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**PUBLIC SERVICE
COMMISSION**

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

In the Matter of:

**APPLICATION OF ATMOS ENERGY)
CORPORATION FOR AN ADJUSTMENT) CASE NO. 2009-00354
OF RATES)**

**RESPONSES OF THE ATTORNEY GENERAL
TO PSC STAFF'S REQUESTS FOR INFORMATION**

April 14, 2010

CERTIFICATE OF SERVICE AND NOTICE OF FILING


I hereby give notice that this the 14th day of April, 2010, 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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Assistant Attorney General

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Dated April 14, 2010
Responding Witness: Counsel

Q-1. Refer to page 2, numerical paragraph 5 of the Stipulation and Recommendation ("Stipulation").

- a. Explain whether numerical paragraph 5 of the Stipulation is a material term of the agreement.
- b. Explain whether it is the Attorney General's position that the Commission has the authority to approve numerical paragraph 5 of the Stipulation and if so, provide the authority.
- c. Explain whether the reimbursement referenced in numerical paragraph 5 of the Stipulation is required to be credited to the general fund.

A-1. a. Yes.

b. Yes. In past decisions, Commission approval of settlements has been based on whether the settlement is reasonable, in the public interest and was the result of arms-length negotiations among capable and knowledgeable parties. The settlement proposed in this case satisfies those standards. Moreover, insofar as the authority of the PSC to approve paragraph 5, the 2008 Budget Bill, enacted as 2008 Ky. Acts Ch. 127, on Page 10, Item 20, Paragraph 6 states:

(6) Reasonable Costs of Litigation: Notwithstanding KRS 48.005(5) and (7), the Attorney General's Office may first recover its reasonable costs of litigation, as determined by the court, and any remaining funds after consumer restitution is made shall be deposited in the General Fund Surplus Account (KRS 48.700). Any costs recovered under this subsection shall be reported to the Interim Joint Committee on Appropriations and Revenue.

While the Commission could not order this type of arrangement over the objections of the parties under KRS Chapter 278, it is consistent with Attorney General's authority under KRS Chapter 367, the means by which he intervened in this case, and the current budget bill.

c. The agreement has no specific language that requires the funds to be deposited into the general fund until the Attorney General has been duly compensated for his expenses for his litigation. The 2008 Budget Bill, enacted as 2008 Ky. Acts Ch. 127, on Page 10, Item 20, Paragraph 6 states:

(6) Reasonable Costs of Litigation: Notwithstanding KRS 48.005(5) and (7), the Attorney General's Office may first recover its reasonable costs of litigation, as

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determined by the court, and any remaining funds after consumer restitution is made shall be deposited in the General Fund Surplus Account (KRS 48.700). Any costs recovered under this subsection shall be reported to the Interim Joint Committee on Appropriations and Revenue.

Additionally, as stated in the agreement, the Attorney General will comply with the requirements of the relevant statutory authority with regard to the receipt of any funds under the agreement.

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Q-2. There is currently proposed legislation, House Bill 290, that would permit the Attorney General to recover reasonable costs of litigation. As this bill has not been enacted into law and since the Attorney General intervenes in Commission proceedings on behalf of consumer interests under authority of KRS 367.150 and not on behalf of the Commonwealth of Kentucky pursuant to KRS 48.005, provide the authority under which the Attorney General is currently permitted reimbursement of litigation costs.

A-2. KRS 48.005 provides that the Attorney General may recover his costs in "other type actions" in addition to those actions in which he has appeared on behalf of the Commonwealth or as an ex rel. participant. Additionally, the 2008 Budget Bill, enacted as 2008 Ky. Acts Ch. 127, on Page 10, Item 20, Paragraph 6 states:

(6) Reasonable Costs of Litigation: Notwithstanding KRS 48.005(5) and (7), the Attorney General's Office may first recover its reasonable costs of litigation, as determined by the court, and any remaining funds after consumer restitution is made shall be deposited in the General Fund Surplus Account (KRS 48.700). Any costs recovered under this subsection shall be reported to the Interim Joint Committee on Appropriations and Revenue.

The Attorney General has consistently represented the consumers with his authority under Chapter KRS 367 and has been authorized recovery under KRS 48.005 for his participation as the chief consumer advocate. This authority is neither implicit nor inherent but authorized under the current budget bill – a bill which authorizes a number of activities which are not otherwise codified. See article (attached as Exhibit A) at <http://www.kentucky.com/2010/04/10/1218214/house-rejects-senate-budget-offer.html#ixzz0kib5g8l6> which states in part that:

The Senate offer on 10 April 2010 accepted House proposals to capture about \$16.8 million in new revenue. That included \$5.5 million from attorney general settlement fees and \$10 million from biodiesel and ethanol tax credits. Thus, the Commission can take administrative notice that the General Assembly has allowed the Attorney General to keep his litigation costs associated with any settlements obtained under KRS Chapter 367.

