

**FILED<sup>3</sup>**

MAR 01 2000

Exhibit No.:	<b>Missouri Public Service Commission</b>
Issue(s):	ANG Asset Purchase
Witness/Type of Exhibit:	Robertson/Rebuttal
Sponsoring Party:	Public Counsel
Case No.:	GM-2000-312

**REBUTTAL TESTIMONY**

**OF**

**TED ROBERTSON**

Submitted on Behalf of  
the Office of the Public Counsel

**ATMOS ENERGY CORPORATION  
AND  
ASSOCIATED NATURAL GAS COMPANY**

**Case No. GM-2000-312**

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**Case No. GM-2000-312**

March 1, 2000

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

In The Matter of The Joint Application of Atmos Energy )  
Corporation and Arkansas Western Gas Company, d/b/a )  
Associated Natural Gas Company, for an Order )  
Authorizing the Sale and Transfer of Certain Assets of )  
Associated Natural Gas Company Located in Missouri )  
to Atmos Energy Corporation and Either Authorizing the )  
Transfer of Existing Certificates of Public Convenience )  
and Necessity or Granting a New Certificate of Public )  
Convenience and Necessity to Atmos Energy Corporation )  
in Conjunction with Same. )

Case No. GM-2000-312

**AFFIDAVIT OF TED ROBERTSON**

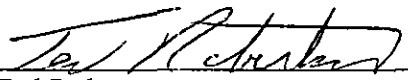
STATE OF MISSOURI     )  
                                  ) ss  
COUNTY OF COLE     )

Ted Robertson, of lawful age and being first duly sworn, deposes and states:

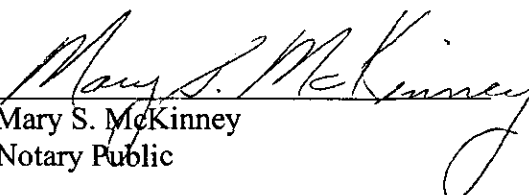
1. My name is Ted Robertson. I am a Public Utility Accountant for the Office of the Public Counsel.

2. Attached hereto and made a part hereof for all purposes is my rebuttal testimony consisting of pages 1 through 48 and Schedule 1.

3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.

  
Ted Robertson

Subscribed and sworn to me this 1st day of March, 2000.

  
Mary S. McKinney  
Notary Public

My commission expires August 20, 2001.

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**REBUTTAL TESTIMONY**  
**OF**  
**TED ROBERTSON**  
**ATMOS ENERGY CORPORATION**  
**AND**  
**ASSOCIATED NATURAL GAS COMPANY**  
**CASE NO. GM-2000-312**

**INTRODUCTION**

1  
2  
3 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

4 A. Ted Robertson, P. O. Box 7800, Jefferson City, Missouri 65102.  
5

6 Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

7 A. I am employed by the Office of the Public Counsel of the State of Missouri ("OPC" or  
8 "Public Counsel") as a Public Utility Accountant III.  
9

10 Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND OTHER  
11 QUALIFICATIONS.

12 A. I graduated from Southwest Missouri State University in Springfield, Missouri, with a  
13 Bachelor of Science Degree in Accounting. In November, 1988, I passed the Uniform  
14 Certified Public Accountant examination, and obtained C. P. A. certification from the State  
15 of Missouri in 1989.

Rebuttal Testimony of  
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1 Q. WHAT IS THE NATURE OF YOUR CURRENT DUTIES WHILE IN THE EMPLOY  
2 OF OPC?

3 A. Under the direction of the OPC Chief Public Utility Accountant, Mr. Russell W.  
4 Trippensee, I am responsible for performing audits and examinations of the books and  
5 records of public utilities operating within the State of Missouri.

6  
7 Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE MISSOURI PUBLIC SERVICE  
8 COMMISSION?

9 A. Yes, I have submitted both written and oral testimony on several occasions before the  
10 Missouri Public Service Commission. Please refer to Schedule No. 1, attached to this  
11 rebuttal testimony, for a listing of cases in which I have previously submitted testimony.

12  
13 Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

14 A. The purpose of my rebuttal testimony is to respond to the direct testimony of the Atmos  
15 Energy Corporation ("Atmos" or "Company") witness, Mr. Thomas R. Blose, Jr. Mr. Blose  
16 requests Commission approval of his Company's proposed acquisition of certain Missouri  
17 jurisdictional assets of Arkansas Western Gas Company ("AWG"). AWG is a subsidiary of  
18 Southwestern Energy Company ("SWN") and does business in Missouri via its operating  
19 division Associated Natural Gas ("ANG"). It is my intention to address the issue of  
20 whether or not the proposed purchase of the ANG assets, by Atmos, is detrimental to the  
21 public interest.

**PROPOSED TRANSACTION**

Q. WHAT IS THE ISSUE?

A. The principal issue before the Commission is whether or not the proposed sale of certain Missouri jurisdictional assets (i.e., Associated Natural Gas) of Arkansas Western Gas Company to Atmos Energy Corporation is detrimental to the public interest.

Q. WHAT DOES "DETRIMENTAL TO THE PUBLIC INTEREST" MEAN?

A. Before a utility, like AWG, can sell assets that are necessary or useful in the performance of its duties to the public it must obtain approval of the Commission. Section 393.190(1), RSMo 1986, states:

No gas corporation, electrical corporation, water corporation or sewer corporation shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system, necessary or useful in performance of its duties to the public, nor by any means, direct or indirect, merge or consolidate such works or system, or franchises, or any part thereof, with any other corporation, person or public utility, without having first secured from the commission an order authorizing it so to do.

The Commission may not withhold its approval of the disposition of assets unless it can be shown that such disposition is detrimental to the public interest. State ex rel. City of St. Louis v. Public Service Commission, 73 S.W.2d 393, 400 (Mo. banc 1934).

1 If Atmos and AWG fail to show that the sale is not detrimental to the public interest in  
2 Missouri, i.e., if it is demonstrated that the Missouri public will be harmed by the proposed  
3 sale, then the Commission should reject their proposal and not approve the sale.  
4

5 Q. DOES THE PUBLIC COUNSEL BELIEVE THAT THE TRANSACTION, AS  
6 PROPOSED, IS DETRIMENTAL TO THE PUBLIC INTEREST?

7 A. Yes, in its current form, the Public Counsel does believe that the proposed sale of assets  
8 would be detrimental to the citizens of Missouri.  
9

10 Q. PLEASE DESCRIBE THE PROPOSED ASSET SALE AND PURCHASE  
11 AGREEMENT.

12 A. According to Mr. Blose's direct testimony, page 6, lines 11 - 17:  
13

14 Atmos will account for the purchase of the Missouri ANG assets using the  
15 purchase method of accounting in accordance with the provisions of  
16 Accounting Principles Board Opinion No. 16, "Business Combinations."  
17 Accordingly, Atmos will record at its cost the fair value of the acquired  
18 assets less the fair value of the liabilities assumed, with the excess of such  
19 cost over the estimated fair value reflected as goodwill (i.e., acquisition  
20 premium). The proposed transaction will be accounted for as a transfer of  
21 net assets between companies. Assets and liabilities transferred will be  
22 accounted for at historical cost.  
23  
24

25 Continuing on page 7, lines 2 - 5, he states:  
26



1                   Atmos intends to pay for the proposed transaction by issuing a \$32,000,000  
2                   note payable at period of not more than twelve months. It is my  
3                   understanding that no Commission approval is required for the issuance of  
4                   this note since it is for a period of less than twelve months.  
5  
6

7                   Q.    DOES THE PUBLIC COUNSEL AGREE WITH MR. BLOSE'S RENDITION OF THE  
8                   ASSET SALE AND PURCHASE TRANSACTION?

9                   A.    Basically, yes; however, I would clarify that Atmos is actually purchasing only a portion of  
10                   the ANG Missouri assets and liabilities. The assets being purchased have a net book value  
11                   of \$32,646,910. In addition, Atmos will also assume various ANG liabilities valued at  
12                   \$4,206,465. (Company's response to MPSC Staff Data Requests No. 2 states these amounts  
13                   are as of September 30, 1999 and that they will be updated to reflect the actual numbers as  
14                   of the closing date.) The Asset Sale and Purchase Agreement does not include the transfer  
15                   of approximately \$6.3 million of ANG's current assets nor approximately \$2.5 million of  
16                   ANG's deferred income tax liability. (Source: OPC Data Request No. 1004) Thus, the  
17                   actual total price of the ANG Missouri assets being purchased will approximate  
18                   \$36,206,465 (i.e., \$32 million plus \$4.2 million).  
19

20                   In essence, Atmos is buying the net assets of the AWG/ANG Missouri properties at a slight  
21                   discount to book value - \$32 million purchase price verses a \$32.65 million net book value.

