IN THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE:	)	
	)	
UNITED CITIES GAS COMPANY, a Division of ATMOS ENERGY CORPORATION INCENTIVE PLAN (IPA) AUDIT	)	Consolidated Docket Nos. 01-00704 and 02-00850
	)	
UNITED CITIES GAS COMPANY, a Division of ATMOS ENERGY CORPORATION, PETITION TO AMEND THE PERFORMANCE BASED RATEMAKING MECHANISM RIDER	)	

ATMOS ENERGY CORPORATION'S MOTION FOR RECONSIDERATION TO HEARING OFFICER

Atmos Energy Corporation ("Atmos" or "Company") files this Motion for Reconsideration to Hearing Officer pursuant to Tenn. Code Ann. §§ 65-2-114, 4-5-317 and Tenn. Rules & Regs. 1220-1-2-.20.[1] As discussed more thoroughly below, the Initial Order of Hearing Officer on the Merits contains errors of fact and law, is procedurally deficient, and is arbitrary and capricious. As such, Atmos requests that the hearing officer grant this Motion for Reconsideration and issue an order sustaining Atmos' objections to the 2000-2001 audit at issue in Docket No. 01-00704, or in the alternative, an order granting the TIF tariff requested in Docket No. 02-00850.

I. PURSUANT TO TRA RULES, THE TIF TARIFF ATMOS FILED ON AUGUST 9, 2002 BECAME EFFECTIVE JUNE 6, 2003.

On August 9, 2002, the Company filed its petition in Docket No. 02-00850 to amend its Performance Based Ratemaking ("PBR") tariff to add a transportation index factor ("TIF"), which would provide a more detailed and specific method for calculation of savings from discounted

[1] Atmos files this Motion without waiving, and while expressly reserving, its right to seek TRA review under Tenn. Code Ann. § 4-5-315, and its right to judicial review of the final TRA decision under Tenn Code Ann. § 4-5-322.

transportation contracts.[2] Pursuant to Tennessee Regulatory Authority ("TRA") rules, the TIF tariff would automatically become effective 30 days after filing, or on September 9, 2002, unless the effective date was suspended by order of the TRA. Tenn. Rules & Regs. 1220-4-1-.04; Consumer Advocate and Protection Division v. Tennessee Regulatory Authority, 2005 WL 3193684 at *7 (Tenn. Ct. App. Nov. 29, 2005) (slip copy) (holding that unless suspended by the TRA, tariffs are automatically effective 30 days after filing and have the force of law).

The TRA suspended the effective date of Atmos' TIF tariff on three separate occasions:

(1) On September 17, 2002, the TRA issued an order memorializing its August 19, 2002 decision to suspend the effective date of the TIF tariff 90 days, from September 8, 2002 through December 7, 2002.[3]

(2) On December 2, 2002, the TRA suspended the effective date of the tariff an additional 90 days, from December 8, 2002 through March 7, 2003.[4]

(3) On March 3, 2003, the TRA suspended the effective date of the TIF tariff for the final time for an additional 90 days, from March 8, 2003 through June 5, 2003.[5]

There is no subsequent order suspending the effective date of the TIF tariff beyond June 5, 2003. As such, as a matter of law, Atmos' TIF tariff became effective June 6, 2003. Tenn. Rules & Regs. 120-4-1-.04; Consumer Advocate, 2005 WL 3193684 at *7.

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[2] TRA Docket No 02-00850, 8/9/02 Petition by United Cities Gas Company to Amend the Performance Based Ratemaking Mechanism Rider to Its Tariff, p. 1.
[3] TRA Docket No. 02-00850, 9/17/02 Order Suspending Tariff Ninety Days, p. 1.
[4] TRA Docket No 02-00850, 4/9/03 Order Suspending Tariff for an Additional Ninety Days, Convening a Contested Case Proceeding, Granting Intervention and Appointing a Pre-Hearing Officer, p 1.
[5] Id., p 2.

II. THE INITIAL ORDER IS NULL AND VOID.

The Tennessee Administrative Procedures Act, which governs proceedings before the TRA, Public Service Commission v. General Telephone Co., 555 S.W.2d 395, 397 (Tenn. 1977), requires that all final and initial orders be issued within 90 days after the conclusion of the hearing:

> A final order rendered pursuant to subsection (a) or initial order rendered pursuant to subsection (b) shall be rendered in writing within ninety (90) days after conclusion of the hearing or after submission of proposed findings in accordance with subsection (f) unless such period is waived or extended with the written consent of all parties or for good cause shown.

