

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

In the Matter of Atmos Energy Corporation's)
Tariff Revision Designed to Consolidate Rates)
and Implement a General Rate Increase for)
Natural Gas Service in the Missouri Service)
Area of the Company.)

Case No. GR-2006-0387

**THE OFFICE OF THE PUBLIC
COUNSEL'S PREHEARING BRIEF**

I. INTRODUCTION

On April 7, 2006, Atmos Energy Corporation (“Atmos” or “Company”) initiated this case when it filed proposed tariffs with the Missouri Public Service Commission (“Commission”) designed to increase rates for its non-gas natural gas local distribution service to recover approximately \$3.396 million in additional revenue. Staff’s testimony, however, indicates that Atmos is over-earning by approximately \$1.2 million annually. Despite this finding, Public Counsel is in the surprising position of being the lone party recommending that Atmos receive a revenue reduction as a result of this case. Even more surprising is that the Staff’s testimony also proposes a new rate design under the justification that it will ensure Atmos will meet its revenue requirement - a revenue requirement that, according to the Staff, Atmos is already exceeding by \$1.2 million under the existing rate design. While the Staff’s “revenue decoupling” rate design proposal may be well-intentioned, Staff is asking the Commission to make a radical change to decades of successful ratemaking principles under a Staff analysis that fails to carefully consider the implications such a drastic change will have on Atmos’ customers.

If adopted, the Staff's rate design will discourage efficiency and conservation, and will shift costs upon the shoulders of low use ratepayers.

This issue and the remainder of the contested issues analyzed below deserve careful consideration to ensure ratepayers are protected from the harm that could result from the misguided changes proposed to the Commission in this case.

II. CONTESTED ISSUES

A. REVENUE REQUIREMENT

1. What is the appropriate level of expense?

On the Income Statement calculated by the Staff in Staff's pre-filed testimony, Accounting Schedule 9 indicates that Atmos' total operating expenses is \$10,823,000 and the total income tax expense is \$1,792,892, for a total expense level of \$12,615,892. Public Counsel supports these figures.

2. What is the appropriate rate of return/return on equity?

The United States Supreme Court, in Bluefield Water Works and Improvement Company v. Public Service Commission of West Virginia, 262 U.S. 679, 67 L.Ed. 1176, 43 S.Ct. 675 (1923), and Federal Power Commission v. Hope Natural Gas Company, 320 U.S. 591, 88 L.Ed. 333, 64 S.Ct. 281 (1944), mandated that the rate of return for a utility must be: 1) comparable to the return on investments in other enterprises having a corresponding risk; and 2) sufficient to a) assure confidence in the financial integrity of the utility, b) maintain support of the utility's credit, and c) attract capital.

Weather variation is a primary factor related to risk for local gas distribution companies. By completely eliminating the weather sensitivity of the non-gas portion of

customer's bills, Atmos is able to remove the weather sensitivity of the revenues that it collects from customers for the non-gas portion of their bill. Thus, by mitigating the impact that weather has on the revenues that Atmos receives from customers, the Company is able to reduce the impact that weather variations have on earnings. Unless the elimination in weather risk is accounted for through an offsetting reduction in the Company's rate of return, customers are made worse off.

Public Counsel believes a 7% return on equity is appropriate to account for the elimination in weather related risk if the Commission adopts Staff's rate design proposal. The Staff's proposed return on equity, sponsored by Staff witness Matt Barnes, does not address this reduction in risk. Likewise, Staff's analysis and calculations of a Discounted Cash Flow model (DCF) and a Capital Asset Pricing Model (CAPM) also fails to consider the reduction in risk created by Staff's rate design proposal.¹ Public Counsel's recommended return on equity, however, protects ratepayers from a return on equity that is unjust and unreasonable by incorporating the correlating changes in risk associated with a utility whose earnings no longer depend on changes in weather.

3. What is the appropriate level of revenue excess/deficiency?

The Staff conducted a thorough analysis of Atmos' revenue needs and determined that Atmos is currently earning a revenue excess between \$1,117,288 and \$1,477,354 annually at the expense of Atmos' customers. Staff calculated this revenue excess using a return on equity between 8.59% and 9.39% that failed to take into account the reduction in risk associated with the Staff's rate design proposal.² By taking the reduced weather related risk, the appropriate return on equity should be closer to 7%, which would

¹ Rebuttal Testimony of Russell W. Trippensee, p. 9.