22                   It is only when the liabilities to be assumed are factored in that the issue of an acquisition  
23                   premium is recognized. It occurs because under the Company's explanation of the asset sale

1 and purchase agreement, it performs a calculation whereby it reduces the net book value of  
2 the assets purchased by the value of the liabilities it is assuming. (Source: MPSC Staff  
3 Data Request No. 2) The amount derived appears intended to represent the "owners equity"  
4 or net value of the company being purchase; however, this is a bit of a misnomer because  
5 Atmos is not buying the entire company (i.e., ANG) nor does the net book value of the  
6 assets become less just because Atmos agreed to assume a portion of the ANG liabilities.

7  
8 The proposed asset sale is not a "stock purchase" transaction nor is Atmos buying all of  
9 ANG's Missouri assets and liabilities. Mr. Blose's comparison of the proposed \$32 million  
10 purchase price to the equity value of only a portion of the entire Company is not an entirely  
11 accurate or fair representation of the true transaction. Atmos is buying only a portion of the  
12 assets and liabilities of ANG, not all the assets and liabilities of ANG. Thus, the  
13 appropriate way to understand the transaction is to view it as AWG is selling some, but not  
14 all of the assets of its ANG division (the ANG Missouri properties) at a discount to its net  
15 book value, but at the same time it is relieving itself of about \$4.2 million in liabilities it  
16 would otherwise be obligated to pay. AWG/SWN (the parent companies) will receive only  
17 \$32 million in cash from Atmos, but they will transfer assets with a book value of \$32.65  
18 million and obligations to pay an additional \$4.2 million of liabilities to Atmos. The result  
19 is that the **final cost** to Atmos to purchase the ANG Missouri properties from AWG/SWN  
20 will approximate \$36.85 million, over a period of time, not just the \$32 million identified in  
21 Mr. Blose's testimony.

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The following example accounting entries should help to clarify how the Company will record the purchase transaction in its financial books of record and how to appropriately calculate the acquisition premium:

	<u>Debit</u>	<u>Credit</u>
Purchase Price (note payable)	\$	\$32,000,000
Net Book of Assets Purchased	32,646,910	
Value of Liabilities Assumed		4,206,465
Goodwill (or acquisition premium)	<u>3,559,555</u>	<u>                    </u>
Total	<u>\$36,206,465</u>	<u>\$36,206,465</u>

Source: MPSC Staff Data Request No. 5017

Q. ARE THE LIABILITIES THAT ATMOS IS ASSUMING PAYABLE IMMEDIATELY?

A. No, but they are primarily short-term in nature. The liabilities being assumed are listed as \$3,846,113 being current or due and payable within one year. The amount consists of costs such as accounts payable, other taxes payable, customer deposits, accrued vacation payable and other current liabilities. There are also some other long-term liabilities being assumed. Those amounts are valued at \$360,352 and they consist of costs for customer advances for construction and SFAS 106 liabilities. If the proposed purchase receives Commission

1 approval, it is probable that some of the liabilities assumed will not be paid by Atmos for  
2 several years after the purchase transaction is completed.

3  
4 Q. IS IT YOUR OPINION THAT THE ANG MISSOURI ASSETS ARE BEING  
5 PURCHASED AT A DISCOUNT TO BOOK VALUE?

6 A. Yes. I am of the opinion that if you allocate the purchase costs of the total transaction to the  
7 assets and liabilities purchased, arguably the assets are being purchased at a discount to their  
8 net book value. This position is corroborated by the Companies own statements in  
9 Appendix 4 attached to the "Asset Sale And Purchase Agreement" dated October 15, 1999.

10 Appendix 4 states:

11  
12 1. Debt Issuance

13  
14 Joint applicant Atmos intends to issue up to \$32,000,000 in short-  
15 term debt, to be used to acquire the Missouri natural gas distribution  
16 assets of Associated Natural Gas, a division of Arkansas Western  
17 Gas. (emphasis added by OPC)  
18  
19

20 Appendix 4 also contains an Atmos Energy Company pro forma condensed balance sheet  
21 that shows the Company increasing its assets property, plant and equipment balance by \$32  
22 million and an offsetting equal increase to its liabilities notes payable balance for \$32  
23 million.  
24

1 The Appendix 4 information is further corroborated in the Company's response to MPSC  
2 Staff Data Request No. 5017. The response states that to record the initial purchase Atmos  
3 will record in USOA Account 102 - Utility Plant Purchased or Sold a balance of \$32  
4 million for gas plant purchased and an offsetting entry to USOA Account 131 - Cash for the  
5 same amount. It is the Public Counsel's belief, based on the Company's representations,  
6 that the assets of ANG are to be purchased at a discount to their book value and that the  
7 Company intends to record the transaction as such in its financial books of record.  
8

9 Q. HOW IS THE ACQUISITION PREMIUM CREATED?

10 A. It is created primarily because, in addition to purchasing assets with a net book value greater  
11 than the \$32 million purchase price, Atmos has also agreed to acquire various liabilities  
12 (debts) of AWG. As I stated earlier, Atmos will assume approximately \$4.2 million of  
13 AWG's current and long-term liabilities outstanding. When the cost of the liabilities  
14 assumed is combined with the purchase price of the assets bought, and that total is adjusted  
15 for the value of the discount associated with the assets net book value, an acquisition  
16 premium of approximately \$3.56 million is created.  
17

18 As I mentioned, once the debts are assumed it is not likely that they will be paid  
19 immediately upon consummation of the purchase transaction. In all likelihood, the debts  
20 will be paid at a date later than the closing date of the asset sale and purchase agreement.

21 By not paying the debts until a later date the Company may be able to reduce the total cost

1 of the purchase transaction because of the time value of money aspect. Reduction of the  
2 total transaction cost would also result in a reduction of the ultimate total value of the  
3 acquisition premium.  
4

5 Q. HAS THE COMPANY PROVIDED ANY EXPLANATION WHY IT BELIEVES THAT  
6 THE PROPOSED PURCHASE IS NOT DETRIMENTAL TO THE PUBLIC INTEREST?

7 A. Yes, it has. Mr. Blose asserts, beginning on page 4, line 24, of his direct testimony that the  
8 proposed acquisition of the ANG Missouri assets is not detrimental to the public interest.  
9 He attempts to validate his statements by briefly describing that in today's competitive  
10 climate size and diversity are becoming increasingly important factors in the continuing  
11 success of natural gas utilities. Furthermore, experience and exposure in diverse markets,  
12 gas supply purchasing power, the overall purchasing power of a larger company, access to  
13 capital resources, and effective collaboration of management and employee resources are all  
14 positive aspects of this acquisition, and that the Missouri service areas of Atmos and ANG  
15 fit together well. However, the Office of the Public Counsel believes that while his  
16 statements may be fundamentally true, the proposed transaction, in its present form, is in  
17 fact detrimental to Missouri ratepayers.  
18

19 Q. WHY DOES THE PUBLIC COUNSEL BELIEVE THE PROPOSED PURCHASE TO  
20 BE DETRIMENTAL?

1 A. For several reasons. The first of which is that the Companies have not satisfied the  
2 standards for acquisition and mergers approved by this Commission in UtiliCorp United  
3 Inc. ("UtiliCorp"), Case No. EM-91-290. Those standards will be discussed later in this  
4 testimony. Because those standards have not been satisfied the proposed purchase is  
5 detrimental to the public interest.

6  
7 Second, the Company will incur an acquisition premium associated with the purchase of the  
8 ANG Missouri assets. As I stated earlier in my testimony, Atmos expects to incur an  
9 acquisition premium of approximately \$3,559,555 which upon consummation of this  
10 proposed transaction will be reflected on the books of Atmos Energy Corporation as  
11 goodwill (i.e., acquisition adjustment.) In his direct testimony, Mr. Blose does not state  
12 whether or not the Atmos anticipates it will seek to recover the premium in rates and/or earn  
13 a return on any unamortized premium balance. He merely mentions that the premium will  
14 be reflected on the books as goodwill. However, in its response to MPSC Data Request No.  
15 2, question #3, the Company does state that it is still evaluating whether to seek recovery of  
16 the acquisition premium.

17  
18 By leaving the issue of rate recovery of the premium recovery in limbo, the Public Counsel  
19 believes that the Company has not provided full disclosure of its intentions and thereby has  
20 not satisfied the acquisition standards set in UtiliCorp United Inc., EM-91-290. The lack of  
21 full disclosure on Atmos' part helps to magnify the potential risk to ratepayers of a future

1 unsupported rate increase. Therefore, we believe, that the proposed purchase is detrimental  
2 to the public interest.

3  
4 Third, the proposed asset sale and purchase agreement has not been structured to provide  
5 Missouri ratepayers with the benefits owed them for the deferred income taxes they have  
6 been paying in rates during the period that AWG operated the Missouri properties. Absent  
7 an appropriate credit to Missouri ratepayers for the appropriate balance of the deferred  
8 income taxes the proposed transaction is detrimental to the public interest.

9  
10 Fourth, the proposed asset sale and purchase agreement has not been structured to provide  
11 the employees of ANG who will be transferred to Atmos in the purchase with an  
12 appropriate pro-rata share of the overfunded pension fund assets for which they are entitled.  
13 Absent an additional allocation and transfer of the appropriate level of the overfunded  
14 pension fund assets the proposed purchase is detrimental to the public interest.

