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Witness: Rebecca Buchanan
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Case No.: GR-2009-0417
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MISSOURI PUBLIC SERVICE COMMISSION

CASE NO.: GR-2009-0417

REBUTTAL TESTIMONY

OF

REBECCA BUCHANAN

ON BEHALF OF

ATMOS ENERGY CORPORATION

Franklin, Tennessee
July 2011

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Atmos Energy Corporation's 2008-2009 Purchased Gas Adjustment and Actual Cost Adjustment	)))	Case No. GR-2009-0417

AFFIDAVIT OF REBECCA M. BUCHANAN

STATE OF TENNESSEE)
) ss
COUNTY OF WILLIAMSON)

Rebecca M. Buchanan, being first duly sworn on her oath, states:

1. My name is Rebecca M. Buchanan I am employed by Atmos Energy Corporation as Manager, Regional Gas Supply. My business address is 377 Riverside Dr, suite 201, Franklin, TN 37064-5393.

2. Attached hereto and made a part hereof for all purposes is my Rebuttal Testimony on behalf of Atmos Energy Corporation consisting of twenty-three (23) pages, all of which having been prepared in written form for introduction into evidence in the above-captioned docket.

3. I have knowledge of the matters set forth therein. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded, including any attachments thereto, are true and accurate to the best of my knowledge, information and belief.

Rebecca M. Buchanan
Rebecca M. Buchanan

Subscribed and sworn before me this 7 day of July, 2011.

Deborah G. Sparkman
Notary Public

DEBORAH G. SPARKMAN
STATE OF TENNESSEE NOTARY PUBLIC
RUTHERFORD COUNTY

My commission expires: ______________

My Commission Expires:
September 16, 2012

REBUTTAL TESTIMONY OF
REBECCA M. BUCHANAN
ATMOS ENERGY CORPORATION

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Rebecca M. Buchanan. My business address is 377 Riverside Dr., Suite 201, Franklin TN, 37064.

Q. DID YOU FILE DIRECT TESTIMONY IN THIS CASE NO. GR-2009-0417?

A. Yes.

Q. HAVE YOU REVIEWED THE DIRECT TESTIMONY OF STAFF WITNESS DAVID M. SOMMERER?

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. The purpose of my rebuttal testimony is to discuss how Atmos Energy Corporation ("Atmos" or "Company") has complied with the requirements of the Affiliate Transaction rules. I will respond to certain questions and address unsubstantiated concerns raised by Mr. Sommerer in his direct testimony regarding the bids awarded to Atmos Energy Marketing ("AEM"). Throughout his direct testimony, Mr. Sommerer makes a number of statements that either stretch, grossly mischaracterize, or ignore what Staff was able to show in the previous ACA case, GR-2008-0364. I will show how Staff's claims are contradictory and unsupported given the facts on record. I will show that the facts do not support a finding that Atmos' gas costs were imprudently incurred and that Mr. Sommerer's testimony has not raised any serious doubts about the prudency of the actual gas costs incurred.

Q. WHAT ARE THE MAJOR CONCERNS RAISED BY MR. SOMMERER IN HIS DIRECT TESTIMONY?

A. In his testimony, Mr. Sommerer has characterized the Affiliate Transactions rules as having additional requirements that are not explicitly or implicitly articulated in the Commission's Affiliated Transaction Rules (4 CSR 240-40.015 and 4 CSR 240-40.016)(hereafter the "Rules") or statutes. Mr. Sommerer asserts that affiliate transactions require greater scrutiny because they are not arms-length transactions. He advances several arguments in an attempt to show that acceptance of AEM's bid was an imprudent decision. The problem is that these arguments rely on flawed logic, misunderstanding of the gas supply business, assumptions of wrongful conduct on the part of Company personnel, or just plain incorrect or misleading assertions. Further, Mr. Sommerer does not demonstrate how these situations are more likely to occur with respect to an affiliated gas supplier than a non-affiliated gas supplier.

AFFILIATE TRANSACTIONS RULES

Q. ON PAGE 4, LINE 15 OF HIS DIRECT TESTIMONY, MR. SOMMERER ASSERTS THAT AFFILIATE TRANSACTIONS "REQUIRE GREATER SCRUTINY." ARE AFFILIATE TRANSACTIONS SUBJECT TO ADDITIONAL REGULATION BY THE COMMISSION?

