

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

3 COMMISSIONER DAVIS: All right.

4 QUESTIONS BY COMMISSIONER DAVIS:

5 Q. All right. So the question is: Would a
6 reasonably prudent person with knowledge of the
7 circumstances -- should they have rejected the AEM bid for
8 the Hannibal/Canton area?

9 A. I think there are areas that would have
10 raised some question, but it was the low bid under a
11 reasonable set of circumstances and assumptions. And
12 therefore, faced with nothing else except having that low
13 bid at that particular time when you're accepting the bid
14 up front and not managing the contract during the course of
15 the ACA, I don't have a problem with their acceptance of
16 the AEM bid as the low bid. I don't think that was
17 imprudent.

18 Q. Okay. And what about Butler?

19 A. Same answer.

20 Q. Okay. And then have you done any
21 comparisons to the -- to the contracts with the -- with the
22 other providers that overlapped in this period of time to
23 determine how far apart their -- well, I guess there's no
24 way because you don't know what their cost basis is. I
25 mean -- well, I guess -- okay.

1 Just looking at Atmos's costs for the -- for
2 the six -- or for the four districts -- or six districts,
3 or however many there are. Are there six at the time?
4 There were six districts at the time, I'm going to guess.

5 A. I don't recall because they'd been folded
6 down to four.

7 Q. Right.

8 A. One -- so I don't recall.

9 Q. Okay. But -- if assuming that there were
10 roughly six districts at the time, I mean, have you gone
11 back and compared the costs incurred by Atmos for each of
12 those contracts and how they compared to the actual bids
13 that came in in terms of -- do you understand what I'm
14 asking, Mr. Sommerer?

15 A. Yes, I do. Yes, I do. I think there's some
16 compliance checking to make sure that you get what you paid
17 for in terms of if you're supposed to pay first of the
18 month price --

19 Q. Right.

20 A. -- and that's what BP said you should -- you
21 know agreed what the charge was going to be, we'll go back
22 and make sure that that's what the invoice has on it, the
23 first of the month price.

24 Q. Okay. So what I'm asking you was the
25 variation between what Atmos actually paid AEM any higher

1 or more significant than the variation that Atmos may have
2 paid any of the other independent, armslength parties that
3 had bids?

4 A. I haven't done that analysis.

5 Q. You think that would be relevant?

6 A. No.

7 Q. No? You don't think that's relevant?

8 So let's go back. Let's say they bid
9 \$100,000 and they came in at 100-and -- let's say it
10 actually cost 110.

11 A. Okay.

12 Q. So you're talking about cost -- it cost
13 \$10,000 or 10 percent more. Okay. And let's say
14 hypothetically speaking Shell had won another bid and let's
15 say their bid was for a larger territory. Let's say it was
16 \$200,000 and they came in at 250. I mean, weather may
17 explain it.

18 I mean, you know, lots of things could
19 explain it, but still the fact is, don't you think that's
20 information that they came closer to hitting the target bid
21 than some of these other providers would be relevant to
22 show that it was a good bid?

23 A. The districts are so diverse in terms of
24 their access to storage, their access to firm
25 transportation, even with the weather and how they dealt

1 with it, the circumstances on the pipeline.

2 You could have the bid analysis, which is
3 done under normal conditions under a particular set of
4 circumstances say one thing in SEMO and have the bid be
5 equivalent to what it was in SEMO for 100 different reasons
6 and then have a very large difference between what they
7 said they were going to provide it at because it's not a
8 cost -- it's not a fixed cost. It's a formulated rate
9 basically.

10 Q. Okay. It's a form-- but you calculate it
11 out -- they calculate it out a dollar amount, did they not?

12 A. In the bid, assuming normal weather, normal
13 circumstances.

14 Q. Right.

15 A. And the actuals, what you actually achieve
16 is based on actual conditions.

17 Q. Right. Okay. And so let's look at it a
18 different way if the actual -- you didn't look at the
19 actual compared to the -- what was estimated in the bid and
20 then compare that, to say the second highest bid then,
21 either, did you?

