

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE  
COMMISSION

In the Matter of:

APPLICATION OF ATMOS ENERGY CORPORATION )  
TO EXTEND ITS DEMAND-SIDE MANAGEMENT PROGRAM ) CASE NO.  
AS AMENDED, AND COST RECOVERY MECHANISM, ) 2008-00499  
AS AMENDED FOR THREE (3) YEARS )

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 tenders the following comments in the above-styled matter.

I. Summary of Plan

Atmos Energy Corporation (hereinafter referred to as "Petitioners" or "Company") seeks Commission approval to amend and continue its demand-side management program and the associated cost recovery mechanism approved by Order of the Commission in Case No.2005-00515 for an additional three year period.

Under its current program, Atmos provides funding for weatherization services for its low income customers, its only current program. The budget for its weatherization services is capped at \$200,000.00 per year and restricts per household expenditures for weatherization measures to \$1,500.00 per home.<sup>1</sup> Atmos reports that for the period of 2000-2008, the average number of households served by the company's weatherization program was 118 per year and the average program cost during that period was \$163,617.00 per year.<sup>2</sup>

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1 See Application Tab 1 – Program Summary, Page 3.

2 Revised responses to the Data Requests of the Attorney General, Question 4.

In this application, the company seeks to expand its offering of DSM programs and continue and amend its weatherization program.<sup>3</sup> The proposed modifications include the addition of an educational component for elementary age school children<sup>4</sup>, a rebate program for consumers purchasing high-efficiency replacement furnaces and water heaters<sup>5</sup>, and raising the limits available per household on its weatherization program from \$1,500.00 per home to \$3,000.00 per home.<sup>6</sup> The company also proposes to increase the budget for its DSM programs from \$200,000.00 per year to \$909,500.00 per year, an increase of over 450%.<sup>7</sup>

a. Low Income Weatherization

As previously noted, the current program budget for the company's low income weatherization program is capped at \$200,000.00 per year and restricts per household expenditures for weatherization measures to \$1,500.00 per home.<sup>8</sup> From 2000 through 2008, the average number of households served by the company's weatherization program was 118 per year and the average program cost during that period was \$163,617.00 per year.<sup>9</sup> Atmos proposes to increase the limits of funds available per household under the program from \$1,500.00 per home to \$3,000.00 per home.<sup>10</sup>

In support of this increase, the company states that the costs associated with its weatherization program have increased dramatically since inception of the program<sup>11</sup> and notes

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3 See Application, Page 2, Paragraph 8.

4 See Application, Page 3, Paragraph 10.

5 See Application, Page 2, Paragraph 9.

6 See Application, Page 2, Paragraph 8.

7 See Application, Tab 2 - Supporting Schedules, Page 1.

8 See Application Tab 1 – Program Summary, Page 3.

9 Revised responses to the Data Requests of the Attorney General, Question 4.

10 See Application, Page 2, Paragraph 8.

11 See Application, Tab 1 – Program Summary, Page 3.

that the rate of inflation increased its costs by 23% between 2000-2009.<sup>12</sup> This program is currently administered by various community action agencies.<sup>13</sup> Although it is not specifically identified in the application, informal inquiry to the company reveals that the administration charges for the weatherization program are “built in” to the budget numbers listed in the application and are 15% of the total budget.<sup>14</sup> The company proposes a budget of \$300,000.00 and estimates a participant level of 100 low income customers per year.<sup>15</sup> Using the company’s response to the Attorney General’s informal request, it appears that the program administration costs are \$45,000.00 per year, leaving approximately \$255,000.00 available for use on weatherization services. No changes in program administration are proposed in the application.

b. High Efficiency Furnace/Boiler/Water Heater Program

With respect to its proposed rebate program, the company states that over the last several years it has received consumer inquiries regarding heating equipment upgrade incentives and information related to lowering gas consumption and increasing insulation levels. To address these areas, the company will offer a rebate to homeowners who install high-efficiency gas furnaces, boilers and water heaters.<sup>16</sup> Additionally, the company will offer rebates to homeowners who install instantaneous or tankless water heaters.<sup>17</sup> This program provides a \$200.00 rebate for homeowners who upgrade to forced air furnaces with an efficiency level of 90% or greater and a 30,000 BTU input or greater or upgrade to a boiler with an efficiency level of 90% or greater and

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12 See Responses to Data Requests PSC-1-d and AG-7.

