BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Atmos Energy Corporation's Tariff Revision Designed to Consolidate Rates and Implement a General Rate Increase for Natural Gas Service in the Missouri Service Area of the Company.	)))))	**Case No. GR-2006-0387**

DISSENTING OPINION OF
COMMISSIONERS ROBERT M. CLAYTON III AND STEVE GAW

These Commissioners dissent from the majority's Report and Order which fundamentally modifies the utility's rate design in a significant shift of PSC policy. While the Report and Order trumpets a supposed denial of any rate increase on behalf of the utility's customers, it also rejects a rate reduction suggested by staff in the amount of $1.2 million. The majority has adopted a number of new provisions to protect the company from fluctuating revenues due to changing weather patterns and changing consumer behavior including customer conservation efforts. Under the new plan, consumers will bear more risk and responsibility than previous customers of gas utilities in Missouri. Despite assertions to the contrary, the majority failed to take advantage of an opportunity to require a number of pro-consumer provisions to offset the change in rate design, especially in the areas of energy efficiency and conservation to help consumers reduce their consumption of gas and, therefore, reduce their bills. The company will now have stabilized revenues while low use consumers will pay greater, and in some cases significantly greater, amounts toward their utility bills. Those low use consumers who are also low income will be particularly hard hit. Furthermore, the fixed charges that consumers will be charged are not cost-based; they are revenue-based. This means that customers in the northeast and west are penalized for being in colder climates with a rate design that favors a lower revenue producing region in the southeast.

Lastly, consumers should be aware that the majority Report and Order contains a number of unpleasant surprises for those who do not retain traditional natural gas service. Customers who disconnect from the system on a seasonal basis will now have a new charge awaiting their return to the system. Those customers will actually be obligated to pay for gas service even when they are disconnected from the system.

I. Rate Design

Atmos filed this rate case seeking a rate increase of $3.4 million, while in response, the staff countered with an assertion that the utility was over-earning by $1.2 million. Instead of pursuing a revenue reduction or filing an over-earnings complaint within this rate case, Staff conceded ground by proposing a departure from the traditional rate design to a fixed variable rate design. Atmos' current rate design is based on a customer charge and a volumetric rate. This traditional rate design determines non-gas margin costs by using a monthly charge, which does not change, and a volumetric charge. The volumetric charge varies according to the amount of gas a customer uses, causing the larger users of gas to pay more for the distribution system as a whole. The Commission has a long history of finding the traditional rate design to be just and reasonable. These Commissioners do not have confidence in this paradigm shift occurring without thorough study and research to determine that this new rate design is just and reasonable and without company concessions for increased efficiency and conservations programs.

A. Energy Efficiency and Conservation

Natural gas is a resource that until recently has been taken for granted in this country. Until the winter of 2000-2001, natural gas prices had never exceeded $5.00 MMBtu and had fluctuated within a very narrow range. Upon deregulation of the wholesale market for natural gas, prices began to fluctuate based on supply, demand and other pressures. The communities of Palmyra, Hannibal, Canton and Bowling Green experienced significant volatility in the market as prices spiked to an all time high of $10.00 MMBtu during the winter of 2000-2001. Such wild swings in the price of gas disrupt budget planning of businesses and families alike as well as raise questions about the role of the PSC and the nature of a deregulated natural gas market.

The public outcry diminished as prices eventually receded to a level of approximately $3.00 MMBtu until 2003 when the prices began to gradually increase. Due to increased demand by industrial, commercial, utility and residential customers and constraints in supply, the price more than doubled within two years and eventually peaked in October 2005 at $14.00 MMBtu. Hurricane damage in the Gulf of Mexico disrupted or halted much of the gas production in Louisiana and the Gulf while production elsewhere failed to keep up with the demand. Additionally, allegations have been raised to question the transparency and legitimacy of the natural gas market including a number of criminal proceedings. But not for the significantly warmer winters of 2005 and 2006 was a public health and safety crisis averted that would have seen average monthly gas bills skyrocketing. While some public assistance was available, the assistance fell far short of need, having barely eclipsed the funding level set at the federal LIHEAP's inception in the early 1980's. Additionally, much of the middle class, small business and industry would have been faced with an economically devastating price increase with no relief in sight. While the prices for natural gas have since subsided from the all time high records, the prices are still high and volatile. Overall demand, supply, and speculation make it imperative that conservation potential be maximized.

