

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

ATTORNEY GENERAL’S RESPONSE BRIEF

The intervenor, the Attorney General of the Commonwealth of Kentucky, through his Office of Rate Intervention (“AG”), states as follows for his Response Brief in the above-styled matter.

**A. The Commission Should Accept Mr. Kollen’s Proposed
NOLC ADIT Adjustments**

The Attorney General agrees with Atmos that a Net Operating Loss Carryforward (NOLC) Deferred Tax Asset (DTA) due to accelerated tax depreciation is required to be placed into rate base in order to avoid a normalization violation.¹ The only remaining disagreement is over what amount should be included. Whereas Atmos insists that the entire claimed NOLC DTA must be included in rate base, the more logical and reasonable approach recommended by Mr. Kollen, is to include in rate base only that portion of NOLC DTA necessary to avoid a normalization violation. This is the portion caused by tax depreciation in excess of book depreciation in those tax years in which there was a taxable loss.² Moreover, the Commission itself adopted this position in Case No. 2023-00231,³ in which the NOLC ADIT was an issue for the PRP Rider. Since Atmos refused to provide the data necessary to

¹ Kollen Direct at 14-15.

² *Id.* at 16, 19-20.

³ *In Re: Electronic Application of Atmos Energy Corporation for PRP Rider Rates Beginning October 1, 2023*, Final Order dated Sept. 29, 2023 at 8.

make the required calculations,⁴ Mr. Kollen was forced to make the calculations necessary to limit the issue solely to tax depreciation.⁵ However, Mr. Kollen was limited in his ability to calculate these limited effects prior to 2022 due to the Company's unwillingness to provide the data necessary. As a result, the amount Mr. Kollen calculated has not been reduced to reflect only the effects of the tax depreciation in excess of book depreciation on the claimed NOLC DTA prior to 2022. While the amount Mr. Kollen calculated as necessary to include in rate base to avoid a normalization violation still is excessive, it nevertheless is more accurate than the Company's attempt to force the Commission to simply include the entirety of the NOLC DTA. Mr. Kollen also recommended the Commission order the Company to provide the information necessary to calculate the minimum NOLC DTA necessary to avoid a normalization violation in its next base rate case filing to ensure this travesty is finally and completely addressed.

The Atmos-Kentucky division has no legal standing – it is not a standalone legal entity, and therefore lacks any discrete financial statements of its own. Only limited financial data is available on the Atmos-Kentucky division, and even that is based on corporate allocations. Atmos erred by including the entirety of those corporate utility allocations into the Kentucky division rate base, even though the allocations to Kentucky are calculated only for ratemaking purposes, even though the NOLC DTAs are not recorded on the Kentucky division's accounting books, and even though only the tax depreciation portion is required to be included in rate base in order to avoid a normalization violation. Atmos' allocation-based methodology imposes a hypothetical cost on the Kentucky division that the parent

⁴ Kollen Direct at 16 (*citing* Response to AG-DR-1-40 (e), attached to Kollen Direct as Ex. LK-4).

⁵ See OAG Initial Brief at 9-10 (*citing* Kollen Direct at 16, and Response to AG-DR-1-40 (e), attached to Kollen Direct as Ex. LK-4).

corporation does not actually incur, because the total NOLC DTA contributed by the Atmos utility divisions has been reduced by the holding company for the Atmos unregulated entities, Atmos Energy Holdings, Inc. (AEHI).⁶ Atmos Energy Corporation (AEC) retains those income tax savings despite the fact that it was the AEC utility divisions that caused the losses that AEHI used for its benefit.⁷ While espousing in its brief that AEHI's taxable income or losses are irrelevant, nonetheless Atmos' allocations utilized in this case intentionally include the AEHI income or losses.

The Commission should limit the NOLC DTA to the amount calculated and recommended by Mr. Kollen and should require Atmos to provide all the data necessary to make the required calculations when it files its next rate case.

