

**IN THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

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

**ATMOS ENERGY CORPORATION'S MOTION
TO MODIFY BRIEFING SCHEDULE**

Atmos Energy Corporation ("Atmos" or "Company") files this Motion to Modify Briefing Schedule. As the basis for its motion, Atmos states as follows:

BACKGROUND

1. On August 1, 2006 the Tennessee Regulatory Authority issued a Notice of Briefing Schedule ("Briefing Schedule") in the above-captioned docket. That Briefing Schedule dictated the following deadlines on the Company's Motion asking the TRA to review the Hearing Officer's *Order* pursuant to TENN. CODE ANN. § 4-5-315:

Initial briefs by the parties shall be due no later than **2:00 p.m. on Thursday, August 31, 2006** and Reply Briefs shall be filed no later than **2:00 p.m. on Friday, September 15, 2006**.

(emphasis in original) Also, the Briefing Schedule stated "[a]ny request to modify this schedule shall be made in writing and filed with the Office of the Chairman no later than 2:00 p.m. on **Wednesday, August 9, 2006.**" (emphasis in original)

THE SCHEDULING CONFLICT IN THE SHOW CAUSE PROCEEDING

2. Lead counsel in this appeal also represents the Company in Docket No. 05-00258, in re: Petition to Open an Investigation to Determine Whether Atmos Energy Corporation Should be Required by the TRA to Appear and Show Cause That Atmos Entergy Corporation Is Not Overearning in Violation of Tennessee Law and That It Is Charging Rates That Are Just and Reasonable (“Show Cause Proceeding”).

3. The Order Granting Interventions and Setting Procedural Schedule in the Show Cause Proceeding, dated May 25, 2006, sets the following schedule:

Evidentiary Hearing:

August 29, 2006 through September 1, 2006

(the “First Order Setting Procedural Schedule” is attached as **Exhibit A** hereto).¹ The Order Setting Procedural Schedule addresses “Phase One” of the Show Cause Proceeding.

4. In addition, a separate Order Addressing Intervention of AEM and the Procedural Schedules for Phase One and Two of the Show Cause Proceeding was entered on July 13, 2006 (the “Second Order Setting Procedural Schedule” is attached as **Exhibit C** hereto). The Second Order Setting Procedural Schedule addresses the procedural schedule for “Phase Two” of the Show Cause Proceeding.

GOOD CAUSE TO EXTEND THE BRIEFING SCHEDULE

5. Because lead counsel for Atmos will be participating in the evidentiary hearing in the Show Cause Proceeding on August 31, 2006, the date the Briefing Schedule currently sets for the initial briefs in this action, good cause exists for extending the Briefing Schedule.

¹ At the Status Conference of July 27, 2006, the Hearing Officer announced that “Director Miller has a conflict on September 1st, 2006. . . [and] as an additional matter, oral argument in Docket No. 03-00585 has been scheduled for one hour on the morning of August 30th, 2006.” (7/27/2006 Tr. of Proceedings at p. 2 (**Exhibit B** hereto).) While this announcement shortened the time for hearing, there was no change to the case’s setting.

6. Further, post-hearing briefs will be due on Phase One of the Show Cause Proceeding after the evidentiary hearing, and Atmos has other deadlines under Phase Two of the Show Cause Proceeding.

7. Atmos requests a reasonable extension of the Briefing Schedule to allow counsel and the Company adequate time to address the issues in both dockets.

8. Counsel for Atmos notified General Counsel for the TRA, Mr. J. Richard Collier, (by voicemail on August 2, 2006) of the Company's good faith request for an extension of the Briefing Schedule.

WHEREFORE, for good cause shown, Atmos submits its request that the Briefing Schedule be extended and that:

- (a) Initial briefs by the parties be due no later than **2:00 p.m. on Thursday, October 19, 2006**; and
- (b) Reply Briefs shall be filed no later than **2:00 p.m. on Friday, November 3, 2006**

BAKER, DONELSON, BEARMAN
CALDWELL, & BERKOWITZ, P.C.

By: 


Joe A. Conner, TN BPR # 12031
Misty Smith Kelley, TN BPR # 19450
Clinton P. Sanko, TN BPR # 023354
1800 Republic Centre
633 Chestnut Street
Chattanooga, TN 37450-1800
(423) 209-4148
(423) 752-9549 (Facsimile)
jconner@bakerdonelson.com
mkelley@bakerdonelson.com
Attorneys for Atmos Energy Corporation

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 9th day of August, 2006:

Russell T. Perkins
Timothy C. Phillips
Office of the Attorney General
Consumer Advocate & Protection Division
P.O. Box 20207
Nashville, TN 37202

Gary Hotvedt
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243



BEFORE THE TENNESSEE REGULATORY AUTHORITY

Nashville, Tennessee

May 25, 2006

IN RE:

