

**JOHN N. HUGHES**  
***Attorney at Law***  
**Professional Service Corporation**  
**124 West Todd Street**  
**Frankfort, Kentucky 40601**

**Telephone: (502) 227-7270**

**jnhughes@johnnhughespsc.com**

June 7, 2022

Ms. Linda Bridwell  
Executive Director  
Public Service Commission  
211 Sower Blvd.  
Frankfort, KY 40601

Re: Atmos Energy Corporation:  
Case No. 2021-00214

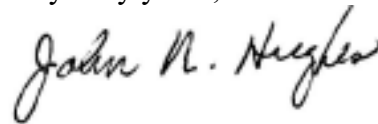
Dear Ms. Bridwell:

Atmos Energy Corporation submits its Petition for Rehearing.

I certify that the electronic filing is a complete and accurate copy of the original documents and that there are currently no parties in this proceeding that the Commission has excused from participation by electronic means.

If you have any questions about this matter, please contact me.

Very truly yours,



John N. Hughes

And

Mark R. Hutchinson  
Wilson, Hutchinson and Littlepage  
611 Frederica St.  
Owensboro, KY 42301  
270 926 5011  
randy@whplawfirm.com

Attorneys for Atmos Energy  
Corporation

COMMONWEALTH OF KENTUCKY BEFORE  
THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

Electronic Application of Atmos Energy )  
Corporation for an Adjustment of Rates ) Case No. 2021-00214  
)

ATMOS ENERGY CORPORATION'S PETITION FOR  
REHEARING

Atmos Energy Corporation ("Atmos Energy" or "Company"), by counsel, pursuant to KRS 278.400, moves for rehearing of the final order dated May 19, 2022 ("Order") seeking clarification on the implementation of certain aspects of the Order. Rehearing is sought on the following matters: 1) clarification on the appropriate manner to adjust rates upon conclusion of the 3-year amortization period for Atmos Energy's unprotected EDIT; 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; 3) clarification of the proper method for the Company to "true-up" and collect annual Pipeline Replacement Program ("PRP") rider revenue associated with the period between October 1, 2021 and May 19, 2022 for its PRP filing in Case No. 2021-00304 which the Commission ruled on through this Case; 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; 5) reconsideration of

whether the Commission's order to track the generation and utilization of NOL ADIT for Kentucky in each fiscal year on a standalone basis presents a potential normalization violation of Internal Revenue Service ("IRS") procedures regarding accelerated depreciation; and 6) reconsideration of the imputation of a hypothetical capital structure for a stand-alone corporation with no holding company. The requested clarifications for Items 1 through 5 would have no effect on the revenue requirement allowed or on the rates approved in the Order. Reconsideration of Item 6 could have an effect on the revenue requirement allowed and the rates approved in the Order. Atmos Energy placed the allowed rates into effect on May 20, 2022 per the Order.

## **1. Methodology for Reflecting in Rates the Termination of the Amortization of the EDIT Regulatory Liability**

On pages 20-21 of the Order, the Commission states:

Atmos Kentucky proposed a five-year amortization of its unprotected EDIT regulatory liability. Kollen recommended a three-year amortization period to return these amounts between rate cases, consistent with the amortization of rate case expenses....

The Commission finds that Kollen's adjustment to amortize unprotected EDIT over three years is reasonable and is accepted. The rate base increase results in a revenue requirement increase of \$0.166 million and the increased amortization, which is discussed below, results in a revenue requirement decrease of \$3.460 million. In conjunction with the amortization of regulatory liabilities discussed below, decreasing the amortization period for unprotected EDIT will ameliorate the current rate increase to the benefit of customers.

