

1 on particular pipelines. Most interstate pipelines have  
2 storage on their system. And the LDCs can lease the  
3 storage from those interstate pipelines. Missouri Gas --  
4 MoGas Company is an example where you have absolutely no  
5 storage on its system.

6 You have some small LDCs in Missouri that  
7 simply haven't acquired storage in the past because it was  
8 fully subscribed on the interstate pipeline systems.

9 Q. Okay. So were there asset management  
10 agreements in place for the Hannibal area?

11 A. In this time frame, the RFPs were only for  
12 supply-only agreements, not asset management agreements.

13 Q. Okay. What about Butler?

14 A. Butler was also a supply-only agreement.

15 Q. Okay. So they were just supplying the gas  
16 to the local distribution area, not providing any of those  
17 other management services. Correct?

18 A. That's correct. Just a refinement to that;  
19 they were supplying it to the interstate pipeline for the  
20 LDC to pick it up at the receipt location.

21 Q. Okay. So wouldn't that be cheaper than an  
22 asset management agreement? Because wouldn't an asset  
23 management agreement require more services and more  
24 management performance by Atmos?

25 A. It depends on the specific situation. When

1 you're in an asset management agreement, the marketing  
2 company will be trying to evaluate what it can do with the  
3 LDCs assets. And it may well find a way to optimize  
4 storage by using a differently -- more aggressively and  
5 different ways to access different markets to use it for  
6 arbitrage opportunities and in deed, you may have a cheaper  
7 price than a typical supply-only agreement simply because  
8 the asset manager is trying to look for values that may be  
9 unique for it.

10 Q. Okay. Has, Mr. Sommerer --

11 Let's go to you too, Mr. Berlin. Has Atmos  
12 violated the Affiliated Transaction Rule or the Market  
13 Affiliate Rule?

14 A. I can only speak to this from a layperson's  
15 standpoint. I'm not an attorney, so --

16 Q. Okay.

17 A. -- it is my opinions --

18 Q. Speak -- you're an expert. We've qualified  
19 you. Go forward.

20 A. Based upon my opinion, I think the rule  
21 requires, as we've discussed, fair market value price from  
22 the LDCs perspective and from a -- my view, I'm looking at  
23 fair market price as being the same thing as fair market  
24 value. And so I think, again --

25 Q. So you're saying fair market price is fair.

1 market value and vice versa?

2 A. That's how I've interpreted it.

3 Q. Okay. You're an expert.

4 A. And --

5 Q. I'm going to rely on that statement.

6 A. Very well.

7 Q. Go ahead. I'm sorry.

8 A. And so I believe that things that can impact  
9 the fair market value that are relevant to looking at the  
10 fair market value need to be evaluated. If the LDC is not  
11 receiving the fair market value, then you have a violation  
12 in my non-legal view.

13 Q. Okay. So you're saying that there is a  
14 violation?

15 A. Based upon the documents that I've seen to  
16 date -- and we're still -- we believe we're still in a mode  
17 of discovery and there are still relevant documents that  
18 are out there. I believe there may be a violation of that  
19 fair market value standard.

20 COMMISSIONER DAVIS: What about you,  
21 Mr. Berlin?

22 MR. BERLIN: Well, I would agree that number  
23 1, we are still in discovery and there may be a violation  
24 of the -- of the rule based on the information that was  
25 supplied to us by the Company as to the amount of profits

1 that were generated from the purchase of the gas.

2 COMMISSIONER DAVIS: Okay.

3 MR. BERLIN: And I say there may be, but  
4 that may also change, based upon discovery process.

5 COMMISSIONER DAVIS: Okay. But you've  
6 already moved to disallow \$360,000. I mean, I'm a little  
7 concerned here because, I mean, throughout your testimony,  
8 Mr. Sommerer, and some of your statements, Mr. Berlin, it's  
9 like well, may -- I keep hearing the phrases "may".

10 And you know, this raises serious doubts  
11 pursuant case law we're throwing the burden back on the  
12 Company to prove their innocent. And I don't hear you  
13 saying they have violated rules. I'm hearing you say they  
14 may have violated the rules, but we're going to go ahead  
15 and move to disallow \$360-plus-thousand. Is that -- is  
16 that a fair assessment?

