

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Brian J. Moline, Chair
 Robert E. Krehbiel
 Michael C. Moffet

In the Matter of the Application of Atmos Energy for)
Approval of an Accounting Order to Permit Atmos)
Energy to Recover Amounts Necessary to Expend in)
Order to Establish and Maintain a Gas Ceiling Price for) Docket No.
all of the 2005-2006 Heating Season and for a Portion of) 05-ATMG-617-HED
the Budgeted Winter Volumes for the 2006-2007 Heating)
Season; and for Approval to Continue with its Use of its)
“Gas Hedge Program” Tariff.)

**ORDER GRANTING JOINT MOTION AND
APPROVING STIPULATION AND AGREEMENT**

NOW, the above-captioned matter comes before The State Corporation Commission of the State of Kansas (Commission) on the Joint Motion for an Order Approving Stipulation and Agreement filed by Atmos Energy (“Atmos” or “Company”), the Commission Staff (Staff), and Citizens’ Utility Ratepayer Board (CURB). Having examined its files and records and being duly advised in the premises, the Commission finds and concludes as follows:

I. BACKGROUND

1. On January 28, 2005, Atmos Energy (Atmos), filed its Application seeking an order approving its request for an accounting order to permit Atmos to recover such amounts of its funds as may be necessary to expend in order to establish and maintain a gas ceiling price for all of the 2005-2006 heating season and a portion of the budgeted winter volumes for the 2006-2007 heating season under the Gas Hedge Program and for approval to continue with its “Gas Hedge Program” tariff. In support of its Application, Atmos filed the direct testimony of Mr. F. Allen Chambers, its Hedging Administrator.

2. On January 31, 2005, Citizens' Utility Ratepayer Board (CURB) filed a Petition to Intervene seeking a Commission order granting CURB leave to intervene as a party in this matter. On February 2, 2005, the Commission issued its Order granting CURB's Petition to Intervene.

3. On February 2, 2005, the Commission entered an Order suspending operation of the changes proposed in Atmos' Application for a period of two hundred forty days from the date of filing the Application, January 28, 2005, until September 25, 2005.

4. On May 9, 2005, Atmos, Staff, and CURB (collectively, "Joint Movants") filed their Joint Motion for an Order Approving Stipulation and Agreement (Joint Motion), including as Attachment A thereto the Stipulation and Agreement entered into by Joint Movants on May 9, 2005 (Stipulation and Agreement).

5. On May 9, 2005, Staff filed its Memorandum prepared by Dr. John Cita, Chief of Economic Policy and Planning, supporting approval of the Stipulation and Agreement.

II. DISCUSSION

6. Atmos' "Gas Hedge Program", first implemented in Docket No. 01-GRLG-886-PGA covering the 2001-2002 heating season has been perpetuated through successive winter seasons by the Company's annual filings with the Commission seeking continuation of the Program. In each case, the Company's request, with some modification, was approved by the Commission. Atmos' instant Application, filed under a new docket, is very similar to its applications of the past. However, Atmos' current proposal includes an increase in the Gas Hedge Program budget from \$1.4 million per year to \$3.1 million. Atmos' Application proposes apportioning \$2.1 million of the \$3.1 million budget to hedging budgeted winter purchase volumes for the 2005-2006 heating season and apportioning the remaining \$1.0 million to

hedging 50% of budgeted winter purchase volumes for the 2006-2007 heating season. Specifically, Atmos' Application requests an accounting order authorizing it to: 1) record those monies expended by Atmos in establishing a gas ceiling price for the 2005-2006 and 2006-2007 heating seasons in an account to accrue interest at the Commission approved interest rate for customer deposits; 2) recover the program costs of \$3.1 million for all of the 2005-2006 heating season and for a portion of the 2006-2007 heating season from all its sales customers, except irrigation customers, through the PGA on a volumetric basis during the months of April 2005 through October 2005, with no carrying costs allowed, and for any over or under recovery, and any of the budget amount not used by Atmos, to be reflected in Atmos' ACA filing for 2006; and 3) make such reports as deemed necessary by the Commission regarding such account. Application at pages 6 and 7.

7. Atmos' stated goal for the Gas Hedge Program is that the Company's actions will mitigate price volatility, at a reasonable cost, relative to the Company's traditional operations. Application at page 7. In his testimony filed in support of the Application, Mr. Chambers provides the Company's reasons for its requested increase in annual hedge spending from \$1.4 million to \$2.1 million. According to Mr. Chambers, the results of the LDC joint effort Focus Groups conducted during the summer of 2004 revealed that customers prefer that their gas utility cap the gas price at reasonable levels for as much volume as possible while preserving the benefit of any downward price movement. Chambers Direct at page 5. Given the increased volatility in the natural gas market over the last several years, the cost of call options has increased significantly and the proposed increase in the budget amount will assist Atmos in attempting to maintain the level of budgeted winter purchase volumes to be protected by a price cap. Chambers Direct at page 6. The Company indicates its belief that the Program, as it now

