

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

In the Matter of Atmos Energy)	
Corporation's 2008-2009 Purchased Gas)	<u>File No. GR-2009-0417</u>
Adjustment and Actual Cost Adjustment)	

**REPLY BRIEF OF
ATMOS ENERGY CORPORATION**

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
Email: jfischerpc@aol.com
Email: 1wdority@sprintmail.com

Douglas C. Walther, MBN 32266
Associate General Counsel
Atmos Energy Corporation
P.O. Box 650205
Dallas, Texas 75265-0205
Telephone: (972) 855-3102
Email: doug.walther@atmosenergy.com

Attorneys for Atmos Energy Corporation

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In accordance with the Commission's *Notice of Briefing Schedule* issued in this matter on September 14, 2011, Atmos Energy Corporation ("Atmos") respectfully submits its Reply Brief in response to the Staff's Initial Brief ("Staff Brief") and to the Office of the Public Counsel's Initial Brief ("OPC Brief") both filed on October 28, 2011.

I. INTRODUCTION

On November 9, 2011, the Commission issued its *Report And Order* in Case No. GR-2008-0364 (hereafter referred to as "*Report And Order*") which resolved all issues in the Atmos ACA case for the 2007-2008 period. Since the facts and circumstances of this case are essentially the same as in Case No. GR-2008-0364, except for the amount of the dollars paid to AEM under the contracts during the current ACA period, the Commission's resolution of the issues in this case should be the consistent with the *Report And Order* in Case No. GR-2008-0364.

It is therefore unnecessary for Atmos to file an extensive reply brief which again addresses the Staff and Public Counsel's arguments since it would be largely repetitious of previous arguments, and the Commission has already made findings of fact and conclusions of law that are directly applicable to this case. The Company would request

that the Commission issue an order in this case that is consistent with the Findings of Fact and Conclusions of Law already contained in the *Report And Order* in Case No. GR-2008-0364.

While the facts and circumstances and applicable law are the same in these cases, Staff and Public Counsel raised a handful of arguments that may be slightly different than in Case No. GR-2008-0364, and Atmos will therefore address those arguments below.

II. THE COMMISSION SHOULD REJECT STAFF'S LATEST THEORY SINCE ATMOS' RFP PROCESS HAS PRODUCED SOME OF THE LOWEST COST OF GAS FOR THE HANNIBAL AND BUTLER SERVICE AREAS ANYWHERE IN THE COMPANY'S MISSOURI SERVICE AREAS.

As fully discussed in Atmos' Post-Hearing Brief, the Staff positions in this case have continued to morph over an extended course of time, and now the Commission and Atmos are presented with Staff's LATEST theory in support of its proposed affiliated transaction disallowance: "The Staff contends the record evidence shows Atmos' RFP, its bid award process and its contracts with AEM during this ACA period are unreasonable and flawed based on the results they produced." (Staff Brief, p. 4)(emphasis added).

Judged by this latest standard proposed by Staff in its Brief—the results the RFP produced—the Staff's proposed affiliated transaction adjustment should be rejected. Based upon the competent and substantial evidence in the record, it is clear that Atmos' RFP process produced excellent results for the Hannibal and Butler customers. The Hannibal and Butler gas costs (i.e. \$3.6273/Dth) were approximately 13.6% less than the state-wide average gas costs for Atmos service areas (i.e. \$4.1983/Dth) during the

September 2008 to August 2009 ACA period. (Tr. 151-53)(Ex. No. 15, pp. 2-3)¹ In fact, only one service area—Greeley—had a lower total delivered cost of gas on a per Dekatherm basis:

	Supply Avg. Price /Dth
<u>Interstate Pipeline Purchases</u>	
ANR Pipeline Company—Kirksville	\$ 3.6343
Mississippi River Transmission—SEMO	\$ 5.0132
Natural Gas Pipeline Company—Neely/SEMO	\$ 3.9503
Panhandle Eastern Pipeline—Hannibal/Butler	\$ 3.6273
Texas Eastern Transmission—Neely/SEMO	\$ 4.8995
Ozark Gas Transmission—SEMO	\$ 4.9714
<u>Southern Star Central Gas Pipeline-Greeley-Div71</u>	<u>\$ 3.2188</u>
Total Delivered—Statewide Average	\$ 4.1983