17 MR. BERLIN: We did move, in our  
18 recommendation to disallow some 362,000, I believe that's  
19 the number.

20 COMMISSIONER DAVIS: Uh-huh.

21 MR. BERLIN: That's based upon the  
22 information that was provided to us by the Company as to  
23 the amount of profits that they achieved through the  
24 purchase and sale of gas.

25 Part of the discovery though is what I think

1 Mr. Sommerer was saying, is it's all geared toward trying  
2 to determine a fair market value -- fair market value of  
3 the price of the gas. And I eluded to a lot of features  
4 that go into figuring out that price.

5 COMMISSIONER DAVIS: Well, but isn't price  
6 what they paid for it?

7 Okay. Let's -- I'm going to back to your  
8 direct testimony, Mr. Sommerer, page 7, lines 20 through  
9 22.

10 QUESTIONS BY COMMISSIONER DAVIS:

11 Q. You stated that, you know, in essence that  
12 you know, you used the phrase "raised serious doubts" and  
13 then you say, now the Company needs to come forward with  
14 evidence to defend its gas costs through direct testimony  
15 with full recognition that further discovery by any party  
16 to the case may be forthcoming.

17 So you feel like you've met your burden of  
18 proof by saying the LDC bought gas from an affiliate, paid  
19 more than the affiliate, so now it's up to the Company to  
20 prove yourself innocent. Is that a fair characterization?

21 A. I don't know that I would agree with the  
22 words "proving themselves innocent". But I would say to  
23 prove up fair market value. I think they have that  
24 obligation.

25 Q. Okay. Mr. Sommerer, back on page 5 of your

1 direct testimony on lines 10 through 13, you stated that  
2 the Commission's Affiliate Transaction Rule is not the only  
3 basis for determining prudence of transactions. What are  
4 the other bases?

5 A. Based upon discussion with legal counsel --  
6 and obviously legal counsel reviewed this testimony -- my  
7 understanding is that the Affiliated Transaction Rule and  
8 the prudent standard may cover some of the same ground,  
9 there may be some overlap, they may not be mutually  
10 exclusive. And therefore, it may well be that there are  
11 aspects of the Affiliated Transaction Rule that govern this  
12 transaction as well as the prudent standard itself.

13 COMMISSIONER DAVIS: Okay. Mr. Berlin, do  
14 you agree that if we are under -- operating under the  
15 prudent standard that any evidence that you get -- the  
16 prudent standard and not the Affiliate Transaction Rule --  
17 that you don't have any authority for the documents of the  
18 affiliate, in this case, of the AEM?

19 MR. BERLIN: Maybe I'm not sure what you're  
20 question is.

21 COMMISSIONER DAVIS: Okay.

22 MR. BERLIN: Can you rephrase that?

23 COMMISSIONER DAVIS: All right.

24 Mr. Sommerer here has said that there's a possibility that  
25 there may be imprudence that is not necessarily covered by

1 the Affiliate Transaction Rule. Is that fair to say,  
2 Mr. Sommerer?

3 THE WITNESS: That's -- that's right.

4 COMMISSIONER DAVIS: Okay. I think the  
5 argument that Mr. Fischer was making earlier is if you're  
6 not alleging a violation of the Affiliate Transaction Rule,  
7 if you're operating on any other standard other than the  
8 Affiliate Transaction Rule, then you don't have a right to  
9 those records. Therefore, they can't be used against the  
10 Company. Do you agree or disagree with that analysis?

11 MR. BERLIN: I agree that the Affiliate  
12 Transaction Rule gives us access to the records on an  
13 affiliate transaction. Is that a way to answer a question?

14 COMMISSIONER DAVIS: No. It's not. You're  
15 not answering the question that I asked you. Okay.

16 So we're saying -- let's -- hypothetically,  
17 let's say -- are you -- well, are you alleging -- it  
18 appears that Mr. Sommerer -- Mr. Sommerer appears to be  
19 alleging that there could be some imprudence here not  
20 associated with the Affiliate Transaction Rule.

21 Okay. You got that?

22 MR. BERLIN: (Nodded.)

23 COMMISSIONER DAVIS: Okay. Do you think  
24 that you could use the discovery pursuant to the Affiliate  
25 Transaction Rule to prove imprudence not associated with

1 the Affiliate Transaction Rule?

