

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 4th day of
August, 2010.

In the Matter of the PGA/ACA Filing of Atmos)
Energy Corporation for the West Area (Old Butler),)
West Area (Old Greeley), Southeastern Area (Old)
SEMO), Southeastern Area (Old Neelyville),)
Kirksville Area and the Northeastern Area)

File No. GR-2008-0364

**ORDER REGARDING MOTION FOR RECONSIDERATION,
MOTION FOR REHEARING, AND REQUEST FOR STAY OF
ORDER**

Issue Date: August 4, 2010

Effective Date: August 4, 2010

On July 15, 2010, the Commission granted Staff's motion to compel Atmos Energy Corporation to respond to a Staff data request.¹ On July 23, Atmos filed a timely motion for reconsideration, motion for rehearing, and request for stay of order.

The Commission's July 15 order directs Atmos to comply with a Staff data request by giving Staff and Public Counsel access to gas supply contracts between Atmos Energy Marketing and its upstream gas suppliers. Atmos Energy Marketing is a subsidiary of the regulated utility, Atmos, but is not itself subject to regulation by this Commission. Atmos' motion asks the Commission to reverse its decision on three bases.

First, Atmos contends the Commission should have denied Staff's motion to compel because Staff is only now seeking information that it should have sought earlier in the audit

¹ For purposes of this order, Atmos Energy Corporation will be referred to simply as Atmos. Other corporate entities that share the Atmos name will be referred to by their full name.

process. The parties have already filed direct and rebuttal testimony and, according to Atmos, any discovery from Staff at this point should be limited to information necessary to respond to Atmos' Rebuttal Testimony, which was filed on June 14, 2010. The information Staff seeks is not related to Atmos' rebuttal testimony and on that basis, Atmos urges the Commission to reverse its decision and deny Staff's motion to compel.

In support of its position, Atmos cites Commission rule 4 CSR 240-2.130(8), which states, "no party shall be permitted to supplement prefiled direct, rebuttal or surrebuttal testimony unless ordered by the presiding officer or the commission." Of course, that rule can also be read as permitting a party to file supplemental testimony if allowed to do so by the presiding officer or the commission. Thus, the regulation allows Staff the ability to seek permission to file supplemental testimony depending upon what it learns from the discovery it seeks. Indeed, Staff makes just such a request in its June 14 motion to compel. In short, the Commission's rule does not require the Commission to reconsider its decision to compel Atmos to comply with Staff's data request.

Atmos' second argument urging the Commission to reconsider its order to compel contends that the Commission improperly decided one of the legal issues necessary to resolve the underlying case without the benefit of briefing on the issue. In particular, Atmos is concerned that the order states:

the existence of a bidding process does not eliminate the rule's requirement that Atmos not provide a financial advantage to its affiliate, and the mere existence of that bidding process does not necessarily establish the fair market price of the goods and services Atmos obtained from its affiliated marketing company.

Atmos contends the bidding process does establish the fair market price of the goods and services that it obtains from its affiliated marketing company and wants the opportunity to

make that argument to the Commission in the underlying case.

The Commission agrees that Atmos should be given a full and fair opportunity to argue its position. However, the challenged statement does not indicate that the Commission has prematurely decided the issue of the effect of the bidding process. Rather, the Commission included the statement in its order to explain why Staff should be allowed an opportunity to conduct discovery to examine the validity of that position. The statement in the order granting Staff's motion to compel is not binding on the Commission in the ultimate resolution of this case and does not require the Commission to reconsider its order to compel.

Atmos' third and final argument in support of its motion for reconsideration contends the Commission has no statutory authority to compel Atmos to obtain access to the contracts of its subsidiary Atmos Energy Marketing, when those contracts are not within the possession of Atmos. Unquestionably, the Commission does not regulate Atmos Energy Marketing. The Commission does, however, regulate Atmos.

The Commission has not ordered Atmos Energy Marketing to do anything and does not intend to regulate the affairs of that unregulated affiliate. However, if the Commission is to carry out its statutory mandate to regulate Atmos, it must, at times, have access to documents maintained by Atmos' unregulated affiliates that pertain to the operations of the regulated utility. Otherwise, a regulated utility could defeat legitimate regulation by simply shuffling key documents into the pocket of an unregulated affiliate. That is the purpose of section 4 CSR 240-40.016(7), the regulation cited in the Commission's order granting Staff's motion to compel. That regulation is consistent with the Commission's statutory authority to regulate Atmos and Atmos' argument to the contrary fails.

In the judgment of the Commission, Atmos has not offered sufficient reason to reconsider or rehear the Commission's Order Granting Staff's Motion to Compel Atmos to Respond to Data Requests. The Commission will deny Atmos' motion seeking such rehearing or reconsideration.

THE COMMISSION ORDERS THAT:

1. Atmos Energy Corporation's Motion for Reconsideration, Motion for Rehearing, and Request for Stay of Order is denied.
2. This order shall become effective immediately upon issuance.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Clayton, Chm., Gunn, and Kenney, CC., concur;
Davis and Jarrett, CC., dissent.

Woodruff, Chief Regulatory Law Judge