THE STATE CORPORATION COMMISSION

OF THE STATE OF KANSAS

In the Matter of the Application of Atmos Energy to Amend Its Purchase Gas Adjustment (PGA) Schedule to Add a Demand Charge Savings and Pipeline Bypass Savings Component to the PGA.	)))))	Docket No. 14-ATMG-230-TAR

POST-HEARING BRIEF OF THE CITIZENS' UTILITY RATEPAYER BOARD

COMES NOW, the Citizens' Utility Ratepayer Board (CURB) and files its Post-Hearing Brief in the above captioned matter. CURB asks the Kansas Corporation Commission (KCC or Commission) to deny the application in this matter. In support of that request, CURB submits the following:

I. Background

1. On November 15, 2013, Atmos Energy (Atmos or Company) filed an application seeking Commission approval to add a Demand Charge Savings and Pipeline Bypass Savings Component to its Purchased Gas Adjustment (PGA) schedule (the PGA proposal). Atmos filed the testimony of Ms. Sheri W. Rowe to support its application. Atmos proposes to create a benchmark price that will be charged to consumers through the PGA. The benchmark price will be based on maximum tariff rates for upstream pipeline capacity on Southern Star Central Gas Pipeline (Southern Star). The benchmark price will also include other volumetric fees and natural gas costs that are similar to what Atmos actually pays currently to source natural gas and deliver it to customers through Southern Star. Atmos asserts that it can reduce upstream capacity and

volumetric supply costs though "non-traditional" sources and purchasing methods (the Demand Charge Savings) and by constructing new interconnects with alternative pipelines that may have lower demand charges than Southern Star (the Pipeline Bypass Savings). If Atmos is successful at acquiring natural gas and upstream pipeline capacity at a lower cost than the benchmark price that is being charged to customers through the PGA, Atmos proposes to return 50% of the difference back to its customers through a credit in the PGA. Atmos bases the 50% amount on a 1995 Commission order that allows natural gas utilities to keep 50% of any revenue generated though releasing upstream pipeline capacity during times when the capacity is not needed to serve customers.[1]

2. On February 21, 2014, representatives of Atmos met with the Staff of the Kansas Corporation Commission (Staff). CURB, an official intervenor in the docket, was not made aware of or invited to participate in this meeting. According to Atmos, at this meeting "Staff made the suggestion that instead of sharing the savings equally between shareholders and customers, which is what the utility does with respect to capacity release revenues, the utility would invest 100% of the savings in certain capital projects."[2] At this meeting, KCC staff discussed the specific types of construction projects that it wanted Atmos to pursue. According to Staff witness Leo Haynos, Staff suggested Atmos construct mains and distribution facilities to all electric subdivisions and construct facilities into rural areas.[3] According to Atmos, the discussions with Staff included the fact that the construction projects would be included as "investments in ratebase and recoverable by Atmos through the normal rate case process."[4]

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[1] Application at p. 2, KCC Docket No. 190,061-U, Order dated May 1, 1995.
[2] Malter, Direct at p. 2.
[3] Haynos, Tr. at p. 146-147. (Haynos states "at that time we had no knowledge of any type of possible modification of Liberty storage or other gas purchases. Those are two ideas that Atmos came up with." Tr p. 147, ln 23 through Tr. p. 148, ln 1.)
[4] Malter, Direct at p. 2.

Based on this meeting, Atmos decided to "move forward with Staff's suggestions"[5] by filing to amend its original application.

3. On April 24, 2014, Atmos filed an Amended Application seeking the same Demand Charge Savings and Pipeline Bypass Savings Components it requested in its original application, but instead of sharing the savings equally between ratepayers and shareholders, Atmos now proposes that 100% of the savings be retained by the company for constructing certain qualified capital projects. Atmos includes the Direct Testimony of Kenneth M. Malter to explain the genesis of the Amended Application. Mr. Malter's testimony includes a March 26, 2014 memorandum provided by Atmos to Staff and CURB that showes "examples of projects that would qualify for funding generated by the pipeline capacity savings" proposed in the application.[6] Projects identified included for funding included construction and installation of mains and distribution facilities "to all electric subdivisions" and to serve "North Ulysses Irrigation customers", "improvements to Atmos' Liberty Gas Storage Field" and an interconnect project "to acquire natural gas supplier from a local natural gas producer in Southeast Kansas."[7]

4. Mr. Malter's testimony also explains that any demand charge savings and bypass savings will be placed into a deferred account, and after projects are approved, built, and placed into service, an accounting entry will be made to transfer the appropriate amount of the deferred balance into an acquisition adjustment account which will be amortized over fifteen years.[8] At trial, Mr. Malter conceded that the "funding" to actually build the projects will be supplied by Atmos[9] and when the money is moved from the deferred account to the acquisition account, none

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[5] Malter, Direct at p. 3.

[6] Malter, Direct Exhibit KMM-1 (See also Harden, Direct Confidential Exhibit SMH-1 for a copy of the memorandum that includes the confidential data tables and support for the proposed projects.)