13 See Application, Tab 1 – Program Summary, Page 3.

14 See Exhibit A attached hereto.

15 See Application, Tab 2, Supporting Schedules, Page 4.

16 See Application, Tab 1 – Program Summary, Page 6-9.

17 See Application, Tab 1 – Program Summary, Page 8.

a 30,000 BTU input or greater.<sup>18</sup> The amount of these rebates is fixed and does not vary according to unit size in either the High Efficiency Heating Program or the High Efficiency Water Heater Program.<sup>19</sup> This program is to be administered by Energy Federation, Inc., a third party vendor chosen by the company based on its use by the company to administer a similar program in Missouri.<sup>20</sup> The company estimates that it will have 1710 participants in its high efficiency furnace program and 90 participants in its high efficiency boiler program.<sup>21</sup> It estimates 500 total participants in its water heater program (375 in the tank type program and 125 in the tankless program).<sup>22</sup> Based on the number of participants in these programs and the rebate amounts, the program budget estimated by the company is \$472,500.00 per year.<sup>23</sup> The company estimates administrative costs for these programs at \$44,100.00 per year.<sup>24</sup> Therefore, the total program costs are estimated to be approximately \$516,600.00 or approximately 57% of the company's overall DSM budget.

For these expenditures, the company estimates that it will save participants approximately 110.35 CCF per high efficiency furnace and boiler replaced under the program and 25.10 CCF per high efficiency tank type water heater and 100.39 CCF per high efficiency tankless water heater.<sup>25</sup> Using company estimates of participation in the programs, the company proposes that it

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18 See Application, Tab 1 – Program Summary, Page 6.

19 See Responses to Data Requests, Questions AG-18 and AG-22.

20 See Application, Tab 1 – Program Summary, Page 7.

21 See Application Tab 2 – Supporting Schedules, Schedule A, Page 4.

22 See Application Tab 2 – Supporting Schedules, Schedule A, Page 4.

23 See Application Tab 2 – Supporting Schedules, Schedule A, Page 4.

24 See Application Tab 2 – Supporting Schedules, Schedule A, Page 4.

25 See Application Tab 2 – Supporting Schedules, Schedule A, Page 4.

will save participants 220,598 CCF of natural gas each year. The company intends to accumulate the “lost sales” (DLSA) component until its next rate case for recovery at that time.<sup>26</sup>

c. Education Program

In the description of its proposed education program, the company states that it envisions the program introducing children to the importance of energy conservation will provide them with suggestions of no-cost and low-cost measures that they can use to reduce their family’s energy consumption.<sup>27</sup> The company intends to target either 4<sup>th</sup> or 5<sup>th</sup> grade children within its service territory and the program will be staffed and administered by company personnel.<sup>28</sup> While participation was not estimated, the company has estimated total program costs to be \$20,000.00.<sup>29</sup> Out of the \$20,000.00 total program costs, the company has stated that its administrative costs are \$12,900.00.<sup>30</sup> This program represents approximately 2% of the company’s overall DSM budget. The company does not intend to claim any energy savings associated with this program.<sup>31</sup>

As these are modified or new programs, the company prepared the application using engineering estimates of the projected savings per program and participant.<sup>32</sup> These savings will be subject to a true-up process on an as-needed basis<sup>33</sup>, although such process is not defined by the company in its application.

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26 See Responses to Data Requests, Question AG-23.

27 See Application Tab 1 – Program Summary, Page 4.

28 See Application Tab 1 – Program Summary, Page 4.

29 See Application Tab 2 – Supporting Schedules, Schedule A, Page 4.

30 See Application Tab 2 – Supporting Schedules, Schedule A, Page 3.

31 See Responses to Data Requests, Question AG-13.

32 See Responses to Data Requests, Question AG-24.

33 See Responses to Data Requests, Question AG-24.

## **II. Attorney General's Comments**

The Attorney General generally applauds the company's efforts but offers the following comments on the programs as proposed by the Company.

First, as a general matter, the Attorney General suggests that periodic review of program budgeting and results by the parties and the Commission is necessary to adequately monitor the programs and should be ordered by the Commission in this case in a manner similar to that currently required. At a minimum, it is suggested that the company report to the Commission and the parties the annual number of participants in each program, the level of expenditures per participant and per program, the estimated energy savings per participant and per program (based on engineering estimates corrected for actual savings), the budget for expenditures going forward on a per participant and per program basis, and the results of the California tests for each individual program each year to evaluate the programs' efficiency along with the company's recommendation as to any proposed future program modifications. The Attorney General suggests that the company should annually prepare and submit a report, including the above-mentioned requirements, to coincide with the anniversary date of the Commission's Order in the case.

