

**Before the**

**TENNESSEE REGULATORY AUTHORITY**

**IN RE:**

**PETITION OF TENNESSEE-ATMOS ENERGY COPORATION**

**DOCKET NO. 05-00258**

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**DIRECT  
TESTIMONY  
OF  
TERRY BUCKNER**

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**July 17, 2006**

1 **Q. Please state your name for the record.**

2 A. My name is Terry Buckner.

3

4 **Q. By whom are you employed and what is your position?**

5 A. I am employed by the Consumer Advocate and Protection  
6 Division ("CAPD") in the Office of the Attorney General for the state  
7 of Tennessee ("Office") as a Regulatory Analyst.

8

9 **Q. How long have you been employed in conjunction with the public**  
10 **utility industry?**

11 A. I have been employed in conjunction with the public utility  
12 industry for approximately twenty-eight years. Before my current  
13 employment with the Office, I was employed by the Comptroller of  
14 the Treasury for the state of Tennessee for nearly two years as the  
15 Assistant Director responsible for public utility audits after  
16 approximately eight years of prior employment with the Office.  
17 Formerly, I was employed with the Tennessee Public Service  
18 Commission ("Commission") in the Utility Rates Division as a  
19 financial analyst for approximately six years. My responsibilities  
20 included testifying before the Commission as to the appropriate cost  
21 of service for public utilities operating in Tennessee. Prior to my  
22 employment with the Commission, I was employed by TDS Telecom

1 for eight years and the First Utility District of Knox County for three  
2 years.

3  
4 **Q. What is your educational background and what degrees do you**  
5 **hold?**

6 A. I have a Bachelors degree in Business Administration from the  
7 University of Tennessee, Knoxville with a major in Accounting. I am  
8 also a Tennessee Certified Public Accountant and a member of the  
9 American Institute of Certified Public Accountants. Additional  
10 education background with respect to my qualifications is provided in  
11 Attachment A.

12  
13 **Q. Would you briefly describe your responsibilities as a Regulatory**  
14 **Analyst with the CAPD?**

15 A. I prepare testimony and financial exhibits in rate proceedings  
16 as an employee with the CAPD. Additionally, I review tariffs filed  
17 with the Tennessee Regulatory Authority (“TRA”) by certificated  
18 utilities operating in Tennessee.

1 **Q. What is the purpose of your testimony?**

2 A. The purpose of my testimony is to present the forecasted  
3 financial exhibits prepared by the CAPD (“CAPD EXHIBITS”) and  
4 to present the CAPD work papers (“CAPD WORK PAPERS”) for  
5 forecasted Operation and Maintenance Expenses, forecasted  
6 Depreciation Expense, forecasted Taxes Other Than Income,  
7 forecasted Income Taxes, forecasted Rate Base, and Net Operating  
8 Income (“NOI”) adjustments for Atmos Energy Corporation  
9 (“Atmos”) for the attrition year ended September 30, 2006.  
10

11 **Q. Please summarize the results of the CAPD forecast of Atmos’**  
12 **earnings for the attrition year.**

13 A. The CAPD forecast of Atmos’ earnings for the attrition year  
14 results in a recommended \$12,407,308<sup>1</sup> decrease in rates. The CAPD  
15 forecast is based on an overall rate of return of 6.56%<sup>2</sup> as  
16 recommended by CAPD economist, Dr. Steve Brown.  
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<sup>1</sup>CAPD EXHIBIT, Schedule 1, Line 8.

<sup>2</sup>CAPD EXHIBIT, Schedule 8, Line 5.

1 **Q. Please describe the overall forecasting methodology adopted by**  
2 **the CAPD.**

3 A. The CAPD has adopted the actual amounts reported by Atmos  
4 for the twelve months ending March 31, 2006 and has normalized for  
5 known or reasonably anticipated and measurable changes.  
6 Consequently, the attrition year reflects a forecasting methodology  
7 which contains partial historic and partial projected amounts. A  
8 forecast, attrition, or test year may be based on historical data, current  
9 data (partial historic and partial projected), or projected data.<sup>3</sup> The  
10 use of a partial historic and partial forecast mitigates the level of pro  
11 forma adjustments. As long as the test period or attrition period  
12 properly match revenues, expenses, and investments (rate base), rates  
13 can be set to allow the company a just and reasonable return on  
14 investment.

