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PUBLIC SERVICE COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

OFFICE OF THE ATTORNEY GENERAL COMMONWEALTH OF KENTUCKY	**: Case No. 2005-00057**
Complainant	:
v.	:
ATMOS ENERGY CORPORATION	:
Respondent	:

ATTORNEY GENERAL'S RENEWED MOTION FOR RULING AND PROCEDURAL SCHEDULE

* * * * *

Comes the Attorney General of the Commonwealth of Kentucky, Gregory D. Stumbo, by and through his Office of Rate Intervention, and renews his motion for the Commission's ruling and issuing of a procedural order in the above-styled matter. In support of this motion, counsel state as follows:

On February 1, 2005, the Attorney General filed his complaint in this matter against Respondent, Atmos Energy Corporation (attached hereto as "Exhibit 1"). Atmos filed its answer on February 14, 2005 (attached as "Exhibit 2"), and the Attorney General filed its Response to Atmos' Answer on February 25, 2005 (attached as "Exhibit 3").

As the Commission had not issued any sort of procedural schedule or ruling on this matter, the Attorney General on September 13, 2005 filed a motion for the Commission to issue a ruling and a procedural schedule in this matter (attached as "Exhibit 4").

On October 13, 2005, a concerned citizen, Mr. Tom Loveless, filed a letter inquiring as to why the Commission has not ruled on the Attorney General's duly-filed complaint. On October 26, 2005, the Commission mailed a letter to Mr. Loveless (attached hereto as "Exhibit 5") stating that it would " . . . do everything in our power to insure that this case is resolved in a fashion that is fair and equitable to all parties."

One year has now passed since the Attorney General filed his complaint, yet the Commission has failed to rule on his complaint, to issue a procedural schedule, or for that matter to issue any order at all. Given the fact that energy prices are at record or near-record highs, Atmos' over-earning is unnecessarily compounding consumers' bills. Though the Commission's docket has resulted in time constraints, the failure to address the Attorney General's complaint and lower citizens' bills amounts to governmental blessing of corporate irresponsibility and greed.

Accordingly, the Attorney General hereby renews his motion for the Commission to rule on this matter, and to issue a procedural schedule.

WHEREFORE, the Attorney General respectfully requests that the Commission grant his motion.

Respectfully submitted,

GREGORY D. STUMBO
ATTORNEY GENERAL

Dennis G. Howard, II
Elizabeth E. Blackford
David Edward Spenard
Lawrence W. Cook
Assistant Attorneys General
1024 Capital Center Drive, Suite 200
Frankfort, Kentucky 40601
502-696-5453 (FAX) 502-573-8315

Certificate of Service and Filing

Counsel certifies that the original and seven photocopies of the foregoing Attorney General's Renewed Motion for Ruling and Procedural Schedule 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:

Honorable John N. Hughes
124 West Todd Street
Frankfort, KY 40601

Honorable Mark R. Hutchinson
Wilson, Hutchinson & Poteat
611 Frederica Street
Owensboro, KY 42301

William J. Senter
V.P. Rates & Regulatory Affairs
Atmos Energy Corporation
2401 New Hartford Road
Owensboro, KY 42303-1312

Douglas Walther
Senior Analyst - Rate Administration
Atmos Energy Corporation
P. O. Box 650205
Dallas, TX 75235-0205

This 1st day of February, 2006.

Assistant Attorney General

EXHIBIT 1

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PUBLIC SERVICE COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

OFFICE OF THE ATTORNEY GENERAL
COMMONWEALTH OF KENTUCKY : **Case No. 2005-**00057
:
Complainant :
v. :
:
ATMOS ENERGY CORPORATION :
:
Respondent :
:

COMPLAINT

Pursuant to KRS 278.260, KRS 278.270, KRS 278.040, KRS 278.030 and 807 KAR 5:001 Section 12, the Office of the Attorney General for the Commonwealth of Kentucky ("Attorney General" or "Complainant") submits its Complaint to the Kentucky Public Service Commission ("Commission") against Atmos Energy Corporation ("Atmos" or "Respondent") and in support thereof state as follows:

1. That the Complainant is the Attorney General for the Commonwealth of Kentucky whose address is as follows:

Office of the Attorney General, Commonwealth of Kentucky
1024 Capital Center Drive, Suite 200
Frankfort, Kentucky 40601

2. Counsel for Complainant is:

Dennis G. Howard, II
Elizabeth E. Blackford
David Edward Spenard
Assistant Attorneys General
1024 Capital Center Drive, Suite 200
Frankfort, Kentucky 40601

3. That the Respondent Atmos Energy Corporation is a public utility, a gas distribution company, as defined in KRS 278.010 incorporated in the Commonwealth of Kentucky and whose address is as follows:

Atmos Energy Corporation
Three Lincoln Centre, Ste. 1800
5450 LBJ Freeway
Dallas, TX 75240

4. Counsel for Respondent is:

Hon. John Hughes
124 W. Todd Street
Frankfort, Kentucky 40601

5. Atmos is the exclusive retail natural gas supplier to approximately 180,443 customers located in many counties in Western Kentucky whose rates for service are set by the Kentucky Public Service Commission pursuant to application of the utility, investigation by the Commission, or customer complaint. The Kentucky Public Service Commission has jurisdiction and venue to hear this complaint under KRS 278.040, KRS 278.060 and 807 KAR 5:001 Section 12.

6. The Attorney General has the statutory obligation to represent utility consumers pursuant to KRS 367.150 (8).

7. Pursuant to KRS 278.060, KRS 278.030 and Kentucky law, Atmos is authorized to receive only fair, just and reasonable rates for service rendered to the public. The determination of whether gas rates are fair, just, and reasonable has historically been made by the Commission through an examination of the rate-of-return on common equity currently being earned by the public utility, compared against the fair, just and reasonable rate-of-return on common equity which should be earned based upon currently prevailing economic conditions. This was the rate setting methodology used by the Commission when Atmos' currently effective base rates were established in 1999 in PSC Case No. 99-070.

8. Since the Commission's 1999 Order in Atmos' last base rate case (Case No. 99-070) approximately five years have passed and economic conditions have changed. There have been substantial reductions in interest rates and inflation. Attached hereto as Exhibit "A" is the direct testimony of the Attorney General's witness Mr. Robert Henkes which shows that the fair, just and reasonable rate-of-return on

equity under currently prevailing market conditions for Atmos should be significantly less than the approximate 18% that it now earns according to ROE reports submitted to the Commission.

9. This Commission ordered a 10.5% Return on Equity for Delta Natural Gas Company by Order dated 10 November 2004. Earnings averaging 18% are well above returns on equity found to be fair, just and reasonable.

10. In order for the rates for gas service currently charged by Atmos to satisfy the requirements of KRS 278.260, KRS 278.270, KRS 278.040, KRS 278.030 and 807 KAR 5:001 Section 12, such rates must be significantly reduced. This rate reduction is in the public interest and necessary to protect the rights of Atmos' 180,000 customers. According to the Kentucky Supreme Court:

> *"Ratepayers have a right to expect reasonable utility rates. Regulators and utilities alike should respect that right."*
>
> * * *
>
> *"If the protestants believe the overall rates are not fair, just and reasonable, they may seek remedy pursuant to KRS 278.260."* <u>Kentucky Industrial Utility Customers, Inc., et. al. v. Kentucky Utilities Company, et. al.</u>, 983 S.W. 2d 493, 497, 498. (Ky. 1998).

11. The requisite annual rate reduction should be allocated by the Commission to the various rate classes served by Atmos based upon fair, just and reasonable cost-of-service principles.

12. The Commission should issue an order requiring Atmos to answer this complaint since a <u>prima</u> <u>facie</u> case has been established that the current rates are not fair, just and reasonable and a rate reduction is in the public interest. The Commission should proceed expeditiously on this complaint given the large rate reduction to which the public is entitled. Pursuant to KRS 278.310, 278.320, 278.330 278.340, and 807 KAR 5:001, the Commission should establish a procedural schedule which will allow for discovery, testimony, a hearing and the submission of briefs and which will result in a final order as expeditiously as possible.