B. The Commission Should Continue to Exclude Non-Cash Expenses From Cash Working Capital Calculations

In its Initial Brief,⁸ Atmos continued relitigating the outcome of its *last* rate case, in which the Commission accepted Mr. Kollen's recommendation to remove non-cash expense from its Cash Working Capital (CWC) determination, holding, "The Commission finds that noncash items should be removed from the lead/lag study."⁹ Nonetheless, Atmos calls the Commission ruling in that case an "outlier"¹⁰ and would have the Commission turn the clock back so that it can inappropriately and unfairly increase its revenue requirement. The Commission should instead follow its well-reasoned precedent in the Company's last rate case, and continue to exclude all non-cash expense from the CWC determination. The non-

⁶ Kollen Direct at 20.

⁷ *Id.*

⁸ Case. No. 2024-00276, Atmos' Initial Brief at 11-12.

⁹ *In Re: Electronic Application of Atmos Energy Corporation for an Adjustment of Rates*, Case No. 2021-00214, Final Order dated May 19, 2022, at 20. *See also* the Commission's reasoning for this holding in that case, *Id.* at 18-20.

¹⁰ Case No. 2024-00276, Atmos Initial Brief at 11.

cash expenses also include the growth portion of the return on equity. The dividend portion of the return on equity is a cash expense, as noted by Mr. Kollen.

C. Atmos' Poor PRP Performance Indicates the Commission Should Reject the Proposed Aldyl-A Replacement Program, Continue the Capital Spending Caps, and Reject the Proposed Rider PM

During the course of the instant case, as well as prior Atmos cases, Mr. Kollen has never recommended that the Commission deny cost recovery for particular pipeline replacement projects, but instead has focused on the form of cost recovery. In repeated instances, Mr. Kollen has stated that Atmos can always recover its pipeline replacement costs through base rates subject to the PRP and non-PRP capital spending limits.¹¹ In the instant case, Mr. Kollen testified that Atmos has a poor history of executing on the projects identified in its PRP Rider, both in terms of cost overruns and lengthy delays in completing projects.¹² In fact, the Company now seeks approval of a new program to replace all Aldyl-A pipes in its territory, despite the fact that the estimated completion date for its bare steel pipe project has been pushed back yet again until sometime after 2027. Furthermore, the Company cannot even provide cost estimates or a schedule for the bare steel project completion.¹³ Additionally, the Company has failed to provide a schedule or cost estimate for the replacement of its Aldyl-A pipe project,¹⁴ nor was it willing to provide such estimates.¹⁵ Mr. Kollen further testified that the inability to complete projects on a timely basis is at least part of the reason why Atmos

¹¹ See, e.g., Kollen Direct at 29. Mr. Kollen further testified that since the non-PRP capital spending cap is limited to the base revenue test year, this means capital spending may exceed the non-PRP cap as long as Atmos can justify the additional costs. *Id.* at 34-35 (*citing, In Re: Electronic Application of Atmos Energy Corporation for an Adjustment of Rates*, Case No. 2018-00281, Final Order dated May 7, 2019 at 25).

¹² May 7, 2025 Video Transcript of Evidence (VTE) at approximately 9:07-30 through 9:27:50, and at approximately 9:54:00; see also Kollen Direct at 29.

¹³ Kollen Direct at 30 (*citing* Response to AG-DR-1-25, attached to Kollen Direct as Ex. LK-9).

¹⁴ *Id.* at 31.

¹⁵ *Id.* (*citing* Response to AG-DR-1-26, attached to Kollen Direct as Ex. LK-10).

has been exposed to cost overruns, which is a problem of the Company's own making.¹⁶ Furthermore, Mr. Kollen testified that due to Atmos' poor track record in cost containment and meeting schedules, he cannot recommend approval of the proposed new accelerated Aldyl-A replacement program:

"It certainly does not make sense to authorize Atmos to undertake an accelerated Aldyl-A replacement program without adequate regulatory controls in place to avoid a repeat of the problems that have plagued the accelerated bare steel replacement program. It does make sense to replace higher priority pipeline segments based on the safety risks and leak history. This is the approach the Commission has already adopted in several PRP and base rate proceeding Orders. The Commission has allowed the Company to proceed with and recover certain Aldyl-A pipeline segment replacement costs though the PRP Rider on a project specific basis. There is every reason for the Commission to maintain this approach and every reason not to adopt the Company's request, which is open-ended, unrestrained in any reasonable manner, and certain to impose harm on customers that can be reasonably avoided."¹⁷

The caps the Commission imposed on Atmos' PRP and non-PRP capital spending have provided greater incentive for the Company to prioritize projects and complete them in a more timely and cost-effective manner. The removal of these caps would only lead to exactly the opposite: additional cost overruns and delays.¹⁸ If the Commission is inclined to modify the caps, it should allow no greater increase than the current consumer price index.

