

1 STATE OF MISSOURI  
2 PUBLIC SERVICE COMMISSION

3 TRANSCRIPT OF PROCEEDINGS  
4

5 On-the-Record Presentation  
6

7 December 15, 2009  
8 Jefferson City, Missouri  
9 Volume 10

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

17 HAROLD STEARLEY, Presiding  
18 SENIOR REGULATORY LAW JUDGE  
19 ROBERT M. CLAYTON, III, Chairman,  
20 JEFF DAVIS,  
21 KEVIN GUN,  
22 ROBERT S. KENNEY,  
23 COMMISSIONERS  
24

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A P P E A R A N C E S

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## 1 P R O C E E D I N G S

2 JUDGE STEARLEY: All right. Good morning. It  
3 is Tuesday, December 15th, 2009 and we are here for an  
4 on-the-record proceeding in the matter of Atmos Energy  
5 Corporation's tariff revision designed to consolidate  
6 rates and implement a general rate increase for natural  
7 gas service in the Missouri service area of Atmos, File  
8 No. GR-2006-0387, following its remand to the Commission  
9 from the Western District.

10 My name is Harold Stearley, and I'm the  
11 Regulatory Law Judge presiding over this proceeding. Our  
12 court reporter this morning is Monnie Mealy. And we will  
13 begin by taking entries of appearance beginning with Atmos  
14 Energy Corporation.

15 MR. FISCHER: Thank you, Judge. Let the record  
16 reflect the appearance of Larry Dority and Jim Fischer on  
17 behalf of Atmos Energy Corporation. Our address and  
18 telephone numbers are on the written entry of appearance.

19 JUDGE STEARLEY: All right. Thank you,  
20 Mr. Fischer.

21 Anyone present for Hannibal Regional Hospital?  
22 They were one of the original parties to this matter.  
23 Hearing none, we'll let the record reflect there is no  
24 entry of appearance for Hannibal Regional Hospital. For  
25 Noranda Aluminum, Incorporated?

1           MR. REID: Scott Reid. Scott Reid on behalf of  
2 Noranda Aluminum. Entry of appearance is -- or excuse me.  
3 My address is Post Office Box 151, Fredericktown,  
4 Missouri.

5           JUDGE STEARLEY: All right. Thank you,  
6 Mr. Reid. The Office of the Public Counsel?

7           MR. POSTON: Thank you. Marc Poston appearing  
8 for the Office of Public Counsel and the public.

9           JUDGE STEARLEY: Okay. Thank you, Mr. Poston.  
10 And the Staff of the Missouri Public Service Commission?

11          MR. THOMPSON: Thank you, your Honor. Kevin  
12 Thompson and Lera Shemwell for the Staff of the Missouri  
13 Public Service Commission, Post Office Box 360, Jefferson  
14 City, Missouri, 65102.

15          JUDGE STEARLEY: All right. Thank you,  
16 Mr. Thompson. I need to advise the parties of my usual  
17 warnings. If you have any cell phones, Blackberries,  
18 other electronic devices, please turn them off as they can  
19 interfere with our recordings and web casting.

20          It's my understanding that the parties do have  
21 witnesses available for the Commission should they wish to  
22 inquire. And Staff has present today Mr. Tom Imhoff, Ms.  
23 Ann Ross and Mr. Steve Rackers; is that correct,  
24 Mr. Thompson?

25          MR. THOMPSON: That is correct, Judge.

1 JUDGE STEARLEY: And for Atmos, we have Mr. Joe  
2 Christiansen -- Mr. Christian?

3 MR. FISCHER: Yes, sir.

4 JUDGE STEARLEY: Okay. Thank you. And for  
5 Noranda Aluminum, I understand they wish to reserve the  
6 right for Mr. Donald Johnson?

7 MR. REID: That's correct.

8 JUDGE STEARLEY: And for Public Counsel, Barbara  
9 Meisenheimer?

10 MR. POSTON: Yes, sir.

11 JUDGE STEARLEY: Are there any preliminary  
12 matters we need to address before we proceed? Hearing  
13 none, we will begin with opening statements. Does Counsel  
14 have a preference for openings? I know, Mr. Poston, you  
15 were the Appellant in this matter. Would you like to go  
16 first?

17 MR. POSTON: Sure. Would you like me to get up  
18 to the podium?

19 JUDGE STEARLEY: Your preference, Mr. Poston.

20 MR. POSTON: I'll get up there.

21 OPENING STATEMENT

22 BY MR. POSTON:

23 MR. POSTON: Good morning. May it please the  
24 Commission. The Commission's Order scheduling this on the  
25 record asked the parties to address three items. And the

1 first of those is the procedural time line.

2           We believe that the procedure should allow  
3 reasonable time for the Commission to review the case  
4 record and develop a report and order that addresses the  
5 issues on remand.

6           The -- the current rates became effective in  
7 April of 2007, and we believe that date is important if  
8 the Commission wants to revert back to the prior rate  
9 design Atmos had been using before 2007.

10           Since the straight fixed variable recovers  
11 greater revenue than traditional rate design in warmer  
12 months and less revenue in colder months, we believe any  
13 reversion back to the old rate design should be done in  
14 April of 2010.

15           By timing the reversion in the same month as the  
16 initially effective date of the Order, the change will  
17 minimize the annual revenue impact resulting from any  
18 change in the rate design.

19           And, also, regarding the procedural time line,  
20 in one of my prior pleadings, I had mentioned due process  
21 concerns if the Commission decided to combine this case  
22 with the expected rate case that Atmos is supposed to  
23 file.

24           And I did -- did some research, and I found  
25 several cases that I'd like to bring to the Commission's

1 attention. The first is Nixon versus Peterson. And  
2 that's a -- it's 253 Southwest Third 77. That's a  
3 Missouri Supreme Court 2008 case. And that case says that  
4 Federal and Missouri -- under Federal and Missouri  
5 Constitutional due process, a fundamental requirement of  
6 due process is the opportunity to be heard in a meaningful  
7 time and manner.

8 I think meaningful time would not be satisfied  
9 if the Commission waits 11 months under the typical rate  
10 case time line until this case -- until that matter is  
11 resolved. That Nixon case also says that due process is  
12 flexible, and it calls for such procedural karma as such a  
13 particular situation demands.

14 These rates have been in effect for two and a  
15 half years, and we don't know if they're just and  
16 reasonable. Of course, we have our opinion that they're  
17 not just and reasonable. But there's no finding by the  
18 Commission that it is just and reasonable.

19 And the Western District issued their decision  
20 six months ago. Yet, still nothing has been done. So we  
21 think that a meaningful time means the Commission needs to  
22 acts on this now and not lump it with that other case.

23 Another case is Lobbinger versus Lobbinger, 5  
24 Southwest Third 166. That is a Western District Court of  
25 Appeals decision, 1999. It also addresses due process

1 requirements. And it says a party must be granted an  
2 opportunity to be heard at a time when the deprivation can  
3 still be prevented.

4           And I would interpret that to mean that -- and  
5 how it applies to this case is customers, in particular,  
6 low volume customers that are being charged more under  
7 this fixed rate design -- straight fixed variable rate  
8 design, I think they're being deprived of what they pay.  
9 And so meaningful time would -- would necessitate that the  
10 Commission address this issue right away.

11           And the last case is a 1957 Missouri Supreme  
12 Court case, Missouri Water Company versus PSC. That's 308  
13 Southwest Second 704. And that says that reasonableness  
14 of rates charged by a public utility must be determined  
15 with regard to the due process clauses of the United  
16 States Constitution and the Missouri Constitution.

17           They cite to a Supreme Court decision that said  
18 what a public -- what the public is entitled to demand is  
19 that no more be exacted from the public than the services  
20 rendered by the company are worth. And we think that goes  
21 directly to the issue of rate design and district  
22 consolidation.

23           The second issue the Commission addressed -- or  
24 asked the parties to address was the record -- whether the  
25 record should be reopened. We don't believe the record



1 should be reopened for accepting new evidence. The  
2 parties all had ample opportunity to present evidence and  
3 positions. So we urge the Commission to reread the  
4 testimony, the transcripts, the arguments and issue a new  
5 Order accordingly.

6           The rates in effect prior to this case have been  
7 found just and reasonable, and the traditional rate design  
8 was found to be just and reasonable by the Commission in  
9 those prior cases and in the Order that was issued in this  
10 case.

11           And Atmos and Staff have the burden to show that  
12 the straight fixed variable rate design is just and  
13 reasonable. We believe the record is inadequate to  
14 support that rate design as the Western District also  
15 concluded, so we believe that rate design should be  
16 rejected.

17           So OPC is willing to resubmit this matter to the  
18 Commission on the evidence currently in the record. We  
19 believe that evidence shows district consolidation was not  
20 cost justified, that straight fixed variable rate design  
21 is not cost justified nor supported by the record.

22           The last item the Commission asked the parties  
23 to address was the effective reverting back to what was  
24 called the status quo rate design, and I assume that --  
25 that means the traditional type of rate design.

1           We believe that reverting back to the prior rate  
2 design is assisted by the fact that there were no changes  
3 in class rate revenues or district revenues other than  
4 miscellaneous charges and provided that the revision  
5 occurs in April. As -- as I have discussed earlier, the  
6 impacts to revenues and impact to customers would be  
7 minimal.

8           And that's all I have for an opening. But I'd  
9 be happy to answer any questions.

10           JUDGE STEARLEY: Let me inquire of the  
11 Commissioners. Did you wish to address questions to  
12 Mr. Poston now, or would you rather we complete all  
13 opening statements before your questioning begins?

14           CHAIRMAN CLAYTON: I'd like to ask some  
15 questions now while I've got them on my mind.

16           JUDGE STEARLEY: Very well.

17           CHAIRMAN CLAYTON: Mr. Poston, I just wanted to  
18 ask you a couple things quickly here, and I may have more  
19 as we go around the table.

20           First of all, the statement you made about  
21 changing the rate design in April of 2010 being an  
22 anniversary of the beginning of this new rate design, what  
23 you're suggesting, I think, is that you don't want to  
24 change to the traditional rate design until April; is that  
25 correct?

1 MR. POSTON: Right.

2 CHAIRMAN CLAYTON: And explain to me why you  
3 feel the need to wait until that April date, that  
4 anniversary.

5 MR. POSTON: Well, because under the two  
6 different rate designs, they recover the margin costs  
7 differently. You know, the straight fixed variable, it's  
8 even throughout the year. The traditional, they're  
9 recovering more of their costs in the winter.

10 And since the switch happened at the end of the  
11 winter periods, you know, beginning of April, we think to  
12 make it the most revenue neutral, by converting back at  
13 that same time period, it will -- it will have less of an  
14 impact on -- having some type of a revenue influence  
15 caused by this change in rate design, if that makes sense.

16 CHAIRMAN CLAYTON: Okay. Let me -- let me ask  
17 the question this way. Would you -- would you agree or  
18 disagree that under the straight fixed variable rate  
19 design that more costs are collected during off peak times  
20 than during peak times if you compare it with a  
21 traditional rate design?

22 MR. POSTON: Yes.

23 CHAIRMAN CLAYTON: So, basically, you're paying  
24 more during the warmer months, and then during the winter  
25 months, you'll pay a little bit less in the way this rate

1 design works?

2 MR. POSTON: Correct.

3 CHAIRMAN CLAYTON: So if you terminate the rate  
4 design, the straight fixed variable rate design, during  
5 winter, customers lose any advantage that they gained by  
6 paying slightly more during the off season --

7 MR. POSTON: That is correct. yes.

8 CHAIRMAN CLAYTON: -- is that correct? Okay.  
9 If the Commission were to make a decision to do that, if  
10 we were to say April is the date, what you're requesting,  
11 and in the meantime, a rate case is filed, what would be  
12 the impact with that new rate case and the Commission's  
13 Order in this case on rate design?

14 MR. POSTON: I would think -- well, for one, I  
15 would think the company would need to file new tariff  
16 proposals that were based off of those old tariffs. I  
17 mean, what they're preparing now would be based on their  
18 current tariffs. I think that would be one impact.

19 I haven't really thought much about that beyond  
20 that to consider what type of other impacts would need to  
21 be addressed.

22 CHAIRMAN CLAYTON: Does -- from Public Counsel's  
23 position, does the Commission have the ability to change  
24 the overall revenue requirement in reviewing the record  
25 and making a decision on rate design in this case?

1           MR. POSTON: Well, yes. Certainly, I think you  
2 do. I think based on -- on the record that you could.

3           CHAIRMAN CLAYTON: Okay. Are -- you mentioned  
4 that the -- the Appellate opinion was decided in -- about  
5 six months ago, June of 2009. When did the Commission  
6 actually receive the mandate from the Circuit Court?

7           MR. POSTON: I don't know. I know it -- it came  
8 back to the Circuit Court from the Western District, I  
9 believe, in July when the opinion was -- was final. I  
10 believe July 15th.

11           We kind of waited for the Circuit Court to do  
12 something. And I think it was September when they finally  
13 -- issued -- or I sent them a proposed order after they  
14 hadn't done anything, and I think it was in September.

15           JUDGE STEARLEY: Just to clarify -- I didn't  
16 want to interrupt you, Mr. Poston, but it was September  
17 17th when the Circuit Court reading of it, Commissioner.

18           CHAIRMAN CLAYTON: So the Commission has really  
19 only had this back for a couple months, and we've gone  
20 through several rounds of filings, so it hasn't been a  
21 great deal of time. It hasn't been six months the  
22 Commission's been sitting on this; is that correct?

23           MR. POSTON: That's correct, yes.

24           CHAIRMAN CLAYTON: Okay. Do you -- from Public  
25 Counsel's perspective, I mean, is the -- is there any

1 other appropriate forum for discussion on this remand  
2 beyond what has been conducted right now? You've already  
3 said that you don't believe reopening the record is  
4 appropriate. Is there any other information that you  
5 believe the Commission should receive in this remand  
6 process?

7 MR. POSTON: The Commission could request  
8 proposed orders from the parties. Other than that, I -- I  
9 can't think of anything that I would suggest that the  
10 Commission request or any other proceedings I would  
11 suggest.

12 CHAIRMAN CLAYTON: The traditional rate design,  
13 if you could refresh my recollection, is it a 55 percent,  
14 45 percent breakdown in -- in cost in the traditional rate  
15 design?

16 MR. POSTON: I don't -- I know that was how the  
17 Commission had broken it down for MGE in one case. And I  
18 don't recall how it was structured for Atmos before April  
19 of 2007.

