

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In The Matter of:

Application of Atmos Energy Corporation)
For an Adjustment of Rates) Case No. 2013-00148
And Tariff Modifications)

**STAND ENERGY CORPORATION’S (CORRECTED) REPLY
TO ATMOS ENERGY CORPORATION’S RESPONSE AND OBJECTION
TO STAND ENERGY CORPORATION’S MOTION TO INTERVENE**

Stand Energy Corporation ("Stand Energy"), by counsel, in response to Atmos Energy Corporation’s Objection to the Intervention of Stand Energy in this action, states as follows:

Standard For Intervention

In response to the predicate statement in its Motion To Intervene regarding the statutory requirement that Stand Energy has “differing commercial goals and directions than another party or prospective party in the case” - Atmos first admits its opposition to Stand’s ideas and then sarcastically states that Stand Energy, “highlights those differing commercial goals and direction by proposing to expand the rate proceeding . . . into a generic investigation into reasonableness of establishing a “Pilot Program for Schools” and enhanced “Standards of Conduct” to regulate the relationship among regulated utilities and their unregulated affiliates.” (Atmos Objection, p. 1). In fact, the Commission recently concluded that its authority to address items in a general rate case is derived from its general powers conferred by KRS 278.030 and 278.040 to establish "fair, just and reasonable" rates. **Kentucky Public Service Com'n v. Commonwealth ex rel. Conway, 324 S.W.3d 373, 376 (Ky. 2010).**

The Kentucky Supreme Court agreed with the Commission, reversed the Kentucky Court of Appeals decision and held that the broad role of the Commission in regulating and investigating utilities to ensure that utilities comply with state law is set forth in KRS 278.040, which provides, in pertinent part:

- (1) The Public Service Commission *shall regulate utilities and enforce the provisions of this chapter. . . .*
- (2) The jurisdiction of the commission shall extend to all utilities in this state. The commission shall have exclusive jurisdiction over the regulation of rates and service of utilities, but with that exception nothing in this chapter is intended to limit or restrict the police jurisdiction, contract rights or powers of cities or political subdivisions.
- (3) The commission may adopt, in keeping with KRS Chapter 13A, reasonable regulations to implement the provisions of KRS Chapter 278 and *investigate the methods and practices of utilities to require them to conform to the laws of this state*, and to all reasonable rules, regulations and orders of the commission not contrary to law. **Kentucky Public Service Com'n v. Commonwealth ex rel. Conway, 324 S.W.3d 373, 376 (Ky. 2010).** (emphasis in original).

Because utilities are allowed to charge consumers only "fair, just, and reasonable rates" under KRS 278.030(1), the Commission must ensure that utility rates are fair, just, and reasonable to discharge its duty under KRS 278.040 to ensure that utilities comply with state law. The plain language of KRS 278.190 does not actually require that the PSC proceed with a "general rate case" or other particular process every time some new rate or change in rates is requested. According to the Kentucky Supreme Court, if a complaint is filed by a person challenging rates as unreasonable or contrary to law, other provisions of KRS Chapter 278, KRS 278.260, KRS 278.270 and KRS 278.280, authorize the PSC to conduct investigations and hearings and enter appropriate orders concerning rates or services.

Stand Energy's proposal of a Pilot Program for Schools and enhanced Standards of Conduct will benefit all ratepayers by improving competition and the request for the Commission to consider implementing such programs should reasonably be considered

tantamount to a Complaint challenging the failure of Atmos to have such programs in place at this time as being “unreasonable and contrary to law”.

The Atmos petition proposes to adjust the rates of all classes of service within the Atmos system: residential, small non-residential, large non-residential and interruptible service customers. As such, it is appropriate for Atmos and the Commission to also consider proposals to modify and improve the existing Atmos Tariffs to expand gas transportation services to commercial, industrial, governmental and other public entities including the appropriate thresholds and rates. Such issues were the topic of Case No. 2010-00146, *An Investigation of Natural Gas Retail Competition Programs* and the Commission’s Resulting Order:

As for expanded transportation services to commercial and industrial consumers, and governmental and other public entities that do not currently qualify for existing transportation services, the Commission finds it appropriate to encourage Atmos, Delta, Duke Kentucky and LG&E to evaluate their existing transportation tariffs with the context of the operation of their distribution systems and the maintenance of system integrity. The EIA data on marketer and LDC prices for commercial customers reflects that the average marketer price was lower than the average LDC price in the majority (sic¹) of states. (See, Appendix C). Therefore, the Commission will review the reasonableness of the existing transportation tariffs of each of the above-named LDC’s and any proposed changes in rate design and product and service availability in their next general rate proceeding. (p. 16, Emphasis Added)

Clarification of Factual Statements

Atmos Energy suggests that if Stand Energy is allowed to intervene in this action, that such intervention should be “limited” in a number of ways. (Objection p.4) However, the Kentucky PSC removed all references to the former procedure for “limited intervention” in Public Service Commission proceedings from the Kentucky Administrative Regulations relating

¹ Exhibit C, *Consumer Prices Table 24* from a 2008 EIA Report lists 9 “selected states” Florida, Georgia, Maryland, Michigan, New York, Ohio, Pennsylvania, Virginia and the District of Columbia. Of these 9 states **only** in Georgia was the marketer price higher for commercial customers than the LDC price. **In the other 8 states (8 out of 9) the marketer price was lowest for commercial customers.**

to the “Rules of Procedure” for the Commission (See, 807 KAR 5:001) effective January 4, 2013. As a result of the rule change, all Kentucky PSC Interventions are full interventions.

Atmos Energy alleges that Stand Energy made a “factual misstatement” in stating that Atmos has gas LDCs in 12 states. (Objection p. 4) Considering the fact that this information was obtained directly from the Atmos web page (highlighting the 12 states where Atmos has tariffs online: Colorado, Illinois, Iowa, Kansas, Missouri, Virginia, Texas, Georgia, Louisiana, Mississippi, Tennessee and Kentucky, See Attached Exhibit 1) - Stand Energy is obviously to blame for relying on information on the Atmos Energy website, as timely and accurate. For this inappropriate reliance we apologize. However, whether 12 states or 8, Atmos Energy has gas LDC operations (regulated), and gas marketing operations (unregulated) in more states than any other regulated gas entity in the United States. As such Atmos should be capable of defending its failure to provide a Kentucky School Transportation Tariff or Standards of Conduct that actually enhance competition on the merits of the ideas. Atmos’ demonstrated expertise in transportation programs that have been approved in other states, flies in the face of the Atmos objection to similar programs in Kentucky. For example, the Atmos Energy reply suggests that the Missouri School Transportation Tariff exists solely because of the Missouri legislature. If Atmos Energy prefers to have the Kentucky legislature create gas programs and impose reasonable standards of conduct upon Atmos entities in Kentucky, Stand Energy will arrange to have such legislation drafted and proposed in the next Kentucky legislative session.

Atmos Energy further alleges at p. 2 of its Objection, that “Stand is not a customer of Atmos Energy and serves no customers of Atmos Energy in Kentucky.” This is a factual misstatement by Atmos. Stand Energy never alleged it was a customer of Atmos. However, Stand Energy continues to serve a large industrial facility in Springfield, Kentucky on the

Kentucky Atmos Energy system which Stand has served since January 2011. (See, Exhibit 2, Affidavit of Gas Control Specialist Adam Howard, confirming Stand Energy is serving a large industrial customer on the Atmos Kentucky facility). Stand Energy will protect the customer's privacy and keep its identity confidential unless it becomes necessary to disclose the identity of the Springfield, KY Account. Stand Energy requests a corrective filing by Atmos regarding this large industrial customer and further requests that this be the last pleading filed in this case containing Atmos fiction.

WHEREFORE, Stand Energy Corporation respectfully requests that the Commission grant it Intervenor status.

Respectfully submitted,

STAND ENERGY CORPORATION

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CERTIFICATE OF SERVICE VIA ELECTRONIC FILING

In accordance with the requirements for electronic filing as required in this case, I hereby certify that the foregoing electronic filing is a true and accurate copy of the documents to be filed in paper medium; that the electronic filing has been transmitted to the Commission on June 3, 2013; that an original of this filing will be delivered to the Commission within two business days of June 3, 2013; and that no party has been excused from participation by electronic means.

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