



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

In the Matter of the Joint Application of Atmos Energy )  
Corporation and United Cities Gas Company for an Order )  
Authorizing Atmos Energy Corporation and United Cities )  
Gas Company to Merge, With Atmos Energy Corporation ) Case No. GM-97-70  
Being the Surviving Corporation, and for Authority for )  
Atmos Energy Corporation to Issue up to 16,000,000 )  
Shares of Its Common Stock to Complete the Merger. )  
)

**APPEARANCES**

James M. Fischer, Attorney at Law, 101 West McCarty Street, Suite 215,  
Jefferson City, Missouri 65101,

and

Douglas C. Walther, Attorney, and Lee A. Everett, Vice President-Rates and  
Regulatory Affairs, Atmos Energy Corporation, Post Office Box 650205, Dallas,  
Texas 75265-0205, for Atmos Energy Corporation.

Mark G. Thessin, Vice President-Regulatory Affairs, United Cities Gas Company,  
5300 Maryland Way, Brentwood, Tennessee 37207, for United Cities Gas Company.

Douglas E. Micheel, Senior Public Counsel, Office of the Public Counsel, Post  
Office Box 7800, Jefferson City, Missouri 65102, for the Office of the Public  
Counsel and the public.

Penny G. Baker, Deputy General, Counsel, William K. Haas, Senior Counsel, and  
R. Blair Hosford, Assistant General Counsel, Missouri Public Service Commission,  
Post Office Box 360, Jefferson City, Missouri 65102, for the staff of the  
Missouri Public Service Commission.

**ADMINISTRATIVE**

**LAW JUDGE:** Thomas H. Luckenbill, Deputy Chief.

**REPORT AND ORDER**

**Procedural History**

On August 21, 1996, Atmos Energy Corporation (Atmos) and United Cities  
Gas Company (United Cities) filed a joint application pursuant to

Sections 393.190 and 393.200, RSMo<sup>1</sup> and 4 CSR 240-2.060(6), (8) and (9). Atmos and United Cities request that the Commission authorize a merger of the entities. Under the terms of the proposed merger Atmos would be the surviving entity.

On September 3, Southern Union Company (Southern Union) filed an application to intervene. On September 20, the Commission granted Southern Union's application to intervene. On November 20, Southern Union filed a motion to dismiss petition to intervene. On December 6, the Commission issued an order which granted Southern Union's request to be dismissed from the proceeding.

On November 5, the Commission established a procedural schedule. Thomas Blose and James Purser filed testimony on behalf of Atmos and United Cities. Doyle Gibbs, Jolie McKeel, Jay Moore, Michael Wallis, and Arlene Westerfield filed testimony on behalf of the Staff of the Missouri Public Service Commission (Staff).

On February 10, 1997, the parties filed a unanimous Stipulation And Agreement. On February 18, the Commission convened an on the record presentation of the Stipulation And Agreement.

### **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.

Atmos Energy Corporation is a corporation organized and existing under the laws of the state of Texas with its principal place of business located at Three Lincoln Center, Suite 1800, 5430 LBJ Freeway, Dallas, Texas 75240. Atmos is a gas corporation and a public utility under Sections 386.020(18) and

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<sup>1</sup>All statutory references are to Revised Statutes of Missouri 1996.

386.020(42), respectively. Atmos has been granted a certificate of convenience and necessity by this Commission to provide natural gas service to the communities of Rich Hill and Hume. Atmos provides natural gas service to residential, commercial and industrial users in those communities through an operating division, Greeley Gas Company.

Atmos distributes, transports, and sells natural gas in 411 cities, towns and communities in the states of Texas, Louisiana, Kentucky, Colorado, Kansas and Missouri. Atmos provides retail natural gas service to a total of approximately 673,000 retail customers. Atmos is subject to the original jurisdiction of incorporated cities in Texas and the jurisdiction of the Texas Railroad Commission, Louisiana Public Service Commission, Kentucky Public Service Commission, Colorado Public Utilities Commission, Kansas Corporation Commission and the Missouri Public Service Commission.

United Cities Gas Company is a corporation duly organized and existing under and by virtue of the laws of the states of Illinois and Virginia. United Cities has its principal office and place of business at 5300 Maryland Way, Brentwood, Tennessee 37027. United Cities distributes and sells natural gas to residential, commercial and industrial customers in and around the municipalities of Aston, Arbela, Alexandria, Bowling Green, Canton, Edina, Ewing, Grantor, Gregory Landing, Hannibal, Kahoka, Knox City, La Belle, La Grange, Lewistown, Luray, Medill, Memphis, Monticello, Naylor, Neelyville, Palmyra, Taylor, Wayland and West Quincy in the state of Missouri. United Cities is a gas corporation and a public utility under Sections 386.020(18) and 386.020(42), respectively, and United Cities' Missouri operations are subject to the jurisdiction of this Commission.