**PETITION OF THE CONSUMER
ADVOCATE TO OPEN AN
INVESTIGATION TO DETERMINE
WHETHER ATMOS ENERGY CORP.
SHOULD BE REQUIRED BY THE
TENNESSEE REGULATORY
AUTHORITY TO APPEAR AND SHOW
CAUSE THAT ATMOS ENERGY CORP.
IS NOT OVEREARNING IN VIOLATION
OF TENNESSEE LAW AND THAT IT IS
CHARGING RATES THAT ARE JUST
AND REASONABLE**

**DOCKET NO.
05-00258**

ORDER GRANTING INTERVENTIONS AND SETTING PROCEDURAL SCHEDULE

This docket came before the Hearing Officer at a Status Conference to consider any petitions to intervene and to establish a procedural schedule. The *Notice of Status Conference* issued on May 16, 2006 notified interested persons that the Status Conference is scheduled to: 1) dispose of any outstanding petitions to intervene; 2) establish a procedural schedule; and 3) resolve any other pending matters. A *Notice of Proposed Procedural Schedule* issued on May 19, 2006.

I. PETITIONS TO INTERVENE

Chattanooga Gas Company filed a petition to intervene on November 3, 2005, and the Atmos Intervention Group¹ filed a petition to intervene on May 18, 2006. In each of the

¹ According to its petition to intervene, the Atmos Intervention Group includes customers who purchase natural gas from Atmos such as Berkline, LLC and Koch Foods, Inc. See *Petition to Intervene of Atmos Intervention Group*, 1 (May 18, 2006).



petitions, it is asserted that the Petitioners' legal interests may be determined by this proceeding.² Tennessee Code Annotated Section 4-5-310(a) sets forth the following criteria for granting petitions to intervene:

(a) The administrative judge or hearing officer shall grant one (1) or more petitions for intervention if:

(1) The petition is submitted in writing to the administrative judge or hearing officer, with copies mailed to all parties named in the notice of the hearing, at least seven (7) days before the hearing;

(2) The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of the law; and

(3) The administrative judge or hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.³

During the Status Conference, the Hearing Officer granted the petitions to intervene filed by Chattanooga Gas Company and the Atmos Intervention Group. The Hearing Officer finds that the petitions were timely filed and substantiate that Petitioners' legal interests may be affected by this docket. Further, Petitioners' intervention will not impair the interests of justice or the orderly and prompt conduct of this docket. Therefore, pursuant to Tennessee Code Annotated Section 4-5-310(a), the Hearing Officer granted the petitions.

Also during the Status Conference, an issue was raised as to whether the Authority Investigative Staff would act as a party in this proceeding. After determining that it may not be clear whether the Investigative Staff was granted party status during the May 15, 2006 Authority Conference, the Hearing Officer invited Investigative Staff to orally move for intervention. After hearing Investigative Staff's motion, the Hearing Officer asked for objections. Upon hearing no objection to the intervention, the Hearing Officer granted the oral motion.

² See *Petition to Intervene*, 2 (Nov. 3, 2005); *Petition to Intervene of Atmos Intervention Group*, 1 (May 18, 2006).

³ Tenn. Code Ann. § 4-5-310(a) (2005).

II. PROCEDURAL SCHEDULE

The charge of the Hearing Officer is to consider both traditional and show cause contested case schedules and to adopt the schedule determined to be the most efficient and expeditious.⁴ With this end in mind, the Hearing Officer developed the following schedules:

- (1) a traditional schedule with all parties filing discovery, pre-filed direct testimony, and pre-filed rebuttal testimony simultaneously
- (2) a traditional schedule with each party having a round of discovery and with intervenors filing pre-filed direct testimony first
- (3) a show cause schedule with each party having a round of discovery and Atmos filing pre-filed direct testimony first
- (4) a show cause schedule excluding all intervenors and requiring testimony from Atmos

After considering the relative strengths, weaknesses, and time to completion of each schedule, the Hearing Officer issued the *Notice of Proposed Procedural Schedule* on May 19, 2006 with the schedule of the first alternative attached.

After ruling on the petitions to intervene, the Hearing Officer asked for comments on the proposed schedule from the parties. Shortly thereafter, it was determined that a recess during which time the parties could confer on the proposed procedural schedule would be beneficial.

After an extended recess, the parties reported to the Hearing Officer that they had reached agreement as to certain modifications to the proposed procedural schedule. Thereafter, discussions between the Hearing Officer and the parties ensued and further adjustments to the schedule were made. Upon conclusion of all discussions, the parties unanimously agreed to the procedural schedule attached hereto as Exhibit A.⁵ The following agreements were also reached:

- Atmos agreed to waive any objection to a party submitting more than forty (40) discovery requests.⁶

⁴ Transcript of Proceedings, May 15, 2006, pp. 29-39 (Authority Conference).

