

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

In the Matter of PGA/ACA Filing of )  
Atmos Energy Corporation for the West )  
Area (Old Butler), West Atea (Old )  
Greeley), Southeastern Area (Old SEMO), )  
Southeastern Area (Old Neelyville), )  
Kirksville Area, and in the Northeastern )  
Area. )

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

**PUBLIC COUNSEL’S RESPONSE TO THE MOTION  
FOR PROTECTIVE ORDER OF ATMOS ENERGY  
CORPORATION TO QUASH HEARING SUBPOENA**

**COMES NOW** the Office of the Public Counsel (OPC) and for its Response to the Motion for Protective Order of Atmos Energy Corporation to Quash Hearing Subpoena, states as follows:

1. On March 2, 2011, the Commission’s Staff filed a Request for Subpoena Duces Tecum to compel the attendance of Mr. Mike Walker, Gas Purchasing Specialist for Atmos Energy Corporation (Atmos), at the evidentiary hearing on March 23, 2011. Atmos responded on March 8, 2011 by filing a Motion for Protective Order of Atmos Energy Corporation to Quash Hearing Subpoena.

2. The Staff deposed Mr. Walker on February 28, 2011. Mr. Walker’s deposition responses lead the Staff to conclude that Mr. Walker’s testimony is “relevant and necessary” to determining whether Atmos’s 2007-2008 gas purchasing decisions and practices were lawful and prudent. OPC agrees with the Staff’s conclusion and opposes Atmos’s attempt to prevent Mr. Walker from testifying before the Commission.

3. In response to the subpoena duces tecum, Atmos argues that “there is no good reason why [Mr. Walker] should be compelled to attend the hearing. Instead, his deposition should be submitted to the Commission with appropriate designations.” OPC disagrees with Atmos’s assertion that there is “no good reason” to compel Mr. Walker’s appearance at the hearing. Mr. Walker should be compelled to attend the hearing for the following reasons:

a. Mr. Walker is Atmos’s Gas Supply Specialist and has first-hand knowledge of the 2007-2008 gas purchasing decisions and practices at issue in this prudency review. Transaction documents show that Mr. Walker regularly purchased gas for Atmos from Atmos Energy Marketing (AEM) during the 2007-2008 ACA period, and therefore Mr. Walker is a necessary witness to helping the Commission understand Atmos’s purchasing decisions.<sup>1</sup>

b. Ms. Rebecca Buchanan is the only witness Atmos wants to make available for questions during the hearing. However, Mr. Walker can answer certain gas purchasing questions that cannot be answered by Ms. Buchanan. During the Staff’s deposition, Ms. Buchanan deferred to Mr. Walker or looked to Mr. Walker for assistance in answering a number of the Staff’s questions. This is to be expected since Ms. Buchanan did not transfer from the Atmos Rates Department to her current position as

---

<sup>1</sup> Rebuttal Testimony of David Sommerer, Case Number GR-2008-0364, June 14, 2010, Schedules 5-6 through 5-19, and Schedules 5-33 through 5-45. See also the Staff’s October 25, 2010 filing, *Filings in Response to Request of Commissioner Davis*, Case Number GR-2008-0364, which includes a large number of transaction documents where Mr. Walker appears to be a primary gas purchaser for Atmos.

Manager of Regional Gas Supply until August 2007.<sup>2</sup> The limits to Ms. Buchanan's knowledge over Atmos's 2007-2008 gas purchases were not known until the deposition.

c. Relying on a deposition without putting Mr. Walker on the stand, as proposed by Atmos, would not provide Commissioners with an opportunity to question Mr. Walker regarding Atmos's 2007-2008 gas purchasing decisions and practices. Commissioners may have questions for Atmos that cannot be answered by Ms. Buchanan, but that could be answered by Mr. Walker.

d. Relying on a deposition alone without putting Mr. Walker on the stand would not allow OPC to exercise its right to cross-examine opposing witnesses. Section 536.070 RSMo 2000.

4. OPC also opposes Atmos's attempt to prevent Mr. Walker from producing the gas nomination documents listed in the Staff's Subpoena Duces Tecum regarding Atmos's Hannibal/Canton/Palmyra/Bowling Green service area. Atmos argues that the documents were already provided to Staff.<sup>3</sup> If so, these documents should be easy to bring since they were already compiled by Atmos. Moreover, having Mr. Walker produce Atmos's own documents would provide the Commission with the best evidence available, and should shorten the hearing since Mr. Walker will be better able to lay a proper foundation for documents that he compiles and brings to the hearing.

---

<sup>2</sup> Direct Testimony of Rebecca Buchanan on Behalf of Atmos Energy Corporation, Case Number GR-2008-0364, March 12, 2010, pp. 1-2.

<sup>3</sup> Motion for Protective Order of Atmos Energy Corporation to Quash Hearing Subpoena, Case Number GR-2008-0364, March 8, 2011, p. 3, paragraph 9.

5. The Subpoena Duces Tecum was issued on March 2, 2011, twenty-one (21) days before the scheduled evidentiary hearing. Because the subpoena issued more than twenty (20) days before the hearing, a good cause showing was not required. 4 CSR 240-2.100(2).

6. Section 386.420 RSMo states that “the commission shall issue process to enforce the attendance of all necessary witnesses.” Mr. Walker is a necessary witness, and his attendance should be required.

WHEREFORE, the Office of the Public Counsel respectfully offers this response in opposition to Atmos Energy Corporations’ attempt to prevent the Staff, OPC, and the Commission from questioning Mr. Walker regarding Atmos’s 2007-2008 gas purchasing decisions and practices.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

By: /s/ Marc D. Poston  
Marc D. Poston (#45722)  
Deputy Public Counsel  
P. O. Box 2230  
Jefferson City MO 65102  
(573) 751-5558  
(573) 751-5562 FAX  
[marc.poston@ded.mo.gov](mailto:marc.poston@ded.mo.gov)

## **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record this 10<sup>th</sup> day of March 2011.

Office General Counsel  
Missouri Public Service Commission  
200 Madison Street, Suite 800  
P.O. Box 360  
Jefferson City, MO 65102  
[GenCounsel@psc.mo.gov](mailto:GenCounsel@psc.mo.gov)

Larry W Dority  
Atmos Energy Corporation  
101 Madison, Suite 400  
Jefferson City, MO 65101  
[lwdority@sprintmail.com](mailto:lwdority@sprintmail.com)

James M Fischer  
Atmos Energy Corporation  
101 Madison Street, Suite 400  
Jefferson City, MO 65101  
[jfischerpc@aol.com](mailto:jfischerpc@aol.com)

**/s/Marc D. Poston**

---

Marc D. Poston