Exhibit No.:	
Issue:	*SourceGas Contract*
	Special Contract Tariff
Witness:	*David M. Sommerer*
Sponsoring Party:	*MoPSC Staff*
Type of Exhibit:	*Surrebuttal Testimony*
Case No.:	*GR-2014-0152*
Date Testimony Prepared:	*August 15, 2014*

MISSOURI PUBLIC SERVICE COMMISSION

REGULATORY REVIEW

UTILITY SERVICES – PROCUREMENT ANALYSIS

SURREBUTTAL TESTIMONY

OF

DAVID M. SOMMERER

LIBERTY UTILITIES (MIDSTATES NATURAL GAS) CORP.
d/b/a LIBERTY UTILITIES

CASE NO. GR-2014-0152

Jefferson City, Missouri
August, 2014

** **Denotes Highly Confidential Information** **

NP

TABLE OF CONTENTS OF

SURREBUTTAL TESTIMONY OF

DAVID M. SOMMERER

LIBERTY UTILITIES (MIDSTATES NATURAL GAS) CORP.
d/b/a LIBERTY UTILITIES

CASE NO. GR-2014-0152

SURREBUTTAL TESTIMONY

OF

DAVID M. SOMMERER

LIBERTY UTILITIES (MIDSTATES NATURAL GAS) CORP.
d/b/a LIBERTY UTILITIES

CASE NO. GR-2014-0152

Q. Please state your name and business address.

A. David M. Sommerer, P.O. Box 360, Jefferson City, MO. 65102.

Q. Are you the same David M. Sommerer who sponsored testimony as part of the Staff's June 6, 2014, Revenue Requirement - Cost of Service Report and the Staff's June 26, 2014, Class Cost-of-Service – Rate Design Report?

A. Yes.

EXECUTIVE SUMMARY

Q. What is the purpose of your surrebuttal testimony?

A. The purpose of my surrebuttal testimony is to address the rebuttal testimony of Liberty Utilities (Midstates Natural Gas) Corp. d/b/a Liberty Utilities ("Company", "Liberty") witnesses Francisco "Chico" DaFonte, Robert Hevert, and Christopher Krygier. I will also address the special contract tariff discussion in Maurice Brubaker's rebuttal testimony. In regard to Mr. DaFonte's testimony, I will be addressing Mr. DaFonte's Rebuttal testimony regarding the Arkansas LDC (SourceGas) contract issue. In summary, my testimony will address the reasons why **

NP

**

THE SOURCEGAS CONTRACT

Q. Do you agree with Mr. DaFonte's characterization on page 4, line 9 that the existing contract with SourceGas is a "similar arrangement" to the predecessor agreement between Atmos and SourceGas?

A. ** **

Q. Please explain.

A. I have provided copies of both highly confidential contracts as Highly Confidential Schedules DMS-1 and DMS-2. ** **

Q. ** **

A. **

NP

**

Q. **

**

A. **

**

Q. **

**

A. **

**

NP

Q. ** ____

____

__________ **

A. ** ____

____

__________ **

Q. On pages 11 through 13 of his rebuttal testimony, Mr. DaFonte points out ** ____

__________ **

NP

A. No. I have provided both FERC orders as Schedules DMS-3 and DMS-4 to my testimony that pertain to the Company service to SourceGas and the Atmos service to the Missouri LDC (Rich Hill and Hume). ** **

Schedules DMS-3 and DMS-4 provide some context. ** ** So the maximum rates became the Missouri maximum tariff rates. However, the Company's Missouri jurisdictional rates are not based **

NP

____

____

____ **

As the FERC said in its Order (Schedule DMS-3) on page 10 (footnotes removed)

> …The Commission agrees with Liberty that SourceGas cannot assume an ability to continue its firm service at a discounted rate after the expiration of its contract at the end of April 2012. As Liberty showed, the firm transportation maximum monthly reservation rate of $5.3858 per MMBtu currently on file at the Commission in the currently effective Statement of Operating Conditions would have resulted in a higher rate paid by SourceGas in every year from 2003-2004 through 2010-2011 than the proposed firm transportation commodity charge of $0.14356 per Ccf (or approximately $1.3938 per MMbtu). Additionally, Liberty offered SourceGas a discounted rate of $0.1500 per Mcf.
>
> We note that there has been no attempt by either SourceGas or Arkansas PSC to demonstrate that the currently effective MoPSC rates are inappropriate for this service. Arkansas PSC requests that the Commission investigate whether the intrastate rates are properly applied for interstate service; however, this is the very essence of the rate election available to companies applying for Section 311 authority. Neither Arkansas PSC nor SourceGas have made any demonstration that the proposed rate election is inappropriate, other than to state that it is more than SourceGas is currently paying, but as Liberty points out, the current firm transportation rate on file with the Commission is also more than SourceGas is currently paying.

Q. You mentioned that the Company chose not to ** ____________________

________________________________ **

A. My understanding of the FERC abbreviated process for Local Distribution Companies, like Liberty, to provide FERC jurisdictional services across state lines is that the utility can provide cost of service information to the FERC and develop an independent maximum rate *or* simply refer to the state-regulated rate for "comparable" service. ** ______ **

Q. ** ______ **

A. ** ______ **

Q. ** ______ **

A. ** ______

NP

**

SPECIAL CONTRACT TARIFF

Q. Do you agree with Mr. Brubaker's testimony that special contract tariffs are unnecessary?

A. No. The tariff provision is necessary to ensure that it is clear what provisions of the Company's tariffs are being applied and that special contracts provisions are not at odds with the Company's tariffs, as well as providing the parameters under which special contracts are allowed. If the Commission does not want to allow Liberty to continue providing service to select customers pursuant to special contracts, no tariff is needed. However, if the Commission desires to allow Liberty to have special contracts, such a tariff is needed.

Q. Do you agree with Mr. Krygier's special contract proposal?

A. Not entirely. I believe that the Company's proposed tariff contains some ambiguity about how a special contract will be applied to the Company's existing tariffs. I have attached Schedule DMS-5 as a tariff that directly addresses tariff applicability to special contracts and minimum documentation requirements related to special contracts.

