

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION

3 TRANSCRIPT OF PROCEEDINGS
4 Question and Answer Session

5 July 25, 2001
6 Jefferson City, Missouri
7 Volume 1

8 In the Matter of Associated Natural)
9 Gas Company's Tariff Revisions to be) Case No. GR-96-227
10 Reviewed in its 1995-1996 Actual Cost)
11 Adjustment.)
12 In the Matter of Associated Natural)
13 Gas Company's Tariff Revision to be) Case No. GR-97-191
14 Reviewed in its 1996-1997 Actual Cost)
15 Adjustment.)
16 In the Matter of Associated Natural)
17 Gas Company's Purchased Gas Adjustment) Case No. GR-98-399
18 Factors to be Reviewed in its)
19 1997-1998 Actual Cost Adjustment.)
20 In the Matter of Associated Natural)
21 Gas Company's Purchased Gas Adjustment) Case No. GR-99-392
22 Factors to be Reviewed in its)
23 1998-1999 Actual Cost Adjustment.)
24 In the Matter of Atmos Energy)
25 Corporation's Purchased Gas Adjustment) Case No. GR-200-573
to be Reviewed in its 1999-2000 Actual)
Cost Adjustment.)

19 BILL HOPKINS, Presiding,
20 SENIOR REGULATORY LAW JUDGE.

21 KELVIN SIMMONS, Chair,
22 SHEILA LUMPE
23 CONNIE MURRAY,
24 STEVE GAW,
25 COMMISSIONERS.

23 REPORTED BY:

24 KELLENE K. FEDDERSEN, CSR, RPR
25 ASSOCIATED COURT REPORTERS, INC.

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1 P R O C E E D I N G S

2 JUDGE HOPKINS: This is in the case of
3 GR-96-227, et al. This is the question and answer session
4 that the Commission requested yesterday, and let's take a
5 real quick entry of appearance starting with you,
6 Ms. Shemwell.

7 MS. SHEMWELL: Thank you, your Honor.
8 Representing the Staff of the Missouri Public Service
9 Commission in this case, I'm representing the Commission in
10 the circuit court cases, Lera Shemwell, Post Office Box 360,
11 Jefferson City, Missouri 65102. Thank you.

12 MR. SCHWARZ: My name is Tim Schwarz,
13 P.O. Box 360, Jefferson City, Missouri 65102. I represent
14 the Staff in the Commission cases in the cases currently
15 pending before the Commission.

16 MR. COFFMAN: John B. Coffman appearing on
17 behalf of the Office of the Public Counsel, P.O. Box 7800,
18 Jefferson City, Missouri 65102.

19 MR. SWEARENGEN: James C. Swearengen, Brydon,
20 Swearengen & England, 312 East Capitol Avenue, Jefferson
21 City, Missouri, appearing on behalf of Associated Natural
22 Gas Company. And I would also like to enter the appearance
23 of Jeff Dangeau also on behalf of Associated.

24 MR. DANGEAU: My address is P.O. Box 1408,
25 Fayetteville, Arkansas 72702.

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1 MR. SWEARENGEN: Thank you.

2 MR. DORITY: Larry W. DORITY with Fischer &
3 DORITY PC, 101 Madison, Suite 400, Jefferson City, Missouri
4 65101, appearing on behalf of Atmos Energy Corporation.

5 JUDGE HOPKINS: Thank you very much. This
6 hearing was convened because the Commission had several
7 questions on the entire Settlement & Agreement that the
8 parties filed, and each Commissioner may or may not have
9 questions about different parts of the Settlement &
10 Agreement and Release. So we will just start with Chair
11 Simmons.

12 MR. SCHWARZ: If I might, Mr. Gary Duffy of
13 Brydon, Swearngen & England, was the principal attorney
14 involved both in the cases and in negotiation of the
15 agreement. Mr. Jim Fischer with Fischer & DORITY was the
16 principal attorney for Atmos, and Mr. Doug Micheel was the
17 principal attorney for the Office of the Public Counsel
18 involved. Those three gentlemen are all on vacation this
19 week.

20 I think if it would please the Commission, I
21 would be -- I'm the only attorney who actually actively
22 participated in the drafting of this document, and I would
23 be pleased to take the Commission's questions. I think I'm
24 probably far more familiar with the negotiations that led up
25 to its filing and the contents of the document.

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1 JUDGE HOPKINS: All right. Chair Simmons,
2 sir, would you like to start with any questions?

3 MR. SCHWARZ: Should I go to the podium or
4 should I remain seated?

5 JUDGE HOPKINS: I think you're fine right
6 there if you'll speak into the microphone where everybody
7 can hear you. You're fine.

8 CHAIR SIMMONS: Thank you, Judge.

9 First of all, let me say to all of the parties
10 that we appreciate you being here on such short notice. The
11 Commission yesterday had some pretty detailed questions as
12 it related to the Stipulation & Agreement and some of the
13 cases that had been before us for quite some time. They've
14 got far more detailed questions, the other Commissioners.
15 I've just got a general question. Then I'll let the other
16 Commissioners proceed.

17 The first thing that I'd like to know is
18 whether or not Staff or any of the parties have been able to
19 tell me, if the agreement is approved, if there's going to
20 be a one-time bill credit that will be issued as relates to
21 this Stipulation & Agreement, and can you tell me in terms
22 of dollars what the typical residential customer would
23 probably expect and when should they expect this one-time
24 bill credit?

25 JUDGE HOPKINS: Mr. Schwarz, if I could

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1 request that you preface your answers with the case numbers
2 that we're talking about or if it refers to the whole thing
3 or whatever.

4 MR. SCHWARZ: The settlement would pertain to
5 all of the five listed cases on the settlement agreement and
6 on the Commission's Order from yesterday. It is anticipated
7 that there would be a one-time bill credit which will
8 actually be processed by Atmos, which is now the local
9 distribution company or LDC which is operating in what was
10 formerly the southeast Missouri territories of Associated
11 Natural Gas.

12 The parties anticipate that the refund will be
13 done during a single billing cycle for those customers.
14 That is, after some thought it was decided that rather than
15 spreading this over multiple billing cycles and the company
16 having to make adjustments to its billing system for more
17 than one billing cycle, that it would be better that it --
18 everyone can be told that in your next bill you'll see a
19 credit.

20 I can't tell you the average amount of the
21 refunds that -- or credits that customers will see. It's
22 going to be based on the customers' usage during the prior
23 year. I can tell you that there are about 47,000 customers,
24 including both commercial and residential. You know, if you
25 just do it on a per-customer basis, it would be something, I

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1 guess, under \$20 given the dollar amounts involved. But
2 it'll be based on usage, and no, I can't at this stage. I'm
3 sure that's something that--

4 CHAIR SIMMONS: We've got a process that I'm
5 sure Staff at some point in time uses or the company uses to
6 determine this. As we get closer to that process, that
7 information will probably be available to us prior to the
8 company actually having the one-time bill credit; is that
9 correct?

10 MR. SCHWARZ: We can certainly make that
11 information available to the Commission by, you know,
12 lodging it in the case files.

13 CHAIR SIMMONS: Okay. Thank you, sir. That's
14 all the questions that I have.

15 JUDGE HOPKINS: Thank you, Chair Simmons.

16 Let me just tell the other parties here that
17 this is an informal session to the extent that if any
18 attorney wants to add something to what Mr. Schwarz has
19 said, please feel free to interject. We want to make sure
20 that everyone gets a chance to present a viewpoint if Mr.
21 Schwarz doesn't present your viewpoint.

