BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

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|---|---|---|---|
| In the Matter of the General Investigation into Commission Policy Regarding Pension and Retirement Costs for Investor-Owned Utilities. | ) ) ) ) | 07-GIMX-1041-GIV | |



**STAFF REPORT AND RECOMMENDATION**

The Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively) submits its Report and Recommendation with respect to Commission policy regarding pension and retirement costs for investor owned utilities.

1. On October 17, 2006, in Docket No. 07-ATMG-387-ACT, Atmos Energy Corporation, Aquila, Inc. d/b/a Aquila Networks KGO, Aquila Networks, The Empire District Electric Company, Kansas City Power & Light company, Westar Energy Inc., and Kansas Gas and Electric Company, jointly referred to as "utilities" or "companies", filed an application requesting the Commission issue an accounting authority order (AAO) authorizing the utilities to:

(1) Establish a regulatory asset or regulatory liability to track the difference between the amounts recognized in rates and the pension, postretirement and post employment expenses recorded according to Generally Accepted Accounting Principals (GAAP) as defined in the Statement of Financial Accounting Standards (SFAS) 87, 88, 106, 112, 132 (R).

(2) Recognize for rate making purposes any charges recorded against equity in compliance with SFAS No. 158 and SFAS Nos. 87,88, 106 and 132 (R) as amended through either the establishment of a regulatory asset or an adjustment to the equity percentage in their utility's capital structure.

(3) Recognize for rate making purposes the companies' contributions to their pension, postretirement, and post employment plans in excess of pension, postretirement, and post employment plan expense recorded in compliance with SFAS No. 87, 88, 106, 112, 132 (R), or 158.

2. On December 22, 2006, Staff filed a Report and Recommendation in the 387 docket recommending the Commission approve Request No. 2. Staff recommended the

Commission deny Request Nos. 1 and 3 due to the lack of time to fully evaluate those options, and recommended a general investigation docket to further explore those proposals.

3. On January 24, 2007, the Commission issued an Order approving Request No. 2 and indicated that a general investigation docket should be opened to further consider the provisions of Request Nos. 1 and 3, which were denied by the Commission.

4. On March 29, 2007, the Commission issued an Order that initiated a general investigation docket to further consider Request Nos. 1 and 3.

5. Staff's Report and Recommendation details each of the three requests and is attached as Attachment A and hereby adopted by reference.

**Request No. 1**

6. Request No. 1 would grant the utilities the authority to establish a regulatory asset or liability to track the cumulative difference between pension, postretirement and post employment expenses calculated under GAAP, and the pension, postretirement and post employment expenses included in its cost of service. In a general rate case, the utilities include in its cost of service a component for pension, postretirement and post employment expenses. These costs are recovered through rates charged to consumers until the next rate case. During the time between rate cases, these expenses usually change, but funds received from consumers remain constant. Between rate cases, the utilities have no mechanism to collect the amount of pension, postretirement and post employment costs which are greater than or less than the amount included in the cost of service. Therefore, any change in the utilities' pension, postretirement and post employment expenses between rate cases is absorbed by the utilities.

7. If implemented, Request No. 1 would provide for a regulatory asset/liability account which would record the difference between each year's pension, postretirement and post employment expense and the amount of expense approved in the utilities' most recent rate case.

At the next rate case, the balance of the asset/liability accounts would begin to be amortized over a 5 year period. The amortization would be added or deducted from the test year's GAAP calculated pension, postretirement and post employment costs, and the sum of these would be included in the utilities' cost of service. This mechanism would absolve the utilities of any risk in recovering the pension, postretirement and post employment costs. The consumer would bear the entire responsibility of the pension, postretirement and post employment costs.

