

Prehearing Conference

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Jefferson City, Missouri

Volume 7

In The Matter Of The PGA/ACA)
Filing Of Atmos Energy Corporation)
For The West Area (Old Butler),)
West Area (Old Greeley),)
Southeastern Area (Old SEMO),) File No. GR-2008-0364
Southeastern Area (Old Neelyville),)
Kirksville Area And The)
Northeastern area)

MORRIS L. WOODRUFF, presiding
CHIEF REGULATORY LAW JUDGE
TERRY JARRETT,
JEFF DAVIS,
COMMISSIONERS.

REPORTED BY:

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1 JUDGE WOODRUFF: Let's come to order,
2 please. Welcome back for another day in this hearing on
3 GR-2008-0364. When we left off yesterday Mike Walker was
4 on the stand answering questions from Staff.

5 So, Mr. Walker, please take the stand. And
6 you are still under oath.

7 THE WITNESS: Okay.

8 JUDGE WOODRUFF: You may inquire.

9 MR. BERLIN: Thank you, Judge.

10 MIKE WALKER testifies as follows:

11 DIRECT EXAMINATION BY MR. BERLIN:

12 Q. Good morning, Mr. Walker.

13 A. Good morning.

14 Q. Mr. Walker, you may recall yesterday before
15 we broke I had some questions on DR 100. And so I'd kind
16 of like to circle back on DR 100. Do you have DR 100 in
17 front of you?

18 A. Yes, I do.

19 Q. Okay. Mr. Walker, you may recall about DR
20 100, Staff sent that DR on January 15th of 2009. And DR
21 100 ask in part, Were there any pipeline or supplier
22 actions that caused the LDC to question its reliance on the
23 transport storage or supplies to be delivered to the LDC.
24 And I believe you indicated that you prepared the response
25 to that?

1 A. Yes, I did.

2 Q. Okay. And would you please read your
3 response?

4 A. There were not any pipelines/supplier
5 reliability issues during this ACA period.

6 Q. Okay. On Wednesday, I believe you said
7 something that you did not include information about the
8 Haven rupture in the December cuts in the DR 100 response
9 because you did not consider those to be related to
10 reliability; is that -- have I summed that up?

11 A. That's correct.

12 Q. Okay. Now, is the event that occurred in
13 November and December of 2007, the Haven rupture or Haven
14 outage, a normal event for Atmos to encounter?

15 A. No. It's -- it's rare.

16 Q. Are the cuts that impacted 25 days for
17 Hannibal and 24 days for Bowling Green a normal event for
18 Atmos?

19 A. No.

20 Q. Did you have discussions with Ms. Buchanan
21 in November and/or December of 2007 regarding how those
22 cuts were impacting storage?

23 A. Yes.

24 Q. Did you have discussions with Ms. Buchanan
25 in December of 2007 regarding how the December cuts would

1 impact the first-of-month nominations for January?

2 A. Yes.

3 Q. Did you have discussions, phone calls,
4 e-mails or instant messages with your supplier, AEM,
5 regarding why you were not getting the swing supply you had
6 nominated?

7 A. Yes.

8 Q. So let me understand this: You did not
9 think any of these things were related to the DR 100 that
10 in part had asked, Were there any pipeline or supplier
11 actions that caused the LDC to question its reliance on the
12 transport storage or supplies to be delivered to the LDC?

13 A. Not under a force majeure event.

14 Q. Okay. Okay. What I'd like to do Mr. Walker
15 is go to DR 132.2.

16 MR. BERLIN: Judge, I have copies of it.
17 May I approach?

18 JUDGE WOODRUFF: You certainly may. Is this
19 an exhibit?

20 MR. BERLIN: Yes.

21 JUDGE WOODRUFF: This will be 18.

22 MR. BERLIN: Exhibit 18.

23 (Wherein; Staff Exhibit No. 18 was marked
24 for identification.)

25 JUDGE WOODRUFF: The whole packet?

1 MR. BERLIN: Yes. This is all one.

2 JUDGE WOODRUFF: And again, the question is
3 whether this is still HC, if the witness could look at it.

4 MR. FISCHER: Is this one different than
5 what we looked at yesterday?

6 MR. BERLIN: The exhibit, you'll see, as on
7 the front -- has the Atmos response here. And then on the
8 back side, which is also a Staff Schedule 3-1, has summary
9 information on the back. These are what we covered
10 yesterday, so it's the same.

11 BY MR. BERLIN:

12 Q. Now, Mr. Walker --

13 JUDGE WOODRUFF: Let me ask first,
14 Mr. Walker, did you determine if any of this is highly
15 confidential?

16 THE WITNESS: I don't think it is.

17 JUDGE WOODRUFF: All right. It will just be
18 18, then.

19 MR. BERLIN: Okay.

20 JUDGE WOODRUFF: You may inquire.

21 MR. BERLIN: Thank you.

22 BY MR. BERLIN:

23 Q. And this is a DR response that you had
24 responded to. Correct, Mr. Walker?

25 A. Correct.

1 Q. Now, DR 132.2 parts A and C shows cuts to
2 two of Hannibal storage contract nominations, FS storage
3 and WS storage for 11/27/07 and 12/04/07 through 12/07/07;
4 is that right?

5 A. That's correct.

6 Q. Okay. Please explain to me why there were
7 cuts to these two storage contracts on those dates.

8 A. It was due to the Haven rupture.

9 Q. Now, for Hannibal FS storage 14088, please
10 keep referring to the DR response. I'm going to refer you
11 to cuts for this storage for November 27, 2007 and for
12 December 4 through December 7. That's five days of cuts.

13 And if you would please, start with the
14 documentation Atmos included in DR 132.2 and tell me what
15 is the reason for this cut. I think it should start out,
16 CCD. If you go to 5-9 that might help you.

17 A. Yes. The reason the return code that the
18 pipeline gave was CCD, meaning pipeline capacity constraint
19 at the delivery location due to Haven outage.

20 Q. Okay. And it specifically makes reference
21 to Haven outage, doesn't it?

22 A. Yes.

23 Q. Okay. And it specifically states the
24 reduction reason of CCD as written here?

25 A. Yes.

1 Q. Now, for FS storage 14088, please go to the
2 part of the response for December 4th of 2007. And that is
3 on 5-11 if you just flip the page.

4 A. I see it.

5 Q. And what does it say?

6 A. Return code is CCR, pipeline capacity
7 constraint at receipt location, Haven outage.

8 Q. Yes. Again, that specifically references
9 the Haven outage, doesn't it?

10 A. Yes.

11 Q. Okay. Now, for FS storage 14088, please go
12 to the part of the response on 5-14 for December 5th, 2007
13 and tell me the reason for the cut.

14 A. The same return code; CCR, pipeline capacity
15 constraint at receipt location, per cut -- cut per Haven
16 outage.

17 Q. Yes. Again, it references Haven outage?

18 A. Yes.

19 Q. Now, for FS storage 14088, please go to the
20 part of the response on Page 5-17 for December 6th of 2007
21 and tell me the reason for the cut.

22 A. CCR, pipeline capacity constraint at receipt
23 location, Haven outage.

24 Q. Again, another reference to Haven outage?

25 A. Yes.

1 Q. Okay. For FS storage 14088, please go to
2 the part of the response on 5-20 for December 7th of 2007
3 and tell me the reason for the cut.

4 A. CCR, pipeline capacity constraint at receipt
5 location, Haven outage.

6 Q. Another reference to Haven outage. Right?

7 A. Yes.

8 Q. Now, for another Hannibal storage contract,
9 WS storage 11597, please go to the part of the response --
10 and I'm going to refer you to cuts for storage for December
11 4th through December 7th, 2007 that are four days of cuts.
12 If you would, please start with the documentation Atmos
13 included. And you'll see it on 5-12 for December 4th.

14 A. Return reason is CCR, pipeline capacity
15 constraint at receipt location, Haven outage.

16 Q. Another reference to Haven outage?

17 A. Yes.

18 Q. For WS storage 11597, please go to the part
19 of the response on 5-15 for December 5th, 2007 and tell me
20 the reason for this cut.

21 A. CCR, pipeline capacity constraint at receipt
22 location, Haven outage.

23 Q. Another reference to Haven outage?

24 A. Yes.

25 Q. For WS storage 11597, please go to the part

1 of the response on 5-18 for December 6th, 2007 and tell me
2 the reason for the cut.

3 A. CCR, pipeline capacity constraint at receipt
4 location, Haven outage.

5 Q. Okay. Another reference to the Haven
6 outage. Correct?

7 A. Yes.

8 Q. For WS storage 11597, please go to the part
9 of the response on 5-21 for December 7th, 2007 and tell me
10 the reason for the cut.

11 A. CCR, pipeline capacity constraint at receipt
12 location, Haven outage.

13 Q. Again, another reference to Haven outage?

14 A. Yes.

15 Q. Okay. DR 132.2 parts A and C shows cuts to
16 Hannibal contract no. 116719 nominations for 11/27/07 and
17 12/08/07 through 12/31/07; isn't that right?

18 A. Could you repeat those dates again?

19 Q. Yes. The dates of the cuts are 11/27/07 and
20 12/08/07 running through 12/31/07?

21 A. We received cuts on 11/27/07 and 12/08
22 through 12/10/07. We did not receive cuts 12/11/2007
23 through 12/31/2007.

24 Q. But doesn't that -- doesn't that show that
25 there's cuts?

1 A. On this -- on this Excel spreadsheet?

2 Q. Yes.

3 A. Yes. Because we -- we listed the scheduled
4 gas. We didn't list what actually got -- we listed the
5 ordered gas. We didn't list what was actually scheduled
6 with the pipeline.

7 Q. Could you --

8 A. During a -- during the Haven --

9 Q. -- explain?

10 A. -- outage, the pipeline wants all the
11 parties to lower their nomination because they can't pass
12 through the gas because of the outage. The line's
13 interrupted, so we lowered our nom. Working with our
14 supplier, working with the pipeline, we lowered our nom to
15 lower the impact of the gas flow through the pipeline. And
16 we did not receive any cuts in doing so.

17 Q. Well, Mr. Walker your response tells Staff
18 that you had nominated these amounts on your response and
19 that you had received cuts running all the way through
20 December 31st.

21 A. Like I said, this in the one in the first
22 column here is what I ordered, but that's not what we nomed
23 because we try to cooperate with the supplier and pipeline
24 during the Haven outage for days 11 through 31.

25 Q. But you agreed that this response says

1 nomination, doesn't it? NOM?

2 A. Yes. Yes. There should have probably been
3 an extra column in there explaining this is what I ordered
4 and then the extra column would give what we actually
5 nominated.

6 Q. Mr. Walker, I'm kind of confused by this.
7 Were you -- were you doing what the pipeline wanted or were
8 you doing what your customers wanted? I mean --

9 A. I did what the pipeline and supplier wanted
10 to do to cooperate with both of them. That's what they
11 would want us to do during the Haven outage.

12 Q. But you could have put in higher noms,
13 couldn't you?

14 A. Yes.

15 Q. You could have done that?

16 A. Yes. And in return got cut because of the
17 outage.

18 Q. But that would have been their decision?

19 A. Yes.

20 Q. Do you know that they would cut the entire
21 amount?

22 A. We don't know what amount would have been
23 cut.

24 Q. But you could've asked for it? You could
25 have?

1 A. Yes.

2 Q. Okay. Okay. Let's go back to Hannibal
3 storage contract 11671 and please refer to the response
4 included in your -- and I'm going to refer you to -- to the
5 cuts for this contract for November 27, '07 and 12/08
6 through December 31, '07. That's 25 days of cuts. And
7 that's included on Page 5-8.

8 Okay. For November 27th of 2007 and could
9 you tell me the reason for this cut?

10 A. CCD, pipeline capacity constraint at
11 delivery location, Haven outage.

12 Q. Okay. And again, another reference to Haven
13 outage. Correct?

14 A. Yes.

15 Q. Okay. And it specifically references the
16 reduction reason, Pipeline capacity constraint at delivery
17 location, doesn't it?

18 A. Yes.

19 Q. Okay. So tell me what you think CCD means.

20 A. We were told by the pipeline rep that during
21 this Haven outage they were more concerned in getting the
22 volumes correct and not necessarily the exact reasoning for
23 the return reduction code.

24 Q. Well, again where's the delivery location
25 here? I can point you to your -- do you have a copy of

1 your deposition?

2 A. Delivery location would be UNCMO, which is
3 the Hannibal citygate meter.

4 Q. Well, I'm -- again, I'm confused here. Do
5 you have a copy of your deposition?

6 A. Yes, I do.

7 Q. Okay. If you would please go to Page 23.
8 I'm sorry, to Page 35, Lines 4 to 6. Are you there?

9 A. Yes, I am.

10 Q. Now, I think you'll see at Line 1 I ask the
11 code CC-- or the answer when I -- going back to 34 my
12 question was: So is that what the code CCD means? And you
13 said the answer: The code CCD means capacity constraint at
14 delivery; is that -- that was your answer?

15 A. Yes.

16 Q. Then my question was: And where is that
17 delivery location. And then, what was your answer?

18 A. That would be at Haven or wherever the
19 nomination occurred, the receipt point.

20 Q. Okay. So there -- that's different than
21 what you just told me?

22 A. Yes. Looking at the reduction notice sent
23 by Panhandle, it has a receipt location and a delivery
24 location. And that's why I said the delivery location it
25 states UNCMO. But again, I'm -- I'm not sure whether it's

1 at Haven or at the Hannibal location. I just know it was
2 cut because of the Haven outage.

3 Q. Okay. So on a pipeline capacity constraint
4 at delivery location, could capacity of pipeline be the
5 reason for the reduction?

6 A. Could you repeat that, please?

7 Q. Yes. On that delivery code, a pipeline
8 capacity constraint at delivery location, could the
9 capacity of the pipeline be the reason for the reduction?

10 A. The capacity is constrained during the
11 outage. Yes.

12 Q. Okay. So would the CCD reduction reason
13 have been related to the Haven 400 Line rupture?

14 A. Yes.

15 Q. Okay. If you go to DR 132.2, I think
16 that's -- yeah. It's Page 5-23. Are you there?

17 A. Yes, I am.

18 Q. Okay. Please refer to the documentation
19 that Atmos included in this response for December 8th of
20 2007 and what is the reason for this cut?

21 A. PRR, confirmation party reduction at receipt
22 location, match Kansas.

23 Q. Okay. Does that reference the Haven outage?

24 A. No, it does not.

25 Q. Okay. And it refers to match Kansas.

1 Correct?

2 A. Yes.

3 Q. Can you -- and you may recall I had a
4 question at deposition on this, but what is match Kansas?

5 A. As it was explained yesterday, this was a
6 clerical error between AEM and their upstream supplier --

7 Q. Okay.

8 A. -- on getting the gas at the Kansas gas
9 supply location.

10 Q. Did you say AEM?

11 A. Yes. Our supplier and their -- with their
12 upstream supplier.

13 Q. Okay. Now, you have a copy of the
14 deposition and I think when I asked you this question you
15 said, I'm not sure. And if you go to Page 36, Line 1 and
16 Page 38, Line 16. I just want to verify that was your
17 answer back then?

18 A. Yes, it was.

19 Q. Okay. Okay. Now, please refer to the
20 documentation in the Atmos response that is -- if you go to
21 Page 5-48, you'll find it. And that's for December 27th,
22 2007 for Hannibal contract 11671.

23 A. Okay.

24 Q. And what is the reason for this cut?

25 A. PRR, confirmation party reduction at receipt

1 location, match KMI.

2 Q. And again, there is no reference to Haven
3 outage there?

4 A. Again, not on this statement, but the
5 pipeline had told us that they were more concerned with
6 getting the volumes right instead of the exact return code.

7 Q. But my question is: It does not
8 reference -- there's no reference to Haven here on that
9 response?

10 A. Because of the reason I stated, yes.

11 Q. All right. For PRR codes given as reasons
12 for the cuts on 12/08/07 and 12/27/07, that state
13 confirmation party reduction at receipt locations, match
14 Kansas or match KMI, who was the confirming party?

15 A. The pipeline actually confirms the volumes,
16 I believe. They match what's coming into pipeline and
17 what's going through their system. We don't have to do
18 confirmations when we nominate.

19 Q. All right. Well, is that something you just
20 learned?

21 A. That's something I wasn't aware of at the
22 time of deposition. I thought so, but I wasn't exactly
23 sure. I did confirm that with the pipeline representative.

24 Q. After -- after the deposition?

25 A. Yes.

1 Q. Okay. What did -- at the time when you saw
2 those -- those codes, why didn't you inquire about who that
3 confirmation party would be at that time? If it helps, you
4 can go to your deposition Page 37, Line 25, Page 38, Lines
5 1 to 3.

6 A. To my knowledge, this happened because of
7 the Haven outage.

8 Q. If you go to the bottom of Page 37 of your
9 deposition and you were asked this question -- go to Line
10 25. I think you gave an answer there. You note that I'd
11 asked that question on Line 23 and 24 at the bottom of 37.
12 What is your answer at the bottom, starting on Line 25 of
13 Page 37 that runs through Lines 1 through 3 on Page 38?
14 Could you read that?

15 A. I believe it would be between our supplier's
16 point and I guess where we pick up the gas and where our
17 supplier would deliver the gas, is my understanding what
18 that means.

19 Q. And then the next question is: Is the
20 confirming party your supplier? And your answer was?

21 A. I believe so. It would be both; my supplier
22 and their delivery point and my receiving point.

23 Q. Okay. Okay. But didn't -- didn't you just
24 earlier when I asked you this just tell me it was the
25 pipeline?

1 A. Yes.

2 Q. Okay. So -- and the -- one minute here. I
3 think we just went through that. Okay. Can you tell me
4 why it's necessary for the confirmation party to confirm
5 the Atmos nomination?

6 A. Again, we don't have to confirm the
7 nomination. Has it set up where it auto-confirms.

8 Q. Okay. Now, when I asked you this on -- and
9 it's in your deposition Page 38, Lines 10 to 12. If you go
10 there, please. And could you tell me your answer to that
11 question on Line 10 through 12?

12 A. I don't have knowledge of that what the
13 supplier has to do as far as nominating or confirmations.

14 Q. Okay. And what caused your supplier to not
15 confirm the gas?

16 A. Again, I don't think they have to confirm
17 the gas just like I don't have to confirm the gas.

18 Q. And how --

19 A. I can only speak on my end. I know --

20 Q. I understand.

21 A. -- we put the nom in. We do not have to
22 confirm it. I'm not exactly sure what they do on their
23 end. I don't think they have to confirm it, but --

24 Q. Could it be that AEM had interruptible
25 supply?

1 A. Not to my knowledge.

2 Q. Could it be that AEM was delivering on a
3 secondary delivery priority?

4 A. As the reason for the cut?

5 Q. Well, as for the reason why your supplier
6 did not confirm the gas.

7 MR. FISCHER: Calls for speculation, Judge.

8 JUDGE WOODRUFF: Overruled. You can answer.

9 BY MR. BERLIN:

10 Q. Could the answer -- could the answer. Let
11 me give you the question again.

12 Could the reason be that AEM was delivering
13 on a secondary delivery priority?

14 A. Whether the nomination was confirmed or not?

15 Q. Well, I --

16 A. What --

17 Q. -- asked you what caused your supplier to
18 not confirm the gas. And my question was: Could it be
19 that AEM was delivering on a secondary delivery priority?

20 A. I don't think that has anything to do with
21 confirmation of gas. Again, I don't think the supplier has
22 to confirm, but that's purely my guess. It's speculation.

23 Q. Well, could it -- do you think it could make
24 it subject to being interrupted or curtailed?

25 A. In talking with the pipeline, the whole area

1 was curtailed. It didn't matter which point we used. The
2 whole system -- it was a cut system-wide. A lot of
3 suppliers, marketers were trying to get down stream of the
4 Haven outage.

5 Q. Now, would you agree with me that the
6 secondary -- that a secondary delivery priority is a lower
7 priority than primary?

8 A. In most cases, but not in this case. Not
9 during the outage.

10 Q. How do you know that?

11 A. Because in talking with the pipeline,
12 they -- they stated that the whole area was being cut and
13 it wouldn't have mattered whether the gas was at Pony
14 Express or Haven.

15 Q. And when did you talk to the pipeline?

16 A. I talked to them during the outage and --
17 and after the deposition as well.

18 Q. Okay. Moving on, can you tell me what the
19 difference is between the CCD and PRR reasons given for the
20 cuts? And I think we said that CCD is capacity constraint
21 at delivery and PRR is party reduction at receipt. I
22 believe that's what you said.

23 A. Yes.

24 Q. Okay. Can you tell me the difference
25 between the two?

1 A. I don't know the exact difference.

2 Q. Okay. In the Atmos response to this DR
3 and -- Staff found no documents explaining the cuts to
4 Hannibal contract no. 11671 for the period of 12/09/07
5 through 12/26/07 and 12/28/07 through 12/31/07. Now, do
6 you agree that -- that those are 22 days of cuts?

7 A. No, I don't. Those are the dates we nomed
8 lower to help out the supplier and the pipeline during this
9 Haven outage.

10 Q. Okay. Yes. I think we just went through
11 that. But you didn't explain that in your data request
12 response to Staff, did you?

13 A. I'm not sure.

14 Q. Well, I -- can you look and see if you
15 explained that to Staff in your response?

16 A. I don't believe I did, but the questions
17 were asked which volumes were curtailed and I gave you all
18 the pipeline notices when they were cut. On those specific
19 days, they were not curtailed.

20 Q. But you agree that this -- this response
21 shows these cuts? We just went through this. I mean, you
22 agree that when you look at this it shows cuts?

23 A. Yes, we've already explained that.

24 Q. Okay. Now, why would you cut firm supply
25 nominations at your supplier's request?

1 A. It's not only the supplier's request, it's
2 the pipeline request as well. During the Haven outage,
3 everyone needs to reduce their nomination in order for the
4 gas to flow at the constraint point.

5 Q. So then did you make cuts for Butler?

6 A. I don't believe I did.

7 Q. Okay.

8 A. They -- Butler wasn't being cut as much as
9 Hannibal. And explained yesterday the pipeline rupture, it
10 didn't know why they weren't being cut and they probably
11 should have been cut. If they're not being cut then
12 there's not as much need to reduce the nomination.

13 Q. Now, Mr. Butler [sic], aren't you already
14 naming below the contract NBQ?

15 A. Yes.

16 Q. All right. Can you tell me, Mr. Walker,
17 what other notifications that Atmos received from messenger
18 at PanhandleEnergy.com or from Panhandle in any other form
19 of communication for the reductions to Hannibal contract
20 11671, the cuts that were made those 22 days. I believe
21 you probably didn't get anything from them, did you?

22 A. I believe I provided everything that I
23 received.

24 Q. All right. Now, of the notices that you
25 received from the pipeline for Hannibal contract no. 11671

1 for the 25 days of cuts, you see that there's only three
2 days with cut codes? You see that it would be 11/27/07,
3 12/08/07 and 12/27/07 and like the cut code CCD for
4 11/27/07, PRR for 12/08/07 and cut code PRR for 12/27/07?
5 And did you --

6 A. What was your question?

7 Q. Okay. I just wanted that -- I'm looking at
8 Hannibal contract no. 11671 and -- for the 25 days of
9 purported cuts. Do you see -- I think if you go to -- let
10 me direct you first to 5-8. Go to 5-8.

11 A. Okay.

12 Q. Okay. And the cut code's CCD. Correct?

13 A. Correct.

14 Q. And 12/08, it is 5-23. That cut code is
15 PRR. Correct?

16 A. Correct.

17 Q. And 12/27/07, which is on 5-48, that cut
18 code is PRR?

19 A. Correct.

20 Q. Now, why didn't you get verification from
21 Panhandle for the reason for the cuts to Hannibal contract
22 11671 on the other 22 days?

23 A. Because the nomination was not cut. We
24 nominated what we could get during this Haven outage and
25 the pipeline did not cut that volume.

1 Q. Did you know what volume you could get?

2 A. That -- what we nominated is what we could
3 get from our supplier.

4 Q. Okay. Now, I'm kind go -- go through a
5 similar series of questions for Bowling Green. For Bowling
6 Green contract 11474, please refer to the part of the
7 response. And I'm going to refer you to cuts for this
8 contract for 12/08/07 through 12/31/07, which are 24 days
9 of cuts. And if you would go to 5-24, please start with
10 the documentation Atmos included in its response for
11 December 8th, 2007 and tell me the reason for that cut.

12 A. PRR, confirmation party reduction at receipt
13 location, match Kansas.

14 Q. Okay. And that -- does that reference the
15 Haven outage?

16 A. No. That was the same scenario as contract
17 11671 for December 8th.

18 Q. And so it states PRR, confirmation party
19 reduction at receipt locations, match Kansas. And it does
20 say match Kansas. Right?

21 A. Yes, it does.

22 Q. And again, Staff found in the response to
23 this DR no documents explaining cuts in the Bowling Green
24 contract 11474 for a period of 12/09/07 through 12/31/07.
25 And that shows 23 days of cuts. Do you see that?

1 A. Again, there were no cuts on days 9 through
2 31 on the Bowling Green contract because we kept the nom --

3 Q. Okay. But I think -- you know, and we just
4 kind of went through this -- but the response does show
5 that there are cuts?

6 A. This spreadsheets shows there's cuts.

7 Q. Okay.

8 A. There's no cuts from the pipeline, notices.

9 Q. But this is the response. Correct?

10 A. And again, I explained that earlier as to
11 what --

12 Q. Yeah. All right. Can you tell me -- now,
13 let me kind circle back here.

14 Now, going back to your answers indicating
15 that you were helping the interstate pipeline by reducing
16 nominations, did you reduce the customer demands in
17 Hannibal to help the pipeline?

18 A. Can you explain your question?

19 Q. Sure. Now, you had just indicated in your
20 answers that you were trying to help or perhaps work with
21 the pipeline by reducing your nominations. Do you recall
22 that?

23 A. Yes.

24 Q. So did you reduce the customer demands in
25 Hannibal in order to help or work with the pipeline?

1 A. The customers -- our customers did not get
2 cut during this outage. They received the gas that they
3 needed through storage.

4 Q. Now, when you made the decision to reduce
5 your nominations to help the pipeline, did you then have to
6 pull gas that customers needed out of storage?

7 A. Yes.

8 Q. Okay. Now, did -- and I think you just told
9 me that you were working with the pipeline. Did the
10 pipeline Panhandle tell you to pull more gas out of storage
11 to help their system during the force majeure?

12 A. They didn't say that, but in doing so that
13 would be the obvious way it would be handled to withdraw
14 out of storage.

15 Q. What other notifications did Atmos get from
16 messenger at PanhandleEnergy.com or Panhandle in any other
17 form for the reductions to Bowling Green contract 11474 for
18 cuts made for those 23 days? Were there any?

19 A. There were no cuts for the 9th through the
20 31st.

21 Q. Right. Now, of the notices that you did
22 receive from the pipeline for Bowling Green contract 11474,
23 as you refer to those -- that I refer to the 24 days of
24 cuts as Staff understands it -- of the notices you received
25 from the pipeline for Bowling Green, do you see that

1 there's only one day with a cut code and that is 12/08/07?

2 It's -- and if it would help you to go to Page Schedule

3 5-24, it's --

4 A. Yes. That's correct.

5 Q. And the cut code is PRR. Correct?

6 A. Yes. We've already discussed that reason.

7 Q. Now, if you would please, look at the

8 e-mails or instant messages in the DR response to DR 132.2.

9 And if you go to Schedule or Page 5-5 through 5-7, for the

10 time frame of December 10th, December 12th and December 17.

11 Tell me if you're there.

12 A. I am.

13 Q. Did you inquire whether your supplier AEM

14 was providing natural gas to any other party during this

15 time frame?

16 A. Why would that -- I don't see why that would

17 matter about serving our customers, what they do on their

18 end to serve their other customers.

19 Q. Well -- well, I think you just told me that

20 you were working with your supplier AEM and the pipeline.

21 A. Yes.

22 Q. You were?

23 A. Uh-huh.

24 Q. You had a dialogue going with them, didn't

25 you?

1 A. Uh-huh.

2 Q. Communications?

3 A. Yes.

4 Q. I think you even told me you had phone
5 conversations?

6 A. Uh-huh.

7 Q. Okay. At any time during those
8 communications, did you ever ask your supplier AEM were
9 they providing gas to any other party during this -- this
10 outage?

11 A. It was my understanding that everyone was
12 getting cut. I mean, this was a force majeure event and
13 resources are limited. And to the best of my knowledge,
14 they're doing everything they can to serve me the gas that
15 I need.

16 Q. How do you know AEM wasn't just asking you
17 to make the cut?

18 A. Why would I think they would do that? I
19 would have no reason to think that. They've never done
20 anything in the past. They're a very reputable company.
21 I don't know why I would think that.

22 Q. Well, wouldn't -- just in your job, wouldn't
23 you just be interested in knowing who else on the system's
24 getting cut?

25 A. From what I was told, everyone pretty much

1 was getting cut. It's a system-wide event.

2 Q. So my question is: Did you ask AEM whether
3 it was providing natural gas to any other parties during
4 this time frame?

5 MR. FISCHER: Judge, asked and answered.

6 JUDGE WOODRUFF: It's been asked, but it
7 hasn't been answered yet.

8 BY MR. BERLIN:

9 Q. And is that answer no?

10 A. I thought I answered, but I'm assuming they
11 were trying -- doing their best to serve all of their
12 customers.

13 Q. Okay. I understand that, but the question
14 is did you ask AEM whether it was providing natural gas to
15 any other parties during this time frame. I can guide you
16 to your deposition --

17 A. No.

18 Q. Okay. Did you inquire whether -- and I
19 think -- let me ask you this, this is a little bit
20 different: Did you -- did you inquire whether any other --
21 any other parties were able to put gas into Panhandle at
22 that point in time?

23 A. Could you ask that again?

24 Q. Sure. Did you inquire whether any --
25 anybody else was able to put gas into Panhandle at that

1 point in time?

2 A. Well, according to AEM's e-mail or IM, I
3 can't remember which one, they were telling us that
4 everyone is kind of holding back on putting gas into
5 Panhandle until the rupture is fixed.

6 Q. Okay. I'm just wanting to clear this up a
7 little. If you go to your deposition Page 43, Lines 16 to
8 18. Are you there?

9 A. Yes, I am.

10 Q. Now, I -- I just asked you this question and
11 it's on Line 14 and 15. I'll read the question now. Did
12 you inquire whether anyone else was able to put gas into
13 PEPL at this point during this time? And your answer
14 was -- if you would read it?

15 A. I was told by the pipeline that it was a
16 force majeure, a system-wide event and every supplier was
17 getting cut.

18 Q. But they were able to -- but they were able
19 to put gas into the pipeline?

20 A. A limited amount, yes. Just like we
21 received a limited amount.

22 Q. Okay. Now, how did you verify that?

23 A. I trust my supplier and trust that they're
24 giving me the gas -- all the gas that they can. I've been
25 told by the pipeline that curtails are being made because

1 of the force majeure event.

2 Q. Did you check the Panhandle bulletin board
3 to review the amount of gas that was coming into Panhandle
4 at the receipt locations that could serve your system?

5 A. I did not. We got the e-mails from
6 Panhandle stating how much could flow through the system,
7 but it's a vague number. It doesn't mean a whole lot to me
8 as far as a system-wide number.

9 Q. Well, if you had checked the Panhandle
10 bulletin board, which I think you just told me you didn't,
11 would you -- would the constraint at the secondary receipt
12 point, the Pony Express line have been made apparent to
13 you?

14 A. Could you repeat your question, please?

15 Q. Sure. I think you just told me you did not
16 check the Panhandle bulletin board; is that right?

17 A. Correct.

18 Q. Okay. But had you checked the Panhandle
19 bulletin board, would you have -- would you have learned --
20 learned anything of the constraint on the secondary receipt
21 point, Pony Express? Would that bulletin board have
22 informed you of the constraint at Pony Express?

23 A. I'm sure if I looked, there would have been
24 constraints everywhere on the system.

25 Q. Had you checked the pipeline bulletin board,

1 would that have shown you that gas supply was coming in
2 through the secondary receipt point down stream of the
3 Haven rupture?

4 MR. FISCHER: Calls for speculation.

5 JUDGE WOODRUFF: Overruled.

6 THE WITNESS: I'm not sure.

7 BY MR. BERLIN:

8 Q. Other than the e-mails and instant messages
9 for December 10, December 12 and December 17, in your DR
10 132.2 response, what inquiries did you make for the cuts
11 from December 18th through December 31st of 2007?

12 A. We didn't get cut on those days. We were
13 nominating what we could get from our supplier. And that's
14 what we named that day.

15 Q. Did you ask whether the cuts for those 25
16 days was unusual?

17 A. Under a force majeure event, no. It's not
18 unusual at all.

19 Q. Well, let's go look at the e-mail in your DR
20 response. And then if you go to Schedule 5-5 you will find
21 it.

22 A. Okay. I'm there.

23 Q. Are you there?

24 A. Yes.

25 Q. Now, in that -- why don't you tell me

1 what -- what that is. Is this an e-mail to you?

