

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)	2023-00086
ECONOMIC DEVELOPMENT RIDER)	

ORDER

On March 10, 2023, Atmos Energy Corporation (Atmos) filed an application seeking approval of a special contract entered into by and between Atmos and Wieland North America Recycling, LLC (Wieland), 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 Order 327). By Order issued on August 18, 2023, a procedural schedule was established to process this matter. No requests for intervention were received. Atmos responded to one round of data requests from Commission Staff. On October 13, 2023, Atmos filed a motion to submit this matter for a final decision. 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), Order.

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 278.170(1) prohibits a utility from giving unreasonable preference or advantage to any person as to rates or subjecting any person to any unreasonable prejudice or disadvantage. KRS 278.160(1) requires a utility to file schedules showing all rates and conditions for service established by it and collected or enforced. KRS 278.190 permits the Commission to investigate any schedule of new rates to determine its reasonableness.

In Administrative Order 327, 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 Administrative Order 327 contains 18 findings that refined the criteria on which the Commission would evaluate and approve an EDR.⁶ In Administrative Order 327, the Commission also directed that a jurisdictional utility filing an EDR contract must comply with Findings 3–17.⁷ The findings in Administrative Order 327 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

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.

- Finding 3: EDRs should be implemented by special contract negotiated between the utilities and their large commercial and industrial customers.⁹
- 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 Administrative Order 327.¹⁷

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

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.

- 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 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.²⁰ Atmos projected Weiland's demand would exceed this annual amount.²¹

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 transportation service²² for the first four years of the contract. According to Atmos, Weiland is a new customer

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

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

²⁰ PSC KY No. 2, First Revised Sheet No. 40-41 (issued Nov. 23, 2015), effective Aug. 15, 2016.

²¹ Application at 5.

²² Application, Exhibit A at 2. Weiland 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.

that is constructing a copper and copper alloy recycling facility in Shelbyville, Kentucky.²³ Atmos indicated that this construction will result in approximately 65-70 new jobs and result in a capital investment of approximately \$100,000,000.²⁴

Atmos provided a marginal cost analysis showing that the special contract will generate revenue sufficient to cover the variable costs related to serving Weiland.²⁵ Atmos indicated that it does not expect any customer-specific fixed costs over the life of the contract—however, Atmos has included meter sets in its marginal cost analysis in the event that becomes necessary.²⁶ Atmos also stated that based on its pressure knowledge of the system, it will have adequate system capacity, with reserve margin, to serve Weiland.²⁷

DISCUSSION AND FINDINGS

The following paragraphs will address the findings of Administrative Order 327 and related tariff provisions 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.²⁸

The Commission finds the proposed special contract complies with Finding 3 of

²³ Atmos's Response to Commission Staff's First Request for Information (Staff's First Request) (filed Sept. 22, 2023), Item 1(a).

²⁴ Application, Exhibit A at 1.

²⁵ Application, Exhibit C.

²⁶ Application at 3.

²⁷ Application at 6. Confidential Exhibit D shows pressures at different points along the distribution route demonstrating that pressures will remain sufficient for all affected customers.

²⁸ Administrative Case 327, Order at 25, finding paragraph 3.

Administrative Order 327. This is because Atmos has submitted the proposed special contract that was negotiated and executed by Atmos and Weiland, an industrial customer.²⁹ Weiland is also expected to have demand in excess of 9,000 Mcf per year as required by Atmos's EDR Tariff.

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.³⁰

Atmos's EDR Tariff and the proposed contract specify all terms and conditions of service. Among other things, they indicate that: (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 65-70 jobs and require a capital investment of approximately \$100,000,000; (3) no customer-specific fixed costs are anticipated in serving Weiland; (4) Weiland's projected annual consumption will be at least 9,000 Mcf and Atmos estimated Weiland's load factor to be 68.5 percent; and (6) the length of the contact is eight years, beginning on May 1, 2023, or the first day of the month following the approval of special contract by the Commission, whichever is later.³¹

²⁹ Application, Exhibit A.

³⁰ Administrative Case 327, Order at 25, finding paragraph 4.

³¹ Application, Exhibit A.