8. As noted in Attachment A, Staff believes that although Request No. 1 ensures the utilities' recovery of pension, postretirement and post employment costs, it fails to ensure funding of the pension trust or postretirement trusts. If the consumers are to absorb the risk of funding the utilities' employee benefits, there must be an absolute assurance these funds are earmarked for that purpose. The inclusion of pension, postretirement and post employment costs in the utilities' cost of service does not automatically result in a cash outlay. In fact, it has been common for a company to have no cash outlay for pension, postretirement and post employment costs, but experience a cash inflow from consumers for recovery through the cost of service.

9. Staff recommends approval of Request No. 1 dependent on the provision of mandatory minimum funding equal to the pension, postretirement and post employment costs included in the utilities' cost of service. Staff recommends that each utility be required to establish and place funds provided by rate payers for the company's postretirement and post employment cost in a Voluntary Employee Beneficiary Association trust where the funds are held, managed, and administered independently of the utility. Current cash funding of the employee's retirement benefit and the time value of money will work towards decreasing future costs. Additionally, current funding of these costs can aid in the prevention of steep costs to be included in the company's future cost of service.

**Request No. 3**

10. Request No. 3 would grant the utilities the authority to establish a mechanism to track, between rate cases, company contributions in excess of pension, postretirement and post employment expenses calculated and recorded according to GAAP. Excess contributions would be included in the company's rate base as a component of working capital. If a utility annually contributes an amount greater than the plan year's pension, postretirement and post employment expense, excess contribution would be recorded in a regulatory asset account and be entitled to earn a return on the balance. Though not specifically stated in Request No. 3, it is assumed contributions less than the current pension, postretirement and post employment expense would decrease the regulatory asset account balance.

11. The utilities did not present a proposal for cumulative contributions less than cumulative pension, postretirement and post employment financial accounts costs. The utilities' proposal discusses only a regulatory asset for excess contributions, but failed to specify if the utilities would include as a deduction from rate base any liability resulting from cumulative contributions less than the cumulative pension, postretirement and post employment costs.

12. Staff feels the utilities' proposal lacks symmetry by having the rate payers assume risk while the utilities receive the benefit. The proposal maintains independence between the funds provided by rate payers and the funds contributed by the company. The utilities do not associate the pension, postretirement and post employment costs collected from its inclusion in the cost of service with the funds contributed by the company. The contribution made by the rate payers is not part of the equation. Therefore, Staff believes it may be possible for a utility to collect more than funded and still earn a return on an asset account when the company has not contributed to the amount of funds collected from the rate payers.

13. Staff believes the proposal lacks the connectivity between the utilities' funding decisions and the amount collected through the companies' cost of service. The utilities have discretion as to the annual contributions to the retirement trust funds. The utilities' discretion could be used to manipulate the timing of contributions to achieve maximum return in conjunction with the timing of rate cases. Furthermore, the timing and amount of contribution to the retirement trust fund is a corporate financial decision. This decision is influenced by factors such as tax considerations and the availability of alternative investments that are unrelated to how the pension obligation is incurred. Managers, in the area of pension funding, may use accounting information along with other factors to make financial decisions. Staff feels that utilities may decide to change their funding policies based in part on this accounting information.

14. Staff recommends the Commission deny Request No. 3 based on the reasons set forth in paragraphs 10, 11 and 12.

15. Due to the complexity of the issues presented in this docket, Staff further suggests that the Commission allow the parties 30 days, from the date of filing of this Report and Recommendation, to submit their comments to the Commission.

WHEREFORE, Staff submits the above report and recommendation.

Respectfully submitted,


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) ss.
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## VERIFICATION

Matthew A. Spurgin, being duly sworn upon his oath deposes and states that he is Litigation Counsel for the State Corporation Commission of the State of Kansas, that he has read and is familiar with the foregoing *Report and Recommendation* and that the statements contained therein are true and correct to the best of his knowledge, information and belief.

Matthew A. Spurgin, #20470
Kansas Corporation Commission of the
State of Kansas

Subscribed and sworn to before me this 18th day of March 2009.