⁵ Atmos agreed to the procedural schedule, but noted for the record its objections previously raised. Transcript of Proceedings, May 22, 2006, p. 20 (Status Conference).

⁶ *Id.* at 20-21; see Tenn. Comp. R. and Regs. 1220-1-2-.11(5) (Rev. July 2003).

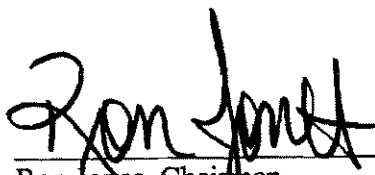
- All parties agreed to serve materials by hand, facsimile or electronic mail on the date due to be filed.⁷
- Authority Advisory Staff shall follow the discovery schedule when issuing data requests.⁸

III. CONCLUSION

At the conclusion of the procedural schedule discussion, the Hearing Officer asked whether there were any further issues to discuss. None being raised, the Hearing Officer adjourned the conference.

IT IS THEREFORE ORDERED THAT:

1. The petitions to intervene filed by Chattanooga Gas Company and the Atmos Intervention Group are granted.
2. The oral motion of the Authority Investigative Staff to intervene is granted.
3. The procedural schedule attached hereto as Exhibit A and the requirements set out herein are adopted.


Ron Jones, Chairman
Acting as Hearing Officer⁹

⁷ Transcript of Proceedings, May 22, 2006, pp. 26-27 (Status Conference).

⁸ *Id.* at 8, 11.

⁹ During the May 15, 2006 Authority Conference, a panel of the Tennessee Regulatory Authority consisting of Chairman Ron Jones and Directors Sara Kyle and Pat Miller unanimously voted to appoint Chairman Jones as the Hearing Officer to prepare this docket for a hearing by the panel. Transcript of Proceedings, May 15, 2006, pp. 29-39 (Authority Conference).

EXHIBIT A**Procedural Schedule**

Discovery Requests and Proposed Procedural Schedule Filed	May 26, 2006
Discovery Objections Filed	June 2, 2006
Status Conference on Objections (if necessary)	June 8, 2006 at 9:00 a.m.
Discovery Responses Filed	June 23, 2006
Pre-Filed Direct Testimony Filed	July 14, 2006
Discovery Requests Filed	July 21, 2006
Discovery Objections Filed	July 25, 2006
Status Conference on Objections (if necessary)	July 27, 2006 at 9:00 a.m.
Order on Objections	July 28, 2006
Discovery Responses Filed	August 4, 2006
Pre-Filed Rebuttal Testimony Filed	August 18, 2006
Hearing	August 29 – September 1, 2006 ¹⁰

¹⁰ The parties proposed that the Authority choose dates that fall within August 23 through September 1, 2006. Transcript of Proceedings, May 22, 2006, p. 19 (Status Conference).

BEFORE THE TENNESSEE REGULATORY AUTHORITY

IN RE:

PETITION OF THE CONSUMER ADVOCATE)
TO OPEN AN INVESTIGATION TO DETERMINE)
WHETHER ATMOS ENERGY CORP. SHOULD BE)
REQUIRED BY THE TENNESSEE REGULATORY) Docket No.
AUTHORITY TO APPEAR AND SHOW CAUSE) 05-00258
THAT ATMOS ENERGY CORP. IS NOT)
OVEREARNING IN VIOLATION OF TENNESSEE)
LAW AND THAT IT IS CHARGING RATES THAT)
ARE JUST AND REASONABLE)

TRANSCRIPT OF PROCEEDINGS
Thursday, July 27, 2006

APPEARANCES:

For Atmos Energy Corp.: Ms. Misty Kelley
Mr. Clinton Sanko

For Atmos Intervention Group: Mr. Henry Walker

For Atmos Energy Marketing: Mr. Melvin Malone

For Consumer Advocate: Mr. Vance Broemel
Mr. Joe Shirley

For Chattanooga Gas: Ms. Jennifer Brundige

For TRA Staff: Mr. Gary Hotvedt

Reported By:
Christina M. Rhodes, RPR, CCR



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1 (The aforementioned cause came on to
2 be heard on Thursday, July 27, 2006, beginning at
3 approximately 9:00 a.m., before Director Ron Jones,
4 when the following proceedings were had, to-wit:)

5
6 DIRECTOR JONES: We're here today for
7 a status conference in Docket No. 05-00258. The status
8 conference was scheduled by public notice issued on
9 July 25th, 2006. As noticed, the purpose of this
10 conference is to resolve disputes over the second round
11 of discovery.

