



# FILED

**DEC 29 2011****Missouri Public Service Commission**

(Date File Stamp)

Judge or Division:	Appellate Number:	<b>Missouri Public Service Commission</b> <i>2:00pm MA</i>
Appellant: The Office of the Public Counsel		Missouri Public Service Commission File Number: GR-2008-0364
vs.		
Respondent: The Missouri Public Service Commission		
<b>Notice of Appeal</b>		
<p>Notice is given that The Office of the Public Counsel appeals to the Missouri Court of Appeals <input checked="" type="checkbox"/> Western <input type="checkbox"/> Eastern <input type="checkbox"/> Southern District.</p> <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="width: 40%;"> <p>_____</p> <p>Date Notice of Appeal (to be filled in by Secretary of Commission)</p> </div> <div style="width: 50%; text-align: center;">   <p>Filed Signature of Attorney or Appellant</p> </div> </div>		
<p>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. <b>Please make checks or money orders payable to the Missouri Court of Appeals.</b> 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.</p>		
<b>CASE INFORMATION</b>		
Appellant Attorney / Bar Number: Marc Poston #45722		Respondent's Attorney / Bar Number: Jennifer Heintz #57129
Address: 200 Madison Street, Suite 650 PO Box 2230 Jefferson City, MO 65102		Address: 200 Madison Street, Suite 800 PO Box 360 Jefferson City, MO 65102
Telephone: 573-751-4857	Fax: 573-751-5562	Telephone: 573-751-3015  Fax: 573-751-6969
Date of Commission Decision:  11/9/2011	Date of Application for Rehearing Filed: 11/18/2011	Date Application for Rehearing Ruled On:  11/30/2011
<b>DIRECTIONS TO COMMISSION</b>		
<p>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.</p>		
<b>Certificate of Service</b>		
<p>I certify that on <u>12-29-2011</u> (date), I served a copy of the notice of appeal on the following parties, at the following address(es), by the method of service indicated.</p> <p style="margin-top: 20px;">Atmos Energy – U.S. Mail Service James M. Fischer #27543 Larry W. Dority #25617 100 Madison Street, Suite 400 Jefferson City, MO 65101</p> <div style="text-align: right; margin-top: 20px;">   <p>Appellant or Attorney for Appellant</p> </div>		

**BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI**

In the Matter of PGA/ACA Filing of	)	
Atmos Energy Corporation for the West	)	
Area (Old Butler), West Atea (Old	)	
Greeley), Southeastern Area (Old SEMO),	)	<b><u>Case No. GR-2008-0364</u></b>
Southeastern Area (Old Neelyville),	)	
Kirksville Area, and in the Northeastern	)	
Area.	)	

**APPLICATION FOR REHEARING**

**COMES NOW** the Office of the Public Counsel (OPC) pursuant to §386.500 RSMo and for its Application for Rehearing states:

1. OPC seeks rehearing of the Commission's November 9, 2011 Report and Order (Order) denying the Actual Cost Adjustment disallowances requested by the Commission's Staff and OPC.

2. The Order unlawfully misapplies the Commission's Affiliate Transaction Rules, 4 CSR 240-40.015 and 4 CSR 240-40.016, including the requirement that Atmos Energy Corporation follow the asymmetrical pricing standards and the recordkeeping requirements of the Rules. The Order is also unjust and unreasonable in that it is not based on facts that provide a sufficient basis to allow the Commission to conclude that the rates charged to Atmos' customers were just and reasonable.

WHEREFORE, the Office of the Public Counsel respectfully requests rehearing.

Respectfully submitted,

**/s/Marc D. Poston**

---

Marc Poston (# 45722)  
Deputy Counsel  
Office of the Public Counsel  
P. O. Box 2230  
Jefferson City, MO 65102  
(573) 751-5558 (Telephone)  
(573) 751-5562 (Fax)  
marc.poston@ded.mo.gov

### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record this 18<sup>th</sup> day of November 2011.

General Counsel Office  
MP PSC  
200 Madison Street, Ste 800  
P.O. Box 360  
Jefferson City, MO 65102  
GenCounsel@psc.mo.gov

Dority W Larry  
Atmos Energy Corporation  
101 Madison, Ste 400  
Jefferson City, MO 65101  
lwdority@sprintmail.com

Fischer M James  
Atmos Energy Corporation  
101 Madison Street, Ste 400  
Jefferson City, MO 65101  
jfischerpc@aol.com

**/s/Marc D. Poston**

---

Marc D. Poston

## **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 November 9, 2011 Report and Order issued in Case Number GR-2008-0364, In the Matter of the PGA/ACA Filing of Atmos Energy Corporation for the West Area (Old Butler), West Area (Old Greeley), Southeastern Area (Old SEMO), Southeastern Area (Old Neelyville), Kirksville Area and the Northeastern Area.

## LIST OF PARTIES TO THE COMMISSION PROCEEDING

(As required by § 386.510 RSMo)

The following parties participated in Public Service Commission Case Number GR-2008-0364:

<b>Atmos Energy Corporation:</b>  James M. Fischer, MBN 27543 Larry W. Dority, MBN 25617 Fischer & Dority, P.C. 101 Madison Street, Suite 400 Jefferson City, MO 65101 Telephone: (573) 636-6758 Facsimile: (573) 636-0383  Douglas C. Walther, MBN 32266 Associate General Counsel Atmos Energy Corporation P.O. Box 650205 Dallas, Texas 75265-0205 Telephone: (972) 855-3102  Attorneys for Atmos Energy Corporation	<b>Office of the Public Counsel:</b>  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  Attorney for the Office of the Public Counsel
<b>Public Service Commission Staff:</b>  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  Attorney for the Staff of the Missouri Public Service Commission.	

**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

Suite 800

Jefferson City, MO 65102

Date Notice filed with the Public Service Commission December 29, 2011

---

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-2008-0364.

**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)