

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

IN THE MATTER OF:

Application of Atmos Energy Corporation)	
for an Adjustment of Rates)	Case No. 2015-00343
and Tariff Modifications)	

**PETITION FOR CONFIDENTIALITY
FOR ITEMS 1, 13, 18, 21, 39, 43, 44, 45, 46, AND 47 OF
THE ATTORNEY GENERAL'S FIRST DATA REQUEST**

Atmos Energy Corporation (Atmos Energy) petitions for an order granting confidential protection of its responses to Items 1;13; 18; 21; 39; 43; 44; 45; 46 and 47 of the Attorney General's first data request. This petition is filed pursuant to 807 KAR 5:001, Section 13 and KRS 61.878. The information sought in the data requests is commercial information which if disclosed could cause substantial competitive harm to Atmos Energy. This information is not publicly available. It would be difficult or impossible for someone to discover this information from other sources. If this information were available to competitors in this form, they could use it to the competitive detriment of Atmos Energy. This information is not generally disclosed to non-management employees of Atmos Energy and is protected internally by the Company as proprietary information. The disclosure of this proprietary information would result in significant or irreparable competitive harm to Atmos Energy by providing its competitors with non-reciprocal competitive advantage. No public purpose is served by the disclosure of such information.

The Kentucky Open Records Act exempts from disclosure certain confidential or proprietary information. KRS 61.878(1)(c). To qualify for this exemption, and, therefore,

maintain the confidentiality of the information, a party must establish that disclosure of the information would permit an unfair commercial advantage to competitors of the party seeking confidentiality.

The Attorney General's requests 43 through 47 seek information about confidential special contracts:

43. Please provide an unredacted copy of the Company's confidential response to PSC-1-59, Attachment 55 in executable electronic (Excel) format with all formulae and links intact.

44. Please provide a copy of all correspondence, emails, internal reports, notes, etc. concerning contract negotiations for negotiated rates for each special contract customer involved subsequent to the Commission's Order in Case No. 2013-00148. In this response, please categorize and separate all documents by individual customer.

45. In Case No. 2013-00148, the Commission's Order stated: "The Commission will therefore require Atmos-Ky. to internally conduct and maintain studies, analyses, reports, quantifications, etc., that demonstrate the threat of bypass by each of its special-contract customers, and that the special contracts continue to generate sufficient revenue to cover variable costs and contribute to fixed costs. This information is to be provided in Atmos-Ky.'s next base-rate case application." (page 38)

Please identify specifically where each of these requirements are contained in the Company's filing by individual customer or contract. If such information has not specifically been provided within the Company's application, please provide each requirement by customer. In this response, please provide in hardcopy as well as in executable electronic (Excel) format with all formulae and links intact.

46. If not specifically provided in response to OAG-1-73 above, please provide the following:

- a. a copy of all documents, including Commission evaluations, that provided the acceptance by the Commission of each contract for each special contract customer;
- b. an identification of each customer by rate schedule taking discounted service that is included in the test year in this case;
- c. the actual rate(s) currently being charged for each

special contract customer, as well as the applicable billing determinants;

- d. the revenues collected from each special contract customer;
- e. the revenues that would have been collected at full tariff rates from each special contract customer, as well as the identification of the applicable full tariff rate schedule;
- f. the treatment of the revenue shortfall (difference between full rates and discounted rates revenues) in this case;
- g. all records, documents, evaluations and analyses undertaken by or for the Company associated with each special contract customer that supports the necessity for a tariff rate lower than the full tariff rate;
- h. copies of each special contract service contract; map(s) showing the location of each special contract customer and proximity to closest transmission pipeline;
- j. the annual throughput, revenues collected, and full tariff revenues associated with discounted services provided by the Company separated by rate schedule for each of the last three years;
- k. list of each Atmos affiliate that provides gas supply or storage services to each special contract customer; and,
 - 1. itemization and gross investment of dedicated facilities (e.g., mains, compressors, regulators, and services) used to serve each special contract customer.

47. Please provide all workpapers, source documents, electronic spreadsheets, etc. that supports the Company's verification for each of the 17 existing special contract customers "that special contract rates continue to generate sufficient revenue to cover variable costs and contribute to fixed system costs that would otherwise be borne by tariff customers" (Page 14, Lines 12 through 15 of Mr. Smith's Direct Testimony).

