

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Andrew J. French, Chairperson
 Dwight D. Keen
 Annie Kuether

In the Matter of the Application of Atmos)
Energy Corporation for Approval to Rename) Docket No. 24-ATMG-574-TAR
the Commodity Charge in its Tariffs to)
Delivery Charge)

ORDER ADOPTING STAFF’S REPORT AND RECOMMENDATION

NOW, the above-captioned matter comes before the State Corporation Commission of the State of Kansas (“Commission”) for consideration and decision. Having reviewed its files and records, the Commission makes the following findings:

I. Background

1. On February 14, 2024, Atmos Energy Corporation (“Atmos Energy” or “Atmos”) filed an Application seeking approval to rename the Commodity Charge in its tariffs to Delivery Charge to more accurately describe the services covered by that charge, and to qualify those charges on bills issued to Atmos customers for exemption from sales tax pursuant to K.S.A. 79-3602.¹ With its Application, Atmos included a Private Letter Ruling issued to Kansas Gas Service, a Division of ONE Gas, Inc. (“KGS”) relating to an amendment to K.S.A. 79-3602 that took effect July 1, 2023.²

2. On February 22, 2024, the Commission granted intervention to the Citizens’ Utility Ratepayer Board (“CURB”).³

¹ Atmos Energy Application, p. 1 (Feb. 14, 2024) (“Application”).

² See Application, Exhibit A.

³ Order Granting CURB’s Petition to Intervene; Protective and Discovery Order (Feb. 22, 2024).

3. On May 8, 2024, Commission Staff filed a Report and Recommendation (“Staff’s R&R” or “R&R”) concerning Atmos’s Application.⁴ To date, no party has filed a response to Staff’s R&R.

II. Jurisdiction and Applicable Law

4. The Commission holds full power, authority and jurisdiction to supervise and control Atmos as a natural gas public utility pursuant to K.S.A. 66-1,201.

5. The Kansas Retailers’ Sale Tax Act, K.S.A. 79-3601 *et. seq.*, imposes a sales tax on retail sales of various goods and services sold within in the State.

6. Effective July 1, 2023, HB 2136 amended K.S.A. 79-3602 to exclude from the definition of “sales or selling price” delivery charges separately stated on the invoice, bill of sale, or similar document given to the purchaser.⁵

III. Discussion

7. Prior to the enactment of HB 2136, delivery charges were included in the sales or selling price as part of the gross receipts from the sale of tangible personal property or enumerated services, and so were subject to Kansas sales tax.⁶ After July 1, 2023, delivery charges, when separately stated on the invoice, bill of sale, or similar document provided to a purchaser, were no longer to be included in the sales or selling price and therefore would not be subject to state sales tax.⁷

8. In the Private Letter Ruling issued to KGS, the Kansas Department of Revenue (“KDR”) informed KGS that its volumetric delivery charge met the definition of “delivery

⁴ Notice of Filing of Staff’s Report and Recommendation (May 8, 2024).

⁵ See Application, Exhibit A, p. 1.

⁶ See Application, Exhibit B, p. 1.

⁷ See *id.*, p. 2.

charges” under K.S.A. 79-3602(i) because it was specifically stated on the customer bill as a “Delivery Charge.”⁸

9. The costs recovered through KGS’s Delivery Charge are exactly the same type of costs currently recovered through Atmos’s Commodity Charge.⁹ These costs are incurred by the gas utility to “deliver” the natural gas to the purchaser or customer.¹⁰ Atmos requested to rename the charge in Atmos’s tariffs so that portion of the bill would qualify to be exempt from sales tax and reduce the customers’ total bill.¹¹

10. Staff reviewed Atmos’s Application and agreed with Atmos’s analysis of the KDR’s Private Letter Ruling, including that Atmos should rename its current “Commodity Charge” within its tariffs to “Delivery Charge” to incur the benefits for ratepayers that will flow from qualifying such charge for an exemption from State sales taxes.¹²

IV. Findings and Conclusions

11. The Commission agrees that renaming Atmos’s “Commodity Charge” to “Delivery Charge” is in the interest of Kansas Ratepayers. The Private Letter Ruling to KGS is clear that if the Delivery Charge is named as such and stated separately on a customer bill, that charge will be exempted from the definition of “sales or selling price,” effectively exempting the charge from State sales taxes.

12. The Commission agrees that the benefit from the exemption in State sales tax will flow-through to Atmos’ ratepayers and therefore is in the interest of Atmos’s customers.

⁸ See Application, Exhibit A, p. 6; Staff’s R&R, p. 2.

⁹ Application, p. 2.

¹⁰ *Id.*

¹¹ *Id.*

¹² See Staff’s R&R, p. 2.

THEREFORE, THE COMMISSION ORDERS:

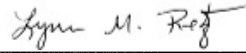
A. The Commission hereby approves Atmos’s request to rename its currently-labeled “Commodity Charge” in its tariffs to “Delivery Charge” to capture the benefits from the exclusion of the charge from the definition of “sales or selling price” in K.S.A. 79-3602, and thus exempting such charge from State sales tax.

B. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).

BY THE COMMISSION IT IS SO ORDERED.

French, Chairperson; Keen, Commissioner; Kuether, Commissioner

Dated: 06/20/2024



Lynn M. Retz
Executive Director

CRM

CERTIFICATE OF SERVICE

24-ATMG-574-TAR

I, the undersigned, certify that a true copy of the attached Order has been served to the following by means of electronic service on 06/20/2024.

JOSEPH R. ASTRAB, ATTORNEY
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
j.astrab@curb.kansas.gov

SHELLY M BASS, SENIOR ATTORNEY
ATMOS ENERGY CORPORATION
5430 LBJ FREEWAY
1800 THREE LINCOLN CENTRE
DALLAS, TX 75240
shelly.bass@atmosenergy.com

JAMES G. FLAHERTY, ATTORNEY
ANDERSON & BYRD, L.L.P.
216 S HICKORY
PO BOX 17
OTTAWA, KS 66067
jflaherty@andersonbyrd.com

TODD E. LOVE, ATTORNEY
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
t.love@curb.kansas.gov

CARLY MASENTHIN, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
c.masenthin@kcc.ks.gov

DAVID W. NICKEL, CONSUMER COUNSEL
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
d.nickel@curb.kansas.gov

SHONDA RABB
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
s.rabb@curb.kansas.gov

DELLA SMITH
CITIZENS' UTILITY RATEPAYER BOARD
1500 SW ARROWHEAD RD
TOPEKA, KS 66604
d.smith@curb.kansas.gov

/S/ KCC Docket Room

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