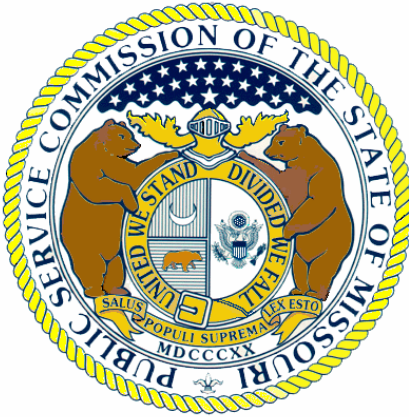


**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**



In the Matter of Atmos Energy Corporation's Tariff )  
Revision Designed to Consolidate Rates and ) **Case No. GR-2006-0387**  
Implement a General Rate Increase for Natural Gas ) **Tariff No. YG-2006-0762**  
Service in the Missouri Service Area of Atmos. )

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**REPORT AND ORDER**

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**Issue Date:** February 22, 2007

**Effective Date:** March 4, 2007

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**APPEARANCES**

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**REGULATORY LAW JUDGE:** Nancy Dippell, Deputy Chief Regulatory Law Judge .

## **REPORT AND ORDER**

**Syllabus:** This order rejects the general rate increase originally requested by Atmos Energy Corporation. The order also authorizes Atmos to file new tariff sheets in compliance with this order. If Atmos files new tariff sheets with the new fixed monthly charge rate design, it shall also implement an efficiency and conservation program as set out herein. Otherwise, the Commission finds that Atmos shall maintain its current rate structure with no additional revenue required.

### **Findings of Fact**

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

### **Procedural History**

On April 7, 2006, Atmos filed revised tariff sheets which set forth revised rate schedules and certain revised charges for all of Atmos' service territories in the state of Missouri, designed to produce an increase of approximately \$3.4 million in new revenues for Atmos. The new rate schedules would increase revenues to provide an

overall rate of return on rate base of 8.59 percent on the test year rate base of \$56.0 million.<sup>1</sup>

Atmos is the largest pure natural gas distribution company in the United States, with corporate offices located in Dallas, Texas. Atmos is comprised of six gas utility operating divisions, and its Mid-States Division (located in Franklin, Tennessee) provides natural gas distribution service in Missouri, Tennessee, Virginia, Georgia, Kentucky, Illinois and Iowa. Regional and state offices for the Missouri operations are located in Hannibal, Jackson and Sikeston. Atmos serves approximately 60,000 customers in Missouri, and the customer base includes residential, commercial and industrial customers. Employing a Missouri-based work force of approximately 75 employees, Atmos' utility plant in Missouri includes over 2,150 miles of transmission and distribution lines.<sup>2</sup>

Atmos' Missouri operations are comprised of six base rate areas located in the northeast, southeast and west-central areas of Missouri, and are the result of the following acquisitions: Greeley Gas Company purchased in 1993; United Cities Gas Company purchased in 1997; and Associated Natural Gas Company purchased in 2000.<sup>3</sup>

Atmos had not filed for a rate case since acquiring these Missouri service areas, so the rates for each district were set when the preceding LDC had its last rate case. United Cities filed its last rate request in Missouri in 1994, and rates were

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<sup>1</sup> Ex. 1, pp. 5-6, 10-11.

<sup>2</sup> Ex. 1, pp. 4-5, 10.

<sup>3</sup> Ex. 1, p. 3; Ex. 110, pp. 1-2.

approved and implemented in 1995. The last rate increase affecting the utility properties Atmos acquired from ANG was filed, approved and implemented in 1997.<sup>4</sup>

A “Joint Issues List, List of Witnesses and Order of Cross-Examination” was filed by the Staff of the Commission on behalf of the parties, on November 14, 2006. As set forth in the “Joint List of Issues,” the parties identified the following issues as being resolved:

1. Billing Determinants
2. Research and Development Rider
3. Noranda (all issues)
4. Class share of revenue by district
5. Uncollectibles in the PGA
6. Customer Service Issues
7. Class Cost of Service

In addition, local public hearings, a rate design technical conference, a settlement conference and evidentiary hearings were held in this matter. The parties each submitted prehearing and post hearing briefs, or a statement declining to do so. The post hearing briefs were submitted on January 19, 2007.

On December 12, 2006, the second part of Exhibit 144 was filed by Staff. No objection to the exhibit was received, and it is hereby admitted into evidence.

### **The Partial Stipulation and Agreement**

In addition to the issues identified as being resolved in the Joint Issues List of November 14, 2006, Atmos, Staff and the Office of the Public Counsel submitted their Partial Non-Unanimous Stipulation and Agreement to the Commission for approval on November 29, 2006. The Agreement sets forth additional issues settled among those parties. Staff filed its memorandum in support of the Agreement on December 12,

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<sup>4</sup> Ex. 1, p. 5; Ex. 110, p. 3.

2006. No party opposed the Agreement. Therefore, as permitted by Commission Rule 4 CSR 240-2.115, the Commission shall treat the Agreement, attached to this Report and Order as Attachment A, as if it were unanimous. The Commission finds the Agreement just and reasonable and, therefore, approves it. In its discussion of the issues as set forth by the parties, the Commission will identify and address those specific components that have been resolved pursuant to the Agreement.

### **The Issues**

- 1. What is the appropriate revenue requirement?**
  - a. What is the appropriate level of expense?**
  - b. What is the appropriate rate of return / return on equity?**
  - c. What is the appropriate level of revenue excess / deficiency?**

Ratemaking involves two successive processes. First is the determination of the revenue requirement; the amount of revenue the utility must receive to pay the costs of producing utility service while yielding a reasonable rate of return to the investors.<sup>5</sup> The second process is rate design, the construction of tariffs that will collect the necessary revenue requirement from the ratepayers.

Atmos' gross annualized revenue of \$16,507,737 was stipulated to in the Partial Non-Unanimous Stipulation and Agreement. Atmos' revised tariff sheets as originally proposed would have increased revenues to provide an overall rate of return on rate base of 8.59 percent on the test year rate base of \$56.0 million. The original proposal also contained a weather mitigation adjustment in the rates. Atmos' requested return on common equity (ROE) in this case was 12 percent.<sup>6</sup>

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<sup>5</sup> *St. ex rel. Capital City Water Co. v. Missouri Pub. Serv. Comm'n*, 850 S.W.2d 903, 916 n 1 (Mo. App., W.D. 1993).

<sup>6</sup> Ex. 14, pp. 29-31.

Staff initially calculated a \$1.2 million revenue excess. Staff is not seeking a revenue reduction or filing an excess earnings complaint. After evaluating the positions of the parties (a difference of \$4.4 million), Staff believed there was a significant chance that it would not prevail in its entire revenue reduction. Furthermore, if Staff failed to prevail on all its issues, Staff believed that Atmos might end up with a revenue increase.<sup>7</sup> And, given that ROE was an issue worth \$1 million, Staff believed the Commission might easily determine that a zero revenue requirement or even a positive change was necessary. Thus, it is Staff's opinion that a zero change in cost of service on a total company basis will still result in just and reasonable rates.<sup>8</sup> Instead of a revenue reduction, Staff is now advocating a change from Atmos' current rate design, to a fixed monthly delivery charge for non-gas costs.

Staff originally proposed a ROE of 8.59 percent to 9.39 percent. Because Staff has advocated a zero change in revenue requirement with a new rate design, Staff no longer advocates a particular ROE. Instead, Staff recommends the revenues stay the same.

After reviewing Staff's proposed new rate design, Atmos abandoned its rate increase proposal and is advocating adopting Staff's fixed monthly delivery charge rate design with the slight modification of "sculpting" rates so that the summer charge is less than the winter charge while overall annual revenues stay the same.<sup>9</sup>

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<sup>7</sup> Ex. 104, pp. 1-2; Tr. 99-102, 106-107.

<sup>8</sup> Ex. 104, p. 2.

<sup>9</sup> Ex. 6, p. 3; Ex. 7, p. 2.



