BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

In the Matter of PGA/ACA filing of Atmos Energy Corporation for the West Area (Old Butler), West Area (Old Greeley), Southeastern Area (Old SEMO), Southeastern Area (Old Neelyville), Kirksville Area, and in the Northeastern Area.	)))))	**Case No. GR-2008-0364**

STAFF'S REPLY BRIEF

Respectfully submitted,

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[1] Atmos counsel derives \$140,000 from 2 RFP periods. Atmos Post-Hearing Brief p 6.

Atmos' Post-Hearing Brief appears to seek a Commission order approving Atmos' boilerplate RFP / Bid Evaluation process as a "proxy" for setting fair market price for gas supplies with its affiliate – ignoring the record evidence in this case and voiding the record keeping requirements of the Affiliate Rules that allow the Commission to scrutinize affiliate transactions.

The Commission recognized the shortcomings of the RFP process in setting a fair market price for gas in its July 15, 2010 Order: "…the existence of a bidding process does not eliminate the rule's requirement that Atmos not provide a financial advantage to its affiliate, and the mere existence of that bidding process does not necessarily establish the fair market price of the goods and services Atmos obtained from its affiliated marketing company."[2]

Staff's Reply Brief relies on the record evidence to rebut Atmos' arguments with Atmos' own inconsistent and contradictory testimony.

Atmos' claim that Hannibal annual costs would have increased by $140,000[3] by awarding the bid to the 2nd place bidder is a fiction and not supported by record evidence

Atmos' claim of customer savings by comparing its bid responses is not supported by fact. The bid response comparison only shows the lowest bidder for the given set of assumptions.

The RFP letter is an invitation to bid and does not represent true costs. The RFP letter/Bid evaluation uses an estimated price of gas and an estimated order quantity. The RFP is not the executed contract. The terms of the supply agreement are contained in the NAESB

[2] *Order Granting Staff's Motion to Compel Atmos to Respond to Data Requests*, Case No. GR-2008-0364, July 15, 2010, p 4.
[3] Atmos counsel derives $140,000 from 2 RFP periods. Atmos Post-Hearing Brief p 6.

agreement and the transaction confirmations. The invoices, not the RFP letter, show the actual volumes ordered at the actual prices.[4]

A comparison of bids is only useful in selecting the lowest bidder. Staff agrees that AEM was the lowest bidder in this case. The index prices, actual nominations, and the chosen ratio of swing versus baseload supplies are not known until later.

It is not the RFP bids but the NAESB agreement and the transaction confirmations that are the controlling contractual documents. Atmos' actual cost of gas depends on: 1) how much it nominates for FOM baseload and 2) how much swing gas it purchases through the month at the published Panhandle index prices. Comparing bid responses to actual costs is like comparing apples and oranges. It doesn't work.

The record evidence shows Atmos did not receive the highest level of firm service from AEM

Atmos testified at deposition and hearing that:

> The 2nd and 3rd place bidders in RFP 1 (April 07 – March 08) submitted nonconforming bid responses and could not be selected because non-conforming bids do not comply with Atmos requirements; and,
>
> The 2nd place bidder in RFP 2 (April 08 – March 09) was also non-conforming.[5]

Atmos' bid comparison (using forecasted estimates of price and quantity) should not include *nonconforming* bid responses because *nonconforming* responses, by Atmos' own definition, do not meet Atmos'bid requirements and cannot be selected.

[4] Tr Vol 5, pp 361-362; Tr Vol 7, p 658
[5] Tr Vol 5, pp 360 and 445; Tr Vol 7 pp 726-727.

