

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE  
COMMISSION

OFFICE OF THE ATTORNEY GENERAL )  
COMMONWEALTH OF KENTUCKY )  
V. )  
ATMOS ENERGY CORPORATION )

Case No. 2005-00057

**Objection and Motion to Quash of  
Atmos Energy Corporation to Attorney General's Interrogatories**

Atmos Energy Corporation, by counsel, objects to certain of the Attorney General's interrogatories contained in his Initial Request for Information dated March 14, 2006.

This case is unlike a rate application filed by the utility. Because the Attorney General has made allegations about excess earnings of Atmos and has requested an adjustment of rates to reflect those earnings, the Commission has placed the burden of proof on the Attorney General. In addition, the Commission has placed other parameters on the issues in the case. The Attorney General must produce substantial evidence on the appropriate ROE level for Atmos under present economic conditions. (Order of February 2, 2006, page 4)

While the Commission has granted the Attorney General the opportunity to conduct discovery, a number of questions propounded by the Attorney General violate the specific limitations stated in its Order. As the Commission

said in Case No. 96-616, In the Matter of: The Application of Winchester Municipal Utilities,: “The purpose of discovery is to make an administrative hearing ‘less a game of blind man’s bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent possible as well as to narrow and clarify the issues in dispute.’” (Order of July 1, 1997, page 2)

A number of questions from the Attorney General seek not to narrow the issues or clarify facts, but rather to expand the investigation and confuse the issues. Questions 8, 15a, 16a, 17a, 18a, 19, 20, 21, 42, require Atmos to provide projected data for years beyond the specified test period of the twelve months ending September 30, 2005 as established in the February 2, 2006 Order, page 4. Questions 1a, 2, 3, 7, 11, 12, 15a, 15b, 16a,16b, 17a, 17b, 18a, 18b, 19, 20, 21, 42, 45b, 49, 50, 59, 60, 61, 63, 66, 67, 69, 80, 81, 82, 83, 84, 85, 87, 89b request at least in part data that is prior to the test year. Neither type of this requested information is relevant to the test year or to the issue of Atmos’ alleged over-earning for the test period. The information is also irrelevant to the Attorney General’s burden of proving that the ROE is excessive under “present economic conditions.” Future financial or economic projections or past years financial operations have no bearing on the company’s current earnings.

The Attorney General attempts to elicit information from Atmos that does not exist or which if provided would be purely speculative. Questions 22, 24, 25, 26, 27, 28, 30, 31, 32, 34, 35, 37, 38, 39, 40, 41, 42, 43, 68, 70, and 72 require “pro forma” adjustments to test year information. Atmos is not proposing any adjustments to its present financial operations. To respond to the Attorney

General would require Atmos to make certain assumptions and adjustments in order to respond to the questions which may not be the same assumptions or adjustments that Atmos would propose if it were filing a rate application. In other words, the Attorney General is attempting to force Atmos to commit to certain adjustments to the test year that may not be appropriate under the current circumstances or at the time of a future rate application.

Any such pro forma adjustment would be speculative and based on assumptions tendered by the Attorney General and not necessarily on the same factors or assumptions Atmos would develop if it were presenting a rate application for approval. Such speculative adjustments have been rejected by the Commission. For example in Kentucky American's Case No. 95-554, Order of September 11, 1996, page 28, the Commission refused to accept an adjustment proposed by the Attorney General as being speculative. In Big River's Case 90-128, Order of December 21, 1990, the Commission said that a historical test period cannot be adjusted using imputed revenue attributable to speculative events. Just as the Commission has rejected such unknown, uncertain adjustments in prior cases, it should reject the Attorney General's attempt to force Atmos to speculate on adjustments that might or might not be appropriate for ratemaking purposes. It is the burden of the Attorney General to prove that the current financial operations of Atmos produce excessive earnings. Pro forma adjustments relate to future operations and potential earnings, which are beyond the scope of this proceeding. Just as the prior years data is not relevant, these prospective adjustments are not.

Because neither the data from prior years nor the pro forma data relate to the current economic condition of Atmos, the only issue in this case, they are not relevant to the proceeding. As the Commission discussed in Kentucky American Water Company Case 2000-120, Order dated September 22,, 2000: “[P]arties may obtain discovery regarding any matter not privileged which is relevant to the subject matter involved in the pending action...The information must be reasonably calculated to lead to the discovery of admissible evidence...Relevant evidence means evidence having a tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” (Emphasis the Commission’s) Financial data unrelated to the current financial condition or economic activity of Atmos is clearly not relevant and as such is not admissible in this action. For these reasons, these interrogatories should be quashed.

In addition to being irrelevant, the effect of requiring Atmos to respond to these questions is to shift the burden of proof to Atmos. If Atmos must make adjustments to its current financial operations as the Attorney General’s questions require, it will be in the position of submitting adjustments involuntarily, which may or may not be the same adjustments that Atmos would propose independently of this discovery request. Doing so only provides the Attorney General with the calculations and revisions to the test year that he believes necessary to prove his case. These questions force Atmos to do the difficult work of adjusting known test year data to support the Attorney General’s claims

of over-earnings. If the Attorney General believes that the test year data need adjusting to prove his position, he should make those proposed adjustments.

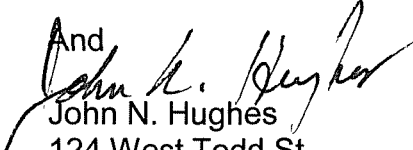
As the Commission pointed out in the Winchester case, supra, "discovery...does not alter the burden of proof..." (Order of July 1, 1997, page 3). By requiring Atmos to provide speculative pro forma adjustments to selected accounts, the Attorney General is attempting to force Atmos to defend ratemaking assumptions which may or may not be reasonable or appropriate under the circumstances and which may not be representative of the adjustments necessary for an adjustment of rates, resulting in the burden shifting to Atmos to defend adjustments forced on it by the Attorney General.

For these reasons, Atmos moves for an order quashing the specified interrogatories and relieving Atmos from responding.

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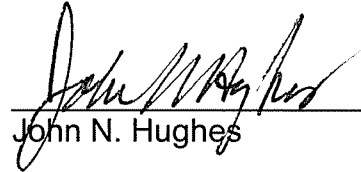
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Certification:

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 and by electronic mail the ~~29<sup>th</sup>~~ day of March, 2006.

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John N. Hughes