

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

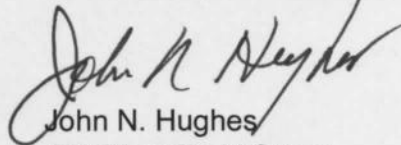
Application of Atmos Energy Corporation)
for an Adjustment of Rates)
and Tariff Modifications) Case No. 2013-0148

REPLY BRIEF OF ATMOS ENERGY CORPORATION

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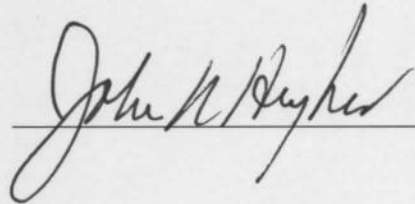


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Certification:

I certify that is a true and accurate copy of the document to be filed in paper medium; that the electronic filing was transmitted to the Commission on March 21, 2014; that an original and one copy of the filing will be delivered to the Commission within two days; and that no party has been excused from participation by electronic means.



**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)

REPLY BRIEF OF ATMOS ENERGY CORPORATION

Pursuant to the Commission’s order of March 7, 2014, Atmos Energy Corporation (“Atmos” or “Company”), by counsel, submits its reply to the Brief of Stand Energy Corporation (“Stand”). Stand’s Brief contains three primary arguments: (A) Stand was denied Due Process; (B) Atmos’ transportation threshold should be lowered; and (C) “anti-competitive” issues need to be addressed.

(A) **DUE PROCESS.**

Stand argues it was denied due process in this proceeding on two grounds: (1) The Commission did not have the authority to limit the scope of Stand’s intervention to the issue of Atmos’ threshold for transportation service; and (2) Stand was denied the right to participate in discovery due to the timing of this Commission’s Order granting intervention.

Stand mischaracterizes the nature of its intervention by claiming the Commission granted it “Limited Full Intervention”. That is not accurate. Stand was granted full intervention on the very issue it says formed the basis for its Motion to Intervene in this proceeding¹, namely the holding in Case No. 2010-00146 that the Commission would review the reasonableness of existing transportation tariffs in each LDC’s next general rate proceeding². This is exactly what the Commission did -- grant Stand full intervention on issues related to Atmos’ transportation

¹ Motion of Stand Energy Corporation to Intervene, page 4-5.

² *Id.*, page 4.

threshold levels. The Commission simply rejected Stand's proposal that it also be allowed to pursue issues related to a Pilot Program for Schools or enhanced standards of conduct, neither of which were deemed appropriate for this general rate proceeding.

In the Order granting intervention the Commission cited the unreported case of *EnviroPower, LLC v. Public Service Commission of Kentucky*, No. 2005-CA-001792-MR, 2007 WL 289328 (Ky. App. Feb. 2, 2007). The Commission restated the Court of Appeals ruling that it retains power in its discretion to grant or deny a motion for intervention, but that discretion is not unlimited. That case explains the statutory limitation of KRS 278.040(2) for intervention. The statute requires that the person seeking intervention have an interest in the rates or service of a utility, as those are the only two subjects under the jurisdiction of the Commission. Additionally, 807 KAR 5:001 Section 4(11)(b), requires that a person demonstrate a special interest in the proceeding which is not otherwise adequately represented or that intervention is likely to present issues or develop facts that assist the Commission in fully considering the matter without unduly complicating or delaying the proceeding. Based on these criteria, the Commission allowed Stand to intervene as follows:

The Commission finds that Stand Energy is a gas marketer and a competitor of Atmos Energy and is not a customer, but that it does nominate gas for one direct-billed customer served on the Atmos Energy system. However, Stand Energy did not indicate that it represented any Atmos Energy delivery customers who desired the Pilot Program for Schools or the Standards of Conduct proposed by Stand Energy....

[T]he Commission will grant Stand Energy full intervention limited to participation on the issues of Atmos Energy's transportation threshold levels and any other matters related thereto, but not to whether a Pilot Program for Schools or enhanced Standards of Conduct should be added.

