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**WILSON, HUTCHINSON & POTEAT**

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**To:** KY. PUBLIC SERVICE COMMISSION    **From:** RANDY HUTCHINSON  

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**Fax:** 502-564-3460    **Pages:**  

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**Phone:**    **Date:** 9-17-08  

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**Re:** ATMOS ENERGY CORPORATION    **CC:**  

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• **Comments:**

Case No. 2008-00230

Please find Comments of Atmos Energy Corporation which have been sent by overnight delivery to you today. Thanks.

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

APPLICATION OF ATMOS ENERGY CORPORATION	)	
FOR AN ORDER APPROVING THE ACCOUNTING	)	
TREATMENT OF COSTS AND EXPENSES INCURRED	)	
IN CONNECTION WITH ENVIRONMENTAL	)	
REMEDIAL ACTIONS ASSOCIATED	)	Case No.
WITH A MANUFACTURED GAS PLANT SITE IN	)	2008-00230
OWENSBORO, KENTUCKY	)	

COMMENTS OF ATMOS ENERGY CORPORATION

PROCEDURAL BACKGROUND

This matter is before the Kentucky Public Service Commission ("Commission") upon the Application of Atmos Energy Corporation ("Atmos") for approval to defer costs incurred, and to be incurred, by it in connection with federally mandated environmental cleanup requirements at a manufactured gas plant site formerly owned by Atmos ("Site"). The Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention ("Attorney General") sought full intervention in this proceeding, which was granted by the Commission on August 12, 2008.

In the Commission's procedural schedule, requests for information to Atmos were required to be filed no later than August 21, 2008. The Commission staff filed initial and supplemental requests for information and Atmos provided the requested information. The Attorney General did not file any requests for information. The Attorney General's written comments were due September 11, 2008. None were filed. These "reply" comments of Atmos were due to be filed September 18, 2008.

ARGUMENT

On January 28, 2008, Atmos and the U.S. Environmental Protection Agency (EPA) entered an Administrative Order on Consent (AOC) that mandated the cleanup of the Site by Atmos. In the event that Atmos and EPA had not entered into an AOC, the EPA would have issued an Unilateral Order mandating

that Atmos perform the cleanup. The AOC provided a method for Atmos to negotiate the terms and conditions pursuant to which the cleanup was performed. Atmos has incurred various costs in connection with the investigation of environmental contamination at the Site and in connection with complying with the EPA's mandate. Additional costs will be incurred in the future. A detailed breakdown of these past, present and anticipated future costs have been filed in the record in response to various requests for information filed by Commission staff. Atmos seeks to defer those costs to Account 186. Atmos is not requesting any ratemaking treatment of these costs in this proceeding. Rather, Atmos proposes that the treatment of these costs for ratemaking purposes be reserved for, and determined in, Atmos' next general rate case.

Atmos respectfully submits that environmental cleanup costs mandated by federal and state agencies, such as those which are the subject of this proceeding, are the type of extraordinary, non-recurring and non-discretionary expenses which if not recoverable by way of a surcharge, should at least be entitled to review in Atmos' next general rate case. At that time, all issues related to the recoverability of these costs in rates can be fully adjudicated. Ratepayers will not be prejudiced since all rights to contest the recoverability of these costs by Atmos are preserved for future review and decision making. On the other hand, to deny Atmos' request to defer consideration of these costs until its next general rate case would necessarily serve as a significant incentive for Atmos to file a rate case sooner than it otherwise would. This would not be in the best interest of either Atmos or its ratepayers.

Atmos acknowledges that under normal circumstances an individual class or type of expense should not be segregated and treated differently for ratemaking purposes than all other expenses. However, where the expenses in question were neither known or reasonably foreseeable during a utility's prior rate case; are non-recurring, and, are of a type that a utility has no discretion as to whether they should be incurred, or when they should be incurred, special circumstances exist which should justify special treatment.

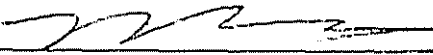
Utility commissions in other jurisdictions have allowed utilities to defer costs in connection with state and federally mandated environmental cleanup requirements until a company's next rate case. See, e.g., Application of United Cities Gas Company for Deferral of Accounts Incurred in Connection with Environmental Control Requirements, Docket No. 94-02529, Tennessee Public Service Commission. Likewise, this Commission has afforded special accounting treatment when special circumstances justified it. See, e.g., Kentucky Public Service Commission Case No. 2007-00054, In The Matter of: Application of the Union Light, Heat and Power Company d/b/a Duke Energy Kentucky, Inc. for Authority to establish a Regulatory Asset for Deferred Vacation Expense.

#### SUMMARY

In summary, Atmos recognizes that to defer costs until a utility's next general rate case seeks extraordinary relief and Commission approval should not be sought except in extraordinary cases. Atmos believes this is such an extraordinary case and that the costs it has incurred in complying with this federally mandated environmental cleanup should be deferred until Atmos' next general rate case.

Atmos' fiscal year ends September 30, 2008. Accordingly, Atmos respectfully requests entry of an Order by the Commission concerning this Application prior to September 30, 2008.

Respectfully submitted this 12 day of September, 2008.

  
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Mark R. Hutchinson  
611 Frederica Street  
Owensboro, Kentucky 42301

Douglas Walther  
ATMOS ENERGY CORPORATION  
PO Box 650250  
Dallas, Texas 75265

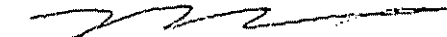
## VERIFICATION

I, Mark A. Martin, being duly sworn under oath state that I am Vice President of Rates and Regulatory Affairs for Atmos Energy Corporation, Kentucky/Midstates Division, and that the statements contained in the foregoing Petition are true as I verily believe.

  
\_\_\_\_\_  
Mark A. Martin

## CERTIFICATE OF SERVICE

I hereby certify that on the 17 day of September, 2008 the original of this document, together with eleven (11) copies, were filed with the Kentucky Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40206 and upon Dennis Howard, Office of Attorney General, 1024 Capital Center Drive, Suite 200, Frankfort, Ky. 40601-8204.

  
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Mark R. Hutchinson

ENVIRONMENTAL SURCHARGE  
WRITTEN COMMENTS