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Q-3. Provide a detailed schedule of litigation expenses incurred to date specifically for this case, including, but: not limited to the following:

- a. Accounting;
- b. Engineering;
- c. Legal;
- d. Consultants; and
- e. Other expenses (identify separately).

For each category, the schedule should include the date of each transaction, the vendor, the hours worked, the rates per hour, the amount, and a description of the services performed.

A-3.

- a. N/A
- b. N/A
- c. \$39,470.00, Attorney General Staff, attorney and support staff labor, copying, postage, etc.
- d. \$10,530.00, Henkes Consulting, review and evaluate financial information associated with the application. Details for the breakdown are attached as Exhibit B.
- e.

EXHIBIT A



Posted on Sat, Apr. 10, 2010

House rejects Senate budget offer

Stumbo says Senate plan to remove construction projects unacceptable

By Jack Brammer
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FRANKFORT — State Senate budget negotiators offered on Friday to accept the House plan for funding various programs and eliminating two school days, but said no to new debt for construction projects and tax changes.

But House Speaker Greg Stumbo, D-Prestonsburg, said his chamber could not accept the Senate offer without a plan for new construction projects to create jobs.

That leaves the House and Senate at an impasse after days of budget negotiations.

Senate President David Williams, R-Burkesville, told reporters late Friday that he hopes the House will accept the Senate proposal, which goes along with the House plan for a one-year budget, so that state lawmakers can approve a spending plan Wednesday, when they reconvene to wrap up this year's legislative session.

Shortly afterward, Stumbo said in a statement that he was "disappointed that this latest Senate proposal again does not address the issue of jobs creation."

House budget negotiators initially proposed about \$1 billion in bonded indebtedness for various construction projects to create jobs and had pared that amount to about \$317 million—\$169 million for water and sewer, \$121.4 million for miscellaneous projects and \$26.5 million for schools.

Stumbo said House leaders "spent all week in Frankfort with the hope that we could re-start budget negotiations as soon as possible, a request we made known to Senate leaders.

"When it became clear that this would not happen, we sent President Williams our proposal this afternoon. We did not get a response, however, until 5:35 p.m., well after we were gone."

Stumbo said he was glad that the Senate agrees that funding for schools and Medicaid needs to be protected.

"However, the House remains vigilant in its commitment to the Kentucky Jobs for Kentucky Families program, and on behalf of the working families of the state, we cannot accept any proposal that does not create a significant amount of jobs throughout the commonwealth to help Kentucky's working families through this terrible recession.

"All of the Senate proposals to date have failed to address the need for job creation, the centerpiece of the House budget."

The Democratic-controlled House and Republican-led Senate have been at an impasse over the final form of the state's spending plan for about two weeks.

If they cannot reach an agreement by midnight Thursday, Gov. Steve Beshear likely would have to call a special legislative session to produce a budget by the new fiscal year, which begins July 1.

If no budget is approved by then, certain non-essential state services could shut down.

The Senate offer on Friday accepted House proposals to capture about \$16.8 million in new revenue. That included \$5.5 million from attorney general settlement fees and \$10 million from biodiesel and ethanol tax credits.

The Senate also agreed to maintain basic school funding at its current level and eliminate two instructional days from the state's school calendar.

The House and Senate budget negotiators have no scheduled meetings. Lawmakers are to return to the Capitol Wednesday.

EXHIBIT B

HENKES CONSULTING	Invoice Date	Hours	Description	Amount per Hour
Atmos Energy 2009-00354	12/2/09	8	11/16/09 Review and analyze filing material; set up issue books; prepare DR	\$135.00
		8	11/17/10 Review and analyze filing material; set up issue books; prepare DR	
		4	Review prior Atmos case material; case analysis; finalize DR	
Total Hours		20		\$2,700.00
	3/1/10	6	2/3/10 Review responses to PSC-2 and AG-1 requests; update issue books	\$135.00
		8	2/4/10 Review responses to PSC-2 and AG-1 requests; update issue books	
		8	2/5/10 Case analysis; prepare AG-2 DR	
		5	2/23/10 Review responses to PSC-3 and AG-2 DR; case analysis	
		8	2/24/10 Prepare schedules with all recommended AG positions	
		4	2/25/10 Continue schedule preparation; prepare settlement analysis	
Total Hours		39		\$5,265.00
	4/1/10	2	3/1/10 Case analysis	
		2	3/4/10 Case analysis; update issue books	
		8	3/5/10 Change position schedules; review additional response material	
		3	3/8/10 Review additional responses to DR; case analysis	
		2	3/9/10 Case analysis; settlement work	
		1	3/10/10 Discussions with AG; review settlement documents	
		1	3/14/10 Review settlement documents; case administration	
Total Hours		19		\$2,565.00