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 Implement a General Rate Increase for Natural Gas Service in the Missouri Service Area of the Company.	))))	**Case No. GR-2006-0387**

POST-HEARING BRIEF OF ATMOS ENERGY CORPORATION

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Atmos Energy Corporation ("Atmos" or "Company") respectfully submits its Post-Hearing Brief in accordance with the Commission's *Order Concerning Test Year and True-Up and Adopting Procedural Schedule with Modifications* and *Order Granting Motion To Extend Filing Date*, issued in this matter on June 2, 2006 and January 4, 2007, respectively. Atmos' Prehearing Brief was filed in this proceeding on November 17, 2006, and is incorporated herein by reference. Pursuant to the Commission's *Order* of June 2, 2006, Atmos' Post-Hearing Brief will follow the same list of issues as filed in the case, such issues being set out in the "Joint Issues List, List of Witnesses and Order of Cross-Examination" filed by the Staff of the Commission ("Staff") on November 14, 2006. In addition to the issues identified as being resolved in the Joint Issues List of November 14, Atmos, Staff and the Office of the Public Counsel ("OPC") submitted their Partial Non-Unanimous Stipulation and Agreement ("Stipulation") to the Commission for approval on November 29, 2006, which sets forth additional issues settled among those parties. Staff filed its Memorandum in Support of the Stipulation on December 12, 2006. Where appropriate, Atmos will identify and address those specific issues/subjects that have been resolved pursuant to the Stipulation.

I. INTRODUCTION

> **Opportunity:** 1. A favorable juncture of circumstances. 2. A good chance for advancement or progress.[1]

In his opening statement, Staff Counsel described Atmos as "an amalgamation, much like many of this state's utilities, but it operates a hodgepodge of old LDC's," and noted that "Atmos Energy has never appeared in a general rate case before this Commission."[2] With its Missouri operations comprised of multiple districts utilizing separate rates and charges, Atmos and the Staff have proposed to consolidate the base rates into three geographic areas. "Now, Staff believes quite strongly that the time is now to consolidate districts. . . . And again, I can't emphasize enough that these three operational areas represent today's operational realities and today's operational costs."[3] Similarly, both parties agree that the current PGA tariffs of Atmos should be consolidated into four areas, based on how the interstate pipelines serve those particular areas. Uniformity of miscellaneous charges on a statewide basis also is proposed by both Atmos and Staff. "I would also like to mention that on a statewide basis the Staff proposes that miscellaneous charges which are based on Atmos's true cost of operations, true cost of service, that the services related to those charges such as things like reconnection or insufficient funds, that those charges be uniform throughout the state. It just makes sense."[4]

Another unique circumstance in this proceeding is the fact that, based upon the recommendations of Staff and the acquiescence of the Company, this is a zero revenue requirement case. "It is certainly a landmark case for Staff. And why is that? Well, to

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[1] Webster's Seventh New Collegiate Dictionary, G.&C. Merriam Company, 1967, p. 592.
[2] Opening Statement of Staff, Senior Counsel Robert S. Berlin, Tr. 30.
[3] *Id.*, Tr. 31.
[4] *Id.*, Tr. 32.

begin with, this is a zero revenue requirement case. . . . I think that you will see that Staff, based on its prefiled testimony and any evidence from the testimony presented here today, that that zero revenue requirement is, indeed, just and reasonable."[5]

Perhaps the most important issue or circumstance in this proceeding involves rate design. While the Company's original proposal contained a weather normalization adjustment mechanism, similar to that utilized in some of the other jurisdictions in which it operates, after carefully considering the Staff's proposal on the Delivery Charge rate structure, the Company now supports the adoption of Staff's rate design proposals in lieu of its original proposal. Under Staff's proposal, the non-gas or the margin costs will be recovered through a fixed monthly charge which is known as a Delivery Charge for residential and small commercial customers. As the testimony and record evidence supports, the delivery charge removes the disincentives for utilities to encourage and assist customers in making conservation and efficiency investments and, secondly, reduces the effects of weather on the utilities' revenues and on customers' bills. Staff Witness Anne Ross explains that the Staff rationale on that issue has changed over the years in light of changes that have taken place in the gas industry. "As time has gone by, as gas prices themselves have gotten higher, as there have been talks about shortages, our decision-making process has changed. . . . I think that the national dialogue on conservation and decoupling has – has really put this issue out as something that all the commissions need to be looking at."[6] Atmos agrees with the Staff that its rate design is a simple, understandable, appropriate recovery mechanism that decouples the cost of serving the customer from the customer's energy consumption. Among the many

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[5] *Id.*, Tr. 33-35.
[6] Tr. 448, 453.

benefits and rationale for the Staff position as identified by Witness Ross: "It is fair (Tr. 334); it removes disincentives for companies to promote conservation (Tr. 339); it works to spread out the revenues, it lowers their winter peak and that's good for customers (Tr. 339); it sends correct price signals to customers, especially those that are looking at coming on the system (Tr. 339); and it addresses the cross-subsidization issue (Tr. 340)."

Indeed, conservation and efficiency measures are an integral part of the Staff proposal in this proceeding, with the Company committing to spend $78,000 on low income weatherization ($2,600 per household for 30 customers) and agreeing to institute a residential efficiency audit program for all customers – not just low-income customers. The audit program will only cost the customer $25, with Atmos picking up the rest of the costs (total costs estimated to be between $60 to $100). Regarding the number of audits, Witness Ross testified "They're going to do as many as ask for them. There is no upper limit." (Tr. 348). In addition, the Company's testimony confirms that it is committed to educating customers about the delivery charge prior to and during the implementation to ensure that customers are aware of it and assist in their understanding of it.

As reflected in its testimony and the evidence adduced at hearing, Atmos does recommend one minor modification to the Staff's proposal, in that it would seasonably sculpt that delivery charge so that it would be slightly higher in the winter and slightly lower in the summer. However, Atmos can accept Staff's delivery charge as proposed if that is the preference of the Commission.

Regrettably, OPC opposes the above-described consolidations and progressive rate design proposals, ignores the changed circumstances and simply advocates maintaining the status quo. Under OPC's recommendations, there would be no progress toward the base area and PGA consolidations, and the Company would not have an opportunity to mitigate the effects of weather on its customers' bills or on the company's earnings. OPC even opposes the Company's proposed economic development rider, as well as many of the other miscellaneous tariff proposals under consideration. Its punitive and hostile reaction to the Staff's Delivery Charge rate design proposal (recommended rate decrease -- although it acknowledges it is not filing a complaint; unprecedented ROE recommendation of 7%; no weatherization or efficiency proposal whatsoever that could assist its clients; opposition to consolidation and tariff uniformity) appears to result in a continuing theme of "Just Say No!"

Fortunately, others have recognized that the above-referenced facets of Mister Webster's definition – "a favorable juncture of circumstances" and "a good chance for advancement or progress" – clearly apply to this proceeding, and appropriately advocate for the positive opportunities presented.