Comparing the difference between AEM's low bid and the next closest *conforming* bidder suggests that AEM bid "less than firm" gas supplies to Hannibal

RFP 1 had seven (7) bid responses of which five (5) were conforming.[6] In RFP 1, AEM had the low bid for "firm" gas service by nearly $297,000 from the next closest *conforming* number 4 bidder.[7]

Similarly, RFP 2 had four (4) bid responses of which three (3) were conforming.[8] In RFP 2, AEM had low bid firm gas service by nearly $235,000 from the next closest *conforming* number 3 bidder.[9]

Despite the number of *nonconforming* bids, Atmos witness Buchanan's direct testimony omitted any mention of *nonconforming* bid responses. Staff did not learn until deposition that Atmos had included the *nonconforming* bids in its bid evaluations. This made AEM's low bid look more competitive against the next closest bidders – three (3) of which were rejected as *nonconforming* bids.[10]

Atmos testified that it had 14,000 customers in the Hannibal area.[11] Add the difference of both period bid amounts (RFP 1 and RFP 2), this results in a total difference of $532,000 for "firm" gas service over the two year period. AEM underbid firm service by nearly $532,000, or $38.00 per Hannibal customer.[12] Because AEM's bid was so low, it raised a red flag with Staff after Staff confirmed at deposition that Atmos had included *nonconforming* bid responses in its bid evaluation report.

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[6] Tr Vol 5, p 360; Ex 1, Buchanan Dir, Attach 2, p 2.
[7] Tr Vol 7, p 724. Ex 24HC
[8] Tr Vol 7, pp 726-727; Ex 1, Buchanan Dir, Attach 2, p 2.
[9] Tr Vol 7, pp 726-727.
[10] Tr vol 7, p 727.
[11] Ex 1, Buchanan Dir p 4.
[12] Divide total $532,000 bid difference for both RFP periods by 14,000, the total number of Hannibal area customer. This equals a bid difference of AEM and the next conforming bidder of $38.00 per customer for the highest level of firm gas service.

Record evidence demonstrates a "lack of firmness" in AEM's low bid for gas supplies

Staff applied the following facts that, when considered in their entirety, point to the lack of "firmness" of the gas supplies AEM sold to Atmos:

1) AEM is the only bidder using a secondary receipt point onto Panhandle downstream from Haven. All other suppliers bid firm service delivery at Haven as their primary or main bid alternative.[13]

2) Atmos has characterized it gas supply contracts with AEM as requiring gas supplies that are "firm and warranted" and "firm without fail".[14]

3) The NAESB base agreement between Atmos and its affiliate AEM permits AEM to provide firm *or* interruptible gas supplies.[15]

4) The "Service Level" term listed on many transaction confirmations between AEM and Atmos for the RFP 2 period was left blank and does not specify any service level.[16]

5) AEM had sufficient gas in its Panhandle portfolio of supplies to meet the firm swing gas needs of Atmos without having to ask Atmos to make huge cuts to its swing gas nominations in December 2007.[17]

6) Atmos witness Buchanan testified at hearing that other shippers moved downstream to the Pony Express line to avoid the Haven rupture, jamming up the Pony Express receipt point.[18] If this is true, as Ms Buchanan suggests, then AEM's gas supplies got crowded out in favor of new suppliers relocating to Pony Express – *diminishing* the purported "firmness" of AEM's supplies and AEM's capacity at the Pony Express receipt point on Panhandle.

[13] Tr Vol 5, p 358. Though some bidders quoted a secondary pont as an alternative, the primary point of Haven was the main bid quote.
[14] Tr Vol 5, p 355-356.
[15] Tr Vol 7, pp 404-407; See Ex 27HC, Sommerer Reb, Sect. 1.1 of NAESB, Sched 5-47 and Sect 3.1 of NAESB, Sched 5-49.
[16] See Ex 12HC, "AEM Transaction Confirmations for the period 4/1/07 to 4/1/08". On 5-10, the first transaction confirmation in the exhibit (for RFP 1), specifies "Firm/Baseload" for Service Level. In RFP 2, Transaction confirmations 5-15, 5-16, 5-17, 5-18, and 5-19 list no Service Level.
[17] Staff's Initial Brief p 7, FN27.
[18] Tr Vol 5 p 452.

