

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

December 5, 2007

IN RE:

**ATMOS ENERGY CORPORATION'S
ANNUAL COST ADJUSTMENT (ACA) FOR
THE TWELVE MONTHS ENDED JUNE 30, 2005**

**DOCKET NO.
05-00253**

**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 CLOSING DOCKETS AND
MOVING REMAINING ISSUES TO A NEW DOCKET**

This matter came before Director Pat Miller, Director Sara Kyle, and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to these dockets, at a regularly scheduled Authority Conference held on August 20, 2007 for consideration of the appropriate forum to address remaining asset management issues and how resolution of the issues should proceed.

BACKGROUND

Docket No. 05-00253 was opened on September 15, 2005 with Atmos Energy Corporation's ("Atmos" or "Company") submission of its 2004-2005 Actual Cost Adjustment ("ACA") filing. On April 21, 2006, Audit Staff filed its Compliance Audit Report ("Audit Report") regarding Atmos' ACA filing. At a regularly scheduled

Authority Conference on May 15, 2006, the Audit Report came before the panel for deliberation. The panel unanimously approved adoption of the Audit Report's seven findings and Recommendations 2D, 3, 4, 5 and 6. With respect to Recommendations 1 and 2A through C,¹ which dealt with various issues relating to asset management, the panel opted not to adopt Audit Staff's approach because the Company had not had sufficient time to respond nor did the docket contain sufficient information to approve the particular approach advocated by Audit Staff.² The Authority, instead, directed that TRA Audit Staff and the Company "meet to discuss the effects of incorporating the asset management arrangement into the performance-based ratemaking mechanism."³ The Authority left open the option of moving forward with a contested case or taking alternative action on issues remaining unresolved at the conclusion of these discussions.⁴

Docket No. 05-00258 was opened on September 15, 2005 upon the filing of the petition by the Consumer Advocate and Protection Division ("Consumer Advocate") to have the TRA open an investigation into whether Atmos was overearning in violation of state law. Ultimately, the Authority opened a contested case in the docket. Chattanooga Gas Company ("CGC"), Atmos Intervention Group ("AIG"), TRA Investigative Staff and Atmos Energy Marketing, LLC ("AEM") were granted intervention in this docket. During the course of discovery, Atmos objected to questions from the Consumer Advocate and AIG regarding asset management, performance based ratemaking ("PBR"), and imputation of earnings, arguing that these topics expanded Docket No. 05-00258 beyond its scope and introduced the potential for decisions which would undermine or

¹ *Audit Report*, pp. 15-16 (April 21, 2006).

² *Order Adopting ACA Audit Report of the Tennessee Regulatory Authority's Utility Division*, p. 4 (December 7, 2006).

³ *Id.*

⁴ *Id.* at 4-5.

contradict Authority orders in Docket No. 05-00253 and other PBR-related dockets. In an attempt to expedite the proceedings, the panel bifurcated Docket No. 05-00258 at the June 26, 2006 Authority Conference with asset management, imputation of earnings, and PBR issues deferred to Phase II of the proceedings. The panel heard testimony on Phase I issues from August 29-31, 2006.

On July 13, 2006, the Hearing Officer in Docket No. 05-00258 issued an *Order Addressing Intervention of AEM and the Procedural Schedules for Phases One and Two*. In the order, the Hearing Officer established a procedural schedule that required the filing of proposed issues for Phase Two on September 12, 2006.⁵ Pursuant to the procedural schedule, Atmos, the Consumer Advocate, and AIG filed proposed issues for Phase Two.

A *Notice of Status Conference* was issued by the Hearing Officer on September 19, 2006 setting a Status Conference to discuss the proposed issues for Phase Two. Attached to the Notice, was an issues list that included all of the issues proposed by the parties. On September 25, 2006, CGC filed its *Response* to the proposed issues for Phase Two in which CGC stated that “it would be more appropriate for the TRA to consider these issues in a rulemaking proceeding than to establish an industry-wide policy regarding asset management through individual company’s rate cases.”⁶ On September 29, 2006, Atmos, AEM, AIG and the Consumer Advocate each filed comments on CGC’s *Response*.

On October 2, 2006, Atmos filed a request that the Authority implement the directive given in Docket No. 05-00253 to meet with Audit Staff regarding the incorporation of the asset management arrangement into the PBR. Atmos contended that

⁵ *Order Addressing Intervention of AEM and the Procedural Schedules for Phases One and Two*, Attachment A (July 13, 2006).

⁶ *Response of Chattanooga Gas Company to the Issues Proposed for Phase II*, 1 (Sept. 25, 2006).