> Now, Staff believes that this is the best time for this Commission to recognize these inequities caused by the status quo, and that the rate that Public Counsel wants to inflict on customers, well, it's just time to make a change, it's time to do the right thing.
>
> * * * * *
>
> Now, Staff believes that its rate design is truly a sea change from the way business was done in the past. We know that. You know, it's never too late to make the right decision, and this is what Staff believes that it is doing with this rate design because it is simply the most efficient way to price service to customers. It's the best way to send a very clear price message and to allow that customer to make their own decisions regarding how they use gas or whether they use gas.
>
> Staff's design is all about fairness. No customer subsidizes another. Each customer pays their fair share. Now, with this hodgepodge of old gas LDCs that make up today's Atmos, and today's operational cost realities and the unique opportunity that a zero revenue requirement case presents to this Commission, Staff believes quite strongly its rate design offers the fairest deal to customers.

* * * * *

> And in closing, I would jut like to urge this Commission that now is the opportunity to do the right thing. Now is the opportunity to strike a truly fair balance of interest and to protect customers and to remove the situation where one high-use customer may subsidize the low discretionary use of another customer, and it is simply the fairest pricing mechanism that can be made to that customer. And we think it's the right thing for this Commission to do to protect Missouri consumers.[7]

In its Prehearing Brief, Atmos set forth the following excerpt from the prefiled testimony of Staff Witness Ross, and strongly urged the Commission to seize the opportunities discussed therein.

> Staff believes that its rate design is a simple, understandable, appropriate recovery mechanism that de-couples the cost of serving the customer from the customer's energy consumption. . . . I want to point out that this is a wonderful opportunity for this Commission to do a great deal of good for a great number of people. . . . We have an opportunity in Missouri to align the interests of shareholders and customers. (Ross Surrebuttal, Exhibit 112, pp. 11-12).

As discussed in its Pretrial Brief and herein, the record evidence entered and adduced at the evidentiary hearing in this proceeding clearly supports a Commission decision adopting the positions of the Company and Staff, and rejecting the positions of the OPC advocated in this matter.

II. LIST OF 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?**

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

[7] Opening Statement of Staff, Senior Counsel Robert S. Berlin, Tr. 39, 43, 46.

for the Company. The new rate schedules would increase revenues to provide an overall rate of return on rate base of 8.59% on the test year rate base of $56.0 million. (Paris Direct, Ex. 1, pp. 5-6, 10-11). The Company's requested rate of return on common equity in this case is 12%. (Murry Direct, Ex. 14, pp. 29-31).

Regarding the appropriate revenue requirement in this proceeding, Atmos Witness Patricia Childers has testified that Atmos and the Staff have reached a common recommendation regarding the issue.

> After careful analysis, Atmos, in connection with the additional issues that I will discuss later in my testimony, would accept no revenue increase in this proceeding if the Commission were to accept the Delivery Charge rate design as described in Commission Staff witness Anne Ross' direct testimony. (Childers Rebuttal, Ex. 6, p. 3).
>
> After reviewing Staff's rebuttal testimony, it appears that the Staff and Company have no areas of disagreement remaining in this case. Specifically with regard to the overall revenue requirement, I would note the consistency between my rebuttal testimony on page 3, line 13-18, and Staff witness Stephen M. Rackers' rebuttal testimony page 2, lines 16-18, where he states, "The Staff believes that no change in cost of the service, on a total company basis, will still result in just and reasonable rates as a result of this case." (Childers Surrebuttal, Ex. 7, p. 2).

Staff Witness Stephen M. Rackers addressed the zero revenue requirement result recommended by Staff at page 2 of his Rebuttal Testimony, Ex. 104. At the evidentiary hearing, Mr. Rackers expounded on Staff's rationale:

> Staff is not pursuing a complaint case to reduce rates in this case. ...Well, I think in every case that I've ever participated in, you go through an assessment of what issues you think are strong, what issues you think are weak. I think that's – I'm not an attorney but I think that's what we often refer to as litigation strategy.
>
> And there are certain manpower and resource requirements to pursue a complaint. And we also participated in a prehearing and had additional discussion on many of these issues. And as I say in my testimony, I think at this time Staff believes that unless it prevailed on each and every one of those issues, which I think is extremely unlikely,

that it believed that zero is – would result in just and reasonable rates. (Tr. 94-95).

In response to an inquiry from Commissioner Appling, Mr. Rackers responded:

> Sure, I'll try. As I say on page 2 [rebuttal testimony], after having prehearing and after discussing the various positions that parties have taken in opposition to where Staff's revenue requirement calculation currently is, we believe that if we had a full hearing on those positions, that it's likely that that level of revenue requirement would be modified such that it could completely wipe out the excess, and it's certainly possible that you could wind up with a rate increase on a total company basis. And because of that, we are not pursuing a complaint.
>
> Q. So what you're telling me is that as Mr. Berlin described this morning, this is a case of first impression, is that good results for the ratepayers, for the company and for everyone that is involved; do you agree with that?
>
> A. Yes. (Tr. 99-100).

Additional details regarding the specific monetary values of different issues were explained in response to a question from Chairman Davis as follows:

> Return on equity in and of itself, between company's position and Staff's position, I believe is worth in excess of $1 million. We have rate base differences, both in level of plant reserve, different items we have included in rate base as opposed to company, that are worth $400,000 worth of revenue requirement.
>
> And we have included certain revenue and expense items in our case, or not included them, or calculated them differently than the company has in their case, and that is worth $3 million, for a total difference between our negative 1.2 and the company's positive 3.2 of $4.4 million.
>
> Now as I said before, we've made certain assumptions or we've tried to determine, can we maintain that level of over-earnings or negative revenue requirement calculation if this case went to a full hearing before the Commission.
>
> And our assessment is that those positions are likely to be modified such that, based on your decision, such that the excess would be reduced to zero or very close, or possibly would end up as a positive number for the company. (Tr. 101-102).

With regard to the reasons for his belief that such positions are likely to be modified, Mr. Rackers responded:

> That would be based on my experience with other Commission orders recently, my assessment of the strength and weaknesses of the company's arguments in opposition to our positions. Those are the two –oh, and there is – those are the two most important reasons. (*Id.*)

Finally, in response to re-direct examination by the Commission's General Counsel, Mr. Thompson, Witness Rackers offered the following:

> Q. Now, as I understand your testimony, Staff didn't pursue the $1.2 million punitive over-earnings because Staff believed it was more likely that a rate increase would result; isn't that correct?
> A. I see the possibility that a rate increase could be the outcome of a fully – of a full hearing.
> Q. Now, from the point of view of a ratepayer, when a company comes in for its first rate case in quite a few years and the result is no increase in revenue requirement, isn't that something that ratepayers can be happy about?
> A. Yes. (Tr. 106-107).