Public Counsel recommends that the Commission find that rates should be reduced<sup>10</sup> based upon the initial revenue requirement position of the Staff. Public Counsel did not file any direct testimony in this case regarding the overall revenue requirement. Public Counsel also has not filed a complaint against the reasonableness of Atmos' existing rates.<sup>11</sup>

The Commission finds, based on the evidence regarding rate of return and the positions of the parties, that regardless of the rate design, no change in cost of service, on a total company basis, is necessary to produce just and reasonable rates. As a result, the Commission finds that the answer to subpart c of this issue – What is the appropriate level of revenue excess/deficiency? – is zero. Having made this determination, the first two subparts of this issue (a. What is the appropriate level of expense? and b. What is the appropriate rate of return/return on equity?) are rendered moot. Nevertheless, the Commission will address Public Counsel's position on these issues.

Public Counsel's witness, Mr. Trippensee, sponsored cost of common equity rebuttal testimony suggesting that the Commission use a seven percent ROE in this proceeding if Staff's rate design proposal is adopted. Public Counsel believes this reduction in ROE is necessary to offset the corresponding elimination of weather variability and other business risk for Atmos. Mr. Trippensee attempted to quantify the risk reduction that he believed was associated with the fixed delivery charge rate

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<sup>10</sup> Tr. 626-627.

<sup>11</sup> Tr. 557.

design.<sup>12</sup> However, as explained further below, the seven percent ROE was calculated using a methodology which is very problematic and is not a method typically relied on by experts in the field.<sup>13</sup>

Both Atmos and Staff's witnesses on this issue, Dr. Donald A. Murry and Mr. Matthew Barnes, thoroughly rebutted Mr. Trippensee's proposal and established that such recommendation was not supported by any commonly accepted rate of return analysis.<sup>14</sup> Mr. Trippensee was also unable to offer any authority in support of his methodology, which Dr. Murry described as "just unorthodox opinion."<sup>15</sup> Furthermore, Mr. Trippensee "did not analyze the cost of common equity of companies that may have similar risk characteristics as those that may be in effect for Atmos' Missouri operations"<sup>16</sup> and "did not even recognize that many of [Staff's] . . . comparable companies have weather mitigation rate designs that minimize risks related to changes in the weather."<sup>17</sup>

As Dr. Murry explained in detail in his Surrebuttal Testimony and on the witness stand, contrary to the criticism that Staff's analysis does not consider the decreased business risk associated with its proposed rate design, seven of the eight companies that Mr. Barnes identified as comparable to Atmos operate under some type of revenue stabilization mechanisms for their residential and small commercial

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<sup>12</sup> Ex. 203, p. 11.

<sup>13</sup> Tr. 179-180.

<sup>14</sup> Ex. 15, Ex. 102.

<sup>15</sup> Ex. 15, p. 3.

<sup>16</sup> Ex. 102, p. 2.

<sup>17</sup> Ex. 102, p. 2.

customers.<sup>18</sup> In addition, Mr. Barnes confirmed that there was no need for further reduction in his recommended ROE because risk is already reflected in his comparable group analysis.<sup>19</sup> The evidence also revealed that Atlanta Gas and Light, one of the comparable companies, has a rate design similar to what Staff is proposing in this case. That company has been authorized a 10.9 percent return on equity.<sup>20</sup> Mr. Barnes further testified that Staff proposed a “range” of ROEs in this case, as it typically does, which covers a variety of risks affecting the companies.<sup>21</sup>

The Commission finds that Mr. Barnes’ analysis of comparable companies includes some degree of risk reduction based on the fact that most of the companies have weather mitigation elements. While Mr. Trippensee had some valid arguments about the need for risk to be considered, his proposed ROE was not reasonable and the Commission finds his methodology to be unreliable.

Based on all the foregoing evidence, the Commission finds that there is zero net additional revenue requirement necessary in order for Atmos to achieve its stipulated gross annualized revenue of \$16,507,737. The Commission finds that rates designed to produce a zero net revenue increase are just and reasonable in that they meet Atmos’ prudent operating expenses and, based on the analysis of Staff of comparable companies, allow an opportunity to earn a reasonable return on the value of the private property dedicated to public service.

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<sup>18</sup> Ex. 15, pp. 4-6; Tr. 89-90.

<sup>19</sup> Tr. 598.

<sup>20</sup> Tr. 512, 592.

<sup>21</sup> Tr. 610-611.

This finding that no change in revenue requirement is necessary does not mean, however, that the Commission accepts Staff and Atmos' fixed delivery charge rate design proposal *carte blanche*. Rather, as will be explained below, the Commission has determined that a fixed delivery charge is not acceptable without a substantial energy efficiency and conservation program.

**2. What is the appropriate treatment of depreciation and should depreciation expense be reduced by a depreciation reserve amortization?**

**Record Keeping and Reporting**

Depreciation Record Keeping and Reporting has been settled in accordance with the Partial Non-Unanimous Stipulation and Agreement.<sup>22</sup>

**Depreciation Reserve Amortization**

Staff and Atmos have proposed a negative amortization of the depreciation reserve in the amount of \$591,000.<sup>23</sup> This approach would be implemented by entering a negative amortization of \$591,000 into the depreciation reserve account 108. This would provide an immediate benefit to Atmos' customers by lowering Atmos' depreciation expense to a level that Staff believes is appropriate.

Public Counsel objects to this negative amortization based on Atmos providing insufficient data for the Staff to perform an accurate depreciation analysis.<sup>24</sup> Public Counsel also objects because it argues that the negative amortization will require Atmos to reinvest moneys already paid by ratepayers in order to reduce current rates,

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<sup>22</sup> Section VI, page 5 and Attachment B.

<sup>23</sup> Tr. 188.

<sup>24</sup> Ex. 107, p. 8.

and will require the customers to pay a return “on and of” these amounts in future rates.<sup>25</sup>

Staff’s witness, Mr. Gilbert, testified that he was unable to verify the accuracy of Atmos’ data and records and “accepted [Atmos] management’s recognition and acknowledgment of an over-accrual of depreciation.”<sup>26</sup> Mr. Gilbert admitted that future ratepayers would be required to repay the \$591,000,<sup>27</sup> but testified that ratepayers would pay less with the negative amortization than they would pay in rates with different depreciation rates. Mr. Gilbert gave the following example:

[I]f we were to use an example of 10 percent for the return on equity for that additional \$591,000 of rate base, it would cost ...[the ratepayers] \$59,100 a year as opposed to savings of \$591,000 a year in depreciation expense. So, the difference of those two would be the net savings to the current ratepayers.<sup>28</sup>

Although there might be different methods of achieving the same goal, with the negative amortization, future rates to customers will be less than if the \$591,000 was reflected in lower depreciation rates.<sup>29</sup> This method of amortization has often been used by both Staff and other utility companies to offset depreciation over- and under-accruals in reserve account 108. In this instance, the amortization would offset an over-accrual to the depreciation reserve.

The Commission finds that, as a whole, the annual depreciation accrual should be reduced by approximately \$591,000. The Commission further finds that

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<sup>25</sup> Ex. 203, p. 13.

<sup>26</sup> Tr. 188-189.

<sup>27</sup> Tr. 200-201.

<sup>28</sup> Tr. 200.

<sup>29</sup> Tr. 200.

entering a negative amortization of \$591,000 to the depreciation reserve account provides an immediate benefit to Atmos' customers by lowering Atmos' depreciation expense. The Commission finds that the benefits of the negative amortization outweigh any potential harm and that the negative amortization is therefore just and reasonable.

3. **What is the appropriate rate design?**
  - a. **What is the appropriate rate structure for residential, small, and medium general service?**
  - b. **What is the appropriate structure for the small general service rate (including the medium general service rate if the small general service class is split)?**

### **Rate Design**

Atmos currently has a "traditional" residential base rate design consisting of a customer charge and a volumetric rate. Under the traditional rate design, residential non-gas margin costs are collected using both a monthly customer charge, which does not vary with usage, and a volumetric charge levied on each Ccf consumed.<sup>30</sup> Non-gas margin costs make up only a portion of a residential customer's total monthly bill. The actual gas cost portion of the bill, called the purchased gas adjustment or PGA, makes up the rest. For the average customer, this is about 80 percent of the total.<sup>31</sup>

In the current case, Staff has proposed a shift from the traditional two-part base rate design to a design in which all non-gas costs are recovered in one fixed monthly charge. This type of fixed delivery charge is often termed a "straight fixed variable" rate design.<sup>32</sup>

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<sup>30</sup> Tr. 317.

