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November 1, 2010

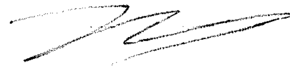
Honorable Jeff Derouen
Executive Director
Kentucky Public Service Commission
211 Sower Blvd.
PO Box 615
Frankfort, Kentucky 40602

RE: Case No. 2010-00146 – An Investigation of Natural Gas Retail Competition Programs - Brief of Atmos Energy

Dear Mr. Derouen:

I enclose herewith an original, plus eleven (11) copies, of Atmos Energy Corporation's Brief in connection with the above referenced case.

Very truly yours,



Mark R. Hutchinson

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE COMMISSION

In the Matter of:

An Investigation of Natural Gas Retail Competition Programs	**)** **)**	**Case No. 2010-00146**

BRIEF OF ATMOS ENERGY CORPORATION

INTRODUCTION

Pursuant to House Joint Resolution 141, the Kentucky Public Service Commission ("Commission") initiated this proceeding on April 19, 2010. The resolution directed the Commission to evaluate natural gas retail competition programs to determine whether they could be crafted to benefit Kentucky consumers. All jurisdictional natural gas distribution utilities with 15,000 or more customers were made parties to the proceeding ("LDCs"). Various parties subsequently intervened, including third party gas suppliers/marketers and consumer advocate groups. Pursuant to the Commission's procedural order, the parties submitted prefiled testimony and responded to data requests from the Staff and parties. Following extensive discovery, a public hearing was held before the full Commission on October 19 and October 20, 2010. The parties were afforded the opportunity to file post hearing briefs, pursuant to which this brief is tendered by Atmos Energy Corporation ("Atmos").

House Joint Resolution 141 and the Commission's order initiating this proceeding, both contemplated an evaluation of natural gas retail competition programs. For purposes of this proceeding, those programs fell into two distinct categories: (1) "Customer Choice" programs which

relate to programs designed to enable residential customers to procure their gas supply from third party suppliers (sometimes referred to herein as "Customer Choice"); and, (2) small volume transportation programs which are designed to facilitate the use of third party gas suppliers by smaller volume, commercial transportation customers (sometimes referred to herein as the "Small Volume" programs).

CUSTOMER CHOICE

The fundamental issue facing the Commission is whether the major LCDs in this state should be compelled to offer "Customer Choice" programs to their residential customers. There were sharply differing opinions presented on this issue during the proceeding, as well as conflicting interpretations of statistical data. Atmos will not undertake in this brief to argue the specifics of all of these conflicting opinions and statistics. There is probably testimony or statistical data somewhere in the record that arguably supports (albeit to varying degrees) every position being advanced by the parties. It will be the Commission's difficult job to analyze and evaluate all of that evidence. When doing so, Atmos urges the Commission to carefully weigh the likely advantageous/benefits of mandated statewide Customer Choice programs against the likely costs/risks to the various groups who would be affected.

There are no less than four (4) groups with competing interests in this proceeding all of whom will be affected, for better or worse, by a statewide mandated "Customer Choice" program: (1) the residential consumers actually participating in the program; (2) the LDCs and their non-participating ratepayers; (3) municipalities; and, (4) the marketers. Of these groups, who are the likely "winners" and who are the likely "losers" if Customer Choice programs are mandated?

A. CONSUMERS PARTICIPATING IN THE PROGRAM ("PARTICIPANTS").

Advocates of Customer Choice programs typically lead with the argument that competition results in lower prices for consumers. Certainly, on the surface, the concept that "competition" leads to lower prices sounds good and is a compelling selling point. However, an analysis of the actual results of these "Customer Choice" programs, both here

in Kentucky and in other states, seems to prove up the old adage that not all that glitters is gold.

Columbia Gas has had a Customer Choice program since 2000. We therefore have the "benefit" of a ten (10) year old pilot program to be able to judge whether or not the Participants in that program have actually saved money. On a cumulative basis, the Participants in Columbia's program have collectively paid over $17,000,000.00 more for their natural gas than they would have paid had they purchased their gas through Columbia's traditional sales program. This should not be too surprising since under the Kentucky regulatory framework, all LDCs sell gas at cost. There is no markup or margin. Marketers, of course, are free to markup their price of gas to cover overhead and profit.