As the Order states, the amortization period has the potential to be completed between rate cases. Atmos Energy respectfully requests clarification from the Commission on the proper procedure for implementation of the three-year amortization period, assuming that the conclusion of this three-year period does not align with the effective date of rates of a subsequent general rate case. As precedent for a similar situation to provide guidance

on appropriate methodology, Atmos Energy looks to the ratemaking approved by the Commission to incorporate in rates the tax rate change that came about through the Tax Cuts and Jobs Act of 2017 (“TCJA”). In order to reflect the lower tax rate in current rates, Case No. 2018-00039, the Company used the revenue requirement model of its previous general rate case (Case No. 2015-00343), adjusted the tax rate to reflect the TCJA, and struck rates that reflected the changes. Atmos Energy respectfully requests that through rehearing the Commission clarify that a similar methodology shall be used upon termination of the three-year amortization period of the EDIT regulatory liability<sup>1</sup>.

## **2. Methodology for Reflecting in Rates the Termination of the Amortization of the Regulatory Liabilities Established following Case No. 2018-00281**

Similarly, the Company also requests clarification regarding the six-year amortization of regulatory liabilities established following Case No. 2018-00281. On page 27 of the Order the Commission states:

Atmos Kentucky proposed to temporarily reduce its requested revenue requirement increase by the amortization of regulatory liabilities established in Atmos’s last rate case. Atmos Kentucky proposed to return the entirety of the \$9.805 million in regulatory liabilities in the first 12 months of the rate increase, for a revenue requirement reduction of \$9.862 million. Kollen recommended amortizing the regulatory liabilities to reduce the current increase to \$0 until they are exhausted, which at a rate of \$1.540 million annually would take approximately 6.4 years. Out of concern and consideration for increasing energy costs that may exist beyond the short term, the Commission chooses not to amortize the regulatory liabilities to bring the current increase to \$0, so that the remaining regulatory asset balances will be available to offset likely or possible increases in energy costs in the foreseeable future, particularly given Atmos Kentucky’s history of frequent and periodic rate cases. The Commission finds that a six-year amortization period is reasonable and is approved, which reduces the revenue requirement by \$1.644 million. *The temporary amortization of regulatory liabilities of \$1.644 million*

---

<sup>1</sup> The Company would file a tariff change in accordance with KRS 278.180 in advance of the end of the three-year period ending.

*shall continue until the regulatory liabilities are exhausted or the effective date of Atmos Kentucky's next base rate case, whichever occurs first.*

(emphasis added.)

Atmos Energy respectfully requests that through rehearing the Commission clarify that a similar methodology described in the above section shall be used upon termination of the six-year amortization period of these regulatory liabilities.

### **3. Methodology for True-Up of PRP**

The Company's third request for clarification is for determination on the proper method for the Company to "true-up" and collect PRP revenue associated with the period between October 1, 2021, and May 19, 2022, for its PRP filing in Case No. 2021-00304 which the Commission ruled on through this Case. The Commission entered its order suspending the effective date of the Company's proposed PRP rates to await the outcome of this Case regarding the appropriate Return on Equity and the proposed inclusion of Aldyl-A plastic pipe replacements in the PRP. The Company filed a motion for rehearing on August 30, 2021, in Case No. 2021-00304 regarding the treatment and method of collection of full PRP revenue pending the outcome of this Case. In its September 15, 2021 Order in Case No. 2021-00304, the Commission stated:

The Commission finds that no public purpose is served by setting the PRP rider rates before a proper investigation can be conducted and that several proposals presented in Case No. 2021-00214 must be decided upon before appropriate PRP rates may be set, such that any definite decision regarding the PRP rates would be premature. Therefore, the Commission finds that rehearing should be denied because Atmos offers no new evidence that could not have been presented in its application and the Commission's decision to suspend the PRP rider rates is not unlawful or unreasonable.

The Company now respectfully requests clarification, following the Order in this Case, for the manner in which the Company should proceed with collection of the PRP

revenue between the period of October 1, 2021, and May 19, 2022, which was not addressed in the Order. One method would be to strike a rate that would recover the approved revenue requirement in the remaining billing months through the end of the Fiscal Year (September 30, 2022). However, because of the rate impact of a volumetric rate to recover this amount in a compressed time frame during months of lower usage, the Company respectfully requests that the Commission instead approve an alternative approach. The Company instead requests that the Commission clarify through rehearing that it may set the approved annual rate to seek recovery in its August 1, 2023 PRP filing, to be implemented October 1, 2024, and to recover the revenue difference through the approved “true-up” provision within its PRP filings and tariff.

