for transactions between affiliated companies "because of the greater risk of self-dealing when contracting with an affiliate." *Id.* at 377. Consequently, the Missouri Supreme Court found that "the presumption of prudence is inapplicable to affiliate transactions." *Id.* In the present case, the OPC argues that the Commission inappropriately applied the presumption of prudence to the 14% cost of debt associated with the financing agreement between Hillcrest and Fresh Start in violation of the *Atmos* decision.[6] The OPC is incorrect, however, as the record before us supports the conclusion that the Commission did not employ the presumption of prudence in this matter.

The record indicates that the Commission did not *presume* the 14% cost of debt to be appropriate but rather *determined* it was appropriate based on the evidence presented at the evidentiary hearing. Specifically, the Commission relied on the testimony of Cox that demonstrated that he had fastidiously tried to find lower cost financing but was unsuccessful in that effort. The commission explicitly stated:

> The evidence shows that after diligent efforts to obtain financing from variety of potential lenders, the only financing available to Hillcrest at that time was the transaction with Fresh Start. Penalizing Hillcrest now for that decision would be unfair and may discourage other companies from acquiring and improving troubled water and sewer utilities in the future, which would be contrary to good public

[6] The Court in *Atmos* was considering a transaction between a gas utility and one of its affiliates. *Atmos*, 409 S.W.3d at 373. Such affiliate transactions for gas companies are governed by 4 CSR 240–40.016. There is no comparable Commission rule regulating water or sewer companies. As an initial matter therefore, there is a question to what extent the *Atmos* decision is applicable to the current situation. There is also a question as to whether the Fresh Start financing agreement should be considered an affiliate transaction for the purposes of *Atmos*. At the time the financing agreement was signed, 87% of First Round and 100% of Fresh Start were owned by the same investors, yet the details of the financing agreement appear to have been established prior to the entry of these investors and the financing agreement does not appear to have changed as a result of the change in investors. It is unclear what effect these factors would have, if any, on the application of the *Atmos* decision to the present case. We need not address either of these issues, however, as we find no evidence that the Commission employed the presumption of prudence in reaching its decision.

Factual and Procedural Background

Hillcrest is a water and sewer utility company as defined by the laws of the state of Missouri. The company provides services to approximately 218 residential customers, 20 apartment customers, and 4 commercial customers. Hillcrest is a wholly owned subsidiary of Hillcrest Utility Holding Company, Inc., which is wholly owned by First Round CSWR, LLC ("First Round"), which, in turn, is managed by Central States Water Resources, Inc. Hillcrest's president is Josiah Cox ("Cox").

The water and sewer systems that are the subject of this appeal were originally owned by Brandco Investments, LLC ("Brandco"). Hillcrest set out to acquire the systems from Brandco in 2014. At the time, the Brandco systems were in a state of severe disrepair. The wastewater system had been the subject of multiple compliance and enforcement actions from both the Missouri Department of Natural Resources ("MDNR") and the Missouri Attorney General, while the drinking water system had been put on an eight-week boil order due to positive test results for E. coli. Prior to acquiring Brandco, Hillcrest entered into an agreement with the MDNR under which it committed to making necessary repairs to the systems and taking emergency steps to ensure that residents would be able to receive water services which included Hillcrest paying for emergency drinking water repairs, on-going drinking water system inspections, and a temporary chlorine disinfection system. Hillcrest anticipated that the necessary improvements would cost upwards of $1,230,000.

On May 13, 2014, Hillcrest filed with the Commission a request for approval of the acquisition of the Brandco systems, as well as the right to issue indebtedness and to encumber the acquired water and sewer systems in order to fund the improvements necessary to bring the systems into regulatory compliance. After some initial disagreement, Hillcrest and the Staff of the