

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 18th day
of August, 2010.

In the Matter of Atmos Energy Corporation's Tariff)	
Revision Designed to Implement a General Rate)	<u>File No. GR-2010-0192, et al.</u>
Increase for Natural Gas Service in the Missouri)	Tariff No. YG-2010-0426
Service Area of the Company)	

ORDER APPROVING STIPULATION AND AGREEMENT

Procedural History

On December 28, 2009, Atmos Energy Corporation ("Atmos") submitted a tariff designed to implement a general rate increase for natural gas service. Atmos indicates the new gas service rates are designed to increase its gross annual revenues by approximately \$6,438,586.¹ The submitted tariff carries a January 28, 2010 effective date.

On January 6, 2010, the Commission issued notice, set an intervention deadline and suspended the tariff for the maximum time allowed by statute² in order to have sufficient time to determine if the rate increase request was just and reasonable and in the public interest. The suspension of the tariffs initiated a contested case.³ A contested case is a formal hearing procedure, but it allows for waiver of procedural formalities⁴ and a decision without a hearing,⁵ including by stipulation and agreement.⁶

¹ On February 3, 2010, the Commission consolidated this case with GR-2006-0387, Atmos' prior rate case that had been remanded to the Commission by the Western District Court of Appeals.

² Section 393.150, RSMo 2000.

³ Section 393.150.1, RSMo 2000; and Section 536.010(4), RSMo Supp. 2009.

⁴ Sections 536.060(3) and 536.063(3), RSMo 2000.

The Commission granted timely intervention requests to Noranda Aluminum, Inc., and the Missouri Department of Natural Resources, and granted late intervention to the International Brotherhood of Electrical Workers, local 1439, AFL-CIO. Ultimately, Local 1439 voluntarily withdrew.

On February 16, 2010, the Commission adopted a procedural schedule, established the Test Year, and adopted the proposed customer notice. The procedural schedule was modified and the evidentiary hearing was set to begin on August 23, 2010. The Commission held eight local public hearings in the cities of Palmyra, Hannibal, Kirksville, Butler, Caruthersville, Hayti, Sikeston, and Jackson, to take public comment on the proposed rate increase request.

The parties held a settlement conference July 12-15, 2010 and on August 11, 2010, they filed a Unanimous Stipulation and Agreement (“Agreement”). The Agreement purports to settle all issues in this matter. And, because the parties reached a settlement, the Commission suspended the procedural schedule and set an On-the-Record presentation so the Commission could inquire into the specific terms of the Agreement.

The Agreement

The agreement waives procedural requirements that would otherwise be necessary before final decision,⁷ including each commissioner’s duty to either hear all the evidence or read the full record.⁸ Also, because the settlement disposes of this action, the Commission

⁵ Sections 536.060, RSMo 2000.

⁶ *Id.* and 4 CSR 240-2.115.

⁷ Section 536.060, RSMo 2000.

⁸ Section 536.080.2, RSMo 2000.

need not separately state its findings of fact.⁹ Therefore, the Commission incorporates the terms of the Agreement into this order.

This order would be unnecessary altogether if Atmos dismissed its action, or if the Commission allowed the tariff to take effect by operation of law alone.¹⁰ But that is not the outcome that the parties seek. The parties do not waive final decision.¹¹ On the contrary, the parties expressly ask for an “Order approving all of the specific terms and conditions of this Stipulation.” The Agreement’s terms include rates for gas service, rate design, the reclassification of certain customers, billing determinants, treatment of special contracts, terms on seasonable reconnection charges, the withdrawal of a proposal to recover bad debt by means of a PGA, withdrawal of a proposal to eliminate *de minimis* ACA balances, ISRS calculations, an Energy Conservation and Efficiency program and a bill check-off program. And, without further discussion, the Commission incorporates all provisions of the Agreement, as if fully set forth, into this order.

With regard to revenue requirement and rate design, the parties agree and recommend that the Commission authorize Atmos to increase its annual non-gas, Missouri jurisdictional revenues by \$5,650,000, which includes approximately \$1,000,000 in infrastructure system replacement surcharge revenues previously authorized by the Commission. The parties agree to the adoption of a two-part rate design whereby the existing three rate districts are maintained. But, a majority of the rate increase resulting from the Agreement will be recovered in volumetric rates.

⁹ Section 536.090, RSMo 2000.

¹⁰ Section 393.150, RSMo 2000.

¹¹ Nor can they. *Weber v. Firemen's Retirement System*, 872 S.W.2d 477, 480 (Mo. banc, 1994).