For these reasons and others, it is imperative that Missouri take steps to reduce demand for natural resources by giving consumers the tools and information they need to embrace the concepts of energy efficiency and conservation. As in the debate over U.S. oil consumption and the desire to reduce dependence on foreign sources, steps must be taken now to reduce natural gas consumption rather than relying on developing facilities and infrastructure to import gas in the form of Liquefied Natural Gas (LNG) to meet demand. In fact, gas and oil prices fluctuate relative to each other suggesting a need for a reduction in consumption for both natural resources.

A fixed variable rate design must be accompanied by a substantial commitment by the company to a conservation and energy efficiency program. This is important for at least two reasons. First, the elimination of a volumetric component to the price paid for LDC service reduces the price signal sent to consumers to conserve. The Commission should therefore increase the incentives for conservation and efficiency to, at a minimum, counteract this loss. Second, nationally the policy of giving gas utilities a straight fixed variable design, which significantly reduces the utilities' financial risks due to weather fluctuation, has been linked with a corresponding agreement to implement significant conservation and efficiency programs. These Commissioners view this case as an opportunity to establish a comprehensive conservation and energy efficiency program to help educate customers on how to reduce their consumption and, in turn, save on their bills. Customers are keenly aware of the high costs of natural gas and should be prepared for taking steps to save, conserve and modernize their businesses and homes. Missouri lags behind most other states when it comes to saving energy and this Report and Order fails to demonstrate a new commitment by the Commission to help customers save in all future cases.

These Commissioners would have preferred to see a Commission mandate and commitment of the utility to begin comprehensive planning on how to help consumers reduce their gas consumption. Under the fixed variable rate design, the company's economic prospects will not be affected by warmer winters. The only variable charge on the customer's bill will be the actual price of the natural gas commodity delivered by the pipeline. By "decoupling" the company's recovery of its costs and investment from the volumes of gas sold, the company no longer has competing interests that incent it to discourage reduced gas usage. Specifically, the utility is not hurt if consumers choose to reduce their consumption. However, customers have lost some of their incentive to cut their consumption because the price signal sent to consumers to conserve has been reduced by abolishing volumetic rates. Conservation is important and that importance should be reflected by significant actions from the Commission and utilities to cause conservation by the consumer. Reduction of energy demand should be encouraged through efficiency programs, communication, and education.

The utility will reap substantial benefits from the new rate design. While this winter has proven to be decidedly frigid and bitterly cold, the trends have been for very mild winters where temperatures remain at a level sufficient to relieve customers of high winter heating bills. In fact, in the prior two winters, customers have experienced temperatures well above the norm. Even this winter heating season, Missouri temperatures remained well above normal until the beginning of 2007. During mild winters, when sales decrease, the utility's ability to earn its authorized rate of return may be more difficult and it may find it has no other alternative but file another rate case requesting increases in base rates. This rate design will permit the company to recoup its investment, regardless of the type of winter, with more stability in revenues and less volatility in its pricing. In fact, the majority has awarded the company a stable revenue stream based on revenues that allow the company to earn greater than its traditionally authorized rate of return. The Commission has the responsibility to balance the interests and risks of both the rate paying public as well as the company. The result of the new rate design shifts an inappropriate amount of risk from the company and places it on the shoulders of ratepayers. However, in exchange for giving the Company this significant benefit, the Majority has extracted insufficient effort toward the goal of energy conservation in return. The Commission has reduced the incentive to conserve by deleting the volumetric component of the rate. It should not only replace the incentive but make a significant effort to achieve substantial energy conservation and efficiency. The effort made in this case is only minimal.

