

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the matter of 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 in the Northeastern Area )

**Case No. GR-2008-0364**

**MOTION AND WAIVER REQUEST CONCERNING DISCOVERY**

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and respectfully moves the Commission to compel expeditiously Atmos Energy Corporation ("Atmos") to fully respond to Staff's Data Request 117 and grant such further relief as is requested below:

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2. Atmos did not object to DR 117 on or before May 13, 2010, the deadline for objections under the Commission's discovery rules at 4 CSR 240-2.090(2), and therefore any objection has been waived.

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3. Atmos did not respond to DR 117 on or before May 23, 2010, the deadline for responding under the Commission's discovery rules at 4 CSR 240-2.090(2). On May 24, 2010, some documentation was provided that was not fully responsive to DR 117.

4. On June 3, 2010, Staff and Atmos counsel held a discovery conference at which Atmos counsel represented that a response to DR 117 was forthcoming. On June 9, 2010, 17 days after the deadline for responding and 27 days after the deadline for objecting, Atmos responded that "The requested documents are not in the possession of AEC."

5. On June 11, 2010, faced with a deadline for rebuttal testimony on June 14, 2010, the Staff filed its Motion to Suspend Procedural Schedule, which Atmos formally opposed on June 14, 2010.

6. As Atmos Energy Corporation seeks to thwart the Staff's discovery by claiming the requested documents are in the hands of a third party, the Staff respectfully moves that the Commission make the affiliated entities that do possess the information (Atmos Energy Holdings, Inc. and Atmos Energy Marketing, LLC, ("AEH" and "AEM," respectively) parties to this action. Both AEH and AEM are hardly disinterested parties; they are both under the direct managerial control of Atmos. The Staff believes that §393.140(12) RSMo 2000, as well as 4 CSR 240-40.015(6)(A) and 40.016(7) give the Commission broad authority to make those entities parties and permits the Staff to inquire into the relationship among the Atmos Companies.

7. As Atmos both failed to object to and failed to produce the response to DR 117, the Staff moves that the Commission compel Atmos or its affiliates to produce the requested documentation, pursuant to 4 CSR 240-2.090(1) and (2). Staff notes that it has not had the requisite conference with the presiding officer as set forth in 4 CSR 240.090(8)(B), but asks that,

in light of the timing of the refusal to respond and the filing of testimony and the Staff's continued good faith attempts to resolve the matter, the Commission waive that requirement pursuant to 4 CSR 240-2.015(1).

8. As noted above, the deadline for filing Rebuttal testimony is today. The Staff is placed at a disadvantage, because the public interest requires that it determine fair market value of the gas purchased by AEM. The Staff believes that, should the Commission compel the production of the DR 117 responses, the Staff will be unable to incorporate that information into its case because of the limitations on the subject matter of testimony in 4 CSR 240-2.130 (7)(D). Therefore, the Staff moves the Commission to grant the Staff to file either supplemental rebuttal after it receives the DR 117 response documents, or allow it to address the matter in surrebuttal unfettered by that rule.

9. Finally, the Staff renews its Motion that the procedurals schedule in this matter be suspended until this discovery issue is resolved. Staff notes that there is no operation of law date in this case. At dispute is a proposed affiliate transaction disallowance; there is no harm to Atmos by suspending this procedural schedule until the discovery issues in this case are resolved. The Commission may, among other more severe sanctions, stay this proceeding. The Staff may seek other sanctions as may be required.

WHEREFORE, for the above stated reasons, the Staff respectfully requests the Commission expeditiously 1) Compel Atmos to respond fully to DR 117; 2) Waive the requirement for an additional discovery conference; 3) Suspend the procedural schedule until the discovery dispute is resolved; 4) Permit Staff to file supplemental rebuttal or surrebuttal testimony unlimited to issues raised in Atmos' rebuttal testimony; 5) Join Atmos Energy Holdings, Inc. and Atmos Energy Marketing, LLC as parties to this case; 6) Suspend indefinitely

the procedural schedule in this case or order other sanctions against Atmos for its failure to object and failure to respond to DR 117; and 7) Expedite the response to this pleading so that the Parties may proceed accordingly.

Respectfully submitted,

**/s/ Robert S. Berlin**

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### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 14<sup>th</sup> day of June 2010.

**/s/ Robert S. Berlin**