

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

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| In the Matter of Atmos Energy Corporation's Tariff |) | |
| Revision Designed to Consolidate Rates and |) | <u>Case No. GR-2006-0387</u> |
| Implement a General Rate Increase for Natural Gas |) | |
| Service in the Missouri Service Area of the Company. |) | |

**RESPONSE OF ATMOS ENERGY CORPORATION
TO PUBLIC COUNSEL'S REPLY**

COMES NOW Atmos Energy Corporation ("Atmos"), pursuant to Missouri Public Service Commission ("Commission") Rule 4 CSR 240-2.080(15), and respectfully submits its Response to Public Counsel's Reply To The Joint Suggestion of Atmos Energy Corporation and the Staff ("Reply") filed in this matter on November 9, 2009. For its Response, Atmos respectfully states as follows:

1. In its Reply, Public Counsel asserts that the remand procedure proposed by both Atmos and the Commission's Staff (addressing the remand issues in Atmos's next rate case) would purportedly violate Public Counsel's right to due process and right to appeal decisions of the Commission. Public Counsel cites no authority for such proposition. Lest silence be deemed acquiescence, Atmos is compelled to submit this brief response to Public Counsel's Reply.

2. As previously noted, in the Western District Court of Appeals' Opinion, *State ex rel. OPC v. P.S.C.*, 2009 WL 1748704 (Mo. App. W.D. June 23, 2009), the Court reversed the Commission's decisions adopting the SFV rate design and approving consolidation of Atmos's districts and remanded those matters to the Commission **for further proceedings**. The Court's Opinion clearly contemplates that the Commission will re-examine these issues. In discussing the Seasonal Reconnection Charges at pages 22-23 of the Opinion, the Court notes:

However, because we have reversed and remanded the Commission's adoption of the SFV rate design, we remand this issue back to the Commission to allow it the flexibility of revising its findings and conclusions **depending on the rate structure ultimately adopted**. . . . However, it remains to be determined how much the reconnection charge will be, and how it will be structured, **depending on the rate design that ultimately prevails**. (Emphasis added).

3. The Commission's Report and Order issued in this matter on February 22, 2007, provided a zero (0) revenue requirement increase to Atmos. The Court recognized that "[t]here is a clear linkage between the adoption of a particular rate design and the considerations regarding Atmos's revenue requirement." Indeed, the Court contemplates that Atmos could seek its original rate increase request in the remand, depending on the rate design advocated. "But Atmos's abandonment of the rate increase request seems to have been dependent on the Commission's acceptance of the SFV rate design. If, on remand, the parties decide to abandon their advocacy of the SFV rate structure, **Atmos could well revert to seeking the rate increase**." (Opinion, page 18, emphasis added).¹

4. Atmos respectfully submits that the language of the Court's Opinion does not reflect any anticipated immediate resolution of these complex issues on remand. In the recent case of *Stanley Roberts, Respondent v. City of St. Louis, Appellant, and Treasurer of The State of Missouri as Custodian for The Second Injury Fund, Respondent*, No. 92438 (Mo. App. E.D., September 1, 2009), the Court observed:

A mandate is not to be read and applied in a vacuum. Ironite Prods. Co. v. Samuels, 17 S. W. 3d 566, 570 (Mo. App. E.D. 2000). The opinion is part of the mandate and must be used in interpreting the mandate. Id. "Accordingly, proceedings on remand should be in accordance with the mandate and the result contemplated in the appellate court's opinion." Id. . . . (Opinion, page 6).

¹ Of course, Atmos's continued shareholder funding of its Energy Efficiency and Conservation Program on an annual basis, a specific condition precedent to the Commission's adoption of the SFV rate design, has not been addressed in the context of these remand discussions.

5. Again, rather than re-opening the record in the above-captioned case for further proceedings, Atmos respectfully suggest that the issues remanded by the Court of Appeals and the Circuit Court of Cole County should be addressed in Atmos's next rate case. Such action would be lawful, prudent and reasonable, and would further the interests of judicial efficiency.

WHEREFORE, Atmos respectfully submits its Response to Public Counsel's Reply and again requests that the Commission follow the above-described procedure upon remand.

Respectfully submitted,

/s/ Larry W. Dority

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand-delivered, emailed or mailed, First Class mail, postage prepaid, this 19th day of November, 2009, to all counsel of record in this matter.

/s/ Larry W. Dority
Larry W. Dority