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1                   STATE OF MISSOURI  
2                   PUBLIC SERVICE COMMISSION  
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4  
5                   TRANSCRIPT OF PROCEEDINGS  
6                   Hearing  
7                   November 30, 2006  
8                   Jefferson City, Missouri  
                  Volume 7

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11   In the Matter of Atmos Energy    )  
12   Corporation's Tariff Revision    )  
13   Designed to Consolidate Rates    ) Case No. GR-2006-0387  
14   and Implement a General Rate     )  
15   Increase for Natural Gas          )  
16   Service in the Missouri          )  
17   Service Area of the Company       )

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16                   NANCY DIPPELL, Presiding,  
17                   DEPUTY CHIEF REGULATORY LAW JUDGE  
18                   JEFF DAVIS, Chairman,  
19                   CONNIE MURRAY,  
20                   STEVE GAW,  
21                   ROBERT M. CLAYTON, III  
22                   LINWARD "LIN" APPLING,  
23                   COMMISSIONERS.

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REPORTED BY:

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PAMELA FICK, RMR, RPR, CCR #447, CSR  
MIDWEST LITIGATION SERVICES

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1 P R O C E E D I N G S

2 JUDGE DIPPELL: This is Case Number  
3 GR-2006-0387 in the matter of Atmos Energy  
4 Corporation's Tariff Division Design to Consolidate  
5 Rates and Implement a General Rate Increase for  
6 Natural Gas Service in the Missouri Service Area of  
7 the Company.

8 My name is Nancy Dippell. I'm the  
9 regulatory law judge assigned to this case, and we've  
10 come here today for an evidentiary hearing in this  
11 matter. It is -- we're having a winter storm outside  
12 so I appreciate everyone braving the weather to be  
13 here today, and we're gonna work our schedule around  
14 that as we go along.

15 So I'd like to begin with entries of  
16 appearance. Can we start with Staff?

17 MR. BERLIN: Yes, Judge. Appearing on  
18 behalf of the Staff of the Public Service Commission,  
19 Robert S. Berlin, Kevin Thompson, Lera Shemwell,  
20 Steve Reed, Post Office Box 360, Jefferson City,  
21 Missouri 65102.

22 JUDGE DIPPELL: And Public Counsel?

23 MR. POSTON: Thank you. Appearing on  
24 behalf of the Office of Public Counsel and the  
25 public, Mark Poston, P.O. Box 2230, Jefferson City

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1 Missouri 65102.

2 JUDGE DIPPELL: And Atmos?

3 MR. FISCHER: Appearing on behalf of  
4 Atmos Energy Corporation, James M. Fischer and  
5 Larry W. Dority with the law firm of Fischer &  
6 Dority. Our address is 101 Madison Street, Suite  
7 400, Jefferson City, Missouri 65101. Also appearing  
8 today is Doug Walter who is in-house counsel with  
9 Atmos out of Dallas, Texas and he will be assisting  
10 as well.

11 JUDGE DIPPELL: Okay. Remind everybody  
12 to turn off your cell phones and other wireless  
13 devices, Palm Pilots, PDA's. Sometimes they  
14 interfere with our internet transmission. And  
15 Noranda?

16 MR. FULTON: Yes. Rob Fulton appearing  
17 on behalf of Noranda Aluminum. My address is P.O.  
18 Box 151, Fredericktown, Missouri 63645.

19 JUDGE DIPPELL: And is anyone present  
20 for Hannibal Regional Hospital?

21 (NO RESPONSE.)

22 JUDGE DIPPELL: Okay. I had a call this  
23 morning. Actually I had a message this morning -- it  
24 may have been a call yesterday -- from Mr. Woodsmall  
25 on behalf of Hannibal Regional, and he asked to be

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1   excused from the hearing. And he may or may not be  
2   present today. While I can't actually excuse him  
3   from the hearing, I will state that I will not hold  
4   any penalties against him. However, anyone who's not  
5   present gives up any right to cross-examination or  
6   recitation of evidence at that point in the hearing  
7   and loses rights to objections and so forth.

8                   Okay. We had a partial nonunanimous  
9   stipulation and agreement filed yesterday, and I just  
10  wanted to have a brief statement from the parties as  
11  to what that covers and give us a little bit of  
12  background on that. Mr. Berlin, would you like to --  
13  or Atmos, whichever?

14                  MR. BERLIN: Judge, going back to the  
15  filing of the joint issues, list of witnesses and the  
16  order of cross-examination, that filing was done on  
17  the 14th of November, and in that filing the parties  
18  indicated that there were seven resolved issues. The  
19  seven resolved issues formed the basis of this  
20  partial nonunanimous stipulation and agreement. The  
21  partial stipulation was signed by Staff, Public  
22  Counsel and Atmos. In looking at this, and I would  
23  refer you to this, I presume you have a copy of it in  
24  front of you?

25                  JUDGE DIPPELL: Yes, I do.

1                   MR. BERLIN: Okay. Roman numeral I,  
2 Billing Determinants, the parties have agreed to  
3 those billing determinants as represented in  
4 Attachment A to this stipulation. I have Roman  
5 Numeral II, Other Post-Retirement Benefits  
6 Contribution. The parties have agreed that, as  
7 stated, Atmos has made a catch-up contribution in the  
8 amount stated and will begin funding the annual OPEB  
9 cost for its operations in Missouri.

10                   Roman Numeral III -- and I'm kind of  
11 water-skiing over this --

12                   JUDGE DIPPELL: That's fine.

13                   MR. BERLIN: -- but I would like to just  
14 add that we do have Staff witnesses who can discuss  
15 this in greater technical detail, but I can't at this  
16 point. But Roman Numeral III is the class share of  
17 revenue by district and class cost of service, and I  
18 think it's important to note the parties have agreed  
19 there will be no revenue shifts among the classes,  
20 and that the normalized present gas not -- let me go  
21 back.

22                   The "normalized present non-gas revenues  
23 of each customer class" shall be the amount shown in  
24 Attachment A which represents the weather-normalized  
25 class test year revenues.

1                   And I think it's important to note Roman  
2   Numeral III, paragraph B, that Atmos has agreed that  
3   they will file a class cost-of-service study  
4   consistent with the Commission's decision regarding  
5   however this Commission decides on the issue of  
6   district consolidation. And they will do that class  
7   cost-of-service study as part of a filing -- its  
8   filing in the next general rate case.

9                   And then you can see there's language in  
10  there whereby the company agrees to submit certain  
11  data to the Staff and to Public Counsel so that Staff  
12  and Public Counsel may perform their own study. And  
13  so this we believe is adequately covered.

14                  Roman Numeral IV deals with customer  
15  service requirements and reporting, and there are  
16  certain -- there are certain requirements in here  
17  that Atmos must meet with regard to customer service,  
18  certain reporting requirements to Staff and to Public  
19  Counsel and I won't get into all of these, but we do  
20  have a Staff representative, Lisa Kremer, who is a  
21  Staff witness who can address this in greater detail.

22                  I know one of the Commissioners will  
23  have probably some questions on this, but Roman  
24  Numeral V has to do with the PGA minimum filing  
25  requirement, and what we've asked Atmos to do is that

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1 concurrently with its annual cost adjustment filing  
2 it will provide certain documentation to support the  
3 company's ACA that will be used to reconcile the  
4 company's actual gas cost with its billed revenues.  
5 And you can see that from paragraph A through  
6 paragraph D, we have pretty well defined what that  
7 documentation is that Atmos is to provide in its PGA  
8 filing.

9                 Roman Numeral VI deals with the subject  
10 of depreciation recordkeeping and reporting, that  
11 Atmos will make certain -- will perform certain  
12 actions with regard to addressing the current  
13 depreciation rates that serve -- the plants that  
14 serve all Missouri operations.

15                 And this -- this particular paragraph  
16 just basically addresses any of the concerns that  
17 Staff and Public Counsel had with regard to  
18 recordkeeping and reporting. And again, Staff  
19 witness Guy Gilbert could certainly address that if  
20 there's technical questions on that issue.

21                 We also settled the issue of gas loss  
22 reporting, Roman Numeral VII, and permit Atmos to use  
23 its proposed 2 percent methodology. And we are  
24 asking Atmos to actually make reports to Staff  
25 regarding its progress with regard to managing gas



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1    loss reporting.  And so we feel we have certain  
2    management protections in place so that the  
3    customer's protected from unaccounted for gas loss.  
4    And that is a topic or subject issue area that Staff  
5    witness Mike Ensrud could answer some more detailed  
6    questions on.

7                   And with regard to Roman Numeral VIII,  
8    the nonsignatory parties, Noranda and Hannibal  
9    Regional Hospital.  And then, of course, Roman  
10   Numeral IX is the general boilerplate language of the  
11   stipulation agreement.  I kind of water-skied over  
12   that I know, but that's just the gist of this  
13   particular stipulation and agreement.

14                  JUDGE DIPPELL:  I appreciate that.  
15   Thank you very much.  Okay.  With that, I will also  
16   say that we did -- I issued an order earlier and the  
17   parties premarked the exhibits with exhibit numbers,  
18   and we will accept those exhibit numbers.

19                  MR. BERLIN:  Judge, if I may interrupt?

20                  JUDGE DIPPELL:  Excuse me, yes.

21                  MR. BERLIN:  We do have a revised  
22   November 30th exhibit list that we will --

23                  JUDGE DIPPELL:  Okay.

24                  MR. BERLIN:  We've been scrutinizing our  
25   list of exhibits and have tried to correct certain

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1 details with regard to the prefiled testimony. Do  
2 you have that? And Judge, I have a copy.

3 JUDGE DIPPELL: Okay. Yes, if you  
4 could -- are there major revisions or --

5 MR. BERLIN: No, no major revisions.

6 JUDGE DIPPELL: Okay. Okay. We'll try  
7 to follow those as we go along. I think we'll do  
8 each parties' exhibits as we go, and prior to going  
9 on the record, the parties indicated they would be  
10 willing to waive the preliminary address, name and so  
11 forth of the witnesses as they come up, and would  
12 there be any objection to that procedure to save  
13 time?

14 (NO RESPONSE.)

15 JUDGE DIPPELL: I see no -- no  
16 objection. Are there any other preliminary matters  
17 that we should resolve before beginning with opening  
18 statements?

19 MR. BERLIN: Judge, I just want to alert  
20 you to -- and unless the situation has changed, one  
21 key Staff witness, Anne Ross, is coming in from out  
22 in the country north of Columbia --

23 JUDGE DIPPELL: All right.

24 MR. BERLIN: -- will be coming in late,  
25 and while I look at the order of issues, I don't

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1 think that will present a problem, and I would expect  
2 that she would be able to be here because I think  
3 that particular issue is the last issue scheduled for  
4 today.

5 JUDGE DIPPELL: Well, like I say, we'll  
6 work around people being able to be here. I don't  
7 want anyone risking life or limb to be here today.  
8 We actually have a whole week reserved next week for  
9 this hearing still, so we'll work around people and  
10 their traveling.

11 MR. FISCHER: Judge, I would also  
12 request, the list of issues and order of witnesses  
13 has Don Murray going first for the company. He's our  
14 ROE witness. However, Pat Childers is actually the  
15 policy witness that gives the overview of the company  
16 and addresses the overall situation on revenue  
17 requirement. And with the approval of the parties,  
18 I'd put her up first just to give a broader  
19 perspective on that.

20 JUDGE DIPPELL: Is there any objection  
21 to the change in the order of witness?

22 (NO RESPONSE.)

23 JUDGE DIPPELL: Seeing none, that would  
24 be allowed. All right, then, let's go ahead and  
25 begin with opening statements, and the parties

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1 previously agreed to the order of that, and we'll  
2 begin with Atmos. And you may stay at your seat, if  
3 you'd rather, than come to the podium, that's fine.  
4 Wherever you're speaking from, I'd appreciate it if  
5 you would speak into the microphone.

6 MR. FISCHER: May it please the  
7 Commission, my name is Jim Fischer and I'm  
8 representing Atmos Energy Corporation today. I also  
9 have with me my partner, Larry Dority, and I wanted  
10 to introduce Doug Walter who's in-house counsel to  
11 the company out of Dallas. Doug was actually with  
12 the Office of the General Counsel here at the  
13 Missouri Public Service Commission back in the  
14 1980's, and he's back here right behind my seat.

15 Atmos is the largest pure natural gas  
16 distribution company in the United States. It has  
17 its offices located in Dallas, Texas but it has  
18 regional and state offices for Missouri operations in  
19 Hannibal, Jackson and Sikeston.

20 Atmos serves about 60,000 customers in  
21 Missouri including residential, commercial and  
22 industrial customers. It has a Missouri-based work  
23 force of approximately 75 employees, and its plant in  
24 Missouri covers -- or includes about 2,150 miles of  
25 both mains and distribution facilities.

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1                   The Missouri operations are actually  
2   compromised of six districts located in the  
3   northeast, the southeast and west-central areas of  
4   Missouri. I noticed on the screen whenever I came  
5   in that there was a map that may be used later in  
6   the hearing that shows exactly where those areas  
7   are.

8                   The company came together as a result of  
9   three acquisitions: The Greeley Gas Company was  
10  purchased in 1993, the United Cities Gas Company was  
11  purchased in 1997, and more recently, the Associated  
12  Natural Gas Company was purchased in the year 2000.

13                  Now, Atmos has not filed a rate case  
14  since acquiring these particular service areas, so  
15  all the rates that exist today go back to those days  
16  when the other companies owned the systems. So for  
17  example, Greeley, which serves a small number of  
18  companies in western Missouri, they haven't had a  
19  rate increase in that area since before Greeley Gas  
20  Company actually acquired that system from the Rich  
21  Hill Hume Gas Company back in 1994.

22                  The last time the rates for the Greeley  
23  district were actually increased was in 1983, nearly  
24  23 years ago. The last rate increase for United  
25  Cities Gas was filed in 1994 or about 12 years ago,

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1 and the last rate increase for the Associated area,  
2 Associated Natural Gas, was in 1997. So it's been  
3 about a decade since the most recent look at any of  
4 these areas, and some of these rates have been in  
5 effect for almost 23 years.

6 In 2002, the Commission approved the  
7 consolidation of the company's rules and regulations  
8 in its tariff so that at least the rules and the  
9 regulations for this company are uniform  
10 throughout -- throughout the state.

11 But more importantly, the rates and the  
12 miscellaneous charges are not uniform in Missouri.  
13 They all go back to that time when Greeley set them  
14 years ago, United Cities rate case and then the  
15 Associated Natural Gas case. And those rates are  
16 still the ones that are in effect in the Atmos tariff  
17 today.

18 As a result, each of these Atmos  
19 districts have different margin or base rates, and  
20 they also have different PGA rates and tariffs  
21 relating to how the PGA operates and also how the  
22 transportation rates are implemented.

23 At present, Atmos has six sets of  
24 non-gas rates or margin rates and six sets of PGA  
25 rates. Even the miscellaneous charges, like bad debt

1 charges, reconnection fees and other miscellaneous  
2 charges are not uniform throughout the state.

3               While the company's made every effort to  
4 operate as efficiently as possible and it is proud of  
5 its well deserved reputation as one of the lowest-  
6 cost providers of natural gas service in the United  
7 States, since the last United Cities rate case, the  
8 company has invested more than \$22 million in direct  
9 Missouri gross plant, including additions that have  
10 occurred since the acquisition of the Associated  
11 Natural Gas properties.

12               Atmos has also made significant  
13 technological investments in customer call centers  
14 and billing systems since that last look at its rates  
15 in the Associated case.

16               On April 7th, 2006, Atmos filed tariffs  
17 in this case which proposed to increase the rates by  
18 approximately \$3.4 million. Now, one of the primary  
19 reasons the company filed this rate case was an  
20 attempt to consolidate these rates and to make the  
21 miscellaneous charges uniform throughout the --  
22 throughout the state of Missouri.

23               It also sought to make rate design  
24 changes that would mitigate the effects of weather on  
25 the customers' bills and on the company's earnings.

1 In that regard, one of the original recommendations  
2 contained in the Atmos testimony in this case was the  
3 recommendation that the Commission permit the company  
4 to use a weather normal -- weather normalization  
5 adjustment mechanism similar to the type of mechanism  
6 that has already been approved for the company in  
7 four of its other jurisdictions.

8 As I'm gonna discuss in a minute,  
9 however, Atmos has changed its position on this  
10 particular issue and is now supporting the Staff's  
11 rate design recommendations which will also mitigate  
12 the effects of weather on the customers' bills and on  
13 the company's earnings.

14 As is discussed in the rebuttal  
15 testimony of Atmos witness Pat Childers, the company  
16 has thoroughly reviewed and compared its case with  
17 the Staff's case, has analyzed and compared the  
18 various adjustments to the test period in both cases  
19 and has considered the impact of the Staff's proposed  
20 rate design on the company as we reviewed our various  
21 cases.

22 The company has concluded that if the  
23 Commission approves the Staff's proposed rate design  
24 and the other positions enunciated by Staff in its  
25 testimony and accepted by the company, then Atmos



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1 believes it will have a reasonable opportunity to  
2 earn a fair return without the need for rate increase  
3 in this case.

4               With only a couple of very minor  
5 exceptions, Staff and company have no areas of  
6 disagreement remaining in the case. Specifically,  
7 with regard to the overall revenue requirement, Staff  
8 witness Steve Rackers, who I think was the head  
9 auditor in the audit, has testified that -- and I'm  
10 gonna quote it: "The Staff believes that no change  
11 in cost of service on a total company basis will  
12 still result in just and reasonable rates as a result  
13 of this case."

14               The company has accepted this  
15 recommendation in light of the rate design proposals  
16 that are being suggested by the -- by the Staff.  
17 While the Office of the Public Counsel did not file  
18 any direct testimony in this case regarding the  
19 overall revenue requirement, its accountant, Mr. Russ  
20 Trippensee, has sponsored rebuttal testimony on the  
21 subject of cost of equity suggesting that the  
22 Commission approve a 7 percent rate of return on  
23 equity for Atmos in this proceeding.

24               I think the evidence will show that  
25 Mr. Trippensee did not perform any discounted cash

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1 flow analysis or other traditional analysis of the  
2 cost of capital issue. Instead, his testimony  
3 recommends that the Commission lower the ROE  
4 recommended by Staff as an apparent response to the  
5 Staff's proposed delivery charge on the rate design  
6 issue.

7 Obviously, a 7 percent ROE is much lower  
8 than any ROE previously authorized by the Commission,  
9 at least in the last 30 years or so that I can  
10 remember. Both Staff witness Matt Barnes and Atmos  
11 witness Don Murray thoroughly discuss and rebut  
12 Mr. Trippensee's calculation of the appropriate cost  
13 of capital for Atmos.

14 Regarding Public Counsel's approach and  
15 the punitive ROE recommendation, Dr. Murray observes  
16 in his surrebuttal, "That is not analysis. This is  
17 just unorthodox opinion." Mr. Trippensee's  
18 recommendation is not supported by a commonly  
19 accepted rate of return analysis. He did not analyze  
20 the cost of equity of the companies that have similar  
21 risk to Atmos.

22 In fact, he didn't acknowledge in his  
23 testimony that many of the comparable companies  
24 analyzed by Staff and the company have weather  
25 mitigation rate designs that minimize the effects of

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1 weather on the -- on the customers' bills and on the  
2 company's earnings.

3 As Dr. Murray explains in his  
4 surrebuttal testimony, seven of the eight companies  
5 that Mr. Barnes identified as comparable to Atmos  
6 Energy operate under some type of revenue  
7 stability -- or excuse me, revenue stabilization  
8 mechanisms for their residential and small commercial  
9 customers.

10 Finally, the other legal flaw in the  
11 Public Counsel's position on the revenue requirement  
12 issue in this case is that the Office of the Public  
13 Counsel has not filed a complaint against the  
14 reasonableness of Atmos's existing rates.

15 As the Commission knows, according to  
16 Section 386.270, all rates of a public utility that  
17 have been approved by the Commission are prima facie  
18 lawful and reasonable until found otherwise in a suit  
19 brought for that purpose pursuant to the provisions  
20 of Chapter 386.

21 The Office of Public Counsel has chosen  
22 not to file a complaint against the reasonableness of  
23 existing rates of the company. As a result, there is  
24 no pending complaint proceeding alleging that Atmos's  
25 existing rates are unjust and unreasonable, and, of

1 course, if they did file a complaint case, the  
2 complainant would have the burden of proof. So we're  
3 basically at a point here, from our perspective, that  
4 we have a revenue-neutral rate design proceeding that  
5 we are asking the Commission to resolve.

6 Now, on the rate design issue, Staff has  
7 recommended that the Commission combine the current  
8 districts into three -- three different districts:  
9 The northeast, the southeast and the midwest.  
10 Staff's proposal to consolidate base rates into three  
11 geographic areas is quite similar to the company's  
12 original recommendations offered in the testimony of  
13 Pat Childers, and Atmos supports the Staff's  
14 proposal.

15 Atmos also supports the Staff's proposal  
16 to consolidate the PGA part of the tariff into four  
17 areas. Although we had originally proposed a  
18 state-wide consolidation so there would just be one  
19 PGA, we are certainly accepting the Staff's proposal  
20 to have four, which is certainly a step in the right  
21 direction.

22 Staff is also recommending that the  
23 non-gas or the margin part of the rate, the margin  
24 costs, be recovered through a fixed monthly charge  
25 which is known as a delivery charge for residential

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1 and small commercial customers.

2 As Anne Ross explains in her testimony,  
3 the delivery charge removes the disincentives for  
4 utilities to encourage and assist customers in making  
5 conservation and efficiency investments, and  
6 secondly, reduces the effects of weather on the  
7 utilities' revenues and on customers' bills.

8 I think she explains very well the many  
9 benefits to customers in her testimony, and I would  
10 encourage you to review her testimony and ask her  
11 questions about the impact for consumers and the  
12 benefits. This type of rate structure would provide  
13 Atmos with the opportunity to earn on its non-gas  
14 revenue requirement without regard to the weather  
15 impacts from any given year.

16 While the company's original proposal  
17 contained this weather normalization adjustment  
18 mechanism, which is sometimes shorthand as a WNA,  
19 after carefully considering the Staff's proposal on  
20 the delivery charge rate structure, the company is  
21 now supporting the adoption of Staff's rate design  
22 proposals in lieu of its original weather  
23 normalization adjustment mechanism.

24 Atmos does recommend one minor  
25 modification to the Staff's proposal, and that is

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1   that it would seasonably sculpt that delivery charge  
2   so that it would be slightly higher in the winter and  
3   slightly lower in the summer.  However, Atmos can  
4   accept Staff's delivery charge as its proposed if  
5   that's the preference of the Commission.  Our  
6   witness, Gary Smith, can discuss that sculpting  
7   proposal.

8                   The company is committed to educating  
9   customers about the delivery charge prior to and  
10  during the implementation to ensure that customers  
11  understand the delivery charge will exist and the  
12  basis for that and understanding what it's all about.  
13  And Pat Childers can talk to you about that if you  
14  have an interest in that.

15                  In addition, the company has reviewed  
16  Ann Ross's rebuttal testimony encouraging the company  
17  to initiate energy audits for all residential  
18  customers, or at least to make them available to all  
19  residential customers.

20                  She also recommends the development of a  
21  home weatherization program for at least 30  
22  low-income customers on an annual basis.  Pat  
23  Childers, in her surrebuttal testimony, accepts that  
24  proposal and agrees to implement these proposals as  
25  described by the Staff.

1                   Now, having reviewed the Staff's  
2   proposed customer classes, including the proposal to  
3   split the general service into a small and a  
4   general -- and a medium general service class, and  
5   also its proposal to set the classes on a uniform  
6   basis across the State of Missouri, the company has  
7   agreed or is willing to accept the Staff's proposal  
8   on rate design in that regard as well.

9                   Now, Atmos does oppose the rate design  
10  proposal that's being advocated by the Office of the  
11  Public Counsel in this proceeding. That proposal  
12  would essentially maintain the status quo. Under  
13  Public Counsel's recommendation, there would be no  
14  progress toward the consolidation of these base rates  
15  in the PGA areas, and the company would not have an  
16  opportunity to mitigate the effects of weather on its  
17  customers' bills or on the company's earnings.

18                   Public Counsel also opposes the economic  
19  development rider and many of the other miscellaneous  
20  proposals that I'm gonna discuss shortly.

21                   Atmos is willing to accept the Staff's  
22  proposals on the miscellaneous utility-related  
23  charges. Staff supports Mike Ensrud's  
24  recommendations in that regard regarding the  
25  reconnection fee to offset any delivery charges

1 avoided by customers when they disconnect from the  
2 system.

3               There are also a number of other  
4 miscellaneous areas which Staff and Atmos are in  
5 agreement. These include changes to the  
6 transportation tariffs including what are known as  
7 cash-out provisions for the transportation tariff.  
8 Staff also supports in their testimony the proposed  
9 economic development rider that is endorsed by Atmos.

10              Staff and Atmos are also in agreement, I  
11 think, on the company's main extension policy. Staff  
12 has advocated only one exception to the company's  
13 main extension policy by proposing some additional  
14 language regarding refunds, and Atmos has accepted  
15 Staff's position on that and is willing to add the  
16 language suggested by Mike Ensrud in that -- in their  
17 final tariffs in this case.

18              Now, as you just heard from Mr. Berlin  
19 yesterday, Atmos, the Staff and Public Counsel filed  
20 a stipulation and agreement which resolved a number  
21 of issues, and I'm not gonna repeat that at this  
22 point, but we'd be happy to answer any questions  
23 about that.

24              We've withdrawn the proposal that we had  
25 included in our testimony on the research development



1 rider and our suggestion that the uncollectible  
2 expense be recovered through the PGA. Also, issues  
3 related to the Noranda contract have been resolved.

4 As more fully described in our  
5 prehearing brief, Atmos and the Staff have no  
6 significant areas of disagreement remaining in this  
7 case. While the Office of the Public Counsel  
8 continues to object to the delivery charge rate  
9 design advocated by Staff, such objections have been  
10 thoroughly discussed and rebutted by the prefiled  
11 testimony of Staff and the company witnesses.

12 Resolution of this particular issue in  
13 favor of the Staff and Atmos's position will result  
14 in just and reasonable rates, and it's certainly  
15 going to be in the public interest.

16 As stated by the Staff witness Anne Ross  
17 who sponsors this testimony, Staff believes that its  
18 rate design is a simple, understandable, appropriate  
19 recovery mechanism that decouples the cost of  
20 serving the customer from the customers' energy  
21 consumption.

22 I want to point out that this is a  
23 wonderful opportunity for this Commission to do a  
24 great deal of good for a great number of people. We  
25 have an opportunity in Missouri to align the interest

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1 of shareholders and customers.

2 Judge, on that point more than any  
3 other, I think the company would agree with Staff,  
4 and we would strongly urge you to accept this  
5 delivery charge proposal that the Staff has  
6 suggested. This proposal is progressive and it  
7 results in benefits to consumers as well as to the  
8 company. It will reduce the volatility of the  
9 company's earnings, and it will give the customer the  
10 opportunity to better manage his energy bill in the  
11 future.

12 Thank you very much for your attention,  
13 and we'll be happy to answer any questions.

14 JUDGE DIPPELL: Thank you, Mr. Fischer.  
15 An opening statement from Staff?

16 MR. BERLIN: Just a minute, Judge.  
17 We're trying to get ready technically. We're making  
18 an attempt to use the Smart Board technology. I'm  
19 gonna have my assistant pull up a -- an overhead of  
20 the state that depicts the service area that  
21 Mr. Fischer talked about, and I have a copy that I  
22 can pass out.

23 JUDGE DIPPELL: Thank you.

24 MR. BERLIN: Judge, I think the Smart  
25 Board has outsmarted us.

1 JUDGE DIPPELL: I applaud you for giving  
2 it a try.

3 MR. BERLIN: What we're attempting to do  
4 is put this overview of Atmos's service areas on the  
5 screen so that it would provide an easy reference to  
6 pointing out these particular areas. Okay. Thank  
7 you, Sarah.

8 During my opening comments, I'll  
9 probably use two other charts that are part of Ann  
10 Ross's surrebuttal and rebuttal testimony just for  
11 purposes of illustration.

12 Good morning. I'm Bob Berlin, and may  
13 it please the Commission, I am assisted today as a  
14 lead attorney by Kevin Thompson who will be  
15 addressing the issue of rate of return, return on  
16 equity and revenue requirement; Lera Shemwell who  
17 will be addressing the issue of depreciation; Steve  
18 Reed who will be addressing the issue of tariff  
19 charges and miscellaneous charges and related tariff  
20 issues. I will be addressing the issue of rate  
21 design and PGA consolidation, district consolidation.