exists, with the ability to use various financial risk management tools, including call options, put options and swaps or a combination of these tools provides the opportunity to effectively establish price protection for its customers. Chambers Direct at page 3. Notwithstanding Atmos' recognized need for flexibility in choosing the appropriate risk management tool(s), the Company remains committed to consulting with Staff and CURB in developing and selecting the risk management strategy to utilize. Chambers Direct at page 3. According to Staff, these meetings have been a standard component of Atmos' implementation process starting with the Company's first Hedge Program. Staff Memorandum at page 3. Elevating the Program to "permanent" status eliminates the need for successive annual applications. Program integrity is retained through meetings between Atmos, Staff, and interveners for the purpose of discussing any proposed changes in the Program. The Commission continues to have oversight regarding proposed changes in the Program, including whether or not the Program should be continued. Staff Memorandum at page 3.

8. The Stipulation and Agreement presented by Joint Movants for the Commission's consideration and approval, together with Staff's Memorandum, reflect Staff's investigation of the Company's Application, as well as extensive negotiations between the parties in this matter. Joint Movants constitute all of the parties in this docket and all are signatories to the Stipulation and Agreement. Staff's Memorandum prepared by Dr. Cita supports approval of the Stipulation and Agreement. Joint Movants stipulate and agree that the Gas Hedge Program as requested and filed by Atmos in its Application should be made permanent and shall be modified and conditioned as follows:

A. The budget for Atmos' Gas Hedge Program shall not exceed \$2.5 million

annually. Atmos may spend an amount up to the approved budget. All hedge program costs incurred by Atmos, such as transaction costs, possible interest on swap margin accounts and other direct costs of financial derivatives are to be covered by the approved budget. If necessary, the rate of interest on margin accounts will be the prime rate as published in the *Wall Street Journal*; and if necessary, an interest charge will be assessed on the initial margin amount, starting from when the account is first established through the expiration of the swap or futures contract, as the case may be. Any revenue possibly generated through the sale of financial derivatives shall be used to augment the allowed budget amount. Atmos may file a Motion to adjust the approved budget depending on market conditions.

B. All payoffs, positive or negative, associated with the settlement of financial derivatives acquired through the Hedge Program shall be passed through to Atmos' PGA customers in accordance with provisions of its PGA clause. The timing of the PGA pass-through shall be in the month following the payoff and will be distributed to all PGA class customers except irrigation. The PGA pass-through will show as a line item on bills in a fashion similar to the recovery of program costs discussed in Paragraph E except that it will be in the months of November through March.

C. Consistent with the findings from the Summer 2004 focus group sessions, Atmos' preferred hedge strategy is the placement of a price cap. Atmos will meet and consult with Staff and CURB prior to program implementation for the purpose of setting a planned program design, which includes specifying the following parameters:

1. quantity or volume of gas to hedge;
2. winter, and possibly summer months to be hedged;
3. price cap level;

4. hedge instruments to be used to set the cap; and
5. timing of hedge placement.

For each of the listed parameters, Atmos shall describe its decision making process and the analysis it used to support that process.

D. Atmos shall have full discretion over selection of the final Gas Hedge Program parameters. Atmos shall also meet with Staff and CURB throughout the implementation period, as needed, for the purpose of discussing significant changes from the planned hedge program.

E. Atmos shall recover the allowed program costs for each Gas Hedge Program year from its PGA customers (except irrigation customers) during the months of April through October through a volumetric Hedge Program charge. Atmos shall show the Hedge Program charge as a separate line item on the customer's bill during the months of April through October. Because hedge volumes are not used by Atmos during the summer irrigation months, Atmos' irrigation customers will neither pay for, nor receive benefits from, the hedge program. Those irrigation customers are completely excluded from said program.

F. Atmos shall maintain a monthly balance for amounts spent on hedge costs compared to amounts received from customers through the PGA. To the extent the net monthly balance shows that Atmos' expenditures on hedges exceed the amounts received from customers through the PGA, Atmos shall accrue interest on the excess amount during the following month at the prime rate as published in the *Wall Street Journal*. To the extent the monthly balance shows that Atmos' expenditures on hedges are less than the amounts received from customers through the PGA, Atmos shall accrue interest on the shortfall during the following month at the Commission's approved rate for customer deposits. Atmos shall recover or pay interest pursuant to the methodology above through a charge to or credit to the approved budget. The interest

charges set forth in this paragraph F are separate from the interest on margin accounts described in paragraph A, which are treated separately.

G. Atmos shall submit monthly hedge reports to Staff and CURB throughout the program year. Reports during the implementation months shall detail actual implementation of the program while reports during the winter months will detail actual program performance. Monthly reports will be submitted electronically and during the first week of each month. The implementation reports will describe all Hedge Program activity during the prior calendar month while the performance reports will summarize Hedge Program performance for the instant calendar month. At the end of each program year, Atmos shall also submit a report on the cumulative, historical performance of its hedge program efforts.

