

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

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**June 7, 2006**

T.R.A. DOCKET ROOM

*In re: Petition to Open an Investigation to )  
Determine Whether Atmos Energy Corp. Should be )  
Required by the TRA 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

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**RESPONSE OF ATMOS INTERVENTION GROUP  
TO THE OBJECTIONS OF  
ATMOS ENERGY CORPORATION**

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The Atmos Intervention Group ("AIG"), submits the following response to the objections raised by Atmos Energy Corporation ("Atmos" or "Company") to the first round of discovery questions submitted by AIG. This filing also responds to the parties' dispute concerning a protective order for this docket.

**Summary**

The main thrust of AIG's questions — and the main objection raised by Atmos — concern the Asset Management Agreement (the "Agreement") between Atmos and its affiliate Atmos Energy Marketing, LLC ("AEM" or "Atmos Marketing") and the relevance of that Agreement to this rate case. AIG has asked several questions (numbers 3 through 9) about Atmos Marketing, the Agreement, and how Atmos selected Atmos Marketing to manage the regulated pipeline and storage assets of Atmos. All of these questions relate to the larger issue of whether Tennessee ratepayers are being treated fairly under the current Agreement. That, of course, is the same issue raised by the TRA Audit Staff in its most recent audit of Atmos. Docket 05-00253, April 21, 2006. As the Audit Staff wrote in that report (at 15):

The Audit Staff has “concerns about the amount of payment by AEM for the use of ratepayer assets . . . The amount credited to ratepayers [for the use of those assets] 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.”

There is no question that the relationships between a regulated utility and its affiliates are relevant to a rate case investigation. The TRA and its predecessor, the Public Service Commission, routinely examined affiliate transactions when setting rates. As the Tennessee Supreme Court held in Tenn. Public Service Commission v. Nashville Gas, 551 S.W.2d 315 (Tenn. 1977), “[R]ate-making and regulatory bodies frequently can and do consider entire operating systems of utility companies in determining, from the standpoint both of the regulated carrier and the consuming public fair and reasonable rates of return.” Id., at 320. In that case, state regulators involved in setting rates for Nashville Gas requested financial information from the company’s unregulated affiliate. The Court upheld the Commission, a decision which then allowed the Commission to impute to Nashville Gas the profits of its unregulated affiliate. Similar imputations have been made, for example, between the Western Electric Company and the Bell telephone system, Smith v. Illinois Bell, 282 US 133 (1930), and between BellSouth and BellSouth Advertising and Publishing Company. See T.C.A. §65-4-303(b).

In sum, the TRA clearly has the right to examine the Asset Management Agreement in the context of this rate case and, if supported by the evidence, to impute to Atmos profits earned by Atmos Marketing through the use of Atmos’ regulated assets. Such an imputation would, of course, reduce Atmos’ annual revenue requirement and allow the TRA to reduce, perhaps substantially, Atmos’ retail gas rates.

The objections raised by Atmos to this line of questions have no legal basis. Contrary to the Company's argument, the requested information about Atmos Marketing and the Agreement do bear on Atmos' rates or, as the Audit Staff put it, on whether Tennessee ratepayers are "receiving a fair amount for the use of the [regulated] assets they have paid for." Staff Audit, supra, at 15. Moreover, Atmos itself has argued that the Staff's Audit findings concerning the Asset Management Agreement should "at the very least . . . be accomplished through a contested case proceeding which allows the parties to conduct discovery and present expert testimony on the matter." "Atmos' Response to Staff Audit Report," Docket 05-00253, May 10, 2006, at 5. Atmos opposes conducting such an investigation in the gas cost audit docket (id., at 2) and insists upon "a full opportunity to develop a complete record on these issues." Id., at 4. This rate case provides the Company just the opportunity it seeks.

In the context of these comments, AIG submits the following additional response to Atmos' objections.

### **Responses**

1. Provide an income statement for the 12 months ended September 30, 2005 and December 31, 2005 and balance sheet at September 30, 2005 and December 31, 2005 for each state regulated utility owned or operated by Atmos. Also provide an income statement for the 12 months ended September 30, 2005 and December 31, 2005 and a balance sheet at September 30, 2005 and December 31, 2005 for each unregulated affiliate of Atmos. Finally, aggregate and reconcile the individual income statements and balance sheets referred to above with the consolidated income statement and balance sheet contained in the Company's most recent stockholder's annual report.

**Objection:** Atmos objects to that portion of Request No. 1 seeking income statements and balance sheets for each unregulated affiliate of Atmos on the grounds that portion of Request No. 1 seek confidential and trade secret information protected by Tennessee law, is overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of relevant information, and thus beyond the scope of legitimate discovery in this proceeding.

