

FILED³

OCT 7 2011

Missouri Public
Service Commission

GR-2009-0417

Atmos Energy Corporation

**2008 – 2009 Actual Cost Adjustment
(ACA)**

**Hannibal / Canton / Palmyra/ Bowling Green
“Hannibal Area” and “Butler”**

Staff Exhibit No. 19
Date 9-24-11 Reporter JL
File No. GR-2009-0417

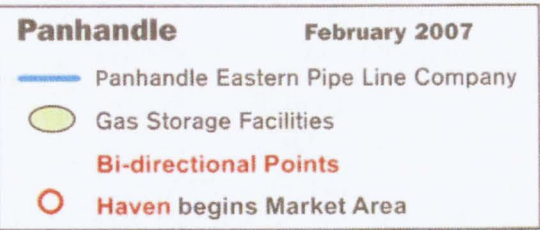
Staff's Opening Statement

- Background of Case
- Applicable Law and Affiliate Rules
- Explanation of Basic Terms
- Relief Requested: Proposed Disallowance
- Atmos Failed to Meet its Legal Burden to demonstrate Reasonableness of its Gas Costs

ACA Period September 2008- August 2009 ACA

- Staff's review examined:
 - Gas purchasing practices & decisions for prudence
 - Reasonableness of Hedging Plans
 - Reliability analysis of estimated peak day requirements & capacity levels

Staff Recommendation filed Dec. 30, 2010



ATMOS ENERGY CORPORATION

Natural Gas Utility Operating Divisions

Colorado-Kansas

Kentucky

Louisiana

Mid-States

Mid-Tex

Mississippi

West Texas

Atmos Energy Holdings, Inc.

Atmos Energy Marketing, LLC

Atmos Pipeline & Storage, LLC

Atmos Energy Services, LLC

Other Non-Utility

Atmos Pipeline - Texas

GR-2008-0364

2007-2008 ACA Period

September 2007 ————— August 2008

Affiliate
Transactions
Adjustment:



\$308K

GR-2009-0417

2008-2009 ACA Period

September 2008 ————— August 2009



\$337K

Supply
Agreement:

April 2008

March 2009



5 months

7 months

March 2008



April 2009



Section 393.130.1 RSMo

“All charges for gas service must be just and reasonable”

“Prudence Standard” defined:

“A utility’s costs are presumed to be prudently incurred.... However the presumption does not survive a showing of inefficiency or improvidence”

“Where some other participant in the proceeding creates a serious doubt as to the prudence of an expenditure, then the applicant has the burden of dispelling these doubts and proving the questioned expenditure to have been prudent.

The test of prudence should not be based upon hindsight, but upon a reasonableness standard: The company’s conduct should be judged by asking whether the conduct was reasonable at the time, under all the circumstances, considering that the company had to solve its problem prospectively rather than in reliance on hindsight. In effect, our responsibility is to determine how reasonable people would have performed the task that confronted the company.”

ASSOCIATED NATURAL GAS COMPANY V. PUBLIC SERVICE COMMISSION OF MISSOURI, Western District Court of Appeals, 1997 (cite **954 SW2d 520**)

Affiliate Transaction Rule

4CSR 240-40.015 and 40.016

- Requires records on cost allocation and cost methodology
- Buy at lower of Fair Market Price (FMP) or Fully Distributed Cost (FDC) to the utility
- No Advantage / Preference to affiliate
- Does not modify existing legal standards
- Upheld by MO Supreme Court in 2003

State ex rel Atmos Energy Corporation v. Public Service Commission, 103 S.W.3d 753

Affiliate Transactions

“Throughout the United States it is recognized that a public utility’s dealings with affiliates require thorough investigation and close scrutiny by a public utility commission.”

Turpen v. Oklahoma Corp. Comm., 769 P.2d 1309, 1320 (OK. Sup.Ct. 1988) citing United States v. Western Elec. Co., Inc. 392 F.Supp.836,853 [D.D.C. 1984].

“It is generally held that ...the utility bears the burden of proving that expenses incurred in transactions with affiliates are reasonable.”

Boise Water Corp. v. Idaho Public Util. Commission [Boise Water I and Boise Water II]

The Process of Ratemaking, Vol. 1

- *Services provided by the affiliate.*

Unlike ordinary expenses of a regulated company, expenses paid to an affiliate do not carry a presumption of reasonableness. The burden is on the company to prove their reasonableness.

[See *U.S. West Communications, Inc. v. Utah PSC*, 901 P.2d 270, 1995 Utah LEXIS 46 (Utah, 1995)]

Explanation of Basic Terms

- Supply-only agreement **Hannibal/Butler Areas**
- Asset Management Agreement (AMA)
- **North American Energy Standards Board (NAESB)**
- Transaction Confirmation
- Firm Service vs. Interruptible Service
- Baseload gas *example*
30,000MCF/month=1000MCF/day
- Swing gas

Relief Requested

- Because RFP & Bid Award Process with AEM is unreasonable and flawed, Staff has adjusted gas cost to AEM's FMP plus its O/H
- \$337,000 Proposed Disallowance:
 $\$401,226 \text{ less } \$64,000 \text{ AEM O/H} = \$337,226$

AEM O/H Attributable to Affiliate Transaction is an Offset

- \$64,000 reported allocated O/H includes:
 - Labor, Employee Welfare, T&E, Outside Services, etc, for total O&M expense allocated by dekatherm
- AEM did not include:
 - Allocated income taxes
 - Allocated interest expense
 - Assigned return or profit on the transaction

Request For Proposal (RFP)

- Letter invitation to bid
- RFP contains terms and conditions example

5.4 Reliability (Ex 22, GR-2008-0364)

All gas supply is to be firm and warranted assuring that natural gas supply services will meet all contractual obligations without fail

- Sent to 60 qualified suppliers
- Bid responses were evaluated
- Conforming or Nonconforming

RFP

- Is NOT:
 - The supply contract (Transaction Confirmation or NAESB Agreement)
 - The end of the prudence review
 - The sole determinant of Fair Market Price
 - The actual or required volumes or prices (uses estimated FOM & Swing Gas prices and forecasted quantities)

Atmos RFP & Bid Award Process is Flawed

- RFP 1 attracted only 3 conforming bids out of pool of 60 suppliers
- \$235,000 difference between AEM and next highest bidder- \$17/customer difference
- RFP requested FIRM & WARRANTED service; only AEM bid into a Secondary Receipt Point
- Atmos did not rebid for Secondary Receipt Point – why not?

Atmos RFP & Bid Award Process is Flawed (cont')

- RFP & Bid Award process allowed AEM to set its own terms of swing gas service
 - RFP 1: AEM swing gas range 5,645 to 6,945 MMBtu/day
 - RFP 2: Supplier swing gas range to 10,645 MMBtu/day
- Same RFP attracts different product services
- RFP 2 attracted only 1 conforming bidder out of pool of 60 suppliers

RFP 1: AEM Transaction Confirmation

- Service Level is **BLANK** for both Baseload and Swing gas requirements
- No Baseload Quantity listed in the agreement
- Base NAESB Agreement allows **FIRM or INTERRUPTIBLE** gas supplies (GR-2008-0364)

Summary

- Because RFP & Bid Award Process with AEM is unreasonable and flawed based on the results that it produced, Atmos has not met its burden in demonstrating that its affiliate gas costs are just and reasonable, therefore, the Staff recommends the Commission adjust Atmos' gas costs by \$337,000