

1                   BEFORE THE PUBLIC SERVICE COMMISSION

2                   STATE OF MISSOURI

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5                   TRANSCRIPT OF PROCEEDINGS

6                   Evidentiary Hearing

7                   March 23, 2011

8                   Jefferson City, Missouri

9                   Volume 5

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

18

                  MORRIS L. WOODRUFF, presiding

19                   CHIEF REGULATORY LAW JUDGE

                  TERRY JARRETT,

20                   JEFF DAVIS,

                  COMMISSIONERS.

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23       REPORTED BY:

      Lisa M. Banks, CCR No. 1081

24       TIGER COURT REPORTING, LLC

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## A P P E A R A N C E S

LARRY DORITY, Attorney at Law

JAMES FISCHER, Attorney at Law

Fischer and DORITY, PC

101 Madison Street, Suite 400

Jefferson City, Missouri 65101

573.636.6758

FOR: Atmos Energy Corporation

MARC POSTON, Deputy Public Counsel

PO Box 2230

Jefferson City, Missouri 65102

573.751.4857

FOR: Office of Public Counsel

ROBERT BERLIN, Senior Counsel

PO Box 360

Jefferson City, Missouri 65101

573.751.4140

FOR: Staff of the Missouri Public Service Commission

1 JUDGE WOODRUFF: We'll go ahead and get  
2 started. Good morning, everyone. We're here for an  
3 evidentiary hearing on Case No. GR-2008-0364, which  
4 concerns the PGA/ACA filing of Atmos Energy Corporation.  
5 We'll begin today by taking entries of appearance,  
6 beginning with Atmos.

7 MR. DORITY: Thank you, Judge. Let the  
8 record reflect the appearance of Larry W. DORITY and James  
9 M. Fischer of the law firm Fischer & DORITY, P.C.,  
10 appearing today on behalf of Atmos Energy Corporation.  
11 Thank you.

12 JUDGE WOODRUFF: Thank you.

13 And for Staff?

14 MR. BERLIN: Good morning, Judge. Appearing  
15 on behalf of the Staff of the Missouri Public Service  
16 Commission, Robert S. Berlin, Post Office Box 360,  
17 Jefferson City, Missouri 65102.

18 JUDGE WOODRUFF: Thank you.

19 And for Public Counsel?

20 MR. POSTON: Thank you. Marc Poston,  
21 appearing for the Office of Public Counsel and the Public.

22 JUDGE WOODRUFF: Thank you.

23 The next item we want to take up is the  
24 premarked -- or prefiled exhibits. We don't have that many  
25 of them, so I'm -- so you guys, just, when you offer them,

1 we'll mark them at that time, rather than taking time to do  
2 that now.

3 Any other preliminary matters we need to  
4 resolve before we go to opening statements?

5 Hearing nothing, then, we'll start with  
6 opening statements. And I believe we'll start with Atmos.

7 MR. FISCHER: Thank you, Judge.

8 Good morning. May it please the Commission.  
9 This case involves Atmos Energy Corporation's 2007 and 2008  
10 ACA audit.

11 The company filed this case on October 16th,  
12 2008, nearly two and a half years ago. And the Company is  
13 very pleased to finally have the opportunity to address and  
14 hopefully resolve the issues that have been raised by the  
15 Staff in this proceeding.

16 Atmos used a formal, competitive bidding  
17 process to solicit bids for numerous unregulated gas  
18 marketers for the Company's gas supplies for all of its  
19 various service areas throughout the state of Missouri.  
20 This formal, competitive bidding process is fully described  
21 in the direct testimony of Rebecca Buchanan in this  
22 proceeding.

23 After a careful evaluation of the various  
24 bids received throughout its service area, Atmos awarded  
25 eight gas supply contracts to six different gas marketers

1 in Missouri in its various service areas.

2 Two out of the eight of its gas supply  
3 contracts were awarded to Atmos Energy Marketer, which I'll  
4 refer to as AEM in some of these proceedings today. That's  
5 an affiliated gas marketer which submitted the lowest and  
6 the best bid for those gas supplies for the Hannibal and  
7 the Butler areas of the company during the 2007 and the  
8 2008 ACA period.

9 AEM did not win the bid for the other areas  
10 of the state, which make up about 66 percent of Atmos' load  
11 in Missouri. In these areas, the winning bids went to  
12 other unregulated gas marketers who submitted lower bids  
13 than AEM.

14 My clicker is not working, Judge.

15 JUDGE WOODRUFF: I'm afraid I can't help you  
16 with that.

17 MR. FISCHER: All righty. Let me try  
18 something different here.

19 MR. BERLIN: Try page down.

20 MR. FISCHER: There you go.

21 MR. BERLIN: There we go. Let's try that.

22 MS. SLACK: You've got to aim it up there.

23 MR. FISCHER: Okay. That's the first slide,  
24 which we've talked about. Let's talk about the AEM bid  
25 results.

1           AEM has not been a dominant gas supplier for  
2   Atmos in Missouri. For the period of April 2004 through  
3   November of 2009, Atmos issued 48 Missouri RFPs. Of those  
4   48 RFPs, AEM participated in 24, but they were only the  
5   winning bid for six of those RFPs. And that's for the  
6   period of 2004 through 2009.

7           Other suppliers who won multiple times  
8   include BP, which won eight times; Tenaska, which won  
9   seven; Anadarko won seven; CenterPoint won five; Conoco  
10   Phillips won five; Shell and OGE both won twice.

11           But in this case, Staff is not proposing any  
12   disallowances related to the gas marketers that submitted  
13   the lowest and the best bid for Kirksville, Piedmont,  
14   Arcadia, Jackson and other southeast Missouri areas. In  
15   other words, Staff is not proposing to disallow any costs  
16   associated with AEM's competitors; Conoco Phillips,  
17   CenterPoint, BP Energy Corporation, Anadarko or Tenaska  
18   Marketing.

19           Staff apparently recognizes that the Atmos  
20   competitive bidding process produced contracts in these  
21   regions that were prudent and reasonable. In these areas,  
22   these contracts represented the lowest and best price that  
23   was available to Atmos and its customers.

24           Even though Atmos used the same competitive  
25   bidding process for Hannibal and Butler, Staff proposed

1 disallowances in the Staff recommendation filed in December  
2 of 2009 because the contracts were awarded to AEM, an  
3 affiliate of Atmos. Now, as I understand the Staff's  
4 position, Staff is not asserting that Atmos was imprudent  
5 in accepting the lowest and best bid, even though it was  
6 from its affiliate.

7 Of course, Atmos is contractually obligated  
8 to pay the full cost -- or the full amount included in the  
9 AEM contracts that were accepted after this formal  
10 competitive bidding process. And the AEM bids were the  
11 lowest and the best bids available to Atmos and its  
12 customers in these areas.

13 As we'll establish in the hearing today,  
14 Staff has now abandoned its original position and totally  
15 eliminated its proposed disallowance related to Butler, and  
16 it's modified its proposed disallowance related to  
17 Hannibal.

18 For the Hannibal area, Staff in this case is  
19 proposing to lower the gas costs that are passed through to  
20 consumers by the same amount as the gross profits of AEM on  
21 these contracts. In other words, Staff is proposing to  
22 disallow from Atmos' gas costs an amount equal to the gross  
23 profits earned by AEM on these contracts -- or at least as  
24 developed by AEM.

25 And I'm emphasizing the word "gross" because

1 the amount of Staff's disallowance does not take into  
2 account that AEM has administrative overheads -- salaries,  
3 pensions and insurance, office costs and numerous other  
4 overheads -- that AEM must recover before it makes any net  
5 profit on these transactions.

6 Staff recognizes that their proposed  
7 adjustment does not include these personnel costs and other  
8 administrative overheads. And Staff's adjustment totally  
9 ignores those other administrative overheads.

10 If Atmos had rejected the AEM low bids and  
11 accepted higher bids from other bidders, then I suspect  
12 that Atmos would be facing a different Staff prudence  
13 disallowance for its failure to accept the lowest and the  
14 best bid.

15 In the Hannibal area, if the supply contract  
16 had not been awarded to the lowest cost bidder, which  
17 happened to be the affiliate, but instead had awarded it to  
18 the second-place bidder, the annual cost for the Hannibal  
19 area customers would have increased by approximately  
20 \$140,000, looking at both the two RFP processes that were  
21 used in the ACA period.

22 Now, if Atmos had accepted the second-best  
23 bids, I suspect Staff would be suggesting a disallowance of  
24 nearly \$140,000 because Staff didn't -- because Atmos  
25 didn't accept the lowest and best bid.



1           Because Atmos tried to save its customers an  
2     additional \$140,000 by accepting the lowest and best bid,  
3     it's now facing a disallowance proposed by Staff of  
4     \$308,000 in this case, and almost \$500,000 in the next ACA  
5     period.

6           I'd just ask the Commission, is this the  
7     type of perverse incentive that the Commission wants to  
8     build into the PGA process? On its face, does this make  
9     good public policy sense?

10          The only difference between the  
11     circumstances in the Hannibal and Butler areas, and in the  
12     rest of the company's service areas, is that AEM happens to  
13     be an affiliate of Atmos Energy Corporation, and AEM won  
14     the competitive bidding process in the Hannibal and Butler  
15     service areas.

16          Now, it's important, I think, to emphasize  
17     that AEM is an unregulated gas supplier in competition with  
18     numerous other unregulated gas marketers, seeking to win  
19     the business of Atmos Energy Corporation in Missouri. AEM  
20     is not an agent of Atmos Energy Corporation in any way.  
21     It's just in competition with these other gas marketers.

22          Let's look at some of the legal issues that  
23     we're going to be talking about. This case includes one  
24     issue that is traditionally heard in almost every ACA case:  
25     Were Atmos Energy Corporation's purchasing practices

1 prudent during the ACA period?

2           Based on the evidence, it's clear that  
3 Atmos' acceptance of the low bid from AEM was prudent and  
4 produced the lowest cost for gas supplies in the Hannibal  
5 area. I don't think anyone in the case now is disputing  
6 this fact.

7           But this case also presents several issues  
8 of first impression: Whether the affiliated transactional  
9 rule requires that a regulated LDC like Atmos lower its gas  
10 costs in the PGA/ACA process by the same amount as the  
11 gross profits of an affiliated gas marketer that provided  
12 gas supplies after a formal competitive bidding process.

13           Now, as I understand the Staff witness's  
14 testimony in his deposition, Mr. Sommerer is now -- is not  
15 now advocating that the affiliated transaction rule  
16 requires that the Commission lower the gas supply costs by  
17 the same amount as the gross profits of the affiliated  
18 marketer. So I understand his testimony. That's not what  
19 they're suggesting.

20           However, in order to establish the fair  
21 market price for the gas, Staff is suggesting,  
22 Mr. Sommerer's suggested in -- that his disallowance is  
23 appropriate and has the effect of reducing Atmos' gas costs  
24 by the same amount as the gross profits of AEM on the  
25 transaction.

1           A couple of other issues of first  
2     impression. Whether Atmos provided a financial advantage  
3     to its affiliate. And I'd like to address that in some  
4     more detail in just a minute.

5           In its position statement filed in this  
6     case, Staff raised another issue: Whether the Commission  
7     should prohibit affiliated transactions between Atmos and  
8     its affiliated gas marketer. If the Commission adopted  
9     this Staff position, of course, it would be totally  
10    inconsistent with the Commission's own affiliated gas  
11    marketer rules that contemplate that there will be, or may  
12    be, affiliated transactions between LDCs and their  
13    affiliated gas marketers.

14          In fact, as the Commission knows, those  
15    rules prescribe the very conditions under which such  
16    transactions are specifically authorized by the Commission.

17          Now, Staff witness Sommerer, in his  
18    deposition, admitted that at least from his layman's  
19    perspective, Staff's position on this issue is inconsistent  
20    with the Commission's own rule.

21          Whether the -- the next issue is whether the  
22    Commission should make a \$308,000 disallowance of gas costs  
23    because Atmos asserted its right to object to discovery  
24    related to its unregulated affiliate. At the end of the  
25    case, at the end of the day, this may be the real issue

1       that the Commission has to address.

2               Atmos was surprised by the deposition  
3       testimony that indicated that the Staff made the proposed  
4       adjustment in the Staff recommendation and the direct  
5       testimony because it anticipated discovery disputes in this  
6       case related to access to books and records of AEM.

7               Let me say that again: Because they  
8       anticipated such discovery disputes.

9               COMMISSIONER JARRETT: Mr. Fischer, while  
10      you are taking a breath, can I ask you a question?

11              MR. FISCHER: Yes, sir.

12              COMMISSIONER JARRETT: Did Staff ever issue  
13      subpoenas to try to get information in this case?

14              MR. FISCHER: They -- after the surrebuttal  
15      was filed, they did issue subpoenas. And they have  
16      subpoenaed Mr. Mike Walker to testify today. And -- but as  
17      far as -- but during the audit there were no subpoenas in  
18      --

19              COMMISSIONER JARRET: And that was my  
20      question. During the audit did they ever issue any  
21      subpoenas when you objected to discovery?

22              MR. FISCHER: No. And there was never a  
23      motion to compel prior to the time that they -- the Staff  
24      recommendation and direct testimony was filed.

25              COMMISSIONER JARRETT: Thank you.

1                   MR. FISCHER: The Staff's proposed  
2   disallowance is based upon Staff's incorrect and unlawful  
3   interpretation of the Commission's affiliated transaction  
4   rules, which are, of course, found at 4 CSR 240-40.015, and  
5   the marketing affiliate transaction rule, 4 CSR 240-40.016.

6                   As the Commission knows, the affiliated  
7   transaction rules have a separate marketing affiliate  
8   transaction rule that specifically contemplates that the  
9   regulated gas companies may lawfully do business with an  
10   affiliated gas marketer.

11                  Although this is an ACA case, and Staff has  
12   not brought a complaint under the Commission's affiliated  
13   transaction rule, the Commission's affiliated transaction  
14   rules seem to be at the heart of the dispute, when the  
15   Staff filed the Staff recommendation and direct testimony.

16                  As I'll explain in a moment, however, we no  
17   longer believe that that's the real issue that is the real  
18   basis for the Staff's adjustment in this case.

19                  Nevertheless, I would like to address the  
20   affiliated transaction rule, since that seems to be the  
21   apparent basis for the Staff's adjustment when it was first  
22   filed more than a year ago.

23                  Both the affiliated transaction rule and the  
24   marketing affiliated transaction rule have the following  
25   provision that mandates competitive bidding, unless good

1       cause is shown why competitive bidding is not appropriate.

2       And I put it on the screen.

3               That particular provision states that when a  
4       regulated gas corporation purchases information, assets,  
5       goods or services from an affiliated entity, the regulated  
6       gas corporation shall either obtain competitive bids for  
7       such information, assets, goods or services, or demonstrate  
8       why competitive bids were neither necessary nor  
9       appropriate. And there's an identical provision to that in  
10      the marketing affiliate rule, at Subsection 3(a).

11             From both of these provisions, it's clear  
12      that a formal competitive bidding process, like the one  
13      that Atmos utilized, is required by the affiliated  
14      transaction rule, unless the regulated company demonstrates  
15      why competitive bids are neither necessary or appropriate.

16             Now, Atmos followed the preferred method of  
17      dealing with its affiliated gas marketer by using a robust,  
18      competitive bidding process. And obviously since Atmos  
19      follows that preferred method of competitive bidding, it  
20      was not necessary for us to explain why we didn't.

21             One of the arguments Staff has raised is  
22      that Atmos provided AEM a financial advantage to its  
23      affiliate. However, according to the criteria established  
24      in the Commission's affiliated transaction rule, it's very  
25      clear that Atmos did not provide its affiliated gas

1 marketer any financial advantage in this case. Again, I  
2 put that provision on the screen.

3 Under the Commission's rules, a regulated  
4 gas corporation shall be deemed to provide a financial  
5 advantage to an affiliate if it compensates its affiliate  
6 for goods and services above the lesser of the fair market  
7 price or the fully distributed cost to provide goods and  
8 services itself.

9 Now, in this case, the Staff has testified  
10 that it's focusing on the fair market price for the gas  
11 that AEM sold to Atmos. Staff has not suggested that the  
12 fully distributed cost to Atmos was lower than the fair  
13 market price. In fact, the evidence will show that Atmos  
14 does not have the capability to provide itself the gas  
15 services at a lower cost than the outside gas marketers do  
16 that -- whenever it obtains competitive bids.

17 Now, in this proceeding, the issue is: What  
18 is the fair market price of the gas that Atmos purchased  
19 from AEM? Atmos needs to establish that it did not pay AEM  
20 more than the fair market price in order to demonstrate  
21 that it did not provide its affiliate with a financial  
22 advantage.

23 Now, based on the competent and substantial  
24 evidence in this case, it's clear that Atmos did not pay  
25 its affiliate above the fair market price for gas. In

1 reality, Atmos paid AEM less than the fair market price.

2 Fair market price is established by a  
3 willing buyer and a willing seller agreeing to a price for  
4 a good or service after an armslength negotiation process.  
5 For Hannibal, there were two competitive RFP bidding  
6 processes that overlapped during the ACA period. And we'll  
7 be talking about both of those. AEM had the lowest bid in  
8 each RFP.

9 For the first RFP, there were six  
10 unaffiliated bidders that established the fair market price  
11 for gas. In the second, there were three unaffiliated  
12 bidders that established the fair market price for gas.

13 I'm not going to disclose the names of the  
14 bidders, but -- in an open session, but I have put on the  
15 screen the AEM low bid and all of the other amounts of the  
16 bidders. And you can see what the mean price was.

17 And in that first RFP, there were, as I  
18 said, six unaffiliated bidders and AEM that offered to  
19 provide gas to Atmos. You can see that the unaffiliated  
20 bidder -- bid prices ranged from 14 million to \$14.5  
21 million. Atmos believes that this competitive bidding  
22 process, among these unaffiliated companies, established  
23 the fair market price for the gas was in the range of 14  
24 million to \$14.5 million.

25 Now, Atmos' bid was less than that fair



1 market price established by those unaffiliated bids. In  
2 fact, the AEM bid was \$102,000 less than the fair market  
3 price for the gas established by these unaffiliated  
4 bidders.

5                   Ultimately, Atmos actually paid less than  
6 the AEM bid, since it did not need as much gas as was  
7 assumed in the bid.

8                   Let's look at the second RFP. AEM again had  
9 the lowest bid. However, there were three other  
10 unaffiliated bidders that bid in the process and  
11 established the fair market price for the gas commodity.  
12 And I've listed those three, and the amounts of the bids on  
13 the slide without identifying the names.

14                   But you can see that the unaffiliated  
15 bidders, they bid in a range of 14.8 million to \$15.1  
16 million. Atmos believes this second competitive bidding  
17 process among these unaffiliated companies established that  
18 the fair market price for the gas was between 14.8 and  
19 \$15.1 million.

20                   Now, in that second RFP, Atmos' bid was  
21 approximately \$38,000 less than the fair market price for  
22 the gas. Again, Atmos did not pay its affiliate more than  
23 the fair market price. It paid the affiliate less than the  
24 fair market price, and therefore there's no financial  
25 advantage given to the affiliate, AEM, under the criteria

1 of the Commission's affiliated transaction rule.

2           Atmos did not compensate its affiliate above  
3 the fair market price as determined by the competitive  
4 bidding process, nor did it pay its affiliate above its  
5 fully distributed cost. Therefore, under the rules, there  
6 is no financial advantage.

7           Now, simply because Atmos tried to save its  
8 customers an additional \$140,000 by accepting the lowest  
9 and the best bids from its affiliate, rather than paying  
10 the fair market price established by the competitive  
11 process with the unaffiliated gas marketers, Atmos is now  
12 facing a disallowance in this case of \$308,000, and almost  
13 \$500,000 in the next ACA period.

14           As the public policy makers of this state,  
15 the Commission should ask itself the following question:  
16 Is this the kind of perverse incentive that the Commission  
17 wants to encourage in the PGA process?

18           If an LDC accepts the lowest bid from an  
19 affiliate, then it will face a substantial disallowance  
20 based upon Staff's analysis of the affiliated gross  
21 profits, or, alternatively, face the cost of -- or face the  
22 cost of an expensive investigation of its affiliate's  
23 businesses practices.

24           From the LDC's perspective, isn't the  
25 incentive under this scenario just to accept the higher

1 price from an unaffiliated gas marketer, even though the  
2 cost to the LDC's customers will be higher?

3 Now, this has been a long journey, since the  
4 company filed its tariffs in October of 2008. And we've  
5 seen the Staff's theory on this case evolve over time.  
6 Initially, Staff -- I mean, Atmos believed this case was  
7 about prudence -- prudence issues related to Atmos'  
8 accepting the lowest bid from an affiliate.

9 Based on the deposition of the Staff  
10 witness, however, we now understand that Staff is not  
11 alleging that it was imprudent for Atmos to have accepted  
12 the low bid from its affiliate.

13 Atmos next believed that this case was about  
14 Staff's allegation that Atmos could not legally pass along  
15 profits of an affiliate through the PGA process. But based  
16 on the depositions of the Staff witness, we now understand  
17 that Staff is not alleging that the affiliated transaction  
18 rule requires that the profits of an affiliate be  
19 subtracted off the gas costs that are passed along to the  
20 LDC's customers.

21 Based upon the deposition of Mr. Sommerer,  
22 Atmos now believes that this case is about Staff's desire  
23 to audit the books and records of its affiliate, or perhaps  
24 Staff's desire to prohibit affiliated transactions  
25 altogether between Atmos and its affiliated gas marketer.

1           Looking back at the development of this case  
2   and the Staff's emphasis on discovery related to AEM, it  
3   probably should have been apparent from the beginning where  
4   the real issues were. The theme of the case could be a  
5   "Tale of More Discovery."

6           On December 28, 2009, Staff filed its Staff  
7   recommendation with a \$362,979 affiliated transaction  
8   adjustment for Hannibal and Butler -- and I've broken it  
9   down between the two -- over -- after -- or at the end of a  
10   year-long ACA audit. But in that Staff recommendation it  
11   stated that they needed more discovery on AEM.

12           On March 12th, 2010, Staff filed its Staff  
13   direct case with that 362,979 affiliated transaction  
14   adjustment. But it again stated in the direct testimony  
15   that it needed further discovery of AEM.

16           On June 14th, 2010, Staff filed its  
17   rebuttal, which continued to propose the affiliated  
18   transaction adjustment, but -- and I'll quote -- "Staff was  
19   unable to make a fully informed recommendation," without  
20   more discovery.

21           On May 3rd, nearly five months after it  
22   completed its ACA audit and alleged that the Company was  
23   charging rates that were unjust and unreasonable, Staff  
24   issued DR No. 117, which requested more information about  
25   AEM's business practices.

1                   On May 24th, Atmos answered DR No. 117  
2     within the time prescribed by the Commission's rules. The  
3     Company also supplemented the response on June 3rd, 2010.

4                   Then on June 11th, 2010, Staff filed its  
5     motion to suspend the procedural schedule on the ground  
6     that it could not file its rebuttal testimony without the  
7     additional discovery of AEM.

8                   Now, of course, this was five months after  
9     it originally alleged that Atmos' rates were unjust and  
10    unreasonable.

11                  On July 2nd, the Commission granted Staff's  
12    request and suspended the procedural schedule until Atmos  
13    and AEM provided Staff with additional information related  
14    to the unregulated activities of AEM, which they did.

15                  On August 27th, 2010, Staff issued follow-up  
16    data requests asking Atmos for more details about the  
17    business practices of AEM. Now, Atmos again objected. But  
18    Staff filed a motion to compel. The Commission granted  
19    this motion, and the Commission directed Atmos to answer  
20    these two DRs by November 22nd, which they did.

21                  Now, fortunately, the PSC also established  
22    the procedural schedule -- or reestablished the procedural  
23    schedule in that order, and ordered that discovery end by  
24    December 23rd, 2010. But Staff claimed it still needed  
25    more discovery to support its case.

1                   On February 10th, 2011, Staff subpoenaed  
2   Becky Buchanan and Mike Walker for depositions and more  
3   discovery, notwithstanding the Commission's order that  
4   discovery should end by December 23rd, 2010 -- more than a  
5   year after Staff filed its Staff recommendation alleging  
6   that Atmos' rates were unjust and unreasonable.

7                   Atmos decided to cooperate with Staff's new  
8   round of discovery, with the hope that it could more  
9   quickly get the substantive issues presented to the  
10   Commission, and finally get them resolved.

11                  On February 28th, 2010 [sic], the Staff  
12   conducted discovery depositions of Becky Buchanan and Mike  
13   Walker. Atmos also conducted the deposition of Mr. David  
14   Sommerer the next day.

15                  On March 2nd, 2011, Staff subpoenaed Mike  
16   Walker as a witness for the hearing, and requested that he  
17   produce documents, which the Company had already provided  
18   to Staff during the extensive discovery process. And I've  
19   listed on that slide all the things that they wanted him to  
20   bring today. The Commission denied that particular  
21   request, although it granted the subpoena of him to come to  
22   the hearing.

23                  Staff wanted Mr. Walker, who had not  
24   prefiled testimony in this case, to bring these documents  
25   that relate to AEM and Atmos.

1           By now the theme of the case has become  
2   clear: The Staff's proposed affiliated transaction  
3   adjustment is more about the opportunity to delve into the  
4   business practices of AEM than it is about the prudence of  
5   Atmos' accepting the lowest bid from an affiliate or Atmos'  
6   passing along gas costs, including a profit from the  
7   affiliate.

8           Staff's position statement indicates that  
9   Staff is recommending that the Commission prohibit  
10   affiliated transactions between LDCs and their affiliates,  
11   apparently because Staff has been concerned about their  
12   access to information about unregulated affiliates.

13           In any event, the theme of the case seems to  
14   have been "A Tale of More Discovery."

15           In surrebuttal testimony, Staff is now  
16   proposing for the very first time a new prudence adjustment  
17   of either \$52,572 or \$85,775 related to Atmos' willingness  
18   to work with its supplier when a pipeline rupture occurred  
19   in December of 2007, and there was a force majeure event  
20   declared by the pipeline.

21           As a result of the pipeline rupture, Atmos'  
22   supplier, AEM, could not deliver the maximum amount that  
23   Atmos could have nominated under its contract. Atmos  
24   agreed to nominate the lesser amount than the maximum.

25           Staff is apparently alleging that this

1 action by Atmos was imprudent. Atmos does not believe that  
2 there is a legal basis for the Staff's proposed adjustment  
3 included in its surrebuttal testimony. But certainly this  
4 adjustment is not proper to be raised at the eleventh hour  
5 in surrebuttal testimony when the Company has absolutely no  
6 opportunity to address it.

7 In conclusion, the Commission should reject  
8 the Staff's proposed \$308,000 affiliated transactions  
9 adjustment and any other adjustments proposed by the Staff  
10 in this proceeding.

11 Thank you very much for your attention  
12 today. I'm happy to answer any questions that you might  
13 have.

14 COMMISSIONER JARRETT: Mr. Fischer, thank  
15 you. I do have a question. Sorry, Judge, for breaking in  
16 there without asking you.

17 JUDGE WOODRUFF: That's all right.

18 COMMISSIONER JARRETT: What is the legal  
19 standard for prudence -- determining prudence?

20 MR. FISCHER: Under the Associated Natural  
21 Gas case, it is a -- basically, a reasonable standard based  
22 on the information that was known at the time under the  
23 circumstances, whether the company acted in a reasonable  
24 way based on the information they had at that time. It's  
25 not a hindsight review. And it's very -- it's the same



1 standard we talked in the KCPL case recently, about power  
2 plant prudence.

3 COMMISSIONER JARRETT: Now, correct me if  
4 I'm wrong, but the expenditures are presumed to be prudent;  
5 is that correct?

6 MR. FISCHER: Yes, sir, until a serious  
7 doubt is raised about it.

8 COMMISSIONER JARRETT: Correct.

9 MR. FISCHER: Yes.

10 COMMISSIONER JARRETT: And that has to be --  
11 the serious doubt has to be by evidence raised?

12 MR. FISCHER: Correct.

13 COMMISSIONER JARRETT: Correct? Thank you.

14 JUDGE WOODRUFF: All right.

15 COMMISSIONER JARRETT: I'm just going to ask  
16 Mr. Berlin if he agreed with that.

17 JUDGE WOODRUFF: Mr. Fischer, don't leave.  
18 I have a question for you also.

19 MR. FISCHER: Oh, yes, sir.

20 MR. BERLIN: Commissioner Jarrett. I'm  
21 going to cover the prudence standard in detail --

22 COMMISSIONER JARRETT: Oh, okay.

23 MR. BERLIN: -- in my opening.

24 COMMISSIONER JARRETT: Thank you.

25 JUDGE WOODRUFF: All right. Mr. Fischer,

1 Commissioner Davis is watching over the Internet.

2 MR. FISCHER: Good morning.

3 JUDGE WOODRUFF: And he sent me a question  
4 that he'd like to have asked also.

5 MR. FISCHER: Okay.

6 JUDGE WOODRUFF: And I'll read it here. And  
7 then I'm going to give the other attorneys a chance to  
8 respond to this also.

9 As a Commission observer and frequent  
10 practitioner in front of this Commission, do you believe  
11 Staff's position in this case constitutes an improper  
12 rulemaking by adjudication as articulated in the case of  
13 Greenbriar Hills County Club vs. Director of Revenue,  
14 Supreme Court Case No. SC-82805 issued March 10 -- or March  
15 20, 2001?

16 MR. FISCHER: Commissioner, I haven't read  
17 that case, so I can't comment on that. I do think it would  
18 be inappropriate for the Commission to prohibit affiliated  
19 transactions by -- in a contested case whenever there's a  
20 rule that specifically authorizes related transactions.  
21 That case may address some similar situation. I'm not  
22 familiar with that particular case.

23 JUDGE WOODRUFF: All right.

24 I'll give the other parties a chance to  
25 address it, also, in your openings, when you come on up.

1       So just keep that in mind.

2                   MR. FISCHER: Thank you.

3                   JUDGE WOODRUFF: All right.

4                   MR. FISCHER: Judge, I have copies of that  
5       slide presentation if anybody would like them.

6                   JUDGE WOODRUFF: I'll let you know if any  
7       Commissioners request them.

8                   We do have a request.

9                   And Mr. Poston. I'm sorry I didn't give you  
10      a chance to respond to that -- to the prudence standard.  
11      If you want to address that in your opening, that's fine,  
12      too.

13                   MR. POSTON: Okay. Thank you.

14                   COMMISSIONER JARRETT: I just apologize.

15                   MR. POSTON: It's okay.

16                   JUDGE WOODRUFF: Nothing for Staff. We're  
17      off the record for a moment.

18                   (A discussion was held off-the-record.)

19                   JUDGE WOODRUFF: All right. We're back on  
20      the record.

21                   MR. BERLIN: Good morning. May it please  
22      the Commission. I wish this case were as easy as Mr.  
23      Fischer has laid it out to be. Unfortunately, this is not  
24      an easy case. There are many arms and legs and many  
25      complexities to this case.

1                   I'm going to take a little bit different  
2    approach in this opening. I've got a PowerPoint  
3    presentation, but I'm going to walk you through some things  
4    that I think are critical to your understanding of this  
5    case.

6                   Let me tell you what I'm going to do in my  
7    opening. I'm going to give you an overview of the case,  
8    including the players and the field of play. As I  
9    mentioned, there's quite a few. It's important to be able  
10   to sort them out.

11                  I'm going to review the legal standards that  
12   apply in the case. I'm going to explain some very basic  
13   terms unique to the industry, just so that we're all on the  
14   same page. And then I'm going to address some key points  
15   of the Atmos gas supply plant.

16                  And then I'm going to bring the case down to  
17   northeast Missouri. And I will explain the rationale for  
18   the relief sought by Staff in its proposed disallowance in  
19   Scenario 1 and Scenario 2. And I'm going to talk a little  
20   bit about discovery matters that affect the length of this  
21   case. I'll do that before I close.

22                  Now, I will also, at the end, circle back,  
23   and I'm going to give you the story of the deal. We may  
24   have to go in camera for some of this. I'll do my best to  
25   alert the Commission when we get to some HC material. So

1       that's what I'm going to do today in my presentation --  
2       opening.

3                   What happened?   What did I hit?

4                   MR. JOE HOFFMAN:   I don't know.

5                   JUDGE WOODRUFF:   We'll go off the record  
6       again while we're dealing with the technology.

7                   (Off the record.)

8                   MR. BERLIN:   This is a rate case.   It is --

9                   JUDGE WOODRUFF:   I'm sorry.   We're back on  
10       the record.

11                  MR. BERLIN:   Okay.   Back on the record.

12                  Yeah.   This is a rate case.   It involves the  
13       2007, 2008 actual cost adjustment for the Hannibal, Canton,  
14       Palmyra and Bowling Green service areas of northeastern  
15       Missouri.   I may talk about Hannibal, Bowling Green, but  
16       this is the service area that I am referring to throughout.

17                  This is different than a general rate case  
18       because of several factors.   Number one, this rate case  
19       involves the other 70 percent of the customers' charges --  
20       the charge for gas itself.

21                  There is no operation of law date, unlike a  
22       general rate case.   There is also the fact that the utility  
23       has already collected its revenues through the PGA process,  
24       and those revenues have been collected from the ratepayers.

25                  And we have to keep in mind that in an ACA

1 case, the purpose is to evaluate the gas costs.

2 This didn't do this yesterday.

3 May we go off the record?

4 JUDGE WOODRUFF: Off the record again.

5 (Off the record.)

6 JUDGE WOODRUFF: Do we need a recess?

7 MR. BERLIN: If we could just take a quick  
8 recess --

9 JUDGE WOODRUFF: Okay. We'll take a  
10 five-minute recess; come back at 9:15.

11 (Off the record.)

12 JUDGE WOODRUFF: Okay. We're back from our  
13 break, and hopefully technology is working now. And  
14 Mr. Berlin, you can proceed.

15 MR. BERLIN: Thank you, Judge. I'm on Slide  
16 2, and during the break, I passed out a paper copy of the  
17 presentation, should the technology issues persist.  
18 Hopefully they won't.

19 As I mentioned, this is an ACA period that  
20 covers a one-year period. It's September 2007 to August of  
21 2008. And in this review that Staff conducted, it looked  
22 at three areas. First, the gas purchasing practices and  
23 the decisions for prudence. It also looked at the  
24 reasonableness of the hedging plans of the Company. And it  
25 did a reliability analysis of estimated peak day

1 requirements and capacity levels.

2 Staff filed its recommendation in this case  
3 December 28th of 2009. In a typical ACA review, Staff  
4 conducts what could be best termed as a compliance audit  
5 when the Company deals with independent third-parties.

6 Now, this is not a typical ACA review,  
7 because the LDC has chosen to buy gas from it's unregulated  
8 affiliate. This changes the complexity of the audit  
9 radically, because there is no armslength transaction.

