

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF ATMOS	)	
ENERGY CORPORATION TO ESTABLISH PRP	)	CASE NO.
RIDER RATES FOR THE TWELVE MONTH	)	2022-00222
PERIOD BEGINNING OCTOBER 1, 2022	)	

ORDER

On June 13, 2023, Atmos Energy Corporation (Atmos) filed a motion for rehearing, pursuant to KRS 278.400, of the Commission’s May 25, 2023 Order denying Atmos’s proposed Pipeline Replacement Program (PRP) rates and approving different PRP rates. Specifically, Atmos requested that the Commission reconsider its denial of Atmos’s prior-period true-up in its May 25, 2023 Order. Atmos’s motion is now before the Commission for a decision on the merits.

LEGAL STANDARD

Under KRS 278.400, which establishes the standard of review for rehearing motions, rehearing is limited to new evidence not readily discoverable at the time of the original hearings, to correct any material errors or omissions, or to correct findings that are unreasonable or unlawful. A Commission Order is deemed unreasonable only when “the evidence presented leaves no room for difference of opinion among reasonable minds.”<sup>1</sup> An Order can only be unlawful if it violates a state or federal statute or

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<sup>1</sup> *Energy Regulatory Comm’n v. Kentucky Power Co.*, 605 S.W.2d 46 (Ky. App. 1980).

constitutional provision.<sup>2</sup> By limiting rehearing to correct material errors or omissions, and findings that are unreasonable or unlawful, or to weigh new evidence not readily discoverable at the time of the original hearings, KRS 278.400 is intended to provide closure to Commission proceedings. Rehearing does not present parties with the opportunity to relitigate a matter fully addressed in the original Order. KRS 278.509 states:

Notwithstanding any other provision of law to the contrary, upon application by a regulated utility, the commission may allow recovery of costs for investment in natural gas pipeline replacement programs which are not recovered in the existing rates of a regulated utility. No recovery shall be allowed unless the costs shall have been deemed by the commission to be fair, just, and reasonable.

### DISCUSSION AND FINDINGS

Atmos requested reconsideration solely related to whether it is proper for the Commission to deny the prior-period true-up associated with its PRP filing. Atmos argued that the Commission has allowed the true-up, or balancing adjustment, in previous PRP cases following rate cases in which the PRP rates were rolled into base rates. Specifically, Atmos stated:

Since the beginning of the Company's PRP filings with the Commission, the Company has filed five additional base rate cases. . . . In the Company's PRP filings following the 2013, 2015, 2017, and 2018 cases the Company has consistently included a balancing adjustment in its filings, and these balancing adjustments have been reviewed and approved by the Commission.<sup>3</sup>

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<sup>2</sup> *Public Service Comm'n v. Conway*, 324 S.W.3d 373, 377 (Ky. 2010); *Public Service Comm'n v. Jackson County Rural Elec. Coop. Corp.*, 50 S.W.3d 764, 766 (Ky. App. 2000); *National Southwire Aluminum Co. v. Big Rivers Elec. Corp.*, 785 S.W.2d 503, 509 (Ky. App. 1990).

<sup>3</sup> Atmos's Petition for Rehearing (filed June 13, 2023) at 4–5.

Thus, Atmos argued that the Commission's May 25, 2023 Order is inconsistent with past Commission precedent. Atmos also noted there was still an outstanding petition for clarification in Case No. 2021-00214<sup>4</sup> regarding its PRP true-up.

As an initial matter, Atmos is incorrect in stating that it has consistently included a true-up or balancing adjustment following previous rate cases.<sup>5</sup> In 2018, following Atmos's 2017 rate case,<sup>6</sup> Atmos did not file a PRP case and therefore did not attempt any true-up for that year. In 2019 and 2020, following Atmos's 2018 rate case,<sup>7</sup> Atmos proposed PRP rates that included no true-up.<sup>8</sup> Atmos did propose a true-up in its 2021 PRP case, but that true-up was for a year after the rate case that preceded the filing. In some cases prior to 2017, the Commission did approve PRP rates that included true-ups of periods before PRP rates were rolled into base rates but that issue was not raised in those cases. As the Commission noted in its May 25, 2023 Order, the Commission has prohibited true-ups for amounts rolled into base rates when the issue is explicitly addressed.<sup>9</sup>

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<sup>4</sup> Case No. 2021-00214, *Electronic Application of Atmos Energy Corporation for an Adjustment of Rates* (Ky. PSC May 19, 2022).

<sup>5</sup> Notably, Atmos did not cite to its PRP cases that support this statement.

<sup>6</sup> Case No. 2017-00349, *Electronic Application of Atmos Energy Corporation for an Adjustment of Rates and Tariff Modifications*, Order (Ky. PSC May 3, 2018).

<sup>7</sup> Case No. 2018-00218, *Electronic Application of Atmos Energy Corporation for an Adjustment of Rates*, Case No. 2018-00281, Order (Ky. PSC May 7, 2019).

<sup>8</sup> See Case No. 2019-00253, *Application of Atmos Energy Corporation for PRP Rates* (filed July 31, 2019), Application, Exhibit B (showing no PRP true-up); Case No. 2020-00229, *Application of Atmos Energy Corporation for PRP Rates* (filed July 27, 2020), Application, Exhibit B.

<sup>9</sup> See, e.g., Case No. 2021-00185, *Electronic Application of Delta Natural Gas Company, Inc. for an Adjustment of its Rates and a Certificate of Public Convenience and Necessity* (Ky. PSC Jan. 3, 2022), final Order at 21; Case No. 2022-00342, *Electronic Application of Columbia Gas of Kentucky, Inc. for Annual Adjustments to the Safety Modification and Replacement Program* (Ky. PSC Feb. 6, 2023), Order.

More importantly, Atmos's motion does not present additional evidence or establish a material error that justifies rehearing. The May 25, 2023 Order noted that the PRP was rolled into base rates and reset to \$0 through September 2022 in Atmos's last rate case;<sup>10</sup> that it is was reasonable to assume that a deferral, or true-up, associated with a rate was eliminated when the rate is rolled into base rates; and that parties could raise the issue of the status of any deferral when rolling a rate into base rates. Atmos responded that it did raise a true-up issue in a petition for clarification in Case No. 2021-00214. However, as even Atmos appears to acknowledge in its petition, that issue was distinct from the true-up at issue in this case, because it dealt only with the true-up of a PRP year that coincided with the implementation of base rates, and in any case, that issue was not raised until after the final Order.<sup>11</sup> Thus, having considered the motion and the case record, the Commission finds that Atmos failed to establish that it is entitled to rehearing in this matter, and therefore, that Atmos's motion for rehearing should be denied.

IT IS THEREFORE ORDERED that:

1. Atmos's motion for rehearing is denied.
2. This case is closed and removed from the Commission's docket.

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<sup>10</sup> The PRP was rolled in at Atmos's request.

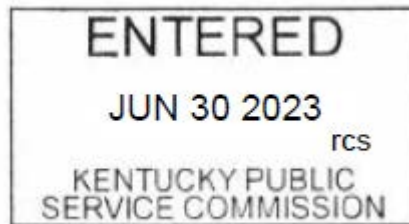
<sup>11</sup> Case No. 2021-00214, *Electronic Application of Atmos Energy Corporation for an Adjustment of Rates* (Ky. PSC June 15, 2023), Order (explaining why the true-up at issue in that case is distinct from the true-up at issue here).

PUBLIC SERVICE COMMISSION

  
\_\_\_\_\_  
Chairman

  
\_\_\_\_\_  
Vice Chairman

  
\_\_\_\_\_  
Commissioner



ATTEST:

  
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