

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF ATMOS)	
ENERGY CORPORATION FOR APPROVAL OF)	CASE NO.
SPECIAL CONTRACT PURSUANT TO ITS)	2022-00292
ECONOMIC DEVELOPMENT RIDER)	

ORDER

On August 29, 2022, Atmos Energy Corporation (Atmos) filed an application seeking approval of a special contract entered into by and between Atmos and Matalco Kentucky, LLC (Matalco), pursuant to the terms of Atmos's Economic Development Rider tariff (EDR Tariff) and to the Commission's September 24, 1990 Order in Administrative Case No. 327¹ (Administrative Case 327 Order). By Order issued on September 19, 2022, a procedural schedule was established to process this matter. The procedural schedule provided for a deadline for requesting intervention and one round of discovery upon Atmos's application. No requests for intervention were received. Atmos responded to one round of data requests from Commission Staff. The matter stands submitted to the Commission for a decision based upon the evidentiary record.

LEGAL STANDARD

The Commission has exclusive jurisdiction over the regulation of rates and service of utilities in Kentucky.² Kentucky law provides that a utility may demand, collect and

¹ Administrative Case No. 327 (Docket No. 19000327), *An Investigation Into the Implementation of Economic Development Rates by Electric and Gas Utilities* (Ky. PSC Sept. 24, 1990).

² KRS 278.040(2).

receive fair, just and reasonable rates³ and that the service it provides must be adequate, efficient and reasonable.⁴ KRS 278.190 permits the Commission to investigate any schedule of new rates to determine its reasonableness.

In the Administrative Case 327 Order, the Commission found that Economic Development Rates (EDR) would provide important incentives to large commercial and industrial customers to either locate or expand their facilities in Kentucky, bringing jobs and capital investment into the Commonwealth.⁵ The Administrative Case 327 Order contains 18 findings that refined the criteria on which the Commission would evaluate and approve an EDR.⁶ In the Administrative Case 327 Order, the Commission also directed that a jurisdictional utility filing an EDR contract must comply with Findings 3–17.⁷ The findings in the Administrative Case 327 Order that are applicable to this proceeding, and therefore comprise the legal standard by which this proposed contract should be evaluated, are summarized as follows:⁸

- Finding 3: EDRs should be implemented by special contract negotiated between the utilities and their large commercial and industrial customers.⁹

³ KRS 278.030(1).

⁴ KRS 278.030(2).

⁵ Administrative Case 327 Order at 25.

⁶ Administrative Case 327 Order at 24-28.

⁷ Administrative Case 327 Order at 28, ordering paragraph 1.

⁸ Finding 13 is not relevant to this proceeding because it applies to contracts designed to retain the load of existing customers, not to attract new customers. Findings 15 and 16 are not relevant to this proceeding as they apply to gas main extension costs, which are not a part of the proposed special contract. Finding 17, while relevant to this proceeding, merely states that comments submitted by the Cabinet or other interested parties pertaining to an EDR contract should be filed with the Commission no more than 20 days following the filing of an EDR. No comments have been filed in this proceeding.

⁹ Administrative Case 327 Order at 25, finding paragraph 3.

- Finding 4: An EDR contract should specify all terms and conditions, including the rate discount and related provisions, jobs and capital investment created, customer-specific fixed costs, minimum bill, estimated load and load factor, and length of contract.¹⁰
- Finding 5: An EDR contract should only be offered during periods of excess capacity for the utility, and the utility must demonstrate that the EDR contract will not cause it to fall below a reserve margin essential for system reliability.¹¹
- Finding 6: A utility should demonstrate that the EDR exceeds the marginal cost associated with serving the customer.¹²
- Finding 7: A utility should file an annual report with the Commission detailing revenues received and marginal costs from EDRs.¹³
- Finding 8: A utility should demonstrate that nonparticipating ratepayers are not adversely affected by the EDR through a cost-of-service analysis.¹⁴
- Finding 9: The EDR should include a provision providing for the recovery of EDR customer-specific fixed costs over the life of the contract.¹⁵
- Finding 10: The major objectives of EDRs are job creation and capital investment. However, specific job creation and capital investment requirements should not be imposed on EDR customers.¹⁶
- Finding 11: All utilities with active EDR contracts should file an annual report with the Commission providing information shown in Appendix A to the Administrative Case 327 Order.¹⁷
- Finding 12: For new industrial customers, an EDR should apply only to load which exceeds a minimum base level. For existing industrial customers, the EDR should apply only to load which exceeds a minimum base load. At the time an EDR

¹⁰ Administrative Case 327 Order at 25, finding paragraph 4.

¹¹ Administrative Case 327 Order at 25, finding paragraph 5.