15  
16 Lastly, it is the Public Counsel's understanding that the Financial Accounting Standard No.  
17 106 ("FAS 106") assets to be allocated and transferred have yet to be determined.  
18 Company has stated that the assets which pertain to trust fund balances for postretirement  
19 employee benefits other than pensions ("OPEB") will be transferred within 30 days after  
20 consummation of the purchase transaction. Public Counsel believes that the allocation of  
21 the assets should be identified prior to the consummation of the purchase transaction so as



1 to allow us time to investigate the appropriateness of the amount calculated. Otherwise, the  
2 proposed purchase is detrimental to the public interest.

3  
4 In summary, the following is a listing of the concerns we have that could be considered  
5 detrimental to the public interest:

- 6  
7 1) The sale results in cost shifts to Missouri which have not been fully identified or  
8 explained.
- 9 2) Atmos pays a significant premium for the Missouri assets.
- 10 3) The sale results in the elimination of the deferred income tax offset to rate base.
- 11 4) SWN keeps excess pension assets over the related projected benefit obligation.
- 12 5) The FAS 106 liability assets to be transferred have not been determined.

13  
14 ACQUISITION STANDARDS

15  
16 Q. HAS THIS COMMISSION SET STANDARDS THAT MUST BE MET IN ORDER TO  
17 RECEIVE APPROVAL OF AN ACQUISITION OR MERGER?

18 A. Yes.

19  
20 Q. WHAT ARE THE STANDARDS?

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1 A. In Case No. EM-91-290, In the Matter of UtiliCorp United Inc., United and Colorado  
2 Transfer Company, the Commission created a supplemental set of standards for acquisitions  
3 and mergers, those being:

- 4 a. All documentation generated relative to the analysis of the  
5 merger and acquisition in question must be maintained.  
6  
7 b. The Company must present an estimate of the impact of the  
8 merger on its Missouri jurisdictional operations.  
9  
10 c. The Company must provide an assessment of the relative  
11 risk regarding items that impact its Missouri operations.  
12  
13 d. The Company must propose assurances or conditions that  
14 will address the overall merger components that pose the risk  
15 of being detrimental to the Missouri public interest.  
16  
17

18 Q. WHEN WERE THE STANDARDS DEVELOPED?

19 A. It's my understanding that the four standards were established in the Kansas Power and  
20 Light Company's proposed acquisition of and merger with Kansas Gas and Electric  
21 Company, docketed as Case No. EM-91-213.  
22

23 Q. HAVE THESE STANDARDS BEEN UTILIZED IN ANY CASE SUBSEQUENT TO  
24 CASE NO. EM-91-290?

25 A. Yes, they have. On August 5, 1993, Western Resources, Inc., d/b/a Gas Service ("WRI")  
26 and Southern Union Company, d/b/a Missouri Gas Energy ("SU") filed a joint application  
27 requesting an order from the Commission authorizing the sale, transfer, and assignment of

1 assets of WRI and SU related to the provision of gas service in the State of Missouri, and, in  
2 connection therewith, approval to perform certain other related transactions. The matter  
3 was docketed as Case No. GM-94-40. On page 8 of the Report And Order, Case No. GM-  
4 94-40, the Commission stated:

5  
6 The Commission therefore finds that the stipulation and agreement and  
7 transaction to which it applies should not be denied unless good reason  
8 exists to do so. The Commission further finds that substantial and  
9 competent evidence exists, on the record, to support the Commission's  
10 finding that the proposed stipulation and agreement, and purchase proposal  
11 is not detrimental to the public interest.

12  
13 The Commission finds that the additional standards prescribed by the  
14 UtiliCorp case, supra, which apply to acquisitions have been satisfied for  
15 purposes of this case. (emphasis added by OPC)  
16  
17

18 Q. WHY IS THE UTILICORP UNITED INC., CASE NO. EM-91-290, SIGNIFICANT?

19 A. The UtiliCorp case is important for two reasons, 1) because, like several other utilities  
20 seeking acquisition and/or merger authorization, UtiliCorp United Inc., pledged not to seek  
21 ratemaking recovery of acquisition adjustments in Missouri and 2) the Commission adopted  
22 a set of standards by which it would judge the appropriateness of future acquisitions. The  
23 Commission's Order in the case stated:

24  
25 Nonetheless, the Commission is of the opinion that future decisions on  
26 acquisitions should be based on a Missouri jurisdictional analysis as such an  
27 analysis is needed to fully evaluate the possible impact on Missouri  
28 ratepayers. The Commission finds that the conditions proposed by Staff are  
29 reasonable and should be adopted.

1 Q. WHAT OTHER COMPANIES IN RECENT HISTORY HAVE AGREED THAT IT IS  
2 APPROPRIATE TO FORGO THE RECOVERY OF AN ACQUISITION PREMIUM IN  
3 ORDER TO CONSUMMATE A PROPOSED ACQUISITION?

4 A. In Case No. GM-94-40, the parties stipulated that the acquisition premium will be recorded  
5 below the line. Beginning on page 2 of the Stipulation And Agreement, Attachment A to  
6 the Report And Order, Case No. GM-94-40, it states:

7  
8 3. The amount of any acquisition premium (i.e., the amount of the  
9 purchase price above net book value) paid by Southern Union to Western  
10 Resources for the gas properties of Western Resources shall be treated  
11 below the line for ratemaking purposes in Missouri and neither amortization  
12 nor inclusion of the premium in rate base shall be sought to be recovered by  
13 Southern Union in rates in any Missouri proceeding.  
14  
15

16 Q. PLEASE CONTINUE.

17 A. In the Matter of the Application of Southern Union Company for Authority to Acquire and  
18 Merge with Pennsylvania Enterprises, Inc., and, in Connection Therewith, Certain Other  
19 Related Transactions, Case No. GM-2000-43, Southern Union Company agreed not to seek  
20 recovery of the merger premium in rates. On page 6 of the Order Approving Stipulation  
21 And Agreement, Case No. GM-2000-43, it states:

22  
23 3. Merger Premium  
24

25 The amount of any asserted merger premium (i.e., the amount of the  
26 total purchase price above net book value, including transaction costs), paid  
27 by Southern Union for PNT or incurred as a result of the acquisition shall be

1 treated below the line for ratemaking purposes in Missouri and not  
2 recovered in rates. Southern Union shall not seek either direct or indirect  
3 rate recovery or recognition of the merger premium, including transaction  
4 costs, through any purported merger savings adjustment (or similar  
5 adjustment) in any future ratemaking proceeding in Missouri.  
6  
7  
8

9 And continuing on page 7:  
10  
11  
12

13 In addition, Southern Union shall not seek to recover in Missouri the  
14 amount of any asserted merger premium in this transaction as being a  
15 "stranded cost" regardless of the terms of any legislation permitting the  
16 recovery of stranded costs from Missouri ratepayers.  
17  
18

19 Q. HAS THE SOUTHERN UNION COMPANY AGREED TO FORGO RECOVERY OF  
20 ACQUISITION OR MERGER PREMIUMS IN ANY OTHER CASES?

21 A. Yes. As a condition to Commission approval of Case Nos., GM-2000-500, GM-2000-502  
22 and GM-2000-503, Southern Union Company offered to agree that any merger premiums  
23 shall be treated below the line for ratemaking purposes in Missouri and not recovered in  
24 rates. Furthermore, Southern Union Company offered to not seek either direct or indirect  
25 rate recovery or recognition of the merger premiums, including transaction costs, through  
26 any purported merger savings adjustments (or similar adjustment) in any future ratemaking  
27 proceeding in Missouri.  
28

1 Q. HAVE ANY OTHER UTILITIES AGREED TO FORGO RATEMAKING RECOVERY  
2 OF ACQUISITION OR MERGER PREMIUMS?

3 A. Yes. In a case involving the purchase of GTE exchanges currently pending before the  
4 Commission, Case No. TM-2000-182, the witness for Spectra Communications Group  
5 LLC, Mr. Kenneth Matzdorf, stated that his Company would not seek ratemaking recovery  
6 of the acquisition premium it expects to pay for the GTE exchanges. On page 14 of his  
7 direct testimony, lines 10-17, he stated:

8  
9 Q. How will any acquisition premium be handled in future rate  
10 filing? (sic)

11  
12 A. Spectra understands some parties' concerns that the purchase  
13 premium should not be recognized in any rate filing. Spectra  
14 also understands that the Commission has traditionally  
15 recognized original historical costs in determining the rate  
16 base for the calculation of revenue requirement. As a result,  
17 Spectra is willing to commit that it will not seek recovery of  
18 any portion of the acquisition premium in future rate filings.  
19  
20

21 Q. PLEASE CONTINUE.

22 A. A couple of electric utilities that have also agreed to forgo recovery of an acquisition  
23 premium in future ratemaking include Union Electric Company ("UE") in its purchase of  
24 the Illinois Utility Central Illinois Power Company, Case No. EM-96-149, and Western  
25 Resources Inc. in its proposed purchase of Kansas City Power & Light, Case No. EM-97-  
26 515.