22 Commissioner Lumpe. Commissioner Murray.

23 COMMISSIONER MURRAY: Thank you. I think both
24 Commissioner Lumpe and myself had questions that pertain
25 primarily to Sections 1.8 and 1.9 of the Stipulation &

1 Agreement. Of course, I'm not intending to speak for
2 Commissioner Lumpe, but yesterday we had raised some
3 questions about those two sections, and that is the reason
4 that you were called in on such short notice.

5 The Section 1.8 providing for lump sum
6 payment, we found that to be quite confusing because it is
7 unclear to me what happens to the 254,476 of accrued
8 interest if it is not distributed as part of the lump sum,
9 and it would appear from the language that Associated might
10 be released from ever passing that along to Atmos.

11 MR. SCHWARZ: If I might, the \$254,000 was
12 paid into the registry of the court pursuant to a Stay Order
13 that the Commission -- that the court issued in October of
14 1999. That order provided that, upon resolution of the
15 case, that the money would be given to ANG with a provision
16 ANG had been tracking the specific amounts of that \$254,000
17 that would be paid to specific individuals.

18 Of course, the parties at that stage did not
19 contemplate, A, the length of time that's transpired, and B,
20 the sale of the property by ANG to Atmos.

21 We have no reason to think that the Circuit
22 Court is not going to simply discharge that money to ANG
23 under the terms of the settlement if, of course, the
24 Commission approves the settlement. I have absolutely no
25 reason to think that Judge Brown would do anything but

1 direct that that payment be made.

2 If it's not, if for one reason or another he
3 should not do it -- and I can't think of any reason that he
4 wouldn't -- then obviously we will have to gauge how he
5 thinks the money should be distributed, and I can't -- I
6 can't think that Judge Brown's going to try to distribute
7 \$254,000 to individuals in southeast Missouri. So --

8 COMMISSIONER MURRAY: Let me just interrupt
9 you and ask you a follow-up question.

10 MR. SCHWARZ: Sure.

11 COMMISSIONER MURRAY: If Judge Brown does not
12 grant the motion to release the funds in accordance with
13 this agreement, when do -- and how does this agreement
14 provide what ANG would be obligated to transfer that
15 released amount to Atmos, when and how?

16 MR. SCHWARZ: If Judge -- under his prior
17 order, Judge Brown would be releasing that money to ANG in
18 any event. So the only thing that would be changing would
19 be instead of distributing it according to what the parties
20 had anticipated when the Stay Order was entered, it would be
21 distributed in a manner that we're proposing now.

22 If he says, No, I want it to go back the way
23 it was ordered back in 1999, we would have the opportunity
24 of seeking mandamus, I would think, from the Court of
25 Appeals saying, No, no, no, you do it the way the parties

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1 have agreed, or perhaps it would be distributed according to
2 the original order.

3 But I don't -- I mean, it's something that,
4 frankly, I can't tell you because we haven't had any
5 indication from Judge Brown that he would do other than as
6 the parties request.

7 COMMISSIONER MURRAY: Mr. Schwarz, you provide
8 in the agreement, the parties provide in the agreement that
9 if the lump sum -- let's see. I'm having trouble locating
10 the language.

11 Okay. It's on page 11. If the court does not
12 grant the motion to modify and ANG does not come into
13 possession of the principal and interest for the purpose of
14 transferring it to Atmos as contemplated in paragraph B
15 here, ANG shall not be obligated to transfer any amount to
16 Atmos under paragraph B hereof, and the only amount it would
17 be obligated to transfer as a lump sum payment is the
18 \$618,524 amount specified in paragraph B1.

19 But are you saying that ANG would somehow be
20 obligated to transfer the funds back to the customers
21 directly?

22 MR. SCHWARZ: Well, I will -- ANG could
23 receive the money from the Circuit Court under the original
24 terms of the stay agreement, and if the court directs ANG to
25 distribute it in accordance with those terms, I -- my

1 feeling is that ANG would then have to either make
2 arrangements with Atmos to get back the necessary records
3 and make the calculations itself or have an agreement with
4 Atmos that Atmos would do it. That's one possibility.

5 The other possibility is that ANG would get
6 the money pursuant to this agreement and transfer it to
7 Atmos and it would be resolved. I do not see any way for
8 ANG to receive the money from the stay fund and not refund
9 it to customers.

10 COMMISSIONER MURRAY: And yet the agreement,
11 that's what's troubling me about the agreement. First of
12 all, I'm very troubled by the whole Section 1.8 because I
13 don't think this, as it is written, it makes -- that it's
14 clear at all. I think it's subject to several
15 interpretations, at least two.

16 And I'm having trouble feeling comfortable
17 approving an agreement that I don't think -- to me doesn't
18 make sense. Section 1.8 to me does not make sense. And if
19 you and the other parties would read that section again, I
20 think you would at least admit that it's very poorly drafted
21 and it appears to allow -- well, I'm not going to go into
22 specifically why I think it's so poorly drafted, but I think
23 if you read it you can just see that you cannot make clear
24 sense out of it as you're reading it.

25 And first of all, it says, The lump sum

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1 payment shall be distributed after the later occurring of
2 this agreement becoming effective and not subject to appeal.
3 Right there I have a problem with becoming effective and not
4 subject to appeal.

5 It's my understanding that you-all are asking
6 for resolution of this prior to -- and I can't recall the
7 date, but it's less than ten days from yesterday --

8 MR. SCHWARZ: Correct.

9 COMMISSIONER MURRAY: -- I believe, so that
10 there is no way that by that date it would not be subject to
11 appeal.

12 MR. SCHWARZ: Well -- I'm sorry. I didn't
13 mean to interrupt.

14 COMMISSIONER MURRAY: And then if I take the
15 ANG receiving the principal and accrued interest from the
16 impounded funds from Case No. GR-96-227, this is providing
17 that after the later -- and I don't like that language, but
18 after the later occurring of either one of those two things
19 is when the lump sum payment would have to be distributed,
20 and then only in the next paragraph does it go into saying
21 that if the court doesn't grant the motion to modify, then
22 the only amount that ANG will be obligated to transfer to
23 Atmos under paragraph B is the 618,000.

24 But it does not make sense to say that nothing
25 will be distributed until the latter of occurrence of A and

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1 B because if B doesn't happen, there's nothing to say when A
2 shall be distributed, the part under A, and there's nothing
3 to the parties in to any dates. You can respond.

4 MR. SCHWARZ: I'm trying to keep all the
5 little strands clear.

6 The parties contemplate that there's already
7 \$54,000 that's been paid in to the registry of the court.
8 Okay. That's the 1.8B. Then there's the additional
9 \$618,000 that ANG has agreed to pay. Within five days of
10 receipt of getting that all lumped together, ANG will
11 transfer it to Atmos, and that's what we anticipate
12 happening under the agreement.

13 So within five days of getting the entire pool
14 together, ANG will transfer that money to Atmos. Atmos
15 will -- under the next paragraph, 1.9, the disbursement
16 section, Atmos undertakes to make that distribution, to
17 begin making the distribution within 45 days of receiving
18 the lump sum.

19 COMMISSIONER MURRAY: Before we go into the
20 distribution of it, I want to go back to 1.8. Within five
21 business days after the lump sum of both A and B. Okay.
22 That's well and good if both A and B occur and if they occur
23 within a reasonable period of time.