2 A. Yes, it is.

3 Q. And who's it from?

4 A. Patrick Ruffing.

5 Q. And he is with AEM?

6 A. Yes.

7 Q. Okay. Now isn't there a statement in
8 Mr. Ruffing's response that says, Plus this weekend I
9 should be able to free some up as well if it hasn't been
10 resolved?

11 A. Yes. His statement was, There still hasn't
12 been a resolution to this, so as soon as they open this up
13 again we'll be able to buy more gas. Plus, this weekend I
14 should be able to free up some -- free up as well if it
15 hasn't been resolved.

16 Q. Okay. So AEM can free gas up on the weekend
17 or at least that's your impression. Right?

18 A. I guess. I don't know their side of the
19 business.

20 Q. Okay. Well, he says he should be able to?

21 A. Uh-huh.

22 Q. Did you ask AEM why it would be able to free
23 gas up on the weekend?

24 A. Again, I don't know their side of the
25 business.

1 Q. Wouldn't you have wanted to why or how
2 they -- that AEM could free gas up on the weekend, though?
3 Would that have been of interest to you?

4 A. During this critical time, I was happy to
5 get any extra gas that I could during this force majeure
6 event.

7 Q. Do you think -- now, you're a -- you've been
8 doing this for some time and some -- I guess my question
9 is: Does this mean that AEM was providing gas to others
10 during the week? I mean, they were providing -- do you
11 believe they were providing gas to others based on this
12 during the week?

13 A. I would assume they are trying to serve
14 other customers just like me.

15 Q. Is the agreement between Atmos and AEM for
16 firm gas during this period?

17 A. Yes.

18 Q. Is there any reason to believe that AEM gas
19 has lower priority than that of other gas flowing at this
20 point?

21 A. There's no reason to believe that.

22 Q. I believe in your deposition you said, Not
23 to my knowledge. Does that sound right? Or you can go to
24 Page 44, Line 16.

25 A. Right. That's what I said.

1 Q. Okay.

2 A. There's no reason for me to believe that
3 they would serve me anything other than firm gas.

4 Q. Okay. So you -- okay. Who would have that
5 knowledge?

6 A. Well, our contract states that -- our RFP
7 states that our gas is to be firm and warranted. I
8 wouldn't have any other reason to believe that they would
9 give me interruptible gas. They have always cooperated in
10 the past. They've been a very reputable supplier.

11 Q. Okay. Now, moving on to -- from the Bowling
12 Green contract no. 11474 and the Hannibal contract 11671,
13 you received nomination reduction notices from the pipeline
14 for Bowling Green contract 11474 during the summer months.
15 And I'm going to refer you to two of these, which are in
16 Schedules 5-60 and 5-78, which you should have.

17 Well, I'm going to have to refer you
18 Sommerer's surrebuttal schedule that has that piece of it.
19 Do you have that?

20 A. I do.

21 Q. Okay. Okay. Take a minute, please, and
22 look at that.

23 A. What section, please?

24 Q. It's Schedule 5-60 and 5-78. Okay. If
25 you -- if you -- are you at Schedule 5-60?

1 A. I have his surrebuttal, but it's not listed
2 as any schedules at the bottom of it.

3 Q. You don't have his schedules? It's at the
4 back.

5 A. I don't have the schedules attached to his
6 surrebuttal.

7 Q. You don't have that?

8 A. Huh-uh.

9 Q. Okay. Well, we'll just take a minute and
10 give you a copy of this.

11 MR. BERLIN: Judge, in the interest of time,
12 can I just give him a copy?

13 JUDGE WOODRUFF: Sure.

14 BY MR. BERLIN:

15 Q. Again, that's Schedule 5-60 and 5-78.

16 A. Okay.

17 Q. Are you there?

18 A. Uh-huh.

19 Q. Okay. And could you -- let's -- I think
20 5-60 -- well, let's -- let me ask you: Please identify
21 5-60. Is that, I believe, an e-mail?

22 A. Yes. From the pipeline.

23 Q. Okay. And is this to you?

24 A. Yes.

25 Q. Okay. And that was taken from the Atmos DR

1 132.2 response, would you agree?

2 A. I don't see it in the 132.2 that you gave
3 me.

4 Q. No. I don't think it's in the -- in the
5 handout. I don't -- I -- I'm going to his Schedule 5-60
6 and this is an e-mail, I think you identified, from
7 pipeline to Mike Walker; is that -- is that correct?

8 A. Yes.

9 Q. Okay. Why don't we just -- we'll just use
10 this then. Okay. So for the PRR code on -- given as
11 reasons for the cuts on July 21st of 2008 and -- let's just
12 go with July 21st of 2008. And it states there,
13 Confirmation party reduction at receipt locations.
14 Confirmation party at receipt location, match KMI. Is that
15 a fair --

16 A. That's correct.

17 Q. -- reading of your e-mail?

18 A. That's correct.

19 Q. Okay. And who -- who was the confirming
20 party here?

21 A. Again, I -- it's my understanding that's the
22 pipeline that confirms gas coming in to the Panhandle
23 system and flowing through their pipeline.

24 Q. Did you inquire about who that confirming
25 party would be?

1 A. I did. I'm not sure exactly when I inquired
2 about it.

3 Q. Isn't the confirming party though, your
4 supplier?

5 A. Again, you've already asked that and I don't
6 know. I know on my end I don't have to confirm
7 nominations.

8 Q. Okay. Now, let's go to 5-78. And again,
9 could you identify that for me?

10 A. The same type of e-mail from the pipeline
11 addressed to me.

12 Q. Okay. And -- and it's from the pipeline and
13 there's a reduction reason and a code. Correct?

14 A. Correct.

15 Q. And what is that?

16 A. PRR, confirmation party reduction at receipt
17 location.

18 Q. And then it says what below that?

19 A. Receipt EDI confirming party reduction.

20 Q. Okay. And again, you -- well, let me ask
21 you and you put it in your own words. The confirming party
22 here is your supplier. Right?

23 A. Again, I'm not sure. It may be the
24 pipeline. I believe it is the pipeline confirming the gas
25 into their system.

1 Q. Okay. Now, we just looked at July 21st of
2 2008 and August 26th of 2008, didn't we?

3 A. Yes.

4 Q. Yes. Okay. And there are -- there are
5 reductions. Correct?

6 A. Correct.

7 Q. Okay. Now, was Atmos under and force
8 majeure event during those summer months of July and August
9 on those dates?

10 A. No.

11 Q. And the supply agreement is for firm gas
12 supplies. Correct?

13 A. Correct.

14 Q. Okay. Do you think we could get that back
15 from you, Mr. Walker?

16 A. Sure.

17 Q. Thank you.

18 A. Thank you.

19 Q. Okay. I think you might need it. Okay.
20 Okay. Mr. Walker, let's go back to that last exhibit that
21 did have the schedules in it, if you would please. Part of
22 your DR 132.2 response.

23 A. Okay.

24 Q. Okay. Now, you received nomination
25 reduction notices from a pipeline for Hannibal contract

1 11671 during the summer months. I'm going to refer you to
2 three of these which were included in the Sommerer
3 surrebuttal Schedules 5-68 and 5-73 and 5-79. And you
4 should have those right in front of you at the very end of
5 the exhibit.

6 A. I do.

7 Q. Okay. Now, these were taken from the DR
8 132.2 response. Correct?

9 A. Yes.

10 Q. Okay. And if you would, take a quick minute
11 there and look at 5-68, 5-73 and 5-79.

12 A. Okay.

13 Q. Okay. Now, can you identify 5-68 for me?
14 That is an e-mail to you, isn't it?

15 A. Yes, it is.

16 Q. Okay. And that's from pipeline, isn't it?

17 A. Yes.

18 Q. And again, there's -- if you look at 5-68,
19 5-68, it shows a PRR code, does it not, for August 11th of
20 2008?

21 A. Yes, it does.

22 Q. And it says what?

23 A. PRR, confirmation party reduction at receipt
24 location, receipt EDI confirming party reduction.

25 Q. Okay. And if we -- if we go to 5-73 that is

1 another e-mail from the pipeline to you, isn't it?

2 A. Yes, it is.

3 Q. Okay. And this is about a reduction on
4 August 20th of 2008, isn't it?

5 A. Yes.

6 Q. Okay. And what is the reduction reason
7 given?

8 A. PRR, confirmation party reduction at receipt
9 location, receipt EDI confirming party reduction.

10 Q. Okay. Now, if you go to the next Schedule,
11 5-79 again, would you agree that that is another e-mail
12 from a pipeline sent to you?

13 A. Yes.

14 Q. And this shows another reduction. And this
15 is for August 26th of 2008, doesn't it?

16 A. Yes.

17 Q. Okay. And could you please the reduction
18 reason?

19 A. PRR, confirmation party reduction at receipt
20 location, receipt EDI, confirming party reduction.

21 Q. Now, for -- for these three PRR codes, or
22 reduction reasons that we've just discussed, on July --
23 rather August 11, August 20th -- just a second. Let me
24 back up a minute, please.

25 Okay. 5-68 was August 11 of 2008. And then

1 we went through another cut code of August 20th, 2008. And
2 we went through one of August 26th of 2008. Now, for those
3 PRR codes that we just discussed that were given as reason
4 for the cuts on those dates, which state confirmation party
5 reduction at receipt locations, again, who was the
6 confirming party here?

7 A. To my knowledge, the pipeline confirms the
8 gas coming in their system and flowing through their
9 pipeline.

10 Q. Now, isn't this supply agreement for firm
11 gas supplies?

12 A. Yes.

13 Q. Okay. Were you under a force majeure event
14 when these cuts were made in the summer months?

15 A. No.

16 Q. Okay. All right. Okay. Mr. Walker --

17 MR. BERLIN: Judge, I have another exhibit
18 here I'd like to --

19 JUDGE WOODRUFF: All right.

20 MR. BERLIN: -- approach.

21 JUDGE WOODRUFF: All right. We're up to
22 number 19.

23 (Wherein: Staff Exhibit No. 19 was marked
24 for identification.)

25 JUDGE WOODRUFF: This is enough.

1 MR. BERLIN: Is it enough? I will give this
2 to you. Get the reporter a copy.

3 JUDGE WOODRUFF: Are you short a copy?

4 MR. BERLIN: Yeah. I'm short some copies.

5 JUDGE WOODRUFF: That's all right. Go ahead
6 and proceed.

7 MR. BERLIN: All right. One to Mr. Fischer.
8 Okay. Maybe I'm not short a copy. There you are
9 Mr. Fischer.

10 MR. POSTON: I don't have a copy.

11 MR. BERLIN: Sorry.

12 COMMISSIONER JARRETT: Do you have a copy to
13 use?

14 MR. BERLIN: Yes, sir.

15 COMMISSIONER JARRETT: I was going to say
16 you can use mine if you need it.

17 MR. BERLIN: We have it.

18 MR. POSTON: Is this 17?

19 MR. BERLIN: This is 17. I'm sorry, 19.

20 BY MR. BERLIN:

21 Q. Mr. Walker, just take a moment, please, to
22 familiarize yourself with this.

23 A. Okay.

24 Q. And could you identify this document for me?

25 A. This is an e-mail from Panhandle Eastern

1 pipeline.

2 Q. And it's about the Haven 400 Line shut-in
3 and curtailment procedure. Correct?

4 A. Correct.

5 Q. Okay. All right. Now -- and you would
6 agree, Mr. Walker, that this is the text of the Panhandle
7 December 7th, 2007 critical notice?

8 A. Yes.

9 Q. Okay. Now, looking at this notice from
10 Panhandle, would the secondary points of delivery be
11 curtailed before the primary points?

12 A. Yes. But speaking with the pipeline
13 representative they said it did not matter during this
14 force majeure event. Everything was being cut at that
15 time.

16 Q. But Mr. Walker, this is -- this -- wouldn't
17 you agree in their notice that they are citing 9.2 of their
18 FERC gas tariff?

19 A. Yes.

20 Q. And wouldn't you agree that number 3 and
21 number 2 would be -- okay. That this shows the order of
22 cuts -- the order of priority of the cuts?

23 A. Yes, it does.

24 Q. Okay. So service from a secondary point of
25 delivery outside the primary path would be cut first.

1 Right?

2 A. Correct.

3 Q. And then after they made those cuts then
4 they would go and service from secondary points of delivery
5 within the primary path. Correct?

6 A. Correct.

7 Q. Okay. And then finally they -- if they
8 needed to during this force majeure, they would make cuts
9 from service from primary points of delivery?

10 A. Correct.

11 Q. And that is the order of their priority
12 cuts?

13 A. Correct.

14 Q. Okay. All right. Let me go back a minute
15 here and -- and I believe -- you may recall we have -- I
16 had some questions for you about an e-mail from Mr. Ruffing
17 from AEM. Do you recall those --

18 A. Yes.

19 Q. -- questions. And Mr. Ruffing said
20 that -- I think he said that he might be able to free some
21 gas up on the weekend. Do you recall that?

22 A. Yes.

23 Q. Okay. Now, Mr. Walker, if you were dealing
24 with another supplier, a third party supplier, possibly BP
25 or ConnocoPhillips, and they told you in an e-mail they

1 could free up gas on the weekend, would you question them
2 on that?

3 A. I wouldn't have treated them any differently
4 than I treated AEM.

5 Q. Okay. Okay. Let's move on. Atmos had a
6 contract with AEM during the 2007/2008 period for the
7 Hannibal/Bowling Green area to provide natural gas that is
8 baseload gas and swing gas. Right?

9 A. Right.

10 Q. Okay. And the Atmos baseload volumes can
11 change every month. Right?

12 A. Yes.

13 Q. Okay. I'd like to refer you to a schedule
14 in Ms. Buchanan's direct testimony that is titled, Gas
15 Supply Plan Procedure Effective January 1st of 2007. And
16 you may recall that yesterday we had addressed that gas
17 supply plan procedure. Atmos had provided this document in
18 DR 8 response in this case.

19 And you may recall that we had gone through
20 parts of that document at your deposition where it was
21 labeled Exhibit 3. But do you have Ms. Buchanan's direct
22 testimony with the gas supply plan procedure?

23 A. I do not.

24 MR. DORITY: Bob, I could provide it.

25 MR. BERLIN: Sure.

1 MR. DORITY: Judge, may I approach?

2 JUDGE WOODRUFF: You certainly may.

3 MR. DORITY: Here you go.

4 BY MR. BERLIN:

5 Q. Okay. Have you had an opportunity to look
6 at that, Mr. Walker?

7 A. Which section would you like me to look at?

8 Q. Okay. Gas supply plan procedure effective
9 January 1, 2007. Okay. I think the copies -- the
10 pertinent copies -- I'm sorry, I -- this will be a little
11 bit easier to direct you to -- part of Exhibit 6. And I
12 have copies. This might help.

13 A. I believe I'm where you need me to be.

14 Q. This is already part of Exhibit 6.

15 MR. FISCHER: Is there a page in the
16 procedure that you want to refer him to?

17 MR. DORITY: Exhibit 6 was a DR response.

18 MR. BERLIN: Well, it was in the -- was it
19 DR 8?

20 BY MR. BERLIN:

21 Q. Well, perhaps if I hand this to you, then I
22 will help guide you to the appropriate page.

23 A. Okay.

24 JUDGE WOODRUFF: Is this an exhibit then?

25 MR. BERLIN: I believe, Judge, it's already

1 part of an exhibit. I just have to make sure --

2 MR. DORITY: It's exhibit -- her direct is
3 Exhibit 1.

4 MR. BERLIN: This is -- yeah, it's Schedule
5 1 to her direct. So this is just a guide.

6 JUDGE WOODRUFF: Okay.

7 MR. FISCHER. What page is it?

8 MR. BERLIN: I think we're set. I don't
9 need to give one to the court reporter. It's already in.
10 She's got one.

11 Okay. Do you have it? All right.

12 BY MR. BERLIN:

13 Q. Okay. Mr. Walker, I think that we're
14 looking at the gas supply plan procedure. If you go to --
15 if you'd please go to the top page, the first paragraph.
16 And I'll just read a piece that -- that my question's
17 about.

18 And it states, The supply plan is based on
19 normal degree days. However, for operational and
20 nomination purposes, the plan should also reflect
21 requirements based on normal, a percent warmer and a
22 percent colder than normal degree days. Is that a correct
23 reading?

24 A. That's correct.

25 Q. And then it further states, This percent

1 will vary by state, for example, it is 20 percent in
2 Missouri. Typically first-of-month nominations are made to
3 cover the daily average of the percent warmer purchase
4 requirements. This will provide flexibility should the
5 warmer weather occur. Is that a correct reading?

6 A. Yes.

7 Q. Okay. And then it further states, In the
8 event the weather is normal or colder than normal, swing
9 purchases can be made during the month to continue with the
10 planned monthly storage quantities. Is that a fair
11 reading?

12 A. Yes.

13 Q. Okay. I'm going to refer you to two supply
14 plan documents pertaining to Hannibal/Bowling Green area
15 for April of 2007 through March of 2008. And these
16 documents that I'll refer you to are taken from the Atmos
17 response to DR 79 in this case. And it should be familiar
18 to you because we went through it at your deposition and it
19 had been labeled Exhibit 2 at the deposition. And I have
20 it as an exhibit here.

21 JUDGE WOODRUFF: This then will be 20.

22 MR. BERLIN: Exhibit 20.

23 (Wherein; Staff Exhibit 20 was marked for
24 identification.)

25 JUDGE WOODRUFF: If you're short, you can

1 give me just a couple of them. That's fine.

2 BY MR. BERLIN:

3 Q. Mr. Walker, have you had an opportunity to
4 look at this document?

5 A. Yes.

6 Q. Would you agree that this is a -- okay.
7 Would you agree with me that this is a response to DR 79 in
8 the GR-2007-0403 case?

9 A. Yes.

10 Q. Okay. And the brief description it says,
11 Storage plans. Right?

12 A. Yes.

13 Q. Okay. And if you would please look at the
14 page for Hannibal/Canton. It's your second page there. I
15 would like you to look at the Hannibal/Canton gas supply
16 plan. And then if you would, please just look at it to
17 make sure -- I think -- our understanding is that it's
18 public, but would you please verify that?

19 A. Yes. It is public.

20 Q. Okay. Okay. Now, looking at the page for
21 Hannibal/Canton and about halfway down the page, there's a
22 line that reads, Average daily requirement. And there's a
23 quantity listed. There's a quantity listed for each month.
24 Is that the daily required volumes for normal weather not
25 including storage?

1 A. That includes storage.

2 Q. Okay. Go further on down there and you'll
3 see to the left it says average daily requirement. Are you
4 there?

5 A. Yes, I am.

6 Q. Okay. And I believe the number is 3,500?

7 A. For the month of November 2007? Yes.

8 Q. Okay. And for December of 2007, that number
9 is 3,900, isn't it?

10 A. Yes.

11 Q. Okay. And then if you would go one -- one
12 down below that where it says, 20 percent of warmer daily
13 requirement, that says 3,100, doesn't it?

14 A. Yes. For December 2007.

15 Q. Okay. One minute please. Okay. Now, the
16 Atmos gas supply plan that we reviewed here refers to a 20
17 percent warmer plan for Missouri, doesn't it?

18 A. It says, Typically first-of-month
19 nominations are made to cover the daily average of the
20 percent warmer purchase requirements.

21 Q. Okay. And I think for December 2007 for the
22 20 percent warmer daily requirement for Hannibal/Canton you
23 said 3,100?

24 A. Yes.

25 Q. Okay. Now, for December of 2007 please read

1 the 20 percent warmer daily requirement for Bowling Green.

2 I think it should say 630?

3 A. 630.

4 Q. Okay. And now when I total those two
5 numbers for Hannibal, Canton and Bowling Green, the 3,100
6 plus the 630 I would get 3,730 per day. Would you agree
7 with that?

8 A. Yes.

9 Q. I'm going to refer you to an Atmos
10 nomination document pertaining to the Hannibal/Bowling
11 Green area for December 2007. And this document is taken
12 from Atmos response to DR 33 in this case. Now, you may be
13 familiar with it because we had gone through this DR
14 response at your deposition.

15 MR. BERLIN: Judge, I have a copy of DR 33.

16 JUDGE WOODRUFF: This will be 21.

17 (Wherein; Staff Exhibit No. 21 was marked
18 for identification.)

19 BY MR. BERLIN:

20 Q. Mr. Walker, have you had an opportunity to
21 review this document?

22 A. Yes.

23 Q. And would you agree this is Atmos' response
24 to DR 33 in this case?

25 A. Yes.

1 Q. And you are familiar with this document?

2 A. Yes.

3 Q. Okay. Does this DR response indicate Atmos'
4 first-of-the-month nomination, its baseload gas was 2,800
5 per day for December?

6 A. Yes, it does.

7 Q. So the Atmos first-of-the-month nomination,
8 its baseload gas was 2,800 per day for December. Correct?

9 A. Yes.

10 Q. Now, we just went through some questions
11 showing that the normal is 3,730. That is -- the 3,730
12 have already been adjusted for 20 percent warmer daily
13 requirements. Correct?

14 A. Yes.

15 Q. Okay. So the 3,730 is already adjusted for
16 20 percent warmer. And the actual daily nomination was
17 2,800. Correct?

18 A. Yes.

19 Q. Okay. So that's substantially below the
20 already adjusted 3,730, isn't it?

21 A. Yes.

22 Q. In fact, if you were to run the numbers, you
23 would find that actual nomination of 2,800 is 75 percent of
24 the 3,730 that had already been reduced?

25 A. That's correct.

1 Q. Now, Mr. Walker, when you make your
2 first-of-the-month nominations, do you take into
3 consideration storage levels?

4 A. Yes, I do.

5 Q. Okay. I believe, Mr. Walker, on Wednesday
6 you indicated that you'd reviewed the first-of-the-month
7 nominations in prior Decembers that were low. Do you
8 recall?

9 A. Could you repeat that, please?

10 Q. Yes. I think yesterday you had indicated
11 that you had reviewed first-of-the-month nominations in
12 past Decembers that were low?

13 A. Yes.

14 Q. And that was part of your consideration in
15 making your nomination?

16 A. Yes.

17 Q. Okay. Does the 20 percent warmer estimate
18 for December in the DR 79 response consider usage from past
19 years?

20 A. Yes, it -- well, I'm not sure. The top line
21 on the plan, the forecasted system requirements is given to
22 me by our forecast planner. And he gives that to us six to
23 eight months ahead of time. And that is a -- I'm not sure
24 how many years ago back, to get the average of all those
25 years.

1 But I do take into consideration a few
2 factors when I make my nominations; current weather trends,
3 past, say, three years, where I think storages are going to
4 end up at the end of the month.

5 Q. Okay. So you had said, if I'm understanding
6 you correctly, that when you -- when you make the decision
7 for the December nomination that you had considered past
8 December nominations for baseload?

9 A. Yes.

10 Q. Okay. Now, in the past years, the past
11 Decembers before December of 2007, those nominations --
12 those baseload nominations do consider your storage levels.
13 Correct?

14 A. Yes. Let me clarify. I look at what has
15 been billed in the past three Decembers, not the past three
16 December nominations. I look and see what actually
17 happened the past three Decembers. I want to make that
18 distinction.

19 Q. And the -- the past December nominations,
20 the historical nominations that you looked at, those
21 consider heating degree days. Correct? I mean, when you
22 make those for the -- for the -- for the appropriate year?

23 A. I'm not sure what the -- the number that our
24 planner gives us, if it's heating degree days or effective
25 degree days.

1 Q. Okay. So but -- okay. But those plans
2 would have been a little bit different because they're
3 previous years. Right?

4 A. Again, I don't -- I look at what was
5 actually billed for the past, usually, three years for each
6 month when I'm making my nomination. I don't look at what
7 I actually nominated during those past three years.

8 Q. Okay. So when you compared December 2007
9 nominations to the December first-of-month nominations from
10 the prior years, did you consider the storage level -- did
11 you consider the storage levels at the time those past year
12 decisions were made?

13 MR. FISCHER: I think that assumes facts not
14 in evidence. I don't think that he testified that that's
15 what he did.

16 MR. BERLIN: Well, I'm trying to -- what I'm
17 trying to find out, Judge, is that he made December
18 nominations the years before 2007. And he made a
19 comparison of those years to December of 2007. And so I
20 just want to know if he considered when he made the -- when
21 he did the historical nominations, if he considered the
22 storage levels at the time those historical nominations
23 were made.

24 JUDGE WOODRUFF: I'll overrule the
25 objection.

1 You can answer the question as clarified
2 here.

3 THE WITNESS: Again, you keep saying I look
4 at the past December nominations. I look at the past what
5 was actually billed to me. That's different than my
6 nomination.

7 BY MR. BERLIN:

8 Q. Okay. Thank you, Mr. Walker. So for your
9 supplier, AEM, to provide baseload gas to Atmos in a
10 quantity that you want, you provide -- you provide it by
11 making a nomination to your supplier. Right?

12 A. Yes. I send an e-mail requesting the volume
13 that I want.

14 Q. And for the supply contract that you have
15 with your supplier AEM for this period, when does that
16 contract require Atmos to place the nominations for
17 baseload gas?

18 A. The standard with any supplier is five to
19 six business days.

20 Q. That's a standard, but is that, to your
21 knowledge, specified in the contract?

22 A. I believe it was not in the transaction
23 confirmation.

24 Q. Okay.

25 A. But I've never dealt with any supplier that

1 was any different than five or six business days.

2 Q. Is the five working day deadline for placing
3 the baseload nomination in the RFP?

4 A. I'm not exactly sure. I believe it is.

5 Q. Okay. Now, when I look at a calendar for
6 November of 2007 -- and I have --

7 MR. BERLIN: Judge, we've been going for
8 some time here. I think a break would be in order. It
9 would --

10 JUDGE WOODRUFF: All right. It is time for
11 a break. We'll take a break now and come back at 10:30.

12 MR. BERLIN: Okay. Thank you.

13 (Off the record.)

14 JUDGE WOODRUFF: We're in the process of
15 direct examination. You may continue.

16 MR. BERLIN: Thank you, Judge.

17 BY MR. BERLIN:

18 Q. Before the break, Mr. Walker, I had asked a
19 question about the five working day deadline. And my
20 question is: Is the five working day deadline for placing
21 the baseload nomination in the RFP?

22 A. I believe it is. I'm not exactly sure, but
23 I believe it is in there.

24 Q. Okay. I actually have a copy here,
25 Mr. Walker, of the RFP.

1 JUDGE WOODRUFF: Is this a new exhibit or is
2 this --

3 MR. BERLIN: Yes, Judge.

4 JUDGE WOODRUFF: It will be Number 22.

5 MR. BERLIN: I've got a -- we had a copier
6 problem.

7 JUDGE WOODRUFF: Okay.

8 (Wherein; Staff Exhibit No. 22 was marked
9 for identification.)

10 BY MR. BERLIN:

11 Q. If you would take the time, Mr. Walker, to
12 familiarize yourself, please. Thank you. Mr. Walker, have
13 you had time to review this document?

14 A. Yes, I have.

15 Q. And can you identify the document?

16 A. This is the RFP letter that was sent out to
17 suppliers to bid on Hannibal and Bowling Green.

18 Q. Okay. Thank you.

19 MR. BERLIN: I'd like to mark this as an
20 exhibit, Judge.

21 JUDGE WOODRUFF: All right. This is Number
22 22.

23 BY MR. BERLIN:

24 Q. Okay. Mr. Walker, just so I'm clear on this
25 five working day deadline for placing your nomination; if

1 you could turn to Page 5.2 or rather Paragraph 5.2, titled
2 Description of Proposal.

3 A. I'm there.

4 Q. Are you there?

5 A. Uh-huh.

6 Q. Okay. At the top of the paragraph, if you'd
7 read the first sentence for me.

8 A. Atmos will nominate first-of-month gas
9 supplies within five working days before the beginning of
10 any month.

11 Q. All right. So that is five working days.

12 A. Yes.

13 Q. You agree with that?

14 A. Uh-huh.

15 Q. Okay. Thank you. Now, Mr. Walker, I want
16 to go to November of 2007. And to help you, I believe I
17 have a calendar with -- with November 2007, so we're clear
18 on the days.

19 JUDGE WOODRUFF: Did you want to mark this
20 as an exhibit, or is this just for --

21 MR. BERLIN: Well Judge, I was originally
22 going to ask to take official notice of the calendar, but
23 it might be helpful to mark it as an exhibit.

24 JUDGE WOODRUFF: All right. 23.

25 (Wherein; Staff Exhibit No. 23 was marked

1 for identification.)

2 BY MR. BERLIN:

3 Q. Okay. Mr. Walker, do you have the exhibit
4 that I handed, 23, that is a calendar for November of 2007?

5 A. Yes, I do.

6 Q. And when you look at the calendar for
7 November 2007, you'll note that the last day is Friday,
8 November 30th, isn't it?

9 A. Correct.

10 Q. Is that a business day or a working day?

11 A. I -- to me business day and working day is
12 the same terminology.

13 Q. Okay.

14 A. Yes, it is a business or working day.

15 Q. And when I look at the calendar, Monday,
16 November 26th through Friday, November 30th, that would be
17 five working days, would you agree with me there?

18 A. Yes.

19 Q. And I believe earlier you testified that you
20 made the December baseload nomination on Tuesday, November
21 20th of 2007.

22 A. Correct.

23 Q. Okay. So under Atmos' five working day
24 guideline, under the RFP, you could have sent your
25 nomination in as late as Monday, November 26th. Correct?

1 A. Correct. At 9:00 a.m.

2 Q. Okay.

3 A. But I don't have -- I have to do my other
4 duties before then, run my forecast. So it's not feasible
5 to get the nom in time by 9:00 a.m.

6 Q. Thank you, Mr. Walker. I think you had
7 answered by question. Now, you had submitted your
8 nomination on November 20th. Right?

9 A. Correct.

10 Q. And I believe in the deposition you said
11 that you had to get your December nomination in a bit
12 earlier for the month because of Thanksgiving holiday.
13 Correct?

14 A. Correct.

15 Q. And so November -- November 20th is the
16 Tuesday. Correct?

17 A. Yes.

18 Q. Now, you, I believe, told us that you did
19 get it in earlier than normal, your nomination for December
20 on the 20th?

21 A. Yes, I did. Because I took a vacation on
22 Wednesday the 21st.

23 Q. Okay. And you were back in the office on
24 the 26th?

25 A. I believe I was.

1 Q. Okay. Now, what did you know about the
2 weather for the remainder of November when you made your
3 December nomination?

4 A. I estimated storage to be pretty much in
5 line of where I -- where my plan was, where I needed to be
6 at the time I made by December nomination.

7 Q. Okay. So what -- can you tell me what you
8 knew of the weather for the month of December when you made
9 your nomination for December?

10 A. I can't forecast that much in advance to
11 know what December's going to do.

12 Q. Well, you did make a 20 percent adjustment
13 for your gas supply plan in the December baseload
14 nomination. Right?

15 A. Yes. I did because the prior year was well
16 below the 20 warmer benchmark, which is just a vague
17 guideline that's in the supply plan. We're not
18 contractually obligated to limit it to 20 percent warmer or
19 colder.

20 Q. Now, what did you know about the expected
21 end-of-month storage volume when you made your December
22 baseload nomination on November 20th?

23 A. I expected storage would be right
24 accordingly with my storage plan.

25 Q. And when did Panhandle issue it's notice of

1 the rupture down stream of the Haven compressor?

2 A. They declared it a force majeure event on
3 November 26th, 2007.

4 Q. Okay. But when did Panhandle issue its
5 notice of the rupture at the Haven -- at Haven on the 400
6 Line?

7 A. The first pipeline notice was sent on
8 November 21st at 10:00 p.m. And at that time, there was no
9 anticipated impact to shippers.

10 Q. Now, when you received the Panhandle notice
11 of the Haven rupture on Wednesday, did you consider what
12 impact that would have had on flowing gas for the rest of
13 November and December?

14 A. I more than likely got that notice when I
15 came back in the office Monday the 26th.

16 Q. Okay. So you were not -- you were not in
17 the office on the Wednesday the 21st?

18 A. Correct.

19 Q. One minute. Okay. Mr. Walker, are you
20 saying that because you were out of the office you would
21 not have time to make the changes?

22 A. No. It doesn't matter whether I was in the
23 office Wednesday the 21st or not. That notice was sent at
24 10:00 p.m. on Wednesday.

25 Q. Would you have had time to have -- to make

1 changes on November 26th, the Monday?

2 A. Not by 9:00 a.m. because of my current
3 responsibilities of running the forecast.

4 Q. Does anybody else in your office monitor
5 pipeline notices or temperatures other than you?

6 A. For their respective areas.

7 Q. Who covers for you when you are not in the
8 office?

9 A. I usually name a back up for emergencies to
10 call. But as far as my routine business, nobody does.

11 Q. Who was the emergency back up at that time?

12 A. I don't recall.

13 Q. From November 20th, Tuesday to November
14 25th, Sunday, could there have been major changes in
15 temperature or gas usage?