PAMELA J. GRIFFETH
Notary Public - State of Kansas
My Appt. Expires 08-17-2011

Pamela J. Griffeth
Notary Public

My Appointment Expires: August 17, 2011

KANSAS
CORPORATION COMMISSION

*Kathleen Sebelius, Governor*
*Thomas E. Wright, Chairman*
*Michael C. Moffet, Commissioner*
*Joseph F. Harkins, Commissioner*

MEMORANDUM
March 18, 2009

| | | |
|---|---|---|
| In the Matter of the General Investigation Into Commission Policy Regarding Pension And Retirement Costs for Investor Owned Utilities | ) ) ) ) | Docket No. 07-GIMX-1041-GIV |

To: Chairman Wright
Commissioner Moffet
Commissioner Harkins

From: Jeff McClanahan, Karen Hull,
Bill Baldry

DATE SUBMITTED TO LEGAL: 03/18/09

DATE SUBMITTED TO COMMISSIONERS: 03/18/09

## Background

On October 17, 2006 in Docket No. 07-ATMG-387-ACT, Atmos Energy Corporation ("Atmos"), Aquila, Inc. d/b/a Aquila Networks KGO, and Aquila Networks (WPK), ("Aquila"), The Empire District Electric Company ("Empire"), Kansas City Power & Light Company ("KCPL"), Westar Energy Inc, and Kansas Gas and Electric Company ("Westar") jointly referred to as "Joint Applicants" filed an application requesting the Commission issue an accounting authority order (AAO) authorizing the Joint Applicants to:

1. Establish a regulatory asset or regulatory liability to track the difference between the amounts recognized in rates and the pension, postretirement and post employment expenses recorded according to Generally Accepted Accounting Principles (GAAP) as defined in the Statement of Financial Accounting Standards (SFAS) 87, 88, 106, 112, 132(R).

2. Recognize for rate making purposes any charges recorded against equity in compliance with SFAS No. 158 and SFAS Nos. 87, 88, 106 and 132(R) as amended through either the establishment of a regulatory asset or an adjustment to the equity percentage in their utility's capital structure.

3. Recognize for rate making purposes the companies' contributions to their pension, postretirement, and post employment plans in excess of pension, postretirement, and post employment plan expense recorded in compliance with SFAS No. 87, 88, 106, 112, 132(R), or 158.

On November 20, 2006, Kansas Gas Service filed, in Docket No. 07-KGSG-496-ACT (496 docket) an application requesting an AAO for identical treatment of pension, postretirement, and post employment costs as requested by other investor owned utilities in this docket. On December 27, 2006, the Commission issued an Order consolidating the 496 docket into the 387 docket. Staff refers to all investor owned utilities in this memorandum jointly as "Utilities".

On December 22, 2006, Staff filed a Report and Recommendation in the 387 docket containing an analysis of the requests filed by the Joint Applicants. Staff recommended the Commission approve Request No. 2. Staff recommended the Commission deny the Joint Applicants' first and third requests due to the lack of time to fully evaluate those options and to open a general investigation docket to further explore the proposals set forth in request Nos. 1 and 3.

On January 24, 2007, the Commission issued an Order approving Request No. 2 allowing the Joint Applicants the opportunity to elect the option of establishing a regulatory asset or adjusting other comprehensive income to absorb the impact of the reporting requirement of SFAS 158. The Commission also indicated that a general investigation docket should be opened to further consider the portions of the Application that were denied by the Commission (Requests 1 and 3).

On March 29, 2007, the Commission issued an Order that initiated a general investigation docket to further consider Requests (1) and (3).

## Analysis

### A. Request No. 1

In Request No. 1, the utilities request authority to establish a regulatory asset or a regulatory liability to track the cumulative difference between pension, postretirement and post employment expenses calculated and recorded under GAAP and the pension, postretirement and post employment expense utilities have included in its cost of service.

