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OVERNIGHT DELIVERY

June 22, 2010

Jeff R. Derouen
Executive Director
Kentucky Public Service Commission
211 Sower Blvd.
PO Box 615
Frankfort, Kentucky 40602

RE: Atmos Energy Corporation
Case No. 2010-00146

Dear Mr. Derouen:

I enclose herewith an original, plus eleven (11) copies, of the testimony of Mark A. Martin as requested by Order of the Commission. I have this day served copies of same on all parties of record. Please return a stamped "filed" copy to me.

Please advise if anything additional is needed. Thanks.

Very truly yours,

Mark R. Hutchinson

BEFORE THE PUBLIC SERVICE COMMISSION

COMMONWEALTH OF KENTUCKY

IN THE MATTER OF	)	
	)	
RATE APPLICATION BY	)	**Case No. 2010-00146**
	)	
ATMOS ENERGY CORPORATION	)	

<u>TESTIMONY OF MARK A. MARTIN</u>

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME, POSITION AND BUSINESS ADDRESS.

A. My name is Mark A. Martin. I am Vice President – Rates and Regulatory Affairs for the Kentucky/Mid-States Division of Atmos Energy Corporation ("Atmos Energy" or the "Company"). My business address is 3275 Highland Pointe Drive, Owensboro, Kentucky, 42303.

Q. PLEASE BRIEFLY DESCRIBE YOUR CURRENT RESPONSIBILITIES, AND PROFESSIONAL AND EDUCATIONAL BACKGROUND.

I am responsible for Rates and Regulatory Affairs matters in the states of Illinois, Iowa, Kentucky, and Missouri. I graduated from Eastern Illinois University in 1995 with a degree in Accounting. I have been with United Cities Gas Company and subsequently Atmos Energy Corporation since September 1995. I have served in a variety of positions of increasing responsibility in both Gas Supply and Rates prior to assuming my current responsibility in 2007.

Q. HAVE YOUR EVER SUBMITTED TESTIMONY BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION?

A. No.

Q. HAVE YOU SUBMITTED TESTIMONY ON MATTERS BEFORE OTHER STATE REGULATORY COMMISSIONS?

A. Yes, I have filed testimony before the Georgia Public Service Commission, the Illinois Commerce Commission, the Missouri Public Service Commission, and South Carolina Public Service Commission.

Q. WHAT IS THE PURPOSE OF YOUR PREPARED DIRECT TESTIMONY IN THIS PROCEEDING?

A. My testimony has four primary purposes: (1) to provide an overview of Atmos Energy's service area in Kentucky and its customer base; (2) to discuss specific items outlined in the Commission order which created this case; (3) to discuss the Company's position in regards to a retail competition program, and (4) to discuss the national landscape in regards to retail competition programs.

II. DISCUSSION OF SERVICE AREA AND CUSTOMER BASE

Q. WHAT ARE THE COMPANY'S PRIMARY OBJECTIVES IN ITS KENTUCKY OPERATIONS?

A. Our primary objective is to meet or to exceed the expectations of our customers, shareholders, employees, regulators and other key stakeholders. The Company is very proud of its tradition as a low-cost, efficient provider of natural gas service. Our distribution charges, particularly for residential customers, are the lowest among the major utilities in Kentucky and our pass-through gas costs are also typically the lowest or the second lowest in the state. We strive to provide excellent customer service, to provide safe and reliable delivery of natural gas service, to be a good corporate citizen in the communities we serve and in this state in which we have operated since 1934.

Q. PLEASE DESCRIBE THE MAKEUP OF ATMOS ENERGY'S CURRENT CUSTOMER BASE IN KENTUCKY.

A. Atmos Energy currently serves 172,300 customers throughout its service area extending from western to central Kentucky. Residential class customers account for the vast majority of meters, at approximately 152,900. Atmos Energy's natural gas deliveries totaled 40.6 Bcf during the 12-month period ending June 2009.

The Company is somewhat unique in its level of throughput to industrial class customers, with industrial sales and transportation volumes accounting for nearly 60% of Atmos Energy's annual throughput during that 12-month period. The region served by Atmos Energy is somewhat economically dependent on the well-being of these industries, as is Atmos Energy through its requirements for operating margin under current rate designs.

Although the industrial class accounts for the majority of total annual deliveries, it is important to note that it is the residential class that primarily drives Atmos Energy's growth capital investment, constituting the vast majority of the Company's annual funding requirements for the extension of pipelines.

III. DISCUSSION OF COMMISSION ORDER CREATING 2010-00146

Q. DID THE COMMISSION'S ORDER CREATING CASE NO 2010-00146 LIST ANY SPECIFIC ITEMS TO BE CONSIDERED?

A. Yes. Starting on page 4 of the Commission's Order dated April 19, 2010, there are fifteen items on which the General Assembly has provided guidance as to what the Commission should consider when determining if benefits could be derived from natural gas retail competition programs for Kentucky consumers. I will address these items in this section of my testimony.

