

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC REQUEST OF ATMOS ENERGY )  
CORPORATION FOR MODIFICATION AND ) Case No. 2020-00289  
EXTENSION OF ITS GAS COST ADJUSTMENT )  
PERFORMANCE BASED RATEMAKING )  
MECHANISM )

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**ATTORNEY GENERAL’S COMMENTS**

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The intervenor in this proceeding, the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention (“Attorney General”), submits the following comments to the Public Service Commission (“Commission”) in the above-styled matter.

**STATEMENT OF THE CASE**

Atmos Energy Corporation (hereinafter “Atmos” or the Company”) is a natural gas distribution company that operates in eight states and serves about 3 million customers.<sup>1</sup> Atmos' Kentucky/MidStates division is one of six operating divisions that provides natural gas service in Kentucky, Tennessee, and Virginia.<sup>2</sup> Atmos serves approximately 176,800 customers in central and western Kentucky.<sup>3</sup> On August 31, 2020, Atmos filed an application requesting the modification and extension of its gas cost adjustment performance based ratemaking (“PBR”)

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<sup>1</sup> Case No. 2018-00281, *Electronic Application of Atmos Energy Corporation for an Adjustment of Rates* (Ky. PSC May 7, 2019), Order at 1.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

mechanism, which is set to expire on May 31, 2021.<sup>4</sup> Atmos filed a report on the results of its PBR mechanism for the last four years with its application, and requests extending the PBR mechanism for 5 years from June 1, 2021.<sup>5</sup> The Commission issued an Order granting the Attorney General's intervention request on October 2, 2020. The Commission Staff and the Attorney General propounded two rounds of discovery to Atmos. Following the submission of these comments, the case will stand submitted for a decision on the record on March 26, 2021.

## **ARGUMENT**

The Commission initially approved Atmos' PBR mechanism in Case No. 97-513.<sup>6</sup> The most recent approval of Atmos' PBR mechanism occurred in Case No. 2015-00298, in which the Commission granted approval of Atmos' PBR mechanism until May 31, 2021.<sup>7</sup> Under Atmos' PBR Mechanism, actual costs and revenues are compared against benchmarks to measure Atmos' performance in its gas procurement activities.<sup>8</sup> In other words, Atmos attempts to outperform benchmarks to achieve lower gas costs, and if successful, the shareholders receive a portion of the savings along with its customers through the PBR mechanism. Atmos' PBR mechanism benchmarks the following components of Atmos' gas costs: (1) commodity costs, (2) transportation costs, (3) capacity release revenues, and (4) off-system sales revenues.<sup>9</sup> Variances between the actual costs and revenues and the benchmarks are shared between shareholders and

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<sup>4</sup> Application, unnumbered page 1.

<sup>5</sup> *Id.* at unnumbered page 4.

<sup>6</sup> Case No. 97-513, *Modification to Western Kentucky Gas Company, a Division of Atmos Energy Corporation (WKG) Gas Cost Adjustment to Incorporate an Experimental Performance-Based Ratemaking Mechanism (PBR)*, (Ky. PSC June 1, 1998).

<sup>7</sup> Case No. 2015-00298, *Request of Atmos Energy Corporation for Modification and Extension of its Gas Cost Adjustment Performance Based Ratemaking Mechanism*, (Ky. PSC Mar. 31, 2016), Order at 4.

<sup>8</sup> *Id.* at 1.

<sup>9</sup> *Id.*; Atmos' response to the Attorney General's First Request for Information ("Attorney General's First Request"), Item 5.

ratepayers on a sliding scale.<sup>10</sup> When gas costs are less than the established benchmark, Atmos and the ratepayers share in the savings through two established tiers.<sup>11</sup> The first tier represents savings up to 2% of total gas cost, for which Atmos shares 30% and the ratepayers 70%.<sup>12</sup> The second tier represents savings greater than 2% of total gas costs, in which Atmos and the ratepayers evenly share 50% each.<sup>13</sup> Atmos and the customers share in the excess costs by applying the same two tiers and sharing percentages when actual gas costs are greater than the established benchmark.<sup>14</sup> Atmos avers that the shared savings represent the rewards of the PBR mechanism, while the shared costs are the penalties.<sup>15</sup>

