BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of a General Investigation Regarding the Acceleration of Replacement of Natural Gas Pipelines Constructed of Obsolete Materials Considered to be a Safety Risk.	))))	Docket No. 15-GIMG-343-GIG

PETITION FOR RECONSIDERATION OF ATMOS ENERGY CORPORATION

Pursuant to K.A.R. 82-1-235, K.A.R. 82-1-230(k), K.S.A. 66-118b and K.S.A. 77-529, Atmos Energy Corporation ("Atmos Energy") respectfully petitions for reconsideration of the Kansas Corporation Commission's ("Commission") September 12, 2017, Final Order in the above captioned docket ("Order") and states:

1. On September 12, 2017, the Commission issued its Order determining there was a public safety need for an alternative ratemaking mechanism that allows gas utilities to recover the cost to accelerate replacement of obsolete pipeline materials. *Order at ¶¶ 78-79*. Atmos Energy commends the Commission on this part of its decision. However, Atmos Energy respectfully seeks reconsideration on two grounds.

2. First, the majority of the Commission rejected the proposals made by Atmos Energy, the other gas utilities and the Commission Staff ("Staff") that were developed in the evidentiary record and crafted its own alternative ratemaking mechanism referred to as an Accelerated Replacement Program ("ARP"). *Order at ¶ 82*. The ARP's conditions, *e.g.* a ten-year replacement structure, lack evidentiary support. Atmos Energy has not been given the opportunity to introduce evidence that demonstrates the alternative ratemaking mechanism approved by the Commission majority is unreasonable, without foundation, and cost prohibitive to customers. Agency rules permit and due

process requires that a hearing on reconsideration be held to consider the evidence proffered by Atmos Energy in **Exhibit A**.

3. Second, the majority's findings that appear to question Atmos Energy's commitment to the provision of safe and reliable service to its customers are not supported by the evidence and are directly contradicted by unchallenged testimony in the record from Staff, the Citizens' Utility Ratepayer Board ("CURB") and Atmos Energy. Atmos Energy is entitled to a reconsideration of those findings and a Final Order consistent with the record evidence that confirms Atmos Energy's commitment to provide safe and reliable service to its customers.

I. AGENCY RULES PERMIT AND DUE PROCESS REQUIRES THE REOPENING OF THE HEARING TO SUBMIT ADDITIONAL EVIDENCE WITH RESPECT TO THE ALTERNATIVE RATEMAKING MECHANISM

A. ATMOS ENERGY HAS GOOD CAUSE TO REOPEN THE RECORD

4. Atmos Energy seeks to reopen the record on reconsideration in order to allow it to present testimony regarding the provisions and conditions in the ARP. Atmos Energy has good cause to do so. K.A.R. 82-1-230(k); *Western Resources, Inc. v. State Corporation Com'n of State of Kansas*, 30 Kan. App. 2d 348, 356, 42 P. 3d 162 (2002). As required by the Kansas Supreme Court, Atmos Energy (1) shows that the additional evidence was either not available or not known to exist at the time of the original hearing; and (2) briefly states the non-cumulative nature and purpose of the evidence. K.A.R. 82-1-235(f); *Western Resources, Inc.*, 30 Kan. App. 2d at 356.

5. Atmos Energy's non-cumulative proffered testimony is briefly outlined in **Exhibit A**, incorporated herein by reference. The testimony's purpose is to confirm that the ARP's conditions lack evidentiary support for furthering the Order's stated purpose of accelerated proactive replacement of obsolete pipe under a systematic plan that provides for both ratepayer protections and the timely

recovery of the costs of replacing said obsolete pipeline materials.[1]

6. For example, the Order contemplates that an accelerated replacement plan should protect ratepayers from cost-prohibitive increases. *Order at ¶ 85*. Without developing an evidentiary record in support, the ARP arbitrarily requires replacement of all steel main and service lines in Class 3 locations over a ten year period even though, for example, Staff Witness Haynos described a 30-year replacement period for all obsolete pipe as "an aggressive pace." *Haynos Direct Test. at p. 12*. Atmos Energy proffers to show that the rate increase required under a ten-year replacement structure makes using the ARP as proposed untenable for Atmos Energy's customers.

7. The ARP also lacks evidentiary support that it can be practically implemented. Atmos Energy proffers testimony in **Exhibit A** that a ten-year replacement period is likely to be physically impractical due to available resources. **Exhibit A** also questions the ability of transportation infrastructures to absorb the sustained work required over a compressed ten-year time period. Atmos Energy also proffers testimony that using the Class 3 location as the sole factor in prioritizing replacement of obsolete pipe, instead of using the utility's prioritization model (that includes location as one of its factors) is not the best option to meet public safety.

8. Moreover, as confirmed by Commissioner Albrecht, in her concurrence in part and dissent, several of the pre-conditions placed on the use of the voluntary ARP mechanism by the majority lacked proper evidentiary support and may be inconsistent or contrary to the Commission's stated objectives. Atmos Energy seeks to reopen testimony on each of these pre-conditions:

(1) the ARP will only apply to expenditures for replacement of obsolete

[1]*See*, Moody's Investor Services' Issue Comment dated September 22, 2017, "Cap on Cost Recovery of Pipe Replacements–Credit Negative for Kansas Utilities," where it indicates the ARP mechanism places gas utilities in a difficult position since the program is far from sufficient to cover all of the necessary investment to meet the stated goal and is unlike other accelerated pipeline replacement programs that exist in over 40 states.

infrastructure that exceed current expenditures as defined by the majority as the average replacement expenditures for years 2014, 2015, and 2016. *Paragraph 88 of Order*.

(2) the ARP will only be available to those gas utilities that can provide a 10-year programmatic replacement of all of its bare steel service/yard lines and all of its bare steel mains in Class 3 locations. *Paragraph 91 of Order*.

(3) the amount to be recovered under the ARP shall be limited to 40 cents per customer per month coupled with the 10-year replacement requirement. *Paragraph 89 of Order*.

