

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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|--------------------------------|---|---------------------|
| THE OFFICE OF ATTORNEY GENERAL |) | |
| THE COMMONWEALTH OF KENTUCKY |) | |
| |) | |
| COMPLAINANT |) | |
| |) | |
| V. |) | CASE NO. 2005-00057 |
| |) | |
| ATMOS ENERGY CORPORATION |) | |
| |) | |
| DEFENDANT |) | |

O R D E R

Pursuant to the procedural schedule established by the Commission in this proceeding, the Attorney General (“AG”) propounded his initial request for information to Atmos Energy Corporation (“Atmos”) on March 14, 2006. On March 30, 2006, Atmos moved the Commission to quash several of the AG’s information requests. The AG filed a response to the motion to quash on April 7, 2006 and Atmos filed its reply thereto on April 12, 2006.

Atmos argues in its motion that the AG is inappropriately requesting information pertaining to years prior to and beyond the test year established by the Commission and that he is inappropriately requesting that Atmos provide speculative information in the form of pro forma adjustments. It states that, by soliciting this information, the AG is attempting to expand the investigation and shift the burden of proof. Atmos argues that the AG’s requests are designed to force Atmos to prove that its current rates are

reasonable. Citing the Commission's decision in Case No. 2005-00322, East Clark County Water District v. City of Winchester, (Ky. PSC April 3, 2006 at 2), Atmos contends that its filed rates are presumed reasonable and that the AG, as the Complainant, has the burden to prove otherwise. It also contends that the AG's requests are irrelevant to the issue of whether Atmos is earning an excessive return on equity ("ROE") under present economic conditions.

The AG argues that, contrary to Atmos's assertions, it is entirely appropriate and a common practice to look outside the test year to determine whether the expenses and revenues within the test year constitute an accurate representation of a utility's finances and revenue requirements. He also argues that Atmos is the only party that is in possession of the information necessary to perform the analysis the Commission requires the AG to file regarding Atmos's ROE and that the burden of proof will not shift to Atmos if it is required to provide the information the AG requested. He states that the Commission's investigation of the earnings of Brandenburg Telephone Company in Case No. 9859¹ established a "template" for these types of cases and that the Commission required Brandenburg to produce information similar to that which the AG is requesting in this proceeding.

Atmos argues that the Brandenburg case is not comparable to this case because it was initiated by the Commission rather than filed as a complaint by a customer or its representative and that the Commission never shoulders the burden of proof.

¹ Case No. 9859, An Investigation Into the Reasonableness of the Earnings of Brandenburg Telephone Company, Inc.

Having considered all the arguments and being otherwise sufficiently advised, the Commission finds that Atmos's motion should be granted in part and denied in part.

The Commission agrees with the AG that it is appropriate to look at information concerning the revenues and expenses outside the test year to determine the reasonableness of the revenues and expenses included in the test year. However, we do not agree with the AG that it is necessary to require Atmos to file information as far outside the test year as the AG has requested. In addition, while we acknowledge that Atmos's most recent rate adjustment proceeding was filed and reviewed using a forecasted test year, we established in our February 2, 2006 Order that this case would be reviewed using a historic test period ending September 30, 2005. We find, therefore, that Atmos should be required to provide information for the test year, the 12 months prior to the test year, and actual data through the end of the first quarter 2006.

With regard to the AG's request for Atmos to provide pro forma adjustments, we are not persuaded by the AG's argument that a "template" for complaint cases was established in the 1988 Brandenburg case. The Complainant bears the burden of proof. We agree with Atmos that requiring it to provide pro forma adjustments at this time would inappropriately shift the burden of proof from the Complainant. Therefore, we find that Atmos's motion to quash the AG's requests for pro forma adjustments should be granted. However, we find that the AG should be permitted to discover from Atmos, within the limitations imposed herein, information that would permit him or his experts to calculate potential pro forma adjustments.

As to AG Data Request Nos. 66 and 67, the AG has requested that Atmos provide information for storm damage expenses and injury and damage expenses for

the test year and each of the 10 preceding fiscal years. The Commission finds that it is reasonable for the AG to request a total of 10 years' of actual data concerning storm damage expenses and injury and damage expenses. Therefore, we find that Atmos's motion to quash with regard to AG Data Request Nos. 66 and 67 should be granted in part and that it should be required to provide the information requested therein for the test year and 9 preceding fiscal years.

The Commission further finds that Atmos does not file quarterly ROE reports with the Commission and that Atmos's motion should be granted with respect to AG Data Request No. 1(a).

IT IS THEREFORE ORDERED that:

1. Atmos's motion to quash is granted with respect to AG Data Request Nos. 1(a) and 89(b).

2. Atmos's motion to quash is denied with respect to AG Data Request Nos. 2, 3, 16(b), and 41.

3. Atmos's motion to quash is granted in part and denied in part with respect to AG Data Request Nos. 7, 8, 11, 12, 15(a), 15(b), 16(a), 17(a), 17(b), 18(a), 18(b), 19, 20, 21, 42, 45(b), 49, 50, 59, 60, 61, 63, 66, 67, 69, 80, 81, 82, 83, 84, 85, and 87 .

4. Atmos shall provide the information requested in AG Data Request Nos. 7, 8, 11, 12, 15(a), 15(b), 16(a), 16(b), 17(a), 17(b), 18(a), 18(b), 19, 20, 21, 42, 45(b), 49, 50, 59, 60, 61, 63, 69, 80, 81, 82, 83, 84, 85, and 87 and for the test year, the 12 months prior to the test year, and actual data through the end of the first quarter of 2006.

5. Atmos shall not be required to provide pro forma adjustments to the AG, and its motion to quash is granted with respect to AG Data Request Nos. 22, 24, 25, 26, 27, 28, 30, 31, 32, 34, 35, 37, 38, 39, 40, 41, 42, 43, 68, 70 and 72.

6. Atmos shall provide the information requested in AG Data Request Nos. 66 and 67 for the test year and the 9 preceding fiscal years.

Done at Frankfort, Kentucky, this 9th day of May, 2006.

By the Commission

ATTEST:



Executive Director