

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF ATMOS	)	CASE NO.
ENERGY CORPORATION FOR AN ADJUSTMENT	)	2021-00214
OF RATES	)	

**ATTORNEY GENERAL’S BRIEF IN RESPONSE TO ATMOS’  
PETITION FOR REHEARING**

The intervenor, the Attorney General of the Commonwealth of Kentucky, through his Office of Rate Intervention (“AG”), hereby submits the following response to the petition of Atmos Energy Corporation (“Atmos,” “AEC” or “the Company”) for rehearing.

1. Clarification on the Appropriate Manner to Adjust Rates Upon Conclusion of the 3-year Amortization Period for Atmos Energy’s Unprotected Excess Deferred Income Taxes (“EDIT”)

Atmos did not propose any particular rate adjustment or other tracking mechanism in either its application or final brief for the completion of amortization of EDIT. The Company now seeks to raise this issue for the first time as a "clarification." The AG’s revenue requirements expert, Mr. Kollen, recommended a three-year amortization period of the EDIT liability in order to match the probable period of time between base rate cases, which is also consistent with the three-year amortization period the Company requested for its deferred rate case expense regulatory asset.<sup>1</sup> The rehearing process is not the appropriate context in which to introduce this first-time issue, and should therefore be rejected.

Nonetheless, if the Commission grants rehearing on this issue, and regardless of when the amortization period begins and ends, then Atmos may seek to introduce through

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<sup>1</sup> Kollen Direct at 30; Attorney General’s Final Brief at 21-22.

testimony or rehearing brief a proposal to increase base rates upon the expiration of the amortization or some form of rider that would allow an increase in rates as the EDIT is amortized. None of this, however, was addressed in Atmos' application or final brief. The AG notes that the Company did not seek rehearing to address the ratemaking upon the expiration of the amortization of rate case expenses. Rehearing on this issue would be wholly contrary to well-established Commission precedent.<sup>2</sup> Accordingly, the Commission should reject the Company's request for rehearing on this issue and its attempt to litigate issues that it could have addressed in its application and/or final brief, but chose not to do so.

2. Clarification on the Appropriate Manner to Adjust Rates Upon Conclusion of the 6-year Amortization Period for the Regulatory Liability Established Following Case No. 2018-00281

In Case No. 2018-00281, the Company established regulatory liabilities for depreciation reserve and cost of service reserve. In the instant case, the Commission's Final Order established a six-year amortization period for these regulatory liabilities, set at \$1.644 million until the liabilities are exhausted, or the effective date of Atmos' next base rate case, whichever occurs first.<sup>3</sup> Just as is the case with issue one, above, Atmos requests "clarification" of the amortization period to cure that which it failed to address in its application or final brief. As the Company did not address this matter in its application or final brief, the Commission should reject the rehearing request.

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<sup>2</sup> See, e.g., Attorney General's Final Brief at 15; and *In Re: Electronic Application Of Duke Energy Kentucky, Inc. For An Adjustment Of The Electric Rates, etc.*, Final Order dated April 27, 2020 at pp. 7-8 (*citing* Case No. 2004-00103, *In Re: Adjustment of the Rates of Kentucky-American Water Company*, Final Order dated Feb. 28, 2005, at 35).

<sup>3</sup> Case No. 2021-00214, Final Order dated May 19, 2022 at 27.

Nonetheless, if the Commission grants rehearing on this issue, and regardless of when the amortization period begins and ends, then Atmos may seek to introduce through testimony or rehearing brief a proposal to increase base rates upon the expiration of the amortization or some form of rider that would allow an increase in rates as the EDIT is amortized. None of this, however, was addressed in Atmos' application or in its final brief. The AG notes that the Company did not seek rehearing to address the ratemaking upon the expiration of the amortization of rate case expenses. Rehearing on this issue would be wholly contrary to well-established Commission precedent, as set forth above, and for the same reasons, the Commission should reject the Company's request for rehearing and its attempt to litigate issues that it could have addressed in its application and/or final brief, but chose not to do so.

3. Clarification of the Proper Method for the Company to "True-Up" and Collect Annual Pipeline Replacement Program ("PRP") Rider Revenue for the Period Between October 1, 2021 and May 19, 2022 for its PRP Filing in Case No. 2021-00304

With the submission of this issue, the Company would have the Commission venture into untested waters – there is simply no relevant testimony in the original record that the Commission could review, and upon which it could rely. In order to derive the methodology Atmos requests, the Commission would need to review the Company's calculations in order to determine whether additional revenue for the October 1, 2021 through May 19, 2022 time period is warranted, and if so, the amount.

