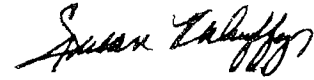


STATE CORPORATION COMMISSION

BEFORE THE STATE CORPORATION COMMISSION OCT 23 2009
OF THE STATE OF KANSAS



In the Matter of the Application of Atmos)
Energy for Approval of the Commission for)
Gas System Reliability Surcharge per K.S.A.)
66-2201 through 66-2204)

Docket No. 10-ATMG-133-TAR

**COMMENTS OF ATMOS ENERGY IN
RESPONSE TO STAFF'S MEMORANDUM**

COMES NOW Atmos Energy ("Atmos"), and pursuant to the Kansas Corporation Commission's ("Commission") order issued on September 14, 2009 in this docket, files the following comments in response to the Staff Memorandum filed on October 13, 2009.

1. Atmos has no objection to Staff's recommendation the Commission approve Atmos' GSRS revenue requirement of \$765,529.00.
2. Atmos also has no objection to the conditions recommended by Staff at page 7 of Staff's Memorandum.
3. Atmos has reviewed the accounting issues Staff has raised with respect to a portion of Atmos' functional projects (projects under 250 feet in size and are tracked under blanket work orders). Atmos understands the accounting issues raised by Staff and Atmos can and will make adjustments to its accounting system for future functional projects to address the Staff's concerns in Atmos' next GSRS filing.
4. Atmos has decided not to challenge any of the public work projects removed by Staff from Atmos' GSRS filing. However, Atmos would like to comment on two of Staff's recommendations with respect to public work projects should similar situations arise in future GSRS filings. First, Atmos notes Staff's comments regarding Atmos using the opportunity of a relocation

project to install higher capacity facilities to serve future growth and in those situations Atmos needs to document the difference in the cost of relocating "like-for-like" replacements and the cost of installing higher capacity facilities to serve future growth to allow for recovery of just the "like-for-like" replacements. Atmos will make such documentation in the future on those type of relocation projects.

5. The other public work relocation project Atmos would like to comment on relates to KPW-2, Line 130. This project related to a relocation of approximately 300' of 2" steel main with 2" PE plastic to clear construction of addition to the Council Grove School and the road vacation by the City of Council Grove, Kansas. The street was vacated by the city to allow for the school building addition to be built where the existing road and Atmos' pipeline were previously located. Staff suggests that the project did not qualify for a relocation project because the government did not vacate the utility easement located in the right of way along the road that was vacated and the school and not the city asked Atmos to relocate its pipeline and the school is not a "public entity." Atmos suggests the relocation is covered by K.S.A. 66-2202, in that the relocation was due to a public work (the addition to the public school building) and the request was made by a political subdivision of the state (local school district).

6. Finally, Atmos desires to comment on whether the Commission should use the capital structure agreed to by Atmos and Staff in Atmos' last rate case (Commission Docket No. 08-ATMG-280-RTS) ("280 Docket") to calculate the GSRS in this matter, or whether the Commission should use the capital structure determined by using the provisions of K.S.A. 66-2204(d)(9) to calculate the GSRS in this matter, given the pending appeal of the 280 Docket by CURB. Although Staff would have to agree with Atmos' request to no longer rely upon or follow the provision in the settlement in the 280 Docket relating to Atmos' GSRS filings, Atmos suggests said agreement would

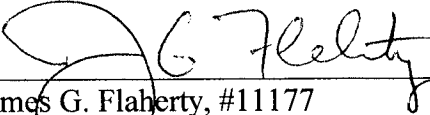
address the issues in the pending appeal of Atmos' last rate case.

7. During oral arguments before the Court of Appeals in the 280 Docket rate case appeal, the court raised an issue as to whether a non-unanimous settlement, like the one in the 280 Docket, relating to future GSRS applications could be approved by the Commission. In the Court of Appeals' written opinion, the court also raised an issue as to whether the Commission could pre-approve or pre-determine elements in calculating future tariff provisions. Without getting into the merits of the issues raised by the Court of Appeals, if Staff and Atmos agree to no longer rely upon or follow the provision contained in the 280 Docket relating to Atmos' GSRS filings and agree not to use that provision in this current case, and instead, agree to follow and rely simply upon the provisions contained in K.S.A. 66-2204(d)(9) to determine the debt/equity ratio, cost of debt and cost of equity to be used in Atmos' GSRS filing, (see, Karen Wilkes, pre-filed direct testimony filed with the application in this docket, page 4, lines 4-21), then the issues raised by the Court of Appeals are avoided. Atmos intends to pursue such a settlement with Staff in this case.