¹² Administrative Case 327 Order at 26, finding paragraph 6.

¹³ Administrative Case 327 Order at 26, finding paragraph 7.

¹⁴ Administrative Case 327 Order at 26, finding paragraph 8.

¹⁵ Administrative Case 327 Order at 26, finding paragraph 9.

¹⁶ Administrative Case 327 Order at 26, finding paragraph 10.

¹⁷ Administrative Case 327 Order at 26, finding paragraph 11.

contract is filed, a utility should identify and justify the minimum incremental usage level and normalized base load for an existing customer or the minimum usage level required for a new customer.¹⁸

- Finding 14: The term of an EDR contract should be for a period twice the length of the discount period, with the discount period not exceeding five years.¹⁹

THE SPECIAL CONTRACT

Atmos stated that its EDR Tariff is designed to enhance the utilization of its gas system while encouraging industrial development and promoting job growth within its service territory. Atmos stated that the EDR Tariff is available to both new customers and existing customers and provides for an incentive or discount rates for purposes of economic development. Under Atmos's EDR Tariff, any new customers with an expected demand of at least 9,000 Mcf per year can qualify for the EDR discount.

Consistent with Atmos's EDR Tariff, the special contract term is eight years and provides a 25 percent discount to the distribution charge for firm service²⁰ for the first four years of the contract. According to Atmos, Matalco is a new customer that has purchased an existing building and is constructing all new facilities with the existing building for aluminum manufacturing.²¹ This construction will result in approximately 60 new jobs and require a capital investment of approximately \$56,500,000.²² Atmos noted that Matalco's

¹⁸ Administrative Case 327 Order at 26–27, finding paragraph 12.

¹⁹ Administrative Case 327 Order at 27, finding paragraph 14.

²⁰ Matalco is served under Firm Transportation Service Rate T-4 and will be required to have a monthly demand of at least 750 Mcf in order to qualify for the discount rate.

²¹ Atmos's Response to Commission Staff's First Request for Information (Staff's First Request) (filed Oct. 12, 2022), Item 1(a).

²² Application at 2.

natural gas consumption is projected to be at least 9,000 Mcf per year.²³ Atmos has provided an analysis showing that the special contract will generate revenue sufficient to cover the variable costs related to serving Matalco and make a contribution towards fixed costs. Atmos also states that based on the previous tenants' usage and its pressure knowledge of the system, it will have adequate system capacity, with reserve margin, to serve Matalco.²⁴

DISCUSSION AND FINDINGS

In the Administrative Case 327 Order, the Commission directed that a jurisdictional utility filing an EDR contract must comply with Findings 3–17.²⁵ The following paragraphs will address the findings of the Administrative Case 327 Order that are applicable to this proceeding.

Finding 3:

EDRs should be implemented by special contract negotiated between the utilities and their large commercial and industrial customers.²⁶

The Commission finds the proposed special contract complies with Finding 3 of the Administrative Case 327 Order. This is because Atmos has submitted the proposed special contract²⁷ that was negotiated and executed by Atmos and Matalco, an industrial customer.

²³ Atmos's Response to Staff's First Request (filed Oct. 12, 2022), Item 1(b).

²⁴ Atmos's Response to Staff's First Request (filed Oct. 12, 2022), Item 3.

²⁵ Administrative Case 327 Order at 28, ordering paragraph 1.

²⁶ Administrative Case 327 Order at 25, finding paragraph 3.

²⁷ Application, Exhibit A.

Finding 4:

An EDR contract should specify all terms and conditions of service including, but not limited to, the applicable rate discount and other discount provisions, the number of jobs and capital investment to be created as a result of the EDR, customer-specific fixed costs associated with serving the customer, minimum bill, estimated load, estimated load factor, and length of contract.²⁸

Atmos provided the following: (1) the discount is 25 percent of the then-current tariff rate during the first four years of the special contract for any volumes in excess of 750 Mcf per month so long as the annual consumption is at least 9,000 Mcf; (2) the special contract will create approximately 60 jobs and require a capital investment of approximately \$56,500,000; (3) no customer-specific fixed costs are anticipated in serving Matalco; (4) Matalco will pay a minimum bill of \$670, plus applicable taxes and franchise fees; (5) Matalco's projected annual consumption will be at least 9,000 Mcf and Atmos estimated Matalco's load factor to be 68.5 percent; and (6) the length of the contact is eight years, beginning on November 1, 2022 or the first day of the month following the approval of special contract by the Commission, whichever is later. For the above reasons, the Commission finds that the proposed special contract complies with the Administrative Case 327 Order, Finding 4.

