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

In the Matter of:

**APPLICATION OF ATMOS ENERGY CORPORATION)
TO EXTEND ITS DEMAND-SIDE MANAGEMENT PROGRAM) CASE NO.
AS AMENDED, AND COST RECOVERY MECHANISM,) 2008-00499
AS AMENDED FOR THREE (3) YEARS)**

**ATTORNEY GENERAL'S APPLICATION FOR REHEARING OF THE
COMMISSION'S SEPTEMBER 2, 2009 ORDER GRANTING ATMOS' PROPOSED
MODIFICATIONS TO ITS DEMAND-SIDE MANAGEMENT TARIFF**

The Attorney General, by and through his Office of Rate Intervention, pursuant to KRS 278.400, and 807 KAR 5:001 Section 4, makes this application to the Kentucky Public Service Commission for rehearing of its September 2, 2009, Order granting Atmos Energy Corporation's proposed modification to its demand-side management tariff. In support of the application, the Attorney General states as follows:

Overview

In this case, Atmos seeks Commission approval to continue and amend its demand-side management tariff and the associated cost recovery mechanism approved by Order of the Commission in Case No.2005-00515 for an additional three-year period.

Under its previously approved tariff, Atmos provided funding for weatherization services for its low-income customers. This was its only program.

However, in this application, the Company seeks to expand its offering of DSM programs under its tariff and continue and amend its weatherization program.¹ The proposed modifications to the tariff include the addition of an educational component for elementary age school

children,² a rebate program for consumers purchasing high-efficiency replacement furnaces and water heaters,³ and raising the limits available per household on its weatherization program from \$1,500.00 per home to \$3,000.00 per home.⁴ Atmos also proposes to increase the budget for its DSM programs from \$200,000.00 per year to \$909,500.00 per year, an increase of over 450%.⁵

a. Low-Income Weatherization

The current program budget for Atmos' low-income weatherization program is capped at \$200,000.00 per year and restricts per household expenditures for weatherization measures to \$1,500.00 per home.⁶ However, in this application, Atmos proposes to increase the budget of this program to \$300,000.00 and also increase the limits of funds available per household under the program from \$1,500.00 per home to \$3,000.00 per home.⁷ In support of its requested increase, the Company states that the costs associated with its weatherization program have increased dramatically since inception of the program⁸ and notes that the rate of inflation increased its costs by 23% between 2000-2009.⁹ Other than these statements, no evidence supporting this modification was provided.

b. High Efficiency Furnace/Boiler/Water Heater Program

The Company proposes a rebate to homeowners who install high-efficiency gas furnaces, boilers and water heaters.¹⁰ Additionally, the Company will offer rebates to homeowners who

1 See Application, Page 2, Paragraph 8.

2 See Application, Page 3, Paragraph 10.

3 See Application, Page 2, Paragraph 9.

4 See Application, Page 2, Paragraph 8.

5 See Application, Tab 2 - Supporting Schedules, Page 1.

6 See Application Tab 1 – Program Summary, Page 3.

7 See Application, Page 2, Paragraph 8.

8 See Application, Tab 1 – Program Summary, Page 3.

9 See Responses to Data Requests PSC-1-d and AG-7.

10 See Application, Tab 1 – Program Summary, Page 6-9.

install instantaneous or tankless water heaters.¹¹ This program provides a \$200.00 rebate for homeowners who upgrade to forced air furnaces with an efficiency level of 90% or greater and a 30,000 BTU input or greater or upgrade to a boiler with an efficiency level of 90% or greater and a 30,000 BTU input or greater.¹² The amount of these rebates is fixed regardless of the size of the unit installed. This program is to be administered by Energy Federation, Inc., a third-party vendor chosen by the Atmos based on its previous use of the Company to administer a similar program in Missouri.¹³

c. Education Program

In the description of its proposed education program, the Company states that it envisions the program introducing children to the importance of energy conservation will provide them with suggestions of no-cost and low-cost measures that they can use to reduce their family's energy consumption.¹⁴ The Company intends to target either 4th or 5th grade children within its service territory and the program will be staffed and administered by Company personnel.¹⁵ While participation was not estimated, Atmos has estimated total program costs to be \$20,000.00.¹⁶ Out of the \$20,000.00 total program costs, the Company has stated that its administrative costs are \$12,900.00.¹⁷ This program represents approximately 2% of the Company's overall DSM budget. The Company does not intend to claim any energy savings associated with this program.¹⁸

As these are modified or new programs, the Company prepared the application using

11 See Application, Tab 1 – Program Summary, Page 8.

12 See Application, Tab 1 – Program Summary, Page 6.

13 See Application, Tab 1 – Program Summary, Page 7.

14 See Application Tab 1 – Program Summary, Page 4.

15 See Application Tab 1 – Program Summary, Page 4.

16 See Application Tab 2 – Supporting Schedules, Schedule A, Page 4.

engineering estimates of the projected savings per program and participant.¹⁹ These savings will be subject to a true-up process on an as-needed basis,²⁰ although such process is not defined by the Company in its application. The Company states that it intends to accumulate the “lost sales” (DLSA) component until its next rate case for recovery at that time.²¹

ARGUMENT

Atmos Has Not Met Their Statutory Burden To Prove That The Requested Modifications Are Reasonable.

