

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

FILED²
NOV 02 2001

Missouri Public
Service Commission

In the matter of Associated Natural Gas)
Company's Tariff Revisions to be)
Reviewed in its 1995-1996 Actual Cost)
Adjustment.)

Case No. GR-96-227

In the matter of Associated Natural Gas)
Company's Tariff Revision to be)
Reviewed in its 1996-1997 Actual Cost)
Adjustment.)

Case No. GR-97-191

In the matter of Associated Natural Gas)
Company's Purchased Gas Adjustment)
Factors to be Reviewed in its 1997-1998)
Actual Cost Adjustment.)

Case No. GR-98-399

In the matter of Associated Natural Gas)
Company's Purchased Gas Adjustment)
Factors to be Reviewed in its 1998-1999)
Actual Cost Adjustment.)

Case No. GR-99-392

In the matter of Atmos Energy Corpor-)
ation's Purchased Gas Adjustment)
to be Reviewed in its 1999-2000 Actual)
Cost Adjustment)

Case No. GR-2000-573

**FIRST AMENDED
SETTLEMENT AGREEMENT AND RELEASE**

This First Amended Settlement Agreement and Release ("this Agreement"), dated this 2nd day of November, 2001, is entered into by and between Associated Natural Gas Company ("ANG"), a division of Arkansas Western Gas Company, an Arkansas corporation; Atmos Energy Corporation, a Virginia and a Texas corporation; the Office of the Public Counsel ("OPC"), an administrative agency of the State of Missouri; and the Staff of the Missouri Public Service Commission ("Staff"); (collectively

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referred to as "the Parties"). This First Amended Settlement Agreement and Release completely replaces and supersedes the Settlement Agreement and Release dated July 11, 2001, filed with the Missouri Public Service Commission ("Commission") on July 17, 2001.

WHEREAS: Currently there are five cases pending which involve ANG, the Commission, and some or all of the other Parties. These cases are briefly described¹ as follows:

1) **Case No. GR-96-227** is an Actual Cost Adjustment ("ACA") case involving the 1995-1996 ACA period (September 1, 1995 through August 31, 1996) in which, on January 26, 1999, the Commission issued a Report and Order where it determined that ANG should reduce the gas costs in its Southeast Missouri (SEMO) district by \$254,476 to eliminate an alleged double recovery of gas costs. A writ of review of this case was sought by ANG in the Circuit Court of Cole County, Missouri (Case No. 19V019900393), which reversed the Commission's decision. The Commission appealed to the Missouri Court of Appeals, Western District (WD 58032), which reversed the Circuit Court's decision and upheld the decision of the Commission. An Application for Transfer by ANG was denied by the Missouri Supreme Court (SC83370) on March 20, 2001. The full amount of the Commission's disallowance was paid into the registry of the Circuit Court of Cole County by ANG under the terms of a stay order and is being held in an interest bearing account.

¹ The descriptions of the cases are intentionally cursory for these purposes and do not purport to convey the complexity of the issues present in these cases.

2) **Case No. GR-97-191** is an ACA case involving the 1996-1997 ACA period (September 1, 1996 through August 31, 1997) in which, on February 29, 2000, the Commission issued a Report and Order where it determined that ANG should reduce the gas costs in its SEMO district by \$382,182 to eliminate an alleged double recovery of gas costs. A writ of review of this case was sought by ANG in the Circuit Court of Cole County, Missouri (Case No. 00CV323609), where the case has been briefed but not argued orally. A request for stay order was made by ANG and ANG has offered to pay the \$382,182 into the registry of the court, but no stay order has been entered and ANG has made no payments into the registry of the Court regarding this matter.

3) **Case No. GR-98-399** is an ACA case involving the 1997-1998 ACA period (September 1, 1997 through August 31, 1998). On August 6, 1999, the Staff filed a recommendation in which it proposed adjustments which, if implemented, would cause ANG to refund \$354,963 to customers in the SEMO district. No procedural schedule has been established for resolution of this case at the Commission.

