

RAILROAD COMMISSION OF TEXAS

ATMOS ENERGY CORP., MID-TEX	§	
DIVISION, GAS COST REVIEW IN	§	GAS UTILITIES DOCKET
COMPLIANCE WITH 8664 AND 9400	§	NO. 9732
	§	
	§	

FINAL ORDER

Notice of Open Meeting to consider this Order was duly posted with the Secretary of State within the time period provided by law pursuant to TEX. GOV'T CODE ANN. Chapter 551, et seq. (Vernon 1994 & Supp. 2004). The Railroad Commission of Texas adopts the following findings of fact and conclusions of law and orders as follows:

FINDINGS OF FACT

1. Atmos Energy Corp., Mid-Tex Division (“Atmos”) is a utility as that term is defined in the Gas Utility Regulatory Act and Atmos’ operations and services fall under the jurisdiction of the Railroad Commission of Texas (“Commission”).
2. Atmos owns and operates gas distribution systems in the State of Texas and provides gas service to customers in Texas.
3. Atmos owns and operates gas distribution systems and pipeline transmission systems that were previously owned and operated by Lone Star Gas Company and Lone Star Pipeline Company.
4. Atmos owns and operates gas distribution systems and pipeline transmission systems that were previously owned and operated by TXU Gas Company.
5. On November 25, 1997, the Commission issued its Second Order on Rehearing Nunc Pro Tunc for Gas Utility Docket Number 8664, *Statement of Intent by Lone Star Gas Company and Lone Star Pipeline Company, Divisions of Enserch Corporation, and ENSAT Pipeline Company to Increase Intracompany City Gate Rate* (the “GUD No. 8664 Final Order”).
6. On May 25, 2004, the Commission issued its Final Order for Gas Utility Docket Number 9400, *Statement of Intent Filed by TXU Gas Company to Change Rates in the Company’s Statewide Gas Utility System*, (the “GUD No. 9400 Final Order”).
7. Atmos owns and operates the gas utility distribution systems and pipeline transmission systems that are governed by the requirements set forth in the GUD No. 8664 Final Order and the GUD No. 9400 Final Order.
8. The GUD No. 9400 Final Order mandates that Atmos file for review with the Commission’s

Gas Services Division every 36-months a detailed Gas Purchase Report for a review of the prudence of Atmos' gas purchases during the 36-month review period. The filing procedure and data requirements for the Commission's 36-month Gas Purchase Prudence Review are set forth in Schedule R of the GUD No. 9400 Final Order.

9. The GUD No. 8664 Final Order set the following restrictions on gas purchases (the "GUD No. 8664 Purchase Restrictions") for Lone Star Gas Company and Lone Star Pipeline Company, which are now applicable to Atmos:

- a. Affiliate purchases may be included at the lowest price charged by the affiliated supplier to other divisions or third parties.
- b. Spot purchases made to cover imbalances to transportation customers may not be included.
- c. The duplicative approximately \$0.58 per Mcf NGPA §311 transport fee component for LSGCOT/ONEOK purchases may not be included.
- d. Any similar double charges for transportation due to an NGPA §311 rate charged for service that is implicitly contained in the city gate rate, or any other cause, may not be included.
- e. Charges under the LSGCOT/ONEOK contract may be included at LSGCOT's actual cost.
- f. Charges by affiliates of any margin above the affiliate's cost of gas may not be included.
- g. Take-or-pay payments to affiliated companies may not be included unless Lone Star (Atmos) obtains the approval of the Director of the Gas Services Section in writing prior to inclusion, *i.e.*, Contract No. 3708, Enserch Exploration, Inc.

10. On May 1, 2007, Atmos filed a detailed Gas Purchase Report with the Gas Services Division of the Commission containing the data required under Schedule R of the GUD No. 9400 Final Order and other supporting documentation. The May 1, 2007, filing by Atmos (the "Compliance Filing") covers the 36-month period of time November 1, 2003 through October 31, 2006 (the "Review Period").

11. On May 1, 2007, Atmos provided notice of its Compliance Filing as required by Schedule R and delivered the Compliance Filing and all required information as specified in Schedule R to all required municipalities.

12. The City of Dallas, Texas ("Dallas"), the Atmos Cities Steering Committee ("ACSC"), the

State of Texas (“State”), and Railroad Commission Staff (“Staff”) filed motions to intervene and participated in this proceeding (the “Intervenors”).

13. By letter dated May 8, 2008, Atmos and the Intervenors filed a request to conduct the final hearing in this docket beginning on September 3, 2008, which was granted by the hearings examiners.

14. A Notice of Hearing was issued in this Docket on July 21, 2008. The Notice of Hearing contained all the required information set forth in 16 TEX. ADMIN. CODE § 1.45 and TEX. GOV'T CODE ANN. § 2001.052 (Vernon 2000 & Supp. 2007).

15. A final hearing was conducted in Austin on September 3-5, 2008, to take testimony, other evidence, and legal argument on all issues of law and fact that were raised in or relevant to the Gas Cost Prudence Review, for the purpose of developing an evidentiary record.