15

16 **OPERATION AND MAINTENANCE EXPENSES:**

17 **Q. Please describe your forecasting methodology for Operation and**  
18 **Maintenance Expenses.**

19 A. There are four broad Operation and Maintenance Expense  
20 categories subject to forecast in this docket: (1) Storage,  
21 Transmission and Distribution expenses; (2) Customer Accounts

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<sup>3</sup>*Accounting for Public Utilities*, Hahne and Aliff § 7.03.

1 expenses; (3) Sales expenses; and (4) Administrative and General  
2 expenses. Within the categories, the direct payroll of Atmos'  
3 Tennessee employees is an element of Operation and Maintenance  
4 Expense. The calculation of the attrition year direct payroll assumed  
5 a full-year of employment normalized at the latest actual wage rates.  
6 Direct payroll was calculated using actual employee levels as of  
7 March 31, 2006, the latest actual wage rates per employee, and actual  
8 overtime hours by employee for the twelve months ended September  
9 30, 2005.<sup>4</sup> The total Operation and Maintenance Labor amount was  
10 derived from the calculated total labor dollars minus labor dollars  
11 charged to capitalization. The capitalization dollars were calculated  
12 using Atmos' actual average rate for the twelve months ended  
13 September 30, 2005.<sup>5</sup> All of the direct labor calculations were based  
14 on the discovery responses received from Atmos.<sup>6</sup>

15 In summary, \$2,877,636<sup>7</sup> of the forecasted Operation and  
16 Maintenance Expense for the attrition year is attributable to direct  
17 labor.

18 For the non-labor charges of the four Operations and

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<sup>4</sup>Latest fiscal year provided by Atmos.

<sup>5</sup>Latest fiscal year provided by Atmos.

<sup>6</sup>Source files: Q10DTB093end05, Summary of Discovery Response ("DR") DR#11, #18, #19, and Minimum Filing Requirement ("MFR") MFR #31, and DR#21.

<sup>7</sup>CAPD WORK PAPER, E-PAY-5, INDEX OF WORK PAPERS, PAGE P12.

1 Maintenance Expense categories, the CAPD primarily adopted the  
2 amounts per account for the twelve months ended March 31, 2006  
3 and grew each amount for customer growth and inflation growth.  
4 One half of the annual customer growth of 3% and inflation growth of  
5 2.91%<sup>8</sup> were used in the development of the combined growth rate.  
6 The combined growth rate from March 31, 2006 through September  
7 30, 2006 is approximately 2.2%. Total Operation and Maintenance  
8 Expense including Uncollectible Expense is \$13,433,009 for the  
9 attrition year.<sup>9</sup>  
10

11 **Q. Please explain your analysis of Uncollectible Accounts Expense.**

12 A. The most recent reported uncollectible expenses on base  
13 revenues were examined. Since uncollectible expense related to gas  
14 costs can be recovered through the Purchased Gas Adjustment  
15 (“PGA”) in compliance with the TRA’s ruling in Docket #03-00209,  
16 the only costs that should be included in the cost of service is the  
17 portion of uncollectible expense related to base rates. Therefore,  
18 uncollectible expense has been adjusted to exclude the “gas cost”  
19 portion of uncollectible expense. \$95,760<sup>10</sup> is the base rate

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<sup>8</sup>CAPD WORK PAPER, E-GDP, INDEX OF WORK PAPERS, PAGE P78.

<sup>9</sup>CAPD EXHIBIT, Schedule 4, Line 6.

<sup>10</sup>CAPD WORK PAPER, E-UNCOL, INDEX OF WORK PAPERS, PAGE P176.

1 uncollectible expense included in the cost of service for the attrition  
2 year ended September 2006.

3  
4 **Q. Please discuss the significant Operation and Maintenance**  
5 **Expense amounts excluded from the CAPD's cost of service**  
6 **forecast.**

7 A. There are two major exclusions from the fiscal year to date  
8 Operation and Maintenance expense amounts. The exclusions are the  
9 recognition of incentive pay and pension expense. First, Atmos has  
10 reported \$189,762<sup>11</sup> through fiscal year to date March 2006 in its  
11 Operations and Maintenance Expense for the "incentive plan."<sup>12</sup> The  
12 Long-Term Incentive Plan ("LTIP") payroll is based on one sole  
13 performance measure: "Earnings Per Share."<sup>13</sup> Consequently, all of  
14 the incentive payroll is based on the financial operating results of  
15 Atmos. Under the incentive plan, Atmos increases the compensation  
16 to its employees for increasing Atmos' regulated earnings. Because  
17 there is no mechanism under the LTIP for Atmos' ratepayers to share  
18 in these increased earnings, Atmos' employees and shareholders will  
19 reap all of the financial rewards of these higher earnings.