The Attorney General also requests information about certain customer curtailments in item 1-39:

39. For each request for interruption or curtailment of interruptible customers during the last five years, please provide the date, duration, requested level of load reduction, and actual load reduction for each request

The responses to these items provide information that identifies customer name, customer identifiable information, such as contracts, location, and specific

volumetric usage and plant facilities associated with the customer. All of this information is protected by the scope of confidentiality. The applicable statutes provide that "records confidentially disclosed to an agency or required by any agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records" shall remain confidential unless otherwise ordered by a court of competent jurisdiction." KRS 81.878(1).

The natural gas industry is very competitive. Atmos Energy has competitors, who could use this information to their advantage and to the direct disadvantage of Atmos Energy. Atmos Energy would be at a competitive threat of loss of business due to the ability of its competitors to leverage the information to their advantage. The public disclosure of the customer name, customer identifiable information, monetary terms negotiated with each customer and critical monetary terms would permit an unfair advantage to those competitors. With the identity of the customer and the knowledge of the contract terms, competitors would have inside information to target these customers. For these reasons, the customer name, customer identifiable information, and monetary terms in the contracts are exempt from public disclosure pursuant to KRS 61.878(c)(1).

As for the information specifically requested in Items 43 through 47 of the Attorney General's request, the Commission has previously ruled that these contract submissions are confidential in the prior rate case 2013-00148. The contract terms are also excluded from public disclosure by KRS 278.160(3). This same information is the subject of a pending petition for confidentiality in response to the Commission's first data request in this case.

The information requested also includes maps of Atmos Energy's' and its customers' infrastructure. Exemption from public disclosure of the information relevant to this petition are provided in KRS 61.878(1)(m). Under the Kentucky Open Records Act, the Commission is entitled to withhold from public disclosure information disclosed to it to the extent that open disclosure would "have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act and limited to: . . . ,

(f) infrastructure records that expose a vulnerability referred to in this subparagraph through the disclosure of the location, configuration, or security of critical systems, including public utility critical systems. These critical systems shall include but not be limited to information technology, communications, electrical, fire suppression, ventilation, water, wastewater, sewage, and **gas** systems and;

(g) The following records when their disclosure will expose a vulnerability referred to in this subparagraph: **detailed drawings, schematics, maps, or specifications of structural elements**, floor plans, and operating, utility, or security systems of any building or facility owned, occupied, leased, or maintained by a public agency."

This Commission has recognized that similar reports with diagrams and maps "are infrastructure records that disclose the location, configuration, or security of public utility systems" and therefore, should be treated as confidential. See Case No. 2014-00166 *In the Matter of 2104 Integrated Resource Plan of Big Rivers Electric Corporation*, KY PSC Order, p. 7 (August 26, 2014).

The information contained in the specified document may provide detailed information about Atmos' Energy's distribution system and the location of critical components; as such, the disclosure of which could threaten the public safety generally and provide sensitive information relevant to the security against terroristic events.

The Attorney General also seeks confidential information about the company's state and federal income tax returns in items 18 and 21;

18. Please provide a schedule showing the history of the taxable income and losses for AEC in total and separated into utility, nonregulated, and other for each fiscal year since 2006. Show the taxable income or loss in each fiscal year; the loss carrybacks, if any, to the year carried back; the carryforward balance at the beginning of the fiscal year, if any; and the related carryforward ADIT at the end of the fiscal year, if any. In addition, please further separate the utility amounts into the Kentucky/Mid-States division, the Kentucky division/jurisdiction, and all other utility divisions. Provide all calculations, assumptions, data, and electronic spreadsheets with formulas intact. In addition, please provide all documents, including studies and/or other analyses developed by the Company to support the calculations each year.

21. Please refer to electronic workpaper "Att2 - ADIT for KY - Fall 2015" provided in response to Staff 1-59. Refer further to cell rows 105, 106 and 107 on worksheet tab "Division 002" that provide the account 190 ADIT amounts for "FD-NOL Credit Carryforward - Non Reg", "FD-NOL Credit Carryforward - Utility", and "FD-NOL Credit Carryforward- Other", respectively.

a. Please provide a detailed description of the methodology used to disaggregate or separately determine the actual and projected NOL carryforward amounts for utility, nonregulated, and other.

b. Please provide copies of all supporting documentation used to quantify the actual NOL carryforward amounts in fiscal years 2013, 2014, 2015, the base year, and the test year.

c. Balances in these lines changed on a quarterly basis until the last month of actual data provided in June 2015. Please explain how those quarterly changes in the NOL carryforward amounts are determined separately for the utility and nonregulated.

d. Please provide the actual balances for utility and nonregulated NOL carryforward amounts as of September 30, 2015 and December 31, 2015 and provide copies of all supporting documentation used to quantify the balances.