10 The audit actually looks less like a  
11 compliance audit and more like a forensic audit. The audit  
12 becomes much more extensive and much more detailed. And  
13 the audit must drill down into the transaction of the  
14 affiliate with its supplier.

15 It is essentially peeling back the layers of  
16 the onion to understand the economics of the transaction  
17 that the company conducted essentially with itself.

18 Now, why do we do this? It is Staff's job  
19 to scrutinize these transactions, because the affiliate  
20 transaction must be transparent.

21 There we go.

22 I'd like to take a minute and talk about  
23 Atmos Energy Corporation, the regulated public utility, and  
24 talk a little bit about the terms you'll hear me use today.  
25 Mr. Fischer used some of them.

1           Atmos Energy is the regulated public  
2   utility. There are two sides to Atmos Energy Corporation.  
3   There is a natural gas utility operating division side and  
4   an Atmos Energy Holdings, Inc. side. On the utility  
5   operating division side, there are divisions.

6           The Mid States Division is the division that  
7   buys gas for Missouri jurisdiction. On the unregulated  
8   side, under the holdings company, there is Atmos Energy  
9   Marketing, and then there's another LLC under the holdings  
10   company called Atmos Energy Services.

11           You'll hear me talk about the regulated LDC,  
12   the local gas distribution company. We'll call it  
13   sometimes AEC, or Atmos. That's the regulated utility.

14           We'll talk about AEM. That's the  
15   unregulated affiliate.

16           And then there's Atmos Energy Services.

17           Where does Atmos Energy Services fit into  
18   this? Well, Atmos Energy Services has a scheduler that is  
19   acting as an agent of the regulated utility of the Mid  
20   States Division gas-buying operation. The gas buyer places  
21   the order for gas, the nomination for gas, to a scheduler  
22   at Atmos Energy Services. Then it gets entered into the  
23   pipeline.

24           Now, I think it's important to note here  
25   that Atmos is, by its own website, the largest pure



1     national gas distribution company in the United States. It  
2     serves over 3.2 million customers.

3             The testimony of Atmos in this case has  
4     shown that Atmos does not have the expertise, the skills,  
5     or special knowledge in its regulated gas-buying section to  
6     access the natural gas markets or to access the financial  
7     markets. Atmos' business model has a skeletal gas-buying  
8     operation in its regulated side of the business.

9             Atmos, by decision, has put its skilled gas  
10    buyers in Atmos Energy Marketing -- the unregulated  
11    affiliate.

12            The cause for concern that Staff has is that  
13    in this transaction, Staff sees no special or unique value  
14    to the gas supply deal that AEM did for its regulated  
15    utility. I'll discuss more about that later.

16            It's important to know, too -- there we go  
17    -- what we're looking at on the ground. This is going to  
18    bring it down to Missouri a little bit. You see a  
19    Panhandle Eastern Pipeline slide. I'd like to explain  
20    this. I'm going to explain a little bit about what this  
21    slide has, and then I'll have to go in camera.

22            First, you see a demarcation point, a line,  
23    where it says Field Zone, and then Market. And that line  
24    is drawn through Haven, Kansas, along the pipeline, which  
25    runs from west to east. This portion of the slide pretty

1 much takes it from, as you see, Texas all the way to the  
2 east into Illinois. And then at the far right, in the  
3 upper right portion, you see the Hannibal citygate. That's  
4 the delivery point.

5 Now, Haven is important because, as I said,  
6 it's a demarcation point. Gas, under the contract that  
7 Atmos entered into with its affiliate, is to be delivered  
8 to Haven. Now, the field zone, we call that upstream of  
9 Haven; that's called a production area or a supply basin.  
10 Going downstream into the market is the market area.  
11 That's where the customers are.

12 What I'd like to do now, Judge, if I could,  
13 go into -- in camera.

14 JUDGE WOODRUFF: Okay. We'll have to go in  
15 camera. Since we do certainly have commissioners watching  
16 over the Internet, it's -- we'll want to be in camera as  
17 little as possible. So make sure to tell me when we can  
18 come out.

19 MR. BERLIN: I will.

20 (REPORTERS'S NOTE: At this point, an  
21 in-camera session was had, which is found in Volume 6, page  
22 270).

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1 JUDGE WOODRUFF: All right. We're back in  
2 regular session.

3 MR. BERLIN: Okay. So down around  
4 Louisburg, Kansas is the secondary receipt point from the  
5 line bringing gas supplies into Louisburg. As I mentioned,  
6 I'm going to call that the secondary receipt point. It is  
7 in the market area.

8 Now, at the heart of these transactions is  
9 this: The RFP issued by Atmos requested that the gas be  
10 delivered to Haven. In actuality, the -- well, the  
11 contract also obligated AEM to supply gas, bring it into  
12 the Haven receipt point. What in fact happened was that  
13 Atmos Energy Marketing brought the gas in -- downstream  
14 through a secondary receipt point, right around Louisburg,  
15 Kansas.

16 This changes the dynamics of the deal. And  
17 you'll hear more about that later.

18 Now, what I'd like to do is talk about the  
19 standards. Section 393-130.1 -- the same statute that  
20 governs general rate cases governs here -- All charges for  
21 gas service must be just and reasonable.

22 There we go.

23 Commissioner Jarrett had asked me a question  
24 earlier about the prudence standard. This is the prudence  
25 standard that is before you. It comes from the Associated

1 Natural Gas v. Public Service Commission of Missouri case,  
2 went to the Western District, and was decided in 1997.

3 And I'd like to read it, because I think  
4 it's very important to know this standard. A utility's  
5 costs are presumed to be prudently incurred; however, the  
6 presumption does not survive a showing of inefficiency or  
7 improvidence. Where some other participant in the  
8 proceeding creates a serious doubt as to the prudence of an  
9 expenditure, then the applicant has the burden of  
10 dispelling these doubts and proving the questioned  
11 expenditure to have been prudent.

12 The test of prudence should not be based  
13 upon hindsight, but upon a reasonableness standard. The  
14 company's conduct should be judged by asking whether the  
15 conduct was reasonable at the time under all the  
16 circumstances, considering that the company had to solve  
17 its problems prospectively rather than in reliance on  
18 hindsight.

19 In effect, our responsibility is to  
20 determine how reasonable people would have performed the  
21 task that confronted the company.

22 All right. Well, it looks like I just lost  
23 the PowerPoint again. So what we'll --

24 MS. SLACK: I have it on a flash drive.

25 MR. BERLIN: Okay. May I just break and

1       give the flash drive --

2                   JUDGE WOODRUFF: All right. We'll go off  
3       the record for a moment.

4                   (Off the record.)

5                   MR. BERLIN: Thank you, Judge.

6                   We just talked about the prudence standard,  
7       and cited the Associated Natural Gas case. Now, as we  
8       know, this case involves an affiliated transaction and  
9       brings in the affiliated transaction rule, specifically for  
10      4 CSR 240-40.016, the marketing affiliate transactions, the  
11      purpose of which is that the rule sets forth standards of  
12      conduct, financial standards, evidentiary standards, and  
13      recordkeeping requirements applicable to all Missouri  
14      regulated gas corporations engaging in affiliate  
15      transactions.

16                  Now, Mr. Fischer covered this rule. I would  
17      like to emphasize that the rule requires extensive,  
18      contemporaneous records of these transactions. It does not  
19      modify existing legal standards, and it was upheld by the  
20      Missouri Supreme Court in Atmos Energy Corporation v.  
21      Public Service Commission in 2003.

22                  And in that decision, the Missouri Supreme  
23      Court stated that there is both incentive and opportunity  
24      to maximize profits at the expense of the regulated  
25      utility. That is why this is such an important rule.

1           The procurement analysis staff is charged  
2     with scrutinizing and policing gas supply transactions to  
3     make sure, as it states in the rule, that no advantage of  
4     preference be given to the affiliate that would not  
5     otherwise be given to an independent third party.

6           Now, the next case -- I've put here a U.S.  
7     Supreme Court case. And I include this because I think  
8     it's important to know that there's nothing new about  
9     affiliate transactions.

10           Back in 1934 in Dayton Power and Light  
11     Company vs. Public Utilities Commission of Ohio, the U.S.  
12     Supreme Court decided this case and held that the  
13     proposition that the gas rate proceeding that a  
14     distributing company had the burden of proving that price  
15     at which it obtained from its affiliated seller was no  
16     higher than would be payable in a regulated business by a  
17     buyer unrelated to the seller and dealing at armslength.

18           Now, bringing this to some more modern case  
19     law governing affiliate transactions, there is the Turpin  
20     v. Oklahoma Corporation Commission case that holds,  
21     Throughout the United States, it is recognized that a  
22     public utility's dealings with affiliates require a  
23     thorough investigation and close scrutiny by a public  
24     utility commission.

25           There is also what I term as the Boise Water

1 I and Boise Water II v. Idaho Public Utility Commission  
2 case -- cases that held, It is generally held that the  
3 utility bears the burden of proving that expenses incurred  
4 in transactions with affiliates are reasonable.

5 Now, I'd like to make a point of distinction  
6 here. The expenses are incurred expenses. The bid  
7 process, those expenses are not incurred because it's --  
8 they're using estimated volumes and estimated gas numbers  
9 -- gas price figures. So we have to look at the  
10 transactions. We have to dig down into them.

11 I'd like to do, very briefly, an explanation  
12 of basic terms, because I think it's important, as I have  
13 to drill down in this case, that we understand certain  
14 terms that are basic to the gas industry.

15 This case involves what is called a supply  
16 only agreement. That means that Atmos entered into an  
17 agreement with its affiliate to supply it with gas supplies  
18 only -- a commodity supply agreement. This is a very  
19 standard type of transaction.

20 There is a board out there called the North  
21 American Energy Standards Board. We call it NAESB. I will  
22 refer it to as NAESB. And NAESB has developed an agreement  
23 that is formalized between the parties using a standard  
24 industry contract, and it incorporates in it common  
25 contracting terms and conditions used in the gas industry.



1 It is a supply agreement.

2 In the Atmos supply agreement with its  
3 marketing affiliate, it is covered under a NAESB base  
4 agreement.

5 Atmos entered -- sent its RFP out, inviting  
6 bids, and of course AEM won it. But it sought firm gas  
7 supplies. And quoting the RFP from Atmos is, All gas  
8 supply is to be firm and warranted -- firm and warranted,  
9 bolden and underlined -- assuring that natural gas supply  
10 services will meet all contractual obligations without  
11 fail.

12 That is the level of service that Atmos  
13 entered into its agreement with its affiliate; firm service  
14 versus interruptible, which is less than firm. And as the  
15 words suggest, it can be interrupted.

16 We're going to talk about baseload gas. Let  
17 me give you an example of baseload gas. If I order for  
18 first of month April flowing supplies of 30,000 Mcf of gas,  
19 that means over the 30-day period 1,000 Mcf will be  
20 delivered every day. That is the base load.

21 And then after I order that, I may go in and  
22 order some daily gas. Daily gas is sought out on short  
23 notice. It's ordered today to flow tomorrow. I may order  
24 swing gas. It's a type of daily gas, and it's ordered on  
25 short notice, but it may be brought on for a period of

1       time -- swing supplies.

2                   And then spot gas is purchased day-to-day  
3       without any kind of notice, and it may not be there; it's  
4       just what it is. It might be on the spot or it might not.  
5       It might not be there.

6                   This contract agreement between Atmos and  
7       its affiliate calls for baseload gas supplies and swing gas  
8       supplies.

9                   A nomination, this is the term used that  
10      describes the placement of an order for a specific quantity  
11      of gas. If I nominate 1,000 Mcf, I have placed an order  
12      for a specific quantity of gas. So you'll hear  
13      nominations.

14                   First of month. First of month is to bring  
15      on your base load for flowing beginning the  
16      first-of-the-month. Typically, and in this case, Atmos,  
17      the LDC, places its order with its affiliate five working  
18      days prior to the end of the month, by its own procedure.

19                   There's the field zone I talked about, and  
20      the market zone, on the earlier slide. I would say that  
21      it -- I would like to say it also applies to transportation  
22      contracts. You may have transportation contracts in the  
23      field zone production area, and you may have contracts out  
24      in the market zone, the market area. And those  
25      transportation contracts, of course, can be firm

1     transportation contracts or they may be less-than-firm;  
2     they may be interruptible or something else.

3                 Now, I'd like to touch on the gas supply  
4     plan of Atmos. And I excerpted some pieces of their gas  
5     supply plan, because this is what Staff looks at. You have  
6     a plan and a procedure, do you follow it.

7                 Typically, first-of-the-month nominations  
8     are made to cover the daily average of the percent warmer  
9     purchase requirements. The plan should also reflect  
10    requirements based on normal, a percent warmer and a  
11    percent colder than normal degree days. This percent is 20  
12    percent in Missouri.

13                The plan should only be adjusted  
14    prospectively to adjust for planned storage level  
15    differences experienced in previous months.

16                This plan provides some flexibility should  
17    warmer weather occur. If warmer weather occurs or is  
18    anticipated, they can adjust it from a normalized order and  
19    reduce it by 20 percent, if they anticipate when they place  
20    the order warmer weather. Or they can increase it 20  
21    percent if they anticipate colder weather. Staff has no  
22    issue with this plan.

23                Now, we're going to go into an HC area. I'm  
24    going to talk about the December 2007 average daily  
25    requirement of Hannibal, Canton and Bowling Green.

1 JUDGE WOODRUFF: Do we need to go in camera  
2 at this point?

3 MR. BERLIN: Yes. We do.

4 JUDGE WOODRUFF: Okay. The company agrees  
5 we need to go in camera?

6 MR. FISCHER: I don't know where he's going  
7 to go, but that's fine with me.

8 JUDGE WOODRUFF: All right. We'll go in  
9 camera at this point. Again, we'll come out of it as soon  
10 as we can.

11 MR. BERLIN: We're in camera because --

12 JUDGE WOODRUFF: Just a moment.

13 MR. BERLIN: -- this is --

14 JUDGE WOODRUFF: Just a moment. Let me get  
15 in --

16 MR. BERLIN: Okay.

17 (REPORTER'S NOTE: At this point, an  
18 in-camera session was held, which is found in Volume 6,  
19 pages 280 to 281.)  
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1 MR. BERLIN: All right.

2 JUDGE WOODRUFF: We're back in regular  
3 session. While we were out of -- while we were in camera,  
4 there was discussion with the Company; they indicated those  
5 slides are not highly confidential anymore and could be  
6 displayed publicly. So we'll --

7 MR. BERLIN: Thank you, Judge.

8 JUDGE WOODRUFF: -- we'll proceed.

9 MR. BERLIN: Now, I included this because I  
10 think it's important to understand, because this will --  
11 this is at the bottom layer of Staff's case, here.

12 This is about December 2007. The normal  
13 average daily requirements on a monthly basis, for normal  
14 weather, is 145,080. Adjusted according to Atmos' own gas  
15 supply plan, that would bring a monthly total down to  
16 115,630. That is to account for warmer than normal weather  
17 going into the December flowing month.

18 Next slide.

19 Now, I might have to spend some time on  
20 this, but I -- I want to explain this very clearly. You  
21 just saw the 115,630 number. That is the total plan  
22 warmest first-of-the-month nomination for December 2007.  
23 That wasn't what the Company did.

24 The Company actually nominated first of  
25 monthly supplies of 86,800. That is substantially below

1       their own plan. On a percentage basis, it is 25 percent  
2       below the already adjusted warmest weather number.

3               MR. FISCHER: Judge, I don't mean to be rude  
4       or interrupt, but I do want to make a point that I don't  
5       think I've seen anything that has been presented so far  
6       that is in this record.

7               MR. BERLIN: It is in the record. The  
8       evidence will show this.

9               JUDGE WOODRUFF: All right. Proceed.

10              MR. BERLIN: Now, I think it's very  
11      important to understand that they came in with a very low  
12      first-of-the-month baseload number. It's not explained.  
13      We can't understand it.

14              When they deviate from the plan, Staff looks  
15      for, Well, why? Tell us what caused you to do this. We  
16      can't find any rational reason for that.

17              Now, also, I would like you to understand  
18      that when they make the nomination, they have to take into  
19      consideration where they are at the end of November in  
20      their storage plan. They are 33,000 below storage at the  
21      end of November when they make their first-of-the-month  
22      flowing supply nomination for December.

23              So they're going into December, for baseload  
24      gas, well below their own stated percentage adjustment --  
25      some 25 percent below their own stated adjustment. And



1       they're also what works out to be about 5 percent below  
2       plan, or 32,844. So they're already in the hole in storage  
3       going into December.

4                       Now, the December first-of-the-month  
5       nomination was made on November 20th, according to the  
6       deposition. That's a Tuesday. The very next day there was  
7       a notice sent out that there was trouble on the Panhandle  
8       pipeline. And six days later, Panhandle declared a force  
9       majeure event.

10                      It's important to know, also, that the  
11       Company order -- policy is to order gas five working days  
12       before the first of the flowing month. That would mean  
13       that the last day for ordering the December first of month  
14       supplies is November 26th, a Monday.

15                      So on the 21st, they got notice that there's  
16       an event. They have this very early December  
17       first-of-the-month nomination that's roughly five days or  
18       six days earlier than what their own plans require -- for  
19       five working days, which is November 26th. So herein lies  
20       a problem.

21                      What did they know? Well, they placed a  
22       very early first-of-month nomination, well ahead of the  
23       last day they could have made it -- November 26th. Yes, we  
24       know there was a Thanksgiving holiday in between. But  
25       November 26th is a Monday. Panhandle notified the

1 shippers, the LDC, There's a problem on the pipeline. And  
2 then, later, declared a force majeure event November 27th.

3 Okay. Go ahead to the next, please.

4 Now, let's look at December of 2007. On  
5 December 7th, Atmos placed an order for swing gas. Swing  
6 gas, according to the contract with their supplier AEM, is  
7 for firm supplies -- firm and warranted; firm without fail.  
8 And on December 10th, AEM tells Atmos, Well, number one,  
9 the gas is not coming, but the communication shows that on  
10 December 10th, AEM tells Atmos, This weekend I should be  
11 able to free some gas up. They're not getting their gas.

12 Now, the buyer placed an order December 7th  
13 for swing gas, evidently, thought, Okay, a force majeure  
14 event declared on a pipeline late November, you could still  
15 place an order for swing gas. But AEM, who is under  
16 contractual obligation to provide firm gas supplies, didn't  
17 have the supplies.

18 Well, they didn't have the supplies or cut  
19 the swing gas nominations. They not only cut them, they  
20 cut them from the flowing day of December 8 all the way  
21 through December 31st, and made some substantial cuts in  
22 the flowing supplies.

23 And what the evidence will show throughout  
24 is that AEM made these cuts to northeast Missouri, and that  
25 AEM, in fact, actually had more than enough

1 first-of-the-month gas supplies in its own portfolio to  
2 meet the Atmos LDC needs.

3 And I think it's also important to note that  
4 as of Christmas Day -- actually, the testimony says  
5 December 15th, but we can go with December 15th, because  
6 that's in testimony -- Atmos Energy Marketing had no gas  
7 supplies under contract for January, February and March of  
8 2008.

9 Now, I want to emphasize that Atmos Energy  
10 Marketing is bound by the NAESB agreement. And in the  
11 testimony, there's a portion of a NAESB agreement that  
12 requires that that party, in the event of a force majeure  
13 event, that initial notice may be given orally; however, a  
14 written notice with reasonably full particulars of the  
15 event or occurrence is required as soon as reasonably  
16 possible. AEM never provided -- at least, we've never saw  
17 -- a written notice to its customer, the LDC.

18 If you'd go to the next, please.

19 Now, I'm going to talk about the Scenario 1,  
20 the Scenario 2. And yes, it's true that Scenario 1 and  
21 Scenario 2 were first raised in surrebuttal. And the  
22 reason is this: DRs were sent in October of 2008 and  
23 January of 2009 to the Company requesting, among other  
24 things, information regarding line segment constraints,  
25 interruptions to customers, curtailments of gas supply and

1 transportation, pipeline or supplier issue related to  
2 reliability, supply reliability.

3 And Atmos provided no information in these  
4 responses regarding cuts, and no information on the Haven  
5 pipeline rupture which occurred in November -- late  
6 November of 2007 that affected -- that they say affected  
7 flowing supplies.

8 In fact, DR 100 response received by Staff  
9 February 2nd, 2009 states: There were not any  
10 pipeline/supplier reliability issues during this ACA  
11 period.

12 The DR is not truthful on its face. Indeed,  
13 the FM allegedly disrupted supply and that Atmos claims  
14 affected its nominations and caused a huge reliability  
15 issue, which is their position, you know, as it affected  
16 the swing gas orders from December 8th all the way through  
17 the end of the month, had the effect of misdirecting the  
18 Staff.

19 Staff didn't learn about this force majeure  
20 event and what Atmos has characterized as the cause for  
21 cuts to the swing supplies going into northeast Missouri,  
22 causing the reliability problem, until after rebuttal  
23 testimony was filed.

24 And I want to point out, and the testimony  
25 that Atmos has filed in this case is very clear, and that

1 is they claim there were no reliability problems. The  
2 facts show otherwise. And so Staff has rebutted this  
3 reliability issue in its surrebuttal.

4 And I'd like to also point out that it is  
5 true, as Mr. Fischer said, that on June 14th, the Staff  
6 requested that the Commission suspend the procedural  
7 schedule until the discovery dispute is resolved; and also  
8 in that motion to permit Staff to file supplemental  
9 rebuttal or surrebuttal testimony unlimited to issues  
10 raised in Atmos' rebuttal testimony.

11 Well, the reliability issue, we maintain,  
12 this is germane to their position that there were no  
13 reliability issues. Well, we rebut that in our  
14 surrebuttal, because we didn't get the information until  
15 after rebuttal was filed.

16 Now, let me explain Scenario 1. \$52,572 is  
17 the measure of the harm to customers. This is the impact  
18 of not nominating a reasonable December 2007  
19 first-of-the-month baseload supplies. It's also affected  
20 by the fact that the LDC had to order more costly baseload  
21 and swing gas in January, February and March of 2008.

22 You may remember that they had an  
23 uncharacteristically early first-of-the-month baseload  
24 nomination on November 20th for December slowing supplies,  
25 and an unexplained low first-of-the-month baseload.

1                   And they also didn't adjust, or even  
2     consider, that they were drawing down storage, and by end  
3     of November were significantly -- had a significant  
4     drawdown in storage, which would enter into the decision  
5     making to up the first-of-the-month baseload nomination.

6                   So the calculation here of the damages uses  
7     the average price paid for more costly supplies, because  
8     these supplies had to be made up. And these supplies were  
9     made up, indeed, by the ratepayers in northeast Missouri.

10                  Because by the end of December, and because  
11     of the huge cuts to the swing gas nominations that are  
12     characterized as firm and warranted under the NAESB -- or  
13     under the RFP requirement and under the actual transaction  
14     confirmation as firm supplies, well, they weren't getting  
15     the gas supplies on the swing gas. They did get that low  
16     first-of-the-month baseload -- FOM nom, first-of-month  
17     nomination.

18                  But they're in a position in December to  
19     order lots and lots of swing gas. I'm going to explain  
20     what that means on the deal when I get to what I call --  
21     for lack of a better term -- "The Story of the Deal."

22                  COMMISSIONER JARRETT: Mr. Berlin, I just  
23     have a question.

24                  MR. BERLIN: Sure.

25                  COMMISSIONER JARRETT: You calculated the --

1 or Staff calculated the \$52,572 harm based on the fact that  
2 Atmos bought below the 20 percent -- 24.5 percent below the  
3 20 percent; is that right?

4 MR. BERLIN: Correct. I can tell --

5 COMMISSIONER JARRETT: So is that the -- is  
6 that where the calculation is, or does it include, also,  
7 the 20 percent?

8 MR. BERLIN: Okay. No. We accept the 20  
9 percent.

10 COMMISSIONER JARRETT: Okay.

11 MR. BERLIN: That's according to their plan,  
12 and we believe that that's reasonable.

13 COMMISSIONER JARRETT: So if they would  
14 have -- if their nomination would have been just at the 20  
15 percent lower, Staff would have no complaint?

16 MR. BERLIN: Well, if it had been at the 20  
17 percent lower number, and would have brought them up to  
18 plan in their storage. So as you see, at the bottom here  
19 on the chart, the scenario increases December baseload by  
20 58,900 Mcf, or -- that equates out to 1,900 Mcf a day.  
21 That accounts for the storage deficit. And it accounts for  
22 being at the 20 percent FOM nom baseload.

23 COMMISSIONER JARRETT: Okay. So I think I  
24 -- so this includes the 24.9 percent? I think I said point  
25 five before.

1 MR. BERLIN: That's right.

2 COMMISSIONER JARRETT: This includes the  
3 24.9 percent, plus the shortage in storage, is how you  
4 calculated this number. Correct?

5 MR. BERLIN: That is correct.

6 COMMISSIONER JARRETT: Okay. Thanks.

7 MS. SLACK: Do you need to go back to it?

8 MR. BERLIN: No. That's -- I think that's  
9 -- we have a paper copy here.

10 Now, if you would please go to the next one.

11 There's this Scenario 2. Now, what is this?  
12 This is based on the same adjustment that we just discussed  
13 in Scenario 1. This is -- \$85,775 is the measure of the  
14 harm to the customers. Now, what does this -- what's  
15 different?

16 Well, this scenario actually increases the  
17 December baseload by 96,100 Mcf. And where does that  
18 number come from? Well, that is the number that would  
19 actually take them to be 5 percent above their storage plan  
20 by end of December had they ordered this in their baseload  
21 order.

22 In other words, what we're saying here is it  
23 is reasonable for a gas buyer, given the uncertainty of  
24 supply, to proactively bump up nominations to assure  
25 sufficient storage going into the winter, knowing ahead of



1 time that there was trouble announced on the pipeline.

2 That is the November 20th FOM nom was made for  
3 first-of-month December flowing supplies, but the very next  
4 day trouble was announced on the pipeline.

5 So this is just a measure, if you will, that  
6 says, to be 5 percent above your storage plan, knowing that  
7 there's trouble on the pipeline, to bump your storage up 5  
8 percent for December is a reasonable thing to do, because  
9 you know you're going into the coldest part of the winter  
10 in January and February; and you know at the time you made  
11 the nom that there is -- or that at the time you could have  
12 adjusted the nom, you could have adjusted the nom knowing  
13 that there was trouble on the pipeline. But that was not  
14 done.

15 So this is simply a scenario that builds in  
16 that 5 percent above storage plan number that I talked  
17 about to assure sufficient winter supplies going into  
18 January/February.

19 That's -- that gives you an idea of what a  
20 gas buyer would reasonably do with the information known at  
21 the time.

22 Now, what I'd like to do is go to the next  
23 one. And this is -- this is the number that Mr. Fischer  
24 had talked about. And it's a \$308,000 proposed  
25 disallowance.

1                   Now, this number is a different number than  
2   what you just saw, in -- because the last two scenarios  
3   just showed a measure of the actual harm to the ratepayer  
4   who had to go in and make up gas that was not bought, that  
5   was under firm contract, that was not delivered.

6                   So what this number is based on is the AEM  
7   fair market price of its gas supplies. And it readjusts  
8   AEM's cost of supply by pricing the baseload supply at  
9   first-of-the-month pricing.

10                  Now, there's a few tweaks to this, and I  
11   would encourage you to ask Mr. Sommerer about some of the  
12   auditing treatments involved here.

13                  But this is essentially taking the fair  
14   market value or price of the gas supplies paid by AEM and  
15   essentially saying, Well, that should be the same fair  
16   market value price that the LDC pays for. And it  
17   recognizes that what we do know through discovery and -- is  
18   that -- and Mr. Sommerer has testified in prefiled  
19   testimony -- AEM had more than sufficient baseload to meet  
20   its firm obligations to Atmos.

21                  Now, let me say -- or give you a little bit  
22   of reason why this number has dropped a bit. Number one,  
23   the Butler proposed disallowance fell out. Why did it fall  
24   out? It fell out because the Company came forth with  
25   additional information that mitigated that.

1                   Now, on this, the proposed disallowance, the  
2     problem is not that Staff would not consider the  
3     administrative and general overhead costs of AEM in  
4     performing the gas buying services that they performed; no,  
5     it's that we have no support for it. We asked; they didn't  
6     provide it.

7                   In fact, I need to lay this out to you so  
8     that you understand what we don't have. And what we don't  
9     have is why we can't justify the \$308,000. We can't see  
10    through that.

11                  What we didn't get from Atmos -- we got no  
12    deal evaluation worksheets from Atmos or AEM. We don't  
13    know where the other AEM firm supplies went -- the ones  
14    that didn't go to the LDC. Did they go to Illinois? We  
15    don't know. We asked. AEM came back; Atmos came back and  
16    said, Well, they're going to our Panhandle book of  
17    business. Well, this is Missouri: Show me. They didn't.

18                  There's no supporting documents explaining  
19    the value of the deal and the value brought by AEM.  
20    There's no overhead costs of AEM in doing the deal to  
21    provide these gas supplies. There's no accurate profit and  
22    loss statement of the AEM -- of AEM regarding its gas  
23    transactions.

24                  There no deal evaluations related to AEM's  
25    original bid to Atmos. There's no economic analysis

1       regarding the profit and loss potential of the deal.

2       There's no risk evaluation of AEM's potential exposure.

3               And by the way, these last three items I  
4       just talked about are required under the Atmos Energy  
5       Marketing risk management policy. This was asked for; it  
6       was not provided. There's no post deal evaluations of  
7       AEM's deal with Atmos.

8               And so the problems -- there are problems  
9       with the documents that were provided by AEM -- because we  
10      did get some documents. Some contract documents provided  
11      by AEM were not consistent with the previous profit and  
12      loss summaries.

13              Some contract documents were not accurate.  
14      The profit and loss summaries are inaccurate because  
15      they're based on larger overview or database query of AEM's  
16      Panhandle business. So it doesn't bring it down to  
17      northeastern Missouri. We just have to look and make our  
18      best guess.

19              Also, there were two large transaction  
20      confirmations posted to the P&L -- the profit and loss --  
21      that had incorrect volumes. So this is a very, very  
22      difficult audit to perform, especially when you're not  
23      getting the information you need, that Staff needs to  
24      scrutinize the transaction and to make the transaction  
25      transparent.

1 COMMISSIONER JARRETT: Judge, may I inquire?

2 JUDGE WOODRUFF: Sure.

3 COMMISSIONER JARRETT: Mr. Berlin, you went  
4 through a fairly long list of things that Staff -- or, I  
5 guess, documents that Staff asked for. And you said Atmos  
6 refused to provide them. Did they just not provide them,  
7 or did they have an objection to providing them?

8 MR. BERLIN: Well, the answer is yes to  
9 both.

10 COMMISSIONER JARRETT: What was their  
11 objections?

12 MR. BERLIN: They either -- well, I think  
13 Mr. Fischer summarized it fairly well in his opening, that  
14 there's a great reluctance to come forward with the  
15 affiliate's accounting information and documents. And so  
16 you may recall in this case, there were two motions to  
17 compel in this case.

18 And the most recent motion to compel, in  
19 which we had the hearing in October of last year, we asked  
20 for the -- you know, basically, Where's the other AEM  
21 supplies going? You have plenty in your AEM portfolio.  
22 But we didn't get it.

23 COMMISSIONER JARRETT: Okay. And what was  
24 the order issued by the Commission on that?

25 MR. BERLIN: Well, the order -- and I would

1 have to refer specifically to the order. But basically, to  
2 summarize it, the order directed the Company to come  
3 forward -- you know, to answer the DR, basically; provide a  
4 response.

5 And they did provide a response. They did.

6 COMMISSIONER JARRETT: Okay.

7 MR. BERLIN: It's just that it's not a  
8 complete response. They said the other AEM business is  
9 going to the AEM Panhandle book of business.

10 COMMISSIONER JARRETT: And at the time you  
11 learned that it was an incomplete response, did you come  
12 back to the Commission and say, They're not complying with  
13 your order, Commission, and ask for further relief --

14 MR. BERLIN: Well --

15 COMMISSIONER JARRETT: -- on that discovery  
16 dispute?

17 MR. BERLIN: We -- I -- we didn't -- I  
18 didn't come back before the Commission because, number one,  
19 they did respond. But they weren't complete. I can't make  
20 them -- it's --

21 COMMISSIONER JARRETT: Well, the Commission  
22 can. If you think it's incomplete, and Staff can't do  
23 their job because it's an incomplete response, why didn't  
24 you come to the Commission to get an order ordering them to  
25 answer more fully?

1                   MR. BERLIN: Because we accepted their  
2 response, and we accepted that they had sufficient  
3 Panhandle supplies for northeastern Missouri -- though they  
4 didn't tell us specifically where it was going. We  
5 thought, Well, maybe -- you know, they don't want to  
6 disclose it.

7                   So we have done our job. We asked for it.  
8 They gave us a response. They didn't tell us specifically  
9 where it went. And so we had to -- we moved on from there.  
10 And it was a decision that we made in Staff counsel's  
11 office that we -- at that time, we had to keep moving  
12 forward.

13                  COMMISSIONER JARRETT: So is that enough  
14 information to calculate the disallowance, or did you have  
15 to -- did Staff just have to assume and guess?

16                  MR. BERLIN: Oh, no. No. We knew they had  
17 sufficient Panhandle supplies to meet northeast Missouri  
18 needs.

19                  COMMISSIONER JARRETT: Okay.

20                  MR. BERLIN: We know that. We would like to  
21 have known, do you have a reason why you made the cuts that  
22 you did to the swing nominations made for northeastern  
23 Missouri? Because where's the other supplies going? Your  
24 AEM -- AEM had supplies, based on the information we  
25 received. But they --

1 COMMISSIONER JARRETT: Okay.

2 MR. BERLIN: -- they just finished -- it's  
3 part of their Panhandle book of business.

4 COMMISSIONER JARRETT: Okay. Now, I'm  
5 confused, because you just said -- in your opening  
6 statement, you gave a long list of documents that you  
7 requested, that you didn't get.

8 And now, by your last answer, you indicate,  
9 Well, we had enough information to calculate. So which is  
10 it? Why did you ask for the documents if you already had  
11 the information that you needed?

12 MR. BERLIN: I guess I'm -- I think maybe I  
13 don't understand your question. But \$308,000 is the  
14 difference between the price paid for the supplies by AEM  
15 to its suppliers. Mr. Sommerer can kind of explain those  
16 accounting nuances. But it's that, versus what -- the  
17 difference of what the LDC paid AEM for the supplies.

18 The disallowance -- the proposed  
19 disallowance includes -- well, it's that difference. We  
20 can't -- they -- there's a lot of things they didn't  
21 provide us, we asked for. You know, come forward, tell us  
22 -- you know, we don't disagree that there's costs of doing  
23 business of AEM that would roll into the A&G -- or  
24 administrative/general costs, the overhead costs.