Q. PLEASE DESCRIBE THE ROLE OF THE COMMISSION IN A COMPETITIVE MARKETPLACE.

A. I will discuss in greater detail the Company's opinion on the merits of a "competitive" market place later in my testimony; suffice it to say at this point, the Company believes that it is imperative that the Commission have the authority to approve, monitor and evaluate the effectiveness of all retail choice programs. The Commission currently monitors, evaluates and approves each local natural gas company's Gas Cost Adjustment (GCA). The existing security provided by the Commission's oversight insures that natural gas customers are being billed rates that are just and reasonable. In short, under a retail choice environment, the Commission would need to remain deeply involved to protect customers.

Q. PLEASE DISCUSS THE OBLIGATION TO SERVE.

A. The "obligation to serve" is a fundamental concept of the utility industry that requires a utility to provide adequate, affordable, and reasonably efficient service to all who desire it without undue discrimination. The Company values all of its customers and prides itself on being a low-cost provider. The Company also prides itself on offering a wide range of payment options as well as being a leader in customer service. All regulated utilities have been subject to the obligation to serve in exchange for their monopoly service territory. Although retail choice results in both regulated and unregulated market participants, the "obligation to serve" will apply to both local natural gas companies and marketers. For local natural gas companies, the obligation to serve will remain basically unchanged, requiring the local natural gas company to connect a customer and provide non-discriminatory sales service pursuant to the terms and conditions of its tariff. The Company works with customers who have difficulty paying their gas bills and has safeguards in place in the event that service needs to be disconnected. Under a retail choice program, the obligation to serve will also be applied to marketers, requiring the marketer to provide sales service on a non-discriminatory basis. These obligations to serve for both the local natural gas company and the marketer are the foundation for providing service in a partially deregulated environment, and it is in the public interest that fair, just and reasonable rates be available to all natural gas customers.

Q. PLEASE DISCUSS THE SUPPLIER OF LAST RESORT.

A. The supplier of last resort is a term that refers to those companies who are obligated to provide supply under all circumstances. Typically, the local natural gas company is deemed to be the supplier of last resort. A supplier of last resort is needed for customers that no marketer wants to serve in a retail choice program. A supplier of last resort would also be required if a marketer were unable to supply the necessary volume to a natural gas company's city gate. In those situations, the local natural gas company would be obligated to step in as supplier of last resort.

Q. PLEASE DISCUSS ALTERNATIVE COMMODITY PROCUREMENT PROCEDURES.

A. The Company believes that alternative commodity procurement procedures referred to in the Order are in reference to some form of auction for the commodity. Assuming that the Company has interpreted this correctly, it does not believe that such procedures would be warranted under this scenario since the local natural gas companies would not be exiting the merchant function. Current commodity procurement procedures used by local natural gas companies are the product of Commission guidance. Current regulatory processes ensure that the Commission is able to review procurement activities of local natural gas companies in order to ensure that the prices charged to customers are fair, just, and reasonable. The ability of the Commission to review not only the price but the underlying process also provides transparency. If the Company has not interpreted this item correctly, the Company reserves the right to amend direct testimony or to discuss this issue further in rebuttal testimony.

Q. PLEASE DISCUSS NON-DISCRIMINATORY ACCESS TO SERVICES OFFERED.

A. It appears that the resolution directing the Commission to investigate a retail competition program would require the local natural gas company to continue to maintain and operate its distribution system, as well as to provide all operations support for customer billing. If the Commission determines that it is in the public interest to implement a retail competition program, in addition to developing rules to provide for non-discriminatory access to services, it is important that the Commission ensure that all costs associated with customer choice programs are borne by the marketers participating in the program.

Q. PLEASE DISCUSS CODES OF CONDUCT FOR MARKETERS AND AFFILIATES OF REGULATED UTILITIES.

A. A comprehensive Code of Conduct already exists for transactions and arrangements between regulated utilities and their affiliates. However, the Company is unaware of any such rules currently in existence in Kentucky for natural gas marketers. There is quite a bit of case history, specifically in Illinois and Michigan, which addresses questionable business practices on the part of marketing companies. It is the Company's position that if retail choice programs were to be approved by the Commission, it is essential that the Commission establish a stringent Code of Conduct to protect all customers.

Q. PLEASE DISCUSS THE ISSUE OF BILLING IN A RETAIL CHOICE PROGRAM INCLUDING THE DESIRABILITY LOCAL NATURAL GAS COMPANIES PURCHASING THE RECEIVABLES OF THE MARKETERS.

A. If retail choice programs were approved by the Commission, all costs of any required modifications to billing systems should be borne by all marketers serving customers in a choice program.