12 Before we begin, as a housekeeping
13 note, the parties should know that although this
14 hearing was previously scheduled for August 29th
15 through September 1st, 2006, it is my understanding
16 that Director Miller has a conflict on September 1st,
17 2006. Therefore, we will make every effort and I
18 certainly hope that we have cooperation to conclude
19 this hearing by August 31st, but if we are not able to
20 conclude it by the 31st, additional hearing dates will
21 have to be scheduled.

22 Also as an additional matter, oral
23 argument in Docket No. 03-00585 has been scheduled for
24 one hour on the morning of August 30th, 2006. So
25 that's before we begin the hearing in Atmos that

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1 morning. So, therefore, the hearing on that morning
2 will obviously begin after that oral argument.

3 And also let me just say as a side
4 note I certainly appreciate the late filings. It kept
5 me up all night. So thank you very much.

6 So let's start by identifying the
7 parties, and we'll start over here.

8 MS. BRUNDIGE: I'm Jennifer Brundige,
9 B-R-U-N-D-I-G-E. I represent Chattanooga Gas.

10 MR. WALKER: Henry Walker for the
11 Atmos Intervention Group.

12 MR. SHIRLEY: Joe Shirley with the
13 Consumer Advocate.

14 MR. BROEMEL: And Vance Broemel with
15 the Consumer Advocate.

16 MS. KELLEY: Misty Kelley with Baker,
17 Donelson, Bearman, Caldwell & Berkowitz for Atmos
18 Energy Corporation. I have with me today Clinton Sanko
19 from my office and Pat Childers, vice president of
20 rates and regulatory affairs for Atmos.

21 MR. MALONE: Melvin Malone, Atmos
22 Energy Marketing.

23 MR. HOTVEDT: Gary Hotvedt, TRA
24 investigative staff.

25 DIRECTOR JONES: Thank you. Before we

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1 begin with each of the individual objections to
2 discovery, let me ask whether there have been -- first
3 of all, before we start that, are there any other
4 preliminary matters that may have come up between the
5 time of the filings and the status conference this
6 morning?

7 (No response.)

8 DIRECTOR JONES: Have there been any
9 settlements of any of the issues at this point?

10 MR. SHIRLEY: Well, we may have -- we
11 were just talking with counsel for Atmos, and we may
12 have an understanding with respect to the Consumer
13 Advocate's objection to Atmos' request for copies of
14 all testimony that the Consumer Advocate witnesses have
15 given. We have stated to Atmos that we plan to provide
16 them with either the electronic files, hard copies, or
17 web site addresses of basically all the testimony that
18 we have in our possession, and that would basically be
19 those cases in recent years that our witnesses have
20 testified in.

21 As the director knows, some of our
22 witnesses have very long histories of providing
23 testimony in these types of cases, and we simply don't
24 have that testimony and -- but I think it's our
25 understanding that Atmos would be satisfied with our

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1 production of basically the testimony that we have for
2 our witnesses.

3 DIRECTOR JONES: Mr. Shirley, could
4 you identify the actual discovery requests and numbers
5 to which you are referring?

6 MR. SHIRLEY: Yes. I think that would
7 cover our objections to Atmos Requests Nos. 3, 18, and
8 47.

9 DIRECTOR JONES: Ms. Kelley, could you
10 respond?

11 MS. KELLEY: Yes. That's correct. In
12 fact, it may be helpful to say this, my assumption was
13 under the Rules of Civil Procedure anytime a request is
14 served you're obligated to give whatever information
15 you have in your possession, custody, or control. So,
16 certainly, the request only was intended to extend to
17 whatever copies of testimony the Consumer Advocate
18 currently has in their possession, custody, or control.
19 So that certainly is an acceptable response to us.

20 DIRECTOR JONES: And, of course, that
21 would be equally applicable to the other data requests
22 to which Mr. Shirley did not respond in like kind?

23 MS. KELLEY: I would agree, yes.

24 DIRECTOR JONES: So then there's
25 agreement that we can remove objections to Discovery

2 (Pages 2 to 5)

BEFORE THE TENNESSEE REGULATORY AUTHORITY

Nashville, Tennessee

July 13, 2006

IN RE:

**PETITION OF THE CONSUMER
ADVOCATE TO OPEN AN
INVESTIGATION TO DETERMINE
WHETHER ATMOS ENERGY CORP.
SHOULD BE REQUIRED BY THE
TENNESSEE REGULATORY
AUTHORITY TO APPEAR AND SHOW
CAUSE THAT ATMOS ENERGY CORP.
IS NOT OVEREARNING IN VIOLATION
OF TENNESSEE LAW AND THAT IT IS
CHARGING RATES THAT ARE JUST
AND REASONABLE**

**DOCKET NO.
05-00258**

**ORDER ADDRESSING INTERVENTION OF AEM AND THE PROCEDURAL
SCHEDULES FOR PHASES ONE AND TWO**

This docket came before the Hearing Officer at a Status Conference held on June 30, 2006 to hear from the parties on a number of issues arising from the panel's June 26, 2006 deliberations and to address the request of the Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate") to extend the time for filing pre-filed direct testimony and the *Petition of Atmos Energy Marketing, LLC Requesting Full Intervention* filed by Atmos Energy Marketing, Inc. ("AEM") on June 30, 2006.

