

1 BEFORE THE PUBLIC SERVICE COMMISSION

2 STATE OF MISSOURI

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5 TRANSCRIPT OF PROCEEDINGS

6 Evidentiary Hearing

7 September 14, 2011

8 Jefferson City, Missouri

9 Volume 2

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13 In The Matter Of Atmos Energy Corporation's)
14 2008-2009 Purchased Gas Adjustment and) File No.
15 Actual Cost Adjustment) GR-2009-0417

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18 MORRIS L. WOODRUFF, Presiding

19 CHIEF REGULATORY LAW JUDGE

20 KEVIN D. GUNN, Chairman,

21 ROBERT M. CLAYTON

22 JEFF DAVIS,

23 TERRY M. JARRETT

24 ROBERT S. KENNEY,

25 COMMISSIONERS

26 REPORTED BY:

27 Jennifer Leibach, CCR No. 1108

28 TIGER COURT REPORTING, LLC

A P P E A R A N C E S

JAMES FISCHER, Attorney at Law

LARRY DORITY, Attorney at Law

Fischer & DORITY, P.C.

101 Madison Street, Suite 400

Jefferson City, MO 65101

573.636.6758

FOR: Atmos Energy Corporation

ROBERT S. BERLIN, Legal Counsel

Public Service Commission

200 Madison Street

P.O. Box 360

Jefferson City, MO 65102

573.526.7779

FOR: The Staff of the Missouri Public Service Commission

MARC POSTON, Legal Counsel

Office of Public Counsel

200 Madison Street

P.O. Box 2230

Jefferson City, MO 65102

573.751.5558

FOR: Office of the Public Counsel and the public

1 PROCEEDINGS

2 JUDGE WOODRUFF: Good morning, everyone.

3 Let's go ahead and get started. We're here for a hearing in
4 case number GR-2009-0417, which concerns Atmos Energy
5 Corporation's 2008-2009 purchase gas adjustment and natural
6 cost adjustment.

7 We'll begin today by taking entries of
8 appearance, beginning with Atmos.

9 MR. FISCHER: Thank you, Judge. Let the
10 record reflect the appearance of Larry W. Dority and James M.
11 Fischer on behalf of Atmos Energy Corporation. Our law firm
12 address is 101 Madison Street, Suite 400, Jefferson City,
13 Missouri 65101. Thank you.

14 JUDGE WOODRUFF: Thank you. For Staff?

15 MR. BERLIN: Thank you, Judge. Appearing on
16 behalf of the Staff of the Missouri Public Service
17 Commission, Robert S. Berlin.

18 JUDGE WOODRUFF: All right. And for Public
19 Counsel?

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

22 JUDGE WOODRUFF: All right. I don't think we
23 have any substantial number of premarked exhibits. We only
24 have two witnesses, so we'll just mark them when they come up
25 to the stand. So we'll begin with opening statements,

1 beginning with Atmos.

2 I will say that Commissioner Kenney is with us
3 in St. Louis, I believe, although I don't see him on the
4 camera at the moment. But he will be participating from
5 St. Louis.

6 COMMISSIONER KENNEY: Good morning.

7 JUDGE WOODRUFF: Good morning.

8 MR. FISCHER: Good morning, Commissioner.

9 COMMISSIONER JARRETT: Good morning,
10 Mr. Fisher.

11 MR. FISCHER: Good morning, Judge Woodruff,
12 Commissioners.

13 May it please the Commission. This case
14 involves the Atmos Energy Corporation's 2008 and 2009 ACA
15 audit. Some of the issues in this case that you're going to
16 hear are very similar to the case GR-2008-0364, which is the
17 last Atmos ACA case. And throughout the day, I may refer to
18 the last Atmos ACA case, and that will be the case that I'll
19 be referring to. However, there are also some new issues
20 that are being raised by Staff and Public Counsel.

21 In this case, the Staff is downsizing the
22 record-keeping and apparently seeks to penalize Atmos for the
23 alleged failure of its affiliate, Atmos Energy Marketing, or
24 AEM as I'll refer to it, to maintain records of its
25 underlying costs in the manner that Staff erroneously

1 suggests are required by the Affiliated Transaction Rule.

2 I believe Staff has largely abandoned in this
3 case its allegations of imprudence that were discussed in the
4 last ACA case and is now focusing on its allegations that AEM
5 isn't keeping appropriate records. But as we'll demonstrate
6 in the hearing, Atmos has endeavored to respond to each
7 question posed during the extensive discovery with the most
8 complete and accurate information possible. Additionally,
9 AEM itself has likewise agreed to respond to discovery, even
10 though it's not a party to this case nor is it regulated by
11 the Public Service Commission.

12 The evidence will show that AEM has maintained
13 the appropriate records as required by the Affiliated
14 Transaction Rule and the Marketing Affiliate Transaction
15 Rule. And AEM has provided those records to Staff. In fact,
16 there have -- there has been absolutely no discovery disputes
17 at all in this case and Staff and Public Counsel have not
18 filed any motions to compel or otherwise complained about
19 Atmos and AEM's refusal to answer their questions.

20 The bottom line, Atmos and AEM have fully
21 cooperated with the Staff and Public Counsel throughout this
22 audit. Nevertheless, Staff is arguing that AEM is not
23 keeping track of the costs that are allocated to Atmos as
24 required by the Affiliated Transaction Rule.

25 As Mr. Sommerer testified on page 10 of his

1 direct, the Affiliated Transaction Rules require that
2 regulated corporations and their affiliated companies need to
3 maintain books and records that include, and I'll quote it,
4 documentation of the methods used to allocate or share costs
5 between affiliated entities. This assumes, though, that cost
6 allocation or cost sharing is taking place with respect to
7 those affiliated transactions. In this case, that assumption
8 is simply not correct.

9 Atmos utilizes an RFP process that results in
10 a gas contract. AEM does not allocate any costs to Atmos.
11 In other words, cost allocation is not required in a
12 competitive bidding situation because there are no costs
13 being allocated to the LDC. The LDC merely accepts the
14 lowest and the best bid of a gas marketer and pays for the
15 gas supply. It does not have any allocated costs or assigned
16 costs coming from its affiliate. If AEM was performing the
17 services of, say, a service company or if it was a purchasing
18 agent for the public utility, then it would be conceivable
19 that there would be allocated costs to the public utility.

20 The Atmos Cost Allocation Manual, which is
21 filed annually with the Commission, the Staff, and the Public
22 Counsel, addresses how such costs would be allocated in that
23 type of a situation. But in the case of a gas marketing
24 affiliate like AEM that participates in a competitive bidding
25 process, there are no allocated costs to keep track of

1 because there are no costs that are allocated from the gas
2 marketer to the LDC.

3 AEM has provided Staff with information
4 regarding its underlying cost for the gas and also its
5 overheads. But Staff apparently is not satisfied with the
6 format of this information. However, there's nothing in the
7 Affiliated Transaction Rule, or anywhere else that I'm aware
8 of, that mandates a particular format for keeping track of
9 the underlying cost of gas.

10 Staff's whole theory in this case that it does
11 not have the allocated costs from AEM is simply incorrect
12 since there are no allocated costs involved. The Staff's
13 theory of the case is therefore flawed and the Commission
14 should reject Staff's attempt to penalize Atmos by reducing
15 its gas costs by \$337,226 because AEM does not have
16 information in the format referred by the Staff.

17 The Commission should also note that Staff has
18 not filed a complaint against Atmos or AEM under the
19 Affiliated Transaction Rule. Instead, Staff seeks to reduce
20 Atmos' gas costs by the same amount as the profits of AEM
21 because of AEM's alleged failure to keep its records in the
22 format desired by the Staff.

23 Now, even if there was a problem with the
24 record-keeping at AEM, which the record's going to
25 demonstrate there's not, the penalty being proposed by Staff

1 for Atmos is not reasonable or authorized by law. Under
2 Staff's approach, the penalty proposed by Staff is tied
3 directly to the level of profits made by AEM on these
4 transactions. If AEM had made profits that were, say, ten
5 times greater than what they made, say \$3.4 million rather
6 than \$340,000, under Staff's approach, the Staff's penalty
7 would be to take \$3.4 million for failure to keep the same
8 records. This approach is unreasonable and it does not
9 follow the statutes related to penalty actions.

10 During this ACA period, like previous ACA
11 periods, Atmos used a formal competitive bidding process to
12 solicit bids from numerous unregulated gas marketers for the
13 company's gas supplies in all of the various areas in
14 Missouri. The formal competitive bidding process used by
15 Atmos is fully described by the testimony of Becky Buchanan,
16 which you'll hear from in a few minutes.

17 Two of the gas supply contracts that were in
18 effect during this ACA period were awarded to Atmos Energy
19 Marketing, or AEM, an affiliated gas marketer. AEM submitted
20 the lowest and the best bid for the gas supplies for the
21 Hannibal and the Butler regions during the 2008-2009 ACA
22 period. And these are the only contracts that are at issue
23 in this case. And the only ones that apparently Staff is
24 seeking a penalty regarding.

25 AEM did not win the bid in the other areas of

1 the state which make up a substantial majority of Atmos' load
2 in Missouri. In these areas, other marketers produced the
3 lowest and the best bid and they won the bid.

4 In this case, Staff is not proposing any
5 disallowances related to the other gas marketers that
6 submitted the lowest and best bids in the Kirksville,
7 Piedmont, Arcadia, Jackson, and the other southeast Missouri
8 areas. In other words, Staff is not proposing to disallow
9 any costs associated with AEM's competitors; Laclede Energy
10 Marketing, Shell Trading, ConocoPhillips, CenterPoint, BP
11 Energy Company, Anadarko, or Tedesco Marketing.

12 I think Staff apparently recognizes that
13 Atmos' competitive bidding process produced contracts in
14 these regions that were prudent and reasonable. In these
15 areas, these contracts represented the lowest and the best
16 price available to Atmos and its customers. And the record's
17 going to reflect, I think, that these contracts are very much
18 in line with the costs that were produced by the AEM bids.

19 Even though Atmos used the same competitive
20 bidding process for the Hannibal and Butler regions, Staff
21 proposed disallowances in the Staff recommendation because
22 the contracts were awarded to AEM, an affiliate of Atmos.
23 And as I understand the Staff's position, Staff is not
24 asserting that Atmos was imprudent by accepting the lowest
25 and the best bid, even though it was from an affiliate.

1 Of course, Atmos is contractually obligated to
2 pay the full amount included in the AEM contracts that were
3 accepted after the formal competitive bidding process. And
4 the AEM bids were the lowest and the best bids available to
5 Atmos and its customers in those areas.

6 In their original Staff recommendation, Staff
7 recommended a disallowance of \$413,165 for the Hannibal area,
8 and \$81,852 for the Butler area. In the Staff's direct
9 testimony, however, their disallowance was slightly reduced
10 to \$401,226.61. In their surrebuttal testimony, Staff again
11 revised its proposed disallowance to take into account
12 \$64,000 of overheads of AEM. So the Staff has revised its
13 disallowance in what we're talking about, as I understand it
14 today, is a total penalty or a total disallowance of \$37,226.

15 In its revised Staff disallowance, Staff is
16 proposing to lower the costs of gas that are passed through
17 to consumers by the same amount as those profits of AEM on
18 the transactions of the Hannibal and Butler region. Again,
19 the basis for this adjustment, this penalty, as I understand
20 it, is that AEM has not maintained appropriate records under
21 the Affiliated Transaction Rule.

22 Now, if Atmos had rejected the AEM low bids
23 and accepted higher bids from other bidders, then I suspect
24 Staff would be -- or Atmos would be facing a different Staff
25 prudence allowance for its failure to accept the lowest and

1 the best bid. If the supply contract had not been awarded to
2 the lowest cost bidder, which happened to be the affiliate,
3 but instead had been awarded to the second or third place
4 bidder, the annual costs would have increased.

5 In the first -- April, 2008 through March of
6 2009, they would have increased by about \$235,000. For the
7 2007 period, they would have increased by almost \$300,000.
8 Atmos tried to save its customers an additional \$500,000 or
9 so during these periods by accepting the lowest and the best
10 bids by its affiliate. It's now facing disallowances by
11 Staff in this case and in the previous case, GR-2008-0364,
12 because it decided to do so.

13 I just ask the Commission, again, the same
14 question I asked in the last case: Is this the time of
15 perverse incentive that the Commission wants to build into
16 the PGA process? On its face, does it make good policy
17 sense? The only difference between the circumstances in the
18 Hannibal and the Butler areas, and in the rest of the service
19 areas, is that AEM happens to be an affiliate of Atmos Energy
20 Corporation, and AEM won the competitive bidding process in
21 the Hannibal and Butler regions.

22 I think it's important, again, to emphasize
23 that AEM is an unregulated gas supplier in competition with
24 numerous other unregulated gas suppliers seeking to win the
25 business of Atmos Energy Corporation in Missouri. AEM is not

1 an agent of Atmos Energy Corporation seeking to obtain gas
2 supplies for Atmos. And AEM does not allocate or assign any
3 costs to Atmos.

4 This case involves one issue that, of course,
5 is traditionally heard in ACA cases. Was Atmos --

6 (Interruption from the Polycom.)

7 JUDGE WOODRUFF: I apologize for that. We've
8 been having some technical difficulties with the Web cast.
9 Hopefully that's the only time we'll be interrupted with
10 that.

11 MR. FISCHER: The first question I think the
12 Commission will be looking at is: Were Atmos Energy
13 Corporation's purchasing practices prudent during the ACA
14 period? Based on the evidence, it's clear that Atmos
15 accepted the lowest and the best bid from AEM.

16 (Interruption from the Polycom.)

17 MR. FISCHER: And that was prudent. And it
18 produced the lowest cost for gas supplies in the Hannibal and
19 the Butler areas. And I don't think the Staff or the Public
20 Counsel are really quarreling with that. They accepted the
21 lowest bid, that's what they should have done, and it
22 produced the lowest cost of gas possible.

23 But this case also presents several issues
24 that were also issues in the last ACA case, which are
25 awaiting decision by the Commission; whether the Affiliated

1 Transaction Rule requires that a regulated LDC like Atmos
2 lower its gas supply costs in the PGA ACA process by the same
3 amount as the profits of an affiliated gas marketer that
4 provided gas supplies after a formal competitive bidding
5 process?

6 Now, as I understand the testimony of
7 Mr. Sommerer, he is not advocating and Staff is not
8 advocating that the Affiliated Transaction Rule on its face
9 requires that the Commission lower the gas supply cost by the
10 same amount as the profits of the affiliated gas marketer.

11 However, because Staff believes that AEM did
12 not keep the appropriate records of its underlying cost as
13 solely defined by Staff, then the Commission should penalize
14 Atmos by lowering the gas cost by an amount equivalent of the
15 profits of AEM on those particular transactions. Therefore,
16 the legal issue I think that I've got on the board here is:
17 Should Atmos be assessed a penalty of \$337,000 because AEM's
18 alleged failure to maintain records in the format desired by
19 Staff?

20 Now, in this case, there may be a suggestion
21 by some parties that Atmos should have purchased its own gas
22 supplies directly without going through a competitive bidding
23 process to obtain its gas supplies from competitive gas
24 marketers. In other words, some may suggest that Atmos needs
25 to change its business model and revert back to the days

1 before the FERC restructured the gas markets in Order 636.

2 Before the gas markets were restructured to
3 introduce more competition and market forces into the
4 process, LDCs like Atmos would enter into long-term contracts
5 for natural gas directly with gas producers. And the
6 competitive gas marketers were pretty far and few between.
7 But as the Commission knows, this model was abandoned in
8 favor of the current market structure that relies upon
9 competition to produce the most efficient results for
10 customers.

11 So this may be a new issue for the Commission
12 in this case. Should the Commission require Atmos to change
13 its business model and require it to abandon the practice of
14 relying upon competitive bids from gas marketers for its gas
15 supplies, and instead require Atmos to hire the necessary
16 personnel that it can perform the function of acquiring the
17 gas supplies and upstream transportation services?

18 Now, clearly from our perspective, this result
19 would infringe upon management's prerogative to run the
20 company. It would also be inconsistent with the Commission's
21 own gas marketing rules and the FERC's orders which introduce
22 competition into the gas markets. But this appears to be one
23 of the natural consequences, whether intended or not, of
24 adopting Staff's position that Atmos should be required to
25 reduce its natural gas costs by the same amount as the profit

1 of AEM that may have -- that AEM may have obtained from these
2 particular transactions. And treat AEM, basically, as if it
3 was really a part of Atmos, the regulated LDC.

4 Now, this would be a radical change in the
5 business model or the market structure that has been used by
6 the natural gas industry since the 1980s. That's when FERC
7 introduced these orders beginning with 636 that restructured
8 the industry.

9 So in conclusion, I would just ask the
10 Commission again to reject the Staff's proposed \$337,000
11 affiliated transaction adjustment and penalty in this
12 proceeding. I appreciate your attention and would entertain
13 any questions you might have. Thank you very much.

14 COMMISSIONER KENNEY: I have a question.

15 JUDGE WOODRUFF: All right, Commissioner
16 Kenney.

17 COMMISSIONER KENNEY: Unless there's somebody
18 else in the room. I don't know who's in there.

19 JUDGE WOODRUFF: Commissioner Jarrett is here.

20 COMMISSIONER KENNEY: My question is a legal
21 question, and it's regarding the burden of proof. So my
22 question is: Who bears the burden of proof in a PGA
23 proceeding? Is there a presumption of prudence that Staff
24 bears the burden of demonstrating by a preponderance of the
25 evidence that the gas purchases were imprudent, or is the

1 burden on the company to demonstrate that its PGA rates are
2 just and reasonable?

3 MR. FISCHER: Yeah, thank you, Commissioner.
4 The Associated Natural Gas case sets out that standard and it
5 was also an ACA case just like this case. In that case, the
6 courts have said that there is a presumption of prudence for
7 the public utility and it's up to other parties to raise a
8 serious doubt regarding that the purchases of gas or whatever
9 the transaction is before that burden shifts back to the
10 public utility. Much like the power plant cases that you're
11 very familiar with where there is a presumption of prudence,
12 a serious doubt needs to be raised and then it gets shifted
13 back.

14 Now, I believe Staff will try to take the
15 position that perhaps because this is an affiliated
16 transaction, this doesn't apply. But that's not what the
17 Associated Natural Gas case said. They involved an
18 affiliated transaction.

19 COMMISSIONER KENNEY: Then a corollary to that
20 standard, then, is it sufficient to raise a serious doubt --
21 is it -- is it in and of itself the fact that these are
22 affiliated transactions, is that enough in and of itself to
23 raise sufficient doubt as to the prudence of the
24 transactions?

25 MR. FISCHER: Absolutely not when you're in a

1 situation like this where you have a competitive bidding
2 situation.

3 COMMISSIONER KENNEY: So the competitive --
4 the fact that it's a competitive bidding, and I'm assuming
5 these are sealed bids and you don't know who you're selecting
6 until after they're opened?

7 MR. FISCHER: Well, no, the company is able to
8 see, I believe, and we can ask the witness, who the people
9 are that are bidding and what their -- what their proposals
10 are. And I suppose that would include whether it happened to
11 be the name of the affiliate or somebody else. But in many
12 cases, the affiliate does not win the bid. It's just
13 whenever they have the lowest and the best bid that they were
14 selected.

15 COMMISSIONER KENNEY: Okay. And let me ask a
16 second question. Could Atmos have purchased the same gas
17 supplies from itself in an arm's-length transaction from the
18 same suppliers that AEM purchased from?

19 MR. FISCHER: That goes to the business model
20 question, I suppose. We can ask the witness that --

21 COMMISSIONER KENNEY: Okay.

22 MR. FISCHER: -- but under the current
23 structure that we have, we don't have the personnel and the
24 capability of doing that. We have always relied on going out
25 to the gas marketers. In years gone by LDCs used to do that,

1 and I suppose the business model could be changed, but that
2 was restructured in the '80s and has been abandoned by the
3 industry. But that essentially is, I think, what one of the
4 issues will be.

5 COMMISSIONER KENNEY: But what you're saying
6 is that the personnel doesn't exist under the current
7 structure to do that?

8 MR. FISCHER: That's correct.

9 COMMISSIONER KENNEY: Okay. That's all the
10 questions I have. Thank you.

11 MR. FISCHER: Thank you.

12 JUDGE WOODRUFF: Thank you. We'll move on,
13 then, to opening from the Staff.

14 MR. BERLIN: Okay. Good morning, may it
15 please the Commission.

16 This is an ACA case, as Mr. Fischer just
17 described. Actual cost adjustment for the period of
18 September, 2008 through August of 2009. And it involves
19 principally Atmos' Hannibal service area, that includes
20 Hannibal, Canton, Palmyra, and Bowling Green. And it also
21 involves a service area in western Missouri service area of
22 Butler.

23 This ACA case is a rate case. It examines the
24 purchased gas cost of the company that are a pass-through on
25 the utility's bill to customers. Typically in a rate case,

1 the regulatory compact has been that the utility does not
2 mark up gas costs. Gas costs make up between 70 and 80
3 percent of the customer's bill. And one of the
4 distinguishing characteristics of this case, an ACA case, as
5 opposed to a general rate case, cost of service type of rate
6 case, is that in this case, there is no operation of law
7 date. The utility has already collected the revenues from
8 the ratepayers in this case.

9 Now, Staff's opening statement is going to be
10 an overview of Staff's case and an overview of what the
11 evidence will show in both of the pre-filed and the live
12 testimony at hearing today. What I'm going to do in my
13 overview is to give you a bit of background of this case, how
14 it relates to the last case. I'll discuss the applicable law
15 and the affiliate rules, briefly cover an explanation of very
16 basic terms just so that we're all on the same page, as this
17 is the gas industry and has its own unique lexicon, and then
18 I will discuss and explain the relief requested by Staff, the
19 proposed disallowance.

20 I'll discuss how Atmos failed to meet its
21 legal burden to demonstrate the reasonableness of its gas
22 costs. I'll do it by explaining how the RFP and the bid
23 award process is flawed because of the results that it
24 produced in this supply period. And I'll explain how the
25 transaction confirmation, which is the supply agreement

1 between Atmos and AEM, allowed AEM the ability to set its own
2 terms of service. And then I will wrap up with a brief
3 summary.

4 In the ACA period, Staff's prudence review
5 examined three areas of the company's purchasing activities.
6 The gas purchasing practices and its decisions were examined,
7 the reasonableness of its hedging plans, and the reliability
8 analysis of estimated peak day and requirements and capacity
9 levels. What's at issue in this case is the prudence
10 associated with Atmos' gas purchasing practices and its gas
11 purchasing decisions with its affiliate.

12 Staff's recommendation in this case was filed
13 December 30th of 2010. In a typical ACA review, Staff
14 conducts what is termed as a compliance-type of audit, of gas
15 purchasing practices and decisions made by the regulated
16 local gas distribution company, which we call the LDC.
17 Usually that prudence review involves the purchasing
18 decisions made between the LDC and an independent third-party
19 supplier.

20 This is not a typical ACA review because the
21 LDC has chosen to buy gas from its unregulated sister
22 affiliate company, AEM, or Atmos Energy Marketing. This
23 changes the complexion of the audit because this is not an
24 arm's-length transaction. The audit becomes much more
25 extensive and it becomes much more detailed. It's

1 essentially an audit that tries to peel back the layers of an
2 onion so that the Commission, the Staff, can scrutinize the
3 transaction as it is required to do so by law.

4 The audit examines whether the LDC has
5 conferred any advantages or preferences or treatment to the
6 affiliate that would increase its overall corporate profits
7 in a way that would not otherwise be available to an
8 unaffiliated supplier.

9 This -- this slide brings you onto the ground
10 to show you a little bit of the physical characteristics of
11 this case. Atmos uses the Panhandle Eastern Pipeline as its
12 main transport into northeast Missouri. I'd like to -- and
13 I'd like to just draw some distinctions so that this orients
14 you.

15 This is the panhandle line, and you see a
16 cross mark. That is the demarcation point between the market
17 zone, which is the market area or the customer area served
18 off the pipeline by Atmos. Then there is the field zone.
19 And that demarcation point is at Haven, Kansas. The field
20 zone is the production area, or the supply basin. The gas
21 comes from the Production Field Zone and the goal is to get
22 it to Haven. That is the primary receipt point for the gas
23 supplies going into northeast Missouri and Butler.

24 Now, this case is different because Atmos bid
25 out a primary receipt point at Haven, but allowed AEM to

1 provide to supply it a secondary receipt point on the
2 pipeline around Louisburg. In the last case in the record,
3 we talked about that secondary receipt point, and I believe
4 it's pretty open that -- in the record that it was the Pony
5 Express Line. But it is the secondary receipt point, it is
6 the point of receipt of supplies that Atmos used with its
7 affiliate, AEM. That gas is transported along the pipeline,
8 along AEM's firm contracts up into northeast Missouri. You
9 see over here on the far right-hand side, this is the
10 Hannibal city gate, and I believe that is the Bowling Green
11 city gate. That is how the gas moves along the pipeline
12 under the supply agreement to the city gate and on to the
13 customer.

14 It's important to just review the corporate
15 structure of Atmos Energy Corporation, and this slide shows
16 you that Atmos Energy, the regulated utility in Missouri, is
17 broken into two different components -- actually, three, but
18 the two main components. The first one is the natural gas
19 utility operating divisions. This is the regulated side of
20 Atmos Energy Corporation. This is the side that we know,
21 this is the side that is here today.

22 Missouri falls under the mid-state's operating
23 division. And I understand that western Missouri service
24 area, which is a small service area, does fall under the
25 Colorado-Kansas operating decision, but the decisions are

1 principally all made here at the mid-state's operating
2 division of Atmos Energy Corporation.

3 And as I said, Atmos Energy Corporation has a
4 non-regulated side of the business called Atmos Energy
5 Holdings in which there are several LLCs. The LLC we are
6 interested in is Atmos Energy Marketing, LLC. Atmos Energy
7 Marketing is a gas marketer. It is not regulated by the
8 Commission.

9 Now Atmos, by its own admission on its web
10 site, is the largest, pure natural gas distribution company
11 in the United States. Atmos serves some 3.2 million
12 customers across the country. And what I think is
13 particularly interesting is that Atmos has two different gas
14 buying groups. They have in the mid-states, on the regulated
15 LDC side of the business, a gas buying department. On the
16 non-regulated side of the business, for AEM, they also are in
17 the business of buying and brokering gas supplies.

18 The testimony from Atmos in the last case and
19 in this case seems to show that Atmos says it does not have
20 the expertise, the skills, or special knowledge in its
21 regulated gas buying department to access a natural gas
22 market or to access the financial markets that would
23 effectively supply LDC customers. It appears from the
24 testimony that Atmos' business model seems to have sort of a
25 skeletal buying operation in the regulated side of the

1 business. And that the real expertise in gas buying sits
2 over at AEM. This is a cause for concern by Staff. Staff
3 sees no special or unique value to the gas supply deals on
4 the part of AEM.

5 This slide shows you the relationship between
6 this case and the last case that we litigated here March 23rd
7 and 24th of this year and is pending before the Commission,
8 that is GR-2008-0364 and the case today GR-2009-0417, which
9 involves a 2008-to-2009 ACA period.

10 You can see by this chart that the ACA periods
11 run from September to August. This ACA period runs from
12 September, 2008 to August, 2009. In the last case, in the
13 364 case, there was a proposed affiliate transaction
14 adjustment of \$308,000. And in addition, that case -- what
15 makes that case a little bit different is that Staff had
16 presented evidence as to some reliability adjustments based
17 upon the failure of AEM to meet its supply commitments. That
18 was a range of some 50- to 80-some thousand dollars. And
19 that has been briefed in that case.

20 But overall, there is a \$308,000 proposed
21 disallowance. And that reliability adjustment, they're not
22 additive. So just to clear that up in the 364 case. That
23 \$308,000 in the last case runs the entire period from
24 September, 2007 to 2008. That's different than in this case
25 because Staff's proposed adjustment of \$337,000 runs from

1 September of 2008 through the end of March, 2009.

2 Below in the middle here of this slide, you
3 see the supply agreements. You'll note that each ACA period
4 of Atmos has two different supply agreements. We call them
5 either RFP periods or supply agreements. The RFP period
6 brings on another supply agreement. But in any event,
7 there's two supply agreements. The supply agreement at issue
8 here in this case actually started in the last case and ran
9 for five months. In the last case, we called that the second
10 RFP supply agreement period because, as I said, there's two
11 different supply agreements in each ACA period.

12 The first RFP supply agreement and the
13 agreement on which our proposed adjustment is based, the
14 first RFP period runs for seven months in this ACA period.
15 And of course, as I mentioned, it started in the last five
16 months of the last ACA. So there is evidence in the record
17 about that RFP supply agreement in the last case. There is a
18 second RFP period in this ACA case that began in April, 2009
19 and ran for the remaining five months of the '08-'09 ACA
20 period.

21 I want to emphasize this slide because I think
22 it's very important to understand how the RFP periods, the --
23 that bring a supply agreement, the RFP supply agreement
24 periods, how they interrelate with the ACA. And this is why
25 this case is very closely tied to the last case.

1 I'm going to discuss the law that applies.

2 Section 393.130.1 requires that all charges for gas service
3 must be just and reasonable. And again, this is a rate case.
4 And the justness and reasonableness of the gas purchase costs
5 are what is at issue today. Unlike the traditional cost of
6 service rate case and general rate case that affects only 25
7 or so percent of a customer's bill, as I mentioned, this ACA
8 case affects approximately 70 to 80 percent of the customer's
9 bill.

10 There's no operation of law date in this case.
11 It is different than a general rate case. And again, the
12 utility has already collected its charges. If the Commission
13 were to approve the proposed disallowance, that proposed
14 disallowance would go back as a credit to the ratepayers.

15 Mr. Fischer made mention of the prudence
16 standard. And you'll have to bear with me because I -- I
17 want to read this. I think it's very important that we
18 understand what the ANG case says about the prudence
19 standard. "A utility's costs are presumed to be prudently
20 incurred. However, the presumption does not survive a
21 showing of inefficiency or improvidence. Where some other
22 participant in a proceeding creates a serious doubt as to the
23 prudence of an expenditure, then the applicant has the burden
24 of dispelling these doubts and proving the questioned
25 expenditure to have been prudent. The test of prudence

1 should not be based upon hindsight, but upon a reasonableness
2 standard. The company's conduct should be judged by asking
3 whether the conduct was reasonable at the time, under all the
4 circumstances, considering that the company had to solve its
5 problem prospectively rather than in reliance on hindsight.
6 In effect, our responsibility is to determine how reasonable
7 people would have performed the task that confronted the
8 company."

9 Now, this case, as I mentioned, is made much
10 more complicated because this involves an affiliate. And
11 because it involves an affiliate, it brings in this
12 Commission's affiliated transaction rules 40.015 and 40.016.
13 The purpose of the Affiliated Transaction Rule is to prevent
14 the regulated utility from subsidizing their non-regulated
15 operations. That's the Affiliated Transaction Rule, or .015.

16 The purpose of the Marketing Affiliate
17 Transactions Rule, which principally applies in this case,
18 sets forth the standards of conduct, the financial standards,
19 evidentiary standards, and the record-keeping requirements
20 applicable to all Missouri regulated gas corporations that
21 engage in marketing affiliated transactions. This rule is
22 applicable to Atmos because it has engaged in affiliated
23 transactions with its unregulated affiliate, AEM.