16 A. There could have been.

17 Q. And you would normally -- wouldn't you
18 normally monitor those things in the winter months?

19 A. Yes.

20 Q. Okay.

21 A. And I don't recall if I -- during the
22 Thanksgiving break if I logged in remotely and checked or
23 not.

24 Q. Okay. One minute.

25 MR. BERLIN: I only have a few more

1 questions, Judge, and I'll wrap up.

2 BY MR. BERLIN:

3 Q. Okay. Mr. Walker, can you tell me what form
4 your monthly first-of-month communications are with your
5 supplier AEM? Are they e-mail? Fax?

6 A. They are e-mails.

7 Q. E-mails. Did Atmos provide Staff with a
8 copy of the actual first-of-month nomination communications
9 for this ACA period, the actual e-mails?

10 A. You would have been provided the in the DR
11 33 with the work papers, the nomination that was sent to
12 AEM.

13 Q. So what you provided Staff is what you got?
14 What you have?

15 A. Yes.

16 Q. Okay. Okay. I just want to clarify
17 something, Mr. Walker, that you had mentioned earlier. And
18 this is with regard to a line of questions about when you
19 make your first-of-month December 7 -- 2007 nomination.
20 And I think you used the term that you looked at "actually
21 billed". Can you tell me what you mean by the term
22 "actually billed"?

23 A. It's what the pipeline bills us, the usage
24 they bill up for that month.

25 Q. Okay. Why does that number impact your

1 December 2007 first-of-month nomination?

2 A. I look back and see what the usage was for
3 the past, say, three years. And I -- to get that range,
4 get a good feel of what's going on. And that particular --
5 the very prior year, December 2006 was very low, so that's
6 how I adjusted my nom for December 2007 --

7 Q. Now --

8 A. -- within that range.

9 Q. Okay. Is that term "actually billed", that
10 criteria that you just described to me that you look at in
11 making your nomination, is that "actually billed" criteria
12 in your gas supply plan manual?

13 A. I'm not sure. The gas supply plan does
14 say, Has the flexibility.

15 Q. This is part that you looked -- you consider
16 for flexibility?

17 A. Sure.

18 Q. Mr. Walker, on the -- the average normal
19 requirement that we talked about and your 20 percent warmer
20 than normal adjustment that we also talked about, don't
21 those adjustments also take into consideration the actually
22 billed -- what had been actually billed in the past?

23 A. They take into account the actual usage of
24 the past years.

25 Q. And that's related to actually billed.

1 Right?

2 A. No.

3 Q. No?

4 A. No. The pipeline bills off of what went
5 through the meter. And then they take into account third
6 party nominations. That's different from the actual usage.

7 Q. And what is usage?

8 A. Usage is just the through put, through the
9 meter.

10 MR. BERLIN: Okay. Okay. Mr. Walker, I
11 appreciate your being here today.

12 I think I don't have any further questions,
13 Judge. But I would like to offer into evidence the
14 exhibits that we went through this morning.

15 JUDGE WOODRUFF: 15 through 23?

16 MR. BERLIN: Yes, Judge. And I'd also at
17 this time would like to enter into the record two filings
18 that were requested by the Commission back in October, as a
19 result of the October hearing. The Commission had issued
20 an order directing the Staff to make a filing into the
21 record.

22 JUDGE WOODRUFF: Okay.

23 MR. BERLIN: And there were two filings.

24 JUDGE WOODRUFF: Let's deal with 15 through
25 23 first.

1 MR. BERLIN: All right.

2 JUDGE WOODRUFF: 15 through 23 have been
3 offered. Any objections to their receipt?

4 MR. FISCHER: Yes, Judge. I would ask that
5 you reserve that ruling until we've had an opportunity to
6 cross Mr. Sommerer because we think these issues are
7 probably not proper and will -- pending your ruling, I
8 think we may move to strike these.

9 JUDGE WOODRUFF: All -- 15 through 23? All
10 of them?

11 MR. FISCHER: Yes.

12 JUDGE WOODRUFF: All right. I will reserve
13 ruling.

14 MR. BERLIN: Okay. There they are. Judge,
15 at the October 20th hearing in this case Staff was
16 requested to make filings at the direction of the
17 Commission. There was a Staff filing in response to
18 Commission order that was made -- the filing itself was
19 made -- let me look at the date -- on the 24th of November
20 2010.

21 This was -- Staff was responding to a
22 request of the Commissioners. And this addresses the bid
23 evaluations that I believe Commissioner Davis was
24 interested in, or germane here.

25 JUDGE WOODRUFF: Okay.

1 MR. BERLIN: This is the first filing. And
2 then --

3 JUDGE WOODRUFF: Do you want to go ahead and
4 mark these as exhibits? Is it --

5 MR. BERLIN: Yes. Yes, please.

6 JUDGE WOODRUFF: They will be 24 and 25.

7 MR. BERLIN: I have copies.

8 MR. FISCHER: I have no objection. It
9 should be HC, though, I think.

10 JUDGE WOODRUFF: Okay. Both of them?

11 MR. FISCHER: At least the first one.

12 MR. BERLIN: The first one? Now, Judge, I
13 have the first one and that's the first filing of the bid
14 evaluations. And I'll give a copy to the court reporter.

15 THE COURT REPORTER: This is HC?

16 MR. BERLIN: Yes.

17 (Wherein; Staff Exhibit 24 HC was marked for
18 identification.)

19 MR. BERLIN: And I would note for the record
20 that that filing reflected Staff's understanding at the
21 time upon completion of that October hearing of needing a
22 request of Commissioner Davis who was interested in bid
23 evaluations and rankings and so forth.

24 And then there was another order that came
25 out, I believe, that further clarified a request of

1 Commissioner Davis that he wanted some additional
2 information filed into the record at that time. And so
3 Staff made a pleading -- filings in response to the request
4 of Commissioner Davis. And this was made -- this was made
5 October 25th of 2010. And I may have -- I may have gotten
6 one before the other, but --

7 JUDGE WOODRUFF: All right.

8 MR. BERLIN: What I'm trying offer into the
9 record here today, Judge, are these documents that
10 Commissioner Davis asked the Staff to provide into the case
11 file. And is obviously our belief that they're relevant
12 documents.

13 JUDGE WOODRUFF: Do you have copies?

14 MR. BERLIN: I have -- I have one for the
15 court reporter and I have my copy.

16 JUDGE WOODRUFF: Okay.

17 MR. BERLIN: These are in EFIS.

18 JUDGE WOODRUFF: All right. They're quite
19 voluminous and double-sided copies.

20 JUDGE WOODRUFF: All right. You don't need
21 to kill trees for me.

22 MR. FISCHER: And we have a copy as well. I
23 have no objection.

24 JUDGE WOODRUFF: All right. 24 HC was the
25 bid evaluation filing. 25 is the response to Commissioner

1 Davis's questions.

2 (Wherein; Staff Exhibit No. 25 HC was marked
3 for identification.)

4 JUDGE WOODRUFF: They've been offered into
5 evidence.

6 MR. FISCHER: Judge, I do need to check on
7 one of the attachments and whether it's HC or not.

8 JUDGE WOODRUFF: Attachment to 25?

9 MR. DORITY: 25, yeah. There's some bid
10 responses in here. Company specific.

11 MR. BERLIN: In the larger one? Yeah.
12 There's quite a few documents in here. And there are
13 communications from the Company.

14 MR. FISCHER: Could I ask that just be
15 marked as HC for purposes of --

16 JUDGE WOODRUFF: How was it filed in EFIS?
17 Was it filed --

18 MR. BERLIN: Well, the cover pleading was a
19 public document.

20 MR. DORITY: Yeah. It says, All of the
21 above documents are highly confidential in their entirety.

22 JUDGE WOODRUFF: All right. We'll make 25
23 HC also, then.

24 All right. 24 HC and 25 HC have been
25 offered. Any objections to their receipt?

1 MR. FISCHER: No objection.

2 JUDGE WOODRUFF: Hearing none, they will be
3 received.

4 (Wherein; Staff Exhibit Nos. 24 HC and 25 HC
5 were received into evidence.)

6 JUDGE WOODRUFF: And are we ready to move on
7 then?

8 MR. BERLIN: Yes, Judge. Thank you.

9 JUDGE WOODRUFF: According to my chart then,
10 for Mr. Walker Atmos responds for cross-examination first.

11 MR. DORITY: If Public Counsel wants to go
12 first that's fine.

13 MR. FISCHER: Yeah. Either way. Go ahead,
14 whichever you want.

15 JUDGE WOODRUFF: It makes no difference to
16 me. If you want to go first, that's fine.

17 MR. POSTON: Well, I'll follow the schedule,
18 that's fine.

19 JUDGE WOODRUFF: Okay.

20 CROSS-EXAMINATION BY MR. FISCHER:

21 Q. Okay. Mr. Walker, let's start at the series
22 of questions that you had just a few minutes ago before you
23 forget. You were asked a lot of questions about the events
24 around November -- your November 20th nomination in 2007.
25 Do you recall those?

1 A. Yes.

2 Q. Could you explain in your own words the
3 circumstances that surrounded that November 20th nomination
4 in 2007?

5 A. Yes. I made my December nomination on the
6 20th and -- because I was out for vacation on the 21st.
7 And the -- a lot of my suppliers the standard is five or
8 six business. And I do have some suppliers that require
9 six business days. So I sent out all my nominations at the
10 same time, so therefore I sent them out on the 20th.
11 And -- that afternoon at 2:00 p.m., I believe.

12 And I would not have had time to react when
13 I came back in the office on the 26th.

14 Q. When did you learn there was any trouble at
15 all on the pipeline?

16 A. The first notice came out at 10:00 p.m., the
17 Wednesday, November 21st.

18 Q. Were you in the office at 10:00 p.m. on
19 Wednesday the 21st?

20 A. No, I was not.

21 Q. So when did you personally learn about the
22 trouble on the pipeline?

23 A. I believe it was when I came back to the
24 office on Monday morning.

25 Q. That would have been the 26th?

1 A. Yes.

2 Q. Okay. And at that time, did -- did you get
3 an indication that there was any likely impact on customers
4 due to the problem on the pipeline?

5 A. No. The notice said it would reduce
6 mainline capacity, but there was no anticipated impact to
7 shippers.

8 Q. So even if you were in the office at 10:00
9 p.m. on the night that that notice came in, would you have
10 thought anything about changing anything?

11 A. No.

12 Q. And I believe there was finally a notice of
13 force majeure declared at some point on the 26th. Do you
14 recall? Is that true?

15 A. That's correct. On the afternoon of the
16 26th.

17 Q. Okay. The afternoon. Would that have been
18 after the 9:00 a.m. deadline for changing your nomination?

19 A. Yes, it would have.

20 Q. Well, so could you have changed your
21 nomination after you learned about the force majeure?

22 A. No. I could not.

23 Q. When you made your original nomination on
24 the 20th, you were asked about the weather assumptions you
25 that made and the expected end of storage -- end-of-month

1 storage levels. Can you explain what kind of assumptions
2 you were making and did you do anything differently than
3 you would have otherwise done for that nomination?

4 A. No. I would just look at the trend of
5 what's happened so far and just estimate where my storage
6 would end up for the remainder of November. And at the
7 time, it looked like I would be right there with my plan is
8 where storages would end up.

9 Q. Did you anticipate at all force majeure was
10 going to happen on the pipeline?

11 A. No.

12 Q. Had you seen one earlier in the year or any
13 at all -- a force majeure?

14 A. No. I did not.

15 Q. Was that only one that occurred that year?

16 A. I believe so.

17 Q. That was Thanksgiving weekend. Right?

18 A. Yes.

19 Q. Did you -- would you have been expected to
20 watch some football during that weekend?

21 A. I hope so.

22 Q. Are you a pretty good Monday morning
23 quarterback?

24 A. Pretty much.

25 Q. Okay. I believe these questions related to

1 an allegation of imprudence that Staff has made around that
2 nomination process. Did you look at those disallowances
3 that are contained in the surrebuttal testimony of the
4 Staff?

5 A. I did.

6 Q. Did you have any concerns about the way they
7 calculated even if there was some imprudence found?

8 A. Yes. I thought from yesterday's hearing
9 that Staff said the 52,000 adjustment was based on the 20
10 percent warmer volumes in the plan and that's not the case.
11 The 1,900 a day that they calculated is based on daily
12 average normal weather, not the 20 percent warmer band.

13 Q. If you had done -- done it based on the 20
14 percent, would the number have gone up or down?

15 A. It would have gone down. It would have went
16 from 1,900 a day to 900 a day, which would in return, using
17 the same pricing, it would have been around \$24,900 instead
18 of \$52,000.

19 Q. Let's go back to a couple of questions you
20 had early related to DR 132.2. Can you take a look at what
21 the -- do you have their in front of you there? You
22 located it?

23 A. I do.

24 Q. There's a Schedule 5.2, I think, where it
25 has the actual request that's in the DR. And I'd like for

1 you to read into the record the Paragraph A.

2 A. Please provide the specific company
3 nominations that the pipeline curtailed with regard to the
4 Haven 400 Line rupture for the time period of November and
5 December 2007. Please provide a copy of the communication
6 from Panhandle Eastern Pipeline that showed the precise
7 level of nominations that were curtailed during the
8 November and December 2007 time frame.

9 Q. Were any of your nominations curtailed
10 during that period?

11 A. They were on the 8th through the 10th and
12 the 27.

13 Q. Okay. But the others --

14 A. The other days they were not curtailed.

15 Q. Okay. Can you explain -- I believe you at
16 one point said I wish I would have added a column to that
17 request. Why would you have done that?

18 A. Yes. Because that would have showed the
19 actual curtailments, the -- what I showed on here was the
20 gas -- the volume that I ordered. But I wish I would have
21 put on there an extra column in there that showed what was
22 actually nominated. And then that would have shown that
23 there were no cuts the 11th through the 26th and the 28th
24 through the 31st. Again, we lowered our nomination to help
25 the supplier and pipeline during this force majeure event.

1 Q. So you did what the pipeline or the supplier
2 expected you to do during this force majeure condition?

3 A. Yes.

4 Q. Did you happen to hear Ms. Buchanan testify
5 that she expects the Company to work with the industry
6 during a force majeure event?

7 A. Yes.

8 Q. Do you think it would have been prudent for
9 you to have acted in a way that was contrary to her
10 expectations?

11 A. No.

12 Q. Did you consider yourself doing -- as doing
13 your job to cooperate with AEM or the pipeline during this
14 force majeure event?

15 A. Yes. I'd actually like to explain the
16 summary that was added by Staff on this 132.2 worksheet.

17 Q. Please do that.

18 A. The volumes at the bottom, it says December
19 2007 flowing subtotals excludes storage. And they have
20 134,710 as the nominations. And then they have a
21 percentage of what was curtailed. But they only count --
22 they only add up on the days that were cut on here, they
23 don't include the total volume that was nominated for the
24 whole month of December.

25 So that wouldn't include the days that were

1 not cut on December 1 through December 7. So if you added
2 all of that up, it would make these percentages lower.

3 Q. I think you had a conversation about -- and
4 you said that everyone was getting cut during this force
5 majeure. Do you recall that conversation?

6 A. Yes, I do.

7 Q. What was that based on?

8 A. That was in talking with our pipeline
9 representative about the Haven outage.

10 Q. So it wasn't just Missouri that was being
11 cut?

12 A. No. She explained the whole system all the
13 way up to Michigan was being cut. It wasn't just
14 concentrated in that area right around Haven.

15 Q. I believe you were -- you stated you at one
16 point you were happy to get gas during this force majeure.
17 Can you elaborate on why that was true?

18 A. Well, with the pipeline rupture I'm sure
19 everyone's scrambling around to get anything that they can
20 because of the limitation. And to get any extra gas, I
21 view that as a positive.

22 Q. Did you have any agreement or any conspiracy
23 with any AEM representative to reduce your nominations
24 during that force majeure to help AEM's bottom line?

25 A. No.

1 Q. Would it be a violation of your company's
2 policy to treat AEM differently than you would treat any
3 other unaffiliated shipper during a force majeure?

4 A. Absolutely.

5 Q. Would that be a problem to you personally if
6 your boss thought you were violating the company policy
7 about that?

8 A. Yes, it would.

9 Q. I think you were asked some questions about
10 some summer cuts that may have been fairly small. Do you
11 recall that?

12 A. Yes, I believe --

13 Q. Can you explain what happens typically in
14 the summertime and -- regarding cuts or notices --

15 A. Yeah.

16 Q. -- from the pipeline?

17 A. Most pipelines that I deal with they do
18 their pig runs, which is cleaning the pipeline, they have a
19 lot of maintenance throughout the summertime. Obviously
20 they wouldn't want to do that during the wintertime, the
21 core time.

22 And I believe that was what was happening
23 during the summer of '08. Actually the pipeline ruptured
24 and it did say that since the Haven outage, every summer
25 since then they've done maintenance in -- to continue the

1 line work for that -- because of that rupture.

2 Q. So it's not uncommon to have some fairly
3 small cuts during the summertime?

4 A. No. It's not uncommon at all.

5 Q. You were also asked some questions about the
6 20 percent normal -- or varying 20 percent warmer or
7 colder. Do you recall those questions?

8 A. Yes.

9 Q. Can you explain what that is? What those
10 guidelines are?

11 A. I believe Staff actually wanted us to put
12 that in our supply plans and I don't recall the year. I'm
13 thinking it was somewhere in 2006, 2007 time frame.
14 Because we just had the average daily requirement in there
15 and they wanted a warmer and cooler band in there and we
16 agreed with 20 percent.

17 With the -- we knew -- we clarified that
18 it's not contractual, obligated to stick to those 20
19 percent variances. It's just a guideline in the supply
20 plan. Just an estimate for the supplier to follow.

21 Q. Do you believe you have flexibility around
22 that or is it just an absolute, you can't go above or
23 below?

24 A. There's definitely -- definitely we have
25 flexibility and that's stated within the RFP.

1 Q. Mr. Walker, I believe you were asked about
2 your deposition in this case. Was that -- have you ever
3 been deposed before?

4 A. No, I have not.

5 Q. And of course that was the end of last
6 month; is that right?

7 A. That was on February 28th, 2011.

8 Q. Have you ever testified before the Missouri
9 Commission before?

10 A. No, I have not.

11 Q. Have you ever testified before any state
12 agency before?

13 A. No, I have not.

14 Q. Is it in your job description to testify in
15 front of public utility commissions?

16 A. No.

17 MR. FISCHER: Judge, with that I'd just like
18 to thank Mr. Walker for be willing to come forward to
19 testify and participating in the hearing and the forensic
20 investigation today.

21 JUDGE WOODRUFF: All right. Thank you.
22 Move over to Public Counsel.

23 MR. POSTON: Thank you.

24 CROSS-EXAMINATION BY MR. POSTON:

25 Q. Good morning. What were your job duties at

1 Atmos during the ACA period in question?

2 A. A few of them are preparing the RFP,
3 preparing the supply plan and sending out the RFPs to
4 potential bidders. I help contract or help gather
5 contracts and evaluate those for upcoming years, renew
6 those. I do a daily forecasting during the wintertime for
7 all my areas, forecast the load.

8 I also approve -- look over and approve the
9 invoices each month from suppliers and pipelines. Those
10 are just to name a few.

11 Q. Okay. And are you the only employee at
12 Atmos that does that?

13 A. No, I'm not.

14 Q. So when you're absent from the office like
15 you are today, is somebody at Atmos filling in and doing
16 that job?

17 A. I list a backup, whether it's one of my
18 co-workers or my boss for any emergencies.

19 Q. And who filled in for you on November 21st
20 of 2007?

21 A. I don't recall who I selected. I may have
22 put both of them, a co-worker and my boss.

23 Q. Okay. And who would those people have been?

24 A. It probably would have been Deborah Sparkman
25 or Becky Buchanan.

1 Q. Okay. And at the time, did Ms. Buchanan
2 have the knowledge to perform your job at that time?

3 A. She would know overall what I'm doing. She
4 doesn't get into the specifics of running my daily
5 forecast, but she knows what I do.

6 Q. She was relatively knew to that position at
7 that time wasn't she?

8 A. Yes, she was.

9 Q. And you testified that on the 26th of
10 November you first became aware of the pipeline rupture; is
11 that correct?

12 A. Yes.

13 Q. And at that time the force majeure was
14 declared?

15 A. Yes.

16 Q. Correct? Okay. And once you learned of
17 that did you make any attempts to purchase more gas as a
18 result of that rupture?

19 A. I didn't need to at the very last few days
20 of November. I already had my nominations set for
21 December. I did by swing in December.

22 Q. Okay. So your testimony is, no you didn't
23 attempt to make any more purchases?

24 A. Not for the end of November.

25 Q. Okay. How about for December?

1 A. Yes, I did.

2 Q. On the Monday the 26th you did?

3 A. No. No. I didn't need to at that time.

4 Q. Okay. And why didn't you need to?

5 A. Because my storages were -- I deemed my
6 storages were going to be at where I -- where my plan needs
7 to be.

8 Q. So did you make a decision at that point
9 that the force majeure event was not going to have any
10 impact on your need for December gas?

11 A. Well, according to the notice there was no
12 anticipated impact to the shipper, so I had no reason to
13 think that I needed to buy any extra gas at that time.

14 Q. Is that notice in the records somewhere?

15 A. Yes, it is.

16 Q. Okay. Where is that?

17 A. It's in 132.2, I think part A. It lists all
18 the pipeline notifications due to the rupture.

19 Q. You talked about a nine o'clock deadline.

20 A. Yes.

21 Q. And where is that spelled out?

22 A. The gas day starts at 9:00 a.m. From 9:00
23 a.m. to 9:00 a.m. So that's where the 9:00 a.m. comes
24 about.

25 Q. Okay. So a new gas day started at 9:00 a.m.

1 on Monday. Okay.

2 A. Yes.

3 Q. And under the five-day requirement, you need
4 to purchase within five days, what was the latest time that
5 you would have -- could have purchased gas and been within
6 that time frame?

7 A. 9:00 a.m.

8 Q. 9:00 a.m. And is that five-day requirement,
9 is that something that if your supplier and Atmos come to
10 an agreement, is that something that you don't have to
11 stick with that five-day?

12 A. Yeah. I believe -- I mean, within five or
13 six business days, I believe you do have to stick to that
14 time frame. You can't change -- I don't believe you can
15 change it two days or three days before the month begins.

16 Q. Let's say you had called on Tuesday the 27th
17 or however you contact and tried to get more gas, you
18 wouldn't have been within -- you would have been outside of
19 the five days. Do you ever do something like that?

20 A. No, I don't.

21 Q. Okay. Is it because you don't think the
22 suppliers would be willing to work with you or why?

23 A. Correct. I don't believe -- I don't believe
24 they would allow to change the nom after-the-fact.

25 Q. Have you tried?

1 A. I don't believe I have.

2 Q. There was an exhibit discussed yesterday,
3 Exhibit 12. It's an HC document. I'll show it to you
4 here. It's -- at the top it says, Atmos Energy Marketing,
5 LLC transaction confirmation.

6 A. Yes.

7 Q. Are you familiar with this?

8 A. I'm familiar.

9 Q. Okay. Do you have one -- a copy of this
10 with you?

11 A. I don't believe I do.

12 Q. Okay.

13 A. But I am very familiar with it.

14 Q. Okay.

15 MR. BERLIN: It's from yesterday?

16 MR. POSTON: Yeah. Exhibit 12.

17 May I approach?

18 JUDGE WOODRUFF: You may.

19 BY MR. POSTON:

20 Q. I've just handed you a document. Can you
21 identify this for me?

22 A. Yes. This is the Atmos Energy Marketing
23 transaction confirmation.

24 Q. Okay. And I just have a few questions just
25 to understand this better. Who creates this document?

1 A. Atmos Energy Marketing.

2 Q. Okay. And what is the purpose of this
3 document?

4 A. This outlines the deal between Atmos Energy
5 Marketing and Atmos Energy Corporation for the RFP term.

6 Q. And the first one here it says, trade date
7 March 16th. Is that when you agreed to all of the volumes
8 and prices that are on this sheet? All the terms that are
9 on this sheet?

10 A. It would be sometime within that time frame.
11 I believe I issued the RFPs in February and probably
12 awarded the bid late February or possibly the first part of
13 March. And between then and the end of March is when they
14 work on the transaction confirmation and try to get it put
15 together before the term begins.

16 Q. Okay. And then they send you this document;
17 is that correct?

18 A. Yes.

19 Q. Okay. And do they send it before -- like
20 say for this first one, would they send it before the
21 beginning date of April 1st? You would have --

22 A. Yes.

23 Q. You would have time to review these
24 documents. Right?

25 A. Yes.

1 Q. And are you the only one that reviews these
2 once they come it?

3 A. No. I'm not the only one.

4 Q. And when you review these what do you look
5 for?

6 A. I look to make sure that the requirements
7 that were stated in the RFP are reflected in this
8 transaction confirmation, such as the correct index for
9 pricing.

10 Q. Do you also check to confirm that the gas
11 you're purchasing is firm gas?

12 A. I would have no reason to believe that it
13 would not be firm. That's what the RFP states.

14 Q. That wasn't my question. Do you check to
15 see if it's firm gas, yes or no?

16 A. Well, not all transaction confirmations are
17 the same. They don't -- some don't have the service level
18 on there. Each company has a different way of doing their
19 transaction confirmation. But I make sure the information
20 we stated in the RFP -- I try to make sure that's in here.

21 Q. Do you think it'd be prudent for you to
22 check these and make sure that it does state that it's firm
23 gas?

24 A. I don't think whether it implies -- whether
25 it has to state firm or not, it would -- I think it would

1 still be considered firm whether it's written on here or
2 not.

3 Q. So your answer's no, you don't think it's
4 prudent to check these documents to make sure --

5 A. I don't think it's necessary because it's
6 understood that it's to be firm gas.

7 Q. And you would agree that the first document
8 is the only one that shows the service level is firm gas.
9 Correct?

10 A. I believe the '07/'08 documents have firm
11 baseload in them. The '08/'09 do not.

12 MR. POSTON: I think that's all I have.

13 Thank you.

14 JUDGE WOODRUFF: All right. Questions from
15 the bench? Commissioner Jarrett?

16 COMMISSIONER JARRETT: Yes, thank you,
17 Judge.

18 QUESTIONS BY COMMISSIONER JARRETT:

19 Q. Good morning, Mr. Walker.

20 A. Good morning.

21 Q. Thanks for being here today. I would like
22 to start with Mr. Poston's question on Exhibit 12. Is all
23 the gas in here actually firm?

24 A. Yes.

25 Q. Okay. So even though it doesn't say service

1 level, some of them are left blank, in fact, all of these
2 are firm?

3 A. Yes.

4 Q. Thank you. And Mr. Berlin was asking you
5 some questions about working with the pipeline and supplier
6 after the force majeure event. Do you recall --

7 A. Yes.

8 Q. -- those? And one of the questions he asked
9 was whether it had -- I may not be saying this exactly but
10 it had to do with whether or not your cooperating with the
11 pipeline and the supplier had any impact on customers or
12 whether you considered whether it had any impact on
13 customers. Do you recall that?

14 A. I do.

15 Q. In working with the pipeline and suppliers
16 during that period, did you believe that even though you
17 were being curtailed, you had adequate gas supplies for
18 your customers?

19 A. Yes, I did.

20 Q. Okay. And if for some reason you believed
21 that through the curtailment in working with the pipeline
22 and suppliers that you weren't getting enough gas to supply
23 your customers, I mean, would you have conveyed that to the
24 pipeline and the supplier?

25 A. Sure.

1 Q. How would you have -- how would you have
2 handled that? Just for example if they would have said,
3 here, you're being curtailed this much and you looked at it
4 and said, Gosh, I'm not going to have enough gas for my
5 customers. What would you have done?

6 A. Well, I don't know if I would have done
7 anything differently than what I did. I mean, it's a
8 scramble to get gas to the pipeline at that point and I
9 would expect to get -- receive everything I can whether my
10 storages can handle if they're being maxed out or not. In
11 this case they weren't and the customers received all the
12 gas that they needed. But I would expect the same
13 situation regardless.

14 Q. All right. And you were here yesterday, I
15 believe.

16 A. Yes, I was.

17 Q. All day?

18 A. Yes, I was.

19 Q. And you were here when Ms. Buchanan was on
20 the stand?

21 A. Yes.

22 Q. I believe Mr. Fischer had asked her some
23 questions and at the very end of her testimony -- and again
24 I'll probably paraphrasing this, but she was -- she took
25 great offense at the insinuation that she had done

1 something improper or had some sort of improper
2 relationship with AEM. Do you recall --

3 A. I do recall --

4 Q. -- that?

5 A. -- that.

6 Q. How do you feel?

7 A. I feel the exact same way. It's very
8 offensive to be accused of doing something I didn't do.

9 COMMISSIONER JARRETT: All right. I have no
10 further questions. Thank you.

11 JUDGE WOODRUFF: I have a couple of general
12 questions to try and get it in my own mind what all this is
13 happening.

14 QUESTIONS BY JUDGE WOODRUFF:

15 Q. Can you describe for me a little bit what
16 happens at Atmos when a force majeure event is declared on
17 the pipeline?

18 A. The pipeline usually sends out e-mails to
19 the supplier and to us so all the parties are notified.
20 And we just try to get enough gas that we can. You know,
21 there's several limitations because of the rupture. It's
22 an act of God. We're limited to what we can do. We try
23 everything we can to get the gas to flow.

24 Q. The pipeline decides what constitutes the
25 act of God?

1 A. Yes.

2 Q. You just kind of have to take what they give
3 you?

4 A. Yes.

5 Q. Okay. How is a force majeure event
6 different than an operational flow order?

7 A. Operational flow order is not an act of God.
8 It's -- I don't usually get them for Missouri, but I know
9 other states do get them. Severe warm weather or severe
10 cold weather, they'll issue OFOs and you have to monitor
11 your limitation on how much gas is flowing through the
12 pipeline to --

13 Q. So an operational flow order could also
14 result in cuts?

15 A. I -- since I don't deal with OFOs much, I
16 don't know if they're being cut. I know you have to limit
17 your nominations to protect the integrity of the pipeline.

18 Q. So they just say we're strained on capacity,
19 limit your nominations; is that how it is?

20 A. I believe so, yeah.

21 Q. Now, you mentioned that you're using your
22 storage capacity during the force majeure event. Where's
23 the storage located?

24 A. It's located in the field zone.

25 Q. Okay. So it would have had to flow through

1 the pipeline just like any other gas. Right?

2 A. Yes.

3 Q. So how is it that you can use the storage
4 when you can't use the flowing gas?

5 A. We asked the pipeline that and they were
6 puzzled as well. They think it might have been a loophole
7 on their end to flow that gas as well. It's -- storage is
8 after-the-fact. After everything's gone through the meter,
9 delivery meter, then they decide how much gas needs to be
10 withdrawn out of storage.

11 Q. Okay. So if you're using storage gas,
12 somebody else isn't using flowing gas; is that --

13 A. Could you repeat that?

14 Q. If you're using storage gas flowing through
15 the pipeline, somebody else isn't using flowing gas, gas
16 that's not coming out of storage?

17 A. Everybody has storage -- I'm assuming most
18 companies have storage contracts. So there's limitations
19 on what you can --

20 Q. Is it just kind of like an accounting thing
21 that the pipeline's doing or do you know?

22 A. Well, I nominate some in my storages. Some
23 of them take the balance.

24 Q. Okay. Now, if you had known about the force
25 majeure before making your end-of-month nomination, suppose

1 the force majeure had been declared on November 15th or
2 something, what would you have done differently in making
3 your nomination?

4 A. If I would have known ahead of time that the
5 impact that it had, I would have increased my December
6 nominations.

7 Q. Okay.

8 A. I would have had to estimate how big of an
9 impact it's going to have and --

10 Q. What good would it do you to increase
11 nominations if they're going to cut you anyway?

12 A. I don't -- that's just it; you don't know
13 how much they're going to cut. You don't know how much can
14 flow through. You just have to --

15 Q. When they cut, do they cut percentages?

16 A. Most of the time they do. On the -- I
17 believe so. They cut on a pro rata basis.

18 Q. Okay. So if you had higher nominations and
19 they cut a percentage, you would still wind up with more
20 flowing gas; is that -- would that be true? I'm just
21 trying to think of reasons why --

22 A. I don't know if that would -- in every case
23 that would happen, but I would assume in some cases it
24 would.

25 JUDGE WOODRUFF: Okay. Well, that's all my

1 questions. So we'll go back to redirect -- or recross
2 based on questions from the bench. And beginning with
3 Atmos.

