

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF ATMOS ENERGY) CASE NO.
CORPORATION FOR AN ADJUSTMENT) 2013-00148
OF RATES AND TARIFF MODIFICATIONS)

ORDER

On May 24, 2013, Stand Energy Corporation ("Stand Energy") filed a motion to intervene and supporting memorandum in the instant proceeding. Stand Energy is a private gas marketer with its corporate offices located in Cincinnati, Ohio. Stand Energy states that it:

. . . is engaged in the marketing of natural gas to a unique blend of public and private customers in over 16 states with relevant experience delivering natural gas behind more than 52 separate and distinct local distribution companies on a daily basis (including Atmos Energy). Stand Energy has no connection to any regulated utility in any state.¹

In support of its motion, Stand Energy filed a memorandum asserting that no other participant can or will adequately represent or protect its interests as its commercial goals and direction are different from those of Atmos Energy Corporation ("Atmos Energy"), the Kentucky Attorney General ("AG"), or any other party or prospective party in this rate case. Stand Energy also contends that its participation in this proceeding will lead to the presentation of relevant facts and issues that will assist

¹ Memorandum Supporting Motion of Stand Energy Corporation to Intervene at 3.

the Commission in its consideration of the matters raised herein without unduly complicating, disrupting, or delaying the proceedings.

Stand Energy asserts that since Atmos Energy is proposing to adjust the rates of all classes of service within the Atmos Energy system, it is appropriate for Atmos Energy and the Commission to also consider proposals to modify and improve the existing Atmos Energy tariff to expand gas transportation services to commercial, industrial, governmental, and other public entities, including the appropriate thresholds and rates. Stand Energy argues that Atmos Energy's tariffs in several other states show that Atmos Energy has the knowledge and experience to run gas transportation programs for any size non-residential customers. Stand Energy proposes that Atmos Energy establish a Pilot Program for Schools and enhanced Standards of Conduct to regulate the relationship and behavior of unregulated marketing affiliates of regulated natural gas utilities such as Atmos Energy.

On May 30, 2013, Atmos Energy filed an objection to Stand Energy's motion to intervene. Atmos Energy argues that neither Stand Energy's proposal to expand the current rate proceeding now before the Commission into a "generic investigation" into the reasonableness of establishing a "Pilot Program for Schools" nor its proposal for the Commission to adopt enhanced "Standards of Conduct" meets the standards for intervention. Atmos Energy points out that Stand Energy is not a customer of Atmos Energy and serves no customers of Atmos Energy in Kentucky, and that rather than claiming an interest in an existing rate or tariff that directly affects it, Stand Energy proposes a pilot program that would affect all schools in Atmos Energy's service areas. Atmos Energy states that Stand Energy has provided no information to show that it

represents any Kentucky school or school district served by Atmos Energy, that it has any information on the natural gas consumption patterns of those schools, that it has any specific knowledge of the threshold transportation gas supply needs that might prove beneficial to the schools, or that it has any information on the gas cost savings that might accrue to the schools. Atmos Energy states that Stand Energy has provided no facts to support its motion to intervene on behalf of third parties that will be directly affected by its proposal and no facts to support its claim that it is in a position to provide the Commission information that would support the development of a "Pilot Program for Schools." Atmos Energy further states that Stand Energy's suggestion for a pilot program for schools primarily serves to enhance Stand Energy's competitive position.

Atmos Energy also states that Stand Energy's suggestion to develop Standards of Conduct for affiliated transactions is not within the scope of a rate proceeding and is not within the scope of the review the Commission specified in Case No. 2011-00146, "An Investigation of Natural Gas Retail Competition Programs," page 16:

While the Commission does not advocate mandating or legislating volumetric thresholds for gas transportation service, as we believe the LDCs are best equipped to propose and implement their own systems' products and programs, we are committed to ensuring the reasonableness of transportation tariffs by reviewing them in the LDCs' next rate case.

Atmos Energy states that Stand Energy's offer of two unrelated proposals, a school pilot program and a utility Standard of Conduct, are more appropriate to be debated in some form of proposed rulemaking, rather than isolated in one utility's rate case.