20 CHAIRMAN CLAYTON: Okay. Thank you very much.  
21 I don't have any other questions.

22 JUDGE STEARLEY: Thank you, Mr. Chairman.  
23 Commissioner Gunn?

24 COMMISSIONER GUNN: I just have a couple. The  
25 Nixon versus Peterson, what type of case was that? Civil?

1 Criminal?

2 MR. POSTON: It was a civil case. You know, I  
3 actually don't really recall.

4 COMMISSIONER GUNN: That's all right. But it  
5 was -- it was a civil case?

6 MR. POSTON: I believe it was. I'm not  
7 positive.

8 COMMISSIONER GUNN: Okay. If you could check on  
9 that -- or I guess I could look that up. The -- the  
10 Office of Public Counsel did just appeal this case on the  
11 two issues that it was remanded on, and the Court of  
12 Appeals kind of -- kind of stopped.

13 If -- if -- if we were to just deal with the two  
14 issues that the Court of Appeals dealt with, would those  
15 other issues be right for appeal as much to the extent  
16 that you can answer this question? Is Office of Public  
17 Counsel still interested in appealing those?

18 MR. POSTON: I think it depends what the  
19 Commission did. One of the issues we raised was return on  
20 equity.

21 COMMISSIONER GUNN: Right.

22 MR. POSTON: And by switching to a straight  
23 fixed variable rate design, the risk the company faced  
24 went down, so there should be an adjustment accordingly.

25 So if the Commission were to continue with the

1 straight fixed variable rate design, we think that would  
2 be an issue that would need to be reconsidered. If the  
3 Commission reverted back to traditional, I don't believe  
4 that would be need to be considered.

5 COMMISSIONER GUNN: So let's -- so you don't  
6 believe that our --

7 MR. POSTON: The -- I'm talking about the  
8 business risk reduction caused by the rate design.

9 COMMISSIONER GUNN: Right. And you think the  
10 record would be sufficient for us to take into account all  
11 factors if we reverted to the traditional rate design.  
12 That doesn't change circumstances that you think there's  
13 plenty of evidence in the record and will refer us to do  
14 that?

15 MR. POSTON: I do, yes.

16 COMMISSIONER GUNN: Okay. Now, let's -- let's  
17 assume that we revert. What would the -- what would  
18 happen to the time line if another party other than OPC  
19 decided to appeal that -- appeal that order?

20 MR. POSTON: I guess it -- you know --

21 COMMISSIONER GUNN: We'd be in the same boat?

22 MR. POSTON: Yeah. We'd be in the same boat,  
23 and it could be two years down the road before that's  
24 finally resolved.

25 COMMISSIONER GUNN: And if -- if an interim --



1 or I shouldn't say a -- excuse me for bringing that up.  
2 If -- if a rate case was filed prior to -- prior to that,  
3 or relatively soon, would that -- would that moot out what  
4 we're talking about today? Assuming there was an appeal of  
5 whatever Order we come -- come out with, would the timing  
6 moot that out?

7 MR. POSTON: I think practically it would, yes.  
8 You know, if there were issues that were raised by the  
9 order that, you know, a party felt the need to, you know,  
10 pursue the courts just to establish some type of  
11 precedent, yeah, a party may pursue it. But I think,  
12 practically, yeah, the new order from the new rates from  
13 the upcoming rate case would be in effect, and it would  
14 essentially moot it out. Yeah.

15 COMMISSIONER GUNN: Have you done any sort of  
16 cost analysis that if -- if we were to not consolidate and  
17 go through an appeals process about what that cost would  
18 be to the -- to the ratepayers as opposed to consolidating  
19 the cases for kind of a judicial economy reason?

20 MR. POSTON: You mean as far as like rate case  
21 expense of the company?

22 COMMISSIONER GUNN: Exactly.

23 MR. POSTON: We have not done any analysis of  
24 that.

25 COMMISSIONER GUNN: Just from -- from your own

1 experience or your own opinion, do you think there is any  
2 validity to a judicial economy argument that says, you  
3 know, we could -- we could go through this process that  
4 we're going through, but if a rate case were on file  
5 today, that, essentially, we'd be looking at it, the same  
6 issues that we were previously and that any appeal or --  
7 of the original order that we're talking about today would  
8 be kind of subsumed in the -- in the second rate case that  
9 was filed?

10 MR. POSTON: I would say that the judicial  
11 economy would not overcome the fact that these rates have  
12 not been found just and reasonable, that they're being  
13 charged to customers and there's no order saying that  
14 these are just and reasonable that hasn't been overturned.

15 So I'd say letting that go on for another 11  
16 months, that -- that would -- I would say that would trump  
17 any judicial economy argument.

18 COMMISSIONER GUNN: If we went back to the  
19 traditional rate-making, that design is slightly -- is  
20 different. And does that have a greater impact on  
21 residential customers than it does commercial or -- or  
22 industrial consumers? Do you know?

23 MR. POSTON: The traditional rate design? What  
24 do you mean by impact? I mean, the --

25 COMMISSIONER GUNN: Or I'm sorry. Not

1 traditional. Status quo. If we went back to status quo,  
2 does that -- those rates would -- even if there was a  
3 zeroing out of the rev -- or zero increase in revenue  
4 requirement, that would -- it would change the burden on  
5 who was currently paying for what?

6 MR. POSTON: Right. Low volume consumers would  
7 start to pay less, and high volume consumers would pay  
8 more if you reverted back away from -- to the traditional  
9 rate design.

10 COMMISSIONER GUNN: What about -- what about a  
11 difference between residential and industrial? What do  
12 you think --

13 MR. POSTON: The Commission --

14 COMMISSIONER GUNN: I'm not -- again, I'm not  
15 talking about traditional. I'm talking about status quo.  
16 I'm talking about the tariffs that were in effect  
17 previous.

18 MR. POSTON: And I believe that was a  
19 traditional style rate design.

20 COMMISSIONER GUNN: It was. But there's --  
21 there's a difference between generally with what you're  
22 talking about where obviously you're right as opposed to  
23 the ones that were in place at the time. So I just want  
24 to be clear that that's -- that's my question, once that  
25 -- that were in place at the time.

1           MR. POSTON: I think the impact would be the  
2 same, that it would be -- it would increase the bills for  
3 high volume and would decrease the bills for low volume to  
4 switch back.

5           COMMISSIONER GUNN: Okay. I think that's all I  
6 have. Thank you.

7           MR. POSTON: Thank you.

8           JUDGE STEARLEY: Okay. Commissioner Kenney?

9           COMMISSIONER KENNEY: Thank you. Mr. Poston,  
10 thank you. The three cases that you cited for the due  
11 process argument, do they give -- do they quantify what a  
12 meaningful time period is in any of those three cases?

13          MR. POSTON: I don't know if they do. I'd have  
14 to -- it's been time since I'd looked at those. I'd have  
15 to reread those. And I apologize.

16          COMMISSIONER KENNEY: That's okay. That's --  
17 that's really -- I mean, that was my biggest question. I  
18 want to know, I mean, what time frame are we looking at  
19 before we get into any due process concerns? Because it  
20 sounds like what you're saying, from at least the Nixon  
21 case, is that, yes, you have to give -- due process  
22 requires meaningful here, meaningful time period, but it  
23 also allows for flexibility given the particular  
24 circumstances of the case.

25          And, so, I mean, do -- do we have any type of

1 quantifiable guidelines that, you know, this amount of  
2 time is clearly too long and violates the due process, or  
3 is it -- is it ultimately flexible and left to our  
4 discretion?

5 MR. POSTON: And what I have seen -- I haven't  
6 seen anything that quantifies a time line, and I agree  
7 with you. It -- as the circumstances of the particular  
8 case require, that's -- that's probably what the standard  
9 is in the Nixon case from what I recall.

10 COMMISSIONER KENNEY: The Chairman asked you  
11 about reopening the record, and you were of the opinion  
12 that it is unnecessary. Is there anything that prohibits  
13 us from doing so?

14 MR. POSTON: I don't believe so.

15 COMMISSIONER KENNEY: Okay. That's all the  
16 questions I have. Thank you.

17 MR. POSTON: Thank you.

18 JUDGE STEARLEY: Thank you, Commissioner Kenney.  
19 Commissioner Davis?

20 COMMISSIONER DAVIS: Good morning, Mr. Poston.

21 MR. POSTON: Good morning.

22 COMMISSIONER DAVIS: Okay. So I got down here a  
23 little late this morning. But you're here to urge us to  
24 just take back up this case and adopt your rate design and  
25 send it out, correct? Is that -- that's what -- that's

1 what your Christmas wish is?

2 MR. POSTON: Essentially, yes. Revert back to  
3 the prior rate design. Yes.

4 COMMISSIONER DAVIS: But you said that if --  
5 that if we -- that if we -- if we adopted straight fixed  
6 variable rate design again that we need to reopen the  
7 record?

8 MR. POSTON: I would -- well, not necessarily.  
9 I think you -- you would need to -- what I was talking  
10 about is return on equity. The reduction in return on  
11 equity would be something that would need to be  
12 considered.

13 That revenue requirements were issued that the  
14 Western District had passed on because they said that --  
15 because of the straight fixed variable had been --

16 COMMISSIONER DAVIS: So you're asking us to  
17 engage in single issue rate-making?

18 MR. POSTON: No. I'm asking you to look at the  
19 entire record from this case.

20 COMMISSIONER DAVIS: So -- okay. So we'd look  
21 at all their costs?

22 MR. POSTON: Yes.

23 COMMISSIONER DAVIS: Okay. So the revenue  
24 requirement could conceivably go up based on the record?

25 MR. POSTON: Yes.

1           COMMISSIONER DAVIS:  And you think that setting  
2 rates now -- well, let's say, if we were going to set  
3 rates in January or February or March of 2010 based on  
4 data that was provided in October, November, December,  
5 January -- October, November, December 2006, January 2007,  
6 you think that's -- that's setting just and reasonable  
7 rates?

8           MR. POSTON:  I think if you just reject the  
9 proposal, then you're reverting back to prior orders that  
10 had found the prior rate design to be just and reasonable  
11 and the prior, I guess, revenue requirement to be just and  
12 reasonable.

13           COMMISSIONER DAVIS:  Do you think that's good  
14 public policy, Mr. Poston, to wait four or five years, and  
15 let's just throw out our existing tariffs, and go back to  
16 what was just and reasonable four years ago?

17           MR. POSTON:  I don't know if that's good public  
18 policy.  I don't think it's good public policy to wait  
19 another 11 months and do nothing.

20           COMMISSIONER DAVIS:  Do you know, does Staff do  
21 surveillance on Atmos?

22           MR. POSTON:  I'm not sure what you mean by  
23 surveillance.

24           COMMISSIONER DAVIS:  Do they monitor their  
25 earnings?  Do you monitor their earnings?

1           MR. POSTON: We have not been, no. I don't know  
2 what -- I can't speak to what Staff's been doing.

3           COMMISSIONER DAVIS: Okay. So you don't know if  
4 they've been over-earning or under-earning?

5           MR. POSTON: I do not.

6           COMMISSIONER DAVIS: Well, we know that Staff  
7 has not filed a complaint against them for over-earning.

8           MR. POSTON: That's correct. We know Staff  
9 didn't do it after they concluded that the company was  
10 over-earning. They didn't do it at that time. And so I  
11 don't know what decision Staff makes when they decide  
12 whether to file a complaint case.

13           COMMISSIONER DAVIS: All right. No further  
14 questions, Judge.

15           JUDGE STEARLEY: Any additional questions for  
16 Mr. Poston?

17           CHAIRMAN CLAYTON: Not at this time.

18           JUDGE STEARLEY: Okay. Thank you, Mr. Poston.  
19 We'll take opening statement of Atmos Energy.

20           MR. FISCHER: Thank you, Judge.

21                            OPENING STATEMENT

22 BY MR. FISCHER:

23           MR. FISCHER: Good morning. My name is Jim  
24 Fischer. And my partner Larry Dority and I are  
25 representing Atmos today.



1           I'd like to go over some of the same issues that  
2 Mr. Poston mentioned because in the order setting the  
3 on-the-record today, you indicated you'd like to hear  
4 about how we should proceed with the remand, and,  
5 particularly, you'd like to talk about procedural time  
6 lines, whether the record should be reopened and  
7 additional evidence adduced and hypothetical scenarios  
8 regarding reverting back to what was called the status quo  
9 rate design, and, also, the impacts that it would have on  
10 the expected rate case of Atmos Energy.

11           I think one important time line that you might  
12 be quite interested in is the fact that Atmos Energy is  
13 planning to file its next Missouri rate case within the  
14 next three days. That would be December -- December 18th.

15           And if we look at a time line of what a case  
16 might look like with a filing with December 18th as our  
17 direct, that will be Friday. So you'll see your -- the  
18 direct. And in that case, we're going to be proposing  
19 continuation of the -- the current straight fixed variable  
20 rate structure, the consolidated districts.

21           But we'll be looking at it on -- with a new  
22 revenue requirement based upon a current test year of 12  
23 months ending June 30, 2009, with known and measurable  
24 changes updated through March 31.

25           Now, in this rate case, we'll be, as I

1 mentioned, asking that the Commission look at continuing  
2 the current rate structure and the three consolidated  
3 districts. And, of course, that would include a current  
4 look at the company's cost of service and its revenues  
5 under current economic conditions.

6           Now, in the last Atmos rate case, Staff and  
7 Public Counsel and Intervenors had approximately five  
8 months to investigate the company's revenue requirement  
9 request and its rate structure request. If you assume a  
10 similar schedule of the upcoming rate case as we had in  
11 that one, then the Staff Public Counsel and the  
12 Intervenors would be filing their direct in -- on 5/15,  
13 about mid-May.

14           In the last case, we had a settlement conference  
15 about a month after that mid-May date whenever the Staff  
16 and Public Counsel filed their direct. So we'd have a  
17 settlement conference June 15, assuming the same schedule  
18 in the current rate case.

19           Now, if that rate case would happen to settle in  
20 June after this conference, you could have new rates in  
21 effect in probably mid-August under the current rate case  
22 schedule.

23           Now, if we do have hearings and if they're  
24 necessary, then we'd probably have hearings in mid-July.  
25 7/15. And, of course, the operation of law date is 11

1 months after the filing date, so that would be November  
2 18. So in any event, you'll have new rates in effect on  
3 November 18, even if it's a fully litigated case.