2 MR. BERLIN: Then we're not dealing with an  
3 affiliate transaction. In this hypothetical of yours?

4 COMMISSIONER DAVIS: He's saying that  
5 prudence can be different than the Affiliate Transaction  
6 Rule.

7 MR. BERLIN: It can be, yes. I agree.

8 COMMISSIONER DAVIS: So do you think you can  
9 use evidence discovered pursuant to the Affiliate  
10 Transaction Rule to prove prudence -- imprudence outside of  
11 the Affiliate Transaction Rule?

12 MR. BERLIN: Well, I -- I wouldn't use the  
13 Affiliate Transaction Rule to seek evidence outside of it.

14 COMMISSIONER DAVIS: Okay.

15 MR. BERLIN: I'd have to answer that, I  
16 wouldn't do it. I wouldn't.

17 COMMISSIONER DAVIS: Okay.

18 QUESTIONS BY COMMISSIONER DAVIS:

19 Q. Mr. Sommerer, having read your direct  
20 testimony, is what you're saying that when an LDC buys gas  
21 from an affiliate the LDC's fair market price of supply for  
22 that given period and the affiliate's fair market price of  
23 supplies should always be equal?

24 A. No.

25 Q. No?



1           A.       No. That's not my testimony.

2           Q.       Okay. Well, should it be the weighted  
3 average cost of the affiliate's gas or -- I mean, what were  
4 you trying to -- I mean, what were you trying to say at the  
5 bottom of page 5 and top of page 6?

6           A.       Well, I think the point is what I say on  
7 lines 5 and 6 at the top of page 6: It is reasonable and  
8 necessary for Staff to question why the LDC's fair market  
9 value would be any different than AEM's fair market value.

10                   And I think I said someplace else that  
11 unless there's a compelling reason why the two values would  
12 be different, then you may have a situation where the LDC's  
13 fair market value is reflected by the unregulated  
14 affiliate's fair market value.

15                   Or you may, if this is a factual question  
16 about trying to determine what a fair market value is, and  
17 it's not a real, straightforward process -- which I don't  
18 think it is -- you may learn something about what the value  
19 is if you don't completely buy into the Company's argument  
20 that an RFP will in all instances set fair market value.

21                   And so absent what Staff believes is fair  
22 discovery into the fair market value, and looking at the  
23 affiliate's supply, and whether that can shine light on  
24 what the regulated LDC may have been able to purchase the  
25 gas on, it may be necessary to take the value to the

1 unregulated affiliate's value.

2 Now, I have to say that's, you know -- I  
3 know there has been some characterization that the Staff is  
4 trying to make them equivalent and they aren't necessarily  
5 equivalent. It could be that the unregulated affiliate has  
6 a niche market, that it has some supply that is proprietary  
7 supply, that it has storage someplace out west that it has  
8 access to that it can bring into the portfolio and the  
9 service and therefore a distinction can be made.

10 But I do believe it's relevant to take a  
11 look at that question. And one of the examples that I've  
12 used -- and I think it's an example that stands up is, if  
13 the affiliate buys interruptible supply, and uses that  
14 supply to serve a firm contract, it may explain why the  
15 affiliate was able to have the low bid and a robust or a  
16 non-robust RFP process.

17 And when you start getting into the  
18 affiliate's ability to undercut bids based upon those  
19 options, which certainly it has, because by virtue of its  
20 assessment of how much risk it truly has, then I think it's  
21 fair to look at those things.

22 Q. Please give me just a second here. Okay.  
23 Now, have you read Ms. Buchanon's testimony?

24 A. Yes, I have.

25 Q. Okay. Would you agree with the statement

1 that all Atmos gas supply contracts require firm supply?

2 A. I would agree with that statement with a  
3 caveat or some more explanation.

4 Q. Okay. Well, go ahead. We just let people  
5 run on here at the PSC, so go ahead.

6 A. Thank you.

7 Q. We're not going to cut you off.

8 A. Okay. Atmos requires their suppliers to  
9 execute North American Energy Standards Board template  
10 contracts or base contracts. And in their RFPs, Atmos asks  
11 for firm supply.