I. RELEVANT PROCEDURAL HISTORY

On June 16, 2006, Atmos Energy Corporation ("Atmos") filed a motion requesting expedited review by the panel of the *Order Resolving Discovery and Protective Order Disputes and Requiring Filings* ("Discovery Order") issued by the Hearing Officer on June 14, 2006. On



June 22, 2006, the Hearing Officer entered an order granting Atmos permission to proceed with the requested interlocutory review and extending the time for filing responses to the discovery requests. On June 23, 2006, the Consumer Advocate filed the *Consumer Advocate's Response to Hearing Officer's Order of June 22, 2006, Granting Extension of Time for Atmos to File Responses to Discovery Requests*. In this filing, the Consumer Advocate requests "an extension of time in which to file its pre-filed testimony corresponding to the amount of time it takes to resolve the discovery disputes."¹

Also on June 23, 2006, AEM filed a petition to intervene. In its petition, AEM requested limited intervention for the "purpose of addressing the intervention of [the Atmos Intervention Group], Director Miller's June 8, 2006, letter, and the allegations set forth in Mr. Burton's afore-referenced affidavit."²

During the Authority Conference on Monday, June 26, 2006, the panel made three decisions in this docket. First, a majority of the panel voted to reverse in part the order granting intervention without limitation to the Atmos Intervention Group ("AIG"). Specifically, the majority voted to allow intervention of AIG for the named parties only. Second, it was decided that Atmos Energy Corporation ("Atmos") should respond to the discovery requests of the Consumer Advocate and AIG as required by the *Discovery Order*. Third, a decision was made to bifurcate this docket into two phases. Phase One will set base rates without consideration of issues involving the asset management agreement, AEM revenue imputation, other income reported on Atmos's SEC 10K report and the performance based ratemaking mechanism. These

¹ *Consumer Advocate's Response to Hearing Officer's Order of June 22, 2006 Granting Extension of Time for Atmos to File Responses to Discovery Requests*, 1 (Jun. 23, 2006).

² *Petition to Intervene of Atmos Energy Marketing, LLC*, 3 (Jun. 23, 2006).

specific issues will be addressed in Phase Two. Also during the June 26, 2006 Authority Conference, the Hearing Officer granted AEM's petition for limited intervention.³

As a result of the panel's decisions, the Hearing Officer issued a *Notice of Status Conference* on June 27, 2006, scheduling a Status Conference for June 30, 2006. The purpose of the conference, according to the notice, is to address any matters arising as a result of the June 26, 2006 Authority Conference, including identifying parties for the two phases of the docket, reviewing and modifying as necessary the procedural schedule for Phase One and establishing a procedural schedule for Phase Two.

On the morning of June 30, 2006, AEM filed a petition for full intervention. The Hearing Officer convened the Status Conference later that morning as noticed at 10:00 a.m. The following parties were in attendance:

Investigative Staff – Gary Hotvedt, Esq., Tennessee Regulatory Authority, 460 James Robertson Parkway, Nashville, Tennessee 37243;

Atmos – Misty Smith Kelley, Esq. and Clinton P. Sanko, Esq., Baker, Donelson, Bearman, Caldwell & Berkowitz, 1800 Republic Centre, 633 Chestnut Street, Chattanooga, Tennessee, 37450;

AIG – Henry Walker, Esq. and April A. Ingram, Esq., Boulton, Cummings, Connors & Berry, PLC, 1600 Division Street, Suite 700, Nashville, Tennessee 37203;

Consumer Advocate – Timothy Phillips, Esq. and Joe Shirley, Esq., Office of the Attorney General, P.O. Box 20207, Nashville, Tennessee, 37202;

Chattanooga Gas – J.W. Luna, Esq., Farmer & Luna, 333 Union Street, Suite 300, Nashville, Tennessee 37201; and

AEM – Melvin J. Malone, Esq., Miller & Martin LLP, 1200 One Nashville Place, 150 4th Avenue North, Nashville, Tennessee, 37219.

During the Status Conference, the parties discussed their intended roles in Phase Two of the proceeding, the Phase One procedural schedule and the Phase Two procedural schedule. At the conclusion of the Status Conference, a procedural schedule form was distributed to the parties and the parties were directed to file proposed schedules by Friday, July 7, 2006. The

³ Transcript of Proceedings, Authority Conference, pp. 31-32 (Jun. 26, 2006).

procedural schedule form followed closely the procedures adopted for Phase One and included time periods for completion of the activities.