[7] *Id.*

[8] Malter, Direct at p.3.

[9] Malter, Tr. at p. 131.

of the money is used to offset consumer costs or reduce consumer rates.[10] Shareholders keep all of the money in the acquisition account.

5. It should be noted here by that Atmos' original application was limited to a mechanism that might incent Atmos to be more aggressive in its purchases within the PGA and contained a sharing proposal that might benefit both Atmos and its customers. The policy question before the Commission was whether the Commission wanted to pursue this type of Performance Based Mechanism (PBR) for gas purchases, and if so, whether the Atmos mechanism and sharing level were appropriate to achieve this policy goal. However, after the February 21, 2014 meeting, and at the behest of Staff, the Atmos proposal became an infrastructure development program and the PGA proposal became merely a way to generate funds to reward Atmos shareholders for building the infrastructure projects Staff proposed.

6. The Commission must now decide a very different policy question than what was posed in the original application. While it can be loosely argued that the Commission's 1995 Order on capacity release revenue provides a policy basis to support the original application, there is no Commission policy order supporting the type of infrastructure development program for which Atmos and Staff advocate in the Amended Application. The infrastructure development program is not consistent with Atmos' Commission approved line extension tariffs.[11] The Commission has also opened policy docket, 14-GIMG-514-GIG (514 Docket) and is currently taking comments on the provision of natural gas infrastructure in rural areas.[12] Since there is no order in the 514 docket setting forth the Commission policy on providing infrastructure in rural areas, it is premature for Staff to advocate the policy solution proposed in

[10] *Id.* at p. 133.
[11] Anyanwu, Direct at p. 7-8. (see also Atmos Energy Corporation Tariff, Schedule 1: Rules and Regulations, Section 8- DISTRIBUTION MAINS EXTENSION POLICY, Sheets 59-67. Document attached to August 27, 2014 Administrative Notice documents of Kansas City Power and Light)
[12] KCC Docket No. 14-GIMG-514-GIG.

the current docket and it is equally premature for the Commission to answer that policy question in this docket before answering the overall policy question in the 514 policy docket.

7. On July 18, 2014, CURB filed the Direct Testimony of Ms. Stacey Harden opposing Atmos' Amended Application. CURB recommends the Commission deny Atmos' proposal to create the Demand Charge Savings and Pipeline Bypass Savings Components in the PGA and deny Atmos' proposed infrastructure development program. CURB argues that changing the PGA from a cost pass-through mechanism to a utility profit center is a bad policy and that the PGA proposal simply provides money to Atmos shareholders without using any of the money to pay down the cost of capital projects in a way that will reduce consumer rates. CURB also argues that Staff and Atmos are proposing to build uneconomic projects through the infrastructure development program. These uneconomic projects will have to be subsidized through higher rates paid by Atmos customers. Finally, CURB argues that there are other less extreme mechanisms, like regulatory pre-approval, for building capital projects that the Commission should consider before overturning 37 years of policy and turning the PGA into a profit center.

8. If the Commission approves Atmos' Amended Application, CURB suggests that the Commission require Atmos to seek pre-approval for any project that may be eligible to receive incentive money through a formal docket. CURB also suggests that the Commission only approve capital projects with positive economic benefit for Atmos' customers. Finally, CURB urges the Commission to require a comprehensive "net savings" test, netting any increases in costs caused by the Demand Charge Savings and Pipeline Bypass Savings plus any increase in costs caused by infrastructure development program against the revenues generated by the Demand Charge Savings and Pipeline Bypass Savings mechanism. Only by following a

comprehensive net savings approach are Atmos' customers assured that Atmos' proposal results in real savings to customer bills.

9. On July 18, 2014, Staff filed the Direct Testimony of Leo Haynos, Justin Grady and Dr. Robert Glass. While supporting Atmos' Amended Application, Staff suggests allowing shareholders to retain only 75% of the Demand Charge Savings and Pipeline Bypass Savings Components, returning 25% of the savings to customers. Staff also suggests changes that would net variable supply costs and upstream capacity expenditures against the savings components to prevent negative savings to Atmos' customers. Staff also proposes to limit the initial program to five years and return any unexpended funds to customers at that time if the program is not reapproved. Staff also proposes that 50% of the funds be spent on general infrastructure that may benefit all customers while the other 50% be spent on targeted infrastructure to supply natural gas where service is not currently available. Staff recommends that all projects must be pre-approved, and testifies that Staff would apply a very narrow benefit cost test in reviewing potential projects.

10. On August 1, 2014, Staff filed the Cross-answering Testimony of Dr. Robert Glass. Dr. Glass admits that Ms. Harden was technically correct that the incentive mechanism will flow profits through the PGA back to Atmos. Dr. Glass also reiterates that Staff will apply a narrow version of the benefit cost analysis in reviewing potential projects.