9. As a result, Atmos Energy believes that the Final Order, without the benefit of reopened testimony related to the ARP, lacks proper evidentiary support, and is therefore, unreasonable and arbitrary and capricious in violation of K.S.A. 77-621(c)(7) and (8). *See, Zinke & Trumbo, Ltd. v. State Corporation Commission of State of Kansas*, 242 Kan. 470, Syl. 6, 749 P. 2d 21 (1988)(an agency order is unreasonable when it is not supported by substantial competent evidence in the record); *Home Telephone Co., Inc. v. State Corporation Commission of the State of Kansas*, 31 Kan. App. 2d 1002, 1011-1013, 76 P.3d 1071 (2003).

B. DUE PROCESS REQUIRES RE-OPENING TESTIMONY

10. Contrary to due process, the Final Order limits the right to present evidence related to the efficacy of the ARP only to utilities who seek Commission approval to participate in the ARP (a participating utility). *Order at ¶ 49, footnote 345*. The Order contemplates that a utility must first agree to participate in the ARP, which includes agreeing to a number of burdensome conditions, and only then may seek an undefined limited waiver if it can demonstrate that it cannot meet the objectives of the program because of physical impracticalities or financial constraints imposed by the ARP. *Id*. Atmos Energy proffers to introduce such testimony now before the ARP goes into effect, and due process requires that it be able to do so.

11. As the Commission is aware, the constitutional guaranty of due process of law applies to administrative proceedings. *Suburban Medical Center v. Olathe Community Hospital*, 226 Kan. 320, 330, 597 P. 2d 654 (1979); *Mobil Exploration & Producing U.S. Inc. v. State Corp. Com'n of State of Kansas*, 258 Kan. 796, 821, 908 P. 2d 1276 (1995). The Kansas Supreme Court in the *Olathe Community Hospital* case explained the due process rights that attach to an administrative proceeding as follows:

> A full hearing at which every party has the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts, is essential for wise and just application of the authority of administrative agencies..." (quoting the text in 2 Am. Jur. 2d, Administrative Law, section 397, page 202). In speaking of due process requirements, the United States Supreme Court, in *Int. Com. Comm. v. Louis. & Nash. R. R.*, 227 U.S.88, 93, 33 S.Ct. 185,187, 57 L. Ed. 431, said: 'All parties must be fully apprised of the evidence submitted or to be considered, and must be given an opportunity to cross-examine witnesses, to inspect documents and to offer evidence in explanation or rebuttal. In no other way can a party maintain its rights or make its defense. In no other way can it test the sufficiency of the facts to support the finding...' *Olathe Community Hospital*, 226 Kan. at 330-331.

12. Before the ARP mechanism is made final in this docket, Atmos Energy has a due process right to present its additional evidence in a hearing and the right to cross examine the witnesses of any party who has a contrary position. Atmos Energy respectfully submits that if the majority decides not to grant a hearing on reconsideration so it can consider Atmos Energy's additional evidence and lets its conclusions stand, then the majority's decision is not based upon reasoned decision making and, is therefore, arbitrary and capricious.

II. THE MAJORITY'S FINDINGS THAT "THERE IS SUFFICIENT EVIDENCE TO GIVE THE COMMISSION THE CONCERN THAT ATMOS' SYSTEM MAY BE AT IMMINENT RISK OF CATASTROPHIC FAILURE" AND THAT ATMOS ENERGY "PLACES A HIGHER EMPHASIS ON SHAREHOLDER PROFITS THAN THE SAFETY OF ITS KANSAS RATEPAYERS" ARE UNSUPPORTED BY AND IN DIRECT CONFLICT WITH THE EVIDENCE IN THE RECORD AND ARE INCONSISTENT WITH THE COMMISSION'S OWN CONCLUSIONS

13. As stated, an agency order is unreasonable and can be overturned on appeal when its findings are not supported by substantial competent evidence from the record. *Zinke & Trumbo, Ltd.*, 242 Kan. at Syl. 6. In the present case, the majority made the following findings that challenged Atmos Energy's commitment to providing safe and reliable safety to its customers:

> There is sufficient evidence to give the Commission the concern that Atmos' system may be at imminent risk of catastrophic failure. *Order at ¶ 73*.

> Atmos Energy places a higher emphasis on shareholder profits than the safety of its Kansas ratepayers. *Order at ¶ 77*.

These findings are not supported by substantial competent evidence from the record, and are therefore, unreasonable. Atmos Energy respectfully requests that the majority reconsider and issue an Order without these unsupported findings.

A. ATMOS ENERGY'S GAS DISTRIBUTION SYSTEM IS SAFE

14. The evidence in the record confirms that none of the gas distribution systems in Kansas, including Atmos Energy's system, are in imminent danger of catastrophic failure.

15. A determination of whether a gas utility distribution system is safe must be decided by an expert, and all experts in this case opined that the Atmos Energy's system was safe.

16. The Staff's report and recommendation authored by Chief Engineer Leo Haynos and filed on February 2, 2015, in this docket, which was admitted into the record as Exhibit GLS-3, included the following opinions from Mr. Haynos confirming the safety of the systems:

> a. "Regular leak surveys and ongoing pipe replacement projects indicate the pipeline systems in Kansas are not in imminent danger of failing." *Staff Report and Recommendation, page 2, Exhibit GLS-3*.

> b. "Current surveillance and replacement programs required by Kansas Pipeline Safety Regulations indicate the natural gas pipeline systems in Kansas are not in imminent danger of catastrophic failure." *Staff Report and Recommendation, page 3, Exhibit GLS-3*.

c. Mr. Haynos testified that "with respect to the threat to public safety for leaking gas pipelines, the leakage history reported by the LDC's does not indicate there is an imminent danger of catastrophic pipe failure in Kansas..." *Haynos Direct, page 3, lines 1-3*.

