

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE FILING OF SEVEN (7) SPECIAL	)	CASE NO.
INDUSTRIAL CONTRACTS BY ATMOS	)	2016-00052
ENERGY CORPORATION	)	

ORDER

On May 31, 2016, the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention (“Attorney General”), filed a motion requesting full intervention in this case, which involves the Commission’s investigation of the reasonableness of eight special contracts (“Service Agreements”) under which Atmos Energy Corporation (“Atmos”) intends to provide large-volume natural gas service to certain of its industrial customers at specified, non-tariffed rates. On June 2, 2016, Atmos filed an objection to the Attorney General’s motion for intervention, and on June 7, 2016, the Attorney General filed a response to Atmos’s objection.

The initial five Service Agreements were submitted by Atmos on December 16, 2015, through the Commission’s electronic Tariff Filing System (“TFS”). On January 29, 2016, the Commission opened this proceeding and suspended the effective dates of those Service Agreements until June 14, 2016. Additional Service Agreements were submitted by Atmos through the Commission’s TFS on January 11, 2016, and on January 19, 2016. On February 9, 2016, the Commission entered a *nunc pro tunc* Order which, among other things, suspended the effective date of the Service Agreement submitted on January 11, 2016, until July 9, 2016, and the effective date on

the Service Agreement submitted on January 19, 2016, until July 17, 2016. On March 16, 2016, Atmos submitted an eighth Service Agreement through the Commission's TFS, and on April 12, 2016, the Commission suspended its effective date until September 14, 2016. Two rounds of discovery have been issued by Commission Staff and have been answered by Atmos.

Atmos objects to the Attorney General's motion to intervene as untimely and states that "[t]here are only approximately two weeks remaining in the original suspension period. Any action by the Attorney General other than observation of the case as it currently stands will unduly disrupt and delay the proceedings."<sup>1</sup> Atmos also points out that in the pending Atmos rate case,<sup>2</sup> "the Attorney General has offered no testimony concerning these special contracts. Yet, at this late stage, [the Attorney General] wants to intervene in this case."<sup>3</sup> Atmos argues that while KRS 367.150(8) grants the Attorney General the authority to intervene in Commission proceedings, it does not exempt him from the regulations for intervention. Atmos notes that in Case No. 2016-00054,<sup>4</sup> the Attorney General filed a motion for intervention beyond the time parameters allowed in the procedural schedule and argued that KRS 367.150(8) provides him with a statutory right to intervene and that he is not required to provide

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<sup>1</sup> Atmos Energy Corporation's Objection to Attorney General's Motion for Intervention ("Atmos Objection") (filed June 2, 2016) at 2

<sup>2</sup> Case No. 2015-00343, *Application of Atmos Energy Corporation for an Adjustment of Rates and Tariff Modifications* (Ky. PSC filed Jan. 15, 2016).

<sup>3</sup> Atmos Objection at 2.

<sup>4</sup> Case No. 2016-00054, *Application of Caldwell County Water District for Rate Adjustment Pursuant to 807 KAR 5:0076* (filed Feb. 3, 2016).

specific, valid reasons for his intervention in any proceeding before the Commission.<sup>5</sup> In that matter, we held the Attorney General's motion to intervene in abeyance "to afford the Attorney General an opportunity to set forth good cause for his untimely motion."<sup>6</sup> The Attorney General supplemented his motion to intervene, which stated, among other things, the following:

The Attorney General's Office of Rate Intervention has recently experienced a change in administration coupled with a loss of personnel. These factors have forced the Office of Rate Intervention to implement a wait-and see approach before intervening in new cases, until such time that it is confirmed the office will have necessary resources to participate effectively.<sup>7</sup>

In the case at bar, the Attorney General has filed a motion to intervene four and a half months after the Commission initiated this matter and after Commission Staff has issued and Atmos has responded to two requests for information. Similar to his actions in Case No. 2016-00054 cited above, the Attorney General has again delayed his request to intervene in this matter until two full rounds of discovery have been issued and answered. Also, as in his motion to intervene in Case No. 2016-00054, the Attorney General's motion to intervene offered no explanation for his late request in this matter. In his response to Atmos's objection to his motion to intervene, the Attorney General argues that Atmos never asserts "that the filing was untimely, nor provides any evidence to support the notion that the Attorney General's intervention would unduly

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<sup>5</sup> *Id.* Also see Supplemental Motion to Intervene (filed Mar. 31, 2016) at 2.

<sup>6</sup> Case No. 2016-00054, *Caldwell County Water District* (Ky. PSC Mar. 29, 2016) at 2.

<sup>7</sup> *Id.* at 3.

disrupt and delay the proceedings.”<sup>8</sup> The Attorney General also argues that he “became aware of the docket by pure happenstance . . . was not informed of this particular proceeding, and therefore intervened as soon as he became aware.”<sup>9</sup> The Attorney General states that in his motion to intervene he requested no changes to procedure or additional time or discovery. Finally, the Attorney General claims that “intervening in this case is the only security the Attorney General has to ensure new or contradictory evidence regarding the special contracts has not been presented by the Company, as it may be a subject in Case No. 2015-00343.”<sup>10</sup>

While KRS 367.150(8) grants the Attorney General the right to intervene in cases before the Commission, the Commission, pursuant to KRS 278.040(3) and KRS 278.310, is authorized to establish the procedures for processing cases and to implement and enforce these requirements, including the timeliness of a motion to intervene. As stated specifically in 807 KAR 5:001, Section 4(11(b)) :

The [C]ommission shall grant a person leave to intervene if the [C]ommission finds that he has made a *timely motion* for intervention and that he has a special interest in the case that is not otherwise adequately represented or that his intervention is likely to present issues or to develop facts that assist the [C]ommission in fully considering the matter *without unduly complicating or disrupting the proceedings* (emphasis added).