22 I would like to begin my statement by  
23 saying that we have a really unique case here. In  
24 fact, this is a case of first impression and a case  
25 of first impression for a number of reasons which I

1 will go into.

2 Mr. Fischer talked about some of those  
3 reasons, and I will attempt to flesh those reasons  
4 out, and attempt to make it very clear what this case  
5 is about.

6 First, I think we need to take a look at  
7 Atmos's service areas on the map on the screen and  
8 the map that is before you, and understand today that  
9 Atmos is composed of seven separate districts that  
10 are spread across three distinct geographic service  
11 areas: We have northeast Missouri, southeast  
12 Missouri, and we have western Missouri or west  
13 central Missouri on the opposite end of the state.

14 Now, in northeast Missouri -- and I'm  
15 pointing to it now -- you can see that there are  
16 three separate districts in that geographic area.  
17 Kirksville area district on the western side is part  
18 of the old Associated Natural Gas Company acquired by  
19 Atmos in 2000. In the middle is Hannibal, Canton,  
20 Bowling Green. That district is part of the old  
21 United Cities Gas that was purchased by Atmos in  
22 1997.

23 And on the far side of the northeast  
24 Missouri area is the Palmyra district. That too is  
25 part of the old United Cities Gas Company acquired in

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1 1997.

2                   Going to southeast Missouri, there are  
3 two separate districts. Now, on your map you can see  
4 that on the far western southwestern corner of  
5 southeast Missouri appear to be two counties that are  
6 bolden out. You should see a bold line. Those two  
7 counties represent approximately the service area of  
8 the Neelyville district. Neelyville -- and I'm  
9 pointing to it -- is part of the old United Cities  
10 Gas Company bought in 1997.

11                   The remainder of southeast Missouri that  
12 I point to here is part of the old Associated Natural  
13 Gas Company acquired in 2000.

14                   Going to western Missouri, there's the  
15 Butler district. Butler is the larger district and  
16 that is -- Butler district is part of the old  
17 Associated Natural Gas Company purchased in 2000.

18                   The southern western corner is called  
19 the Greeley district, and as Mr. Fischer explained,  
20 that is the old Greeley Gas Company, and that was  
21 purchased by Atmos in 1993.

22                   So today what we have is that Atmos is  
23 operating seven separate districts across the state.  
24 These seven separate districts are based on  
25 operational realities of Atmos's three predecessor

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1 companies: The Greeley Gas Company purchased in  
2 1993, United Cities bought in 1997, and the old  
3 Associated Natural Gas Company bought in 2000.

4               What does this mean? Well, with seven  
5 districts, you have seven different customer charges,  
6 you have seven different volumetric commodity  
7 charges, you have seven PGA filings and there are  
8 seven sets of miscellaneous charges.

9               In short, what Staff sees here are seven  
10 opportunities to create customer confusion, seven  
11 opportunities for needless customer confusion over  
12 billing, especially among the customers in adjoining  
13 or contiguous districts.

14              As I point to the northeast Missouri  
15 district, there's three separate districts all  
16 adjoining each other. One can only imagine the  
17 administrative inefficiencies involved in managing  
18 seven separate districts.

19              In short, Atmos is an amalgamation, much  
20 like many of this state's utilities, but it operates  
21 a hodgepodge of old LDC's whose costs represent  
22 operational realities of the past. Atmos Energy has  
23 never appeared in a general rate case before this  
24 Commission.

25              Greeley Gas Company that I mentioned in

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1 the western part of Missouri, acquired in 1993, never  
2 had a rate case before this Commission. Its rates  
3 were actually set on nonexistent costs in an  
4 application case. United Cities Gas, acquired in  
5 1997, had its last rate case in 1994 in which its  
6 rates were implemented in 1995. Associated Natural  
7 Gas, acquired in 2000, had its last rate case in 1997,  
8 and its rates were implemented that same year.

9 Now, Staff believes quite strongly that  
10 the time is now to consolidate districts. Staff  
11 proposes the consolidation of these seven separate  
12 districts into three separate operating areas and  
13 four separate PGA districts, and let me explain  
14 again.

15 For purposes of determining cost of  
16 operations, cost of service to the customer, Atmos  
17 will have the three geographic areas that you see on  
18 the screen or on your map: Northeast Missouri,  
19 southeast Missouri and western Missouri. And again,  
20 I can't emphasize enough that these three operational  
21 areas represent today's operational realities and  
22 today's operational costs.

23 Now, going to PGA, Atmos, in Staff's  
24 opinion and Staff's proposal, should have four  
25 separate PGA districts. Now, why the number four?

1 Well, let me explain: The number of PGA districts  
2 was determined by Staff based upon how the interstate  
3 pipelines serve those particular areas, or where the  
4 gas supply comes from, what particular supply basin  
5 the pipeline brings the gas.

6 Staff witness Tom Imhoff can provide  
7 many of the answers to any questions you have with  
8 regard to the cost of those interstate pipelines and  
9 how they relate.

10 I would like to point out that with four  
11 PGA districts, the geographical area that will have  
12 two districts for PGA purposes is northeast Missouri.  
13 There will be a Kirksville PGA district, and the  
14 remainder of the northeast Missouri service area will  
15 be another district. The driver, again, for that is  
16 how the interstate pipelines serve those areas and  
17 the costs related to those interstate pipelines.

18 I would also like to mention that on a  
19 statewide basis the Staff proposes that miscellaneous  
20 charges which are based on Atmos's true cost of  
21 operations, true cost of service, that the services  
22 related to those charges such as things like  
23 reconnection or insufficient funds, that those  
24 charges be uniform throughout the state. It just  
25 makes sense.



1                   Now, when I started my opening  
2   statement, I said this is a case of first impression,  
3   and I need to go into the other reasons why this --  
4   this case is a case of first impression. It is  
5   certainly a landmark case for Staff. And why is  
6   that? Well, to begin with, this is a zero revenue  
7   requirement case. The Staff's proposed rate design  
8   in a zero revenue requirement situation, customers  
9   will pay no more to Atmos than what they are paying  
10   now. Atmos will take the same amount of revenue from  
11   the State as they are taking today.

12                   Now, in its direct case, Atmos filed for  
13   a \$3.6 million rate increase. The Staff, based on  
14   its audit and analysis, determined in its direct case  
15   a negative \$1.2 million revenue requirement. After  
16   holding a rate design technical conference and a  
17   week-long settlement conference, Staff became aware  
18   of the various positions of the parties on many  
19   different issues.

20                   And in consideration of the positions of  
21   the parties on other issues, Staff firmly believes  
22   that the current rates are just and reasonable under  
23   this revenue requirement. And let me give you an  
24   example. Staff developed its \$1.2 million negative  
25   requirement in its direct case using a 9.0 return on

1 equity.

2                   Staff -- Staff recognizes that this  
3 Commission has never awarded a single-digit return on  
4 equity. Though Staff believes that it can defend its  
5 9.0 return on equity, we are being realistic and  
6 recognize that this Commission has, in the past,  
7 awarded any number from 10 to 10.5 on return on  
8 equity. And I understand that the Commission  
9 recently awarded 11 percent return on equity in a  
10 past rate case. I believe it might have been Empire.

11                   Now, that was just one piece of it.  
12 There was a couple other issues. There was the issue  
13 of amortization, the issue of uncollectibles. When  
14 considering the positions of the parties on those  
15 issues, all three of those issues, it's quite  
16 possible that if the Commission were to adopt those  
17 positions, that that negative \$1.2 million would be  
18 erased and could possibly move this case into a  
19 positive revenue requirement. That is possible.

20                   Now, Staff witness Steve Rackers can  
21 fully explain how these different positions affect  
22 the revenue requirement. But what I have tried to  
23 explain is that there is a certain flex in that  
24 number. Staff firmly believes that that number  
25 represents -- the number of the zero revenue

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1 requirement -- represents a very fair revenue  
2 requirement at just and reasonable rates.

3 I think that you will see that Staff,  
4 based on its prefiled testimony and any evidence from  
5 the testimony presented here today, that that zero  
6 revenue requirement is, indeed, just and reasonable.

7 Now, moving forward, the real  
8 centerpiece of Staff's case here, what makes this  
9 truly a case of first impression, is Staff's rate  
10 design proposal. Staff's rate design is a design  
11 that strikes the greatest fairness for all customers  
12 of Atmos.

13 Staff proposes a simple two-part rate  
14 design. First, we break out the fixed delivery  
15 charges to cover the cost of service, simply the cost  
16 of providing gas service to the customer. That cost  
17 of service. The other piece of a customer's bill is  
18 the PGA. That is the pass-through to the customer,  
19 the actual cost of the gas that that customer uses.

20 We believe that is simple -- that is a  
21 simple approach, certainly one that would be easily  
22 understood. But as Mr. Fischer talked about, Staff  
23 really believes it strikes the very best fair and  
24 equitable approach to rate design for the customer.

25 And yes, it does balance the interest of

1 the customer with the shareholder. And I'll talk a  
2 little bit more about that in a minute, but I think  
3 it's important now to take a look at what is an  
4 average residential customer and what does that  
5 customer use, what do they use gas for and how much  
6 do they use? And so I'd like to go to -- can you,  
7 Sarah? And what -- what she's bringing up is the  
8 average residential annual CCF usage and typical  
9 residential usage that is part of Staff witness Anne  
10 Ross's testimony. That's okay. I think we can go  
11 there. And I do have copies of that too, to provide  
12 to you.

13                   What you see on the screen and on the  
14 handout that I just passed out to you is a graph  
15 prepared by Anne Ross in her surrebuttal testimony  
16 just showing the average residential annual CCF gas  
17 usage by service territory, the service territory  
18 being the three geographic areas in the state:  
19 Northeast Missouri, west-central or southeast  
20 Missouri.

21                   And you can see what the average gas  
22 consumption is per residence. Sarah, if you could  
23 scroll down. Now, what are typical residential end  
24 uses? And this is on Anne Ross's surrebuttal, I  
25 should point out for the record, on page 6.

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1                   Well, pretty easy to understand that  
2   space heating is the big driver of gas consumption,  
3   640 CCF annual. The next big driver is water heating  
4   at 288, gas fireplace inserts, 84, and then stove  
5   cooking, 24. I don't know if that includes barbecue  
6   grills or not, but --

7                   COMMISSIONER APPLING: At least we hope  
8   so.

9                   MR. BERLIN: But if you've got a  
10   gas-fired barbecue grill, you can understand a little  
11   bit about what you're consuming as a result of using  
12   it. And that's a snapshot of what a typical resident  
13   uses gas for and how much they use it in each of the  
14   three geographic service areas served by Atmos.

15                  Now, I think we should take a look at  
16   the status quo. What is happening today? What you  
17   see on the screen, I believe on the second page of  
18   this handout, is today's situation, and I'd like to  
19   just walk you through this.

20                  This is also part of Anne Ross's -- this  
21   is part of her rebuttal testimony, but this gives you  
22   an overview of what's happening today. You can see  
23   that we've broken this out by the seven operating  
24   districts served by Atmos today.

25                  We can take a look here and see, for

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1 example, the northeast service area. We have the  
2 Kirksville district, the Palmyra district, and then  
3 that Hannibal/Canton/Bowling Green district. And you  
4 can see that the -- there's a variety of customer  
5 charges there: \$7 at Kirksville, 9.05 in Palmyra and  
6 seven and a quarter over at Hannibal/Canton/Bowling  
7 Green. Each of those districts also has a different  
8 volumetric rate that is charged to the commodity.  
9 You can see that it varies from seven and a half  
10 cents all the way to over 25 cents.

11 So what does that mean in terms of what  
12 the customer is paying in the non-gas margin costs?  
13 Well, if you're -- if you live in Kirksville, you're  
14 getting a pretty good deal because during the year,  
15 if you're using 720 CCF, that is, a year, you're only  
16 gonna pay \$138 in margin costs.

17 However, if you happen to live in  
18 Hannibal, Canton or Bowling Green, you will pay  
19 substantially more in non-gas margin costs at the  
20 same amount of gas consumption at \$269. And you can  
21 see, going down that chart, the western district --  
22 western operating area or western service area of  
23 Greeley district and Butler district, there's a  
24 really low service charge for Greeley, but of course,  
25 we know that that was set in an application case back

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1 in 1993.

2 But they make up for it, though, when  
3 you look at their volumetric commodity charge there  
4 at 31 -- almost 32 cents. That cost of service for  
5 non-gas margin is \$290. Butler's is a little bit  
6 more reasonable at 213, certainly still far ahead of  
7 Kirksville. Going to southeast Missouri, you can see  
8 pretty much similar results. If you live in  
9 Neelyville, you're paying a lot more. If you're  
10 living in Sikeston or New Madrid, you got a good  
11 deal.

12 That's today's rate design. That is the  
13 status quo rate design. That is the rate design that  
14 Public Counsel is embracing for Missouri customers.

15 Now, Staff believes that this is the  
16 best time for this Commission to recognize these  
17 inequities caused by the status quo, and that the  
18 rate that Public Counsel wants to inflict on  
19 customers, well, it's just time to make a change,  
20 it's time to do the right thing.

21 And before I -- I leave this topic, I'd  
22 kind of like to give you a little bit of background  
23 on the why and how these different charges came into  
24 being because in light of today's environment, they  
25 just radiate, you know, a question of why. How is

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1    this reflective of what is happening today?  What are  
2    the operational cost realities we experience today?

3                   Well, I think it's important to know  
4    that these rates were set long ago, back in the day  
5    when utilities were developing and implementing huge  
6    capital investments, huge capital investments that  
7    were needed to achieve a critical mass so that they  
8    could offer gas service to customers in their  
9    respective certificated areas.

10                   Utilities we all know are capital-  
11   intensive businesses.  And as any business person  
12   knows, you can't make money or get any return on your  
13   investment unless you have a customer who is willing  
14   to buy your service and, of course, a customer who  
15   actually pays for your service.

16                   Why did the utilities price their  
17   service charges so low?  Well, back in that day, it  
18   was needed to attract customers, possibly customers  
19   who were using propane service.  Perhaps they were  
20   all electric.  But those low service charges were  
21   needed to bring them onboard.  And the utility needed  
22   those customers to help pay for that massive capital  
23   investment.

24                   And they did that knowing that they  
25   would recover their fixed cost or a portion of them



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1 in that service charge, but they also knew at the  
2 time that they'd recover hopefully the balance of  
3 their fixed costs, their cost of service from the  
4 commodity charge, a commodity charge passed onto  
5 customers, paid by customers based upon the amount of  
6 gas that they bought, whether they're firing up a  
7 barbecue grill or whether they're space and  
8 water-heating their homes.

9                   And this made perfect -- perfectly good  
10 sense back then because, as you remember, most of us,  
11 many of us were around back then, those were the days  
12 of very cheap gas, a cheap commodity that was priced  
13 very attractively in the market and could entice  
14 customers to come onboard the gas utility.

15                   And that old pricing mechanism, the one  
16 that is in effect today, allowed the recovery of  
17 fixed cost and let the utility offer truly low and  
18 unrealistic service charges in light of today's  
19 costs.

20                   Now, we know the days of cheap gas are  
21 long gone. Gas costs today are about 80 percent of a  
22 customer's bill. There's been a turnaround in what  
23 that bill looks like. Customers are getting walloped  
24 on cost of gas. Service charges are but a small  
25 portion of customers' bills today. The service

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1 charges are approximately 20 percent. It's an 80/20  
2 break, couple percent either way.

3 Now, Staff proposes a fixed delivery  
4 charge for the cost of service for each of the three  
5 geographical areas. Those three service areas are  
6 based -- or the customer charge would be based on the  
7 company's cost of providing service to that area.

8 Now, what Staff's rate design does, is  
9 that it represents the operational realities of  
10 today. It ensures that each customer pays the right  
11 price for gas service, the true price, and that no  
12 customer overpays for service, no customer underpays.  
13 Similarly situated residential customers will pay the  
14 same delivery charge. What does that mean?

15 It means that if I'm space and  
16 water-heating my home and using gas to cook with, and  
17 fire up a fireplace, it means that my cost of that  
18 service will be the same as that customer that has  
19 decided to only use it for cooking or maybe even a  
20 fireplace purpose.

21 Because when you think of this, the cost  
22 of providing service to one house is the same cost of  
23 providing that gas service to another house. Cost of  
24 providing gas service to a resident is not a function  
25 of how much gas flows through the line; it's a

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1 function of all the fixed cost that the company has  
2 to put that service -- bring that service to  
3 residents.

4               Now, Staff believes its rate design is  
5 truly a sea change from the way business was done in  
6 the past. We know that. You know, it's never too  
7 late to make the right decision, and this is what  
8 Staff believes that it is doing with this rate design  
9 because it is simply the most efficient way to price  
10 service to customers. It's the best way to send a  
11 very clear price message and to allow that customer  
12 to make their own decisions regarding how they use  
13 gas or whether they use gas.

14              Staff's design is all about fairness.  
15 No customer subsidizes another. Each customer pays  
16 their fair share. Now, with this hodgepodge of old  
17 gas LDC's that make up today's Atmos, and today's  
18 operational cost realities and the unique opportunity  
19 that a zero revenue requirement case presents to this  
20 Commission, Staff believes quite strongly its rate  
21 design offers the fairest deal to customers.

22              It not only balances the interest of  
23 customers with the shareholders, but it truly  
24 balances the interests of the customers so that the  
25 customer who uses more gas need not subsidize that

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1 customer who uses less gas for some discretionary  
2 purpose. And a customer who uses -- and we know the  
3 customer who uses the most gas is one who's using it  
4 for space and water heating. This is about equity,  
5 it's about fairness.

6                   And before I close, I want to address  
7 how Staff's rate design affects this issue of  
8 business risk. Much is talked about business risk,  
9 and it's certainly a valid issue. Staff's design  
10 does remove weather as a business risk when compared  
11 against today's status quo rate design because  
12 Staff's rate design is intended for the company to  
13 have an opportunity, not a guarantee, but an  
14 opportunity to recover its fixed costs of service in  
15 a -- in a fixed delivery charge as opposed to a  
16 commodity charge.

17                   Now, much is talked about this reduction  
18 of business risk, but it is a two-way street here.  
19 Staff's rate design also removes risk from the  
20 customer with regard to bad weather because under  
21 today's rate design, and the ways of the old rate  
22 design with high fixed commodity charges that are  
23 passed through to that customer on buying, the  
24 situation is, you've got the gas utility in one  
25 corner of the room, you have the customer in the

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1     other, they come to the middle and they sit at the  
2     table and place their bets today.

3                 The gas utility bets on, well, we sure  
4     hope that we don't have a warmer-than-normal winter  
5     because we're not gonna recover our fixed costs, our  
6     cost of service. The customer, on the other hand,  
7     and not much is ever talked about this, and there's a  
8     pretty obvious reason why, because we have been  
9     fortunate and experienced warmer-than-normal weather.

10                But when that cold weather hits, that  
11     customer will be pulling out cash out of its pockets  
12     and throwing it at the utility and the utility will  
13     be glad to take that money because that's the way the  
14     rate design today is designed.

15                And there is a fairness issue involved  
16     here. I don't think that's fair. And I think,  
17     recognizing that today's rate design, the status quo  
18     is designed to recover fixed costs on a volumetric  
19     basis, those costs are paid by the customer today in  
20     four months of the year.

21                And so when you look at Staff's rate  
22     design, you have to understand that those costs are  
23     spread out across the year. And so the customer,  
24     most customers will experience lower gas bills in the  
25     winter, because under the volumetric design, when

1    you're buying the most gas and the customer needs the  
2    most help, you're not -- you won't be paying as much  
3    when you're -- as when -- in the current way where  
4    you front all those costs during a four-month period  
5    when you're just sucking gas out of a line to heat  
6    your house.

7                   We have Staff witness Anne Ross who will  
8    provide the testimony on rate design and  
9    consolidation, and the other witnesses that I have  
10   talked about who will be present today.

11                   And in closing, I would just like to  
12   urge this Commission that now is the opportunity to  
13   do the right thing. Now is the opportunity to strike  
14   a truly fair balance of interest and to protect  
15   customers and to remove the situation where one high-  
16   use customer may subsidize the low discretionary use  
17   of another customer, and it is simply the fairest  
18   pricing mechanism that can be made to that customer.  
19   And we think it's the right thing for this Commission  
20   to do to protect Missouri customers.

21                   And I appreciate your attention, and  
22   that concludes my opening remarks, and we are  
23   available to answer questions as may be needed.

24                   JUDGE DIPPELL: Thank you, Mr. Berlin.  
25   I just have a couple questions for you before you

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1 step down.

2 MR. BERLIN: Sure.

3 JUDGE DIPPELL: Is the map that you have  
4 of the service territories, is that what you had  
5 premarked on your exhibit list as Exhibit 100?

6 MR. BERLIN: Correct.

7 JUDGE DIPPELL: Okay. And in your --  
8 the information that you put up also that was out of  
9 Ms. Ross's testimony, there was a slight discrepancy,  
10 and maybe this is accounted for elsewhere, but on the  
11 presentation information, the very beginning it said  
12 northeast, the average residential annual CCF usage  
13 was 836, and I believe in her testimony it says 835.  
14 Is that just an error?

15 MR. BERLIN: I would have to have her  
16 answer the difference of 835 and 836. I can't answer  
17 that.

18 JUDGE DIPPELL: Okay. We'll -- we'll  
19 clarify that when we get to her testimony which  
20 number is correct there. Okay. That's all. I also  
21 just wanted to state for those of you that noticed,  
22 before we begin, Ms. Shemwell did hand me a Diet  
23 Coke, and if anyone thinks that that will bias me  
24 toward Staff, I just want to get that on the record.

25 COMMISSIONER APPLING: Judge, can I ask

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1 one?

2 JUDGE DIPPELL: Oh, sure. Commissioner  
3 Appling, you had a question?

4 COMMISSIONER APPLING: Mr. Berlin, will  
5 you step back one step and put your map back up there  
6 again?

7 MR. BERLIN: Sure. Sarah, are you able  
8 to call that back up?

9 COMMISSIONER APPLING: If you can't,  
10 then I think everybody probably has a copy of it. I  
11 just -- this is just serving as a reminder, and I'm  
12 not trying to get ahead of anyone here. And what I  
13 hear you saying, there is just and reasonable rates  
14 and I will listen to OPC very carefully.

15 But I just want this to serve as a  
16 reminder that the south part of this map down there  
17 in Moreland and Caruthersville and all that, if  
18 you've been down there lately or earlier or years  
19 ago, you realize that this is one of the most  
20 economic depressed areas in the whole state.

21 And I get in front of the company, you  
22 or anyone else here, I'm just saying as we march down  
23 the road to the south, just before we get to  
24 Arkansas, we need to be reminded that this is a low,  
25 depressed economical area. Just keep that in mind.



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1 Thank you very much, sir.

2 JUDGE DIPPELL: Thank you. Is there an  
3 opening statement from Public Counsel?

4 MR. POSTON: Yes, thank you. Good  
5 morning. My name is Mark Poston, and I'm here on  
6 behalf of the Office of Public Counsel and the  
7 public. And I wish I could point to a team of  
8 attorneys behind me that were supporting me here but  
9 I'm all you're gonna get today.

10 As you know, Mr. Fischer -- as  
11 Mr. Fischer stated, Atmos came in originally asking  
12 for a more than \$3 million increase in rates. And  
13 after a thorough review, the Commission's Staff  
14 replied that not only is that Atmos entitled -- not  
15 entitled to any revenue increase, but Atmos is  
16 earning more from ratepayers than necessary by  
17 approximately \$1.2 million annually.

18 Despite this, Staff and Atmos appeared  
19 to have agreed to no increase and no decrease. This  
20 begs the question, why is Staff not pursuing the  
21 \$1.2 million of annual over-earnings? We haven't  
22 seen any agreement filed between Staff and Atmos  
23 where concessions have been made, but apparently  
24 concessions have been made.

25 And what does Atmos get out of this

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1 deal? Atmos gets a lot. First, they get Staff to  
2 back off and not file a complaint due to Atmos's  
3 excess earnings. Second, Atmos gets Staff's support  
4 for a rate design proposal that would essentially  
5 guarantee Atmos will receive more than a mere  
6 opportunity to earn a fair return as required by law,  
7 but will instead guarantee a return by completely  
8 removing all weather-related risk, removing all  
9 conservation-related risk and other risk factors.

10                   And this unprecedented change in rate  
11 design was more than enough to convince Atmos to  
12 quickly back off every penny of its rate increase and  
13 settle with Staff for zero. That alone is very  
14 telling of what the rate design proposal will do.

15                   Atmos also gets a number of other perks  
16 including changes designed to reduce its  
17 administrative burden such as consolidated rates and  
18 miscellaneous charges up front, recovery of the cost  
19 of certain main extensions and more. What does Staff  
20 get out of this deal? In our opinion, very little.  
21 What do ratepayers get out of the deal? Even less.

22                   One of the biggest detriments to Staff's  
23 decoupling rate design proposal is that it will  
24 eliminate entirely any benefits the customers will  
25 receive from conservation related to the service

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1 regulated by this Commission.

2 At a time when NARUC, NASUCA, and state  
3 commissions around the company are encouraging  
4 conservation and efficiency and implementing programs  
5 to achieve those goals, Staff presents the Commission  
6 with a rate design proposal that should be labeled a  
7 conservation mitigation rate design.

8 Customers expect to be rewarded for  
9 their conservation efforts, and the Staff's proposal  
10 will deny customers that opportunity and will be  
11 contrary to their expectations.

12 Another criticism of the Staff's rate  
13 design proposal is that it makes absolutely no  
14 adjustment for the reduction in risk that will happen  
15 if all weather-related risks are removed and the  
16 other risks identified. Staff did not take the  
17 reduction of risk into account when it proposed its  
18 rate of return which would suggest that the Staff's  
19 1.2 million excess calculation should be even  
20 greater.

21 Mr. Fischer stated that OPC's 7.0 return  
22 on equity proposal was lower than any previously  
23 approved by the Commission and I believe he said the  
24 past 30 years. I would reply that the Commission has  
25 not completely eliminated weather and other risks

1     like it would do if it approves Staff's decoupling  
2     proposal.

3                 The evidence presented at this hearing  
4     and the argument made in Public Counsel's post  
5     hearing brief will show that Staff's decoupling  
6     proposal was terribly understudied before its  
7     proposal. Decades of ratemaking by this Commission  
8     has resulted in a traditional rate design that allows  
9     gas distribution companies to recover their margin  
10    costs through a two-part rate, a fixed rate element  
11    and a volumetric element.

12                This Commission has repeatedly found  
13    this former rate design to be just, reasonable in the  
14    public interest. Now the Staff wants to make a  
15    historical change. Change alone is not bad. There  
16    can be better ways to do things, and the Commission  
17    must be able to respond to new problems that arise  
18    under the old ways of doing things.

19                But to make a huge change to something  
20    as important as how you design the rates paid by the  
21    public, the public deserves nothing less than a  
22    thorough review of all data necessary to fully  
23    analyze the impact the change will make on ratepayers  
24    in the industry. And the Commission itself  
25    deserves -- deserves nothing less than all necessary

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1 data and the best study possible.

2                   Unfortunately, the coupling rate design  
3 proposal before the Commission was proposed before  
4 any real data analysis was performed, and is  
5 insufficient to remotely support what is being  
6 proposed. Sure, the supporters have come in after  
7 the proposal and tried to prop it up, but those  
8 attempts are based on unsupported reasoning rather  
9 than hard data.

10                   And then there's the policy aspect of  
11 the recommended change. Is it good public policy for  
12 the Commission in a case where the evidence suggests  
13 a rate decrease should be the result because the  
14 company's over-earning, is it good public policy for  
15 the Commission to make a change that could be  
16 detrimental to all small low-use customers to the  
17 benefit of the larger gas users?

18                   In the last MGE rate case, this  
19 Commission got it right and concluded just two years  
20 ago that dumping cost on low-use customers is  
21 contrary to good public policy. Nothing has changed  
22 to make this shift to low-use customers suddenly to  
23 become good public policy.

24                   We see the value in ensuring that Atmos  
25 has a reasonable opportunity to earn a fair return,

1 allowing it to continue providing safe and reliable  
2 gas service. In that scenario everyone wins,  
3 shareholders and customers alike, but this proposal  
4 is extremely lopsided. Where are the consumer  
5 protections? What do consumers get? They get  
6 Staff's hope that Atmos will encourage conservation  
7 efficiency while removing a portion of the economic  
8 incentive to customers to conserve.

9               Atmos will be getting a rate design  
10 unprecedented in Missouri and unprecedented  
11 nationally. Nothing like this exists anywhere and  
12 for good reason. Other states that have moved toward  
13 to weather mitigation, former rate design, couple  
14 that with conservation and efficiency programs.  
15 Because when you take away a customer's ability to  
16 see benefits from conservation, the customer deserves  
17 something in return.