WHEREFORE, the Attorney General prays that the Commission make a determination that a prima facie case has been established that Atmos' rates are not fair, just and reasonable as required by KRS 278.030, KRS 278.260, KRS 278.040, KRS 278.270 and 807 KAR 5:001 Section 12; that the Commission require Atmos to answer this complaint; and that this matter be handled expeditiously.

Respectfully submitted,

GREGORY D. STUMBO
ATTORNEY GENERAL

Dennis G. Howard, II
Elizabeth E. Blackford
David Edward Spenard
Assistant Attorneys General

1024 Capital Center Drive, Suite 200
Frankfort, Kentucky 40601
502-696-5453 (FAX) 502-573-8315

Attorneys For Complainant
Office of the Attorney General
Commonwealth of Kentucky

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EXHIBIT A

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

OFFICE OF THE ATTORNEY GENERAL COMMONWEALTH OF KENTUCKY	:	**Case No. 2005-**
	:	
Complainant	:	
v.	:	
	:	
ATMOS ENERGY CORPORATION	:	
	:	
Respondent	:	
	:	

DIRECT TESTIMONY

AND EXHIBIT

OF

ROBERT J. HENKES

On Behalf of the Office Of Rate Intervention Of The Attorney General Of The Commonwealth Of Kentucky

February 1, 2005

Q. WOULD YOU STATE YOUR NAME AND ADDRESS?

A. My name is Robert J. Henkes and my business address is 7 Sunset Road, Old Greenwich, Connecticut 06870.

Q. WHAT IS YOUR PRESENT OCCUPATION?

A. I am Principal and founder of Henkes Consulting, a financial consulting firm that specializes in utility regulation.

Q. WHAT IS YOUR REGULATORY EXPERIENCE?

A. I have prepared and presented numerous testimonies in rate proceedings involving electric, gas, telephone, water and wastewater companies in jurisdictions nationwide including Arkansas, Delaware, District of Columbia, Georgia, Kentucky, Maryland, New Jersey, New Mexico, Pennsylvania, Vermont, the U.S. Virgin Islands and before the Federal Energy Regulatory Commission.

Q. WHAT OTHER PROFESSIONAL EXPERIENCE HAVE YOU HAD?

A. Prior to founding Henkes Consulting in 1999, I was a Principal of The Georgetown Consulting Group, Inc. for over 20 years. At Georgetown Consulting I performed the same type of consulting services that I am currently rendering through Henkes Consulting. Prior to my association with Georgetown Consulting, I was employed by the American Can Company as Manager of Financial Controls. Before joining the American Can Company, I was employed by the management consulting division of Touche Ross & Company (now Deloitte & Touche) for over six years. At Touche Ross, my experience, in addition to regulatory work, included numerous projects in a wide variety of industries and financial disciplines such as cash flow projections, bonding feasibility, capital and profit forecasting, and the design and implementation of accounting and budgetary reporting and control systems.

Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?

A. I hold a Bachelor degree in Management Science received from the Netherlands School of Business, The Netherlands in 1966; a Bachelor of Arts degree received from the University of Puget Sound, Tacoma, Washington in 1971; and an MBA degree in Finance received from Michigan State University, East Lansing, Michigan in 1973. I have also completed the CPA program of the New York University Graduate School of Business.

Q. WHAT IS THE SCOPE AND PURPOSE OF THIS TESTIMONY?

A. I was engaged by the Office of Rate Intervention of the Attorney General of Kentucky ("AG") to conduct a limited earnings review of the Kentucky-jurisdictional operations of Atmos Energy Corporation ("AEC") in connection with the AG's Complaint before the Kentucky Public Service Commission ("KPSC" or the "Commission"). The purpose of this testimony is to present to the Commission the findings and conclusions resulting from this limited earnings review.

Q. WHAT DOCUMENTATION HAVE YOU RELIED ON IN THIS LIMITED EARNINGS REVIEW?

A. In this limited earnings review, I have reviewed the following documentation:

- The Quarterly Return on Equity (ROE) reports of Kentucky's major water, electric and gas utilities, including AEC-Kentucky. These ROE reports were included in the Commission's 10/28/04 response to the AG's Open Records Request dated 10/25/04;
- AEC's "Kentucky Only" Annual Reports to the KPSC for 2003 and 2002;
- AEC-Kentucky's Statement of Income for the 12 months ended September 30, 2004;
- Various other AEC responses to information issued by the AG in this limited earnings review;
- The Colorado Public Service Commission's Order dated September 8, 2004, approving an Earnings Agreement concerning excess earnings of AEC-Colorado for the years 2002, 2003, and 2004;
- The Tennessee Consumer Advocate's October 15, 2004, petition to the Tennessee Regulatory Authority to require AEC to Show Cause that its rates are just and reasonable and that it is not over-earning, and the accompanying Affidavit of Stephen N. Brown; and
- The Kentucky Public Service Commission Order of November 10, 2004, in the general rate case of Delta Natural Gas Company, Inc., PSC Case No. 2004-00067.

Q. BEFORE DISCUSSING THE FINDINGS AND CONCLUSIONS OF YOUR LIMITED EARNINGS REVIEW OF AEC-KENTUCKY'S OPERATIONS, COULD YOU BRIEFLY SUMMARIZE THE ACTIONS TAKEN IN COLORADO AND TENNESSEE REGARDING AEC'S EARNINGS IN THOSE JURISDICTIONS?

A. On September 8, 2004, the Colorado Public Utilities Commission ("CPUC") approved an Earnings Agreement between AEC-Colorado, the Colorado Office of Consumer Counsel, and the CPUC Staff dated July 26, 2004. In this Earnings Agreement, AEC agreed to return to its ratepayers and Energy Outreach Colorado a total amount of $1,850,000 for excess earnings in 2002 and 2003, to be refunded in the form of a bill credit to be issued on or before January 31, 2005. The benchmark ROE number used to determine the 2002 and 2003 excess earnings of $1,850,000 was 10.25%. The Earnings Agreement also provides that 50% of any of AEC's 2004 earnings in excess of an ROE number of 10.25% would be returned to the ratepayers. The 50% portion of any over-earnings for 2004 would be returned to the ratepayers on or before July 1, 2005.

On October 15, 2004, the Consumer Advocate Department of the Attorney General of Tennessee ("AG") filed a petition with the Tennessee Regulatory Authority ("TRA") requiring AEC-Tennessee to show cause that its rates are just and reasonable and that it is not over-earning. Recently, the TRA issued a rate decision concerning Chattanooga Gas Company in which the TRA authorized CGC to earn an overall ROR of 7.42%. On August 31, 2004, AEC filed ROE reporting documentation with the TRA from which the AG derived that AEC realized an overall ROR of 10.45% for the 12-month period ended June 30, 2004 As a result, the AG has concluded that AEC annually earns $6.6 million more from its natural gas service in Tennessee than AEC will earn when its tariffs incorporate an overall rate of return of 7.42% rather than 10.45%.

Q. WHAT ARE THE FIRST FINDINGS OF YOUR LIMITED EARNINGS REVIEW CONCERNING AEC-KENTUCKY'S JURISDICTIONAL OPERATIONS?

A. These first findings are presented on the attached Schedule RJH-1. This schedule shows the actual achieved ROEs for a number of "12 months ended by quarter" periods from 9/30/2001 through 3/31/2004[1] for Kentucky's major investor-owned water, electric and gas utilities, including AEC-Kentucky. Schedule RJH-1 also shows the currently authorized ROE from the last fully litigated rate case for each of these Kentucky utilities and the date that this ROE was first authorized. As shown on this schedule, some of the currently authorized ROE numbers date as far back as 1984 (KPC's ROE of 16.50%), 1989 (Columbia's ROE rate of 13.00%) and 1990 (AEC's ROE rate of 12.50%) because all rate cases for these utilities subsequent to these dates were settled without identifying a specific new ROE rate. It is quite obvious that these old ROE rates are severely outdated within the context of today's financial performance measures and ROE determinations by the KPSC.

It should also be noted that, while the actually achieved ROE numbers on Schedule RJH-1 have been calculated and reported by the utilities based on Kentucky-jurisdictional numbers, they represent "per books" financial results that have not been adjusted for KPSC ratemaking principles. Despite this fact, I believe that these reported "per books" ROE numbers can certainly be relied upon to draw conclusions as to how the utility is doing financially and whether the utility is earning in excess of either its authorized ROE (if this ROE was recently decided by the KPSC), or is earning in excess of an ROE number that can be considered fair and reasonable in today's financial environment (if the authorized ROE for the particular utility is an old, outdated ROE).