Tenn. Code Ann. § 4-5-314(g). The hearing in this case was held October 19, 2004.[6] The Initial Order was not issued until March 14, 2006, which was 511 days after the hearing.[7] Where an agency's failure to issue an order within the prescribed 90 days results in prejudice to a party, the failure to comply with the 90 day requirement renders the order null and void. Garrett v. State Dept. of Safety, 717 S.W.2d 290, 291 (Tenn. 1986); Daley v University of Tennessee, 880 S.W.2d 693, 695 (Tenn. Ct. App. 1994); Murray v. Wood, 1987 WL 7966 at *4 (Tenn. Ct. App. March 18, 1987) (unpub.). In this Atmos suffered substantial prejudice as a result of the 14 month delay in issuing the Initial Order, and therefore the Order is null and void.

The Initial Order denied Atmos' requested TIF tariff because the hearing officer found insufficient evidence in the record to support the TIF methodology.[8] The Initial Order specifically contemplates that the Company may refile its petition with additional supporting evidence, and provides that "nothing in this order is intended to preclude the Company from filing a similar tariff in the future with additional supporting documentation."[9] However, because any new tariff Atmos

[6] Initial Order, p 18
[7] Id., p. 1.
[8] Initial Order, p. 36
[9] Id., p. 37

filed after the conclusion of this case would take effect prospectively only[10], the more than year-long delay in issuing the Initial Order has deprived Atmos of any opportunity to share in the transportation savings the Company achieved during the 14 months it waited for the Initial Order, an amount which is in excess of $1 million. The prejudice Atmos has suffered as a result of the 14 month delay renders the Initial Order void for failure to comply with the 90 day deadline mandated by Tenn. Code Ann. § 4-5-314. Cf. Garrett, 717 S.W.2d at 291 (finding no prejudice where order was filed 112 days after hearing); Daley, 880 S.W.2d a6 695 (finding no prejudice where order was filed 19 days late due to delay in obtaining the transcript); Murray, 1987 WL 7966 at *4 (refusing to reverse agency decision absent a showing of prejudice from the delay).

III. THE HEARING OFFICERS' DECISIONS IN THIS CASE HAVE DEPRIVED ATMOS OF THE DUE PROCESS PROTECTIONS AFFORDED BY THE STATE AND FEDERAL CONSTITUTIONS.

The prejudice to Atmos resulting from the 14 month delay in issuing the order is compounded in this case by arbitrary and capricious rulings which have violated the Tennessee Administrative Procedures Act and deprived Atmos of the due process protections of the federal and state constitutions. See Tenn. Code Ann. § 4-5-322.

The prospect of prejudice resulting from delay was at the forefront of the proceedings in this case from the beginning. Both Atmos and the TRA Staff recognized the impact of the passage of time on the parties' rights and positions. As Atmos faced years of uncertainty and litigation, the TRA Staff watched 4 years of audit deadlines pass with no standard under which to conduct the audits. The CAPD, as the only party unaffected by the passage of time, attempted to use the delay

[10] Per agreement with TRA Staff, Atmos has not filed any audit reports for the 5 audit years that have passed during the pendency of this case. (Hearing Trans. Vol. II, pp 87-89.) TRA Staff and Atmos agree that because the Staff has yet to even begin the adutis for the 2001-02, 2002-03, 2003-04, 2004-05, and 2005-06 audit years, those audit years remain open. (Id.) Therefore, if Atmos' petition in Docket No. 02-00850 is granted, the TIF tariff proposed therein will become effective April 1, 2001, the first audit year following the audit year in dispute in Docket No 01-00704. (Atmos' Post-Hearing Brief, pp. 51-54)

to its advantage by constructing a retroactive ratemaking argument which, contrary to well established caselaw, would have deprived the Company of the right to share in any savings generated for each audit year commenced during the pendency of the case by delaying the effective date of the TIF tariff until the first full audit year commencing after the decision was rendered in this case. Not incidentally, the CAPD's retroactive ratemaking argument would also invalidate all incentive based ratemaking plans, as well as the PGA rule, both of which CAPD witness Dan McCormac strongly opposes.