H. Atmos shall retain all information and records necessary to verify derivative transactions performed on its behalf so that Staff or CURB may perform an audit of those transactions.

I. The parties agree that the Gas Hedge Program shall be made permanent. To the extent that Atmos, Staff or CURB believe that modifications to the previously approved program are necessary, such as a change in the budget, it shall file a Motion in this Docket requesting such changes as it deems necessary.

J. Atmos shall provide the Hedge Program design parameters to Staff and CURB sometime during September of each year. As described in Paragraph I, any modifications to submitting the design parameters in September shall require a Motion be filed in this Docket requesting such changes as deemed necessary.

9. Atmos must file its revised Gas Hedge Program tariff (SCHEDULE V: Purchased Gas Adjustment (PGA); SECTION 3 - PURCHASED GAS COST SURCHARGES; A. Gas

Hedge Program) with the Commission for approval within thirty (30) days of the date of the Order approving this Stipulation and Agreement. Stipulation and Agreement at paragraph 6.

10. The Stipulation and Agreement expresses the parties' agreement with regard to certain modifications and conditions applied to the Gas Hedge Program as requested in Atmos' Application. Although Staff recognizes that the parties' jointly proposed \$2.5 million annual budget for the new program is significant, given current gas price forecasts, Staff sees the proposed increase as reasonable if Atmos' COGR customers are to continue receiving the same level of protection from price spikes. Staff Memorandum at pages 2 and 3. Staff further states that with the currently proposed budget, the assessment will be about \$1.75 per month per customer, or about \$21 per year per meter. Based on the summer 2004 Focus Group results, about 89% of the surveyed customers indicated that spending \$21 per year *or more* would be "reasonable". Staff Memorandum at page 2. All parties support the Company's implementation of a permanent Gas Hedge Program, as modified and conditioned by the Stipulation and Agreement, and take the position that the Stipulation and Agreement is reasonable and could be found by the Commission to be in the public interest.

III. FINDINGS AND CONCLUSIONS

11. Atmos Energy provides retail natural gas service to approximately 118,000 customers in the State of Kansas. Atmos is a certificated natural gas public utility subject to regulatory jurisdiction of the Commission. The Application, as modified and conditioned by the Stipulation and Agreement, affects the cost of gas as allowed under the monthly COGR; therefore, the Commission, pursuant to K.S.A. 66-104, K.S.A. 66-117, K.S.A. 66-131, and K.S.A. 66-1,200, *et seq.* has jurisdiction over Atmos and the subject matter herein.

12. Settlements are favored in the law, *Bright v. LSI Corporation*, 254 Kan. 853, 86 P.2d 686 (1994). However, the Commission must make an independent judgment concerning whether the settlement is in the public interest and should be approved. In making this assessment, the Commission takes into consideration the immediate and future effects on consumers.

13. The Gas Hedge Program proposed in the Application, as modified and conditioned by the Stipulation and Agreement, is likely to mitigate against winter price volatility. Price volatility exposes consumers to unpredictably high gas bills, such as those resulting from the price spikes of the winter of 2000-2001. Implementing the Gas Hedge Program on a permanent basis will afford Atmos' customers a measure of protection against such price volatility during future heating seasons. The Commission concludes that the Gas Hedge Program is a reasonable means of providing each customer an absolute increase in the level of price spike protection.

14. The Stipulation and Agreement provides that Atmos' activities will be effectively monitored by Staff through monthly reporting and consultation. The reporting requirements of the Stipulation and Agreement will facilitate Staff keeping the Commission apprised of all program developments, particularly in the event that immediate corrective action is needed.

15. For the foregoing reasons, the Commission finds that the Stipulation and Agreement is reasonable, in the public interest, and should be approved.

IT IS THEREFORE, BY THE COMMISSION ORDERED:

(A) The parties' Joint Motion is hereby granted and the Stipulation and Agreement is hereby approved and incorporated in this Order by reference.

(B) Atmos Energy's Application, as modified and conditioned by the Stipulation and Agreement, is hereby granted.

(C) Atmos shall file its revised Gas Hedge Program tariff referenced in paragraph 9 above with the Commission for approval within thirty (30) days from the date of this Order.

(D) The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further order or orders, as it may deem necessary and proper.

(E) A party may file a petition for reconsideration of this Order within fifteen (15) days from the date of service of this Order. If service is by mail, service is complete upon mailing, and three (3) days shall be added to the above time frame.

BY THE COMMISSION IT IS SO ORDERED.

Moline, Chr.; Krehbiel, Com.; Moffet, Com.

Dated: MAY 10 2005

ORDER MAILED

MAY 11 2005

 Executive Director

Susan K. Duffy
Executive Director

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