

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 MOTION TO STRIKE ATMOS’ RESPONSE  
DATED JANUARY 3, 2019; ALTERNATIVE MOTION FOR LEAVE TO FILE A  
RESPONSE THERETO; MOTION TO SET A FORMAL HEARING ON 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 hereby moves the Commission: (a) to strike Atmos’ Second Response dated January 3, 2019 to the Attorney General’s initial Motion to Compel; (b) alternatively, for leave to file a Reply to Atmos’ January 3, 2019 response; and (c) alternatively, to set a formal hearing on the record regarding his Motion to Compel. In support thereof, the Attorney General states as follows.

807 KAR 5:001 § 5 (2)-(3) provide that in motion practice before the Commission, there shall be a motion, a response, and a reply. The Commission’s regulations make no provision for a second response, such as Atmos filed on January 3, 2019, to a motion. Moreover, Atmos even failed to seek leave to file any such second response. Therefore, the Attorney General moves to strike Atmos’ Second Response dated January 3, 2019 on the basis that it is clearly unlawful.

In the alternative, the Attorney General seeks leave of the Commission to file the following reply to Atmos’ Second Response. Atmos asserts that it would be “unduly burdensome” for it to provide its proposed new depreciation rates in the instant case based

upon the ALG methodology.<sup>1</sup> However, upon best information and belief, the Attorney General believes that doing so would require virtually no work at all on behalf of Atmos' depreciation expert who filed testimony in this matter, Mr. Watson. The genesis of this issue is Atmos' objection to the Attorney General's discovery, and it is the utility's burden to support the sustaining of its objection.

Moreover, it is the Commission and consumers who would be unduly burdened if the Commission sustains the objection. Upon best information and belief, it is the Attorney General's understanding that Mr. Watson utilizes a proprietary software program known as "PowerPlan" to develop depreciation rates. This software program relies on prodigious volumes of historic fixed asset data that are maintained within the utility's PowerPlan software program and extracted and utilized to develop depreciation rates. There are other proprietary software programs developed by other consulting firms that are used by those firms to develop depreciation rates. Once the data is loaded into these software programs, they can calculate depreciation rates under either the ELG or the ALG procedures. The data does not change. Only the statistical calculations change.

The Attorney General's sole expert witness in this matter, Mr. Lane Kollen, who has appeared numerous times before this Commission, is a revenue requirements expert. Mr. Kollen does not perform independent depreciation studies because such studies typically are performed either by the utility, or a consultant for the utility using proprietary software programs. However, Mr. Kollen does address various depreciation issues, such as the use of ELG or ALG, the service lives of assets, and salvage percentages, among other issues. Mr. Kollen does not have access to PowerPlan or other proprietary software program. Nor would

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<sup>1</sup> Atmos' Response to Attorney General's DR 1-30.

it be cost-effective for him to replicate the utility's depreciation study. After making reasonable inquiry, Mr. Kollen believes the cost of obtaining a proprietary software program would be \$30,000 or more. However, even if Mr. Kollen *could* obtain such software (which he cannot due to contractual cost constraints), the Company's data would have to be loaded into the software program and then benchmarked against the results developed by Mr. Watson. Mr. Kollen could not replicate Mr. Watson's work even as to the ELG methodology because the software program that Mr. Kollen would license may not provide consistent results with the PowerPlan software Mr. Watson utilized in preparing Atmos' actual proposed new depreciation rates based upon the ELG methodology. To make matters even more complicated – and unduly burdensome – Mr. Watson's depreciation study consists of over **1,100 data files**.<sup>2</sup> While that data is already loaded into Mr. Watson's proprietary software, Mr. Kollen would have to license proprietary software and input this data into that software simply to attempt to replicate Mr. Watson's results. This would be a significant, time consuming, and costly task that would unnecessarily duplicate the cost Atmos incurred to perform the depreciation study, and for which it seeks reimbursement in this rate proceeding.

Atmos bears the burden of proof that its depreciation rates are fair, just and reasonable. Atmos has retained a depreciation expert capable of recalculating the depreciation rates based on the ALG methodology using the data already loaded into the PowerPlan proprietary software program at virtually no cost and simply using the algorithms already resident in the software program. Atmos' costs in bringing its rate cases are reimbursed by its ratepayers, not its shareholders. Atmos is required to provide complete responses to data requests, such as the one at issue here. Atmos itself must therefore provide the requested data in order for the

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<sup>2</sup> See Atmos' Motion for Deviation, dated Oct. 12, 2018.

intervenors and the Commission to review the data and determine the reasonableness of Atmos' *proposed* rates. The Attorney General believes that depreciation rates based on the ELG methodology are unreasonable on their face as well as being inconsistent with Commission precedent on this issue. Without additional evidence to support, compare and contrast Atmos' proposed rates, the Attorney General may be forced to recommend \$0 in annual depreciation expense in this matter.

Accordingly, the Attorney General respectfully requests that the Commission grant his previously-tendered Motion to Compel. Alternatively, if the Commission believes it would be helpful, the Attorney General respectfully moves the Commission to set a formal hearing on the record regarding his Motion to Compel. Mr. Kollen can be available telephonically to answer any of the Commission's questions any day next week (January 7-11, 2019), except that on Wednesday January 9<sup>th</sup> he could only be available in the late afternoon, due to testifying at another hearing out-of-state. In addition, a depreciation consultant that Mr. Kollen has previously worked with, Mr. David Garrett, is also prepared to appear telephonically for up to two hours in order to address questions the Commission may have.<sup>3</sup> The Attorney General also respectfully suggests that it would be helpful for Mr. Watson to likewise be made available telephonically to address any questions the Commission may have, and to respond to cross-examination from the Attorney General.

WHEREFORE, the Attorney General respectfully renews his request that the Commission grant his previously-tendered Motion to Compel; or alternatively, (a) that it grant his motion for leave to tender the included Reply to Atmos' Second Response dated

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<sup>3</sup> Mr. Garrett, a recognized depreciation expert and past-president of the Society of Depreciation Professionals, will not be providing pre-filed written direct testimony in this matter, has not participated in this case up to and including the present date, and his appearance would be limited solely as a consultant to Mr. Kollen, and to assist the Commission in this matter.

January 2, 2019; or (b) to hold a formal evidentiary hearing on the record regarding his 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 4, 2019; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding.

This 4<sup>th</sup> day of January, 2019.

A rectangular area containing a handwritten signature in blue ink. The signature is stylized and appears to be the initials 'AJ'.

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Assistant Attorney General