Phase II of Docket No. 05-00258 had had the unintended effect of postponing discussions with Audit Staff that could resolve many, if not all, outstanding issues in Docket No. 05-00253.

On October 6, 2006, the Hearing Officer issued the *Recommendation of the Hearing Officer Regarding the Dismissal of Phase Two and the Need for a Rulemaking to Resolve Asset Management Issues* (“*Recommendation*”). In this document, the Hearing Officer recommended that the panel: (1) should not dismiss Phase Two of Docket No. 05-00258; (2) should not address the Phase Two issues through a new rulemaking docket or any actual cost adjustment audit docket; (3) should stay the course established during the June 26, 2006, deliberations and support bringing this docket to conclusion in accordance with the adopted procedural schedule; and (4) should not issue an order limiting the decisions in Phase Two to the facts surrounding Atmos and its asset management agreement or stating that the decision will have no precedential or binding effect on CGC or other natural gas utilities.

At the November 6, 2006 Authority Conference, a majority of the panel voted to hold consideration of the *Recommendation* in abeyance and to allow the parties to file briefs regarding whether Docket No. 05-00253 or Docket No. 05-00258 was the appropriate forum to address asset management issues and how resolution of the issues should proceed. All parties filed briefs on November 20, 2006, and oral arguments were heard at a regularly scheduled Authority Conference on March 26, 2007.

POSITION OF THE PARTIES

Atmos: The asset management issues should not be considered within Docket No. 05-00258 because it is a base rate proceeding. The asset management issues are exclusively concerned with the Company’s gas supply procurement activities. Since the

implementation of the PGA Rule, the Authority has regulated gas supply procurement activities separately from the base rate. Gas supply procurement issues are not relevant in base rate proceedings such as Docket No. 05-00258. Additionally, the Authority previously has determined in Docket No. 05-00253 that the resolution of these asset management issues should first be attempted through meetings between the Company and Audit Staff. Only if the issues fail to be resolved should the panel then consider whether a contested case or other proceeding such as a rulemaking should be utilized.⁷

Consumer Advocate and AIG:⁸ The asset management issues should be considered in the context of a contested case.⁹ The parties prefer the Authority hear the issues in Docket No. 05-00258. The basis for the preference is that it would maximize judicial economy because a contested case on the issues already exists. The resolution of these issues will affect how much ratepayers pay for gas and so is a natural extension of the rate case proceeding.¹⁰ If the Authority chooses to use Docket No. 05-00253, which is also a contested case, the Consumer Advocate would not object as long as all of the parties in Docket No. 05-00258 can intervene without limitation; the docket is conducted as a full-scaled contested case, with all the attendant rights and privileges; all of the asset management issues adopted in Docket No. 05-00258 for Phase Two would be heard and decided without limitation; and the remedies available in Docket No. 05-00258 would in no way be limited under Docket No. 05-00253. Further, if the Authority chooses to proceed with issues in Docket No. 05-00253, the Consumer Advocate requested that

⁷ *Brief of Atmos Energy Corporation and Request for Oral Argument*, pp. 2, 6 (November 20, 2006).

⁸ AIG filed correspondence on November 20, 2006 stating that it joined in the Consumer Advocate's brief filed on the same date.

⁹ *Brief of Consumer Advocate and Protection Division on the Appropriate Forum to Address Asset Management Issues*, p. 1 (November 20, 2006).

¹⁰ *Id.* at 3.

Director Jones serve as Hearing Officer due to his experience and knowledge of the issues gained in serving as Hearing Officer in Docket No. 05-00258.¹¹

TRA Investigative Staff: Staff supports the analysis set out in the Consumer Advocate brief submitted on November 20, 2006. While Staff has previously suggested there are several generic issues that should be addressed through a rulemaking, the Consumer Advocate has outlined several issues in its brief that can only be resolved through a contested case. Staff does not have an opinion as to which docket the issues should be heard. Staff further withdraws its formal intervention in the Phase II issues in Docket No. 05-00258.¹²

CGC: CGC believes that a rulemaking is the most appropriate forum for the TRA to establish policies on various asset management issues that may be applied industry-wide. However, as to the specific asset management issues concerning Atmos, CGC believes the proper forum is Docket No. 05-00253, the ACA docket, rather than Docket No. 05-00258, which is the rate docket. This is consistent with how TRA has handled asset management issues with CGC and the approach has worked well. Allowing the issues to be heard in Docket No. 05-00258 will expand rate cases to include issues that have been reviewed and regulated by the TRA through the PGA.¹³

FINDINGS AND CONCLUSIONS

After reviewing various options for proceeding toward resolution of the issues in these dockets, including the *Recommendation*, the panel decided to close both Docket No. 05-00253 and Docket No. 05-00258 and to open a new docket to consider the asset management issues that arose in both dockets. A majority of the panel found that this

¹¹ *Id.* at 4.