<sup>31</sup> Tr. 78.

<sup>32</sup> Tr. 694-695; Tr. 85.

For residential and small general service classes Staff recommends recovering the entire amount of the non-gas, or margin, costs in a fixed monthly delivery charge.<sup>33</sup> Staff believes this proposed rate structure will address two significant current issues affecting the natural gas distribution market: 1) remove disincentives for utilities to encourage and assist customers in making conservation and efficiency investments; and 2) reduce the effects of weather on utility revenues and customer bills.<sup>34</sup>

Under Staff’s proposal, each of Atmos’ three service areas, Western Missouri (WEMO), Northeast (NEMO), and Southeast (SEMO), would have a unique fixed delivery charge that is based, per the Agreement, on the revenues generated by the current residential customers within that geographic service area.<sup>35</sup> Staff’s proposed fixed monthly delivery charges are as follows:<sup>36</sup>

SEMO (includes Neelyville)	\$13.92 / month
WEMO (Butler and Greeley)	\$19.43 / month
NEMO (Kirksville; Palmyra; Hannibal; Canton; Bowling Green)	\$20.61 / month

Staff argues that maintaining the “status quo” rate structure:

1. forces Residential customers whose usage is greater than the average to pay more than the cost required to serve them, while allowing smaller customers to underpay their cost-of-service;
2. discriminates between identical Residential customers in contiguous districts by charging different non-gas margin rates;

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<sup>33</sup> Ex. 110, p. 9.

<sup>34</sup> Ex. 110, pp. 9-10.

<sup>35</sup> Staff Witness Tom Imhoff performed the Class Cost of Service study (Imhoff Direct p. 3-8). The parties agreed to no revenue shifts among the classes and to billing determinants (Attachment A, representing the weather-normalized class test year revenues) in the Partial Non-Unanimous Stipulation and Agreement filed November 29, 2006.

<sup>36</sup> Ex. 137; Ex. 7, Schedule PJC SURREB 1.

3. creates unnecessary volatility in customer bills by collecting a larger portion of customers' cost-of-service in the winter;
4. provides no incentive for utilities' to aggressively promote customer efficiency and conservation to their customers; and a utility doing so would be acting contrary to its shareholder interests;
5. sends incorrect price signals to Residential customers; and
6. does nothing to address Senate Bill 179.<sup>37</sup>

Atmos' original rate design proposal embodied a weather normalization adjustment. However, Atmos' witnesses testified that after careful consideration of the Staff's rate design proposal, Atmos supports the adoption of the Staff's rate design recommendations in lieu of the weather normalization adjustment.

As Staff's witness, Ms. Ross, testified, there is a "rapidly-changing environment" with regard to natural gas distribution.<sup>38</sup> Ms. Ross explained that "[a]pproximately five years ago, natural gas prices increased dramatically, and did not return to their previous levels."<sup>39</sup> This increase in prices caused residential customer bills to double. In addition, the non-gas portion of a customer's bill went from being approximately 60 percent of the total monthly bill to being approximately 20-25 percent of the total monthly bill.<sup>40</sup>

In addressing the fixed delivery charge rate design proposal, Ms. Ross explained that the Staff rationale has changed over the years. And, that on a national basis, there has been much discussion about conservation and "decoupling," or

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<sup>37</sup> Ex. 111, p. 6.

<sup>38</sup> Ex. 111, p. 5.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*



separating the delivery costs from the volumetric costs.<sup>41</sup> Ms. Ross specifically references a November 2005, National Association of Regulatory Utility Commissioners (NARUC) *Resolution on Energy Efficiency and Innovative Rate Design*.<sup>42</sup> That resolution calls for state commissions and other policy makers to consider new rate designs that will encourage energy conservation and energy efficiency.

Public Counsel opposes Staff's rate design proposal and advocates maintaining the status quo. Public Counsel argues that the fixed delivery charge rate design is harmful to consumers because: (1) the effect of the proposal is truly not known without sufficient studies; (2) customer efforts to conserve energy will be negated; (3) no conservation or efficiency programs have been introduced; and (4) it will be contrary to good public policy in that it will shift a substantial portion of the cost to the lowest use customers.<sup>43</sup>

The Commission has set natural gas rates as a two-part base rate for many years and found those rates to be just and reasonable. There is no way of knowing 100 percent of the effects a fixed rate design will have on the ratepayers without having actually experienced such a design. However, the Commission finds the decision by Atmos to abandon its request for a \$3.4 million revenue increase in its entirety is sufficient reason to overcome any doubts about the proposed rate design. Especially when considering that even a portion of that revenue increase, if found just and reasonable, could have a traumatic effect when spread out over the approximately

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<sup>41</sup> Tr. 448, 453.

<sup>42</sup> Ex. 110, Schedule 3-1.

<sup>43</sup> Tr. 57-58.

60,000 customers served by Atmos. The Commission further finds that such a rate design is worthwhile so long as it is accompanied by an energy conservation program.

The current rates are designed with a conservation incentive “built in” in that the less gas a customer uses the less that customer will pay. The current rate design encourages conservation by increasing the minimum monthly bill paid by the customer. The rationale is that customers will notice a change in their fixed monthly bill charge and adjust their behavior appropriately. Requiring the company to initiate a conservation program is further insurance that the fixed delivery charge rate design will promote conservation. Thus, in order to change the rate structure, the Commission finds that a conservation program of significant size would be necessary to offset any loss of traditional rate design conservation incentive.

The evidentiary record rebuts Public Counsel’s second argument. Under Staff’s rate design, customer efforts to conserve energy will not be negated. Eighty percent of a customer’s total bill is purchased gas cost.<sup>44</sup> Even under Staff’s proposed rate design where the volumetric portion of non-gas cost is removed in favor of a fixed delivery charge, the customer is still going to have a great incentive to reduce consumption in order to reduce 80 percent of that customer’s bill. Thus, consumption is going to be largely driven by the wholesale cost of gas. In addition, by removing the disincentive that Atmos has for encouraging consumption, there is the potential for even greater conservation and efficiency to occur through a comprehensive program funded by the company.

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<sup>44</sup> Tr. 68-69.

Public Counsel next argues that no conservation or efficiency programs have been introduced. Public Counsel's argument is not accurate. It would be more accurate to say that Atmos has not introduced a sufficient program. With the change in rate design, Atmos has committed to spend \$78,000 for low income weatherization (\$2,600 per household for 30 customers) and has agreed to institute a residential efficiency audit program for all residential customers (approximately 50,000) – not just low-income customers.<sup>45</sup> The audit program will cost the customer \$25, and Atmos will pay the additional cost of the estimated \$60 to \$100 total cost per audit.<sup>46</sup> Atmos witness, Patricia Childers, also testified that Atmos will participate in collaborative meetings with Staff and Public Counsel to provide any further "details" that may be necessary.<sup>47</sup>

Public Counsel did not come forward in this proceeding with any weatherization or efficiency proposals that could assist in encouraging energy conservation or efficiency. Further, Ms. Meisenheimer makes it clear that no conservation proposals would be presented by Public Counsel in connection with the Staff's rate design proposal.<sup>48</sup> Ms. Meisenheimer also testified that she could not support any fixed delivery charge that recovered 100 percent of the non-gas cost.<sup>49</sup> Ms. Meisenheimer did state, however, that she agreed that this type of rate design could be just the "carrot" to involve companies in energy conservation programs.<sup>50</sup>

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<sup>45</sup> Tr. 344, 347; Ex. 7, p. 6.

<sup>46</sup> Tr. 348.

<sup>47</sup> Ex. 7, p. 6; Tr. 494.

<sup>48</sup> Tr. 549.

<sup>49</sup> Tr. 480-481.

<sup>50</sup> Tr. 545-546.

