

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF ATMOS ENERGY)	
CORPORATION FOR APPROVAL OF THIRD)	
PARTY GAS SUPPLY AGREEMENT AND FOR)	
A DEVIATION FROM THE PRICING)	CASE NO. 2006-00194
REQUIREMENTS OF KRS 278.2207)	

O R D E R

On May 10, 2006, Atmos Energy Corporation ("Atmos") applied for approval of its proposed gas supply agreement with Atmos Energy Marketing, LLC ("AEM") and for a deviation from the pricing requirements set forth in KRS 278.2207(1)(b). By this order, we grant the application.¹

In Case No. 2002-00245,² the Commission approved Atmos's current gas supply agreement with AEM and granted a deviation from the requirements of KRS 278.2207(1)(b). This agreement was to expire on June 1, 2006, but AEM has extended the contract on a month-to-month basis pending the execution and approval of a new agreement.

¹ No person has sought intervention in this proceeding. In addition to the application, the record contains Atmos's response to Commission Staff's requests for information. No hearing was requested in this matter.

² Case No. 2002-00245, Application of Western Kentucky Gas Company, A Division of Atmos Energy Corporation, For Approval of Third Party Gas Supply Agreement and for a Deviation from the Pricing Requirements of KRS 278.2207, Order dated December 3, 2002.

In February 2006, Atmos issued a Request For Proposal (“RFP”) to 26 prospective bidders, requesting bids for 2, 3, 4, and 5 year terms based on the benchmarks within its Performance Based Mechanism approved in Case No. 2005-00321.³ Five bidders submitted timely responses. Based upon analysis of these responses, Atmos determined that AEM’s proposal was in the best interest of Atmos and its ratepayers and will produce greater savings than the current supply agreement.⁴

AEM is a wholly owned subsidiary of Atmos Energy Holdings, Inc., which is wholly owned by Atmos. As a result of this relationship, any transaction between Atmos and AEM must comply with the pricing requirements of KRS 278.2207, unless the Commission grants a deviation. KRS 278.2207, in pertinent part, provides:

- (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 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 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.

³ Case No. 2005-00321, Modification of Atmos Energy Corporation’s Gas Cost Adjustment to Incorporate Performance Based Ratemaking Mechanism (PBR), Order dated February 8, 2006.

⁴ Atmos response to Item 1 of Staff’s Initial Rate Request dated June 9, 2006.

Atmos has requested a deviation from these requirements. Atmos provides several arguments in support of its request for deviation. First, Atmos argues that the contract is the result of a competitive bidding process; therefore the price cannot be at AEM's fully distributed cost. Second, Atmos argues that the competitive bidding process establishes that the cost of the services is not greater than the market.

In its last order approving Atmos's gas supply agreement with AEM, the Commission noted the recommendations of Liberty Consulting Group ("Liberty") regarding Atmos's RFP process in a management audit Liberty conducted in 2002. Liberty recommended several modifications to Atmos's RFP process to ensure that all bidders receive the same information, especially that supplied to one bidder in response to questions submitted in response to the RFP. Atmos states that it revised its RFP process to incorporate Liberty's recommendations and that all current bidders were provided the same information.

The Commission has afforded confidential treatment to Atmos's proposed gas supply agreement, the particulars of the bids and Atmos's analysis. The Commission is unable to elaborate upon the specifics of the bids and the proposed agreement.

The Commission, having reviewed the information and analysis provided and being otherwise sufficiently advised, finds that:

1. The proposed transaction with AEM, as compared to the other bids, will provide the greatest savings, is reasonable, and is in the public interest.
2. Atmos's request for deviation from the requirements of KRS 278.2707 is in the public interest.
3. The requested price is reasonable.

4. Atmos's request should be granted.

IT IS THEREFORE ORDERED that Atmos's request for a deviation from the pricing requirements of KRS 278.2207 is granted.

Done at Frankfort, Kentucky, this 18th day of August, 2006.

By the Commission

ATTEST:



Executive Director