

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

**ATMOS ENERGY CORPORATION'S MOTION TO
REESTABLISH PROCEDURAL SCHEDULE
AND RESPONSE TO STAFF'S MOTION TO COMPEL**

COMES NOW Atmos Energy Corporation ("Atmos" or "Company") and, pursuant to Missouri Public Service Commission ("Commission") Rule 4 CSR 240-2.080 and the Commission's *Order Establishing Time To Respond To Staff's Motion To Compel* issued September 15, 2010, files its Motion to Reestablish Procedural Schedule and Response To Staff's Motion To Compel. In support, Atmos respectfully states:

1. On December 28, 2009, the Commission Staff ("Staff") filed its recommendation following completion of the audit of the 2007-2008 Actual Cost Adjustment ("ACA") filing. The Staff's audit consisted of a review and analysis of the billed revenues and actual gas costs for the period of September 1, 2007 to August 31, 2008 for all areas served by the Company in Missouri.

2. Atmos filed its response to Staff's recommendation on January 28, 2010. In its Response, the Company disagreed with Staff's affiliated transaction adjustments and requested that the Commission schedule a hearing to deal with the matter.

3. On January 30, 2010, the Commission scheduled a prehearing conference for February 11, 2010, so that the Commission and the Parties could discuss a procedural schedule. At the prehearing conference, the Regulatory Law Judge requested that the Parties submit a

procedural schedule by February 18, 2010. After discussing this matter, the Parties were unable to agree on a joint recommendation regarding the procedural schedule.

4. In *Staff's Proposed Procedural Schedule*, pp. 2-3, filed on February 18, 2010, Staff clearly indicated that it believed that a 30-day discovery period between the filing of direct testimony and rebuttal testimony was adequate for Staff:

“The Staff proposes the above procedural schedule because it allows a proper amount of time for Staff to conduct discovery upon Atmos’ filing of its direct testimony. Staff has no need to file direct testimony in this matter because it has adequately supported its challenge to Atmos’ ACA in its verified Recommendation and has nothing further to add to it until the Company comes forward with additional evidence in its direct testimony. Moreover, Staff has provided the Company with its workpapers explaining the affiliate transaction disallowance that is at the heart of this dispute. By giving the Company the opportunity to file a last round of Surrebuttal testimony to rebut Staff’s rebuttal testimony, the Staff believes this procedural schedule provides ample due process to all parties and permits an efficient use of administrative resources in creating a clear, uncluttered case file for the Commission’s review.”

5. On February 24, 2010, the Commission issued its *Order Adopting Procedural Schedule* adopting Staff’s proposed procedural schedule with the exception that it ordered the simultaneous filing of direct, rebuttal, and surrebuttal testimony. The Commission-approved procedural schedule provided Staff with approximately thirty days of discovery between the filing of direct and rebuttal testimony, as requested by Staff. The following procedural schedule was ordered by the Commission:

Direct Testimony by all parties - March 12, 2010

Rebuttal testimony by all parties - June 14, 2010

Joint List of Issues, - June 25, 2010

Statements of Position - June 30, 2010

Surrebuttal Testimony by all parties - July 16, 2010

Order of Witnesses, Order of Cross-Examination, Order of Opening - September 3, 2010

Evidentiary Hearing - September 14 to September 17, 2010.

6. Pursuant to the approved procedural schedule, the Company and Staff filed direct testimony on March 12, 2010, rebuttal testimony on June 14, 2010, and Company, Staff and Public Counsel each filed their respective Lists of Issues on June 25, 2010 and Position Statements on June 30, 2010, as directed by the Commission. In this motion, Atmos is now seeking the opportunity to file its Surrebuttal Testimony and have a timely evidentiary hearing to resolve the issues in this case.

7. On June 11, 2010, Staff filed its *Motion to Suspend Proposed Procedural Schedule* which stated “Staff is unable to comply with the established deadline [for filing rebuttal testimony due Monday, June 14, 2010] due to the failure of Atmos to provide requested documents in response to Staff Data Request No. 117.” (*Emphasis added*).