¹² *Brief of TRA Investigative Staff Concerning Asset Management Issues*, pp. 1-2 (November 20, 2006).

¹³ *Brief of Chattanooga Gas Company Regarding the Appropriate Forum to Consider Proposed Phase II Issues*, pp. 1-2 (November 20, 2006).

approach would provide the greatest clarity.¹⁴ The panel further found that the new docket should be governed by the conditions set out in the Consumer Advocate's November 20, 2006 brief which included: 1) the new docket would be convened as a contested case with all the attendant rights and privileges; 2) intervening parties from Docket No. 05-00258¹⁵ would be permitted to intervene upon filing their requests to do so; 3) that the Phase II issues of Docket No. 05-00258 would be incorporated without limit; and 4) any remedies available to the parties in Docket Nos. 05-00253 and 05-00258 would be available to the parties in the new docket. The panel also determined that the new docket would include, to the extent that they may exist, any remaining issues in Docket No. 05-00253. After receiving no objection from the parties, the panel also found that judicial economy would be afforded by having the new docket assigned to the current panel with Director Jones being appointed to serve as Hearing Officer.

Based upon these findings, the panel voted unanimously to: 1) close Docket No. 05-00253; 2) close Docket No. 05-00258; 3) open a new docket and convene a contested case to address, without limitation, the unresolved issues from Docket Nos. 05-00253 and 05-00258 with all remedies from Docket Nos. 05-00253 and 05-00258 remaining available to the parties; 4) allow any intervening parties from Docket No. 05-00258 to intervene in the newly established docket upon submission of an appropriate filing; and 5) for the sake of judicial economy, request that the Chairman assign the current panel to

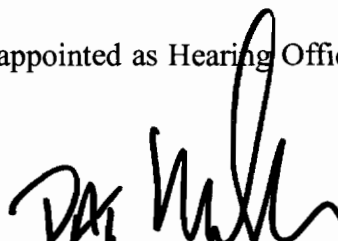
¹⁴ Director Jones served as the Hearing Officer for Docket No. 05-00258 and issued the October 6, 2006 *Recommendation*. It was his position that the panel should move forward as suggested in the *Recommendation*. However, due to the decision of the majority to reject the *Recommendation* and to move forward by creating a new docket, Director Jones took a resolution-oriented approach and stated that he would not oppose the creation of a new docket as long as the conditions set out in the Consumer Advocate's November 20, 2006 brief were adopted without modification.

¹⁵ Stand Energy Corporation ("Stand") had filed a petition to intervene in Docket No. 05-00258 upon which action had not been taken. The panel voted unanimously to grant Stand's petition to intervene in Docket No. 05-00258 in order to preserve its right to intervene in the new docket.

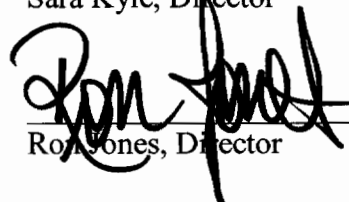
the new docket, and contingent upon such action, that Director Jones would be appointed as Hearing Officer for the new docket.

IT IS THEREFORE ORDERED THAT:

1. Docket No. 05-00253 is hereby closed;
2. Docket No. 05-00258 is hereby closed;
3. A new docket is opened and a contested case is convened to address, without limitation, the unresolved issues from Docket Nos. 05-00253 and 05-00258 with all remedies from Docket Nos. 05-00253 and 05-00258 remaining available to the parties;
4. Any intervening parties from Docket No. 05-00258 are permitted the right to intervene in the newly established docket upon submission to the Authority of an appropriate filing; and
5. For the sake of judicial economy, the Chairman of the Tennessee Regulatory Authority is requested to assign the current panel to the new docket, and contingent upon such action, Director Jones is appointed as Hearing Officer for the new docket.¹⁶

 11-30-07
Pat Miller, Director


Sara Kyle, Director


Ron Jones, Director

¹⁶ Docket No. 07-00225 was opened to address the issues remaining from Docket Nos. 05-00253 and 05-00258. Chairman Roberson filed a memorandum on October 18, 2007 assigning the current panel to Docket No. 07-00225.