Q. What specific comments do you have regarding Mr. Krygier's Rebuttal Schedule CDK-R7?

A. The Schedule that Mr. Krygier has attached is designed to be a replacement to existing Tariff Sheet Numbers 34 and 35. Those existing tariffs relate to "Negotiated Gas Sales Service", which is a tariff that includes availability for sales service customers and specifically applies to alternative fuel customers. The Company's proposed tariff replaces this concept with its proposed tariff to deal with special contract situations. However, it has left the title of the service as “Negotiated Gas Sales Service”, and replaced that existing tariff service with a tariff to address bypass situations.

Q. Is there a problem with characterizing the new tariff as a “Negotiated Gas Sales Service?

A. The new tariff is clearly proposed to deal with transportation service bypass issues. It is confusing to title any tariff that is designed to address the existing special contract situations as a type of “sales service”.

Q. Is your proposed tariff (contained in Schedule DMS-5) meant to replace any existing company tariff?

A. No. This proposed tariff is meant to be an additional tariff sheet, added to the Company’s existing tariffs.

RECOMMENDATIONS

Q. What is your conclusion?

A. The FERC’s order is clear to me that there was no evidence that the Missouri maximum tariff rates were inappropriate or unreasonable. Liberty chose *not* to ** ________

____

____

____ ** absent substantial evidence to the contrary.

Finally, the Staff’s special contract tariff in Schedule DMS-5 should be adopted if the Commission wants to allow Liberty to have special contracts.

Q. Does this conclude your surrebuttal testimony?

A. Yes, it does.

NP

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of Liberty Utilities (Midstates Natural Gas) Corp. d/b/a Liberty Utilities' Tariff Revisions Designed To Implement a General Rate Increase for Natural Gas Service in the Missouri Service Areas of the Company	)))))	Case No. GR-2014-0152

AFFIDAVIT OF DAVID M. SOMMERER

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

David M. Sommerer, of lawful age, on his oath states: that he has participated in the preparation of the foregoing Surrebuttal Testimony in question and answer form, consisting of 10 pages to be presented in the above case; that the answers in the foregoing Surrebuttal Testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true and correct to the best of his knowledge and belief.

David M. Sommerer

David M. Sommerer

Subscribed and sworn to before me this 14th day of August, 2014.

D. SUZIE MANKIN
Notary Public - Notary Seal
State of Missouri
Commissioned for Cole County
My Commission Expires: December 12, 2016
Commission Number: 12412070

D Suzie Mankin

Notary Public

SCHEDULE DMS - 1

HAS BEEN DEEMED

HIGHLY CONFIDENTIAL

IN ITS ENTIRETY

SCHEDULE DMS - 2

HAS BEEN DEEMED

HIGHLY CONFIDENTIAL

IN ITS ENTIRETY

138 FERC ¶ 61,249
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

Liberty Energy (Midstates) Corp. Docket No. CP12-42-000

ORDER ISSUING BLANKET CERTIFICATE OF LIMITED JURISDICTION

(Issued March 30, 2012)

1. On January 4, 2012, Liberty Energy (Midstates) Corp. (Liberty) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA) and section 284.224 of the Commission's regulations[1] for a limited jurisdiction blanket certificate to transport gas in interstate commerce. Liberty requests approval of rates and charges pursuant to section 284.224(e) of the Commission's regulations. For the reasons discussed below, the requested limited jurisdiction certificate is granted and the proposed rates and charges are accepted subject to the conditions discussed herein.

I. Background and Proposal

2. Liberty, a Missouri corporation, is a new entity created to purchase and own the Missouri, Illinois, and Iowa regulated natural gas distribution assets of Atmos Energy Corporation (Atmos). This application by Liberty is for the Missouri-regulated natural gas distribution assets of Atmos (Missouri Facilities), and is prompted by the sale of the Missouri Facilities to Liberty pursuant to an Asset Purchase Agreement dated May 12, 2011. The Missouri Facilities are regulated by the Missouri Public Service Commission (MoPSC).

3. The Missouri Facilities include approximately 2,179 miles of pipeline varying in diameter from 2-inches to 12-inches. The Missouri Facilities connect to two 50-foot stub

[1] 18 C.F.R. § 284.224 (2011). Section 284.224 authorizes local distribution companies and Hinshaw pipelines to perform the same types of transactions which intrastate pipelines are authorized to perform under section 311 of the Natural Gas Policy Act (NGPA) and subparts C and D of Part 284 of the Commission's regulations.

lines (Border Facilities),[2] owned and operated by SourceGas Arkansas Inc. (SourceGas), a local distribution company (LDC) with operations in Colorado, Nebraska, Wyoming and Arkansas. SourceGas operates the Border Facilities. The Border Facilities cross the Missouri-Arkansas border, allowing delivery of gas from interstate pipeline delivery points in Missouri through the Missouri Facilities to SourceGas' distribution facilities.

4. Liberty states that the acquisition transaction by which Liberty is to acquire the Missouri Facilities is scheduled to close on April 1, 2012. Liberty states that upon acquisition, it intends to "step into Atmos' shoes" and continue the current service to SourceGas, SourceGas' customers, and other qualifying shippers. Liberty proposes to provide, on a non-discriminatory basis, firm and interruptible transportation service, including a "flow-through" no-notice service.

5. Atmos has not elected to use any of its rates on file with MoPSC for its interstate service under its limited jurisdiction section 284.224 certificate. Instead, it has filed rates for the Commission's approval pursuant to section 284.123(b)(2) of our regulations. Atmos' currently approved rates on file with the Commission consist of: Firm Transportation, a maximum rate Monthly Reservation Charge of $5.3858 per MMBtu, and a minimum rate of "$0.00 Commodity Charge"; Interruptible Transportation, a maximum rate commodity charge of $0.1771 per MMBtu (which is the 100 percent load factor rate); and a minimum rate of $0.00. In addition, all firm and interruptible service is subject to an add-on fuel charge, calculated by multiplying the volumes transported times the most recent lost and unaccounted for percentage for Atmos reported to the Commission on Atmos' Form 2.