4 MR. FISCHER: No questions, Judge. Thank
5 you.

6 JUDGE WOODRUFF: All right. And for Public
7 Counsel?

8 MR. POSTON: No questions. Thank you.

9 JUDGE WOODRUFF: Any redirect? No redirect?

10 MR. BERLIN: No, Judge.

11 JUDGE WOODRUFF: All right. Then,
12 Mr. Walker, you can step down.

13 (Witness excused.)

14 JUDGE WOODRUFF: We would next be starting
15 with Mr. Sommerer for Staff. It's 11:30. I suggest we go
16 ahead and take a break for lunch and come back at 12:30
17 with Mr. Sommerer.

18 MR. BERLIN: Thank you, Judge.

19 (Off the record.)

20 JUDGE WOODRUFF: Welcome back from lunch.
21 Mr. Sommerer is taking the stand. I will swear him in.

22 (Witness sworn.)

23 JUDGE WOODRUFF: And you may inquire.

24 MR. BERLIN: Thank you, Judge.

25 DAVID SOMMERER testifies as follows:

1 DIRECT EXAMINATION BY MR. BERLIN:

2 Q. Good afternoon, Mr. Sommerer.

3 A. Good afternoon.

4 Q. Please state your full name for the record.

5 A. David M. Sommerer.

6 Q. And how are you employed?

7 A. I'm employed with the Missouri Public
8 Service Commission.

9 Q. And what is your -- your job position?

10 A. I'm the manager of the procurement analysis
11 department.

12 Q. And did you cause to be prepared in this
13 case pre-filed testimony that was direct testimony,
14 rebuttal testimony, surrebuttal testimony, in a
15 question-and-answer format?

16 A. Yes.

17 Q. And you filed your direct in an NP and HC
18 version?

19 A. Yes.

20 Q. And you filed your rebuttal in an HC
21 version?

22 A. Yes.

23 Q. And there is no NP version there?

24 A. Correct.

25 Q. And surrebuttal is an NP version and HC?

1 A. Yes.

2 Q. Okay. And Mr. Sommerer, are the answers to
3 the questions in your direct, rebuttal, and surrebuttal
4 testimony true, correct, and accurate to your best
5 information, knowledge and belief?

6 A. I do have several changes to make to the
7 record.

8 MR. BERLIN: Judge, I'd like to hand the
9 court reporter the pre-filed testimony.

10 JUDGE WOODRUFF: All right. 26 NP and HC --
11 the direct will be 26 NP and HC; the rebuttal is 27 HC; and
12 surrebuttal is 28 NP and HC.

13 THE COURT REPORTER: Thanks.

14 (Wherein; Staff Exhibits 26 HC, 26 NP, 27
15 HC, 28 NP and 28 HC were marked for identification.)

16 BY MR. POSTON:

17 Q. Okay. Mr. Sommerer, I believe you said you
18 had some corrections you'd like to make. Do you have
19 corrections to make to your direct testimony?

20 A. Yes.

21 Q. And what are they?

22 A. On Page 10, Line 16, which states, The end
23 result of Atmos's RFP process is that Atmos awarded the
24 majority. I would like to delete the words "the majority"
25 and change that to "a significant amount." So remove "the

1 majority" and replace it with "a significant amount."

2 Q. Okay. Do you have any other corrections to
3 your direct testimony?

4 A. No.

5 Q. Okay. Do you have any corrections to make
6 to your rebuttal testimony?

7 A. Yes, I do.

8 Q. Okay. What are they?

9 A. On Page 3 of my rebuttal, Line 10, it says,
10 Atmos has three PGA areas in Missouri. I would like to
11 delete the number "three" and replace it with "four." On
12 Line 12, it currently says "Northeastern." I would like to
13 add the words "and Kirksville." And on -- at the end of
14 Line 16, that same page, Page 3, it says, This was a
15 majority. I would like to change or delete the word "a
16 majority" and replace those two words with the word "half."
17 So it would read, This was half of the PGA areas.

18 Q. Okay. Is there any other edits on that
19 page?

20 A. Page 6, rebuttal, these are basically typos.
21 On Line 1, Does AEC supports AEM. I would like to delete
22 the letter "S" after supports to make that into support.
23 Line 2, currently states, Are AEM and
24 AEC are in competition. I would like to remove the word
25 "are," the second word "a-r-e," so that it states, Are

1 AEM and AEC in competition.

2 Line 4, where it states, Are AEM and AEC
3 both are evaluated, I would like to remove the second word
4 are, "a-r-e," so it states, Are AEM and AEC both evaluated.
5 That's all for rebuttal.

6 Q. For your surrebuttal?

7 A. Surrebuttal Page 5, Line 4, currently reads,
8 Missouri are part of the east region. I would like to
9 remove the words "east region" and replace that with
10 "mid-state's division." So it would read, Missouri are
11 part of the mid-state's division.

12 Q. Are there any more?

13 A. Yes, there are some unit rate changes to my
14 Schedule 8 of surrebuttal. And I'd have to say that
15 Schedule 8 is an HC schedule that summarizes Staff's view
16 of the adjustment. If you take a look at the 308,733, I
17 don't believe the unit rates would be considered highly
18 confidential by Atmos, so I need to ask whether they
19 believe those are still highly confidential or not.

20 MR. BERLIN: He has some adjustments, I
21 believe, to make to the unit rates and the table there.

22 MR. FISCHER: Are you taking about Schedule
23 8 of the surrebuttal?

24 MR. BERLIN: Yes.

25 MR. FISCHER: The WACOG column?

1 THE WITNESS: The all sale price and WACOG
2 column?

3 MR. FISCHER: Yeah, Judge, I think it still
4 needs to be confidential, actually. The Atmos folks
5 haven't even seen this because it's an AEM document. If we
6 could go in camera?

7 JUDGE WOODRUFF: Okay. Do you want to be in
8 highly confidential, then?

9 MR. FISCHER: Pardon me?

10 JUDGE WOODRUFF: It will remain highly
11 confidential then?

12 MR. BERLIN: Yes.

13 JUDGE WOODRUFF: Okay.

14 MR. BERLIN: So I think for him to make the
15 corrections, we would have to go in camera.

16 MR. FISCHER: Would it be better to
17 submit -- I don't know how many there are -- submit a
18 late-filed correction and just put it under seal?

19 THE WITNESS: That would -- that would be my
20 preference.

21 MR. FISCHER: That would be fine with us.
22 Does it change -- I can ask you later.

23 BY MR. BERLIN:

24 Q. Okay. After that schedule, Mr. Sommerer,
25 are there any other changes?

1 A. No.

2 Q. Okay. Mr. Sommerer, recognizing these
3 changes, would any of these changes have changed the
4 answers that you've provided in this pre-filed testimony?

5 A. Except to the extent that I've made the
6 edits, no.

7 Q. And Mr. Sommerer, you also have filed a
8 great deal of supporting schedules with your pre-filed
9 testimony. Are the pre-filed schedules, except for the
10 changes that you've just noted, true and accurate to your
11 best information and belief?

12 A. As documents that came from AEM, I believe
13 they're accurate documents that were from AEM. I can't
14 really speak to the accuracy of the particular documents
15 from AEM in terms of --

16 Q. Okay.

17 A. -- whether or not they state accurate
18 volumes.

19 Q. This is a reflection of what you received
20 from AEM?

21 A. That's correct.

22 Q. All right. Okay. So Mr. Sommerer, in your
23 pre-filed direct, rebuttal, surrebuttal testimony, are the
24 answers to the questions that you have provided true and
25 correct to your best information, knowledge and belief?

1 A. Yes.

2 MR. BERLIN: Okay, Judge, I'd like to enter
3 the pre-filed testimony of Mr. Sommerer into the record.

4 JUDGE WOODRUFF: All right. That would be
5 Exhibits 26 NP and HC, 27 HC, and 28 NP and HC. Are there
6 any objections to their receipt?

7 MR. FISCHER: Judge, I'd like a brief
8 opportunity to voir dire the witness before you do that.

9 JUDGE WOODRUFF: All right. Go ahead
10 VOIR DIRE BY MR. FISCHER:

11 Q. Before I forget, though, just on the last
12 correction you made on Schedule 8, does that change your
13 bottom-line adjustment at all?

14 A. No.

15 Q. Okay. Good afternoon, Mr. Sommerer.

16 A. Good afternoon.

17 Q. On Pages 1 and 2 of your surrebuttal
18 testimony, you discuss in the executive summary an incident
19 in December of 2007 in which AEM experienced a supply
20 interruption from the Panhandle Eastern pipeline. Do you
21 see that?

22 A. Yes.

23 Q. Did the company witness, Becky Buchanan,
24 discuss that December, 2007 supply interruption anywhere in
25 her direct, rebuttal or surrebuttal testimony that you know

1 of?

2 A. Not specifically, no.

3 Q. Did -- did you discuss this December, 2007
4 supply interruption in the Staff recommendation which was
5 filed on December 28th of 2008?

6 A. No.

7 Q. Did you discuss this December, 2007 supply
8 interruption in your direct testimony filed on March of
9 2010?

10 A. No.

11 Q. Did you discuss the December, 2007 supply
12 interruption in your rebuttal testimony filed in June of
13 2010?

14 A. No.

15 Q. Isn't it true that you did not discuss this
16 December, 2007 supply interruption or the Staff's proposed
17 disallowances related to that December, 2007 supply
18 interruption until you filed your surrebuttal testimony in
19 this proceeding?

20 A. To my recollection, I did not discuss it
21 with Ms. Buchanan or Mr. Walker as we discussed in the
22 deposition. There is a chance it was discussed with
23 Mr. Martin, but I don't recall.

24 Q. Oh, I'm sorry, I think you misunderstood my
25 question. I was asking whether you discussed that

1 particular supply interruption or the Staff's proposed
2 disallowances before -- oh, I'm sorry, you're saying
3 just -- you communicated, you didn't discuss it in any of
4 your pre-filed testimony. That was my question.

5 A. That is correct.

6 Q. Okay.

7 A. Except for THE surrebuttal.

8 Q. Okay. So the first time you did discuss it
9 in pre-filed testimony, including the supply interruption
10 and the Staff's disallowances, was in this surrebuttal
11 testimony filed, I think, December 22nd, 2010. Right?

12 A. That's correct.

13 Q. And then I'd also like to refer you to Page
14 19 of your surrebuttal testimony, Lines 21 through 22 where
15 you're discussing the disallowance of 52,572. Do you see
16 that?

17 A. Could you direct me to a line number?

18 Q. Yeah, it's Lines 21 through 22 on Page 19.

19 A. Yes.

20 Q. As I understand your testimony, this is a
21 disallowance that's being proposed related to Company
22 actions related to the supply interruption that occurred
23 on -- in the December, 2007 time frame; is that correct?

24 A. Correct.

25 Q. Was this adjustment contained in the Staff's

1 recommendation filed on December 28th of 2009?

2 A. No.

3 Q. Was this adjustment contained in your direct
4 testimony filed in March of 2010?

5 A. No.

6 Q. Was this adjustment contained in your
7 rebuttal testimony filed in June of 2010?

8 A. No.

9 Q. Did Ms. Buchanan or any Company witness or
10 anyone else in the record discuss the Staff's proposed
11 disallowance in direct or rebuttal testimony in this case?

12 A. Regarding Scenario 1 and Scenario 2?

13 Q. Yes.

14 A. No.

15 Q. Then on Page 20, lines 1 through 3 of your
16 surrebuttal testimony, it states, The Staff also calculated
17 another scenario that reasonably assumed an increase over
18 actual December baseload nominations of 3,100 MMBtu's per
19 day, which yielded a disallowance of \$85,775; is that
20 correct?

21 A. That's correct.

22 Q. This is an alternative disallowance being
23 proposed by Staff related to the December, 2007 incident;
24 is that correct?

25 A. That's correct.

1 Q. Was this adjustment contained in the Staff
2 recommendation filed on December 28th of 2009?

3 A. No.

4 Q. Was this adjustment contained in your direct
5 testimony filed in March of 2010?

6 A. No.

7 Q. Was this adjustment contained in your
8 rebuttal testimony filed in June of 2010?

9 A. No.

10 Q. Did Ms. Buchanan discuss this disallowance
11 in her direct or rebuttal testimony filed in this case?

12 A. No.

13 Q. When did you first develop the proposed
14 adjustments contained in your surrebuttal testimony related
15 to the December, 2007 pipeline rupture?

16 A. Sometime between the filing of rebuttal
17 testimony and the filing of surrebuttal testimony.

18 Q. And then on the bottom of Page 19 of your
19 surrebuttal testimony, you discuss what you call Staff's
20 calculation of damages on Line 20; is that correct?

21 A. Yes.

22 Q. I believe you also discuss a second or an
23 alternative calculation of damages at the top of Page 20;
24 is that right?

25 A. Correct.

1 Q. Was Staff's calculation of damages contained
2 in the direct or discussed in the direct or rebuttal
3 testimony of company witness Becky Buchanan in this case?

4 A. No.

5 MR. FISCHER: Judge, based on that
6 testimony, the Company would move to strike portions of
7 Mr. Sommerer's surrebuttal on the ground that it's improper
8 surrebuttal under 4 CSR 240-2.130 Subsection 7, Subsection
9 D. There it states, Surrebuttal testimony shall be limited
10 to material which is responsive to matters raised in
11 another party's rebuttal testimony.

12 In this case, portions of the Staff's
13 testimony is improper surrebuttal because it's not
14 responsive to matters raised in anyone's rebuttal testimony
15 in this case. Instead, it appears to be more in the nature
16 of direct testimony, which is defined in Subsection (7)(a)
17 of that rule, Direct testimony shall include all testimony
18 and exhibits asserting and explaining a party's entire case
19 in chief.

20 The portions of the testimony I'd like to
21 cite are more in the nature of direct as defined by that
22 rule and it should have been filed at the time of the
23 filing of the Staff's direct case. Therefore, the Staff
24 would move -- excuse me, the Company would move to strike
25 portions of Exhibit 3 and I'd like to designate those

1 sections.

2 JUDGE WOODRUFF: Go ahead and designate.

3 MR. FISCHER: Okay. I would move to strike
4 beginning on Page 1, Lines 19, beginning with two asterisks
5 through Line 7 on Page 2. And then on Page 19, beginning
6 at Line 11 through Line 16 on Page 20. I'm sorry, it's
7 Exhibit 28, not 20.

8 And then I'd also move to strike Schedule 3
9 to the surrebuttal testimony, which includes the record of
10 cuts under highly confidential seal related to that
11 December, 2007 pipeline outage. Thank you.

12 JUDGE WOODRUFF: Okay. Staff wish to
13 respond?

14 MR. BERLIN: Yes, Judge. Judge, as
15 Mr. Sommerer had indicated, the reliability issues that
16 these are related to were made apparent to the Staff after
17 Staff had filed its rebuttal testimony and it was made
18 apparent to Staff in a DR. I believe it was largely 132.2.
19 We've been through that today.

20 Judge, I would take you back to testimony
21 from yesterday that is on the record and that is also on
22 the record today in which we went back to DR 100 and --
23 and -- and as in my opening, I had cited quite a few DRs
24 and I can go through them. But let me go back to DR 100.

25 And this is what Mr. Walker testified today

1 and he testified about it yesterday. That asked were there
2 any pipeline or supplier actions that caused the LDC to
3 question its reliance on the transport, storage, or
4 supplies to be delivered to the LDC. And Mr. Walker
5 testified -- that it is the response of Mr. Walker, there
6 were not any pipeline/supplier reliability issues during
7 this ACA period. And that was a DR that was sent January
8 15th of 2009.

9 I think throughout this hearing, we've
10 demonstrated there are some very significant reliability
11 issues, huge reliability issues that effected the entire
12 month of pretty much December, some of late November. Now,
13 this DR 100 response and the other DR responses that I had
14 gone through provide no -- are completely inapposite of
15 where this company's coming from today saying oh, there's
16 big reliability issues, there was a force majeure event.
17 But they didn't make it apparent to us. They could have
18 told us.

19 This DR response is not accurate. It's less
20 than -- more than less complete and on its face not even
21 truthful. Because there were huge reliabilities issues.
22 We just went through those. There were cuts that were
23 made, there were cuts that were made at the request of the
24 supplier AEM that were communicated to Staff that were
25 pipeline cuts that were not, that were actually AEM's

1 requested cuts made of the LDC.

2 Now, Mr. Sommerer, as you may recall, back
3 in October provided testimony to the Commission under
4 direct examination from the Commissioners that there were
5 indeed reliability issues, big reliability issues and that
6 northeast Missouri was not getting the gas that the company
7 had nominated. Gas was not going into northeast Missouri,
8 was not getting its gas supplies.

9 And I know that Commissioner Davis had
10 questions of Mr. Sommerer along those lines and was
11 concerned about why there's such a big difference and why
12 those nomination cuts were made. So Mr. Sommerer, then,
13 provided the answers that he had at the time and then after
14 that -- that hearing where he testified, he went back and
15 he -- he was researching those -- those cuts just to
16 determine just where the harm is on those cuts.

17 He obviously could not have done it in
18 rebuttal testimony, which in my motion in June I told the
19 Commission that that motion -- well, from previous
20 discovery reasons, was incomplete rebuttal testimony.

21 So, Judge, the Company wants to be
22 inaccurate, if you will, or incomplete, maybe even
23 misdirecting Staff, which this DR 100 certainly had that
24 effect. And then to come in later and to strike our
25 surrebuttal testimony when they were the ones that were

1 under the duty to make it known to us and they did not. So
2 herein lies the -- the big problem in discovery in this
3 case when Staff gets incorrect information.

4 So I would also like to add, Judge, that
5 Mr. Sommerer's testimony, his surrebuttal testimony and
6 pieces that Mr. Fischer has cited here are directly
7 responsive to the matter of reliability. Reliability in
8 the pre-file -- is a -- an issue that was raised in Atmos's
9 direct and its rebuttal testimony. And they were very
10 clear in their pre-filed testimony there were no
11 reliability issues.

12 So we are, through this surrebuttal
13 testimony, rebutting their contention that there were no
14 reliability issues. There were huge reliability issues.
15 The record evidence at hearing today and yesterday show
16 that, so that's -- that's my response, Judge.

17 JUDGE WOODRUFF: Public Counsel wish to make
18 any response?

19 MR. POSTON: We just concur with Staff that
20 it was the incorrect DR responses that seemed to lead to
21 this, and so we think it's wholly proper to allow that
22 testimony.

23 JUDGE WOODRUFF: Well, what I'm going to do
24 is may -- defer ruling on that -- that Motion to Strike and
25 take it up with the ultimate order in this case where the

1 Commission can actually make the final decision on that
2 rather than mr. For purposes of the hearing today, we'll go
3 on and take Mr. Sommerer's testimony and proceed with
4 cross-examination as if the order had been denied.

5 But the Commission will make the ultimate
6 decision on whether to strike that testimony, which would
7 include testimony that's offered today. All right?

8 MR. FISCHER: Thank you, Judge.

9 JUDGE WOODRUFF: Then he's been tendered for
10 cross-examination, I believe. And we will -- the cross
11 will begin with Public Counsel.

12 MR. POSTON: Thank you.

13 CROSS-EXAMINATION BY MR. POSTON:

14 Q. Mr. Sommerer, does Atmos Energy Corporation
15 profit from the sale of gas in Missouri?

16 A. The LDC, in terms of the purchase gas
17 adjustment clause, does not profit from the sale of gas
18 that's recovered in the PGA clause.

19 Q. How about Atmos's shareholders, are they
20 receiving some sort of benefit from the sale of gas to
21 Atmos's customers, financial benefits in any way?

22 A. To the extent that AEM sells gas to its
23 affiliate and profits from those sales, then potentially
24 the corporations shareholders could receive benefit.

25 Q. And do you know why the PGA/ACA process was

1 established?

2 A. It was established many years ago to provide
3 a direct pass-through of the utility's natural gas costs.

4 Q. In considering these reasons, does the fact
5 that Atmos's shareholders could be benefiting and profiting
6 from the sale of this gas, could -- does that give you any
7 concerns?

8 A. It certainly is a point of additional
9 scrutiny that Staff would like to apply to these
10 transactions because there is a profit potential there.

11 Q. And what earlier -- I think it's in your
12 direct testimony you gave a couple numbers of how much
13 those profits were during this ACA period; is that correct?

14 A. Gross margins, yes.

15 Q. And have those amounts changed at all from
16 what's in your direct testimony?

17 A. Yes, actually, the adjustment has gone down
18 to approximately \$308,000.

19 Q. Well, you -- you also testified in
20 surrebuttal that Staff's not proposing a disallowance
21 because a profit was earned; is that correct?

22 A. That's correct.

23 Q. Can you explain how that is that the 308,000
24 is what you're saying is the profit, but the 308,000 is not
25 being disallowed because it was a profit?

1 A. The Staff's focus in this case has been
2 about fair market value, what is the utility's fair market
3 value for the goods and services that were purchased from
4 the affiliate. We believed it relevant to look at AEM's
5 fair market value as perhaps impacting the ultimate fair
6 market value decision.

7 If you take a look at the entire gross
8 revenues of AEM and you make a mathematical calculation
9 removing the gross margin, you will arrive at an estimate
10 of the fair market value of AEM's supplies. So although
11 we've discussed profit, that was not the -- the primary
12 goal. It was an indirect result of trying to measure AEM's
13 fair market value.

14 Q. Okay. Yesterday, Mr. Berlin, your counsel,
15 referred to that 308,000 as a figure, I think he might have
16 said not supported or he used some similar term. Do you
17 recall that?

18 A. Yes, I do.

19 Q. Did you agree with -- with that?

20 A. My understanding of what Mr. Berlin was
21 saying was that the spreadsheet and the underlying numbers
22 of AEM that were the basis of the 308,000 were not fully
23 supported by AEM. He was not suggesting that Staff had no
24 support for the adjustment.

25 Q. Okay. And what do you mean "not fully

1 supported by AEM?"

2 A. The Staff had made some attempt to get
3 additional detail around AEM's gas supply, what the supply
4 represented, what it was associated with, what
5 jurisdictions it may have applied to. And although we
6 received limited information from AEM, Staff did not
7 believe we received everything that was required mainly
8 based upon an AEM response that said they only had one
9 document in existence that addressed Staff's questions.

10 Q. And the -- the 308,000 figure, is it
11 supported by calculations in your -- in your testimony?

12 A. Yes.

13 Q. And do you have -- did you create work
14 papers to support that 308,000?

15 A. Yes.

16 Q. Did you provide those to any parties in this
17 case?

18 A. Those work papers were provided to the
19 Company shortly after the adjustment was described in
20 surrebuttal testimony.

21 Q. But are they in the case -- are they in your
22 testimony, your work papers?

23 A. There is a summary work paper that's shown
24 as Schedule 8, the actual detailed work papers are part of
25 the work papers that are not in testimony.

1 Q. Okay. And regarding -- well, I'd like to
2 talk about the two scenarios that you -- you raised. And
3 can you just please explain, what are these scenarios?
4 What is the purposes of these?

5 MR. FISCHER: Judge, I'm just going to, just
6 for the record, make an objection here subject to the
7 Court's ruling -- the Commission's ruling on our Motion to
8 Strike any references to those. I would understand will be
9 taken, but I do want to have a continuing objection that in
10 the event that the Commission would rule in our favor, that
11 all the discussion about that will be struck.

12 JUDGE WOODRUFF: I'll note that as a
13 continuing objection.

14 THE WITNESS: Those scenarios related to the
15 Staff's overall concern that Atmos received the supplies
16 that they were contracted to receive. In direct testimony
17 and even in Staff's recommendation back in 2009, we had
18 indicated a concern that AEM had the opportunity to use
19 interruptible supply and/or transportation to not only win
20 the bid, but also to make additional profit throughout the
21 duration of the ACA period. So some of the Staff discovery
22 directed towards AEM was to look into that.

23 We also were looking at the nomination
24 process more closely because we saw a twin pricing
25 provision as part of this contract where there were

1 definite opportunities for AEM to make money based upon the
2 interplay between first-of-the-month pricing and daily
3 pricing. And so given that that relationship is governed
4 by the nominations that are made by the utility, we wanted
5 to take a very close look at whether or not the Norman --
6 the normal nominations or the typical nominations were
7 made.

8 And we wanted to understand any unusual
9 nominations of -- and we found one of those in December of
10 2007 for first-of-month supply that wasn't fully supported
11 by the company in the discovery. We didn't believe it was
12 fully explained. It wasn't completely logical to the
13 Staff. We also noted as part of that discovery that some
14 of the nominations did not show up.

15 That goes back to the value of service. If
16 a company's requested nomination, doesn't show up, it could
17 be an indicator of interruptible or less than firm supply.
18 So we wanted to get more detail about that. The Scenario 1
19 and Scenario 2 effectively attempt to quantify the fact
20 that the company had a very low first-of-month nomination
21 and some of their swing nominations in December did not
22 show up. So in essence, that's -- that's how Staff
23 approached that issue.

24 Q. And you were in here during the testimony of
25 Ms. Buchanan and Mr. Walker; is that correct?

1 A. That is correct.

2 Q. Did -- did their testimony cause you to
3 change your concern that AEM could have been providing
4 something less than firm gas to Atmos?

5 A. No.

6 Q. I'd like to -- do you have Exhibit 18 with
7 you?

8 A. I'm not sure. Could you describe the
9 exhibit?

10 Q. Well, let me try to find it myself. It must
11 have walked away from me, too.

12 A. I have it.

13 Q. Okay. You would agree this exhibit -- there
14 has been a lot of questions over this exhibit for
15 Ms. Buchanan and Mr. Walker; is that correct?

16 A. That's correct.

17 Q. And I'd like to get a better understanding
18 of the significance or relevance of -- of this. And can
19 you just please explain what the relevance is of this
20 exhibit to your disallowance?

21 A. My recollection of the -- the data requests
22 that were asked as part of this and a little bit prior to
23 132.2 was that the Staff was attempting to understand the
24 nominations that were made during the ACA period in greater
25 detail. I believe it was data request 132 that was asked

1 sometime after direct testimony, perhaps May of 2010, that
2 had inquired whether Atmos could provide a rationale in
3 support for each and every nomination that they made.
4 Again, trying to understand the interplay between daily
5 nominations and first-of-the-month nominations and whether
6 the nominations showed up.

7 Atmos responded to that data request, I
8 believe it was in early June of 2010, prior to rebuttal
9 testimony in this case, saying that their nomination
10 process was based upon forecasts and various other general
11 planning documents; however, they could not provide a
12 rationale or support for each and every nomination that was
13 made.

14 They did, at the end of that response, say
15 we would welcome Staff to list nominations that they're
16 concerned about, and we would be happy to go nomination by
17 nomination for a sample of nominations that you choose.

18 Staff submitted another data request and
19 Atmos responded looking at the four or five nominations
20 that appear to be atypical from Staff's standpoint. And in
21 that data request, one of Atmos's response was -- responses
22 was that the December, 2007 actual nominations were less
23 than planned because of the Haven outage.

24 Now, that response was received after
25 rebuttal testimony and that was the first direct reference

1 that Staff had in this case that I can recall seeing a
2 reference to the force majeure event, or the Haven outage.
3 That was sometime after rebuttal was filed.

4 So based upon that response, the Staff
5 focused on December. It excluded the other questions or
6 concerns it had about other nominations. It was more
7 focused on that particular time frame as we've discussed at
8 length. We asked another data request. This was, I
9 believe, the second follow-up, 132.2.

10 And our request had to do with specifically
11 what happened with the Haven outage, how many cuts were
12 there, give us documentation about whether the gas did or
13 did not show up through the nomination process.

14 And it's at that point this spreadsheet came
15 back to us, a very critical spreadsheet, that showed that
16 there were significant cuts, and from my viewpoint some
17 liability issues during late November, 2007 and for most of
18 the month of December of 2007. And when you look at the
19 spreadsheet and you spend some time with it, you see
20 that -- that the cuts are quite significant and occurred
21 throughout most of the -- the month.

22 They occurred to Atmos's storage areas
23 earlier in December and they -- they appeared to occur from
24 the 8th until the 31st. And to us, it became a matter of
25 trying to understand whether these were something that was

1 totally outside of the supplier's control, totally outside
2 of the LDC's control, something mandated by the pipeline,
3 something that was related to the delivery points that were
4 being used, the preferred delivery points of AEM. And so
5 there were additional questions and work that was done
6 around this.

7 So that's a very long answer, but it was a
8 long process to get to what we had hoped was fairly
9 accurate information.

10 Q. Do you -- well, Ms. Buchanan and Mr. Walker,
11 their testimony on this exhibit, would you agree that
12 their -- that according to them, nothing was done out of
13 the ordinary.

14 MR. FISCHER: Judge, I'm also going to now
15 add to my objection that this is in the nature of friendly
16 cross-examination. The Staff and the Public Counsel are
17 taking the same positions in the -- in their position
18 statements. Of course, this issue is not even addressed in
19 their position statements, but I do object to the nature
20 of -- the friendly nature of this cross-examination.

21 MR. BERLIN: Judge, I would disagree with
22 Mr. Fischer. I don't see this as friendly cross at all. I
23 think the Public Counsel is trying to understand this
24 critical exhibit and he's trying to understand the impact
25 it has.

1 JUDGE WOODRUFF: I'm going to overrule the
2 objection. You may proceed.

3 MR. BERLIN: I don't even recall what my
4 question was.

5 BY MR. POSTON:

6 Q. Do you recall? I think what I was asking
7 you was Mr. Walker and Ms. Buchanan testified regarding
8 this as if nothing was done out of the ordinary. And do
9 you agree with that, by the appearance there was nothing
10 out of the ordinary done?

11 A. It seems to be an exceptional situation.
12 The force majeure situation was somewhat rare in terms of
13 its duration. The spreadsheet itself stating that cuts
14 took place for most of the month or at least that was the
15 original view that Staff had of the spreadsheet show that
16 that was somewhat unusual and required some further inquiry
17 and investigation. So I would disagree if their -- their
18 characterization is that this is just a normal month and
19 normal process. I would disagree with that.

20 Q. Would you disagree with the
21 characterization, perhaps, that there was no imprudence?

22 A. I would disagree with that as well.

23 Q. And why?

24 MR. FISCHER: Judge, I'm going to again
25 enter an objection that this is clearly friendly cross at

this point and it's improper.

JUDGE WOODRUFF: I'm going to again overrule
it.

THE WITNESS: The Staff believes that the nominations and the subsequent allowance of AEM to lower supplies was imprudent. It was an imprudent decision at the time based upon the facts and circumstances known by the Company at the time.

BY MR. POSTON:

Q. Hypothetically, let's assume that you are an employee of Atmos, your -- you have Mr. Walker's position that -- on November 20th. How would you have done things differently?

A. I believe that I would have certainly looked at the information that was available to me that Monday morning upon returning to work and attempted to up the nomination in the context of the notices that had already been issued by the pipeline.

I would have made the attempts since contractually I knew that AEM had not bound itself to a five-day requirement, I would not only use Monday, but I would continue to ask for an increased nomination right up to the pipeline deadline, which is much later than the supplier's somewhat discretionary deadline.

And I believe my first-of-the-month

1 nomination would have been higher as Staff has described in
2 its surrebuttal testimony.

3 Throughout the month of December, I would
4 have been pushing AEM to provide me with an explanation on
5 why the supplies weren't available. I think Mr. Walker did
6 this through one of his e-mails where he said where are my
7 supplies. I would not have accepted the answer that came
8 back from -- from AEM. I would have repeated to bring
9 those swing supplies on or had a well-documented reason
10 more than just general working with the supplier's needs.

11 Q. Do you think the reasons that have been
12 given by Atmos are well documented?

13 A. Not with regard to what happened during this
14 time of force majeure, no.

15 MR. POSTON: I don't think I have anything
16 else. Thank you.

17 JUDGE WOODRUFF: Thank you. Now we'll move
18 over to Ameren for cross.

19 MS. BUCHANAN: Ameren?

20 JUDGE WOODRUFF: I'm sorry, Atmos. I knew I
21 was going to do that sooner or later.

22 MR. FISCHER: I'm going to come up here,
23 Mr. Sommerer, so I can visit with you a little more
24 carefully and clearly.

25 CROSS-EXAMINATION BY MR. FISCHER:

1 Q. Do you have your copies of your testimony
2 and the Staff rec as well as your deposition?

3 A. I believe I have those, yes.

4 Q. Okay. Let's begin with your direct
5 testimony on Page 3 at Line 18 and 19.

6 A. Yes.

7 Q. There you indicate that Staff performed an
8 examination of Atmos's gas purchasing practices to
9 determine the prudence of the company's purchasing
10 decisions; is that correct?

11 A. Yes.

12 Q. Would you agree that one of the primary
13 purposes of an ACA review is to examine the LDC's
14 purchasing practices to determine whether they're prudent?

15 A. That's correct.

16 Q. I understand that Staff also reviews hedging
17 practices and reliability analysis as a part of the ACA
18 review; is that correct?