#### **4. Correction to Tariff regarding Priorities of Curtailment**

The fourth item is seeking a minor clarification regarding its tariff revision for priorities of curtailment. In the Order, the Commission stated that the revisions include, *inter alia*, “(2) combine all commercial service under Rate G-2 into Priority Level 2.” The Company respectfully requests clarification that this noted revision should instead state the Priority Level 2 is for commercial services under Rate G-1. The proposed tariff is attached as Exhibit A and has also been proposed as part of the Company’s submission of tariffs resulting from the Order.

#### **5. Reconsideration of Consolidated Tracking of NOL ADIT**

Fifth, Atmos Energy requests that the Commission reconsider its determination that the Company begin to track the generation and utilization of NOL ADIT for Kentucky in each fiscal year on a standalone basis as this presents a potential normalization violation of IRS procedure. On pages 13-14 of the Order, the Commission states:

The Commission recognizes that Atmos Energy has been tracking its NOL ADIT on a consolidated basis and then allocating the NOL ADIT to various divisions for some time and that the method could result in a reasonable allocation if the allocation percentage is appropriate. However, Atmos Kentucky's initial inclusion of \$439.64 million arising from losses in other jurisdictions in the NOL ADIT to be allocated raises questions about Atmos Kentucky's method for allocating NOL ADIT to Kentucky customers and the reasonableness of using sharing percentages. Thus, in light of the potentially significant losses being incurred by other divisions that might be assigned to Kentucky customers, the Commission finds that Atmos Kentucky's failure to identify and allocate NOLs to specific utility divisions is unreasonable going forward. Atmos Kentucky must now track the generation and utilization of NOL ADIT for Kentucky in each fiscal year on a standalone basis based on the expenses incurred and revenue generated from regulated operations in Kentucky, including any revenue from Atmos Kentucky's performance-based rates, without regard to losses incurred by other jurisdictions. In future applications to increase base rates, Atmos Kentucky must file a report showing the generation and utilization of NOL ADIT for Kentucky since this Order based on the expenses incurred and revenue generated from Kentucky operations. If Atmos Kentucky proposes to use a different method to reflect the generation and utilization of NOL ADIT for Kentucky in its revenue model in such cases, Atmos Kentucky must explain in detail why using that method would be reasonable.

In compliance with the Commission's order in Case No. 2013-00148, the Company filed for a private letter ruling ("PLR") with the IRS. The IRS issued the requested PLR confirming the Company's interpretation of IRS procedures related to accelerated depreciation and the Company filed its NOL ADIT in Case No. 2015-00343 following the same methodology. The parties included a provision in the settlement to Case No. 2015-00343 that no finding should be made by the Commission on either party's position on the NOL ADIT or PLR, with parties reserving the right to argue positions in future cases. The Company filed its NOL ADIT in Case No. 2017-00349 following the same methodology and the parties litigated the issue before the full Commission. The final order in Case No. 2017-00349 supported the Company's methodology for inclusion of

NOL ADIT in rate base. The Company filed the same methodology in Case No. 2018-00281 and the issue was not contested by any party to that proceeding.

In the instant Case, the Attorney General's witness identified, through the discovery process, the increase in NOL ADIT created by the effects of Winter Storm Uri and in response to this discovery the Company updated its filing to remove those effects. Through discovery, particularly AG 1-20, 2-16, and 2-17, the Company confirmed its accounting for its NOL ADIT and its ongoing compliance with IRS revenue procedures related to normalization. Moreover, in his testimony Mr. Kollen did not recommend any wholesale changes to the NOL ADIT methodology that was approved in prior cases and confirmed the Company had removed the impact of Winter Storm Uri through discovery. Atmos Energy respectfully requests that the Commission reconsider its finding on p. 14 of the Order that "Atmos Kentucky must now track the generation and utilization of NOL ADIT for Kentucky in each fiscal year on a standalone basis based on the expenses incurred and revenue generated from regulated operations in Kentucky. . . ." The Company identified items contributing significantly to the Company's net operating loss in AG 2-16, Attachment 1 for each fiscal/tax year after 2008 until 2020 which was prepared based on the principle of the second ruling provided in response to the Company's request for PLR that the use of any method other than the "last dollars deducted" method would be inconsistent with the Normalization Rules. Without the book/tax depreciation adjustment contributed to net operating loss in each tax year after 2008, the Company would have had a cumulative taxable income. In AG 2-17 subpart (f) the Company confirmed that the Company does not file separate federal income tax returns for each of its rate divisions within the entity. The Order requiring the tracking of