Under the terms of the Stipulation and Agreement, Atmos has agreed that it will not seek recovery of any asserted merger premium in rates in any Missouri

proceeding. (Ex. 1, p. 1; Ex. 5, pp. 9-10). Atmos has agreed to be bound by the terms of any Commission-approved stipulation and agreement entered into by Atmos or United Cities regarding Actual Cost Adjustment (ACA) cases. (Ex. 1, p. 2; Ex. 8, p. 2). Atmos and United Cities have agreed to make available to the Commission and the Office of the Public Counsel (Public Counsel) all books, records, employees, and officers of Atmos and any affiliate or subsidiary controlled by Atmos Energy Corporation as provided under applicable law and Commission rules. (Ex. 1, p. 2; Ex. 7, p. 12, 21; Ex. 8, pp. 2-3, 8).

Atmos has agreed that it will not file for any increase in current bundled retail nongas rates prior to January 1, 1999 absent the occurrence of unusual events which would have a significant adverse impact on gas operations, such as an act of God, a significant change in federal or state tax laws, or the complete elimination of the Purchased Gas Adjustment (PGA) clause. (Ex. 1, p. 2; Ex. 9, p. 11). This specific agreement does not preclude Atmos from proposing changes in its rate related to its cost of gas through PGA and ACA clauses.

The Commission finds that the proposed merger is not detrimental to the public interest. The Stipulation And Agreement contains sufficient safeguards to protect the current customers of United Cities. Atmos has agreed that after the merger it will apply the same rates to the customers of United Cities as the rates charged prior to the merger. Also, Atmos has agreed to a two-year moratorium on rate increase requests. Thus, the transaction is virtually transparent to the customers. For the above stated reasons, the Commission shall approve the proposed merger.

The rates referenced in the Stipulation And Agreement and this Report And Order are rates other than the wholesale cost of gas that United Cities incurs when it purchases gas from its suppliers. The wholesale cost of gas,

which fluctuates in the unregulated market, is passed through to customers by the PGA mechanism.

The Stipulation And Agreement is attached to this Report And Order (Attachment A). The effective date of this report and order is March 31, 1997. This effective date is not to be construed as a Commission mandate or expectation that the merger will close on that specific date. The effective date of March 31, 1997 means that Atmos and United Cities are authorized by this Commission to close the merger on March 31, 1997 or subsequent thereto, unless otherwise ordered by this Commission. Furthermore, it is understood by the Commission that Atmos will file an Adoption Notice adopting the existing Missouri tariff of United Cities and that the Adoption Notice shall bear an effective date concurrent with the closing date of the merger. (Ex. 1, pp. 4-5).

### **Conclusions of Law**

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

The parties have waived their rights to cross-examine witnesses and the Commission may use the verified statements of witnesses as a basis to approve the proposed Stipulation And Agreement. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Comm'n*, 776 S.W.2d 494, 496 (Mo. App. 1989). The Commission may accept the Stipulation And Agreement to resolve this matter. Section 536.060.

### **IT IS THEREFORE ORDERED:**

1. That the Stipulation And Agreement filed by Atmos Energy Corporation, United Cities Gas Company, the Staff of the Missouri Public Service

Commission, and the Office of the Public Counsel on February 10, 1997, be and is hereby, approved. (Attachment A).

2. That the merger of United Cities Gas Company into Atmos Energy Corporation with the latter being the surviving corporation is hereby approved.

3. That Atmos Energy Corporation and United Cities Gas Company are authorized to enter into, execute and perform in accordance with the terms of the Agreement and Plan of Reorganization attached to the Joint Application and designated therewith as Exhibit No. 1.

4. That Atmos Energy Corporation is authorized to issue up to 16,000,000 shares of its common stock to effectuate the transaction and for other general corporate purposes.

5. That United Cities Gas Company, through the proposed merger, is authorized to transfer to Atmos Energy Corporation all the property rights, privileges, immunities and obligations of United Cities Gas Company including, but not limited to the certificates of public convenience and necessity, works or systems or franchises, and all securities and evidences of indebtedness and guarantees, effective on the date of the closing of the merger.

6. That United Cities Gas Company is authorized to terminate its responsibilities as a public utility in Missouri on and after the closing date of the merger.

