

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

August 2, 2006

IN RE:)	
)	
PETITION OF THE CONSUMER ADVOCATE)	DOCKET NO.
TO OPEN AN INVESTIGATION TO DETERMINE)	05-00258
WHETHER ATMOS ENERGY CORP. SHOULD BE)	
REQUIRED BY THE TENNESSEE REGULATORY)	
AUTHORITY 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)	

**ORDER ACCEPTING RECOMMENDATION OF INVESTIGATIVE STAFF
AND APPOINTING A HEARING OFFICER**

This matter came before Chairman Ron Jones, Director Pat Miller and Director Sara Kyle of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on May 15, 2006 to consider the *Report and Recommendation of Investigative Staff* issued on April 24, 2006.

BACKGROUND

The Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate") filed the *Consumer Advocate's Petition to Open an Investigation to Determine Whether Atmos Energy Corporation Should be Required by the TRA to Appear and Show Cause that Atmos Energy Corporation is Not Overearning in Violation of Tennessee Law and that It is Charging Rates that are Just and Reasonable* ("Petition") on September 15, 2005. In the *Petition*, the Consumer Advocate alleged that Atmos Energy Corporation ("Atmos") is overcharging its

customers in Tennessee by at least \$10 million and asked the Authority to open an investigation to determine whether Atmos is overearning by charging rates that are not just and reasonable.

On October 18, 2005, Atmos filed its response to the *Petition* refuting specific allegations and facts put forth in the testimony of the Consumer Advocate's witnesses attached to the *Petition*. Atmos further asserted that the *Petition* failed "to produce the convincing evidence of a substantial and material nature that is required to overcome the presumption that the rates the TRA set for Atmos are just and reasonable."¹ On November 3, 2005, Chattanooga Gas Company filed a *Petition to Intervene*.

The panel considered the Consumer Advocate's *Petition* at an Authority Conference held on November 7, 2005. Based on a review of the *Petition* and supporting documentation, and the response of Atmos, the Directors voted unanimously to grant the *Petition* of the Consumer Advocate as to conducting an investigation to determine whether sufficient facts exist to justify the issuance of a show cause order. In voting to open an investigation, the panel did not make any determination regarding whether to proceed with a show cause proceeding. Such a determination would be based on the results of the investigation relating to allegations set forth in the Consumer Advocate's *Petition*. Further, the panel voted unanimously to defer consideration of Chattanooga Gas Company's *Petition to Intervene* until after the filing of the report on the investigation.

On November 8, 2005, the Atmos Intervention Group, a group of gas customers served by Atmos, filed comments "urging the Authority to complete this investigation as soon as practical" so as to "address the matter at an agenda conference in December."² On February 7, 2006, the Atmos Intervention Group and the Consumer Advocate jointly filed a letter stating they were "interested in doing what we can to help the show cause process move along as quickly as possible" and urging that "the process be given top priority."³ In addition, the letter requested a status conference to

¹ *Atmos Energy Corporation's Response to the Consumer Advocate's Position*, p. 13 (October 18, 2005).

² Letter from Henry Walker to Chairman Ron Jones, p. 1 (November 8, 2005).

³ Letter from Vance L. Broemel and Henry Walker to Chairman Ron Jones, p. 1 (February 7, 2006).

discuss the current status of the investigation, consideration of an order granting interim rate relief and a target date for the completion of the investigation.

On March 23, 2006, Director Miller filed a *Motion for Reconsideration* of the Authority's November 7, 2005 decision "[b]ecause of various correspondence filed in this docket since [the panel's] deliberations."⁴ On March 28, 2006, the Consumer Advocate filed a response opposing the *Motion for Reconsideration*. On March 29, 2006, the Atmos Intervention Group filed comments also opposing the *Motion for Reconsideration*. On March 31, 2006, Atmos filed a response supporting the *Motion for Reconsideration*.

At the April 3, 2006 Authority Conference, Investigative Staff⁵ announced that the report on the investigation would be issued by April 24, 2006. After consideration of the comments of interested persons and entities, Director Miller withdrew the *Motion for Reconsideration*.