The limitation on Stand's intervention was not related to its ability to participate fully in the case, but was simply related to issues relevant to Atmos' transportation threshold. Stand went far beyond that in its Motion to Intervene, however, seeking to inject two additional issues,

neither of which were appropriate for a general rate case.

Stand's second basis for claiming a denial of due process is that it was prevented from participating in discovery due to the timing of the Commission's order granting intervention. While the date for initial requests for information to Atmos had passed at the time of the Commission's intervention order, Stand failed to take any action thereafter to participate in discovery. The Commission's intervention Order was entered on September 3, 2013. The only discovery "deadline" that had passed at that time was data requests to Atmos. Had Stand wanted to participate in discovery, it should have moved for an extension of time to submit data requests to Atmos. In fact, that is exactly what the Commission determined in a similar situation. In *Adjustment of Rates of Kentucky American Water Company*, Case No. 2004-00103, dated November 15, 2004, an intervener complained of an inability to participate in discovery due to the timing of the intervention order. The Commission said:

Once granted intervention, the party acquires the same rights as the other parties, except that it is bound by the existing procedural schedule. If that party believes that modifications to the existing procedural schedule are required, the intervening party must move for such modifications. If it fails to make such motion, the Commission can only interpret the intervening party's silence as acceptance of the existing schedule and as the absence of any need for modifications.

Thus, it is Stand's failure to take any action to modify the schedule or to alert the Commission of its interest in submitting discovery questions to Atmos that limited its ability to participate in discovery. If any rights were denied to Stand, it was because of its own failure to assert them.

Additionally, under the existing procedural schedule, Stand had the opportunity to participate in this proceeding after it was granted intervention on September 3, 2013. Supplemental requests for information to Atmos were not due until September 11, 2013.

Intervener testimony was not due until October 9, 2013. Stand filed no discovery requests or intervener testimony. Stand voluntarily chose not to participate in any way prior to the hearing on January 23, 2014 and thus should not now be heard to complain.

(B). **TRANSPORTATION THRESHOLDS.**

The next portion of Stand's Brief relates to Atmos' threshold limits for gas transportation service. Before addressing the substance of Stand's comments, it should be noted that Stand relies almost exclusively on data from Case No. 2010-00146. While there is a procedure for incorporating closed cases into an active one, Stand failed to follow the proper procedure for doing so. 807 KAR 5:001(11)(5), allows a party to incorporate the record of a Commission case into the active proceeding. Stand did not do so. This failure makes any reference to the record in Case 2010-00146 improper.

Stand claims that Atmos' transportation threshold should be lowered from nine thousand Mcf to three thousand Mcf per year³. No evidence, however, was provided by Stand to support such a reduction and only broad generalizations about the issue are provided. As stated above, Stand had every right to introduce proof through intervener testimony, both pre-filed and at the public hearing, in an effort to refute Atmos' sworn testimony. Stand simply failed to do so. As a result, Atmos' proof of various facts remain unrefuted including the following:

- Atmos' existing threshold is in line with the thresholds of the other Kentucky local distribution companies.
- Only four sales customers have even inquired about transportation service over the last five years.⁴
- There are up-front costs, such as electronic flow metering (EFM), monthly administrative

³ Brief of Stand Energy Corporation, page 6.

⁴ Atmos Response to Staff's Second Request for Information, 2-11, Filed August 28, 2013, Case No. 2013-00148.

fees and potential cash-out obligations which may make transportation service cost prohibitive for many customers.⁵

Stand states "... it is unclear why the volumetric threshold to transport has not been lowered, either by Atmos or by Order of the Commission, to allow more customers to take advantage of transportation."⁶ The answer is simple: there is no demand from customers for a lower threshold and the Commission has no basis to arbitrarily impose a reduction. Stand claims that because a number of customers qualify for transportation service, but remain sales customers, this is proof of a "lack of information"⁷. Atmos submits it is more likely proof of a lack of interest and lack of economic benefit to those customers. Contrary to Stand's assertion, there are no guarantees of savings for a customer. Stand's assumption is apparently that the customers are not capable of obtaining information and making informed judgments. That is not an assumption which the Commission should accept.