19 A. Yes.

20 Q. On -- on Page 4 of your direct testimony,
21 you state that, The issues in this case have been resolved
22 with the exception of Staff's proposed disallowance
23 regarding Atmos's transactions with its affiliated -- its
24 affiliate marketing company; is that correct?

25 A. That's correct.

1 Q. In this case, there are no longer any issues
2 for the Commission to resolve regarding any of the hedging
3 practices or reliability issues related to Atmos Energy
4 Corporation; is that correct?

5 A. That's my understanding, yes.

6 Q. And that's notwithstanding all of the
7 testimony we heard in the last day regarding reliability
8 issues; is that right?

9 A. That's correct.

10 Q. As I understand your testimony in the
11 deposition, the Staff is not contending and perhaps an
12 answer to Mr. Poston a minute ago, the Staff's not
13 contending that it was imprudent for Atmos to have accepted
14 the lowest bid from its affiliate AEM in the Hannibal area;
15 is that right?

16 A. That's correct.

17 Q. In the Staff recommendation in this case
18 that was filed on December 28th of 2009, Staff proposed two
19 disallowances related to Atmos's gas purchasing practices;
20 is that right?

21 A. Yes.

22 Q. And that was originally filed on December
23 28th of 2009?

24 A. Correct.

25 Q. That Staff recommendation was filed after

1 the Staff had done a year-long audit of -- of Atmos's
2 2007-2008 actual cost period; is that right?

3 A. That is correct.

4 Q. And if I recall that filing that the company
5 did really initiated the case on October 16th of 2008. Is
6 that your recollection?

7 A. That sounds correct.

8 Q. So we've been doing this for about two and a
9 half years now?

10 A. From the date of filing, I would say
11 that's -- yeah, about two and a half years.

12 Q. And hopefully within three years from the
13 time we filed it, we'll have a decision in this case, would
14 you agree?

15 A. I would hope a decision would be
16 forthcoming.

17 Q. Now, there's been substantial discovery as a
18 part of the your ACA audit, wouldn't you agree?

19 A. Yes.

20 Q. And there's also been substantial discovery
21 since the audit was completed, is that true?

22 A. That's correct.

23 Q. On Page 5 of the Staff recommendation, 5 of
24 12, you identify what the original Staff disallowances
25 were. And you say that, With the inclusion of the swing

1 gas sales to AEC, Staff proposes an adjustment of \$349,015
2 for the Hannibal area and an adjustment of \$13,964 for the
3 Butler area; is that correct?

4 A. That is correct.

5 Q. Now, these adjustments were based on an
6 analysis provided by Atmos Energy Marketing of its profit
7 and losses for the Hannibal and Butler areas; is that
8 correct?

9 A. That is correct.

10 Q. And as I understand your original
11 adjustments, they were intended to bring the fair market
12 value of Atmos's gas costs down to what Staff believed to
13 be the fair market price of the AEM gas costs; is that
14 right?

15 A. That's correct.

16 Q. And I believe you told me in your deposition
17 that you equate the terms "fair market value" with "fair
18 market price;" is that correct?

19 A. That is correct.

20 Q. Just so we have some terms that we're on the
21 same page with, in -- in Staff brief -- prehearing brief
22 filed in the Laclede Gas case, Case No. GR-2005-0203 and
23 GR-2006-288, Staff included a definition of "fair market
24 value" in one of the foot notes. And if -- if I could
25 approach the witness, I'd like to give him a copy of this

1 brief.

2 JUDGE WOODRUFF: You may.

3 BY MR. FISCHER:

4 Q. There in footnote 8 on Page 5 of that
5 particular prehearing brief, Staff stated that the "fair
6 market price" is, and I'll just quote, The price that
7 seller is willing to accept and a buyer is willing to pay
8 on the open market and in armslength transaction, citing
9 Black's Law Dictionary 1547, 7th edition, 1999; is that
10 right?

11 A. That's correct.

12 Q. And do you agree with that definition that
13 that's "fair market price?"

14 A. I would generally agree with that, yes.

15 Q. And I recall in this proceeding, we had an
16 October 20th hearing that I think you attended where
17 Commissioner Davis asked I think your counsel, Mr. Berlin,
18 about a similar Black's Law Dictionary definition of "fair
19 market value." Do you recall that at all?

20 A. Yes.

21 Q. He -- he quoted a section that said, It
22 provides the price that seller is willing to accept and a
23 buyer is willing to pay on the open market in an armslength
24 transaction, the point at which supply and demand
25 intersect. That's essentially the same definition as what

1 it was quoted in that Laclede brief; is that true?

2 A. That's correct.

3 Q. And that would be, in your mind, the
4 definition of a "fair market price" and "fair market value"
5 since they're synonymous terms in your mind. Right?

6 A. Yes.

7 Q. Now, in Mr. Berlin's opening statement, he
8 included a reference to a Dayton Power & Light Company case
9 versus the Public Utilities Commission of Ohio. Do you
10 recall that?

11 Let me hand you a copy of the slides that he
12 handed out. Would you read the standard that's included on
13 that slide?

14 A. In gas rate proceeding, distributing company
15 had burden of proving the price at which it obtained gas
16 from affiliated seller was no higher than would be payable
17 in regulated business by buyer unrelated to seller in
18 dealing at armslength.

19 Q. Is that the whole quote there?

20 A. Except for the cite.

21 Q. Okay. Is this the standard that Staff
22 believes should apply in this case generally?

23 MR. BERLIN: I'm going to object. I think
24 Mr. Fischer's asking Mr. Sommerer for a legal conclusion of
25 a U.S. Supreme Court case. Mr. Sommerer's not an

1 attorney.

2 MR. FISCHER: Let me rephrase it, then,
3 Judge. I don't want a legal conclusion from a non-lawyer.

4 BY MR. FISCHER:

5 Q. But I do wonder if the standard that you're
6 looking for is whether -- if the Company can show the Staff
7 in this hearing or the Commission that it paid its
8 affiliate no higher than it would have paid a
9 non-affiliated marketer, is that the standard that we need
10 to meet to satisfy you?

11 A. I would simply make a clarification that you
12 have to deal with apples and apples in terms of the good or
13 service that's provided.

14 Q. And assuming that's the case, would you
15 agree that that's the standard that we should try to meet?

16 A. Assuming that you -- and subject to legal
17 briefing on the -- the matter of what the prudence standard
18 is and how that applies, but the standard that I would
19 suggest as a layperson and the Staff expert would be it's
20 the standard that you see here understanding that it has to
21 be the same good or service.

22 Q. Okay. And if we could meet that standard in
23 this hearing with competent and substantial evidence, will
24 Staff withdraw its affiliated transaction adjustment in its
25 brief in this case?

1 A. Well, to me, this is a matter that goes
2 before the Commission for decision, and I think it highly
3 unlikely that Staff would withdraw its position based upon
4 the record of evidence that I've heard.

5 Q. Well, assuming that we could show you that
6 we paid less than the fair market price -- Atmos I'm
7 saying -- would you recommend to the Staff that they --
8 they withdraw their affiliated transaction adjustment in
9 this case?

10 A. I would want the opportunity to consult with
11 my superiors and legal counsel before I made that -- that
12 determination. As I sit here today, if there was evidence
13 that the Company had paid less than the true fair market
14 value and the evidence was compelling, I would not
15 disregard that recommendation. I would think about that
16 discussion and possibly make it.

17 Q. So you would consider suggesting that that
18 affiliated transaction adjustment be withdrawn?

19 A. That's correct.

20 Q. Okay. Good. I'll try to do that. The --
21 the effect of Staff's original affiliated transaction
22 adjustment was to reduce the price paid for the gas costs
23 by the Atmos ratepayers to a gas cost level that did not
24 include a profit level for the affiliated gas marketer AEM;
25 is that right? That's the effect of the adjustment?

1 A. That is the effect of the adjustment, yes.

2 Q. And as I understand your deposition, the
3 primary purpose of the Staff's proposed adjustment was not
4 to keep any profits from the affiliate, AEM, from being
5 passed through the PGA process to Atmos's ratepayers; is
6 that right?

7 A. That is correct.

8 Q. The primary purpose of the Staff's
9 adjustment, as I understand it, was to determine the fair
10 market price for the gas sold by AEM to Atmos; is that
11 right?

12 A. That is correct.

13 Q. And Staff determined that fair market price
14 by subtracting off the gross profits that AEM provided to
15 you on those transactions for the invoice costs of gas that
16 Atmos paid; is that right?

17 A. That was the basis of Staff's disallowances
18 as adjusted for some additional concerns Staff had.

19 Q. So mechanically, that's how you determine
20 the fair market price of the gas that AEM sold to Atmos in
21 your Staff recommendation. Correct?

22 A. That is correct.

23 Q. And that was the primary purpose of the
24 adjustment to determine the fair market price of the gas.
25 Correct?

1 A. That is correct.

2 Q. The purpose was not to eliminate the profits
3 of AEM for being passed through to consumers to Atmos; is
4 that right?

5 A. That is correct.

6 Q. Now, as I understand your deposition
7 testimony, as a layman, you don't think that the
8 Commission's affiliated transaction rule necessarily
9 requires that the profits of an affiliate be used to reduce
10 the cost of gas of the -- of the regulated utility; is that
11 right?

12 A. Not by a direct reading of the rule in my
13 layperson's understanding of the rule.

14 Q. The real concern of the Staff in this case
15 is that the LDC pay the affiliated gas marketer no more
16 than the fair market price for the gas it purchases from
17 the affiliate; is that right?

18 A. That's correct.

19 Q. And to get to that fair market price,
20 mechanically, you've done it by removing the gross profits
21 of the affiliate. Correct?

22 A. That is correct.

23 Q. Now, in the Staff recommendation, the cost
24 of gas supplies was adjusted so that it did not include any
25 of markup of profit for AEM. Wasn't that the effect of --

1 of the adjustment whenever we look at your original Staff
2 recommendation where you recommended a \$349,015
3 disallowance for Hannibal and 13,964 for Butler?

4 A. The effect of the original adjustment was to
5 bring the cost down to AEM's cost of gas.

6 Q. Okay. And you did that mechanically by
7 subtracting off the profits that AEM gave to you?

8 A. The gross margin.

9 Q. Yes. Now, in your rebuttal testimony at
10 Page 10, Lines 11 through 12, you indicate that the basis
11 for the adjustment was AEM's own after-the-fact assessment
12 of the cost associated with its deal with Atmos; is that
13 right?

14 A. Yes.

15 Q. And then on Lines 19 through 20, you stated,
16 AEM's profits seem quite high to Staff as well; is that
17 correct?

18 A. That's correct.

19 Q. Is it correct to conclude that Staff
20 believed that the AEM profits supplied in the after
21 effect -- after-the-fact assessment of the cost associated
22 with the deal were quite high based on what you saw?

23 A. Yes.

24 Q. Did you believe that those profits were
25 higher than you would have expected them to be?

1 A. Yes.

2 Q. Even though the Staff believed the reported
3 profits from AEM were quite high, this was the level of the
4 profits that formed the basis for the Staff's adjustment to
5 bring down the gas cost to the fair market price in the
6 Hannibal and Butler areas; is that right?

7 A. That's correct.

8 Q. Okay. Let's turn to your surrebuttal
9 testimony at Page 18, Lines 1 and 2. There you state, The
10 company was originally asked to provide the profit and loss
11 of AEM that was associated with the affiliate transaction;
12 is that correct?

13 A. Correct.

14 Q. You pointed out that AEM did not have a
15 document that contained the information sought by Staff but
16 AEM compared the generic Panhandle Eastern pipeline cost of
17 supply to the revenues it earned from Atmos Energy
18 Corporation; is that correct?

19 A. That's correct.

20 Q. Now Mr. Berlin yesterday indicated that
21 Staff is alleging, I think, that there are inadequate
22 recordkeeping now by AEM. Is that your understanding?

23 A. Yes.

24 Q. Is Staff referencing the documents that --
25 that you were requesting that would identify the profit and

1 loss of AEM on a transaction-by-transaction basis?

2 A. He's referring to a specific data request
3 where Staff had asked for the deal documentation and
4 supporting documentation around AEM's economic evaluation
5 of the deal.

6 Q. And that would be -- the document that you
7 received had the gross profits but not any net profits.
8 Correct? They didn't have that document. Right?

9 A. That's correct.

10 Q. Now, does the Commission's affiliated
11 transaction rule anywhere say that you need to keep a
12 transaction-by-transaction accounting of the net profits of
13 the affiliate?

14 MR. BERLIN: Objection, calls for legal
15 conclusion.

16 BY MR. FISCHER:

17 Q. As a non-lawyer reading the affiliated
18 transaction documents or rules, do you know of anywhere
19 that there's a statement you need to keep the net profits
20 on a transaction-by-transaction basis?

21 A. I'm not aware of that provision, no.

22 Q. Then on Line 8, you state, AEM interpreted
23 profit and loss, P&Ls, as the gross margin or gross
24 revenues it received from AEC minus a calculated weighted
25 average cost of gas; is that right?

1 A. That's correct.

2 Q. So is it correct to conclude that your P&L
3 statement that Staff relied on to make the proposed
4 adjustment contained the gross revenues of AEM and
5 subtracted a calculated weighted cost of gas from that?

6 A. In essence, I think that's what the
7 spreadsheet was meant to calculate. There were a couple of
8 errors, or at least Staff characterized them as errors from
9 AEM in terms of the way it prepared its spreadsheet;
10 however, I think conceptually, that was AEM's concept.

11 Q. Okay. At the time that Staff filed its
12 Staff recommendation in December of '09, did Staff have a
13 general awareness from the AEM profit and loss analysis
14 that the profits that were included in the AEM analysis
15 were the gross profits?

16 A. Yes.

17 Q. And when refer to gross profits or gross
18 margins, those are synonymous terms in your mind; is that
19 right?

20 A. That's correct.

21 Q. A gross margin would not include any
22 overhead for any AEM personnel or other administrative
23 costs associated with the AEM business; is that right?

24 A. That's correct.

25 Q. Now on the bottom of Page 3 of your

1 surrebuttal testimony, at Line 23, you testify that
2 AEM would have some administrative overhead in obtaining
3 the fair market value you've its supplies; is that correct?

4 A. That is correct.

5 Q. Does Staff recognize that AEM has some
6 administrative overheads associated with its transactions
7 with Atmos in the Hannibal and Butler areas?

8 A. I believe AEM's offices are located in
9 Houston. I don't believe they have any personnel located
10 in Hannibal.

11 Q. Okay. It's not an inter -- it probably
12 wasn't stated very well. For those transactions that they
13 did in Hannibal and Butler, wouldn't they have some
14 overheads, personnel costs, pensions, electricity, other
15 administrative overheads that would be associated with
16 getting that deal done?

17 A. Yes.

18 Q. Just to be clear, AEM did not include any
19 personnel costs associated with its gas marketers,
20 pensions, office overheads, electricity or other
21 administrative costs that AEM would have to provide the gas
22 marketing services to Hannibal or Butler. Correct?

23 A. It may have been indirectly part of their
24 demand charges or demand fees; however, those are meant to
25 cover -- well, anything that's charged to AEC is meant to

1 cover everything -- the whole cost of service for
2 AEM related to the transactions. But I will agree with you
3 that the effect of Staff's adjustment is to bring this down
4 to AEM's fair market value. When you do that, there's
5 nothing left except for the cost of gas. There aren't any
6 administrative and overhead expenses in that particular
7 calculation.

8 Q. So Staff understands that AEM's profit and
9 loss information that was provided to Staff did not include
10 any of those personnel costs or overheads. Correct?

11 A. Not in terms of costs, no.

12 Q. If AEM had included such costs, wouldn't you
13 expect that AEM's calculation of net profits would be
14 reduced by the amount of those costs?

15 A. Yes.

16 Q. Has Staff estimated the amount of overheads
17 that would be needed to be subtracted off the gross margins
18 in order to calculate a net margin or a net profit
19 associated with that transaction?

20 A. No.

21 Q. Did Staff ever request that AEM estimate the
22 overheads associated with its Missouri transactions on a --
23 on a -- a net basis?

24 A. I don't believe that question was directly
25 asked of AEM.

1 Q. So Staff doesn't know what those
2 AEM personnel costs or other administrative overheads would
3 be. Correct?

4 A. Correct.

5 Q. But you recognize that AEM would have
6 personnel costs and administrative overheads that are not
7 reflected in the profit and loss analysis that Staff is
8 relying on in this case. Correct?

9 A. Correct.

10 Q. Now, ideally, AEM's overheads should not be
11 included in a Missouri rate case for Atmos Energy
12 Corporation, is that your understanding?

13 A. Ideally, that should be the case.

14 Q. If -- if you included the AEM personnel
15 costs and other overheads in your calculation of the AEM
16 profits, that would be expected to lower the AEM profits;
17 is that true?

18 A. Yes.

19 Q. Is it correct to conclude from your
20 surrebuttal testimony that you now consider the AEM profit
21 and loss information you relied upon in your Staff
22 recommendation to reduce the gas costs by the 349,000
23 and -- for Hannibal and 13, almost 14,000 for Butler, that
24 the stuff you relied on in that calculation included
25 inaccurate assessments of AEM's cost of gas supply?

1 A. In AEM's original materials, I believe
2 there's subsequent information shown that the original
3 spreadsheet was inaccurate.

4 Q. Affiliated transaction disallowance proposed
5 by Staff in your surrebuttal is now \$308,733 for the
6 Hannibal area and zero for the Butler area; is that right?

7 A. Correct.

8 Q. And if you don't mind, I'll just talk about
9 a \$308,000 rounded down adjustment. Okay? Is it -- is it
10 correct that Staff is no longer supporting its original
11 position filed in the original Staff recommendation to
12 reduce the costs of Hannibal and Butler?

13 A. It's correct to say that the adjustment has
14 been reduced.

15 Q. To 308,000 for Hannibal and to zero for
16 Butler?

17 A. Correct.

18 Q. I'd like to refer you to your Schedule 8 of
19 your surrebuttal, which I believe are the work papers that
20 Mr. Poston was referring or asking you about that support
21 that \$308,000 adjustment; is that right?

22 A. That's correct.

23 Q. If you look at the Hannibal/Haven table, you
24 have the all-sales price, which is the price charged to
25 Atmos; is that correct?

1 A. Correct.

2 Q. And then you have the WACOG, or the weighted
3 average cost of gas, of the entire gas supply portfolio
4 which represents AEM's weighted cost of gas for its entire
5 portfolio; is that right?

6 A. As adjusted by Staff, yes.

7 Q. Okay. And then the P&L column would contain
8 the profits and losses from the monthly transactions; is
9 that correct?

10 A. The gross profits and losses, yes.

11 Q. And again, those would be gross profits that
12 don't reflect any of the personnel or overhead costs of
13 AEM?

14 A. From a cost standpoint, I would agree with
15 that.

16 Q. Now looking at the third table for Butler
17 down below there, it appears that the P&L column would
18 aggregate to a net loss; is that right?

19 A. That's correct.

20 Q. Is it correct to conclude that AEM can
21 actually lose money on some transactions with Atmos?

22 A. That's what this shows.

23 Q. And based on your experience here at the
24 Commission, wouldn't you agree that that can happen to gas
25 market -- to other gas marketers?

1 A. Yes.

2 Q. Is this \$308,000 adjustment for the Hannibal
3 area intended to reduce the gas costs paid by ratepayers to
4 an amount equal to what Staff now believes is the fair
5 market price that AEM received for the gas?

6 A. That AEM paid for the gas, yes.

7 Q. Okay. And that's now the Staff's estimate
8 of the gross margins of AEM on those transactions -- or for
9 Hannibal, at least. Right?

10 A. That's correct.

11 Q. To the extent the Commission wanted to
12 reflect AEM's personnel costs and overheads in its
13 calculation of the AEM profits, the Commission would have
14 to lower your \$308,000 adjustment to reflect those
15 personnel costs and overheads; is that right?

16 A. That's correct.

17 Q. And it's possible that if those personnel
18 and over -- personnel, administrative, and general
19 overheads were actually subtracted off the gross margin of
20 308,000, it would lower the estimated AEM profits. Right?

21 A. Are you referring to AEM's net profit or
22 gross profit?

23 Q. Well, we start with the gross profits and we
24 subtract off the overheads. Wouldn't that reduce the
25 estimate of AEM's net profits?

1 A. That would certainly be more a reflection of
2 net profit at that time.

3 Q. And it's even possible that such overheads
4 can eliminate the net profits depending on how much the
5 personnel and the overhead costs turned out to be; isn't
6 that correct?

7 A. In theory, if you had allocated enough
8 AEM indirect A&G costs and overheads and it added up to
9 over 308,000, then that would certainly take -- take the
10 number down to zero.

11 Q. And I believe you testified that it's
12 possible for a gas marketer not to make a profit on some
13 transactions; is that right?

14 A. Correct.

15 Q. But Staff has not estimated what AEM's
16 personnel costs and other administrative overheads would be
17 associated with the Hannibal transactions during this ACA
18 period. Right?

19 A. Correct.

20 Q. And you didn't specifically ask AEM for such
21 personnel costs or other administrative costs?

22 A. Not specifically, no.

23 Q. It's probably not likely they would have it
24 on a transaction-by-transactions basis based on the
25 information you got; is that right?

1 MR. BERLIN: Calls for speculation.

2 JUDGE WOODRUFF: Overruled.

3 THE WITNESS: I really don't know whether
4 they would keep the detailed administrative expenses in
5 this level of -- of detail. I -- I didn't receive that
6 information from AEM, so I'm -- I'm assuming they didn't
7 have it.

8 BY MR. FISCHER:

9 Q. You got the one document that had the
10 profits and loss based on the gross -- gross margin basis.
11 Right?

12 A. I would say with regard to the actual
13 numbers, AEM supplied -- supplied the one document. They,
14 based upon further discovery updated that document, based
15 upon some errors that they found in reevaluating the
16 numbers in some of their contracts.

17 And there was additional information
18 provided by AEM to some additional Staff discovery. But in
19 essence, you're looking at the numbers that they provided.

20 Q. Okay. Is the basis for the \$308,000 Staff
21 adjustment a theory that Atmos did not act prudently when
22 it accepted the lowest bid of AEM for gas supplies in the
23 Hannibal area?

24 A. No.

25 Q. Today Staff does not think it was imprudent

1 for Atmos to have accepted the lowest bid for the Hannibal
2 gas supplies; is that correct?

3 A. That is correct.

4 Q. If Atmos had accepted a higher bid from an
5 unaffiliated gas marketer that offered gas for Hannibal,
6 would Staff have had a concern about Atmos accepting a
7 higher bid in this case?

8 A. I think to the extent they had a lower bid
9 and they chose the -- the highest bid, we would be
10 concerned and want to look at that in great detail.

11 Q. So Staff would have a concern about Atmos
12 accepting a higher bid in this case?

13 A. Correct.

14 Q. Mr. Sommerer, I'd like to refer you now to
15 an exhibit your counsel marked, I think it's 24. It's the
16 Staff Filing in Response to Commission Order. It's 24 HC.
17 Do you have that in front of you by chance?

18 A. I believe so.

19 Q. I'd like to try to stay in public session
20 and I think I can do this without disclosing the highly
21 confidential information, which is primarily the names of
22 the particular bidders. But I would like to refer to them
23 based on the rank -- rank that they have, so I'll be
24 talking about the second highest or the second lowest, the
25 third lowest and the fourth lowest.

1 If you feel like you need to disclose the
2 names in your answers, would you tell me that and I can ask
3 the judge to go in camera?

4 A. Yes.

5 Q. Okay. This document essentially includes
6 the Atmos bid evaluations as an attachment to the pleading.
7 Right?

8 A. Yes.

9 Q. I'd like for you to look at Page 2 of the
10 attachment. Well, let's see, I guess it's Page 2 of the
11 actual pleading where it indicates that there in the middle
12 for the 2007-2008 ACA period, 12 months ending August '08,
13 there are two RFP bid evaluations that overlap this ACA
14 period; is that correct?

15 A. That's correct.

16 Q. Now let's turn to the appendix, the first
17 page. This indicates that Staff received four bids from
18 gas marketers in response to the RFP for the April '08
19 through March of '09 for the Hannibal area; is that right?

20 A. That's correct.

21 Q. And if we turn to the third page of Appendix
22 A, there in the bottom, there's a table and it includes the
23 four suppliers that bid and the total costs of the various
24 bids and the relative rankings of the suppliers, does it
25 not?

1 A. That's correct.

2 Q. The low bid was from Atmos Energy Marketing
3 and that bid was 14,723,472; is that correct?

4 A. That's the quantification of the bid.

5 Q. Now let's look at the second lowest bid
6 there. It's a bid of 14,000 -- excuse me, 14,761,471.
7 Correct?

8 A. That is also a quantification of the bid.

9 Q. And the name that is associated with that
10 bid is not an affiliate of Atmos Energy Corporation; is
11 that true?

12 A. That's correct.

13 Q. If Atmos had accepted the second lowest bid
14 there instead of the AEM bid, would Staff have been
15 concerned or proposed an adjustment in this case to lower
16 the gas cost to reflect the gross profits of the second
17 lowest bidder?

18 A. I would say that we would have been
19 concerned and had quite a bit of discovery around that
20 issue. I won't say whether or not there would have been a
21 disallowance. I'm not sure.

22 Q. Would you have had an affiliated transaction
23 disallowance like you had with AEM in this case?

24 A. If they had purchased from the second
25 highest bid quantification, there would not be an

1 affiliated transaction disallowance.

2 Q. Why is that?

3 A. Because [HC NAME DELETED] --

4 Q. That's okay. It's the -- the name that's
5 there is not an affiliate. Right?

6 A. That's not an affiliate.

7 Q. Okay.

8 JUDGE WOODRUFF: If you'd like, we can
9 delete that name from the transcript.

10 MR. FISCHER: All right. That would be
11 great.

12 JUDGE WOODRUFF: All right. We will do so.

13 BY MR. FISCHER:

14 Q. If -- if Atmos had accepted that second
15 lowest bid instead of the AEM bid, would -- would you think
16 you'd be making a \$308,000 affiliated transaction
17 adjustment at all?

18 A. There would be no \$308,000 adjustment.

19 Q. As I understand your testimony in the
20 deposition, Staff is not making its disallowance based on
21 the fact that Atmos chose AEM in the bid process as the
22 lowest bid. Right?

23 A. That's not what our adjustment's based on.

24 Q. Staff is making its adjustment based upon
25 what it believes AEM's fair market value is with regard to

1 the spreadsheet provided. Correct?

2 A. That is correct.

3 Q. So is it correct to conclude that if Atmos
4 had accepted that second lowest bid, then Staff wouldn't be
5 proposing an adjustment in this case?

6 A. I would want to look at all the facts and
7 circumstances surrounding --

8 MR. BERLIN: I would object, Judge. This
9 assumes some facts that are not in evidence with regard to
10 this particular bidder.

11 BY MR. FISCHER:

12 Q. Do you have your deposition, Mr. Sommerer?
13 Would you turn to Page 42, Line 16? Would you read into
14 the record the -- the question that's asked right above
15 line 16?

16 A. The question says --

17 Q. Oh, and not -- don't -- I think it may
18 include the name. Don't -- don't say the name, if you
19 wouldn't mind.

20 A. But if it accepted the blank bid, there
21 wouldn't be an adjustment, that's what we said. Right?
22 And my answer is, That's correct.

23 Q. And that's referring to the same second
24 lowest bid here, isn't it?

25 A. That's correct.

1 Q. Now the third lowest bid was a total bid of
2 \$14,958 -- I'm sorry, \$14,958,757; is that right?

3 A. That's correct.

4 Q. And that third lowest bidder is not an
5 affiliate of Atmos Energy Corporation either; is that
6 right?

7 A. That's correct.

8 Q. And the third lowest bid was approximately
9 \$235,000 higher than the AEM bid; is that right?

10 A. That's correct.

11 Q. Does Staff believe that Atmos Energy
12 Corporation should have accepted the third lowest bid that
13 was \$235,000 higher than the AEM bid?

14 A. No.

15 Q. So it's not Staff's contention that it was
16 imprudent for Atmos to have accepted a bid from AEM when it
17 could have accepted a bid from an unaffiliated gas marketer
18 that was \$235,000 higher than the AEM bid; is that correct?

19 A. That's correct.

20 Q. Now if Atmos had accepted the third lowest
21 bid instead of the AEM bid, would Staff have proposed an
22 affiliated transaction adjustment in this case to lower the
23 cost of the gas reflected -- or to reflect the gross
24 profits of the third lowest bidder?

25 A. No.

1 Q. It wouldn't have done that because that
2 bidder's not an affiliate of Atmos; is that right?

3 A. That's correct.

4 Q. The fourth lowest bid was a total bid of
5 \$15,069,726; is that right?

6 A. Yes.

7 Q. And the fourth lowest bid is not an
8 affiliate -- or bidder is not an affiliate of Atmos either.
9 Correct?

10 A. Correct.

11 Q. And that fourth lowest bid was approximately
12 \$346,000 higher than the AEM bid; is that right?

13 A. Yes.

14 Q. That bid, as you understand it, was a
15 conforming bid; is that right?

16 A. That particular bid, to my recollection, was
17 a conforming bid.

18 Q. Does Staff believe that Atmos Energy
19 Corporation should have accepted the fourth lowest bid that
20 was \$346,000 higher than the AEM bid?

21 A. No.

22 Q. Assume that Staff -- that Atmos accepted
23 that fourth lowest bid of a non-affiliate, because it knew
24 Staff would make an affiliated transaction adjustment if it
25 accepted the lowest bid from its affiliate AEM. Would you

1 make that assumption?

2 A. Okay.

3 Q. And that it would further have to
4 participate in an extensive forensic audit by Staff. Can
5 you make had a assumption?

6 A. Okay.

7 Q. If we make those assumptions, wouldn't you
8 agree that the consumers are going to be worse off?

9 A. I would certainly agree that the number here
10 is what we discussed higher and if a consumer is paying
11 that much more money in that instance, then they would be
12 worse off in terms of that dollar amount.

13 Q. \$346,000 worse off. Right?

14 A. With respect to the comparison between
15 these -- these estimates, the bid quantifications, yes.

16 Q. Now if we exclude the AEM bid from this
17 analysis and just look at the other three bids, would you
18 agree that the second lowest bid was for 14,8; third lowest
19 bid was 14 -- almost 15 million; and the fourth lowest bid
20 was 15,089,726?

21 A. Have you -- have you gone to another page?

22 Q. I don't know, maybe I did. Let's look back
23 at this page. The -- I'm trying to compare the -- the
24 unaffiliated bidders and the second lowest bid is
25 14,761,471. The third lowest bid is 14,958,757, and the

1 fourth lowest bid was 15,069,726; is that right?

2 A. That's correct.

3 Q. So just looking at those bids, it looks like
4 the -- they have a spread of about \$328,000. Does that
5 sound about right?

6 A. The spread between two, three, and four?

7 Q. Yes.

8 A. It looks to me like around \$300,000.

9 Q. Okay. Now, if we look at those bids and
10 assuming that the volumes ended up about what the
11 hypothetical bids were in the analysis, wouldn't you agree
12 that the fair market price that would be considered in --
13 would be in the range of 14.7 million to 15.1 million
14 dollars based on those three bids?

15 A. No.

16 Q. Would you turn to Page 46 of your
17 deposition?

18 A. I'm there.

19 Q. I'm not. Let's look up at the top of the
20 page on that where I ask you, If you looked at those bids,
21 wouldn't you agree that the fair market price would be
22 considered to be in that range of 14.7 to 15.1 on a million
23 dollar basis? And then you -- would you read into the
24 record your answer?

25 A. Again, using these numbers as establishing

1 the fair market value under the assumption that the volumes
2 ended up being what the hypothetical volumes were in the
3 analysis, then those dollars would represent fair market
4 value.

5 Q. Okay. Now I believe you agreed that the
6 AEM bid was less than that range; is that right?

7 A. That's correct.

8 Q. I'd like to now refer you to Schedule 6
9 that's attached to your surrebuttal testimony. Does this
10 schedule show the actual AEM invoices to Atmos for the
11 period September '7 through August '08 for both Hannibal
12 and Butler?

13 A. Could you please repeat the question?

14 Q. Yes. I'm referring to Schedule 6.

15 A. Yes.

16 Q. Does that schedule there have the actual
17 invoice totals for the period of September '7 through
18 August '8 for both Hannibal and Butler on different tables?

19 A. Yes.

20 Q. Now if we look at Hannibal, the total that
21 was actually paid during that period was just a little more
22 than 13.4 million dollars; is that right?

23 A. That's correct.

24 Q. If the Commission decided that the fair
25 market price for gas supplies during the period was

1 established by the unaffiliated gas marketer's bids in the
2 range of 14.7 to 15.1 million dollars, wouldn't you agree
3 that mathematically, Atmos paid less to AEM than that
4 range?

