

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 COMPEL DISCOVERY

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 to order petitioner Atmos Energy Corporation (“Atmos”) to produce certain data requested in the Attorney General’s Initial Data Requests. In further support of this motion, the Attorney General states as follows.

On November 21, 2018, the Attorney General filed his Initial Data Requests in this matter. In particular, AG 1-30 requested that Atmos recalculate its proposed depreciation rates based on the Average Life Group (“ALG”) methodology. On December 7, 2018 Atmos refused to comply with this request, stating in its objection that doing so would be “unduly burdensome,” ostensibly because the Company calculated its proposed depreciation rates based on the Equal Life Group (“ELG”) methodology and seeks to preclude the Commission from adopting depreciation rates based on the ALG methodology.

Neither Atmos, nor any other jurisdictional utility should be able to dictate the terms of its ratemaking by withholding critical information, or not performing calculations, especially when doing so would result in ratemaking that is inconsistent with prior Commission orders. In the instant case, Atmos seeks authorization to change its depreciation rates based on a new depreciation study based on the ELG methodology. Atmos bears the

burden of proving that the proposed depreciation rates are fair, just and reasonable, but it should not be allowed to satisfy that burden by failing to provide essential data.

Atmos must be compelled to provide the comparison of its proposed depreciation rates based on the ALG methodology because the Commission recently found in Case No. 2017-00321 that the ALG methodology is superior to the ELG methodology.¹ In that case, the Commission noted:

“ . . . [T]his Commission has found that the ELG procedure does not accurately match revenues and expenses, is front-loaded, and Duke Kentucky is the only Kentucky based utility that utilizes the ELG procedure for computing depreciation rates.”²

Moreover, in Case No. 2017-00321, Duke Energy as a result of a discovery request from the Attorney General did not object to providing the depreciation study it submitted in that case based upon the ALG methodology.³ In the instant case, only Atmos itself is in a position to provide the depreciation rates based upon the ALG methodology, given that it has retained a depreciation expert and given that this expert has the requisite proprietary software to calculate depreciation rates using *either* the ELG or the ALG methodology. The Commission should not allow a utility to unilaterally refuse to provide critically relevant information essential to the setting of fair, just and reasonable rates. Allowing such a result would set a horrendous precedent, not only as to depreciation rates, but also with respect to any other issue in which a utility disagrees with another party. The Commission should not relinquish its ratemaking authority to the very entity that it is charged with regulating.

¹ *In Re: Electronic Application of Duke Energy Kentucky, Inc. for an Adjustment of Electric Rates*, etc., Final Order dated April 13, 2018, pp. 26-27. *See also* Rebuttal Testimony of Duke Energy’s depreciation expert John J. Spanos in that case, at 30-34 in which he acknowledged that “ELG, will every time result in higher depreciation rates in early years than the ALG methodology.”

² Case No. 2017-00321, Final Order dated April 13, 2018, at 26. The Commission’s adoption of the ALG methodology in that case resulted in a reduction in depreciation expense of \$6.920 million. *Id.* at 26-27.

³ Case No. 2017-00321, Duke’s response to AG 1-35.

Additionally, in the instant case, Commission Staff in PSC 2-39 also asked Atmos whether the Company was aware of the Commission's finding and holding in Case No. 2017-00321 disallowing Duke's attempt to utilize the ELG methodology in its depreciation study. Atmos responded that it was aware of the holding in that case.⁴

The ALG methodology is the predominant depreciation methodology for the utility industry, is just as accurate as ELG, and provides full compensation to the Company for gross plant costs.⁵ Moreover, ALG smooths the data so that group depreciation rates tend to remain constant, all else equal, over the service life compared to ELG procedure. By contrast, the ELG methodology accelerates recovery in early years, and decelerates recovery in the later years, all else equal. Perhaps most important, the ELG methodology requires a more refined stratification of the data which is the result of the subjective judgment and assumptions of the depreciation analyst, and can be easily biased, regardless of whether intentionally or unintentionally.⁶

The Attorney General's request that Atmos recalculate its proposed depreciation rates based upon the ALG methodology is clearly reasonable. The Commission itself has expressed its preference for the ALG methodology, and the provision of this data will obviously assist the Commission in its determination of fair, just and reasonable rates. Therefore, Atmos should be compelled to produce the requested data.

Finally, counsel for the Attorney General notes that he has been in communication with counsel for Atmos in an attempt to resolve this discovery dispute, but the parties have not been able to reach a resolution.

⁴ Atmos' response to PSC 2-39.

⁵ See Direct Testimony of Lane Kollen, Case No. 2017-00321, pp. 31-36.

⁶ *Id.* at 34-35.

Respectfully submitted,

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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 December 21, 2018; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding.

This 21st day of December, 2018.



Assistant Attorney General