11. On August 1, 2014, Kansas City Power & Light Company (KCP&L) filed the Cross-Answering Testimony of Emeka Y. Anyanwu. KCP&L opposes that portion of the Atmos program that would build mains and distribution facilities into all-electric subdivisions. KCP&L argues that such a program is unfair, violates the revenue justification policy for line extension,

is contrary to Atmos's Commission approved line extension policy and would result in losses to KCP&L and its customers from unfair competition.

12. On August 15, 2014, Atmos filed the Rebuttal Testimony of Mr. Kenneth Malter. Mr. Malter agrees with most of the conditions for approval recommended by Staff, but does not agree that customers should receive 100% of unspent funds if the program ends after 5 years. Atmos proposes that customers get 1/3 of the remaining funds and that Atmos keep 2/3 of the remaining funds. Atmos does not agree with Staff's mandated infrastructure spending proposals. Atmos also does not agree with CURB's recommendations.

13. On August 25, 2014, Staff filed the Sur-Rebuttal Testimony of Dr. Robert Glass. Dr. Glass indicates Staff does not intend the 50% infrastructure spending direction to be a mandate. Also, Dr. Glass reiterates Staff's position that 100% of any remaining unspent funds after five years be given back consumers, but also offeres an alternative that would provide 1/3 of any unspent funds to Atmos after five years.

14. On August 27, 2014, CURB filed the Sur-Rebuttal/Reply testimony of Ms. Stacey Harden. Ms Harden rebuts Atmos' contention that the Commission, by changing one line in the otherwise cost-based PGA to allow the sharing of capacity release revenues in 1995, creates a policy that supports charging a benchmark PGA price that is not based on actual cost so that revenues and profits can be generated for shareholders. As Ms. Harden concludes, "one changes a line in the PGA, the other changes the entirety of the PGA and 37 years of Commission policy."[13] Ms. Harden also points out that throughout this case the amount of customer sharing under the PGA proposal has gone from 50% to 100% to 75%, to now zero or 25% if no projects are actually built in five years. No evidence has been produced to support the necessity or reasonableness of any of these numbers.

[13] Harden, Sur-Rebuttal/Reply at p. 3.

II. Legal Argument and Authorities

15. CURB will not argue that the Commission lacks authority to make the type of policy decisions requested by Atmos and Staff in this case. The Commission has the authority to make these determinations. However, while the Commission is free to change an existing policy, the Commission must do so based on substantial competent evidence and the Commission must articulate that reasons for its decision.

16. The standard of evidence the Commission must meet for its decision to be lawful and valid was considered in *Zinke & Trumbo Ltd. v. Kansas Corp. Comm'n.* [14] In *Zinke*, the Court held that to be lawful and valid, the Commission's decision must be supported by substantial competent evidence, and must not be unreasonable, arbitrary, or capricious.[15]

17. Regulatory agencies may make major changes in prior policies or positions, but the subsequent policy or position must be based on substantial and competent evidence.[16] Substantial competent evidence is evidence which "possesses something of substantial and relevant consequence and which furnishes a substantial basis of fact from which the issues tendered can reasonably be resolved."[17]

18. The issues raised in this case are complex and may affect every natural gas and electric utility the Commission regulates. If the Commission accepts Atmos' proposal, it is a policy decision will set the stage for proposals from all other Kansas jurisdictional companies. CURB does not believe that the record in this case provides the type of substantial and

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[14] 242 Kan. 470, 749 P.2d 21 (1988).
[15] 242 Kan. at 474.
[16] *Western Resources. Inc. v. Kansas Corporation Comm'n,* 30 Kan. App.2d 348, 360 (2002) (When and administrative agency deviates from a policy it had adopted earlier, it must explain the basis for the change. *Farmland Industries, Inc. v. Kansas Corp. Comm'n*, 24 Kan. App. 2d. at 191. Where the KCC rules in a manner inconsistent with a previous decision, the law requires the Commission to explain its change in position. *Southwest Kan. Royalty Owners Ass'n v. Kansas Corporation Commission*, 244 Kan 157, 190, 769 P.2d 1 (9189)
[17] *Jones v. Kansas Gas & Electric Co. v. Kansas Corp. Comm'n,* 222 Kan. 390, 565 (1977).

competent evidence that lends support to the Atmos proposal, or provides an adequate basis to justify the Commission reversing 37 years of Commission policy.

III. The Commission Must Reject the Amended Application

A. The Commission Must Reject the Underlying Premise of Atmos' PGA Proposal

19. Atmos argues that there have been "significant" changes in the natural gas markets conditions of the past several years. Natural gas supply has increased since 2008 because of the increase production in shale gas formations. According to Atmos, "this prolific shale gas supply growth has created the need for new infrastructure to move the growing shale gas supply to market," and "the new infrastructure and location of shale basins has directly impacted the tradition long haul pipelines," who have responded by "filing rate cases requesting increases to the fixed demand charges."[18] The result of these changes in the gas markets and increased pipeline transportation costs is increased cost of upstream natural gas supply and services for Atmos' customers."[19]