5 A. No.

6 Q. Would you turn to Page 48 of your
7 deposition?

8 A. I'm there.

9 Q. There on that page beginning on Line 18, I
10 asked you the question, If the Commission decided that the
11 fair market price for gas supplies during this period was
12 established by the affiliated gas marketer -- and I should
13 have said unaffiliated, because there's a sic after it --
14 the gas marketer's bids between 14.7 and 15.1 million
15 dollars, wouldn't you agree that Atmos actually paid AEM
16 less than that range? Would you read into the record what
17 you said there?

18 A. I would agree that mathematically, that is
19 less than that range, yes.

20 Q. In this case, the Staff is proposing to
21 disallow \$308,000 of gas costs thereby lowering the amount
22 passed along to gas consumers by \$308,000; is that correct?

23 A. That's correct.

24 Q. If the Commission accepts this adjustment,
25 the impact of the adjustment would be to change the cost of

1 gas that Atmos passes along to its customers by \$308,000
2 below the actual cost that it paid to AEM; is that right?
3 That's the effect of the adjustment?

4 A. That's correct.

5 Q. So if the Commission accepts this
6 adjustment, then the effect will be to lower the gas cost
7 by \$308,000 below the lowest bid; is that right? Sorry for
8 the noise.

9 A. Could you -- I was preoccupied. Could you
10 restate that question?

11 Q. I understand totally. If the Commission
12 accepts the adjustment that Staff's proposing in this case,
13 then the effect would be to lower the gas cost by \$308,000
14 below the lowest bid that Atmos received. Correct?

15 A. I don't believe that's fully correct, no.

16 Q. If Atmos had rejected the lowest bid from
17 its affiliate and instead accepted one of the higher bids
18 from an unaffiliated gas marketer, then Atmos would have
19 avoided the \$308,000 proposed adjustment being proposed by
20 Staff in this case. Correct?

21 A. That particular adjustment, yes.

22 Q. And instead, Atmos accepted the low bid from
23 AEM. Correct?

24 A. They accepted the low bid quantification,
25 yes.

1 Q. And when you subtract off the gross profits,
2 which Staff has done in this adjustment, that lowers the
3 total gas cost passed on to consumers by \$308,000.

4 Correct?

5 A. That is correct.

6 Q. There would be no affiliated transaction
7 adjustment if -- well, let me just strike that. Let me go
8 to a different one.

9 Now under those assumptions and assuming the
10 actual volumes turned out to be what was assumed in the bid
11 analysis, then Atmos's customers would have had increased
12 gas cost for this period, assuming Atmos accepted one of
13 the higher bids of the unaffiliated gas marketers. Right?

14 A. Could you restate that question, please?

15 Q. Yes. Let's go back to the assumptions and
16 make sure we don't get confused here with it. If Atmos had
17 rejected the low bid from its affiliate, okay, and instead
18 accepted one of the higher bids from an unaffiliated gas
19 marketer, and assuming the actual volumes turned out to be
20 what was assumed in the bid analysis, those three
21 assumptions, then Atmos's customers would have increased
22 gas cost during this period assuming that Atmos had
23 accepted one of the higher bids. Correct?

24 A. I don't believe that's fully correct.

25 Q. And explain why?

1 A. As we discussed in the deposition, and I
2 attempt today clarify in the deposition, it's not only the
3 volumes that change during the actual cost period but it's
4 also the pricing. When these evaluations were done and
5 these costs that you're looking at, you only assume a
6 typical volume, a normal type volume. And we discussed why
7 that may make this actual cost number lower that we're
8 trying to compare to.

9 It's not only that, but as I attempted to
10 clarify later on in the deposition, it's also the fact that
11 these bid evaluations assume an IMEX price or a forward
12 price that was available when the bid evaluation was
13 conducted. So --

14 Q. Okay.

15 A. -- these are estimated costs in an
16 evaluation that really aren't related to what the actual
17 costs end up being. And here's an example on why this --

18 Q. That's okay. I don't need to ask you for an
19 example. Let us assume one other assumption, which I guess
20 I failed to assume. Not only are the volumes the same but
21 the price is the same. Now assuming that, then Atmos's
22 customers would have increased cost for the period assuming
23 that they accepted one of the higher bids; is that right?

24 A. I don't believe that's fully correct either.

25 Q. Okay. Well, let's go on to the next one.

1 The highest unaffiliated bid was \$346,000 higher than the
2 AEM bid; is that right?

3 A. You're on Bidder No. 3?

4 Q. Yes. Oh, I'm actually on the highest of
5 unaffiliated bid, so four.

6 A. That's approximately \$346,000.

7 Q. Now, during your deposition, you indicated
8 that it was not your goal to create any sort of incentive
9 in favor of an affiliate or against an affiliate; is that
10 right?

11 A. That's correct.

12 Q. You don't believe the Commission should
13 create any type of incentive that would favor either an
14 affiliate or a non-affiliate. Correct?

15 A. That's correct.

16 Q. Is it correct that the regulatory process
17 should be neutral as to whether an LDC uses an affiliate or
18 a non-affiliated gas marketer?

19 A. That's correct.

20 Q. From your perspective, is it good public
21 policy to create an incentive for an LDC that would cause
22 it to want to accept a higher bid from an unaffiliated gas
23 marketer to avoid an affiliated transaction adjustment and
24 a forensic audit by Staff if it accepted a lower bid from
25 its affiliated gas marketer?

1 A. Not in my view.

2 Q. That's not your goal, is it?

3 A. That's correct.

4 Q. Mr. Sommerer, are you aware of any case in
5 which the Commission has accepted a similar affiliated
6 transaction adjustment as the adjustment that Staff is
7 proposing in this case?

8 A. No.

9 Q. If the Commission would accept Staff's
10 proposed adjustment in this case, wouldn't there be an
11 incentive for the Company to accept a higher unaffiliated
12 marketer bid rather than accepting a lower affiliated
13 marketer bid that has an affiliated transaction adjustment
14 associated with it?

15 A. I really can't speak for the Company's
16 intentions or how they would view a particular policy
17 statement. I don't know.

18 Q. Would you turn to Page 55 of your
19 deposition.

20 A. I'm there.

21 Q. On that page, I asked you the question, If
22 the Commission would accept this adjustment, wouldn't the
23 incentive be there for the company to accept the higher
24 unaffiliated marketer bid, which gets passed through the
25 PGA rather than accepting a lower affiliated marketer bid

1 that has an affiliated adjustment associated with it?

2 A. Yes.

3 Q. Do you see that?

4 A. Yes.

5 Q. Would you read your answer into the record?

6 A. I hope the incentive would be created that
7 if a company still wants to do business with AEM, they
8 would be -- they would require AEM to have complete records
9 regarding the transaction and that would be the incentive I
10 hope would be instilled.

11 Q. While we're in your deposition, let's turn
12 to Page 55, Lines 11 through 21.

13 A. Page 55, Lines 11 through 21?

14 Q. Yes. Do you see the question that I asked
15 there?

16 A. I'm there.

17 Q. And that's the question I just asked you.
18 Correct?

19 A. That's correct.

20 Q. Assuming that Atmos still wants to do
21 business with AEM under such regulatory policies, which
22 might be a big assumption, but let's assume that, is the
23 incentive that you hope is created by Staff's adjustment
24 that AEM would have complete records for the Staff to audit
25 in future transactions?

1 A. I would certainly hope that would be an
2 outcome, yes.

3 Q. And those -- those records would identify
4 the net profits, including personnel and administrative
5 costs on every transaction in Missouri so that to satisfy
6 Staff's desire to do a forensic audit?

7 A. I would simply say that those records would
8 include the costs that AEM believed relevant to the
9 transaction, the costs that were related to the
10 transactions that were allocated by AEM, the method that
11 AEM allocated those costs to the transaction as well as the
12 costs that may have been allocated to the transaction but
13 AEM chose not to allocate to the transaction. I believe
14 that's required by the rule.

15 Q. And AEM is an unregulated company. Right?

16 A. Yes.

17 Q. But you want those kinds of records in order
18 to do a forensic audit of AEM. Correct?

19 A. I believe those records are required by the
20 rule.

21 Q. And that's your personal opinion?

22 A. That's correct.

23 Q. Let's assume as a hypothetical that Atmos
24 accepted one bid for gas supplies from AEM that included a
25 profit. Would Staff propose an adjustment to remove that

1 profit of AEM from the gas cost passed onto Atmos
2 ratepayers as you've done in this case?

3 A. It depends upon the facts and circumstances
4 of the case.

5 Q. Didn't you testify in the deposition, Not
6 necessarily, not as a matter of course. I don't believe
7 that's certainly not my goal, I don't believe that's
8 certainly not my goal. I don't believe it's Staff's goal
9 to identify profits and disallow them from affiliated
10 marketer companies just because those affiliated profits
11 may exist?

12 A. That's correct.

13 Q. Didn't you testify in your deposition that
14 with the absolute cooperation from AEM and with
15 contemporaneous records about their gas costs, Staff would
16 not necessarily propose that AEM's profits be removed from
17 Atmos's cost of gas in the PGA process?

18 A. That is correct.

19 Q. Assuming that the Staff received the
20 information you wanted from AEM, and I believe you're
21 saying absolute cooperation, if AEM has a profit, is Staff
22 going to take the position that that profit ought to be
23 removed in the PGA process before passing it along to
24 customers?

25 A. Not as a matter of course, no.

1 Q. As I understand your testimony in your
2 deposition, the factors that would drive your decision
3 about whether to propose an adjustment to remove the
4 profits of AEM, those would include things like does
5 AEM have contemporaneous records regarding the cost of gas.
6 Right?

7 A. Correct.

8 Q. Does Staff have access to that information?

9 A. Yes.

10 Q. Does Staff have enough information to
11 understand truly what its supply was related to, its
12 business and to form a fair opinion about what type of
13 business or deal was being structured by AEM in regard to
14 its service?

15 A. Correct.

16 Q. And those are the types of factors that
17 would drive your decision. Are there any other factors
18 that we ought to be aware of that will determine if Staff
19 proposes an affiliated transaction adjustment to remove
20 AEM's profits?

21 A. Those would be the primary variables that I
22 would be considering.

23 Q. Now from your perspective as the head of the
24 procurement analysis staff and not as a lawyer, you've not
25 concluded that the affiliated transaction rule itself would

1 always require that AEM's profits be removed from the gas
2 cost of Atmos. Right?

3 A. That's correct.

4 Q. It all depends on whether Atmos is paying
5 more than the fair market price to an affiliate, AEM.
6 Right?

7 A. That is a primary focus of Staff's
8 adjustment.

9 Q. And from your perspective, the way to
10 determine whether AEM is paying above the fair market price
11 requires that Staff have access to the books and records of
12 AEM and the details and the types of upstream contracts
13 that AEM has with its upstream providers, that's what you
14 need. Right?

15 A. That's correct.

16 Q. Do you think you can be wrong on that point?

17 A. Not to my knowledge, no.

18 Q. Do you think it's possible to determine the
19 fair market price without having access to books and
20 records of gas marketers?

21 A. There may be circumstances, but with respect
22 to this particular issue, I believe that was totally
23 required that AEM provide these records.

24 Q. No. I'm not asking you that question. I'm
25 asking you whether you think it's possible to determine the

1 fair market price without having access to the books and
2 records of gas marketers?

3 A. There may be particular circumstances, as
4 I've testified before in the Greeley situation, there's an
5 affiliated transaction. We're no longer are suggesting
6 disallowance with Butler. So clearly the evidence shows
7 that there are situations that the Staff can be convinced
8 that fair market value can be ascertained by other means.

9 Q. In the Butler case, there was no profit.
10 Right?

11 A. In that particular instance, I believe
12 that's correct in terms of gross margin.

13 Q. Do you think it's possible to determine the
14 fair market price by having access to information regarding
15 the competitive bidding process?

16 A. That certainly would be evidence that the
17 Commission could consider and should consider.

18 Q. Staff does not have access to the books and
19 records of unaffiliated gas marketers. Correct?

20 A. That is correct.

21 Q. And Staff generally wouldn't have access to
22 the specific upstream contracts that unaffiliated gas
23 marketers are using to provide gas supply. Right?

24 A. That's correct.

25 Q. Without that access to books and records and

1 upstream contracts of unregulated affiliates, would Staff
2 be in a position to determine if Atmos is paying more than
3 the fair market price of gas supplied by unregulated and
4 unaffiliated gas marketers?

5 A. There's a lot to that question. Could you
6 restate it?

7 Q. Certainly. I'm asking you, let's just look
8 at unaffiliated gas marketers. And what I'm trying to
9 decide whether Staff could determine what the fair market
10 price would be without access to the books and records of
11 those unaffiliated gas marketers and the upstream contracts
12 that they use?

13 A. That's correct.

14 Q. You could tell, you could determine what the
15 fair market price would be?

16 A. Yes.

17 Q. How would Staff determine whether Atmos is
18 paying more than the fair market price to unaffiliated gas
19 marketers?

20 A. You could look at a bidding process, you
21 could look at comparable contracts, you could look at
22 published information with regard to price indices, you
23 could ask about Atmos's process of establishing fair market
24 value. All of those things would be asked in terms of an
25 unaffiliated transaction.

1 Q. You would inquire into the bidding process.
2 Right?

3 A. Precisely.

4 Q. Now, let's assume that Atmos receives two
5 identical bids; one from AEM and the other from an
6 unaffiliated gas marketer. If Atmos accepted the bid from
7 the unaffiliated gas marketer, then Staff would not remove
8 the profits of the unaffiliated gas marketer from the gas
9 costs passed along to Atmos's ratepayers. Right?

10 A. That's correct.

11 Q. But if Staff accepted -- excuse me, but if
12 Atmos accepted an identical bid from AEM, then Staff would
13 conduct an investigation into the books and records of
14 AEM and seek information about the upstream contracts of
15 AEM with its upstream suppliers; is that right?

16 A. Generally speaking, that's correct.

17 Q. Staff may or may not make an adjustment to
18 remove the profits of AEM from the transaction, depending
19 upon whether you receive cooperation or absolute
20 cooperation from AEM to give Staff access to AEM's books
21 and records and upstream contracts with its unregulated
22 suppliers. Right?

23 A. That certainly could be a major factor
24 behind Staff's disallowance, yes.

25 Q. Now, assuming that you did receive absolute

1 cooperation from AEM and you got all the records you wanted
2 from the affiliate, wouldn't you still be treating the
3 affiliated gas marketer differently than you would be
4 treating the unaffiliated gas marketer?

5 A. In terms of record retention, expectations
6 and the amount of scrutiny that goes into the transaction,
7 I would say yes, there would be a different treatment
8 there.

9 Q. Is it correct that whether you make an
10 adjustment, if it's an affiliated gas marketer depends on
11 whether the discovery process has gone well enough for you?

12 A. I would certainly say that the discovery
13 process is a key part of the disallowance consideration.

14 Q. So the answer is yes?

15 A. Well, "well enough" is a term that implies
16 that -- it's a subjective -- a very subjective term and I
17 would hope that there would be more objectivity than
18 implied by that term.

19 Q. Well, didn't you tell me, though, that if
20 you don't get cooperation from AEM, then you make the
21 adjustment. If you do get absolute cooperation, you don't
22 make the adjustment?

23 A. Well, that would certainly be a major
24 driving consideration. You would look at the fair market
25 value at that time and based upon the evidence and the

1 records that were made available under the cooperation of
2 AEM, there would still be a decision on whether you had
3 received fair market value.

4 Q. But you can tell that from the unaffiliated
5 bidder without having access to books and records and
6 upstream contracts. You look at the bidding process for
7 those. Right?

8 A. That's correct.

9 Q. Assuming Atmos received identical bids from
10 several unaffiliated gas marketers, wouldn't you agree that
11 the fair market price would be determined by the bid price
12 that was contained in those identical bids?

13 A. Not necessarily.

14 Q. Again, I guess you're going back to the
15 concern that you have with these that they are estimated
16 bids and not the actual prices and the actual volumes.
17 Right?

18 A. And assuming that you had prudent actions
19 that take place, obviously.

20 Q. Okay. Well, let's assume that you have --
21 that the bids reflect the forecasted price and the
22 forecasted volumes correctly. Under those assumptions, if
23 Atmos received identical bids from several unaffiliated gas
24 marketers, wouldn't you agree that the fair market price
25 would be determined by the bidding process, the bids that

1 were received?

2 A. Assuming the volumes stayed the same,
3 assuming that the -- the prices stayed the same and there
4 weren't any prudence disallowances, I believe that would
5 represent the fair market value.

6 JUDGE WOODRUFF: Okay. Mr. Fischer, we're
7 overdue for a break now. We've been going for two hours.
8 We need to take a break.

9 MR. FISCHER: Okay. That's probably a good
10 place to stop. Thank you.

11 JUDGE WOODRUFF: Timed it right, then.
12 We'll come back at 2:45.

13 JUDGE WOODRUFF: Cross-examination.

14 MR. FISCHER: Thank you, Judge. Could I ask
15 the court reporter to read back the last question and
16 answer to make sure I got an answer?

17 (The record was read back by the court
18 reporter.)

19 BY MR. FISCHER:

20 Q. Okay. Okay, Mr. Sommerer, I'm sorry to take
21 so long here. Assuming that Atmos received identical bids
22 from the unaffiliated -- from several unaffiliated gas
23 marketers, I think you agree that under the assumptions
24 that we've used that you get the same price and the volumes
25 that you are anticipating when you evaluate those bids,

1 that the fair market price could be determined by the bid
2 price that was contained in those identical bids. Right?

3 MR. BERLIN: Object. Is this the question
4 or?

5 MR. FISCHER: Yes. I'm trying to make sure
6 that we've covered that. I think we did.

7 MR. BERLIN: Oh, okay. Yes.
8 BY MR. FISCHER:

9 Q. We agreed to that, didn't we?

10 A. I think we did, subject to there would be a
11 prudence review, even with an unaffiliated --

12 Q. Right.

13 A. -- marketer.

14 Q. Well, if -- if we take a little different
15 approach, and if the identical bids involved an affiliated
16 gas marketer, like AEM, and several unaffiliated gas
17 marketers, like we've got in this case, then Staff would
18 need to have access to the books and records and the
19 upstream supplier contracts of the affiliated gas marketers
20 in order to determine the fair market price. Is that what
21 you're saying?

22 MR. BERLIN: I'm going to object. It's
23 assuming facts not in evidence. I believe it's a
24 hypothetical question.

25 THE WITNESS: Yes, it is.

1 JUDGE WOODRUFF: I'm going to overrule the
2 objection.

3 THE WITNESS: Could you restate the
4 question, please?

5 BY MR. FISCHER:

6 Q. Yeah, if -- if on the other hand the
7 identical bids involved an affiliated gas marketer like
8 AEM and several unaffiliated gas marketers, then Staff
9 would need to have access to books and records of the
10 upstream supplier contracts of the affiliated gas marketer
11 in order to determine the fair market price; is that true?

12 A. Generally speaking, I would say yes.

13 Q. Is it correct that the reason Staff is
14 recommending the \$308,000 adjustment for the Hannibal area
15 is that the gas marketer involved happens to be an
16 affiliated gas marketer and Staff felt it didn't get all
17 the access to the books and records that it believed it
18 needed?

19 A. That certainly is one of the major factors
20 behind the \$308,000 disallowance.

21 Q. Were there some other reasons that you made
22 the adjustment?

23 A. Well, I believe Scenario 1 and Scenario 2.

24 Q. I'm not asking about those. I'm just asking
25 about the affiliated transaction adjustment.

1 A. Precisely. And I'm attempting to bring the
2 value of AEM's supply down to AEM's fair market value.
3 That is the -- the foundation of the adjustment and I
4 attempted to understand whether that supply was
5 interruptible or not and I do believe that that's part of
6 the looking at the records, but I would agree that
7 certainly the lack of records was, you know, foundational
8 to the disallowance.

9 Q. Now the original affiliated transaction
10 adjustment for Hannibal and Butler were included in the
11 Staff's recommendation filed on December 28th, 2009; is
12 that right?

13 A. That's correct.

14 Q. Prior to the time of filing the Staff
15 recommendation at the end of 2009, had Staff filed a Motion
16 to Compel Discovery related to AEM and its books and
17 records?

18 A. Not to my recollection, no.

19 Q. Staff filed its Staff recommendation which
20 contained the original affiliated transaction adjustment
21 before there was any discovery issues. Correct?

22 A. Before we had reached an impasse regarding
23 AEM's records, that's true.

24 Q. Now is it true that the first time Staff
25 filed any motions related to the discovery issues was on

1 June 11, 2010, when Staff filed its Motion to Suspend
2 Procedural Schedule?

3 A. Could you restate the question, please?

4 Q. Yes, sir. Isn't it true that the first time
5 Staff filed any motions related to discovery issues in this
6 case was when Staff filed its Motion to Suspend Procedural
7 Schedule, which I believe was filed on June 11th, 2010?

8 A. That's my recollection.

9 Q. Now in that motion, Staff suggested that
10 Staff is unable to comply with the established deadline for
11 the failure and refusal of Atmos to provide requested
12 documents in response to data request number 117. Is that
13 your memory?

14 A. That's my recollection, yes.

15 Q. And DR 117 related to obtaining copies of
16 all supply contracts from the AEM supply listed in the
17 spreadsheet in effect during the ACA period; is that right?

18 A. That's correct.

19 Q. Is it correct that Staff proposed the
20 affiliated transaction adjustment in this case at the end
21 of December, 2009, because Staff expected that discovery
22 wouldn't proceed very well?

23 A. The adjustment was made out of concern that
24 there is an opportunity for the marketing affiliate to
25 provide less than firm supplies and so based upon Staff's

1 best information available at the time, it made the
2 disallowance.

3 Q. Is it correct that Staff's proposed
4 affiliated transaction adjustment in this case is because
5 Staff expected that there would be discovery problems?

6 A. The adjustment was made to bring the fair
7 market value of the supplies down to the best understanding
8 of AEM's fair market value. We may have indicated that
9 there was some additional discovery required and I don't
10 recall whether we had anticipated the kind of issues that
11 we eventually ran into.

12 Q. Would you refer to your deposition at Page
13 71, Line 20?

14 A. I'm there.

15 Q. Would you begin reading the question that's
16 on Line 20, and the next answer and -- the next two
17 questions and answers?

18 A. The question and answer starting at Line 20?

19 Q. Yes.

20 A. So the motivation of Staff to file an
21 affiliated transaction adjustment as part of that Staff
22 recommendation had nothing to do with discovery; is that
23 right? Actually, it did. We expected the discovery to
24 proceed.

25 QUESTION: Just like Laclede, right?

1 ANSWER: Unfortunately, it hasn't proceeded
2 very well.

3 Q. Mr. Sommerer, is it correct that Staff
4 assumed that AEM would not want to cooperate in a Staff
5 audit after it won a competitive bid and that's the primary
6 reason Staff included the affiliated transaction adjustment
7 and the Staff recommendation?

8 A. My belief was that the disallowance was made
9 to bring the fair market value of the supplies down to
10 AEM's fair market value. It was made understanding that
11 there may be additional discovery required and that the
12 adjustment may be at some point mitigated during the course
13 of the process based upon the discovery.

14 Q. Are you saying that you did not make the
15 adjustment because you had assumed that there would be --
16 there wouldn't be any discovery problems?

17 A. The adjustment was made --

18 Q. Can you answer that question?

19 A. I'd have to go back and review the Staff
20 recommendation to see all the considerations that went into
21 that judgment, if you could give me a minute.

22 Okay. In reviewing the original Staff
23 recommendation, to answer your question, I would say that
24 discovery and the potential additional discovery that Staff
25 believed it would be seeking may have been part of the

1 rationale behind making the disallowance. It doesn't
2 appear to have been the primary reason. As I've testified,
3 the fair market value is the underlying foundation for the
4 disallowance.

5 Q. But didn't you testify, too, that the only
6 time you take off those profits is if you have discovery
7 issues?

8 A. That is one of the driving factors as well.
9 And I also indicated or I tried to follow-up with you by
10 saying you would clearly want to look at the fair market
11 value after you got full discovery and cooperation.

12 Q. Let's turn to your deposition to Page 67.
13 At Line 23, do you see that?

14 A. Yes.

15 Q. I asked you the question, So is it in the
16 eye of the beholder whenever the discovery process has
17 worked well or when do you make that adjustment? Would you
18 read the answer that you gave me?

19 A. This would be a determination made, and I
20 would be making an assessment on whether there's enough
21 information there that's been provided that you can get an
22 adequate understanding of the transaction.

23 Q. Okay. Is it correct that Staff didn't have
24 sufficient information to support your original affiliated
25 transaction adjustment contained in Staff's December, 2009

1 recommendation at the time you filed it?

2 A. We believe there was enough support to
3 quantify an adjustment, go forward with a procedural
4 schedule, but we would continue to seek further information
5 to see if the adjustment could -- could be refined or
6 mitigated.

7 Q. You needed more discovery to support your
8 adjustment. Correct?

9 A. We believed discovery would continue in the
10 procedural schedule and to the extent we had better
11 information, we would refine the adjustment.

12 Q. You knew you couldn't support your original
13 adjustment without more discovery. Correct?

14 MR. BERLIN: Objection; asked and answered.

15 MR. FISCHER: It's a different question,
16 Judge.

17 JUDGE WOODRUFF: Overruled.

18 THE WITNESS: I believe that sufficient
19 evidence existed at the time we made our recommendation,
20 that it was a valid adjustment when we made the
21 recommendation.

22 BY MR. FISCHER:

23 Q. But it's no longer the recommendation you're
24 supporting, right, based on additional discovery?

25 A. Yes.

1 Q. Mr. Sommerer, do you personally believe that
2 the Commission should prohibit affiliated transactions
3 between LDCs and affiliated gas marketers?

4 A. My personal opinions are that at some point
5 in some context, we may need to take a close look at the
6 rule, perhaps in terms of an amendment if these cases
7 proceed the way they're proceeding. It's obvious to me
8 that there is a real problem in terms of the affiliated
9 transactions flowing through the PGA, access to discovery,
10 the discovery disputes that ensue, the time that it takes
11 to -- to litigate the case. That is not a good thing for
12 anyone.

13 Q. And that's true even if you have a robust
14 fully competitive bidding process that starts this process
15 off before you ever get to the affiliated contract; is that
16 right?

17 A. There certainly could be difficult discovery
18 issues. To the extent you had a robust RFP process with
19 many bidders, you know, there are situations where the
20 Staff has given weight to that, as we've discussed. In the
21 case of Greeley, we didn't seek as much detailed
22 information. We did seek some.

23 And so I won't say universally that every
24 affiliated transaction will result in a massive discovery
25 dispute, but in this particular case, it's gone that way.

1 Q. But aren't you saying -- aren't you
2 suggesting to the Commission that you, the Staff auditors,
3 are the arbiter of what is -- or the determiner of what is
4 a fair market price rather than the market itself?

5 A. I would expect in the case of affiliated
6 transactions additional scrutiny to be applied. And as
7 we've testified all along, that an RFP doesn't necessarily
8 set a fair market value in all cases.

9 Q. If the Commission prohibited affiliated
10 transactions between LDCs and the affiliated gas marketers,
11 then Staff wouldn't have a concern about giving such
12 transactions increased regulatory scrutiny like you just
13 mentioned. Right?

14 A. If there were no affiliated transactions
15 that were run through the PGA, then presumably there would
16 be no scrutiny about affiliated transactions.

17 Q. If the Commission prohibited affiliated
18 transactions between LDCs and affiliated gas marketers, do
19 you believe that it would necessarily benefit consumers?

20 A. Not necessarily.

21 Q. In some cases, affiliated gas marketers may
22 be able to provide gas supplies at the lowest price to
23 consumers. Right?

24 A. That is a possibility.

25 MR. FISCHER: Judge, this is already in the

1 record, but I would like to ask the witness about it. It's
2 the Staff's position statement.

3 JUDGE WOODRUFF: All right. Did you wish to
4 mark this as an exhibit?

5 MR. FISCHER: You know, I don't think I need
6 to have it in evidence. It's just the position they
7 stated. Well, why not. Let's mark it as an exhibit.

8 JUDGE WOODRUFF: All right. It's number 29.
9 (Wherein; Atmos Exhibit No. 29 was marked
10 for identification.)

11 BY MR. FISCHER:

12 Q. Mr. Sommerer, do you recognize Exhibit 29?

13 A. Yes.

14 Q. Is that the Staff's position statement that
15 was filed in this case on June 30th of this year -- or last
16 year? Excuse me.

17 A. Yes.

18 Q. And on Page 1 of the Staff's position
19 statement, it states, It's Staff's position that the rates
20 charged by Atmos in its Butler and Hannibal service areas
21 were not just and reasonable because the rates did not
22 merely pass on the cost of gas, but it included a profit
23 for Atmos's shareholders; is that correct?

24 A. That's correct.

25 Q. Is that still the position of the Staff in

1 this case?

2 A. As we discussed during the deposition, that
3 was the Staff's position. I have focused on the fair
4 market value, and to me, it had the result or the effect of
5 reducing the profits. But I've also testified that just
6 because there is a profit by the affiliate doesn't
7 necessarily mean you have an unjust rate. So I would not
8 have characterized this in the way that the general counsel
9 did in this position statement.

10 Q. So you don't personally support it, at least
11 on an unqualified basis, what was said there?

12 A. I think the spirit of what was said was that
13 in this particular case, the profits will be disallowed.
14 But this particular sentence as it's used, I can't give it
15 an unqualified agreement from my standpoint.

16 Q. Okay. Let's -- let's go back to Exhibit 24.
17 We looked at the first RFP process. I'd like to look at
18 the second RFP process in a much shorter time, I hope. Do
19 you have that exhibit?

20 A. I'm not sure if I still have it or not.
21 I'll look.

22 Q. It was the Staff Filing in Response to
23 Commission Order, Exhibit 24 HC.

24 A. I still have it.

25 Q. Let's look at the bid evaluation for the

1 period April 1st, 2007, through March 31, 2008, on the
2 seventh page of the appendix. And let's look at the
3 revised one that has -- in the lower right-hand corner. Do
4 you have that page? What I wanted to look at says, AEC
5 revised in handwriting on the right-hand side.

6 MR. FISCHER: Can I approach the witness?

7 JUDGE WOODRUFF: You may.

8 THE WITNESS: I found it.

9 BY MR. FISCHER:

10 Q. Okay. Great. Sorry. Now, for this period,
11 Atmos received seven bids for the gas supplies in Hannibal.
12 Right?

13 A. It looks like they've received seven ranked
14 bids, yes.

15 Q. And the lowest bid was \$13,947,511.
16 Correct?

17 A. Correct.

18 Q. The second lowest bid was the 14,049,424 or
19 about \$102,000 more than the lowest AEM bid. Correct?

20 A. Correct.

21 Q. And now the second lowest bid I think is
22 about one percent higher than the AEM bid. Correct?

23 A. That's correct.

24 Q. Is it Staff's contention that any of the
25 bids here, that AEM was imprudent to have accepted the

1 AEM bid instead of accepting the higher bids?

2 A. That's not my position.

3 Q. I think we could go through all seven of
4 these bids, but I think we could short-circuit it by just
5 asking: Do you agree that there were six higher bids that
6 Atmos could have accepted for this period that were higher
7 than the AEM bid?

8 A. Yes.

9 Q. The highest bid was for \$14,431,937; is that
10 correct?

11 A. I'm showing the highest bid, number seven,
12 is \$14,541,937.

13 Q. And that's about almost \$600,000 more than
14 the lowest bid for AEM. Right?

15 A. That's correct.

16 Q. Now just looking at the bids for the
17 unaffiliated markers, the second through the seventh, the
18 range is about \$500,000 for those unaffiliated -- or the
19 spread, I guess is a better word, would be about \$500,000
20 among the unaffiliated gas marketers?

21 A. That's correct.

22 Q. And based upon these unaffiliated gas
23 marketer bids, would you agree that the fair market price
24 for the gas during this period to Hannibal would be
25 somewhere between 14 million and 14 and a half million

1 dollars, that's the range?

2 A. Well, again, assuming what we've already
3 discussed about volumes and estimated prices and then the
4 prudence would still be applicable, that's -- that's the
5 fair market value.

6 Q. And I believe you agree that the AEM bid was
7 for \$13,947,297, which was less than the fair market price
8 established by these unaffiliated gas marketer bids.
9 Right?

10 A. That's correct.

11 Q. And again, you're not questioning the
12 decision of Atmos to take the low bid on this particular
13 RFP process. Right?

14 A. That's correct.

15 Q. Let's go back to the Staff's position
16 statement. On Page 1 of the position statement -- well, we
17 just talked about it. There they said it was not just and
18 reasonable because the rates didn't merely pass on the cost
19 of the gas but included a profit. And you said you don't
20 necessarily agree that that's the case?

21 A. That is not the focus of Staff's adjustment
22 here, that merely because there's a profit that a
23 disallowance is made.

24 Q. Your emphasis has been on the fair market
25 value?

1 A. That's correct.

2 Q. And I believe you just testified that at
3 least in this last set of bids, Atmos's bid was lower than
4 the fair market value?

