STATE OF IOWA

DEPARTMENT OF COMMERCE

UTILITIES BOARD

IN RE: ATMOS ENERGY CORPORATION	DOCKET NO. SPU-07-1

ORDER REQUIRING FILING

(Issued March 7, 2007)

PROCEDURAL BACKGROUND

On December 13, 2006, the Utilities Board (Board) issued an order in Docket No. PGA-06-47 that directed Atmos Energy Corporation (Atmos) to file an explanation of why the asset management contract it had entered into for the management of its gas purchasing assets is not covered by Iowa Code § 476.77 and 199 IAC 32.2 as a reorganization, or to make the appropriate filing as a proposal for reorganization. During the review of the annual reconciliation of the company's purchased gas adjustment (PGA), the Board learned that Atmos had entered into the contract and the Board requested the filing to determine if the asset management arrangement required review by the Board pursuant to Iowa Code § 476.77.

On January 8, 2007, Atmos filed a response to the December 13, 2006, order. On January 19, 2007, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a response to Atmos' filing.

ATMOS' POSITION

Atmos states that because the costs associated with interstate pipeline capacity, transportation, and storage are borne by Atmos' customers as part of the PGA, Atmos has an obligation to reduce PGA costs for its customers wherever and whenever it safely and reliably can. Without the asset management plan, Atmos asserts that customers would be required to pay for full capacity costs all year even though the full capacity is not utilized for the delivery of gas to customers in warmer months.

Atmos indicates it could use periodic capacity release and bidding provisions of the Federal Energy Regulatory Commission (FERC) to mitigate costs, however, Atmos' Iowa operations are not large enough to yield significant amounts. Atmos contends the asset management arrangement allows it to extract additional value from interstate pipeline capacity and storage assets.

According to Atmos, the asset management contract between Atmos and Atmos Energy Marketing, LLC (AEM), provides for a stable, discounted commodity price for Atmos, and AEM is entitled to use Atmos' capacity and to retain any revenue from interim capacity releases. Atmos states that it has not divested itself of any assets; rather, it has given AEM the right to manage those assets subject to Atmos' prior need. Atmos then contends that the Board's rules specifically exempt capacity purchases and sales and gas purchases from the filing requirements of Iowa Code § 476.77. Atmos concludes that the asset management plan does not constitute a

reorganization for purposes of pertinent statutory and regulatory provisions and to hold otherwise would frustrate a utility's ability to maximize the value of interstate capacity and storage assets to minimize gas costs to Iowa ratepayers.

CONSUMER ADVOCATE'S POSITION

Consumer Advocate argues that Atmos' filing provides no evidence as to whether the assets involved fall below the minimum standards established in 199 IAC 32.2(2) and (3) for filing a proposal for reorganization. Consumer Advocate states that it endorses the goal of reducing gas costs for customers. Consumer Advocate points out that Atmos must take all reasonable actions to minimize its purchase gas costs while ensuring adequate long-term supply of natural gas and operate in an efficient manner.

Consumer Advocate indicates that it has reviewed the procurement and execution of the asset management plan and has no objections to the agreement as it has been implemented. However, Consumer Advocate points out that 199 IAC 32.2(3) only specifically exempts gas purchases and not natural gas capacity purchases and sales. The reference to capacity purchases in the subrule only applies to electric utilities and Consumer Advocate states that the Board will have to interpret whether gas capacity purchases and sales are similar transactions to "gas purchases" or "energy capacity purchases and sales." Consumer Advocate points out that Atmos has ignored the determinative exemption language in 199 IAC 32.2(3) which provides for the exemption unless the transaction is "outside the ordinary

course of business." Atmos does not address whether the asset management plan should be considered part of the ordinary course of business of purchasing gas by a regulated natural gas utility.

Consumer Advocate then states its disagreement with Atmos' statement that requiring a reorganization filing would frustrate a utility's ability to maximize the value of interstate capacity and storage assets. Consumer Advocate argues that filing a proposal for reorganization as required by the statute and Board rules does not frustrate the utility, rather, it provides for Board review to ensure the proposed reorganization does in fact maximize the value of utility assets and bring minimum cost to customers.

