

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF ATMOS ENERGY)	
CORPORATION TO ESTABLISH PRP RIDER RATES)	CASE No.
FOR THE TWELVE MONTH PERIOD BEGINNING)	2025-00246
OCTOBER 1, 2025)	

ATTORNEY GENERAL’S COMMENTS

The intervenor, the Attorney General of the Commonwealth of Kentucky, through his Office of Rate Intervention (“AG”), hereby submits his Comments in the above-styled matter.

The Attorney General opposes any reduction to the tax depreciation deferred tax liability (DTL) subtracted from the PRP rate base for a net operating loss carryforward (NOLC) deferred tax asset (DTA) as shown on Schedule F-1. The NOLC DTA is inherently and uniquely a base revenue cost. An increment to the NOLC DTA in the PRP rider is not reasonable or necessary to avoid a so-called Internal Revenue Code (IRC) normalization violation or for any other reason. The NOLC DTA is a base revenue ratemaking construct involving multiple levels of allocation from the Atmos Energy Corporation (AEC) consolidated tax return to the Kentucky division using AEC forecasts of estimated revenues (income) and expenses (deductions) in the test year, performed solely for ratemaking purposes in conjunction with a base ratemaking proceeding. There never is a true-up of the estimated amounts included in the rate base for the test year to reflect an actual NOLC DTA, despite the fact the AEC NOLC DTA and the allocations to the Kentucky division vary based on the actual taxable income and losses of AEC and the utility divisions in the aggregate.

The NOLC DTA starts with a total AEC calculation of consolidated taxable income or loss in the aggregate for all members of the AEC affiliate group, including the unregulated

entities owned by its subsidiary Atmos Energy Holdings, Inc. (AEHI) and all of its regulated utility divisions in numerous states, including the Kentucky division, and multiple divisions within certain states.

For each taxable year, AEC calculates the consolidated taxable income or loss. AEC then allocates the consolidated taxable income or loss between AEHI and the regulated utility divisions in the aggregate. Historically, this first allocation has resulted in: (i) taxable income for AEHI and taxable losses for the regulated utility divisions in the aggregate in each tax year; and (ii) loss carryforwards from prior years, which are maintained on a vintage year basis depending on the taxable year the loss was generated. The cumulative loss carryforwards from the prior years for all utility divisions in the aggregate are added to the taxable loss for all utility divisions in the aggregate, if any, in the current tax year, then multiplied times the income tax rate to calculate the NOLC DTA, and then allocated to the divisions based on a general allocation factor.¹

In the last Atmos base rate case for the Kentucky division, Case 2024-00276, the Commission relied on an AEC calculation that allocated an estimate of the NOLC DTA for all utility divisions in the aggregate to the Kentucky division based on: (i) AEC's estimates of the NOLC and NOLC DTA corresponding to the end of the base period;² (ii) AEC's estimate

¹ Atmos response to AG 1-34 in Case 2024-00276 wherein it stated: "Due to the Company's filing structure that all utility operations are in one entity "AEC" for tax filing purpose, the Company has historically allocated the Utility NOL to each of its operational jurisdictions based on the same factors used to allocate general office rate base." In addition, Atmos response to AG 1-39 in Case 2024-00276 wherein it stated: "Atmos Energy records its NOL in Shared Service division 002 into three categories: utility, Non-Regulated and Other. Refer to the response to AG 1-34 for further information on Atmos Energy's NOL categories. There is no NOL recorded separately in divisions 9, 2 and 91 on books." Further, Atmos response to AG 1-40(h) wherein it stated: "For the Test Period, the Company made an adjustment at the bottom of Schedule B.5.F, consistent with the methodology used in previous cases, to properly synchronize ADIT included in rate base, tax expense and depreciation expense."

² The base period in Case 2024-00276 is the twelve-month period from January 1, 2024 through December 31, 2024.

of the taxable income and the reduction in the NOLC and NOLC DTA after the base period until the beginning of the test year; and (iii) a calculation of the taxable income specifically based on an estimate of the Kentucky division's taxable income and the reduction in the NOLC and NOLC DTA for ratemaking purposes in the test year.³ The NOLC DTA in all three periods are estimates because the actual NOLCs and NOLC DTAs for AEC as the starting point are not known until AEC files its consolidated federal tax returns, usually on or before the 15th day of the 10th month following the end of the tax year. The consolidated tax return for the tax year will be based on actual revenues (income) and actual expenses (deductions) for the AEC consolidated tax return. The NOLCs and NOLC DTAs allocated to the utility divisions in the aggregate and to the Kentucky division for ratemaking purposes will be different than the estimates that were reflected in the test year used to determine the base revenue requirement in Case 2024-00276. In other words, the NOLC DTA included by the Commission in the test year is an all-inclusive estimate. It is by no means an actual amount. Even after the AEC consolidated federal tax return is filed in 2025 for the tax year ending September 30, 2024 and even after the AEC consolidated federal tax return is filed in 2026 for the tax year ending September 30, 2025, the amounts allocated to the Kentucky division still will be estimates in the unlikely event that Atmos even performs such an allocation.

