

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

In the matter of 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 in)
the Northeastern Area)

Case No. GR-2008-0364

**STAFF RESPONSE IN OPPOSITION TO
MOTION FOR PROTECTIVE ORDER OF ATMOS ENERGY
CORPORATION TO QUASH HEARING SUBPOENA**

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through Staff Counsel, in opposition to the Motion For Protective Order Of Atmos Energy Corporation To Quash Hearing Subpoena (Motion) served by Staff upon Atmos on March 2, 2011. In response the Staff states as follows:

1. The Staff timely served Atmos with its Subpoena Duces Tecum, Order To Appear For Evidentiary Hearing, Order to Produce Documents (Hearing Subpoena). The Hearing Subpoena requested that Mr. Mike Walker, the Atmos Missouri gas buyer, appear at the evidentiary hearing on March 23, 2011. Staff served the Hearing Subpoena pursuant to Commission Rule 4 CSR 240-2.100 on March 2, 2011, a full 20 days before the start of the evidentiary hearing on March 23, 2011. Because Staff timely served its Hearing Subpoena, the Staff is not required to show good cause under 4 CSR 240-2.100(2). Moreover, there is no surprise to the witness.

2. Atmos' Motion alleges Staff's Hearing Subpoena is intended for discovery. It is not. Staff's Hearing Subpoena is intended to call Mr. Walker as a witness at the evidentiary

hearing so that he is available to answer the Commission's questions on how and why he made the gas nominations that he made with Atmos' gas supplier, its affiliate Atmos Energy Marketing (AEM). Mr. Walker's appearance is necessary because at deposition, Ms. Rebecca Buchanan, Atmos witness in this case, could not answer questions about how Atmos made its gas supply nominations. Further, Ms. Buchanan disclaimed technical knowledge on how nominations were made and deferred those questions to Mr. Walker, the buyer who formulated and made the first of month and daily/swing gas nominations to supply Hannibal/Canton/Bowling Green and are at issue here.

3. Mr. Walker's decisions on nominations, his assessment of Atmos' storage, and his reactions to his affiliate Atmos Energy Marketing's lack of firm swing gas supply for Atmos' nominations bear directly on the prices paid by ratepayers and the profits made by the affiliate. Mr. Walker's presence is necessary to answer Commission questions and to further its understanding of how Atmos dealt with its affiliate during a period of force majeure on the pipeline and in making nominations.

4. Mr. Walker's appearance at hearing is critical to a full and fair hearing by this Commission. At the October 10, 2010 hearing on Staff's second motion to compel, Commissioner Davis voiced many questions to Staff on how Atmos made its nominations with its affiliate AEM. Mr. Walker's nominations directly affected the prices that Missouri's captive ratepayers ultimately paid for gas and Mr. Walker is the only one who can testify regarding this.

5. Atmos' Motion incorrectly alleges Staff's Hearing Subpoena is like the hearing subpoenas Staff issued in the KCPL rate case, ER-2010-0355/ER-2010-0356. Indeed, Atmos' Motion follows KCPL's Motion nearly word for word and asks for similar relief. In the KCPL case, the Commission issued an order quashing and limiting scope of subpoenas because Staff

did not timely file its subpoena and because the Commission determined Staff had not shown good cause. Comparing this case to KCPL is apples and oranges. In KCPL, the Staff sought the presence of certain witnesses less than 20 days before hearing and was, by Commission rule, required to show good cause to the Commission and the Commission had to make a good cause determination in order to compel the presence of KCPL witnesses. Here, because Staff is timely in its filing, Staff has no good cause requirement and the Commission has no requirement to make a good cause determination. 4 CSR 240-2.100(2)

6. Atmos further alleges in its Motion that Staff is attempting to conduct further discovery because the Hearing Subpoena requires Mr. Walker to bring with him:

- Copies of all contractual requirements regarding nomination deadlines. Included in this are documents with the pipeline, AES, and AEM.
- Copies of all documents, including correspondence and communication, with the pipeline, AES, and AEM regarding first-of-month nominations for September 2007 through August 2008.
- Copies of all documents, including correspondence and communication, with the pipeline, AES, and AEM regarding swing (or daily) nominations for December 2007.

The Staff is not seeking discovery. Instead, Staff requests the Commission order Mr. Walker to bring the above documents because this matter involves the 2007-2008 ACA period and production of the above documents ensures Mr. Walker is prepared to answer questions about the actions he took some three years ago. Staff's Hearing Subpoena *limits documents to Atmos' Hannibal/Canton/Bowling Green service area.*

7. Furthermore, the production of the above documents relate directly to the issues regarding nominations and the affiliate transactions at issue in this case. Staff is not requesting anything new that it had not already requested of Atmos in Data Requests. The Company should have produced the above documents in its responses to Staff's Data Requests.

8. There is no undue burden on Atmos. Nomination decisions for gas supplied by the affiliate are part of the costs to be examined by the Commission in this hearing. These issues have never been heard by the Commission. Because this is a case of first impression, the Commission, Staff, and Office of Public Counsel are entitled to examine a witness prepared to answer its questions. To that end, Mr. Walker's appearance at hearing is required.

WHEREFORE, for the above stated reasons and for reasons that provide a fair and thorough hearing of the issues in a case of first impression, the Staff prays the Commission issue an order denying the Motion For Protective Order Of Atmos Energy Corporation To Quash Hearing Subpoena.

Respectfully submitted,

/s/ Robert S. Berlin

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 9th day of March 2011.

/s/ Robert S. Berlin