24 There's some key requirements of the
25 Affiliated Transactions Rule. First, it requires records on

1 cost allocations. Records of cost allocations to the
2 transaction and records on cost allocations that are
3 allocated away from the transaction. It also requires
4 records on the cost methodology used. It requires the
5 utility to buy at the lower of the fair market price or the
6 fully distributed cost to the utility. That's called the
7 asymmetrical pricing provision.

8 There are also some anti-discriminatory
9 standards in the rule that essentially say no advantage or
10 preference or treatment should be provided to the affiliate
11 that is not otherwise provided or would otherwise be provided
12 to an independent third-party supplier.

13 Our rules do not modify existing legal
14 standards. Our Affiliated Transaction Rule was upheld by the
15 Missouri Supreme court in 2003 in which the Missouri Supreme
16 Court articulated in its decision that a regulated utility
17 has both the opportunity and the incentive to maximize its
18 rate of return and to maximize its profits. And so this is
19 why this rule is so very important.

20 Our Affiliated Transactions Rule provides for
21 transparency in the affiliated transaction that took place.
22 There's a great deal of case law on affiliated transactions.
23 Throughout the United States, it is recognized that a public
24 utility's dealings with affiliates require a thorough
25 investigation and close scrutiny by a public utility

1 commission. And it is generally held that the utility bears
2 the burden of proving that expenses incurred in transactions
3 with affiliates are reasonable.

4 The case law says in an affiliated
5 transaction, there is no presumption of reasonableness.
6 Reasonableness is all about what the prudence review is
7 about. That's what we do in a prudence review is we look for
8 reasonableness. The burden is on the utility to demonstrate
9 the reasonableness of its gas purchases.

10 And I think it's also very important to note
11 that it is the company that controls the information that it
12 keeps. The company controls who keeps the information, the
13 company controls where the information is kept. The company
14 controls the naming of the document for the record. The
15 company controls what information it provides to Staff. And
16 getting to the business processes, the company controls how
17 its business processes and its business model work to comply
18 with our affiliate rules. That all falls under the ambit of
19 company management.

20 This law is so well established and so well
21 settled that services provided by an affiliate are described
22 in one of the leading textbooks on the process of
23 rate-making, specifically volume 1. The services provided by
24 the affiliate, unlike ordinary expenses of a regulated
25 company, expenses paid to an affiliate, do not carry a

1 presumption of reasonableness. The burden is on the company
2 to prove their reasonableness. That's in a textbook.

3 I'm going to briefly mention some explanation
4 of basic terms. I'll go through it rather quickly, but this
5 is all to kind of bring you on the same page as to the kind
6 of terms you need to be familiar with in this case.

7 There's a supply-only agreement in effect for
8 Hannibal and for the Butler areas. A supply-only agreement
9 is the type of agreement that is just that. It's a
10 commodity-only agreement. You provide the gas and the
11 company will manage its own transportation and its own
12 storage assets.

13 There's also another type of supply agreement
14 called an asset management agreement. That's a little
15 different. An asset manager manages the company's
16 transportation and its storage assets in a way to utilize
17 excess capacity to provide better discounts on the gas prices
18 it provides to the LDC.

19 Then there is the North American Energy
20 Standards Board. We call it the NAESB. The North American
21 Energy Standards Board has formalized a relationship between
22 parties in the form of a standard NAESB contract. We call it
23 the NAESB base agreement. I guess the way to put the NAESB
24 base agreement into a proper perspective is that it's kind of
25 like a UCC for the gas industry. Atmos Energy Corporation's

1 supply agreement with its affiliate AEM are covered under a
2 base NAESB contract.

3 Then there's the type of service or
4 performance obligation. There's either firm service or
5 interruptible service. It's as the name implies, firm
6 service is the highest quality of service. There's different
7 priorities of firm service, which you will hear later in this
8 case. And then there's interruptible service, which is that.
9 And that would be a lower reliability and typically a much
10 lower cost of service.

11 Base load gas and swing gas. Base load gas is
12 ordered typically at the end of the month to be provided
13 ratably across every day of the next month. If you have a
14 30-day month, you order 30,000 Mcf per month, then you're
15 going to get a thousand Mcf per day. So it's a ratable-type
16 of supply. Swing gas is ordered today and brought on for a
17 period of days in any amount that the gas buyer deems is
18 needed.

19 I'm going to discuss the relief. And again,
20 this is all based upon Staff's proposed relief. It's based
21 upon, principally, the RFP that Atmos used, its bid award
22 process, and its following supply contracts. With AEM, staff
23 believes that because the RFP and the bid award process with
24 AEM is unreasonable and it's flawed, the Staff has adjusted
25 the gas cost to equal AEM's fair market price of its gas

1 supplies plus its recorded overhead expenses.

2 As Mr. Fischer stated, we originally had a
3 proposed disallowance of some \$401,000. AEM came in after
4 the position statements had been filed and before our
5 surrebuttal testimony had been filed and reported an overhead
6 expense of some \$64,000, which Staff considered and it
7 applied as an offset to the original proposed adjustment.

8 AEM's overhead, as I say, we attributed to the
9 affiliate transaction as an offset. The \$64,000 reported by
10 AEM includes overhead items such as labor -- well, fair
11 travel and entertainment expenses, outside services, and a
12 list of some 16 to 18 specific items that go to make up a
13 total operations and maintenance expense that was allocated
14 by dekatherm.

15 Again, Staff considered that information, even
16 though it was not contemporaneous to the transaction -- it
17 was provided right before surrebuttal was filed, well after
18 the timing of the transaction. But we reviewed it for
19 reasonableness and we applied it as an offset to the proposed
20 disallowance.

21 Now, it's important to note, and Staff found
22 it quite curious in this case that AEM did not include
23 certain expenses. We still don't know why. We want to
24 know -- would like to know why didn't they include allocated
25 income taxes. They didn't include any allocated interest

1 expense. They didn't report or include any assigned return
2 or any profit on the transaction. Had they provided us that
3 information, we would have examined it for reasonableness.
4 And if reasonable, Staff would have applied it back as an
5 offset against its proposed disallowance. But again, this is
6 information provided by the company and we can only go by the
7 information that the company provides to Staff.

8 I would like to just say that what this does
9 is it brings the total proposed disallowance down to 337 --
10 337,000, that breaks out to 261,000 for Hannibal area and
11 76,000 for Butler area.

12 Now, Staff's concern and issues in this case
13 have to do with the reasonableness of the process used to
14 secure these gas supplies. Atmos uses a request for
15 proposal. It is a letter invitation to bid. The RFP
16 contains many different terms and conditions. One example,
17 which I think is quite important, is their Section 5.4 on
18 reliability. "All gas supply is to be firm and warranted,
19 assuring that natural gas supply services will meet all
20 contractual obligations without fail."

21 Now, that is the message that is communicated
22 to a prospective bidder, an independent third-party supplier
23 will get that message along with AEM, if AEM's on the bid
24 list. This request for the proposal, the letter invitation
25 to bid, is sent to 60 qualified suppliers. Bid responses

1 come back, they are evaluated by the company, and they're
2 determined to be either conforming or non-conforming.

3 We established in the record in the last case
4 that a non-conforming bid is just that. It's non-conforming
5 to the requirements, and therefore by definition cannot be
6 considered among the bids. So we strip those out. We only
7 look at, and the company only looks at, the conforming bids
8 as to -- to arrive at the lowest bid.

9 It's important to emphasize what the RFP is
10 not. And I can't overemphasize this. This is a very big
11 distinction. The RFP is not the actual supply contract. The
12 RFP confers no contractual rights. It is the transaction
13 confirmation and the NAESB agreement that govern the
14 contractual obligations between Atmos and its supplier.

15 The RFP is not, as Atmos would like it to be,
16 the end of the prudence review. It just is not. It is just
17 one key part of the prudence review. Because, you know, the
18 RFP is not the sole determinant of fair market price of gas
19 supplies. The RFP is not representative of the actual or the
20 required gas volumes or prices because the RFP uses estimated
21 first of the month and swing gas prices and forecasted
22 quantities.

23 Again, Staff's concern, its big issue, what
24 the evidence will show is that the RFP and the bid award
25 process is flawed. It's flawed because the first RFP in this

1 supply period attracted only three conforming bids out of a
2 pool of 60. That in and by itself, that fact by itself is
3 not determinative, but it's an important fact.

4 We have only three conforming bids. And the
5 winning bid by AEM was \$235,000 -- \$235,000 is the number
6 that separated AEM's bid and the next closest bidder. So
7 there's a big gap between the bid that won, AEM's bid, some
8 \$235,000 separates it from the next closest bidder. Now
9 that's a big number. It doesn't sound like much, but when
10 you look at it being spread across 14,000 customers, that
11 amounts to about \$17 a customer. If we were looking at this
12 issue in terms of a market that is the size of St. Louis,
13 that would be about a ten million dollar difference. So this
14 is a sizable number.

15 As demonstrated in the record in the last
16 case, this did raise Staff's concerns about the RFP. The RFP
17 requested firm and warranted service. But as you heard when
18 I had the panhandle slide up, only AEM bid into a secondary
19 receipt point. The other two conforming bids that were
20 provided bid the primary receipt point.

21 So what we're looking at here are three
22 conforming bids. One, the winner, AEM bid the secondary
23 receipt point. The others bid what the RFP requested, Haven,
24 the primary receipt point. So there's already a distinction
25 between the bid responses.

1 COMMISSIONER JARRETT: Mr. Berlin, I have a
2 question on that. Did the RFP -- you say they were all
3 conforming. So did the RFP allow the bidders to bid into
4 either at their choice?

5 MR. BERLIN: The RFP had a sentence in there
6 that did allow or stated words to the effect that the company
7 would consider a secondary receipt point. That is correct.

8 COMMISSIONER JARRETT: Okay. So the other two
9 bidders could have bid into the secondary receipt point but
10 for some -- whatever reason they chose not to?

11 MR. BERLIN: That is correct.

12 COMMISSIONER JARRETT: Okay.

13 MR. BERLIN: That is correct. To meet what
14 they believed to be the requirements of the bid.

15 COMMISSIONER JARRETT: Thank you.

16 MR. BERLIN: Again, the RFP requested firm and
17 warranted service and that's -- that's a key -- key point.
18 What is the firm and warranted service? Because the RFP in
19 no less than six different places according to Atmos'
20 testimony, say they want firm service.

21 The question becomes, at least this was a
22 concern by Staff, well, boy, they got a good deal when they
23 bid a secondary receipt point. Maybe they should have just
24 been clear and opened up the bidding to the secondary receipt
25 point and see what kind of bids you would get returned. If

1 they're serious about a secondary receipt point, you might
2 attract -- you might specify that more in the bid. You might
3 attract more bidders. But, you know, it's a small part of
4 the RFP. That's just the way it worked.

5 Now, Staff contends this RFP and bid award
6 process is flawed because as well, it allowed AEM to set its
7 own terms of swing gas service. In this supply period --
8 actually, in the ACA period, there's two RFPs. The first
9 RFP, AEM in its contract provides swing gas range from 5,645
10 to 6,945 MMBtu per day. The second RFP supply agreement in
11 this ACA period, the supplier, which is a non-affiliated
12 supplier, which got the same RFP, the same RFP is used
13 throughout the bidding process, bid a gas range of from 0 to
14 10,645 MMBtu per day. We find that to be a very curious
15 distinction because intuitively, one might expect to pay more
16 for swing gas ranging from 0 to 10,000 a day as opposed from
17 5,600 to 6,900 a day.

18 COMMISSIONER JARRETT: Now Mr. Berlin, just so
19 I'm clear, when you're talking about RFP-2 attracting only
20 one conforming bidder out of a pool of 60 suppliers --

21 MR. BERLIN: Yes.

22 COMMISSIONER JARRETT: -- was that conforming
23 bidder AEM?

24 MR. BERLIN: No.

25 COMMISSIONER JARRETT: So this was not even an

1 affiliated transaction?

2 MR. BERLIN: No. What the point here is that,
3 and I'll explain that.

4 COMMISSIONER JARRETT: Okay.

5 MR. BERLIN: The same RFP that is used by
6 Atmos to procure supplies in the last ACA case, this ACA
7 case, both supply periods, the same RFP process is used.
8 Staff's concern is that it attracts different product
9 services, different -- different product services. And we
10 see some flexibility and big differences with the AEM
11 transaction agreements or supply contracts than with the
12 independent third-party contracts.

13 Now, RFP-2 is the supply period, and I believe
14 it goes directly to your question. RFP-2 is the supply
15 agreement, it's the second supply agreement in this ACA case.
16 That was won by a non-affiliate. But this is what signals
17 Staff's concern about the RFP process and the RFP design is
18 that that RFP attracted only one conforming bidder, a
19 non-affiliate. One. It attracted only one bidder out of a
20 pool of 60 qualified suppliers. One. Now -- one. Is that
21 the lowest and the best bid? We don't know. Is it the
22 highest and the worst bid? We don't know.

23 So we have a concern about the process that is
24 being used to select the supplier because obviously it
25 appears that suppliers are viewing the RFP differently and

1 valuing the service differently based upon the results that
2 we see.

3 COMMISSIONER JARRETT: So why isn't Staff
4 alleging that that RFP and those transactions out of that RFP
5 are imprudent?

6 MR. BERLIN: Well --

7 COMMISSIONER JARRETT: Why are they only
8 alleging that the transactions with the affiliate are
9 imprudent? Because you've explained very well that that is a
10 flawed process there. That RFP-2 is a very flawed process
11 and it got one conforming bidder. So why isn't Staff going
12 after that transaction and saying it's imprudent?

13 MR. BERLIN: Staff is concerned about the fact
14 that they're only getting one bidder. Staff has identified
15 that as a concern.

16 COMMISSIONER JARRETT: That's not my question.
17 My question is why isn't Staff alleging that that's
18 imprudent?

19 MR. BERLIN: We have nothing to base it on,
20 other than the fact that we have a problem with the process
21 as it relates to the way in which they selected their own
22 affiliate in the earlier supply agreement using the very same
23 process and the very same RFP and getting only three
24 conforming bidders out of a pool of 60, of which AEM won not
25 by just a little bit or a reasonable amount, but by a huge

1 amount. \$235,000 separates them. And AEM in its supply
2 agreement had the ability to go in and set its own terms of
3 service for swing gas supply. That's -- that's Staff's
4 concern.

5 COMMISSIONER JARRETT: Did the bid -- the
6 conforming bidder that wasn't AEM in RFP-2 get to set its own
7 gas and swing supply, like AEM did in those contracts?

8 MR. BERLIN: Mr. Sommerer may be able to
9 address that a little bit better than I can. We -- we are
10 looking at the RF -- we're looking as RFP as it goes out and
11 then the type of contract that is in place between Atmos and
12 the supplier. So I'd have to kind of defer to Mr. Sommerer.

13 COMMISSIONER JARRETT: You seem -- you seem --
14 you seem to know that AEM got to set its own terms. I'm
15 asking about the other one that you cite here. Are they
16 allowed to set their own terms, too? I mean, I can
17 understand if -- if AEM got to set their swing gas at the
18 same and the other one didn't. Okay. Now you can argue
19 maybe there's some sort of unfair advantage. But I don't
20 understand.

21 MR. BERLIN: I believe that the exhibits that
22 I'm going to go through today will clarify that --

23 COMMISSIONER JARRETT: Oh, okay.

24 MR. BERLIN: -- for you. I'm going to be
25 addressing that for you today.

1 Now, there's another key component here of
2 Staff's concern over the process. In the first RFP, the AEM
3 transaction confirmation, AEM was not contractually obligated
4 to provide firm gas. The service level was left blank for
5 both base load and swing gas requirements. This was brought
6 out in the last case.

7 The blank service level basically means
8 there's no contractual rights. There's no base load quantity
9 listed in the agreement. When we went and we looked at the
10 base NAESB agreement between Atmos and AEM, the base NAESB
11 agreement allows either firm or interruptible gas supplies.
12 So, this transaction confirmation, which is a supply
13 agreement between AEM and Atmos, has no performance
14 obligations in terms of the service.

15 It's important because transaction
16 confirmations list the volumes and MMBtu per month and they
17 tend to vary each month. The transaction confirmation here
18 with AEM does not specify the maximum base load volume in
19 MMBtu per day, and you'll see this today in the exhibits that
20 I have.

21 In summary, based upon all the information
22 that Staff has received from the company, Staff believes that
23 because the RFP and the bid award process with AEM is
24 unreasonable and flawed based on the results that it
25 produced, Atmos has not met its burden in demonstrating that

1 its affiliated gas costs are just and reasonable. Therefore,
2 the Staff recommends the Commission adjust Atmos' gas costs
3 by \$337,000.

4 And that concludes my opening statement. If
5 you have any questions.

6 JUDGE WOODRUFF: Thank you, sir. Questions
7 from the Commissioners? All right. Thank you. Commissioner
8 Kenney?

9 COMMISSIONER KENNEY: So I just want to be
10 clear -- thanks, Mr. Berlin. It's the -- it's not the
11 absence of any particular records or a flaw in the
12 record-keeping. It's a flaw in the RFP and the bid process
13 itself that leads to the Staff's determination that the PGA
14 rates are not just and reasonable? Is that restating Staff's
15 position correctly?

16 MR. BERLIN: That -- that is -- that is
17 correct. Though I will say that Staff does have a concern
18 with the timeliness of the records, the costs that AEM kept.
19 But we believe there's great room for improvement in
20 record-keeping between a regulated gas company and its
21 marketing affiliate.

22 I will note we do have that concern and
23 it's -- as you know, the Commission's Affiliate Transactions
24 Rule requires that the Commission approve a Cost Allocation
25 Manual. We do not have an approved Cost Allocation Manual

1 with Atmos by the Commission.

2 So that -- and the reason I bring that up is
3 because that addresses our rule -- that would address our
4 rule -- the rule and it addresses the need for
5 record-keeping. So, I think that's a positive note for the
6 future when we start looking at these -- these CAMS and the
7 company starts submitting them for Commission approval. So
8 that should resolve some of the record-keeping requirements,
9 hopefully, in the future.

10 COMMISSIONER KENNEY: Well, will it, or is
11 that a function that's written in the rules themselves? I
12 mean, will the process of the Commission approving the CAMS
13 correct the record-keeping concerns that Staff has, or is
14 there something that needs to be done in revising our rules?

15 MR. BERLIN: I believe that the rules are very
16 good as they -- as they are. I think what needs to be done
17 is that we need to have the Commission approve CAM. The CAM,
18 the Cost Allocation Manual, is the manual that tells the
19 Commission how the utility intends to comply with all of the
20 requirements of the Affiliate Transactions Rule. And we
21 believe that when that can get flushed out, it is Staff's
22 hope and -- Staff's hope that the company will understand
23 that, you know, what specific records it needs to keep so
24 that they don't -- as well as that the company recognizes
25 that the burden is upon them to produce the records, the cost

1 allocation records that are specifically referred to in the
2 affiliate rules.

3 COMMISSIONER KENNEY: Okay. I don't have any
4 other questions. Thank you.

5 JUDGE WOODRUFF: Thank you, Mr. Berlin.
6 Public Counsel?

7 MR. POSTON: Yes, thank you, Judge. I'd just
8 like to state that we support the disallowance recommended by
9 Staff and that Atmos has not met its burden of proving that
10 the AEM contracts are prudent. And we look forward to
11 explaining this in greater detail in post-hearing briefs and
12 we hope the Commission will pay close attention to those
13 briefs. Thank you.

14 COMMISSIONER JARRETT: I have a quick question
15 for Mr. Poston. Are you -- are you -- is Public Counsel
16 basically adopting Staff's rationale and testimony, or do
17 you-all have any other independent thoughts on why it's
18 imprudent?

19 MR. POSTON: At this point, I've read Staff's
20 testimony and I'm supportive of -- of -- of that testimony.
21 In our post-hearing brief, we may raise arguments that are
22 different than what Staff has raised.

23 COMMISSIONER JARRETT: Okay. Thank you,
24 Mr. Poston.

25 JUDGE WOODRUFF: All right. That concludes

1 the opening statements then. We'll take a short break before
2 we come back with the first witness. We'll come back at ten
3 o'clock.

4 (A recess was held.)

5 (Exhibit Numbers 1-HC, 1-NP, 2, 3-HC, and 3-NP
6 were marked for identification by the court reporter.)

7 JUDGE WOODRUFF: All right. We're back on the
8 record and back web casting again. After the break, now
9 we're going to go ahead and take the first witness, which I
10 believe is Ms. Buchanan for Atmos.

11 MR. FISCHER: Yes.

12 (The witness was sworn.)

13 JUDGE WOODRUFF: Thank you very much. You may
14 inquire.

15 DIRECT EXAMINATION

16 QUESTIONS BY MR. FISCHER:

17 Q. Please state your name and address for the
18 record.

19 A. My name's Rebecca M. Buchanan. I work at
20 Atmos Energy, 377 Riverside Drive, Franklin, Tennessee 37064.

21 Q. Are you the same Rebecca Buchanan that caused
22 to be filed in this proceeding certain testimony that's been
23 marked as your direct testimony, Exhibit Number 1-HC and an
24 NP version?

25 A. Yes.

1 Q. And did you also cause to be filed rebuttal
2 testimony, which I believe has been premarked as Exhibit 2;
3 is that correct?

4 A. Yes.

5 Q. And surrebuttal testimony, both an HC version
6 and an NP version, which has been marked as Exhibit 3-HC
7 and 3-NP?

8 A. Yes.

9 Q. Do you have any changes or corrections that
10 you need to make to any of those pieces of testimony?

11 A. No, I don't.

12 Q. And if I were to ask you the questions that
13 are contained in those testimonies today, would your answers
14 be the same?

15 A. Yes.

16 MR. FISCHER: Judge, with that, I would move
17 for the admission of Exhibits 1-HC and NP, 2, and Exhibit
18 3-HC and NP; and tender the witness for cross-examination.

19 JUDGE WOODRUFF: All right. Exhibits 1-HC and
20 NP, Exhibit 2, Exhibit 3-HC and NP have been offered. Any
21 objections to their receipt? Hearing no objections, they
22 will be received.

23 (Exhibit Numbers 1-HC, 1-NP, 2, 3-HC, and 3-NP
24 were received into evidence by Judge Woodruff.)

25 JUDGE WOODRUFF: For cross-examination, we

1 begin with Staff.

2 MR. BERLIN: Judge, do you want us to go to
3 the podium or stay?

4 JUDGE WOODRUFF: As you prefer.

5 MR. BERLIN: Thank you.

6 CROSS-EXAMINATION

7 QUESTIONS BY MR. BERLIN:

8 Q. Good morning. How long have you been employed
9 by Atmos?

10 A. Just received my 20-year award, service award.

11 Q. And could you please restate your job title?

12 A. My current position is manager regional gas
13 supply.

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

15 A. Four years.

16 Q. And could you just describe briefly your
17 current responsibilities?

18 A. Yes. I'm in charge of the east region gas
19 supply. We do the gas procurement, functions for the
20 Kentucky Mid-states division. And that's made up of seven
21 states, including Missouri.

22 Q. Okay. And so you do buy gas for other states
23 than Missouri, correct?

24 A. Correct.

25 Q. Okay. And could you just briefly name the

1 states you buy gas for?

2 A. Yes. Iowa, of course Missouri, Illinois,
3 Kentucky, Tennessee, Virginia, and Georgia.

4 Q. And I believe you stated in the last case
5 you're a certified public accountant?

6 A. I am.

7 Q. And you also filed testimony in GR-2008-0364
8 on the 2007 and 2008 ACA period, correct?

9 A. Yes.

10 Q. And you also appeared before the Commission on
11 that evidentiary hearing back in March?

12 A. Yes.

13 Q. Okay, Ms. Buchanan, I'm going to ask a few
14 questions about your direct testimony. And you do have a
15 copy of it, correct?

16 A. I do.

17 Q. If you'd go to page 2, you state around
18 line 13 that, "A key function of the gas supply department is
19 to assure that Atmos customers receive gas supply that is
20 both reliable and economical;" is that right?

21 A. Yes.

22 Q. And so reliable and economical gas supply is
23 your objective in procuring gas?

24 A. Yes.

25 Q. And you select gas suppliers through a request

1 for proposal process, or RFP process, correct?

2 A. That's correct, the competitive bid.

3 Q. Okay. And the RFP is a letter that goes out
4 to the perspective bidders, correct?

5 A. A rather detailed letter.

6 Q. All right. And so it's an invitation to bid
7 on your supply requirements?

8 A. Correct.

9 Q. And that RFP lists many different
10 requirements, doesn't it?

11 A. Well, it states the parameters of the service
12 that we're expecting proposals on.

13 Q. Okay. And then bidders that want to respond
14 send in their bid responses?

15 A. That's correct.

16 Q. And so this RFP letter and the bid evaluation
17 process is used by Atmos not just in Missouri but other
18 jurisdictions?

19 A. That's correct.

20 Q. And the RFP process is a significant component
21 of Atmos' business model for its regulated LDCs?

22 A. In my gas supply department and my role, yes,
23 it is significant.

24 Q. And while this ACA period covers from
25 September 1, 2008, to August 31st of 2009, you would agree

1 that this ACA period contains two different RFP gas supply
2 periods?

3 A. If you are limiting it to the regions we
4 discussed in your opening statements, the Hannibal, Bowling
5 Green and Butler, I would agree with that.

6 Q. Okay. And so the first RFP supply agreement
7 period in this case started April 1st of 2008? In other
8 words, that first RFP started back in the last five months of
9 the last ACA period?

10 A. That is correct for the Hannibal; not for the
11 Butler.

12 Q. Okay. And you probably recall that we had a
13 lot of discussion on that RFP in the last case?

14 A. Yes.

15 Q. And that RFP ran -- that period ran through
16 the end of March of 2009?

17 A. Yes, for the Hannibal, Panhandle transaction,
18 that's correct.

19 Q. Okay. So that RFP covered about seven months
20 in this --

21 A. Yes.

22 Q. -- period? Now, in your direct, on
23 attachment 2, you list four bidders for the April '08 through
24 the March '09 period. You might want to --

25 A. I have it.

1 Q. And of course that's for Hannibal?

2 A. Correct.

3 Q. Okay. And do you recall during the testimony
4 at that hearing in the prior case, we had established that
5 for those four bidders, three of the four bids were
6 conforming?

7 A. Yes.

8 Q. Okay. And so that means that for the first
9 RFP supply period in this case, and we know that it started
10 in the last case, that there were only three conforming bids
11 out of 60 bid letters to the qualified suppliers?

12 A. Yes.

13 Q. And do you recall from Atmos' testimony at the
14 hearing in that last case, that we had established the
15 difference between AEM and the next conforming bidder at
16 about \$235,000 --

17 A. Subject to check, that sounds about right,
18 yes.

19 Q. Yeah, I can refer you to the transcript on
20 page 72 --

21 A. I'll say that's a reasonable amount, yes.

22 Q. Okay. And so for a small service area of
23 about 14,000 customers, that would be a good-sized number?
24 \$235,000 is a significant number?

25 A. In contrast to the total gas cost, it's about

1 two percent, so I wouldn't characterize it that way.

2 Q. So in your direct, attachment 2, if you go to
3 the next page for the Panhandle/Hannibal area, you list only
4 one bidder for the April '09 through March 2010; is that
5 correct?

6 A. That's correct.

7 Q. And we don't need to identify that bidder --

8 A. Right.

9 Q. -- but there's one?

10 A. There was actually two bids, but one was
11 non-conforming, and we realized that Staff had some concerns
12 about us showing non-conforming bids. So as we added
13 information to this, we left off the non-conforming for
14 future periods.

15 Q. So this is just one conforming?

16 A. One conforming, correct.

17 Q. Okay. Does receiving only one bid response
18 out of 60 letters make a robust RFP process?

19 A. There was a data request on that and --

20 Q. Well, I just want to know if you think it's
21 robust.

22 A. You have to look at the full process and what
23 was happening at that time. So we were not happy that there
24 was only two bids and one was non-conforming --

25 Q. Right.

1 A. -- but we --

2 Q. My question is: Do you believe that to be a
3 robust -- indicative of a robust process?

4 A. Of and by itself, I wouldn't take it that way.
5 I also say that there was approximately nine other responses
6 from bidders who said we're sorry, we're not bidding at this
7 time --

8 Q. Right, but --

9 A. -- but we're interested. So we saw that, yes,
10 there was interest in the RFP process --

11 Q. Okay, Ms. Buchanan, my question is: Do you
12 believe that getting one qualified conforming bid response
13 indicative of a robust process?

14 A. I'd say that you have to look at more things
15 than just that to make a determination if it's robust.

16 Q. All right.

17 A. And that one bid was also --

18 Q. Yeah, I just -- yeah, so you have one bid
19 response, correct? You did get one bid response?

20 A. One conforming.

21 Q. Out of a pool of 60 qualified suppliers?

22 A. I can't remember, it was probably about that
23 many that year.

24 Q. Okay.

25 A. Yeah. I'm not sure.

1 Q. So when you have one conforming bid response,
2 you have no other conforming bid responses to compare it to?

3 A. I did look at it as reasonable compared to
4 historic bids in that area, and we did find that it was
5 comparable in value.

6 Q. But you would agree with me, wouldn't you,
7 that since there, by definition, is only one conforming bid,
8 there's not another conforming bid in that period to look at?

9 A. That's right.

10 Q. All right. Now, let's circle back a little
11 bit and see what constitutes a gas supply contract. Would
12 you agree that the RFP letter is the invitation to bid on
13 supplies that are provided to Atmos?

14 A. Yes.

15 Q. Okay. And again, that RFP informs the bidders
16 of Atmos' requirements?

17 A. Yes.

18 Q. And you would agree that the RFP is not the
19 actual supply contract?

20 A. That's correct.

21 Q. And Atmos does use a standardized contract of
22 common operational terms and conditions developed by the
23 North American Energy Standards Board, or the NAESB?

24 A. We do.

25 Q. Okay. And you refer to this and we refer to

1 this as the base NAESB?

2 A. Yes, we do.

3 Q. And so the base NAESB agreement is part of
4 Atmos' supply agreement with whatever supplier it does
5 business with?

6 A. Yes.

7 Q. Okay. But in the base NAESB, not all of the
8 terms of the supply agreement are set in the base NAESB,
9 correct?

10 A. Yes, that's just the broad conditions that
11 apply to all the suppliers.

12 Q. Okay. And there are certain specific supply
13 agreement requirements that are included in the transaction
14 confirmation between Atmos and its suppliers?

15 A. There are.

16 Q. Okay. Ms. Buchanan, I have -- I'd like to go
17 to your RFP dated February 14th, 2009, for gas suppliers for
18 April 1, 2008. And I believe I have your RFP for that, we'll
19 mark as -- I'm sorry. Yeah, it's April 1, 2008 through March
20 of 2009?

21 A. And we're limiting to Hannibal, the Hannibal
22 one.

23 (Exhibit Number 4 was marked for
24 identification by the court reporter.)

25

1 BY MR. BERLIN.

2 Q. Ms. Buchanan, take a minute and look at it.
3 And if you would, please, just identify that document for me.

4 A. This is the RFP packet that went out to the
5 bidders on list.

6 Q. Okay.

7 A. The potential bidders, I should say.

8 Q. To Hannibal area?

9 A. For the Hannibal area.

10 Q. Okay. And if you would, please, look at the
11 RFP overview section. And if you'd please see attachment 1,
12 it states, "Attachment 1 for details pertaining to Atmos
13 requests for proposal for commodity-only gas supply." Is
14 that correct?