7) Ms Buchanan testified that AEM's supply coming through Pony Express was limited and that AEM could only get a certain amount of gas to serve Atmos' contracts.[19]

8) Ms. Buchanan testified that Butler nominations were cut approximately: 7% on 12/8/07; 7% on 12/9; 13% on 12/10; 13% on 12/11; and, 1% on 12/12, further noting no cuts from 12/13/07 to 12/31/07.[20] Butler gas flowed from the field zone *through* the Haven rupture.[21]

9) Contrast Ms. Buchanan's testimony on the force majeure impact on Butler with her testimony on Atmos' cuts to Hannibal: Ms. Buchanan acknowledged the Hannibal cuts on 12/8, 12/9, and 12/10/07 were approximately 48%, ranging from 48% to 28% through the end of month 12/31/07, with a slight letup on 12/23, 12/24, and 12/25.[22]

10) Mr. Walker testified the pipeline did not make cuts from 12/9/07 to 12/26/07 and 12/28 to 12/31/07 and that those were cuts made by him to help out his supplier: "…Those [22 days of cuts] are the dates we nomed lower to help out the supplier and the pipeline during this Haven outage.[23]" Gas flowing to Hannibal area was brought into Panhandle downstream of Haven, *bypassing* the Haven rupture.[24] Based on record evidence, the Haven rupture had minimal, if any effect at all on the ability of the Pony Express line to bring gas into Panhandle downstream from the 400 line rupture. Atmos' self-imposed Hannibal cuts (from reducing its AEM nominations) were far greater and of much longer duration than Panhandle's small cuts over 5 days at Butler.

11) AEM and Atmos are contractually bound by the base NAESB provisions regarding Force Majeure. If AEM expected a problem in supplying its affiliate LDC related to force majeure, then it is bound by its NAESB agreement with the LDC to invoke the force majeure provision and to provide the particulars of its supply incapability in writing. AEM did not invoke a force majeure event and did not put the particulars of its alleged supply constraints in writing to Atmos. By not invoking its force majeure provision, AEM has represented that it had no supply disruption that would impact its

[19] Tr Vol 5, p 454.
[20] Tr Vol 5, pp 374-376. *See* Ex 10, Atmos Energy Corporation GR-2008-0364 Response to Staff DR 132.2 parts A & C for list of actual cuts. This is also Ex 18. On Tr Vol 5 p 376, Ms Buchanan testified "*Well, I still think 13 percent is a pretty good-sized cut…*"
[21] Tr Vol 5 p 376.
[22] Tr Vol 5, pp 377-378. *See* Ex 10 (also Ex 18) for detailed list and comparison of cuts for December 2007.
[23] See Staff's Initial Brief p 10 and FN 38.
[24] Staff's Initial Brief p 7, FN 26.

ability to supply its affiliate LDC as a result of the Haven rupture.[25] This fact is consistent with the fact that AEM had plenty of flowing supplies to service its LDC contracts.

12) Ms. Buchanan testified its "… supplier [AEM] has the obligation to deliver firm supply into our contract. And then we transport it on a firm transportation contract to our citygate." If AEM cannot get its gas to Panhandle through its chosen Pony Express receipt point, then Atmos has no gas to transport.[26]

Firm gas has higher priority than non-firm or interruptible gas. Unless the pipeline is making cuts that impact firm gas, firm gas shows up. Butler gas had to flow through the Haven 400 line rupture and Butler had minimal cuts over a few days.

AEM failed to meet its contractual obligation to provide firm gas to Hannibal – the highest level of service quality – and provided something less than firm service. AEM used the cover of a Panhandle force majeure event upstream from the Pony Express line, a receipt point that *bypasses* the Haven rupture, to ask its willing affiliate LDC to make huge cuts to its swing gas nominations. The LDC did as AEM asked and cut its swing gas nominations throughout the month of December 2007.

AEM's use of the Haven 400 line rupture to excuse its performance is not reasonable. As discussed above and in Staff's Initial Brief, it is troubling that AEM had plenty of flowing supplies in its portfolio to supply Atmos <u>without</u> having to ask its affiliate LDC to make any cuts at all.

[25] Staff's Initial Brief p 7, FN 28.
[26] Tr Vol 5, p 384.

In point of fact, Atmos did <u>not</u> cut its nominations solely because of a request from the pipeline as Atmos had earlier claimed in its response to DR132.1.[27] Atmos had cut its nominations for 22 days in December 2007 because of AEM.[28]

The fact that Atmos agreed to cut its swing gas nominations to "help out" AEM required Atmos to draw down storage in December 2007 below planned levels. Atmos had to make up its end-of-December 2007 storage deficiency by purchasing additional gas supplies at higher cost to ratepayers during the cold months of January, February, and March 2008.

