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April 11, 2000

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RE: Case No. GM-2000-312

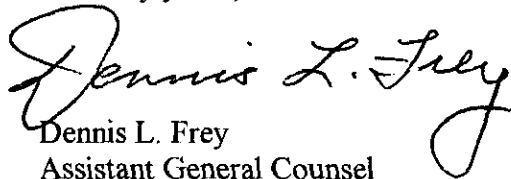
Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and fourteen (14) conformed copies of a **STAFF MEMORANDUM IN SUPPORT OF UNANIMOUS STIPULATION AND AGREEMENT**.

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,



Dennis L. Frey
Assistant General Counsel
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DLF/lb
Enclosure
cc: Counsel of Record

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

FILED²

APR 11 2000

Missouri Public
Service Commission

In the matter of the Joint Application of Atmos)
Energy Corporation and Arkansas Western Gas)
Company, d/b/a Associated Natural Gas)
Company, for an order authorizing the sale and)
transfer of certain assets of Associated)
Natural Gas Company located in Missouri to)
Atmos Energy Corporation and either)
authorizing the transfer of existing)
Certificates of Public Convenience and)
Necessity or granting a New Certificate of Public)
Convenience and Necessity to Atmos Energy)
Corporation in conjunction with same.)

Case No. GM-2000-312

**STAFF MEMORANDUM IN SUPPORT OF
UNANIMOUS STIPULATION AND AGREEMENT**

COMES NOW the Staff of the Missouri Public Service Commission ("Staff") and submits this Staff Memorandum in Support of Unanimous Stipulation and Agreement ("Memorandum") for Missouri Public Service Commission ("Commission") review and consideration, in support of the Unanimous Stipulation and Agreement entered into by the Staff, the Office of the Public Counsel ("OPC"), Atmos Energy Corporation ("Atmos" or "Company"), Arkansas Western Gas Company, d/b/a Associated Natural Gas Company ("ANG"), Noranda Aluminum, Inc. ("Noranda"), and the International Brotherhood of Electrical Workers ("IBEW") Local Union No. 1439. This document provides solely the Staff's reasoning, and does not necessarily reflect the views of the other parties to the Unanimous Stipulation and Agreement.

Introduction

This case involves an agreement between Atmos and ANG, two Missouri-regulated gas utilities, for the purchase by Atmos of ANG's Missouri properties. Historically, and pursuant to 4 CSR 240-2.060(5)(D), Staff has supported such acquisitions provided that Missouri ratepayers do not suffer any detriment as a result of the transaction. Staff believes that the subject transaction, as qualified by the conditions set forth in the Unanimous Stipulation and Agreement filed in this docket on March 29, 2000, meets the "no detriment" standard.

Procedural History

1. On November 2, 1999, Atmos and ANG, hereinafter collectively to be known as "the Applicants," filed their Joint Application, requesting Commission approval of the sale to Atmos of the Missouri assets of ANG (the "Sale") along with the attendant authorizations to enable the Applicants to carry out the purpose of the Sale. The Joint Application was docketed as Case No. GM-2000-312.

2. On November 8, 1999, the Commission issued its Order and Notice, in which it set an intervention deadline of November 29, 1999. Applications to Intervene were timely filed by Noranda, by IBEW Local Union No. 1439, and by the Cities of Appleton City, Campbell and Malden.

3. On December 1, 1999, in its Order Granting Intervention, Setting a Prehearing Conference and Directing Filing of a Procedural Schedule, the Commission, among other things, granted all five requests to intervene. On February 14, 2000, however, the Cities of Appleton City, Campbell and Malden jointly filed a pleading

indicating that they wished to withdraw from the case, and the Commission granted these three requests on February 15th.

4. On December 20, 1999, in response to the parties' proposed procedural schedule (filed December 17, 1999), the Commission adopted a procedural schedule that provided for an evidentiary hearing on April 4 and April 5, 2000. In accordance with the procedural schedule, the Applicants filed Direct testimony on January 14, 2000, and the remaining parties filed Rebuttal testimony on March 1, 2000.