Illinois is another example of dismal results in terms of gas cost savings for Participants. The Illinois Consumer Utility Board estimated that over 92% of the Participants in Illinois have lost money by participating in Customer Choice programs. Further examples from additional states are in the record in this proceeding.

On the other hand, the Customer Choice proponents will argue that in other states and for other time periods, Participants have saved money. Certainly that has also occurred from time to time in various programs. However, one thing is for sure, there is no guarantee of gas cost savings under any of these programs. Accordingly, even viewed in the light most favorable to the Customer Choice proponents, whether Participants will actually spend less for their gas over the long term is questionable at best.

The second justification advanced by Customer Choice proponents in this proceeding is that consumers can be provided with various pricing options (e.g. a fixed mcf price for a stated period) under Customer Choice that are not currently made available to consumers by the LDCs.

To the extent the Commission believes it is advantageous for residential consumers to be provided such pricing options, then certainly the LDCs can be authorized, or for that matter, ordered to propose alternative pricing plans for its customers. If the Commission believes a significant number of residential consumers want these alternative pricing options, they can be made available by the LDCs without mandating radical changes to a system that has worked so well for so long in this Commonwealth.

In summary, insofar as the advantageous/benefits to Participants in Customer Choice programs are concerned, the record, taken as a whole in this proceeding, establishes that: (1) with certainty in Kentucky, Participants in Columbia's Customer Choice program have spent millions of dollars more, cumulatively, for natural gas than they would have spent in the traditional program; (2) in all other states, even when viewed in the light most favorable to the proponents of Customer Choice programs, the gas costs savings to Participants over the long term is questionable at best; and, (3) to the extent the Commission believes that alternate pricing options for consumers should be evaluated and if appropriate, implemented, that can be accomplished by the LDCs without making significant changes to the entire system - which would be required if Customer Choice programs are mandated.

So, those are the potential "benefits" to Participants. What about the other side of the equation? What are the potential risks to Participants? First and foremost, and as borne out in Kentucky, there is a real and substantial risk Participants will pay significantly more for natural gas purchased through Customer Choice marketers than they would if they purchased their natural gas through the traditional LDC system. The likelihood of Participants paying more for their gas under a Customer Choice program is heightened by the lack of sophistication most residential customers possess in natural gas pricing and

trends – especially when coupled with the risk of Participants being misled and confused by overly aggressive and/or dishonest marketers. Potential abuse in Customer Choice programs was, if not expressly, then at least implicitly, acknowledged by all parties to this proceeding. Even the pro-Customer Choice witnesses acknowledged that an extensive amount of regulatory oversight is absolutely essential . However, even with extensive oversight, consumer confusion and abuse nevertheless continue to occur. This was made clear by the testimony of Mr. Jack E. Burch, Executive Director of the Community Action Council, who testified that notwithstanding the safeguards implemented by Columbia in their program, many of the people he works with were consistently misled and confused by marketers. Based on his personal experience, Mr. Burch was opposed to Customer Choice programs.

In summary, insofar as the Participants in these programs are concerned, although there is some potential for gas cost savings and for flexibility in pricing plans, there is a much greater likelihood that Participants will actually pay more over the long term. Atmos respectfully submits therefore that the potential benefits to Participants are far outweighed by the likely risks.

B. LDCs AND THEIR NON-PARTICIPATING RATEPAYERS.

What does a risk/reward analysis reveal for the LCDs and their non-participating ratepayers under Customer Choice programs? As to the LDCs themselves, since there is no markup on the gas it sells its customers, Customer Choice programs do not pose a direct threat of a loss of "profit" or "margin" on the sale of gas. The LDCs will continue to be paid for all non-gas cost charges under their tariffs. There are, however, indirect risks to LDCs and more importantly, to their ratepayers posed by Customer Choice programs. These

include risks of higher operating costs, higher gas costs and decreased reliability, all to the potential detriment of ratepayers.