² Rebuttal Testimony of Stephen M. Rackers, pp. 1-2.

increase Atmos' revenue excess by approximately \$0.6 million annually.³ Public Counsel believes the Commission's order resolving this case should lower Atmos' revenues accordingly.

B. DEPRECIATION

The depreciation issues ask the Commission to determine the appropriate treatment of depreciation and whether depreciation expense should be reduced by a depreciation reserve amortization. Staff witness Mr. Gilbert proposes that the Commission reduce the annual depreciation expense accrual by \$591,000. Public Counsel opposes this proposal because it will in effect require Atmos to *reinvest monies already paid by ratepayers* in order to reduce current rates and then require the customers to *pay a return* "on and of" these amounts in future rates. Ratepayers traditionally pay a return that rewards investors and encourages future investments, and in this regard, requiring ratepayers to pay a return on investments is just and reasonable. In contrast, forcing ratepayers to pay a return on monies paid by the ratepayers themselves creates a situation where the ratepayer is needlessly paying a return that has no justification. Future ratepayers would then be forced to pay a return on these amounts taken from Accumulated Depreciation Reserve.⁴ Staff requests this unorthodox treatment despite Mr. Gilbert's acknowledgment that Atmos "lacks the data to perform an accurate depreciation analysis."⁵ Public Counsel believes it is against the public interest to reduce depreciation expense by a depreciation reserve amortization because: 1) It is

³ Rebuttal Testimony of Russell W. Trippensee, p. 11.

⁴ *Id.*, p. 13.

⁵ Direct Testimony of Guy Gilbert, p. 8.

inappropriate to force consumers to pay a return on amounts paid by ratepayers; and 2) Atmos lacks the data to perform an accurate depreciation analysis.

C. RATE DESIGN

The main issue in dispute regarding rate design is the Staff's "delivery charge" rate design proposal, which acts as a "revenue decoupling" rate design. Currently in Missouri, gas utility rates charged to residential ratepayers are "coupled" in that they contain both a fixed rate element and a volumetric rate element. Companies recover the fixed element through a fixed customer charge regardless of any changes in weather or changes in the consumer's attempts to curtail usage and lower the overall amount of the customer's bill. The volumetric element, however, is directly tied to the customer's usage. If the customer uses more, the customer pays more, and the utility earns more. Likewise, if the customer makes efforts to curtail usage and lower the dollar amount of the customer's monthly bill, the consumer benefits through a lower gas bill. In a similar fashion, warmer weather creates a lesser need for space heating and the customers also see a benefit under a volumetric rate element. Removing the volumetric piece from residential rate design will create a disincentive for consumers to conserve. Revenue decoupling is not a new issue, and has been rejected by regulators in years past. In recent years, however, utilities have been successful in gaining greater attention for decoupling principles from regulators and several state commissions have adopted different forms of decoupling. No state, to Public Counsel's knowledge, has adopted a revenue decoupling proposal as radical and unfriendly to consumers as the proposal before the Commission in this case.

1. What is the appropriate rate structure for residential, small, and medium general service?

In Atmos' direct testimony, Atmos requested a rate design that would adjust for changes in consumption due to both weather variations and conservation. Atmos' weather mitigation adjustment (WMA) proposal would adjust the customer's future rates to account for past revenue variations due to abnormal weather. Atmos appeared eager to abandon its rate design proposal and "settle" this issue with the Staff after the Staff gift-wrapped a rate design proposal that would essentially remove all weather risk for Atmos and guarantee Atmos' revenues. Public Counsel recommends that no changes be made to the rate structure for residential, small and medium general service. Staff's testimony indicates that Atmos' current rate design is more than sufficient to meet Atmos' revenue needs. The Commission has previously determined that the existing rate design is just and reasonable, and absent sufficient justification to change that rate design, the Commission should reject making rate design changes when no increase in revenue is necessary. Public Counsel strongly opposes Staff's revenue decoupling proposal for the following reasons:

a. Staff's Rate Design Harms Low-Volume Users

The Staff's proposed decoupling rate design would create negative impacts on ratepayers. Based on an analysis of a two-year period of data obtained by the Staff from Atmos, Public Counsel determined that the lowest use customers were most harmed by Staff's proposal and would pay 52% to 173% more depending on the district in which those customers reside.⁶ This occurs because decoupling shifts revenue responsibility within the residential rate class from high-volume users to low-volume users. It was this