For the above reasons, the Commission finds that the proposed special contract complies with Administrative Order 327, 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 reliability. Such a reserve margin should be identified and justified with each EDR contract filing.³²

Atmos stated that based on its pressure knowledge of the system, Atmos has adequate system capacity with reserve margin for system reliability to serve Weiland with Firm Transportation Service and provided a distribution line map showing pressures at delivery points based on expected demand.³³ Atmos further indicated that additional projects would not be necessary to serve Weiland's load. The Commission finds that, based on Atmos's representations, the proposed special contract complies with Administrative Order 327, Finding 5.

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.³⁴

³² Administrative Case 327, Order at 25, finding paragraph 4.

³³ Application, Exhibit D.

³⁴ Administrative Case 327, Order at 26, finding paragraph 6.

The Commission finds that the special contract complies with Administrative Order 327, Finding 6. This is because Atmos provided a marginal cost of service study, based on reasonable assumptions, demonstrating that the discounted rate to Weiland produces revenues that exceed the marginal cost associated with serving Weiland.³⁵

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.³⁶

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 Weiland and the marginal costs associated with serving Weiland.

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.

Atmos states that its marginal cost study demonstrates that the contract will have no adverse effect on non-participating ratepayers.³⁷ Consistent with Finding 8, 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

³⁵ Application, Exhibit C.

³⁶ Administrative Case 327, Order at 26, finding paragraph 7.

³⁷ Application at 4.

demonstrating that non-EDR ratepayers are not adversely affected by the proposed special contract.

Finding 9:

All EDR contracts should include a provision providing for the recovery of EDR customer-specific fixed costs over the life of the contract.³⁸

The proposed special contract indicates that no customer-specific fixed costs are anticipated in serving Weiland. However, Atmos factored possible fixed costs from meter setting into its marginal cost analysis. Atmos's marginal cost study, even with the potential meter setting costs, demonstrates that Weiland will cover marginal costs associated with its service. The Commission finds that the proposed special contract complies with Administrative Order 327, 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.³⁹

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 Administrative Order 327, 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.⁴⁰

³⁸ Administrative Case 327, Order at 26, finding paragraph 9.

³⁹ Administrative Case 327, Order at 26, finding paragraph 10.

⁴⁰ Administrative Case 327, Order at 26, finding paragraph 11.

Atmos's EDR Tariff states that Atmos will file with the Commission the information from Appendix A to Administrative Order 327. The Commission finds that the proposed special contract complies with Administrative Order 327, Finding 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.⁴¹

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 Administrative Order 327, 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.⁴²

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

⁴¹ Administrative Case 327, Order at 26–27, finding paragraph 12.

⁴² Administrative Case 327, Order at 27, finding paragraph 14.

Having reviewed the record and being otherwise sufficiently advised, the Commission finds that the terms of Atmos's proposed special contract with Weiland are reasonable and should be approved, because they satisfy the requirements set forth in Atmos's EDR Tariff and Administrative Order 327.

IT IS THEREFORE ORDERED that:

1. The special contract between Atmos and Weiland is approved effective the first day of the month following the month in which this Order is issued.
2. By March 31 of each year, Atmos shall file an annual report with the Commission detailing, for the prior calendar year, revenues received from Weiland and the marginal costs associated with serving Weiland throughout the term of the special contract.
3. During any rate proceedings filed by Atmos subsequent to the effective date of the special contract with Weiland, 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 Weiland and any other EDR customers that may be on the Atmos system at that time.
4. 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.
5. 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.
6. Any documents filed pursuant to Ordering paragraphs 2 and 4 of this Order


shall reference the number of this case and shall be retained in the post-case correspondence file for this proceeding.

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

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PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ENTERED
DEC 08 2023
KENTUCKY PUBLIC SERVICE COMMISSION ^{rCS}

ATTEST:


Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2023-00086 DATED DEC 08 2023

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

*L. Allyson Honaker
Honaker Law Office, PLLC
1795 Alysheba Way
Suite 6202
Lexington, KENTUCKY 40509

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

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

*Brittany H. Koenig
Honaker Law Office, PLLC
1795 Alysheba Way
Suite 6202
Lexington, KENTUCKY 40509

*Honorable John N Hughes
Attorney at Law
7106 Frankfort Road
Versailles, KENTUCKY 40383

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