

**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) **Case No. GR-2006-0387**
Service in the Missouri Service Area of the Company.)

**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW
OF
ATMOS ENERGY CORPORATION**

Atmos Energy Corporation ("Atmos" or "Company") respectfully submits its Proposed Findings of Fact and Conclusions of Law 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.

PROPOSED FINDINGS OF FACT

Overview

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 Commission in making this decision has considered the positions and arguments of all of the parties. 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.

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 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. (Ex. 1, pp. 5-6, 10-11).

Atmos is the largest pure natural gas distribution company in the United States, with corporate offices located in Dallas, Texas. The Company 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. (Ex. 1, pp. 4-5, 10).

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 ("Greeley") purchased in 1993; United Cities Gas Company ("UCG") purchased in 1997; and Associated Natural Gas Company ("ANG") purchased in 2000. (Ex. 1, p. 3; Ex. 110, pp. 1-2).

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. The last rate request in Missouri was filed in 1994 by UCG, and rates were approved and implemented in 1995. The last rate increase affecting the utility properties the Company

acquired from ANG was filed, approved and implemented in 1997. (Ex. 1, p. 5; Ex. 110, p. 3).

In accordance with Commission Orders, local public hearings, a rate design technical conference, a settlement conference and evidentiary hearings were held in this matter.

A "Joint Issues List, List of Witnesses and Order of Cross-Examination" was filed by the Staff of the Commission ("Staff") on behalf of the parties, on November 14, 2006.

The Partial Stipulation and Agreement

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. No party opposed the Stipulation. Therefore, as permitted by Commission Rule 4 CSR 240-2.115, the Commission will treat the Stipulation, affixed to this Report and Order as Appendix A, as if it were unanimous. The Commission finds the Stipulation reasonable and, therefore, approves the Stipulation. 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 Stipulation.

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, the determination of the “revenue requirement,” that is, 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.¹ The second process is rate design, that is, the construction of tariffs that will collect the necessary revenue requirement from the ratepayers.

As discussed above, Atmos’ revised tariff sheets which initiated this proceeding were designed to produce an increase of approximately \$3.4 million in new revenues 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. The Company’s requested rate of return on common equity in this case is 12%. (Ex. 14, pp. 29-31).

While Staff’s initial filed revenue requirement on a total company basis calculated a revenue excess of approximately \$1.2 million, the Staff believes that no change in the cost of service, on a total company basis, will still result in just and reasonable rates and, therefore, Staff is not filing a complaint in this proceeding. (Ex. 104, pp. 1-2). Staff witness Stephen M. Rackers addressed the zero revenue requirement result recommended by Staff at page 2 of Exhibit 104, and noted that during the Settlement Conference held on October 2, 2006, through October 6, 2006, several of the parties to the case voiced significant opposition to many of the Staff’s positions. As Mr. Rackers testified, based on those discussions, the Staff recognized that its cost of service was likely to be modified if a hearing of the differing positions of the parties was conducted. During the evidentiary hearing, Mr. Rackers expounded on the Staff’s rationale and testified that

¹ 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).

Staff believed if a full hearing were held on its positions, it was likely that the level of revenue requirement would be modified such that it could completely eliminate any excess, and it was certainly possible that a rate increase on a total company basis could result. (Tr. 99-102, 106-107). Accordingly, Staff's position in this proceeding remains that no change in the cost of service, on a total company basis, will still result in just and reasonable rates as a result of this case.

Atmos witness Patricia Childers testified that, after careful analysis of the issues and consideration of the Delivery Charge rate design proposal advocated by the Staff, Atmos would accept no revenue increase in this proceeding. (Ex. 6, p. 3). As a result, it appeared that the Staff and Company have no areas of disagreement remaining in the case, particularly with regard to overall revenue requirement. (Ex. 7, p. 2).

While OPC recommends that the Commission find that the Company's rates should be reduced² based upon the initial revenue requirement position of the Staff (which Staff has abandoned for the reasons fully explained in the record of this proceeding), the OPC did not file any direct testimony in this case regarding the overall revenue requirement. In addition, OPC has not filed a complaint against the reasonableness of Atmos' existing rates. (Tr. 557). 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.

² 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).