18               The Staff proposes absolutely no new or  
19 net customer benefits with its rate design proposal.  
20 We ask that you reject this rate design. If there  
21 comes a time when the current rate design proves to  
22 be insufficient, which it does not appear to be since  
23 the company is earning 1.2 million more than  
24 necessary, then make changes. But here we have a  
25 company over-earning, and in no need of locking in a

0055

1 rate design that will ensure it continues to  
2 over-earn.

3               If the Commission agrees with Staff and  
4 wants to guarantee Atmos's recovery of all margin  
5 costs, the public deserves that the rates  
6 guaranteeing such recovery are initially set to allow  
7 recovery of no more than is necessary to cover margin  
8 costs. The rates should not be set to cover margin  
9 plus 1.2 million.

10              In fact, it's hard to see how the  
11 Commission could resolve this case at zero increase  
12 and zero decrease without including that certain  
13 aspects of Staff's testimony is reasonable and  
14 likewise for Atmos's testimony.

15              Staff, however, appears to be saying  
16 that our expertise has determined -- or their  
17 expertise has determined that Atmos is already  
18 recovering more than necessary. We're not going to  
19 allow that.

20              Oh, and by the way, for you low-use  
21 customers, even though the company's not getting a  
22 rate increase and deserves a rate decrease, we're  
23 raising your rates by as much as 173 percent. This  
24 absolutely does not make sense.

25              Something else that does not make sense

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1 is consolidating districts under the extremely false  
2 premise that the cost to serve a customer is equal  
3 in every -- excuse me, in every district. This  
4 premise in Staff's testimony completely ignores a  
5 study by another Staff witness that shows there  
6 really are differences in costs per district. The  
7 costs of each district are different.

8 I'm not going to address each and every  
9 remaining issue, but I will address one last issue  
10 and that's depreciation. Staff's intentions here are  
11 good. They see a benefit from lowering depreciation  
12 expense by 591,000. Normally, you would expect  
13 Public Counsel to be in favor of a proposal that  
14 lowered expenses.

15 But this time we cannot support this  
16 proposal for two reasons: One, by taking 591,000  
17 from accumulated depreciation reserve and adding it  
18 back into rate base, the Commission would essentially  
19 be requiring rate fares to once again pay for a plant  
20 that already depreciated and force them to pay a  
21 return on top of this addition to rate base.

22 The second reason we don't support this  
23 proposal is that it would constitute poor accounting  
24 practices and we cannot support that. Staff's  
25 testimony is clear in stating Atmos has failed to



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1 follow the Commission's rules and has failed to keep  
2 data to enable anyone, Staff, Atmos, OPC, the  
3 Commission, to conduct a proper depreciation analysis  
4 based on known and measurable data. Despite this,  
5 Staff agrees to go along with the 591,000 reductions  
6 to depreciation reserves simply because Atmos --  
7 Atmos's management thinks it's a good idea. That  
8 reasoning is absurd and it's clearly not supported by  
9 any data in this record.

10 I'm the first to admit that depreciation  
11 is a very complex issue, so I strongly encourage you  
12 to ask Mr. Trippensee to walk you through this  
13 reasoning. He's been doing this for a long time, and  
14 he can explain this to you even if it takes him  
15 getting up on the Smart Board and doing a little  
16 accounting 101 which he had to do with me and explain  
17 why this proposal should be rejected.

18 In conclusion, we see the most important  
19 issue before the Commission to the rate design  
20 proposal. I think everyone agrees with that.

21 Staff's decoupling rate design proposal  
22 is harmful to consumers because, one, the impact of  
23 the proposal is truly not known without sufficient  
24 studies; two, customer efforts to conserve energy  
25 will be negated; three, no conservation or efficiency

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1 programs have been introduced; and four, it will be  
2 contrary to good public policy in that it will shift  
3 a substantial portion of the cost to the lowest use  
4 customers. We encourage you to reject this proposal  
5 and not disrupt customers in a case where the company  
6 has backed off its requested rate increase and where  
7 no changes are necessary. Thank you.

8 JUDGE DIPPELL: Thank you. Is there an  
9 opening statement from Noranda?

10 MR. FULTON: Yes, briefly. May it  
11 please the Commission, Commissioner Appling, Noranda  
12 is located in that poor -- poor part of the state  
13 down in the Boot Heel of Missouri. In testimony  
14 filed by Mr. George Swogger, who, unfortunately, was  
15 caught up by the weather up in Kingdom City and won't  
16 be here, we have spelled out how important Noranda is  
17 to the Boot Heel area, not just New Madrid County  
18 where it's located and which it supplies over  
19 one-third of the revenues -- the tax revenues for the  
20 school districts and for the county, but also for the  
21 entire region down there.

22 We've also incorporated in there some  
23 testimony from two of the representatives down there,  
24 the county administrator. And at the hearing in  
25 Sikeston, the administrator of the -- director of the

1 sheltered workshop testified about the importance of  
2 Noranda.

3 Noranda is a large company. Its a  
4 corporation. Its revenues are derived by what the  
5 world economy dictates. We do not center on prices,  
6 we do not have guaranteed -- well, we don't have the  
7 opportunity to earn a fair rate of return if the  
8 economy does not see fit to do so.

9 As such, we have to watch what our  
10 expenses are. If we do not pare our expense to the  
11 bone, we cannot compete, we cannot support our  
12 community. We are part of the community, but we have  
13 to be able to keep our expenses down. There has been  
14 a couple of statements made during the course of  
15 these opening statements that I think are important  
16 to note.

17 Well, by way of background,  
18 approximately four years ago in an effort to keep our  
19 costs down, Noranda entered into a special contract  
20 with Atmos whereby they'd provide delivery services  
21 to us. We purchase our gas elsewhere but they  
22 provide the transportation services to us under  
23 special contract.

24 In the initial phase of this proceeding,  
25 it appeared that the special contract was going to be

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1 at issue. However, during the course of a -- some  
2 discussions, it was asked of us what does Noranda  
3 want? Noranda believes that it's actually paying  
4 more than what the cost of service is under the  
5 special contract. But we have six more -- we have  
6 been under this contract for four years, we have six  
7 more years to run. We've met our contract, we're  
8 willing to live with our contract notwithstanding  
9 it's a little bit above what we believe the costs  
10 are.

11 When asked what it was that Noranda  
12 wanted at these conferences, we specified we want to  
13 be left alone. What you have heard today by  
14 Mr. Fischer and also by Mr. Berlin is that they're  
15 going to leave Noranda and its contract alone.  
16 They're also going to leave alone the management to  
17 the Hannibal hospital contract.

18 As such, Noranda no longer has a dog in  
19 this fight. They're going -- it's -- the statements  
20 are that the rates are just and reasonable, we're  
21 prepared to live with that. And as such, we would  
22 ask permission of this Commission to go home so we  
23 can save Noranda a little bit more money. We will  
24 waive our right to cross-examine the witnesses, and  
25 we will also waive our right to object to the other

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1 testimony. I thank you. Anybody have any questions  
2 I'll be happy to answer any.

3 JUDGE DIPPELL: Commissioner Appling,  
4 did you have any questions?

5 COMMISSIONER APPLING: I think just a  
6 couple. Mr. Fulton, how are you doing this morning?

7 MR. FULTON: I'm doing fine, Judge,  
8 Commissioner.

9 COMMISSIONER APPLING: I wish I was  
10 a judge, but I'm not, so I'll just stick with the  
11 Commissioner for a while.

12 But anyway, what you're telling me this  
13 morning that Noranda is pleased with what the Staff  
14 is putting forth.

15 MR. FULTON: What -- what we're  
16 telling -- what I'm telling you today is Noranda is  
17 not taking a position with regards to the other  
18 issues before this Commission to specifically -- the  
19 rate design issues which is, I really believe, the  
20 fundamental thing, that do not impact upon our  
21 contract. Those rate design issues do not impact  
22 Noranda.

23 COMMISSIONER APPLING: Is that correct,  
24 Staff?

25 MR. BERLIN: Yes.

1 COMMISSIONER APPLING: Okay.

2 Mr. Fulton, thank you very much, and you need to stay  
3 around a little bit and get a little of this cold  
4 weather. It's kind of warm down in your district,  
5 okay?

6 MR. FULTON: Well, I'm in Fredericktown,  
7 and actually, it's about 50 miles -- 100 miles north  
8 of where Noranda is, so I'm going to be getting it  
9 too. But I appreciate it, Commissioner. Thank you.

10 COMMISSIONER APPLING: Thank you very  
11 much.

12 JUDGE DIPPELL: Thank you. And  
13 Mr. Fulton, you -- with the caveat that, of course,  
14 you will give up any rights to cross-examine and to  
15 present further evidence and so forth, you may be  
16 excused from your presence here when you're ready to  
17 go. I will ask that if there would happen to be a  
18 question tomorrow from some of the Commissioners,  
19 that your witnesses be available by telephone if  
20 that's possible.

21 MR. FULTON: That's certainly possible,  
22 and I will also be available by telephone.

23 JUDGE DIPPELL: All right.

24 MR. FULTON: Thank you.

25 JUDGE DIPPELL: Okay. I think that this

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1 is a good place then to take a short break. We'll  
2 break for 15 minutes and we'll come back just like 17  
3 after the hour. Thank you.

4 (A RECESS WAS TAKEN.)

5 JUDGE DIPPELL: Okay. Let's go ahead  
6 and go back on the record. Remind everyone that if  
7 you were using your cell phones while you were out at  
8 break, if you'd make sure those are turned back off.

9 Okay. I think we're ready to begin then  
10 with Atmos's case, and we've rearranged the order of  
11 the witnesses just a little bit. Atmos has given the  
12 court reporter a copy of all of its exhibits that  
13 were premarked.

14 Mr. Fischer?

15 MR. FISCHER: Yes, your -- well, at any  
16 rate, we'll call Pat Childers.

17 JUDGE DIPPELL: Okay. And we also  
18 previously dispensed with the preliminaries for the  
19 witnesses, but I will swear Ms. Childers in. Please  
20 raise your right hand.

21 (The witness was sworn.)

22 DIRECT EXAMINATION BY MR. FISCHER:

23 Q. Good morning, Ms. Childers. I wanted to  
24 let you know that your testimony's been marked as  
25 Exhibit 5, your direct; rebuttal, 6; and surrebuttal

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1 is 7. Do you have any corrections or changes you  
2 need to make to any of those testimonies?

3 A. No, I do not.

4 MR. FISCHER: Judge, then I tender her  
5 for cross-examination.

6 JUDGE DIPPELL: I did have one question.  
7 I notice that her -- on the premarked exhibit list,  
8 her testimony was marked as 5 HC and NP, but I didn't  
9 see actually that there was any highly confidential;  
10 is that correct?

11 MR. FISCHER: There are two schedules  
12 that have some special-contracts revenues on the HC  
13 version that are redacted from the other, and that's  
14 the only change.

15 JUDGE DIPPELL: Okay. Is that the same  
16 as filed in EFIS originally?

17 MR. FISCHER: I believe there was a  
18 subsequent filing that did clarify that.

19 JUDGE DIPPELL: Oh, okay. Okay. So I  
20 just looked at it and it was not confidential on  
21 EFIS, but there's a subsequent filing with the  
22 confidential information?

23 MR. FISCHER: That's correct.

24 JUDGE DIPPELL: All right, then. Are  
25 you offering that?



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1                   MR. FISCHER: Yes. We would offer  
2 Exhibits 5 NP, 5 HC, Exhibit 6 and then Exhibit 7.

3                   JUDGE DIPPELL: Would there be any  
4 objection to Exhibit 5 NP and HC and 6 and 7?

5                   (NO RESPONSE.)

6                   JUDGE DIPPELL: Seeing no objection, I  
7 will receive it into the record.

8                   (EXHIBIT NOS. 5 NP, 5 HC, 6 AND 7 WERE  
9 RECEIVED INTO EVIDENCE AND MADE A PART OF THE  
10 RECORD.)

11                   (TELEPHONIC INTERRUPTION.)

12                   COMMISSIONER APPLING: I'm always afraid  
13 that's gonna happen to me in church.

14                   JUDGE DIPPELL: Okay. It threw me off  
15 just a little bit. We will begin with  
16 cross-examination then. Staff?

17                   MR. THOMPSON: Thank you, Judge.

18 CROSS-EXAMINATION BY MR. THOMPSON:

19           Q.       What is it that you do for Atmos?

20           A.       I'm the vice president of regulatory  
21 affairs.

22           Q.       So you would be familiar with what an  
23 Atmos bill looks like?

24           A.       Yes.

25           Q.       Now, from the point of view of a

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1 customer, if a customer uses less gas during a  
2 billing period than another customer, is the customer  
3 that uses less gas, is that bill going to be lower,  
4 equal to or higher than the bill of a customer who  
5 uses more gas?

6 A. If a customer uses less gas --

7 Q. Yes, ma'am.

8 A. -- is the bill going to be higher or  
9 lower?

10 Q. Yes, ma'am.

11 A. It depends on what -- well, what area  
12 they're in. You know, we -- right now we have  
13 various --

14 Q. Let's say they're in the same area.

15 A. If they're in the same area --

16 Q. Yes, ma'am.

17 A. -- and they use less gas, they would pay  
18 the same customer charge, they would pay the same  
19 distribution charge and they would pay the same gas  
20 rate, the same PGA.

21 Q. Well, now, when you say the same rate,  
22 isn't that a charge that's multiplied by the amount  
23 of gas that's used to reach the final bill to that  
24 customer?

25 A. Yes, they would pay the same unit rates

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1 but they would pay a different total dollar bill  
2 amount.

3 Q. And is that going to still be true if  
4 the rate design that Staff has proposed in this case  
5 is implemented?

6 A. That will be true because the customer  
7 that uses less gas is still going to be charged  
8 volumetrically for the PGA, the gas cost portion of  
9 the bill.

10 MR. POSTON: Your Honor, I'd like to  
11 object. I believe this is nothing but friendly  
12 cross. These parties have no issues where they're in  
13 disagreement.

14 MR. THOMPSON: Well, your Honor, first  
15 of all, traditionally in Commission proceedings,  
16 friendly cross is prohibited in the procedural  
17 schedule or in what used to be called the hearing  
18 memorandum. I'm not aware of any order issued in  
19 this case that has stated that there will not be  
20 so-called friendly cross. And secondly, when  
21 Mr. Poston stands at that lectern and  
22 mischaracterizes the facts for this Commission, I  
23 believe we should have an opportunity to bring out  
24 the reality and the truth.

25 JUDGE DIPPELL: I'm going to allow you

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1 to cross-examine, but I would appreciate it if you  
2 would not make it repetitive.

3 MR. THOMPSON: I am absolutely  
4 uninterested in repetition, your Honor.

5 JUDGE DIPPELL: Proceed, please.

6 MR. THOMPSON: Thank you.

7 THE WITNESS: Could I further clarify my  
8 response? Would that be appropriate?

9 BY MR. THOMPSON:

10 Q. You certainly may.

11 A. The delivery charge that Staff is  
12 recommending, the customers would both pay that same  
13 delivery charge. But I think it's important to keep  
14 in mind that 80 percent of a customer's bill is  
15 purchased gas cost. So the customer that's going to  
16 use less consumption is going to pay less in the  
17 wholesale cost of gas than the customer that uses  
18 more. So there would be a total difference in the  
19 bill, but it's going to be largely driven by the gas  
20 cost itself, not by the delivery charge.

21 Q. So do I understand you to say in answer  
22 to my question, that if the rate design that Staff  
23 has proposed in this case is implemented, it will, in  
24 fact, continue to be true that the customer in the  
25 same area that uses more gas will, in fact, pay more

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1 money?

2 A. That's correct.

3 Q. So would you agree with me that there is  
4 still a reason to practice conservation in gas use?

5 A. Absolutely. The gas cost is, again, 80  
6 percent of what a customer pays, so they have every  
7 incentive to conserve and use less.

8 MR. THOMPSON: Thank you. No further  
9 questions.

10 JUDGE DIPPELL: Thank you. Is there  
11 anything from Public Counsel?

12 CROSS-EXAMINATION BY MR. POSTON:

13 Q. Good morning.

14 A. Good morning.

15 Q. I don't have very many questions for you  
16 and I'll kind of -- kind of jump around. Has Atmos  
17 prepared a class cost-of-service study in this case?

18 A. No, we did not prepare one in this case.

19 Q. Has Atmos prepared a replacement study  
20 for the cost of mains in the last ten years?

21 A. Not to my knowledge.

22 Q. Does the design of Atmos's main system  
23 include consideration of future load?

24 A. I am probably not the most appropriate  
25 witness to ask of that. I believe witness Mike Ellis

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1 would be better able to respond to that. That's  
2 really outside my area.

3 MR. POSTON: Your Honor, I'd like to  
4 approach the witness with a document, a data request.

5 JUDGE DIPPELL: Show it to her attorney  
6 and then proceed.

7 BY MR. POSTON:

8 Q. Can you please describe the document I  
9 handed you?

10 A. Yes. It appears to be a data request  
11 from the office of OPC. Shall I read the question?

12 Q. Yeah. Who is -- it's from OPC to?

13 A. Requested from Josh Stull.

14 Q. And the date of that?

15 A. The date is September 1, 2006.

16 Q. And that's for this case, correct?

17 A. That's correct.

18 Q. Okay. If you could please read the  
19 request and the response.

20 A. Certainly. "Please describe in detail  
21 how the company designs and plans its main's system  
22 to meet design day peak system requirements. Other  
23 than design day peak requirements, what factors might  
24 enter into the design of the main system?"

25 The response: "The engineering

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1 department designs each major main extension or  
2 system modification and would use expected future  
3 load information, existing system capacity and would  
4 utilize system modeling software to conduct the  
5 study."

6 MR. POSTON: Thank you. I have a few  
7 more of these that I'd also like to ask that she  
8 read, if I may approach as well.

9 BY MR. POSTON:

10 Q. I handed you -- the first one I'm gonna  
11 ask you to read is data request 732.

12 A. Yes.

13 Q. If you could identify that document,  
14 please?

15 A. Again, this is a data request from the  
16 office of OPC requested of Josh Stull. The date of  
17 the request is September 1, 2006. The information  
18 requested: "Are distribution mains of the size  
19 two-inch or below used in serving large volume  
20 interruptible or transportation customers? If yes,  
21 approximately what percentage of the two-inch or  
22 below distribution mains is used in serving customers  
23 in each of these classes?"

24 The company responds: "This information  
25 is not readily available but we probably do have some

0072

1 large volume accounts served off of two-inch  
2 distribution mains. However, if this is the case,  
3 the system delivering capacity would have been  
4 modeled to make sure it was capable of maintaining  
5 deliveries to firm customers."

6 Q. Okay. And data request 704, there is a  
7 subpart D. If you could first identify that  
8 document?

9 A. Yes. Yes. Again, a data request from  
10 Public Counsel requested of Josh Stull. Date of the  
11 request, September 1, 2006. Subpart D: "What other  
12 factors does the company believe to be relevant in  
13 designing the company's rates?"

14 Company response: "Other factors that  
15 the company has considered include changing patterns  
16 of use such as declining use, the fixed nature of the  
17 company's cost of service, the value of service to  
18 customers and the risk of customers leaving the  
19 system and gradualism in making changes to minimize  
20 impact."

21 Q. And the last one, 724?

22 A. Again, a data request from the office of  
23 OPC of Josh Stull, date of request, September 1,  
24 2006. Information requested: "Please provide any  
25 information available in the last five years



0073

1 regarding actual experienced average cost-per-foot  
2 cost for various types of main-installation projects  
3 on a rolling 12-month basis. Please identify the  
4 type of main projects, such as new business  
5 extension, relocation, reinforcement, maintenance,  
6 replacement, et cetera. Please also explain the  
7 approximate proportion of each type of main projects."

8 Company response: "This information is  
9 not readily available."

10 Q. Does the design of main system include  
11 modeling considerations?

12 A. According to the response, yes.

13 Q. Do those modeling considerations for  
14 Atmos include customer density?

15 A. Again, I'm going to defer to witness  
16 Mike Ellis. He's much more familiar with mains and  
17 services and those types of expenditures than I am.

18 MR. POSTON: Okay. Thank you.

19 JUDGE DIPPELL: Thank you. I did not  
20 ask if there were questions from Noranda or Hannibal  
21 Regional because those parties are no longer present,  
22 so I just wanted to clarify that.

23 Are there any questions from the  
24 Commissioners for this witness regarding these  
25 issues? Ms. Childers will be testifying about other

0074

1 issues later. Commissioner Appling, did you have  
2 anything?

3 CHAIRMAN DAVIS: No, no. Go ahead,  
4 Commissioner Appling.

5 QUESTIONS BY COMMISSIONER APPLING:

6 Q. I'm sorry but I missed you. Good to see  
7 you again.

8 A. Thank you. Good to see you.

9 Q. I came in a little late then. I didn't  
10 adjust my head space in time in order to ask the  
11 question that I need to ask, but you'll be back up  
12 again, won't you?

13 A. Yes, Commissioner, I will.

14 Q. Color for me again exactly what you done  
15 on this case again, please.

16 A. Okay. I am a vice president of  
17 regulatory affairs.

18 Q. Right.

19 A. I work with six of the regulatory  
20 jurisdictions in which we serve, Missouri being one  
21 of those. I have filed direct, rebuttal and  
22 surrebuttal testimony on the rate design, utility  
23 related charges, things of that matter, which I  
24 believe I'll actually be back before you two more  
25 times --

0075

1 Q. Okay.

2 A. -- to answer any questions you might  
3 have on the rate consolidation for the base portion  
4 of the rates, as well as the proposal to consolidate  
5 the PGA's.

6 COMMISSIONER APPLING: Okay. Thank you  
7 very much. I have some for you the next time you're  
8 up then. Thank you.

9 THE WITNESS: You're welcome.

10 JUDGE DIPPELL: Mr. Chairman?

11 QUESTIONS BY CHAIRMAN DAVIS:

12 Q. Ms. Childers, when's the last time Atmos  
13 filed a class cost-of-service study in Missouri?

14 A. The last time we had a case was ten  
15 years ago, and Chairman, I really cannot tell you  
16 whether we filed a cost-of-service study in that case  
17 or not. I could probably get that answer for you,  
18 and when I come back before you, I could respond to  
19 that. My memory is just -- I just can't recall.

20 Q. Okay. When's the last time Atmos filed  
21 a class cost-of-service study in another state?

22 A. I believe we have recently filed one  
23 perhaps in the states of Tennessee -- again, I can --  
24 on the next break I can verify that with some of the  
25 other people that are here today with the company.

0076

1 And if I have misspoken, I will be happy to correct  
2 that.

3 Q. And then I believe Mr. Poston also  
4 inquired if Atmos conducted a study, what was it,  
5 main replacement; is that correct, Mr. Poston?

6 A. Not to my knowledge. Again, I believe  
7 witness Mike Ellis would know the answer to that if  
8 it's different than no, we have not.

9 Q. Okay. So would you have any idea of  
10 when Atmos would have ever conducted one in Missouri,  
11 if they'd ever conducted one at all?

12 A. No, I would not have that knowledge.

13 Q. Is it Atmos's practice to perform those  
14 studies in other states?

15 A. I know that we have ongoing pipe  
16 replacement programs in Tennessee and Georgia, and I  
17 know we have studies in those states.

18 Q. Do you have an ongoing pipe replacement  
19 program in Missouri?

20 A. No, we do not, not a Commission-ordered  
21 pipe replacement program. Obviously, we continue to  
22 replace pipe in all of the jurisdictions in which we  
23 serve.

24 Q. Okay.

25 A. But not a formalized program such as



0078

1 down.

2 JUDGE DIPPELL: That's all right.

3 QUESTIONS BY COMMISSIONER APPLING:

4 Q. Mrs. Childers, Mr. Poston testified this  
5 morning -- not testified but spoke to the fact that  
6 in one of the areas the percentage will go up about  
7 173 percent?

8 A. Yes, that's correct. I would first like  
9 to say that I think percentages can be very  
10 misleading when you use percentages or you use dollar  
11 impact, but I also believe that OPC's analysis  
12 excluded the gas cost portion of the bill which,  
13 again, represents 80 percent. When you roll back in  
14 80 percent of the bill, the customer cost, obviously  
15 the percent comes down. But again, I think you have  
16 to be careful at looking at percents as opposed to  
17 looking at dollar -- dollar impact.

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

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

22 Q. Right.

23 A. -- there is page 2 of 2 of Exhibit 2  
24 which does show the consolidated delivery charge  
25 based on Staff's recommendation and the consolidated

0079

1     PGA's. The PGA's that are shown on this exhibit are  
2     the PGA's that have been most recently filed by the  
3     company which are substantially less than the PGA's  
4     that are in effect today, which is good news for  
5     the -- for the consumer.

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

8             Q.       Right.

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

17                    COMMISSIONER APPLING: Thank you.

18                    JUDGE DIPPELL: Is there any further  
19    cross based on Commissioner Appling's question from  
20    Staff?

21                    (NO RESPONSE.)

22                    JUDGE DIPPELL: Public Counsel?

23                    MR. POSTON: No.

24                    JUDGE DIPPELL: Is there redirect from  
25    Atmos?

1 MR. FISCHER: Just briefly, your Honor.

2 REDIRECT EXAMINATION BY MR. FISCHER:

3 Q. Ms. Childers, you were asked some  
4 questions from the bench regarding Atmos's  
5 cost-of-service studies.

6 A. Yes.

7 Q. And is that one of the issues that is  
8 the subject -- that is the subject of the partial  
9 stipulation and agreement that was filed last night?

10 A. Yes, we have agreed at our next filing  
11 to file a cost-of-service study and provide all the  
12 information to all parties to assist them in  
13 performing the cost-of-service study on their own as  
14 well.

15 Q. I believe the chairman wasn't available  
16 this morning. That -- that stipulation also includes  
17 Staff, Public Counsel and the company, they were  
18 signatories; is that right?

19 A. That's correct.

20 Q. You were also asked some questions about  
21 past cost-of-service studies. Is it correct that if  
22 past cost-of-service studies would have been done,  
23 that that would have been done by your predecessor  
24 companies, United Cities or Associated Natural Gas  
25 and not Atmos?



0081

1           A.       Yes, that's -- that's definitely  
2 correct, yes.

3                   MR. FISCHER: That's all I have. Thank  
4 you.

5                   JUDGE DIPPELL: Thank you. I'm gonna  
6 allow you to step down, Ms. Childers. We'll have you  
7 back for further questions. And some of the  
8 Commissioners are not able to be here today, and they  
9 may have questions about this topic also tomorrow.

10                  THE WITNESS: Thank you.

11                  JUDGE DIPPELL: Uh-huh.

12                  MR. THOMPSON: I apologize, Judge. Did  
13 you admit her testimony into the record?

14                  JUDGE DIPPELL: Yes, I did.

15                  MR. THOMPSON: Thank you.

16                  JUDGE DIPPELL: Okay. Let's move on  
17 with the next witness. And we are going -- we are  
18 trying to go by issue, revenue requirement, rate of  
19 return and return on equity. To begin, I realize the  
20 testimony is all -- covers all of the subjects, so  
21 obviously, if there was objections to the testimony  
22 on other subjects, you should make those when the  
23 testimony is offered as a whole instead of trying to  
24 offer the testimony piecemeal. Dr. Murray?

25                   (The witness was sworn.)

1 JUDGE DIPPELL: Thank you. Mr. Fischer?

2 DIRECT EXAMINATION BY MR. FISCHER:

3 Q. Yes. Dr. Murray, your direct  
4 testimony's been marked as Exhibit 14, and your  
5 surrebuttal's been marked as Exhibit 15. Do you have  
6 any changes or corrections you need to make to those  
7 exhibits?

8 A. I have -- I have one minor change to  
9 each.

10 Q. Okay.

11 A. On page 10, line 7 of my direct  
12 testimony, there is a word 40 and that should be the  
13 word 30. And on -- in the rebuttal testimony of  
14 page 6, line 8, the word "to" should be the word  
15 "from."

16 JUDGE DIPPELL: I'm sorry. What page  
17 was that?

18 THE WITNESS: That was in surrebuttal,  
19 page 6, line 8.

20 JUDGE DIPPELL: Thank you.

21 BY MR. FISCHER:

22 Q. Any other changes that need to be made?

23 A. No, sir.

24 MR. FISCHER: All right. Your Honor,  
25 with that, then, I'd move for the admission of

0083

1 Exhibit 14 and 15 and tender Dr. Murray for cross.

2 JUDGE DIPPELL: Would there be any  
3 objection to Exhibits 14 and 15?

4 MR. THOMPSON: No objection.

5 JUDGE DIPPELL: Seeing no objections,  
6 then I will enter those into evidence.

7 (EXHIBIT NOS. 14 AND 15 WERE RECEIVED  
8 INTO EVIDENCE AND MADE A PART OF THE RECORD.)