6. Liberty states that, unlike Atmos, it elects, pursuant to section 284.123(b)(1)(ii) of the Commission's regulations, to use rates on file with MoPSC for its interstate service under section 284.224. Specifically, Liberty states that it elects to use the rates contained in Atmos' currently effective MoPSC Tariff under the Large Firm General Service Schedule and the Interruptible Large Volume Gas Service Schedule for service under section 284.224. The rates Liberty proposes to adopt consist of a distribution charge of $0.14356 per hundred cubic feet (Ccf), a delivery charge of $500 per meter per month, a lost and unaccounted for gas (L&UFG) retention rate of 2.0 percent, and an infrastructure System Replacement Surcharge (ISRS) of $8.24 per month.

---

[2] The Border Facilities include: (i) a 50-foot segment of 6-inch transmission line beginning at the Arkansas/Missouri border in Dunklin County, Missouri and extending 50 feet into Missouri, including the associated 50-foot right-of-way; and (ii) a 50-foot segment of 10-inch transmission line beginning at the Arkansas/Missouri border in Pemiscot County, Missouri and extending 50 feet into Missouri, including the associated 50-foot right-of-way.

7. Liberty asserts that the MoPSC does not propose to conduct a new rate proceeding for Liberty upon completion of the proposed acquisition. Thus, Liberty contends that it will not have the documentation normally associated with state-approved cost-based rates. Accordingly, if required, Liberty requests waiver of any requirement to file cost-of-service information, including the information specified in section 284.224(c)(7)(i) – (v), in support of its proposed initial rates. Liberty states that it will submit such information when it proposes to change its state-approved rates for transportation service authorized under the blanket-certificate requested in this application.

8. Liberty requests that the Commission confirm that Liberty is exempt from the Commission's regulations (i.e. accounting rules and reporting requirements) applicable to NGA jurisdictional entities other than section 284.224 certificate holders and that it will remain exempt from Commission jurisdiction over the Missouri Facilities.

II. Information Request

9. On January 25, 2012, Commission Staff sent an information request (January 2012 Request) for additional information on and clarification of Liberty's application. The January 2012 Request sought, among other things, information from Liberty regarding Atmos' cost-based rates currently on file with and approved by the MoPSC (which Liberty seeks to elect as its rates).

10. On February 8, 2012, Liberty submitted a copy of: (1) a settlement agreement that Atmos and other parties submitted to the MoPSC on August 11, 2010; (2) the MoPSC's order approving the settlement issued on August 18, 2010; (3) the MoPSC's order approving tariff filings in compliance with the settlement order on August 20, 2010; and (4) Atmos' Natural Gas Transportation Service Schedule (Sheet Nos. 50-57), Large Firm General Service Schedule (Sheet Nos. 28-29), and Interruptible Large Volume Gas Service Schedule (Sheet Nos. 30-33).[3] Liberty states that the attached tariffs are the state rate schedules which set forth the rates for its services as required by section 284.224 of the Commission's regulations.

III. Procedural Matters

A. Notice and Interventions

11. Public notice of the filing was issued on January 12, 2012.[4] Interventions and protests were due as provided in section 154.210 of the Commission's regulations

[3] *See* Exhibit B of the Liberty Response to January 2012 Request.

[4] An errata was issued January 17, 2012, changing the intervention date from December 25, 2012 to January 25, 2012.

(18 C.F.R. § 154.210 (2011)). Atmos filed a timely motion to intervene, with comments in support of Liberty's application.

12. On February 6, 2012, SourceGas filed a request to intervene out-of-time along with its protest, and on February 8, 2012, the Arkansas Public Service Commission (Arkansas PSC) filed intervention and comments out-of-time. On February 17, 2012, Liberty filed an opposition to SourceGas' request to intervene out-of-time and, alternatively, an answer to SourceGas' protest. On February 24, 2012, Liberty filed an answer to the comments of Arkansas PSC. Arkansas PSC filed an additional response on March 6, 2012 (March 6 Answer).

13. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2011)), all timely filed motions to intervene and any unopposed motion to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties.

14. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits answers to protests and answers unless otherwise ordered by the decisional authority. We will accept Arkansas PSC's and Liberty's answers because they have provided information that assisted us in our decision-making process.

B. SourceGas' Late Intervention Request

15. In support of its request to intervene out-of-time, SourceGas asserts that it is a customer of Atmos on the facilities at issue in this proceeding. SourceGas is a firm transportation customer of Atmos. As such, SourceGas states that, when Liberty begins engaging in the sales and transportation of natural gas on the Missouri Facilities, it will also be Liberty's customer. SourceGas further asserts that: (1) although it did not initially file an intervention request in this proceeding, the January 2012 Request sent out by Commission Staff caused it to evaluate its current rates and contract with Atmos for service, and Commission orders regarding this service; (2) Liberty's proposed rates for service substantially exceed those charged by Atmos for the exact same service; (3) the January 2012 Request which prompted its intervention request was released on January 25, 2012 (the intervention deadline); and (4) no one else can represent its interest. Finally, SourceGas contends that it accepts the record as it stands and does not wish to delay these proceedings.

16. Liberty opposes SourceGas' late intervention request. Liberty states that SourceGas late intervention fails to satisfy the threshold requirement that the movant

provide "good cause for failing to file the motion within the time prescribed."[5] Liberty notes that SourceGas' only justification for filing late, that "[Commission Staff's] issuance of a request for information. . . .prompted SourceGas . . . to review the filing,"[6] is not sufficient to show "good cause" for failure to intervene on time. Therefore, Liberty states the Commission should reject SourceGas' motion or in the alternative, if SourceGas' request is granted, Liberty's answer should also be accepted in order to clarify the record.