1 In Union Electric Company, Case No. EM-96-149, UE agreed not to seek recovery of the  
2 acquisition premium in rates. On page two of the Stipulation and Agreement signed in  
3 Case No. EM-96-149 it states:  
4

5 2. Merger Premium  
6

7 UE shall not seek to recover the amount of any asserted merger  
8 premium in rates in any Missouri proceeding. UE has identified this  
9 amount as \$232 million.  
10  
11

12 In Western Resources Inc., Case No. EM-97-515, the Company essentially agreed to the  
13 same conditions that UE did. Beginning on page one of the Stipulation and Agreement,  
14 Case No. EM-97-515, it states:  
15

16 2. Merger Premium  
17

18 The amount of any asserted merger premium (i.e., the amount of the  
19 purchase price above net book value) paid by Western Resources for  
20 KCPL shall be treated below the line for ratemaking purposes in  
21 Missouri and not recovered in rates. The Joint Applicants, including  
22 Westar, shall not seek to recover the amount of any asserted  
23 acquisition premium resulting from this transaction in rates in any  
24 Missouri proceeding and the Joint Application shall be considered as  
25 amended in this regard. The Joint Applicants have currently  
26 estimated this amount as approximately \$870 million. In addition,  
27 Westar shall not seek to recover in Missouri the amount of any  
28 asserted acquisition premium in this transaction as being a "stranded  
29 cost" regardless of the terms of any legislation permitting the  
30 recovery of stranded costs from ratepayers.  
31  
32

1 Q. HAS ATMOS MET THE STANDARDS PRESCRIBED IN CASE NO. EM-91-290 FOR  
2 THIS CASE?

3 A. No. It is the Public Counsel's belief that the Company has not developed or provided the  
4 information that would satisfy the acquisition standards outlined above.

5  
6 Q. PLEASE EXPLAIN YOUR OPINION AS TO THIS MATTER.

7 A. Except for possibly maintaining the documentation generated relative to the analysis of the  
8 acquisition, the Company has not provided the detailed information required for the other  
9 three standards listed. While it is my understanding that the Company has provided a  
10 generic discussion of the possible lowering of Company operating and capital costs after the  
11 acquisition is consummated, it has not, however, provided any detailed estimate of the  
12 impact of the acquisition on the ANG service area or its other Missouri jurisdictional  
13 operations. Sufficient information would include items such as the detail and summary data  
14 related to the allocation of corporate overhead, service company and administrative and  
15 general costs to ANG and the other operating service areas of the Company located in  
16 Missouri.

17  
18 Neither has the Company provided an assessment of the relative risk (i.e., range of possible  
19 results) regarding items that impact its Missouri operations. For example, the Company has  
20 not even begun to address the fourth standard wherein the Company must propose  
21 assurances (e.g., rate reductions, rate moratoriums, no recovery of acquisition adjustments)



1 or conditions (e.g., expense caps, rate of return ceilings) that will address the overall merger  
2 components that pose the risk of being detrimental to the Missouri public interest.

3  
4 Q. SHOULD THE COMMISSION ALLOW THE COMPANY TO CONSUMMATE THE  
5 PROPOSED ACQUISITION PRIOR TO IT SATISFYING THE STANDARDS?

6 A. No, it should not.  
7

8 ACQUISITION ADJUSTMENT  
9

10 Q. PLEASE EXPLAIN WHAT IS MEANT BY THE ACCOUNTING TERM  
11 "ACQUISITION ADJUSTMENT."

12 A. In traditional accounting, fixed assets, such as plant, are usually recorded at "Original Cost".  
13 Original cost, as applied to utility plant, means the cost of property to the person first  
14 devoting it to public service. When utility property is purchased from another utility, the  
15 buyer is allowed to capitalize only the cost of the property when it was originally dedicated  
16 to utility service. This means that the excess paid over original cost for the property cannot  
17 be recorded in the Uniform System of Accounts ("USOA") Account No. 101, Utility Plant  
18 In Service. The difference (the premium amount) is recorded in the balance sheet plant  
19 Account No. 114, Utility Plant Acquisition Adjustments, and any amortization of the  
20 balance is booked to the balance sheet plant reserve Account No. 115, Accumulated  
21 Provision For Amortization Of Utility Plant Acquisition Adjustments. If the purchase is

1 deemed to benefit the buyer's customers, the regulatory authority may allow an offsetting  
2 amortization (expense) entry which books the premium's cost to the utility's income  
3 statement operating income via Account No. 406, Amortization Of Utility Plant Acquisition  
4 Adjustments; thus, including the premium above the line for regulatory ratemaking. If there  
5 is no benefit to customers, the premium is amortized (expensed) to the non-operating  
6 income Account No. 425, Miscellaneous Amortization.

7  
8 Simply put, an acquisition adjustment results when utility property is purchased or acquired  
9 for an amount either in excess of or below book value. Book value relates to the value  
10 placed on utility property as recorded in a company's financial books and records. It  
11 consists of the property's "original cost" less depreciation, amortization, and contributions in  
12 aid of construction ("CIAC"). If the purchase price exceeds book cost a "premium" has  
13 been paid to the seller. If the purchase price is less than book cost a "discount" has been  
14 received from the seller. This "premium" or "discount" is classified and booked on the  
15 purchasing company's financial records as an **acquisition adjustment**.

16  
17 Q. WHAT IS ORIGINAL COST?

18 A. The term "original cost", as defined by the 1976 Uniform System of Accounts for Class A  
19 and B Gas Utilities, page 12, relates to:  
20  
21

1                   2. Utility Plant to be Recorded at Cost.

2                   A. All amounts included in the accounts for utility plant,  
3                   acquired as an operating unit or system, except as otherwise  
4                   provided in the texts of the intangible plant accounts, shall be stated  
5                   at the cost incurred by the person who first devoted the property to  
6                   utility service. All other utility plant shall be included in the  
7                   accounts at the cost incurred by the utility. Where the term "cost" is  
8                   used in the detailed plant accounts, it shall have the meaning stated  
9                   in this paragraph.

10  
11  
12                  The deduction of depreciation, amortization, and CIAC from the original cost results in a  
13                  net original cost recorded on the seller's financial books and records. Thus, any property  
14                  acquired is valued on the books and records of the purchaser at the same value that the seller  
15                  placed on it. This principle is referred to as the "original cost first devoted to public service  
16                  concept."

17  
18                  Q. IS THE USE OF NET ORIGINAL COST FOR VALUING RATE BASE STILL THE  
19                  PREDOMINANT FORM OF REGULATION?

20                  A. Yes. In the State of Missouri, the use of original cost less depreciation is the accepted form  
21                  of regulation for valuing rate base.

22  
23                  Q. IS THE USE OF ORIGINAL COST FOR VALUING RATE BASE CONSISTENT WITH  
24                  GENERALLY ACCEPTED ACCOUNTING PRINCIPLES?

1 A. Yes, it is. The accounting profession's "cost principle" specifies that cash-equivalent cost is  
2 the most useful basis for **initial** accounting recognition of the elements recorded in the  
3 accounts and reported on the financial statements. It is important to note that the cost  
4 principle applies to the **initial** recording of transactions and events. Financial Accounting  
5 Standards Board Concepts Statement 5, paragraph 67, explains that the initial cost is  
6 commonly adjusted for depreciation, amortization or other allocations. The "accounting  
7 constant" is the starting point, which is the historical (i.e., original) cost of the property  
8 being purchased.

9  
10 Q. WHAT IS THE HISTORICAL BACKGROUND FOR THE POSITION THAT NET  
11 ORIGINAL COST SHOULD BE THE BASIS FOR SETTING RATES?

12 A. Abuses occurred in the 1920's and 1930's creating the need to adopt the original cost  
13 method for setting rates. Utilities were acquiring other utility properties for amounts in  
14 excess of net book value. This valuation and transfer in excess of book value (i.e., positive  
15 acquisition adjustment) created inflated rate bases which resulted in higher rates to existing  
16 customers. These customers were paying higher rates based on the **exact** same property  
17 that had been providing them utility service prior to the acquisition when in fact nothing had  
18 changed except for the valuation of the properties transferred. It was believed that it was  
19 unreasonable to charge customers higher rates for the same utility property simply because  
20 the utility providing the service was acquired by another company. Thus, the concept of  
21 using the original cost of the property when first devoted to public service came to be

1 widely accepted. This principle has served to protect ratepayers from utilities who would  
2 buy properties at inflated prices and then seek revaluation of the properties at higher levels  
3 in order to produce greater profits. Absent this protection the potential for abuse through  
4 acquisitions and mergers is the same as it was prior to implementation of the original cost  
5 concept.

6  
7 Q. PLEASE EXPLAIN HOW AN ACQUISITION ADJUSTMENT IS RECORDED IN A  
8 COMPANY'S FINANCIAL BOOKS AND RECORDS?

