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PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

OFFICE OF THE ATTORNEY GENERAL)
COMMONWEALTH OF KENTUCKY)

V.)

ATMOS ENERGY CORPORATION)

Case No. 2005-00057

Motion to Dismiss of Atmos Energy Corporation

Atmos Energy Corporation, by counsel, moves to dismiss the Complaint of the Attorney General filed on February 10, 2005. The purpose of that Complaint was to initiate a review of the rates of Atmos for the purpose of determining if Atmos was over-earning its previously authorized return on equity.

After finding that the Attorney General's Complaint was sufficient to meet the standard of a prima facie case, the Commission established a procedural schedule to allow for the development of a record that would provide the basis for the Commission to determine if the Attorney General's allegation could be proven.

In its order of February 2, 2006, the Commission concluded that the Attorney General as complainant had the burden of proof in the case. In that order, the Commission explicitly stated that the filing of a prima facie case is not the same as meeting the burden of proof. That order lists

specific items of evidence the Attorney General had to provide for the case to continue. In the order dated February 9, 2007, the Commission reiterated the burden on the Attorney General. To date the Attorney General has not submitted the required information.

In spite of the explicit factors identified by the Commission necessary for the continuation of the investigation, the Attorney General has admitted that he cannot produce adequate evidence to support his allegations. For example see Henkes' Supplemental Testimony, pages 4-5.

Based on the Commissions orders of February 2, 2006 and February 9, 2007, the only way for this case to proceed is for the Attorney General to submit the specified evidence.

On April 9, 2007, the Attorney General notified the Commission of his withdrawal from these proceedings. Obviously, if the Attorney General is no longer a party to the case, there is no possibility that he can meet the burden of proof established by the Commission.

Having admitted he cannot prove his allegations, and now withdrawing from the case, there is no basis for the Commission to proceed. For these reasons, Atmos moves for the dismissal of the Complaint.

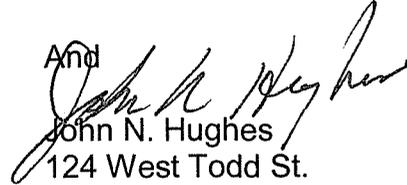
Submitted By:

Douglas Walther

Atmos Energy Corporation
Box 650205
Dallas, TX 75235-0205

Mark R. Hutchinson
Wilson, Hutchinson and Poteat
611 Frederica St.
Owensboro, KY 42301

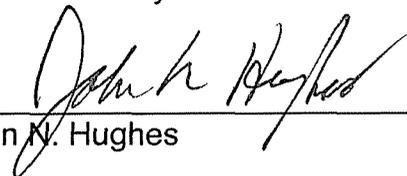
And



John N. Hughes
124 West Todd St.
Frankfort, KY 40601
Attorneys for Atmos Energy Corporation

Certification:

I certify that a copy of this Motion was served on the Attorney General, 1204 Capital Center Dr., Frankfort, KY 40601 by first class mail the 13th day of April, 2007.



John N. Hughes