A. Yes. The Commission has created rules applying only to affiliate transactions. My understanding is that the purpose of these rules is to address any concerns, including those raised by Mr. Sommerer, that might exist regarding affiliate transactions.

Q. ARE YOU FAMILIAR WITH THE COMMISSION'S AFFILIATE TRANSACTIONS RULES?

A. Yes, I am.

Q. PLEASE DESCRIBE THE BASIC REQUIREMENTS OF THE RULES.

A. The Rules state that "When a regulated gas corporation purchases information, assets, goods or services from an affiliated entity, the regulated gas corporation shall either obtain competitive bids for such information, assets, goods or services or demonstrate why competitive bids were neither necessary or appropriate." (4 CSR 240-40.015(3)(A).

Q. DID ATMOS OBTAIN COMPETIVE BIDS FOR ITS GAS SUPPLIES?

A. Yes. The Company has fully complied with this requirement of the rule.

Q. ARE THERE OTHER RELEVANT ASPECTS OF THE RULES?

A. Yes. The Affiliate Transactions rules state that the utility "shall not provide a financial advantage to an affiliated entity." The rules also state that the utility "shall conduct its business in such a way as not to provide any preferential service, information, or treatment to an affiliated entity over another party at any time."

Q. DO THE RULES EXPLAIN WHAT IS MEANT BY THE TERM "FINANCIAL ADVANTAGE"?

A. Yes. A financial advantage would occur if the utility compensated an affiliate at a rate that is above the lesser of the fair market price or the fully distributed cost ("FDC") to the utility. The rules further specify that the FDC examines *all* costs of an enterprise in relation to all the goods and services that are produced, including a recognition of all costs incurred directly or indirectly including a general allocation of any costs that could not be directly assigned or indirectly allocated. My reading of the Rules is that the term "financial advantage" essentially means an advantage over a non-affiliated competitor. The Rules do not specify that any profit constitutes a financial advantage.

Q. HAS ATMOS EXAMINED THE FULLY DISTRIBUTED COST TO PROVIDE THOSE GAS SUPPLIES TO ITSELF?

A. Yes. As I explained in my direct testimony, Atmos Energy Corporation does not have the in-house capability to provide the gas marketing services that AEM and other gas marketers provide to Atmos. For example, Atmos does not have sufficient personnel with the in-house expertise to perform the gas marketing services that AEM and other marketers provide to Atmos. Atmos does not have personnel experienced in obtaining gas supply from producers of natural gas, trading on the physical and financial markets, or arranging for transportation services from upstream suppliers. In order to provide these types of services to the Missouri areas of Atmos, the Company would need to incur substantial cost and develop many processes already utilized by gas marketers for securing such gas supplies and transportation services in the interstate market. Further, Atmos would be entitled to include these additional expenses in its cost of service upon which its rates are based and earn a reasonable return on any capital investment related to these services, a fact which Mr. Sommerer completely disregards in his testimony regarding fully distributed cost. Based upon these facts, Atmos has determined that the Fully Distributed Cost of providing these gas services to itself would exceed the market price of those gas supplies. Therefore, Atmos believes it is more prudent to solicit proposals from gas marketers through a competitive bidding process to provide these necessary services in the most cost-effective manner.

Q. ON PAGE 11, LINE 10, MR. SOMMERER TESTIFIES THAT THE LDC'S ASSESSMENT OF ITS FULLY DISTRIBUTED COST "RAISES A RED FLAG." WHAT IS YOUR REACTION TO THAT STATEMENT?

A. I find it to be somewhat disingenuous given that Staff is only recommending a disallowance for affiliate transactions. If Staff truly believed that Atmos was fully capable of meeting all of its own gas supply needs in house without using a third party gas marketer, then it seems to me that Staff would also be challenging, or at the very least questioning, gas costs incurred in other areas of Missouri where unaffiliated gas marketers were hired. Staff's concerns are isolated to the affiliate marketer only, however. It is this kind of selective scrutiny that permeates Staff's entire case.

Q. IN HIS DIRECT TESTIMONY, MR. SOMMERER USES THE TERM "FAIR MARKET VALUE" (PAGE 11, LINE 5). WHAT IS YOUR UNDERSTANDING OF FAIR MARKET VALUE AS IT RELATES TO AFFILIATE TRANSACTIONS UNDER THE RULES?