12 Q. Yeah.

13 A. There's not a lot of definition around  
14 "firm". They may use the word -- and this might be highly  
15 confidential, so I'll speak generally about it.

16 Q. Okay.

17 A. But they may say something like it needs to  
18 be firm and warranted supply. Warranted, just in  
19 layperson's terms, guaranteed.

20 Pipelines are a different types of firm  
21 supply. You can have secondary firm, primary firm and not  
22 a lot of definition goes around it. This base contract  
23 defines what firm is. The conditions on when the supply  
24 doesn't have to show up.

25 Q. But they're using the base contract that's

1 put out there by this standards board. Correct?

2 A. That's correct. That's correct.

3 Q. And that's somehow imprudent?

4 A. No. That's general business practice in the  
5 gas industry. I think where the concern comes in -- and  
6 there was an example of this in the ACA period.

7 Q. Uh-huh.

8 A. Is when a pipeline declares forced majeure  
9 or an "act of God" --

10 Q. Correct.

11 A. -- and it starts cutting supplies out, there  
12 are various priorities and you always want to be on the top  
13 priority. Otherwise you could get cut with your supplies.

14 Q. Right.

15 A. It's very much a question of reliability.  
16 And during this time frame, Atmos was indeed cut  
17 repeatedly. And the way that Panhandle Eastern, which is  
18 the pipeline that's serving Hannibal cuts supplies is it  
19 asks what type of transportation and what type of receipt  
20 point you have.

21 And if you have less than primary firm,  
22 you're going to get cut more quickly and more often than  
23 you will if you have the primary firm receipt point.

24 So it's caused me some concern that Atmos  
25 has characterized this business that they've done with

1 their affiliate as firm when I think the question is more  
2 complicated than that and you know, I want to make sure  
3 that when they're buying firm, they're getting firm; that  
4 they're getting what they paid for.

5 Q. Okay. So contractually you'd agree that the  
6 supply is firm. It's a transportation issue. Correct?

7 A. I think that what may have a bearing on that  
8 question is the type of supply that the vendor who's  
9 selling the gas, delivering it into Panhandle Eastern for  
10 AEC -- for Atmos, if their supplies are interruptible or  
11 they are using a receipt point that is secondary, it is  
12 lower on the pecking order in terms of firmness.

13 And so the contract can say --

14 Q. Okay. But how is that any different from  
15 the contract they have signed with Conoco, Shell, BP or  
16 anyone else?

17 A. The difference from my point of view is you  
18 have to be concerned that there's some sort of value play  
19 in this contract from AEM's standpoint because if they sign  
20 this contract with BP or Anadarko or ConocoPhillips, in  
21 theory there's no money in it for AEC as a corporation if  
22 the supplies get cut and more supplies are brought on  
23 later.

24 Because of the pricing provision of this  
25 agreement -- we've discussed first of the month pricing

1 versus the daily pricing provision. You have to worry  
2 about what goes on with the supply showing up. When it  
3 doesn't show up, is there some profit potential later on  
4 because it didn't show up when you have to re-order the gas  
5 at a time where daily prices are higher.

6 So you know, you're right. I mean, in terms  
7 of the standard --

8 Q. Okay. I mean, if -- I guess whose  
9 contractual -- I mean, is it -- is it costing the Atmos  
10 ratepayers more money or is AEM somehow making -- I'm not  
11 following here.

12 A. It could cost the Atmos ratepayers more  
13 money. Because this is after the bid process has occurred.

14 Q. Right.

15 A. Even if, you know, on paper the low bid was  
16 from AEM, you would incur costs -- additional cost as  
17 you're operating under the contract. And if everything  
18 ends up being daily priced -- and the daily market tends to  
19 be volatile.

20 Q. Right.

21 A. From and an LDC standpoint, you always want  
22 to buy when spot market price is cheap as opposed to maybe  
23 a first of the month price.

24 Q. Okay.

25 A. You're looking to --

1 Q. Well, I mean, Mr. Sommerer, I feel like  
2 you're turning this into a theoretical conversation here;  
3 whereas, did they do that here?

4 A. This is the reason why we're wanting to  
5 learn more about how AEM acquired the supply and whether  
6 this -- this almost gaming potential existed from AEM's  
7 standpoint because that would make a difference. That  
8 makes an affiliate different if they have that potential to  
9 game.