In an attempt to avoid continued delay, on March 8, 2004, the Company and TRA Staff made a joint request to the hearing officer to permit Atmos to withdraw its objections to the 2000-2001 audit at issue in Docket No. 01-00704 and accept the initial report of the audit staff, thus rendering Docket No. 01-00704 moot. The joint request also asked that the TIF tariff be set for final resolution by hearing.[11] The parties' joint proposal also notified the hearing officer that TRA Staff was in agreement with the Company that the TIF tariff was in the public interest and should be approved effective with the 2001-2002 audit year, the first year following the disputed audit year.[12] In reply, the CAPD claimed that it needed more discovery to respond to the TIF tariff, even though at that point the petition had been pending for two years.[13] After being granted several additional months of discovery, the CAPD opposed the joint request to allow Atmos to withdraw its objections to the 2000-2001 audit.[14] Not content with winning by default, the CAPD claimed that allowing Atmos to withdraw its objections and give up any right to recover its share of transportation savings from the 2000-2001 audit year would deprive the CAPD of the opportunity to litigate, even though Atmos' withdrawal of its objections left nothing to litigate

[11] 3/8/04 Motion to Consolidate and for Approval of Settlement.
[12] Id.
[13] CAPD's 3/26/04 Motion for Extension of Time to Respond to the Motion to Consolidate, pp 4-5.
[14] CAPD's 5/17/04 Objections to the Motion Filed by Atmos and TRA Staff, pp 8-10

about.[15] At a hearing on June 8, 2004, the hearing officer denied the Staff and Company's joint request to allow Atmos to withdraw its objections to the 2000-2001 audit.[16] The hearing officer's decision was arbitrary and capricious, and deprived Atmos of due process by forcing the Company to litigate objections it wished to withdraw.

IV. THE TIF TARIFF IS SUPPORTED BY SUFFICIENT EVIDENCE IN THE RECORD.

The Initial Order finding that the TIF tariff is not supported by sufficient record evidence is in error. The Initial Order states that "the record does not contain sufficient evidence to support the percentage sharing split between the Company and its customers in the proposed TIF Tariff."[17] However, the Order does not address the fact that the sharing percentages presented in the proposed TIF tariff were initially agreed to by all parties, including TRA Staff and CAPD. As demonstrated in the record, during the summer of 2002, the parties (the Company, TRA Staff and the CAPD) reached agreement on the substance of the TIF tariff, including the sharing percentages.[18] The CAPD's only objection was to the effective date of the TIF. The CAPD would not agree to an effective date of April 1, 2001, but instead insisted that the TIF not become effective until one year later, April 1, 2002.[19] The CAPD made no challenge to the appropriateness of the sharing percentages at the hearing.[20]

The parties' agreement aside, the record is replete with uncontradicted evidence supporting the sharing percentages and operation of the TIF tariff. Through pre-filed and live testimony at the hearing, Atmos presented the opinions of Frank Creamer, the TRA consultant who advised on the

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[15] Id
[16] Transcript of 6/8/04 Hearing
[17] Initial Order, p 36
[18] 5/21/04 Resp. to CAPD's Objections to the Mot. for App. Of Settlement Agrmt., pp. 2-4, Atmos' Post-Hearing Brief, pp. 6-8.
[19] Id.
[20] Hearing Trans. Vol. II, pp. 67-67.

creation of the original PBR plan, and who is the author of the proposed TIF tariff.[21] Mr. Creamer testified at length about the marketplace for transportation contracts and the economic realities of such purchases, and provided a detailed explanation of how the TIF tariff would balance the interests of both ratepayers and the Company, while accomplishing the goals and intent of the PBR plan.[22] TRA Staff presented testimony asserting that it agreed with Mr. Creamer's conclusions.[23] The CAPD did not challenge Mr. Creamer's testimony regarding the market for downstream transportation purchases and the genesis and operation of the TIF tariff at the hearing.[24] Given the uncontradicted testimony in support of the TIF tariff and the sharing percentages therein, the hearing officer's ruling that the record contained insufficient evidence on that issue is arbitrary and capricious, and should be reversed. Tennessee American Water Co. v. Public Serv. Comm'n, 1985 Tenn. App. LEXIS 2800 at *13 (Tenn. Ct. App. April 11, 1985) (unpub.) (holding that an agency acts arbitrarily when it unreasonably rejects expert opinion or disregards uncontradicted testimony without sufficient reason), citing South Central Bell v. Tennessee Pub. Serv. Comm'n, 579 S.W.2d 429 (Tenn. Ct. App. 1979).