25 But they didn't -- as Mr. Fischer said



1 earlier today, it's not information that they want to come  
2 forward with. So we're saying, Well, we can't -- let me  
3 just put it -- maybe I should put it this way: We can't  
4 support \$308,000. We just don't know what makes that up.  
5 I mean, it's not --

6 COMMISSIONER JARRETT: And that -- and --

7 MR. BERLIN: -- pure profit. We understand  
8 that.

9 COMMISSIONER JARRETT: And that's because  
10 you didn't get the documents that you asked for; is that  
11 correct?

12 MR. BERLIN: We didn't get -- I went through  
13 a list -- yes. We didn't get a lot of things. We got  
14 responses -- partial responses that we tried to piece  
15 together. Yes.

16 COMMISSIONER JARRETT: But again, you get  
17 partial responses that you think are inadequate, and yet  
18 you don't come back to the Commission and ask them to  
19 provide full responses. Instead, you say, This is all the  
20 Company wants to give us, so we'll just use a number based  
21 on incomplete information.

22 MR. BERLIN: Well, it's up to the Company to  
23 provide us that.

24 COMMISSIONER JARRETT: Well, isn't it up for  
25 Staff, if the Company is non-responsive, to either come to

1 the Commission to make the company respond or issue  
2 subpoenas to get the Company or the third party -- you  
3 could issue third-party subpoenas -- to get information?  
4 Why didn't Staff do any of that --

5 MR. BERLIN: Okay.

6 COMMISSIONER JARRETT: -- if they had  
7 incomplete information?

8 MR. BERLIN: Okay. Well, number one, their  
9 responses were not complete. But we don't know what -- as  
10 I said, we don't know whether documents exist or how the  
11 data is kept -- number one. We don't know how they keep  
12 the data. Part of it has to do with the way they say they  
13 keep data. We considered going to Houston -- we did. And  
14 that would have been at a significant cost. And in -- as  
15 well as in time, as well.

16 But based on the size of that \$308,000 it  
17 just was a decision made by Staff that it's just not  
18 cost-effective. But I would point out that nothing stopped  
19 the Company from being more responsive in its answers.

20 And I believe Staff has done quite a bit to  
21 seek out complete answers to its data requests. We've had  
22 two lengthy dispute -- disputes over discovery that  
23 resulted in two motions to compel.

24 And at some point, as I mentioned, we -- and  
25 as a matter of fact, we did -- I did issue -- we did issue

1 subpoenas. We brought in Ms. Buchanan and the actual gas  
2 buyer, Mr. Walker, and deposed both of them in order to try  
3 to seek out much more of this information.

4 But it was just simply -- just from a  
5 balancing perspective, not cost effective for us to go to  
6 Houston, subpoena witnesses from AEM and conduct  
7 depositions down there. That may be something,  
8 Commissioner Jarrett, that we have to do. It may be.

9 COMMISSIONER JARRETT: Thank you.

10 MR. BERLIN: Next slide, please.

11 MS. SLACK: This one? There was a black  
12 side there, when I went to the next slide.

13 MR. BERLIN: That's okay. Yeah, it's fine.  
14 It was intentionally blank.

15 MS. SLACK: Okay.

16 MR. BERLIN: Well, I guess what I want to do  
17 here is just make a couple of points. Cases take a long  
18 time, and Staff recognizes this.

19 Mr. Fischer pointed out a Staff position  
20 statement that was filed in June. The position statement  
21 was filed by Mr. Thompson, and it was done during the  
22 middle of a -- one of the big discovery disputes that we  
23 had, where we weren't getting the information. And Ms. --  
24 and basically, the position statement -- Mr. Fischer is  
25 right -- but basically, I want to frame it a little bit

1 differently than the way he framed it.

2           Staff's view of these affiliate transactions  
3 is this: The Commission should consider as an alternative  
4 to these long and drawn-out discovery disputes the  
5 possibility that maybe affiliate transactions are not a  
6 good thing for Missouri.

7           Because these affiliate transaction cases --  
8 and I can speak to this, and I know that there's another  
9 one involved -- require enormous -- enormous -- Staff  
10 resources and time, especially as we try to winnow out the  
11 information from the Company. And you heard from Mr.  
12 Fischer, there's a reluctance from the affiliate to come  
13 forward with that information.

14           I don't think there's a perverse incentive  
15 here, because I think public policy demands transparency.  
16 That's all we want. We have to follow the rule -- the  
17 affiliated transaction rule. It is our duty to scrutinize  
18 it, to police the affiliate transactions. I can tell you,  
19 it's a very tough type of audit, because we're deal --  
20 we're having to peel back many, many layers.

21           And this is complicated, as I mentioned,  
22 because in our discovery requests, the Company never made  
23 any mention of the Haven 400-line rupture to us -- the  
24 force majeure event -- until after rebuttal testimony had  
25 been filed. Staff sought that information as far back as

1 late 2008. But we didn't get it.

2 Now, Mr. Sommerer had testified in the  
3 October hearing before the Commission that that information  
4 come in after rebuttal testimony was filed, and he  
5 testified about the failure of northeast Missouri to get  
6 its gas in December of 2007. And this did arouse many  
7 questions  
8 from -- I know from Commissioner Davis. And it intensified  
9 Staff's look at the nominations, and it intensified our  
10 look at AEM's supply portfolio.

11 Now, our concern here -- and I'm going to go  
12 to the next slide, and then I'm going to walk you through  
13 some things that I think will clarify the nature of the  
14 deal and where we are on this. This idea -- now, at the  
15 last minute, that a force majeure is some sort of a hall  
16 pass for AEM's inability to deliver firm and warranted gas  
17 supplies that it is under contract to deliver.

18 It's certainly -- a force majeure event is  
19 not a carte blanche excuse for non-delivery. I'm going to  
20 explain to you, soon, why their defense of the force  
21 majeure event has been an excuse -- and this is in  
22 deposition; this is -- came from deposition -- that force  
23 majeure --

24 JUDGE WOODRUFF: Go off the record for a  
25 moment.

1 (Off the record.)

2 JUDGE WOODRUFF: We're back on the record.

3 Go ahead, Commissioner.

4 COMMISSIONER DAVIS: Okay. I mean,  
5 Mr. Berlin, if I've heard you correctly, basically, I just  
6 heard you admit that Staff didn't have the information so  
7 they disallowed \$308,000 because they didn't work hard  
8 enough to find out what information that Staff needed; is  
9 that correct?

10 MR. BERLIN: Commissioner Davis, I don't  
11 think I'd put it quite like that.

12 COMMISSIONER DAVIS: Well, but is that not,  
13 in essence, what's going on here?

14 MR. BERLIN: No. I don't think so. What's  
15 going on is that the Company is essentially playing a game  
16 of dangling information and being -- and providing partial  
17 responses.

18 We have sought the information, and they  
19 have responded. At what level of the response is  
20 responsive and how much of it is maybe not quite  
21 responsive, that becomes part of the analysis. As I went  
22 through, we did get responses from Atmos and AEM. They --

23 COMMISSIONER DAVIS: Well, but, I mean,  
24 Mr. Berlin, I mean, don't you have an obligation to come to  
25 this Commission and to say, Hey, their response is

1 incomplete? You know, blah, blah, blah.

2 MR. BERLIN: Well, certainly, we have  
3 responsibilities to seek these -- this information out. I  
4 would like to point out, AEM told us that they did not have  
5 records. I have to point that out.

6 I don't mean to say that they were just  
7 thumbing their nose. They did tell us that they didn't  
8 have records. They told us -- the only report in existence  
9 that tracked the subject deal is the Trader Validation  
10 Report that was attached. And all other reports present  
11 data on a summarized basis were not applicable to the  
12 trade.

13 So it's -- I perhaps need to clarify that  
14 some records AEM really just didn't have. And we are  
15 looking for them. But they didn't have them. So if they  
16 didn't have them, they didn't have them.

17 COMMISSIONER DAVIS: Well, and, Mr. Berlin,  
18 I mean, isn't it possible -- I mean, it's my understanding  
19 -- and correct me if I'm wrong -- but the reason why  
20 utilities -- gas utilities were allowed to form marketing  
21 affiliates in the first place was because you didn't want  
22 the regulated utility engaging in all this speculation,  
23 that therefore companies would have marketing affiliates  
24 that would do the speculation and assume the risks? Isn't  
25 that, in essence, why marketing affiliates were formed in

1 the first place?

2 MR. BERLIN: I don't know that I can answer  
3 that question. I certainly follow you -- the logic.

4 COMMISSIONER DAVIS: Well, maybe Mr.  
5 Sommerer can answer that. Now, I want to get back to  
6 something else, real quick. I mean, you're sitting here  
7 today, you know, raising the question that, Maybe we should  
8 make a -- you know, maybe it should be -- I mean, I hear  
9 you saying that, Maybe we should have a rule or it should  
10 be a Commission policy that gas distribution utilities  
11 should not buy gas from the affiliates.

12 That sounds like a rulemaking, and this  
13 sounds like you're trying to adjudicate a rulemaking here  
14 in front of me, which is exactly what I asked about earlier  
15 about the Greenbriar case. Now, you tell me one way or the  
16 other, is that right or wrong?

17 MR. BERLIN: Commissioner Davis, I'm not  
18 familiar with the Greenbriar case. I mean, I'd be glad to  
19 brief that. I'd have to do that --

20 COMMISSIONER DAVIS: Well, you're going to  
21 have to read it and brief it.

22 MR. BERLIN: Let me back up a minute and --  
23 I -- I want to emphasize -- what I was trying to do is  
24 reply to Mr. Fischer's pointing out that our position  
25 statement that was filed in June of last year on this case,



1     it was filed during a lengthy discovery dispute in this  
2     matter, and we didn't have all the information. And it was  
3     meant to offer to the Commission a consideration of an  
4     alternative. It's not to say that, Well, we just do -- we  
5     just cut these out entirely.

6                 COMMISSIONER DAVIS: Well --

7                 MR. BERLIN: And I might add, also,  
8     Commissioner Davis, if -- you may find it interesting what  
9     the Texas Railroad Commission did on affiliate transactions  
10    regarding Atmos and its affiliate AEM. And that will come  
11    out in testimony.

12                COMMISSIONER DAVIS: Okay. Okay. And let  
13    me just go ahead and ask a couple more questions here,  
14    Mr. Berlin.

15                Walk me through -- I mean, are you familiar  
16    with the whole IRAC analysis; issue, rule, application,  
17    conclusion? Can you briefly give me an IRAC law school  
18    analysis, and tell me what Atmos has done wrong? Atmos  
19    Energy Corporation, the regulated utility.

20                MR. BERLIN: Atmos has not kept the records  
21    of these affiliate transactions that is -- it is required  
22    to do so under our affiliate transaction rule, 40.016.

23                COMMISSIONER DAVIS: Okay. So you're saying  
24    that Atmos Energy Corporation has not maintained the proper  
25    records, which violates the affiliate transaction rule?

1 That is the crux of your argument?

2 MR. BERLIN: Well, the failure to have the  
3 records, the contemporaneous records of the transactions  
4 does not allow Staff to accept the fair market price of  
5 AEM's gas supplies to be the fair market price to the  
6 regulated LDC.

7 Now, that said, there's more involved here.  
8 I pointed out that we believe that the facts show that  
9 Atmos, the LDC, acted imprudently in making its December  
10 first-of-the-month nominations. And we have -- you know,  
11 and we believe that the testimony supports that, because  
12 this is -- this is what Scenario 1 and Scenario 2 are based  
13 on. Because ultimately, we are looking at prudence. This  
14 is a prudence standard that applies.

15 COMMISSIONER DAVIS: Okay. Now, Mr. Berlin,  
16 let me ask you this question: Let's say Atmos Energy  
17 Corporation has a contract to buy gas from someone else who  
18 is not affiliated. Let's say that they have a contract to  
19 buy gas from One Oak. And let's say that One Oak fulfills  
20 the terms of that contract to the tee.

21 However, One Oak, in an effort to make more  
22 money, goes out and makes some pretty speculative deals to  
23 buy that gas in order to increase their profit margin. Is  
24 AEC somehow liable for what One Oak has done?

25 MR. BERLIN: I'm going to assume in your

1 scenario that AEC has been damaged because they have not  
2 gotten supplies --

3 COMMISSIONER DAVIS: No. AEC has not been  
4 damaged at all. AEC has not been damaged at all. But just  
5 the fact that One Oak goes out and speculates, and maybe  
6 they, you know, use spot market instead of firm supply;  
7 maybe they play some other games --

8 MR. BERLIN: Okay.

9 COMMISSIONER DAVIS: -- you know --

10 MR. BERLIN: I think I understand --

11 COMMISSIONER DAVIS: But all the gas gets  
12 delivered, and all Atmos customers get served, and it's  
13 delivered at the contract price. Has Atmos committed any  
14 violations, under that hypothetical?

15 MR. BERLIN: Well, under your hypothetical,  
16 the -- if the gas was ordered and the gas showed up, and  
17 there's no harm to the ratepayers, then I would say that  
18 One Oak, under your hypothetical, is taking some huge  
19 risks, because they risk the possibility of  
20 non-performance.

21 And if that did occur, because we're dealing  
22 in this hypothetical with an armslength transaction of two  
23 independent parties, Atmos would have a right-of-action  
24 against their supplier if the supplies did not show up.

25 COMMISSIONER DAVIS: Okay. So now, during

1 the period in question, did AEC ever fail to deliver gas to  
2 its regulated customers?

3 MR. BERLIN: The regulated customers did get  
4 gas supplies --

5 COMMISSIONER DAVIS: I'm sorry.

6 MR. BERLIN: -- from -- yes, the regulated  
7 customers in northeast Missouri did receive gas supplies.  
8 There was no outage, if that's what you're referring to.

9 COMMISSIONER DAVIS: Okay. So they never  
10 stopped receiving gas, even during the force majeure event;  
11 is that correct?

12 MR. BERLIN: The customers -- the burner tip  
13 received gas, but the LDC did not receive the gas that they  
14 ordered.

15 COMMISSIONER DAVIS: Okay. All right.

16 Hang on here, Judge, just a second.

17 Earlier in your opening statement you talked  
18 about the A&G standard. Can you tell me how Atmos Energy,  
19 AEC, was inefficient in promulgating and procuring their  
20 gas?

21 MR. BERLIN: Yes. I can.

22 COMMISSIONER DAVIS: Okay. Can you explain  
23 that?

24 MR. BERLIN: The LDC made a very early  
25 November 20th first-of-the-month baseload nomination, and

1 placed that on its supplier AEM. It made it November 20th.  
2 It could have, by its own policies, done so November 26th,  
3 and met the five-working-day interval between the  
4 first-of-the-month, when flowing supplies start.

5 They made an early first-of-the-month  
6 baseload nomination. And while that by itself may be  
7 interesting, the problem with that is the very next day,  
8 there was a notice sent to the shippers from Panhandle that  
9 basically said, There is trouble on the pipeline.

10 Now, the baseload nomination that was made  
11 by Atmos on November 20th was adjusted downward some 25  
12 percent below what the gas supply manual provides, that is  
13 a guideline.

14 And the point of that is, we don't know why  
15 they dropped that baseload down 25 percent below the 20 --  
16 the already adjusted baseload, a nom number that would be  
17 according to their gas supply plan. We don't know why they  
18 dropped it another 25 percent, but they did.

19 We don't think that's prudent, or we don't  
20 think -- it's certainly not reasonable, given the  
21 information at the time, between November 20th and November  
22 26th -- which is the last day that they could have made  
23 their base load nomination for December.

24 The other piece of that is that by their own  
25 policy, they take into consideration where they are on

1     their end-of-month storage supplies. End of month November  
2     they were down some 33,000 decatherms. They ignored that  
3     fact. They did not account for it or adjust for it in  
4     making their first-of-the-month baseload nomination.

5             Staff believes that is not reasonable, it is  
6     not prudent, to have ignored that, especially given what  
7     they knew at the time that they made -- certainly, they  
8     didn't know of trouble on the 20th, but they sure knew  
9     about trouble on the 21st of November, and they had until  
10    the 26th of November -- and I know there's a Thanksgiving  
11    in there -- but there's still Monday, November 26th.

12            They could have come back and adjusted that  
13    because gas buyers look at, We need to have sufficient  
14    supplies on hand. This -- these actions were not  
15    reasonable, because -- and the damage here is that they  
16    needed the supplies. They needed the supplies because they  
17    ended up having to go and buy these suppliers later at a  
18    higher price.

19            Now, the first-of-the-month, that low  
20    baseload, they got that, but they didn't get their swing  
21    gas supplies throughout the month, through December 8th  
22    flowing day through December 31st. There was a little bit  
23    of a let-up right around Christmas, but there were some  
24    huge cuts into northeast Missouri, on supplies that were  
25    firm and warranted, and in their words, firm without fail,

1       firm as firm can be. Well, that's not what they got.

2                   COMMISSIONER DAVIS: Okay. And so -- and  
3       just let me -- let me just ask the -- one last question,  
4       Mr. Berlin. And that is: What would a reasonable person  
5       have done differently?

6                   MR. BERLIN: Okay. Staff believes that a  
7       reasonable person would have nominated, according to what  
8       the policy called for, the warmest month -- the warmer  
9       month, and made the 20 percent adjustment. Of course, as I  
10      already talked about, they didn't do that. But that's what  
11      Staff believes a reasonable person would do.

12                   In addition, a reasonable person would take  
13      a look at where they are in their end-of-the-month November  
14      storage balance, and perhaps, according to the supply plan,  
15      make an adjustment prospectively to overcome that  
16      deficiency. They did not do that.

17                   And the other reasonable thing that would  
18      have been done is to have recognized the information  
19      available at the time the transactions were being made.  
20      And the key piece of information that a reasonable person  
21      would have responded to is that there was trouble on the  
22      pipeline announced one day after the nomination was made --  
23      November 21st.

24                   That would raise the suspicion of a  
25      reasonable person, that maybe your first-of-the-month

1     baseload nom needs to be looked at and adjusted upward, to  
2     assure sufficient winter gas supplies. That's --

3                 COMMISSIONER DAVIS: Okay. But Mr. Berlin,  
4     if you make the nomination on the 20th, and then you know  
5     that there's trouble on the pipeline already, then why  
6     would you increase your nomination? It's like I'm in  
7     trouble here, so I'm going to go out and get in more.

8                 MR. BERLIN: First of all, there's no force  
9     majeure event declared. There's just word out that there's  
10    trouble on the pipeline. So you look proactively to  
11    protect your customers and your gas supplies. And you  
12    increase your first-of-the-month baseload noms. You do it  
13    because the theory is that you're managing your operation,  
14    and you're looking out for whether you have sufficient  
15    supplies going into next month.

16                Understand that Panhandle did not declare  
17    the force majeure event. They could have gotten a higher  
18    nom in. And then based upon whatever priority matrix that  
19    the pipeline might use on a force majeure, then they may  
20    weather a cut -- maybe. But this never happened. The  
21    first-of-the-month baseload supplies all came through.

22                In fact, in Butler, they made a  
23    first-of-the-month December nom that was more than -- that  
24    was well within the 20 percent variance. So -- and  
25    Butler -- now, part of this, Commissioner Davis -- and I



1 actually regret that you're not able to stay with us,  
2 because this force majeure event is sort of an interesting  
3 issue, because Atmos claims that the force majeure event  
4 that was actually declared by Panhandle on November 27th is  
5 the reason why the supplies in Hannibal, northeast  
6 Missouri, were cut.

7 But there's a problem with that. There's  
8 flawed logic. Butler is also supplied off of Panhandle.  
9 Butler had de minimis cuts. And you may recall if you --  
10 you may recall -- and there's a lot of information here,  
11 and this is not an easy case to follow. I understand that,  
12 and I'm trying to break it down. But --

13 COMMISSIONER DAVIS: Right.

14 MR. BERLIN: -- you remember that AEM was  
15 not delivering into Haven, though they were contractually  
16 obligated to deliver into Haven. They were actually using  
17 a secondary receipt point downstream that fed into the  
18 Panhandle line around Louisburg, Kansas. And I had to go  
19 in camera to name that line.

20 COMMISSIONER DAVIS: Right. Okay. Okay.  
21 And did that make it more -- I mean, without getting into  
22 any numbers, did that make it more expensive or -- I mean,  
23 quite frankly, I've got, you know, Mr. Sommerer's  
24 surrebuttal testimony which is a good inch and a half, two  
25 inches thick; and then I've got all of his attachments,

1     which are another inch or two thick. And, you know, I have  
2     looked it all over, and I'm still trying to make some sense  
3     of it all. Are you there, Mr. --

4                     MR. BERLIN: I am. And I would say the  
5     surrebuttal is mostly schedules that are attached to it. I  
6     know it's thick, but --

7                     COMMISSIONER DAVIS: Yeah.

8                     MR. BERLIN: -- the thickness comes from the  
9     schedules. The -- and the testimony will show today that  
10    any cuts attributed to the force majeure were essentially  
11    de minimis, and that the reason is that -- well, let me  
12    just talk a little bit about the secondary receipt point.  
13    As I mentioned, that's significantly downstream from the  
14    force majeure event.

15                    And I need to also talk about, what is that  
16    event? Well, that event was a 400-line rupture. On the  
17    Panhandle running from west to east, there are four lines,  
18    and there's a redundancy in the pipeline.

19                    So -- four lines; there's a Line 100, a Line  
20    200, 300 and 400. There was a rupture right around --  
21    right at Haven Compressor Station on the 400 line. So that  
22    was the force majeure event.

23                    And what's important to understand here is  
24    that -- and Mr. Sommerer can talk to this -- but we've  
25    dropped our Butler adjustment because when we got the

1 information from the company, we found that the cuts that  
2 could be attributed to the force majeure event for the gas  
3 supplies and -- in Haven --

4 In Butler's case, those supplies came  
5 through Haven, because their supplies -- the Butler  
6 supplies came from the production field zone. That means  
7 it came out of the supply basin, got onto the system, and  
8 passed through Haven on their way to Butler. Butler had de  
9 minimis cuts.

10 Now, the supplies that northeast Missouri  
11 got did not come from the production basin; they came from  
12 the secondary receipt point through supplies that AEM had  
13 lined up to come through the secondary receipt point, as I  
14 mentioned, well downstream from the force majeure event in  
15 Haven.

16 Now, you got to look at the secondary  
17 receipt point. Let's look at a sack of potatoes. If  
18 you've got a five-pound sack of potatoes, and you've got  
19 ten pounds waiting to be put into the sack, at the end of  
20 the exercise, you're only going to get five pounds into the  
21 sack. The other five pounds are going to stay in a  
22 warehouse. Well, you can only put so much gas through the  
23 secondary receipt point.

24 Now, we don't know what kind of supplies AEM  
25 had lined up. We don't know exactly what they were doing

1 with their supply portfolio. But we do know that the LDC  
2 got very significant cuts in northeast Missouri. And I can  
3 show that to you, and I'll show you through the testimony  
4 today. But anyway, those are huge cuts.

5 And part of Staff's concern here is that, of  
6 course, we do know that AEM had plenty of first-of-month  
7 baseload flowing supplies in its portfolio. We don't know  
8 what they were doing. I can only speculate. Anybody can  
9 speculate what AEM was doing, and why AEM only supplied  
10 what they supplied. We just don't know.

11 But I would point out, too, that AEM was  
12 contractually obligated to bring the supplies into Haven.  
13 And when the other bidders bid on this through the RFP  
14 process, the other bidders, the independents, looked at the  
15 bid and said, Well, you want firm gas supplies, and you  
16 want it delivered to Haven. And so they bid it  
17 appropriately.

18 AEM said, Would you consider a secondary  
19 receipt point? Atmos says, Yes, we'll consider it, but we  
20 want firm supplies. Okay. So the deal went -- the -- that  
21 was the deal, although AEM was still contractually  
22 obligated to deliver the gas to Haven. But they provided  
23 it through the secondary receipt point well downstream  
24 around Louisburg, Kansas.

25 COMMISSIONER JARRETT: But was it at the

1 contract price, or was it higher than the contract price?

2 MR. BERLIN: Well, this kind of takes me  
3 into my story of the deal. I'd like to explain how the  
4 money is made on this deal. And I can explain that to you.

5 COMMISSIONER JARRETT: That's fine. And I  
6 didn't mean to interrupt Commissioner Davis.

7 Do you have any other questions,  
8 Commissioner?

9 COMMISSIONER DAVIS: No, no, no. I'm done.  
10 I'm done. No mas, no mas, no mas.

11 Judge, I assume that we are going to break  
12 for lunch. I mean, I would hope that we could get to  
13 Mr. Sommerer after lunch, because I would like to --  
14 hopefully, our local public hearing will be over by about  
15 1:30, and maybe we'll -- I -- at the pace we're going, I  
16 think we should be fine. But I would like to be able to at  
17 least listen to some of Mr. Sommerer's testimony, if  
18 possible.

19 MR. BERLIN: Commissioner Davis --  
20 May I interject?

21 JUDGE WOODRUFF: Go right ahead.

22 MR. BERLIN: I do know we have two days  
23 scheduled for this hearing. I just toss that out for your  
24 consideration.

25 MR. FISCHER: Judge, we'd be happy to take

1 Mr. Sommerer out of order to accommodate the Commissioner's  
2 schedule, as well.

3 JUDGE WOODRUFF: All right.

4 COMMISSIONER DAVIS: Well, it's no -- just  
5 -- let's just -- we'll just -- let's just -- just go on,  
6 because I don't want to interrupt anything -- interrupt  
7 anything for me. But I've got to log off now, and I will  
8 review the video and look at the transcript.

9 JUDGE WOODRUFF: All right. And you can  
10 check in with us again this afternoon and we'll see where  
11 we're at. And if you want to send me an e-mail --

12 COMMISSIONER DAVIS: Yeah.

13 JUDGE WOODRUFF: -- we'll accommodate.

14 COMMISSIONER DAVIS: I will check in -- I  
15 will check in with you, Judge, you know, after lunch.

16 JUDGE WOODRUFF: All right. Thank you,  
17 Commissioner.

18 COMMISSIONER DAVIS: All right. All right.  
19 Thanks.

20 JUDGE WOODRUFF: Off the record so he can  
21 hang up.

22 (Off the record.)

23 JUDGE WOODRUFF: Back on the record.

24 MR. BERLIN: Thank you.

25 Responding to Commissioner Jarrett's

1 question about pricing, this plays into what I'd like to  
2 talk about, the story of the deal. I can't -- I don't have  
3 any better term for it. But what I'd like to do is just  
4 give you an idea of these business relationships and how  
5 the money is made.

6 Now -- one minute.

7 All right. I'm going to talk about the  
8 pricing in effect that Atmos has with AEM. And AEM bid for  
9 first-of-month baseload supplies to supply those flowing  
10 baseload supplies at what is called first-of-month index  
11 pricing off of Panhandle. So it's an indexed price, and  
12 it's a published price. So that is the price at which AEM  
13 is -- it's the price AEM is charging AEC for the  
14 first-of-month baseload supplies.

15 And then the contract also calls for swing  
16 gas supplies that would be ordered later in the month.  
17 It's just what it is: Swing gas, for a period of days.

18 The swing gas supplies are based also on an  
19 index, called the Gas Daily Average Index. It is published  
20 and it's a Panhandle Gas daily average index price. So  
21 swing gas is priced like that, and that's what Atmos Energy  
22 Corporation pays for it if they get it -- assuming they're  
23 getting it.

24 Now, there's also a third component of how  
25 the money is made. And that's an adder. It's a

1 transportation adder. Now, AEM is under contract with  
2 Atmos, as I mentioned, to deliver firm supplies at Haven.  
3 They sought permission to deliver it through the secondary  
4 receipt point, but they're still under obligation to  
5 deliver it at Haven.

6               There's a transportation adder of some -- I  
7 might have Mr. Sommerer adjust it, but this is as much as I  
8 do know. The transportation adder for deliveries at Haven  
9 of the -- of gas supplies is 15 cents per Mcf. Okay. So  
10 we recognize that you have some costs here in the field  
11 zone to bring those supplies into Haven, or to get those  
12 firm supplies into Haven. So that transportation adder is  
13 15 cents. AEM gets 15 cents per Mcf on its gas supplies.

14              Now, it's a little different in reality as  
15 to what's going on here. Because as you know -- as I  
16 mentioned, the gas supplies are coming in on a secondary  
17 receipt point, down around Louisburg, Kansas.

18              The cost of bringing those supplies into  
19 Louisburg is not 15 cents per Mcf. The cost is more on the  
20 order of anywhere from a nickel to eight cents. And again,  
21 I want to defer to Mr. Sommerer on specifics with regard to  
22 these numbers. But that's generally what it costs to bring  
23 supplies in to the secondary receipt point in Louisburg --  
24 around a nickel to eight cents.

25              So AEM is getting 15 cents, because they're



1 contractually obligated to get it to Haven, but they have  
2 permission to bring it in into the market zone, and they're  
3 making the difference in profit.

4                   So how is the money -- the real money made,  
5 though? Well, first-of-the-month baseload supplies are  
6 your cheapest and your least risky gas supplies.  
7 First-of-the-month baseload, you get that order in; the  
8 price is generally close to always -- and I'll let  
9 Mr. Sommerer fill in any gaps on it -- but generally close  
10 to always is the lowest and the best price you're going to  
11 get for gas supplies -- first-of-the-month.

12                   Okay. Now, let's talk about  
13 first-of-the-month. If the LDC comes in with an  
14 unreasonably first-of-the-month baseload number, well, you  
15 got to remember -- we want to think about that. But let's  
16 talk about when they get the order in to AEM. They get the  
17 order into AEM, let's say, five working days -- that's what  
18 their policy says.

19                   AEM has to go to its suppliers to get the  
20 gas. AEM has about a two-day window to get its  
21 first-of-the-month order in to its gas supplier. It has a  
22 two-day window. And there's -- that window difference, a  
23 timing difference, it may be able to beat the  
24 first-of-the-month index price. It might be able to do  
25 that.

1                   And I would say that's where the profit is.  
2   There's profit potential there, especially if AEM might be  
3   going out and buying spot gas, interruptible supplies, any  
4   kind of supplies that would be less than firm supplies.  
5   There's a big profit potential there. We don't know. But  
6   there is a potential there.

7                   Now, here's the other piece of the puzzle,  
8   is there's money to be made on the gas daily average, which  
9   is applied to the swing gas supplies. Because gas daily  
10   average index pricing generally, close to -- most always,  
11   is higher than your first-of-the-month -- generally. It's  
12   usually -- that's just the way it is in the business.

13                  Well, Atmos is going to pay the gas daily  
14   average. And as we saw in December, it's going to be  
15   buying a lot of swing gas, because they had a very low  
16   first-of-the-month baseload nom.

17                  Well, AEM -- all AEM needs to do is to make  
18   sure it has a lot of gas in its portfolio at  
19   first-of-the-month, because when those swing gas supply  
20   orders come in, the noms come in, it's going to charge out  
21   to the LDC at the gas daily average on gas supplies that  
22   AEM has bought in its portfolio first-of-the-month. So  
23   there's a profit opportunity here for AEM.

24                  And I want to comment, because I'm not --  
25   I'm not saying this to say that profit is bad. I just want

1     you to know that's the way the deals work; that they're --  
2     that AEM can make money on this deal.

3                 And so this, you know, comes and raises our  
4     suspicion, and it raises our interest in scrutinizing the  
5     transaction, is that, you know -- especially if the gas  
6     supplies -- the swing gas orders, which we know they're  
7     placing. And they -- they have provided us this  
8     information. They're placing very large swing gas orders  
9     in December. And the swing gas orders were cut.

10                JUDGE WOODRUFF: Who's placing the swing gas  
11     orders?

12                MR. BERLIN: Well --

13                JUDGE WOODRUFF: Is that AEM or --

14                MR. BERLIN: Well, AEC --

15                JUDGE WOODRUFF: -- Atmos?

16                MR. BERLIN: --- AEC is -- there's a chain  
17     here, and I'll try to clarify. AEC is placing the swing  
18     gas orders. December 7th, calls up, I need swing gas.  
19     Gives an amount.

20                JUDGE WOODRUFF: Now, AEC is the LDC --

21                MR. BERLIN: AEC is the LDC.

22                JUDGE WOODRUFF: Okay.

23                MR. BERLIN: Places the order with its  
24     supplier AEM. Okay. Now, we also, as Mr. Sommerer has  
25     testified, that we know that there's a risk play involved

1 here. AEM had not locked any firm supplies in for January,  
2 February or March as late as December 15 of '07.

3 So they're going out into the market, and  
4 they're looking for supplies, and they're doing what they  
5 do. They're brokers; they go out there and they buy gas  
6 supply. They like to buy it low and sell it high. That's  
7 the nature of the beast.

8 So the concern is -- the concern is this:  
9 Most Missouri LDCs have locked in baseload supplies -- a  
10 certain level of baseload supplies well in advance of  
11 December 15th. They will normally lock in their baseload  
12 supplies as late as the fall, and many of them lock those  
13 baseload supplies in for the winter in the preceding  
14 summer. So they'll do that.

15 So Atmos is relying on its affiliate to come  
16 forward with firm supplies. We don't know what the  
17 affiliate is doing. We -- it's very hard to ascribe any  
18 motivation. We do know that they're wanting to make money,  
19 obviously.

20 But what we care about, as the Staff, is  
21 that the supplies that are ordered, number one, that the  
22 baseload order is reasonable, and we're also interested in  
23 the swing gas to know that you placed the order; did you  
24 get it? Did you get what you ordered? Did you get the  
25 firm supplies?

1                   Because these supplies that you're buying  
2   are firm and warranted, firm without fail, firm as firm can  
3   be. Those are the words used by Atmos in describing the  
4   level of service.

5                   Profit opportunities do exist to go out and  
6   buy spot gas and interruptible supplies anywhere out on the  
7   market, as you're going to want to go out and piece this  
8   all together and to sell it as some kind of firm supply.  
9   It would be tantamount to you coming to me and saying, you  
10   know, I think you have a very reasonable price on your  
11   steak filet. I do, and so you come to me.

12                  And I say, Yes, I do. And it's -- you're  
13   looking for a premium cut. Well, then I bring to you  
14   something that looks like steak filet, wrapped in bacon,  
15   and you put your fork in it, and it's not steak filet.  
16   It's hamburger made to look like steak filet. Well,  
17   immediately, you're not getting what you paid for, because  
18   you're saying, I'm paying steak filet prices, and you're  
19   serving me something less than the highest quality that I  
20   ordered.

21                  So what do you do? Do you adjust -- do you  
22   say, Hey, look, make me whole? You know, I just -- you  
23   know, I'll pay the reasonable price for what you delivered  
24   to me, but don't make me pay for the top quality that I  
25   ordered, thought I was getting, but did not get.

