

**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 REPLY 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 a deadline for submitting a response brief and hereby tenders its response to the brief filed by the Attorney General, by and through the Office of Rate Intervention (“Attorney General”) on May 30, 2025, and respectfully states as follows:

INTRODUCTION

Each of the parties in this proceeding filed post-hearing briefs on May 30, 2025. The Attorney General argued for multiple adjustments that would reduce Atmos Energy’s proposed requested increase from approximately \$28 million to \$11.751 million. The proposed adjustments are unreasonable and should not be accepted.

ARGUMENTS

**The Attorney General’s Adjustments to Rate Base and Operating Income are
Unreasonable and Should Not be Accepted**

After accepting or modifying several of the Attorney General's positions, Atmos Energy's rebuttal increase in annual revenue would be \$28,089,154.¹ The Attorney General argued that Atmos Energy's revenue requirement be reduced by \$21.250 million through various adjustments to rate base and operating income.² If accepted, the Attorney General's recommendation would result in an annual revenue increase of \$11.751 million. Based upon the voluminous record in this proceeding the Attorney General's position would be an unreasonable increase that would not result in fair, just and reasonable rates.

Cash Working Capital

The Attorney General made several adjustments to Atmos Energy's calculation of cash working capital ("CWC").³ However, the *ad hoc* adjustments proposed by the Attorney General are purely 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 CWC.⁴ The result of the Commission's decision in Case No. 2021-00214 is an outlier from prior Commission precedent and did not accurately reflect the sources and uses of CWC in utility daily operations.⁵ Since the decision in Case No. 2021-00214 was not consistent with Commission precedent, Atmos Energy determined that it would utilize a lead-lag study that was accepted by the Commission in multiple other cases.⁶

¹ Gregory Waller Rebuttal Testimony ("Waller Rebuttal"), Exhibit GKW-R-1.

² Attorney General Final Brief at 35.

³ Attorney General Final Brief at 10-12.

⁴ 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 16-17.

⁵ Rebuttal Testimony of Joe Christian ("Christian Rebuttal") at 15-16.

⁶ Christian Rebuttal at 16, *citing* Case No. 2017-00349 and Case No. 2019-00218.

The Attorney General made the same recommendations in this proceeding that were made in Case No. 2021-00214.⁷ This adjustment reduced the CWC in rate base by \$9.817 million and reduced the revenue requirement by \$1.045 million.⁸ 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

The Attorney General has recommended three adjustments to the Company's NOL ADIT Asset presented in this filing. First, the Attorney General recommended a reduction to the Company's NOL ADIT Asset to roll forward the balance three months from June 30, 2024, the end of the twelve-month test period, through September 30, 2024, to take into consideration actual activity occurring subsequent to end of test period.⁹ The Company has indicated within its rebuttal testimony that it is willing to concede this recommendation and update the NOL ADIT Asset to reflect the three-month activity ending September 30, 2024.¹⁰

⁷ Case No. 2021-00214, *Electronic Application of Atmos Energy Corporation for an Adjustment of Rates* (Ky. PSC May 19, 2022) final Order at 16-17; Attorney General Final Brief at 10-12.

⁸ Attorney General Final Brief at 12.

⁹ Amended Direct Testimony of Attorney General Witness Lane Kollen ("Kollen Direct Amended") at 7-11.

¹⁰ *See, e.g.*, Rebuttal Testimony of Joel Multer ("Multer Rebuttal") at 2.

The Attorney General's second recommendation was that the determination of NOL ADIT Asset revert back to the Company's methodology utilized in its previous rate filings through and including Case No. 2021-00214.¹¹ In the current filing, the Company changed its calculation methodology to comply with the Commission's order in Case No. 2021-00214, which required that in future applications to increase base rates Atmos Kentucky to file a report showing the generation and utilization of NOL ADIT for Kentucky since the order based on the expenses incurred and revenues generated from Kentucky operations.¹²

In making their recommendation in this filing to reduce NOL ADIT Asset, the Attorney General claims the Company has failed to comply with the Commission's order in Case No. 2021-00214 by utilizing a methodology that includes the effects of deductions of Divisions 002 (Shared Services Unit), 012 (Customer Service) and 091 (KY/Mid-States General Office) by stating many of the deductions of these divisions are not recognized as expenses for ratemaking in Kentucky.¹³ The Attorney General also claims that the Company's methodology in this filing fails to include the taxable income and the reductions in the NOL ADIT Asset during the "bridge" period from July 1, 2024 through March 31, 2025 in its direct testimony,¹⁴ and from October 1, 2024 through March 31, 2025 in its updated response to Staff discovery.¹⁵

The Company disagrees with the Attorney General's claims and reasoning for making this recommendation. The Company has fully complied with the Commission's order in Case No.

¹¹ Kollen Direct Amended at 13-14.

¹² Case No. 2021-00214, *Electronic Application of Atmos Energy Corporation for an Adjustment of Rates* (Ky. PSC May 19, 2022) final Order at 14.

¹³ Kollen Direct Amended at 13.

¹⁴ Kollen Direct Amended at 13.

¹⁵ Atmos Energy's Response to Commission Staff's Post-Hearing Request for Information, Item 4.

2021-00214 in which the Commission ordered that in future applications to increase base rates, Atmos Kentucky file a report showing the generation and utilization of NOL ADIT for Kentucky since the order in Case No. 2021-00214 based on the expenses incurred and revenues generated from Kentucky operations. The Company complied with this order as illustrated in Exhibit JJM-1 in the direct testimony of Atmos Energy witness Mr. Joel Multer. The Company also disagrees with the Attorney General's claims that the effects of deductions of Divisions 002 (Shared Services Unit), 012 (Customer Service) and 091 (KY/Mid-States General Office) are not recognized as expenses for ratemaking in Kentucky. In determining Atmos Kentucky's rate base in each of its general rate filings, Atmos Energy has included allocations of specific deferred tax items of these divisions due to fact the associated expenses were allocated to the Kentucky division and are included within the division's income statements. The Company's methodology in the rate filing, as incorporated in Exhibit JJM-1, follows the exact same allocation methodology and exact same deferred tax items utilized by the Company and accepted by the Commission in previous rate filings.

