

**IN THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE: PETITION TO OPEN AN	)	
INVESTIGATION TO DETERMINE	)	
WHETHER ATMOS ENERGY CORP.	)	
SHOULD BE REQUIRED BY THE TRA	)	Docket No. 05-00258
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	)	

**COMMENTS OF ATMOS ENERGY CORPORATION
CONCERNING ISSUES RAISED IN *RESPONSE OF CHATTANOOGA GAS COMPANY
TO THE ISSUES PROPOSED FOR PHASE II***

At the September 26, 2006 Status Conference in this docket, the Hearing Officer ordered that any party wishing to file comments concerning the issues raised by the September 25, 2006 *Response of Chattanooga Gas Company to the Issues Proposed for Phase II* do so on September 29, 2006. Atmos Energy Corporation (“Atmos” or “Company”) submits the following comments as ordered by the Hearing Officer. As discussed more thoroughly below, Atmos respectfully submits that the issues raised by Chattanooga Gas’ filing are matters which can be taken up only by the full presiding panel in this docket. Therefore, Atmos requests that the Hearing Officer decline to rule on these issues, and instead set the matter for determination by the presiding panel.

In its filing, Chattanooga Gas asserts that the Phase II issues, all of which deal with the Company’s asset management contract, have the potential to impact the industry as a whole, and should therefore be considered in a rulemaking proceeding, rather than a contested case.¹ At the September 26 Status Conference, Investigative Staff indicated that it agreed with Chattanooga Gas, and stated that Staff “actually thinks that Phase Two should be turned into a rulemaking,” and

¹ *Resp of Chattanooga Gas Co. to the Issues Proposed for Phase II*, TRA Docket No. 05-00258 (Sept. 25, 2006), p.1.

that any company-specific issues that were not resolved by the rulemaking could be dealt with in separate proceedings following the rulemaking.²

The determination as to whether the asset management issues identified in Phase II of this docket must be resolved through a rulemaking is a decision that can be made only by the presiding panel in this docket. The Phase II asset management issues are the exact same issues raised by Authority Audit Staff in Docket No. 05-00253, and the presiding panel in that docket, which is the same 3 director panel presiding over this docket, has already ruled on how those issues should be considered by the Authority. The Hearing Officer in this docket lacks the authority to reverse or alter the panel's ruling in any way. In the alternative, even if the Hearing Officer deems that he has such authority via the Show Cause Docket, and Atmos contends that he does not, under the unique circumstances presented, comity and the orderly and effective administration of Authority dockets compel that the issues at hand be addressed by the presiding panel.

I. THE PARTIES AGREE THAT THE PHASE II ASSET MANAGEMENT ISSUES ARE THE SAME MATTERS AUTHORITY STAFF PLACED AT ISSUE IN DOCKET NO. 05-00253.

The Phase II asset management issues in this docket are the exact same issues Authority Audit Staff raised in Docket No. 05-00253, and the parties have acknowledged as much.³ In its April 21, 2006 ACA Audit Report in Docket No. 05-00253, Audit Staff raised several issues concerning the asset management agreement between the Company and its unregulated affiliate, Atmos Energy Marketing, LLC ("AEM"), and made asset management recommendations in the following 4 areas:

² TRA Docket No. 05-00258, Transcr. of Proceedings, Sept. 26, 2006, at pp. 10-12.

³ See *Phase 2 Issues List From Atmos Intervention Group*, TRA Docket No. 02-00258 (Sept. 12, 2006), p. 1 (noting that Phase II will include several issues, including "issues raised arising from Atmos' asset management practices and affiliate relationships **as pointed out by TRA Staff in its most recent ACA audit report on Atmos.**") (emphasis added); TRA Docket No. 05-00258, Transcr. of Proceedings, Sept. 26, 2006, at pp. 8-9 (statements indicating the parties' agreement as to the issues implicated in Phase II).

- (1) affiliate guidelines and procedures for selection of asset manager;
- (2) regulatory treatment of AEM profits;
- (3) regulatory treatment of asset management fee; and
- (4) regulatory approval of future asset management contracts.

As demonstrated by the following chart, the Phase II issues identified by the parties in this docket concern the same four asset management subject areas as identified in Audit Staff's April 21, 2006 Audit Report in Docket No. 05-00253:

Audit Staff Issue	Phase II Issue
<i>Affiliate Guidelines and Procedures for Selection of Asset Manager</i> -- Audit Staff recommended that the Authority order the Company to advertise its asset management RFP in "appropriate trade publications," ⁴ and "allow at least thirty (30) days for a prospective bidder to respond to its RFP." ⁵ Audit Staff also recommended that the Authority order "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." ⁶	"the examination of both Atmos' bidding practices and the affiliate transaction rules" ⁷
(2) <i>Regulatory Treatment of AEM Profits</i> -- Audit Staff recommended that the Company should credit to ratepayers in its ACA account 100% of the "total profits realized by AEM from the sale of customer assets." ⁸	"imputation to Atmos of all or part of the profits earned by AEM under its current contract with Atmos" ⁹ ;

⁴ *Compliance Audit Report of Atmos Energy Corporation*, TRA Docket No. 05-00253 (April 21, 2006), at p. 15, Staff Recommendation No. 1(b).