Staff has not challenged the “justness” or the “reasonableness” of the gas costs in the SEMO, Kirkville Districts, or Greeley service areas in this case. **However, the gas costs in the Hannibal and Butler areas are lower than those gas costs in the SEMO and Kirkville Districts, and only slightly above the gas costs in Greeley.** In fact, the Hannibal and Butler customers have experienced gas costs that are nearly 28% lower than in the SEMO area served by the Mississippi River Transmission pipeline. ($\$5.0132 - \$3.6273/\$5.0132 = 27.655\%$). Compared to the SEMO area served by the Ozark Gas Transmission pipeline, the customers in Hannibal and Butler customers paid 27% less. ($\$4.9714 - \$3.6273/\$4.9714 = 27.04\%$) The Hannibal and Butler customers have experienced gas costs that are approximately 26% less than for SEMO customers served off the Texas Eastern Transmission pipeline ($\$4.8995 - \$3.6273/\$4.8995 = 25.97\%$).

¹ Since this case and Case No. GR-2008-0364 are so closely intertwined, Staff proposed at the conclusion of the evidentiary hearings in Case No. GR-2009-0417 to incorporate the record from Case No. GR-2008-0364 into this case. This request was granted by Chief Regulatory Law Judge Morris Woodruff. (Tr. 237-38) In order to avoid confusion since there are duplicate transcript pages and exhibit numbers in both cases, this Brief will highlight Transcript references, and Exhibit references from Case No. GR-2009-0417 with yellow highlighting. (e.g. Tr. xx; Ex No. 1, pp. xx). The transcript pages and exhibit numbers from Case No. GR-2008-0364 will not be highlighted, but will be identified in black typeface. (e.g., Tr. xx; Ex No. 1, pp. xx)

Compared to the SEMO customer served off the Natural Gas Company Pipeline, Hannibal and Butler customers paid 8% less. ($\$3.9503 - \$3.6273 / \$3.9503 = 8.10\%$). Hannibal and Butler customers also paid less than the Kirksville customers. (Ex. No. 15, pp. 2-3)

Notwithstanding the fact that Atmos used the same RFP process in the Hannibal and Butler areas as it did in the other service areas in Missouri, Staff has only challenged the RFP process when it resulted in AEM winning the bid. This fact is true even though the gas costs in other service areas of the state were actually higher than in Hannibal and Butler.

Based upon the results produced by Atmos' RFP process, it is difficult to understand how Staff can suggest that the price of gas in Hannibal and Butler is not "just and reasonable" when the cost of gas in these service areas is less than the gas costs in SEMO and Kirksville which Staff has not challenged, or the state-wide average cost of gas.

In reality, the cost of gas in the Hannibal and Butler service areas is almost the lowest cost per Dekatherm for any service area served by Atmos in Missouri. Only the Greeley system which is served out of Atmos' Kansas system has a slightly lower overall cost of gas than in the Hannibal and Butler service areas. The Commission should therefore find Atmos' RFP process resulted in gas costs in the Hannibal and Butler services areas that are not out of line with the cost of gas found elsewhere in Atmos' Missouri service areas, and that these costs are just and reasonable.

Since the cost of gas in the Hannibal and Butler areas is among the lowest in Atmos' Missouri service areas, it should be unnecessary to address the remainder of

Staff's criticisms of the RFP process itself since the results produced by that RFP process have proven to be so favorable to Hannibal and Butler customers. However, Atmos will nevertheless address below the criticisms of the RFP process contained in the Staff's Initial Brief.

III. THE ATMOS RFP PROCESS IS NOT "FLAWED" AS ALLEGED BY STAFF

On pages 4-5 of its Initial Brief, Staff lists a series of "facts" that it asserts "when viewed *in their entirety* cast serious doubt over the reasonableness of Atmos' bidding process and the inability of that process to attract enough competitive bids to set a true market price for gas..." (Staff Br. at 4) Each of these "facts" or criticisms will be addressed below.

