduce, alter, or impair the Securitized Utility Tariff Charges to be imposed, billed, charged, collected, and remitted for the benefit of the bondholders, any assignee, and any other financing parties, until any and all principal, interest, premium, financing costs and other fees, expenses or charges incurred and any contracts to be performed in connection with the related Securitized Utility Tariff Bonds have been paid and performed in full.<sup>48</sup>

Notwithstanding that the imposition and collection of Securitized Utility Tariff Charges depends on Atmos Energy performing its servicing functions relating to the collection of Securitized Utility Tariff Charges and on the number of future natural gas ~~consumption~~customers, Securitized Utility Tariff Property (whether associated with a single bond series covering the entire Qualified Extraordinary Costs or with one of multiple bond series covering only a portion of the Qualified Extraordinary Costs) constitutes a present property right for purposes of contracts

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<sup>47</sup> K.S.A. § 66-1,241(h)(4).

<sup>48</sup> K.S.A. § 66-1,252(a).

concerning the sale or pledge of property; and the property will continue to exist until Securitized Utility Tariff Bonds issued pursuant to ~~this~~the Financing Order have been paid in full and all Financing Costs and other costs of such Securitized Utility Tariff Bonds have been recovered in full.<sup>49</sup> In addition, the interests of an assignee or pledgee in Securitized Utility Tariff Property (as well as the revenues and collections arising from the property) are not subject to setoff, counterclaim, surcharge, or defense by the utility or any other person or in connection with the bankruptcy of the utility or any other entity.<sup>50</sup>

The Commission may, at the request of ~~Atmos Energy~~a utility, adopt a ~~financing order~~Financing Order providing ~~for the~~ refinancing, retiring or refunding of Securitized Utility Tariff Bonds issued pursuant to this Financing Order if the Commission finds that the subsequent ~~financing order~~Financing Order satisfies all of the criteria for a ~~financing order~~Financing Order under the Act.<sup>51</sup> This Financing Order does not preclude Atmos Energy from filing a request for a ~~financing order~~Financing Order to ~~refinance~~, retire or refund Securitized Utility Tariff Bonds approved in this Financing Order upon a showing that the statutory criteria ~~in the Act~~ are met.<sup>52</sup>

To facilitate compliance and consistency with applicable statutory provisions, this Financing Order adopts the definitions in K.S.A. § 66-1,240. In addition, capitalized terms not defined in the Act are defined in The Glossary, attached to this Financing Order as Appendix J.

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<sup>49</sup> K.S.A. §§ 66-1,244(a)-(b).

<sup>50</sup> K.S.A. § 66-1,244(e).

<sup>51</sup> K.S.A. § 66-1,241(i).

<sup>52</sup> *Id.*

## **II. Description of Proposed Transaction**

A description of the transaction proposed by Atmos Energy is contained in its Application and the filing package submitted as part of the Application. A brief summary of the proposed transaction is provided in this section. A more detailed description is included in the Findings of Fact, Section C, titled “Structure of the Proposed Securitization,” attached appendices, and in the Application itself. In general, the proposal consists of the following framework:

- a) The Qualified Extraordinary Costs will be updated, trued-up, verified, and allocated among Atmos Energy’s ~~sales customers~~ Retail Customers;
- b) Atmos Energy will form a wholly owned, subsidiary, ~~a Delaware limited liability company special purpose entity~~ Special Purpose Entity LLC (the “SPE”), referred to in the Act as an Assignee;<sup>53</sup>
- c) The SPE will be designed to be a bankruptcy-remote limited purpose entity;<sup>54</sup>
- d) ~~The~~ This Financing Order will establish the mechanism for the creation of Securitized Utility Tariff Property;<sup>55</sup>
- e) Atmos Energy will transfer, via a true sale, ~~their~~ its rights in ~~the~~ Securitized Utility Tariff Property to the SPE, rendering ~~the~~ this Financing Order irrevocable;
- f) The SPE will issue ~~the~~ Securitized Utility Tariff Bonds to investors;

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<sup>53</sup> “Assignee” means a corporation, limited liability company, general partnership, limited partnership, public authority, trust, financing entity or other entity to which a public utility assigns, sells or transfers, other than as security, all, or a portion of its interest in, or right to, securitized utility tariff property. K.S.A. §66-1,240(b)(4).

<sup>54</sup> See Direct Testimony of Jason L. Schneider, Docket No. 22-ATMG—~~538~~-TAR, p. 8 (May 25, 2022).

<sup>55</sup> “Securitized Utility Tariff Property” includes:

(A) All rights and interests of a public utility, its successor or assignee under a financing order, including the right to impose, bill, charge, collect and receive securitized utility tariff charges authorized under the financing order and to obtain periodic adjustments to such charges authorized under this section and as provided in the financing order; and

(B) all revenues, collections, claims, rights to payments, payments, money or proceeds arising from the rights and interests specified in the financing order, regardless of whether such revenues, collections, claims, rights to payment, payments, money or proceeds are imposed, billed, received, collected or maintained together with or commingled with other revenues, collections, rights to payment, payments, money or proceeds. K.S.A. 66-1,240(b)(22).

- g) The proceeds from the Securitized Utility Tariff Bonds will be used, directly or indirectly to recover, finance or refinance Atmos Energy's Qualified Extraordinary Costs and Financing Costs;
- h) The Securitized Utility Tariff Bonds and Financing Costs will be secured by or payable from the Securitized Utility Tariff Property transferred to the SPE;
- i) Atmos Energy will act as a collection agent or servicer for the SPE and the SPE's right to collect and receive Securitized Utility Tariff Charges;
- j) Atmos Energy will, on at least a semi-annual basis, apply an Adjustment Mechanism to the Securitized Utility Tariff Charges to ensure the timely and complete payment of the Securitized Utility Tariff Bonds and all other Financing Costs.

To facilitate the proposed securitization, Atmos Energy ~~has proposed that Atmos Energy~~ will form a Delaware limited liability subsidiary special purpose entity (the "SPE") to which Atmos Energy will transfer the rights to impose, collect, and receive Securitized Utility Tariff Charges along with the other rights arising pursuant to this Financing Order. Upon transfer ~~to the SPE~~ (in connection with the issuance of the Securitized Utility Tariff Bonds), the rights to impose, collect, and receive Securitized Utility Tariff Charges along with the other rights arising pursuant to this Financing Order will become Securitized Utility Tariff Property as provided by K.S.A. § 66-1,244. The SPE will issue the Securitized Utility Tariff Bonds and will transfer the net proceeds from the sale of the Securitized Utility Tariff Bonds to Atmos Energy in consideration for the transfer of the Securitized Utility Tariff Property. The SPE will be organized and managed in a manner designed to ~~achieve the objective of maintaining~~maintain the SPE as a bankruptcy-remote special purpose entity that will not be affected by any bankruptcy or insolvency of Atmos Energy, any other division, their affiliates, or respective successors. In addition, the SPE will have at least one independent manager whose approval will be required for certain actions or changes by the SPE. A form of the Amended and Restated Limited Liability Company Agreement of the SPE ("SPE LLC Agreement") is attached to this Financing Order as Appendix I.

The Securitized Utility Tariff Bonds will be issued pursuant to an ~~indenture~~Indenture and a series supplement ~~(collectively, the “Indenture”)~~, which will be administered by an ~~indenture trustee (the “Indenture Trustee”)~~. The Securitized Utility Tariff Bonds will be secured by and payable solely out of the corresponding Securitized Utility Tariff Property created pursuant to this Financing Order and any collateral described in Atmos Energy’s Application. Such collateral will be pledged to the Indenture Trustee for the benefit of the holders of the Securitized Utility Tariff Bonds and to secure payment of the principal, interest, and related charges for the Securitized Utility Tariff Bonds. A form of the Indenture (including a form of series supplement as an exhibit thereto) (the “Indenture”) is attached to this Financing Order as Appendix H.

The Servicer of the Securitized Utility Tariff Bonds will bill and collect the Securitized Utility Tariff Charges and remit those amounts to the Indenture Trustee on behalf of the SPE. The Servicer will be responsible for filing any required or permitted true ups of the Securitized Utility Tariff Charges. The Servicer will perform these functions for the SPE pursuant to ~~a servicing agreement~~the Securitized Utility Tariff Property Servicing Agreement (the “Servicing Agreement”) by and between Atmos Energy, as the initial servicer, and the SPE ~~(the “Servicing Agreement”)~~, ~~a form of which is attached hereto as Appendix D.~~ If the Servicer ~~materially~~ defaults on its obligations under the Servicing Agreement, the Indenture Trustee may appoint a successor Servicer, ~~as is further detailed in the Servicing Agreement attached hereto as Appendix D.~~ Atmos Energy will act as the initial Servicer for the Securitized Utility Tariff Bonds and will collect fees as described in the Servicing Agreement. A form of the Servicing Agreement is attached to this Financing Order as Appendix D.

The Servicing Agreement ~~will prohibit~~prohibits the initial Servicer’s ability to resign as Servicer unless (i) ~~it~~ it is unlawful for the initial Servicer to continue in such a capacity, or (ii) the

Commission consents and the credit rating agencies confirm that the resignation would not impact the ratings on the Securitized Utility Tariff Bonds. Resignation of the initial Servicer cannot become effective until the successor Servicer has fully assumed all obligations to continue servicing the Securitized Utility Tariff Bonds without interruption. The Servicer may be terminated from its responsibilities in certain cases upon a majority vote of bondholders.

~~Atmos Energy is authorized to recover directly through the Securitized Utility Tariff Charges its actual ongoing costs of servicing the Securitized Utility Tariff Bonds and providing administrative services to the SPE, subject to a cap on servicing fees equal to 0.05% of the initial principal amount of Securitized Utility Tariff Bonds issued pursuant to this Financing Order and a cap on administrative fees of \$100,000 for the SPE plus reimbursable third party costs, which will apply as long as Atmos Energy continues to serve as the Servicer or Administrator, respectively.~~

Atmos Energy requested approval of Securitized Utility Tariff Charges sufficient to recover the principal and interest on the Securitized Utility Tariff Bonds as described in this Financing Order and Attachment 2, Schedule B of Appendix A, Form of Issuance Advice Letter, attached hereto. Securitized Utility Tariff Charges will be calculated to ensure the collection of an amount sufficient to service the principal, interest, and related charges for the Securitized Utility Tariff Bonds and in a manner that allocates this amount to the various classes of ~~sales customers~~Retail Customers as provided in this Financing Order or as otherwise ordered by the Commission.

The Securitized Utility Tariff Charges will be calculated on a fixed monthly charge per ~~customer~~Retail Customer, pursuant to the method described in the Winter Event Securitized Cost Recovery Rider (“WESCR”), a pro forma copy of which is contained in Appendix B, Form of

Tariff. The fixed monthly per-~~customer~~Retail Customer Securitized Utility Tariff Charge will be adjusted semi-annually pursuant to the Adjustment Mechanism described in this Financing Order. The per-~~customer~~Retail Customer charge initially will be calculated using the customer count reported in the most recent Atmos Energy Annual Report ~~filed with the Commission~~ and will be updated semi-annually. Additionally, if the customer count for a particular class declines by more than ten percent (10%) from that identified in the 2021 Annual Report, then the allocation factors will be recalculated using the most recent 12-month weather normalized volume for each customer class.

The Securitized Utility Tariff Charges shall be collected over the expected life of the Securitized Utility Tariff Bonds. However, Securitized Utility Tariff Charges shall be collected only until all of the Securitized Utility Tariff Bonds and related ~~ongoing~~Ongoing Financing Costs are paid in full. The scheduled final maturity date of the bonds shall be determined by Atmos Energy subject to review of the Designated Representative. The Issuance Advice Letter shall specify both the scheduled final maturity of the Securitized Utility Tariff ~~Bonds~~Bond tranches and the legal maturity for the Securitized Utility Tariff ~~Bonds~~Bond tranches. The legal maturity is expected to be longer than the scheduled final maturity, based upon rating agency and market considerations, but in no event shall the final legal maturity exceed 32 years from the issuance date of the Securitized Utility Tariff Bonds-, as described in K.S.A. § 66-1,240(b)(19)(A). Amounts remaining unpaid after final legal maturity of the last Securitized Utility Tariff Bond tranche may be recovered but only to the extent that the charges are attributable to services rendered prior to the final legal maturity of the last Securitized Utility Tariff ~~Bonds~~Bond tranche.

The Securitized Utility Tariff Charge will become effective on the day after the Securitized Utility Tariff Bonds are issued. As required by the Act, this charge will be a separate line item on

the Retail Customers' bill. Billing will begin with the first billing cycle of the month following bond issuance.

~~A true-up adjustment mechanism (the “An Adjustment Mechanism”)~~,<sup>56</sup> as described in K.S.A. § 66-1,240(b)(2) and as authorized by the Commission in this Financing Order, shall be used to make necessary corrections to: (a) adjust for the overcollection or under-collection of Securitized Utility Tariff Charges, or (b) to ensure the timely and complete payment of the Securitized Utility Tariff Bonds, other Financing Costs, and other amounts due in connection with the Securitized Utility Tariff Bonds. In addition to the semi-annual true-up required by K.S.A. § 66-1,241(g), periodic true-ups may be performed as necessary to ensure that the amount collected from Securitized Utility Tariff Charges is sufficient to service the Securitized Utility Tariff Bonds. The methodology for making true-up adjustments under the Adjustment Mechanism and the circumstances under which any such adjustment shall be made are described in the pro forma WESCR, attached to this Financing Order as Appendix B.

The Financial Plan Settlement ~~(as defined in Finding of Fact 5)~~ approved by the Commission in Docket No. 21-ATMG-333-GIG (“Docket 21-333”) includes several elements which Atmos Energy was required to incorporate into its Application. At the time of the Financial Plan Settlement, Atmos Energy had prudently incurred Qualified Extraordinary Costs totaling \$102,517,847.<sup>56</sup> Atmos Energy has updated and verified the Qualified Extraordinary Costs as part of this proceeding.<sup>57</sup> The updated Qualified Extraordinary Costs are:<sup>58</sup>

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<sup>56</sup> See Exhibit A to Financial Plan Settlement Order, p. 5, ¶8.

<sup>57</sup> ~~See id.~~

<sup>58</sup> See Revised Direct Testimony of Kathleen R. Ocanas, Docket No. 22-ATMG—~~538~~-TAR, p. 13 (~~May 25~~July 22, 2022); and Direct Testimony of Justin T. Grady, (August 26, 2022).



<b><u>QUALIFIED</u> EXTRAORDINARY COST DESCRIPTION</b>	<b>AMOUNT</b>
Gas Costs	\$76,652,625
Carrying Costs – at 2% through March 31, 2023	<del>\$3,142,758</del> <b><u>210,388</u></b>
<u>Docket Cost, Including Customer Education</u>	<b><u>\$779,000</u></b>
Atmos Energy Penalties from Docket 21-333	\$9,559,372
Credit for Passthrough Penalties to 3 <sup>rd</sup> Parties	(\$334,521)
<del>Financing Fees Relating to Securitization</del>	<del>\$22,010,188</del>
Legal/Consulting Fees (excluding financing fees)	\$2,885,000
<b><u>Total Amount to be Securitized</u></b>	<b><u>\$92,684,223</u></b>
<u>Illustrative Interest Expense Relating to Securitization</u>	<b><u>\$22,157,796</u></b>
<u>Operation &amp; Admin/ Net Reserve Funding Costs (Ongoing Costs)</u>	<b><u>\$3,672,001</u></b>
<b>Total <u>Qualified</u> Extraordinary Costs</b>	<b><u>\$111,809,422</u></b> <b><u>118,514,030</u></b>

Atmos Energy was permitted to recover carrying charges on the Qualified Extraordinary Costs, at a rate of 2.0%, between the time the Qualified Extraordinary Costs were incurred until the Securitized Utility Tariff Bonds are issued and Atmos Energy begins to charge customers a Securitized Utility Tariff Charge.<sup>59</sup> The principal amount being securitized is \$92,684,223. The remaining portion of the \$118,514,030 identified as the total qualified extraordinary cost in the table above (\$25,829,797) includes the estimated interest cost for the bonds themselves and Ongoing Financing Cost.

The Financial Plan Settlement deferred certain determinations to this proceeding. Notwithstanding the Act's requirements, this proceeding determined the term of the Securitized Utility Tariff Bonds, and how Securitized Utility Tariff Charges will be recovered from Atmos Energy's ~~sales customers~~.<sup>60</sup> Retail Customers.<sup>61</sup> Unless otherwise prohibited by law, Securitized Utility Tariff Charges will not be charged to Transportation Customers, as defined in The Glossary. Furthermore and pursuant to the Financial Plan Settlement, unless otherwise prohibited by law,

<sup>59</sup> See Exhibit A to Financial Plan Settlement Order, pp. 5 – 6, ¶10.