There are no actual NOLC DTAs calculated based on taxable income and taxable losses specifically for the Kentucky division for accounting or ratemaking purposes because AEC does not calculate taxable income and taxable losses specifically for the Kentucky division. The AEC NOLC DTA allocated to the utility divisions in the aggregate for

³ Final Order dated May 25, 2023 in Case No. 2022-00222, at 12 (footnotes omitted).

accounting purposes varies each month based on the AEC taxable income and taxable losses. To the extent there is taxable income, then the NOLC DTA allocation to the utility divisions in the aggregate declines. However, if there is a reduction in the NOLC DTA allocated to the utility divisions in the aggregate, there is no reduction in the NOLC DTA allocated to the Kentucky division and thus, there is no true-up to the NOLC DTA included in rate base for base ratemaking purposes. Nor is there any reduction to the Company's base revenues to reflect the reduction in the NOLC DTA.

The Company has offered no evidence that the PRP tax depreciation in excess of book depreciation causes an increment to the NOLC DTA already included in rate base in the base revenue requirement. Rather, the Company relies on an unsupported and incorrect assertion that the failure to include the cumulative increments to an NOLC DTA equivalent to the cumulative increments of excess of tax depreciation over book depreciation DTL in the PRP rate base will result in a normalization violation. This incorrect assertion matters for several reasons. First, as previously noted, there are no actual NOLC DTAs calculated for the Kentucky division and therefore there is no baseline to measure whether the PRP rider will cause an increase in the NOLC DTA included in rate base in the base revenue requirement proceeding, even assuming the NOLC DTA allocation methodology reflected in the base revenue requirement is reasonable, which it is not. The Commission has been concerned about this fact and addressed this lack of support for this assumption in its Order in PRP Case 2022-00222, and again in its Order in PRP Case 2023-00231 as follows:

As the Commission explained in Case No. 2022-00222, Atmos's method of projecting NOL ADIT is unreasonable for a PRP rider, because it produces an NOL ADIT estimate that is not reasonably connected to Atmos's actual net operating position. . . . Because Atmos's failed to establish that its Kentucky operations were in a net operating loss position in the relevant periods, and therefore, that its accelerated tax expensing

of PRP investments could not be used to offset tax expense, the Commission finds that Atmos failed to establish that NOL ADIT was or would be generated from its Kentucky operations during the relevant PRP program years.⁴

Atmos failed to establish that including its projected NOL ADIT in rate base in this matter is reasonable. Based on that failure, it would be reasonable to include all of Atmos's projected ADIT liability in rate base with no offset for NOL ADIT. On a prorated basis, based on when Atmos projected that the ADIT would arise, this would result in an ADIT offset to PRP rate base of \$(1,954,463) as opposed to the ADIT offset of \$(317,361) Atmos included in its revenue model.

However, while the Commission does not agree that the exclusion of all NOL ADIT would result in a normalization violation, the Commission acknowledges that such a violation could have negative consequences for Atmos and its customers in future rate cases. Further, Atmos acknowledged that only the ADIT reflected in FXA02, which consisted of \$(15,400) on a prorated basis, is subject to federal normalization rules. Because that amount is *de minimis* and the consequences of a normalization violation could be significant, the Commission will offset the ADIT reflected in FXA02 by a corresponding amount in NOL ADIT in this case only to avoid any potential normalization violation. Thus, the Commission finds that the prorated net ADIT offset reflected in Line Number 12 of Exhibit B of Atmos's revenue model should be \$(1,939,063) as opposed to \$(317,361) and that Atmos's PRP rates should be amended to reflect that change, though the Commission notes that it will not include any NOL ADIT in future PRP rate base absent specific, credible evidence that Atmos's Kentucky operations and its PRP spend actually generated NOL ADIT during the relevant period or that normalization rules would require it.⁵

Second, the NOLC DTA included in the rate base in the Company's most recent base rate proceeding, Case 2024-00276, is significantly greater than necessary to avoid a normalization violation, even assuming the Company's calculation was reasonable in that case, which it was not. As noted previously, the Commission stated in its Order in Case 2022-00222 that "it will not include any NOL ADIT in future PRP rate base absent specific credible

⁴ Final Order dated Sept. 29, 2023, Case No. 2023-00231, at 5-6 (footnotes omitted).