The Company also disagrees with the Attorney General's representation that Atmos Energy failed to include the taxable income and reductions in NOL ADIT Asset during the "bridge" period of July 1, 2024 through March 31, 2025. The Company did consider the estimated taxable income or taxable losses of this period in this filing. The Company is currently in a window whereby its taxable income has been near break-even or zero. As such, the Company anticipated either a small amount of taxable income or a small amount of taxable loss. Therefore, its estimate of taxable income for this bridge period was zero as the Company could not anticipate whether it would have net income or loss during this period. This conclusion is supported by the history of periods of

both taxable income and taxable losses during the years 2022 through 2024 as illustrated in Exhibit JJM-1.

Despite the Company's disagreement with the Attorney General's claims and arguments for recommending the Company revert back to the historical methodology for determining its NOL ADIT Asset in rate filings prior to Case No. 2024-00276, as indicated in rebuttal testimony the Company has indicated its willingness to accept this recommended adjustment.

The Attorney General's third recommendation was to reduce the Company's NOL ADIT Asset to reflect only book/tax depreciation temporary differences. The Attorney General then attempts to calculate what this amount would be and proposes an adjustment to NOL ADIT Asset based on their attempted calculation. While the Company acknowledges that the normalization provisions of the Internal Revenue Code require a minimum amount of NOL ADIT Asset to be included in rate base where NOLs exist as the result of accelerated tax depreciation deductions, the Company disagrees with the Attorney General's recommendation that the Company's NOL ADIT Asset be reduced to this minimum.

The determination of total income tax expense presented in rate filings for recovery from customers is formulaic, 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. The Company does not seek to recover any expenses, including income tax expense, or costs associated with the assets and operations of the unregulated entities.¹⁶ Where the deferred tax benefits of deductions giving rise

¹⁶ See Multer Rebuttal at 10-11.

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 as well 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 reduction to the Company's NOL ADIT Asset to reflect only a minimum amount under the normalization provisions of the Internal Revenue Code, as recommended by the Attorney General, would have to be attributable to some rationale or transaction. Such rationale could only be the incorporation of expenses or revenues of other Atmos utilities or non-regulated subsidiaries, or a deemed intercompany loan between affiliates. Neither of these explanations have been practices utilized by this Commission. The Commission has stated that the accumulation and utilization of NOLs should be done on a Kentucky-specific basis to the extent possible.¹⁷ 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."¹⁸ The Company therefore, objects to the Attorney General's recommendation to reduce NOL ADIT Asset to reflect only book/tax temporary differences associated with accelerated tax depreciation. Where the deferred tax benefits of deductions giving rise to a NOLC are included as ADIT liabilities reducing rate base, it is proper, economic and reasonable ratemaking practice to include the utility's entire NOL ADIT Asset in rate base to maintain consistency between the amount of total income tax expense recovered from customers in cost of

¹⁷ Case No. 2021-00214, *Electronic Application of Atmos Energy Corporation for an Adjustment of Rates* (Ky. PSC May 19, 2022) final Order at 12.

¹⁸ Kollen Direct Amended at 13-14.

service and the amount of that total tax expense that has been deferred and yet to be remitted to the federal government.

Payroll

Regarding payroll expenses, the Attorney General argued Atmos Energy's adjustments for labor, benefits, and employee welfare were too high.¹⁹ The Attorney General recommended reducing labor expenses based upon the 2024 fiscal year numbers. This would reduce the payroll expense by \$0.98 million and a corresponding \$0.064 million in payroll tax expense.²⁰ However, Atmos Energy's forecasting method for payroll and benefits in this proceeding are the same methods as previously accepted by the Commission.²¹ Additionally, the Attorney General's adjustments for payroll and benefits are based upon historical data. In contrast, Atmos Energy based its adjustment for the forward-looking test period using the best information available to forecast what actual expenses will be for the time period in which rates will be effective. It is inappropriate to make adjustments for some expenses based upon historical amounts and base other adjustments on forecasted amounts, especially in the context of building a forward looking test year as the Company has done in this case. This is inconsistent with rate-making principles and therefore the Attorney General's adjustments should be rejected.

Ad Valorem

Atmos Energy initially forecasted ad valorem expenses of \$12.385 million.²² The Attorney

¹⁹ Attorney General Final Brief at 12-13.

²⁰ Attorney General Final Brief at 13.

²¹ 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.)

²² Application, Schedule C-2.3F.

General recommended a reduction of \$3.216 million in ad valorem tax expenses.²³ 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.²⁴ 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. However, in rebuttal, Atmos Energy revised the ad valorem expense to \$9,424,575 for the forecasted test year as new information became available.²⁵ Atmos Energy again contends that using historical data to make a *pro forma* adjustment in a forecasted rate proceeding is inappropriate. Atmos Energy's forecasted ad valorem expense is the correct way to determine this adjustment and is very close to the Attorney General's recommendation despite the Attorney General's use of improper methodology. The Attorney General's adjustment should be rejected.

Directors and Officers Insurance; Investor Relations Expense

The Attorney General recommended a 50/50 share of both Directors & Officers ("D&O") insurance and investor relations expenses.²⁶ D&O insurance and investor relations expenses are both legitimate business expenses and are therefore prudently incurred by Atmos Energy.²⁷ D&O insurance allows a utility to also potentially reduce borrowing costs which ultimately benefits the ratepayers.²⁸ D&O insurance is designed to protect directors and officers from personal losses if

²³ Attorney General Final Brief 15-17.

²⁴ Attorney General Final Brief 15-17.

²⁵ Waller Rebuttal at 13.

²⁶ Attorney General Final Brief at 18.