~~<sup>60</sup> See Exhibit A to Financial Plan Settlement Order, p. 6, ¶11.~~

See Exhibit A to Financial Plan Settlement Order, p. 6, ¶11.

~~sales customers~~Retail Customers who become ~~transportation customers~~Transportation Customers during the period Securitized Utility Tariff Charges are being recovered shall be required to pay a settlement fee prior to becoming a ~~transportation customer~~.<sup>62</sup>Transportation Customer. The settlement fee owed by the customer shall be based on the present value of the expected charges the customer would have paid as a ~~sales customer~~Retail Customer over the remaining period in which the Securitized Utility Tariff Charge is being recovered.<sup>63</sup> The ~~settlement fee~~charges shall use a discount rate equal to the weighted average remaining rate of the ~~Securitized Utility Tariff Bonds~~securitization bonds at the time of such settlement. This settlement fee will be credited to Atmos Energy's other ~~sales customers~~Retail Customers once a year through its Purchased Gas Adjustment ("PGA") tariff and associated Annual Cost Adjustment ("ACA") (collectively, "PGA/ACA").<sup>64</sup>

Atmos Energy's Application contains a method of tracing funds collected as Securitized Utility Tariff Charges. The Securitized Utility Tariff Charges collected from customers will be placed on a separate line on customers' bills, allowing the Company to assign the Securitized Utility Tariff Charges a specific code, by customer class, in its billing system. This code will allow the Company to trace proceeds from the Securitized Utility Tariff Charges.

Atmos Energy's Application also contains a reconciliation proposal. As contemplated by the Financial Plan Settlement, this proposal considers both the deferred tax liability associated with Qualified Extraordinary Cost recoveries, as well as the corresponding and offsetting deferred

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<sup>62</sup> See Exhibit A to Financial Plan Settlement Order, pp. 6–7, ¶14 (The settlement fee owed by the customer shall be based on the present value of the expected charges the customer would have paid as a sales customer over the remaining period in which the Securitized Utility Tariff Charge is being recovered. This settlement fee will be credited to Atmos Energy's other sales customers once a year through the PGA.).

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

tax asset associated with the net operating loss carry-forward created by the Qualified Extraordinary Costs.<sup>65</sup>

### **III. Findings of Fact**

#### **A. Identification and Procedure**

##### **1. Identification of Applicant and Application**

1. Atmos Energy is a natural gas public utility which owns and operates for compensation an extensive natural gas distribution network to provide service in this state.
2. On February 15, 2021, in Docket No. 21-GIMX-303-MIS, the Commission issued an Emergency Order.<sup>66</sup> Sub-zero temperatures and increased demand for electricity and natural gas caused by the Winter Event placed significant stress on utilities. Wholesale natural gas prices increased 10 to 100 times higher than normal.
3. The Commission ordered jurisdictional utilities to do everything necessary to ensure natural gas and electricity continued to be provided to customers in Kansas.<sup>67</sup> The Commission authorized every jurisdictional electric and natural gas utility to defer extraordinary costs related to the Winter Event to a regulatory asset

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<sup>65</sup> ~~See Exhibit A to Financial Plan Settlement Order., p. 6, ¶12.~~ See Direct Testimony of Kathleen R. Ocanas, Docket No. 22-ATMG-538-TAR, p. 36-37 (May 25, 2022) Settlement., Exhibit A, p. 8, ¶15.

<sup>66</sup> Emergency Order, Docket No. 21-GIMX-303-MIS, p. 1, ¶1 (Feb. 15, 2021) (Emergency Order).

<sup>67</sup> *See id.* at p. 2, ¶3.

account.<sup>68</sup> Concurrent with this decision, the Commission directed Atmos Energy to develop a plan to minimize the Winter Event's financial impact on Atmos Energy's ~~ratepayers~~ customers.<sup>69</sup> ~~For perspective, by~~ By September 14, 2021, Atmos Energy had incurred and deferred approximately \$87,880,622 million of extraordinary ~~gas~~ costs, exclusive of carrying costs, related to the Weather Event.<sup>70</sup>

This amount was later estimated as \$89,799,233, including estimated carrying costs of 2%, through March 31, 2023.<sup>71</sup>

4. On September 14, 2021, Atmos Energy ~~filed with the Commission~~ submitted its plan to minimize the financial impact of the Winter Event on customers.<sup>72</sup> Supported by testimony from five witnesses,<sup>73</sup> Atmos Energy proposed to apply for a Financing Order in a separate docket. Atmos Energy would seek authorization to issue Securitized Utility Tariff Bonds to finance the Winter Event's Qualified Extraordinary Costs.<sup>74</sup> After including additional carrying costs, legal and consulting fees, and other expenses, the estimated cost to be securitized totaled ~~over \$109,809,921~~ \$118,514,030 million; ~~for a ten-year period.~~

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<sup>68</sup> See *id.* at p. 2, ¶4.

<sup>69</sup> Emergency Order, Docket No. 21-GIMX-303-MIS, p. 3, ¶5 (Feb. 15, 2021).

<sup>70</sup> See Direct Testimony of Kathleen R. Ocanas, Docket 21-333, p. 5 (Feb. 24, 2022).

<sup>71</sup> See Revised Direct Testimony of Kathleen R. Ocanas, Docket No. 22-ATMG-538-TAR (July 22, 2022).

<sup>72</sup> Plan to Minimize the Financial Effects of the 2021 Winter Weather Event, Docket 21-333 (Sep. 14, 2021).

<sup>73</sup> Barton W. Armstrong, Rob R. Leivo, Kenneth M. Malter, Kathleen R. Ocanas and Jason L. Schneider.

<sup>74</sup> ~~See~~ Plan To Minimize the Financial Effects of the 2021 Winter Weather Event, Docket 21-333, p.1 (Sep. 14, 2021).

<sup>75</sup> See Revised Direct Testimony of Kathleen R. Ocanas, Docket 21-333 No. 22-ATMG-538-TAR, p. 4 (Sep. 14, 2021)-13 (July 22, 2022); and Direct Testimony of Justin T. Grady, (August 26, 2022).

5. On February 9, 2022, Atmos Energy, Commission Staff (“Staff”), and the Citizens’ Utility Ratepayer Board (“CURB”) ~~and the Natural Gas Transportation Customer Coalition (“NGTCC”)~~ filed~~submitted~~ a Joint Motion to Approve Settlement Agreement (“Financial Plan Settlement”).<sup>76</sup>
6. On March 24, 2022, in Docket 21-333, the Commission issued an order<sup>77</sup> approving the Financial Plan Settlement in its entirety.<sup>78</sup> The Commission emphasized: (1) it was in the public interest for Atmos Energy to incur extraordinary costs during the Winter Event,<sup>79</sup> (2) it is in the public interest to recover these costs,<sup>80</sup> and (3) the plan implemented by this Application will result in just and reasonable rates.<sup>81</sup>

## 2. Procedural History

7. On                     , August 25, 2022, in Docket No.                     , 22-ATMG-538-TAR, Atmos Energy filed an Application for Financing Order for the recovery of Securitized Utility Tariff Costs (i.e., Qualified Extraordinary Costs)<sup>82</sup> and Financing Costs incurred because of the Winter Event. Atmos Energy provided a

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<sup>76</sup> Joint Motion to Approve Settlement Agreement, Docket 21-333 (Feb. 9, 2022) (Settlement).

<sup>77</sup> Order Approving Unanimous Settlement Agreement on Atmos Energy Corporation’s Financial Plan, Docket 21-333 (Mar. 24, 2022). (“Financial Plan Settlement Order”)

<sup>78</sup> *See id.* at p. 9, Ordering Clause (A).

<sup>79</sup> *See id.* at p. 8 ¶13.

<sup>80</sup> *See id.* at p. 9 ¶14.

<sup>81</sup> *See id.* at p. 9 ¶16.

<sup>82</sup> Pursuant to the Act, and relevant for this Application, “Securitized Utility Tariff Costs” means “Qualified Extraordinary Costs.” K.S.A. 66-1,240(b)(21). As such, Atmos Energy’s Application refers to these terms collectively as “Qualified Extraordinary Costs.”

general description of the proposed transaction structure in its Application and in the testimony and exhibits submitted in support of its Application.

8. The following parties intervened in this proceeding and were granted party status:

• ~~[To be added at the time of issuance of the Financing Order.]~~

• CURB

9. Atmos Energy's Application in this proceeding is consistent with the Financial Plan Settlement approved by the Commission in Docket 21-333.<sup>83</sup>

10. No party opposes Atmos Energy's Application in this docket for a Financing Order.

## **B. Qualified Extraordinary Costs and Amount to be Securitized**

### **1. Identification and Amounts**

11. Qualified Extraordinary Costs are defined in the Act to include costs the public utility has incurred before, on or after the effective date of this ~~aet~~Act of an extraordinary nature that would cause extreme customer rate impacts if recovered through customary rate-making, including, but not limited to, purchases of gas supplies, transportation costs, fuel and power costs, including carrying charges incurred during anomalous weather events.<sup>84</sup> The Commission has further

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<sup>83</sup> Order Approving Unanimous Settlement Agreement on Atmos Energy's Financial Plan, Docket 21-333, (Mar. 24, 2022).

<sup>84</sup> K.S.A. § 66-1,240(b)(18).

identified deferred costs including, but, not limited to the cost of procuring and transporting natural gas supplies for jurisdictional utility customers, costs associated with jurisdictional utilities coordinating and assisting non-jurisdictional utilities with the transportation of gas supplies, and any other reasonable costs necessary to ensure stability and reliability of natural gas and electric service.

~~These deferred costs may also include carrying costs at the utility's weighted average cost of capital.<sup>8586</sup>~~

## 2. Balance to be Securitized

12. Atmos Energy should be authorized to cause Securitized Utility Tariff Bonds to be issued in an aggregate principal amount not to exceed the Qualified Extraordinary Costs plus any incurred and ~~ongoing~~Upfront Financing Costs. Pursuant to this Financing Order, Atmos Energy will be responsible for costs of issuance, which may be paid out of proceeds of the Securitized Utility Tariff Bonds. It is appropriate to recover operations and maintenance, financing fees associated with the term loan and notes offering, legal and consulting fees, and additional Financing Costs identified in this proceeding directly through Securitized Utility Tariff Charges. As indicated above, the principal amount of the issuance is \$92,684,223. The difference between the total qualified extraordinary cost (\$118,514,030) and the principal amount of the issuance

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<sup>85</sup> ~~Emergency Order, Page 2, paragraph 4.~~

<sup>86</sup> Emergency Order, Page 2, paragraph 4.

(\$92,684,233) is \$25,829,797, which constitutes the estimated interest costs for the bonds themselves and Ongoing Financing Cost.

13. The proposed recovery of costs described in Finding of Fact 12 through issuance of Securitized Utility Tariff Bonds as provided in this Financing Order should be approved because ~~customers~~Retail Customers will receive net quantifiable rate benefits under this securitization when compared to the costs that would result from the Application of the traditional method of financing and recovering the Securitized Utility Tariff Costs with respect to Qualified Extraordinary Costs or that would avoid or mitigate rate impacts to ~~customers~~Retail Customers.

### 3. Pre-Issuance Advice Letter Review Process

14. Because~~As~~ the actual structure and pricing of the Securitized Utility Tariff Bonds will not be known at the time this Financing Order is issued, ~~following determination of the final terms of the Securitized Utility Tariff Bonds and prior to issuance of the Securitized Utility Tariff Bonds, Atmos Energy will file with the Commission, and no later than the end of the first day after the pricing date for the~~the Act provides for the Commission to provide additional provisions related to the Issuance Advice Letter process as the Commission considers appropriate. The Commission finds a pre-issuance review process is necessary to approve the Financing Order and to meet the requirement that the financing can be expected to result in the lowest securitized utility tariff charges, consistent with market conditions at the time the securitized utilities bonds are priced. As such, following the approval of the Financing Order, Atmos Energy shall be subject to the review



of the Designated Representative of the Commission Staff, including its legal and investment banking advisors, who shall have all authority to review and observe all facets of the process undertaken by Atmos Energy to place the Securitized Utility Tariff Bonds to market so the Commission's Designated Representative can be prepared, if requested, to provide the Commission with an opinion on the reasonableness of the pricing, terms, and conditions of the Securitized Utility Tariff Bonds on an expedited basis. The Designated Representative shall have the authority to review, confer, and consult with Atmos Energy regarding the proposals of Atmos Energy, including but not limited to, the structuring, marketing, and pricing of the Securitized Utility Tariff Bonds to achieve the Act's statutory requirements. Any costs incurred by Designated Representative in connection with its review would be treated as a financing cost of the securitized utility tariff bonds and shall be included in the securitized utility tariff charge or as otherwise required by the Act.

15. The Designated Representative will have all authority to review, confer, and consult with Atmos Energy and its underwriters on all facets of the securitization process, including but not limited to all material terms of the Securitized Bonds and other items it determines appropriate to perform its role, which may include, without limitation, (1) the underwriter and syndication group sizes, selection process for the lead underwriter, co-lead underwriter, and all other underwriters (the foregoing constitutes the ("Underwriter Selection Process") involved in the securitization process review and criteria, participants, allocations, and economics; (2) the structure of the Securitized Bonds and compliance with the

requirements; (3) the marketing process, including the Securitized Bonds' credit rating agency application, the underwriters' preparation, marketing, and syndication of the Securitized Bonds; (4) the pricing of the Securitized Bonds and certifications provided by the issuer and underwriter(s); (5) all associated Securitized Bond costs (including Bond Issuance Costs and other Financing Costs), servicing and administrative fees; (6) maturities; (7) reporting templates; (8) the amount of equity contribution to the related SPE; (9) overcollateralization and other credit enhancements; and (10) the initial calculation of the related Fixed Recovery Charges. Whenever this Finance Order provides the Designated Representative will review and observe any matter, that means that the Designated Representative's review includes, and it has all of the authority to, review, confer, consult with Atmos Energy and its underwriters regarding the matter or proposal being reviewed, including the provision of substantive input and advice as needed without further explanation or expansion at each reference. Atmos Energy shall endeavor in good faith to provide as much notice as possible to the Commission's Designated Representative, including its legal and investment banking advisors, when meeting with investors or ratings agencies on the Securitized Utility Tariff Bonds. Atmos Energy shall provide this notice to the Commission's Designated Representative through email, unless the Designated Representative requests otherwise. The Commission recognizes meetings with investors or ratings agencies may occur with very little or no notice. Provided Atmos Energy operates in good faith to inform the Designated Representative of such meetings, Atmos Energy shall not be required to wait for the Designated Representative prior to

meeting with investors or ratings agencies. The Designated Representative, including its legal and investment banking advisors, shall be allowed to listen in on meetings with investors or ratings agencies, but shall not be allowed to speak or otherwise take an active role in such meetings.

~~14.16.~~ Atmos Energy shall file with the Commission no later than the end of the first business day after the pricing date for that series of Securitized Utility Tariff Bonds, an Issuance Advice Letter. The Issuance Advice Letter for the Securitized Utility Tariff Bonds will report the actual dollar amount of the initial Securitized Utility Tariff Charges and other information specific to the Securitized Utility Tariff Bonds. All amounts that require computation will be computed using the mathematical formulas contained in the form of the Issuance Advice Letter in Appendix A to this Financing Order and the WESCR. The initial Securitized Utility Tariff Charges and the final terms of the Securitized Utility Tariff Bonds set forth in the Issuance Advice Letter shall become effective on the date of issuance of the Securitized Utility Tariff Bonds unless, prior to noon on the fourth business day after ~~the Commission receives the Issuance Advice Letter, pricing~~ the Commission issues a Disapproval Letter pursuant to K.S.A. § 66-1,241(h)(4), finding that the proposed issuance does not comply with the requirements of the Act and this Financing Order.

~~15.17.~~ Atmos Energy will submit a draft Issuance Advice Letter to Commission Staff and the Designated Representative for review as explained in the review process outlined above not later than two weeks prior to the expected date of commencement of the marketing of the Securitized Utility Tariff Bonds. ~~Within~~

~~one week after receipt of the draft Issuance Advice Letter,~~ Commission Staff will provide Atmos Energy comments and recommendations regarding the adequacy of the information provided. ~~in a timely manner.~~

~~16.18.~~ The Issuance Advice Letter for the Securitized Utility Tariff Bonds shall be filed with the Commission not later than the end of the first day after the pricing of the Securitized Utility Tariff Bonds. Commission Staff may request such revisions of the Issuance Advice Letter as may be necessary to assure the accuracy of the calculations and that the requirements of the Act and of this Financing Order have been met. Atmos Energy may proceed with the issuance of the Securitized Utility Tariff Bonds unless, prior to noon on the fourth business day after the Commission receives the Issuance Advice Letter, the Commission issues a disapproval letter directing that the Securitized Utility Tariff Bonds as proposed shall not be issued and the basis for that disapproval.

