

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

**ATTORNEY GENERAL’S RESPONSE TO ATMOS’ MOTION
FOR REHEARING**

The intervenor, the Attorney General of the Commonwealth of Kentucky, through his Office of Rate Intervention (“OAG”), hereby submits his response to Atmos’ August 29, 2025 Motion for rehearing.

KRS 278.400 (“Rehearing”) states in pertinent part: “. . . Upon the rehearing any party may offer *additional* evidence that *could not with reasonable diligence have been offered on the former hearing.*” (Emphasis added). Atmos (or “the Company”) has failed to satisfy this quintessential element of the statute, and instead is seeking only to re-litigate the Commission’s well-founded findings. Rather than founding its motion upon “additional evidence that could not with reasonable diligence have been offered on the former hearing,” Atmos simply regurgitates the same arguments it used in the existing record in a repeated attempt to achieve an unreasonably high level of common equity ratio (“CE ratio”) in its capital structure.

The Commission’s rationale for its findings and rulings regarding Atmos’ CE ratio were clearly stated and were based on the evidence presented by both the Company and the OAG. Atmos’ requested CE ratio, had the Commission approved it, would have resulted in unfair and unreasonable rates for its Kentucky customers. The OAG recommendation would have resulted in a lower CE ratio and was fully supported by the evidence, but the

Commission chose a middle ground, one that was less than the Company's request, but more than the OAG recommendation.

Regulated utilities such as Atmos are exposed to less risk than non-regulated businesses. For this reason, regulated utilities can carry more debt (short-term and long-term) than an unregulated business. This ability to access diverse types of debt enhances a regulated utility's financial strength, and lowers rate costs for customers. Given that common equity is the most expensive capital, utilities should maintain it at the lowest possible levels rather than seek to accentuate it, as Atmos does. An excessive utility CE ratio unnecessarily and unreasonably increases the cost of capital and return on rate base, as well as the income taxes on the equity return. The unreasonably high CE ratio Atmos sought in its application, and continues to seek through the instant rehearing petition, will extract unreasonable costs from its Kentucky ratepayers.

In this proceeding, Atmos chose to utilize a fully forecasted test year, which means that the capital structure had to be hypothetical. The choice of a forecasted test year requires the Commission to analyze all revenue requirement components, including the rate base, revenues, expenses, and cost of capital components. One key component of this reasonableness analysis is examining the capital structure of the proxy group of utilities utilized by the rate of return witnesses in this docket.¹ OAG witness Baudino found that for 2024, the CE ratio for his proxy group was expected to be 49.79%, and for Mr. D'Ascendis' proxy group, 49.17%.² Furthermore, Mr. Baudino's recommended CE ratio of 52.5% was in

¹ Baudino Direct Testimony at 35-36.

² *Id.* at 35:8-12. Moreover, Mr. Baudino opined that the proxy group CE ratios are expected to decline for the 2027-2029 forecast period. *Id.* at Table 2.

line with two other recent LDC cases, in which the Commission set CE ratios of 52.64%³ and 52.76%.⁴ In its Final Order, the Commission conducted additional analysis of the evidence provided by Atmos' own witness, which the Commission concluded:

“. . . supports the Attorney General's position that Atmos's equity ratio is substantially higher than comparable utilities. While Atmos asserts that to its high equity ratio provides benefits, Atmos failed to present evidence indicating that those benefits justify the cost to customers of an unusually high equity ratio. . . . Further, there is nothing improper about the Commission adjusting a utility's capital structure for ratemaking purposes where the Commission finds that the utility's actual capital structure is unreasonable. Atmos, in making decisions regarding whether to raise capital through debt or equity issuances, or by retaining capital, controls its capital structure. If Atmos makes decisions with respect to its capital structure that unreasonably increase costs to customers, the Commission has the authority to make an adjustment to prevent unreasonable costs from being passed on to customers, and depending on the circumstances, may be required to do so. Further, the Commission has given Atmos significant notice that it was concerned with the reasonableness of Atmos's rising equity ratio. However, Atmos failed to establish that its equity ratio in this case is reasonable for the reasons discussed above and in the evidence presented by the Attorney General. Thus, the Commission finds that Atmos's proposed capital structure, as filed, is not reasonable and does not result in fair, just, and reasonable rates for Atmos's consumers in Kentucky, and therefore, the Commission finds that an adjustment is necessary.”⁵

³ *In Re: Electronic Application Of Columbia Gas Of Kentucky, Inc. For An Adjustment Of Rates; Approval Of Depreciation Study; Approval Of Tariff Revisions; And Other Relief*, Case No. 2024-00092, Final Order dated Dec. 30, 2024, at 46-47.

⁴ *In Re: Electronic Application Of Delta Natural Gas Company, Inc. For An Adjustment Of Gas Rates*, Case No. 2024-00346, Final Order dated July 1, 2024, at 17-19.

⁵ Case No. 2024-00276, Final Order dated Aug. 11, 2025, at 46-49 [footnotes omitted]. *See also, In Re: Electronic Application Of Bluegrass Water Utility Operating Company, LLC For An Adjustment Of Rates And Approval Of Construction*, Case No. 2020-00290, Order dated Aug. 2, 2021, at 62: “The Commission agrees with Ms. Nelson that the current capital structure deviates from standard utility practices and is inappropriate for ratemaking purposes. As noted by Ms. Nelson, David Parcell's text, the *Cost of Capital Manual*, states that there are circumstances where a hypothetical capital structure is used for a utility such as when the current capital structure is deemed substantially different from the typical. Ms. Nelson further notes that in *The Regulation of Public Utilities* by Charles F. Phillip, a hypothetical capital structure is used only when the utility's actual capitalization is clearly out of line as compared to others”[footnotes omitted]; and, *In Re: Electronic Investigation Into Kentucky-American Water Company's Proposal To Implement A Rate Mechanism Related To Cost Savings From Refinancing Of Long-Term Debt*, Case No. 2020-00091, Order dated June 12, 2020 at 4: “The Commission has the authority to impute hypothetical debt rates for instruments reasonably anticipated to be issued during a rate case test year provided that the hypothetical rates are supported by substantial evidence.”

The Commission's findings and rulings are reasoned and based on irrefutable factual evidence, much of it coming from Atmos. The Commission's final order is in full compliance with statutes and its own precedents. Atmos has also failed to establish that the Commission's rulings of which it complains in its motion for rehearing were unreasonable in any manner. Moreover, it has failed to present any new evidence to support its motion which was not already provided in the case in chief, and thus seeks merely to re-argue its previously-stated positions.

WHEREFORE, the Attorney General respectfully requests that the Commission deny Atmos' motion for rehearing.

Respectfully submitted,

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ATTORNEY GENERAL



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Certificate of Service

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

This 3rd day of September, 2025



Assistant Attorney General