9 A. As I stated earlier, utility property is recorded on the accounting books and records at net  
10 original cost. Utilities must account for any difference between the acquisition cost or  
11 purchase price of property and the net original cost separately. The difference which is the  
12 acquisition premium or discount should be recorded in the USOA Account No. 114, Utility  
13 Plant Acquisition Adjustments. The expensing of the acquisition adjustment balance occurs  
14 by amortizing it through the company's income statement via Account No. 406,  
15 Amortization of Utility Plant Acquisitions Adjustments, if authorization is granted by the  
16 Commission for "above-the-line" treatment. If Commission authorization is **not** given to  
17 include the amortization for ratemaking purposes, the utility must account for the purchase  
18 price difference "below-the-line" in Account No. 425, Miscellaneous Amortization.

1 The USOA account descriptions are as follows:

2  
3 1. Account No. 114:  
4

5 A. This account shall include the difference between (a) the cost  
6 to the accounting utility of utility plant acquired as an operating unit or  
7 system by purchase, merger, consolidation, liquidation, or otherwise,  
8 and (b) the original cost, estimated, if not known, of such property, less  
9 the amount or amounts credited by the accounting utility at the time of  
10 acquisition to accumulated provisions for depreciation, depletion, and  
11 amortization and contributions in aid of construction with respect to  
12 such property.

13  
14 B. With respect to acquisitions after the effective date of this  
15 system of accounts, this account shall be subdivided so as to show the  
16 amounts included herein for each property acquisition and the amounts  
17 applicable to each utility department and to utility plant in service,  
18 property held for future use, and utility plant leased to others. (See  
19 utility plant instruction 5)  
20

21 C. The amounts recorded in this account with respect to each  
22 property acquisition shall be amortized, or otherwise disposed of, as  
23 the Commission may approve or direct.  
24

25 2. Account No. 115:  
26

27 This account shall be credited or debited with amounts which are  
28 includible in account 406, Amortization of Utility Plant Acquisition  
29 Adjustments, or account 425, Miscellaneous Amortization, for the  
30 purpose of providing for the extinguishment of amounts in account  
31 114, Utility Plant Acquisition Adjustments, in instances where the  
32 amortization of account 114 is not being made by direct write-off of  
33 the account.  
34

35 3. Account No. 406:  
36

37 This account shall be debited or credited, as the case may be, with  
38 amounts includible in operating expenses, pursuant to approval or  
39 order of the Commission, for the purpose of providing for the  
40 extinguishment of the amount in account 114, Utility Plant Acquisition  
41 Adjustments.

4. Account No. 425:

This account shall include amortization charges not includible in other accounts which are properly deductible in determining the income of the utility before interest charges. Charges includible herein, if significant in amount, must be in accordance with an orderly and systemic amortization program.

Items:

1. Amortization of utility plant acquisition adjustments, or of intangibles included in utility plant in service when not authorized to be included in utility operating expenses by the Commission.
2. Amortization of amounts in account 182, Extraordinary Property Losses, when not authorized to be included in utility operating expenses by the Commission.
3. Amortization of capital stock discount or expenses when in accordance with a systematic amortization program.

The original cost of utility plant is the cost to the owner who first placed the property into public use. If the utility property is purchased by another utility, the purchaser must record the acquisition in the appropriate "plant and property" accounts at the selling utility's original cost; similarly, the purchaser records the seller's accumulated depreciation, amortization, and contributions in aid of construction in the appropriate account(s). Any difference between the original cost and the actual price paid by a subsequent purchaser is recorded as the acquisition adjustment. **An acquisition adjustment does not represent a contribution of capital (i.e., neither cash or new**

1 investment) to the public service. It merely represents a purchase of the legal interests  
2 in the properties that were possessed by the seller.

3  
4 Q. DOES AN ACQUISITION ADJUSTMENT PROVIDE ANY ADDITIONAL BENEFITS  
5 TO MISSOURI RATEPAYERS?

6 A. No. The acquisition adjustment balance, in this case, consists of excess purchase costs over  
7 and above the net original cost of the ANG assets purchased.. **The premium paid**  
8 **provides no additional benefit to Missouri ratepayers; therefore, to allow the**  
9 **Company recovery through cost of service treatment unjustly penalizes consumers.**  
10 The acquisition premium is in fact additional earnings (i.e., a gain on the sale) from the  
11 perspective of the properties seller.

12  
13 Q. IS IT EVER APPROPRIATE TO ALLOW A UTILITY RECOVERY OF AN  
14 ACQUISITION ADJUSTMENT?

15 A. In some instances allowance of an acquisition adjustment may make sense. It may be an  
16 appropriate remedy to a critical situation. Such an instance would probably involve a small  
17 troubled company being "rescued" by a larger and financially stronger utility. In such an  
18 instance the Commission may deem it appropriate to provide an incentive for a larger, well-  
19 managed company to acquire a smaller system in cases where a premium to book value is  
20 required to accomplish the acquisition. It must be clear the smaller system currently  
21 presents a host of problems to customers and regulatory agencies such as the Missouri



1 Public Service Commission. Further, it must be evident that the problems are continuing  
2 and expected to only get worse. Even in a rescue situation, the question arises of whether or  
3 not ratepayers should be forced to reimburse the purchaser for a reward that is paid to the  
4 previous owner if it is determined that the previous owner contributed to the "troubled  
5 utility" status. As discussed earlier an acquisition premium is additional earnings paid to  
6 the sellers of the utility.

7  
8 Q. IS ARKANSAS WESTERN GAS COMPANY (i.e., ANG) A SMALL TROUBLED  
9 COMPANY?

10 A. No. ANG is not a small financially or operationally crippled utility. ANG is a division of  
11 AWG which is a wholly owned subsidiary of Southwestern Energy Company. ANG is not  
12 exactly small, with approximately 69,000 customers in northeast Arkansas, southeast  
13 Missouri, and the towns of Butler and Kirksville in western and northern Missouri,  
14 respectively. Approximately 48,000 of those customers are located in Missouri. ANG  
15 Missouri revenues for 1998 were approximately \$48 million. Those revenues generated  
16 \$4.1 million of operating income. Also, to my knowledge, the Company is not in any  
17 unusual operational trouble nor does it have an ongoing history of service problems.

18  
19 Q. HAS THE COMPANY ATTEMPTED TO CONVINCE THIS COMMISSION THAT  
20 THE RECOVERY OF THE ACQUISITION PREMIUM IS APPROPRIATE FOR  
21 REGULATORY RATEMAKING PURPOSES?

Rebuttal Testimony of  
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1 A. No. As I stated earlier, the Company has not presented its position regarding any attempt to  
2 recover the premium in future rates. Neither has it attempted to convince this Commission  
3 to permit it to book for future recovery the acquisition premium incurred by demonstrating  
4 purported savings related to the acquisition.

5  
6 Q. HAS THIS COMMISSION PREVIOUSLY APPROVED ANY UTILITY'S REQUEST  
7 FOR RECOVERY OF AN ACQUISITION PREMIUM?

8 A. No. It's my understanding that the Commission has denied all requests for rate recovery of  
9 all acquisition premiums presented to it.

10  
11 Q. PLEASE EXPLAIN HOW THE ACQUISITION PREMIUM IS A DETRIMENT TO THE  
12 PUBLIC INTEREST?

13 A. It is the Public Counsel's opinion that Commission authorization of the transaction creates  
14 the acquisition adjustment and would validate the possible future recovery of the premium.  
15 The detriment to ratepayers occurs if this acquisition premium is not immediately precluded  
16 from the possibility of rate recovery. It occurs because ratepayers are put at risk **now** of  
17 paying for the premium in future rates. A simple analogy would be that a dollar from future  
18 ratepayers still has a current present value so that the allocation of the ratepayers resources,  
19 in this case money, must be addressed now by the customer in order to be able to pay the  
20 possible higher rates later.

1 Q. IF THE COMPANY IS NOT PARTICIPATING IN SOME FORM OF AN  
2 ALTERNATIVE REGULATION PLAN, SHOULD THIS COMMISSION ALLOW IT  
3 TO RECOVER FROM RATEPAYERS MORE MONIES THAN ITS ORDERED RATE  
4 OF RETURN AND APPROVED EXPENSES?

5 A. No, of course not. The Company is a monopoly public utility, and it should not be allowed  
6 to recover or earn more than its Commission-ordered rate of return and approved expenses.  
7 Doing otherwise would violate the rate base, revenue, and expense matching concept of  
8 regulatory ratemaking.

9  
10 Q. WHAT DO YOU MEAN WHEN YOU STATE THAT THE REGULATORY  
11 MATCHING CONCEPT WOULD BE VIOLATED?