17. Mr. McGee, the engineer retained by CURB in this case, provided a similar expert opinion that the gas distribution systems in Kansas, including Atmos Energy's system, do not pose a dangerous condition:

> Q. Do the percentages of obsolete metallic and obsolete plastic materials indicate a dangerous condition in the piping systems of any of the three Kansas Companies?
>
> A. (Mr. McGee): No, not now. As will be shown in the following section covering each Company's operating history, the Companies are managing current piping problems well, as evidence by generally declining leak rates. *McGee Direct Testimony, page 10, lines 11-13*.
>
> (Mr. McGee): all three of the Companies have managed their leak repairs in an effective, responsible manner. *McGee Direct, page 12, line 22*.
>
> Q. After viewing the general declines in the number of leak repairs on both mains and service lines, do you conclude that each of the three Companies has been successfully managing leaks in its system?
>
> A. (Mr. McGee): Yes. *McGee Direct Testimony, page 14, lines 1-5*.
>
> Q. What do the trends in Kansas incidents and their severity tell us about the operations of Kansas Utilities?
>
> A. (Mr. McGee): The decreases are evidence that the major Kansas utilities have been successfully managing the safety of their systems. This indicates that leak repair and pipe replacement activities (as well as other Company safety programs such as damage prevention) at these utilities have been sufficient to markedly reduce the rate of incidents over the past forty-five years. *McGee Direct, Testimony, page 17, lines 12-17*.
>
> (Mr. McGee): Eventually all pipes have to be replaced. I think the proper time for extensive, accelerated replacement program is when things are getting bad, when the system is getting worse. And the

> indicators that I've shown indicates that things are getting better. They are not getting worse. So I'm not convinced that these types of programs should be enacted at this particular time. *McGee, Vol. I, Tr. 112*.

18. Two Atmos Energy engineers, Mr. McDill and Mr. Paige, provided expert testimony without contradiction that Atmos Energy's system is safe. *See*, **Exhibit B**, incorporated by reference. The Commission acknowledged this testimony at paragraph 19 of its Order and made no findings to challenge expertise or credibility of these witnesses as to their expert opinions.

19. The majority points to the following facts to support their conclusion that Atmos Energy's system is unsafe:

> (a) Atmos Energy's system has a large amount of obsolete pipe, some of which has been in use between 50 and 75 years.
>
> (b) Under Atmos Energy's current replacement rate, the estimated replacement of its entire obsolete pipe inventory is 187 years.
>
> (c) The number of Atmos Energy's known system leaks scheduled for repair, including leaks due to corrosion, increased between 2011 and 2014.
>
> (d) Atmos Energy has recently replaced less steel service lines than the other two gas utilities.

Order, pages 34-35, paragraphs 73-75. Each engineering expert in the case considered these facts in their proper context along with all other relevant facts and each concluded that Atmos Energy's system was safe.

20. The additional uncontroverted facts that cannot be ignored and must be considered and accounted for before reaching a decision on whether Atmos Energy's system is safe, and which were not taken into account by the majority, are:

> (a) All of the engineering experts testified that obsolete pipe is pipe that was used in the past as the industry standard, but is no longer used because there is now pipe made of materials that are safer to use and less likely to leak. Mr. McGee

defined obsolete pipe as follows:

> The word obsolete means that the materials were state-of-the-art materials for gas piping at the time they were installed, and consist of various metals and plastics. However, over the decades, new materials have been developed that have superior characteristics (e.g., longer life, less susceptible to corrosion). Today, when a gas company installs new piping, it uses only the newest types of materials. Older materials that are still a part of piping systems but are considered unsuitable for installation today are referred to as obsolete materials. *McGee Direct, pages 2-3*.

(b) All of the expert engineers testified that the fact that all of the distribution systems contain significant amounts of pipe made of obsolete materials does not make those systems unsafe.

(c) What those experts indicated, instead, was that replacement of obsolete pipe with pipe made from newer materials would result in a safer system. The point made by all of the expert engineers in this case, was that all of the distribution systems in Kansas are currently safe, but the cumulative effects of age and environment will make them less safe as time goes by. Accelerated replacement of pipe made of obsolete materials is needed to ensure these systems remain safe. Where the majority erred in making its finding about the safety of Atmos Energy's system was that all of the discussion of risk in this docket was forward looking and based upon the premise that risk will increase as time goes by. Looking at all of the systems as they are currently operated, all of the engineering experts unequivocally opined that all the systems in Kansas are currently safe.

(d) None of the engineering experts testified that the existence of pipe made of the obsolete materials was the result of imprudence. This is because, as stated by Mr. McGee, at the time the pipe was installed by the utility it was made of materials that were the standard in the industry.

(e) All of the engineering experts testified that all of the gas utilities, including Atmos Energy, have adequate priority risk evaluation models to manage replacement of problematic materials.

(f) All of the engineering experts testified that all three gas companies have managed their leak repairs in an effective, responsible manner. Mr. Haynos indicated that regular leak surveys and ongoing pipe replacement projects indicate the pipeline systems in Kansas are not in imminent danger of failing. He also indicated that the current surveillance and replacement programs required by Kansas Pipeline Safety Regulations indicate the natural gas pipeline systems in Kansas are not in imminent danger of catastrophic failure.

When the facts identified by the majority in paragraphs 73-75 are considered in the context

of the other above-mentioned facts and opinions provided by the expert engineers in this case, the facts relied upon by the majority do not support a conclusion that Atmos Energy's system is unsafe.

21. At paragraph 76 of its Order, the majority stated the Commission takes Atmos Energy "at its word and agrees that its current pace of replacement is unreasonable and places its customers' safety at an unacceptable level of risk" and suggested that Atmos Energy's "minimal replacement levels" demonstrated a lack of commitment to operational safety. The majority not only grossly mischaracterized what Atmos Energy told the Commission in this case, but their statement regarding Atmos Energy's replacement levels of obsolete pipe and insufficient investment in its system is simply not true and is directly contradicted by the Commission's own Staff witness. Mr. Grady who provided the following testimony in this case:

(a) Mr. Grady: Both of those utilities [Atmos Energy and Black Hills Energy] on a per capita basis are spending a significant amount of capital expenditures relating to system integrity, safety, replacement of their systems. It's a significant percentage on a pro forma basis. *Grady, Vol. II, Tr. 342.*