These Commissioners believe that certain additional steps could have been taken to lessen the impact on the rate payer while also displaying leadership on future Missouri energy policy. The majority Report and Order adopted a figure that was half of what these Commissioners recommended be included to jump start the energy efficiency and conservation program. The utility will have the responsibility to set aside funds amounting to 1% of gross revenues (approximately $165,000), which represents $2.75 per customer per year in the Atmos service territory. With an account balance of $165,000, the parties will have the task of taking steps to design and implement a new program of energy efficiency and conservation and submit the proposal for the Commission's approval by June 30, 2007. The development of such a proposal is a positive statement by the Commission and was suggested by these Commissioners. Considering that Atmos has no energy efficiency or conservation programs in place in any of its service territories, the amount set aside for the program should be doubled to ensure that the resources are available throughout its service territories to effectively change customer actions and attitudes about efficiency and conservation. Unfortunately, the sum adopted by the majority leaves much in doubt for a successful implementation of the program.

It is important that a comprehensive plan address all customers served by Atmos. A successful plan would benefit the customers of Atmos through less commodity use. Residential consumers, especially low income families, could see immediate benefits from lower volumetric usage. Overall, lowering of demand reduces capacity issues on transmission and distribution systems and as a part of a larger strategy would potentially ease price pressures. Business and commercial interests who have the highest per capita usage have the most to gain from reducing their costs in the form of energy usage. Many of the energy efficiency leaders are large businesses who have invested in new technologies and reconsidered past practices. These Commissioners urge their colleagues to embrace energy efficiency and conservation by requiring the company to respond to the deadline of June 30, 2007, with a comprehensive program complete with an efficiency audit program, education and training, options for appliance trade-out or rebates, communication of accredited businesses that specialize in efficiency, appropriate methods of establishing targets or goals of reducing demand and any other programs adopted by other states that would reduce demand.

B. Determining the Amount of the Fixed Monthly Charge

Through a series of acquisitions, Atmos' Missouri operations consist of Greeley Gas Company purchased in 1993; United Cities Gas Company purchased in 1997; and Associated Natural Gas Company purchased in 2000. Until filing this rate case, Atmos had been operating according to the effective tariffs in each district as they were set when the preceding LDC had its last rate case. Atmos is a unique combination of infrastructures of varying age, construction and geographic location. Staff did not perform a class cost of service study on this company. There are no reliable numbers on which to depend when determining what it actually costs to serve the company's customers. A class cost of service study is incredibly important in this company's case due to its unique structure because it is an amalgamation of three, separate and distinct LDCs.

While staff testified that the cost to serve the different geographic areas where these former LDCs operate is about the same, this assertion is purely speculative without a class cost of service study to support it. Yet the rates authorized in the majority's Order are substantially higher in Northeast Missouri. Additionally, staff calculated the fixed monthly rate for each service area based on historic, volumetric rates. This is especially troubling when the NEMO district is the area with the coldest winters and the most gas consumption. If the Commission wants to shift its rate design policy to a fixed rate based on what it costs to serve a class of customers, it makes no sense to set the fixed charges on historic volumetric rates. This is especially true when a class cost of service study would have provided accurate numbers on which to rely. It is difficult to convince a customer in the NEMO service area that its fixed monthly charge should be considerably more each month than the fixed monthly charge paid by a customer in the SEMO service area without reliable cost of service figures. These Commissioners have no confidence in staff's speculative determination of an appropriate fixed monthly charge in each of the service areas that varies from the southeast of $13.92 per month to $19.43 per month in the west to the highest charge of $20.61 per month in the northeast.

These Commissioners share the Office of Public Counsel's (OPC) serious concerns for consumers with the adoption of a fixed variable rate design because the effect of this rate design is unknown and without adequate studies, customers' efforts to conserve will be diminished, there is a lack of conservation and efficiency programs and a shift of a large portion of the cost to low-use customers. The Staff argued tirelessly that customers should pay the same for their service through the fixed monthly charge because that was the only fair way to share the costs. The Staff then abandoned that position when it calculated the costs among the various territories without a valid basis.

II. Seasonal Disconnects

Some customers will also find a surprise from a number of tariff provisions approved by the majority. Customers who disconnect *for any reason* at any time throughout the year will now be required to pay the actual cost of reconnecting to the system ($24.00) as well as an additional charge for all missed delivery charges (up to three and half months). This effectively means that these customers will be paying for natural gas service during months when their usage is zero and they are fully disconnected from the system.