While the Office of the Public Counsel did not file any direct testimony in this case regarding the overall revenue requirement, its accountant, Mr. Trippensee, has sponsored cost of common equity rebuttal testimony suggesting that the Commission use a 7 percent return on equity in this proceeding. Regarding this punitive reaction to Staff's Delivery Charge rate design, Atmos Witness Dr. Murry observes: "That is not analysis; this is just unorthodox opinion." (Murry Surrebuttal, Ex. 15, p. 3). Both Staff Witness Matthew Barnes and Atmos Witness Dr. Murry thoroughly rebut the Trippensee "calculation." (*See*, Surrebuttal Testimony of Matthew J. Barnes, Ex. 102, and Surrebuttal Testimony of Donald A. Murry, Ph.D., Ex. 15.)

> Mr. Trippensee's recommendation is not supported by a commonly accepted rate of return analysis. He 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 if the Company's or Staff's rate design proposal is accepted. In fact, he did not even recognize that many of my comparable companies have weather mitigation rate designs that minimize risks related to changes in the weather. Mr.

> Trippensee's methodology is not supported by any authoritative sources regarding a cost of capital analysis. As far as Staff is aware his methodology has never been presented to the Commission. (Barnes Surrebuttal, Ex. 102, p. 2).

Responding to a question from Commissioner Appling regarding OPC's methodology, Witness Barnes stated:

> Q. If the Commission would adopt his recommendation, what do you see is the difficulty in that?
> A. Well, I don't agree that using a current risk-free rate within a historical rate is the appropriate method to determine the difference between the embedded cost and the risk-free rate. I believe the DCF model and the CAPM model are the appropriate models to use to determine an ROE. I don't agree with his methodology here. (Tr. 129).

Mr. Barnes also testified that he had never seen such methodology presented in any Commission proceeding, nor has he ever come across it in any financial textbook or economic treatise. (Tr. 130).

As the testimony adduced in this matter revealed, the Commission should give little or no weight to the opinion of Mr. Trippensee on this subject. During cross-examination of Mr. Trippensee, the Commission took official notice of the transcript in Case No. TR-85-23, at page 81, where Mr. Trippensee was asked in that proceeding: "Are you holding yourself out to this Commission as an expert in the areas of capital structure and rates of return, Mr. Trippensee? Answer: "Definitely not in the – in regard to the area of rates of return. With regard to the components of capital structure that support rate base, yes, I am." (Tr. 161). In addition, Mr. Trippensee never performed the generally accepted, basic analysis in this case:

> Q. Mr. Trippensee, did you perform personally a discounted cash flow analysis as a part of your rebuttal testimony?
> A. No, I did not.

> Q. Did you perform a capital asset pricing model analysis as a part of your rebuttal testimony?
> A. No, I did not.
> Q. Did you include in your rebuttal testimony a comparison of the ROE's of similarly situated public utilities with Atmos?
> A. No, I did not. (Tr. 161-162).

Responding to questions posed by Judge Dippell on behalf of Commissioner Murray, Mr. Trippensee could offer no authority in support of his "methodology":

> Q. And what authorities can you cite to show that your methodology is generally accepted?
> A. I'm unable to cite any methodology because this is new ground. . . . (Tr. 179-180).

The evidence further established that Atlanta Gas and Light has a rate design similar to what Staff is proposing in this case, and that company has been authorized a 10.9 percent return on equity. (Tr. 512, 592).

As Dr. Murry explains in detail in his Surrebuttal Testimony, contrary to Mr. Trippensee's criticism of Mr. Barnes' analysis for purportedly not considering the fixed charge rate design change proposed by Staff, "seven of the eight companies that Mr. Barnes identified as comparable to Atmos Energy operate under some type of revenue stabilization mechanisms for their residential and small commercial customers." (*See*, Murry Surrebuttal, Ex. 15, pp. 4-6, where Dr. Murry goes through the comparable companies one by one and discusses the revenue stabilization adjustments or other weather normalizing mechanisms that those companies had.)

> That was in response to the testimonies I read and the testimony by Mr. Trippensee that essentially accused the Staff witness of ignoring weather adjustments, weather normalizations. And so I looked specifically as to -- as to whether or not those companies had weather provisions, and I detailed that in my surrebuttal testimony.
>
> In fact, seven out of the eight of the companies that Staff witness analyzed do have weather normalization provisions of one form or

> another. And so if you take – if you take the theoretical implications of the discounted cash flow, for example, which he also used, those data would reflect the fact that these companies had some weather adjustment provision. (Tr. 89-90).

Mr. Barnes confirmed that there simply was no need for further reduction in his recommended ROE because risk is already reflected in his comparable group analysis. "It's contemplated in the stock price of the company and the credit rating of the company, of my comparable companies." (Tr. 598). Finally, Mr. Barnes testified that Staff proposed a "range" of ROEs in this case as it typically does, which covers a variety of risks that might be affecting companies. (Tr. 610-611).

The other legal flaw in the Public Counsel's position on the revenue requirement issue in this case[8], is that the Office of the Public Counsel has not filed a complaint against the reasonableness of Atmos' existing rates. (Tr. 557). As this Commission is well aware, according to 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. (*e.g., See* Staff's Overearnings Complaint, Case No. ER-2007-0002, Union Electric Company d/b/a AmerenUE.) OPC has chosen not to file a complaint against the reasonableness of existing rates of the company. As a result, there is no pending complaint proceeding alleging that Atmos' existing rates are unjust and unreasonable and, of course, if they did file a complaint case, the complainant would have the burden of proof.

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[8] OPC has suggested that revenues should be decreased by approximately $1.2 million. In addressing the issue of negative amortization of the depreciation reserve, OPC Witness Trippensee testified that if OPC won that issue, "That actually would raise the 1.2 or make it a smaller decrease. It would move it $591,000 closer to zero. So that would make it 6 – a little over 600,000 negative." (Tr. 626-627).

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

Depreciation Record Keeping and Reporting has been settled in accordance with the Partial Non-Unanimous Stipulation and Agreement, Section VI, page 5 and Attachment B. As set forth in the Staff's Memorandum in Support, "[t]he near term continued use of the currently ordered depreciation rates for all plant serving Missouri operations will allow both the Company and rate payers consistent return of the plant in service investment. Atmos' efforts to comply with the Commission rules will allow the Company to develop records that facilitate the determination of depreciation rates that allow for accurate and timely recovery of investment." In the Stipulation, Atmos agrees that continuing property records converted into Atmos' continuing property record system need the vintage portion of the record to be updated, and the process for presentation, contemplated agreement and execution of the company's plan is addressed.

Regarding the depreciation recordkeeping and reporting concerns initially expressed by Staff, Staff Witness Guy Gilbert noted: "I think its further explored and explained in the nonunanimous stipulation and agreement where it produces a timeline with which these goals would be met." (Tr. 204).

Staff and Atmos have proposed a negative amortization of the depreciation reserve in the amount of $591,000. (Tr. 188). OPC opposes this proposal. In addressing this issue, Mr. Gilbert offered the following:

> Right. Because I see that, I view that as an immediate relief to the current ratepayers in that it reduces their depreciation expense by $591,000 per year. Now, granted, it's going to increase the amount of rate base that consumers are going to pay a return on.
>
> However, if 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 them

> $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. (Tr. 200).

