

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

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

**STAFF TESTIMONY IN SUPPORT OF
ATMOS SETTLEMENT AGREEMENT**

PREPARED BY

ANDRIA N. JACKSON

UTILITIES DIVISION

KANSAS CORPORATION COMMISSION

March 15, 2018

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

2 A. My name is Andria N. Jackson and my business address is 1500 Southwest
3 Arrowhead Road, Topeka, Kansas, 66604.

4

5 **Q. Are you the same Andria Jackson that contributed to the Report and**
6 **Recommendation in this Docket on December 14, 2017?**

7 A. Yes.

8

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

10 A. I am testifying on behalf of the Staff of the Kansas Corporation Commission
11 (Staff and Commission, respectively) in support of the settlement of the issues
12 outlined in the Settlement Agreement (Agreement) between Atmos Energy
13 Corporation (Atmos Energy), Staff, and the Citizens' Utility Ratepayer Board
14 (CURB) (collectively, the Parties).¹

15 My testimony will explain why the Commission should approve the
16 Agreement because it is in the public interest. Specifically, I will:

- 17 • Provide background information about this docket;
- 18 • Provide an overview and discussion of the Agreement;
- 19 • Discuss the standard of review used to guide the Commission in its
20 consideration of whether to accept the Agreement²; and
- 21 • Discuss the evidence in the record that supports the Agreement.

¹ *Joint Motion for Approval of Atmos Energy's Tax Reform Plan*, Docket No. 18-GIMX-248-GIV (Mar. 9, 2018).

² *Order Approving Contest Settlement Agreement*, Docket No. 08-ATMG-280-RTS, pp. 4-6 (May 12, 2008).

1

2

Background Information

3

Q. Please provide a brief background of this docket.

4

A. The Tax Cuts and Jobs Act (TCJA) is a Congressional bill that amends the

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Internal Revenue Code to reduce tax rates and modify policies, credits, and

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deductions for individuals and businesses. The bill was initially passed in the

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House of Representatives on November 16, 2017, and on December 2, 2017, the

8

Senate passed its version of the bill. While the House and Senate bills were in

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reconciliation conference meetings, it became widely anticipated that tax reform

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would be signed by the President before the first of the upcoming year.

11

Therefore, in anticipation of the TCJA being signed into law, on December

12

14, 2017, Staff filed a Motion to Open a General Investigation and Issue

13

Accounting Authority Order Regarding Federal Tax Reform (Staff's Motion).

14

Attached to Staff's Motion was a Report and Recommendation recommending the

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Commission issue an Order addressing the following:

16

1) Opening a general investigation for the purposes of examining the

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financial impact of anticipated federal income tax reform on regulated

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public utilities operating in Kansas;

19

2) Requiring, through the use of an Accounting Authority Order (AAO),

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certain regulated public utilities that are taxed at the corporate level to

21

track and accumulate in a deferred revenue account, with interest

22

compounded monthly at the most current Commission-approved customer

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deposit interest rate, the reduction in their regulated cost of service that

1 would occur in the event that a new lower federal income tax rate is signed
2 into law. These deferrals should take effect at the same time as the new
3 federal corporate tax rate change and the calculations should be performed
4 using the cost of service data that were used to set the utilities' last
5 Commission-approved revenue requirement; and

- 6 3) Confirming that the Commission's intention regarding the AAO is to
7 preserve any potential tax benefits so that they may be evaluated in the
8 context of a comprehensive evaluation of the reasonableness of the
9 utilities' rates as well as notifying utilities that this portion of their rates
10 should be considered interim subject to refund until the Commission has
11 the opportunity to review the reasonableness of the utilities' rates on a
12 comprehensive and case-by-case basis and confirming that the
13 Commission intends to capture the reduction in Accumulated Deferred
14 Income Tax (ADIT) balances that will occur in the event that a lower
15 corporate federal income tax rate takes effect, over time, in a manner that
16 comports with Internal Revenue Services (IRS) Tax Normalization Rules.

17 On December 22, 2017, the TCJA was signed into law, which, amongst other
18 changes, reduced the federal corporate income tax rate from 35% to 21%
19 beginning on January 1, 2018.³ Also, on December 22, 2017, CURB filed a
20 Petition to Intervene and a Response in Support of Staff's Motion.

³ *Tax Cuts and Jobs Act*, Public Law No. 115-97; Statute 131 Stat. 2054 (Dec. 22, 2017).

1 On January 18, 2018, the Commission issued its Order Opening General
2 Investigation and Issuing Accounting Authority Order Regarding Federal Tax
3 Reform.

