

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

ELECTRONIC APPLICATION OF)	
ATMOS ENERGY CORPORATION FOR)	CASE NO.
AN ADJUSTMENT OF RATES;)	2024-00276
APPROVAL OF TARIFF REVISIONS;)	
AND OTHER GENERAL RELIEF)	

ATMOS ENERGY’S POST-HEARING BRIEF

Comes now Atmos Energy Corporation (“Atmos Energy” or “Company”), by and through counsel, pursuant to the Kentucky Public Service Commission’s (“Commission”) May 12, 2025 Order setting forth a post-hearing procedural schedule and respectfully states as follows:

INTRODUCTION

This Case presents Atmos Energy’s request for a regulatory framework that is supportive of its safety practices and related investment going forward and includes a rate adjustment by Atmos Energy that is necessitated by the costs associated with these activities. While Atmos Energy’s vision and principles remain the same, the operational landscape of natural gas utilities in general and that of Atmos Energy’s Kentucky operations continues to change. The demand for Atmos Energy’s services in Kentucky is growing, primarily through the addition of large customers. Atmos Energy is modernizing its distribution system to enhance the safety, reliability, versatility, and supply diversification necessary to meet the current and growing demands of our customers. Atmos Energy is enhancing safety practices, such as accelerating the timeframe in which it eliminates leaks, and continuously working on plans to improve its operations to meet its obligation to provide safe and reliable service.

Atmos Energy filed this application seeking a \$33,001,164, or 17.9%, increase in base rates. Based upon revisions resulting from intervenor testimony and Atmos Energy's rebuttal testimony, Atmos Energy's revised request results in an increase in revenue of \$28,089,154, which equates to a 15.9% increase, or approximately \$7.71 for an average residential customer. If this revised request is approved, Atmos Energy will still have the lowest residential retail rates of any major natural gas utility in the Commonwealth.¹

The regulatory framework requested in this Case is consistent with sound ratemaking principles and can be summarized in the four categories below, which were the main topics in testimony, discovery, and the hearing on the evidence in this Case:

- **Removal of Limitations on Investment Caps Beyond Those Required by Kentucky Law:** Atmos Energy requests a regulatory framework that includes the flexibility to present to the Commission the level of capital investment needed to accomplish the objectives described above without the limitations or uncertainties regarding capital investment levels created by past Commission orders. This includes elimination of the limitations on investments from those past orders regarding both the Pipeline Replacement Program ("PRP") and non-PRP capital investment. Removing these caps provides essential operational flexibility, enabling Atmos Energy to respond to system needs, promote economic development, and enhance system reliability. Importantly, providing this regulatory framework for Atmos Energy will make it consistent with the other utilities in Kentucky, and all capital investments will continue to be subject to the rigorous Commission oversight outlined in Kentucky law.
- **Use of Actual Capital Structure:** Atmos Energy emphasizes the importance of using its actual cost of capital to calculate rates, which requires the use of Atmos Energy's actual capital structure, as opposed to a hypothetical equity ratio that understates the costs Atmos Energy incurs to access the capital markets. Atmos Energy's strong balance sheet supports safe and reliable service, facilitates market access during emergencies (*e.g.*, the COVID-19 pandemic and Winter Storm Uri), allows for favorable long-term debt financing, and sustains ongoing investment in Kentucky. These efforts contribute to system safety, reliability, and economic growth while maintaining the lowest natural gas rates in the Commonwealth. The Commission previously affirmed that a utility's capital structure should not be determined based

¹ Atmos Energy's Responses to Commission Staff's Fourth Request for Information, Item 2 (Apr. 8, 2025).

on those of comparable utilities.²

- **Approval of the Pipeline Modernization Rider (“PM Rider”)**: Atmos Energy seeks approval of the PM Rider to comply with federal mandates issued by the Pipeline and Hazardous Materials Safety Administration (“PHMSA”). The PM Rider is specifically designed to meet prescriptive requirements to reconfirm Maximum Allowable Operating Pressure (“MAOP”) under 49 CFR § 192.624, which must be completed by the timeline outlined in the regulation. The required investments will be separately reviewed and tracked, providing full transparency, and will not drive the need for a general rate case. Commission precedent supports the approval of such narrowly tailored capital recovery mechanisms.
- **Inclusion of Aldyl-A Replacement in the PRP**: Atmos Energy requests that the replacement of Aldyl-A pipe be included within the scope of its PRP. Aldyl-A has been identified by both PHMSA and the Commission as a significant safety risk. Other Kentucky utilities have been authorized to address Aldyl-A replacement through similar capital recovery mechanisms, and Atmos Energy seeks comparable treatment.

PROCEDURAL HISTORY

On September 27, 2024, Atmos Energy tendered its Application for an adjustment of rates, approval of tariff revisions, and other general relief.³ The Attorney General, by and through the Office of Rate Intervention (“Attorney General”) was granted intervention.⁴ On October 17, 2024, the Commission suspended Atmos Energy’s proposed rates and established a procedural schedule for the processing of the case.⁵ Atmos Energy responded to five (5) requests for information from

² See, e.g., Case No. 2004-00426, *The Application of Kentucky Utilities Company for a Certificate of Public Convenience and Necessity to Construct Flue Gas Desulfurization Systems and Approval of its 2004 Compliance Plan for Recovery by Environmental Surcharge* (Ky. PSC June 20, 2005), Order at 20.

³ Application (filed September 27, 2024), *see also* October 11, 2024 Order which found good cause to approve Atmos Energy’s request for deviation from certain filing requirements and deemed the Application filed (Ky. PSC October 11, 2024).

⁴ October 3, 2024 Order (Ky. PSC October 3, 2024).

⁵ October 17, 2024 Order (Ky. PSC October 17, 2024).

Commission Staff⁶ and three requests for information from the Attorney General.⁷ Atmos Energy supplemented multiple requests for information through the proceeding.⁸ The Attorney General filed the testimony of three witnesses.⁹ The Attorney General responded to requests for information.¹⁰ Atmos Energy filed testimony rebutting the testimony of the Attorney General's witnesses.¹¹

On May 6-7, 2025, the Commission held a formal hearing.¹² Atmos Energy presented eleven witnesses for cross-examination at the hearing. The Attorney General presented three witnesses for cross-examination. The Commission established a post-hearing procedural schedule.¹³ Post-hearing requests for information were filed and Atmos Energy filed its responses to those requests on May 28, 2025.

⁶ Atmos Energy's Responses to Staff Set 1 (filed October 25, 2024); Atmos Energy's Response to Staff Set 2 (filed December 2, 2024); Atmos Energy's Response to Staff Set 3 (filed January 3, 2025); Atmos Energy's Response to Staff Set 4 (filed April 18, 2025); and Atmos Energy's Response to Staff Post-Hearing Set 1 (filed May 28, 2025).

⁷ Atmos Energy's Response to AG DR Set 1 (filed December 2, 2024); Atmos Energy's Response to the Attorney General's Set 2 (filed January 3, 2025); and Atmos Energy's Response to the Attorney General's Post-Hearing Set 1 (filed May 28, 2025).

⁸ Atmos Energy Supplemental Response to Staff 1-3 and 1-13 (filed November 14, 2024); Atmos Energy Supplemental Response to Staff's 1-48 (filed December 12, 2024); Atmos Energy Supplemental Responses to AG DR Set 2 (filed January 8, 2025); Atmos Energy Supplemental Responses to Staff's Set 1 (filed February 14, 2025); Atmos Energy Supplemental Response to AG DR 1-74 (filed March 10, 2025); and, Atmos Energy Supplemental Response to Staff 1-3 and 1-13 (filed April 2, 2025).

⁹ Baudino Direct and Exhibits; Futral Direct and Exhibits; and, Kollen Direct and Exhibits (filed January 27, 2025); *see also* Kollen Direct Amended and Exhibits (filed January 27, 2025).

¹⁰ Attorney General's Responses to Data Requests (filed February 24, 2025).

¹¹ Atmos Energy Rebuttal Testimony (filed March 10, 2025).

¹² Hearing Video Transcript ("HVT") of the May 6-7, 2025 Formal Hearing.

¹³ May 12, 2025 Order (Ky PSC May 12, 2025).

LEGAL STANDARD

Rates charged by a utility must be fair, just and reasonable.¹⁴ The Commission found that cost-based rates for investor-owned utilities should be set at a level for the utility to recover its reasonable expenses and provide its shareholders an opportunity to earn a fair return on invested capital.¹⁵ The utility proposing the rate increase must show that the increases rates are just and reasonable.¹⁶

ARGUMENT

Atmos Energy's Rebuttal Revenue Requirement is Reasonable and Should be Accepted

Atmos Energy's Application requested an increase in annual revenue of \$33,001,164. The Attorney General made adjustments to multiple rate base and operating income items which if accepted would result in a revenue increase of \$11,751,000.¹⁷ In rebuttal testimony, Atmos Energy accepted, rejected, or modified several of the Attorney General recommendations for rate base, operating income, rate of return, and composite allocation.¹⁸ The result of these adjustments is a request to increase annual revenue by \$28,089,154.¹⁹ The actual increases by amount and percentage for each customer class are listed in the schedule attached as Exhibit 1 to this Brief. The rate calculation confirming the rates generated the revenue proposed is attached as Exhibit 2.

¹⁴ KRS 278.030(1).

¹⁵ Case No. 2017-00481, *An Investigation of the Impact of the Tax Cuts and Job Act on the Rates of Atmos Energy Corporation, Delta Natural Gas Company, Inc., Columbia Gas of Kentucky, Inc., Kentucky American Water Company, and Water Service Corporation of Kentucky*, December 27, 2017 Order, at 1-2 (Ky. PSC Dec. 27, 2017); *see also Com. ex. rel. Stephens v. South Central Bell Tel. Co.*, 545 S.W.2d 927, 931 (Ky. 1976).

¹⁶ KRS 278.190(3).

¹⁷ Attorney General Direct Testimony, Direct Testimony of Randy Futral ("Futral Direct Testimony") at 5.

¹⁸ *See* Gregory Waller Rebuttal Testimony ("Waller Rebuttal") at 2.

¹⁹ Waller Rebuttal, Exhibit GKW-R-1.

If approved, the new rates will increase revenues sufficiently to provide an overall rate of return on rate base of 8.30% on the adjusted test year rate base of \$623,012,457.²⁰

The Attorney General only made six operating income adjustments.²¹ The Attorney General made no adjustments to the remaining depreciation regulatory liability, excess deferred income tax liability (“EDITL”), rate case expense, or cloud computing costs. The Attorney General proposed no adjustments to Atmos Energy’s revenue at present rates, depreciation rates, or the class cost of service (“COSS”).²² There is also no disagreement by the Attorney General to Atmos Energy’s forecasted capital spending in the test period as shown in Company Exhibits TRA-6 and TRA-7.²³

Atmos Energy accepted several adjustments made by the Attorney General: 1) the Net Operating Loss Carryforward (“NOLC”) Deferred Tax Asset (“DTA”) allocated to Kentucky be updated to actual amounts through September 30, 2024; 2) the methodology used to determine the NOLC DTA revert to the method previously used by Atmos Energy in prior filings at the Commission; 3) a correction to the third-party vendor expense lag days cash working capital calculation; 4) an adjustment to benefits expenses; and 5) an update to the allocation factors from year-end fiscal 2024.²⁴ Atmos Energy will address the contested issues in turn.