⁵ *Id.* at p. 15, Staff Recommendation No. 1(a).

⁶ *Id.* at p. 16, Staff Recommendation No. 2(d).

⁷ *Phase 2 Issues List from Atmos Intervention Group*, TRA Docket No. 05-00258 (Sept. 12, 2006), p. 1.

⁸ *Id.* at p. 16, Staff Recommendation Nos. 2(a) and 2(b).

⁹ *Phase 2 Issues List from Atmos Intervention Group*, TRA Docket No. 05-00258 (Sept. 12, 2006), p. 1.

(3) <i>Regulatory Treatment of Asset Management Fee</i> – Audit Staff recommended that the Authority open a separate docket to amend Atmos’ Performance Based Ratemaking Rider (“PBR”) to permit Atmos to share in some percentage of the AEM annual lump sum fee, which is currently passed through 100% to ratepayers.¹⁰	“examination of how the revenue from [the AEM] contract should be treated”¹¹
(4) <i>Regulatory Approval of Future Asset Management Contracts</i> – Audit Staff recommended that “[t]he 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.”¹²	“consideration of whether any future contract for asset management and gas procurement agreements (or the renewal of all current such contracts) should be submitted to the TRA for review and approval”¹³

There can be no dispute: the issues identified in Phase II of this docket are identical to the issues raised by Audit Staff in Docket No. 05-00253.

Atmos filed a written response to the Audit Staff Report on May 10, 2006 in Docket No. 05-0253. Atmos’ response, in addition to noting several factual inaccuracies and false assumptions in the Audit Report’s description of the Company’s asset management contract,¹⁴ argued that any determination with regard to Audit Staff’s recommendations would represent new

¹⁰ *Id.* at p. 16, Staff Recommendation 2(c).

¹¹ *Phase 2 Issues List from Atmos Intervention Group*, TRA Docket No. 05-00258 (Sept. 12, 2006), p. 1.

¹² *Id.* at p. 16, Staff Recommendation No. 3.

¹³ *Phase 2 Issues List from Atmos Intervention Group*, TRA Docket No. 05-00258 (Sept. 12, 2006), p. 1.

¹⁴ For example, Audit Staff misstated the amount of the annual lump sum fee, and wrongly assumed Atmos’ contract with AEM was a bundled arrangement for asset management and gas procurement, similar to the contracts in place for Chattanooga Gas and Nashville Gas. *See* Docket No. 05-00253, June 14, 2006 Memo. To File from Audit Staff (acknowledging the incorrect statements concerning the lump sum fee) and May 10, 2006 Atmos Resp. to Audit Staff Report (discussing factual inaccuracies in Audit Report).

policy for the Authority that would impact all three regulated natural gas companies in Tennessee, and therefore, should be resolved through rulemaking.¹⁵

II. THE PRESIDING PANEL IN DOCKET NO. 05-00253 HAS ALREADY RULED ON THE APPROPRIATE MANNER IN WHICH THE ASSET MANAGEMENT ISSUES SHOULD BE TAKEN UP BY THE AUTHORITY.

On May 15, 2006, the presiding panel in Docket No. 05-00253 issued its ruling on the issues raised in Audit Staff's Report and Atmos' Response. In that ruling, the panel rejected Audit Staff's asset management recommendations, and instead described what it had determined was the appropriate manner for the Authority to proceed to take up the asset management issues raised by Audit Staff:

Instead of the approach recommended in [Staff Recommendation] No. 2A through C, I would move that in the course of developing revisions in accordance with 2D that our audit staff and the company meet to discuss the effects of incorporating the asset management arrangement into the performance-based ratemaking mechanism. In the event that the [sic] agreement on any issue cannot be reached or if audit staff believes that issues remain unresolved, then the panel – ***this panel*** may then consider whether to convene a contested case on those issues or take some other actions.¹⁶

It is clear from the transcript that the panel made 2 rulings: (1) that the agency should not take up the asset management issues until Audit Staff and the Company met to discuss the issues and made a report back to the panel identifying any issues that remained unresolved¹⁷; and (2) that upon receiving the report of the meetings, ***the panel*** would then consider whether to convene a contested case on the asset management issues, or take some other actions. It is also clear from the transcript that the panel retained for itself the sole authority to determine, after hearing the report of the Company's meetings with Audit Staff, whether any remaining issues should be

¹⁵ May 10, 2006 Atmos Resp. to Audit Staff Rep., pp. 4-6.

¹⁶ TRA Docket No. 05-00258, Transcr. of Authority Agenda Conference, May 15, 2006 (Excerpt) at p. 3, ll. 12-17 (emphasis added). As of the date of this filing, the panel's oral ruling has not been memorialized by written order.