The Initial Order is also in error in finding insufficient evidence in the record to support use of the maximum FERC rate as a benchmark for downstream transportation costs. As demonstrated in the record in this case, the TRA has already accepted the maximum FERC rate as the benchmark for downstream transportation costs, and has continuously used the maximum FERC rate as the benchmark for calculating transportation discounts in the Company's NORA contract since the inception of the original PBR plan a decade ago.[25] Furthermore, Atmos established through the unchallenged testimony of Frank Creamer that the maximum FERC rate:

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[21] Hearing Trans Vol. II , pp 67-76.
[22] Id.
[23] Hearing Trans. Vol II, pp. 83-84.
[24] Hearing Trans. Vol. II, pp 67-76.
[25] Hearing Trans. Vol. II, pp. 67-76.

is the market-clearing price for the majority of the firm transportation contracts industry-wide and is the basis for the negotiations of any future discounts; is the benchmark that would be used for any prudence review of Atmos' purchases; and is the accepted benchmark used by other state public utility commission to measure avoided downstream transportation costs.[26] Again, Mr. Creamer's assertions were unchallenged by the CAPD at the hearing, and TRA Staff submitted testimony asserting its agreement with Mr. Creamer's conclusions.[27] In light of the uncontradicted proof in the record that the maximum FERC rate is the appropriate benchmark to measure avoided downstream transportation costs, the hearing officers' finding of insufficient evidence to support use of the maximum FERC rate is arbitrary and capricious, and should be reversed. Tennessee American Water Co., 1985 Tenn. App. LEXIS 2800 at * 19 (holding that the Commission acted arbitrarily by ignoring evidence in the form of expert opinion and acting on speculation).

Atmos and the TRA Staff have produced sufficient evidence in this case, much of it uncontradicted, to show that the TIF tariff is just and reasonable and in the public interest. The hearing officer's finding to the contrary is unreasonable, and should be reversed.

V. THE SHARING OF SAVINGS FROM DISCOUNTED TRANSPORTATION RATES THROUGH THE TRANSPORTATION COST ADJUSTER IS WITHIN THE INTENT AND SCOPE OF THE ORIGINAL PBR PLAN.

The Initial Order found that because transportation discounts were not specifically referenced within the PBR plan, the TRA could not have intended that such discounts be included within the plan.[28] This finding is in error. The evidence demonstrated, and all parties in this case agreed, that the TRA's intent in implementing the PBR was to avoid the necessity of prudency audits by putting incentives in place that span the entire spectrum of gas purchasing activities,

[26] Hearing Trans. Vol. II, pp. 67-76.
[27] Hearing Trans. Vol II, pp 83-84.
[28] Initial Order, p 32.

including transportation.[29] Further, the evidence demonstrated, and all parties agree, that if the transportation costs are wholly excluded from the PBR, as the Initial Order found, it would be impossible to achieve the original goal and intent of the PBR, and the TRA would have no choice but to conduct prudency audits, the precise activity the PBR was designed to avoid.[30] Just as the TRA found in Docket No. 03-00209 that recovery of the gas cost portion of bad debt is within the intent and scope of the PGA despite the fact the PGA rule did not address the issue specifically, the TRA should find in this case that the sharing of transportation discounts is within the intent and scope of the original PBR plan. The Initial Order's finding to the contrary is arbitrary and capricious and should be reversed. Tennessee American Water Co. , 1985 Tenn. App. LEXIS 2800 at * 19 – 22.

VI. STAFF'S DISALLOWANCE OF THE TRANSPORTATION SAVINGS IS PRECLUDED BY THE PLAIN LANGUAGE OF THE PBR TARIFF.

The binding regulation contained within the PBR tariff, which has been approved and accepted by the Authority, states that Atmos' incentive plan accounts "shall" be deemed in compliance for the periods of time covered by the quarterly reports if the TRA Staff does not object to such reports within 180 days.[31] The language of the PBR tariff is unequivocal: it requires Atmos to file annual and quarterly reports, and then states that the Incentive Plan Account will be deemed in compliance unless the Authority objects to ***such reports*** within 180 days, clearly indicating that the obligation to object applies to both quarterly and annual reports.[32] Atmos filed two quarterly reports which included the transportation savings, with no objection

[29] Hearing Trans Vol. II, pp. 83-84; 93; 99-100; Staff 7/31/02 Memo. in Supp of Mot for Summ J., pp 10, 22-23; CAPD 7/17/02 Memo. in Supp. of Mot. for Partial Summ J , p. 18
[30] Direct Test. of Dan McCormac, p 6 ; Rebuttal Test of Dr. Stephen Brown, p. 25, Staff's 5/21/04 Resp. to the CAPD, p. 13.
[31] Tariff Sheet 45.6
[32] Id.

from TRA Staff.[33] The Company did not try to hide the submission of these savings, but instead held a meeting with TRA Staff to notify it of the additional savings and how those savings would be reflected in the upcoming reports.[34] Despite the Staff's failure to object, the Initial Order upheld the Staff's audit findings disputing the savings amounts. This holding is arbitrary and capricious.