With regard to AEC-KY's actually achieved ROE numbers, the following findings can be

[1] The ROE information presented on Schedule RJH-1 is derived from the Quarterly ROE/TIER Reports to the KPSC. ROE data through March 31, 2004, was available to the AG at the time this testimony was prepared.

derived from the information on Schedule RJH-1:

- From the 12-month period ended 9/30/01 through the 12-month period ended 3/31/04, AEC-KY's actual ROE averaged approximately 19.40%;
- AEC-KY's most recent reported actual achieved ROE for the 12-month period ended March 31, 2004, is approximately 18%;
- There is no discernible downward or upward trend in AEC-KY's actual ROE numbers for the "12-month ended by quarter" annual periods from 9/30/01 through 3/31/04; the ROE numbers fluctuate upwards and downwards with an average ROE level of 19.40%;
- AEC-KY's actual ROE for each of the nine "12-month ended by quarter" annual periods in 2002, 2003, and 2004 to date ranged from a low of 17.56% to a high of 23.71% and averaged approximately 20%. This is 750 basis points in excess of AEC-KY's ROE of 12.50% authorized back in 1990 and 950 basis points in excess of -- or close to twice as high as -- the most recent KPSC-authorized gas utility ROE of 10.50%[2] established in the fully-litigated Delta Natural Gas rate case (KPSC Case No. 2004-00067) concluded on November 11, 2004 .

Q. DID YOU FIND ADDITIONAL EVIDENCE IN YOUR LIMITED EARNINGS REVIEW INDICATING THAT AEC-KENTUCKY IS EARNING IN EXCESS OF A REASONABLE ROE?

A. Yes. This over-earnings evidence is presented on the attached Schedules RJH-2 through RJH-4.

Schedule RJH-4 contains AEC-Kentucky average rate base and capitalization information for the years 2002 and 2003, as well as calculations regarding the Company's effective cost

[2] The KPSC also authorized ROEs of 10.50% for Louisville Gas & Electric and Kentucky Utilities in their respective rate cases, Case No. 2003-00433 and Case No. 2003-00434, concluded by KPSC Order dated June 30, 2004.

of debt for these same two years. All of this information was derived from the Company's "Kentucky Only" Annual Reports to the KPSC. As shown in the first column of Schedule RJH-4, similar information for the 12-month period ended September 30, 2004, could not be prepared due to lack of comparable data. Although the AG requested average rate base and capitalization balances in the same format as per the "Kentucky Only" KPSC Reports and information to determine the effective cost of debt for the 12-month period ended September 30, 2004, the Company refused to provide this information.

Schedule RJH-3 shows AEC-Kentucky's Net Operating Income information for calendar years 2002, 2003 and the 12-month period ended September 30, 2004. The income information for the years 2002 and 2003 were taken from the Company's "Kentucky Only" Annual Reports to the KPSC, whereas the income data for the 12 months ended September 30, 2004, were derived from the "Statement of Income – 12 Months Ended September 30, 2004" that was provided by the Company in response to AG discovery.

Schedule RJH-2 combines the rate base, capitalization, debt cost and net operating income information from Schedules RJH-3 and RJH-4 in order to (1) determine AEC-Kentucky's actually achieved overall rate of returns on rate base and capitalization; and (2) approximate the ROE components of these overall rate of return numbers assuming a capital structure debt/equity ratio of 50/50. Schedule RJH-2 also shows the calculated revenue requirement impact associated with the difference between the actual achieved ROE numbers and a benchmark ROE rate of 10.50%. As shown in the first column of Schedule RJH-2, this information could not be presented for the 12-month period ended

September 30, 2004, because comparable rate base, capitalization and debt cost information was not available for this period.

With regard to AEC-KY's actually achieved ROE numbers and the associated revenue requirement implications of the difference between these actually achieved ROE numbers and a benchmark ROE of 10.50%, the following findings can be derived from the information on Schedule RJH-2:

- AEC-Kentucky's actually achieved ROE numbers (assuming 50% equity ratio) using rate base as the measurement base were 18.30% in 2003 and 17.13% in 2002 (see line 6);
- The required annual rate decrease levels associated with the reduction of these ROE rates of 18.30% and 17.13% to the benchmark ROE of 10.50% would be approximately $8.7 million and $7.4 million, respectively (see line 7);
- AEC-Kentucky's actually achieved ROE numbers (assuming 50% equity ratio) using capitalization as the measurement base were 16.60% in 2003 and 15.27% in 2002 (see line 13);
- The required annual rate decrease levels associated with the reduction of these ROE rates of 16.60% and 15.27% to the benchmark ROE of 10.50% would be approximately $7.4 million and $5.8 million, respectively (see line 14);

A. Based on the previously discussed findings, I have reached the following conclusions:

1. AEC-KY's current ROE in Kentucky is not a fair rate of return;
2. Similar to AEC's earnings experience in Colorado and Tennessee, AEC is significantly over-earning in the Kentucky jurisdiction;
3. Kentucky consumers who receive natural gas service from AEC-KY are economically burdened with gas prices higher than needed for AEC to deliver gas

services. Such gas prices should be reduced to achieve just and reasonable utility rates for AEC-Kentucky's consumers.

Q. MR. HENKES, DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, it does.

COMMONWEALTH OF KENTUCKY

RETURN ON EQUITY - TWELVE MONTHS ENDED BY QUARTER

	KAWC	KPC	ULH&P Elec.	ULH&P Gas	KU	LG&E Elec.	LG&E Gas	COL.	DELTA	AEC-KY
Authorized	11.00%	16.50%	11.50%	11.00%	11.50%	11.50%	11.25%	13.00%	11.60%	12.50%
Date	Nov-00	Dec-84 *	May-92	Jan-02	Jan-00	Jan-00	Sep-00	Oct-89 *	Dec-99	Sep-90 *
12-Month Ended:										
3/31/2004	7.19%	10.80%	6.35%	9.45%	9.21%	9.96%	6.44%	11.11%	4.08%	17.94%
12/31/2003	7.75%	11.39%	8.02%	9.83%	8.01%	10.37%	6.62%	14.50%	4.82%	17.56%
9/30/2003	6.78%	7.34%	8.60%	8.63%	10.07%	10.01%	6.58%	14.71%	7.91%	23.71%
6/30/2003	8.27%	6.75%	10.72%	8.66%	8.91%	10.43%	7.14%	12.58%	7.95%	19.52%
3/31/2003	9.02%	10.80%	12.16%	10.84%	18.84%	11.45%	5.89%	10.53%	6.95%	17.93%
12/31/2002	8.85%	5.15%	11.80%	11.01%	8.37%	9.66%	6.21%	13.47%	7.89%	21.56%
9/30/2002	9.08%	9.09%	17.83%	6.76%	13.16%	17.94%	20.04%	14.71%	7.91%	23.71%
6/30/2002	9.85%	9.75%	15.82%	7.16%	9.35%	18.70%	20.87%	12.58%	7.95%	19.52%
3/31/2002	10.48%	5.61%	15.79%	15.79%	15.46%	19.90%	21.90%	10.53%	6.95%	17.93%
12/31/2001	11.85%	7.93%	18.40%	18.40%	11.74%	12.35%	7.22%	10.43%	7.50%	15.90%
9/30/2001	9.85%	6.01%	18.90%	18.90%	7.67%	5.64%	-2.90%	13.32%	8.56%	17.95%

* ROE is from last litigated rate case; all subsequent rate cases have been settled.

NOTES:

- Source of the above ROE information is the Quarterly ROE/TIER Reports to the KPSC
- ROE calculations based on the amounts reported by utilities in their monthly financial reports.