²⁷ 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.

²⁸ See Case No. 2024-00092, *Electronic Application of Columbia Gas of Kentucky, Inc. for an Adjustment of Rates*,

sued as a result of their service, as well as reduce the costs that would be passed on to customers if Atmos Energy's executives if were involved in litigation related to the operation of the utility.²⁹ 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.³⁰ As the Commission has repeatedly stated, 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 reduction³¹ and the Attorney General has not argued for this reduction for other gas utilities.³² There is no reasonable or justifiable reason why Atmos Energy should be treated differently and not be permitted to recover these prudently incurred costs.

American Gas Association; Kentucky Chamber of Commerce Dues

The Attorney General argued the entirety of the American Gas Association (“AGA”) dues and the Kentucky Chamber of Commerce (“Chamber”) dues should be removed from the revenue requirement.³³ The Attorney General argued the Commission indicated Atmos Energy bears the

Approval of Depreciation Study; Approval of Tariff Revisions; and Other Relief, (Ky. PSC December 30, 2024) Order at 24.

²⁹ 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”).

³⁰ 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”).

³¹ See Case No 2024-00092.

³² 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); see also; Case No. 2024-00346, Fully Executed Settlement Agreement with Exhibits (filed April 14, 2025).

³³ Attorney General Final Brief at 18-19.

burden of establishing the cost of the dues are not for lobbying, regulatory advocacy, or public relations.³⁴ Atmos Energy has provided that information in this proceeding. Atmos Energy provided information that the AGA and the Chamber designate a specific portion of membership dues related to lobbying.³⁵ Atmos Energy also provided information regarding the reporting and rate recovery of AGA expenses before the Federal Energy Regulatory Commission (“FERC”).³⁶ The Chamber membership also allows Atmos Energy to be on the forefront of economic development within Kentucky. Since Atmos Energy has provided evidence in this proceeding that all portions related to lobbying and regulatory advocacy have been removed, Atmos Energy should be allowed to recover these costs. These memberships directly benefit Atmos Energy’s customers and should be included in the revenue requirement.

The Attorney General’s Position on Capital Structure and Return on Equity are Unreasonable and Not Supported by the Evidence in the Record

Using Atmos Energy’s Actual Capital Structure is Appropriate

The Attorney General’s entire argument on its proposed hypothetical capital structure in this proceeding relies solely on the proxy group comparison and goes against decades of Commission precedent of the Commission’s rationale for utilizing actual capital structure.

The Attorney General attempts to make the false claim that since this proceeding utilizes a forecasted test year the Company’s proposed capital structure is equally as hypothetical as the

³⁴ Attorney General Final Brief at 19, *citing* Case No. 2021-00214, *Electronic Application of Atmos Energy Corporation for an Adjustment of Rates* (Ky. PSC May 19, 2022) final Order at 23.

³⁵ Hearing Video Transcript (“HVT”) Day 1, at 14:31:20; *see also* Atmos Energy’s Response to Commission Staff’s Post-Hearing Request for Information, Item 4.

³⁶ Waller Rebuttal, Exhibit GKW-R-3.

Attorney General's proposal.³⁷ The Attorney General also states the Commission is not bound by actual costs in a historic base period.³⁸ The Company's proposed capital structure in this proceeding is not hypothetical because it is based on *actual* costs and is Atmos Energy's actual consolidated capital structure.³⁹ Atmos Energy's proposed capital structure in this Case is Atmos Energy's thirteen-month period end *actual* capital structure for the period as of June 30, 2024.⁴⁰ 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 test period.⁴¹ In contrast, the Attorney General's capital structure is not based on any actual costs of the Company's, relies solely on a proxy group comparison, and is purely *hypothetical*.

The Commission's Order in Case No. 2021-00214 approving a hypothetical capital structure utilizing a proxy group comparison for Atmos Energy is a clear outlier from decades of Commission precedent for the use of actual capital structure, rather than hypothetical. 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.⁴² The Commission has long

³⁷ Attorney General Final Brief at 21.

³⁸ Attorney General Final Brief at 21.

³⁹ See Cross Examination of Joe Christian at HVT Day 1, 17:42:14-17:42:29; see also Direct Testimony of Joe Christian ("Christian Direct") at 7-8.

⁴⁰ Christian Direct at 8.

⁴¹ Christian Direct at 8.

⁴² 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

recognized that investors look at actual capital ratio when assessing the financial risk of a company.⁴³ The Attorney General's same arguments arguing for a lower, hypothetical equity ratio were also before the Commission in Case No. 2004-00426 by the same Attorney General's expert witnesses in this proceeding. The Commission noted in that case:

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 established a hypothetical capital structure for the environmental surcharges authorized for KU, LG&E, Big Rivers, or East Kentucky.⁴⁴

(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 American'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 projections 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.**"; Case No. 99-176, *An Adjustment of the Rates of Delta Natural Gas Company, Inc.* (Ky. PSC December 27, 1999), final Order at 12 (Commission noting that the use of a hypothetical capital structure is a "drastic remedy.").

⁴³ 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.").

⁴⁴ 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. (emphasis added).

The Attorney General’s argument for a hypothetical capital structure that reduces the Company’s equity ratio goes against longstanding Commission precedent, does not allow Atmos Energy to recover its prudently incurred costs, and would represent an unconstitutional taking.

