

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF ATMOS	)	CASE NO.
ENERGY CORPORATION FOR AN ADJUSTMENT	)	2021-00214
OF RATES	)	

ORDER

On June 7, 2022, Atmos Energy Corporation (Atmos) filed a petition, pursuant to KRS 278.400, requesting rehearing of the Commission’s May 19, 2022 final Order, including “clarification” of the proper method to true-up and collect pipeline replacement program (PRP) revenue associated with the period between October 1, 2021, and May 19, 2022.<sup>1</sup> On June 24, 2022, the Commission granted, in part, Atmos’s request for rehearing “to investigate and to allow Atmos to provide the Commission additional support for its assertion that a PRP true-up should be allowed for the collection of PRP revenue for October 1, 2021, through May 19, 2022.”<sup>2</sup> Pursuant to a procedural schedule established for this rehearing, Atmos responded to requests for information from Commission Staff and the Attorney General of the Commonwealth of Kentucky, by and through the Office of Rate Intervention (Attorney General), the only intervenor in this case. Atmos and Attorney General filed briefs in this matter on August 8, 2022. This matter is now before the Commission for a decision on the merits.

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<sup>1</sup> Atmos Energy Corporation’s Petition for Rehearing (filed Jun. 7, 2022) (Atmos’s Rehearing).

<sup>2</sup> Order (Ky. PSC June 24, 2022) at 14, ordering paragraph 2.

## BACKGROUND

Atmos's PRP Rider was first authorized in Case No. 2009-00354 and has been reauthorized and modified in subsequent cases.<sup>3</sup> Atmos's PRP Rider allows it to recover the anticipated impact on its revenue requirement of net plant additions related to certain pipeline replacements not included in base gas rates as offset by operation and maintenance expense reductions during the upcoming fiscal year as well as "a balancing adjustment to reconcile collections with actual investment for the program year from two years prior."<sup>4</sup> Atmos may file its PRP Rider annually on or around August 1 of each year for its upcoming fiscal year, which runs from October 1 through September 30 of each year.<sup>5</sup>

On July 30, 2021, in Case No. 2021-00304, Atmos applied for approval to establish PRP Rider rates for the 12-month period beginning October 1, 2021. However, Atmos proposed to use the return on equity it was simultaneously proposing to use in this case, which was tendered on June 30, 2021, and proposed to expand the PRP Rider to include the revenue requirement impact of net plant additions related to Adly-A replacements as requested in this case. On August 20, 2021, the Commission suspended Atmos's proposed rates in Case No. 2021-00304, pursuant to KRS 278.190(2), for six months up

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<sup>3</sup> See Case No. 2018-00281, *Electric Application of Atmos Energy Corporation for an Adjustment of Rates* (Ky. PSC May 7, 2019), Order at 8–10 (discussing the history of Atmos's PRP mechanism).

<sup>4</sup> See PSC KY. No. 2, Third Revised Sheet No. 38 (effective Oct. 1, 2020); PSC KY. No. 2, Fourth Revised Sheet No. 38 (effective May 20, 2022) (both describing the balancing adjustment in that manner).

<sup>5</sup> See PSC KY. No. 2, Third Revised Sheet No. 38 (effective Oct. 1, 2020); PSC KY. No. 2, Fourth Revised Sheet No. 38 (effective May 20, 2022).

to and including April 1, 2022, because the application included requests that were previously included in this rate case that had yet to be ruled on by the Commission.<sup>6</sup>

In this case, Atmos proposed forecasted rates based on a test year ending December 31, 2022. Among other things, Atmos proposed to include the rate base for its PRP Rider in rate base for its base rates and to reset its rider to \$0.00 through the end of the fiscal year ending September 30, 2022, and as in Case No. 2021-00304, Atmos proposed to expand its PRP Rider to include projects related to the accelerated replacement of Aldyl-A lines.<sup>7</sup> The Commission suspended the proposed rates in this case through February 18, 2022.<sup>8</sup>

In the May 19, 2022 final Order in this matter, the Commission, among other things, granted Atmos's request to roll the PRP Rider into base rates and reset the PRP Rider to \$0.00 through the fiscal year ending September 30, 2022. The Commission further stated that "[t]he inclusion of future Aldyl-A pipelines will be determined on a case by case basis and any PRP applications including Aldyl-A projects should at minimum include safety justifications for such projects."<sup>9</sup> In a May 20, 2022 Order in Case No. 2021-00304, the Commission noted that the holding in this case rendered Atmos's application to revise the PRP Rider rates in that case moot, because the PRP had been incorporated into base rates for the relevant period.<sup>10</sup>

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<sup>6</sup> Case No. 2021-00304, *Electric Application of Atmos Energy Corporation to Establish PRP Rider Rates for the Twelve Month Period Beginning October 1, 2021* (Ky. PSC Aug. 20, 2021), Order.