The Attorney General supports the Company's proposal to delay the recovery start date to the October 1, 2024 effective date for the August 1, 2023 PRP filing. However, this should be contingent upon the Commission's review of the Company's calculations of the

increase to which it would be entitled, either in the pending PRP proceeding, or in the August 1, 2023 PRP filing.

4. Clarification of Whether the Commission's Order to Combine All Commercial Service Under Rate G-2 into Priority Level 2 was Intended to Apply to All Commercial Service Under Rate G-1

The Attorney General asserts no position regarding this issue.

5. Reconsideration of the Commission's Order to Track the Generation and Utilization of Net Operating Loss ("NOL") Accumulated Deferred Income Taxes ("ADIT") for Kentucky in Each Fiscal Year on a Standalone Basis

Through a series of Private Letter Rulings,<sup>4</sup> the Internal Revenue Service ("IRS") determined that accelerated depreciation is the last deduction each year that creates a tax NOL. Therefore, at least a portion of the asset NOL ADIT must be included in rate base. In fact, the Commission, through prior orders, determined that the asset NOL ADIT must be included in rate base.<sup>5</sup> This in turn means that there is no potential normalization violation if the Company calculates the NOL ADIT on a Kentucky jurisdictional basis.

Furthermore, Atmos does not maintain an NOL ADIT on the Kentucky jurisdiction's accounting books. Rather, the Company starts with the AEC corporate-wide NOL ADIT, then segregates it into "utility" and "non-utility" amounts, and then allocates the "utility" amount to its rate jurisdictions for ratemaking purposes only.<sup>6</sup> The Commission's Final Order in the instant case requires Atmos to produce a calculation of the asset NOL ADIT in future rate proceedings for the Kentucky jurisdiction on a standalone basis, specifically for

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<sup>4</sup> See, e.g., Case No. 2017-00349, *In Re: Atmos Energy Corporation Adjustment of Rates*, Order dated May 3, 2018, at 10-12.

<sup>5</sup> Case No. 2017-00349, Final Order dated May 3, 2018 at 12.

<sup>6</sup> Case No. 2021-00214, Final Order dated May 19, 2022 at 8-9.

ratemaking purposes, not for accounting purposes.<sup>7</sup> The Company has already demonstrated that this is not a problem or a normalization violation, first through its utility/non-utility and jurisdictional allocations, and second through its assignment of the asset NOL ADIT caused by Winter Storm Uri to the jurisdictions that actually incurred the storm losses.<sup>8</sup> In other words, the Company itself calculated a portion of the asset NOL ADIT in this case on a standalone basis. In fact, the Company itself calculated its income tax expense on a standalone basis, of which deferred tax expense is a component. In addition, the Company itself calculated its liability ADIT due to accelerated depreciation and other temporary differences on a standalone basis. In short, the Company's argument that if it calculates the asset NOL ADIT on a standalone basis that there may be a normalization violation, does not even pass a threshold reasonableness test because its request for rehearing argues that what it *already does* may result in a normalization violation. Other than presenting an argument that appears to be at odds with itself, the Company has no justiciable issue in this regard.

#### 6. Reconsideration of the Commission's Order Regarding Atmos' Capital Structure

The Commission's Final Order thoroughly discusses issues surrounding Atmos' proposed capital structure.<sup>9</sup> It is clear that Atmos' desire to review this matter arises to nothing more than a second bite at the same apple. The Company offers no “. . . additional evidence that could not with reasonable diligence have been offered on the former hearing”<sup>10</sup> to support its assertions. Accordingly, the Commission should deny rehearing as to this issue.

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<sup>7</sup> *Id.* at 12-14.

<sup>8</sup> *Id.* at 9.

<sup>9</sup> *Id.* at 28-38.

<sup>10</sup> KRS 278.400.

Respectfully submitted,

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***Certificate of Service***

Pursuant to the Commission's Order dated July 22, 2021 in Case No. 2020-00085, and in accord with all other applicable law, Counsel certifies that an electronic copy of the forgoing was served and filed by e-mail to the parties of record.

This 14<sup>th</sup> day of June, 2022



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Assistant Attorney General