22 A. I'm having a hard time following. Can you
23 give a little bit more?

24 Q. Okay. Well, I don't know -- you know. Do
25 you know how far off the actual was from what was bid? I

1 mean, do we need to go in camera?

2 A. It's information that we would certainly
3 have access to. My understanding of your question is it
4 would be a comparison between the invoices coming through
5 from ConocoPhillips or BP or whoever won the bid versus an
6 assumption of what it was going to be when you calculated
7 these costs on an annual basis under what they committed
8 the bid to be for?

9 Q. All right. And I -- right now, I'm just
10 focusing -- I'm going to focus in on Hannibal. So we're
11 looking at Hannibal. You know what the estimated bid was
12 under normal conditions?

13 A. Yes.

14 Q. And you know the dollar amount?

15 A. Yes.

16 Q. Do you know the actual amount?

17 A. Yes.

18 Q. Okay. If I'm going to ask you what the --
19 can you calculate the difference in that amount?

20 A. It's a calculation that can be made, yes.

21 Q. Okay. But you can't do it here at the desk
22 right now?

23 A. No.

24 Q. Okay. Could you do that and provide us that
25 information?

1 A. For the winning bidder?

2 Q. Yes.

3 A. Because it would only be a comparison
4 between what Atmos ultimately charged versus what Atmos --
5 AEM agreed its bid price would be under normal conditions
6 as evaluated by ADC. That's my understanding of the
7 comparison you're asking for there. Because there won't be
8 any actuals obviously for the -- in Hannibal for anyone
9 except for AEM.

10 Q. Right.

11 A. They wanted --

12 Q. Right. I'm just looking at Hannibal and for
13 the year in question.

14 A. '07/'08.

15 Q. '07/'08.

16 A. Yes.

17 Q. So what I'm asking is -- I mean, can you run
18 a scenario of what the bid would have been under the -- say
19 the next closest bidder? Can you run that scenario?

20 A. Well, that scenario should already be
21 available in their bid evaluation because they have
22 analyzed those bids over an annual 12-month period.

23 Q. Right.

24 A. And they've done it for each one of the
25 bidders.

1 Q. Right.

2 A. Competing bidders. So you would have actual
3 cost as incurred from AEM. That's one thing.

4 Q. Yeah.

5 A. And then you would have the annual cost
6 under normal circumstances for the three or four or five
7 bidders that bid into the RFP.

8 Q. Right. And then based on the actual data
9 provided by AEM, could you compute estimates for those
10 other companies for what their actuals would have been
11 under the contract -- under their contracts?

12 A. It would be very difficult to do. I --

13 Q. Okay.

14 A. It would be difficult to do.

15 Q. Okay. At the very bottom of page 9 of your
16 direct testimony you stated that if Atmos had purchased the
17 gas itself instead of through its affiliates the actual
18 cost of the gas without profit would be the basis for the
19 PGA charge for the customers.

20 Now, I'm going to rephrase that statement a
21 little bit and you tell me if you agree with it.

22 A. Okay.

23 Q. So if an LDC purchases gas through an
24 affiliate, the LDC can't charge its customers any more than
25 the actual cost of gas paid for by the affiliate?

1 A. I wouldn't agree with that characterization.

2 Q. Okay. So you're saying that they can --
3 there can be some mark up? You're just saying that it's
4 not appropriate for the two properties that you've
5 referenced here in this case?

6 A. That's correct.

7 Q. Okay. Would you agree that there were some
8 inconsistencies in your direct testimony on page 10 that
9 you had to clear up in your rebuttal testimony?

10 A. Yes.

11 Q. Okay. Page 13 of your direct testimony you
12 stated that Staff monitored -- quote -- recent Atmos
13 transactions with AEM and the states of Tennessee, Georgia,
14 Kansas, Virginia and Illinois, where Atmos provided
15 regulated gas service.

16 To the best of your knowledge, did any of
17 those states disallow any portion of the affiliate
18 transactions there?

19 A. Yes.

20 Q. Okay. Can you tell us which states, what --
21 and how much? If you want to make it a homework assignment
22 you can.