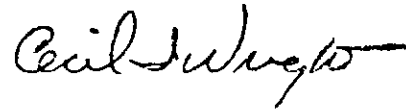
7. That on and after the closing date of the merger, Atmos Energy Corporation, as the surviving corporation, is authorized to provide gas service in the current service areas of Atmos Energy Corporation and United Cities Gas Company as a public utility subject to the jurisdiction of the Commission.

8. That on and after the closing date of the merger, Atmos Energy Corporation is authorized to provide gas service in accordance with the rules, regulations, rates, and tariffs of Atmos Energy Corporation and United Cities Gas

Company as may be on file with and approved by the Commission on and after the closing date of the merger.

9. That this Report And Order shall become effective on March 31, 1997.

**BY THE COMMISSION**



**Cecil I. Wright  
Executive Secretary**

( S E A L )

Zobrist, Chm., McClure, Crumpton  
and Drainer, CC., concur.

Dated at Jefferson City, Missouri,  
on this 19th day of March, 1997.



BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI

FILED

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PUBLIC SERVICE COMMISSION

In the matter of the Joint Application of Atmos )  
Energy Corporation and United Cities Gas )  
Company for an order authorizing Atmos Energy )  
Corporation and United Cities Gas Company to )  
merge, with Atmos Energy Corporation being )  
the surviving corporation and for authority for )  
Atmos Energy Corporation to issue up to )  
16,000,000 shares of its common stock to )  
complete the merger. )

Case No. GM-97-70

STIPULATION AND AGREEMENT

As a result of discussions between the parties hereto, said parties hereby submit to the Missouri Public Service Commission ("Commission") for its consideration and approval the following, including actions to be taken by Atmos Energy Corporation ("Atmos") and United Cities Gas Company ("UCG"), and the other parties (collectively, "Signatories") in settlement of the above styled case:

**1. Approval of the Merger**

The Signatories are agreed that the Commission should approve the merger, issuance of Common Stock, and other relief, as requested in the Joint Application filed on August 21, 1996, by Atmos and UCG, on the basis that, subject to the conditions set forth below, said merger is not detrimental to the public interest.

**2. Merger Premium**

Atmos shall not seek to recover the amount of any asserted merger premium in rates in any Missouri proceeding.

**3. Actual Cost Adjustment Clause**

Atmos and UCG agree that any Stipulation and Agreement, with regard to any UCG or Atmos Actual Cost Adjustment ("ACA") case approved by the Commission which occurs prior to the final merger of UCG and Atmos, will be adhered to by Atmos.

**4. Access to Books, Records and Personnel, and Voluntary Discovery Practices**

Atmos and UCG agree to make available to the Commission and Public Counsel, at reasonable times and places, all books, records, employees, and officers of Atmos and any affiliate or subsidiary controlled by Atmos Energy Corporation as provided under applicable law and Commission rules; provided that Atmos and any affiliate or subsidiary of Atmos shall have the right to object to such production of records or personnel on any basis under applicable law and Commission rules. Atmos agrees to continue voluntary and cooperative discovery practices pursuant to Commission rules. Any information received from Atmos or its affiliates and subsidiaries should also be subject to reasonable protection under applicable law and the Commission's standard Protective Order procedures.

**5. Rate Case Moratorium**

Atmos agrees that, absent the occurrence of unusual events which would have a significant adverse impact on gas operations, such as an act of God, or a significant change in Federal or State tax laws, or the complete elimination of the Purchased Gas Adjustment Clause ("PGA"), it will not file for any increase in current bundled retail non-gas rates prior to January 1, 1999. (The filing of an incentive PGA mechanism would not be considered the complete elimination of the PGA clause, and therefore would not be an exception that would permit Atmos to file for an increase in current bundled retail non-gas rates prior to January 1, 1999.) This Agreement does not in any way preclude

Atmos from proposing changes in its rates related to its cost of gas, pursuant to the Commission's rules related to PGA and ACA clauses or from complying with the Commission's rules or new policies concerning non-traditional rate structures, unbundled rates, new services, incentive rates or other rates which are voluntary options for customers. This Agreement does not preclude Atmos from filing a revenue neutral rate design case or from seeking the approval of accounting authority orders during the moratorium period.

**6. Semi-Annual Reports**

On an semi-annual basis, Atmos agrees to provide the Commission Staff and Public Counsel with a report detailing Missouri's proportionate share of Atmos' total consolidated assets; total consolidated operating revenues; total operating and maintenance expense; and total consolidated number of employees.