4) **Case No. GR-99-392** is an ACA case involving the 1998-1999 ACA period (September 1, 1998 through August 31, 1999). On August 1, 2000, the Staff filed a recommendation in which it proposed adjustments which, if implemented, would cause ANG to refund \$1,031,753 allegedly related to Gathering and Transmission ("G&T") charges, some of which relate to Case No. GR-98-399. This "G&T issue" is related to an issue in Case No. GR-97-272, discussed below, where the Commission ordered the "deregulation" of certain

G&T facilities which had previously been a part of ANG's rate base, an order which has been contested and appealed by ANG. No procedural schedule has been established for resolution of this case at the Commission. The Staff also raised issues in its recommendation regarding an analysis of reserve margins and the production of a "peak day study." There is currently some controversy between Atmos and the Staff regarding the content of the "peak day study." The issues related to the "peak day study" and associated reliability issues are not addressed by this Agreement.

5) **Case No. GR-2000-573** is an ACA case involving the 1999-2000 ACA period (September 1, 1999 through August 31, 2000). Although this case started out as a case involving only ANG, ANG sold its Missouri properties to Atmos, effective June 1, 2000. Therefore, ANG's portion of this case only involves the period from September 1, 1999 through May 31, 2000; the period during which it was the owner of the Missouri properties. On October 30, 2000, the Commission issued an order changing the style of the case to reflect Atmos' current ownership of the former ANG Missouri gas properties. The Staff has not filed a recommendation regarding its audit for this ACA period. There is no procedural schedule for this case pending at the Commission.

AND WHEREAS, ANG sold its Missouri natural gas properties to Atmos in a transaction approved in Commission Case No. GM-2000-312. As a result, as of June 1, 2000, ANG no longer has any public utility property or customers in the state of Missouri subject to regulation by the Commission.

AND WHEREAS, to avoid further expense, inconvenience, and the distraction of

complex, burdensome, and protracted litigation presented by the above-referenced cases and potential appeals therefrom, the Parties, without admitting liability of any kind whatsoever, have agreed to enter into a settlement of all disputes, causes of action, bases for complaints or adjustments, and claims either asserted or which could be asserted, relating to or arising from the matters addressed herein, and this agreement to settle is based on good and valuable consideration, the fact and sufficiency of which the Parties hereby acknowledge.

AND WHEREAS, the Parties have concluded that a settlement is in their respective best interests, and the Parties are, therefore, willing to enter into a settlement of the matters addressed herein on the terms set forth herein, which will result in the final resolution of these cases and the releases more particularly addressed herein.

AND WHEREAS, the Parties hereto recognize and acknowledge that each Party has independent perspectives and reasons for executing this Agreement and conducting its ongoing business or governmental responsibilities, and that each Party specifically reserves the right to discuss, propose, or file evidence of such independent position as may be necessary in any public or regulatory forum, provided such disclosure is in compliance with any protective orders which have been issued in any Commission cases pertaining thereto.

NOW THEREFORE, for and in consideration of the premises, and the mutual promises and releases and agreements herein contained, and for other good and valuable consideration, the fact and sufficiency of which are hereby acknowledged by the Parties, the Parties agree as follows:

1. Implementation of Settlement:

1.1. **Case No. GR-96-227:** As noted, ANG's application for transfer has been denied by the Supreme Court of Missouri and a mandate issued. In consideration of this Agreement, ANG agrees to refrain from taking any further actions in any court to seek further judicial review of the Commission's Report and Order therein. In addition, since Two Hundred Fifty Four Thousand Four Hundred and Seventy Six Dollars and No Cents (\$254,476.00) has been paid by ANG into the registry of the Circuit Court of Cole County, and there has been an undetermined amount of interest which has accrued thereon while in the registry of the Circuit Court of Cole County, within five (5) business days after this Agreement is approved by a final, effective and non-appealable Commission order, ANG will file a motion with the Circuit Court requesting that the Circuit Court enter its order releasing the \$254,476.00 and all accrued interest thereon to ANG, in trust, for ANG to expeditiously transfer the same to Atmos in accordance with the terms of section 1.7 of this Agreement, and for Atmos to then disburse the same to the applicable customers pursuant to the terms of this Agreement and the Court's order. The motion will request that the Circuit Court turn over all funds pertaining to the Consent Order Granting Stay so that no funds would remain under Circuit Court jurisdiction after the transfer to ANG as provided herein. This is consistent with paragraph 5 of the Consent Order Granting Stay which provided for the principal and interest to be transferred to ANG to make the refunds. No Party to this agreement shall oppose such dismissal, or aid any third party in opposing same. Without limiting the scope or effect of the release described in section 2 hereof, each Party hereby acknowledges that an effect of this Agreement is to preclude it from proposing,

determining or implementing any disallowances, credits or refunds at the expense of ANG which relate to ANG's gas costs arising out of its operations in Missouri during the period of September 1, 1995 through August 31, 1996.

1.2 **Case No. GR-97-191.** As noted, the judicial review of this case is pending in the Circuit Court of Cole County in Case No. 00CV323609. Within five (5) business days after this Agreement is approved by a final, effective and non-appealable Commission order, ANG will file a motion to dismiss Case No. 00CV323609 with prejudice. No Party to this agreement shall oppose such dismissal, or aid any third party in opposing same. The Parties other than ANG agree that the dismissal of this proceeding by ANG in the manner described is the result of and dependent upon this Agreement and, therefore, no Party shall seek to enforce the Commission's Report and Order issued February 29, 2000, in Case No. GR-97-191, as a result of such dismissal since such Report and Order is being compromised by this Agreement. Without limiting the scope or effect of the release described in section 2 hereof, each Party hereby acknowledges that an effect of this Agreement is to preclude it from proposing, determining or implementing any disallowances, credits or refunds at the expense of ANG which relate to ANG's gas costs arising out of its operations in Missouri during the period of September 1, 1996 through August 31, 1997.

1.3 **Case No. GR-98-399.** As noted, this case is pending at the Commission and there is no procedural schedule. Within thirty (30) days after this Agreement is approved by a final, effective non-appealable Commission order, and conditioned upon the payment by ANG of the Lump Sum Payment(s) described in section 1.8 hereof, and ANG's performance of the other conditions of this Agreement,

the parties recommend that the Commission issue an order which acknowledges this Agreement, recites that all of the issues presented in Case No. GR-98-399, or which could have been presented in that case, have been fully compromised by this Agreement, and unconditionally closes Case No. GR-98-399. As a condition for entering into this Agreement, each party is relying upon the Commission to issue an order in conformance with these provisions. Each Party agrees not to file an application for rehearing to such order. Without limiting the scope or effect of the release described in section 2 hereof, each Party hereby acknowledges that an effect of this Agreement is to preclude it from proposing, determining or implementing any disallowances, credits or refunds at the expense of ANG which relate to ANG's gas costs arising out of its operations in Missouri during the period of September 1, 1997 through August 31, 1998.

1.4 **Case No. GR-99-392.** As noted, this case is pending at the Commission and there is no procedural schedule. Within thirty (30) days after this Agreement is approved by a final, effective non-appealable Commission order, and conditioned upon the payment by ANG of the Lump Sum Payment(s) described in section 1.8 hereof, and ANG's performance of the other conditions of this Agreement, the parties recommend that the Commission issue an order in Case No. GR-99-392 which

a) separates the issues relating to ANG's natural gas purchasing practices from any and all issues relating to a "peak day study" or reliability of gas supplies on the system now owned and operated by Atmos; and

b) creates a new and separate case into which it transfers the

Atmos issues.