By using its storage Atmos gave AEM a free pass to serve its other customers. Atmos passed on to Hannibal ratepayers the higher cost of make-up gas supplies through its PGA clause.

Ultimately, Atmos shareholders benefited from AEM having its affiliate LDC cut its "firm" swing gas nominations. Atmos accepted the flawed excuse of the Haven 400 line rupture and did not hold AEM to its contractual firm supply obligation, causing increased costs for Hannibal customers.

<u>Staff's Scenario 1 adjustment: Atmos' Post Hearing Brief miscasts the "maximum amount" of gas that Atmos could have nominated under its contract for Hannibal</u>

Staff has <u>not</u> asserted that Atmos should have nominated anywhere near its contract maximum for December 2007, as Atmos' Post Hearing Brief incorrectly asserts. Staff did not

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[27]Ex 28 HC, Sommerer Surr, Sched 4-3. Atmos' response to Staff's DR 132.1 states: *Dec07- Actual nominations were lower than planned nominations because a Haven 400 Line rupture occurred during late Nov07, resulting in the pipeline curtailing nominations during December, which reduced actual nominations.*

[28] Mr. Walker testified:
Q. Now, why didn't you get verification from Panhandle for the reason for the cuts to Hannibal contract 11671 on the other 22 days?
A. Because the nomination was not cut. We nominated what we could get during this Haven outage and the pipeline did not cut that volume.
Q. Did you know what volume you could get?
A. That -- what we nominated is what we could get from our supplier. (Tr Vol 7, p. 518-519)

assert that Atmos was imprudent because it failed to nominate the maximum amount possible under its contract with AEM during a December 2007 Force Majeure period at Haven.

The allowable contract maximum nomination for Hannibal is 10,645 Mcf/day.[29] In Staff's Initial Brief, the Staff explains in detail how Atmos deviated from its own Gas Supply Plan Procedure. Some key points follow:

December 2007 Baseload Nomination (NOM) for Hannibal Area[30]

Total Planned Normal First of Month (FOM) Nomination = 4,680 Mcf/day[31]

Total FOM Nomination adjusted 20% per Atmos MO Supply Plan = 3,730 Mcf/day[32]

Atmos' Actual FOM Nomination = 2,800 Mcf/day[33]

Staff's Scenario 1 adjustment relies on Atmos Gas Supply Plan Procedures to set the reasonable FOM nomination volume for December 2007 of 3,730 Mcf/day, and adjusts the nomination for storage deficiency, also required by the Atmos Gas Supply Plan Procedure. Scenario 1 reasonably increases December 2007 FOM baseload nomination by only 1,900 Mcf/day.[34]

Further, Scenario 1 is based on Atmos following its own Plan and reasonably increasing its FOM December 2007 nomination by 1,900 Mcf/day more than its actual under-nomination of 2,800 Mcf/day. Thus, Scenario 1 calculates the harm to ratepayers for Atmos not having nominated 4,700 Mcf/day for the month of December 2007. Again, Staff points out that Panhandle made no cuts to FOM baseload supplies. If Atmos had followed its own Missouri

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[29] Ex 25, part 2 of 2, p 167.
[30] See Staff's Initial Brief, p 21.
[31] Ex 20, Atmos response to Staff DR 79 in GR-2007=0403 showing PEPL (Hannibal/Canton) and PEPL (Bowling Green) Gas Supply Plan for Missouri, Apr 2007-Mar 2008.
[32] Ex 20; Tr Vol 7, p 544 ln 13 to p 547 ln 8.
[33] Tr. Vol 7, p 547, ln 9 to p 548 ln 25; Ex 21, Atmos response to Staff DR 33, Nominations and Revisions on PEPL for the Month of December 2007. Note: Dth (dekatherms) and Mcf (thousand cubic feet) are used interchangeably.
[34] Ex 28 HC, Sommerer Surr, p 19. Note: Staff uses "Dth/Mcf/MMBtu" terms interchangeably but uses "Mcf" for ease of understanding.

