

**BAKER
DONELSON**
BEARMAN, CALDWELL
& BERKOWITZ, PC

CLINTON P. SANKO
Direct Dial: 423.209.4168
Direct Fax: 423.752.9589
E-Mail Address: csanko@bakerdonelson.com

RECEIVED
2006 OCT -2 AM 9 54
T.R.A. DOCKET ROOM

1800 REPUBLIC CENTRE
633 CHESTNUT STREET
CHATTANOOGA, TENNESSEE 37450
PHONE: 423.756.2010
FAX: 423.756.3447
www.bakerdonelson.com

September 29, 2006

VIA FEDERAL EXPRESS

Ms. Sharla Dillon
Dockets Manager
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

*In Re: Atmos Energy Corporation Actual Cost Adjustment ("ACA") Audit
Tennessee Regulatory Authority Docket No. 05-00253*

Dear Ms. Dillon:

Please find enclosed the original and four copies of Atmos Energy Corporation's Request for Implementation of the Order of the Order of the Authority to be filed in the above-captioned matter.

Copies of the enclosed were electronically filed and served on September 29, 2006.

Thank you for your attention to this matter. If you have any questions at all, please do not hesitate to contact me.

Very truly yours,



Clinton P. Sanko
For the Firm

CPS: dcl

Enclosures

cc: Monica Smith-Ashford (w/enclosure)
Misty Smith Kelley (w/o enclosure)

C CPS 358613 v1
2015477-000029

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

IN RE:)	
)	
)	
ATMOS ENERGY CORPORATION)	Docket No. 05-00253
ACTUAL COST ADJUSTMENT)	
("ACA") AUDIT)	

**ATMOS ENERGY CORPORATION'S REQUEST FOR
IMPLEMENTATION OF THE ORDER OF THE AUTHORITY**

On May 15, 2006 the Tennessee Regulatory Authority ordered Authority Audit Staff and Atmos Energy Corporation ("Atmos" or "Company") to meet and attempt to resolve the outstanding issues regarding asset management raised by Audit Staff in its April 21, 2006 Audit Report in this docket. The Company remains willing to meet and believes that many, if not all of the outstanding issues, can be resolved informally through such discussion with Audit Staff. The Company respectfully moves the Panel to implement its order.

I. BACKGROUND OF THE PANEL'S ORDER THAT THE STAFF AND COMPANY MEET AND ATTEMPT TO RESOLVE THE OUTSTANDING ISSUES.

In the Audit Report, Audit Staff made several recommendations concerning the Authority's regulation of the asset management agreement between the Company and its unregulated affiliate, Atmos Energy Marketing, LLC ("AEM"). While the Panel's ruling directing the Company and Audit Staff to meet to discuss the issues is clear, Docket No. 05-00258¹ has had the unintended effect of putting on hold any discussions between Staff and the Company, and is impeding any informal resolution of these issues. Atmos is simply requesting that it be given the

¹ TRA Docket No. 05-00258 is captioned "Petition of Consumer Advocate to Open an Investigation to Determine Whether Atmos Energy Corporation Should be Required to Appear and Show Cause Why it is Not Overearning in Violation of Tennessee Law and That it is Charging Rates That Are Just and Reasonable", and is referred to herein as the "Show Cause Docket."

opportunity that the Panel ruled it should have to resolve the outstanding issues, which is the same opportunity that has been given to Chattanooga Gas and Nashville Gas.

A. The Audit Staff Recommended a Wholesale Restructuring of the Asset Management Agreement.

On April 21, 2006 the Audit Staff issued its Audit Report in this docket and recommended a wholesale restructuring of the Company's asset management agreement. Audit Staff recommended that the Authority disregard the current asset management contract between Atmos and AEM,² and made the following recommendations:

2. . . . The Audit Staff believes that since AEM is an affiliate of Atmos, customers are entitled to a reasonable percentage of the total profits realized by AEM in the sale of the ratepayer's assets. Audit Staff therefore, recommends the following:
 - a. The Company should provide the Audit Staff documentation of the total profits realized by AEM from the sale of customer assets. This documentation should be provided in its annual Actual Cost Audit filing.
 - b. *The Company should credit 100% of this profit to ratepayers in its ACA Account.*
 - c. The Authority should open a separate docket to address the inclusion of asset management fees in the Company's Performance Based Ratemaking Rider ("PBR") and the appropriate sharing mechanism and percentage applicable to these fees.
 - d. The Authority should direct the TRA Staff and Company to submit a proposed revision of the affiliate rules currently included the PBR to provide additional guidance to the Company in the selection of the asset manager.
3. The Authority should direct the Company to file all future proposed asset management and gas procurement agreements or renewal of the current contract with the TRA for prior approval of the Authority.³

² *Compliance Audit Report of Atmos Energy Corporation ("Audit Report")*, TRA Docket No. 05-00253 (April 21, 2006) (hereinafter "*Audit Report*"), at pp. 15-16, Staff Recommendations 2(a) and 2(b). Under the current asset management agreement, AEM pays ratepayers an annual lump sum payment in exchange for the right to manage Atmos' idle gas supply assets, and Atmos passes 100% of this annual lump sum fee through to ratepayers. See *Audit Report*, p. 14.

³ *Audit Report*, pp. 15-16.

Essentially, the approach recommended by Audit Staff would have the *effect* of rewriting the asset management agreement by requiring: (a) reporting of profits realized by the unregulated affiliate; (b) imputation of all profit to the Company from the unregulated affiliate; and (c) a separate docket to determine the disposition of the lump sum management fee.

B. Atmos Responded that the Issues Raised by Audit Staff Should be Resolved in a Rulemaking Proceeding.

Atmos filed a written response to the Audit Staff Report on May 10, 2006 specifically addressing Audit Staff's recommendations concerning the Company's asset management contract. In addition to noting several factual inaccuracies in the Audit Report,⁴ Atmos argued, *inter alia*, that a determination adopting Audit Staff's recommendations would represent new policy for the Authority that would impact all three regulated natural gas companies in Tennessee. Therefore, such a determination should be resolved through a rulemaking.⁵ *See Tennessee Cable Assoc. v. Tennessee Pub. Serv. Comm'n*, 844 S.W.2d 151, 161-62 (Tenn. Ct. App. 1992).

C. The Panel Ruled that it Would Decide What Action to Take Only After the Company and Audit Staff Met to Attempt to Resolve the Issues Raised in the Audit Report.

On May 15, 2006, the presiding Panel accepted some of Audit Staff's recommendations regarding asset management and rejected others. With regard to the recommendations in paragraphs 2 and 3, related to asset management, the Panel voted:

CHAIRMAN JONES: Based on the record . . . I do move that the Panel adopt the [] findings in Recommendations numbered 2D⁶ [and] 3⁷ . . . in the audit report.

⁴ For example, Audit Staff misstated the amount of the annual lump sum fee, and wrongly assumed Atmos' contract with AEM was a bundled arrangement for asset management and gas procurement, similar to the contracts in place for Chattanooga Gas and Nashville Gas. *See* Docket No. 05-00253, June 14, 2006 Memo. To File from Audit Staff (acknowledging the incorrect statements concerning the lump sum fee) and May 10, 2006 Atmos Resp. to Audit Staff Report (discussing factual inaccuracies in Audit Report).

⁵ *Atmos Resp. to Audit Staff Rep.*, TRA Docket No. 05-00253 (May 10, 2006), pp. 4-6.

⁶ *See Audit Report*, p. 16 (Recommendation 2D was the recommendation that the Authority direct Staff and Company to meet and jointly propose revisions to the affiliate rules).

⁷ *See Audit Report*, p. 16 (Recommendation 3 required the Company to submit future asset management agreements for prior approval by the Authority).

Instead of the approach recommended in Nos. 2A through C⁸, I would move that in the course of developing revisions in accordance with 2D that our audit staff and the company meet to discuss the effects of incorporating the asset management arrangement into the performance-based ratemaking mechanism.

In the event that the agreement on any issue cannot be reached or if audit staff believes that issues remain unresolved, then the Panel – this Panel may then consider whether to convene a contested case on these issues or take some other actions.

And I would so move.

DIRECTOR KYLE: I think that you're right. I second and vote yes.