(b) Mr. Grady: You know, the issue that we are facing or that the three gas utilities are facing and I would say KGS to a slightly lesser extent -- but this is an issue of it's just the math. It's just the magnitude of what we're looking at. I'm going to use Atmos as an example because it is the easiest example. It's the largest, the most significant challenge that is being faced. So Atmos' incumbent level of capital expenditures now, $17 million a year on average -- the numbers are attached to our testimony. You can see how that has accelerated over the last five or six years or so, but it's significant. But $17 million a year, they are allowed to recover from the GSRS $7 million a year. That is not their total cap ex. Their total cap ex is around $22 million. So we are talking about significant percentage of total cap ex. This is to replace the system at 187 years. That's nothin' correct? That is almost three times what they are allowed to collect from GSRS. What they have identified, what Mr. Haynos has recommended is a good idea, is doubling that current level, $17 million more per year for 35 years. So the level for cap ex is, is simply -- it's the math. It's the financial pressure that results that would place Atmos' financing, on their -- all of their financial results will require, all other things being

> equal, that level of cap ex is enough to support a base rate filing every 18 months. That's why Atmos is filing rate cases that frequently. And I looked at that issue in depth in the last rate case. I examined it with a fine tooth comb. And the result that I came out with was I see now why they are filing rate cases so frequently, even though we are asking them not to. I came away with the conclusion that if they accelerate the level of capital expenditures that it looks like they should, fiduciary responsibility to their shareholders is going to require that they file more frequent rate cases. That's my conclusion, but that is an inevitable result. Atmos is again the most extreme example of that, but Black Hills is similar. I mean Black Hills is allowed to recover $8.8 million through the GSRS. They are already spending $11 million. I think the testimony is they are recommending doubling that, just safety-related investment allowed through the GSRS. When that occurs, absent some other major offsetting impact, financial impact, that will drive them to file more frequent rate cases to get back to the investors. Just the regulatory compact requires it. Their management won't be allowed to not file the rate cases. The financial pressure will be too much. So that is really the question before the Commission. I don't think the question is should we do this. I thought about that yesterday, and we should. The question is really alternative ratemaking mechanisms or rate base cases. That is not suggesting it's the end of the world if we do general rate cases. That's my job and my Staff's job. I think we do them quite well. We'll continue to do them if that's the Commission's desire that we need to do rate cases. I'm just suggesting there might be an alternative. *Grady, Vol. II, Tr. 339-342.*

Mr. Grady's testimony, which supported the testimony presented by Atmos witness Gary Smith on this subject, and which is summarized in **Exhibit C** to this Petition and incorporated herein by reference, demonstrates that it is untenable for the majority to conclude that Atmos Energy is not committed to making the investment in its distribution system necessary to make it safer for its customers.

22. It is also untenable for the Commission to have suggested in its Order that gas utility customers in Kansas have somehow been financially harmed by the gas utilities' previous pace of replacement of obsolete pipe; that gas utilities have somehow been imprudent in the pace of such replacement; and therefore, that implementing an alternative ratemaking mechanism allowing them

to recover their costs should be accompanied by a financial penalty because customers have been harmed by the absence of a more aggressive replacement program. This finding is not supported by substantial competent evidence and in fact is contrary to the testimony submitted by the Commission Staff's witness Mr. Haynos during the hearing. Mr. Haynos correctly pointed out that customers have actually benefitted from that approach. Mr. Haynos testified:

> The fact that the pipe has lasted this long is a benefit to the customer, though. You know, you can replace pipe and keep it really safe if you replaced it every five years. But it would be really expensive in that hypothetical situation. **So there has been a benefit that has been gained by the fact that we were able to keep this system this long**. In my testimony I point out there's two parts to the risk equation. There's, there's predictive or possibility of risk meaning is the pipe old? Is it going to leak? There is also you have a consequence factor in a risk component. The consequence is by doing more frequent leak surveys, by patrolling the system more frequently, by replacing pipe through the sector program that we have had, you reduce the possibility of that leak when it does occur. (Emphasis added). *Haynos, Vol. I, Tr. 198-199.*

This point made by Mr. Haynos in his testimony was the primary theme of CURB in this case. Mr. McGee testified that customers derive a financial benefit from a gas utility extending the useful life of its obsolete pipe by doing more frequent leak surveys and patrolling the system more frequently so that replacement can be reasonably delayed. *McGee Direct Testimony, page 5*. Any suggestion by the Commission that the gas utilities were imprudent in the pace of replacement, that this approach resulted in harm to customers and therefore, should incur some financial penalty, is unsupported by the record.

B. SAFETY IS ATMOS ENERGY'S HIGHEST PRIORITY

23. Finally, the Commission's suggestion that Atmos Energy cares more about shareholder profits than customer safety with regards to replacement of obsolete materials in its system is completely contrary to the record in this proceeding. First, Atmos Energy witnesses McDill, Paige and Smith all testified, repeatedly, that Atmos Energy considers safety as its primary mission.

Second, multiple witnesses, including Staff witness Haynos, testified that Atmos Energy's prioritization system for the replacement of pipe is appropriate and effective. In fact, Staff witness Haynos testified that all three company's prioritization systems were similar and would produce similar if not identical results for any particular set of prioritization analyses. Third, the fact that Atmos Energy has pursued an effective means of cost-recovery associated with its accelerated replacement of obsolete system materials provides no grounds upon which to conclude that it is more interested in shareholder profits than customer safety. To the contrary, that is the entire point of this docket, as evidenced by the Commission adopting an accelerated cost recovery mechanism. Moreover, the Commission's own Staff witness Grady testified at length regarding the regulatory compact and the need to provide for reasonable recovery of costs associated with increased capital investment in pipeline remediation and concluded that such recovery was constitutionally required and that the Commission had a choice between traditional rate cases or an alternative accelerated cost-recovery mechanism such as the SIP mechanism agreed to by Staff, CURB and Atmos Energy (which Mr. Grady preferred) in Atmos Energy's 2015 rate case to achieve that end. Finally, the evidence demonstrating the adoption of alternative accelerated cost-recovery mechanisms in 38 states and the industry literature attached as exhibits to Mr. McDill's direct testimony, which includes policy pronouncements and directives from the Secretary of Transportation, the FERC, and NARUC (among others) all address the necessity of promoting effective cost-recovery as part of the accelerated replacement of obsolete pipeline materials. Notwithstanding the ubiquitous nature of the linkage of these two issues (KGS and Black Hills took exactly the same positions and made the same linkage), the Commission reached the unwarranted conclusion that Atmos Energy's suggestion that both issues were linked somehow evidenced the Company's belief that shareholder profits were a higher priority

than customer safety. Atmos Energy strongly rejects that suggestion and contends that it is utterly unsupported in the record and contrary to the evidence.