ATMOS ENERGY - KENTUCKY
RETURN ON EQUITY AND EXCESS REVENUE CALCULATIONS

Sch. RJH-2

	12 Months Ended - $000			
	9/30/2004	12/31/2003	12/31/2002	
1. Rate Base	NA	$ 133,153	$ 132,823	Sch. RJH-4
2. Adjusted Utility Operating Income	15,650	15,371	14,730	Sch. RJH-3
3. Achieved Return on Rate Base	NA	11.54%	11.09%	L2 / L1
4. Weighted Cost of LT and ST Debt Assuming 50% Debt Ratio	NA	2.39%	2.53%	(1)
5. Equity Return Portion of Achieved Return on Rate Base	NA	9.15%	8.56%	L3 - L4
6. Achieved Return on Equity Assuming 50% Equity Ratio	NA	18.30%	17.13%	L5 / 50%
7. Required Rate Decrease to Bring ROE Down to ROE of 10.50%	NA	$ 8,712 (2)	$ 7,381	
8. Adjusted Capitalization	NA	$ 143,733	$ 144,982	Sch. RJH-4
9. Adjusted Utility Operating Income	15,650	15,371	14,730	Sch. RJH-3
10. Achieved Return on Capitalization	NA	10.69%	10.16%	L9 / L8
11. Weighted Cost of LT and ST Debt Assuming 50% Debt Ratio	NA	2.39%	2.53%	(1)
12. Equity Return Portion of Achieved Return on Capitalization	NA	8.30%	7.63%	L10 - L11
13. Achieved Return on Equity Assuming 50% Equity Ratio	NA	16.60%	15.27%	L12 / 50%
14. Required Rate Decrease to Bring ROE Down to ROE of 10.50%	NA	$ 7,351 (3)	$ 5,798	

(1) 2003: Sch. RJH-4 interest rate of 4.78% x 50%= 2.39%
2002: Sch. RJH-4 interest rate of 5.05% x 50%= 2.53%

(2) Calculation: [(18.30%-10.50%) x equity ratio of 50% x rate base of $133,153] * income tax gross-up multiplier of 1.6768

(3) Calculation: [(16.600%-10.50%) x equity ratio of 50% x capitalization of $143,733] * income tax gross-up multiplier of 1.6768

ATMOS ENERGY - KENTUCKY
OPERATING INCOME DATA

Sch. RJH-3

	12 Months Ended - $000		
	9/30/2004	12/31/2003	12/31/2002
	(2)	(1)	(1)
Operating Revenues:			
Gas	$ 183,327	$ 173,795	$ 132,220
Transportation	9,043	8,346	8,588
Other	2,746	2,504	2,124
Total	195,116	184,645	142,932
Purchased Gas (Production Exp.)	142,549	133,083	90,235
Gross Profit	52,567	51,562	52,697
Other O & M Expenses:			
Storage & Processing	228	195	253
Transmission	369	403	417
Distribution	5,334	5,304	6,256
Uncollectibles	518	1,283	(5)
Other Customer Accts Exp.	1,965	1,939	2,061
Customer Service	334	297	269
Sales	123	208	167
Administrative & General	9,002	6,528	8,102
Total Other O&M Expenses	17,873	16,157	17,520
Depreciation & Amortizations	9,412	10,420	10,773
Taxes o/t Income Taxes	2,543	2,900	2,719
Income Taxes	7,089	6,714	6,155
Net Utility Operating Income - Per Books	$ 15,650	$ 15,371	$ 15,530
Pro Forma Net Income Adjustments	-	-	(800) (3)
Pro Forma Adjusted Net Utility Income	$ 15,650	$ 15,371	$ 14,730

(1) Per "Kentucky Only" Annual Reports to KPSC.

(2) Per "Statement of Income - 12 months ended 9/3/04" provided by ATMOS in response to AG requests for information and ATMOS response to AG requests for information, question "Item 3."

(3) See Case No. 2003-00305 PSC DR Item 2 response, Part a, line 1 and footnote [1]: remove after-tax income of $800,000 in 2002 and add after-tax income of $400,000 in 2001 and 2000 to adjust for the fact that there was a $1.3 million uncollectible expense credit booked in 2002 that related back to 2001 and 2000.

ATMOS ENERGY - KENTUCKY
RATE BASE AND CAPITALIZATION DATA

	12 Months Ended - $000		
	9/30/2004	12/31/2003	12/31/2002
AVERAGE RATE BASE	(2)	(1)	(1)
- Gas Plant in Service (101-106,114)	NA	$ 246,994	$ 245,474
- CWIP (107)	NA	3,922	5,790
- Accumulated Depreciation (108,111,115)	NA	(113,357)	(115,369)
- Net Utility Plant	NA	137,559	135,895
- Additions:			
- Gas Stored Underground (Non-Current)	NA	1,695	1,695
- Cash Working Capital (1/8th of O&M)	2,234	2,020	2,189
- Materials and Supplies (154,163)	NA	17	119
- Prepayments (165)	NA	276	1,556
- Gas in Storage (Current) (164.1)	NA	18,556	16,671
- Total Rate Base Additions	NA	22,564	22,230
- Deductions:			
- Net ADIT (281-283, 190)	NA	(22,389)	(20,281)
- Customer Advances for Construction (252)	NA	(4,581)	(5,021)
- Total Rate Base Deductions	NA	(26,970)	(25,302)
- Total Net Rate Base	NA	$ 133,153	$ 132,823
AVERAGE CAPITALIZATION			
- Equity/LT Debt/ST Debt - Per Books	NA	$ 124,033	$ 125,282
- Pro Forma Equity Add-Back for MPL	NA	19,700 (3)	19,700 (3)
- Pro Forma Adjusted Capitalization	NA	$ 143,733	$ 144,982

	12 Months Ended - $000		
COST OF DEBT	9/30/2004	12/31/2003	12/31/2002
LT Debt Interest & Amort. Exp. (427,428)	NA	$ 6,209	$ 6,172
Avg. LT Debt Balance (221,231)	NA	$ 100,693	$ 94,989
Effective LT Debt Interest Rate	NA	6.17%	6.50%
LT & ST Debt Int. & Amort. Exp.	NA	$ 6,562	$ 6,758
Avg. LT & ST Debt Balances	NA	$ 137,170	$ 133,771
Effective LT and ST Debt Interest Rate	NA	4.78%	5.05%

(1) Per "Kentucky Only" Annual Reports to KPSC. Rate base and capitalization balances are average of each year's beginning and ending balances.

(2) Average rate base and capitalization balances in the same format as per the "Kentucky Only" KPSC Reports and information to determine the effective cost of debt was requested by the AG, but not provided by ATMOS in response to these requests.

(3) See Case No. 2003-00305 PSC DR Item 2 response, Part a, line 3 and footnote [2]: add-back to equity balance to reverse Minimum Pension Liability related OCI booking made in 2002.

In Re the Matter of:

OFFICE OF THE ATTORNEY GENERAL COMMONWEALTH OF KENTUCKY	)	
Complainant	)	
v.	)	**Case No. 2005-**
ATMOS ENERGY CORPORATION	)	
Respondent	)	

Comes the affiant, Robert J. Henkes, and being duly sworn, states that the foregoing testimony and attached schedules were prepared by him and are, to the best of his information and belief, true and correct.

Robert J. Henkes

State/Commonwealth of: CT
County of: Fairfield

Subscribed and sworn to before me by the affiant, Robert J. Henkes, this ____ day of 1st Feb, 2005.

Maria Rigakos, Notary Public

MARIA RIGAKOS
NOTARY PUBLIC
My Commission Expires January 31, 2008

EXHIBIT 2

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED
FEB 14 2005
PUBLIC SERVICE
COMMISSION

OFFICE OF THE ATTORNEY GENERAL	)	
COMMONWEALTH OF KENTUCKY	)	
	)	Case No. 2005-00057
V.	)	
	)	
ATMOS ENERGY CORPORATION	)	

<u>Answer of Atmos Energy Corporation</u>

Atmos Energy Corporation, by counsel, pursuant to the Commission's order of February 4, 2005, files its answer to the proffered Complaint of the Attorney General.

807 KAR 5:001(12) states in part :

> Formal Complaints. (1) Contents of complaint. Each complaint shall be headed "Before the Public Service Commission," shall set out the names of the complainant and the name of the defendant, and shall state: . . .
>
> (c) Fully, clearly, and with reasonable certainty, the act or thing done or omitted to be done, of which complaint is made, with a reference, where practicable, to the law, order, or section, and subsections, of which a violation is claimed, and such other matters, or facts, if any, as may be necessary to acquaint the commission fully with the details of the alleged violation. The complainant shall set forth definitely the exact relief which is desired (see Section 15(1) of this administrative regulation).
>
> 4) Procedure on filing of complaint.
>
> (a) Upon the filing of such complaint, the commission will immediately examine the same to ascertain whether it establishes a prima facie case and conforms to this administrative regulation. If the commission is of the opinion that the complaint does not establish a prima facie case or does not conform to this administrative regulation, it will notify the complainant

> or his attorney to that effect, and opportunity may be given to amend the complaint within a specified time. If the complaint is not so amended within such time or such extension thereof as the commission, for good cause shown, may grant, it will be dismissed.