20. Atmos specifically points to Southern Star pipeline, which supplies 80% of Atmos' upstream pipeline capacity and over which Atmos sources the majority of its natural gas. At the time of Atmos' filing, Southern Star had filed a rate increase at FERC "seeking to significantly increase its fixed demand charges to account for lost throughput."[20] According to Ms. Rowe, Southern Star said in its rate case that "LDC's, marketers, everyone is moving away from their pipeline and connecting to these other pipelines where they can get cheaper gas

[18] Rowe, Direct at p. 4-5.
[19] *Id.*
[20] *Id.* at p. 6. (The Southern Star rate case subsequently settled at FERC, resulting in an 18% overall revenue increase rather than the proposed 47% increase)

supply," and this is leaving "stranded costs and capacity that's no longer being used and that remaining customers bear these additional costs."[21]

21. Before the Commission can approve Atmos' PGA proposal, the Commission must answer these questions: If LDC's, marketers and everyone is moving away from Southern Star and connecting with other pipelines where they can get cheaper supply, and presumably they are doing so in the normal course of business, why isn't Atmos also doing this in the normal course of business? More specifically, as a certificated public utility in Kansas charged with providing sufficient and efficient service at just and reasonable rates[22] does Atmos have an obligation to seek out the types of "non-traditional" opportunities it suggests are available in the market? And aren't these "non-traditional" supply opportunities really just normal business opportunities available to smart participants in an ever changing market? Again, "LDC's, marketers and everyone" else seems to think so. The Commission must thinks so too.

22. Atmos asserts in its application that the primary reason it is not pursuing these non-traditional supply opportunities outside of its proposed changes to the PGA is the additional resources Atmos will have to devote to searching out these new supply opportunities.[23] However, Atmos presents no evidence to support this assertion. There are no studies or documents to show that the additional costs Atmos may incur seeking out these non-traditional opportunities would be so large as to prevent Atmos from even beginning to try to find alternative sources. In fact, the majority of the evidence in the record supports the opposite conclusion. Other than vaguely suggesting that Atmos' current employees would have to review proposals specific to Kansas, Ms. Rowe could not identify any specific increases in cost that Kansas would face. As for current employees, Ms. Rowe testified that these are "sunk costs that

[21] Rowe, Tr. at p. 75.
[22] K.S.A 66-1,1202.
[23] Rowe, Direct at p. 2.; Tr. at p. 47-47

are being allocated to the different states anyway."[24] Ms. Rowe further testifies that the costs of the planning group, gas supply group and legal team are allocated to the corporation and then to the states based on the number of customers in each state.[25] Ms. Rowe also testifies that "if she spent six hours in the past day on Kansas, is that going to be allocated dollar for dollar? No."[26] Finally, Ms. Rowe testifies that the cost of the gas supply representative that handles Kansas is already allocated 100% to Kansas.[27]

23. In response to a question from Chair Albrecht about whether Atmos has a strategic planning group for anticipating the need to change business models and the dynamic conditions existing in the industry, Ms. Rowe testifies that "we have got our whole gas supply team that's involved in that. Planning is permanently involved. And then Mr. Malter, you know, he oversees all that. And so we do have, we do have people that are constantly looking, and, you know, checking the evolving markets."[28] Mr. Malter testifies that he has already looked at pipelines in the area, determined that there is available capacity that could displace some of Southern Star's capacity and Atmos has already begun discussion with those pipelines.[29]

24. Atmos' argument that it is not pursuing "non-traditional" supply options for Kansas because of increase cost is simply not supported by evidence in the record. Atmos did not identify any costs that would increase for Kansas. Mr. Malter testifies that Atmos is already in the process of identifying favorable alternative supply opportunities. The Commission should be troubled that Mr. Malter also testifies that if the Commission denies this application, Atmos will simply stop these conversations with alternative suppliers.[30] CURB believes Atmos has an

[24] Rowe, Tr. at p.51-52.
[25] *Id.*
[26] *Id.*
[27] *Id.* at p. 52.
[28] *Id.* at p. 89.
[29] Malter Tr. at p 109.
[30] *Id.*

ongoing obligation to understand and react to changing market conditions and to always search out new opportunities that may lead to lower supply costs for customers.

25. The underlying premise of Atmos' PGA proposal is that Atmos will not seek alternative sources of upstream natural gas supply in an effort to lower consumer bills unless Atmos can also make a profit. If the Commission rejects this proposal, and Atmos does not have a profit opportunity, Atmos claims it will not work to lower consumer bills. Atmos will purchase upstream capacity and supply over Southern Star pipeline and Atmos customers will simply have to pay full Southern Star rates, even if cheaper supply is available elsewhere. The Commission must reject this premise and emphasize to Atmos, and all Kansas utilities, that the obligation to provide sufficient and efficient service at just and reasonable rates carries with it the obligation to constantly adjust to changing market conditions and to pursue supply options that will reduce costs to utility customers.