<sup>7</sup> May 19, 2022 Order at 19.

<sup>8</sup> Order (Ky. PSC July 23, 2021).

<sup>9</sup> May 19, 2022 Order at 59–60.

<sup>10</sup> Case No. 2021-00304, *Atmos Energy Corporation* (Ky. PSC May 20, 2022), Order.

Atmos did not request rehearing of or appeal the May 20, 2022 final Order in Case No. 2021-00304. Rather, in this matter, Atmos requested rehearing, in relevant part, to obtain clarification of the method to true-up and collect annual PRP Rider revenue for the time period of October 1, 2021, through May 19, 2022, pertinent to Case No. 2021-00304,<sup>11</sup> and as noted above, the Commission granted Atmos's request for rehearing, in relevant part, "to investigate and to allow Atmos to provide the Commission additional support for its assertion that a PRP true-up should be allowed for the collection of PRP revenue for October 1, 2021, through May 19, 2022."<sup>12</sup>

Atmos noted that its PRP tariff allows it to file a PRP Rider annually on or around August 1 to recover the revenue effects of incremental PRP investment and that the tariff indicates that such adjustments to the PRP Rider will become effective with meter readings on and after the first billing cycle of October.<sup>13</sup> Atmos argued that while the Commission found its proposed PRP investment to be fair, just, and reasonable there was no recovery of the revenue impact of that investment from October 1, 2021, through May 19, 2022.<sup>14</sup> Atmos argued that it should be permitted to recover the PRP investment from its customers "[i]n order to fully comply with KRS 278.509 and the Company's Tariff."<sup>15</sup> Atmos also argued that its proposed method of recovering the revenue impact as a true-up in its August 1, 2023 PRP filing through the true-up provision in its PRP tariff

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<sup>11</sup> Case No. 2021-00304, *Electronic Application of Atmos Energy Corporation to Establish PRP Rider Rates for the Twelve Month Period Beginning October 1, 2021* (Ky. PSC May 19, 2022).

<sup>12</sup> Order (Ky. PSC June 24, 2022).

<sup>13</sup> Atmos's Rehearing Brief (filed Aug. 8, 2022) at 3.

<sup>14</sup> Atmos's Rehearing Brief at 4.

<sup>15</sup> Atmos's Rehearing Brief at 5.

is reasonable, because it will spread the recovery over 12 months and thereby reduce the per bill impact.<sup>16</sup>

The Attorney General noted that Atmos continued to charge the PRP Rider rates approved in Case No. 2020-00229 from October 1, 2021, through May 19, 2022, such that “the only potential loss Atmos suffered was the increase in the PRP revenue requirement due to its projected incremental PRP spending.”<sup>17</sup> The Attorney General further noted that the Commission did not authorize any PRP spending, recovery, or deferral in Case No. 2021-00304 and that Atmos bore the risk that it would not be permitted to recover any incremental revenue requirement impacts of PRP spending between October 1, 2021, and when rates were placed in effect in this case.<sup>18</sup> The Attorney General asserted that Atmos has not provided a proposal or a methodology to calculate the requested PRP deferral for the period from October 1, 2021, through May 19, 2022, despite multiple requests in discovery on rehearing that it do so.<sup>19</sup> Thus, the Attorney General argued that Atmos failed to meet its burden establishing that it was entitled to the requested deferral and that any deferral would necessarily constitute impermissible retroactive ratemaking.<sup>20</sup>

#### LEGAL STANDARD

KRS 278.160(1) requires each utility to “file with the commission, within such time and in such form as the commission designates, schedules showing all rates and

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<sup>16</sup> Atmos’s Rehearing Brief at 5.

<sup>17</sup> Attorney General’s Rehearing Brief (filed Aug. 8, 2022) at 2–3.

<sup>18</sup> Attorney General’s Rehearing Brief at 4.

<sup>19</sup> Attorney General’s Rehearing Brief at 2-4.

<sup>20</sup> Attorney General’s Rehearing Brief at 4-5.

conditions for service established by it.” KRS 278.160(2) prohibits a utility from charging “greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules.” KRS 278.180 prohibits a utility from increasing a rate in its filed schedules without 30 days’ notice to the Commission or 20 days-notice upon a showing of good cause.