4           Now, if we looked at a remand case, we believe  
5 that it would be necessary to reopen the record to allow  
6 the company and the Staff and the Public Counsel to adduce  
7 evidence under the due process cases that -- that  
8 Mr. Poston mentioned to give us an opportunity to present  
9 to especially Commissioners that weren't even in the last  
10 case our perspective on those issues.

11           The Court opinion clearly contemplates that the  
12 Commission will re-examine the revenue requirement and the  
13 rate design issues, including that straight fixed variable  
14 issue as a part of the remand proceeding.

15           If -- we don't think it would be reasonable or  
16 appropriate, as a couple of questions from the Bench have  
17 suggested, to -- to put rates into effect now in 2010  
18 based upon a test year of 2005 data. This data is  
19 extremely stale. And, of course, our next rate case, the  
20 one that I'm talking about here, which we'll file on  
21 Friday, will have a test year that is about four years  
22 more current than what the record is in the old rate case.

23           Under the law, the Commission has to take a look  
24 at all relevant factors when you set rates. And,  
25 certainly, the current conditions and the financial data

1 of the company would be among those relevant factors that  
2 we'd ask you to take a look at.

3 We don't believe that having a separate remand  
4 proceeding at this stage to consider those issues will  
5 produce a decision much sooner, if at all, sooner than  
6 having it under the current rate case schedule.

7 I would assume under the remand case that you'd  
8 give the company a couple months, maybe six weeks to -- to  
9 put together its testimony to present to you under the due  
10 process clause. Let's assume that that was February 1st.

11 Now, assume that you'd want Staff and Public  
12 Counsel to have an opportunity to -- to do some discovery  
13 and investigate the company's request in that February 1st  
14 testimony. And let's assume that you shorten it a little  
15 bit to try to expedite it. Instead of giving them five  
16 months like you have in the regular rate case, you have  
17 only three or four months. Okay?

18 If you did that, then we're talking about a  
19 filing date for Staff, Public Counsel and Intervenors of  
20 5/15, the same date you'd have under the current rate case  
21 schedule.

22 Now, under those assumptions, hearings wouldn't  
23 be occurring until mid-summer. And I guess we could have  
24 a settlement conference on the remand case, too, probably  
25 a month after the Staff filed their testimony. So that

1 would be on the same schedule as the settlement conference  
2 in the rate case. If we couldn't get to a settlement,  
3 then you could have hearings about a month later.  
4 And, again, that would be on the middle of July schedule,  
5 which is the same as I would suspect we'd have in the rate  
6 case.

7           And even if somehow we were able to obtain a  
8 decision on the remand issues in a separate remand  
9 proceeding a couple of months sooner than in the new rate  
10 case, it would undoubtedly create customer questions and  
11 -- and probably some customer confusion if the company  
12 changed the rates after the remand proceeding in the  
13 summer and then turned around and changed the rates again  
14 a few months later based upon the most recent data that  
15 would be considered as part of the rate case.

16           Again, it just seems that it makes the most  
17 practical sense to consider the issues once rather than  
18 litigating the same issues on a stale record and then  
19 immediately relitigating those same issues under current  
20 data, using current data.

21           We also believe that considering the revenue  
22 requirement in rate design issues that have been remanded  
23 in the next rate case would not have any adverse impact  
24 upon that next rate case because the issues are going to  
25 be the same.

1           We're going to be talking about revenue  
2 requirement. We're going to be talking about whether we  
3 ought to use a straight fixed variable rate structure or  
4 the previous rate structure or some alternative rate  
5 structure. Rates can only be changed, of course,  
6 prospectively in either of -- either of these cases.

7           So in either case, we're going to be only  
8 looking at rates on a going forward basis. Therefore,  
9 taking into account this kind of a schedule, the company  
10 believes, and I think the Staff still believes, that it  
11 makes the most sense for the Commission to save itself and  
12 the parties a lot of time and effort by hearing the -- the  
13 issues just one time, not asking us to litigate those  
14 issues twice.

15           Now, another issue that Mr. Poston mentioned and  
16 there were some questions from the Bench on were about the  
17 reversion to the old rate structure. We don't believe  
18 that that scenario is one that the Court envisioned and  
19 was contemplating since the Court opinion clearly  
20 indicates that the Commission may consider implementing  
21 the straight fixed variable rate design again or some  
22 alternative rate design after the remand hearing or -- and  
23 the opinion also notes that the company might wish to  
24 re-assert its position on the revenue requirement in that  
25 remand proceeding.

1           But, nevertheless, if the Commission merely  
2 directed the company to put the old rates into effect  
3 immediately, then the effect would be that the rate  
4 structure that the Commission ordered to be implemented  
5 would be based more heavily upon the consumption of gas by  
6 residential and small general service customers.

7           Now, as the Commission found in that last rate  
8 case order, customers have to pay more in the winter when  
9 usage is higher under the old rate structure than under  
10 the straight fixed variable rate structure. A couple of  
11 your questions have -- have indicated that.

12           But I think that's an important point.  
13 Customers pay more in the winter when bills are already  
14 the highest under the old rate structure than under the  
15 straight fixed variable rate structure. So since we will  
16 be placing the old rate structure into effect in the  
17 middle of winter, it would result in the company receiving  
18 a higher level of revenues unless, of course, we happened  
19 to have a milder winter than -- weather than we -- than is  
20 typical.

21           That's one of the major disadvantages of the old  
22 rate structure. consumer bills are highest in the winter  
23 when their bills are likely to be the highest anyway. So  
24 if the Commission ordered the old rate to be put into  
25 effect immediately, so let's say January 1st, the company

1 would be expected to experience higher revenues unless we  
2 happen to have a warmer -- warmer weather than normal.

3           The company is estimating that it would receive  
4 an extra \$1,350,000 from residential customers alone over  
5 the next three months if the Commission orders that the  
6 old rates be put into effect immediately assuming normal  
7 weather.

8           Now, if we happen to have colder weather like  
9 we've been having the last couple weeks, then those  
10 revenue estimates would have to go higher. I've got the  
11 Director of Rates, Joe Christian, here, and he's available  
12 to answer questions regarding those figures if -- if you  
13 have some questions and want some more detail.

14           Finally, the company shareholders have been  
15 funding the energy efficiency and conservation program  
16 since the Commission adopted a rate structure that aligned  
17 the interests of the customers and the company. In the  
18 last three years, they've spent approximately half a  
19 million dollars on those programs.

20           Under the straight fixed variable straight  
21 structure, the company shareholders are largely  
22 indifferent to whether customers use a lot or a little  
23 natural gas since the company -- since the company  
24 recovers its fixed distribution costs through a fixed  
25 monthly charge or delivery charge no matter what the level



1 of usage.

2           The customer benefits from the company's energy  
3 efficiency and conservation programs. However, if the  
4 Commission would order the company to return to that  
5 traditional two-part rate structure where lower levels of  
6 consumption would have an adverse impact on the company,  
7 then the company programs to encourage conservation would  
8 have to be revisited. Thank you very much for your  
9 attention. I'm happy to answer your questions.

10           JUDGE STEARLEY: Okay. Questions from the  
11 Bench? Commissioner Davis?

12           COMMISSIONER DAVIS: Good morning Mr. Fischer.

13           MR. FISCHER: Good morning, Judge.

14           COMMISSIONER DAVIS: All right. So Atmos is  
15 going to file a rate case no later than this Friday, the  
16 18th?

17           MR. FISCHER: That's what I've been ordered to  
18 do.

19           COMMISSIONER DAVIS: That's what you've been  
20 ordered to do. So you're going to do it?

21           MR. FISCHER: Unless the numbers have a bust  
22 that come up in the next three days, we'll be filing it.

23           COMMISSIONER DAVIS: Unless the Internet crashes  
24 or terrorists take over the building, you're going to file  
25 it?

1 MR. FISCHER: That's our intention. Yes, sir.

2 COMMISSIONER DAVIS: Okay. And it's your  
3 position that -- that us going back and establishing rates  
4 just -- you know, I guess as Mr. Poston would have us do,  
5 we'd just withdraw our order and just go back to the rates  
6 that we had prior to 2006. It's your position that  
7 wouldn't be just and reasonable, correct?

8 MR. FISCHER: Yes, sir. I think if you consider  
9 all relevant factors, you need to consider more current  
10 data. And it wouldn't be -- it wouldn't be reasonable or  
11 appropriate to base rates on 2005 data at this point.

12 COMMISSIONER DAVIS: Okay. I don't think I have  
13 any further questions, Judge.

14 JUDGE STEARLEY: Commissioner Gunn?

15 COMMISSIONER GUNN: Is there a -- a third way,  
16 if you will? Basically, what we've -- we've -- we have so  
17 far is throw out the tariffs, go back to -- to where we  
18 were before or consolidate with -- with the new case and  
19 just kind of -- we'll deal with it in the new rate case.

20 And I -- this is just off the top of my head.  
21 But is there -- is there any sort of hybrid approach or  
22 approach that allows us to take into account the Western  
23 District's order respecting that we have to do something  
24 in order to put just and reasonable rates in effect?

25 And, again, I hate to -- hate to bring up this

1 word, but almost an interim tariff that could be -- that  
2 could be put into effect in order to have just and  
3 reasonable rates, effective deal with the winter summer  
4 disparity while not waiting the full 11 months for -- for  
5 a new rate design to come?

6 MR. FISCHER: Judge, I hadn't fully thought  
7 about that. I guess you could put an interim increase on  
8 the revenue requirement into effect using the old rate  
9 structure, put half of what the company's requested into  
10 effect on a subject to refund basis using the -- a  
11 different rate structure. But that would certainly be a  
12 departure from the past.

13 COMMISSIONER GUNN: Right. All right. Okay.  
14 Again, I -- I'm -- not to put you on the spot.

15 MR. FISCHER: The company would probably be  
16 happy to get some of their revenue requirement early.

17 COMMISSIONER GUNN: I'm sure they would be. And  
18 I didn't mean to put you on the spot. But I'm just  
19 wondering -- and I would ask everybody to think about  
20 whether there is a -- whether there is any other way other  
21 than the take it or leave it kind of positions.

22 And it may not be -- again, this is something  
23 that I'm not going to put everybody on the spot and ask  
24 them to do.

25 MR. FISCHER: One way you could do that, Judge,

1 I think, if you really want rates into effect faster, you  
2 can -- there's nothing in the law that requires this  
3 Commission to take a full 11 months to decide this case.

4           You could order the Staff to file their audit at  
5 three months after we've filed ours and have a more  
6 compressed schedule that would get you to an end date much  
7 quicker than November 18th.

8           I think the company would certainly support  
9 having a quicker schedule than what -- than what would  
10 traditionally be had under an 11-month schedule.

11           COMMISSIONER GUNN: I'm also looking for  
12 something that everybody could agree on, too. So there  
13 might be some other issues with that. But -- but we have  
14 an oppor -- part of what -- part of what kind of got us  
15 into this was an attempt, which I think was appreciated to  
16 be creative with some rate design and some other things.  
17 And I think now we have an opportunity to maybe get  
18 creative again to try to maybe find a solution to this.

19           And if we do all or nothing on this -- that may  
20 be the answer -- those may be the other answers, but I  
21 don't want to miss the opportunity to figure out maybe if  
22 there is a -- if there was a third way in order to -- to  
23 kind of satisfy everybody, maybe not make everybody happy,  
24 but make everybody happy enough.

25           MR. FISCHER: Well, I think under the cases that

1 -- that Mr. Poston cited and certainly some others that  
2 I'm familiar with, everybody needs a meaningful  
3 opportunity to be heard. And I think that's -- the  
4 schedule you adopt needs to give people a meaningful  
5 opportunity to be heard. I think you can do that on less  
6 than 11 months.

7 COMMISSIONER GUNN: Sure.

8 MR. FISCHER: But I think we will be taking the  
9 position that the old revenue requirement data from 2005  
10 is not reasonable to be used again, and you need to take a  
11 look at the current data, which is in the current rate  
12 case.

13 And we will continue to support the straight  
14 fixed available variable rate structure, although the  
15 company is interested in other alternatives as well. And  
16 that can be explored in a rate case or whatever proceeding  
17 you might have.

18 COMMISSIONER GUNN: So under your position --  
19 just to clarify, under Mr. Poston's suggested solution,  
20 your position is that it isn't possible it get just and  
21 reasonable rates under that suggested position because the  
22 data is so out-dated that it's -- that you wouldn't be  
23 able to get to just and reasonable?

24 MR. FISCHER: That's correct. I don't see how  
25 you could consider all relevant factors looking at ROEs or

1 wage levels from 2005 whenever you've got data that is in  
2 front of you that is current data, includes a look at the  
3 current financial conditions, the -- you know, we've had  
4 all kinds of disruptions in the market since 2005, which  
5 the Commission has -- has recognized in other cases. And  
6 I think you need to look at that now.

7 COMMISSIONER GUNN: Okay. I don't have anything  
8 further. Thanks.

9 JUDGE STEARLEY: Commissioner Kenney?

10 COMMISSIONER KENNEY: If we do nothing to  
11 consolidate the two cases, what -- what does it  
12 procedurally do to the current case that the Western  
13 District has instructed us to deal with?

14 MR. FISCHER: I think you've satisfied the  
15 Western District's mandate to look at these issues again.  
16 And there's -- there's nothing that requires that you go  
17 back to that old data and re-decide issues or anything  
18 else.

19 If you decided a new rate case, it's going to  
20 moot out any -- any previous rates that were in effect  
21 anyway under the -- under the law. I think Mr. Poston  
22 mentioned -- mentioned that.

23 So it -- it seems to me like looking at current  
24 data, deciding these rate structure issues, the rate of  
25 return, the energy efficiency issues, that will take care

1 of any of the mandate that the Court has suggested that  
2 you do here.

3           It's not unlike other cases where the Commission  
4 has had like the Missouri American Water case where I  
5 think that went up two or three times to the Court of  
6 Appeals, came back.

7           They put new rates into effect. It basically  
8 mooted out all those other issues. I was familiar with  
9 one case involving this company where I think it was  
10 Noranda that appealed it to the Court of Appeals, and the  
11 Court said that the findings weren't adequate. They --  
12 they sent it back.

13           In the meantime, Atmos bought the company. And  
14 we worked out an arrangement with the -- with Noranda that  
15 -- that mooted out the appeal and it was gone.

16           COMMISSIONER KENNEY: What procedurally -- when  
17 you say it was gone, procedurally, what happened? Did The  
18 Appellate dismiss it?

19           MR. FISCHER: It just died. It just died and --  
20 yeah. We filed a -- a pleading and suggested the case be  
21 closed because it was no longer necessary.

