

139 FERC ¶ 61,150
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

(May 23, 2012)

In Reply Refer To:
Atmos Energy Corporation
Docket No. PR09-24-001

Moore & Van Allen PLLC
100 North Tryon Street
Suite 4700
Charlotte, NC 28202-4003

Attention: James H. Jeffries IV
Attorney at Law

Reference: Request for Two-Year Extension of Informational Rate Filing Deadline

Dear Mr. Jeffries:

1. On March 9, 2012, Atmos Energy Corporation (Atmos) filed a request for a two-year extension to submit its next informational rate filing on behalf of Atmos Energy – Kentucky/Mid-States Division. Atmos is a Hinshaw pipeline under section 1(c) of the Natural Gas Act (NGA), providing interstate transportation service in Missouri and other states pursuant to a limited jurisdiction blanket certificate under section 284.224 of our regulations. Atmos has agreed to sell its Missouri natural gas distribution assets (Missouri Facilities) to Liberty Energy (Midstates) Corporation (Liberty). The Missouri Public Service Commission (MoPSC) regulates the Missouri Facilities. On March 30, 2012, the Commission issued Liberty a limited jurisdiction blanket certificate to provide interstate service on the Missouri Facilities.¹ However, MoPSC must still approve Atmos' transfer of those facilities to Liberty before Atmos' sale can be completed.

¹ *Liberty Energy (Midstates) Corp.*, 138 FERC ¶ 61,249 (2012).

2. Atmos filed its last triennial informational rate filing relating to service provided through the Missouri Facilities in March 2009, and the Commission issued an order in that proceeding on August 17, 2009² requiring Atmos to submit its next triennial informational rate filing on or before March 17, 2012. In its instant filing, Atmos requests that the date for its next rate filing be extended to March 17, 2014, which is five years from the date of Atmos' last rate filing. For the reasons discussed below, and for good cause shown, the Commission grants Atmos' request to extend the deadline for submitting its informational rate filing until March 17, 2014.

3. On May 20, 2010, the Commission issued Order No. 735 which, among other things, modified the Commission's triennial rate review policy for intrastate pipelines providing transportation service pursuant to section 311 of the Natural Gas Policy Act (NGPA) and Hinshaw pipelines providing interstate service pursuant to blanket certificates issued under section 284.224 of the Commission's regulations.³ Specifically, Order No. 735 changed the frequency of Commission review of the affected pipelines' rates from three to five years, stating that requiring affected pipelines to make filings for a review of their rates every three years imposed an unnecessary burden on both the pipelines and the Commission.⁴ Additionally, Order No. 735 stated that "[a]ny pipelines subject to a requirement to file a triennial rate review after the issuance of this Final Rule may file a request for an extension of time consistent with the revised policy announced here."⁵

4. Public notice of Atmos' instant filing was issued on March 12, 2012, in the *Federal Register*, 77 Fed. Reg. 15,748 (2012). Interventions and protests were due on or before March 16, 2012, as provided by the notice. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), all timely motions to intervene and any unopposed motions to intervene filed out-of-time before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. The Arkansas Public Service Commission (APSC) filed a limited protest.

² *Atmos Energy Co.*, Docket No. PR09-24-000, at 2 (August 17, 2009) (delegated letter order).

³ 18 C.F.R. § 284.224 (2011).

⁴ *Contract Reporting Requirements of Intrastate Natural Gas Companies*, Order No. 735, 75 FR 29404, FERC Stats. & Regs. ¶ 31,310 (2010) (Order No. 735).

⁵ Order No. 735, FERC Stats. & Regs. ¶ 31,310, at P 96.

5. On March 21, 2012, Atmos filed an answer to the APSC's limited protest. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits answers to protests without leave of the decisional authority, 18 C.F.R. § 385.213(a)(2) (2011). The Commission will accept Atmos' answer because the answer has aided us in our decision making process.

6. The APSC is concerned with the background of this proceeding. Specifically, APSC states that SourceGas Arkansas Inc. (SourceGas) owns and operates intrastate transmission and local distribution facilities in Arkansas and is a customer of Atmos. The APSC regulates the intrastate activities of SourceGas. The APSC notes that Atmos is in the process of selling its Missouri operations to Liberty. The APSC requests that, if the Commission grants a two-year extension of the filing requirement to Atmos, then Liberty, as new owner of the Atmos' assets, be required to continue to apply Atmos' currently approved interstate rate until Liberty makes a new rate filing. Alternatively, APSC requests that Atmos' extension not be granted so that a determination can be made now as to what the cost of providing interstate transportation service is and the appropriate rates can be established based on those costs.

