

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**STATE OF MISSOURI, ex rel. PUBLIC COUNSEL,
RESPONDENT
ATMOS ENERGY CORPORATION,
APPELLANT**

vs.

**MISSOURI PUBLIC SERVICE COMMISSION,
RESPONDENT**

DOCKET NUMBER WD70219

DATE: JUNE 23, 2009

Appeal from:

The Circuit Court of Cole County, Missouri
The Honorable Jon E. Beetem

Appellate Judges:

Division One: James E. Welsh, P.J., Victor C. Howard and Alok Ahuja, JJ.

Attorneys:

Larry W. Dority, for Appellant

Jennifer L. Heintz, for Respondent Missouri Public Service Commission

Marc D. Poston, for Respondent Office of Public Counsel

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**STATE OF MISSOURI, ex rel. PUBLIC COUNSEL, RESPONDENT
ATMOS ENERGY, APPELLANT**

v.

MISSOURI PUBLIC SERVICE COMMISSION, RESPONDENT

WD70219

Cole County, Missouri

Before Division One Judges: James E. Welsh, P.J., Victor C. Howard and Alok Ahuja, JJ.

Atmos Energy Corporation filed a request with the Missouri Public Service Commission seeking to increase its annual revenue. Atmos later abandoned its request and adopted a proposal created by the Commission's Staff that would allow Atmos to recover its non-gas costs through a straight fixed variable ("SFV") rate design. The Commission approved the SFV rate design and adopted Atmos and Staff's proposals on several other issues. On appeal, the Missouri Office of the Public Counsel challenges the Commission's adoption of Atmos and Staff's proposals.

AFFIRMED IN PART, REVERSED AND REMANDED IN PART.

Division One holds:

(1) The Commission primarily based its adoption of the SFV rate design upon its findings that Atmos's cost of serving each residential customer is the same regardless of the customer's usage and that, under Atmos's current rate structure, high-use customers are subsidizing low-use customers. However, the testimony upon which the Commission relied to make its findings was not substantiated by cost studies and did not address all the costs incurred by Atmos in distributing gas to its residential customers. The Commission's findings were not based upon competent and substantial evidence and, therefore, the Commission's decision adopting the SFV rate design is reversed and remanded.

(2) Because the Commission found that the cost for Atmos to serve similarly situated customers in neighboring districts was approximately the same, the Commission adopted a proposal to consolidate Atmos's seven districts into three new districts. However, without the benefit of cost studies to determine the cost to serve each of the seven districts, the Commission's decision to consolidate the districts was not based on competent and substantial evidence. The Commission's decision regarding district consolidation is reversed and remanded.

(3) The Commission approved Staff's proposal to enter a negative amortization of \$591,000 into Atmos's depreciation reserve account. Where the Commission found that the benefits of the proposal outweighed any potential harm that may result from it, and the evidence showed that a negative amortization would correct an over-accrual of depreciation until new depreciation rates could be determined, the Commission's adoption of the negative amortization method was reasonable and supported by competent and substantial evidence. Furthermore, where the Office of the Public Counsel attacked the testimony of a witness who accepted the \$591,000 figure, but failed to challenge the testimony or depreciation study of the witness who calculated the

\$591,000 figure, the Office of the Public Counsel did not meet its burden of demonstrating that the Commission's approval of the \$591,000 figure was not supported by competent and substantial evidence. The Commission's decision ordering the entry of a negative amortization of \$591,000 in Atmos's depreciation reserve account is affirmed.

(4) The remaining proposals to which the Office of the Public Counsel objects involve the creation of new general service classes, changes to Atmos's revenue requirement, and the implementation of seasonal reconnection charges. However, as each of these proposals is tied to the Commission's adoption of the SFV rate design, which has been reversed, review of these issues is not yet warranted.

Opinion by: Victor C. Howard, Judge

Date: June 23, 2009

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