The Initial Order applied a strict construction to that portion of the PBR tariff describing the Company's sharing, finding that because discounted transportation contracts were not specifically referenced within the PBR, the TRA did not intend to include such discounts in the plan.[35] However, despite the fact that the Initial Order concedes the language of the objection provision of the PBR tariff is "unclear," the Order abandons the strict construction it applied to other portions of the tariff, and instead finds that, with regard to the objection provisions, the intent is something different than what the language says. Rather than apply the language as written, the Order finds that where the tariff references quarterly and annual reports (plural), and then requires the Staff to object to ***such reports*** (plural) that the language actually was intended to refer to only one of the reports – the annual report.[36] This finding is arbitrary and capricious and should be reversed. Atmos filed two quarterly reports in which it took pains to alert the Staff that it included the transportation savings, with no objection from TRA Staff. Under the plain language of the PBR tariff, the Company's filings highlighting those savings are deemed in compliance, and the Staff's disallowance of those savings must, under the terms of the tariff, be rejected.

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[33] Initial Order, p.35.
[34] Id.
[35] Initial Order p 32.
[36] Initial Order, p 35.

VII. THE FINDINGS IN THE AUDIT REPORT ARE BARRED BY THE DOCTRINE OF ESTOPPEL.

The record in this case demonstrates that on January 31, 2001, shortly after successfully negotiating the discounted transportation contracts at issue, Atmos held a meeting with TRA Staff and explained in detail how the discounts were negotiated and how the savings would be reported and calculated under the PBR plan in the Company's upcoming reports.[37] At the meeting, the Staff indicated that they agreed with Atmos' position that the savings from the negotiated transportation discounts were included within the avoided costs provisions of the PBR plan, and that they accepted Atmos' proposed method of calculating and reporting the savings.[38] At no point during the January 31, 2001 meeting did the Staff give any indication that Atmos could not rely on the Staff's statements, or make any suggestion that Atmos needed to take any further action before proceeding with its proposed reporting and calculations.[39] Atmos filed two quarterly reports which calculated the transportation savings exactly as described and agreed to in the meeting with TRA Staff.[40]

The Initial Order found that despite Staff's actions, the audit findings were not barred by the doctrine of estoppel because the element of detrimental reliance was not present.[41] The finding is in error. The Order ignores the evidence in the record that the Company booked $600,000 in income based on Staff's agreement with the proposed calculation method.[42] This reliance was clearly induced by the Staff's affirmative actions at the meeting with Atmos which led Atmos to believe Staff agreed and approved of the proposed reporting and calculation methods.[43] As such, the element of detrimental reliance is present, and Staff is now barred from taking an inconsistent

[37] Initial Order, pp 21-23.
[38] Id.
[39] Id
[40] Id
[41] Initial Order, pp. 34-35
[42] Hearing Trans Vol I, pp. 60-61.
[43] Id.

position and contesting the inclusion of the transportation savings as avoided costs under the PBR. The hearing officer's finding to the contrary is inconsistent with the evidence in this case, and should therefore be reversed. Tennessee American Water Co., 1985 Tenn. App. LEXIS 2800 at * 14 (holding that agency action which is counter to the evidence presented is arbitrary).

