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**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**January 30, 2007**

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

**NOTICE OF CLARIFICATION OF FILING BY THE UTILITIES DIVISION OF THE TENNESSEE REGULATORY AUTHORITY**

The Utilities Division of the Tennessee Regulatory Authority ("Authority") gives notice of clarification of its Compliance Audit Report ("Report") of Atmos Energy Corporation's ("Atmos" or the "Company") ACA Audit Report in this docket and would respectfully state as follows:

1. The attached statement (Exhibit I) by the Audit Staff of the Utilities Division ("Staff") is filed to clarify Staff Recommendations found on pages 15 and 16 of the Report, which are attached as Exhibit II.

2. Specifically the clarification addresses Recommendation #3.

3. The Report was considered at the Authority Conference held on May 15, 2006 by the panel of Directors assigned to this docket. The Authority voted unanimously to adopt the findings and recommendations contained in the Report with the exception of Recommendations 1 through 2 (C).

4. On December 7, 2006, the Authority issued its Order in this docket.

5. Upon review of Staff's Report, it has come to my attention that the wording of Recommendation #3 would require the Company to bring its gas procurement agreements before the Directors for approval prior to executing these agreements with the chosen suppliers. Staff wishes to clarify this recommendation. It was not and is not the intent of Staff to recommend requiring prior approval by the Directors of these agreements.

6. Staff is cognizant of the fact that time is a major factor to gas utilities in negotiating these contracts and unnecessary delays inadvertently caused by a formal approval process would be a detriment to the Company, to its suppliers, and to the ratepayers.

7. The Staff hereby files the attached statement with the Tennessee Regulatory Authority for deposit as a public record.

Respectfully Submitted:

Pat Murphy

Pat Murphy, Manager
Utilities Division of the
Tennessee Regulatory Authority

## CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of January, 2007, a true and exact copy of the foregoing has been either hand-delivered or delivered via U.S. Mail, postage pre-paid, to the following persons:

Sara Kyle
Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243

Ms. Patricia Childers
Vice President of Rates and Regulatory Affairs
Atmos Energy Corporation
810 Crescent Centre Dr., Suite 600
Franklin, TN 37067

Mr. Edward Wilkens
Manager - Rate Administration
Atmos Energy Corporation
381 Riverside Dr., Suite 440
Franklin, TN 37064

Pat Murphy

Pat Murphy

## EXHIBIT I

### CLARIFICATION OF STAFF RECOMMENDATION

On April 21, 2006, Staff filed with the Authority its compliance audit report covering the audit of Atmos' Actual Cost Adjustment ("ACA") for the twelve-month period ended June 30, 2005. Contained in that report were the Staff's recommendations based on its findings and conclusions reached during the audit process. Specifically, Staff Recommendation #3, found on page 16 of the Report and attached to this filing as Exhibit II, reads "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."

To clarify the recommendation with respect to the gas procurement agreement, Staff is asking the Authority to require the Company to timely file its executed gas procurement agreements with the Authority Staff, so that they are available to Staff for its review and acceptance during the audits of the ACA and any future filings under the Company's Performance Based Ratemaking Mechanism Rider included in the Company's tariff.

EXHIBIT II

Also, Audit Staff finds that the Company appears to be restricting RFP recipients to the same list it has used for a number of years. The Company does not publicly notice its RFP in an industry wide publication. During the most recent RFP offering, the only proposal received was from its affiliate AEM.

Another issue involves Audit Staff concerns about the amount of payment by AEM for the use of ratepayer assets and the calculation of the credit that was given to ratepayers in the current audit period. The amount credited to ratepayers[5] seems to be significantly less than the amounts paid for the use of Nashville Gas and Chattanooga Gas assets. Since Atmos is dealing with its affiliate, Staff has concerns that Tennessee ratepayers are not receiving a fair amount for the use of the assets they have paid for. Without knowing the total profits that AEM is making, which in turn benefit the Company's stockholders, Audit Staff cannot report that Tennessee ratepayers are being treated fairly under the current agreement.

**Staff Recommendations**

Based on the findings and conclusions reached in this audit, the Audit Staff urges the Authority to adopt the following recommendations:

1. The Company allowed only ten (10) days for third party prospective asset managers to submit bids on its RFP for asset management. In addition the Company sent the RFP only to an established list of bidders. The result was the one bid received from its affiliate. Given the complexities of the asset management agreement, Audit Staff believes the length of time given was too short for a prospective bidder to consider the proposal and submit a bid. At a minimum, the Audit Staff recommends the following:

   a. The Company should allow at least thirty (30) days for a prospective bidder to respond to its RFP.
   b. The Company should advertise the RFP in appropriate trade publications.

2. The Company awarded its asset management contract to its affiliate AEM. The contract calls for AEM to pay Atmos $782,978 annually for the right to sell the Company's excess pipeline capacity. This amount is credited 100% to the Company's ratepayers. Compared to similar agreements in place for the other TRA regulated gas companies,[6] the amount paid for the right to use these assets appears to be extremely low. 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.*

[5] The asset management agreement provides for a $782,978 payment by AEM to Atmos Tennessee operations for the use of Tennessee assets and a payment of $282,978 from Atmos Tennessee operations to AEM for services provided to Tennessee in the gas procurement function. The net credit given to Tennessee ratepayers as a result of this agreement was $500,000.

[6] One company has a third party manager and the other has an affiliate manager.

Audit Staff therefore, recommends the following:

a. The Company should provide 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 in 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.

4. The Company should provide a summary report listing all billing adjustments made to the ACA recoveries in each annual ACA filing.

5. The Company should use the updated demand allocation percentage between Tennessee and Virginia customers in its next ACA filing for the 2005-2006 audit period. The Company should also recalculate and adjust their demand allocation percentages at a minimum of every three (3) years or sooner if circumstances warrant.

6. In recording partial bad debt payments, the Company should abide by the joint agreement submitted by the three gas companies and either credit the gas cost portion of the bad debt first, or at the margin/gas cost percentage of the original write-off.