5. The parties continued to participate in negotiations aimed at resolving the various issues raised in this case. Encouraged by the progress being made toward a stipulation and agreement, the Applicants twice (March 10 and March 20, 2000) requested an extension of the deadline for filing Surrebuttal testimony, and the Commission, on March 13 and March 21, 2000, issued Orders granting those respective requests. In pertinent part, the Commission's March 21st Order extended until March 29, 2000 the deadline for filing Surrebuttal testimony and the Statement of the Issues.

6. On March 29, 2000, in lieu of Surrebuttal testimony and the Statement of the Issues, the parties filed their Unanimous Stipulation and Agreement (the "S&A") in settlement of all issues in this docket. The next day, the Commission issued an Order canceling the remainder of the procedural schedule, including the hearing scheduled for April 4th and 5th.

7. On April 4, 2000, the Commission issued its Order Directing Staff to File Memorandum on Stipulation and Agreement, wherein Staff was ordered to file said Memorandum no later than 3:00 p.m. on April 11, 2000.

The Agreement

8. In the course of the proceeding, the parties identified a total of eleven issues about which all or some of the parties were concerned. These included Customer Service, Acquisition Premium, ANG's Construction Budget, State Jurisdictional Issues, Tariffs, Gas Supply Issues, Rate Base Deductions, Pensions, Other Postretirement Benefits Plan, issues involving IBEW Local No. 1439, and those concerning Noranda. Although the Staff did not take an active position and did not file testimony regarding the last two of these issues, Staff believes that the agreements reached in these areas are reasonable and are not detrimental to the public interest.

9. With respect to the IBEW Local No. 1439 issues, the S&A includes recognition by Atmos of said union local as the collective bargaining unit on a going-forward basis, as well as an agreement by Atmos to bargain in good faith with Local No. 1439. Moreover, the agreement provides that Atmos will not reduce its work force or lay off any employees, including IBEW Local Union No. 1439 members, for a period of twelve months following the closing of the Sale.

10. Regarding the Noranda issues, Atmos agrees to honor the existing Interruptible Gas Transportation Service Contract with Noranda, including the interpretations thereof, and also will provide Noranda with certain ancillary services at mutually agreeable rates. Also under the S&A, Atmos will work closely with Noranda in a good faith effort to develop, within one year of the closing date of the Sale, a cost of service study that is intended to serve as a basis for a possible extension or modification of the aforementioned existing contract upon its expiration. At the same time, other

parties to this S&A retain their rights to contest in a future proceeding the results of any such cost of service study.

11. The Staff has a direct interest in and, with the exception of State Jurisdictional Issues, filed Rebuttal testimony on the remaining issues addressed in the S&A. With few exceptions, the final agreements reached among all the parties, as set forth in the S&A, essentially mirrored the positions taken by Staff in its testimony. The following paragraphs contain discussions of each of the issues, including an explanation of Staff's rationale for any significant changes from its original filed positions.

12. Customer Service: In its prefiled Rebuttal testimony, the Staff outlined the importance of customer service performance measures, in general, as a managerial control tool for the vital customer service function, and in particular, as a means of helping to ensure, in merger or acquisition cases, that a degradation of certain customer service activities does not occur in the post-transaction environment. In the instant case, Staff took the position that, as a condition precedent to Commission approval of the Sale, the parties should be required to reach an agreement that establishes reasonable performance measures, against which Atmos will be measured, in order to help ensure that there will be no degradation in customer service. Staff noted in testimony that the establishment of two such performance measures, the Abandoned Call Rate ("ACR") and the Average Speed of Answer ("ASA"), became an integral aspect of agreements in two recent merger cases that received Commission approval (Case Nos. EM-97-515, Western Resources, Inc./Kansas City Power and Light Company, and GM-2000- 43, Southern Union Company/Pennsylvania Enterprises, Inc).

The S&A provides for the establishment of reasonable measures for both ACR and ASA. These figures represent refinements achieved through the joint efforts of Atmos, the Office of the Public Counsel ("OPC") and the Staff, and the S&A allows for future refinements to the measures, should experience so warrant.

