

**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 RESPONSE IN OPPOSITION TO  
STAFF’S MOTION TO SUSPEND PROPOSED PROCEDURAL SCHEDULE**

**COMES NOW** Atmos Energy Corporation (“Atmos” or “Company”), and pursuant to 4 CSR 240-2.080, files its Response In Opposition To Staff’s Motion To Suspend Proposed Procedural Schedule filed on June 11, 2010 (“June 11<sup>th</sup> Motion”) which requests that the Commission suspend indefinitely the procedural schedule in this matter. As its response in opposition to the Staff’s June 11<sup>th</sup> Motion, Atmos respectfully states:

1. On December 28, 2009, the Commission Staff (“Staff”) filed its recommendation following completion of an extensive 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 of served by the Company in Missouri. The Staff’s audit in this ACA case lasted approximately one year and included the issuance of 116 data requests prior to the filing of the Staff Recommendation.

2. Atmos filed its response to Staff’s recommendation on January 28, 2010. In its Response, the Company disagreed with two of Staff’s proposed affiliated transactions 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 parties could discuss a procedural schedule. At the prehearing conference, the Chief Regulatory Law Judge Morris Woodruff requested that the parties submit a procedural schedule by February 18, 2010.

4. On February 18, 2010, the Staff filed Staff's Proposed Procedural Schedule ("February 18th Motion") in which the Staff informed the Commission that **"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."** (February 18th Motion, pp. 2-3) In its February 18th Motion, Staff requested that it not be required to file any direct testimony since the proposed adjustments were already adequately supported in the Staff Recommendation, but only file rebuttal testimony in response to the Company's direct testimony. Staff proposed that it be ordered to file its rebuttal testimony on June 14, 2010. The Company proposed that the Commission order the filing of simultaneous direct, rebuttal and surrebuttal testimony by both Staff and Atmos consistent with the practices in other ACA proceedings. Otherwise, the Company accepted Staff's proposed procedural schedule. (See Atmos Energy Corporation's Response To Staff's Proposed Procedural Schedule And Motion For Expedited Treatment filed on February 22, 2010)

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. In its *Order Adopting Procedural Schedule*, the Commission specifically adopted Staff's suggested date of June 14, 2010 as the date for filing rebuttal testimony by Staff. Pursuant to that *Order*, both Atmos and

Staff filed their direct testimony on March 12, 2010. (Atmos will also be filing its Rebuttal Testimony simultaneously with the filing of this response, as ordered by the Commission.)

6. Although Staff had asserted in its February 18 Motion that “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”, Staff now asserts that it can not proceed at all with this proceeding because it is unhappy with one response of Atmos (i.e. DR No. 117).<sup>1</sup> Although Staff has not discussed the Atmos response with Atmos’s counsel or filed a motion to compel with the Commission, Staff instead filed its Motion To Suspend Proposed Procedural Schedule on Friday, June 11, 2010 at 4:33 P.M. which stated that “Staff is unable to comply with the established deadline [for filing rebuttal testimony] due to the failure of Atmos to provide requested documents in response to Staff Data Request No. 117.” (June 11<sup>th</sup> Motion, p. 1). For the reasons stated herein, Staff’s belated attempt to suspend the procedural schedule and extend indefinitely the time for additional Staff discovery in this case, should be rejected by the Commission.

7. This case involves 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

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<sup>1</sup> In response to DR No. 117 which requested documents from an affiliated gas marketer, AEM [Atmos Energy Marketing], Atmos responded on June 11, 2010 that “the requested documents are not in the possession of AEC [Atmos Energy Corporation].

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 240-40.016. 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. In the course of addressing these issues in this proceeding, as well as in Case No. GR-2007-0403 which contained the same (or very similar) Affiliated Transactions issue involving gas contracts with the same affiliated gas marker AEM, Staff has utilized twenty-nine (29) months of discovery (propounding 117 Data Requests commencing on October 3, 2007 in the -0403 case, and 132 Data Requests commencing on October 6, 2008 in this matter). No additional discovery should be needed to support Staff's proposed adjustment since Staff has already proposed, quantified, and recommended the affiliated transaction adjustments in its Staff Recommendation filed on December 28, 2009, and in the Direct Testimony of David M. Sommerer filed on March 12, 2010. (If Staff could not support the adjustment based upon the information obtained in their year-long audit, perhaps the Staff should have refrained from proposing it.)

9. 4 CSR 240-2.130 states that "rebuttal testimony shall include all testimony which explains why a party rejects, disagrees or proposes an alternative to the moving party's direct case." In this instance, Atmos's direct testimony does not rely upon and does not include any references to the documents being requested in DR No. 117. As a result, any discovery related to

these documents would be beyond the scope of appropriate discovery related to Atmos's direct testimony.

10. As mentioned above, Staff counsel has not discussed this discovery matter since Atmos filed its response to DR No. 117.<sup>2</sup> Nor has Staff filed any motions to compel related to any of the discovery responses to Atmos to date. Until now, Atmos and Staff have been able to amicably resolve any discovery issues.

11. In this instance, Staff has not complied with the Commission's discovery rule, 4 CSR 240-2.090(8) which states in part:

“(8) Except when authorized by an order of the commission, the commission will not entertain any discovery motions, until the following requirements have been satisfied:

- (A) Counsel for the moving party has in good faith conferred or attempted to confer by telephone or in person with opposing counsel concerning the matter prior to the filing of the motion. . . Counsel for the moving party shall certify compliance with this rule in any discovery motion; and
- (B) If the issues remain unresolved after the attorneys have conferred in person or by telephone, counsel shall arrange with the commission for an immediate telephone conference with the presiding officer and opposing counsel. No written discovery motion shall be filed until this telephone conference has been held.”

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<sup>2</sup> During the discovery conference held on June 3, 2010, Staff informed the undersigned counsel that a response to DR Nos. 117 and 131 had not be submitted. The undersigned stated that he would have to check on the status of the responses to DR Nos. 117 and 131. At that time, Staff did not indicate that they would not be able to move forward with the case if Atmos was unable to provide the documents subject of this request.

12. Staff's attempt to use the discovery issues related to DR No. 117 as the basis for a suspension of the procedural schedule should not be tolerated by the Commission. In reality, the Company believes that this Staff motion merely promotes Staff's real agenda to extend the discovery period in a belated effort to support Staff's proposed affiliated transactions adjustments for which Staff has no support in the record.

13. For the reasons stated herein, Staff's Motion To Suspend Proposed Procedural Schedule filed on Friday afternoon at 4:33 PM on June 11<sup>th</sup>, 2010, should be rejected. Instead, the Commission should require that the parties adhere to the procedural schedule that was adopted by the Commission which was the Staff's proposed procedural schedule. Simultaneously with the filing of this response, Atmos is also filing its Rebuttal Testimony in this matter as previously ordered by the Commission.

**WHEREFORE**, for the reasons stated herein, Atmos Energy Corporation respectfully requests that the Commission deny the Staff's Motion To Suspend Proposed Procedural Schedule.

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 14<sup>th</sup> day of June, 2010.

/s/ James M. Fischer

James M. Fischer