Payroll

The adjustments made by the Attorney General to payroll should not be accepted. Atmos

²⁰ See Waller Rebuttal , Exhibit GKW-R-1

²¹ See generally Futral Direct Testimony.

²² Waller Rebuttal at 3.

²³ See generally Kollen Direct Amended Testimony.

²⁴ Waller Rebuttal at 5.

Energy forecasted \$14.070 million in labor expense for the test year.²⁵ The Attorney General recommended a reduction in Atmos Energy's proposed payroll expense by \$1.044 million.²⁶ As part of this reduction, the Attorney General removed several employee vacancies for a reduction in payroll expense²⁷ and failed to recognize information contained in Atmos Energy's budget as a result of its annual budgeting process.

The forecasting methodology for payroll and benefits were the same as approved previously.²⁸ Atmos Energy based its forecast, as it has in forward-looking test year cases in Kentucky since at least 2007, on the most recently available fiscal year budget. The budget is prepared annually and involves a rigorous process (documented in the direct testimony of Greg Waller) that ensures that the resulting level of O&M is the best predictor of future actual costs. The budget incorporates the best and most complete information available to management at the time it is prepared and is the level of expense to which they are held accountable. The Attorney General's calculations, in contrast, are based upon historical 2024 actual expenses and do not represent the most recently available information. In doing so, the Attorney General's witness is inconsistent in his approach as 2024 actual expenses were not used for other adjustments. Additionally, the Attorney General removed vacant positions but failed to include the new positions that were filled, continue to be filled, and resulted in an offset to contract labor expense.²⁹ Even if the Commission were to accept the reduction in vacancies made by the Attorney General,

²⁵ Waller Direct Testimony at 26.

²⁶ Futral Direct Testimony at 5.

²⁷ Futral Direct Testimony at 8.

²⁸ See Case No 2021-00214, May 19, 2022 Order (omitting a discussion of Atmos Energy's calculation of payroll and accepting Atmos Energy's position); see also, Case No. 2021-00214, Attorney General Direct Testimony (filed September 30, 2021) (Attorney General made no adjustments to Atmos Energy's proposed payroll adjustments.)

²⁹ Waller Rebuttal Testimony at 8.

these positions were offset by the new employees.³⁰ The Attorney General's adjustment is based on historical rather than forward-looking data and fails to account for known positions.³¹ For these reasons, the Attorney General's adjustment should be rejected.

Ad Valorem Taxes

Atmos Energy initially forecasted ad valorem expenses of \$12.385 million.³² Atmos Energy utilized its standard methods for determining the forecasted amount of ad valorem expenses using the best information available at the time the forecast was prepared. This method accounts for increases in growing plant investments, therefore increasing the taxable amount, and the uncertainty in the method of calculating ad valorem taxes by the Kentucky Department of Revenue.³³

The Attorney General recommended a reduction of \$3.216 million in ad valorem tax expenses.³⁴ The Attorney General based this recommendation on estimates for fiscal year 2025 because, according to the Attorney General, it is more known and measurable than the prior year's accrual amount.³⁵ In rebuttal, Atmos Energy revised its forecasted ad valorem expenses using newly available information while committing to its forward-looking methodology.³⁶ This amount was calculated by removing the ad valorem recovered through the PRP and then calculating an

³⁰ Waller Rebuttal Testimony at 11.

³¹ Company Response to Attorney General's Post Hearing Data Request No. 1-03.

³² Application, Schedule C-2.3F.

³³ Waller Rebuttal at 13-14.

³⁴ Futral Direct Testimony at 18.

³⁵ Futral Direct Testimony at 18.

³⁶ Waller Rebuttal at 13.

effective expense ratio.³⁷ The expense ratio was then applied to the plant forecast for the test period.³⁸ This results in \$9,424,575 for the required ad valorem expenses.³⁹ The amount, while derived using Atmos Energy's consistent forward-looking methodology rather than the Attorney General's reliance on historical data, substantially narrows the gap between Atmos Energy's original forecast and the Attorney General's recommendation and therefore should be accepted.

Director's & Officer's Insurance and Investor Relations

D&O insurance expenses are legitimate business expenses that reduce the costs that would be passed on to customers if Atmos Energy's executives were involved in litigation related to the operation of the utility. Atmos Energy included \$130,000 in Director's & Officer's ("D&O") Insurance in the revenue requirement.⁴⁰ Atmos Energy included \$37,000 in investor relations expense in the revenue requirement.⁴¹ The D&O insurance is designed to protect directors and officers from personal losses if sued as a result of their service.⁴² The insurance also protects shareholders from negligent acts committed by an organization's directors and officers. The investor relations expense is crucial to attracting investors to the company. The Attorney General proposed a 50/50 split between the ratepayers and shareholders for the D&O insurance and the investor relations expense. This would be a reduction of \$84,000 from the revenue requirement.

³⁷ Waller Rebuttal at 13.

³⁸ Waller Rebuttal at 13.

³⁹ Waller Rebuttal at 13.

⁴⁰ Atmos Energy's Response to the Attorney General's First Request for Information, Item 91.

⁴¹ Atmos Energy's Response to the Attorney General's First Request for Information, Item 92.

⁴² See Case No. 2024-00092, *Electronic Application of Columbia Gas of Kentucky, Inc. for an Adjustment of Rates, Approval of Depreciation Study; Approval of Tariff Revisions; and Other Relief*, (Ky. PSC December 30, 2024) Order at 24 ("The Commission agrees with Columbia Kentucky that these expenses are legitimate business expenses that reduce the costs that would be passed on to ratepayers if Columbia Kentucky's executives were involved in litigation related to the operation of the utility").

D&O insurance and investor relations expenses are legitimate business expenses and are therefore prudently incurred.⁴³ The insurance allows a utility to also potentially reduce borrowing costs which ultimately benefits the ratepayers.⁴⁴ The same is true for the investor relations expenses. Investor relations expenses support Atmos Energy's efforts to communicate with debt and equity investors, helping to reduce investor concerns and the risk associated with the investments.⁴⁵ All prudently incurred expenses should be recovered by the utility. The Commission has permitted other gas utilities the ability to recover these costs without a reduction⁴⁶ and the Attorney General has not argued for this reduction for other gas utilities.⁴⁷ This Case should be no different and Atmos Energy should be permitted to fully recover this allocated cost.

Dues

The American Gas Association (“AGA”) provides important benefits for Atmos Energy’s customers,⁴⁸ including participation in industry initiatives and programs that enhance public safety and gas system integrity and assisting members’ understanding of discrete operational issues.

⁴³ See Case No. 2024-00092, *Electronic Application of Columbia Gas of Kentucky, Inc. for an Adjustment of Rates, Approval of Depreciation Study; Approval of Tariff Revisions; and Other Relief*, (Ky. PSC December 30, 2024) Order at 22-26.

⁴⁴ See Case No. 2024-00092, *Electronic Application of Columbia Gas of Kentucky, Inc. for an Adjustment of Rates, Approval of Depreciation Study; Approval of Tariff Revisions; and Other Relief*, (Ky. PSC December 30, 2024) Order at 24.

⁴⁵ See Case No. 2024-00092, *Electronic Application of Columbia Gas of Kentucky, Inc. for an Adjustment of Rates, Approval of Depreciation Study; Approval of Tariff Revisions; and Other Relief*, (Ky. PSC December 30, 2024) Order at 24 (“Columbia Kentucky reiterated that the expense supports Columbia Kentucky’s efforts to communicate with debt and equity investors, helping to reduce investor concerns and the risk associated with the investments....These expenses are legitimate business expenses that lower the cost of debt for Columbia Kentucky and the Commission agrees with Columbia Kentucky’s reasoning for its inclusion in the revenue requirement”).

⁴⁶ See Case No 2024-00092.

⁴⁷ See, e.g., Case No. 2024-00346, *Electronic Application of Delta Natural Gas Company, Inc. for an Adjustment of Gas Rates*, Attorney General Direct Testimony, Dittmore Direct and Exhibits (filed February 18, 2025).

⁴⁸ See, e.g., Waller Rebuttal at 19-21.

Atmos Energy included \$33,000 in AGA dues and \$45,000 in Kentucky Chamber of Commerce (“Chamber”) dues in the test year, after removing a portion of the dues that are related to lobbying activities.⁴⁹ Atmos Energy provided information that the AGA designates a specific portion of its membership dues related to lobbying as does the Chamber.⁵⁰ The Attorney General recommended removal of the entirety of the AGA and Chamber dues.⁵¹ However, the reporting and rate recovery of AGA expenses has been heavily documented before the Federal Energy Regulatory Commission.⁵² The Chamber membership allows Atmos Energy to be on the forefront of economic development within Kentucky. Atmos Energy plays an important role in economic development in the region by participating in the expansion of industrial and commercial development in its service area. These memberships directly benefit Atmos Energy’s customers and should be included in the revenue requirement.

Cash Working Capital

The Attorney General’s *ad hoc* adjustments are results driven and inconsistent with sound ratemaking principles. In Case No. 2021-00214, the Commission made material changes to Atmos Energy’s lead-lag study to remove noncash expenses from cash working capital (“CWC”).⁵³ The result of the Commission’s decision in Case No. 2021-00214 did not accurately reflect the sources and uses of CWC in utility daily operations.⁵⁴ Based upon the outlying decision in Case No. 2021-

⁴⁹ Waller Direct Testimony at 34 and Application, Schedule F-1.

⁵⁰ HVT, Day 1 at 02:31:20. *See also* Atmos Energy’s Response to Commission Staff’s Post-Hearing Request for Information, Item 4.

⁵¹ Futural Direct Testimony at 22.

⁵² Waller Rebuttal, Exhibit GKW-R-3.

⁵³ Case No. 2021-00214, May 19, 2022 Order at 16-17.

⁵⁴ Rebuttal Testimony of Joe Christian (“Christian Rebuttal Testimony”) at 15-16.

00214, Atmos Energy determined that it would utilize a lead-lag study that was accepted by the Commission in multiple other cases.⁵⁵

The Attorney General made the same recommendations in this proceeding that were made in Case No. 2021-00214.⁵⁶ This adjustment reduced the CWC in rate base by \$9.817 million and reduce the revenue requirement by \$1.045 million.⁵⁷ The Attorney General's adjustments improperly expand the lead-lag analysis to include expenditures recorded to recover capital investment and recovered through the subsequent recording of depreciation expenses and should not be accepted by the Commission. The exclusion of depreciation expense and return on equity from the portion of the study that calculates the revenue lag is inappropriate. Atmos Energy already excluded these non-cash expenses from the expense lead portion of the study. The Commission did not accept the Attorney General's position related to CWC in the Atmos Energy's proceedings prior to Case No. 2021-00214 and should return to its long-standing prior precedent.