For the reasons set forth herein, Atmos Energy respectfully requests reconsideration of the Order.

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VERIFICATION

STATE OF KANSAS)
)ss:
COUNTY OF FRANKLIN)

James G. Flaherty, of lawful age, being first duly sworn on oath, states:

That he is the attorney for Atmos Energy Corporation, named in the foregoing Petition for Reconsideration, and is duly authorized to make this affidavit; that he has read the foregoing Petition, and knows the contents thereof; and that the facts set forth therein are true and correct.

James G. Flaherty

SUBSCRIBED AND SWORN to before me this 27th day of September, 2017.

NOTARY PUBLIC - State of Kansas
RONDA ROSSMAN
My Appt. Exp. 5/25/2018

Notary Public

Appointment/Commission Expires:

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was sent via U.S. Mail, postage prepaid, hand-delivery, or electronically, this 27th day of September, 2017, addressed to:

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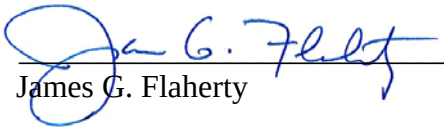

James G. Flaherty

BRIEF SUMMARY OF PROFFERED TESTIMONY TO BE PRESENTED AT A HEARING ON RECONSIDERATION

I. The Commission's conclusions relating to system safety and commitment to system integrity, safety and reliability.

A. In its Order, the Commission reached unreasonable conclusions about the integrity, safety and reliability of Atmos Energy's system and the utility's commitment to safety. The purpose of this docket was entirely focused on determining if there was a public safety need for an alternative ratemaking mechanism that would allow the three gas utilities to recover cost to accelerate replacement of obsolete pipeline materials. This docket was set up as a collaborative effort between the gas utilities, Staff and CURB. This docket was never about determining whether Atmos Energy's systems are safe or whether Atmos Energy was committed to system integrity, safety and reliability. Atmos Energy was not provided an opportunity to present all evidence that would need to be taken into account before such conclusions could be made. If granted a hearing on reconsideration, Atmos Energy would expect to provide testimony on the many factors that would have to be reviewed and considered before a reasonable conclusion about Atmos Energy's gas systems' integrity and safety could be made by the Commission.

II. Replacement of all bare steel main and service lines in Class 3 locations over a compressed 10-year period would result in significant rate increases to customers and would not achieve goal of balancing rate impact to customers and timely replacement of obsolete pipe.

A. On rehearing, Atmos Energy will show that estimated cost, based upon most recent updated construction prices, to replace all bare steel main and service lines in Class 3 locations is approximately $300-$500 million, which would translate into an estimated annual rate increase between $4.0 and $7.5 million and increasing each year for each of the next ten years for such replacement. This level of annual increase would be between 5 and 10 times the $0.40 per residential customer cap.

B. On rehearing, Atmos Energy can provide breakdown of costs by pipe and class location. Atmos Energy submits that the estimates are provided to give the Commission the magnitude of the rate impact on customers under the compressed time period to complete replacement of the bare steel pipe. Atmos Energy reserves the right to refine the above-stated numbers if granted the opportunity to present such information at a hearing on reconsideration.

III. Replacement of all bare steel main and service lines in Class 3 locations over a 10-year period would result in disruption of roads, facilities, etc. because of the amount of construction that would be required within the compressed time frame and that such disruption would not promote the public interest.

A. On rehearing, Atmos Energy would expect to present testimony explaining the strain the 10-year compressed construction period would have on Atmos Energy's relationship with local governments and residents in the communities that it provides gas service. This would include strain caused by (i) the disruption of roads and facilities caused by the level of construction; (ii) the impact such would have obtaining the necessary local construction and other permits; (iii) the availability of local and state inspectors to review the level of construction and (iv) the increase in locates for underground facilities.

IV. Replacement of all bare steel main and service lines in Class 3 locations over a 10-year period would also result in a strain on the availability of resources, including the ability to obtain enough qualified contractors and construction crews at reasonable rates to complete the replacement within the compressed time frame and could unnecessarily increase the cost of replacement.

A. On rehearing, Atmos Energy would expect to present testimony explaining how the compressed replacement period could unnecessarily increase cost of replacement in order to obtain (i) qualified construction crews; and (ii) qualified pipeline safety inspectors.

V. The Class 3 location factor included in the ARP mechanism should not be the only indicator that determines the prioritization of replacement of obsolete pipe. Instead, gas utilities should continue to use their prioritization models to prioritize replacement of all bare steel pipe.

A. On rehearing, Atmos Energy will provide testimony explaining why the Class 3 location factor included in the ARP mechanism should not be the only indicator that determines the prioritization of replacement of obsolete pipe. Atmos Energy will show that its prioritization model, which uses 21 indicators to rank risk including location, will best identify which pipe should be replaced.

B. On rehearing, Atmos Energy would also show how the Class 3 location factor contained in the ARP mechanism does not consider the fact that smaller Kansas communities, some of which were acquired by Atmos Energy at the request of the Commission's pipeline safety staff, may have higher risk scores with respect their bare steel mains and service lines, but would not qualify under the ARP mechanism because they are located in a Class 2 and not Class 3 location. Use of Atmos Energy's 21 indicator prioritization model would account for pipe that would have a higher risk ranking in Class 2 locations.

VI. The combination of (i) the $0.40 ARP charge; (ii) rate moratorium; (iii) abbreviated rate case filing; and (iv) the requirement that the ARP only cover investment that exceeds 2014-2016 average investment made by Atmos Energy; will not allow Atmos Energy to timely recover cost of replacing all bare steel main and service lines in Class 3 locations in the compressed 10-year period, making the ARP unworkable and requiring Atmos Energy to file frequent rate

cases if a 10-year time frame is required to be included in Atmos Energy's plan.