First, Staff notes that in RFP 1 Atmos attracted three (3) conforming bids out of a pool of 60 qualified suppliers. Secondly, Staff notes that in a later RFP (not subject to any disallowance in this case), Atmos received one (1) conforming bid from an unaffiliated supplier.² Staff seems to be concerned by the number of unregulated gas marketers that chose not to bid on the Atmos' business.

As explained in Atmos' Brief, Atmos would prefer "to have as many [bidders] as we can get." (Tr. 129) However, Atmos cannot determine the number of bidders that choose to submit bids for Atmos' business. Contrary to the implication of Staff's criticisms of the number of bidders on these RFPs, Atmos certainly cannot be held responsible for the lack of interest by unregulated gas marketers in a specific RFP. There

² In the first RFP Process in Case No. GR-2008-0364, there were six unaffiliated bidders for this load that offered to provide gas to Atmos, and second RFP Process in Case No. GR-2008-0364, there were there three unaffiliated bidders that offered gas to Atmos for this load—in addition to AEM. (See Ex No. 17 HC, Schedule 1; Tr. 201-04); Ex No. 24HC, Appendix A, p. 7)

is nothing in the Atmos RFP process that would discourage bidders from bidding on the business if they wanted to do so.

In the second RFP referenced by Staff, AEM did not bid on the RFP, even though in past ACA periods, AEM had participated in the bidding process for this load. (Tr. 153, 206) If Staff believes that more bidders are preferable, as Atmos does, then the Company would respectfully suggest that Staff should not be advocating regulatory policies that are likely to reduce the number of bids by discouraging AEM from bidding on Atmos' business in Missouri in the future. Mr. Sommerer recognized in Case No. GR-2008-0364 that Staff's proposals could be a disincentive for AEM and Atmos to do business together through the Atmos RFP process. (Tr. 706)

Thirdly, Staff notes that in RFP 1 there was a difference of \$235,000 between the low AEM bid and the next highest bidder. Atmos has already addressed this criticism (Atmos Br. at 22-23). The competent and substantial evidence demonstrates that a \$235,000 difference is a small difference (approximately 2%) between the AEM bid and the next conforming bid when the total amount of gas used in Hannibal/Butler area is considered. (Tr. 148-50)(See Ex No. 15, p. 3 [$\$235,000/\$9,683,738 = 2\%$]) This small difference is hardly grounds to "raise a red flag" regarding Atmos' RFP process. (Staff Br. at 23). In other instances, AEM has not bid the lowest and best bid, and as a result, AEM did not win the bid.

Fourth, Staff notes that "Only AEM bid into a Secondary Receipt Point, the other two bidders bid into the Primary Receipt Point at Haven." (Staff Br. at 5). Staff also suggests that "it is significantly cheaper for a supplier to use a Secondary Receipt Point than for a supplier to deliver into a Primary Receipt Point." (Id.) In addition, Staff

criticized the Company for its failure to “rebid to explore the potential for attracting cheaper supplies at an optional Secondary Receipt Point.” (Id.)

As already pointed out in Atmos’ Brief at 36, Atmos’ RFP permitted any supplier, whether affiliated or unaffiliated to Atmos, to utilize a secondary receipt point in the delivery of its gas supplies to Atmos. (Tr. 133, 223-24) There is no support for Staff’s implication that Atmos has provided preferential treatment to AEM since AEM used a secondary receipt point. In fact, Staff counsel conceded under questioning by Commissioner Jarrett, that other marketers could have used a secondary receipt point under the Atmos RFP. (Tr. 44) In addition, there was no need to “rebid” since the original RFP allowed any bidder to bid into a Secondary Receipt Point. Staff’s criticisms in this regard are unfounded and should be rejected by the Commission.