As to the risk of higher operating costs and higher gas costs, extensive evidence was presented pertaining to transition costs, stranded costs, supplier of last resort costs, increased billing costs, uncollectible costs, and customer education/handling costs. To the extent these are not all assumed by the marketers and Participants, they will have to be borne by the LDC and its ratepayers and will therefore increase operating costs. In addition, significant migration of traditional sales customers to Customer Choice programs could reduce the ability of LDCs to obtain the best wholesale gas cost for all of their ratepayers because of diminished purchasing power.

Another risk to LDCs and their other ratepayers under Customer Choice programs is a potential decrease in the reliability of service. Under the traditional structure in Kentucky, LDCs have a well defined and well established duty or obligation to serve all of its customers, including the obligation to ensure that an adequate supply of gas is always available for its customers at all times. However, the very commodity that LDCs have traditionally been obligated to provide its customers would no longer be subject to control and oversight by the LDC under Customer Choice programs. Much proof in this proceeding was presented about the importance of the LDC maintaining adequate system supply and how that duty can be interfered with by third party suppliers of natural gas in Customer Choice programs, including poor and inaccurate forecasting by such third party suppliers. These risks are real and the Commission is urged to carefully weigh such risks in evaluating the risks/rewards for the LDCs and their ratepayers of mandating these programs. As there are no or few apparent benefits (rewards) to the LDCs and non-participating ratepayers

under these programs, only a relatively small degree of risk should be necessary to tip the scales against making these programs compulsory for this group.

C. MUNICIPALITIES.

There was contradictory testimony as to the effect mandated Customer Choice programs may have on the revenue municipalities receive under existing franchise agreements with LDCs. Therefore, at a minimum, a significant issue concerning this matter clearly exists. In Atmos' case, its standard franchise agreement with the municipalities requires the payment of a percentage of its revenues for all natural gas sold to residents of the municipalities. If that gas is sold by a third party supplier who does not have a franchise agreement with the municipality, it is likely the municipality would not receive any revenue on the gas sold by the marketer. Accordingly, as with the Participants in the Customer Choice programs, the LDCs and their non-participating ratepayers, municipalities are also likely "losers" under Customer Choice mandated programs.

D. **THIRD PARTY SUPPLIERS/MARKETERS**.

What are risks and rewards for the marketers? As to risks, other than normal business risks that all private for profit companies face, there are no apparent risks to marketers if Customer Choice is mandated. In fact, the marketers are actually the only group, out of the groups that would be affected, who clearly stand to profit and benefit from these programs. Although there is certainly nothing wrong for a marketer to make a profit, there is something inherently wrong when it wants virtually everyone else involved to assume most of the risks and absorb much of the costs, so it alone can make a profit.

The Commission is also urged to bear in mind that there clearly is no ground swell of Kentucky consumers requesting "choice" in their natural gas purchases. In fact, all of the consumer advocate interveners in this proceeding, have provided testimony in opposition to

Customer Choice programs. The reason is simple. The potential benefit to consumers under these programs are far outweighed by the risks inherent in these programs.

SMALL VOLUME TRANSPORTATION

Atmos has offered transportation only service for its large industrial customer for many years. Conceptually, Atmos is not opposed to offering transportation only services to its smaller industrial and commercial customers as long as it makes economic sense for those customers and the company and its other ratepayers. Atmos' threshold for customers wishing to participate in transportation only services is 9,000mcf per year. This threshold has been in place for several years. As stated in Mark Martin's pre-filed testimony and in his cross examination testimony, Atmos believes its 9,000 mcf threshold is appropriate for several reasons. First, Atmos has 30 customers who purchase more than 9,000 mcf per year and therefore qualify for transportation only service under Atmos' existing tariffs. None of these customers, however, have requested to convert from sales to transportation. As to those customers consuming less than 9,000 mcf per year, Atmos has not received any request to lower the threshold. Given that there are more than 30 customers above the threshold who have not switched to transportation and given the further fact that none of its commercial customers utilizing less than 9,000 mcf per year have requested the threshold to be lowered, Atmos believes its threshold remains appropriate and should not be changed.