A. The Rules do not contain the term "fair market value." The Rules use the term "fair market price." In the last ACA case, GR-2008-0364, Mr. Sommerer testified that he equated the two terms (Transcript p.626, lines 16-19). I can only assume that Mr. Sommerer is still using these terms interchangeably, otherwise he would be attempting to impose a new standard not contained in the Rules and inconsistent with his previous testimony.

Q. WHAT IS MR. SOMMERER'S DEFINITION OF "FAIR MARKET VALUE"?

A. On page lines 5-6 of page 11, Mr. Sommerer refers to the "fair market value of what AEM actually paid for its gas supply." From this testimony, it seems that Mr. Sommerer is defining the "fair market value" of the gas as the price paid by AEM.

Q. HAS MR. SOMMERER EVER DEFINED THE TERM "FAIR MARKET PRICE"?

A. Yes. During the evidentiary hearing in the previous ACA Case, GR-2008-0364, Mr. Sommerer agreed that the "fair market price" was "the price that seller is willing to accept and a buyer is willing to pay on the open market and in armslength transaction." (Transcript page 627, lines 6-8). Even if Mr. Sommerer persuades the Commission that the contract price between AEM and Atmos, determined by the RFP process, is not the "fair market price," the actual "fair market price" must be determined by how much another seller was willing to accept "on the open market and in armslength transaction." In other words, Atmos' "fair market price" is set by the market and is unrelated to what AEM paid for its gas.

Q. BASED ON YOUR UNDERSTANDING OF HIS TESTIMONY, WHY DOES MR. SOMMERER BELIEVE THAT THE FULLY DISTRIBUTED COST TO ATMOS IS LESS THAN THE FAIR MARKET PRICE?

A. In his testimony, Mr. Sommerer makes the flawed assumption that if AEM is able to procure gas supply at a certain price, then the regulated utility must also have similar access to gas supply at that same price without any additional overhead. On page 16, lines 7-9, Mr. Sommerer claims that the Company did not provide "information that demonstrates that AEM brought any special skills or value-added capability to Atmos LDC gas purchasing." Thus, he concludes, the utility could provide its own gas supply at a lesser rate without contracting with the affiliate.

Q. WHY DO YOU CALL THIS ASSUMPTION FLAWED?

A. Mr. Sommerer's assertion overlooks two crucial facts. First, he ignores the additional costs that the utility would incur in terms of personnel and processes necessary to provide gas marketing services that AEM and other marketers provide to Atmos. Second, Mr. Sommerer overlooks the fact that gas marketers, both affiliated and non-affiliated, have greater purchasing power than regulated utilities by virtue of the fact that they may bundle their purchases into a comprehensive portfolio of business that can include non-utility customers. The utility does not have the ability to take advantage of similar efficiencies of scale. Mr. Sommerer has also characterized AEM's gas purchasing practices as possibly having risk. Starting on line 5 of page 17 of his direct testimony, Mr. Sommerer claims that "The chief reason why Staff has inquired into the fair market value of the gas supplies that AEM provided to Atmos (the LDC) is that it is possible for AEM to use high risk interruptible or spot gas, in addition to interruptible transportation, or other risk-taking measures to fulfill its firm service obligations with Atmos the LDC." Yet, he maintains that the utility would be able to obtain gas supply at an identical price without addressing all the alleged risks that AEM might bear in the process. Is Mr. Sommerer suggesting that the utility should engage in risky procurement practices? Or is Mr. Sommerer's claim that AEM might engage in these risky practices simply a ploy to suggest the affiliate is unreliable? Whatever truly underlies Staff's seemingly contradictory testimony, the fact is that the fair market price that a utility can obtain in the natural gas markets is simply not the same as the fair market price that AEM can obtain in the natural gas market. In other words, the price at which sellers are willing to sell to the LDC, simply isn't the same as the price at which sellers are willing to sell to gas marketers.

Q. IS ATMOS' GAS PROCUREMENT PROCESS APPROVED IN OTHER JURISDICTIONS?

A. Yes. Although Mr. Sommerer does testify on page 21 lines 8-10 that Staff has "monitored recent Atmos' transactions with AEM" in several jurisdictions, he does not elaborate. The fact is that there are several states including Georgia, Kansas, Kentucky, Tennessee and Virginia that have formally reviewed and explicitly or implicitly approved the Company's RFP process. Other states, such as Colorado, Iowa, Louisiana, Mississippi, and Texas are accepting of Atmos' RFP process and have not expressed concern. On page 22, lines 2-4, Mr. Sommerer criticizes Atmos' business model and calls it inconsistent with being the largest natural-gas-only distributor in the United States. While Atmos is the largest natural-gas-only distributor, it does not claim to be the largest natural gas marketer or purchaser. While the differences may be interesting, they are not relevant to a prudence review. Again, Mr. Sommerer is just throwing out conjecture that does not support Staff's disallowance, but merely serves to cast doubt on Atmos.