15 A. Yes. I have attachment 1 or Roman Numeral I,
16 yes.

17 Q. Okay. But it does say, Please see attachment
18 1 for details pertaining to gas -- I mean, excuse me --
19 pertaining to Atmos' request for proposal for commodity-only
20 gas supply?

21 A. Yes, in the overview, it says that.

22 Q. All right. And if you would, please, read the
23 RFP Section 3.0, background paragraph starting at our annual
24 purchase requirements.

25 A. "Our annual purchase requirements are

1 approximately 1.8 Bcf. Approximate historical purchase
2 volumes are provided to assist you in the preparation of your
3 proposal. These volumes are informational only and may or
4 may not be indicative of future requirements. See attachment
5 Roman Numeral I and gas supply plans for further usage
6 details and pipeline contract information."

7 Q. Okay. So these volumes are informational only
8 and may or may not be indicative of the future requirements,
9 correct?

10 A. That's correct.

11 Q. Okay. I'd like to go to -- well, just for the
12 record, this is not the actual supplier contract, correct?
13 This is the RFP?

14 A. This is the RFP.

15 Q. Okay. Now I'd like to go to the RFP dated
16 March 13, 2009, for gas supplies April 1, 2009, through
17 March, 2010 for the Hannibal area.

18 MR. BERLIN: This would be marked as
19 Exhibit 5.

20 (Exhibit Number 5 was marked for
21 identification by the Court Reporter.)

22 BY MR. BERLIN.

23 Q. After you've had a chance to look at that,
24 Ms. Buchanan, if you would, please identify the document for
25 me.

1 A. This is the RFP that went out in 2009 -- early
2 2009 for the Hannibal/Bowling Green area.

3 Q. Okay.

4 A. I did want to mention that letter -- the cover
5 letter, it has a specific name and address on there. And of
6 course, that same letter went out to all of the ones on the
7 list.

8 Q. All right. And this is the RFP that
9 eventually was awarded to a non-affiliate supplier, correct?

10 A. This is, yes.

11 Q. All right. And again, if you would, please go
12 to attachment 1. I'm sorry, where it says under section 1,
13 RFP overview. It also says, Substantial -- it's identical,
14 is it not, where it says -- and I'll read it, "Please see
15 attachment 1 for details pertaining to Atmos' request for
16 proposal for commodity-only gas supply."

17 A. Correct.

18 Q. Okay.

19 A. Our RFPs are pretty much the same every year,
20 we just tweak them a little bit as we go along.

21 Q. Okay. So if you would, please read RFP
22 section 3.0 background paragraph, starting at our annual
23 purchase requirements.

24 A. "Our annual purchase requirements are
25 approximately 1.8 Bcf. Approximate historical purchase

1 volumes are provided to assist you in the preparation of your
2 proposal. These volumes are informational only and may or
3 may not be indicative of future requirements. See attachment
4 Roman Numeral I in gas supply plans for further usage details
5 in pipeline contract information."

6 Q. And again, that states that the volumes are
7 informational only and may or may not be indicative?

8 A. Correct.

9 Q. So it's the same language as in the last one?

10 A. It is.

11 Q. Now what I'd like to do is direct you to the
12 NAESB with the affiliate that was in effect during this ACA
13 period.

14 MR. BERLIN: This would be Exhibit 6.

15 (Exhibit Number 6 was marked for
16 identification by the Court Reporter.)

17 BY MR. BERLIN:

18 Q. Okay. Ms. Buchanan, if you'll take a quick
19 minute here, and if you will please identify the document for
20 me. Is this indeed the NAESB agreement that was -- that was
21 in effect during this ACA period?

22 A. Yes, I believe it is.

23 Q. Okay. Thank you. Is it HC?

24 A. That's a tough one. Since it doesn't really
25 contain any terms specific to the gas purchase and sale

1 agreement for that year, I would say that it's okay to be a
2 public document.

3 Q. Okay.

4 A. It's just more of a standardized contract.

5 Q. Okay. I have a few questions for you
6 regarding the base NAESB agreement with AEM. And I think you
7 just stated that this is the NAESB agreement in effect during
8 the time of the supply agreement with AEM in this '08-'09 ACA
9 period?

10 A. Yes, for the period that AEM held the
11 contract.

12 Q. Okay.

13 A. Those months.

14 Q. And was this the -- is this the same base
15 NAESB agreement in effect during the time of the supply
16 agreement with AEM in the prior '07-'08 case?

17 A. Yeah, it was -- it was effective March, 2003.
18 So I would say it was the base NAESB for any contracts
19 entered into from that date forward.

20 Q. Okay. And if you would, please, refer to
21 section 2, definitions. And if you would, refer to the
22 definition of "transaction confirmation" in section 2.27.

23 A. Would you like me to read it or just look at
24 it?

25 Q. Please read 2.27.

1 A. "2.27, transaction confirmation shall mean a
2 document similar to the form of Exhibit A setting forth the
3 terms of a transaction formed pursuant to section 1 for a
4 particular delivery period."

5 Q. Okay. And if you would please refer to the
6 Exhibit A provided with the NAESB agreement, which I believe
7 is referred to as Exhibit A, transaction confirmation for
8 immediate delivery. Are you there?

9 A. Yes.

10 Q. Okay. So this is a sample transaction
11 confirmation, correct?

12 A. Right. You can see that this was drafted in
13 2003, so I think it was just like you said, it was a sample
14 that would then be filled in each year as they were awarded a
15 different contract --

16 Q. Okay.

17 A. -- with the details of that.

18 Q. Does this sample transaction confirmation have
19 a place to indicate the contract price?

20 A. Yes, there's blanks on here for lots of
21 information, and one of them is the contract price.

22 Q. And does it have a place to indicate the
23 delivery period?

24 A. Yes.

25 Q. Does it have a place to indicate the

1 performance obligation and the contract quantity?

2 A. Yes.

3 Q. Do the blocks that refer to performance
4 obligation and contract quantity allow Atmos to specify
5 whether the quantity is firm, fixed, or interruptible?

6 A. Yes, those choices are provided.

7 Q. Okay. And did Atmos have a transaction
8 confirmation with AEM during the time of the supply agreement
9 with AEM in this '08-'09 ACA, which is similar to that in
10 this base contract Exhibit A?

11 A. Yes.

12 Q. I have some questions regarding the actual
13 transaction confirmations with ACA after we've gone over a
14 few other items in this base agreement. If you would, please
15 look at section 3 under performance obligation. Are you
16 there?

17 A. Roman section III?

18 Q. Yes. Are you there?

19 A. Yes.

20 Q. Okay. Could you please read for me
21 section 3.1?

22 A. "3.1, seller agrees to sell and deliver, and
23 buyer agrees to receive and purchase the contract quantity
24 for a particular transaction in accordance with the terms of
25 the contract. Sales and purchases will be on a firm or

1 interruptible basis as agreed to by the parties in a
2 transaction."

3 Q. Does the base NAESB agreement tell me whether
4 the transaction with the supplier is firm or interruptible?

5 A. No.

6 Q. Okay. I'd like to shift gears here a little
7 bit and go to the transaction confirmation with Atmos Energy
8 Marketing that was in effect during this ACA period of
9 September '08 through August '09 for the Hannibal area. And
10 this would be introduced as Exhibit Number 7, which we'll
11 hand out.

12 MR. DORITY: Your Honor, may I inquire of
13 Mr. Berlin? Regarding Exhibit 6, Ms. Buchanan indicated she
14 thought that it could be a public document, but in reviewing
15 it, there is some information on the first page that we would
16 ask to be redacted.

17 So if Mr. Berlin is going to offer the
18 exhibit, we would ask leave to be able to redact certain
19 banking information that's shown on here that we don't think
20 should be in the public record.

21 JUDGE WOODRUFF: That is Number 6?

22 MR. DORITY: Six, yes.

23 JUDGE WOODRUFF: Okay. Well, we'll deal with
24 it when you offer it.

25 MR. DORITY: Okay.

1 THE WITNESS: So this one is definitely
2 confidential, the one that you just handed me.

3 (Exhibit Number 7-HC was marked for
4 identification by the court reporter.)

5 BY MR. BERLIN:

6 Q. Ms. Buchanan, if you would, please identify
7 this document.

8 A. This is a transaction confirmation between
9 Atmos Energy Marketing and Atmos Energy Corp. It appears it
10 is for the period of April, 2008 through March, 2009. And it
11 appears to be the Panhandle/Hannibal area, I believe.

12 Q. Now I'm going to have some questions about
13 that. Is that for the delivery of Haven pool?

14 A. The delivery points are stated as Haven pool
15 in that first section under volumes.

16 Q. Okay. And if you would, please refer to
17 the -- this transaction confirmation with AEM that was in
18 effect during this ACA period for Haven pool. And I believe
19 you just -- did you say that the document is HC?

20 A. Yes.

21 Q. And if -- if my question to you would elicit
22 an HC response, please tell me.

23 A. Okay.

24 Q. For this '08-'09 ACA, this contract would have
25 covered the ACA months of September, 2008 through March,

1 2009; is that correct?

2 A. Yes.

3 Q. And do you recall the prior questions that I
4 asked you regarding the sample transaction confirmation
5 included in Exhibit A of the base NAESB agreement?

6 A. Yes.

7 Q. You may recall that the sample transaction
8 confirmation had a place to indicate the performance
9 obligation or service level and the contract quantity?

10 A. Yes.

11 Q. Can you please show me on this transaction
12 confirmation with AEM where Atmos includes the performance
13 obligation, service level for firm, fixed quantity or firm,
14 variable quantity or interruptible service?

15 A. It looks like they forgot to fill it in.

16 Q. Okay.

17 A. I see a blank there next to service level.

18 Q. Okay. So you agree this transaction
19 confirmation does not specify whether the supply is to be
20 firm or interruptible on any of the three pages in this
21 agreement?

22 A. Right. It looks like it's missing.

23 Q. Okay.

24 A. At least from that spot.

25 Q. Okay.

1 A. Yeah.

2 Q. If you would, please look at the volume
3 requirements of this transaction confirmation with AEM. It
4 refers to monthly volumes, correct?

5 A. Yes, it does.

6 Q. And would you please look at the bottom third
7 of the transaction confirmation where you see a breakdown?
8 And it starts at April 1, 2008, and runs through 2001 of --
9 I'm sorry, it runs through February 1st, 2009.

10 A. On page 1?

11 Q. On page 1.

12 A. Yes, I see it.

13 Q. And you see it. If you would, please look at
14 the December volumes.

15 A. The December volumes. Okay.

16 Q. I'm going to ask you to tell me what the
17 December volume is. Is that HC?

18 A. The quantities are not HC. It's generally our
19 plan volumes which were part of the RFP, which is a public
20 document. So it should be okay.

21 Q. Okay. So the December volume lists 145,700
22 per month, correct?

23 A. Yes.

24 Q. And that is a monthly requirement, right?

25 A. That's the estimate of purchase for the month

1 of December.

2 Q. Does it tell AEM the amount of the daily
3 requirement?

4 A. No.

5 Q. Let's go to page 2 of the transaction
6 confirmation at the bottom. And you see that it lists a
7 daily swing gas requirement?

8 A. I'm sorry, where are we at? In the box that
9 says special conditions or?

10 Q. Yes.

11 A. Okay.

12 Q. Yeah, we're on the special conditions box on
13 page 2, and it lists a daily swing gas requirement of 5,945
14 for December swing gas; is that right?

15 A. No. You really need to read the context of
16 the sentence that it's in. Are you looking at the third
17 bullet point? It says, We can take up to. And then it lists
18 five different amounts. And I assume they're in the same
19 order as the months. So for December, that would be the
20 second amount that you listed, 5,945. That means we can buy
21 up to 5,945 --

22 Q. Okay.

23 A. -- additional swing.

24 Q. Does that list the daily maximum for base load
25 gas?

1 A. Does the swing? No. The base load.

2 Q. But there's no -- in the special conditions,
3 you don't -- do you list the daily maximum for base load gas?

4 A. Let me read it and see. I don't see that
5 addressed in those special conditions.

6 Q. And in looking at the transaction confirmation
7 for base load, there are no minimum or maximum daily
8 requirements listed, are there?

9 A. It's the estimated volumes that are listed,
10 that we would purchase in a month.

11 Q. Okay.

12 A. The contractual volumes actually get set
13 before -- approximately five days before each month when the
14 gas supply specialists turns in his nomination.

15 Q. Okay. But this transaction confirmation for
16 base load, there's no specified minimum or a specified
17 maximum daily requirement listed?

18 A. No, there's not. Not that I can see on here.

19 Q. Okay. Moving on, I'd like to take a look at
20 the transaction confirmation with the affiliate for April,
21 2008 through October of 2009 for Panhandle Field Zone.

22 A. And again, that's confidential.

23 JUDGE WOODRUFF: We'll mark this as 8-HC?

24 (Exhibit Number 8-HC was marked for
25 identification by the Court Reporter.)

1 BY MR. BERLIN:

2 Q. Ms. Buchanan, if you've had a chance to look
3 at this document, would you agree with me that this is the
4 transaction confirmation with AEM for the April, 2008 to
5 October, 2008 period for Panhandle --

6 A. Correct.

7 Q. -- Field Zone pool?

8 A. Yes.

9 Q. And if you would, please refer to this
10 transaction confirmation, I have a few questions about it.
11 For this '08-'09 ACA period, this contract covered the ACA
12 months for April, 2008 through October, 2008; is that
13 correct?

14 A. This transaction confirmation, yes.

15 Q. Okay. And do you recall from my prior
16 questions regarding the sample transaction confirmation
17 included in Exhibit A on the base NAESB agreement? Do you
18 recall those questions?

19 A. Yes.

20 Q. That transaction confirmation agreement had a
21 place to or service level, such as firm or interruptible, and
22 the contract quantity such as fixed quantity or variable
23 quantity. You recall that, correct?

24 A. I do.

25 Q. Okay. If you could, please show me on this

1 transaction confirmation with AEM, Exhibit 8-HC, where Atmos
2 includes the performance obligation or service level for firm
3 fixed quantity or firm variable quantity or interruptible.

4 A. Again, I see that they've left the blank --
5 the spot for the service level blank.

6 Q. Okay. So the transaction confirmation is not
7 specific whether the supply is to be firm or interruptible on
8 either of the two pages of this transaction confirmation?

9 A. It's not indicated on here that I can see.

10 Q. If you would, please look at the volume
11 requirements of this transaction confirmation. It also
12 refers to monthly volumes; is that right?

13 A. Yes.

14 Q. Now Ms. Buchanan, if you look at the bottom
15 third of the transaction confirmation, you see a breakdown,
16 again, that starts in this -- on this transaction
17 confirmation, April 1 of '08 and it runs through November 1
18 of '08. Are you there?

19 A. I am.

20 Q. If you would, please look at the July volumes.
21 And would you agree the July volumes list the 5,400 per
22 month?

23 A. Yes. That's the estimate.

24 Q. Does that monthly number tell AEM the amount
25 of the daily requirement?

1 A. No, it does not.

2 Q. Okay. Let's go to page 2 on the second page.
3 Does page 2 list volume requirements -- I mean page 2 does
4 not list volume requirements; is that correct?

5 A. No, I do not see that on page 2, correct.

6 Q. Okay. So does this transaction confirmation
7 list any daily maximum for base load gas or for swing gas?

8 A. There's -- this is a summer contract, so we
9 don't buy swing in the summer, so -- but to answer your
10 question, no.

11 Q. Okay. Now I'd like to go over to the
12 transaction confirmation that was in effect with the other
13 supplier, not an affiliate, that was in effect during this
14 ACA period.

15 JUDGE WOODRUFF: I assume this is also HC?

16 THE WITNESS: Yes, sir.

17 JUDGE WOODRUFF: This will be 9-HC?

18 (Exhibit Number 9-HC was marked for
19 identification by the Court Reporter.)

20 BY MR. BERLIN:

21 Q. Okay, Ms. Buchanan, if you'd had a chance to
22 look at this document, could you please identify it for me?
23 And you don't have to name the name of the supplier.

24 A. Oh, okay. Okay. This is the transaction
25 confirmation between Atmos and an unaffiliated supplier for

1 gas supplied between April, 2009 and March, 2010 for the
2 Hannibal area.

3 Q. Yeah, from the Panhandle -- for Panhandle
4 Pipeline Field Zone pool, correct?

5 A. If you're just looking at page 1. I think
6 there's other areas within the document on page -- oh, gosh,
7 it says page 10 of 10 on each, but we know what we're talking
8 about, right? So the next page in the packet is Haven.

9 Q. Okay. If you would please refer to the
10 transaction confirmation 9-HC, with the non-affiliated other
11 supplier that was in effect during this ACA for Hannibal
12 area, it's Field Zone Pool and Haven, correct?

13 A. Yes, I think I just indicated that Haven was
14 on the next page.

15 Q. All right. Okay. For this 2008-2009 ACA,
16 this contract covered the ACA months of April, 2009 through
17 August, 2009 of this ACA period, or a five-month period;
18 would you agree?

19 A. Yes.

20 Q. And do you recall, again, the questions that
21 we had reviewed in the sample transaction confirmation that
22 was included in Exhibit A of the base NAESB contract? Do you
23 recall those questions?

24 A. I do.

25 Q. Okay. Do you recall that the sample

1 transaction confirmation had a place to indicate performance
2 obligation or service level, firm or interruptible, and the
3 contract quantity, fixed quantity, or variable quantity?

4 A. Well, the sample we were looking at was the
5 AEM one, so are we assuming that it's the same sample that
6 was attached to the NAESB for this non-affiliate? Because I
7 don't think we looked at that sample for the non-affiliate.

8 Q. Would the base NAESB agreement for the
9 unaffiliated supplier have been similar?

10 A. I think it would have been similar.

11 Q. Okay. And if you would, could you show me on
12 this transaction confirmation that is with the non-affiliated
13 other supplier where Atmos includes the performance
14 obligation or service level for firm, fixed quantity, firm
15 variable quantity, or interruptible services?

16 A. There's a section about in the middle that's
17 called performance obligation and it has those options that
18 you just mentioned.

19 Q. And it is for firm variable quantity as
20 specified on page 3 of the agreement, correct?

21 A. I'm not following where you're reading that.
22 Oh, I see what you're saying now. Yes, page 3 has the firm
23 variable, has some -- something typed in there. It just says
24 see below. And page 1 has -- says see below under the fixed.

25 Q. Okay. So firm fixed quantity is specified on

1 pages 1 and 2 of this agreement?

2 A. Yes, I think that's correct.

3 Q. Okay. And just to clarify my -- the firm
4 variable quantity is specified on page 3 of the agreement?

5 A. Yes.

6 Q. Okay. So the performance obligation is not
7 left blank for the unaffiliated other supplier, correct?

8 A. They have words filled in there, yes, see
9 below.

10 Q. Okay. If you'd please look with the
11 non-affiliated supplier, go to page 1. Listed at the top is
12 page 1 and the bottom it says page 10 of 10.

13 A. Yeah.

14 Q. It refers to daily firm fixed quantity and
15 that quantity varies from -- for April, 2009 through October
16 of '09?

17 A. Those, again, are estimates --

18 Q. And it's --

19 A. -- of the base load.

20 Q. But you would agree that it varies, correct?

21 A. Yes, by month.

22 Q. There's specific quantities per month and
23 those quantities vary?

24 A. Yeah, it's a per day and it does vary by
25 month.

1 Q. Just to clarify, in looking at this part of
2 the performance obligation at this transaction confirmation,
3 it doesn't say "estimate," does it?

4 A. That is the term we use, but it's indicated
5 here. They don't say "estimate," but it's indicated here by
6 telling you that we have the option to take or release any
7 portion of those quantities listed above by five business
8 days before the month, and that's what I indicated that the
9 actual quantity gets set five business days before the end of
10 the month. These are placeholders based on our plan that we
11 gave in the RFP.

12 Q. But these are the obligations of the supplier,
13 correct?

14 A. It's the estimate at the beginning of the
15 contract. If we fail to ever call them five days or e-mail
16 them five days before the beginning of the month with a
17 first-of-the-month nomination, I assume that they could go
18 back to this document and say, oh, you failed to contact us
19 with your first-of-the-month volume, so therefore you are
20 going to be held to this quantity. But in practice, we do
21 just like what it says here. We contact them five business
22 days before the beginning of the month and we give them the
23 quantity.

24 Q. Okay. Ms. Buchanan, let me just go back here
25 to -- to -- just to clarify this. In April, 2009, the

1 requirement would be 1,900 MMBtu per day; May of '09 would be
2 3,400 MMBtu per day; June is 2,000 -- June is 3,000 MMBtu per
3 day; July is 3,400 MMBtu per day; August is 1,900 MMBtu per
4 day; September 2009 is 500 MMBtu per day; October, 2009 is
5 400 MMBtu per day; November, 2009 is 0 MMBtu per day and
6 December, January, February, through March of 2010 is all 0
7 MMBtu per day. Did I read that correctly?

8 A. Yes, you read that. But I think your
9 interpretation is incorrect, and I'd really like you to try
10 to understand --

11 Q. Ms. Buchanan --

12 A. -- that these are not the contract --

13 JUDGE WOODRUFF: Ms. Buchanan --

14 THE WITNESS: I'm sorry.

15 JUDGE WOODRUFF: -- only answer the questions
16 he asks of you.

17 THE WITNESS: I'm sorry. I was getting
18 frustrated.

19 BY MR. BERLIN:

20 Q. I'm sure your counsel will go over that with
21 you.

22 A. Okay.

23 Q. Now, of those quantities that I just read from
24 your transaction confirmation, can Atmos nominate more than
25 any of those amounts?

1 A. Yes, up to our MDQ, which is the maximum daily
2 quantity on our contract.

3 Q. For base load quantity?

4 A. Yes, sir.

5 Q. And is there language on this agreement that
6 says that?

7 A. I'm not sure. I can tell you in practice,
8 that's absolutely the way it works, though. Oh, yes, it's on
9 the third page of the packet in the special conditions. It's
10 the second sentence of the special conditions.

11 Q. Okay. But that part that you just referred to
12 me only tells what the total cannot exceed, correct?

13 A. I think --

14 Q. You cannot exceed 10,000?

15 A. That's the MDQ that I referred to. It says
16 that the first-of-the-month nominations for Haven and Field,
17 along with the swing nominations -- I'm paraphrasing -- shall
18 not exceed 10,645 per day. And then right below that, it
19 lists each month that we have between 0 and 10,645 per day
20 for swing less the first-of-the-month nominations. So it's
21 saying between the first-of-the-month nom and your swing, you
22 can purchase up to your MDQ.

23 Q. Okay. So these are listed as daily, or MMBtu,
24 per day requirements for this non-affiliated supplier,
25 correct?

1 A. Yes.

2 Q. Okay. Okay. If you would, please look at the
3 volume requirements of this transaction confirmation with the
4 non-affiliated supplier. Page 2, listed at the top as page
5 2, and the bottom as 10 of 10. It refers to daily firm fixed
6 quantity that varies for April, 2009 through March, 2010,
7 correct?

8 A. Yes.

9 Q. Okay. And you agree that the volume
10 requirements are listed as daily requirements, or MMBtu per
11 day for this non-affiliated supplier, correct?

12 A. That's right.

13 Q. And if you would, please look at the volume
14 requirements of this transaction confirmation with a
15 non-affiliated supplier on page 3. Listed at the top of
16 page 3, you see the volume requirements that refer to daily
17 firm variable quantity, and that varies from a minimum amount
18 of 0 MMBtu per day to a maximum MMBtu per day for November,
19 2009 through March, 2010; is that correct?

20 A. Right.

21 Q. Okay. And these are listed as daily
22 requirements, or MMBtu per day, for this non-affiliated
23 supplier, correct?

24 A. Yes.

25 Q. And again, you see on page 3 of the

1 transaction confirmation where it further explains that the
2 field FOM nominations plus the Haven FOM nominations plus the
3 Haven swing nominations not to exceed 10,645 MMBtu per day,
4 correct?

5 A. Correct.

6 Q. And so you agree that -- would you agree that
7 the unaffiliated supplier is obligated to provide anywhere
8 from 0 MMBtu per day up to 10,645 MMBtu per day?

9 A. Yes.

10 Q. Okay. So the non-affiliated supplier may only
11 go to the transaction confirmation to understand its daily
12 performance requirements, correct?

13 A. I would say those terms are stated here.

14 Q. All right. And the non-affiliated supplier,
15 then, would not have to refer back to an RFP which it did not
16 sign to know what its daily requirements are, correct?

17 A. Right.

18 Q. It would go to this document?

19 A. I would say that they would use this document,
20 yes.

21 MR. BERLIN: All right. Next what I would
22 like to do is shift over to the transaction confirmation with
23 the other supplier. If it's not an affiliate that was not in
24 effect for -- for the prior ACA case, and I would introduce
25 this March 2007 for Panhandle Eastern Haven pool.

1 THE COURT: I assume this would be highly
2 confidential also?

3 THE WITNESS: Yes, sir.

4 JUDGE WOODRUFF: Okay. This would be 10-HC?

5 (Exhibit Number 10-HC was marked for
6 identification by the Court Reporter.)

7 BY MR. BERLIN:

8 Q. Okay. Ms. Buchanan, this document, if you
9 would, please identify it. You don't need to identify the
10 name of the supplier.

11 A. It appears to be the -- I'm not quite sure if
12 this is the full thing, but this appears to be the
13 transaction confirmation between Atmos and an unaffiliated
14 supplier for the period April, 2006 to March, 2007. And it
15 says Panhandle Haven pool.

16 Q. Okay. If you would, please, refer to the
17 transaction confirmation with this non-affiliated supplier
18 that was in effect -- in effect during a prior ACA Hannibal
19 area Haven pool. And would you please show me on this
20 transaction confirmation with a non-affiliated supplier where
21 Atmos includes the performance obligation, or service level
22 for firm fixed quantity or firm variable quantity, or
23 interruptible?

24 A. Anadarko has checked a box in this performance
25 obligation.

1 JUDGE WOODRUFF: If I can interrupt you. You
2 just stated the name of the company.

3 MR. BERLIN: We can strike that as HC.

4 JUDGE WOODRUFF: I assume that is HC
5 information for Atmos, or is it?

6 MR. FISCHER: Judge, I think we have been
7 avoiding tying a particular name to most of these, although
8 the fact that particular supplier didn't check a box, I don't
9 think is -- is HC and on its face. I think if you get into
10 what they bid or anything like that and tie it to the name,
11 it would be.

12 JUDGE WOODRUFF: Well, what I'll offer you is
13 to -- if we need to go back in the transcript and redact
14 that, we can.

15 MR. FISCHER: Okay.

16 JUDGE WOODRUFF: If you want me to.

17 MR. FISCHER: I think at this point, we're
18 okay.

19 JUDGE WOODRUFF: All right.

20 THE WITNESS: It's fairly old, 2006, so I'm
21 not as concerned as if it were more recent.

22 JUDGE WOODRUFF: Proceed then.

23 MR. BERLIN: Okay. Thank you.

24 BY MR. BERLIN:

25 Q. Ms. Buchanan, if you can please show me on

1 this transaction confirmation where Atmos includes the
2 performance obligation or service level for firm fixed
3 quantity or interruptible?

4 A. Yes, there's a box in the middle that's called
5 performance obligation and they have an X under the firm
6 variable quantity area.

7 Q. And does it reflect that the firm fixed
8 quantity is up to 5,000 MMBtu per day?

9 A. That's what's typed in there, yes.

10 MR. BERLIN: If I could have just a minute,
11 Judge, I'd like to clarify the exhibit for a minute, please.

12 JUDGE WOODRUFF: Okay.

13 BY MR. BERLIN:

14 Q. All right, Ms. Buchanan. Let's start over
15 here. I'll ask you to take a look at the performance
16 obligation and the contract quantity. It's in the middle of
17 the form. Do you see that?

18 A. Yes.

19 Q. And there's a spot there that says firm fixed
20 quantity and MMBtu per day. Do you see that?

21 A. Yes.

22 Q. And it says up to 5,000 --

23 A. Yes.

24 Q. -- underneath it. And then there's a spot
25 that says "firm variable quantity." Do you see that?

1 A. Yes.

2 Q. Do you agree it goes -- it says 0 MMBtu per
3 day minimum with a 7,000 MMBtu per day maximum?

4 A. Yes, subject to -- and it has a few more words
5 there, subject to Section 4.2 at the election of the buyer.

6 Q. All right.

7 A. I think that's all part of that.

8 Q. Okay. Okay. So the performance obligation
9 block here is not blank, correct?

10 A. No, there's items typed in in that spot.

11 Q. In fact, it contains a very specific service
12 level?

13 A. There's volume quantities stated.

14 Q. Okay. And it does indicate the service level,
15 too, under firm, correct?

16 A. Yes, it's under the firm area.

17 Q. Okay. And so when you look at these volume
18 requirements on this transaction confirmation with the
19 non-affiliated supplier, the firm fixed quantity and the firm
20 variable quantity are listed as daily requirements, correct?

21 A. Yes. They're shown there, there's a little
22 more down in the special conditions as well.

23 Q. All right. But the non-affiliated supplier
24 would not have to refer back to an RFP, which it did not
25 sign, to know what its daily performance requirements are,

1 correct?

2 A. Yes, there's volumes stated on the transaction
3 confirmation.

4 Q. Okay. Thanks. I want to move on now to
5 transaction confirmation for April, 2006 to March, 2007 for
6 Panhandle Field Zone pool. Just a minute, please.

7 JUDGE WOODRUFF: And this would be 11-HC?

8 (Exhibit Number 11-HC was marked for
9 identification by the Court Reporter.)

10 BY MR. BERLIN:

11 Q. Okay. Ms. Buchanan, I've just handed to you a
12 transaction confirmation for Panhandle Eastern Field Zone
13 pool, and you'll note that this transaction confirmation is
14 with the same unaffiliated supplier. Is that a correct
15 identification of this document?

16 A. Yes, for April '06 to March, '07, yes.

17 Q. Okay. And if you would, please, refer to this
18 transaction confirmation with a non-affiliated supplier,
19 could you please show me on this transaction confirmation
20 where Atmos includes the performance obligation or service
21 level for firm fixed quantity or interruptible?

22 A. This is pretty much the same as the one we
23 just looked at. So it's in that same spot in the middle
24 under performance obligation. They have things typed in
25 under firm fixed quantity and firm variable quantity.

1 Q. Okay. So you would agree with me, then, I
2 think, we're looking at the performance obligation under firm
3 fixed quantity, under MMBtu per day states up to 3,500?

4 A. Yes.

5 Q. Okay. And then the firm variable quantity
6 states 0 MMBtu per day minimum and a 0 MMBtu maximum?

7 A. I see that.

8 Q. And so this performance obligation is not
9 blank, correct?

10 A. There's information filled in.

11 Q. Okay. And it does contain specific service
12 level and volume terms, correct?

13 A. There are quantities and service levels
14 indicated.

15 Q. Okay. If you'd please look at the volume
16 requirements of this transaction confirmation, and the firm
17 fixed quantity is listed as a daily requirement up to a
18 certain MMBtu, right?

19 A. Yes.

20 Q. And the daily requirements of this
21 non-affiliated supplier is spelled out in this transaction
22 confirmation, correct?

23 A. The first of the month fixed quantity is
24 stated as a daily MMBtu on here.

25 Q. Okay. And so the non-affiliated supplier

1 would not have to go back to an RFP that it did not sign to
2 know its daily performance requirements, correct?

3 A. I would say there's information on the
4 transaction confirmation that provides that.

5 Q. Okay. Now, Ms. Buchanan, I'm going to shift
6 gears here and ask you to look at your rebuttal testimony in
7 this case. Are you there?