NOL ADIT

Atmos Energy's historic methodology for determining NOL ADIT in its regulatory filings has been to isolate its NOL ADIT from its regulated utility operations by removing all taxable income or losses from non-regulated affiliates and then allocating this result to each Atmos Energy Corporation division using applicable jurisdictional allocation factors. This methodology has been consistently applied throughout each of Atmos Energy's regulatory filings and produces a result that represents a proxy for the amount of NOL ADIT applicable to the operations of each utility division.

⁵⁵ Christian Rebuttal Testimony at 16, citing Case No. 2017-00349 and Case No. 2019-00218.

⁵⁶ Case No 2021-00214, May 19, 2022 Order at 16-17.

⁵⁷ Kollen Direct Amended Testimony at 26.

The Commission has recognized that Atmos Energy Corporation has been tracking its NOL ADIT on a consolidated utility basis and then allocating for some time and that such method could result in a reasonable allocation if the allocation percentage is appropriate.⁵⁸

In Atmos Energy's last base rate proceeding, the Commission ordered Atmos Energy to file a report showing the generation and utilization of NOLC ADIT for Kentucky since the Order based on the expenses incurred and revenue generated from Kentucky operations.⁵⁹ Atmos Energy complied with the Order in the preparation and filing of the NOLC DTA in this proceeding as presented in Exhibit JJM-1 of Joel Multer's direct testimony.

Witness for the Attorney General's Office, Lane Kollen, has stated the Company failed to follow this order by not conducting the analysis beginning with the inception of the NOLC. Witness Kollen also recommended the Commission consider income and expenses of affiliates outside of the Kentucky Division in determining the NOLC ADIT for the Kentucky Division in this filing. Witness Kollen is both inconsistent and contradictory in his direct testimony on this topic. Witness Kollen states that "the correct and most accurate methodology would be to calculate the Kentucky division NOLC DTA from the first year in which there was an NOLC on a Kentucky division standalone basis."⁶⁰ Despite this statement, Witness Kollen also states that the Commission consider the operations of Atmos Energy non-regulated affiliates by recommending the Commission consider the ability of the Atmos Energy Holdings, Inc. unregulated entities to utilize the tax losses of the Atmos Energy Corporation utility divisions.

⁵⁸ Case No. 2021-00214, *Electronic Application of Atmos Energy Corporation for an Adjustment of Rates*, May 19, 2022 (Ky. PSC May 19, 2022), Order at 13.

⁵⁹ *Id.* at 14.

⁶⁰ Kollen Direct Amended at 13.

While there may be discussion as to the best manner in determining the accumulation and utilization of the Kentucky Division specific NOLC ADIT, there is no rationale for considering taxable income or losses of unregulated affiliates other than to reach beyond Atmos Energy's Kentucky operations and consider the income, expenses, assets, and liabilities of non-regulated affiliates in the determination of the utility rates of Kentucky customers. The revenues, expenses, assets, and liabilities of the unregulated affiliates are not relevant to this proceeding. The determination of total income tax expense presented in rate filings for recovery from customers is formulaic and based solely on the revenues, expenses, assets, and liabilities included within the filing. The amount of income tax expense included in the cost of service is calculated based on the income tax expense associated with the Kentucky jurisdictional utility's equity return. As a result, the Kentucky jurisdiction only seeks to collect from customers the income tax expense associated with the jurisdiction's revenue, assets, and operations. Atmos Energy does not seek to recover any expenses, including income tax expense, or costs associated with the assets and operations of the unregulated entities. Where the deferred tax benefits of deductions giving rise to a NOLC are included as ADIT liabilities reducing that taxpayer's rate base, it is proper, economic, and reasonable ratemaking practice to include the utility's entire NOLC DTA asset in rate base to maintain consistency between the amount of total income tax expense recovered from customers in cost of service and the corresponding amount of that total income tax expense that has been deferred and yet to be remitted to the federal government.

The Attorney General recommends that the Kentucky Division NOLC DTA requested in this filing be reduced to an amount that represents only the minimum amount of asset required to be included in rate base under the accelerated depreciation normalization rules of the Internal Revenue Code. The Attorney General is wrong in making this recommendation.

There are two general manners in which regulatory commissions determine the amount of total income tax expense to be included in cost of service utility rates. The first is referred to as deferred tax accounting and includes a utility's total income tax expense, both that which is currently due and that deferred to a subsequent period, in the utility's cost of service calculation. Any income taxes that are deferred are then included as a component of rate base. The second manner is referred to as flow through accounting. Under flow through accounting, only that portion of total tax expense currently due the IRS is included as tax expense in cost of service. Because only current tax due is included in customer rates, there is no inclusion of deferred taxes in rate base under the flow through method.

The Commission historically follows the deferred tax accounting method for incorporating the effects of income taxes in utility rates within its jurisdiction. To reduce Atmos Energy's NOLC DTA in this filing, as the Attorney General recommends, would be to either deviate from the Commission's historic use of deferred tax accounting or to incorporate the tax effects of other Atmos Energy Corporation affiliates. Both of these approaches would be improper. Therefore, the Commission should deny the Attorney General's recommendations.

The Limitations on Capital Investment Should be Lifted

Non-PRP Limitations

Atmos Energy requests the Commission remove existing caps on capital investment for the PRP mechanism and non-PRP capital investment.⁶¹ Atmos Energy is the only utility in the

⁶¹ See Case No. 2017-00349, *Electronic Application of Atmos Energy Corporation for an Adjustment of Rates and Tariff Modifications*, May 3, 2018 Order (Ky. PSC May 3, 2018); Case No. 2018-00281, *Electronic Application of Atmos Energy Corporation for an Adjustment of Rates*, May 7, 2018 Order (Ky. PSC May 7, 2018); and, Case No. 2023-00231, *Electronic Application of Atmos Energy Corporation for PRP Rider Rates Beginning October 1, 2023*, October 29, 2023 Order (Ky. PSC Oct. 29, 2023).

Commonwealth with limitations on capital investment.⁶² In 2017, the Commission limited Atmos Energy’s annual PRP investment to \$28 million and extended bare steel replacement by two years.⁶³ In 2018, the Commission found that safety concerns did not warrant the accelerated replacement of all Aldyl-A pipe, and that projected capital spending on non-PRP projects should be limited to \$29.26 million based on the 2014-2018 historical average and then follow a rolling 5-year average.⁶⁴ The Commission found Atmos Energy was to determine the prioritization of non-PRP projects within the limits of capital spending. The Commission also held that non-PRP capital spending must be consistent with Atmos Energy’s Distribution Integrity Management Plan (“DIMP”) and Transmission Integrity Management Plan (“TIMP”), and further held that if non-PRP capital spending exceeds the 5-year rolling average that Atmos Energy should be prepared to provide supporting documentation showing how each project is consistent with its DIMP.⁶⁵ This 5-year historic rolling average methodology has had the effect of placing a limit on Atmos Energy’s non-PRP capital expenditures to approximately the same amount going forward as if Atmos Energy had caps put in place. This creates regulatory uncertainty and therefore places a limit on the amount of any future non-PRP expenditures in order to comply with the limitations contained within Commission orders.

Capital costs have increased since 2017.⁶⁶ Factors leading to those increased costs include

⁶² Taylor Direct Testimony at 20-21.

⁶³ Case No. 2017-00349, *Electronic Application of Atmos Energy Corporation for an Adjustment of Rates and Tariff Modifications* (Ky. PSC May 3, 2018), Order at 41.

⁶⁴ Case No. 2018-00281, *Electronic Application of Atmos Energy Corporation for an Adjustment of Rates* (Ky. PSC May 7, 2019), Order at 24.

⁶⁵ Case No. 2018-00281, *Electronic Application of Atmos Energy Corporation for an Adjustment of Rates* (Ky. PSC May 7, 2019), Order at 24.

⁶⁶ Austin Direct Testimony at 31.

but are not limited to the COVID-19 pandemic, rising inflation, geopolitical issues, and continued supply chain constraints that have increased the labor and material costs for Atmos Energy on capital projects.⁶⁷ These rising costs mean Atmos Energy is able to perform less work each year based on the caps, which have remained static to the levels established in 2017 and 2018.⁶⁸

The Attorney General's claim that the non-PRP caps are "soft caps" is not accurate – or at best, a distinction without a difference – as evidenced by a review of the language of the non-PRP caps. The Commission stated:

*While the Commission is not imposing a specific limit on Atmos' non-PRP capital spending in years after the forecasted test period, the Commission may prohibit a return of and on investments that it finds unreasonable and unlawful. Atmos should ensure that the projects it selects to construct are consistent with its DIMP or TIMP. Moreover, if its total non-PRP capital spending exceeds the 5-year rolling average, Atmos should scrutinize the justification for its projects closely and be prepared to provide supporting documentation showing how each project is consistent with its DIMP or TIMP. Significant increases in capital spending would raise questions about the necessity of the spending and may require additional scrutiny by the Commission.*⁶⁹

This language is written as if the output of the DIMP and the TIMP identifies specific capital projects. Those programs provide an analysis of risk on the system, and it is the operator's duty to make decisions regarding when pipe replacement is the appropriate measure to undertake to address that risk. This language creates an undefined, ambiguous burden of proof that Atmos Energy must meet above and beyond its burden to demonstrate that the costs are prudent, just and reasonable. In addition, there are reasonable, necessary capital investments, such as that needed

⁶⁷ Austin Direct Testimony at 31.

⁶⁸ See, e.g., HVT, Day 1 at 10:32:40 – 10:34:15

⁶⁹ Case No. 2018-00281, *Electronic Application of Atmos Energy Corporation for an Adjustment of Rates* (Ky. PSC May 7, 2019), Order at 25.

for growth and economic development, system improvements, or industrial customers, unrelated to the relative risk analyses conducted in DIMP and TIMP. For example, with growth comes the need to replace, loop, or increase pipe sizes to continue to provide reliable service to existing customers. These projects are not identified through the integrity management process to address safety threats but rather are identified through the system planning process to maintain reliable service.⁷⁰

All economic development capital spending falls outside DIMP or TIMP justifications because it involves expansion of Atmos Energy's distribution assets. Kentucky is growing. To further this growth, it is necessary to continually attract and expand industries to the Commonwealth. With this industrial growth comes the need for system expansion to support these businesses and the resulting growth in the communities. Atmos Energy has seen, and believes it will continue to see, industrial growth that will require increased amounts of system expansion, system improvement, and public improvement to safely and reliably meet these needs.⁷¹ Many of the capital projects and associated functionals are often unknown and require flexibility. The Commission's current language regarding the caps does not contemplate any of these scenarios.

In particular, several thriving areas of Atmos Energy's service territory are outgrowing the capacity of Atmos Energy's current system: Bowling Green, Hopkinsville, and the Shelbyville/Lawrenceburg/Springfield area.⁷² In these areas, there are several existing and potential industrial projects that will bring investment and jobs to the region. Atmos Energy's desire and commitment is to be well positioned in the future to continue to support long-term

⁷⁰ Austin Direct Testimony at 28.

