

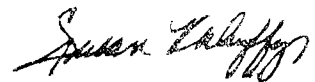
BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

TESTIMONY IN SUPPORT OF
STIPULATION AND AGREEMENT

OF
KAREN P. WILKES
ATMOS ENERGY

STATE CORPORATION COMMISSION

OCT 29 2009



DOCKET NO. 10-ATMG-133-TAR

1 I. INTRODUCTION

2 Q. PLEASE STATE YOUR NAME.

3 A. Karen P. Wilkes.

4 Q. ARE YOU THE SAME KAREN P. WILKES WHO PROVIDED PREFILED
5 TESTIMONY IN SUPPORT OF ATMOS ENERGY'S ("ATMOS") GAS SYSTEM
6 RELIABILITY SURCHARGE ("GSRs") TARIFF APPLICATION?

7 A. Yes.

8 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

9 A. I am testifying in support of the Joint Stipulated Settlement Agreement ("Agreement")
10 being submitted to the Kansas Corporation Commission ("Commission") for approval
11 in the above-captioned docket by Atmos and Staff. I will discuss the application of
12 the factors the Commission has previously identified as relevant to its determination
13 of settlement agreements generally and how those apply in this matter.

14 Q. PLEASE PROVIDE AN OVERVIEW OF YOUR TESTIMONY AND THE

1 **AGREEMENT.**

2 A. The Agreement being presented to the Commission is in the public interest. If
3 approved, the Agreement contemplates that Atmos' GSRS tariff would be approved
4 based upon the recommendations included in Staff's Memorandum, which is
5 attached to the Agreement filed in this matter by Atmos and Staff on October 23,
6 2009, as Exhibit A. As set forth on page 7 of Staff's Memorandum, Atmos and Staff
7 agree the Atmos' GSRS revenue requirement should be set by the Commission at
8 \$765,529.00. Atmos and Staff further agree this included recovery of approximately
9 \$7.1 million of capital projects that meet the criteria outlined in K.S.A. 66-2201, *et*
10 *seq.*, under the GSRS as set forth in Staff's Memorandum, and the disallowance of
11 approximately \$2.7 million of Atmos' projects contained in the application based upon
12 the reasons set forth in Staff's Memorandum. Atmos and Staff also agree that the
13 allocation of the GSRS revenue requirement among customer classes and the
14 surcharge resulting from said allocation shall be as set forth in my Exhibit KPW-4
15 attached to my prefiled testimony in this matter. Atmos and Staff also agreed to the
16 conditions contained in Staff's Memorandum at page 7. Those included a
17 requirement that Atmos file an updated GSRS tariff schedule reflecting the final
18 Commission ordered GSRS amount, and during Atmos' next GSRS filing, Staff will
19 ensure the amount of GSRS revenue actually collected is compared to the amount
20 intended to be collected, with the under or over recovery being collected or refunded,
21 respectively, in subsequent years. Finally, as part of the Agreement, Atmos and Staff
22 agreed not to follow or rely upon the provisions contained in the Joint Stipulated
23 Settlement Agreement filed in Docket No. 08-ATMG-280-RTS ("280 Docket") relating

1 to Atmos' GSRS filing but instead, to use the provisions of the GSRS statute to
2 calculate the GSRS revenue requirement in this case.

3 **II. BACKGROUND INFORMATION REGARDING ATMOS' APPLICATION AND THE**
4 **STIPULATION**

5 **Q. DESCRIBE THE PROCEDURAL HISTORY OF THE ABOVE-CAPTIONED**
6 **DOCKET.**

7 A. On August 14, 2009, Atmos submitted for filing a new tariff schedule, GSRS, which
8 is designed to allow for the adjustment of Atmos' rates and charges to provide
9 recovery of costs for eligible infrastructure system replacements. Atmos is the last
10 major natural gas utility in Kansas to apply for a GSRS tariff. Citizens' Utility
11 Ratepayer Board ("CURB") requested and was granted intervention in this
12 proceeding.

13 On October 13, 2009, the Staff filed its Memorandum recommending approval
14 of Atmos' request for approval of its GSRS tariff, subject to a number of comments
15 and conditions set forth in its Memorandum.

16 On October 23, 2009, Atmos filed a response to Staff's Memorandum. All
17 parties discussed a settlement on October 16, 2009, and the Agreement was
18 prepared and executed by Atmos and Staff as a result of those discussions. CURB
19 elected not to execute the Agreement. The Agreement was filed with the
20 Commission on October 23, 2009. On October 23, 2009, CURB filed comments and
21 a motion to dismiss Atmos' application. Atmos and Staff have filed responses in
22 opposition to CURB's motion to dismiss and it is my understanding said motion to
23 dismiss will be addressed through oral argument by the attorneys in this case.