22           COMMISSIONER KENNEY: And there was an order  
23 from the Western District granting your motion? I mean, I  
24 want to know procedurally what specifically happened.

25           MR. FISCHER: You'll never see an order back

1 from the Court saying what you've done is appropriate or  
2 anything like that unless somebody appeals it. It will  
3 just come back here. You have done what the Court told  
4 you to do, and it's no longer -- nobody appeals it, and it  
5 dies on the line, so to speak.

6 COMMISSIONER KENNEY: Can you guys go work this  
7 out and somebody file a voluntary dismissal of the appeal?  
8 And what I mean by that, agree that we're going to deal  
9 with these issues in a subsequent rate case? Because, I  
10 mean, if your time line is correct, then, yeah, what  
11 you're saying makes sense for purposes of judicial  
12 economy. But I'm just not satisfied with that answer that  
13 it just dies on the line and the appeal just goes away.

14 MR. FISCHER: Judge, unfortunately, the  
15 Appellate process isn't always as effective as people  
16 would like. There are lots of cases that go up, and they  
17 come back. And the -- in the meantime, the -- the  
18 Commission is -- has decided new rate cases and it  
19 basically moots out the older rates, and, therefore, those  
20 become the just and reasonable rates on a going forward  
21 basis.

22 I don't know whether we could settle this case  
23 somehow. We certainly -- given this time frame, it seems  
24 to me like reasonable folks could agree that we ought to  
25 just take a look at it one time rather than re-litigating



1 the same issues twice.

2 COMMISSIONER KENNEY: If we decided that we  
3 didn't want to roll these two cases together, then it's  
4 your position that we would have to reopen the record?

5 MR. FISCHER: Yes, sir.

6 COMMISSIONER KENNEY: And take in new evidence  
7 that's timely, which would ultimately be the same evidence  
8 that the company intends to put on in the new rate case?

9 MR. FISCHER: Yes, sir. The other thing you  
10 could do, I suppose, is let the remand sit a few months.  
11 And then when you decide the new rate case rates, you  
12 would -- could basically declare the remand proceeding to  
13 be a moot issue because you've now set new rates.

14 COMMISSIONER KENNEY: And we can do that without  
15 running into any due process violations?

16 MR. FISCHER: You've given everybody a  
17 meaningful opportunity to be heard on what their current  
18 rates should be. And it seems to me like that would  
19 address that.

20 COMMISSIONER KENNEY: Again, so you're --  
21 you're --

22 MR. FISCHER: If you've got a problem -- if  
23 there's a concern about that, then just rolling the two  
24 cases together would certainly take care of that.

25 COMMISSIONER KENNEY: Would it?

1           MR. FISCHER: Yes. You're going to look at the  
2 same issues, the rates, rate design, the revenue  
3 requirement, conservation issues. All of those will be  
4 decided again.

5           COMMISSIONER KENNEY: And that's -- that much is  
6 clear. But will they be looked at in a timely and  
7 meaningful fashion?

8           MR. FISCHER: I think as timely and meaningful  
9 as the due process clause will allow.

10          COMMISSIONER KENNEY: So this is similar to my  
11 question that I asked Mr. Poston. I mean, is it your  
12 position, then, that -- that what is meaningful can't be  
13 quantified and we have to look at it in the context of the  
14 particular circumstances and it's essentially whatever we  
15 say it is?

16          MR. FISCHER: Well, I don't think I'd go that  
17 far, Judge. There was a -- a case that I was involved  
18 with the Public Counsel's office many years ago where they  
19 -- they found that due process was denied the Office of  
20 Public Counsel based upon a hearing that was granted.

21          And that case also stands from the fact that due  
22 process requires a meaningful opportunity to be heard.  
23 Now, the company needs a meaningful opportunity, as does  
24 the Public Counsel, to -- to present our positions to you.

25          I think, practically speaking, the rate case is

1 about as good a schedule as you're going to get. I mean,  
2 even if you try to do it on a current basis, you're going  
3 to be on about the same schedule, but you're just going to  
4 be doing it twice.

5 COMMISSIONER KENNEY: Okay. I don't have any  
6 other questions. Thank you.

7 MR. FISCHER: Yes. Thank you.

8 JUDGE STEARLEY: Mr. Chairman?

9 CHAIRMAN CLAYTON: Thank you, Judge.  
10 Mr. Fischer, good morning.

11 MR. FISCHER: Yes, sir. Good morning.

12 CHAIRMAN CLAYTON: You have practiced before the  
13 Commission. You've played a number of different roles  
14 over the years in your career.

15 MR. FISCHER: Yes, sir.

16 CHAIRMAN CLAYTON: Is this a common occurrence  
17 where a party files an appeal against a Commission  
18 decision and it works its way up through the process, and  
19 it gets remanded and, basically, the whole appeal gets  
20 mooted because of the timing of additional rate cases?

21 MR. FISCHER: Yes, sir. Very common.

22 CHAIRMAN CLAYTON: You used the word  
23 "meaningful" a couple times, meaningful due process,  
24 meaningful process in general. How meaningful is an  
25 appeal that a party is successful in unwinding an order

1 issued by this -- by this Commission to get only -- only  
2 to get remanded and then consolidated with the next case  
3 and they never --in this case, Public Counsel never gets  
4 any relief despite having successfully processed an  
5 appeal?

6 MR. FISCHER: One way that you can avoid that,  
7 Judge, is if you -- if you ask the Court for permission to  
8 pay into the Court and you create a fund as -- as some of  
9 the industrials have done over the years, and so there's a  
10 pot of money there that needs to be revolved and -- and  
11 distributed back.

12 If there's not -- if there's not a -- some kind  
13 of a -- a stay fund created, then it -- the time it takes  
14 to appeal, it may be mooted out by a new rate case.

15 CHAIRMAN CLAYTON: So the answer would be that  
16 Public Counsel out of their budget should come up with  
17 funds that would cover that amount?

18 MR. FISCHER: You know, I don't know what the  
19 answer to that is. That was always a question I worried  
20 about.

21 CHAIRMAN CLAYTON: Did you advocate for that  
22 when you were in the Public Counsel?

23 MR. FISCHER: I tried to figure out a way to  
24 make the process more meaningful from that perspective.  
25 That's true.

1           CHAIRMAN CLAYTON: By consolidating these cases,  
2 don't we basically just ignore the Court of Appeals?  
3 Aren't we saying it doesn't matter what you're saying  
4 because we're not going to revisit this and we'll look at  
5 this in the context of a new case that will have new  
6 tariffs that will completely supersede what has been done?

7           MR. FISCHER: I don't think you're ignoring  
8 their mandate at all. I think you're -- they've remanded  
9 it back for another look for further proceedings on these  
10 issues, on the fixed straight -- straight fixed variable  
11 rate structure, on the consolidation, on the seasonal  
12 reconnect, and then, also, they recognize that revenue  
13 requirement will be a part of that.

14           And by doing -- by having another hearing on  
15 this, you're going to have, you know -- could be a couple  
16 weeks of hearings on those -- on those issues pursuant to  
17 their mandate.

18           CHAIRMAN CLAYTON: I was confused on re-opening  
19 the record on taking additional information. Would that  
20 mean that we would change the test year in the old case?

21           MR. FISCHER: What new evidence would need to be  
22 taken for -- for the test year that ended -- I don't even  
23 know what the test year was. It was 2005, I think with  
24 some in 2006. But, yes, Judge, you'd have to take -- to  
25 take into account all relevant factors, you'd have to look

1 at current data.

2 CHAIRMAN CLAYTON: Based on the test year?

3 MR. FISCHER: Based on the test year and the --  
4 and the position of the parties, the economic conditions  
5 and all of that.

6 CHAIRMAN CLAYTON: How much has that data  
7 changed from the test year period, though?

8 MR. FISCHER: Well, from 2005, it's changed a  
9 lot.

10 CHAIRMAN CLAYTON: But -- but the information  
11 you would litigate in this proceeding in the old case  
12 would have to be confined to that time period,  
13 circumstances involving that time period, wouldn't it?

14 MR. FISCHER: No. Because you're not -- you're  
15 not going to refund anything back based on some old 2005  
16 test period or anything like that. All you're doing is  
17 setting rates on a going forward basis based upon the most  
18 recent data that you have, the best data that you have to  
19 set just and reasonable rates.

20 CHAIRMAN CLAYTON: From 2005?

21 MR. FISCHER: No. From -- from the current  
22 data.

23 CHAIRMAN CLAYTON: So the data would -- would be  
24 taken from a time period outside of the test year?

25 MR. FISCHER: No. The test year in the current

1 rate case will be -- what did I say?

2 CHAIRMAN CLAYTON: Not -- not the new case. I'm  
3 talking about the -- if we were to prosecute on a  
4 stand-alone basis the old case.

5 MR. FISCHER: Yeah. We would have -- Judge, we  
6 would have the opportunity on behalf of the company to  
7 present to you all relevant factors, including the data  
8 that we have available to us in the current period in that  
9 remand case.

10 CHAIRMAN CLAYTON: I understand the concerns  
11 that you raise about stale information, about a test year  
12 that is four or five years old. A lot of things  
13 potentially have changed. A lot of actions have been  
14 taken by the company in consolidating districts and  
15 modifying rate designs.

16 But what other choice does Public Counsel have  
17 but to ask for the relief that they asked for when this  
18 case was decided what, back in 2007? Do they have any  
19 choice other than to ask for -- for what they asked for  
20 years ago?

21 MR. FISCHER: I'm not sure I'm following your  
22 question. But they -- they certainly have the choice of  
23 -- you know, as Mr. Poston has rightly suggested that you  
24 can reopen -- reopen the record to take additional  
25 evidence.

1           It's just a question of what schedule are you  
2 going to use. And I'm suggesting that given the fact that  
3 we're filing a rate case right now, the schedules are  
4 going to be virtually identical.

5           CHAIRMAN CLAYTON: And it basically makes the  
6 appeal meaningless by that -- that proposal makes the  
7 appeal meaningless.

8           MR. FISCHER: No. I don't think it makes it  
9 meaningless. You're going to -- you're getting -- from  
10 Public Counsel's perspective, they are getting another  
11 review by this Commission about all of the rates -- all of  
12 the rate issues that they have raised in their appeal.

13           They are going to -- they are going to now have  
14 the opportunity to -- to have a new Commission take a look  
15 at those issues and resolve that.

16           CHAIRMAN CLAYTON: But they would have had that  
17 regardless of winning the appeal because there would be a  
18 new rate case that is filed.

19           MR. FISCHER: I suppose that's true.

20           CHAIRMAN CLAYTON: Yeah. I mean, they get  
21 another bite at the apple because Atmos is filing another  
22 case. Okay. Thank you very much.

23           JUDGE STEARLEY: Any additional question?

24           COMMISSIONER DAVIS: Wait a minute. All right.  
25 Let's -- I want to go back and ask you about this concept



1 of -- of shortening the schedule, Mr. Fischer. Now, you  
2 correct me if I -- if I'm wrong because many of these  
3 things started happening long before I got here. It was  
4 when you and Mr. Dority and sometime after the Mayflower  
5 arrived.

6 MR. FISCHER: Not very long after that.

7 COMMISSIONER DAVIS: Okay. Traditionally, there  
8 is a quote -- a -- does it -- does it take Staff six  
9 months to do the audit or -- in your opinion, or does that  
10 just happen because the utility gets a, quote, six-month  
11 update?

12 MR. FISCHER: I think it depends on -- on the  
13 size of the utility how long those audits take.  
14 Traditionally, it takes about five months from the time  
15 the company files their direct until the Staff feels  
16 comfortable filing its direct.

17 Now, you know, audits tend to increase to the  
18 amount of time that's available. But that's something you  
19 might ask the Staff how much time do they really need or  
20 how much -- when do they begin their audit? When do they  
21 conclude it?

22 For a company like Atmos, I think the audit  
23 period isn't as long as it is, for example, in an Ameren  
24 Electric case or anything like that.

25 COMMISSIONER DAVIS: Right. Well, I mean, you

1 do appear here on multiple matters. You are aware that  
2 they do have a few more audits going?

3 MR. FISCHER: Oh, definitely. I'm not  
4 suggesting -- I'm not suggesting that -- I'm just saying  
5 that the company -- if you want -- if you want to  
6 accelerate the decision, that would be one way.

7 I was asked what scenario you could do. That  
8 would be one scenario that could get you to an end date  
9 decision faster if you shorten the period in the current  
10 rate case.

11 COMMISSIONER DAVIS: Okay. I mean, and then --  
12 and then did you have an impression as to how much  
13 accounting work it takes to -- to review the -- the  
14 updated figures when you update it? I mean, is the  
15 company willing to shorten its update?

16 MR. FISCHER: I think what we have now proposed  
17 or what we will be proposing is an update of known and  
18 measurable changes through March. Now, you wouldn't  
19 necessarily have to do a complete update of all  
20 information. In some cases, you do take just known and  
21 measurables that are more isolated. That might be a way  
22 to slow -- to make the -- the process a little easier for  
23 Staff. I don't know. But, of course, a lot of times you  
24 like to see a whole package of adjustments as well.

25 COMMISSIONER DAVIS: Right. I mean, the -- but

1 concern expressed by -- by Staff and -- and OPC, no doubt,  
2 is that you would only take the factors that are -- that  
3 are favorable to you and not take the factors that are  
4 unfavorable to you.

5 MR. FISCHER: Traditionally, those update  
6 periods do look at a package of adjustments, including  
7 those that go for and against, like you're saying.

8 COMMISSIONER DAVIS: Okay. All right. No  
9 further questions, Judge.

10 JUDGE STEARLEY: Any additional questions for  
11 Mr. Fischer? Seeing none, thank you, Mr. Fischer.

12 MR. FISCHER: Thank you.

13 JUDGE STEARLEY: Opening statement from Staff?

14 MR. THOMPSON: Thank you, Judge.

15 OPENING STATEMENT

16 BY MR. THOMPSON:

17 MR. THOMPSON: May it please the Commission. As  
18 you've now heard from Mr. Poston and Mr. Fischer, this  
19 case comes to you on remand from the Western District of  
20 the Missouri Court of Appeals.

21 There were six issues on appeal, the straight  
22 fixed variable rate design, the SGS and MGS rate classes,  
23 the revenue requirement and return on equity, district  
24 consolidation, negative amortization and seasonal  
25 reconnection charges. Six issues.