While Atmos has a right under statute to propose demand-side management programs and to seek reimbursement of its costs associated with those programs, the Company also bears the burden under to prove such programs are reasonable. KRS 278.190(3) and KRS 278.285(1). Simply stated, the burden of proof for the necessity of any change in the approved rates rests entirely with the Applicant; it is not necessary that the Commission or anyone else prove that the proposed change is inappropriate. See *In the Matter of: Notice of Adjustment of the Rates of Kentucky-American Water Company*, Case No. 8836, Order, 20 December 1983, page 9; also see *Energy Regulatory Commission v. Kentucky Power*, 605 S.W.2d 46, 50 (Ky.App. 1980) (fact that applicant’s evidence is uncontroverted, or otherwise not rebutted, unexplained, or not impeached is unremarkable). A simple review of the evidence contained in the record of the case clearly indicates that Atmos has not met their statutory burden to prove the modifications it requests are reasonable.

a. Low-Income Weatherization

17 See Application Tab 2 – Supporting Schedules, Schedule A, Page 3.

18 See Responses to Data Requests, Question AG-13.

19 See Responses to Data Requests, Question AG-24.

20 See Responses to Data Requests, Question AG-24.

As previously noted, Atmos currently provides funding for weatherization services only for its low-income customers. Although the current program budget restricts per household expenditures for weatherization measures to \$1,500.00 per home,²² Atmos proposes to increase the limits available per household on its weatherization program from \$1,500.00 per home to \$3,000.00 per home²³ and increase the program budget from \$200,000.00 per year to \$300,000.00 per year.²⁴

In support of this request, the Company states that costs associated with its weatherization program have increased dramatically since the program's inception,²⁵ and in particular inflation increased costs by a cumulative 23% between 2000-2009.²⁶ However, there is no evidence in the record supporting either claim other than the Company's own statements. There are no invoices, price lists, etc., contained in the record that would support these statements. In its previous cases, the Commission has held that increases based upon the Consumer Price Index, a measure of the inflation rate, are improper and unreasonable and has held that a utility must provide specific evidence showing its costs increases to support any requested rate increase. See e.g., *In the Matter of: An Investigation Into The Proposed Wholesale Water Service Contract Between The Richmond Utilities Board And Madison County Utilities District*, Case No. 2008-00373, November 12, 2008, Page 2; See also *Re: West Kentucky Rural Telephone Co-op Corp, Inc.*, Case No. 7927; January 19, 1981; and *In The Matter of: Proposed Adjustment of the Wholesale Water Service Rate of the City of Lawrenceburg, Kentucky*, Case No. 2006-00067, November 21,

21 See Responses to Data Requests, Question AG-23.

22 See Application Tab 1 – Program Summary, Page 3.

23 See Application, Page 2, Paragraph 8.

24 See Application, Tab 2 - Supporting Schedules, Page 4.

25 See Application, Tab 1 – Program Summary, Page 3.

26 See Responses to Data Requests PSC-1-d and AG-7.

2006. Therefore, for the Commission to approve an increase on the per household limits based on a general rise in inflation and without any other evidence to support such an increase is clearly unreasonable and in error.

Additionally, from the data provided by the Company, this program appears to have failed the California tests. Although the Commission states that the California test results submitted with Atmos' application demonstrates that the proposed programs are cost-effective,²⁷ in fact, nothing could be further from the truth. A simple review of the Company's results from the California tests indicates that only the Company's whole portfolio was tested -- *not* the individual programs. If the Company had tested each program individually, the results would be quite different. As noted by the Attorney General in his comments, the Company projected its rebate programs would provide 93% of its overall DSM natural gas savings (no savings were claimed for the Company's education program). Therefore, the weatherization program only provided 7% of the Company's stated natural gas savings while spending *double* the amount per household of what the previous program did and consuming a third of the proposed budget.

Clearly, this program is not cost-effective in the slightest. While such information is not clearly stated in the Company's application for obvious reasons, the information is there nonetheless. Therefore, the Commission's statement that the "proposed programs are cost effective" is incorrect and has no basis in the record. Only one of the proposed programs is cost-effective, the rebate program. For the Commission to approve this program in spite of the Atmos' own evidence indicating the program is not a cost-effective use of ratepayer funds is unreasonable.