16. Atmos completed its notice requirements by delivering all information required under Schedule R to all municipalities on July 12, 2008.

17. At the October 9, 2007 Conference, the Commission set the standard for review for determining the prudence of Atmos' gas purchases during the Review Period. The Commission ruled that the appropriate legal standard for determining the prudence of Atmos' gas purchases during the review period is that which is set forth in *Gulf States Utilities Co. v. Public Utility Comm'n of Texas*, 841 S.W.2d 459 (Tex. App. – Austin, 1992).

18. Atmos' May 1, 2007, Compliance Filing, Atmos contained a Gas Purchase Report that included a gas contract index, contract summaries, schedule of monthly gas purchases, a statement of hedging procedures and a schedule of hedging activities. The Compliance Filing data submitted by Atmos included the contract number, effective date, type of contract, Mcf purchased, MMBtu purchase, purchase amount, and \$/MMBtu in the gas contract index.

19. Atmos' Compliance Filing complied with all data and procedural requirements of the Commission as set forth in Schedule R of the GUD No. 9400 Final Order.

20. There is no evidence in the record that affiliate purchases were included at the higher prices charged by the affiliated supplier to other divisions or third parties.

21. There is no evidence in the record that spot purchases made to cover imbalances to transportation customers were included.

22. There is no evidence in the record that the approximately \$0.58 per Mcf NGPA §311 transport fee component for LSGCOT/ONEOK purchases were included.

23. There is no evidence in the record that double charges for transportation due to an NGPA §311

rate charged for service that is implicitly contained in the city gate rate, or any other cause, were included.

24. There is no evidence in the record that charges under the LSGCOT/ONEOK contract were included at LSGCOT's actual cost.

25. There is no evidence in the record that charges by affiliates of any margin above the affiliate's cost of gas were included.

26. There is no evidence in the record that take-or-pay payments to affiliated companies were included without the approval of the Director of the Gas Services Section in writing prior to inclusion.

27. The evidence and testimony establishes that Atmos did not engage in conduct that violates the GUD No. 8664 Purchase Restrictions.

28. As part of its Compliance Filing Atmos submitted the following contemporaneous documentation of its gas purchasing practices during the Review Period:

- a. The written materials of each Annual Gas Supply Plan;
- b. Over 3,000 pages of supporting documents for the Annual Plans, including prior winter postmortem reviews, gas demand, forecast, and weather data, test case scenarios, presentations, RFP processes and results, hedging, and storage data;
- c. Over 1,000 pages in electronic format, of contemporaneous daily supply plans, prepared three times per day during each gas buying day of the review period;
- d. Over 150 pages showing monthly gas purchases by contract;
- e. A CD containing approximately 100 files of contemporaneous winter planning worksheets showing price volatility mitigation efforts and progress during the review period; and,
- f. Approximately 1,000 pages of gas buyers' contemporaneous daily notes regarding purchases during the review period.

29. The contemporaneous documentation submitted by Atmos is sufficient to allow the Commission to review the prudence of Atmos' gas purchasing process during the Review Period.

30. Atmos undertakes an annual planning process every year to develop an annual Gas Supply Plan. Atmos uses a variety of methods and tools to forecast customer gas needs throughout the year and during the winter heating season. The annual Gas Supply Plan is presented to Atmos management for approval and to Commission Staff for review. After the Gas Supply Plan is finalized then Atmos determines how to implement the plans

31. The annual Gas Supply Plans set forth an appropriate mix of baseload, peaking and spot purchase contracts. Atmos uses a structured gas acquisition process that uses requests for proposals or spot-market pricing for the bulk of the supply portfolio.

32. Atmos implements the Gas Supply Plan through a daily planning process and contract administration function. Atmos additionally undergoes a daily planning process that utilizes demand forecasting, weather forecasting and other tools to determine the daily purchase needs of the utility. Atmos takes steps to mitigate price volatility by attempting to limit exposure of the gas supply portfolio to the daily spot market while still being able participate in the spot market when prices start to decline.

33. During the review period, Atmos sought to mitigate price volatility by attempting to establish a known price for approximately 45% of expected winter season gas supplies. Atmos mitigated price volatility by implementing physical hedges, a process of using gas storage and baseload contract prices to establish in advance of the winter season known prices.

34. The gas purchasing process employed by Atmos during the Review Period was prudent.

35. The gas prices of Atmos' spot, baseload and peaking contracts during the Review Period were in the range of market prices for such gas supplies. There is no evidence that Atmos made any gas purchases during the review period that were above market price or at unreasonable prices for such purchases. The gas prices paid by Atmos during the Review Period were therefore reasonable.

36. There is no evidence of excessive increases in volumes of gas in storage and related costs during the Review Period. There is no evidence that storage gas volumes were higher than necessary for the operation of Atmos' gas distribution and transmission systems. There is no evidence that excessive storage fees or costs were incurred during the Review Period. There is no evidence that Atmos purchased excessive or unreasonable volumes of gas and charged those purchases to its customers. The gas purchases made by Atmos during the Review Period were reasonable and necessary and therefore prudent.