Finally, Public Counsel asserted that the delivery charge proposal will be contrary to good public policy in that it will shift a substantial portion of the cost to the lowest use customers. The customer demographics for Atmos regarding average residential annual Ccf usage, along with the annual Ccf consumption for various typical residential end-uses, is depicted on Staff Exhibit 142. Exhibit 142 shows that space heating is the major area of consumption at 640 Ccf annually. The next largest area of consumption is water heating at 288 Ccf, gas fireplace inserts at 84 Ccf, and then gas cooking stoves at 24 Ccf.<sup>51</sup> However, the evidence shows that currently the low-use customer is being subsidized.<sup>52</sup> For example, Ms. Ross testified that a customer who uses gas only for cooking will have the same equipment (meters and pipes) as a customer using natural gas for space heating, heating water, and cooking.<sup>53</sup> The Commission finds that the cost of serving a residential customer is the same regardless of the customer's usage. So, under the status quo, customers using less than the average will underpay their cost-of-service, while customers using more than the average will overpay their cost-of-service. Staff's fixed delivery charge rate design provides a "carrot" (revenue stabilization) to get Atmos involved in energy conservation programs. However, in this case the Commission does not find sufficient resources of the company being dedicated to replacing the lost incentives for conservation provided by the traditional rate design. Atmos must give consideration for the decreased risk that it will have under a rate design which completely eliminates weather volatility. Atmos has done that by forgoing its request for an additional \$3.4 million. And, Staff's

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<sup>51</sup> Tr. 36-37.

<sup>52</sup> Tr. 304-305

<sup>53</sup> Tr. 355-356.

comparable companies include some elements of risk within the analysis. However, that is not enough.

The proposed fixed monthly rate design will eliminate the inherent conflict between the shareholders (whose returns increase if more gas is sold) and the ratepayers (who will only pay less by using less). Thus, the potential for a significant program is there. The Commission also acknowledges the pledge of a \$78,000 low-income weatherization and the unlimited \$25 energy audits that the shareholders are willing to provide as a step in the right direction. However, there was no evidence to suggest that these measures will be sufficient and no details were presented as to how the programs would be implemented. The Commission cannot find that Atmos and Staff have shown that the fixed delivery charge rate design as presented will encourage efficiency and conservation.

As Public Counsel points out, based on the specific facts of other cases, the Commission has previously determined that “[h]igh fixed monthly customer charges tend to defeat customer efforts to reduce their bill by conserving natural gas. As a result, . . . the public interest is best served by setting customer charges as low as reasonably possible.”<sup>54</sup> However, the natural gas distribution business has changed drastically in less than a decade. It continues to evolve and as such, the Commission must be able to recognize an opportunity to evolve as well. And, as the NARUC resolution states, there is a need for state commissions to do more to promote reduced energy demand and consumption. The Commission is also aware of other programs implemented by other Missouri companies referred to in this proceeding and in other

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<sup>54</sup> Report and Order, *In the Matter of Missouri Gas Energy’s Tariffs to Implement a General Rate Increase for Natural Gas Service*, Case No. GR-2004-0209, September 21, 2004.

states as evidenced by the information provided in Exhibit 144. The Commission finds that a comprehensive energy efficiency and conservation program can work to provide benefits to the ratepayers and to the general public interest by reducing the demand and consumption of natural gas.

The Commission finds that under the circumstances of this case, Atmos' rates are ripe for being redesigned. However, the Commission cannot find such a design to be in the public interest without some assurance of a significant energy conservation and efficiency program that will educate and assist Atmos' customers in conservation and reduced demand. In this instance the Commission has determined that with the right conservation and efficiency program, a fixed delivery charge would be in the public interest while allowing Atmos a fair return on its investment.

Atmos has proposed \$78,000 and unlimited energy audits creating a minimum of \$1.75 million<sup>55</sup> worth of potential liability. Obviously, not every one of the 50,000 residential customers served by Atmos will request an audit. However, that commitment shows that Atmos is capable and willing to provide enough funding to implement a meaningful conservation program. Thus, the Commission finds that it would be just and reasonable and in the public interest to implement a fixed delivery charge rate design as proposed by Staff on the condition that Atmos contribute annually, one percent (1%) of its annual gross revenues (currently, approximately \$165,000) to be used for an energy efficiency and conservation program.

If Atmos does not provide for such a program, the Commission cannot find that the proposed rate design is just and reasonable and in the public interest and

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<sup>55</sup> Approximately 50,000 residential customers multiplied by a minimum of \$35 per possible audit requested.

therefore, the Commission must reject it. In that event, the Commission determines that it is just and reasonable and in the public interest to maintain the status quo rate design and that no party has justified a change in the revenue requirement.

The Commission finds that an energy and conservation program must be approved by the Commission and must be the result of a collaborative process involving the Staff, Public Counsel, Atmos, the other parties to this case (that wish to participate), the Energy Center of the Missouri Department of Natural Resources, and other parties that the Commission shall designate. As the Commission has found with regard to other companies, a successful program may include Energy Star education and communication, appliance rebate and replacement, green construction for old and new homes, Pay As You Save programs, weatherization, energy audits (with follow-up), and others. Such a program may contain a low-income component as well as residential, commercial, and industrial components. The comprehensive program should be designed with methods for gathering and reporting data to analyze its effectiveness.

Therefore, the Commission directs that if Atmos files tariff pages in compliance with this order designed to implement a fixed delivery charge, it shall also set up a new program by meeting with the other parties set out above, and any other social service agency or party that the Commission designates to participate, and design a program to be approved by the Commission and implemented no later than August 31, 2007. The Commission will direct that Atmos file a report regarding the status of any collaborative effort every thirty days. In addition, Atmos must present a program for Commission consideration no later than June 30, 2007. Finally, if the fixed delivery charge rate design is implemented, Atmos shall file on an annual basis a report with the

Commission for the purpose of evaluating the effect of a fixed delivery charge rate design on energy efficiency and conservation.

If Atmos does not file tariff pages designed to implement a fixed delivery charge rate design, it shall file new tariff pages designed to implement the status quo rate design with the other changes as set out in this Report and Order.

The Commission will issue further orders following this Report and Order to set up the collaborative process to design the conservation program if necessary.

**Seasonal Rates**

Atmos recommends one modification to the Staff proposal by seasonally “sculpting” the fixed monthly delivery charge.<sup>56</sup> Atmos proposes that the delivery charge be higher in the winter and lower in the summer. The sculpting of the rates would allow for the same annual revenue collections as Staff’s rate design.<sup>57</sup> Atmos argues that the benefits of its sculpting proposal are that it will reduce the risk of customer loss during the summer months and it will aid in customer acceptance of the changed rate design.<sup>58</sup>

Staff’s fixed monthly delivery charge rate design proposal, as modified by Atmos’ sculpting proposal set forth in Schedule GLS-1 as follows:

	<u>Summer</u>	<u>Winter</u>
Butler/Greeley	\$15.00	\$25.46
Kirksville/Palmyra/old UCG	\$15.00	\$28.24
Old SEMO/Neelyville	\$10.00	\$19.23

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<sup>56</sup> Ex. 3, pp. 4-5, and Schedule GLS-1.

<sup>57</sup> Tr. 299.

<sup>58</sup> Ex. 3, p. 4.



As set out below, the Commission finds that the problem of customers disconnecting on a seasonal basis should be solved through the seasonal disconnection charges. While the “sculpted” rates may offer less of an incentive for customers to disconnect in the warmer months, it also would have a significant affect on rates in the winter months. The Commission finds that this disparity is not justified.

### **Small General Service Rate Class**

Staff proposes to create new classes of General Service customers. The basis for this part of Staff’s proposal was the large variation in usage between members of the class. Some of the General Service class use zero Ccfs, and some of them use close to a million Ccfs in one year. Staff proposes to split the Small General Services rate class so that customers using more than 2,000 Ccf per year will retain the traditional rate structure while those at or below 2,000 Ccf will be under the same rates as residential ratepayers. For the others, there would be a new Medium General Service class, a Large General Service class, and a Large Volume Service class. Staff recommended the traditional rate design for those customers.<sup>59</sup>

Small General Service Customers using less than 2,000 Ccf per year are served with the same meter/regulator and service lines as residential customers. Approximately 80 percent of Atmos’ current Small General Service customers use less than 2,000 Ccf per year.

The proposed Medium General Service class would include non-residential customers using from 2,000 to 75,000 Ccf per year. The Large General Service class would include non-residential customers using from 75,000 to 200,000 Ccf per year.

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<sup>59</sup> Tr. 353-354.