8 A. Yes.

9 Q. If you would, please, just take a look at --
10 let me just see here. I have lines 10 to 22.

11 MR. FISCHER: I'm sorry, Counsel, what was the
12 reference?

13 MR. BERLIN: One second here.

14 BY MR. BERLIN:

15 Q. I know the lines I'd like you to look at, I'd
16 just like to confirm the page.

17 A. Yeah, that would help, wouldn't it.

18 Q. Thank you. Okay. I believe it's page 20. If
19 you'd go to line 11, you state and I quote, "there is no cost
20 allocation involved in the gas supply transaction between
21 Atmos and AEM." Did I state that correctly?

22 A. Yes, that's correct.

23 Q. Okay. And further down the page on line 17,
24 you state, "AEM does not allocate costs to Atmos." And that
25 is -- did I state that correctly?

1 A. Yes, you did.

2 Q. And in looking at your surrebuttal testimony,
3 if you could pull that, and go to page 9, on lines 23, page 9
4 of your surrebuttal testimony, you state, and I quote,
5 "there are no allocations made between the utility and the
6 affiliate that are specific to the gas supply deal." Did I
7 read that correctly?

8 A. Yes, you did.

9 Q. And go down to line 10 of your surrebuttal,
10 and you state, and I'll quote, "AEM does not allocate any
11 costs to Atmos. It simply offers to provide gas supplies to
12 Atmos like any other gas marker through the competitive
13 bidding process. The Affiliated Transaction Rule should not
14 be interpreted to require the utility to fabricate
15 information that doesn't exist for transactions that didn't
16 happen." Did I state that correctly?

17 A. Yes, you did.

18 Q. Have you seen AEM's response to Staff
19 regarding its request for Atmos' records of affiliate
20 entities as required under the affiliate rules in which Staff
21 requested all documentation, O & M, overheads, and all other
22 costs affiliated with affiliated transactions?

23 A. No, I've not seen that.

24 Q. Perhaps you're more familiar with it in
25 Mr. Sommerer's surrebuttal testimony. Have you reviewed his

1 surrebuttal testimony?

2 A. I received the NP, the public version, and I
3 did get a copy of the HC last night, but I've not had a
4 chance to look at all of the HC information thoroughly. I'm
5 familiar with what you said in your opening statement about
6 the overheads.

7 Q. Okay. Well -- one minute. I have a copy of
8 Mr. Sommerer's surrebuttal Schedule 4, if this would help.

9 MR. FISCHER: Direct? Surrebuttal?

10 MR. BERLIN: It's Mr. Sommerer's surrebuttal.

11 MR. FISCHER: Okay. Thanks.

12 BY MR. BERLIN:

13 Q. It's his Schedule 4. Just one minute. I'm
14 not making this an exhibit because it's his surrebuttal
15 exhibit, but I would hand it out as a reference for you.

16 A. And it's okay that I see this?

17 Q. It's part of Mr. Sommerer's surrebuttal
18 testimony, which I think you indicated you had a chance to
19 glance over,

20 A. Okay.

21 JUDGE WOODRUFF: If you're not going to mark
22 it as an exhibit, we don't need it up here, unless the
23 Commissioner wants one.

24 MR. BERLIN: It's in the surrebuttal of
25 Mr. Sommerer.

1 COMMISSIONER JARRETT: If you've got one, I'll
2 take it.

3 BY MR. BERLIN:

4 Q. And for the record, I have not marked it as an
5 exhibit. I note that it's Mr. Sommerer's surrebuttal
6 testimony Schedule 4.

7 And Ms. Buchanan, you said you had an
8 opportunity to look at it?

9 A. I've not looked at it. I said I received his
10 HC yesterday late and I've -- didn't have time to look at all
11 the HC information. I'm somewhat protected from that, to
12 protect the integrity of the bidding process and the
13 affiliate relationship. So I just was wanting to make sure
14 with my counsel that it's okay that I view that.

15 Q. Well, what I've given you is after-the-fact
16 information.

17 A. He said it's okay.

18 Q. All right.

19 A. All right.

20 Q. And if you would, just take a look at his
21 surrebuttal Schedule 4. And I'm not asking you to have any
22 specific knowledge of this, of the information contained in
23 here. But if you would, look at this schedule and would you
24 agree with me that this appears to be AEM's overhead analysis
25 related to the transaction?

1 A. That's the title. I don't know if it's
2 related to the transaction. Let me read what he said in the
3 front. I can't tell that it's related to the Hannibal
4 transaction, but it does say it's AEM's overhead analysis.

5 Q. All right.

6 A. Maybe in the request itself it mentioned that.
7 I'm not sure. All I have is the response.

8 Q. Okay. So in the normal course of your duties,
9 you wouldn't see specific overhead allocation costs from your
10 marketing affiliate AEM?

11 A. We have no allocation costs from our marketing
12 affiliate.

13 Q. That's based on to the best of your knowledge?

14 A. That's based on fact.

15 Q. Okay. Because I'm -- this is AEM's response.

16 A. This was not allocated to us, to Atmos.

17 Q. Okay. So Ms. Buchanan, I guess -- do I
18 understand correctly that -- do you know the details of the
19 records that the affiliate AEM keeps or related to the gas
20 that it supplies to Atmos?

21 A. No, I don't know their records. I know their
22 bid that they bid on the deal and that's what established the
23 price that we paid was the bid in the competitive RFP
24 process.

25 Q. Okay. So -- all right. Next question I have

1 for you is regarding the DR response on fully distributed
2 costs. I'm going to shift gears a bit.

3 JUDGE WOODRUFF: This will be Exhibit 12?

4 (Exhibit Number 12 was marked for
5 identification by the Court Reporter.)

6 BY MR. BERLIN:

7 Q. Ms. Buchanan, I just handed you the company's
8 response to Staff data request 0130. After you've reviewed
9 it, would you agree that that's the document?

10 A. Would I agree -- I'm sorry, would I agree
11 what?

12 Q. That this is the company's response to Staff
13 Data Request 0130 marked as Exhibit 12?

14 A. Yes. There's a subpart to -- there's a 130.1
15 also that's not here. But I wasn't sure if you knew that.

16 Q. Well, this is my -- this is my -- my question
17 pertains to this data request.

18 A. Okay.

19 Q. Okay. So do you recall receiving Staff's DRs
20 inquiring about Atmos' fully distributed cost, or FDC?

21 A. Yes.

22 Q. If you would, please read Staff question in
23 part B and the company's response.

24 A. "Please provide the company's calculation of
25 fully distributed costs that pertains to this ACA period.

1 Provide supporting work papers, including fully functioning
2 electronic spreadsheets in Excel, if possible, including
3 source data and output data."

4 Q. Okay. And please read the company's
5 response.

6 A. "Not applicable."

7 Q. Does "not applicable" mean that you had not
8 performed an FDC calculation as part of -- as of the date of
9 the data request?

10 A. Yes, we had not calculated an FDC at that
11 date. I think we were unclear on the definition.

12 Q. All right. Can you tell me Atmos' definition
13 of FDC, or fully distributed costs?

14 A. It's in my response to 130.1 -- or Atmos'
15 response to 130.1. It's rather lengthy. Would you like me
16 to read it or?

17 Q. One second. Let me ask you another question,
18 Ms. Buchanan, related to this DR response. So I am clear on
19 the timing, at the time you had made your agreements with
20 AEM, you had not calculated the fully distributed costs, you
21 had not made that calculation?

22 A. That's correct.

23 Q. Okay. All right. Moving on, I have some
24 questions for you about the priority of the secondary receipt
25 point. We talked about this in the last case, you may

1 recall. It has to do with the Panhandle gas tariff general
2 terms and conditions.

3 (Exhibit Number 13 was marked for
4 identification by the Court Reporter.)

5 BY MR. BERLIN:

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

8 A. It's a portion of the Panhandle Eastern
9 Pipeline tariff, part of their general terms and conditions,
10 a section on nomination and scheduling of service.

11 Q. And as part of what's called part 6 of the
12 general terms and conditions of Panhandle's FERC tariff?

13 A. Yes.

14 Q. Ms. Buchanan, are you familiar with
15 Panhandle's FERC tariff?

16 A. I've looked at parts of it. I've not read the
17 entirety of it. It's very long.

18 Q. Well, you do recall that we had some
19 discussions about the FERC tariff in the last case?

20 A. Yes.

21 Q. Do you recall seeing that -- you may recall
22 that this tariff is schedule 4 to Mr. Sommerer's rebuttal
23 testimony?

24 A. Yes.

25 Q. If you would, please, go to Section 8.8 at the

1 bottom of the page of Panhandle's FERC tariff.

2 A. At the bottom of which page?

3 Q. I believe it's the first page.

4 A. Page 5 of 8?

5 Q. Yes, section 8.8 at the bottom of the page.

6 A. Okay.

7 Q. If you would, please read the Section 8.8,
8 which is quantities of gas nominated for transportation or
9 storage by shippers --

10 (Clarification by the court reporter.)

11 BY MR. BERLIN:

12 Q. Ms. Buchanan, if you would, please read
13 Section 8.8. That's where it starts out saying "quantities
14 of gas nominated for."

15 A. How far would you like me to read? Just that
16 page? Just on that page. Or should I go through to the end?

17 Q. Well, what I'd like to you do is just read
18 through paragraph A.

19 A. A.

20 Q. Read A and then stop.

21 A. Okay. 8.8 A, scheduling of receipts. Firm
22 service -- I'm sorry, number one: "Firm service from primary
23 points of receipt adjusted for fuel readjustment."

24 Q. Ms. Buchanan, I'll make this process a little
25 bit easier for everybody. Okay? If you would, please read

1 just 8.8 and maybe stop at A. Where it says, "Quantities of
2 Gas."

3 A. Oh, not A, okay. You want me to read the
4 heading of 8.8?

5 Q. Correct.

6 A. "Quantities of gas nominated for
7 transportation or storage by shippers pursuant to Section 7.3
8 shall be scheduled by Panhandle for receipt and delivery in
9 the following order."

10 Q. Okay. And then you'll see down below, there's
11 a paragraph A, and it says scheduling of receipts. Do you
12 see that?

13 A. I do.

14 Q. And as you work down the scheduling of
15 receipts, you see that there's a subparagraph 1, and one is
16 the firm service from primary points of receipt, correct?

17 A. It is.

18 Q. And two is firm service from a secondary point
19 of receipt within primary path?

20 A. Correct.

21 Q. Okay. And then three is firm service from
22 secondary points of receipt outside the primary path?

23 A. Correct.

24 Q. Okay. And then four would be interruptible
25 service from points of receipt, right?

1 A. Yes.

2 Q. And then five is gas parking service?

3 A. Yes.

4 Q. In looking at paragraph B, you see the
5 scheduling of deliveries, correct? That's --

6 A. Yes.

7 Q. And that's a priority of scheduling as well,
8 correct?

9 A. It is.

10 Q. And as you look at it, it is the same priority
11 as we just went over?

12 A. Yes.

13 Q. Okay. And in this case, this '08-'09 ACA
14 case, would you agree with me that Atmos' primary point of
15 receipt is Haven?

16 A. That is one of our primary points.

17 Q. Okay. And according to Panhandle's FERC
18 tariff, that primary point of receipt is a higher priority
19 than a secondary point of receipt in path, correct?

20 A. That's correct.

21 Q. Okay. And then the Pony Express point in this
22 case is a secondary receipt point, correct?

23 A. On Atmos' contract, there are secondary
24 receipt points. I believe Pony Express or reqs, other
25 interconnecting points are secondary in path.

1 Q. Okay. All right. And you agree -- would you
2 agree that AEM bid into the secondary Pony Express receipt
3 point?

4 A. I believe they did on most occasions.

5 Q. And no other supplier in this ACA period bid
6 outside the primary point?

7 A. Oh, I'm sorry, you said "bid." Yes.

8 Q. Okay.

9 A. I apologize. I was misinterpreting what you
10 said.

11 Q. Yes, AEM bid into the Pony Express secondary
12 receipt?

13 A. Yes.

14 Q. And no other supplier in this ACA point bid
15 outside the primary point?

16 A. I'm not sure.

17 Q. No conforming supplier.

18 A. Subject to check, I think you're correct.

19 Q. So all unaffiliated suppliers that bid
20 conforming bids, bid the primary receipt point?

21 A. I believe that's correct.

22 Q. So Ms. Buchanan, if we go to your surrebuttal
23 testimony on page 19 -- are you there?

24 A. Not quite.

25 Q. Okay.

1 A. Yes, I'm there.

2 Q. Okay. If you go to page 19 and you go to
3 line 2, you state, and I'm going to quote, "within the RFP
4 documents for both years, there are no less than six
5 occurrences where Atmos states the company is seeking firm
6 supply." Did I state that correctly?

7 A. Yes, you did.

8 Q. And then you go on to list those six
9 occurrences in your testimony?

10 A. Yes.

11 Q. And on line 13, you list Section 5.4 on
12 reliability?

13 A. Yes.

14 Q. And it says, and I'll quote, "all gas supply
15 is to be firm and warranted assuring that gas supply services
16 will meet all contractual obligations without fail." Is
17 that --

18 A. Absolutely correct, yes.

19 Q. Okay. So it's fair to say, from at least
20 reading the reliability section that we read -- that I read,
21 and the other sections in the RFP that you cite that address
22 firm service, the company is serious in its request for firm
23 service?

24 A. Absolutely.

25 Q. Very clear, it wants firm service?

1 A. Yes.

2 Q. So Ms. Buchanan, recognizing that only AEM bid
3 the lower priority secondary receipt point, can you agree
4 with me that AEM saw some kind of a cost advantage in bidding
5 the secondary receipt point?

6 A. Secondary firm receipt point has -- on many
7 occasions will have a lower cost than a primary.

8 Q. Okay. Okay.

9 A. And that cost is passed on to the customers.
10 That cost savings.

11 Q. Right. Okay. So there is a clear advantage
12 to attracting bids at a secondary receipt point because as
13 you just identified, they tend to be lower in cost?

14 A. Yes, that's how we try to bring value to the
15 customers by allowing a secondary firm point.

16 Q. But the secondary receipt point is, as we just
17 went through on the FERC tariff, is a lower priority than the
18 primary receipt point?

19 A. On 90 percent of the time, that's never going
20 to be an issue.

21 Q. Well, Ms. Buchanan, that wasn't my question.

22 A. Or maybe even higher.

23 Q. And we just went through, and you agree, that
24 secondary receipt point is a lower priority --

25 A. But they are both firm --

1 Q. -- and the higher priority --

2 A. -- I agree --

3 COURT REPORTER: I can only take one at a
4 time.

5 BY MR. BERLIN:

6 Q. All right. Now, on page 14 of your
7 surrebuttal, you take issue with Mr. Sommerer's testimony
8 that AEM has no obligation to move delivery back to the
9 primary receipt point in the event of a service interruption.
10 And you state, and I quote, "this is absolutely unqualifiedly
11 untrue." And that is your testimony?

12 A. Yes.

13 Q. And then you go on to say in your answer on
14 line 15, and I quote, "in the occasion where secondary
15 receipt points are used, the priority resembles that of
16 primary receipt points. If for any reason the secondary
17 points were unavailable, the company would revert to the
18 primary points." Did I state that correctly?

19 A. Yes, you did.

20 Q. All right. Ms. Buchanan, where in the
21 transaction confirmation, the actual supply agreement, has
22 Atmos reserved the right to force its supplier, AEM, to move
23 from the secondary receipt point to the primary receipt
24 point?

25 A. That doesn't appear in the transaction

1 confirmation.

2 Q. All right. Can you tell me where it is?

3 A. I'm just going to have to paraphrase for you,
4 but I believe in the NAESB, there is an obligation to avoid
5 imbalances. And the way you avoid imbalances is if one point
6 gets cut, you move your supply to another point.

7 Q. Okay. One minute, please. Now, your answer,
8 Ms. Buchanan, you're referring to the same NAESB agreement
9 that allows firm or interruptible service?

10 A. Yes, the base standard NAESB.

11 Q. Okay. Okay. I'm going to shift gears just
12 one more time, I think, and refer to you your surrebuttal
13 testimony in GR-2008-0364. And we had talked about this at
14 the evidentiary hearing in that case. And I have a copy of
15 it, if you need it. But I'll quote your testimony. You
16 state, "the company's Texas jurisdiction alone comprises more
17 than half of all Atmos utility business throughout its
18 system, yet it does no business with AEM in Texas." Do you
19 seem to recall your testimony in that case?

20 A. That sounds familiar to me.

21 Q. I have your testimony and I quoted you
22 directly there, so if you'd like to see it to check.

23 A. No, I'm good.

24 Q. Okay.

25 A. I take your word for it.

1 Q. All right. In your rebuttal testimony in this
2 case, on page 8, on line 14, did you testify that in that
3 body of testimony, you testify that Texas accepts Atmos RFP
4 process and has not expressed any concern about it? Did I
5 phrase your testimony correct? You list some other states,
6 but --

7 A. Yes, that's -- Texas is among the states
8 listed that says that they're accepting of the RFP process.

9 Q. Okay. So it is possible, then, for Atmos to
10 use its RFP in its bid award process in a very large
11 jurisdiction like Texas to achieve competitive gas supplies
12 without doing business with AEM, correct?

13 A. Yes.

14 Q. Okay. One second. Ms. Buchanan, that's the
15 end of my questions. I thank you.

16 JUDGE WOODRUFF: Do you wish to offer your
17 exhibits?

18 MR. BERLIN: I do, Judge.

19 JUDGE WOODRUFF: All right.

20 MR. BERLIN: I believe -- Judge, I would move
21 to admit into evidence Exhibits 4 -- would you like me to
22 name the actual exhibit?

23 JUDGE WOODRUFF: Yes, if you would, please.

24 MR. BERLIN: Exhibit 4 is the RFP dated
25 2/14/2008 for gas supplies for 4/1/08 to 3/31/09 for the

1 Hannibal area.

2 Exhibit 5 is the RFP dated 2/13/2009 for gas
3 supplies for 4/10/09 through 3/31/10 for the Hannibal area.

4 Exhibit 6 is the NAESB agreement with the
5 affiliate in effect during this ACA.

6 Exhibit 7 is the transaction confirmation for
7 April, 2008 to March, 2009, for Panhandle Haven pool.

8 Exhibit 8-HC is the transaction confirmation with
9 affiliate for April, 2008, to October, 2008, for Panhandle
10 Field Zone pool.

11 Exhibit 9-HC is the transaction confirmation
12 for April, 2009, through March, 2010, for Panhandle Field
13 Zone pool and for Panhandle Haven.

14 Exhibit 10-HC is the transaction confirmation
15 for April, 2006, through March, 2007, for Panhandle Eastern
16 Haven pool.

17 Exhibit 11-HC is the transaction confirmation
18 for April, 2006, through March, 2007, for Panhandle Field
19 Zone pool.

20 Exhibit 12 is Atmos' response to Staff DR
21 0130.

22 Exhibit 13 is the Panhandle Eastern Pipeline
23 company FERC gas tariff general terms and conditions.

24 And Judge, I would move to admit those
25 exhibits into evidence.

1 JUDGE WOODRUFF: All right. The exhibits
2 listed by Staff have been offered. Are there any objections
3 to their receipt?

4 MR. DORITY: Your Honor, following up on my
5 previous comments regarding Exhibit 6, unless we mark it HC,
6 we would ask for an opportunity to redact some of the
7 information shown on the cover page of that exhibit.

8 JUDGE WOODRUFF: What I'll do is I'll accept
9 this as offered as 6-HC, then you can file subsequently an NP
10 version with redactions. Is that acceptable to Staff?

11 MR. BERLIN: I would offer that as
12 Exhibit 6-HC.

13 JUDGE WOODRUFF: Right. Okay. So it will be
14 received as 6-HC and I'll give Atmos an opportunity to file
15 an NP version subsequently.

16 MR. DORITY: All right. Thank you, Judge.

17 JUDGE WOODRUFF: All right. So 4, 5, 6-HC,
18 7-HC, 8-HC, 9-HC, 10-HC, 11-HC, 12, and 13 are all received
19 into evidence.

20 (Exhibit Numbers 4 through 13 were received
21 into evidence by Judge Woodruff.)

22 JUDGE WOODRUFF: That completes your cross
23 then?

24 MR. BERLIN: Yes, Judge, it does.

25 JUDGE WOODRUFF: All right. Cross for Public

1 Counsel?

2 MR. POSTON: Thank you.

3 CROSS-EXAMINATION

4 QUESTIONS BY MR. POSTON:

5 Q. I'd like to quickly go back to a point
6 Mr. Berlin was questioning you on. Other than the location
7 of the receipt point, what are the differences between
8 primary and secondary receipt points?

9 A. The differences would be the priority of
10 service that we were talking about. Also, the supply can be
11 sourced from different areas. Obviously a secondary receipt
12 point may be an interconnect with another pipe where
13 suppliers can bring in pipe -- supply from other sources.

14 Q. And the priority of service, explain -- please
15 explain. What does that mean?

16 A. The priority of service, it starts out with
17 the highest priority of service. So if there is a
18 curtailment on the pipe, that highest priority is the least
19 likely to get cut in a critical situation. And then it goes
20 down through the tiers to the lowest priority.

21 Q. Okay. So a secondary receipt point would be
22 cut for a primary receipt point?

23 A. In theory, yes.

24 Q. Okay. Do you believe that the purchase of
25 natural gas by Atmos, the LDC from its affiliate AEM, is an

1 arm's-length transaction?

2 A. I believe it has the feel of an arm's-length
3 transaction. The parties are obviously affiliated and
4 related to each other, but we do take measures to make us
5 independent.

6 Q. Okay. I'd like you to look at a dictionary
7 definition of arm's-length transaction.

8 MR. POSTON: If I could approach.

9 JUDGE WOODRUFF: You may.

10 (Exhibit Number 14 was marked for
11 identification by the Court Reporter.)

12 BY MR. POSTON:

13 Q. I'll give you a minute to look at this.

14 A. Yes.

15 Q. And would you agree that what I've handed you
16 is three pages that have been copied from Black's Law
17 Dictionary, Sixth Edition?

18 A. Yes.

19 MR. FISCHER: If she knows.

20 THE WITNESS: I'm sorry.

21 MR. FISCHER: If you know.

22 THE WITNESS: Well, I'm reading the front
23 cover page, and that's what it says.

24 BY MR. POSTON:

25 Q. And if I could get you to turn to the second

1 page of Exhibit 14. And do see there's a definition of
2 arm's-length transaction?

3 A. Yes.

4 Q. Would you please read the first sentence in
5 that definition?

6 A. "Said of a transaction negotiated by unrelated
7 parties each acting in his or her own self-interest. The
8 basis for a fair market valuation" -- I'm sorry -- "the basis
9 for a fair market value determination."

10 Q. Is Atmos unrelated to AEM?

11 A. No.

12 Q. Will you please read the second sentence in
13 that definition?

14 A. "A transaction in good faith in the ordinary
15 course of business by parties with independent interests."

16 Q. Do Atmos and AEM share any common interests?

17 A. On a corporate level, yes.

18 Q. And what are those interests?

19 A. I would say both parties are interested in the
20 success of the corporation.

21 MR. POSTON: Judge, I offer Exhibit 14.

22 JUDGE WOODRUFF: Exhibit 14 has been offered.
23 Any objections to its receipt? Hearing none, it will be
24 received.

25 (Exhibit Number 14 was received into evidence

1 by Judge Woodruff.)

2 BY MR. POSTON.

3 Q. Ms. Buchanan, the evidentiary standard you
4 cite in your testimony, I believe it's in your direct, is
5 that when Atmos purchases gas from AEM, they'll either obtain
6 competitive bids or demonstrate why competitive bids were
7 neither necessary nor appropriate; is that correct?

8 A. Yes, I think that was in relation to the
9 affiliate rules; is that correct?

10 Q. Right. Correct.

11 And for the transactions in question in this
12 case, the two RFPs, is it your position that competitive bids
13 were neither necessary nor appropriate?

14 A. I'm sorry?

15 Q. Let me rephrase that. You agree that
16 competitive bids were necessary?

17 A. Yes.

18 Q. And how many conforming bids did Atmos receive
19 for each of the two RFPs?

20 A. I believe you -- are you asking about just one
21 area, Hannibal, or Butler, or all -- or both or any other
22 areas?

23 Q. Just the RFPs that are in question here, the
24 two that Staff is --

25 A. Okay. I think there's Hannibal and Butler, so

1 there would be several RFPs, but for the RFP that was issued
2 for the Hannibal area in spring 2008, there were three
3 conforming bids.

4 Q. Okay.

5 A. For the Hannibal RFP issued in spring 2009,
6 there was one conforming bid; for the Butler RFP issued in
7 the fall of 2007, there were six conforming bids. And I
8 think there's one more. Let me see. Is that it -- oh, I
9 think there was one November -- fall of 2008 for Butler area
10 that had seven conforming bids.

11 Q. Okay.

12 A. I think those are the ones that are in
13 question here.

14 Q. So for the one that there was just one
15 conforming bid received, what competition did that bidder
16 face in terms of conforming bids?

17 A. They probably had a perceived competition
18 because they had no idea that they were the only bidder, so
19 they bid as if they were bidding against other parties, as
20 far as I assume. In reality, there were no competing bids,
21 but they don't know that and hopefully they still don't know
22 that.

23 Q. Did Atmos reissue the RFP in an attempt to
24 gather more conforming bids?

25 A. No.

1 Q. Do you recall a data request I sent to Atmos
2 to which you responded, Data Request Number One, where I
3 asked you to describe what services AEM provides that Atmos
4 is incapable of providing for itself?

5 A. Yes, I remember that.

6 Q. And if you -- do you have that with you?

7 A. I believe I do. Yes.

8 Q. Okay. And if you'd look down on that Tier
9 Number One, there was a subsection A. And partly -- maybe
10 about two-thirds of the way down, your answer, there's a
11 sentence in there that states, "It is unlikely that large
12 producers would be willing to sell their gas directly to the
13 utility in the small base load quantities that the company
14 purchases for its mostly rural service area;" is that
15 correct?

16 A. Yes.

17 Q. And how many large producers did you contact
18 and ask whether they would be willing to sell their gas
19 directly to Atmos?

20 A. I didn't contact any large producers. If
21 there's a producer that's on our qualified bid list for that
22 RFP, then they would have had the opportunity to bid.

23 Q. But you didn't make any direct contacts --

24 A. I did not.

25 Q. -- on any large producers --

1 A. I did --

2 Q. -- to try to determine whether they would --

3 A. No.

4 Q. -- be willing to bid?

5 A. No, but I'm not sure if there's -- there may
6 be some on the bid list. I'm not sure.

7 Q. Thank you.

8 MR. POSTON: That's all I have, Judge.

9 JUDGE WOODRUFF: All right. We'll come up for
10 Commissioner questions, but it is nearly lunchtime. With
11 your permission and Commissioner Jarrett's indulgence, we'll
12 go with Commissioner Kenney. He had one question.

13 COMMISSIONER KENNEY: Thank you.

14 EXAMINATION

15 QUESTIONS BY COMMISSIONER KENNEY:

16 Q. Good afternoon. Well, almost. I just have
17 one quick question. And it pertains to the discussion that
18 you were having with Mr. Berlin about primary and secondary
19 delivery points.

20 A. Yes.

21 Q. And I think your response was that whether
22 something's primary or secondary goes to the priority, but
23 not to the firmness of the service; is that correct?

24 A. That's correct.

25 Q. So whether a delivery point is considered

1 primary or secondary doesn't have any impact on the firmness
2 of the service?

3 A. That's right. It's still firm. It's not
4 subject to interruption.

5 Q. Gotcha. That's the only question.

6 COMMISSIONER KENNEY: Thank you.

7 JUDGE WOODRUFF: All right. We have been
8 going for two hours, and at this point, we will take a break
9 for lunch before we continue with Commissioner questions.
10 We'll come back at one o'clock.

11 (A lunch recess was held.)

12 JUDGE WOODRUFF: All right. We're back from
13 lunch. And let's go ahead and get back on the record.
14 Before we broke for lunch, we were amidst Commissioner
15 questions, so I'll turn to Commissioner Jarrett.

16 COMMISSIONER JARRETT: Thank you, Judge.

17 EXAMINATION

18 QUESTIONS BY COMMISSIONER JARRETT:

19 Q. Good afternoon, Ms. Buchanan. Can we put
20 Mr. Berlin's slides back up? What I plan to do is kind of
21 plan to go through them. I don't know if someone can switch
22 them as I go. I thought Mr. Berlin did a pretty good job of
23 kind of summarizing Staff's position, Ms. Buchanan, and I
24 kind of wanted to walk through this and some of their points.

25 So if you could go to the next slide, please.

1 Okay. Next slide. Next slide. Next slide.

2 MR. BERLIN: Commissioner Jarrett, I can give
3 you a paper copy if you'd like to thumb through it.

4 COMMISSIONER JARRETT: Thank you, Mr. Berlin.
5 BY COMMISSIONER JARRETT:

6 Q. Well, let me start with this: I guess it
7 would be the thirteenth slide. And it says that Staff's
8 review examined gas purchasing practices and decisions for
9 prudence, reasonableness of hedging plans, reliability
10 analysis of estimated peak day requirements, and capacity
11 levels.

12 Now, does that sound to you like a pretty
13 reasonable approach to checking for Atmos' prudence?

14 A. Yes.

15 Q. And then there was the one slide with Atmos,
16 sort of the flowchart of the Atmos operations. Was that an
17 accurate description of how Atmos is structured?

18 A. Could I look at it one more time?

19 MR. BERLIN: Sure.

20 THE WITNESS: It's a little limited. I don't
21 know that it shows all the details, but I would say that --
22 let me just look at this for a second. The Kentucky and
23 Mid-States division are one now. At some point historically,
24 they were two separate operating divisions, now they're the
25 Kentucky Mid-States operating division. Other than that.

1 BY COMMISSIONER JARRETT:

2 Q. And you are -- your job is in the
3 Kentucky/Mid-States section?

4 A. I'm a shared service under the utility, and I
5 do -- my department does the purchasing for the
6 Kentucky/Mid-States Division.

7 Q. Okay. So there are two -- under Atmos Energy
8 Corporation, there are two, I guess, divisions or
9 departments. There's the Natural Gas Utility Operating
10 Divisions and Atmos Energy Holdings, Incorporated. And then
11 Atmos Energy Marketing, which is the affiliate that is at
12 issue here. They are under Atmos Energy Holdings,
13 Incorporated; is that correct?

14 A. You'll notice there's a little third one that
15 comes down below on the right that says, Atmos Pipeline
16 Texas, that's a third one. But yes, Atmos Energy Marketing
17 is under Atmos Energy Holdings.

18 Q. Okay. So what type of separation or walls are
19 there between the Natural Gas Utility Operating Divisions and
20 Atmos Energy Holdings?

21 A. Well, physically, we're located in different
22 parts of the company. We have separate offices. Our books
23 and records are kept separate. For gas supply purchasing,
24 I'm completely independent what we do from the Atmos Energy
25 Marketing and Atmos Energy Holdings. We have no

1 correspondence with them except for if they were a winning
2 bidder in our supply.