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)?**

As noted above, while the Company's original rate design proposal embodied a Weather Normalization Adjustment ("WNA"), after careful consideration of the Staff's Delivery Charge proposal, the Company supports the adoption of the Staff's rate design recommendations in lieu of the WNA.

As discussed in the Direct Testimony of Staff Witness Anne Ross, Atmos currently has a "traditional" residential rate design consisting of a customer charge and a volumetric, or commodity rate. In this proceeding, for residential and small general service classes Staff recommends recovering the entire amount of the non-gas, or margin, costs in a fixed monthly charge (Delivery Charge). (Ex. 110, p. 9).

> We believe that this rate structure will address two significant current issues affecting the natural gas distribution market. Specifically, it will:
> * Remove disincentives for utilities to encourage and assist customers in making conservation and efficiency investments.
> * Reduce the effects of weather on utility revenues and customer bills. This will provide utilities the opportunity to earn their Commission-ordered non-gas revenue requirement – no more, and no less – in a rapidly changing environment. (*Id.*, pp. 9-10).

Ms. Ross briefly explained this rapidly-changing environment in her Rebuttal Testimony, Ex. 111, at page 5:

> Approximately five years ago, natural gas prices increased dramatically, and did not return to their previous levels. Residential customer bills doubled, and worse. An Emergency Cold Weather Rule was enacted in Missouri. The non-gas portion of a customer's bill went from being around 60% of the total bill to around 20%-25%. Studies found that the usage of low-income customers was not under their control to any great extent, and a study performed by a former OPC Chief Public Economist found that low-income customers were often high users, mainly due to the inefficient housing in which they lived. (Footnote omitted.)

In its prefiled direct testimony, the Staff proposed the following specific Delivery charges: Northeast Service Territory - $21.79; Midwest - $19.43 and Southeast $14.77. For each service territory, Ms. Ross used the class revenue requirements determined in the class cost-of-service studies performed by Staff witness Thomas Imhoff. (Ex. 110, pp. 9, 15). Based on stipulated billing determinants, Staff's proposed fixed monthly Delivery charges are: Northeast Service Territory - $20.61; Midwest - $19.43 and Southeast - $13.92. (Ex. 137; Ex. 7, Schedule PJC SURREB 1).

OPC opposes this progressive rate design proposal and advocates maintaining the status quo. Ms. Ross succinctly rebutted the OPC's "status quo" posture at page 6 of her Rebuttal Testimony (Ex. 111):

> I believe that the OPC Residential 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;
> 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; in fact, 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.

In his opening statement, counsel for OPC stated the following objections to the Staff's rate design proposal:

> Staff's decoupling rate design proposal is harmful to consumers because, one, the impact of the proposal is truly not known without sufficient studies; two, customer efforts to conserve energy will be negated; three, no conservation or efficiency programs have been introduced; and four, it will be contrary to good public policy in that it will shift a substantial portion of the cost to the lowest use customers.
> (Tr. 57-58).

As discussed below, all of these unsubstantiated claims were thoroughly rebutted in the evidentiary hearing in this matter.

Clearly, Staff's proposal is not a novel, one-time "trial balloon," but rather a thoughtful, studied policy initiative, whose time is right -- not only for this proceeding, but other LDC proceedings as well.[9] As noted previously, Staff Witness Anne Ross explains that the Staff rationale has changed over the years. "As time has gone by, as gas prices themselves have gotten higher, as there have been talks about shortages, our decision-making process has changed. . . . I think that the national dialogue on conservation and decoupling has – has really put this issue out as something that all the commissions need to be looking at."[10] In her prefiled testimony, Ms. Ross specifically references a November 2005, National Association of Regulatory Utility Commissioners ("NARUC") *Resolution on Energy Efficiency and Innovative Rate Design.* (Schedule 3-1 to Ex. 110).

> Q. Are other states looking at ways to address the issues that you have described?
> A. Yes. The NARUC Resolution that I referenced earlier calls for "State commissions and other policy makers to review the rate designs they have previously approved to determine whether they should be reconsidered in order to implement innovative rate designs that will

[9] *See*, Case Nos. GR-2006-0422, GR-2007-0003.
[10] Tr. 448, 453.

> encourage energy conservation and energy efficiency. A May 2006 forum entitled "Rethinking Natural Gas Utility Rate Design," and sponsored by the American Gas Foundation and NARUC Education and Research Foundation brought together representatives of the major stakeholders – state commissioners, utilities, financial analysts, utility consultants, and consumer advocates – to discuss ways in which the stakeholders' interests can be more closely aligned. (Ex. 110, p. 14).

Exhibit 140, a composite of the Oklahoma Commission Staff Survey on the issue, contains the Missouri response at page 13 of 22 which reflects, "Also, in many rate cases, Missouri Staff is looking at changing our policy on customer charges to address this issue directly without the need to implement surcharge provisions." As Ms. Ross confirmed at the hearing, "We are re-examining rate structures in rate cases." (Tr. 444). Atmos witness Childers notes, "[t]he Company believes that this rate case is clearly the most appropriate forum to address these issues. . . . The parties have invested considerable amount of time and resources addressing the issues in this docket, including Staff's CCOS analysis which provides a basis for establishing rates on a cost supported basis." (Ex. 7, pp. 3-4).

There is substantial record evidence in this proceeding concerning the impacts of the Delivery Charge rate design proposal. While OPC attempts to interject misleading percentages of purported impacts on customer bills when it ostensibly serves its purpose, as Company and Staff witnesses point out, one must be careful to ensure that the true picture is revealed. In response to inquiries by Commissioner Appling, Company Witness Childers stated as follows:

> Q. Mrs. Childers, Mr. Poston testified this morning -- not testified but spoke to the fact that in one of the areas the percentage will go up about173 percent?
> A. Yes, that's correct. I would first like to say that I think percentages can be very misleading when you use percentages or you use dollar

impact, but I also believe that OPC's analysis excluded the gas cost portion of the bill which, again, represents 80 percent. When you roll back in 80 percent of the bill, the customer cost, obviously the percent comes down. But again, I think you have to be careful at looking at percents as opposed to looking at dollar -- dollar impact.

Q. Can you answer what one of the areas that he was referring to?

A. Well, this might be helpful. Attached to my -- attached to my surrebuttal testimony --

Q. Right.

A. -- there is page 2 of 2 of Exhibit 2 which does show the consolidated delivery charge based on Staff's recommendation and the consolidated PGA's. The PGA's that are shown on this exhibit are the PGA's that have been most recently filed by the company which are substantially less than the PGA's that are in effect today, which is good news for the -- for the consumer.

It also includes that ACA component which is the true-up component.

Q. Right.

A. And if you, for example, look at -- well, let's just say Kirksville, for example, because they currently have the lowest rates. If you look at the impact in Kirksville, the dollar amount is $105, but the percentage is 12.4. Again, when you calculate percent, not only using the base rate but the gas cost which is a larger portion of the bill, you get a substantially reduced percentage.