1                   So it's sort of an analogy, but remember,  
2   we're talking about gas supplies; we're talking about a  
3   level of service of those gas supplies -- firm and  
4   warranted gas supplies. That carries the highest level of  
5   delivery guarantee.

6                   Now, Mr. Fischer talked in his opening  
7   about, Why did -- well, let's talk about the first order of  
8   peak period. And this is important to know because this is  
9   definitely -- this it out there in the records.

10                  Yes, he's right. You know, AEM beat the  
11   next high -- well, let me just say. On the first RFP  
12   period, you saw about seven bid responses. What Mr.  
13   Fischer did not tell you, though, was that the one that --  
14   bidder number two, close -- and AEM is number one -- what  
15   Mr. Fischer did not tell you is that number two and number  
16   three bids were nonconforming bids. Those bids were just  
17   put in the analysis just as a basis of comparison of what  
18   was bid. They're nonconforming bids, so they couldn't be  
19   considered anyway.

20                  So the real basis of comparison on the bid,  
21   just as the RFP, is to look at AEM, and then you go all the  
22   way down to number four. And that supplier, of course,  
23   what are they doing? They're bidding. They're bidding for  
24   firm and warranted service for delivery at Haven, Kansas.

25                  Now, part of the RFP -- and I have not

1 mentioned this, but we need to kind of get a feel for  
2 this -- is that the RFP gives to the LDC incredible  
3 flexibility. So what does that mean? It means that the  
4 LDC can order anywhere from zero Mcf to 150,000 or more Mcf  
5 for first-of-the-month baseload.

6 Now, flexibility of that nature brings with  
7 it a cost. An independent third party must factor that  
8 risk, that flexibility of being able to provide -- you say,  
9 I only want 5 Mcf, and then maybe you really want 155,000  
10 Mcf, but the RFP permits that flexibility. That is what  
11 Atmos is asking for; they want that flexibility.

12 Well, an independent third-party bidder is  
13 looking at it and thinking, Man, that's the very highest  
14 level of gas service, firm, it has to be at Haven, Kansas.

15 Well, we're going to have to go in and  
16 probably put a -- a our demand charge in there, we're going  
17 to have to reserve some capacity, because, you know, we got  
18 to be able to bring firm supplies to Haven, and we got to  
19 bring it -- either, you know, five or 155,000 for  
20 first-of-month baseload.

21 There's a cost for that flexibility. And an  
22 independent third party recognizes that and bids into that  
23 recognizing it. Because as you know, an independent third  
24 party, if the independent third party does not perform,  
25 well, then Atmos has -- may have a positive action against

1       them in contract -- possibly. It depends. Whatever might  
2       happen. But it's important to know that.

3               Now, I said on that first RFP period AEM won  
4       the bid. They did. But what's the difference between AEM  
5       and the number four bid? That difference is \$297,000. If  
6       you go to the second RFP, there's -- AEM was on top. The  
7       number two bid in the second RFP was nonconforming.

8               And so you have to go to the third one,  
9       because that's -- you're comparing -- you kind of compare  
10      apples to apples, supposedly. You kind of keep it --  
11      because it was a nonconforming bid; you got to -- you  
12      really can't consider it, so you got to go to number three.

13              And the difference between AEM at the top  
14      and number three is about \$236,000. So it causes one to  
15      ask the question: Why is there such a big difference for  
16      serving northeast Missouri ratepayers? That's a big  
17      difference. Well, the answer lies in, this is a risk play  
18      that AEM has undertaken.

19              And it goes into, you know, looking at --  
20      back to Commissioner Davis's question: Hey, if the gas  
21      supplies show up, where is the harm? Well, the gas  
22      supplies did not show up. Those supplies had to be ordered  
23      later, at higher cost.

24              And that's the harm of having to make up at  
25      higher average costs supplies that didn't show up, and



1 supplies that, by their own policy, it should have added --  
2 they should have been at least at the 20 percent level in  
3 their first-of-the-month base load from December.

4 So I have tried to give you an overview of  
5 what the deal looks like. It takes an enormous amount of  
6 investigation to get to that level of trying to understand  
7 what's going on in this affiliate transaction.

8 But we have a concern that independent third  
9 parties are bidding firm and the contract requires firm  
10 from AEM, but they're not getting it. So that's the nature  
11 of the business relationships, to try to give you some  
12 sense of understanding of how this works.

13 And that is really all I have.

14 JUDGE WOODRUFF: All right. Thank you,  
15 Mr. Berlin.

16 MR. BERLIN: Thank you.

17 JUDGE WOODRUFF: Opening for Public Counsel?

18 MR. POSTON: Good morning. May it please  
19 the Commission. My name is Marc Poston. I'm here on  
20 behalf of the Office of the Public Counsel and the public.

21 Customers of Atmos here in Missouri are  
22 repeatedly told by this Commission, by the Company, by  
23 Staff, by myself that gas costs are a pass-through, and  
24 that the utility doesn't earn a profit on the sale of gas.  
25 That doesn't appear to be the case here.

1           Atmos' shareholder did profit from the sale  
2   of gas to Atmos' customers as a direct result of buying gas  
3   at a price that is above AEM's cost.

4           If I could, I'd like to read a quote. Let  
5   me grab something back at the desk here. I have a copy of  
6   a 1962 Commission order. This is the order that first  
7   brought purchased gas adjustments to Missouri. It was the  
8   Laclede Gas case. It's Case No. 14,713, 14,027 and 12,525.

9           And the Commission set out the reasons why  
10   they've allowed the PGA to be used in Missouri. And one of  
11   the reasons they say, quote, "It's clear that the wholesale  
12   price of gas is an expense that must be recovered by the  
13   company, and that the fixing of such wholesale rates is a  
14   matter over which the company and this Commission have  
15   virtually no control," end quote.

16           And the question I ask is: How does the  
17   reasonableness and lawfulness of the PGA stay intact as the  
18   company regains, to an extent, control over the gas rate it  
19   charges its customers?

20           The Commission also said, quote, that,  
21   "Operation of the purchased gas adjustment clause does not  
22   affect the return to the company one way or the other," end  
23   quote. And again, I ask: Well, how does the  
24   reasonableness and lawfulness of the PGA stay intact when  
25   the PGA does affect the company's return?

1                   And Mr. Berlin quoted from a Supreme Court  
2 case that I'd like to quote from as well. It's the case  
3 that -- where the Supreme Court reviewed the Commission's  
4 affiliate transaction rules.

5                   And they stated that, "As long as a public  
6 utility is engaged in both monopoly and competitive  
7 activities, it will have the incentive, as well as the  
8 ability, to milk the rate of return regulated monopoly  
9 affiliate to subsidize the competitive ventures."

10                  And we believe that increases the scrutiny  
11 the Commission must apply here.

12                  The evidence in this case will demonstrate  
13 that Atmos made imprudent gas purchasing decisions, and  
14 that those decisions harmed ratepayers by causing them to  
15 pay higher rates for gas than they would have paid had  
16 Atmos' decisions been prudent.

17                  The evidence will also show that Atmos  
18 profited from its imprudent decisions through its  
19 affiliate.

20                  On behalf of Atmos' customers, I ask that  
21 you recognize the Supreme Court's warnings and apply a  
22 heightened scrutiny to these affiliate transactions. I  
23 also ask that you preserve the integrity of the PGA and  
24 prevent Atmos from profiting on the same of gas to its  
25 customers, and prevent Atmos from causing ratepayers to pay

1 higher rates caused by the Company's imprudent decisions.

2 Thank you.

3 JUDGE WOODRUFF: Thank you.

4 All right. It's been a long morning  
5 already, and we haven't even heard any evidence. I propose  
6 to go ahead and take a lunch break now. Let's come back at  
7 12:30 with -- and we'll start with Ms. Buchanan.

8 (Off the record.)

9 JUDGE WOODRUFF: All right. Let's come to  
10 order, please. We're back from lunch, and we're ready to  
11 go with the first witness, which I believe to be Ms.  
12 Buchanan for the -- for Atmos.

13 MR. DORITY: Your Honor, may I approach?  
14 I've got copies --

15 JUDGE WOODRUFF: Yes.

16 MR. DORITY: -- of the testimony, if I can  
17 go ahead and provide those --

18 JUDGE WOODRUFF: Let's go ahead and mark  
19 that while we're at it.

20 MR. DORITY: She has direct testimony, both  
21 NP and HC versions. That's the HC. Would that be 1?

22 JUDGE WOODRUFF: 1, 1 HC and NP.

23 (Wherein; Atmos Exhibit No. 1 HC and 1 NP,  
24 were marked for identification.)

25 MR. DORITY: Rebuttal, one version.

1                   (Wherein; Atmos Exhibit No. 2 was marked for  
2     identification.)

3                   MR. DORITY: And surrebuttal, one version.

4                   (Wherein; Atmos Exhibit No. 3 was marked for  
5     identification.)

6                   JUDGE WOODRUFF: The rebuttal is 2 and the  
7     surrebuttal is then 3.

8                   MR. DORITY: Thank you, Judge.

9                   Your Honor, I have an additional, if the  
10    bench would like one, if that's --

11                  JUDGE WOODRUFF: We should -- that was all  
12    prefiled, so we should have it.

13                  MR. DORITY: Yes.

14                  JUDGE WOODRUFF: All right.

15                  Ms. Buchanan, if you'd raise your right  
16    hand.

17                  (Witness sworn.)

18                  JUDGE WOODRUFF: You may inquire.

19    REBECCA BUCHANAN testifies as follows:

20    DIRECT EXAMINATION BY MR. FISCHER:

21                  Q.     Please state your name and address for the  
22    record.

23                  A.     Rebecca M. Buchanan. I work for Atmos  
24    Energy, 377 Riverside Drive, Franklin, Tennessee 37064.

25                  Q.     Are you the same Rebecca Buchanan that

1 caused to be filed in this proceeding certain direct  
2 testimony, rebuttal testimony, and surrebuttal testimony  
3 that have been marked respectively Exhibits 1, 2 and 3?

4 A. Yes.

5 Q. Do you have any corrections or changes that  
6 need to be made to any of those exhibits?

7 A. No.

8 Q. If I were to ask you the questions contained  
9 in those exhibits today, would your answers be the same?

10 A. Yes.

11 Q. And are they true and best of your knowledge  
12 and belief?

13 A. Yes. They are.

14 Q. And are there schedules attached to any of  
15 those exhibits?

16 A. Yes. There are.

17 Q. Do those accurately depict what those  
18 schedules are designed to show?

19 A. Yes.

20 MR. FISCHER: Judge, with that, I would move  
21 for the admission of Exhibits 1 HC and NP, 2 and 3, and  
22 tender the witness for cross-examination.

23 JUDGE WOODRUFF: All right. Exhibits 1 NP  
24 and HC, Exhibits 2 and 3 have been offered. Any objections  
25 to their receipt?

1                   Hearing none, they will be received.

2                   (Wherein; Exhibit Nos. 1 HC and 1 NP, 2 and  
3                   3 were received into evidence.)

4                   JUDGE WOODRUFF: And for cross-examination,  
5                   we begin with Staff.

6                   MR. BERLIN: Thank you, Judge.

7                   CROSS-EXAMINATION BY MR. BERLIN:

8                   Q.       Good afternoon, Ms. Buchanan. How long have  
9                   you been employed at Atmos?

10                  A.       Considering my time with the predecessor,  
11                  United Cities Gas Company, it's been nearly 20 years.

12                  Q.       And can you please state your job title --  
13                  your current title.

14                  A.       Manager, regional gas supply.

15                  Q.       And how long have you held that position?

16                  A.       Three and a half years.

17                  Q.       Okay. Please describe your current  
18                  responsibilities in that position.

19                  A.       Yes. As manager of the regional gas supply,  
20                  I am responsible for the development of gas supply plans in  
21                  my department, the procurement of gas, the RFP process,  
22                  selection of suppliers, making sure that we have sufficient  
23                  pipeline capacity and supplies to serve our customers in a  
24                  safe, reliable manner.

25                  Q.       And do you buy gas for other states than

1 Missouri?

2 A. Yes. We do.

3 Q. What are those states?

4 A. There are seven states that my gas supply  
5 department serves in our regional office: Iowa, Missouri,  
6 Illinois, Kentucky, Tennessee, Virginia, and Georgia.

7 Q. And I believe in the deposition you said  
8 that you were trained as an accountant; is that right?

9 A. Yes. I have a bachelor's degree, business  
10 administration with the major in accounting.

11 Q. And you are a certified public accountant?

12 A. And I'm -- I am.

13 Q. And when did you begin your duties as  
14 manager of gas supply for mid states?

15 A. Three and a half years ago. So it was  
16 around September of '07.

17 Q. And did you put together the supply plan for  
18 the September 2007 to August 2008 ACA period?

19 A. Do you mean my department, or do you mean me  
20 personally?

21 Q. Were you involved in putting the plan  
22 together?

23 A. No. I would not have been.

24 Q. Who would have been?

25 A. I believe that would be Mr. Walker.



1 Q. Okay. Anybody else?

2 A. Well, at the time that supply plan was  
3 developed, which was probably early in 2007, when the plan  
4 was first developed, Mr. Martin -- Mark Martin would also  
5 have been in the department. So he may have had some  
6 input.

7 Q. Okay. So Mr. Martin held the position that  
8 you have now --

9 A. Correct.

10 Q. -- before you? Okay. And he's here today.  
11 Right?

12 A. Yes.

13 Q. Okay. But you are able to answer questions  
14 about this plan?

15 A. For the most part, I am. Uh-huh.

16 Q. Okay. And who is the gas buyer that buys  
17 gas for Missouri?

18 A. We don't refer to our employees as buyers.  
19 I have two different roles that report to me -- a gas  
20 supply specialist and a gas supply representative. At the  
21 time of this ACA review, Mike Walker was the gas supply  
22 specialist that would have been responsible for Missouri.

23 Q. Okay. And could you explain Mr. Walker's  
24 duties?

25 A. Yes. I have explained to you in

1       depositions, as well. Mr. Walker is supply specialist. He  
2       develops the plan with input from our -- excuse me -- with  
3       forecast inputs from our planning department. He  
4       implements -- prepares and implements the RFPs. He  
5       receives bids from the suppliers, prepares an analysis of  
6       the bids, and makes a recommendation of the winning  
7       bidders.

8                       He works towards getting a contract signed  
9       and putting the deal into place. And then on a  
10      going-forward basis, he runs daily forecasts and prepares  
11      first-of-month nominations and daily nominations as is  
12      needed, and also manages his storage accounts, and makes  
13      sure that the balances are sufficient to carry throughout  
14      the full year. I'm sure there's a few things that I'm  
15      leaving off.

16           Q.       Okay. That's fine. Thank you.

17           A.       Okay.

18           Q.       Now, Mr. Walker, I believe you mentioned it  
19      in deposition, also buys gas for Iowa. Correct?

20           A.       Yes.

21           Q.       And with regard to Missouri, he buys gas  
22      for -- does he buy gas for the entire jurisdiction, or are  
23      there pieces --

24           A.       Yes.

25           Q.       -- of the jurisdiction he doesn't?

1           A.       No. He's the only person in my department  
2       that handles Missouri.

3           Q.       Okay. Ms. Buchanan, would you agree with me  
4       that the discovery in this case goes back as far as late  
5       2008?

6           A.       That sounds accurate.

7           Q.       Okay. And at that time, would you have been  
8       involved in answering Staff's data requests back then?

9           A.       I would have been. Uh-huh.

10          Q.       And in your role as manager of gas supply,  
11       you've been involved in answering the Staff DRs since that  
12       point?

13          A.       Yes. We have a team approach, so we give it  
14       to the person who's most able to provide the best answer.  
15       And then within the team, we review the responses, and then  
16       present them for filing.

17          Q.       Okay. One minute.

18                 MR. BERLIN: Judge, may I approach? I  
19       have --

20                 JUDGE WOODRUFF: Certainly, you may. You  
21       may approach.

22                 MR. BERLIN: -- several exhibits, so --

23                 JUDGE WOODRUFF: Go ahead.

24                 MR. BERLIN: -- for my cross.

25                 Can you mark these? I'd like to mark this

1 as Exhibit 1.

2 JUDGE WOODRUFF: That would be Exhibit 4.

3 MR. BERLIN: Oh, okay. You're not doing  
4 it -- you're not breaking it out by --

5 JUDGE WOODRUFF: No. No. We'll -- we're  
6 only going to one list of numbers, so --

7 MR. BERLIN: Okay.

8 JUDGE WOODRUFF: This will be 4.

9 MR. BERLIN: Okay. Thank you.

10 MR. FISCHER: Can we have a copy?

11 MR. BERLIN: Indeed.

12 MR. FISCHER: Thank you.

13 (Wherein; Staff Exhibit No. 4 was marked for  
14 identification.)

15 BY MR. BERLIN:

16 Q. This DR request -- this DR, which is DR-67,  
17 requests, among other things, that if there was any  
18 curtailment of gas supply and transportation to the Company  
19 and to the Company's customers during the ACA period in  
20 this case, please provide (a) reasons for the curtailments;  
21 and (c) -- going to (c) information on the timing of the  
22 curtailments. Do you read that?

23 A. Yes. I read that. Uh-huh.

24 Q. Okay. And the Atmos cover page shows that a  
25 J. Dunlap responded to the DR; is that right?

1           A.       What I see is it was requested of her. Let  
2 me see if I can find out who actually responded.

3           Q.       Well, looking down at the very -- at the  
4 bottom, it says, Responded by J. Dunlap.

5           A.       Oh, it -- well, it must be on the back. Is  
6 it on the back?

7           Q.       I think it's on the --

8           A.       Well, I've got a two-sided copy. I'm sorry.  
9 Wait a minute. What --

10          Q.       That's right. I should have mentioned this  
11 is a two-sided copy.

12          A.       Interesting.

13          Q.       I think what you'll find is --

14          A.       Yes. I see on the other side it has her  
15 name on the bottom. It looks like it's paginated -- you  
16 know, kind of formatted a little differently, but perhaps  
17 the exact same wording.

18          Q.       Okay.

19          A.       Okay.

20          Q.       Now, if you would please look at the Company  
21 response. My question is: Is there any information in  
22 this DR response regarding the constraints of the Haven  
23 receipt point?

24          A.       The response says to refer to another  
25 response. So I would answer we have to refer to the other

1       one.

2               Q.       Okay. Well, I have the other one.

3               MR. BERLIN: This will be Exhibit 5.

4               (Wherein; Staff Exhibit No. 5 was marked for  
5       identification.)

6       BY MR. BERLIN:

7               Q.       Okay. Ms. Buchanan, could you please  
8       identify the document that I handed to you?

9               A.       So the second one that you just handed to me  
10       is the data request in response that the first DR-67  
11       referred to when it said, Please refer to DR-63. So you  
12       handed me the response to DR-63.

13              Q.       Okay. Okay. And if you would look at  
14       DR-63, you'd note that it was sent by Staff October 9th of  
15       2008? That's the date requested.

16              A.       On one page it says 2007 and one says 2008.  
17       But logically, I would think it would have been 2008.  
18       Interesting.

19              Q.       Well --

20              A.       I think we'll go with 2008. Right?

21              Q.       I think we went through this at deposition,  
22       and --

23              A.       Yeah.

24              Q.       -- you made a correction on the date.

25              A.       Right.

1 Q. Okay. Okay. So Staff requested it  
2 October 9th of 2008, and the response was received -- can  
3 you tell me when?

4 A. Is it dated on here? It says it was due  
5 October 29th. Let me see if I have --

6 Q. Well, Staff -- and Staff -- it was due  
7 the 29th, and Staff received a response on the 29th.

8 A. Yes. I have records that show that, as  
9 well.

10 Q. Okay. And the DR states, If any  
11 interruptions to the company's customers occurred in this  
12 ACA period, please list the following: Date(s), and the  
13 time of the interruption, names of the customers  
14 interrupted, any unauthorized volumes taken, any penalties  
15 assessed against these customers, and the accounting  
16 treatment of any penalty.

17 And the Atmos cover page shows that a B.  
18 Buchanan/J. Dunlap responded to the DR; is that right?

19 A. Yes.

20 Q. And that B. Buchanan is you. Right?

21 A. That's correct.

22 Q. Okay. So in looking at the response, is  
23 there any information in this DR response regarding  
24 constraints at the Haven receipt point?

25 A. This data request asks about interruptions

1 to the customer. And it's not talking about interruptions  
2 on the receipt --

3 Q. Well --

4 A. -- end of the supply. So if we go back to  
5 your original question on 67, I would say that this -- when  
6 it referred to DR-63, I now believe that it doesn't fully  
7 respond to 67. And Ms. Dunlap, in her response on DR-67,  
8 was not -- did not appropriately refer to DR-63 to answer  
9 that. She must have misinterpreted the question in 67.  
10 I'm just making that assumption.

11 Q. All right. But you would agree with me,  
12 then, that --

13 A. I would say that DR-63 fully answers the  
14 question that's on DR-63, but it does not answer the  
15 question in DR-67.

16 Q. Okay.

17 A. And yes, it does not refer to any outage or  
18 curtailment at that receipt point.

19 Q. And there's no information in the DR  
20 response about the Haven pipeline rupture?

21 A. No, because that did not result in an  
22 interruption to any customers. All customers received firm  
23 gas supply throughout that force majeure event.

24 Q. Okay. So -- and there's -- all right.  
25 There's no information, then, is there about cuts to the



1 supply and storage made in November and December of 2007  
2 for Hannibal, Canton, Palmyra, Bowling Green area?

3 A. That's not addressed in DR-63. It wasn't  
4 part of the question, and it's not part of the answer.

5 Q. Okay. Well, then, there's nothing in DR-67  
6 about it, either. Right?

7 A. Yes. I indicated that I don't believe her  
8 response was accurate. She should not have referred to  
9 DR-63 to answer that.

10 Q. All right. Okay. Ms. Buchanan, I'm going  
11 to be handing you a copy of DR-7.1.

12 JUDGE WOODRUFF: 6.

13 (Wherein; Staff Exhibit No. 6 was marked for  
14 identification.)

15 BY MR. BERLIN:

16 Q. This will be Exhibit 6.

17 MR. BERLIN: Did I hand you too many?

18 JUDGE WOODRUFF: I think you may have.

19 BY MR. BERLIN:

20 Q. Ms. Buchanan, have you had a chance to look  
21 at DR-7.1?

22 A. I'm still reading it. Just one second.

23 Q. While you're reading it, I'm going to note  
24 that the DR states, For the company's natural gas planning  
25 for the ACA period under review, please provide the

1 following: The company's analysis of line segment  
2 constraints that would limit the capacity available to  
3 specific city gate points, and whether this would permit  
4 the receipt of full peak day requirements at specific  
5 citygate points. Is that a fair reading, Ms. Buchanan?

6 A. Yes. I'd say that's fair.

7 Q. And do you note that it was sent by Staff on  
8 January 15th, 2009?

9 A. I see that.

10 Q. And Staff received the response on  
11 January 29th and February 2nd of '09. The Atmos cover page  
12 shows that a Harold Fox responded to the DR; isn't that  
13 right?

14 A. Yes.

15 Q. Is there any information in this DR response  
16 regarding constraints at the Haven receipt point?

17 A. No, there's not. But I believe I understand  
18 why there would not have been mention of that.

19 Q. Okay. Well, I just wanted to ask if there  
20 was information about Haven, and you've answered that.

21 Is there any information in this DR response  
22 about constraints at the secondary receipt point that was  
23 used by your supplier, AEM? And if you don't understand  
24 who the secondary receipt point is, I'd be glad to go into  
25 camera, if you --

1           A.       No. I don't --

2           Q.       -- if you'd like me to.

3           A.       -- I don't believe I need any further  
4 explanation. I don't see a mention of that. But keep in  
5 mind, his plan -- Harold Fox's plan would have been  
6 created, I would say, in late 2006, February 2007 -- his  
7 planning for this ACA period under review. His planning  
8 process occurs six to eight months before the ACA period  
9 even begins.

10          Q.       Okay. Thank you. Is there any information  
11 in this DR about the Haven pipeline rupture that occurred  
12 in late 2007?

13          A.       That would have occurred after his planning  
14 process -- many months after he would have created his plan  
15 for the ACA period.

16          Q.       And is there any information about the cuts  
17 to supply and storage made in November or December of '07  
18 for Hannibal, Canton, Palmyra, Bowling Green?

19          A.       Again, I would not expect that to occur on  
20 this response, because Mr. Fox's plan would have been  
21 created many, many months before that force majeure  
22 occurred.

23          Q.       Does the secondary receipt point have any  
24 constraints?

25          A.       We're talking about the pony express point,

1 and I'm not -- I believe that's what you're talking about,  
2 and I'm not aware of any constraints. We can talk about  
3 further what happened during the force majeure, if you'd  
4 like.

5 Q. Okay.

6 MR. BERLIN: This was 6. Right?

7 BY MR. BERLIN:

8 Q. Okay. Ms. Buchanan, I'm going to hand you a  
9 copy of DR-100.

10 JUDGE WOODRUFF: This will be No. 7.

11 (Wherein; Exhibit No. 7 was marked for  
12 identification.)

13 BY MR. BERLIN:

14 Q. I marked Staff Exhibit 7. Okay.  
15 Ms. Buchanan, I had just handed you what's marked as  
16 Exhibit 7. It's DR-100. Do you note that it was sent by  
17 Staff on January 15th of 2009?

18 A. Yes.

19 Q. With response received February 2nd, 2009?

20 A. I'm not sure about the date. I think my  
21 records show February 4th. But --

22 Q. That's fine.

23 A. -- it's close enough, I guess.

24 Q. Well, Ms. Buchanan, this DR asks, Regarding  
25 reliability for the ACA period for the pipelines and

1 suppliers that the LDC utilized for this ACA period --

2 Paragraph A: Were there any pipeline or supplier actions  
3 including maintenance or pressure problems during this ACA  
4 period that caused the LDC to question its reliance on the  
5 transport, storage or supplies to be delivered to the LDC?

6 Paragraph B: If yes, fully explain the  
7 actions that caused concern, and explain what actions the  
8 LDC has taken to alleviate those concerns for this ACA and  
9 subsequent ACA periods. Is that a fair reading of this?

10 A. That's what the data request says. Yes.

11 Q. And can you tell me who responded to this  
12 DR?

13 A. Mike Walker.

14 Q. And if you would, please, let's look at the  
15 response related to Hannibal, Bowling Green area. And  
16 would you please read to me the response.

17 A. There were not any pipeline supplier  
18 liability reliability issues during this ACA period.

19 Q. Okay.

20 A. I stand behind that, too. I fully support  
21 his answer in that.

22 Q. Okay. Well -- now, Ms. Buchanan, I'm going  
23 to refer you to your direct testimony. Do you have your  
24 direct with you?

25 A. Yes. It will take me just a second to turn

1 to it.

2 Q. Okay. Well, in your direct testimony --

3 A. I'm sorry. What did you say?

4 Q. In your direct testimony -- you can go to  
5 Page 2, Line 11, if you'd like -- you state that a key  
6 function of the gas supply department is to assure that  
7 Atmos customers receive gas supply that is both reliable  
8 and economical; is that right?

9 A. I agree with what you say. I haven't caught  
10 up with where you're at in the testimony. But --

11 Q. Well, take a minute to look.

12 A. I'm sorry. Did -- which testimony?

13 Q. Direct testimony, Page 2, Line 11.

14 A. Oh, I see. Yes. It goes on to Line 12  
15 and 13. Yep. I agree.

16 Q. And you select gas suppliers through a  
17 request for proposal process, or RFP process. Correct?

18 A. Yes. It's a competitive bid request for  
19 proposal process. Correct.

20 Q. And an RFP is a letter to the prospective  
21 bidders. Right?

22 A. It is an extended letter, with many  
23 components to it, explaining the background of the service  
24 area and the nature of the service.

25 Q. Basically, it's an invitation to bid on your

1 supply requirements?

2 A. Correct.

3 Q. And the RFP is -- I think you mentioned,  
4 does list certain requirements. Right?

5 A. Yes.

6 Q. And then the bidders that want to respond  
7 send in their bid responses. Correct?

8 A. Yes.

9 Q. And in your direct -- it's Page 6, Line 23  
10 -- you say that you select the best bid for reliable supply  
11 at the least cost. Correct?

12 A. That's correct.

13 Q. And then that bid response is awarded a  
14 supply contract. Right?

15 A. Yes.

16 Q. Okay. So -- now, does the RFP letter inform  
17 the bidders that they are to provide reliable supply?

18 A. I would have to pull out the exact wording,  
19 but I'm sure that the firm nature of the supply is  
20 definitely mentioned.

21 Q. Okay. I'm going to hand out to you DR-78.  
22 I believe it's proprietary.

23 JUDGE WOODRUFF: This will be 8.

24 (Wherein; Staff Exhibit No. 8 was marked for  
25 identification.)

1 JUDGE WOODRUFF: And you say it's  
2 proprietary?

3 MR. BERLIN: Yes.

4 JUDGE WOODRUFF: 8-P, then.

5 MR. BERLIN: 8-P.

6 JUDGE WOODRUFF: Let me know if we need to  
7 go in camera to discuss this.

8 BY MR. BERLIN:

9 Q. Ms. Buchanan, I'm going to ask you, if you  
10 would please read the Section 5.4 on reliability. And if  
11 you believe we need to go in camera, please tell me.

12 A. Let me see. We are looking at the RFP  
13 letter. There shouldn't be anything in here that's  
14 confidential. 5.4, Reliability, All gas supply is to be  
15 firm and warranted, assuring the natural gas supply  
16 services will meet all contractual obligations without  
17 fail.

18 Q. And that phrase, firm and warranted, is in  
19 bold type and underlined. Right?

20 A. That's correct.

21 Q. Okay. Well, presumably, it's in bold and  
22 underlined for emphasis. Correct?

23 A. That's right.

24 Q. So the quality of the gas is firm without  
25 fail?



1           A.       That's right.

2           Q.       Now, you may recall -- in the deposition we  
3       discussed this a bit -- and I also think that you will --  
4       you had addressed some of it in your direct -- but all gas  
5       supply contracts require firm supply, do they not? And I'm  
6       just referring to your direct, Page 14 --

7           A.       Our --

8           Q.       -- Line 14.

9           A.       Our Atmos contracts?

10          Q.       Your Atmos gas supply contracts --

11          A.       Yes.

12          Q.       -- require firm supply?

13          A.       That's correct.

14          Q.       Okay. And in looking at your RFP, that gas  
15       supply is to be delivered at Haven. Right?

16          A.       This does not represent the entire RFP  
17       packet. This is just one portion of it. I believe --

18          Q.       Would that be on another -- would that  
19       requirement be on another portion of the RFP?

20          A.       I believe there -- I believe there's a  
21       section that gives --

22                   MR. WALKER: Attachment 1.

23                   THE WITNESS: It's -- oh, okay. So it's  
24       missing -- this is missing a component of the RFP itself.

25                   MR. BERLIN: Okay.

1 THE WITNESS: In DR-78 response --

2 MR. BERLIN: Uh-huh.

3 THE WITNESS: -- and granted, that's for  
4 year 2008 -- it would be a similar attachment. But it's  
5 on -- it's behind here on DR-78. We could just refer to  
6 that Attachment 1, if that would be easier.

7 And to answer your question, --

8 BY MR. BERLIN:

9 Q. Well, my question is: Does your RFP -- it  
10 require the gas supply to be delivered at Haven?

11 A. Well, what I'm trying to answer you is that  
12 we gave flexibility within the RFP for the bidders to also  
13 use a secondary in-path point.

14 Q. Okay. But it -- it does ask that the supply  
15 be delivered to Haven. And I understand your --

16 A. It says, Haven -- let me read it to you.  
17 All of this gas will flow on Atmos' firm transportation  
18 agreements to our Hannibal, Missouri and Bowling Green  
19 service areas. Haven first-of-month and swing receipts can  
20 be at Haven or other points between Haven and Atmos'  
21 service area at UNCMO point Hannibal, Missouri on  
22 Panhandle. That is the secondary in-path point that we're  
23 talking about.

24 Q. Okay.

25 A. This attachment was provided to all

1 recipients of the RFP, and they could all utilize that in  
2 their bid and in their service.

3 Q. Did any of the responses request the  
4 secondary receipt point?

5 A. I don't know that it's a request. It's  
6 actually -- would be part of their bid. So they had the  
7 freedom to use the secondary in-path point. They didn't  
8 have to request it from us; we already told them in this  
9 RFP that they could do that, if so they desired.

10 I believe -- in talking to Mr. Walker, I  
11 don't know if any of the others did utilize that point in  
12 their bid, but they certainly had the ability to and we  
13 would not have objected to that.

14 Q. I believe you testified in your deposition  
15 that Atmos had sent RFP letters to 56 entities to supply  
16 the Hannibal, Bowling Green system. Does that number sound  
17 right?

18 A. That does sound right to me.

19 Q. Now, looking at your Attachment 2 to your  
20 direct testimony, it's your -- and it's titled Summary of  
21 RFP Bids with Rankings.

22 A. Okay. Oh, I'm sorry. Can you just give me  
23 a minute to turn to that?

24 Q. Sure.

25 MR. FISCHER: Sorry. What was your

1 reference, Counsel?

2 THE WITNESS: Oh, I'm sorry. I'm hitting  
3 the microphone.

4 MR. POSTON: While she's doing that, Judge,  
5 can I ask, does this Exhibit 8 need to be marked  
6 proprietary? I thought she said it was not.

7 JUDGE WOODRUFF: Let me ask Atmos.  
8 Does this need to be proprietary?

9 THE WITNESS: Was that the RFP letter that  
10 we were just looking at?

11 MR. POSTON: Right.

12 THE WITNESS: The RFP letter is public. I  
13 mean, I don't think the letter itself and that Attachment 1  
14 that I was talking about -- I don't know if there was  
15 anything else behind DR-78, but what he handed me was not  
16 proprietary.

17 JUDGE WOODRUFF: What he handed to you is  
18 the exhibits.

19 THE WITNESS: Right. That isn't --

20 JUDGE WOODRUFF: All right. Then we'll  
21 remove the "P" designation.

22 THE WITNESS: Yes.

23 MR. POSTON: Okay.

24 THE WITNESS: All right. I have Attachment  
25 2 to my direct testimony.

1 BY MR. BERLIN:

2 Q. Okay. And that is a summary of your RFP  
3 with the rankings for the Missouri jurisdiction. Right?

4 A. For the period 2004 through 2009.

5 Q. Okay. And for the April 2007 to March 2008  
6 period, Atmos received seven bid responses. Correct?

7 A. I'm turning to Page 2 of 3, and under the  
8 Hannibal column, April '07 to March '08, I do see seven  
9 listed here. Yes.

10 Q. And AEM is ranked number one. Correct?

11 A. Yes, as having the least cost and best bid.

12 Q. Okay. Going through your rankings of  
13 responses, will you agree with me that -- and at  
14 deposition, we had established that out of those seven  
15 responses, the number two closest bid response and the  
16 number three closest bid response were nonconforming?