⁵ Final Order dated May 25, 2023, Case No. 2022-00222, at 12 (footnotes omitted).

evidence that Atmos Kentucky operations and its PRP spend actually generated NOL ADIT during the relevant period or that normalization rules would require it.”⁶ The normalization rules do not require it. The NOLC DTA reflected in the base revenue requirement provides a sufficient margin to avoid a normalization violation if the Commission does not include the Company’s monthly increments to the NOLC DTA in the PRP rider, even assuming that AEC calculates the Kentucky division NOLC DTA, which it does not, and regardless of whether it calculates the Kentucky division NOLC DTA necessary to meet the normalization requirements, which it does not.

As the Attorney General noted in base rate Case 2024-00276 and AEC confirmed,⁷ the IRC normalization rules do not require the entirety of an NOLC DTA be included in rate base. Rather, the normalization rules require only that the NOLC DTA caused by tax depreciation in excess of book depreciation be included in rate base. The NOLC DTA included in rate base by the Commission in its Order in Case 2024-00276 included the entirety of the Company’s claimed NOLC DTA, after adjustments by the Commission to update and revise the claimed amount. The NOLC DTA that is not required to be included in rate base by the normalization rules includes the effects of deductions for costs incurred in other divisions, costs incurred in the Kentucky division and other divisions that are disallowed for Kentucky ratemaking purposes, and other non-depreciation temporary differences. In short, the NOLC DTA reflected in the base revenue requirement already exceeds the NOLC DTAs required to comply with the IRC normalization requirements. It isn’t necessary to include any

⁶ *Id.* at 12 (footnotes omitted).

⁷ Atmos response to AG-DR-2-08 in Case 2024-00276 wherein it stated: “The Company does agree that the NOL ADIT normalization requirements of the IRC apply only to method/life temporary differences.”

increment to comply with the IRC normalization requirements, let alone the Company's proposed PRP increment.

In Case 2024-00376, the Commission rejected the Attorney General's recommendation to further limit the NOLC DTA to reflect only the tax depreciation in excess of book depreciation, the amount necessary to comply with the IRC normalization requirements. The Commission approved an amount that was \$5.896 million greater than the maximum NOLC DTA caused by tax depreciation in excess of book depreciation calculated by the Attorney General's witness.⁸ The NOLC DTA actually caused by tax depreciation in excess of book depreciation was less than calculated by the Attorney General's witness, but the Company refused to provide the historic data necessary to calculate the tax depreciation and book depreciation temporary differences giving rise to the NOLC DTA in years prior to 2022.⁹ The Commission expressed its concern with the Company's failure to provide this information, stating that it was the Company's burden of proof, and directed the Company to provide the information necessary to calculate the NOLC DTA to reflect only the tax depreciation in excess of book depreciation implicated by the normalization rules in its next base rate case.¹⁰

Third, the Company's proposed methodology in this case is analogous to adopting an NOLC DTA tax rider within the PRP rider to recover a return on a cost that does not meet the threshold requirements set forth by the Commission in Cases 2022-00222 and 2023-00231, and is not actually a known and measurable cost. As noted previously, the claimed cost is based on an assumption that lacks credible foundation, and even if it is accepted is not

⁸ Final Order dated Aug. 11, 2025, Case No. 2024-00276 at 11.

⁹ *Id.* at 13-14.

¹⁰ *Id.* at 14.

necessary to meet the IRC normalization requirements. The Company proposes to add a cumulative NOLC DTA increment to the PRP rider rate base starting in October 2024 and increasing each month to exactly offset and reduce to \$0 the entirety of the tax depreciation in excess of book depreciation DTL that is, in fact, known and measurable and that represents tax benefits paid for by and belonging to customers through the PRP rider. There is no credible evidence in this proceeding, prior PRP proceedings, or in prior base rate proceedings that the PRP investments caused or cause increases in the NOLC DTA equivalent to the tax depreciation in excess of book depreciation DTL properly reflected in the PRP rider.

In addition, and as previously noted, even if the Company's assumption is accepted as correct, then it does not implicate the normalization rules if the proposed increment in the NOLC DTA is excluded, due to the fact the NOLC DTA already included in the base revenue requirement is greatly in excess of the amount required solely to meet the normalization rules.

Further, under the Company's proposed methodology in this case, there never will be a reduction to the NOLC DTA in the PRP even if there is no NOLC DTA at the AEC consolidated, no NOLC DTA allocated to the utility divisions in the aggregate, or no NOLC DTA allocated to the Kentucky division for base ratemaking purposes. That clearly is an unreasonable result.

In summary, the Commission should reject the Company's proposed methodology and its proposal to completely eliminate the reduction to rate base for the tax depreciation in excess of book depreciation DTL. The Company's proposed methodology is conceptually and irredeemably flawed, practically and factually incorrect, premised on incorrect and flawed assumptions, inconsistent with the findings in prior Commission Orders, and will result in excessive, unjust, and unreasonable PRP rider revenue requirements and rates.

Respectfully submitted,

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Certificate of Service

Pursuant to the Commission's Orders 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 6th day of October, 2025



Assistant Attorney General