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<sup>11</sup>CAPD WORK PAPER, E-LTIP, INDEX OF WORK PAPERS, PAGE P173.

<sup>12</sup>Atmos response to TRA Data Request, MFR #38.

<sup>13</sup>Atmos response to TRA Data Request, MFR #38.



1        Additionally, ratepayers are the sole source of Atmos' regulated  
2        earnings; therefore, the incentive plan is a circular one whose success  
3        is a by-product of the over-earnings identified in this docket,  
4        rewarding Atmos' employees and shareholders for inflated natural  
5        gas rates charged to ratepayers. Also, it is a "crude"<sup>14</sup> method of  
6        measuring specific accomplishments of employees. For these  
7        reasons, there is no reasonable basis to charge the cost of this LTIP to  
8        ratepayers, as all of the plan benefits will inure entirely to Atmos'  
9        employees and shareholders and all of the plan's burden will be  
10       charged directly to ratepayers. As a result, this amount has been  
11       excluded and should be borne solely by Atmos' shareholders.

12            Additionally, Atmos has capitalized a large portion of LTIP  
13       costs. Based on the data provided by Atmos, the rate base portion of  
14       the LTIP has been excluded.<sup>15</sup> Further, \$174,842 of depreciation  
15       expense associated with the LTIP has been excluded for the attrition  
16       year.<sup>16</sup>

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<sup>14</sup>Washington Utilities and Transportation Commission Docket No. UT-950200,  
Fifteenth Supplemental Order, dated March 8, 1995, Page 49.

<sup>15</sup>CAPD WORK PAPER, RB-LTIP, INDEX OF WORK PAPERS, PAGE P215.

<sup>16</sup>CAPD WORK PAPER, E-LTIP-DEP, INDEX OF WORK PAPERS, PAGE P174.

1 **Q. Please explain the exclusion of Pension Expense from the CAPD**  
2 **forecast.**

3 A. The CAPD has adopted the Pension funding amount of zero as  
4 disclosed in the latest Form 10-K report filed by Atmos with the  
5 United States Securities and Exchange Commission (“SEC”).<sup>17</sup>  
6 Historically, in Tennessee, only actual pension contributions have  
7 been recognized for setting rates. Please note the following  
8 examples:

9	Tennessee-American Water Company	U-87-07534	Mar. 1988
10	Tennessee-American Water Company	89-15388	May 1990
11	Tennessee-American Water Company	91-05224	Dec. 1991
12	Tennessee-American Water Company	96-00959	Oct. 1996
13	Chattanooga Gas Company	U-87-07531	Apr. 1989
14	Chattanooga Gas Company	91-05224	Dec. 1991
15	Nashville Gas Company	U-87-07499	Apr. 1987
16	Nashville Gas Company	89-10491	Nov. 1989
17	Nashville Gas Company	91-02636	Nov. 1991
18	Nashville Gas Company	94-01054	Oct. 1994
19	United Cities Gas Company	89-10017	Nov. 1989
20	United Cities Gas Company	92-02987	Sep. 1992
21	Kingsport Power Company	90-05735	Dec. 1990
22	Kingsport Power Company	92-04425	Nov. 1992
23	Tellico Telephone Company	91-09061	Feb. 1992
24	Tennessee Telephone Company	91-09062	Feb. 1992
25	Concord Telephone Company	91-09063	Feb. 1992

26  
27 Atmos records pension expense in accordance with Financial  
28 Accounting Standard (“FAS”) No. 87. The FAS 87 amount prescribed  
29 in the latest actuarial report for total Atmos pension expense for the

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<sup>17</sup>Atmos 2005 10K, page 92.

1 attrition year is \$14,443,374.<sup>18</sup> Tennessee's portion of the FAS 87  
2 pension expense for fiscal year to date ended March 31, 2006 is  
3 estimated to be \$215,669<sup>19</sup> and was excluded for rate-setting purposes  
4 in Tennessee.

