STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

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| **Atmos Energy Corporation** | : | |
| | : | Docket No. 09-0365 |
| Verified Petition for Approval of | : | |
| Affiliated Interest Transaction | : | |

## VERIFIED AMENDED AND RESTATED PETITION

Atmos Energy Corporation ("*Atmos*") hereby respectfully submits this verified petition to the Illinois Commerce Commission for approval pursuant to the Public Utilities Act (220 ILCS §§ 5/1-101 *et. seq.*) of arrangements between it and its affiliate, Atmos Energy Marketing, LLC ("*AEM*") in connection with the release by AEM of Texas Eastern Transmission Company (TETCO) FT-1 and SS-1 pipeline capacity to Atmos. A copy of the letter setting forth these arrangements (the "*October 21 Letter*") is attached as **Attachment A** to this petition. Pursuant to section 200.140 of the Commission's rules of practice ((83 Ill. Admin. Code § 200.140), this petition amends and restates the petition originally filed in this docket on August 11, 2009.

The prefiled direct testimony of Rebecca M. Buchanan in support of this petition is attached hereto as **Attachment B** to this petition. In support of this petition, Atmos states as follows:

1. Atmos is a corporation duly organized and existing under the laws of the State of Texas and the Commonwealth of Virginia, with principal offices located at 1800 Three Lincoln Centre, 5430 LBJ Freeway, Dallas, Texas 75240. It is a public utility within the meaning of the Public Utilities Act. It is engaged in the business of distributing and

selling natural gas in Illinois as well as in the States of Georgia, Tennessee, Virginia, Missouri, Mississippi, Iowa, Kansas, Texas, Louisiana, Colorado and Kentucky.

2. AEM is a limited liability company organized and existing under the laws of the State of Delaware. AEM is a natural gas marketing company operating primarily in the Midwest and Southeast areas of the United States and was formerly known as Woodward Marketing, LLC. Pursuant to the Commission's order in Docket No. 00-0640, AEM is a wholly owned indirect subsidiary of Atmos. Specifically, AEM is a wholly owned subsidiary of Atmos Energy Holdings, Inc., a Delaware corporation, which is itself a wholly owned subsidiary of Atmos.

3. Atmos provides natural gas distribution service to approximately 24,000 customers in six operating areas in Illinois. The TETCO pipeline is the only interstate pipeline that is geographically proximate to Atmos' Harrisburg service area. Guidance from Commission staff in recent years has led Atmos to seek to acquire its own capacity on the TETCO pipeline (rather than relying on gas suppliers to provide delivered service to Harrisburg).

4. Beginning in late 2005, Atmos began to inquire whether capacity was available on TETCO to serve its Harrisburg service area, without success. The TETCO pipeline is fully subscribed and therefore in order for Atmos to obtain capacity on the pipeline, a different holder must first release its capacity. AEM holds capacity on numerous pipelines, including on TETCO. On October 21, 2008, Atmos entered into an agreement with AEM indicating that AEM had released its TETCO capacity effective November 1,

2008. Atmos then obtained capacity directly from TETCO in an amount equal to that which AEM had released pursuant to the October 21 Letter.

5. Two types of capacity were released pursuant to the October 21 Letter, an SS-1 bundled transportation and storage service and FT-1 firm transportation service. Because the SS-1 transportation services is bundled with storage service, AEM possessed a certain amount of natural gas inventory in pipeline storage at the time it released the pipeline capacity to Atmos.

6. The acquisition, use and release of interstate pipeline and storage capacity is subject to the rules and policies of the Federal Energy Regulatory Commission (FERC) and applicable interstate pipeline tariff provisions. One of the FERC's fundamental policies is that "shipper must hold title" rule which requires a shipper to hold a contractual right to pipeline or storage capacity as well as title to gas transported or stored on that capacity.[1] Thus, AEM could not release the pipeline capacity to Atmos while retaining title to the natural gas inventory at issue without violating the FERC's shipper must hold title policy. As a practical matter, in order for Atmos to obtain the pipeline capacity from AEM, Atmos had to take possession of the natural gas owned by AEM that was already in inventory on TETCO.[2] Accordingly, Atmos agreed that it would purchase this inventory from AEM as set forth in the October 21 Letter.

[1] *See, e.g., Entergy New Orleans*, 122 FERC ¶ 61,219 (FERC 2008) (fining gas distribution company $400,000 for shipping gas without holding title).