⁷¹ Austin Direct Testimony at 28-29.

⁷² Austin Direct Testimony at 30. *See also* HVT, Day 1 at 10:35:00 -10:37:20.

economic development in Kentucky by having available gas capacity in the areas it serves. Removal of the limits on capital investment is critical to be proactive in investment where needed.⁷³

Moreover, the removal of the caps to be in position to serve has also been highlighted as critical by the Kentucky Cabinet for Economic Development.⁷⁴ If Atmos Energy needed to make capital investment in the region to support that growth, its budget would be limited by the cap on non-PRP spending and not justifiable by DIMP or TIMP as ordered by the Commission, and necessary system maintenance and safety projects that would have to take precedence.⁷⁵

Atmos Energy's proposed FY25 and FY26 budgets include Atmos Energy's anticipated capital projects should the Commission lift the capital restraints currently in place for non-PRP investment.⁷⁶ The proposed total capital is only incrementally above the current caps and these projects are each individually prudent and necessary for the continued safety and reliability of Atmos Energy's system and to properly support anticipated economic development in Kentucky. The Attorney General does not recommend the disallowance of any of Atmos Energy's proposed capital in the forecasted test period.⁷⁷

Even with the removal of the caps, the Commission still has complete oversight over the prudence of Atmos Energy's capital investment, in the same process as all other regulated utilities

⁷³ See Atmos Energy's Response to the Attorney General's First Request, Item 24 and HVT, Day 1 at 10:35:00 - 10:37:20.

⁷⁴ Please see Exhibit 3.

⁷⁵ Austin Direct Testimony at 30. See also HVT, Day 1 10:35:00 - 10:37:20.

⁷⁶ Austin Direct Testimony at 33.

⁷⁷ See generally Kollen Direct Testimony.

in Kentucky.⁷⁸ For any capital spending (including non-PRP capital spending), all of Atmos Energy's capital investment is subject to review in setting fair, just and reasonable rates by the Commission. If the caps are removed, the Commission's review of Atmos Energy's capital spending would be the same as it is for all other regulated utilities in Kentucky since Atmos Energy is the only regulated utility that currently has the caps in place.⁷⁹ These utilities are constrained only by the requirement that all investments are prudently incurred. For Atmos Energy's non-PRP capital spending, any capital investment made between rate cases and forecasted through that current rate case would remain subject to review by the Commission. This would include any time period between rate cases and not just base period and forecasted test period additions.

Atmos Energy is open to any additional requirements for discussion of capital projects with the Commission outside the context of rate applications.⁸⁰ Atmos Energy has offered to submit its capital projects before each fiscal year, or to meet quarterly or annually to discuss projects with Commission Staff.⁸¹ The removal of the caps grants Atmos Energy flexibility in investing in its system from year-to-year for projects in the ordinary course of business and to be appropriately proactive. Most importantly, the removal of the limitations on capital investment allows Atmos Energy the required flexibility to operate its business in the manner it believes is prudent as all other utilities in the Commonwealth are allowed.

PRP Limitations

Atmos Energy requests that the Commission remove the limitations on capital investment

⁷⁸ Taylor Direct Testimony at 23.

⁷⁹ Atmos Energy's Response to the Attorney General's First Request for Information, Item 3.

⁸⁰ Taylor Direct Testimony at 24.

⁸¹ Taylor Direct Testimony at 24.

currently placed upon the PRP program. The current PRP limitation is \$30 million per year. There is no mechanism to account for inflation or outside factors for increased costs within the caps.⁸² Atmos Energy has endeavored to complete bare steel removal within the capital limits set by the Commission by 2027. The \$30 million yearly limit will not allow Atmos Energy to complete the bare steel replacement by 2027.⁸³ In future PRP filings, the projects identified are expected to include all bare steel and Aldyl-A over a period determined to be prudent through the implementation of Atmos Energy's approved DIMP.

The removal of the limitations on capital spending in PRP will facilitate the complete retirement or replacement of bare steel and Aldyl-A, two material types that have been identified by PHMSA for replacement.⁸⁴ The removal of the limits for PRP spending also grants Atmos Energy the required flexibility to *proactively* take a systematic approach to address and mitigate relative risk *before* those risks mount to the level of pipeline failure.⁸⁵ Bare steel and Aldyl-A are prone to failure over time from the threat of corrosion (for bare steel) and brittle cracking (for Aldyl-A). The Attorney General admits that its recommendation in this Case for pipeline materials is not based on safety or assessments of condition of risk and that the utility is in the best position to make that determination.⁸⁶ The replacement of pipeline materials by the Commission should be based on condition and risk and not arbitrary cap amounts as the Attorney General recommends.

Within the PRP mechanism, the Commission is able to separately review and scrutinize

⁸² See Case No. 2017-00349; *see also* Case No. 2023-0231

⁸³ Austin Direct Testimony at 32.

⁸⁴ Austin Direct Testimony at 37.

⁸⁵ HVT, Day 1 at 10:32:40 – 10:34:15

⁸⁶ Office of the Attorney General's Response to Commission Staff's First Request for Information, Item 2.

each project and expenditure annually, with the opportunity for the Attorney General, and potentially others, to intervene in the PRP proceedings.⁸⁷ The capital and projects within the PRP filings and base rate filings are all still subject to prudence review by the Commission in the setting of fair, just and reasonable rates.⁸⁸ The burden of proof to show that any proposed increased rate or charge is just and reasonable shall be upon the utility.⁸⁹ This process is the same for every other regulated utility in Kentucky and Atmos Energy's requests to be treated similarly to its peers.

Inclusion of Aldyl-A Replacement Within the PRP

In addition to the removal of the limits on PRP spending, Atmos Energy is requesting the inclusion of Aldyl-A pipe replacement in the PRP. Currently, the PRP tariff only allows the targeting of Aldyl-A materials on a "case-by-case" basis. Allowing Aldyl-A replacement within the PRP will allow Atmos Energy to begin the long-term systematic replacement of Aldyl-A in its system through the PRP, just as the Commission has allowed for other Kentucky LDCs. The Commission has been clear in previous cases on the appropriateness for inclusion of Aldyl-A within a capital rider. In Case No. 2018-00086, the Commission stated:

The Commission is aware of the risk associated with Aldyl-A pipe. As Delta states in its application, Aldyl-A is subject to slow crack growth that leads to eventual rupture of the pipe. Furthermore, Aldyl-A has been the subject of several PHMSA bulletins, the most recent of which is attached hereto as Appendix B. Due to the significant amount of pre-1983 Aldyl-A pipe that exists in the Delta system, the Commission finds that the Aldyl-A pipe should be replaced in a 15-year time frame. As of the date of this Order, the newest of the Aldyl-A pipe on Delta's system is at least 35 years old. At the conclusion of Delta's proposed PRP, the newest of the Aldyl-A pipe will be at least 50 years old. Given that Aldyl-A pipe was installed on Delta's system as early as 1965, and some has already been in service nearly 55 years, the Commission finds that now is an appropriate time to plan for the

⁸⁷ Case No. 2018-00281, *Electronic Application of Atmos Energy Corporation for an Adjustment of Rates* (Ky. PSC May 7, 2019), Order at 14-15.

⁸⁸ Atmos Energy's Response to the Attorney General's First Request for Information, Item 8.

⁸⁹ Atmos Energy's Response to the Attorney General's First Request for Information, Item 8.

replacement of Aldyl-A pipe. The Commission expects Delta to continue to prioritize its PRP to replace pipe based on risk, and pipe in high-consequence areas, whether it be bare steel or Aldyl-A pipe.⁹⁰

Similarly, the Commission amended Louisville Gas and Electric Company's ("LG&E") Gas Line Tracker ("GLT") to include the replacement of all Aldyl-A pipe within the LG&E gas distribution system.⁹¹ In its application, LG&E noted that Aldyl-A replacement programs are very similar in nature to replacement programs that target cast iron, wrought iron, and bare steel piping, and Aldyl-A had been the subject of multiple safety advisories and the primary cause of several significant issues.⁹² The Commission approved the inclusion of a comprehensive Aldyl-A replacement program stating that LGE's proposal to include the replacement of Aldyl-A pipe and services in its GLT program was reasonable and should be approved.⁹³ The Commission further reiterated its approval for Aldyl-A inclusion in the GLT Rider noting that Aldyl-A was included in the GLT Rider because it was *an immediate safety concern* (emphasis added).⁹⁴

⁹⁰ Case No. 2018-00086 *Electronic Adjustment of the Pipe Replacement Program Rider of Delta Natural Gas Company, Inc.*, (Ky. PSC August 21, 2018) Order at pp. 3-4.

⁹¹ Case No. 2015-00360, *Application of Louisville Gas and Electric Company for Approval of Revised Rates to be Recovered Through its Gas Line Tracker Beginning with the First Billing Cycle for January, 2016*, (Ky. PSC January 28, 2016) Order at 3.

⁹² Case No. 2015-00360, (Ky. PSC October 30, 2015), Application at 3-4.

⁹³ Case No. 2015-00360, (Ky. PSC January 28, 2016), Order at 3; *see also* Case No. 2015-00360, (Ky. PSC January 28, 2016), Order at 2 ("LG&E proposes to add a new program to its GLT to replace Aldyl-A plastic pipe. **Aldyl-A, manufactured between 1965 and 1991, has been the subject of a number of safety bulletins issued by the Pipeline and Hazardous Materials Safety Administration, and is considered responsible for several incidents involving fatalities, injuries and property damage.** Over time, DuPont Chemical Company, the original equipment manufacturer, determined that the inner wall of Aldyl-A pipe can become brittle, which can lead to the formation of cracks in the pipe wall, and in some instances, failure of the pipe.")

⁹⁴ Case No. 2019-00301, *Electronic Application for an Amended Gas Line Tracker* (Ky. PSC March 26, 2020) Order at 7 ("**Subsequent amendments to the GLT program that were proposed by LG&E and approved by the Commission also addressed immediate safety concerns. For example, in Case No. 2015-00360, the Commission approved the addition of a program proposed by LG&E to the GLT program to replace Aldyl-A plastic pipe**

The PHMSA safety bulletins cited by the Commission in both the Delta and LG&E case are the same ones cited by Atmos Energy in this proceeding.⁹⁵ Like Delta and LG&E, Atmos Energy's request is in line with Commission precedent to designate the use of PRP to facilitate the long-term, strategic replacement of Aldyl-A materials based on risk, rather than a "case-by-case" basis.