On April 24, 2006, the TRA's Investigative Staff issued the *Report and Recommendation of Investigative Staff*. Investigative Staff did not prepare any forecast of revenues, expenses or rate base, but did make minor adjustments to accurately reflect earnings for the period ended September 30, 2005. Because the investigation covered only the twelve (12) months ended September 30, 2005, Investigative Staff did not include a review of the future effects of two major mergers or exclude non-recurring items. Investigative Staff recommended a return on equity of 10.2%, which was the equity return deemed just and reasonable by the Authority for the Chattanooga Gas Company in 2005 in TRA Docket No. 04-00034. The investigation indicated that Atmos earned 10.53% for the twelve (12) months ended September 30, 2005, while the Investigative Staff calculated an overall just and reasonable return for Atmos to be 7.4%, indicating an annual revenue surplus of \$7.8 million. Therefore, Investigative Staff

⁴ *Motion for Reconsideration*, p. 1 (March 23, 2006).

⁵ TRA Staff serving as the Investigative Staff in this docket were identified in a *Notice of Filing* issued on March 29, 2006.

concluded that a contested case proceeding should be convened for the purpose of conducting an earnings investigation to establish fair and reasonable rates for Atmos on a going forward basis. As an alternative to a contested case, Investigative Staff contended that additional discovery and investigation would be required to forecast future earnings levels and establish an appropriate fair rate of return prior to the issuance of a show cause order.

Atmos filed *Atmos Energy Corporation's Response to Report and Recommendation of Investigative Staff* on May 10, 2006. Atmos asserted that the Investigative Staff correctly concluded that there was insufficient evidence to justify the issuance of a show cause order and correctly found that the Consumer Advocate's allegations were unpersuasive. Atmos also argued that there was insufficient evidence to support Investigative Staff's recommendation to convene a contested case and that the recommendation should be rejected. If a contested case is convened, however, Atmos asserted that the burden of proof could not be shifted to Atmos, either directly or indirectly.

The Consumer Advocate filed comments on the *Report and Recommendation of Investigative Staff* on May 10, 2006. The Consumer Advocate welcomed the Investigative Staff's finding that Atmos is overearning, but disagreed with the suggestion that a contested case should be preferred over a show cause proceeding. On May 12, 2006, the Atmos Intervention Group filed comments stating that the Authority has a "clear legal duty to take action to reduce the company's earnings"⁶ and opining that the Investigative Staff's findings were sufficient to support the issuance of a show cause order. If a contested case were opened, the Atmos Intervention Group suggested that a Director be appointed as Hearing Officer "to discourage dilatory tactics."⁷

⁶ *Comments of Atmos Intervention Group*, p. 1 (May 12, 2006).


⁷ *Id.* at 2.

MAY 15, 2006 AUTHORITY CONFERENCE

During the May 15, 2006 Authority Conference, the panel voted unanimously to accept the recommendation of the Investigative Staff to proceed with this docket. The panel noted that acceptance of the Investigative Staff's recommendation to proceed should not be construed as the adoption of any specific finding in the *Investigative Report* but rather was an acknowledgement that the *Investigative Report* provided evidence that Atmos is overearning and the Authority has a duty and obligation to proceed accordingly. The panel also voted unanimously to appoint Chairman Ron Jones as Hearing Officer to determine the type of proceeding to be established and to take all actions necessary to prepare this matter for hearing by the panel as expeditiously as possible.

IT IS THEREFORE ORDERED THAT:

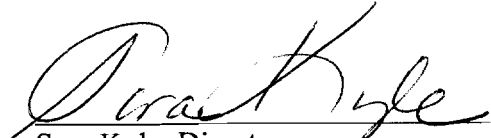
1. The Investigative Staff's recommendation to proceed with this docket is accepted.
2. Chairman Ron Jones is appointed as Hearing Officer to determine the type of proceeding to be established and to take all actions necessary to prepare this matter for hearing by the panel as expeditiously as possible.



Ron Jones, Chairman



Pat Miller, Director



Sara Kyle, Director