Fifth, Staff alleges that “Atmos RFP sent a mixed message to bidders that service must be Firm.” (Staff Br. at 5) Atmos must respectfully disagree. As explained in Atmos’ Brief at 34 and conceded by Staff (Id.), there are no less than six occurrences where Atmos states in the RFP itself that the Company is seeking Firm Supply. It is apparent in reading the RFP references, and in fact, absolutely clear to any potential bidder that the Company’s RFP specifies the need for Firm supply. In not one instance does the Company infer that it will accept Interruptible supply. (Ex No. 3, Buchanan Surrebuttal, pp. 18-19; See also Staff Ex Nos. 4 and 5)

Staff is apparently confused by the fact that the RFP also permitted any bidder to deliver its gas supply to a secondary point. Contrary to Staff’s apparent understanding, a secondary receipt point does not transform Firm Supply into Interruptible Supply.

The General Terms and Conditions of the standard Base Contract For Sale and Purchase of Natural Gas used throughout the natural gas industry (“NAESB contract”) clearly defines “Firm Service” and “Interruptible Service” (See Ex No. 6HC, Section 2, page 3 of 10):

- 2.17. “Firm” shall mean that either party may interrupt its performance without liability only to the extent that such performance is prevented by reasons of Force Majeure; provided, however, that during Force Majeure Interruptions, the party invoking Force Majeure may be responsible for any Imbalance Charges as set forth in Section 4.3 related to its Interruption after the nomination is made to the Transporter until the change in deliveries and/or receipts is confirmed by the Transporter.

* * *

- 2.20.1 “Interruptible” shall mean that either party may interrupt at any time for any reason, whether or not caused by an event of Force Majeure, with no liability, except such interrupting party may be responsible for Imbalance Charges as set forth in Section 4.3 related to its interruption after the nomination is made to the Transporter and until the change of deliveries and/or receipts is confirmed by the Transporter. (emphasis added)

Under the General Terms and Conditions of the standard NAESB Contract, the distinction between Firm and Interruptible supply has nothing whatsoever to do with whether the gas supplies are delivered to a primary or a secondary receipt point. Instead, the distinction between Firm and Interruptible has only to do with whether either party may interrupt for any reason or not, absent a Force Majeure Event.

As explained in Atmos’ Brief at 35, the distinction of primary versus secondary has to do with the ranking of receipt and delivery points on the pipeline contracts during a curtailment situation. Whether a delivery point is considered “primary” or “secondary” does not have any impact on the “firmness” of the services. (Tr. 119-20) In a supply-

only service, such as what Atmos used in the Hannibal area during this ACA period, the Company utilizes its own firm transportation contracts. The suppliers/marketers are not providing a transportation service to Atmos. Thus, the use of the phrase “primary” or “secondary” is not applicable to a supply-only RFP. The distinction the Company makes in its RFP is for Firm supply as opposed to Interruptible supply. When Atmos and the marketer contract for Firm supply, that means that the marketer cannot interrupt, absent a Force Majeure Event. (Ex No. 3 NP, Buchanan Surrebuttal, pp. 12-16)

As noted by Staff, the use of secondary firm receipt points is a safe and economical way to provide customers savings on gas costs. But contrary to Staff’s allegations, the use of a secondary receipt point does not transform the service into Interruptible Supply. The supply from a secondary “in path” point is firm, not subject to interruption. In fact, during the ACA period, there were no interruptions or cuts to Atmos’ supply because it utilized a firm secondary in path receipt point rather than a firm primary receipt point. (Id.)

Finally, Staff suggested that Atmos’ suppliers were concerned about “getting firm transportation to Haven.” (Staff Br. at 5, fn. 15) Unfortunately, Staff has misunderstood Atmos’ communications with its bidders. Atmos made it clear to all bidders that inquired that the service was Firm Service, but it could be delivered at either a Primary Receipt Point or a Secondary Receipt Point. (Ex No. 17, Schedule 3) Staff’s final criticism of the RFP process should therefore be disregarded.

None of the “facts” or criticisms raised by Staff regarding the Atmos RFP process whether taken individually--or “*taken in their entirety*”-- justify a \$337,000 prudence disallowance or penalty. The Commission should reject Staff’s position, and find that

Atmos' RFP process produced results that allowed customers in the Hannibal and Butler service areas to receive gas service at just and reasonable rates. In fact, the gas costs in Hannibal and Butler were considerably below the gas costs for the SEMO service area, and less than in the Kirksville area, but Staff has not challenged these rates since Atmos' affiliate did not win the bid in these areas.