Finding 5:

EDRs should only be offered during periods of excess capacity. Utilities should demonstrate, upon submission of each EDR contract, that the load expected to be served during each year of the contract period will not cause them to fall below a reserve margin that is considered essential for system

²⁸ Administrative Case 327 Order at 25, finding paragraph 4.

reliability. Such a reserve margin should be identified and justified with each EDR contract filing.²⁹

Atmos stated that based on the usage of the previous tenant and its pressure knowledge of the system, Atmos has adequate system capacity with reserve margin for system reliability to serve Matalco with Firm Transportation Service.³⁰ Atmos did not provide specific information pertaining to the load of the previous tenant. However, the Commission finds that, based on Atmos's representations, the proposed special contract complies with the Administrative Case 327 Order, Finding 5. For future EDR contracts, the Commission finds that Atmos should provide more specific support for Finding 5 than a blanket statement that Atmos has adequate system capacity and that the load served will not cause it to fall below a reserve margin considered essential for system reliability.

Finding 6:

Upon submission of each EDR contract, a utility should demonstrate that the discounted rate exceeds the marginal cost associated with serving the customer. Marginal cost includes both the marginal cost of capacity as well as the marginal cost of energy. In order to demonstrate marginal cost recovery, a utility should submit, with each EDR contract, a current marginal cost-of-service study. A current study is one conducted no more than one year prior to the date of the contract.³¹

The Commission finds that the special contract complies with the Administrative Case 327 Order, Finding 6. This is because Atmos provided a marginal cost of service

²⁹ Administrative Case 327 Order at 25, finding paragraph 5.

³⁰ Atmos's Response to Staff's First Request (filed Oct. 12, 2022), Item 3.

³¹ Administrative Case 327 Order at 26, finding paragraph 6.

study demonstrating that the discounted rate to Matalco produces revenues that exceed the marginal cost associated with serving Matalco.³²

Finding 7:

Utilities with active EDRs should file an annual report with the Commission detailing revenues received from individual EDR customers and the marginal costs associated with serving those individual customers.³³

Atmos's EDR Tariff states that it will file annual reports that detail revenues received from EDR customers and the marginal costs associated with serving those customers. The Commission finds that Atmos should file an annual report with the Commission detailing the revenues received from Matalco and the marginal costs associated with serving Matalco.

Finding 8:

During rate proceedings, utilities with active EDR contracts should demonstrate through detailed cost-of-service analysis that nonparticipating ratepayers are not adversely affected by these EDR customers.³⁴

Atmos's EDR Tariff is silent on this finding and Atmos did not refer to it in the instant proceeding. The Commission finds that in all rate proceedings occurring during the term of the proposed special contract that Atmos should provide a detailed cost of service analysis demonstrating that non-EDR ratepayers are not adversely affected by the proposed special contract.

³² Application, Exhibit C.

³³ Administrative Case 327 Order at 26, finding paragraph 7.

³⁴ Administrative Case 327 Order at 26, finding paragraph 8.

Finding 9:

All EDR contacts should include a provision providing for the recovery of EDR customer-specific fixed costs over the life of the contract.”³⁵

The proposed special contract indicates that no customer-specific fixed costs are anticipated in serving Matalco. The Commission finds that the proposed special contract complies with the Administrative Case 327 Order, Finding 9.

Finding 10:

The major objectives of EDRs are job creation and capital investment. However, specific job creation and capital investment requirements should not be imposed on EDR customers.³⁶

Atmos’s EDR Tariff states that job creation and capital investment requirements shall not be imposed on EDR customers. The Commission finds that the proposed special contract complies with the Administrative Case 327 Order, Finding 10.

Finding 11:

All utilities with active EDR contracts should file an annual report to the Commission providing the information as shown in Appendix A, which is attached hereto and incorporated herein.³⁷

Atmos’s EDR Tariff states that Atmos will file with the Commission the information from Appendix A to the Administrative Case 327 Order. The Commission finds that the proposed special contract complies with the Administrative Case 327 Order, Finding 11.

³⁵ Administrative Case 327 Order at 26, finding paragraph 9.

³⁶ Administrative Case 327 Order at 26, finding paragraph 10.

³⁷ Administrative Case 327 Order at 26, finding paragraph 11.

Finding 12:

For new industrial customers, an EDR should apply only to load which exceeds a minimum base level. For existing industrial customers, an EDR shall apply only to new load which exceeds an incremental usage level above a normalized base load. At the time an EDR contract is filed, a utility should identify and justify the minimum incremental usage level and normalized base load required for an existing customer or the minimum usage level required for a new customer.³⁸

Pursuant to the proposed special contract, the EDR discounts only apply to usage exceeding 750 Mcf per month. The Commission finds that the proposed special contract complies with the Administrative Case 327 Order, Finding 12.