**Response:** AIG needs to properly segregate Atmos' Tennessee regulated operations from those other businesses (regulated and unregulated) of the Company. As the TRA is fully aware, the only audited financial statements of the Company are those appearing in the stockholders' annual report. However, because Atmos has regulated operations in 13 states as well as numerous unregulated operations, it is impossible for AIG to verify that the Tennessee income statement and balance sheet ties to the Company's consolidated financial statements without the information requested in Item 1.

2. In order for the TRA to verify the Company's gas sales, identify and provide the monthly sales volumes by rate classification for each of the Company's 50 largest Tennessee customers from January 1, 2003 through December 31, 2005. Also provide a contact person, telephone number and mailing address for each customer identified. Finally provide copies of all correspondence, other than billing statements, and notes of discussions or meetings with these customers concerning gas usage or rates between January 1, 2004 through May 1, 2006.

**Objection:** Atmos objects to this request on the grounds that the request seek confidential and trade secret information protected by Tennessee law, and further that to the extents the request exceeds the customer information required by the Minimum Filing Requirements, the request is overbroad unduly burdensome, not reasonably calculated to lead to

the discovery of relevant information, and is thus beyond the scope of legitimate discovery in this proceeding.

**Response:** The sales of gas to industrial customers is a far more volatile figure than sales to the Company's other customer classes. AIG needs the information requested in Item 2 in order to contact each industrial customer to determine if the customer expects any significant swings in its future usage so that the Company's pro forma Industrial Revenues can be calculated with a reasonable degree of certainty. In addition, AIG intends to use the results of Item 2 to consider proposals for alternative rate design, including multiple volumetric steps within the Industrial Class.

3. Provide a copy of the Company's current asset management contracts applicable to Tennessee.

**Objection:** Atmos objects to this request on the grounds the request seeks confidential and trade secret information protected by Tennessee law, and further that the request is not reasonably calculated to lead to the discovery of relevant information and is thus beyond the scope of legitimate discovery in this proceeding. This docket was convened "for the purpose of establishing a fair and reasonable return for Atmos." (Transcript of May 15, 2006 TRA Agenda Conference, p. 24.) This request seeks information related to gas costs, specifically, pipeline capacity and storage charges and other similar costs. Pursuant to the TRA's Purchased Gas Adjustment ("PGA") Rule, these costs have no bearing on Atmos' rates, but are instead regulated through the PGA filings and the annual Actual Cost Adjustment ("ACA") Audits by TRA staff. Atmos further objects to this request on the grounds it is inconsistent with the TRA's Orders in the Company's PBR docket, Docket No. 97-01364, which waives the requirement of a prudence

audit for each year the PBR is in effect, and with the TRA's order in Docket 05-00253, the Company most recent ACA audit docket.

**Response:** If, as AIG has argued, the TRA agrees that the Asset Management Agreement is not only relevant but necessary to the determination of just and reasonable rates, AIG needs a copy of all current asset management contracts.

4. Provide a copy of the latest Request for Proposal ("RFP") that was issued by the Company for the management of the Company's Tennessee pipeline and storage assets and procurement of gas. Provide a copy of all responses to the Company's latest RFP.

**Objection:** Atmos objects to this request on the grounds the request seeks confidential and trade secret information protected by Tennessee law, and further that the request is not reasonably calculated to lead to the discovery of relevant information and is thus beyond the scope of legitimate discovery in this proceeding. This docket was convened "for the purpose of establishing a fair and reasonable return for Atmos." (Transcript of May 15, 2006 TRA Agenda Conference, p. 24.) This request seeks information related to gas costs, specifically, pipeline capacity and storage charges and other similar costs. Pursuant to the TRA's Purchased Gas Adjustment ("PGA") Rule, these costs have no bearing on Atmos' rates, but are instead regulated through the PGA filings and the annual Actual Cost Adjustment ("ACA") Audits by TRA staff. Atmos further objects to this request on the grounds it is inconsistent with the TRA's Orders in the Company's PBR docket, Docket No. 97-01364, which waives the requirement of a prudence audit for each year the PBR is in effect, and with the TRA's order in Docket 05-00253, the Company most recent ACA audit docket.

**Response:** As the Audit Staff found, Atmos' procedures for the selection of an asset manager appear to favor Atmos Marketing. If true, that could impact the Authority's decision

about the imputation of revenues from AEM to Atmos. Staff Audit, supra, at 14-15. To explore this possibility, AIG needs a copy of the latest RFP and copies of the responses submitted by all bidders.