24 Atmos and Staff have filed testimony in support of the Agreement.

1 **Q. PLEASE DESCRIBE THE TERMS OF THE AGREEMENT.**

2 A. For purposes of the Agreement, and subject to other provisions contained in the
3 Agreement, Atmos agreed with the recommendations included in Staff's
4 Memorandum, which is attached hereto as Exhibit A to the Agreement. As set forth
5 on page 7 of Staff's Memorandum, Atmos and Staff agreed the Atmos' GSRS
6 revenue requirement should be set by the Commission at \$765,529.00. Atmos and
7 Staff further agreed this included recovery of approximately \$7.1 million of capital
8 projects that meet the criteria outlined in K.S.A. 66-2201, et seq. under the GSRS as
9 set forth in Staff's Memorandum, and the disallowance of approximately \$2.7 million
10 of Atmos' projects contained in the application based upon the reasons set forth in
11 Staff's Memorandum. Atmos and Staff agreed the allocation of the GSRS revenue
12 requirement among customer classes and the surcharge resulting from said
13 allocation shall be as set forth in my Exhibit KPW-4 attached to my prefiled testimony
14 in this matter. Atmos and Staff also agreed to the following conditions contained in
15 Staff's Memorandum:

16 a) Atmos shall file an updated GSRS Tariff Schedule reflecting the
17 final Commission-ordered GSRS amount.

18 b) During Atmos' next GSRS filing, Staff will ensure that the amount
19 of GSRS revenue actually collected is compared to the amount intended to be
20 collected, with the under or over recovery being collected or refunded,
21 respectively, in subsequent years.

22 In addition, as part of the Agreement, Atmos and Staff agreed not to follow or
23 rely upon the provision contained in the Joint Stipulated Settlement Agreement filed

1 in the 280 Docket relating to Atmos' GSRS filings. In said provision, Atmos and Staff
2 had agreed that for applications filed under the GSRS statute, Atmos would use a
3 debt/equity ratio of 51.90%/48.10%, a cost of debt of 6.11% and a cost of equity
4 equal to the average of the cost of equity used or agreed to be used by the
5 Commission in calculating the GSRS for the other Kansas gas utility companies
6 (currently calculated at 10.2%). The Commission approved the 280 Docket
7 Settlement Agreement as between Staff and Atmos, but specifically indicated CURB
8 had the right to challenge said calculation when Atmos filed its GSRS tariff
9 application. CURB objected to the settlement provision relating to the GSRS filings
10 and filed an appeal. *Citizens' Utility Ratepayer Board v. The State Corporation*
11 *Commission of the State of Kansas*, Case No. 101,452. It is my understanding the
12 Court of Appeals dismissed CURB's appeal for its failure to follow K.S.A. 66-118b
13 and 77-613(c). It is also my understanding CURB has filed a petition for review to the
14 Kansas Supreme Court and the Supreme Court has granted said review.

15 Based upon my discussions with our counsel, it is my understanding during
16 oral arguments before the Court of Appeals, the court raised an issue as to whether
17 a non-unanimous settlement, like the one in the 280 Docket, relating to future GSRS
18 applications could be approved by the Commission. Also, in the Court of Appeals'
19 written opinion, the court raised an issue as to whether the Commission could
20 pre-approve or pre-determine elements in calculating future tariff provisions. As set
21 forth in the Agreement, without comment with respect to the merits of the issues
22 raised by the Court of Appeals, Staff and Atmos have agreed to no longer rely upon
23 or follow the provision contained in the 280 Docket relating to Atmos' GSRS filings

1 and have agreed not to use that provision in this current case. Instead, Atmos and
2 Staff have agreed to follow and rely simply upon the provisions contained in K.S.A.
3 66-2204(d)(9) to determine the debt/equity ratio, cost of debt and cost of equity to be
4 used in Atmos' GSRS filing. I discuss this approach in my prefiled direct testimony
5 filed with the Application in this docket at page 4, lines 4-21.