The Commission finds that the competent and substantial evidence supports the position advocated by both the Company and Staff regarding the appropriate revenue requirement for Atmos, which is that no change in cost of service, on a total company basis, will still result in 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 the OPC's position on these issues. Regarding the appropriate level of expense, in its Prehearing Brief OPC simply announces that it supports the figures reflected on the Income Statement calculated by the Staff in Staff's pre-filed testimony. Again, for the reasons enumerated by its primary auditor in this proceeding, after considering the various positions of the other parties the Staff believes that no change in the cost of service, on a total company basis, will still result in just and reasonable rates. Given Staff's position and the totality of the evidence in the record, the Commission does not find the position advocated by the OPC to be reasonable.

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, sponsored cost of common equity rebuttal testimony suggesting that the Commission use a 7 percent return on equity in this proceeding, should the Commission adopt the Staff's rate design proposal. OPC bases its proposed ROE on the allegation that Staff's analysis fails to consider the reduction in risk created by Staff's rate design proposal. Again,

given the Commission's determination that a zero revenue requirement is appropriate in this case, it is not necessary to make a determination or finding regarding the specific issue of appropriate rate of return/return on equity. However, the Commission will address Mr. Trippensee's proposal, which was vigorously challenged by both the Company and Staff.

Both the Company and Staff witnesses on this issue, Dr. Donald A. Murry and Mr. Matthew Barnes, thoroughly rebut Mr. Trippensee's proposal and established that such recommendation was not supported by any commonly accepted rate of return analysis. (Ex. 15, Ex. 102). Mr. Trippensee was unable to offer any authority in support of his methodology, which Dr. Murry described as "just unorthodox opinion." As Dr. Murry explained in detail in his Surrebuttal Testimony and on the witness stand, 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 operate under some type of revenue stabilization mechanisms for their residential and small commercial customers. (Ex. 15, pp. 4-6; Tr. 89-90). In addition, 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. (Tr. 598). Indeed, the evidence revealed 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). Mr. Barnes further 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). Finally, based on the record, including previous representations of the witness himself as

to his qualifications to testify on this particular subject, the Commission finds that Mr. Trippensee's testimony on this particular issue should be accorded little weight. (Tr. 161-162).

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.

Staff and Atmos have proposed a negative amortization of the depreciation reserve in the amount of \$591,000. (Tr. 188). OPC opposes this proposal. Staff witness Guy Gilbert testified at the evidentiary hearing in support of this issue, outlining the resultant benefits to current ratepayers. (Tr. 200). The Commission finds that the competent and substantial evidence supports the position of Company and Staff on this issue.

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 discussed in the Direct Testimony of Staff's primary witness on this issue, 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). Ms. Ross testified that Staff believes this proposed rate structure will address two significant current issues affecting the natural gas distribution market.

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).

The Company's original rate design proposal embodied a Weather Normalization Adjustment ("WNA"). However, Company's witnesses testified that 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.

OPC opposes this rate design proposal and advocates maintaining the status quo. Ms. Ross addressed 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).

In addressing the rate design proposal now advocated by Staff, Ms. 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." (Tr. 448, 453). 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 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).

The Commission finds that there is substantial record evidence in this proceeding concerning the impacts of the Delivery Charge rate design proposal. As Company and Staff witnesses point out, in dealing with purported impacts on customer bills, one must be careful to ensure that the true picture is revealed. As Company witness Ms. Childers testified, “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.” (Tr. 78-79).

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 Ms. Childers’ 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 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) In addition, 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, 438-440).

Given discussions during 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).

The Commission finds that 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).

When presented with these specific conservation and efficiency measures, the OPC appears to fall back to an attack on the purported lack of details. (Tr. 468). While the Commission finds no merit in OPC's unsubstantiated assertions, the Company has testified that it will participate in collaborative meetings with the Staff and OPC to provide any further "details" that may be necessary. (Ex. 7, p. 6; Tr. 494).

More disturbing 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 any 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 residential, 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-heating 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. (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). Mr. Smith discussed the benefits of Company's sculpting proposal 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.

While Staff would recommend a single delivery charge for all months of the year, Ms. Ross testified that Staff is not opposed to the Company's sculpting proposal. (Tr. 303, Ex. 113, p. 14).

After considering all of the evidence and the arguments of the parties, the Commission finds that the competent and substantial evidence supports the Staff's Delivery charge rate design proposal, as modified by the Company's sculpting proposal set forth in its testimony and supporting schedules.

The Company testified that having reviewed Commission Staff witness Ross' proposed customer classes (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, it 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. (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).

