

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF ATMOS ENERGY)
CORPORATION FOR A GENERAL) Case No. 2015-00343
RATE ADJUSTMENT)

ATTORNEY GENERAL'S RESPONSE TO
CHAIRMAN GARDNER'S LETTER DATED JANUARY 25, 2016

Comes now the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, and responds to Chairman Gardner's letter dated January 25, 2016. The letter seeks comment or objection to Chairman Gardner's participation in Case No. 2015-00343, and was electronically transmitted to all parties. By this letter, the Attorney General presents two solutions to Chairman Gardner's potential for the appearance of impropriety.

Chairman Gardner has stated that he is a member of the Gas Technology Institute's (GTI) Public Interest Advisory Committee (PIAC). GTI is an Illinois-based not-for-profit corporation that conducts research and development for the benefit of the natural gas industry. GTI has described the role of PIAC as "very important to GTI in that it helps us and our Board to determine the future strategic direction of public interest R&D for gas consumers and for GTI."¹ Chairman Gardner was appointed to PIAC in 2010.²

¹ Attachment to Chairman Gardner's January 25, 2016 Letter; Letter from Ron Edelstein, Director, Regulatory and Governmental Relations of GTI to Honorable James W. Gardner, Vice Chairman, KPSC, November 19, 2010.

² *Id.*

Atmos' application for a general increase in rates contains a request for an increased "R&D Unit Charge."³ The R&D rider, if approved, would generate approximately \$278,000 annually. Mark Martin, Vice President of Rates and Regulatory Affairs for the Kentucky Mid-States Division of Atmos Energy Corporation, has stated that "[a]ll funds collected under the R&D Rider would be remitted to the Gas Technology Institute."⁴ GTI's 2014 Annual Report includes several examples of the work it conducts, including helping "a Chinese energy research organization evaluate the emission reduction benefits of using natural gas to displace coal and fuel oil for industrial and commercial applications," and "collaborating with Korea Gas Corporation on energy research and development, education and training, and information sharing."⁵ In summary, Atmos would like to collect \$278,000 from captive Kentucky ratepayers so Atmos could then donate the proceeds to an organization dedicated to furthering domestic and international natural gas interests, with no clear benefit to the Kentucky ratepayers from which the money was collected.

In the opinion of the Attorney General, Chairman Gardner's affiliation with GTI will create the appearance of impropriety should he participate in any determination of the R&D Rider. The American Bar Association (ABA) Model Code of Judicial Conduct: Canon 1 states "A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety." While the Model Code of Judicial Conduct is not binding, it provides appropriate and relevant guidance. Overseeing the decision of whether or not to approve a direct contribution from a utility to GTI in the amount of \$278,000, where Chairman Gardner is openly affiliated with GTI, certainly presents the

³ Application of Atmos Energy Corporation for an Adjustment of Rates and Tariff Modifications, Case No. 2015-0343, Application, Volume 1, Testimony of Mark Martin, Pages 13-15.

⁴ *Id.* at 15.

⁵ GTI 2014 Annual Report: Energy In Action. Available at: http://www.gastechnology.org/news/Documents/Annual_Reports/GTI-Annual-Report-2014.pdf.

appearance of impropriety. ABA Model Code of Judicial Conduct, Rule 1.2, states “A judge shall act at all times in a manner that... shall avoid impropriety and the appearance of impropriety.” Here, Chairman Gardner sitting in judgment of a large donation to an organization he is formally affiliated with certainly gives the appearance of impropriety, and should be avoided.

Having established the Attorney General’s preference to avoid the appearance of impropriety with Chairman Gardner in this case, two potential solutions exist. First, Atmos can withdraw the request for the offending Rider. If the request for an R&D rider is withdrawn by Atmos, the potential for a perceived impropriety would be eliminated, and Chairman Gardner would be free to sit in judgment of the case. Considering that the Commission has historically prevented utilities from incorporating donations to not-for-profit entities into rate base, it seems likely that Atmos request in this instance will be denied anyway. In order to avoid the recusal of Chairman Gardner, and the senseless litigation over the R&D Rider, the most logical solution to the potential appearance of impropriety is for Atmos to withdraw its request for an R&D Rider.

Should Atmos refuse to withdraw the offending request, unfortunately, the Attorney General must object to Chairman Gardner’s participation in Case No. 2015-00343 and request that Chairman Gardner recuse himself. Recusals are not overly uncommon in the Kentucky Public Service Commission’s history, and they impart no ill regard on the recusing Commissioner. It should be noted, during Chairman Gardner’s tenure on the Commission, the Attorney General’s Office of Rate Intervention has found Chairman Gardner to be nothing but professional, ethical, and an asset to the Commonwealth of Kentucky through his roles as Vice-Chair and now Chairman of the KPSC.

Wherefore, the Attorney General requests that in the absence of Atmos withdrawal of the request for an R&D Rider, that Chairman Gardner recuse himself from Case No. 2015-00343.

Respectfully submitted,

ANDY BESHEAR
ATTORNEY GENERAL

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