Atmos Energy's Kentucky gas distribution system contains approximately 199 miles of Aldyl-A pipe.⁹⁶ A breakout of the vintages of Aldyl-A pipe currently in Atmos Energy's Kentucky system is below:

Kentucky Aldyl-A System (in miles)	
Unknown Install Year	35.1
Pre 1973	115.8
1973 to 1983	41.4
Post 1983	6.4

While Aldyl-A pipe is not generally as old as the bare steel pipe in Atmos Energy's distribution system, it is nonetheless made of legacy materials that are no longer used in the natural gas industry and have been directed by PHMSA and the Commission to be targeted for replacement. Over the past ten years, leaks on Aldyl-A have averaged 35% higher per 100 miles of pipe than leaks on other types of PE pipe. When compared with leaks on coated steel, the rate

over two years. The Aldyl-A plastic pipe, manufactured between 1965 and 1991, had been the subject of a number of PHMSA safety bulletins and was considered responsible for several incidents involving fatalities, injuries, and property damage.”)

⁹⁵ See Exhibit TRA-8.

⁹⁶ Austin Direct Testimony at 46.

is over 250% higher per 100 miles of pipe.⁹⁷

The Attorney General recommends denying the inclusion of Aldyl-A and maintaining the replacement of Aldyl-A only on a “case-by-case” basis. The Attorney General asserts full Aldyl-A replacement would be open-ended and unrestrained.⁹⁸ The Attorney General does not mention the PHMSA directives in its analysis recommending denial of Aldyl-A within Atmos Energy’s PRP mechanism. The “case-by-case” basis has led to, at times, inconsistent results on whether Aldyl-A can be replaced for similarly situated Aldyl-A pipe.⁹⁹ The Attorney General admitted it is not aware of a specific time frame for Aldyl-A replacement, or any other pipeline material replacement, and that the replacement and timeline to replace pipelines of any material are based on the utility’s assessments of condition and risk.¹⁰⁰ The Attorney General also did not attempt to differentiate between its recommendation against Aldyl-A within Atmos Energy’s PRP in this Case in comparison to the Commission’s approval of Aldyl-A within pipeline replacement riders for Delta and LG&E as cited above. The Attorney General’s recommendation is, in essence, a request for the Commission to treat Aldyl-A pipeline materials differently depending on the LDC, rather than focusing on the risk and long-term replacement of the Aldyl-A materials and treating the materials similarly across utilities in Kentucky.¹⁰¹

⁹⁷ Austin Direct Testimony at 48.

⁹⁸ Kollen Direct Testimony at 32.

⁹⁹ HVT, Day 1 at 10:32:40 – 10:34:15

¹⁰⁰ Attorney General’s Response to Commission Staff’s First Request for Information, Item 2.

¹⁰¹ Cf. Case No. 2019-00301, *Electronic Application for an Amended Gas Line Tracker* (Ky. PSC March 26, 2020) Order at 7 (“Subsequent amendments to the GLT program that were proposed by LG&E and approved by the Commission also **addressed immediate safety concerns**. *For example, in Case No. 2015-00360, the Commission approved the addition of a program proposed by LG&E to the GLT program to replace Aldyl-A plastic pipe over two years. The Aldyl-A plastic pipe, manufactured between 1965 and 1991, had been the subject of a number of PHMSA safety bulletins and was considered responsible for several incidents involving fatalities, injuries, and property damage.*”)

Atmos Energy requests to replace Aldyl-A pipeline and prioritize its PRP to replace pipe based on risk and pipe in high-consequence areas, whether it be bare steel or Aldyl-A pipe, for long-term replacement in a capital rider. The justifications for doing so have already been approved by the Commission for two separate Kentucky LDCs as discussed above. The Company's initial focus is on the replacement of pre-1973 Aldyl-A replacement and Aldyl-A that has the highest relative risk ranking. Consistent with the principles of DIMP, Atmos Energy intends to prioritize replacement by examining the facts of the Aldyl-A sections in its system. The prioritization of replacement considers factors such as age of material, location of the pipe in relation to population, and relative risk from third-party damage.

Through the PRP mechanism, Atmos Energy submits detailed projects and costs to the Commission beforehand for review and approval, and the long-term strategic replacement of material such as segments of Aldyl-A through a pipeline replacement program is in the *expressed* interest of the Commission.¹⁰² As noted by the Commission:

The Commission has consistently found that the public interest is served by replacing potentially unsafe, aged gas pipelines through the adoption of pipeline replacement programs that have been approved as being fair, just and reasonable. To the extent that the pipeline eligible for replacement poses a safety risk to the utility's customers, service areas, and employees, the Commission reiterates that it is in favor accelerated replacement. The Commission believes that pipeline replacement programs improve public safety and reliability of service for customers...

Through the PRP process, the Commission is able to separately review and scrutinize each project and expenditure annually, with

¹⁰² See e.g., Case No. 2018-00281, *Electronic Application of Atmos Energy Corporation for an Adjustment of Rates* (Ky. PSC May 7, 2019), Order at 14-15; see also Case No. 2018-00086 *Electronic Adjustment of the Pipe Replacement Program Rider of Delta Natural Gas Company, Inc.*, (Ky. PSC August 21, 2018) Order at pp. 3-4.

the opportunity for the Attorney General, and potentially others, to intervene in the PRP proceedings. The Commission finds that the already established separately review for the accelerated replacement of bare steel pipelines in Atmos' system to be a more streamlined and efficient process than Atmos's proposal to include the PRP projects in an annual base rate case. During a base rate case, a multitude of issues are examined in detail by the parties and the Commission. If PRP projects are also included in the base rate case then the Commission and the intervenors may not have adequate time to review and analyze the proposed projects.¹⁰³

Based on consideration of these risk factors, Atmos Energy identified specific sections of Aldyl-A that should be replaced over time and, under its current proposal, would anticipate the longer-term replacement of the remainder of Aldyl-A in its system over a seven-to-ten-year time period through Atmos Energy's PRP mechanism.¹⁰⁴

Atmos Energy's Actual Capital Structure Should be Approved

Atmos Energy's forecasted capital structure in this Application reflects its *actual* capital structure. The capital structure presented is Atmos Energy's thirteen-month period end actual capital structure as of June 30, 2024.¹⁰⁵ The thirteen-month actual capital structure for the period ended June 30, 2024, is representative of the capital structure that will be in effect during the forecast period.¹⁰⁶ Actual capital structure consists of short-term debt comprising 0.19%, long-term debt comprising 38.93%, and equity is 60.88% of Atmos Energy's 13-month average rate base for the forward-looking test period.¹⁰⁷

¹⁰³ Case No. 2018-00281, *Electronic Application of Atmos Energy Corporation for an Adjustment of Rates* (Ky. PSC May 7, 2019), Order at 14-15.

¹⁰⁴ Austin Direct at 51-52; *see also* HVT, Day 1 at 9:55:50 – 9:56:36

¹⁰⁵ FR 16(8)(j); *see also* Christian Direct at 8.

¹⁰⁶ Christian Direct at 8.

¹⁰⁷ FR 16(8)(j); *see also* Christian Direct at 8.

The Attorney General's recommendation of a 52.5% *hypothetical* common equity ratio does not reflect Atmos Energy's *actual* capital structure. The Commission's Order in Case No. 2021-00214 approving a hypothetical capital structure for Atmos Energy is a clear outlier from decades of Commission precedent. In the past several decades, the Commission has been clear that a company's *actual* capital structure is the proper way to determine a company's capital structure, including the use of a utility's *actual* common equity ratio rather than ratios of other comparable utilities.¹⁰⁸ For example, in Case No. 2004-00426 the Commission stated:

The Commission is not persuaded by KIUC's arguments. **In determining the reasonable capital structure in either an environmental surcharge or base rate case, the Commission normally does not establish the common equity ratio using the approach followed by the ratings agencies but instead utilizes the actual common equity ratio of the utility. Unlike the approach used in a rate of return on common equity analyses, the Commission does not determine the capital structure or common equity ratio of a utility based on the capital structures or ratios of other comparable utilities.** KIUC has provided no compelling evidence documenting that KU or its corporate parent LG&E LLC intentionally increased KU's common equity ratio. Contrary to KIUC's mischaracterization, the Commission has never

¹⁰⁸ Case No. 2004-00426, *The Application of Kentucky Utilities Company for a Certificate of Public Convenience and Necessity to Construct Flue Gas Desulfurization Systems and Approval of its 2004 Compliance Plan for Recovery by Environmental Surcharge*, June 20, 2005 Order at 20 (Ky. PSC June 20, 2005); Case No. 8734, *Adjustment of Rates of Kentucky Power Company*, October 31, 1983 Order at 5 (Ky. PSC Oct. 31, 1983), "[T]he use of a hypothetical capital structure does not alter the actual amount of debt Kentucky Power has outstanding or increase its common equity. Investors look at actual capital ratio when assessing the financial risk of a company."); Case No. 2004-00103, *Adjustment of the Rates of Kentucky-American Water Company*, February 28, 2005 Order at 69-70 (Ky. PSC February 28, 2005), "[Kentucky-American] further asserts that the AG's proposed capital structure is a hypothetical capital structure that does not exist and is not reflective of Kentucky America's capital needs. The Commission declines to accept the AG's proposed capital structure. As previously noted, we find the use of historical averages to be of limited relevance. **Our central focus is with Kentucky-American's ability to forecast its capital requirements rather than comparisons of a forecasted capital structure with historical quarterly averages. The record shows that Kentucky American's forecast is based upon current projects of its construction investment and capital requirements.**"; Case No. 2013-00148, *Application of Atmos Energy Corporation for an Adjustment of Rates and Tariff Modifications*, April 22, 2014 Order at 8-9 (Ky. PSC April 22, 2014), "The Commission is not persuaded by Atmos-Ky.'s reasoning for not reflecting short-term debt in its capital structure. To the extent there is a connection between long-lived assets and long-term forms of capital, the Commission has recognized that a utility's rate base included items other than long-lived plant assets that may be financed with short-term debt. Furthermore, while it is the intent of utilities, from a planning perspective, to finance long-lived assets with long-term forms of capital, **from a practical perspective the Commission has long held the position that capital cannot be assigned directly to a particular state, jurisdiction or specific asset.**").

established a hypothetical capital structure for the environmental surcharges authorized for KU, LG&E, Big Rivers, or East Kentucky.¹⁰⁹

The Attorney General has also recently argued that the use of actual capital structure, rather than a hypothetical capital structure, results in fair, just and reasonable rates. In Case No. 2022-00432 the Attorney General stated:

*The Company [Bluegrass Water] has failed to provide evidentiary support that the costs at issue are actually equity and not debt...The Commission provides shareholders with an opportunity to earn a return on their investment, but the Commission also has an obligation to ensure that ratepayers are only required to pay fair, just and reasonable rates...If a capital structure is not based on actual costs, but instead allows the affiliated companies to earn a windfall exceeding the return on investments plus a reasonable return, the rates supporting that capital structure are not fair, just, and reasonable.*¹¹⁰

In this proceeding the Attorney General is arguing for a hypothetical capital structure, which is the exact opposite of its position from less than two years ago. There is no valid reason for the Attorney General to argue a different utility to receive its actual capital structure while also arguing Atmos Energy should receive a hypothetical capital structure.