~~17.19.~~ The completion and filing of ~~an~~the pre-issuance review and Issuance Advice Letter in the form of the Issuance Advice Letter attached as Appendix A to this Financing Order is necessary to ensure that any securitization actually undertaken by Atmos Energy complies with the terms of this Financing Order and the requirements of the Act.

#### 4. Benefits to Customers

~~18.20.~~ K.S.A. § 66-1,241 directs the Commission to ensure that securitization provides net quantifiable rate benefits to customers when compared to the costs that would result from the ~~Application~~application of the traditional method of financing and

recovering the Securitized Utility Tariff Costs with respect to Qualified Extraordinary Costs or ~~that would~~ avoid or mitigate rate impacts to customers. As Transportation Customers will not be subject to the Securitized Utility Tariff Costs, this Financing Order address only net quantifiable rate benefits to Retail Customers. An analysis that compares the net present value of the costs to ~~eustomers~~Retail Customers that are estimated to result from the issuance of Securitized Utility Tariff Bonds and the costs that would result from the ~~Application~~application of traditional methods of financing and recovery of such Qualified Extraordinary Costs, which Atmos Energy has included in its Application, is an appropriate economic analysis to demonstrate whether securitization provides economic benefits to ~~ratepayers~~Retail Customers. Likewise, a net present value analysis demonstrates whether securitizing Atmos Energy's Qualified Extraordinary Costs provides net quantifiable rate benefits or avoids or mitigates rate impacts to Atmos Energy's customers.

19:21. The financial analysis presented by Atmos Energy as confirmed by Staff witness Grady, indicates that securitization of the Qualified Extraordinary Costs plus Financing Costs as requested by Atmos Energy is expected to result in approximately \$~~21.9 million to \$31.38.5~~ million of net quantifiable rate benefits to ~~ratepayers on a net present value basis~~Retail Customers if the Securitized Utility Tariff Bonds are issued at ~~ana weighted~~ average interest rate of 4.~~254~~269% allowed by this Financing Order and with a ~~10~~ten-year expected life. Using the projected ~~weighted~~-average interest rate of 4.~~333~~623% and a ~~15~~fifteen-year expected life, the net quantifiable benefits of securitization would be

approximately ~~\$21.6 million to \$39.7~~11.5 million on a net present value basis. These estimates assume that actual ~~ongoing~~Ongoing Financing Costs will be as shown on Appendix C to this Financing Order. The benefits for ~~customers~~Customers set forth in Atmos Energy's evidence are fully indicative of the benefits ~~customers~~Customers will realize from the securitization approved in this Financing Order; however, the actual benefit to ~~ratepayers~~Retail Customers will depend upon market conditions on the date of pricing of the Securitized Utility Tariff Bonds, and the actual scheduled maturity of the Securitized Utility Tariff Bonds, ~~and the amount actually securitized.~~

20.22. K.S.A. § 66-1,241(e)(13) requires that ~~this~~the Financing Order contain a statement to ensure that a future rate-making process to reconcile any differences between the actual Securitized Utility Tariff Costs financed by Securitized Utility Tariff Bonds and the final Securitized Utility Tariff Costs incurred by Atmos Energy or its assignee shall not affect the amount of Securitized Utility Tariff Bonds or the associated Securitized Utility Tariff Charges paid by customers. The Commission finds that this requirement, as reflected in Ordering Paragraph ~~34~~160, provides customers with additional assurance that rate impacts to ~~customers~~Retail Customers will be mitigated or avoided.

### C. Structure of the Proposed Securitization

#### 1. Special Purpose Entity

21:23. For purposes of this securitization, Atmos Energy will form ~~the SPE~~a Delaware limited liability company special purpose subsidiary (the “SPE”) with Atmos Energy as its sole member. The SPE will be formed for the limited purpose of acquiring Securitized Utility Tariff Property, issuing Securitized Utility Tariff Bonds in one or more tranches or classes, and performing other activities relating thereto or otherwise authorized by this Financing Order. The SPE will not be permitted to engage in any other activities and will have no assets other than Securitized Utility Tariff Property and related assets to support its obligations under the Securitized Utility Tariff Bonds. Obligations relating to the Securitized Utility Tariff Bonds will be the SPE’s only significant liabilities. ~~—~~These restrictions on the activities of the SPE and restrictions on the ability of Atmos Energy to take action on the SPE’s behalf are imposed to achieve the objective that the SPE will be bankruptcy remote and not affected by a bankruptcy of Atmos Energy.

22:24. The SPE will be managed by a board of managers with rights and duties set forth in its organizational documents. As long as the Securitized Utility Tariff Bonds remain outstanding, the SPE will have at least one independent manager with no organizational affiliation with Atmos Energy other than possibly acting as an independent manager for one or more other bankruptcy-remote subsidiaries of Atmos Energy, or their affiliates.

23.25. The SPE will not be permitted to amend the provisions of its limited liability agreement or other organizational documents that relate to bankruptcy-remoteness of the SPE without the consent of the independent manager. Similarly, the SPE will not be permitted to institute bankruptcy or insolvency proceedings or to consent to the institution of bankruptcy or insolvency proceedings against it, or to dissolve, liquidate, consolidate, convert, or merge without the consent of the independent manager. Other restrictions to facilitate bankruptcy-remoteness may also be included in the organizational documents of the SPE as required by the credit rating agencies. The Commission agrees that these restrictions to ensure that the SPE is bankruptcy-remote are reasonable and required.

24.26. Per credit rating agency and ~~any requirements of the~~ Internal Revenue Service (“IRS”); ) requirements, Atmos Energy will transfer to the SPE an amount required to capitalize the SPE adequately (the “SPE Capitalization Level”) for deposit into the capital sub-account. The SPE Capitalization Level is expected to be 0.5% of the initial principal amount of the Securitized Utility Tariff Bonds to be issued by the SPE or such greater amount as might be needed to meet ~~IRS or~~ credit rating agency and IRS requirements. The actual SPE Capitalization Level will depend on ~~any IRS and~~ credit rating agency and IRS requirements. Moreover, the Commission confirms that the SPE will be an “~~assignee~~ Assignee” as defined in K.S.A. § 66-1,240(b)(4), when ownership of the Securitized Utility Tariff Property is transferred to ~~thesuch~~ SPE; and ~~thesuch~~ SPE may issue Securitized Utility Tariff Bonds in accordance with this Financing Order.



25:27. When Atmos Energy transfers its rights to the SPE under an agreement that expressly states that the transfer is a sale or other absolute transfer in accordance with the true-sale provisions of K.S.A. § 66-1,246, then that transfer will be a “true sale” of an interest in ~~the~~ Securitized Utility Tariff Property and not a secured transaction or other financing arrangement and title, legal and equitable, to the Securitized Utility Tariff Property will pass to the SPE. The transfer of an interest in Securitized Utility Tariff Property to an assignee will be perfected against all parties having claims of any kind in tort, contract or otherwise against the person granting the security interest and regardless of whether the parties have notice of the security interest, and a security interest in the Securitized Utility Tariff Property shall be perfected against all claims of lien creditors and shall have priority over all competing security interests and other claims other than any security interest previously perfected in accordance with the Act. The priority of a lien and security interest perfected should not be impaired by any later change in the Securitized Utility Tariff Charges pursuant to the Adjustment Mechanism or by the commingling of funds arising from Securitized Utility Tariff Charges with other funds, and any other security interest that may apply to those funds will be terminated when they are transferred to a segregated account for an assignee or a Financing Party.

26:28. The SPE will issue the Securitized Utility Tariff Bonds in one ~~tranche~~ or more tranches, in an aggregate amount not to exceed the principal amount approved by this Financing Order. ~~The SPE and~~ will pledge to the Indenture Trustee, as collateral for payment of the Securitized Utility Tariff Bonds, the Securitized

Utility Tariff Property, including the SPE's right to receive the Securitized Utility Tariff Charges when collected, as described in Atmos Energy's Application.

27:29. The scheduled final maturity of the last tranche of Securitized Utility Tariff Bonds will not exceed 15ten years ~~(although, provided, however, that if a longer term is required to achieve the legal final maturity of the best possible credit rating and lowest resulting~~ Securitized Utility Tariff ~~Bonds~~Charges, such term may extend ~~beyond 15~~to a maximum of 12 years ~~but not to exceed 32~~in consultation with and subject to the review rights of the Designated Representative. The legal final maturity is anticipated to be two years)~~- outside of the final scheduled maturity date.~~

28:30. Concurrent with the issuance of any of the Securitized Utility Tariff Bonds, Atmos Energy will transfer to the SPE the Securitized Utility Tariff Property approved in this Financing Order. This transfer will be structured so that it will qualify as a true sale within the meaning of K.S.A. § 66-1,256(a). By virtue of the transfer, the SPE will acquire all of the right, title, and interest of Atmos Energy in the Securitized Utility Tariff Property arising under this Financing Order.

29:31. The use and proposed structure of the SPE and the limitations related to its organization and management are necessary to minimize risks related to the proposed securitization transactions and to minimize the Securitized Utility Tariff Charges. Therefore, the use and proposed structure of the SPE should be approved.

## 2. Credit Enhancement and Arrangements to Reduce Interest Rate Risk or Enhance Marketability

~~30.~~32. The primary ~~form~~forms of credit enhancements are the true-up process established with the Adjustment Mechanism and the capital sub-account. Atmos Energy requested approval to use additional forms of credit enhancement (*e.g.*, letters of credit, additional amounts of overcollateralization or reserve accounts) and other mechanisms designed to promote the credit quality and marketability of the Securitized Utility Tariff Bonds. In connection with implementing any such other credit enhancement, the Company may enter into one or more ~~“ancillary agreements.”~~ Under K.S.A. 66-1,240(b)(3), an ~~“ancillary agreement” means a bond, insurance policy, letter of credit, reserve account, surety bond, interest rate lock or swap arrangement, hedging agreement, liquidity, or credit support arrangement.~~Ancillary Agreements.

~~31.~~33. Atmos Energy also asked that the costs of any credit enhancements as well as the costs of arrangements to enhance marketability be included in the amount of Qualified Extraordinary Costs to be securitized. Atmos Energy should be permitted to recover the ongoing costs of credit enhancements and arrangements to enhance marketability, provided that the Commission’s ~~designated representative~~Designated Representative and Atmos Energy agree in advance that such enhancements and arrangements provide benefits greater than their tangible and intangible costs. This finding does not apply to the collection account or its sub-accounts approved in this Financing Order.

~~32.34.~~ Atmos Energy's proposed use of credit enhancements and arrangements to enhance marketability is reasonable and should be approved, provided that Atmos Energy certifies that the enhancements or arrangements provide benefits greater than their cost and that such certifications are agreed with by the Commission's ~~designated representative~~ Designated Representative.

### 3. Securitized Utility Tariff Property

~~33.35.~~ Under K.S.A. § 66-1,246(c), the rights to impose, collect, and receive Securitized Utility Tariff Charges (including all other rights of a utility under the Financing Order) are only contract rights until such rights are first transferred to an assignee or pledged in connection with the issuance of Securitized Utility Tariff Bonds, at which time they will become Securitized Utility Tariff Property. That transfer will be a true sale of an interest in Securitized Utility Tariff Property and not a secured transaction or other financing arrangement and title, legal and equitable, to the Securitized Utility Tariff Property will pass to the SPE.

~~34.36.~~ The rights to impose, collect, and receive the Securitized Utility Tariff Charges approved in this Financing Order along with the other rights arising pursuant to this Financing Order will become Securitized Utility Tariff Property upon the transfer of such rights by Atmos Energy to the SPE pursuant to K.S.A. § 66-1,246(c). The rights to impose, collect and receive Securitized Utility Tariff Charges along with the other rights arising pursuant to this Financing Order as they relate to any portion of the Qualified Extraordinary Costs that remains unsecuritized shall remain with Atmos Energy and shall not become Securitized

Utility Tariff Property until transferred to the SPE in connection with a subsequent issuance of Securitized Utility Tariff Bonds.

~~35.37.~~ Securitized Utility Tariff Property and all other collateral will be held and administered by the Indenture Trustee pursuant to the Indenture, as described in Atmos Energy's Application and the testimony of Mr. Jason Schneider. This proposal will help ensure the lowest ~~Securitized Utility Tariff Charges and should be approved~~ bond charges.

~~36.38.~~ Under K.S.A. §§ 66-1,244(a)-(b), Securitized Utility Tariff Property constitutes a present property right for purposes of contracts concerning the sale or pledge of property, ~~even though the imposition and collection of Securitized Utility Tariff Charges depends on further acts or the utility or others that have not yet occurred,~~ and the property will continue to exist until Securitized Utility Tariff Bonds issued pursuant to ~~this~~ the Financing Order have been paid in full and all Financing Costs and other costs of such Securitized Utility Tariff Bonds have been recovered in full.

#### 4. Servicer and the Servicing Agreement

~~37.39.~~ Atmos Energy will execute a Servicing Agreement with the SPE. ~~The Servicing Agreement may be amended, renewed or replaced by another servicing agreement.~~

The entity responsible for carrying out the servicing obligations under any Servicing Agreement is the ~~servicer (the "Servicer")~~. Atmos Energy will be the initial Servicer but may be succeeded as Servicer by another entity under certain circumstances detailed in the Servicing Agreement, a form of which is attached

hereto as Appendix D, and as hereby incorporated into this Financing Order, approved, and authorized by the Commission.

38.40. Pursuant to the Servicing Agreement, the Servicer will be required, among other things, to bill and collect the applicable Securitized Utility Tariff Charges for the benefit and account of the SPE, to make the periodic true-up adjustments of Securitized Utility Tariff Charges as required or allowed by this Financing Order, and to account for and remit the applicable Securitized Utility Tariff Charges to, or for the account of the SPE, in accordance with the remittance procedures contained in the Servicing Agreement without any charge, deduction or surcharge of any kind (other than the servicing fee specified in the Servicing Agreement).

39.41. Under the terms of the Servicing Agreement, if the Servicer fails to perform its servicing obligations in any material respect it shall be considered a default under the Servicing Agreement and the Indenture Trustee, acting under the Indenture to be entered into in connection with the issuance of the Securitized Utility Tariff Bonds, or the Indenture Trustee's designee, may, or, upon the instruction of the requisite percentage of holders of the outstanding amount of Securitized Utility Tariff Bonds shall, appoint an alternate party to replace the defaulting Servicer (the "Replacement Servicer"), in which case the Replacement Servicer will perform the obligations of the Servicer under the Servicing Agreement. The obligations of the Servicer under the Servicing Agreement and the circumstances under which an alternate Servicer may be appointed will be more fully described in the Servicing Agreement. The rights of the SPE under the Servicing Agreement

will be included in the collateral pledged to the Indenture Trustee under the Indenture for the benefit of holders of the Securitized Utility Tariff Bonds.

40.42. The Servicing Agreement shall include a provision that Atmos Energy shall indemnify the Commission (for the benefit of ~~eustomers~~Customers) in connection with any increase in servicing fees that become payable as a result of a default resulting from Atmos Energy's willful misconduct, bad faith, or negligence in performance of its duties or observance of its covenants under the Servicing Agreement. The indemnity will be enforced by the Commission but will not be enforceable by any ~~customer~~Customers.

41.43. The proposed Servicing Agreement and servicing obligations of the Servicer are reasonable, will ~~reduce~~reduced risk associated with the proposed securitization and will, therefore, result in lower ~~Securitized Utility Tariff Charges~~bond charges and greater benefits to customers and should be approved. Atmos Energy has represented that in order to obtain the necessary true sale and bankruptcy opinions, the SPE must pay a servicing fee to Atmos Energy that is set at a level that constitutes fair and adequate consideration sufficient to obtain the true sale and bankruptcy opinions required for the Securitization. Atmos Energy proposes to charge an annual servicing fee of 0.05 percent of the presumed initial principal Securitized Utility Tariff Bonds, plus out-of-pocket expenses (e.g., legal, accounting fees), to cover Atmos Energy's incremental costs and expenses in servicing the Bonds and should be approved. The servicing and administration fees proposed by Atmos Energy shall be reviewed by the Designated Representative as part of the pre-issuance review process. If the incremental cost to Atmos Energy

to perform its servicing and administrative services under the Servicing Agreement and the Administration Agreement, a form of which is attached as Appendix D and Appendix G to this Financing Order, respectively, is less than what the Company is paid for those services, then that difference in cost (the associated profit margin earned by the Company as servicer and administrator) shall be tracked by Atmos Energy and included in a regulatory liability account to be addressed in Atmos Energy's next general rate case.