If utilities are required to purchase receivables of marketers, the process must be structured in a way that the local distribution companies are not harmed or exposed to increased financial risk. If the local natural gas company is required to purchase a marketer's accounts receivable without recourse, the marketer transfers 100% of the risk and burden of collection to the local natural gas company. This only benefits the marketer by reducing their financial risk, simplifying their operations and eliminating their need to perform credit checks. These risks and burdens would instead be placed on the local distribution company. The local natural gas company would have no direct retail relationship with the customer, and therefore would not have control over the customer interface for collection of receivables. This could only increase the cost of service to natural gas customers in Kentucky. In addition, marketers should be required to provide security to the utilities to guarantee no harm if the utility is required to purchase the receivables.

Q. PLEASE DISCUSS CERTIFICATION OF SUPPLIERS.

A. The Company understands that a certification process currently exists for Columbia's pilot program. The Company does not know all of the particulars of such certification process but it is the Company's position that any certification process must be thorough and comprehensive to insure that marketers are fully capable of performing and that all appropriate consumer protections are put in place. The Commission would need to establish a stringent supplier/marketer certification process and clearly specify supplier/marketer qualification criteria. Requirements of any such certification process should include, but not be limited to, thorough financial statements, a description of a marketer's commodity expertise in terms of nominations, deliveries, etc., a requirement for a regulatory liaison, adequate information technology (IT) support, and a customer service structure. Examples of supplier qualification criteria include, but are not limited to, creditworthiness including financial capability and stability, electronic data exchange processes, and demonstrated experience in the natural gas industry.

Q. PLEASE DISCUSS TRANSITION COSTS.

A. The Company believes that the term transition costs refers to costs associated with, but not limited to, customer education as well as billing system changes. The Company believes that 100% of such costs should be borne by the marketers. Also, the Company believes that the Commission should review and approve all customer education material prior to distribution to prevent customer confusion.

Q. PLEASE DISCUSS STRANDED COSTS.

A. The Company believes that the term stranded costs refers to costs associated with, but not limited to, pipeline contracts. The Company believes that each marketer should be required to have adequate pipeline capacity in its own name prior to implementing a retail choice program. It should not be the responsibility of the local distribution company to provide such capacity. A marketer may argue that the capacity needs to follow the customer, but the Company respectfully disagrees with such claim. The capacity does not belong to the customer, but belongs to the Company. The Company uses its capacity assets to serve it customers, and believes that a marketer also should be required to secure its own pipeline capacity. Atmos Energy is concerned that if it were required to allow a marketer to utilize the Company's pipeline capacity, it will result in confiscation of the Company's assets. Also, how can a utility be the "supplier of last resort" when it has to give up a portion of its assets? Any released capacity would have to be on a recallable basis. The Company currently offers transportation service to larger customers. With the existing transportation service, the marketer has its own capacity to serve the respective customer, the marketer bills the respective customer, the Company is not the "supplier of last resort", and the Company does not buy any receivables associated with such service.

Q. PLEASE DISCUSS UNCOLLECTIBLES.

A. The Company believes that under a retail choice program, the risk of uncollectibles should be borne by the marketers for some of the reasons described above.

Q. PLEASE DISCUSS DISCONNECTIONS.

A. The Company believes that under a retail choice program, no disconnection of customers should occur outside of the Commission's rules. Each customer is protected by the Customer Bill of Rights and any potential disconnection should follow the local natural gas company's procedures, as well as any weather related rules.

Q. PLEASE DISCUSS STEPS NECESSARY TO MAINTAIN SYSTEM INTEGRITY.

A. The Company has, is and will always be committed to operating a safe and reliable system. In 2011, the Company will be implementing a pipe replacement program to replace aging infrastructure. The Company designs its distribution system to meet peak requirements and to accommodate foreseeable growth opportunities. The Company attempts to receive as much local production gas as possible, but limits do exist due to gas quality, location and system requirements.

It is important that the Commission maintain all rules and programs designed to protect system integrity and ensure that any marketer interface with the local natural gas company not jeopardize the safety and integrity of the system.

Q. PLEASE DISCUSS ACCESS TO PIPELINE STORAGE CAPACITY.

A. The Company believes that if a marketer desires to have pipeline storage capacity in its supply portfolio, that marketer should be required to subscribe to such capacity in its own name. The Company is concerned that any allocation of existing storage capacity of a local natural gas company would be a confiscation of the local natural gas company's assets. Any release of storage capacity is to be governed by FERC Orders 712 and 712A. At no point should a local natural gas company be obligated to follow or implement a storage plan from a marketer.

The Company has a very successful Performance Based Ratemaking (PBR) program. Customers have enjoyed significant savings from the Company's PBR program. The future success of the Company's PBR program would be seriously jeopardized with the addition of a retail choice program requiring that marketers be allocated pipeline and/or storage capacity.