5. Provide a copy of the Company's latest gas supply plan for its Tennessee customers and the reserve margin associated with the peak day demand requirements.

**Objection:** Atmos objects to this request on the grounds the request seeks confidential and trade secret information protected by Tennessee law, and further that the request is not reasonably calculated to lead to the discovery of relevant information and is thus beyond the scope of legitimate discovery in this proceeding. This docket was convened "for the purpose of establishing a fair and reasonable return for Atmos." (Transcript of May 15, 2006 TRA Agenda Conference, p. 24.) This request seeks information related to gas costs, specifically, pipeline capacity and storage charges and other similar costs. Pursuant to the TRA's Purchased Gas Adjustment ("PGA") Rule, these costs have no bearing on Atmos' rates, but are instead regulated through the PGA filings and the annual Actual Cost Adjustment ("ACA") Audits by TRA staff. Atmos further objects to this request on the grounds it is inconsistent with the TRA's Orders in the Company's PBR docket, Docket No. 97-01364, which waives the requirement of a prudency audit for each year the PBR is in effect, and with the TRA's order in Docket 05-00253, the Company most recent ACA audit docket.

**Response:** Given the affiliate relationship between Atmos and Atmos Marketing, the regulated company may have an incentive to retain more regulated storage and pipeline assets than needed to serve jurisdictional customers. This question will allow AIG to review the Company's current capacity requirements and the total capacity and reserve margin that Atmos

believes is needed to serve jurisdictional customers. Furthermore, the Company's capacity requirements will ultimately determine the price of gas paid by ratepayers.

6. Provide a listing of all pipeline and storage assets, along with their related costs, that are contracted for in providing gas supply for Tennessee ratepayers. Please identify the FERC tariff or negotiated costs of each asset and the contract number of each asset.

**Objection:** Atmos objects to this request on the grounds the request seeks confidential and trade secret information protected by Tennessee law, and further that the request is not reasonably calculated to lead to the discovery of relevant information and is thus beyond the scope of legitimate discovery in this proceeding. This docket was convened "for the purpose of establishing a fair and reasonable return for Atmos." (Transcript of May 15, 2006 TRA Agenda Conference, p. 24.) This request seeks information related to gas costs, specifically, pipeline capacity and storage charges and other similar costs. Pursuant to the TRA's Purchased Gas Adjustment ("PGA") Rule, these costs have no bearing on Atmos' rates, but are instead regulated through the PGA filings and the annual Actual Cost Adjustment ("ACA") Audits by TRA staff. Atmos further objects to this request on the grounds it is inconsistent with the TRA's Orders in the Company's PBR docket, Docket No. 97-01364, which waives the requirement of a prudence audit for each year the PBR is in effect, and with the TRA's order in Docket 05-00253, the Company most recent ACA audit docket.

**Response:** A list of assets is usually provided in the PGA calculation. These costs are relevant to the overall costs paid by Tennessee ratepayers and if AIG needs to audit the storage activity of the Company, the storage and pipeline contracts will differentiate those assets paid for by Tennessee ratepayers and those contracted by the affiliate. There is typically a contract



number to identify these FERC assets. If there is not a contract number, then the Company should indicate this.

7. From January 1, 2004 to May 1, 2006, provide by month the total number of Tennessee customers served under the Company's Rate 260 transportation rate schedule that also purchase gas from Atmos Energy Marketing LLC ("Atmos Energy Marketing"). Also provide the monthly total volumes and profits realized by Atmos Energy Marketing attributable to transporting these volumes using the Company's regulated pipeline assets. For purposes of questions 7, 8, and 9, the term "regulated assets" refers to those assets which are paid for by the Company's Tennessee customers and the costs of which are recovered through the TRA's Purchased Gas Adjustment rules.

8. From January 1, 2004 to May 1, 2006, provide the monthly total volumes and profits realized by Atmos Energy Marketing on sales to non-jurisdictional customers attributable to transporting this gas using the Company's regulated pipeline assets.

9. From January 1, 2004 to May 1, 2006, provide the total monthly profits realized by Atmos Energy Marketing that are attributable to the management of the Company's regulated storage assets.