The Attorney General falsely claims that Atmos Energy’s requested equity ratio is 20.5% higher than the proxy group average.⁴⁵ Atmos Energy’s equity ratio is within the range of equity ratios of the Utility Proxy Group and their operating subsidiaries.⁴⁶ The Attorney General’s equity ratio comparison to the proxy group also ignores the relationship between holding companies and subsidiaries for other utilities in comparison to Atmos Energy.⁴⁷ The equity ratio and the Company’s capital structure is based on the Company’s actual costs as stated above. The equity ratios for Columbia Gas and Delta Gas cited by the Attorney General and approved by the Commission for Columbia Gas, with Delta Gas still pending, were their *actual* equity ratios.⁴⁸ Atmos Energy is simply seeking the same treatment as other gas utilities in Kentucky. The Attorney General also ignores the benefits that Atmos Energy’s strong balance sheet provides for its Kentucky customers. These benefits include most importantly the continued provision of safe and reliable service of a financially stable utility that is committed long-term to serving its Kentucky customers. Atmos Energy’s capital structure is reflective of this commitment and the continued ability to invest in the safety and reliability of its Kentucky system, as well as to invest

⁴⁵ Attorney General Brief at 20.

⁴⁶ D’Ascendis Rebuttal at 6.

⁴⁷ Christian Rebuttal at 14-15.

⁴⁸ See Direct Testimony and Exhibits of Richard A. Baudino (“Baudino Direct”) at 4; *see also* 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; Case No. 2024-00346, *Electronic Application of Delta Natural Gas Company, Inc. for an Adjustment of Gas Rates* (Ky. PSC April 14, 2025) Stipulation and Recommendation at Article 1.2(D).

in economic development to the region, and the financial ability to respond to emergencies as needed such as Winter Storm Uri or the tornado events in Mayfield, Kentucky.⁴⁹ 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.⁵⁰ Atmos Energy's actual long-term debt rate, achieved through its strong balance sheet and actual capital structure, is much lower than the other Kentucky proxy companies. The Attorney General conveniently wants to maintain this benefit of low long-term debt costs while simultaneously punishing the Company for its actual equity ratio that helped achieve this low long-term debt rate.⁵¹ The Attorney General does not recognize that with the benefits achieved from the Company's actual capital structure the Company would still maintain the lowest residential rates in Kentucky.⁵²

The Attorney General also fails to address that its recommendation to reduce Atmos Energy's actual equity ratio *results in Atmos Energy's customers in other jurisdictions subsidizing Kentucky customers*.⁵³ The Attorney General's and the Commission's current joint complaint before the Federal Energy Regulatory Commission in a separate matter shows that they do not approve of Kentucky utilities subsidizing a company's operations in other states.⁵⁴ Almost all other jurisdictions where Atmos Energy operates have approved capital structures at Atmos

⁴⁹ See, e.g., Christian Direct at 16; Direct Testimony T. Ryan Austin ("Austin Direct") at 53-54.

⁵⁰ Christian Rebuttal at 12.

⁵¹ See, e.g., Direct Testimony and Exhibits of Randy A. Futral ("Futral Direct") at 24 recommending the Company's actual long-term debt rate while simultaneously recommending a hypothetical equity ratio.

⁵² Atmos Energy's Responses to Commission Staff's Fourth Request for Information, Item 2 (Apr. 8, 2025).

⁵³ Atmos Energy Post-Hearing Brief at 29-30; see also HVT Day 1, at 17:38:40 - 17:40:30

⁵⁴ 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).

Energy's actual capital structure, or levels close to actuals, with annual ratemaking.⁵⁵ 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, resulting in a clear subsidization.⁵⁶ 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 receive actual equity ratios in establishing rates.

Atmos Energy's Proposed Return on Equity ("ROE") is Reasonable

DCF Model

As stated in the Attorney General's brief, Attorney General's witness Baudino initially determined that the DCF model indicated ROEs of 9.33% and 9.46% based on Methods 1 and 2 applied to his proxy group, and results ranging from 9.23% to 9.36% for Atmos Energy witness Mr. D'Ascendis' proxy group.⁵⁷ The Attorney General also claims that Mr. Baudino's use of "updated" stock prices and Mr. D'Ascendis' failure to include projected dividend per share ("DPS") growth rates supports Mr. Baudino's results.⁵⁸ However, Mr. D'Ascendis' updated DCF result of 10.37% using data as of January 31, 2025 confirms that Mr. Baudino's indicated DCF result is understated.⁵⁹

⁵⁵ Christian Direct Testimony, Exhibit JTC-2; *see also* HVT Day 1, at 17:40:00 - 17:40:50.

⁵⁶ HVT Day 1, at 17:38:40 - 17:40:50

⁵⁷ Attorney General Final Brief at 24.

⁵⁸ Attorney General Final Brief at 27.

⁵⁹ Rebuttal Testimony of Dylan W. D'Ascendis ("D'Ascendis Rebuttal") at 1-2; *see also* D'Ascendis Rebuttal at 3-4; D'Ascendis Rebuttal, Exhibit DWD-1R.

Mr. D’Ascendis demonstrates conclusively that Mr. Baudino’s DCF analysis was (1) based on outdated data; (2) incorrectly incorporates dividend per share (“DPS”) growth rates; and (3) incorrectly duplicates S&P Capital IQ growth rates.⁶⁰ For the use of outdated data, the dividends Mr. Baudino applied in his DCF analysis did not reflect those available to investors at the time of his analysis (December 31, 2024), contrary to the premise of the DCF model.⁶¹ This served to understate Mr. Baudino’s indicated DCF cost rate. While Mr. Baudino claims that DPS growth rates are appropriate for use in a DCF model, he did not provide any academic or empirical evidence supporting their use. Conversely, Mr. D’Ascendis provided ample support for the exclusive use of projected earnings per share (“EPS”) growth rates.⁶² Due to the overwhelming support in the record for projected EPS growth rates and lack of any support for DPS growth rates, the Commission should reject the Attorney General’s position on the appropriate measure of growth in a DCF analysis. Mr. Baudino performs a misapplication of growth rate inputs when he inexplicably applied projected EPS growth rates from S&P Capital IQ when equivalent Zacks’ growth rates were not available. Correcting Mr. Baudino’s DCF analysis results for these issues results in indicated ROEs of 9.80% and 10.01%, based on Methods 1 and 2, respectively.⁶³

Risk Premium Model

The Attorney General claims several issues noted by Mr. Baudino regarding Company witness Mr. D’Ascendis’ Risk Premium Model (“RPM”). First, the Attorney General states that Mr. D’Ascendis RPM is based on historical risk premium with no relevance today but fails to note

⁶⁰ D’Ascendis Rebuttal at 19-25.