Q. DID STAFF EXPRESS ANY OTHER CONCERNS RELATED TO THE RFP PROCESS?

A. Yes. On page 20 of his testimony, Mr. Sommerer poses a number of questions about AEM's upstream suppliers and their motivations for bidding, claiming that Staff's prudence review has been "thwarted and incomplete" without answers to these questions (some of which could only be answered by non-affiliate suppliers). Although he offers a hypothetical, Mr. Sommerer does not show with evidence why this is relevant to either the inquiry into "fair market price" or prudence. Staff does, in fact, possess the names of the bidders in Atmos' RFP process as well as the parties to AEM's upstream supply contracts. The complete RFP distribution list was requested by Staff and provided by Atmos in response to DR 0083 in this Case, and in response to DR 0078 in Case No. GR-2008-0364. Atmos welcomes and encourages all qualified parties to participate in its RFPs. The February 2009 RFPs and February 2008 RFPs were distributed to more than 60 potential suppliers and marketers. Among the recipients of Atmos' Missouri RFPs are many of the largest natural gas suppliers/marketers in the country, such as Anadarko Petroleum, BG Energy Merchants, BP Energy Company, Chesapeake Energy, Chevron USA, ConocoPhillips Company, Devon Energy Corporation, Louis Dreyfus Energy Services, Macquarie Energy LLC, Occidental Energy Marketing Ventures, ONEOK Energy Services, Shell Energy North America, Tenaska Marketing Ventures, and Total Gas and Power North America. So while Mr. Sommerer has not proven how or why this information is relevant, he has all the information that he asked for that Atmos or AEM possess.

Q. DID THE RFP AND SUBSEQUENT AFFILIATE CONTRACT THAT IS BEING QUESTIONED BY STAFF ORIGINATE IN THE CURRENT ACA REVIEW PERIOD SEPTEMBER 2008 – AUGUST 2009?

A. No. The RFP that Staff has focused its efforts on was issued in February 2008 with the supply contract commencing April 1, 2008. This is the same RFP that was examined in Case No. GR-2008-0364. The supply contract does not terminate until March 31, 2009, which is within the current ACA review period. Since Staff conducted extensive discovery in Case No. GR-2008-0364, Atmos would not expect to encounter new concerns from Staff in this Case.

Q. HAS ATMOS PROVIDED ANY PREFERENTIAL INFORMATION OR TREATMENT TO AEM?

A. No. As I explained in my direct testimony, AEM receives identical information and treatment as other bidders in the Request for Proposal ("RFP") competitive bidding process.

Q. DO THE AFFILIATE TRANSACTIONS RULES PROHIBIT AN AFFILIATE FROM MAKING A PROFIT ON A TRANSACTION WITH THE REGULATED UTILITY?

A. No.

Q. IF THE REGULATED UTILITY PROVIDED GAS SUPPLY SERVICES TO ITSELF, WOULD THE UTILITY EARN A PROFIT?

A. Yes. While Mr. Sommerer correctly notes that gas costs are passed through to ratepayers with no markup, he does not take into account the fact that additional Company personnel and resources that would be necessary to provide such gas supply services. The additional expenses would be included in the Company's cost of service, and the utility is permitted to recover prudent expenses and earn a reasonable return on any capital costs associated with these services.

Q. IF A NON-AFFILIATE MARKETER PROVIDED THESE SERVICES TO ATMOS, WOULD IT EARN A PROFIT?

A. I can only assume that a gas marketer would not participate in the RFP process unless it had determined that it would profit from the transaction.

Q. DO THE AFFILIATE TRANSACTIONS RULES MODIFY THE BURDEN OF PROOF IN THIS CASE?

A. No, 4 CSR 240-40.015(6)(C) specifically states that the rule does not modify existing legal standards regarding which party has the burden of proof in Commission proceedings.

