

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF ATMOS ENERGY)	CASE NO.
CORPORATION FOR AN ADJUSTMENT)	2015-00343
OF RATES AND TARIFF MODIFICATIONS)	

ORDER

On November 23, 2015, Atmos Energy Corporation (“Atmos”) tendered an application seeking an adjustment of rates and tariff modifications. Upon review, the Commission discovered certain deficiencies in Atmos’s application and issued a deficiency letter rejecting the filing. The deficiency letter addresses the application’s failure to satisfy 807 KAR 5:001, Section 17(4)(b), which relates to the notice of general rate adjustment and notice content. Pursuant to 807 KAR 5:001, Section 17(4)(b), when filing an application for a general rate adjustment, a utility is required to provide notice of the present and proposed rates for each customer class to which the proposed rates will apply. Here, the deficiency letter noted that Atmos’s published notice sets forth an incorrect current rate for Rate T-4, refers to updating the Research and Development (“R&D”) Rider unit charge without showing the current and proposed R&D unit charges, and refers to updating the cashout methodology for Transportation Service without showing the current and proposed cashout percentages.

On December 7, 2015, Atmos filed a response to the deficiency letter and a motion for deviation from the notice requirements of 807 KAR 5:001, Section 17(4)(b).

In support, Atmos explains that two of the listed deficiencies relate to transportation customers. The monthly base charge for the T-4 service as set forth in Atmos's notice listed the current rate of \$390.09 rather than the correct current rate of \$390.12, a difference of \$0.03 on an average monthly bill. Atmos also provides details in its response regarding the impact of the cashout methodology for Transportation Service, which was not included in the notice. To correct these two deficiencies relating to the transportation customers, Atmos proposes a deviation from the regulation that would allow it to satisfy the notice requirements by mailing a letter with the corrected notice to all affected transportation customers. Atmos states that such notice would assure that those customers receive complete information about the proposed rate and cashout methodology.

With respect to the R&D Rider, Atmos points out that the published notice states that the R&D Rider, applicable to sales customers, had been updated but does not show the current and proposed unit charge. The current R&D Rider is \$0.0035/Mcf, and the proposed rate is \$0.0174/Mcf. The effect of this change to the average residential customer is \$0.07 per month, or \$0.84 per year. Atmos moves for a deviation to allow correction of the published notice on its web site to incorporate the current and proposed unit charge of the R&D Rider, as well as to include the two aforementioned deficiencies relating to its transportation customers. Atmos proposes publication on its web site rather than republication of the notice in local newspapers on the basis that republishing the notice in print to correct this minor change will cost approximately \$100,000.00. Atmos argues that due to the insignificant impact on the customer's bill, the benefit of republication in local newspapers hardly justifies the cost.

In further support of its motion to deviate, Atmos asserts that it has substantially complied with the substantive requirements of the regulations and that the deficiencies have no significant impact on any customer's ability to understand the proposed changes to the tariffs and rates. Atmos maintains that any discrepancy between the published and actual rates on an average monthly bill is de minimis. Given the minor nature of the deficiencies, Atmos moves for an Order finding good cause for the deviations, that the published notice be accepted, that the application be deemed in substantial compliance with all filing requirements and that the case be docketed for review.

On December 14, 2015, the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention ("AG"), filed a response in opposition to Atmos's request for deviation. The AG was granted intervention in this case by Commission Order dated November 18, 2015. In his response, the AG emphasizes that Atmos's proposal to resolve the notice deficiencies varies by the class of customers who received the deficiency: the smaller group in the transportation class will receive a written notice mailed to them correcting the errors, whereas the retail class will not receive any specific notice, with the information being updated on the Atmos website only. With respect to Atmos's claimed substantial compliance with the notice requirements and Atmos's contention that the information given allows its customers to understand the impact of the changes, the AG notes that the current R&D Rider is not listed, which would make it impossible to compare with the proposed rate and tell that it is intended to be an increase. The AG asserts that accuracy and transparency should be the goal of public notices, not merely substantial compliance, and that a company

that repeatedly makes errors in its filings should be required, at expense to the shareholders, to provide accurate and up-to-date information to its customers through an additional notice. The AG notes that Atmos also received a deficiency letter from the Commission in its prior rate case and asked for a deviation from the filing requirements.¹ The AG maintains that notice is a fundamental requirement of due process and serves to apprise interested parties of the action and afford them an opportunity to present their objections.

The AG further asserts that the \$100,000.00 claimed republication expense is unsupported by any actual costs or invoices. As a lower-cost alternative, the AG proposes that Atmos utilize electronic methods for correcting the notice deficiencies. The AG asserts that Atmos has access to most customers' e-mail addresses through the online payment submissions from its web site and thus an e-mailed or other electronic notice is possible for a least-cost alternative to correct the inaccurate information listed in the original notice.