A. On rehearing, Atmos Energy can provide testimony and schedules showing how pre-conditions to using the ARP will make the ARP mechanism unworkable and will require frequent rate case filings to allow for a more timely recovery of the amount of investment that would need to be made in the compressed 10-year time period.

VII. Testimony regarding changes to leak surveys and reporting requirements relating to leaks ordered by the Commission.

A. On rehearing, Atmos Energy would request the opportunity to present evidence with respect to the Commission's decision to make changes to the frequency in which leak surveys are conducted and new reporting requirements relating to leaks. Atmos Energy has no objection to preparing and presenting a plan for Commission approval to increase the number of leak surveys on obsolete pipe and the additional reporting requirement to file annual lost and unaccounted for gas sub-categorized by city over 10,000 customers. However, if given the opportunity at a hearing on reconsideration, Atmos Energy would expect to provide testimony on how such information would best be used for safety and integrity purposes.

EVIDENTIARY SUMMARY
Docket Number 15-GIMG-343-GIG

Final Order, Paragraph 73

Record Testimony Supporting Finding that Atmos Energy's System is Safe.

Testimony Citation		Description/ Statement
McDill Direct p. 8, l. 21 - p. 9, l. 1	Q.	Is Atmos Energy's pipeline system in jeopardy?
	A.	No. Atmos Energy's natural gas pipeline system in Kansas is not in imminent danger of catastrophic failure.
McDill Direct p. 9, l. 5-11	Q.	Is the Atmos Energy pipeline system in Kansas safe?
	A.	Yes. We are very proud that, overall, our system has proven to be safe and reliable. While no one can guarantee there will never be an incident, we can and do monitor and inspect our system, identify risks, and implement remedies when appropriate. . .Atmos Energy must remain vigilant in monitoring, inspecting, maintaining, and improving the system. Failure to do so will inevitably lead to a less safe system.
McDill Direct p. 9, ll. 17-19		Atmos Energy's goal is to work with our regulators to implement a safety program that best serves the interests of our customers, the communities in which they live, and the Kansas public.
McDill Direct p. 12, ll. 3-9	Q.	Has the Commission Staff offered an opinion on the importance of acceleration of replacement of pipelines in the general investigation?
	A.	Yes. On February 2, 2015, the Staff issued a memorandum to the Commission recommending the initiation of General Investigation. The Staff's memorandum stated on page 2: Regular leak surveys and ongoing pipe replacement projects indicate the pipeline systems in Kansas are not in imminent danger of failing.
McDill Direct p. 15, l. 10		FERC policy statement on cost-recovery mechanisms for pipeline remediation states "...aging pipelines are not inherently risky..."

Paige Direct p. 2, l. 21 - p. 3, l. 2		Atmos Energy believes the accelerated replacement of this aging and potentially fragile pipe over a 35 year timeframe strikes the right balance between increased safety for the community, our customers and property and ensuring rates continue to be reasonable for customers.
Paige Rebuttal p. 9, ll. 1-3	Q.	Does Atmos Energy agree that its Kansas distribution system is safe?
	A.	Yes.
Paige Rebuttal p. 11, ll. 18-22	Q.	Do the relatively high percentages of bare steel and early generation plastic pipe indicate that the Company's Kansas distribution system is not safe?
	A.	No. As was previously stated in both my and Mr. McDill's direct testimonies, the operating history of the Atmos Energy Kansas distribution system illustrates that the system is safe.
Smith Direct p.7, l. 21-p.8, l. 3	Q.	Is Atmos Energy's Kansas pipeline system in immediate jeopardy?
	A.	No, Atmos Energy's pipeline system in Kansas is not in imminent danger of failure. However, as pipe ages the risk of failure becomes greater. Prolonging the replacement of undesirable pipe increases the chance of catastrophic failure.
Smith Direct p. 8, ll. 8-14	Q.	Is Atmos Energy's Kansas pipeline system safe?
	A.	Currently, yes. Atmos Energy is proud that our system has proven to be safe and reliable. While no one can guarantee there will never be an incident, Atmos Energy works diligently to monitor and inspect the Company's system, identify risks and implement remedies in compliance with both industry best practices and federal safety requirements. Our requests in this docket for implementation of the SIP mechanism is aligned and consistent with the goal of continued pipeline safety and reliability.
Exh. GLS-3 p.3	Staff Report - "...current surveillance and replacement programs required by Kansas Pipeline Safety Regulations indicate the natural gas pipeline system in Kansas is not in imminent danger of catastrophic failure."	

Haynos Direct p.3, ll.1-7		With respect to the threat to public safety from leaking gas pipelines, the leakage history reported by the LDC's does not indicate there is an imminent danger of catastrophic pipe failure in Kansas. . . At some point, the ongoing deterioration of this infrastructure will make pipe replacement an absolute and immediate necessity in order to provide safe and reliable natural gas service.
Haynos Direct p.6, ll. 11-16	Q.	Do the LDCs have appropriate pipe replacement prioritization schemes that satisfy DIMP requirements?
	A.	Yes. In testimony filed in this Docket, the LDCs discuss their respective pipe replacement prioritization methodologies. From the testimony presented, I believe the LDCs have adequate procedures to analyze the safety risks of their operation and prioritize pipe replacement based on that risk analysis.
Haynos Direct p.12, ll. 16-18		As I noted earlier in my testimony, all of the LDCs have adequate replacement prioritization methodologies that focus on replacing the pipe that presents the highest safety risk first.
Haynos Direct p. 16, ll. 21-22		...[T]he number of pipeline leaks in Kansas is lower than the national average...
McGee Direct p.10, ll. 8-13	Q.	Do the percentages of obsolete metallic and obsolete plastic materials indicate a dangerous condition in the piping systems of any of the three Kansas Companies?
	A.	No, not now. As will be shown in the following section covering each Company's operating history, the Companies are managing current piping problems well, as evidenced by generally declining leak rates.
McGee Direct p.12, l. 22		...[A]ll three of the Companies have managed their leak repairs in an effective, responsible manner.
McGee Direct p. 14, ll. 1-5	Q.	After viewing the general declines in the number of leak repairs on both mains and service lines, do you conclude that each of the three Companies has been successfully managing leaks in its system?
	A.	Yes.

