



# FILED

FEB 22 2012

## Missouri Public Service Commission

(Date File Stamp)

Judge or Division:	Appellate Number:	Missouri Public Service Commission 124pm MA
Appellant: The Office of the Public Counsel	Missouri Public Service Commission File Number: GR-2009-0417	

vs.

Respondent:  
The Missouri Public Service Commission

### Notice of Appeal

Notice is given that The Office of the Public Counsel appeals to the Missouri Court of Appeals  Western  Eastern  Southern District.

\_\_\_\_\_  
Date Notice of Appeal  
(to be filled in by Secretary of Commission)

\_\_\_\_\_  
Filed Signature of Attorney or Appellant

The notice of appeal shall include the appellant's application for rehearing, a copy of the reconciliation required by subsection 4 of section 386.420, a concise statement of the issues being appealed, a full and complete list of the parties to the commission proceeding, and any other information specified by the rules of the court. The appellant(s) must file the original and (2) two copies and pay the docket fee required by court rule to the Secretary of the Commission within the time specified by law. **Please make checks or money orders payable to the Missouri Court of Appeals.** At the same time, Appellant must serve a copy of the Notice of Appeal on attorneys of record of all parties other than appellant(s), and on all parties not represented by an attorney.

### CASE INFORMATION

Appellant Attorney / Bar Number: Marc Poston #45722	Respondent's Attorney / Bar Number: Jennifer Heintz #57128		
Address: PO Box 2230 Jefferson City, MO 65102	Address: PO Box 360 Jefferson City, MO 65102		
Telephone: 573-751-4857	Fax: 573-751-5562	Telephone: 573-751-8701	Fax: 573-522-4016
Date of Commission Decision:  12/11/2011	Date of Application for Rehearing Filed:  1/19/2012	Date Application for Rehearing Ruled On:  1/25/2012	

### DIRECTIONS TO COMMISSION

A copy of the notice of appeal and the docket fee shall be mailed to the clerk of the appellate court. Unless otherwise ordered by the court of appeals, the commission shall, within thirty days of the filing of the notice of appeal, certify its record in the case to the court of appeals.

**Certificate of Service**

I certify that on February 22, 2012, I served a copy of the notice of appeal on the following parties, at the following address(es), by the method of service indicated.

---

Missouri Public Service Commission – Hand delivered  
200 Madison Street  
Jefferson City, MO 65102

---

James M. Fischer – U.S. Mail Service  
Larry W. Dority  
Fischer & Dority, P.C.  
101 Madison Street, Suite 400  
Jefferson City, MO 65101  
Attorneys for Atmos Energy Corporation

---



Appellant or Attorney for Appellant

**FORM 1. CIVIL CASE INFORMATION FORM SUPPLEMENT**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

No. WD \_\_\_\_\_

Public Counsel,

Petitioner/Appellant

Marc Poston, Bar Number 45722

P.O. Box 2230

Jefferson City, MO 65102

vs.

Missouri Public Service Commission

Defendant/Respondent

Jennifer Heintz, Bar Number 57128

200 Madison Street

Jefferson City, MO 65102

Date Notice filed with the Public Service Commission February 22, 2012

---

The Record on Appeal will consist of Transcript and Legal File. (This will include records filed pursuant to Rules 81.13 and 81.16)

**FACTUAL BACKGROUND: (Events Giving Rise to Cause of Action)**

Judicial Review of the Missouri Public Service Commission's Report and Order in Case No. GR-2009-0417.

**ISSUE(S):**

(Anticipated to be Presented by the Appeal; Appellant is Not Bound by this Designation)

Lawfulness and reasonableness of the Commission's Report and Order.

[Two (2) typewritten pages maximum]

(Added June 25, 1987, effective Dec. 1, 1987. Amended effective June 23, 1988)

## LIST OF PARTIES TO THE COMMISSION PROCEEDING

(As required by § 386.510 RSMo)

The following parties participated in Public Service Commission Case Number GR-2009-0417:

<p><b>Atmos Energy Corporation:</b></p> <p>James M. Fischer, MBN 27543 Larry W. Dority, MBN 25617 Fischer &amp; Dority, P.C. 101 Madison Street, Suite 400 Jefferson City, MO 65101 Telephone: (573) 636-6758 Facsimile: (573) 636-0383</p> <p>Douglas C. Walther, MBN 32266 Associate General Counsel Atmos Energy Corporation P.O. Box 650205 Dallas, Texas 75265-0205 Telephone: (972) 855-3102</p> <p>Attorneys for Atmos Energy Corporation</p>	<p><b>Office of the Public Counsel:</b></p> <p>Marc D. Poston, MBN 45722 Deputy Public Counsel P. O. Box 2230 Jefferson City MO 65102 (573) 751-5558 (573) 751-5562 FAX marc.poston@ded.mo.gov</p> <p>Attorney for the Office of the Public Counsel</p>
<p><b>Public Service Commission Staff:</b></p> <p>Kevin Thompson, MBN 36288 Chief Staff Counsel Missouri Public Service Commission P.O. Box 360 Jefferson City, MO 65102 573-751-6514 (Voice) 573-526-6969 (Fax) kevin.thompson@psc.mo.gov</p> <p>Attorney for the Staff of the Missouri Public Service Commission.</p>	

## STATEMENT OF THE ISSUES

(As required by § 386.510 RSMo)

Appellant Public Counsel will raise the following issues on appeal:

1. The lawfulness and reasonableness of the Missouri Public Service Commission's December 21, 2011 Report and Order issued in Case Number GR-2009-0417, In the Matter of Atmos Energy Corporation's 2008-2009 Purchased Gas Adjustment and Actual Cost Adjustment.



5. The Orders are unlawful in that they apply a prudency standard, a burden of proof, and authorize rates in violation of §§ 386.430, 393.130, 393.140, and 393.150 RSMo.

6. The Orders' findings and conclusions regarding the errors identified in paragraphs 1 through 5 of this Application are: 1) unlawful, 2) not based on competent and substantial evidence, 3) arbitrary, capricious, and unreasonable, and 4) constitute an abuse of discretion.

WHEREFORE, the Office of the Public Counsel respectfully requests rehearing to address the errors identified above.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

By: /s/ Marc D. Poston

Marc D. Poston (#45722)

Senior Public Counsel

P. O. Box 2230

Jefferson City MO 65102

(573) 751-5558

(573) 751-5562 FAX

[marc.poston@ded.mo.gov](mailto:marc.poston@ded.mo.gov)

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 19<sup>th</sup> day of January 2012.

**Missouri Public Service Commission**

Bob Berlin  
Bob.Berlin@psc.mo.gov

**Missouri Public Service Commission**

Office General Counsel  
GenCounsel@psc.mo.gov

**Atmos Energy Corporation**

James M Fischer  
jfisherpc@aol.com

**Atmos Energy Corporation**

Larry W Dority  
lwdority@sprintmail.com

**/s/ Marc Poston**

---