The use of a hypothetical capital structure with a reduced equity ratio will result in a subsidization of Kentucky customers by customers from other Atmos Energy jurisdictions. The Commission's current complaint before the Federal Energy Regulatory Commission in a separate matter shows that the Commission does not approve of Kentucky utilities subsidizing a company's

¹⁰⁹ Case No. 2004-00426, *The Application of Kentucky Utilities Company for a Certificate of Public Convenience and Necessity to Construct Flue Gas Desulfurization Systems and Approval of its 2004 Compliance Plan for Recovery by Environmental Surcharge*, June 20, 2025 Order at 20. (emphasis added).

¹¹⁰ Case No. 2022-00432, *Electronic Application of Bluegrass Water Utility Operating Company, LLC for an Adjustment of Sewage Rates* (Ky. PSC October 27, 2023) Attorney General's Post-Hearing Brief at 16.

operations in other states.¹¹¹ Almost all other jurisdictions where Atmos Energy operates approved capital structures at Atmos Energy’s actual capital structure, or levels close to actuals, with annual ratemaking.¹¹² With an imposed hypothetical capital structure, the Kentucky customers of Atmos Energy would not be contributing back ratably to the funds from operations (“FFO”) at the same level as customers in Atmos Energy’s other jurisdictions.¹¹³ The equity cap imposed by Kentucky is, by far, an outlier compared to other regulatory jurisdictions where Atmos Energy operates and is also an outlier among other Kentucky regulated LDCs that also receive actual equity ratios. The Commission should not require Atmos Energy’s other customers to subsidize Kentucky operations.

Atmos Energy’s actual capital structure and strong balance sheet benefit Atmos Energy’s Kentucky customers. The strong balance sheet first and foremost ensures the provision of safe and reliable service to Atmos Energy’s customers. The ability to invest in the safety and reliability of the system requires a strong balance sheet. Atmos Energy’s capital structure is reflective of this commitment to invest in safety and reliability in Kentucky.¹¹⁴ Although the Tax Cut and Jobs Act (“TCJA”) reduced the federal income tax rate and created a need to return deferred taxes to customers resulting in a negative impact to cash flow, Atmos Energy has been able to adjust its external financing needs and not experience a downgrade by ratings agencies.¹¹⁵ When the COVID-19 Pandemic resulted in Emergency Orders being issued across all of Atmos Energy’s

¹¹¹ Docket No. EL25-67-000, *Complaint of Kentucky Public Service Commission, Attorney General of the Commonwealth of Kentucky v. American Electric Power Service Corporation, et al. under EL25-67* (F.E.R.C. March 12, 2025).

¹¹² Christian Direct Testimony, Exhibit JTC-2; *see also* HVT, Day 1, at 17:43:00 - 17:40:30.

¹¹³ HVT, Day 1, at 17:38:40 - 17:40:30

¹¹⁴ Christian Direct Testimony at 13.

¹¹⁵ Christian Direct Testimony at 16.

service territories to not disconnect, Atmos Energy was able to raise additional debt early in the pandemic to maintain its liquidity during uncertain times.¹¹⁶ Atmos Energy's current capitalization allows it to respond to emergencies in ways other utilities cannot. As an example, in response to Winter Storm Uri, Atmos Energy was able to quickly raise \$2.2 billion to fund extraordinary gas costs on very short notice and increase liquidity through a new short-term credit facility. Without Atmos Energy's strong financial balance sheet in place these examples could have had serious long-term detrimental effects on Atmos Energy's customers.¹¹⁷

Atmos Energy's strong balance sheet also allows Atmos Energy to access the debt market at more favorable terms and is the key to maintaining Atmos Energy's strong "A" range debt rating.¹¹⁸ For instance, Atmos Energy's actual long-term debt rate of 4.11% is far lower than those recently approved by the Commission for Columbia Gas of 4.80%,¹¹⁹ and what has been submitted for approval by Delta Natural Gas and Duke Energy Corporation of 4.51% and 4.93%, respectively.¹²⁰ Exhibit JTC-R-2 Interest Savings is a comparison of long-term debt savings achieved since 2014 as a result of being "A" rated by the debt rating agencies as compared to a "B" rated company.

¹¹⁶ Christian Direct at 16.

¹¹⁷ Christian Direct at 16.

¹¹⁸ Christian Rebuttal at 12.

¹¹⁹ See Case No. 2024-00092, *Electronic Application of Columbia Gas of Kentucky, Inc. for an Adjustment of Rates, Approval of Depreciation Study; Approval of Tariff Revisions; and Other Relief* (Ky. PSC December 30, 2024), final Order at 46-47.

¹²⁰ See Case No. 2024-00346, *Electronic Application of Delta Natural Gas Company, Inc. for an Adjustment of Gas Rates*; see also Case No. 2024-00354, *Electronic Application of Duke Energy Kentucky, Inc. for: 1) An Adjustment of the Electric Rates; 2) Approval of New Tariffs; 3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and 4) All Other Required Approvals and Relief*.

Return on Equity

It is important that Atmos Energy receive a fair return on equity (“ROE”). A fair ROE will reflect the risks and prospects of Atmos Energy and support Atmos Energy on a standalone basis. The ROE should support the operations, business risk, and financing, financial risk, of the Kentucky operations. Business risks faced by utilities are many and include regulatory and environmental compliance, customer mix, service territory economic growth, market demand, supply uncertainties, and degree of operating leverage.¹²¹ Financial risk is the risk created by the introduction of debt and preferred stock in the capital structure.¹²²

To adequately support the operations and financing of the Kentucky operations, Atmos Energy proposed a 10.95% return on equity based upon the Discounted Cash Flow Model (“DCF”), the Capital Asset Pricing Model (“CAPM”), and the Risk Premium Model (“RPM”).¹²³ Atmos Energy utilized a utility proxy group of six regulated natural gas utilities (“Utility Proxy Group”) and a non-utility proxy group of 53 non-price regulated utilities.¹²⁴ The range of ROE for the Utility Proxy Group ranged from 9.93% and 12.05%.¹²⁵ After adjusting for Atmos Energy specific risks, the range of ROE was 10.12% to 12.12%, which led Atmos Energy to decide to recommend 10.95% in this proceeding.¹²⁶ The Attorney General also analyzed ROE using the DCF and CAPM methods.¹²⁷ The Attorney General ultimately recommended an ROE of 9.40%

¹²¹ HVT, Day 1, at 11:51:01.

¹²² *Id.*

¹²³ Application, Volume 1, Direct Testimony of Dylan D’Ascendis at 3. (D’Ascendis Direct Testimony).

¹²⁴ D’Ascendis Direct Testimony at 3-4.

¹²⁵ D’Ascendis Direct Testimony at 4.

¹²⁶ D’Ascendis Direct Testimony at 5.

¹²⁷ Attorney General Direct Testimony, Direct Testimony of Richard Baudino at 33 (“Baudino Direct Testimony”)

for Atmos because in its analysis this was in the midpoint of the DCF ROE and is within the range of ROE estimates for CAPM.¹²⁸ The Attorney General also recommended a 9.30% for Atmos Energy's PRP due to a perceived lower risk of cost recovery.¹²⁹

The 10.95% ROE is appropriate because it is commensurate with returns in businesses with similar risks.¹³⁰ Additionally, the use of multiple models, that all include 10.95% in the range of results, adds reliability to the estimated common equity costs is supported by precedent and financial principles.¹³¹

For the Attorney General's recommended 10-basis-point deduction to the authorized ROE for PRP, the Attorney General offered no substantive evidence in support of his position other than stating it is what the Commission has done previously.¹³² The presence of Atmos Energy's PRP rider does not affect Atmos Energy's ROE . Atmos Energy's PRP rider does not affect the ROE because it is similar to riders present in the operating companies of the Utility Proxy Group used to derive the ROE.¹³³ Therefore, the lower risk of having a PRP (if any) would already be subsumed in the market data for the Utility Proxy Group.¹³⁴ Furthermore, several studies show that rate stabilization mechanisms like the PRP do not materially affect the investor-required return

(filed January 27, 2025).

¹²⁸ Baudino Direct Testimony at 33.

¹²⁹ Baudino Direct Testimony at 37.

¹³⁰ D'Ascendis Direct Testimony at 8.

¹³¹ D'Ascendis Direct Testimony at 44-45.

¹³² Baudino Direct Testimony, at 37.

¹³³ D'Ascendis Direct Testimony at 61-62.

¹³⁴ D'Ascendis Direct Testimony at 62.

for those companies.¹³⁵ Atmos Energy’s PRP rider does not lower the comparative risk of Atmos Energy relative to the Utility Proxy Group; and therefore, the ROE should not be adjusted due to Atmos Energy’s PRP rider.

That said, Atmos Energy recognizes that the Commission has discretion in determining the ROE supported by the evidence, and Atmos Energy requests that, in exercising this discretion, the Commission consider the recent decisions awarding a 9.75% ROE to investor-owned utilities in Kentucky.¹³⁶

Atmos Energy’s Proposed Tariffs Should be Approved

Pipeline Modernization Rider

Atmos Energy has proposed the Pipeline Modernization Rider (“PM Rider”) for legally required PHMSA compliance and is limited to projects required under §192.624 for Maximum Allowable Operating Pressure (“MAOP”) reconfirmation.¹³⁷ Atmos Energy will request Commission approval before any other projects are included in the PM Rider.

The Commission has already established a precedent in the approval of a capital rider for mandated PHMSA compliance. The Commission approved Duke Energy’s Pipeline Modernization Mechanism (“Rider PMM”).¹³⁸ When approving Duke Energy’s Rider PMM the

¹³⁵ D’Ascendis Direct Testimony at 62.

¹³⁶ Case No. 2024-00092, *Electronic Application of Columbia Gas of Kentucky, Inc. for an Adjustment of Rates; Approval of Depreciation Study; Approval of Tariff Revisions; and other Relief*, December 30, 2024 (Ky. PSC. December 30, 2024) Order at 43; Case No. 2023-00159, *Electronic Application of Kentucky Power Company for (1) A General Adjustment of Rates for Electric Service; (2) Approval of Tariffs and Rider; (3) Approval of Accounting Principles to Establish a Regulatory Assets and Liabilities; (4) A Securitization Financing Order; and (5) all other Required Approvals and Relief*, January 19, 2024 (Ky. PSC January 19, 2024) Order at 61; *See also*, Case No. 2024-00346, *Electronic Application of Delta Natural Gas Company, Inc. for an Adjustment of Gas Rates*, Fully Executed Stipulation (filed April 14, 2025) for another investor-owned utility relying upon precedent to determine ROE of 9.75%.

¹³⁷ HVT, Day 1 at 11:28:40 – 11:28:42; *see also* Austin Rebuttal Testimony at 17.