## 5. Securitized Utility Tariff Bonds

~~The SPE will issue~~

~~42.44.~~ Securitized Utility Tariff Bonds will be issued in one ~~tranche or more tranches.~~

The legal final maturity date of any tranche of the Securitized Utility Tariff Bonds will not exceed 32 years from the date of issuance. ~~The legal, as required by the Act. It is not expected that the scheduled~~ final maturity ~~date~~ of the Securitized Utility Tariff Bonds ~~will be~~ Bonds will exceed ten years, provided, however, that if a longer term is required to achieve the best possible credit rating and lowest resulting Securitized Utility Tariff Charges, such term may be modified to a maximum of twelve years, in consultation with and subject to review rights of the Designated Representative. The legal final maturity date of each tranche and amounts in each tranche is anticipated to be two years outside of the final scheduled maturity date. The legal final maturity will be finally determined by Atmos Energy, and subject to the ~~Commission's~~ ~~designated representative~~ Designated Representative's review, consistent with market conditions and indications of the rating agencies, at the time the Securitized Utility



Tariff Bonds are priced, but subject to ultimate Commission review through the Issuance Advice Letter process. Atmos Energy will retain sole discretion regarding whether or when to assign, sell, or otherwise transfer any rights concerning Securitized Utility Tariff Property arising under this Financing Order, or to cause the issuance of any Securitized Utility Tariff Bonds authorized in this Financing Order, subject to the right of the Commission to find that the proposed issuance does not comply with the requirements of the Act and this Financing Order. The SPE will issue the Securitized Utility Tariff Bonds on or after the fifth business day after pricing of the Securitized Utility Tariff Bonds unless, prior to noon on the fourth business day ~~after the Commission receives the Issuance Advice Letter~~following pricing of the Securitized Utility Tariff Bonds, the Commission issues a Disapproval Letter finding that the proposed issuance does not comply with the requirements of the Act or this Financing Order.

43.45. The Commission finds that the proposed structure is in the public interest and should be used. The proposed structure as subject to the pre-issuance review process is reasonable and should be approved, provided that the structure may be modified based upon rating agency and market considerations, as long as the final Issuance Advice Letter demonstrates that all of the statutory financial requirements are met. This restriction is necessary to ensure that the stated economic benefits to customers materialize.

## 6. Security for Securitized Utility Tariff Bonds

44.46. The payment of the Securitized Utility Tariff Bonds and related charges authorized by this Financing Order is to be secured by the Securitized Utility Tariff Property created by this Financing Order. The Securitized Utility Tariff Bonds will be issued pursuant to ~~the~~an Indenture and series supplement administered by the Indenture Trustee. The Indenture will include provisions for a collection account and sub-accounts for the collection and administration of the Securitized Utility Tariff Charges and payment or funding of the principal and interest on the Securitized Utility Tariff Bonds and other costs, including fees and expenses, in connection with the Securitized Utility Tariff Bonds, as described in Atmos Energy's Application. Pursuant to the Indenture, the SPE will establish a collection account as a trust account to be held by the Indenture Trustee as collateral for the payment of the scheduled principal, interest, and other costs approved in this Financing Order related to the Securitized Utility Tariff Bonds in full and on a timely basis. The collection account will include the general sub-account, the capital sub-account, and the excess funds sub-account, and may include other sub-accounts.

### a.7.The General Sub-account

45.47. The Indenture Trustee will deposit the Securitized Utility Tariff Charge remittances that the Servicer remits to the Indenture Trustee for the account of the SPE into the general sub-account. The Indenture Trustee will on a periodic basis allocate or use all amounts in this sub-account to pay expenses of ~~the~~-SPE, to pay

principal and interest on the Securitized Utility Tariff Bonds, and to meet the funding requirements of the other sub-accounts. The funds in the general sub-account will be invested by the Indenture Trustee in short-term high-quality investments, and such funds (including, to the extent necessary, investment earnings) will be applied by the Indenture Trustee to pay principal and interest on the Securitized Utility Tariff Bonds and all other components of the Periodic Payment Requirement (as defined in Finding of Fact ~~67~~69), and otherwise in accordance with the terms of the Indenture.

#### **b.8. The Capital Sub-account**

46.48. When the Securitized Utility Tariff Bonds are issued, Atmos Energy will make a capital contribution to the SPE for that series, which the SPE will deposit into the capital sub-account. The amount of the capital contribution is expected to be not less than 0.5% of the original principal amount of the Securitized Utility Tariff Bonds, although the actual amount will depend on tax and rating agency requirements. The capital sub-account will serve as collateral to ensure timely payment of principal and interest on the Securitized Utility Tariff Bonds and all other components of the Periodic Payment Requirement (as defined in Finding of Fact 68). Any funds drawn from the capital sub-account to pay these amounts due to a shortfall in the Securitized Utility Tariff Charge remittances will be replenished through future Securitized Utility Tariff Charge remittances.

47.49. The funds in ~~the~~ capital sub-account will be invested by the Indenture Trustee in short-term high-quality investments, and such funds (including investment

earnings) will be available to be used by the Indenture Trustee to pay principal and interest on the Securitized Utility Tariff Bonds and all other components of the Periodic Payment Requirement (as defined in Finding of Fact ~~67~~69). Atmos Energy will be authorized to receive an annual return on the capital contribution at Atmos Energy's ~~then authorized~~ cost of capital, which is currently 8.396%. The required revenue, if any, to provide an annual return on any such additional capital at Atmos Energy's ~~then authorized~~ weighted average cost of capital (WACC) is an ~~ongoing~~ Ongoing Financing Cost. Upon payment of the principal amount of all Securitized Utility Tariff Bonds and the discharge of all obligations that may be paid by use of Securitized Utility Tariff Charges, all principal amounts in the capital sub-account, ~~including any investment earnings~~, will be released to the SPE for payment to Atmos Energy. ~~Investment~~ Retail Customers shall receive the benefit of the investment earnings ~~in~~ on this ~~sub~~ Capital Sub-account ~~may as earnings will~~ be ~~released earlier~~ transferred to the Excess Funds Subaccount in accordance with the provisions of the Indenture, with the funds in this Subaccount being taken into account in the semi-annual true-up Adjustment Mechanism process.

48.50. The capital sub-account, funded by a capital contribution by Atmos Energy of an amount equal to 0.5% of the initial principal balance of the Securitized Utility Tariff Bonds, will serve as a credit enhancement of the transaction. To ensure that ~~customers~~ Retail Customers receive the appropriate benefit from the securitization approved in this Financing Order, the proceeds from the sale of the Securitized Utility Tariff Bonds should not be applied towards this capital contribution.

Because Atmos Energy funds the capital sub-account, Atmos Energy should receive ~~theits~~ authorized ~~cost of~~ WACC as a return on the capital ~~and the investment earnings on that capital, and if~~ sub-account. If Atmos Energy is required to make a capital contribution in excess of 0.5% of the original ~~principal amount of the~~ Securitized Utility Tariff Bonds, Atmos Energy should receive the ~~annual~~ WACC return on any such additional capital contribution, from time to time, and should receive a return of all capital contributions after all Securitized Utility Tariff Bonds have been paid. So long as no event of default under the Indenture has occurred and is continuing, and the Periodic Payment Requirement is satisfied, such ~~earnings and~~ return on amounts in the capital sub-account shall be released to Atmos Energy ~~as provided in the Indenture.~~

#### **e.9. The Excess Funds Sub-account**

49.51. The excess funds sub-account will hold any Securitized Utility Tariff Charge remittances and investment earnings on the collection account (other than earnings attributable to the capital sub-account and released under the terms of the Indenture) in excess of the amounts needed to pay current principal and interest on the Securitized Utility Tariff Bonds and to pay ~~ongoing costs~~ Ongoing Financing Costs related to the Securitized Utility Tariff Bonds (including, but not limited to, replenishing the capital sub-account). Any balance in or allocated to the excess funds sub-account on a true-up adjustment date will be subtracted from the Periodic Billing Payment Requirement ~~(as defined in Finding of Fact 67)~~ for purposes of the true-up adjustment. The funds in this sub-account will be invested by the Indenture Trustee in short-term high-quality investments, and such funds

(including investment earnings thereon) will be available to be used by the Indenture Trustee to pay principal and interest on the Securitized Utility Tariff Bonds and other ~~ongoing costs~~Ongoing Financing Costs relating to the Securitized Utility Tariff Bonds.

#### **d.10. Other Sub-accounts**

~~50.52.~~ Other credit enhancements in the form of sub-accounts may be used for the transaction provided that the Commission's ~~designated representative~~Designated Representative and ~~Atmos~~Amos Energy agree in advance that such enhancements provide benefits greater than their tangible and intangible costs. If the Commission's ~~designated representative~~Designated Representative and Atmos Energy subsequently agree that use of an over-collateralization sub-account or other sub-account is necessary to obtain such tax treatment or AAA ratings or will otherwise increase the tangible and quantifiable benefits of the securitization, Atmos Energy may implement such sub-accounts in order to reduce Securitized Utility Tariff Charges.

#### **7.11. General Provisions**

~~54.53.~~ The collection account and the sub-accounts described above are intended to provide for full and timely payment of scheduled principal and interest on the Securitized Utility Tariff Bonds and all other components of the Periodic Payment Requirement (as defined in Finding of Fact ~~67~~69). If the amount of Securitized Utility Tariff Charges remitted to the general sub-account is insufficient to make all scheduled payments of principal and interest on the Securitized Utility Tariff

Bonds and to make payment on all of the other components of the Periodic Payment Requirement, the excess funds sub-account, and the capital sub-account will be drawn down, in that order, to make those payments. Any deficiency in the capital sub-account due to such withdrawals must be replenished on a periodic basis through the Adjustment Mechanism. In addition to the foregoing, there may be such additional accounts and sub-accounts as are necessary to segregate amounts received from various sources, or to be used for specified purposes. Such accounts will be administered and used as set forth in the Servicing Agreement and the Indenture. Upon the maturity of the Securitized Utility Tariff Bonds and the discharge of all obligations in respect thereof, remaining amounts in the collection account, other than amounts that were in the capital sub-account, will be released to the SPE and equivalent amounts will be credited by Atmos Energy to ~~customers~~Retail Customers. The Indenture Trustee will distribute to Atmos Energy the final balance of the sub-accounts.

52.54. The use of a collection account and its sub-accounts in the manner proposed by Atmos Energy is reasonable, will lower risks associated with the securitization and thus lower the costs to ~~ratepayers~~Retail Customers, and should, therefore, be approved.

#### **8.12. Securitized Utility Tariff Charges—Imposition and Collection, Nonbypassability, Settlement Fee**

53.55. Atmos Energy seeks authorization to impose on and collect from ~~customers~~Retail Customers Securitized Utility Tariff Charges in an amount sufficient to provide

for the timely ~~recovery of its Qualified Extraordinary Costs approved in this Financing Order (including~~ payment of principal and interest on the Securitized Utility Tariff Bonds and Financing Costs related to the Securitized Utility Tariff Bonds).

54.56. Securitized Utility Tariff Charges are ~~nonbypassable~~Nonbypassable charges that will be paid by all existing and/or future ~~sales customers~~Retail Customers receiving natural gas service from the public utility or its successors or assignees under Commission-approved rate schedules or under special contracts, even if a ~~retail customer~~Retail Customer elects to purchase natural gas from an alternative natural gas supplier following a fundamental change in regulation of public utilities in Kansas. The ~~nonbypassable~~Nonbypassable Securitized Utility Tariff Charges are applicable to existing and/or future ~~sales customers~~Retail Customers located within Atmos Energy's service area, as such service area exists on the date of this Financing Order, and, as this Financing Order so provides, at the discretion of Atmos Energy, as such service area may be expanded or acquired.

55.57. Securitized Utility Tariff Charges will be calculated on a fixed monthly charge per ~~customer~~Retail Customer, pursuant to the method described in the WESCR, a pro forma copy of which is contained in Appendix B. The fixed monthly per-~~customer~~Retail Customer Securitized Utility Tariff Charge will be adjusted semi-annually pursuant to the Adjustment Mechanism described below. The per-~~customer~~Retail Customer charge initially will be calculated using the ~~customer~~Retail Customer count reported in the most recent Atmos Energy Annual Report and will be updated semi-annually. Additionally, if the customer count for



a particular class declines by more than ten percent (10%) from that identified in the 2021 Annual Report, then the allocation factors will be recalculated using the most recent 12-month weather normalized volume for each customer class.

56.58. Securitized Utility Tariff Charges will be ~~separately~~ identified as a separate line item on bills presented to customers. Billing will begin with the first billing cycle of the month following bond issuance.

57.59. The Securitized Utility Tariff Bonds will have a scheduled maturity of ~~not no~~ longer than ~~15ten~~ years, provided, however, that if a longer term is required to achieve the best possible credit rating and lowest resulting Securitized Utility Tariff Charges, such term may extend to a maximum of twelve years. subject to review rights of the Designated Representative. The Securitized Utility Tariff Bonds may be issued in one or more tranches of varying duration and maturity, subject to the review of the Designated Representative. The legal final maturity of any tranche of the Securitized Utility Tariff Bonds may be longer than the scheduled final maturity of such tranche, based upon rating agency and market considerations, but in no event shall the final legal maturity of any tranche exceed 32 years, as required by the Act.

58.60. Atmos Energy, acting as Servicer, and any subsequent Servicer, will collect Securitized Utility Tariff Charges from all existing and future ~~sales customers~~ Retail Customers located within Atmos Energy's service area, as such service area exists on the date of this Financing Order. Atmos Energy should be granted the opportunity, but not the obligation, to collect Securitized Utility Tariff

Charges from all existing and future ~~sales-customers~~Retail Customers located in any such service area as may be expanded or acquired in the future. Unless otherwise prohibited by law, Securitized Utility Tariff Charges will not be charged to Transportation Customers. In accordance with the ~~Financial Plan~~ Settlement in Docket No. 21-ATMG-333, ~~sales-customers-GIG~~, Retail Customers who become ~~transportation-customers~~Transportation Customers during the period Securitized Utility Tariff Charges are being recovered shall be required to pay a settlement fee prior to becoming a ~~transportation-customer.~~ Transportation Customer. The settlement fee owed by the ~~customer~~Retail Customer shall be based on the estimated present value of the expected charges the customer would have paid as a ~~sales-customer~~Retail Customer over the remaining period in which the Securitized Utility Tariff Charge is being recovered. The ~~settlement fee~~charges shall use a discount rate ~~equal to the rate of the Securitized Utility Tariff Bonds described in this Order.~~ This settlement fee will be credited to Atmos Energy's other ~~sales-customers~~Retail Customer once a year through its PGA/ACA.

59-61. Atmos Energy's proposal related to imposition and collection of Securitized Utility Tariff Charges, the ~~nonbypassability~~Nonbypassability of such charges, and the imposition of a settlement fee on ~~sales-customers~~Retail Customers that become ~~transportation-customers~~Transportation Customers is reasonable and is necessary to ensure collection of Securitized Utility Tariff Charges sufficient to support recovery of the Qualified Extraordinary Costs plus Financing Costs should be approved. It is reasonable to approve Atmos Energy's Form of Tariff, attached hereto as Exhibit B (WESCR) in this Financing Order and require that these tariff

provisions be filed before any Securitized Utility Tariff Bonds are issued pursuant to this Financing Order.

**9.13. Allocation of Qualified Extraordinary Costs and Ongoing Financing Costs among ~~Sales~~Retail Customer Classes**

~~60.62.~~ Atmos Energy proposed that a single allocation percentage be developed for each Securitized Utility Tariff Charge class and that such percentages be set forth in the WESCR.

~~64.63.~~ Atmos Energy proposes to allocate Securitized Utility Tariff Charges ~~and Financing Costs (collectively, “Customer Charges”) to its sales customer~~ to its Retail Customer classes based on each customer classes’ percentage of the total estimated February 2021 sales volumes. The proposed allocation method is as follows:

Customer Class	Estimate of February 2021 Usage (Mcf)	Allocation %
Residential Sales Service	23,505,675	75.015%
Commercial/Public Authority	7,572,483	24.167%
School Sales Service	82,668	0.264%
Industrial Sales Service	50,073	0.160%
Small Generator	31	0.000%
Irrigation Engine	123,509	0.394%
	31,334,439	100.000%

~~62.64.~~ The Servicer is responsible for assessing and collecting ~~Customer Charges~~ Securitized Utility Tariff Charge. The procedures for assessing, collecting, and remitting ~~Customer~~ Securitized Utility Tariff Charges are detailed

in the Servicing Agreement, attached ~~hereto~~ to this Financing Order as Appendix D. ~~Customer~~Securitized Utility Tariff Charges received by the Servicer shall be remitted to the Indenture Trustee each business day based on estimated amounts collected, with cash held no more than two business days prior to remittance. The Indenture Trustee shall hold ~~Customer~~Securitized Utility Tariff Charge amounts received from the Servicer until the next payment date. In the event that an entity not the Servicer (e.g., a third-party energy provider or collection agent) assesses or collects ~~Customer~~Securitized Utility Tariff Charges, such entity is bound to the requirements of this Financing Order for any such assessment, collection, or remittance of ~~Customer~~Securitized Utility Tariff Charges.

63.65. The methodology for allocating ~~Customer~~Securitized Utility Tariff Charges and developing the initial percentages as described above is reasonable and appropriate and should be approved.