5  
6 **DEPRECIATION EXPENSE**

7 **Q. Please discuss your calculation of Depreciation Expense for the**  
8 **attrition year.**

9 A. A composite depreciation rate of 3.9% was used for the  
10 attrition year, which is consistent with the actual amounts for the first  
11 six months of the fiscal year ended September 2006. The composite  
12 depreciation rate was applied to the previous monthly Tennessee  
13 Plant in Service balances for the remaining forecasted six months.  
14 The actual and forecasted amounts net of the LTIP exclusion results  
15 in total Depreciation Expense of \$11,055,705.<sup>20</sup>

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<sup>18</sup>Atmos response to TRA Data Request, MFR #37.

<sup>19</sup>CAPD WORK PAPER, E-PENSION, INDEX OF WORK PAPERS, PAGE P175.

<sup>20</sup>CAPD WORK PAPER, E-DEP, INDEX OF WORK PAPERS, PAGE P172.

1 **TAXES OTHER THAN INCOME:**

2 **Q. Please describe your calculation of Taxes Other Than Income for**  
3 **the forecasted attrition year?**

4 A. In CAPD WORK PAPERS, work paper T-OTAX0<sup>21</sup> provides a  
5 summary of the calculation of Taxes Other Than Income.

6 Taxes Other Than Income for the attrition year are: (1) Property  
7 Taxes; (2) the TRA Inspection Fee; (3) Payroll Taxes (FICA, FUTA,  
8 and SUTA); (4) State Franchise Tax; and (5) State Gross Receipts  
9 Taxes.

10

11 **Q. Please explain the calculation of Property Taxes.**

12 A. In CAPD WORK PAPERS, work paper T-OTAX1<sup>22</sup> provides  
13 a historical summary of property taxes paid by Atmos, their gross  
14 assessment values, their composite tax rate, and their reported rate  
15 base amounts. This schedule reflects an increase in the property taxes  
16 due by Atmos for the years 2004-2005. The gross assessment value  
17 for the year 2006 indicates an increase too. Consequently, the  
18 forecasted tax amount for 2006 is \$2.7 million, which is based on the  
19 actual gross assessment values for the years 2005 and 2006 at the  
20 2005 composite tax rate.

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<sup>21</sup>CAPD WORK PAPER, E-OTAX0, INDEX OF WORK PAPERS, PAGE P177.

<sup>22</sup>CAPD WORK PAPER, E-OTAX1, INDEX OF WORK PAPERS, PAGE P178.

1   **Q.    Provide an explanation of the TRA Inspection Fee amount.**

2   A.           The attrition year TRA Inspection Fee amount is summarized  
3           in work paper T-OTAX2,<sup>23</sup> which is simply the actual amounts paid  
4           by Atmos to the TRA on TRA Form UD-20. Atmos has paid  
5           \$413,077 in TRA Inspection Fees applicable to the attrition year.

6  
7   **Q.    Please explain the calculation of Payroll Tax Expense.**

8   A.           A summary of Payroll Taxes is prepared in work paper T-  
9           OTAX3.<sup>24</sup> Payroll Taxes were calculated using the latest actual wage  
10          rates per employee for a normalized fiscal year ending September 30,  
11          2006 at the current payroll tax rates subject to the taxable wage bases  
12          per employee. The capitalized portion of payroll taxes was deducted  
13          from the total payroll tax calculation to arrive at the attrition year  
14          Payroll Tax Expense of \$145,232.

15  
16   **Q.    Please explain the calculation of Franchise Tax.**

17   A.           State of Tennessee Franchise Tax amounts are summarized in  
18          work paper T-OTAX6<sup>25</sup> for the fiscal years 2003-2006. The  
19          Franchise Tax calculation for the attrition year of \$446,830 is derived

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<sup>23</sup>CAPD WORK PAPER, E-OTAX2, INDEX OF WORK PAPERS, PAGE P179.

<sup>24</sup>CAPD WORK PAPER, E-OTAX3, INDEX OF WORK PAPERS, PAGE P180.

<sup>25</sup>CAPD WORK PAPER, E-OTAX6, INDEX OF WORK PAPERS, PAGE P188.