Finally, Consumer Advocate disagrees with Atmos that a finding that the asset management plan comes within the provisions of Iowa Code § 476.77 would apply statutory asset divestiture and acquisition regulation to assets that have never in fact been divested. Consumer Advocate refers to a prior Board order in Docket No. WRU-99-54-151 in which the Board found it had jurisdiction over a management contract for reorganization filing purposes. Consumer Advocate indicates the order allowed the utility to file for a waiver of the filing requirements of Iowa Code § 476.77 and 199 IAC 32. Consumer Advocate requests the Board, if it determines it does not have jurisdiction over the asset management plan in question, to inform the rate-regulated utilities that the Board intends to stay informed of all proposed and executed asset management contracts with third parties.

BOARD DISCUSSION

Iowa Code § 476.76 defines "reorganization" as the acquisition, sale, lease, or any other disposition, directly or indirectly, including by merger or consolidation, of the whole or any substantial part of a public utility's assets. Iowa Code § 476.77 states that a reorganization shall not take place if the Board disapproves and requires that prior to reorganization, the utility shall file with the Board a proposal for reorganization with supporting testimony and evidence to establish that the reorganization is not contrary to the interests of the public utility's ratepayers and the public interest.

Iowa Code § 476.77(4) provides that the Board may adopt rules which exempt a public utility or class of public utility or class of reorganization from this statutory requirement if the Board determines that review is not necessary in the public interest. This section also provides the Board with the authority to waive the statutory filing requirements if the Board finds that review is not necessary in the public interest.

Based upon the Board's March 31, 2000, decision in Re: IES Utilities Inc. and Nuclear Management Company, Docket No. WRU-99-4-151 (SPU-99-33), the Board finds that an asset management plan entered into between a rate-regulated public utility and a third party for the management of the utility's gas purchasing assets is a reorganization and the utility is required to file a proposal for reorganization unless exempted by 199 IAC 32. In Docket No. WRU-99-4-151 (SPU-99-33), the Board

required IES Utilities Inc. (IES) to file a proposal for reorganization before it could enter into a service agreement for the operation, management, maintenance, and repair of the Duane Arnold Energy Center (DAEC). Although there is a difference between the operation of a nuclear facility and managing gas purchasing assets, the same statutory requirements and principles apply to both transactions. The Board stated that the transfer of the day-to-day operational authority constituted an indirect transfer of assets and the retention of certain management decisions was not sufficient to avoid application of the reorganization statutes and rules. The asset management contract entered into by Atmos is the same general type of transaction as the DAEC service agreement and falls within the scope of the reorganization statute.

Although a transaction may fall within the parameters of Iowa Code § 476.77, the Board has by rule exempted certain transactions from the filing requirements. Subrules 32.2(1) and 32.2(1) require the filing of a proposal for reorganization for the acquisition or leasing of assets or the disposal of assets, directly or indirectly, with a value in excess of 3 percent of a utility's Iowa jurisdictional revenue or $5 million, whichever is greater. Regardless of the provisions in the two subrules above, subrule 32.2(3) provides that certain listed transactions are exempt from the filing requirements if the transactions are conducted in the ordinary course of business. The exempt transactions listed are: fuel purchases, energy and capacity purchases and sales, gas purchases, sale of accounts receivables, sale of bonds, claim and

litigation payments, tax payments, regulatory fees and assessments, insurance premiums, payroll, stock dividends, financings, routine financial transactions, operation and maintenance expense, construction expense, or similar transactions. Subrule 32.2(3) also provides that any transaction involving more than 10 percent of a public utility's gross utility assets less depreciation, or any transaction outside the ordinary course of business, shall not be exempt.

As pointed out by Consumer Advocate, Atmos did not address the minimum standards in subrule 32.2(1) or the 10 percent standard in subrule 32.2(3). Atmos argues that the asset management plan is exempt as one of the listed items in subrule 32.3(3) or as a similar transaction, however, Atmos did not directly address whether it considers the asset management contract to be a transaction within the ordinary course of business. The arguments presented by Atmos appear to indicate that it believes the asset management contract was executed in the ordinary course of business.

The question of whether an asset management contract between a rate-regulated natural gas utility and a third party to manage the utility's gas purchasing assets falls within the exemptions in 32.2(3) appears to be a question of first impression before the Board. The Board adopted the list and the "ordinary course of business" language in Docket No. RMU-91-2. In the preamble to the "Notice of Intended Action" published at IAB Vol. XIV, No. 17. No.17 (2/19/92), p. 1480, as ARC 2788A, the Board states that the transactions listed occur on a routine basis and the

Board added the "similar transactions" provisions since any list could not be exhaustive. The Board emphasized that the transactions to be exempt should occur within the ordinary course of business. The proposed amendments also exempted transactions that had been approved in a contested case proceeding before the Board.