23 A. The only state that has made a disallowance
24 regarding the affiliated transaction is Illinois.

25 Q. Okay.

1 A. And its testimony is public. And it would
2 not be a problem in quantifying those disallowances that it
3 was actually several disallowances for several different
4 reasons.

5 (Wherein; telephone interruption.)

6 JUDGE WOODRUFF: I don't know why this is
7 ringing.

8 Hello?

9 TELEPHONE AUTOMATION: Hi, this is Donna
10 from Survey RC. I have an important --

11 MR. FISCHER: Judge, may I add something on
12 that?

13 JUDGE WOODRUFF: Yes.

14 MR. FISCHER: The Illinois case has been
15 settled. It's not a litigated case. There's no decision
16 by the Commission other than there is a settlement.

17 COMMISSIONER DAVIS: Okay. So there was a
18 settlement?

19 QUESTIONS BY COMMISSIONER DAVIS:

20 Q. What you're saying is, Mr. Sommerer, is the
21 staff did recommend disallowances there and there was a
22 settlement?

23 A. Yes.

24 Q. Okay. For less than the asked for amount?

25 A. The settlement hasn't been published, but my

1 understanding is there is a settlement.

2 Q. Okay. So to your knowledge did any of those
3 states -- or has any other state out there -- any other
4 state ever taken the position that when and LDC buys gas
5 from an affiliate, the fair market value of the gas is
6 whatever the affiliate paid for it?

7 A. Not to my knowledge.

8 Q. Okay. Going back now to your rebuttal
9 testimony, page 1, lines 19 through 21, you say that
10 Staff's position in the case is that the RFP process alone
11 may not establish the fair market value of the services
12 when a utility is dealing with its non-regulated affiliate,
13 i.e. when the utility is engaged in self-dealing.

14 So I'm going to rephrase that and you tell
15 me if you agree or disagree with this characterization.
16 Are you saying that the RFP process alone can establish the
17 fair market value of the services when a utility is dealing
18 with its non-regulated affiliate? It can, but it doesn't
19 always?

20 A. That's correct.

21 Q. Okay. Page 3, lines 22 through 22 of your
22 rebuttal testimony, you say that Staff proposed a
23 disallowance in the previous ACA case, which you denoted as
24 GR-2006-0403. Is that the correct case? Do you know?

25 A. I believe it is and I would trust that more

1 than my earlier recollection that we discussed a few
2 minutes ago.

3 Q. Okay. Do you know, had Atmos bought gas to
4 serve its Missouri customers for the upcoming winter?

5 A. Based upon past practice, Atmos issues its
6 RFPs in the spring, in the fall. So I would say, yes, it
7 has set up contracts to supply gas for the upcoming winter.

8 Q. Okay. So is what you're saying here this
9 afternoon that for the Hannibal area and the Butler area
10 that Atmos shouldn't accept any bids from AEM?

11 A. No.

12 Q. Okay. So what does it take to get you
13 comfortable with AEM bidding on Hannibal and Butler?

14 A. As the situation stands presently, to make
15 me comfortable, I think we need access to AEM's contracts
16 and its -- its costs and its deal valuation.

17 Q. Do you have that information for Greeley or
18 for Piedmont?

19 A. In some respects we have part of that
20 information, but we did not obtain the underlying deal
21 evaluations for those service areas.

22 Q. But you're okay with those two?

23 A. Yes.

24 Q. Okay. Mr. Sommerer, going back to -- let's
25 go back to Mr. Fischer's position statement for Atmos.

1 Mr. Fischer argues that it's not realistic to expect Atmos
2 to have the purchasing power of its energy marketing
3 affiliate. Would you dis-- do you agree or disagree with
4 that statement?

5 A. It's situationally dependent.

6 Q. How so?

7 A. If AEM has no presence on Panhandle Eastern,
8 if it has no transportation contracts on Panhandle, if it
9 has no storage contracts on Panhandle Eastern, I think it's
10 questionable about whether or not they would have any
11 economy of scale or anything special that Atmos itself
12 wouldn't have.