After the Atmos peak day and reliability issues are transferred into a new and separate case, so that the only issues remaining in Case No. GR-99-392 are ANG-specific issues, the parties recommend that the Commission issue an order in Case No. GR-99-392 which recognizes that the only remaining actual and potential issues involve the gas costs of ANG, acknowledges this Agreement, recites that all of the issues presented in that new and separate case relate to Atmos and not ANG, and that all of the issues that could have been presented in Case No. GR-99-392 relating to ANG have been fully compromised by this Agreement, and unconditionally closes Case No. GR-99-392. As a condition for entering into this Agreement, each party is relying upon the Commission to issue an order in conformance with these provisions. Each Party agrees not to file an application for rehearing concerning such order. Without limiting the scope or effect of the release described in section 2 hereof, each Party hereby acknowledges that an effect of this Agreement is to preclude it from proposing, determining or implementing any disallowances, credits or refunds at the expense of ANG which relate to ANG's gas costs arising out of its operations in Missouri during the period of September 1, 1998 through August 31, 1999.

1.5 **Case No. GR-2000-573.** As noted, this case is pending at the Commission and there is no procedural schedule. As presently structured, this case applies both to Atmos and ANG. Within thirty (30) days after this Agreement is approved by a final, non-appealable Commission order, and conditioned upon the payment by ANG of the Lump Sum Payment(s) described in section 1.8 hereof, and ANG's performance of the other conditions of this Agreement, the parties recommend

that the Commission issue an order which:

a) separates the time period relating to ANG's natural gas purchasing practices and operations in Missouri (i.e., September 1, 1999 through May 31, 2000) from the time period relating to Atmos' natural gas purchasing practices and operations in Missouri (i.e., June 1, 2000 through August 31, 2000); and,

b) creates a new and separate case into which it transfers all issues arising out of Atmos' natural gas purchasing practices and operations in Missouri during the June 1, 2000 through August 31, 2000 time period, and bars the Parties from raising any claims against Atmos in that new and separate case based on the acts, omissions, or decisions of ANG.

After creating the new and separate case and transferring all Atmos-specific issues into that separate case, so that the only remaining actual and potential issues in Case No. GR-2000-573 are those which are either raised or could have been raised regarding the gas costs of ANG relating to the September 1, 1999 through May 31, 2000 time period, the parties recommend that the Commission issue an order in Case No. GR-2000-573 which recognizes that the only remaining issues involve the gas costs of ANG, acknowledges this Agreement, recites that all of the issues presented or which could have been presented therein relating to ANG have been fully compromised by this Agreement, and unconditionally closes Case No. GR-2000-573. As a condition for entering into this Agreement, each party is relying upon the Commission to issue an order in conformance with these provisions. Each Party agrees not to file an application for rehearing concerning such order. Without limiting the scope or effect of

the release described in section 2 hereof, each Party hereby acknowledges that an effect of this Agreement is to preclude it from proposing, determining or implementing any disallowances, credits or refunds at the expense of ANG which relate to ANG's gas costs arising out of its operations in Missouri during the period of September 1, 1999 through May 31, 2000.

1.6 **Case No. GR-97-272.** This is a general rate case involving ANG. It is now pending at the Commission as the result of a remand by the Western District of the Missouri Court of Appeals in Case No. WD 57012. The next expected event is the issuance by the Commission of a new Report and Order in compliance with the Court of Appeals' instructions regarding findings of fact and conclusions of law. All Parties agree that this Agreement does not purport to effect Case No. GR-97-272 and that Case No. GR-97-272 is beyond the scope of this Settlement Agreement and Release.

1.7 **Planned Disbursement of Impounded Funds from Case No. GR-96-227.** The Parties agree that disbursement of the funds now in the custody of the Circuit Court of Cole County pursuant to the Consent Order Granting Stay entered on October 7, 1999 in Case No. 19V019900393 shall be made in accordance with the disbursement provisions contained in section 1.9 in this Agreement rather than those contained in paragraph 6 of the Consent Order Granting Stay. This minor modification is necessary because the Consent Order Granting Stay was entered before there was any indication that Atmos would be acquiring the ANG Missouri properties. Atmos acquired the Missouri properties during the middle of the period in which ANG was paying the funds into the Circuit Court. Atmos now owns the Missouri properties and therefore now exclusively controls the means of making the bill credits to customers

called for in said paragraph 6. ANG and Atmos shall make such arguments and file such pleadings as may be considered necessary by them to urge the Circuit Court of Cole County to approve the refunding of the impounded funds in a manner consistent with this Agreement, but any deviation in the refund procedure from that agreed to herein which may be ordered by the Circuit Court shall not negate this Agreement.