10 Q. Okay. Now, what about Mrs. Buchanan's  
11 contention that the -- that there were firm co--  
12 transportation contracts in place pursuant to FERC's  
13 shipper-must-have-title Rule?

14 A. That's a true statement that Atmos has firm  
15 market area transportation contracts in place and that the  
16 requirements are that the supplier, whoever won the bid,  
17 was to inject the gas into the pipeline in a designated  
18 receipt point. However, Atmos doesn't hold --

19 Q. So wait. Who designated the receipt point?  
20 Did Atmos designate the receipt point?

21 A. Atmos appears to have given flexibility to  
22 the vendor to designate the receipt point.

23 Q. Okay. Did they do that just with AEM or did  
24 they do that with other operators as well?

25 A. I can only speak to the Hannibal/Canton area

1 because that's what I've looked into in great detail. And  
2 that's what --

3 Q. Okay.

4 A. -- I'm most familiar with.

5 The RFP went out and had a discrete request  
6 for a particular receipt point. It's called Haven.

7 Q. Yes. I'm familiar -- I read that. I read  
8 that.

9 A. Okay. The Haven receipt point is the  
10 demarcation between the field zone on Panhandle Eastern and  
11 the market zone. Atmos does not hold for pretty large  
12 aspect of its portfolio any field zone Panhandle Eastern  
13 capacity.

14 That means it is beholden on vendors to  
15 either hold that field zone capacity for them or to allow  
16 the vendor enough flexibility to find a way to deliver the  
17 gas into the market area of Panhandle Eastern.

18 So the RFP goes out and basically says, we  
19 want firm gas here at Atmos. And we want it delivered to  
20 Haven and give us the first of the month bid for a baseload  
21 gas and you can use sort of a daily index price for daily  
22 needs that we might need. That's the -- how they define  
23 their RFP.

24 They have a footnote that says, we will  
25 entertain -- Atmos will entertain other delivery points.



1 we will look at other delivery points; go ahead and quote  
2 your business if you'd like to do that. We'll look at it  
3 here --

4 Q. Okay.

5 A. -- at Atmos.

6 Q. All right. Is that footnote in and of  
7 itself unreasonable or imprudent?

8 A. It could be. Not in and of itself, not just  
9 in seeing it, it's not imprudent on its face.

10 Q. Well, Mr. Sommerer, I mean, can you sense my  
11 concern that there's just a -- there seems to be a whole  
12 lot of speculation here on the part of you and Mr. Berlin?

13 A. It's a fair concern. And perhaps if you'd  
14 seen what I have from the other jurisdictions and the  
15 concern that they brought forth, that might add a little  
16 bit of --

17 Q. Okay. Well, we'll --

18 A. -- background.

19 Q. We'll get to that because that's on my list  
20 to ask about here.

21 A. Good.

22 Q. You didn't have anywhere to be for awhile,  
23 did you?

24 A. No. Not at all.

25 Q. All right. I want to go back and ask this

1 question: If a Missouri LDC buys natural gas from an  
2 affiliate, are you saying that barring some unforeseen  
3 circumstance or facts, the LDC can only pass on the  
4 affiliate's -- and I guess, cost of gas or maybe it's their  
5 weighted average cost of gas -- I'm not sure; you tell  
6 me -- on to the ratepayers through the PGA/ACA process?

7 A. Well, I would saying barring those  
8 unforeseen circumstances would be that it could very well  
9 be that the affiliate's fair market value is different and  
10 justifiably so from the LDC's fair market value. And if we  
11 can see enough information --

12 Q. But that's not your position in this case,  
13 is it?

14 A. Yes. Yes.

15 Q. Yes what? It is or isn't?

16 A. It is Staff's position that if you've taken  
17 a look at the relevant documentation and you're allowed to  
18 see what may shed light on the fair market value, and there  
19 is a reason why the fair market values are different, a  
20 justifiable reason, then it could be that AEM or any  
21 affiliate would be allowed to make profit. And the fair  
22 market values may be different.

23 COMMISSIONER DAVIS: Okay. So Mr. Fischer,  
24 Mr. Dority, you feel free to jump in here and say if we  
25 need to go into in camera for me asking highly confidential

1 questions.

