

**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

**ATMOS ENERGY CORPORATION’S MOTION FOR RECONSIDERATION,
MOTION FOR REHEARING, AND REQUEST FOR STAY OF ORDER**

COMES NOW Atmos Energy Corporation (“Atmos” or “Company”), and pursuant to 4 CSR 240-2.160 moves the Commission for reconsideration and rehearing of the Order Granting Staff’s Motion to Compel Atmos to Respond To Data Requests issued in the above-referenced case on July 15, 2010 (the “Order”). Atmos further requests that the Commission stay its Order pending its ruling on Atmos’ Motion for Reconsideration and Rehearing. In support thereof, Atmos states as follows:

MOTION FOR RECONSIDERATION AND REHEARING

1. On July 15, 2010, the Commission issued its Order in which it effectively granted Staff’s request that Atmos be required to produce copies of the contracts between Atmos Energy Marketing (“AEM”), an unregulated affiliated gas marketer and AEM’s upstream gas suppliers. For the reasons stated herein, Atmos respectfully submits that the Order is unlawful, unreasonable, arbitrary and capricious and should accordingly be reversed by the Commission upon reconsideration and rehearing.

2. The Commission’s Order failed to consider the fact that Atmos and Staff have already filed their Direct and Rebuttal Testimony in this proceeding, and “No party

shall be permitted to supplement its prefiled prepared direct, rebuttal or surrebuttal testimony unless ordered by the presiding officer or the commission.” 4 CSR 240-2.130(8).

3. Staff’s Direct Testimony filed on March 12, 2010 supported Staff’s proposed affiliate transaction adjustment which resulted from its ACA audit in this case. Atmos has now responded to the Staff Direct Testimony with the Rebuttal Testimony of Rebecca M. Buchanan which was filed on June 14, 2010. Any discovery at this stage of the proceeding must relate to facts and issues raised in the rebuttal testimony of Atmos or the Staff since the direct and rebuttal testimony may not be supplemented, without an order from the Commission.

4. As the Commission’s Order correctly noted:

“The Commission held an on-the-record prehearing conference regarding Staff’s motion on June 18. At the conference, Staff explained that it needs to see the requested contracts to determine the fair market value of the gas that was sold to Atmos by its subsidiary marketing company. In its December recommendation, Staff had proposed to disallow all profits the marketing subsidiary earned from the questioned transactions.”

5. No additional discovery related to contracts between AEM and upstream unregulated suppliers is needed to support Staff’s proposed adjustment since Staff has already proposed, quantified, and recommended the affiliate transaction adjustment in its Staff Recommendation filed on December 28, 2009, and in the Direct Testimony of David M. Sommerer filed on March 12, 2010. Atmos’ direct and rebuttal testimony did not rely upon and did not include any references to the documents being requested by Staff in DR No. 117. Contrary to 4 CSR 240-2.130(8), the Commission’s Order permits Staff to launch an entirely new field of discovery six months after Staff completed its ACA audit and filed its

Staff Recommendation related to the 2007-08 ACA period, nearly 5 months after Staff filed its Direct Testimony which again proposed the Staff disallowances at issue in this case, and after the Company has filed its Rebuttal Testimony addressing the Staff proposal. At this juncture in the proceedings, the Staff's discovery should be limited to information necessary to respond to Atmos' Rebuttal Testimony which was filed on June 14, 2010. It is totally inappropriate for Staff to seek to compel the production of documents that it should have reviewed as a part of the year old audit conducted prior to the filing of the Staff Recommendation on December 28, 2009 in this case.

6. Secondly, the Order also improperly reaches one of the legal issues necessary to resolve this case without the benefit of briefing of the issue. On page 4 of the Order, the Commission concludes: "However, the existence of a bidding process does not eliminate the rule's requirement that Atmos not provide a financial advantage to its affiliate, and the mere existence of that bidding process does not necessarily establish the fair market price of the goods and services Atmos obtained from its affiliated marketing company." (Order, p. 4) The Commission should not reach this legal conclusion without the benefit of legal argument on this point. The Commission should therefore reconsider and delete such legal conclusions from the Order.

7. Thirdly, the Commission has no statutory authority to compel Atmos to obtain access to the contracts of AEM which are not within the possession of Atmos. Citing 4 CSR 240-40.016(7) but no other specific statutory authority, the Order states: "Under the explicit terms of that regulation, Atmos, as a regulated gas corporation, has an obligation to make the books and records of its affiliated entities available for the Commission's review. If Atmos does not currently have access to the records Staff seeks, it needs to gain that access

immediately.” (Order, pp. 4-5) This portion of the Order is unlawful and beyond the statutory authority of the Commission. The Commission may not rely upon a regulation for statutory authority that it does not possess. Section 536.014(1), RSMo. If a rule is beyond the scope of the authority conferred by the statute (*ultra vires*), the rule is invalid and of no effect. *See Ketring v. Sturges*, 372 S.W.2d 104 (Mo. 1963); *Brown-Forman Distillers Corporation v. Steward*, 520 S.W.2d 1 (Mo. Banc 1975).

7. Section 393.140 that deals with the general powers of the Commission also prohibits the Commission from exercising jurisdiction over AEM. Section 393.140(12) states in part:

(12) In case any . . . gas corporation, . . . engaged in carrying on any other business than owning, operating or managing a gas plant. . . which other business is not otherwise subject to the jurisdiction of the commission, and is so conducted that its operations are to be substantially kept separate and apart from the owning, operating, managing or controlling of such gas plant, . . . said corporation in respect to such other business shall not be subject to any of the provisions of this chapter and shall not be required to procure the consent or authorization of the commission to any act in such other business or to make any report in respect thereof.

Since the Commission has no specific statutory authority or jurisdiction over AEM, it has no statutory authority to require that AEM provide its contracts with third parties to Atmos so that Atmos may provide them for review by the Commission Staff. Nor can the Commission lawfully compel Atmos to obtain AEM contracts which are not within its possession or control.

WHEREFORE, for the reasons stated herein, Atmos Energy Corporation respectfully requests that the Commission grant reconsideration and/or rehearing of the Order, and stay the effect of the Order until this matter is resolved.

Respectfully submitted,

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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 July 23rd day of July, 2010.

/s/ James M. Fischer

James M. Fischer