Q. PLEASE DISCUSS THE IMPACTS OF NEW NATURAL GAS RETAIL COMPETITION PROGRAMS ON EXISTING UTILITY SERVICES AND CUSTOMERS.

A. I will discuss in greater detail such impacts later in my testimony; however, the Company has great concerns about any plan or program that may negatively impact its customers. The Company is proud of being a low cost provider of natural gas and strives every day to achieve low and stable prices for its customers. The Company believes that a retail competition program will increase gas costs, could decrease the level of customer service and will ultimately encourage fuel switching of existing customers. In regard to gas cost, since no costs will be eliminated under the proposed structure (local natural gas companies would still be required to maintain and support all operations), costs can only increase under a retail competition program. Additionally, local natural gas companies do not mark up the cost of gas. Marking up the cost of gas would be the primary source of profits for marketers in a retail competition program. As a result, consumers and businesses would almost certainly pay higher prices for natural gas service. In regard to customer service, customer perception may be impacted by billing, service and possible deceptive marketing tactics related to retail choice programs. Fuel switching is possible if a customer pays more for natural gas service and there is the potential for customer service issues, that customer may chose to replace his/her gas appliance(s) with another fuel source.

IV. ATMOS' POSITION ON RETAIL CHOICE

Q. DOES THE COMPANY BELIEVE THAT THE COMMISSION HAS THE AUTHORITY TO APPROVE RETAIL CHOICE PROGRAMS?

A. Yes. The Commission has approved and renewed such a program with Columbia's pilot program.

Q. DOES THE COMPANY BELIEVE THAT IT SHOULD BE ORDERED TO ALLOW RETAIL CHOICE?

A. No. Each local natural gas company within Kentucky is uniquely situated. What may work for one company may not necessarily work for all companies. The Company believes that the Commission should maintain the status quo. If a particular local natural gas company wants to implement a retail choice program, it should be up to the individual local natural gas company to file such an application. The Company is unaware of any other business model in which one party bears all the risk (the utility) while another party keeps most of the profits (the marketer).

Q. WOULD ATMOS BE IN FAVOR OF FILING AN APPLICATION TO ALLOW RETAIL CHOICE IN ITS FOOTPRINT?

A. No. The Company has no desire to file such an application. Conceptually, customer choice sounds great because who does not want a choice; however, the Company does not see where our customers would experience any cost savings and/or benefit in the long run. It is unlikely that a marketer could offer lower rates than Atmos or another local natural gas company over the long run. The local natural gas company does not mark up the cost of gas. That would not be the case for marketers. Additionally, it is Atmos' position that the costs and risks associated with a retail competition program structured in the manner proposed by the legislation are cost prohibitive for consumers and the Company.

Q. DO CUSTOMERS ALREADY HAVE CHOICE?

A. Yes, our existing customers already have a choice. The choice exists between natural gas and other fuel sources. This choice drives us to be the low cost provider for natural gas and will continue to guide us in that direction in the future.

Q. ARE THERE ANY ADDITIONAL ITEMS TO CONSIDER?

A. Yes. As stated earlier, any and all costs associated with a retail choice program should be borne by the marketers. The Company expects negative impacts to franchise and school tax revenues as well as increased operational and maintenance expenses. These increased expenses range from cost impacts to the Company's call center to its billing system. The way that the Company's franchise agreements are written with our cities, any retail choice program would have a negative impact on the revenues that are remitted back to our cities. The Company's franchise agreements contain language that calculates the franchise fee based on a set percent of gross receipts per year from the Company's sale of natural gas to all entities inside the City's corporate limits. Even if the Company collected on its monthly invoice the revenue for a marketer for gas it sold to the consumer, there are two potential issues. First, such revenue would not be from the Company's sale of natural gas. Second, service rendered by marketers probably would not be considered service as specified in the Company's franchise agreements. Both of these issues would seem to call into question, and perhaps preclude, the Company from charging a franchise fee based on the marketer's sale of natural gas, even though the Company collected the money. School tax revenues may also be negatively impacted by retail choice programs. Also, any retail choice program would require that Atmos have a separate call center to handle customer requests related to such a program. It would not be efficient to train all of our 300+ customer contact agents who serve all Atmos states for a Kentucky specific program. The Company would be required to hire, train and house additional agents and dedicate them to any Kentucky specific retail choice program. Any retail choice program also would require a new billing system to accommodate multiple rate options. The Company's current billing system is not equipped to handle such options. This modification of the Atmos billing system could involve an expensive upgrade to the current system, thus increasing costs to consumers.

V. NATIONAL PERSPECTIVE ON RETAIL CHOICE

Q. OVERALL, HAVE RETAIL CHOICE PROGRAMS SAVED CUSTOMERS MONEY?

A. Not to my knowledge based on the research that Atmos has done.

Q. ARE RETAIL CHOICE POPULAR?

A. Apparently not. According to the US Energy Information Administration (EIA) website, customer participation levels increased from 2007 to 2009, but those increases appear to be the direct result of mandates from individual states to encourage customers to switch from the local natural gas company to a marketer rather than the customer making the switch on their own accord. Prior to 2007, participation was stagnant at best. When comparing residential participation levels from December 2008 to December 2009, the following states showed a decrease in participating customers per EIA's website: Florida, Illinois, Montana, Nebraska and Pennsylvania. Of the 5.1 million choice participants, 1.6 million are in Georgia. Georgia is not directly comparable since Atlanta Gas Light exited the merchant function and became a distribution-only company in accordance with the legislation passed by the Georgia General Assembly. Georgia customers in the AGLC franchise territory were required to choose a marketer. All natural gas customers in the District of Columbia, New York, New Jersey and

Pennsylvania are eligible for choice programs, but less than 10% of the approximately 9.7 million eligible customers choose to participate in a choice program.