Within the context of a general rate case, the utilities include in its cost of service a cost component for pension, postretirement and post employment as computed in accordance with GAAP. These costs are recovered through the rates charged to consumers until the next rate case. During the period between rate cases, the pension, postretirement, and post employment expenses usually changes (due to changes in employees' compensation, number of employees, and interest on the pension and postretirement benefit obligations), but the funds received from consumers remains constant. Any change in the utility's pension and postretirement expense in the years between rate cases is absorbed by the utility. Presently, the utility has no mechanism to collect, between rate cases, the amount of pension, postretirement and post employment costs calculated in accordance with GAAP greater than or less than the amount included in the companies' cost of service.

If Request No. 1 is implemented, the difference between each year's pension, postretirement and post employment expense and the amount of expense approved in the company's most recent rate case would be recorded in the appropriate regulatory asset/liability account. Separate regulatory asset/liability accounts would be established for pensions and postretirement/post employment differences. Each subsequent year's difference would be recorded in the applicable regulatory asset/liability account until the next rate case. At the next rate case, the balances of the asset/liability accounts would begin to be amortized over a period of 5 years. The amortization amount would be added or deducted from the test year's GAAP calculated pension, postretirement and post employment costs and the sum of these would be included in the companies' cost of service. (Appendix A provides an illustration of the accounting and recovery of these costs.)

Approving request no. 1 would provide a mechanism for truing up the difference between pension, postretirement, and post employment plan expenses recognized for financial reporting purposes (GAAP) and the amounts recovered in rates. With the implementation of Request No. 1, the company would be absolved of any risk in recovering the pension, postretirement and postemployment costs. The company will have shifted all risk onto the consumer who will bear the entire responsibility of the pension, postretirement and post employment costs.

Request No. 1, as proposed by the company ensures the company's recovery of pension, postretirement and post employment costs but fails to ensure funding of the pension trust or postretirement trusts. Should the rate payers absorb the risk of funding the utilities' employee benefits, there must be absolute assurance the funds provided by the rate payers are specifically earmarked for that purpose. Unlike a company's costs such as payroll or other operating and maintenance costs that mandate cash payments to the employees or the appropriate vendors, the inclusion of pension, postretirement and post employment costs in the company's cost of service does not automatically result in a cash outlay. The amount of cash payments for pension, postretirement and post employment costs is generally dependent upon outside regulation as mandated by agencies or legislation such as the Employee Retirement Income Security Act (ERISA). In the past, it has been a common occurrence for a company to have no cash outlay for pension, postretirement and post employment costs but experience a cash inflow from ratepayers for recovery through the cost of service. Staff recommends minimum mandatory funding with third party trustees of all monies collected from rate payers for pension, postretirement and post employment benefits.

Required funding of the company's pension, postretirement and post employment costs recovered through the cost of service in the present cannot do anything but lower future pension, postretirement and post employment costs. Current cash funding of the employees' retirement benefits and the time value of money will decrease future costs. Current funding of these costs can aid in the prevention of steep costs to be included in the company's future cost of service. Staff's recommended approval of Request No. 1 is dependent upon the provision of mandatory funding of the pension, postretirement, and post employment costs included in the company's cost of service.

## B. Request No. 3

In Request No. 3, the Utilities are requesting authority to establish a mechanism to track, between rate cases, the contributions in excess of pension, postretirement, and post employment expenses calculated and recorded according to GAAP. Any excess contributions would be included in the company's rate base as a component of working capital. Request No. 3 focuses on capturing the difference between the company's pension, postretirement and post employment expenses for the current year and the company contributions. The dollar amount a company contributes for the current year may be more or less than its current year costs calculated according to GAAP. Request No. 3 assures the company the ability to earn a return on excess contributions.

