

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Verified Application and Petition of)
Atmos Energy Corporation)
to Change its)
Infrastructure System Replacement Surcharge)

Case No. GO-2010-0168
Tracking No. YG-2010-0369

ORDER SUSPENDING TARIFF, ORDER DIRECTING FILINGS AND PUBLICATION OF NOTICE, AND NOTICE OF CONTESTED CASE

Issue Date: December 8, 2009

Effective Date: December 8, 2009

The Missouri Public Service Commission is:

- suspending the tariff that accompanies the application,
- giving notice of a contested case, and
- directing and setting deadlines for intervention and other filings.

The Commission is also directing the publication of this notice and order.

On December 1, 2009, Atmos Energy Corporation (“Atmos”) filed a tariff sheet (“tariff”) and an Application and Petition (“petition”). The tariff and petition seek an adjustment to Atmos’ infrastructure system replacement surcharge (“ISRS”). The petition includes example customer notices and a customer bill (“notices”).

Upon such filing:

. . . the commission shall conduct an examination of the proposed ISRS [;¹]

and decide whether the:

. . . petition complies with the requirements of sections 393.1009 to 393.1015 [.²]

The tariff bears an effective date of December 31, 2009.

¹ Section 393.1015.2(1), RSMo Supp. 2008.

A. Tariff Suspension and Contested Case

The tariff's effective date is not time enough for the Commission to discharge the statutory duties we described. The statutes allow the Commission to suspend the tariff for a period of 120 days beyond the tariff's effective date.³ But the statutes also provide that Commission must decide the petition as follows:

The commission may hold a hearing on the petition and any associated rate schedules and shall issue an order to become effective not later than one hundred twenty days after the petition is filed. [⁴]

Therefore, the Commission will suspend the tariff until one hundred twenty days after the petition's filing date.

The statutes allow the Commission to suspend the tariff only pending a "full" hearing and decision on the tariff's propriety.⁵ Because the "hearing involv[es] a rate sought to be increased, the burden of proof to show that the . . . proposed increased rate is just and reasonable shall be upon the gas corporation seeking the increase[. ⁶]"

The provision for a full pre-decision hearing signifies that this action must now be a "contested case."⁷ A contested case is a formal hearing procedure, but it allows for waiver of procedural formalities and a decision without a hearing,⁸ including by stipulation and agreement.⁹ The Commission has published regulations on discovery at 4 CSR 240-2.090. This order and notice requires the parties to file responsive pleadings¹⁰ as follows.

² Section 393.1015.2(4), RSMo Supp. 2008.

³ Section 393.150.1, RSMo 2000.

⁴ Section 393.1015.1.2(3), RSMo Supp. 2008.

⁵ Section 393.150.1, RSMo 2000.

⁶ Section 393.150.2, RSMo 2000.

⁷ Section 536.010(4), RSMo Supp. 2008.

⁸ Sections 536.060, RSMo 2000.

⁹ 4 CSR 240-2.115.

¹⁰ Section 536.067(2)(d), RSMo 2000.

B. Responsive Filings

The petition certifies compliance with the requirement to:

. . . . serve the office of the public counsel with a copy of its petition, its [tariff], and its supporting documentation.^[11]

The Commission's regulations provide:

[T]he office of the public counsel may, within ten (10) days of the gas utility's filing of this information, submit comments regarding these notices to the commission.^[12]

That date would be just three days from the issuance of this notice and order, but the Commission may extend that time.¹³ Therefore, the Commission will order the filing of such comments under an extended time.

The petition also certifies service on the Commission's General Counsel. The General Counsel represents the Commission's staff ("Staff").¹⁴ Staff's authority is as follows:

The staff of the commission may examine information of the gas corporation to confirm that the underlying costs are in accordance with the provisions of sections 393.1009 to 393.1015, and to confirm proper calculation of the proposed charge, and may submit a report regarding its examination to the commission not later than sixty days after the petition is filed. No other revenue requirement or ratemaking issues may be examined in consideration of the petition or associated proposed rate schedules filed pursuant to the provisions of sections 393.1009 to 393.1015. ^[15]

Therefore, the Commission will order Staff to file a report as described in that statute.

The Commission will also set deadlines for any application to intervene, any response to an application to intervene, and any reply to any responsive filing.

¹¹ Section 393.1015.1(1), RSMo Supp. 2008.

¹² 4 CSR 240-3.265(9).

¹³ 4 CSR 240-2.050(3)(A).

¹⁴ 4 CSR 240-2.040(1).

C. Notice of this Action

The statutes also require the Commission to “publish notice of the filing[,]”¹⁶ so the Commission will order publication of this notice and order.

THE COMMISSION ORDERS THAT:

1. The tariff sheet assigned tracking number YG-2010-0369, issued and filed by Atmos Energy Corporation on December 1, 2009, is suspended through March 31, 2010.

The tariff sheet suspended is:

P.S.C. MO. No. 2

Second Revised Sheet No. 19, Canceling First Revised Sheet No. 19

2. No later than December 18, 2009, the Office of Public Counsel shall file any comment as to the example notices that accompany the application and petition.

3. No later than December 23, 2009, any response to any comment of the Office of Public Counsel shall be filed.

4. No later than December 23, 2009, any application for intervention shall be filed by delivery to:

Secretary, Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102

or by entry into the Commission’s electronic filing and information system (“EFIS”).

5. No later than January 8, 2010, any response to any application for intervention shall be filed.

6. No later than February 1, 2010, the Commission’s staff shall file a report as described in the body of this order.

¹⁵ Section 393.1015.2(2), RSMo Supp. 2008.

¹⁶ Section 393.1015.1(2), RSMo Supp. 2008.

7. No later than February 11, 2010, any response to the report of the Commission's staff shall be filed.

8. The Commission's Data Center shall mail a copy of this notice and order to the county commission of any counties served by Atmos Energy Corporation and to all parties in Atmos Energy Corporation's most recent general rate case: File No. GR-2006-0387.

9. The Commission's Public Information Office shall make notice of this order available to the media serving the counties served by Atmos Energy Corporation and to the members of the General Assembly representing the counties served by Atmos Energy Corporation.

10. This order shall become effective immediately on issuance.

BY THE COMMISSION

(S E A L)



Steven C. Reed
Secretary

Jordan, Regulatory Law Judge,
by delegation of authority pursuant
to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 8th day of December, 2009.