1           Of these six, the Court affirmed the  
2 Commission's decision with respect to negative  
3 amortizations. You cannot change that decision. The law  
4 of the case has frozen it since the Court of Appeals has  
5 affirmed your previous decision.

6           With respect to the other five, the Court  
7 reversed and remanded on straight fixed variable rate  
8 design, district consolidation and seasonal reconnection  
9 charges.

10           Two other issues, the SGS and MGS rate classes  
11 and the revenue requirement and return on equity, the  
12 Court stated that review was premature considering that it  
13 had reversed the straight fixed variable rate design.  
14 Okay? So that's -- that's where we stand.

15           On November 24th, you set this proceeding,  
16 directed the parties to be ready to discuss not three,  
17 but, in fact, four issues I found reading your order.  
18 First of all, what procedure to follow on remand,  
19 particularly, procedural time lines.

20           Second, should the record be reopened an  
21 additional evidence taken? Third, what would be the  
22 effects of consolidating this matter with Atmos' next rate  
23 case? And, finally, hypothetical scenarios regarding  
24 reversion to the status quo rate design and effects on  
25 revenue requirement and rate classes.

1           I assume that the fourth issue is what you  
2 wanted expert witnesses for and hopefully you'll address  
3 your questions on those hypothetical scenarios to them.  
4 What procedure should be followed on remand?

5           Staff has not changed its position on these  
6 issues. Staff would like to see you resolve them the same  
7 way you did the first time. The Court reversed and  
8 remanded the seasonal reconnection charge issue because it  
9 had reversed the straight fixed variable rate design  
10 issue.

11           The straight fixed variable rate design issue,  
12 in turn, and the district consolidation issues were  
13 reversed because the Court found that the Commission erred  
14 by relying on the testimony of Staff expert, Ann Ross.

15           Why was that? Because, the Court stated, her  
16 testimony was not competent and substantial evidence  
17 because she had no factual basis for two opinions that she  
18 expressed. First, that under the traditional rate design,  
19 high volume users were subsidizing low volume users and,  
20 second, that the company's cost of serving residential  
21 customers was the same regardless of district.

22           The Court found those two pieces of testimony,  
23 those two opinions to be unsupported and that the  
24 Commission consequently erred in relying on them, and so  
25 it reversed the straight fixed variable rate design issue

1 and the district consolidation issue.

2           So because Staff wants to see this case come out  
3 the same way it did the first time, naturally, Staff would  
4 like to see the record supplemented with competent and  
5 substantial evidence on those two points. We would like  
6 to see the evidentiary deficiencies noted by the Court of  
7 Appeals made good.

8           However, Staff has not recommended reopening the  
9 record and taking additional evidence, which would be the  
10 only way of getting the necessary evidence into the  
11 record. So why is that? That is because Staff (sic)  
12 advised Staff shortly after the remand that it was on the  
13 verge of filing its next rate case.

14           You've now heard from Mr. Fischer that, in fact,  
15 we can expect that rate case Friday. You've seen him plot  
16 out the expected schedule. Staff's resources are limited.  
17 The sufficiency of those resources are, frankly, quite  
18 challenged at this time given the number of rate cases  
19 that are pending and expected.

20           Staff is engaged in triage. Because of that,  
21 Staff would rather just prepare one case than prepare two  
22 cases. It's as simple as that. So after discussions with  
23 the company and with Mr. Poston, that is what Staff has  
24 recommended, and that is still Staff's recommendation.

25           Staff urges you to adopt the recommendation made

1 by the company, combine this matter with the new rate case  
2 that will be filed on Friday.

3 The evidence necessary to support the  
4 deficiencies in your original decision can easily come in  
5 as part of the evidence provided in the new rate case.

6 Mr. Poston does not want this case to come out  
7 the same way. That, after all, is the reason he appealed  
8 it. Mr. Poston wants to get some kind of relief for low  
9 volume residential ratepayers who he believes have taken  
10 it in the chin with the straight fixed variable rate  
11 design in the district consolidation.

12 Now, before I came here, before I was taken up  
13 bodily into heaven to come to the PSC, I was a plaintiff's  
14 attorney. I was a special sort of plaintiff's attorney.  
15 I wasn't out there making a mint of money doing slip and  
16 falls and car accidents. I was instead representing  
17 persons with disabilities on behalf of Missouri Protection  
18 & Advocacy Services.

19 But make no mistake, I was a plaintiff's  
20 attorney. My job as a plaintiff's attorney and the job of  
21 every plaintiff's attorney is to design litigation that  
22 will get the result you want for your client. You have to  
23 put your thinking cap on. You have to plan. You have to  
24 carefully design your litigation to go where you want it  
25 to go.

1           From the questions that you have asked, some of  
2 you seem disturbed that Mr. Poston has won a victory at  
3 the Court of Appeals and that victory may not translate  
4 into any kind of real world relief for his clients. Well,  
5 that is the conundrum that faces the plaintiff's attorney.

6           And I suggest to you that that's the case now  
7 because Public Counsel didn't do their homework in terms  
8 of designing their litigation. After all, the tariff that  
9 this Commission approved after it originally issued its  
10 report and order in this case did not evaporate or go away  
11 when the Court of Appeals reversed the report and order.

12           In fact, that left the tariff unaffected.  
13 Unaffected. Why is that? Well, it's because the tariff,  
14 the compliance tariff, as we call it, was not approved by  
15 the report and order. It was reapproved -- approved by a  
16 second subsequent order.

17           Public Counsel did not file an application for  
18 rehearing with respect to the compliance tariff order.  
19 That order was never challenged. That order is still  
20 good. That's why that tariff is still in effect. It  
21 doesn't go away automatically. It doesn't evaporate like  
22 the morning dew when the Court of Appeals reverses the  
23 Commission.

24           And so we're left with the situation we have  
25 now. The tariff is in effect today and will remain in



1 effect until you guys issue a new tariff order.

2 Customers are still paying the rates described  
3 in that tariff, even though the support for the  
4 Commission' decision has been removed. That tariff has  
5 never been found to be not just and not reasonable.

6 What has happened is that the order in which it  
7 was found to be just and reasonable has vanished. But  
8 that's not the same as finding it to be unjust or  
9 unreasonable. And so it remains in effect.

10 Mr. Poston would like you to write a new  
11 decision without taking new evidence. He believes that  
12 the record does not support the straight fixed variable  
13 rate design and that, consequently, you would be unable to  
14 get there in a supportable manner in a new decision.

15 He would then like you to issue new rates to  
16 approve new tariffs going back somehow to the 2006 rates.  
17 Mr. Fischer did his best to tell you that that cannot  
18 happen. And it is Staff's view as well that that can not  
19 happen.

20 You would have to consider all applicable  
21 factors, all pertinent factors. And, certainly, those  
22 factors show a lot of change since 2005.

23 There's also been talk of due process.  
24 Mr. Poston threw out that phrase "due process" in one or  
25 perhaps more of his filings leading up to today. It's a

1 powerful word in our business, in the law business. But  
2 let's think about what it means.

3           It really has two applications here. No. 1, it  
4 means that your proceedings have to be fair. They have to  
5 be fair. But due process also has a special meaning, and  
6 it has to do with depriving people of life, liberty or  
7 property.

8           So who has got a property interest here?  
9 Because you're not taking away life or liberty. So who  
10 has a property interest, the deprivation of which requires  
11 due process?

12           Well, the company has a property interest. They  
13 have a property interest because they have committed their  
14 property to the public service. And in exchange, they  
15 have to get just and reasonable rates, rates which cover  
16 their prudent operating and maintenance expenses and give  
17 them an opportunity to earn a fair return on the value of  
18 that investment. That's the property interest here.

19           The courts have held that ratepayers have no  
20 property interest in any particular rate. The money that  
21 they have paid under these tariffs that you approved, that  
22 money belongs to the company. You can't take it away from  
23 the company and refund it to the ratepayers.

24           The Missouri Supreme Court explained that in the  
25 Utility Consumers Council case. The best you can do is

1 make new rates. And in doing that, you have to consider  
2 all relevant factors because the company has a due process  
3 interest in the rate that its going to receive on its  
4 investment on the property it has committed to the public  
5 service. The interests that the ratepayers have is that  
6 you follow fair procedures. Thank you.

7 JUDGE STEARLEY: Questions for Mr. Thompson,  
8 beginning with Commissioner Davis.

9 COMMISSIONER DAVIS: Mr. Thompson, do you think  
10 Public Counsel has a conflict of interest here, a conflict  
11 between low res -- low usage residential customers and  
12 high usage residential customer?

13 MR. THOMPSON: I think the Public Counsel is a  
14 statutory officer with certain statutory duties, and I  
15 believe the Public Counsel is -- is discharging those  
16 duties to the best of his ability.

17 COMMISSIONER DAVIS: Okay. Do you think there  
18 is a -- there is a conflict in his -- in his rate design  
19 proposal?

20 MR. THOMPSON: If you go back to the previous  
21 type of rate design, let's call it the traditional rate  
22 design, then it's Staff's view that high volume customers  
23 would be subsidizing the low volume customers.

24 COMMISSIONER DAVIS: All right.

25 MR. THOMPSON: Is that -- does that rise to the

1 level of a conflict of interest? Personally, I don't  
2 think so. Utility rate-making always involves  
3 subsidizations.

4 COMMISSIONER DAVIS: Okay. And the way you get  
5 to be a high volume user is by, one, you yourself turn up  
6 the thermostat. You know, you control your customer  
7 habits. But isn't there also another way that it's, in  
8 fact, driven by cold weather, correct?

9 MR. THOMPSON: Yes, sir.

10 COMMISSIONER DAVIS: And so you're saying that  
11 the -- the tariffs are effective and that they were never  
12 challenged?

13 MR. THOMPSON: Yes, sir.

14 COMMISSIONER DAVIS: And, therefore, the tariffs  
15 are good law?

16 MR. THOMPSON: That is correct.

17 COMMISSIONER DAVIS: And do you have any case  
18 law that you can cite to in support of that?

19 MR. THOMPSON: Not offhand. I can certainly  
20 look for some.

21 COMMISSIONER DAVIS: Why don't you look for some  
22 and file that with us, Mr. Thompson?

23 MR. THOMPSON: Yes, sir.

24 COMMISSIONER DAVIS: Thank you, Judge.

25 No further questions.

1 JUDGE STEARLEY: All right. Commissioner Gunn?

2 COMMISSIONER GUNN: I don't think I have -- I  
3 don't think I have any questions because I'm still trying  
4 to -- I might have later, but I don't have any right now.

5 JUDGE STEARLEY: All right. Commissioner  
6 Kenney?

7 COMMISSIONER KENNEY: Mr. Thompson, thank you.  
8 I need to make sure I understand your due process  
9 argument. Is it, essentially, you're saying the ratepayer  
10 has a procedural due process argument and that the  
11 company's due process rights are more substantive?

12 MR. THOMPSON: Absolutely. At this point.

13 COMMISSIONER KENNEY: At this point.

14 MR. THOMPSON: Now, if the tariffs had been  
15 shown to be reasonable or unjust so that the customers  
16 were paying more than is necessary to cover the prudent  
17 operating and maintenance expenses of the company and to  
18 give it a reasonable opportunity to earn a fair return,  
19 then the ratepayers would have a due process interest.

20 COMMISSIONER KENNEY: Would have a substantive  
21 due process in their money?

22 MR. THOMPSON: Exactly right.

23 COMMISSIONER KENNEY: So the money is a proper  
24 -- property interest. We've established that, right?

25 MR. THOMPSON: Yes, sir.

1           COMMISSIONER KENNEY: So long as the tariff is  
2 reasonable, just and reasonable, the moment that it  
3 transfers from the ratepayer to the company, the property  
4 interest transfers as well, and the ratepayer no longer  
5 has a property interest in that money?

6           MR. THOMPSON: Absolutely right.

7           COMMISSIONER KENNEY: Okay. And, again, forgive  
8 me the obtuseness of this question. But isn't the just  
9 and reasonableness of the tariff the very reason why it's  
10 been remanded, and so how has the property interest  
11 transferred from the ratepayer to the company?

12           MR. THOMPSON: The Court found the Commission's  
13 decision with respect to two issues to be unsupported by  
14 competent and substantial evidence. It sent it back to  
15 the Commission to reconsider it.

16           The Commission -- the Court did not find the  
17 Commission's decision to be unjust and unreasonable. It  
18 made no finding with respect to the tariff at all. It  
19 said --

20           COMMISSIONER KENNEY: Well, it's not a decision  
21 that we're looking at the just and reasonable of the  
22 decision. We're looking at the just and reasonableness of  
23 the tariff, right, of the rates?

24           MR. THOMPSON: That's what we're looking at  
25 here.

1 COMMISSIONER KENNEY: I'm asking.

2 MR. THOMPSON: We're here on a remand of the  
3 Commission's report and order. There's been no order, no  
4 review of the tariff order, the order that approved the  
5 tariff. There's been no attack on the tariff itself  
6 through a complaint or any other sort of proceeding.

7 COMMISSIONER KENNEY: Can the rate design, if  
8 it's unsupported by substantial and competent evidence, be  
9 considered just and reasonable?

10 MR. THOMPSON: Under the statutes, it's presumed  
11 to be just and reasonable until the opposite is shown in a  
12 suit brought for that purpose. There's been no such suit.

13 COMMISSIONER KENNEY: Okay. Thank you.

14 JUDGE STEARLEY: Mr. Chairman?

15 CHAIRMAN CLAYTON: You mentioned --  
16 Mr. Thompson, you mentioned the order adopting the  
17 compliance tariffs.

18 MR. THOMPSON: Yes, sir.

19 CHAIRMAN CLAYTON: What -- what do you suggest  
20 that Public Counsel should have done? Should they have  
21 filed an objection basically identical to the objections  
22 that they had to the underlying report and order?

23 MR. THOMPSON: They should have filed an  
24 application for rehearing directed at the compliance  
25 tariff order. And then in their appeal, they should have

1 rolled both orders into a single appeal.

2 CHAIRMAN CLAYTON: But the order approving the  
3 compliance tariffs basically is just a review that the  
4 tariffs are compliant with the underlying report and order  
5 where the actual substance of the Commission's decision is  
6 -- is made. It's not on the order approving the  
7 compliance tariffs. Would you agree with that?

8 MR. THOMPSON: I -- I do agree with that. It is  
9 certainly based on the report and order.

10 CHAIRMAN CLAYTON: So because they didn't file  
11 an application for rehearing, they're not entitled to  
12 relief?

13 MR. THOMPSON: That's why -- that's why the  
14 tariff remains in effect. And the order approving that  
15 tariff was never challenged and is also still in effect.

