

**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),) Case No. GR-2008-0364
Southeastern Area (Old Neelyville),)
Kirksville Area, and in the Northeastern)
Area.)

**MOTION FOR PROTECTIVE ORDER OF
ATMOS ENERGY CORPORATION TO QUASH HEARING SUBPOENA**

Atmos Energy Corporation ("Company"), pursuant to Missouri Rules of Civil Procedure 56.01(c) and 57.09(b)(1), as well as 4 CSR 240-02.090, moves for a protective order to quash a hearing subpoena served by Staff upon the Company on March 2, 2011, or otherwise to limit its terms and conditions.

In support of this Motion, the Company states the following:

1. On March 2, 2011 Staff served a request to compel the attendance of Company employee Mike Walker, Gas Supply Specialist of Atmos Energy Corporation, to appear in this case at the evidentiary hearing on March 23, 2011 and thereafter. See Exhibit 1. The Subpoena Duces Tecum also requests that Mr. Walker be ordered to bring the following documents for the Hannibal/Canton/Palmyra/Bowling Green Area, for the September 2007-August 2008 timeframe:

- 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.

2. In its *Order Granting Staff's Motion To Compel Atmos To Respond To Data Requests and Reestablishing Procedural Schedule* issued on November 10, 2010 (“*November 10th Order*”), the Commission established a discovery cut-off date of December 22, 2010 for Staff’s discovery in this case (i.e. thirty days after Atmos was required to respond to Staff’s data requests). In the *November 10th Order* the Commission stated:

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. (*emphasis added*)

3. Although Mr. Walker has not pre-filed any testimony in this case, Atmos agreed to allow Mr. Walker to be deposed by Staff on February 28, 2011, notwithstanding the Commission’s clear and unequivocal *November 10th Order* that Staff’s discovery should have been completed by December 22, 2010. Because Mr. Walker has been deposed by Staff, there is no good reason why he should be compelled to attend the hearing. Instead, his deposition should be submitted to the Commission with appropriate designations.

4. Missouri Rule of Civil Procedure 57.07(a) provides: “Depositions may be used in court for any purpose.” The Commission, like a trial court, has broad discretion in determining whether to admit deposition testimony. *See Hemeyer v. Wilson*, 59 S.W.3d 574, 580 (Mo. App. W.D. 2001). Thus, the Commission could admit into evidence the deposition transcripts of these witnesses and avoid unnecessarily duplicative live testimony.

5. Once admitted, “depositions of witnesses are used as evidence in all respects as though the witnesses orally testified in open court.” *Robertson v. Cameron Mut. Ins. Co.*, 855 S.W.2d 442, 448 (Mo. App. W.D. 1993). Because deposition testimony is given the same credibility as live testimony at trial, where a deposition transcript is available and admitted into evidence, the party deposed need not be subpoenaed to testify at trial.

6. Therefore, the Commission should direct Staff to designate by page and line the portions of the transcript it seeks to offer into evidence. The Company should then be given an opportunity to submit any objections for the Commission's consideration and to counter-designate any additional passages of the depositions, with Staff given the right to object to any such counter-designations.

7. This would be similar to the process often used in judicial proceedings where portions of the deposition transcripts are offered into evidence, and the non-offering party is then permitted to rebut the offered testimony by reading into the record any additional portions of the deposition. After selections from a deposition are proffered to the Court or the jury, the opposing party's remedy is to utilize the deposition to clarify, rebut the inferences to be drawn from the selections, or explain its side of the controversy. Saddleridge Estates, Inc. v. Ruiz, 2010 WL 3743761 *3 (Mo. App. W.D. 2010). "As a general rule, once one party reads a portion of a deposition, the opposition may read some or all of the remainder in explanation." Bowls v. Scarborough, 950 S.W.2d 691, 703 (Mo. App. W.D. 1997).

8. Given the constraints upon the Commission's time and resources, and the fact that Commissioners consider pre-filed written testimony in the majority of cases pending before them, the process of designating and counter-designating deposition testimony would be the most efficient means of presenting deposition testimony to the Commission. This procedure was recently adopted by the Commission in the pending Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company rate cases. *See Order Quashing And Limiting Scope of Subpoenas*, Case No. ER-2010-0355/ER-2010-0356. (issued on January 21, 2011).

9. In the event the Commission denies this motion and compels Mr. Walker to appear at the hearings, Mr. Walker and the Company should not be compelled to produce the additional documents now being sought by Staff in the subpoena duces tecum. Such an order would be contrary to the Commission's *November 10th Order* which ordered that Staff's discovery should end by December 22, 2010. The Company believes that the requested information has already been provided to Staff during the extensive discovery that has occurred in this case, and it would be burdensome to produce it again.

WHEREFORE, Atmos Energy Corporation respectfully requests that a protective order be issued that quashes the hearing subpoena and subpoena duces tecum dated March 2, 2011 to Mike Walker (Exhibit 1), and instead orders Staff to use this witness' deposition testimony, as may be designated by the parties.

