

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

In the Matter of Atmos Energy Corporation's Tariff)
Revision Designed to Implement a General Rate)
Increase for Natural Gas Service in the Missouri) Case No. GR-2010-0192
Service Area of the Company.)

**ATMOS ENERGY CORPORATION'S
MOTION FOR RECONSIDERATION**

COMES NOW Atmos Energy Corporation ("Atmos"), pursuant to Missouri Public Service Commission ("Commission") Rule 4 CSR 240-2.160, and moves the Commission to reconsider its Order Granting Late Intervention ("Order") issued in this matter on April 28, 2010, on the basis that said Order is unlawful, unjust and unreasonable. In support of its Motion, Atmos respectfully states as follows:

1. The Commission's Order permits the International Brotherhood of Electrical Workers Local 1439, AFL-CIO ("Local 1439") to intervene in this matter based on the filing of "an application to intervene 87 days, or 2 months and 28 days, late." (Order page 1.) In its initial Objection¹ and subsequent Reply² (both pleadings incorporated herein by reference), Atmos pointed out that Local 1439's Motion and Application ("Late-Filed Application") to intervene in this proceeding almost three months after the intervention deadline, clearly did not rise to the level of good cause (as required by Commission Rule) and the granting of same would be contrary to Commission precedent. While acknowledging Atmos' Objection and reciting specific

¹ "Objection To Motion To File Application To Intervene Out Of Time And To Verified Application Of IBEW Local 1439 To Intervene" filed April 19, 2010, EFIS document No. 47 in the Commission's Case File.

² "Reply Of Atmos Energy Corporation To The Response Of IBEW Local 1439," filed at 9:34 a.m., April 27, 2010, EFIS document No. 50 in the Commission's Case File.

language from one of the Commission's prior cases set forth therein,³ the Commission's Order proceeds to reference Local 1439's responsive pleading – a pleading used to interject unverified allegations regarding contract negotiations between Local 1439 and Atmos. Although Atmos disputed the characterization of the purported representations set forth in Local 1439's pleading and directed the Commission to the important implications of Section 386.315.1, RSMo 2000 in its Reply, Atmos' Reply is not addressed, or even acknowledged, in the Commission's Order.

2. In announcing its "Decision," the Commission simply states: "Although Local 1439 is clearly late with its application to intervene, the Commission finds the reason for this tardiness to constitute good cause." (Order, page 4.) However, the Commission fails to identify or reference any such "reason." What is clear from the Commission's Order is its failure to consider the important factors set forth in Atmos' Reply pleading, as noted above, and such failure to identify the basis for its action as well as the failure to consider the factors pointed out by Atmos renders the Order arbitrary and capricious and unreasonable. When an agency's order "indicates that the agency completely failed 'to consider an important aspect or factor of the issue before it,' this court may find that the agency acted arbitrarily and capriciously." *State ex rel. GS Techs. Operating Co. v. Pub. Serv. Comm'n*, 116 S.W.3d 680, 692 (Mo. App. W.D. 2003) (quoting *Barry Serv. Agency Co. v. Manning*, 891 S.W.2d 882,892 (Mo. App. W.D. 1995)).

³ Order, page 2, quoting language from Case Number GR-2006-0422, Order Denying Application to Intervene, August 28, 2006. The Commission's Order does not address the other case cited by Atmos in its Objection, Case No. EO-2005-0293, wherein the Commission found that a party's unfamiliarity with Commission procedure did not rise to the level of good cause for permitting an application to intervene filed two weeks out of time. As Atmos pointed out in its Objection, Local 1439's application was submitted almost three months out of time by a party familiar with Commission procedure. (Objection, pages 2-3).

3. Furthermore, the Commission offers no justification for reversing its clear precedent in addressing such late-filed interventions, and its resulting decision finding good cause under the present facts is arbitrary and capricious and an abuse of discretion.

WHEREFORE, Atmos Energy Corporation respectfully moves the Commission to reconsider its Order Granting Late Intervention entered in this matter on April 28, 2010, and to deny the Motion and Late-Filed Application of IBEW Local 1439 to intervene as a party in this proceeding.

Respectfully submitted,

/s/ Larry W. Dority

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing Objection has been emailed this 6th day of May, 2010, to all counsel of record.

/s/ Larry W. Dority

Larry W. Dority