16 CHAIRMAN CLAYTON: But the only challenge that  
17 one can actually make against a compliance tariff is not  
18 based on substance. It's more procedural, that maybe the  
19 words don't accurately track what was listed in the report  
20 and order. Isn't that correct? I mean, there's no  
21 substantive challenge on a compliant tariff filing, is  
22 there?

23 MR. THOMPSON: There could be. There could be.  
24 You could -- you could certainly raise -- in your  
25 application for rehearing, you could incorporate by



1 reference the application for rehearing you filed with  
2 respect to the report and order and stated that the  
3 compliance tariffs should not be approved because they're  
4 not just and reasonable for those reasons.

5 CHAIRMAN CLAYTON: Okay.

6 MR. THOMPSON: We've seen some -- some -- some  
7 imaginative attacks on both report and orders and  
8 compliance tariffs filed particularly by Mr. Conrad.

9 CHAIRMAN CLAYTON: But before we get into  
10 that --

11 MR. THOMPSON: I don't know if they've gotten  
12 him where he wanted to go, but --

13 CHAIRMAN CLAYTON: Before we get into that,  
14 assume for me that Public Counsel did file this  
15 application for rehearing. I'm not even sure if they  
16 filed an objection to the compliance tariffs.

17 MR. THOMPSON: They filed a request -- a Request  
18 for hearing, Motion to Suspend. There may have been an  
19 objection.

20 CHAIRMAN CLAYTON: And that was denied, which is  
21 generally a matter of course by the Commission.

22 MR. THOMPSON: Right.

23 CHAIRMAN CLAYTON: Yet they did not file an  
24 application for rehearing?

25 MR. THOMPSON: That's correct. That's what the

1 dockets --

2           CHAIRMAN CLAYTON: But they're not appealing the  
3 decision to approve the compliance tariffs. They're just  
4 appealing the unlawfulness or the appropriateness of the  
5 underlying report and order.

6           MR. THOMPSON: That's correct. If -- if I were  
7 in Mr. Poston's shoes, let's say I were representing the  
8 Public Counsel or an Intervener here and I wanted to  
9 attack one of your orders, I would file an application for  
10 rehearing against the report and order.

11           I would file an application for rehearing  
12 against the compliance tariff order. I would roll the two  
13 into a single appeal. And in that appeal, in the relief,  
14 I would ask the Court to order the Commission to vacate  
15 the compliance tariff.

16           CHAIRMAN CLAYTON: Okay. And was that done  
17 here?

18           MR. THOMPSON: No, it was not.

19           CHAIRMAN CLAYTON: Okay. Now, they're not  
20 asking -- is Public Counsel asking for relief in  
21 retrospect in terms of going back over the last 24 months,  
22 asking for changes in the rates that were paid from the  
23 customers?

24           MR. THOMPSON: No, sir. I don't believe that he  
25 is.

1           CHAIRMAN CLAYTON:  They're basically asking for  
2 prospective moving forward --

3           MR. THOMPSON:  Yes, sir.

4           CHAIRMAN CLAYTON:  -- change in tariffs?

5           MR. THOMPSON:  Yes, sir.

6           CHAIRMAN CLAYTON:  Okay.  And you -- you believe  
7 that is -- I know you disagree because Staff supported the  
8 underlying report and order.  But is that a lawful choice  
9 for us here today?

10          MR. THOMPSON:  Yes, sir.

11          CHAIRMAN CLAYTON:  For us to -- it is to -- to  
12 grant them prospective relief and require new tariffs be  
13 filed?  If the Commission changes its mind.

14          MR. THOMPSON:  Sure.  I think there's a lot of  
15 procedural poten -- potential procedural land mines in  
16 getting to that point.  But, yes, theoretically, that is a  
17 valid choice.  You can always change tariffs  
18 prospectively.

19          CHAIRMAN CLAYTON:  Okay.  Now, let's say that --  
20 let's say that the Commission were to run into one of  
21 those land mines.  Let's say it makes -- makes a change in  
22 policy, but makes -- perhaps doesn't grant all parties the  
23 opportunity to file additional evidence.  Then a party  
24 would appeal from that, correct?

25          MR. THOMPSON:  That is -- that is true.

1           CHAIRMAN CLAYTON: Okay. And how long would it  
2 take to process that appeal?

3           MR. THOMPSON: Well, normally, it takes a year  
4 at the Circuit Court level and a year at the Appellate  
5 Court level. So, certainly, that appeal would be mooted  
6 by this new case that they're getting ready to file. I  
7 think the --

8           CHAIRMAN CLAYTON: Which is basically the same  
9 thing that happens to Public Counsel every time they  
10 appeal one of our decisions?

11          MR. THOMPSON: That's true. As I was going to  
12 say, I don't think the danger arises so much from a  
13 potential appeal as from an extraordinary writ.

14          CHAIRMAN CLAYTON: Yeah. I've got experience  
15 with those, too. Explain to me, from Staff's perspective,  
16 what additional evidence -- first of all, does Staff  
17 believe that additional evidence should be taken if we do  
18 not consolidate the two cases?

19          MR. THOMPSON: Yes, sir.

20          CHAIRMAN CLAYTON: Okay. Help me understand  
21 what additional evidence would need to be taken. I wasn't  
22 completely following the -- in my discussion with  
23 Mr. Fischer. You would still have the same test year from  
24 the old case; is that correct? Same test year, true-up  
25 and update period. You wouldn't change those dates,

1 correct?

2 MR. THOMPSON: I think more properly, you'd have  
3 the same test year, but you would have to update again for  
4 the most recent information available. And that's if you  
5 were --

6 CHAIRMAN CLAYTON: So we'd be required to change  
7 the update period?

8 MR. THOMPSON: I believe you would. Yes.

9 CHAIRMAN CLAYTON: Why is that?

10 MR. THOMPSON: Because you know that a  
11 significant amount of time has passed. The company would  
12 certainly file something stating pretty much what they've  
13 stated today, which is that they believe that you need to  
14 look at fresh data, not stale data.

15 If you chose not to do that, I think they would  
16 attack that decision, again, as I stated, with an  
17 extraordinary writ. Who knows who would prevail at that  
18 point.

19 CHAIRMAN CLAYTON: So, basically, you would have  
20 -- potentially, in that circumstance, you'd have an  
21 extraordinary writ going to the same court that asked us  
22 to revisit an issue that, basically, we would be merging  
23 with another case potentially --

24 MR. THOMPSON: That's exactly right.

25 CHAIRMAN CLAYTON: -- and potentially ignoring

1 what the Court of Appeals has suggested? That would be  
2 interesting. Any other additional evidence that you think  
3 would be necessary?

4 MR. THOMPSON: Staff -- Staff would focus that  
5 on only two pieces of additional evidence. And that would  
6 be the deficiencies that the Court of Appeals identified  
7 in the testimony of Ann Ross.

8 Staff would want to do a study showing whether,  
9 in fact, it's true that it costs the same to serve  
10 residential customers regardless of district, and Staff  
11 would want to do a study having to do with interclass  
12 subsidization.

13 CHAIRMAN CLAYTON: Do you -- do you agree or  
14 disagree that changing from straight fixed variable rate  
15 design to a traditional rate design during the winter  
16 months would be unfair to the rate paying side of the  
17 equation? This was my first line of questions with  
18 Mr. Poston earlier.

19 MR. THOMPSON: I believe that to be true, but --  
20 but we have brought people that would be much better able  
21 to answer questions like that.

22 CHAIRMAN CLAYTON: Just a general -- just a  
23 general you would agree or disagree with that statement?

24 MR. THOMPSON: I would agree.

25 CHAIRMAN CLAYTON: Okay. Would you agree or

1 disagree that if the Commission were to revisit the rate  
2 design, would April be an appropriate date? Is there  
3 anything magical about that anniversary period from  
4 Staff's perspective?

5 MR. THOMPSON: It certainly -- it certainly  
6 seems to create a kind of structural balance to go back to  
7 the old rate design in the same month that you went to the  
8 new rate design. But beyond that, I -- I really can't  
9 speak to it.

10 CHAIRMAN CLAYTON: Okay. The witnesses that you  
11 brought with them, can they provide information about what  
12 unwinding the district consolidation would do and who  
13 would benefit and who would be harmed?

14 MR. THOMPSON: I'm -- I'm seeing Ms. Ross at  
15 least shaking her head yes.

16 CHAIRMAN CLAYTON: Okay. Judge, how many more  
17 parties do we have?

18 JUDGE STEARLEY: Noranda, I was going to ask if  
19 you wanted to give an opening statement when Mr. Thompson  
20 was through.

21 MR. REID: No. Not at this time. We were  
22 served under a separate contract, so we don't have any  
23 particular recommendation to make at this time.

24 JUDGE STEARLEY: All right. Thank you very much  
25 Mr. Reid.

1           CHAIRMAN CLAYTON: I -- I would like to ask  
2 those questions. And we've had this conversation about  
3 whether it's evidence. I don't think it's evidence. I --  
4 I think I just want anecdotal suggestions of the impact of  
5 whatever the Commission decides one way or the other. So  
6 I'd like to ask Ms. Ross or whoever the Staff witness  
7 would be those questions.

8           JUDGE STEARLEY: Ms. Ross would come forward to  
9 where there's a microphone? Please proceed.

10          CHAIRMAN CLAYTON: Thank you. Good morning,  
11 Ms. Ross.

12          MS. ROSS: Good morning.

13          CHAIRMAN CLAYTON: Do you agree -- let me start  
14 with this. Do you agree with the assertion mentioned  
15 earlier today that changing from straight fixed variable  
16 to a traditional rate design during the winter months  
17 would be unfair or perhaps would -- would -- would it be  
18 unfair to the rate paying side of -- of the equation?

19          MS. ROSS: Yes. I do believe that -- I do  
20 believe that.

21          CHAIRMAN CLAYTON: Okay. So, basically, you  
22 would agree with the -- with the concept that the  
23 increased fixed monthly charge paid by customers during  
24 the summer or warmer months decreases the potential impact  
25 of the volume metric charge during the cold months under a



1 traditional rate design?

2 MS. ROSS: That's correct. Customers that paid  
3 more during the summer would be also paying more during  
4 the winter.

5 CHAIRMAN CLAYTON: Okay. So, potentially, it  
6 would be unfair to customers to change it during the  
7 winter months because they've been paying it for now,  
8 what, two and a half years?

9 MS. ROSS: Yes. I think it would.

10 CHAIRMAN CLAYTON: Now, on the district  
11 consolidation, remind me how we actually consol -- we went  
12 from what, seven districts to three?

13 MS. ROSS: Yes. That's correct.

14 CHAIRMAN CLAYTON: Okay. And can you just  
15 generally give me an idea what would happen if we were to  
16 go back to seven districts? Who loses? Who wins? And --

17 MS. ROSS: Yeah. This was Exhibit 137 in the  
18 previous case.

19 CHAIRMAN CLAYTON: Thank you.

20 MS. ROSS: It's a comparison of OPC and Staff  
21 residential rate design proposal impact dollars updated to  
22 reflect billing units and stipulation and agreement. Let  
23 me see if I can say this in an organized way.

24 Okay. In what is now the -- the CMO district  
25 down in the southeast corner of the state, that's composed

1 of two previous districts. And, actually, it's the -- I'm  
2 going to call the CMO service territory. The districts  
3 that it is composed of is the old associated natural gas  
4 CMO district and the old United Cities Neelyville  
5 district.

6 Now, I think what you're asking -- tell me if  
7 I'm not answering it. But in the CMO district, somewhere  
8 between six and 700 CCFs annually, customers would be  
9 paying the same in both normalized year, both rate  
10 designs.

11 CHAIRMAN CLAYTON: So that's kind of the cutoff  
12 line?

13 MS. ROSS: Yes. And, actually, I believe that  
14 Mr. Imhoff has those numbers.

15 CHAIRMAN CLAYTON: Okay.

16 MS. ROSS: In Neelyville, that would occur for  
17 customers using between three and 400 CCFs. So if they  
18 were using over that amount, they would pay more under the  
19 traditional rate design. If they used less than that  
20 amount, they'd pay more under straight fixed variable.

21 Okay. Then we've got the west central district  
22 -- district. That's composed of -- I'm sorry. We've got  
23 the west central service territory. That's composed of  
24 two districts. First, the Associated Natural Gas, Butler  
25 district, was rolled into that one. Also, the Greely Gas

1 Company, Greely district. Basically, the Greely Gas  
2 Company.

3 The break-even point for the Butler district  
4 occurs around 850 CCFs a year. For the Greely district,  
5 that's going to happen at about 550.

6 CHAIRMAN CLAYTON: And then the northeast  
7 region?

8 MS. ROSS: The northeast region. Okay. That's  
9 composed of three districts. First, there's the  
10 Associated Natural Gas, Kirksville district.

11 CHAIRMAN CLAYTON: Kirksville.

12 MS. ROSS: The United Cities Gas --

13 CHAIRMAN CLAYTON: Let's start -- Kirksville,  
14 what's the break-even point?

15 MS. ROSS: Okay. The break-even point for them  
16 is going to be very, very high. It's -- I'm -- I'm  
17 looking for that. It's not on my schedule.

18 CHAIRMAN CLAYTON: It's going to be colder in  
19 Kirksville, so I would assume that's why the number's  
20 going to be higher.

21 MS. ROSS: Yes.

22 CHAIRMAN CLAYTON: I'm assuming there's logic to  
23 these break-even points from Staff's perspective?

24 MS. ROSS: Well, the Kirksville district had a  
25 relatively low customer charge, not the lowest, and -- and

1 a relatively low volume metric rate. So you're going to  
2 have to get up into the higher usages to -- to break even  
3 with straight fixed variable.

4 CHAIRMAN CLAYTON: All right. And then what  
5 Hannibal, Paulmeyer, Canton? Are they on the same system?

6 MS. ROSS: They're on the same system, but they  
7 didn't have the same rates. They both came from United  
8 Cities.

9 CHAIRMAN CLAYTON: Where is Boling Green?  
10 They're -- basically, I thought you had three that were  
11 consolidated in one.

12 MS. ROSS: Yeah. Hannibal, Canton, Boling Green  
13 is an old United Cities Company.

14 CHAIRMAN CLAYTON: Okay.

15 MS. ROSS: They break even at a little less than  
16 650, it looks like. But I'm interpolating. We don't have  
17 that exact -- the Paulmeyer district is also from United  
18 Cities.