5 A. Again, assuming the conditions that you and
6 I discussed regarding the volumes and the estimated prices,
7 that's -- that was what my testimony was, yes.

8 Q. At the time the Staff filed its position
9 statement in June of 2010, is it correct to conclude that
10 Staff believed that the rates charged by Atmos were not
11 just and reasonable because the rates did not merely pass
12 on the cost of gas but included a profit for AEM?

13 A. I would say that it's correct to say that we
14 didn't have sufficient evidence to support the request for
15 total pass-through of the AEM cost of gas. So the
16 disallowance was meant to bring this back to our best guess
17 of AEM's fair market price.

18 Q. You had enough information to suggest that
19 The Atmos rates were not just and reasonable. Right?

20 A. Correct.

21 Q. Mr. Sommerer, in your deposition, you
22 indicated that -- well, you told me that Staff really
23 doesn't have much choice except to make the adjustment,
24 which may well include AEM's profits because we're looking
25 at AEM's fair market value in this case. Do you recall

1 that?

2 A. Yes.

3 Q. From your perspective, Staff didn't have
4 much of a choice except to make the adjustment in the Staff
5 recommendation because you didn't have sufficient
6 information about AEM's fair market value or fair market
7 price at the time you filed the Staff recommendation?

8 A. I believe that sufficient evidence existed
9 to make the adjustment, but I do believe that additional
10 discovery would have completed the Staff's inquiry.

11 Q. But the Staff had already completed a
12 year-long audit of the ACA period, hadn't it?

13 A. Yes.

14 Q. And I believe you testified there were no
15 discovery motions filed in this case prior to the time you
16 filed your Staff recommendations. Correct?

17 A. That's correct.

18 Q. Why was it that you felt you didn't have
19 much choice but to make the proposed affiliated transaction
20 disallowance when there had been no discovery issues in the
21 case?

22 A. Based upon the information that I had at the
23 time, which was the -- the trader's estimate of gas cost, I
24 believe that it was not fully supported in terms of whether
25 it was firm or interruptible supply. And so based upon

1 that evidence, the disallowance was made.

2 Q. What would you recommend to the Commission
3 be the criteria for the Commission to decide when you allow
4 an affiliated company's profits to be passed on and when
5 you don't?

6 A. I would think it would be based upon
7 competent and substantial evidence of the record.

8 Q. Let's turn to Page 83 of your deposition. I
9 asked you on -- get to the right page -- what would you
10 recommend be the -- on Line 6, I asked you the question,
11 What would you recommend be the criteria for the Commission
12 to decide when you allowed an affiliated company's profits
13 to be passed on and when you don't. Would you read into
14 the record your statement there, beginning on Line 9?

15 A. I would tell the Commission that they need
16 to have access, or their Staff needs to have access to the
17 affiliate's information because you do risk certain things
18 an affiliate can could to win bids, have low fair market
19 value. That's why it's important to look at the
20 affiliate's information, so I would recommend to the
21 Commission they need to pursue records of the affiliate.

22 Q. Thank you. Is it correct to conclude that
23 while it's not unreasonable for an unaffiliated gas
24 marketer to earn a profit on gas transactions with Atmos,
25 it would be unreasonable for Atmos to pass along those

1 profits to ratepayers through the PGA process if the Staff
2 doesn't have access to books and records of the affiliate?

3 A. If the Staff does not have records of the
4 affiliate and cannot find compensating evidence, then I
5 would say the disallowance is appropriate.

6 Q. Is it correct to conclude that the primary
7 consideration regarding whether gross profits of the
8 affiliate should be removed from the gas costs that are
9 passed on to customers depends on whether Staff have all
10 the information from the affiliate it believes necessary to
11 evaluate the fair market price of the gas?

12 A. That certainly would be one of the
13 foundational items, yes.

14 Q. So ultimately, it's about whether Staff can
15 audit the affiliated gas marketer; is that right?

16 A. And derive information about fair market
17 value that's the basis of this disallowance.

18 Q. And Staff has no ability to audit the
19 business practices of the unaffiliated gas marketers; is
20 that right?

21 A. I would say that's correct. Yes.

22 Q. So it's correct to conclude that Staff
23 intends to treat the transactions that involve an
24 affiliated gas marketer differently than the transactions
25 that involve an unaffiliated gas marketer even after we've

1 had a robust competitive bidding process?

2 A. Well, there's always a question about how
3 robust and competitive the bidding process is. You would
4 want to look at that. And I would also say the bidding
5 process will not always yield a fair market value. So, you
6 know, even if it has the appearance of a robust and
7 competitive bidding process, you would want to seek that
8 information.

9 Q. So the answer is yes?

10 A. Could you repeat the question, please?

11 Q. So it's correct to conclude that Staff
12 intends to treat the transactions that involve an affiliate
13 gas marketer differently from the transactions that involve
14 an unaffiliated gas marketer even at the end of a fully
15 robust and competitive bidding process?

16 A. Generally speaking, yes.

17 Q. Now let's look back at the Staff's position
18 statement again. There on the lower paragraph on the first
19 page, you say, The PGA ACA mechanism which protects LDCs
20 from the effects of natural gas price volatility by
21 removing regulatory lag to the greatest extent possible by
22 permitting rate changes outside of a general rate case is
23 legally permissible only if the rate simply passes on to
24 ratepayers the cost of which the LDC obtained the
25 commodity. Is that what Staff's position is?

1 A. Well, you have the word "legally" stated
2 there, and I'm not an attorney.

3 Q. Let's take that out. That's Staff position
4 is really what I was asking.

5 A. The document speaks for itself and it speaks
6 to the fact that the PGA is a -- a pass-through, which
7 means the LDC should not make profit in the context of the
8 PGA clause.

9 Q. Does Staff dispute that Atmos was obligated
10 to pay the price it agreed to pay AEM when it accepted the
11 AEM bid for Hannibal?

12 A. Could you re-ask, please?

13 Q. Yes, sir. Does Staff dispute that Atmos was
14 obligated to pay the price it agreed to pay AEM when it
15 accepted the AEM bid?

16 A. Yes.

17 Q. You do dispute that they had an obligation
18 to pay for it or that you don't?

19 A. They had an obligation to pay that price.

20 Q. Okay. Now let's turn to Page 2. The middle
21 of the page on the Staff position statement where it says,
22 Further, Staff points out that Atmos's behavior in this
23 regard is common among Missouri LDCs with a result that
24 Staff now urges the Commission to prohibit LDCs from
25 engaging in gas supply transactions with unregulated

1 affiliates and subsidiaries; is that correct?

2 A. That's correct.

3 Q. Is Staff urging the Commission to prohibit
4 LDCs from engaging in gas supply transactions with
5 unregulated affiliates and subsidiaries as is stated here?

6 A. My reading of this is it's a policy point
7 that -- to the extent that the discovery disputes continue
8 in this manner, that the litigation and the years' worth of
9 disputes continue, then the seriousness of that -- that
10 issue needs Commission attention. And that may require an
11 amendment to the affiliated transaction rule.

12 Q. So you're not -- are you recommending that
13 here?

14 A. No.

15 Q. So as I understand your testimony in the
16 deposition, this came out of a position paper that somebody
17 put together in a Laclede case; is that right?

18 A. I -- I believe that's part of the background
19 behind that statement, yes.

20 Q. In this case, we've had two DRs that there
21 was a problem with. Right?

22 A. I believe that the Staff has had some
23 concerns about the completeness of some of the answers.
24 But in terms of a Motion to Compel, we've moved forward
25 with -- with that in two different time frames.

1 Q. Now the affiliated transaction rule, as you
2 understand it, requires that LDCs use competitive bidding
3 to obtain its gas supplies unless it can demonstrate why
4 it's not necessary to use competitive bidding; is that
5 true?

6 A. That's my understanding.

7 Q. And Atmos has used the competitive bidding
8 process in this case, hasn't it?

9 A. Yes.

10 Q. Staff apparently believes that if an
11 affiliated gas marketer wins that competitive bidding
12 process, then Staff needs to launch this forensic
13 investigation into the business practices of the affiliated
14 gas marketer to determine the fair market price of the gas
15 being supplied by the affiliate. Correct?

16 A. Generally speaking, I think that's required,
17 yes.

18 Q. Otherwise, if an unaffiliated gas marketer
19 wins the bidding process, then Staff will accept the final
20 bid as the fair market price for the gas; is that right?

21 A. Subject to prudence review, I would say
22 that's correct.

23 Q. So if the unaffiliated gas marketer wins the
24 bidding process, then Staff does not conduct an
25 investigation into the fair market price of the gas.

1 Correct?

2 A. There wouldn't be the detailed investigation
3 you have with an affiliated transaction.

4 Q. I'm just about done, Mr. Sommerer, but are
5 you familiar with the Commission's affiliated transaction
6 rules, both the gas marketer rule and the affiliated
7 transaction rule?

8 A. Yes.

9 Q. I think those rules have been in effect for
10 quite awhile, going back to the '99 and then it was taken
11 to the Supreme Court, but it's been in effect for quite
12 awhile. Correct?

13 A. Correct.

14 Q. Do you happen to have a copy of the
15 affiliated transaction rule? If you don't, I've got one
16 here. Okay. I'd like to refer you to the 40.016 rule, the
17 Marketing Affiliate Rule on Page 5. There the purpose
18 clause at the very beginning states, This rule sets forth
19 standards of conduct, financial standards, evidentiary
20 standards and recordkeeping requirements applicable to all
21 Missouri Public Service Commission, parentheses Commission,
22 regulated gas corporations engaging in marketing affiliate
23 transactions. Do you see that?

24 A. Yes.

25 Q. Wouldn't you agree that the marketing

1 affiliate transaction rule specifically authorizes and
2 contemplates that LDCs may engage in affiliated
3 transactions with their affiliated gas marketing
4 affiliates?

5 A. Yes.

6 Q. From your perspective as a non-lawyer,
7 wouldn't you agree that on its face, it would be
8 inconsistent with this marketing affiliate transactions
9 rule for the Commission to adopt the recommendation of the
10 Staff to prohibit LDCs from engaging in gas supply
11 transactions with affiliates?

12 A. From my layperson standpoint, I would think
13 that that policy approach without some rulemaking effort
14 would be inconsistent with this current rule.

15 Q. Now, let's go down to -- go to the -- the
16 other rule, the 015 rule, particularly Subsection (3)(a)
17 There it states, When a regulated gas corporation purchases
18 information, assets, goods or services from an affiliated
19 entity, the regulated gas corporation shall either obtain
20 competitive bids for such information, assets, goods, or
21 services, or demonstrate why competitive bids were neither
22 necessary or appropriate; is that right?

23 A. That's correct.

24 Q. As you understand this rule, is it correct
25 that when an LDC purchases goods or services from an

1 affiliate, then the rule requires the LDC to utilize
2 competitive bidding for goods or services unless it
3 demonstrates why competitive bids aren't necessary or
4 appropriate?

5 A. That's my understanding.

6 Q. And you've agreed that Atmos followed the
7 preferred method of competitive bidding in this case.
8 Right?

9 A. Correct.

10 Q. Now turning back to your direct testimony on
11 Page 5 at Line 10 where you state, While the Commission's
12 affiliated transaction Rule 4 CSR 240-40.015 subsection --
13 Section 2(a) is not the only basis for determining prudence
14 of transactions. The Commission's rules states that a
15 regulated gas corporation shall not provide a financial
16 advantage to an affiliated entity. Right?

17 A. Correct.

18 Q. Then you state at the bottom of Page 5 and
19 carry over to Page 6, It further defines how such
20 transactions are to be priced to prevent giving a financial
21 advantage to an affiliate. This pricing requires the
22 regulated entity to compensate the affiliate for goods or
23 services at the lesser of the fair market price, or equally
24 distributed costs to the regulated gas corporation to
25 provide the goods or services for itself; is that right?

1 A. That's correct.

2 Q. And Staff has attempted to ascertain the
3 fair market value or the fair market price of the gas
4 purchased by Atmos from AEM in this case. Right?

5 A. Correct.

6 Q. According to your rebuttal testimony, Staff
7 has not focused on the fully distributed costs in this
8 case. Right?

9 A. Correct.

10 Q. And I believe that in the October 20
11 hearings in this case, you indicated that there was no
12 adjustment proposed by Staff based upon fully distributed
13 cost to Atmos. Right?

14 A. That's correct.

15 Q. And I believe Mr. Berlin indicated in those
16 hearings that Staff does not have any concerns over Atmos's
17 cost allocation matter. Do you recall that?

18 A. I do recall that -- that discussion, and I
19 believe I clarified it to say we are clearly looking at the
20 fair market value of the gas, but we have not raised any
21 concerns about their -- their CAM.

22 Q. On Page 6 of your testimony at page -- at
23 Lines 9 through 11, you state, The reason the Staff made
24 the adjustment in this case is that the customer in
25 Hannibal and Butler areas should not have to pay for more

1 than the fair market value for their gas. Correct?

2 A. Correct.

3 Q. Assuming that the Company is getting the
4 same natural gas supplies, does Staff have any concerns
5 that consumers pay less than the fair market price for
6 natural gas?

7 A. Assuming you have the same level of service
8 and the same contractual obligations, if you pay less than
9 fair market value, I don't believe that would be imprudent.

10 Q. Does Staff have any concern if consumers pay
11 less than the fair market price for their gas even if it's
12 provided by an affiliated company?

13 A. My answer would be the same.

14 Q. Do you personally believe that the
15 affiliated transaction rule's intended that consumers don't
16 pay a profit on affiliated transactions?

17 A. That's not my opinion.

18 Q. What's the policy reason that Staff has
19 suggested to the Commission that they should prohibit LDCs
20 from engaging in gas supply and transactions from
21 unaffiliated -- or unregulated affiliated through
22 subsidiaries?

23 A. I think driving that recommendation and it
24 was made back in the white paper that the Commission asked
25 for in the Laclede case and it was echoed again in the

1 position statement that when discovery becomes so difficult
2 and the access to the affiliated information is -- is so
3 difficult to -- to get, there needs to be a consideration
4 of that -- that option.

5 Q. Let's change gears just a little bit.
6 Mr. Sommerer, is it reasonable for LDCs like Atmos to
7 cooperate with their suppliers to mitigate adverse
8 consequences to the entire pipeline system when there's a
9 rupture on a natural gas pipeline?

10 A. I think as we discussed in the deposition,
11 it's reasonable assuming that there's no detriment to the
12 LDC in taking those actions.

13 Q. Wouldn't you expect the LDCs to cooperate
14 with their suppliers to mitigate such adverse consequences
15 to the entire pipeline system whether or not those
16 suppliers are affiliated or unaffiliated companies?

17 A. To the extent that it does not have a
18 negative impact, that it doesn't have a negative impact, I
19 would say that's a reasonable course of action.

20 Q. Now prior to the time you filed your
21 surrebuttal testimony, did you discuss the December, 2007
22 disruption in supply with Becky Buchanan?

23 A. Prior to the surrebuttal testimony?

24 Q. Yes.

25 A. There were no calls that I can recollect

1 prior to surrebuttal or after surrebuttal regarding that
2 issue.

3 Q. Prior to the time you filed your surrebuttal
4 testimony, did you discuss that disruption in supply with
5 Mike Walker?

6 A. Same answer.

7 Q. Prior to the time you filed your surrebuttal
8 testimony, did you discuss the December, 2007 disruption of
9 supply with any personnel at AEM?

10 A. And I know I was asked that in deposition
11 and I believe I said I don't recollect; however, upon
12 further thought, if you're asking me about the time frame
13 when the force majeure event occurred, there may have been
14 some discussion or e-mail with -- with Atmos employees
15 regarding the -- the general disruption. I don't recall.

16 Q. With Atmos or AEM?

17 A. Atmos.

18 Q. Did you discuss the disruption of supply
19 with any personnel at AEM?

20 A. No.

21 Q. Prior to the time you filed your surrebuttal
22 testimony, did you discuss the December, 2007 disruption of
23 supply with anyone at Panhandle Eastern?

24 A. Prior to surrebuttal, there may have been a
25 call to Panhandle Eastern regarding the general nature of

1 the event.

2 Q. Was that a call with Jackie Butler?

3 A. Yes.

4 Q. Did Jackie Butler confirm that there was a
5 pipeline rupture in December of 2007?

6 A. Yes.

7 Q. So Staff doesn't dispute that there was a
8 pipeline rupture in December of 2007; is that right?

9 A. No.

10 Q. And you don't dispute that there was a force
11 majeure declared by the pipeline in that time period
12 either. Right?

13 A. Correct.

14 Q. Did you have any conversations with Jackie
15 Butler on Monday of this week?

16 A. I don't recall if it was Monday, Tuesday, or
17 late last week, but I have had conversations with Jackie
18 Butler in the last several days.

19 Q. Did she tell you that the force majeure in
20 December of 2007 effected other areas besides Missouri?

21 A. I don't recall.

22 Q. Did she tell you that Panhandle Eastern was
23 cutting Michigan customers, too, during that period?

24 A. I think general comments were made that some
25 of the cuts were universal in nature.

1 Q. Did you happen to tell her that you were
2 going to testify in this hearing this week?

3 A. No.

4 Q. Was your call to Panhandle Eastern, this
5 recent call, part of your forensic investigation into the
6 business practices of AEM?

7 A. It was part of an attempt to understand
8 generally what was going on, some definition --
9 definitional issues about Panhandle's codes, how Panhandle
10 operated during the force majeure, how Panhandle made
11 determinations on who would be cut and the nature of the
12 cuts.

13 Q. By the way, who -- who on Staff would
14 determine that Staff needs to conduct a full-blown forensic
15 investigation into AEM when you have competitive bidding
16 processes as required by the affiliated transaction rule?

17 A. It's a basic policy decision where the
18 general counsel's office and my supervisor would be aware
19 of the discovery issues and the nature of Staff's
20 investigation.

21 Q. But would it be your call or would it be
22 Natel Dietrich's (ph.) call or who would decide that you
23 need to do a full-blown forensic investigation?

24 A. It would be my recommendation as reviewed by
25 the general counsel's office and my supervisor.

1 Q. Which is, let's see, Mr. Schallenberg?

2 A. Correct.

3 Q. Okay. On Page 3 of your surrebuttal
4 testimony, you were asked the question on Line 7 through 8,
5 Ms. Buchanan discusses on Page 3 of her rebuttal testimony
6 that the rules do not specify that a profit constitutes a
7 financial advantage. Do you agree? Do you see that
8 question?

9 A. You're on Page 3, Line 7 and 8 of my
10 surrebuttal?

11 Q. That's correct.

12 A. I see it.

13 Q. And on that point, you agree with
14 Ms. Buchanan. Correct?

15 A. Correct.

16 Q. Then you go on to state, However, I consider
17 a marketing affiliate's use of interruptible supply or the
18 use of interruptible transportation to fulfill a firm
19 obligation to be the same as giving a financial advantage
20 to the affiliate. Right?

21 A. Correct.

22 Q. Now, the affiliate transaction rules don't
23 specify that, do they?

24 A. Not directly, no.

25 Q. That's just your personal opinion?

1 A. That's -- based upon my judgment that if you
2 are able to provide interruptible service at a firm price,
3 it would be giving the affiliate an advantage.

4 Q. Is it Staff's position that the use of
5 interruptible supply or interruptible transportation by an
6 affiliate would constitute a financial advantage under the
7 Commission's rules?

8 A. I believe it would be a preference. The
9 financial advantage provision discusses that it needs to be
10 at lower of, so that's where you need to take a very close
11 look at the nature of the service and the fair market value
12 of that service. So that's where that -- that -- that
13 discussion is coming from.

14 Q. Didn't you testify, though, in your
15 deposition that you didn't approach Staff with that
16 question?

17 A. In terms of what constitutes a financial
18 advantage?

19 Q. Whether interruptible supply and
20 interruptible transportation by an affiliate would
21 constitute a financial advantage.

22 A. That may have been my testimony in the
23 deposition.

24 Q. And you agree with that today?

25 A. That I haven't asked Staff whether an

1 interruptible service would constitute a financial
2 advantage, I think my testimony would be the same.

3 Q. Mr. Sommerer, I've said this before, but I
4 hope to be almost done. Would you agree that if the
5 Commission adopts the Staff's affiliated adjustment in this
6 case, it would be a disincentive for Atmos and AEM to do
7 business together in the future?

8 A. That could very well be the result.

9 Q. Is it the goal of Staff in this proceeding
10 to provide a disincentive for Atmos to do business with its
11 affiliated gas marketer in the future?

12 MR. BERLIN: Objection, that was asked and
13 answered.

14 MR. FISCHER: It was?

15 JUDGE WOODRUFF: Objection's overruled.

16 THE WITNESS: No.

17 BY MR. FISCHER:

18 Q. Is it the goal of Staff in this proceeding
19 to advocate policies that would have the practical effect
20 of having the Commission implicitly prohibit LDCs from
21 engaging in gas supply transactions with an unregulated
22 affiliate?

23 A. Could you restate the question, please?

24 Q. Yes, I bungled it. Is it the goal of Staff
25 in this case to advocate policies that would have the

1 practical effect of having the Commission implicitly
2 prohibit LDCs from engaging in affiliated transactions with
3 their gas marketers -- with their affiliated gas marketer?

4 A. No.

5 Q. But you haven't amended your position
6 statement. Correct?

7 A. That's correct.

8 Q. Well, if the Commission decided that the
9 adoption of Staff's proposed affiliated transaction
10 adjustment in this case would be a disincentive for Atmos
11 and AEM to do business in the future, would you personally
12 continue to advocate that there should be a \$300,000
13 adjustment in this case -- \$308,000 affiliated transaction
14 adjustment?

15 A. I would faithfully follow the Commission's
16 direction from a Commission Order.

17 Q. So if they agree that this would be a
18 disincentive for them to adopt it, you would be willing to
19 withdraw that \$308,000 adjustment?

20 A. I would want to discuss that with -- with
21 other staff before I made that agreement.

22 Q. Wouldn't it be more transparent -- we've
23 heard about transparency in this case -- for the Staff to
24 advocate an outright prohibition of affiliated transactions
25 with affiliated gas marketers if that's what you really

1 want?

2 A. I think the Staff needs to assess the
3 effectiveness of the discovery and the time it takes to
4 find the -- the records and retrieve the records that Staff
5 believes is relevant. And for that reason, there should be
6 a discussion and an on-the-table. Pursuant to that
7 discussion should be the option of prohibiting these types
8 of transactions.

9 Q. Okay. Let's go back and change gears one
10 more time. Would you agree that Atmos could have accepted
11 higher bids from affiliated gas marketers during the ACA
12 period?

13 A. Could you restate the question, please?

14 Q. Would you agree that Atmos could have
15 accepted higher bids from unaffiliated marketers during the
16 ACA period?

17 A. That certainly would be a possibility that
18 they could have accepted a higher bid.

19 Q. So the price at which Atmos obtained gas
20 from AEM was no higher than would be payable by Atmos to an
21 unregulated seller in dealing at armslength. Correct?

22 A. With the provisions that we've discussed
23 numerous times, which is assuming that the volumes were the
24 same and the pricing was the same and the, you know,
25 discuss we have a performance question about AEM's

1 performance and what that impacted. But under the
2 hypothetical that you have, I don't think that we would
3 have had an issue had the company chosen an unaffiliated
4 supplier assuming that that was the lowest -- the lowest or
5 the -- the lowest bid, I guess is what your question is.

6 Q. Well, I'm asking: The price at which Atmos
7 obtained gas from AEM was no higher than would have been
8 paid if it accepted one of those unaffiliated bids.
9 Correct?

10 A. Again, you're comparing actuals to -- to the
11 bidding process and we don't know exactly what the -- the
12 bids, the actual result of the bids would have been on an
13 actual-cost basis.

14 Q. When we did look at the actual costs,
15 though, it turned out it was lower than all the other bids.
16 Right?

17 A. Based upon actual prices and actual volumes,
18 yes.

19 Q. And based upon that conclusion that Atmos
20 paid less than the market price that they would have paid
21 to all other or to other unaffiliated gas marketers, would
22 you be willing to recommend that the Staff withdraw this
23 \$308,000 proposed disallowance when it filed its brief in
24 this case?

25 A. Not without understanding more about the

1 value of service received.

2 Q. From your perspective?

3 A. Correct.

4 MR. FISCHER: Thank you. I appreciate your
5 patient. I think I'm done.

6 JUDGE WOODRUFF: Thank. Did you wish to
7 offer 29?

8 MR. FISCHER: Yes, I would offer 29.

9 JUDGE WOODRUFF: Twenty-nine has been
10 offered. That was the Staff's position statement. Any
11 objections to its receipt?

12 Hearing none, it will be received.

13 (Wherein; Atmos Exhibit No. 29 was received
14 into evidence.)

15 JUDGE WOODRUFF: Going to questions from the
16 bench then. Commissioner Jarrett?

17 COMMISSIONER JARRETT: I don't have any
18 questions.

19 JUDGE WOODRUFF: I do have a couple
20 questions, just to try to clarify a few things.

21 QUESTIONS BY JUDGE WOODRUFF:

22 Q. There's been two sets of disallowances
23 Proposed in this case, as I understand it. The first one,
24 the \$308,000 that was discussed and then the second one
25 that was proposed in the -- in your surrebuttal testimony.

1 A. Yes.

2 Q. My question: Are those disallowances
3 cumulative? In other words, if we -- if the Commission
4 were to approve the \$308,000 disallowance, would it still
5 look at the \$58,000 in addition?

6 A. No, they are not cumulative. We would ask
7 the Commission to consider these adjustments independently.

8 Q. Okay. So what you're saying, we could -- if
9 the Commission approved the \$308,000 disallowance, it could
10 also approve the \$50,000 [sic] disallowance on top of the
11 308?

12 A. That's not my recommendation. I think that
13 I would recommend the Commission consider the \$52,000
14 disallowance, the \$85,000 disallowance, and the \$308,000
15 disallowance. It is not my recommendation that the
16 Commission disallow 308,000 and an additional amount for
17 Scenario 1 or Scenario 2.

18 Q. Okay. So the second -- the smaller
19 disallowances are subsets of the larger disallowance. Is
20 that one way to look at it?

21 A. That's fair.

22 Q. Okay. Another thing I want to be clear
23 about. The -- the December, 2007 disruption on the
24 pipeline that resulted on the force majeure, was Staff
25 aware of that at the time the general -- not necessarily

1 dealing with Atmos, the fact that there had been a
2 disruption?

3 A. Yes.

4 Q. Okay. Final question. Both the witness
5 for -- Mr. Walker and apparently Staff have taken the
6 position that if -- that when Atmos became aware of the
7 force majeure being declared, they would have -- it would
8 have been preferable for them to increase their monthly
9 nominations. Can you explain to me why that would be?

10 A. Yes. If you believe that there may be
11 supply issues in the month of December and you already know
12 that storage is behind schedule and your nomination starts
13 out as being relatively low as we've discussed in the
14 record, you would want to bring on first-of-the-month
15 because you're not absolutely sure that your swing supply
16 will show up. The swing supply is ordered in trial month
17 after December the 1st.

18 Your last opportunity to make that
19 first-of-the-month nomination happens several days before
20 December starts. If you make the nomination, the supplier
21 is obligated, if it's firm service, to come forward with
22 that firm baseload amount. So you're locked in. And if
23 there is a disallowance made, disallowance, there's a
24 reduction made by Panhandle Eastern, it's going to be made
25 to something you've already adjusted up.

1 So you've already got that amount in the
2 bank, and to the extent that you're impacted, you've made
3 that provision up front rather than waiting in the daily
4 market where there may be issues.

5 Q. Would the -- the cuts, I think is the way
6 it's described by the pipeline, would that apply more to
7 the swing gas than it would to the firm gas or does that
8 make any difference?

9 A. It can. It appears that the
10 first-of-the-month nominations were not impacted from what
11 we could tell. And we've been told this -- or my
12 interpretation of the company's response is -- is that the
13 first-of-the-month nomination was not reduced by their
14 supplier and it was not cut. So we believe they -- they
15 had that flexibility to order additional baseload gas.

16 Q. Okay. Well, thank you for that explanation.

17 A. You're welcome.

18 JUDGE WOODRUFF: Let's go back to recross
19 based on questions from the bench, beginning with Public
20 Counsel.

21 MR. POSTON: No questions, thank you.

22 JUDGE WOODRUFF: Then beginning with Atmos.

23 RECROSS-EXAMINATION BY MR. FISCHER:

24 Q. With regard to your comments about the two
25 scenarios and the affiliated transaction adjustments, would

1 you agree, Mr. Sommerer, that you have different theories
2 about the affiliated transaction adjustment versus Scenario
3 1 and 2?

4 A. In the main, the theories are different.
5 There is some linkage in that we've been concerned about
6 the interruptible nature of the supplies as we've discussed
7 throughout this cross-examination, and that's one of the
8 drivers for the \$308,000.

9 Staff believes that's an indication of the
10 less than firm nature when we're looking at Scenario 1 and
11 Scenario 2. The company disputes that. But I'd say to the
12 extent that you have some linkage, that's where it's at.

13 Q. Did you propose Scenario 1 and Scenario 2
14 just to lower the threshold?

15 A. The Scenario 1 and Scenario 2 was proposed
16 as we got more information about the nomination process,
17 which has been an area of inquiry during 2010, during the
18 procedural schedule. And recall that Commissioner Davis
19 had asked us to have an unbiased look and a close look in
20 terms of this -- this process, the daily versus the
21 first-of-the-month and what impact that may have caused.
22 So we tried to do that.

23 MR. FISCHER: Judge, I'm not sure I need to
24 do this, but I guess I would ask that the Commission take
25 official notice of its own affiliated transaction rule and

1 the marketing affiliated transaction rule.

2 JUDGE WOODRUFF: I'm not sure it's necessary
3 either, but we will take notice of it.

4 MR. FISCHER: Okay. Thank you.

5 JUDGE WOODRUFF: All right. Redirect?

6 And before you start with that, I do want to
7 go back and deal with the admission of Staff's documents
8 that I deferred ruling on it. Anything else you want to
9 add on that for Atmos?

10 MR. FISCHER: Judge, I would just -- I would
11 continue to move to strike those adjustments -- or excuse
12 me, those exhibits pending your ruling on the -- the
13 appropriateness of this whole line of inquiry and
14 surrebuttal testimony.

15 JUDGE WOODRUFF: All right. Well, I will
16 conditionally admit them at this point. Again, they would
17 be subject to strike depending upon how the Commission
18 rules on the -- upon your motion when it actually makes
19 that ruling. For purposes of today's hearing, 15, 16, 17,
20 18, 19, 20, 21, 22, 23, and 26 NP and HC, 27 HC, and 28 NP
21 and HC are received into evidence.

22 (Wherein; Staff Exhibit Nos. 15, 16, 17, 18,
23 19, 20, 21, 22, 23, 26 NP, 26 HC, 27 HC, 28 NP and 28 HC
24 were received into evidence.)

25 JUDGE WOODRUFF: All right. Redirect?

1 REDIRECT EXAMINATION BY MR. BERLIN:

2 Q. Good afternoon, Mr. Sommerer. Do you recall
3 that Mr. Poston had had some questions of you and I believe
4 he was asking you about the -- how you formulated the
5 \$308,000 adjustment and he also asked you about the
6 Scenario 1 adjustment and Scenario 2 disallowances. Do you
7 recall those questions?

8 A. Yes.

9 Q. And I believe that you had indicated that
10 you had done some work papers to support those; is that
11 right?

12 A. That's correct.

13 Q. And you provided work papers to Mr. Fischer,
14 right?

15 A. Yes.

16 MR. BERLIN: Judge, may I approach?

17 JUDGE WOODRUFF: You may.

18 MR. BERLIN: Judge, I have a copy of the
19 work papers that provide the -- the backup. And this is
20 the document here. Mr. Fischer also has a copy.

21 JUDGE WOODRUFF: Do you wish to mark these,
22 then?

23 MR. BERLIN: I do.

24 JUDGE WOODRUFF: We're up to No. 30.

25 (Wherein; Staff Exhibit No. 30 was marked

1 for identification.)

2 BY MR. BERLIN:

3 Q. Mr. Sommerer, have you had an opportunity to
4 review this set of documents?

5 A. It appears to be a copy of the set of work
6 papers we provided the Company.

7 Q. Is this also the set of work papers that
8 support your Schedule 8?

9 A. Yes.

10 MR. BERLIN: Judge, I would move to admit
11 this into the record as Exhibit 30.

12 JUDGE WOODRUFF: Exhibit 30 has been
13 offered. Any objections to its receipt?

14 MR. FISCHER: Yes, Judge. I would have the
15 same objection as they relates to Scenarios 1 and 2. I
16 would also note that I moved for limitation on friendly
17 cross-examination in this case whenever he was being
18 crossed without work papers.

19 It was pointed out to Staff during the
20 depositions that there were no work papers to support their
21 adjustments in the record and I believe that we just
22 indicated that orchestrated attempt by Staff to put their
23 work papers into the record whenever the Company has no
24 opportunity to cross anyone on it and we can't address
25 them. So I would object on that ground.