Q. IS RETAIL CHOICE ONLY FOR THE RESIDENTIAL CUSTOMER?

A. No. However, the majority of programs tend to focus on the residential class. The Company has an existing transportation tariff which allows a business to choose from whom they buy gas. The Company was one of the first local natural gas companies in the Nation to offer transportation service when such service was introduced in the early to mid 1980s. The Company also offers a pooling service in which a marketer can pool transporters together in offering pricing options. The Company has established a volumetric threshold of 9,000 Mcf per year in order to subscribe to transportation service. The Company believes that the existing volumetric threshold is the appropriate level at which customers could achieve savings. While no formal studies have been done, it is somewhat intuitive that there is a point of diminishing returns depending on a customer's usage in which savings can be achieved under transportation service. In addition, there are also up-front costs, such as electronic flow metering (EFM), monthly administration fees and potential cashout obligations which may make transportation service cost prohibitive. The Company also has approximately thirty (30) customers that qualify for transportation service but choose to stay on sales service which further indicates the existing threshold is at an appropriate level.

Q. PLEASE DISCUSS ATMOS' EXPERIENCE IN GEORGIA.

A. In 1997, the General Assembly adopted a new regulatory model for natural gas distribution companies in which competitive marketers have an opportunity to provide natural gas services to Georgia consumers. The General Assembly found market-based competition as the best mechanism for selecting and providing natural gas services at the most efficient price. Soon after the passage of the Natural Gas Competition and Deregulation Act, Atlanta Gas Light Company (AGLC) elected to open its territory to competition and opted out of the merchant role. By mid-1998, the Georgia Public Service Commission (GPSC) concluded its review of AGLC's rates and notice of election. In its Final Order in Docket No. 8390-U, Notice of Election and Application of Atlanta Gas Light Company, June 30, 1998, the GPSC approved a new rate schedule and set forth other conditions for the transition to competition, as required by the Act. Atmos, Georgia's other local distribution company, has not opened its market to competition. In 2002, the General Assembly passed the Consumers' Relief Act to set forth a Consumer Bill of Rights and to establish a regulated provider for low-income and high risk customers. The Act increased consumer protection and strengthened enforcement. The GPSC issues a monthly Gas Marketer Scorecard as a service to natural gas consumers in the State of Georgia and in response to consumer requests for this information. The scorecard reflects the number of complaints and general questions about the marketers received by the GPSC during the month in three categories: Billing, Service, and Deceptive Marketing. The website for the GPSC has monthly scorecards from 2004 forward. The GPSC also posts a monthly price chart. Price charts are available from 2004 forward as well. When comparing Atmos' prices with the larger marketer's prices for calendar years 2005 through current, the marketer's rates were always higher on an annual basis. The Company compared favorably with both fixed and variable programs offered by Georgia Natural Gas (GNG) and SCANA. The Company chose to compare its prices with GNG and SCANA since both marketers have a long history in Georgia and have a large market share. As stated earlier, it is unlikely that a marketer can offer lower prices than Atmos in the long run.

Q. HAVE ANY MARKETERS IN GEORGIA GONE BANKRUPT?

A. Yes. It appears that Catalyst Natural Gas (Catalyst) filed for Chapter 11 bankruptcy protection on October 1, 2008. At the time of their bankruptcy petition, Catalyst served 30,000 customers in Georgia. Fortunately, Catalyst worked with the GPSC as well as AGLC to make sure that gas service to their customers was not interrupted. Additionally, there were other marketer bankruptcies in the first few years following the implementation of the Georgia legislation implementing a retail competition program. These bankruptcy proceedings are listed to illustrate another potential pitfall of retail choice. Even though the GPSC had a marketer certification process, that process could not insulate Georgia gas customers from the confusion, inconvenience and frustration caused by a marketer failing to continue to serve its customer base. In addition to the impact on customers from the Catalyst bankruptcy, there were negative financial consequences to other natural gas marketers related to the formula used to calculate the gas that each marketer is required to bring to the city gate each month. The formula allowed Catalyst to be consistently "short" in the gas that they supplied versus the amount their customers used. Because of the lag time in the true up, several gas marketers were stranded with significant amounts owed to them by Catalyst at the time of the bankruptcy. The Georgia Commission reluctantly allocated Universal Service Funds to help mitigate some of the lost funds to the marketers, but several marketers still lost hundreds of thousands of dollars.