Q. WHAT IS YOUR UNDERSTANDING OF THAT BURDEN OF PROOF?

A. The Commission has stated that the proponent of a gas cost adjustment must raise a "serious doubt" as to the prudence of the decision that caused what the proponent is alleging to be excessive gas costs. Although Mr. Sommerer's testimony raises a number of unsubstantiated concerns about the transactions between Atmos and AEM, he does not provide any evidence that Atmos was imprudent in the administration of its competitive bidding process or decision to accept the lowest bid produced by that process. Atmos accepted the lowest bid and far from creating excessive gas costs, the April 1, 2008 contract in fact saved the Missouri customers hundreds of thousands of dollars annually as compared to the other conforming bids. In Case No.GR-2008-0364, the Company presented undisputed evidence of the substantial gas cost savings afforded by the affiliate contract. Atmos showed this not only by using the initial bid estimates, but also by using the actual volumes nominated to calculate what the invoiced costs from other suppliers would have been. Although prudence is not assessed through hindsight, even hindsight shows an actual savings to Missouri customers.

ARMS-LENGTH TRANSACTIONS

Q. DOES MR. SOMMERER DEFINE THE TERM "ARMS-LENGTH" IN HIS TESTIMONY?

A. Yes. According to Mr. Sommerer, "Arms-length transactions are between two separate entities each with their own diverse interests to obtain the best terms for their respective entities." (page 6, lines 9-10)

Q. DOES MR. SOMMERER PROVIDE A BASIS FOR HIS UNDERSTANDING OF THE TERM IN HIS TESTIMONY?

A. No.

Q. DID YOU FIND THE TERM IN THE COMMISSION'S AFFILIATE TRANSACTIONS RULES?

A. No. I was not able to find the term "arms-length" in those Rules. As I stated earlier, however, my understanding is that the Commission implemented the Rules to deal with any concerns that might exist about affiliate transactions. This would include whether or not the transaction is at "arms-length." The Rules provide a framework to ensure that the utilities' transactions with affiliates do not provide an undue preference or advantage to an affiliate. Atmos' open and competitive bidding process, as approved by the Commission, supplies the conditions required for competitive, free-market dealings. The

Staff has failed to provide any evidence that the Company has not complied with the requirements of the Rules.

Q. DOES MR. SOMMERER OFFER ANY EXPLANATION IN HIS TESTIMONY REGARDING WHY HE DID NOT BELIEVE THE TRANSACTION TO BE "ARMS-LENGTH"?

A. In his direct testimony, Mr. Sommerer makes the statement that "AEM and Atmos share limited resources on access to liquidity and counterparty credit exposures." (page 6, lines 11-12)

Q. IS THIS A TRUE STATEMENT?

A. No. Atmos and AEM do not commingle regulated and unregulated funds. Separate cash accounts are maintained for each entity. Additionally, Atmos and AEM maintain their own independent credit facilities to support their individual businesses and each has their own separate procedure for management of credit risk.

Q. IS MR. SOMMERER AWARE OF THIS FACT?

A. He should be. Mr. Sommerer made the exact same statement in his testimony in the previous ACA case, GR-2008-0364, and I corrected it at that time also.

Q. DOES MR. SOMMERER OFFER ANY OTHER REASONS WHY HE BELIEVES THE TRANSACTION IS NOT AT ARMS-LENGTH?

A. Mr. Sommerer testifies that the Company's corporate and compensation structures provide an incentive to choose the affiliate in order to maximize shareholder profits, and in turn, maximize incentive compensation to those involved in the decision-making process. He claims that there is "a risk that affiliate transactions are more likely structured to increase Atmos profits than to provide the utility gas on the best terms available."(Page 8, Lines 17-19)

Q. DOES THIS MAKE SENSE?

A. No. First, the Commission implemented the Rules specifically to deal with any such "risk." Second, while it is true that consolidated earnings per share ("EPS") is the benchmark used in the Company's incentive compensation programs, an employee must first be able to demonstrate competent performance of their job duties prior to becoming eligible for incentive compensation. With respect to the Gas Supply function, competent performance includes substantial compliance with Company policies and procedures such as those included in the Gas Supply & Services Manual ("Manual") as well as with applicable regulatory law. The Manual provides the method by which bids are evaluated. As a general rule, the vendor providing the lowest cost offer is recommended as the winning bid unless operational, reliability, or financial concerns exist. In this review, none of these concerns existed.

Further, assuming for argument's sake that Mr. Sommerer's calculations are correct, he contends that the gas supply deals under review provided an approximately $400,000 in additional gross profit to earnings. This amount, which has not been netted for any associated overhead expense, represents less than one half of one percent of the net income for the overall enterprise in fiscal year 2009. To state that another way, the transactions that are the subject of this review did not materially increase the Company's EPS.