2 QUESTIONS BY COMMISSIONER DAVIS:

3 Q. So is the breast of what you're saying here,  
4 Mr. Sommerer, that okay, Atmos puts out the RFP. AEM gets  
5 the RFP and then goes out and buys the gas to fill the  
6 contract; gets it at a lesser price and then therefore  
7 that's why the price of the gas should be imputed to Atmos?

8 A. Not necessarily.

9 Q. Okay. Then give me a little help here.  
10 what are you saying?

11 A. That if AEM by virtue of its affiliate  
12 relationship with AEC is able to find a way to buy the gas  
13 or potentially buy the gas more cheaply merely by virtue of  
14 its affiliated relationship, then I think that's a  
15 situation you have to look at very closely.

16 Q. And so -- I mean, once again, you're using  
17 the phrase "if" and I'm just trying to figure out --

18 Okay. We got to -- let's move on here.  
19 Let's go back to "serious doubt".

20 JUDGE WOODRUFF: Commissioner Davis, we've  
21 been going for a couple of hours. We probably need to take  
22 a break if you're at a breaking point.

23 COMMISSIONER DAVIS: Let me just ask a  
24 couple of "serious doubts" that I have and then how about  
25 we take a break?

1 JUDGE WOODRUFF: That'd be great.

2 QUESTIONS BY COMMISSIONER DAVIS:

3 Q. Okay. What is the -- I mean, you use  
4 "serious doubt" in your testimony. Mr. Berlin has  
5 referenced the term "serious doubt" and obviously it has a  
6 legal meaning. I mean, what is the serious doubt that you  
7 have raised in this case? Is it just the fact that this is  
8 an affiliate transaction or is it more?

9 A. That's certainly part of it. I think you  
10 have to be skeptical when you have an affiliated  
11 transaction. You have to apply extra scrutiny to it  
12 because it isn't, in my view, an armslength transaction.  
13 And -- so that's one factor.

14 Another factor is we looked at where AEM is  
15 in terms of the corporate structure or the corporate  
16 organization. It was clear to us that AEC has, you know,  
17 authority over AEM, has access to AEM's records.

18 And the way that compensation, bonus  
19 compensation at AEC caused some more concern for us because  
20 it seemed like there was an appearance -- an appearance of  
21 a conflict of interest when it's possible for the gas LDC  
22 or the management of the gas LDC to indirectly benefit  
23 anytime that the unregulated affiliate benefits. So that  
24 causes some concern as well.

25 And then, you know, another area of concern

1 is, is was that by AEM's own admission or the provision of  
2 the own profit/loss, it was clear that there was a pretty  
3 wide variance between the revenues that AEM took in on the  
4 deal versus the cost, AEM's fair market value.

5 And we've been told that this is a  
6 supply-only deal; pretty straightforward. Shouldn't you be  
7 able to go to that point and just sort of independently  
8 look at it and -- so that raised some questions in Staff's  
9 mind as well.

10 Q. So it's a supply-only deal where they  
11 provide the gas and they were able to provide the gas  
12 significantly cheaper to the tune of \$360,000 cheaper than  
13 their bid?

14 A. The original AEM calculation was around  
15 \$160,000 profit and loss and Staff made some adjustments to  
16 their profit and loss. But yeah, that 350,000 is our view  
17 of their profit and loss.

18 Q. Okay. Now, let me ask you: Do you think  
19 that Atmos considered all the costs incurred to complete  
20 the transaction?

21 A. In their evaluation of the RFP?

22 Q. Yes.

23 A. I think there are some considerations about  
24 how much daily gas they may be buying that -- it's  
25 questionable how carefully they considered the interplay

1 between the first of the month purchases and what they need  
2 in the daily market.

3 Q. Okay. So were they making a lot of spot  
4 market purchases on top of this contract?

5 A. They may -- they're really called swing  
6 purchases, I think is a better term for it. Spot market  
7 purchases may be okay to use. They're both daily concepts  
8 and they're usually -- those kinds of purchases are made in  
9 the daily market where you're paying a spot price, a day  
10 price for the natural gas.

11 And anything that was purchased by Atmos  
12 during this time period would have been pursuant to that  
13 contract. This is a full requirements contract.