24 If B does not occur within a reasonable period
25 of time, when is Atmos -- when is ANG obligated to transfer

1 the \$618,000?

2 MR. SCHWARZ: I will concur the agreement does
3 not speak to that.

4 COMMISSIONER MURRAY: And is it not possible
5 to write an agreement that would speak to that?

6 MR. SCHWARZ: Yes. I mean, it's certainly
7 possible. I mean, that's not something that we have
8 specifically addressed. I think that a reasonable reading
9 of it would be that if the lump sum payment that ANG is
10 obliged to make is only the \$618,000, that would become a
11 cognate obligation at the time that the Circuit Court says,
12 No, I'm not going to go along with it.

13 Once the Circuit Court says no, then -- and
14 says, I'm not going to give it to ANG, then within five
15 business days of the lump sum payment being determined in
16 that manner, that -- or actually within -- when the
17 Commission Order has become effective and not subject to
18 appeal and the determination has been made by the Circuit
19 Court that it's not going to transfer the other amounts,
20 then I would say that that obligation then becomes cognate
21 and ANG has to make the transfer.

22 Obviously that is not as satisfactory as
23 hammering out and addressing it by explicit language, but,
24 frankly, I view that possibility as extremely remote.

25 So yes, we could, I suppose, draft additional

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1 language to address that possibility, but I see the
2 likelihood of the Circuit Court not paying that money over
3 once the case is resolved and pursuant to Commission order
4 as being extremely remote.

5 COMMISSIONER MURRAY: However remote it is, if
6 it's not in writing in the contract --

7 MR. SCHWARZ: That's correct. That's correct.

8 COMMISSIONER MURRAY: -- it will be a problem.

9 MR. SCHWARZ: It leaves you in an area of
10 uncertainty.

11 COMMISSIONER MURRAY: So do you think it's
12 possible for the parties to get back together and negotiate
13 language which will clearly set out that the obligation to
14 pay this \$618,000 amount would incur at the time that the
15 Circuit Court has made a -- would have made a decision to
16 deny the motion or something to that effect to clarify that?

17 MR. SCHWARZ: Yes, that's possible. I think
18 it would probably be easier just to talk to -- go over and
19 talk to Judge Brown and say, Look, we've reached an
20 agreement on how to disburse this. If the Commission
21 approves it, will you go ahead and concur?

22 MR. SWEARENGEN: If I could speak to that for
23 a minute and jump in. First of all, I thank Mr. Schwarz for
24 taking me off the hook earlier. I was kind of reminded when
25 I was in law school many years ago that if you were called

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1 on in class and hadn't read the cases, you were asked to get
2 up and leave. If you came in ahead of time and told the
3 professor that you weren't prepared, he wouldn't call on
4 you. So you always took the chance, am I going to get
5 called on and get kicked out or do I go ahead and confess
6 ahead of time and indicate that I'm not really interested.
7 Well, I'm interested in this, but I'm not really prepared.

8 Let me speak to what Mr. Schwarz just said.
9 We did the very thing that he mentioned in the MGE case a
10 while back where we had an arrangement to settlement a
11 matter that was pending before him, and we went to see Judge
12 Brown and asked him, we said, This is what we're considering
13 doing, in anticipation of you-all asking the question
14 whether or not he would approve it. And he indicated to us
15 in open court that he didn't have any problem with the
16 proposal.

17 And I don't recall that it actually came up in
18 the stipulation presentation, but that's certainly something
19 that we could do. We could go see him and ask him if he
20 would be willing to do that if that would give you some
21 reassurances.

22 The other possibility is, and I haven't talked
23 to the other counsel about it, is simply making a couple of
24 minor changes to this agreement to indicate that certain
25 things have to happen within a certain period of time,

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1 because I agree with Mr. Schwarz, the agreement is really
2 silent with respect to any time constraints here. So that's
3 a legitimate concern on your part.

4 COMMISSIONER MURRAY: So the parties would be
5 willing to renegotiate some language to clarify if that's
6 what the Commission decided?

7 MR. SWEARENGEN: The company certainly would
8 be, yes. I don't think that it would take very long.

9 MR. SCHWARZ: Certainly. I don't know that it
10 would take too long either except that the shuffling of
11 paper. I think that the four of us can adjourn from here
12 and go chat with Judge Brown quite quickly. I'm not sure
13 when -- Mr. Fischer will be back tomorrow. I'm not sure
14 when Mr. Duffy will be back.

15 I think talking to the judge is probably a
16 more expeditious and quicker way of handling our oversight.

17 COMMISSIONER MURRAY: Now I have another
18 question before I pass the microphone here. The language
19 regarding this Commission's order no longer being subject to
20 appeal, what can we do to make that -- can we just have a --
21 can there be a statement by the parties that they will not
22 appeal it? Would that be sufficient, or are you thinking
23 that somebody who was not a party might appeal it?

24 MR. SCHWARZ: That last point is exactly it.
25 The statutes provide that basically anyone can file a Motion

1 for Rehearing. Although, I mean, it's recited that the ANG
2 rate case is not part of this settlement, we had had talks
3 with the other parties in that case, and I don't know --
4 again, I don't anticipate that they would file a Motion for
5 Rehearing of a settlement of cases in which they're not a
6 party, but that's I think the reason that that language was
7 put in.

8 I would anticipate that if the Commission
9 issues an Order, 30 days will run, and if -- certainly none
10 of the signatory parties are going to file a Motion for
11 Rehearing, but there's no way that we can preclude someone
12 else from doing so, and I think that's why the language is
13 structured the way it is.

14 COMMISSIONER MURRAY: And in the event that
15 someone does file an appeal, what do you anticipate being
16 the result?

17 MR. SCHWARZ: I anticipate looking for other
18 work.

19 (Laughter.)

20 I don't know. I haven't -- I'm sure that I
21 will spend considerable time thinking of things hopefully
22 artfully to do to spike those wheels, but --

23 COMMISSIONER MURRAY: What happens to the
24 money in the meantime if there's an appeal?

25 MR. SCHWARZ: Well, if there's an appeal, the

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1 money that's in the registry will continue in the registry,
2 and the balance of the funds will remain with ANG until such
3 time as the court money can be bundled with the additional
4 618,000 and you get a single bill credit distribution.

5 MR. SWEARENGEN: Could I jump in again? I
6 don't know that there would have to be a 30-day fuse on the
7 Order. In other words, I think if you issue an Order and
8 made it effective within ten days, I think we'd all be
9 comfortable that that would be long enough.

10 I think the law is any interested person,
11 which is any customer, can file an Application for
12 Rehearing. If none were filed within that time period, no
13 one could take an appeal. We'd have a final unappealable
14 Order.

15 If someone did file an Application for
16 Rehearing within the ten-day period, once you-all overrule
17 that, and I'm assuming that you would, let's assume that you
18 did that, that party would then have 30 days to take an
19 appeal to the Circuit Court of Cole County. If that did not
20 happen, we would have a final unappealable Order.

21 So I don't think you're really looking at a
22 very long period of time. First of all, I think the chances
23 of a non-party to a Commission proceeding coming in and
24 filing an Application for Rehearing is pretty remote. I
25 don't ever remember that happening. The court has said that

1 it's a possibility, and that's why we have this type of
2 language in these agreements, and I think it needs to be in
3 there, but I don't ever remember a non-party coming in. Do
4 you, John?