1 from forecasted Plant in Service, forecasted Accumulated  
2 Depreciation, forecasted Construction Work in Progress, forecasted  
3 Materials and Supplies and a factored forecasted Rental Expense  
4 value times the statutory tax rate.  
5

6 **Q. Please explain the calculation of Gross Receipts Taxes.**

7 A. In CAPD WORK PAPERS, work paper T-OTAX<sup>26</sup> provides a  
8 calculation of State Gross Receipts Tax for the attrition year. The  
9 CAPD forecasted amount is based on the actual Gross Receipts Tax  
10 Return amount of \$1,992,791 as filed with the Tennessee Department  
11 of Revenue.<sup>27</sup> This return is for the tax period July 1, 2005 through  
12 June 30, 2006. The remaining three months of the attrition year were  
13 calculated based on actual amounts and forecasted amounts. The  
14 total Gross Receipts Tax for the attrition years is \$1,829,611.  
15

16 **INCOME TAXES:**

17 **Q. Please describe your calculation of Income Taxes for the**  
18 **forecasted attrition year?**

19 A. Income taxes were calculated using the forecasted Net  
20 Operating Income (“NOI”) for the attrition year, less interest expense

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<sup>26</sup>CAPD WORK PAPER, E-OTAX7, INDEX OF WORK PAPERS, PAGE P189.

<sup>27</sup>Atmos response to TRA Data Request, MFR Question #47.

1 based upon the weighted cost of debt prescribed by Dr. Brown, times  
2 forecasted attrition year rate base, less forecasted permanent tax  
3 differences as provided by Atmos times the statutory federal and state  
4 tax rates. Investment Tax Credit (“ITC”) amortization provided by  
5 Atmos was deducted from the calculated federal income tax expense.  
6 The net income taxes amount to \$7,511,463.<sup>28</sup>

7  
8 **RATE BASE:**

9 **Q. Please summarize your calculation of Rate Base items in the**  
10 **attrition year forecast for Atmos.**

11 **A.** Work paper RB-SUM-1 summarizes the results of the  
12 calculations and attributes most of the results to actual or forecasted  
13 amounts from discovery responses of Atmos. However, there is one  
14 normalizing adjustment, which affects four rate base categories: Plant  
15 in Service, Construction Work in Progress, Depreciation Reserve  
16 (Accumulated Depreciation), and Accumulated Deferred Taxes. The  
17 normalizing adjustment is the allocation of Shared Services amounts  
18 to Tennessee. Atmos has reported allocation percentages for these  
19 four categories on the TRA 3.03 surveillance report through March  
20 2006 that are higher than the allocation percentages it disclosed in

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<sup>28</sup>CAPD EXHIBIT, Schedule 3, Sum of Lines 10 and 11.

1 discovery. In their discovery response, Atmos indicates a 4.28%<sup>29</sup>  
2 allocation factor for the remaining five months. This percentage has  
3 been adopted for the entire attrition year amounts, both historical and  
4 forecasted. Also, the 4.28% allocation factor is more consistent with  
5 Tennessee's portion of Operations and Maintenance Expenses for  
6 Atmos' total Operations and Maintenance Expense amounts.<sup>30</sup>

7 No amounts were included for working capital and unpaid  
8 materials and supplies, because there is no basis for an amount at this  
9 time. Further, the Virginia and Georgia regulatory agencies have  
10 found that the level of cash working capital should be zero for Atmos  
11 operations in those states.<sup>31</sup>

12 The total Rate Base amount nets to \$157,426,273.<sup>32</sup>  
13

#### 14 **NOI ADJUSTMENTS:**

##### 15 **Q. Describe your NOI adjustments.**

16 A. All of the NOI adjustments forecasted by Atmos were adopted  
17 for the attrition year. However, Atmos has historically failed to report

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<sup>29</sup>Atmos response to TRA Data Request, DR #33, DR #36.

<sup>30</sup> CAPD WORK PAPER, E-HIST1, INDEX OF WORK PAPERS, PAGE P159, 4.05%.

<sup>31</sup>Georgia Public Service Commission Docket No. 20298-U, Order on Reconsideration and Final Order acted on December 20, 2005, page 10. Virginia State Corporation Commission, Docket No. 2003-00507, Final Order, dated January 7, 2005.

<sup>32</sup>CAPD WORK PAPER, E-RB-SUM1, INDEX OF WORK PAPERS, PAGE P190.