9 JUDGE DIPPELL: Sorry. I seem to be  
10 losing my voice. Is there cross-examination from  
11 Staff?

12 MR. THOMPSON: None, your Honor.

13 JUDGE DIPPELL: Is there  
14 cross-examination from Public Counsel?

15 MR. POSTON: No, your Honor.

16 JUDGE DIPPELL: Okay. Is there -- are  
17 there any questions from the Commissioners?  
18 Commissioner Appling?

19 QUESTIONS BY COMMISSIONER APPLING:

20 Q. Good morning, Dr. Murray.

21 A. Good morning, Commissioner.

22 Q. Where are you from?

23 A. Oklahoma, Norman, Oklahoma.

24 Q. Norman, Oklahoma, huh? That's pretty  
25 close to Fort Sill, isn't it?

0084

1           A.       Yes.

2           Q.       Yeah.

3           A.       Have you been to Fort Sill, sir?

4           Q.       Yeah. I spent two days too long there.

5           A.       We both did.

6           Q.       It's redneck country, artillery. That's  
7 where we train all our rednecks.

8           A.       Yes, sir, I went -- I went through  
9 there.

10          Q.       Yeah. Oklahoma is a great -- great  
11 state and -- did you recommend the ROE on this -- on  
12 this -- on this case?

13          A.       Yes, sir, I did.

14          Q.       Talk to me a little bit about it.

15          A.       Well, my -- my testimony and analysis,  
16 of course, preceded what I understand is now in  
17 agreement with the Staff which states --

18          Q.       Do you understand what the Staff and  
19 Atmos is talking about right now?

20          A.       I can't say that I've analyzed it, but I  
21 think I understand some of the basic elements to that  
22 agreement.

23          Q.       Share your thoughts on it with me,  
24 please.

25          A.       Well, this is not so much a rate of

1 return response, because I'm not privy to all the  
2 issues.

3 Q. Correct.

4 A. And as I understand it, it's a -- I  
5 guess we use the term black box agreement, but the  
6 stipulation for a straight fixed variable rate, and I  
7 know that's one of the issues in this case, now I'm  
8 speaking as an economist and my experience which at  
9 the time was the Federal Power Commission, and the  
10 movement to straight -- straight fixed variable rates  
11 for the pipelines, as an economist I view that as an  
12 efficient rate schedule.

13 There was much discussion this morning  
14 about equity, and I'm not disagreeing with that  
15 concept. But as I -- listening to that and thinking  
16 back, my recollection in dealing with the regulation  
17 pipelines and moving to that sort of rate structure,  
18 was to create a stable revenue stream for the  
19 investment in maintaining the pipeline system or  
20 expanding the system, the capacity requirement, if  
21 you will.

22 And if you think about it, that  
23 guarantees the revenues that are going into the  
24 investment. And so looking at it again now from an  
25 investment, economic efficiency standpoint, that made

1 it possible for the pipelines to go into the market  
2 and borrow money and maintain the system. I know  
3 that was one of the considerations.

4 And in separating that from the  
5 volumetric requirement of natural gas, that puts the  
6 burden, the cost of the gas on the volumetric charge.  
7 And so in that sense, it's dividing those two issues,  
8 the capacity requirements and the volumetric charge.

9 Now, as I understand in this agreement,  
10 there's also a provision for -- for -- to treat the  
11 weather normalization, and I'm using that term, I  
12 guess, generically as part of that fixed charge.

13 And as an economist and also looking at  
14 the financial issues, to me that also makes sense  
15 because you're essentially going to a normal weather  
16 basis and smoothing out the variability, the highs  
17 and the lows, and looking at those kinds of weather  
18 provisions as an -- again, as an economist.

19 And the way an investor would look at  
20 it, you're not -- you're not increasing the return to  
21 the company. What you're doing is you're reducing  
22 the variability. And so it's beneficial on one hand  
23 to the ratepayers because they don't get hit with  
24 these heavy shocks when the weather is severe, and on  
25 the other hand, the company doesn't have to dip into

0087

1 short-term borrowing and periods to cover gas at  
2 those points in time.

3 And so it -- it's really narrowing  
4 the range of the revenue stream as opposed to  
5 raising the revenue stream. And that's my  
6 understanding of the agreement, and I think it makes  
7 economic sense.

8 COMMISSIONER APPLING: I think that's  
9 all I need.

10 THE WITNESS: Yes, sir.

11 COMMISSIONER APPLING. I haven't read  
12 your testimony and all that, so I think the rest of  
13 the question is somewhat hindsight. Today is the  
14 only day you're going to be -- at least you're hoping  
15 so, right?

16 THE WITNESS: I was going to say, if I  
17 can make a plane in St. Louis and get out today, I...

18 COMMISSIONER APPLING: Yeah, that's the  
19 way I felt about Oklahoma is that it's the only way  
20 to see Fort Sill was in your rear-view mirror. Thank  
21 you very much, sir.

22 THE WITNESS: Yes, sir.

23 JUDGE DIPPELL: Mr. Chairman, do you  
24 have questions?

25 CHAIRMAN DAVIS: No.

1 QUESTIONS BY JUDGE DIPPELL:

2 Q. Dr. Murray, I just have one question and  
3 it's sort of a basic -- basic question.

4 A. Certainly, your Honor.

5 Q. And that is, in your testimony -- let's  
6 see, your direct testimony at page 10, you talked  
7 about the comparable companies that you looked at in  
8 a group of gas companies, and -- well, let me just  
9 ask first, were any of those companies Missouri  
10 companies?

11 A. I would have to look to tell you. No,  
12 ma'am.

13 Q. And why is that?

14 A. The criteria I used -- well, to begin  
15 with, I don't think it's necessary to select a  
16 Missouri company or not to select a Missouri company,  
17 because we're concerned with the cost of capital in a  
18 national capital margin, and so it's country-wide.  
19 And so I don't consider that a necessary criterion.

20 And so the selection process that I  
21 think was important -- the criteria that I think are  
22 important are such things as size of the company and  
23 the equity ratios, and the factors that I think  
24 investors would look -- look to. Missouri companies  
25 didn't fit those criteria.



0089

1 JUDGE DIPPELL: Okay. Thank you.

2 THE WITNESS: Certainly.

3 JUDGE DIPPELL: Is there any further  
4 cross-examination based on questions from the bench?

5 MR. THOMPSON: No, your Honor.

6 JUDGE DIPPELL: Public Counsel?

7 MR. POSTON: No, your Honor.

8 JUDGE DIPPELL: Any redirect?

9 MR. FISCHER: Just briefly.

10 REDIRECT EXAMINATION BY MR. FISCHER:

11 Q. You were just asked a question about the  
12 comparable companies that you looked at. Did you  
13 also look at the comparable companies that Staff  
14 included in their testimony?

15 A. I did in my surrebuttal, yes, sir.

16 Q. And why did you do that?

17 A. That was in response to the testimonies  
18 I read and the testimony by Mr. Trippensee that  
19 essentially accused the Staff witness of ignoring  
20 weather adjustments, weather normalizations. And so  
21 I looked specifically as to -- as to whether or not  
22 those companies had weather provisions, and I  
23 detailed that in my surrebuttal testimony.

24 In fact, seven out of the eight of the  
25 companies that Staff witness analyzed do have weather

0090

1 normalization provisions of one form or another. And  
2 so if you take -- if you take the theoretical  
3 implications of the discounted cash flow, for  
4 example, which he also used, those data would reflect  
5 the fact that these companies had some weather  
6 adjustment provision.

7 MR. FISCHER: That's all I have, your  
8 Honor. Dr. Murray is available by phone if any of  
9 the other Commissioners would have questions, but if  
10 possible, we would like to let him get on the road.

11 JUDGE DIPPELL: Okay.

12 MR. FISCHER: The other company  
13 witnesses are available, though.

14 JUDGE DIPPELL: I'm -- yeah, I'm gonna  
15 try to contact the other Commissioners and make sure  
16 that that's gonna work out. And if you'll give us a  
17 little bit of time, Dr. Murray, we'll have an answer  
18 for you shortly.

19 THE WITNESS: Certainly. I appreciate  
20 that.

21 JUDGE DIPPELL: Okay. For now, you can  
22 step down.

23 MR. THOMPSON: We would call Steve  
24 Rackers, your Honor.

25 (The witness was sworn.)

0091

1 JUDGE DIPPELL: Go ahead, Mr. Thompson.

2 MR. THOMPSON: Thank you, your Honor.

3 DIRECT EXAMINATION BY MR. THOMPSON:

4 Q. Mr. Rackers, you prepared or caused to  
5 be prepared Exhibits 103, your direct testimony; 104,  
6 your rebuttal testimony; 105, Staff accounting  
7 schedules and 106 which is a corrected Schedule 10;  
8 is that correct?

9 A. Yes.

10 Q. Do you have any corrections or changes  
11 to those four exhibits?

12 A. Yes. On Exhibit 103, my direct  
13 testimony, page 2, line 8, the word "Arkansas" should  
14 be "associated." And I have the same correction on  
15 page 8, line 13. The word "Arkansas" should be  
16 "associated."

17 MR. THOMPSON: As I understand it, we  
18 are waiving the other standard questions, so at this  
19 time I would move for the admission of Exhibits 103  
20 through 106 and tender the witness for  
21 cross-examination.

22 JUDGE DIPPELL: Would there be any  
23 objection to Exhibits 103 through 106?

24 MR. FISCHER: No objection.

25 JUDGE DIPPELL: Seeing no objection, I

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1 will enter those into evidence and I guess I just  
2 have one question.

3 (EXHIBIT NOS. 103, 104, 105 AND 106 WERE  
4 RECEIVED INTO EVIDENCE AND MADE A PART OF THE  
5 RECORD.)

6 JUDGE DIPPELL: The accounting schedule  
7 105 and then it was later corrected as 106, is -- I  
8 guess my question is, do we need both accounting  
9 schedules to understand the testimony or the numbers?

10 THE WITNESS: I think the second  
11 accounting schedule is just -- might just be a single  
12 page.

13 JUDGE DIPPELL: Oh, okay.

14 THE WITNESS: I think from our original  
15 direct filing, we were missing a page out of one of  
16 the districts.

17 JUDGE DIPPELL: Okay. That's right.  
18 I'm sorry. I -- that's probably why I couldn't find  
19 the other volume. Okay. Is there any  
20 cross-examination from Atmos?

21 MR. FISCHER: Just one, your Honor.

22 CROSS-EXAMINATION BY MR. FISCHER:

23 Q. Mr. Rackers, I quoted your testimony in  
24 my opening statement where you indicated that Staff  
25 believes that no change in the cost of service on a

0093

1 total company basis would still result in just and  
2 reasonable rates as a result of this case. I just  
3 wanted to make sure that that's still your present  
4 testimony; is that right?

5 A. Yes.

6 MR. FISCHER: That's all I have.

7 JUDGE DIPPELL: Is there any  
8 cross-examination from Office of Public Counsel?

9 MR. POSTON: Yes, Judge, thank you.

10 CROSS-EXAMINATION BY MR. POSTON:

11 Q. Good morning.

12 A. Good morning.

13 Q. Mr. Rackers, what was the amount of  
14 revenue increase requested by Atmos?

15 A. I believe it was 3.2 million.

16 Q. Isn't it true that in the Staff's direct  
17 case filed on September 13th, 2006, the Staff  
18 calculated revenue excess for Atmos of approximately  
19 1.2 million on a total company basis?

20 A. That's correct.

21 Q. And in your rebuttal testimony, you  
22 state that Staff made corrections to this calculation  
23 but that these corrections did not significantly  
24 change results of Staff's calculation; is that  
25 correct?

0094

1           A.       Yes.

2           Q.       Would you agree that Staff's latest  
3   calculations continue to reflect a revenue in excess  
4   of approximately 1.2 million?

5           A.       Yes, they do.

6           Q.       Are you aware of any errors to Staff's  
7   calculations?

8           A.       Not at present.

9           Q.       But Staff isn't pursuing a complaint  
10   case against Atmos requesting a revenue reduction, is  
11   it?

12          A.       Staff is not pursuing a complaint case  
13   to reduce rates in this case.

14          Q.       Has the Staff reached some form of an  
15   agreement with Atmos whereby Staff agreed not to  
16   pursue the 1.2 million over-earnings?

17          A.       No.

18          Q.       What does Staff get for giving up the  
19   1.2 million?  What, in your opinion, is the benefit  
20   of this?

21          A.       Well, I think in every case that I've  
22   ever participated in, you go through an assessment of  
23   what issues you think are strong, what issues you  
24   think are weak.  I think that's -- I'm not an  
25   attorney but I think that's what we often refer to as

1 litigation strategy.

2                   And there are certain manpower and  
3 resource requirements to pursue a complaint. And we  
4 also participated in a prehearing and had additional  
5 discussion on many of these issues. And as I say in  
6 my testimony, I think at this time Staff believes  
7 that unless it prevailed on each and every one of  
8 those issues, which I think is extremely unlikely,  
9 that it believed that zero is -- would result in just  
10 and reasonable rates.

11           Q.       Did Staff meet with Atmos without Public  
12 Counsel's involvement in any meetings where the  
13 company and Staff talked about settling certain  
14 issues and talked about agreeing to a zero revenue  
15 increase?

16           A.       No.

17           Q.       Okay. How about where they just talked  
18 about settling certain issues and didn't talk about  
19 the zero revenue increase?

20           A.       I don't recall that Public Counsel  
21 either wasn't present or wasn't invited.

22           Q.       If the Commission were to direct the  
23 Staff to pursue a complaint case against Atmos, do  
24 you believe Staff's position of 1.2 million is  
25 reasonable and defensible, and if accepted by the

0096

1 Commission, would result in just and reasonable rates?

2 MR. THOMPSON: Objection, calls for  
3 speculation.

4 JUDGE DIPPELL: Sustained.

5 BY MR. POSTON:

6 Q. Let me rephrase this. If the Commission  
7 were -- just a minute. Mr. Rackers, did you  
8 previously testify that the Staff's 1.2 million  
9 over-earning position is reasonable and defensible?

10 A. Yes, I think that's in my rebuttal  
11 testimony.

12 Q. Thank you. Assuming Staff's 1.2 million  
13 negative revenue requirement has a reasonable  
14 level -- level of cost built in, what level of return  
15 on equity would be needed to bring Staff's  
16 1.2 million to zero?

17 A. I think roughly 12 percent return on  
18 equity would nearly erase Staff's negative case.

19 Q. Would you accept, subject to check,  
20 12. -- almost 12.6?

21 MR. THOMPSON: I object to that, your  
22 Honor. Testifying subject to check is speculative.  
23 I mean, he either knows or he doesn't know.

24 JUDGE DIPPELL: I was starting to say, I  
25 don't know that it's speculative, but it's not really



0097

1 an answer if you get one but --

2 MR. POSTON: I can rephrase.

3 JUDGE DIPPELL: Okay.

4 BY MR. POSTON:

5 Q. Would you have reason to believe that  
6 your 12 percent number would not -- is not -- if  
7 calculated, would not be 12.59?

8 A. I'm sorry. I don't understand your  
9 question.

10 Q. You just testified you believe it would  
11 be close to 12 percent. Do you have reason to  
12 believe that if you actually sat down and did the  
13 calculations, it would not be actually 12.59?

14 A. Are you asking me if it would take a  
15 return on equity in Staff's case, having everything  
16 else equal, to bring Staff's revenue requirement  
17 calculation to zero?

18 Q. Yes.

19 A. I don't know.

20 Q. Can you explain how that calculation  
21 would be made?

22 A. Well, in easiest terms, I would take  
23 Staff's current revenue-requirement run, change the  
24 return on equity. I guess if you were -- if your  
25 goal was to try to get the number to zero, you could

0098

1 continue to earn -- excuse me, insert different  
2 returns on equity until the revenue-requirement  
3 number was zero. I haven't tried to do that.

4 MR. POSTON: That's all I have. Thank  
5 you.

6 JUDGE DIPPELL: Thank you. Other  
7 questions from the bench for Mr. Rackers?  
8 Commissioner Appling?

9 QUESTIONS BY COMMISSIONER APPLING:

10 Q. Mr. Rackers, how are you doing this  
11 morning?

12 A. Pretty good. How are you, sir?

13 Q. It's a little cold out and I'm moving  
14 slow today so bear with me, okay?

15 A. Sure.

16 Q. There was a couple numbers thrown  
17 around, the 3.2, you recall?

18 A. Yes.

19 Q. And a 1.2 over-earning?

20 A. Yes.

21 Q. And then there's another leg to this  
22 whole stew, is the fact that this company has seven  
23 districts right now, if it's -- districts is right,  
24 or seven areas of operation, which they would  
25 certainly get some -- some equity here in their

1 billing process and all the other things in the cost.

2 I'm just trying to get my arms around  
3 that 1.2. I'm trying to level that in my own mind,  
4 the justification for you-all to move ahead on the  
5 1.2.

6 I think I understand exactly what you're  
7 doing and why you're doing it, but would you just  
8 touch on that for me again, how you got to that? And  
9 also I read your testimony which is on page 2 of your  
10 rebuttal testimony. Help me out just a little bit  
11 because I'm trying to get level on it if I can, okay?

12 A. Sure, I'll try. As I say on page 2,  
13 after having prehearing and after discussing the  
14 various positions that parties have taken in  
15 opposition to where Staff's revenue requirement  
16 calculation currently is, we believe that if we had a  
17 full hearing on those positions, that it's likely  
18 that that level of revenue requirement would be  
19 modified such that it could completely wipe out the  
20 excess, and it's certainly possible that you could  
21 wind up with a rate increase on a total company  
22 basis. And because of that, we are not pursuing a  
23 complaint.

24 Q. So what you're telling me is that as  
25 Mr. Berlin described this morning, this is a case of

0100

1 first impression, is that good results for the  
2 ratepayers, for the company and for everyone that is  
3 involved; do you agree with that?

4 A. Yes.

5 COMMISSIONER APPLING: No further  
6 questions, Judge.

7 JUDGE DIPPELL: Thank you.

8 Mr. Chairman, did you have any questions?

9 QUESTIONS BY CHAIRMAN DAVIS:

10 Q. Mr. Rackers, in your opinion, is Atmos  
11 over-earning?

12 A. Based on my revenue calculation, if  
13 Staff won every issue it proposed, yes.

14 Q. And -- well, I mean -- okay, but  
15 that's -- I mean, that's -- that's a qualified  
16 response, Mr. Rackers. And I don't want to put words  
17 in your mouth, but I believe you've given previous  
18 testimony here just a few minutes ago that you did  
19 not believe that you would win every issue; is that  
20 correct?

21 A. That's correct.

22 Q. So that over -- could you please tell  
23 me -- could you please walk through the assumptions  
24 that you have to make to get -- to get to that  
25 \$1.2 million worth of over-earning? I mean, the

0101

1 Commission would have to find for you on all issues.

2 What are those -- what are those issues?

3 A. Well, I can talk to you about some of  
4 the significant ones.

5 Q. I want all of them, Mr. Rackers, not  
6 just the significant ones. I want all of them.

7 A. Return on equity in and of itself,  
8 between company's position and Staff's position, I  
9 believe is worth in excess of \$1 million. We have  
10 rate base differences, both in the level of plant  
11 reserve, different items we have included in rate  
12 base as opposed to the company, that are worth  
13 \$400,000 worth of revenue requirement.  
14 And we have included certain revenue and  
15 expense items in our case, or not included them, or  
16 calculated them differently than the company has in  
17 their case, and that is worth \$3 million, for a total  
18 difference between our negative 1.2 and the company's  
19 positive 3.2, of \$4.4 million.

20 Now, as I said before, we've made  
21 certain assumptions or we've tried to determine, can  
22 we maintain that level of over-earnings or negative  
23 revenue requirement calculation if this case went to  
24 a full hearing before the Commission.

25 And our assessment is that those

0102

1 positions are likely to be modified such that, based  
2 on your decision, such that the excess would be  
3 reduced to zero or very close, or possibly would end  
4 up as a positive number for the company.

5 Q. Mr. Rackers, can you please state your  
6 reasons for believing that those positions would be  
7 modified?

8 A. That would be based on my experience  
9 with other Commission orders recently, my assessment  
10 of the strength and weaknesses of the company's  
11 arguments in opposition to our positions. Those are  
12 the two -- oh, and there is -- those are the two most  
13 important reasons.

14 Q. So Mr. Rackers, I'm gonna ask you this  
15 question: Is it your belief, in fact, that they are  
16 over-earning by \$1.2 million or is that position a  
17 negotiated position?

18 A. Well, Judge, I'm having some trouble  
19 answering your question because --

20 Q. It's a -- is it a negotiating position  
21 or are they over-earning? It's one or the other,  
22 Mr. Rackers. And if you don't know, that's fine too.

23 A. Based on our assessment of the issues, I  
24 don't believe that we can support an over-earnings of  
25 1.2 million.

0103

1           Q.       Okay.  Is there an over-earnings  
2   position that you believe you can support?  And if  
3   so, what would it be?

4           A.       I don't know.

5                   CHAIRMAN DAVIS:  No further questions at  
6   this time, Judge.

7                   JUDGE DIPPELL:  Thank you.  Is there  
8   further cross-examination based on questions from the  
9   bench?

10                  MR. FISCHER:  Yes, your Honor, just  
11   briefly.

12                  JUDGE DIPPELL:  Go ahead.

13   RE-CROSS-EXAMINATION BY MR. FISCHER:

14           Q.       Mr. Rackers, in other cases where the  
15   Staff has assessed its litigation position and  
16   decided that there was an over-earnings it could  
17   support, has Staff filed a complaint against public  
18   utilities?

19           A.       Yes.

20           Q.       And Staff has not done that in this  
21   case; is that correct?

22           A.       That's correct.

23           Q.       And when you talk about assessing  
24   litigation risk, would that include more than just  
25   ROE in your assessment?

0104

1           A.       Yes.

2           Q.       And I believe in answer to Chairman  
3 Davis's questions you listed quite a number of issues  
4 that represent differences between the Staff and  
5 company; is that right?

6           A.       Yes.

7           Q.       Those all would be taken into account in  
8 your assessment of that risk?

9           A.       That's correct.

10           MR. FISCHER: I have no further  
11 questions.

12           JUDGE DIPPELL: Okay. I believe the  
13 chairman has one more question before we go any  
14 further.

15 QUESTIONS BY CHAIRMAN DAVIS:

16           Q.       Mr. Rackers, are you the case manager in  
17 this case?

18           A.       I share those duties with Mr. Solt, Tom  
19 Solt.

20           Q.       And just for the record, what cases out  
21 there are you the case manager? What pending cases  
22 are you a case manager in right now, just so I'm  
23 aware of it?

24           A.       This is the only one.

25           Q.       This is the only one?



0105

1           A.       The only rate case, yes.

2                   CHAIRMAN DAVIS:  The only rate case.

3   Thank you.

4                   JUDGE DIPPELL:  Thank you.  Anything  
5   further, Mr. Fischer?

6                   MR. FISCHER:  No, your Honor.

7                   JUDGE DIPPELL:  Public Counsel?

8   RE CROSS-EXAMINATION BY MR. POSTON:

9           Q.       I'm confused.  Your response to Chairman  
10   Davis's question about the 1.2 million, did you  
11   answer that you do not believe that you can support  
12   the 1.2 million?

13                  MR. THOMPSON:  I object.  The record  
14   speaks for itself.  What he said is what he said.

15                  MR. POSTON:  I'm following up too.  I  
16   have a question to follow up.  I'm trying to clarify  
17   what was said.

18                  JUDGE DIPPELL:  I'm gonna let him  
19   answer.

20                  MR. THOMPSON:  Well, Judge, I don't  
21   think that Mr. Poston's confusion should take up time  
22   in the hearing today.

23                  JUDGE DIPPELL:  I'm gonna overrule your  
24   objection and let him answer.

25                  THE WITNESS:  I believe Staff's current

0106

1 case is defensible, but I don't believe that we would  
2 prevail on enough issues that we can support filing a  
3 complaint to reduce rates by \$1.2 million.

4 BY MR. POSTON:

5 Q. Are there mistakes in your testimony --  
6 in any of the testimony, prefiled testimony?

7 A. Not that I'm aware of. Oh, I'm sorry.  
8 In the prefiled case? There were some errors that  
9 were corrected. They weren't significant enough to  
10 change the run very much.

11 MR. POSTON: That's all I have.

12 JUDGE DIPPELL: Is there any redirect?

13 MR. THOMPSON: Why, thank you, your  
14 Honor.

15 REDIRECT EXAMINATION BY MR. THOMPSON:

16 Q. Have you ever been sued, Mr. Rackers?

17 A. No, thankfully.

18 Q. You probably got a pretty good idea what  
19 it feels like today, haven't you?

20 A. I doubt it.

21 Q. Would you agree with me that Mr. Poston  
22 has done a good job of putting you and Staff on trial  
23 here today?

24 A. Somewhat, yes.

25 Q. Now, as I understand your testimony,

0107

1 Staff didn't pursue the \$1.2 million punitive  
2 over-earnings because Staff believed it was more  
3 likely that a rate increase would result; isn't that  
4 correct?

5 A. I see the possibility that a rate  
6 increase could be the outcome of a fully -- of a full  
7 hearing.

8 Q. Now, from the point of view of a  
9 ratepayer, when a company comes in for its first rate  
10 case in quite a few years and the result is no  
11 increase in revenue requirement, isn't that something  
12 that ratepayers can be happy about?

13 A. Yes.

14 MR. THOMPSON: Thank you, no further  
15 questions.

16 JUDGE DIPPELL: Thank you. Mr. Rackers,  
17 you may be excused for now, but I will ask you to  
18 remain and be available tomorrow if there are further  
19 Commission questions.

20 THE WITNESS: Okay.

21 JUDGE DIPPELL: Your next witness?

22 CHAIRMAN DAVIS: Judge, something tells  
23 me that's not as big a problem for Mr. Rackers as it  
24 might be for other witnesses here.

25 JUDGE DIPPELL: I'm afraid with the

0108

1 weather forecast it may be a problem for all of us.

2 MR. THOMPSON: Staff calls Matt Barnes.

3 (The witness was sworn.)

4 JUDGE DIPPELL: Thank you.

5 Mr. Thompson?

6 MR. THOMPSON: Thank you, your Honor.

7 DIRECT EXAMINATION BY MR. THOMPSON:

8 Q. Mr. Barnes, you're responsible for  
9 preparing, or you did prepare Exhibits 101, your  
10 direct testimony, and 102, your surrebuttal  
11 testimony; is that correct?

12 A. Yes.

13 Q. Do you have any corrections or changes  
14 to those exhibits?

15 A. I have two changes to my direct  
16 testimony. The first one on schedule 16, column 7  
17 and 8, WGL Holdings Incorporation, the high and low  
18 stock price are switched. The high stock price  
19 should read "\$30.32", and the low stock price should  
20 read "\$28.44."

21 And then on schedule -- let's see, I'm  
22 sorry. Schedule 18, below the company names it says  
23 "Great Plains Energy." It should say "Atmos Energy  
24 Corporation." That's it.

25 MR. THOMPSON: Thank you, Mr. Barnes.

0109

1 Understanding again, your Honor, that we're waiving  
2 the traditional questions, I would move for the  
3 admission of Exhibits 101 and 102 and tender  
4 Mr. Barnes for cross-examination.

5 MR. FISCHER: No objection.

6 MR. POSTON: No objection.

7 JUDGE DIPPELL: Seeing no objection, I  
8 will enter those exhibits into evidence.

9 MR. THOMPSON: Thank you.

10 JUDGE DIPPELL: That's Exhibits 101 and  
11 102.

12 (EXHIBIT NOS. 101 AND 102 WERE RECEIVED  
13 INTO EVIDENCE AND MADE A PART OF THE RECORD.)

14 JUDGE DIPPELL: Okay. Is there any  
15 cross-examination from Atmos?

16 MR. FISCHER: No, thank you, your Honor.

17 JUDGE DIPPELL: From Public Counsel?

18 MR. POSTON: Yes, thank you.

19 CROSS-EXAMINATION BY MR. POSTON:

20 Q. Mr. Barnes, is the purpose of your  
21 testimony in this case to present Staff's  
22 recommendation on the appropriate overall rate of  
23 return?

24 A. Yes.

25 Q. And you recommend an overall rate of

0110

1 return of 7.12 percent to 7.46 percent based on a  
2 recommended return of equity of 8.5 to 9.3 roughly,  
3 correct?