On January 31, 2018, Atmos filed its entry of appearance in this docket. On February 8, 2018, the Parties met in Topeka to discuss and attempt to reach an agreement to quantify the financial impacts of the new lower tax rate on Atmos' Kansas-based operations based upon the instructions provided by the Commission in its Order and how the cost savings related to the lower tax rates should be passed on to its Kansas customers. As a result of the meeting and follow-up discussions, the Parties were able to reach an agreement.

11

12 **Terms of the Settlement Agreement**

13 **Q. Please discuss in detail the provisions of the Agreement.**

14 A. The provisions of the Agreement are as follows:

- 15 • For the period of time between January 1, 2018, through the date the
16 Commission issues an order approving Atmos' Tax Reform Credit Tariff,
17 Atmos agrees to accrue monthly, in a deferred revenue account, the cost
18 savings resulting from the TCJA. The Parties agree that the estimated
19 amount to be accrued in the deferred revenue account shall be \$1.13
20 million, including interest, for the period of January 1, 2018, through
21 March 31, 2018, and that the interest rate applied to the deferred revenue
22 amount shall be calculated at the rate used for interest paid on customer
23 deposits, which is currently 1.62%. Additionally, Atmos reserves its right

1 in its next rate case to provide the Commission with information and
2 supporting data to show other components of its cost of service may have
3 offset the decrease in its income tax expenses during the accrual period
4 and its right to request that all or a portion of the deferred revenue amount
5 being credited to customers under this Agreement be credited back to
6 Atmos in some fashion to account for such offset. Staff and CURB also
7 reserve their rights to challenge any effort made by Atmos to contend that
8 other components of its cost of service should be used to offset the
9 decrease in Atmos' income tax expenses during the accrual period.

- 10 • The Parties agree that the annual cost of service savings to customers
11 relating to the reduction in federal income tax expense included in Atmos'
12 cost of service (Cost of Service Credit) is \$3,002,308 and the annual Gas
13 Service Reliability Surcharge (GSRS) Credit is \$75,210 (collectively the
14 Annual Tax Reform Credit Amount). The Annual Tax Reform Credit
15 Amount shall be allocated among Atmos' customer classes based upon the
16 customer class allocations approved in its last rate case. The amount in
17 the deferred revenue account shall also be credited to customers beginning
18 April 1, 2018, and be returned on a monthly basis through March 31,
19 2019, using the same allocation method. Subject to a true-up provision,
20 the Tax Reform Credit Tariff shall be reset to zero when Atmos' base rates
21 are reset to account for the change in tax rate in its next general rate case.
- 22 • The Parties agree that Atmos shall establish the Cost of Service Credit
23 rate, exclusive of the amount in the deferred revenue account, by

1 providing its customers a fixed monthly separate line bill credit beginning
2 in April 2018, for 54% of the tax savings, and a separate line volumetric
3 credit for the remaining 46% of the Cost of Service Credit from April
4 2018 forward until the tax savings are reflected in base rates following an
5 order in Atmos' next rate case.⁴ The GSRS Credit will be provided to
6 Atmos' customers as part of and included in the fixed monthly separate
7 line credit and referred to on the bill as the "Tax Reform Credit". The
8 amount in the deferred revenue account, plus interest, shall also be
9 included as a component of the Tax Reform Credit Tariff for the period of
10 April 1, 2018, through March 31, 2019.

- 11 • Atmos will establish a regulatory liability to account for and capture tax
12 savings relating to excess ADIT. Any issues regarding the amount of tax
13 savings relating to excess ADIT and how those savings should be passed
14 on to customers will be deferred to Atmos' next general rate case filing
15 with the exception of the items noted here. Provisions in the Agreement
16 relating to the treatment of excess ADIT in Atmos' next rate case include:
17 (1) all fixed asset-related excess deferred taxes (both protected and
18 unprotected) shall be reflected in rates utilizing the Reverse South Georgia
19 method; and (2) excess deferred taxes booked as an estimate can be trued-
20 up after the end of Atmos' fiscal year, which ends of September 30, 2018.
21 Additionally, Atmos' excess ADIT as of December 31, 2017, will not be

⁴ The allocations of 54% and 46% between the fixed bill credit and the volumetric credit, respectively, are consistent with the percentage allocations in Atmos' last rate case for the amount of total non-gas or non-PGA costs recovered through the monthly customer charge and the amount of total costs recovered through the commodity charge.

1 amortized for ratemaking purposes until the excess ADIT is reflected in
2 base rates approved by the Commission in its next rate case filing.