Next, it is important that the company's projected engineering estimated results be compared against those that the programs actually achieve so that the company's recovery is based on numbers that are as close to actual as possible.<sup>34</sup> The company states that it will review the results of its programs and that any projected savings will be subject to a true-up process

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<sup>34</sup> The company prepared the application using engineering estimates of the projected savings per program and participant as the programs were new or modified. See Responses to Data Requests, Question AG-24.

which reflects actual savings on an as-needed basis,<sup>35</sup> although such process is not defined by the company in its application. The Commission should require the company to define this true-up process in detail and should require that results will not be based exclusively on engineering estimates but also incorporate actual savings as measured by an independent engineering evaluation.

Finally, the company states that it will accumulate its “lost sales” (DLSA) component until its next rate case for recovery at that time.<sup>36</sup> The application specifically states that the company seeks approval for its DSM programs for three (3) years, through December 31, 2011,<sup>37</sup> but the application proposes to tie recovery of the lost sales component to the filing of the company’s next rate case. The Attorney General does not agree with this proposal. This is not reasonable as the company may not file its next rate case until after the programs’ proposed end date. Further, to allow the lost sales component to accumulate until the next rate case filing could lead to a large outstanding balance to be recovered from ratepayers. The Attorney General suggests that a better approach would be to recover the lost sales component based on the engineering estimates until the aforementioned true-up period suggested by the company. At that time, the lost sales component can be trued-up and recovered using the actual results.

a. Low Income Weatherization

Under its current program, Atmos provides funding for weatherization services only for its low income customers. The current program budget is capped at \$200,000.00 per year and

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35 See Responses to Data Requests, Question AG-24.

36 See Responses to Data Requests, Question AG-23.

37 See Application, Page 1.

restricts per household expenditures for weatherization measures to \$1,500.00 per home.<sup>38</sup> The program served an average of 118 households per year between 2000 and 2008 at an average program cost per year of \$163,617.00.<sup>39</sup>

In this application, the company seeks to amend its weatherization program and increase the limits available per household on its weatherization program from \$1,500.00 per home to \$3,000.00 per home<sup>40</sup> and increase the program budget from \$200,000.00 per year to \$300,000.00 per year.<sup>41</sup> In support of its request, the company states that costs associated with its weatherization program have increased dramatically since the program's inception,<sup>42</sup> and in particular inflation increased costs by a cumulative 23% between 2000-2009.<sup>43</sup>

The Attorney General does not recommend that the requested increase in limits from \$1,500.00 to \$3,000.00 per household be granted although he does not oppose the increase in the program budget from \$200,000.00 to \$300,000.00.

First, the Attorney General notes that the company claims that its costs of the measures utilized by the program have "dramatically increased" but it provides no evidence supporting that claim other than its own statement. However, assuming that the 23% increase in costs from 2000 to 2008 due to inflation is correct, when that rate is multiplied by the current limit of \$1,500.00 per household, this would only account for an increase of \$345.00, not the \$1,500.00 increase sought by the company. However, it appears from the application that the company is not even utilizing the full \$1,500.00 per household that it is currently authorized to spend. Data for the

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38 See Application Tab 1 – Program Summary, Page 3.

39 Revised responses to the Data Requests of the Attorney General, Question 4.

40 See Application, Page 2, Paragraph 8.

41 See Application, Tab 2 - Supporting Schedules, Page 4.

42 See Application, Tab 1 – Program Summary, Page 3.



period of 2000-2008 show average yearly costs of \$163,617.00, and that the average number of participants per year was 118. This equates to an approximate average of \$1,386.58 spent per household. As this number also includes the company's administrative costs, clearly the company is not spending the full \$1,500.00 it is authorized to spend per household. Additionally, the recently enacted American Recovery and Reinvestment Act of 2009 ("ARRA") provides significantly increased levels of weatherization assistance to low income households (\$6,500.00 per home). As the company has stated that the benefits its provides under its program are utilized in conjunction with Federal Weatherization funds,<sup>44</sup> low income participants would not only be eligible for the \$6,500.00 in Federal money, but \$3,000.00 in ratepayer funds, or nearly \$10,000.00 per home. However, leaving the current funding level in place still ensures that participants are eligible for \$8,000.00 per home. Clearly, the dramatic increase in Federal funding outweighs any need for an increase in ratepayer funding. Additionally, the Attorney General notes that there are no restrictions that would prohibit participants from claiming benefits from the associated local electric utility in addition to the benefits received under the company's program. In order to maximize the number of participants served by these types of programs, benefits should be coordinated to allow Federal weatherization dollars to be used in conjunction with funds collected under the company's program but restrict the use of another utilities funds.