II. PETITION OF ATMOS ENERGY MARKETING, LLC REQUESTING FULL INTERVENTION

AEM filed a petition for full intervention the morning of the June 30, 2006 Status Conference. In its petition, AEM asserts that as a result of the panel's June 26, 2006 decisions and the *Discovery Order* issued by the Hearing Officer on June 14, 2006, AEM's "legal rights, duties, privileges, immunities or other legal interests may be determined in this proceeding."⁴ Tennessee Code Annotated Section 4-5-310(a) sets forth the following criteria for granting petitions to intervene:

(a) The administrative judge or hearing officer shall grant one (1) or more petitions for intervention if:

(1) The petition is submitted in writing to the administrative judge or hearing officer, with copies mailed to all parties named in the notice of the hearing, at least seven (7) days before the hearing;

(2) The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of the law; and

(3) The administrative judge or hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.⁵

During the Status Conference, the Hearing Officer granted the petition for full intervention. The petition was timely filed and substantiates that AEM's legal interests may be affected by this docket. Further, AEM's intervention will not impair the interests of justice or the orderly and prompt conduct of this docket. Therefore, pursuant to Tennessee Code Annotated Section 4-5-310(a), the petition is granted.

⁴ See *Petition of Atmos Energy Marketing, LLC Requesting Full Intervention*, 2 (Jun. 30, 2006).

⁵ Tenn. Code Ann. § 4-5-310(a) (2005).

III. PHASE ONE PROCEDURAL SCHEDULE

During the Status Conference, two items related to the Phase One procedural schedule were discussed. The first involves the date for filing pre-filed direct testimony. The second involves the scope of that testimony.

As to the date for filing pre-filed direct testimony, the Consumer Advocate had requested that the date be extended by the same amount of time provided to Atmos for the filing of responses to disputed discovery requests. At the Status Conference, the Consumer Advocate requested that no determination be made on its request to extend the time to file pre-filed direct testimony until after the Consumer Advocate and Atmos resolve all outstanding discovery issues. The Consumer Advocate agreed to notify the Hearing Officer as soon as possible of any need to resolve the request. As part of this discussion, AIG noted that it had not yet had the opportunity to review all of the discovery responses, but requested that if an extension of time is granted to the Consumer Advocate, the same extension should be granted to all parties.

On Friday, July 7, 2006, the Hearing Officer received via electronic mail a request from the Consumer Advocate.⁶ The request reads:

The Consumer Advocate requests that the filing date for all pre-filed testimony in this matter be moved from Friday, July 14 to Monday, July 17. All other dates in the procedural schedule will remain the same. The CAD has contacted counsel for Atmos, AEM, AIG, Chattanooga Gas, and TRA Staff and none oppose this request. Please let us know if this causes any inconvenience for the Hearing Officer.

Based on the assertions that the remainder of the schedule will not be delayed as a result of the requested modification and that there is no opposition to the request, the request is granted.

⁶ A printed version of the e-mail has been filed in the docket file.

The second procedural schedule subject raised during the Status Conference is Atmos's request that any procedural order reflect that the testimony to be filed pursuant to the Phase One procedural schedule be limited to the Phase One issues. Although this should go without saying, to the extent it is necessary, the parties are cautioned to limit the subject matter of the Phase One testimony to the scope of Phase One as defined by the panel during the June 26, 2006 Authority Conference.

IV. PHASE TWO PROCEDURAL SCHEDULE

During the Status Conference, the parties were directed to file comments on the Phase Two procedural schedule by July 7, 2007. Atmos, AEM, AIG and the Consumer Advocate filed comments.

In its comments, Atmos affirms its support of the Hearing Officer's suggestion of taking the Phase Two issues in two separate parts – the first part covering imputation of AEM revenues and other income and the second part covering asset management issues and the performance based ratemaking mechanism. Atmos next argues that Phase Two should not begin until the Authority issues a final order in Phase One and proposes dates running from an assumed Phase One final order issuance date of October 20, 2006. Atmos's schedule for the first part of Phase Two includes the filing of a threshold issues list, the pre-filing of direct and rebuttal testimony, a hearing, the filing of post-hearing briefs, panel deliberation and the issuance of a final order. The proposed schedule begins October 27, 2006 and concludes on December 6, 2006.⁷ Atmos's schedule does not include any additional discovery for these issues. As to the second part of Phase Two, issues involving asset management and the performance based ratemaking mechanism, Atmos sets forth a schedule running from an assumed Phase Two - part one final order issuance date of December 6, 2006. Atmos's schedule for part two contains two rounds of

