

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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COMMISSION

In the Matter of:

MODIFICATIONS OF ATMOS ENERGY)
CORPORATION'S GAS COST ADJUSTMENT) CASE NO. 2005-00321
TO INCORPORATE PERFORMANCE BASED)
RATEMAKING MECHANISM)

ATTORNEY GENERAL'S COMMENTS

Comes now the Intervenor, the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, and submits the following comments.

A. The Standard for Sharing of Costs Should Not Change

Atmos seeks to lower the savings it must achieve in order to receive higher performance rewards because the cost of gas is higher than it was when the level of savings and rewards allowed was previously set. The consequence of Atmos' request would be to allow the company to do less for greater rewards when gas prices are already at the highest they have ever been, and are expected to remain high for years to come. Simply put, there is no reason the company should be allowed to prosper at or above the level previously set, as if gas prices had not risen, while consumers are paying the highest prices for gas they have ever paid. Why should the company escape the impact of high priced gas when its customers suffer that cost directly?

B. There is No Objective Standard Against Which Asset Management Can Be Measured

Asset management is not something that allows the company to surpass any industry benchmark; rather, it is merely a means to make use of an unutilized asset.

Indeed, the GAIFAM which Atmos seeks to introduce for the first time is not in any manner tied to an objective industry standard. Worse yet, the GAIFAM has a strong potential for causing harm to customers. The GAIFAM is designed to reward Atmos by creating an on-going performance benchmark as if it were an industry standard that it is outperforming, despite the fact that the only measure Atmos is taking is a one-time effort to try to find a new asset manager.

C. The PBR Should Not be Made Permanent

There are three primary reasons why the PBR should not be made permanent. First, it was never designed as such -- PBRs were designed to transition away from cost-based rates and toward the provision of service in a fully competitive market. Since there is no competitive market, there is no rationale for the existence of a PBR. Second, it would be unwise to make an entirely new benchmark – the GAIFAM – permanent, given the absence of any experience with this element. Third, there is no way of proving whether the personnel and facilities overhead for which ratepayers already pay through base rates would not have performed equally as well in gas procurement without incentives. Although it can clearly be proven that the PBR rate standards have been beaten before cost sharing occurs, there is simply no means of determining whether ratepayers are paying more than is otherwise necessary in a market boasting the highest cost ever.

D. The Credit for the Asset Management Fee Should be Volumetric

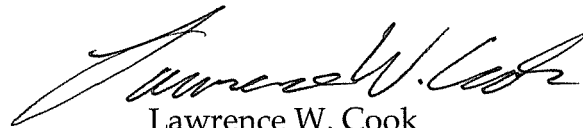
While it is better from the asset manager's perspective to pay Atmos a known fee each year for the use of those assets, a set per annum fee is worse from the consumers'

point of view. For the consumer, allowing the establishment of a set annual asset management fee creates an inverse ratio, because the credit for the asset management fee will be divided over the actual number of mcf a customer uses. When the fee is fixed, the higher the volume of gas used results in a smaller credit per mcf. Conversely, the smaller the volume of gas used, the higher the credit per mcf. Clearly, such a cost sharing mechanism is disadvantageous to the ratepayer. Atmos speculates that the asset manager will be willing to pay more over the life of the asset management contract for the certainty of knowing its cost each year than it would pay if the fee continues to be volumetric. Thus, it argues, the customer will ultimately profit because the total amount to be paid will be greater over the life of the PBR. This is mere speculation -- there is no industry standard or means by which this assertion may be checked. Meanwhile, the value of whatever amount is received to offset gas costs will be less when gas costs are higher due to usage and higher when gas costs are less due to usage. This is a certainty.

The Attorney General is concerned that ratepayers may be missing out on the cost savings that normally would inure at least in part to their favor, but for Atmos' PBR.

Respectfully submitted,

GREGORY D. STUMBO
ATTORNEY GENERAL

A handwritten signature in black ink, appearing to read "Lawrence W. Cook". The signature is fluid and cursive, with a large initial "L" and "W".

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Certificate of Service and Filing

Counsel certifies that an original and seven photocopies of the foregoing Attorney General's Comments were filed with and served by hand delivery to Beth O'Donnell, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601; furthermore, it was served by mailing a true and correct copy of the same, first class postage prepaid, to:

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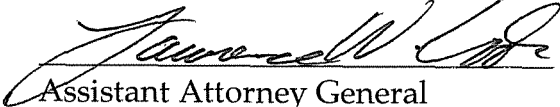
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This 27th day of December, 2005


Assistant Attorney General