COMMISSIONER APPLING: Thank you. (Tr. 78-79).

As Ms. Childers discussed above, the impact on a percentage basis of the proposed delivery charge rate design on the three non-gas areas and four PGA areas is specifically set forth on the schedule attached to her Surrebuttal testimony, Exhibit 7, Schedule 2. Page 2 of 2 of that schedule reflects the Staff's delivery charge as applied to the districts as consolidated per the Staff/Atmos position, as well as the most recent PGA filings. The schedule is discussed at length with Commissioner Clayton at pages 254-263 of the transcript. An examination of the schedule reveals that the average customer in the SEMO district will see a 4/10 of one percent increase, or $3.16 annually. (While Atmos proposes sculpting the charge; on an annual basis the Delivery Charge rate design is the same. Tr. 299) Of course, as shown on Staff Exhibit 137 (sponsored by Staff Witness

Ross and titled "Comparison of OPC and Staff Residential Rate Design Proposal Impact Dollars Updated to Reflect Billing Units in Stipulation and Agreement"), a SEMO customer using more than the average amount will see reductions in increasing amounts to his total bill. (Tr. 290-291). (*See* discussion at Tr. 438-440). Mindful of Commissioner Appling's observation at the beginning of the evidentiary hearing regarding the economically depressed areas in the southeastern portion of the state, it is important to note that the evidence in this proceeding reveals that "low-income" does not necessarily equate to "low use." As OPC witness Meisenheimer testified based on her own study, "in this case it doesn't appear that low-income customers' characteristics substantially differ from those of the rest of the general customer class." (Tr. 142). Exhibit 19, depicting Atmos company-specific information on LIHEAP customer consumption in comparison with average consumption, clearly rebuts any suggestion that low-income equates to low-use. (Tr. 498, 509).

Further, the evidentiary record also rebuts OPC's claim that under Staff's rate design, customer efforts to conserve energy will be negated. In response to questions from Mr. Thompson, Atmos witness Childers testified as follows:

> A. The delivery charge that Staff is recommending, the customers would both pay that same delivery charge. But I think it's important to keep in mind that 80 percent of a customer's bill is purchased gas cost. So the customer that's going to use less consumption is going to pay less in the wholesale cost of gas than the customer that uses more. So there would be a total difference in the bill, but it's going to be largely driven by the gas cost itself, not by the delivery charge.
> Q. So do I understand you to say in answer to my question, that if the rate design that Staff has proposed in this case is implemented, it will, in fact, continue to be true that the customer in the same area that uses more gas will, in fact, pay more money?
> A. That's correct.
> Q. So would you agree with me that there is still a reason to practice conservation in gas use?

A. Absolutely. The gas cost is, again, 80 percent of what a customer pays, so they have every incentive to conserve and use less. (Tr. 68-69).

Similarly, Staff witness Ross offered the following testimony on re-direct examination at the hearing:

Q. Is it your opinion that Staff's proposed rate design gives customers the greatest break during the winter months?
A. Yes.
Q. Isn't the winter months when they need the greatest pricing help?
A. If they're space heating and/or water heating customers, yes, the winter months – their usage will go up in winter months.
Q. And would low-income customers typically reside in poor housing stock?
A. Yes.
Q. And would poor housing stock be a cause for low-income customers to use more gas during the winter months?
A. Yes, it could.
Q. Mr. Poston had asked you about the largest portion of the gas bill I think in some questions regarding the effect on conservation. And I believe that you have responded that the actual gas cost is the largest portion of the gas bill; is that correct?
A. I don't remember responding to that. I agree with that statement.
Q. Okay. Would the cost of gas then be an incentive to conserve gas for a customer?
A. Yes. (Tr. 450-451).

As previously discussed, conservation and efficiency measures are an integral part of the Staff proposal in this proceeding, with the Company committing to spend $78,000 for low income weatherization ($2,600 per household for 30 customers) and agreeing to institute a residential efficiency audit program for all customers – not just low-income customers. (Tr. 344, 347) (Childers Surrebuttal, Ex. 7, p. 6). As Staff witness Ross testified, "Atmos has agreed to promote efficiency, perform audits, and they will bear the costs. . . . These are new proposals because this is the first time that Atmos has been in for a rate case." (Tr. 313). The audit program will only cost the customer $25, with Atmos picking up the rest of the costs (total costs estimated to be between $60 to $100).

Regarding the number of audits, Witness Ross testified "They're going to do as many as ask for them. There is no upper limit." (Tr. 348). There are no specific charges included in the company's rates to cover the costs of these energy efficiency audits or the weatherization program that is being proposed by Staff. (Tr. 437). In addition, the Company's testimony confirms that it is committed to educating customers about the delivery charge prior to and during the implementation to ensure that customers are aware of it and assist in their understanding of it. (Ex. 7, p. 5).

Presented with the specific conservation and efficiency measures, the OPC falls back to an attack on the purported lack of details.

> I don't think that the proposals that the Staff brought out and the company agreed to in surrebuttal have enough detail to be sure that they're – that they'll actually happen. So I'm not real comfortable with these particular proposals, not because I don't think the concepts would work, but because I don't think there's any detail or enough detail set out in them. (OPC Witness Meisenheimer) (Tr. 468).

As thoroughly discussed, *supra*, the Company is fully committed to implementing these programs, and it will be more than pleased to sit down with representatives of the Staff and OPC in collaborative meetings to fine-tune any "details" as required. (Ex. 7, p. 6; Tr. 494).

Perhaps more incredible than the OPC's unsubstantiated attacks on the conservation and energy efficiency measures proposed, is their total refusal to come forward in this proceeding with <u>any</u> weatherization or efficiency proposals whatsoever that could assist their clients. In cross-examination and in response to questions from the bench, Ms. Meisenheimer makes it perfectly clear that no conservation proposals would be forthcoming from OPC in connection with the Staff's Delivery charge proposal, while at the same time strenuously arguing that any decoupling proposal must contain conservation measures as an integral part thereof.

> Q. Has Public Counsel made any proposals in this case that would reduce the impact of weather on customers' bills?
> A. No. (Tr. 549).
>
> * * * * *
>
> And I want to be clear that even if we got a comprehensive conservation program, it is – I would be surprised to find myself in support of a flat fixed charge that collects everything. (Tr. 466).
>
> * * * * *
>
> Questions by Commissioner Clayton:
> Q. Ms. Meisenheimer, do you make a proposal for energy efficiency and conservation in your testimony?
> A. I do not.
> Q. Do not. Okay. Is there any energy efficiency or conservation program that the Commission could implement that, in your opinion, would justify the rate design that the Staff has proposed and the company has agreed to?
> A. I can think of no conservation program that is going to justify a rate design that collects everything through a fixed cost. . . .
> (Tr. 475).

Even if the Commission were to adopt a program similar to the PAYS program that OPC suggested in the last MGE case, Ms. Meisenheimer would not support this rate design. (Tr. 480-481).