McGee Direct
p. 17, ll.12-17

Q. What do the trends in Kansas incidents and their severity tell us about the operations of Kansas Utilities?

A. The decreases are evidence that the major Kansas utilities have been successfully managing the safety of their systems. This indicates that leak repair and pipe replacement activities (as well as other Company safety programs such as damage prevention) at these utilities have been sufficient to markedly reduce the rate of incidents over the past forty-five years.

McDill Cross
T. Vol 1, p.42-43

Q. Is the Atmos Kansas Gas system currently safe and reliable?

A. Yes.

Q. Is the safety and reliability of the system due in part to the proactive monitoring and inspecting of the Atmos system, the identification of costs - risk, I'm sorry, and taking appropriate remedial action?

A. Yes.

McDill Cross
T. Vol. 1, p.43

Q. Regardless of whether or not the Commission approves Atmos' SIP, is there any reason to believe that Atmos would not continue to monitor and inspect its system, identify risk and take appropriate remedial action?

A. No.

McGee Cross
T. Vol 1, p.103

Q. Would you agree that a prudent pipeline owner would plan for the ultimate replacement of obsolete materials on its system, understanding that we might disagree about when that should occur?

A. That is a valid point. Yes, there is a time to prepare. And I think my testimony states possibly now is not the time to launch a massive, expensive replacement program because of the testimony that I've submitted.

McGee Cross
T. Vol. 1, p.112

...[E]ventually all pipes have to be replaced. I think the proper time for extensive, expensive, accelerated replacement program is when things are getting bad, when the system is getting worse. And the indicators that I've shown indicates that things are getting better. They are not getting worse. So I'm not convinced that these types of programs should be enacted at this particular time.

Paige Commission Questions - Albrecht T. Vol. 1, p. 174-181	Description of Atmos prioritization tool used to address problematic pipeline segments. "...[W]e are all going to prioritize the projects and identify those, that should occur first that mitigate the risk to the public and improve public safety."
McDill Commission Questions - Apple T. Vol. 1, p.194	Q. In the testimony that I've read, it says that everyone has a safe system. Yet it contains obsolete pipe. And now I'm hearing that obsolete pipe is a high risk. A. Yeah, I'm using - certainly that's the way the Department of Transportation has characterized that in the Call to Action that, you know, these material pipes have had known failures in the industry. We do think our system is safe. However, there may be conditions that exist in our system or which we do not know about because some of the examples we submitted into evidence that were discovered in a leak survey where we found conditions that we did not know about at the time. And, yeah those are materials that we had proposed to be part of our system integrity program.
McDill Commission questions - Apple T. Vol. 1, p.195	...[W]e're entrusted, you know, by our customers and communities to operate a safe and reliable system. And it is really at the heart of what we do. Is the foundation of both what we are as a company to continue to provide safe and reliable service. So we continually survey our pipes, observe where there may be threats and apply a commensurate level of resources to address those needs as we discover those.
McDill Redirect T. Vol. 1 p. 217	McDill confirms Atmos system currently safe and reliable.

EVIDENTIARY SUMMARY
Docket Number 15-GIMG-343-GIG

Final Order, Paragraph 77

Record Testimony Supporting Finding that Atmos Energy is Committed to Providing Safe and Reliable Service to its Customers.

Testimony Citation	Description/ Statement
McDill Direct p. 1, l. 6 - p. 2, l. 2	Executive summary statement of priority safety plays in managing system and relationship to cost.
McDill Direct p. 3, ll. 18-22	I also serve as the executive sponsor for Atmos Energy's Utility Operating Council ("UOC"). The UOC is a governing body of enterprise leaders that is responsible for the activities that are core to delivering safe and reliable service and adhering to our customer service objectives. The UOC works to ensure that we meet or exceed compliance, operational, and jurisdictional standards, and oversees our written procedures, plans and policies.
McDill Direct p. 5, ll. 9-10	Atmos Energy's basic mission is to provide safe and reliable gas service to our Kansas customers.
McDill Direct p. 5, ll. 14-16	For each mile of pipe we maintain and for every community we serve, ensuring the safety and reliability of our gas transmission and distribution infrastructure stands as our Company's core commitment and highest goal.
McDill Direct p. 5, l. 18 - p. 6, l. 4	Atmos Energy is deeply committed to the safety of our customers, communities and employees; it is our highest priority. Our commitment to safety and reliability is threaded throughout our corporate culture. We have worked and continue to work with regulators, industry associations, and other stakeholders to take proactive measures to strengthen safety in Kansas, in all other states in which we have gas distribution facilities, and in our industry in general. Additionally, against the backdrop of recurring natural gas incidents, Atmos Energy must continually seek and assess opportunities to improve upon the safety of our operations in an effort to reduce, wherever feasible, the potential for system integrity threats.

McDill Direct p. 6, ll. 11-14	With regard to system safety and reliability, it is very important that neither Atmos Energy nor this Commission allow the goal of providing low-cost service to jeopardize the undertaking of initiatives to maintain a safe and reliable system.
McDill Direct p. 6, l. 15 - p. 8, l. 15	[Description of incident with gas leak and fatality and personal reaction.]
McDill Direct p. 8, l. 16-20	...[W]e always have to ask ourselves if we are doing enough and have we considered all the possibilities. We are entrusted to operate a safe and reliable system and we always have to challenge ourselves to think about conditions that may exist but we do not know about. We have to be relentless in our efforts and take all reasonable means in our daily activities while remaining vigilant in the pursuit of operating a safe and reliable system.
McDill Direct p. 9, ll.17-19	Atmos Energy's goal is to work with our regulators to implement a safety program that best serves the interest of our customers, the communities in which they live, and the Kansas public.
McDill Direct p. 10, ll. 12-13	Atmos Energy does not restrict capital to address safety considerations and makes certain that identified risks are mitigated.
McDill Direct p. 11, ll. 5-6	...[N]ew federal regulations and directives make the systematic and proactive assessment and replacement of pipelines essential.
McDill Direct p. 13, ll. 10-14	The assessment, rehabilitation and proactive replacement of aging infrastructure are essential to enhancing the safety and integrity of the system.
McDill Direct p. 23, ll. 21-26	Atmos Energy is also implementing a more proactive approach to pipeline safety. Atmos Energy's intention is not only to repair identified leaks but also to proactively identify pipes where the risks of leaks developing are unacceptably high and to then design and implement a plan to mitigate those risks. As a result, Atmos Energy is investing capital into our system at a much higher annual rate than we have historically done to address safety and integrity issues identified through the risk assessment process.
Paige Direct p. 5, ll. 15-17	The safety of Atmos Energy's customers, community and employees is Atmos Energy's highest priority in every jurisdiction in which it operates. Pipeline safety is an integral element of that mission.
Paige Direct p. 5, ll. 18-19	From the Company's perspective, there is no higher priority in our operations than safety.