Approximately 75% of the total revenue charged to the Residential and Small Firm General Service classes will be recovered through delivery rates. Revenue increases for the Medium General Service, Large General Service, Interruptible Large Volume Gas, and Transportation Service classes will be allocated on an across-the-board equal percentage basis to all rate elements. Additionally reclassifying commercial customers into the Small General Service, Medium General Service and Large General Service classes should be adopted by grouping all Type A and Type B meters into the Small General Service class, and all non-Type A and non-type B meters in the Medium General Service and Large General Service classes. The customers in these classes may request a review to determine if they would qualify for a different class through a meter replacement.

The parties further request the Commission to order Atmos to file tariff sheets, to be effective for service rendered on and after September 1, 2010 in conformity with the specimen tariff sheets attached to the Agreement.

Ratemaking Standards

The standard for rates is “just and reasonable,”¹² a standard founded on constitutional provisions, as the United States Supreme Court has explained:

Rates which are not sufficient to yield a reasonable return on the value of the property used at the time it is being used to render the services are unjust, unreasonable and confiscatory, and their enforcement deprives the public utility company of its property in violation of the Fourteenth Amendment.¹³

But the Commission must also consider the customers:

¹² *Id.* and Section 393.150.2, RSMo 2000.

¹³ *Bluefield Water Works & Improvement Co. v. Public Serv. Com'n of the State of West Virginia*, 262 U.S. 679, 690 (1923).

The rate-making process . . . i.e., the fixing of 'just and reasonable' rates, involves a balancing of the investor and the consumer interests.¹⁴

Further, that balancing has no single formula:

The Constitution does not bind rate-making bodies to the service of any single formula or combination of formulas. Agencies to whom this legislative power has been delegated are free, within the ambit of their statutory authority, to make the pragmatic adjustments which may be called for by particular circumstances.¹⁵

Moreover, making such pragmatic adjustments is part of the Commission's duty:

What annual rate will constitute just compensation depends upon many circumstances and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts.¹⁶

And:

[T]he Commission [is] not bound to the use of any single formula or combination of formulae in determining rates. Its rate-making function, moreover, involves the making of 'pragmatic adjustments.'¹⁷

Thus, the law requires a just and reasonable end, but does not specify a means:

Under the statutory standard of 'just and reasonable' it is the result reached not the method employed which is controlling. It is not theory but the impact of the rate order which counts.¹⁸

¹⁴ *Federal Power Com'n v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944).

¹⁵ *Federal Power Com'n v. Natural Gas Pipeline Co.*, 315 U.S. 575, 586 (1942).

¹⁶ *Bluefield*, 262 U.S. at 692.

¹⁷ *State ex rel. Associated Natural Gas Co. v. Public. Serv. Com'n*, 706 S.W.2d 870, 873 (Mo. App. 1985) (citing *Hope Natural Gas Co.*, 320 U.S. at 602-03).

¹⁸ *Id.*

The means employed in the settlement consists of “rate case usage parameters [¹⁹]” which is a system of policy decisions and accountancy conventions. Determining whether a rate adjustment is necessary requires comparing Atmos’ current net income to Atmos’ revenue requirement. Revenue requirement is the amount of money that a utility may collect per year, which depends on the requirements for providing safe and effective service at a profit. Those requirements are tangible and intangible:

From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on the debt and dividends on the stock.²⁰

That and similar holdings have led to a conventional analysis of the resources devoted to service, from which the Commission determines revenue requirement as follows.

To provide service, a utility devotes resources, which accounting conventions classify as either expense or investment. Expenses include operation, replacement of capital items as they depreciate (“current depreciation”), and taxes on the return. Investment is the basis (“rate base”) on which the utility seeks profit (“return”). Return is therefore a percentage (“rate of return”) of rate base. Rate base includes capital assets (“gross plant”), less historic deterioration of such assets (“accumulated depreciation”), plus other items.

Those components relate to each other in the following formula:

Revenue Requirement = Cost of Providing Utility Service or $RR = O + (V - D) R$ where,

RR	=	Revenue Requirement;
O	=	Operating Costs; (such as fuel, payroll, maintenance, etc., Depreciation and Taxes);
V	=	Gross Valuation of Property Used for Providing Service;

¹⁹ *Stipulation and Agreement*, page 2, paragraph 3.

²⁰ *Hope Natural Gas Co.*, 320 U.S. at 603 (1944).