8. Atmos filed its *Response in Opposition to Staff’s Motion to Suspend Procedural Schedule* on June 14, 2010, fully setting forth the reasons why Staff’s June 11th Motion should be denied. While acknowledging that it had not complied with the requisite actions for elevating discovery disputes set forth in Commission Rule CSR 240-2.090, Staff asked that “until this discovery dispute is resolved either by the parties or by the Commission, the Staff prays the Commission issue an order suspending the procedural schedule indefinitely ...”

9. On July 2, the Commission suspended the procedural schedule to allow more time for the Commission to evaluate Staff’s motion to compel. In its *Order Suspending Procedural Schedule*, the Commission specifically stated that it would reestablish the remaining procedural schedule after the Commission resolved the pending discovery dispute, stating:

The procedural schedule requires the parties to file surrebuttal testimony on July 16, although the hearing is not scheduled until September 14-17. The Commission will require additional time to consider Staff's motion to compel and the parties cannot prepare their further testimony until that discovery dispute is resolved. Therefore, the Commission will suspend the procedural schedule while it considers Staff's motion to compel, and will remove the September hearing dates from its calendar. **The remaining procedural schedule will be reestablished after the Commission resolves the discovery dispute.** (*Emphasis added*)

10. On July 15, 2010, the Commission issued its *Order Granting Staff's Motion to Compel Atmos to Respond to Data Requests*, effectively resolving the discovery dispute as contemplated in Staff's June 11th Motion. Staff and Public Counsel have been in possession of the requested contracts between AEM and upstream suppliers (all entities not regulated by the Commission) for over thirty days, more than the time originally contemplated for the review of the response to Staff's Data Request 117 in the original procedural schedule.

11. The Commission's July 15th Order also directed the parties to file a progress report no later than August 13, 2010. Accordingly, on August 13, 2010, the parties filed a joint progress report. The report indicated that Atmos had produced the compelled documents and Staff and Public Counsel were evaluating the information provided to them, but were unable to address the matter of the procedural schedule. The August 13th Report explained "Because more time is needed to evaluate that information and because the parties have been working on finalizing the Unanimous Stipulation and Agreement in the Atmos rate case (GR-2010-0192) that is the subject of an on-the-record proceeding before the Commission on August 17th, the parties respectfully request the Commission allow the parties additional time to address the matter of the status of the procedural schedule by issuing an order directing the parties to file, either jointly or severally, a progress report no later than August 31, 2010." The Commission so ordered.

12. On August 31, 2010, the Staff on behalf of the parties filed a subsequent joint progress report in which Staff referred to the issuing of additional data requests. Staff expressed

what the Staff characterized as a “need for additional follow-up discovery,” without mention of an anticipated discovery period ending date or reestablishing the dates for an evidentiary hearing.

13. In its *Order Directing The Parties To File An Additional Progress Report* issued on August 31, 2010, the Commission ordered that: “No later than September 30, 2010, the parties shall file, jointly or severally, a progress report including recommendations regarding reestablishment of a procedural schedule.”

14. Atmos respectfully submits that the procedural schedule in this docket was suspended for the purpose of consideration of Staff’s motion to compel related to DR No. 117 which was resolved by the Commission on July 15, 2010 (more than two months ago). There is no basis for Staff and Public Counsel to continue unending discovery at this juncture of the proceedings. The discovery dispute subject of Staff’s June 11th motion has been resolved. It is now appropriate for the Commission to reestablish the procedural schedule as it previously indicated it would in the Order Suspending Procedural Schedule. The only procedural milestones that have not been already completed are: the filing of (1) Surrebuttal Testimony; (2) Order of Witnesses, Order of Cross-Examination, and Order of Opening Statements; and (3) reestablishing dates for the evidentiary hearing.

15. Atmos would respectfully request that the Commission adopt the following dates for the remaining items in the procedural schedule:

Surrebuttal Testimony—Friday, October 1, 2010;

Order of Witnesses, Order of Cross-Examination, and Order of Opening Statements—October 6, 2010

Evidentiary Hearings—October 13 (1 PM)¹ through October 15, 2010, if necessary.