17 A. Yes. I would agree with that.

18 Q. Okay. And so a nonconforming bid is one  
19 that just does not meet the bid requirements. Right?

20 A. That's correct.

21 Q. And so AEM that -- did win the bid and was  
22 allowed to deliver gas downstream of Haven. Correct? To  
23 the secondary receipt point?

24 A. As per -- was provided in the RFP. They did  
25 nothing wrong. The -- any other bidder could have done the

1 same thing.

2 Q. Thank you. As you stated earlier, your  
3 contracts with your gas suppliers are for firm gas supply.

4 A. Yes.

5 Q. And that includes AEM. Right?

6 A. That's right. That point is a firm point.

7 Q. Okay. So let's look at what constitutes a  
8 gas supply contract. You would agree -- I think we just  
9 went through a line of questions, and you agreed that the  
10 RFP bid letter is an invitation to bid.

11 A. Yes.

12 Q. Right? And it informs the bidders of Atmos'  
13 requirements. But the RFP is not the supplier contract.  
14 Right?

15 A. No. But it's the basis of the agreement.

16 Q. Now, Atmos uses a standardized contract of  
17 common operational terms and conditions developed by the  
18 North American Energy Standards Board, or NAESB, does it  
19 not?

20 A. Yes. We refer that to the base contract,  
21 the base NAESB.

22 Q. Okay. So the NAESB base agreement is part  
23 of Atmos' supply agreement with its affiliate AEM. Right?

24 A. Yes. We try to use that same agreement with  
25 all our suppliers.

1           Q.       Okay.  So Atmos and its supplier AEM are  
2 bound by the terms of the NAESB base agreement, any  
3 addendums to the base agreement, and the transactions  
4 confirmations between Atmos and AEM.  Correct?

5           A.       Correct.

6           Q.       And at deposition I think you indicated that  
7 the transaction confirmations between Atmos and its  
8 supplier AEM formed the contractual requirements along with  
9 the NAESB agreement?

10          A.       Yes.

11          Q.       Okay.  And if you would, please, I'd like to  
12 take you to Section 11 of the NAESB base agreement.  And --

13          A.       I'm sorry.  Oh, my.

14               JUDGE WOODRUFF:  This will be 9.

15               (Wherein; Staff Exhibit No. 9 was marked for  
16 identification.)

17               JUDGE WOODRUFF:  And I -- I note that at the  
18 bottom that it's stamped HC.  Is this a highly confidential  
19 aspect?

20               MR. BERLIN:  Is this base agreement HC,  
21 Ms. Buchanan?

22               THE WITNESS:  This -- I don't think there's  
23 anything on this page that's confidential.

24               JUDGE WOODRUFF:  All right.  It's Exhibit 9.

25               BY MR. BERLIN:

1 Q. Okay. Ms. Buchanan, if you would, please,  
2 read the first two sentences in Section 5, under Force  
3 Majeure -- 11.5.

4 A. Okay. The party whose performance is  
5 prevented by force majeure must provide notice to the other  
6 party. Initial notice may be given orally; however,  
7 written notice with reasonably full particulars in the  
8 event or occurrence is required as soon as reasonably  
9 possible.

10 Q. Okay. Ms. Buchanan, do you know if your  
11 supplier AEM provided Atmos with a written notice of the  
12 force majeure?

13 A. During this ACA period, there -- the force  
14 majeure was called by the pipeline. The pipeline gave the  
15 notice to both parties.

16 Q. Okay.

17 A. So --

18 Q. But my -- my question --

19 A. -- we did not receive a force majeure notice  
20 from our supplier; we received it from the pipeline.

21 Q. Okay. All right. So the answer is no --

22 A. No. We didn't get --

23 Q. -- AEM did not provide --

24 A. That's right.

25 Q. -- written notice?



1           A.       We did not get it from AEM, but rather from  
2       the pipeline.

3           Q.       So without a notice from AEM, you had every  
4       reason to believe that AEM could still meet its firm supply  
5       obligations.   Correct?

6           A.       Absolutely not.   During a force majeure  
7       event, that is an act of God.   The pipeline ruptured.   It  
8       would be ridiculous for me to think that AEM could still  
9       supply us gas in that event.   You would think that I was  
10      imprudent if I had assumed that.

11          Q.       Well, Ms. Buchanan, AEM did supply some gas,  
12      didn't it?

13          A.       Yes.   And my understanding is it was not a  
14      complete rupture of all four pipelines flowing through that  
15      area.   I think as you explained earlier, only one of the  
16      four lines ruptured; and therefore, a proportion of supply  
17      was able to get through.

18          Q.       But I think -- and you may recall at  
19      deposition, I had asked you a question about the December  
20      2007 swing nominations that were reduced by Panhandle, and  
21      AEM's inability to schedule certain supplies for Atmos at  
22      the AEM delivery point.   Do you recall those questions?

23          A.       I do remember you asking me about that.

24          Q.       And in your response you indicated the only  
25      period when AEM didn't deliver the requested volumes was

1 December 8th through 10th. Do you recall that?

2 A. Yes.

3 Q. Okay.

4 A. Yes. I remember that I also explained to  
5 you that their schedule -- scheduler made a clerical error,  
6 and therefore that we did not get any of the swing gas or  
7 -- I believe not -- none of the swing gas during that  
8 weekend.

9 Q. Okay. And --

10 A. And then -- then further in the month, we  
11 didn't get cut.

12 Q. And you said that December 8th through 10th  
13 was during the period of the force majeure. Right?

14 A. It was.

15 Q. Okay. And so -- and I'm going to go to Page  
16 31 of your deposition. And do you have your deposition  
17 there?

18 A. I do. Well, I'll say, I did. Oh, here it  
19 is. Too many papers. I do have it.

20 Q. Okay. And if you would like to, I'd direct  
21 you to Page 31, Line 7.

22 A. Just one second. I was looking at the  
23 transcript page. You're wanting me to look at the  
24 deposition page number. Okay. I'm sorry. What page  
25 number?

1 Q. Page 31.

2 A. 31. Okay.

3 Q. And I'm at Line 7. And the question is: Is

4 it your belief that your affiliate AEM had not -- or no

5 performance issues? And your answer was?

6 A. That's my belief, and it still is. They may

7 have --

8 Q. The -- what's the answer?

9 A. That --

10 Q. Yes?

11 A. Yes. I --

12 Q. Okay.

13 A. -- I agree with that.

14 Q. I'm just asking what it --

15 A. Okay. Well, that weekend, as we explained,

16 was a clerical error.

17 Q. No. I -- I don't --

18 A. So --

19 Q. Ms. Buchanan, I'm going by the deposition.

20 A. Okay.

21 Q. So I'm just going --

22 A. That's fine.

23 Q. -- through the Q&A.

24 A. That -- well, I was just going to explain

25 why --

1 JUDGE WOODRUFF: And --

2 THE WITNESS: -- I thought that.

3 JUDGE WOODRUFF: If I can interrupt you,

4 Ms. Buchanan.

5 THE WITNESS: Yes.

6 JUDGE WOODRUFF: Only answer the questions

7 --

8 THE WITNESS: Okay.

9 JUDGE WOODRUFF: -- that are asked of you.

10 Don't elaborate unless you're asked to.

11 THE WITNESS: Okay. Thank you.

12 BY MR. BERLIN:

13 Q. And the next question is: And did AEM

14 provide firm gas supplies? Your question -- your answer

15 was?

16 A. Yes.

17 Q. Okay. And my question was: How so? And

18 then if you would read your answer.

19 A. They provided the gas supply to our citygate

20 when we requested on all days that they were required to do

21 so outside of the force majeure event.

22 Q. Okay. And that is your testimony?

23 A. Yeah.

24 Q. Correct?

25 A. Yes. It is.

1           Q.       Okay. What I'd like to do now is just kind  
2 of shift gears a little bit and go to a Sommerer  
3 surrebuttal Schedule 3-1. This is actually Atmos' response  
4 to Staff DR-132.2, Parts A and C.

5           MR. BERLIN: I'm going to hand it out.

6           JUDGE WOODRUFF: And this will be No. 10.

7           (Wherein; Staff Exhibit No. 10 was marked  
8 for identification.)

9 BY MR. BERLIN:

10          Q.       It's No. 10.

11          A.       Thanks.

12          JUDGE WOODRUFF: And again, I note that this  
13 is stamped HC at the bottom. Is this still highly  
14 confidential?

15          THE WITNESS: Let me look at this. I don't  
16 see any pricing on here or anything that would give me  
17 concern on this particular page.

18          JUDGE WOODRUFF: All right.

19          THE WITNESS: So I would say that it's okay  
20 to be a public document.

21          JUDGE WOODRUFF: Then Exhibit 10.

22 BY MR. BERLIN:

23          Q.       Okay. Okay. Ms. Buchanan, let's just kind  
24 of look at this document. It's a two-sided document.

25          MR. BERLIN: And I note for the record that

1       these are two-sided documents mostly that I've been handing  
2       out.

3       BY MR. BERLIN:

4               Q.       But you'll note that it looks like the same  
5       on both side, except that --

6               JUDGE WOODRUFF:   Mr. Berlin, the documents I  
7       have are only one-sided.

8               THE WITNESS:   Mine, too.   It's a single.

9       BY MR. BERLIN:

10              Q.       Let me correct myself, here.   This is taken  
11       from Sommerer -- no -- surrebuttal Schedule 3-1 HC.   But it  
12       reflects Atmos' response to Staff DR-132.2, Parts A and C.  
13       And you can see that at the top left-hand corner.

14              And Ms. Buchanan, what I would note -- have  
15       you look at and note that the only difference here is that  
16       Staff had added some summary information at the very  
17       bottom, which was Staff's summary information.   Do you  
18       agree with that?

19              Or another way of asking you is, everything  
20       above the summary added by Staff on the bottom part --  
21       everything above that is Atmos' data?

22              A.       Without going through every line, I'll agree  
23       with that, subject to check.   But yes, I would say that  
24       that's correct.

25              Q.       Okay.   Now, Ms. Buchanan, please take a look

1 at the far left column. And you see dates, and you see a  
2 column called Hannibal Nom. And then you see Pipeline  
3 Curtailed Nom, and then a variance column. Do you see  
4 that?

5 A. Yes. I see that.

6 Q. Okay. Now, if you would please go down to  
7 December 8th. Okay. Tell me how much volume was curtailed  
8 in the Hannibal nom on December 8th.

9 A. By looking at the December 8th column -- I  
10 mean, line item under the Hannibal Pipeline Curtailed Nom,  
11 it shows -- I'm sorry -- the variance column, which would  
12 be the third one, shows 2,200.

13 Q. Okay. And what was the nom on that day?  
14 Would that have been --

15 A. Well, it's -- by going off the sheet -- I  
16 didn't prepare this. It might be better for Mr. Walker.  
17 But just by going off the sheet, it says 4,500.

18 Q. Okay. Now, go down to December 9th. And  
19 again, there was a nomination of 4,500. Correct?

20 A. Yes. That's on the sheet.

21 Q. And the cut that day was?

22 A. Well, it's the same as the line before it.  
23 It says 2,200 in the variance.

24 Q. Okay. Okay. And so if you would please  
25 look all the way down through December 31st, you -- would

1     you agree that the pipeline cut Hannibal nominations every  
2     day through December 31st?

3             A.     According to this sheet, that's what it  
4     shows from the 8th through the 31st.

5             Q.     Okay. Now, if you would, go to the far  
6     right of the chart, and you see the Bowling Green Nom  
7     column. Do you see that? It's --

8             A.     Sort of -- like two-thirds to the right?

9             Q.     Yes.

10            A.     Yes.

11            Q.     Okay. And looking down at December 8th,  
12     going through December 31st, would you agree that Bowling  
13     Green nominations were cut each day?

14            A.     Yes.

15            Q.     Okay.

16            A.     From the 8th to the 31st. That's what it  
17     appears to show.

18            Q.     And it appears to show a cut of 200. Right?

19            A.     Yes.

20            Q.     On a nom of 700?

21            A.     Yes. It does.

22            Q.     Okay. Now, please look at the bottom middle  
23     box, if you would, at the very bottom. It's part of the  
24     summary added by Staff that says December 7 Flowing  
25     Subtotals. Are you there?



1           A.       I see that box.  Yes.

2           Q.       Okay.  And you agree that it would be a  
3       summary that was added by Staff.  Correct?

4           A.       Yes, according to what you told me,  
5       everything from the bottom of the graph down is added by  
6       Staff.  Yes.

7           Q.       Okay.  And so the summary chart says that  
8       the total nominations for December 2007 is 134,710.  Do you  
9       have any reason to not believe the totalized number?

10          A.       I'll be fine with agreeing to that.  Unless  
11       we, you know, find something different, I'll go along with  
12       that.

13          Q.       I mean, we could get a calculator out --

14          A.       Yeah, but let's --

15          Q.       -- and --

16          A.       -- not worry about that for now, for --  
17       subject to this discussion.

18          Q.       All right.  Well, thank you.

19          A.       Okay.

20          Q.       All right.  Now, this chart here is a  
21       summary of nominations on days that had cuts, isn't it?

22          A.       Yeah.  I guess what you're saying is there  
23       were probably nominations on other days that didn't have  
24       cuts, and they're not reflected here.

25          Q.       Okay.

1           A.       I would guess so.

2           Q.       All right. And so the amount of volume  
3     curtailed -- or cut, rather, is -- looking at the summary  
4     -- 41,701, or 31 percent of the total. Does that math --  
5     do you have any reason to not believe that math?

6           A.       No. I'll go along with that.

7           Q.       Okay. So 31 percent of the nominations for  
8     flowing gas were cut by the pipeline. Right?

9           A.       Of the nominations shown on this sheet, yes.

10          Q.       Right. Now, that would be a big number,  
11     isn't it? 31 percent?

12          A.       It seems large.

13          Q.       Okay. Well, before we leave this DR  
14     response, I'd like to go to the far right column, the  
15     Butler Nom column. And that is -- it's further to your  
16     right. It's like -- I'm sure you can spot it there. Are  
17     you there?

18          A.       Yes. The last three columns -- the third  
19     from the end is Butler Nom.

20          Q.       Right.

21          A.       Yes.

22          Q.       Right. And on December 8th, Butler also  
23     made a nomination, correct, that was -- do you see their  
24     nomination?

25          A.       I do.

1 Q. And it's 1,982. Right?

2 A. Yes.

3 Q. Okay. And it had a cut as well. Right?

4 How much was that cut?

5 A. It shows a variance on the 8th of 142.

6 Q. Okay.

7 A. 142.

8 Q. And we could look at the math, but would you

9 agree with me that that cut is just over 7 percent of

10 1,982?

11 A. Okay.

12 Q. And looking at December 9th, you see Butler

13 Nominated, again, 1,982, and 136 was cut. Is that --

14 A. I see that.

15 Q. We're going down the chart, here.

16 A. Yep.

17 Q. Okay. In doing the math, do you think you'd

18 agree that the cut -- that cut would amount to about 7

19 percent of the requested nom?

20 A. I'll go with that.

21 Q. Okay. December 10th, the Butler nom was

22 again 1,982, and the cut was 265. Do you agree with that?

23 A. I do.

24 Q. Okay. And again the math -- would you say

25 the cut was just over 13 percent. Right?

1           A.       That seems reasonable. Uh-huh.

2           Q.       That's fine. And December 11th, again, the  
3       nom was 1,982, the cut was 271; is that right?

4           A.       Yes. It says 271.

5           Q.       And so doing the math, that's over 13  
6       percent -- right around, ballpark. Right?

7           A.       Okay.

8           Q.       You would agree with that?

9           A.       Yes. That's what I'm seeing here.

10          Q.       Okay.

11          A.       Approximately. Uh-huh.

12          Q.       And then on December 12th, the Butler nom  
13       was again 1,982, and that cut was 21, wasn't it?

14          A.       It shows 21 right here. Yes.

15          Q.       So 21 is just a little bit over 1 percent,  
16       isn't it?

17          A.       About 1 percent. Uh-huh.

18          Q.       Okay. And again we see that Butler, from  
19       December 13th, going down the column through the end of the  
20       month of the 31st, had no cuts. Do you agree with that?

21          A.       Since it's not showing up here, I believe  
22       that's correct.

23          Q.       Okay. So --

24          A.       Otherwise, it would be reflected on the  
25       chart here.

1           Q.       Okay. So when we look at these dates -- so  
2 Butler had five days of cuts. Right?

3           A.       There's five days listed on the chart. Yes.

4           Q.       Okay. And so those cuts, I think we  
5 established, are fairly small, aren't they?

6           A.       Well, I still think 13 percent is a pretty  
7 good-sized cut. But yeah.

8           Q.       Okay. Now, are the Butler cuts small  
9 because Butler is not served downstream of Haven and  
10 downstream of the secondary receipt point off of Panhandle?

11          A.       In talking to our pipeline rep, we were  
12 puzzled by why the Butler nominations were not cut, and we  
13 posed that question to the pipeline rep. And that gas  
14 does -- my understanding is that gas does flow through  
15 Haven. And the pipeline rep was puzzled herself and could  
16 not explain why there weren't cuts throughout the period  
17 for that gas that was flowing through Haven to Butler --

18          Q.       Okay.

19          A.       -- from field to Haven through -- to Butler.

20          Q.       Okay. Now, just for comparison's sake,  
21 let's go back to the Hannibal Nom column on December 8th.  
22 We had just done that earlier. We looked at that earlier,  
23 and you, I think, agreed with me that the Hannibal --  
24 Hannibal had nominated 4,500 as of December 8th. And in  
25 fact, was nominating 4,500 on December 8th all the way

1 through the end of the month of -- through December 31st.

2 That's what the column says, isn't it?

3 A. Yes. It's -- that's what's represented on  
4 the chart. Yes.

5 Q. Okay. And we talked about the cut of  
6 December 8th and 9th, and it goes down to even another day  
7 of 2,200. Now, doing the math, that cut is over 48  
8 percent. Would you agree with me, or -- I mean --

9 A. I'm sorry. Where -- you kind of lost me.

10 Q. Okay. Let's --

11 A. How did you get 48 percent?

12 Q. Well, the cut was 2,200. We already talked  
13 about --

14 A. Oh, out of 4,500?

15 Q. Yes.

16 A. Okay.

17 Q. And so 2,200 of the 4,500 would be about 48  
18 percent.

19 A. Okay.

20 Q. Would you agree?

21 A. Yes.

22 Q. Okay. Now, I think you -- you were -- you  
23 were just talking about significant size of the cuts. But  
24 would you agree that a 48-percent cut is pretty  
25 significant, isn't it?

1 A. Yes.

2 Q. Okay. And looking further down the column,  
3 we see significant cuts through the remainder of December,  
4 with a bit of a let-up around December 23rd, 24th and 25th.  
5 Would you agree?

6 A. Yes.

7 Q. And then the cuts again increase through the  
8 end of the month, through to the 31st. And would you agree  
9 that those -- the size of those cuts, which is consistently  
10 1,000 -- the cut is consistently 1,259. Right?

11 A. Yes.

12 Q. And that would amount to about 28 percent.

13 A. Okay.

14 Q. And again, Staff sent this DR on August 27th  
15 of 2010. Do you agree with me there? We received the  
16 response on September 16th of 2010.

17 A. That looks correct.

18 Q. Okay. All right. Let's go now to DR-101.1.

19 JUDGE WOODRUFF: This will be Exhibit 11.

20 MR. BERLIN: 11. Okay.

21 (Wherein; Staff Exhibit No. 11 was marked  
22 for identification.)

23 BY MR. BERLIN:

24 Q. And Ms. Buchanan, as you look at it, I  
25 believe it's HC.

1 JUDGE WOODRUFF: Is this document then HC?

2 THE WITNESS: I'll have to look at it for  
3 just --

4 JUDGE WOODRUFF: Okay.

5 THE WITNESS: -- a moment to see. I'm not  
6 sure. Let me just look at what page you provided me, if  
7 there's anything in this actual part of the response that  
8 would be considered confidential. I don't believe there's  
9 anything confidential in the page that you've handed me.

10 MR. BERLIN: Okay.

11 BY MR. BERLIN:

12 Q. Well, would you agree with me that Staff  
13 sent this on August 11, 2009?

14 A. Yes. That's what's dated on the request.

15 Q. And -- okay. And the response was received  
16 August 31, 2009. This DR request -- and I'm going to look  
17 at Paragraph 2. Would Atmos please explain the following  
18 -- Paragraph 2, the impact of the force majeure and  
19 operation flow order or other supply cuts further upstream  
20 (west) of Haven (in the production zone) for these primary  
21 receipt points. If you would please read response to -- to  
22 Paragraph 2. It says, The impact of the force majeure.

23 A. Yeah. It's just a little confusing how the  
24 question is on one page and the response is on the other.  
25 I just want to make sure I'm getting to the right place,



1       here.

2                       Okay.  You want me to read the Response

3       Number 2?

4               Q.       Yes.

5               A.       The impact of the force majeure and OFO or  
6       other supply cuts in the field zone would affect the gas  
7       transported through the field zone to delivery point only  
8       and not gas transported from Haven to delivery point, since  
9       it is further downstream of the force majeure event.

10              Q.       Okay.  Now, the delivery point, is that  
11       Hannibal citygate?

12              A.       Yes.  I believe so.

13              Q.       Okay.  So if you -- if you agree with the --  
14       this response, then the Haven 400 line rupture, or force  
15       majeure event, would not affect supplies downstream from  
16       Haven from the secondary receipt point, would it?

17              A.       The impact of the force majeure -- let me --  
18       if you don't mind, I really need to read the full question  
19       first.

20              Q.       Sure.  Sure.

21              A.       So if I can just take a moment and read the  
22       full data request --

23              Q.       Yeah.

24              A.       -- the whole thing.  Okay.  Could you repeat  
25       your question now?

1 Q. Well --

2 A. I think I've got a --

3 Q. -- I --

4 A. -- better idea of what's going on now.

5 Q. My question is -- now, I'm presuming the  
6 response that is offered here is true. Would you agree  
7 that Haven 400 line rupture, or the force majeure event at  
8 Haven there, would not affect supplies downstream of Haven  
9 from the secondary receipt point further downstream?

10 A. No. I wouldn't exactly agree with that.  
11 Would you like me to explain why?

12 Q. Okay. So what I'd like to do is just kind  
13 of go to the impact -- I mean, this statement here refers  
14 to force majeure. Correct? Or OFO or other supply cuts in  
15 field zone. Correct? And so --

16 A. Yes.

17 Q. -- that affects gas transported through the  
18 field zone to delivery point. Right?

19 A. That's what it says.

20 Q. Okay. And not gas transported from Haven to  
21 the delivery point, which we established is Hannibal.  
22 Right?

23 A. I would say that's what the response says.  
24 But that's not the question you just asked me a moment ago.

25 Q. Okay. Well, I'm just -- I'm just going --

1           A.       Okay.

2           Q.       -- I'm just looking at your response here  
3 and trying to understand your --

4           A.       Okay.

5           Q.       -- response. Okay. Excuse me.

6                    Ms. Buchanan, I was wondering if you were  
7 able to explain to me the manner or the method that  
8 Panhandle Pipeline ranks nominations during a period of  
9 curtailment.

10                   JUDGE WOODRUFF: Mr. Berlin, would you make  
11 sure your microphone is on.

12                   MR. BERLIN: It's on. It's on. Yes.

13                   MR. FISCHER: Judge, I think I'm going to  
14 object on the grounds that it calls for speculation, if  
15 he's asking what -- how does Panhandle treat something. I  
16 don't know that this witness could speculate about that.

17 BY MR. BERLIN:

18           Q.       Well, Ms. Buchanan, are you able to answer  
19 that question?

20           A.       Well, I was going to say, this is posted in  
21 their tariff, I believe. And I was going to check to see  
22 if I may have brought a page from their tariff that  
23 explains the schedule.

24           Q.       Well, maybe I can help out here,  
25 Ms. Buchanan. Would -- would you agree that primary is the

1 highest priority?

2 A. The -- primary firm, yes.

3 Q. Okay.

4 A. I believe that's correct.

5 Q. And then the next would be secondary within  
6 path primary?

7 A. Just from my knowledge, I think that's  
8 correct. Secondary in-path would be next.

9 Q. Okay. And then secondary out-of-path  
10 primary?

11 A. That sounds right. I would prefer to  
12 actually go to the pipeline tariff and look --

13 Q. Okay.

14 A. -- to see if there's anything in between  
15 there, but --

16 Q. Okay. No. That's -- that's all I have  
17 there.

18 I'm just going to go back to your direct, if  
19 you would. Okay. Going to your direct testimony, Page 12,  
20 Line 9, and you state, The commodity flows on our firm  
21 transportation contract, so there are no reliability  
22 issues. Is that a fair reading there?

23 A. Yes. That's what my testimony says.

24 Q. Okay. And so you may recall I had asked you  
25 a similar question in deposition about that. And is it

1 your belief that because transportation contract is firm  
2 that the contract makes the AEM gas supply firm? And I  
3 think you answered yes to that.

4 A. Yeah. Yes. Because the -- the supplier has  
5 the obligation to deliver firm supply into our contract.  
6 And then we transport it on a firm transportation contract,  
7 to our citygate.

8 Q. So Atmos has firm transportation contracts  
9 on Panhandle?

10 A. Yes. We do.

11 Q. Okay. An Atmos supplier would need to be  
12 able to get that gas onto Panhandle, doesn't it?

13 A. Yes.

14 Q. Okay.

15 A. Into our point.

16 Q. Right. So that means that AEM has to be  
17 able to get the gas into Panhandle. That's -- they're --  
18 they're --

19 A. To --

20 Q. -- obligated to get it to --

21 A. Yes.

22 Q. -- Panhandle?

23 A. To our -- to our receipt point.

24 Q. To your receipt --

25 A. To our contract. Uh-huh.

1           Q.       And then once the gas is at your receipt  
2 point, it gets onto Panhandle; that goes along on your firm  
3 transportation contract. Correct?

4           A.       That's correct.

5           Q.       Okay. Now, we just went through a series of  
6 questions about cuts that were made. Could AEM possibly  
7 have been relying on interruptible gas supplies?

8           A.       I --

9                   MR. FISCHER: Calls for speculation, Judge.

10                  THE WITNESS: Yeah. I don't know.

11 BY MR. BERLIN:

12           Q.       You don't know?

13           A.       (Witness shook head.)

14           Q.       Okay.

15                   JUDGE WOODRUFF: I'll -- well, she answered  
16 the question, so I guess the objection is moot.

17                  THE WITNESS: Sorry.

18 BY MR. BERLIN:

19           Q.       Could AEM have been relying on gas that it  
20 had parked that would not have been firm?

21                   MR. FISCHER: Calls for speculation.

22                   JUDGE WOODRUFF: I'll sustain the objection.

23                  MR. BERLIN: Okay.

24 BY MR. BERLIN:

25           Q.       Well, let me -- let me just kind of ask you

1     about a hypothetical, Ms. Buchanan. Let's assume that AEM  
2     was using an interruptible transportation on the secondary  
3     receipt line, that line that they were bringing in the  
4     supplies; and not only using interruptible transportation,  
5     but using interruptible supplies during the Panhandle force  
6     majeure, and those supplies were cut by Panhandle.

7                     Would you describe that cut as caused by the  
8     Panhandle force majeure?

9             A.     I would say that would probably be one of  
10    the circumstances surrounding that.

11            Q.     Okay. Now, if AEM can't get the gas to  
12    Panhandle, for whatever reason, then its gas can't get to  
13    your citygate, can it?

14            A.     Yes. If they can't give us supply -- is  
15    that what you're saying?

16            Q.     Well --

17            A.     If --

18            Q.     -- I mean --

19            A.     -- they're --

20            Q.     -- if AEM cannot get your -- get the gas to  
21    Panhandle, then the gas can't get to the citygate, can it?  
22    Because --

23            A.     Not that -- not that particular molecule of  
24    gas, yes.

25            Q.     Well, the Panhandle is the delivery system

1       --

2           A.       Right.

3           Q.       -- into northeast Missouri.  Right?

4           A.       Right.

5           Q.       And you may recall at deposition I asked you  
6       to define firm supply.  And you told me -- and I'm  
7       quoting -- "Firm supply is that supplier delivers the  
8       quantity requested to our citygate," closed quote.  Do you  
9       recall that response?

10          A.       Yes.  I'd probably modify it just slightly.

11          Q.       Okay.  Well -- so if your supplier AEM is  
12       not getting the gas onto Panhandle, then it's not going to  
13       get your city gate; and then it doesn't look like it's firm  
14       supply, does it?

15          A.       If that was the reason, is that it just --  
16       they just didn't get it there, then yeah.  But if there was  
17       other extenuating circumstances, such as a force majeure,  
18       then you have to look at that differently.

19          Q.       Are you aware that AEM had plenty of  
20       first-of-month baseload supply to meet its requested  
21       nominations from Atmos?

22          A.       I don't know anything about their upstream  
23       contracts.

24          Q.       Okay.  Okay.  Ms. Buchanan, I'd like to go  
25       to some different questions about Atmos' supply contract



1 with its supplier AEM. And you would agree that the NAESB  
2 base contract and the addendums to the base contract and  
3 the transaction confirmations form the contractual  
4 requirements?

5 A. Yes.

6 Q. Okay. I'd like to go to a transaction  
7 confirmation. And I do that through Sommerer rebuttal,  
8 Schedule 5-10 HC.

9 JUDGE WOODRUFF: This will be 12.

10 (Wherein; Staff Exhibit No. 12 HC was marked  
11 for identification.)

12 JUDGE WOODRUFF: And I've got them all --  
13 all this needs to be highly confidential?

14 MR. BERLIN: Yes. But I could ask her. Did  
15 I give you one?

16 BY MR. BERLIN:

17 Q. And Ms. Buchanan, if you would look at it  
18 and verify whether it needs to be highly confidential.

19 A. A transaction confirmation, I would say yes.

20 Q. Okay.

21 A. That includes pricing information.

22 Q. Okay.

23 JUDGE WOODRUFF: Okay. I'll mark it as 12  
24 HC.

25 MR. BERLIN: 12 HC.

1 BY JUDGE WOODRUFF:

2 Q. Okay. Ms. Buchanan, have you had a chance  
3 to review these schedules, the transaction confirmations?

4 A. No, not yet. I'm still looking.

5 Q. Okay. There's several of them here. And  
6 you should have seen some of these, I believe, at  
7 deposition, just to orient you. But on the first page, if  
8 you'd look at the top left block, you'll see on this  
9 transaction confirmation a begin date of 04/01/2007 and an  
10 end date of 04/01/2008. Do you see that?

11 A. I do.

12 Q. And just below, you see a -- in that block,  
13 an entry for service level. Do you see that?

14 A. Yes. I do.

15 Q. Okay. And what does it say next to service  
16 level?

17 A. Firm/base load.

18 Q. And based on this transaction confirmation,  
19 what is the delivery or receipt point?

20 A. It says Haven Pool.

21 Q. Okay. And that means supplies are to be  
22 delivered to Haven. Correct?

23 A. That's the point listed on this, yes.

24 Q. Okay. Now, if you would, please, go to the  
25 next page, which is Sommerer Rebuttal Schedule 5-15 HC.

1 And you should see a begin date on the upper left of  
2 04/01/2008 and an end date of 04/01/2009.

3 A. Yes.

4 Q. Okay. And then right below that you also  
5 see an entry for -- a line that says service level. Do you  
6 see that?

7 A. Yes.

8 Q. And what does that say?

9 A. It was left blank.

10 Q. Okay. And again what is a delivery or  
11 receipt point --

12 A. It --

13 Q. -- here?

14 A. -- it says Haven Pool.

15 Q. Okay. And that, again, means the supplies  
16 are delivered to Haven?

17 A. Yes.

18 Q. So if you go to the transaction confirmation  
19 on the next page, which is 5-16, and if you go to the  
20 service level, what does it say there?

21 A. That is left blank.

22 Q. Okay. And then go to the transaction  
23 confirmation Schedule 5 -- on 5-17. What is the service  
24 level there?

25 A. That is left blank.

1           Q.       Okay. And then in the interest of time,  
2       would you please look at the transaction confirmations on  
3       -- of the following pages: 5-18, 5-19.

4           A.       Yes. Those also are blank.

5           Q.       Okay. And on transaction confirmation  
6       labeled 5-19, at the bottom, that is your signature, isn't  
7       it?

8           A.       Yes.

9           Q.       Okay. Ms. Buchanan, given that we just  
10      reviewed quite a few transaction confirmations between  
11      Atmos and AEM, do you think AEM could view the blank  
12      service level as an opportunity to provide less than firm  
13      supplies?

14                 MR. FISCHER: Objection, calls for  
15      speculation.

16                 MR. BERLIN: No. I don't think it calls for  
17      speculation. She's the manager of gas supply, and her  
18      signature is on the document.

19                 MR. FISCHER: He's asking what AEM thought,  
20      Judge.

21                 MR. BERLIN: Well --

22                 JUDGE WOODRUFF: Actually, he's asking what  
23      she thinks they thought. Can you rephrase the question?

24                 MR. BERLIN: Yes. I will try.

25      BY MR. BERLIN:

1           Q.       All right. We just went through quite a few  
2 blanks on the service level on the transaction  
3 confirmations. We also established earlier in a line of  
4 questioning that the transaction confirmation is part of  
5 the contractual agreement between Atmos and AEM.

6                   My question is: As the manager of gas  
7 supply, do you believe your supplier AEM could have  
8 considered that the blank service level on that document  
9 would be an opportunity for them to provide less than firm  
10 gas supplies?

11                   MR. FISCHER: Same objection.

12                   JUDGE WOODRUFF: I'm going to overrule the  
13 objection.

14                   You can answer.

15                   THE WITNESS: Okay. In my opinion -- which  
16 is what you're asking --

17                   MR. BERLIN: Yes.

18                   THE WITNESS: -- I think it very unlikely  
19 that the supplier did not have full awareness that they had  
20 an obligation to deliver firm supply. It's also in the  
21 base NAESB that it's a firm supply requirement. You know,  
22 there could be a few other fields that are left blank.

23                   Mr. Walker's phone number isn't on here. It  
24 doesn't mean he's -- he doesn't have a phone. So sometimes  
25 things like that happen. We may not have given it as much

1 attention. But I -- my opinion is that all parties were  
2 very well aware that this was a firm service level  
3 requirement. That's my opinion.

4 BY MR. BERLIN:

5 Q. Ms. Buchanan, I'm going to shift gears a  
6 little bit here. And I want to go to your surrebuttal  
7 testimony. Do you have a copy of it?

8 A. I do.

9 Q. And on Page 5, at Line 22 -- are you there?

10 A. I am.

11 Q. Could you read me the sentence at Line 22  
12 that goes -- that starts at Line 22 and ends at Line 23?

13 A. The company's Texas jurisdiction alone  
14 comprises more than half of all Atmos' utility business  
15 throughout its system, yet it does no business with AEM in  
16 Texas.