VIII. THE INITIAL ORDER VIOLATES ATMOS' RIGHTS TO DUE PROCESS AND EQUAL PROTECTION.

Two recent decisions represent a clear indication of TRA policy regarding the disallowance of incentive plan items for gas companies. Recognizing that the complex and ever changing nature of the natural gas industry prevents the Authority from being able to draft an incentive plan that will foresee and specifically address all possible purchasing arrangements, the TRA has twice refused to penalize gas companies that notify the Authority of their intentions, and rely in good faith on the tacit approval they receive in response. In the case of Nashville Gas' 2003 plan year audit, the TRA Staff found that, under the terms of the company's incentive plan, Nashville Gas is not entitled to share in the proceeds of the fee paid by its asset manager.[44] Nevertheless, the Staff declined to disallow those savings for the audit year, on the grounds that the company had acted in good faith and had relied on previous Authority approval in including those savings in its reports.[45] Instead, the Staff recommended that the TRA suspend Nashville Gas' incentive plan going forward until the issue of inclusion of the asset management fee could be resolved.[46] The TRA declined to suspend the incentive program, and instead asked for input from the company on the issue.[47]

The second decision occurred on December 13, 2004. There, the Authority unanimously voted to reject a Staff finding disallowing reported savings in Chattanooga Gas' 2003 plan year

[44] Docket No. 03-00489, Audit Report p. 13.
[45] Id.
[46] Id. at p. 14
[47] 10/1/04 Order in Docket No. 03-00489.

audit.[48] Staff found that Chattanooga Gas had violated the terms of its tariff by entering into a flat-fee asset management arrangement with its affiliate, and sharing that fee rather than tracking the off-system sales individually and sharing in the profits as required by the terms of the tariff.[49] The TRA unanimously rejected the Staff's finding and permitted Chattanooga Gas to retain its share of the fee.[50] In rejecting the Staff finding, Director Jones noted for the record that his decision was influenced by the fact that Chattanooga Gas "has been very forthcoming in notifying the TRA of the agreement and its intended treatment of the revenues generated from that agreement and has included those revenues in previous tariff filings and audits."[51] Director Jones found it significant that at no point did the TRA notify Chattanooga Gas of a potential tariff violation, despite the fact that Chattanooga Gas made several filings.[52] Director Tate agreed, finding that "it does seem reasonable that the company relied on, if not actual approval, some kind of tacit approval over the past few years . . . ."[53] Director Kyle also agreed that the Staff's disallowance should be rejected, finding the TRA's decision "consistent with the policy constantly following by the Authority regarding actual cost adjustment filings."[54]

Atmos is entitled to the same deference extended to Nashville Gas and Chattanooga Gas. Atmos met with Staff to notify it of the newly negotiated discount transportation contracts, it reported the savings as outlined in the meeting, and the Company relied on the Staff's indication of approval. The Company has acted in good faith. The Initial Order acknowledges as much.[55] Despite this acknowledgement, the Order fails to apply the TRA's established policy in an evenhanded manner and instead treats Atmos differently from other similarly situated utilities,

[48] Docket No. 03-00516, 12/13/04 Trans. of Proceedings pp. 59-60.
[49] Docket No. 03-00516, Audit Report p 9.
[50] Docket No 03-00516, 12/13/04 Trans. of Proceedings pp. 59-60
[51] Id. at p 52.
[52] Id. at p. 52
[53] Id. at p. 54.
[54] Id at p. 56.
[55] Initial Order p. 35.

with no rational basis. The Order's failure to apply the TRA's policy to Atmos is arbitrary and capricious, and violates the due process and equal protection provisions of the state and federal constitutions. Champion's Auto Ferry, Inc. v. Michigan Public Service Com'n, 588 N.W.2d 153, 164 (Mich. Ct. App. 1998) ("The Equal Protection Clause of the Fourteenth Amendment directs that all persons similarly situated shall be treated alike."); Wisconsin Hosp. Ass'n v. Natural Resources Bd., 457 N.W.2d 879, 891 (Wis. Ct. App. 1990) (noting that equal protection challenge is warranted when an administrative agency's ruling treats similarly situated individuals differently); Anco, Inc. v. State Health and Human Services Finance Com'n, 388 S.E.2d 780, 786 (S.C. 1989) ("Equal protection requires that all persons of the statutory class shall be treated alike under similar circumstances and conditions, both in the privileges conferred and in the liabilities imposed."); Miller v. State Civil Service Com'n, 540 So.2d 482, 485 (La. Ct. App. 1989) ("the right to equal protection requires that state laws or administrative rules affect all persons similarly situated alike.").

IX. CONCLUSION.

The Initial Order of Hearing Officer on the Merits contains errors of fact and law, is procedurally deficient, and is arbitrary and capricious. Therefore, Atmos requests that the hearing officer grant this Motion for Reconsideration and issue an order sustaining Atmos' objections to the 2000-2001 audit at issue, or in the alternative, an order granting the requested TIF tariff.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served via U.S. Mail, postage prepaid, upon the following this the 27th day of March, 2006:

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