¹³⁸ Case No. 2021-00190, *Electronic Application of Duke Energy Kentucky, Inc. for: 1) An Adjustment of the*

Commission stated, “the purpose of a rider tied to capital investment in the natural gas industry to address specific problems, such as bare steel or a section of pipe prone to issues, and is often tied to specific directives issued by PHMSA.”¹³⁹ The Commission also noted another determining factor in the approval of Duke Energy’s Rider PMM was that most of the expenses related to the Mega Rule compliance associated with AM07 lied outside of the test year.¹⁴⁰

The projects Atmos Energy proposes for the PM Rider are legally required with a completion percentage of 50% by 2028 and 100% by 2035. The test year in this proceeding is forecasted through March 31, 2026. Following the competition of the PHMSA-mandated work under §192.624, the proposed PM Rider would sunset unless the Commission specifically authorized other projects under the Mega Rule necessary for compliance.¹⁴¹

There is no alternative but replacement for the pipelines identified in Exhibit TRA-5; however, where Atmos Energy has determine that an alternative exists these are being pursued to meet the requirements of the rule. Approximately 20.4 miles of Atmos Energy’s Kentucky transmission lines require MAOP reconfirmation per §192.624.¹⁴² To date, Atmos Energy has reconfirmed 2.3 miles via pressure test, so 18.1 miles remain.¹⁴³ An additional 3.1 miles are planned for a pressure reduction, while another 1.0 mile is a candidate for a pressure test. However, for approximately 14.0 miles of Atmos Energy’s affected transmission pipeline, Atmos

Natural Gas Rates; 2) Approval of New Tariffs, and 3) All Other Required Approvals, Waivers, and Relief (Ky. PSC Dec. 28, 2021), final Order at 22.

¹³⁹ Case No. 2021-00190, final Order at 23.

¹⁴⁰ Case No. 2021-00190, final Order at 23.

¹⁴¹ HVT, Day 1 at 11:30:15 – 11:30:15; *see also* Austin Rebuttal Testimony at 17.

¹⁴² Austin Direct Testimony at 17.

¹⁴³ Austin Direct Testimony at 17.

Energy believes that pipe replacement would be the most cost-efficient way to re-establish the MAOP of the affected pipeline segments as pressure testing or reducing the pressure in these segments is not possible.

Replacement will allow Atmos Energy to keep customers in service as well as modernize vintage pipeline and remove them from transmission lines to distribution lines (*i.e.* less than 20% of specified minimum yield strength) so the lines will operate with a higher factor of safety.¹⁴⁴ An ancillary benefit of the replacement work is that Atmos Energy will be able to install larger diameter pipe to enhance system reliability and support the continued development of the areas where the replacement work will occur as these areas have grown significantly since the original pipe was installed.¹⁴⁵ For the 14.0 miles of transmission pipelines proposed for replacement, all are pre-November 12, 1970 lines which is when 49 CFR Part 192 went into effect. Of those 14.0 miles, 4.7 miles of these transmission lines were installed between 1956-1959, and 5.9 miles were installed in 1955 or prior to that time.¹⁴⁶

There are several reasons why pressure test is not a practical option for a large portion of Atmos Energy's Kentucky transmission assets. Primarily, the affected pipelines are not piggable due to factors including diameter changes, stopple fittings, tees for regulator stations and farm tap services, and insufficient radius bends.¹⁴⁷ These factors also make the pipelines impractical to test with water as it would be nearly impossible to remove all the water from the lines because they are not piggable. In addition, the pressure testing would heavily increase O&M spending not just

¹⁴⁴ HVT, Day 1 at 10:04:30 – 10:06:00; *see also* Austin Direct Testimony at 18-19.

¹⁴⁵ HVT, Day 1 at 10:04:30 – 10:06:00; *see also* Austin Direct Testimony at 18-19.

¹⁴⁶ Austin Direct Testimony at 19.

¹⁴⁷ Austin Direct Testimony at 19.

for the cost of pressure testing, but also to account for long-term outages while the tests and any replacements are performed that would require sustained use of liquified natural gas (“LNG”) or compressed natural gas (“CNG”) supply to be trucked in continuously to supply those customers with natural gas in the interim period.¹⁴⁸

For the lines where Atmos Energy is proposing replacement, reducing the pressure on the affected transmission lines would likely lead to significant and prolonged customer outages and Atmos Energy would be unable to serve customers with the mandated pressures. Many customers would permanently lose their natural gas service. For similar reasons, this is also why Atmos Energy is unable to reduce the pressure for those pipelines with a potential impact radius of 150 feet or less.

Perhaps most critically, the 14.0 miles proposed for replacement were installed prior to the adoption of the record-keeping requirements in Part 192, and records on wall thickness and grade necessary to perform pressure-testing do not exist for these assets.¹⁴⁹ To confirm the MAOP via a pressure test with water poses risks, as Atmos Energy would need to pressure the line to at least 1.5 times its MAOP. To safely perform these tests, the wall thickness and grade must be known. Otherwise, manufacturing-related or construction-related defects may fail due to overstressing the pipe beyond 100% of its yield strength. This would potentially result, beyond the safety risks alone, in replacing significant amounts of pipe because of testing.¹⁵⁰ During the test process, if any materials were to fail, Atmos Energy would be legally required to expose and replace a section of pipe, causing additional delays and even more increased costs for providing daily, continuous

¹⁴⁸ Austin Direct Testimony at 20.

¹⁴⁹ Austin Direct Testimony at 20.

¹⁵⁰ HVT, Day 1 at 10:04:30 – 10:06:00.

LNG / CNG supplies to multiple locations within the system.¹⁵¹

The replacement of these pipelines will allow Atmos Energy to install new pipe using modern construction practices, and enhanced safety design factors that will allow Atmos Energy to reclassify them from transmission to high pressure distribution where they will operate with a higher level of safety. The pipelines proposed for replacement are all aged where replacement is the best option to enhance safety. In addition, the replacement of these pipelines will prevent long-term or permanent customer loss of gas services, as well as prevent long-term O&M costs associated with MAOP reconfirmation methods other than replacement. For the lines where Atmos Energy proposed replacement, any other reconfirmation method potentially risks failure to achieve compliance with the Mega Rule.¹⁵²

The projects included in the PM Rider are required by federal law to be complete by 2028 and 2035. Should the PM Rider be approved Atmos Energy would make its first annual filing to reflect investments beyond the test year in this Case and forecasting out the proposed FY27 projects. In addition, should any future requirements arise, Atmos Energy would seek authorization from the Commission or the proposed PM Rider would sunset following the completion of the required MAOP activities.¹⁵³

Tax Rider

Atmos Energy proposed the Tax Rider to capture the effects of Public Law 117-169, 136 STAT. 1818 of August 16, 2022 (“Tax Act 2022”) and certain other tax-related costs that will

¹⁵¹ Atmos Energy Responses to Staff Post-Hearing Set 1, DR No. 1-02.

¹⁵² HVT, Day 1 at 10:04:30 – 10:06:00.

¹⁵³ HVT, Day 1 at 11:30:10 – 11:30:50 and Austin Rebuttal Testimony at 17.

change from the amounts included in the base revenue requirement in Case No. 2024-00276.¹⁵⁴

These effects include the return on the Corporate Alternative Minimum Tax (“CAMT”) deferred tax asset (“DTA”) resulting from the Tax Act 2022 and income tax credits resulting from the Tax Act 2022 included in rate base and in the base revenue requirement in Case No. 2024-00276.

The Tax Rider will be set at zero until the effective date of approval by the Commission of a Tax Rider rate.¹⁵⁵ This tariff modification would be applicable under Atmos Energy’s Rate Schedules G-1, G-2, T-3 and T-4. Any future adjustments to the Tax Rider rate would require Commission approval.¹⁵⁶ The Tax Rider is designed to capture and implement the income tax effects of the Tax Act 2022, but can be utilized for any other federal, state or local tax law changes, including but not limited to property tax rates. Establishment of the proposed tariff will allow customer rates to be aligned with Atmos Energy’s costs in a timely manner and that the procedure for achieving that alignment is seamless, efficient and transparent.

The tariff prescribes the calculation of a rider calculated as the product of the Atmos Energy’s grossed-up rate of return authorized in the most recent base rate case proceeding times the CAMT deferred tax asset estimated at September 30 of the fiscal year or applicable quarter-end within a fiscal year prior to the annual change in the rates pursuant to the tariff, less the income tax credits received in accordance with Internal Revenue Code requirements applicable to the Tax

¹⁵⁴ Application at 7-8.

¹⁵⁵ Taylor Direct Testimony at 17.

¹⁵⁶ Taylor Direct Testimony at 17.

Act 2022 grossed-up for income taxes to a revenue equivalent.¹⁵⁷ Furthermore, the estimated CAMT deferred tax asset and the related effects on the rider revenue requirements shall be trued up to the actual effects in the following year and the over/under recovery amortized over the twelve months that each year's recalculated tariff rates are in effect.¹⁵⁸

The Attorney General is wrong in claiming the CAMT and CAMT DTA does not apply to the Kentucky division on a standalone basis and that the Atmos Energy Kentucky division is not an “applicable corporation” subject to the CAMT.¹⁵⁹ The Attorney General is wrong in asserting that the CAMT has nothing to do with the regulated utility divisions of Atmos Energy.¹⁶⁰ The CAMT applies to any corporation having three-year average annual adjusted financial statement income greater than \$1 billion.¹⁶¹ If applicable, the corporation is required to calculate a minimum tax liability that is equal to 15% of adjusted financial statement income (“AFSI”). AFSI generally consists of the corporation's net income or loss as reported on its annual financial statements prepared under U.S. Generally Accepted Accounting Principles adjusted to exclude income tax expense and substitute tax depreciation in place of financial statement depreciation expense. The provisions of the Internal Revenue Code (“IRC”) require that for purposes of determining if a corporation is an applicable corporation, the AFSI of all members of the corporation's controlled

¹⁵⁷ Multer Direct Testimony at 8-9.

¹⁵⁸ Multer Direct at 8-9.

¹⁵⁹ Kollen Direct at 39.

¹⁶⁰ Kollen Direct at 39.

¹⁶¹ Multer Direct at 6.

group be aggregated.¹⁶² As a result, the test for determining “applicable corporation” is made at the AEC consolidated level. Once AEC meets this definition at a consolidated level, all corporate subsidiaries, such as the AEC utility, as well as all trades or businesses of a corporate subsidiary, such as Atmos Energy Kentucky, are considered applicable corporations subject to the CAMT.

The application of CAMT in ratemaking context is identical to the regulatory application of the federal corporate income tax rate in determining the utility’s federal income tax expense allowance in cost of service. All Atmos Energy Corporation subsidiaries, by reason of common ownership, must join in the filing of a consolidated federal income tax return.¹⁶³ The taxable earnings of each Atmos Energy Corporation operating division is, therefore, subject to federal income tax on a consolidated basis at the applicable tax rate before such earnings are reinvested or distributed as a dividend. As a result, the determination of the Kentucky Division’s federal income tax expense in cost of service is made using the federal income tax rate applied to all Atmos Energy Corporation earnings at the consolidated level. For example, income tax expense in this proceeding is based on the current 21% flat federal tax rate. Prior to the Tax Cuts and Jobs Act of 2017, the federal income tax rate used in Atmos Energy’s regulatory proceedings was 35%,¹⁶⁴ the highest marginal rate applicable to the Atmos Energy Corporation consolidated earnings even though the federal tax rate was a graduated rate summarized as follows:

- 15% on the first \$50,000 of taxable income;

¹⁶² Multer Direct Testimony, Exhibit JJM-R-3; Internal Revenue Code Section 59(k)(1)(D).