¹ Atmos understands that there is an Agenda Meeting scheduled for October 13 from 9:30 AM to Noon.

16. If the Commission adopts this proposed procedural schedule, the parties will have had three and one-half (3 ½) months between the filing of Rebuttal (June 14) and the filing of Surrebuttal Testimony (October 1). Evidentiary hearings will be occurring ten and one-half (10 ½) months after the Staff filed its original Staff Recommendation proposing its Affiliated Transaction Adjustments. Given the circumstances of this case, it is reasonable to move forward to obtain a resolution of these issues in a timely manner.

ATMOS' RESPONSE TO STAFF'S MOTION TO COMPEL

17. On September 14, 2010, Staff filed its *Motion To Compel Atmos' Response To Staff Data Requests 117.1 and 131.1*. Since Staff DR Nos. 117.1 and 131.1 are totally irrelevant to the issues in this case and are not designed to lead to admissible evidence, the Commission should deny this motion.

18. With regard to DR No. 117.1, Staff is seeking to explore “unexplained anomalies” in the aggregate quantities of gas supplies obtained by Atmos Energy Marketing (AEM) from its upstream suppliers for services provided in unregulated gas markets when compared to a spreadsheet containing volumes AEM provided to the Company. AEM does not act as the Company’s purchasing agent. AEM is a supplier that purchases gas on its own account, using its own credit and its own contracts to supply its own portfolio of customers, the Company being just one of those customers. The requested documents of AEM seek information related to the reasons AEM reduced the volumes of gas taken under two specific contracts which deal with AEM’s aggregate portfolio (Trade # 236672 and 239534) and do not specifically relate to the Company. These documents have nothing to do with the “fair market value” of gas sold to Atmos under a competitive bidding process, or to compliance with the Missouri Affiliated Transactions Rule. With regard to Trade #239534, Staff is asking: “Did AEM have any hedges in place to protect against the price exposure created by selling baseload gas FOM while buying gas at

GDA?” It is difficult to understand how AEM’s hedging practices have anything to do with the “fair value of the gas sold to Atmos” or compliance with the Missouri Affiliated Transactions Rule generally. It is simply not relevant to this proceeding, and is not likely to lead to admissible information.

19. With regard to DR No. 131.1, this DR appears to be seeking to determine if AEM, an unregulated gas marketer, is following a specific risk management policy manual. This inquiry is not within the statutory authority of the Commission or its Staff, and it is not relevant to determining the “fair market value” of gas sold to Atmos under a competitive bidding process, or to determining compliance with the Missouri Affiliated Transactions Rule. DR No. 131.1 also requests all “procedures maintained by the AEM Trade Management department.” Again, this DR has nothing to do with determining the fair market value of gas sold to Atmos under a competitive bidding process, or to determining compliance with the Missouri Affiliated Transactions Rule. Finally, DR No. 131.1 is also seeking AEM’s “trader validation reports” and “trading books” definitions of terms as referenced in its risk management policy, and other internal reports related to AEM’s unregulated business. Staff has already been provided AEM’s commodity cost in the form of contracts, transaction confirmations, and supplier invoices. Staff is, in effect, probing AEM’s supply acquisition decisions which are not relevant to a prudence review of the Company. Once again, these requests in DR No. 131.1 have nothing to do with determining the fair market value of gas sold to Atmos under a competitive bidding process, or to determining compliance with the Missouri Affiliated Transactions Rule.

20. For all of these reasons, and the fact that the Commission should not sanction Staff’s continuing fishing expedition into the business affairs of AEM, the Commission should deny Staff’s Motion To Compel, and reestablish the procedural schedule as discussed herein.

WHEREFORE, Atmos Energy Corporation hereby respectfully requests that the Commission reestablish the procedural schedule in this case, and deny Staff's Motion To Compel filed on September 14, 2010.

Respectfully submitted,

/s/ James M. Fischer

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand delivered, emailed or mailed, postage prepaid, this 22nd day of September, 2010, to all counsel of record.

/s/ James M. Fischer

James M. Fischer