4 A. Correct.

5 Q. And in your direct testimony, you  
6 explained two steps that you took to determine your  
7 recommended cost of common equity. One, you  
8 developed the cost of common equity by applying the  
9 discounted cash flow model to a comparable group of  
10 natural gas distribution companies, correct?

11 A. Correct.

12 Q. And then the second step is you  
13 evaluated a number of factors to test the  
14 reasonableness of your recommendations, correct?

15 A. Correct.

16 Q. But before you explained your analysis,  
17 you highlight what you call legal principles and cite  
18 to the landmark cases of Hope and Bluefield; is that  
19 correct?

20 A. Yes.

21 Q. And on page 5 of your direct, you state  
22 that in the 1923 Bluefield case, the United States  
23 Supreme Court ruled that a fair return for a public  
24 utility would have three qualities; is that correct?

25 A. Could you refer to what lines you're

0111

1 referring to?

2 Q. Very top of the page. I guess "quality"  
3 was my term. But you listed what the Supreme Court  
4 determined that a fair return would be; is that  
5 correct?

6 A. Yes.

7 Q. Would you please read -- I'm sorry.  
8 Scratch that. Would you please read lines 2 through  
9 8 on page 5 of your testimony for me?

10 A. Sure. "Answer: In the Bluefield case  
11 the Supreme Court ruled that a fair return would be,  
12 one, a return generally being made at the same time  
13 in that general part of the country; two, a return  
14 achieved by other companies with corresponding risk  
15 and uncertainties; and three, a return sufficient to  
16 ensure confidence in the financial soundness of the  
17 utility."

18 Q. Okay. And that second one you listed,  
19 that a fair return would be achieved by other  
20 companies with corresponding risks and uncertainties,  
21 what are the primary risks and uncertainties facing  
22 most local distribution companies today?

23 A. The main risk would be weather. There's  
24 also other business risks associated besides weather.  
25 There's also financial risk for the company, the

0112

1 ability for the company to be able to attract capital  
2 to maintain certain credit ratings. Those are the  
3 main ones that come to my mind right now.

4 Q. And the business risks, what would those  
5 be, other business risks?

6 A. The risk of customers leaving the  
7 system, customers not paying their bills, maintenance  
8 expenses, payroll expenses, those are just a few.

9 Q. Could conservation be a business risk,  
10 if a customer is conserving and reducing their usage?

11 A. Yes.

12 Q. Why does weather create a risk?

13 A. Well, weather changes all the time  
14 throughout the year. The colder it is, the more a  
15 customer is likely to use more gas, and the warmer it  
16 is, the less likely they are to use gas.

17 Q. If a significant risk factor is  
18 completely removed for the company, would that  
19 generally make the company a less risky investment if  
20 all else is equal?

21 A. If all else is equal, yes.

22 Q. Turning to your cost of common equity  
23 recommendation, you performed a comparable company  
24 analysis of eight companies, correct?

25 A. Correct.



0113

1 Q. And you found these companies from the  
2 Edward Jones Natural Gas Industry Summary dated  
3 March 1st, 2006, correct?

4 A. Correct.

5 Q. And you state that they listed 14  
6 companies that they considered to be natural gas  
7 distribution companies?

8 A. Yes.

9 Q. Did they list more than 14 and you just  
10 chose 14 or was that the total list?

11 A. That was the total list.

12 Q. And of these 14, you applied certain  
13 criteria that you list on page 14 of your direct  
14 company -- or I'm sorry, of your direct testimony; is  
15 that correct?

16 A. Yes.

17 Q. And you used this criteria to select  
18 your -- what you called a proxy group, I believe?

19 A. Correct.

20 Q. Was similar weather risk a criteria that  
21 you used?

22 A. No, it was not.

23 Q. On that same page, there is a Q and A  
24 and there's a sentence in there I'd like you to read.  
25 It starts on line 9 with the word "because." Could

0114

1 you read that sentence for me?

2 A. "Because Atmos is a natural gas  
3 distribution utility, this helps to ensure the  
4 selection of companies that are similar in risk  
5 profile of that of Atmos's business operations."

6 Q. When you make that statement, are you  
7 saying that the only tests you applied to determine  
8 whether the proxy companies with corresponding risks  
9 to that of Atmos was whether the company was simply  
10 another local distribution company?

11 A. Could you repeat that question?

12 Q. Are you saying in that sentence that the  
13 only -- well, strike that.

14 Is the only test you applied to  
15 determine whether your proxy companies had  
16 corresponding risks to that of Atmos was whether  
17 those companies were simply another local  
18 distribution company?

19 A. That was one of my criterion of -- if I  
20 understand your question, yes, it's -- the first  
21 criterion is if they are a limited distribution  
22 company.

23 Q. In the sentence you read, you state that  
24 because Atmos is a natural gas distribution company,  
25 this helps ensure the selection of companies that are

0115

1 similar in risk, correct?

2 A. Yes.

3 Q. So just because they are a local  
4 distribution company, these companies that you  
5 selected, that's the only basis for your  
6 determination that this risk is similar?

7 MR. THOMPSON: Objection, he's  
8 mischaracterizing the testimony.

9 JUDGE DIPPELL: I think he's asking the  
10 witness to clarify that.

11 MR. THOMPSON: I think he asked him to  
12 agree that this was the only criterion, and the  
13 sentence states "this helps ensure."

14 MR. POSTON: I'm asking is this -- is  
15 this the only --

16 MR. THOMPSON: Could I get a ruling,  
17 your Honor?

18 JUDGE DIPPELL: Sustained. Mr. Poston,  
19 could you rephrase your question?

20 BY MR. POSTON:

21 Q. That sentence that we're highlighting,  
22 are you saying in there that the only factor that you  
23 have considered to determine whether the risk  
24 associated with your companies is similar to Atmos is  
25 whether it was -- these companies are also a natural

0116

1 gas distribution utility?

2 A. No, that's not my only criterion for  
3 selecting these companies.

4 Q. That's not what I asked. Was that your  
5 only criteria for determining whether the risk is  
6 similar?

7 A. No.

8 Q. Okay. What -- what else did you  
9 consider?

10 A. Well, starting -- the criteria in here  
11 that I selected to determine what companies were  
12 comparable to Atmos, if you want me to read those, I  
13 can. On page 14, the stock publicly traded to -- is  
14 the information printed in Value Line.

15 Q. That's okay.

16 A. Okay.

17 Q. This criteria you list, these one  
18 through six, is that the only criteria that you used?

19 A. Yes.

20 Q. In the Bluefield case that you quoted  
21 from your testimony, the three items that you list,  
22 did the Supreme Court say a fair return must be that  
23 earned by companies that simply offer the same  
24 service or did they say companies with corresponding  
25 risks and uncertainties?

0117

1           A.       They said companies with corresponding  
2 risks and uncertainties.

3           Q.       And before you made your rate of return  
4 recommendation in your direct testimony, did you read  
5 the direct testimony of Staff witness Anne Ross that  
6 was filed in this case regarding rate design?

7           A.       I briefly looked over it, yes.

8           Q.       So you were aware that the rate design  
9 Staff would propose would eliminate all  
10 weather-related risk and uncertainty for Atmos?

11          A.       Yes.

12          Q.       In your direct testimony analysis, did  
13 you look into each company's rate design and first  
14 determine whether each comparable company had no  
15 weather risk similar to that being proposed by Staff  
16 or Atmos?

17          A.       I didn't look at the details of it. I  
18 researched the Standard & Poor's research reports  
19 that they issue for each of the companies and  
20 determined that seven out of eight have some sort of  
21 weather mitigation rate design in place.

22          Q.       And did you do that research before or  
23 after your direct testimony?

24          A.       After.

25          Q.       Would it be safe to say that your cost

0118

1 of common equity analysis that you conducted for your  
2 direct testimony did not specifically take the  
3 weather risk elimination of Staff's rate design  
4 proposal into consideration?

5 A. My analysis does take into account the  
6 fact that Staff's rate design proposal indirectly  
7 takes in the weather mitigation rate design as being  
8 proposed.

9 Q. Can you point to anywhere in your direct  
10 testimony where you explain how you've taken the  
11 elimination of weather risk into consideration?

12 A. I didn't specifically talk about that in  
13 my surrebuttal testimony. I explained that my  
14 comparable companies there, that risk reduction is  
15 reflected in the price of their stock, which seven  
16 out of eight companies have some sort of weather  
17 mitigation rate design in place, so that's already  
18 being reflected in the price of the stock and also  
19 the credit rating of the companies.

20 Q. Before you filed your direct testimony,  
21 did you look at each of the eight companies and study  
22 their tariff to determine whether the risk associated  
23 with their rate design is similar to the risk of a  
24 rate design that completely eliminates weather risk?

25 A. No, I did not.

1           Q.       Can you explain the type or form of rate  
2     design used by each of the eight companies?

3           A.       I don't have the details. I have these  
4     Standard & Poor's reports that mention what -- if  
5     it's a weather normalization clause or a weather  
6     mitigation rate design. I don't have details of each  
7     of those companies.

8                   MR. THOMPSON: Your Honor, I'm gonna  
9     object to this whole line of questioning because, as  
10    you're aware, Staff has moved away from the position  
11    that was announced in Mr. Barnes' filed testimony,  
12    and has instead moved to a position of no revenue  
13    requirement change.

14                   And as Mr. Rackers testified, that  
15    equates to an ROE of about 12 percent. So I don't  
16    understand how the abandoned position of Staff  
17    continues to be relevant here, and therefore, why we  
18    are enduring a lengthy cross-examination as to how  
19    Mr. Barnes calculated it.

20                   JUDGE DIPPELL: Mr. Poston, can you  
21    explain why it's relevant?

22                   MR. POSTON: Well, this testimony has  
23    been offered and accepted, and I believe we deserve  
24    our opportunity to cross-examine this witness on that  
25    testimony.

0120

1 JUDGE DIPPELL: The objection is  
2 overruled.

3 MR. THOMPSON: Could I voir dire a  
4 moment, your Honor?

5 JUDGE DIPPELL: Certainly.  
6 VOIR DIRE EXAMINATION BY MR. THOMPSON:

7 Q. Mr. Barnes, if the Commission adopts  
8 your original ROE proposal, which I believe was a  
9 range of 8.5 to 9.3, would you agree with me that  
10 that would result in a reduced revenue requirement  
11 for Atmos?

12 A. Compared to what the company is  
13 requesting?

14 Q. Compared to what they have right now.

15 A. Possibly, yes, but I don't know for  
16 sure.

17 MR. THOMPSON: Mr. Poston is attacking  
18 testimony that, in fact, supports the result that he  
19 wishes to achieve. So I suppose if he wants to  
20 continue, I will withdraw my objection.

21 JUDGE DIPPELL: Thank you.

22 CROSS-EXAMINATION RESUMED BY MR. POSTON:

23 Q. Do any of your eight proxy companies  
24 that you identified have a rate design that  
25 completely eliminates weather risk for that company?



0121

1           A.       Seven out of the eight have a weather  
2 mitigation rate design put in place.

3           Q.       And that's not what I asked.

4           A.       It --

5           Q.       Do they -- I'm sorry. Go ahead.

6           A.       Yes, all else equal, that would reduce  
7 the risk for those companies.

8           Q.       But would it completely eliminate  
9 weather risk, those rate designs or those eight  
10 companies?

11          A.       I don't know the details of each of the  
12 rate designs so I don't know.

13          Q.       Do any of your eight proxy companies  
14 have a rate design that completely eliminates  
15 conservation risks for that company?

16          A.       I believe a couple of them do. I'd have  
17 to look at those but I believe a couple of them do.

18          Q.       And which companies are those?

19          A.       Northwest Natural Gas.

20          Q.       Can you explain how conservation risk is  
21 completely eliminated for that company?

22          A.       It's my understanding if a customer  
23 wants to, say, put in insulation or new windows in  
24 their home, that would cut back on their consumption  
25 of gas.

1           Q.       There's still a volumetric rate tied  
2   with that rate design, is that correct, with the  
3   non-gas portion of that rate design?

4           A.       I don't know. I'd have to refer you to  
5   Anne Ross with that question.

6           Q.       Have you read the testimony of OPC  
7   witness Barbara Meisenheimer where she states that  
8   the only state that has approved a rate design like  
9   Staff's proposal is North Dakota, and in North Dakota  
10  the company accepted a reduced return; have you read  
11  that testimony?

12          A.       No, I haven't.

13          Q.       Earlier you stated that you analyzed --  
14  and I believe this is in your testimony -- you  
15  analyzed research reports from Standard & Poor's and  
16  Value Line investment survey and determined seven out  
17  of the eight proxy companies have a rate design that  
18  mitigates weather, correct?

19          A.       Correct.

20          Q.       Is this your only support claim, that  
21  these companies all have weather mitigation rate  
22  design?

23          A.       Yes.

24          Q.       Did you include these reports in your  
25  testimony?

0123

1           A.       I don't believe that I did.

2           Q.       Even if you were correct in your seven  
3 out of eight companies have a rate design that  
4 mitigates the effects of weather, is simply  
5 mitigating weather risk different than eliminating  
6 weather risk altogether?

7           A.       I'm not sure if I understand your  
8 question.

9           Q.       What -- what do you consider mitigating  
10 weather risk to mean? Define that term.

11          A.       It's my understanding -- I understand it  
12 to be if there's a warmer winter, that consumers will  
13 use less gas; therefore, there would be less cash  
14 flow going to the company. And if it's a colder  
15 winter, more cash flow going to the company based on  
16 their usage.

17          Q.       So under a mitigating weather risk rate  
18 design, the company would be protected to an extent  
19 from changes in weather, correct?

20          A.       That's my understanding, yes.

21                   JUDGE DIPPELL: Mr. Barnes, could I get  
22 you to speak more toward the microphone?

23                   THE WITNESS: Certainly, sorry.

24                   JUDGE DIPPELL: Thanks.

25 BY MR. POSTON:

1 Q. And there's different ways you can do  
2 that weather mitigating rate design, correct?

3 MR. THOMPSON: Objection, none of those  
4 are under consideration in this case. Irrelevant.

5 MR. POSTON: Well, they're relevant  
6 because he's citing eight companies, seven out of  
7 eight that he said have weather mitigating rate  
8 design, and I'd like to explore those.

9 MR. THOMPSON: And he's already agreed  
10 with you that they merely mitigate, they don't  
11 remove. So what's the relevance Mr. Poston?

12 JUDGE DIPPELL: I'm gonna overrule your  
13 objection.

14 MR. THOMPSON: Very well.

15 BY MR. POSTON:

16 Q. Mitigating weather risk is simply  
17 reducing the risk of weather; is that correct?

18 A. I would agree with that, yes.

19 Q. Is that equivalent to eliminating the  
20 risk of weather altogether?

21 A. I don't know.

22 Q. Did you analyze your seven companies,  
23 the seven out of eight to determine if they received  
24 a reduced return on equity to account for the  
25 reduction of risk associated with their rate design?

0125

1           A.       No, I did not.

2                   JUDGE DIPPELL: Mr. Poston, do you have  
3 substantial cross-examination still to go?

4                   MR. POSTON: I'm almost at the end.

5                   JUDGE DIPPELL: Okay. Well, since I've  
6 already interrupted you, I'm going to interrupt and  
7 just give Dr. Murray some good news and some bad  
8 news. The good news is that you are free to leave  
9 the premises so long as you can be available by  
10 telephone tomorrow. And would it be possible to be  
11 available on Monday also if there are Commissioner  
12 questions?

13                  DR. MURRAY: Yes.

14                  JUDGE DIPPELL: The bad news is there  
15 are substantial delays from airport traffic from  
16 Lambert right now.

17                  DR. MURRAY: Thank you for the news.

18                  JUDGE DIPPELL: Go ahead, Mr. Poston. I  
19 apologize.

20 BY MR. POSTON:

21           Q.       Are there other factors other than  
22 weather that can affect customer usage and affect  
23 earnings due to the existing traditional rate design?

24           A.       Yes.

25           Q.       Would customer conservation be a factor?

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1           A.       Yes.

2           Q.       Would general economic conditions be a  
3 factor?

4           A.       Yes.

5           Q.       Would changes in gas appliance  
6 technology be a factor?

7           A.       I believe so, yes.

8           Q.       Do any of your comparable companies have  
9 a rate design that completely eliminates the effect  
10 of conservation, economic conditions or gas appliance  
11 technology?

12          A.       I don't know the details of those rate  
13 designs.

14          Q.       Can you please explain where you  
15 considered the business risk of customers in  
16 determining whether recommended -- in determining  
17 your recommended cost of equity for Atmos?

18          A.       Could you repeat that question?

19          Q.       Did you consider any customer business  
20 risk in your recommended cost of equity?

21          A.       Customer business risk?

22          Q.       I'm sorry, scratch that. Did you  
23 consider -- hold on a minute, please.

24                   Did you consider the customers' business  
25 risk in determining your recommended cost of equity

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1 for Atmos?

2 A. Could you define customer business risk?

3 Q. The business risk that customers face.

4 A. I believe it's reflected in the  
5 company's credit rating, so indirectly I did consider  
6 that.

7 Q. Has Staff, to your knowledge, ever  
8 incorporated a customer's business risk into its  
9 recommended cost of equity for a public utility  
10 regulated by this Commission?

11 A. I don't know.

12 Q. Could you please define what you  
13 understand a basis point to be?

14 A. A basis point is -- let's say --  
15 let's -- I prefer to use my schedule at the very end,  
16 schedule 21. 8.59 is my low end of my range, so one  
17 basis point would be 859 basis points, or 8.59  
18 percent.

19 Q. Can you quantify the revenue requirement  
20 value of a change in ROE of one basis point?

21 A. No. In this case I don't know what that  
22 number would be.

23 Q. Would you -- would you determine that  
24 basis -- would you determine that basis point value  
25 by measuring the change in recommended revenue

0128

1 requirements on Staff's accounting schedule 1 divided  
2 by change in ROE?

3 A. I'll have to refer you to Steve Rackers  
4 on that question because I don't know.

5 MR. POSTON: That's all I have. Thank  
6 you.

7 JUDGE DIPPELL: Thank you. Are there  
8 any questions from the Commission? Commissioner  
9 Applling?

10 QUESTIONS BY COMMISSIONER APPLING:

11 Q. Good morning, Mr. Barnes.

12 A. Good morning.

13 Q. You might want to take this all the way  
14 up to lunch and then we can go and have a snack,  
15 okay? Would you go to your surrebuttal information,  
16 and you can refer to this in any way you choose,  
17 okay?

18 But I'm trying to get a better  
19 understanding of OPC's recommendation on common  
20 equity for Atmos. I think they are recommending  
21 7 percent and you are recommending -- Staff is  
22 recommending a spite higher number, okay? For me,  
23 very quickly -- I'm still missing something here and  
24 I don't know exactly what it is -- but would you take  
25 the short version and summarize that for me, please?



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1           A.       OPC's recommendation?

2           Q.       Yes.

3           A.       Well, Mr. Trippensee basically uses the  
4 risk-free rate of the 30-year treasury bond of 5.13  
5 percent, subtracts that from my embedded cost of debt  
6 for Atmos of 6.03 percent to arrive at .87, and he  
7 adds that to the embedded cost of 6.03 to -- which  
8 arrives at 6.9 and he rounds it up to 7.

9           Q.       If the Commission would adopt his  
10 recommendation, what do you see is the difficulty in  
11 that?

12          A.       Well, I don't agree that using a current  
13 risk-free rate within a historical rate is the  
14 appropriate method to determine the difference  
15 between the embedded cost and the risk-free rate. I  
16 believe the DCF model and the CAPM model are the  
17 appropriate models to use to determine an ROE. I  
18 don't agree with his methodology here.

19                   COMMISSIONER APPLING: Thank you. I'm  
20 sure I'll get Mr. Trippensee to explain his side of  
21 the story there when he reaches the witness stand.  
22 Thank you very much.

23                   THE WITNESS: Thank you.

24                   JUDGE DIPPELL: Is there any further

25 cross-examination based on questions from the bench?

0130

1 From Atmos?

2 MR. FISCHER: Just briefly.

3 CROSS-EXAMINATION BY MR. FISCHER:

4 Q. Judge Applling just asked you to talk  
5 about Mr. Trippensee's methodology a little bit.  
6 Mr. Barnes, have you ever seen this methodology  
7 presented in any Commission proceeding that you know  
8 of?

9 A. Not since I've started this position,  
10 no.

11 Q. Have you ever come across it in any  
12 financial textbook or economic treatise?

13 A. Not that I can recall right now.

14 MR. FISCHER: That's all I have. Thank  
15 you.

16 JUDGE DIPPELL: Any further cross from  
17 Public Counsel?

18 MR. POSTON: No, thank you.

19 JUDGE DIPPELL: Any redirect?

20 MR. THOMPSON: No, thank you.

21 JUDGE DIPPELL: All right. Mr. Barnes,  
22 you may be excused for now also. I will ask you to  
23 remain available for further Commission questions,  
24 should they come up on this subject at a later date.

25 THE WITNESS: Thank you.

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1 JUDGE DIPPELL: Okay. It looks like  
2 it's almost noon so we will go ahead and take a break  
3 for lunch. How much time do you need for lunch? An  
4 hour and a half? Okay. Let's come back at 1:30 by  
5 that clock.

6 Mr. Poston, please take the opportunity  
7 to read over your notes and speed up the  
8 cross-examination when we get back. And I will ask  
9 the other attorneys to do the same.

10 MR. POSTON: Could you order  
11 Mr. Trippensee to improve his handwriting, please?

12 JUDGE DIPPELL: Okay. We can go off the  
13 record.

14 (THE NOON RECESS WAS TAKEN.)

15 JUDGE DIPPELL: All right. I believe we  
16 were ready to begin with Office of Public Counsel's  
17 witness on the revenue requirement, rate of return,  
18 return on equity.

19 MR. POSTON: Thank you. We'd call  
20 Barbara Meisenheimer. Your Honor, I'll just ask the  
21 other parties if the parties are gonna have questions  
22 of Ms. Meisenheimer on this subject. She didn't  
23 offer a lot of testimony in this area, but she wanted  
24 to make herself available in case they do.

25 MR. FISCHER: The company does not have

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1 any cross for Ms. Meisenheimer on this issue.

2 MR. THOMPSON: I might if she reminds me  
3 what she said about it.

4 (The witness was sworn.)

5 JUDGE DIPPELL: Go ahead, Mr. Poston.

6 DIRECT EXAMINATION BY MR. POSTON:

7 Q. Ms. Meisenheimer, did you cause to be  
8 filed direct, rebuttal and surrebuttal testimony in  
9 this case that has been marked Exhibits 200, 201,  
10 202?

11 A. Yes, I did.

12 Q. And do you have changes or corrections  
13 to this testimony?

14 A. Yes, I do. I've prepared a sheet that  
15 lists those corrections to all three pieces of  
16 testimony.

17 MR. POSTON: Your Honor, I'd like to  
18 have this correction sheet marked as Exhibit, I  
19 believe, 204. We previously marked Mr. Trippensee's  
20 testimony as 203.

21 JUDGE DIPPELL: Have you given copies of  
22 that to the other parties?

23 MR. FISCHER: The company has received  
24 one, yes.

25 MR. POSTON: I believe everyone has. We

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1 have extras.

2 JUDGE DIPPELL: Okay. We'll mark that  
3 as Exhibit 204. Can I get a copy of it? And make  
4 sure the court reporter has one. I'm sorry. Did you  
5 offer your exhibits?

6 MR. POSTON: We offer Exhibits 200, 201,  
7 202 and 204 and tender Ms. Meisenheimer for  
8 cross-examination.

9 JUDGE DIPPELL: Would there be any  
10 objection to Exhibits 200, 201, 202 and 204? If  
11 you need a minute to look at the corrections,  
12 that's...

13 MR. THOMPSON: No objection.

14 MR. FISCHER: No objection.

15 JUDGE DIPPELL: All right. Then I will  
16 receive those into evidence.

17 (EXHIBIT NOS. 200, 201, 202 AND 204 WERE  
18 RECEIVED INTO EVIDENCE AND MADE A PART OF THE  
19 RECORD.)

20 JUDGE DIPPELL: Is there  
21 cross-examination from Atmos?

22 MR. FISCHER: No, thank you, not on this  
23 issue.

24 JUDGE DIPPELL: Staff?

25 MR. THOMPSON: Thank you, your Honor.

1 CROSS-EXAMINATION BY MR. THOMPSON:

2 Q. I'll take you up on your offer,  
3 Ms. Meisenheimer, to remind me what you said about  
4 return on equity or rate of return.

5 A. What I said about rate of return or  
6 return on equity that I'll lump together -- I assume  
7 you'd be interested in both --

8 Q. Absolutely.

9 A. -- was I introduced the idea in rebuttal  
10 testimony in response to the Staff's proposed rate  
11 design that, in fact, in the Laclede stipulation,  
12 there was consideration given for the return in  
13 developing that stipulation that I do not believe  
14 that the Staff, in fact, considered at the time  
15 were -- at or before the time that they filed their  
16 direct testimony in rate design. Were you able to  
17 find that? I might be able to locate it for you if  
18 it would be helpful.

19 Q. I just want you to summarize for me what  
20 you had to say of significance in the area of return  
21 on equity or rate of return.

22 A. Okay. And then I also criticized the  
23 fact that there was no such recommendation together  
24 with the Staff's direct filing. I introduced  
25 Mr. Trippensee as our witness on that issue

1 specifically, and then I believe that I restated some  
2 of the same concerns about no adjustment in  
3 surrebuttal testimony.

4 Q. Thank you. Now, you would agree with  
5 me, would you not, that when a customer receives a  
6 bill from Atmos, the customer is called upon to pay a  
7 charge for the commodity that the customer has  
8 consumed as well as a noncommodity charge to the  
9 company; isn't that correct?

10 A. Yes.

11 Q. And, in fact, we're here today for a  
12 case to set the amount of that second charge only,  
13 aren't we?

14 A. Well, from my perspective, those  
15 charges, the customer charge and volumetric charge  
16 associated with non-gas cost recovery.

17 Q. Okay. I think what I did was, I  
18 attempted to split out the charges into those for the  
19 gas and those that aren't for the gas. And today  
20 we're here to set charges that aren't for the gas;  
21 isn't that true?

22 A. I would agree with that. I thought you  
23 were talking about a singular rate when you first  
24 asked the question. I'm sorry if I was confused.

25 Q. I'm just a lawyer. You know, this is

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1 deep water for me, numbers, but we'll struggle  
2 forward. So let me ask you this: I have heard you  
3 testify in many rate cases as to class cost of  
4 service; isn't that true?

5 A. Yes.

6 Q. And so you are at least generally  
7 familiar with how utility costs can be divided across  
8 customer groups and classes?

9 A. Yes.

10 Q. And you are -- or are you not at least  
11 generally familiar with the sort of costs that are  
12 incurred by an LDC in providing services to  
13 customers?

14 A. Yes, I am.

15 Q. Well, let me ask you this: So far as  
16 you know, do the costs incurred by Atmos in providing  
17 gas service to its customers, are those costs  
18 weather-variable?

19 A. Yes.

20 Q. So --

21 A. Some of those costs are  
22 weather-variable, yes.

23 Q. For example?

24 A. For example, to some degree, when mains  
25 are placed, I believe that the engineering models



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1 that are used to determine what are, you know, the  
2 cost-efficient size to place have a lot to do with  
3 what do you expect the demand to be on that system,  
4 not just today, but also in the future. What are the  
5 characteristics of the service territory, things such  
6 as density. I have, in fact, reviewed those types of  
7 modeling -- engineering models in the past. So, yes,  
8 I do think that a portion is weather-sensitive.

9 Q. What portion?

10 A. Well, the size of mains when they're  
11 placed, although --

12 Q. What if they're already in the ground?  
13 In other words, what does it -- does the cost  
14 incurred by this company in serving its customers, do  
15 those costs vary with the weather where the  
16 infrastructure is already in existence?

17 A. Well, I mean, once -- once the pipe is  
18 laid, certainly that is, you know, the -- the cost is  
19 what the cost is. How you divide that --

20 Q. Thank you. Thank you, Ms. Meisenheimer.

21 A. I'd be happy to explain my answer.

22 Q. I like that phrase, "the cost is what  
23 the cost is." So if the cost is what the cost is,  
24 and if we divide that cost for each customer class  
25 across the number of customers in the class and the

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1     number of billing periods, I mean, why is that an  
2     unfair way to collect those costs?

3           A.       That -- that is one way to divide those  
4     costs. I do not think it is the fairest way. There  
5     is -- there is the issue of the cost is what the cost  
6     is. There is also the issue of whose cost is it.