(C.) **ANTI-COMPETITIVE ISSUES.**

Stand asserts that there is an anti-competitive aspect to Atmos' gas supply and asset management arrangements. Specifically, that Atmos Energy Marketing (AEM) is the main impediment and likely source of anti-competitive activities and pricing relative to competitors such as Stand⁸. The facts again trump Stand's speculation.

Atmos' gas supply and asset management agreements are awarded only after Requests for Proposals are sought from suppliers throughout the natural gas industry. Atmos employs an independent CPA firm to marshal the RFP process. That firm receives and stamps all bids as well as confirms the RFP analysis for accuracy. The contract with a successful bidder is

⁵ Atmos Response to Staff's Second Request for Information, 2-09. Filed August 28, 2013, Case No. 2013-00148.

⁶ Brief of Stand Energy Corporation, page 8.

⁷ *Id.*, page 11.

⁸ *Id.*, page 11-12.

submitted to the Commission for review. The Commission's review assures a non-discriminatory process of selecting among qualified bidders. The Commission, after a thorough review process, makes specific determinations concerning Atmos' gas supply agreements to assure they are in the best interest of Kentucky ratepayers. Perhaps the best proof that Atmos' gas supply and asset management agreements are in the best interest of Kentucky ratepayers is the fact that Atmos' gas commodity costs have historically been among the lowest, if not the lowest, among all of the Kentucky LDC's.⁹

Contrary to Stand's assertion, AEM is not always the successful bidder. The process of gas supply and asset management review is controlled by the Commission and meets all required standards of disclosure and fair dealing. This regulatory review negates all of Stand's unsupported claims of restraint of trade or unfair competition.

Stand also makes several allegations concerning Atmos' special contracts. Stand states: "It is an invasion of the right of gas suppliers like Stand Energy to sell competitively, and of the public to buy competitively in the open market"¹⁰. Nothing in Atmos' tariff or in any of its special contracts prevents Stand from competing with Atmos or AEM or any other marketer/supplier. Nothing prevents Stand from offering a more competitive price or business arrangement to any customer. Perhaps Stand should consider that price is not the sole determining factor of the decision to do business with another entity. Other items include, but are not limited to, quality customer service, accurate billing, and a friendly, knowledgeable staff.

None of the special contracts restrict any customer's choice of gas marketers/suppliers. These contracts only restrict those customers from constructing their own pipeline to bypass Atmos Energy's transportation service or arranging for such construction

⁹ Direct Testimony of Mark A. Martin, page 6, lines 19-21.

¹⁰ Brief of Stand Energy Corporation, page 6.

through another party on their behalf. The customers are free to negotiate supply with anyone. The contracts can be terminated by the customer at the end of the contract period. Most of these special contracts are now in “evergreen” status and the customer can terminate the arrangement if it so desires. The failure of Stand to supply gas to more than one of Atmos’ customers has nothing to do with any anti-competitive practice of Atmos.

Interestingly, Stand claims to have installed multiple bypass pipelines around natural gas distribution systems on behalf of customers.¹¹ The confidentiality under which Atmos’ special contracts are reviewed and approved by the Commission is intended to prevent entities (such as Stand Energy) from gaining a competitive advantage against the Company’s effort to retain and maximize those financial contributions toward fixed costs that would otherwise be borne by remaining ratepayers.

Stand repeats the argument of the Attorney General that there is “lost revenue” from special contracts¹². The margin derived from these bypass threats is “retained revenue”. Retaining contributions from these special contract customers in excess of their variable costs benefits all other customers who would otherwise have to bear those costs. The aggregate of annual revenue the Company derives from its seventeen special contract customers (that Stand apparently seeks to serve) can be found on Exhibits to Martin Direct testimony MAM-1, MAM-2, MAM-5, MAM-6 and MAM-7.

SUMMARY

Stand has failed to present any fact or argument that supports any of the issues it raises. Atmos asserts that the case be decided on the facts contained in the record, not on the speculative, self-serving arguments of Stand.

¹¹ *Id.*, page 13, see footnote 5.

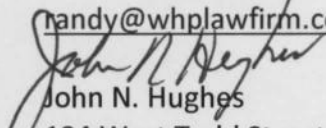
¹² *Id.*, page 13.

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