

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 ON REHEARING**

The intervenor, the Attorney General of the Commonwealth of Kentucky, through his Office of Rate Intervention (“AG”), hereby submits his Brief on Rehearing in the above-styled matter.

**Background**

On May 14, 2022, the Commission issued its Final Order in this matter. On June 7, 2022 Atmos Energy Corporation (“Atmos,” or “the Company”) filed its petition for rehearing, asserting six separate grounds. The AG filed his brief in response to Atmos’ rehearing petition on June 14, 2022. The Commission, on June 24, 2022, issued its Order Granting Rehearing in which it made certain technical wording changes to its May 14, 2022 Final Order,<sup>1</sup> and granted rehearing in order for the Commission to investigate whether to allow the Company to provide additional support for its assertion that a Pipeline Replacement Program (“PRP”) true-up should be allowed for the collection of PRP revenue for the period October 1, 2021, through May 19, 2022.<sup>2</sup> The AG’s Brief on Rehearing addresses solely this singular issue.

**Argument**

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<sup>1</sup> Order Granting Rehearing, dated June 24, 2022, p. 15, ordering ¶ 3.

<sup>2</sup> *Id.* at p. 14, ordering ¶ 2. The Commission rejected all of Atmos’ remaining grounds for rehearing. *Id.* at p. 15, ordering ¶ 4.

The Commission should deny the Company's request for the requested PRP deferral. The Company has not met its burden of proof. More specifically, the Company has not provided the Commission and parties a proposal or a methodology to calculate the requested PRP deferral for the period October 1, 2021 through May 19, 2022. This is a fatal flaw in the Company's request and denies the AG due process in its attempt to substantively respond to the request.

The AG specifically asked the Company to describe its proposal and to provide the calculation of the deferral in rehearing discovery. The Company failed to do so. The first AG rehearing discovery request and the response are as follows:

**REQUEST:** Describe the Company's request for deferral and recovery of the PRP revenue deficiency and the PRP revenue requirement used to calculate the deficiency, including the basis for each component of the deferral. In your response, specifically address the overlap, if any, between the costs included and the revenue requirement requested in the PRP docket and the costs included and the revenue requirement requested in this proceeding. In addition, with respect to the overlap, specifically address why the Company believes that it should defer and recover the PRP revenue deficiency from January 1, 2022 through May 19, 2022 that presumably was included and addressed in this base rate proceeding for that same time period.

**RESPONSE:** The FY 2022 PRP investment included in Case No. 2021-00304 (PRP) was included in Case No. 2021-00214 (the rate case), however the Commission suspended the implementation of the PRP from October 1, 2021 - April 1, 2022 thus the Company had no opportunity to collect the PRP revenue in accordance with its approved PRP tariff. Please see the Company's response to Staff's Data Requests on Rehearing 1-01, 1-02, and 1-03 for information regarding why the FY 2024 PRP should include a true-up for the period of October 1, 2021 - May 19, 2022.<sup>3</sup>

In fact, the preceding response to this first request is misleading. Contrary to its claim in the response, the Company continued to recover the previously authorized PRP tariff rates. The Company did "collect the PRP revenue in accordance with its approved PRP tariff." The Commission did not terminate the previously authorized PRP tariff rates; rather, it suspended

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<sup>3</sup> AG Rehearing DR 1-1.

the requested PRP rates that included the revenue requirement for the projected incremental PRP spending from October 1, 2021 through September 30, 2022. In other words, the only potential loss Atmos suffered was the increase in the PRP revenue requirement due to its projected incremental PRP spending.

The AG again specifically asked the Company to provide its calculation of the revenue requirement and requested deferral. The Company again failed to do so. The second AG rehearing discovery request and the response are as follows:

REQUEST: Provide the Company's calculation of the requested PRP revenue requirement and the requested deferral, consistent with the description provided in response to the immediately preceding question, by month in live Excel format and with all formulas intact. Separately quantify the Aldyl A components and the calculation of the related revenue requirement and deferral.

RESPONSE: The requested calculation cannot be performed until the FY 2022 PRP spending is completed. Please see the Company's response to Staff's Data Requests on Rehearing 1-02 and 1-03. As noted in response to Staff inquiries, the FY 2022 proposed PRP Aldyl A projects will not be included in the FY 2024 PRP True-up schedules.<sup>4</sup>

The referenced responses to Staff Rehearing Data Requests 1-2 and 1-3 do not provide the Company's calculation of the requested PRP revenue requirement and the requested deferral, the very thing the Company seeks on rehearing. Yet, Atmos failed to provide this information.

The AG a third time specifically asked the Company to provide the PRP revenue requirement roll-in to the base revenue requirement in this proceeding to attempt to determine potential lost PRP revenues due to the incremental capital expenditures after October 1, 2021. The Company also failed to provide this information, necessary to calculate the potential loss in the PRP revenue requirement sought in the request for deferral adjusted for the

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<sup>4</sup> AG Rehearing DR 1-2.

Commission's decision to deny authorization for proposed Aldyl-A accelerated replacement program. The third AG rehearing discovery request and the response are as follows:

REQUEST: Provide the Company's calculation of the PRP revenue requirement rolled-in and included in the Company's requested base rate increase in this proceeding and its calculation of the PRP revenue requirement allowed by the Commission in this proceeding in live Excel format and with all formulas intact. Separately provide the Company's calculation of the Aldyl A components rolled-in and included in the Company's requested base rate increase in this proceeding and its calculation of the Aldyl-A revenue requirement allowed by the Commission in this proceeding in live Excel format and with all formulas intact.

RESPONSE: Please see the Company's response to AG Rehearing DR 1-02 and Staff's Data Requests on Rehearing 1-02 and 1-03.<sup>5</sup>

In addition to the Company's failure to meet its burden to support its request, the AG notes that the Commission did not authorize incremental PRP spending in Case No. 2021-00304.<sup>6</sup> Nevertheless, the Company continued on with PRP capital expenditures after October 1, 2021. They did so without authorization to recover or defer the incremental revenue requirement related to these expenditures until all PRP costs, including the incremental costs, were rolled-into base rates, effective May 20, 2022. Atmos retained the risk for this incremental spending, and further retained the risk that the Commission's Final Order in this case might not issue until the end of the ten-month period as set forth in KRS 278.190. Nevertheless, the Company chose to continue spending.

The AG asserts the following: (a) the Company has not met its burden of proof and therefore its request for deferral should be denied; (b) there is no basis for allowing deferral and future recovery of revenue requirement sums for these incremental costs through May 19, 2022, as these costs were not authorized, not subject to recovery through the PRP rider,

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<sup>5</sup> AG Rehearing DR 1-3.

<sup>6</sup> *In Re*: Electronic Application Of Atmos Energy Corporation To Establish PRP Rider Rates For The Twelve Month Period Beginning October 1, 2021.

and still have not been quantified; (c) any deferral necessarily would constitute impermissible retroactive ratemaking; and (d) any actual loss in recovery of the revenue requirement due to the incremental PRP spending voluntarily undertaken by the Company from October 1, 2021 until base rates were reset on May 20, 2022 is self-inflicted and could have been avoided if it had averted incremental PRP capital expenditures on and after October 1, 2021 through May 19, 2022.

WHEREFORE, the Attorney General respectfully requests that the Commission deny the Company's request to defer potential PRP revenue requirements that it has not justified and cannot quantify.

Respectfully submitted,

DANIEL CAMERON  
ATTORNEY GENERAL



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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 8<sup>th</sup> day of August, 2022



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Assistant Attorney General