3 Q. Okay. And does your department or your
4 section, are you the ones that prepare the RFPs?

5 A. Yes, for the Kentucky/Mid-States division.

6 Q. And are they done under your supervision?

7 A. Yes, they are.

8 Q. So under your supervision?

9 A. Yes.

10 Q. Do you ever talk to anybody personally from
11 Atmos Energy Marketing ever?

12 A. If they win a bid --

13 Q. Okay.

14 A. -- we talk to them. Obviously they're our
15 supplier.

16 Q. But you don't typically pick up a phone and
17 talk to anyone at Atmos Energy Marketing?

18 A. No, they're not involved in our supply
19 purchasing practices.

20 Q. To your knowledge, does any of your employees
21 regularly pick up the phone and call --

22 A. No, actually, we're very sensitive to the
23 delineation and we try to keep very clear walls between the
24 two.

25 Q. Okay. How about e-mails, does anybody e-mail

1 back and forth with each other?

2 A. Only with respect to a -- a contract between
3 Atmos Energy Marketing and the utility.

4 Q. Okay. I'm going past all of Mr. Berlin's sort
5 of legal analysis and legal standards. He has a slide
6 entitled relief requested. There we go. And it says,
7 Because the RFP and bid award process with AEM is
8 unreasonable and flawed, Staff has suggested gas cost to
9 AEM's FMP plus its O/H.

10 Would you just kind of -- basically an
11 overview, describe your RFP process.

12 A. Yes. At this point in time, we were still on
13 a manual RFP process, which means we drafted paper letters.
14 We had a list of approximately -- in this area of
15 approximately 60 potential bidders.

16 The RFP letters were drafted by a gentleman
17 that works for me. He's a gas supply specialist at the time,
18 Mr. Walker. I would approve the -- the letters and the RFP
19 documents that we looked at earlier and then those letters
20 would be Fed-Ex'd out to each of the -- the potential bidders
21 of each of those 60 on that list.

22 Within the RFP document, they're given a
23 deadline for asking questions. If -- within that deadline,
24 questions are submitted in writing, generally through e-mail,
25 to Mr. Walker. He would show me the question, and between

1 the two of us, we would craft an answer if -- if we felt it
2 was an appropriate question for that supply deal. And that
3 response would go out confidentially, not revealing who asked
4 the question. But it would go out to all 60 of the
5 recipients so they would be privy to both the question and
6 the answer that the other supplier -- the other bidder
7 submitted.

8 At the end of the bid deadline, those parties
9 who wished to submit bids would mail their bids in or FedEx
10 through courier to our office by -- typically it's a
11 four p.m. deadline on a date certain. Any bids that came in
12 after that date, barring a circumstance that we would
13 forgive, for example, I think there was a hurricane one time
14 and FedEx shipments got delayed a day, so we accepted that
15 party's bid the following day. We could verify that through
16 FedEx that there had been a delivery delay. But barring
17 that, any bids that come in after the deadline are returned
18 unopened to that party.

19 We open the bids -- Mr. Walker would open
20 them, and he would have one witness, typically myself, or if
21 I'm not available, my designee, someone in my office.
22 Typically, it's he and I open the bids, open the envelopes.
23 Typically date-stamp them and quickly jot down who's bidding.

24 It's not uncommon that we get a number of
25 responses that say I'm very interested in your process, but I

1 choose not to bid at this time. Please continue to keep me
2 in your process in the future. So we -- we note those.

3 And then starts an evaluation period.
4 Depending on the complexity of the RFP, it could be anywhere
5 from one to three weeks for a supply RFP -- like in the
6 Hannibal and Butler area is about a one-week process to
7 evaluate.

8 Q. And who does the evaluations?

9 A. Mr. Walker does, and then when he's completed
10 his evaluation, I review it. He puts in the terms of the
11 pricing that were submitted in the bids, along with his plan
12 purchase volumes for that next year and does the math to come
13 out with the projected costs of each bid, and then ranks
14 them. If he feels that any of the bids were non-conforming
15 because either they didn't provide a service that we required
16 or they bid in such a way that it didn't agree with some of
17 the terms that we specified in our RFP, he will -- he'll
18 indicate that to me. I'll review it. If I'm still not sure,
19 I may take it up a level to my boss and say do you believe
20 this is non-conforming? And if it is, we'll -- we'll
21 typically include it still in the evaluation, but we'll
22 exclude them from being a winner, you know, if that were to
23 be the case.

24 After the evaluation is made and the
25 determination of the best bid, we -- we generally share -- we

1 concrete a document called a Recommendation, and that's
2 shared up to senior management. My -- my supervisor, who's
3 the Vice-President of Gas Supply will review it. If an
4 affiliate is involved, we also have our legal department
5 review and the Vice-President of Rates and Regulatory Reviews
6 as well.

7 Q. And what's the reason for that?

8 A. Just -- we're just sensitive to if an
9 affiliate is chosen as the winning bidder, we want to make
10 sure that we have a higher level of review than just myself
11 and Mr. Walker, so just being cautious.

12 Once the recommendation goes out and the
13 signatures from the VPs, then we contact the bidders. We'll
14 contact the winning bidder, congratulate them on -- on them
15 being selected as the lowest cost. And then we typically
16 will just send e-mails to the losers. And -- and then we
17 start the contracting process after that, setting up the base
18 NAESB if we have not done business with them before. If we
19 have done business with them before, there is a base NAESB in
20 place, we'll just draft a new transaction confirmation to
21 capture that deal. And then the following month, we start --
22 usually, it's about the next month, we'll start purchasing
23 gas on that contract.

24 Q. Okay. And who writes the -- the language of
25 the RFPs?

1 A. We're trying very hard over the last several
2 years to have a very standardized RFP throughout Atmos. All
3 12 states. It's been an ongoing process. I've been working
4 with the other gas supply managers. Together we try to
5 select the best practices and best language for these RFPs.
6 We want a consistent face throughout Atmos. So it's -- it's
7 an evolution, but it builds on the last year and then we
8 might tweak it.

9 Sometimes Staff gives us suggestions on how we
10 can make it better, and so we put some of those changes into
11 it. But typically, for the RFPs that go out at the same time
12 over different areas of the company, they'll all have the
13 same look and feel, the same language. So they're drafted in
14 my office, but we do have a standardization process in place.

15 Q. Now, have you ever gotten any direction from
16 your superiors or anybody up the chain of command to put
17 clauses or sections in RFPs that, in your mind, would seem to
18 benefit or give an advantage to AEM?

19 A. No.

20 Q. That's never happened?

21 A. And if they did, under our code of conduct, I
22 think I would have to report that.

23 Q. And you've --

24 A. No.

25 Q. -- never received any question, you've never

1 reported it?

2 A. No.

3 Q. Okay. I wanted to go to the slide that says
4 Atmos RFP and Bid Award Process is Flawed. A couple more, I
5 think. There we go. "RFP 1 attracted only three conforming
6 bids out of a pool of 60 suppliers." Is that unusual or
7 uncommon, from your perspective?

8 A. Three does not seem to be an unusual amount.
9 I'm just turning to a schedule, my schedule in my direct
10 testimony. I was going to look at it, it shows the number of
11 bidders, but I don't think three is unusual. Of course, we
12 desire to have as many as we can get.

13 Q. Of course.

14 A. That's always good to have more.

15 Q. And why would three out of 60 not be that
16 unusual?

17 A. Just historically looking back, I'm just kind
18 of looking over from 2006 through 2010, there's cases where
19 there's one bidder, three bidders, five bidders, six, so I'd
20 say three is kind of middle of the road.

21 Q. I mean, do you have suppliers on that list of
22 60 that have never bid for any of Atmos business?

23 A. Yes, yes.

24 Q. So -- so you just -- you -- correct me if I'm
25 not understanding correctly, but you would send this out all

1 over the country, and there may be people that are never ever
2 going to bid on Atmos', and you know it, but you're going to
3 send it to them anyway just in case?

4 A. Right. At one point, we used to say that if
5 you don't bid -- this was years before I was in the
6 department. There used to be a clause on there that would
7 say if you don't bid, we're going to take your name off the
8 list. Several years back, we decided that, no, we're just
9 going to keep sending it to you, we want to have as many
10 people on our bid list as possible.

11 Q. Now -- now, in your function of your job at
12 Atmos, are you aware of how other companies do their RFPs?

13 A. Just vaguely.

14 Q. Okay. Do you know whether they get more bids
15 or less bids --

16 A. No, I don't.

17 Q. -- than you?

18 A. I don't have any awareness of that.

19 Q. So you don't have any comparison between
20 whether Atmos gets more bidders or less on average?

21 A. No.

22 Q. Okay. The next bullet there is the \$235,000
23 difference between AEM and next highest bidder, which I guess
24 is on this RFP 1. Now, again, for that -- for that size of a
25 contract or that size of a bid, what you were asking for, is

1 a \$235,000 difference, is that -- is that unusual?

2 A. Doesn't surprise me at all.

3 Q. Okay. Do you see those kinds of differences
4 even when AEM doesn't bid?

5 A. Yes, and in other states as well, outside of
6 Missouri, we see a wide variety and range of bids. Usually,
7 there's little clusters. You may have one or two high bids,
8 a little cluster that would be less, and then maybe some, you
9 know, one or two that are really low. It's just all over the
10 board, so. It doesn't shock me.

11 Q. And do you know why there would be such a wide
12 variation?

13 A. I don't know with certainty. I know that each
14 supplier has its own portfolio, its own business model, so I
15 just assume that some know how to extract more value or have
16 the ability to extract more value out of a certain
17 transaction, maybe the pipe it's on, maybe in relation to
18 their other customers, if they're marketers, obviously
19 they're dealing with other producers and LDCs and municipals.
20 So maybe it's just how it fits into their business, whether
21 it has more value to them. I'm just not sure, though.

22 Q. So correct me if I'm wrong. Would it be safe
23 to say that while you send out bid requests to of 60 or
24 however many you send out at any one time, that you maybe
25 have a small core of certain companies that bid regularly?

1 A. Yeah, a small core, but it's quite a variety
2 of different names of -- of suppliers.

3 Q. Okay. And -- and it just depends on what the
4 contract is --

5 A. Yes.

6 Q. -- on who bids it?

7 A. We do see from year to year a lot of repeat
8 bidders. You know, it's the same company. They know that
9 area or that fits their business, so they're going to -- we
10 expect them to bid year after year in that area.

11 Q. Okay. And then the third bullet on that slide
12 says that the "RFP requested firm and warranted service."
13 What is that?

14 A. That means that the gas supply is going to
15 come to the company without fail. Firm. It's not subject to
16 interruption. The supplier doesn't call us and say, I've got
17 something else going on today, I can't give you my gas.

18 Q. Okay.

19 A. Firm and warranted is just supply us every day
20 without fail.

21 Q. Okay. And then it says, "Only AEM bid into a
22 secondary receipt point." And you were here during the
23 opening statements, correct?

24 A. Yes.

25 Q. And you heard my exchange with -- with

1 Mr. Berlin, I think, and I think he had indicated that there
2 was some language in the RFP that said that Atmos would
3 consider bids into a secondary receipt point.

4 A. Yes.

5 Q. Is that correct?

6 A. Yes.

7 Q. So anyone who bid on that was able to bid into
8 a secondary receipt point and that would have been considered
9 conforming?

10 A. Correct.

11 Q. Okay. And then he said -- the final point is,
12 "Atmos did not rebid for a secondary receipt point." Why
13 not? Why didn't Atmos bid --

14 A. I'm not sure I understand that point.

15 Q. Well, I think his -- from what I understand in
16 his opening statement was that it wasn't very clear that you
17 could bid into a secondary receipt point, so why didn't you
18 make it more clear and rebid it?

19 A. Oh, goodness. I don't think we had that
20 assumption that anyone was confused. We thought it was
21 pretty clear in the RFP.

22 Q. Okay. And then the next slide. "Atmos RFP
23 and Bid Award Process is Flawed Continued." And then it
24 says, "RFP and bid award process allowed AEM to set its own
25 terms of swing gas service;" is that true? What does that

1 mean?

2 A. I don't know what that means. Let me read
3 this. "RFP and bid award process allowed AEM to set its own"
4 -- I have no idea what that means. The swing gas is the gas
5 daily, gas that we order a day ahead. The quantity that's
6 ordered is what Mr. Walker needs for the -- typically the
7 weather -- the requirements that are happening on that next
8 day, his forecast. So he'll order more gas. So they -- I
9 really don't understand what that means.

10 Q. So does AEM set any terms of the swing gas
11 service?

12 A. I think maybe he was -- I think it was maybe
13 referring to the transaction confirmation where there was
14 some ranges of swing gas quantity on the transaction
15 confirmation.

16 Q. But Atmos would be the one that would set how
17 much --

18 A. Yes, when we do our day-ahead nomination, we
19 set the quantity for swing gas.

20 Q. AEM doesn't call you and say we're going to
21 set up the swing gas --

22 A. No, sir.

23 Q. -- service and --

24 A. The parameter is the maximum delivery quantity
25 on our transportation contract that, 10,645. That limits the

1 nomination for that.

2 Q. And then -- well, look at the difference,
3 because I guess RFP 1 in orange there, that's AEM swing gas
4 range. And then RFP 2 is -- is a different supplier, it's
5 not AEM.

6 A. Uh-huh.

7 Q. Is there something there because there's no
8 bottom number? I guess the bottom number is 0 in RFP 2.

9 A. Probably 0 to 10,645.

10 Q. But the range in RFP 2 is much shorter. Is
11 that of any consequence as far as allowing AEM to set its own
12 terms?

13 A. Because the -- the transaction confirmation
14 volumes on there are generally the estimates, they're the
15 plan volumes. And then the contractual volume is set when
16 the nomination is made. Either the first of the month or the
17 daily. So I think the plan must have estimated the 5,645 and
18 the 6,945 as what Mr. Walker thought at the beginning of the
19 year what his swing volumes would be in those months.

20 Q. Okay. And then in RFP 2, it would be the same
21 -- so why would RFP 2 be 0 then, as the lower part?

22 A. Oh, well, both instances, it would be 0
23 because you're not required to order swing gas. It would be
24 0. I think the 5,645 and the, 6945 were set as -- as the
25 estimated maximum swing that you would buy.

1 Q. Okay. But that would be done at the time. It
2 wouldn't be like in the RFP or anything like that?

3 A. Correct.

4 Q. Okay. And it would just be -- would it be
5 based on -- on circumstances as they were at that particular
6 time?

7 A. Yes.

8 Q. Okay. And then the next bullet, the second
9 bullet on that slide says, "Same RFP attracts different
10 product services." I'm not sure -- what does that mean to
11 you?

12 A. Well, to me, we're always going to get the
13 firm gas supply. That's the service that we're asking for
14 and that's what we got. The firm gas supply. I'm thinking
15 what may be meant is that some came in at that secondary
16 receipt point versus --

17 Q. Okay.

18 A. -- the primary.

19 Q. And what's the significance of that to you?
20 Is there a significance as far as prudence?

21 A. Not prudence, but it has a cost significance.
22 The secondary receipt point is going to be less costly.

23 Q. Oh, okay. So if it comes in the secondary
24 receipt point, then that's going to be less costs for
25 consumers?

1 A. Yes.

2 Q. And then the final bullet point there is, "The
3 RFP 2 attracted only one conforming bidder out of a pool of
4 60 suppliers." One out of 60, is that unusual in and of
5 itself?

6 A. It is not common.

7 Q. Okay.

8 A. We have had other instances, but it's not very
9 common.

10 Q. Do you know why there was only one conforming
11 bidder here?

12 A. I don't know with certainty why that is.

13 Q. And was -- AEM didn't bid on this, I take it?

14 A. That's correct, they did not.

15 Q. Or they were non-conforming?

16 A. They didn't bid.

17 Q. So this really had nothing to do with whether
18 the price you paid to AEM was prudent or not?

19 A. No.

20 Q. Because this is a separate contract?

21 A. Correct.

22 Q. And then the next slide. Mr. Berlin asked you
23 a lot of questions and went through some of his exhibits
24 where the service level was blank for both base load and
25 swing gas requirements. Now, why were those blank in the

1 transaction confirmation?

2 A. I can't say why that was. I think it was just
3 a clerical oversight. The transaction confirmation --

4 Q. Sorry, I didn't mean to speak over you.

5 A. The transaction confirmation is -- is filled
6 out at the very beginning of the contract and tucked away
7 into a binder and it's not something that we're getting out
8 and referring to. So it could have been an oversight is my
9 guess.

10 Q. Is there anyplace else where the service level
11 is written down for both base load and swing gas
12 requirements, other than the transaction confirmation?

13 A. Other than the request for proposal that
14 initiated the bid. Other than that, I don't know that it's
15 written down; however, I can tell you that we -- we know what
16 kind of service we received.

17 Q. Okay.

18 A. But not written.

19 Q. I guess I'm trying to, you know, determine in
20 my own mind what the significance of that is. Does that mean
21 that -- that we can -- since it's blank, that you can just
22 require any service level?

23 A. We have the expectation that the service was
24 firm and we received firm service.

25 Q. And that was written down somewhere else?

1 A. I don't know that it was written other than in
2 the RFP, but that's the only kind of business we do with our
3 suppliers is firm gas supply. We don't ever do interruptible
4 supply.

5 Q. Okay.

6 A. And as far as I know, no supplier has ever
7 thought that they were giving us interruptible supply.

8 Q. And then it says, the next bullet, "No base
9 load quantity listed in the agreement;" is that true?

10 A. I'm not sure. We would have to go back and
11 look at the TCs, if there was one that had a blank for the
12 base load. I'm not sure.

13 Q. What would be the significance if it was
14 blank?

15 A. It would seem to me if you had a contract
16 dispute and you had to go to a contract -- if you had to go
17 to court and try to resolve that, they would probably go to
18 the transaction confirmation and say, you know, you had an
19 obligation for this quantity. So if it's not in there, I
20 don't know what document you would look to.

21 Q. Okay. So do you know on any -- on any of the
22 AEM transaction confirmations, were there any that were just
23 -- I guess what I'm trying to find out is: Does that give
24 AEM -- does that give Atmos an opportunity to give AEM an
25 unfair advantage?

1 A. No. We don't treat AEM any differently than
2 any other supplier. If there was an oversight in the
3 transaction confirmation, it had no effect on the service
4 that we got. We have a clear expectation of the service.

5 Q. And I mean, is there any documents that show
6 any spikes like you were buying all this gas from AEM that
7 you didn't need?

8 A. The purchasing decisions, the nominated
9 quantities are determined based on our requirements in the
10 forecast. So it's an operational need-based purchase.

11 Q. Okay. So --

12 A. We have backup forecasts and design day
13 studies that show how much we're going to be purchasing.

14 Q. Now, the third bullet point out that slide
15 says that, "The base NAESB agreement allows firm or
16 interruptible gas supplies." Now, I take it from your prior
17 testimony in these prior slides that Atmos, in their
18 agreements, asked for firm and warranted?

19 A. Yes.

20 Q. Is that correct?

21 A. Yes.

22 Q. And is that always the case in every contract
23 whether AEM is the -- the supplier or not?

24 A. I can speak for my area, my jurisdiction, the
25 Kentucky/Mid-States division and those seven states, and the

1 answer's yes, it is always firm and warranted.

2 Q. Okay. I don't have anymore questions about
3 the slides.

4 I do have one final question for you,
5 Ms. Buchanan. And if you don't know the answer to this,
6 please feel free to -- to say so.

7 You're aware that Atmos is pulling up its
8 operations in Missouri and leaving?

9 A. Yes, we're selling the properties, yes.

10 Q. Yes. Is it a reason or the reason, one of the
11 reasons because of the regulatory climate in Missouri as it
12 relates to Atmos?

13 A. In my opinion, that did have an influence on
14 it.

15 Q. Thank you, Ms. Buchanan.

16 COMMISSIONER JARRETT: I don't have any
17 further questions.

18 JUDGE WOODRUFF: I just have one follow-up
19 question to something that Commissioner Jarrett asked you.

20 EXAMINATION

21 QUESTIONS BY JUDGE WOODRUFF:

22 Q. You said that you always ask for firm gas
23 services and that you knew that you received firm gas
24 service. How do you know that you received firm gas service?

25 A. We put a nomination in for first-of-the-month

1 gas or incremental daily gas. If you receive that gas, then
2 you've gotten your firm supply. So for this ACA period under
3 review, we received our gas every day we asked for it.
4 Outside of a few clerical errors with some of our suppliers,
5 including AEM had a few, I believe.

6 Q. If you were, in fact -- the supplier was
7 actually using interruptible gas but was never interrupted,
8 would you be able to tell the difference?

9 A. I don't know how I would know what they were
10 doing behind the scenes. All I know is they delivered the
11 gas to my point.

12 Q. You just know that you got your gas?

13 A. Yes.

14 Q. Okay.

15 COMMISSIONER JARRETT: Judge, I'm sorry, I did
16 have a couple more questions.

17 FURTHER EXAMINATION

18 QUESTIONS BY COMMISSIONER JARRETT:

19 Q. Did you have a chance to read Mr. Sommerer's
20 testimony?

21 A. Yes.

22 Q. Okay. I think in there in several places, he
23 indicates that Atmos either didn't provide information or
24 provided inadequate information. Do you recall reading some
25 of that in his testimony?

1 A. I was thinking that that pertained to AEM.

2 Q. Okay. Didn't pertain to Atmos?

3 A. I'm not sure if there was anything -- I don't
4 remember there being something directed at the utility not
5 providing.

6 Q. Well, to your knowledge, did you provide
7 everything that Staff asked of you?

8 A. Yes, as far as I know.

9 Q. Okay. Thank you.

10 JUDGE WOODRUFF: All right. I don't have
11 anything further. Then for recross, Staff.

12 RE CROSS-EXAMINATION

13 QUESTIONS BY MR. BERLIN:

14 Q. Ms. Buchanan, you may recall that Commissioner
15 Kenney had asked you some questions regarding the secondary
16 receipt point, and that I think his questions were about the
17 firmness of the secondary receipt point. Do you recall his
18 questions?

19 A. Yes.

20 Q. Did Atmos' transaction confirmation with AEM
21 specify the service level was blank?

22 A. The service level had been left blank on those
23 examples we looked at.

24 Q. Okay. Thank you. I think Commissioner
25 Jarrett had asked you some questions about the \$235,000

1 difference between AEM and the next closest bidder. I think
2 he had asked you if -- if that was unusual. And my question
3 for you is: Could there be a reason for the difference such
4 as if, as an example, if a supplier thought that the swing
5 requirement was 0 to 10,645 per day and another supplier
6 thought the swing requirement was 0 to 7,000 a day, do you
7 think that difference could have -- could have caused the
8 supplier to value the contract differently?

9 A. Yeah, in that hypothetical situation, they
10 probably could. Typically, the pricing is per dekatherm, so.

11 Q. And then I think that he had asked about a
12 slide that it stated about the RFP and the bid award process
13 that allowed AEM to set its own terms of swing gas service.
14 Do you recall his questions about that?

15 A. Yes.

16 Q. And I think, if I recall your response, that
17 you -- if it wasn't in the transaction confirmation, it would
18 be in the nomination. Was that your response, that the
19 nomination tells what is being ordered?

20 A. The nomination is the contractual quantity of
21 incremental or swing gas being ordered.

22 Q. The nomination locks in --

23 A. Yes.

24 Q. -- what is being ordered, correct?

25 A. Correct.

1 Q. But the contract volumes merely specify the
2 range, correct?

3 A. Or the plan.

4 Q. So when it's 0 to -- when it's specified in
5 the transaction agreement for a specific level of service or
6 a specific quantity such as a requirement for 0 to 10,645,
7 that range is what's specified in the supply agreement, the
8 contract?

9 A. It can be, yes.

10 Q. Okay. I believe he had asked you as well
11 about the significance of the blank base load quantity, and I
12 think you answered that if there's a dispute, you would go
13 back to the transaction confirmation?

14 A. Yes, I believe that's -- I'm not an attorney,
15 obviously, but I was thinking that if there was a dispute
16 between the parties and Mr. Walker had failed to turn in a
17 nomination that month, they may go back to the transaction
18 confirmation and look for the quantity that was estimated for
19 that month.

20 Q. So the transaction confirmation is the -- is
21 the document, the agreement, if you will, that -- that the
22 parties would go back to look to to determine what the
23 quantity is?

24 A. Initially.

25 MR. BERLIN: No further questions, Judge.

1 JUDGE WOODRUFF: Further cross from Public
2 Counsel?

3 MR. POSTON: Yes, real brief.

4 RECROSS-EXAMINATION

5 QUESTIONS BY MR. POSTON.

6 Q. In response to a question from Commissioner
7 Jarrett, you said that, in your opinion, the regulatory
8 environment in Missouri influenced the decision to sell the
9 Atmos properties; is that correct?

10 A. In my opinion.

11 Q. And who made that decision to sell?

12 A. I don't know. I wasn't involved in it.

13 Q. Okay. Have you spoken with any of the people
14 who were involved in making that decision to understand their
15 reasoning?

16 A. I don't know who made the decision. I assume
17 it was the president, and I haven't spoke to him, no.

18 Q. Okay. So the opinion that you stated was just
19 your opinion and --

20 A. Yes.

21 Q. -- was not based on any conversation with
22 anyone who made the decision to sell Atmos --

23 A. That's correct.

24 Q. -- properties?

25 MR. POSTON: Thank you, that's all.

1 JUDGE WOODRUFF: Redirect?

2 REDIRECT EXAMINATION

3 QUESTIONS BY MR. FISCHER.

4 Q. Ms. Buchanan, I'd like to go to a couple of
5 the slides that Commissioner Jarrett asked you about, and I'd
6 like to begin with the relief requested slide.

7 And I was just going to ask you about the
8 first bullet where it says, "Because RFP and bid award
9 process with AEM is unreasonable and flawed, Staff has
10 adjusted gas cost to AEM's FMP plus its O/H." I guess that
11 would be -- well, what is FMP to you?

12 A. Fair market price.

13 Q. Plus its O/H? Is that overhead?

14 A. Overhead, O/H.

15 Q. My question to you is: When you came into the
16 hearing room today, based upon your understanding of the
17 Staff recommendation and the Staff's testimony, did you
18 understand that the basis for Staff's proposed disallowance
19 in this case was directly related to the RFP process?

20 A. No, I didn't have that understanding.

21 Q. Has your RFP process changed substantially
22 from the last case?

23 A. No.

24 Q. Was it an issue in the last case?

25 A. Not that I remember.

1 Q. In the past, has Staff made suggestions to
2 your RFP process in the Staff recommendation?

3 A. Yes, there's been recommendations by Staff on
4 the RFP process.

5 Q. Has Atmos incorporated those suggestions in
6 the past?

7 A. We try to be sensitive to Staff's suggestions
8 and try to work those into the -- to make our RFP process
9 better each time.

10 Q. And in this case, was there also a section in
11 the Staff recommendation on RFP process?

12 A. Yes.

13 Q. And did you address that in the Staff -- in
14 your response to the Staff recommendation?

15 A. Yes, we did.

16 Q. Okay. And the record will reflect what we
17 said?

18 A. Yes.

19 Q. Now there was a question -- several questions,
20 I guess, about the \$237,000 difference in the AEM bid versus
21 the next highest bid. Do you recall those?

22 A. Yes.

23 Q. Did you take a look at an analysis on a
24 state-by-state basis on the kind of money that you had Atmos
25 spend for gas costs and how that would relate to \$235,000?

1 A. Yes, we do a monthly gas cost report and I add
2 those up for the 12 months and compared that 200,000 to the
3 total gas cost.

4 MR. FISCHER: Judge, I'd like to have an
5 exhibit marked.

6 JUDGE WOODRUFF: All right. We're up to
7 Number 15.

8 (Exhibit Number 15 was marked for
9 identification by the Court Reporter.)

10 BY MR. FISCHER.

11 Q. Ms. Buchanan, was this the analysis, the
12 report that you talked about that you mentioned?

13 A. Yes.

14 Q. And what -- what does that report show?

15 A. On the first page, for a 12-month period, our
16 gas costs are pretty much the same from year to year, so I
17 just picked a more recent year that I had readily available,
18 December, '09 to 2010. By state, it shows the quantity of
19 gas purchased, it shows the transportation costs, that would
20 be from the pipelines. It shows the supply costs from the
21 suppliers and marketers that we purchase gas from and then
22 the grand total dollars.

23 Q. And if you look at the Missouri total, is
24 \$235,000 a significant amount of the total dollars that you
25 spent in Missouri?

1 A. I believe it's around two percent of the total
2 cost.

3 Q. Okay. And of course that's throughout the
4 state, that's not just Butler and Hannibal?

5 A. Oh, yes, right. So it's even less on total
6 state, uh-huh.

7 Q. Now, had you not adopted or not accepted that
8 bid from AEM and had gone to a higher bid, would the cost to
9 the consumers have increased?

10 A. Yes.

11 Q. Is there any doubt in your mind that the AEM
12 bid was the low bid?

13 A. No.

14 Q. One of the summary sheets on the Staff's
15 presentation today suggested that AEM is unreasonable -- that
16 the costs I think associated with AEM were unreasonable and
17 flawed based upon the results that it produced.

18 I'd like for you to take a look at the second
19 page of this exhibit. And does it compare, for example, the
20 Butler area, the amount of supply average price per dekatherm
21 from AEM and what the results were that it produced?

22 A. Yes, this is for the 12 months, April, 2008 to
23 March, 2009. And the fourth line down is the Panhandle Gas
24 Supply and gas costs. So that would be the services provided
25 by AEM.

1 Q. And what does that last column show?

2 A. That shows \$6.7438 per dekatherm in supply,
3 the average price.

4 Q. How would that compare to other areas of the
5 state?

6 A. Oh, there's some higher and some lower. It's
7 about average, I would say.

8 Q. Is the average on the very bottom of that
9 supply average price column, is that an average where it says
10 \$7 and a nickel?

11 A. Correct.

12 Q. So Butler was actually less than the average,
13 is that what we could conclude or not?

14 A. Yes.

15 Q. Okay. And that was for a period of, at the
16 top, April of '08 to March, '09; is that right?

17 A. Correct.

18 Q. Now, if we turn to the next page, does that
19 address a different 12-month period?

20 A. Yes, I did this period to sync it up to the
21 ACA period under review. So you would -- if you were going
22 to look at the same line, it would span two different
23 contracts and suppliers.

24 Q. Okay. Well, what would that show as far as
25 the Butler area?

1 A. It's actually Butler and Hannibal combined.
2 It's all the supply on Panhandle for Missouri and it shows
3 \$3.6273, the average price of supply per dekatherm.

4 Q. Is that more or less than the average for the
5 state?

6 A. It's less than its average, which is \$4.1983.

7 Q. And the previous slide that we talked about,
8 the previous sheet, that would include both Butler and
9 Hannibal as well?

10 A. That's correct.

11 Q. Okay. Let's turn to the next sheet. What
12 does it show?

13 A. This is a price sheet that we prepare in the
14 gas supply department each month that shows our
15 first-of-the-month indices, the gas supply indexes, the
16 indices that we look at are in the last two columns, inside
17 FERC and NGI. The third-to-last column is the price that is
18 the first-of-the-month price bid by the -- the contracted
19 supplier.

20 Q. Would that suggest that for the Panhandle
21 Hannibal and Panhandle Butler areas, the 4.03, does that
22 appear to be among the lower, if not the lowest supply -- I
23 looked at the wrong column -- the 4.04 and 4.18, does that
24 appear to be among the lowest of the state?

25 A. I'd say it's on the low range because I do see

1 some that's in the \$6 and \$7 range. And this is, again,
2 statewide for Missouri for the month of -- this is just
3 October, 2008.