Q. PLEASE DISCUSS ATMOS' EXPERIENCE IN ILLINOIS.

A. Atmos has a very small footprint in Illinois. While Atmos does not offer a retail choice program within its Illinois service territory, the Company is aware of two other companies that offer programs, NICOR Gas and Peoples/North Shore Gas. According to the website for the Illinois Citizens Utility Board (CUB), most of the programs have been money losers. CUB was established in 1984 and its mission is to promote the health, welfare and prosperity of all the citizens of Illinois by ensuring effective and democratic representation of utility consumers. CUB publishes on its website "The Gas Market Monitor" which is a unique tool that shows consumers that they are more likely to lose than save money with an unregulated natural gas company. According to the report, as of May 12, 2010, ninety-two percent (92%) of customers in choice programs paid more for natural gas with an average loss in excess of $660 per customer.

The Illinois Commerce Commission (ICC) maintains a summary of consumer complaints it receives from residential and small commercial customers regarding

Alternative Gas Suppliers (AGS). The summary provides the total number of informal and formal complaints reported to the ICC quarterly. Complaints are organized in three categories: marketing and sales; contracts and billing; and customer service. All AGSs with certificates to serve residential and small commercial customers in Illinois are included in the summary, regardless of whether they are currently marketing to or serving customers. The summary provides the total number of complaints received for each AGS and does not account for the number of customers served. According to the 2009 EIA Report, as of December 31, 2009, only around 10% of eligible residential and commercial customers combined are participating in these programs despite the fact that three local natural gas companies have had retail choice programs since 2002.

Customers who prefer not to receive information or solicitations from suppliers may request to be added to their gas utility's "Do Not Contact List". Alternative Gas Suppliers and their sales agents are prohibited from any direct marketing to consumers on the list or soliciting consumers on the list.

Each AGS is required to have a complaint resolution process in place. A toll free number for the AGS' customer call center is supposed to be listed on the customer's bill. If a customer is not satisfied with the outcome after contacting the AGS, he/she may request assistance from the ICC, Illinois Attorney General, or the Citizens Utility Board (CUB). The ICC website list Consumer Protections from Consumer Rights to Obligations of an AGS which were generated in 2009 by new legislation. The ICC website also provides price comparison worksheets to help customers compare supply options from their local utility and AGS.

Q. IS THE COMPANY AWARE OF ANY OTHER STATES THAT HAVE IMPLEMENTED RETAIL CHOICE PROGRAMS?

A. Yes.

Q. PLEASE EXPLAIN.

A. The following information was obtained from the aforementioned EIA website. The states of Wisconsin and Delaware had retail choice programs, but discontinued them. Wisconsin Gas Company decided not to continue its pilot program beyond October 31, 2001, because of declining marketer and customer participation. In November 2000, Connectiv Power Delivery Company (now doing business as Delmarva Power) withdrew its earlier request to extend and revise its customer choice pilot program in Delaware beyond October 31, 2001. The program had been in existence since 1999, but the surge in natural gas prices in 2000 meant that marketer prices were higher than gas costs under the utility's sales service, which reduced program participation.

Currently, 21 states and the District of Columbia have legislation or existing programs that let residential consumers and other small-volume gas users purchase natural gas from someone other than their traditional utility company. However, the availability and characteristics of these customer choice programs vary widely from state to state. Seven of the 21 states and the District of Columbia allow all residential consumers to choose their natural gas suppliers, but a lack of marketer participation has precluded the development of competitive retail markets in three of these states. Six of the 21 states are in the process of implementing choice statewide, with programs available to more than half their residential customers, and another eight states have pilot or partial unbundling programs in place or awaiting development. No significant changes occurred in the states that allow consumer choice but have virtually no participation. Massachusetts had only 0.1 percent of residential customers participating, while New Mexico and West Virginia had fewer than 20 total residential transportation customers participating. The customer aggregation program continued in California, but accounted for only 0.7 percent of deliveries to residential customers. Only 1 percent of Montana's residential and commercial gas consumers and 0.2 percent of South Dakota gas consumers (all sectors) have chosen to use transportation service. Colorado allows utilities to offer customer choice programs if approved by the Colorado Public Utilities Commission, but no utilities have submitted unbundling plans.

Two other states discontinued their pilot programs several years ago after deciding not to proceed with choice, although a utility in one of these states remains committed to expanding its small-volume transportation program in the future, with a goal of eventually exiting the merchant function over several phases.

To my knowledge, the remaining 27 states are not considering choice programs at this time.