6 Based upon my reading of K.S.A. 66-2204(d)(9), the statute provides that in
7 the event information relating to debt/equity ratio, cost of debt and cost of equity are
8 unavailable and the Commission is not provided with such information on an
9 agreed-upon basis, the Commission shall utilize the average of the recommendations
10 contained in the testimony submitted by the natural gas public utility and commission
11 staff during the most recent general rate proceeding of the natural gas public utility
12 to determine the capital structure, recommended cost rates for debt and preferred
13 stock and recommended cost of common equity to determine the average weighted
14 cost of capital. Atmos' last rate case was settled between Staff and Atmos and
15 absent the provision relating to future GSRS filings did not include an agreement as
16 to the utility's capital structure and cost of debt and equity. Therefore, because Staff
17 and Atmos have agreed not to utilize the provision in the rate case settlement relating
18 to future GSRS filings in this case, the above-mentioned information is unavailable
19 and under the provisions of the statute the Commission is required to utilize the
20 average of the recommendations made by Atmos and Staff in the last rate case. As
21 set forth in my prefiled testimony in this matter, the testimony submitted by all of the
22 parties, including CURB, in Atmos' most recent rate case, was in agreement relating
23 to the debt/equity ratio (51.90%/48.10%), and was in agreement relating to the cost

1 of debt (6.11%). Following the provisions of K.S.A. 66-2204(d)(9), the cost of equity
2 recommended by Staff witness Gatewood was 9.6%, the cost of equity
3 recommended by Atmos' witness Fairchild was 11%, and the average of the two
4 recommendations is 10.3%. See, my prefiled testimony, page 4, lines 4-21. Atmos
5 and Staff have therefore agreed to use the averages recommended by Atmos and
6 Staff in Atmos' last rate case (280 Docket) to calculate Atmos' GSRS in this pending
7 case. Because Atmos is limited by law in receiving no more than what it requested
8 in its application in this case, the agreement by Staff and Atmos to use a 10.3% cost
9 of equity in this case under K.S.A. 66-2204(d)(9), instead of the lower 10.2% cost of
10 equity under the provision in the settlement in the 280 Docket, does not result in
11 increasing the amount of Atmos' GSRS. However, if Atmos does not file a rate case
12 prior to its next GSRS filing, then using the statute to calculate the return on equity
13 could have an impact on future GSRS revenue requirements.

14 **Q. WERE THERE ANY RESERVATIONS INCLUDED IN THE AGREEMENT?**

15 A. Yes. Except as provided in the Agreement, the Agreement fully resolved all issues
16 among Staff and Atmos. The terms of the Agreement constituted a fair and
17 reasonable resolution of the issues addressed herein. The terms and provisions of
18 the Agreement have resulted from negotiations between the signatories and are
19 interdependent. Unless (and only to the extent) otherwise specified in the
20 Agreement, the signatories to this Agreement agreed to not be prejudiced, bound by,
21 or affected in any way by the terms of the Agreement: (1) in any future Commission
22 or court proceeding; (2) in any proceeding currently pending under a separate docket;
23 and/or (3) in this proceeding, if the Commission decides not to approve this

1 Agreement in its entirety or in any way conditions its approval of the same. The
2 parties also agreed the Commission's approval of the Agreement shall have no
3 precedential effect in any other proceeding.

4 The Agreement does not prejudice or waive any party's legal rights, positions,
5 claims, assertions or arguments in any proceedings in this docket, or any other
6 proceeding before this Commission or in any court. If the Commission accepts the
7 Agreement in its entirety and incorporates the same into its final order in this docket,
8 the parties intend to be bound by its terms and the Commission's Order incorporating
9 its terms as to all issues addressed herein, and will not appeal the Commission's
10 Order on those issues. Staff and Atmos agreed they should have the right to submit
11 to the Commission testimony that supports its rationale for entering into the
12 Agreement and provide to the Commission whatever further explanation the
13 Commission requests. The parties agreed that any rationales advanced by each
14 party in such testimony are its own and not acquiesced in or otherwise adopted by
15 the other parties.

16 **III. THE COMMISSION SHOULD APPROVE THE AGREEMENT**

17 **Q. WHAT FACTORS SHOULD BE CONSIDERED WHEN DETERMINING WHETHER**
18 **THE AGREEMENT IS IN THE PUBLIC INTEREST AND SHOULD BE APPROVED**
19 **BY THE COMMISSION?**

20 A. The Commission has previously applied a five-factor test when analyzing proposed
21 settlement agreements. Those factors are:

- 22 (1) Has each party had an opportunity to be heard on its reasons for opposing the
23 settlement?

- 1 (2) Is the Agreement supported by substantial evidence in the record as a whole?
2 (3) Does the Agreement conform to applicable law?
3 (4) Will the Agreement result in just and reasonable rates?
4 (5) Are the results of the Agreement in the public interest, including the interests
5 of customers represented by any party not consenting to the Agreement?

6 I will discuss the application of each of these factors to the Agreement in my
7 testimony below. The application of these factors indicates the Agreement is in the
8 public interest and should be approved.