With Request No. 3, if a utility annually contributes an amount greater than the plan year's pension, postretirement and post employment expenses, the excess contribution would be recorded in a regulatory asset account and be entitled to earn a return on the balance. Though not specifically stated in the companies' proposal, it is assumed contributions less than the current pension, postretirement and post employment expense would decrease the regulatory asset account balance. In addition, the utility companies did not present any proposal for cumulative contributions less than cumulative pension, postretirement and post employment financial accounts costs. The companies discuss only a regulatory asset for excess contributions but failed to specify if the utilities would include as a deduction from rate base any liability resulting from cumulative contributions less than the cumulative pension, postretirement, and post employment costs. (Appendix A provides an illustration of the accounting and recovery of these costs.)

Request No. 3 maintains independence between the funding provided by rate payers and the amount funded by the utilities. The utilities do not associate the pension, postretirement and postemployment costs collected from its inclusion in the cost of service with the funds contributed by the company to the respective retirement plans. The contribution made by ratepayers is not in the equation. It may be possible for a company to collect more than funded and still earn a return on an asset account when the company has not contributed to the funds the amount collected from ratepayers. This proposal lacks symmetry by having the ratepayers assume risk while the company receives the benefit.

The company has discretion as to the annual contributions to the retirement trust funds. The utility's discretion can be used to manipulate the timing of the contributions to achieve maximum return in conjunction with the timing of the utilities' rate cases.

The timing and the amount of contributions to the retirement trust funds is a corporate financial decision, influenced by many factors such as tax considerations and the availability of attractive alternative investments that are unrelated to how the pension obligation is incurred.[1] In pensions, as in other areas, managers may use accounting information along with other factors in making

[1] Financial Accounting Standards Board, Statement of Financial Accounting Standard No. 87, paragraph 81.

financial decisions. Some employers may decide to change their pension funding policies based in part on the new accounting information.[2] Request No. 3 lacks the connectivity between the utilities' funding decisions and the amount collected through the companies' cost of service.

## Recommendations:

1. Approve Request No. 1 with the addition of mandatory minimum funding equal to the pension, postretirement and postemployment costs included in the utilities' cost of service.

One of the requirements a pension plan must satisfy to be a qualified plan is that the utility establish a trust and place all employer contributions in that trust. (IRC Section 401(a)(2)). However, the Internal Revenue Code does not require a company to establish a trust fund for its postretirement and post employment plan as it does for pension plans. (IRC Section 419(e)).

Even though a utility is not required under the Internal Revenue Code to establish and place contributions for its postretirement and post employment plan in a trust, Staff has recommended that each utility be required to establish (if a fund has not already been established) and place the funds provided by rate payers for the company's postretirement and post employment cost in a VEBA (Voluntary Employee Beneficiary Association) trust where the funds are held, managed, and administered independently of the utility. Placing the money funded by rate payers in an independent trust provides greater assurance that the money will be available to pay the company's retiree's benefit claims when they are incurred sometime in the future.

Staff requires annual minimum funding equal to the retirement costs included in the utilities' latest cost of service. This requirement would not preclude a utility to contribute a greater amount; however, the utility would not be granted the opportunity to earn a return on or of excess contributions through rates.

2. Deny Request No. 3.

[2] Financial Accounting Standards Board, Statement of Financial Accounting Standard No. 87, paragraph 83.

## APPENDIX A

## REQUEST NO. 1

The following illustration shows how the pension expense excess (or deficit) accumulates during the years 2008 through 2012 in the regulatory asset account. The illustration assumes Request No. 1 was approved in 2008, and two rate cases were filed over time. The first rate case was filed in 2008 and allowed the 2008 pension expense to be included in rates. The second rate case was filed in 2013 and used 2013 as its test year. An adjustment was made to pension expense for the year 2013 that adds one-fifth of regulatory asset account balance as of December 31, 2012 to the 2013 pension expense.

