

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 28th day of
April, 2010.

In the Matter of Atmos Energy Corporation's Tariff)	
Revision Designed to Implement a General Rate)	<u>File No. GR-2010-0192</u>
Increase for Natural Gas Service in the Missouri)	Tariff No. YG-2010-0426
Service Area of the Company)	

ORDER GRANTING LATE INTERVENTION

Issue Date: April 28, 2010

Effective Date: April 28, 2010

Background

On December 28, 2009, Atmos Energy Corporation ("Atmos") submitted a tariff designed to implement a general rate increase for natural gas service. The Commission suspended the tariff, issued notice and set an intervention deadline of January 19, 2010. Notice was issued in the customary fashion.

On April 16, 2010, the International Brotherhood of Electrical Workers Local 1439, AFL-CIO ("Local 1439") filed an application to intervene 87 days, or 2 months and 28 days, late. In an accompanying motion seeking leave to file its application out of time, Local 1439 claims that because it has not participated in past rate cases involving Atmos, that it did not receive notice until after the deadline for intervention had passed. Local 1439 does not state when it did become aware of the case, but claims that its late intervention will not prejudice any party. Local 1439 further claims that it represents forty-one non-managerial transmission and distribution gas workers of Atmos' Missouri operations and that its interest in this matter is the "impact the proposed general rate

[increase] could have on jobs, pensions, and other terms and conditions of employment.”

On April 19, 2010, Atmos filed an objection to the late intervention request. Atmos argues that Local 1439’s alleged reason for failing to timely seek intervention does not constitute “good cause,” a finding of which is required pursuant to Commission Rule 4 CSR-240-2.075(5) in order to grant Local 1439’s late application. Atmos contends that Local 1439’s inaction for almost three months cannot be justified by the “we just found out” excuse, a reason that this Commission has rejected in prior cases for such lengthy delays.¹ As previously articulated by the Commission, accepting this excuse for such a late application would render the “good cause” requirement meaningless.²

On April 21, 2010, Local 1439 filed a response to Atmos’ objection stating that in the course of recent contract negotiations Atmos was seeking to have its employees take a 12% pay cut. According to Local 1439, the reason Atmos gave for this is that the company’s current rate of return is a negative 1.26%. According to Local 1439, this changed circumstance prompted their intervention request.

Intervention

Intervention is the process whereby a stranger becomes a full participant in a legal action.³ Due process requires that any person with a life, liberty or property interest that will be affected by the outcome of a legal matter be permitted to intervene

¹ See Case Number GR-2006-0422, Order Denying Application to Intervene, August 28, 2006.

² *Id.*

³ *Ballmer v. Ballmer*, 923 S.W.2d 365, 368 (Mo. App. 1996).

upon timely application.⁴ Such persons have a right to intervene; however, even persons with a right to intervene must exercise that right in good time and in accordance with established procedures.⁵

Commission Rule 4 CSR 240-2.075 governs intervention before this tribunal. Rule 4 CSR 240-2.075(5) provides that untimely applications to intervene may be granted for good cause shown. Although the term “good cause” is frequently used in the law,⁶ the rule does not define it. Therefore, it is appropriate to resort to the dictionary to determine its ordinary meaning.⁷ Good cause “generally means a substantial reason amounting in law to a legal excuse for failing to perform an act required by law.”⁸ Similarly, “good cause” has been judicially defined as a “substantial reason or cause which would cause or justify the ordinary person to neglect one of his [legal] duties.”⁹

Of course, not just *any* cause or excuse will do. To constitute *good* cause, the reason or legal excuse given “must be real not imaginary, substantial not trifling, and reasonable not whimsical.”¹⁰ And some legitimate factual showing is required, not just the mere conclusion of a party or his attorney.¹¹

⁴ See U.S. Constitution, Amendment XIV; Missouri Constitution, Article I, Section 10 (1945).

⁵ *Ballmer*, 923 S.W.2d at 368.

⁶ *State v. Davis*, 469 S.W.2d 1, 5 (Mo. 1971).

⁷ See *State ex rel. Hall v. Wolf*, 710 S.W.2d 302, 303 (Mo. App. E.D. 1986) (in absence of legislative definition, court used dictionary to ascertain the ordinary meaning of the term “good cause” as used in a Missouri statute); *Davis*, 469 S.W.2d at 4-5 (same).

⁸ *Black’s Law Dictionary* 692 (6th ed. 1990).

⁹ *Graham v. State*, 134 N.W. 249, 250 (Neb. 1912). Missouri appellate courts have also recognized and applied an objective “ordinary person” standard. See, e.g., *Cent. Mo. Paving Co. v. Labor & Indus. Relations Comm’n*, 575 S.W.2d 889, 892 (Mo. App. W.D. 1978) (“[T]he standard by which good cause is measured is one of reasonableness as applied to the average man or woman.”)

¹⁰ *Belle State Bank v. Indus. Comm’n*, 547 S.W.2d 841, 846 (Mo. App. S.D. 1977). See also *Barclay*

In addition to demonstrating good cause for its late application to intervene, Commission Rule 4 CSR 240-2.075(2) requires the applicant to state its interest in the proceeding, its reason for intervening, and whether or not the applicant supports the relief sought. Commission Rule 4 CSR 240-2.075(4) lists grounds upon which intervention will be granted: (A) that the intervention applicant has an interest different from that of the general public and which may be adversely affected by a final order arising from the case; or (B) that granting intervention would serve the public interest.

Decision

Although Local 1439 is clearly late with its application to intervene, the Commission finds the reason for this tardiness to constitute good cause. Local 1439 has stated an interest in this matter that demonstrates an interrelation between the company's requested rate increase and its members that cannot be adequately represented by any other party. The Commission will grant Local 1439's application to intervene; however, Local 1439 must accept the case in its current procedural posture and must comply with all of the Commission's current procedural orders.

Additionally, Local 1439 identifies itself as an "association," but does not believe it is the type of association referenced in 4 CSR 240-2.060(1)(J) or 2.075(3). These regulations require an association to file a list of its members, and to the extent these regulations may apply to Local 1439, it seeks a waiver of this requirement. The Commission finds that these rules do not apply to Local 1439 and will waive them.

White Co. v. Unemployment Compensation Bd., 50 A.2d 336, 339 (Pa. 1947) (to show good cause, reason given must be real, substantial, and reasonable).

THE COMMISSION ORDERS THAT:

1. The Application to Intervene out-of-time filed by the International Brotherhood of Electrical Workers Local 1439, AFL-CIO on April 16, 2010, is granted.
2. The International Brotherhood of Electrical Workers Local 1439, AFL-CIO is granted a waiver from Commission Rules 4 CSR 240-2.060(1)(J) and 4 CSR 240-2.075(3).
3. That this order shall become effective immediately upon issuance.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Clayton, Chm., Davis, Gunn, and Kenney, CC., concur;
Jarrett, C., dissents.

Stearley, Senior Regulatory Law Judge.

¹¹ See generally *Haynes v. Williams*, 522 S.W.2d 623, 627 (Mo. App. E.D. 1975); *Havrisko v. U.S.*, 68 F.Supp. 771, 772 (E.D.N.Y. 1946); *The Kegums*, 73 F.Supp. 831, 832 (S.D.N.Y. 1947).