1.8 Lump Sum Payment(s) by ANG. When this Agreement is approved by a final, effective non-appealable Commission order, ANG shall:

a) within thirty (30) days thereafter, transfer to Atmos, by any means mutually agreeable to ANG and Atmos, including wire transfer, a "Lump Sum Payment" in the amount of Six Hundred Eighteen Thousand Five Hundred Twenty Four Dollars and No Cents (\$618,524.00); and

b) within ten (10) days after it receives the principal and accrued interest from the impounded funds in Case No. GR-96-227/Case No. 19V019900393, from the Cole County Circuit Court as a result of the motion described in **section 1.1**, transfer to Atmos by any means mutually agreeable to ANG and Atmos, including wire transfer, a "Lump Sum Payment" in the exact same amount as the principal and accrued interest it receives from the Circuit Court of Cole County as described in **section 1.7** hereof.

ANG shall have the option of either making these Lump Sum Payments to Atmos individually or collectively within thirty (30) days after this Agreement is approved by a final, effective non-appealable Commission order.

1.9 Calculation of Refund Amounts and Disbursement of Lump Sum Payment(s) by Atmos.

a) On the assumption that ANG will transmit to Atmos both the Lump Sum Payment amounts described in **section 1.8** hereof within thirty (30) days after this Agreement is approved by a final, effective non-appealable Commission order, ANG will also divide the total of those actual Lump Sum Payment(s) by the actual Ccf (one hundred cubic feet) sales to ANG and Atmos customers who were subject to the ACA process from November 1, 1999 to October 31, 2000, in the territory which was ANG's SEMO district, in order to determine a refund amount per Ccf. At the same time as it transfers the Lump Sum Payment(s), ANG will provide Atmos with the amount of refund per Ccf so calculated.

b) Upon receipt of the Lump Sum Payments and the calculation of the refund amount per Ccf, Atmos shall use the calculated refund amount per Ccf to determine the amount of a bill credit to each then-current Atmos customer who was a customer during the November 1, 1999 to October 31, 2000 period in what was ANG's SEMO district. Atmos shall commence such bill credit refunds in the manner calculated no later than forty-five (45) days from receipt of the Lump Sum Payment(s) from ANG. This refund process is consistent with the approach called for in paragraph 6 of the Consent Order Granting Stay with the exception of refunding to customers who received service during the period of November 1, 1999 to October 31, 2000 but have subsequently left the ANG or Atmos system.

c) Atmos shall not be obligated to refund more than the Lump Sum Payment(s) received from ANG.

d) To the extent that the implementation of the refund in the manner described above results in Atmos not being able to distribute the full amount of the Lump Sum Payment(s) it received from ANG, Atmos shall credit any remainder to Atmos' existing Missouri ACA balance for what was the ANG SEMO district. In such manner, that amount will be credited to the same general group of customers as a part of the Commission-approved ACA process. This provision is also consistent with paragraph 6 of the Consent Order Granting Stay in that it provided that ANG would seek Commission approval to disburse any amounts remaining after the refund process.