²⁷ See September 2, 2009 Order, Page 3, Paragraph 1.

While the goal of weatherization of low-income households may be noble, societal benefits are not the only measure by which these programs should be judged. These funds are financed by ratepayers involuntarily, a “hidden tax” as it were. As the Commission is a public body reviewing how the utilities it governs propose to spend “other people’s money,” it is incumbent upon the Commission to ensure that ratepayers are receiving a good return for their forced investment. Therefore, low-income programs should stand or fall on their cost effectiveness and not just on any perceived societal benefits.

Finally, the Company limits the weatherization program to serve only its low-income customers, and the program is not available to other customers. Limiting the participants in this program to low-income households raises equity concerns compared with the low level of program benefits available to its other customers. Limiting this program to low-income customers does not comport with the requirements of KRS 278.285(1)(g) as it offers no benefits to the average ratepayer. Additionally, such a limitation creates an unreasonable prejudice or disadvantage to the average ratepayer in violation of KRS 278.285(1)(e).

Although Atmos defends limiting the weatherization program to low-income participants by alleging that its weatherization contractor (the community action agencies) works only on low-income homes,²⁸ the Commission should take administrative notice that this multi-billion dollar entity operates in many states, and should therefore have at least some familiarity with other contractors that could perform the same task for non-low income customers. Clearly, all of the Company’s customers could benefit from some level of weatherization services. The Attorney General states that it was error to approve this program and suggests the Commission

²⁸ See Responses to Data Requests, Questions AG- 1.

revise its' Order of September 2, 2009, to require Atmos to amend its proposed program to include weatherization services to all its customers, disapprove the requested increase in the level of benefits to low-income customers and to provide benefits to its residential ratepayers that equalize the services offered to the entire residential class.

b. Education Program

While the Attorney General agrees that efforts to inform the public regarding energy conservation issues are important, the efficient use of ratepayer funds is equally as important. The proposed program, to be staffed and administered by company personnel, will have total estimated costs of are \$20,000.00, and intends to target either 4th or 5th grade children.^{29 30} The Commission's Order correctly states that Atmos did not estimate any savings associated with the program, however it also notes the Company's argument that the \$20,000.00 program budget is *de minimus* and that there is great merit in the concept of educating young children to be more energy efficient. However, there are no measures proposed in the application which will provide any indication of the program's effectiveness. Simply stated, there is nothing in the application to show the Commission that this will have any effect on the attitudes or behavior of 4th or 5th graders with regard to energy conservation, much less the attitudes and behavior of the real consumers: their parents. The suggestion that attempts to influence young students will in turn influence their parents' behavior, without any evidence to support such a suggestion, is by definition mere conjecture.

While it is debatable whether there is great merit in these efforts as 4th and 5th graders have little influence over household energy usage, it should be noted that over half of the funds

29 See Application Tab 1 – Program Summary, Page 4.

30 See Application Tab 2 – Supporting Schedules, Schedule A, Page 4.

budgeted towards these efforts of “great merit” are consumed by administration of the program. Atmos states that it projects its administrative costs will total \$12,900.00³¹ out of the program budget of \$20,000.00. Simply put, nearly 65% of the funds are paid to Atmos to administer a program with no verifiable energy savings.³²

Clearly, this supports the position of the Attorney General that these types of programs are essentially “goodwill” exercises on behalf of the company and have little or no measureable impact on energy usage. It is clearly unreasonable for the Commission to approve a program with no verifiable energy savings, no way to measure the effectiveness of the program and which pays the company the bulk of the funds (no matter how *de minimus*) in program administration. As previously stated, the Commission is tasked with ensuring that ratepayers receive value for their forced investment. Clearly, the approval of this program without regard to that goal is error since none of these concerns are addressed by the Commission’s Order.

If there is indeed “great merit” and the budget is truly *de minimus* as maintained by the Company, it would be more appropriate for its shareholders to fund these efforts since there are no energy savings which could justify this program’s use of ratepayer funds and no way to ensure this program is even effective.

31 See Application Tab 2 – Supporting Schedules, Schedule A, Page 3.

32 See Responses to Data Requests, Question AG-13.

Respectfully submitted,

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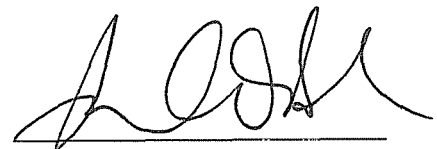
CERTIFICATE OF SERVICE AND NOTICE OF FILING

I hereby give notice that this the 21st day of September, 2009, I have filed the original and ten copies of the foregoing with the Kentucky Public Service Commission at 211 Sower Boulevard, Frankfort, Kentucky, 40601 and certify that this same day I have served the parties by mailing a true copy of same, postage prepaid, to those listed below.

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