19 They break even at a -- at a much higher rate.  
20 it's not on my -- it's not on this schedule. And, again,  
21 that's because they had a volume metric rate of about  
22 seven and a half cents compared to Hannibal, Canton,  
23 Boling Green. They had a volume metric rate of about 25.

24 CHAIRMAN CLAYTON: Okay. So these are the  
25 break-even points that if basically you use less than this

1 CCF, then you're paying higher rates under the straight  
2 fixed variable?

3 MS. ROSS: That's correct.

4 CHAIRMAN CLAYTON: And if you're higher than  
5 this figure, then you're paying lower and you do better  
6 than under a traditional rate design?

7 MS. ROSS: Yes. On an annual basis, that's  
8 correct.

9 CHAIRMAN CLAYTON: All right. So if we were to  
10 revert, basically, that would describe who is harmed in  
11 each of those areas; is that correct?

12 MS. ROSS: Yes.

13 CHAIRMAN CLAYTON: If -- if you were to go back  
14 to seven districts, would there be -- would there be  
15 differences in who would be harmed or who would benefit  
16 among the districts?

17 MS. ROSS: Yes.

18 CHAIRMAN CLAYTON: And how do you -- is it  
19 possible -- does that make sense, what I'm asking?

20 MS. ROSS: Well, no, it doesn't. I mean, it  
21 would be volume metric. Like you described a minute ago,  
22 that would determine who would pay more and who would pay  
23 less. It would depend, also, on whether we went back to  
24 our cost of service results for the seven districts,  
25 which, actually, we didn't have cost of service results.

1           CHAIRMAN CLAYTON: For summer?

2           MS. ROSS: Yes. Yes. The accounting -- the  
3 data just wasn't there.

4           CHAIRMAN CLAYTON: Okay. So the cost of service  
5 is consolidated. I think that's what I was -- that's  
6 helpful. Basically, you are consolidating into these  
7 districts, throwing all their costs into three baskets  
8 rather than seven baskets; is that correct?

9           MS. ROSS: Yeah. We use their current revenues,  
10 and we just combined their current revenues and came up  
11 with it.

12           CHAIRMAN CLAYTON: I guess the question would  
13 be, is there intra-district subsidies with perhaps a  
14 district that has higher cost of service than another?  
15 Were those significant where you did have data?

16           MS. ROSS: To do a -- a class cost of service?

17           CHAIRMAN CLAYTON: Yeah. Where you consolidated  
18 these districts, are there -- are there quantifiable  
19 subsidies among the districts? Those who have a higher  
20 cost of service are being perhaps subsidized by someone  
21 who has a lower cost of service?

22           MS. ROSS: That's hard to say. We -- the  
23 accounting records -- and that came out in the  
24 depreciation issue -- were really deficient. And while we  
25 -- while we had some costs that we could throw into a

1 bucket to come out with this and while -- while we did  
2 perform three cost of service studies, we really didn't  
3 trust the results because the -- the information wasn't --  
4 wasn't complete. There were -- there were just a lot of  
5 problems with the data.

6 CHAIRMAN CLAYTON: Okay. Okay. Thank you. I  
7 don't think I have any other questions. I do want to come  
8 over from Public Counsel's perspective on the district  
9 consolidation. Do you all still see that as an issue the  
10 Commission needs to address in its report and order? Or  
11 are you focusing primarily on the straight fixed variable  
12 rate design?

13 MR. POSTON: Well, we're looking at both of  
14 those issues, just because we don't see cost justification  
15 for either.

16 CHAIRMAN CLAYTON: Okay. Okay. Thank you. I  
17 don't think I have any other questions at this time.

18 MR. FISCHER: Judge? Judge, could I chime in?  
19 Those are the kinds of issues that a new proceeding would  
20 look at. We would expect in the new rate case to give you  
21 some data about, for example, the operating and  
22 maintenance costs of the various districts and why they  
23 are similar or not.

24 JUDGE STEARLEY: Additional questions?

25 COMMISSIONER GUNN: To go -- to go back to this,

1 Mr. Thompson, I just want to be clear. Under your theory,  
2 we really don't have to do anything. We don't have to --  
3 we don't have to consolidate -- this is just having  
4 tariffs go into operation of law without us doing anything  
5 because there's no -- even though the underlying report  
6 and order is -- is gone away, the tariffs are still in  
7 effect.

8           They've done their -- their presumed just and  
9 reasonable and there's been nothing to -- to say that  
10 they're not just and reasonable. So we don't really have  
11 to have any proceeding under your theory, except for the  
12 new rate case?

13           MR. FISCHER: I don't think I would go that far,  
14 Commissioner. There was a Missouri American rate case.  
15 The Commission decided it in, I believe, August of 2000.  
16 And it was appealed, and it came back. And it was -- it  
17 was frozen under a prohibition for about a year.

18           And, eventually, the Commission then dismissed  
19 the remand or basically said, We're not going to do  
20 anything because it's been mooted. There's been an  
21 intervening rate case.

22           And it was then appealed again. And the -- the  
23 Court of Appeals seemed to express a certain amount of  
24 dissatisfaction that the Commission had not done anything.  
25 They weren't real clear -- let's see if I can -- if I can



1 get it right.

2           They did expect the Commission to do the review,  
3 the re-examination that they had told the Commission to do  
4 even though they acknowledged there was no rate relief  
5 available for the Appellant, which was the City of Joplin  
6 in that case.

7           So I would suggest to you that you do have to do  
8 something. You do have to have, I think, proceedings on  
9 this remand. They can either be combined with the new  
10 case, which is what Staff recommended, or they can be  
11 separate. But to do absolutely nothing, I think, that  
12 would be ignoring the decision of the Court of Appeals.  
13 And I don't think that's what's required.

14           COMMISSIONER GUNN: But what's -- what's the  
15 point of -- of --

16           MR. FISCHER: I think --

17           COMMISSIONER GUNN: If the report and order  
18 doesn't matter to the current -- to the tariff that is  
19 currently in effect --

20           MR. FISCHER: Right.

21           COMMISSIONER GUNN: -- then we would be going  
22 back and we would be rewriting the report and order or  
23 reviewing a report and order that has no effect on the  
24 current tariff.

25           MR. THOMPSON: I -- I realize it seems bisintine

1 to the point of absurdity. But Public Counsel may yet  
2 devise some way to get relief with respect to the tariff  
3 that's in effect now.

4           And I certainly don't want to give them any help  
5 in thinking about what those avenues might be. But the  
6 tariff is a separate issue from the report and order. The  
7 report and order has been remanded. The Court has  
8 instructed the Commission to reconsider those issues in  
9 the light of what it said in its opinion.

10           And I think the Commission has to do that. It  
11 can do that either as part of this ongoing case or this  
12 new case, I should say, or it can set a separate  
13 procedural schedule and do it separately.

14           If anything happens to the tariffs, that's for  
15 Public Counsel to find the right can openers to pry those  
16 tariffs open.

17           COMMISSIONER GUNN: So -- but so we could have a  
18 proceeding in which we don't open up the record and we  
19 find exactly what we found before?

20           MR. THOMPSON: You could write a new order based  
21 on the existing record. You would have to write --

22           COMMISSIONER GUNN: What if we wrote exactly the  
23 same order? I mean, I'm not -- I'm not discounting your  
24 theory because I think it's a creative, and as it's --  
25 actually, it's -- it's -- it's an interesting legal

1 question. But I'm trying to flesh it out a little bit.

2 MR. THOMPSON: I understand.

3 COMMISSIONER GUNN: Because when you disconnect  
4 the report and order from the tariff, which it may very  
5 well be, then if we go back and write exactly -- we have a  
6 hearing, we have a proceeding, and we reconsider it. And  
7 we -- someone sits down and types up exactly the same  
8 report and order --

9 MR. THOMPSON: Well, perhaps you could do a  
10 proceeding limited to just certain issues. I don't know  
11 that you necessarily have to take up all of the issues in  
12 the previous proceeding.

13 COMMISSIONER GUNN: We have to take up at least  
14 the two that the Court of Appeals remanded on.

15 MR. THOMPSON: You have to at least take up  
16 those two. That's right. And the third one, which is  
17 reversed and remanded because it had remanded one of the  
18 others.

19 Then there were -- there were two other issues  
20 that the Court didn't even take up saying, Well, we can't  
21 get to these until we see what they're going to do with  
22 that rate design.

23 COMMISSIONER GUNN: Are those -- are those other  
24 issues still live issues? The Court not addressing them  
25 doesn't --

1           MR. THOMPSON:  Let's say -- let's say you did a  
2 separate proceeding and all you took up was district  
3 consolidation and straight fixed variable.  Okay?  And if  
4 all you did was take new evidence on those two issues, I  
5 think that might well be procedurally permissible.

6           If -- if you changed the way you did them, if  
7 you went to a different rate design, let's say, and it may  
8 very well be that that's what you want to do, the problem,  
9 then, is that that would probably pry open other issues,  
10 like the revenue requirement because, remember, this is a  
11 case where the company came in seeking a \$3 million rate  
12 increase.

13           And Staff's initial position was, Well, you know  
14 what?  You're over-earning by about a million and a half.  
15 So there was a disparity of about four and a half million  
16 between the parties' positions on revenue requirement.  
17 And then they decided to settle -- essentially settle the  
18 revenue requirement issue by going to the straight fixed  
19 variable rate design in the district consolidation.

20           The company said, Yeah, we'll forgo any increase  
21 in order to get that.  And Staff said, you know, as we  
22 consider our litigation risk, we think that would be the  
23 best answer.  Revenue requirement doesn't go up at all.  
24 If we -- if we litigate the whole case, people might get a  
25 rate increase that we don't think is warranted.

1           So that's part of what led to where we are now.  
2   So if you -- if you go to a new rate design, then the  
3   company might very well say, Well, heck, we need a rate --  
4   we need a rate increase, then. We came in looking for a  
5   rate increase, which we gave up in order to get these two  
6   things. Now you've taken those two things away from us.  
7   We want our rate increase. You see what I'm saying?

8           So it's -- it's hard to give a good answer of  
9   what -- of what would be the best path for the Commission  
10   to take in this difficult case. These cases are  
11   difficult, certainly, from the plaintiff's point of view.  
12   How do I get effective relief considering that the  
13   company's going to file a new rate increase? And -- and  
14   difficult from the point of view of the Commission.

15           But I -- I do think based on that Missouri  
16   American decision, and I will be happy to provide that to  
17   you, that the -- that the Court would be annoyed if you  
18   didn't do anything at all.

19           COMMISSIONER GUNN: Right. To change the  
20   subject a little.

21           MR. THOMPSON: Yes, sir.

22           COMMISSIONER GUNN: You're essentially saying  
23   that we would use 2005 as our test year and then have a  
24   four year true-up or adjustment?

25           MR. THOMPSON: I think you'd have to update.

1 Yes, sir.

2 COMMISSIONER GUNN: Which is what we may be  
3 doing if this case is filed by Friday? I mean, it would  
4 essentially be -- would it be the same data?

5 MR. THOMPSON: As -- it would be pretty much the  
6 same data. You know, Mr. Fischer suggested that perhaps  
7 you could do something -- something somewhat innovative,  
8 an interim increase, an immediate rate design change  
9 coupled with a small increase or an increase of some sort  
10 that's interim subject to refund when the -- when the new  
11 rate case is completed. You might be able to do something  
12 like that.

13 And I doubt you could satisfy everybody. And  
14 there's always the possibility of not satisfying anybody.  
15 But if you feel that you want to change that rate design,  
16 that the rate design was a mistake and the Commission's  
17 policy has changed, then doing something along those lines  
18 would be the way to get there, I think.

19 COMMISSIONER GUNN: All right. I don't think I  
20 have anything else. Thank you.

21 JUDGE STEARLEY: Questions from any of the other  
22 Commissioners? Mr. Thompson, I have a couple quick things  
23 just to fill in a couple gaps.

24 MR. THOMPSON: Yes, Judge.

25 JUDGE STEARLEY: You had spoken about the relief

1 that Public Counsel had requested when they took their  
2 writ of review in this case and had pointed out that they  
3 had not filed a motion for rehearing on the compliance  
4 tariff or pursued that avenue.

5 MR. THOMPSON: I believe that to be true.

6 JUDGE STEARLEY: Okay. Can you -- can you fill  
7 in a gap for me? Did they request a stay of the  
8 Commission's report and order?

9 MR. THOMPSON: I do not recall. And I don't  
10 have the docket sheet here. I'm sorry.

11 JUDGE STEARLEY: Mr. Poston, can you --

12 MR. POSTON: Did we request a stay? I don't  
13 believe so.

14 JUDGE STEARLEY: All right. Thank you. And you  
15 had mentioned if the Commission reconsiders the rate  
16 design issues, Staff would like a meaningful opportunity  
17 to correct the deficiencies the Western District had  
18 identified in the testimony of Ms. Ross.

19 MR. THOMPSON: That is correct.

20 JUDGE STEARLEY: And that would require  
21 preparing a couple studies --

22 MR. THOMPSON: That is correct.

23 JUDGE STEARLEY: -- On those rate classes.  
24 Would you or Ms. Ross be able to give the Commission an  
25 approximate time estimate on how long it would take to

1 complete those studies?

2 MS. ROSS: Okay. I'm having -- I'm struggling  
3 with the question because I don't believe that we can do  
4 studies that will show that. I don't believe that --  
5 we've done four cases -- we've litigated this three times  
6 already, and there haven't been any studies showing that  
7 there is a difference in cost of service.

8 And we've talked about it on Staff. I'm not  
9 sure how we would show that there isn't a difference on  
10 cost of service. So my answer to you would be I -- I  
11 don't think that we can do them.

12 JUDGE STEARLEY: Okay. Is there any study Staff  
13 could do to shed any light on those issues?

14 MS. ROSS: No. Henry doesn't have an opinion.  
15 We've talked about it in Staff with our engineering staff,  
16 among ourselves because, obviously, we know what the  
17 Appellate Court said. And, no, I don't think we can.

18 JUDGE STEARLEY: All right. Thank you, Ms.  
19 Ross.

20 MS. ROSS: You're welcome.

21 JUDGE STEARLEY: And that's all I have,  
22 Mr. Thompson. Thank you very much.

23 MR. THOMPSON: Thank you.

24 MR. POSTON: Judge, could I speak quickly to  
25 that district consolidation?



1 JUDGE STEARLEY: Certainly, Mr. Poston.

2 MR. POSTON: If you look at the Western District  
3 opinion, you will see that they do address that issue.  
4 And I think they say something along the lines there --  
5 there was evidence in the record regarding the difference  
6 district costs, that there needs to be some type of effort  
7 done towards determining those.