B. The Commission Must Reject the PGA Proposal as Bad Policy

26. The Commission instituted the modern PGA in Kansas in 1977.[31] The PGA allowed gas utilities to flow the actual cost of upstream supply directly to customers. The PGA mechanism protects utilities from the volatility of changing natural gas prices[32] since upstream supply costs are no longer in base rates. However, utilities are only allowed to flow the actual cost of upstream supply through the PGA. The transparency of the PGA benefits ratepayers because they are assured that there are no hidden charges or fees in the PGA portion of their monthly bill.[33] For 37 years, the underlying PGA policy in Kansas has not changed. The Commission is able to assure ratepayers that there is no utility profit in the PGA.

[31] KCC Docket No. 106,850-U, Order dated April 19, 1977.
[32] Harden, Direct at p. 9. (See also discussion in KCC Docket No. 109,061-U, Order Dated May 1, 1995 at p. 6)
[33] *Id.* at p. 10.

27. The Commission did make one change to the PGA in 1995 as noted by Atmos in its Application to allow natural gas utilities to share capacity release revenues on a 50/50 basis with customers.[34] And while CURB will concede that the Commission said in that order that its "ultimate goal is to devise a gas cost incentive mechanism; perhaps a performance based mechanism, which address gas purchasing activities as a whole, rather than just the capacity resale decision," it is disingenuous for Atmos and Staff to show up 19 years after the fact and claim this one aspirational sentence provides a policy justification for Atmos' proposal in this case.

28. In context, the Commission decision in 1995 to allow Atmos to share in capacity release revenues altered one line in the PGA. Even with the capacity release mechanism, the PGA costs charged to customers are the actual costs incurred by Atmos to purchase supply. Capacity release is a very narrow and auditable revenue opportunity.[35] We know how much transmission capacity Atmos holds for its peak demand needs. Off peak, any capacity Atmos has available for release is publically posted, where bids and sale information is readily available. The process is transparent and the revenue generated is known and auditable. The Commission does not have to guess, or estimate, or benchmark or assume the level of capacity release revenue.

29. The Commission spent a year taking comment on its capacity release policy in 1994, a policy that functionally changed one line in the PGA. In contrast Atmos' PGA proposal in this case changes every line in the PGA, overturns 37 years of Commission policy and allows Atmos' customers to be charged a PGA price that is not based on the actual cost of natural gas supply. Atmos' proposal turns the PGA into a profit center to reward shareholders for building,

[34] KCC Docket No. 109,061-U, Order Dated May 1, 1995 at p. 10.
[35] Harden, Direct at p. 12.

at least as proposed, uneconomic infrastructure projects. The cost of these uneconomic projects will also ultimately be recovered from customers through higher rates. And yet in this case, there has been no public hearing, no public comment and no request for comment from other utilities about this fundamental change in the Commission's PGA policy.

30. The Commission has determined that the policy questions related to building natural gas infrastructure into rural areas warrants extensive comment in the 514 docket. However, in this docket, the Commission is being asked to approve an infrastructure development program with no outside comment. In the 514 docket, Atmos' Initial Comments discuss the Commission's policy orders restricting duplication of facilities and the financial reasons why allowing customers to bypass existing suppliers can harm that supplier's remaining customers.[36] And yet Atmos' PGA proposal in this case is premised on generating revenues by bypassing Southern Star. Atmos' infrastructure development program proposes to build distribution mains into a KCP&L subdivision, which if successful, will allow customers to bypass KCP&L's electric service. This irony should not be lost on the Commission.

31. If the Commission believes its policy on natural gas procurement and the PGA should be revisited or updated, CURB suggests that a general policy docket is a more appropriate way to receive comment and make policy decisions. CURB does not believe that the Commission should change 37 years of policy in a one-off Atmos docket, especially where there has been no public input. CURB does not believe that the current docket provides the Commission an adequate evidentiary record to support a decision changing the existing PGA policy. While CURB, Atmos, Staff and KCP&L have spent a lot of time arguing the details of the proposal in this case, at its simplest, turning Atmos' cost base PGA into a profit center for Atmos shareholders is a bad policy. The Commission must reject Atmos' Amended Application.

[36] KCC Docket No 14-GIME-514-GIG, Initial Comments of Atmos Energy filed July 27, 2014 at p. 4-10.

C. There is No Evidence to Support the Proposed Sharing Level in the PGA Proposal

32. The sharing level in Atmos' original PGA proposal is based on the Commission allowed 50% sharing of capacity release revenues.[37] However, other than a 19 year old policy order, Atmos fails to produce any evidence in this case to support why 50% sharing is reasonable and necessary to accomplish the goals of the proposal. And while Atmos and Staff point to the capacity release order as the policy justification for the sharing proposal in this case,[38] Staff rejects the 50% level of sharing Atmos proposes. According to Mr. Haynos, Staff "had meetings internally" and "we were not inclined to agree to the, to this type of approach where 50 percent of the profits were kept by Atmos..."[39]

33. At the February 21, 2014 meeting, Staff suggested Atmos keep 100% of the PGA program savings as incentive to build certain infrastructure.[40] Staff testifies that it chose the 100% sharing level because "Atmos made the point that the savings envisioned from this effort would not amount to a significant amount of money."[41] However, Staff performed no studies to verify or back up the point made by Atmos.[42] There is no evidence in the record to support the proposed 100% sharing level as being reasonable or necessary to accomplish the goals of the proposal.

