

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 15<sup>th</sup> day of  
July, 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 GRANTING STAFF'S MOTION TO COMPEL ATMOS TO  
RESPOND TO DATA REQUESTS**

Issue Date: July 15, 2010

Effective Date: July 15, 2010

This case involves Atmos Energy Corporation's (Atmos) 2007-2008 Actual Cost Adjustment (ACA) filing. The purpose of the ACA filing is to reconcile Atmos' actual cost to purchase natural gas with the amount of cost it passed to its customers through the operation of the purchased gas adjustment (PGA) provisions of its tariff. As part of that reconciliation process, the Commission's Staff examines the prudence of Atmos' gas purchase contracts.

Staff filed its recommendation regarding Atmos' ACA filing on December 28, 2009. At that time, Staff recommended an adjustment of approximately \$363,000 to reduce Atmos' actual gas costs by the amount of profit earned by Atmos' affiliated gas marketing entity, Atmos Energy Marketing, for transactions involving sales of gas to Atmos. Atmos disagreed with Staff's proposed adjustment and a procedural schedule was established leading to an evidentiary hearing on September 14-17, 2010. The parties prefiled direct

testimony on March 12, rebuttal testimony on June 14, and surrebuttal testimony would have been due on July 16.

On Friday, June 11, Staff filed a motion asking the Commission to suspend the procedural schedule because of Atmos' failure to provide Staff with copies of the contracts between Atmos Energy Marketing and its upstream gas suppliers. Atmos had responded to Staff's data request for those contracts on June 9 with a statement that the requested contracts are not in Atmos' possession. In particular, Staff wanted to avoid having to file rebuttal testimony on Monday, June 14.

Atmos responded in opposition to Staff's motion on June 14 and at the same time filed its rebuttal testimony. Staff also filed its rebuttal testimony on June 14. However, Staff also filed another motion on June 14. This time, Staff asked the Commission to compel Atmos to fully respond to Staff's data request seeking copies of the marketing subsidiaries' upstream gas supply contracts. Staff again asked the Commission to suspend the procedural schedule until the discovery dispute is resolved, permit Staff to file supplemental rebuttal or surrebuttal testimony after the contracts are disclosed, impose sanctions on Atmos, and join Atmos's subsidiaries, Atmos Energy Holdings, Inc. and Atmos Energy Marketing, LLC, as parties to this case.

The Commission held an on-the-record prehearing conference regarding Staff's motion on June 18. At the conference, Staff explained that it needs to see the requested contracts to determine the fair market value of the gas that was sold to Atmos by its subsidiary marketing company. In its December recommendation, Staff had proposed to disallow all profits the marketing subsidiary earned from the questioned transactions. Staff claims the requested information would allow Staff to refine, and possibly reduce that

disallowance, based on the fair market value of the purchased gas.

Atmos argues Staff should not be allowed to review the contracts because they are contracts of the unregulated subsidiary marketing company, and not contracts of the regulated utility. More fundamentally, Atmos contends the contracts are irrelevant to the issues before the Commission because all transactions between the regulated utility and the unregulated marketing company resulted from a competitive bidding process in which the subsidiary marketing company submitted the best bid. According to Atmos, the fact that the contracts resulted from competitive bidding should end the Commission's inquiry into the valuation of those contracts.

On July 2, the Commission indefinitely suspended the procedural schedule to allow more time to properly evaluate Staff's motion to compel.

Commission Rule 4 CSR 240-40.016 specifically governs the relationship between a regulated gas utility and any unregulated gas marketing affiliate. The relevant portion of subsection 4 CSR 240-40.016(3)(A) of that rule provides:

A regulated gas corporation shall not provide a financial advantage to an affiliated entity. For purposes of this rule, a regulated gas corporation shall be deemed to provide a financial advantage to an affiliated entity if –

1. It compensates an affiliated entity for information, assets, goods or services above the lesser of –
  - A. The fair market price; or
  - B. The fully distributed cost to the regulated gas corporation to provide the information, assets, goods or services for itself;
- ...

Staff indicates it needs to review the marketing affiliate's contracts with its suppliers to be able to determine whether the price that affiliate is charging the regulated company is in fact the fair market price.

Subsection 4 CSR 240-40.016(4)(A) of the Commission's rule requires a regulated

gas utility that purchases goods or services from an affiliated entity to either obtain competitive bids for such goods or services, or demonstrate why competitive bids were neither necessary nor appropriate. Atmos appears to have satisfied that requirement of the rule by obtaining competitive bids for the gas procurement services and gas supply it purchased from its affiliated marketing company. However, 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.

Ultimately, after hearing the evidence presented by the parties, the Commission may determine that the bidding process has established the fair market price and that Atmos has not provided a financial advantage to its affiliate. However, if Staff is to satisfy its obligation to evaluate Atmos' compliance with the affiliate transaction rule and perhaps present evidence on that question, it must be able to review the supply contracts entered into by Atmos' affiliate.

Atmos declined to give copies of those supply contracts to Staff because it says it does not have possession or control of the contracts entered into by its affiliated marketing company. However, the relevant portion of Section 4 CSR 240-40.016(7) of the Commission's rule on marketing affiliate transactions provides:

(A) To the extent permitted by applicable law, and pursuant to established commission discovery procedures, a regulated gas corporation shall make available the books and records of its parent and any other affiliated entities when required by the application of this rule.

(B) The commission shall have the authority to –

1. Review, inspect and audit books, accounts and other records kept by a regulated gas corporation or affiliated entity for the sole purpose of

ensuring compliance with this rule and make findings available to the commission; ...

Under the explicit terms of that regulation, Atmos, as a regulated gas corporation, has an obligation to make the books and records of its affiliated entities available for the Commission's review. If Atmos does not currently have access to the records Staff seeks, it needs to gain that access immediately.

The Commission promulgated its marketing affiliate transaction rule because dealings between a regulated utility and unregulated affiliated companies can be used to improperly push profits to the unregulated affiliate to the detriment of the captive rate payers of the utility. Only by having full access to the relevant records of the affiliate can Staff evaluate Atmos' compliance with the affiliate transaction rule and report its findings to the Commission. The Commission will grant Staff's motion to compel Atmos to respond to Staff's data request.

Staff's motion also asks the Commission to add Atmos' subsidiaries as parties and impose unspecified sanctions against Atmos. There is no need to add any parties to this case as Atmos already has a clear obligation under the regulation to produce the relevant records of its affiliated companies. The Commission will not impose sanctions on Atmos at this time. The Commission will reestablish a procedural schedule after Staff and Public Counsel have an opportunity to review the documents Atmos produces.

**THE COMMISSION ORDERS THAT:**

1. Atmos Energy Corporation shall promptly comply with Staff's Data Request 117 by providing the documents sought in that data request to Staff and the Office of the

Public Counsel. Atmos Energy Corporation may treat those documents as propriety or highly confidential as appropriate under the Commission's rules.

2. No later than August 13, 2010, the parties shall file, jointly or severally, a progress report including recommendations regarding reestablishment of a procedural schedule.

3. This order shall become effective immediately upon issuance.

**BY THE COMMISSION**

( S E A L )

A handwritten signature in black ink, appearing to read 'S. Reed', is positioned above the printed name of the signatory.

Steven C. Reed  
Secretary

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

Woodruff, Chief Regulatory Law Judge