These Commissioners believe that customers should be able to leave and re-join the system as they choose, subject to the actual cost of reconnection to the system. Customers who do not need or cannot afford to stay on the system may now be forced to stay on the system. It is troubling to charge customers for a time period when they were not receiving service.

What makes this even worse is that this reconnection fee is not targeted at those who leave the system in the summer months and reconnect during the winter heating season. All customers who disconnect for any reason and then reconnect at the same address in a twelve month period are now required to pay this fee. This includes military personnel, college students and those attending to family or personal issues. These Commissioners would have preferred that the Report and Order, at a minimum, have included specific exceptions for military, education and health reasons to limit unfair costs, if not eliminating the reconnection fee above the actual cost of reconnection.

Seasonal reconnection fees will be an additional barrier to low-income customers who search for any way to lawfully reduce their monthly costs which includes turning off the gas when it is not necessary. Low-income customers will now have to gather even more money to pay for the system when they were not receiving any gas service. This unfair fee places even more stress on the low income customer as well as the public assistance coffers that are already over-extended. The ultimate result may be to drive away customers to propane service to the detriment of other utility customers or fail to attract new customers.

III. Customer Service

Prior to and during the prosecution of this rate case, a number of concerns have been raised regarding Atmos' customer service performance. The staff found that Atmos' customer service performance standards were not meeting the requirements of PSC rules and policy. In addition, Commissioner Clayton has received contacts from customers unhappy with customer service whether relating to the questionable accuracy of information received from utility representatives, discourteous treatment by Atmos representatives and difficulties in understanding various company payment programs. Furthermore, the record reflects that industry surveys have suggested that Atmos has performed below average in customer service satisfaction.

Staff has insisted on improvements in customer service. Calls should be answered in a more timely fashion, information is to be more accurately disseminated and the Atmos customer call center will be reviewed for improvements in responding to Missouri inquiries. In the partial Non-Unanimous Stipulation and Agreement filed on November 29, 2006, Atmos agreed to report monthly all data it currently reports to staff and the OPC on a quarterly basis, including all call center performance metrics. By reporting this information more frequently, staff will be able to more quickly identify any failure to meet PSC policy and rules. In addition, Atmos agreed to notify staff and the OPC of all plans to improve the performance of the call center services to Missouri customers and any changes that involve the answer of Atmos' Missouri customer calls by the Waco Call Center or previous TXU customer calls being answered by the Amarillo or Metairie Call Centers.

Atmos also committed to increasing its efforts to educate its customers about the budget billing process. This commitment includes informational material that will be mailed to Missouri customers who express interest in this program; training for Atmos' call center employees specifically about the Missouri budget bill program and how bills are calculated; and an annual mailing to all Missouri budget bill customers as a reminder of the billing program's requirements.

While Atmos' commitments to specific ways to improve customer service are steps in the right direction, these Commissioners encourage Atmos to open customer service centers in Missouri. Access to Atmos' customer service representatives would be much improved if Missouri customers had the opportunity to call a local number or go to an Atmos location for information and assistance.

These Commissioners urge Atmos to improve its service and find ways to satisfy the concerns raised by staff and the rate paying public. The commitments made by the company must be reevaluated in the years to come to ensure that they meet the standards set by this Commission. The public services offered by the company must be of a high quality with customers confident in the information it distributes.

IV. Conclusion

In conclusion, these Commissioners do not support the Report and Order because it implements a new rate design without thorough study and without a meaningful commitment by Atmos to a comprehensive conservation and energy efficiency program. This decoupling results in Atmos' investment risk being substantially decreased while its potential profit margin is stabilized without additional benefit to ratepayers. Additionally, these Commissioners do not have confidence in the rates assigned to the various service territories and believe that only a comprehensive class cost of service study can suggest equitable rates around the state. Finally, these Commissioners cannot support "seasonal disconnection" charges that require payment for services not received.

For the foregoing reasons, these Commissioners respectfully dissent.

Respectfully Submitted,

Robert M. Clayton III
Commissioner

Steve Gaw
Commissioner

Dated at Jefferson City, Missouri,
on this 3rd day of May, 2007.