⁷ *Atmos Energy Corporation's Proposed Procedural Schedule for Phase Two*, 5 (Jul. 7, 2006).

discovery, the pre-filing of direct and rebuttal testimony, a hearing, and the filing of post-hearing briefs. The schedule begins on December 13, 2006 and concludes on May 14, 2007.⁸ AEM concurs with the schedules proposed by Atmos.⁹

Intervenors other than AEM also filed comments. The Consumer Advocate notes in its comments that it is generally in agreement with the procedural schedule time periods distributed to the parties by the Hearing Officer during the Status Conference.¹⁰ The Consumer Advocate requests, however, that hearing dates be scheduled on dates following the hearing dates set in the Chattanooga Gas Company rate case.¹¹ The Consumer Advocate also requests two rounds of discovery, asserts that a final order in Phase One is not required before proceeding with Phase Two, and that Phase Two should not be broken into parts.¹² AIG asserts that Phase Two should conclude prior to the winter heating season because the decisions in Phase Two could result in a reduction of Atmos's base rates.¹³ Finally, Chattanooga Gas Company states that it has no objection to the procedural schedule time periods distributed to the parties.¹⁴

Upon consideration of the proposals, the Hearing Officer concludes that Phase Two issues should be addressed together through one procedural schedule. While I am largely persuaded that the speediest avenue to establishing final base rates in advance of the heating season is to address all potential rate base adjustment issues prior to addressing non rate base issues, apparently not all parties agree. In fact, the Consumer Advocate, who has been incredibly consistent and justifiably steadfast in its desire to expedite this proceeding, has evidently

⁸ *Id.* at 6.

⁹ Letter from Counsel for AEM, Melvin J. Malone, dated July 7, 2006 (Jul. 7, 2006).

¹⁰ Letter from Counsel for the Consumer Advocate, Vance Broemel, dated July 7, 2006, 1 (Jul. 7, 2006).

¹¹ See *In re: Petition of Chattanooga Gas Company for Approval of Adjustment of its Rates and Charges, Comprehensive Rate Design Proposal, and Revised Tariff*, Docket No. 06-00175, *Proposed Procedural Schedule* (Jun. 30, 2006) (containing proposed hearing dates of October 30 through November 3, 2006).

¹² Letter from Counsel for the Consumer Advocate, Vance Broemel, dated July 7, 2006, 1-2 (Jul. 7, 2006).

¹³ *Response of Atmos Intervention Group*, 2 (Jul. 7, 2006).

¹⁴ Letter from Counsel for Chattanooga Gas Company, J.W. Luna, dated July 7, 2006 (Jul. 7, 2006).

concluded that any further division of issues in the proceeding, at this juncture, should not be pursued.¹⁵ AIG stated that it supports the position of the Consumer Advocate Division.¹⁶ Given the Consumer Advocate's well documented unwavering commitment to complete this cause as soon as practicable and given the realization that no person is endowed with a singular capacity for correctness on this issue, the Hearing Officer finds it reasonable and without prejudice to the other parties to adopt the Consumer Advocate's position at this time. Moreover, after further deliberation, it is my determination that the issues, particularly those related to revenue imputation, the asset management agreement and the performance based ratemaking mechanism, have a sufficient nexus to afford the parties a meaningful analysis even when kept together.

The timing concerns present particularly challenging issues. I summarily reject the argument that a final order in Phase One must be issued before the Phase Two schedule can commence. There simply is no reasonable justification for this argument and such a requirement was not mandated by the panel.¹⁷ The Authority decided to procedurally sever the two phases and any administrative efficiency gained by having done so would likely be forfeited if the Authority were to require the issuance of an order in Phase One as a prerequisite to commencing Phase Two proceedings. Simply stated, Phase One issues are distinct from the Phase Two issues.¹⁸

¹⁵ "With regard to the issue of whether review of the PBR mechanism itself (as distinct from the financial impact of the current PBR on rates) should be included in Phase II or broken out into a Phase III, we prefer to keep the issues in Phase II." Letter from Counsel for the Consumer Advocate, Vance Broemel, dated July 7, 2006, 2 (Jul. 7, 2006).

¹⁶ "As to the scheduling of the phase two proceeding, Atmos [sic] supports the comments of the Consumer Advocate Division" Letter from Counsel for AIG, Henry Walker, dated July 7, 2006, 2 (Jul. 7, 2006).

¹⁷ Director Miller, who made the prevailing motion, offered the following in response to the question of whether the phases would run consecutively or concurrently: "Consecutively. Otherwise, we don't gain anything by breaking them out, I don't think. Let me take that back. I mean I want to allow you the ability to manage the docket as hearing officer, but that's how I envisioned it." This comment in no way requires the issuance of a final order on Phase One, and, further, in my opinion, that the comment allows the Hearing Officer flexibility when setting the starting point of Phase Two. Transcript of Proceedings, Authority Conference, p. 28 (Jun. 26, 2006).