Gas Supply Plan Procedure, Staff would not have proposed its Scenario 1 (or Scenario 2) adjustment.

Staff notes that the 1,900 Mcf/day increase called for by Atmos' Plan to adjust for storage deficiency coincidentally brings the nomination back to the total 4,680 Mcf/day (rounded to 4,700) called for under Atmos' Plan (without the 20% warm weather adjustment).

Atmos' Post Hearing Brief confuses Atmos' contract maximum allowable nomination amount with Staff's Scenario 1. Atmos' contract maximum 10,645 Mcf/day for Hannibal far exceeds the 4,700 Mcf/day prescribed by Atmos' Gas Supply Plan Procedure that is the basis of Staff's Scenario 1 adjustment. Moreover, Atmos wrongly suggests that Staff factored in the propane plant into its Scenario 1 adjustment. Staff explains Scenario 1 in detail in Staff's Initial Brief, pp. 20-26, and does not consider the propane plant because it is not factually related to Atmos nominations for December 2007.

<u>Atmos' cuts to its December 2007 nominations were not reasonable</u>

Staff witness Dave Sommerer reviewed the email communications between Atmos (Mike Walker) and AEM (Patrick Ruffing) and notes Atmos' unquestioning compliance and failure to follow-up:

> <u>On December 10, 2007 AEM states the work should be done today at Haven, but no one is putting their gas into PEPL til they hear it is done. He states he will keep trying to buy gas, but not having much luck. Atmos' (Mike Walker) response is simply "k". Atmos does not address or explain the fact that the contract for gas was firm and it should have the highest priority. Atmos does not take any action to learn whether AEM is getting any gas at Haven.</u>
>
> <u>On December 12, 2007 AEM (Patrick Ruffing) states:</u>
>
>> <u>There still hasn't been a resolution to this so as soon as they open this up again we will be able to buy more gas Plus this weekend I should be able to free some up as well if it hasn't been resolved.</u>
>
> <u>Atmos does not address the fact that its contract for gas was firm and it should have the highest priority. Again, Atmos does not make any effort to learn whether AEM is getting</u>

any gas at Haven. Atmos does not even inquire why AEM would be able to free some gas up on the weekend. Does this mean AEM was getting gas for some customers that didn't need it on the weekend? If so, why wasn't some of this gas going to the LDC? Atmos does not ask any of these questions in the emails/messages between the parties. Nor does Atmos seek the answers to these questions from its Affiliate. In such a supply cut, would it not have been reasonable and prudent for Atmos to have sought answers to these questions had it been dealing with a third party? If the answer is yes, as Staff believes, then why didn't Atmos seek answers from its own Affiliate when "firm" supplies to Hannibal customers were at serious risk of being cut?

On December 17, 2007 Atmos (Mike Walker) states:

> "hey patrick – i know pepl hasn't sent out an updated notice saying the haven outage is fixed, but it doesn't look like they are cutting noms anymore how come you haven't tried noming the full swing i ordered?"

The response from AEM (PatrickAtmos), states:

> "i will call the pipe everyone i talk to that sells market area gas still hasn't been diverting gas back into pepl, everything that i have got I give to you" , :
>
> The response from Atmos (Mike Walker) is simply, "ok". Atmos does not inquire why the AEM buyer is just now checking with the pipeline. Atmos does not address the fact that the contract for gas was firm and that it should have the highest priority. Atmos does not take action to learn whether AEM is getting any gas at Haven.[35]

In addition, at hearing Mr. Walker testified that he did little to follow up on AEM's nonperformance:

> He did not ask AEM (Ruffing) why he could free up gas on the weekend.[36]
>
> He did not ask AEM if they were supplying other customers. He relied on the force majeure event and the notion that resources must be limited - even though Mr. Walker says he was having phone communications with AEM.[37]
>
> He did not inquire whether any other parties were able to put gas into the Panhandle system.[38]

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[35] Ex 28HC, Sommerer Surr p 13 ln1 to p 14 ln 8 and Sched 5-5 and 5-7 contain the emails cited above.
[36] Tr Vol 7, p 528.
[37] Tr Vol 7, p 522-524.
[38] Tr Vol 7, p 524-525.