⁶¹ D’Ascendis Rebuttal at 24.

⁶² D’Ascendis Rebuttal at 19-25.

⁶³ D’Ascendis Rebuttal at 25; *see also* D’Ascendis Rebuttal, Exhibit DWD-6R.

that Mr. Baudino's supply-side MRP is also based on historical data.⁶⁴ Second, as it relates to the statistical significance of Mr. D'Ascendis' RPM analysis, the relevant fact is that the relationships presented by Mr. D'Ascendis are statistically significant.⁶⁵ Third, the Attorney General claims that no evidence was put forth supporting the reliance on the Predictive Risk Premium Model ("PRPM") by investors.⁶⁶ This is incorrect. Mr. D'Ascendis stated that the model is based on Nobel Prize winning work and has been published in multiple textbooks, including those cited by Mr. Baudino in this proceeding.⁶⁷ The Attorney General further asserts that the PRPM result is clearly excessive, however, as noted by Mr. D'Ascendis, the inclusion of the PRPM only increases the top-end of the range by four basis points.⁶⁸ As it relates to the alleged excessive nature of the PRPM results, and several other RPM results, Mr. D'Ascendis clearly shows that the ultimate equity risk premium estimates he relies on fall in the 49th percentile of historical ERPs.⁶⁹ This indicates that despite Mr. Baudino's concerns, whether supported or not, Mr. D'Ascendis' RPM results are reasonable as compared to historically observed returns and risk premiums.

Capital Asset Pricing Model

The Attorney General asserts that Mr. D'Ascendis market risk premium ("MRP") is overstated relative to the "supply-side" MRP, historical capital appreciation, and both historical and projected GDP growth.⁷⁰ First, Mr. D'Ascendis demonstrated in Table 4 of his rebuttal

⁶⁴ See, e.g., Attorney General Final Brief at 27-28.

⁶⁵ D'Ascendis Rebuttal, at 50-51.

⁶⁶ Attorney General Final Brief at 29-30.

⁶⁷ D'Ascendis Rebuttal, at 51-53.

⁶⁸ D'Ascendis Rebuttal at 54.

⁶⁹ D'Ascendis Rebuttal at 55; see also D'Ascendis Rebuttal, Exhibit DWD-9R.

⁷⁰ Attorney General Final Brief at 31-32.

testimony that the long-term average return on large capitalization stocks is the most accurate measure to predict the actual returns experienced by investors.⁷¹ Second, Mr. D’Ascendis showed that GDP growth rates and market returns do not have a statistically significant relationship.⁷² Mr. D’Ascendis also showed that his estimated market returns and MRPs are consistent with those experienced historically.⁷³ As it relates to the Empirical CAPM (“ECAPM”), the Attorney General does not appear to dispute the theoretical basis of the ECAPM but argues that its existence supports their position that the CAPM is unreliable.⁷⁴ Since both parties agree that the CAPM has its limitations in practice, the indicated result using the ECAPM may be a more accurate measure than the traditional CAPM.

Non-Utility Group ROE

The Attorney General claims that non-utilities face risks utilities do not.⁷⁵ As Mr. D’Ascendis demonstrates though, from a total risk standpoint, investor publications such as Value Line do not observe any significant differences between utilities and non-utilities.⁷⁶ Essentially, companies that have similar betas and standard errors of regression have similar total risk.⁷⁷ Further, regarding a utilities ability to adjust prices irrespective of demand, Mr. D’Ascendis

⁷¹ D’Ascendis Rebuttal Testimony, Table 4; *see also* D’Ascendis Rebuttal Testimony at 41-43.

⁷² D’Ascendis Rebuttal Testimony at 60.

⁷³ D’Ascendis Rebuttal at 58-59.

⁷⁴ *See, e.g.*, Baudino Direct at 55.

⁷⁵ Attorney General Final Brief at 33.

⁷⁶ D’Ascendis Rebuttal at 61-64.

⁷⁷ D’Ascendis Rebuttal at 62.

testified that this is no different than the inelastic demand for the products offered by the non-utility companies he relies on.⁷⁸

Size Premium

The Attorney General claims that because Atmos-Kentucky does not raise capital it should not be afforded a size premium.⁷⁹ This is incorrect. Mr. D'Ascendis demonstrates that this Case involves the Company's Kentucky operations and should be assessed on a stand-alone basis.⁸⁰

Flotation Costs

Regarding flotation costs, Mr. Baudino ignores the basic assumptions of the DCF and CAPM that the models assume no transaction (i.e., flotation) costs.⁸¹ Further, Mr. Baudino provides no competing evidence that stock prices already account for flotation costs.⁸² Finally, given that the embedded cost of debt for ratemaking purposes reflects flotation costs, an equivalent adjustment must be made to the ROE to reflect those transaction costs not reflected in the model.⁸³

The Removal of Limitations of Investment Caps Beyond Those Required by Kentucky Law is Critical to Ensure Continued Operational Flexibility

Atmos Energy is the only utility in Kentucky that currently has caps on capital expenditures, but yet Atmos Energy has the lowest residential rates, by far, of the major Kentucky

⁷⁸ D'Ascendis Rebuttal at 61-64.

⁷⁹ Attorney General Brief at 34.

⁸⁰ See D'Ascendis Rebuttal at 43-45.

⁸¹ Baudino Direct at 60.

⁸² D'Ascendis Rebuttal, at 45-46.

⁸³ D'Ascendis Direct at 56-59.