5 MR. COFFMAN: In any case?

6 MR. SWEARENGEN: In any case coming in and
7 filing an application. Okay. John's nodding yes. That's
8 why I want to leave the language in.

9 MR. COFFMAN: I can remember --

10 COMMISSIONER MURRAY: It's been done.

11 MR. COFFMAN: -- a Missouri-American case that
12 there was one party that did file an application.

13 MR. SWEARENGEN: That's why we need the
14 language in it.

15 MR. COFFMAN: There were several other appeals
16 going on at the same time, but Stewart Conrad has tried that
17 in one scenario.

18 COMMISSIONER MURRAY: Did anybody else want to
19 add anything to those questions or those answers?

20 All right. Thank you, Judge.

21 JUDGE HOPKINS: Commissioner Lumpe.

22 COMMISSIONER LUMPE: Yes. Ms. Shemwell,
23 refresh my memory. On 96-227, the case, ANG won that case
24 in the Circuit Court and was reversed in the appeals; is
25 that correct?

1 MS. SHEMWELL: That's correct, your Honor.

2 COMMISSIONER LUMPE: All right. I guess some
3 of my questions are very, very similar to Commissioner
4 Murray's. My concern was it looked as though we had a
5 Catch 22, that if you read 1.8, which said after the later
6 occurring of, and if the second never occurred, there would
7 be no refund by anyone. It would be gotcha, and that
8 concerned me greatly.

9 And that's why I had some -- I wondered why --
10 I think I understand now why you wanted to put them together
11 so there'd be one refund, and that makes sense. But if you
12 do it this way and there's no refund, then I think that is
13 an adverse outcome that shouldn't happen.

14 And that's why I would wonder if whatever
15 solutions you come up with, another one might be to
16 segregate those two so that if Judge Brown did not release
17 that money, at least the customers would get the 600-plus
18 that they have coming. So, I mean, that was my major
19 concern. It looked like a Catch 22, gotcha, you don't get
20 anything.

21 MR. SCHWARZ: I confess, it's not a -- you
22 know, we went over and, you know, there were a lot of people
23 putting their heads together on this, and that's just not
24 anything that, as far as I know, anyone caught. I think
25 that it is a possibility, but I think the quickest way to

1 resolve that is simply to go talk to the judge.

2 COMMISSIONER LUMPE: And ask him --

3 MR. SCHWARZ: Yeah. He's very approachable.

4 COMMISSIONER LUMPE: -- at one point will he
5 release?

6 MR. SCHWARZ: Right.

7 COMMISSIONER LUMPE: I mean, the other one, as
8 Commissioner Murray mentioned, were deadlines. So, I mean,
9 it could be the year 2020 that they decide to release those
10 moneys, you know, or never, with this language.

11 And so, say, at least if he didn't release --
12 if he didn't -- if Judge brown didn't choose to release it
13 for six months, then at least there would be some sort of
14 30-day deadline that you would get the 600,000 anyway. I
15 mean, there's got to be some time there where it's over and
16 not going on ad infinitum.

17 MR. SCHWARZ: If it would be suitable with the
18 Commission, I will undertake to go speak to the judge and
19 indicate, you know, that the Commission's concerned about
20 getting the money back to the customers as promptly as
21 possible and get an indication from him as to when that --
22 see, I don't know if it's, for instance, it's invested in
23 CDs. They may have maturity dates and that sort of thing
24 that I'm not aware of.

25 And I think the easiest way is to, and

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1 probably the quickest way, is to simply go ask and ask him,
2 assuming we get you a Commission Order approving this
3 arrangement on a date certain, when can you get those funds
4 released, and then --

5 COMMISSIONER LUMPE: I won't feel good until I
6 know what date they are going to be released because I don't
7 want to do my part and then have Judge Brown say, Well, I'm
8 sorry, I can't do it, you know, they're locked up in this,
9 that or the other thing, and it's -- I just -- I'm just very
10 concerned that conceivably they would never get any money
11 back.

12 MR. SWEARENGEN: Well, the way I read it is
13 that if -- and I'm looking at the top of page 11 -- if the
14 Circuit Court didn't grant the motion to modify and we did
15 not get that money back from the court, the only amount that
16 ANG is obligated to transfer is the 618,000. The way I read
17 it under that scenario, if that would be transferred, the
18 question would be when, and that would be easily remedied, I
19 think.

20 COMMISSIONER LUMPE: And it would be
21 contingent on the 1.8 which says the later off. In other
22 words, until that is released, they don't have to pay out
23 because you want to do it in one chunk --

24 MR. SWEARENGEN: Right.

25 COMMISSIONER LUMPE: -- the 600. So if the

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1 254 sat around for a year, two years, so would the 618, and
2 that was where I had concerns.

3 MR. SCHWARZ: Yes.

4 COMMISSIONER LUMPE: Okay. And I think if
5 either you segregate them or you get some date certain, and
6 even if you don't get a date certain from Judge Brown, you
7 have a date certain for the 618, or another thought be have
8 ANG pay the whole sum and have ANG collect from the court.

9 MR. SCHWARZ: Well, ANG --

10 COMMISSIONER LUMPE: I don't know how the
11 gentleman from ANG feels about that, but I would like to see
12 the customers get their refund. I think they are entitled
13 to it, and I don't think they should have to wait into
14 infinity.

15 MR. SWEARENGEN: I think that's a good point,
16 and I think we can fix that pretty easily with some date
17 language in this agreement, quite honestly. I don't think
18 it would take a whole lot to address it.

19 COMMISSIONER LUMPE: I would appreciate you
20 going back to the drawing board and making it clearer.

21 MR. SCHWARZ: Would it be satisfactory if we
22 went and talked to the judge and then, say, tomorrow -- I
23 mean, that's something that we can do tomorrow. If we can
24 get ahold of the judge this afternoon or tomorrow morning,
25 we can communicate whatever information we find.

1 If it looks like the judge is going to be
2 balky, then we certainly would amend the language of the
3 stipulation, I think, to deal with that, but I guess along
4 the lines --

5 COMMISSIONER LUMPE: As your first step to
6 speak to the judge, I don't have a problem, but if whatever
7 you find out from him becomes a problem, then I think you
8 need to revise the language.

9 MR. SWEARENGEN: If I can jump in again. I
10 think we can fix the language to address your concern and
11 make sure that under any scenario the customers are going to
12 get the \$600,000 back by a time certain without going and
13 seeing the judge.

14 I think we can probably in ten minutes here
15 hopefully get some language and tell you what that is on the
16 record this afternoon and at least have that issue
17 addressed.

18 COMMISSIONER LUMPE: At least it wouldn't tie
19 the two together so that I have to wait for the judge before
20 I --

21 MR. SWEARENGEN: That's your concern, and
22 that's a very legitimate concern.

23 COMMISSIONER LUMPE: That is one of my
24 concerns.

25 MR. SWEARENGEN: I think we can fix that in

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1 just a few minutes. I don't think we have to go see the
2 judge to do that.

3 MR. SCHWARZ: I will tell you --

4 COMMISSIONER LUMPE: But I would still like to
5 have the judge tell me by some date certain that he intends
6 to release those moneys.

7 MR. SCHWARZ: Yes. I, speaking as someone on
8 the Staff, and I don't mean to disparage my co-signatory
9 Atmos, but the Commission may remember that earlier this
10 year we ran into some problems with the Atmos billing
11 systems which resulted in adjustment, not only adjustments
12 to customers' bills, but contributions to low-income energy
13 assistance programs.

