

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

OFFICE OF THE ATTORNEY GENERAL
COMMONWEALTH OF KENTUCKY

Complainant

v.

ATMOS ENERGY CORPORATION

Respondent

: Case No. 2005-00057
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RECEIVED

FEB 13 2007

PUBLIC SERVICE
COMMISSION

ATTORNEY GENERAL'S MOTION TO HOLD
PROCEDURAL SCHEDULE IN ABEYANCE

Comes now the Attorney General, by and through his Office of Rate Intervention, and hereby moves the Commission to hold the procedural schedule in the above-styled matter in abeyance.

In support of this motion, the Attorney General states that the Commission on Friday, February 9, 2007 issued an order which: (a) denied the motion of Atmos Energy Corporation to dismiss the Attorney General's complaint in the instant proceeding; and (b) established a revised procedural schedule in this case. The Attorney General attaches a copy of the February 9th order hereto as "Exhibit A."

The Attorney General has employed experts in the instant matter, which are the same experts being employed in Atmos' rate case, case no. 2006-00464. Also on February 9, 2007, the Commission issued a procedural order in 2006-00464. The Attorney General attaches a copy of said order hereto as "Exhibit B."

The temporal proximity of the deadlines set forth in the procedural orders governing the two cases makes it impossible for the Attorney General's experts to provide the services needed to proceed in the instant case, while at the same time both providing services in case no. 2006-00464, and abiding by multiple other prior commitments.

Furthermore, the Attorney General's principal expert in both cases, Mr. Robert Henkes, is scheduled to be outside of the country from March 17 through March 25th of this year. Under the deadlines set forth in the current procedural orders, Mr. Henkes would have only five (5) days to review and analyze supplemental data requests in case no. 2006-00464, while in the same time frame having to review and analyze Atmos' responses in the instant case.

The timing of the procedural orders has thus worked an impossibility for the Attorney General's experts, even assuming they work 24 hours per day.

Moreover, the Attorney General is currently actively involved in several other rate cases and other cases requiring extensive expenditure of time and other resources: Eastern Kentucky Power Cooperative Rate Case ["EKPC"] (2006-00472) together with flow-through rate cases for all sixteen (16) of the EKPC member cooperatives; Columbia Gas of Kentucky Rate Case (2007-00008); Inter-County RECC Rate Case (2006-00415); EKPC Integrated Resource Plan (2006-00017); Motion to Revoke Buzz Telecom's Certificate of Public Convenience and Necessity (2007-00068); Fleming-Mason RECC Rate Case (2007-00022); Meade County RECC Rate Case (2006-00500); Bluegrass Energy Rate Case (2007-00031);


Hardin County Water District No. 1 (2006-00410); and Northern Kentucky Water District (2006-00398).

While the Attorney General desires the complaint case to proceed expeditiously, the procedural schedule ordered by the Commission would deny the Attorney General meaningful participation in this case given the almost impossible litigation workload before him.

For these reasons, the Attorney General respectfully requests that the Commission hold the procedural schedule in the instant matter in abeyance, pending resolution of the Atmos rate case (2006-00464).

Respectfully submitted,

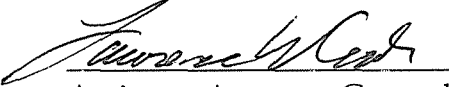
GREGORY D. STUMBO
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Notice of Serving and Filing in Paper and Electronic Medium

Per Instruction 2 (d) of the Commission's 3 March 2006 Order, Counsel submits for filing, by hand delivery to Beth O'Donnell, Executive Director, Public Service Commission, 211 Sower Blvd., Frankfort, KY 40601, the original and five copies of the document in paper medium. Counsel also submits a copy of the document in electronic medium by e-mailing the document to pscfilings@ky.gov and Beth.O'Donnell@ky.gov. 13 February 2007 is the date for the filing and service in paper and electronic medium.

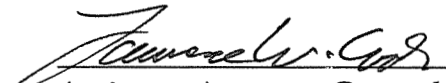

Assistant Attorney General

Certificate of Service

Per Instructions 2 (d) and 8 the 3 March 2006 Order, Counsel certifies service of a true and correct photocopy of the document by mailing the photocopy, first class postage prepaid, to the following:

John N. Hughes
124 West Todd St.
Frankfort, KY 40601

Counsel further certifies, per Instructions 2 (e) and 9, service of an electronic version of the document by electronic mail to the following: jnhughes@fewpb.net; randy@whplawfirm.com; gary.smith@atmosenergy.com; and douglas.walther@atmosenergy.com. Service was made this 13th day of February 2007.