7           Q.       Okay. Let's talk about whose cost is  
8     it. Now, would you agree with me that low-income  
9     customers are more likely to live in homes that do  
10    not have efficient furnaces and that have not been  
11    weatherized; would you agree with that?

12          A.       I would not necessarily agree with that,  
13    and I would be happy to explain why.

14          Q.       So you don't believe there's any chance  
15    of a weather-sensitive noncommodity charge having an  
16    unfair impact on lower-income customers?

17          A.       That's not what I said. What I said is  
18    that I don't necessarily agree with that, and I would  
19    be happy to explain my answer.

20          Q.       Well, but I -- I'm not interested in  
21    having you narrate into the record, so, thank you. I  
22    won't take you up on that.

23          A.       Darn it.

24                   MR. THOMPSON: I have no other questions  
25    for this witness. Thank you.

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1 JUDGE DIPPELL: Commissioner Appling, do  
2 you have any questions for Ms. Meisenheimer on the  
3 revenue requirement, rate of return, return on equity  
4 issues? She will be back for additional testimony.

5 COMMISSIONER APPLING: I would just pull  
6 up my emergency brake until your return, okay?  
7 We'll -- I'm sorry that I didn't get back down here  
8 on time, but we'll talk to you next time, okay?  
9 Thank you very much.

10 THE WITNESS: Thanks.

11 JUDGE DIPPELL: All right. I think  
12 that's all -- all the questions from the bench, since  
13 there were none. Is there any redirect?

14 MR. POSTON: Sorry.

15 REDIRECT EXAMINATION BY MR. POSTON:

16 Q. Ms. Meisenheimer, there was two  
17 questions just asked of you where you offered to  
18 expand. I believe one of them was about companies'  
19 costs varying by weather. Could you please expand on  
20 those, please?

21 A. On just the one about varying by weather  
22 or also --

23 Q. On both of them.

24 A. -- the ones about whose cost is it?

25 Q. Both questions.

1           A.       Okay. In fact, it is my testimony that  
2 not only may costs vary by considerations related to  
3 weather, but it is also my testimony that costs vary  
4 according to other factors: The embedded costs that  
5 are collected in a rate case vary by other factors,  
6 and I listed those in my testimony.

7                   I won't -- I won't repeat them here in  
8 an effort to save time, but there are costs. The  
9 sizing of the system is dependent on the expectation  
10 of weather and customer characteristics and other  
11 things, and is planned for as a whole, not  
12 necessarily by a customer class.

13                  The additional issue is once -- once you  
14 place them in the ground, there is a cost to be  
15 recovered. Those costs as I believe -- was a  
16 response to a data request that may have made it into  
17 the case, and the company agrees, much of those costs  
18 are common costs.

19                  Common costs are costs that are not  
20 easily assignable to one particular class in any  
21 precise manner, and instead, you have to come up with  
22 reasonable allocations of whose cost is it. And  
23 typically and historically, this Commission has  
24 determined in gas cases that it is fair for a portion  
25 to be identified as a customer cost, that all

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1 customers pay -- similarly situated customers pay the  
2 same rate. And similarly situated generally was  
3 defined by being in the same type of service area  
4 served by a connected system.

5 In addition, there was an additional  
6 component of cost recovered through volumetric rates  
7 that the Commission deemed fairly distributed based  
8 on use of the system so that there is a value of  
9 service in actually receiving the commodity as  
10 opposed to just having the ability to receive the  
11 commodity. And with respect to low-income customers,  
12 I think actually that was the other question.

13 Q. Yeah. I asked you to expand on both of  
14 them, so please.

15 A. Okay. I think that I had that one not  
16 separated. The low-income customers, I am aware of  
17 some arguments that, in fact, low-income customers  
18 may tend to live in less efficient housing. I am  
19 also aware of studies that indicate that low-income  
20 customers tend to live in smaller housing, so there  
21 may actually be a trade-off between those two  
22 factors.

23 In this particular case before I filed  
24 rebuttal testimony, I actually took a look based on a  
25 sample of data that the Staff collected regarding

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1 low-income customers to determine whether they, in  
2 fact, did have similar characteristics to the rest of  
3 the service territory, and related to something that  
4 Commissioner Appling pointed out, I believe, that I  
5 think helps explain it.

6               You mentioned earlier that, in fact,  
7 down around the SEMO area, the southeast portion of  
8 the state, incomes tend to be low. And what I found  
9 in the study that I did and I mentioned in testimony,  
10 is that in this case it doesn't appear that  
11 low-income customers' characteristics substantially  
12 differ from those of the rest of the general customer  
13 class, and that may be because just generally, it's a  
14 low-income area down there. And that may be the  
15 primary driver in other areas that this company  
16 serves. They don't serve the metropolitan areas of  
17 St. Louis, Kansas City proper, if you will, or  
18 Springfield or Columbia. So, in fact, the income  
19 levels may be more alike and therefore the usage more  
20 alike.

21               MR. POSTON: That's all I have. Thank  
22 you.

23               JUDGE DIPPELL: Thank you.  
24 Ms. Meisenheimer, you can step down for now. Ask you  
25 to remain for further questions at a later time.

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1 Who's your next witness, Mr. Poston?

2 MR. POSTON: Yes. We'd call Russell

3 Trippensee.

4 (The witness was sworn.)

5 JUDGE DIPPELL: Thank you.

6 DIRECT EXAMINATION BY MR. POSTON:

7 Q. Mr. Trippensee, did you prepare and  
8 cause to be filed rebuttal testimony that's been  
9 marked as Exhibit 203?

10 A. Yes, I did.

11 Q. Do you have any corrections or changes?

12 A. Not to my knowledge.

13 MR. POSTON: Your Honor, I'd offer  
14 Exhibit 203 into the record and tender Mr. Trippensee  
15 for cross-examination.

16 JUDGE DIPPELL: Is there any objection  
17 to Exhibit 203?

18 MR. THOMPSON: No objection.

19 JUDGE DIPPELL: Seeing none, I will  
20 receive it into evidence.

21 (EXHIBIT NO. 203 WAS RECEIVED INTO  
22 EVIDENCE AND MADE A PART OF THE RECORD.)

23 JUDGE DIPPELL: Is there any  
24 cross-examination by Atmos?

25 MR. FISCHER: Yes, your Honor.

1 CROSS-EXAMINATION BY MR. FISCHER:

2 Q. Good afternoon Mr. Trippensee.

3 A. Good afternoon, Mr. Fischer.

4 Q. I'd like to turn your attention to  
5 page 11 of your rebuttal testimony at line 18.

6 A. Yes, sir, I'm there.

7 Q. You state there Public Counsel would  
8 recommend the Commission use a 7 percent return on  
9 equity; is that correct?

10 A. That is correct.

11 Q. Would you have any interest in  
12 withdrawing that recommendation in the interest of  
13 moving this along today?

14 A. Why don't we see where this goes.

15 Q. Okay. I'll ask you again.  
16 Mr. Trippensee, is this recommendation your own  
17 professional opinion or are you just relaying to the  
18 Commission what Lewis Mills, the Director of the  
19 Office of Public Counsel, might suggest is a  
20 recommendation in this case?

21 A. This is my recommendation to this  
22 Commission based on the data available in this case.

23 Q. Okay. On page 1 of your rebuttal  
24 testimony, you testified that you received a  
25 B.S./B.A. degree, major in accounting in December of



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1 1977; is that right?

2 A. That is correct.

3 Q. And what does that term -- I wasn't  
4 familiar with the B.S./B.A. What does that  
5 certification mean?

6 A. Bachelor of Science, business  
7 administration.

8 Q. Okay. And you also indicate that you've  
9 acquired the requisite hours for a major in finance;  
10 is that right?

11 A. That is correct.

12 Q. How many hours of finance would that be?

13 A. 30.

14 Q. 30? Okay. And how many hours of  
15 accounting would your degree --

16 A. The accounting degree also required 30.  
17 I have 36, I believe.

18 Q. Okay. And did you have any economics  
19 hours?

20 A. I have every undergraduate economics  
21 course the business school offered. I think that was  
22 nine hours of undergrad.

23 Q. Okay. And would it be correct to  
24 conclude that while you have the requisite number of  
25 hours for a major in finance, your actual degree is

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1 in accounting; is that right?

2 A. The University of Missouri at that time  
3 did not, quote, have majors; you just fulfilled the  
4 requirements for those areas, so I have both.

5 Q. Okay. So you have basically a business  
6 administration degree; is that right?

7 A. With an emphasis in accounting and an  
8 emphasis in finance.

9 Q. Okay. Have you taken any graduate  
10 classes in accounting, finance or economics since you  
11 graduated in 1977?

12 A. From a university, no.

13 Q. Have you taken any graduate college  
14 courses since you joined the Public Counsel's office  
15 in '84?

16 A. The only -- the formal  
17 university-offered courses, no. I did take classes  
18 through various seminars and also probably 50 hours  
19 of class for a CPA exam.

20 Q. You indicated that you started at the  
21 PSC in August of '77 as an accounting intern and were  
22 later employed in January of 1978 as a public utility  
23 accountant I; is that correct?

24 A. Yes, it is.

25 Q. And you also indicated you attended the

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1 1981 NARUC annual regulatory studies program at  
2 Michigan State University; is that correct?

3 A. That is correct.

4 Q. Is that something we normally call Camp  
5 NARUC around the Commission?

6 A. We definitely used to.

7 Q. Okay. And is that a two-week course on  
8 basic regulation of public utilities?

9 A. Generally, yes.

10 Q. Would you agree that a variety of  
11 professional disciplines, accountants, lawyers,  
12 management services personnel and other professionals  
13 would typically be in attendance at that seminar?

14 A. Yes.

15 Q. Mr. Trippensee, would you agree that  
16 everyone that attends Camp NARUC is not necessarily  
17 qualified to sponsor expert accounting testimony in a  
18 Commission proceeding?

19 A. Definitely if they're a lawyer, that  
20 would be true.

21 Q. Okay. Would you also agree that  
22 everyone that attends Camp NARUC is not necessarily  
23 qualified to sponsor expert testimony on the subject  
24 of what's an appropriate rate of return on equity for  
25 a public utility?

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1           A.       That would be true too.

2           Q.       Camp NARUC basically gives you another  
3 view of regulation but not expertise in a particular  
4 field, wouldn't you agree?

5           A.       Correct.

6           Q.       Before you left the Commission to go to  
7 work for Public Counsel, did you ever work in the  
8 Commission's financial analyst department?

9           A.       No, I did not.

10          Q.       And that's the group at the PSC that  
11 typically provides ROE and capital structure  
12 testimony; is that correct?

13          A.       That is correct.

14          Q.       That's the section that Matt Barnes is  
15 currently employed in; is that right?

16          A.       That is correct. Mr. Barnes is an  
17 accountant by training.

18          Q.       Did you ever present testimony on  
19 appropriate ROE for a public utility while you were  
20 employed at the PSC?

21          A.       No, I did not.

22                 JUDGE DIPPELL: Mr. Trippensee, can I  
23 get you to speak into the microphone a little more?  
24 Thank you. Or speak up a little louder. Go ahead.  
25 Mr. Fischer, I'm sorry.

1 MR. FISCHER: Thank you.

2 BY MR. FISCHER:

3 Q. On page 1 of your testimony you also  
4 indicate that -- on lines 16 and 17, that you left  
5 the Missouri Public Service Commission's staff in  
6 June of 1984 as a public utility accountant I and  
7 assumed your present position; is that correct?

8 A. No, it's not. I left as a public  
9 utility accountant III.

10 Q. Oh, I'm sorry. Public utility  
11 accountant III. You also indicated you're a member  
12 of the Missouri Society of Certified Public  
13 Accountants; is that right?

14 A. That is correct.

15 Q. Are you familiar with a professional  
16 organization called the Society of Rate of Return  
17 Analysts?

18 A. I believe I've heard of them, yes.

19 Q. Are you a member of that professional  
20 association?

21 A. No, I am not.

22 Q. I'd like to ask you to refer to your  
23 schedule, RWT-1. I believe this schedule lists the  
24 cases in which you filed testimony over the last 25  
25 years or so; is that correct?

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1           A.       That is the intent of that schedule. I  
2   hope I haven't missed any.

3           Q.       Okay. Based on that list of cases, it  
4   appears to me that you're reaching a milestone in  
5   this particular case. It appears this is your one  
6   hundredth case that you've submitted testimony.  
7   Would that be about right, centennial or something?

8           A.       Sounds like a good reason for a party,  
9   but I'll take your count for that, subject to check.

10          Q.       Okay. Well, and I wasn't sure whether  
11   you might have had other cases before that time or  
12   not.

13          A.       Mr. Fischer, I looked at this recently,  
14   and it seems like I've filed more, but --

15          Q.       Well, for purposes of this discussion,  
16   let's assume it's 100 and then make it nice and round  
17   numbers. Out of those 100 cases, would you identify  
18   the number of cases in which you -- in which the  
19   specific purpose and subject of your testimony was to  
20   recommend the appropriate rate of return on equity  
21   for a public utility?

22          A.       A specific purpose for rate of return I  
23   don't believe was the focus of these testimonies.  
24   Other components of business risk, the appropriate  
25   relationship between rate of return and the revenue

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1 requirement have been touched on.

2 Q. So would this be the first case you made  
3 a specific recommendation on ROE, is that what you're  
4 saying?

5 A. Where there's a numeric value, yes.

6 Q. Okay. Would it be correct, then, to  
7 conclude that with the exception of this case, the  
8 subject of the testimony and those remaining 99 cases  
9 dealt with issues other than rate of return on  
10 equity?

11 A. As I indicated, I do not believe any of  
12 those other cases have a specific number for equity.  
13 I cannot agree that the subject of return on equity  
14 was not discussed in that testimony. I did not go  
15 back and look at every issue, but with the variety of  
16 issues I have testified on over the years, rate of  
17 return is an integral part of the revenue  
18 requirement.

19 Q. Okay. We can discuss that in a minute.  
20 Is it correct or could you agree that in the vast  
21 majority of those cases listed on RWT-1 that you were  
22 testifying on accounting-related matters?

23 A. I was testifying on revenue-  
24 requirement-related matters. I have testified on  
25 engineering matters, I have testified on all the

1 components of the revenue requirement in one way or  
2 another. I have not made, as I indicated, a specific  
3 recommendation on return on equity where I have the  
4 responsibility for that recommendation.

5 Q. When was the last case, other than this  
6 one, that you did testify on what is an appropriate  
7 rate of return on equity for a public utility?

8 A. I believe I just indicated I haven't  
9 gone back and looked at each and every testimony.  
10 Quite frankly, I did not have time to do that.

11 Q. But you did -- is it -- is it your  
12 testimony that this is the first case that you've  
13 done a specific number for ROE; is that what you're  
14 telling me?

15 A. That is correct. Some of these  
16 testimonies that dealt with the appropriate -- the  
17 relationship of rate of return and customer deposits  
18 and the appropriate amount of -- the appropriate  
19 return to provide customers and stockholders as one  
20 example where rate of return is an integral part of  
21 what you're terming accounting issue.

22 Q. When was the last case in which you  
23 testified on the issue of capital structure of a  
24 public utility, do you recall?

25 A. I'm not sure if I've had testimony on



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1 the specific issue of capital structure, as I do not  
2 in this case.

3 Q. On page 1 of your schedule, you list a  
4 case involving the Northeast Missouri Rural Telephone  
5 Company, Case Number TR-85-23. I think it's the 16th  
6 case listed on that first page. Do you see that  
7 case?

8 A. Yes, I do.

9 Q. Do you recall testifying about a capital  
10 structure issue in that case?

11 A. Since I'm supposed to tell the truth,  
12 the answer is no, I don't. I do not go back and  
13 review each -- each --

14 MR. FISCHER: Your Honor, I would ask  
15 the Commission to take administrative notice of its  
16 decision in Case Number TR-85-23 which can be found  
17 at 27 Missouri PSC New Series, pages 369 through 373.

18 JUDGE DIPPELL: Is there any objection  
19 to the Commission taking notice of that?

20 MR. THOMPSON: No objection.

21 JUDGE DIPPELL: The Commission will take  
22 notice of that decision.

23 BY MR. FISCHER:

24 Q. Mr. Trippensee, I'd like to show you and  
25 your counsel a copy of that decision.

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1 Mr. Trippensee, if you could take a look at that  
2 decision, and particularly I'm interested in the last  
3 paragraph on page 372. Maybe that will refresh your  
4 memory.

5 Mr. Trippensee, do you recall that in  
6 that case you suggested on behalf of the Public  
7 Counsel that the Commission utilize a capital  
8 structure for Northeast Missouri Rural Telephone  
9 Company by deducting from rate base the entire amount  
10 of some REA debt?

11 A. I'd have to look at the entire order  
12 because what I'm reading here doesn't comport with  
13 what I, you know, would believe.

14 Q. Let's look at the last paragraph found  
15 on page 372 in that reported decision where it  
16 states, "Public Counsel has created a capital  
17 structure by deducting from rate base the entire  
18 amount of REA debt. The remaining amount Public  
19 Counsel designates as equity-funded rate base. The  
20 Commission finds this computation inappropriate as  
21 applied by Public Counsel to the capital structure in  
22 this case." Do you see that passage?

23 A. That's the passage I see, and that's the  
24 passage I don't understand what they're talking  
25 about.

0155

1           Q.       Okay. Were you the Public Counsel's  
2   witness in that case?

3           A.       I'm in the paragraph before, and my  
4   concern is debt is not a component of rate base.  
5   Debt supports components of rate base. While that  
6   semantical difference may seem insignificant to some  
7   people, it's a material difference to me, and my  
8   problem is I'm not sure if this characterization of  
9   the testimony is accurate because the  
10   characterization is not something I believe I would  
11   ever have said.

12          Q.       Did you make a recommendation in that  
13   case on what should be an appropriate capital  
14   structure?

15          A.       Again, I would have to go back and  
16   review the entire case.

17          Q.       Well, based on what you have in front of  
18   you, would it be correct to conclude from that  
19   passage that the Commission rejected the capital  
20   structure suggested by Public Counsel in that case?

21          A.       The Commission rejected capital  
22   structure, but again, their description of why does  
23   not make sense to me.

24          Q.       Okay. Well --

25          A.       Because they're two different things.

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1           Q.       That's fair. They disagreed with your  
2   position too, I think. On page 373 of that decision,  
3   the Commission stated, "With regard to Public  
4   Counsel's argument that acceptance of Staff and  
5   company's position will result in the company earning  
6   a return through capital structure as well as through  
7   interest income recorded below the line, the  
8   Commission would state that it does not believe this  
9   to be possible. It is impossible for the company to  
10  earn a double return on cash investments since they  
11  are not included in the rate base agreed to by Staff  
12  and company, meaning that the customers do not pay  
13  the company a return on these funds." Did I read  
14  that right?

15          A.       It appears you did.

16          Q.       And were you the Public Counsel's  
17  witness addressing that particular issue?

18          A.       I believe that's what the order states.

19          Q.       Mr. Trippensee, would it be correct to  
20  conclude from that passage that the Commission  
21  rejected the Public Counsel's position in the NEMO  
22  case?

23          A.       It appears that the Commission did.

24          Q.       Now, you've mentioned -- you've touched  
25  on ROE issues in other cases while not specifically

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1 making an ROE recommendation. Do you recall if the  
2 Commission has ever adopted your ROE recommendation  
3 specifically in any case?

4 A. Since I didn't make one, it would be  
5 very difficult for them to accept it.

6 Q. Okay. Would it be correct that of those  
7 other 99 cases that are listed on your RWT-1, that  
8 there would have been some other Staff witness or  
9 perhaps Public Counsel witness that would have  
10 sponsored testimony on the appropriate ROE in those  
11 rate cases?

12 A. That would be correct.

13 Q. Office of the Public Counsel used to  
14 have a financial analyst on staff; is that correct?

15 A. That is correct. We've had several.

16 Q. And who would some of those have been?

17 A. John Tuck, Mark Burdette, Amy Levins.

18 Q. Jim Bush?

19 A. No.

20 Q. Bill Thompson?

21 A. No.

22 Q. What were the professional backgrounds  
23 of the financial analysts that you mentioned that had  
24 been in the office?

25 A. Ms. Levins had the same background that

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1 I do, effectively a double major, Mr. Burdette had an  
2 engineering major and a finance major, or actually I  
3 think it was a finance master's. Mr. Tuck, I  
4 believe, had an undergrad in either economics or  
5 finance and a finance major.

6 Q. In the recent KCPL rate case that the  
7 hearings have just concluded, is it true that Public  
8 Counsel sponsored the testimony of Michael Baudino on  
9 the subject of the appropriate ROE?

10 A. Yes.

11 Q. He's an outside consultant for the  
12 Office of Public Counsel?

13 A. Yes, he was.

14 Q. What's Mr. Baudino's professional  
15 background?

16 A. Mr. Baudino, I believe, is an economist  
17 by training. He worked for the New Mexico, I  
18 believe, Public Service Commission staff for  
19 approximately six to seven years, upon which he went  
20 out on his own.

21 Q. Mr. Trippensee, are you holding yourself  
22 out to this Commission in this case as an expert in  
23 the area of what is an appropriate rate of return on  
24 equity for a public utility?

25 A. I'm holding myself out as an expert in

1 regulatory risk, rate of return for this -- to  
2 recognize the risk.

3 Q. So the answer --

4 A. Yes.

5 Q. -- to the question is yes, you are  
6 holding yourself out as an expert on rate of return  
7 in this case?

8 A. Yes. I would point out that the people  
9 you have discussed, Mr. Tuck, Ms. Levins,  
10 Mr. Burdette, all operated under my direct  
11 supervision for the last ten to 15 years.

12 Q. Okay.

13 A. All preparation of all testimony was  
14 through -- under my direct supervision.

15 Q. At what point in your career do you  
16 believe that you became qualified as -- to sponsor  
17 expert opinions on the issue of rate of return for  
18 (sic) equity for public utilities?

19 A. I believe I have -- as a finance major  
20 which I obtained from the University of  
21 Missouri-Columbia, I believe that provides the  
22 requisite basic knowledge. I believe 29 years  
23 experience in revenue requirement, in reviewing rate  
24 of return testimony, analysis, studies, has amply  
25 provided me the ability to recognize -- to discuss

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1 the subject with this Commission.

2 Q. So you're saying that you've been an  
3 expert since you began in the area 29 years ago?

4 A. I believe you have the educational  
5 background. The question is what do you do with it.

6 Q. Okay. And since that time, you would  
7 hold yourself out as an expert on ROE?

8 A. I think I've answered that, yes.

9 Q. Okay. Mr. Trippensee, in the Northeast  
10 Missouri Rural Telephone Company proceeding, Case  
11 Number TR-85-23, do you recall being asked the  
12 following question: "Are you holding yourself out to  
13 the Commission as an expert in the areas of capital  
14 structure and rates of return, Mr. Trippensee?"

15 A. No, I do not remember that question.

16 MR. FISCHER: Judge, I'd ask the  
17 Commission to take administrative notice of page 81  
18 of the transcript in Case Number TR-85-23 in a  
19 proceeding held on April 2nd, 1985, and I'd like to  
20 show the witness that page.

21 JUDGE DIPPELL: Would there be any  
22 objection to the Commission taking official notice of  
23 that record?

24 MR. THOMPSON: No.

25 MR. POSTON: No.



1 JUDGE DIPPELL: Then the Commission will  
2 take official notice of that transcript.

3 BY MR. FISCHER:

4 Q. Mr. Trippensee, I'd like to show you a  
5 copy of that transcript in the case, and I'd refer  
6 you to the first question and answer on page 81. On  
7 that page isn't it true that you were asked the  
8 question, "Are you holding yourself out to this  
9 Commission as an expert in the areas of capital  
10 structure and rates of return, Mr. Trippensee?"

11 A. That is correct.

12 Q. And is it correct that you answered that  
13 question by stating, "Definitely not in the -- in  
14 regard to the area of rates of return. With regard  
15 to the components of capital structure that support  
16 rate base, yes, I am"; is that correct?

17 A. That is a correct reading, yes, sir.

18 Q. Mr. Trippensee, did you perform  
19 personally a discounted cash flow analysis as a part  
20 of your rebuttal testimony?

21 A. No, I did not.

22 Q. Did you perform a capital asset pricing  
23 model analysis as a part of your rebuttal testimony?

24 A. No, I did not.

25 Q. Did you include in your rebuttal

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1 testimony a comparison of the ROE's of similarly  
2 situated public utilities with Atmos?

3 A. No, I did not.

4 Q. On page 11 of your testimony you  
5 recommend a 7 percent return on equity which utilizes  
6 a spread between the risk-free rate and the cost of  
7 debt; is that correct?

8 A. I believe that's correct, yes.

9 Q. Can you cite any Missouri PSC decision  
10 which has accepted that specific approach that you're  
11 recommending in this case?

12 A. First off, you're saying I'm  
13 recommending it. Let's get something understood  
14 first. This recommendation is if, and only if, this  
15 Commission adopts the Staff's rate of return which  
16 completely decouples sale -- decouples earnings from  
17 sales.

18 Q. Let's assume for purposes of this  
19 question that the Commission does adopt the Staff and  
20 the company's proposals to use the delivery charge.  
21 Is it correct that that's what you're recommending at  
22 7 percent return on equity?

23 A. That would be the recommendation under  
24 that unprecedented rate design.

25 Q. So would it be correct to conclude that

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1    there's no Missouri PSC decision which has accepted  
2    that specific approach that you're recommending in  
3    this case?

4           A.       There's been no PSC decision that has  
5    accepted a rate design that would necessitate  
6    recognition of the risk reduction.

7           Q.       And is this the first case in which  
8    you've recommended this approach?

9           A.       It's the first case in which any party  
10   has recommended --

11                  MR. FISCHER:  Judge, I'm going to  
12   object.  He's nonresponsive.  These are yes or no  
13   questions.

14                  JUDGE DIPPELL:  Mr. Trippensee, answer  
15   the question.

16                  THE WITNESS:  Could he repeat the  
17   question, please?

18   BY MR. FISCHER:

19           Q.       I'm sorry.  Sure.  Is this the first  
20   case you've recommended this specific approach?

21           A.       Yes, it is, but I would like to qualify  
22   that.

23           Q.       Okay.  Well, your counsel can redirect  
24   like he did with Barb Meisenheimer.  Can you cite any  
25   Missouri PSC decision in the last 30 years which

1 establishes a rate of return on equity for a gas LDC  
2 as low as 7 percent?

3 A. I would have to go back and look at all  
4 the cases. Prior to double-digit inflation and --  
5 beginning in the late '70s, interest rates were --  
6 and rate of returns were significantly lower.

7 Q. So the answer to that question, would it  
8 be no, you can't cite any as you sit there today?

9 A. As I sit here today, the answer would be  
10 no.

11 Q. Okay. I'm sorry to put you through  
12 this. Would you care to withdraw your recommendation  
13 on 7 percent return on equity?

14 A. Let's continue going forward,  
15 Mr. Fischer.

16 MR. FISCHER: Thank you very much.  
17 That's all I have.

18 JUDGE DIPPELL: Is there any  
19 cross-examination from Staff?

20 MR. THOMPSON: Why, yes, your Honor.

21 CROSS-EXAMINATION BY MR. THOMPSON:

22 Q. Good morning, or good afternoon,  
23 Mr. Trippensee. Are you familiar with the direct  
24 testimony filed in this matter by Mr. Barnes?

25 A. Yes, I am.

1 Q. Do you have a copy of that up there?

2 A. Yes, I do.

3 Q. I wonder if you could turn to page 5.

4 A. Of his direct?

5 Q. Yes, sir. During his examination of  
6 Mr. Barnes, Mr. Poston very properly focused  
7 attention on Mr. Barnes' citation of certain  
8 principles from Hope and Bluefield. If you take a  
9 look at the top of page 5, there's three factors that  
10 are listed by Mr. Barnes. I wonder if you could read  
11 them, starting at page -- excuse me, line 2. Read  
12 them out loud.

13 A. The three factors begin on line 3.  
14 Line 2 refers simply to the -- to the Bluefield case.  
15 Three begins -- first factor is "A return generally  
16 being made at the same time in that general part of  
17 the country"; second factor, "A return achieved by  
18 other companies with corresponding risk and  
19 uncertainties"; and 3, "A return sufficient to ensure  
20 confidence and the financial soundness of the  
21 utility."

22 Q. Now, Mr. Trippensee, with respect to  
23 your recommendation for a return on equity in this  
24 case, what exactly did you do to ensure that your  
25 recommendation complies with the first of these

1 factors?

2 A. The basis of my recommendation --  
3 contingent recommendation is Mr. Barnes' testimony  
4 and his, quote, comparable companies. I believe  
5 Mr. Barnes' testimony is sound, absent the rate  
6 design proposed by Staff.