Finally, the financial evaluation of the bids is a straight forward, mechanical process undertaken by the Gas Supply Department employee using an Excel spreadsheet analysis to determine the rankings of all bids received and ultimately to determine the least cost bid. Staff has been provided this evaluation in each of the Company's numerous Missouri RFPs. The same methodology is used in each Missouri service area. Staff could thoroughly audit the spreadsheet in a very brief time (less than an hour would be my estimate). There is no point in this process that allows data to be manipulated to make an affiliate bid have a better or worse ranking among all the bids received. Staff has reviewed the Excel file year after year in its audits, including the current case, and there has never been a question of deception or impropriety in the evaluation.

Q. DO YOU OBJECT TO MR. SOMMERER'S ARGUMENT FOR ANY OTHER REASON?

A. Yes. Although Mr. Sommerer has avoided clearly articulating a direct attack on my integrity or that of my employees, by advancing this argument that is exactly what he is doing. He discusses built-in conflict and financial motivation, the underlying implication being that Atmos employees have acted imprudently in order to increase corporate profits and potentially increase the employees' variable pay. This is a serious allegation and one to which I take great offense. Additionally, he has provided no evidence that any employees of Atmos or AEM actually attempted to maximize shareholder profits at the expense of Missouri ratepayers. Mr. Sommerer has only raised the specter of impropriety and riskiness in an attempt to convince this Commission that his wildly inappropriate disallowance has some basis in gas cost jurisprudence. I brought this out at the hearing in Case No. GR-2008-0364 and find it incredulous that Mr. Sommerer persists with this unsupported, offensive, testimony.

Q. WHAT WOULD HAVE BEEN THE RESULT HAD THE UTILITY ELECTED TO EITHER PROVIDE ITS OWN GAS SUPPLY OR SELECT THE BID OF A NON-AFFILIATED SUPPLIER?

A. As I explained previously, had the utility provided its own supply, it would have been able to recover the overhead costs incurred (for the additional personnel and systems required) to provide that supply service. This recovery would have contributed to the Company's EPS in a manner similar to that described above. The other alternative, accepting another supplier's bid, would have resulted in higher gas costs for ratepayers.

Q. MR. SOMMERER POINTS OUT THAT THE BIDS ARE NOT THE SAME AS THE ACTUAL GAS COSTS AND THAT THE COMPARISON IS "APPLES TO ORANGES." IS HE RIGHT?

A. Only partially. Bid evaluations are based on estimated volumes since actual volumes are not yet known. Consequently, the bid amount and the actual invoice amount do not match up. This does not mean that it is not possible to say what would have happened had another supplier been selected, however. The comparison between suppliers is easily made "apples to apples" by applying the suppliers' bid prices to the actual quantities nominated by Atmos. To suggest that this is not an effective comparison is to imply that Atmos does not treat AEM the same way that it treats other suppliers, and that had another supplier won the bid, Atmos would have placed different nominations.

As explained earlier in this testimony, the Company uses an Excel spreadsheet to evaluate and rank the bids. This same methodology is used for each of Atmos' Missouri RFPs. If there is a flaw in the evaluation and ranking methodology, Staff has not made their concern known. The Company has evidence that the bid rankings would be exactly the same if actual volumes were utilized in the Excel evaluation. The least cost bidder is still going to remain the least cost bidder. A simple example will make this quite clear. Bidder A bids a price per dekatherm of Inside FERC plus five cents, while Bidder B bids an index price per dekatherm of Inside FERC plus one cent. Regardless of how many dekatherms are nominated by the Company, Bidder A's total cost will always be higher than Bidder B – the incremental savings provided by Bidder B is always four cents per dekatherm. Contrary to what Mr. Sommerer would lead you to believe, it really is just that simple. Any volume can be applied to the example and Bidder B will always result in savings over Bidder A.

Q. DOES ATMOS NOMINATE VOLUMES DIFFERENTLY WHEN AEM IS THE SUPPLIER?

A. No, absolutely not. The Gas Supply department uses the same process and methodology to nominate gas no matter who the supplier is.

AEM RECORDS

Q. DOES MR. SOMMERER'S PROPOSED ADJUSTMENT TAKE INTO ACCOUNT THAT AEM ALSO HAS OVERHEAD, INCLUDING PERSONNEL AND CAPITAL COSTS, IN ORDER TO PROVIDE GAS SUPPLIES TO ATMOS?

