

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

Before Commissioners: Brian J. Moline, Chair
 John Wine
 Robert E. Krehbiel

In the Matter of the Application of Atmos Energy)
for an Order to Permit the Company Establish Rates) Docket No. 03-ATMG-539-TAR
for a Weather Normalization Adjustment.)

**ORDER GRANTING JOINT MOTION
AND
APPROVING STIPULATION AND AGREEMENT**

NOW, the above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) on the Joint Motion for an Order Approving Stipulation and Agreement (Joint Motion) filed by Atmos Energy (Atmos) and the Commission Staff (Staff). Having examined its files and records, and being duly advised in the premises, the Commission finds as follows:

I. BACKGROUND

1. On January 3, 2003, Atmos, pursuant to K.S.A. 66-117 and K.S.A. 66-1,200, *et seq.*, filed its Application seeking an order establishing rates for a Weather Normalization Adjustment (WNA) to begin with the Kansas 2003-2004 heating season. In support of its Application, Atmos filed the direct testimony of Messrs. Thomas H. Petersen, Director of Rates, and D. Allen Ashburn, Senior Rate Analyst.

2. On January 14, 2003, the Commission entered a Suspension Order suspending Atmos' Application for a period of two-hundred-forty (240) days from the date of filing the Application, January 3, 2003, until August 31, 2003, subject to further order or orders of the Commission.

3. On January 21, 2003, Citizens' Utility Ratepayer Board (CURB) filed a Petition to Intervene in this matter and on February 3, 2004, the Commission entered its order granting CURB's intervention.

4. Atmos and Staff entered into a Stipulation and Agreement dated May 8, 2003 (Stipulation and Agreement) and on May 8, 2003, Atmos and Staff filed the Stipulation and Agreement, together with their Joint Motion for an Order Approving Stipulation and Agreement (Joint Motion). The terms of the Stipulation and Agreement modify the WNA proposed by Atmos in its Application and the resulting WNA tariff is incorporated as Exhibit A to the Stipulation and Agreement. CURB has not joined in the Stipulation and Agreement or the Joint Motion, but does not oppose the Joint Motion.

5. On May 12, 2003, Staff filed the Memorandum of Dr. Soojong Kwak and Dr. John Cita in support of the Stipulation and Agreement.

II. DISCUSSION

6. Atmos and Staff stipulate and agree that the terms of Atmos' WNA shall be as follows:

A. Atmos WNA Rate Schedule

If the Commission approves the instant Stipulation and Agreement, then the Commission would effectively approve Atmos' proposed WNA rate schedule as attached hereto as Exhibit A, which has incorporated WNA modifications developed by Staff. The Staff's modifications are set forth in paragraph 4C herein. The WNA rate schedule shall become effective with sales service rendered on and after October 1, 2003, as provided in the Application.

B. Customer Education Materials

Atmos agrees to work closely with the Commission's Public Affairs and Consumer Protection Division in developing and implementing its WNA consumer education materials, and will provide copies of any and all such customer education materials to that Division for review and comment, prior to its use.

C. Modifications Developed by Staff

Staff agrees that Atmos' proposed weather station selections are reasonable. Therefore, Atmos will use the five weather stations identified in its pre-filed testimony. However, the data obtained from three (3) of those stations shall be modified as follows:

(1) Atmos shall adjust the heating degree days billed to reflect a two (+2) degree increase in the average temperature for the weather reported each day at the Kansas City International Airport weather station;

(2) Atmos shall adjust the heating degree days billed to reflect a one (-1) degree decrease in the average temperature for the weather reported each day at the Dodge City, Kansas weather station;

(3) Atmos shall adjust the heating degree days billed to reflect a one (-1) degree decrease in the average temperature for the weather reported each day at the Salina, Kansas weather station.

No increase or decrease to degree days for billing shall be made to the weather reported at the Chanute, Kansas and Wichita, Kansas weather stations.

The above modifications, as well as, the corresponding modifications to the baseload/heat sensitive factors have been included in the WNA tariff, which has been attached hereto as Exhibit A and incorporated herein by reference. Atmos must file its WNA tariff with the Commission for approval within thirty (30) days of the date of the Order approving this Stipulation and Agreement.

D. WNA-Related Risk Adjustment to ROE in Future Rate Case

Atmos and Staff agree that inclusion of a WNA clause in a local distribution company's rate structure influences its weather-related risk and, therefore, the financial risk of the utility. Staff specifically reserves its respective right to take the position in Atmos' future rate cases that any reduced risk associated with the implementation of the WNA should be considered in the determination of the utility's return on equity (ROE) and that it could be appropriate for the Commission to approve a lower ROE to reflect this reduction in weather-related risk in the context of a rate case. Atmos specifically reserves its right when determining the appropriate ROE in future rate cases to consider the experience of other local distribution utilities that may or may not have WNAs in their rate structures and to take the position that the Commission would be justified in making no change to the Company's ROE as a result of having a WNA clause in its rate structure.