7 Q. Well, as I look at your testimony, you  
8 constructed your recommendation, did you not, by  
9 taking Mr. Barnes' risk-free rate; isn't that  
10 correct?

11 A. That is correct.

12 Q. And his risk-free rate has, in fact,  
13 nothing whatsoever to do with his comparable  
14 companies, does it? Isn't that simply the rate of  
15 return on a selected federal government security?

16 A. It is -- yes -- yes, sir.

17 Q. Okay. So it has nothing to do with an  
18 analysis of comparable companies, does it?

19 A. It is part of the analysis of the  
20 overall rate of return.

21 Q. And --

22 A. There is no precedent for comparable  
23 companies with the Staff rate design.

24 Q. And the second thing you took, as I  
25 recall, was the cost of debt; isn't that right?

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1           A.       That is correct.

2           Q.       And isn't that, in fact, Atmos's  
3 embedded cost of debt?

4           A.       That is correct.

5           Q.       So that has nothing to do with an  
6 analysis of comparable companies either, does it?

7           A.       Cost of debt is a component of cost for  
8 Atmos. It is not a component of cost for a  
9 comparable company.

10          Q.       So, in fact, you did absolutely no  
11 comparative analysis to reach your recommendation --  
12 your recommended return on equity; isn't that  
13 correct?

14          A.       I would disagree. I looked at  
15 Mr. Barnes' comparable companies that he utilized.  
16 He did not make any adjustment for the risk reduction  
17 associated with Staff's innovative, brand new,  
18 never-tried-before rate design, and Mr. Barnes'  
19 testimony and his comparable analysis served as an  
20 upper end of what a reasonable return would be.

21                 So I disagree with your assertion. I  
22 simply was trying to quantify what needed to come off  
23 of Mr. Barnes' recommendation based on comparable  
24 companies.

25          Q.       So are you saying you took Mr. Barnes'

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1 recommendation and then made a subtraction to get to  
2 7 percent?

3 A. It was a consideration in the  
4 development of the appropriate return. I have seen  
5 in -- have never seen a utility -- financial analyst  
6 be able to specifically quantify how much has to come  
7 off to represent this much -- this reduction in risk.  
8 I attempted to quantify that reduction utilizing the  
9 risk-free rate of return and the relationship of that  
10 risk-free rate of return to the cost of debt, but  
11 Mr. Barnes' testimony was a fundamental component of  
12 that analysis.

13 Q. Do you say that in here anywhere?

14 A. I believe I just testified to it right  
15 now, sir.

16 Q. Okay. So you would agree with me, then,  
17 that your rebuttal testimony is misleading?

18 A. No, I would not agree with you that my  
19 testimony is misleading. I told you how the  
20 mathematical calculation worked in the testimony. I  
21 did not put down every consideration, every parameter  
22 that was done.

23 Q. Okay. Now, one of the questions  
24 Mr. Poston had of Mr. Barnes was whether or not  
25 Mr. Barnes could tell us what the revenue requirement



1 impact is of a single basis point change in a return  
2 on equity recommendation. I wonder if you can tell  
3 me that.

4 A. Be happy to. 3,750 basis points -- I  
5 mean, excuse me, \$3,750 per basis point.

6 Q. Okay.

7 A. That's pretty basic in our line of work.

8 Q. Well, as you testified, lawyers couldn't  
9 do this.

10 A. No.

11 Q. And so when you rounded up here at the  
12 bottom of page 11, what was the support for that?

13 A. Support for that?

14 Q. In other words, you said --

15 A. One was --

16 Q. -- using the method that you have  
17 described, as well as the secret and undescribed  
18 aspects of your method that you've testified to  
19 today, you came up with 6.9 percent rounded up to 7  
20 percent. Well, somebody's gonna have to pay for that  
21 additional revenue requirement, so I'm asking you,  
22 sir, what is your basis to recommend that that be  
23 rounded up?

24 A. As I indicated, consideration of  
25 Mr. Barnes' recommendation in this case, which, by

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1 the way, was 80 basis points a range, a  
2 ten-basis-point adjustment, based on my opinion of  
3 the quality of Mr. Barnes' testimony, and the  
4 completely unknown effect of this rate design that  
5 Staff's proposing, appear to be reasonable to myself.

6 Q. Well, now, Mr. Poston characterized this  
7 rate design as removing weather-related risk.

8 A. Along with conservation, along with gas  
9 technology, along with a complete -- I think he used  
10 the term decouple.

11 Q. So is it unknown or is it known?

12 A. The removal of the risk, the valuation  
13 of the risk is completely unknown. I would point out  
14 that in MGE, the company witness made an arbitrary  
15 25-basis-point adjustment downward if some sort of  
16 rate design like this is adopted. He also made a  
17 15-basis-point unsubstantiated upward adjustment  
18 because there was no weather-related adjustment -- or  
19 rate design, excuse me.

20 MR. THOMPSON: Thank you.

21 JUDGE DIPPELL: Are there any questions  
22 for Mr. Trippensee on these issues from the bench,  
23 Commissioner Appling?

24 COMMISSIONER APPLING: I think I'm gonna  
25 pass at this time, Judge.

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1 JUDGE DIPPELL: Mr. Chairman?

2 CHAIRMAN DAVIS: I'll pass at this time

3 as well.

4 JUDGE DIPPELL: Is there any redirect?

5 MR. POSTON: Yes, thank you.

6 REDIRECT EXAMINATION BY MR. POSTON:

7 Q. Mr. Fischer questioned you about your  
8 background in the area of finance.

9 A. Yes, sir.

10 Q. And what do you believe to be the  
11 background that you have in finance that qualifies  
12 you to testify for return on equity?

13 A. As indicated earlier, I have an  
14 undergrad degree -- or undergrad emphasis in finance.  
15 I, subsequent to that time in the late 1980's,  
16 participated in an extensive class sponsored actually  
17 by the Public Service Commission but through the  
18 University of Missouri to pass the CPA exam. Finance  
19 is an integral part of the CPA exam.

20 In the early '90s I became responsible  
21 for the financial analysis department -- if you can  
22 call one person a department -- at Office of Public  
23 Counsel and held that position consistently for  
24 approximately 15 years.

25 So I reviewed all testimony that went

1 through the Office of Public Counsel and participated  
2 in the development of it for the rate of return. I  
3 did not serve as a sponsor, as I was more -- my  
4 abilities were better used elsewhere.

5 Q. And Mr. Fischer asked you about your 100  
6 cases before you made recommendations. He asked you  
7 if you made recommendations on ROE. And out of these  
8 100, is this the first case that you can recall where  
9 Staff and the company have proposed to completely  
10 eliminate the company's weather conservation and  
11 other risks as far as they apply to the services  
12 provided by this company?

13 A. This is the first case where the Staff  
14 has ever proposed a complete decoupling of earnings  
15 from sales, so Public Counsel or this Commission has  
16 never seen this proposal before.

17 Q. So that's why you chose to step up and  
18 file testimony and respond to this?

19 A. We had -- the Office of Public Counsel  
20 received this in direct testimony and because of my  
21 background, I was the only person in the office who  
22 could address this, and because of state procurement  
23 procedures, we could not obtain an outside consultant.

24 Q. That doesn't minimize the importance of  
25 the issue?

1           A.       It definitely does not minimize the  
2   importance and the -- of the issue, nor does it  
3   minimize the fact that neither Staff nor the company  
4   witness on rate of return utilize any comparable  
5   companies in their studies that has a complete  
6   decoupling rate design.

7           Q.       And in questioning your -- well, did  
8   Mr. Fischer question the background of Mr. Barnes?

9           A.       No, he did not.

10          Q.       Are you aware of Mr. Barnes' background?

11          A.       Yes, I am. Mr. Barnes has an undergrad  
12   in accounting and a master's in accounting.

13                 MR. THOMPSON: I object, your Honor.  
14   This certainly goes beyond the scope of anything  
15   we've heard before.

16                 JUDGE DIPPELL: I believe you asked him  
17   about Mr. Barnes' testimony.

18                 MR. THOMPSON: I didn't ask him about  
19   Mr. Barnes' background.

20                 JUDGE DIPPELL: I'm gonna allow it.  
21   Overruled.

22   BY MR. POSTON:

23          Q.       I'd like to bring your attention to the  
24   case that Mr. Fischer handed you. I believe you  
25   still have the book in front of you. And you started

1 to answer a question regarding the Commission's  
2 reasoning and why you questioned Mr. Fisher's  
3 characterization of your position and Office of  
4 Public Counsel's position. Can you please explain to  
5 me what concerns you have about this case and what  
6 you have before you?

7 A. The first sentence on page 372 of  
8 volume 27, Public Service Commission reports, states,  
9 "Public Counsel has created a capital structure by  
10 deducting from rate base the entire amount of the REA  
11 debt."

12 The REA debt would be in the capital  
13 structure, it would not be in rate base. Rate base  
14 is the investments of the company, the assets of the  
15 company. How debt is an asset of the company,  
16 though, in which they're going to earn, it supports  
17 the assets, but that distinction is critical to  
18 anyone understanding what the Office of Public  
19 Counsel's position was in this case. Those two  
20 things are not together. They're not on the same  
21 place in the process.

22 Capital structure supports rate base. I  
23 don't deduct a component of capital structure from  
24 rate base. So I don't know what the Commission is  
25 meaning here. I have not gone back and studied our

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1 position in this case, but their reasoning is not  
2 sound.

3                   Whoever wrote this order or whoever  
4 voted for this order -- and Mr. Dority is kind of  
5 chuckling because one of the people who did may be  
6 sitting next to me. Those two things are mutually  
7 exclusive. So you can't say because of this, this is  
8 happening, because they don't go together.

9           Q.       So it would help to look at the entire  
10 record --

11          A.       Yes, it would.

12          Q.       -- in this case? Including the entire  
13 transcript?

14          A.       Yes, it would.

15                   MR. POSTON: Your Honor, I move that we  
16 take official notice of the entire record in that  
17 case instead of just one page of the transcript.

18                   JUDGE DIPPELL: Is there any way to  
19 limit that to --

20                   MR. POSTON: What does that entail?  
21 Does that entail...

22                   JUDGE DIPPELL: Well, I've never filed a  
23 record on appeal in one of these cases. Would that  
24 include anything that the Commission took official  
25 notice of?

1                   MR. POSTON: You mean would it include  
2 what they took official notice of in that case, so it  
3 could be cases and cases, is what you're saying?

4                   JUDGE DIPPELL: No, I -- I just don't  
5 want to bog down this record with a lengthy record  
6 from another case. If there's some way to limit  
7 that, just the transcript, or just Mr. Trippensee's  
8 testimony or --

9                   MR. FISCHER: Judge, I placed in front  
10 of the witness the cross-examination that occurred in  
11 that case of the witness that's like 30 pages. If  
12 you wanted to take that, that's -- I don't have an  
13 objection to that.

14                  MR. POSTON: I mean, yeah, that  
15 testimony -- and perhaps all of Mr. Trippensee's  
16 testimony, all of Public Counsel's testimony in that  
17 case.

18                  JUDGE DIPPELL: Would there be any  
19 objection to the Commission taking official notice of  
20 those items?

21                  MR. THOMPSON: If Public Counsel  
22 supplies them. I mean, I don't think I have them in  
23 my office.

24                  MR. FISCHER: They're available in  
25 microfilm.



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1 JUDGE DIPPELL: I believe they're  
2 available in the data center, and Mr. Poston will  
3 make those available.

4 MR. POSTON: Thank you.

5 JUDGE DIPPELL: As soon as the microfilm  
6 machine is fixed, the Commission takes official  
7 notice of those items.

8 BY MR. POSTON:

9 Q. Mr. Thompson asked you questions about  
10 your calculation on ROE and use of comparable  
11 companies. Are there comparable companies?

12 A. That have this decoupled rate design?

13 Q. Yes.

14 A. I believe Northeast and -- well, excuse  
15 me. Northern States Power has a somewhat similar  
16 rate design to what Staff has proposed in this case.  
17 They were not a member of either the comparable  
18 groups by company witness or Staff witness.

19 Other than that, to my knowledge, there  
20 are no other companies in this country, natural gas  
21 companies, that have this type of rate design. So  
22 the issue of are there comparable companies, from my  
23 perspective, is somewhat moot because this is new  
24 ground, completely.

25 MR. POSTON: That's all the questions I

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1 have.

2 JUDGE DIPPELL: Thank you.

3 QUESTIONS BY JUDGE DIPPELL:

4 Q. I actually have some additional  
5 questions from Commissioner Murray to ask this  
6 witness, so I'm gonna backtrack just a little bit.  
7 And I'm just going to read this. She's actually  
8 listening to our internet broadcast.

9 So for the following questions  
10 Commissioner Murray would like to figure out how  
11 exactly you calculated the reduction for ROE based on  
12 risk reduction through Staff-recommended rate design.  
13 First question is what number did you begin with?

14 A. As far as beginning, I looked at the  
15 Staff testimony of Mr. Barnes, his range, and it was  
16 my opinion that his testimony with a traditional rate  
17 design was reasonable. So that would constitute the  
18 upper end of any recommendation for the appropriate  
19 rate of return with a completely decoupled rate  
20 design.

21 I then tried to determine the best way  
22 to measure that reduction in risk. And absent any  
23 other information available because of the lack of  
24 any comparable company, I simply -- I looked at the  
25 differential between a risk-free rate and the risk

1     that lenders place on the company and took that  
2     differential and placed it, then, again on top of the  
3     lender's risk.

4                     And then, as was pointed out, for --  
5     rounded it up, and I simply did that based on  
6     Mr. Barnes' -- consideration of Mr. Barnes' position  
7     and just a principle of conservativeness.

8             Q.       And so the specific number that you used  
9     to start with was Mr. Barnes' --

10            A.       It served -- it served as the upper end  
11     of -- as kind of a test of reasonableness. But then  
12     the actual calculation considered the risk-free rate  
13     of return and the cost of debt to Atmos-specific, and  
14     I used Atmos's cost of debt because equity as the --  
15     to meet the financial metrics, interest coverage,  
16     debt coverage, things along that line, would be  
17     Atmos-specific. They would not be comparable  
18     companies.

19                     That's why I used that as the reason to  
20     take the spread off of that number versus, say, take  
21     the spread and reduce it from Mr. Barnes' number.

22            Q.       And what authorities can you cite to  
23     show that your methodology is generally accepted?

24            A.       I'm unable to cite any methodology  
25     because this is new ground. I've discussed this with

1 numerous rate of return analysts of utilities over  
2 the years and Staff members. Nobody has ever been  
3 able to try to quantify a -- or been able to quantify  
4 a risk reduction, the quantification and basis points  
5 of a risk reduction.

6 As I pointed out in MGE, their witness,  
7 Mr. Handley, in his direct testimony that's been  
8 filed with this Commission, just says 25 basis points  
9 with absolutely no support whatsoever, just his  
10 opinion.

11 Q. What return on equity would Office of  
12 Public Counsel recommend without Staff's rate design?

13 A. We believe that Mr. Barnes'  
14 recommendation is appropriate as was pointed out  
15 earlier. That would result in a 1. -- approximately  
16 \$1.2 million rate reduction. To go to zero, that  
17 return on equity, based on Staff's case, moves up to  
18 approximately 12.6 which is even above the company's  
19 request.

20 Q. And so in arriving at that return on  
21 equity without Staff's rate design, you're in  
22 agreement with Mr. Barnes' methodology on that?

23 A. Yes, Mr. Barnes' methodology was sound  
24 as far as it went with traditional rate designs. The  
25 issue here is driven by rate design as I indicated in

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1 my direct testimony, not by difference with Staff's  
2 methodology, which we believe was sound in this case.

3 JUDGE DIPPELL: Okay. Are there any  
4 further cross-examination questions based on my  
5 questions from Commissioner Murray? Atmos?

6 MR. FISCHER: Yes, just briefly.

7 RECROSS-EXAMINATION BY MR. FISCHER:

8 Q. Mr. Trippensee, do you know if there was  
9 anything added to Mr. Barnes' ROE due to the lack of  
10 a weather-mitigating rate design?

11 A. No, I don't.

12 MR. FISCHER: Okay. Thank you.

13 JUDGE DIPPELL: Staff?

14 MR. THOMPSON: No questions, thank you.

15 JUDGE DIPPELL: Any redirect?

16 MR. POSTON: No, thank you.

17 JUDGE DIPPELL: All right. Thank you,  
18 Mr. Trippensee. You may step down for now and remain  
19 available for other topics.

20 I think we're ready to move on to  
21 depreciation, so this is a good time to take a break.  
22 So we'll come back at about ten till according to the  
23 clock in the room which is different than the clock  
24 on the computer.

25 (A RECESS WAS TAKEN.)

1 JUDGE DIPPELL: Okay. Let's go ahead  
2 and go back on the record. The weather's getting bad  
3 outside, and we talked about trying to get through a  
4 little bit more and then recessing until at least  
5 late tomorrow morning. I'll reassess that when we  
6 adjourn here today. And so let's try to keep things  
7 moving with our next witness. Depreciation. Atmos?

8 MR. FISCHER: Judge, we have listed as a  
9 witness, Jim Cagle. He's here mostly to answer any  
10 questions there might be about the depreciation  
11 stipulation. He did not file prefiled testimony and  
12 we wouldn't offer any, but if someone from the bench  
13 does have any questions about Atmos with respect to  
14 that, we'd be glad to put him up.

15 JUDGE DIPPELL: We don't have any  
16 questions on that today, but if -- it would be likely  
17 that those questions would be on Monday. Could  
18 Mr. Cagle be available Monday by phone?

19 MR. FISCHER: Yes, by phone he could be.

20 JUDGE DIPPELL: Ms. Shemwell?

21 MS. SHEMWELL: Judge, we're prepared,  
22 then, to bring Guy Gilbert to the stand if you don't  
23 have any questions for Mr. Cagle.

24 JUDGE DIPPELL: Okay. Were there any  
25 other cross-examination questions for Mr. Cagle?

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1 MR. POSTON: No, your Honor.

2 JUDGE DIPPELL: Okay. Let's go ahead  
3 then with Mr. Gilbert. I guess Mr. Cagle -- there  
4 could be questions tomorrow for Mr. Cagle, but I  
5 believe that being available by telephone would be  
6 sufficient.

7 (The witness was sworn.)

8 JUDGE DIPPELL: Ms. Shemwell?

9 MS. SHEMWELL: Thank you.

10 DIRECT EXAMINATION BY MS. SHEMWELL:

11 Q. I understand we have agreed to dispense  
12 with the name and so on. Mr. Gilbert, did you file  
13 testimony in this case that has been marked as  
14 Exhibits 107 for your direct, 108 for your rebuttal  
15 and 109 for surrebuttal?

16 A. I have.

17 Q. Do you have any corrections to your  
18 testimony?

19 A. I do.

20 Q. Would you please tell those to the  
21 reporter?

22 A. On my direct testimony, Exhibit No. 107  
23 at page 1, line 23, the word deprecation should be  
24 "depreciation" with the insertion of an i.

25 Q. Is that Exhibit 107?

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1           A.       Yes.

2           Q.       Thank you.

3                   JUDGE DIPPELL:  I'm sorry.  Could you  
4 tell me the page and line again?

5                   THE WITNESS:  Page No. 1, line 23.

6                   JUDGE DIPPELL:  Thank you.

7                   THE WITNESS:  And then again at page 6,  
8 line 23, the last line there, Schedules 2 and 3  
9 should say "Schedules GCG 2 and 3."

10                  And then again at page 8, line 22, the  
11 same modification, Schedules 2, 3 and 4 should read  
12 "Schedules" -- excuse me, "Schedules GCG 4, 5 and 6."

13                  And then with respect to my rebuttal  
14 testimony, Exhibit No. 108 at page 2, line 6, the  
15 word savage should read "salvage."

16 BY MS. SHEMWELL:

17           Q.       Spell check doesn't pick those up.

18           A.       And that's all I'm aware of at this  
19 time.  Thank you.

20           Q.       Mr. Gilbert, is your testimony, then,  
21 true and correct to the best of your knowledge and  
22 belief?

23           A.       I believe so, yes.

24                   MS. SHEMWELL:  I will tender the witness  
25 for cross, Judge.  Thank you.



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1 JUDGE DIPPELL: Are you offering those  
2 exhibits?

3 MS. SHEMWELL: Yes, I am offering the  
4 exhibits as corrected.

5 JUDGE DIPPELL: Is there any objection  
6 to Exhibits No. 107, 108 and 109?

7 (NO RESPONSE.)

8 JUDGE DIPPELL: Seeing none, then I will  
9 receive those into evidence.

10 (EXHIBIT NOS. 107, 108 AND 109 WERE  
11 RECEIVED INTO EVIDENCE AND MADE A PART OF THE  
12 RECORD.)

13 JUDGE DIPPELL: Is there any  
14 cross-examination by Atmos?

15 MR. FISCHER: No, thank you, your Honor.

16 JUDGE DIPPELL: Public Counsel?

17 MR. POSTON: Yes, thank you.

18 CROSS-EXAMINATION BY MR. POSTON:

19 Q. Mr. Gilbert, your prefiled testimony  
20 addresses the issue of depreciation, correct?

21 A. That's correct.

22 Q. And in your direct testimony you propose  
23 that the Commission order the continuation of Atmos's  
24 current depreciation rates with one exception, that  
25 being the Commission -- that the Commission use the

1 current Butler depreciation rates for Greeley; is  
2 that correct?

3 A. I believe that's correct, yes.

4 Q. And with the exception of Greeley, is  
5 your proposal that the Commission order the continued  
6 use of the depreciation rates that the Commission  
7 previously ordered for Atmos or the predecessor  
8 companies?

9 A. That's correct.

10 Q. So you're not recommending any changes  
11 to the depreciation rates?

12 A. Not to the depreciation rates, no.

13 Q. Isn't it true that you recommend using  
14 the current depreciation rates because Atmos failed  
15 to maintain sufficient plant data to enable the Staff  
16 to perform a detailed depreciation analysis?

17 A. That's correct. An actuarially-based  
18 detailed analysis, yes.

19 Q. I'd like to briefly go over some of that  
20 missing data. You testified Atmos provided its final  
21 submission of actuarial data in May 2006, but data on  
22 17 separate accounts was missing; is that correct?  
23 Page 6 of your direct.

24 A. There were 17 accounts missing from the  
25 data, yes, the actuarial data.

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1           Q.       And you also testified that a  
2   disproportionate amount of account transactions list  
3   2005 ending balances, correct?

4           A.       I thought that was true, yes.

5           Q.       What other items other than ending  
6   balances should have been shown for each account?

7           A.       Well, the major thing that I was seeking  
8   in the continuing property record was the retirement  
9   data.

10          Q.       And would additions, dates of removal --  
11   removal, cost for removal, were those things that you  
12   would want to see as well?

13          A.       They are.

14          Q.       And you also testified that there are  
15   problems in the net salvage data because the company  
16   does not maintain comprehensive retirements in the  
17   CPR as required, correct?

18          A.       Correct.

19          Q.       And you testified that because of the  
20   lack of data to perform an accurate depreciation  
21   analysis, it was not possible for Staff to accurately  
22   determine a theoretical reserve for each account,  
23   correct?

24          A.       That's true.

25          Q.       So would it be fair to say Staff cannot

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1 perform a detailed depreciation analysis because the  
2 underlying plant data is not known and measurable?

3 A. That's true.

4 Q. And how would you define the term "known  
5 and measurable"?

6 A. What we look for in the continuing  
7 property record -- and I believe that's outlined in  
8 my direct testimony -- let's see here -- at page 3,  
9 line 12. "What is the CPR and what is its purpose?"  
10 I detail the information that we look for to be part  
11 of the continuing property record of the company.

12 Q. Is concluding whether a cost is known  
13 and measurable a standard criteria when deciding  
14 whether a cost belongs in the company's overall cost  
15 of service?

16 A. That has often been a criteria in the  
17 past.

18 Q. Staff and Atmos have proposed a negative  
19 amortization of \$591,000, correct?

20 A. That's true.

21 Q. Have you been able to verify the  
22 accuracy of the -- of that figure through an analysis  
23 of Atmos's actuarial data and continuing property  
24 records?

25 A. No. I accepted management's recognition

1 and acknowledgment of an over-accrual of depreciation  
2 in that amount.

3 Q. Are you familiar with the Uniform System  
4 of Accounts?

5 A. I believe I am, yes.

6 Q. Could you please tell me what entries  
7 are made on the company's monthly financial records  
8 to record depreciation expense?

9 A. Not specifically. I'm not an  
10 accountant.

11 Q. If you don't understand how to make  
12 these basic entries, how are you qualified to testify  
13 that your recommendation doesn't take away amounts  
14 from the depreciation reserve?

15 A. The method that we've used to adjust the  
16 depreciation reserve, a negative amortization, is a  
17 method that we have often used to true up  
18 depreciation imbalances in previous cases.

19 Q. Are you familiar with the Uniform System  
20 of Accounts, account 403, depreciation expense?

21 A. I would -- 403, that's not a 300 series,  
22 so without referring to the Uniform System of  
23 Accounts, I can't, off the top of my head, unless  
24 it's in the schedule here. I have no accounts that I  
25 study that are numbered 403. They're all 300 series.

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1           Q.       Okay.  So you wouldn't also be familiar  
2   with account 108, cumulative provisions for  
3   depreciation of gas utility plant?

4           A.       I am aware that the depreciation  
5   accruals in aggregate are placed in that account.

6                   MR. POSTON:  I have copies of these  
7   accounts.  May I approach the witness?

8                   JUDGE DIPPELL:  Yes, go ahead.

9   BY MR. POSTON:

10          Q.       I've just handed you a description of  
11   account 403; is that correct?

12          A.       That's what it states, yes.

13          Q.       Okay.  And I believe on the second page  
14   there is a description of account 108; is that  
15   correct?

16          A.       Yes.

17          Q.       Could you please read -- or just read to  
18   yourself 403 and familiarize yourself with it?

19                   MS. SHEMWELL:  Judge, perhaps it would  
20   be helpful before we take the time to do this if we  
21   understood the relevance of the line of questions.

22                   JUDGE DIPPELL:  Mr. Poston?

23                   MR. POSTON:  The relevance is the proper  
24   accounting that needs to occur when the adjustments  
25   that he recommends are made.  These accounts are

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1 accounts that also need to be adjusted and it is  
2 relevant that we discuss those accounts.

3 JUDGE DIPPELL: Ms. Shemwell?

4 MS. SHEMWELL: I would just note that  
5 Mr. Gilbert has indicated that accounting is not his  
6 area of expertise, and it's possible that these might  
7 be areas to be discussed with a witness who is an  
8 accounting expert.

9 JUDGE DIPPELL: I think that may be the  
10 point Mr. Poston is trying to make.

11 MS. SHEMWELL: See, I just -- I just saw  
12 what he was going to hand him, so I don't have the  
13 opportunity to sit here and read it myself, so I  
14 can't really know. I guess I could look over  
15 Mr. Gilbert's shoulder, but --

16 JUDGE DIPPELL: I'm going to allow him  
17 to ask questions, but please, let's do cut out  
18 anything that we don't really need.

19 MR. POSTON: Okay.

20 BY MR. POSTON:

21 Q. Would you be able to answer this  
22 question: When a monthly depreciation expense is  
23 recorded in account 403, is that account credited or  
24 debited?

25 A. I wouldn't be able to answer that.

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1           Q.       On account 108, same question: When  
2 monthly depreciation expense is recorded, is that  
3 account credited or debited?

4           A.       I'm not able to answer that question. I  
5 don't know when the records of entry were made.

6           Q.       So would you know what financial  
7 statement account 108 would appear in the company's  
8 records?

9           A.       No, I wouldn't.

10          Q.       Will the current depreciation rates that  
11 you propose be applied to plant and service as of  
12 June 30th, 2006 on a going-forward basis until such  
13 time as that plant is retired or the Commission  
14 authorizes new depreciation rates?

15          A.       I don't know what date the rates would take  
16 place per the Commission's orders in this case, so...

17          Q.       If June 30th, 2006 was the update date  
18 for the Staff's determination of rate base, would  
19 that help?

20          A.       I'm the depreciation analyst. I'm kind  
21 of like a life insurance agent. I look at the  
22 utilities's plant and equipment and determine the  
23 serviceability of it and how long it's gonna live and  
24 be used and useful, and then pass those rates on and  
25 any total amounts adjustments that I believe are



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1 necessary to bring the reserves back into line, so...

2 Q. Okay. Do you understand or do you know  
3 the formula used to calculate depreciation expense?

4 A. There's several different methods, yes.

5 Q. Would you agree that the formula -- that  
6 one formula would be to calculate depreciation  
7 expense is to multiply plant and service by the  
8 depreciation rate?