14 I have a very strong preference for only
15 dealing with it once if that can be done expeditiously,
16 and --

17 COMMISSIONER LUMPE: And I think that would be
18 the efficient way to do it, Mr. Schwarz, but if not --

19 MR. SCHWARZ: Yes. If not.

20 COMMISSIONER LUMPE: If not, and if you can't
21 get it from the judge, then do it twice.

22 MR. SCHWARZ: Exactly. Exactly. But I --
23 rather than --

24 COMMISSIONER LUMPE: Right. And I understand
25 what you're saying about billing and I understand billing

1 issues and that sort of thing, but my --

2 MR. SCHWARZ: Correct.

3 COMMISSIONER LUMPE: -- my concern is getting
4 it to the customers.

5 MR. SCHWARZ: Forthwith.

6 COMMISSIONER LUMPE: Thank you very much.
7 That's all I have.

8 JUDGE HOPKINS: Thank you. Commissioner Gaw.

9 COMMISSIONER GAW: Thank you, Judge. I just
10 have a couple of clarification -- well, I say a couple. I
11 better not say that. I have some questions that will help
12 me a little bit here on clarification at a very basic level.

13 The 254,000 that you referred to earlier, that
14 is from which case again?

15 MR. SCHWARZ: That is from the lead case,
16 GR-96-227.

17 COMMISSIONER GAW: And its status is
18 currently?

19 MR. SCHWARZ: That case was appealed to the
20 Circuit Court, and I don't -- they changed their numbering
21 system twice. It started off as CV-199393. I'm not sure
22 what they're calling it now.

23 That case, the Circuit Court reversed the
24 Commission. The Commission appealed it to the Western
25 District. The Western District affirmed the Commission's

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1 decision, and remanded it back. So that is -- the
2 disposition of those funds is resolved.

3 COMMISSIONER GAW: All right. And that is --
4 when we're referring to the 254,000, is that the exact
5 amount or is that the principal amount and there's interest
6 accruing?

7 MR. SCHWARZ: That is the principal amount.
8 There is interest accrued since October of '99.

9 COMMISSIONER GAW: And there is no dispute
10 about the interest as far as the parties are concerned or as
11 far as the Circuit Court is concerned?

12 MR. SCHWARZ: The Circuit Court will have
13 records of where it deposited those funds and the interest
14 that has accrued to those funds specifically.

15 COMMISSIONER GAW: All right. So in that --
16 that amount when we were -- when Commissioner Lumpe and
17 others were inquiring earlier, that is -- that particular
18 amount, 254 plus interest, this agreement contemplates its
19 distribution when? And I understand that's part of the
20 problem.

21 MR. SCHWARZ: That's correct, that's part of
22 the problem. I can't tell you I know the --

23 COMMISSIONER GAW: If you were -- in trying to
24 figure out how to fix this agreement, it would be possible,
25 would it not, to put a date in this agreement either -- even

1 if you have to discuss it with the judge so that we will
2 have as a Commission something in front of us that has a
3 deadline on that particular account?

4 MR. SCHWARZ: Yes. And --

5 COMMISSIONER GAW: Go ahead.

6 MR. SCHWARZ: I mean, we can either amend the
7 agreement or we can inform the Commission by letter to the
8 file what undertaking the judge has made.

9 COMMISSIONER GAW: I'm most -- it strikes me
10 that it would be more helpful to us to have some sort of a
11 date cutoff for distribution in the agreement itself. And
12 if nothing happens by that date, some party must have the
13 obligation to pursue getting that money back from the
14 Circuit Court, and I'm not sure who that is the way this
15 is -- the way this is drafted currently.

16 Is there a party who shoulders that burden if
17 that amount for some reason is not turned over to be --

18 MR. SCHWARZ: I think it's Ms. Shemwell.

19 MS. SHEMWELL: I think you're looking at her.

20 MR. SCHWARZ: I think it's Ms. Shemwell,
21 because the money was paid into the stay fund pursuant to
22 the statutes to preserve the Commission's decision, and so I
23 would think that it would be Ms. Shemwell as attorney for
24 the Commission who would be doing that.

25 COMMISSIONER GAW: Because all of the other

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1 parties at that point in time would basically be out of the
2 case, that judgment having been final; would that be
3 accurate?

4 MS. SHEMWELL: Yes, and I don't see anyone
5 objecting to our pursuing that money.

6 COMMISSIONER GAW: I wouldn't either. I just
7 want to make sure that we have someone who's going to take
8 on the affirmative responsibility if that occurs. And if
9 that would occur and that would in some way, which probably
10 will not happen, but if it would happen, that it would be at
11 a later time than what you were able to distribute the
12 618,000, is it contemplated how that would be then
13 distributed to the individuals that should receive it?

14 MS. SHEMWELL: It would be distributed in the
15 same method as the 618,000. They would do it on usage and
16 try to do it in a single billing cycle because that's the
17 most efficient and cost-effective manner.

18 COMMISSIONER GAW: I think you're answering
19 most of what I'm asking, but if it -- we would not have to
20 wait on this amount to distribute this 618 and this could be
21 done in the same way on another billing cycle if it had to
22 be. Is that my understanding? Is my understanding correct?

23 MS. SHEMWELL: Yes, sir.

24 COMMISSIONER GAW: If it needs to be, if
25 you-all can clarify that for us, that would be very helpful.

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1 The other question I have is more of a
2 procedural question, and it's not really for you-all as much
3 as it is for us, but if you have suggestions, it would seem
4 to me to be appropriate for you to make them.

5 Because of the unique situation -- I realize
6 it's not totally unique, but the fact that we have several
7 cases here and some of them we're acting in a capacity as a
8 party and some of them acting in a quasi-judicial capacity,
9 would it be appropriate for us to have all of this in one
10 Order, or would it be more appropriate for it to be handled
11 individually under case title according to our particular
12 role in that case?

13 I realize the stipulation groups all of these
14 together, and I'm not necessarily suggesting that that
15 should be handled any differently. It strikes me that there
16 is some question about the appropriateness of one Order to
17 deal with all of these cases when the Commission is in
18 different roles in different cases. And if you have
19 suggestions on that, I'd like to hear them.

20 MR. SCHWARZ: Well, I don't know if I have
21 suggestions. I have confessions. Originally we
22 contemplated that the Commission -- the Commission would
23 sign as a party to the document as well with respect to just
24 those issues that involve circuit court litigation. But
25 Mr. Joyce when he finally really took a look at it, and I

1 concur with him, that's simply not appropriate.

2 And I know that the document is sprinkled with
3 the Commission shall and the Commission shall, and all that
4 language sneaked in when the Commission was going to be a
5 signatory as well and we didn't go back and get it scrubbed
6 out.

7 I think that it's -- I certainly hope that
8 it's plain that that's what the parties anticipate should
9 the Commission approve the settlement. We certainly didn't
10 intend to imply that we thought that we could bind the
11 Commission. It just originally was drafted that the
12 Commission too would be a signatory.

13 It is a unique situation in that Atmos is now
14 a signatory to ACA cases in which they have no interest
15 basically except as distributing the money.

16 I think that the fact that the property's
17 transferred from ANG to Atmos probably is a situation that
18 won't recur in the future. It's certainly something that I
19 think everyone in the General Counsel's Office is now far
20 more cognizant of, and I think that we will certainly make
21 every effort in the future to avoid those kinds of
22 entanglements.