17 Q. Okay. Ms. Buchanan, is the reason that  
18 Atmos doesn't do business in Texas with its affiliate  
19 because it is not permitted to make a margin on gas  
20 supplies?

21 A. I don't know the reason.

22 Q. Well, let me hand you a document from the  
23 Railroad Commission of Texas.

24 JUDGE WOODRUFF: This will be Exhibit 13.

25 (Wherein; Staff Exhibit No. 13 was marked

1 for identification.)

2 BY MR. BERLIN:

3 Q. Ms. Buchanan, I just handed to you a -- what  
4 is the final order in a case filed as Atmos Energy Corp Mid  
5 Tex Division, Proposed Revisions to the Gas Cost Review  
6 Process Separate from Gas Utilities, Docket No. 9670. It's  
7 in a gas utility docket No. 9696.

8 And again, it's a final order. And you  
9 should be familiar with this, because you'll note it was  
10 also a deposition exhibit. But --

11 A. No, sir. I'm not familiar with it. We just  
12 looked at -- glanced at it.

13 Q. Right.

14 A. We didn't take the time to review it. I'm  
15 not familiar --

16 Q. Okay.

17 A. -- with the document.

18 Q. Well, I'm trying to -- what I'd like to do  
19 is I want to get to this notion that you had in your  
20 surrebuttal testimony. And if you would, please, under the  
21 Findings of Fact section there, if you go to a couple pages  
22 into the final order, to Paragraph 12, would you read,  
23 please, Paragraph 12 and Subsection A?

24 MR. FISCHER: Judge, I'm going to object.  
25 If she doesn't have any knowledge of this particular order

1       -- and she's indicated she hasn't -- she's not competent to  
2       talk about it.

3                   MR. BERLIN: Well, Judge, this goes directly  
4       to her surrebuttal testimony, where she's basically saying  
5       that Texas is the largest gas distribution operation in the  
6       Atmos system, and yet makes a statement that they don't  
7       business with AEM. And I think this is very relevant.  
8       And -- and -- and I'd like to know why they don't do  
9       business with AEM.

10                  MR. FISCHER: She's also testified she has  
11       no knowledge of why --

12                  MR. BERLIN: Well --

13                  MR. FISCHER: -- they don't do business  
14       there, Judge.

15                  MR. BERLIN: Well, I'd like to know her  
16       thought based on -- yeah, this goes directly to it, Judge.

17                  JUDGE WOODRUFF: Well, the objection isn't  
18       to relevance; the objection is to whether she has any  
19       knowledge about this document.

20                  MR. BERLIN: Well, she seems to have  
21       knowledge about Texas and whether it does business with  
22       AEM.

23                  MR. POSTON: Judge, I mean, we can take the  
24       time and give her a chance to familiarize herself --

25                  MR. BERLIN: Yes.



1 MR. POSTON: -- with it.

2 MR. BERLIN: I mean --

3 JUDGE WOODRUFF: We're about due for a  
4 break, anyway, and this would probably be a good time to  
5 take one. Let's take a break now, and we'll come back at  
6 let's say 2:30.

7 (Off the record.)

8 JUDGE WOODRUFF: Let's go ahead and get  
9 started again. Before we took a break, there had been an  
10 objection and further discussion about this final order  
11 from the Railroad Commission of Texas.

12 Has anything changed while were on break?

13 Mr. Fischer?

14 MR. FISCHER: Well, I think my -- I think my  
15 witness has had an opportunity to read at least that one  
16 paragraph, so --

17 JUDGE WOODRUFF: All right. You're  
18 withdrawing your objection, then?

19 MR. FISCHER: He can ask what she knows.

20 JUDGE WOODRUFF: All right.

21 You can proceed with your questions.

22 MR. BERLIN: Thank you, Judge.

23 BY MR. BERLIN:

24 Q. Ms. Buchanan -- okay -- I think before break  
25 I had handed you the final order of the Railroad Commission

1 of Texas. And I'd ask that you please go to Paragraph 12  
2 in the final order. It's four pages in.

3 JUDGE WOODRUFF: Is your microphone on?

4 MR. BERLIN: Yes. It is on.

5 JUDGE WOODRUFF: Okay.

6 BY MR. BERLIN:

7 Q. Please go to Paragraph 12. I think it's on  
8 Page 3 there. And if you would read 12 in Paragraph A for  
9 me.

10 A. The Commission established a triennial  
11 review procedure and imposed seven standards on the gas  
12 purchase of the utility: (a) affiliate purchases may be  
13 included at the lowest price charged by the affiliated  
14 supplier to other divisions, affiliates or third parties  
15 for the same class of purchased gas.

16 Q. Okay. And can you tell me what that means  
17 to you? If you don't --

18 A. I really don't read anything more into it  
19 than what it says.

20 Q. Okay. That's --

21 A. It says, The affiliate purchases or price  
22 may be included at the lowest price charged by the  
23 affiliate. So in this example, the affiliate is AEM -- to  
24 other divisions. My interpretation of what they mean by  
25 other divisions would be, for example, to the Kentucky Mid

1 States Division that I buy gas for, or perhaps the Colorado  
2 Kansas division of Atmos, or the Louisiana division. So I  
3 would --

4 Q. Okay.

5 A. -- say that the purchases would be included  
6 at the lowest price that AEM one of those divisions, or to  
7 the -- the second one says, to an affiliate. But I'm not  
8 aware of any other affiliates, so that one confuses me a  
9 bit, of who another affiliate would be besides AEM and  
10 Atmos, the utility.

11 Q. Okay.

12 A. And then it says, Or the lowest price  
13 charged to third parties for the same class of service.  
14 And I'm assuming that third parties would mean maybe an  
15 industrial transport customer, for example. So they were  
16 saying that that price that would be charged to some other  
17 unrelated party would be the price that the affiliate could  
18 include in the Texas --

19 Q. Okay.

20 A. -- supply.

21 Q. Fair enough. If you would, please, go to  
22 12-F and read that for me.

23 A. Charges by affiliates of any margin above  
24 the affiliate's cost of gas may not be included.

25 Q. Okay. Now, is it your opinion that that

1 condition or standard may have a chilling effect on Atmos  
2 doing business with AEM?

3 A. I don't make that policy, so I'm not going  
4 to tell you one way or the other what I think on that.

5 Q. Okay.

6 A. You know.

7 Q. Okay.

8 A. It does say "may," so it's --

9 Q. Okay.

10 A. -- not an absolute.

11 Q. All right. Well, I have just a -- I have a  
12 few more questions along this line. I believe at  
13 deposition you told me Atmos uses the same RFP process --  
14 same RFP basically in Iowa, Kansas, Illinois, Kentucky,  
15 Tennessee and Georgia that it uses in Missouri.

16 A. Oh, I'm not sure about Kansas. Let me think  
17 about what you just said. Can you repeat the list again?

18 Q. Well --

19 A. The states that are in my division? Is that  
20 what you're saying? Or are you --

21 Q. Well, tell me --

22 A. -- just talking about --

23 Q. -- tell me --

24 A. -- Atmos-wide?

25 Q. -- where the RFP process is the same as it

1 is in Missouri.

2 A. Okay. We have three regional gas supply  
3 offices. My office is one, and we've already discussed the  
4 seven states that we have gas supply for. So for all seven  
5 of those states, I'm very familiar with the RFP. And the  
6 process is similar for all seven states.

7 Q. Okay.

8 A. There's other areas of -- the other two gas  
9 supply offices. There is a movement in Atmos now to  
10 standardize our RFP process. Back in 2007, 2008, I can't  
11 answer to the way that those offices were conducting their  
12 RFPs.

13 Q. Okay. I believe I asked you at deposition  
14 if Texas LDCs use the same RFP process similar to the one  
15 in Missouri. Do you recall that question in deposition?

16 A. Vaguely.

17 Q. And you said that they use RFPs, but that  
18 there's an effort to get standardization. And I believe  
19 you said you were all using the same methodology throughout  
20 Atmos. Is that --

21 A. That's the movement towards that. Yes.

22 Q. All right. Now, are the storage agreements  
23 the same in Iowa, Kansas, Illinois, Kentucky, Tennessee,  
24 Georgia and Missouri?

25 A. Are the storage agreements the same?

1 Q. Yeah. Or are they different?

2 A. Well, I'm not familiar with the storage  
3 agreements in the areas outside my gas supply. So I don't  
4 know. I would think that they could be different.

5 Q. Okay. Would the storage agreements in these  
6 states have the same type of constraints, such as maximum  
7 storage quantity, maximum withdraw quantity, and maximum  
8 objection quantity?

9 A. As a pipeline standard, most storages do  
10 have some parameters around that, such as the ones that you  
11 mentioned.

12 Q. Okay. Can you tell me what, specifically,  
13 you have done or others have done for Missouri to examine  
14 whether this generic RFP is the best interest for the  
15 normal or peak natural gas requirements for Missouri?

16 A. That's a lot you just said. Let me just  
17 think about what you said. Can you repeat it slowly so I  
18 can kind of digest the parts?

19 Q. I'm just asking, you know, what have you or  
20 others done with regards to Missouri to examine whether the  
21 generic RFP is in the best interest for normal or peak  
22 natural gas requirements in the state?

23 A. Okay. Have I examined whether the  
24 standardized RFP process is the best process to use in  
25 order to obtain supply for normal and peak day needs? Is

1       that another way of saying what you asked?

2               Q.       Have you examined it in the light of, Is it  
3       the best -- is that generic RFP process the best as for --  
4       in serving the interests of the normal or peak natural gas  
5       requirements of Missouri?

6               A.       I'm a little concerned about your word "the  
7       best." But to me it's a very effective process. It's a  
8       competitive bid process. I think the documents spell out  
9       very clearly what the expectations of the company are. And  
10      a variety of suppliers, marketers have access to that RFP  
11      and can bid. So yeah, I think it's a very effective  
12      process.

13              Q.       All right. Ms. Buchanan, earlier, you may  
14      recall I had some questions on the transfer -- transaction  
15      confirmation documents. And we went through many of those  
16      documents. And we were looking at the service level on the  
17      transaction confirmations. Do you recall those questions?

18              A.       Yes. I do.

19              Q.       Okay. And I believe you had -- in response  
20      to a question about the fact that those -- the service  
21      level on the transformation -- transaction confirmation  
22      being left blank that you believe that the NAESB base  
23      agreement and addendums specify a firm level of gas  
24      service.

25              A.       Yes.

1           Q.       Okay. Can you show me where -- in the NAESB  
2       base agreement or addendums where it specifies firm,  
3       quality service? Now, I happen to have in Mr. Sommerer's  
4       rebuttal testimony the NAESB base agreement in Schedule 5  
5       that was supplied by Atmos in response to a data request.  
6       His Schedule 5 -- I don't know if you have his testimony in  
7       front of you. Do you?

8           A.       Well, I do, but I also have a copy of the  
9       base NAESB already.

10          Q.       Okay. Well --

11          A.       So if that's what you want me to look at, I  
12       have one.

13          Q.       Well, I'd actually -- I really like you to  
14       look at Mr. Sommerer's Schedule --

15          A.       I don't know --

16          Q.       -- 5.

17          A.       -- if I have his schedule, but I'll look.

18          Q.       It's in his surrebuttal. I'm sorry. It's  
19       in his rebuttal testimony. And if you go to his rebuttal  
20       testimony, Schedule 5-31, it's part of a data request,  
21       Number 121.

22          A.       Okay. I have Schedule 5-31. It looks like  
23       Data Request 121.

24          Q.       Okay. And the description of what's  
25       requested is the NAESB base agreement with all related



1 attachments. Would you agree with me there?

2 A. Okay. I see brief description here.

3 Q. Right. It's under --

4 A. I don't see the actual --

5 Q. It's under --

6 A. -- question.

7 Q. -- Mr. -- it's under Mr. Sommerer's name.

8 A. Yeah. Yes. Uh-huh. Under Brief  
9 Description. That's not the actual question, but yes, I  
10 see that.

11 Q. Okay. Well, what I'd like to refer you to  
12 in his Schedule 5 -- I'd like you to actually just take a  
13 look at the base agreement. Is it your -- and I think it  
14 starts on Page -- Schedule 5-20.

15 A. Yes. That's the base NAESB.

16 Q. Okay.

17 A. At least, that's the first page on there.

18 Q. Okay. And then I think it -- there's many  
19 pages. And if you go -- let me see -- Schedule -- Page  
20 5-30, that's Addendum A to the base contract.

21 A. Yes.

22 Q. Okay. So Ms. Buchanan, I'm interested in  
23 knowing where in the base NAESB agreement and the addendum  
24 where it specifies a firm level of service for the gas  
25 supplies.

1           A.       Under Section 1, 1.1, it reads, These  
2       general terms and conditions are intended to facilidate --  
3       facilitate purchase and sale transactions of gas on a firm  
4       or interruptible basis.

5           Q.       Okay.

6           A.       And then it's defined firm under 2.17,  
7       Definitions.

8           Q.       Okay. But it can be firm or interruptible  
9       under this NAESB agreement. Right?

10          A.       Well, it certainly leaves open for  
11       interruptible, but --

12          Q.       Okay.

13          A.       -- we didn't --

14          Q.       Okay.

15          A.       -- request interruptible --

16          Q.       All right.

17          A.       -- service in our RFP.

18          Q.       All right. But you would agree with me that  
19       it doesn't limit -- I mean, the supplier could provide  
20       interruptible under this base NAESB. Correct?

21          A.       Well, if that's the --

22          Q.       Under the -- under --

23          A.       -- type of service that you asked for that  
24       -- then that could have -- also have been included in --  
25       under this base NAESB. But we did not request

1 interruptible service.

2 Q. But --

3 A. So this is kind of a base form that --

4 Q. Okay.

5 A. -- multiple agreements could attach to.

6 Q. Okay. But this is complete? It has

7 Addendum A, and there is no Addendum B.

8 A. Well, then the --

9 Q. So there's nothing --

10 A. -- the TCs --

11 Q. -- left?

12 A. -- also would be part of the contract -- the

13 transaction confirmation. I'm sorry.

14 Q. Yes. And --

15 A. Yes.

16 Q. -- we just went through the transaction

17 confirmations.

18 A. Yes.

19 Q. And that's part of the contract?

20 A. Correct.

21 Q. And the service level was left blank.

22 Right?

23 A. On some of them, yes.

24 Q. A good many of them, but we just went

25 through that, so -- there's a good many of them where it's

1 blank. Okay.

2 But I'm trying to understand your response  
3 to me earlier, that this somehow locks in firm service --  
4 this base NAESB agreement -- where what I see is it could  
5 be firm or interruptible, according to the section you just  
6 read to me.

7 A. Okay. I understand what you're saying.

8 Q. Okay. All right. And so my question is, is  
9 there any other place where it may limit the service level  
10 to firm gas in the base NAESB, other than this firm or  
11 interruptible section you just read?

12 A. Under 3.1 it has similar wording, but, like  
13 you said, it says, Sales and purchases will be on a firm or  
14 interruptible basis as agreed to by the parties in a  
15 transaction. And I believe the parties -- both parties --

16 Q. All right.

17 A. -- understood that it was a firm commitment.

18 Q. Okay. Okay. Now, Ms. Buchanan, you had  
19 also -- well, let me ask you. Do you recall the questions  
20 I had on the DR-132.2, Part A and C that had the chart that  
21 showed the Hannibal, Bowling Green and the Butler  
22 nominations from -- for the month of December?

23 A. Yes. With the -- Mr. Sommerer's  
24 calculations at the bottom?

25 Q. Yes.

1           A.       Yes. I remember that. I think it's --

2           Q.       Yeah.

3           A.       -- still up here somewhere.

4           Q.       And we went through some questions, you may  
5 recall, about Butler, and the cuts that Butler had during  
6 those five days. Do you recall those questions?

7           A.       I remember we talked about it. Yes.

8           Q.       Okay. Well, you had indicated that, you  
9 know, you were trying to -- you tried to figure out, you  
10 know, Well, why only those days of cuts --

11          A.       Uh-huh.

12          Q.       -- at Butler? And I think you indicated to  
13 me that you had talked to Panhandle?

14          A.       Yes.

15          Q.       When did you talk to Panhandle?

16          A.       Oh, goodness. We talked on multiple  
17 occasions over the last few years. I don't have exact  
18 dates written down.

19          Q.       Now, did you talk to them after the  
20 deposition?

21          A.       Yes.

22          Q.       Okay. And that's your most recent  
23 conversation with Panhandle?

24          A.       After the deposition?

25          Q.       After we went through this in the

1 deposition.

2 A. Yes. We talked to them before that, too.

3 Q. Okay. Well, it would have been good to have  
4 looked into it back in 2007. Right?

5 A. I'm not saying that we didn't talk to them  
6 in 2008. Are you talking about after the force majeure?

7 Q. 2008.

8 A. I can't limit that we didn't talk to them in  
9 2008.

10 Q. Okay.

11 A. We --

12 Q. Okay.

13 A. -- probably very likely did.

14 Q. All right. All right. I have just a few  
15 more questions here.

16 I'm going to kind of shift gears a little  
17 bit here. And you may recall at deposition that I had some  
18 questions about the Atmos cost allocation manual or the  
19 CAM.

20 A. I do remember you talking to me about that.

21 Q. And I think you told me that based on your  
22 knowledge, you were aware that the CAM was generated in the  
23 Dallas office; is that --

24 A. Well, I don't have a whole lot of knowledge.  
25 I was guessing.

1 Q. All right.

2 A. And I told you I didn't really know.

3 Q. Okay.

4 A. I was guessing about that, so --

5 Q. And I gave you a copy of the CAM and asked  
6 you if you could show me in your CAM where the Company has  
7 set forth the cost allocation, market valuation and the  
8 internal cost methods regarding its purchases of gas from  
9 AEM. Do you recall that question?

10 A. I remember you asked me a question, and it  
11 sounds kind of like that. And I told you I'm really not  
12 familiar enough to be able to --

13 Q. Okay.

14 A. -- turn to it.

15 Q. Yeah. And you did -- you told me that you  
16 didn't have much familiarity with that --

17 A. Okay.

18 Q. -- and you couldn't turn to it.

19 A. Okay.

20 Q. Okay. And you may recall that I had asked  
21 you to point out in your CAM where you provide the  
22 criteria, the guidelines and the procedures that Atmos  
23 would follow to be in compliance with the affiliate  
24 transactions rule with regards -- with respect to its  
25 purchases of gas from AEM. Do you recall that question?

1           A.     I don't recall the question. But if you ask  
2     me that again, I --

3           Q.     Well --

4           A.     -- would say it's not really my area, so I  
5     don't have knowledge of --

6           Q.     Well, your answer was --

7           A.     -- if it's in there.

8           Q.     -- I can't do that.

9           A.     Yeah. It's not --

10          Q.     Does that --

11          A.     It's --

12          Q.     I mean, you --

13          A.     That doesn't --

14          Q.     -- can --

15          A.     -- surprise me, because it's not my area  
16     of --

17          Q.     Well, let's --

18          A.     -- responsibility --

19          Q.     -- let's go to --

20          A.     -- for that.

21          Q.     -- your deposition.

22          A.     Do I have my -- yes.

23          Q.     Okay. Go to Page 49, please.

24          A.     Okay. Yes.

25          Q.     And if you would just -- you know, you can



1 look, I guess, around Line 2 or wherever. And I believe  
2 you provided the answer on Line 7. And what was your  
3 answer?

4 A. Wait. May I read the question --

5 Q. Yeah. Yeah.

6 A. -- to myself?

7 Q. In fact, why don't you read the question --

8 A. Okay.

9 Q. -- please?

10 A. And really what I'd like you to -- what I'd  
11 like you to be able to tell me is can you point out in your  
12 CAM where you provide the criteria, the guidelines and the  
13 procedures Atmos will follow to be in compliance with the  
14 rule with respect to its purchases of gas from AEM?

15 And the answer, on Line 7 is, I can't do  
16 that.

17 Q. Okay. That's all my question was, is that's  
18 still accurate?

19 A. Yes.

20 Q. Okay. Ms. Buchanan, in your direct  
21 testimony -- which is on Page 9 if you'd like to look --  
22 but you address the affiliate guidelines from the  
23 affiliated procedures section of your supply manual.

24 And the affiliate guidelines state that, In  
25 the event a state has a specific guideline for affiliated

1 transactions, it is the gas supply specialist's  
2 responsibility to know and follow those guidelines. I  
3 think we also went through that in the deposition. But is  
4 that a fair reading?

5 A. Yeah. Yes. I'd --

6 Q. And is --

7 A. -- say so.

8 Q. -- is -- is that supply specialist that's  
9 responsible for following the affiliated transactions rule  
10 of the state Mr. Walker?

11 A. Yes.

12 Q. Okay. And --

13 A. For Missouri, you mean? Yes.

14 Q. For Missouri. And as manager, you also bear  
15 some responsibility --

16 A. That's --

17 Q. -- as well?

18 A. -- correct.

19 Q. Okay. And your boss Mr. Multer would have  
20 some responsibility, too?

21 A. I believe all of us at Atmos have a  
22 responsibility to abide by affiliate rules.

23 Q. Okay. Okay. I have a few questions  
24 regarding Atmos Energy Services. And these are about how  
25 nominations are processed at Atmos. When Mr. Walker makes

1 a nomination, he transmits that nomination to Atmos Energy  
2 Services; is that right?

3 A. I believe that he potentially sends an  
4 e-mail to our agent at Atmos Energy Services.

5 Q. Okay. And that would be his nomination.  
6 Right?

7 A. Yes. He tells them how much gas he wants  
8 them to schedule for him.

9 Q. Okay. And do you know where the AES  
10 scheduler is located?

11 A. No. And I think I relayed to you at  
12 deposition that there's been different offices for AES, and  
13 I'm not exactly sure right now -- or at the time, in 2007,  
14 2008.

15 Q. Okay.

16 A. And I guess -- I believe I -- it would have  
17 been Houston at that time, but I'm not sure.

18 Q. All right. And then the AES scheduler  
19 enters the nominations, and it gets passed off over to your  
20 supplier. Right?

21 A. I don't really know exactly how --

22 Q. Okay.

23 A. -- the process works.

24 Q. Okay. Does Atmos ever check that AES has  
25 made the nomination correctly?

1           A.       I believe Mr. Walker checks that.

2           Q.       Okay. Well, Ms. Buchanan, I appreciate your  
3 time.

4           MR. BERLIN: I have no further questions.

5           JUDGE WOODRUFF: Did you wish to offer the  
6 Exhibits 4 through 13?

7           MR. BERLIN: Yes. I do. And I just want to  
8 make sure, that's 4 through 13.

9           JUDGE WOODRUFF: And 12 was HC.

10          MR. POSTON: Is that the only HC?

11          MR. BERLIN: 12 is HC.

12          JUDGE WOODRUFF: Yes. 8 was originally P,  
13 but then we took off the P designation.

14          MR. BERLIN: Okay. Yes. 13 was the last  
15 one. I believe that's the Texas Railroad Commission final  
16 order.

17          JUDGE WOODRUFF: Correct.

18          MR. BERLIN: Okay.

19          JUDGE WOODRUFF: All right.

20          MR. BERLIN: Yes. I -- Judge, I would like  
21 to offer into evidence Exhibits No. 4 through 13. That  
22 includes 12 HC as well.

23          JUDGE WOODRUFF: Exhibits 4, 5, 6, 7, 8, 9,  
24 10, 11 and 12 HC and 13 have been offered. Any objections  
25 to their receipt?

1                   MR. FISCHER: Judge, I -- I understand that  
2 Exhibit 10 is Schedule 3-1 from Mr. Sommerer's surrebuttal  
3 testimony.

4                   JUDGE WOODRUFF: Correct.

5                   MR. FISCHER: And I would ask that you  
6 reserve ruling on that until we've had an opportunity to  
7 cross Mr. Sommerer about that.

8                   JUDGE WOODRUFF: Okay.

9                   MR. FISCHER: And then with regard to  
10 Exhibit 13, I would ject -- object on the grounds there's  
11 lack of foundation for this to be entered into the record.

12                  MR. BERLIN: Well, that's a new objection,  
13 but --

14                  We just went through the objections on that,  
15 Judge.

16                  JUDGE WOODRUFF: Well, this is a new  
17 objection he has. So what's your response to it?

18                  MR. BERLIN: On 13? I think there was  
19 plenty of foundation laid.

20                  JUDGE WOODRUFF: What would the foundation  
21 be?

22                  MR. BERLIN: Well, I was wanting to  
23 understand why, based on her surrebuttal testimony -- in  
24 her surrebuttal testimony, she testified that the Company's  
25 Texas jurisdiction alone comprises more than half of all of

1     Atmos' utility business throughout its system, and yet it  
2     does not business with AEM in Texas.

3                     It was to make some kind of a point,  
4     apparently, as she evidently had some knowledge about the  
5     Texas LDCs. And so I wanted to probe reasons why that may  
6     very well be, that Texas LDCs don't do business with their  
7     affiliate AEM. And that's -- was -- the final order of the  
8     Railroad Commission of Texas was directly responsive to  
9     that.

10                    MR. FISCHER: Judge, I think that counsel  
11     did ask her some questions, and she responded the best she  
12     could, but she can't lay a foundation for the introduction  
13     of this entire exhibit.

14                    MR. BERLIN: I'm not -- this is a public  
15     document, Judge. So it has very standard terms in it, so  
16     it's -- it's just to ask her understanding, to try to get  
17     to why AEM is not doing business with its Atmos LDCs in the  
18     state of Texas, which are the largest of all of Atmos' --

19                    JUDGE WOODRUFF: All right. Well --

20                    MR. BERLIN: -- distribution.

21                    JUDGE WOODRUFF: -- the objection isn't to  
22     relevance, again. The objection is to the foundation for  
23     the document. And it is a public document from one of our  
24     sister states. I think, technically, the requirement would  
25     be that you could present it as self-authenticating with

1       certified -- certification from the Texas Commission that  
2       it in fact is a document of the Texas Commission. I assume  
3       you just got this off the Internet or something, rather  
4       than a certified document.

5                   MR. BERLIN: It's a publicly available  
6       document.

7                   JUDGE WOODRUFF: Okay.

8                   Mr. Fischer, do you want to require a  
9       certified document -- certification from the Texas  
10      Commission on this?

11                  MR. FISCHER: Judge, if you're going to take  
12      a notice of it anyway, I don't -- won't require that. But  
13      I just would suggest that it certainly goes to the weight  
14      of this. This witness doesn't know anything about it. She  
15      can't give you any background on it. She's read the  
16      paragraph from it. It speaks for itself. But she does  
17      have no knowledge of it otherwise, and couldn't give you  
18      any -- you know, based on that, it's what it is.

19                  JUDGE WOODRUFF: All right. I understand.  
20      And it is what it is. And I will go ahead and overrule the  
21      objection and admit the document. And I'll reserve ruling  
22      on that until after Mr. Sommerer's been cross-examined. 4,  
23      5, 6, 7, 8 and 9, 11 and 12 HC are admitted.

24                  (Wherein; Staff Exhibit Nos. 4, 5, 6, 7, 8  
25      and 9, 11 and 12 HC were received into evidence.)

1 JUDGE WOODRUFF: Further cross-examination,  
2 then, from Public Counsel?

3 MR. POSTON: Thank you. Just a few  
4 questions.

5 CROSS-EXAMINATION BY MR. POSTON:

6 Q. Good afternoon.

7 A. Hi.

8 Q. On your direct testimony on Page 10, you  
9 treat the names of the marketers bidding on different  
10 systems to be confidential; is that correct?

11 A. I did.

12 Q. Can you explain why?

13 A. There's a lot surrounding the bidding  
14 process that we like to hold confidential. A lot of times  
15 the number of -- or every time, the number of bidders we  
16 want to hold confidential, the names of the bidders,  
17 obviously their prices.

18 We don't want to give one party an unfair  
19 advantage over the other in future RFPs, to know who  
20 they're up against, who their competition might be. It's  
21 better that they not have knowledge of that.

22 Q. And could a marketer with info such as this  
23 gain an advantage over other marketers?

24 A. I'm thinking that it could. Or it -- it  
25 could actually harm the customer if, for example, a -- a --



1 marketers only knew that there were one or two parties  
2 bidding, and they were one of them, then they would know,  
3 Oh, there's, you know, not a lot of competition here. So  
4 that could give them some advantage, I would think.

5 Q. And is it the position of Atmos Energy  
6 Corporation that Atmos' shareholders can profit from the  
7 sale of gas sold to Atmos' customers if purchased from an  
8 affiliate?

9 A. Can you say that just one more time?

10 Q. Is it the position of Atmos Energy  
11 Corporation that Atmos' shareholders can profit from the  
12 sale of gas sold to Atmos' customers if purchased from an  
13 affiliate?

14 A. I can't exactly speak for the corporation.  
15 But just thinking logically through, if -- if the -- if AEM  
16 has a gross -- or a net profit and it affects earnings per  
17 share of the whole corporation, then that would somehow  
18 flow through to the shareholders.

19 Q. Thank you.

20 MR. POSTON: That's all I have.

21 JUDGE WOODRUFF: Okay.

22 Questions from the bench?

23 Commissioner Jarrett?

24 QUESTIONS BY COMMISSIONER JARRETT:

25 Q. Good afternoon, Ms. Buchanan.

1           A.       Good afternoon.

2           Q.       You were here, I think, when Mr. Berlin gave  
3 his opening statement --

4           A.       I was here.

5           Q.       -- were you not?

6           A.       Yes.

7           Q.       And you recall -- recall all of that?

8           A.       Yes.

9           Q.       He made some allegations in his opening  
10 statement -- or assertions, I should say. And I just  
11 wanted to ask you about some of those, and your knowledge.

12          A.       Okay.

13          Q.       He referred to Atmos' gas supply plan and  
14 indicated that that was included in Data Request No. 8 and  
15 your direct Schedule 1.

16          A.       Okay.

17          Q.       Okay. And one of the things he said about  
18 -- was that the first of the month nominations are made to  
19 cover the daily average of the percent warmer purchase  
20 requirements. To your knowledge, is that correct?

21          A.       In our gas supply procedures manual that was  
22 Attachment 1, there is a sentence in there that addresses  
23 that. Yes.

24          Q.       So that's essentially correct?

25          A.       It says "typically." It uses the word

1 "typically first" -- I'm sorry. First, let me move this a  
2 little closer so I'm not leaning.

3 Typically first-of-month nominations are  
4 made to cover the daily average of a percent warmer  
5 purchase requirements. It's not an absolute.

6 Q. Okay. And then it says that the plan should  
7 also reflect requirements based on normal percent warmer  
8 and a percent colder than normal degree days.

9 A. It does say that.

10 Q. Okay. And then it goes on to say that this  
11 percent is 20 percent in Missouri.

12 A. Yes.

13 Q. So --

14 A. For -- for example, 20 percent --

15 Q. 20 percent --

16 A. -- in Missouri.

17 Q. -- higher or 20 percent lower --

18 A. Yes.

19 Q. -- based on warmer or colder?

20 A. Yes. It gives a range of plan requirements.

21 Q. Okay. So then he went -- and I don't know  
22 if this should be -- I don't think this should be in  
23 camera, but if it should be, let me know.

24 He talked about the December 2007  
25 nomination.

1           A.       Okay.

2           Q.       And he went through sort of a time line  
3 where Atmos made their nomination -- first-of-the-month  
4 nomination on November 20th; is that correct, for the  
5 December 2007 month?

6           A.       Yes. And I can share information on why  
7 that date was done.

8           Q.       Yes. Please tell me why.

9           A.       Okay. So if you were to look at a calendar,  
10 you would see that that was Thanksgiving week. As a  
11 typical standard of ours, we turn in our first-of-month  
12 nominations five to six business days prior to the  
13 beginning of the month.

14                   The fifth business day would have been, I  
15 believe, Monday the 26th. The sixth business day before  
16 end of month would have been Wednesday just before  
17 Thanksgiving. Mr. Walker was going on vacation Wednesday.

18                   So, you know, he has permission to turn in  
19 his first-of-month nominations before he leaves for  
20 vacation. So that's what he did. He turned in his  
21 nominations on the 20th.

22           Q.       Okay. Now, the nomination was 20 percent on  
23 the warmer, plus another 24.9 percent. So it was a cut of  
24 20 percent, plus another cut of 24.9 percent; is that  
25 correct?

1           A.       I haven't done the math, but I'll say yes.

2           Q.       Okay.

3           A.       You know, subject to check, I'll say that  
4 I'll go ahead and agree with that. But I'm not --

5           Q.       Okay.

6           A.       -- sure about the math.

7           Q.       Now, why -- since the manual said 20  
8 percent --

9           A.       Uh-huh.

10          Q.       -- why did Atmos go another 24.9 percent?

11          A.       Right. Well, first, the manual is a -- the  
12 plan is a guideline.

13          Q.       Okay.

14          A.       And the manual also has -- states some other  
15 facts that might be relevant. It says, The supply plan is  
16 developed to be utilized as a tool to source the purchase  
17 requirements, a guide in managing storage levels throughout  
18 the withdraw and injection period, and a tool to determine  
19 first-of-month nomination.

20                    So that 20 percent is just a guideline for  
21 Mr. Walker.

22          Q.       Okay.

23          A.       It's not an absolute. There's a lot of  
24 judgment on his part as far as what's happening during  
25 that -- the month preceding the gas flow month he's

1 ordering gas for. He would be looking at storage balances.

2 He would be looking at weather condition.

3 He would be looking at historic purchase --  
4 purchases in that same area for that same month, and -- as  
5 well as the plan quantities that we were just discussing.  
6 And taking that all into consideration, he develops his  
7 first-of-month nomination.

8 That is true for all of our suppliers, and  
9 all three of my supply reps do that same analysis to create  
10 a first-of-month plan.

11 Q. Okay. So my question is: Do you know the  
12 specific reason why he went to the 24.9 percent below --  
13 even below the 20 percent, or is -- do you know that?

14 A. I can tell you the overview of it. He can  
15 give you the specifics.

16 Q. Okay.

17 A. Yes. I discussed that with him. One, he  
18 reviewed the last two to three years of actual requirements  
19 for December, and -- you know, what did I buy in December a  
20 year ago? What did I buy December two years ago?

21 He looked at that, and he determined that  
22 the plan -- the normal plan was -- he determined it was too  
23 high -- the -- or the 20 percent higher, 20 percent lower.  
24 He selected something between that and one of his historic  
25 years. I believe he did an averaging. I'm not sure. But

1       you -- we can ask him. But I believe --

2               Q.       Okay.

3               A.       -- he did an averaging. And then he also  
4       looked at his storage balances, where he was three weeks  
5       into the month, in November -- where his storages were  
6       running. I know there's been some discussion about, We  
7       should have ordered more gas because we were 5 percent  
8       below our storage plan.