8. K.S.A. 66-2204(d)(9) provides that in the event information relating to debt/equity ratio, cost of debt and cost of equity are unavailable and the commission is not provided with such information on an agreed-upon basis, the Commission shall utilize the average of the recommendations contained in the testimony submitted by the natural gas public utility and commission staff during the most recent general rate proceeding of the natural gas public utility to determine the capital structure, recommended cost rates for debt and preferred stock and recommended cost of common equity to determine the average weighted cost of capital. Atmos' last rate case was a black-box settlement. Therefore, the above-mentioned information is unavailable and under the provisions of the statute the Commission would be required to utilize the average of the recommendations made by Atmos and Staff in the last rate case. As set forth in Ms. Wilkes' testimony

in this matter, the testimony submitted by all of the parties, including CURB, in Atmos' most recent rate case, was in agreement relating to the debt/equity ratio (51.90%/48.10%), and was in agreement relating to the cost of debt (6.11%). Following the provisions of K.S.A. 66-2204(d)(9), the cost of equity recommended by Staff witness Gatewood was 9.6%, the cost of equity recommended by Atmos' witness Fairchild was 11%, and the average of the two recommendations is 10.3% (see, Wilkes Testimony, page 4, lines 4-21). If Atmos and Staff agree to use the averages recommended by Atmos and Staff in Atmos' last rate case (280 Docket) to calculate Atmos' GSRS in this pending case, then the issues raised by the Court of Appeals are avoided. Because, Atmos is limited by K.S.A. 66-117 in receiving no more than what it requested in its application in this case, any agreement by Staff and Atmos to use a 10.3% cost of equity in this case under K.S.A. 66-2204(d)(9), instead of the lower 10.2% cost of equity under the provision in the settlement in the 280 Docket, will not result in increasing the amount of Atmos' GSRS revenue requirement in this case.

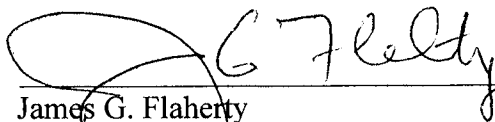
WHEREFORE, Atmos requests that its comments in response to Staff's Memorandum be considered by the Commission in this matter.


James G. Flaherty, #11177
ANDERSON & BYRD, LLP
216 S. Hickory, P. O. Box 17
Ottawa, Kansas 66067
(785) 242-1234, telephone
(785) 242-1279, facsimile
Attorneys for Atmos Energy

VERIFICATION

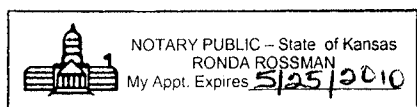
STATE OF KANSAS, FRANKLIN COUNTY, ss:


James G. Flaherty, of lawful age, being first duly sworn on oath, states: That he is an attorney for Atmos Energy; that he has read the above and foregoing Comments in Response to Staff's Memorandum, knows the contents thereof; and that the statements contained therein are true.



James G. Flaherty

SUBSCRIBED AND SWORN to before me this 23rd day of October, 2009.





Notary Public

Appointment/Commission Expires:

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was mailed, postage prepaid, this 23rd day of October, 2009, addressed to:

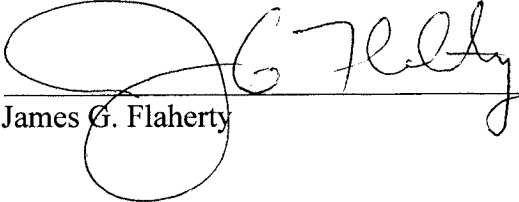
Niki Christopher
Citizens' Utility Ratepayer Board
1500 SW Arrowhead Road
Topeka, KS 66604

C. Steven Rarrick
Citizens' Utility Ratepayer Board
1500 SW Arrowhead Road
Topeka, KS 66604

David Springe
Consumer Counsel
Citizens' Utility Ratepayer Board
1500 SW Arrowhead Road
Topeka, KS 66604

Dana Bradbury
Litigation Counsel
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, KS 66604-4027

Terri Pemberton
Litigation Counsel
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, KS 66604-4027


James G. Flaherty

LAW OFFICES OF
ANDERSON & BYRD

A Limited Liability Partnership

JOHN L. RICHESON
JAMES G. FLAHERTY
R. SCOTT RYBURN
KEITH A. BROCK

216 S. HICKORY, P. O. BOX 17
OTTAWA, KANSAS 66067
(785) 242-1234, *Telephone*
(785) 242-1279, *Facsimile*
www.andersonbyrd.com

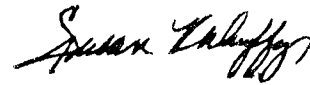
ROBERT A. ANDERSON
(1920-1994)
RICHARD C. BYRD
(1920-2008)

October 23, 2009

Sent by Facsimile
Original Mailed 10/23/09

STATE CORPORATION COMMISSION

OCT 23 2009



Ms. Susan K. Duffy
Executive Director
Kansas Corporation Commission
1500 S. W. Arrowhead Road
Topeka, Kansas 66604-4027

Re: Atmos Energy
Docket No. 10-ATMG-133-TAR

Dear Ms. Duffy:

Please file the enclosed Comments in Response to Staff's Memorandum on behalf of Atmos Energy in the above captioned matter. I would appreciate receiving a file stamped copy of this cover letter as well as a file stamped copy of the Comments for my files. An envelope is included for your convenience.

Thank you for your assistance. If you have any questions, please call.

Sincerely,

James G. Flaherty

James G. Flaherty
jflaherty@andersonbyrd.com

JGF 
Enclosure