Given Atmos' poor performance with the bare steel projects embedded in its PRP, there is no basis to conclude that the proposed new Rider PM would be operated any differently or better. The language in the proposed tariff is open-ended, meaning that almost anything could be deemed as necessary to comply with PHMSA's Mega Rule and thus be included for accelerated recovery in the rider. In discovery, the Company was unwilling or

¹⁶ May 7, 2025 VTE at approximately 9:52:30.

¹⁷ Kollen Direct at 32-33; *see also* May 7, 2025 VTE at approximately 9:09.

¹⁸ Kollen Direct at 33-35.

unable to provide an estimate of the costs and projects it would include in Rider PM.¹⁹ In fact, as Mr. Kollen noted, the Company could conceivably seek to implement its proposed Aldyl-A pipe replacement program through Rider PM.²⁰ Moreover, these cost items would not be subject to the caps in place for PRP and non-PRP capital costs.²¹ The Commission should reject the Company's request.

D. The Commission Should Reject Atmos' Proposed Tax Rider

The Atmos-Kentucky division is not a corporation or other legal entity, and does not file its own tax return. Given these indisputable facts, the Atmos-Kentucky division itself is not subject to the corporate alternative minimum tax (CAMT) nor is there any legal mandate that forces an allocation of this consolidated tax cost on the Atmos-Kentucky division; it is merely a ratemaking construct to impose a consolidated tax cost on the Atmos-Kentucky division while denying the benefits on consolidated tax savings to the Atmos-Kentucky division. The only reason AEC is subject to the CAMT on its consolidated return is due to adjustment financial statement income from AEHI's unregulated activities included in the AEC consolidated tax return. In other words, AEHI's unregulated taxable income was the sole cause of the AEC CAMT based on the consolidated tax return. Kentucky ratepayers should not have to pay a single penny of AEC's CAMT arising from the AEHI unregulated activities. Further, there is no requirement that an allocation of CAMT expense be included in ratebase for normalization purposes. Through establishing the tax rider, Atmos seeks to impose CAMT costs on Kentucky ratepayers, but refuses to allow ratepayers to receive any of the benefits of the consolidated tax savings. The cost causer for any potential CAMT

¹⁹ *Id.* at 44 (*citing* Response to AG-DR-1-21, attached to Kollen Direct as Ex. LK-12).

²⁰ *Id.* at 43 (*see also* May 7, 2025 VTE at approximately 9:12).

²¹ *Id.* at 42.

expense would be Atmos' unregulated activities, not the regulated utility divisions. Approval of the tax rider would thus expose Kentucky ratepayers to unwarranted costs, and would be manifestly unjust. The Commission should instead reject it.

E. The Commission Should Reject Funding for the GTI Research Rider

Atmos ratepayers are being charged approximately \$300,000 annually for an expense item that does not relate to the provision of gas utility services, in order to fund a grant from Atmos to the Gas Technology Institute (GTI). Instead, this grant amounts to a forced cross-industry subsidy to GTI. The burden for this cost should be placed where it belongs – on industry that manufactures gas furnaces, stoves and ovens and their suppliers, not on gas utility ratepayers.²² Mr. Kollen pointed out that there is no evidence of direct benefits to Atmos customers from paying this sum.²³ The Attorney General respectfully requests that the Commission halt this forced subsidy as the Atmos grant to GTI provides no direct benefit to Atmos ratepayers.

²² Kollen Direct at 49.

²³ *Id.*

Respectfully submitted,

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Certificate of Service

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

This 13th day of June, 2025



Assistant Attorney General