14 Q. Right.

15 A. And it has features of baseload and swing.  
16 So if Atmos needs to go into a mode of buying more gas  
17 because their storage appears to be a little bit low or gas  
18 didn't show up in November and it got really cold in  
19 December, they have to tap into the provision of their  
20 contract that says, do you want swing supply today.

21 And the LDC, the Atmos buyers, would say  
22 yeah. We want a week's work of swing at the daily price,  
23 which is governed by the contract. And that interaction  
24 can drive up the total cost of the contract.

25 Q. Okay. And did that happen here?

1           A.       Yes.

2                   COMMISSIONER DAVIS: All right. Judge,  
3 let's take a break here.

4                   JUDGE WOODRUFF: We'll take a 10-minute  
5 break and come back at 4:15.

6                   (Wherein, a recess was taken.)

7                   JUDGE WOODRUFF: All right. We are ready to  
8 go.

9 QUESTIONS BY COMMISSIONER DAVIS:

10           Q.       All right. Going back Mr. Sommerer, did you  
11 look at the other rejected bids for the Hannibal property?

12           A.       Yes.

13           Q.       Okay. Hang on just a second. Do you have  
14 any reason to dispute that Atmos sent the RFP letter out to  
15 more than 50 entities for the Hannibal property?

16           A.       I don't recall the exact figure, but if  
17 that's what's in testimony, I have no reason to dispute  
18 that number.

19           Q.       Okay.

20                   COMMISSIONER DAVIS: Judge, can we go into  
21 camera for a minute here?

22                   JUDGE WOODRUFF: All right.

23                   (REPORTER'S NOTE: At this point, an  
24 in-camera session was held, which is contained in Volume 4,  
25 pages 140 to 143 of the transcript.)

1 JUDGE WOODRUFF: Okay. We're back in  
2 regular session.

3 QUESTIONS BY COMMISSIONER DAVIS:

4 Q. Okay. We talked about your previous noted  
5 concerns in the ACA recommendation. Can you summarize what  
6 those concerns were or are?

7 A. This is going from memory. I don't have the  
8 Staff recommendation in front of me. But these concerns  
9 went --

10 Q. Can you provide that document to us and tab  
11 the relevant part of it?

12 A. Yes.

13 Q. Okay. Thank you.

14 A. Yes.

15 Q. But go ahead and summarize it, if you would.

16 A. My recollection was that the RFP be provided  
17 as broadly as possible. I think we have some suggestions  
18 about posting it on their website or at least posting some  
19 of the discussions that were going back and forth between  
20 the vendors and Atmos in terms of questions or  
21 clarifications. We wanted to make sure that everyone had  
22 access to the same information.

23 I think I had seen one situation where AEM  
24 was still noted as an agent to AEC on the Texas Eastern  
25



1 system. And I think Atmos was willing to address those  
2 staff concerns.

3 Q. Okay. So they addressed those concerns?

4 A. That was their answer in their staff  
5 response. Yes.

6 Q. Do you dispute that they addressed those  
7 concerns? I mean, your statement -- I mean, you seem to  
8 imply that they did and then now you're saying that  
9 represented, so which is it?

10 A. To the best of my information -- and the  
11 '08/'09 audit is still underway, and so we would want to  
12 test those compliance actions of Atmos to make sure that  
13 they were following through. But I have no reason to  
14 believe that they, you know, have not done those  
15 corrections.

16 Q. Okay. Now, going back to page 4, lines 19  
17 and 20, you -- well, it's actually a little bit after that.  
18 You state that the Hannibal area only got four bids  
19 including AEM in this bid. And you seem to imply that that  
20 wasn't enough. Is four bids not enough?

21 A. Four bids could be enough. I think you  
22 would want to make sure that the bids that were coming in  
23 made sense. In other words, you didn't have to qualify  
24 them in terms of whether they were conforming or there  
25

1 wasn't a lot of confusion about the design of the RFP or  
2 what the requirements of the RFP was.

3 So four, to the extent that you have, I  
4 think an armslength transaction environment, may well be  
5 adequate.

6 Q. Okay. And certainly from all appearances it  
7 looks like that in the Hannibal case at least three of  
8 those bids were armslength, were they not?