The concept shown in the following illustration for excess pension expense applies equally to postretirement and post employment expenses.

| | 2008 | 2009 | 2010 | 2011 | 2012 |
|---|---|---|---|---|---|
| Pension Expense | $10,000 | $ 9,000 | $ 7,500 | $11,000 | $13,000 |
| Less: Pension Expense Allowed in Rates | (8,500) | (8,500) | (8,500) | (8,500) | (8,500) |
| Excess (Deficit) Pension Expense | $ 1,500 | $ 500 | $ (1,000) | $ 2,500 | $ 4,500 |
| Regulatory Asset Account Balance | | | | | |
| At the Beginning of the Year | $ -0- | $ 1,500 | $ 2,000 | $ 1,000 | $ 3,500 |
| Excess (Deficit) For the Year | 1,500 | 500 | (1,000) | 2,500 | 4,500 |
| Balance At the End of the Year | $ 1,500 | $ 2,000 | $ 1,000 | $ 3,500 | $ 8,000 |

| | 2013 | 2014 | 2015 | 2016 |
|---|---|---|---|---|
| Pension Expense | $ 13,500 | $ 13,500 | $14,000 | $15,000 |
| Amortization of One-Fifth of the $8,000 | 1,600 | 1,600 | 1,600 | 1,600 |
| Less: Pension Expense Allowed in Rates | (15,100) | (15,100) | (15,100) | (15,100) |
| Excess (Deficit) Pension Expense | $ -0- | $ -0- | $ 500 | $ 1,500 |

| | 2013 | 2014 | 2015 | 2016 |
|---|---|---|---|---|
| Regulatory Asset Account Balance | $8,000 | $ 6,400 | $4,800 | $3,700 |
| Plus: Excess Pension Expense for Current Year | -0- | -0- | 500 | 1,500 |
| Less: Amortization of One-Fifth of the $8,000 | (1,600) | (1,600) | (1,600) | (1,600) |
| | --------- | ---------- | --------- | -------- |
| Balance At the End of the Year | $6,400 | $ 4,800 | $3,700 | $3,600 |

## REQUEST NO. 3

Illustration of Company Contributions to the Employee Pension Plan

| | 2008 | 2009 | 2010 | 2011 | 2012 |
|---|---|---|---|---|---|
| Company Pension Contribution | $12,000 | $12,000 | $12,000 | $11,000 | $ 8,000 |
| Less: Pension Expense | (10,000) | (10,000) | (10,000) | (11,000) | (11,000) |
| Excess (Deficit) Pension Contribution | $ 2,000 | $ 2,000 | $ 2,000 | $ -0- | $ (3,000) |

| | 2008 | 2009 | 2010 | 2011 | 2012 |
|---|---|---|---|---|---|
| Excess Pension Contribution Account Balance At the Beginning of the Year | $ -0- | $ 2,000 | $ 4,000 | $ 6,000 | $ 6,000 |
| Excess (Deficit) Pension Contribution | 2,000 | 2,000 | 2,000 | -0- | (3,000) |
| Balance at the End of the Year | $ 2,000 | $ 4,000 | $ 6,000 | $ 6,000 | $ 3,000 |

| | 2013 | 2014 | 2015 | 2016 |
|---|---|---|---|---|
| Company Pension Contribution | $ 8,000 | $ 13,000 | $ 14,000 | $15,000 |
| Less: Pension Expense | (11,000) | (12,000) | (12,000) | (12,000) |
| Excess (Deficit) Pension Contribution | $ (3,000) | $ 1,000 | $ 2,000 | $ 3,000 |

| | 2013 | 2014 | 2015 | 2016 |
|---|---|---|---|---|
| Excess Pension Contribution Account Balance At the Beginning Of the Year | $ 3,000 | $ -0- | $ 1,000 | $ 3,000 |
| Excess (Deficit) Pension Contribution | (3,000) | 1,000 | 2,000 | 3,000 |
| Balance At the End of the Year | $ -0- | $ 1,000 | $ 3,000 | $ 6,000 |

## CERTIFICATE OF SERVICE

07-GIMX-1041-GIV

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Staff Report and Recommendation was placed in the United States mail, postage prepaid, or hand-delivered this 18th day of March, 2009, to the following:


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## CERTIFICATE OF SERVICE

07-GIMX-1041-GIV

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