Assistant Attorney General

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

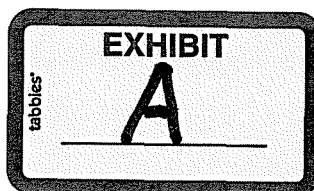
OFFICE OF THE ATTORNEY GENERAL)	
COMMONWEALTH OF KENTUCKY)	
)	
COMPLAINANT)	
)	
V.)	CASE NO. 2005-00057
)	
ATMOS ENERGY CORPORATION)	
)	
DEFENDANT)	

O R D E R

On November 17, 2006, Atmos Energy Corporation ("Atmos") moved the Commission to dismiss this proceeding and to suspend immediately the procedural schedule. On November 28, 2006, the Commission entered an Order suspending the procedural schedule to allow the Attorney General, by and through his Office of Rate Intervention ("AG"), the opportunity to respond to Atmos's motion. The AG responded on November 29, 2006 and the movant replied on December 7, 2006. The motion to dismiss has been properly briefed and stands submitted for decision.

In support of its motion to dismiss, Atmos stated that the period designated by the Commission for review of Atmos's earnings is too remote from current operating conditions to be an appropriate gauge of Atmos's financial condition.¹ It stated that it

¹ The Commission established a 12-month test period ending September 30, 2005 as the test period to be used for review of Atmos's rates in this proceeding.



has given notice of its intent to file a forecasted test-year rate case on or shortly after December 1, 2006² and that the period proposed for review in the new rate case would be a more accurate depiction of its financial condition. Atmos further argued that reviewing its financial condition using the more recent test period through its rate application would address the AG's arguments that he is unable to make pro forma adjustments due to the lack of available information. Atmos also argues that "[e]ven if the Commission were to determine a rate that might be appropriate based on the historical information developed in the Complaint case, that rate could not be imposed on Atmos, because it would result in a retroactive reduction of its earnings and violate the rule against retroactive ratemaking."

The AG countered these arguments stating: (1) that it is inappropriate for Atmos to complain, 1-1/2 years into the proceeding, that the test period is too remote; (2) that rates established based on the test period ending September 30, 2005 would not constitute retroactive rate-making as they would be set prospectively; and (3) that the issue before the Commission in this proceeding is not relevant to the issue before the Commission in Atmos's recently filed rate proceeding. He further argued that his inability to make pro forma adjustments due to lack of information does not constitute grounds for dismissal as he does not bear the burden of proof in this proceeding. He stated that once the Commission determined that he had established a *prima facie* case, the Commission was required by KRS 278.260 to conduct the investigation into Atmos's earnings.

² The Commission accepted Atmos's application for a rate adjustment on January 16, 2007.

The Commission has reviewed the briefs filed by the parties and finds that Atmos's motion to dismiss should be denied and that the remainder of the procedural schedule suspended by our Order of November 28, 2006 should be reinstated with amended due dates.

The Commission agrees with the AG that the issue in this proceeding - whether Atmos was over-earning at the end of the 12-month period ending September 30, 2005 - is different from the issue of whether it would be appropriate to adjust Atmos's rates at the conclusion of its recently filed rate proceeding. We also agree with the AG that the imposition of a rate adjustment at the conclusion of this proceeding will not violate the prohibition against retroactive rate-making as any rate adjustment that might be ordered will be prospective only. As the Commission explained in Case No. 1995-00011:³

The rule against retroactive ratemaking is a 'generally accepted principle of public utility law which recognizes the prospective nature of utility ratemaking and prohibits regulatory commissions from rolling back rates which have already been approved and become final.' . . . It further prohibits regulatory commissions when setting utility rates, from adjusting for past losses or gains to either the utility consumers, or particular classes of consumers.

Moreover, the Commission finds that it is specifically authorized by KRS 278.270 to make prospective adjustments to rates if it finds that the rates are unjust, unreasonable, insufficient, unjustly discriminatory or otherwise in violation of any provisions of KRS Chapter 278.

The Commission disagrees with the AG's contention that he does not bear the burden of proof in this proceeding. The AG argues that, pursuant to KRS 278.260, once

³ Case No. 1995-00011, Kentucky Industrial Utility Customers, Inc. v. Big Rivers Electric Corporation (Ky. PSC April 1, 1997).

the Commission determined that his complaint established a *prima facie* case, the complaint became an investigation by the Commission and he was relieved of his burden of proof. The Court of Appeals of Kentucky clearly stated in *Energy Regulatory Commission v. Kentucky Power Company*,⁴ that “[a]pplicants before an administrative agency have the burden of proof.” While the term “applicant” is not defined in KRS Chapter 278, it is generally held to mean “[o]ne who requests something; a petitioner....”⁵ The Commission finds that the AG is the applicant in this proceeding and that, contrary to his arguments, nothing in the language of KRS 278.260 relieves him from his burden of proof.

IT IS THEREFORE ORDERED that:

1. Atmos’s motion to dismiss is denied.
2. The procedural schedule set forth in Appendix A to this Order shall be followed.

Done at Frankfort, Kentucky, this 9th day of February, 2007.

By the Commission

ATTEST:


Executive Director

⁴ Ky. App., 605 S.W. 2d 46, 50 (1980).

