

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 10th day of
November, 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 AND REESTABLISHING
PROCEDURAL SCHEDULE**

Issue Date: November 10, 2010

Effective Date: November 10, 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 the Commission established a procedural schedule.

On June 14, 2010, Staff filed a motion asking the Commission to compel Atmos to respond to certain data requests for documents relating to Atmos Energy Marketing's purchase of the natural gas it supplied to Atmos. The Commission granted Staff's motion to compel on July 15, and suspended the remaining procedural schedule while the disputed discovery proceeded.

Atmos complied with the Commission's order to compel by providing Staff with the documents it requested. On August 27, Staff issued follow-up data requests asking Atmos for more details about the transactions between Atmos Energy Marketing and its gas suppliers. Atmos objected to the follow-up data requests as irrelevant and not designed to lead to the discovery of admissible evidence. Staff responded by filing the current motion to compel on September 14.

Atmos filed a written response to Staff's motion to compel on September 22. On the same date, the Office of the Public Counsel filed its response in support of Staff's Motion to Compel. In addition, the Commission convened an oral argument regarding Staff's Motion to Compel on October 20.

Atmos contends the information Staff seeks is 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. Staff indicates it needs to review and evaluate 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.

The data requests for which Staff asks the Commission to compel a response require Atmos to provide Staff with additional documents to explain certain anomalies in the marketing affiliate's handling of gas supplies that the Staff believes could indicate manipulation of those supplies to the benefit of Atmos and the detriment of Atmos' ratepayers. Staff is also seeking further information to evaluate the integrity of Atmos' bid process for those supplies.

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 and evaluate the supply contracts entered into by Atmos' affiliate. To do that it is entitled to obtain the additional information and documents it seeks.

For that reason, the Commission finds that the additional information Staff seeks is relevant, or may lead to the discovery of relevant, admissible evidence. Thus, under Rule 56.01(b)(1) of the Missouri Rules of Civil Procedure, the information Staff seeks is subject to discovery. Therefore, the Commission will grant Staff's motion to compel Atmos to respond to Staff's data requests.

The Commission is mindful of Atmos' concern that Staff not be allowed to proceed with a never-ending fishing expedition into Atmos' business dealings with its subsidiary gas marketing company. Staff purportedly completed its audit of Atmos' actual gas costs in December 2009, and proposed a disallowance at that time. While there is no statutorily imposed deadline for Commission action, Atmos deserves a reasonably prompt resolution

of that proposed disallowance. Therefore, the Commission will order Atmos to respond to Staff's data request within twelve days and will direct Staff to complete its discovery thirty days thereafter. The Commission will also order all parties to file their surrebuttal testimony at that time. After the parties file their surrebuttal testimony, the Commission will entertain recommendations from the parties for the scheduling of an evidentiary hearing and attendant procedural matters.

THE COMMISSION ORDERS THAT:

1. Staff's Motion to Compel Atmos' Response to Staff Data Requests 117.1 and 131.1 is granted.
2. Atmos Energy Corporation shall respond to Staff's Data Requests 117.1 and 131.1 by November 22, 2010.
3. All parties may file surrebuttal testimony no later than December 22, 2010.
4. All parties may file recommendation regarding the scheduling of an evidentiary hearing and attendant procedural matters no later than December 29, 2010.
5. This order shall become effective immediately upon issuance.

BY THE COMMISSION

(S E A L)



Steven C. Reed
Secretary

Clayton, Chm., Davis, Gunn, and Kenney, CC., concur;
Jarrett, C., dissents with dissenting opinion to follow.

Woodruff, Chief Regulatory Law Judge