In addition to specifying measures for ACR and ACA, the S&A contains a number of additional requirements designed to maintain a consistent level of customer service. In particular, the S&A requires Atmos to provide quarterly reports of its performance against the established measures to both Staff and OPC. The S&A further requires Atmos to provide Staff and OPC with a written explanation of any unfavorable variances against the measures. In such event, the Company is also required to credit its customers during the subsequent year with the amount of any expenditure necessary to improve Atmos' performance to the level of the agreed upon measure(s). In addition, Atmos has agreed to employ a number of operating procedures that are beneficial to its customers. The customer service provisions described in this paragraph are similar to those previously approved by the Commission in the aforementioned merger cases.

13. Acquisition Premium: Acquisition premium is the amount by which the sale price of a property exceeds its net book value (i.e., the original cost of the asset when first placed into service less accumulated depreciation). As such, the term acquisition premium describes one aspect of a more general term known as "acquisition adjustment," which refers to a sale price that is either greater than or less than its net book value. The issue arises as to whether Atmos should be permitted to seek rate recovery of any acquisition premium paid in the course of acquiring the ANG properties. Although the Company did not propose to do so, it indicated during discovery that it was considering

whether or not to do so. In its Rebuttal testimony, Staff took the position that a company should not be permitted to recover acquisition premium in rates, because it requires ratepayers to finance such acquisitions, which rarely have anything to do with the provision of safe and adequate service and which are sometimes prompted by considerations outside the sphere of a Missouri-regulated utility, or of the utility business in general. Moreover, the ratepayers of the selling company do not benefit from the existence of any acquisition premium.

In Staff's view, then, the consideration for ratemaking purposes of any acquisition premium paid by Atmos would be detrimental to Missouri ratepayers. The S&A essentially adopts Staff's position. Atmos agrees not to seek to recovery of acquisition premium in Missouri rates, while reserving the right to present evidence as to Sale-related savings in any complaint proceeding concerning rates initiated by Staff or OPC, as well as the right to seek recovery of transition costs, such as payroll and payroll-related costs, incurred in order to take advantage of cost saving opportunities occasioned by the Sale.

14. ANG's Construction Budget: As expressed in its testimony, the Staff wanted to ensure that the Sale does not interfere with ANG's ongoing service line and main replacement programs. In particular, Staff contended that the budget for these programs should remain intact and that Atmos should continue to comply with any other waivers or agreements concerning pipeline safety. The S&A reflects Atmos' agreement to these terms.

15. State Jurisdictional Issues: This section addresses Staff's continuing interest in assuring that Atmos will retain or maintain all relevant Sale-related documentation in the post-Sale environment. Accordingly, Atmos agrees to retain

documentation related to the identification of personnel involved in the acquisition project, the number of hours of such individuals devoted to this work, other Sale-related expenses, a description of the nature of the costs incurred, and information regarding the accounts utilized for the collection of such costs. Further, Atmos agrees to maintain its books in such a manner as to segregate Sale-related costs as well as any costs related to future mergers or acquisitions, and to promptly submit to Staff's accounting department and to OPC a record of the Sale-related journal entries. Additionally, Atmos agrees to work with Staff during the Company's next rate proceeding in identifying appropriate acquisition-related costs. At the same time, Atmos and the other parties to this case retain their respective rights to seek and oppose recovery of merger or acquisition costs related to future transactions.

16. Tariffs: Atmos' original intention, as expressed in the Joint Application, was to adopt ANG's existing tariff by filing an adoption notice under the United Cities Gas Company. The Staff, however, was concerned that use of the United Cities label in this context would invite confusion for anyone who must deal with both the additional tariff and the United Cities tariff already existing. Given the considerable differences between the two tariffs, the result could be a detriment to current ANG ratepayers. In its testimony, Staff therefore recommended that Atmos adopt ANG's tariff under the Atmos Energy name. The S&A reflects the agreement by Atmos to assume the rights and obligations of ANG pursuant to ANG's current tariffs and, upon Commission authorization, to file an adoption notice regarding the subject ANG properties under the name Atmos Energy Corporation.