64.66. Except for ~~customers~~Retail Customers outside of Atmos Energy's service area as it exists on the date of this Financing Order which are subsequently acquired by Atmos Energy, customers will be assigned to the Securitized Utility Tariff Charge classes listed in the WESCR based on the definitions and procedures described in the WESCR. Customers outside of Atmos Energy's service area as it exists on the date of this Financing Order may become subject to Securitized Utility Tariff Charges at the time Atmos Energy files an application to expand its service area. As long as the Securitized Utility Tariff Charges are being collected, any application to expand or acquire service area by Atmos Energy will detail whether

customers located within the expanded or acquired service area will be assessed Securitized Utility Tariff Charges.

~~65.67.~~ The initial percentages will remain in effect throughout the life of the Securitized Utility Tariff Bonds. ~~Notwithstanding the above, the customer classes are cross-collateralized in the Adjustment Mechanism, meaning that projected revenue shortfalls in one customer class are remedied by adjustments to the Securitized Utility Tariff Charges for each customer class, not only the customer class with the projected revenue shortfalls.~~

~~66.68.~~ The method of calculating percentages as set forth in Atmos Energy's Application and the WESCR complies with the requirements of the Act and should be approved.

#### **10.14. True-Up of Securitized Utility Tariff Charges**

~~67.69.~~ Pursuant to K.S.A. § 66-1,240(b)(2), the Servicer of the Securitized Utility Tariff Bonds will make semi-annual adjustments to the Securitized Utility Tariff Charges to:

- (a) correct any under-collection or over-collection of Securitized Utility Tariff Charges during the preceding 6 months; and
- (b) ensure the expected recovery of amounts sufficient to timely provide all payments of debt service and other required amounts and charges in connection with the Securitized Utility Tariff Bonds.

Such amounts are referred to as the “Periodic Payment Requirement” and the amounts necessary to be billed to collect such Periodic Payment Requirement are referred to as the “Periodic Billing Requirement.” The Servicer will make true-up adjustment filings with the Commission utilizing the Adjustment Mechanism at least semi-annually.

68:70. True-up filings will be based on the cumulative differences, regardless of the reason, between ~~the Periodic Payment Requirement (including~~ scheduled principal and interest payments and ~~ongoing~~Ongoing Financing Costs on the Securitized Utility Tariff Bonds) and the amount of Securitized Utility Tariff Charge remittances to the Indenture Trustee. The ~~true-up mechanism~~Adjustment Mechanism is cross-collateralized across customer classes, meaning that any projected under-collection in one customer class requires an adjustment of charges for that customer class as well as of the other customer classes. ~~True-up~~ procedures are necessary to ensure full recovery of amounts sufficient to meet the Periodic Payment Requirements over the expected life of the Securitized Utility Tariff Bonds.

69:71. The Servicer will make true-up adjustments ~~in~~utilizing the ~~manner~~Adjustment Mechanism described in the Servicing Agreement, attached hereto as Appendix D.

#### 11:15. Interim True-Up

70:72. In addition to semi-annual true-up adjustments, true-up adjustments may be made by the Servicer more frequently at any time during the term of the Securitized Utility Tariff Bonds to correct any under-collection or over-collection, as provided

for in this Financing Order, in order to assure timely payment of Securitized Utility Tariff Bonds as scheduled.

~~71.73.~~ In the event an interim true-up is necessary, the interim true-up adjustment should be filed ~~not less than 30 days prior to by~~ the fifteenth day of the current month for implementation in the first billing cycle of the ~~month in which the revised Securitized Utility Tariff Charges will be in effect~~following month. In no event would such interim true-up adjustments occur more frequently than every three months if quarterly Securitized Utility Tariff Bond payments are required or every six months if semi-annual bond payments are required; provided, however, that ~~interim~~quarterly true-up adjustments for any Securitized Utility Tariff Bonds remaining outstanding during the year immediately preceding scheduled final maturity of the last tranche of Securitized Utility Tariff Bonds shall occur ~~quarterly~~.

#### **12.16. Additional True-Up Provisions**

~~72.74.~~ The ~~true-up adjustment~~Adjustment Mechanism filing will set forth the Servicer's calculation of the ~~true-up adjustment~~Adjustment Mechanism to the Securitized Utility Tariff Charges. The Commission will have 30 days after the date of ~~a true-up adjustment~~an Adjustment Mechanism filing in which to confirm the mathematical accuracy of the Servicer's adjustment and to confirm that there are no clerical errors. Any ~~true-up adjustment~~Adjustment Mechanism filed with the Commission should be effective on its proposed effective date, which shall be not less than 30 days after filing. Any necessary corrections to the ~~true-up~~

~~adjustment~~Adjustment Mechanism, due to mathematical or clerical errors in the calculation of such adjustment or otherwise, will be made in future ~~true-up~~ ~~adjustment~~Adjustment Mechanism filings.

~~73.75.~~ The true-up procedures contained in the WESCR are reasonable and will reduce risks related to the Securitized Utility Tariff Bonds, resulting in lower ~~Securitized Utility Tariff Charges~~bond charges and greater benefits to ~~ratepayers~~Retail Customers and should be approved.

~~74.76.~~ The broad-based nature of the ~~true-up mechanism~~Adjustment Mechanism and the pledge of the State of Kansas, along with the bankruptcy remoteness of the SPE and the collection account, will serve to minimize credit risk ~~associated with,~~ and support the highest ratings ~~for, the Securitized Utility Tariff Bonds.~~

### ~~13.17.~~ Lowest ~~Securitized Utility Tariff~~Bond Charges

~~75.77.~~ Atmos Energy has proposed a transaction structure that is expected to include (but is not limited to):

- (a) the use of the SPE as issuer of the Securitized Utility Tariff Bonds, limiting the risks to bondholders of any adverse impact resulting from a bankruptcy proceeding of its parent or any affiliate;
- (b) the right to impose and collect Securitized Utility Tariff Charges that are ~~nonbypassable~~Nonbypassable, and which must be trued-up at least semi-annually, but may be trued-up more frequently under certain circumstances,



in order to assure the timely payment of the debt service and other ongoing transaction costs;

- (c) additional collateral in the form of a collection account which includes a capital sub-account funded in cash in an amount not less than 0.5% of the original principal amount of the Securitized Utility Tariff Bonds and other sub-accounts resulting in greater certainty of timely payment of interest and principal to investors and that are consistent with the IRS requirements that must be met to receive the desired federal income tax treatment for the Securitized Utility Tariff Bond transaction;
- (d) protection of bondholders against potential defaults by a Servicer that is responsible for billing and collecting the Securitized Utility Tariff Charges from existing or future ~~sale customers~~Retail Customers located within Atmos Energy's service area as it exists on the date of this Financing Order, and, at Atmos Energy's discretion, from existing or future ~~sales customers~~Retail Customers located within service areas Atmos Energy expands into or acquires after the date of this Financing Order;
- (e) the Securitized Utility Tariff Bonds will be marketed using proven underwriting and marketing processes, including Designated Representative and advisor review through which market conditions and investors' preferences, with regard to the timing of the issuance, the terms and conditions, scheduled and legal final maturities, and other aspects of the

structuring and pricing will be determined, evaluated, and factored into the structuring and pricing of the Securitized Utility Tariff Bonds; and

- (f) furnishing timely information to the Commission's ~~designated representative~~Designated Representative and its advisors, to allow the Commission, through the pre-issuance review and Issuance Advice Letter process, to ensure that the structuring, marketing and pricing of the Securitized Utility Tariff Bonds result in the lowest ~~Securitized Utility Tariff Charges~~bond charges consistent with market conditions at the time the Securitized Utility Tariff Bonds are priced and the terms of this Financing Order.

76:78. Atmos Energy's proposed transaction structure, coupled with the review of the Designated Representative and its advisors, is necessary to enable the Securitized Utility Tariff Bonds to obtain the highest possible bond credit rating, ensures that the structuring and pricing of the Securitized Utility Tariff Bonds will result in the lowest ~~Securitized Utility Tariff Charges~~bond charges consistent with market conditions and the terms of this Financing Order, ensures the greatest benefit to customers consistent with market conditions and the terms of this Financing Order, and protects the competitiveness of the gas market.

#### **D. Use of Proceeds**

77:79. Upon the issuance of Securitized Utility Tariff Bonds, the SPE will use the net proceeds from the sale of the Securitized Utility Tariff Bonds (after payment of

transaction costs) to pay to Atmos Energy the purchase price of the Securitized Utility Tariff Property.

78:80. The net proceeds from the sale of the Securitized Utility Tariff Property (after payment of transaction costs) will be applied to recover Atmos Energy's Qualified Extraordinary Costs incurred because of the Winter Event.

### **E. Method of Tracing Funds**

79:81. Atmos Energy's Application also contains a method of tracing funds collected as Securitized Utility Tariff Charges. The Securitized Utility Tariff Charges collected from customers will be placed on a separate line on customers' bills, allowing the Company to assign the Securitized Utility Tariff Charges a specific code, by customer class, in its billing system. This code will allow the Company to trace proceeds from the Securitized Utility Tariff Charges.

### **F. Reconciliation Plan**

80:82. Atmos Energy's Application contains a reconciliation proposal. As contemplated by the Financial Plan Settlement, this proposal considers both the deferred tax liability associated with Qualified Extraordinary Cost recoveries, as well as the corresponding and offsetting deferred tax asset associated with the net operating loss carry-forward created by the Qualified Extraordinary Costs. If the incremental cost to Atmos Energy to perform its servicing and administrative services under the Servicing Agreement and the Administration Agreement,

respectively, is less than what the Company is paid for those services, then that difference in cost (the associated profit margin earned by the Company as servicer and administrator) shall be tracked by Atmos Energy and included in a regulatory liability account to be addressed in Atmos Energy's next general rate case.

### **G. Customer Communications Plan**

81.83. Atmos Energy shall provide information regarding the benefits of securitization to customers as set forth in the Customer Communications Plan, attached hereto as Appendix F.

### **H. State Pledge**

82.84. Pursuant to K.S.A. § 66-1,252(a), the State of Kansas and its agencies, including the Commission, have pledged and agreed with bondholders, the owners of the Securitized Utility Tariff Property and other financing parties that the state and its agencies shall not:

- (a) Alter the statute that authorizes the Commission to create an irrevocable contract right or chose in action by the issuance of a Financing Order, to create securitized utility tariff property and to make the Securitized Utility Tariff Charges imposed by a Financing Order irrevocable, binding or ~~nonbypassable~~Nonbypassable charges for all existing and future ~~sales customers~~Retail Customers within the service area of the public utility;

- (b) Take any action that would impair the value of Securitized Utility Tariff Property or the security for the Securitized Utility Tariff Bonds, or revises the Securitized Utility Tariff Costs for which recovery is authorized; impair the rights and remedies of the bondholders, assignees and other financing parties in any way; or,
- (c) Except for changes made pursuant to the Adjustment Mechanism expressly allowed by law, reduce, alter, or impair the Securitized Utility Tariff Charges to be imposed, billed, charged, collected, and remitted for the benefit of the bondholders, any assignee, and any other financing parties, until any and all principal, interest, premium, Financing Costs and other fees, expenses or charges incurred and any contracts to be performed in connection with the related Securitized Utility Tariff Bonds have been paid and performed in full.

#### **IV. Conclusions of Law**

1.85. Atmos Energy is a natural gas public utility, as defined in K.S.A. § 66-1,200.

2.86. Atmos Energy is entitled to file an Application for a Financing Order under K.S.A. § 66-1,241(b).

3.87. The Commission has jurisdiction and authority over Atmos Energy's Application pursuant to K.S.A. § 66-1,241(b).

4.88. The Commission has authority to issue this Financing Order under K.S.A. § 66-1,241(d).

5.89. Atmos Energy's Application is in the public interest and complies with Commission rules.

6.90. K.S.A. § 66-1,241 allows a public utility to securitize its Qualified Extraordinary Costs.

7.91. The SPE will be an assignee as defined in K.S.A. § 66-1,240(b)(4) when an interest in Securitized Utility Tariff Property is transferred, other than as security, to the SPE.

8.92. The holders of the Securitized Utility Tariff Bonds and the Indenture Trustee will each be a Financing Party as defined in K.S.A. § 66-1,240(b)(12).

9.93. The securitization approved in this Financing Order satisfies the requirement of K.S.A. § 66-1,241(d)(2) mandating that the proposed issuance of Securitized Utility Tariff Bonds and the imposition and collection of Securitized Utility Tariff Charges are expected to provide net quantifiable rate benefits to ~~eustomers~~Retail Customers as compared to the traditional methods of financing and recovering Securitized Utility Tariff Costs from ~~eustomers~~Retail Customers or would avoid or mitigate rate impacts to customers. An analysis that compares the net present value of the costs to ~~eustomers~~Retail Customers that are estimated to result from the issuance of Securitized Utility Tariff Bonds and the costs that would result from the Application of traditional methods of financing and recovery of such

Qualified Extraordinary Costs, which Atmos Energy has included in its Application, is an appropriate economic analysis to demonstrate whether securitization provides the requisite benefits to customers ~~and will avoid and mitigate rate impacts to customers.~~

~~10.94.~~ The SPE's issuance of the Securitized Utility Tariff Bonds approved in this Financing Order in compliance with the criteria established by this Financing Order satisfies the requirement of K.S.A. § 66-1,241(e)(5) that the structuring, pricing and Financing Costs of the Securitized Utility Tariff Bonds are expected to result in the lowest Securitized Utility Tariff Charges, consistent with market conditions at the time ~~that~~ the Securitized Utility Tariff Bonds are priced and the terms of ~~this~~the Financing Order.

~~11.95.~~ This Financing Order adequately details the amount to be recovered and the period over which Atmos Energy will be permitted to recover ~~nonbypassable~~Nonbypassable Securitized Utility Tariff Charges in accordance with the requirements of K.S.A. §§ 66-1,241(e)(1), (6).

~~12.96.~~ The payment of a Securitized Utility Tariff Charge may not be avoided by any existing or future ~~sales customer~~Retail Customer, including special contract customers, located within Atmos Energy's service area, as such service area existed on the date of this Financing Order, or, if the Financing Order so provides, as such service area may be expanded, even if the customer elects to purchase natural gas from a supplier other than Atmos Energy, or its successors or assignees, or receives natural gas service from another natural gas service utility operating in

the same service area. -Atmos Energy shall have the option, but not the obligation, to impose Securitized Utility Tariff Charges on existing or future ~~sales customers~~Retail Customers in service areas expanded or acquired following the issuance of this Financing Order.

~~13.97.~~ The method approved in this Financing Order for collecting and allocating the Securitized Utility Tariff Charges satisfies the requirements of K.S.A. § 66-1,241(e)(2)(A).

~~14.98.~~ The Customer Communications Plan approved in this Financing Order for providing information regarding the benefits of securitization obtained for customers through this Financing Order satisfies the requirements of K.S.A. § 66-1,241(e)(4).

~~15.99.~~ As provided in K.S.A. § 66-1,241(h)(1), this Financing Order, together with the Securitized Utility Tariff Charges authorized by this Financing Order, is irrevocable and not subject to reduction, impairment, or adjustment by further act of the Commission, except for true-up adjustments made in accordance with the Adjustment Mechanism approved in this Financing Order; provided, however, that such irrevocability shall not preclude the Commission from extending the deadline for issuance of Securitized Utility Tariff Bonds if requested to do so by Atmos Energy.

~~16.100.~~ As provided in K.S.A. § 66-1,246(c), the rights and interests of Atmos Energy or its successor under this Financing Order, including the right to impose, collect and receive the Securitized Utility Tariff Charges authorized in this Financing Order,



are assignable and shall become Securitized Utility Tariff Property when they are first transferred to the SPE.

~~17.~~101. The rights, interests and property conveyed to the SPE in a Securitized Utility Tariff Property Purchase and Sale Agreement (the “~~Sales~~Sale Agreement”), a form of which is attached hereto as Appendix E, and the related Bill of Sale, including the irrevocable right to impose, collect and receive Securitized Utility Tariff Charges and the revenues and collections from Securitized Utility Tariff Charges are “Securitized Utility Tariff Property” within the meaning of K.S.A. § 66-1,240(22), and all revenues and collections resulting from the Securitized Utility Tariff Charges will constitute proceeds only of the Securitized Utility Tariff Property arising from this Financing Order.

~~18.~~102. Upon the transfer by Atmos Energy of the Securitized Utility Tariff Property to the SPE, the SPE will have all of the rights, title and interest of Atmos Energy in the portion of the Securitized Utility Tariff Property arising under this Financing Order that is related to the amount of Securitized Utility Tariff Bonds the SPE issues, including the right to impose, collect and receive the Securitized Utility Tariff Charges authorized by ~~this~~the Financing Order.

~~19.~~103. The Securitized Utility Tariff Bonds issued pursuant to this Financing Order will be “Securitized Utility Tariff Bonds” within the meaning of K.S.A. § 66-1,240(19)(A), and the Securitized Utility Tariff Bonds and holders thereof are entitled to all of the protections provided under the Act.

