

**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 RESPONSE
TO STAFF'S PROPOSED PROCEDURAL SCHEDULE
AND
MOTION FOR EXPEDITED TREATMENT**

COMES NOW Atmos Energy Corporation (“Atmos” or “Company”) and, pursuant to Missouri Public Service Commission (“Commission”) Rule 4 CSR 240-2.080(15) and (16), files its Response to Staff’s Proposed Procedural Schedule and respectfully requests expedited treatment on the relief sought herein. In support of its Response and Motion, Atmos respectfully states as follows:

1. In response to the request of the Regulatory Law Judge issued during the prehearing conference, Atmos and the Staff of the Commission (“Staff”) submitted proposed procedural schedules in this matter on February 18, 2010.

2. Atmos requested that the Commission establish a procedural schedule as follows:

Direct Testimony by all parties—March 12, 2010
Rebuttal Testimony by all parties—April 16, 2010
List of Issues—April 23, 2010
Statements of Position—April 30, 2010
Surrebuttal Testimony by all parties—May 14, 2010
Evidentiary Hearings—June 15-17, 2010

3. Staff proposed the following procedural schedule, accompanied by various conditions:

Atmos files Direct Testimony – March 12, 2010
Discovery Issues Period: Staff files Rebuttal Testimony – June 14, 2010
Settlement Conference – June 21-23, 2010
Joint List of Issues – June 25, 2010
Statements of Position – June 30, 2010
Atmos Surrebuttal Testimony – July 16, 2010
Evidentiary Hearing – September 14-17, 2010

4. While Atmos continues to believe that its proposed procedural schedule is the most appropriate to bring this matter to resolution, in the spirit of compromise Atmos is willing to accept the Staff's proposal with the simple modification of requiring Staff to file its various rounds of testimony simultaneous with that of Atmos. Thus, Staff's proposal would be amended to provide:

Atmos and Staff file Direct Testimony – March 12, 2010

Atmos and Staff file Rebuttal Testimony – June 14, 2010

Atmos and Staff file Surrebuttal Testimony – July 16, 2010

5. The simultaneous filing of direct, rebuttal and surrebuttal testimony is commonplace in gas Actual Cost Adjustment ("ACA") cases that proceed to hearing (*See e.g., Order Adopting Procedural Schedule*, Case No. GR-2003-0150, November 19, 2003—Atmos; *Order Adopting Procedural Schedule*, Case No. GR-2004-0273, June 2, 2006 – Laclede; *Order Consolidating Cases and Modifying Procedural Schedule*, December 21, 2007 – MGU; *Order Adopting Procedural Schedule*, Case No. GR-2007-0256, July 30, 2009 – MGE), and fairness and equity require it in this case as well.

6. In its February 18 pleading, the Staff suggests that it "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." While

approximately one page of its twelve-page Memorandum is devoted to the affiliate transaction disallowance (which Staff characterizes as “at the heart of this dispute”), Atmos respectfully disagrees that Staff has provided sufficient information to give Atmos “notice of the claims, contentions and evidence in issue” – the information that the practice of prefilings testimony is designed to provide parties in Commission proceedings.¹ Staff’s contention that it has provided the Company with its workpapers explaining the disallowance also rings hollow; Atmos cannot discern what assumptions and theories are embedded in the Excel spreadsheet depicting tables of data – sworn testimony explaining such information will be extremely helpful.

7. Based upon the Company’s limited understanding of Staff’s proposed Affiliated Transaction adjustment, it appears that this case will involve one major issue which is primarily a legal question. In this case (like in Case No. GR-2007-0403), Atmos used a formal competitive bidding process to solicit bids from unregulated gas marketers for the Company’s gas supplies. After a careful evaluation of the various bids received, Atmos awarded its gas supply contracts to Atmos Energy Marketers, Inc. (“AEM”), an affiliated gas marketer, which submitted the lowest and best bid for those gas supplies. In this case, Staff is proposing to impute the profits of AEM on these transactions to lower the gas costs of Atmos by the same amount as the AEM profits on these transactions. In other words, Staff proposes to disallow from Atmos’s gas costs an amount equal to the profits earned by AEM, based upon Staff’s incorrect interpretation of the Commission’s Affiliated Transactions Rule, 4 CSR 240-40.015 and 4 CSR 240-

¹ Order Adopting Procedural Schedule, Case No. GR-2004-0273, *In the Matter of the PGA Filing for Laclede Gas Company*, June 2, ,2006.