4 Q. Does the next sheet address a different month?

5 A. Yes, I think we have here each month in the
6 ACA review period.

7 Q. If you looked at each of those months and just
8 cut to the end here, would your conclusion be the same
9 regarding the comparison of the Panhandle and Butler supply
10 costs to the rest of the state in your territory?

11 A. I believe that generally each month, it falls
12 in the low end of the scale, compared to the other supply
13 pricing in the state.

14 MR. FISCHER: Judge, I'd move for the
15 admission of Exhibit 15.

16 JUDGE WOODRUFF: Exhibit 15 has been offered.
17 Any objections to its receipt? Hearing none, it will be
18 received.

19 BY MR. FISCHER:

20 Q. There was a question to you about the -- the
21 recent bid where you had only one conforming bid. Do you
22 recall that?

23 A. Yes.

24 Q. And I believe Commissioner Jarrett confirmed
25 with you that that was not AEM?

1 A. Correct, it was a non-affiliate.

2 Q. And that was a more recent period than the ACA
3 period that we've been dealing with in this case; is that
4 right?

5 A. Let me just look at that. I believe it was
6 the latter part of the period that we're dealing with. That
7 -- that particular Panhandle Hannibal contract went into
8 effect in April, 2009. So it was the last five months of the
9 ACA review period in question here.

10 Q. And I believe you answered that AEM did not
11 bid on that contract?

12 A. Correct.

13 Q. Is AEM bidding on any Missouri RFPs today?

14 A. They have not bid in a couple of years now.

15 Q. And that would be since Staff proposed a
16 disallowance in the last case?

17 A. I think that's about the same timing, yes.

18 Q. Did Staff make a disallowance based upon that
19 one -- one conforming bid? Did they disallow anything in
20 your case related to that?

21 A. No.

22 Q. Did they make any disallowances in any of the
23 cases where you had a handful of bids where AEM didn't bid?

24 A. No.

25 Q. Have they raised any questions in any of the

1 other areas, other than where AEM won the contract, about
2 your bidding process?

3 A. No.

4 Q. I believe you had some questions about DR
5 related to fully distributed costs. Do you recall that?

6 A. Yes.

7 Q. Were there more than one DR related to fully
8 distributed costs in the discovery in this case?

9 A. Yes, there was a follow-up data request for
10 that same one. I think it was 130 and 130.1.

11 Q. And did you explain how you calculated fully
12 distributed costs in that DR?

13 A. The company, in its response, explained fully
14 distributed costs.

15 Q. In the last case, do you recall that the Staff
16 witness testified that the company's fully distributed cost
17 calculation was not an issue or a concern to Staff?

18 A. Yes, I remember that.

19 Q. Do you also recall that Staff's witness
20 indicated that the cost allocation of Atmos was not a
21 concern?

22 A. Yes.

23 Q. Is that the same Cost Allocation Manual in
24 this case that you had in the last case?

25 A. I believe it is.

1 Q. Now, you've had discussions about your RFP
2 process and how you do that.

3 A. Uh-huh, yes.

4 Q. Do you get -- after you get this transaction
5 confirmation sheet that you visited with Staff with, do you
6 get an invoice from a gas marketer like AEM?

7 A. Yes, once the transactions start, we are
8 invoiced every month by the suppliers.

9 Q. And would that supplier in the case of AEM
10 particularly, would they include a service fee or a -- an
11 allocation of their office overheads or their personnel or
12 anything else on a separate line for their invoiced cost of
13 gas?

14 A. No, the only costs on there are the bid
15 prices.

16 Q. And what would you suppose is part of the bid
17 price? Would it include the cost of gas?

18 A. Yes. Anything that they're trying to recoup
19 in their pricing, I assume, would be imbedded in their bid
20 price.

21 Q. Would it include an overhead cost embedded in
22 that invoiced cost of gas?

23 A. Well, I would assume so.

24 Q. And if they made a profit, would it be
25 included in there, too?

1 A. I would assume so.

2 Q. But then after you have that, your invoiced
3 cost of gas, do you get any other charges from AEM?

4 A. No, just the gas costs that was bid.

5 Q. So there are no allocated costs?

6 A. No.

7 Q. No shared costs?

8 A. No.

9 Q. Any other costs other than the invoiced cost
10 of gas?

11 A. Nope.

12 Q. Would you get anything like that from any
13 unaffiliated gas marketer?

14 A. Would we get any allocated costs?

15 Q. Yes.

16 A. No, just the bid price for the price itself.

17 Q. So is AEM the same as any other unaffiliated
18 gas marketer in that regard?

19 A. Yes.

20 Q. And is that what you meant when you said we
21 have no allocations, that's a fact?

22 A. That's what I meant.

23 Q. Okay. Staff asked you about a schedule, I
24 think it was 4-1, where it was attached to Staff witness
25 Sommerer's testimony where it says that AEM does not

1 customarily track, allocate, or assign costs to a specific
2 transaction. Do you recall that question?

3 A. Yes.

4 Q. Would that be consistent with your invoices
5 that you received?

6 A. Yes. I don't see any detail broken out of how
7 they came up with their bid pricing. We get the price of the
8 gas that they bid. That's it.

9 Q. There were questions about how you know that
10 you have firm and warranted supply. Do you recall those?

11 A. Yes.

12 Q. How many times in your RFP are those terms, to
13 your knowledge?

14 A. At least six times.

15 Q. And I believe those are on Exhibits 4 and 5
16 that the Staff has introduced, correct?

17 A. I'll agree with you. I'm not sure if that's
18 the exhibit number, but I'll agree with you, yes.

19 Q. Okay. Now, during this ACA period that's in
20 question in this case, did AEM ever interrupt Atmos during
21 the ACA period other than for some clerical error?

22 A. No.

23 Q. Just to be clear, whenever I asked you about
24 clerical errors, would you explain what kind of clerical
25 error might cause an interruption?

1 A. Over the course of the ACA period, from time
2 to time, Mr. Walker would find that after he ordered gas,
3 maybe on a Friday, for example, when he'd come in Monday, he
4 found out that something went wrong. It was very infrequent
5 and limited. It's not limited to just -- the affiliate
6 suppliers do make mistakes. And so that's the clerical
7 errors I'm talking about where they sometimes make a
8 scheduling error and the supply might get cut because of
9 that.

10 Q. And you've seen similar clerical errors from
11 unaffiliated gas marketers?

12 A. Yes.

13 MR. FISCHER: Judge, I think that's all I
14 have. Thank you very much.

15 JUDGE WOODRUFF: Thank you. Ms. Buchanan, you
16 can step down.

17 MR. BERLIN: Can we take a quick break?

18 JUDGE WOODRUFF: I was just going to say that.
19 You anticipated my thought. We'll take a break until 2:15.

20 (A break was held.)

21 (Exhibit Numbers 16 through 18 were marked for
22 identification by the Court Reporter.)

23 JUDGE WOODRUFF: Okay. We're back from break,
24 and you can go ahead and start to begin. Mr. Sommerer has
25 taken the stand and I'll swear him in.

1 (The witness was sworn.)

2 JUDGE WOODRUFF: You may inquire.

3 MR. BERLIN: Thank you, Judge.

4 DIRECT EXAMINATION

5 QUESTIONS BY MR. BERLIN:

6 Q. Good afternoon, Mr. Sommerer.

7 A. Good afternoon.

8 Q. Would you please state your full name for the
9 record?

10 A. David Sommerer.

11 Q. And how long have you been employed by the
12 Commission?

13 A. Approximately 27 years.

14 Q. And in what capacity are you employed now?

15 A. I am the manager of procurement and analysis.

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

17 A. Since around 1993, so I would say 17 years.

18 Q. In the context of this case today, did you
19 cause to be prepared certain direct, rebuttal, and
20 surrebuttal testimony in a question-and-answer format?

21 A. Yes.

22 Q. And did you prepare both public and highly
23 confidential versions of your direct, your rebuttal, and your
24 surrebuttal?

25 A. Yes.

1 Q. And did your pre-filed testimony contain any
2 supporting schedules?

3 A. Yes.

4 Q. Do you have any corrections to your pre-filed
5 testimony and/or your supporting schedules at this time?

6 A. I do.

7 Q. Okay. What are they?

8 A. In rebuttal testimony, Schedule 1, which is a
9 highly confidential schedule in its entirety, I have one
10 change to make. And I may be able to make this in public.
11 I'm not sure. I need to change Atmos' estimate of bid, one
12 of those estimates is wrong. It needs to be corrected. And
13 I think I may be able to do it without mentioning which
14 supplier it is.

15 Q. Okay.

16 A. Okay. If you go to the left-hand side of the
17 schedule, the supply period, April, 2008 through March, 2009,
18 and go to the second bidder.

19 Q. All right.

20 A. And to give you a little bit of a bearing, the
21 one column, it says conforming, it says no. And the next
22 column, instead of 14,958,757, the number actually is
23 14,761,471.

24 Q. Okay.

25 A. That's the only correction.

1 Q. Would that correction that you just made
2 change any of your testimony today?

3 A. No.

4 Q. In noting that the correction that you just
5 made, are the answers that you gave in your direct, your
6 rebuttal, and your surrebuttal testimonies true and correct
7 to your best information, knowledge, and belief?

8 A. Yes.

9 Q. And if I were to ask you today the same
10 questions in your pre-filed testimony, would your answers be
11 substantially the same?

12 A. Yes.

13 Q. And is the information contained in the
14 supporting schedules that are attached to your testimony true
15 and correct to your best information, knowledge, and belief?

16 A. Yes.

17 MR. BERLIN: Judge, I would move to admit into
18 the record Mr. Sommerer's direct testimony in NP and HC
19 version marked as Exhibit 16; and his rebuttal testimony in
20 NP and HC versions marked as Exhibit 17; and his surrebuttal
21 testimony in NP and HC versions marked as Exhibit 18.

22 JUDGE WOODRUFF: All right. 16, 17, and 18
23 have been offered. Any objections to their receipt? Hearing
24 no objections, they will be received.

25 (Exhibit Numbers 16-NP, 16-HC, 17-NP, 17-HC,

1 18-NP and 18-HC were received into evidence by Judge
2 Woodruff.)

3 MR. BERLIN: And with that, Judge, I tender
4 the witness for cross-examination.

5 JUDGE WOODRUFF: Cross-examination, we begin
6 with Public Counsel.

7 MR. POSTON: Thank you, just a few.

8 CROSS-EXAMINATION

9 QUESTIONS BY MR. POSTON:

10 Q. In light of the testimony from Ms. Buchanan,
11 which you were in the room for that, correct?

12 A. Yes.

13 Q. Has your opinion of Staff's proposed
14 disallowances changed?

15 A. No.

16 Q. Then how would you respond to the claim that
17 consumers have saved \$235,000 as a result of AEM's bid on
18 RFP 1?

19 A. I don't believe that the level of service is
20 the same between the bidders, as we showed through an
21 analysis of the transaction confirmations. It's uncertain
22 exactly what the level of service is between AEM and AECI.

23 We also had a question about the volume
24 obligation, the obligations for swing and base load are set
25 very strictly in the transaction confirmations. We believe

1 that the obligations of AEM are vague in the transaction
2 confirmation. So although AEM had the lowest bid, and that's
3 what they're measuring the \$235,000 of savings for, we don't
4 believe that the level of service is the same.

5 Q. And what's the significance of that, for the
6 consumer?

7 A. The importance is you want to get what you pay
8 for. And it's possible by putting together a portfolio that
9 is not totally firm or has some degree of curtailment
10 probability associated with it, it's possible to get cheaper
11 gas. That's always the case. The LDCs in Missouri could buy
12 all interruptible. They could buy all secondary firm. They
13 could buy spot supply. They could not hedge, simply ride the
14 market up and down, and I would say for the past five or ten
15 years, the savings could have been tremendous, if you
16 measured it against that standard. But the standard needs to
17 be comparable between these bids, and I don't believe that
18 particular standard is comparable.

19 Q. And so what -- what do you think should have
20 been done differently?

21 A. I think the RFP process, although it's not
22 imprudent on its face because they've used it for years and
23 it is comparable between jurisdictions generally speaking, as
24 soon as they saw transaction confirmation, which had blank
25 service levels, uncertain volume obligations, I think they

1 should have acted upon that and done something to try and
2 increase the level of bidders.

3 To me, three bidders is not a particularly
4 robust process. We talked about the \$235,000 perhaps being a
5 signal that you don't have the same service here. The way I
6 viewed that \$235,000 was it was material, and I believe there
7 were ways they could have seen that was significant. And
8 sometimes there isn't a free lunch and sometimes things are
9 too good to be true. And I think that may have been an
10 instance where they have followed up more thoroughly and
11 tried to increase the bidders that were buying in for the
12 RFP.

13 Q. And so would more, I guess, focus on --
14 scratch that.

15 Is it your position that a more robust RFP
16 process would have brought in more bidders on the secondary
17 receipt point?

18 A. I think it could have possibly done that,
19 although I still maintain that it was somewhat unclear from
20 the bidders' perspective exactly how they were going to
21 accomplish firm service without fail, firm and warranted
22 service at that secondary point.

23 I still continue to believe that it's
24 difficult from a supplier's standpoint to make sure that that
25 is the firmest type of commitment at a secondary point. It's

1 difficult to do. And I think you saw that through some of
2 the communication where bidders were asking questions -- and
3 this may be highly confidential. I don't know if it still
4 is, but they had questions about how they would accomplish
5 firm delivery at Haven, how they can make that work. And I
6 think those questions went to how they could make a secondary
7 process work as well.

8 Q. Okay. Thank you.

9 MR. POSTON: That's all I have.

10 JUDGE WOODRUFF: All right. Move over to
11 Atmos.

12 MR. FISCHER: Thank you, Judge.

13 CROSS-EXAMINATION

14 QUESTIONS BY MR. FISCHER:

15 Q. Good afternoon, Mr. Sommerer.

16 A. Good afternoon, Mr. Fischer.

17 Q. Isn't it amazing how fast 27 years can go by?

18 A. It's scary. It's scary.

19 Q. It's scary how quickly -- it just seems like
20 the other day we were talking about these issues, too.

21 A. In fact, we were.

22 Q. Before I go into some of the prepared cross I
23 had, I just wanted to ask you about some of the things that
24 Public Counsel just asked you.

25 Now, during the ACA period in question in this

1 case, did consumers have any of their services cut in
2 Hannibal or Butler?

3 A. In this particular case, I am unaware of any
4 outages that took place in Hannibal, other than -- I'm sure
5 it's possible you could have had a backhoe situation or
6 something like that, but not a systemic supply situation.

7 Q. And you also suggested that three bidders
8 weren't robust; is that right?

9 A. That's correct.

10 Q. Now in this ACA period, there were some
11 situations where we only had one bidder; is that right?

12 A. That's correct.

13 Q. And did Staff make any adjustments in those
14 situations in this ACA period where there was just one
15 bidder?

16 A. No, we have not.

17 Q. But that was not an affiliated bidder; is that
18 right?

19 A. That's correct.

20 Q. So the only adjustments that you've made are
21 when an affiliate won the bid?

22 A. That is correct.

23 Q. And I believe you answered a DR, didn't you,
24 that suggested that Staff has no evidence to confirm whether
25 unaffiliated marketers use any interruptible service

1 supplies?

2 A. That's correct.

3 Q. Okay. Do you happen to have your direct, your
4 rebuttal, and your surrebuttal today?

5 A. I do.

6 Q. And I don't know if you would have this: Do
7 you have a copy of the cross from the last case,
8 GR-2008-0364?

9 A. I do not.

10 Q. Okay. Well, if we need to go there, I'll try
11 to give you a copy. But we'll avoid it if we can.

12 Let's turn to your direct, for starters, on
13 page 4 at lines 1 through 2. And I believe there you
14 indicate that Staff performed an examination of the company's
15 gas purchasing decisions. Staff also conducted a hedging
16 review to determine the reasonableness of the company's
17 hedging plans for this ACA period; is that right?

18 A. That's correct.

19 Q. And you would agree, wouldn't you, that one of
20 the purposes of an ACA review is to examine the LDC's gas
21 purchasing practices to determine whether they're prudent?

22 A. Yes.

23 Q. And I understand from the earlier slides that
24 Staff did review the hedging practices and reliability
25 analysis as a part of this ACA review, correct?

1 A. Yes.

2 Q. Now, on lines 10 through 11 there, you say,
3 "The issues in this case have been resolved with the
4 exception of Staff's proposed disallowance regarding Atmos'
5 transactions with its affiliate marketing company;" is that
6 right?

7 A. That's correct.

8 Q. So there aren't any other issues for the
9 Commission to resolve regarding any of the hedging practices
10 or reliability or anything other than this affiliated
11 transaction adjustment, correct?

12 A. That's my understanding, yes.

13 Q. And as I understand your testimony, the Staff
14 is not contending that it was imprudent for Atmos to have
15 accepted the lowest bid from its affiliate AEM from the
16 Hannibal and Butler areas; is that right?

17 A. I would clarify that, and I know you asked me
18 that in the last case, to say given what Atmos had with the
19 bids that it had, I would have chosen that same low bid;
20 however, I would add that by the time they got to the spring
21 of 2008, I would have taken a further look at the transaction
22 confirmations to make sure I was looking at the same thing.
23 And I think that's consistent with my testimony.

24 Q. So -- but it wasn't imprudent to go with a low
25 bid?

1 A. Not on its face, no.

2 Q. You wouldn't have gone to the second lowest
3 bid?

4 A. Correct.

5 Q. Okay. And it's my understanding based on your
6 answers to the data requests that Staff has no evidence of --
7 regarding intentional attempts of Atmos gas supply personnel
8 to increase the profits of AEM; is that right?

9 A. That's correct.

10 Q. And Staff has no evidence that Atmos
11 intentionally attempted to increase shareholder profits by
12 accepting the lowest bid from AEM; is that right?

13 A. That's correct.

14 Q. And Staff has no evidence that the LDC Atmos
15 treats its affiliates and its unaffiliated suppliers any
16 differently; is that right?

17 A. I would clarify my answer before I've said it,
18 I guess, or want to expand on the answer. I would say that I
19 have no direct evidence that that RFP was any different. It
20 was the same RFP, it was evaluated in the same way. There
21 weren't any preferences built into the RFP that were directly
22 stated; however, I maintain that it is my testimony that the
23 transaction confirmations are different. And to the extent
24 that assisted the affiliate, then that may well have been a
25 preference.

1 Q. Mr. Sommerer, I'd like to show you the Staff's
2 answer to data request number 6-B, where we asked the
3 question, "Please describe how the LDC treats the affiliated
4 and unaffiliated suppliers differently in this respect."

5 A. Yes.

6 Q. Would you read into the record what your
7 answer was? I highlighted it there.

8 A. "The Staff has no evidence that the LDC treats
9 affiliated and unaffiliated suppliers differently in this
10 respect."

11 Q. And Staff has no evidence regarding whether or
12 not unaffiliated gas marketers use gas spot or interruptible
13 supplies to fulfill firm obligations; is that right?

14 A. That's correct.

15 Q. Now, in the last Atmos ACA case, Staff made
16 alternative adjustments related to the actions of Mr. Mike
17 Walker related to a pipeline interruption; is that right?

18 A. That's correct.

19 Q. Now, in this case, Staff has not proposed any
20 prudence adjustments related to that pipeline interruption or
21 anything similar to that; is that right?

22 A. Yes.

23 Q. Staff has not proposed any prudence
24 disallowances with the exception of this \$337,000
25 disallowance related to what I thought was AEM's

1 record-keeping, but apparently it's also related to the bids,
2 right? That's the only thing we're talking about?

3 A. That is correct.

4 Q. And that adjustment is a carryover from the
5 last ACA case, correct?

6 A. There is a direct relationship between the
7 prior case and this case.

8 Q. The affiliated contracts were an issue in the
9 last case and they're a carryover because of the period, I
10 guess some of the costs are recovered in the current ACA
11 period; is that right?

12 A. That is correct.

13 Q. So the Staff's proposed adjustments in this
14 case involve the same affiliated transaction contracts that
15 were already discussed in the last Atmos ACA case?

16 A. They involve the same contracts, yes.

17 Q. Okay. Well, let's talk about those Staff
18 disallowances a little bit. In the Staff recommendation that
19 was filed, I think December 30th of 2010, the Staff proposed
20 two disallowances related to Atmos' gas purchasing practices,
21 correct? One related to Butler and one related to Hannibal?

22 A. Correct.

23 Q. And that was done after a year-long audit of
24 Atmos Energy Corporation for that 2008-2009 ACA period;
25 correct?

1 A. That is correct.

2 Q. Now, do you happen to have the memorandum
3 attached to the Staff recommendation that was filed on
4 December 30th of last year?

5 A. Yes, I do.

6 Q. It notes that the company's filings began in
7 this case in October of 2009 for the rates to become
8 effective on November 1st, 2009; is that right?

9 A. That's correct.

10 Q. And there was substantial discovery during the
11 audit and before the Staff recommendation was filed; is that
12 correct?

13 A. Correct.

14 Q. And then there's also been substantial
15 discovery since the audit was completed by Staff, wouldn't
16 you agree?

17 A. Correct.

18 Q. Now, on page 6 of 11 of the Staff
19 recommendation, the memo, it's stated that the proposed
20 disallowance for the Hannibal system is \$413,165 and for the
21 Butler system, it is \$81,852; is that right?

22 A. That is correct.

23 Q. Now, in your direct testimony and then again
24 in your surrebuttal, you revised that proposed disallowance;
25 is that right?

1 A. Yes.

2 Q. And in your surrebuttal testimony, if you go
3 there, I think on page 11, lines 2 through 5, you state, "The
4 Staff has consistently maintained that if AEM is able to
5 produce data that might mitigate the Staff's adjustment then
6 the Staff would evaluate and consider that data. Therefore
7 Staff is willing to accept an offset of \$64,000 to Staff's
8 proposed adjustment, bringing Staff's net disallowance to
9 \$337,226;" is that right?

10 A. Yes.

11 Q. And that's the adjustment we're talking about,
12 that \$237,000 adjustment, correct?

13 A. 330 -- 337,226, that's correct.

14 Q. Okay. And I may just round that off to
15 337,000, if that's all right with you.

16 So that would be the total issue -- the total
17 amount of the issue involved in this case. And as I
18 understand your testimony, you made that \$64,000 adjustment
19 based upon information that AEM supplied to the Staff, that
20 quantified its overheads that AEM believes are attributable
21 to the Hannibal and the Butler transactions with Atmos; is
22 that right?

23 A. That's correct.

24 Q. And they also provided Staff its cost of gas
25 associated with these transactions; is that right?

1 A. That is also correct.

2 Q. So is it correct to conclude that Staff now
3 has AEM's information regarding its cost of gas and its
4 overheads so you can determine the net profits that AEM had
5 related to those transactions?

6 A. That is not correct.

7 Q. Okay. What am I missing?

8 A. Well, since AEM never kept its books according
9 to particular deals or particular transactions, there's
10 really not a net profit number that you can find associated
11 with this particular transaction. AEM assigned, associated,
12 allocated supplies in an after-the-fact spreadsheet. And I
13 believe it was at Staff's request that it did this. It
14 wasn't something it had done at the time. So if you ask
15 AEM's management what net profit they made on the deal, they
16 wouldn't have been able to tell you what that net profit was.

17 Q. Initially, Staff requested the gross profits,
18 right?

19 A. That's correct.

20 Q. And then before your surrebuttal testimony,
21 you asked for what are your overheads, and they gave you the
22 overheads at that point, right?

23 A. That is also correct.

24 Q. So they cooperated, they gave you the cost of
25 gas, and then they gave you the overheads. And you're

1 saying, well, maybe it's not exactly net profits because they
2 didn't keep it that exactly? Is that what you're saying?

3 A. Well, I'm saying that based upon two years
4 worth of discovery, it's apparent that AEM does not keep its
5 books and records to a level where it can tell what its net
6 profit was on a particular transaction. It's just not
7 available.

8 Q. But that's the basis, isn't it, for the
9 Staff's proposed adjustment in this case?

10 A. The Staff's proposed adjustment is meant to
11 bring the fair market value of the transaction down to AEM's
12 fair market value as best we can determine it. And that's
13 done -- not that it would be done in every instance, but we
14 don't believe there is enough strength, robustness behind the
15 RFP process and the resulting transaction confirmations to go
16 ahead and accept the RFP process on its face.

17 Q. Well, my question was: Isn't the basis of
18 your \$337,000 adjustment taking the cost of gas, taking the
19 overheads, and figuring out what the difference is and that's
20 what you're disallowing from Atmos' cost of gas?

21 A. It's an essence saying what was AEM's cost of
22 gas associated with this transaction.

23 MR. FISCHER: Judge, I think I asked a
24 yes-or-no question on that.

25 JUDGE WOODRUFF: You can answer yes or no.

1 THE WITNESS: Then I don't think I would agree
2 with that specific representation. I would say no.

3 BY MR. FISCHER.

4 Q. Okay. So you took the cost of gas that AEM
5 provided to you, correct?

6 A. A general cost of gas that AEM provided, yes.

7 Q. And you took the general overheads that AEM
8 suggested were associated with those two transactions,
9 correct?

10 A. That's correct.

11 Q. And you added those two together and then you
12 subtracted that sum from the total invoice cost of gas to
13 Atmos, correct?

14 A. That is correct.

15 Q. Do you believe this information's sufficient
16 for Staff to use to propose your disallowance in this case?

17 A. I believe it's a reasonable disallowance and
18 we based that disallowance on the best information we had.

19 Q. Is there any other information that you would
20 need from AEM to quantify that adjustment that Staff's
21 proposing in this case?

22 A. I think it could have been refined had AEM
23 brought forward additional details about who the gas supplies
24 that they were showing us were allocated to or related to.

25 Q. But it's rough justice or not at all?

1 A. It's the Staff's best view of what the fair
2 market value of that transaction was.

3 Q. But you don't really trust it, is that what
4 you're saying?

5 A. It's not based upon complete information of
6 AEM, which we sought. And we don't believe that AEM, for
7 whatever reason, has kept that information, it's no longer
8 available, or it was never kept in the first place.

9 Q. Well, let me ask you this: Without that
10 information, wouldn't it be inappropriate for the Commission
11 to adopt your proposed adjustment since you need more
12 information?

13 A. The Commission is going to have to deal with a
14 decision that has incomplete information, which I suspect
15 they're used to making judgments based upon information that
16 is not totally complete. And this is a situation where
17 because of AEM's bookkeeping, exact dollars aren't associated
18 with an affiliated transaction. They're not available.

19 Q. Well, if I understood one of your DRs, or
20 perhaps one of your slides, if you knew about income taxes,
21 allocated income taxes, you might have knocked that off?

22 A. We would have certainly looked to it to see if
23 it was reasonable or not.

24 Q. Okay. Now, on page 21 of your direct
25 testimony, at lines 14 through 16, I believe you explain why

1 the Staff considers an adjustment to the invoice cost of gas
2 necessary in this case. There on line 14 through 16, you
3 state, "As previously discussed, the disallowance is
4 necessary due to the unavailability of detailed AEM
5 records/procedures of how AEM allocates the costs associated
6 with its supplies. In addition there is no AEM evaluation of
7 the economics of the deal;" is that right?

8 A. That's correct.

9 Q. Is it correct to conclude that Staff believes
10 the proposed Staff adjustment is necessary because of AEM's
11 failure to comply with the record-keeping requirements of the
12 Affiliated Transaction Rules?

13 A. No, I would disagree with that.

14 Q. Mr. Sommerer, are you familiar with the
15 Staff's position statement in this case?

16 A. Generally speaking, yes.

17 Q. Do you have a copy of it?

18 A. No, I do not.

19 Q. I'd like to hand you a copy of the Staff's
20 position statement and just ask you to read the highlighted
21 first paragraph there. It goes over to the next page, and I
22 marked the end of it.

23 A. "First, the gas transactions between the
24 regulated local distribution company Atmos and its
25 unregulated affiliate AEM do not comply with the

1 record-keeping requirements of the Commission's Affiliate
2 Transaction Rules 4 CSR 240-40.015(5). Atmos has not kept
3 records on the cost methodology and the cost allocated to and
4 away from the gas transactions that are required under the
5 rules. Without these cost records, the Staff is not able to
6 perform a complete prudence review of the costs associated
7 with the gas supplies Atmos purchased from AEM in a
8 competitive market. A market that is available to both
9 Atmos, gas buying entities. As a result, the Staff must rely
10 on the limited information supplied by the company. Because
11 of Atmos' lack of cost documentation, it cannot demonstrate
12 the reasonableness of the price it paid AEM for gas and
13 passed on to ratepayers through its PGA."

14 Q. Thank you. Would you turn now to your direct
15 testimony page 22?

16 A. I'm there.

17 Q. And let's look at lines 8 through 9 where you
18 state, "In summary, the proposed disallowance results from
19 the Company's own failure to comply fully with the
20 record-keeping requirements of the Affiliate Rules and its
21 inability to explain the reasonableness of its affiliate
22 transaction."

23 A. That is correct.

24 Q. The Staff's adjustments were based up an
25 analysis provided by AEM of its profit and losses for

1 Hannibal and Butler, in part; is that right?

2 A. That is correct.

3 Q. And the effect of the Staff's original
4 affiliated transaction adjustment was to reduce the price
5 paid for the gas costs by -- the costs paid by Atmos'
6 ratepayers, I guess, to a cost level that did not include,
7 initially, a gross profit level for the affiliated gas
8 marketer AEM; is that right?

9 A. Based upon AEM's spreadsheet, which again
10 wasn't done concurrently with its own record-keeping, I would
11 say that's generally correct.

12 Q. And then you did a revised adjustment where
13 you subtracted off what AEM said were its overheads, so that
14 you got to this difference of what I was calling net profits;
15 is that right?

16 A. That's correct.

17 Q. Now, as I understand your testimony in the
18 last ACA case, as a layman, you don't think that the
19 Commission's Affiliated Transaction Rule necessarily requires
20 that the profits of an affiliate be used to reduce the gas
21 costs of the LDC; is that right?

22 A. That's correct.

23 Q. AEM's cost of gas, AEM's overheads, and its
24 net profit would make up the invoice cost of gas to Atmos for
25 the Hannibal and the Butler areas that Atmos is purposing to

1 pass through its PGA; is that right?

2 A. Presumably whatever is it charged its
3 affiliate would be an attempt to recoup its cost of doing
4 business.

5 Q. Which would be its cost of gas and its
6 overheads plus its profits?

7 A. Plus potentially income taxes, interest
8 expense, its entire cost of service.

9 Q. The entire cost of service. Did AEM charge
10 Atmos any other cost with the exception of those invoice gas
11 costs, which included the cost of gas, the overheads and the
12 profits and anything else in their cost of service?

13 A. It's possible it may have done so indirectly.
14 If you look at the Cost Allocation Manual of Atmos, you'll
15 see that AEM allocates costs to AES, Atmos Energy Services.
16 Atmos Energy Services, in turn, allocates costs to Mid-States
17 division.

18 Q. Did you have any evidence on any bill that
19 Atmos paid anything other than the invoiced cost of gas in
20 this ACA case that came from AEM?

21 A. No.

22 Q. Did AEM charge Atmos any separate service fees
23 as a part of the Hannibal and Butler transactions?

24 A. No.

25 Q. Did AEM charge Atmos for any services related

1 to securing the gas supplies that would not be included in
2 the invoiced cost of gas?

3 A. With the clarification that I've just
4 mentioned to you, I would say no.

5 Q. Did AEM charge Atmos for any personnel costs,
6 office costs or other costs as a separate line item above the
7 invoiced cost of gas?