Perhaps most importantly, the Commission has already addressed Atmos' Competitive Bidding Process and the Fair Market Value issues in its *Report And Order* in Case No. GR-2008-0364. (*Report & Order*, pp. 8-12). The Commission correctly found and concluded:

Assuming the bidding process was fair and open, and no party has presented evidence to establish a serious doubt about the fairness of the bidding process, that bidding process established the fair market value for the affiliate transactions, just as it did for the transactions with non-affiliated gas marketing companies. Because of the bidding process, Atmos, and ultimately its ratepayers, will pay no more for the services of the affiliated gas marketing company than they would have to obtain the same services from an unaffiliated gas marketing company. In effect, it is the non-affiliated gas marketing companies bidding in the open market that establish the fair market value for the bids won by AEM as much as they do for the bids won by non-affiliated bidders. Absent some showing of insider-dealing to favor an affiliate in the bidding process or some showing of facts that cast doubt on the bidding process itself, there is no need for Staff to search behind the bidding process to try to establish an independent fair market value for the affiliate transactions, if any such determination were possible. (*Report & Order*, p. 11-12)

IV. STAFF RAISES NO NEW ISSUES RELATED TO CASE NO GR-2008-0364

On pages 12-21 of its Initial Brief, Staff essentially re-briefs the issues already fully litigated, and now decided, in Case No. GR-2008-0364. Atmos believes it has fully addressed these issues in its Initial Brief and Reply Brief in that case. More importantly, the Commission has resolved the issues in GR-2008-0364, and there is no need to revisit them in this proceeding.

V. STAFF'S CRITICISMS THAT ATMOS' RFP FAILED TO ESTABLISH A FAIR MARKET PRICE ARE UNFOUNDED.

Staff devotes a section of its brief to an argument that "Atmos failed to establish a fair market price because it is unreasonable to think that one bid sets the market price." (Staff Br. at 28) Apparently, this criticism is based upon the fact that AEM suggested it would be using a secondary receipt point while other bidders indicated they would use Haven, a primary receipt point. The Commission has already resolved this issue in its *Report And Order* in Case No. GR-2008-0364. (*Report And Order*, pp. 8-12; 25-30).

As already discussed, any bidder had the option of using a secondary receipt point under the Atmos RFP. Atmos RFP permitted any supplier to utilize a secondary receipt point in the delivery of its gas supplies to Atmos. (Tr. 133, 223-24) In fact, Staff counsel conceded under questioning by Commissioner Jarrett and Judge Woodruff, that other marketers could have used a secondary receipt point under the Atmos RFP. (Tr. 44, 223-24) There is no support for Staff's suggestion that the AEM bid was somehow different from the other three (3) unaffiliated bids, so that the RFP process could not be used to establish a fair market price. Since AEM provided Firm Service to Atmos, just as it was required to do by Atmos' RFP, it really does not matter how AEM delivered the gas to Atmos. AEM did not seek to interrupt any gas service, and under the definitions of "Firm" and "Interruptible" supplies contained in the standard NAESB Contract discussed herein, it is clear that Atmos received its Firm Supply as requested. Staff's contention that the Atmos RFP process did not establish a fair market price is unfounded.

In fact, during cross-examination in Case No. GR-2008-0364, Staff witness Sommerer candidly admitted that the fair market price for 2007-2008 ACA period could be determined by reviewing the unaffiliated gas suppliers' bids (Tr. 686):

Q. Now just looking at the bids for the unaffiliated marketers, the second through the seventh, the range is about \$500,000 for those unaffiliated – or the spread, I guess is a better word, would be about \$500,000 among the unaffiliated gas marketers?

A. That's correct.

Q. And based upon these unaffiliated gas marketer bids, would you agree that the fair market price for the gas during this period to Hannibal would be somewhere between 14 million and 14 and a half million dollars, that's the range?

