

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

June 23, 2006

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*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

**RESPONSE OF ATMOS INTERVENTION GROUP TO
ATMOS' INTERLOCUTORY APPEAL**

The Atmos Intervention Group ("AIG") submits the following response to the "Motion for Expedited TRA Review of Hearing Officer Order" filed on June 16, 2006, by Atmos Energy Corporation ("Atmos").¹ Atmos has asked the Authority to review the Hearing Officer's Order of June 14, 2006, concerning certain discovery disputes.

I. As an initial matter, Atmos cannot make an interlocutory appeal of the Hearing Officer's decision to the Authority without the permission of the Hearing Officer. TRA Rule 1220-1-2-.06(6). The rule also states that such permission "shall not be unreasonably withheld." On June 22, 2006, the Hearing Officer granted Atmos' request and further held that Atmos need not comply with the Hearing Officer's order to answer the disputed discovery questions until after the Authority rules on the company's appeal.

Unfortunately, consideration of Atmos' interlocutory appeal may force a postponement in the agreed-upon procedural schedule. The Authority has repeatedly stated its intention to

¹ Pursuant to TRA Rule 1220-1-2-.06(2), this response to the Motion of Atmos is due seven days after the filing of the Motion.

conclude this case as soon as possible. Depending upon how quickly the Authority rules on the appeal, this delay could extend the procedural schedule by two weeks or more.

In the alternative, AIG suggests that the Authority take the pending appeal under advisement while directing the company, in the interim, to comply with the Hearing Officer's Order. If the Authority later holds that some or all of the disputed information is, as Atmos contends, irrelevant to this proceeding, the Hearing Officer can order that the information be returned to Atmos and not addressed at the hearing. That will allow the Authority the opportunity to fully consider these issues while keeping the proceedings on schedule.

II. Should the Authority decide to address now the merits of Atmos' relevancy arguments, AIG urges the Authority to affirm the Hearing Officer's decision.

The disputed discovery questions from AIG and the Consumer Advocate Division ("CAD") relate to Atmos' management of its regulated gas storage and transportation assets. AIG, the CAD, and the TRA's own audit staff agree that there are serious issues surrounding the relationship between Atmos and its unregulated affiliate, Atmos Energy Marketing ("AEM"). Based on a ten-day bidding process, in which AEM was the only bidder, AEM entered into an "asset management agreement" with Atmos. Under that agreement, AEM controls the regulated pipeline and storage assets of Atmos. In exchange for a payment to Tennessee ratepayers of less than \$500,000, AEM uses those ratepayer funded assets to make millions of dollars in profits, none of which benefits Tennessee ratepayers. As the TRA's staff auditors concluded, "Staff has concerns that Tennessee ratepayers are not receiving a fair amount for the use of the assets they have paid for." Staff Audit Report of April 21, 2006, at 15.

If the responses to discovery ordered by the Hearing Officer confirm the suspicions of the TRA's auditors, the Authority could decide to capture all or part of AEM's profits for the benefit

of Tennessee ratepayers. The imputation of profits from an unregulated affiliate to a regulated utility is a common and long standing regulatory practice in Tennessee and has been expressly upheld by the Tennessee Supreme Court. See Tenn. Public Service Commission v. Nashville Gas, 551 S.W.2d 315 (Tenn. 1977).

To explore the imputation issue, AIG has requested information about the asset management agreement between AEM and Atmos and about AEM's profits from the management of Atmos' storage and transportation assets. As the Hearing Officer wrote, "the requested information is critical" to a determination of whether the Authority "should impute AEM's revenues to Atmos and thereby reduce Atmos's revenue requirement." Order, at 12. The Hearing Officer also found no conflict between pursuing the imputation issue in this docket and the Authority's recent oral decision in the ACA Audit case, Docket 05-00253. The Authority's decision in Docket 05-00253 addresses how the Authority treats the relatively small payment AEM made to Atmos under the asset management agreement. That decision did not address whether the Authority should impute to Atmos all or part of the profits of AEM resulting from AEM's preferential and profitable relationship with its affiliate.

Atmos' objections to the Hearing Officer's decisions are entirely based on the mistaken assumption that the Hearing Officer did not know what he was doing, *ie.*, that he "clearly found" that "revenues derived from the management of gas supply assets . . . are beyond the scope of this proceeding" but that the Hearing Officer "failed to apply that finding" to AIG's discovery requests. Motion, at 7.