1 MR. BERLIN: Judge, I -- I believe this is
2 directly responsive to the questions Mr. Poston had. He
3 was asking for the support of these adjustments.

4 JUDGE WOODRUFF: And hence the problem with
5 friendly cross, and I don't want to try and impede anything
6 here, so what is the relevance of these at this point?

7 MR. BERLIN: Well, the relevance is that
8 they go directly to Staff's proposed disallowance in
9 Scenario 1 and Scenario 2 adjustments. It provides the
10 background support the Company had, the Company has been
11 given those.

12 JUDGE WOODRUFF: All right. I understand
13 that the Company's been given those and normally work
14 papers are not admitted into the -- into the hearing
15 record. Why should these be in the hearing record?

16 MR. BERLIN: Judge, I'm offering the
17 support, the calculations that were done in the proposed
18 \$308,000 disallowance and the Scenario 1 and Scenario 2
19 adjustments.

20 JUDGE WOODRUFF: Has anyone challenged the
21 details of the calculation? I'll ask that of Atmos.

22 MR. FISCHER: Judge, there's nothing in the
23 record at this point in time other than two sentences
24 giving the numbers, and we would object to having this now
25 supplemented into the record at the eleventh hour whenever

1 we've had no opportunity -- we didn't have an opportunity
2 to address the surrebuttal, now we don't even have an
3 opportunity to address the work papers to try to justify
4 it.

5 JUDGE WOODRUFF: All right.

6 MR. BERLIN: Well, Mr. Walker did address it
7 in his testimony.

8 JUDGE WOODRUFF: The Company was given these
9 work papers at the time or -- has Company seen these work
10 papers in the past?

11 MR. FISCHER: I don't know. I assume we
12 have. If Counsel says we have, then we probably have them.
13 But if they're not in the record, then they were clearly --
14 it's clearly trying to be introduced through friendly cross
15 and it's -- it's improper.

16 JUDGE WOODRUFF: Does Public Counsel want to
17 get in on this?

18 MR. POSTON: Yeah, I was honestly just
19 trying to understand the basis of the 308,000 and that's
20 why I was asking about work papers.

21 MR. FISCHER: And to the extent that it goes
22 to \$308,000, Company won't object. But to any -- any
23 reference to the other Scenario 1 and Scenario 2, we would.

24 JUDGE WOODRUFF: All right. What's Staff's
25 view on this? What's the purpose of these coming in as far

1 as which scenarios we're talking about?

2 MR. BERLIN: Well, Staff's view is that it
3 provides the -- the adjustments are as they are in the
4 testimony and this is just providing the support behind
5 those.

6 JUDGE WOODRUFF: It's a large number of
7 graphs and charts and so forth. I don't see any -- any
8 relevance that's been offered. It is kind of just dumping
9 documents into the record at this late stage. I am going
10 to sustain the objection and they will not be received.

11 MR. BERLIN: For the entire amount, for the
12 308?

13 JUDGE WOODRUFF: No, I'm only talking about
14 this document here. I'm saying the document is not
15 received as an exhibit. I'm not making any rulings to
16 anything beyond that.

17 MR. BERLIN: I think you had asked about the
18 308,000 and then there's a Scenario 1 and Scenario 2.

19 JUDGE WOODRUFF: Oh, I see what you're
20 saying.

21 MR. BERLIN: That was my question.

22 JUDGE WOODRUFF: Well, the document is not
23 being received for any purpose at this point.

24 MR. BERLIN: All right.

25 JUDGE WOODRUFF: Okay. You can continue

1 with your redirect.

2 MR. BERLIN: Thank you, Judge.

3 BY MR. BERLIN:

4 Q. Mr. Sommerer, Mr. Fischer asked you quite a
5 few questions about fair market value. Can you remember
6 some of those questions?

7 A. Yes.

8 Q. And your comments referenced an equal level
9 of service product in -- in your answer.

10 A. Correct.

11 Q. And what concerns did you raise in your
12 testimony regarding the level of service?

13 A. You have to make sure when you're comparing
14 these values that we've discussed that you have the same
15 level of service. It's been part of Staff's testimony all
16 along going back to the Staff recommendation that it is
17 possible for an affiliate to acquire interruptible supplies
18 at a lesser cost than firm supplies.

19 It gives you the possibility to undercut
20 other bidders who believe they have an absolute firm
21 obligation. My assumption would be that unaffiliated
22 bidders would view that firm obligation as requiring them
23 to have upstream firm resources.

24 It is possible, and this is a major concern,
25 for an affiliated company to obtain interruptible services

1 and sell it as firm. It would let you win the bid and
2 still maintain profit.

3 Q. Now, were any of those concerns related to
4 Atmos's records or lack of records?

5 A. The reason why we were asking for Atmos's
6 records with regard to the nomination cuts would have
7 related to concerns about the firmness of service, so there
8 was a direct relationship there.

9 Q. Now, Mr. Fischer had you look at the bid
10 responses. I believe he asked you about conforming bids.
11 Now, does this list of bids -- and I believe they're in
12 your surrebuttal Schedule 7-4 and 7-6 -- actually, they're
13 also an exhibit that Mr. -- Mr. Fischer entered prior. I
14 believe it's Exhibit 26. It's the same list, I believe.
15 Why don't we go to that exhibit, which Mr. Fischer was
16 using.

17 A. I'm there.

18 Q. I'm sorry, I -- I -- I misspoke. It was --
19 I believe it was 24 HC.

20 A. I have it.

21 Q. Okay. And he asked you some questions about
22 bid responses. And do you recall -- did he ask you about
23 conforming bids?

24 A. I think he did mention that once or twice.

25 Q. Now -- and then he took you to this 1-- this

1 ist. And on page -- if we can go to Page 7, for an
2 example.

3 A. Is this know notated as AEC revised?

4 Q. That's -- that's correct.

5 A. Okay.

6 Q. Okay. And he spent some time on that. Now,
7 my question is: Does this list anywhere say which bids
8 were conforming or non-conforming bids?

9 A. No.

10 Q. Okay. And of course, protecting the names
11 of the suppliers, we know that Atmos Energy Marketing was
12 the No. 1 ranked bid. Correct?

13 A. Correct.

14 Q. Okay. So, again, excluding the other
15 suppliers, can you tell me in this list which of these bids
16 are non-conforming?

17 A. Based upon discussions with the Company
18 through depositions and through their testimony, my
19 understanding is that -- and I can't get into the
20 confidential information here -- I'll just say that they
21 have characterized rank two as non-conforming and rank
22 three as non-conforming.

23 Q. Okay. So the second closest bid to AEM and
24 the third closest bid to AEM are non-conforming. Correct?

25 A. Right.

1 Q. Now, is a non-conforming contract -- or I'm
2 sorry, a non-conforming bid response, is that really in the
3 running here to be considered?

4 A. I think to the extent it's non-conforming,
5 you have to ask why that would have been considered since
6 it likely wasn't, for some reason, a viable offer, it
7 didn't meet the requirements of the RFP, so it's not really
8 something that you could accept if it's non-conforming.

9 Q. Okay. So I guess the really -- if we go to
10 Bid No. 4, the Bid Response No. 4, that would be the
11 closest conforming bid, wouldn't it?

12 A. That's correct.

13 Q. Okay. And can you give me a number -- a
14 rough number as to the difference between the AEM bid and
15 the next closest conforming bid response, the No. 4 bid?

16 A. That looks to be roughly 248,000.

17 Q. Okay. But without running a calculator,
18 there's about \$248,000 difference between AEM and the next
19 closest conforming bid, is that --

20 A. No. Upon closer inspection of the number,
21 it looks like it may be closer to 295,000.

22 Q. All right. So there's about \$295,000
23 difference. Now -- and this is for the Hannibal service
24 area, isn't it?

25 A. That's correct.

1 Q. Is that a large -- is that a sizable
2 difference between the low bid and the next lowest?

3 A. I would characterize it as being material.

4 Q. Is it something an auditor would look at?

5 A. I think it's a valid question to wonder why
6 there's that big of a difference.

7 Q. Why could there be such a big difference
8 between the next closest conforming bid?

9 A. There could be a number of reasons. It
10 could be that the low bid had special access to supply,
11 special facilities or assets that it brought to the table
12 that the other bidders did not have. It could be that it
13 was going to take more risk being in its attempt to provide
14 supply services to Atmos. It could be that they had
15 cheaper supplies for any one of a number of reasons.

16 Q. Okay. Could one -- one reason is -- I just
17 want to make sure I heard right -- the level of supply or
18 the level of service?

19 A. Correct.

20 Q. I think -- I think you said earlier that
21 it's possible to bid into the bid using some interruptible
22 transportation and interruptible supply and bring in a low
23 bid; is that right?

24 A. That certainly is possible, yes.

25 Q. Okay. In fact, looking at this particular

1 exhibit, I think he -- he went to another page there. I
2 think it might have been one right -- I think it's the
3 third -- third page after the apen -- after -- yeah, I
4 guess the third page of the appendix. This is also
5 Hannibal service area. This is the one for April, 2008
6 through 2009. He asked you some questions about this as
7 well.

8 A. Actually, I thought we had just discussed
9 April 2008, 2009.

10 Q. Well, he had -- he had -- he had -- he did
11 ask you some questions about this and he's been through the
12 difference because there's four different bids. And I --
13 are these all conforming bids, bid responses, the four that
14 are listed here?

15 A. No.

16 Q. What bid is not conforming?

17 A. My understanding is that the second-ranked
18 bid is non-conforming.

19 Q. Okay. So that is one -- because it's not
20 conforming, likely it's not going to be considered?

21 A. That's correct.

22 Q. So the closest -- so that the next
23 conforming -- the actual closest conforming bid is No. 3,
24 isn't it?

25 A. That's correct.

1 Q. And what is the difference between the No. 1
2 ranked bid from AEM and the No. 3 ranked conforming bid,
3 roughly?

4 A. Roughly that's around \$235,000.

5 Q. Okay. And again, that's a sizable
6 difference, isn't it?

7 A. Yes.

8 Q. Okay. And do you recall when you first
9 heard about the -- this list of bids and whether they were
10 conforming or non-conforming? Did you hear about this
11 in -- in depositions?

12 A. Yes.

13 Q. Is this when you learned about it?

14 A. I recall that we had some questions because
15 the bids did appear to be non-conforming based upon some
16 preparation that we did during the deposition and Atmos
17 confirmed that suspicion.

18 Q. Okay. Now, if Staff had known some of these
19 bids were non-conforming, would you say this is an
20 apples-to-apples comparison of the supply?

21 A. Well, since you have a combination here
22 between non-conforming, which would never be considered in
23 the bid process and conforming bids, you have apples and
24 oranges with respect to that.

25 Q. Now, Mr. Fischer had asked you about your

1 surrebuttal Schedule 6. Do you have it in front of you?

2 A. Yes.

3 Q. And can you please explain why the dollar
4 amount on this schedule is different than the dollar amount
5 in the bid evaluation?

6 A. It could be different for a number of
7 reasons. As I attempted to explain with Mr. Fischer, the
8 numbers in the bid evaluation are estimates. They're based
9 upon estimated volumes, they're based upon estimated rates.
10 You're looking at in Schedule 6 the actual gas cost that
11 was charged from AEM to AEC.

12 So the number as we discussed was lower. It
13 was a fairly significant amount lower, but that could very
14 easily be due to the fact that the estimate that was used
15 to prepare the bid analysis was the prevailing gas price at
16 the time the bid analysis was made.

17 These dollars represent what the indices
18 both the first-of-the-month indices and the daily indices
19 ended up being and that could be greatly different than the
20 estimate gas price that was used to evaluate the bids.

21 Q. And had another -- had an independent
22 unaffiliated supplier been chosen, would the costs -- the
23 actual costs be different than what was bid?

24 A. Yes, most certainly.

25 Q. Okay. Mr. Fischer had asked you about

1 AEM records that Staff would want to see to conduct its
2 audit. And you stated that those records were required by
3 the rule. Now, in your opinion as a technical expert and
4 not as an attorney, what part of the rule requires this
5 type of recordkeeping?

6 A. If you go to the document that Mr. Fischer
7 handed me, it's Page 7, which is I believe part of 4 CSR
8 240-40.016, and this is Section 6, Records of Affiliates.
9 My belief is is that required documentation to the costs
10 associated with the affiliated transactions that are
11 incurred by the parent or affiliate and charged to the
12 regulated gas corporation.

13 Documentation of the methods used to
14 allocate or shared costs between affiliated entities
15 including other jurisdictions and/or corporate divisions,
16 description of the costs that are not subject to allocation
17 to affiliated transactions and documentation supporting the
18 non-assignment of these costs to affiliated transactions.

19 So that's where I was focussing on my
20 expectation that there would be quite a bit of
21 documentation regarding the affiliate's cost.

22 Q. And Mr. Fischer had asked you some questions
23 about cost information you requested from AEC. And did you
24 ask for cost data from AEM?

25 A. The Staff had basically asked for all the

1 information that AEM had associated with the deal in terms
2 of the economics behind the deal, the information kept by
3 the trading group related to the deal, the evaluation of
4 the deal and the records associated with the deal.

5 Q. And is that -- and are those the records
6 that you would have expected to have received?

7 A. Yes.

8 Q. Did you get that information?

9 A. Not entirely, no.

10 Q. What didn't you get?

11 A. Well, there weren't any trader evaluations
12 of the deal, or AEM evaluations of the deal. There weren't
13 any economic analyses about the deal. The response from
14 AEM was basically no documents were in existence except for
15 something called a trader validation report.

16 Q. And did -- did you get the trader validation
17 report?

18 A. Yes.

19 Q. And was that responsive to your -- your --
20 your request?

21 A. In part. It contained a very limited amount
22 of information basically listing what we've already
23 discussed today on -- on the transaction confirmations.

24 Q. Okay. And Mr. Fischer had asked you about
25 AEM's administrative and general costs. And are those A&G

1 costs relevant to your analysis?

2 A. The focus of my analysis was on the fair
3 market value of the cost of AEM's supply, and that would
4 not include administrative and general expenses. It would
5 have only included the direct cost that AEM had from its
6 upstream suppliers.

7 Q. And you were asked some questions about the
8 proposed disallowance. And what is the basis of Staff's
9 adjustment for the amounts that you list in your
10 surrebuttal testimony, the \$308,000?

11 A. The basis behind that disallowance is to
12 bring the best estimate that Staff believes of the fair
13 market value of AEM's cost of supplies associated with the
14 actual sale of gas to its affiliate, AEC. That's the
15 primary reason behind the adjustment along with the fact
16 that the Staff believed additional records should have been
17 kept by AEM to provide support for its fair market value.

18 Q. And -- and what is the basis of the amount
19 of the \$52,572 Scenario 1 --

20 MR. FISCHER: Judge, subject to my objection
21 on the overall appropriateness of this whole topic.

22 JUDGE WOODRUFF: All right.

23 THE WITNESS: The basis behind the \$52,000
24 disallowance is based upon a Staff evaluation of whether or
25 not certain supplies showed up. When they were requested

1 by AEC, the Staff in looking at the process in late
2 November and December questioned the first-of-the-month
3 nominations and whether those supplies showed up, the swing
4 nominations and whether AEM fulfilled obligations for those
5 to show up.

6 The Staff had concerns when we found out
7 that there were either cuts or a relatively low
8 first-of-the-month nomination and we believe that that
9 process was unreasonable.

10 BY MR. BERLIN:

11 Q. And the basis of the 85,000?

12 A. Very similar basis. The Staff had those
13 concerns about the cuts that were made in December or the
14 agreement of AEC to reduce its nominations for AEM. And
15 that adjustment assumes that you bring storage up five
16 percent above normal levels for the end of December and
17 also bases the first-of-the-month nomination on the theory
18 that Atmos would follow its gas supply planned guidelines.

19 Q. Now, Mr. Fischer had referred you to the
20 Staff recommendation. The affiliate issue -- do you have
21 your Staff recommendation in front of you? If you would,
22 please go to Page 5 of 12.

23 A. I'm there.

24 Q. Okay. And if you would, please, read where
25 it starts, The Staff, and read to the end of that

1 paragraph.

2 A. You're on Page 5 of 12?

3 Q. I am, at the top there. There's a comma and
4 it says, The Staff.

5 A. The Staff has based a disallowance of
6 affiliated cost based upon the information that was made
7 available. As this case proceeds, the Staff may pursue
8 additional AEM data.

9 Q. And what is -- what else is on this page
10 regarding the Staff's adjustment?

11 A. Well, we further describe the disallowance,
12 how it's calculated, what its basis is. We are, in
13 essence, saying that one way of assessing the fair market
14 value of these agreements is to look at the elements of the
15 underlying supply that was used to fulfill AEM's obligation
16 to provide firm service.

17 Q. Now, Mr. Sommerer, Mr. -- Mr. Fischer may --
18 had quite a few questions about differences of gas
19 suppliers, whether it be an affiliate or independent third
20 party. The ACA process here, can you tell me what -- when
21 you do the ACA, what's different between an ACA when an
22 independent third party is involved versus as we see here
23 what -- dealing with an affiliate? Can you explain what
24 that difference is?

25 A. Certainly the fact that you have an

1 affiliate brings into question the -- the profit
2 opportunity that exists because it is an affiliated
3 transaction. The higher the price that's paid by the LDC,
4 the higher potential profit you have with the affiliate.

5 There is the possibility that the affiliate
6 may be able to undercut what appears to be a competitive
7 RFP process if it decides it will take greater risk than an
8 unaffiliated supplier would or could or use interruptible
9 services to meet a firm need.

10 Q. Well, if -- if an independent third party
11 supplier, an -- unaffiliated to Atmos had been selected and
12 had that -- that independent supplier failed to deliver gas
13 or failed in its service obligation, in your -- in your
14 non-legal opinion, do you think that the Company would be
15 able to have a -- have a cause of action against
16 non-performance against an independent third party.

17 MR. FISCHER: That sounds a lot like a legal
18 conclusion to me, even if he's asking as a non-lawyer, but.

19 JUDGE WOODRUFF: I'll have to agree. The
20 objection is sustained.

21 BY MR. BERLIN:

22 Q. All right. Well, Mr. Fischer had asked you
23 questions about the RFP process and the affiliates as part
24 of the process, and I think you commented that the RFP
25 process wouldn't necessarily set the fair market value.

1 Can you please explain that?

2 A. Typically an RFP process, if -- if it's
3 designed appropriately and it has a sufficient number of --
4 of bidders, should generate a competitive price. You have
5 to be concerned that an affiliate who is bidding into that
6 process has some advantage over and above the other
7 unaffiliated producers and marketing companies. You have
8 to ask that question, I believe.

9 And one way that they can beat the other
10 bids, pretty simple way they can do it is if they use
11 interruptible supplies. You would think that that would
12 come back to haunt the affiliate. You would experience
13 many interruptions over the years that you have the
14 affiliate service.

15 But the fact of the matter is is that it
16 could be 11 months out of 12 months or for two years
17 running, if you don't have a system that's stressed, if you
18 have wet whether that's mild, if you don't have severe
19 circumstances, it could be that the interruptible supplies
20 or less than firm supplies generally show up.

21 Q. And he had asked -- Mr. Fischer had asked
22 you some questions about auditing an affiliate's books and
23 records, but not the non-affiliate. Now, is an affiliate
24 an armslength transaction?

25 A. No.

1 Q. Okay. And are there recordkeeping
2 requirements of the non-affiliate?

3 A. No.

4 Q. Are there recordkeeping requirements of the
5 affiliate?

6 A. Yes.

7 Q. I think you just went through that. In your
8 opinion, how are these requirements different?

9 A. Well, they don't believe that unregulated
10 affiliates, unaffiliated companies would be subject to the
11 Commission's affiliated transaction rules whereas there are
12 some recordkeeping requirements for affiliated marketing
13 companies.

14 Q. Does a -- a competitive bidding process
15 replace the recordkeeping requirements, in your opinion?

16 A. No.

17 Q. So is the competitive bidding process and
18 the recordkeeping requirements both required in an
19 affiliated transaction?

20 A. Yes, unless -- as we discussed about the
21 bidding process, it's required unless you have a reason for
22 not doing it.

23 Q. Mr. Fischer had asked you questions about
24 not giving an affiliate an unfair advantage and he also
25 gave you many hypotheticals. Can you give an example of

1 how an RFP could be set intentionally or not intentionally
2 to provide an unfair advantage to an affiliate?

3 A. Well, I would rather discuss an RFP just
4 being set-up without regard to whether there's even an
5 affiliate because, you know, as we've discussed, this RFP
6 is fairly standardized. But even with a standardized RFP
7 that doesn't vary between the states, there is still an
8 opportunity for the affiliate by its own actions to
9 aggressively undercut the other bids.

10 It wouldn't necessarily know that it was
11 going to be the low bid. But it may have the potential to
12 have a high degree of likelihood to be the low bidder if it
13 chooses to use interruptible assets to provide firm
14 service.

15 Q. Mr. Fischer had asked you about Staff
16 positions that could impact policy. Has Staff filed
17 recommendations in this case or any case related to policy
18 considerations related to affiliated transactions?

19 A. I believe the Commission had requested a
20 position paper or white paper in one of the Laclede cases,
21 ACA cases where the Staff had provided basically a policy
22 statement.

23 Q. Now, is -- is Staff's disallowance the
24 proposed disallowance just because AEM is an affiliate?

25 A. The disallowance is not made just because

1 AEM is an affiliate.

2 Q. Now, Mr. Fischer had suggested in some
3 questions to you that Staff had assumed a lack of
4 cooperation. Did Staff assume AEM would not cooperate in
5 discovery when it made its disallowance?

6 A. I believe as discussed with Mr. Fischer in
7 the deposition that we had the Laclede experience and there
8 was some degree of reservation. We had hopes that it
9 wouldn't turn out that way during the course of the
10 procedural schedule. As it turned out, we did run into
11 some -- some serious issues.

12 Q. Okay. And Mr. Fischer had asked you to
13 assume many things. He had quite a few assume questions,
14 posing hypotheticals and assumptions. Do you agree with
15 all those assumptions -- do you agree that those
16 assumptions are facts in evidence?

17 A. No. I'm not convinced that the assumptions
18 that were made were already in evidence.

19 Q. Okay. Is it your opinion that AEC has not
20 supported the prudence of its transaction with its
21 affiliate, AEM?

22 A. That is my opinion, yes.

23 Q. Is discovery the driver behind your
24 disallowance?

25 A. It certainly is a primary driver as

1 discussed with Mr. Fischer. The foundation of the
2 disallowance is to try and bring the value of the supplies
3 of AEM down to AEM's fair market value. There was also a
4 concern about the limited information that AEM was able to
5 provide.

6 Q. Is it -- is it your position that -- that
7 the affiliate transaction deserves higher scrutiny than an
8 armslength transaction?

9 A. Yes, that is not only my position but it's
10 Staff's position as well. Given the nature of the
11 affiliated transactions, that there is a definite profit
12 motive that can directly result from -- from paying too
13 high of a price. You do have to be very skeptical and
14 apply that skepticism to the review.

15 Q. Now why -- can you -- can you give the
16 Commission some reasons why a year-long audit might not be
17 sufficient to scrutinize these transactions?

18 A. The transactions themselves are difficult
19 because you're going into another set of records. It's an
20 additional set of records that are typically reviewed in
21 the context of the standard ACA. When I reviewed the
22 Illinois case, which had an affiliated disallowance, I
23 noted that their case went on for a number of years.

24 You could see it was extremely contentious
25 in terms of the testimony. And a number of ACA cases in

1 Illinois are still pending after a number of years. It's
2 an example that these cases are controversial and
3 difficult.

4 Q. Okay. In an affiliate transaction, does the
5 utility have any incentive to hide information?

6 A. I would hope that the utility would be
7 forthcoming with information and I would not want to cast
8 aspersions at the utility. They are defending their
9 practices and they are doing so vigorously and they have a
10 different opinion, I believe, on perhaps how deeply the
11 Staff needs to go into information and I think that's where
12 you get into some of the -- the difficulties.

13 Q. Mr. Fischer had asked you many, many
14 questions about the transaction affiliate rules. Is it --
15 is it your testimony that the affiliate transaction rules
16 prohibit a profit by a marketing affiliate?

17 A. That is not my testimony.

18 Q. Now, is it correct to assume that Atmos
19 customers receive the same quality of gas service from AEM?

20 A. Could you restate the question, please?

21 Q. Sure. Is it correct to assume that Atmos
22 customers receive the same quality of gas service from AEM?

23 A. As opposed to what? The same quality as
24 some other competitor?

25 Q. What are the gas -- what are the service

1 quality levels for gas service?

2 A. You can have firm service, you can have
3 interruptible service. There may be issues in between
4 those -- those levels just based upon the structure of the
5 contracts, so there are certainly different service levels.

6 Q. Is it possible to be sold firm gas service
7 but, in fact, you're receiving something less than that?

8 A. That is a possibility, yes.

9 Q. And does Staff dispute that the force
10 majeure was the reason for the December first-of-month
11 nomination -- or actually, the December nomination
12 reductions?

13 A. That's not my understanding based upon the
14 testimony and discovery.

15 Q. Okay. What is your concern if an
16 affiliate's using interruptible to meet a firm contract
17 obligation?

18 A. That would have reliability and possibly
19 cost consequences for the captive customer, so that would
20 be a major concern.

21 Q. Mr. Fischer had asked quite a few questions
22 about policy. Does the Staff or the Commission set
23 Commission policy?

24 A. The Commission sets Commission policy.

25 Q. Does Staff really want the Commission to

1 prohibit affiliate transactions?

2 A. That's not my understanding of Staff policy.

3 Q. Okay. And Mr. Sommerer, you were deposed by
4 Mr. Fischer, correct?

5 A. That's correct.

6 Q. And did you answer all those questions
7 truthfully?

8 A. To the best of my knowledge and belief.

9 MR. BERLIN: Judge, I have no further
10 redirect.

11 JUDGE WOODRUFF: All right. Mr. Sommerer,
12 you can step down.

13 THE WITNESS: Thank you.

14 JUDGE WOODRUFF: Clear up a few things. In
15 going back over my schedule of exhibits, I notice that
16 yesterday, Exhibit 10, I reserved ruling on that on the
17 same basis as the other documents that were objected to.
18 I'll make the same ruling on that and at this point accept
19 it into the record, and it is accepted.

20 (Wherein; Staff Exhibit No. 10 was received
21 into evidence.)

22 MR. BERLIN: Judge.

23 JUDGE WOODRUFF: Yes, sir.

24 MR. BERLIN: I do have one -- one item of
25 exhibits that I want to address too.

1 JUDGE WOODRUFF: All right. Go ahead.

2 MR. BERLIN: Judge, as you know, I used a
3 PowerPoint presentation for Staff's opening yesterday
4 morning, and I did pass copies out for the Commissioners
5 that weren't here yesterday. And I just want to offer that
6 into evidence.

7 MR. FISCHER: Judge, I would object to that.
8 I mean, I have a PowerPoint as well. It's illustrative.
9 The only thing we can refer to are things that are in
10 evidence. I have a concern I think I expressed about that
11 particular PowerPoint, that there was a lot of things that
12 really addressed 40 lines of testimony and went on for an
13 hour and a half. I think I would object to that.

14 JUDGE WOODRUFF: Well, for purposes of the
15 record, we'll mark it as 31; however, I'm going to sustain
16 the objection and not allow it into evidence.

17 (Wherein; Staff Exhibit No. 31 was marked
18 for identification.)

19 JUDGE WOODRUFF: All Right. One other thing
20 I wanted to -- to address as far as evidence, Commissioner
21 Davis yesterday left instructions for me to make a request
22 at the end of the -- at the end of proceedings, it's for
23 Atmos. He wants to know how much -- an estimate of the
24 amount of money Atmos has spent litigating this case.

25 I propose to leave Exhibit 32 open for that

1 purpose and ask Atmos to file such a document one week from
2 today and then at that point, the other parties will have
3 an opportunity to object to its admission if it wish to do
4 so.

5 MR. FISCHER: Judge, can I inquire whether
6 the Commissioner is interested in internal costs as well as
7 outside costs or just whatever our best estimate is?

8 JUDGE WOODRUFF: He says an estimate of the
9 amount of money Atmos has spent litigating this case. So I
10 guess however you want to interpret that.

11 MR. FISCHER: Okay. Thank you.

12 JUDGE WOODRUFF: And 32 is left open for
13 that.

14 MR. FISCHER: Could we at least keep it HC?

15 JUDGE WOODRUFF: Yes. We'll make it 32 HC.

16 All right. And then the only other thing,
17 then, would be briefing schedule. I think the transcript
18 will be available within ten working days. If you want to
19 do initial briefs and reply briefs?

20 MR. FISCHER: I'm certainly open to whatever
21 the parties would like. That sounds like a reasonable
22 opportunity here. We can do a little more leisurely if the
23 Staff wants that, but we do want to get the issue resolved.

24 JUDGE WOODRUFF: Certainly.

25 MR. POSTON: Judge, are we off the record?

1 JUDGE WOODRUFF: No, we're on the record.

2 MR. POSTON: Well, with regard to the
3 timing, I'm open to initial reply briefs but I have a
4 family issue that I have to take care of in Ohio and I
5 wanted to put that --

6 JUDGE WOODRUFF: Okay. We'll certainly
7 avoid that. I guess we can look in late April for initial
8 briefs?

9 MR. BERLIN: Sure.

10 JUDGE WOODRUFF: Do you want to do April 22
11 for initial?

12 MR. BERLIN: Can we add a few more days to
13 it?

14 JUDGE WOODRUFF: We can.

15 MR. FISCHER: Let me get my calendar.

16 JUDGE WOODRUFF: April 29 would be the next
17 Friday, which is also the middle of the Atmos hearing, so
18 I'm probably not going to read them right away anyway. Is
19 April 29 okay?

20 MR. BERLIN: Just let me check here. I
21 believe that would work, Judge.

22 JUDGE WOODRUFF: Okay. With Atmos and
23 Public Counsel?

24 MR. POSTON: That's fine.

25 MR. FISCHER: That's okay.

1 JUDGE WOODRUFF: Okay. And then the reply,
2 shall we say May 13th?

3 MR. BERLIN: That's fine, Judge.

4 JUDGE WOODRUFF: And I will issue a notice
5 tomorrow putting those into the record. Anything else we
6 need to deal with?

7 MR. BERLIN: Yes, Judge. I believe that
8 Mr. Sommerer was going to file his corrections --

9 JUDGE WOODRUFF: Yes.

10 MR. BERLIN: -- in one of his schedules in
11 his testimony.

12 JUDGE WOODRUFF: 28 NP and HC, I believe it
13 is.

14 MR. BERLIN: We intend to file a corrected
15 copy of that.

16 JUDGE WOODRUFF: Okay. You're going to make
17 that corrected copy of the entire testimony?

18 MR. BERLIN: No. No. No. I'm sorry, only
19 that one page. There was some -- as you recall, it didn't
20 effect the --

21 JUDGE WOODRUFF: Right. But it was highly
22 confidential.

23 MR. BERLIN: Right, but the actual, some of
24 the numbers in there --

25 JUDGE WOODRUFF: Right.

1 MR. BERLIN: -- were highly confidential.

2 JUDGE WOODRUFF: And we'll give that a new
3 number?

4 MR. BERLIN: That would be fine.

5 JUDGE WOODRUFF: All right. We'll reserve
6 33 HC for that.

7 MR. FISCHER: I'm sorry, I missed the
8 discussion on that. It's a revised what is that?

9 JUDGE WOODRUFF: If you'll recall when
10 Mr. Sommerer was initially put on the stand, he wanted to
11 make some corrections to his surrebuttal testimony that had
12 highly confidential numbers, we're going to put that in.

13 MR. FISCHER: Yes, I'm sorry.

14 JUDGE WOODRUFF: That will be 33 HC.

15 MR. FISCHER: No objection, that's great.

16 JUDGE WOODRUFF: Okay. So I'll just call it
17 a correction page for Sommerer's surrebuttal. Okay. And
18 that will be coming in fairly soon also.

19 MR. BERLIN: Yes.

20 JUDGE WOODRUFF: Okay. All right. Anything
21 else we need to deal with? All right. We made it by five
22 o'clock. We are adjourned.

23 (The hearing was adjourned.)

24

25

1
2 CERTIFICATE OF REPORTER
3

4 I, Lisa M. Banks, CCR within and for the State of
5 Missouri, do hereby certify that the witness whose testimony
6 appears in the foregoing hearing was taken by me to the best of
7 my ability and thereafter reduced to typewriting under my
8 direction; that I am neither counsel for, related to, nor
9 employed by any of the parties to the action in which this
10 hearing was taken, and further, that I am not a relative or
11 employee of any attorney or counsel employed by the parties
12 thereto, nor financially or otherwise interested in the outcome
13 of the action.

14
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16 _____
Lisa M. Banks, CCR
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