⁶ Rebuttal Testimony of Barbara A. Meisenheimer, p. 11.

very shift and the burden it places on low-volume users that caused Staff witness Dr. Michael Proctor, just a few years ago, to oppose a rate design proposal that would recover all non-gas costs in the customer charge. Staff's proposal is needless and unsupported by the record in this case. Public Counsel's evidence shows that the Staff's rate design proposal could nearly double the non gas recovery on some low use customers' bills that do not have the ability to avoid the increase by curbing use.⁷

b. Staff's Rate Design Will Reduce Ratepayer Incentives to Conserve

Today, a customer can reduce the non-gas portion of the customer's bill by reducing consumption. Under the Staff's rate design, customers lose that ability, which clearly diminishes a customer's incentive to conserve. Staff's proposal offers no counterbalancing incentives to customers, nor does it offer any assurances that Atmos will make efforts to encourage conservation.⁸ Staff's proposal actually creates a *disincentive* for Atmos to encourage conservation because the costs of any such programs would come from Atmos at the shareholder's expense. Without any counterbalancing program to encourage conservation, Staff's rate design proposal will be a drastic step backwards during a time when Staff and the Commission should be promoting strong conservation incentives.

c. Staff's Rate Design Offers No Reductions in Rate of Return to Reflect the Corresponding Reduction in Risk

The decoupling rate design proposal recommended by Staff and supported by Atmos offers no corresponding reduction in Atmos' rate of return to reflect the significant reduction in weather risk. By ensuring recovery of a set level of revenue, the impact weather plays on Atmos' earnings essentially disappears. In a recent case wherein

⁷ Surrebuttal Testimony of Barbara A. Meisenheimer, p. 12.

the Commission approved an experimental weather mitigation rate design, an agreement of the parties, including Laclede Gas Company, was that the impact on the company's risk was a factor considered when mitigating weather effects.⁹

Under Staff's rate design proposal, "the Commission determined non-gas revenue requirement (including ROE) intended to be collected will in fact be collected."¹⁰ Accordingly, the risk of earnings variability is greatly reduced.¹¹ If the Commission fails to recognize this reduction in risk, the result would be rates "paid by customers that compensate stockholders for a risk they no longer have, therefore such rates would not be just and reasonable."¹²

d. Staff's Rate Design Reduces Atmos' Incentives to Operate Efficiently

The Staff's rate design proposal reduces incentives for Atmos to operate efficiently. The weather risk associated with traditional rate design creates an incentive for utility companies to mitigate that risk by operating the utility efficiently. If the utility experiences warmer than normal weather and the lower consumption levels reduce earnings, any cost savings realized through efficient improvements will help mitigate the impact of the decreased earnings. By reducing the company's risk as proposed by Staff's rate design, the utility has less incentive to create efficiencies because the utility is ensured a level of earnings.¹³

⁸ Rebuttal Testimony of Barbara Meisenheimer, p. 19.

⁹ Rebuttal Testimony of Barbara Meisenheimer, p. 17.

¹⁰ Rebuttal Testimony of Russ Trippensee, p. 6.

¹¹ *Id.*

¹² *Id.* at p. 7.

¹³ *Id.*, at p. 11.

e. Staff's Rate Design Contradicts Ratepayer Expectations

Staff's decoupling rate design proposal is contrary to good public policy because it would be contrary to ratepayer's expectations that consuming less gas will lower the non-gas portion of the customer's bill. Unfortunately, consumers were unaware of this proposal when they offered comments to the Commission during the local public hearings and were unable to offer comments on requiring low-volume users to pay the same as high-volume users. However, Staff witness Ms. Anne Ross acknowledges that customers may feel the rate design proposal is unfair.¹⁴

f. Staff's Rate Design Assumes a Guaranteed Return

The Staff's rate design proposal appears to be based on the misguided legal premise that utilities should be guaranteed a certain level of revenues. Rates are "not set or designed to provide uniform recovery each year."¹⁵ Rates are set to provide an opportunity to earn a return incorporated in the revenue requirement. In *State ex rel., Missouri Public Service Co. v. Fraas*, 627 S.W.2d 882 (App. W.D. 1981), the Western District held that a tariffed rate is intended to only permit an opportunity to make the percentage return approved by the PSC, and guarantees no specific return. The Court compared this opportunity to a hunting or fishing license, which does not guarantee that the holder will catch anything at all - it simply makes the catch legal provided the holder is successful in his own efforts. Staff's rate design proposal, however, would essentially guarantee a specific return. Utility regulation should mimic a competitive market, not an