- 3 • The terms in the Agreement are only applicable to Atmos' tax refund plan
4 and shall not be binding on Staff, CURB or the Commission in reviewing
5 or approving any TCJA tax refund plan submitted by any other public
6 utility.

7
8 **The Commission's Standard of Review for Settlement Agreements**

9 **Q. Has the Commission previously used factors or standards to review a**
10 **settlement agreement?**

11 A. Yes. The Commission's Order in Docket No. 08-ATMG-280-RTS (08-280
12 Docket) discusses five factors, or standards, and multiple agreements have been
13 reviewed by the Commission using the five factors since that Order.⁵ These five
14 standards are as follows:

- 15 1. Whether there was an opportunity for the opposing party to be heard on
16 their reasons for opposition to the Agreement;
17 2. Whether the Agreement is supported by substantial competent evidence in
18 the record as a whole;
19 3. Whether the Agreement conforms to applicable law;
20 4. Whether the Agreement results in just and reasonable rates; and
21 5. Whether the results of the Agreement are in the public interest.

22 Each of these five factors is discussed individually below.

⁵ *Order Approving Contested Settlement Agreement*, 08-280 Docket, p. 5 (May 12, 2008).

Support for the Settlement Agreement

Q. Please address whether each party had an opportunity to be heard on its reasons for opposing the Agreement.

A. The Agreement presented to the Commission is a unanimous agreement, as the Parties either support or do not oppose approval of the Agreement. All parties having an interest in Atmos' tax savings plan participated in settlement discussion on February 8, 2018, and were able to reach a settlement of all issues. Therefore, this factor has been met as each party has been represented, has had an opportunity to be heard, and agree to the terms of the Agreement.

It should be noted that the Agreement limits its applicability to only Atmos and is not binding or precedential to the tax savings refund plans submitted by other utilities. Furthermore, should any other party wish to be heard, it can file a response to the Joint Motion.

Q. Please address whether the Agreement is supported by substantial competent evidence in the record as a whole.

A. The Agreement is supported by substantial competent evidence in the record as a whole. The record as a whole includes Atmos' Application and direct testimony, Staff and CURB direct testimony, rebuttal testimony and a Commission Order filed in support of the settlement amount resulting from Atmos' last rate case, Docket No. 16-ATMG-079-RTS (16-079 Docket), which the Parties agree is the basis of the recalculation of the revenue requirement in this case. Additionally,

1 the Parties intend to submit pre-filed testimony in support of this Agreement.

2 These past and present filed positions constitute the body of evidence that the
3 Commission would rely on to make a determination of the issues presented if this
4 were to go to a fully litigated evidentiary hearing. It is Staff's position that the
5 terms of this Agreement complies with all the instructions set forth in the Order
6 issued by the Commission in this docket, is based on the record as a whole, and
7 are commensurate with what could be expected if the case were to be fully
8 litigated.

9

10 **Q. How was the annual cost of service savings to customers in the amount of**
11 **\$3,002,308 arrived at by the Parties?**

12 A. Atmos and Staff quantified the impact of the new lower tax rates by taking the
13 difference between the cost of service approved by the Commission in the 16-079
14 Docket and the cost of service that would have resulted had the provision for
15 federal income taxes been based upon the corporate income tax rate approved in
16 the TCJA. The result of that calculation, as presented in Appendix 2 attached to
17 the Agreement, resulted in an annual cost of service savings to customers in the
18 amount of \$3,002,308. Both parties performed its own analysis using the same
19 methodology of incorporating the change in income tax rate to the settlement
20 amount in its own financial schedules. The difference in the revenue requirement
21 recalculations presented by the parties in settlement discussion was immaterial.

22

23 **Q. Please address whether the Agreement conforms to applicable law.**

1 A. I am not an attorney. However, it is my understanding that the Agreement does
2 follow precedent for similar settlements in the past that have been executed in an
3 effort to conform to applicable laws. All attempts were made to ensure that this
4 Agreement conforms to applicable laws and is presented in a fashion to allow the
5 Commission to properly approve the Agreement.

6

7 **Q. Does the Agreement result in just and reasonable rates?**

8 A. Yes. This Agreement results in rates that fall within the “zone of reasonableness”
9 described by the Kansas courts in which the result is balanced between the
10 interests of investors versus ratepayers, present versus future ratepayers, and is in
11 the public interest generally. The agreed-upon tax savings refund plan is based
12 upon the Commission-approved rates in the 16-079 Docket, which at the time of
13 approval were just and reasonable as it resulted in the proper balance between the
14 Company’s desire to have a reasonable assurance that it would earn sufficient
15 revenues and cash flows to meet its financial obligations and the need to keep
16 rates as low as possible for customers, while providing reliable gas service.
17 However, with the passing of the TCJA, a subsequent revision to the
18 Commission-approved rates must be made to reflect the lower tax rate in order to
19 ensure the rates continue to be just and reasonable as was intended by the
20 Commission Order in the 16-079 Docket. Atmos’ agreement to pass the savings
21 resulting from the TCJA immediately on to customers contributes to their rates
22 continuing to be just and reasonable.

