

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
JEFFERSON CITY  
February 20, 2002**

**CASE NO: GR-99-392**

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**Enclosed find certified copy of ORDER in the above-numbered case(s).**

**Sincerely,**

A handwritten signature in black ink that reads "Dale Hardy Roberts". The signature is written in a cursive, slightly slanted style.

**Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge**

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

In the Matter of Associated Natural Gas	)	
Company's Purchased Gas Adjustment	)	<b><u>Case No. GR-99-392</u></b>
Factors to be Reviewed in its 1998-1999	)	
Actual Cost Adjustment	)	

**ORDER GRANTING JOINT MOTION TO CLOSE CASE**

This order grants the joint motion filed by all the parties on February 6, 2002, to close the case.

**Brief Procedural History**

On November 2, 2001, the parties to this case—i.e., Associated Natural Gas, Atmos Energy Corp., the Office of the Public Counsel, and the Staff of the Missouri Public Service Commission—filed their first amended settlement agreement and release, which was approved by a Commission order dated November 27, 2001. The agreement resolved the actual cost adjustment audit as to Associated for the 1998-1999 period; however, it did not address the issues between Atmos and Staff related to the peak day study and associated reliability issues. Among other things, the agreement provided that within thirty days after its approval by a final, effective non-appealable Commission order, and conditioned upon the payment by Associated of the lump-sum payment described in the agreement, and Associated's performance of other conditions of this agreement, the parties recommended that the Commission issue an order in this case that separates the issues relating to Associated's natural gas purchasing practices from any issues relating to a "peak day

study” or reliability of gas supplies on the system now owned and operated by Atmos; and creates a new case into which it transfers Atmos issues.

In addition, the agreement recommended that after the peak day and reliability issues, which relate solely to Atmos, are transferred to the new case, the Commission issue an order recognizing that the only actual and potential issues remaining in this case involve the gas costs of Associated; acknowledging the agreement; reciting that all of the new and potential issues in the new case relate strictly to Atmos and not to Associated, and that all of the issues relating to Associated that could have been presented in this case have been fully compromised by the agreement; and unconditionally closing this case.

On December 4, 2001, the Commission issued an order directing the filing of a status report, requiring that the parties jointly prepare a report giving the status on this case by February 27, 2002.

On January 22, 2002, Associated filed a report concerning compliance with the agreement and requested the issuance of orders. The compliance report stated that on January 2, 2002, Associated had executed a lump-sum wire transfer to Atmos of the payment called for in section 1.8 of the agreement; and had transmitted to Atmos the calculations called for in section 1.9(a) of the agreement. Asserting its belief that it had fulfilled all of its obligations under the agreement pertaining to this case, Associated requested that the Commission issue the orders contemplated by the agreement and unconditionally close this case.

On January 30, 2002, the Commission issued an order requiring the Staff and Associated, jointly or separately, to file a pleading indicating “exactly what the ‘Atmos

issues' are." The Commission notified the parties of its intention to use this information to determine whether it is necessary to create a new case.

#### Discussion

In support of their joint motion to close case, the parties stated as follows:

- a. With respect to the "Atmos issues" for which, under the agreement, the creation of a new case was contemplated, the Staff has completed its review of the supplemental peak day report submitted by Atmos on May 1, 2001. Atmos has satisfactorily provided the information requested by Staff in its August 1, 2000, recommendation. Follow-up concerns related to reliability are being addressed in subsequent actual cost adjustment cases (i.e., GR-2000-573 and GR-2001-396). Accordingly, there is no need to establish a new case for Atmos issues.
- b. The representations made by Associated in its January 22, 2002, compliance report regarding GR-99-392 are correct. Therefore, given that Associated has complied with the terms of the agreement as they pertain to this case, there are no longer any Associated-related issues to be resolved in this case.

According to the parties, inasmuch as there are no remaining issues to be resolved in this case, the case may be closed. Further, according to the parties, by filing their joint motion to close case, the parties believe they have satisfied their obligation under the December 4, 2001, Commission order to file a status report concerning this case.

Thus, the parties requested that the Commission issue an order closing case number GR-99-392, except that the parties recommended that no new case be established for "Atmos issues," since there is no longer a need for such a case.

Commission Rule 4 CSR 240-2.080(3) requires that each pleading must include a specific reference to the statutory provision or other authority under which relief is requested. The parties' joint motion to close the case did not comply with Commission Rule 4 CSR 240-2.080(3) in that it did not include a specific reference to the statutory provision or other authority under which the relief was requested.

The parties should have cited Commission Rule 4 CSR 240-2.116(1). This rule holds that an applicant may voluntarily dismiss an application without an order of the Commission at any time before prepared testimony has been filed or oral evidence has been offered by filing a notice of dismissal with the Commission and serving a copy on all parties. Once evidence has been offered or prepared testimony filed, however, an applicant may dismiss an action only by an order of the Commission or by written consent of the adverse parties.

The Commission will assume, for the purposes of this order, that the question-and-answer session on the record held on July 25, 2001, included the offering of evidence. Thus, under Commission Rule 4 CSR 240-2.116(1), Associated and Atmos may dismiss an action only by an order of the Commission or by written consent of the adverse parties. The joint motion substantially complies with this requirement since this is an order closing the case and the joint motion of the parties was, in essence, a written consent of the adverse parties to close the case.

The parties are encouraged to follow the Commission's pleading and practice rules.

### Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position, or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

With respect to the "Atmos issues" for which, under the agreement, the creation of a new case was contemplated, the Staff has completed its review of the supplemental peak day report submitted by Atmos on May 1, 2001. Atmos has satisfactorily provided the information requested by Staff in its August 1, 2000, recommendation. Follow-up concerns related to reliability are being addressed in subsequent actual cost adjustment cases (i.e., GR-2000-573 and GR-2001-396). Accordingly, there is no need to establish a new case for Atmos issues, and there are no longer any Atmos issues to be resolved in this case.

The representations made by Associated in its January 22, 2002, compliance report regarding GR-99-392 are correct. Therefore, given that Associated has complied with the terms of the agreement as they pertain to this case, there are no longer any Associated-related issues to be resolved in this case.

### Conclusions of Law

The Missouri Public Service Commission has reached the following conclusions of law.

There are no remaining issues pertaining to Associated or Atmos to be resolved in this case and the case may be closed.

By filing their joint motion to close case, the parties have satisfied their obligation, under the aforementioned December 4, 2001, Commission order, to file a status report concerning this case.

There are no remaining issues pertaining to Atmos to be resolved in a new case.

Ruling

The Commission will grant the parties' joint motion to close this case.

**IT IS THEREFORE ORDERED:**

1. That this order will become effective on March 2, 2002.
2. That this case will be closed on March 3, 2002.

**BY THE COMMISSION**



**Dale Hardy Roberts  
Secretary/Chief Law Judge**

(SEAL)

Bill Hopkins, Senior Law Judge,  
by delegation of authority under  
Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,  
on this 20th day of February, 2002.

FYI: To Be Issued By Delegation

ALJ/Secretary: Hopkins/Boye

Date Circulated 2-14 2-20  
Return Not Later Than 10/04

CASE NO. CR-99-392

KS  
Simmons, Chair

MS  
Murray, Commissioner

MS  
Lumpe, Commissioner

MS  
Gaw, Commissioner

MS  
Forbis, Commissioner

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and

I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,

Missouri, this 20<sup>th</sup> day of Feb. 2002 .

Dale Hardy Roberts

Dale Hardy Roberts

Secretary/Chief Regulatory Law Judge