Atmos agrees to accept Staff's proposal to split the general service class and to have uniform classes throughout the state.<sup>60</sup>

Public Counsel believes the Commission should maintain the existing structure for the entire Small General Service rate class. Public Counsel's foremost concern with Staff's proposal is that it will create discontinuity within the Small General Service class. Under Staff's proposal, General Service customers using 2,001 Ccf will pay two to three times as much in non-gas rates as a customer using 2,000 Ccf.<sup>61</sup>

The Commission is not persuaded by Public Counsel's argument. The evidence supports Staff's proposal. Whenever classes are distinguished, there must be a dividing line between those classes. The proposal by Staff is logical in that those customers using less than 2,000 Ccf per year are served by the same size and type of equipment as residential customers. Thus, the Commission finds that a residential delivery charge for Small General Services customers using less than 2,000 Ccf per year within the same territory is just and reasonable. The Commission shall adopt the proposal of Staff with regard to this issue.

**4. What are the appropriate miscellaneous charges (activation charges for connection, reconnection, and transfer; late payment, NSF, and seasonal reconnection)?**

Atmos Witness Michael H. Ellis sponsors Atmos' proposal to make various miscellaneous charges (connection, reconnection, and transfer; late payment; insufficient funds; and seasonal reconnection) uniform and consistent across its

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<sup>60</sup> Ex. 6, pp. 3-4.

<sup>61</sup> Ex. 201, p. 26.

Missouri service area.<sup>62</sup> Mr. Ellis supports the rates proposed with a cost analysis discussed in, and attached to, his testimony. Staff proposes that these miscellaneous charges be based on the actual costs rounded to the nearest whole dollar.

While Atmos and Staff have reached agreement on all of the issues addressed in the Miscellaneous Charges area, Public Counsel objects to the changes. The exception is for interest paid on customer deposits, a change that would bring parity to all deposits.<sup>63</sup> An agreement was also reached to revise Atmos' proposed tariff language and use the generic terminology, instead of the term "activation charge."<sup>64</sup>

### **Connection, Reconnection, and Transfer Charges**

Some areas of Atmos' service territory currently do not have connection, reconnection, or transfer charges. The Commission finds that it is appropriate to make these types of charges uniform within all of Atmos' service territory. In addition, the Commission finds that it is reasonable to align the charges with the actual costs to provide the service.

The actual costs of providing the specific services and applicable rates to be applied on a statewide basis, as agreed to by Atmos and Staff, are.<sup>65</sup>

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<sup>62</sup> Ex. 10, pp. 2-8.

<sup>63</sup> Ex. 10, p. 7.

<sup>64</sup> Ex. 114.

<sup>65</sup> Ex. 114, pp. 5-6; Tr. 635-636.

<b><u>Type of Charge</u></b>	<b><u>Actual Cost</u></b>	<b><u>Proposed Charge</u></b>
Connection – Normal Hours	\$23.56	\$24.00
Connection – After Normal Hours	\$50.09	\$50.00
Reconnection – Normal Hours	\$23.56	\$24.00
Reconnection – After Normal Hours	\$50.09	\$50.00
Transfer – Normal Hours	\$20.02	\$20.00
Transfer – After Normal Hours	\$46.55	\$47.00

The Commission finds the proposed charges to be just and reasonable based on the actual costs to provide such services and shall adopt them.

### **NSF Charges**

As with the other charges, Staff supports a statewide charge in an amount closely related to the actual costs. Currently, Atmos charges \$15.00 for an insufficient funds (NSF) charge for approximately 75 percent of its customers.<sup>66</sup> The rates for the remaining customers have been under cost at \$10.00 and Staff was able to discern that charge had been applied only twice in the last three years. Thus, for all practical purposes Atmos has had an NSF charge of \$15.00. Therefore, the Commission finds it reasonable to set these charges on a statewide basis in an amount that is closer to the actual costs. The Commission adopts a statewide NSF charge for Atmos of \$15.00.

### **Late Payment Fee**

Atmos also requests authority to apply the authorized late payment fee found in specific existing tariff sheets (equal to 1.5 percent of the outstanding balance) across all rate schedules. The late payment fees existing in Atmos' Missouri tariffs vary in amounts and this change will make the charge consistent across all of Atmos' Missouri

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<sup>66</sup> Ex. 117, p. 2.

service areas.<sup>67</sup> Staff supports and recommends that the late payment fee be consistent throughout the tariff. Public Counsel only addresses this issue in its Prehearing Brief, where this component is listed with those “miscellaneous charges that remain unresolved between the parties.”

The Commission finds that the late payment fee equal to 1.5 percent of the outstanding balance is reasonable and shall be applied on a statewide basis by Atmos.

### **Seasonal Reconnection**

The proposed seasonal reconnection charge is the most contentious of the Miscellaneous Charges. One-tenth<sup>68</sup> of Atmos’ customers disconnect for a month or more each year.<sup>69</sup> Thus causing Atmos to forgo revenues from its investments to those properties (e.g. meters, pipes, mains, etc.). Staff proposes a two-component reconnection charge to dissuade seasonal customers that disconnect during the non-winter months and do not pay for the costs associated with providing utility service.<sup>70</sup> Such a customer would pay the traditional reconnection charge (\$24.00 proposed); in addition, the customer would make up all missed delivery charges that occurred while the customer was disconnected. Staff proposes a 12-month limitation to the second component, regardless of the reason for disconnection. The purpose of this change is for the company to make up the revenues lost during the months of disconnection.

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<sup>67</sup> Ex. 10, pp. 5-6.

<sup>68</sup> Mr. Ensrud testified that 1/10 or **7,000** customers disconnect for a month or more each year. (Tr. 651.) However, other evidence indicates that Atmos only has 60,000 customers. Therefore, the Commission assumes the lower number of customers for the sake of this argument.

<sup>69</sup> Tr. 651.

<sup>70</sup> Ex. 114, pp. 18-20.

Otherwise, the company has a certain amount of embedded costs that it cannot recoup unless gas service is being provided to that customer.

Although Atmos proposed seasonally sculpting the rates as a possible way to alleviate some of the seasonal loss concerns, it supports Staff's proposal.<sup>71</sup> Atmos believes that it can recoup sufficient revenue under its sculpted rate proposal without collecting all the missed customer charges. In addition, Atmos' original proposal included a reconnection charge of up to twelve months of a \$9.00 statewide customer charge. Atmos requests that regardless of the methodology chosen, the Commission address this concern.

Public Counsel does not offer any type of adjustment to Atmos' revenue requirement to adjust for seasonal customers, but argues that it is appropriate to allow customers to disconnect during the non-winter months.

Atmos has a provision similar to Staff's proposal in its tariffs for its current SEMO, Butler, and Kirksville Districts.<sup>72</sup> Those provisions, however, require the payment of the customer charge, and not the volumetric portion, of the missed months where the customer has requested the disconnection.

As the undisputed evidence shows, Atmos has a significant problem with lost revenues due to ten percent of its customer base disconnecting for a month or more and then reconnecting at the same address. Customers seek to avoid paying the fixed cost of providing gas service when not using gas for heat, and thus shift costs for their meters and equipment during that time to the other customers. The Commission finds that a seasonal reconnection charge is a just and reasonable way to discourage

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<sup>71</sup> Smith, Ex. 3, p. 4.

<sup>72</sup> Tr. p. 639 – 640.

seasonal disconnection while allowing Atmos to recover its fixed costs of offering service to the premises.

The Commission further finds, however, that there is not sufficient justification for recovery of Staff's proposed seasonal reconnection charges up to twelve months. The twelve-month recovery of the fixed delivery charge would be a total of up to: \$167.04 (SEMO); \$233.16 (WEMO); and \$247.32 (NEMO). Customers would pay the \$24.00 reconnection fee in addition to the seasonal reconnection charges. The Commission finds that Staff's proposed collection of customer charges for up to twelve months would cause a significant barrier to low-income households trying to get service reconnected for the winter heating season. After carefully examining all the various proposals set forth to solve the seasonal disconnect problem, the Commission is able to find a solution.

The proposal presented to the Commission is for a "seasonal" disconnection charge and all of the evidence suggests that it is customers who disconnect for the warmer months and then reconnect for winter at the same location that cause the issue which needs to be addressed. Thus, Atmos and Staff are seeking to discourage those customers who disconnect during the summer season. The "summer season" is clearly meant to be the time period from March 1 to October 31 as defined in the Commission's Cold Weather Rule.<sup>73</sup> Therefore, it is unreasonable to make the applicable period for the "seasonal" disconnection charge longer than seven months.