23

1 **Q. Why is it reasonable to defer a decision on amortization of the excess**
2 **deferred taxes to the next rate case?**

3 A. As part of the Agreement, the Parties agree to defer many issues regarding the
4 amount of tax savings related to excess ADIT to Atmos' next rate case. Until
5 such time, Atmos will establish a regulatory liability to account for and capture
6 the tax savings related to the excess deferred taxes. This regulatory liability will
7 not be amortized until the next base rate case. This approach is reasonable
8 because it ensures that customers will continue to realize the benefit associated
9 with the excess deferred taxes as an offset to rate base. If ADIT is reduced, rate
10 base will increase reflecting less of an ADIT rate base offset (lower cost free
11 capital). Therefore, until the excess deferred taxes are reflected in Atmos' next
12 rate case, customers will continue to receive the time value of money associated
13 with the excess deferred taxes today because they serve as an offset to rate base.

14 Atmos also intends to capture the tax savings relating to excess ADIT for the
15 benefit of customers using a methodology that is consistent with the tax
16 normalization requirements specified by IRS normalization rules. Calculating the
17 amortization of excess deferred taxes in a fashion that does not cause an IRS
18 normalization violation is a complicated and data intensive process. It is
19 reasonable to perform this calculation in the context of a comprehensive rate
20 review so as to not risk calculating the amortization incorrectly and inadvertently
21 causing an IRS normalization violation.

22
23 **Q. What are the consequences of a violation of the normalization rules?**

1 A. The effect of the normalization requirements is to provide utility customers with
2 the benefit of cost free capital made possible by using accelerated tax
3 depreciation. Violating the normalization requirements can result in the loss of
4 the ability to claim accelerated depreciation on public utility property in the
5 future, which has a real cost to both the utility and its customers. It should be
6 avoided at all costs.

7

8 **Q. As part of the Agreement, all fixed asset-related excess deferred taxes are to**
9 **be reflected in rates utilizing the Reverse South Georgia Method. Please**
10 **explain.**

11 A. If a utility lacks sufficient records to properly use the average rate assumption
12 method (ARAM), the IRS allows an alternative methodology known as the
13 Reverse South Georgia Method. This approach calculates excess deferred taxes
14 on the basis of the weighted-average life or composite rate used to calculate
15 depreciation for regulatory purposes and reduces the computed amount over the
16 remaining regulatory life of the property. After consultants assessed Atmos'
17 records to determine whether the ARAM could be utilized, it was determined that
18 it would not be possible as Atmos did not have book depreciation in its records by
19 vintage. Because Atmos lacks sufficient vintage account data to implement the
20 ARAM, Atmos must utilize the Reverse South Georgia Method.

21 Staff believes it is a reasonable resolution to the issue of amortizing fixed
22 asset-related deferred taxes, whether they are "protected" (required to be
23 amortized in a fashion that comports with IRS normalization rules) or

1 “unprotected”. This is reasonable because the deferred taxes that were created by
2 these fixed asset investments are assumed in the ratemaking process to be a
3 source of cost free capital that is invested in those assets. As fixed asset
4 investments are long-lived in nature, it is equitable and reasonable to amortize
5 these deferred taxes over an equally long time frame.

6 It is important to remember that these deferred taxes are currently financing
7 rate base and are treated as cost free capital in the ratemaking process. If these
8 deferred taxes are reduced in an accelerated fashion, that cost free capital will
9 have to be replaced by debt and equity capital, which is not cost free. Currently,
10 ratepayers are being compensated for Atmos holding these excess deferred taxes
11 at the pre-tax weighted average cost of capital by virtue of these balances being
12 reflected as an offset to rate base. If Atmos gives these deferred taxes back to
13 customers quickly, they will no longer get this rate base offset, but instead will be
14 asked to pay for the replacement capital. In this regard, this is not simply a
15 theoretical conversation about the appropriate time value of money and how
16 quickly these deferred taxes should be passed back. How quickly these deferred
17 taxes are amortized will have real consequences in terms of rate base financing
18 for both the Company and its customers.