> He did not check the Panhandle bulletin board to review the amount of gas that was coming into Panhandle at the receipt locations that could serve Atmos.[39]
>
> When asked at hearing: "Had you checked the pipeline bulletin board, would that have shown you that gas supply was coming in through the secondary receipt point downstream of the Haven rupture?", Mr. Walker answered: "I'm not sure."[40]

Abundant record evidence shows that Atmos' demonstrated much more that a willingness to "work with its supplier" AEM. The testimony shows that Atmos, perhaps out of a spirit of corporate teamwork, altered its relationship from "working with" to "working for" AEM so that Atmos could help its affiliate meet its other customer obligations sourced off the Pony Express line receipt point. Considering that Atmos' actions are easily subsidized by the PGA clause, the evidence points to a lopsided Atmos – AEM relationship that flows to AEM's benefit. Atmos has not overcome its burden of proving the reasonableness of its transaction with its unregulated affiliate AEM.

<u>Atmos' use of storage to bailout AEM does not establish supplier reliability and does not excuse AEM's nonperformance in December 2007</u>

On page 11 of its Post-Hearing Brief, Atmos wrongly relies on a "Q and A" from the hearing transcript of Atmos' cross-examination of Staff witness Dave Sommerer that begins:

> Q: I understand that Staff also reviews hedging practices and reliability analysis as a part of the ACA review; is that correct?
>
> A: Yes.

Atmos then miscasts its questions on hedging and reliability - questions related to Staff's Recommendation of December 2009 - to erroneously conclude that there are no reliability issues that need to be addressed in this case. Not so. Atmos' failure to disclose information regarding service reliability and cuts or reductions to nominations from early in the case until <u>after</u> Staff

[39] Tr Vol 7, p 526.
[40] Tr. Vol 7, p 526-627.

filed its rebuttal testimony is well documented by the record evidence and described in detail in Staff's Initial Brief, pp. 4-11.

Atmos argues that because Staff witness Dave Sommerer knew of the December 2007 force majeure event called by Panhandle that Staff is foreclosed from making its prudence disallowance. Atmos' assertion improperly equates Staff's knowledge of the force majeure event with Atmos' disclosure after rebuttal was filed that it was suffering supply cuts.

In addition, Atmos' assertion the 400 line rupture was not a reliability problem is not reasonable. Staff notes the following:

1) Staff's Scenario 1 (and Scenario 2) disallowance is based on the unreasonable actions taken by Atmos in under-nominating its December 2007 FOM baseload and its swing gas supplies.[41]

2) Atmos is not absolved from reporting the impact of the 400 line rupture on supply reliability in its responses to Staff's DRs on the matter of reliability. Atmos eventually did report the impact of the 400 line rupture in its response to Staff DR 132.1 on July 15, 2010, <u>after</u> rebuttal testimony had been filed.[42]

3) Ms. Buchanan's hearing testimony that a force majeure event is not a reliability problem it is an act of God[43] is not credible because she confuses the mechanical failure of Panhandle's 400 line rupture – the underlying cause of the force majeure event - with an act of nature.[44] Both mechanical failure and act of nature fall under the NAESB agreement force majeure provision. That provision and others govern how the parties are to conduct themselves during the critical period. Nowhere in the force majeure provision is a party relieved of its duty to mitigate the effects of the force majeure event.[45]

4) Staff witness Sommerer is not employed by Atmos and can have no real-time knowledge of the actions of the LDC or the impact on the LDC's ability to receive

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[41] *See* Staff's Initial Brief, pp 20-26.
[42] *See* Staff's Initial Brief, pp 9-10.
[43] Tr Vol 5, p 458.
[44] *See* definitions of "*act of God*" (p 20) and "*force majeure*" (p 366) in <u>A Dictionary Of Modern Legal Usage</u>, Second Edition, Bryan A. Garner, Oxford University Press 1995.
[45] See Ex 27 HC, Sommerer Reb, Sched 5-53 "Section 11: Force Majeure" provision of the base NAESB agreement between Atmos and AEM (entire NAESB agreement is in Sched's 5-46 to 5-56).

gas supplies from its affiliate supplier, AEM. Staff relies on information provided in the LDC's responses to Staff's data requests. General knowledge of a pipeline rupture does not impute knowledge of the event's impact on specific supplies.