Atmos further contends that in the past four years its actual gas costs of \$311,904,506 were 9.1%<sup>16</sup> less than the established benchmark costs, which yielded savings of \$28,267,062.<sup>17</sup> Atmos states that pursuant to the PBR mechanism the Kentucky ratepayers retained \$15,381,149 in savings and the Company's share was \$12,885,913.<sup>18</sup> Due to Atmos never purchasing gas below the benchmark cost, the Company nor the ratepayers were penalized during this timeframe.<sup>19</sup>

Atmos, Columbia Gas of Kentucky ("Columbia Kentucky"), and Louisville Gas and Electric Company ("LG&E") are the only three utilities in Kentucky that have a PBR mechanism.<sup>20</sup> In Case No. 2019-00437, LG&E filed for continuation and modification of its PBR mechanism.<sup>21</sup>

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<sup>10</sup> Case No. 2015-00298, *Request of Atmos Energy Corporation for Modification and Extension of its Gas Cost Adjustment Performance Based Ratemaking Mechanism*, (Ky. PSC Mar. 31, 2016), Order at 2.

<sup>11</sup> Atmos' response to the Attorney General's First Request, Item 2(a).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> In Atmos' response to the Commission Staff's Second Request for Information, Item 2(b), Atmos confirmed that it had achieved average savings of 9.1% of gas costs for the period June 2016 – May 2020.

<sup>17</sup> Atmos' response to the Attorney General's First Request, Item 2(a).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Atmos' response to the Attorney General's First Request, Item 3.

<sup>21</sup> Case No. 2019-00437, *Electronic Application of Louisville Gas and Electric Company for Renewal and Proposed Modification of its Performance-Based Ratemaking Mechanism*, (Ky. PSC Oct. 26, 2020).

LG&E's PBR mechanism provided for the variances between LG&E's actual gas costs and the benchmarks to be shared between the shareholders and ratepayers on a sliding scale consisting of two tiers.<sup>22</sup> The first tier covered variances from the benchmark ranging from 0% to 3%, and was shared 25% to LG&E and 75% to the ratepayers.<sup>23</sup> The second tier covered variances greater than 3% and was shared 50% to LG&E and 50% to the shareholders.<sup>24</sup>

In the October 26, 2020 Final Order, the Commission stated that LG&E sufficiently proved that it had outperformed benchmarks to achieve lower gas costs and in allowing its shareholders to benefit along with its customers through the sharing component of the PBR mechanism.<sup>25</sup> The Commission noted that over the past four years LG&E's total calculated gas cost savings achieved through the PBR mechanism was \$20,726,465, which was 4.6% of the total gas cost of \$447,680,992.<sup>26</sup> The Commission asserted that in recognition of the need to provide a meaningful incentive to LG&E that still provides the greatest possible gas cost savings to the ratepayers, it was necessary to increase the range of the initial sharing so that the upper end of the band reflects historical achieved savings.<sup>27</sup> Thus, the Commission modified LG&E's PBR mechanism to the following: the first tier variances from the benchmark ranging from 0% to 4.6% to be shared 30% to the shareholders and 70% to the ratepayers, while the second tier variances greater than 4.6% is shared 50% to the shareholders and 50% to the ratepayers.<sup>28</sup> The end result of this modification allows for a larger portion of the savings from the PBR mechanism to go to LG&E's ratepayers. This result is fair and equitable because the ratepayers bear 100% of the costs for the PBR mechanism though the gas cost adjustment clause in the rates. Thus, the ratepayers should receive

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<sup>22</sup> *Id.* at 2.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 2 – 3.

<sup>25</sup> *Id.* at 3.

<sup>26</sup> *Id.* at 6.

<sup>27</sup> *Id.* at 7.

<sup>28</sup> *Id.*

a larger share of the PBR mechanism savings than the Company's shareholders.