34. In its Direct Testimony, Staff rejects the 100% sharing level proposed by Atmos and recommendes 75% sharing, with 25% sharing going back to customers.[43] Again, no evidence supports the 75% sharing level as being reasonable and necessary to accomplish the goals of the

[37] Application and Amended Application at p. 4.
[38] Application and Amended Application at p. 2; Rowe, Direct at p. 9; Malter, Rebuttal at p. 5; Haynos Direct at p.2; Glass, Direct at p. 3; Glass Cross-Answering at p. 2.
[39] Haynos, Tr. at p. 146.
[40] Malter, Direct at p. 2-3.
[41] Haynos, Direct at p. 4.
[42] Haynos, Tr. at p. 161.
[43] Haynos, Direct at p. 4; Glass Direct at p. 5-6.

proposal. Finally, Staff proposes that 100% of unspent revenues be returned to customers after five years, although Staff also proposes an alternative that allows Atmos to keep 1/3 of the unspent funds. According to Dr. Glass, "by returning one third of the unspent funds to Atmos, Staff believes that there would still be sufficient incentive for Atmos to find infrastructure projects to invest in."[44] Returning 1/3 of the unspent funds would effectively allow Atmos to keep 25% of the overall revenue pool, and Staff believes that 25% is a sufficient incentive for Atmos to find infrastructure projects; this testimony contradicts Staff's testimony that Atmos needs 75% of the savings to find infrastructure projects.

35. Whether it's 50%, 100%, 75% or 25%, there is no underlying evidence in the record that any of the proposed sharing levels are reasonable and necessary to accomplish the goals of the PGA proposal. Rather, it looks like Staff and Atmos are throwing out numbers just hoping one will stick. There is no substantial competent evidence in the record to support a Commission decision on a reasonable level of savings.

D. The Commission Must Reject Atmos and Staff's Infrastructure Development Proposal

36. CURB recommends that Commission reject Atmos' PGA proposal. Since the revenues generated from customers under the PGA proposal provide the funding source for the proposed infrastructure development program, CURB also recommends the infrastructure development program be rejected.

37. As explained above, there is no Commission policy that supports the type of infrastructure development program proposed by Atmos and Staff in this case. Mr. Hayno's admits there is no Commission order that Staff was using for guidance that says that says that it is the Commission's policy to extend natural gas facilities into rural areas or to run distribution

[44] Glass, Sur-Rebuttal at p. 2.

mains into subdivisions in Kansas City.[45] And since the Commission is taking comment on rural infrastructure development in the 514 docket, it is premature for the Commission to make any policy decisions on rural infrastructure development in this case.

E. The Commission Should Explore Other Options That Can Achieve Supply Savings or Support Cost Effective Infrastructure Projects That Don't Require Overturning the Current PGA Policy in Kansas

38. Much of the confusion and debate in this case stems from Staff's apparent support for that portion of the infrastructure development program that will construct mains and distribution facilities into both residential subdivisions that currently have all electric service and into rural areas that do not currently have service. Atmos identifies these projects as uneconomic,[46] meaning that if constructed and placed into rates, all other Atmos customers will be forced to pay higher rates to subsidize the projects. Since Atmos also proposes keeping 100% of the revenues generated under the PGA proposal, CURB views this entire proposal as lose/lose for customers and recommends the Commission reject the Application.

39. But, CURB is interested in working with Atmos to explore ideas for reducing upstream supply costs that do not require the extreme changes in policy proposed in this application. For example, one of the capital projects Atmos proposes is to enhance the Liberty Storage facility. While more work needs to be done to review the specifics of the project it appears to be a reasonable proposal. If upfront review and some sort of regulatory preapproval would help reduce Atmos' risk and perhaps reluctance to proceed, CURB believes these are reasonable approaches for the Commission to pursue.[47] And while CURB does not have a ready

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[45] Haynos, Tr. at 159-160.

[46] Malter, Direct, Exhibit KMM-1 ("It is not economical now for either the subdivision home owners association or Atmos to construct and install the mains and distribution facilities to serve these all electric subdivisions under Atmos' line extension policy")

[47] Harden, Direct at p.22.

answer for the capital availability challenges asserted in the Application in this case, once built, Atmos will earn a return on any capital project, so there is still the traditional incentive to invest capital that is available to Atmos. CURB is willing to continue discussions to see if progress can be made.

40. Further, according to Ms. Rowe, the Demand Charge Savings (Segmentation Savings, Pipeline Discount Savings Delivered Service Savings) portion of the PGA proposal does not require infrastructure investment, so there is nothing that precludes Atmos from pursuing these options today.[48] The Pipeline Bypass Savings portion of the PGA proposal also often does not require Atmos to expend capital because any capital cost to construct an interconnection point is built into the contract with the new pipeline.[49] Both of these opportunities can be pursued without much cost.