8 And there was evidence, also, in  
9 Mrs. Meisenheimer's testimony regarding different costs  
10 among different districts.

11 JUDGE STEARLEY: Okay. Mr. Poston, is it your  
12 opinion there is sufficient evidence in the record for the  
13 Commission to revisit those issues?

14 Mr. POSTON: I believe there is sufficient  
15 evidence, yeah, to revisit. Not necessarily to  
16 consolidate, but to revisit the issues, yes.

17 JUDGE STEARLEY: All right. Thank you. Well,  
18 at this point, since Mr. Reid has waived an opening  
19 statement at this time, the floor is open for any  
20 additional questions that the Commissioners may have for  
21 Counsel or their witnesses.

22 COMMISSIONER GUNN: I have -- I have one.

23 JUDGE STEARLEY: Please proceed, Commissioner  
24 Gunn.

25 COMMISSIONER GUNN: I'd like Mr. Poston to take

1 an opportunity to talk about Mr. Thompson's argument that  
2 the tariff was approved by a separate order and is,  
3 therefore, not really the -- not really the subject of the  
4 proceeding or -- or remains in full legal force and effect  
5 and -- and really, very little of what we do here will  
6 affect that -- that tariff. Just a quick response, if you  
7 would.

8 MR. POSTON: Well, just like Mr. Thompson, I  
9 also have not researched that -- that issue specifically.  
10 I would like to have an opportunity to do so and provide  
11 the Commission with the results of that research.

12 But I would also respond and say that I think  
13 it's entirely within the Commission's authority and  
14 obligation, given the Western District's opinion, to  
15 revisit that tariff and, at a minimum, before we move  
16 forward with whatever procedure to revert back to that  
17 tariff, go to square one and start over again.

18 That's what I -- because right now, we've got  
19 tariffs based on an order that is not based on competent  
20 and substantial evidence based on a rate design that has  
21 not been found just and reasonable by an order that hasn't  
22 been overturned.

23 COMMISSIONER GUNN: So from a procedural  
24 standpoint, we would -- on our -- on our own motion,  
25 reject the tariff? Or would we put in an order asking,

1 you know -- I mean, procedurally, how would that work?

2 MR. POSTON: I think you would direct the  
3 company based on the Western District's opinion to file a  
4 revised tariff that corrects the problems, goes back to  
5 where the company was when they initially filed the case.  
6 And as we revisit those issues, if the Commission  
7 determines again that straight fixed variable is  
8 appropriate, then change the tariff again.

9 COMMISSIONER GUNN: But according to  
10 Mr. Thompson, there's nothing wrong with the tariff.  
11 There's a problem with the report and order.

12 MR. POSTON: Well, I don't think he's actually  
13 researched that.

14 COMMISSIONER GUNN: Let's -- let's assume for  
15 just the sake of argument that that is -- that that is  
16 correct from a procedural standpoint. If that is correct,  
17 how would we go about removing a tariff that has not been  
18 declared not just and reasonable and -- and ordering the  
19 company to -- to file another -- or a separate compliance  
20 tariff?

21 MR. POSTON: I think just issue an order based  
22 on the Western District's opinion, determine that they  
23 need to refile that tariff. And as we revisit it, don't  
24 be charging these rates that are not just and reasonable  
25 while you revisit it.

1           COMMISSIONER GUNN: Do you -- if we do that, do  
2 you run into a due process argument that the company can  
3 make? If -- if the report and order has not been declared  
4 -- if the research were to show that the report and order  
5 are still -- had not been declared not just and reasonable  
6 and it's presumed just and reasonable, by us removing that  
7 just on our own -- on our own, does that not give you any  
8 pause for a due process --

9           MR. POSTON: I don't believe so. I think, you  
10 know, we've been debating this for two and a half years.  
11 I think that's sufficient process.

12           COMMISSIONER GUNN: I'll give the company a  
13 chance to respond if they have any -- if they have any  
14 desire to do so.

15           MR. FISCHER: Judge, I hadn't really thought  
16 about that theory that Mr. Thompson put out there.  
17 Typically, we've, in the past, appealed rate -- report and  
18 orders. But I would like to think about that -- that  
19 issue some more.

20           COMMISSIONER GUNN: Okay.

21           MR. FISCHER: It's usually viewed as a  
22 ministerial act, put the tariffs into effect and  
23 compliance. But we have had a few cases where parties  
24 have suggested the -- the tariffs were not in compliance.  
25 And then, of course, you have to resolve those issues,

1 too, so --

2 COMMISSIONER GUNN: Okay. That's all I have.

3 JUDGE STEARLEY: Okay. Commissioner Kenney?

4 COMMISSIONER KENNEY: Yeah. That -- that  
5 sparked in my mind additional questions. If it's -- and  
6 this is to Mr. Thompson. If it's the -- if it's the -- if  
7 the report and order is what's been attacked and the  
8 compliance tariff has not been, then -- then, practically,  
9 what's -- what's the point of the Court of Appeals' order?

10 I mean, they're -- they're saying that -- the  
11 Court of Appeals is instructing that the rate design  
12 that's used to establish rates is not supported by  
13 substantial and competent evidence. And your theory says  
14 that that really has no practical meaning as it relates to  
15 determining the validity of the compliance tariff.

16 So then, I mean, isn't the logical conclusion to  
17 draw from your argument that the Court of Appeals' opinion  
18 really has no force and effect at all?

19 MR. THOMPSON: No, Commissioner. I wouldn't  
20 reach that conclusion. The -- when the Court of Appeals  
21 issues its decision, it had no knowledge that Atmos was  
22 planning to file a new rate case.

23 Now, let's say Atmos, in fact, was not planning  
24 to file a new rate case. Let's say that Atmos likes its  
25 rates and, in fact, intends to keep them the way they were

1 for the foreseeable future. Then you can see that the --  
2 the outcome of the Court of Appeals order would be very  
3 different.

4           The Commission would embark on a new proceeding  
5 of some sort, either reopening the record or writing a new  
6 order based on the existing record. And at the end of  
7 that proceeding, whichever it was, a new report and order  
8 would be produced, and the Commission then would direct  
9 Atmos to file tariffs in compliance with that order.  
10 Atmos then would have to do that.

11           It is -- it is this -- this wild card of a new  
12 rate proceeding that has changed things.

13           COMMISSIONER KENNEY: So it's the new rate --  
14 it's the potential new rate case being filed on Friday  
15 that changes the dynamic and not OPC's failure to  
16 challenge the compliance there? That's not the same as  
17 what you were saying before.

18           MR. THOMPSON: What I was saying before took  
19 into account the fact that they have filed a new rate  
20 case, that they've told us ever since the -- the case was  
21 first remanded that they planned to file a new rate case  
22 about the end of the year.

23           From the -- from the point of view of Public  
24 Counsel, in order to get effective relief for his clients,  
25 he has to have a rate that will go into effect, a new

1 tariff before the tariff that's going to come out of this  
2 new filing.

3           There would be no problem if there was no new  
4 rate case filing. But given that there is, practically  
5 speaking, and in the procedural stance that he finds  
6 himself, I don't think he can get that relief. I don't  
7 think he can get a new tariff in place before the tariff  
8 that's going to come out of that case.

9           COMMISSIONER KENNEY: Okay. Thank you.

10           JUDGE STEARLEY: Any additional questions from  
11 the Commissioners?

12           COMMISSIONER DAVIS: Judge, can I -- can I go  
13 back and ask Mr. Thompson and -- and all parties --  
14 Mr. Thompson, can could you give us a brief primer on --  
15 on how the file and suspend method works?

16           MR. THOMPSON: Well, certainly. The file and  
17 suspend method is one of the two methods by which rates  
18 can be made in Missouri, the other being the complaint  
19 method.

20           In the file and suspend method, a utility  
21 company files tariffs proposing a general rate increase  
22 with the Commission, thereby proposing that rates be  
23 increased.

24           The Commission has the option of either allowing  
25 the tariffs to go into effect or of suspending them and

1 entering into proceedings by which it would determine  
2 whether or not the -- the tariffs are appropriate.

3           The Supreme Court has pointed out that even if  
4 you allow the tariffs to go into effect, you have to  
5 consider all relevant factors. So the normal process is  
6 to suspend those tariffs.

7           Let's leave the world of telephone out of this.  
8 Typically, it's for an 11-month period. At the end of  
9 that time, which is the length of time the Commission can  
10 suspend the tariff, the tariffs will automatically go into  
11 effect. That's why the -- the report and order will  
12 typically reject the tariffs that had been filed to start  
13 the case.

14           Of course, a proceeding on a tariff is a  
15 non-contested case unless it is suspended by the  
16 Commission. The statute that authorizes you to suspend  
17 tariffs also requires you to hold a hearing, and that  
18 converts it into a contested case.

19           COMMISSIONER DAVIS: And are the tariffs  
20 presumed lawful until shown otherwise?

21           MR. THOMPSON: Once they take effect, yes, sir.

22           COMMISSIONER DAVIS: Okay. Anybody have  
23 anything to add to that? Thank you, Mr. Thompson.

24           JUDGE STEARLEY: Additional questions from the  
25 Commissioners? I have one question to address to you all.



1 And it's my -- my last question.

2           Mr. Poston has indicated that the Commission  
3 could theoretically issue an order requiring the company  
4 to file a new tariff based upon the Western District's  
5 remand. To my recollection, and you can all correct me if  
6 I am wrong, the report and order that came out in this  
7 case did not have to address the issue of revenue  
8 requirement since there was no increase in revenue given.

9           Wouldn't any subsequent order of the Commission  
10 have to address revenue requirement and all the components  
11 therein since it was not addressed in the first report and  
12 order? And anyone can chime in.

13           MR. THOMPSON: Well, revenue requirement was  
14 addressed in the first report and order. And it was part  
15 of the appeal. It was addressed in an unsatisfactory  
16 manner in that the Commission pointed out that the parties  
17 had agreed not to change it and then did not include any  
18 Findings of Fact supporting the -- the fact that that  
19 revenue requirement continued to be just and reasonable.

20           So after all of that, I would say that you would  
21 certainly have to address revenue requirement if you  
22 changed the rate design. If the Commission decides not to  
23 change the rate design, then perhaps it would not need to  
24 address revenue requirement.

25           But the parties aren't going to know in advance

1 what you're going to do. And so I think the company, very  
2 certainly, would want to address rate design. I --  
3 without having conferred with anyone in Staff, I -- I  
4 would guess that Staff would want to as well.

5 MR. FISCHER: Yeah. Judge, on page 18 of the  
6 order, it says, There is a clear linkage between the  
7 adoption of a particular rate design and considerations  
8 regarding Atmos' revenue requirement. Because we have  
9 reversed the Commission's decision to adopt the SFV rate  
10 design, the Commission's findings and conclusions  
11 regarding Atmos' overall revenue requirement are not right  
12 for review. So they didn't take a look at revenue  
13 requirement.

14 But the company's position would be on any  
15 rewrite of the order that you certainly have to, we would  
16 believe, take additional evidence and then give the  
17 company opportunity to update the financial data related  
18 to revenue requirement.

19 JUDGE STEARLEY: Okay. Even if the Commission  
20 didn't look at updated information, would they still have  
21 to revisit the issue of revenue requirement?

22 MR. FISCHER: Judge, I think there -- the Court  
23 has indicated there's a clear linkage. Perhaps Mr. --  
24 Mr. Thompson is right. If you did adopt the -- the  
25 straight fixed variable rate structure, which is what the

1 Commission ultimately did and the company went along with  
2 that, with a zero revenue requirement, I think perhaps --  
3 perhaps that could be done.

4           But it's -- it's -- if you're going to be  
5 setting new rates, our position would be you need to set  
6 it on all relevant factors, including an update of the  
7 revenue requirement.

8           JUDGE STEARLEY: Mr. Poston?

9           MR. POSTON: I would agree that the Commission  
10 would need to consider all relevant factors in revenue  
11 requirement. I would disagree that they need to have  
12 updates provided. But I think the -- that needs to be a  
13 consideration.

14           JUDGE STEARLEY: All right. That's all I have.  
15 Any other questions from the Bench?

16           MR. DORITY: Your Honor, if I may interrupt, I  
17 did have one procedural inquiry.

18           JUDGE STEARLEY: Certainly.

19           MR. DORITY: A reference has been made to the  
20 company's energy efficiency and conservation program. And  
21 as the Commission is aware, our tariffs have certain  
22 filing requirements associated with that program, and the  
23 company has been fulfilling those requirements.

24           The Commission's report and order also contained  
25 a filing requirement regarding a report on the company's

1 fixed delivery charge rate design and its impact on energy  
2 efficiency and conservation. If you may recall, the  
3 company filed its report last year about that time, and I  
4 -- and the Commission issued a report and order, I think  
5 it was, in February of this year that accepted that  
6 report.

7 I just wanted to let the Commission know that in  
8 accordance with the report and order, the company has  
9 prepared its second annual report regarding the straight  
10 fixed variable rate design and its impact on energy  
11 conservation. And we will intend to file that in this  
12 docket. And I just wanted to make the Commission and the  
13 parties aware of that.

14 JUDGE STEARLEY: Thank you, Mr. Dority.

15 MR. DORITY: Thank you.

16 JUDGE STEARLEY: Is any party wanting to give a  
17 closing statement or summary?

18 Okay. There's been some talk regarding the  
19 issue Mr. Thompson raised with regard to continuation of  
20 the validity of the tariff. And so I'm going to set a  
21 schedule for the parties to file responses on that.

22 MR. THOMPSON: Will I get to file something,  
23 too, Judge?

24 JUDGE STEARLEY: Yes, Mr. Thompson.

25 MR. THOMPSON: Thank you.

1           JUDGE STEARLEY: Everyone is welcome to file  
2 something. And I will set a deadline of Monday, January  
3 4th, for those filings. I'll try not to interfere with  
4 anybody's holidays.

5           MR. DORITY: Thank you, Judge.

6           JUDGE STEARLEY: Is there anything else we need  
7 to take up at this time? Very well. This proceeding in  
8 File No. GR-2006-0387 is hereby adjourned. Thank you all  
9 very much.

10          MS. SHEMWELL: Thank you.

11          MR. THOMPSON: Thank you.

12                 (The proceedings were concluded at 12:20 p.m. on  
13 December 15, 2009.)

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