Even with a seven-month cap on the seasonal disconnection charge these fees might be a rate shock for some customers. Because the customers have not

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<sup>73</sup> 4 CSR 240-13.055.

previously had the higher fixed delivery charge during the summer months,<sup>74</sup> customers who disconnect on a seasonal basis will be shocked to discover that they must pay as much as \$97.44 (SEMO), \$136.01 (WEMO), and \$144.27 (NEMO), plus the \$24.00 reconnection fee, in order to reconnect service. This is especially significant because in all likelihood those customers disconnected because they could not afford to pay the monthly charge in the summer months.

Given that the Commission has found the recovery of the fixed delivery charges to be a reasonable cost recovery mechanism, the Commission has determined that the rate shock to the customers justifies a further reduction of the amount of recovery in order to mitigate the rate shock to the customers. The Commission determines that customers would not be so shocked by a charge that was one-half of the seven-month summer season. Therefore, the Commission finds that it is just and reasonable to reduce the seven-month cap further by half.

The Commission finds that the seasonal disconnection charge is just and reasonable and in the public interest so long as it is limited to a three-and-one-half-month cap on recovery of the fixed monthly delivery charge. In addition, the Commission finds that this provision should be prospective only. That is, Atmos should not be allowed to recover any reconnection charges that were not in effect at the time of the customer's disconnection. For example, if Atmos files new tariffs with the fixed monthly charge, it must only charge the customer what it could have charged under the tariff that was in effect for that customer at the time of the disconnection.

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<sup>74</sup> Previous "customer charges" were in the range of \$5.00 to \$9.05.



**5. Should Atmos' districts be consolidated for purposes of setting margin non-gas rates in this case?**

Atmos currently has six sets of base tariffs and six purchased gas adjustments (PGAs) for its Missouri service areas (although there are seven separate PGA rate filings). The areas are referred to as District B (Butler); District K (Kirksville); District S (Southeast Missouri, all of which are properties formerly operated by Associated Natural Gas Company); District G (Greeley) formerly operated by Greeley Gas Company; District U (Hannibal/Canton/Palmyra/Neelyville) and District P (Palmyra), both formerly operated by United Cities Gas Company. Staff proposes to consolidate base rates into three geographic areas.<sup>75</sup> A map depicting this proposal was entered into evidence as Exhibit 100. Staff's proposal is very similar to that of Atmos<sup>76</sup> and is supported by Atmos. OPC opposes this consolidation.

The consolidated rates are supported by the Staff's cost studies and based on seven different districts' rates.<sup>77</sup> The consolidation will combine the current rate districts into three service territories based on location, and will set a single rate for all customers in a particular class in a particular geographic area. By consolidating the districts, customers in neighboring communities will pay similar non-gas rates.<sup>78</sup>

The new areas would be as follows:

- i. NEMO: Kirksville, Palmyra, Hannibal/Canton/Bowling Green
- ii. SEMO: Neelyville and SEMO
- iii. WEMO: Greeley and Butler/Rich Hill

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<sup>75</sup> Ex. 110.

<sup>76</sup> Ex. 5.

<sup>77</sup> Tr. 298.

<sup>78</sup> Ex. 110, p. 4.

Public Counsel opposes consolidating the districts without comprehensive data and cost studies. Public Counsel argues that the embedded costs for each district may not be the same. In addition, Public Counsel argues that customer confusion will result from the widely varying changes in rates as the result of consolidation.

The Commission is persuaded by Staff's evidence that the districts should be consolidated. Staff identified what appear to be inequities between users in various districts of Atmos. A customer using 720 Ccf per year would pay annual non-gas costs as follows.<sup>79</sup>

Kirksville –	\$138
Palmyra –	\$163
Hannibal/Canton/Bowling Green –	\$269
Greeley –	\$290
Butler –	\$213
Neelyville –	\$269

Thus, Staff has shown that customers in neighboring districts pay much different costs for the same gas usage.

The cost for Atmos to serve similarly situated customers in neighboring districts, such as the combining of three adjoining northeast Missouri districts into one service territory, is about the same. Atmos does not buy equipment, such as meters or mains, in quantities intended to serve just one “legacy” district. Atmos service employees serve *all* customers in each of its geographical service areas. Corporate overhead expenses associated with serving a residential customer are also indifferent as to the “legacy” district that customer lives in.

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<sup>79</sup> Tr. 37-39; Ex. 112, pp. 8-9; Ex. 142, p. 7.

While there may be some difference in costs due to the vintage of the distribution equipment in various “legacy” districts at any given point in time, Atmos’ cost to provide service today do not change from area to area. Moreover, the cost of meters, regulators, and service lines is the same for all districts. In addition, when a customer calls Atmos customer service, the call is first answered by a Company representative located in one of three out-of-state call centers. If that call cannot be addressed, then it is routed to one of seven Missouri call centers which serve the surrounding area. These calls are routed without regard for the predecessor company that served the area ten years ago. Related billing and customer service costs do not vary among Atmos’ current seven districts.

For Atmos to make the attempt to collect and break out its costs to serve each of seven “legacy” districts is unnecessary – particularly in light of the reasonableness of combining these districts into their natural geographic service areas. The Commission finds that it is just and reasonable to consolidate the base rate districts of Atmos as proposed by Staff.

**6. Should Atmos’ PGA tariffs be consolidated for purposes of setting gas rates in this case?**

Staff recommends consolidating Atmos’ PGA rate districts, by pipelines served, into the following four districts: (1) Butler and Greeley; (2) Hannibal/Canton, Bowling Green and Palmyra; (3) Kirksville and (4) SEMO and Neelyville.

Butler and Greeley are combined into one district because their primary source of gas comes from the Mid Continent Basin. As a result, the commodity costs are basically the same, even though the gas is being transported over two different pipelines.

For the SEMO/Neelyville consolidated PGA district, Staff's witness, Mr. Imhoff, noted that NGP&L pipeline currently feeds both Neelyville and a part of SEMO as well, even though SEMO has four different pipelines feeding into it.

At hearing, Mr. Imhoff also testified that Staff will have each individual "legacy" district take care of its respective Actual Cost Adjustment (ACA) balances to "zero them out." The current balances are very close with the exception of the ACA factor, which will run for 12 months to recover or refund any over- or under-recovery.<sup>80</sup> Although Atmos proposed a statewide consolidation for the PGA, its witness testified that consolidation of the four areas identified by Staff's direct testimony is acceptable.<sup>81</sup>

Public Counsel opposes PGA consolidation. Public Counsel argues that the rates vary significantly among districts, and the parties have offered no compelling reason other than administrative burden to alter the PGA structure. Gas costs represent 73 percent to 82 percent of a customer's bill, and consolidating could have a substantial negative effect on customers in areas with lower rates.

The Commission finds that PGA consolidation as proposed by Staff will simplify and improve the PGA/ACA rate process by making it more efficient as a result of reducing the current number of filings made by Atmos. This is accomplished by logically identifying the PGA computation by pipeline or supply source. New, consolidated PGA districts have similar transportation rates and gas supply sources. Such consolidation is consistent with how other regulated LDCs (e.g., AmerenUE) currently file PGA rate filings. In addition, one company is currently doing all gas purchasing for each of the districts, and employing the same hedging program and strategy for

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<sup>80</sup> Tr. 242.

<sup>81</sup> Ex. 6, p. 4.

Missouri. Finally, as Staff's testimony showed, under the current PGA rates, "the maximum rate differential between the various proposed PGA rate district consolidations . . . [is] \$.0309 per Ccf."<sup>82</sup> Thus, the effect on customer rates will be insignificant.

In addition, although the four PGA areas do not align exactly (Kirksville is the exception) with the geographic non-gas rates, they are substantially the same in most areas and, therefore, the benefits of bill comparability will be achieved if the Commission adopts the four areas as recommended by Staff. The Commission finds the PGA consolidation to be reasonable and shall adopt Staff's proposal.