A. No. Mr. Sommerer's proposed adjustment imputes the "gross profits" of AEM to the Company. He apparently ignores the fact that AEM also has overhead that must be recovered before AEM can make a "profit".

Q. ARE THERE OTHER FLAWS IN MR. SOMMERER'S CALCULATIONS OF AEM'S "PROFITS"?

A. Yes. Mr. Sommerer's calculation only takes into account the price of gas purchased by AEM against the price of gas sold to the utility. When making his recommendation for disallowance, Mr. Sommerer has failed to consider any of AEM's administrative and general costs to provide gas marketing services to the utility. Even if you can accept his argument that a utility should be compelled to reduce its recoverable gas costs by any profit made by its affiliate, Staff cannot support its proposed disallowance. Staff cannot accurately state the level of net income earned by AEM on the gas supply deals under review as Staff is missing an important piece of the calculation.

Q. HAS STAFF PREVIOUSLY ADVANCED THIS ARGUMENT AND METHODOLOGY?

A. Yes. This is the same mistake that Staff made in the last ACA case, GR-2008-0364.

Q. HAS STAFF ATTEMPTED TO DIFFER ITS APPROACH TO THIS ISSUE IN THE 2009 CASE?

A. Yes, but not in a substantive way. Rather than seeking the information necessary to make the appropriate calculation, Mr. Sommerer merely blames AEM for not providing information that Staff did not request. In his direct testimony, Mr. Sommerer has added a section with the misleading title "AEM Documents Are Not Responsive to Staff's Inquiry." (Page 12, Line 10)

Q. IS AEM A PARTY TO THIS CASE?

A. No. It is my understanding, however, that AEM agreed to respond to Staff's questions in an effort to be cooperative with Staff.

Q. DOES MR. SOMMERER CITE EXAMPLES OF DATA REQUESTS THAT WENT UNANSWERED?

A. No. In his direct testimony, Mr. Sommerer only gives a summary of the information that it received from AEM but does not show how this information was unresponsive to the requests that were submitted to AEM. On page 13, lines 5-9, Mr. Sommerer testifies that "The Rule requires an assessment of all AEM costs associated with or allocated to the transaction. If AEM had provided this information to Staff, which it did not, AEM would be able to demonstrate its overhead costs at the time of the deal and Staff would be able to consider that information in its prudence review." Here Mr. Sommerer attempts to mislead the Commission into thinking that Staff requested the information and AEM simply did not respond to Staff's request.

Q. WHAT INFORMATION RELATED TO PROFITS DID STAFF REQUEST FROM AEM?

A. In DR 104, Staff requested:

> "Please provide a copy of AEM's supply and management transaction and contract records that show the ***gross profit*** related to each deal between the Missouri LDC and AEM in effect during the 2008-2009 ACA for the Rich Hill and Hume service area (SSCG), Butler and Hannibal/Canton service areas (PEPL). ***Please refer to the response to DR 106 in GR-2008-0364 and respond accordingly.***" (emphasis added)

Mr. Sommerer also testifies on page 12, lines 7-9, "The AEM information that Atmos provided to Staff was mainly limited to a spreadsheet that showed AEM's characterization of the revenues and costs associated with the Missouri affiliated gas deals." As shown by DR 104 above, not only did Staff *not* request information related to overheads or net profit, Staff specifically instructed AEM to provide records related to *gross* profit and to respond in the *same manner as they had in GR-2008-0364.*

Q. DOES MR. SOMMERER MAKE ANY OTHER MISLEADING REFERENCES TO THE INFORMATION PROVIDED BY AEM?

A. Yes. On page 13, lines 9-11, Mr. Sommerer testifies that "Because AEM did not document its cost allocation methodologies or its pricing/trading, the Staff is unable to consider that information for possible reduction of the proposed disallowance."

Q. WHAT PROBLEMS DO YOU IDENTIFY WITH THIS STATEMENT?

A. Mr. Sommerer complains that AEM does not document cost allocation methodologies. The problem with this statement is that *there is no cost allocation involved in the gas supply transaction between Atmos and AEM.* As Mr. Sommerer testifies on page 10 of his direct, the Rules provide that regulated gas corporations and their affiliates need to maintain books and records that include "documentation of the methods used to allocate and/or share costs between affiliated entities." (lines 26-28) This assumes that allocation or cost sharing is taking place with respect to the affiliate transaction. As previously explained, Atmos utilizes an RFP process that results in a contract. *AEM does not allocate costs to Atmos.* Costs of the transaction are invoiced by AEM according to the contract terms and the invoices are subsequently paid by Atmos. Atmos provides these invoices to Staff early in the audit process (see response to DR 39). Additionally, Atmos' Cost Allocation Manual ("CAM") describing any allocations that do in fact take place within the corporation is provided to Staff annually.