9 A. Yes.

10 Q. And would it be fair -- would it be fair to  
11 characterize that the other -- that AEM as well as the  
12 other bidders are all -- as Ms. Buchanon phrased it -- you  
13 know, some of the largest natural gas marketers in the  
14 country?

15 A. Yes.

16 Q. So you've thoroughly reviewed the bids for  
17 this Hannibal property. Correct?

18 A. Yes.

19 Q. And did you see anything that raised  
20 concerns?

21 A. Based upon some of the discovery that has  
22 taken place during the procedural schedule in this case,  
23 I've noticed that there was some bidder confusion with what  
24 Atmos was requiring. And it related to whether or not  
25

1 Atmos -- and this may -- are we still in camera?

2 COMMISSIONER DAVIS: No. Let's go into  
3 camera because I want to hear this.

4 (REPORTER'S NOTE: At this point, an  
5 in-camera session was held, which is contained in Volume 4,  
6 pages 148 to 151 of the transcript.)  
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1 JUDGE WOODRUFF: And we're back in regular  
2 session.

3 QUESTIONS BY COMMISSIONER DAVIS:

4 Q. Okay. During this period, I believe that  
5 AEM had contracts -- or during all or part of this period  
6 AEM had contracts on four of the different Atmos  
7 properties; Piedmont, the Hannibal/Canton area, Greeley --  
8 it's lovely this time of year -- and Butler. But you're  
9 only making adjustments on the Hannibal and the Butler  
10 area. Why just those two areas and not Piedmont or  
11 Greeley?

12 A. The Greeley system is part of a much larger  
13 RFP that's issued. Missouri's towns in the Greeley system  
14 are only three or four very small communities south of  
15 Kansas City.

16 Q. Uh-huh.

17 A. And Atmos packages their bid -- their RFP,  
18 for the Greeley system with Kansas in terms of shopping  
19 this to the marketing community.

20 Q. Right.

21 A. And Kansas is around 95, 97 percent of the  
22 total. So since Missouri is collapsed into the RFP  
23 process, Missouri is benefiting by the larger portfolio  
24 that serves Greeley, Kansas and Greeley, Missouri. And in  
25 fact in looking at it, you know, AMA [sic] will have some

1 profit there on the Greeley system. And we didn't go any  
2 farther than to evaluate the bids that resulted because we  
3 saw some significant pricing benefit for the customer in  
4 Missouri by being associated with that RFP process.

5 It was an asset management agreement. It  
6 was turning over to the winner of the bid the storage and  
7 the transportation assets of the LDC, mainly Kansas. And  
8 what we saw there was prices that were below index price,  
9 substantially below.

10 And just based upon the assessment of the  
11 value that was coming back to Missouri and the fact that  
12 Missouri was a very small piece of this, I believe it was a  
13 fair -- it was a fair process for Missouri. Missouri got a  
14 good price. That really involved the nature Greeley in  
15 Missouri.

16 Q. Okay.

17 A. The fact that it was --

18 Q. And it sounds like they actually got some  
19 value?

20 A. Yes.

21 Q. But you're not going to give any offset to  
22 your subtractions for Hannibal and Butler for that value,  
23 are you?

24 A. The value is, I think, much more a thing of  
25 question with the supply-only deal. I understand that

1 upfront they won the bid and that you can sort of assess  
2 the value against the armslength transaction, but there  
3 were extra costs that were incurred during the period that  
4 may not have been fair.

5 Q. Okay. Now, what about Piedmont?

6 A. Piedmont, another very small system that's a  
7 subset in terms of an RFP package of the SEMO system,  
8 Southeast Missouri System. And a very small community, I  
9 think maybe 1,000 customers in total. And very few bidders  
10 in terms of consistency of bidding, who bids year after  
11 year.

12 And in that respect, Atmos had the argument  
13 that's its affiliate was actually interjecting some more  
14 competition potentially for Piedmont because there was only  
15 one other bidder for like two or three years running.

16 My under-- are we still in camera?

17 COMMISSIONER DAVIS: No.

18 JUDGE WOODRUFF: No. We're not in camera.

19 COMMISSIONER DAVIS: No. Let's go in  
20 camera. Sorry about that viewers.

21 (REPORTER'S NOTE: At this point, an  
22 in-camera session was held, which is contained in Volume 4,  
23 pages 155 to 156 of the transcript.)  
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