KRS 61.878(1)(k) exempts from public disclosure "all public records or information the disclosure of which is prohibited by federal law or regulation." Federal law codified in 26 U.S.C.A. 5 6103(a), prohibits state officials from publicly disclosing any federal income tax return or its contents, making the requested federal income tax return exempt.

Returns and return information shall be confidential, and except as authorized by this title ... no officer or employee of any State ... shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or an employee or otherwise or under the provisions of this section....

The term "return information" means a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense. The effect of these two statutes is to preclude disclosure of the federal tax return.

Additionally, KRS 131.190(1) requires that all income tax information filed with the Kentucky Revenue Cabinet be treated in a confidential manner:

131.190 Information acquired in tax administration not to be divulged

-- Exceptions.

(1) (a) No present or former commissioner or employee of the Department of Revenue, present or former member of a county board of assessment appeals, present or former property valuation administrator or employee, present or former secretary or employee of the Finance and Administration Cabinet, former secretary or employee of the Revenue Cabinet, or any other person, shall intentionally and without authorization inspect or divulge any information acquired by him of the affairs of any person, or information regarding the tax schedules, returns, or reports required to be filed with the department or other proper officer, or any information produced by a hearing or investigation, insofar as the information may have to do with the affairs of the person's business.

Thus, the requested state income tax return is also confidential and protected from disclosure by KRS 61.878(1)(1), which exempts from the Kentucky Open Records Act "...public records or information the disclosure of which is prohibited or restricted or otherwise made confidential by enactment of the General Assembly."

This information was determined to be confidential in Atmos Energy's prior rate application - Case No 2013-00148.

The Attorney General's request 1 seeks workpapers:

1. Please provide all workpapers not already provided in the filing and/or in response to the Staff discovery. Provide all electronic workpapers with formulas and links intact, including all supporting and linked workpapers.

Attorney General request 13 relates to the Atmos Energy financing plan, which details the company's current and expected financial activities, assumptions, plans and other detailed information about the company's financial condition and expectations.

13. Please refer to the Company's response to Staff 1-03, which provides the components of the capital structure for Atmos Energy Corporation for the last ten calendar years using ending balances and daily average balances of short term debt. Please identify and describe all reasons why the Company increased the common equity ratio to 53.3% in 2014 from 50.0% or less in prior years by issuing a significant amount of common equity. Provide a copy of all documents, including studies and/or other analyses developed by the Company to support the issuance of such a significant amount of common equity. In addition, explain why the Company did not issue long term debt in lieu of some or all of the issuance of common equity.

Certain workpapers associated with Mr. Schneider's testimony include documents related to the Sarbanes-Oxley audit. The financing plan associated with the information requested in AG 1-13 includes information about accounting controls; provides information that details the internal financial operations of the company, procedures, methodologies and controls for assuring financial accuracy, all of which directly expose the most sensitive details of the company's financial workings.

The Supreme Court of Kentucky has held that "disclosure of [this financial information] would unfairly advantage competing operators. The most obvious disadvantage may be the ability to ascertain the economic status of the entities without the hurdles systematically associated with acquisition of such information. *Marina Management Servs. v. Cabinet for Tourism, Dep't of Parks*, 906 S.W.2d 318, 319 (Ky. 1995); see also *Hoy v. Kentucky Indus. Revitalization*

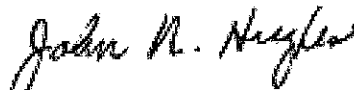
Auth., 907 S.W.2d 766, 768 (Ky. 1995) ("It does not take a degree in finance to recognize that such information concerning the inner workings of a corporation is generally recognized as confidential or proprietary and falls within the wording of KRS 61.878(1)(c).").

Atmos Energy requests that the information be held confidentially indefinitely. The statutes cited above do not allow for disclosure at any time. Given the competitive nature of the natural gas business and the efforts of non-regulated competitors to encroach upon traditional markets, it is imperative that regulated information remain protected and that the integrity of the information remain secure.

For these reasons, Atmos Energy requests that the items identified in this petition be treated as confidential. Should the Commission determine that some or all of the material is not to be given confidential protection, Atmos Energy requests an hearing prior to any public release of the information to preserve its rights to notice of the grounds for the denial and to preserve its right of appeal of the decision.

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