SUPPLY RELIABILITY

Q. DOES MR. SOMMERER MAKE ANY ALLEGATIONS WITH REGARD TO THE RELIABILITY OF ATMOS' GAS SUPPLY?

A. Yes and no. Mr. Sommerer makes some unsupported references to reliability, but then states in another portion of his testimony that there is no disallowance based on reliability. Starting on line 5 of page 7, Mr. Sommerer refers to "heightened risk exposure and the potential for supply disruptions" without explaining or supporting these claims with any evidence. On page 16, Mr. Sommerer reiterates a concern about Atmos' follow-up when its supplier "fails to perform."(lines 15-16) He goes on to say that "after examining the duration and materiality of those cuts, the Staff is not proposing a disallowance related to supply nominations and cuts in this case." (lines 17-19) Mr. Sommerer continues to sprinkle references to AEM's reliability throughout his testimony (pages 17, 19, 20). Although Mr. Sommerer continues to plant the seed of doubt regarding the reliability of AEM's supply, he ultimately concedes that there is not sufficient credible evidence to support any reliability disallowance in this case. Instead, he shoehorns reliability into a reason to reduce the "fair market value" of the gas. But Mr. Sommerer already agreed that "fair market value" was the same as "fair market price," which means the price agreed to by a willing seller and willing buyer.

PRUDENCY OF GAS COSTS

Q. WHAT IS MR. SOMMERER'S BASIS FOR CONCLUDING THAT GAS COSTS WERE IMPRUDENTLY INCURRED?

A. The basis for his conclusion was not immediately evident to me from his testimony. On page 21, lines 14-16, Mr. Sommerer asserts "the disallowance was necessary due to the unavailability of detailed AEM records/procedures of how AEM allocates the costs associated with its supplies." Earlier on page 14, however, he claimed that "Staff supports the disallowance because it brings the costs passed through the ACA to a level that reflects the reasonable fair market value that is based on AEM's costs ..." (lines16-18) Finally, on page 22, Mr. Sommerer testifies that "the proposed disallowance results from the Company's own failure to fully comply with the record-keeping requirements of the Affiliate Rules and its inability to explain the reasonableness of the affiliate transaction" (lines 8-10) -- even though Atmos and AEM have provided all information requested by Staff. It appears that Mr. Sommerer seeks to impose on Atmos new standards that are not contained in the Rules, while simultaneously claiming that Staff's disallowance achieves something that he has clearly testified Staff cannot accomplish without more information.

Q. DID HE EXPLAIN HOW THE RFP PROCESS WAS DEFICIENT?

A. No. As I explained in my direct testimony, Staff has had abundant opportunity to both review and provide input on the utility's RFP process. Atmos has even incorporated previously suggested revisions to the RFP process provided by Staff. The utility followed exactly the same procedures for the RFPs awarded to AEM as it did for the RFPs awarded to non-affiliated gas marketers.

CONCLUSION

Q. PLEASE SUMMARIZE YOUR TESTIMONY FOR THE COMMISSION.

A. The positions adopted by Mr. Sommerer in this case deviate from and go beyond the requirements of the Commission's Affiliate Transactions rules. Atmos has followed the Commission's rules by using a competitive bidding process. Staff has reviewed and given the Company input on this bidding process. There is no evidence in the record to show that Atmos gave preferential treatment to any bidder, regardless of affiliate status. Mr. Sommerer now seeks, without justification, to apply a heightened, punitive and unfair standard to those bids awarded to the utility's affiliate, AEM, based on fictional scenarios in which he imagines that AEM has engaged in some sort of risky behavior in order to provide the lowest bid. Adoption of Mr. Sommerer's recommended disallowances will have a chilling effect on the competitive bidding process, as utilities and their affiliates are signaled that having the lowest bid in an approved, competitive bidding process is no longer considered proof of fair market value and that prudently obtaining the lowest cost of gas is no longer in the best interest of the ratepayer.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.