⁵ Black’s Law Dictionary, 96 (7th ed. 1999).

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2005-00057 DATED February 9, 2007.

Atmos shall file testimony, in verified form, no later than..... 02/23/07

All requests for information to Atmos shall be filed no later than..... 03/09/07

Atmos shall file responses to requests for information no later than 03/19/07

AG shall file rebuttal testimony, in verified form, no later than..... 03/29/07

Last day for Atmos to publish notice of hearing..... To be scheduled

Public Hearing shall begin at 9:00 a.m., Eastern
Time, in Hearing Room 1 of the Commission's
offices at 211 Sower Boulevard, Frankfort, Kentucky,
for the purpose of cross-examination of witnesses of
the AG and Atmos To be scheduled

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF ATMOS ENERGY)	CASE NO.
CORPORATION FOR AN ADJUSTMENT)	2006-00464
OF RATES)	

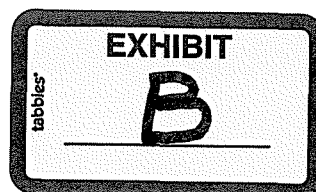
O R D E R

On December 28, 2006, Atmos Energy Corporation ("Atmos") submitted an application to the Commission requesting authority to adjust its rates utilizing a forward-looking test period. The application failed to meet certain filing requirements and was rejected for filing, pursuant to 807 KAR 5:001, Section 2(2), by letter dated January 10, 2007. In response to the rejection notice, Atmos submitted additional information on January 16, 2007.

Based on a review of the additional information supplied by Atmos, the Commission finds that the deficiencies noted in our January 10, 2007 letter have been cured, and that Atmos's application should be considered filed as of January 16, 2007.

Atmos originally proposed that its rates become effective on February 1, 2007. When it filed the additional information on January 16, 2007, Atmos submitted revised tariffs with a proposed effective date of February 16, 2007.

Based on a review of Atmos's rate application, the Commission finds that an investigation will be necessary to determine the reasonableness of the proposed rates and that the investigation cannot be completed by February 16, 2007. Therefore,



pursuant to KRS 278.190(2), the Commission will suspend the effective date of the proposed rates for 6 months.

IT IS THEREFORE ORDERED that:


1. Atmos's application is considered filed as of January 16, 2007.
2. Pursuant to KRS 278.190(2), Atmos's proposed rates are suspended up to and including August 15, 2007.
3. The procedural schedule set forth in Appendix A, which is attached hereto and incorporated herein, shall be followed.
4. All requests for information and responses thereto shall be appropriately indexed. Any request for information by letter from the Commission Staff shall be responded to as if set forth in a Commission Order. All responses shall include the name of the witness who will be responsible for responding to the questions related to the information provided, with copies to all parties of record and 7 copies to the Commission.
5. Any party filing testimony shall file an original and 10 copies.
6. Atmos shall give notice of any hearing in accordance with the provisions set out in 807 KAR 5:011, Section 8(5). At the time publication is requested, Atmos shall forward a duplicate of the notice and request to the Commission.
7. At any public hearing in this matter, neither opening statements nor summarization of direct testimonies shall be permitted.
8. The Commission does not look favorably upon motions for continuance. Accordingly, motions for extensions of time with respect to the schedule herein shall be made in writing and will be granted only upon a showing of good cause.

9. Nothing contained herein shall prevent the Commission from entering further Orders in this matter.

Done at Frankfort, Kentucky, this 9th day of February, 2007.

By the Commission

ATTEST:


Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2006-00464 DATED February 9, 2007

- All initial requests for information to Atmos shall
be filed no later than.....02/23/07
- Atmos shall file responses to initial requests for
information no later than.....03/16/07
- All supplemental requests for information to Atmos
shall be filed no later than03/30/07
- Atmos shall file responses to supplemental requests
for information no later than04/13/07
- Intervenor testimony, if any, in verified prepared form
shall be filed no later than04/27/07
- Pursuant to KRS 278.192(2)(b), actual results for the estimated
months of the base period shall be filed no later than05/15/07
- All requests for information to Intervenors shall be
filed no later than.....05/18/07
- Intervenors shall file responses to requests for
information no later than.....06/01/07
- Pursuant to 807 KAR 5:001, Section 10(8)(d), last day
to file corrections of mathematical errors in the forecasted
test period or revisions reflecting statutory or regulatory
enactments that could not, with reasonable diligence,
have been included in the forecast on the date it was filed06/08/07
- Atmos shall file rebuttal testimony, in verified
form no later than06/15/07
- Last day for Atmos to publish notice of hearing.....07/03/07
- Public Hearing is to begin at 9:00 a.m., Eastern
Daylight Time, in Hearing Room 1 of the Commission's
offices at 211 Sower Boulevard, Frankfort, Kentucky,
for the purpose of cross-examination of witnesses of
Atmos and Intervenors07/10/07
- Briefs, if any, shall be filed by08/13/07