¹⁴ Direct Testimony of Anne Ross, p. 15.

¹⁵ *Id.* at p. 21.

unregulated monopoly market. “Earnings uncertainty motivates competitive business entities to minimize costs and to strive for customer satisfaction.”¹⁶

g. Past Commission Decisions Suggest Staff’s Rate Design is Contrary to Good Public Policy

The Commission recently addressed the issue when Missouri Gas Energy (“MGE”) requested a rate design proposal that would increase MGE’s fixed rate element and reduce MGE’s volumetric rate element. While not as drastic a change as that being proposed by the Staff for Atmos, the Commission nonetheless found that placing more than 55% into a fixed charge to be poor public policy. MGE had proposed a “weather mitigation” rate design “to avoid volatility in the company’s revenue stream.” The Commission rejected MGE’s proposal and held:

High fixed monthly customer charges tend to defeat customer efforts to reduce their bill by conserving natural gas. As a result, the Commission finds that the public interest is best served by setting customer charges as low as reasonably possible. ...

The result of the proposed rate design would allow MGE to recover a greater percentage of its costs even when warm weather results in the sale and consumption of fewer units of natural gas.

Staff opposes MGE’s weather mitigation rate design proposal, but Public Counsel voices the most vehement opposition. Public Counsel correctly points out that the proposed rate design would reduce MGE’s risk associated with warmer than normal weather by effectively creating a second, fixed, customer charge. As a result, customers would not receive as much of a benefit from warmer than normal weather. Furthermore, customers would have less ability to lower their bills by conserving energy. As the Commission found in its discussion of fixed rate elements, such a result is contrary to good public policy.¹⁷

The Commission determined that the “current ratio between fixed and volumetric rate elements, whereby MGE recovers approximately 55% of its residential distribution

¹⁶ Rebuttal Testimony of Barbara Meisenheimer, p. 22.

revenues from fixed elements, is appropriate.” Under Staff’s proposal for Atmos, Atmos would recover 100% of its residential distribution revenues from fixed elements. This continues to be contrary to good public policy for the reasons identified by the Commission just two years ago. Customers would not receive as much of a benefit from warmer than normal weather, and would have less ability to lower their bills by conserving energy. Public Counsel is not aware of any case where the Commission approved a rate design similar to what the Staff has proposed.

h. Staff’s Rate Design is Not Supported by NARUC or Other States

Staff’s testimony in support of their rate design proposal relies in part upon a NARUC resolution that identifies companies in other states that have decoupling tariffs. Staff apparently misread NARUC’s resolution to assert that decoupling rate design *in and of itself* promotes conservation and efficiency. Such is not the case. The NARUC resolution was clearly aimed at promoting conservation and efficiency through programs, and did not suggest that a state commission should guarantee revenue recovery while remaining silent on conservation and efficiency. In fact, the resolution attached to Ms. Ross’ testimony clearly states that NARUC encourages “State commissions and other policy makers to support expansion of energy efficiency *programs*, including consumer education, weatherization, and energy efficiency to address regulatory incentives to inefficient use of gas and electricity.” [emphasis added]. Staff’s rate design proposal lacks any program aimed at promoting conservation and efficiency. Staff’s testimony offers no consumer education programs, no weatherization programs and no programs designed to encourage energy efficiency. Staff’s rate design merely relies upon Atmos to

¹⁷ Report and Order, In the Matter of Missouri Gas Energy’s Tariffs to Implement a General Rate Increase for Natural Gas Service, Case No. GR-2004-0209, September 21, 2004.

somehow encourage conservation and efficiency, despite Atmos having no incentive and having made no commitments to do so. Public Counsel believes NARUC endorsed a more concerted effort on the part of state commissions rather than reliance upon the industry.