The $308K proposed disallowance is not "punitive" because it results from the Company's own failure to comply with the record-keeping requirements of the Affiliate Rules

Atmos failed to report its cost methodology and costs allocated to and from its affiliate transaction as required by the Affiliate Rules record-keeping requirements.[46]

Atmos failed to keep records of its cost methodology and cost allocations of its affiliate transactions. Because of Atmos' failure to keep records, the Staff and the Commission cannot scrutinize the methodology and cannot make a determination that the gas costs AEM charged its affiliate are just and reasonable. It is Atmos' responsibility to conduct its internal practices to comply with Missouri's Affiliate Rules.

Atmos has not met its burden of proving the reasonableness of its gas costs. The Staff is not able to consider mitigating or reducing its adjustment for reasonable personnel, overhead and administrative costs associated with the purchase of gas supplies without the necessary information and compliance by Atmos.

Atmos' use of its RFP to select the lowest bidder is but one part of an affiliate transaction and it does not excuse compliance with other Affiliate Rules. Moreover, the prudence review of the actual gas transactions does not end at bid selection.

Staff's prudence review evaluated the fair market value / price of the gas purchased by Atmos' affiliate AEM for its regulated LDC. Based on the information obtained through discovery, Staff's adjustment of $308K <u>equalizes</u> the fair market price of the gas supplies AEM

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[46] 4 CSR 240-40.015(5) and 4 CSR 240-40.016(6) require: 1. *Documentation of the costs associated with affiliate transactions that are incurred by the parent or affiliated entity and charged to the regulated gas corporation*; 2. *Documentation of the methods used to allocate and/or share costs between affiliated entities, including other jurisdictions and/or corporate divisions;* 3. *Description of costs that are not subject to allocation to affiliate transactions and documentation supporting the nonassignment of these costs to affiliate transactions;* See Staff's Initial Brief, pp 17-20.

bought from its suppliers to the fair market price for the same supplies had Atmos LDC gas buyers bought the same gas supplies from the same suppliers using its "robust" RFP process.

The record evidence shows that Atmos, the largest LDC in the United States,[47] is capable of making gas purchases and that Atmos could have acquired the gas supply for itself rather than through AEM.[48] There is no evidence that AEM brought any special skills or capability to Atmos.[49]

Staff agrees with Public Counsel that "AEM acquired the gas through an arms-length transaction in a competitive market that is also available to Atmos……Atmos has not provided a sufficient explanation to overcome the Staff's evidence indicating that Atmos could have acquired the gas supply on its own at similar cost as AEM."[50]

Relief Requested

Based on the record evidence, the Staff prays the Commission issue an order approving its proposed $308,733 disallowance, holding Hannibal customers harmless from Atmos' failure to demonstrate the reasonableness of having its unregulated affiliate buy the gas supplies that Atmos the LDC could have acquired on its own without using AEM as an intermediary buyer.

In the alternative, if the Commission should not approve the $308,733 disallowance, the Staff prays the Commission issue an order approving its Scenario 1 adjustment of $52,572 or Scenario 2 disallowance or $85,577 because the record evidence shows that Atmos' gas purchasing decisions in December 2007 were not reasonable and not prudent based on Atmos' own Gas Supply Plan procedure and the information known at the time those decisions were made. Moreover, the Scenario 1 disallowance makes Hannibal customers whole from having to

[47] Ex 27HC, Sommerer Reb, p 2.
[48] Ex 28HC, Sommerer Surr, pp 4-5.
[49] Ex 28 HC, Sommerer Surr, p 8.
[50] *Initial Brief of the Office of the Public Counsel*, p 9.

pay the higher costs of make-up gas as a result of Atmos' having drawn down its storage to the benefit of its affiliate AEM.

Respectfully submitted,

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I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 20th day of May, 2011.

/s/ Robert S. Berlin____________________