

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of Atmos Energy Corporation’s Tariff)
Revision Designed to Consolidate Rates and) Case No. GR-2006-0387
Implement a General Rate Increase for Natural Gas)
Service in the Missouri Service Area of the Company.)

**RESPONSE OF ATMOS ENERGY CORPORATION
TO ORDER DIRECTING FILING**

COMES NOW Atmos Energy Corporation (“Atmos”), pursuant to the Missouri Public Service Commission’s (“Commission”) directive for filing pleadings addressing the legal status of Atmos Energy Corporation’s tariff,¹ and for its Response respectfully states as follows:

1. In the course of discussions held during the Commission’s December 15, 2009 on-the-record proceeding regarding the Western District Court of Appeals’ remand of certain matters to the Commission for further proceedings, Staff Counsel Mr. Thompson addressed the fact that Atmos’ existing tariffs continue to be lawful.

The tariff is in effect today and will remain in effect until you guys issue a new tariff order. . . . That tariff has never been found to be not just and reasonable.
. . . You would have to consider all applicable factors, all pertinent factors. And, certainly, those factors show a lot of change since 2005. (Tr. 792).

2. Indeed, as Mr. Thompson pointed out, once the tariffs take effect they are presumed lawful until shown otherwise. (Tr. 831). The Commission has exclusive

¹ During the On-the-Record proceeding held December 15, 2009, Senior Regulatory Law Judge Stearley originally set a schedule for the parties to file responses on “. . . the issue Mr. Thompson raised with regard to continuation of the validity of the tariff.” That schedule was subsequently extended by the Commission’s Orders granting extensions of time, issued January 4 and January 12, 2010, wherein the Commission described the subject to be addressed as “the legal status of Atmos Energy Corporation’s tariff.”

jurisdiction to establish public utility rates,² and the rates it sets have the force and effect of law.³ In the instant remand, “[t]he Court found the Commission’s decision with respect to two issues to be unsupported by competent and substantial evidence. It sent it back to the Commission to reconsider it.” (Tr. 797, Mr. Thompson). In discussing the joint recommendation of Atmos and the Commission’s Staff that the remand be addressed in Atmos’ rate case,⁴ as opposed to OPC’s advocacy of merely reviewing the existing record and reverting to the old rate structure, Mr. Fischer explained:

We don’t believe that that scenario [OPC’s suggestion] is one that the Court envisioned and was contemplating since the Court opinion clearly indicates that the Commission may consider implementing the straight fixed variable rate design again or some alternative rate design after the remand hearing or – and the opinion also notes that the company might wish to re-assert its position on the revenue requirement in that remand proceeding. (Tr. 765).

* * * *

I don’t think you’re ignoring their mandate at all. I think you’re – they’ve remanded it back for another look for further proceedings on these issues, on the fixed straight – straight fixed variable rate structure, on the consolidation, on the seasonal reconnect, and then, also, they recognized that revenue requirement will be a part of that. (Tr. 780).

3. Both Mr. Fischer and Mr. Thompson stressed that, under the law, the Commission has to take a look at all relevant factors in setting rates⁵, and the Commission will need to examine more current data in fulfilling that requirement. (Tr. 762, 792).

I think if you consider all relevant factors, you need to consider more current data. And it wouldn’t be – it wouldn’t be reasonable or appropriate to base rates on 2005 data at this point. (Tr. 769, Mr. Fischer).

² *May Dep’t Stores Co. v. Union elec. Light & Power Co.*, 341 Mo. 299, 107 S.W.2d 41, 57 (Mo.App. 1937).

³ *St. ex. rel. Utility Consumers Council, Inc. v. Pub. Serv. Comm’n*, 585 S.W.2d 41, 49 (Mo. banc 1979).

⁴ On December 28, 2009, Atmos filed its new rate case, Case No. GR-2010-0192, *In the Matter of Atmos Energy Corporation’s Tariff Revision Designed to Implement a General Rate Increase of Natural Gas Service in the Missouri Service Area of the Company*.

⁵ *Utility Consumers Council*, supra, 585 S.W.2d at 56.

In response to an inquiry from Commissioner Gunn regarding the need for a true-up or adjustment, Mr. Thompson replied: “I think you’d have to update. Yes sir.” (Tr. 820-821).

4. In discussing Section 393.270(4)) and the consideration of all relevant factors, in the “UCCM” case the Supreme Court reiterated the basic proposition regarding “. . . the general statutory system discussed above of fixed rates filed by the utilities to remain in effect until a new rate is approved or permitted to take effect.”⁶ Again, in emphasizing the continued legal validity of Atmos’ current tariffs, Mr. Thompson explained that, after embarking on a new proceeding of some sort, at the end of that proceeding a new report and order would be produced and the Commission would direct Atmos to file tariffs in compliance with that order. (Tr. 829).

5. As noted in a previous pleading, Atmos respectfully submits that the language of the Western District Court’s Opinion does not reflect any anticipated immediate resolution of these complex issues on remand. In the recent case of *Stanley Roberts, Respondent v. City of St. Louis, Appellant, and Treasurer of The State of Missouri as Custodian for The Second Injury Fund, Respondent*, No. 92438 (Mo. App. E.D., September 1, 2009), the Court observed:

A mandate is not to be read and applied in a vacuum. Ironite Prods. Co. v. Samuels, 17 S. W. 3d 566, 570 (Mo. App. E.D. 2000). The opinion is part of the mandate and must be used in interpreting the mandate. Id. “Accordingly, proceedings on remand should be in accordance with the mandate and the result contemplated in the appellate court’s opinion.” Id. . . . (Opinion, page 6).

⁶ *Id.*

WHEREFORE, Atmos respectfully submits its Response to the Commission's directive and again requests that the Commission address the issues remanded by the Court of Appeals and the Circuit Court of Cole County in Atmos' pending general rate proceeding, Case No. GR-2010-0192.

Respectfully submitted,

/s/ Larry W. Dority

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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, First Class mail, postage prepaid, this 19th day of January, 2010, to all counsel of record in this matter.

/s/ Larry W. Dority _____

Larry W. Dority