LDCs.⁸⁴ The Attorney General continues to erroneously state that the annual caps on PRP and non-PRP capital expenditures are not hard caps.⁸⁵ The Attorney General does not cite to any evidence within the record of this Case or in prior Commission orders supporting that assertion. The Company clearly stated the language and analyzed the language in the Commission's orders regarding the caps on capital for both the non-PRP and PRP capital expenditures and described the limitations and uncertainty inherent within both limits.⁸⁶ The Attorney General also notes that each non-PRP project in excess of the caps must be supported by DIMP or TIMP, inherently recognizing caps on non-DIM and non-TIMP capital expenditures.⁸⁷ The Attorney General does not address, however, the various forms of non-PRP capital that are necessary and prudent and yet falls outside DIMP or TIMP guidelines. Examples of non-PRP capital not within DIMP or TIMP but still necessary to operate safely and reliably include public improvement projects, economic development projects that bring jobs and investment to the region, related system improvement, and growth and service functionals.⁸⁸ The removal of the caps to be in position to serve economic development has also been highlighted as critical by the Kentucky Cabinet for Economic Development.⁸⁹ 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

⁸⁴ Atmos Energy's Responses to Commission Staff's Fourth Request for Information, Item 2 (Apr. 8, 2025).

⁸⁵ Atmos Energy Post-Hearing Brief at 39.

⁸⁶ Atmos Energy Post-Hearing Brief at 15-22.

⁸⁷ Attorney General Final Brief at 39.

⁸⁸ Atmos Energy Post-Hearing Brief at 18; Austin Direct at 28-29.

⁸⁹ Atmos Energy Post-Hearing Brief, Exhibit 3.

that would have to take precedence.⁹⁰ The Attorney General's statement that the Commission has frequently explained that the caps are not hard caps⁹¹ is a complete mischaracterization of the issue and does not consider any of the nuances provided by the Company in evidence.

The Attorney General believes the caps are necessary to impose restraint on the Company's capital expenditures and costs included in the PRP and base revenue requirements.⁹² The Attorney General fails to mention that 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 requirements *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. 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, similar to all other regulated utilities in Kentucky. This would include any time period between rate cases and not just base period and forecasted test period additions.

Similarly, within the PRP mechanism, the Commission is able to separately review and scrutinize each project and expenditure annually, with the opportunity for the Attorney General, and potentially others, to intervene in the PRP proceedings.⁹³ The capital and projects within the PRP filings and base rate filings are all still subject to prudence review by the Commission in the

⁹⁰ Austin Direct at 30; *see also* HVT Day 1, 10:35:00 -10:37:20.

⁹¹ Attorney General Final Brief at 39.

⁹² Atmos Energy Post-Hearing Brief at 39.

⁹³ Case No. 2018-00281, *Electronic Application of Atmos Energy Corporation for an Adjustment of Rates* (Ky. PSC May 7, 2019), Order at 14-15.

setting of fair, just and reasonable rates.⁹⁴ This annual review process is the complete opposite of the open-ended, unrestrained scenario the Attorney General attempts to portray in its brief.⁹⁵ 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.⁹⁶ 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.⁹⁷ 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 Atmos Energy is in the best position to make that determination.⁹⁸

Atmos Energy's Proposed Tariffs Should be Approved

Pipeline Modernization Rider

The Attorney General's recommendation to deny the proposed Pipeline Modernization Rider ("PM Rider") goes against prior Commission precedent as well as the clear, established record in this Case. The Attorney General falsely claims that the PM Rider will incentivize the Company to incur additional capital costs that it would not do without the PM Rider.⁹⁹ The PM

⁹⁴ Atmos Energy's Response to the Attorney General's First Request for Information, Item 8.

⁹⁵ Attorney General Final Brief at 38.

⁹⁶ Austin Direct Testimony at 37.

⁹⁷ HVT Day 1, at 10:32:40 – 10:34:15.

⁹⁸ Office of the Attorney General's Response to Commission Staff's First Request for Information, Item 2.

⁹⁹ Attorney General Final Brief at 43.

Rider is proposed for federally-mandated PHMSA compliance, limited at this time to MAOP reconfirmation required under 49 CFR § 192.624. The Company is required by law to perform this work. The Attorney General also attempts to purposefully confuse the Commission that A not within the PRP could be recovered through the proposed PM Rider.¹⁰⁰ The Company has been clear that the PM Rider would be limited to projects that fall under MAOP reconfirmation requirements, and any additional work outside those requirements within the PM Rider would require explicit Commission approval.¹⁰¹

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").¹⁰² When approving Duke Energy's Rider PMM 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."¹⁰³ 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.¹⁰⁴ Similar to Rider PMM, most of Atmos Energy's projects for the PM Rider lie outside the test year of this Case.

The Attorney General falsely claims the scope and timing of compliance projects under the

¹⁰⁰ Attorney General Final Brief at 43.

¹⁰¹ HVT, Day 1 at 11:28:40 – 11:28:42; *see also* Rebuttal Testimony of T. Ryan Austin ("Austin Rebuttal") at 17.

¹⁰² Case No. 2021-00190, *Electronic Application of Duke Energy Kentucky, Inc. for: 1) An Adjustment of the 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.

¹⁰³ Case No. 2021-00190, final Order at 23.

¹⁰⁴ Case No. 2021-00190, final Order at 23.

PM Rider would be left to the Company's own judgment.¹⁰⁵ The projects Atmos Energy proposes for the PM Rider have been identified in the record at Exhibit TRA-5 and are legally required with a completion percentage of 50% by 2028 and 100% by 2035. The projects, and the scope of the projects, have been included by the Company in evidence in Exhibit TRA-5. The PM Rider allows even more oversight and collaboration with the Commission, and the Attorney General should it intervene, than even through periodic base rate proceedings as the Attorney General recommends. The benefits of the proposed PM Rider are the exact same as the language used by the Commission for projects under the PRP.¹⁰⁶ Through the proposed PM Rider process, the Commission is able to separately review and scrutinize each project and expenditure annually, with the opportunity for the Attorney General, and potentially others, to intervene in the proposed PM Rider proceedings.¹⁰⁷ This process is the complete opposite of the Attorney General's false assertion that the PM Rider will incentivize the Company to incur additional capital costs, or that the scope and timing of projects will be without Commission review and input.