23 Associated Natural Gas really does want to
24 wind up its ACA involvement in Missouri, and I think that to
25 the extent that that's what they want to do, they want to

1 wind up old cases, new cases, was a factor that affected how
2 this thing was put together. It's not unreasonable and
3 it's --

4 COMMISSIONER GAW: I'm not -- and I appreciate
5 what you just said, counsel. What I'm -- I guess I'm being
6 a little more specific in asking whether or not when the
7 Commission does its Order, whether it should be issued just
8 on those cases which are technically in front of it and
9 whether or not in order to make sure that the stipulation,
10 if it is approved, is fully effectuated, that those cases
11 where the matters pending are not in front of us in a
12 capacity as a decision-maker but rather a party should be
13 handled with appropriate documents filed in those cases
14 wherever they may lie.

15 And if you have suggestions on that or if you
16 think it's an important matter in this case, that's what I'm
17 looking for. I'm not sure that it's -- it's not causing any
18 particular consternation, I don't think, but I do note it
19 and I have not been able to resolve it myself at this point.

20 So if you have suggestions, I'd listen to
21 them. Anyone else, you're welcome to join in. Everyone is
22 ducking like in class.

23 MR. SCHWARZ: Certainly on the lead case, the
24 affirmance by the Court of Appeals of the Commission's
25 decision ends that case. There's nothing further for the

1 Commission to do in that original case except insofar as it
2 has an interest in seeing that the stay fund in the Circuit
3 Court is actually distributed.

4 COMMISSIONER GAW: But it would not be
5 necessary for us in an Order, would it, to address that
6 case?

7 MR. SCHWARZ: No.

8 COMMISSIONER GAW: That's kind of -- that's
9 more particularly what I'm looking for, making sure that our
10 record is clean in our Order so that we're handling it
11 appropriately as a party or as a decision-making authority.

12 Okay. I think I've gotten all I can drive
13 here.

14 JUDGE HOPKINS: Let me ask --

15 COMMISSIONER GAW: Thank you all very much.

16 JUDGE HOPKINS: Let me ask Mr. Schwarz one
17 question. What was the case number Commissioner Gaw was
18 referring to? Was that the 227 or the --

19 MR. SCHWARZ: That's correct, the lead case,
20 227, and --

21 JUDGE HOPKINS: 191 is actually --

22 MR. SCHWARZ: 191 is scheduled for argument on
23 the first in the Circuit Court. Assuming we can get all our
24 ducks in a row, I would assume that that will be dismissed,
25 that that appeal would be dismissed and, again, the

1 Commission's Order would then be final and there would be no
2 further action the Commission would need to take. I think
3 it's 191.

4 JUDGE HOPKINS: I believe that's correct. So
5 you're saying 227 does not have to be mentioned in the
6 Commission's Order?

7 MR. SCHWARZ: I would -- I don't think the
8 Commission has to enter an Order in 227. I think that just
9 for purposes of clarity and, you know, five years from now
10 when someone wants to do a settlement and they look back
11 they can trace things back, that referencing the other cases
12 is probably appropriate, but I don't think the Commission
13 has to enter an Order in either of those two cases.

14 JUDGE HOPKINS: If they're mentioned on the
15 captions but not mentioned in the therefore it is ordered,
16 five years from now is that going to confuse somebody or
17 help somebody?

18 MR. SCHWARZ: Lord knows. I don't think so.

19 JUDGE HOPKINS: You don't think so?

20 MR. SCHWARZ: I don't think there'll be
21 confusion. I don't think they'll be any more confused than
22 we were when we drafted the agreement.

23 COMMISSIONER LUMPE: Just one. On that
24 particular case, if you're going to talk to the judge about
25 releasing the money, and my understanding was from what you

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1 had said or the Staff or the party had said was that the
2 judge was not willing to move that August 1st date, if it
3 should take us -- and I don't know whether it will -- past
4 August 1st, is he still going to make you all come down
5 there and start arguing the case?

6 MS. SHEMWELL: Mr. Duffy and I intend to go
7 and visit with Judge Brown and explain that we're working on
8 a settlement, and I suspect -- or that we have resolved the
9 matter and present it to him. I suspect he doesn't want to
10 hear it if he's not going to need to decide.

11 COMMISSIONER LUMPE: I wouldn't think that
12 he'd be so bereft of work that he would want to do that.

13 MS. SHEMWELL: I'm pretty sure that's right.

14 COMMISSIONER LUMPE: And the other thing to go
15 along with what Commissioner Gaw is saying, it seemed that
16 we had earlier a case in the MGE Stip & Agreement which had
17 some settlement of various court cases, and I think maybe
18 we're getting more of those and maybe that does raise the
19 issue of how we do address them appropriately just to add on
20 to what Commissioner Gaw was saying.

21 Thank you. That's all.

22 JUDGE HOPKINS: Commissioner Murray has a
23 question or two.

24 COMMISSIONER MURRAY: Thank you, Judge.

25 I notice that the Stip & Agreement has the

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1 language which I guess is just boilerplate language about
2 the agreement may be amended, modified or waived, discharged
3 or terminated only by an instrument in writing signed by all
4 parties.

5 Would the parties have to come back in to the
6 Commission for approval of an amendment to the agreement?

7 MR. SCHWARZ: Certainly the Commission's -- we
8 can't -- the parties can't effectuate any agreement among
9 themselves. Yes, the Commission's definitely going to have
10 to, at least in the open cases, that is GR-98-399, GR-99-392
11 and GR-2000-573, enter an Order approving the settlement.

12 So my answer is yes, the parties will have to
13 submit something. The form that it takes I think -- and I
14 think I've come to the conclusion that simply amending the
15 stipulation is probably the easiest thing to do.

16 COMMISSIONER MURRAY: All right. And I'm not
17 talking about your amendment that we're asking you to do
18 here today. I'm talking about the language that's in the
19 agreement that provides that it may be amended, modified.
20 That's page 15.

21 MR. SCHWARZ: Right.

22 COMMISSIONER MURRAY: I'm sure it's
23 boilerplate, but what I'm asking you is, the parties can't
24 do that collectively without approval by the Commission; is
25 that correct?

1 MR. SCHWARZ: No. I mean, we can --

2 COMMISSIONER MURRAY: No, it's not correct?

3 MR. SCHWARZ: No, that's not correct. The
4 parties can -- until it's approved by the Commission and the
5 Commission, you know, by Order either accepts or rejects it,
6 I think it remains subject to amendment by the parties.

7 COMMISSIONER MURRAY: Yes, but after the
8 Commission approves it --

9 MR. SCHWARZ: No.

10 COMMISSIONER MURRAY: -- then it cannot be
11 further amended?

12 MR. SCHWARZ: No. No.

13 COMMISSIONER MURRAY: I just wanted to clarify
14 that because I believe the proposed Order as it was written
15 said it may be amended by the parties, but it would still
16 have to be --

17 MR. SCHWARZ: No. Once the Commission
18 approves --

19 COMMISSIONER MURRAY: -- normally by approval
20 of the Commission.

21 MR. COFFMAN: I suppose that's something else
22 that can be clarified in this paragraph.

23 COMMISSIONER MURRAY: Well, I think it's more
24 that we need to make sure it's clear in the Order.

25 MR. SCHWARZ: Clear in the Order, right.

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1 COMMISSIONER MURRAY: And also the Order, the
2 proposed Order that we were looking at yesterday had a
3 paragraph in it requiring that the Staff do a report in
4 reference to Case No. GR-96-227, and that report would be a
5 full accounting of those funds.