37. This docket is not a rate-making proceeding as the intent, purpose and effect of the docket was to review the prudence of gas purchases of Atmos during the Review Period and not to establish rates for gas service.

CONCLUSIONS OF LAW

1. Atmos Energy Corp., Mid-Tex Division (Atmos) is a "Gas Utility" as defined in TEX. UTIL. CODE ANN. §101.003(7) (Vernon 2007) and §121.001(2007) and is therefore subject to the jurisdiction of the Railroad Commission (Commission) of Texas.

2. The Railroad Commission of Texas (Commission) has jurisdiction over Atmos and Atmos's rates, services and fees under TEX. UTIL. CODE ANN. §§ 102.001, 103.022, 103.054, & 103.055, 104.001, 104.001 and 104.201 (Vernon 2007).

3. Under TEX. UTIL. CODE ANN. §102.001 (Vernon 2007), the Commission has exclusive original jurisdiction over the rates and services of a gas utility that distributes natural gas in areas outside of a municipality and over the rates and services of a gas utility that transmits, transports, delivers, or sells natural gas to a gas utility that distributes the gas to the public.
4. This gas purchase prudence review was processed in accordance with the requirements of the Gas Utility regulatory Act (GURA), and the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.001-2001.902 (Vernon 2000 and Supp. 2004) (APA).
5. In accordance with the stated purpose of the Texas Utilities Code, Subtitle A, expressed under TEX. UTIL. CODE ANN. §101.002 (Vernon 1998), the Commission has assured that the gas purchases made by Atmos during the 36-month period from November 1, 2003 through October 31, 2006 (the "Review Period") and ultimately charged to its customers were just and reasonable.
6. In accordance with TEX. UTIL. CODE §104.103 (Vernon 2007), 16 TEX. ADMIN. CODE ANN. §7.230 (2002), and 16 TEX. ADMIN. CODE ANN. §7.235 (2002), adequate notice was properly provided.
7. The gas costs incurred by Atmos during the Review Period are found to be just and reasonable, not unreasonably preferential, prejudicial, or discriminatory, and are sufficient, equitable, and consistent in application to each class of consumer, as required by TEX. UTIL. CODE ANN. §104.003 (Vernon 1998).
8. In this proceeding, Atmos has the burden of proof under TEX. UTIL. CODE ANN. §104.008 (Vernon 1998) to show that the gas purchases made during the Review Period were just and reasonable.
9. The gas purchasing processes employed by Atmos during the Review Period are found to be prudent under the standard for prudence set forth in *Gulf States Utilities Co. v. Public Utility Comm'n of Texas*, 841 S.W.2d 459 (Tex. App. – Austin, 1992).
10. The gas costs incurred by Atmos during the Review Period are found to be prudent under the standard for prudence set forth in *Gulf States Utilities Co. v. Public Utility Comm'n of Texas*, 841 S.W.2d 459 (Tex. App. – Austin, 1992).
11. It is reasonable for the Commission to deny rate case expenses incurred by Atmos, the City of Dallas, Texas, and the municipalities participating in the Atmos Cities Steering Committee in this docket as this proceeding is not a rate-making proceeding and associated expenses are not recoverable under TEX. UTIL. CODE ANN. §103.022 (Vernon 2007 & Supp. 2008), and 16 TEX. ADMIN. CODE §7.5530 (2002).

IT IS THEREFORE ORDERED that Atmos's purchased gas costs incurred during the 36-month period of time from November 1, 2003 through October 31, 2006 were reasonable, necessary, prudent

and are hereby **APPROVED**.

IT IS FURTHER ORDERED that Atmos's gas purchasing processes employed during the 36-month period of time from November 1, 2003 through October 31, 2006 were reasonable, necessary, prudent and are hereby **APPROVED**.

IT IS FURTHER ORDERED that all proposed findings of fact and conclusions of law not specifically adopted in this Order are hereby **DENIED**. **IT IS ALSO ORDERED** that all pending motions and requests for relief not previously granted or granted herein are hereby **DENIED**.

This Order will not be final and effective until 20 days after a party is notified of the Commission's order. A party is presumed to have been notified of the Commission's order three days after the date on which the notice is actually mailed. If a timely motion for rehearing is filed by any party at interest, this order shall not become final and effective until such motion is overruled, or if such motion is granted, this order shall be subject to further action by the Commission. Pursuant to TEX. GOV'T CODE §2001.146(e), the time allotted for Commission action on a motion for rehearing in this case prior to its being overruled by operation of law, is hereby extended until 90 days from the date the order is served on the parties.

Each exception to the examiners' proposal for decision not expressly granted herein is overruled. All requested findings of fact and conclusions of law which are not expressly adopted herein are denied. All pending motions and requests for relief not previously granted or granted herein are denied.

SIGNED this 26th day of February, 2009.

RAILROAD COMMISSION OF TEXAS

CHAIRMAN VICTOR G. CARRILLO

COMMISSIONER MICHAEL L. WILLIAMS

COMMISSIONER ELIZABETH A. JONES

ATTEST:

SECRETARY