12 A. If a regulated utility company's earnings exceed its ordered rate of return plus approved  
13 expenses, it is said to be in an overearning situation. That means that the matching of its  
14 rate base and expenses with a level of sales that generates revenues to cover the Company's  
15 approved return on rate base and appropriate expenses has become misaligned. This  
16 situation can be caused by many reasons, e.g., increasing customer numbers at a time when  
17 the average expense to serve each customer is decreasing, a declining rate base, or capacity  
18 improvements due to technological advancements. If and when this type of situation occurs  
19 the OPC and/or the MPSC Staff would be entitled to file a complaint case with the  
20 Commission requesting that it order the utility to lower its rates to a level that would bring

1 the rate base, revenues, and expenses back into equilibrium. The opposite of this situation  
2 occurs when a utility files a rate case requesting a general rate increase.

3  
4 Q. HOW ELSE DOES THE PURCHASE PREMIUM CAUSE A DETRIMENT TO THE  
5 PUBLIC INTEREST?

6 A. Another reason that the acquisition is a detriment to the public interest is that, as proposed,  
7 it would leave a major issue unresolved, creating a "dark cloud held over ratepayers' heads"  
8 since the intervening parties would be forced to challenge the Company's proposed  
9 ratemaking treatment of the acquisition premium in a later case. Forcing the parties to  
10 argue and defend their positions on this issue in a later proceeding would result in an  
11 unnecessary waste of money, time and other valuable resources. This would result in costs  
12 for which the Company's customers, and Missouri taxpayers, would ultimately be held  
13 responsible. This is true even if the Commission did not rule in the Company's favor on the  
14 issue of recovery, which the Public Counsel believes will occur. That is because the  
15 Commission has considered this issue many times before, and in each case, to my  
16 knowledge, the ultimate order was that the recovery of an acquisition premium via rates is  
17 not appropriate for regulatory ratemaking. Public Counsel has serious doubts that the  
18 Commission would abandon its past rulings on this issue; thus, any efforts centered around  
19 the future regulatory ratemaking for this issue would be wasteful and a detriment to the  
20 public interest.  
21

**DEFERRED INCOME TAXES**

1  
2  
3 Q. ARE THERE ANY OTHER AREAS OF CONCERN WHICH OPC BELIEVES IT  
4 SHOULD ADDRESS IN THIS TESTIMONY?

5 A. Yes. As currently structured the proposed purchase transaction **excludes** the transfer from  
6 ANG to Atmos of credit for deferred income tax balances funded by Missouri ratepayers  
7 during the time that AWG owned and operated the Missouri assets. (Source: Asset Sale and  
8 Purchase Agreement, Section 2.4.5) The deferred income tax balance primarily represents  
9 dollars paid by Missouri ratepayers to ANG for accelerated depreciation expense.

10  
11 Since this transaction is considered a "sale of assets" by AWG/ANG as the seller to Atmos,  
12 the buyer, the deferred taxes that have accumulated throughout the life of the Missouri  
13 property will be lost to Atmos. The deferred tax reserve is used as an offset to rate base in  
14 the setting of rates. Therefore, the rate base associated with the Missouri property will be  
15 higher after the sale than it was immediately prior to the sale. AWG will retain any benefits  
16 of the Missouri deferred taxes that have previously been paid in rates by Missouri  
17 customers, while the Missouri customers will lose rate recognition of the "flow-back" of  
18 deferred taxes as a result of the terms of this proposed transaction.

19  
20 Q. WHAT IS THE VALUE OF THE DEFERRED INCOME TAXES ATTRIBUTED TO  
21 THE ANG MISSOURI ASSETS?

Rebuttal Testimony of  
Ted Robertson  
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1 A. Company's response to OPC Data Request No. 1004 provided a balance sheet of ANG  
2 Missouri operations at September 30, 1999 which shows a current deferred income taxes  
3 balance of \$722,884 and an accumulated deferred income taxes payable balance of  
4 \$1,783,649 for a total of \$2,506,533. Company also provided a response to MPSC Staff  
5 Data Request No. 11 which stated that the preliminary calendar year 1999 deferred income  
6 tax allocated to Missouri is \$2,698,156. Public Counsel believes that that once the calendar  
7 year 1999 taxes have been finalized that it is reasonable to assume that the balance of the  
8 deferred income taxes payable will approximate the preliminary 1999 amount provided by  
9 the Company.

10  
11 Q. ISN'T IT TRUE THAT THE DEFERRED INCOME TAXES BALANCE IS  
12 NORMALLY USED TO REDUCE THE AMOUNT OF RATE BASE THAT A  
13 COMPANY CAN EARN ON WHEN DETERMINING RATES CUSTOMERS WILL  
14 PAY?

15 A. Yes, it is. Since the deferred income taxes payable are essentially an interest free loan  
16 required by the federal government, **but financed by ratepayers**, the theory is that the  
17 utility **should not** be allowed to earn a return on assets it did not finance. Ratepayers have  
18 paid the monies, via ANG rates, to pay the taxes which because of the structure of the  
19 current tax laws AWG/ANG does not have to remit to the government until a later date.  
20 The utility may use the monies to finance assets and/or its operations. As the deferred  
21 income tax balance reverses it becomes a smaller amount (occurs when taxable income and

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1 the related taxes payable increase), and that smaller amount causes less of a reduction in the  
2 rate base of a company when determining future rates. Thereby, the Company is allowed to  
3 earn a return on a larger rate base. Theoretically, a rate base the Company alone has  
4 financed.

5  
6 Q. WHAT IS THE REVENUE REQUIREMENT ASSOCIATED WITH THE LOSS OF THE  
7 DEFERRED TAX RESERVE?

8 A. The revenue requirement associated with the deferred taxes would approximate \$437,101  
9 when using the preliminary calendar year 1999 deferred income tax balance of \$2,698,156  
10 and a conservative return of 10% adjusted for income taxes. That means that Missouri  
11 ratepayers rates would be \$437,101 higher than the rates that would be enacted if the  
12 deferred income tax reserve was available to appropriately reduce rate base.

13  
14 Q. DOES THE FEDERAL GOVERNMENT ALLOW THE SELLING UTILITY TO  
15 ACTUALLY TRANSFER ITS OBLIGATION FOR THE DEFERRED INCOME TAXES  
16 BALANCE TO THE PURCHASER?

17 A. No, it does not. The obligation to pay the taxes owed the federal government will stay with  
18 the selling utility. However, those same taxes have already been funded by ratepayers.  
19 Therefore, it is imperative that the ratepayers be provided with the credit due them in the  
20 setting of future rates. It's my understanding that this Commission has the authority to deny  
21 the proposed purchase transaction if it is not structured so that Missouri ratepayers will

1 receive a credit for the income tax funds that they have paid to ANG. If the Commission  
2 approves the purchase and does not order the development of such a credit then AWG/SWN  
3 will have received an unearned gain in the transaction equal to the amount of the deferred  
4 income taxes balance and Atmos will not be obligated to provide the Missouri ratepayers  
5 with the reduction in future rates that is due them.

6  
7 Q. PLEASE EXPLAIN HOW AWG/ANG RECEIVES THE UNEARNED GAIN.

8 A. A simple illustration should help to understand the process. Assume that AWG/ANG  
9 received \$100 from ratepayers, via the payment of their normal monthly bills, that is  
10 earmarked for the payment of income taxes. However, because of the structure of the tax  
11 laws the Company does not have to remit the monies to the government just yet. The  
12 monies are said to be deferred and they are, for financial reporting purposes, recorded in the  
13 deferred income taxes payable liability account. Assume further that the Company then  
14 uses the \$100 to build or buy additional assets such as distribution or service lines. In  
15 essence, the Company now has an additional \$100 of new plant, which it has sole title to,  
16 that was not financed by shareholders monies. Now assume that the AWG/ANG sells that  
17 same plant, to Atmos, at its recorded book value - \$100. AWG/ANG will probably use the  
18 money received from Atmos to pay the tax obligation owed to the government, but  
19 remember AWG/ANG also received \$100 from ratepayers to develop the plant.  
20 AWG/ANG has actually received \$200; the initial \$100 from ratepayers and a second \$100  
21 from Atmos. The \$100 received from Atmos will likely be used to satisfy its tax obligation



1 to the government (because of its liquidity) and the other \$100 will result in a booking entry  
2 that shows an AWG gain created upon the sale of the properties.  
3

4 Q. HOW SHOULD THE COMMISSION HANDLE THIS ISSUE?

5 A. Before the Commission agrees to approve the purchase of the ANG Missouri assets of  
6 AWG, by Atmos, Atmos should be required to develop a credit balance that is  
7 representative of the most current deferred income taxes balance on the ANG books of  
8 record. The credit balance could then be systematically reduced over time just as the actual  
9 deferred income taxes balance would have been. Thus, whenever Atmos comes in for a  
10 general rate increase any remaining balance can be used in the determination and  
11 calculation of future rates Missouri customers will pay. If the purchase is to be approved by  
12 the Commission, that is the only way Missouri ratepayers will be able to receive credit for  
13 the value of the deferred income taxes that they have funded for the payment of taxes not  
14 paid.  
15

16 Q. HAS THE CREDIT METHODOLOGY YOU DESCRIBE BEEN DONE BEFORE?

17 A. Yes, it has. In Missouri Gas Energy, Case No. GM-94-40, the Commission adopted this  
18 exact same methodology. The Stipulation approved by the Commission in Case No. GM-  
19 94-40 provided that the Company would recognize an additional offset to rate base to  
20 compensate for rate base deductions that were eliminated as a result of the acquisition of  
21 assets relating to the provision of gas service in Missouri by the Southern Union Company.