On December 15, 2015, Atmos filed a reply to the AG's response and attached a copy of the invoice for the newspaper notices that were published. In its reply, Atmos argues that the purpose of the notice is to provide customers with sufficient information to determine the nature and amount of the impact of proposed rates on their monthly utility bills. In this case, Atmos states that it provided notice of the tariff change but the adjustment related to a specific tariff provision for recovery of an R&D Rider was omitted. That adjustment amounts to \$0.84 per year for an average residential customer. Atmos asserts that with the average monthly residential bill amounting to

¹ Case No. 2013-00148, *Application of Atmos Energy Corporation for an Adjustment of Rates and Tariff Modification* (Ky. PSC June 24, 2013).

approximately \$52.00, it is difficult to believe that an upward adjustment of \$0.07 per month would affect a customer's decision to intervene or otherwise protest the rate application. Furthermore, Atmos argues this minor omission hardly necessitates the cost of \$107,371.21 for republication.

Moreover, Atmos notes that the AG has intervened on behalf of the residential customers. As a general rule, those individual customers are not allowed to intervene unless there is a special interest not represented by the AG. Atmos contends that the discrepancy between the actual and noticed rates does not afford any individual an additional basis to attempt to intervene or create any special circumstance that would substantiate intervention. Thus, republishing the notice would serve no purpose as it relates to the opportunity to seek intervention by individual customers.

Regarding the AG's suggestion to republish using e-mail addresses, Atmos argues that this alternative notice undermines the AG's argument for republication. Not all customers have e-mail addresses, and Atmos does not have the e-mail address for all of those customers who do. As a result, any effort to notify by that method would fall short of covering all customers. And that limited notice itself would require a deviation from the regulation. Atmos asserts that if the AG believes such partial notice is adequate, then the previously published notice to all customers, albeit with a minor error, should suffice.

Atmos reiterates that it has substantially complied with the substantive requirements of the regulations and renews its motion for an order finding good cause for the deviation, that the published notice be accepted, that the application be deemed in substantial compliance with all filing requirements and that the case be docketed for

review. Atmos cites the Kentucky Supreme Court's holding with respect to notice: "Substantial compliance in regard to publication requirements has been authorized. The purpose of the statute is to allow the public an ample opportunity to become sufficiently informed on the public question involved."²

Having reviewed the filing and being otherwise sufficiently advised, the Commission finds that with respect to the two deficiencies in the notice for transportation customers, Atmos's proposal to send a letter to each transportation customer setting forth the correct current Rate T-4 and information on the impact of the cashout methodology is reasonable and will ensure that proper notice has been given as required by 807 KAR 5:001, Section 17(4). Thus, for these two deficiencies, Atmos should be granted a deviation upon filing both a copy of the letter mailed to each transportation customer and a certification of the date that the letter was mailed. With respect to the omission from the notice of the current and proposed R&D unit charges, Atmos has neither established good cause to deviate from the filing requirements of 807 KAR 5:001, Section 17(4)(b), based on the notice as published, nor shown substantial compliance with that regulation. The notice as published omits both the current R&D rate and the proposed R&D rate. Under these circumstances, Atmos's customers have not been provided an opportunity to be sufficiently informed of this proposed increase in the R&D rate. In making this finding we note that Atmos has provided no explanation of how this omission occurred or of the steps and procedures it has in place to ensure that the newspapers are provided with a complete and accurate notice in compliance with 807 KAR 5:001, Section 17(4). While the cost for the initial publication was just over

² *Conrad v. Lexington-Fayette Urban County Government*, 659 S.W.2d 190, 195 (Ky. 1983) [internal citation omitted].

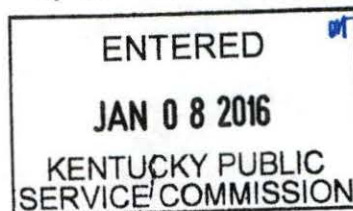
\$107,000, that publication included all of the proposed rate changes and ran for three consecutive weeks. Considering the nature of the rate at issue here, we find it reasonable for Atmos to publish one time an abbreviated notice containing the current and proposed R&D unit charges along with the information set forth in 807 KAR 5:001, Section 17(4)(e) through (j).

IT IS THEREFORE ORDERED that:

1. Atmos's request for a deviation from the requirements of 807 KAR 5:001, Section 17(4)(b), for publishing the correct current Rate T-4 and information on the impact of the cashout methodology shall be granted on the date that it files the letter and certification discussed in the findings above and this filing deficiency shall be deemed cured on that date.

2. Atmos's request for a deviation from the requirements of 807 KAR 5:001, Section 17(4)(b), for publishing the current and proposed R&D unit charges shall be granted on the date that Atmos files a copy of the one-time notice as published in accord with the findings above and this filing deficiency shall be deemed cured on that date.

By the Commission



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