KRS 278.030(1) states that “[e]very utility may demand, collect and receive fair, just and reasonable rates” for utility service. KRS 278.509 states that:

Notwithstanding any other provision of law to the contrary, upon application by a regulated utility, the commission may allow recovery of costs for investment in natural gas pipeline replacement programs which are not recovered in the existing rates of a regulated utility. No recovery shall be allowed unless the costs shall have been deemed by the commission to be fair, just, and reasonable.

The burden of proof to show that an increased rate or charge is just and reasonable shall be upon the utility.<sup>21</sup>

KRS 278.220 states that the Commission may establish a uniform system of accounts (USoA) for utilities. The Commission has also established parameters for expenses which qualify for regulatory asset treatment; the Commission has approved regulatory assets where a utility has incurred: (1) an extraordinary, nonrecurring expense which could not have reasonably been anticipated or included in the utility's planning; (2) an expense resulting from a statutory or administrative directive; (3) an expense in

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<sup>21</sup> KRS 278.190(3).

relation to an industry sponsored initiative; or (4) an extraordinary or nonrecurring expense that over time will result in a saving that fully offsets the cost.<sup>22</sup>

### DISCUSSION AND FINDINGS

When the issue has been specifically addressed, the Commission has not generally allowed a true-up for the periods before a rider was rolled into base rates.<sup>23</sup> The Commission, in granting rehearing, determined that the timing and nature of Case No. 2021-00304 and this case presented novel issues that warranted additional investigation to determine whether, and if so, how any true-up should be applied. However, having reviewed the record and being otherwise sufficiently advised, the Commission agrees with the Attorney General that Atmos failed to establish that it was entitled to the requested deferral.

First, the Commission disagrees with Atmos that its requested true-up is necessary to comply with Atmos's PRP tariff. As noted above, Atmos's PRP tariff authorizes it to include a balancing adjustment in its proposed PRP rider rates "to reconcile collections with actual investment for the program year from two years prior."<sup>24</sup> However, Atmos has previously calculated that adjustment, subject to the Commission's review, by comparing its approved PRP investment and revenue requirement for the relevant PRP year to its

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<sup>22</sup> Case No. 2008-00436, *Application of East Kentucky Power Cooperative, Inc. for an Order Approving Accounting Practices to Establish a Regulatory Asset Related to Certain Replacement Power Costs Resulting from Generation Forced Outages* (Ky. PSC Dec. 23, 2008), Order at 3–4.

<sup>23</sup> See, e.g., Case No. 2021-00185, *Electronic Application of Delta Natural Gas Company, Inc. for an Adjustment of its Rates and a Certificate of Public Convenience and Necessity* (Ky. PSC Jan. 3, 2022), final Order at 21; see also Case No. 2019-00253, *Electronic Application of Atmos Energy Corporation for PRP Rider Rates* (filed July 31, 2019) (in which Atmos did not propose a balancing adjustment for a PRP year in which no PRP rates were approved because Atmos had not requested PRP rates for the relevant PRP year).

<sup>24</sup> See PSC KY. No. 2, Third Revised SHEET No. 38 (effective Oct. 1, 2020); PSC KY. No. 2, Fourth Revised SHEET No. 38 (effective May 20, 2022) (both describing the balancing adjustment in that manner).

actual PRP investment and PRP revenue for that year.<sup>25</sup> The incremental PRP investment and PRP revenue requirement increase that Atmos would seek to recover through the true-up it is proposing was never approved in Case No. 2021-00304.

More importantly, the PRP revenue requirement is calculated on an annual basis, and therefore, the balancing adjustment, or true-up, in the existing tariff is intended to be calculated “for the program year.” i.e. on an annual basis. Atmos’s proposed deferral in this matter would only be for part of the program year, since the PRP investment and associated revenue impact were rolled into base rates during the program year. This would necessarily change the manner in which the balancing adjustment or true-up would need to be calculated, because there would have to be some mechanism for allocating the revenue requirement to portions of the year.<sup>26</sup> Thus, even assuming it would have survived the roll-in, Atmos is not seeking to apply the existing balancing adjustment or true-up, but rather, is seeking to have the Commission create a new deferral to be recovered through the PRP Rider.

The Commission is also not required to authorize Atmos’s proposed deferral to fully comply with KRS 278.509 as asserted by Atmos. KRS 278.509, by stating that “the commission *may* allow recovery of costs for investment in natural gas pipeline

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<sup>25</sup> See Case No. 2021-00304, *Electronic Application of Atmos Energy Corporation to Establish PRP Rider Rates for the Twelve Month Period Beginning October 1, 2021* (filed July 30, 2021), Application.