Respectfully submitted,

/s/ James M Fischer

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Attorneys for Atmos Energy Corporation

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the above and foregoing was served upon counsel of record on this 8th day of March, 2011.

/s/ James M. Fischer

James M. Fischer



Commissioners
KEVIN GUNN
Chairman

ROBERT M. CLAYTON III
JEFF DAVIS
TERRY M. JARRETT
ROBERT S. KENNEY

Missouri Public Service Commission

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Director, Utility Operations

STEVEN C. REED
Secretary/General Counsel

KEVIN A. THOMPSON
Chief Staff Counsel

March 2, 2011

Mr, Steve Reed, Secretary
Missouri Public Service Commission
200 Madison Street
P.O. Box 360
Jefferson City, MO 65102

RE: GR-2008-0364 Request for Subpoena Duces Tecum

Dear Mr. Reed:

The Staff of the Missouri Public Service Commission (Staff) requests that you in your capacity as the Secretary of the Missouri Public Service Commission (Commission) and pursuant to Sections 386.040, 386.250(1) and (7), 386.320.3, 386.390.4, 386.420.2, 386.440(a) and (2), 393.140.8, 393.140.9, 391140.10 and 4 CSR 240-2.100 issue a subpoena duces tecum for the attendance of; Mike Walker, Gas Supply Specialist, of Atmos Energy Corporation, at an evidentiary hearing beginning March 23, 2011 at 8:30am and continuing thereafter until excused, at 200 Madison Street, Jefferson City, MO 65102, in the Hearing Room 310. Mr. Walker's appearance, with certain documents listed below, is to provide testimony relevant to Staff's inquiry and assessment of the utility management's planning and its decisions affecting the area of natural gas supply procurement from its affiliate, Atmos Energy Marketing, LLC.

On Monday, February 28, 2011, the Staff deposed Mr. Walker. Because of the information provided by Mr. Walker at the deposition, the Staff believes the testimony of Mr. Walker is relevant and necessary in presenting its case to the Commission. Therefore, the Staff requests that Mr. Walker bring with him to the hearing the following documents for the Hannibal/Canton/Palmyra/Bowling Green Area, for the September 2007 — August 2008 timeframe:

- 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.

Informed Consumers, Quality Utility Services, and a Dedicated Organization for Missourians in the 21st Century

Exhibit 1

- Copies of all documents, including correspondence and communication, with the pipeline, AES, and AEM regarding swing (or daily) nominations for December 2007.

Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert S. Berlin". The signature is fluid and cursive, with a long horizontal stroke at the end.

Robert S. Berlin

Senior Counsel

(573) 526-7779 (Telephone)

(573) 751-9285 (Fax)

RSB:sw

SUBPOENA DUCES TECUM

**Order to Appear for Evidentiary Hearing
Order to Produce Documents
Case No. GR-2008-0364**



THE STATE OF MISSOURI

SERVE: James M. Fischer and/or
Larry W. Dority
FISCHER & DORITY, P.C.
101 Madison, Suite 400
Jefferson City, MO 65101

Attorneys for Atmos Energy Corporation

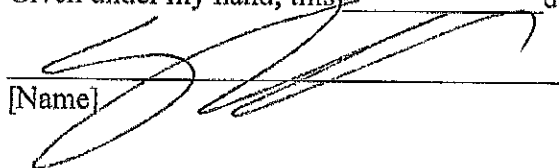
To: Atmos Energy Corporation, **Mike Walker**, Gas Supply Specialist, Atmos Energy Corporation, 377
Riverside Dr., Suite 201, Franklin, TN 37064-5393.

Pursuant to Sections 386.250; 386.440; 393.130; 393.140(8),(9),(10) and (12); CSR 240-2.100, and Supreme Court Rules 57.03, 57.09(b) and 58.01, you are hereby commanded to be and appear personally before The Public Service Commission of the State of Missouri on the 23rd day of March, 2011 at 8:30am o'clock of that day, and *continuing daily thereafter until completed* in accord with Rule 57.03 at the Missouri Public Service Commission at 200 Madison St., Hearing Room 310, Jefferson City, 65102, in the State of Missouri, to produce documents and to testify at an evidentiary hearing in the matter of the PGA/ACA Filing of Atmos Energy Corporation, Case No. GR-2008-0364, concerning the subject of the gas supply decisions and activities during the 2007-2008 ACA period.

Bring with you and produce at said evidentiary hearing the following documents for the Hannibal/Canton/
Palmyra/Bowling Green Area, for the September 2007-August 2008 timeframe:

- 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.

Hereof fail not at your peril. The person or officer serving this writ is commanded to have the same at the time and place aforesaid, certifying thereon its return.

Given under my hand, this 2nd day of MARCH 2011
 SECRETARY
 [Name] [Title]

RETURN

I HEREBY CERTIFY that I have served the within writ by ~~reading the same in the presence and hearing of the~~ ^{hand delivering}
 within named to Larry Dowdy, attorney for Atmos on the 2nd day of MARCH 2011, in
Cole County, in the State of Missouri.

ROBERT SBERUN Staff Counsel
 [Name] [Title]