17. Gas Supply Issues: In its Rebuttal testimony, Staff proposed a number of conditions related to gas supply issues and the Actual Cost Adjustment ("ACA") process that are designed to ensure the following: (1) that Staff has continued access, as needed, to the records and personnel of both Atmos and ANG; (2) that Staff's discovery rights with regard to currently open cases and any future cases involving ANG are maintained; (3) that the reliability of the ANG system with respect to gas supply, transportation and storage is maintained following the Sale; and (4) that the total ACA costs (gas supply, transportation, storage, etc.) to existing ANG customers will not be detrimentally impacted as a result of the Sale. The S&A reflects Atmos' and ANG's agreement, with some clarifications, to all of Staff's conditions.

18. Rate Base Deductions: This issue addresses the loss of ANG's accumulated deferred tax reserve as a result of the Sale. In its prefiled testimony, Staff took the position that the Commission should require Atmos to reflect this loss by using an additional offset to rate base in any of its rate increase filings during the next ten years. The parties agreed upon an initial value of the rate base offset of \$2,500,000. This amount reflects ANG's accumulated deferred income taxes, excluding short-term book/tax timing differences and an estimated amount related to ANG's acquisition adjustment, incurred when ANG purchased these gas properties. Atmos will begin amortizing this \$2,500,000 on a monthly basis over a period of ten (10) years, beginning on the date of closing. This same approach was agreed to by the parties and approved by the Commission in Case No. GM-94-40, which involved the acquisition by Southern Union Company of the Missouri gas properties of Western Resources, Inc.

19. Pensions: In its prefiled testimony, Staff referred to a provision in the Joint Application of Atmos and ANG, indicating that ANG planned to transfer to Atmos' pension fund an amount of cash equal to the Projected Benefit Obligation ("PBO") of the transferred employees. Inasmuch as the value of pension fund assets of Southwestern Energy Company ("SWEN"), ANG's parent company, exceeds the PBO, Staff took the position that a pro rata share of the pension asset value should be transferred to Atmos along with the transferred employees. In this manner, the funding level would be maintained after the Sale, thus avoiding a detriment to Missouri ratepayers. In recognition of the fact that the market value of the SWEN pension plan currently exceeds the PBO, the S&A provides that the amount of money transferred from the SWEN pension plan to the Atmos pension plan will be equal to the relevant PBO of the transferred employees plus an additional \$350,000. The figure was arrived at by averaging the excess of the market value of the SWEN plan assets over the corresponding PBO liability, for the period covering December 1999 through March 2000. The averaging was done so as to mitigate the effect of the unusual volatility of the market value of the plan's assets.

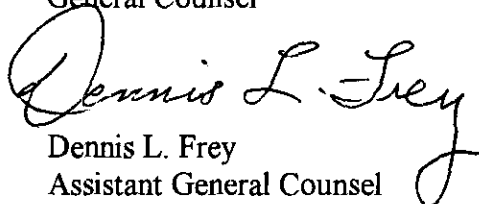
20. Other Postretirement Benefits Plan ("OPEB"): OPEB refers to benefits of retired employees other than pension, such as medical, dental and life insurance. Upon closing of the Sale, the assets of the current ANG plan will need to be allocated between ANG's Arkansas employees and its current Missouri employees. Staff's concern, as expressed in its Rebuttal testimony, is to ensure that Atmos obtain from ANG, and provide to Staff in Atmos' next Missouri rate case, all of the documentation necessary to fully account for the disposition in ANG's OPEB plan as of the date of acquisition by

Atmos. By the terms of the S&A, Atmos has agreed to provide such documentation to all parties to the Company's next rate case. In addition to specifying certain types of documents that will be furnished, the S&A obligates Staff and OPC to complete an investigation of the matter within ninety (90) days of the closing of the Sale, provided that the Joint Applicants furnish the necessary data and other support for such investigation within thirty (30) days of said closing.

WHEREFORE, the Staff respectfully submits its Memorandum in support of the Unanimous Stipulation and Agreement entered into by the Staff, OPC, Atmos, ANG, Noranda, and IBEW Local Union No. 1439, and filed in the instant docket on March 29, 2000.

Respectfully submitted,

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Missouri Bar No. 44697

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand delivered to all counsel of record as shown on the service list below on this 11th day of April 2000.

Dennis L. Frey

**Service List for
Case No. GM-2000-312
April 11, 2000**

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