¹⁶³ Treas. Reg. Sec. 1.1502-1(h).

¹⁶⁴ See Schedule E per Case 2017-00349.

- 25% on any amount in excess of \$50,000 and up to \$75,000;
- 34% on any amount in excess of \$75,000 and up to \$10,000,000; and
- 35% on any amount in excess of \$10,000,000.

Once the applicable consolidated tax rate is determined, the tax rate is applied to the earnings of the Kentucky Division to calculate the amount of federal income tax expense allowance to be recovered in the rates of the Kentucky Division. Similarly, once Atmos Energy Corporation becomes an applicable corporation subject to the CAMT, the amount of CAMT to be included in the ADIT of the Kentucky Division is that associated solely with the earnings of the Kentucky Division.

The CAMT asset to be included in Atmos Energy's proposed rider will be determined based on the AFSI of the Kentucky division determined on a stand-alone basis. Therefore, there will be no cost imposed on the Kentucky division customers as the result of Atmos Energy's unregulated entities as the Attorney General suggests.¹⁶⁵ The Commission recently approved the inclusion of CAMT deferred tax asset for another Kentucky utility.¹⁶⁶ Atmos Energy is, therefore, proposing the same methodology to address the impact of the CAMT in rates that the Commission found to be reasonable.

The Tax Rider is designed to efficiently capture the impact of it and other future changes

¹⁶⁵ Multer Rebuttal Testimony at 23.

¹⁶⁶ Case No. 2023-00159, *Electronic Application of Kentucky Power Company for (1) A General Adjustment of its Rates for Electric Service; (2) Approval of Tariffs and Riders; (3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; (4) a Securitization Financing Order; and (5) all other Required Approvals and Relief* (Ky. PSC January 19, 2024) final Order at 25.

to tax law that could result in a misalignment of rates and costs and alleviate the misalignment in a timely and efficient manner. Should federal, state, or ad valorem rates change then the Tax Rider enables the Commission to efficiently reflect these amounts, whether an increase or a decrease, efficiently into rates to prevent misalignment. For instance, the recent changes with ad valorem tax would have been a perfect candidate to reflect those changes within the Tax Rider.¹⁶⁷ Because tax law changes are inherently unpredictable and largely out of Atmos Energy's and the Commission's control, the proposed Tax Rider is the most effective way to reflect their impact in the customer's rates.

Research and Development Rider

Atmos Energy's existing Research and Development ("R&D") Rider to support the research of Gas Technology Institute ("GTI") continues to be in the public interest and should not be terminated or reduced by the Commission. The Attorney General's argument that GTI funding should be from suppliers and manufacturers of industry and that there are no direct benefits associated with these research and development activities is the exact same argument that failed before the Commission previously.¹⁶⁸ In that case, the Commission not only maintained Atmos Energy's R&D Rider, but the Commission also increased the funding amount to its current level today.¹⁶⁹ The Commission noted:

¹⁶⁷ HVT, Day 1 at 13:37:28 - 13:38:25.

¹⁶⁸ Case No. 2017-00349 *Electronic Application of Atmos Energy Corporation for an Adjustment of rates and Tariff Modifications*, May 3, 2018 Order at 44 (Ky. PSC May 3, 2018).

¹⁶⁹ *Id.*

The Commission further finds that the value of benefits received by Atmos's customers and gas consumers, in general, outweighs the bill increase to its customers. While the R&D Riders of both Atmos and Columbia were initially approved as a result of rate case settlements in which the Attorney General was a participant, the Commission approved the GTI Rider for Delta Natural Gas Company, Inc. ("Delta") in a contested rate proceeding in Case No. 2004-00067. Despite the opposition of the Attorney General, the Commission stated in its final Order that:

"The Commission agrees with Delta's proposal to recover the monies to voluntarily fund GTI research through a tariff rider. The Commission has provided a clear signal to jurisdictional gas utilities in the past that it supports research and development efforts in the gas industry. Allowing recovery via a rider is consistent with Commission decisions for two other gas utilities, Atmos Energy and Columbia Gas of Kentucky"¹⁷⁰

The Commission also noted that the decision in support of research and development was consistent with a resolution issued by the National Association of Regulatory Utility Commissioners ("NARUC") in support of research and development funded by gas and electric utilities and performed by institutions such as GTI.¹⁷¹

Several of the technologies developed by GTI have had a direct benefit to Kentucky customers. For instance, LocusView has enabled Atmos Energy to digitally map its assets and transition away from paper records and this technology was initially developed out of GTI research.¹⁷² GTI continued to fund a variety of technologies every year on both the Operations Technology Development ("OTD") and the Utilization Technology Development ("UTD").

¹⁷⁰ Case No. 2017-00349, (Ky. PSC May 3, 2018), final Order at 44-45.

¹⁷¹ NARUC Resolution on Public Purpose Research & Development in the Electricity and Natural Gas Industries, adopted November 12, 1997.

¹⁷² Cross Examination of Brannon Taylor, HVT at 9:30:00 - 9:30:50.

Atmos Energy has a direct participation process with GTI in order to direct funds collected by the Company towards projects that it believes will most directly benefit its customers. Atmos Energy provided the listed funding by project for Atmos Energy in response to Commission discovery.¹⁷³

The Attorney General continues to ignore the precedent by the Commission and makes the same arguments in this proceeding it made years ago. In Case No. 2017-00349, the Commission stated:

The Commission notes that not all states in which Atmos operates have approved ratepayer contributions to research and development. This arguably creates a “free rider” issue because consumers that do not contribute to the efforts of entities such as GTI share in benefits in which they have no investment. The Commission finds, however, that all gas consumers including the customers of Atmos, the utility itself, and the general public, benefit sufficiently from the relatively small investment that it is reasonable for an average residential customer’s annual bill to be increased less than a dollar. While private firms may benefit as well, their investment in research and development may not adequately fund science and technology activities that produce important health and safety benefits. With pipeline safety concerns often at the forefront on a national level, R&D Rider funding appears to be a natural accompaniment to pipeline replacement programs approved pursuant to KRS 278.509.¹⁷⁴

The same rationale provided by the Commission in previous proceedings still applies today. The level of funding now is approximately equal to the level provided by Atmos Energy when the R&D Rider was previously funded by the interstate pipeline charge¹⁷⁵ and the level is

¹⁷³ Company response to Staff 2-01.

¹⁷⁴ Case No. 2017-00349, *Electronic Application of Atmos Energy Corporation for an Adjustment of rates and Tariff Modifications* (Ky. PSC May 3, 2018), final Order at 45-46.

¹⁷⁵ Case No. 2017-00349, *Electronic Application of Atmos Energy Corporation for an Adjustment of rates and Tariff Modifications* (Ky. PSC May 3, 2018), final Order at 43.

similar to Columbia Gas of Kentucky's current R&D contribution in effect.¹⁷⁶ The Attorney General's arguments regarding the R&D Rider in this proceeding should be not be given weight.

CONCLUSION

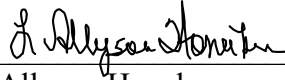
The most significant elements of this proceeding are the removal of limits on capital spending in the PRP and non-PRP investment, including Aldyl-A replacement in the PRP, approval of the PM Rider, and receiving actual capital structure as opposed to a hypothetical structure. The evidence Atmos Energy presented throughout the proceeding has been demonstrated as credible and will result in fair, just and reasonable rates. The Attorney General's position is solely focused on minimizing rates, rather than developing reasonable rates based upon the record. However, even with the removal of limits on capital investment, the PM Rider, actual capital structure, requested ROE, and all other requested relief Atmos Energy will still have the lowest residential rates for a LDC in the state.

Atmos Energy respectfully requests its proposed rates, inclusion of Aldyl-A within the PRP, approval of the PM Rider, removal of limits on capital spending, and all other requested relief be approved.

This the 30th day of May, 2025.

¹⁷⁶ Columbia Gas of Kentucky, Tariff Sheet No. 51c.

Respectfully submitted,



L. Allyson Honaker
Heather Temple
Meredith Cave
HONAKER LAW OFFICE, PLLC
1795 Alysheba Way, Suite 1203
Lexington, KY 40509
(859) 368-8803 Phone
No Fax
allyson@hloky.com
heather@hloky.com
meredith@hloky.com

John N. Hughes
7106 Frankfort Rd.
Versailles, KY
502 223-7033
No Fax
jnhughes@johnnhughespcc.com

Attorneys for Atmos Energy Corporation

CERTIFICATE OF SERVICE

This is to certify that the electronic filing has been transmitted to the Commission on May 30, 2025, and that there are currently no parties in this proceeding that the Commission has excused from participation by electronic means. Pursuant to prior Commission Orders no paper copies of this filing will be made.



Counsel, Atmos Energy Corporation

EXHIBIT 1
IS AN EXCEL SPREADSHEET
THAT IS BEING UPLOADED
SEPARATELY

EXHIBIT 2
IS AN EXCEL SPREADSHEET
THAT IS BEING UPLOADED
SEPARATELY

EXHIBIT 3



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PUBLIC SERVICE
COMMISSION

CABINET FOR ECONOMIC DEVELOPMENT

Andy Beshear
Governor

500 Mero Street
Mayo-Underwood Bldg.
Frankfort, Kentucky 40601

Jeff Noel
Secretary

November 1, 2024

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

RE: Case No. 2024-00276

Dear Ms. Bridwell:

The Commonwealth of Kentucky has achieved record-breaking economic success over the past several years. Together, we have supported the creation of great paying jobs and helped grow and/or attract leading companies that are transforming the industries that they represent and the communities where they reside. This achievement was only possible through great collaboration between Team Kentucky and critical partners. Among others, those partnerships include the Energy and Environment Cabinet, the Public Service Commission, and our utility partners, who have been supportive on many projects and initiatives. Atmos Energy (Company) is one of those great co-collaborators.

The Kentucky Cabinet for Economic Development (KCED) is aware that the Company has filed an application to increase rates through the general rate case proceeding referenced above and are also requesting a removal of caps on capital expenditures. While we are not experts in the regulatory space, nor would we take a position on any regulatory matter, we do know communities across Kentucky have a pent-up need for increased gas infrastructure to support job creation and investment. We encourage all parties involved in this area to work collaboratively to understand all issues with an eye toward stimulating expanded infrastructure for economic development.

The ability for a company to locate a true build ready site in Kentucky and have the flexibility to get to market expeditiously, is critical to the success of our collective economic development efforts. We stand ready to support all involved to continue in our efforts to make the Commonwealth as competitive as possible for future community and economic development activities.

Thank you for your time and consideration.

Sincerely,

Jeff Noel
Secretary, Office of the Secretary
Kentucky Cabinet for Economic Development

TEAM
KENTUCKY