13 Q. Okay. Is that the case?

14 A. Based upon my review of the contracts that
15 are held by customers on Panhandle Eastern, I don't believe
16 that AEM holds any contracts with Panhandle.

17 Q. Okay. But Atmos does.

18 A. Yes.

19 Q. And is that why -- does that explain why
20 it's a requirements contract and not an asset management
21 agreement? Or --

22 A. Not necessarily because an AMA asset
23 management arrangement provider will look to the LDC's
24 assets to capitalize or exploit those opportunities. It
25 doesn't necessarily have to have a existing relationship

1 with the interstate pipeline supplier.

2 It's most likely that it would. It's most
3 likely that it would have other customers downstream or
4 upstream of wherever they're borrowing the assets from, but
5 it's not necessarily the case.

6 Q. Okay. Does Atmos have a cost allocation
7 manual?

8 A. Yes.

9 Q. Is that the Atmos Gas Supply and Services
10 Manual?

11 A. No.

12 Q. Okay. Have you reviewed the cost allocation
13 manual of Atmos?

14 A. With respect to the PGA gas-type
15 transactions, I have.

16 Q. Okay. Can we get a copy of the cost
17 allocation manual filed and put into the record at some
18 point?

19 A. Yes. And it may be HC, but --

20 Q. Yeah. I would assume it would be HC.

21 Because back in GR-2007-403 Atmos provided
22 that cost allocation manual to the Staff, didn't they?

23 A. It's routinely provided on an annual basis
24 as part of their requirements under the Affiliated
25 Transaction Rule.

1 Q. Right. And do you know how long that Atmos
2 has had a cost allocation manual?

3 A. For a number of years, at least -- at least
4 four I would say.

5 Q. At least four. Okay.

6 And you've been around to hear -- you
7 testified earlier you've been doing this for more than 20
8 years, so you were here since the inception of the
9 Affiliated Transaction Rules. Correct?

10 A. Correct.

11 Q. And are you familiar with
12 4 CSR 240-40.0164 (D)?

13 A. Does it start with, In transactions that
14 involve?

15 Q. It does. It says, In transactions
16 involving. Take a minute to review it there.

17 A. We're still looking for the cite.

18 Q. I got it in the middle of page 7, I believe.
19 It's under, Evidentiary standard.

20 A. For affiliated transaction. Okay.

21 Q. Yeah. Okay. So --

22 A. (D).

23 Q. All right.

24 A. I'm with you.

25 Q. All right. I'm just going to go ahead and

1 read it.

2 In transactions involving the purchase of
3 information, assets, goods or services, by the regulated
4 gas corporation from an affiliated entity, the regulated
5 gas corporation will use a Commission approved CAM, which
6 sets forth cost allocation, market valuation, and internal
7 cost methods. This CAM can use benchmarking practices that
8 can constitute compliance with the market valuation
9 requirements of this section if approved by the Commission.

10 okay. Have you ever -- have you or anyone
11 else on Staff ever told Atmos that they needed to change
12 something in their CAM or they needed to file it with the
13 Commission?

14 A. There was one and maybe two circumstances
15 that I can recall -- and it's been a couple of years since
16 this has happened. But I think in one instance the Staff
17 was looking for the cost allocation manual. It wasn't
18 filed in a typical time frame and so it had to call a
19 company official to get the manual filed.

20 Q. Was that in a case or in response to a data
21 request or --

22 A. This would have been in under the typical
23 submission that happens pursuant to the Affiliated
24 Transaction Rule. It comes in in a non-case environment.

25 Q. Okay. So do you have any problems with

1 their CAM?

2 A. Again, my focus would have been on the parts
3 that address the purchased gas adjustments.

4 Q. Right. That's what we're talking about
5 here, isn't it?

6 A. Absolutely.

7 Q. Okay.

8 A. And --

9 Q. So those portions of the CAM that you sort
10 of had jurisdiction over here in your capacity as manager
11 of procurement, do you have any problems with those
12 sections?