The Board adopted the amendments to 32.2(3) with an unrelated revision in IAB Vol. XIV, No. 24 (5/27/92) p. 2236, as ARC 3018A. The amendments were effective July 1, 1992. In the "Adopted and Filed" preamble, the Board again said that the purpose of the amendments was to exempt similar transactions that occur in the ordinary course of business and that do not involve more than 10 percent of a public utility's gross assets less depreciation. A review of the list in subrule 32.2(3) shows that capacity purchases and sales by natural gas utilities are not specifically exempted, as they are for electric utilities. It could be argued that capacity purchases and sales of natural gas are transactions similar to those listed, however, on this record the Board is not convinced that asset management of gas purchasing assets by third parties is a transaction that is undertaken in the ordinary course of business of a rate-regulated utility.

The Board has established the ordinary course of business for rate-regulated natural gas utilities through recovery of gas costs in the PGA and in the sharing of any earnings from the release of capacity and buy-sell arrangements. These transactions allow for regulatory oversight. Asset management contracts with third

parties do not lend themselves to the same regulatory oversight so that oversight must occur before the asset management plan is implemented.

In the current filing, Atmos has not provided the Board with sufficient support for finding that the asset management contract should come within the exemption as a similar transaction within the ordinary course of business. In addition, Atmos has not addressed the 10 percent standard. If Atmos had filed a proposal for reorganization or a waiver request, this information would have been presented and the Board could have exercised its regulatory responsibility to review the asset management plan before it was effective.

The Board is not prepared to waive the filing requirements on the basis of what has been filed to date in this docket. Since this is a case of first impression, the Board wants to ensure that it takes into consideration the effect any decision will have on similar requests. Accordingly, the Board will require that Atmos file either an application for a waiver of review pursuant to Iowa Code § 476.77(4) or a petition for reorganization pursuant to Iowa Code § 476.77(1). Requiring a further filing will allow the Board to consider the application of the exemptions in 32.2(3) to an asset management contract for gas purchasing assets and to consider whether the filing requirements of Iowa Code § 476.77 should be waived as not necessary in the public interest.

The Board recognizes that this contract is already in place and the Consumer Advocate has stated it has no objection to the contract itself. Under these

circumstances, the Board finds that if Atmos chooses to file an application for waiver pursuant to Iowa Code § 476.77(4), it is not necessary for Atmos to file testimony and evidence in support of a petition for reorganization at the same time. This should reduce the resources required to make the filing in a timely manner.

The Board's decision to require Atmos to file a proposal for reorganization under Iowa Code § 476.77 does not indicate that the Board opposes this particular asset management contract. From the review done during the annual reconciliation, it appears that the asset management contract may have provided reasonably priced gas to Atmos' Iowa customers. Atmos should include in its filing a comparison of the costs and revenues before the asset management contract and with the asset management contract in place. Regardless of any benefit to ratepayers from the arrangement, the Board has determined that Atmos is required by statute to make the appropriate filing so the Board can fulfill its statutory responsibility of review to determine whether the transaction is not contrary to the interests of Atmos' ratepayers and the public interest.

As indicated in the December 13, 2006, order, the Board has received inquiries from other rate-regulated utilities concerning asset management contracts for other ratepayer assets and the Board has concerns about contracting with a third party for the management of assets used to provide service to ratepayers. The Board also recognizes that there may be other asset management contracts for gas purchasing assets entered into by rate-regulated utilities under the Board's

jurisdiction where the utility has not filed a proposal for reorganization or a request for waiver. The Board is reviewing the gas purchasing operations of the other natural gas utilities to determine if there are other asset management contracts that should be presented to the Board for review under Iowa Code § 476.77.

ORDERING CLAUSE

IT IS THEREFORE ORDERED:

Atmos Energy Corporation shall file a proposal for reorganization regarding the asset management contract for the management of its gas purchasing assets or a waiver request within 30 days of the date of this order.

UTILITIES BOARD

/s/ John R. Norris

/s/ Curtis W. Stamp

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 7th day of March, 2007.