COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF ATMOS ENERGY CORPORATION FOR AN ORDER APPROVING THE ACCOUNTING TREATMENT OF COSTS AND EXPENSES INCURRED IN CONNECTION WITH ENVIRONMENTAL REMEDIAL ACTIONS ASSOCIATED WITH A MANUFACTURED GAS PLANT SITE IN OWENSBORO, KENTUCKY	)	CASE NO. 2008-00230

O R D E R

On June 20, 2008, Atmos Energy Corporation ("Atmos") filed an application requesting authority to defer in Account 186, Miscellaneous Deferred Debits, all costs and expenses it had incurred and would incur in the future for environmental remedial actions taken, and to be taken, in connection with its former manufactured gas plant in Owensboro, Kentucky. Western Kentucky Gas Company ("WKG"), the predecessor of Atmos, acquired property at the corner of Third and Elm Streets in Owensboro in 1945, which included a coal gasification plant, when it merged with Owensboro Gas Company, the owner and operator of the plant since 1889. The property, which WKG sold to the Owensboro Board of Education in 1950, is now owned by the Fourth Street Baptist Church ("Church").

During 2007, federal and state authorities determined that remedial action was needed to eliminate the threat of benzo(a)pyrene contamination in the soil at the site caused by the coal gasification plant. After negotiations between Atmos, the federal Environmental Protection Agency ("EPA") and the Church, a settlement agreement

("Agreement")[1] was reached which requires Atmos to cap all areas containing concentrations of benzo(a)pyrene above the removal action level, with all removed soils disposed of in accordance with EPA's Off-Site Rule. Pursuant to the Agreement, the Church transferred ownership of the site to Atmos so that remedial actions could proceed and proper deed restrictions could be put in place. Also as part of the Agreement, Atmos leased the site back to the Church and agreed to make other improvements to the site.

Atmos has incurred various costs and expenses in connection with the investigation of environmental contamination at the site and in connection with complying with the EAM and Agreement. These include costs for purchase of the site, payments to reimburse EPA, cleanup expenses, soil analysis expenses, and legal and consulting fees. At the time of its application, Atmos had incurred $298,556 in costs and expenses. Since the filing of its application, Atmos has incurred an additional $228,572, with the expectation of incurring $20,000 more in legal fees in connection with the project.

Atmos stated in its application that it believed that "the accounting treatment being requested herein is appropriate since the costs of investigation, assessment and environmental response actions at the site are extraordinary and non-recurring costs" and that it "may not otherwise have the opportunity to recover these extraordinary expenses without the issuance of the order requested herein." Atmos also stated that it was not requesting approval of any rate-making treatment of the subject costs and

[1] The settlement was memorialized in EPA's Enforcement Action Memorandum ("EAM") of January 9, 2008. EPA entered an Administrative Settlement Agreement and Order on Consent Action for the site on January 28, 2008.

expenses at this time but that the issue of rate treatment would be reserved for its next general rate case or in a later proceeding seeking separate recovery thereof.

PROCEDURAL BACKGROUND

On August 5, 2008, the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention ("AG"), sought intervention in the matter. The Commission's August 12, 2008 Order granted the AG's request and established a procedural schedule for this proceeding which allowed for discovery upon Atmos, the filing of comments on Atmos's responses, and reply comments by Atmos. Commission Staff served two rounds of discovery on Atmos. The AG filed neither discovery nor comments. However, Atmos filed reply comments on September 18, 2008. In its comments, Atmos expanded on the reasons why its request was reasonable. It also, for the first time in this proceeding, requested that the Commission rule on its request by September 30, 2008, since that is the ending date of its fiscal year.

DISCUSSION AND ANALYSIS

The request submitted by Atmos does not create an issue of first impression. The Commission, from time to time, has received similar requests from other utilities under its jurisdiction. However, each request involves issues and circumstances that make it different from the other requests. In this instance, Atmos's request involves the nature of the activity that gives rise to the costs and expenses it seeks to defer, i.e., remedial environmental actions required by the EPA. In addition, the request includes costs and expenses incurred by Atmos during the 12-month period which it proposed as

the forecast period in its most recent general rate case,[2] which it filed based on a forecasted test year.

Atmos has stated its belief that legally required environmental cleanup costs are the type of extraordinary, non-recurring and non-discretionary expenses which should be recoverable outside a general rate case by way of a surcharge. However, it did not seek such recovery due to the Franklin Circuit Court's ruling in Commonwealth of Kentucky, ex. rel. Gregory D. Stumbo, Attorney General v. Kentucky Public Service Commission and Union Light, Heat & Power Company, Franklin Circuit Court Case No. 06-CI-269. Atmos has also stated that the timeline for the cleanup imposed by EPA and the costs and expenses related to the cleanup were not planned or budgeted and were not included in its revenue requirement calculation in Case No. 2006-00464.

The Commission considers these types of requests for accounting deferrals on a case-by-case basis. In general, the relative magnitude of the costs for which deferral is sought can be a factor in that consideration. In this case, Atmos's total costs associated with its environmental remedial actions will exceed $527,000, which we conclude is a relevant amount for a utility the size of Atmos.

Atmos incurred the first $298,556 of the costs and expenses it seeks to defer during the forecast period it proposed in its most recent rate case. That, plus the fact that they had been incurred and recorded on Atmos's books of account prior to when it submitted its application requesting approval to defer them, could be considered reason to limit our approval to the later and future costs and expenses associated with the

[2] Case No. 2006-00464, Application of Atmos Energy Corporation for an Adjustment of Rates, final Order dated July 31, 2007.

remedial actions taken by Atmos. However, Atmos had no discretion in taking those actions, as they were required by EPA, a federal regulatory agency with the statutory authority to require such actions and to impose penalties if Atmos failed to perform the actions which it required. Considering these circumstances, and taking note of the uncertainty created by the Franklin Circuit Court ruling to which Atmos referred, the Commission concludes that Atmos's request is reasonable and should be approved.

DECISION

The Commission, based on the evidence of record and being otherwise sufficiently advised, finds that:

1. Atmos should be authorized to defer its costs and expenses related to the environmental cleanup of the site of its former coal gasification plant in Owensboro, Kentucky, as required by EPA, and those costs and expenses should be recorded in Account 186, Miscellaneous Deferred Debits.

2. The deferral authorized herein is for accounting purposes only. Any potential rate recovery of the costs and expenses which Atmos defers as a result of this Order will be addressed in a future proceeding in which Atmos will have the burden to demonstrate that any proposed rate recovery is reasonable.

3. If Atmos's total costs and expenses incurred in connection with the subject environmental cleanup project ultimately exceed their anticipated total of approximately $527,000 by more than five percent, Atmos should inform the Commission of the final amount thereof when that amount has been determined.

IT IS THEREFORE ORDERED that Atmos's request for authority to defer in Account 186, Miscellaneous Deferred Debits, all costs and expenses incurred and to be incurred in connection with the environmental remedial actions at its former coal gasification plant in Owensboro, Kentucky, is approved for accounting purposes only.

Done at Frankfort, Kentucky, this 29th day of September, 2008.

By the Commission

ATTEST:

Executive Director