[2] In June 2008, FERC issued Order No. 712 specifically permitting a releasing shipper such as AEM to tie the release of storage capacity to the taking of existing storage inventory by the replacement shipper (Atmos, in this case). *See Promotion of a More Efficient Capacity Release Market*, 123 FERC ¶ 61,286, ¶¶ 186-190 (FERC 2008) (clarifying that prohibition on tying does not apply to sales of inventory in connection with releases of capacity).

7. The October 21 Letter specifies that Atmos would purchase the inventory in place effective November 1, 2008 and that it would be paid for in four installment payments over four months (December 2008 to March 2009) at an indexed price equal to the applicable month's *Inside FERC* TETCO East Louisiana index price plus applicable fuel and commodity charges delivered to zone M1. The parties used this method for calculating pricing because it is a market-based rate the parties believed was comparable to what Atmos would pay to purchase flowing gas on its TETCO firm transportation contract.

8. Pursuant to the October 21 Letter, Atmos purchased a total of 142,112 dth of natural gas for a total cost of $800,534.33 in four payments as follows:

| Date | Volume (dth) | Price ($) |
|---|---|---|
| **December 2008** | 23,686 | 170,507.84 |
| **January 2009** | 47,371 | 305,402.63 |
| **February 2009** | 47,370 | 223,833.81 |
| **March 2009** | 23,685 | 100,790.05 |
| **Total** | **142,112** | **800,534.33** |

9. For the reasons described above, it is desirable for Atmos to have its own capacity on TETCO. The arrangements set forth in the October 21 Letter allow this. The

purchase of AEM's existing inventory in TETCO was necessary to effectuate these transactions.

10. Because the purchase of AEM inventory simply offsets the volume of purchases Atmos must make under other gas supply arrangements, customers incur no additional costs as a result of Atmos' purchases from AEM as compared to purchasing flowing gas on Atmos' transportation contracts. Because the acquisition of SS-1 capacity occurred at the start of the winter season, Atmos would not have an opportunity to inject gas into storage until after the winter season. Customers therefore benefitted from the immediate availability of inventory for the 2008-2009 winter season.

11.Because AEM is an affiliated interest of Atmos under Section 7-101 of the Public Utilities Act (220 ILCS § 5/7-101), Atmos seeks approval under the Public Utilities Act for the arrangements set forth in the October 21 Letter, including the acquisition of FT-1 and SS-1 capacity and the associated purchase of the natural gas inventory from AEM .[3] As discussed above, this purchase is in the public interest and should be approved.

[3] Because the acquisition of pipeline capacity by Atmos is regulated by the Federal Energy Regulatory Commission (and because the inventory purchase is incidental to and a necessary part of that acquisition under FERC policies), Illinois may be preempted from prohibiting the acquisition and release of the capacity and the incidental inventory purchase. There is also a question of whether Section 7-101 of the Act is applicable to the acquisition and release of pipeline capacity in this case. Without prejudice to the Commission's ability to so decide, and without waiving Atmos' right to pursue these arguments in this or any other proceeding in the future, Atmos does not believe that it is necessary to address these issues at this time, because Atmos believes that these transactions meet the standards for Commission approval under Section 7-101 of the Act. The amendment of this petition to cover matters in addition to the purchase of inventory was made in accordance with discussions with Commission staff in an effort to make this an uncontested docket.

WHEREFORE, Atmos respectfully requests that the Commission approve the transactions set forth in the October 21 Letter under the Public Utilities Act.

Respectfully submitted,

ATMOS ENERGY CORPORTATION

By: Mark A. Martin

Name: MARK MARTIN

Title: VP, RATES & REGULATORY AFFAIRS


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October 2, 2009

## VERIFICATION

STATE OF KENTUCKY :
: SS
COUNTY OF DAVIESS :

Mark A. Martin, being first duly sworn, states in his capacity as Vice President – Rates and Regulatory Affairs of Atmos Energy Corporation, Kentucky/Mid-States Division, that he has read the foregoing petition and that the facts stated therein are true and correct to the best of his knowledge, information and belief.

Mark A Martin

Mark A. Martin
Vice President – Rates and Regulatory Affairs
Atmos Energy Corporation
Kentucky/Mid-States Division

SUBSCRIBED AND SWORN to
Before me on this 2nd day of October 2009

Jacqueline S Purcell

Notary Public