The Complaint submitted by the Attorney General fails to comply with the requirements of the regulation. The allegation made is that Atmos' rates are unfair, unjust and unreasonable because of certain unspecified changes in "economic conditions and "substantial reductions in interest rates." There is no fact presented that meets the regulations standard for "reasonable certainty" of a violation by Atmos nor has an "act or thing done or omitted" to be done identified. Further, no order, statute, or regulation is cited that has been violated. The thrust of the Complaint is that in the Attorney General's opinion, the rates being charged are excessive. The rates being charged are those authorized by the Commission. There is no allegation to the contrary.

In fact, the testimony submitted with the Complaint admits the lack of specific relevant information in the possession of the Attorney General to support his speculation. On page two of Mr. Henkes' testimony, he states that he conducted a "limited earnings review" based on seven documents, three of which involve non-Kentucky companies and a third involving an unrelated Kentucky gas utility. There is no attempt made to show any relevance of this unrelated information to Atmos' earnings. Unsubstantiated assertions with reference to irrelevant information are not adequate to meet the prima facie standard of the regulation.

Indeed, Mr. Henkes concedes that his analysis if faulty. On page five of his testimony, he qualifies his conclusions by noting that his calculations have not been adjusted for Kentucky ratemaking principles.[1] His analysis is also based on a misunderstanding or misstatement of a similar complaint by the Tennessee Attorney General before the Tennessee Regulatory Authority. On page 8 of his testimony, he refers to Atmos' over earnings in Tennessee. In reality, there has been no finding by the TRA of any over earnings by Atmos as a result of that complaint or otherwise. In fact, the TRA has not yet even addressed the Petition filed with it regarding Atmos' earnings in Tennesse

Mr. Henkes, also without any justification, assumes a "benchmark" return on equity of 10.50%. He makes no effort to explain how this is derived or how it is relevant to the specific financial condition of Atmos. He does provide a schedule with various returns on equity with his testimony. However, that schedule includes a water utility and four electric utilities. No explanation of the relevance of those companies to Atmos is given. There is also no explanation of why those types of utilities are relevant to the calculation of a gas utilities' return or whether the Commission has relied on those utilities to set Atmos' return in prior cases.

The burden of proof in this matter is on the complainant. See for example *Earnest Miller v. Hima-Sibert Water Distrct*, Case No. 95-228 (January 16, 1996), in which the Comission said: "Applicants before an administrative agency have

[1] While admitting that his Kentucky specific information is unreliable, he fails to even acknowledge that the order from Colorado or the Complaint filed in Tennessee are based on regulatory standards that may not be comparable to those in Kentucky. Without such comparability, they are of no significance in the Commission's review of the allegations made in this Complaint.

the burden of proof. Energy Regulatory Commission v. Kentucky Power Co., Ky., 605 S.W.2d 46, 50 (1981)." In *The Harbor Condominium Association v. Fourth Ave. Corp.,* Case No. 2000-00379 (August 14, 2001), the Commission further explained the burden: "In order to meet its burden of proof, The Harbor's contention that Fourth Avenue is unfairly and incorrectly applying the provisions of its tariff must be proven by substantial evidence." In these cases the Commission found that the complainant did not carry its burden and dismissed the complaint. The Attorney General's complaint and supporting documents do not provide the Commission with either a valid basis to further investigate Atmos' rates, or "substantial evidence." If there is to be a further investigation, the burden clearly is on the Attorney General to provide credible evidence to support his allegations. His attempt to shift the burden to Atmos to prove the reasonableness of its rates is contrary to law and the Commission's procedures. The Attorney General is attempting to require Atmos to prove its innocence, yet the burden is on the Attorney General to prove that the rates are unreasonable. He has failed to do so and has failed to provide the Commission with sufficient information to meet the threshold test of probable violation of its most recent rate case.

In addition to these inadequacies, the schedules provided by Mr. Henkes are factually incorrect and provide inaccurate information about Atmos' earnings. Attached are schedules showing corrected calculations and earnings, which refute the conclusion of Mr. Henkes. Schedule 1, which corresponds to Schedule RJH-1 attached to Mr. Henkes testimony, adds rates of return on equity for Atmos for periods ending June 30, 2004 and September 30, 2004 and corrects the RJH-1 rate of return on equity for the period ending December 31, 2003. Mr. Henkes notes that the Quarterly ROE reports were received from the PSC in response to the AG's Open Records Request dated 10/25/2004. The PSC noted in its response to the AG that the report is prepared for informational purposes only and does not reflect any ratemaking adjustments.

Subsequent to that time, but prior to the AG's filing of the complaint, Atmos had reports on file with the KPSC through September 2004. Schedule RJH-1 failed to show any rates of return more current than March 31, 2004. It is noteworthy that the updated reports show the rate of return on equity declining to 11.25% by September 2004. In addition, Schedule RJH-1 shows an incorrect rate of return of 17.56% for the twelve months ended December 31, 2003. A different method was utilized to calculate the rate of return for that period than was used for the other periods included in Schedule RJH-1. The company has attached the conventional computation of ROE from the monthly financial filings, which produces a rate of return of 14.36% for the twelve months ended December 31, 2003 (Schedule 1-A) and the 11.25% ROE for the twelve months ended September 30, 2004 (Schedule 1-B).

It is also important to note that all of the rates of return for Atmos on this schedule include significant income from unregulated activities. For example, the twelve months ended September 2004 had a net income of $11,364,504 which included other income from merchandising, interest income and other nonoperating income of $1,039,974. Including this other income overstates the rate of return for Kentucky utility operations.

Schedule 2, which corresponds to Schedule RJH-2 attached to Mr. Henkes testimony, substitutes the correct capitalization amounts and debt cost rates in the calculation of rates of return on equity from Schedule RJH-2. Schedule RJH-2 rate base and capitalization amounts and debt cost rates were calculated from data included on "Kentucky only" annual reports to the KPSC which do not include investment in assets shared with other states such as the customer information system and the customer service center. These assets are essential to provide service to customers in Kentucky and as a result of their exclusion , Schedule RJH-2 overstates rates of return on equity. Atmos' monthly reports to the KPSC contain capitalization amounts that include an allocated portion of the Company's investment in these shared assets as well as Atmos' actual debt cost rates. Additionally, one of the years included in Schedule RJH-1 was previously addressed in discovery in Case No. 2003-00305. Using the correct data inputs from monthly reports and the information from Case No. 2003-00305, the correct achieved rates of return that should be included on Schedule 2 are 11.45% for 2002, 12.22% for 2003 and 10.69% for 2004.

In a similar situation, the Commission dismissed a complaint by the Kentucky Industrial Utility Customers against LG&E in Case No. 9847. There the Commission found that "(1) KIUC included no analysis of LG&E's current cost of capital or LG&E's current earnings to substantiate its request for the Commission to initiate hearings to adjust LG&E's rates. (2) The Commission staff monitors the earnings of LG&E and other jurisdictional utilities on a monthly basis to determine whether an adjustment to existing rates is needed."

Similarly, the Commission receives monthly reports from Atmos on earnings, among other information. No investigation has been warranted by that ongoing review. Significantly, Atmos in Case No. 2003-00305 provided the Commission with detailed information about its earnings in a case involving its Margin Loss Recovery mechanism. No action was taken by the Commission to alert Atmos of possible excess earnings based on the financial information that was filed in that case. The information provided in that case covers substantially the same period as the Attorney General's analysis in this Complaint. The KIUC case, supra, is clear precedent for the dismissal of this Complaint.

Finally, the conclusion of Mr. Henkes is predicated on the faulty rate making assumption that Atmos should have its rates reduced due to over earning of return on equity. He cites no authority for the Commission to set a rate based on ROE to the exclusion of all other factors relevant to the setting of rates.