13 A. Again, going from memory, Atmos did not set
14 out a set of pricing provisions per se, that I can
15 remember. It included contracts. It included copies of
16 the contracts, the affiliated contracts, between AEC and
17 AEM. And it basically said, please refer to these
18 contracts.

19 These are transactions that have been
20 consummated between our affiliate. I don't think there was
21 a lot more detail to it than that.

22 Q. Okay. But did you ever say -- did you ever
23 call anyone up and say, hey you need some more detail here.

24 A. There may have been an instance, where
25 again, it may have been an area where we knew affiliated

1 transactions were occurring based upon the ACA process.

2 Q. Uh-huh.

3 A. And we looked at one of their CAM filings,
4 which didn't even have the contracts or transactions
5 listed. So there may have been a follow-up CAM, revised
6 CAM that was filed or supplemental CAM that in essence
7 listed the contracts. And that was -- in terms of making
8 sure that at least listed them, that was the check that I
9 was looking for.

10 Q. Okay. So every time you've had a CAM
11 concern, they have addressed it?

12 A. Yes.

13 Q. Okay.

14 COMMISSIONER DAVIS: Mr. Berlin, have you
15 had an opportunity to review the section of the rule in
16 question?

17 MR. BERLIN: I did read it along with you a
18 minute ago.

19 COMMISSIONER DAVIS: Okay. Would you agree
20 that that portion of the rule would provide the Company
21 with a safe harbor if the Commission approved the manual
22 and the Company followed it?

23 MR. BERLIN: I'm very leery of anything in
24 the Affiliate Transaction Rules as in their entirety that
25 could be viewed as -- or construed as granting a safe

1 harbor when you're dealing with a specific affiliate
2 transaction. I would have to look at to -- in more detail
3 to see just what this proposed CAM would look like. And I
4 would have to confer with Staff. But I'm -- I'm very leery
5 of that.

6 COMMISSIONER DAVIS: Okay. Well, maybe we
7 should just allow all of you to opine on that and
8 particularly the last sentence. It says, this CAM can use
9 benchmarking practices that can constitute compliance with
10 the market valuation requirements of this section if
11 approved by the Commission.

12 MR. BERLIN: I think if the Commission were
13 to approve something that sort of is a matter for pro forma
14 as to what it -- what the Commission wants --

15 COMMISSIONER DAVIS: Uh-huh.

16 MR. BERLIN: -- I think that is within the
17 power of the Commission to do that.

18 COMMISSIONER DAVIS: Well, this rule
19 suggests that the Company can file a CAM and we can approve
20 it. Doesn't it suggest that?

21 MR. BERLIN: It does.

22 COMMISSIONER DAVIS: Okay.

23 QUESTIONS BY COMMISSIONER DAVIS:

24 Q. Mr. Sommerer, to the best of our knowledge
25 does anyone else on the PSC staff have any concerns over

1 Atmos's cost allocation manual?

2 A. Other than what I've cited, not to my
3 knowledge.

4 COMMISSIONER DAVIS: Mr. Berlin?

5 MR. BERLIN: Not to my knowledge either,
6 Commissioner Davis.

7 QUESTIONS BY COMMISSIONER DAVIS:

8 Q. Okay. This has come up in both Laclede and
9 now here. You know, has Staff -- anyone from Staff to your
10 knowledge ever thought to suggest, hey, you know, utilities
11 could come in and get your CAM approved and that might be a
12 way to resolve some of these practices in the future so we
13 don't just keep having the same argument year after year?

14 Has anyone ever had that thought to your
15 knowledge?

16 A. I think in the context of Laclede, there
17 have been ongoing discussions with Laclede over several
18 years. And those discussions have almost always broken
19 down around pricing standards, what constitutes fair market
20 value, what you can benchmark, what a safe harbor might be.

21 And Laclede's always had the right, I guess
22 as any other utility, to file for a waiver; put the CAM in
23 front of case and have it approved.

24 The Staff has personally, from my
25 standpoint, looked at these in the context of applying the

1 rule and the prudent standard and the ACA.