1           The rate base deductions eliminated as a result of the acquisition were mainly accumulated  
2           deferred taxes.

3  
4                                   **PENSION PLAN ASSET TRANSFER**

5  
6           Q.    ARE THERE ANY OTHER ISSUES WITH THE PROPOSED PURCHASE WHICH  
7           ARE A DETRIMENT TO THE PUBLIC INTEREST?

8           A.    Yes. In Section VII, Employee Matters, Paragraph 7.3, Transfer of Pension Assets And  
9           Liabilities, of the Asset Sale and Purchase Agreement attached to the Joint Application, the  
10          Companies describe how they intend to transfer the pension obligation for ANG employees  
11          being transferred with the sale of the ANG Missouri properties. The language states that an  
12          amount in cash equal to the projected benefit obligation ("PBO") of the transferred  
13          participants will be transferred from Southwestern Energy Company's Pension Plan to  
14          Atmos' Pension Plan. The language does not provide for the transfer of any excess of  
15          pension fund assets over the PBO allocable to the employees being transferred. Public  
16          Counsel believes that at a minimum a portion of the overfunded assets that were achieved as  
17          a direct result of the credits for Missouri operations that were deposited into the pension  
18          plan's investment vehicles (i.e., trust) should also be included in the pension plan asset  
19          transfer.  
20

1 Q. IS THE COMPANY OPPOSING THE TRANSFER OF ALL THE EXCESS PENSION  
2 FUND ASSETS?

3 A. Yes. In response to MPSC Staff Data Request No. 4, the Company stated:  
4

5 Due to the volatility in the stock market, plan assets can and do change  
6 substantially from year to year. For example, as of September 30, 1999, the  
7 plan assets have decreased over \$3.4 million from \$71,518,000 to  
8 \$68,100,000, while the projected benefit obligation has increased to  
9 \$64,000,000 (thus shrinking the overfunding substantially to approximately  
10 \$4.1 million at that point).

11  
12 Additionally, at the time Southwestern Energy Company acquired  
13 Associated Natural Gas in 1988, the Associated Plan required annual  
14 contributions while the Southwestern Plan was overfunded. As noted on the  
15 attached spreadsheet, the Associated Plan required contributions of  
16 \$1,077,752 over the 1988-1992 period at which time the Associated Plan  
17 was merged into the Southwestern Plan. The Southwestern Plan did not  
18 require any contributions during this same period. Further, as noted on the  
19 attached, while the Associated Plan assets approximated the accumulated  
20 benefits (ABO) in 1989, the Southwestern Plan assets exceeded the  
21 accumulated benefits (ABO). Thus, any excess overfunding should not  
22 inure to the Associated Natural Gas ratepayers, but rightly belongs to the  
23 Southwestern Plan.  
24  
25

26 Q. WHEN WERE THE PENSION PLANS MERGED?

27 A. The plans were merged as of January 1, 1993. (Source: MPSC Staff Data Request No. 4)  
28

29 Q. WAS THE ANG PENSION PLAN UNDERFUNDED DURING THE PERIOD 1989 TO  
30 1992?

1 A. Financial Accounting Standard No. 87 ("FAS 87") states that to determine whether the  
2 pension plan assets are underfunded or overfunded the projected benefit obligation balances  
3 are compared to the fair value of the pension plan assets. If the pension plan assets are less  
4 than the PBO, the plan is underfunded. If the pension plan assets are greater than the PBO,  
5 the reverse is true. OPC's review of the ANG's pension plan actuarial reports indicates that  
6 up until plan year 1991 the pension plan was underfunded based on this criteria; however,  
7 beginning with plan year 1991, the actuarial report identifies that the value of the pension  
8 plan assets exceeded that of the PBO. The continuation of the overfunded status of the  
9 pension plan fund was further corroborated by the actuarial report for plan year 1992 which  
10 also showed that the value of the pension plan assets again exceeded the PBO.

11  
12 Interestingly, the Company's response to MPSC Staff Data Request No. 4 also notes that  
13 during the years 1989 through 1992 the market basis of the pension plan assets was actually  
14 overfunded 6%, 12%, 16% and 22%, respectively, when compared to the present value of  
15 the accumulated benefit obligation (APO).

16  
17 Q. WHAT IS FINANCIAL ACCOUNTING STANDARD NO. 87?

18 A. Financial Accounting Standard No. 87 is the authoritative accounting document that defines  
19 the methodology used by the public accounting profession to recognize pension expense,  
20 for financial reporting purposes, related to the provision of pension plan benefits.  
21

1 Q. WHAT DOES THE ACCUMULATED BENEFIT OBLIGATION REPRESENT?

2 A. The accumulated benefit obligation is the actuary's estimate of the employer's benefit  
3 obligation based on current and past compensation levels. The accumulated benefit  
4 obligation includes no assumption about future employee compensation levels. Therefore,  
5 it would be the employer's current obligation if the pension plan was discontinued as of the  
6 measurement date.

7  
8 Q. HAS SOUTHWESTERN ENERGY COMPANY AGREED TO TRANSFER  
9 LIABILITIES AND ASSETS EQUAL TO THE AFFECTED GROUP'S PROJECTED  
10 BENEFIT OBLIGATION?

11 A. Yes, it has.

12  
13 Q. WHAT DOES THE PROJECTED BENEFIT OBLIGATION REPRESENT?

14 A. The projected benefit obligation is the actuary's estimate of the employer's total benefit  
15 obligation as of the measurement date based on assumptions about future compensation  
16 levels of employees. This estimate is based explicitly on the pension benefit formula. The  
17 projected benefit obligation as of a particular measurement date is the present value of the  
18 employer's future pension obligations to pay retiree's benefits assuming that (1) the plan  
19 continues in effect and (2) actuarial estimates do not change. If the pension benefit formula  
20 does not specify that pension benefits will be based on future compensation levels, the  
21 accumulated benefit obligation and the projected benefit obligation will be equal.

1 Otherwise, the projected benefit obligation will be higher than the accumulated benefit  
2 obligation.

3  
4 Q. WHAT DO PENSION PLAN ASSETS REPRESENT?

5 A. Pension plan assets, as of any measurement date, include the cumulative:

- 6 a. Contributions by the employer (funded by ratepayers), plus  
7 b. Earnings on the pension fund, less  
8 c. Pension benefits paid.

9  
10 Q. WHAT HAS THE HISTORICAL RELATIONSHIP BEEN BETWEEN THE MARKET  
11 VALUE OF THE PENSION PLAN ASSETS AND THE PBO?

12 A. Under FAS 87, an annual valuation is done by an actuarial firm to determine the PBO and  
13 market value of assets in the pension fund. This information is used for financial statement  
14 disclosure of the funded status of the pension plan and is used to determine the pension  
15 expense to be charged against earnings in the current year.

16  
17 Q. HAVE ANY OF THE ASSETS IN THE PENSION FUNDS BEEN PROVIDED BY THE  
18 COMPANY'S BONDHOLDERS OR SHAREHOLDERS?

19 A. No. The cost of providing benefits is recognized as an operating expense for ratemaking  
20 purposes. The recovery of annual pension expense represents the initial source of funding  
21 of the pension obligation. Cash contributions made into the fund are invested. The income

1           earned on investing the cash contributions to the fund is the other source of funds used in  
2           funding the pension plan obligation. Income earned on the fund assets reduces the  
3           additional cash needed from ratepayers to fund the pension obligation. Bondholders and  
4           shareholders do not fund from their own resources any of the contributions to the pension  
5           plan fund. That responsibility belongs solely to the ratepayer.

6  
7       Q.    ONCE THE ASSETS OF THE TWO PENSION PLANS WERE MERGED IN 1993 DID  
8           SWN SEPARATELY TRACK THE EARNINGS ACHIEVED BY THE RESPECTIVE  
9           PENSION PLAN'S ASSETS ON A GOING FORWARD BASIS?

10       A.   It's my understanding that they did not. Once merged, the assets were essentially treated as  
11           a single investment vehicle. Any earnings achieved by the assets in the SWN pension plan  
12           after the merger can be attributed to "investing" all the assets of the pension plan not just the  
13           assets owned by the SWN pension plan prior to January 1, 1999. That means that the assets  
14           formerly attributed to the ANG pension plan also contributed to the development of  
15           earnings achieved by the merged SWN pension plan. These earnings basically created the  
16           overfunded status of the SWN pension plan. It is illogical to believe that they did not.

