

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF ATMOS ENERGY )  
CORPORATION FOR A DEVIATION FROM THE ) CASE NO.  
PRICING REQUIREMENTS OF KRS 278.2207 ) 2011 -00077

O R D E R

On March 3, 2011, Atmos Energy Corporation (“Atmos”) applied for a deviation from the pricing requirements contained in KRS 278.2207(1)(b) to permit it to purchase natural gas from Atmos Energy Marketing, LLC (“AEM”), an affiliate of Atmos.<sup>1</sup> By this Order, we grant the application.<sup>2</sup>

On July 6, 2010,<sup>3</sup> the Commission granted Atmos a Certificate of Public Convenience and Necessity to bid on a franchise for a natural gas system (“the Livermore System”) offered by the city of Livermore (“Livermore”), Kentucky which serves Livermore’s citizens. Atmos purchased the Livermore System on January 31, 2011.

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<sup>1</sup> Case No. 2010-00146, An Investigation of Natural Gas Retail Competition Programs. Atmos Energy Management (“AEM”) was originally named Woodward Marketing, LLC (“Woodward”). Atmos Energy Corporation (“Atmos”) eventually purchased 100 percent ownership in Woodward and renamed it Atmos Energy Marketing, LLC. Atmos’s Response to Second Data Request of Interstate Gas Supply, Inc., Southeast Energy Services, LLC and Vectron Sources and to Atmos, Item No. 3, p.14 (filed Sept. 7, 2010).

<sup>2</sup> No person has sought intervention and no hearing has been requested in this proceeding.

<sup>3</sup> Case No. 2010-00252, Application of Atmos Energy Corporation, Owensboro, Kentucky, for a Certificate of Public Convenience and Necessity Authorizing it to Bid on a Franchise Established by the City of Livermore, Kentucky (Ky. PSC Jul. 6, 2010).

Livermore and AEM entered into a Gas Supply Agreement (“Agreement”) on August 15, 2007.<sup>4</sup> As part of Atmos’s January 31, 2011 acquisition of the Livermore System, the Agreement between Livermore and AEM was assigned to Atmos. This assignment resulted in the parties to the Agreement being Atmos and its affiliate AEM, which causes the Agreement to be subject to the pricing rules of KRS 278.2207(1)(b). The Agreement will expire by its own terms on October 31, 2011, unless allowed to automatically extend for a successive one year period.<sup>5</sup> Atmos states that once the Agreement expires on October 31, 2011, Livermore’s gas will be supplied through the existing gas supply agreement between Atmos and AEM dated June 1, 2006.<sup>6</sup>

Atmos is requesting a deviation from the affiliate pricing requirements of KRS 278.2207(1)(b), specifically for services and products provided to Atmos from its affiliate AEM. KRS 278.2207 provides in pertinent part:

- (1) The terms for transactions between a utility and its affiliates shall be in accordance with the following:
  - (b) Services and products provided to the utility by an affiliate pursuant to a tariff shall be priced at the affiliate’s fully distributed cost but in no event greater than market or in compliance with the utility’s existing USDA, SEC, or FERC approved cost allocation methodology.
- (2) A utility may file an application with the commission requesting a deviation from the requirements of this section for a particular

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<sup>4</sup> Application Exhibit A.

<sup>5</sup> Id. Transaction Confirmation (filed May 3, 2011).

<sup>6</sup> The Commission approved Atmos’s deviation request for its existing gas supply agreement with AEM in Case No. 2006-00194, Application of Atmos Energy Corporation for Approval of Third Party Gas Supply Agreement and for a Deviation from the Pricing Requirements of KRS 278.2207 (Ky. PSC Aug. 18, 2006).

transaction or class of transactions. The utility shall have the burden of demonstrating that the requested pricing is reasonable. The commission may grant the deviation if it determines the deviation is in the public interest.

Atmos states that the Agreement between Livermore and AEM was entered into approximately four years ago and was negotiated in the open market by disinterested third parties. Atmos acknowledges that the terms for the services and products being supplied under the Agreement are not necessarily at AEM's fully distributed cost as required by KRS 278.2207(1)(b), but contends that the cost of services and products are necessarily not greater than market.

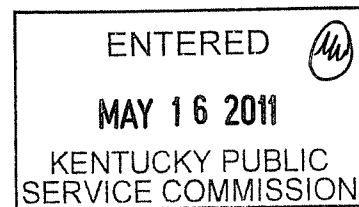
Having considered the evidence of record in this case and being otherwise sufficiently advised, the Commission finds that:

1. Atmos's request for deviation from KRS 278.2207(1)(b) is reasonable and in the public interest.
2. The gas supply agreement with AEM was assigned to Atmos as part of its purchase of the Livermore System.
3. The gas supply agreement was originally entered into approximately four years ago between Livermore and AEM, two totally unrelated parties.
4. The fact that the Agreement was negotiated by disinterested parties in the open market establishes that the cost of such services and products are not greater than market.
5. The Agreement is for a short time period and will expire by its own terms on October 31, 2011.

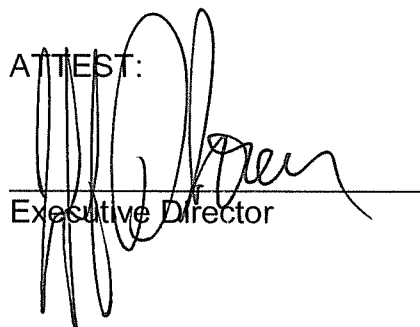
IT IS THEREFORE ORDERED that:

1. Atmos's contract with AEM for AEM to supply natural gas to the former Livermore System is hereby approved through October 31, 2011.
2. Atmos's request for a deviation from KRS 278.2207(1)(b) is hereby granted.

By the Commission



ATTEST:

  
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