The projects included in the PM Rider are required by federal law to be completed by 2028 and 2035. Should the PM Rider be approved Atmos Energy would make its first annual filing to

¹⁰⁵ Attorney General Final Brief at 43.

¹⁰⁶ 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 ("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 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.").

¹⁰⁷ See Case No. 2018-00281, (Ky. PSC May 7, 2019), Order at 14-15.

reflect investments beyond the test year in this Case and forecasting out the proposed FY27 projects. 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.

Aldyl-A inclusion within PRP

The Attorney General states that Aldyl-A should not be included within the Company's PRP due to it posing "enormous rate risk" for Atmos Energy's customers. The Attorney General fails to mention the safety risks posed by Aldyl-A over time as well as the already existing Commission precedent for Aldyl-A for other Kentucky LDCs. 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.¹⁰⁸ The Commission has already recognized that Aldyl-A is *an immediate safety concern*.¹⁰⁹ The Commission, citing in part the safety concerns of Aldyl-A from PHMSA, has already approved the replacement of Aldyl-A for two other utilities in Kentucky within approved capital riders.¹¹⁰ The Commission has also stated its preference for

¹⁰⁸ Attorney General's Response to Commission Staff's First Request for Information, Item 2.

¹⁰⁹ 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.**").

¹¹⁰ 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; 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

accelerated replacement of potentially, unsafe aged gas pipelines through a capital rider.¹¹¹ The Commission specifically stated that “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 is in favor of accelerated replacement.”¹¹² As a safety risk, the Commission has been clear that Aldyl-A is an immediate safety concern as noted above.¹¹³ Atmos Energy’s request for a comprehensive Aldyl-A program within its PRP is no different than the authorizations the Commission has already granted to other Kentucky utilities. The Company has stated that it will

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.”); *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 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 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.”).

¹¹¹ Case No. 2018-00281, *Electronic Application of Atmos Energy Corporation for an Adjustment of Rates* (Ky. PSC May 7, 2019), Order at 14-15 (“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 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.”).

¹¹² *Id.*

¹¹³ Case No. 2019-00301, (Ky. PSC March 26, 2020) Order at 7.

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, for long-term replacement in a capital rider.¹¹⁴ 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 Attorney General claims inclusion of Aldyl-A in the PRP will lead to potential cost overruns or potential schedule delays. Again, Aldyl-A within the PRP program allows the Commission to separately review and scrutinize each project and expenditure annually, with the opportunity for the Attorney General, and potentially others, to intervene in the PRP proceedings.¹¹⁵ The Company has also provided estimates for the cost of the Aldyl-A program over the proposed seven to ten-year time period.¹¹⁶ This argument of potential cost overruns and schedule delays also misses the primary mark of the purpose of Aldyl-A replacement within the PRP which is the proactive replacement of a PHMSA-identified material and a material the Commission has identified as an immediate safety concern. The Attorney General's recommendation, in essence, is arguing the Commission should treat Aldyl-A pipeline materials on a different basis depending on the LDC since it has already been approved by the Commission for Delta Gas and LG&E. The Attorney General does not focus on the safety risk and PHMSA guidance of the Aldyl-A materials. The Company's request in this proceeding is to proactively

¹¹⁴ Brief at 26.

¹¹⁵ Case No. 2018-00281, (Ky. PSC May 7, 2019), Order at 14-15.

¹¹⁶ Atmos Energy's Responses to Commission Staff's Fourth Request for Information, Item 3 (Apr. 8, 2025).

target this pipe based on risk over time similar to approvals this Commission has already granted to other Kentucky utilities.

Tax Rider

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 ensure that the procedure for achieving that alignment is seamless, efficient and transparent. The Attorney General erroneously claims that the Tax Rider would force the Commission to delegate its legal authority to the Company.¹¹⁷ This is completely false. The Company has stated multiple times that any adjustments to the Tax Rider tariff would require Commission approval.¹¹⁸ What the Tax Rider will achieve is a mechanism that enables the Commission to efficiently reflect tax changes, whether an increase or a decrease, efficiently into rates to prevent misalignment. The Attorney General, on the other hand, does not advocate these sound ratemaking principles in its recommendation. The recent statutory uncertainty with ad valorem tax would have been a perfect candidate to address pursuant

¹¹⁷ Attorney General Final Brief at 40.

¹¹⁸ See, e.g., Direct Testimony of Brannon C. Taylor ("Taylor Direct") at 17-18 ("The Tax Rider tariff will be set at zero until the effective date of approval by the Commission of a Tax Rider rate. This tariff modification would be applicable under the Company's Rate Schedules G-1, G-2, T-3 and T-4. Any future adjustments to the Tax Rider rate would require Kentucky Public Service Commission approval."); see also Multer Rebuttal at 20-21 ("The Company's proposed rider does not preclude the Commission from undertaking its own analysis and/or requiring additional filings; however, it does promote efficiency by creating a mechanism through which the effect of future income tax rate changes may be efficiently reflected.").

to the Tax Rider, rather than requiring a full and expensive base rate case to reflect such changes.¹¹⁹ 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.

The CAMT and CAMT DTA do apply to Atmos Energy's Kentucky division, despite the Attorney General's repeated attempts to obfuscate the issue. *The law is clear.* As the Company clearly stated in its post-hearing brief, the CAMT applies to any corporation having three-year average annual adjusted financial statement income greater than \$1 billion.¹²⁰ 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 group be aggregated.¹²¹ As a result, the test for determining "applicable corporation" is made at the AEC consolidated level. Once AEC meets this definition at a

¹¹⁹ Atmos Energy Post-Hearing Brief at 43.