Through careful word choice, Atmos tries to confuse the issue. As the Hearing Officer wrote, the questions raised by AIG do not concern AEM's payment to Atmos for the use of Atmos' storage and transportation assets. That payment currently flows back to ratepayers

through the PGA. The question here is whether all or part of the profits earned by AEM under the asset management agreement should be imputed to Atmos to reduce the revenue requirement of the regulated utility. Those are two separate issues; Atmos has chosen to ignore the difference.

The Hearing Officer did, however, understand the difference and his Order carefully spells out the reasons he overruled Atmos' objections to these discovery questions about AEM and the asset management agreement. The Authority should have no hesitation in quickly affirming his Order.

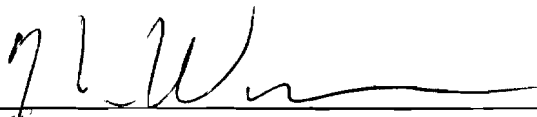
III. As the TRA's Investigative Staff wrote in comments filed on June 22, 2006, the Authority should address "sooner than later" these issues surrounding the asset management agreement between AEM and Atmos. Investigative Staff Response, at 1. The only way to address those issues "sooner" is to address them in this rate case. The only other open docket in which the issue of the asset management agreement has been raised is the ACA Audit case, Docket 05-00253. As the Hearing Officer found, however, the purpose of the ACA Audit docket is not the same as the purpose of this rate case. Atmos itself, moreover, strongly objected to addressing the asset management agreement in the ACA Audit docket, claiming just a month ago, that the asset management agreement with AEM "has absolutely no impact on or relationship to the subject of the [ACA] audit, Atmos' gas supply costs," precisely the opposite position that Atmos now takes. See "Atmos' Response to Staff Audit Report," filed May 10, 2006, at 3. The company's strategy, as characterized during a pre-hearing conference by Mr. Hotvedt, attorney for the Investigative Staff, is akin to a "shell game." Atmos argued in Docket 05-00253 that any debate over the asset management agreement should be litigated in a separate, contested case proceeding. This rate case is, of course, just such a proceeding. Here, however,

Atmos insists just as strongly that the revenue sharing issue will be addressed in the ACA Audit docket and is irrelevant to the rate case.

The Authority should not condone this “shell game” but should move to address “sooner than later” the concerns raised by AIG, the CAD, and the Authority’s auditors. The imputation issue is potentially worth millions of dollars in savings to Tennessee ratepayers. One way or the other, it should be resolved in this rate case so that, if the Authority agrees with the intervenors, Atmos’ customers will quickly benefit.²

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: 
Henry Walker
1600 Division Street, Suite 700
P.O. Box 340025
Nashville, Tennessee 37203
(615) 252-2363

² Another way to put an end to the company’s shell game is to combine this case with Docket 05-00253. The only disputed findings raised by the staff in the ACA Audit docket concern the asset management agreement between Atmos and AEM.

CERTIFICATE OF SERVICE

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

Vance L. Broemel
Office of the Attorney General
Consumer Advocate and Protection Division
P.O. Box 20207
Nashville, TN 37202
vance.broemel@state.tn.us

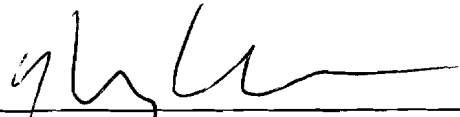
Joe A. Conner
Misty Smith Kelley
Baker, Donelson, Bearman & Caldwell
1800 Republic Centre
633 Chestnut Street
Chattanooga, TN 37450-1800
mkelley@bakerdonelson.com
jconner@bakerdonelson.com

Patricia J. Childers
VP-Regulatory Affairs
Atmos/United Cities Gas Corp.
810 Crescent Centre Drive, Ste. 600
Franklin, TN 37064-5393
pat.childers@atmosenergy.com

J. W. Luna
Farmer & Luna
333 Union Street, Ste. 300
Nashville, TN 37201
jwlunc@farmerluna.com

Gary Hotvedt
Tennessee Regulatory Authority
460 James Robertson Pkwy.
Nashville, TN 37243-0505
gary.hotvedt@state.tn.us

on this the 23rd day of June 2006.



Henry M. Walker