9                       Well, you did not know what your storage for  
10       November was going to end up with on November 20th, because  
11       the month has not finished yet. You don't know that until  
12       the pipeline measurement statements come out sometime after  
13       the first week in December.

14                      So he could not have made a knowledgable  
15       decision on November ending storage balance because it had  
16       not even occurred yet. But from what he did know that  
17       month, it looked like his storage was right on plan.

18                      Then after he made his nomination, later in  
19       the month of November, I believe there was a cold snap, and  
20       so his storages did pull down a little lower than he had  
21       anticipated the third week of November.

22               Q.       Okay. Now, does -- now, does this  
23       purchasing plan, does it apply to all purchases, even those  
24       not from AEM?

25               A.       We prepare a plan for every supply -- for

1 every service area for every supplier. So if it's another  
2 area in Missouri, there's a plan for that area. If it's  
3 served by a different supplier, then yes, it would apply to  
4 non-AEM areas.

5 Q. So is it then common for this 20 percent  
6 above or below to sort of be the guide --

7 A. Within Missouri.

8 Q. -- within Missouri for --

9 A. For the other areas.

10 Q. -- everybody you purchase gas from, not just  
11 AEM?

12 A. Yes. Mike uses that statewide --

13 Q. Okay.

14 A. -- as a tool for his first-of-month  
15 nominations.

16 Q. Now, in your experience, is it -- how common  
17 is it for Atmos to go more than 20 percent --

18 A. I --

19 Q. -- in any given month?

20 A. I -- you know, to tell you the truth, I  
21 haven't looked at statistics on that.

22 Q. All right.

23 A. I'm sorry. I don't know.

24 Q. Would Mr. Walker be the person to ask about  
25 that?



1           A.       He may be able to tell you on his own area.  
2       But, you know, there's a lot of factors that come into  
3       play, like we were talking about, and it's reassessed every  
4       month. You know, where are you at in storage? What's the  
5       weather looking like? What was the history?

6                        So this is not just a given. It's not a  
7       simple task. They have to use their analytical skills,  
8       their decision-making skills, their judgment in making  
9       their first-of-month nomination.

10                      What I can assure you -- assure you -- is  
11       that he did not make his nomination thinking about what AEM  
12       wanted. That has been alluded to in the record. I can  
13       assure you -- Mr. Walker is an ethical person, and he did  
14       not worry about what AEM wanted on his first-of-month  
15       nomination.

16           Q.       Okay. Well, let me ask it this way, then:  
17       Would December of 2007 nom -- would the December 2007  
18       nomination be the only time in the history of Atmos that  
19       they went above or below the 20 percent in Missouri?

20           A.       I would be surprised if it was the only  
21       time.

22           Q.       Okay. Now, on the timeline, then, on  
23       December the 7th, Atmos ordered swing gas.

24           A.       I'm sorry. What was the date?

25           Q.       December 7th.

1           A.     Okay.

2           Q.     Okay. Is that correct?

3           A.     I believe so.

4           Q.     Okay.

5           A.     I have to go and look at the --

6           Q.     Okay.

7           A.     I'm not sure if we --

8           Q.     Take your time.

9           A.     -- ordered swing gas that day or not. But

10       let me see if I can find something that gives me that

11       information. I know we did it on the weekend of the 8th,

12       9th, and 10th. I'm not so sure about the 7th. Yeah. I'm

13       not sure on that, Commissioner, whether we ordered swing

14       gas on the 7th.

15           Q.     Okay. But --

16           A.     I don't -- I don't recall that we did. I

17       was thinking the first date was on the 8th.

18           Q.     All right. But they did order --

19           A.     Oh, we would have ordered --

20           Q.     -- swing gas --

21           A.     -- it -- I'm sorry -- we would have ordered

22       it on the 7th for the 8th, 9th and 10th.

23           Q.     Okay. And what was the reason why you

24       ordered swing gas?

25           A.     The forecast requirements were colder -- or

1       came out stronger than first-of-month baseload quantities  
2       that were ordered. So in order to serve our customers, we  
3       would have needed more gas.

4               Q.       Okay. And was that in any way related to  
5       the force majeure --

6               A.       No.

7               Q.       -- issue?

8               A.       No. I don't believe it was related to the  
9       force majeure. The force majeure would have been on at  
10      that time. But the gas was ordered because of the  
11      requirements of the customers -- the forecast.

12              Q.       And that swing gas was purchased from AEM?

13              A.       They're our supplier. Yes.

14              Q.       All right. And was that purchased at a  
15      price higher than the firm -- the firm price?

16              A.       Oh, I'm not sure what the daily price was.  
17      But you could -- you could suggest that that was true. I  
18      mean, it wouldn't surprise me if it was higher, given that  
19      it's December. A lot of times the daily gas is higher than  
20      the first-of-month.

21              Q.       Right. And this was in December 2007. In  
22      Missouri, with other gas suppliers, does Atmos ever have to  
23      purchase swing gas --

24              A.       Yes.

25              Q.       -- because they haven't nominated enough --

1 A. Yes.

2 Q. -- based on weather and a cold snap occurs?

3 A. Yes. Particularly in the months of  
4 December, January and February, it's not uncommon to  
5 purchase swing gas.

6 Q. Now, Mr. Berlin also said that AEM has -- or  
7 had more than enough FOM gas to meet Atmos' needs, I guess  
8 implying that you didn't need to purchase swing gas. Do  
9 you know that? I mean, I know you don't work for AEM, but  
10 --

11 A. Well, I believe he was implying that our  
12 supplier had some contracts set up where they had plenty of  
13 supply. I have no knowledge of AEM's -- what -- what's  
14 going on behind the scenes with them. Their contractual  
15 obligation to us is the nominations that Mr. Walker gave to  
16 them -- the first-of-month --

17 Q. Okay.

18 A. -- and the swing.

19 Q. So then if -- but -- and if that doesn't  
20 cover what you need, then you have to purchase the swing?

21 A. Correct.

22 Q. And I wanted to ask you a little bit about  
23 the DRs and the discovery requests. Mr. Berlin alluded to  
24 it and Mr. Sommerer -- did you read Mr. Sommerer's  
25 testimony?

1           A.       I did.

2           Q.       Is it correct that he alludes to many  
3 instances where he believed -- he testified that Atmos  
4 didn't adequately respond to discovery requests; is that  
5 correct?

6           A.       I'm familiar with that in his testimony. I  
7 don't necessarily agree with it.

8           Q.       And why don't you agree?

9           A.       Well, I would make a distinction between two  
10 different types of data requests: The ones that came to  
11 the LDC, to my gas supply department, that's the ones that  
12 I have knowledge of. I believe those were all answered  
13 timely, thoroughly.

14                   The other data requests -- and I think these  
15 are the ones that he was probably talking about, that he  
16 felt didn't receive the full information -- were ones  
17 directed to AEM, an affiliate that's not regulated by this  
18 Commission. So -- but again, I wasn't privy to those  
19 answers, so I'm not really sure whether they responded  
20 fully or not. But I -- that is -- I believe that is what  
21 he's alluding to, is that the AEM questions were not fully  
22 answered.

23           Q.       Okay. But at least to the ones that you  
24 were involved in --

25           A.       Yes. I believe they were timely and

1 complete.

2 Q. Did you ever hear anything back from Staff  
3 saying that they weren't complete and they needed  
4 additional responses?

5 A. Not to my recollection, no.

6 Q. Okay.

7 A. No. I think we're good on ours.

8 Q. Okay. I just have a couple more questions.  
9 Finally, Mr. Berlin was asking you a little bit Texas. And  
10 this is an "if you know." Do you know what Texas'  
11 administrative rules are regarding affiliate transactions?

12 A. No. That's not in my area.

13 Q. So you have no knowledge whether Missouri's  
14 might be completely different rules than --

15 A. I --

16 Q. -- Texas'?

17 A. I don't know one way or the other.

18 Q. Okay. That's all I had. Thank you.

19 A. Okay.

20 JUDGE WOODRUFF: I have some really basic  
21 questions, just to -- about how the process works.

22 QUESTIONS BY JUDGE WOODRUFF:

23 Q. Now, it's my understanding that Atmos, the  
24 local distribution company, will enter into these contracts  
25 with either an affiliate or a non-affiliated company to

1 provide gas marketing services.

2 A. Yes.

3 Q. What exact -- in general, what does the gas  
4 marketer do for Atmos, then?

5 A. Well, once we've selected the marketer as  
6 the one who's -- or the supplier -- we refer to it  
7 interchangeably as a supplier or marketer. Once we've  
8 selected the best bid, then they're responsible for  
9 obtaining the supplies from whatever source and bringing to  
10 them our receipt point on our contract so that then we move  
11 it on our contract to the Missouri customers. The citygate  
12 is what we call that.

13 Q. Okay. And the receipt point was described  
14 as a place in Kansas.

15 A. We have various receipt points, so the  
16 receipt point on our contracts, there's a Haven point on  
17 one of them, yes.

18 Q. Okay. Now, there's a cost -- a price that  
19 the company bids in. Right?

20 A. That the --

21 Q. That the --

22 A. -- marketer --

23 Q. -- that the marketer bids in?

24 A. The marketer put a bid -- bid a price in  
25 their proposal. And then those prices are put into

1     analysis from the various bidders. They're put into an  
2     Excel spreadsheet analysis, along with the planned  
3     quantities of baseload gas and estimates on incremental  
4     demand charges.

5                     And then the analysis more or less spits out  
6     the pricing for each bid. And then it's a simple fact of  
7     going down and looking at -- ranking them by the least cost  
8     to the most cost, and then determining if it's a conforming  
9     bid or not. And if that supplier is known to us to be a  
10    reputable, reliable supplier, and -- and then the decision  
11    is made.

12            Q.     Now, assuming you've entered into a contract  
13    with a marketer and there's an agreed-upon price, is the  
14    marketer then bound by that price to provide a certain  
15    amount of gas? Is that how it works?

16            A.     Correct.

17            Q.     Okay. So -- now, I'm also confused by this  
18    idea of -- and Atmos is actually ordering swing gas -- is  
19    the description.

20            A.     We use -- I know there was some distinction  
21    made by Mr. Berlin of daily, swing and spot. He made some  
22    distinction. But we use those terms all interchangeably to  
23    mean gas that we order a day ahead of the day of flow.

24            Q.     Okay. Now, explain to me, why is Atmos  
25    ordering the swing gas rather than the marketer?



1           A.       Oh, I'm sorry. We determine the quantity,  
2       and then we tell the marketer how much we want. We give  
3       them the order.

4           Q.       Okay.

5           A.       We request the gas -- the day ahead, we put  
6       in the nomination, so to speak.

7           Q.       All right. So that's the difference between  
8       the monthly nomination and the daily nomination?

9           A.       Correct.

10          Q.       Okay. So with the monthly nomination you're  
11       telling the marketer, We need X amount of gas throughout  
12       this month?

13          A.       Yes. It's five to six days before the  
14       beginning of the month we tell them how much we want in  
15       baseload, which would be a constant for every day of the  
16       month.

17          Q.       So every day you get X amount of gas?

18          A.       Yes.

19          Q.       And then beyond that then you have to tell  
20       the marketer, We want a little bit more for this day?

21          A.       Yes. After reviewing daily forecasts,  
22       Mr. Walker and my other two supply specialists run a daily  
23       weather forecast. And then they also look at other factors  
24       as -- storage, how much they have available from storage,  
25       and then they determine how much they need extra gas for

1 the next day to meet that forecast requirement.

2 Q. And then for these daily nominations, the  
3 price can vary from what the contract was with the  
4 marketer?

5 A. No. No. That's in the contract as well.

6 Q. Okay.

7 A. The daily price is also a component of the  
8 bid.

9 Q. But the daily price may be higher than what  
10 the monthly nomination --

11 A. Oh, yes. It's a -- if it's a different  
12 index. And what I mean is that there's market index prices  
13 that we use for first-of-month gas, and a different index  
14 used for daily pricing. And so yes, they do differ.

15 Q. Okay. This is probably a dumb question, and  
16 I'm assuming there's a good answer to it. Why not nominate  
17 at the top -- first of month a whole bunch of gas so that  
18 you never have to worry about asking for more on the  
19 dailies?

20 A. Yes. So what would happen is if you had  
21 excess of first-of-month nominations, you have to do  
22 something with that gas. You would either have to sell it  
23 back to the supplier -- and we call those buybacks -- and  
24 there's pricing within the contract for that as well; or it  
25 could be injected into storage, if your storage contracts

1 allow that. If we're in the winter, a lot of times your  
2 storages don't allow injections in the winter. Some do.

3 Q. So you --

4 A. So --

5 Q. -- could wind up with gas that you couldn't  
6 do anything with?

7 A. Yes. And that's not our goal to -- in the  
8 winter, particular, we want to be withdrawing some rateable  
9 gas each month. And -- yes.

10 Q. Well, thank you very much. That helps me  
11 understand.

12 A. Okay. You're welcome.

13 Commissioner Jarrett: Judge, I had another  
14 question. I'm sorry.

15 JUDGE WOODRUFF: Go right ahead.

16 COMMISSIONER JARRETT: Your questioning --  
17 FURTHER QUESTIONS BY COMMISSIONER JARRETT:

18 Q. In Mr. Berlin's opening, he talked about the  
19 fact that the contract with AEM was very flexible: You  
20 could ask for more up to a large amount. Do you remember  
21 him saying that?

22 A. I remember him saying that. Yes.

23 Q. Are -- is that a common feature of all of  
24 your contracts, even the ones that you don't -- with your  
25 other suppliers?

1           A.       Yes.  If you don't mind, I'd like to just  
2 explain that a little bit.

3           Q.       Okay.

4           A.       That is more for the protection of our  
5 customers.  If we hold a certain capacity on the pipeline  
6 -- for example, 10,000 -- we want a contractual obligation  
7 of the supplier on any day to deliver from zero up to that  
8 capacity -- up to that 10,000 -- so that on a peak day we  
9 are assured that our customers will have availability of  
10 the gas that they need.

11                   Now, there may be a differential in the  
12 pricing.  You know, it's either first-of-month or daily or  
13 even an intra-day if something like that -- which could be  
14 a higher price if something like that were to happen.  But  
15 we want assurance that that supplier has an obligation to  
16 deliver up to that maximum quantity.

17                   Now, that -- having said that, within our  
18 RFP process, we don't just say zero to 10,000 a day, or we  
19 don't just say, We need 140,000 for December, potentially.  
20 We also give them a monthly plan -- and I also emphasize,  
21 it's a plan -- that gives them parameters of how much  
22 baseload we will be buying each month.

23                   So they have an idea of the obligation, what  
24 we will be requesting, still knowing that if something  
25 would happen, we still expect them to deliver up to 10,000,

1 if for some reason we need that. Yeah. That's about it.

2 Q. And just to make sure I understand, that  
3 flexibility feature that Mr. Berlin described and that  
4 you're talking about is not just exclusive to --

5 A. Oh, yes.

6 Q. -- the AEM contract; it's --

7 A. I'm sorry.

8 Q. -- it's --

9 A. I --

10 Q. -- a common feature --

11 A. I did not --

12 Q. -- in all your --

13 A. -- address --

14 Q. -- contracts?

15 A. -- that in your question. I apologize.

16 Yes. That is in all of our RFPs and all of the contracts  
17 and -- even outside of Missouri.

18 Q. Okay. Thank you.

19 COMMISSIONER JARRETT: I don't have any  
20 further questions, Judge.

21 JUDGE WOODRUFF: Thank you.

22 Recross based on questions from the bench,  
23 beginning with Staff.

24 RECROSS EXAMINATION BY MR. BERLIN:

25 Q. I think I've only got one question,

1 Ms. Buchanan. Do you know if Mr. Walker was in the office  
2 on November 26th of 2007?

3 A. Just in reviewing this case, I think he  
4 indicated he was.

5 MR. BERLIN: Okay. That's all -- all I  
6 have. Thank you.

7 JUDGE WOODRUFF: Recross from Public  
8 Counsel?

9 MR. POSTON: Just a few.

10 RECROSS EXAMINATION BY MR. POSTON:

11 Q. When did you first become aware of Staff's  
12 concern that AEM may have been supplying Atmos with  
13 less-than-firm gas?

14 A. Perhaps in Mr. Sommerer's testimony, I  
15 believe.

16 Q. Okay. And did you or anyone at Atmos  
17 request info -- information from AEM that would show  
18 whether the gas it supplied to Atmos was firm or something  
19 else?

20 A. Oh. I'm not sure. Mr. Walker could have  
21 made some calls, but I'm not sure.

22 Q. Do you believe Atmos should have brought  
23 forward that information to rebut the Staff's concerns?

24 A. Oh, if we became aware of something other  
25 than firm?

1           Q.       No. Do you think you should have gotten  
2       that information from AEM and brought it forward to address  
3       the Staff's concerns about the source -- or whether it's  
4       firm or something less?

5           A.       Oh, I think I've said numerous times that  
6       the gas was firm. That was our understanding, that we were  
7       receiving firm supply.

8           Q.       Okay. Well, you haven't brought forth any  
9       evidence from AEM to show that. Correct?

10          A.       The contractual obligation is what I believe  
11       to be the evidence, and that they also did serve us firm  
12       gas on each and every day except during the force majeure  
13       event.

14                   MR. POSTON: Thank you. That's all I have.

15                   JUDGE WOODRUFF: Redirect?

16                   MR. FISCHER: Yes, Judge. Thank you.

17       REDIRECT EXAMINATION BY MR. FISCHER:

18          Q.       Let's start from the last set of questions  
19       and go backwards, if that's all right with you --

20          A.       Okay.

21          Q.       -- Ms. Buchanan. Public Counsel was just  
22       asking about your knowledge of, I think, AEM and their --  
23       whether they had firm or not. Do you have any knowledge at  
24       all regarding what the upstream contracts would be that AEM  
25       has with their suppliers?

1           A.       No. I don't.

2           Q.       Would you have any knowledge about that  
3 regarding any non-affiliated company?

4           A.       No. I wouldn't know any more or less from  
5 AEM as I know from any other supplier.

6           Q.       Public Counsel was asking about, Well, why  
7 didn't you ask AEM to, I think, come forward with evidence  
8 about whether they were firm or not?

9           A.       Uh-huh.

10          Q.       Were you involved at all in the responses  
11 that AEM gave to the Commission Staff's data request?

12          A.       No.

13          Q.       Are there rules that are established by this  
14 Commission, affiliated transaction rules, that require that  
15 you not be involved in books and records of your affiliate?

16          A.       Yes. I was very sensitive to that fact. In  
17 fact, when I saw those data requests come through, I  
18 contacted my attorney in Dallas and said, Please make sure  
19 that when -- if and when those responses are provided that  
20 I'm not copied on that, because I don't want to have any  
21 knowledge about that; I'm not supposed to know about their  
22 contracts. That's just an area that it's better left that  
23 I don't know about so that that supplier is not viewed in  
24 any way different from any other supplier.

25          Q.       I think Commissioner Jarrett asked you about



1 the AEM contract and the allegation that it was a very  
2 flexible one.

3 A. Oh, the --

4 Q. Do you recall that?

5 A. -- the contract between us and AEM on the  
6 supply. Yes.

7 Q. Do you treat AEM as an affiliate any  
8 differently than you would any other non-affiliate with  
9 that -- in that regard?

10 A. In that regard, no. The only thing I was  
11 going to say is that we're even more conscious about our  
12 affiliate requirements and making very sure that we don't  
13 have any conversations with the affiliate that could be  
14 deemed, you know, inappropriate. So we're very conscious  
15 of that.

16 Q. Is it your understanding that under those  
17 rules of the Commission here in Missouri, Atmos has any  
18 requirements to bid contracts?

19 A. Yes. There is a requirement to -- well, we  
20 have the choice to either bid or show a good reason why  
21 you're not using a bid --

22 Q. Is it --

23 A. -- a competitive bid process.

24 Q. Do you believe you're complying with those  
25 particular rules?

1           A.       Oh, yes.

2           Q.       Judge Woodruff asked you about the process  
3       itself. Can you explain what you do -- well, can you  
4       explain how you handle adders above a NYMEX index or  
5       something like that, if that comes in a bid?

6           A.       That's fairly common for the bids to have a  
7       plus or a minus attached to the index price. I mentioned  
8       that there's an index for first-of-month pricing in the  
9       bid, as well as gas daily index. And then the suppliers  
10      will either put on a plus or a minus to that.

11                   And when we evaluate the bids, we put them  
12      into a spreadsheet and take into consideration all of the  
13      -- all of those factors in evaluating the bids.

14          Q.       There was some questions about  
15      non-comforming bids. Why would you ever evaluate a  
16      non-conforming bid?

17          A.       Yes.

18          Q.       And perhaps you can explain what a  
19      non-conforming bid is first.

20          A.       Yes. If it doesn't -- if the bid doesn't  
21      provide one of the services or pricing levels that we've  
22      specified in a way that would make it not -- I was going to  
23      say not conforming, but that doesn't make sense -- but in a  
24      way that does not comply with our requirements of the RFP.

25                   Sometimes we do go ahead -- as in this case,

1 we do go ahead and put those bids into the analysis, just  
2 so we have an idea of what all the parties are bidding. We  
3 can -- you know, it just gives us more knowledge. And we  
4 can always -- as in this case, you just ignore them in the  
5 outcome, but they're there for knowledge.

6 Q. Staff asked you about a couple of the  
7 non-conforming bids I believe that you did evaluate. Were  
8 those for field only?

9 A. Yes. I believe that's correct. Yes.

10 Q. What does that mean? And what would you do  
11 to put it on an apples-to-apples basis to evaluate those  
12 bids?

13 A. Well, if the -- the supply was coming into  
14 the field zone -- and there was a map up here earlier --  
15 the field zone was further upstream to the left, you would  
16 -- in order to put that on an apples-to-apples basis with  
17 the other bids that came in at the Haven point or at the  
18 market zone, you would have to add in an incremental amount  
19 of transportation to get the gas from field to the market  
20 point.

21 Q. And that would make it an apples-to-apples  
22 comparison?

23 A. Yes.

24 Q. If you threw out those non-conforming bids  
25 that Staff asked you about -- I think it was the second and

1 the third one, and the fourth one was a conforming bid. Do  
2 you recall that?

3 A. I -- that's my recollection. Yeah.

4 Q. Had Atmos accepted that fourth-highest bid,  
5 what would that have done to the difference between the AEM  
6 bid and the highest bid, in terms of the savings to  
7 customers?

8 A. Well, the savings would have been even  
9 greater than the fourth-place bid, because, as you know, we  
10 rank them in level of price from -- least would be bid  
11 number one, and on up. So if we eliminated bid number two  
12 and three, then that price savings compared to number four  
13 would be even greater than what we had indicated.

14 Q. So that \$140,000 figure I cited in the  
15 opening statement would be understated. Is that what --

16 A. Oh, yeah.

17 Q. -- you're saying?

18 A. There would be much more savings than that.

19 Q. Judge Jarrett -- or Commissioner Jarrett  
20 asked you about --

21 COMMISSIONER JARRETT: I like the sound of  
22 that.

23 MR. FISCHER: Judge, they used to have judge  
24 up there years ago, and I can't get over that -- beyond  
25 those days, I guess.

1 BY MR. FISCHER:

2 Q. He was asking you about the December 2007  
3 incidents -- incident that occurred.

4 A. Yes.

5 Q. Can you give us an explanation for what  
6 happened in December 2007 in the force majeure that was  
7 announced and how that affected Atmos?

8 A. Yes. I can -- is it okay if I pull out a  
9 little timeline?

10 Q. Certainly.

11 A. Okay. All right. So to precede this, we  
12 kind of step back to November, to explain what was going on  
13 with nominations. And we'd already talked about November  
14 20th is when Mr. Walker turned in his first-of-month  
15 nomination, which admittedly was a day before our typical  
16 day.

17 We normally do five to six business days  
18 prior to the first-of-month. So he did a day earlier  
19 because he was going on vacation the next day. And  
20 totally --

21 Q. Was that --

22 A. -- acceptable --

23 Q. -- was that --

24 A. -- to --

25 Q. -- reasonable from your standpoint?

1           A.       That's totally reasonable. I think that's  
2 fine. On November 21st -- is the Wednesday before  
3 Thanksgiving was the first pipeline notice about a Haven  
4 outage, and it was sent at 10:00 p.m. Wednesday night  
5 before Thanksgiving. No one was in the office -- in our  
6 office at that point.

7           Q.       Was that a force majeure notice at that  
8 point?

9           A.       No. It was just a notice from the pipeline.  
10 And it also said it will reduce mainline capacity, but no  
11 anticipated impact to shippers. Now, we weren't in the  
12 office at 10:00 p.m. Wednesday, so we didn't receive that  
13 notice. Mr. Walker, I believe, was back in the office on  
14 Monday morning, the 26th.

15          Q.       Had he wanted to change the nominations on  
16 that day, what time, if you know, would he have to have  
17 acted?

18          A.       Nomination deadline is usually between 8:00  
19 and 9:00.

20          Q.       So he had -- may have had an hour to figure  
21 out that there been a problem on the line and to do  
22 something about it?

23          A.       Well, he would have, but I don't believe by  
24 reading that statement that came at 10:00 p.m. on the 21st  
25 that that indicated he had any reason to take action,

1       because they did say no anticipated impact to shippers.

2               Q.       And in fact, during that force majeure  
3       event, were there any impacts to Atmos' customers?

4               A.       To the customers, no. We served all of our  
5       customers throughout that entire force majeure event. Our  
6       customers received the gas that they needed. There was no  
7       curtailments of our customers; no impact.

8                       They probably didn't even realize anything  
9       was going on, because we have ways to deal with the  
10      situation. For example, storage gas; we were able to pull  
11      out of storage some more and work with our supplier to make  
12      sure that we got the gas to our customers.

13              Q.       I apologize. I think I interrupted your  
14      discussion of the timeline.

15              A.       Oh, that's okay. Let's see. Where am I at?  
16      So then on the 20 -- Monday the 26th, the second pipeline  
17      notice came out, during the morning. And it did indicate  
18      that noms through Haven would be limited.

19                      But when the pipeline gives these notices,  
20      they use a very large decaderm -- or Mcf -- MMcf amount of  
21      limitation, so it doesn't really give us a good idea of how  
22      much the limitations would be. It said 1,150 MMcf per day.  
23      So that really doesn't give us an idea of what the cut --  
24      or the limitation would be.

25                      And then, later in that day, on the 26th,

1 the third pipeline notice came, in that afternoon, and  
2 declared a force majeure event.

3 Q. While you're there, would you explain what a  
4 force majeure event -- what the impact is on the LDC or  
5 other parties on the pipeline.

6 A. Well, first of all, the force majeure event  
7 is an act of God, an unanticipated action. At first,  
8 there's really no idea of what the impact is going to be.  
9 The pipeline has to evaluate.

10 And I -- I believe it takes a few days for  
11 them to work through that. And then more information comes  
12 out subsequently from the pipeline as to how it's going to  
13 impact the various shippers and the supply.

14 So it may have no impact, or it could have a  
15 large magnitude of impact depending on the event. It's  
16 very rare, though, and we don't get them too often, so --

17 Q. Was that the only force majeure event in  
18 2007 that you know of?

19 A. That's the only one that I know of. Yeah.

20 Q. Okay. Go ahead with your timeline.

21 A. Okay.

22 Q. I'm sorry.

23 A. All right. Then on the 27th there was a  
24 small pipeline cut at the Hannibal -- on the Hannibal  
25 contracts due to the rupture. And then along the lines of



1 December 4 through the 7th there were -- there were some  
2 cuts.

3 And then a fourth pipeline notice came out  
4 on the -- on December 4th, again talking about reductions  
5 in capacity, lower operating pressure -- just some more  
6 details. Like, as I explained, as the pipeline assessed  
7 the situation more -- let's see.

8 From what I understand is on our contracts,  
9 since we -- since our supplier was using a pony express  
10 point further downstream of the actual pipeline rupture,  
11 there would be initial thought that that point would be  
12 safe from any impact. Logically, thinking about the flow  
13 of gas, if you're beyond the point of the rupture --

14 Q. Was that reasonable, from your perspective,  
15 that AEM would use that point?

16 A. Yes. I think that's reasonable to assume.  
17 And I understand that -- from talking to the pipeline that  
18 a lot of other shippers tried to do that as well. And so  
19 -- to avoid the pipeline rupture at Haven, they moved  
20 further downstream. And then what happens is that that  
21 pony express point gets more jammed up --

22 Q. Would that --

23 A. -- I'll say.

24 Q. -- be consistent, though, to use that  
25 receipt point -- that secondary receipt point under your

1 contract?

2 A. Oh, yes.

3 Q. Could --

4 A. Yes.

5 Q. -- could other unaffiliated suppliers do  
6 something like that under your contract?

7 A. Yes. Yes. I believe so.

8 Q. Okay. Well, going back to your timeline,  
9 what happened after the force majeure was announced?

10 A. Okay. And so then what happened is -- I  
11 believe then we got into some colder weather where  
12 Mr. Walker had to order swing gas that we talked about.  
13 And on the 10th -- wait -- the 8th through the 10th -- yes,  
14 the 8th through the 10th it says he ordered his swing gas.

15 But there was a clerical error on the part  
16 of our supplier, and they didn't order the gas properly.  
17 And so he didn't get his swing gas for those three days --  
18 that three-day weekend, the Saturday, Sunday, Monday.

19 And so then Monday, when he got back into  
20 the office, he discussed that with them. They fixed it.  
21 But then they said that this force majeure is going on, so  
22 even if we fixed it, you're going to get cut anyway.

23 And they explained to Mike -- and I don't  
24 want to get too much on saying what he -- they said to him,  
25 you know, as a one-off conversation.

1                   But from what Mr. Walker has relayed to me,  
2     the supplier explained to them that the supply coming  
3     through pony express was limited and that they could only  
4     get a certain amount of gas to serve his contracts.

5                   And they told him how much they believed he  
6     could get without getting cut by the pipeline. Given our  
7     past experience with our supplier, I don't fault Mr. Walker  
8     for going along with their suggestion.

9                   Q.     As the manager of the gas supply group at  
10    Atmos, do you expect your gas specialist to work with the  
11    industry when a force majeure is declared?

12                  A.     It's a requirement. Yes. He needed to do  
13    that. He needed to work with the supplier and with the  
14    pipeline to make sure all parties try to get the gas that  
15    they need, or at least as much as they can.

16                  Q.     I take it you reviewed his actions since  
17    this has --

18                  A.     Yes.

19                  Q.     -- been raised in surrebuttal testimony?

20                  A.     Right. I did.

21                  Q.     Did you find anything imprudent about what  
22    he did?

23                  A.     I thought he did a really good job handling  
24    the -- handling the event. You know, if our supplier had  
25    been unreliable in the past, I could see why Mr. Walker

1 might question what they're suggesting him to do to address  
2 this event. But AEM had -- has been very reliable for many  
3 years, and has -- has not caused us any concern.

4 So I'm fine with Mr. Walker working with our  
5 supplier. And if they said, I cannot get more than this  
6 gas to serve you, I'm okay with him listening to them and  
7 trying to work with them through this -- through this  
8 event. We did have sufficient storage balances, and we  
9 were able to pull gas out of storage and flow it to our  
10 customers.

11 Q. Are there other reasons besides this event  
12 that would require that in January, February or March there  
13 might be larger purchases?

14 A. Other than -- well, there's also weather,  
15 obviously, you know. And then sometime in mid-December or  
16 so, there was a notification from our Hannibal office that  
17 our propane air peaking plant had gone out of operation.

18 And we -- like I called it a peaking plant,  
19 we rely on that on peak days for gas supply for our  
20 Hannibal customers. And when that went down, we had to  
21 quickly assess the situation and decide how we're going to  
22 serve those customers without that facility, because it is  
23 an important part of the requirement -- the peak day  
24 requirements.

25 So we took some action to address that plant

1 going down. And one of them was to purchase more gas in  
2 January to maintain -- to make sure we didn't pull our  
3 pipeline storages down too low.

4 Storage accounts -- storage contracts have  
5 ratchets on them, and if you let the inventory fall below a  
6 certain level, then you lose deliverability. And so  
7 Mr. Walker was trying to purchase enough gas in January to  
8 make sure that the deliverability of his pipeline storage  
9 did not hit a ratchet.

10 If it had hit a ratchet, then we wouldn't --  
11 potentially not be able to have enough gas to serve the  
12 customers on a peak day. So in addition to the -- buying  
13 gas for the -- to affect the force majeure event, he was  
14 also buying gas for cold days and also for the propane air  
15 plant, to make up for it.

16 Q. Is it reasonable to conclude that the only  
17 reason why additional gas was bought in January and  
18 February and March was due to actions that were taken  
19 during that force majeure period?

20 A. No. There was other reasons.

21 Q. Okay. Do you have anything else you'd like  
22 to tell the Commission about that particular event that's  
23 of a concern?

24 A. What I'd really like to express is that we  
25 believe our supplier is reliable. They served us reliable

1     for many years, and also during the course of this ACA  
2     period served us reliability throughout this event.

3             The force majeure holds a different level of  
4     service accountability, where there's a realization because  
5     of this act of God, you may not be able to get the supply  
6     in the same way you're used to.

7             Like I said, there was some scrambling going  
8     around through the pipeline and the various shippers to try  
9     to deal with this, and it was a rather extensive outage.  
10    And to say that that one event, and our supplier asking us  
11    to work with them during those weeks to reduce nominations,  
12    and to say that that made them unreliable just does not sit  
13    well with me.

14            And I kind of liking it -- liken it to if  
15    you asked me if Mr. Walker was -- reliably showed at work  
16    every day. And I would say, Well, yes. He does reliably  
17    show up to work every day.

18            And you say, Well, what about that time in  
19    December when he was out for a month? You know, he had  
20    that car accident and he was in the hospital? And I would  
21    say, Well, you know, that's -- doesn't affect him as a  
22    reliable employee.

23            That was an event outside of his control  
24    that -- but other than that, I would say yeah, he's a  
25    reliable employee. He shows up to work on time. So --

1           Q.       Well, that raises a question. You were  
2 asked about some DRs where you said you didn't have any  
3 reliability problems.

4           A.       Yes. That's what I meant. That's what I  
5 was alluding to.

6           Q.       Do you consider a force majeure event to be  
7 a reliability problem?

8           A.       No. That is a -- an act of God. Again,  
9 it's beyond the pipeline's control, and beyond the  
10 supplier's control. So it's a whole new animal when you  
11 have a force majeure.

12          Q.       Well, on that subject, did the Panhandle  
13 Eastern Pipeline rupture occur in the field zone?

14          A.       No. I don't believe it did. I think it --  
15 it was at that line -- that area in between field and  
16 market --

17          Q.       Do --

18          A.       -- right at that Haven point.

19          Q.       You had a conversation, I think, about why  
20 the cuts in the -- in Butler were different than in  
21 Hannibal. And you, I believe, mentioned that you had some  
22 conversations with Panhandle. What do you know about that?