9 A. Yeah, that's how the depreciation rate  
10 is used, uh-huh.

11 Q. And mathematically, can we also  
12 determine the depreciation rate by dividing the  
13 depreciation expense by plant and service?

14 A. I believe that's correct.

15 Q. And you say your policy would lower  
16 depreciation expense; is that correct?

17 A. There would be a reduction to the  
18 aggregate depreciation expense, yes.

19 Q. Is the negative amortization the Staff  
20 recommends dependent on the level of depreciation  
21 expense that is recorded each month?

22 A. I don't know that the number I produce  
23 is on an annual basis.

24 Q. Do you believe this Commission must  
25 authorize Atmos to utilize specific depreciation

1 rates that will apply against monthly plant and  
2 service balances to determine monthly depreciation  
3 expense?

4 A. The rates I provide are for an annual  
5 accrual.

6 Q. Do you believe this Commission must  
7 authorize the negative amortization in order for  
8 Atmos to record this -- the reduction of what you  
9 term net accrual in your surrebuttal testimony?

10 A. Could you rephrase the question, please?

11 Q. The question is, do you believe this  
12 Commission must authorize the negative amortization  
13 in order for Atmos to record the reduction in what  
14 you term net accrual, on page 2 of your surrebuttal?

15 A. I believe in reference to your question  
16 in my rebuttal testimony at page 1, line 18, the  
17 question, "Are there any clarifications, explanations  
18 or amplifications that you would like to provide to  
19 the Commission at this time with respect to your  
20 testimony," I answered, "The only additional  
21 clarification and explanation I would like to offer  
22 is that Atmos management accepted in its own  
23 depreciation consultant's recommendation that as a  
24 whole, the annual depreciation accrual should be  
25 reduced by approximately \$591,000. This reduction

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1     should be facilitated by a negative amortization to  
2     the depreciation reserve account in the amount of  
3     \$591,000 annually."

4                     And then I go on, "Furthermore," if  
5     you'd like me to read. But this is a common  
6     mechanism that we've used in depreciation  
7     amortizations on an annual basis, either positive or  
8     negative, to true up the aggregate reserve for  
9     depreciation.

10            Q.     The question was, do you believe the  
11     Commission must authorize the negative -- sorry. Do  
12     you believe the Commission must authorize the  
13     negative amortization in order for Atmos to record  
14     this reduction in what you term "net accrual"?

15            A.     The Commission's the ruling authority  
16     with respect to the issues in this case, so to the  
17     extent that this is a question that they've been  
18     asked to decide, I believe that would be the case. I  
19     mean, they are the authority.

20                     MS. SHEMWELL: It seems to me Mr. Poston  
21     is asking a question about recording, which I'm not  
22     understanding. Perhaps that's an accounting question  
23     in order for them to record it in their books.

24                     MR. POSTON: I'm ready to move on.

25                     JUDGE DIPPELL: Okay. Thank you.

1 BY MR. POSTON:

2 Q. Is it Staff's position that the  
3 Commission's authorization of specific depreciation  
4 rates is dependent on the Commission also authorizing  
5 the negative amortization?

6 A. I think the Commission has -- has the  
7 authority to choose all or part of any decision.

8 Q. If the Commission rejects your negative  
9 amortization proposal, do you still recommend keeping  
10 current depreciation rates?

11 A. I do.

12 Q. And has that been an agreement of the  
13 parties, I believe, keeping the current depreciation  
14 rates?

15 A. I believe so with the partial  
16 stipulation and agreement -- nonunanimous partial  
17 stipulation and agreement which I've reviewed earlier  
18 today, that is the case, true.

19 Q. Would Staff's proposed negative  
20 amortization change from the \$591,000 amount as a  
21 result of new plan additions subsequent to June 30th,  
22 2006?

23 A. It is a fixed amortization until such  
24 time as the Commission would rule otherwise.

25 Q. And do you know what accounts will be

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1 credited to record the 591,000 on the company's  
2 financial records?

3 A. The aggregate account that I spoke of  
4 earlier that I believe that all the depreciation  
5 accruals went into, that would be the account 108,  
6 but again, I'm not an accountant.

7 Q. So you wouldn't then know what account  
8 would be debited to record that same...

9 A. No, I would not.

10 Q. Is the recording of depreciation expense  
11 based on monthly plant and service balances and  
12 currently approved depreciation rates?

13 A. I think I've answered that earlier in  
14 that the depreciation rates that I developed are  
15 based upon an annual basis. So, you know, frequency  
16 of their booking, again, that's not something I'm  
17 really involved with or privy to.

18 Q. Is the depreciation expense a static  
19 number or does it change from month to month as a  
20 plant is added or retired?

21 A. Well, I would think that -- well, again,  
22 you're talking on a monthly basis, and the rates I  
23 come up with are annual rates. But to the extent  
24 that they have added plant over the course of a year,  
25 yeah, I would think that there would be more

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1 depreciation accrued then.

2 And likewise, if they retired a plant,  
3 there would be, likewise, a deduction in the amount  
4 of plant and service. And that's part of the  
5 actuarial life characteristics that we get into in  
6 depreciation.

7 Q. Would you agree that accumulated  
8 depreciation is a reduction to rate base under  
9 traditional regulatory procedures advocated by Staff  
10 and used by this Commission?

11 A. I believe that's the case.

12 Q. I'm sorry?

13 A. Yeah, I believe that's the case, uh-huh,  
14 yes.

15 Q. Thus, rate base would be larger in the  
16 future absent Commission authorization of a negative  
17 reserve?

18 A. I'm not sure I understand.

19 Q. I'll move on. Are you familiar with the  
20 terms "return on" and "return of" capital?

21 A. I've heard them used before, yes.

22 Q. Would you agree that depreciation  
23 expense represents a return of the capital investment  
24 in plant and service from the ratepayers to the  
25 company?

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1           A.       That's true.

2           Q.       Would you agree that until such time  
3   that the ratepayers provide a return of the capital  
4   investment that the ratepayer provides a return on  
5   the capital investment through the overall rate of  
6   return?

7           A.       That is also true as I understand it,  
8   yes.

9           Q.       Would you agree that rate base  
10   represents the capital investment of the company used  
11   to provide regulated natural gas service to  
12   Missourians?

13          A.       As I understand it, yes.

14          Q.       You've also agreed that plant and  
15   service is included in the rate base?

16          A.       That's my understanding.

17          Q.       If future ratepayers are required to  
18   provide a return of capital and a return on capital  
19   as a result of the Commission authorizing a negative  
20   amortization in this case, given all things else  
21   being equal, wouldn't future ratepayers have higher  
22   rates incrementally as it relates to the increase in  
23   rate base resulting from the negative amortization?

24          A.       Well, I think that gets back to my  
25   direct testimony, and kind of one of the cruxes of

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1 the problem that's brought us here to begin with is  
2 that given the lack of an actuarial database to work  
3 from and study what the appropriate depreciation  
4 rates should be, we don't know whether those rates  
5 would be higher or lower in the future. So it would  
6 be a matter of conjecture to say whether it would be  
7 more or less in the future.

8 Q. But you've simply accepted the 591,000  
9 based on what Atmos's management believes is  
10 appropriate?

11 A. Right. Because I see that, I view that  
12 as an immediate relief to the current ratepayers in  
13 that it reduces their depreciation expense by  
14 \$591,000 per year. Now, granted, it's going to  
15 increase the amount of rate base that consumers are  
16 going to pay a return on.

17 However, if we were to use an example of  
18 10 percent for the return on equity for that  
19 additional \$591,000 of rate base, it would cost them  
20 \$59,100 a year as opposed to the savings of \$591,000  
21 a year in depreciation expense. So the difference of  
22 those two would be the net savings to the current  
23 ratepayers.

24 Q. Will the future ratepayers have to repay  
25 that 591,000?



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1           A.       At some rate of depreciation.

2           Q.       The answer is yes, they will have to  
3    repay that?

4           A.       Yes.

5                   MR. POSTON:  Thank you.  That's all I  
6    have.

7                   JUDGE DIPPELL:  Thank you.  Are there  
8    any questions from the bench of Mr. Gilbert?  
9    Commissioner Appling?

10                  COMMISSIONER APPLING:  No questions.

11                  JUDGE DIPPELL:  All right.

12    QUESTIONS BY JUDGE DIPPELL:

13           Q.       Mr. Gilbert, you testified about what  
14    you believe is a violation of the Commission rule  
15    with regard to the recordkeeping.

16           A.       That's correct.

17           Q.       And on page 2 of your direct testimony,  
18    is it Staff's position that the Commission should  
19    authorize Staff to seek penalties or to pursue a  
20    complaint if Staff deems it necessary?  Is that what  
21    you're asking there?

22           A.       During prehearing negotiations, the  
23    company expressed a ready willingness to work with  
24    Staff to come into compliance with the Commission's  
25    rules.  However, based upon the Commission's order or

1     whatever, essentially that item does remain on the  
2     table.

3                     JUDGE DIPPELL:   Okay.   All right.  
4     That's all I have.   Is there any cross-examination,  
5     based on that question, from Atmos?

6                     MR. FISCHER:   Yes, your Honor.

7     CROSS-EXAMINATION BY MR. FISCHER:

8             Q.       Mr. Gilbert, you mentioned the partial  
9     nonunanimous stipulation and agreement in your  
10    discussion earlier today, but isn't it correct that  
11    the depreciation recordkeeping and reporting issue  
12    has been settled between Staff and Atmos and Public  
13    Counsel in this case now?

14            A.       For purposes of the stipulation and  
15    agreement, we are going to meet and work together and  
16    hopefully -- and it's intended by that, I believe, to  
17    have the issue resolved by the middle of 2007.

18            Q.       And assuming that that is done by June  
19    of 2007, won't that go a long way toward resolving  
20    any questions that there are related to the property  
21    records issued?

22            A.       I believe it would.

23            Q.       And that would also be true of the  
24    reverse amortization adjustment that's being proposed  
25    by Public Counsel?

1           A.       I'm not sure that I make the connection  
2     there.   In order for the amortization to be relieved,  
3     I believe it would be necessary for the Commission to  
4     order new depreciation rates.

5           Q.       And that will happen following the June  
6     property updates; is that your understanding?

7           A.       That becomes a matter of case, but I  
8     don't know if we would have to file with the  
9     Commission for rates that would reflect that.   I'm  
10    sorry.   That's not my --

11          Q.       But at some point that could happen in  
12    the future, though; is that right?

13          A.       I would believe so, yes.

14                 MR. FISCHER:   I think that's all I have,  
15    Judge.   Thank you.

16                 JUDGE DIPPELL:   Thank you.   Is there  
17    anything further from Public Counsel?   Or I'm sorry.  
18    Yes, from Public Counsel?

19                 MR. POSTON:   No, thank you.

20                 JUDGE DIPPELL:   Is there redirect?

21                 MS. SHEMWELL:   Yes, briefly, thank you.

22    REDIRECT EXAMINATION BY MS. SHEMWELL:

23          Q.       Mr. Gilbert, are you simply accepting  
24    the problems with recordkeeping that this company  
25    has?

1           A.       No, I am not.

2           Q.       And what is your plan of action?

3           A.       Well, the plan of action is, as I laid  
4 out in my direct testimony, would be to fulfill the  
5 requirements of the Commission's rules, and I think  
6 I've laid those out with respect to the requirements  
7 for the continuing property record and timely  
8 recordkeeping and so forth.

9                    I think it's further explored and  
10 explained in the nonunanimous stipulation and  
11 agreement where it produces a timeline with which  
12 these goals would be met.

13          Q.       If they're not met?

14          A.       The Staff would then have the option to  
15 pursue another course of action.

16          Q.       I was hearing an implication that either  
17 customers might double-pay for depreciation or Atmos  
18 might double-recover. Is that your understanding?

19          A.       No, I don't believe that's the case.

20          Q.       Do you believe that customers benefited  
21 from your suggested reduction?

22          A.       Yes, I think that the customers would  
23 see an immediate benefit in the reduction.

24          Q.       Can you quantify that benefit?

25          A.       The \$591,000 in negative amortization to

1 the depreciation expense.

2 Q. I'd like to clarify, for all of the rate  
3 base questions. Do you consider yourself a rate base  
4 expert?

5 A. No, I do not.

6 Q. You have said that there would be a  
7 repayment at some rate of depreciation. Would you  
8 say what you mean by repayment?

9 A. Yeah, let me clarify that. As  
10 Mr. Fischer, I believe, pointed out, is that once  
11 Atmos has adequate records in place, the depreciation  
12 study can be conducted. Staff and the company  
13 would be able to conduct a depreciation analysis and  
14 arrive at what would be true and correct, we would  
15 believe to be true and correct depreciation rates  
16 for those plant and equipment serving Atmos customers  
17 at that time, at which the appropriate return of  
18 the investment could be made to the Atmos  
19 stockholders.

20 Q. I may be misremembering, but I thought  
21 earlier you said a return on investment. But you're  
22 clarifying that it's a return of?

23 A. Yes. Hopefully, I didn't misspeak, but  
24 the depreciation end of things is the return of the  
25 investment.

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1           Q.       Can you speculate as to what that will  
2   be?

3           A.       No, I cannot.

4                   MS. SHEMWELL:   That's all I have.   Thank  
5   you.

6                   JUDGE DIPPELL:   Okay, then.

7   Mr. Gilbert, I believe that's all the questions for  
8   you today.   The other Commissioners could have some  
9   questions for you, and so I'll ask you to remain  
10  available on future days.

11                  THE WITNESS:   Thank you.   I will.

12                  JUDGE DIPPELL:   Okay.   We need to take a  
13  quick break for the court reporter.   So let's take  
14  about a five to seven-minute break and come back at  
15  25 till.

16                   (A RECESS WAS TAKEN.)

17                   (The witness was sworn.)

18                  JUDGE DIPPELL:   You can sit down,  
19  Mr. Trippensee.   You've been previously sworn.   We  
20  can go back on the record if I didn't say that.  
21  Okay.

22                   We had a little technical difficulty  
23  there, but the court reporter is gonna let me know if  
24  she has further difficulties.

25                   We are gonna go as long as we can,

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1 hopefully get through Mr. Trippensee. If -- we're  
2 gonna adjourn and reconvene tomorrow at 10:00 a.m. if  
3 we can. And I'm getting a calling conference call  
4 port, and I'll let you know as soon as I have the  
5 toll-free number in case we need to have some  
6 witnesses by phone or people listening in by phone  
7 tomorrow.

8 Mr. Trippensee, you were previously  
9 sworn, and on the issue of depreciation your exhibits  
10 have already been admitted. Is there  
11 cross-examination from Atmos?

12 MR. FISCHER: No, thank you, your Honor.

13 JUDGE DIPPELL: From Staff?

14 MS. SHEMWELL: Briefly. Thank you, your  
15 Honor.

16 CROSS-EXAMINATION BY MS. SHEMWELL:

17 Q. Mr. Trippensee, I have a question.  
18 Mr. Gilbert has recommended a reduction in  
19 depreciation reserve, correct? Is that your  
20 understanding?

21 A. A reduction in the depreciation reserve,  
22 that is correct.

23 Q. And it is only on a going-forward basis,  
24 correct?

25 A. That is correct.

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1           Q.       And past customers have paid what  
2 they've paid, right?

3           A.       Past customers will have paid those  
4 monies that he's now wishing to funnel back to  
5 current --

6           Q.       My question was, they've paid what  
7 they've paid, right?

8           A.       I am just answering your question.

9           Q.       And the reserve will continue to grow,  
10 correct, because the total depreciation is greater  
11 than the 591,000?

12          A.       On a net basis the reserve will continue  
13 to grow.

14                   MS. SHEMWELL: Thank you. That's all I  
15 have.

16                   JUDGE DIPPELL: Okay. Commissioner  
17 Appling, do you have any questions for  
18 Mr. Trippensee?

19                   COMMISSIONER APPLING: No questions at  
20 this time.

21                   JUDGE DIPPELL: Okay. Give me just a  
22 moment. I have one. Never mind. I believe my  
23 question's already been answered, Mr. Trippensee. So  
24 is there any redirect?

25                   MR. POSTON: Yes, your Honor.



1 REDIRECT EXAMINATION BY MR. POSTON:

2 Q. Ms. Shemwell asked you a question about  
3 reduction in depreciation reserve going forward.

4 A. Yes.

5 Q. Do you have any concerns with that?

6 A. Yes, I do.

7 Q. Can you please explain that?

8 A. Yes, I can. The depreciation reserve  
9 represents the accumulated payments of ratepayers of  
10 the return of plant investment of the company. Staff  
11 is proposing, without any support, I think, as even  
12 Mr. Gilbert support -- or testified to today, to take  
13 some of those monies and return it to current  
14 ratepayers in the next year.

15 But what that does not point out is that  
16 future ratepayers, after that first year, are going  
17 to have to repay all \$591,000, and until such time as  
18 those amounts are repaid, they will also have to pay  
19 a return on that \$591,000. This also effectively  
20 results in the company having to reinvest in this  
21 company in this rate base by \$591,000 because the  
22 capital structure has to support the rate base.

23 If you increase rate base, the company  
24 has to have either debt or equity that supports it.  
25 So Staff's position is effectively forcing the

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1 company to reinvest and then have the ratepayers,  
2 somewhere down the line, repay them. They -- the  
3 Staff is taking two separate adjustments, one, their  
4 depreciation expense based on depreciation rates that  
5 they're -- that I believe Mr. Gilbert stated were  
6 independent, would be the rates be used regardless of  
7 the 591,000.

8                   And then they get that number which is  
9 about \$3.3 million -- I believe that's right. It  
10 happens to be about what the company asks for. They  
11 are not the same. And then also then netting it  
12 against this other -- this negative amortization, and  
13 therefore saying gee, the reserve overall will  
14 continue to grow.

15                   Unfortunately, the two adjustments are  
16 separate and distinct, I think, as Mr. Gilbert  
17 recognized when he said that he recommended those  
18 rates if the Commission rejected the negative  
19 amortization.

20                   So simply by netting it together and  
21 squishing it and making it appear as it's not there  
22 doesn't change the underlying factors of what is  
23 causing it. Right now, that \$591,000 of negative  
24 amortization is effectively -- is based on the  
25 comparison of a theoretical reserve to what the

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1 actual reserve is.

2 I believe I heard Mr. Gilbert say he  
3 couldn't calculate the theoretical reserve. That  
4 does not rise to the level, then, of being a known  
5 measurable adjustment that this Commission should  
6 accept rates on.

7 MR. POSTON: Thank you. That's all I  
8 have.

9 JUDGE DIPPELL: All right. Thank you,  
10 Mr. Trippensee. There may be additional questions on  
11 this topic from the other Commissioners at a later  
12 time.

13 THE WITNESS: Fine.

14 JUDGE DIPPELL: Okay. Can we go ahead  
15 and begin with Mr. Smith and get to his -- get his  
16 testimony in the record and so forth?

17 MR. FISCHER: Yes.

18 (The witness was sworn.)

19 JUDGE DIPPELL: Thank you. And is  
20 this the only day that Mr. Smith is scheduled to  
21 testify?

22 MR. FISCHER: I believe so, yes.

23 JUDGE DIPPELL: Okay. Let's go ahead  
24 with him. Maybe we'll see how it goes. Maybe we can  
25 get finished with him today too.

1 DIRECT EXAMINATION BY MR. FISCHER:

2 Q. Mr. Smith, just for your information,  
3 your direct testimony has been marked as Exhibit  
4 No. 2, your rebuttal has been marked as No. 3 and  
5 your surrebuttal has been marked as No. 4. Do you  
6 have any changes or corrections you need to make to  
7 any of those exhibits?

8 A. No, I do not.

9 MR. FISCHER: With that, your Honor, I  
10 would move for the admission of Exhibits 2, 3 and 4  
11 and tender Mr. Smith for cross-examination.

12 JUDGE DIPPELL: Is there any objection  
13 to Exhibit 2, 3 and 4?

14 MR. BERLIN: No, your Honor.

15 JUDGE DIPPELL: Seeing none, then I will  
16 admit it into evidence -- or admit those into  
17 evidence.

18 (EXHIBIT NOS. 2, 3 AND 4 WERE RECEIVED  
19 INTO EVIDENCE AND MADE A PART OF THE RECORD.)

20 JUDGE DIPPELL: Is there any  
21 cross-examination from Staff?

22 MR. BERLIN: Yes, your Honor. I just  
23 have a couple quick questions.

24 CROSS-EXAMINATION BY MR. BERLIN:

25 Q. Mr. Smith, do you have any studies or

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1 any opinion on the amount of gas consumption of  
2 low-income consumers?

3 A. No, I do not, no.

4 Q. Is there someone in the company who  
5 might have knowledge of that?

6 A. You can refer the question to Mr. Ellis  
7 later. I'm not certain that we've done any studies  
8 in Missouri. I believe we may have evaluated it a  
9 little bit in some other states.

10 MR. BERLIN: All right. Thank you. I  
11 have no further questions, your Honor.

12 JUDGE DIPPELL: Thank you. Public  
13 Counsel?

14 MR. POSTON: No questions, thank you.

15 JUDGE DIPPELL: Commissioner Appling, do  
16 you have any questions for Mr. Smith?

17 COMMISSIONER APPLING: No questions for  
18 Mr. Smith.

19 QUESTIONS BY JUDGE DIPPELL:

20 Q. Okay. Mr. Smith, you mentioned page 3  
21 of your surrebuttal testimony, the Missouri Energy  
22 Task Force and their adoption of the National Energy  
23 Action Plan for Energy Efficiency?

24 A. What page did you say, please?

25 Q. On page 3.

0214

1           A.       Okay.

2           Q.       Are you familiar with the makeup of the  
3   Missouri Energy Task Force?

4           A.       No, other than to see that resolution.

5           Q.       Okay.  And on page 5 of your rebuttal  
6   testimony, can you explain to me how you arrived at  
7   the 75 percent on line 7?

8           A.       Basically what we did there was we  
9   agreed with Staff witness Ross's calculations, and  
10   this was our methodology used to arrive at a  
11   potential structure that would be what we referred to  
12   as sculpting the delivery charge.

13                   And the 75 percent was not a real  
14   scientific approach, but what we were looking for  
15   more or less was a summer charge that we felt  
16   wouldn't drive behavior of customers that otherwise  
17   would probably turn off service.  We felt like it was  
18   a little bit closer what the customer -- the  
19   customers would be familiar with in the way we  
20   collected margins under traditional rate designs to  
21   these classes, and -- but yet, still, probably as  
22   Staff is seeking lowering their winter bills.

23                   So we took the 75 percent of the  
24   computed charge by Ms. Ross, made that the summer  
25   rate, and then for the five winter months of November

0215

1 through March, backed into the remainder to equal her  
2 total revenue for that residential class.

3 JUDGE DIPPELL: Okay. That's all the  
4 questions I have for you. Are there any  
5 recross-examination questions from Staff?

6 MR. BERLIN: No, your Honor.

7 JUDGE DIPPELL: Public Counsel?

8 MR. POSTON: No, thank you.

9 JUDGE DIPPELL: Is there any redirect?

10 MR. FISCHER: Just briefly.

11 REDIRECT EXAMINATION BY MR. FISCHER:

12 Q. The judge asked you about low-income  
13 usage. Are you familiar with the testimony of Public  
14 Counsel witness Barb Meisenheimer who addressed that  
15 topic earlier today?

16 A. I have read her testimony, yes.

17 Q. Do you recall that she indicated that  
18 her study showed that low-income was the equivalent  
19 of the average use in all of the Atmos districts?

20 A. I do recall that, yes.

21 Q. Okay. And I'm not sure that this  
22 addresses just low income, but I'd like to show you  
23 an exhibit that's attached to Pat Childers'  
24 surrebuttal testimony that talks about the average  
25 annual CCF.

0216

1                   MR. FISCHER: May I approach the  
2 witness?

3                   JUDGE DIPPELL: Yes.

4                   MR. POSTON: Your Honor, I have an  
5 objection. I'm not sure how this is based off of a  
6 question that came from the bench.

7                   JUDGE DIPPELL: Mr. Fischer?

8                   MR. FISCHER: Well, your Honor, the  
9 evidence seems to be that the average -- the low-  
10 income has the same usage levels as the average  
11 customer. I was about to put in front of him the  
12 testimony that shows what the average usage is in our  
13 different districts.

14                  JUDGE DIPPELL: And that's based on  
15 cross questions?

16                  MR. FISCHER: It's based on your  
17 question about low-income usage.

18                  JUDGE DIPPELL: Oh, okay. Well, my  
19 question had to do with the 75 percent.

20                  MR. FISCHER: Perhaps I'm thinking of a  
21 cross question then. Okay. I will withdraw that  
22 question then.

23                  JUDGE DIPPELL: Okay. Well, you're --  
24 you're allowed to redirect.

25                  MR. FISCHER: Okay. Well, I guess



0217

1 that's right, then. If it's redirect I can go ahead  
2 and do that.

3 MR. POSTON: My apologies.

4 JUDGE DIPPELL: Okay.

5 BY MR. FISCHER:

6 Q. I'd like to show you the PJC surrebuttal  
7 two, pages 1 of 2, and ask you just to read into the  
8 record the average annual usage for each of the --  
9 for residential classes for each of our districts.

10 A. I knew I would regret not bringing my  
11 glasses to the stand, but I can --

12 Q. I've got 150s. Will that do?

13 A. Yes, it will do. It will actually do  
14 perfectly. Yeah, this will be fine. Okay. The  
15 average residential CCF annually in the Butler  
16 division was 761 CCF; in division 29 it was 747 CCF;  
17 in Kirksville, 771; division 97 is 793; division 97  
18 of -- UCG portion of division 97 is 817, and the  
19 southeast Missouri division is 638.

20 MR. FISCHER: Thank you. That's all I  
21 have.

22 JUDGE DIPPELL: Thank you. All right.  
23 Mr. Smith, again, there may be additional questions  
24 from the other Commissioners so I won't excuse you  
25 completely, but if you are going to be available

0218

1 tomorrow?

2 THE WITNESS: I will be.

3 JUDGE DIPPELL: That will be fine. If  
4 you need to be available by telephone, that will be  
5 fine as well.

6 MR. BERLIN: Judge?

7 JUDGE DIPPELL: I'm sorry.

8 MR. BERLIN: Just for purposes of  
9 clarity -- and I'm just gonna ask the question and  
10 ask you to rule on it -- but Mr. Smith just read into  
11 the record the CCF average annual usage from some  
12 prefiled testimony, and he used some terms that we  
13 had not discussed here today, such as division 29,  
14 division 97, the old UCG.

15 Perhaps you might be able to say if  
16 that's just exactly what that is based on how he's  
17 been identifying these districts. This is just for  
18 purposes of clarity.

19 JUDGE DIPPELL: That is a good idea.

20 QUESTIONS BY JUDGE DIPPELL:

21 Q. I believe it's in Ms. Childers'  
22 testimony but...

23 A. I would need that.

24 Q. If you could just clarify that for this  
25 portion.

0219

1           A.       Okay. It would appear that division 71  
2   that I referred to is the Butler division -- or the  
3   Butler district. Division 29 is the Greeley area.  
4   I'm not sure if this is helping or not.

5                   MR. BERLIN: I think it is. Go ahead.

6                   THE WITNESS: Okay. Thank you. The  
7   70 I've already identified as the Kirksville  
8   division. As division 79 -- I'm looking at the cross  
9   tabs here. I'm sorry. That's 97. I'm sorry. 97,  
10   Palmyra.

11                  MR. BERLIN: That's division what,  
12   Palmyra?

13                  THE WITNESS: Palmyra, division 97,  
14   Palmyra. That was the 793 CCF. The 817 was in  
15   division 97 UCG, or Neelyville. And then finally,  
16   division 72, southeast Missouri, is referred to as  
17   the southeast district.

18                  JUDGE DIPPELL: Did that help,  
19   Mr. Berlin?

20                  MR. BERLIN: Yes, thank you.

21                  JUDGE DIPPELL: Okay. Thank you. You  
22   may be excused for now, Mr. Smith, subject to being  
23   available later for additional Commission questions,  
24   if any.

25                  THE WITNESS: That's fine. Thank you.

0220

1                   JUDGE DIPPELL: Okay. I think that  
2 we're gonna call it a day. And I do have an 800  
3 number, and I've made some copies and I'll get those  
4 to you if counsel could give me their contact  
5 information in case the weather should be so  
6 awful that we'd need to cancel completely tomorrow.  
7 Thank you, all, and be careful this evening.

8                   We can go off the record.

9                   (WHEREUPON, the hearing of this case was  
10 recessed until December 4, 2006.)

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