D	=	Accumulated Depreciation Representing the Capital Recovery of Gross Property Investment.
(V – D)	=	Rate Base (Gross Property Investment less Accumulated Depreciation = Net Property Investment)
R	=	Overall Rate of Return or Weighted Cost of Capital
(V - D) R	=	Return Allowed on Net Property Investment

But determining the revenue requirement does not end the analysis, because the utility must collect that amount from its customers, and all customers need not receive identical treatment. Rate design is how a utility distributes its revenue requirement among its various classes of customer. Customers vary as to the costs attributable to their service. Accordingly, their rates should reflect their costs, respectively. Just and reasonable rates may account for such differences among customers.

Conclusions²¹

A utility has the burden of proving that increased rates are just and reasonable²² by a preponderance of the evidence.²³ In this order, the Commission grants the parties' request to enter all pre-filed testimony and affidavits prepared by the parties into the record. The record thus contains substantial and competent evidence. The Commission has compared the substantial and competent evidence on the whole record with the Agreement as to both rate adjustment and rate design. The Commission independently finds and concludes that Atmos has met its burden of proof that the rates proposed in the Agreement are just and reasonable rates. Additionally, upon review of the record and the Agreement, the Commission independently finds and concludes that the Agreement's proposed terms support safe and adequate service.

²¹ Section 386.420.2, RSMo 2000 requires a report of the Commission's conclusions.

²² Section 393.150.2, RSMo 2000.

²³ *State Board of Nursing v. Berry*, 32 S.W.3d 638, 641 (Mo. App. 2000).

THE COMMISSION ORDERS THAT:

1. The Unanimous Stipulation and Agreement filed on August 10, 2010 is approved.

A copy of the Agreement shall be attached to this order as "Attachment A."

2. The tariff submitted under Tariff File No. YG-2010-0426, on December 28, 2009, by Atmos Energy Corporation, for the purpose of increasing rates for natural gas service, is rejected. The specific tariff sheets rejected are:

P.S.C. MO. No. 2

2nd Revised Sheet No. 2, Cancelling 1st Revised Sheet No. 2
2nd Revised Sheet No. 19, Cancelling 1st Revised Sheet No. 19
1st Revised Sheet No. 21, Cancelling Original Sheet No. 21
2nd Revised Sheet No. 22, Cancelling 1st Revised Sheet No. 22
1st Revised Sheet No. 23, Cancelling Original Sheet No. 23
2nd Revised Sheet No. 24, Cancelling 1st Revised Sheet No. 24
1st Revised Sheet No. 25, Cancelling Original Sheet No. 25
2nd Revised Sheet No. 26, Cancelling 1st Revised Sheet No. 26
2nd Revised Sheet No. 28, Cancelling 1st Revised Sheet No. 28
1st Revised Sheet No. 30, Cancelling Original Sheet No. 30
2nd Revised Sheet No. 42, Cancelling 1st Revised Sheet No. 42
2nd Revised Sheet No. 43, Cancelling 1st Revised Sheet No. 43
2nd Revised Sheet No. 115, Cancelling 1st Revised Sheet No. 115
2nd Revised Sheet No. 116, Cancelling 1st Revised Sheet No. 116
2nd Revised Sheet No. 117, Cancelling 1st Revised Sheet No. 117
2nd Revised Sheet No. 118, Cancelling 1st Revised Sheet No. 118
1st Revised Sheet No. 119, Cancelling Original Sheet No. 119

3. The prefiled testimony, including all exhibits, appendices, schedules, etc. attached thereto, as well as all reports of all witnesses, that are already filed in the Commission's electronic filing and Information system ("EFIS") are hereby admitted into evidence. A copy of the exhibits list is attached to this order as "Attachment B." A notation in EFIS for the issuance of this order shall stand in lieu of a notation in EFIS for any exhibit's entry into the record.

4. Atmos Energy Corporation shall file new tariff sheets consistent with this order and the specimen tariff sheets attached to the Unanimous Stipulation and Agreement no later than August 19, 2010, bearing an effective date of September 1, 2010.

5. The Commission's Staff may either join Atmos Energy Corporation with filing its compliance tariff sheets, or file a separate recommendation regarding their approval no later than August 20, 2010.

6. This order shall become effective on August 27, 2010, except for paragraphs 4 and 5 that shall become effective immediately upon this order's issuance.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Davis, Jarrett, Gunn, and Kenney, CC., concur;
Clayton, Chm., dissents with dissenting opinion to follow.

Stearley, Senior Regulatory Law Judge