**7. Depreciation and Related Matters**

a. Atmos agrees to adopt and utilize depreciation rates by account contained on Schedule 1 to accrue depreciation expense to the reserves for depreciation, effective with the effective date of the merger, for its Missouri property;

b. Atmos also agrees to include the data from the continuing property records ("CPRs") of the pre-merged entities for use in depreciation analysis and maintain CPRs by plant subaccount level for the purpose of conducting future depreciation studies;

c. Atmos also agrees to perform a depreciation study on its consolidated Missouri operation. The study, supporting data, CPR, and property unit catalog will be submitted to the Manager of the Depreciation Department not later than the time of its next general rate case filing, per 4 CSR 240-40.040(5)(B)2 or two years from the effective date of the Report & Order, whichever

date is earlier. The study and electronically formatted data will be provided in the format specified in Staff witness McKeel's testimony;

d. Atmos agrees to maintain the property unit catalog by primary plant account as discussed in the Rebuttal Testimony of Staff witness Jolie McKeel; and

e. Atmos agrees to continue to maintain the depreciation reserve by primary plant account following the effective date of the merger.

f. Nothing in this Stipulation and Agreement would prohibit the filing and implementation of revised depreciation rates during the rate case moratorium period discussed in Paragraph 5, in the event that the Commission, upon consideration and review of the proposed rates, determines that revised depreciation rates are reasonable and in the public interest.

#### **8. Monthly Surveillance Reports**

Atmos agrees to continue to provide monthly surveillance reports to the Commission Staff for the merged company in the same format as presently provided, or with mutually agreed upon adjustments, following the effective date of the merger.

#### **9. Transaction Costs**

Merger transaction costs shall be amortized over ten years for financial reporting purposes beginning the date the merger closes. No rate base treatment of the unamortized costs will be included in the determination of rate base for any regulatory purposes in Missouri.

#### **10. Adoption Notice**

Atmos agrees to file an Adoption Notice adopting the existing Missouri tariff of UCG. The Adoption Notice shall contain an effective date concurrent with the planned date of the merger, and the Adoption Notice shall be filed at least fifteen (15) days in advance of the planned date of the

merger. The customers of Greeley Gas Company, a division of Atmos Energy Corporation, residing in and around Rich Hill and Hume, Missouri, shall continue to be served under the existing tariffs of Greeley Gas Company until the rates are changed, pursuant to an order of the Commission.

#### **11. Accounting Authority Order (AAO)**

In light of the rate case moratorium agreed to herein, UCG and/or Atmos intend to file an application with the Commission for the issuance of an accounting authority order to defer to Account 186, depreciation expenses, property taxes and carrying costs associated with the safety upgrade of its mains and service lines in compliance with the Commission's pipeline safety rules. The Commission approved requests for similar Accounting Authority Orders in Case Nos. G0-92-67 and GO-90-215. The Commission Staff and Office of the Public Counsel agree that they will not oppose the issuance of such Accounting Authority Order associated with gas safety rule compliance, provided the request is substantially similar to the AAO approved in Case Nos. GO-92-67 and GO-90-215. Atmos and UCG acknowledge that the granting of an AAO does not guarantee the ratemaking treatment as prescribed in the AAO for the items deferred to Account 186. This acknowledgment by Atmos and UCG, however, is not a waiver of their right to judicial review of any Commission order regarding the application for an AAO.

#### **12. Commission Rights**

Nothing in this Stipulation and Agreement is intended to impinge or restrict in any manner the exercise by the Commission of any statutory right, including the right of access to information, and any statutory obligation.

### **13. Staff Rights**

If requested by the Commission, the Staff shall have the right to submit to the Commission a memorandum explaining its rationale for entering into this Stipulation and Agreement. Each party of record shall be served with a copy of any memorandum and shall be entitled to submit to the Commission, within five (5) days of receipt of the Staff's memorandum, a responsive memorandum which shall also be served on all parties. All memoranda submitted by the parties shall be considered privileged in the same manner as are settlement discussions under the Commission's rules, shall be maintained on a confidential basis by all parties, and shall not become a part of the record of this proceeding or bind or prejudice the party submitting such memorandum in any future proceeding or in this proceeding whether or not the Commission approves this Stipulation and Agreement. The contents of any memorandum provided by any party are its own and are not acquiesced in or otherwise adopted by the other Signatories to this Stipulation and Agreement, whether or not the Commission approves and adopts this Stipulation and Agreement.