DIRECTOR MILLER. I vote aye.⁹

Therefore, the presiding Panel in this docket rejected all of Audit Staff's asset management recommendations except Recommendation 3 (that future asset management contracts be submitted for prior approval by the Authority) and 2D (proposed revision of affiliate rules "to provide additional guidance to the Company in the selection of an asset manager").¹⁰ As to the other recommendations, the Audit Staff and Company were ordered to meet and, only if agreement could not be reached, then "this Panel may then consider whether to convene a contested case on these issues."¹¹

This ruling is consistent with the Authority's treatment of Nashville Gas and Chattanooga Gas, both of whom were ordered to meet with Staff to attempt to resolve the same asset management issues Audit Staff has raised in its Audit Report in this docket. A comparison of the Authority's treatment of all 3 regulated gas companies shows that the Authority has consistently ordered the gas companies to work with Staff to informally resolve these issues before proceeding to convene a case or other proceeding to address the issues:

⁸ See *Audit Report*, pp. 15-16 (Recommendations 2A through C included (a) reporting of profits realized by the unregulated affiliate; (b) imputation of all profit to the Company from the unregulated affiliate; and (c) a separate docket to determine the disposition of the lump sum management fee).

⁹ TRA Docket No. 05-00253, Transcript of May 15, 2006 Agenda Conference (Excerpt), pp. 2-3.

¹⁰ *Id.* at p. 3, ll. 4-7 (adopting Staff Recommendation 2(d)).

¹¹ *Id.* at p. 3, ll. 15-17.

ACA AUDIT	RESOLUTION BY THE AUTHORITY
Nashville Gas's 2004 ACA Audit	Panel rejected staff's audit findings; and ordered the company to meet with Staff and submit a joint proposal to address the issues raised in the audit report ¹²
Nashville Gas's 2005 ACA Audit	Panel voted to allow the company to keep all past amounts, and convened a contested case to resolve the issues going forward (the contested case is currently on hold for continued talks between staff and the company) ¹³
Chattanooga Gas's 2004 ACA Audit	Panel in docket rejected staff's audit findings; denied staff's request for a consultant to review asset management issues; and encouraged the company to work with staff to resolve the issues informally ¹⁴
Chattanooga Gas's 2005 ACA Audit	Panel ordered the company to place future asset management contracts out for bid, obtain prior approval for future asset management contracts, and submit proposed affiliate guidelines ¹⁵
Atmos' 2006 ACA Audit	Panel ordered the Company to obtain prior approval for future management contracts and submit proposed affiliate guidelines; and work with staff to resolve the issues informally

¹² *Compliance Audit Report of Nashville Gas Company's Incentive Plan Account*, TRA Docket No. 03-00489 (March 29, 2004), at pp. 6-9, 13-14; *Order Adopting, in Part, IPA Compliance Audit Report of Tennessee Regulatory Authority's Energy and Water Division*, TRA Docket No. 03-00489 (Oct. 1, 2004) at pp. 2-3 ("A majority of the panel voted to direct the Company to file with Authority a proposal to remedy the areas of concern identified in Section VI of the Report, Audit Conclusions and Recommendations.").

¹³ *Compliance Audit Report of Nashville Gas Company's Incentive Plan Account*, TRA Docket No. 04-00290 (March 2005), at pp. 6-9, 12; *Order Adopting Incentive Plan Account Filing of Nashville Gas Company for Year Ended June 30, 2004*, TRA Docket No. 04-00290 (Sept. 6, 2005) ("[T]he panel determined that it would be improper to disallow the inclusion of asset management fees in this IPA filing . . . [and] voted unanimously to approve the Company's IPA filing in its entirety."); *Order Convening a Contested Case Proceeding and Appointing a Hearing Officer*, TRA Docket No. 05-00165 (July 12, 2005); *Order Establishing Procedural Schedule*, TRA Docket 05-00165 (Nov. 28, 2005) (establishing a procedural schedule and determining that "because the issue is the appropriateness of the inclusion of the asset management fee which arose from the Audit Staff's report, the burden of proof should be on Audit Staff"); *Order Granting Agreed Motion to Stay Proceedings*, TRA Docket No. 05-00165 (March 27, 2006) (staying the proceedings so that the parties can continue to negotiate).

