

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of Atmos Energy Corporation's)
Tariff Revision Designed to Consolidate Rates)
and Implement a General Rate Increase for)
Natural Gas Service in the Missouri Service)
Area of the Company.)

Case No. GR-2006-0387
Tariff No. YG-2007-0602

**PUBLIC COUNSEL’S RESPONSE TO THE ANNUAL REPORT
OF ATMOS ENERGY CORPORATION REGARDING THE FIXED
DELIVERY CHARGE RATE DESIGN AND ITS IMPACT ON
ENERGY EFFICIENCY AND CONSERVATION**

COMES NOW the Office of the Public Counsel (Public Counsel) and states:

1. On November 24, 2008, Atmos Energy Corporation (“Atmos”) filed its Annual Report of Atmos Energy Corporation Regarding the Company’s Fixed Delivery Charge Rate Design and its Impact on Energy Efficiency and Conservation (“Report”). Atmos filed its Report in response to the Commission’s February 22, 2007 *Report and Order* directing Atmos to “file on an annual basis a report with the Commission for the purpose of evaluating the effect of a fixed delivery charge rate design on energy efficiency and conservation.”¹

2. Atmos’ Report includes Atmos’ claims that the straight-fixed variable (SFV) rate design, as opposed to the conservation programs ordered by the Commission, has proven to be beneficial to Atmos’ consumers. Due to Atmos’ efforts to bolster the Commission’s acceptance of the SFV in the future, which Public Counsel has repeatedly

¹ The Commission’s *Report and Order* was recently reversed by the Circuit Court of Cole County and the case is now on appeal in the Court of Appeals, Western District. The Circuit Court concluded that the *Report and Order* was based on insufficient evidence regarding the impact of the SFV rate design and that the SFV rate design discriminates against low-volume consumers.

argued is against the public interest and harmful to low-volume and low-income gas consumers, Public Counsel offers the below responses to Atmos' Report.

3. Atmos' claim that the SFV rate design has achieved energy efficiency and conservation successes ignores the fact that it was a Commission mandate that these programs be implemented that truly created the energy efficiency and conservation programs. The Commission could have just as easily ordered that these programs be implemented by Atmos, in collaboration with the Staff, Public Counsel, and DNR with a different rate design, and one that does not include an inappropriate shift of cost responsibility from residential and small general service customers with above average usage to residential and small general service customers with below average usage. The argument that the SFV rate design has "aligned the interests of the customers and the Company" overstates the reality that the SFV rate design will at best make Atmos indifferent towards sales volumes, while consumers generally prefer lower bills. The energy efficiency and conservation programs could have been implemented and administered by a directive of the Commission without the drastic move to abandon the traditional rate design for an untested and inequitable SFV rate design.

4. The Commission recognized in its *Report and Order* that Atmos' previous rate design that had a lower fixed charge and a higher volumetric-based charge was "designed with a conservation incentive 'built in' that the less gas a customer uses the less that customer will pay." To counter this lost incentive, the Commission found that "a conservation program of significant size would be necessary to offset any loss of traditional rate design conservation incentive." Missing from Atmos' Report is a study that allows the Commission to determine the extent to which the lost conservation

incentive, which has reduced the conservation incentive for *every* Atmos customer, has been sufficiently offset through the energy efficiency and conservation programs. The Report simply reports on Atmos' expenditures without an analysis of the impact of (1) the reduced price signal to conserve that consumers receive from a lower rate per unit of consumption and (2) the energy efficiency and conservation programs.

5. Atmos identifies 12 homes that were weatherized, with 6 others in the process of being weatherized. Atmos states that after two years, Atmos will be able to report on the energy savings experienced by these customers. Atmos also identifies 46 customers that received rebates for purchasing high efficiency space heating equipment. While the impact of Atmos' efforts may prove beneficial to these 64 homes, an analysis of the energy efficiency programs and the SFV rate design that complies with the Commission's *Report and Order* would need to determine the overall net impact on all Atmos customers. The incentive to conserve was reduced for every Atmos customer with the SFV rate design, and until Atmos can prove that the decreased conservation incentive created by the SFV rate design has been truly offset, the Commission lacks sufficient data to conclude that customers have not been harmed.

6. Atmos claims that the fixed delivery charge assisted consumers by shifting costs from the winter months to the summer months, thus lowering winter bills. It is misleading to claim that the SFV bill averaging effect has provided a benefit since bill averaging was already available to consumers through the Atmos level payment plan. In fact, the level payment plan is more effective at smoothing out winter and summer bills since it includes the entire bill, not just the approximate 20% of the bill covered by the fixed delivery charge as claimed by Atmos in its Report. By increasing energy costs for

every consumer in the summer months, consumers on limited fixed incomes and that were not on a level bill payment plan may now find it more difficult to pay high summer electric bills (due to air conditioning usage) coupled with an increased gas energy bill.