¹²⁰ Direct Testimony of Joel J. Multer ("Multer Direct") at 6.

¹²¹ Multer Direct, Exhibit JJM-R-3; Internal Revenue Code Section 59(k)(1)(D).

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. This is a matter of (i) the applicability of a cost (cash tax obligation in this instance) followed by (ii) the determination of the amount of that cost associated with the Kentucky division. The cost is applicable as the earnings of the Kentucky division will be subject to the CAMT by way of the tax code. The amount that is proposed to be included in rate filings of the Kentucky division will be limited to that cost associated solely with the earnings of the Kentucky division without any allocations or considerations of the earnings of other Atmos utility divisions or non-regulated subsidiaries. To clarify, it will be an amount calculated by applying the 15% minimum tax rate to the earnings as shown in the **Kentucky** cost of service (revenue requirement) model with certain adjustments.¹²² Furthermore, Atmos Energy Holding Inc. (“AEHI”) and non-regulated earnings are only approximately 1% of the Company’s consolidated earnings. Therefore, Atmos Energy’s regulated utility operations comprise 99% of the Company’s consolidated earnings that will result in the Company being an applicable corporation subject to the CAMT. The Attorney General only offers an unsupported theory of its expert witness with no legal evidence, citations, or precedent supporting its false claim about why the CAMT should not apply to Atmos Energy’s Kentucky division.¹²³

Research and Development Rider to be Maintained

¹²² See proposed Tax Rider tariff in FR 16(1)(b)3 Attachment 1; see also Multer Rebuttal at 23.

¹²³ See, e.g., Attorney General Final Brief at 41-42.

The Attorney General does not address any of Atmos Energy’s rebuttal arguments or evidence presented at the hearing regarding the Company’s long-existing Research and Development (“R&D”) Rider. Instead, the Attorney General simply repeats a claim supported without evidence from its testimony that there is no evidence of direct benefits for the Company’s customers from the R&D Rider.¹²⁴ The Commission has been clear about the benefits provided by the R&D Rider for the past two decades. In fact, the Commission approved an increase to Atmos Energy’s existing R&D Rider in Case No. 2017-00349 to its current rate today.¹²⁵ The Attorney General’s arguments in that case were the exact same arguments in this Case. In speaking on the benefits of the R&D Rider, which the Attorney General claims are non-existent, the Commission stated:

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”¹²⁶

¹²⁴ Atmos Energy Post-Hearing Brief at 45.

¹²⁵ 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 44.

¹²⁶ Case No. 2017-00349, *Electronic Application of Atmos Energy Corporation for an Adjustment of Rates and Tariff*

The Company also listed several of the continued benefits of GTI in response to data requests Staff 1-08 and Staff 2-01. Several of the technologies developed by GTI have had a direct benefit to Kentucky customers as the Company presented at its evidentiary hearing. 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.¹²⁷ Atmos Energy's current R&D Rider rate today is also similar to the amount approved for Columbia Gas in Kentucky.¹²⁸ Finally, the Commission's long-standing support for the R&D Rider is consistent with 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.¹²⁹ The Attorney General fails to mention any of these points presented in evidence by the Company and instead relies on a broad, false assertion that has already been rejected by the Commission in recommending the cancellation of the Company's R&D Rider.

Rate Design

The Attorney General attempts to raise the issue of rate design for the first time in its post-hearing brief, in particular the residential customer base charge. Nowhere in the Attorney

Modifications (Ky. PSC May 3, 2018), final Order at 44-45.

¹²⁷ Cross Examination of Brannon Taylor, HVT, Day 1 at 9:30:00 - 9:30:50.

¹²⁸ Columbia Gas of Kentucky, Tariff Sheet No. 51c.

¹²⁹ NARUC Resolution on Public Purpose Research & Development in the Electricity and Natural Gas Industries, adopted November 12, 1997.

General's direct testimony, rebuttal testimony, or in the course of discovery responses does the Attorney General raise any objection to the Company's proposed rate design for residential customers, or any other customer class. This issue of first impression creates a due process issue as the Company has been unable to respond to any potential objections of the Attorney General and develop an appropriate record for the Commission to even evaluate the Attorney General's objection. Decisions must be based on the record in the proceeding and the Attorney General's argument on rate design, raised for the first time in the post-hearing brief, should be waived for reasons of timeliness and due process. That said, the record provided by the Company shows that the Company's proposed residential rate design in this Case would result in its residential customers still receiving the lowest overall rates in Kentucky among the major Kentucky LDCs.¹³⁰

Annual Review Mechanism

The Attorney General continues to fail to see the merit in an Annual Review Mechanism ("ARM") in Kentucky. Although not formally proposed in this Case, the Company believes there are long-term benefits for all parties for consideration of an ARM to be utilized in future regulatory proceedings. As pipeline safety, regulatory compliance, and tax rates continue to change and remain dynamic the frequency of general base rate case proceeding by all utilities will continue to increase.¹³¹ An ARM allows for increased efficiency, transparency, and adaptability for the Company, Commission Staff, and the Attorney General to focus on key issues that arise in a timely

¹³⁰ Atmos Energy's Responses to Commission Staff's Fourth Request for Information, Item 2 (Apr. 8, 2025).

¹³¹ Rebuttal Testimony of Brannon C. Taylor ("Taylor Rebuttal") at 24.

manner while simultaneously greatly reducing regulatory expenses.

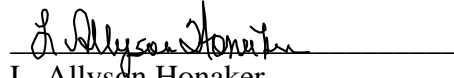
CONCLUSION

The evidence Atmos Energy presented throughout the proceeding has been demonstrated as credible and will result in fair, just and reasonable rates. The Company has conclusively shown within the record the proper justifications for its requests for items, including but not limited to, 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 Attorney General's position is solely focused on minimizing rates, rather than developing fair, just and 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 the major Kentucky LDCs.

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 13th day of June, 2025.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that the electronic filing has been transmitted to the Commission on June 13, 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