The Staff also shall have the right to provide, at any agenda meeting at which this Stipulation and Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, provide the other parties with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from the Staff. The Staff's oral explanation shall be subject to public disclosure, except to the extent it refers to matters that are privileged or protected from disclosure pursuant to any Protective Order issued in this case.

**14. No Acquiescence**

Unless specifically agreed to herein, none of the parties to this Stipulation and Agreement shall be deemed to have approved or acquiesced in any question of Commission authority, accounting authority order principle, cost of capital methodology, capital structure, ratemaking principle, valuation methodology, cost of service methodology or determination, depreciation principle or method, rate design methodology, cost allocation, cost recovery, or prudence that may underlie this Stipulation and Agreement, or for which provision is made in this Stipulation and Agreement.

**15. Negotiated Settlement**

This Stipulation and Agreement represents a negotiated settlement. Except as specified herein, the Signatories to this Stipulation and Agreement shall not be prejudiced, bound by, or in any way affected by the terms of this Stipulation and Agreement: (a) in any future proceeding; (b) in any proceeding currently pending under a separate docket; and/or (c) in this proceeding should the Commission decide not to approve this Stipulation and Agreement in the instant proceeding, or in any way condition its approval of the same, or should the merger with Atmos and UCG not be consummated.

**16. Provisions Are Interdependent**

The provisions of this Stipulation and Agreement have resulted from negotiations among the Signatories and are interdependent. In the event the Commission does not approve and adopt the terms of this Stipulation and Agreement in total, it shall be void and no party hereto shall be bound, prejudiced, or in any way affected by any of the agreements or provisions hereof.

**17. Waive Rights to Cross Examination, etc.**

In the event the Commission accepts the specific terms of this Stipulation and Agreement, the Signatories waive their respective rights to cross-examine witnesses; their respective rights to present oral argument and written briefs pursuant to Section 536.080.1, RSMo 1994;<sup>1</sup> their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2; and their respective rights to judicial review pursuant to Section 386.510. This waiver applies only to a Commission Report and Order issued in this proceeding, and does not apply to any matters raised in any subsequent Commission proceeding, or any matters not explicitly addressed by this Stipulation and Agreement.

**18. Effective Date**

The Signatory parties respectfully request the Commission to issue its Order Approving Merger and Adopting this Stipulation and Agreement at its earliest convenience. Atmos Energy Corporation and United Cities Gas Company request the Order Approving Merger be effective by March 31, 1997, if possible.

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<sup>1</sup> All statutory references are to Revised Statutes of Missouri 1994, unless otherwise noted.



Respectfully submitted,

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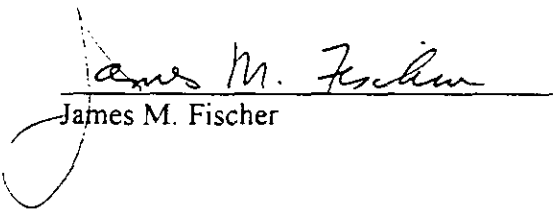
Attorney for the Office of the Public  
Counsel

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand-delivered or mailed, postage prepaid, this 10<sup>th</sup> day of February, 1997, to:

Office of the Public Counsel  
P.O. Box 7800  
Jefferson City, Missouri 65102

Penny G. Baker  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, Missouri 65102

  
James M. Fischer

**Atmos Energy Corporation  
Depreciation Rates  
Case No. GM-97-70**

Account Number	Description of Account	Recommended Rate
302	Franchises & Consents	4.71%
303	Misc. Intangible Plant	20.00%
311	Liquified Petro. Gas Equipment	4.98%
367	Transmission Mains	1.33%
369	Measuring and Regulating Station Equipment	1.89%
375	Structures and Improvements	4.37%
376	Distribution Mains	3.43%
378	Measuring and Regulating Station Equipment	1.89%
379	CITY GATE Measuring and Regulating Station Equipment	1.89%
380	Services	5.13%
381	Meters	2.52%
382	Meter Installations	3.91%
383	Regulators	3.24%
385	Industrial Measuring and Regulation Station Equipment	1.89%
386	Property on Customer Premises	1.26%
387	Other Equipment	5.52%
390	Structures	1.00%
391	Office Furniture and Fixtures	5.00%
391.2	Owned Computer Equipment	10.00%
392	Transportation	10.00%
393	Stores Equipment	5.00%
394	Tools, Shop and Garage Equipment	3.29%
395	Laboratory Equipment	3.85%
396	Power Operated Equipment	13.81%
397	Communications Equipment	12.00%
398	Miscellaneous Equipment	10.00%

Schedule 1