17. Pursuant to Rule 214(b), the Commission grants SourceGas' request to intervene out-of-time.[7] In granting late intervention requests, the Commission typically finds that, at the early stage of the proceeding, granting late intervention will neither disrupt the proceeding nor prejudice the interests of any other party. Thus, the Commission liberally allows late interventions at the early stages of its proceedings, but is more restrictive as a proceeding nears its conclusion.[8] SourceGas has a substantial interest in the proceeding that cannot be represented by any other party.[9] It is a customer of Atmos on its Missouri Facilities which are at issue in this proceeding. Therefore, when Liberty's application is approved, SourceGas will also be Liberty's customer. SourceGas' late intervention will not prejudice any other party to the proceeding nor will it delay the proceeding as the request was less than two weeks late; further, no decision or rulings have been issued on this matter. SourceGas acknowledges that it did not seek to intervene earlier but after receiving the Commission Staff's January 2012 Request, it reviewed the history of its

[5] Liberty Reply to SourceGas Motion at 1 (citing Rule 18 C.F.R. § 385.214(d) (2011))

[6] *Id*. 2.

[7] The Commission considers four factors in acting on a motion to intervene out of time: (1) whether the movant has good cause for failing to file the motion within the time for failing to file the motion within the time prescribed; (2) whether the granting of the motion will disrupt the proceeding; (3) whether the movant's interest is adequately represented by other parties in the proceeding; and (4) whether the motion conforms to the regulations set forth in Rule 214(b).

[8] *See Black Marlin Pipeline Co*., 67 FERC ¶ 61,205, at 61,638 (1994).

[9] *See Consolidated Gas Supply Corp.*, 21 FERC ¶ 61,255, at 61,562-563 (1982) (In determining whether there is good cause to permit a late intervention, the Commission considers four factors: (1) the nature of the interest alleged by the late intervenor and whether that interest is adequately represented by other parties in the proceeding; (2) whether permitting the late intervention will prejudice other parties in the proceeding; (3) whether permitting the late intervention will delay resolution of the proceeding; and (4) the reasons offered by the late intervenor for not having filed on time.).

contracts for service with Atmos and ascertained that its rates would be increased. Inasmuch as SourceGas will be impacted by the Commission's decision in this matter and the proceedings will not be delayed, we determine that it should be permitted to intervene out-of-time.

IV. Protests, Comments and Answers

A. Protests

18. SourceGas states that the rates Liberty proposes to adopt are not the rates presently being charged by Atmos for the services at issue in this case. SourceGas states that Atmos did not elect to base its transportation rates on its MoPSC approved intrastate rates. SourceGas and Arkansas PSC state that the current Commission approved Atmos rates are $.1771 per MMBtu for interruptible transportation, and a maximum monthly firm reservation charge of $5.3858 per MMBtu for firm transportation, with no usage charge.

19. SourceGas and Arkansas PSC assert that Liberty's proposed maximum usage charge for firm and interruptible transportation service is $.14356 per hundred cubic feet (Ccf), or approximately $1.398 per MMbtu, a 973% increase according to SourceGas, a nearly eight-fold increase according to Arkansas PSC. SourceGas and Arkansas PSC state that Liberty also seeks a monthly delivery charge per meter of $500, a monthly Infrastructure System Replacement Surcharge of $8.24 per month, and a 2% fuel charge. SourceGas observes that Liberty states it would be unduly discriminatory for interstate shippers not to pay these charges. SourceGas disagrees, declaring that Atmos never collected these charges from interstate shippers.

20. SourceGas states that Liberty neither explains why its proposed rates differ from those assessed by Atmos and set forth in Atmos' SOC, nor does it provide any support or justification for the deviation. Arkansas PSC observes that, because MoPSC is not requiring a new rate case, Liberty cannot provide normal supporting cost documentation for the rates it is asking the Commission to approve which Liberty asserts are cost based. Arkansas PSC requests that the Commission investigate whether the proposed rates are appropriate for interstate purposes, taking into consideration (1) whether the service provided to SourceGas is similar in nature to the intrastate transportation service provided in Missouri, (2) whether the intrastate rates are properly applied for interstate service, and (3) whether Liberty should continue to provide service to SourceGas under Atmos' currently effective rates set in Docket No. PR10-68-000.

21. SourceGas states it would be amenable to Liberty charging Atmos' currently effective rates on file with the Commission.

B. Answers

22. In answer to SourceGas' and Arkansas PSC's protests, Liberty states that the comparison of Liberty's proposed maximum rates to the $0.1771/MMBtu volumetric rate SourceGas is currently being charged by Atmos for firm transportation service is misleading and unfair. Liberty states that Liberty's proposed maximum rates cannot be fairly compared to the rate Atmos currently charges SourceGas, because that rate is a pure volumetric rate, under which SourceGas pays Atmos far less for its firm service than if Atmos charged SourceGas its currently effective maximum reservation charge for firm service. Liberty states that each of the three following comparisons would be far more relevant:

23. First, Liberty argues that a comparison of SourceGas' cost for firm transportation at the discounted rate Atmos' is currently charging SourceGas, to the effective cost per unit of gas transported at Atmos' maximum reservation rates is necessary. Liberty states that SourceGas' MDQ is 22,166 MMBtu, and under Atmos' Commission-approved maximum reservation rate for firm service, SourceGas could be charged a monthly charge of $5.3835/MMBtu of contract demand, or $119,381.64 per month, totaling $1,432,579.68 per year. Liberty observes that, based on the 613,608 MMBtu, 716,994 MMBtu, and 736,777 MMBtu of gas transported for SourceGas by Atmos in 2009, 2010 and 2011 respectively, the reservation charge would equate to equivalent commodity rates of $2.335/MMBtu in 2009, $1.998/MMBtu in 2010, and $1.994/MMBtu in 2011. Thus, Liberty argues, even under Atmos' Commission-approved rates, SourceGas' cost could go up by 1,100 percent or more upon expiration of SourceGas' discounted rate agreement with Atmos, which is scheduled to expire at the end of April 2012. Liberty states that the complained-of potential "973%" rate increase (according to SourceGas) or "nearly eight-fold" increase (according to Arkansas PSC) under the MoPSC-approved rate Liberty has proposed pales in comparison.