~~20.104.~~ The Securitized Utility Tariff Charges paid by the ~~sales—customers~~Retail Customers to the Servicer as Securitized Utility Tariff Charges pursuant to this Financing Order are “Securitized Utility Tariff Charges” as defined in K.S.A. § 66-1,240(b)(20~~7-1~~).

105. The terms “customer” and “sales customers” in the Kansas Utility Securitization Act means Retail Customers, as defined in The Glossary. Transportation Customers is defined in the Glossary are excluded from the Securitized Utility Tariff Charges.

~~24.106.~~ As provided in K.S.A. § 66-1,244(e), the interests of an assignee, the holders of Securitized Utility Tariff Bonds, and the Indenture Trustee in Securitized Utility Tariff Property and in the revenues and collections arising from that property are not subject to setoff, counterclaim, surcharge, or defense by Atmos Energy or any other person or in connection with the reorganization, bankruptcy or other insolvency of Atmos Energy or any other entity.

~~22.107.~~ The Adjustment Mechanism approved in this Financing Order to true-up the Securitized Utility Tariff Charges satisfies the requirements of the Act.

~~23.108.~~ If and when Atmos Energy transfers to the SPE the right to impose, collect, and receive Securitized Utility Tariff Charges and to issue Securitized Utility Tariff Bonds, the Servicer will be able to recover the Securitized Utility Tariff Charges associated with such Securitized Utility Tariff Property only for the benefit of the SPE and the holders of the Securitized Utility Tariff Bonds in accordance with the Servicing Agreement.

24.109.As provided in K.S.A. § 66-1,241(e)(12), this Financing Order contains a method of tracing funds collected as Securitized Utility Tariff Charges, or other proceeds of Securitized Utility Tariff Property, demonstrating that such method shall be deemed the method of tracing such funds and determining the identifiable cash proceeds of any Securitized Utility Tariff Property subject to a Financing Order under applicable law.

25.110.As provided in K.S.A. § 66-1,241(e)(13), this Financing Order contains a statement specifying a future rate-making process to reconcile any differences between the actual Securitized Utility Tariff Costs financed by Securitized Utility Tariff Bonds and the final Securitized Utility Tariff Costs incurred by Atmos Energy or assignee provided that any such reconciliation shall not affect the amount of Securitized Utility Tariff Bonds or the associated Securitized Utility Tariff Charges paid by ~~sales customers~~Retail Customers.

26.111.If and when Atmos Energy transfers its rights under this Financing Order to the SPE under an agreement that expressly states that the transfer is a sale or other absolute transfer in accordance with the true-sale provisions of K.S.A. § 66-1,246, then, pursuant to that statutory provision, that transfer will be a true sale of an interest in Securitized Utility Tariff Property and not a secured transaction or other financing arrangement and title, legal and equitable, to the Securitized Utility Tariff Property will pass to the SPE. As provided by K.S.A. § 66-1,246(b), this true sale shall apply regardless of whether the purchaser has any recourse against the seller, or any other term of the parties' agreement, including Atmos Energy's retention of an equity interest in the SPE, Atmos Energy's role as the Servicer, or

the treatment of the transfer as a financing for tax, financial reporting, or other purposes.

~~27.112.~~As provided in K.S.A. §§ 66-1,245(d) and (e) the transfer of an interest in Securitized Utility Tariff Property to an assignee will be perfected against all parties having claims of any kind in tort, contract or otherwise against the person granting the security interest and regardless of whether the parties have notice of the security interest. Without limitation, upon such filing, a security interest in the Securitized Utility Tariff Property shall be perfected against all claims of lien creditors and shall have priority over all competing security interests and other claims other than any security interest previously perfected in accordance with the Act.

~~28.113.~~As provided in K.S.A. §§ 66-1,245(e) and (f), the priority of a lien and security interest perfected in accordance with K.S.A. § 66-1,245(d) will not be impaired by any later change in the Securitized Utility Tariff Charges pursuant to the Adjustment Mechanism or by the commingling of funds arising from Securitized Utility Tariff Charges with other funds, and any other security interest that may apply to those funds will be terminated when they are transferred to a segregated account for an assignee or a Financing Party.

~~29.114.~~As provided in K.S.A. § 66-1,245(e), if Securitized Utility Tariff Property is transferred to an assignee, any proceeds of the Securitized Utility Tariff Property will be treated as held in trust for the assignee.

~~30.115.~~ As provided in K.S.A. § 66-1,245(g), if a default occurs under Securitized Utility Tariff Bonds that are secured by a security interest in Securitized Utility Tariff Property, the financing parties or their representatives may exercise the rights and remedies available to a secured party under the code, including the rights and remedies available under K.S.A. Chapter 84, Part 6, Article 9, and amendments thereto, as if they were secured parties with a perfected and prior lien under the code. ~~The Commission may also order amounts arising from Securitized Utility Tariff Charges be transferred to a separate account for the financing parties' benefit, to which their lien and security interest shall apply. On Application by or on behalf of the financing parties, the district court of the county where the public utility's headquarters is located shall order the sequestration and payment to such financing parties of revenues arising from the Securitized Utility Tariff Charges.~~

~~34.116.~~ As provided by K.S.A. § 66-1,250, the Securitized Utility Tariff Bonds authorized by this Financing Order are not a debt or obligation of the State of Kansas and are not a charge on its full faith and credit or taxing power.

~~32.117.~~ Pursuant to K.S.A. § 66-1,252(a), the State of Kansas and its agencies, including the Commission, have pledged and agreed with bondholders, the owners of the Securitized Utility Tariff Property and other financing parties that the state and its agencies shall not:

♦ ~~118.~~ Alter the statute that authorizes the Commission to create an irrevocable contract right or chose in action by the issuance of a Financing Order, to create securitized utility tariff property and to make the Securitized Utility Tariff Charges imposed

by a Financing Order irrevocable, binding or ~~nonbypassable~~Nonbypassable charges for all existing and future ~~sales customers~~Retail Customers within the service area of the public utility;

•119. Take any action that would impair the value of Securitized Utility Tariff Property or the security for the Securitized Utility Tariff Bonds, or revises the Securitized Utility Tariff Costs for which recovery is authorized; impair the rights and remedies of the bondholders, assignees and other financing parties in any way; or,

•120. Except for changes made pursuant to the Adjustment Mechanism expressly allowed by law, reduce, alter, or impair the Securitized Utility Tariff Charges to be imposed, billed, charged, collected, and remitted for the benefit of the bondholders, any assignee, ~~or~~and any other financing parties, until any and all principal, interest, premium, Financing Costs and other fees, expenses or charges incurred and any contracts to be performed in connection with the related Securitized Utility Tariff Bonds have been paid and performed in full.

33.121. This Financing Order will remain in full force and effect and unabated notwithstanding the bankruptcy or insolvency of Atmos Energy, or their successors or assignees.

34.122. Atmos Energy retains sole discretion regarding whether or when to assign, sell, or otherwise transfer the rights and interests created by this Financing Order or any interest therein, or to cause the issuance of any Securitized Utility Tariff Bonds authorized by this Financing Order, subject to the Commission's authority through the Issuance Advice Letter process to find that the proposed issuance does not

comply with the requirements of the Act and this Financing Order. The pre-issuance review process, with the review, consultation and collaboration of the Designated Representative and its advisors is necessary to comply with the lowest cost standard provided by the Act.

35.123. The Commission shall not, in exercising its powers and carrying out its duties regarding any matter within its authority, consider the (1) Securitized Utility Tariff Bonds issued pursuant to this Financing Order to be the debt of Atmos Energy other than for federal and state income tax purposes; (2) Securitized Utility Tariff Charges paid under this Financing Order to be the revenue of Atmos Energy for any purpose; or (3) Qualified Extraordinary Costs or Financing Costs specified in this Financing Order to be the costs of Atmos Energy.

36.124. The Commission shall not, directly or indirectly, utilize or consider the debt reflected by the Securitized Utility Tariff Bonds in establishing Atmos Energy's capital structure used to determine any regulatory matter, including, but not limited to, Atmos Energy's revenue requirement used to set its rates.

37.125. The Commission shall not, directly or indirectly, consider the existence of the Securitized Utility Tariff Bonds or the potential use of Securitized Utility Tariff Bond financing in determining Atmos Energy's authorized rate of return used to determine Atmos Energy's revenue requirement used to set its rates.

38.126. This Financing Order meets the requirements for a ~~financing order~~ Financing Order under the Act.

## **V. Ordering Paragraphs**

Based upon the record, the Findings of Fact and Conclusions of Law set forth herein, and for the reasons stated above, this Commission orders:

### **A. Approval**

~~39.~~127.**Approval of Application.** The Application of Atmos Energy for the issuance of a ~~financing order~~Financing Order under the Act, is approved, as provided in this Financing Order. Atmos Energy's Application and accompanying testimony and schedules are incorporated into the record pursuant to this Financing Order. The form of the Servicing Agreement, Sales Agreement, Administration Agreement, Indenture, and SPE LLC Agreement discussed herein and attached hereto are approved, subject to the review of the Designated Representative of the Commission, including its legal and investment banking advisors during the Pre-Issuance Review process discussed in paragraphs 14 and 15.

~~40.~~128.**Authority to Securitize.** Atmos Energy is authorized in accordance with this Financing Order to securitize and to cause the issuance of Securitized Utility Tariff Bonds in one ~~tranche~~or more tranches with an aggregate principal amount ~~equal~~ to \$                    estimated at \$92,684,233 (the Qualified Extraordinary Costs



and Financing Costs~~);~~, with said estimated amount being finalized in the Issuance Advice Letter.<sup>87</sup>

**41.129. Imposition of Securitized Utility Tariff Charges.** Atmos Energy shall impose on, and the Servicer shall collect from, all ~~sales customers~~Retail Customers and other entities which, under the terms of this Financing Order or the WESCR are required to pay Securitized Utility Tariff Charges~~;~~ as provided in this Financing Order, Securitized Utility Tariff Charges in an amount sufficient to provide for the timely payment of scheduled principal and interest on the Securitized Utility Tariff Bonds and ~~of ongoing~~Ongoing Financing Costs related to the Securitized Utility Tariff Bonds.

**42.130. Provision of Information.** Atmos Energy shall take all necessary steps to ensure that the Commission or its ~~designated representative~~Designated Representative is provided sufficient and timely information to allow the Commission or its ~~designated representative~~Designated Representative to fully participate in and exercise its decision-making authority concerning the proposed securitization as provided in this Financing Order. Atmos Energy shall collaborate, confer, and consult with the Designated Representative of the Commission, including its legal and investment banking advisors, to review and observe all facets of the structuring, marketing, and pricing of the securitization bonds following approval of the Financing Order. The Designated Representative's review shall be

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<sup>87</sup> This represents \$89,799,233 in extraordinary gas costs and anticipated carrying costs through March 31, 2022, as well as anticipated Upfront Financing Costs of \$2,885,000. See Revised Direct Testimony of Kathleen R. Ocanas, Docket No. 22-ATMG-538-TAR, p 4 (July 22, 2022).

conducted with a goal of achieving the lowest cost standard as provided in the Act, and shall reflect the input and collaboration of the Designated Representative of steps necessary to ensure the statutory objective is achieved and minimize risk the Issuance Advice Letter is rejected.

**43.131. Issuance Advice Letter.** ~~Prior to the issuance of the Securitized Utility Tariff Bonds,~~ Atmos Energy shall submit a draft Issuance Advice Letter to Commission Staff for review not later than ~~two~~three weeks prior to the expected date of commencement of marketing of the Securitized Utility Tariff Bonds. ~~Within one week after receipt of the draft Issuance Advice Letter, Commission Staff shall provide Atmos Energy comments and recommendations regarding the adequacy of the information provided.~~ Not later than the end of the first day after pricing of the Securitized Utility Tariff Bonds and prior to issuance of the Securitized Utility Tariff Bonds, Atmos Energy, in consultation with the Commission acting through its ~~designated representative~~Designated Representative, shall file with the Commission an Issuance Advice Letter in substantially the form of the Issuance Advice Letter attached as Appendix A to this Financing Order. The Issuance Advice Letter shall be completed, shall evidence the actual dollar amount of the initial Securitized Utility Tariff Charges and other information specific to the Securitized Utility Tariff Bonds to be issued, and shall certify to the Commission that the structure and pricing of the Securitized Utility Tariff Bonds results in the lowest ~~Securitized Utility Tariff Charges~~bond charges consistent with market conditions at the time that the Securitized Utility Tariff Bonds are priced ~~and with~~utilizing the lowest cost standard, and the terms set out in this Financing

Order. All amounts that require computation shall be computed using the mathematical formulas contained in the Form Issuance Advice Letter in Appendix A to this Financing Order and the Form of Tariff (WESCR) attached as Appendix B to this Financing Order. Electronic spreadsheets with the formulas supporting the schedules contained in the Issuance Advice Letter shall be included with such letter. The Commission's review of the Issuance Advice Letter shall be limited to the arithmetic accuracy of the calculations and to compliance with the Act, this Financing Order, and the requirements contained in the Issuance Advice Letter. The initial Securitized Utility Tariff Charges and the final terms of the Securitized Utility Tariff Bonds set forth in the Issuance Advice Letter shall become effective on the date of issuance of the Securitized Utility Tariff Bonds (which shall not occur prior to the fifth business day after pricing) unless, prior to noon on the fourth business day after ~~the Commission receives the Issuance Advice Letter,~~pricing the Commission issues a Disapproval Letter finding that the proposed Issuance Advice Letter does not comply with the Act and this Financing Order.

~~44.~~132.**Approval of Tariff.** The Form of Tariff (WESCR) attached as Appendix B to this Financing Order is approved. Prior to the issuance of any Securitized Utility Tariff Bonds under this Financing Order, Atmos Energy shall file a tariff that conforms to the Form of Tariff (WESCR) attached to this Financing Order.

~~45.~~133.**Customer Communications Plan.** The Customer Communications Plan attached as Appendix F to this Financing Order is approved. ~~-~~Atmos Energy shall provide information regarding the benefits of securitization obtained for customers through

this Financing Order as set forth in the Customer Communications Plan attached as Appendix F to this Financing Order.

### **B. Securitized Utility Tariff Charges**

**46.134.Imposition and Collection.** Atmos Energy is authorized to impose on, and the Servicer shall collect from, all ~~sales customers~~Retail Customers and other entities which, under the terms of this Financing Order or the WESCR are required to pay Securitized Utility Tariff Charges as provided in this Financing Order, Securitized Utility Tariff Charges in an amount sufficient to provide for the payment of principal and interest on the Securitized Utility Tariff Bonds and ~~ongoing~~Ongoing Financing Costs related to the Securitized Utility Tariff Bonds as approved in this Financing Order. Securitized Utility Tariff Charges will be a separate line item on customers' bills.

**47.135.SPE's Rights and Remedies.** Upon the transfer by Atmos Energy of the Securitized Utility Tariff Property to the SPE, the SPE shall have all of the rights, title, and interest of Atmos Energy with respect to such Securitized Utility Tariff Property, including, without limitation, the right to exercise any and all rights and remedies with respect thereto.

**48.136.Collection Period.** The Securitized Utility Tariff Charges shall be designed to be collected over the scheduled life of the Securitized Utility Tariff Bonds. However, to the extent that any amounts are not recovered at the end of this period, Atmos Energy may continue to recover Securitized Utility Tariff Charges over a period

ending not more than 32 years from the date of issuance of the Securitized Utility Tariff Bonds. Amounts remaining unpaid after this 32-year period may be recovered but only to the extent that the charges are attributable to services rendered during the 32-year period.

**49.137. Allocation.** Atmos Energy shall allocate the Securitized Utility Tariff Charges among ~~sales-customer~~Retail Customer classes in the manner described in this Financing Order and the WESCR. -The Securitized Utility Tariff Charges will be calculated on a fixed monthly charge per ~~customer~~Retail Customer, pursuant to the method described in the WESCR. The fixed monthly per-customer Securitized Utility Tariff Charge will be adjusted semi-annually pursuant to the Adjustment Mechanism described in this Financing Order. The per-customer charge initially will be calculated using the ~~customer~~Retail Customer count reported in the most recent Atmos Energy Annual Report and will be updated semi-annually. Additionally, if the customer count for a particular class declines by more than ten percent (10%) from that identified in the 2021 Annual Report, then the allocation factors will be recalculated using the most recent 12-month weather normalized volume for each customer class.