Additionally, in Case No. 2019-00437, LG&E requested that its PBR mechanism be approved for five years, but the Commission found that it should be approved as modified only through March 31, 2021.<sup>29</sup> The Commission also ordered the same PBR mechanism expiration date for Columbia Kentucky in its most recent PBR proceeding in Case No. 2017-00453.<sup>30</sup> The Commission stated that the goal was to take consistent action in regard to gas cost PBR mechanisms for Atmos, Columbia Kentucky, and LG&E.<sup>31</sup> The Commission stated that during the pendency of the three proceedings it would consider the larger issue of PBR mechanism as it applies to gas cost, the appropriateness of all gas purchasing activities included in incentive mechanisms, the construction and consistency of all approved benchmarks, and best practices of sharing mechanisms between local distribution companies (LDCs) and their ratepayers.<sup>32</sup>

If the Commission determines that Atmos' PBR mechanism is still beneficial to the ratepayers and should continue, then the Attorney General recommends a similar modification to Atmos' PBR as the Commission ordered for LG&E in Case No. 2019-00437. As aforementioned, in the past four years Atmos' actual gas costs of \$311,904,506 were 9.1% less than the established benchmark costs, which yielded a savings of \$28,267,062.<sup>33</sup> However, under the current sharing structure Atmos' ratepayers only retained \$15,381,149 in savings while the Company's share was \$12,885,913.<sup>34</sup> Due to Atmos' customers bearing 100% of the costs associated with the PBR mechanism, it is only fair to provide the ratepayers with a larger portion of the savings. Therefore,

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<sup>29</sup> *Id.* at 9.

<sup>30</sup> Case No. 2017-00453, *Application of Columbia Gas of Kentucky, Inc. to Extend its Gas Cost Adjustment Performance Based Rate Mechanism*, (Ky. PSC Oct. 22, 2019), Order at 3.

<sup>31</sup> Case No. 2019-00437, *Electronic Application of Louisville Gas and Electric Company for Renewal and Proposed Modification of its Performance-Based Ratemaking Mechanism*, (Ky. PSC Oct. 26, 2020), Order at 9.

<sup>32</sup> *Id.* at 10.

<sup>33</sup> Atmos' response to the Attorney General's First Request, Item 2(a).

<sup>34</sup> *Id.*

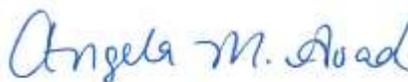
the Attorney General recommends that the first tier of Atmos' PBR savings be increased from 0% - 2% to 0% - 9.1%, with 30% of the savings allocated to Atmos and the remaining 70% to the ratepayers. The second tier of savings greater than 9.1% would then be shared between the Atmos and the ratepayers evenly with 50% each. The Attorney General contends that the above proposed modification strikes a fair balance between Atmos and the ratepayers. The proposed modification will still provide Atmos with the proper incentive to seek out gas cost savings, while adequately rewarding Atmos' customers for providing the funding for the PBR mechanism.

### CONCLUSION

WHEREFORE, if the Commission determines that the monetary benefits of Atmos' PBR mechanism outweigh the costs of the program then the Attorney General requests that the Commission adopt its aforementioned proposed modification in order to set fair, just, and reasonable rates for the ratepayers.

Respectfully submitted,

DANIEL J. CAMERON  
ATTORNEY GENERAL



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ANGELA M. GOAD  
J. MICHAEL WEST  
LAWRENCE W. COOK  
JOHN G. HORNE II  
ASSISTANT ATTORNEYS GENERAL  
1024 CAPITAL CENTER DRIVE, SUITE 200  
FRANKFORT, KY 40601  
PHONE: (502) 696-5421  
FAX: (502) 564-2698  
[Angela.Goad@ky.gov](mailto:Angela.Goad@ky.gov)  
[Michael.West@ky.gov](mailto:Michael.West@ky.gov)  
[Larry.Cook@ky.gov](mailto:Larry.Cook@ky.gov)  
[John.Horne@ky.gov](mailto:John.Horne@ky.gov)

*Certificate of Service and Filing*

Pursuant to the Commission's Orders dated March 16, 2020 and March 24, 2020, in Case No. 2020-00085, and in accord with all other applicable law, Counsel certifies that the foregoing electronic filing was transmitted to the Commission on March 25, 2021, and there are currently no parties that the Commission has excused from participation by electronic means in this proceeding. Further, the Attorney General will submit the paper originals of the foregoing to the Commission within 30 days after the Governor lifts the current state of emergency.

This 25<sup>th</sup> day of March, 2021.

A handwritten signature in blue ink that reads "Angela M. Aoad". The signature is written in a cursive, flowing style.

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Assistant Attorney General