1 the Allowance for Funds Used During Construction (“AFUDC”). An  
2 amount of \$143,054<sup>33</sup> was forecasted based on actual year to date  
3 amounts annualized through the attrition year ended September 30,  
4 2006.

5  
6 **Q. What is Atmos currently earning?**

7 A. The results submitted by Atmos on the September 2004 and  
8 September 2005 TRA 3.03 surveillance reports are shown in CAPD  
9 work paper H-COM1. Atmos’ reports a 11.02%<sup>34</sup> rate of return for  
10 the twelve months ended September 2004 and 10.16% for the twelve  
11 months ended September 2005. The TRA Staff report and  
12 recommendation in this Docket found that the adjusted earnings of  
13 Atmos for the fiscal year ended September 2005 was 10.53% with a  
14 revenue surplus of \$7.8 million.

15 Based on the historical evidence reported by Atmos and the  
16 extensive discovery responses of Atmos, the forecasted earnings for  
17 the twelve months ended September 2006 should result in a 11.37%  
18 rate of return.

19 Therefore, based on this consistent trend<sup>35</sup> of earnings in excess

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<sup>33</sup>CAPD WORK PAPER, NOI-AFUDC, INDEX OF WORK PAPERS, PAGE P216.

<sup>34</sup> CAPD WORK PAPER, H-COM1, INDEX OF WORK PAPERS, PAGE P2, Line 38.

<sup>35</sup>September 2004 is a historical unadjusted rate of return, September 2005’s reported rate of return of 10.16% was adjusted to 10.53% by the TRA Staff and September 2006

1 of a just and reasonable rate of return, a rate decrease to Atmos is  
2 warranted by the TRA for the benefit of Tennessee ratepayers.

3 A rate decrease of \$12,407,308<sup>36</sup> will put Atmos on track to  
4 earn an overall rate of return of 6.56%, which is consistent with the  
5 recommendation of Dr. Steve Brown.

6  
7 **Q. Does this conclude your testimony?**

8 **A.** Yes, it does.

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reflects known and reasonably anticipated adjustments.

<sup>36</sup>CAPD EXHIBIT, Schedule 1, Line 8.

**Attachment A**

**Terry Buckner**

**Regulatory Analyst**

**Office of the Attorney General for the State of Tennessee**

**Consumer Advocate & Protection Division**

**Additional Education Background:**

Cost Separations School, **United States Telephone Association, San Diego**

Rate Case School, **Arthur Andersen LLP, Chicago**

Telecommunications Conference, **University of Georgia, Athens**

Micro-Computer Training, **University of Wisconsin, Madison**

NARUC Conference, **Michigan State University, Lansing**

Management Training Seminar, **Vanderbilt University**

Interstate Access Settlements, **National Exchange Carrier Association**

SEARUC Conferences, **Birmingham, AL and Charleston, S.C.**

Telephone Plant Accounting Program, **Ernst and Young LLP, Atlanta**

NARUC Subcommittee on Accounting & Finance, **San Antonio and Salt Lake City**

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
AT NASHVILLE, TENNESSEE

IN RE:

PETITION OF TENNESSEE-ATMOS ENERGY CORPORATION


DOCKET NO. 05-00258

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AFFIDAVIT

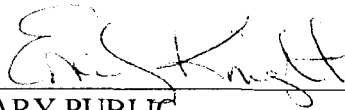
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I, Terry Buckner, Regulatory Analyst, for the Consumer Advocate Division of the Attorney General's Office, hereby certify that the attached Testimony represents my opinion in the above-referenced case and the opinion of the Consumer Advocate Division.



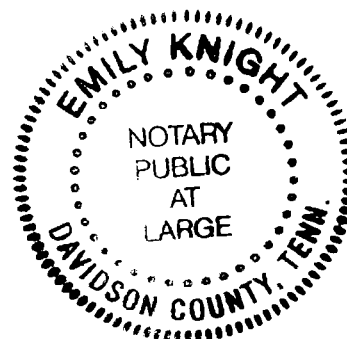
TERRY BUCKNER

Sworn to and subscribed before me  
this 14<sup>th</sup> day of July, 2006.



NOTARY PUBLIC

My commission expires: Sept. 22, 2007



My Commission Expires SEPT. 22, 2007