24. Second, Liberty submits a historical cost comparison at maximum rates. Liberty includes Exhibit A, Cost Comparison of Current vs. Proposed Rates (prepared by Francisco DaFonte, Director Energy Procurement for Liberty), in which it calculates comparison costs for SourceGas for each year from 2003-2004 through 2010-2011, demonstrating that SourceGas' annual transportation cost at the maximum MoPSC-approved rate proposed by Liberty would have been substantially lower than SourceGas' annual transportation cost at the maximum FERC-approved rate.

25. Third, Liberty provides a comparison of SourceGas' current cost to SourceGas' cost under the discounted rate Liberty had offered to SourceGas. Liberty states (and provides an affidavit from Francisco DaFonte attesting so) that Liberty offered SourceGas a discounted, usage charge-only rate of $0.1500/MMBtu, plus additional charges under Atmos' MoPSC-approved tariff including a $500/month meter fee, L&UFG charge, and $8.24/month ISRS. In his affidavit, Mr. DaFonte attests that the

discounted usage rate plus the add-ons was designed to keep both parties "neutral". Liberty states that this offer would result in a 3.01% increase of SourceGas' 2011 cost.

26. Liberty concludes that SourceGas' and Arkansas PSC's comparisons are flawed because they are based on invalid premises. Liberty notes that SourceGas' "steeply discounted rate" expires in April 2012. Liberty states that SourceGas has no reasonable expectation of continuing the steeply discounted rate without increase. Liberty asserts that SourceGas' protest is misleading by omission of Liberty's offer of a discounted rate of $0.1500/MMBtu plus add-ons for a term of five years. Liberty notes that its offer was just 10.45 percent of the maximum usage rate about which SourceGas protested.

27. Liberty states that SourceGas' objection to Liberty's proposed L&UFG charge is unreasonable, "[i]n lieu of a floating fuel charge calculated by reference to the percentage reported annually on the transporter's FERC Form No. 2, Liberty . . . seeks a fuel charge of 2%, based on the Missouri tariff."[10] In response to SourceGas' statement that Atmos never collected these MoPSC-approved charges, Liberty states that Atmos' Commission-approved charges provided a different L&UFG recovery mechanism. Liberty states that, having proposed MoPSC rates, it cannot choose Commission-approved rates for L&UFG, but proposes to use the 2 percent fuel charge included in the MoPSC rates it is proposing to elect.

28. Liberty states that SourceGas' discount is expiring, and the proposed rates (not to mention the offered discount) are both below the currently effective Commission-approved rate. Liberty asserts that SourceGas would be in a worse position in five years if the Commission-approved rates remain in effect, rather than the MoPSC-approved rates Liberty is proposing. Liberty believes that Liberty and its customers will receive significant cost savings from a single set of cost-of-service filings for both interstate and intrastate rates, and L&UFG charges. Liberty states that the facilities are an integral part of the Atmos system and not a dedicated set of facilities used exclusively for Section 284.224 service.

29. Liberty states that it is not clear if it could continue to charge a discounted, usage-only rate for firm service unless the Commission confirms so. Liberty states that, without clarification, it does not believe that the minimum monthly reservation charge's reference to a "$0.00 Commodity Charge" in the Commission-approved rates clearly and unambiguously authorizes Liberty to charge a discounted, usage-only rate for firm service.

30. In its March 6 Answer, Arkansas PSC reiterates its previous request that the Commission investigate whether the current rates approved by MoPSC for Liberty are appropriate for interstate transportation service subject to the Commission's jurisdiction.

[10] Liberty Reply to SourceGas Motion at 9 (citing SourceGas Motion at 6).

In support of this answer, Arkansas PSC attached an affidavit from Thomas S. Catlin noting the current firm transportation rate paid by SourceGas to Atmos under its discount agreement. The affidavit also explains that Liberty's proposed non-discounted firm transportation rate to SourceGas would represent a substantial increase for the service.

V. Discussion

31. Upon grant of the blanket certificate, Liberty states that it plans to continue to provide the same services as Atmos, using cost-based maximum rates currently effective and on file with MoPSC.[11] Liberty's application meets the requirements of section 284.224 of the Commission's regulations and, accordingly, its proposal is in the public convenience and necessity.

32. Under the section 284.224 of the Commission's regulations on blanket certificate authority, the rates charged by an LDC may be determined by: (1) submitting proposed rates to the Commission for approval, or (2) electing to use the rates contained in one of its transportation rate schedules on file with the appropriate state regulatory agency covering comparable service.[12] Liberty chose the latter option.

33. Liberty has determined that for its firm transportation service under the blanket certificate, the comparable rates are the generally available Large Firm General Service rates and the Interruptible Large Volume Gas Service rates, which are on file and have been approved on a cost basis by MoPSC.[13]

34. Liberty's proposed maximum rates for firm transportation service include: (1) a Delivery Charge of $500.00 per meter per month, (2) a Distribution Charge of $0.14356 per Ccf, (3) a Lost and Unaccounted For (L&UFG) retention rate of 2.0 percent, and (4) an ISRS of $8.24 per month.

35. The Commission agrees that SourceGas' and Arkansas PSC's protests regarding the "973%" or "eight-fold" increase are misleading. SourceGas' failure to mention that it was being charged the 100 percent load factor interruptible commodity rate for firm

---

[11] In a separate, but related application filed on February 1, 2012, in Docket No. CP12-53-000, Atmos seeks Commission authorization to allow Atmos Colorado/Kansas to provide periodic natural gas sales and transportation service to Liberty, its customers and other qualifying shippers. Atmos states that this certificate is necessary to maintain existing service on Liberty's Missouri Facilities.

[12] 18 C.F.R. § 284.123 (2011).