1.10 Contingency Plan for Disbursement:

a) The Parties contemplate that the Circuit Court of Cole County will approve the disbursement of the impounded funds in the manner anticipated by this Agreement and that the disbursement will take place as described in **sections 1.7, 1.8, and 1.9** hereof. If, however, the Circuit Court does not sustain ANG's motion (as described in **section 1.1**) to disburse the impounded funds within thirty (30) days of its being filed, or more than thirty (30) days passes after the filing of the motion with no action thereon by the Circuit Court, then the following alternative distribution plan has been agreed upon by the Parties.

b) If the conditions set out in the second sentence of section 1.10 a) occur, then ANG shall be relieved of the obligation created by this Agreement to make the Lump Sum Payment described in section 1.8 b) (being the \$254,476.00 and accrued interest) because it will not have received those

funds from the Circuit Court. ANG will still be obligated, however, to make the Lump Sum Payment described in section 1.8 a) (the \$618,524.00) and to calculate the amount of customer refund per ccf. In that event, upon receipt of the \$618,524.00, and receipt of the calculation of the refund amount per ccf, Atmos shall follow the process described in **section 1.9 b)**.

c) If the conditions set out in the second sentence of section 1.10 a) occur, ANG hereby waives any claim to the impounded \$254,476.00 and accrued interest, and the Parties agree to cooperate with the Commission to make such filings with the Circuit Court as they deem necessary to pursue the release of the impounded \$254,476.00 and accrued interest. The Parties contemplate that if the conditions set out in the second sentence of section 1.10 a) occur, the courts will ultimately determine the manner in which that amount will be distributed, and when.

2. Scope of Release of ANG.

A. In consideration of ANG's promises contained herein and the Lump Sum Payment(s), and other good and valuable consideration, the sufficiency of which is acknowledged, the other Parties hereby release and forever discharge ANG, its parent corporation and their successors and assigns, from any and all manner of claims, demands, actions, causes of action, contracts, agreements, charges, sums of money, claims for attorneys fees, lawsuits, and administrative proceedings of every kind and description, whether known or unknown, now existing or which may hereafter arise against ANG, its parent corporation and their successors and assigns, under the laws

of the United States or any state thereof, or any other jurisdiction based upon, arising out of, or regarding issues which were raised or could have been raised in Case No. GR-96-227, Case No. GR-97-191, Case No. GR-98-399, Case No. GR-99-392, and Case No. GR-2000-573, as described in this Agreement. Without limiting the generality and breadth of the foregoing release language, it is the intention of the Parties by means of this Agreement to fully compromise and settle all possible claims that have been and could have been made against ANG, and all possible changes to rates that were or could have been authorized by the Commission and charged to customers, arising out of or relating to the ACA process employed by the Commission for the time period from September 1, 1995 through and including May 31, 2000, so that ANG will not be subjected to any prudence or operational reviews or investigations or claims for refunds, credits or adjustments at the expense of ANG arising out of or related to the operation of its Purchased Gas Adjustment ("PGA") or ACA tariff provisions as they existed under the jurisdiction of the Commission prior to June 1, 2000.

B. Without limiting the generality of the foregoing release language, this settlement shall also operate to release and forever discharge ANG, its parent corporation and their successors and assigns, from obligations it assumed under paragraph 7 a. of the Unanimous Stipulation and Agreement filed March 29, 2000, and approved by the Commission on April 20, 2000, in Commission Case No. GM-2000-312, with regard to any existing or future claims arising out of or related to the operation of ANG's PGA or ACA tariff provisions under the jurisdiction of the Commission prior to June 1, 2000. Accordingly, ANG's obligations under said paragraph 7 a. are specifically not released by this Agreement as to any proceeding which relates to

Atmos' utilization of ANG's LNG Plant, or matters of the nature described in section 3 of this Agreement.

C. It is expressly stipulated and agreed by the Parties that the Lump Sum Payment(s) shall be deemed to be a singular, lump sum, one-time compromise-and-settlement payment(s) and shall not be deemed or construed to be made for a disallowance or proposal in any particular case, but rather is a settlement of all of the identified cases and any possible future claims arising out of or applicable to the time periods relevant to all the cases.