Given the lack of factual support for the Complaint and the faulty regulatory assumptions on which it is predicated, the Complaint fails to meet the minimum standard for establishing a prima facie case. The Commission has ruled that a prima facie case is one that states sufficient allegations that if uncontradicted by other evidence would entitle the complainant to the relief sought. *In the Matter of: Kanawha Hall v. Equitable Production Company*, Case 2004-00307 (October 27, 2004). In this case, the Attorney General has not provided any factual support for his conclusions. The assumptions made in the

Complaint have been refuted by the exhibits prepared by Atmos. Additionally, the relief sought is inappropriate in that it requires the Commission to violate ratemaking procedures and set a rate based on only one aspect of Atmos' financial operations, namely return on equity.

Having shown that the data supplied by the Attorney General to support his allegations are not factual and that his request for relief is predicated on the violation of several regulatory principles, his Complaint cannot state a prima facie case. Even if one of those factors were valid, the other would negate a prima facie showing of a legitimate complaint. Yet, the Complaint filed is both factually and legally deficient. For these reasons, the Complaint should be dismissed as failing to meet the criteria of 807 KAR 5:001 (12).

In addition to the factual defects in the Complaint, it is deficient for several legal reasons. First, it attempts to set rates on the single issue of return on equity. The Commission has consistently rejected single issue cases. In its most recent discussion of this principle, the Commission in Case Nos. 2004-00459 and 00460 *The Application of Louisville gas And Electric Company for Approval of New Rate Tariffs Containing a Mechanism for the Pass-Through of MISO Related Revenues and Costs Not Already Included in Existing Rates* made the following statement of regulatory law:

> As defined in KRS 278.010(12), the term rate includes:
>
> "any...compensation for service rendered or to be rendered by any utility...." If the proposed MISO cost surcharges are approved, it appears that the rates now paid by every LG&E and KU electric customer will be adjusted by a charge or credit to reflect the surcharge.

Commission regulation 807 KAR 5:001, Section 10, establishes minimum filing requirements for all applications requesting a general adjustment in existing rates. Those filing requirements include a specific advance notice, as well as detailed financial data and exhibits that are necessary to demonstrate that the applicant's existing rates are not, or will not be, fair, just, and reasonable, and need an adjustment. The MISO cost surcharges are proposed to be mandatory, not optional, rates, and they will recur every month on the bill of every electric customer. Consequently, it appears that LG&E and KU are requesting a general adjustment to every rate classification by including the MISO cost surcharge as a supplement to every rate classification. However, the LG&E and KU applications did not include the financial data and exhibits required by 807 KAR 5:001, Section 10, and the advance notices of filing that were provided did not comply with that regulation.

Simply stated, the pending applications appear to be requests for the Commission to engage in single-issue rate-making by focusing exclusively on one or more closely related items of revenue and expense, to the exclusion of all other items of revenue and expense. Although the Commission has, in limited instances, previously engaged in single-issue rate-making, those instances were either specifically authorized by statute or the result of a unanimous agreement by all parties with approval by the Commission. While the General Assembly has authorized single-issue rate-making for recovery of the Commission's annual assessment and the costs of its consultants (KRS 278.130), environmental costs (KRS 278.183), and demand side management costs (KRS 278.285), there is no provision of law authorizing a rate case focused exclusively on MISO-related revenues and expenses. Since LG&E and KU are proceeding under KRS 278.030, which requires rates to be "fair, just and reasonable," their applications appear to be deficient by having omitted the information and schedules required by 807 KAR 5:001, Section 10, to justify a change in rates. (emphasis added)

Interestingly, the Attorney General in that same case "strongly agreed" with the Commission's position against pursuing a single issue rate case. His Brief was filed on January 24, 2005, just one week prior to his filing of the Complaint in this case. In one matter he stands for one proposition, and in the other just the opposite. If the Attorney General believes that single issue ratemaking is improper, as he has stated on the record in the LG&E case, he should not be allowed to argue the opposite position in this case and succeed.

The second principle that the Attorney General seeks to have the Commission violate is the rule against retroactive ratemaking. The Commission engaged in an extensive review of this principle in *Kentucky Industrial Utility Customers, Inc. v. Big Rivers Electric Corporation,* Case No. 95-011, (April 1, 1997). In that case the Commission said:

> The rule against retroactive ratemaking is a 'generally accepted principle of public utility law which recognizes the prospective nature of utility ratemaking and prohibits regulatory commissions from rolling back rates which have already been approved and become final.' **It further prohibits regulatory commissions, when setting utility rates, from adjusting for past losses or gains to either the utility, consumers, or particular classes of consumers**. The rule 'rewards the utility's efficiency and protects the consumer from surprise surcharges allocable to the utility's losses in prior years...[and] ensures fairness, stability and certainty by preventing a regulatory agency from reversing prior approved rates.' (emphasis added)

The Attorney General seeks to have the Commission lower Atmos' approved rates for the sole purpose of correcting what he claims is excessive earnings for the years 2001 through 2003. That is exactly what the rule against retroactive ratemaking prohibits. Rates are based on current data to project what the company's revenue requirements will be for the future. The Attorney General has provided unsupported, inaccurate data on past periods to set rates for the future. There is no legal or regulatory justification for such action.

For these reasons, the Complaint should be dismissed.

Submitted By:

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And

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Attorneys for Atmos Energy Corporation

Certification:

I certify that a copy of this Answer was served on the Attorney General, 1204 Capital Center Dr., Frankfort, KY 40601 by first class mail the 14th day of February, 2005.

John N. Hughes

Case No. 2005-00057
Schedule 1

COMMONWEALTH OF KENTUCKY

RETURN ON EQUITY - TWELVE MONTHS ENDED BY QUARTER [1]
Corresponds to RJH-1

	AEC Kentucky
Authorized	12.50%
Date	Sep-90
12-Month Ended	
September 30, 2004	11.25% [2]
June 30, 2004	17.31% [2]
March 31, 2004	17.94%
December 31, 2003	14.36% [3]

[1] All of these rates of return include significant income from unregulated activities. For example, the twelve months ended September 2004 had a net income of $11,364,504 which included other income from merchandising, interest income and other nonoperating income of $1,039,974.

[2] Schedule RJH-1 stopped at March 2004, Atmos had monthly reports on file at the Commission through September 2004 at the time the AG filed the complaint. See Schedule 1-B for the ROE calculation.

[3] Schedule RJH-1 shows a rate of return of 17.56% for the twelve months ended December 31, 2003. Using the same method that was used to calculate the other rates of return produces a rate of return of 14.36%. Since this period is already over a year old Atmos did not review any of the even older data on RJH-1. See Schedule 1-A for the ROE calculation.

Case No. 2005-00057
Schedule 1-A

COMMONWEALTH OF KENTUCKY

Calculation of Return on Equity
For the Twelve Months Ended September 30, 2004

Line Number	Return on Equity:	
1	Kentucky Division Capital Account	$158,977,684
2	Dallas General Office Capital Allocation	(86,771)
3	Total Capital Account at September 30, 2004	158,890,913
4	Kentucky Division Net Income before Interest	16,498,889
5	Return on Capital Account (Line 4/Line 3)	10.38%
6	Interest Portion of Return on Capital (7.13% x 43%)	3.92%
7	Equity Portion of Return on Capital	6.46%
8	Return on Equity (Line 7/57%)	14.36%

NOTE: The return calculated on this schedule may not be reflective of a normal 12 month period. Adjustments have not been made to normalize items such as weather, expenses or to reflect seasonal changes in capital investment.

Case No. 2005-00057
Schedule 1-B

COMMONWEALTH OF KENTUCKY

Calculation of Return on Equity
For the Twelve Months Ended September 30, 2004

Line Number	**Return on Equity:**	
1	Kentucky Division Capital Account	$180,231,695
2	Dallas General Office Capital Allocation	(2,080,767)
3	Total Capital Account at September 30, 2004	178,150,928
4	Kentucky Division Net Income before Interest	16,668,597
5	Return on Capital Account (Line 4/Line 3)	9.37%
6	Interest Portion of Return on Capital (6.88% x 43%)	2.96%
7	Equity Portion of Return on Capital	6.41%
8	Return on Equity (Line 7/57%)	11.25%

NOTE: The return calculated on this schedule may not be reflective of a normal 12 month period. Adjustments have not been made to normalize items such as weather, expenses or to reflect seasonal changes in capital investment.

