

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In The Matter of:

ELECTRONIC APPLICATION OF ATMOS )  
ENERGY CORPORATION FOR AN ) Case No.  
ADJUSTMENT OF RATES ) 2018-00281

**ATTORNEY GENERAL’S REPLY TO ATMOS’ RESPONSE TO THE  
ATTORNEY GENERAL’S MOTION TO COMPEL**

Comes now the intervenor, the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, and for his Reply to Atmos’ Response to the Attorney General’s Motion to Compel, states as follows.

Atmos’ refusal to provide in discovery depreciation rates using the most-widely accepted methodology in the industry is not, as Atmos would have the Commission believe, merely a discovery dispute. Rather, Atmos’ attempt to unilaterally restrict a comprehensive review of its depreciation rates is tantamount to instilling a *de facto* alternative ratemaking mechanism (ARM) in which the Company itself -- rather than the Commission -- dictates what evidence is considered in setting the rates. The Commission must not allow Atmos to dictate the terms of discovery.

In Case No. 2013-00148,<sup>1</sup> the Commission recognized that having more data, rather than too little, is “appropriate and beneficial” in the context of considering evidence, particularly utility-supported methodologies. Accordingly, the Commission put Atmos on notice that with regard to cost of service studies, it should file multiple-methodology COSSes in the future:

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<sup>1</sup> *In Re*: Application of Atmos Energy Corporation for an Adjustment of Rates and Tariff Modifications.

Atmos-Ky. acknowledged that there is support for the approach used by the AG in previously filed COSSes in other jurisdictions.<sup>97</sup> In addition, Atmos-Ky. stated that "[b]oth approaches utilize traditional and accepted classification and allocation methods and yet produce widely divergent results of the 'cost of service.'" It was for this reason that, in Case No. 10201,<sup>98</sup> the Commission encouraged Columbia to submit multiple methodology COSSes in its future rate proceedings. The Commission reaffirmed this position in Case No. 90-013<sup>99</sup> when it encouraged Atmos-Ky.'s predecessor, Western, as well as other utility companies and intervenors, to file well-documented alternative and multiple-methodology COSSes to provide additional information for rate design. We continue to believe that such an approach to COSSes is appropriate and beneficial. Hence, the Commission strongly encourages Atmos-Ky. to file multiple-methodology COSSes in future rate cases **in order to give the Commission a range of reasonable results** for use in determining revenue allocation and rate design.<sup>2</sup>

The Commission has expressed a strong concern against allowing parties to unduly tilt the evidentiary scale to one side or the other by controlling and shaping the record in an outcome-determinative manner. In Case No. 2003-00266,<sup>3</sup> the Commission allowed MISO to file a second set of cost/benefit studies, finding:

Having cost/benefit studies in this case that are based upon comparable inputs will produce **a more complete evidentiary record, enabling the Commission to be in a better position to render a decision on the merits.**<sup>4</sup>

Here, Atmos is proposing new depreciation rates,<sup>5</sup> and bears the evidentiary burden on this issue.<sup>6</sup> The utility provided a single methodology, whereas the Attorney General merely wants to compare the outcomes of that methodology with the most commonly used methodology, in order to determine the reasonableness of Atmos' proposal. When asked for this information, Atmos objected stating it was unduly burdensome. Yet Atmos' Response

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<sup>2</sup> *Id.* at p. 34 [footnote citation deleted; emphasis added].

<sup>3</sup> *In Re: Investigation into the Membership of Louisville Gas & Elec. Co. and Kentucky Utilities Co. in the Midwest Independent Transmission System Operator, Inc.*

<sup>4</sup> *Id.*, Final Order dated Feb. 4, 2005, p. 34 [emphasis added].

<sup>5</sup> *See, e.g.*, Direct Testimony of Dane Watson, Case No. 2018-00281.

<sup>6</sup> KRS 278.190 (3).

instead focused on shot-gun style legal gymnastics designed to be anything other than transparent. Atmos' response raises two questions: (a) was Atmos' response to the Attorney General's discovery request honest (that performing the ALG methodology was unduly burdensome), in light of the fact that its Response to the Attorney General's Motion seemingly abandoned this attempted defense; and (b) would the Company's response have been the same had Commission Staff requested the ALG methodology for Atmos' proposed depreciation rates? The Commission, the Attorney General and the customers he represents should have this information available to them. The alternative would set an unacceptable precedent, in allowing a regulated entity in tunnel-vision like manner to control the evidentiary record.

Wherefore, the Attorney General respectfully requests that the Commission grant his previously-filed Motion to Compel.

Respectfully submitted,

ANDY BESHEAR  
ATTORNEY GENERAL



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*Certificate of Service and Filing*

Counsel certifies that the foregoing is a true and accurate copy of the same document being filed in paper medium with the Commission within two business days; that the electronic filing has been transmitted to the Commission on January 2, 2019; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding.

This 2<sup>nd</sup> day of January, 2019.

A handwritten signature in blue ink, appearing to be the initials 'MJ', is placed on a light blue rectangular background.

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Assistant Attorney General