Paige Direct p. 13, ll. 9-10	...[I]t is both reasonable and prudent for the Company to pursue the accelerated replacement of pipe comprised of materials with known and documented risks.
Paige Rebuttal p. 1, ll. 7-8	Atmos Energy takes seriously its responsibility to provide safe and reliable service, and the safety of its Kansas pipeline distribution system is paramount.
Smith Direct p.8, ll. 18-21	Atmos Energy's goal is to work collaboratively with the Commission to allow the Company to undertake activities that serve the interest of Atmos Energy's customers, the communities in which they live and the broader Kansas public.
Exh. GLS-3 p.3	Kansas' three natural gas public utilities have ongoing replacement programs primarily associated with GSRS.
Smith Rebuttal p. 7, ll. 8-15	There is a clear interrelationship between the need for a replacement program and the need for an alternative ratemaking mechanism that will allow the gas utility a reasonable opportunity to recover its costs of implementing such a program in a timely manner. To ignore or reject that such interrelationship exists is to ignore the overwhelming evidence not only presented in this case, but in cases across this country where most public utility commissions have concluded that alternative ratemaking solutions are required to address the safety and reliability concerns relating to the replacement of aging and obsolete infrastructure in the gas distribution and transmission industry.
Smith Rebuttal p.19, ll. 13-19	Mr. Grady explained in his testimony that the current capital cost limitations under GSRS translates into approximately $7 million per year of capital investment for Atmos Energy and that Atmos Energy is exceeding that investment level on system integrity and safety related expenditures annually. In fact, Mr. Grady testified that during the five year period between 2010 and 2014, Atmos Energy's annual investment levels averaged $15.7 million, which is over twice as much as the GSRS limitation.
Haynos Direct p. 9, l. 21- p. 10, l. 5	...BHE claims it will require 74 years to replace obsolete piping at their current replacement pace, and Atmos claims it would take 187 years at the current pace. Although these extrapolated time-to-replacement estimates are theoretical, it demonstrates the need to accelerate replacement. And to do so will require additional capital spending that is recovered either through more frequent general rate case filings or through an alternative ratemaking mechanism.

Grady Direct
p.4, l. 22 - p. 5, l.3

Provided that costs are prudently incurred, the regulatory compact generally, and Kansas law specifically, necessitates that these additional investments will have to be recovered in one fashion or another from Kansas ratepayers.

Smith Cross
T. Vol 2, pp. 253-54

Q. ...Atmos has already ramped up its capital spending on replacement projects, but that still puts you on the 187 year replacement pace, is that correct?

A. That is correct, yes.

Q. And I think I have seen in some of your testimony and some of the testimony yesterday that it is Atmos' position that the 187 year pace is not an acceptable replacement pace, is that correct?

A. Yes.

Q. So whether or not a replacement program is approved here, I would be correct in assuming that Atmos does plan to further accelerate capital expenditures on replacement moving forward?

A. That's correct.

Q. And if an alternative cost recovery mechanism isn't approved in this proceeding, how would Atmos cover those additional increases in capital expenditures?

A. We would I guess have no course other than more frequent rate case filings.

Grady Cross
T. Vol. 2, pp. 339-42

Detailed description of why a SIP mechanism is necessary/appropriate to cover accelerated spending on pipeline remediation for Atmos and why Atmos has no choice but to consider economic impacts on shareholders as part of its approach to obsolete materials replacement on its system.

Grady Cross
T. Vol. 2, p. 342

Both those utilities [Atmos and Black Hills] on a per capita basis are spending a significant amount of capital expenditures relating to system integrity, safety, replacement of their systems. It's a significant percentage on a pro forma basis.

Grady Cross
T. Vol. 2, p. 344-45

...utilities...have the obligation to provide efficient and sufficient service and maintain just and reasonable rates. And part of the establishment of just and reasonable rates is that the utility has an opportunity to earn a return on those investments and a return of those investments over time. Those core sort of legal principles, that backbone principle, is what provides the framework and structure for how you set a revenue requirement. And when these utilities invest to place capital in the ground, they invest and they place infrastructure in the ground, and it starts to provide service for utility customers, they have an opportunity - they have to be afforded an opportunity to earn a return on and a return of that investment through depreciation expense and a return on capital unless somebody can prove with substantial - unless it is found with substantial competent evidence that that behavior or that investment was imprudent. And so that's, that's what we are facing. That is the reality of the situation. That's what is driving rate cases. The additional capital investment has to be paid for somehow.

Smith Commission Questions - Albrecht
T. Vol. 2, p. 400-01

...since fiscal 2008, our system integrity capital investment has increased from $6.3 million a year to about $17.7 million a year. There is some other capital spending too, so right now as Witness Grady pointed out, we are at about 22 million in total, most of the increase being in that system integrity investment, not covered by GSRS.

Smith Redirect
T. Vol. 2, p. 457

Q. Mr. Smith, in one of Ms. Crane's responses to questions that I quite frankly don't remember who asked the question, there was at least - I took it to be an implication that there was some possibility that the accelerated capital recovery program might simply be a means of increasing Atmos' revenues or, or it might be driven by that fact. And could you tell us, is that true? Is that what is driving Atmos' attempt to accelerate its replacement of obsolete pipe?

A. Our motivation is not earnings driven. It is to improve the safety of our system.