Case No. 2005-00057
Schedule 2

COMMONWEALTH OF KENTUCKY

RETURN ON EQUITY
Corresponds to RJH-2

Line Number		12 Months Ended - $000 9/30/2004	12/31/2003	12/31/2002	
1	Adjusted Capitalization	178,151	158,891	151,528	[1]
2	Adjusted Utility Operating Income	15,650	15,371	14,730	
3	Achieved Return on Capitalization	8.78%	9.67%	9.72%	L2 / L1
4	Weighted Cost of Debt Assuming 50% Debt Ratio	3.440%	3.565%	3.995%	[2]
5	Equity Return Portion of Achieved Return ofn Capitalization	5.34%	6.11%	5.73%	L3 - L4
6	Achieved Return on Equity Assuming 50% Equity Ratio	10.69%	12.22%	11.45%	L5 / 50%

[1] Capitalization for 2002 from PSC DR 1 - Item 2 Case No. 2003-00305. Capitalization for 2003 and 2004 from monthly reports to PSC.
Schedule RJH-2 Rate Base and Capitalization are calculated from data on "Kentucky Only" Annual Reports to the KPSC which do not include investment in assets shared with other states such as the customer information system and the customer service center.

[2] Debt Cost Rate for 2002 from PSC DR 1 - Item 2 Case No. 2003-00305. Debt Cost Rate for 2003 and 2004 from monthly reports to PSC.
RJH-2 debt cost rates differ significantly from the company's actual debt cost rates.

EXHIBIT 3

RECEIVED

FEB 2 5 2005

PUBLIC SERVICE COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

OFFICE OF THE ATTORNEY GENERAL COMMONWEALTH OF KENTUCKY	:	**Case No. 2005-00057**
Complainant	:	
v.	:	
ATMOS ENERGY CORPORATION	:	
Respondent	:	

Attorney General's Response to Atmos Energy Corporation's Answer and Motion to Dismiss Complaint

Comes now the Attorney General, by and through his Office of Rate Intervention ("AG") , and files this response to Atmos Energy Corporation's ("Atmos") answer and motion to dismiss. For the following reasons, the Public Service Commission should grant the Attorney General's request for a hearing on his complaint and deny Atmos' motion to dismiss the complaint.

ARGUMENT

The Attorney General has presented a *prima facie* case that Atmos is significantly over-earning and a hearing is required pursuant to KRS 278.260, KRS 278.060, KRS 278.040, KRS 278.270 and 807 KAR 5:001 Section 12 to adjust the company's rates to be fair, just and reasonable.

As previously demonstrated in the Attorney General's complaint and further reiterated here, the Commission must hold a hearing pursuant to KRS 278.030, KRS 278.260, KRS 278.040, KRS 278.270 an 807 KAR 5:001 Section 12 to adjust the company's rates to be fair, just and reasonable.

First, the AG's Complaint does present a *prima facie* case requiring a hearing. A complaint establishes a *prima facie* case when, on its face, it states sufficient allegations that, if uncontradicted by other evidence, would entitle the complainant to the requested relief.[1] The standard is not that the complaint must state a case that cannot be contradicted, as Atmos suggests with its efforts to contradict the facts presented. Rather, the standard is that if uncontradicted, the allegations would entitle the Complainant to the requested relief.

In *Kanawha Hall*,[2] the complaint alleged that the Complainant was being charged the rate established by the tariff, but asked for different treatment because others were being charged less under right of way contracts. Having stated that it was being charged the rate established by the tariff, there was no ground on which relief could be granted. There, even if the facts alleged were uncontradicted, there was no ground for relief. Here, by contrast, if uncontradicted, the evidence shows that the achieved rate of return for Atmos has consistently been well above both the rate of return established for it in its last case as well as being well above the allowed rates of return appropriate in today's financial environment. Atmos's efforts to manipulate the numbers it has previously provided to the Commission to lower the returns stated in those numbers as originally provided to the Commission aside, the fact remains that the evidence of public record shows Atmos to have been earning well in excess of appropriate amounts for a length of time sufficient to warrant an inquiry into whether the rates continue to be fair, just

[1] *In the Matter of Kanawha Hall v Equitable Production Company*, PSC Case No. 2004-00307, Order of October 2, 2004, pp. 2-3.
[2] Id.

and reasonable, and to lower the rates if they are too high. If uncontradicted, the facts alleged in the Complaint do state a ground for relief. The *prima facie* case is made. An investigation into the rates of Atmos must be instigated and rates lowered if that investigation demonstrates they are too high.

Unlike utilities that have all of the facts at their fingertips, challengers who exercise their rights under KRS 278.260 must act on evidence that is of public record and on that information the utilities will voluntarily turn over to them. In reciting and relying on the figures provided to the Commission by the utilities of their achieved returns, the AG has presented that which is available as a matter of public record. Recognizing that those numbers have not been adjusted for ratemaking purposes does not make them any less reliable for the purpose of determining whether a *prima facie* case has been presented as there is no basis on which to assume that the adjusted numbers would vary significantly from the reported numbers. Further, there is nothing of public record that would allow such an adjustment prior to an investigation in which the pertinent numbers were brought to light pursuant to the power of the Commission.

While Atmos contends that the ratemaking adjustments it has to offer will bring the returns reported down significantly and that therefore unadjusted numbers cannot be the basis for the finding that a *prima facie* case has been made, the AG has never seen the Commission fully agree with all ratemaking adjustments proposed by any party, be it the utility or the intervenor. Therefore, the proposed ratemaking adjustments themselves present issues of fact which are the very meat of a hearing to be held subsequent to the finding that the *prima facie* case, the case that would present a cause for relief if facts alleged are uncontested, has been made.

Too, as the testimony presented by the AG candidly admits, it was without facts it would have wished to present. This however, was not because no effort was made to garner and present those facts, but rather, because Atmos refused to provide the information necessary to do so.[3] Atmos now wants to bootstrap its lack of cooperation and the consequent gap in information into an assertion that the Complaint fails to make a *prima facie* case. Allowing this bootstrapped defense to prevail would render KRS 278.260 meaningless.

Atmos appears to take umbrage with references to the current financial picture and to the allowed returns the Commission has awarded. Here too, Atmos's attack on the sufficiency of the facts stated to constitute a *prima facie* case

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[3] For instance, in order to determine AEC's effective composite cost of long- and short-term debt, the AG submitted the following requests for information to AEC:

- Q.4: The "Kentucky-Only FERC Form No. 2 Information" reports page 116, line 62 show "Other Interest Expense" amounts of $793,575 for 2001, $586,293 for 2002 and $396,681 for 2003. For each of these Other Interest Expense amounts, indicate what these interest expenses represent and what portion of these annual interest expenses are for short term debt interest.
- Q.5: For the 12-month period ended 9/30/04 provide (a) the Interest on Long Term Debt, (b) Amortization of Debt Disc. & Exp., (c) Amort. of Loss on Reacquired Debt, and (d) Short Term Debt interest expenses.....
- Q.6: Please provide the actual Short Term Debt (Acct 231 – Notes Payable) balances for each of the months in 2001, 2002, 2003 and 2004 through September.
- Q.7: ...Please provide the monthly Long Term Debt balances for each month from 12/31/2000 through 9/30/2004.
- Q.8: Please provide a breakout of the total Long Term Debt balances as of 12/31/03 and 9/30/04 by Long Term Debt issue and the stated interest (coupon) rates for each of these Long Term Debt issues.

AEC refused to respond to these interest expense related requests for information because it either deemed the requested information to be "not necessary in the determination of the reasonableness of earnings," or to be "not related to previously supplied data."

must fail. The Commission is free to take administrative notice of matters of common knowledge such as the current financial environment in which utilities are operating. Not only is that information commonly followed by the Commission and subject to assessment within the Commission's sphere of expertise, it has been specifically presented to the Commission for its consideration recently in two gas cases, one of which was settled and one of which was fully litigated. Likewise, the Commission is free to take administrative notice of the allowed returns on equity that have been awarded and the discrepancy between reported achieved returns and currently allowed returns.