the generation and utilization of NOL ADIT at a level below the taxable entity level therefore presents the possibility of a normalization violation due to the contradiction presented between the Order and the PLR.

## **6. Reconsideration of Setting Rates Based on Actual, Prudently Incurred**

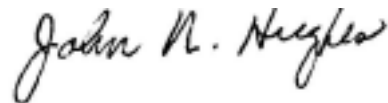
### **Capital Costs Associated with the Actual Common Equity Ratio**

Finally, the Company clarifies that its Kentucky operations is not an “operating subsidiary” as reflected on page 32 of the Order and respectfully requests that the Commission reconsider its denial of the Company’s actual capital structure supporting the prudently incurred costs associated with that structure. Atmos Energy is a standalone company, and not part of a holding company structure like several of its Kentucky utility peers. The capital structure proposed and supported in this case represents an actual cost, not a hypothetical or subsidiary cost that is part of a larger holding company and can be leveraged at a higher level than the actual corporate structure. Imposing a weaker capital structure limits Atmos Energy’s sound business decisions regarding capitalization and corporate structure, which have allowed Atmos Energy to meet the Commission’s policy goals expressed in its recent order in Case No. 2021-00481 to make capital investments in the integrity of its system over time for the short-term and long-term benefit of its Kentucky customers. Atmos Energy respectfully requests that the Commission reconsider its decision to impute a weaker, higher debt hypothetical capital structure.

For these reasons, Atmos Energy seeks rehearing for the purpose of clarification of the Order as requested.

Submitted by:

Mark R. Hutchinson  
Wilson, Hutchinson & Littlepage  
611 Frederica St.  
Owensboro, KY  
42303  
270 926 5011  
Fax: 270-926-9394  
Randy@whplawfirm.com



John N. Hughes  
124 West Todd Street  
Frankfort, KY 40601  
502 227 7270  
Fax: none  
jnhughes@johnnhughespsc.com

**FOR ENTIRE SERVICE AREA**

**PSC KY. No. 2**

**First Revised SHEET No. 87**

**Cancelling**

**Original SHEET No. 87**

**ATMOS ENERGY CORPORATION**

(NAME OF UTILITY)

**Rules and Regulations**

b) Priorities of Curtailment:

Sales Service

The Company may curtail or discontinue sales service in whole or in part on a daily, monthly or seasonal basis in any purchase zone in accordance with the following priorities, starting with Priority 4 and proceeding in descending numerical order.

(T)

Firm Priority

(T)

Priority 1. Residential and services essential to the public health where no alternate fuel exists (Rate G-1).

Priority 2. Commercials served under Rate G-1.

(T)

Priority 3. Industrials served under Rate G-1 and Customers served under Rate T-4.

(T)

(D)

(D)

Interruptible Priority

(T)

Priority 4. Customers served under Rates G-2 and Rate T-3.

(T)

Priority 5. Flex sales transactions.

(T)

(D)

(D)

(D)

(D)

(D)

DATE OF ISSUE May 19,2022  
Month/Date/Year

DATE EFFECTIVE May 20,2022  
Month/Date/Year

Issued by Authority of an Order of the Public Service Commission in  
Case No. 2021-00214 dated May 19,2022

ISSUED BY /s/ Brannon C. Taylor  
Signature of Officer

TITLE Vice President – Rates and Regulatory Affairs