2 And I'm not opposed to a Company filing a
3 CAM. I think there would be differences of opinion. But,
4 you know, maybe that's one way to put it before the
5 commissioners and sort through some of these things.

6 COMMISSIONER DAVIS: Okay. I'm going to
7 assume that's this is an HC document. There's a document
8 that's entitled Exhibit -- I believe it's I. It talks
9 about the gas charge adjustment for the northeast Missouri
10 area. For some reason it was loose in my file and I
11 couldn't find out where it belonged.

12 And is this how Staff calculated its -- I
13 mean, can anyone explain to me what this document is
14 supposed to tell me?

15 MR. BERLIN: Commissioner Davis, I'd have to
16 see exactly the document you're referring to. Do you think
17 it was part of the prefiled testimony?

18 COMMISSIONER DAVIS: Well, here. I'll just
19 skip -- I'll just skip that for right now.

20 QUESTIONS BY COMMISSIONER DAVIS:

21 Q. Mr. Sommerer, going back -- as part of your
22 job do you track the major indices?

23 A. Yes.

24 Q. Okay. So NYMEX, Henry-hub, Midcontinent,
25 ICE Market. Am I missing anything?

1 A. There are many pipeline indices that are
2 published by McGraw-Hill and Inside FERC, but those are the
3 major ones we would follow for Missouri.

4 Q. Okay. And so there -- and then there are
5 pipeline indices as well. And I guess my question is the
6 Atmos contract with AEM, the prices that were paid, is
7 there a significant difference between what they were
8 paying for gas delivered under the contract and those
9 indexes or the index for that particular pipeline?

10 A. This is probably highly confidential if I
11 get into any detail.

12 COMMISSIONER DAVIS: All right. Let's --
13 we'll only be in camera for a minute or two, hopefully
14 folks.

15 (REPORTER'S NOTE: At this point, an
16 in-camera session was held, which is contained in Volume 4,
17 pages 178 to 190 of the transcript.)
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1 JUDGE WOODRUFF: Okay. We're out of the
2 in-camera session and Commissioner Davis indicated he is
3 finished with his questions and we'll move over to
4 Commissioner Jarrett.

5 COMMISSIONER JARRETT: Yes. Thank you,
6 Judge. I'll pick on Mr. Berlin first.

7 See if you would agree with me -- with my
8 general statement: In a regulated state like Missouri we
9 have monopolies, utilities are monopolies and really the
10 purpose of regulation is to act as the substitute for
11 competition.

12 Since there isn't any market competition in
13 a rate -- in a state like Missouri because they're
14 monopolies, we act as a substitute -- or the regulation
15 acts as a substitute for the market competition.

16 Would you agree?

17 MR. BERLIN: I would agree with that.

18 COMMISSIONER JARRETT: Okay. And sort as a
19 general statement on this Affiliate Transaction Rule it's
20 sort of the same idea. Since you have companies that are
21 affiliates, the free market may not be able to regulate
22 those.

23 So the purpose of our rule is to level the
24 playing field and act as a substitute for full market
25 competition. Would you agree with that?

1 MR. BERLIN: I'm sorry. I don't understand
2 that. Full market competition with the regulated
3 utilities?

4 COMMISSIONER JARRETT: Right. It's the same
5 concept since we have affiliates here, the full market,
6 without regulation is -- may not be a fair competition, so
7 therefore we have this Affiliate Transaction Rule and we
8 place regulations on those transactions to act as a
9 substitute and to make sure that it's as much of a free
10 market-type of transaction as possible.

11 MR. BERLIN: I would -- if I understand your
12 question, I would agree that the purpose of the Affiliate
13 Transaction Rules is to provide the Commission with the
14 ability to fully evaluate and investigate the transactions
15 that a regulated monopoly utility engages in with its
16 unregulated affiliate.

17 COMMISSIONER JARRETT: Okay. Well, let's
18 just read the purpose then because there's a purpose in the
19 rule. I'm looking at 4 CSR 240-40.015, Affiliate
20 Transactions.