Atmos contends that in pointing to the allowed return/achieved return contrast as a central element of its testimony, the AG is soliciting single-issue ratemaking by the Commission. Make no mistake. The Attorney General is not seeking single issue ratemaking, but rather is pointing to a change in one expense that ordinarily has a material impact on rates, awarded returns on equity appropriate to the current financial environment and level of risk faced by the company, and in light of that seeks a full examination of all of the company's expenses and revenues to determine whether their rates continue to be fair just and reasonable as evidenced by achieved rates of return that far exceed the allowed rates of return being awarded today.

In single issue ratemaking, the overall financial picture of the utility is studiously and deliberately avoided, examining only the expense at issue. By contrast, the Attorney General is pointing to the achieved rate of return which is a consequence of all of the revenues and expenses of the utility and to one expense, the allowed rate of return, that is capable of creating a material impact on the company's overall financial well being and is asking for the review to determine whether as a result rates continue to be fair, just and reasonable, or whether they need to be reset on a going-forward basis. The AG welcomes a full investigation, but in stating its *prima facie* case he is working within the limits of the information available outside of the Commission's ability to require Atmos to present all of the facts that would lead to a determination of fair, just and reasonable rates.

In its Answer, Atmos presents its own version of the facts and prematurely attempts to get the Commission to rule as if the facts had been fully developed in the context of discovery and a hearing by arguing that the Complainant bears the burden of proof and that it must meet this burden with substantial evidence. Today, the Commission must only determine whether a *prima facie* case has been made, a case that if uncontradicted would entitle the AG to the relief requested. The *prima facie* case has been made. Therefore an investigation should be opened and pursued as was done with reference to Kentucky Utilities and Louisville Gas and Electric Company in 1999.[4]

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[4] See, Order of April 13, 1999 entered in *Kentucky Industrial Utility Customers, Inc. v. Kentucky Utilities Company,* Case No. 99-083 and *Kentucky Industrial Utility Customers, Inc. v. Louisville Gas and Electric Company, Inc.,* Case No. 99-082 merging the holding that a prima facie case had been made and merging the cases into and considered with Case No. 98-474 and 98-426, respectively, which are more fully cited as *In the Matter of: Application of Kentucky Utilities Company for Approval of an Alternative Method of Regulation of its Rates and Services* and *In the Matter of: Application of Louisville Gas and Electric Company for Approval of an Alternative Method of Regulation of its Rates and Services,* respectively.

CONCLUSION

The Commission should find that the Complaint makes a *prima facie* case and should require Atmos to satisfy or Answer the Complaint. Further, as only the Commission has the power to require Atmos to produce the facts that would allow a determination of the fairness, justness and reasonableness of the rates, the Commission should establish a procedural schedule that requires Atmos to produce such information as is necessary to make that determination, that allows the Attorney General and any other interested party to test the accuracy of that information, and following a full hearing, should establish fair, just and reasonable rates for Atmos on a going-forward basis.

Respectfully submitted

/s/ Blackford

Dennis G. Howard, II
Elizabeth E. Blackford
David Edward Spenard
Assistant Attorneys General
1024 Capital Center Drive, Suite 200
Frankfort, Kentucky 40601-8204
(502) 696-5453

NOTICE OF FILING AND CERTIFICATION OF SERVICE

I hereby give notice that I have filed the original and ten true copies of the foregoing with the Executive Director of the Kentucky Public Service Commission at 211 Sower Boulevard, Frankfort, Kentucky, 40601 this the 25th day of February, 2005, and certify that this same day I have served the parties by mailing a true copy, postage prepaid, to the following:

DOUGLAS WALTHER ESQ
SENIOR ATTORNEY
ATMOS ENERGY CORPORATION
BOX 650205
DALLAS TX 7235-0205

MARK R HUTCHINSON ESQ
2207 FREDERICA ST
OWENSBORO KY 42301

JOHN N HUGHES ESQ
124 WEST TODD ST
FRANKFORT KY 40601

EXHIBIT 4

RECEIVED

SEP 13 2005

PUBLIC SERVICE COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

OFFICE OF THE ATTORNEY GENERAL COMMONWEALTH OF KENTUCKY	:	**Case No. 2005-00057**
	:	
Complainant	:	
v.	:	
	:	
ATMOS ENERGY CORPORATION	:	
	:	
Respondent	:	

Attorney General's Motion for Ruling and Procedural Schedule

Comes now the Attorney General, by and through his Office of Rate Intervention ("AG"), and files this motion for an immediate ruling that Atmos Energy Company ("Atmos") is over earning, to establish a procedural schedule to determine the amount of the excessive over earning, and to reduce the rates charged to reasonable amounts prospectively. As grounds for this motion the Attorney General states the following.

On 1 February 2005, the Attorney General filed a complaint against Atmos which unequivocally demonstrated a *prima facie* case that the Company was over earning. While the Company filed an answer on 14 February 2005 trying to refute same[1], the Attorney General responded on 25 February 2005, reiterating its irrefutable position that the Company is over earning and that a hearing should be held to reduce the rates.

[1] On 15 February 2005 Atmos filed a correction to an error on a schedule included in its Answer.

Close to seven months have now passed with no ruling by the Commission on the demonstrated need to reduce Atmos' rates. Given the concurrence by local distribution companies, including Atmos, the Commission, the Attorney General, and other stakeholders that the approaching winter will present ratepayers with significant increases for the natural gas cost portion of their bills, it is imperative that the Commission rule that the company is over earning and immediately set in course a procedural schedule and hearing to reduce the non-gas rates so that customers are not burdened with the support of inflated earnings for Atmos on top of increases in gas prices.

Given the delay that has already occurred since the filing of the Complaint, it is impossible to afford the Attorney General and other interested parties sufficient time to conduct meaningful discovery, hold a hearing, and issue a decision prior to the beginning or the end of this heating season. Under a system governed by the principle of the fixed rate doctrine, justice delayed becomes justice denied. To provide reasonable rates prospectively, the Attorney General respectfully demands that a procedural schedule and hearing immediately be established in this docket.

CONCLUSION

The Commission should rule that the Complaint makes a *prima facie* case that Atmos is over earning and should immediately establish a procedural schedule and hearing in this docket.

Respectfully submitted

Dennis G. Howard, II
Elizabeth E. Blackford
David Edward Spenard
Assistant Attorneys General
1024 Capital Center Drive, Suite 200
Frankfort, Kentucky 40601-8204
(502) 696-5453

NOTICE OF FILING AND CERTIFICATION OF SERVICE

I hereby give notice that I have filed the original and ten true copies of the foregoing with the Executive Director of the Kentucky Public Service Commission at 211 Sower Boulevard, Frankfort, Kentucky, 40601 this the 13th day of September, 2005, and certify that this same day I have served the parties by mailing a true copy, postage prepaid, to the following:

HONORABLE JOHN N HUGHES
124 W TODD ST
FRANKFORT KY 40601

WILLIAM J SENTER
VP RATES AND REGULATORY AFFAIRS
ATMOS ENERGY CORPORATION
2401 NEW HARTFORD RD
OWENSBORO KY 42303 1312

Assistant Attorney General

EXHIBIT 5

Case No. 2005-00057

Ernie Fletcher
Governor

LaJuana S. Wilcher, Secretary
Environmental and Public
Protection Cabinet

Christopher L. Lilly
Commissioner
Department of Public Protection

Commonwealth of Kentucky
Public Service Commission
211 Sower Blvd.
P.O. Box 615
Frankfort, Kentucky 40602-0615
Telephone: (502) 564-3940
Fax: (502) 564-3460
psc.ky.gov

Mark David Goss
Chairman

Teresa J. Hill
Vice Chairman

Gregory Coker
Commissioner

October 26, 2005

Tom Loveless
1110 Cleveland Avenue
Glascow, Kentucky 42141

Re: Atmos Energy

Dear Mr. Loveless:

Thank you for your letter of October 10, 2005 regarding the Atmos Energy case.

As you might understand, because this is a matter currently pending before the Kentucky Public Service Commission, and because I am one of the three decision makers in this case, I am unable at this time to comment on any aspect of the case.

However, I am very appreciative that you would take the time to write the Commission and advise us of your concerns regarding this matter.

Please be sure that we will do everything in our power to insure that this case is resolved in a fashion that is fair and equitable to all parties.

Sincerely yours,

Mark David Goss

cc: Parties of Record