8 A. Not on the invoice, no.

9 Q. Did you find anything in your audit that would
10 suggest that the office costs or anything else from AEM were
11 allocated directly to -- to Atmos as a part of these
12 transactions?

13 A. The only area that I saw was a review of their
14 Cost Allocation Manual where AEM allocates some of their
15 costs, some of their non-gas costs to AES, Atmos Energy
16 Services. Atmos energy Services, in turn, allocates some of
17 their costs to the Mid-States division.

18 Q. And in the last case, didn't you testify that
19 the Cost Allocation Manual was not an issue for Staff?

20 A. That's correct.

21 Q. And you also testified that the fully
22 distributed cost calculations weren't an issue with Staff?

23 A. That is also correct.

24 Q. Did any of the invoiced cost of gas that you
25 saw in this audit include charges with separate costs that

1 were either allocated or shared costs of AEM to Atmos Energy
2 Corporation, the regulated public utility?

3 A. In reviewing the invoices, I saw no separate
4 line items for shared costs or separate line items for
5 allocated charges.

6 Q. Now, would you turn to page 10 of your direct
7 testimony, lines 10 through 34. I believe you quote a
8 portion of the Affiliated Transaction Rules related to
9 requirements of the affiliate to keep records; is that right?

10 A. That's correct.

11 Q. And I think, isn't it true, that both the
12 Marketing Affiliate Rules and the Affiliate Transaction Rules
13 include essentially the same provisions in this regard; is
14 that right?

15 A. Yes.

16 Q. Is this the portion of the Affiliated
17 Transaction Rule that Staff is alleging that Atmos or AEM
18 violated?

19 A. I don't know that Staff has made a legal
20 determination, and I'd have to look to my attorney for that,
21 that there's a rule violation. I would just say that in my
22 interpretation of the rule, this is an area where I believed
23 AEM would have to show quite a few detailed records. There's
24 a disagreement, obviously, but that's my -- my understanding
25 of this provision.

1 Q. What's your understanding of this statement:

2 "First the gas transactions between the regulated local
3 distribution company Atmos and its unregulated affiliate AEM
4 do not comply with the record-keeping requirements of the
5 Commission's Affiliated Transaction Rules 4 CSR
6 240-40.015(5)?

7 A. That's a statement made by legal counsel and
8 whether that constitutes a rule violation, I really can't
9 speak to it.

10 Q. Does not comply. Doesn't say "violates," just
11 says does not comply. From your standpoint, that's not the
12 same as saying it violated it?

13 A. I'm not sure.

14 Q. Okay. Well, in any event, let's look at your
15 testimony. Subsection (6)(a)(1) of the Marketing Affiliate
16 Rule, which is the 40.016 rule requires the information that
17 you've quoted there, documentation of the costs associated
18 with the affiliate transactions that are incurred by the
19 parent or affiliate and charged to the regulated gas
20 corporation; is that right?

21 A. That's correct.

22 Q. And then if we drop down to subsection (5)(a)
23 or (6)(a)(1) of the Affiliate Rule, I guess that's the same
24 provision in both (5)(a) section and the (6)(a) section,
25 depending on whether you're in the Marketing or the Affiliate

1 Rule, right? And they're in the same in both rules is what
2 I'm trying to say.

3 A. In looking at both rules, there may be a
4 difference in the numbing. But the wording is the same.

5 Q. Okay. Well, whenever I ask you about the
6 Affiliate Rules, let's just assume we're asking about both
7 the Marketing Rule and the Affiliate Rule.

8 Now, I think you testified that you were
9 provided AEM's cost of gas, right?

10 A. We were provided with AEM's supplies that it
11 had aggregated on Panhandle Eastern.

12 Q. And you were provided with AEM's overheads as
13 they estimated them related to the transaction, right?

14 A. That is correct.

15 Q. And then you were able to calculate the
16 difference in what I was calling net profits, and that's
17 where the \$64,000 came from, correct?

18 A. That's correct.

19 Q. Now, subsection (6)(a)(2) requires
20 documentation of the methods used to allocate and/or share
21 costs between affiliated entities, including other
22 jurisdictions and/or corporate divisions; is that right?

23 A. That's correct.

24 Q. Now, in this case, we don't have any
25 jurisdictional allocations that were involved in the

1 affiliated transactions between AEM and Atmos and Hannibal
2 and Butler, correct?

3 A. Hannibal supplies are all located in Missouri,
4 so you wouldn't expect there to be any jurisdictional
5 allocations.

6 Q. So there's at least no problem with the
7 documentation of jurisdictional allocations, correct?

8 A. Not in terms of what the LDC has provided, no.

9 Q. Now, does subsection (5)(a) of the Affiliate
10 Rule or subsection (6)(a) of the Marketing Rule, does it
11 require that the documentation of costs be maintained in a
12 specified format?

13 A. No.

14 Q. Does the Affiliate Transaction Rule or a
15 Marketing Affiliate Transaction Rule require that a report be
16 maintained that says there are zero allocated costs?

17 A. Could you restate that question, please?

18 Q. Yeah. Does the Affiliate Rules require some
19 kind of a report that -- be filed or given to Staff that says
20 there are no allocated costs?

21 A. Not that I'm aware of.

22 Q. And there were no shared costs between AEM and
23 Atmos that appeared on a separate line item on the bill
24 either. We said that, I think, right?

25 A. Correct.

1 Q. So the only charges that were paid by Atmos
2 included the invoiced cost of gas, which included the
3 wholesale cost of the gas, AEM's overheads, and the
4 difference. I think we call that net profit. That's what
5 they got and were trying to pass through the PGA, correct?

6 A. If you define "net profit" as being what AEM
7 had provided to the Staff in terms of its cost of gas and any
8 costs in addition to that being the overheads, then that
9 would represent AEM's net profit.

10 Q. Does the Affiliate Transaction Rule require
11 that the company file a report that says there are no shared
12 costs?

13 A. Not to my knowledge.

14 Q. Now in the last Atmos ACA case, I believe you
15 testified that you were not aware of any requirement in the
16 Affiliate Transaction Rule that required the company or its
17 affiliate to keep track of its net profits on a
18 transaction-by-transaction basis. Do you recall that
19 testimony?

20 A. Could you refresh my memory?

21 Q. Well, yeah. I'd like for you to take a look
22 at the transcript of page 635 of the hearings of that case,
23 at lines 17 through 22 -- 21. And I asked you the question,
24 "As a non-lawyer reading the Affiliated Transaction Documents
25 or Rules, do you know of anywhere that there's a statement

1 you need to keep the net profits on a
2 transaction-by-transaction basis?" And your answer was, "I'm
3 not aware of that provision, no."

4 Could you confirm that's what you said?

5 A. That was my testimony, yes.

6 Q. Do you believe that the Affiliate Transaction
7 Rules require an affiliate to document the methods used to
8 allocate and/or share costs between affiliated entities?

9 A. Yes, I do.

10 Q. Is that true even though the affiliated gas
11 marketing company does not allocate or share any costs with
12 the LDC related to gas supply contracts?

13 A. I read the requirement more generally to say
14 that any costs that are associated with the transaction from
15 AEM's viewpoint need to be shown to the Staff, need to be
16 made available, need to be documented. And if you have
17 supplies that are in a pool, I would think they have to be
18 allocated between the states that they serve. And so from
19 AEM's standpoint, some of those volumes that had provided,
20 some of those costs were related to Illinois, were related to
21 some of its other customers. So I'm convinced that --

22 Q. So that's what you think it means, if there
23 are no allocated costs to Atmos and there are no shared
24 costs, they're supposed to know, they're supposed to somehow
25 keep track of how they allocate their own portfolio up above

1 between the various states? That what you think that means?

2 A. I think number two is it needs to be read in
3 context with number one.

4 Q. Is that a yes or no?

5 A. I would say yes, with a clarification.

6 Q. Okay. Let's look at subsection three,
7 (6) (a) (3) refers to the description of costs that are not
8 subject to allocation to an affiliate transaction and
9 documentation supporting the non-assignment of these costs to
10 an affiliate transactions; is that right?

11 A. Yes.

12 Q. Mr. Sommerer, would you explain your
13 understanding of what this subsection is referring to?

14 A. I believe that that requires the affiliate to
15 document its supplies and its costs that are associated --
16 not associated with a transaction. So in the case where AEM
17 had pooled supplies and some of the pooled supplies were not
18 associated with Missouri, there should have been some sort of
19 indication on what was related to Illinois, what was related
20 to Missouri.

21 Q. Even though they didn't allocate any costs or
22 share any costs with Illinois or with Missouri or with any
23 other state, because all they provided were invoiced costs of
24 gas?

25 A. I believe ultimately, they're providing gas

1 supply in those jurisdictions and those costs are not
2 assigned to a particular business segment or they are
3 assigned, and I think this requires that documentation.

4 Q. Description of costs that are not subject to
5 allocation, what would those costs be?

6 A. If you're AEM and you have to try to ascertain
7 what costs are relevant towards a transaction, which I
8 believe part 1 requires you to do, whatever you're not going
9 to assign or allocate or associate with the Missouri
10 transaction, you're going to have to move over or non-assign
11 it to some other business segment.

12 Q. So even if they don't allocate any costs, they
13 somehow need to file a report that says these are the costs
14 we don't allocate?

15 A. I would say they need to keep documents. I
16 wouldn't say they need to file a report saying these are the
17 costs we don't allocate.

18 Q. Does the Affiliate Rule anywhere suggest a
19 format for keeping track of that kind of information?

20 A. No.

21 Q. Does subsection (6)(a) of the Affiliate
22 Transaction Rule refer anywhere to the economics of the deal?

23 A. No.

24 Q. Does subsection (6)(a) describe the format for
25 documenting the economics of the deal or the profits

1 associated with the transaction?

2 A. No.

3 Q. Does subsection (6)(a) describe the format for
4 documenting any allocated or shared costs, even if they don't
5 exist?

6 A. No.

7 Q. But the regulated companies are supposed to
8 somehow know what format these allocated costs, shared costs,
9 economics of the deal or profits are to be maintained for
10 record-keeping purposes? Is that Staff's contention?

11 A. It's Staff's contention that there is enough
12 guidance here and there's also flexibility that whatever it
13 takes to document the supplies that are associated with the
14 deal, that needs to be done. We're not asking that it be in
15 an Excel format, electronically available. We're not
16 maintaining the specific record that needs to be kept, but to
17 me, these rules are clear that costs that are associated with
18 a transaction need to be kept.

19 Q. Otherwise they will be faced with a Staff
20 disallowance of all the profits associated with the
21 affiliated transaction; is that right?

22 A. That's not necessarily the case.

23 Q. Well, if we don't keep the records the way you
24 want it, isn't that what caused this disallowance in this
25 case?

1 A. I think that's an aspect of the case in
2 Staff's attempt to understand what the fair market value of
3 the transaction was. We were very interested in knowing what
4 AEM's fair market value was. That's an aspect of this
5 disallowance.

6 Q. Would you agree that the wholesale cost of gas
7 and the AEM overheads were more than covered by the invoice
8 costs sent by AEM to Atmos after the competitive bidding
9 process?

10 A. Could you restate?

11 Q. Certainly. Would you agree that the wholesale
12 cost of gas and AEM's estimated overheads were more than
13 covered by the invoiced costs of gas that were sent to Atmos?

14 A. That appears to be the case.

15 Q. But the only charges that AEM charged Atmos
16 were those that resulted from the competitive bidding process
17 and the invoiced cost of gas, right?

18 A. Again, with a clarification that there may be
19 some incorrect cost allocation going on between AEM, AES, and
20 Mid-States.

21 Q. Okay. Let's change gears just a little bit.
22 Let's turn to page 18 of your testimony, your direct
23 testimony at lines 3 through 5.

24 You say there that, "This raises the question:
25 Why can't Atmos LDC buy the same gas supplies at the same

1 pricing from the same suppliers that AEM buys from in a
2 competitive market at 'arm's-length'?" Do you see that?

3 A. Yes, I do.

4 Q. Is Staff suggesting in your testimony that
5 Atmos should be buying the same supplies that AEM buys from a
6 competitive market?

7 A. Not in all circumstances, no.

8 Q. In this circumstance?

9 A. I think it's a question that we wanted to have
10 an answer to. We wanted to understand what AEM was doing to
11 procure the supplies that it was providing to the LDC based
12 upon original concerns that it was all interruptible or it
13 was all non-firm in some way.

14 Q. Is it correct for me to conclude, then, from
15 your testimony that, in this instance, you believe that Atmos
16 should be buying the same supplies that AEM is buying in a
17 competitive market for Butler and Hannibal?

18 A. I think in this particular instance, the
19 concern resides more with the results of their RFP process.
20 We're staying with their RFP process to try and understand
21 whether it was the same service or not.

22 Q. So your answer is no, in this instance, Staff
23 is not suggesting that Atmos should have been buying the same
24 supplies from AEM -- or that AEM buys from the competitive
25 market?

1 A. I think that may have been one possible
2 alternative, but that's not my testimony that they should
3 have gone out and bought those same supplies. That's not my
4 testimony.

5 Q. Okay. So Staff is not saying that that's what
6 we should have done, we just possibly should have done that?

7 A. That might be one alternative, yes.

8 Q. Well, is Staff suggesting that Atmos in the
9 future should change its business model so it purchases the
10 gas supplies and arranges for upstream transportation
11 services without the need or the use of a gas marketer?

12 A. No.

13 Q. Is Staff suggesting that this Commission
14 should mandate that Atmos should change its business model so
15 that it would purchase its own gas supplies directly from gas
16 producers and arrange all transportation services itself?

17 A. No.

18 Q. Is it your understanding based on those 27
19 years that back in the old days, there was natural gas
20 companies, LDCs that did arrange supplies directly for the
21 producers, right?

22 A. I think back in the old days, prior to Order
23 636, the LDCs were buying from the pipeline and the pipeline
24 was, in essence, the provider for the LDC. And the LDC would
25 contract with the pipeline for not only transportation, but

1 supply services as well. And the pipelines themselves would
2 be the ones that would go out and deal directly with whatever
3 marketing companies were out there or producers.

4 Q. And that market structure was changed in 636
5 and all the subsequent orders that the FERC put out; is that
6 right?

7 A. That's correct.

8 Q. Natural gas marketers began competing for the
9 business of LDCs by offering to secure LDCs, gas supplies,
10 and arranging transportation services, right?

11 A. That's correct.

12 Q. Now, is Staff suggesting that the Commission
13 should go back to that market structure where LDCs would buy
14 from the pipelines instead of dealing with marketers?

15 A. I don't even think that's an option that's
16 available. Generally speaking, pipelines as a pipeline
17 cannot sell gas to an LDC.

18 Q. But it would eliminate the need to deal with
19 gas marketers, whether affiliated or unaffiliated, right?

20 A. If you overturn those FERC decisions and went
21 back to those times, which is highly unlikely. That
22 certainly would be something the LDC would be doing again.

23 Q. Is it the goal of the Staff in this case to
24 have the Commission change the business model that Atmos and
25 other LDCs have used in recent years?

1 A. Well, I would say that Atmos' business model
2 is not exactly the same as other Missouri LDCs that I'm
3 familiar with. But in the context of the questions that
4 you're asking, it is not the testimony to go back to
5 pre-Order 636 days.

6 Q. Is Staff recommending the Commission prohibit
7 Atmos from utilizing services of gas marketers?

8 A. No.

9 Q. Is Staff recommending the Commission prohibit
10 Atmos from utilizing the services of an affiliated marketer
11 like AEM?

12 A. No.

13 Q. Is the basis of the \$337,000 Staff adjustment
14 a theory that Atmos did not act prudently when it accepted
15 the bid from AEM and Hannibal and Butler?

16 A. No.

17 Q. Today, does Staff believe that Atmos could
18 have gotten a lower price for its gas if Atmos had rejected
19 the AEM bid?

20 A. I think the Staff is suggesting that had the
21 company looked closely at the AEM bid along with the
22 transaction confirmations, it should have done some
23 follow-up. With that follow-up, it may have been able to
24 increase the bidders that were available. It may have had
25 price -- prices that were comparable to AEM's, maybe even

1 cheaper than AEM's price.

2 Q. So Staff believes that Atmos could have gotten
3 a lower price for its gas if AEM had rejected the low bid?

4 A. If that's all the company had available to it
5 and it didn't have any other options to rebid or were to take
6 a close look at the transaction confirmations and questioned
7 those, I'm not suggesting they should have gone to the next
8 highest bidder.

9 Q. So given the circumstances as they knew it at
10 the time, their action to take the bid from AEM was prudent?

11 A. I would say the action to pick the lowest bid
12 in that evaluation was initially a prudent step. But there
13 are more steps than just picking the bid. There's the
14 contracting process that -- that follows. And I'm suggesting
15 that there should have been more work as these contracts were
16 put together.

17 Q. And that -- that equates to a \$337,000 penalty
18 because they didn't do what you think they should have done
19 after they accepted the low bid?

20 A. I don't believe that you can put so much
21 weight on their RFP process that you can eliminate the need
22 to look at the fair market value of the affiliate. And that
23 may be an indication of the fair market value of the
24 transaction.

25 Q. Well, if you look at unaffiliated gas

1 marketer's bids, would that be an indication of what the fair
2 market value was?

3 A. If the service level was the same, I would say
4 generally speaking, yes.

5 Q. And if the service level was the same and you
6 accepted a bid that was -- or a number that was less than
7 that, wouldn't agree that you could conclude that they
8 actually got it at less than fair market value?

9 A. You may not have had the same product or you
10 may not have had the same service being offered. So I
11 wouldn't agree with that.

12 Q. Okay. Well, let me assume that it is the same
13 service and the same product. If you look at unaffiliated
14 gas marketer's bids, that would be an indication of what the
15 fair market value or fair market price would be for that
16 service, right?

17 A. Not exactly.

18 Q. Isn't that what you do whenever AEM is not
19 bidding? You look at the competitive bidding process and you
20 decide that that's the fair market value? You don't go back
21 behind those unregulated and unaffiliated gas marketers'
22 bids, right?

23 A. That's not what I'm saying.

24 Q. Well, I'm asking you, you don't go behind
25 those bids, right?

1 A. That's correct.

2 Q. And those reflect what fair market price at
3 the time would be?

4 A. Not necessarily.

5 Q. If Atmos doesn't use a competitive bidding
6 process, does that meet the -- does that meet the Affiliated
7 Transaction Rules?

8 A. The Affiliated Transaction Rules encourage
9 competitive bidding. They don't require it.

10 Q. If Atmos had accepted a higher bid from the
11 unaffiliated gas marketer that offered gas for Hannibal and
12 Butler, would Staff have had a concern about accepting a
13 higher bid in this case?

14 A. You're assuming that AEM wasn't part of the
15 bid process? Or was part of the bid process.

16 Q. Make it either way.

17 A. If AEM was part of the bid process, AEM had
18 bid in a lower amount, I think we would have had questions
19 about going with the higher bid.

20 Q. I think that's what you told me in the last
21 case, too, correct?

22 A. Correct.

23 Q. Let's turn to your rebuttal testimony, your
24 Schedule 1. Does this schedule show the various bid
25 responses that Atmos received in the case?

1 A. It shows a summary of those responses.

2 Q. Okay. And I know it's a highly confidential
3 document, so I don't want to talk about the numbers in public
4 session, but would you confirm to me that the Atmos Energy
5 Marketing bid was the lowest for the April, 2008 through
6 March, 2009 period based on what you see there?

7 A. Yes.

8 Q. And it was also the lowest for the April, 2007
9 through March, 2008 period, correct?

10 A. That is correct.

11 Q. And then down at the bottom, there's a table
12 that shows the difference between the awarded bid to AEM and
13 the next highest conforming bid for those periods, right?

14 A. Correct.

15 Q. Would it be correct to conclude that assuming
16 the volumes were the same as assumed in the bids, that the
17 cost of gas to Atmos would have been higher by the amounts
18 shown on that table if Atmos had accepted the next highest
19 conforming bid for those periods?

20 A. Correct.

21 Q. Now, looking at the April, 2008, through
22 March, 2009 period, if the Commission decided that the fair
23 market price for gas supplies during the period was
24 established by the unaffiliated gas marketer's bids, and I
25 believe it's a range of \$14,958,000 to \$15,069,000, wouldn't

1 you agree that mathematically, at least, Atmos paid AEM less
2 than that range?

3 A. Assuming that the volumes, the nominations,
4 the prices, everything was the same, then mathematically
5 speaking, AEM's costs were lower.

6 Q. So if the Commission accepts this adjustment,
7 the impact of the adjustment would be to change the cost of
8 gas that Atmos passes along to consumers by \$337,000 below
9 the actual cost that it paid to Atmos -- or excuse me, that
10 it was paid by Atmos to AEM, right?

11 A. That's correct.

12 Q. And if Atmos had rejected the lowest bid from
13 the affiliate and instead accepted one of the higher bids,
14 then Atmos could have avoided this \$337,000 penalty in this
15 case because it's not an affiliated transaction anymore,
16 right?

17 A. I think we would have looked at it in the
18 context of an unaffiliated transaction at that point. There
19 may have been some concerns about the quantity of bids. You
20 would have been down to perhaps two conforming bids at that
21 time. But I don't think there would have been a
22 disallowance.

23 Q. And there probably wouldn't have been a
24 disallowance in the last case either, where there was -- what
25 was it, 330, 333,000, something like that? So we're talking

1 about a total of over \$600,000 in disallowances, correct?

2 A. Well, I recall there was an additional
3 disallowance regarding the AEM supplies not showing up during
4 December of 2007, but.

5 Q. Let's put that aside. I mean together, the
6 two affiliated transaction adjustments that we're talking
7 about in this case and the last case total more than
8 \$600,000?

9 A. That's correct.

10 Q. Even though your table at the bottom shows
11 that they tried to save a little more than \$500,000 for
12 consumers?

13 A. You're clarifying or classifying those as real
14 savings. And I'm saying it's very possible that the service
15 that you're getting is not the same level of service that
16 these non-affiliated bidders are providing.

17 Q. But we don't have any evidence of that. Let's
18 assume that it is the same service. If you just look at the
19 numbers, the Staff's disallowance is greater than what the
20 company was trying to save consumers, right?

21 A. Well, I think we do have evidence of that, so
22 I'll argue with the premise of your question.

23 Q. Okay. Well, let's assume, then, that it was
24 the same service. I'm just asking, mathematically, isn't the
25 Staff's disallowance bigger than even the savings the company

1 was trying to achieve?

2 A. Mathematically, the Staff's disallowances are
3 greater than these bid differences. I would agree with that.

4 Q. Don't you believe the Commission should create
5 an incentive that would keep affiliated transactions and
6 unaffiliated transactions on an equal playing field? They
7 certainly shouldn't create a disincentive, right?

8 A. I would say that you would want these
9 transactions on as level of a playing field as you possibly
10 can get.

11 Q. I think you told me in the last case you'd say
12 it should be neutral with the understanding there are
13 requirements that the affiliate has to meet regarding
14 affiliated transactions, right?

15 A. Correct.

16 Q. From your perspective, is it good public
17 policy to want to accept a higher bid from an unaffiliated
18 marketer and to avoid an affiliated transaction adjustment,
19 rather than accepting a lower bid where it knows that it
20 would have to probably adjust for the profits?

21 A. I would certainly say if you're creating an
22 incentive to move towards a higher bid, that would not be a
23 good incentive.

24 Q. Are you aware of any case in which the
25 Commission has accepted a similar affiliated transaction

1 adjustment as the Staff is recommending in this case and in
2 Case Number GR-2008-0364?

3 A. We have had some concerns with another utility
4 company in the state. I would say that the facts and
5 circumstances are markedly different.

6 Q. Didn't you testify in the last case that you
7 weren't aware of any time the Commission had adopted an
8 adjustment similar to the adjustment that was proposed in
9 that case?

10 A. That is correct.

11 Q. And have you had any cases where the
12 Commission has adopted a similar adjustment in the interim?

13 A. No.

14 Q. If the Commission would accept the Staff's
15 proposed adjustment in this case, wouldn't there be an
16 incentive for the company to accept a higher unaffiliated
17 marketer bid rather than accepting the lower affiliated
18 marketer bid that would have an associated affiliated
19 transaction adjustment with it?

20 A. I really can't speculate on that. I believe
21 that that's a possibility. It may also be a possibility that
22 the adjustment would encourage the company to make sure that
23 the service level for their various bids were equivalent.

24 Q. Would you refer to your direct testimony at
25 page 2 line 21 through 22 where you state, "it is likely that

1 AEM would have won this service in perpetuity had AEM
2 continued to bid." Is that what you said there?

3 A. Are you on rebuttal testimony?

4 Q. I don't know. Maybe I am. Yes, I'm sorry,
5 I'm in rebuttal. The bottom there, line 21, "it is likely
6 that AEM would have won this service in perpetuity had AEM
7 continued to bid," correct?

8 A. That's correct.

9 Q. Is it correct that AEM did not continue to bid
10 for Atmos' business in Missouri in the April of 2009 through
11 March of 2010 period?

12 A. If you're speaking about the Hannibal Canton
13 system, I would agree with that. They were serving another
14 system in Missouri and perhaps even to this day, they may be.

15 Q. Other than the service that comes from Kansas
16 and Rich Hill/Hume, are you aware of anywhere else that AEM
17 has bid for service in Missouri since -- during that period?

18 A. Not to my recollection.

19 Q. Is it correct that AEM has chosen not to bid
20 on Atmos' business in Missouri ever since the Staff proposed
21 its affiliated transaction adjustment in Case Number
22 GR-2008-0364?

23 A. I would say with the exception of the
24 Greeley/Rich Hill/Hume system, I'm not aware of AEM bidding
25 after the Staff disallowance.

1 Q. Is it possible that Staff's proposed
2 affiliated transaction adjustment in that case may have been
3 a factor in AEM's decision not to bid, do you think?

4 A. I don't know.

5 Q. Do you believe consumers in Hannibal and
6 Butler are better off now that AEM's not bidding on the Atmos
7 business in Missouri?

8 A. I don't know the answer to that question.

9 Q. AEM had submitted the lowest bid for Hannibal
10 and Butler in the last two ACA periods, though, didn't you
11 agree with that?

12 A. Yes, they did.

13 Q. But AEM made a business decision and chose not
14 to bid for the Atmos business in Hannibal and Butler during
15 the April, 2009, through March, 2010, period, right?

16 A. That's my understanding.

17 Q. And on that case, the last case, Staff filed a
18 position statement which recommended the Commission prohibit
19 affiliated transactions between Atmos and its affiliated gas
20 marketer. Do you recall that?

21 A. That's my recollection.

22 Q. Is it possible that Staff has effectively
23 accomplished that stated goal of eliminating affiliated
24 transactions between Atmos and AEM merely by proposing the
25 affiliated transaction approach that you're proposing in this

1 case?

2 A. I think it unlikely.

3 Q. Didn't you testify in the last Atmos ACA case
4 that with the absolute cooperation from AEM and with
5 contemporaneous records about their cost of gas, Staff would
6 not necessarily propose that AEM's profits be removed from
7 Atmos' cost of gas in the PGA process?

8 A. That's correct.

9 Q. As I understand your testimony in that last
10 case, the factors that would drive your decision on whether
11 to propose an adjustment to remove the profit of AEM would
12 include does AEM have contemporaneous records regarding the
13 cost of gas, right?

14 A. Yes.

15 Q. Does Staff have access to that information,
16 correct?

17 A. Yes.

18 Q. Does Staff have enough information to
19 understand truly what its supply was related to in this
20 business to form a fair opinion about what business or deal
21 was being structured by AEM regarding its service. That was
22 the third factor, right?

23 A. Yes.

24 Q. Now in this case, Staff didn't file any
25 Motions to Compel, correct?

1 A. That's correct.

2 Q. Both AEM and Atmos answered Staff's data
3 requests, correct?

4 A. That is correct.

5 Q. Staff sent follow-up data requests after the
6 audit which were also answered by Atmos and AEM?

7 A. That is correct.

8 Q. Mr. Sommerer, do you believe that Atmos
9 cooperated with Staff in this case?

10 A. I think when you refer to Atmos, you have to
11 make a distinction between the LDC and the affiliate. I
12 think the LDC did cooperate with Staff's discovery.

13 Q. Do you believe that AEM did not cooperate with
14 Staff in this case?

15 A. I think AEM could have cooperated to a greater
16 degree, yes.

17 Q. You would have liked to have had the
18 information in a different format, right?

19 A. I think there is more information possibly out
20 there that could have shed light to the allocation of AEM's
21 supplies or what supplies were appropriate to Missouri. I
22 certainly think that AEM could have even offered an affidavit
23 or someone who had direct knowledge about their spreadsheets
24 to lend more credibility to their documents. That would have
25 improved the process.

1 Q. But there's nothing in the Affiliated
2 Transaction Rules in Missouri that identify or tell an
3 unregulated, unaffiliated -- affiliated marketing company
4 what format to keep that information in, correct?

5 A. That's correct.

6 Q. But you, as the head of the procurement
7 analysis staff, and I believe you testified to this, you
8 haven't concluded that the Affiliated Transaction Rule always
9 requires that the profits be removed?

10 A. That's correct.

11 Q. Has Staff filed a complaint against Atmos or
12 AEM for the alleged failure to comply with the record-keeping
13 requirements of the Affiliated Transaction Rules?

14 A. No.

15 Q. Does Staff have the ability to file a
16 complaint against companies that believes it's failing to
17 comply with the Commission rules?

18 A. Yes.

19 Q. If the Staff files a complaint against a
20 company for failure to maintain appropriate records under the
21 Affiliated Transaction Rules, could Staff request penalty for
22 non-compliance?

23 A. Yes.

24 Q. Staff has never filed a complaint against
25 Atmos or AEM for alleged failure to comply with the

1 record-keeping requirements of the Affiliated Transaction
2 Rules, right?

3 A. That's correct.

4 Q. If Staff were to file such a complaint, how
5 would Staff quantify the penalty that would be appropriate?

6 A. I would have to consult with legal counsel.

7 Q. Would Staff just simply try to figure out how
8 much money the affiliate made on the transaction and use that
9 as the basis for the penalty?

10 MR. BERLIN: I'm going to object. I think he
11 just stated that he would have to consult with legal counsel.
12 So it's asked and answered.

13 MR. FISCHER: I'll withdraw it.

14 BY MR. FISCHER.

15 Q. Setting aside the legal counsel's opinion, how
16 would you, as the head of the procurement analysis group,
17 suggest that the Staff calculate the penalty?

18 A. I would suggest that Staff talk to legal
19 counsel.

20 Q. So you don't have an opinion about what an
21 appropriate penalty is if a company does not comply with the
22 record-keeping requirements of the Affiliate Rule?

23 A. Based upon my knowledge of years of employment
24 with the Commission, a penalty case usually results in -- in
25 penalties that I think are set out by either rule or statute.

1 It seems like \$10,000 per instance or per day comes to mind.
2 And I'm giving you just to the best of my knowledge what
3 complaint cases have suggested in terms of penalties.

4 Q. Do you think it could be \$100,000 to \$200,000
5 under the statute?

6 A. Maybe I just upped that amount.

7 Q. Has the Commission in your long tenure at the
8 Commission ever penalized a regulated company or its
9 affiliate for failure to maintain records required by the
10 Affiliated Transaction Rule?

11 A. Not to my knowledge.

12 Q. Is it correct to conclude that if the
13 Commission accepts the Staff's proposed disallowance in this
14 case, that it would be the first time in your tenure that the
15 Commission has penalized a company for failure to maintain
16 appropriate records under the Affiliated Transaction Rule, to
17 your knowledge?

