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December 12, 2014

Via electronic mail

Hon. Jeff DeRouen
Executive Director
Public Service Commission
211 Sower Blvd.
Frankfort, KY 40601

RE: Atmos Energy Corporation, Case No. 2013-00148

Dear Mr. DeRouen:

At the request of staff for the Commission and in response to Atmos Energy Corporation's ("Atmos") request for approval of its draft request to the Internal Revenue Service ("IRS") for a Private Letter Ruling ("PLR") on the issue of net operating loss carry-forward ("NOLC"), the Attorney General files the following comments to the draft. Moreover, the Attorney General files this in reply to Atmos' letter of counsel dated December 12, 2014.

As quoted in Atmos' November 7, 2014 cover letter to the Commission, the Final Order in Case No. 2013-00148 requested "a more definitive assessment of [the] issue" regarding NOLC, which was addressed by the Attorney General's expert witness, Bion Ostrander, during the case proceedings. While the Commission did not adopt Mr. Ostrander's proposal, it did order Atmos to request a PLR that would eliminate the ambiguity in the regulations. The draft proposed does not eliminate the ambiguity, but rather requests that the IRS answer two (2) unnecessarily specific questions, which may be summarized as confirmation that there is enough ambiguity in the law to permit Atmos to treat NOLC the way it chose to treat it. As such, the letter as currently drafted does not comport with the Commission's Order.

Rather, the question that should be presented is whether other options for treating the NOLC are reasonable and may be required by the Commission. In other words, the question presented should ask the broader question of whether the IRS requires a specific method to be used. At pages 23 to 29 of the draft letter, Atmos discusses the three (3) options or methodologies: (1) the "last dollars deducted method" (also known as the "with or without" method), (2) the "first dollars deducted" method, and (3) a ratable allocation. However, the rulings requested at page 9 of the draft only ask whether a computation on a "last dollars deducted" method is allowable. The Attorney General posits that the IRS has not cited a specific method, therefore the ratable allocation, for example, is an option that Atmos could utilize were the Commission to direct it to do so. At a minimum, the rulings requested on page 9

of the letter draft should more broadly address all approaches available to the IRS, including but not limited to “the ratable allocation method (and other allocation approaches available to the Service).”

The Attorney General requests that the Commission direct Atmos to consult its tax counsel and draft the letter and the PLR request in a manner that definitively addresses whether Atmos may legally adopt any of the methods referenced and still comply with the requirements of the Internal Revenue Code and Treasury Regulations.

Tendered by:



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And

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