41. For infrastructure projects, Staff testifies that goal of the PGA proposal in this case is to generate some cash because "if you want to do any type of projects that have any type of effect, you need to have some cash to do it."[50] If the PGA proposal is simply a means to generate cash from customers to earmark for Kansas infrastructure projects, it seems quite an elaborate, complicated and unnecessary plan. If the Commission, for policy reasons, decides it wants to generate cash from Atmos customers to fund Kansas infrastructure projects, a simple and more straightforward means of doing so is to put a fee on Atmos' customer bills. CURB is not recommending the Commission adopt this approach in this docket. CURB is merely suggesting an example of a more straight forward approach than what is proposed in this case that accomplishes the same goals.

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[48] Rowe, Tr. at p. 57-58.
[49] *Id.* at p 58-59.
[50] Haynos, Tr. at p. 161.

42. Finally, what has not been discussed in any meaningful way in this case is energy efficiency policy. In contemplating how to reduce customer exposure to increasing upstream capacity and supply costs, Atmos has not considered offering energy efficiency programs as a way to reduce overall customer demand and customer bills.[51] Energy efficiency may provide a cheaper, more effective and popular way to reduce customer bills. It is an option that should at least be considered in this discussion.

43. CURB asserts that Atmos has the obligation to pursue these potential savings on behalf of customers as part of its obligation to provide sufficient and efficient service at just and reasonable rates. However, CURB also believes that there are a number of policy options that the Commission can pursue that may create incentives for Atmos to pursue projects, or at least reduce barriers that prevent Atmos from pursuing projects that are less extreme than the proposals in this case. CURB encourages the Commission to pursue these other policy options instead of turning the PGA into a profit center for Atmos.

IV. <u>Changes Necessary if the Commission Approves The Amended Application</u>

44. If the Commission approves Atmos' application in this proceeding, CURB recommends the Commission also require the following changes to the program to protect customers.

A. Atmos Must Seek Pre-Approval of Any Project Under the Program Through a Formal Docket

45. There is some confusion about the process for getting approval for capital projects under the proposal. Atmos says it will file with the Commission to obtain approval of each capital project it intends to fund using revenue generated by the Capacity Demand and/or

[51] Rowe, Tr. at p. 80.

Pipeline Bypass Components.[52] But Atmos also says that "under Atmos' proposal, Commission approval will not be required to determine if a project is economically justified."[53]

46. CURB recommends the Commission clarify that project approval must be accomplished through a formal docket filing to allow intervenor parties, like CURB, to fully participate and have access to due process if there is ultimately a dispute that cannot be resolved between the parties.[54]

B. The Commission Must Apply a Narrow Benefit Cost Test to Proposed Projects

47. In Staff's testimony, various references are made to the capital projects proposed by Atmos as projects that will "provide for the common good",[55] and that will make "the Kansas economy and Kansans in general..better off."[56] Given the types of projects that Staff asked Atmos to include in its proposal, there is general concern that Staff is using a very expansive benefit cost test that could lead to cross-subsidization of project costs by Atmos' other customers. Atmos also indicates that simply deeming that a project will "provide natural gas service to an underserved area" is sufficient for Commission approval[57] which seems to ignore the underlying economics of the project.

48. However, at trial Mr. Haynos clarified that staff "will not recommend uneconomic projects," which he defines as "the present worth of the revenue stream would exceed the present worth of the expense or the investment."[58] Mr. Haynos also clarified that Staff

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[52] Malter, Direct at p. 5.
[53] KCP&L Trial Exhibit 1.
[54] Harden, Tr. at 276-280.
[55] Haynos, Direct at p. 5.
[56] Glass, Direct at p. 9.
[57] KCP&L Trial Exhibit 2.
[58] Haynos Tr. at p. 159.

would not approve projects that are not revenue justified.[59] Dr. Glass also testified that Staff would only use a narrow benefit cost test.[60]

49. The Commission must clearly specify that a narrow benefit cost test will be used to review proposed capital projects, that the traditional revenue justification methodology that supports the existing line extension policy in Kansas will continue to be used, that projects must not increase rates to consumers and that Atmos, and Atmos' customers are not responsible for the overall Kansas economy, economic development or jobs that are unrelated to the specific project being built.

C. The Commission Must Require Atmos to Prove that the Capital Dollars that Otherwise Would Come to Kansas are Not Reduced Under This Proposal

50. Staff asserts that for Atmos to receive a return on the revenue generated by the PGA proposal, Atmos has to invest the revenues in Kansas.[61] However, there is nothing in the proposal that prevents Atmos headquarters from reducing the level of capital that otherwise would have been spent in Kansas and replacing that capital with the revenues produced under the mechanism.[62] Nothing in this proposal guarantees that any additional level or amount of capital will be spent on projects in Kansas. It is possible that Atmos will just trade the revenue received under the PGA proposal for capital that would have otherwise come to Kansas and then send the newly freed up capital to another state.