**7. Other Tariff Issues:**

- a. **Should a cash-out policy be implemented?**
- b. **Should the Commission allow third-party administered pools for cash-outs?**
- c. **What is the appropriate level of lost and unaccounted gas?**
- d. **Should the Commission approve an Economic Development Rider?**
- e. **Should the mains extension policy and the determination of amounts to be charged be changed in this case?**

**Cash-Out Policy**

The cash-out provision allows transportation customers to resolve imbalances by cash payments instead of making up imbalances with gas volumes in kind. This provision replaces Atmos' existing policy of charging \$15.00 per Mcf when the balance is negative, or absorbing the gas when the imbalance is positive. Whether the imbalance is positive or negative, a transportation customer will pay a price determined by a formula that uses a published industry price. If the imbalance is greater than 5 percent of the monthly contract volume, the price will be inflated or deflated by an index referenced in the tariff. This standardized policy will replace Atmos' current

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<sup>82</sup> Ex. 120, p. 2.

practice of applying varying policies. Atmos also agrees to make minor changes to the transportation tariffs.

Public Counsel's only opposition noted in testimony is that large transportation customers would be allowed to create pools that would allow pool members to offset imbalances, thus allowing large volume customers flexibility at smaller ratepayer expense. According to Staff, the only customers on Atmos' system that could pool are the school districts, which are allowed to pool by statute.

The Commission finds that it is just and reasonable to have a standardized policy regarding cash-outs. Furthermore, there was no evidence that this policy will affect any customer or revenues of Atmos in any manner, other than school districts which all allowed to pool under current Missouri statutes. Thus, the Commission finds in favor of Atmos on this issue.

### **Third-Party Administered Pools for Cash-Out**

Atmos proposes to allow third parties to create pools that would allow pool members to offset imbalances caused by transport customers taking more or less gas from the system than the amount under contract. According to Staff, the only customers on Atmos' system that could pool are the school districts which are already allowed to pool by Section 393.310, RSMo. Public Counsel has the same concerns as with the Cash-Out issue above.

For the reasons stated above, the Commission finds in favor of Atmos' proposal.

### **Level of Lost and Unaccounted Gas**

The issue of the level of lost and unaccounted gas has been settled among the parties and is addressed in the Partial Non-Unanimous Stipulation and Agreement.<sup>83</sup>

### **Economic Development Rider**

An Economic Development Rider (EDR) encourages industrial customers to use Atmos' natural gas service by providing limited discounts.<sup>84</sup> Staff carefully analyzed the proposal and recommended that it be adopted.<sup>85</sup>

Public Counsel's testimony that the EDR would force residential and small customers to subsidize industry discounts is unsupported and contrary to Staff's analysis indicating that generally, a new industrial customer will generate revenues and defray costs beyond the initial discounted amounts.

The Commission is persuaded by Mr. Ensrud's Surrebuttal testimony regarding this matter.<sup>86</sup> He testifies that a new customer will generate revenues and defray fixed costs to the point that both Atmos stockholders and ratepayers will benefit.<sup>87</sup> In addition, Mr. Ensrud testifies that secondary benefits of the potential economic development, such as new jobs, new tax revenue, and increased property values are also to be taken into consideration. The Commission finds that it is just and reasonable and in the public interest to allow an EDR as proposed by Atmos. The Commission finds for Atmos with regard to this issue.

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<sup>83</sup> Stipulation, page 5; see also, Staff's Memorandum in Support of the Stipulation, p. 4.

<sup>84</sup> Ex. 9.

<sup>85</sup> Ex. 114.

<sup>86</sup> Ex. 116, pp. 9-11.

<sup>87</sup> Ex. 114, p. 10.

### **Mains Extension Policy and the Determination of Amounts to be Charged**

Atmos proposes to eliminate its current minimum line extension policy. Currently, customers may receive up to 150 feet of gas main extension free. Instead, Atmos would use a computer model to estimate the cost of the main and the revenue that will be produced. The initial customer would be compensated by the utility if additional customers come on to the extended portion of the main.<sup>88</sup> Staff proposes one exception with regard to refunds, but otherwise agrees with Atmos' proposal.

Public Counsel opposes Atmos' proposal to eliminate the minimum line extension, and subject every new residential and small business customer to a feasibility review resulting in an up-front fee for main extensions. "A reasonable fee-free line extension is both a reasonable obligation to impose on a public utility and an investment in future earnings for the utility."<sup>89</sup>

The Commission agrees with Public Counsel and finds that the main extension policy should not be eliminated at this time. Proposing such a drastic change from 150 feet free to zero feet free is not a reasonable proposal. The Commission finds in favor of Public Counsel on this issue. Atmos shall not implement a new main extension policy.

### **Conclusions of Law**

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

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<sup>88</sup> Ex. 114, p. 13-14.

<sup>89</sup> Ex. 202, p. 38-39.



## **Jurisdiction**

Atmos is a public utility, and a gas corporation, as those terms are defined in Section 386.020(42) and (18), RSMo 2000. As such, Atmos is subject to the Commission's jurisdiction pursuant to Chapters 386 and 393, RSMo.

## **Burden of Proof**

Section 393.150.2, RSMo 2000, provides in part, "At any hearing involving a rate sought to be increased, the burden of proof to show that the increased rate or proposed increased rate is just and reasonable shall be upon the . . . gas corporation . . . and the commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible."

## **Commission's Authority**

Pursuant to Section 393.130.1, RSMo 2000, the Commission has authority to prohibit the implementation of gas rates that are unjust or unreasonable.

Section 393.140 authorizes the Commission to determine just and reasonable rates. Section 393.150, in pertinent part, authorizes the Commission to suspend for a period of time any schedule stating new rates, charges, rules, regulations, or practices, and to hold "a hearing concerning the propriety of such rate, charge, . . . rule, regulation or practice." Section 393.270 provides in paragraph 4 that in determining the price to be charged, "the commission may consider all facts which in its judgment have any bearing upon a proper determination of the question . . . ." The courts have held that this statute

means that the Commission's determination of the proper rate must be based on consideration of all relevant factors.<sup>90</sup>

In determining whether rates are just and reasonable, the Commission must balance the interests of the investor and the consumer.<sup>91</sup> The Commission's failure to establish just and reasonable rates would, in fact, violate the United States Constitution. In discussing the need for a regulatory body to institute just and reasonable rates, the United States Supreme Court has held as follows:

Rates which are not sufficient to yield a reasonable return on the value of the property used at the time it is being used to render the services are unjust, unreasonable and confiscatory, and their enforcement deprives the public utility company of its property in violation of the Fourteenth Amendment.<sup>92</sup>

In the same case, the Supreme Court provided the following guidance on what is a just and reasonable rate:

What annual rate will constitute just compensation depends upon many circumstances and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts. A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money

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<sup>90</sup> *State ex rel. Missouri Water Co. v. Public Service Comm'n*, 308 S.W.2d 704, 719 (Mo. 1957); *State ex rel. Midwest Gas Users' Ass'n v. Public Service Commission*, 976 S.W.2d 470, 479 (Mo. App., W.D. 1998); *State ex rel. Office of Public Counsel v. Public Service Com'n of Missouri*, 858 S.W.2d 806 (Mo. App., W.D. 1993).

<sup>91</sup> *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1943).

<sup>92</sup> *Bluefield Water Works and Improvement Company v. Public Service Commission of West Virginia*, 262 U.S. 679, 690 (1923).

necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time and become too high or too low by changes affecting opportunities for investment, the money market and business conditions generally.<sup>93</sup>

In undertaking the balancing required by the Constitution, the Commission is not bound to apply any particular formula or combination of formulas. Instead, the Supreme Court has said:

Agencies to whom this legislative power has been delegated are free, within the ambit of their statutory authority, to make the pragmatic adjustments which may be called for by particular circumstances.<sup>94</sup>

The dominant purpose in creation of the Commission is public welfare.<sup>95</sup> Section 386.610 reads, in relevant part, that “[t]he provisions of this chapter shall be liberally construed with a view to the public welfare, efficient facilities and substantial justice between patrons and public utilities.” The Commission must weigh the benefits and detriments to all the groups affected by its decision.

Under Section 386.270, RSMo 2000, all rates of a public utility that have been approved by the Commission are prima facie lawful and reasonable until found otherwise in a suit brought for that purpose pursuant to the provisions of Chapter 386.