**50.138. Nonbypassability.** The payment of a Securitized Utility Tariff Charge may not be avoided by any existing or future ~~sales-customer~~Retail Customer, including special contract customers, located within Atmos Energy's service area, as such service area existed on the date of this Financing Order, or as such service area may be expanded, even if the customer elects to purchase natural gas from a supplier other than Atmos Energy, or its successors or assignees, or receives

natural gas service from another natural gas service utility operating in the same service area. Atmos Energy shall have the option, but not the obligation, to impose Securitized Utility Tariff Charges discussed in this Financing Order on existing or future ~~sales-customers~~Retail Customers in service areas expanded or acquired following the issuance of this Financing Order. ~~Sales-customers~~Retail Customers who become ~~transportation-customers~~Transportation Customers during the period Securitized Utility Tariff Charges are being recovered shall be required to pay a settlement fee prior to becoming a ~~transportation-customer~~Transportation Customer. The settlement fee owed by the customer shall be based on the present value of the expected Securitized Utility Tariff Charges the customer would have paid as a ~~sales-customer~~Retail Customer over the remaining period in which the Securitized Utility Tariff Charge is being recovered. The settlement fee shall use a discount rate equal to the ~~rate~~weighted average cost of ~~the Securitized Utility Tariff Bonds~~securitization. This settlement fee will be credited to Atmos Energy's other ~~sales-customers~~Retail Customers once a year through its PGA/ACA.

**54.139. True-Ups.** True-ups of the Securitized Utility Tariff Charges shall be undertaken and conducted in accordance with the Adjustment Mechanism as described in the Form of True-Up ~~Letter~~ attached to this Financing Order as Appendix C. The Servicer shall file true-~~up letters~~ups in a compliance docket, to be determined by the Commission, and shall give notice of the filing to all parties in this docket.

**52.140. Semi-Annual True-Ups.** The Servicer of the Securitized Utility Tariff Bonds shall make semi-annual adjustments to the Securitized Utility Tariff Charges to

correct any under-collection or over-collection of Securitized Utility Tariff Charges during the preceding six (6) months, and ensure the expected recovery of amounts sufficient to timely provide all payments of scheduled debt service and other required amounts and charges in connection with the Securitized Utility Tariff Bonds.

~~53.141.~~**Interim True-Ups.** The Servicer of the Securitized Utility Tariff Bonds may make interim adjustments to the Securitized Utility Tariff Charges at any time to correct any projected under-collection of Securitized Utility Tariff Charges to assure timely payment of Securitized Utility Tariff Bonds as scheduled, or as otherwise provided for in this Financing Order, as described in this Financing Order or in the WESCR.

### C. Securitized Utility Tariff Bonds

~~54.142.~~**Issuance.** Atmos Energy is authorized, through the SPE, to issue the Securitized Utility Tariff Bonds as specified in this Financing Order. The Qualified Extraordinary Costs and ~~ongoing~~**Ongoing** Financing Costs described in the Form Issuance Advice Letter attached to this Financing Order as Appendix A may be recovered directly through the Securitized Utility Tariff Charges. The Securitized Utility Tariff Bonds shall be denominated in U.S. Dollars.

~~55.143.~~**Ongoing Financing Costs.** Atmos Energy may recover its incurred and ~~ongoing~~**Ongoing** Financing Costs through its Securitized Utility Tariff Charges. The amount of ~~ongoing~~**Ongoing** Financing Costs is subject to updating in the

Issuance Advice Letter to reflect a change in the size of the bond issuance and any decision to issue the Securitized Utility Tariff Bonds in more than one series and other information available at the time of submission of the Issuance Advice Letter. As provided in Ordering Paragraph 26154, a Servicer other than Atmos Energy may collect a higher servicing fee than that set forth in Appendix A to this Financing Order if such higher fee is approved by the Commission and the Indenture Trustee. Ongoing Financing Costs (along with Upfront Financing Costs) shall be reviewed by the Designated Representative and its advisors as part of the pre-issuance review process.

56.144. **Refinancing.** Atmos Energy or any assignee may apply for one or more new ~~financing orders~~ Financing Orders to retire or refund Securitized Utility Tariff Bonds approved in this Financing Order upon a showing that the statutory criteria are met.

57.145. **Collateral.** All Securitized Utility Tariff Property and other collateral shall be held and administered by the Indenture Trustee pursuant to the Indenture as described in Atmos Energy's Application. The Indenture Trustee shall establish a collection account under the Indenture as described in Findings of Fact 45.46.

58.146. **Distribution Following Repayment.** Following repayment of the Securitized Utility Tariff Bonds and all other related amounts authorized in this Financing Order, by the Indenture Trustee shall distribute funds remaining in the general sub-account and the excess funds sub-account to Atmos Energy, and equivalent amounts will be credited to ~~sales customers~~ Retail Customers in the form of a credit



to their natural gas bills. Monies remaining in the Atmos Energy-funded capital sub-account along with the authorized return, will be returned to the Company through the SPE without any equivalent credit to customers' bills, because the capital sub-account was funded at issuance with the Company's own funds.

**59.147. Funding of Capital Sub-account.** The capital contribution by Atmos Energy to the SPE to be deposited into the capital sub-account shall, be funded by Atmos Energy and not from the proceeds of the sale of the Securitized Utility Tariff Bonds. Upon payment of all of the principal amount of all Securitized Utility Tariff Bonds and the discharge of all obligations in respect thereof, all amounts in the capital sub-account, ~~including investment earnings~~, and any amounts required to replenish the capital sub-account to the level of Atmos Energy's capital contribution and any unpaid authorized return on all capital contributions, shall be released to the SPE for payment to Atmos Energy. Customers shall receive the benefit of the investment earnings on this Capital Sub-account as earnings will be transferred to the Excess Funds Subaccount in accordance with the provisions of the Indenture, with the funds in this Subaccount being taken into account in the semi-annual true-up Adjustment Mechanism process. Investment earnings in this sub-account and authorized return on capital contributions in excess of 0.5% of the original principal amount of the Securitized Utility Tariff Bonds, if any, may be released earlier in accordance with the terms of this Financing Order and the Indenture.

**60.148. Credit Enhancement.** Atmos Energy may provide for various forms of credit enhancement including letters of credit, reserve accounts, overcollateralization

account, surety bonds, and other mechanisms designed to promote the credit quality or marketability of the Securitized Utility Tariff Bonds to the extent not prohibited by this Financing Order. The decision to use such arrangements to enhance credit or promote marketability shall be made in conjunction with the Commission acting through its ~~designated—representative~~Designated Representative. Atmos Energy may not enter into an interest-rate swap, currency hedge, or other hedging arrangement. Atmos Energy shall not be required to enter any arrangements to promote credit quality or marketability unless all related costs and liabilities can be included in its ~~ongoing~~Ongoing Financing Costs. Atmos Energy and the Commission's ~~designated—representative~~Designated Representative shall evaluate the relative benefits of the arrangements in the same way that benefits are quantified under the quantifiable benefits test. This ordering paragraph does not apply to the collection account or its sub-accounts approved in this Financing Order.

~~61.~~149. **Life of Bonds.** The scheduled maturity of the bonds is not anticipated to exceed 10 years unless required to meet the lowest cost standard as discussed in this Financing Order. The legal final maturity of any tranche of the Securitized Utility Tariff Bonds authorized by this Financing Order shall not exceed 32 years, as provided in the Act.

~~62.—~~ **Commission Participation in Bond Issuance.** ~~The Commission expects its designated representative to advise the Commission of any proposal that does not comply in any material respect with the criteria established in this Financing Order and to promptly inform Atmos Energy and the Commission of any items that, in the designated representative's~~

~~opinion, are not reasonable. Although this Financing Order is written in the context of an underwritten offering, nothing herein shall be construed to preclude issuance of the Securitized Utility Tariff Bonds through a competitive bid offering or private placement if Atmos Energy doing so would result in the lowest Securitized Utility Tariff Charges. If the Commission's designated representative finds that the structuring, marketing, or pricing of Securitized Utility Tariff Bonds does not comply with the criteria established in this Financing Order, the designated representative shall notify Atmos Energy and the Commission no later than 12:00 p.m. CST on the second business day after the Commission's receipt of the Issuance Advice Letter for the Securitized Utility Tariff Bonds.~~

150. **Commission Participation in Bond Issuance.** Atmos Energy shall collaborate and consult with a Designated Representative of the Commission Staff, including its legal and investment banking advisors, on all facets the structuring, marketing and pricing of the securitization bonds following approval of the Financing Order. The pre-issuance review shall be conducted with a goal of achieving the lowest cost standard as provided in the Act, and shall reflect the review of the Designated Representative regarding the steps necessary to ensure the statutory objective is achieved and minimize risk the Issuance Advice Letter is rejected. For the avoidance of doubt, such process should begin prior to the commencement of the Underwriter Selection Process and conclude following the Commission's review of the final issuance advice letter, allowing the Designated Representative the opportunity to review and observe all facets of the pre-issuance review process.

~~63.~~151. **Use of SPE.** Atmos Energy shall use the SPE, as proposed in its Application and described in this Financing Order, in conjunction with the issuance of any Securitized Utility Tariff Bonds authorized under this Financing Order. The SPE shall be funded with an amount of capital that is sufficient for the SPE to carry out its intended functions and to avoid the possibility that Atmos Energy would have to extend funds to the SPE in a manner that could jeopardize the bankruptcy remoteness of the SPE.

#### **D. Servicing and Administration**

~~64.~~152. **Servicing Agreement.** The Commission authorizes Atmos Energy to enter into a Servicing Agreement with the SPE and to perform the ~~servicing duties~~services described in the Servicing Agreement as approved in this Financing Order as the “Servicer.” Without limiting the foregoing, in its capacity as initial Servicer of the Securitized Utility Tariff Property, Atmos Energy is authorized to calculate, bill and collect for the account of ~~the~~ SPE, the Securitized Utility Tariff Charges initially authorized in this Financing Order, as adjusted from time to time to meet the Periodic Payment Requirements as provided in this Financing Order; and to make such filings and take such other actions as are required or permitted by this Financing Order in connection with the periodic true-ups described in this Financing Order. The Servicer shall be entitled to collect servicing fees in accordance with the provisions of the Servicing Agreement, provided that the annual servicing fee payable to Atmos Energy while it is serving as Servicer (or to any other Servicer affiliated with Atmos Energy) shall not at any time exceed

0.05% of the original principal amount of the Securitized Utility Tariff Bonds. The Servicing Agreement shall include a provision that Atmos Energy shall indemnify the Commission (for the benefit of ~~sales customers~~Retail Customers) in connection with any increase in servicing fees that become payable as a result of a default resulting from Atmos Energy's willful misconduct, bad faith, or negligence in performance of its duties or observance of its covenants under the Servicing Agreement. The indemnity will be enforced by the Commission but will not be enforceable by any ~~customer~~Retail Customer. If the incremental cost to Atmos Energy to perform its servicing and administrative services under the Servicing Agreement and the Administration Agreement respectively, is less than what the Company is paid for those services, then that difference in cost (the associated profit margin earned by the Company as servicer and administrator) shall be tracked by Atmos Energy and included in a regulatory liability account to be addressed in Atmos Energy's next general rate case.

**65.153.Administration Agreement.** The Commission authorizes Atmos Energy to enter into ~~an administration agreement~~ (the "Administration Agreement") with the SPE to perform the administrative ~~duties~~services set forth in the form of Administration Agreement attached hereto as Appendix G. The fee charged by Atmos Energy as administrator under the Administration Agreement shall not exceed \$100,000 per annum plus reimbursable third-party costs.

**66.154.Replacement of Atmos Energy as Servicer.** Upon the occurrence of an event of default under the Servicing Agreement relating to Atmos Energy's performance of its servicing functions with respect to the Securitized Utility Tariff Charges, ~~the~~

~~financing parties may~~ successor Servicer subject to the Designated Representative's review, acting on behalf of the bond holders, and approved by the Commission, will replace Atmos Energy. The Financing Parties may also replace Atmos Energy as the Servicer in accordance with the terms of the Servicing Agreement. No entity may replace Atmos Energy as the Servicer in any of its servicing or administrative functions with respect to the Securitized Utility Tariff Charges and the Securitized Utility Tariff Property authorized by this Financing Order, if the replacement would cause any of the then current credit ratings of the Securitized Utility Tariff Bonds to be suspended, withdrawn or downgraded.

~~67.155.~~ **Amendment of Agreements.** The parties to the Servicing Agreement, the ~~Administration Agreement, the~~ Indenture, and the ~~Sales~~Sale Agreement may amend the terms of such agreements; provided, however, that no amendment to any such agreement shall increase the ~~ongoing~~Ongoing Financing Costs or result in less favorable terms for Retail Customers without the approval of the Commission. Any amendment that does not increase the ~~ongoing~~Ongoing Financing Costs or result in less favorable terms for Retail Customers shall be effective without prior Commission approval. Any amendment to any such agreement that may have the effect of increasing ~~ongoing~~Ongoing Financing Costs shall be provided by Atmos Energy to the Commission along with a statement as to the possible effect of the amendment on the ~~ongoing~~Ongoing Financing Costs. The amendment shall become effective on the later of ~~(i)~~ the date proposed by the parties to the amendment or ~~(ii)~~ 31 days after such submission to the Commission

unless the Commission issues an order disapproving the amendment within a 30-day period.

**68.156. Collection Terms.** The Servicer shall remit collections of the Securitized Utility Tariff Charges to the SPE or the Indenture Trustee for the SPE's account in accordance with the terms of the Servicing Agreement.

### **E. Structure of the Securitization**

**69.157. Structure.** Atmos Energy shall endeavor to structure the securitization ~~as proposed in Atmos Energy's Application. This structure shall be~~ consistent with ~~Findings the findings of Fact 75 through 76. Nevertheless, the fact made in this~~ Financing Order and in a manner that achieves the lowest cost for the Securitized Bonds consistent with market conditions at the time of the issuance. The Commission provides Atmos Energy with the flexibility to modify the proposed structure based upon rating agency and market considerations, and the final structure shall satisfy the customer benefit requirements as reviewed and collaborated on with the Designated Representative throughout the pre-issuance review process and ultimately demonstrated by the final Issuance Advice Letter.

### **F. Use of Proceeds**

**70.158. Use of Proceeds.** Upon the issuance of Securitized Utility Tariff Bonds, the SPE will use the net proceeds from the sale of the Securitized Utility Tariff Bonds (after payment of transaction costs) to pay to Atmos Energy the purchase price of the

Securitized Utility Tariff Property. The net proceeds from the sale of the Securitized Utility Tariff Property (after payment of transaction costs) will be applied to recover Atmos Energy's Qualified Extraordinary Costs and Financing Costs as approved by this Financing Order and specified in the final Issuance Advice Letter.

### **G. Miscellaneous Provisions**

**71.159. Method of Tracing Funds.** The Securitized Utility Tariff Charges collected from ~~customers~~Retail Customers will be placed on a separate line on customers' bills, allowing Atmos Energy to assign the Securitized Utility Tariff Charges a specific code, by customer class, in its billing system. This code will allow Atmos Energy to trace proceeds from the Securitized Utility Tariff Charges.

**72.160. Reconciliation of Securitized Utility Tariff Costs.** Because not all Securitized Utility Tariff Costs or offsets to the costs to be securitized are known at this time or at the time the Securitized Utility Tariff Bonds are issued, a future rate-making process using the existing PGA/ACA mechanism will reconcile any differences between the actual Securitized Utility Tariff Costs financed by Securitized Utility Tariff Bonds and the final Securitized Utility Tariff Costs incurred by Atmos Energy or its assignee. The reconciliation process will also consider both the deferred tax liability associated with recovery of Qualified Extraordinary Costs, as well as the corresponding and offsetting deferred tax asset associated with the net operating loss carryforward created by the Qualified Extraordinary Costs. The



reconciliation shall not affect the amount of Securitized Utility Tariff Bonds or the associated Securitized Utility Tariff Charges paid by customers.

**73.161. Irrevocability.** Upon issuance of Securitized Utility Tariff Bonds or transfer of the Securitized Utility Tariff Property to the SPE, whichever occurs first, this Financing Order and the Securitized Utility Tariff Charges authorized by the Financing Order become irrevocable and not subject to reduction, impairment, or adjustment by further act of the Commission, except for any true-up adjustments made in accordance with the Adjustment Mechanism as approved in this Financing Order; provided, however, that such irrevocability shall not preclude the Commission from extending the deadline for the issuance of Securitized Utility Tariff Bonds if requested to do so by Atmos Energy.

**74.162. Pledge of the Commission.** The Commission affirms the pledge of state set forth in K.S.A. § 66-1,252 and shall not take or permit any of the following actions that would impair the value of the Securitized Utility Tariff Property authorized by this Financing Order, unless otherwise permitted by the statute:

- ◆ **(a)** Alter the statute that authorizes the Commission to create an irrevocable contract right or chose in action by the issuance of a ~~financing order~~Financing Order, to create securitized utility tariff property and to make the Securitized Utility Tariff Charges imposed by a ~~financing order~~Financing Order irrevocable, binding or ~~nonbypassable~~Nonbypassable charges for all existing and future ~~sales customers~~Retail Customers within the service area of the public utility;

- (b) Take any action that would impair the value of Securitized Utility Tariff Property or the security for the Securitized Utility Tariff Bonds, or revises the Securitized Utility Tariff Costs for which recovery is authorized; impair the rights and remedies of the bondholders, assignees and other financing parties in any way; or,
- (c) Except for changes made pursuant to the Adjustment Mechanism expressly allowed by law, reduce, alter, or impair the Securitized Utility Tariff Charges to be imposed, billed, charged, collected, and remitted for the benefit of the bondholders, any assignee, and any other financing parties, until any and all principal, interest, premium, Financing Costs and other fees, expenses or charges incurred and any contracts to be performed in connection with the related Securitized Utility Tariff Bonds have been paid and performed in full.