9 A. APPLICATION OF FIVE FACTORS APPLIED TO SETTLEMENT
10 AGREEMENTS

11 **Q. HAS EACH PARTY HAD AN OPPORTUNITY TO BE HEARD ON ITS REASONS**
12 **FOR OPPOSING THE SETTLEMENT?**

13 A. Yes. As discussed above, all of the parties were involved in the settlement
14 conference scheduled by the parties on October 16, 2009, and all parties were given
15 the opportunity to discuss all of the issues relating to the filing. CURB was given the
16 opportunity to file a pleading explaining its opposition and to file testimony opposing
17 the Agreement.

18 **Q. IS THE STIPULATION SUPPORTED BY SUBSTANTIAL EVIDENCE IN THE**
19 **RECORD AS A WHOLE?**

20 A. Yes. The prefiled testimony and exhibits filed by Atmos in this matter in support of
21 its application, my testimony herein, the Staff Memorandum, and the testimony of Jeff
22 McClanahan, provide support for the Agreement and for the Commission's approval
23 of Atmos' GSRs tariff application pursuant to the terms of the Agreement.

24 **Q. DOES THE AGREEMENT CONFORM TO APPLICABLE LAW?**

1 A. Yes. All parties had notice of the Agreement and the opportunity to comment on the
2 Agreement. Based upon my review of Atmos' GSRs application, testimony and
3 exhibits, and the Agreement, all comply with the provisions of the GSRs statute.
4 Additionally, as the Commission has previously recognized, settlements are favored
5 by the law.

6 **Q. WILL THE STIPULATION RESULT IN JUST AND REASONABLE RATES?**

7 A. Yes. The GSRs revenue requirement and GSRs surcharges proposed in the
8 Agreement will result in just and reasonable rates. The GSRs replacement projects
9 included in the proposed revenue requirement, according to all parties in this matter,
10 qualify to be included under the GSRs tariff. The calculation of the GSRs revenue
11 requirement complies with the GSRs statute.

12 **Q. ARE THE RESULTS OF THE AGREEMENT IN THE PUBLIC INTEREST?**

13 A. Yes. The Agreement complies with the GSRs statute. In 2006, Senate Bill 414, the
14 GSRs Act was passed into law. Under this law, a utility like Atmos is allowed to file
15 to establish a GSRs rate schedule that will allow for the adjustment of the utility's
16 rates to provide for the recovery of costs for eligible infrastructure system
17 replacements. Each year, Atmos, like the other gas utilities, is required to relocate
18 or replace certain segments of its system. Approval of this GSRs application will
19 allow Atmos to recover those expenses between rate cases through a surcharge like
20 the other natural gas utilities and as allowed by statute.

21 **Q. WHAT ACTION IS ATMOS REQUESTING FROM THE COMMISSION?**

22 A. Atmos asks the Commission approve the Agreement in its entirety.

23 **Q. THANK YOU.**

VERIFICATION OF KAREN P. WILKES

STATE OF COLORADO)
)ss:
COUNTY OF DENVER)

I, Karen P. Wilkes, being first duly sworn on oath, depose and state that I am the witness identified in the foregoing Testimony in Support of Stipulation and Agreement; that I have read the testimony and am familiar with its contents; and that the facts set forth therein are true and correct.

Karen P. Wilkes

Karen P. Wilkes

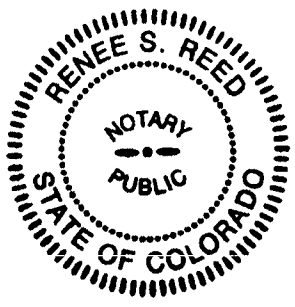
SUBSCRIBED AND SWORN to before me this 29th day of October, 2009.

Renee S. Reed

Notary Public

Appointment/Commission Expires:

3/28/2012



LAW OFFICES OF
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A Limited Liability Partnership

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October 29, 2009

Sent by Facsimile
Original Mailed 10/29/09

STATE CORPORATION COMMISSION

OCT 29 2009



Ms. Susan K. Duffy
Executive Director
Kansas Corporation Commission
1500 S. W. Arrowhead Road
Topeka, Kansas 66604-4027

Re: Atmos Energy
Docket No. 10-ATMG-133-TAR

Dear Ms. Duffy:

Please file the enclosed Testimony in Support of Stipulation and Agreement of Karen P. Wilkes on behalf of Atmos Energy in the above captioned matter. I would appreciate receiving a file stamped copy of this cover letter as well as a file stamped copy of the Testimony for my files. An envelope is included for your convenience.

Thank you for your assistance. If you have any questions, please call.

Sincerely,

James G. Flaherty

James G. Flaherty
jflaherty@andersonbyrd.com

JGF 
Enclosure

ec: Terri J. Pemberton
Dana Bradbury
Patti Petersen-Klein
Niki Christopher