

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF ATMOS ENERGY )  
CORPORATION FOR AN ADJUSTMENT ) CASE NO. 2013-00148  
OF RATES AND TARIFF MODIFICATIONS )

ATTORNEY GENERAL'S EXPEDITED MOTION FOR EXTENSION OF TIME AND  
CONTINUANCE OF HEARING

Comes now the Attorney General ("AG") of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, and files this Expedited Motion for Extension of Time and Continuance of Hearing. Specifically, after the AG's communication with his experts regarding their need for additional time, the AG requests an additional two weeks to review new information, and a corresponding continuance of the hearing date. To not be provided with sufficient time to review new, previously requested, information would greatly prejudice the Attorney General's case. In fact, and to be definitively clear, the AG **cannot**<sup>1</sup> review the information with his experts and be meaningfully prepared to participate in the hearing as scheduled.

Per the Commission's 28 June 2013 procedural schedule and Order, motions for an extension of time must be filed four (4) business days in advance of the deadline and must show good cause. This Motion is filed seven (7) business days before the date of the Hearing we are requesting be delayed. Good cause is demonstrated below.

---

<sup>1</sup> This motion is filed with emphasis on the AG's lack of time to meaningfully review the information even including the holiday that precedes the hearing.

## **1. AG First Data Requests Filed 14 August 2013**

On 14 August 2013 the Attorney General filed his First Request for Information from Atmos Energy Corporation (“Atmos” or “the company”). The deadline for Atmos to respond to that discovery request was 28 August 2013. On 28 August 2013 Atmos electronically filed responses to the AG discovery requests. However, those responses did not contain much of the information that it purported to contain. In fact, many of the excel sheets were not functional, or in several instances were simply not supplied to the AG, and prevented the AG from promptly beginning their analysis of the information. Per the Commission’s 28 June 2013 Order, the AG attempted to resolve this issue informally. See Exhibit 1 attached to this motion, email correspondence between the Office of the Attorney General (“OAG”) and counsel for Atmos. As the Exhibit demonstrates, the AG did not receive all information purported to have been filed on 28 August 2013 until it was actually delivered on 10 September 2013. The AG then, in keeping with the procedural schedule, filed his supplemental data requests on 11 September 2013. The AG did so with less than a full 24 hour period to review the materials Atmos should have provided on 28 August 2013. At the time of his filing, the AG informally put Atmos on notice that he would be seeking additional information and clarification regarding the data he received from Atmos on 10 September 2013. See Attachment 2, email from OAG to counsel for Atmos. On 16 September 2013 the AG formally requested additional information and clarification on Atmos’ responses to nine (9) of the responses he received to his first data requests. See Attachment 3, letter from OAG to counsel for Atmos. Seven (7) of the nine (9) requests for additional information

were requests for additional information in response to AG data request 1-212. The only response the AG received from Atmos was counsel's statement via email that "I will forward to the company for review." See Attachment 4, email correspondence between Atmos' counsel and the OAG.

On 18 November 2013 at 6:07 PM Atmos filed its supplemental responses to the AG's first data requests. The only information contained in the filing was the information related to special contracts, which the AG has been seeking since 14 August 2013, or for three (3) months and four (4) days. This information was filed with exactly eight (8) business days before the hearing in this case is scheduled to commence. Furthermore, because much of the information was deemed confidential by Atmos, a substantial amount of critical information is not contained in the public filing. To emphasize, not UNTIL 19 NOVEMBER 2013, did the AG receive any of the **confidential**, additional information requested. Because the information was delivered late in the day on the 19<sup>th</sup> and by paper copy only, the AG's expert witnesses did not have the critical confidential information that the AG originally requested on 14 August 2013 until the date of this motion. It is plainly obvious that Atmos has been an obstructionist throughout the discovery process, and that is highlighted by delivering critical information in an inconvenient format with a mere seven (7) full working days before the hearing commences. Indeed, it begs the question of exactly when Atmos had the information in its possession because the company attempts to rebut the testimony of one of the AG's experts by pontificating on the exact information that had heretofore

been "unavailable." (See discussion below.) In golf parlance, Atmos has been sandbagging.