6 And my question -- let's see. Well, first of
7 all it says, Within ten days of the date of this Order the
8 Staff must file a report stating the dates, the date on
9 which these funds were paid in to the court registry and
10 then state the total amount of interest or investment income
11 that has accrued to the date of this Order, and it goes on
12 and provides other things.

13 But my question to you is, after we get such
14 accounting or such report, is there anything we can do with
15 it? What if it shows some irregularity?

16 MS. SHEMWELL: I'm sorry. Are you asking what
17 if there's no interest, if it shows no interest?

18 COMMISSIONER MURRAY: Or some irregularity is
19 shown. What recourse do we have at that time to do any --
20 as I'm reading that, I'm thinking, okay, we're asking for an
21 accounting, but once we get it, what can we do with it?

22 MS. SHEMWELL: Well, the money has certainly
23 not been in Staff's or the Commission's control. It's over
24 in the control of the court. So the Staff could only report
25 to the Commission what they can determine from the court and

1 the timing that the court decides, of course, I suppose.

2 I don't know. The only thing I can think of
3 is go to the Attorney General, actually, if there's some
4 irregularity. Anybody else have thoughts?

5 MR. SCHWARZ: There have been reports in the
6 newspaper, and I assume they accurately reflect, that
7 there's been some litigation, I guess, under the aegis of
8 the State Auditor and the Attorney General to recover for
9 the -- there are funds in the Cole County Circuit Court that
10 according to the Attorney General and the Auditor should
11 escheat to the State.

12 I would assume that if there are any
13 irregularities in the escrow account itself, that they would
14 be appropriate parties to pursue that, but I mean, I
15 haven't -- I haven't looked at the statutes that govern
16 those sorts of things, and that's something we'd have to
17 look at.

18 COMMISSIONER MURRAY: Okay. If anybody else
19 has anything to add, that's fine. Thank you.

20 JUDGE HOPKINS: Is that all? Chair Simmons.

21 CHAIR SIMMONS: I don't have any other
22 questions. I don't have any other questions. Should we
23 deliberate at this point in time to then come back and ask
24 the judge to give instructions to the parties based on this
25 proceeding or -- I guess I ask the Commissioners that

1 question. Do we adjourn for a moment? We don't have to.

2 I'm just asking the question.

3 COMMISSIONER LUMPE: Isn't it in their
4 ballpark to sort of revise?

5 MR. SCHWARZ: If it might help, I anticipate
6 that yet this afternoon or sometime tomorrow I will catch up
7 with Judge Brown to see what kind of commitments he can make
8 on when that money can be released, assuming that the
9 Commission approves that.

10 We will address -- and I would ask you, would
11 it be adequate if we just amend those paragraphs that we've
12 talked about, I think it's 1.8 and possibly 1.9, to address
13 those concerns and simply indicate that, you know, these are
14 the substitute paragraphs 1.8 and 1.9?

15 JUDGE HOPKINS: Mr. Schwarz, the Commission
16 has indicated that that's what they want you to do. Do you
17 know when you would be able to have that to me?

18 MR. SCHWARZ: I would think -- I would hope
19 sometime tomorrow. Again, Judge Brown may be out of town,
20 too, at this stage. I don't know.

21 Well, I'd like the amended language to
22 indicate clearly to the Commission when they can expect
23 money from the Circuit Court, if the Circuit Court has any
24 objections to the provisions of the parties. So I'd like to
25 have that reflected in what we submit to you, and I would

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1 think that certainly by Friday we could get that to you. We
2 can -- even if he's on vacation, he's got to be close enough
3 to a phone that we can track him down.

4 COMMISSIONER LUMPE: I think there were a
5 couple of other changes, too. We talked about the
6 Commission shall, that you -- wouldn't you want to sort of
7 clean that up? And I think there was another one that
8 Commissioner Murray had that you talked about needing
9 modification or clarification. So I think that there are a
10 few other places.

11 COMMISSIONER MURRAY: I think the other point
12 that I raised about the amendment language does not need any
13 additional language in the Stip & Agreement, and the only
14 thing that I would disagree with, perhaps disagree with is
15 that we need specific language about when we expect those
16 funds to be released in the agreement.

17 I don't -- I guess what I'm more concerned
18 about is that there be language that the \$618,000 be
19 released, period, preferably if it can be all released as a
20 lump sum, but if it cannot all be released as a lump sum by
21 a date certain, that at least the \$618,000 will be released
22 by a date certain.

23 And that to me would be easier to put in
24 amended language than would language about when the court is
25 expected to release the funds.

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1 COMMISSIONER GAW: Judge, if I could follow up
2 on that, please. It seems on the 254 that, if I've got this
3 settled in my mind right, that I don't know how necessary it
4 is for us to have something from Judge Brown before we
5 have -- I mean, basically what we're saying with that amount
6 is that case is done.

7 And if the obligation is on the Staff to
8 pursue collection of it back, the other parties really, as
9 far as a deadline is concerned, I mean, I think if we're --
10 if the Commission's Staff is the laboring oar there in
11 correcting it back, then I'm not sure that on that amount
12 you have to have some sort of a date now that I think about
13 it after having it fully explained.

14 It's really Staff's obligation to collect it
15 back. The only thing that the Order, really that the
16 agreement has to have is just the mechanism for delivery of
17 that money back once it is collected back.

18 And the parties, other than Staff, if I
19 understand you correctly, can do nothing about getting it
20 collected back. They just have to -- you just have to make
21 sure the language, which I think it contemplates with some
22 revisions on the other amount, gets it delivered after it's
23 back in Staff's control. Would that be accurate?

24 MS. SHEMWELL: Yes, sir.

25 COMMISSIONER GAW: So I'm not sure how much

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1 information we need from Judge Brown on that.

2 MR. SWEARENGEN: I think you're right.

3 MR. DORITY: Commissioner Gaw, I think you're
4 right, except the only wrinkle would be, as Mr. Schwarz
5 indicated earlier, is we were hoping it would be a one-time
6 credit.

7 COMMISSIONER GAW: Yes.

8 MR. DORITY: To the extent that we can combine
9 those funds together, I guess we would need to have an idea
10 what is the outer limit of Judge Brown getting those funds
11 back to us at a reasonable time that we can combine those
12 together understanding that --

13 COMMISSIONER LUMPE: That's where the deadline
14 for the 618 is important. We don't want to wait until the
15 Staff goes and collects and all that sort of stuff.

16 COMMISSIONER GAW: It strikes me that from our
17 standpoint, from the Commission's standpoint, that we are
18 fairly -- I think we're speaking together that we want the
19 618 to be delivered ASAP regardless of what happens to the
20 other amount. And I realize that it would be better from
21 the parties' standpoint if it could happen together.

22 It strikes me that if you-all wish to go talk
23 to the judge about that, that that's -- that we don't
24 have -- that it's not necessarily something that we have to
25 have in front of us. If you-all can get that worked out

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1 with him, fine, but I don't think that should have an impact
2 on our particular Order and what we do here as long as we
3 have the 618 spelled out that it's going back and it's going
4 back within a certain time frame.

5 If you-all can get the good judge to release
6 the rest of it in that same time frame, more power to you,
7 and I think that would be fine, if that makes -- if that
8 makes sense to you.