18 A. I can't agree with the premise of your
19 question that this disallowance is based upon a penalty for
20 failure to maintain records.

21 Q. Well, let me amend it to say failure to comply
22 with the record-keeping requirements of the rule.

23 A. That certainly was part of the reason why we
24 developed the disallowance at the magnitude it was, was based
25 upon AEM's fair market value and the records of AEM and the

1 lack of records of AEM. But in addition to that, this
2 disallowance is based upon the RFP process and the service
3 level of the goods received.

4 Q. But can you cite an example for Commissioner
5 Jarrett and Judge Woodruff of a case where this has been
6 accepted in the past?

7 A. No, I cannot.

8 Q. And if they'd made 3.4 million instead of just
9 340000, would that be the adjustment in this case?

10 A. We would want to take a look at all the facts
11 and circumstances of the transaction confirmations, the RFP
12 process. But to the extent that you're just asking whether
13 our philosophy would change based upon the fair market value,
14 we would seek the fair market value of AEM.

15 Q. And that's what you believe you get whenever
16 you subtract off the profits from the cost of gas?

17 A. That is our best estimate.

18 MR. FISCHER: I appreciate it. Thank you very
19 much.

20 JUDGE WOODRUFF: All right. Questions from
21 the bench, Commissioner Jarrett?

22 EXAMINATION

23 QUESTIONS BY COMMISSIONER JARRETT:

24 Q. Good afternoon, Mr. Sommerer.

25 A. Good afternoon, Commissioner.

1 Q. Could you give me, I guess, just a simple
2 laymen's terms as possible what exactly Staff believes Atmos,
3 the regulated company, did that was imprudent in this case?

4 A. In this case, we believe that during the bid
5 evaluation process and the transaction confirmation process,
6 AEC, the LDC, should have spent more time trying to figure
7 out what the service level was. And it should have been
8 apparent to them that the service level that they were
9 requesting in the RFP really wasn't the same thing that was
10 coming back in the transaction confirmation. And so that's
11 really Staff's primary concern about the RFP process. It's
12 not the letter that goes out. Because the letter was the
13 same. The evaluation was a mathematical evaluation and the
14 low bid was chosen. So it's not really a problem with
15 choosing mathematically the low bid. But it's an expectation
16 that they go a step farther than that and they ask
17 themselves, do we have apples to apples here, or is it apples
18 to oranges. And that's really where we're concentrating.

19 Q. Okay. So Atmos the LDC asked for firm and
20 warranted service?

21 A. Correct.

22 Q. And what you're saying is they didn't get firm
23 or warranted service?

24 A. It may well have been less than that.

25 Q. Well, that's my question. It may well have

1 been. Was it?

2 A. Based upon that circumstance from the last
3 case, we don't believe it was.

4 Q. What circumstance is that?

5 A. That was the force majeure situation that we
6 discussed in Case 2008.

7 Q. Okay. But you don't believe it was?

8 A. That's correct.

9 Q. Okay. Do you have any documents or any
10 testimony in the record that would show this?

11 A. My testimony was that the last case, the
12 circumstances that happened in the last case was relevant to
13 this case and it was important to show that the service may
14 well not be a primary service.

15 Q. Well, how I am supposed to know that, as the
16 decision-maker?

17 A. I would say based upon the record in the last
18 case, you will know that.

19 Q. I mean, I'm trying to understand. Can you
20 point me to a document where -- or testimony from someone
21 where Atmos did not get firm and warranted service? Didn't
22 Ms. Buchanan testify that they got all the gas that they
23 asked for? And didn't you testify when you were talking with
24 Mr. Fischer that there wasn't any outages or -- other than
25 maybe a backhoe cut a line, they got all the gas they wanted

1 and there wasn't any interruption or any problem?

2 A. There were a couple of clerical situations as
3 well, which I think she mentioned. But I agree with that
4 that there weren't any interruptions that I saw beyond those
5 that were discussed for this ACA period.

6 Q. Okay. So how was Atmos, the LDC, supposed to
7 know -- or why would they care what kind of service they got
8 as long as they got their gas?

9 A. I think you have to take into account what
10 happened in the previous period. They knew from December of
11 2007 that the affiliate, for some reason, was unable to
12 provide the gas supply. And in their evaluation process in
13 February or March of 2008, that's after that circumstance.
14 So you would know that. You would be armed with that fact
15 that that supply may well not be firm.

16 And in addition to that, I would say again, I
17 would go back to the transaction confirmation that those
18 levels were -- were blank in the transaction confirmations.
19 There wasn't any obligation pursuant to the contract to
20 provide firm service.

21 Q. Okay. But where's the prove that it wasn't?

22 A. Just as if you bought -- even pursuant to
23 contract an interruptible gas supply and it was planned that
24 it was best efforts, it was interruptible. The gas could
25 show up. It could show up to the city gate in every

1 instance. In fact, 90 percent of the time, 99 percent of the
2 time it could show up, if you didn't have a severe weather
3 event. And I think what Staff is suggesting here is that
4 even though that could be the case, and you don't have any
5 interruptions at all, the value of the service may be
6 different.

7 Q. May be?

8 A. May be.

9 Q. So I have to make a decision based on may be?

10 A. I think the evidence is there from December of
11 2007.

12 Q. Well, that was a force majeure though. That
13 was a -- you know, that was an extraordinary event. That
14 wasn't -- how does that apply in this instance?

15 A. It gives an indication that AEM and the
16 communications that went back and forth between the LDC and
17 AEM, had an expectation that it would be relieved from its
18 obligations, if it asked. And so even in the context of a
19 force majeure event, which you're right, that's what it was.
20 There are higher priorities of service that have more value
21 than secondary service. And we are confident that it was a
22 secondary service that was being offered and provided by AEM.
23 And that did have some consequences.

24 Q. Okay. So if I live in Joplin and there's a
25 tornado that goes through and destroys the plant and I don't

1 get my service, then somehow, you know, it's my fault that I
2 didn't require them to -- to provide me service? I mean, is
3 that what you're saying?

4 A. It's not a perfect analogy that you bring up
5 because that's a situation where all service has been dropped
6 and there aren't grades of service. And this is probably on
7 the spot a poor analogy, but it's as if you had contracted
8 with the electric company down in Joplin and they said we
9 would bring you out a generator and assure you that you'd
10 have electricity and that's going to cost you. But if the
11 plant goes down, it's not necessarily the end of the
12 contractual obligation.

13 Q. Right. But they got all their gas that they
14 wanted.

15 A. In this particular period, I would say that's
16 correct.

17 Q. Yeah. And they got it at a good price?

18 A. They got it at a price that was less than the
19 other unaffiliated bidders.

20 Q. Right. Okay.

21 COMMISSIONER JARRETT: I don't have any
22 further questions. Thank you.

23 JUDGE WOODRUFF: Commissioner Kenney?

24 ///

25 ///

EXAMINATION

QUESTIONS BY COMMISSIONER KENNEY:

Q. Good afternoon, Mr. Sommerer. I just have a few questions. If I'm understanding what you're saying in this specific case, in its bid evaluation process, Atmos should have taken into account what occurred in the prior period with respect to the quality of the service delivery?

A. That's correct.

Q. Okay. How do you quantify what you are saying is, in essence, a diminished service level or a lesser service level? How do you quantify that?

A. If you have a very robust bid process that you believed had the same level of service and you were confident that the contracts were the same, then you could look to the RFP process. In this instance, we weren't comfortable enough with that particular result from the RFP process and the resulting transaction confirmations that we had to go to an additional step.

We believe it's a tool to look at the affiliate's cost of gas to see what the value of service was from their perspective, what was their cost. Is that an indicator -- is that a valid indicator for what it could have cost the LDC. And if you don't have anything else, and there's potential that you may not. You may have one bid, you may have two, you may not have the same service levels.

1 If you believe that, then you would want to go to the
2 affiliate and ask what its costs were. And that's what we
3 did.

4 Q. And then once you find that out -- well, let
5 me back up a step. What should Atmos have done, let's say
6 they did have multiple bids and its gas marketing affiliate
7 is the lowest bidder, but then it does want to take into
8 account what happened in the force majeure event in the prior
9 period, and it wants to adjust the low bid somehow to take
10 into account that diminished service level, how would it
11 quantify that?

12 A. I think it would be difficult to quantify, and
13 that's why I've suggested when you're only dealing with two
14 or three other bidders and the service levels may not be the
15 same, you may need to rebid the RFP out. You may need to
16 look for other options.

17 Atmos has, in other states, its common
18 practice done something called an asset management agreement
19 option where it turns over its storage and its capacity to
20 try and yield more value. It didn't do it for some reason, I
21 don't fully understand why, in the Hannibal area.

22 So there are options that you can put together
23 in your RFP to try and understand what the value is, which I
24 think is where your question is going is, is how in the world
25 do we Measure some sort of lesser service? Is there a way to

1 do this entirely on a secondary basis? Put such a strong
2 contractual requirement behind it that you're making it as
3 firm as firm can be? Is there a way to do that? And so
4 those are the options that we thought would have been prudent
5 for the LDC to -- to do in the RFP.

6 Q. And you're saying that Atmos did do that in
7 other jurisdictions?

8 A. It's common practice for Atmos in other
9 jurisdictions to offer an asset management arrangement.
10 Either an option for it, or that appears to be the primary
11 way they -- they advertise their services that are needed for
12 a particular jurisdiction in other states.

13 Q. And do you -- is it -- is it Staff's opinion,
14 then, that the failure to do that constitutes imprudence in
15 this circumstance?

16 A. The failure to consider other options, and
17 that's one, that's one example.

18 Q. Or rebidding?

19 A. Rebidding, breaking this apart into a base
20 load and a swing obligation, attempting to maybe marry this
21 up to an Illinois jurisdiction where you've got a bigger
22 system and you can draw in larger amounts of bids. Because
23 this is very much -- when you look at Atmos' RFPs, is many
24 small LDCs. Although it's the biggest natural LDC in the
25 nation, you've got to look at their process as really

1 subdividing these things into very small little service
2 areas.

3 Q. Now, the analysis -- well, the situation that
4 you just described where the lowest bidder isn't necessarily
5 the best service, this circumstance wouldn't just occur
6 necessarily just with an affiliated entity, correct?

7 A. That's correct.

8 Q. So then is it Staff's suggestion that in every
9 situation, that the bidding process should be revised on the
10 RFP process, should be revised to take into account
11 variations in service levels?

12 A. I would think --

13 Q. And if that is not Staff's position, why not?

14 A. Yeah. I would think that would be consistent
15 with the concerns here, that if you're looking at issues of
16 whether you have the same service level, even if you only
17 have unaffiliated bids, or the bids are only coming back as
18 one or two conforming bids, you would want to take a look at
19 that in each instance.

20 Q. But Staff isn't suggesting that in the
21 jurisdictions or in the areas in which Atmos purchased from
22 unaffiliated entities?

23 A. I think we would want to take a close look
24 anytime we were down to one or two bids, but we have made no
25 disallowances with regard to unaffiliated vendor responses.

1 Q. So it's only in the situation in which it's an
2 affiliated entity that this additional scrutiny has been
3 triggered?

4 A. There's no denying that there is additional
5 scrutiny here and it has been triggered, yes.

6 Q. Okay.

7 COMMISSIONER KENNEY: That's all the questions
8 I have, thank you.

9 THE WITNESS: Thank you, Commissioner.

10 JUDGE WOODRUFF: I have a follow-up question
11 to something Commissioner Jarrett asked you.

12 EXAMINATION

13 QUESTIONS BY JUDGE WOODRUFF:

14 Q. You talked about you thought that AEM was
15 providing secondary delivery, I think is what the term you
16 used?

17 A. Yes.

18 Q. Do you mean secondary delivery to the sense
19 that they were taking off a secondary delivery point off the
20 Pony Express, or they were taking interruptible service?

21 A. I would define it as being a secondary
22 delivery or receipt off of the -- off the points, the
23 pipeline points, be it Pony Express or reqs, downstream
24 points.

25 Q. Okay. Which was something that was allowed by

1 their contract; is that correct?

2 A. That option was clearly offered in the RFP.
3 The contracts were somewhat vague about just exactly what the
4 true delivery point would be.

5 Q. The contracts were blank in portions, or the
6 acceptance, the documents were blank?

7 A. The transaction confirmations were blank in
8 portions.

9 Q. Now, it's my understanding that an
10 unaffiliated marketing company could also, even unbeknownst
11 to Atmos, the LDC, take gas off of -- even interruptible gas,
12 even though they're saying it's firm gas and the LDC wouldn't
13 necessarily know that; is that true?

14 A. That is true.

15 Q. Okay. If that's the case, does it make any
16 difference whether there's ten bidders or only one or two
17 bidders, if you're subject to being cheated that way?
18 Because essentially, that would be a cheat to the company,
19 right?

20 A. Could you restate that? I lost you somewhere.

21 Q. Well, I'm just trying to struggle through
22 this. What I understand what Staff is saying is that
23 affiliated company or an unaffiliated marketing company
24 could, in fact, substitute non-firm gas for what they
25 promised was firm gas; is that true?

1 A. That's true.

2 Q. All right. Now, if you're assuming that --
3 that sort of dishonest behavior is going on, does it make any
4 difference if there's only one bidder or if there's 50
5 bidders?

6 A. I think the more bidders that you have, the
7 more of an indication you may get in terms of the value of
8 service that you're receiving. In theory, it's possible,
9 though, that you could have all 50 of them decide we're going
10 to take a big risk here, and what an opportunity, we're going
11 to serve this obligation with interruptible gas. Eventually,
12 it would come back to haunt you. It may take two years, it
13 may take three years. You would make a lot of money,
14 probably, in the meantime. Because the cheaper you can go
15 in, obviously, the higher the probability you're going to win
16 the bid. And how do you get cheap supply.

17 Q. Is there any indication that that sort of
18 thing does, in fact, go on in the industry?

19 A. I have seen situations where our LDCs have
20 been frustrated with particular suppliers because supply
21 hasn't shown up, whether it's in a time of crises or time of
22 stress or just a regular run-of-the-mill winter, and I've
23 heard our LDC gas buyers say if they believe they have an
24 absolute firm commitment and the supply doesn't show up, the
25 typical practice is not to reorder from that supplier.

1 There's of a discipline involved where you're not going to
2 reward that supplier anymore, even though they were cheap.

3 Q. Okay. And these would be unaffiliated
4 suppliers?

5 A. That's correct.

6 Q. Okay. All right. Well, thank you.

7 THE WITNESS: You're welcome.

8 JUDGE WOODRUFF: That's all the questions,
9 then, from the bench. Go back for recross based on questions
10 from the bench. Public Counsel?

11 MR. POSTON: Thank you.

12 RECROSS-EXAMINATION

13 QUESTIONS BY MR. POSTON.

14 Q. Commissioner Jarrett asked you a question
15 about where is the proof that the gas that was provided by
16 AEM may not have been firm. And -- do you recall that?

17 A. Yes, I do.

18 Q. And I believe one of your responses was that
19 the force majeure event; is that correct? Is that --

20 A. Correct.

21 Q. And is that discussed in your testimony, your
22 pre-filed testimony, that event?

23 A. I believe I made some references to that
24 event, yes.

25 Q. Okay. And is it also correct that another

1 piece of evidence in this case is the transaction
2 confirmations that did not specify a level of service level?

3 A. Correct.

4 Q. Okay. And is there anything else?

5 A. Those truly are the main pieces of evidence
6 that I would suggest the Commission look at.

7 Q. Okay. And do you believe that this evidence
8 creates serious doubt about what service level was provided?

9 A. Yes.

10 Q. And do you believe Atmos should have responded
11 to this evidence and this serious doubt with additional
12 evidence that proves that gas received by Atmos was -- was
13 firm?

14 A. I believe that would be reasonable, yes.

15 Q. And did they provide that evidence?

16 A. I think their attempt to provide it was
17 testimony before the Commission that in this particular ACA
18 period, the gas did indeed show up. And I think that's the
19 bulk of their evidence.

20 Q. So they don't have any documentation showing
21 the source of the gas or in any way showing that it was firm?

22 A. The LDC itself, I would say no. There's
23 probably some evidence out there of the way the AEM purchased
24 some of its supplies. So you could go there. But the LDC, I
25 don't think, has offered any additional evidence.

1 Q. And so what kind of evidence would you think
2 would be out there to show the level of this gas that AEM
3 might have?

4 A. Well, it's very clear, and this might be
5 getting into highly confidential information. I'll try and
6 keep it as general as possible. But you can tell by AEM's
7 transaction confirmations that it was really counting on
8 those secondary receipt points. That's where it was
9 aggregating its supplies. Whether those supplies were
10 ultimately headed for Illinois or Missouri or some industrial
11 customer, you could tell where the gas was being pooled and
12 aggregated. And it wasn't happening at Haven. It wasn't
13 there.

14 And I think that creates a bit of a problem if
15 the company forces the affiliate to go back to Haven in times
16 of stress, which might raise a priority of service, if AEM
17 supplies are being aggregated and gathered at some secondary
18 point. It's counting on that point.

19 Q. Who's counting on that point?

20 A. AEM.

21 Q. Did you ask Atmos or AEM to provide additional
22 proof of the service level that was actually provided?

23 A. I think we've asked for everything surrounding
24 the transaction. I can't think of any good discovery that I
25 could generate that would get to any. In fact, you know when

1 you reach the point where you've seen everything that they
2 have when the answers start saying this is all we have. This
3 is all we have. You've seen everything that we have.

4 Q. Do you think the Atmos response to the serious
5 doubt that you've created, their testimony evidence, is
6 sufficient to overcome the doubt that you've raised?

7 A. No.

8 MR. POSTON: Thank you, that's all I have.

9 JUDGE WOODRUFF: Atmos?

10 RE CROSS-EXAMINATION

11 QUESTIONS BY MR. FISCHER.

12 Q. Yes, following up on Commissioner Kenney's
13 questions. If you had unaffiliated gas marketers that were
14 using spot or interruptible supplies, would Staff have anyway
15 of knowing that?

16 A. No. No, they wouldn't.

17 Q. I think you indicated Staff has no evidence
18 regarding whether unaffiliated gas marketers use spot or
19 interruptible, correct?

20 A. That is correct.

21 Q. So let's just assume in the Hannibal and
22 Butler case, that rather than having Hannibal and AEM be the
23 lowest bid, it was the second lowest bid and some
24 unaffiliated gas marketer was using spot or interruptible
25 supplies. In that case, there wouldn't be an adjustment,

1 right?

2 A. I believe that's a correct assessment, yes.

3 Q. So it's only because AEM happens to be an
4 affiliate that this concern that you would have about any gas
5 marketer becomes an issue for this Commission?

6 A. I think there are circumstances where you
7 would be concerned if the gas doesn't show up, if there are
8 penalties that should have been sought after from the
9 unaffiliated supplier. If it's impacted your storage, if it
10 resulted in a city gate outage, if it was a material
11 situation that impacted the company's procurement operations,
12 you would have to look at those circumstances as they
13 occurred.

14 Q. Well, let's assume that the company did
15 receive firm and warranted gas. Even in December. And you
16 had a pipeline interruption and a force majeure was declared.
17 Even if it was firm and warranted, wouldn't you -- isn't it
18 possible that you would have to work with the industry and
19 you wouldn't get all the gas that was firm and warranted
20 because you had a pipeline interruption?

21 A. Well, as we've discussed before, I think
22 there's a disagreement between the level of working with the
23 industry. I testified, and we've talked about this in a
24 deposition and otherwise, that you always want to go into a
25 difficult situation with the idea in mind that you're going

1 to work with the pipeline. And to the extent that you can
2 reasonably do so without any negative consequences, even work
3 with the supplier as long as it's consistent with their
4 obligations. That's been my testimony. It is my testimony.

5 Q. But if it had been an unaffiliated marketer,
6 Laclede Energy Resources or Anadarko or Tedesco or anybody
7 else besides AEM and that force majeure had occurred, Staff
8 wouldn't have made an adjustment?

9 A. I think you would have to look at the
10 circumstances that occurred. If you're talking about the
11 adjustment we made regarding force majeure and the supplies
12 not showing up, I think we would have had concern had we seen
13 communications with an unaffiliated marketing company and the
14 LDC where the marketing company says, I don't have gas for
15 you this weekend or can you lower your nominations down,
16 things are tight all over? If the LDC does that without
17 really pursuing it, we would -- I'm sure we would have
18 concerns about that.

19 Q. But you wouldn't have any information about
20 whether that unaffiliated gas marketer had spot interruptible
21 or the firmest of firm, right?

22 A. You could probably get some indications based
23 upon what the pipeline was curtailing, and that would take
24 some digging. But you wouldn't have direct indications of
25 what was in the portfolio of unaffiliated marketing company.

1 You would not know that.

2 Q. So there is a disadvantage to being an
3 affiliated marketer in this jurisdiction?

4 A. I would say there's more scrutiny, perhaps,
5 you know, there's gain there of AEM has won the Greeley
6 business over in Missouri for years running. So I'm sure
7 there's value there. So perhaps there's negatives and
8 positives.

9 MR. FISCHER: Thank you. That's all I have.

10 JUDGE WOODRUFF: All right. Redirect?

11 MR. BERLIN: Yes, thank you.

12 REDIRECT EXAMINATION

13 QUESTIONS BY MR. BERLIN.

14 Q. Mr. Sommerer, you may recall Mr. Fischer had
15 some questions, and they pertain to the AEM transaction
16 confirmations, questions about Atmos getting a lower price
17 for a lower bid. If the lower level of service that was
18 provided by AEM based upon the transaction agreements that
19 were actually signed had been the level of service expressly
20 requested in the bid, is it possible that the bids of other
21 parties, other suppliers would have had or may have been
22 lower than what they had provided?

23 A. That's very possible, yes.

24 Q. So there is a difference between a bid that is
25 provided a primary receipt point and a bid response that is

1 provided a secondary receipt point?

2 A. Yes, there would be.

3 Q. Okay. All right. Mr. Fischer had asked if
4 AEM had allocated any costs other than those that were
5 invoiced to Atmos. I think his question was about picking
6 the -- well, let me back up.

7 I think he had asked a question about picking
8 the lowest bidder in the fair market price. And I think he
9 had asked the question: Is the review of the bid sufficient
10 to set the fair market price? I think you had answered, Not
11 necessarily. Can you give us an example of how bids may not
12 help determine the fair market price?

13 A. I can think of a couple of examples. One
14 which we discussed with Mr. Fischer in the prior case and
15 maybe in this case is that when you see a bid, it's not
16 necessarily the fair market price. That bid is based upon
17 hypothetical volumes. It's based upon potential service
18 levels. When Atmos evaluates these things, it uses
19 hypothetical prices, forecasted volumes, assumptions about
20 how much swing gas is going to be purchased, how much base
21 load is going to be nominated. So it's been Staff's view
22 that the fair market value is really not known or can be
23 assessed until you actually see the invoice, which is a long
24 time after the bids are -- are put together.

25 So I've tried to put that clarification in

1 there. I would certainly say that if you didn't have the
2 same level of service, which we've been concerned about all
3 along, you would have to wonder if you -- even if you made
4 the assumption that we tried to make with the company, that
5 the volumes turned out to be whatever they were between the
6 AEM versus some unaffiliate. All things being equal, if
7 you've only got one or two bidders, the service level is
8 different. I don't know that that's an indication of the
9 fair market value in that particular instance.

10 We've also, I think in the last case, said
11 that even when you're looking at the actuals, and I think
12 Atmos has looked at this, and said what if? What if we went
13 with the second highest bidder and what would the resulting
14 cost be? You have to make the assumptions that your
15 nominations would have been precisely the same.

16 And it was foundational to the Staff's last
17 case that the nominations may have been different had an
18 unaffiliated bidder won the award and said I don't need to
19 lower the nominations. I don't need to do it. I'm not
20 asking for any sort of cooperation here. As soon as you do
21 that, you have a different level of fair market value.

22 So there's three or four instances where you
23 just cannot use those hypothetical bids to set your fair
24 market value.

25 Q. Mr. Fischer had asked what if AEM did not bid?

1 Would there be a disallowance? And I believe your answer was
2 something like, Probably not.

3 If the transaction confirmation had shown
4 blank service level or only monthly requirements and no
5 daily, is it possible that Staff would have inquired about
6 the prudence of such a decision?

7 A. I would think we would have had some questions
8 about the contracting practice and whether the agreement was
9 truly firm. And that could be sort of a reliability concern
10 or it could be a cost concern potentially, actually.

11 Q. Mr. Fischer had asked if the Commission has
12 accepted a similar affiliate adjustment in another case. And
13 I believe you might have answered no. Is there -- did you
14 know if there's any other Staff ACA adjustments that had been
15 proposed for another LDC for affiliate issues?

16 A. Yes. I think as the Commission is aware,
17 there are several open ACA cases with another large LDC that
18 do involve affiliated transaction concerns. As I indicated
19 to Mr. Fischer, the issues may not be exactly the same. The
20 circumstances may not be precisely the same, but we certainly
21 have raised those concerns in those cases.

22 Q. And have any of those cases gone to hearing
23 yet?

24 A. No.

25 Q. I believe that Judge Woodruff had asked you a

1 question to the effect that couldn't a non-affiliate provide
2 lower priority gas? Do you recall that question?

3 A. Yes.

4 Q. And I believe you had answered, Yes. In your
5 opinion, would the awarded supplier be required to deliver
6 the gas if it had failed to -- failed in its requirement?

7 A. If it were obligated on a firm basis to
8 deliver the gas and it did not declare a specific and notify
9 the LDC of a specific -- an acceptable force majeure event,
10 it would be required to be accountable under the contract.

11 Q. And that contract is the transaction
12 confirmation, correct that?

13 A. That is where the particulars usually reside.
14 There's the basic agreement where it's more boilerplate, but
15 the main definitions are derived from that transaction
16 confirmation.

17 Q. So the -- the contractual right to firm
18 service is specified -- usually specified in the transaction
19 confirmation; is that right?

20 A. That's correct.

21 Q. Okay. Mr. Fischer had asked a question
22 whether an unaffiliated marketer would be treated the same
23 under similar circumstances. And I know you've been doing
24 some affiliated transaction examinations for quite some time.
25 Are affiliates held to a different standard in Missouri?

1 A. I think the rule is certainly applicable to
2 affiliates and it would not be applicable to non-affiliates.
3 And so you've got all the standards of the rule. You've got
4 record-keeping requirements, you've got the requirement of
5 pricing that is supposed to be the lower of fair market price
6 or fully distributed costs. These are standards that you
7 would not -- you could not apply to an unaffiliated marketing
8 company.

9 MR. BERLIN: Judge, I have no more redirect,
10 but I do have a couple items that I would like to bring to
11 your attention.

12 JUDGE WOODRUFF: All right. Do they involve
13 the witness?

14 MR. BERLIN: They do not.

15 JUDGE WOODRUFF: Then you may step down.

16 THE WITNESS: Thank you.

17 JUDGE WOODRUFF: What other matter do you
18 have?

19 MR. BERLIN: Judge, throughout the course of
20 today's hearing, and this particular case, we have discussed
21 and made reference to -- all parties have -- the record from
22 the prior case. And you have noted that there is a
23 significant relationship between both cases. So I would
24 motion to incorporate the record from the prior case into
25 this case.

1 JUDGE WOODRUFF: Any response to that from the
2 other parties?

3 MR. POSTON: Public Counsel supports that and
4 makes sense.

5 JUDGE WOODRUFF: All right. Mr. Fischer?

6 MR. FISCHER: Will it help us get a decision?
7 I have no objection.

8 JUDGE WOODRUFF: Yeah, it may very well.
9 Perhaps the Commission will combine the decisions in the
10 cases. I don't know how long. All right. Hearing no
11 objection to it, then we'll accept that.

12 MR. BERLIN: All right. And Judge, the second
13 item is that I'd like to -- I had used some slides in my
14 opening statement and they became the subject matter of quite
15 a bit of -- of questions -- questioning of the witnesses.
16 And I would like to move that a copy of the slides be
17 admitted into evidence.

18 JUDGE WOODRUFF: You have a physical copy of
19 that, I believe.

20 MR. BERLIN: I have physical copies of those.

21 MR. FISCHER: Judge, like in the last case, I
22 would object to that. Counsel's slides, counsel's statements
23 as opening are not evidence and shouldn't be admitted as
24 evidence in the record.

25 MR. BERLIN: And I would just respond to that,

1 Judge, that we have some Commissioners who are not present
2 today who may be looking at this in the Internet archives at
3 some later date. And there were so many questions, I do
4 believe it would be an aide to those Commissioners to have
5 that so that they could refer to it.

6 JUDGE WOODRUFF: All right. Let's go ahead
7 and mark it as 19.

8 (Exhibit Number 19 was marked for
9 identification by the court reporter.)

10 JUDGE WOODRUFF: So that the record is clear,
11 I will allow that to be entered into the record. As counsel
12 indicated for Atmos, it is not evidence and I don't think
13 you're offering it as evidence; is that correct?

14 MR. BERLIN: Well, I'm offering it as an
15 exhibit into the case record. Commissioner Jarrett has a
16 copy right now.

17 JUDGE WOODRUFF: So it will be in the record
18 so anybody wants to refer to it, they can. But it's not
19 going to be admitted as evidence. Is that your understanding
20 also?

21 MR. BERLIN: I believe that's my
22 understanding.

23 JUDGE WOODRUFF: All right. Mr. Fischer?

24 MR. FISCHER: I don't have any problem if he
25 wants to mark it as an exhibit, but it's not admitted into

1 the record.

2 MR. POSTON: The difference being we just
3 can't cite to it.

4 JUDGE WOODRUFF: You can't cite to it. It's
5 not competent and substantial evidence. It's -- if somebody
6 wants to refer to it saying, and by the way, take a look at
7 this exhibit, this is what we were talking about during the
8 opening argument or opening statements, I think it's
9 appropriate for that purpose.

10 MR. POSTON: Okay.

11 JUDGE WOODRUFF: All right. So it's marked as
12 19. It's not admitted into evidence. Was there anything
13 else?

14 MR. BERLIN: No, Judge, those were the only
15 two items I had.

16 JUDGE WOODRUFF: All right. The only other
17 matter to be taken up would be the briefing schedule. Let's
18 go off the record for a moment.

19 (An off-the-record discussion was held.)

20 JUDGE WOODRUFF: While we were off the record,
21 we had a discussion about the briefing schedule. The court
22 reporter indicated the transcript would be coming in on
23 September 28th. We agreed that initial briefs would be due
24 on October 28th and reply briefs would be due on November
25 14th. Anything else anyone wants to bring up while we are on

1 the record? Hearing nothing, then we are adjourned. Thank
2 you.

1 CERTIFICATE OF REPORTER

2 STATE OF MISSOURI)

) ss:

3 COUNTY OF GASCONADE)

4

5 I, JENNIFER L. LEIBACH, Registered Professional

6 Reporter, Certified Court Reporter, CCR #1108, and Certified

7 Realtime Reporter, the officer before whom the foregoing

8 matter was taken, do hereby certify that the witness/es whose

9 testimony appears in the foregoing matter was duly sworn;

10 that the testimony of said witness/es was taken by me to the

11 best of my ability and thereafter reduced to typewriting

12 under my direction; that I am neither counsel for, related

13 to, nor employed by any of the parties to the action in which

14 this matter was taken, and further that I am not a relative

15 or employee of any attorney or counsel employed by the

16 parties thereto, nor financially or otherwise interested in

17 the outcome of the action.

18

19 _____

20 Court Reporter

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