## **2. New Testimony of Atmos Witness Gary Smith**

As further evidence of the prejudice that the AG experiences from the obstructionist actions of Atmos, the company filed new testimony on special contracts from a new witness in their rebuttal testimony. The testimony of Gary L. Smith deals with a single issue - special contracts. Atmos filed rebuttal testimony to Mr. Watkins testimony, without ever allowing Mr. Watkins the opportunity to review the special contracts and associated information, deemed confidential, that has been requested since 14 August 2013. In essence, Atmos filed rebuttal testimony to Mr. Watkins without ever affording Mr. Watkins the opportunity to fully analyze and testify as to his opinion on the special contracts. The special contracts, and the additional confidential information contained in Mr. Smith's supposed "rebuttal" testimony is exactly the information the AG has been requesting from Atmos since 14 August 2013. Mr. Smith did not file any testimony with Atmos' application on 13 May 2013. His testimony filed on 19 November 2013 is entirely new. The vast majority of information contained in his testimony is information the AG specifically requested back on 14 August 2013, and again via formal letter dated 16 September 2013. The appropriate place for this information was in Atmos' responses to AG data requests, not rebuttal testimony. Again, the fact that Mr. Smith could opine on the Special Contracts begs the question of just how long Atmos had the information before disclosing it to the AG.

Mr. Smith argues that certain information from the contracts has previously been provided to the AG in this case. While it is true that certain information regarding the contracts was provided, there is a significant difference between providing data with no contract from which to draw reference, and providing the actual contracts. Mr. Smith also argues that information from the contracts has been provided to the PSC in other cases before the Commission. However, the actual contracts themselves have seemingly not been reviewed since they were first accepted by the Commission in 1999. The contracts themselves are so old, that it purportedly took the company 3 months just to locate them. The current economic factors are exceptionally different than the factors that existed in 1999 when these contracts were signed and eventually accepted by the Commission. It is the burden of the company to prove that their proposed rates are fair, just and reasonable. This cannot be accomplished without examining all contracts that have an impact on those rates. The original contracts are necessary to conduct this analysis; therefore, time should be afforded the AG to thoroughly review the contracts and the implication on Atmos' proposed rates.

### **3. Reason for 2 week extension**

As the AG has clearly provided in this motion, there is good cause for allowing the AG and his expert witnesses sufficient time to review the new information Atmos only provided 19 November 2013, the day prior to this motion. The AG strives to hire exceptional and nationally renowned expert witnesses. This often means that his witnesses are involved in multiple cases at any given time. Both his experts in this case

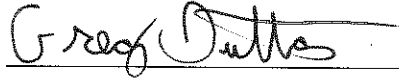
are currently involved in other cases both before the Kentucky Commission and as well as other Commissions. As such, they simply cannot dedicate the necessary time to sufficiently analyze this new information, which the AG first requested on 14 August 2014, before the commencement of the hearing on December 3<sup>rd</sup>. It is definitively unduly prejudicial, and fundamentally flawed based on procedural due process to expect the AG and his witnesses to sufficiently analyze this information with only seven (7) working days between now and the hearing, when the AG clearly requested this information over three (3) months ago on 14 August 2013. Simply stated, the AG **cannot** review the information with his experts and be meaningfully prepared to participate in the hearing as scheduled.

#### **4. Conclusion**

In conclusion, because of the intentional delay and obstructionist tactics employed by Atmos, as evidenced by the exhibits attached hereto as well as the Atmos filings of 18 and 19 November 2013, and the significant prejudice and deprivation of procedural due process the AG experiences by only being afforded seven (7) business days before commencement of the hearing to review information which he requested over three (3) months ago but only received this week, the AG is forced to request an extension of time to analyze the data and move for a corresponding continuance of the hearing.

Respectfully submitted,

JACK CONWAY  
ATTORNEY GENERAL

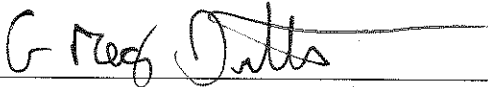


---

DENNIS G. HOWARD II  
GREGORY T. DUTTON  
JENNIFER BLACK HANS  
ASSISTANT ATTORNEYS GENERAL  
1024 CAPITAL CENTER DRIVE,  
SUITE 200  
FRANKFORT KY 40601-8204  
(502) 696-5453  
FAX: (502) 573-1009

*Certificate of Service and Filing*

Counsel certifies that the Attorney General's Motion for Extension of Time and Delay of Hearing is a true and accurate copy of the documents to be filed in paper medium; that the electronic filing was transmitted to the Commission on November 20, 2013; that an original and two copies of the filing will be delivered to the Commission within two business days; and that no party has been excused from preparation by electronic service.

A handwritten signature in black ink, appearing to read "G. Mark Datta", is written over a horizontal line.

Assistant Attorney General