

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

O R D E R

The Attorney General, by and through his Office of Rate Intervention ("AG"), moved the Commission to hold this proceeding in abeyance pending resolution of Atmos Energy Corporation's ("Atmos") rate adjustment case, Case No. 2006-00464.<sup>1</sup> Upon review of that motion, the Commission directed each party to brief the issue of whether granting the AG's request for abeyance would render his complaint proceeding moot. Both parties filed timely briefs and the motion stands submitted for decision.

Atmos contends that the AG's complaint will be rendered moot once the Commission renders its decision in the pending rate case. It states that the complaint alleged that the rates established by the Commission in Case No. 1999-00070<sup>2</sup> were no longer reasonable. It asserts that once the Commission renders its decision in Atmos's

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<sup>1</sup> Case No. 2006-00464, Application of Atmos Energy Corporation For an Adjustment of Rates.

<sup>2</sup> Case No. 1999-00070, The Application of Western Kentucky Gas Company For an Adjustment of Rates (Ky. PSC Dec. 21, 1999).

pending rate case, the rates established in Case No. 1999-00070 will have been replaced and no further investigation on the reasonableness of those rates may be conducted.

The AG concentrated his brief on the Commission's actions in this proceeding that he contends have precluded him from being able to establish that Atmos is over-earning. He states that the filed rate doctrine would prevent the Commission from ordering a reduction of rates in this proceeding at the conclusion of the new rate proceeding,<sup>3</sup> but continues to request that his complaint be held in abeyance until that time. He states that he "simply cannot complete the task which the Commission demands of him under the current procedural schedule."<sup>4</sup> He stated that he requested abeyance because his principal expert will be out of the country and because of his extraordinarily heavy workload.

Despite his motion to hold the matter in abeyance, the AG, in his brief on that issue, renewed his previous requests that the Commission require Atmos to submit pro forma adjustments and reconsider its previous decision that the AG bears the burden of proof. We decline to grant these requests based on the findings previously made on these issues.

While the Commission notes that the initial review of the complaint filed herein was slow in being completed, we also note that Commission Staff proffered a procedural schedule at the February 14, 2006 informal conference that would have

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<sup>3</sup> See Attorney General's Brief Regarding Motion to Hold Procedural Schedule in Abeyance at 8.

<sup>4</sup> *Id.* at 10.

permitted this case to be completed within the time frame of a general rate adjustment case and prior to the 2006/2007 heating season.<sup>5</sup> The AG rejected Staff's proffered procedural schedule and proposed his own, which the AG and Atmos adjusted at the informal conference to arrive at the procedural schedule that the Commission adopted in its March 3, 2006 Order. The Commission held the agreed procedural schedule in abeyance in November 2006 in order to give the AG the opportunity to respond to Atmos's motion to dismiss. Upon denial of Atmos's motion to dismiss, the Commission instituted a procedural schedule that would still permit this proceeding to be completed and any potential rate reduction to be effected prior to the implementation of new rates in Atmos's general rate adjustment case.

The rule against retroactive rate-making 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."<sup>6</sup> It further prohibits regulatory commissions from "setting future rates to allow a utility to recoup past losses or to refund to consumers excess utility profits."<sup>7</sup> The Commission finds that if it grants the AG's motion to hold this matter in abeyance as requested, it will be prohibited by the rule against retroactive rate-making from ruling on the alleged issue of over-earning during the period of review established for this proceeding. Therefore, the Commission finds that the AG's motion

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<sup>5</sup> See Informal Conference Memorandum, Appendix B.

<sup>6</sup> *MGTC Inc. v. Pub. Serv. Comm'n*, 735 P.2d 103, 107 (Wyo. 1987).

<sup>7</sup> *Pacificorp v. Pub. Serv. Comm'n*, 103 P.3d 862, 874 (Wyo. 2004).

to hold this proceeding in abeyance pending the conclusion of Case No. 2006-00464 should be denied.

The Commission further finds that the AG's workload is not sufficient reason to hold this case in abeyance until the case otherwise becomes moot. The Commission finds, therefore, that this case should proceed so that a decision may be rendered in this proceeding before the implementation of new rates in Case No. 2006-00464. The Commission recognizes, however, that while the AG's motion was pending decision, the procedural schedule continued in effect and that the AG did not propound a data request to Atmos on March 9, 2007 as provided in the schedule. Finding that the AG may have believed his motion for abeyance tolled the procedural schedule, the Commission will amend the procedural schedule to allow data requests to be propounded to Atmos and to allow Atmos time to respond.

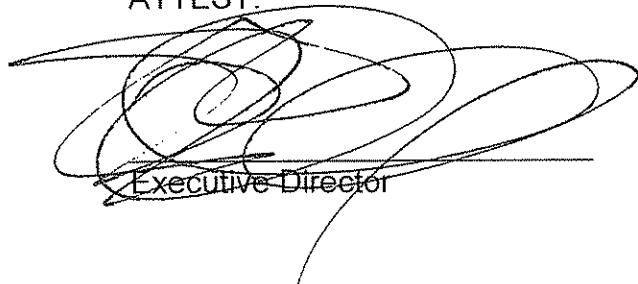
IT IS THEREFORE ORDERED that:

1. The AG's motion to hold this proceeding in abeyance pending final resolution of Case No. 2006-00464 is denied.
2. The procedural schedule attached hereto as Appendix A shall be followed for the remainder of this case.

Done at Frankfort, Kentucky, this 30th day of March, 2007.

By the Commission

ATTEST:



Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2005-00057 DATED March 30, 2007.

All requests for information to Atmos shall  
be filed no later than .....04/09/07

Atmos shall file responses to requests for  
information no later than .....04/16/07

AG shall file rebuttal testimony, in verified  
form, no later than.....04/23/07

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