¹⁴ *Compliance Audit Report of Chattanooga Gas Company*, TRA Docket No. 03-00516 (June 4, 2004), at pp. 9-15 and 17, Staff Recommendations 3-5; *Order Adopting, In Part, ACA Audit Report of Tennessee Regulatory Authority's Energy and Water Division*, TRA Docket No. 03-00516 (May 6, 2005), at pp. 2-3, 10; TRA Docket No. 03-00516, Transcr. of Proceedings Dec. 13, 2004, p. 60.

¹⁵ *Compliance Audit Report of Chattanooga Gas Company*, TRA Docket No. 04-00402 (Sept. 9, 2005), at pp. 17-18, 21; *Order*, TRA Docket No. 04-00402 (March 14, 2006) at pp. 4-5.

D. Atmos Has Attempted to Comply With the Panel's Order

A week after the May 15, 2006 ruling by the Panel directing the Company to meet with Audit Staff, Atmos approached Authority Staff and informed Authority Staff that the Company was eager to meet to discuss the asset management issues, and would make its representatives available at Authority Staff's earliest convenience. Although Authority Staff commented that the Company's eagerness to meet would be discussed within the agency and that a response would be forthcoming, a response was never received by Atmos.

On September 11, 2006, shortly after Atmos' rate case hearing had concluded in the Show Cause Proceeding, Atmos notified the Authority, via a letter submitted in this docket, that the Company was eager to meet with Audit Staff as ordered by the Panel, and sought direction from the Authority as to who to contact to initiate those meetings. Instead, the Company has been informed that "the TRA staff does not intend to meet with Atmos regarding [this docket] until the completion of [the Show Cause Proceeding]." ¹⁶

II. ATMOS REQUESTS THAT THIS PANEL ENFORCE ITS ORDER DIRECTING THE COMPANY AND AUDIT STAFF TO MEET TO ATTEMPT TO RESOLVE THE ISSUES RAISED IN THE AUDIT REPORT.

Atmos remains eager and committed to meeting with Audit Staff to discuss the asset management issues raised in the Audit Report. When similar issues have been raised by commission staff in other jurisdictions, the Company has been able to address staff concerns and resolve the matter without the need for a contested case, and the Company believes it can accomplish the same result here. Like Atmos' success stories, both Nashville Gas and Chattanooga Gas have been afforded ample opportunity to meet with TRA Staff to informally resolve these issues, and these talks have had some success.

¹⁶ TRA Docket No. 05-00258, Transcr. of Proceedings Sept. 26, 2006, pp. 39-40.

Atmos, Nashville Gas and Chattanooga Gas are similarly situated parties, which have had similar experiences up to a point. Atmos received a similar order to meet with staff, but has not been given similar treatment. While Atmos has attempted to comply with the Panel's directive to meet with Audit Staff, Atmos has been informed by Authority Staff that such a meeting will not take place any time before February 2007 (which is the scheduled conclusion of Phase II in the Show Cause Docket). The Authority must ensure that Atmos is afforded the same procedural and substantive considerations as the other regulated gas companies in the state, and that the Authority takes up the issue of asset management in the same manner for each company.

Under the Panel's May 15, 2006 order in this docket, Atmos and Audit Staff should have ample opportunity to meet informally, outside the confines of any pending litigation, to share information and attempt to develop proposals to resolve Audit Staff's concerns regarding asset management. Under the Panel's own order, it is only after those meetings and a joint proposal will the Panel make a determination as to whether a contested case or other action, such as a rulemaking, is necessary. Although Atmos continues to maintain that an industry-wide rulemaking is the most appropriate way for the Authority to develop policy to regulate asset management, in the alternative, the Panel's order in this docket should be enforced in a manner which ensures that Atmos is afforded the same procedural and substantive considerations that have been provided to Chattanooga Gas and Nashville Gas. To do otherwise would violate basic principles of fairness. *See Tennessee Consumer Advocate v. Tennessee Reg. Auth.*, 1997 WL 92079, *4 (Tenn. App. Ct. Mar. 5, 1997).

III. CONCLUSION.

Atmos requests that this Panel implement its Order and require Audit Staff and the Company to meet to attempt to resolve the concerns raised in the Audit Report regarding the Company's asset management arrangement.

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

By: 

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)

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 29th day of September, 2006:

Monica Smith-Ashford
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243