Finally, OPC asserts 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. However, the record evidence in this proceeding clearly established that the low use customer is being subsidized today. (Tr. 304-305). 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. During the evidentiary hearing, Staff witness Ross explained:

> Okay. I believe that the facilities that it – and the cost that a company incurs to serve a residential customer doesn't vary with the variation in size of residential customers. . . . Because when they hook up a residential customer, they're not only hooking them up and providing the equipment they need for the intended use today, they also put in equipment that will serve them if they change that end-use.
>
> So, for instance, if somebody get on – on the system today and all they're going to do is cook with a gas stove – and we're just talking about residentials, they'll put the exact same equipment outside the house on those customer – on that customer as they would on a customer that came on and said, I'm going to space heat, run a water heater and cook.
> (Tr. 355-356).

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. Drawn from information set forth in Ms. Ross' Surrebuttal Testimony (Ex. 113, p. 6), Staff Counsel, in his Opening Statement, characterized the first page of the exhibit as "a snapshot of what a typical resident uses gas for and how much they use it in each of the three geographic service areas served by Atmos."

> . . . Now, what are typical residential end uses? And this is on Anne Ross's surrebuttal, I should point out for the record, on page 6.
>
> Well, pretty easy to understand that space heating is the big driver of gas consumption, 640 CCF annual. The next big driver is water heating at 288, gas fireplace inserts, 84, and then stove cooking, 24. . . .
> (Tr. 36-37).

As Mr. Berlin further states, the second page of Exhibit 142 is "an overview of what's happening today," resulting in what Staff describes as "the inequities caused by the status quo." (*See*, Tr. 37-39, Ross Rebuttal, Ex. 112, pp. 8-9).

Ms. Ross succinctly captured the folly of OPC's arguments regarding low-use concerns in her Surrebuttal testimony.

> The OPC rate design forces the households that depend on natural gas for their essential space and water-hearing needs to subsidize those that use natural gas for non-essential purposes. The subsidy is greatest in the

> winter heating months, when the space-heating customers' gas use is the highest, as are gas prices. This cost differential is not cost-justified, and this subsidy is unfair. (Ex. 142, p. 7).

Atmos does recommend one minor modification to the Staff proposal by seasonally sculpting the fixed monthly Delivery Charge, as discussed in Company Witness Gary Smith's Rebuttal Testimony. (*See*, Smith Rebuttal Testimony, Ex. 3, pp. 4-5, and Schedule GLS-1). Atmos would seasonably sculpt the delivery charge so that it would be slightly higher in the winter and slightly lower in the summer. As noted during the evidentiary hearing, the sculpting of the rates would achieve the same results as the staff proposal in terms of annual revenue collections. (Tr. 299). However, as previously indicated, Atmos can accept Staff's delivery charge as proposed if that is the preference of the Commission.

Having reviewed Commission Staff witness Ross' proposed customer classes (Page 5; Line 11-23 of Ms. Ross' Direct testimony, Ex. 110) including the proposal to split the general service class into a small and medium non-residential customer class and setting the classes on a uniform basis across the entire state, the Company has concluded that it would be appropriate to have statewide classes on a uniform basis and to break the non-residential general service into a small class and medium class. (Childers Rebuttal, Ex. 6, pp. 3-4). Ms. Ross further explained the basis for her proposal during the evidentiary hearing:

> Well, in my – my testimony I propose that we take the company's customers that are currently classified as SGS and split them because I found a huge variation in the amount of usage. Some of them use zero, some of them use close to a million CCFs in one year. I suggested that we split out the very small ones, the ones that are approximately the size of residential customers and use the re—residential delivery charge to collect their margin costs. . . . For all other classes I suggested we would have a

> new medium general service class, a large general service class and a large volume service class. I recommended that we go with the traditional rate design on those customers. (Tr. 353-354).

In cross-examination, Ms. Ross explained that she didn't propose a similar split for MGE in their current case, because Staff did not have individual customer information. "I had that in Atmos." (427).

Utilizing Staff's billing determinants in this case, the Company has developed a set of rates based on uniform statewide classes and non-gas rates in three geographic areas utilizing the sculpted residential Delivery Charge rate design proposed by Mr. Smith in his rebuttal testimony and the Delivery Charge rate design proposed Ms. Ross for small and medium non-residential general classes. The Company then evaluated the impact of these rates on each of Atmos' existing rate districts and the residential, small general, and medium general classes within each district. Attached to Ms. Childers' surrebuttal testimony (Ex. 7) is PJC SURREB – 1 which is a summary of the rates that would be implemented if these rates, which are consistent with both Atmos' and Staff's positions, are adopted by the Commission. Also attached to Ms. Childers' surrebuttal testimony is PJC SURREB -2, previously discussed, which is the class level impact.

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 the Company's proposal to make Utility Related Charges and late payment penalties uniform and consistent across its Missouri service area. (Ellis Direct, Ex. 10, pp. 2-8). Mr. Ellis supports the rates proposed with a cost analysis discussed in, and attached to, his testimony. <u>While the</u>

Company and Staff have reached agreement on all of the issues addressed in the Miscellaneous Charges area, OPC states in its Prehearing Brief that "the appropriate miscellaneous charges for the following remain unresolved between the parties: 1) activation charges for connection; 2) activation charges for reconnection; 3) activation charges for transfer; 4) late payment charges; 5) insufficient fund charges; and 6) seasonal reconnection charges." No party has opposed the Company's request to change the interest paid on customer deposits, a change that would bring parity to all deposits (the same interest rate as that previously approved for Missouri Gas Energy). (Ex. 10, p. 7).

Atmos is willing to accept Staff Witness Ensrud's recommendations related to miscellaneous utility-related charges. As set forth on pages 4-6 of Mr. Ensrud's Direct Testimony, Ex. 114, an agreement was reached with Staff to revise the Company's proposed tariff language and use the generic (commonly understood) terminology, instead of the term "activation charge." In addition, Staff proposed reduced rates for the Connection, Reconnection and Transfer services, based upon the underlying costs. The specific services and applicable rates to be applied on a state-wide basis, as agreed to by Company and Staff, are depicted in a chart at pages 5-6 of Ex. 114. (*See also*, Tr. 635-636).

While Atmos proposed to increase its non-sufficient funds charge (NFS charge or bad check charge) to $30.00 for the Company's entire service area, Staff supports a state-wide charge in the amount of a $15.00 rate. As Mr. Ensrud notes in his Corrected Direct Testimony, "Atmos currently has a $15.00 NSF charge today for the majority of its customers. The rate that I am proposing for the majority (75%) of customers, constitutes retention of the status quo." (Ex. 117, p. 2).

While OPC acknowledges that the above-described rates vary substantially by district, Ms. Meisenheimer suggests that there is no compelling reason to alter or raise the existing rates. (Meisenheimer Rebuttal, Ex. 201, p. 36). Staff Witness Ensrud rebuts the concerns expressed by Ms. Meisenheimer at pages 4-7 of his Surrebuttal Testimony, Ex. 116. It appears that if the Commission were to allow the Company to implement statewide rates for these services, OPC would not oppose the rates proposed by Staff in this proceeding.