<sup>26</sup> For instance, prior to the final Order in this case, the PRP consisted of both volumetric and flat rates such that the balancing adjustment would true-up PRP revenue for a program year based on differences in annual sales and customer counts throughout the year. Because any PRP rate base was rolled into the rate base used to calculate base rates as of May 19, 2022, it would not be possible to true-up the revenue based on actual annual sales. Rather, it would be necessary to apportion portions of the revenue requirement to certain periods. Further, even the annualized true-up of the flat rates in the PRP rate would have to be adjusted to account for the base rates going into effect during the PRP program year.



replacement programs,” (emphasis added)<sup>27</sup> gives the Commission permissive authority to authorize recovery of pipeline replacement costs through a pipeline replacement rider but does not require the Commission to allow such recovery through a rider. In fact, the only explicit requirements in KRS 278.509 are limitations on the Commission’s authority that prohibit it from authorizing the recovery of such costs unless the costs are deemed to be fair, just and reasonable by the Commission and are not recovered in existing rates.

Here, a true-up of the PRP program year beginning in October 2021 could result in the double recovery of costs associated with PRP investment in a manner inconsistent with KRS 278.509. The revenue requirement for the 2021-2022 PRP program year would include costs such as the depreciation expense and the return, or cost of capital, associated with PRP investment prior to October 2021<sup>28</sup> and in each month from October 2021 through September 2022. The revenue requirement used to calculate base rates approved in this case includes the costs, including depreciation expense and the return, associated with all PRP investment through September 2022, which means both revenue requirements would include depreciation expense and the return, or the cost of capital, for the same property. Further, Atmos began charging base rates that included the PRP spending during the PRP program year. Thus, Atmos would recover the same expenses through the true-up and base rates if the true-up does not appropriately account for costs associated with PRP investment accrued during the PRP program year that were also included in base rates and recovered during the PRP program year.

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<sup>27</sup> KRS 278.509 (emphasis added).

<sup>28</sup> This prior PRP investment would include any investment since PRP rate base was last rolled into base rates through the end of September 2019.

Atmos has not explained how its proposed true-up of the program year beginning October 2021 would be calculated. For instance, Atmos was asked how the true-up would be calculated such that amounts included in base rates are excluded from the calculation, and Atmos responded that:

The Company proposes to calculate the true-up amount in accordance with the tariff calculations submitted in the PRP, however due to the Commission's abeyance, no PRP rate change occurred on October 1, 2021 so the revenues, when compared to the investment, are anticipated to be lower than as filed thus creating a true-up for the average PRP investment for Fiscal 2022.<sup>29</sup>

As an example of the true-up calculation, Atmos attached schedules like those filed with the PRP filing in Case No. 2021-00304 with the only apparent differences being a slight decrease in the PRP plant in service and the PRP rate of return.<sup>30</sup>

As noted above, the PRP rate was eliminated and the PRP rate base was rolled into the rate base for base rates during the program year. For that reason, indicating that the true-up will be calculated in accordance with the tariff calculations does not explain how the true-up will be calculated much less how the calculation of the true-up will ensure that the same costs are not recovered through the true-up and through base rates that went into effect during the program period. Thus, the Commission finds that Atmos failed to establish that its proposed true-up of the PRP revenue requirement for the October 2021 program year is just and reasonable and consistent with the requirements of KRS 278.509, and therefore, finds that Atmos's request for the true-up should be denied.

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<sup>29</sup> Atmos's Response to Commission Staff's Rehearing Request for Information (Staff's Rehearing Request) (filed July 25, 2022), Item 1.

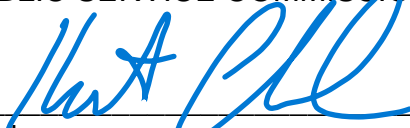
<sup>30</sup> Atmos's Response to Staff's Rehearing Request, Item 1; see also Case No. 2021-00304, *Application of Atmos Energy Corporation to Establish PRP Rider Rates for the Twelve Month Period Beginning October 1, 2021* (filed July 30, 2021), Application.

IT IS THEREFORE ORDERED that:

1. Atmos's request for a true-up of the October 2021 to September 2022 PRP program year is denied.
2. No true-up of the October 2021 to September 2022 PRP program year shall be permitted.
3. This matter is removed from the Commission's docket and closed.

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PUBLIC SERVICE COMMISSION

  
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Vice Chairman

  
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