On June 3, 2013, Stand Energy filed a reply to Atmos Energy's response and objection to Stand Energy's motion to intervene. Stand Energy states that its proposal for a Pilot Program for Schools and enhanced Standards of Conduct will benefit all ratepayers by improving competition, and that the request for the Commission to consider implementing such programs should be considered "tantamount to a Complaint challenging the failure of Atmos Energy to have such programs in place at this time as being 'unreasonable and contrary to law.'"

Stand Energy refutes Atmos Energy's statement that Stand Energy is not a customer of Atmos Energy and serves no customers of Atmos Energy. Stand Energy states that it "continues to serve a large industrial facility in Springfield, Kentucky on the Kentucky Atmos Energy system which Stand Energy has served since January 2011."

On June 4, 2013, Atmos Energy filed a reply objection to Stand Energy's motion to intervene and states that Stand Energy attempts to convert its motion to intervene into a "complaint" supporting the need for the Commission to investigate the School Pilot Program. Atmos Energy argues that Stand Energy has not disclosed its claimed knowledge of or representation of any school or school system in Kentucky and that KRS 278.260 requires that the person filing a complaint have a "direct interest" in the rate at issue. Atmos Energy reasserts its position that Stand Energy is not a customer of Atmos Energy and states that Stand Energy "only nominates gas for one direct billed customer serviced on the Atmos Energy system." Atmos Energy states that Stand Energy has not stated a direct interest in this case or sufficient basis for it to be considered to have special knowledge of the issues in the case. Atmos Energy requests that the Commission deny Stand Energy intervention in this case, or that if

Stand Energy is granted intervention, that intervention should be restricted or limited to the issues identified in the application, in the Commission's order in Case No. 2010-00146 and in Case No. 2012-00222, The Application of Louisville Gas & Electric Company for An Adjustment of Rates.

Having reviewed Stand Energy's motion and memorandum, Atmos Energy's response and objection, Stand Energy's reply to Atmos Energy's response and objection, and Atmos Energy's response to Stand Energy's reply, and being otherwise sufficiently advised, the Commission finds that the only person that has a statutory right to intervene is the Attorney General, pursuant to KRS 367.150(8)(b). Intervention by all others is permissive and is within the sound discretion of the Commission.

In 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 Court of Appeals ruled that this Commission retains power in its discretion to grant or deny a motion for intervention, but that discretion is not unlimited. The Court then enumerated the statutory and regulatory limits on the Commission's discretion in ruling on motions for intervention. The statutory limitation, KRS 278.040(2), 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.

The regulatory limitation of 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

disrupting the proceedings. It is under these statutory and regulatory criteria that the Commission reviews a motion to intervene.

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. In Case No. 2010-00146,² an investigation to which both Atmos Energy and Stand Energy were parties, the Commission expressly stated that there was a need to review the transportation tariffs of natural gas local distribution companies in their next base rate proceeding. The Commission finds that this case represents its first such opportunity to review Atmos Energy's gas transportation tariffs since the Order in that proceeding, and that Stand Energy may present issues or develop facts that assist the Commission in its investigation of these issues. For these reasons, the 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.

IT IS HEREBY ORDERED that:

1. Stand Energy is granted full intervention limited to participation on the issues of Atmos Energy's transportation threshold levels and any other matters related

² Case No. 2010-00146, *An Investigation of Natural Gas Retail Competition Programs* (Ky. PSC Dec. 28, 2010).

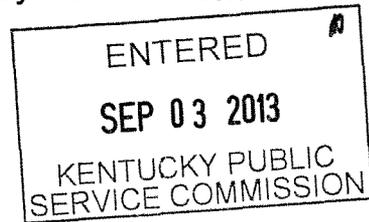
thereto, but not to whether a Pilot Program for Schools or enhanced Standards of Conduct should be added.

2. Stand Energy shall be served with all Commission Orders and all documents filed by any party to this proceeding issued after the date of this Order.

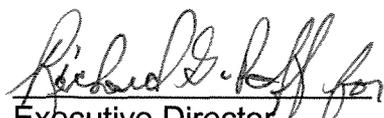
3. Should Stand Energy file documents of any kind with the Commission in the course of these proceedings, Stand Energy shall also serve a copy of said documents on all other parties of record.

4. Stand Energy shall adhere to the June 28, 2013 procedural schedule.

By the Commission



ATTEST:


Executive Director

Case No. 2013-00148

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