3. **Matters Not Covered By This Agreement and Release.** This Agreement shall not be construed to impair or affect

- a) the ability of any Party to file with the Commission, or
- b) the Commission's ability to consider and take action regarding, or
- c) ANG's ability to defend or contest

complaints or investigations or other actions or matters within the jurisdiction of the Commission, (such as application of the Commission's administrative rules and regulations, orders, or applicable statutes), in any future disputes involving ANG's operations prior to June 1, 2000, within the state of Missouri, so long as such matters do not arise from or relate to the PGA or ACA process employed by the Commission, all as described in section 2 of this Agreement. The Parties other than ANG each represent and warrant that there are no such complaints or investigations or actions involving ANG presently in existence or under consideration by them. Without limiting the generality of the foregoing, this Agreement shall not be construed to preclude either Parties or non-Parties from filing complaints at the Commission regarding, e.g., the

quality of service provided by ANG prior to June 1, 2000, billing disputes related to ANG's provision of natural gas service in Missouri prior to June 1, 2000, or complaints alleging ANG's failure to comply with applicable statutes or rules of the Commission, or ANG's tariff relating to its provision of natural gas service in Missouri (except for PGA and ACA provisions) prior to June 1, 2000, or to preclude the Commission from considering same. Nothing in this Agreement shall be construed as a waiver of any defense ANG may have in any such proceeding.

4. **No Admissions or Waivers.** This Agreement is a compromise of disputed claims and neither the execution of, nor all or any part of this document constitutes an admission of any violation of law, statute, rule, regulation or procedure of any kind by ANG, its parent corporation, or their successors or assigns, any and all claims of violation being expressly denied by ANG. As a compromise of disputed claims, none of the Parties shall be deemed to have approved or acquiesced in any question of Commission authority or jurisdiction, ratemaking principle, valuation method, rate design, method of cost allocation or recovery, or prudence which has been advocated in any of the cases being compromised by this Agreement, and no Party shall be prejudiced or bound in any manner by the terms of this Agreement in the above-referenced cases or any other proceeding, except as necessary to enforce the terms of this Agreement. No waiver or modification of any right ANG may have, or any defense which has been raised by ANG in any of the aforementioned cases, is intended or should be assumed as a result of this Agreement. No admission or waiver by ANG of any defense in any future proceeding is intended or may be assumed as a result of this Agreement.

5. **Provisions are Interdependent.** This Agreement has resulted from lengthy and extensive negotiations among the Parties and represents a number of finely-balanced compromises for the purpose of achieving agreement upon this package. Therefore the terms hereof are interdependent. In the event the Commission does not issue an order approving this Agreement on or before December 7, 2001, effective ten (10) days thereafter, or in the event such order is issued but does not become non-appealable due to a timely application for rehearing, this Agreement shall be void and no signatory shall be bound by any of the provisions or agreements hereof.

6. **Amendment.** Prior to its approval by the Commission, this Agreement may be amended, modified, waived, discharged or terminated only by an instrument in writing signed by all Parties.

7. **Successors and Assigns.** This Agreement will be binding upon and inure to the benefit of the successors or assigns of all Parties. Atmos will remain subject to ACA\PGA prudence reviews for all periods after its acquisition of the ANG properties on June 1, 2000.

8. **No Third Party Beneficiaries.** Nothing expressed or implied in this Agreement is intended or will be construed to confer upon or give any person or entity other than a named Party any rights or remedies under or by reason of this Agreement or any action contemplated thereby.

9. **Expenses.** Each party shall bear its own expenses, costs and attorneys' fees incurred in connection with this Agreement.

10. **Confidential Materials.** Any documents in the possession of any Party relating to the aforementioned cases which are subject to a protective order issued by

the Commission in any such case shall continue to be treated as if the protective order survives the closing of the particular case as long as such Party retains the documents.

11. **Legal Advice.** In entering into this Agreement, all Parties represent that they have relied upon the legal advice of their attorneys or attorney of their own choice, that the terms of this Agreement have been completely read and explained to them by their attorneys, and those terms are fully understood and voluntarily accepted by them.

12. **Cooperation.** The Parties agree to cooperate fully and promptly execute any and all supplementary documents which may be necessary to give effect to all of the provisions of this Agreement.