Atmos argues that the Attorney General’s right to intervene pursuant to KRS 367.150(8) does not provide him with the authority to ignore the Commission’s other procedural rules, including those regarding the manner and timing of intervention.

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<sup>8</sup> Attorney General’s Response to Objection (filed June 7, 2016) at 1.

<sup>9</sup> *Id.* at 2.

<sup>10</sup> *Id.* at 3; Case No. 2015-00343, *Atmos Energy Corporation* (filed Jan. 15, 2016).

Atmos further avers that “the Attorney General’s cavalier attitude toward the regulations should not be indulged.”<sup>11</sup>

Having reviewed the Attorney General’s motion to intervene, Atmos’s objection to same, the Attorney General’s response to Atmos’s objection, and being otherwise sufficiently advised, the Commission finds that KRS 367.150(8) does give the Attorney General a unique statutory right to intervene in cases before the Commission. We further find, however, that the Attorney General is required, like any other party before the Commission, to comply with all other provisions of KRS Chapter 278 and KAR Title 807, in order to protect the rights of Atmos and to maintain an orderly review of the proceedings before the Commission. In Case No. 2016-00054, a procedural schedule specifically setting a date certain for intervention had been established, and prior to our granting the Attorney General’s motion to intervene in that case, we held the motion in abeyance for ten days allowing the Attorney General an opportunity to file a supplemental motion setting forth good cause for filing his motion to intervene after the due date established by the Commission.<sup>12</sup> In the case at bar, although the Attorney General’s motion to intervene was filed subsequent to the completion of two rounds of discovery, there was no procedural schedule issued setting forth a specific deadline for intervention, and the Attorney General is not requesting additional time, or discovery. The Commission takes note that this case was initiated by Commission Order following Atmos’s permissible filing of its special contracts through the TFS, and that there is no requirement that the AG be specifically served or notified of this type of proceeding, as all Commission orders are posted on the Commission’s website and available for any

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<sup>11</sup> Objection to Attorney General’s Motion for Intervention (filed June 2, 2016) at 2.

<sup>12</sup> Case No. 2016-00054, Caldwell County Water District (Ky. PSC Mar. 29, 2016) at 2.

interested party to review. It is unclear why the Attorney General did not become aware of this case at an earlier date, but the Commission finds that Atmos will not be disadvantaged by his intervention in the instant proceeding, which involves issues addressed by the Attorney General's expert testimony in Case No. 2013-00148.<sup>13</sup>

IT IS THEREFORE ORDERED that:

1. The Attorney General's Motion to Intervene is granted.
2. The Attorney General shall be entitled to the full rights of a party and shall be served with the Commission's Orders and with filed testimony, exhibits, pleadings, correspondence, and all other documents submitted by parties after the date of this Order.
3. The Attorney General shall comply with all provisions of the Commission's regulations, 807 KAR 5:001, that apply to this matter.
4. The Attorney General and Atmos shall have seven days from the date of this Order to file written comments or to request an evidentiary hearing.
5. Pursuant to 807 KAR 5:001, Section 8(9), within seven days from the date of this Order, the Attorney General shall file a written statement with the Commission that:
  - a. Certifies that it, or its agent, possesses the facilities to receive electronic transmissions; and
  - b. Sets forth the electronic mail address to which all electronic notices and messages related to this proceeding should be served.

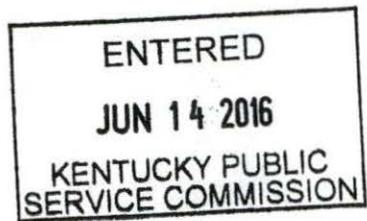
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<sup>13</sup> Case No. 2013-00148, *Application of Atmos Energy Corporation for an Adjustment of Rates and Tariff Modifications*, (Ky. PSC Apr. 22, 2014).

6. All other provisions of the Commission's prior Orders in this case not in conflict with this Order shall remain in full force and effect.

7. Nothing shall prevent the Commission from issuing further orders in this matter.

By the Commission



ATTEST:

  
Acting Executive Director

\*Honorable John N Hughes  
Attorney at Law  
124 West Todd Street  
Frankfort, KENTUCKY 40601

\*Kent Chandler  
Assistant Attorney General  
Office of the Attorney General Utility & Rate  
1024 Capital Center Drive  
Suite 200  
Frankfort, KENTUCKY 40601-8204

\*Atmos Energy Corporation  
3275 Highland Pointe Drive  
Owensboro, KY 42303

\*Atmos Energy Corporation  
Atmos Energy Corporation  
3275 Highland Pointe Drive  
Owensboro, KY 42303