9 MR. SWEARENGEN: Could I ask one question?
10 What's the time frame you're talking about?

11 COMMISSIONER GAW: I think that's a good
12 question. I'm not probably the right one to try to answer
13 that, but --

14 CHAIR SIMMONS: I think that that was probably
15 the next issue that we'll probably want to present to the
16 Judge is, after the Commissioners are clear on what it is
17 that we would like to do and then the parties are clear,
18 understanding what it is that we would like to do, then what
19 is that time frame from when you, Judge, need to at least
20 have an Order in front of us so that we can move forward?

21 And I guess there are some timing issues that
22 either Judge needs to clarify for us or the parties need to
23 agree upon.

24 COMMISSIONER GAW: I may be able to -- if the
25 parties are -- since you're rewriting this agreement, if the

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1 parties have a workable time frame for that 618,000 with a
2 date certain that it's going to be acting on to recommend to
3 the Commission, unless the Commissioners already have some
4 idea about what that date should be, perhaps that would be
5 appropriate to have an agreement. I think that's what
6 you --

7 MR. SWEARENGEN: That's my question.

8 COMMISSIONER GAW: -- were contemplating
9 earlier.

10 JUDGE HOPKINS: I think if you give us a date
11 certain, then that's something I can present to the
12 Commission.

13 MR. SWEARENGEN: I guess I was asking you to
14 tell us because you may give us a date that --

15 COMMISSIONER LUMPE: Mr. Dority and
16 Mr. Swearngen, I know you have billing cycles, and I think
17 that's possibly what you were going to mention. So that I
18 would say, you know, some billing cycle that is reasonable,
19 not long and drawn out, that how it works into your billing
20 cycle, whatever the first or second one might be.

21 MR. DORITY: Your Honor, I think that's why in
22 paragraph 1.9 there's specific language that whatever point
23 in time that we get that amount of money from ANG, that we
24 be provided a 45-day window from that date to begin the
25 refunds on a one-time basis so that we could get them all

1 within the same billing cycle, and that's the only time
2 frame I think that from Atmos' standpoint would be
3 important.

4 COMMISSIONER LUMPE: But if you had to do two
5 billing cycles, the 618 and then wait on the judge, you're
6 saying that 45 days -- what is the time frame that ANG is
7 going to -- or whoever is going to turn it over to Atmos?

8 MR. DORITY: That's the other question that I
9 expect Mr. Swearengen has more of an interest in.

10 COMMISSIONER LUMPE: That's something you
11 would have to work out between the two of you; is that
12 correct?

13 MR. SWEARENGEN: That's right.

14 COMMISSIONER MURRAY: Can I ask what the
15 parties feel is the reasonable likelihood that the funds
16 will be released?

17 MS. SHEMWELL: From the court?

18 COMMISSIONER MURRAY: Yes, from the court.

19 MR. SWEARENGEN: Let me just tell you what I
20 scribbled down here and you-all can tell me if I'm way out
21 of line.

22 I'm looking at the top of page 11, and I
23 started out and I said, Notwithstanding the foregoing
24 language of paragraph 1.8, which is what we're in, if within
25 30 days after the Commission's Order approving this

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1 agreement is effective and not subject to appeal, and then
2 go back to the language, the Circuit Court does not grant
3 the Motion to Modify. You go down to the bottom, and then
4 it would say, The only amount that we're obligated to refund
5 is the 618, and then I say, Which amount will be transferred
6 no later than blank in any event.

7 So within 30 days, if we haven't heard from
8 the court, we're obligated to go ahead and transfer that
9 \$618,000, and I was going to plug a date in there as to when
10 that would be.

11 MS. SHEMWELL: September 1 maybe since we're
12 going up.

13 COMMISSIONER LUMPE: Can counsel from ANG give
14 you some indication how long it would take them?

15 MR. DANGEAU: Yes, ma'am. We can be prepared
16 to pay that 618 to Atmos any time after your Order approving
17 the settlement becomes final. The issue will be with them
18 on the distribution to customers.

19 COMMISSIONER LUMPE: I mean, if 30 -- I mean,
20 if after we do this in 30 days you can transfer immediately,
21 well, then, that's fine. Then you have the 45-day billing
22 cycle.

23 MR. SWEARENGEN: And then I was going to add
24 which amount -- then I was going to say, If thereafter ANG
25 comes into possession of the principal and interest, which

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1 we're back to that case, it shall transfer that sum within
2 30 days or whatever, and then you would have two lump sum
3 payments to distribute under paragraph 1.9. I think
4 something like that would work, if that sounds reasonable to
5 the Commission.

6 COMMISSIONER MURRAY: That sounds like good
7 language to me, but I still have a question. If you have
8 language in there that if within 30 days the Circuit Court
9 does not grant the motion --

10 MR. SWEARENGEN: We're going to go ahead and
11 then transfer that \$618,000.

12 COMMISSIONER MURRAY: Well, assume that the
13 Circuit Court does within 30 days grant the motion but it's
14 going to take another 15 to 30 days to release the funds.
15 Do you really want to do it in two payments versus one? I
16 mean, don't you have to allow some time for the funds to be
17 released after the motion is granted?

18 MR. SWEARENGEN: Perhaps.

19 COMMISSIONER MURRAY: And I would think it
20 would be reasonable to include a time for the funds to
21 actually be released.

22 MR. SWEARENGEN: I guess the way to do that is
23 make the 30 longer.

24 MR. DORITY: Perhaps that's a subject of our
25 discussion with the judge as to what is a reasonable time to

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1 get our hands on the money.

2 COMMISSIONER GAW: If it's possible to do this
3 in a shorter version rather than using your notwithstanding
4 language, counsel, that would be helpful.

5 MR. SWEARENGEN: I always hate to negotiate a
6 contract with a Commissioner. I was just trying to make as
7 few changes as possible.

8 COMMISSIONER GAW: I understand, and I
9 appreciate deference to your co-counsel who's not here. But
10 if it's possible to make it clearer and more concise, we
11 would appreciate it.

12 MR. SWEARENGEN: Might just rewrite the whole
13 paragraph.

14 COMMISSIONER GAW: Yes, sir. Thank you.

15 MR. SWEARENGEN: I understand what you're
16 saying.

17 MS. SHEMWELL: Commissioner Murray, you had a
18 question about the likelihood. I think we have all thought
19 that it's extremely likely that the Circuit Court will
20 release the funds. Is that your question?

21 COMMISSIONER MURRAY: The question now is
22 within what period of time so that it does not have to be --
23 the payment does not have to be paid in two different time
24 periods.

25 MR. SWEARENGEN: I think that's a good point.

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1 I think we give ourself enough time in here that'll work
2 itself out in talking to the judge.

3 MR. DORITY: As a party who has funds within
4 one of those accounts in a different proceeding, it's my
5 understanding that the judge has now invested those in a
6 sweep account which should be relatively easy to access.

7 MR. SCHWARZ: Sweep account?

8 MR. DORITY: Where they do it on a daily
9 basis.

10 CHAIR SIMMONS: Any other Commissioner
11 suggestions, questions? If not, Judge, do you have all the
12 information you need to proceed?

13 JUDGE HOPKINS: Yes, I do. If someone will
14 send me an electronic copy of that as well as a paper copy
15 of that, it will make me happy.

16 Anything else? Thank you. We're off the
17 record.

18 WHEREUPON, the question and answer session was
19 concluded.

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