51. The Commission must require that Atmos maintain its normal levels of capital spending in Kansas so that Atmos customers can be assured that the revenues shareholders receive under the PGA proposal are used to provide capital for projects that will not otherwise be

[59] *Id.* at p. 153.
[60] Glass, Direct at p. 8; Cross-Answering at p. 3
[61] Haynos Tr. at p. 163.
[62] *Id.* at p. 170.

built in Kansas. The Commission must ensure that the revenue generated under the PGA proposal funds incremental capital projects that will otherwise not be completed.

D. The Commission Must Order a Comprehensive Net Savings Approach

52. CURB is concerned that Atmos has identified several areas under the PGA proposal and infrastructure development proposals where Atmos customers may see higher costs, and therefore higher rates. These potential increases in costs to customers are not netted against shareholder savings in the PGA proposal. For example, CURB spent a considerable amount of time in the trial attempting to identify any additional personnel costs that Atmos believes will be allocated to Kansas. If we take Atmos' assertion at face value that Kansas customers will incur additional costs (personnel or otherwise) for having Atmos seek non-traditional supply sources, then the increased costs of finding non-traditional supply must be netted against any potential savings under the proposed PGA mechanism before Atmos shareholders take their cut. If these increased costs are not accounted for properly, the Commission will be approving a mechanism that forces Kansas customers to pay higher rates while allowing shareholders to pocket 100% of the supply savings the additional costs bought under Atmos' proposal. The PGA proposal in the Amended Application does not require these potential cost increases to be netted against supply savings.[63]

53. Likewise, the cost associated with seeking approval of every project is also not netted against revenue generated under the PGA proposal. And to the extent that capital projects are built and placed in ratebase and into consumer rates, any increase in margin rates are also not

[63] Rowe, Tr. at p. 55.

netted against revenue generated under the PGA proposal. There is no requirement in the proposal that increases from capital expenditures have to be less than what customers save.[64]

54. Ultimately, if this proposal is going to benefit Atmos customers, customers cannot face a series of rate increases that are not taken into account in the PGA savings proposal. If Atmos can increase the shareholder revenue share under the PGA proposal by shifting costs onto customers outside of the PGA, then there is no guarantee that customers will be made better off, and certainly a possibility that customers will be made worse off, under this proposal.

55. To guarantee that customers receive benefits under the proposal, the Commission must order that a comprehensive net benefit approach be used, where any cost increases to customers are netted against the revenues generated under the PGA proposal before determining shareholder savings.

E. 100% of Any Remain Funds Must be Returned to Customers

56. CURB supports Staff's recommendation that 100% of revenue generated through the PGA proposal but not spent on qualified capital projects in five years be returned to customers.[65] CURB does not support Staff's alternative proposal to allow Atmos to keep 1/3 of any unspent revenue.[66] Staff's alternative proposal will reward Atmos with 25% of the overall revenue generated under the PGA proposal, even if no projects are ever identified, approved and built.

V. Conclusion

57. For the reasons listed above, CURB urges the Commission to reject the Amended Application in this docket. The Commission must reiterate that Atmos has an obligation to

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[64] *Id.* at p. 67.
[65] Glass, Direct at p. 6; Harden, Sur-Rebuttal/Reply at p. 7.
[66] Glass, Sur-Rebuttal at p. 2, Harden, Sur-Rebuttal/Reply at p. 7.

provide sufficient and efficient service at just and reasonable rates and that this obligation carries with it the requirement to constantly adjust to changing market conditions and to pursue supply options that will reduce costs to utility customers. The Commission must reject the Atmos proposal to turn the PGA into a profit center for shareholders as bad policy and as not supported by substantial competent evidence in the record. The Commission must find that there is no evidence in the record to support the sharing percentages in the PGA program proposed by Atmos and Staff. The Commission must reject the proposed infrastructure development program as premature given the ongoing Commission policy docket on the subject of rural infrastructure development. While CURB requests the Commission reject the Amended Application in this docket, CURB also urges the Commission to support and encourage dialog among the parties to seek other less drastic policy options that might create incentives for Atmos to pursue projects, or at least reduce barriers that prevent Atmos from pursuing projects that will otherwise reduce costs to Atmos' customers.

58. In the event the Commission disagrees with CURB and approves the programs in the Amended Application, CURB requests the Commission modify the proposal as outline above to provide additional protections for Atmos' customers.

Respectfully submitted,

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VERIFICATION

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

I, David Springe, of lawful age and being first duly sworn upon my oath, state that I am an attorney for the Citizens' Utility Ratepayer Board; that I have read and am familiar with the above and foregoing document and attest that the statements therein are true and correct to the best of my knowledge, information, and belief.

David Springe

SUBSCRIBED AND SWORN to before me this 15th day of September, 2014.

Notary Public

DELLA J. SMITH
Notary Public - State of Kansas
My Appt. Expires January 26, 2017

My Commission expires: 01-26-2017.

CERTIFICATE OF SERVICE

14-ATMG-230-TAR

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was served by electronic service on this 15th day of September, 2014, to the following:

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