Q. HAS EIA POSTED ANY PRICING DATA REGARDING RETAIL CHOICE PROGRAMS?

A. Yes. According to EIA's 2008 summary on retail choice programs, the agency compared the average price of natural gas delivered to residential and commercial consumers by local natural gas companies to those of marketers in selected states. The selected states were Florida, Georgia, Maryland, New Jersey, New York, Ohio, Pennsylvania, and Virginia. In 2007, New York was the only state in which marketer's prices averaged lower than the local natural gas company for residential customers. In 2008, Ohio was the only state in which marketer's prices averaged lower than the local natural gas company for residential customers. These results demonstrate that on the whole, marketers simply cannot procure gas cheaper for residential customers than local distribution companies.

Q. PLEASE DISCUSS CUSTOMER PROTECTIONS THAT THE MICHIGAN PUBLIC SERVICE COMMISSION NEEDED TO IMPLEMENT AS PART OF RETAIL UNBUNDLING.

A. In 2008, the Michigan PSC filed a formal complaint against the marketer Universal Gas and Electric Corporation (UGE) regarding its marketing practices. The PSC reached an agreement with UGE in April 2009 that required UGE to offer to terminate contracts with certain customers without charge or provide a $50 credit to customers who choose to remain with UGE. As part of the agreement, the company must limit its gas supply contracts to 1- and 2-year terms and limit its cancellation fees to $50 for early cancellation of a 1-year contract and $100 for early cancellation of a 2-year contract. UGE must submit its marketing materials to the PSC for approval and revise its contract terms to indicate that the terms and conditions of the contract are specified in the user guide distributed with the contract.

The investigation into UGE's marketing practices also led to a number of new consumer protection measures in October 2009. Choice customers are now able to cancel marketer service unconditionally up to ten days beyond the due date of the first bill where the new marketer is listed. Previously customers had thirty days after enrollment to cancel. Further, marketers must execute cancellation requests without delay, even if an early termination fee or other penalty is owed. In addition, only the customer account holder can sign a contract. Customers enrolling verbally or electronically will receive a written contract by mail, or by verifiable email, that is postmarked within seven days of enrollment.

Q. PLEASE DISCUSS MARKETING PRACTICES OF ENERGY SERVICE COMPANIES IN NEW YORK.

A. At the end of 2007, the New York State Consumer Protection Board (CPB) and the New York City Department of Consumer Affairs (DCA) petitioned (Case 07-M-1514) the New York Public Service Commission to strengthen its regulation over the marketing practices of energy service companies (ESCO). The CPB and the DCA were concerned that the marketing practices of some ESCOs denied customers accurate information and may have resulted in customers paying unreasonable rates.

Based on complaints received by the agencies, media reports and anecdotal information from customers and the industry, it appeared that problems with abusive, misleading and deceptive marketing tactics used by ESCOs in their contacts with customers were persistent and disruptive. Not all ESCOs were accused of any wrong doing, but nevertheless, allegations that some ESCOs or their representatives had misrepresented themselves as agents of distribution utilities, had made other false and misleading statements and engaged in false and misleading practices continued to surface.

The Department of Public Service (DPS) worked with the ESCOs to develop a "Statement of Principles for Marketing Retail Energy to Residential and Small Business Customers in New York State" (Statement of Principles) at the outset of the program. The guidelines for marketing conduct set forth in that document could have prevented most of the problems customers experienced, had the guidelines been mandated and consistently enforced. Unfortunately, that was not the case as some of the complaints involved signatories of the Statement of Principles as well as others that declined to adopt the Statement at all. Clearly, a voluntary approach to preventing misleading marketing practices was not acceptable.

The CPB's and DCA's petition stated that all ESCOs offering service to customers in New York should be required to abide by a minimum set of marketing rules to ensure that customers are protected from deceptive sales practices, and that those rules must be enforced by the PSC with a wide range of sanctions including termination of a company's authorization to do business in New York.

In October 2008, the PSC issued an order which addressed concerns with ESCO marketing and sales agreements by specifying acceptable and unacceptable ESCO marketing practices, fashioning a fuller array of remedies and improving consumer disclosure requirements. Specifically, the Order added the following remedial provisions to the Commission's Uniform Business Practices (UBP): early release of customers from their ESCO contract, without further charges; suspension of an ESCO's participation in any retail access program; suspension of an ESCO's ability to enroll any new customers; the requirement that an ESCO failing to comply with the new requirements record all telephone marketing calls; reimbursement to customers who did not receive the savings promised by an ESCO; revocation of an ESCO's ability to operate in New York State; and any other measures the Commission deems necessary and appropriate under the circumstances.

The Order also adopted marketing standards with which ESCOs must comply in seeking to enroll new customers. The marketing standards adopted place important requirements on ESCOs to train their marketing representatives so that the information they provide to customers accurately describes the merits of the ESCO offer. The marketing standards further define behaviors that marketing representatives must adopt to properly identify themselves and clearly communicate with all customers, including non-English speaking customers. Finally, the marketing standards define several specific forms of conduct with which ESCO marketers must conform. These include, for example, prohibitions on misleading or deceptive conduct or misrepresentation, requirements to provide information using plain language, and requirements to investigate customer complaints.

