

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

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 DENYING IN PART AND GRANTING IN PART ATMOS' MOTION TO QUASH SUBPOENA

Issue Date: March 16, 2011

Effective Date: March 16, 2011

On March 8, 2011, Atmos Energy Corporation filed a motion asking the Commission to quash a subpoena duces tecum the Commission's Staff served on Mike Walker, an Atmos employee. The subpoena directs Walker to appear at the hearing before the Commission on March 23 and to produce multiple documents. The Commission established 1:00 p.m. on March 11 as the time for filing any response to Atmos' motion. Staff and Public Counsel filed timely responses.

Atmos' motion explains that Walker has not prefiled testimony in this case and states that Staff took his deposition on February 28, 2011. Atmos contends the Commission should require Staff to designate portions of the transcript of Walker's deposition to be offered into evidence at the hearing in lieu of requiring him to testify again at the hearing. Atmos proposes to designate the portions of the deposition transcript it would offer into evidence. Atmos suggests the Commission could thereby avoid the burden of hearing Walker's live testimony at the hearing.

Atmos' motion offers legal citations indicating depositions can be used in the manner it suggests, but it does not offer support for the idea that Staff should be compelled to present its evidence in that manner. Normally, the Commission accepts prefiled written testimony in its cases, but where, as here, Staff wants to use the testimony of a utility employee to prove some aspect of its case, it has no way to compel the adverse witness to submit the testimony it seeks in written form. A prehearing deposition, as Atmos suggests, is an alternative, but that alternative would eliminate the Commission's opportunity to question the witness, would limit the opportunity of other parties to cross-examine the witness, and could limit the perceived impact of the testimony. Absent a showing of good cause to limit a party's ability to compel a witness to testify at the hearing, the Commission will not do so. The Commission will not quash Staff's subpoena.

As an alternative to entirely quashing Staff's subpoena, Atmos asks the Commission to quash the portion of the subpoena that compels Mr. Walker to produce documents at the hearing. Atmos claims it has already provided the subpoenaed documents to Staff during the extensive discovery process and claims it would be burdensome to produce them again. Atmos also points to a previous Commission order that directed Staff to complete its discovery by December 22, 2010. Atmos is concerned that through this *subpoena duces tecum*, Staff is seeking to conduct still more discovery at the hearing.

Staff, supported by Public Counsel, denies it is asking Mr. Walker to produce these documents for discovery purposes. Rather, Staff asserts Mr. Walker's testimony is necessary because he purchased natural gas for Atmos during the 2007-2008 ACA period. For that reason, Staff believes Walker can best answer questions about Atmos gas

purchasing practices during that period and it has directed him to produce documents relating to that period so he can be questioned about those documents at the hearing.

The Commission is mindful of Atmos' concern because the witness stand at the evidentiary hearing is not the proper time or place for Staff to conduct a discovery deposition of Atmos' witness. Staff says it is not seeking additional discovery by directing the witness to produce these documents, indicating it has previously requested these documents from Atmos by issuing data requests, and asserts that it simply wants Mr. Walker to be prepared to answer questions related to these documents. Public Counsel further explains that Staff may want the witness to bring the subpoenaed documents to the hearing because he is in the best position to lay a proper foundation for documents that he compiles and brings to the hearing.

The Commission concludes that the portion of the subpoena that directs Atmos to produce documents at the hearing is improper. To the extent that Staff wants to question Atmos about documents that are in Staff's possession, it is incumbent upon Staff to compile and lay a foundation for the documents about which it wants to question the witness. The Commission will not allow Staff to transfer that burden to the witness. If, in fact, Staff is seeking additional discovery by asking the witness to produce documents that Staff does not already have in its possession, then the subpoena duces tecum is improper because the Commission previously ordered Staff to complete its discovery by December 22, 2010. The Commission will quash the production of documents portion of Staff's subpoena.

THE COMMISSION ORDERS THAT:

1. The Motion for Protective Order of Atmos Energy Corporation to Quash Hearing Subpoena is denied in part so that Atmos Energy Corporation's employee, Mike Walker, is compelled to appear and testify at the hearing on March 23, 2011.
2. The Motion for Protective Order of Atmos Energy Corporation to Quash Hearing Subpoena is granted in part so that Atmos Energy Corporation's employee, Mike Walker, is not compelled to produce the documents described in the subpoena.
3. This order shall become effective immediately upon issuance.

BY THE COMMISSION

(S E A L)



Steven C. Reed
Secretary

Morris L. Woodruff, Chief Regulatory Law Judge,
by delegation of authority pursuant to
Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 16th day of March, 2011