**Objection:** [The objection to each question is identical.] Atmos objects to this request on the grounds the request seeks confidential and trade secret information protected by Tennessee law, and further that the request is not reasonably calculated to lead to the discovery of relevant information and is thus beyond the scope of legitimate discovery in this proceeding. This docket was convened "for the purpose of establishing a fair and reasonable return for Atmos." (Transcript of May 15, 2006 TRA Agenda Conference, p. 24.) This request seeks information related to gas costs, specifically, pipeline capacity and storage charges and other

similar costs. Pursuant to the TRA's Purchased Gas Adjustment ("PGA") Rule, these costs have no bearing on Atmos' rates, but are instead regulated through the PGA filings and the annual Actual Cost Adjustment ("ACA") Audits by TRA staff. Atmos further objects to this request on the grounds it is inconsistent with the TRA's Orders in the Company's PBR docket, Docket No. 97-01364, which waives the requirement of a prudency audit for each year the PBR is in effect, and with the TRA's order in Docket 05-00253, the Company most recent ACA audit docket. This request also seeks confidential and proprietary information regarding a non-party to this proceeding which is not relevant hereto nor reasonably calculated to lead to the discovery of relevant information.

**Response:** The purpose of these three questions is to determine the total profits made by Atmos Marketing through the use of the regulated assets of Atmos. As the Audit Staff wrote (Audit Report, at 15), "Without knowing the total profits AEM is making, which in turn benefit the company's stockholder, Audit Staff cannot report that Tennessee ratepayers are being treated fairly under the current [Asset Management] agreement."

If, as AIG has argued, the profits of Atmos Marketing from the use of regulated assets are relevant and necessary to establishing rates, AIG needs to know the profits attributable to using Atmos' regulated pipeline and storage assets to serve both jurisdictional and non-jurisdictional customers. Questions 7, 8 and 9 are designed to obtain that information.

Atmos also argues that the investigation of the Asset Management Agreement in this rate case is inconsistent with the TRA's orders in Docket 97-01304 (the PBR docket) and Docket 05-00253 (the most recent ACA audit docket). Atmos does not explain this alleged inconsistency. As previously discussed, a general rate case often involves an investigation of affiliate relationships to determine whether revenues from the use of regulated assets are being properly

credited to the utility's regulated operations. There is nothing in either the PBR docket or the ACA audit docket which precludes such an investigation in this case. The orders in the PBR docket, which predates the Asset Management Agreement, say nothing about the Agreement. The recent Staff ACA audit, on the other hand, expresses serious concerns about the Agreement and its impact on ratepayers. In its April 2006 report issued in Docket 05-00253, the Audit Staff recommends (at 16) that the Authority "open a separate docket" to address the sharing of revenues arising from the Asset Management Agreement. This is, in part, the kind of relief that AIG intends to seek in this "separate" docket. AIG's proposed investigation of the Agreement and the appropriate division of revenues resulting from that Agreement is not only consistent with the Audit Staff's recommendation but, ironically, provides the Company just the kind of "full opportunity to develop a complete record on these issues" that Atmos has so insistently requested.

#### **Issues Regarding the Proprietary Agreement**

Atmos has taken the position that Mr. Earl Burton of Tennessee Energy Consultants should not be allowed to review any confidential information provided in this case by Atmos Marketing, thus effectively preventing Mr. Burton from acting as a consultant or expert witness for AIG in this case.

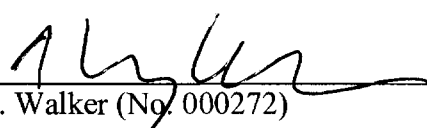
Mr. Burton is an expert in the natural gas industry. A former employee of Chattanooga Gas, he now advises large gas customers throughout Tennessee concerning their gas purchases. Because of this experience, he can advise AIG and the TRA concerning the reasonableness of the Asset Marketing Agreement and help the agency determine whether "Tennessee ratepayers are being treated fairly" under the Agreement.

Mr. Burton is willing to sign the same confidentiality agreement that other consultants are asked to sign. That agreement strictly limits the use of any confidential information and requires that it be returned or destroyed when this case is over. Furthermore, as an additional precaution, AIG has asked only for the "number" of Atmos' transportation customers purchasing gas from Atmos Marketing and the "total monthly volumes and profits" of Atmos Marketing from the use of regulated assets but has not asked for the names of any AEM customers or any AEM customer-specific information. In light of these protections, it is not clear what objections Atmos has to allowing Mr. Burton access to the requested information. Granting the Company's request would hinder the ability of AIG and, ultimately the TRA, to obtain relevant evidence and expert opinions about one of the most critical issues in this case.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: \_\_\_\_\_

  
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing is being forwarded via email and U.S. mail, postage prepaid, to:

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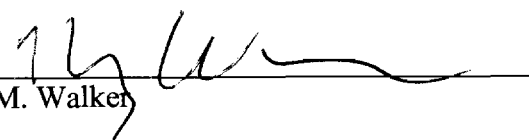
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on this the 7<sup>th</sup> day of June 2006.

  
Henry M. Walker