21 Purpose: This rule is intended to prevent
22 regulated utilities from subsidizing their non-regulated
23 operations. In order to accomplish this objective the rule
24 sets forth financial standards, evidentiary standards, and
25 recordkeeping requirements applicable to any Missouri

1 public service commission, regulated corporation whenever
2 such a corporation participates in transactions within the
3 affiliated entity.

4 And then it goes on the rule and its
5 effective enforcement will provide public the assurance
6 that the rates are not adversely impacted by the utilities
7 on unregulated activities.

8 So that's the purpose of the rule.

9 MR. BERLIN: Correct.

10 COMMISSIONER JARRETT: Would you agree with
11 me that the Company has to follow this rule? Has to comply
12 with all the requirements in this rule?

13 MR. BERLIN: I agree with that.

14 COMMISSIONER JARRETT: Would you agree with
15 me that the Commission also has to follow the provisions in
16 this rule?

17 MR. BERLIN: Yes.

18 COMMISSIONER JARRETT: And would you agree
19 with me that regulation in substitution of free market may
20 or may not be a perfect substitute for the free market?

21 MR. BERLIN: I'd say --

22 COMMISSIONER JARRETT: Approximates it, but
23 at times it can't.

24 MR. BERLIN: I would agree with that.

25 COMMISSIONER JARRETT: All right. Now, the

1 rule -- again, I'm on .015. It sets out all definitions, I
2 guess, that are applicable to the rule in Subsection (1).
3 And then in Subsection (2) it's titled Standards. All
4 right. And then Subsection (2)(A) says that a regulated
5 gas corporation shall not provide a financial advantage to
6 an affiliate entity.

7 For the purposes of this rule a regulated
8 gas corporation shall be deemed to provide a financial
9 advantage to an affiliated entity if: 1, it compensates an
10 affiliated entity for goods or services above the lesser
11 of; a, the fair market price or b, the fully distributed
12 costs to the regulated gas corporation to provide the goods
13 or services for itself.

14 Now, in this case is there any argument that
15 we're talking about fair market price versus the fully
16 distributed cost? Is there agreement that the fair market
17 price is the lesser of here in this case?

18 MR. BERLIN: We have not performed an
19 analysis of fully distributed cost. The focus of Staff's
20 investigation has been on the fair market price, the value
21 of that contract.

22 COMMISSIONER JARRETT: All right. Well,
23 they have to provide the lesser of. So I don't understand,
24 if the fully distributed cost is lesser then why are we
25 even worried about the fair market price? Shouldn't you

1 perform that analysis first to determine which is the
2 lesser of?

3 MR. BERLIN: I think --

4 COMMISSIONER JARRETT: Because it's an "or,"
5 one or the other.

6 MR. BERLIN: Yeah. I believe that we -- I
7 think certainly passive analysis that has to take place
8 under the rule. But for right now, for this ACA case in
9 which we are evaluating the prudence of the gas supplies,
10 the decisions made and the gas supplies provided by an
11 unregulated entity to the LDC is I think -- as Mr. Sommerer
12 has kind of gone through -- is in looking at this
13 information to establish where that fair market price, the
14 value of contract and the way in which that contract plays
15 out from when that contract was implemented, if that would
16 be the same as the fair market price to the LDC.

17 And the concern being that his -- I think
18 Mr. Sommerer touched on this afternoon, that the regulated
19 utility not confer advantages or preferences any number of
20 different ways to its unregulated affiliate such that the
21 unregulated affiliate by virtue of the fact that it is a
22 sister to the regulated entity may have the ability to
23 extract benefits and advantages in such a way that would
24 not be available to an independent third party dealing at
25 an arm's length transaction.

1 COMMISSIONER JARRETT: All right. What I'm
2 focusing on right now and my question is the plain language
3 of this rule. For purposes of this rule a regulated gas
4 corporation shall be deemed to provide a financial
5 advantage to an affiliated entity if: 1, it compensates an
6 affiliated entity for goods or services above the lesser
7 of; a, the fair market price or b, the fully distributed
8 cost of the regulated gas corporation to provide the goods
9 or services for itself.