13. **Authority.** Each Party represents and warrants that it has the full right, power and authority to execute, deliver, and carry out the terms of this Agreement; that the execution and delivery of this Agreement by said Party will not result in any conflict with, breach, violation or termination of, or default under any order of any administrative agency applicable to them; their organizational documents, or any law, statute, rule, regulation, or other material instrument or agreement to which such Party is a party or by which such Party is otherwise bound.

14. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Missouri, without regard to principles of conflict of laws.

15. **Certain Definitions.** The terms "gas costs," "ACA period," "ACA balance," "ACA tariff" and "ACA process" as used herein shall be deemed to mean those terms and procedures either defined in, contained in, or implied by the portion of the Purchased Gas Adjustment provisions of the Commission-approved tariff of ANG

which describe the Actual Cost Adjustment process, as the same was in effect at the time relevant to each such ACA case, and which involve the true-up, prudence and operational investigation, audit, and review which is conducted by the Commission and its Procurement Analysis Department for each such period, and such tariff provisions are thereby incorporated herein by reference.

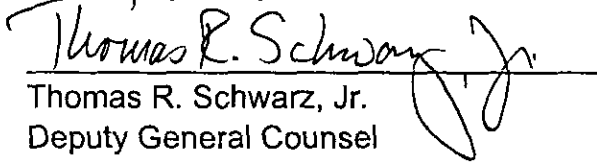
16. **Staff Recommendation.** Although the Staff does not purport to speak for or bind the Commission with respect to any matters covered by this Agreement which are now pending in circuit court, the Staff recommends that the Commission not oppose reasonable actions necessary to permit effectuation of the provisions of this Agreement.

17. **Effect of Commission Order Approving this Agreement.** The Parties have created this Agreement without listing the Commission as a Party due to considerations raised by the Staff. Nevertheless, effectuation of this Agreement requires certain specific actions by the Commission in the form of issuing orders referred to in this Agreement, and the Commission's acceptance of the exact same consequences as a Party with regard to the release provisions hereunder. Therefore, the Parties recommend that the Commission issue an order which approves this Agreement as an agreed settlement of numerous issues, since the Commission has the legal authority to do so pursuant to Section 536.060 RSMo 2000. The parties recommend that the Commission issue such order on or before December 7, 2001, effective ten (10) days thereafter so that further expenses involving litigation of one of the circuit court cases and the cases still pending at the Commission can be avoided. In issuing an Order approving this Agreement, the Commission accepts the same obligations as a signatory Party with regard to the release, and accepts the specific

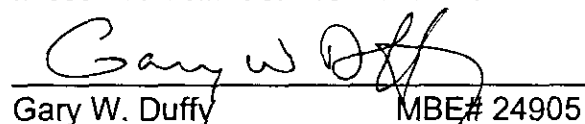
obligations to issue orders as specified in Section 1 hereof.

IN WITNESS HEREOF, the Parties have duly executed this Agreement as of the

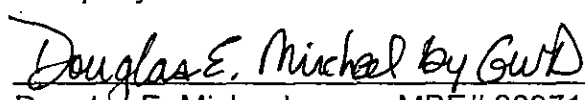
month, day and year first above written.



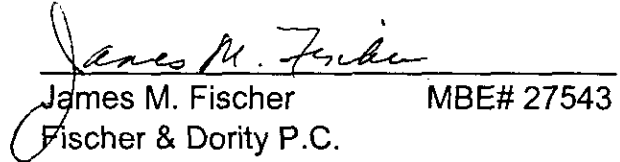
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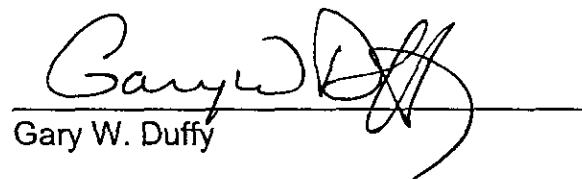


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Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record in the listed cases this 2nd day of November, 2001.



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