75.163. **Continuing Issuance Right.** Atmos Energy has the continuing irrevocable right to cause the issuance of Securitized Utility Tariff Bonds in accordance with this Financing Order for a period commencing with the date of this Financing Order and extending 24 months following the later of (i) the date on which this Financing Order becomes final and no longer subject to any appeal; or (ii) the date on which any other regulatory approvals necessary to issue the Securitized Utility Tariff Bonds are obtained and no longer subject to any appeal. If at any time during the effective period of this Financing Order there is a severe disruption in the financial markets of the United States, the effective period shall automatically be extended to a date which is not less than 90 days after the date such disruption ends.

~~76.164.~~**Internal Revenue Service Private Letter or Other Rulings.** Atmos Energy is not required by this Financing Order to obtain a ruling from the IRS; however, if it elects to do so, then upon receipt, Atmos Energy shall promptly deliver to the Commission a copy of each private letter or other ruling issued by the IRS with respect to the proposed transaction, the Securitized Utility Tariff Bonds, or any other matter related thereto. Atmos Energy shall also include a copy of every such ruling by the IRS it has received as an attachment to each Issuance Advice Letter required to be filed by this Financing Order. Atmos Energy may cause Securitized Utility Tariff Bonds to be issued without a private letter ruling if it obtains an opinion of tax counsel sufficient to support the issuance of the Securitized Utility Tariff Bonds.

~~77.165.~~**Binding on Successors.** This Financing Order, together with the Securitized Utility Tariff Charges authorized in it, shall be binding on Atmos Energy and any successor to Atmos Energy. This Financing Order is also binding on any other entity responsible for billing and collecting Securitized Utility Tariff Charges on behalf of the SPE, and any successor to the Commission. In this paragraph, a “successor” means any entity that succeeds by any means whatsoever to any interest or obligation of its predecessor, including by way of bankruptcy, reorganization or other insolvency proceeding, merger, consolidation, conversion, assignment, pledge or other security, by operation of law or otherwise.

~~78.166.~~**Flexibility.** Subject to compliance with the requirements of this Financing Order, (including Designated Representative review), Atmos Energy and the SPE shall be afforded flexibility in establishing the terms and conditions of the

Securitized Utility Tariff Bonds, including the final structure of the SPE, repayment schedules, term, payment dates, collateral, credit enhancement, required debt service, reserves, interest rates, use of original issue discount, other Financing Costs, and the ability of Atmos Energy, at its option, to cause one or more series of Securitized Utility Tariff Bonds to be issued or to create more than one SPE for purposes of issuing such Securitized Utility Tariff Bonds. -The final terms and conditions of the Securitized Utility Tariff Bonds will be provided to the Commission through the Issuance Advice Letter process, as described in Ordering Paragraph ~~5~~131.

~~79.167.~~**Effectiveness of Order.** This Financing Order is effective upon issuance.

Notwithstanding the foregoing, no Securitized Utility Tariff Property shall be created hereunder, and Atmos Energy shall not be authorized to impose, collect, and receive Securitized Utility Tariff Charges, until Atmos Energy's rights and interests under this Financing Order with respect to such Securitized Utility Tariff Property have been transferred to the SPE or another assignee or pledged in connection with the issuance of the Securitized Utility Tariff Bonds.

~~80.168.~~**Regulatory Approvals.** All regulatory approvals within the jurisdiction of the Commission that are necessary for the securitization of the Securitized Utility Tariff Charges associated with the ~~costs that are the subject of the Application~~Qualified Extraordinary Costs and Financing Costs, including Upfront Financing Costs and Ongoing Financing Costs, and all related transactions contemplated in the Application, are granted.

**81.169.Payment of Commission's Costs for Professional Services.** In accordance with K.S.A. § 66-1,241(h)(5), all expenses incurred by the Commission for financial advisors, counsel, or other professional services acquired for the purpose of evaluating Atmos Energy's application and proposed transaction, the Financing Order, and the closing of the transaction shall be included as part of the ongoingUpfront Financing Costs and/or Ongoing Financing Costs as applicable of the Securitized Utility Tariff Bonds and shall be included in the Securitized Utility Tariff Charge.

**82.170.Effect.** This Financing Order constitutes a legal ~~financing order~~Financing Order for Atmos Energy under the Act. The Commission finds this Financing Order complies with the provisions of the Act. A Financing Order gives rise to rights, interests, obligations, and duties as expressed in the Act. It is the Commission's express intent to give rise to those rights, interests, obligations, and duties by issuing this Financing Order. Atmos Energy, as the initial Servicer, and any Replacement Servicer are directed to take all actions as are required to effectuate the transactions approved in this Financing Order, subject to compliance with the criteria established in this Financing Order.

**83.171.Further Commission Action.** The Commission guarantees that it will act pursuant to this Financing Order as expressly authorized by the Act to ensure that expected Securitized Utility Tariff Charge revenues are sufficient to pay on a timely basis scheduled principal and interest on the Securitized Utility Tariff Bonds issued pursuant to this Financing Order and other costs, including fees and expenses, in connection with the Securitized Utility Tariff Bonds.

172. **All Other Motions Denied.** All motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or specific relief not expressly granted herein, are denied for want of merit.

## Appendix J

### GLOSSARY OF TERMS

<u><b>Adjustment Mechanism</b></u>	<u>Has the meaning set forth in the Act.<sup>88</sup></u>
<u><b>Ancillary Agreement</b></u>	<u>Has the meaning set forth in the Act.<sup>89</sup></u>
<u><b>Assignee</b></u>	<u>Has the meaning set forth in the Act.<sup>90</sup></u>
<u><b>Cost of Capital</b></u>	<u>Atmos Energy’s weighed average cost of capital authorized from time to time by the Commission in Atmos Energy’s rate proceedings.</u>
<u><b>Customer</b></u>	<u>As set out in Schedule 1 of the General Terms and Conditions for Service of the Commission-approved Tariff of Atmos Energy Corporation, Section 1.B, “Any person, partnership, association, firm, public or private corporation, or governmental agency applying for or using natural gas service supplied by [Atmos],” and who receives Natural Gas Service as set out in Section 1.D of the same Schedule, which is “the sale, delivery, and providing natural gas by [Atmos] to the Customer in accordance with and established by, (a) [Atmos] applicable rate schedules, (b) [Atmos] Rules and Regulations in effect and on file with the Commission and, (c) the Commission applicable orders.” Except as provided in this Financing Order, Customer includes any current or future Customer, receiving natural gas service from Atmos, but excludes Transportation Customers.</u>
<u><b>Designated Representative</b></u>	<u>A representative from Commission Staff, who may be advised by financial and legal advisors contracted with the Commission to review and observe all facets of the process undertaken by the public utility to place the Securitized Utility Tariff Bonds to market so the Commission’s representative can be prepared, if requested, to provide the Commission with an opinion on the reasonable ness of the pricing, terms and conditions of Securitized Utility Tariff Bonds on an expedited basis.<sup>91</sup></u>

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<sup>88</sup> K.S.A. § 66-1,240(b)(2).

<sup>89</sup> K.S.A. § 66-1240(b)(3).

<sup>90</sup> K.S.A § 66-1,240(b)(4).

<sup>91</sup> K.S.A. § 66-1,241(h)(4).

<b><u>Financing Costs</u></b>	<u>Has the meaning set forth in the Act.<sup>92</sup></u>
<b><u>Financing Order</u></b>	<u>Has the meaning set forth in the Act.<sup>93</sup></u>
<b><u>Financing Party</u></b>	<u>Has the meaning set forth in the Act.<sup>94</sup></u>
<b><u>Issuance Advice Letter</u></b>	<u>Document setting out the terms for the issuance of the Securitized Utility Tariff Bonds submitted to the Commission to demonstrate Atmos Energy's compliance with this Financing Order as described in the Act.</u>
<b><u>Nonbypassable</u></b>	<u>Has the meaning set forth in the Act.<sup>95</sup></u>
<b><u>Ongoing Financing Costs</u></b>	<u>Any Financing Costs, as defined in the Act, incurred after the issuance of the Securitized Utility Tariff Bonds.</u>
<b><u>Periodic Payment Requirement</u></b>	<u>Semi-annual adjustments made to the Securitized Utility Tariff Bonds by the Servicer of the Securitized Utility Tariff Bonds pursuant to the Adjustment Mechanism described in the Act.</u>
<b><u>Qualified Extraordinary Costs</u></b>	<u>Has the meaning set forth in the Act.<sup>96</sup></u>
<b><u>Retail Customer</u></b>	<u>An end-use customer who purchases natural gas or electricity for consumption.</u>
<b><u>Securitized Utility Tariff Bonds</u></b>	<u>Has the meaning set forth in the Act.<sup>97</sup></u>
<b><u>Securitized Utility Tariff Charges</u></b>	<u>Has the meaning set forth in the Act.<sup>98</sup></u>

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<sup>92</sup> K.S.A. § 66-1,240(b)(10).

<sup>93</sup> K.S.A. § 66-1,240(b)(11).

<sup>94</sup> K.S.A. § 66-1,240(b)(12).

<sup>95</sup> K.S.A. § 66-1,240(b)(15).

<sup>96</sup> K.S.A. § 66-1,240(b)(18).

<sup>97</sup> K.S.A. § 66-1,240(b)(19)(A).

<sup>98</sup> K.S.A. § 66-1,240(b)(20).



**Securitized  
Utility Tariff  
Costs**

Has the meaning set forth in the Act.<sup>99</sup>

**Securitized  
Utility Tariff  
Property**

Has the meaning set forth in the Act.<sup>100</sup>

**Servicer**

The entity responsible for performing the servicing obligations under any Servicing Agreement.

**Servicing  
Agreement**

Document detailing the servicing obligations. See Appendix D.

**Special Purpose  
Entity (SPE)**

A wholly owned, subsidiary, which is a Delaware LLC that is bankruptcy-remote, with Atmos Energy as its sole member, formed for the limited purpose of acquiring Securitized Utility Tariff Property and issuing Securitized Utility Tariff Bonds in one or more tranches or classes, and performing other activities relating thereto or otherwise authorized by the Financing Order. The Special Purpose Entity will not be permitted to engage in any other activities and will have no assets other than Securitized Utility Tariff Property and related assets to support its obligations under the Securitized Utility Tariff Bonds. Obligations relating to the Securitized Utility Tariff Bonds will be the Special Purpose Entity's only significant liabilities. The Special Purpose Entity will act as an Assignee as defined in the Act.

**Substitute  
Servicer**

Any subsequent Servicer, taking the place of the original Servicer.

**Transportation  
Customers**

Customers who elect to receive Transportation Service or Transportation, as set out in Schedule 1 of the General Terms and Conditions of the Commission-approved tariff of Atmos Energy Corporation, Section 1.D, and maintain a contractual right to have natural gas transported by Atmos on demand, and who are not pursuant to the terms of the Financing Order, responsible for paying Securitized Utility Tariff Charges.

**Upfront  
Financing Costs**

Financing Costs, as defined in the Act, incurred by Atmos Energy, the Commission, and third parties in applying for a Financing Order and obtaining the issuance of the Securitized Utility Tariff Bonds.

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<sup>99</sup> K.S.A. § 66-1,240(b)(21).

<sup>100</sup> K.S.A. § 66-1,240(b)(22)(A)-(B).

STATE OF KANSAS                    )  
  ) ss.  
COUNTY OF SHAWNEE            )

VERIFICATION

Justin T. Grady, being duly sworn upon his oath deposes and states that he is the Chief of Revenue Requirements, Cost of Service and Finance for the Utilities Division of the State Corporation Commission of the State of Kansas; that he has read and is familiar with the foregoing Direct Testimony, and that the statements contained therein are true and correct to the best of his knowledge, information, and belief.

*Justin Grady*

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Justin T. Grady  
Chief of Revenue Requirements, Cost of  
Service and Finance  
Kansas Corporation Commission of the  
State of Kansas

SUBSCRIBED AND SWORN to/before me on this 26 day of August, 2022.

*Sally A. Conn*  
\_\_\_\_\_  
Notary Public

My Appointment Expires:



## **CERTIFICATE OF SERVICE**

22-ATMG-538-TAR

I, the undersigned, certify that a true and correct copy of the above and foregoing document was sent electronically this 26th day of August, 2022, to the following:

JAMES G. FLAHERTY, ATTORNEY  
ANDERSON & BYRD, L.L.P.  
216 S HICKORY  
PO BOX 17  
OTTAWA, KS 66067  
jflaherty@andersonbyrd.com

ASHLEY BURTON, ASSOCIATE GENERAL COUNSEL  
ATMOS ENERGY CORPORATION  
5420 LBJ FWY STE 1600 (75240)  
P O BOX 650205  
DALLAS, TX 75265-0205  
ashley.burton@atmosenergy.com

KATHLEEN R OCANAS, DIVISION VP OF RATES &  
REGULATORY AFFAIRS  
ATMOS ENERGY CORPORATION  
25090 W 110TH TERR  
OLATHE, KS 66061  
kathleen.ocanas@atmosenergy.com

JOSEPH R. ASTRAB, ATTORNEY  
CITIZENS' UTILITY RATEPAYER BOARD  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
j.astrab@curb.kansas.gov

TODD E. LOVE, ATTORNEY  
CITIZENS' UTILITY RATEPAYER BOARD  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
t.love@curb.kansas.gov

DAVID W. NICKEL, CONSUMER COUNSEL  
CITIZENS' UTILITY RATEPAYER BOARD  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
d.nickel@curb.kansas.gov

SHONDA RABB  
CITIZENS' UTILITY RATEPAYER BOARD  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
s.rabb@curb.kansas.gov

DELLA SMITH  
CITIZENS' UTILITY RATEPAYER BOARD  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
d.smith@curb.kansas.gov

MARK DAVIS, PARTNER  
DUCERA PARTNERS LLC  
11 TIMES SQUARE  
36TH FLOOR  
NEW YORK, NY 10036  
mdavis@ducerapartners.com

MICHAEL FEINBERG, GENERAL COUNSEL  
DUCERA PARTNERS LLC  
11 TIMES SQUARE  
36TH FLOOR  
NEW YORK, NY 10036  
mfeinberg@ducerapartners.com

## **CERTIFICATE OF SERVICE**

22-ATMG-538-TAR

TYLER KIM, ASSOCIATE  
DUCERA PARTNERS LLC  
11 TIMES SQUARE  
36TH FLOOR  
NEW YORK, NY 10036  
tkim@ducerapartners.com

SEAN LANCASTER  
DUCERA PARTNERS LLC  
11 TIMES SQUARE  
36TH FLOOR  
NEW YORK, NY 10036  
slancaster@ducerapartners.com

JAMNAH MORTON, ASSOCIATE  
DUCERA PARTNERS LLC  
11 TIMES SQUARE  
36TH FLOOR  
NEW YORK, NY 10036  
jmorton@ducerapartners.com

SARAH BUCHANAN  
FOULSTON SIEFKIN LLP  
1551 N. Waterfront Parkway  
Suite 100  
Wichita, KS 67206  
sbuchanan@foulston.com

RACHEL SCHOLL, PARALEGAL  
FOULSTON SIEFKIN LLP  
1551 N. Waterfront Parkway  
Suite 100  
Wichita, KS 67206  
rscholl@foulston.com

HARVEY R SORENSEN  
FOULSTON SIEFKIN LLP  
1551 N. Waterfront Parkway  
Suite 100  
Wichita, KS 67206  
hsorensen@foulston.com

C. EDWARD WATSON, ATTORNEY  
FOULSTON SIEFKIN LLP  
1551 N. Waterfront Parkway  
Suite 100  
Wichita, KS 67206  
cewatson@foulston.com

BRIAN G. FEDOTIN, GENERAL COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
b.fedotin@kcc.ks.gov

WALKER HENDRIX, LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
w.hendrix@kcc.ks.gov

JARED JEVONS, LITIGATION ATTORNEY  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
j.jevons@kcc.ks.gov

CARLY MASENTHIN, LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
c.masenthin@kcc.ks.gov

MICHAEL NEELEY, LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD RD  
TOPEKA, KS 66604  
m.neeley@kcc.ks.gov

**CERTIFICATE OF SERVICE**

22-ATMG-538-TAR

*/s/ Sally Conn*

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Sally Conn  
Executive Secretary