7. In its reply, Atmos calls the APSC's request both procedurally misplaced and contrary to the Commission's regulations and therefore, should be denied. Atmos argues that its request in this docket pertains solely to an extension of time to file its next informational rate filing. Atmos states that it does not here propose to change its current rates and no action taken by the Commission in response to Atmos' request – positive or negative – will affect those rates. Atmos states that a section 284.224 blanket certificate allowing the holder to provide interstate transportation service is non-transferrable. Atmos asserts that Liberty is currently seeking its own blanket certificate and interstate rates in Docket No. CP12-42-000 and notes that the APSC has intervened in that proceeding. Atmos avers that its current blanket certificate and the rates approved for the provision of interstate transportation service pursuant to that blanket certificate will not have (and cannot have) any effect on any future similar service provided by Liberty because that service will be provided solely by Liberty at rates no greater than those approved by the Commission for such service.

8. Atmos argues that granting its requested extension of time will have no bearing on the rates that Liberty may charge in the future as those rates will be established by the Commission in Docket No. CP12-42-000. Atmos further states that it would be procedurally improper to order Liberty to take any action in this proceeding as Liberty is not a party hereto and is unaffected by the relief requested by Atmos herein. Finally, Atmos asserts that the appropriate place for APSC or any other party to challenge the appropriateness of rates to be charged by Liberty is in Docket No. CP12-42-000.

9. For good cause shown, the Commission grants Atmos' request for a two-year extension to file its informational rate review filing. As a pipeline with facilities providing transportation service under section 284.224 of the Commission's regulations, Atmos is subject to periodic rate reviews to ensure that the Commission has current information and to ensure that its rates have not become stale.⁶ However, after the Commission's 2009 review of Atmos' triennial rate filing, the Commission issued Order No. 735, decreasing the frequency of Commission review from three to five years. Further, Order No. 735 expressly provides that a "pipeline subject to a requirement to file a triennial rate review after the issuance of this Final Rule may file a request for an extension of time consistent with the revised policy announced here."⁷ In accordance with Order No. 735's revised policy, Atmos requests a two-year extension of time to file its informational rate filing so that it will be subject to a five-year review of its instead of a three-year review. Accordingly, we will grant Atmos' request for a two-year extension of time to file until March 17, 2014.

10. The Commission denies the APSC's request that we condition our approval of Atmos' two-year extension on Liberty's continued application of Atmos' Commission-approved rates for transportation service until a new rate filing is made by Liberty or in the alternative, deny the two-year extension so that a determination can be made now as to the appropriate cost based rates for such service. The Commission agrees with Atmos' assertion that approval or denial of its extension request in this proceeding would have no bearing on the Commission's decision on Liberty's application in CP12-42-000 for approval of a blanket certificate and rates under section 284.224. The instant proceeding concerns Atmos' request for a two-year extension of the Commission's periodic review of Atmos' currently effective rates for interstate transportation service. The APSC did not raise any specific issues regarding Atmos' rates or why it is not appropriate to extend Atmos' periodic rate review for an additional two years. Rather, its protest appears to concern the rates Liberty proposes to adopt in Docket No. CP12-42-000.⁸ Therefore, to

⁶ See Order No. 735, FERC Stats. & Regs. ¶ 31,310, at P 95.

⁷ *Id.* P 96.

⁸ On March 30, 2012, the Commission issued an order in the Docket No. CP12-42-000 proceeding approving Liberty's election to use Atmos' rates on file with MoPSC for its generally available Large Firm General Service and Interruptible Large Volume Gas Service. However, the Commission required Liberty to remove from its proposed tariff a monthly infrastructure System Replacement Surcharge (ISRS) of \$8.24 per month, holding that the Large Firm General Service rates on file with MoPSC did not include such a charge. *Liberty Energy (Midstates) Corp.*, 138 FERC ¶ 61,249 at P 37. Liberty has requested rehearing of the Commission holding on the ISRS, and that

(continued...)

the extent that the APSC seeks to raise any arguments regarding Liberty's application in this proceeding, such issues are outside the scope of the proceeding.⁹

By direction of the Commission.

Kimberly D. Bose,
Secretary.

rehearing request is currently pending. The Commission notes that the APSC intervened and is a party in Docket No. CP12-42-000.

⁹ See *Midwest Independent Transmission System Operator, Inc.*, 135 FERC ¶ 61,060 (2011); see also *PJM Interconnection, L.L.C.*, 134 FERC ¶ 61,066, at P 32 (2011).