7. As indicated in Staff's Memorandum, the instant Application represents the

second request of a natural gas public utility seeking Commission approval of a WNA mechanism. The first such request submitted by Kansas Gas Service Company (KGS), with minor modifications, was approved pursuant to the Commission's Order entered October 27, 2000 in Docket No. 01-KGSG-229-TAR. Atmos' proposed WNA is essentially equivalent to the WNA approved by the Commission and subsequently implemented by KGS, with two basic differences. First of all, in Atmos' WNA, the "WNA factor" is updated monthly while the KGS "WNA factor" is updated annually. Consequently, under Atmos' WNA there is no time lag between the actual weather experienced by the ratepayer during the billing period and the WNA charge or credit shown on their monthly bill. Secondly, there is no true-up term associated with Atmos' WNA factor. In the case of Atmos' WNA, should any true-up be necessary, it would be handled through Atmos' actual cost adjustment (ACA) factor. Staff Memorandum at p. 1-2. According to Staff, because Atmos' WNA is essentially a real-time adjustment, it will be easier for customers to make the connection between the WNA charge or credit on their current bill and the weather they just experienced during the previous month.

8. The general reasons for implementing a WNA remain unchanged from those existing at the time the first WNA was requested and approved by the Commission. According to Staff, those reasons include a closer match between the annual recovered revenue and annual allowed revenue, less volatile revenue recovery, and an improved ability of utilities to forecast budgets and perform long term planning. Implementation of a WNA may reduce shareholder exposure to weather risk as well, possibly leading to lowered shareholder required return on equity (ROE), further translating to a lower cost of service, thus lower rates. Staff Memorandum at p. 2-3. Staff has specifically reserved the right to take the position in Atmos' future rate cases that any reduced risk associated with the implementation of the WNA should be considered in

determining the utility's ROE and that it could be appropriate for the Commission to approve the lower ROE to reflect such a reduction in weather-related risk in the context of a rate case. Stipulation and Agreement at p. 3, paragraph D.

III. FINDINGS AND CONCLUSIONS

9. Atmos is a certified public utility authorized to transact the business of a natural gas public utility within the state of Kansas. The proposed WNA is a change in the tariff, and thus, the Commission has jurisdiction over Atmos and the subject matter herein, pursuant to K.S.A. 66-104, K.S.A. 66-117 and K.S.A. 66-1,200 *et seq.*

10. The Commission has the power to approve a non-unanimous settlement, *Farmland Industries Inc. v. Kansas Corporation Comm'n*, 24 Kan.App.2d 172, 186 (1997). However, the Commission must make an independent judgment based on substantial competent evidence that the settlement proposal will establish just and reasonable rates, efficient and sufficient service, and just and reasonable practices, rules and regulations. *Id.* At 186 See also K.S.A. 66-101b. In making this determination, the Commission takes into consideration the immediate and future impact upon consumers.

11. Atmos and Staff entered into the Stipulation and Agreement as an appropriate and reasonable means of concluding this matter. The Stipulation and Agreement expresses the parties' agreement with regard to necessary modifications to the WNA proposed in Atmos' Application. As a result of these modifications, the WNA factor will more accurately reflect actual weather conditions where Atmos' customers are located. The more accurate the WNA factor, the smaller the expected true-up due to WNA implementation. In support of the Stipulation and Agreement, Staff has filed its Memorandum providing a thorough analysis of the requested WNA, as modified by the Stipulation and Agreement, and concludes that, as a matter

of policy, implementation of WNA mechanisms remains reasonable. In Staff's opinion, the Commission could find approval of the Stipulation and Agreement to be consistent with the public interest. CURB has filed no objection to the Stipulation and Agreement.

12. The Commission concurs with the position taken by Staff in its Memorandum. Implementation of the proposed WNA, as conditioned by the Stipulation and Agreement, is reasonable, in the public interest and should be approved. The Commission therefore approves and adopts the Stipulation and Agreement and the same is hereby incorporated in and made part of this Order by reference.

IT IS THEREFORE, BY THE COMMISSION ORDERED THAT:

A. The parties' Joint Motion is hereby granted and the Stipulation and Agreement is hereby approved and incorporated in this Order by reference.

B. Atmos' Application for a WNA and WNA tariff is hereby approved, as conditioned by the terms of the Stipulation and Agreement.

C. Atmos shall file its WNA tariff with the Commission for approval within thirty (30) days of the date of this Order.

D. A party may file a petition for reconsideration of this Order within fifteen (15) days of service. If the order is served by mail, three (3) days are added to the above time period.

E. The Commission retains jurisdiction of the subject matter and parties for the purpose of entering such further order or orders as it may deem necessary.

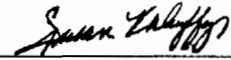
BY THE COMMISSION IT IS SO ORDERED.

Moline, Chair; Wine, Comm.; Krehbiel, Comm.

Dated: **MAY 27 2003**

ORDER MAILED

MAY 27 2003

 Executive
Director

Susan K. Duffy
Executive Director

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