> Q. If the Commission does allow the company to implement uniform statewide rates for these services, would you object to the rates proposed by Mr. Ensrud?
> A. No. (Ex. 201, p. 38).

The Company also requests authority to apply the authorized late payment fee found in specific existing tariff sheets (equal to 1.5% of the outstanding balance) across all rate schedules. The late payment fees existing in the Company's Missouri tariffs vary in amounts and this change will make the charge consistent across all of the Company's Missouri service areas. (Ex. 10, pp. 5-6). Staff supports and recommends that the late payment fee rate be consistent throughout the tariff. (Staff Prehearing Brief, p. 5). OPC only addresses this issue in its Prehearing Brief, where this component is listed with those "miscellaneous charges that remain unresolved between the parties," all of which are subject to the baseless allegation that there is no compelling reasons presented in the testimony to alter or raise the existing rates.

The most contentious issue in this Miscellaneous Charges subject area is the Staff's proposed Seasonal Reconnection charge (also referred to as "Two-Component Reconnection Charge" or "Seasonal Disconnect" proposal). Separate and distinct from the Staff's Delivery Charge rate design proposal, the Staff's Seasonal Reconnection charge is aimed at seasonal disconnection customers who seek to avoid paying costs when not using gas for heat. Mr. Ensrud's Seasonal Reconnection proposal is outlined in his Direct testimony, Ex. 114, beginning on page 18 (line 5) and continuing to page 20 (line 6). Essentially, 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. Such 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 (a 12-month limitation would be applicable to the second component, regardless of the reason for disconnection). The focus of Mr. Ensrud's approach is customers who interrupt service for an interim period of time.

> Q. And is it your testimony that 1/10, 7,000 out of 70,000 Atmos customers disconnect for a month or more every year?
> A. Right, and reconnect is my understanding. (Tr. 651).

Although OPC Witness Meisenheimer does not offer any type of adjustment to the Company's revenue requirement to adjust for seasonal customers, she believes that it is appropriate to allow customers to disconnect during the non-winter months and not pay for the costs associated with providing utility service. Mr. Ensrud addresses Ms. Meisenheimer's concerns at pages 11-13 of his Surrebuttal Testimony, Ex. 116.

While the Company supports Mr. Ensrud's proposal, it should also be noted that Atmos Witness Gary Smith has presented testimony in this proceeding wherein he addresses the Company's sculpting proposal as a methodology to alleviate some of the seasonal loss concerns. As set forth at page 4 of Ex. 3:

> We believe seasonally sculpting the fixed monthly Delivery Charge may be an alternative which will aid customer acceptance and alleviate some of the seasonal loss concerns. If the Delivery Charges proposed were increased during winter months and lowered in summer months, while producing the equivalent annual revenue Ms. Ross proposes, the Company's risk of customer loss could be reduced. For example, the lower summer Delivery Charge would provide less incentive for heating-only customers to abandon service during non-winter months. Also, the degree of change for all affected customers would be less significant. Under Atmos' traditional rate structures, for the typical heating customer, distribution margins were greater in the winter than in the summer months.

Atmos also is aware of "seasonal reconnection" tariff proposals under consideration in other cases before the Commission, in which certain components differ from that proposed by Staff herein (*e.g.*, not applicable to involuntary disconnects; 7-month versus 12-month maximum time frame). Atmos respectfully submits that regardless of the methodology chosen, the Commission should address this serious concern in this proceeding.

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

Staff's proposal to consolidate base rates into three geographic areas (Ross Direct, Ex. 110; page 4; lines 7-18 and page 5; lines 1-4) is very similar to the Company's recommendations offered in the direct testimony of Company Witness Childers (Ex. 5 NP, page 11; lines 5-10; page 13 lines 9-29), and Atmos supports Staff's proposal.

(Childers Rebuttal, Ex. 6, p. 4). A map depicting this proposal was entered into evidence as Exhibit 100. OPC opposes this consolidation.

Understandably, the record reflects some confusion as to the number of current rate areas, which are a result of the Company acquiring its Missouri territory in three separate acquisitions. As set forth in Ms. Childers' Direct Testimony, Ex. 5 NP, p. 12, Atmos currently has six sets of base tariffs and six purchased gas adjustments for its Missouri service areas (although there are seven separate PGA rate filings, as discussed, *infra*). 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. The Company/Staff proposal, supported by the Staff's cost studies (Tr. 298), will combine these 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. As Staff Witness Ross explains, "This will insure that a customer will not pay a completely different non-gas rate as his neighbor in the next town." (Ex. 110, p. 4).

The agreement among Company and Staff also was confirmed by Ms. Childers during the evidentiary hearing, in the following exchange with Commissioner Clayton.

> Q. All right. And is there an agreement on that issue?
> A. Yes, sir.
> Q. Okay. And could you describe that non-unanimous agreement or stipulation?
> A. The – the company's proposal and the Staff's recommendation as far as the consolidation of the base rates was essentially the same. We had consolidated regionally as had the – as had the Staff as well.
> Q. And that would be just a complete consolidation –

A. No, sir.
Q. – or the same four districts?
A. That would be – actually for the base rates it would be three – three sets of districts per se. You would have SEMO and Neelyville; you then would have Kirksville, what used to be the old United Cities Gas, which would be Hannibal, Canton, Bowling Green and Palmyra. So you would basically have a south, north and west central.
Q. And Staff's in agreement and Atmos are in agreement on that consolidation?
A. Yes, sir. (Tr. 253-254).

6. Should the Company's PGA tariffs be consolidated for purposes of setting gas rates in this case?

Staff's proposal to consolidate the PGA into four areas (Staff Witness Imhoff Direct, Ex. 118; page 8 line 13-26; page 9 lines 1-8) is also acceptable to Atmos. Although Atmos proposed a statewide consolidation in regards to the PGA, consolidation of the four areas identified by Staff's direct testimony is certainly an important step in the right direction. (Childers Rebuttal, Ex. 6, p. 4).

OPC Witness Ms. Meisenheimer opposes any PGA consolidation. Although the four PGA areas don't 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 and Atmos. Consequently, the Company believes that OPC's 'status quo' regarding PGA's should be rejected. (*Id.*, pp. 4-5). In response to the question -- "Do you agree with OPC witness Meisenheimer's assessment that the "rates vary significantly?" – Staff Witness Imhoff responds, "No. As Staff has previously stated, the maximum rate differential between the various proposed PGA rate district consolidations would be the West Central district of $0.0309 per Ccf. These changes will have an insignificant affect on a customer's bill." (Ex. 120, p. 2).