17  
18           The ANG pension plan assets were in the merged pension plan, the merged pension plan  
19           increased in value due to earnings achieved on all the assets; therefore, a portion of the  
20           excess overfunding is attributable to assets formerly held in the ANG pension plan fund.  
21           Thus, I believe, that a portion of the overfunded pension plan assets, relative to the

1 employees being transferred to Atmos, should also be transferred to Atmos' pension plan  
2 fund. Otherwise, the Commission should not give its approval to the proposed purchase  
3 transaction because, as proposed, the transaction is detrimental to the public interest.  
4 Missouri ratepayers are entitled to 100% of their allocated share of **all** pension fund assets,  
5 not just the assets equal to the PBO at the date of transfer.  
6

7 Q. PLEASE EXPLAIN WHY A PENSION FUND ASSET TRANSFER EQUAL TO THE  
8 PBO WILL HAVE A DETRIMENTAL IMPACT ON MISSOURI RATEPAYERS.

9 A. As previously explained, the annual level of pension expense needed from ratepayers is  
10 directly impacted by the funded status of the plan. The more assets available to generate  
11 investment income results in lower cash outlays by ratepayers to fund the pension  
12 obligation.  
13

14 Up to now, Missouri ratepayers have benefited from the income earned on their allocated  
15 share of all assets in the SWN pension fund. This is proper treatment because the initial  
16 cash contributed to the pension fund was provided by ratepayers. Therefore, all income  
17 earned on pension fund assets should be utilized in determining the additional cash to be  
18 collected from ratepayers to fund the pension obligation.  
19

20 The proposed sale contract providing for a pension fund asset transfer equal to the PBO will  
21 allow SWN to retain 100% of all pension fund assets exceeding the PBO as of the date of



1 the transfer. This will result in an initial windfall profit to the stockholders of SWN and  
2 lower pension expense for its non-Missouri customers. Pension expense collected from  
3 Missouri ratepayers will increase over time because pension fund assets available for  
4 investment no longer include any amount of the existing assets which exceed the PBO as of  
5 the date of the transfer.

6  
7 Q. HAVE YOU ESTIMATED THE VALUE OF THE PENSION FUND ASSETS,  
8 EXCEEDING THE PBO, THAT SHOULD BE TRANSFERRED TO ATMOS?

9 A. Yes, however, Public Counsel does not currently have the most up-to-date information. We  
10 do have several data requests outstanding that when answered should help clarify the  
11 current value of the total pension fund including any overfunded amount. Until we receive  
12 those responses, from the Company, the data we have is somewhat outdated and  
13 mismatched.

14  
15 For example, the actuary for the pension plan has stated that the value of the SWN total  
16 PBO at January 1, 1999, was \$62,923,162, and that the PBO for the 91 active participants  
17 who will transfer to Atmos, if the purchase is approved, is \$5,850,720 or 9.3% of that total.  
18 The actuary has also stated that the value of the Pension Plan assets at September 30, 1999,  
19 nine months later, is \$68,000,000 and that the estimated PBO of the Southwestern Energy  
20 Plan on that same date is \$64,000,000 (according to the Company the actual amount of the

1 PBO on that date is not currently available.) Thus, the Pension Plan was overfunded by  
2 approximately \$4 million at the end of September 1999.

3  
4 If we assume, and the actuary does, that the PBO for the affected group will represent  
5 approximately the same percentage of the total (i.e., 9.3%) on September 30, 1999, as it did  
6 on January 1, 1999, then the excess overfunded pension fund assets that should be  
7 transferred to Atmos is \$372,000 (i.e., \$4 million multiplied by 9.3%.) The numbers are  
8 subject to change if we receive data that is more current, but the methodology that OPC is  
9 recommending to allocate the overfunded portion of the pension plan fund will not.

10  
11 **POSTRETIREMENT BENEFITS OTHER THAN PENSIONS**

12  
13 Q. WHAT IS FINANCIAL ACCOUNTING STANDARD NO. 106?

14 A. Financial Accounting Standard No. 106 is the authoritative accounting document that  
15 defines the methodology used by the public accounting profession to recognize expense, for  
16 financial reporting purposes, related to the provision of employer's accounting for  
17 postretirement benefits other than pensions.

18  
19 Q. WHAT IS THE ISSUE REGARDING THE BENEFITS ASSOCIATED WITH  
20 FINANCIAL ACCOUNTING STANDARD NO. 106?

1 A. It is the Public Counsel's opinion that the Company has not provided the information  
2 needed to properly analyze this issue prior to the consummation of the proposed purchase.  
3 In response to MPSC Staff Data Request No. 6 which requested the dollar amount of  
4 Southwestern Energy's FAS 106 plan assets that will be transferred from Southwestern  
5 Energy's OPEB plan to Atmos Energy's OPEB plan, as a result of this transaction, the  
6 Company stated:

7  
8 The amount of SFAS 106 plan assets to be transferred from Southwestern  
9 Energy Company to Atmos has not yet been determined. As noted in  
10 Section 7.7.3 of the Asset Sale and Purchase Agreement, Seller will transfer  
11 all related funding on the Transferred Employees and retired Missouri  
12 employees to Buyer within 30 days of Closing. The actuaries for the  
13 parties will make the calculations of the amount to be transferred. As of  
14 December 31, 1998, the total amount of net assets in the Associated Natural  
15 Gas Company Employee Medical, Dental, and Life Plan was \$125,094.  
16 This amount plus all net amounts collected through Closing will be  
17 actuarially split between Arkansas and Missouri.  
18  
19

20 It's the Public Counsel's belief that the allocation information should be provided prior to  
21 the closing of the transaction, not after. It would be a moot point to analyze the information  
22 after approval has been granted, if it is granted by the Commission, and the purchase has  
23 been finalized. Should any problems, or differences of opinion, be encountered there would  
24 exist no recourse or action for reversing the consummated transaction.  
25

26 Q. WHAT IS YOUR RECOMMENDATION?

Rebuttal Testimony of  
Ted Robertson  
Case No. GM-2000-312

1 A. It is the Public Counsel's recommendation that the Commission deny authorization of the  
2 Company's request to consummate a purchase of various AWG assets and liabilities (i.e.,  
3 the ANG Missouri properties.) Atmos Energy Corporation's purchase proposal should not  
4 be approved, as currently requested, because it contains provisions which are detrimental to  
5 the interests of Missouri ratepayers, and the public interest.

6  
7 The Commission **should not** authorize the proposed purchase of the ANG Missouri  
8 properties unless Atmos will agree to the following requirements:

- 9  
10 1. Atmos will provide the detailed information required by the acquisition and merger  
11 standards adopted by this Commission in UtiliCorp United, Inc., Case No. EM-91-  
12 290.  
13  
14 2. Atmos will agree to forgo any future rate recovery, via both cost of service and rate  
15 base treatment, of the actual acquisition premium.  
16  
17 3. Atmos will provide Missouri ratepayers with credit for the deferred income taxes  
18 they have paid to ANG.  
19  
20 4. Atmos/AWG will allocate and provide to the ANG employees transferred in the  
21 purchase a pro-rata share of the overfunded SWN pension fund assets exceeding the  
22 PBO, and  
23  
24 5. Atmos/AWG will provide the appropriate pro-rata share of the FAS 106  
25 postretirement benefits other than pensions plan assets for those same employees.  
26

27 Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

28 A. Yes, it does.

**CASE PARTICIPATION  
OF  
TED ROBERTSON**

<b>Company Name</b>	<b>Case No.</b>
Missouri Public Service Company	GR-90-198
United Telephone Company of Missouri	TR-90-273
Choctaw Telephone Company	TR-91-86
Missouri Cities Water Company	WR-91-172
United Cities Gas Company	GR-91-249
St. Louis County Water Company	WR-91-361
Missouri Cities Water Company	WR-92-207
Imperial Utility Corporation	SR-92-290
Expanded Calling Scopes	TO-92-306
United Cities Gas Company	GR-93-47
Missouri Public Service Company	GR-93-172
Southwestern Bell Telephone Company	TO-93-192
Missouri-American Water Company	WR-93-212
Southwestern Bell Telephone Company	TC-93-224
Imperial Utility Corporation	SR-94-16
St. Joseph Light & Power Company	ER-94-163
Raytown Water Company	WR-94-211
Capital City Water Company	WR-94-297
Raytown Water Company	WR-94-300
St. Louis County Water Company	WR-95-145
United Cities Gas Company	GR-95-160
Missouri-American Water Company	WR-95-205
Laclede Gas Company	GR-96-193
Imperial Utility Corporation	SC-96-427
Missouri Gas Energy	GR-96-285
Missouri-American Water Company	WR-97-237
St. Louis County Water Company	WR-97-382
Union Electric Company	GR-97-393
Missouri Gas Energy	GR-98-140
Laclede Gas Company	GR-98-374
Union Electric Company	EO-96-14
Union Electric Company	EM-96-149
United Water Missouri Inc.	WR-99-326
Laclede Gas Company	GR-99-315
Missouri Gas Energy	GO-99-258
Missouri-American Water Company	WM-2000-222
Atmos Energy Corporation	WM-2000-312