The Commission finds that there is substantial and competent evidence in the record to support Staff's proposal, which is also endorsed by the Company, to adopt its residential Delivery charge for SGS customers using less than 2,000 Ccf per year within the same territory and finds this issue in favor of Staff.

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. (Ex. 10, pp. 2-8). Mr. Ellis supports the rates proposed with a cost analysis discussed in, and attached to, his testimony. While the 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).

The record reveals that 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. (Tr. 635-636).

While Atmos proposed to increase its non-sufficient funds charge (NSF 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. (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. (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."

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. The testimony reveals that as many as one in ten Atmos customers engage in this type of activity. 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.

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.

The Commission finds that the substantial and competent evidence in the record supports the Staff and Company positions on each of these issues.

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) is very similar to the Company's recommendations offered in the direct testimony of Company Witness Childers (Ex. 5), and Atmos supports Staff's proposal. (Ex. 6). 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, 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 Commission finds that the substantial and competent evidence in the record supports the Staff and Company positions on this issue.

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

The evidence in this matter establishes that Staff's proposal to consolidate the PGA into four areas (Staff Witness Imhoff Direct, Ex. 118) is also acceptable to Atmos. Although Atmos proposed a statewide consolidation in regards to the PGA, its witness testified that consolidation of the four areas identified by Staff's direct testimony is

certainly an important step in the right direction. (Ex. 6, p. 4). 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.

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, Staff and Atmos argue, the benefits of bill comparability will be achieved if the Commission adopts the four areas as recommended by both parties. Consequently, Company and Staff argue that OPC's 'status quo' regarding PGA's should be rejected, as these changes will have an insignificant affect on a customer's bill. (Ex. 120, p. 2).

In responding to questions from the bench, Staff witness Imhoff clarified Staff's proposal and acknowledged that the primary cause of differences in districts is the ACA component. Under Staff's proposal, supported by the Company, no customer with a new "combined" district will pay any of the ACA balance attributed to a different "historic" district.

The Commission finds that the competent and substantial evidence supports the Staff and Company position regarding PGA consolidation.

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. (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 (Ex. 114) also supports Atmos’ proposed Economic Development Rider (“EDR”) (Ex. 9, page 2 and following). In his Surrebuttal Testimony, Mr. Ensrud rebuts the alleged concerns raised by OPC Witness Meisenheimer concerning Atmos’ proposed EDR. (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 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.

The Commission finds that the competent and substantial evidence supports the positions of the Company and Staff on these various "Other Tariff" issues.

Resolved Issues

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. Uncollectables in the PGA
6. Customer Service Issues
7. Class Cost of Service

As previously discussed and approved, 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.

Resulting Tariffs

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, is a summary of the rates that will be ordered to be implemented, which are consistent with both Atmos' and Staff's positions as adopted by the Commission and are found to be just and reasonable. Also attached to Ms. Childers' surrebuttal testimony is PJC SURREB -2, which reflects the class level impact of the decisions of the Commission adopted herein. Miscellaneous and Other Tariff provisions as determined herein will be ordered to be filed.

PROPOSED CONCLUSIONS OF LAW

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

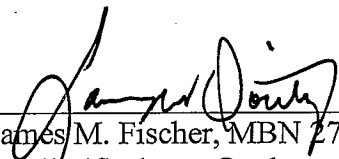
Atmos is a public utility, and a gas corporation, as those terms are defined in Section 386.020(42) and (18), RSMo 2000. As such, Atmos is subject to the Commission's jurisdiction pursuant to Chapters 386 and 393, RSMo.

Section 393.140(11), RSMo 2000, gives the Commission the authority to regulate the rates that Atmos may charge its customers for natural gas. When Atmos filed a tariff designed to increase its rates, the Commission exercised its authority under Section 393.150, RSMo 2000, to suspend the effective date of that tariff for 120 days beyond the effective date of the tariff, plus an additional six months.

In determining whether rates are just and reasonable, the Commission must balance the interests of the investor and the consumer.³ 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.⁴

Respectfully submitted,


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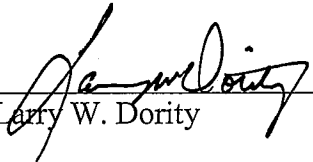
Attorneys for Atmos Energy Corporation

³ Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591, 603 (1943).

⁴ Bluefield Water Works & Improv. Co. v. Pub. Serv. Comm'n of West Virginia, 262 U.S. 679 at 690, 43 S. Ct. 678, 67 L.Ed. 1181 (1923).

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