



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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VIA ELECTRONIC FILING

December 14, 2015

Jeff DeRouen
Executive Director
Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40601

Re: In The Matter of: Application of Atmos Energy Corporation for a General Rate Adjustment, Case No. 2015-00343

Dear Mr. DeRouen:

The Attorney General submits this cover letter for his electronic filing in this case, and it serves as the Read1st introductory file. The filing is the Opposition to Deviation in the above-referenced case. In accordance with 807 KAR 5:001 Section 8, Counsel certifies that the electronically filed documents are a true representation of the original paper document(s) being hand delivered to the Commission no later than the second day after this electronic filing, that all materials in the paper documents are included in the electronic filing, and that no party has been excused from participation by electronic service. In accordance with 807 KAR 5:001 Section 8, the Attorney General is filing with the Commission one paper original of the entire filing.

Should you have any questions, please feel free to contact me at your convenience.

Yours very truly,

A handwritten signature in blue ink, appearing to read "Stefanie Kingsley".

Stefanie Kingsley

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF ATMOS ENERGY)
CORPORATION FOR A GENERAL) Case No. 2015-00343
RATE ADJUSTMENT)

ATTORNEY GENERAL'S
OPPOSITION TO RESPONSE TO DEFICIENCY NOTICE, AND REQUEST FOR
DEVIATION OF NOTICE REQUIREMENTS

The Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, submits his Opposition to Response to Deficiency Notice, a notice filed of record December 4, 2015 by the Commission. Atmos filed its Response to the Deficiency on December 7, 2015, in which the Company outlined its preferred method to handle the deficiencies noted by the Commission Staff, and the Attorney General opposes the deviation requested therein as follows.

The Company's plan 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, but the information will be updated on the website only. The Company believes that the information provided is "substantially compliant" with the statute, and that the information given allows the customers to understand the impact of the changes. But, it remains that the current R&D Rider rate is not listed to compare to the proposed rate, and it would be impossible to tell that it was intended to be an increase. The Attorney General asserts that accuracy and transparency should be the goal of public notices, not merely substantial compliance, and that

companies who repeatedly make errors in their filings should be required, at expense to the shareholders, to re-notice its customers with accurate and up to date information.

The foundation of a public notice is fundamental fairness, transparency, and Constitutional Due Process. The two prong test for due process dictates that the interested parties must receive both accurate and timely notice, and a fair hearing.¹ The Supreme Court of the United States further held that “[a]n elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”² If the customer cannot calculate that the rate is an increase, because there is no comparison rate, that notice is not reasonable.

Atmos argues, as it did in its 2013 rate case where it also received a notice of deficiency in its Public Notice, that “substantial” compliance with the statutes and regulations governing notice should be sufficient and it should receive a deviation for the filing.³ The only way in which the 2015 Opposition to Cure the Deficiency differs from the 2013 Opposition is the cost to cure the error was \$50,000⁴ in 2013, \$100,000 to cure today. The \$100,000 is totally unsupported by any actual costs or invoices. The actual cost for the notices that were sent inaccurately was never supplied as a totaled by the Company in the request for the deviation. The Attorney General opposes the proposition that retail customers should not receive accurate information because of an error made by the Company, and opposes the position that the cost of a corrected notice would cost in excess of \$100,000. A cost benefit analysis with an inflated cost

¹ *KIUC v. Kentucky Utilities Co.*, 938 S.W.2d 493,497(Ky. 1998)(citing, *Mathews v. Eldridge*, 424 U.S 319, 96 S. Ct. 893(1976).

² *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 13, 98 S. Ct. 1554, 1562 (1978), citing (*Mullane v. Central Hanover Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 657 (1950).

³ *In re: Atmos Energy Corporation for an Adjustment of Rates and Tariff Modification*. June 24, 2013, Order (KY PSC 2013-00148).

⁴ *Id.*

cannot be used for a true comparison for the cost to the company and benefit to the ratepayers. Alternative electronic methods can be utilized for the correction, corrections that would not cause the company to incur substantial additional cost. In the same way that most customers access the information for the Company through the website, as indicated in the Commission's last approval for a deviation from the Notice requirements,⁵ the Company has access to most customer's email addresses through the on-line payment submissions. An alternative notice, emailed or other electronic notice, is possible for a least cost alternative to correct the inaccurate information listed in the original notice.

Wherefore, due process requires that a corrected notice be sent, submitted or transmitted electronically, the Attorney General is opposed to a granting of a deviation from the notice requirements, consistent with the arguments presented herein.

Respectfully submitted,

JACK CONWAY
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⁵ *Id.*