7. Atmos provides a chart on page 7 of its Report that purports to show increased stability and lower winter bills. Again, this chart does not provide any valuable information regarding consumer benefits since the benefit already existed. Furthermore, the chart appears to only include margin revenues, and not gas cost revenues that make up the large majority of a customer's bill (80% by Atmos' calculation). If gas cost revenues were included, the Commission would see the large fluctuations between winter and summer bills that Atmos purports to have eliminated. Taking this into consideration, the level payment plan achieves a far greater leveling of bills and lowering of winter energy costs because it levels both gas costs and margin costs, not just the margin costs leveled by the SFV rate design.

8. Atmos claims that there were two primary concerns identified regarding the SFV rate design, without identifying who raised these concerns. The second of these concerns is "that the Company may experience an increased level of customers leaving the system". Atmos claims that this second concern has not materialized and that "the Company has not experienced greater customer attrition since the implementation of the fixed delivery charge." However, the numbers provided by Atmos show the exact opposite. Before the SFV rate design went into effect, Atmos experienced a loss of 633 customers per year. Following implementation of the SFV rate design, Atmos experienced an increase in this number to 733 customers lost during the year. This shows a disturbing trend of increased attrition, contrary to Atmos' characterization of the trend.

If this trend continues, the fewer remaining customers will experience increased customer cost responsibility to pay the costs for expenses such as distribution mains.

9. Atmos' Report fails to provide the meaningful analysis of the SFV rate design and its impact on energy efficiency and conservation that was envisioned by the Commission in its *Report and Order*. Because the Commission is left with no data to assess the usage impacts of the decreased price signal inherent in the SFV rate design, Atmos' Report is not in compliance with the Commission's *Report and Order*. Since removal of the per volume margin rate is likely to result in more consumption, the question remains unanswered as to the extent that the expected increase in consumption (lower prices generally increase the quantity demanded) has been offset and additional net reductions in consumption achieved. The SFV rate design continues to be an untested departure from decades of successful rate design. Atmos' Report only increases the concerns with the SFV rate design and its impacts on conservation and revenues. These matters deserve additional investigation.

10. The "load-building" effects that result from moving margin costs into fixed charges and away from volumetric charges was recently recognized as a important concern of the Commission in Case No. EO-2007-0395, *In the Matter of Tariff Revisions filed by Aquila, Inc., d/b/a Aquila Networks-MPS and Aquila Networks-L&P Designed to Continue and Expand its Fixed Bill Pilot Program*. These load-building effects were the reason the Commission rejected Aquila's proposal to expand its fixed bill pilot program. Even Aquila acknowledged that expanding the availability of a fixed bill option will result in *increased* usage. Aquila's proposal to expand its fixed bill program included a

six percent kilowatt hour growth factor to account for the expected increase in customer usage. The Commission's December 20, 2007 Report and Order concluded:

National public policy regarding energy efficiency requires Aquila and its customers to at least attempt to reduce the growth in use of electric power. Aquila's proposed fixed bill pilot program would instead have the perverse effect of encouraging residential customers to use electricity without regard to the price signal otherwise associated with increased usage.

...

Based on the facts as it has found them, and its conclusions of law, the Commission finds that Aquila's proposed expansion and extension of its fixed bill pilot program would not give proper pricing signals to customers and would therefore encourage the wasteful use of electricity. This may result in unnecessary increases in Aquila's residential load, causing harm to Aquila's customers as well as to the public.

The Commission's rationale for rejecting Aquila's attempt to expand its fixed bill program illustrates the Commission's concern with improper price signals caused by fixed charges and the load-building impact of fixed charges. For this reason, Public Counsel believes the Commission in the present case expected Atmos' annual report to contain an analysis that allows the Commission to assess the impacts of the improper price signals caused by the SFV rate design, not simply a report that says dollars were spent. Atmos' Report, therefore, fails to comply with the Commission's *Report and Order*, and Atmos should be ordered to comply. Atmos' Report should have provided an analysis of whether there was an increase in usage resulting from the removal of the price signal.² At a minimum, Atmos should begin its analysis with a study of the weather normalized usage per customer before the SFV rate design, after the first year of the SFV

² Most states that have moved to a decoupling rate design included provisions that retained the price signal of keeping volumes tied to rates and adopted a true-up mechanism to account for lost reservation associated with consumer conservation.

rate design, and again for its second annual report.³ Until these analyses are provided, Atmos has failed to comply with the Commission's *Report and Order* and should be directed to comply to give the Commission basis for which to determine whether the SFV rate design has resulted in a net benefit or a net detriment on consumers. .

WHEREFORE, the Office of the Public Counsel respectfully offers this response and requests that the Commission order Atmos to comply with its *Report and Order* and open an investigation into Atmos' rate design.

Respectfully submitted,

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³ This analysis should attempt to take pre-existing usage per customer trends into account.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been sent via email on this 4th day of December 2008:

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