## **DECISION**

### **Stipulation And Agreement**

Atmos, the Staff, and Public Counsel filed on November 29, 2006, their *Partial Non-Unanimous Stipulation and Agreement*, which sets forth issues settled among the parties.

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<sup>93</sup> *Id.* at 692-93.

<sup>94</sup> *Federal Power Commission v. Natural Gas Pipeline Co.* 315 U.S. 575, 586 (1942).

<sup>95</sup> *Alton R. Co. v. Public Service Commission*, 110 S.W.2d 1121, 1125 (Mo. App. 1937).

Pursuant to 4 CSR 240-2.115(2)(C), because no parties objected within seven days to the Partial Non-Unanimous Stipulation and Agreement, the Commission may, by operation of law, treat this Agreement as a unanimous stipulation and agreement.

The Stipulation addressed the following issues as resolved among the parties: Billing Determinants; Other Post-Retirement Benefits (OPEB) Contribution; Class Share of Revenue by District / Class Cost of Service; Customer Service Requirements and Reporting; PGA Minimum Filing Requirements; Depreciation Record Keeping and Reporting; and Gas Loss Reporting.

Based on the agreement of the parties, the Commission concludes that the Agreement constitutes a just and reasonable settlement of all of the issues included therein.

### **Contested Issues**

#### **1. Revenue Requirement**

- a. Level of Expense
- b. Rate of Return / Return on Equity
- c. Level of Revenue Excess / Deficiency

The Commission concludes that rates designed to produce a zero net revenue requirement allowing for a stipulated gross annualized revenue of \$16,507,737 are just and reasonable in that they meet Atmos' prudent operating expense and allow an opportunity to earn a reasonable return on the value of the private property dedicated to public service.

#### **2. Depreciation and Reserve Amortization**

The Depreciation issues are resolved among the parties in accordance with the Stipulation, which constitutes a just and reasonable settlement of the issues.

The Commission concludes that, as a whole, the annual depreciation accrual should be reduced by approximately \$591,000 and that, by Atmos entering a negative amortization of \$591,000 to the depreciation reserve account, this provides an immediate benefit to Atmos' customers by lowering Atmos' depreciation expense. The Commission concludes that based on these facts, this is a just and reasonable result.

### **3. Rate Design**

Based on the specific facts in this case, the Commission finds that placing all non-gas costs into a fixed delivery charge, within the context of a zero revenue increase and the consolidation of the operating districts into three service areas (NEMO, WEMO, and SEMO) will provide for just and reasonable rates *if* it is accompanied by a meaningful energy efficiency and conservation program as described above. Thus, the Commission concludes that no party justified a change in revenue requirement, and absent the conservation program, the Commission must reject the proposed fixed delivery charge rate design. If Atmos chooses to enter into a significant energy efficiency and conservation program as set out in this order to be approved by the Commission, it may file tariffs including a fixed delivery charge rate design.

The Commission determines that the problem of seasonal disconnects is most appropriately handled in the context of a seasonal disconnection charge. Thus, the Commission concludes the proposed seasonally "sculpted" rates are not just and reasonable.

The Commission further concludes that creating a Small General Service class that is based on the same operating parameters and cost of service of the Residential class provides just and reasonable rates for non-residential customers.

The Commission also concludes that maintaining the traditional rate design for Medium General Service and Large General Service customers provides just and reasonable rates to the members of these service classes.

**4. Miscellaneous Charges**

The Commission concludes that uniform, statewide cost-based charges for Activation, Reconnection, Transfer, Late Payment, and NSF are just and reasonable.

The Commission concludes that the “seasonal” reconnection charge is a just and reasonable method of discouraging customers from disconnecting from the system on a seasonal basis. In addition, the seasonal reconnection charge will allow Atmos to recover its fixed costs of serving the customer and prohibit the shifting of costs from the customer who disconnects to all other customers. The Commission further determines, however, that for the charge to truly be a “seasonal” disconnection charge, it cannot reasonably recover more than seven months of the fixed monthly charge. The Commission further determines that the recovery of up to seven months of a fixed monthly delivery charge would be so shocking to customers attempting to reconnect as to be unreasonable. Therefore the Commission determines that the recovery of the fixed monthly delivery charge for the purpose of a seasonal reconnection fee should be limited to three-and-one-half months. In addition, Atmos shall only collect the seasonal disconnection charge on a prospective basis.

**5. Company PGA Tariffs Consolidation**

The Commission concludes that the consolidation to four PGA districts provides for just and reasonable rates because the consolidation is based on the cost

similarity of interstate pipelines that serve the districts and/or the cost similarity of the sources of gas supply to the districts.

**6. Company District Consolidation**

Because the costs to provide service to each service area do not change among those areas, the Commission concludes that the consolidation of operating districts into three geographic service areas (NEMO, WEMO, SEMO) for the purpose of setting non-gas margin rates (the fixed delivery charge) provides for just and reasonable rates.

**7. Other Tariff Issues**

The Commission concludes that the Cash-Out Policy and the Economic Development Gas Service Rider provide for just and reasonable rates and that no credible evidence opposing these tariff issues has been provided by Public Counsel.

The Commission concludes that Third-Party Administered Pools for cash-outs provide for just and reasonable rates and notices that school districts are permitted to pool under Section 393.310.

The Lost and Unaccounted Gas issue is resolved among the parties in accordance with the Stipulation, which constitutes a just and reasonable settlement of this issue.

With regard to the main extension policy proposed by Atmos and Staff, the Commission concludes that it is not a just and reasonable policy, and therefore it must be rejected.

## CONCLUSION

The Commission has thoroughly considered the facts of this case and the arguments of all the parties. The Commission has found that the status quo rate design is just and reasonable and that the volumetric rates encourage conservation. The Commission agrees with its Staff that the facts of this case present an opportunity to implement just and reasonable rates under a rate design that is quite novel in the state of Missouri. However, the Commission has determined that it is not just and reasonable to relinquish the conservation measures currently in place in the form of volumetric rates without also implementing a significant efficiency and conservation program to offset the loss of conservation encouraged by the volumetric portion of the rate. Therefore, the Commission has determined that Atmos shall maintain the status quo rate design unless it proceeds with a significant energy efficiency and conservation program as set out in the body of this order. If Atmos chooses to go forward with such a program, it may file new tariffs designed to implement not only that program, but also a fixed delivery charge rate design.

### **IT IS ORDERED THAT:**

1. Exhibit 144 is admitted into evidence.
2. All pending motions and requests for relief not otherwise granted are denied.
3. The Partial Non-Unanimous Stipulation and Agreement filed on November 29, 2006, is hereby approved as a resolution of all issues contained therein (See Attachment A).



4. The parties are ordered to comply with the terms of the Stipulation and Agreement.

5. The proposed gas service tariff sheets (Tariff No. YG-2006-0762) submitted on April 7, 2006, by Atmos Energy Corporation for the purpose of increasing rates for gas service to retail customers are rejected. The tariff sheets rejected are:

**P.S.C. MO. No. 2**

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**Original Sheet No. 1 through Original Sheet No. 113**

6. Atmos Energy Corporation may file tariffs that comply with this Report and Order.

7. If Atmos Energy Corporation files tariffs that include a fixed delivery charge rate design, it shall also set up an energy efficiency and conservation program as outlined in the body of this order to be implemented no later than August 31, 2007, and shall present a program to the Commission for consideration no later than June 30, 2007 .

8. If Atmos Energy Corporation files tariffs that include a fixed delivery charge rate design, beginning on April 1, 2007, Atmos shall report to the Commission no later than the first day of every month as to the status of the collaborative process set out herein.

9. If Atmos Energy Corporation files tariffs that include a fixed delivery charge rate design, it shall file on an annual basis a report with the Commission for the purpose of evaluating the effectiveness of a fixed delivery charge rate design on energy efficiency and conservation.

10. This Report and Order shall become effective on March 4, 2007.

**BY THE COMMISSION**

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale  
Secretary

( S E A L )

Davis, Chm., and Appling, C., concur;  
Murray, C., concurs, with separate concurring  
opinion attached;  
Gaw and Clayton, CC., dissent, with separate  
dissenting opinion(s) to follow;  
and certify compliance with Section 536.080,  
RSMo 2000.”

Dated at Jefferson City, Missouri,  
on this 22nd day of February, 2007.