A. Well, again, assuming what we've already discussed about volumes and estimated prices and then the prudence would still be applicable, that's—that's the fair market value.

Q. And I believe you agree that the AEM bid was for \$13,947,297, which was less than the fair market price established by these unaffiliated gas marketer bids. Right?

A. That's correct. (*emphasis added*)(Tr.685-86)

The Commission has again addressed this fundamental point in its *Report And*

Order:

As simple as it sounds, fair market price is established by the fair market composed of willing buyers and sellers. In this case, that fair market resulted from the request for bids process undertaken by Atmos to determine the least cost bid for gas marketing services in its various service territories. For some of those service territories, but by no means for all, AEM, a gas marketer affiliated with Atmos, submitted the low bid.

For the service territories in which AEM did not submit the low bid, Staff is willing to accept the fair market price as established by the market. However, for those service territories for which AEM did submit the low

bid, Staff claims that it must carefully examine AEM's contracts with its suppliers to determine the real fair market price. It argues that if only it had the full cooperation of Atmos and complete access to the records of the unregulated affiliate, including specific transaction records that the unregulated affiliate does not maintain, it could make such a determination. However, Staff's efforts to determine a "real fair market price" are misguided and doomed to failure.

Fair market price is set by the market, not by Staff's review of documents. . . (*Report And Order*, pp. 26-27)

It is therefore incorrect to suggest that the fair market price cannot be established by referring to the competitive bidding process. This Staff criticism should be rejected or disregarded by the Commission.

VI. PUBLIC COUNSEL'S CRITICISMS OF ATMOS SHOULD BE REJECTED.

Public Counsel raised the following criticisms of Atmos in its Initial Brief: (1) "Atmos has not met its burden of proving that it could not procure the same gas for its customers directly from the same suppliers used by AEM" (OPC Br. at 4); and (2) "The evidence also demonstrates that Atmos violated the asymmetrical pricing and recordkeeping provisions of the Affiliate Transaction Rules. 4 CSR 240-40-016." (OPC Br. at 8)

The Commission has already addressed the Public Counsel's criticisms in its *Report And Order* in Case No. GR-2008-0364. (*Report And Order*, pp. 6-8; 23-24). Both criticisms should be rejected again by the Commission.

In this case, Public Counsel is arguing that Atmos should have purchased its own gas directly without going through a competitive bidding process to obtain its gas supplies from competitive gas marketers. In other words, according to Public Counsel,

Atmos needs to change its business model and revert back to the days before the FERC restructured the gas markets in Order 636.

Before the gas markets were restructured to introduce more competition and market forces into the process, LDCs would enter into long term contracts for natural gas directly with gas producers or pipeline companies, and competitive gas marketers were few and far between. But this model was abandoned in favor of the current market structure that relies upon competition to produce the most efficient results for customers.

Clearly, the adoption of Public Counsel's position would infringe upon management's prerogative to run the company. It would also be inconsistent with the Commission's Marketing Affiliate Transaction rule, and the FERC's orders which introduced competition into the gas markets. But this appears to be one of the natural consequences—intended or not—of adopting Public Counsel's position that Atmos should be required to reduce its natural gas costs by the same amount as the profit that AEM may have obtained from the transactions, and treat AEM as if it was really just a part of Atmos, the regulated LDC.

The Commission recognized this result in its decision in Case No. GR-2008-0364:

Neither the general nor the specific affiliate transaction regulation includes any language that would preclude an affiliate gas marketing company from earning a profit on its transaction with the regulated gas corporation. Indeed, such a provision would have the practical effect of banning the transactions that are clearly allowed under the rule, as no affiliated company will enter into a transaction in which it is not allowed to earn a profit. (*Report And Order*, pp. 22-23)

The adoption of Public Counsel's position would result in a radical change in the business model or market structure that has been used by the natural gas industry since the 1980s when FERC issued orders requiring a restructuring of the industry.

Staff's witness Mr. David Sommerer recognized the problems with this recommendation:

Q. Is Staff suggesting that this Commission should mandate that Atmos should change its business model so that it would purchase its own gas supplies directly from gas producers and arrange all transportation services itself?

