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February 8, 2016

Parties of Record

Re: Atmos Energy Corporation, Case No. 2015-00343

On January 26, 2016, I filed in the record of Case No. 2015-00343 a letter asking parties in the case to comment on whether I should recuse myself because I am a member of the Public Interest Advisory Council ("PIAC") of the Gas Technology Institute ("GTI"). I attached a copy of my appointment letter outlining those advisory duties. On February 2, 2016, the Attorney General ("AG") filed his Response and requested that I recuse myself because it "will create the appearance of impropriety should he participate in any determination of the R&D Rider." (P. 2) In spite of my concern regarding the AG's position as described below, I will in fact recuse myself from participation on the R&D Rider matter.

The issue as to whether R&D program funding may be recoverable through utility rates is a legitimate issue. However, the means by which the AG has raised the issue is not appropriate. It is not legitimate to use a recusal motion as an overt litigation strategy to try to force Atmos to withdraw part of its application, nor is it appropriate to attempt to smear a 501(c)(3) R&D organization by insinuating it has inappropriate ties to Asian efforts to reduce reliance on coal.

The AG's arguments disparaging GTI reference the institute's 2014 Annual Report, which is not in the record and was apparently accessed through an Internet search, while Atmos has indicated in the record in Response to Item 53 of the Commission Staff's First Request for Information that its GTI contributions resulting from its longstanding R&D Rider are used for projects other than Chinese, South Korean, or anti-coal research efforts.

Further, the record shows that Atmos provided information concerning its funding of GTI's Operations Technology Development and Utilization Technology Development programs, and included attachments highlighting the results of those programs. The AG ignores this information in his response.

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This Commission has a long history of approving as reasonable ratepayer funded research by jurisdictional utilities following a fully developed record and a finding of reasonableness regarding benefits to Kentucky ratepayers. Both before and during my tenure the Commission has approved requests by Kentucky jurisdictional utilities to participate in the research of the Electric Power Research Institute and the Center for Applied Energy Research, as well as GTI. It is apparent that the Attorney General is now asking the PSC to change its practice. In support of his position, he should expect to develop his recommendation as is his right through the process of discovery.

Even though the litigation tactics of the AG cannot be condoned, in order to avoid the appearance of impropriety I will recuse myself from participating with respect to the R&D Rider.

Sincerely,



James W. Gardner
Chairman

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