Finding 14:

The term of an EDR contract should be for a period twice the length of the discount period, with the discount period not exceeding five years. During the second half of an EDR contract, the rates charged to the customer should be identical to those contained in a standard rate schedule that is applicable to the customer's rate class and usage characteristics.³⁹

Pursuant to the proposed special contract, the 25 percent discount applies to first four years of the special contract. The Commission finds that the proposed special contract complies with the Administrative Case 327 Order, Finding 14.

The Commission finds that the terms of the Matalco special contract are reasonable and should be approved because they substantially comply with the requirements set forth in Atmos's EDR Tariff and in the Administrative Case 327 Order.

³⁸ Administrative Case 327 Order at 26–27, finding paragraph 12.

³⁹ Administrative Case 327 Order at 27, finding paragraph 14.

IT IS THEREFORE ORDERED that:

1. The special contract between Atmos and Matalco is approved effective November 1, 2022.⁴⁰
2. For future EDR contracts, Atmos shall file specific detailed support for the Administrative Case 327 Order, Finding 5 showing that Atmos has adequate system capacity to serve the proposed customer and that the load served will not cause it to fall below a reserve margin considered essential for system reliability.
3. By March 31 of each year, Atmos shall file an annual report with the Commission detailing, for the prior calendar year, revenues received from Matalco and the marginal costs associated with serving Matalco throughout the term of the special contract.
4. During any rate proceedings filed by Atmos subsequent to the effective date of the special contract with Matalco, and during a period when Atmos still has an active EDR contract, Atmos shall demonstrate through a detailed cost-of-service analysis that its non-EDR ratepayers are not adversely affected by the EDR rate to Matalco and any other EDR customers that may be on the Atmos system at that time.
5. Atmos shall file by March 31 of each year a report with the Commission providing, for the prior calendar year, the information shown in the Appendix to this Order.
6. Any documents filed pursuant to Ordering paragraphs 3 and 5 of this Order shall reference the number of this case and shall be retained in the post-case correspondence file for this proceeding.

⁴⁰ Under the relevant terms of the special contract, the effective date of the special contract is November 1, 2022, or the first day of the month following the month in which the special contract is approved by the Commission, whichever is later.

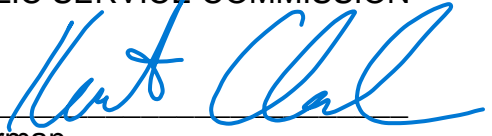
7. The Executive Director is designated authority to grant a reasonable extension of time for the filing of any documents required by this Order upon Atmos's showing of good cause for such extension.

8. Within 20 days of the date of service of this Order, Atmos shall file with the Commission, using the Commission's electronic Tariff Filing System, the special contract as approved herein.

9. This case is closed and removed from the Commission's docket.

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PUBLIC SERVICE COMMISSION



Chairman

Vice Chairman



Commissioner



ATTEST:



Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2022-00292 DATED OCT 31 2022

ECONOMIC DEVELOPMENT RATE CONTRACT REPORT

UTILITY: _____

YEAR: _____

	<u>Current Reporting Period</u>	<u>Cumulative</u>		
1) Number of EDR Contracts -				
Total:	_____	_____		
Existing Customers:	_____	_____		
New Customers:	_____	_____		
2) Number of Jobs Created -				
Total:	_____	_____		
Existing Customers:	_____	_____		
New Customers:	_____	_____		
3) Amount of Capital Investment -				
Total:	_____	_____		
Existing Customers:	_____	_____		
New Customers:	_____	_____		
4) Consumption -				
(A) DEMAND				
Total:	_____	Mcf	_____	Mcf
Existing Customers:	_____	Mcf	_____	Mcf
New Customers:	_____	Mcf	_____	Mcf
(B) ENERGY/CONSUMPTION				
Total:	_____	Mcf	_____	Mcf
Existing Customers:	_____	Mcf	_____	Mcf
New Customers:	_____	Mcf	_____	Mcf

*Atmos Energy Corporation
3275 Highland Pointe Drive
Owensboro, KY 42303

*Brannon Taylor
Atmos Energy Corporation
810 Crescent Centre Drive, Suite 600
Franklin, TN 37067

*Honorable John N Hughes
Attorney at Law
124 West Todd Street
Frankfort, KENTUCKY 40601

*Randy Hutchinson
Wilson, Hutchinson & Littlepage
611 Frederica Street
Owensboro, KENTUCKY 42301

*Eric Wilen
Atmos Energy Corporation
810 Crescent Centre Drive, Suite 600
Franklin, TN 37067