Additionally, the company states that it expects to save approximately 165.53 CFF of natural gas per household under the program.<sup>45</sup> Compared to the total projected gas savings for all programs, this program represents only 7% of the projected savings, yet receives 38% of the

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43 See Responses to Data Requests PSC-1-d and AG-7.

44 See Responses to Data Requests, Question AG-3.

45 See Application, Tab 2, Supporting Schedules, Schedule A, Page 4.

overall budget. It is therefore questionable whether this program would pass the California tests. Moreover, since the company ran the tests on all its programs in aggregate,<sup>46</sup> it is impossible to separate the results of this program out from the rest of the programs. In future reporting, the Commission should required separate runs of each program under the California tests so that the overall efficiency of the program can be assessed.

Further, the ARRA increased the level of eligibility from 150% to 200% of the Federal poverty level. As the company's program proposes to use the same eligibility standard, this will increase the number of households eligible for weatherization benefits under the company's program. However, the company's proposal does not address this increase. In fact, the company's proposal would serve to limit the number of eligible participants to only 100, less than what they currently serve under the existing program.<sup>47</sup> As the proposed program budget increases from \$200,000.00 to \$300,000.00 per year, if the company left the amount of benefits available per household at the current level of \$1,500.00, the proposed increase in the overall program budget would address this increase in eligible households. This increased program budget would allow 200 participants to be served under the program at the level of \$1,500.00 per household rather than the 100 proposed by the company at the increased level of \$3,000.00 per household.

As each household at 200% of the Federal poverty level is already eligible for \$6,500.00 of Federal Weatherization benefits (a substantial increase from previous funding levels), and the number of eligible households will undoubtedly increase with the change in income eligibility, there is simply no reason to increase the level of funds per household under the company's weatherization program.

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<sup>46</sup> See Exhibit A attached hereto.

Further, the company's weatherization program is currently administered by various community action agencies<sup>48</sup> and no changes in program administration are proposed. However, the company has stated that its administration costs comprise 15% of the total program budget. The Attorney General questions whether this level of administrative costs is too high when compared to other utilities' programs. The Commission's prior practice has been to limit administrative costs to 10% of the program budget. The Attorney General agrees that 10% level should be appropriate in this case also. Additionally, the Attorney General is concerned that the agencies may charge administrative fees under both the Federal Weatherization program as well as the company's program for the same residence, allowing the agencies to "double dip" for administrative fees. The Commission should ensure that ratepayer funds are not used in this manner, and should prohibit the agencies from charging administration fees to the company if it also charges administration fees under any other program for the same residence. Ratepayers are forced to fund these programs and the programs should be completely transparent and accountable for the funds collected.

Finally, the weatherization program is limited to the company's low income customers and is not available to other customers. The level of benefits proposed by the company of \$3,000.00 per household under the weatherization program raises equity concerns compared with the low level of program benefits available to its other customers. In its responses, the company indicated that it limited the weatherization program to low income participants due to the fact that its weatherization contractor (the community action agencies) only works on low income

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47 See Responses to Data Requests, Questions AG-4, PSC-1a.

48 See Application, Tab 1 – Program Summary, Page 3.

homes.<sup>49</sup> However, since the company operates in numerous jurisdictions, it should be at least familiar with other contractors that could assist it with weatherization services for its non-low income customers. Clearly, all of the company's customers could benefit from some level of weatherization services and the Attorney General urges the Commission to require the company to amend its proposed program to include some level of weatherization services to all its customers.

b. High Efficiency Furnace/Boiler/Water Heater Program

The company intends to offer a rebate to homeowners who install high-efficiency gas furnaces, boilers, and tank type water heaters<sup>50</sup> along with those who install instantaneous or tankless water heaters.<sup>51</sup> The program provides a \$200.00 rebate for homeowners who upgrade to forced air furnaces with an efficiency level of 90% or greater and a 30,000 BTU input or greater, or those who upgrade to a boiler with an efficiency level of 90% or greater and a 30,000 BTU input or greater.<sup>52</sup> Under both the High Efficiency Heating Program and the High Efficiency Water Heater Program the rebates are fixed and the amounts do not vary according to unit size.<sup>53</sup>

The program is to be administered by Energy Federation, Inc., a third-party vendor the company uses to administer a similar program in Missouri.<sup>54</sup> Atmos estimates administrative costs for these programs at \$44,100.00 per year<sup>55</sup> or approximately 9% of the program budget.

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49 See Responses to Data Requests, Questions AG- 1.