A. No.

Q. Is it your understanding based on those 27 years that back in the old days, there was natural companies, LDCs that did arrange supplies directly for [from] (sic) the producers, right?

A. I think back in the old days, prior to Order 636, the LDCs were buying from the pipeline and the pipeline was, in essence, the provider for the LDC. And the LDC would contract with the pipeline for not only transportation, but supply services as well. And the pipelines themselves would be the ones that would go out and deal directly with whatever marketing companies were out there or producers.

Q. And that market structure was changed in 636 and all the subsequent orders that the FERC put out; is that right?

A. That's correct.

Q. Natural gas marketers began competing for the business of LDCs by offering to secure LDCs' gas supplies, and arranging transportation services, right?

A. That's correct.

Q. Now, is Staff suggesting that the Commission should go back to that market structure where LDCs would buy from the pipelines instead of dealing with marketers?

A. I don't even think that's an option that's available. Generally speaking, pipelines as a pipeline cannot sell gas to an LDC. (Tr. 105-06)(emphasis added)

There is no competent and substantial evidence in the record to support Public Counsel's position that Atmos should have purchased its own gas directly without going through a competitive bidding process to obtain its gas supplies from competitive gas marketers, including AEM. The Commission should therefore reject Public Counsel's position.

In Case No. GR-2008-0364, the Commission made the following Findings of Fact in its *Report And Order* which addressed Public Counsel's contention:

13. Most importantly, Atmos is a natural gas distribution company. Its core competency is in the distribution of natural gas to its customers. It is able to most efficiently provide service to its customers by focusing on that core competency while leaving gas marketing services to gas marketing companies that specialize in providing that service.

14. On the basis of those facts, Atmos contends that its fully distributed cost of providing gas-marketing services through its own employees would exceed the market price for those gas-marketing services as established by a competitive bidding process among gas marketing companies.

15. Staff does not challenge the specifics of Atmos' decision to purchase its gas supplies through gas marketing companies rather than by using in-house gas marketing experts except to insinuate that it is "most remarkable that the 'largest natural-gas-only distributor in the United States' (per the Company's website) asserts that it does not have the resources to optimize PGA assets."

16. Furthermore, Staff does not seek to disallow Atmos' costs associated with acquiring its gas supply through the services of unaffiliated gas marketing companies. And Staff does not seek to disallow any of Atmos' gas costs based on a fully distributed costs argument. Thus, it is apparent

that Staff's concern is only with Atmos' affiliated transactions and not with Atmos' decision to obtain its gas supplies through gas marketing companies rather than by purchasing those supplies using in-house gas marketing personnel.

17. The Commission finds that Atmos' fully distributed cost of providing gas-marketing services through its own employees would exceed the market price for those gas-marketing services as established by a competitive bidding process among gas marketing companies. (Report And Order, pp. 7-8)(*footnotes omitted*)

With regard to Public Counsel's second criticism that Atmos failed to follow the Commission's Affiliated Transaction Rules, this criticism has already been thoroughly addressed by the Commission in its *Report And Order* in Case No. GR-2008-0364, and in Atmos' Initial Briefs in this case and in Case No. GR-2008-0364. It is therefore unnecessary to address this criticism again.

VII. CONCLUSION

In conclusion, the Commission should reject the Staff's proposed \$337,226 Affiliated Transaction Adjustment, consistent with its Findings of Fact and Conclusions of Law, and its Decision in its *Report And Order* in Case No. GR-2008-0364.

Respectfully submitted,

/s/ James M. Fischer

James M. Fischer, MBN 27543
email: jfischerpc@aol.com
Larry W. Dority, MBN 25617
email: lwdority@sprintmail.com
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
Email: doug.walther @atmosenergy.com
Telephone: (972) 855-3102

Attorneys for Atmos Energy Corporation

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand-delivered, emailed or mailed, First Class mail, postage prepaid, this 12th day of November, 2011, to all counsel of record in this matter.

/s/ James M. Fischer

James M. Fischer