23          A.       Well, like I said, when we were reviewing  
24 all of the information, it -- we were puzzled by -- from  
25 that one date forward, where we didn't see cuts in Butler,

1 even though it was running through the Haven point where  
2 the rupture actually occurred.

3 And so we asked our pipeline rep what -- you  
4 know, Why is this? And she was as puzzled as we were. She  
5 could not explain it, and said that, You probably shouldn't  
6 have gotten all that gas. So I guess things happen at the  
7 pipeline, too. We probably got more gas than we should  
8 have.

9 Q. Is it typical when you get cuts like that  
10 from your supplier that it applies kind of across the board  
11 to other folks, too?

12 A. Well, I wouldn't say typical, because this  
13 hardly --

14 Q. It never happens?

15 A. -- you know, it doesn't happen. But my  
16 understanding is that the -- this particular force majeure  
17 event impacted all shippers in that area and around that --  
18 surrounding that event.

19 Q. Someone asked you whether you reviewed the  
20 surrebuttal testimony of Mr. Sommerer.

21 A. Yes.

22 Q. Do you recall that?

23 A. Yes.

24 Q. And I believe you indicated you did?

25 A. I did.



1           Q.       Do you believe that Staff's proposal to  
2       Scenarios 1 and 2 to disallow 50 and \$83,000 are  
3       appropriate in this case?

4           A.       No.    The reason I think it's inappropriate  
5       is because they're saying it's a prudency adjustment.   And  
6       in my opinion, Mr. Walker was very prudent in his  
7       nominations.   His first-of-month nom was within a standard  
8       of reasonableness.

9                    It wasn't the -- it wasn't the normal; and  
10       yes, I do agree that it was probably less than the 20  
11       percent warmer than -- warmer range.   But in looking at his  
12       analysis where he showed me what the prior year had been,  
13       and the year before that, one of those years, actually, he  
14       bought less gas than what he put in his first-of-month nom.

15                   So looking at that information and -- and he  
16       was considering his -- again his storage balances and such  
17       that he knew on -- at that point in the month.   I have no  
18       problem with Mr. Walker's nomination.   So I think it's very  
19       reasonable, and don't believe that a prudency adjustment  
20       would be called for.

21           Q.       I think you were asked some questions about  
22       swing gas and the impacts that that could have after the  
23       fact on contracts.   Did you have the occasion to review or  
24       do an analysis of whether swing gas purchases affected  
25       whether AEM was the low bid?

1           A.       Oh, yes. There -- I can't remember if it  
2 was in Mr. Sommerer's surrebuttal or rebuttal, where he  
3 said that he didn't believe our RFP analysis used enough  
4 quantity for swing gas. So we decided to take a look at,  
5 Okay, so let's do some other quantities. And I believe Mr.  
6 Walker actually does that during his analysis.

7           MR. FISCHER: Judge, I'd like to have an  
8 exhibit marked.

9           JUDGE WOODRUFF: All right. We're up to  
10 No. 14.

11           (Wherein; Atmos Exhibit No. 14 HC was marked  
12 for identification.)

13           THE WITNESS: So this is --  
14 BY MR. FISCHER:

15           Q.       Yeah. What does this exhibit show?

16           A.       This is the Excel spreadsheet that I spoke  
17 of earlier that Mr. Walker prepares. He puts in his plan  
18 volumes at the top. The first two columns are what he  
19 thinks he'll be buying for baseload gas. And then the  
20 third column says Haven Swing is the quantities that he  
21 believes he'll be buying as incremental daily gas.

22           This particular sheet that Mr. Fischer's  
23 handed to you is a rework of the swing volumes. So in  
24 Mr. Walker's original analysis, he had less swing quantity  
25 than what's shown on this sheet. And you can see where it

1       says, under Haven Swing, in that third -- I don't know how  
2       to explain it to you, but there's like a third box of  
3       volumes -- 6,545 for November and 5,945 for December, those  
4       are some higher amount of swing purchases than what  
5       Mr. Walker showed in his original analysis to try to  
6       address the fault that Mr. Sommerer had raised.

7               And what we found by putting in higher swing  
8       quantities is that the rankings did not change; that -- or  
9       at least the top rankings, anyway. AEM 1, 2 and 3 and 4, I  
10      believe, all stayed the same. AEM was still the low.

11             Q.       The other bidders' names should be kept  
12      confidential. Correct?

13             A.       Oh, yes. I'm --

14             MR. FISCHER: And so I --

15             THE WITNESS: -- I'm sorry.

16             MR. FISCHER: -- would ask that this be 14

17      HC.

18             JUDGE WOODRUFF: All right.

19             MR. FISCHER: I would move for the admission

20      of 14 HC.

21             THE WITNESS: But what I did want to --

22             JUDGE WOODRUFF: Wait a minute.

23             THE WITNESS: -- say --

24             JUDGE WOODRUFF: Just --

25             THE WITNESS: Oh, I'm sorry.

1 JUDGE WOODRUFF: 14 HC has been offered into  
2 evidence. Any objections to its receipt?

3 Hearing none, it will be received.

4 (Wherein; Atmos Exhibit No. 14 HC was  
5 received into evidence.)

6 THE WITNESS: But what I --

7 JUDGE WOODRUFF: Wait. Wait for your next

8 --

9 THE WITNESS: Oh, I'm --

10 JUDGE WOODRUFF: -- question.

11 THE WITNESS: -- sorry.

12 BY MR. FISCHER:

13 Q. What else --

14 A. I'm sorry.

15 Q. -- would you like to explain about this  
16 incident?

17 A. I'm just so anxious.

18 What I did want to say is that even though  
19 Mr. Walker didn't include it in his analysis, it's very  
20 typical for him to try out different swing volumes, because  
21 we do realize that as the months progress, the quantity  
22 that he buys for swing will be determined by factors each  
23 month.

24 So he does -- it's typical for him to put in  
25 different volumes. The one that he included in the RFP

1     analysis was just one of the factors -- one of the ways he  
2     did it. But if he finds no difference in the ranking when  
3     he does the different swing volumes, then he'll just put  
4     his first one in the -- in his report, in his  
5     recommendation, and go with that. So we can see that by  
6     putting in higher swing volumes it did not change the  
7     ranking.

8             Q.       Ms. Buchanan, you were also asked some  
9     questions about the storage levels. Did you have the  
10    opportunity to review the storage levels during that  
11    December period and your analysis of that?

12            A.       Yes. I looked at that.

13            Q.       What did you conclude?

14            A.       Okay. So I think I -- yes. I mentioned  
15    earlier that one of the ways we were able to ensure our  
16    customers got reliable supply during this force majeure  
17    event is that we pulled some gas out of storage and had  
18    that delivered -- more than what we had originally  
19    anticipated. And that worked out very well for us.

20                    At the end of December, once we received the  
21    final measurement information from the pipeline, Mr.  
22    Walker's storage balances were about 10 percent less than  
23    what he had planned to be at December. And to me, that's  
24    actually a lot better than I thought it was going to be  
25    when I saw that, given the force majeure event.

1 I wasn't too concerned about that at all. I  
2 thought, Wow, he did a pretty good job handling that given  
3 the circumstances.

4 Q. And finally, you were asked a question, I  
5 think from Public Counsel, regarding whether it was  
6 reasonable that AEM profits should be -- go to the Atmos  
7 shareholders. Do you recall that?

8 A. Sorry. Yes.

9 Q. Does AEM contribute or carry a dominant  
10 portion of Atmos' load in Missouri, typically? Or in this  
11 ACA period?

12 A. Oh, in this period, I think AEM's share of  
13 the supply in Missouri was about 36 percent, I believe, out  
14 of the total requirements for the state.

15 Q. And is ACM a national marketer?

16 A. AEM is --

17 Q. AEM.

18 A. Yes.

19 Q. Would Missouri have any appreciable impact  
20 on any shareholder profits or whatever at that level for  
21 Missouri?

22 A. Well, I'm just going on my opinion. I would  
23 say it should be miniscule.

24 Q. I mean, the Commission Staff has made an  
25 adjustment on gross profits of \$308,000. Is that

1       significant in your mind at all at --

2               A.       The --

3               Q.       -- at the AE -- at the Atmos level?

4               A.       I would say that the Missouri contribution,  
5       just -- again, just my opinion, the Missouri contribution  
6       to the earnings in AEM would probably be insignificant or  
7       little.

8               Q.       Does that affect --

9               A.       I don't know.

10              Q.       -- in any way the -- your relationship with  
11       AEM?

12              A.       Oh, definitely not. Absolutely not. And I  
13       actually take great offense to the implications that  
14       Mr. Sommerer has made that we've acted in a  
15       less-than-ethical manner.

16                      MR. FISCHER: That's all I have, Judge.

17                      JUDGE WOODRUFF: All right. Thank you.

18                      You can step down.

19                      THE WITNESS: Thank you.

20                      (Witness excused.)

21                      JUDGE WOODRUFF: The next witness, then,  
22       will be Mr. Walker, being called by Staff.

23                      MR. BERLIN: Can we take a quick break to  
24       get reshuffled here?

25                      JUDGE WOODRUFF: All right.

1                   COMMISSIONER DAVIS: Before we go to break,  
2 Mr. Fischer, can I inquire of Mr. Berlin?

3                   JUDGE WOODRUFF: Certainly.

4                   COMMISSIONER DAVIS: Okay. I want to go  
5 back to a few questions from this morning, Mr. Berlin.

6                   So if Atmos is not following their own  
7 internal policies, then they should forfeit the \$308,000;  
8 is that correct?

9                   MR. BERLIN: Staff can't support the  
10 \$308,000 because there's no support for it.

11                  COMMISSIONER DAVIS: Okay. So Staff can't  
12 support -- they're not following their own policies, so  
13 Staff can't support it; therefore, we should disallow it?

14                  MR. BERLIN: They're not following the  
15 recordkeeping requirement of the affiliated transaction  
16 rule.

17                  COMMISSIONER DAVIS: They're not -- they're  
18 not following -- okay. Now, let me ask you this, Mr.  
19 Berlin: What should we do if Staff doesn't follow its own  
20 policies?

21                  Like, say, their own internal policies on  
22 depreciation, say on prudence audits for construction  
23 projects, say -- I don't know -- maybe two or three other  
24 things that I can think of where Staff has a record here of  
25 not following its own internal policies. What should we



1 do? Should we just disallow your salaries?

2 MR. BERLIN: Commissioner Davis, I can't  
3 answer that question. That goes to a level of -- well  
4 above me and -- as a staff. I just can't answer it. I  
5 don't know.

6 COMMISSIONER DAVIS: You just don't know?  
7 Okay.

8 MR. BERLIN: I -- I don't get involved in  
9 the setting --

10 COMMISSIONER DAVIS: Okay.

11 MR. BERLIN: -- of policy.

12 COMMISSIONER DAVIS: All right. Well,  
13 then -- and I do -- I just have one more question for you,  
14 then. And that is: It seems like -- in reading  
15 Mr. Sommerer's testimony and listening to your arguments  
16 this morning, it seems -- you -- it seems like you throw  
17 out a lot of different things.

18 And I'm wondering if you could put all of  
19 those complaints on one single sheet of paper, not three  
20 volumes -- not a three-volume desk reference set, but  
21 basically the allegation that they have failed to comply  
22 with the recordkeeping portion of the affiliated  
23 transaction rule or the affiliate marketing rule, whatever  
24 -- whichever one it is; that they have not, you know --  
25 that they made imprudent nominations at the -- at the end

1 of the month instead of the beginning of the month, or  
2 whatever.

3 Could you do that and potentially file that  
4 first thing tomorrow morning?

5 MR. BERLIN: I would need more time. I'm  
6 not sure I understand your question.

7 COMMISSIONER DAVIS: I'm basically trying to  
8 scale down the points that you were trying to make earlier,  
9 because I'm not understanding if this is -- if these points  
10 are being pled in the alternative, or if they are being  
11 pled that there are all of the -- there are all of these  
12 systematic problems. Do you need an order directing  
13 filing?

14 MR. BERLIN: I'm just trying to understand  
15 what you're looking for. I --

16 JUDGE WOODRUFF: Are you looking for a  
17 position statement?

18 COMMISSIONER DAVIS: Well, I mean, we've  
19 already got a position statement from June. I've read  
20 that. I'm still a little unclear, because Staff's position  
21 seems to morph, so I was trying to get some further  
22 clarification from Mr. Berlin. But I will -- I'll consult  
23 with you, Judge, and maybe we can get an order directing  
24 filing in writing that Mr. Berlin can hopefully articulate.

25 Thank you.

1 JUDGE WOODRUFF: Let's go ahead and --

2 Yes?

3 MR. POSTON: Could we take a break?

4 JUDGE WOODRUFF: Let's go ahead and take a  
5 five-minute break. Come back at 4:10.

6 (A short break was taken.)

7 JUDGE WOODRUFF: It's now about ten after  
8 four. And I do want to go ahead and get started with  
9 Mr. Walker. I don't plan on going late tonight, so we'll  
10 wrap it up at about 4:45 today and then start again  
11 tomorrow morning. So hopefully that won't cause any  
12 problems for anybody.

13 So let's go ahead and get started with  
14 Mr. Walker.

15 MR. BERLIN: Okay. Judge, the Staff calls  
16 Mr. Mike Walker.

17 JUDGE WOODRUFF: All right.

18 (Witness sworn.)

19 JUDGE WOODRUFF: Thank you.

20 You may inquire.

21 MR. BERLIN: Thank you.

22 MICHAEL WALKER testifies as follows:

23 DIRECT EXAMINATION BY MR. BERLIN:

24 Q. Mr. Walker, would you state your full name  
25 for the record.

1           A.       Mike Walker.

2           Q.       And are you employed by Atmos Energy  
3 Corporation, the company that is adverse to Staff in this  
4 case?

5           A.       Yes.

6           Q.       And are you here under subpoena?

7           A.       Yes.

8                   MR. FISCHER: Judge, at this time I'd like  
9 to lodge an objection. It's my understanding that Staff  
10 has subpoenaed Mr. Walker as a witness in support of its  
11 case-in-chief.

12                   Under the Commission's procedural schedule  
13 adopted on February 24, 2010, the Staff was to have filed  
14 its direct testimony supporting its proposed adjustments on  
15 March the 12th. Staff complied by filing the direct  
16 testimony in its direct case, including the direct  
17 testimony of Mr. Sommerer.

18                   To the extent Staff intends to call  
19 Mr. Walker to provide information that's relevant to or  
20 otherwise supports any of Staff's adjustments in its direct  
21 case, then Staff should have filed that testimony on March  
22 the 12th, as was ordered by the Commission, instead of  
23 waiting until the day of the hearing.

24                   To the extent the -- as you know, the rules  
25 say the direct testimony shall include all testimony and

1 exhibits asserting and explaining that a party's -- that  
2 party's case-in-chief. And to the extent Mr. Walker is  
3 being asked to support that case-in-chief it should have  
4 been filed many, many months back. To --

5 JUDGE WOODRUFF: You're talking about March  
6 12th of 2010?

7 MR. FISCHER: Yes.

8 JUDGE WOODRUFF: Okay.

9 MR. FISCHER: And to the extent that  
10 Mr. Walker's testimony is intended to support any of --  
11 intended to rebut the testimony of Ms. Buchanan's  
12 testimony, then it should have been filed on June 14th of  
13 2010, and not presented on the first day of the hearing.

14 To the extent that Mr. Walker's testimony is  
15 intended to rebut the rebuttal testimony of Ms. Buchanan,  
16 then it should have been -- I'm sorry -- it should have  
17 been filed on December 22nd and not on the first day of the  
18 hearing.

19 And finally, to the extent that Mr. Walker's  
20 testimony is intended to support the new adjustments  
21 proposed by Staff for their -- for the first time in their  
22 surrebuttal, then it's improper surrebuttal, since  
23 surrebuttal is limited to matters raised in another party's  
24 rebuttal testimony.

25 Otherwise, the Commission's procedural

1 schedule is meaningless if Staff can subpoena a person to  
2 support their direct case at the day of the hearing and  
3 basically have -- get around all of our concerns about  
4 trial by surprise. That's what prefiling is all about.

5 So therefore, Atmos must respectfully object  
6 to the testimony of Mr. Walker at this -- being presented  
7 in this eleventh hour, in violation of the Commission's  
8 procedural schedule in this case, and ask that Mr. Walker  
9 be barred from presenting testimony on behalf of the Staff  
10 at this time.

11 JUDGE WOODRUFF: Your response?

12 MR. BERLIN: Yes, Judge.

13 Atmos' prefiled testimony, in both direct  
14 and the rebuttal cases, have made it rather a large issue  
15 of reliability.

16 The testimony, number one, that was filed in  
17 Staff's surrebuttal is directly responsive to the matter of  
18 reliability.

19 I've just gone through a rather extensive  
20 cross-examination where I've shown that there's a  
21 significant issue with the completeness, the accuracy and  
22 the veracity of the data request responses that were  
23 provided by the Company to Staff where they claim that  
24 there were no reliability issues.

25 The first time that the reliability issue

1       came to us was after rebuttal testimony had been filed.

2               JUDGE WOODRUFF: And by reliability issue  
3       you're talking about the force majeure incident?

4               MR. BERLIN: I'm talking about the matter of  
5       cuts that were made to northeast Missouri, where northeast  
6       Missouri was not getting its gas supply that was nominated  
7       by Atmos.

8               JUDGE WOODRUFF: And that was December of  
9       '08, was it?

10              MR. BERLIN: No. We --

11              JUDGE WOODRUFF: No. That's when the cuts  
12       were --

13              MR. BERLIN: Yes. Yes. Yes, Judge.

14              JUDGE WOODRUFF: Okay.

15              MR. BERLIN: The cuts were made in December  
16       that we have just -- and we just went through that this  
17       afternoon.

18              But, Judge, the -- as you recall, we had a  
19       motion to compel hearing, I believe it was October 20th of  
20       last year. And that was to see -- Atmos to produce certain  
21       information. They -- we -- we got the information, and at  
22       that time -- we got it in the form of the DR that I just  
23       went through this afternoon, 132.2, Part A and C, where  
24       there are extensive cuts made to northeastern Missouri, and  
25       very de minimis cuts made to the Butler service area.

1                   Now, this is a matter of reliability. And,  
2     in fact, Mr. Sommerer testified in the October hearing that  
3     there were serious reliability issues at that time. That  
4     was the first time, through the DR 132.2, where these cuts  
5     were made known to us that affected the reliability of the  
6     supplies that had been nominated by the LDC. So we  
7     addressed that in the surrebuttal.

8                   Back in June, when we went through the first  
9     motion to compel, that hearing, I had filed a motion  
10    requesting that the Commission permit Staff to file --  
11    well, because we weren't getting the information from the  
12    Company, but we were still under the procedural schedule,  
13    and we filed our rebuttal testimony anyway, because we were  
14    up against the file and we had to file it. We did file it.

15                  We did note in our rebuttal testimony at  
16    that time, under that discovery dispute, that our rebuttal  
17    was incomplete, and we were waiting more information from  
18    Atmos.

19                  So my motion back in June alerted the  
20    Commission to the fact that it's incomplete. And I asked  
21    -- it's in the motion -- to file either a supplemental  
22    rebuttal or to address -- to be -- to address the rule that  
23    Mr. Fischer just cited and to allow Staff to address  
24    certain issues in its surrebuttal. The Commission did not  
25    act on that.



1                   Now, that said, all of the testimony goes to  
2     the matter of reliability. The Scenario 1, Scenario 2  
3     proposed disallowances that shows harm to the ratepayer,  
4     that goes to the fact that we believe the actions that the  
5     company took were not prudent end of November in making  
6     that first-of-the-month December base load nomination.

7                   Now, Staff deposed Mr. Walker and  
8     Ms. Buchanan on February 28th and March 1st of this year.  
9     It became apparent in the deposition of Ms. Buchanan that  
10    she did not have real working knowledge about why certain  
11    nominations were made.

12                  And the only person who had that -- and it  
13    became even more apparent on Tuesday, March 1st, when I  
14    deposed Mr. Walker, that he was indeed the one who was  
15    making the nominations and could answer some rather  
16    detailed and specific questions regarding those  
17    nominations, as it -- as it relates directly to the matter  
18    of reliability that we are rebutting from their rebuttal  
19    testimony.

20                  MR. FISCHER: Judge, then based on that, I  
21    would suggest that I would have a further objection. If  
22    the reason Mr. Walker is being called is to address a  
23    reliability issue, I would suggest that that testimony is  
24    not relevant to any of the issues listed in the joint list  
25    of issues that Staff filed or that Public Counsel or -- and

1     their position statements, where the only issues that were  
2     listed were, Were the rates of Atmos charged for natural  
3     gas during the 2007/2008 ACA period just and reasonable?

4             And under that particular issue, they argued  
5     that the rates were not just and reasonable because the  
6     rates did not merely pass on the cost of gas, but included  
7     a profit for Atmos' shareholders.

8             And secondly, the only other issue that was  
9     raised is what, if any, ACA adjustments should the  
10    Commission order for the 2008 -- 2007/2008 ACA period?

11            And under that issue, the Staff says it's  
12    the Staff's position that an adjustment of \$363,979 should  
13    be ordered, being \$349,015 for Hannibal and \$13,964 for  
14    Butler in order to eliminate the profits realized by AME on  
15    the sales of gas to Atmos to serve the Hannibal and Butler  
16    areas during the 2007, 2008.

17            Any testimony that's not directly related to  
18    those particular list of issues that the Staff and Public  
19    Counsel have already filed and taken positions on are  
20    improper and should not be permitted.

21            And I don't think Mr. Walker has a thing  
22    that he knows about rates or about the profits of these  
23    companies.

24            MR. BERLIN:   The --

25            JUDGE WOODRUFF:  Does Public Counsel want to

1       jump in on any of this?

2                   MR. POSTON: I mean, it just seems to me  
3       that Mr. Walker is an essential witness in this case given  
4       Ms. Buchanan's testimony and Mr. Walker's involvement in  
5       all the transactions that are at issue here. And I believe  
6       the Commission already rejected Atmos' to quash the  
7       subpoena to have Mr. Walker come here today. And I would  
8       just ask the Commission to allow Mr. Walker to testify here  
9       today.

10                   Thank you.

11                   JUDGE WOODRUFF: I'm going to overrule the  
12       objection and allow the testimony to proceed.

13                   You can ask your first question. Or you've  
14       asked some questions, so --

15                   COMMISSIONER DAVIS: Judge, can I just  
16       inquire?

17                   JUDGE WOODRUFF: Go ahead.

18                   COMMISSIONER DAVIS: And that is: Does --  
19       we're going to let him appear?

20                   JUDGE WOODRUFF: Correct.

21                   COMMISSIONER DAVIS: And the question is:  
22       Does Mr. Fischer need to make a continuing objection to  
23       relevance?

24                   MR. FISCHER: That was my next --

25                   MR. BERLIN: May I --

1 JUDGE WOODRUFF: All right.

2 MR. BERLIN: -- interject here, Judge, and  
3 address --

4 JUDGE WOODRUFF: Certainly.

5 MR. BERLIN: -- Commissioner Davis's  
6 question?

7 I --

8 MR. FISCHER: Well, perhaps I just should  
9 make the objection, Judge.

10 JUDGE WOODRUFF: Make your objection.

11 MR. FISCHER: I'd ask for a continuing  
12 objection to relevance, and let it go at that.

13 MR. BERLIN: Judge, I was going to seek a  
14 ruling from the bench that -- to declare Mr. Walker an  
15 adverse witness.

16 JUDGE WOODRUFF: All right. Let's do one  
17 thing at a time, here, first.

18 Yes, Atmos can have a continuing objection  
19 as to relevance.

20 Your question was whether he can be treated  
21 as an adverse witness, which would allow you to lead on  
22 direct?

23 MR. BERLIN: Yes.

24 JUDGE WOODRUFF: And the answer is also yes.

25 MR. BERLIN: All right. Thank you, Judge.

1 BY MR. BERLIN:

2 Q. All right. Good afternoon, Mr. Walker. I  
3 have a copy of DR 7.1.

4 MR. BERLIN: I had already entered that into  
5 the record as Buchanan Exhibit 6.

6 BY MR. BERLIN:

7 Q. I don't know if you have a copy of it,  
8 Mr. Walker.

9 A. I do.

10 Q. Okay. Now, Mr. Walker, the -- Staff sent  
11 this DR on January 15th of 2009, with a response received  
12 January 29th of '09 and February 2nd of '09. You'd agree  
13 with it, the Staff sent this on January 15th of '09?

14 A. Yes.

15 Q. Okay. And this DR states, For the Company's  
16 natural gas planning for the ACA period under review,  
17 please provide the following: The Company's analysis of  
18 line segment constraints that would limit the capacity  
19 available to specific citygate points, and whether this  
20 would permit the receipt of full peak day requirements at  
21 specific citygate points.

22 Do you follow that on the DR?

23 A. That's what it says. Yes.

24 Q. Okay. And the Atmos cover page that shows a  
25 Mr. Harold Fox responded to the DR. Correct?

1           A.       Correct.

2           Q.       Is there any information in this DR response  
3       regarding the constraints at the Haven receipt point, the  
4       Haven pipeline rupture, or the Haven pipeline rupture that  
5       occurred in late November of '07?

6           A.       No. It does not reference that. But I  
7       would not --

8           Q.       Well, that wasn't my --

9           A.       -- include that with this answer.

10          Q.       Is there any mention of cuts to the supply  
11       and storage made in November and December of 2007 for the  
12       Hannibal, Bowling Green area?

13          A.       No.

14          Q.       Okay. Mr. Walker, I am going to provide you  
15       a copy of DR 100, which I also believe is an exhibit. It's  
16       No. 7. Do you have a copy of that, Mr. Walker?

17          A.       Yes. I do.

18          Q.       Okay. And if you look at the DR, you'll  
19       note that Staff sent that in -- January 15th of 2009.  
20       Correct?

21          A.       Correct.

22          Q.       Okay. In this DR request, regarding the  
23       reliability for the ACA period for the pipelines and  
24       suppliers that the LDC utilized for this ACA period --  
25       Paragraph A -- were there any pipeline or supplier actions,

1 including maintenance or pressure problems, during this ACA  
2 period that caused the LDC to question its reliance on the  
3 transport, storage or supplies to be delivered to the LDC?

4 And then B says, If yes, fully explain the  
5 actions.

6 And my question, Mr. Walker, is: Is this a  
7 DR that you had responded to?

8 A. Yes. It was.

9 Q. Okay. Because your name is at the bottom.  
10 Right?

11 A. Yes.

12 Q. Okay. Is there any information contained in  
13 this response regarding constraints at the Haven receipt  
14 point?

15 A. Are you talking about during the outage --  
16 the pipeline rupture?

17 Q. Just in the DR response, is there any  
18 information in this response regarding constraints at the  
19 Haven receipt point?

20 A. Outside of the pipeline rupture, no.

21 Q. Is there any mention of the cuts to the  
22 supply and storage made in the November/December 2007 for  
23 Hannibal, Bowling Green area?

24 A. Again, outside of the pipeline rupture, no.

25 Q. And, in fact, the response is, There were

1 not any pipeline/supplier reliability issues during this  
2 ACA period. Isn't that the response?

3 A. That's correct.

4 Q. Okay. Okay. Mr. Walker, I'm going to hand  
5 you DR 101. It was --

6 JUDGE WOODRUFF: This will be a new exhibit?

7 MR. BERLIN: Yes. It is. This will be  
8 Exhibit No. 15.

9 (Wherein; Staff Exhibit No. 15 was marked  
10 for identification.)

11 BY MR. BERLIN:

12 Q. Okay. Mr. Walker, if you'd look at the --  
13 DR 132, you'll note it was sent by Staff on May 31st of  
14 2010. I'm sorry. I'm ahead of myself.

15 A. I see --

16 Q. This -- this --

17 A. -- January 15th, 2009.

18 Q. You are correct. That's right. That's what  
19 mine shows.

20 And the DR states, Regarding the LDC's  
21 supply plan -- plans -- Paragraph A -- please provide the  
22 LDC's analysis of the reliability of its supply for the ACA  
23 period and any actions the LDC has or will take for  
24 subsequent ACA periods to address supply reliability.

25 And then I'll read Part C. Were any



1 pipeline operational flow orders issued for this ACA period  
2 that impacted the LDC's flowing supply? If yes, please  
3 provide a copy of the operational flow order, explanation  
4 of how the flow order impacted the LDC, and the actions  
5 taken by the LDC.

6 So I -- my question -- I believe this is a  
7 DR that shows that you responded to; is that right?

8 A. That's correct.

9 Q. Is there any information in this DR response  
10 regarding constraints at the Haven receipt point?

11 A. The question asked is: Were there any  
12 pipeline operational flow orders? And there were not  
13 during this ACA period.

14 Q. Okay. But is there any information at all  
15 in the response regarding constraints at the Haven receipt  
16 point?

17 A. There are not, because there wasn't a  
18 question asked in this DR about that.

19 Q. Okay. Well, in A, it does go to ask in the  
20 LDC's analysis of reliability. But that said, is there any  
21 information of the Haven pipeline rupture which occurred in  
22 November 2007?

23 A. Not on this DR.

24 Q. Is there any information on the cuts to  
25 supply and storage made in November and December of 2007

1 for the Hannibal, Canton, Bowling Green area?

2 A. Due to the pipeline outage, no.

3 Q. Okay.

4 A. Because it wasn't asked.

5 Q. I'm going to give you a copy of DR 132.

6 MR. BERLIN: I think we're at 16 now.

7 JUDGE WOODRUFF: That would be correct.

8 (Wherein; Staff Exhibit No. 16 was marked  
9 for identification.)

10 MR. BERLIN: Judge, could I trouble you to  
11 see if I could get one back? Did I give you one?

12 MR. POSTON: Yes.

13 BY MR. BERLIN:

14 Q. Now --

15 JUDGE WOODRUFF: Mr. Berlin --

16 MR. BERLIN: Yes?

17 JUDGE WOODRUFF: -- both 16 -- 16 indicates  
18 that the response is highly confidential. Is it highly  
19 confidential?

20 I guess I'm asking the witness if he can go  
21 through it and let us know.

22 THE WITNESS: I don't see anything that  
23 would make it confidential.

24 JUDGE WOODRUFF: All right. Thank you.

25 You may inquire.

1 MR. BERLIN: Okay.

2 BY MR. BERLIN:

3 Q. Thank you, Mr. Walker. You'll note that  
4 Staff sent this on May 31st, 2010. Correct?

5 A. I have May 13th --

6 Q. I'm sorry.

7 A. -- 2010.

8 Q. May 13th. And this DR states -- and I'm  
9 going to go directly to Paragraph E -- Please provide a  
10 copy of all communications between AEM and AEC regarding  
11 all nominations made on the Panhandle eastern pipeline  
12 system for the 2007 to 2008 ACA period. Do you follow  
13 that?

14 A. I do.

15 Q. Okay. And this response shows -- I believe  
16 that you responded to this. Correct?

17 A. I did.

18 Q. Now, is there any information in this  
19 response regarding constraints at the Haven receipt point?

20 A. This asked about communication between AEM  
21 and AEC regarding all nominations made on the pipeline.  
22 And I answered that accordingly.

23 Q. Okay. But you don't -- there is no  
24 information in the response about constraints at Haven?

25 A. No.

1           Q.       Okay. Is there any information on the Haven  
2 pipeline rupture that occurred late November '07?

3           A.       I don't think the question asked for that  
4 information. No. There's no information on that.

5           Q.       Is there any information on cuts to supply  
6 and storage made in November and December 2007 for the  
7 Hannibal, Bowling Green area?

8           A.       Again, Part E does not ask about nomination  
9 cuts.

10          Q.       I'm going to provide you a copy of DR 132.1.  
11 This, too, is HC.

12                   THE COURT REPORTER: 17 HC.

13                   MR. BERLIN: 17 HC.

14                   (Wherein; Staff Exhibit No. 17 was marked  
15 for identification.)

16 BY MR. BERLIN:

17          Q.       And Mr. Walker, if you'd review it to make  
18 sure it's HC.

19          A.       Okay. I don't see anything on here to --  
20 for it to be highly confidential.

21          Q.       Okay.

22                   JUDGE WOODRUFF: Then it will be 17, not  
23 17 HC.

24 BY MR. BERLIN:

25          Q.       Now, Mr. Walker, you note that Staff sent

1 this on June 25th of 2010. Correct?

2 A. Correct.

3 Q. All right. And this DR requests, among  
4 other things, information for December of 2007. And it  
5 states: For December of 2007, plan nominations on the  
6 11671 contract were to be 114,200 decatherms. That's in  
7 response to DR 17.

8 Actual nominations were 88,034 decatherms,  
9 of which 71,300 were baseload and 16,734 were swing.  
10 Please explain the nominations for the month of December of  
11 2007.

12 Is that an accurate reading?

13 A. Yes. It is.

14 Q. Okay. And this cover page shows that you  
15 responded to this DR; is that right?

16 A. Correct.

17 Q. Mr. Walker, would you please read your DR  
18 response paragraph that starts out, December '07?

19 A. Uh-huh. Actual nominations were lower than  
20 planned nominations because the Haven 400 line rupture  
21 occurred during late November 2007, resulting in the  
22 pipeline curtailing nominations during December, which  
23 reduced actual nominations.

24 Q. Does the response include any information  
25 about the volume of those reductions?

1           A.       No. It does not.

2           Q.       When did Atmos provide information regarding  
3 the volume of those reductions?

4           A.       I'm not exactly sure. They would have been  
5 included along with the invoices. I'm not sure which --  
6 when you get those.

7           Q.       Do you think it would be in DR 132.2?

8           A.       It would be in there, also, but it would  
9 be -- you would have had them whenever you received the  
10 invoices.

11          Q.       When did Atmos provide information regarding  
12 communications with Panhandle or with AEM regarding the  
13 Haven pipeline rupture or the cuts to supply and storage  
14 made in November and December of '07 for Hannibal, Bowling  
15 Green area?

16          A.       I don't recall which DR.

17          Q.       Okay.

18                 JUDGE WOODRUFF: Mr. Berlin, it is now a  
19 quarter 'til five. If this is a convenient stopping point,  
20 we can stop now. If you want to finish something up in the  
21 next few minutes, we can do that.

22                 MR. BERLIN: Actually, Judge, I was going to  
23 move on to another DR.

24                 JUDGE WOODRUFF: All right. Well, then it's  
25 a good point to stop, then.

1                   We'll stop now for the day. We'll resume at  
2   8:30 tomorrow morning.

3                   (The proceedings were adjourned until March  
4   24th at 8:00 a.m.)

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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.

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Lisa M. Banks, CCR  
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