An analysis of the state commission decisions cited by NARUC reveals that of the seven (7) state commissions mentioned – Oregon, Maryland, California, North Carolina, North Dakota, Georgia and Oklahoma, only North Dakota opted for a rate design that would collect all non-gas costs through a uniform fixed rate. One significant difference between the North Dakota proposal and the Staff’s proposal is that the North Dakota proposal was accompanied by a reduction in the overall revenue requirement, a distinguishing feature which is missing from the Staff’s rate design proposal in the present case.

2. What is the appropriate structure for the small general service rate (including the medium general service rate if the small general service class is split)?

Public Counsel believes the Commission should maintain the existing structure for the entire small general service (SGS) rate class. The Staff seeks to divide the SGS class so that customers using more than 2,000 Ccf per year will retain the traditional rate structure while SGS customers at or below 2,000 Ccf will be subject to the same rate design Staff proposed for residential ratepayers. Public Counsel’s foremost concern with Staff’s proposal is the discontinuity it will create within the SGS class. If the Commission approves Staff’s rate design proposal, SGS customers using 2,001 Ccf will

pay roughly two to three times as much in non-gas rates as a customer using 2,000 Ccf.¹⁸

The inherent unfairness of this proposal is obvious.

D. MISCELLANEOUS CHARGES

The appropriate miscellaneous charges for the following remain unresolved between the parties: 1) activation charges for connection, 2) activation charges for reconnection, 3) activation charges for transfer, 4) late payment charges, 5) insufficient fund charges, and 6) seasonal reconnection charges. These rates vary substantially by district, and there is no compelling reasons presented in the testimony to alter or raise the existing rates.

High connection charges, for low and moderate income customers, could create a barrier to establishing independent residency. “Unless a connection charge can be shown to be priced below incremental cost, there is little support for the notion that existing customers are made significantly worse off by retaining a lower connection charge for new customers.”¹⁹

Similar arguments exist for high reconnection charges. In addition, where the reconnection fee is set at a rate that is too high for low income users to overcome, it is “reasonable to assume the Company would face an increased risk of writing off uncollectibles,” which would “flow through to the remaining customer base.”²⁰ The record provides no compelling reasons to increase the burden on users already facing financial hardships, or to increase the overall burden on the remaining customer base. Public Counsel recommends that the Commission recognize that the burden from these

¹⁸ Rebuttal Testimony of Barbara Meisenheimer, p. 26.

¹⁹ *Id.*, p. 37.

²⁰ *Id.*, p. 38.

miscellaneous charges may be insignificant to many ratepayers, but could create an insurmountable burden for low income consumers.

Public Counsel opposes the seasonal disconnect proposal that would deny customers the ability to avoid current non-gas volumetric based charges by forgoing service in the summer. When coupled with the Staff's rate design proposal to eliminate the volumetric rate portion of non-gas costs, customers will be held hostage to a service that may be unnecessary to the customer in the summer months. Currently, all but one Atmos district requires seasonal disconnect customers to pay the customer charge upon reconnection. Under the new proposal, seasonal disconnect customers will be forced to pay a significantly higher amount to regain service for the winter season. Staff's proposal would likely create a substantial barrier to low-income customers that find it necessary to deprive themselves of the service during the summer. It will also put a greater drain on resources meant to help low-income customers get reconnected to the system.

E. DISTRICT CONSOLIDATION

Public Counsel opposes consolidating Atmos' districts without "comprehensive data on which to base consolidation or district specific class shifts."²¹ Even if the Commission were to order a zero revenue increase, consolidating districts would cause customer bills to change from a 29% decrease to a 67% increase depending on the district.²² With the parties proposing no shifts between classes, and Atmos agreeing to a zero revenue increase, there is no apparent reason for the Commission to generate the

²¹ Surrebuttal Testimony of Barbara Meisenheimer, p. 3.

²² *Id.* at 4.

customer confusion that would occur if customers experienced a drastic rate change in a case where the Commission rejected the proposed revenue increase.