[13] Liberty Response to January 2012 Request, Attachment 3, containing MoPSC's Orders approving the rates, and the MoPSC rate sheets containing the rates.

transportation is a misrepresentation of SourceGas' "current" rates. The Commission agrees with Liberty that SourceGas cannot assume an ability to continue its firm service at a discounted rate after the expiration of its contract at the end of April 2012. As Liberty showed, the firm transportation maximum monthly reservation rate of $5.3858 per MMBtu currently on file at the Commission in the currently effective Statement of Operating Conditions would have resulted in a higher rate paid by SourceGas in every year from 2003-2004 through 2010-2011 than the proposed firm transportation commodity charge of $0.14356 per Ccf (or approximately $1.3938 per MMbtu). Additionally, Liberty offered SourceGas a discounted rate of $0.1500 per Mcf.[14]

36. We note that there has been no attempt by either SourceGas or Arkansas PSC to demonstrate that the currently effective MoPSC rates are inappropriate for this service. Arkansas PSC requests that the Commission investigate whether the intrastate rates are properly applied for interstate service; however, this is the very essence of the rate election available to companies applying for Section 311 authority. Neither Arkansas PSC nor SourceGas have made any demonstration that the proposed rate election is inappropriate, other than to state that it is more than SourceGas is currently paying, but as Liberty points out, the current firm transportation rate on file with the Commission is also more than SourceGas is currently paying.

37. However, the Commission finds that the proposed ISRS charge of $8.24 per month, which Liberty refers to as "state-required," differs from that contained in the MoPSC tariff. Tariff Sheet No. 28, which lists the rates for Large Firm General Service, states that "Pursuant to Missouri Public Service Commission approval, a monthly ISRS charge as provided on Tariff Sheet Number 19 is applicable to this rate." Tariff Sheet No. 19 lists the amount of the ISRS for Large Firm General Service as 0.00. Therefore, 0.00 is the amount which the Commission will allow Liberty to charge for its monthly ISRS charge, as consistent with the rates on file with MoPSC.

38. Liberty's proposed transportation rates, as modified in the preceding paragraph, are accepted as consistent with sections 284.224(c) and 284.123(b) of the Commission's regulations.[15] Consistent with Commission policy,[16] Liberty must file, within five years of the date of this order either: (a) an application pursuant to 18 C.F.R. § 284.123(b) (2011) seeking to establish rates for interstate transportation services provided under its

[14] *See* Arkansas PSC Answer, Exhibit A at 12 (Arkansas PSC has been informed that the discounted rate offer of Liberty…to [SourceGas] has been withdrawn).

[15] 18 C.F.R. §§ 284.224(c) and 284.123(b) (2011).

[16] *Contract Reporting Requirements of Intrastate Natural Gas Companies*, Order No. 735, FERC Stats. & Regs. ¶ 31,310 at P 96 (2010).

section 284.224 blanket certificate or (b) an informational filing with cost, throughput, revenue and other data, in the form specified in section 154.313 of the Commission's regulations,[17] to allow the Commission to determine whether any change in Liberty's interstate transportation rates is required pursuant to section 5 of the Natural Gas Act.

39. The Commission also grants, to the extent necessary, Liberty's request for waiver of any requirement to file cost-of-service information, including the information specified in section 284.224(c)(7)(i) – (v) of the Commission's regulations, in support of its proposed initial rates. Liberty is adopting the cost based rates approved by MoPSC for Atmos and will offer the same services as Atmos using the same facilities. The Commission also notes that Liberty has confirmed that it will submit such information when it proposes to change its state-approved rates for transportation service authorized under the blanket-certificate requested in this application.

40. No environmental assessment or environmental impact statement has been prepared for this application because it qualifies for categorical exclusion from such review under section 380.4(a)(22) of the Commission's regulations.[18]

<u>The Commission orders</u>**:**

(A) A blanket certificate of limited jurisdiction is granted under section 284.224 of the Commission's regulations authorizing Liberty to engage in the transportation of natural gas that is subject to the Commission's jurisdiction under the Natural Gas Act to the same extent and in the same manner that intrastate pipelines are authorized to engage in such activity by subparts C and D of the Commission's regulations.

(B) The certificate issued by Ordering Paragraph (A) above and the rights granted thereunder are conditioned upon Liberty's compliance with all applicable Commission regulations under the Natural Gas Act and in particular the general terms and conditions set forth in paragraphs (a) and (e) of section 157.20 of the Commission's regulations. Further, the authorization granted herein is also subject to all the terms and conditions in section 284.224 of the Commission's regulations.

(C) The authorization granted herein is subject to Liberty filing, within five years of the date of this order, either: (a) an application pursuant to 18 C.F.R. § 284.123(b) seeking to establish rates for interstate transportation services provided under its section 284.224 blanket certificate or (b) an informational filing with cost, throughput, revenue and other data, in the form specified in section 154.313 of the

[17] 18 C.F.R. § 154.313 (2011).

[18] 18 C.F.R. § 380.4(a)(22) (2011).

Commission's regulations, to allow the Commission to determine whether any change in Liberty's interstate transportation rates is required pursuant to section 5 of the NGA.

(D) The firm transportation rates and charges Liberty has proposed are accepted.

(E) Within thirty days of the date of this order, Liberty must file its baseline Statement of Operating Conditions (SOC), as revised in the body of this order, in accordance with the authorization granted herein and the regulations adopted in Order No. 714,[19] requiring that tariff and tariff-related filings be made electronically.[20] Liberty is reminded that it must make all subsequent SOC and SOC-related filings electronically using eTariff.[21]

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

---

[19] *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008).

[20] Liberty should use Type of Filing Code 990 when filing its baseline SOC.

[21] *Electric Tariff Filings, order establishing baseline filing schedule starting April 1, 2010*, 130 FERC ¶ 61,228, at P 7 (2010).