The Order also outlined customer disclosure guidelines. The Customer Disclosure Statement should be displayed on the first page of the sales agreement. The Disclosure Statement shall include, at the very least, the following information:

- the price, terms and conditions of the ESCO agreement;
- the length of the agreement;
- the terms of renewal;
- provisions governing the process for rescinding or terminating the agreement by the ESCO or the customer, including that a residential customer may rescind the agreement within three business days after its receipt;
- the amount of the termination fee, if any, and the method of calculating the termination fee, if applicable;
- the amount of late payment fees, if applicable; and
- a clear description of the conditions that must be present for savings to be provided (if savings are guaranteed), or under what circumstances savings are guaranteed.

Besides addressing the petition in Case 07-M-1514, the above referenced Order also addressed retail access business rules from Case 98-M-1343. As a result, the UBP was amended to include the items referenced above as well consequences for non-compliance with the UBP, the procedural process for determining such consequences and a retention policy for proof of authorization. Sections 2.D.4

and 2.D.5 of the UBP outline the actions governed, consequences of those actions and the procedural process for resolution. Proof of authorization needs to be kept for two years whether the authorization was telephonic, electronic or written.

Q. WERE THERE ANY OTHER SITUATIONS THAT OCURRED IN NEW YORK?

A. Yes. In July 2008, US Energy Savings agreed to pay $200,000 in costs and penalties as part of a settlement it reached with the New York Attorney General's office. US Energy Savings agreed to waive hundreds of thousands of dollars in residential consumer termination fees and to implement a series of reforms that will ensure that customers are given accurate, up-front information regarding service agreements. The Attorney General's office cited hundreds of complainants that alleged that US Energy Savings sales contractors promised immediate savings, but in fact, customers' bills turned out to be higher than what was being charged by their local utility. When consumers, surprised by the increase in their gas bills, sough to cancel their agreements, US Energy Savings required them to pay a termination fee of $600 or more. As a result of the settlement, US Energy Savings must allow customers to cancel their agreements with termination fees any time form the date the customer signs the agreement until thirty days after receiving the first gas bill from the marketer. Further, the settlement limits the amount that US Energy Savings may charge as a termination fee. After the Attorney General's office brought its concerns to US Energy Savings, the company agreed to waive termination fee for more than 300 customers and allowed them to cancel their contracts. Going forward, US Energy Savings must obtain background and/or reference checks for all potential sales contractors and terminate any contractor that misleads consumers. All future customer complaints must be reviewed and a response provided within thirty days.

Q. DID THE COMPANY REVIEW THE SURVEY RESULTS FROM THE COMMISSION'S NARUC SURVEY?

A. Yes. The Commission received survey responses from Maryland, California, Florida, Oregon, Maine, South Dakota, and Arkansas.

Q. PLEASE CONTINUE.

A. The Company found the responses in regards to the California programs to be troublesome from a customer's point of view. It appears that there is little oversight, no certification process and no consumer protections in California. The Oregon Commission's response to the survey ended after the first question which was "Is small volume gas transportation ("SVT") available in your state?" Their response was: "No, little interest among customers. Natural gas service is not considered of enough importance or size (volumes and $) to warrant the trouble associated with such services as SVT." Maryland and Maine indicated that at least one marketer had gone bankrupt. Maine does not have retail choice at the residential level. South Dakota and California indicated very little participation. South Dakota indicated the reason for low participation to be "too much administrative work, meter expense, etc. to be viable". SVT is not available in Arkansas and "has not been strongly considered." The state of Florida has less than 15,000 residential choice customers and the choice programs are voluntary on the part of the local natural gas company rather than mandatory.

VI. CONCLUSION

Q. DO YOU BELIEVE THAT RETAIL CHOICE PROGRAMS SAVE CUSTOMERS MONEY?

A. No. As outlined above, there is an abundance of evidence showing that retail choice programs have created additional costs as well as risks for natural gas customers.

Q. SHOULD THE COMMISSION MANDATE RETAIL CHOICE PROGRAMS?

A. No. The Commission has the authority to approve retail choice programs, but the Company does not believe that such programs are in the public interest, and therefore, should not be mandated. The Company believes that each local natural gas company is uniquely situated and it should be up to each individual company to decide whether to file an application to offer retail choice programs.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

VERIFICATION

I, Mark A. Martin, being duly sworn under oath state that I am Vice President of Rates and Regulatory Affairs for Atmos Energy Corporation, Kentucky/Mid-States Division, and that the statements contained herein are true and correct as I verily believe.

Mark A. Martin

Mark A. Martin

SUBSCRIBED AND SWORN TO before me, a notary public in and for the Commonwealth of Kentucky, by Mark A. Martin, Vice President of Rates and Regulatory Affairs, Atmos Energy Corporation, Kentucky/Mid-States Division, on this 21st day of June 2010.

Jacqueline S. Purcell

Notary Public

Expiration date November 15, 2011