Staff witness Ms. Ross concludes that the cost to serve similarly situated customers in contiguous districts is approximately the same. This conclusion is based upon mere speculation. Staff has provided no evidence to suggest the embedded district costs are the same. Ms. Ross' conclusion ignores the fact that the embedded cost of mains varies significantly by district.²³ The density, depreciation rates and other factors of each legacy district will influence the mains costs.²⁴ Public Counsel's testimony shows that Staff's Accounting Schedules indicate that there are indeed significant differences in the embedded costs of the different districts.²⁵ Without the necessary data, a decision to consolidate districts would be unreasonable and unsupported by the record.

F. PGA CONSOLIDATION

This issue asks whether the Company's Purchased Gas Adjustment (PGA) tariffs should be consolidated for purposes of setting gas rates in this case. Atmos proposed a single statewide rate, whereas Staff proposed consolidating the existing rates into three (3) rates based on the underlying pipeline serving each area. Public Counsel opposes PGA consolidation. The rates vary significantly among districts, and the parties have offered no compelling reason other than administrative burden to alter the PGA structure. Gas costs represent 73% to 82% of a customer's bill, and consolidating could have a substantial negative impact on customers in areas with lower rates.

²³ *Id.* at 7.

²⁴ *Id.*

G. OTHER TARIFF ISSUES

1. Should a cash-out policy be implemented?

2. Should the Commission allow third party administered pools for cash-outs?

Atmos proposes to replace the current penalty structure with a fee and payment schedule for imbalances caused by transport customers taking more or less gas from the system than the amount under contract. Atmos also proposes to allow third parties to create pools that would allow pool members to offset imbalances. Public Counsel is concerned with these proposals because they give large volume customers flexibility at residential ratepayer's expense, allowing them to borrow or repay the use of gas at their discretion. This creates a concern because residential and small business class users rely on the company for their gas, but under this proposal would be subservient to the needs of the large volume users. Under the current structure, in all districts but Greeley the Company already has protections or penalties in place to restrict imbalances. Public Counsel believes this is preferable over the Company's proposal to implement a cash-out policy.

3. What is the appropriate level of lost and unaccounted gas?

Public Counsel supports the corrective actions proposed by Staff and believes the 2% level supported by the Staff is acceptable provided that residential and small businesses are "held harmless from excessive line loss in the event that an investigation reveals actual line loss instead of faulty read equipment."²⁶

²⁵ *Id.*, p. 11.

²⁶ Rebuttal Testimony of Barbara Meisenheimer, p. 40.

4. Should the Commission approve an Economic Development Rider?

Any Economic Development Riders (EDR) approved by the Commission should not be funded by ratepayers. Atmos has not provided support for the notion that requiring ratepayers to fund an EDR is just and reasonable. Public Counsel would support an EDR funded by shareholders.²⁷

5. Should the mains extension policy and the determination of amounts to be charged be changed in this case?

Public Counsel believes the Company's proposal to eliminate the minimum line extension, and subject every new residential and small business customer to a feasibility review resulting in an up front fee for main extensions, should be rejected. "A reasonable fee-free line extension is both a reasonable obligation to impose on a public utility and an investment in future earnings for the utility."²⁸

III. CONCLUSION

Public Counsel asks that the Commission listen closely to the concerns of the low-income and senior citizen ratepayers that appeared at the public hearings opposing Atmos' rate increase. Ratepayers living on fixed incomes are not afforded the luxury of filing with the Commission for an increase in income. It is imperative that the Commission carefully examine the changes requested in this case and protect against changes that fail to serve the public. While it is true that the law requires the Commission to employ ratemaking principles that give the utility a reasonable opportunity to earn a fair return on its shareholder's investments, the *foremost purpose* of the Commission is to *protect ratepayers*. The public is not served by a Commission decision that simply balances the positions of the public with the positions of the

²⁷ *Id.*, p. 40.

company and splits the difference. Each issue must be separately analyzed, and the ultimate decision on each issue must protect ratepayers to the best extent possible. Anything less is a disservice to the very public the Public Service Commission was created to protect. Public Counsel strongly believes that the proposed changes opposed by Public Counsel in this case will be harmful to the public if adopted by the Commission, and should be rejected outright. Lastly, Atmos' revenue requirement should be reduced by at least \$1.2 million to avoid the continuation of excessive earnings for Atmos' shareholders at the expense of Atmos' customers.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been sent via email on this 17th day of November 2006:

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²⁸ *Id.*, pp. 38-39.