UNITED STATES OF AMERICA 138 FERC ¶ 62,319
FEDERAL ENERGY REGULATORY COMMISSION

Atmos Energy Corporation Docket No. CP12-53-000

ORDER ISSUING BLANKET CERTIFICATE OF LIMITED JURISDICTION

(March 29, 2012)

1. On February 1, 2012, as amended on February 22, 2012, Atmos Energy Corporation (Atmos), filed on behalf of Atmos' Colorado/Kansas Division, a local distribution company (LDC), an application under section 7(c) of the Natural Gas Act (NGA) and section 284.224 of the Commission's regulations for a limited jurisdiction blanket certificate to transport gas in interstate commerce.[1] In addition, Atmos requests approval of rates and charges pursuant to section 284.224(e) of the Commission's regulations. For the reasons discussed below, the requested certificate authority is granted and the proposed rates and charges are accepted subject to the conditions discussed herein.

Background and Proposal

2. Atmos is a corporation organized under the laws of the states of Texas and Virginia with its principal place of business is Dallas, Texas. Atmos is a LDC transporting, distributing and selling gas to more than 1 million customers in the states of Colorado, Georgia, Illinois, Iowa, Kansas, Kentucky, Louisiana, Missouri, Tennessee, Texas and Virginia. Atmos' local distribution activities in each state are carried out through non-contiguous and distinct distribution and transmission systems[2] that are organized into different divisions.

3. Atmos states that this application is prompted by the pending sale of the Missouri natural gas transmission and distribution facilities (Missouri Facilities) of Atmos Kentucky/Mid-States to Liberty Energy (Midstates) Corp. ("Liberty").[3] Atmos states that

[1] 18 C.F.R. § 284.224 (2011). Section 284.224 authorizes LDCs and Hinshaw pipelines to perform the same types of transactions which intrastate pipelines are authorized to perform under section 311 of the Natural Gas Policy Act (NGPA) and subparts C and D of Part 284 of the Commission's regulations.

[2] Atmos has received NGA 7(f) exemptions for the limited situations where its local distribution facilities cross state lines.

[3] See related filings in Docket Nos. CP12-41-000 and CP12-42-000.

Liberty will operate the Missouri Facilities exclusively for the purpose of distributing natural gas to customers within the state of Missouri. Atmos states that the Missouri Facilities connect to one 35 foot stub line which will be owned by Liberty and which crosses the Kansas/Missouri border (Border Facility). Atmos states that the Border Facility will facilitate the delivery of natural gas from an interstate natural gas pipeline delivery point in Kansas to Liberty's Missouri distribution facilities, as well as the delivery of certain peaking volumes from supply sources in Kansas.

4. Atmos states that, following the sale of the Missouri Facilities to Liberty, Atmos Colorado/Kansas, a division of Atmos, proposes to provide, on a non-discriminatory basis, firm and interruptible transportation service (including "flow through" no notice service) through its Kansas distribution facilities to Liberty. Atmos asserts that this service will permit gas to be delivered to the Atmos facilities at an interconnection with an interstate pipeline in Kansas and then transported to the Border Facility, either on behalf of Liberty or customers with access to Liberty's Missouri Facilities, for transportation into the state of Missouri. Atmos states that this flow through no notice service is designed to allow firm transportation customers who subscribe to no notice service from an upstream interstate pipeline, to receive the benefits of that service on a "flow through" basis. However, Atmos clarifies that it will not, and cannot, provide no notice service using its own facilities and is offering this service solely on a flow through basis.

5. Atmos asserts that, in order for Missouri end users to continue to receive the same level of service they currently enjoy, they will need to continue to access supplies of gas through interstate pipeline delivery points in Kansas. Atmos states that to do this, it is necessary that Atmos Colorado/Kansas receive authorization pursuant to Section 284.224 to receive, transport and deliver this gas, through the Atmos Colorado/Kansas distribution facilities to the Border Facility. Atmos states that it will offer such service to all qualifying shippers, on a non-discriminatory basis, consistent with the terms of the *pro forma* Statement of Operating Conditions (SOC) attached to the filing as Exhibit C.

6. Atmos states that it anticipates approval of the pending asset sale by the Missouri Public Service Commission (MoPSC) as early as April 1, 2012. Therefore, Atmos requests that the Commission act on this application on an expedited basis, and grant the requested limited jurisdiction blanket certificate by April 1, 2012.

Notice and Intervention

7. Public notice of the filing was issued on February 6, 2012. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. 154.210 (2011)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2011)), all timely filed motions to intervene and any unopposed motion to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing

parties. The Kansas Corporation Commission (KCC) filed comments. MoPSC filed a conditional protest. On March 1, 2012, MoPSC filed to withdraw its protest and filed support for expedited treatment of Atmos' amended application.

Discussion

8. In its conditional protest, MoPSC opposed Atmos' SOC because it did not contain a provision obligating Atmos to continue to provide firm service at the end of any initial contract term. On February 22, 2012, Atmos filed to amend its SOC, section 2.2 Firm Transportation Service, to include language stating "An eligible Shipper with a public utility obligation to serve human needs loads may, at its request, have unilateral termination rights under its Transportation Agreement." On March 1, 2012, MoPSC filed to withdraw its conditional protest, and to notify the Commission of MoPSC's support for expedited treatment of Atmos' application.

9. Under the section 284.224 blanket certificate authority, the rates charged by an LDC may be determined by: (1) submitting proposed rates to the Commission for approval or (2) electing to use the rates contained in one of its transportation rate schedules on file with the appropriate state regulatory agency covering comparable service.[4] Atmos chose the latter option.

10. Atmos has determined to use, as maximum rates for transportation services under the blanket certificate, the rates contained in its Rate Schedule FT900, which is on file with and has been approved by the KCC. Rate Schedule FT900 rates were derived using Atmos Colorado/Kansas' cost-based revenue requirement approved by the KCC and made effective August 1, 2010. Attachment D of the application contains the Rate Schedule FT900 rates, and a summary sheet listing various cost-of-service components used to derive the rate. The summary sheet shows for the 12 months ending September 30, 2011, Atmos Colorado/Kansas' total annual demand under Rate Schedule FT900 was 14,431,833 hundred cubic feet (Ccf), and the total delivery revenue was $1,869,355, producing revenue per unit of demand of $0.12953 per Ccf-year. Atmos' rates include an add-on fuel charge calculated by multiplying the volumes transported times the most recent lost and unaccounted for percentage included in Section 4 of the SOC.