19

20 **Q. Are you aware of the balancing test set forth by the Kansas Supreme Court**
21 **for determining whether rates are “just and reasonable”?**

22 A. Yes, the Kansas Supreme Court has stated:

23 The leading cases in this area clearly indicate that the goal should be a rate
24 fixed within the “zone of reasonableness” after the application of a balancing

1 test in which the interests of all concerned parties are considered. In rate-
2 making cases, the parties whose interests must be considered and balanced are
3 these: (1) the utility's investors vs. the ratepayers; (2) the present ratepayers
4 vs. the future ratepayers; and (3) the public interest.⁶
5

6 **Q. What evidence in this case should be considered when performing the**
7 **balancing test set forth by the Kansas Supreme Court?**

8 A. Staff's contention is the Agreement before the Commission comfortably passes
9 the balancing test set forth by the Kansas Supreme Court. The following supports
10 this assertion: (1) the agreed-upon tax savings balances the interests of the
11 utility's investors and the ratepayers because it appropriately takes into account
12 the reduction in federal income tax expense included in Atmos' current cost of
13 service as a result of the TCJA and passes those cost saving to Atmos' customers
14 in a timely manner; (2) Staff believes the Agreement appropriately balances the
15 interests of present and future ratepayers because excess deferred taxes are
16 currently being treated as a rate base offset until amortized back to rates, which
17 means that customers are being fairly compensated for the excess deferred taxes
18 that are going to be amortized over time as a result of this Agreement; and (3) the
19 fact that both of the two factors above have been met is itself an indication that
20 the Agreement is in the public interest generally. I will discuss this in greater
21 detail below.
22

23 **Q. Does Staff believe the results of the Agreement are in the public interest?**

⁶ *Kan. Gas and Electric Co. v. State Corp Comm'n*, 239 Kan. 483, 488 (1986).

1 A. Yes. There were multiple interests represented by the Parties involved in the
2 Agreement, with CURB representing the interests of residential and small general
3 service ratepayers, Atmos representing the interest of its management and
4 shareholders, and Staff attempting to balance each of those interests while
5 representing the interests of the public generally. The fact that these varied
6 interests were able to collaborate and present a unanimous resolution of the issues
7 discussed in this case strongly indicates the public interest standard has been met.

8 Generally speaking, the public interest is served when ratepayers are protected
9 from unnecessarily high prices, discriminatory prices and/or unreliable service.
10 More specifically, it is Staff's opinion that the Agreement meets the public
11 interest because:

- 12 • It is in the public interest to pass back savings to customers as soon as
13 possible and this Agreement accomplishes that;
- 14 • Each of the Parties represented their respective interests by putting time,
15 thought, and analysis into deriving a tax savings settlement position it
16 found reasonable;
- 17 • The tax savings was calculated and confirmed independently by each
18 Party based on the evidence in the record in the 16-079 Docket; and
19 • If this Agreement is approved, the Parties would avoid the costly and
20 time-consuming process of a fully-litigated hearing. It is in the public
21 interest to avoid these costs if possible and this Agreement accomplishes
22 this result.

23

1 **Q. Should the Commission accept the Agreement as a reasonable resolution of**
2 **the issues in this docket?**

3 A. Yes, the Agreement represents a reasonable resolution of the issues in this docket,
4 will result in just and reasonable rates, is in the public interest, is supported by
5 substantial competent evidence in the record, and falls within the realm of
6 reasonable debate and the zone of reasonableness.

7


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

9 A. Yes, thank you.

STATE OF KANSAS)
) ss.
COUNTY OF SHAWNEE)

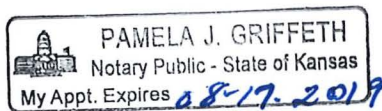
VERIFICATION

Andria N. Jackson, being duly sworn upon her oath deposes and states that she is Managing Auditor in the Utilities Division for the State Corporation Commission of the State of Kansas, that she has read and is familiar with the foregoing *Staff Testimony in Support of Atmos Settlement Agreement* and that the statements contained therein are true and correct to the best of her knowledge, information and belief.



Andria N. Jackson, Managing Auditor
Utilities Division
Kansas Corporation Commission of the
State of Kansas

Subscribed and sworn to before me this 15th day of March, 2018.





Notary Public

My Appointment Expires: August 17, 2019

CERTIFICATE OF SERVICE

18-GIMX-248-GIV

I, the undersigned, certify that a true and correct copy of the above and foregoing Staff Testimony in Support of Atmos Settlement Agreement Prepared by Andria N. Jackson was service by electronic service on this 15th day of March, 2018, to the following:

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18-GIMX-248-GIV

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