¹⁸ The Hearing Officer is cognizant that an adjustment to Phase One base rates may be warranted after the completion of Phase Two. This *potential* action, however, is independent of the setting of base rates in Phase One.

Also, I am sympathetic to the claim that the hearing should follow in time the hearing in the Chattanooga Gas Company rate case. Given that a procedural schedule has not yet been set for that proceeding, I will presume for the purposes of this order that a hearing will be set for October 30 through November 3, 2006, the dates contained in the proposed procedural schedule.¹⁹ Further, the argument that Phase Two should be concluded prior to the start of the heating season is a laudable target, but may impose a goal too difficult to attain in light of other factors, such as the statutory time period for completion of the Chattanooga Gas Company rate case and the holidays in November and December.


Two other issues raised in the comments involve the need for further discovery on the imputation and other income issues and the need for an issues list. As to the former, I find that this issue is moot given the decision to place the Phase Two issues within one schedule. Although the intervenors have had one opportunity to issue discovery on the issues of imputation of revenues and other income, there has been no such opportunity with regard to the asset management and performance based ratemaking mechanism issues. Thus, the Phase Two procedural schedule should include two rounds of discovery. As to the latter issue, it is my opinion that an issues list for Phase Two should be created. The creation of an issues list will provide the parties and the Authority with a guide to the efficient resolution of this phase of the docket.

With these findings and conclusions in mind, I adopt the *Phase Two Procedural Schedule* attached hereto as Attachment A. Any party objecting to this schedule for reasons other than those asserted in the July 7, 2006 comments should file such objections by no later than Friday, July 21, 2006.

¹⁹ See *In re: Petition of Chattanooga Gas Company for Approval of Adjustment of its Rates and Charges, Comprehensive Rate Design Proposal, and Revised Tariff*, Docket No. 06-00175, *Proposed Procedural Schedule* (Jun. 30, 2006) (containing proposed hearing dates of October 30 through November 3, 2006).

IT IS THEREFORE ORDERED THAT:

1. The *Petition of Atmos Energy Marketing, LLC Requesting Full Intervention* filed on June 30, 2006 is granted.
2. The time for filing pre-filed direct testimony for Phase One is extended until Monday, July 17, 2006. No other dates are modified.
3. The subject of the pre-filed direct testimony for Phase One shall be limited to the subject of Phase One as described by the panel during the July 26, 2006 Authority Conference.
4. Phase Two of this docket shall proceed in accordance with the schedule attached hereto as Attachment A. Any party objecting to this schedule for reasons other than those asserted in the July 7, 2006 comments should file such objections by no later than Friday, July 21, 2006.


Ron Jones, Chairman
Acting as Hearing Officer²⁰

²⁰ During the May 15, 2006 Authority Conference, a panel of the Tennessee Regulatory Authority consisting of Chairman Sara Kyle and Directors Ron Jones and Pat Miller unanimously voted to appoint Director Jones as the Hearing Officer to prepare this docket for a hearing by the panel. Transcript of Proceedings, Authority Conference pp. 29-39 (May 15, 2006).

Phase Two Procedural Schedule

Proposed Issues List Filed	September 12, 2006 – Tuesday
Status Conference on Proposed Issues List (if necessary)	September 26, 2006 at 10:00 a.m. – Tuesday
Discovery Requests Filed	October 13, 2006 – Friday
Discovery Objections Filed	October 20, 2006 – Friday
List of Disputed Discovery Requests with Party's Position Filed	October 25, 2006 – Wednesday
Status Conference on Disputed Discovery Requests (if necessary)	October 27, 2006 at 10:00 a.m. – Friday
Discovery Responses Filed	November 13, 2006 – Monday
Pre-Filed Direct Testimony Filed	December 4, 2006 – Monday
Discovery Requests Filed	December 11, 2006 – Monday
Discovery Objections Filed	December 18, 2006 – Monday
List of Disputed Discovery Requests with Party's Position Filed	December 22, 2006 – Friday
Status Conference on Disputed Discovery Requests (if necessary)	January 4, 2007 at 10:00 a.m. – Thursday
Discovery Responses Filed	January 12, 2007 – Friday
Pre-Filed Rebuttal Testimony Filed	February 2, 2007 – Friday
Hearing	February 20-23, 2007 - Tuesday through Friday ²¹

All filings shall be filed with the Authority's docket clerk by 2:00 p.m. on the date due.

²¹ These dates are subject to approval by Chairman Kyle and Director Miller, the other members of the panel assigned to this docket.