11. KCC filed comments concurring with Atmos' rate election, stating that the rate election filed by Atmos is indeed an effective rate schedule for comparable intrastate service on file with the KCC. Atmos's proposed transportation rates are accepted as consistent with sections 284.224(c) and 284.123(b) of the Commission's regulations.[5]

[4] 18 C.F.R. § 284.123 (2011).

[5] 18 C.F.R. §§ 284.224(c) and 284.123(b) (2011).

12. Consistent with Commission policy,[6] Atmos must file, within five years of the date of this order either: (a) an application pursuant to 18 C.F.R. § 284.123(b) seeking to establish rates for interstate transportation services provided under its section 284.224 blanket certificate or (b) an informational filing with cost, throughput, revenue and other data, in the form specified in section 154.313 of the Commission's regulations,[7] to allow the Commission to determine whether any change in Atmos's interstate transportation rates is required pursuant to section 5 of the Natural Gas Act.

13. No environmental assessment or environmental impact statement has been prepared for this application because it qualifies for categorical exclusion from such review under section 380.4(a)(22) of the Commission's Regulations.[8]

Findings:

(A) A blanket certificate of limited jurisdiction is granted under section 284.224 of the Commission's regulations authorizing Atmos to engage in the transportation of natural gas that is subject to the Commission's jurisdiction under the Natural Gas Act to the same extent and in the same manner that intrastate pipelines are authorized to engage in such activity by Subparts C and D of the Commission's regulations.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Atmos' compliance with all applicable Commission regulations under the Natural Gas Act and in particular the general terms and conditions set forth in paragraphs (a) and (e) of section 157.20 regulations. Further, the authorization granted herein is also subject to all the terms and conditions in section 284.224 of the Commission's regulations.

(C) The authorization granted herein is subject to Atmos filing, within five years of the date of this order, either: (a) an application pursuant to 18 C.F.R. § 284.123(b) seeking to establish rates for interstate transportation services provided under its section 284.224 blanket certificate or (b) an informational filing with cost, throughput, revenue and other data, in the form specified in section 154.313 of the Commission's regulations, to allow the Commission to determine whether any change in Atmos's interstate transportation rates is required pursuant to section 5 of the Natural Gas Act.

(D) The transportation rates and charges Atmos has proposed are accepted.

---

[6] *Contract Reporting Requirements of Intrastate Natural Gas Companies,* Order No. 735, 131 FERC ¶ 61,150, at P 96 (2010).

[7] 18 C.F.R. § 154.313 (2011).

[8] 18 C.F.R. § 380.4(a)(22) (2011).

14. Within thirty days of the date of this order, Atmos must file its baseline Statement of Operating Conditions (SOC) in accordance with the authorization granted herein and the regulations adopted in Order No. 714,[9] requiring that tariff and tariff-related filings be made electronically.[10] Atmos is reminded that it must make all subsequent SOC and SOC-related filings electronically using eTariff.[11]

15. This action is taken pursuant to the authority delegated to the Director, Division of Pipeline Regulation under 18 C.F.R. § 375.307. This action constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713.

Sincerely,

Nils Nichols, Director
Division of Pipeline Regulation

---

[9] *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276; 124 FERC ¶ 61,270 (2008).

[10] Atmos should use Type of Filing Code 990 when filing its baseline SOC.

[11] *Order Establishing Baseline Filing Schedule Starting April 1, 2010*, 130 FERC ¶ 61,228, at P 7 (2010).

Document Content(s)

NEGOTIATED GAS TRANSPORTATION SERVICE

AVAILABILITY:

Service under this rate schedule is available to those Customers who provide affidavits to the Company (in a form acceptable to the Company) certifying that and the Company is convinced that: (i) Liberty Utilities faces bypass by an intrastate or interstate upstream pipeline; and (ii) without the Company's lowering the Distribution Commodity Rate for Transportation Service, the Customer will bypass Liberty Utilities. The Customer must also provide the Company with evidence to verify the investment required on the part of the customer in order to take gas service directly from the interstate or intrastate pipeline company.

NEGOTIATED GAS TRANSPORTATION SERVICE RATES:

Subject to the Availability section above, Company may, in instances where it faces bypass from interstate or intrastate pipelines, enter into Negotiated Gas Transportation Service Rate contracts with Transportation Customers which lower the Distribution Commodity Rate for Transportation Service.. The Distribution Commodity Rate agreed upon by Company and Customer shall not exceed the maximum Distribution Commodity Rate for Transportation Service nor be less than 1.0¢ per Ccf (the "Flexed Distribution Commodity Rate").

The right to charge a Flexed Distribution Commodity Rate shall be exercised on a case-by-case basis at the discretion of the Company.

All executed contracts, amendments, and contract renewals, as well as the affidavits and evidence required under the Availability section above related to such contracts, amendments, and contract renewals, shall be furnished to the Commission staff and the Office of Public Counsel and submitted in the Commission's EFIS system under Non-Case Related submissions. Such executed contracts, amendments, and contract renewals shall be subject to the Commission's jurisdiction. Ratemaking treatment of any Flexed Distribution Commodity Rate may be reviewed and considered by the Commission in subsequent rate proceedings.

Rules and Regulations and Tariffs.

Other than providing for a Flexed Distribution Commodity Rate, service hereunder will be rendered in accordance with the Company's Rules and Regulations for Gas Service and other tariffs on file with the Missouri Public Service Commission.

DATE OF ISSUE: ______, 2014 DATE EFFECTIVE: ______, 2014
month day year month day year

ISSUED BY: Chris Krygier Director Rates and Regulatory Affairs Jackson, MO
name of officer title address