Stand Energy, who has been the primary proponent of lowering the LDCs volumetric thresholds (and/or reducing the administrative fees) presented no testimony or evidence that it, or anyone it was working with, was ever denied transportation service by Atmos because the volumetric threshold was not met. This is not, and has not, been an issue in Atmos' service area. Accordingly, Atmos believes that in the absence of any evidence or testimony indicating a need to lower the threshold, the current threshold should be maintained.

As to the other LDCs, the evidence in this proceeding did not indicate a ground swell of customer interest in removing their alleged "barriers" to transportation services for smaller volume customers. Of the half a dozen or so members of the public who spoke at the commencement of the public hearing, one was a part owner of Stand Energy and of the rest, most, if not all, had been recruited and transported to testify at the hearing by Stand Energy.

It is also important to note that in Atmos' most recent rate case, neither Stand Energy nor any other third party supplier, intervened for the purpose of requesting a change to Atmos' transportation tariff that sets the 9,000 mcf threshold and establishes the $50.00 per month administrative fee. Based upon the testimony at the public hearing, it does not appear that either Stand Energy or any other marketer, intervened in any of the other LDCs recent rate case proceedings seeking a change in the transportation tariff terms for small volume users. This would seem to be a pretty good indication that there is not much demand or need for compelling the LDCs to reduce their volumetric thresholds or lower their administration fees.

Atmos respectfully submits that given the unique makeup of each of the LDCs demographic customer base and other factors, rather than making wholesale state wide changes to the terms and conditions governing transportation services for commercial users, the issue should be dealt with on a utility by utility basis. In Atmos' case, there has simply been no demand or request for any change in its volumetric threshold or administrative fee. If and when Atmos does receive such a request it will work diligently with the customer and the customer's third party gas supplier to try to accommodate the wishes and best interest of the customer. If need be, appropriate changes to Atmos' existing tariffs could be proposed and evaluated by the Commission.

However, to make a wholesale radical change to the system and to mandate a "cookie cutter" approach to small volume transportation customers for all utilities is, it is respectfully submitted, unnecessary and would be unwise.

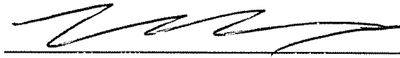
COMMISSION

When evaluating this program, it is also important to emphasize that the decision to mandate customer choice programs state wide would, by all accounts, necessitate the Commission implementing extensive rules and regulations governing the marketing of natural gas to residential customers by third party suppliers. This would range from enacting appropriate regulations to handling consumer complaints, overseeing regulatory marketing and advertisements, certification of the marketers, determination of their reliability and financial stability, etc. The additional cost for all this work and oversight might be justifiable if there was a significant likelihood of substantial natural gas costs savings under the Customer Choice programs for Kentucky's consumers. However, the outlook is quite the opposite and therefore it is respectfully submitted that imposition of the additional costs and burden on the Commission for oversight of these programs is simply not justified in terms of the potential benefits to Kentucky customers.

SUMMARY

For the reasons set forth above, Atmos respectfully urges the Commission to recommend to the legislature that the status quo be maintained and that LDCs should, accordingly, not be compelled to offer "Customer Choice" programs or to modify their tariffs relating to small volume transportation volumetric thresholds and administration fees.

Respectfully submitted this __1__ day of November, 2010.



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CERTIFICATE OF SERVICE

This is to certify that an original, plus eleven (11) copies of the foregoing was served upon the Kentucky Public Service Commission by overnight delivery and by facsimile transmission, and a true and correct copy of the foregoing was served upon the following by mailing a copy of same to each of them on this the __1__ day of November, 2010:

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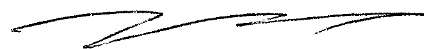

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