

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

**STAFF REPLY TO OFFICE OF THE PUBLIC COUNSEL'S RESPONSE TO  
ATMOS ENERGY CORPORATION'S ANNUAL REPORT**

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and for its reply 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* (Annual Report).

2. Atmos filed its Annual Report pursuant to the Report and Order issued by the Commission on February 22, 2007, effective March 4, 2007. The only guidance provided by the Commission regarding the filing of Atmos' Annual Report was one sentence in the body of the Order, which states in pertinent part:

Finally, if the fixed delivery charge rate design is implemented, Atmos shall 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. (pp. 22-23)

The Commission later repeated that same sentence in its Ordered paragraph no. 9.

3. On December 4, 2008, the Office of the Public Counsel (OPC) filed its Response to the annual report of Atmos Energy Corporation (Atmos) regarding an issue of the fixed delivery charge (Straight Fixed Variable or SFV) rate design and its impact on energy efficiency and conservation.

4. On December 16, 2008, the Commission issued its *Order Directing Staff To Reply To The Office Of The Public Counsel's Response To Atmos Energy Corporation's Annual Report* ordering Staff to file its reply no later than January 5, 2008.

5. In its Response OPC suggests that Atmos' filing was not in compliance with the Commission's Order and requests an investigation. OPC's allegations of non-compliance appear to be a continuation of its challenge of the Commission's adoption of the SFV rate design. The only directive and/or guidance from the Commission regarding this particular filing was contained in one twice repeated sentence in the Order (see para. 2 above). Staff believes Atmos' filing is in compliance with the Commission's Report and Order.

6. There is no basis for OPC's requested "investigation." Pursuant to the collaborative process ordered by the Commission, the Collaborative Members (Atmos, Commission Staff, the Missouri Department of Natural Resources – Energy Center, and the Office of the Public Counsel) helped design the Program Description, General Terms and Conditions, and the specific components of the Conservation Efforts constituting Atmos' Energy Conservation and Efficiency Program.

7. In accordance with the parameters agreed upon by the Collaborative Members, Atmos has been providing the collaborative members quarterly reports and has filed Biannual Reports with the Commission. In addition, both the *FILING MEMORANDUM Regarding Energy Conservation and Efficiency Program* and the tariff sheets filed by Atmos on June 28,

2007 inform the Commission the Company will conduct a comprehensive evaluation of the program:

“At the end of the second program year, the Company will perform an evaluation of [the program] to evaluate the success of the program in accordance with parameters developed by the Collaborative Members. Based on discussions of the Collaborative Members to date, it is anticipated that such evaluation will address the success of the program in terms of participation, increased affordability, reduced arrears, reduced late-payments, disconnects/reconnects and reduced uncollectibles. Information on customer usage and payments will be included in the evaluation.”

Moreover, Collaborative Members will continue to actively participate in the program evaluation process.

8. An evaluation done at the end of the second program year will benefit from the Company having collected more meaningful and ripe data. At present there is only data for a single 12 month period after the roll out of the SFV delivery charge (April 2007 – March 2008). Not only is data from a single period inadequate, that data reflects the initial program start-up. The Company must collect data from a second period, especially after the program has been fully implemented, before it can provide a meaningful evaluation.

9. As Public Counsel points out, this case is currently on appeal before the Missouri Court of Appeals – Western District, Case No. WD70219. The case records and transcripts making up the record on appeal have been submitted to the Court pursuant to Section 386.540. Thus, there is a real question as to this Commission’s jurisdiction to change, amend, or modify its Report And Order in Case No. GR-2006-0387 at the current time. Atmos merely filed its Annual Report in the current case file in response to a previous Commission directive that was issued prior to OPC’s filing of its Writ of Review. That said, Atmos’ current filed and approved Tariff Sheet No. 115 (Energy Conservation and Efficiency Program) provides:

(A) This program will remain in effect unless the program is modified or terminated by the Missouri Public Service Commission, or a court of competent

jurisdiction invalidates or otherwise overturns the Commission's Report and Order in Case No. GR-2006-0387.

WHEREFORE, the Staff submits its Reply as directed and respectfully recommends (1) the Commission take no further action in this case until the Western District Court of Appeals has issued its decision on this matter, and (2) withhold opening another investigatory case docket so that Atmos may collect a second year's worth of data for the Company to complete a more meaningful evaluation of its program in accordance with parameters to be set by the Collaborative Members.

Respectfully submitted,

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### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 5th day of January 2009.

**/s/ Robert S. Berlin**