10 So what I'm asking is -- we're focused on
11 the fair market price, but we don't focus on the fair
12 market price if the fully distributed cost of the regulated
13 gas corporation is lesser.

14 So are you saying you don't know what the
15 fair market price is, so you can't determine whether the
16 fully distributed cost is lesser? Is that your argument?

17 Because, I mean, you know what the company
18 says the fair market price is. And if the fully
19 distributed cost is less than that then we would be talking
20 about that.

21 MR. BERLIN: I'm probably not the best
22 person to answer that.

23 COMMISSIONER JARRETT: All right.

24 MR. BERLIN: I might defer that to
25 Mr. Sommerer.

1 COMMISSIONER JARRETT: That's fine.

2 MR. BERLIN: If that's all right.

3 COMMISSIONER JARRETT: Absolutely.

4 THE WITNESS: In this case we did look at
5 the Company's responses to data request and their testimony
6 with regard to fully distributed cost. The Company made
7 statements saying that the fully distributed cost when you
8 realize that individuals in Houston are precuring the
9 supply, there are overheads involved in the procurement of
10 that supply. And we have a definition here in the rule of
11 what fully distributed cost is.

12 It's, you know, from the perspective of the
13 LDC to produce the goods themselves. If you're not
14 producing wellhead supply, you're not making it, it's not
15 around in Hannibal. This is not a producer here, so you're
16 looking at sort of a wholesale cost and clearly the fully
17 distributed cost includes direct and indirect cost that
18 might be allocated pursuant to general and administrative.

19 The Company's testimony is is that -- well,
20 you've got a wholesale price. If you layer in or you load
21 indirect cost and administrative costs, almost by
22 definition, you're looking at something higher than the
23 fair market value price.

24 So you know, we inquired into what the
25 Company's view of fully distributed cost and for purposes

1 of this case -- and I won't say this universally, but for
2 the purposes of this case -- I understand that argument and
3 to me the Staff's position is not a concern about fully
4 distributed cost being less than the fair market value
5 price.

6 QUESTIONS BY COMMISSIONER JARRETT:

7 Q. So we're looking at the fair market price
8 being the lesser of in this case?

9 A. That's correct.

10 Q. And then it goes on to say in (2)(B) the
11 statement that except as necessary to provide corporate
12 support functions, the regulated gas corporation shall
13 conduct its business in such a way as not to provide any
14 preferential service, information or treatment to an
15 affiliated entity over another party at any time.

16 So that's the burden is on the regulated
17 company not to provide any preferential treatment for an
18 affiliated entity. Not the other way away.

19 A. Correct.

20 COMMISSIONER JARRETT: I'll move on to (3)
21 under 4 CSR 240-40.015. This sets out the evidentiary
22 standards for affiliated transactions. And Mr. Fischer
23 highlighted this in his presentation earlier -- much
24 earlier.

25 (A): When a regulated gas corporation

1 purchases information, assets, goods or services from an
2 affiliated entity, the regulated gas corporation shall
3 either obtain competitive bids for such information,
4 assets, goods or services, or demonstrate why competitive
5 bids were neither necessary nor appropriate.

6 Would you agree that that requires the gas
7 corporation when they purchase goods or services or assets
8 from affiliated entity, they have to do it in a competitive
9 bid environment unless they can demonstrate for some reason
10 why some other method would be better?

11 MR. BERLIN: Yes.

12 COMMISSIONER JARRETT: So Atmos didn't
13 violate (3)(A)? They did what they were supposed to do?
14 Yes, no, maybe.

15 MR. BERLIN: Well, it would appear that way
16 that -- part of our discovery request is to understand the
17 terms and conditions of the deal itself so that they
18 weren't given any advantage to profit.

19 COMMISSIONER JARRETT: Right. But they did
20 obtain competitive bids for the goods?

21 MR. BERLIN: They did.

22 COMMISSIONER JARRETT: Okay. And then (B)
23 goes on to say -- (3)(B): In transactions that involve
24 either the purchase or receipt of information, assets,
25 goods or services, by a regulated gas corporation from an