40.016. As a result, Atmos believes that the legal issues to be resolved in this case will be whether Atmos's gas costs are prudent, and whether the Affiliated Transaction Rule requires a regulated LDC to lower its gas supply costs in the PGA/ACA process by the same amount as the profits of an affiliated gas marketer that provided gas supplies, pursuant to a formal competitive bidding process.

8. The standard adopted by the courts and the Commission in Missouri recognizes that a public utility's costs are presumed to be prudently incurred. The public utility is not required in its case-in-chief to prove the prudence of all expenditures. Only when the Staff or some other party creates a "serious doubt" about the prudence of the expenditures of the public utility does the burden to dispel those doubts shift to the public utility prove that the expenditures were prudently incurred. *See State ex rel. Associated Natural Gas v. Public Service Commission*, 954 S.W.2d.520, 529 (Mo.App.1999). *See also Report & Order*, pp. 16-17, *Re Missouri Gas Energy*, Case No. GR-2003-0330 (Commission recognized the legal presumption of prudence for natural gas companies in PGA/ACA cases).

9. Recognizing that the public utility has a presumption of prudence in its favor until a "serious doubt" has been created by Staff or other parties, the Commission has generally required the simultaneous filing of direct, rebuttal, and surrebuttal testimony in ACA cases that have required a hearing, as previously noted. Atmos strongly believes this practice should be adopted in this case to timely resolve the prudence issue being raised by Staff.

10. Finally, although Atmos is willing to agree to Staff's proposal with the above minor caveats, Atmos must rebut Staff's stated premise for its proposed procedural

schedule – “because it allows a proper amount of time for Staff to conduct discovery upon Atmos’ filing of its direct testimony.” Let there be no mistake regarding Staff’s opportunity for discovery. In the course of addressing these issues in this proceeding, as well as in Case No. GR-2007-0403 which concerned a similar Affiliated Transaction Issue², Staff has utilized twenty-nine (29) months of discovery (propounding 117 Data Requests commencing on October 3, 2007 in the -0403 case, and 116 Data Requests commencing on October 6, 2008 in this matter).

Motion for Expedited Treatment

11. In accordance with Commission Rule 4 CSR 240-2.080(16), Atmos respectfully requests the Commission to act in approving the proposed procedural schedule that Atmos submits herein, no later than February 26, 2010. As the proposed schedule requires the parties to file Direct Testimony on March 12, 2010, obviously, time is of the essence in confirming the Commission’s acceptance of the procedural dates recommended. As discussed above, the parties will benefit by the Commission’s expedited consideration of this matter, and there will be no negative effect on Atmos’ customers or the general public if the Commission acts by the desired date. This pleading was filed as soon as it could have been.

WHEREFORE, Atmos Energy Corporation respectfully requests that the Commission issue its Order Establishing Procedural Schedule as requested herein, and that such relief be granted on an expedited basis.

² Case No. GR-2007-0403 was resolved by the filing of a Unanimous Stipulation And Agreement which was approved by the Commission. See Order *Approving Unanimous Stipulation And Agreement*, Case No. GR-2007-0403 (February 3, 2010).

Respectfully submitted,

/s/ James M. Fischer

James M. Fischer, Mo Bar. No. 27543

Fischer & Dority, P.C.

101 Madison

Suite 400

Jefferson City, MO 65101

(573) 636-6758 Phone

(573) 636-0383 Fax

jfischerpc@aol.com

Attorneys for Atmos Energy Corporation

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 22nd day of February, 2010.

/s/ James M. Fischer

James M. Fischer