50 See Application, Tab 1 – Program Summary, Page 6-9.

51 See Application, Tab 1 – Program Summary, Page 8.

52 See Application, Tab 1 – Program Summary, Page 6.

53 See Responses to Data Requests, Questions AG-18 and AG-22.

54 See Application, Tab 1 – Program Summary, Page 7.

55 See Application Tab 2 – Supporting Schedules, Schedule A, Page 4.

The Attorney General notes that the proposed administrative fees are in line with prior Commission practice.

The company estimates that it will have 1710 participants in its high efficiency furnace program and 90 participants in its high efficiency boiler program.<sup>56</sup> It estimates 500 total participants in its water heater program (375 in the tank type program and 125 in the tankless program).<sup>57</sup> Based on the number of participants in these programs and the rebate amounts, the program budget is estimated at \$472,500.00 per year.<sup>58</sup>

The total program costs are approximately \$516,600.00 including administrative costs, or approximately 57% of the company's overall DSM budget. For these expenditures, the company estimates that it will save participants the following approximate amounts: (a) 110.35 CCF per high efficiency furnace and boiler replaced under the program; (b) 25.10 CCF per high efficiency tank type water heater; and (c) 100.39 CCF per high efficiency tankless water heater.<sup>59</sup> Based on company estimates of program participation, the company believes it will save participants 220,598 CCF of natural gas each year.<sup>60</sup> The company projects that this program will save 93% of its overall DSM natural gas savings while using 57% of the program budget. It is suggested that this program is the reason that the company DSM portfolio passed the California tests.

While the Attorney General supports the proposed program, the level of benefits should be indexed to the size of the unit installed by the customer. Obviously, larger unit sizes cost

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56 See Application Tab 2 – Supporting Schedules, Schedule A, Page 4.

57 See Application Tab 2 – Supporting Schedules, Schedule A, Page 4.

58 See Application Tab 2 – Supporting Schedules, Schedule A, Page 4.

59 See Application Tab 2 – Supporting Schedules, Schedule A, Page 4.

60 See Application Tab 2- Supporting Schedules, Schedule A, Page 4.

customers more to purchase and install and the benefit available to customers should reflect this increased cost.

### c. Education Program

The proposed education program will introduce children to the importance of energy conservation and will provide them with suggestions of no-cost and low-cost measures they can use to reduce their family's energy consumption.<sup>61</sup> The program, to be staffed and administered by company personnel, will have total estimated costs of are \$20,000.00, and intends to target either 4<sup>th</sup> or 5<sup>th</sup> grade children.<sup>62</sup> <sup>63</sup> The company did not estimate participation levels. Atmos estimates administrative costs will total \$12,900.00.<sup>64</sup> This program represents approximately 2% of the company's overall DSM budget. The company does not intend to claim any energy savings associated with this program.<sup>65</sup>

While the Attorney General agrees that efforts to inform the public regarding energy conservation issues are important, the efficient use of ratepayer funds is equally important. The Attorney General has consistently maintained that these programs are essentially "goodwill" exercises on behalf of the company and have little or no measureable impact on energy usage. In its responses to data requests, the company seemed to acknowledge that fact when it confirmed that it will not claim energy savings as a result of the program.<sup>66</sup> Since the children participating under the program will not become customers for many years to come, the use of ratepayer funds

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61 See Application Tab 1 – Program Summary, Page 4.

62 See Application Tab 1 – Program Summary, Page 4.

63 See Application Tab 2 – Supporting Schedules, Schedule A, Page 4.

64 See Application Tab 2 – Supporting Schedules, Schedule A, Page 3.

65 See Responses to Data Requests, Question AG-13.

to “educate” these future consumers seems highly unlikely at best, and would reach an untenable result. It is much more likely that such a program will result in increased goodwill to the company in the near term, and as such is tantamount to mere advertising. Therefore, the Attorney General does not recommend approval of the proposed program.

Subject to the above comments, the Attorney General would recommend the Commission approve the Application.

Respectfully submitted,

JACK CONWAY  
ATTORNEY GENERAL OF KENTUCKY



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66 See Responses to Data Requests, Questions AG-13.


**CERTIFICATE OF SERVICE AND NOTICE OF FILING**

I hereby give notice that this the 30<sup>th</sup> day of March, 2009, I have filed the original and ten copies of the foregoing with the Kentucky Public Service Commission at 211 Sower Boulevard, Frankfort, Kentucky, 40601 and certify that this same day I have served the parties by mailing a true copy of same, postage prepaid, to those listed below.

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