In responding to questions from Commissioner Clayton, Staff Witness Imhoff clarified Staff's proposal as follows:

> Q. So there's no consolidation in northeast Missouri, nothing's changing in northeast Missouri?
> A. Correct.
> Q. So who is changing then, because Kirksville you're leaving alone?
> A. Yes. I am combining Butler and Greeley districts, and I am combining the SEMO with Neelyville. (Tr. 675).
>
> * * * * *
>
> Q. So to make the statement that there are – that there are six or seven PGA districts is not accurate? There are not six – is it six or is it seven? Maybe it's just six.
> A. It's just six, but when they file for the Hannibal, Bowling Green and Palmyra, they still have to file separate tariffs. (Tr. 676).
>
> * * * * *
>
> Q. . . . So all these differences in the PGA are just basically messed-up ACA balances; is that correct?
> A. That's correct. (Tr. 678).
>
> * * * * *
>
> Q. Now, is the Staff making recommendations for any other changes in the PGA/ACA process, aside from consolidating Butler and Greeley and Neelyville?
> A. Other than eliminating the repetitive PGA tariff language for each individual section.
> Q. So no, so basically they're just being consolidated?
> A. Correct. (Tr. 680).

Company Witness Childers also addressed the ACA balance issue during the evidentiary hearing.

> We reviewed Staff's recommendation and where Staff is recommending not going to a consolidated statewide PGA but going to four, we are willing to accept that recommendation. We feel like that's a move in the right direction. They have grouped the areas geographically by the pipelines that serve those areas. (Tr. 240-241).

* * * * *

> And I would like to add that the commodity cost of gas within all of the currently filed PGAs is approximately – I think it's 850 an MMBtu. So the commodity cost within the PGAs is consistent within all the filings. Again, it's the ACA component that results in some differences.
> (Tr. 244).

In response to questions from counsel for OPC, Staff Witness Imhoff confirmed how the respective ACA balances would be handled on a prospective basis, by maintaining segregated balances until they are "zeroed out". As stated in the Staff's Prehearing Brief, no customer with a new "combined" district will pay any of the ACA balance attributed to a different "historic" district.

> Your question was did I actually state something in my testimony how it relates to the ACA. I – I have gone back through my direct and I do not have that. My intention was to have each individual district take care of their respective ACA balance to zero them out. (Tr. 279).

OPC Witness Meisenheimer further addressed the ACA balance issue in response to cross-examination by Company counsel, as follows:

> Q. If the Commission did decide that some consolidation would be appropriate, would you find the Staff's proposal to be more appropriate than the company's original proposal to consolidate into one PGA?
> A. Yes, with the qualification that – as you heard from Mr. Imhoff on the stand just a few minutes ago, the Staff's testimony did not address how the ACA would be handled and carried out for 12 months. I think he indicated that was his intention and that's – that's something that – that certainly should be done. That the – whatever leftover costs there are from existing districts, they should be preserved and carried – carried through and blended.
> Q. And did you –
> A. Or not blended across the districts. Sorry.
> Q. Did you also hear Ms. Childers testify that that was consistent with what the company would propose as well?
> A. I – I don't specifically remember exact – exactly what she said. I – I do remember that the – the company has taken the position it agrees with the Staff. (Tr. 286-287).

Finally, Mr. Imhoff confirmed that the Staff's modest proposal regarding the consolidation of the PGA rate districts is driven by consideration of the underlying pipelines serving those four districts. In re-cross by Company counsel, Mr. Imhoff testified:

> Q. And would you also agree that the Staff's consolidation proposal is actually quite modest, what you're really doing is moving the two smallest areas like Rich Hill into Butler and Neelyville into the SEMO area?
> A. I'd agree with that, yes.
> Q. And Kirksville isn't being changed because it's on ANR, where the Hannibal/Canton is still on Panhandle Eastern? It's really a pipeline issue there, is that the reason the Staff is keeping those separate?
> A. That's the main reason, yes. (Tr. 682).

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?**

Issue C above – "What is the appropriate level of lost and unaccounted gas?" – has been settled among the parties and is addressed in the Partial Non-Unanimous Stipulation and Agreement at page 5. Staff's Memorandum in Support of the Stipulation addresses this issue at page 4.

Atmos Witness Robert V. Kerley sponsors the Company's testimony in this proceeding related to these issues. (Exhibits 9NP and 9HC). Staff Witness Ensrud's position is consistent with Atmos' position regarding changes to its transportation tariffs (Ex. 9, page 3, line 16 and following), although Mr. Ensrud does propose some minor changes to the "cash-out" provisions of the transportation section (Ensrud Direct, Ex. 114, page 10, line 6-20). Atmos has no objection to incorporating this additional language into its transportation tariffs. (Childers Rebuttal, Ex. 6, p. 6). As discussed in the Staff Prehearing Brief, an approval of Atmos' provision is consistent with what the Commission has approved for other utilities.

The consistency between Mr. Ensrud's acceptance of Atmos' proposed transportation tariffs includes the proposed change to third party administered pools for cash-outs. Again, Staff points out in its Prehearing Brief that it wants to be consistent with the methodology used in the AmerenUE tariffs for cash-outs as recommended by Staff Witness Ensrud.

Staff's testimony (Ensrud Direct, Ex. 114) also supports Atmos' proposed Economic Development Rider ("EDR") (Kerley Direct, Ex. 9, page 2 and following). In his Surrebuttal Testimony, Mr. Ensrud appropriately rebuts the alleged concerns raised by OPC Witness Meisenheimer concerning Atmos' proposed EDR. (*See*, Ensrud Surrebuttal, Ex. 116, pp. 9-11).

Staff advocates only one exception to the Company's main extension policy by proposing additional language (on page 14, line 5-20 of Staff Witness Ensrud's Direct Testimony, Ex. 114) regarding refunds. Atmos accepts Commission Staff's position and is willing to add the language to the final tariffs approved in this case. Again, Mr. Ensrud rebuts concerns expressed by OPC Witness Meisenheimer regarding this issue at pages 8-9 of Ex. 116.

III. RESOLVED ISSUES

As noted in Atmos' Prehearing Brief and 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. Uncollectables in the PGA
6. Customer Service Issues
7. Class Cost of Service

The Partial Non-Unanimous Stipulation and Agreement submitted by Company, Staff and OPC on November 29, 2006, addressed the following areas: 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 Requirement; Depreciation Record Keeping and Reporting; and Gas Loss Reporting. As stated in the Stipulation, Atmos respectfully requests the Commission to issue an order in this case approving the Stipulation subject to the terms and conditions contained therein.

IV. CONCLUSION

As the competent and substantial evidence discussed herein clearly reveals, this proceeding truly represents "a favorable juncture of circumstances," and presents this Commission with a tremendous "chance for advancement or progress" regarding Missouri's regulatory environment and this company, in particular – to the benefit of the customers and company alike. Once again, Atmos Energy Corporation respectfully and strongly urges the Commission to seize the opportunities discussed in this proceeding, adopt the positions advanced by both the Staff of the Commission and Atmos, and reject the positions advocated by the OPC on the contested issues litigated in this matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand-delivered, emailed or mailed, First Class mail, postage prepaid, this 19th day of January, 2007, to all counsel of record in this matter.

Larry W. Dority