¹⁷ As noted in Atmos' Response to the Audit Report, this is the procedure the Authority followed to address the same asset management issues with Chattanooga Gas and Nashville Gas.

determined through contested case, or through some other action, such as rulemaking. The Hearing Officer in this docket cannot reverse or alter in any way the ruling of the presiding panel in Docket No. 05-00253. The presiding panel in Docket No. 05-00253 has ruled on how the asset management issues should be taken up by the Authority, and any request to change or alter the panel's ruling must be brought before that panel and ruled on by that panel. As such, Atmos respectfully requests that the Hearing Officer decline to rule on the issues raised in Chattanooga Gas' filing and the comments of Investigative Staff, and instead refer the matter to the full presiding panel for determination.

III. THE PRESIDING PANEL IN THIS DOCKET IS THE ONLY ENTITY WITH THE POWER TO GRANT THE RELIEF REQUESTED BY CHATTANOOGA GAS AND URGED BY INVESTIGATIVE STAFF.

By its filing, Chattanooga Gas requests that the Authority consider the Phase II asset management issues in a rulemaking proceeding, rather than in this docket.¹⁸ At the September 26 Status Conference in this docket, Investigative Staff agreed, stating that Staff "actually thinks that Phase Two should be turned into a rulemaking."¹⁹ By its May 15, 2006 order, the presiding panel in this docket convened this matter as a contested case proceeding, not a rulemaking.²⁰ On June 26, 2006, the presiding panel bifurcated the asset management issues into a separate proceeding to "be held in the same [contested case] docket with the same panel," not as a rulemaking.²¹ The Hearing Officer may not reverse or modify the presiding panel's rulings taking these matters up in

¹⁸ *Resp. of Chattanooga Gas Co. to the Issues Proposed for Phase II*, TRA Docket No. 05-00258 (Sept. 25, 2006), p. 1.

¹⁹ TRA Docket No. 05-00258, Transcr. of Proceedings, Sept. 26, 2006, p. 10.

²⁰ TRA Docket No. 05-00258, Order Accepting Recommendation of Investigative Staff and Appointing a Hearing Officer, at pp. 3-4 (reciting Investigative Staff's recommendation that "a contested case proceeding should be convened") and p. 5 (accepting Investigative Staff's recommendation). *See also* TRA Docket No. 05-00258, Transcr. of Proceedings May 15, 2006 at pp. 24 – 34 (convening the docket as a "contested case on a rocket").

²¹ TRA Docket No. 05-00258, Transcr. of Authority Agenda Conference, June 26, 2006 (Excerpt) p. 4. As of the date of this filing, the panel's ruling has not been memorialized by written order. A motion for reconsideration must be filed within 15 days of the issuance of a final written order. Tenn. Rules & Regs. 1220-1-2-.20.

the form of a contested case proceeding, which is precisely what Chattanooga Gas and Investigative Staff are requesting.

Atmos is in agreement with Investigative Staff and Chattanooga Gas that the Authority's determination of the Phase II issues will require the formulation of new policies, rules, and standards that will govern the future conduct of all regulated gas companies, and the issues should therefore be taken up in a rulemaking. *See Tennessee Cable Assoc. v. Tennessee Pub. Serv. Comm'n*, 844 S.W.2d 151, 161-62 (Tenn. Ct. App. 1992). Atmos has raised this issue in both this docket and in Docket No. 05-00253, however, the Authority has yet to conduct deliberations or issue a ruling on the issue, choosing instead to table the issue each time it arose.²² While Atmos agrees that the time has come for the Authority to take up the issue of the need for a rulemaking, it is clear that the only entity empowered to make that determination is the presiding panel.

IV. CONCLUSION.

Atmos respectfully submits that the issues raised by Chattanooga Gas' filing are matters which can be taken up only by the full presiding panel in this docket, for the following reasons:

(1) In Docket No. 05-00253, the presiding panel has already ruled on the appropriate manner in which the asset management issues should be taken up by the Authority, and in doing so, retained for itself the sole authority to decide, after hearing the report of the Company's meetings with Audit Staff, whether any remaining issues should be determined through a contested case, or through some other action, such as a rulemaking. The Hearing Officer in this docket lacks the authority to modify or reverse the panel's ruling.

²² *See* TRA Docket No. 05-00253, Transcr. of Authority Agenda Conference, May 15, 2006 (Excerpt) at p. 3, ll. 12-17 (stating that upon receiving report of Company and Audit Staff meetings, the presiding panel would decide at that time "whether to convene a contested case on those issues or take some other actions."); TRA Docket No. 05-00258, Transcr. of Authority Agenda Conference, June 26, 2006 (Excerpt) at pp. 3-6 (placing asset management issues into a separate proceeding, without discussion as to whether a rulemaking was required).

(2) In this docket, the presiding panel convened these matters in the form of a contested case proceeding, and the panel is therefore the only entity empowered to reconsider or modify that ruling as required by the parties' requests for a rulemaking.

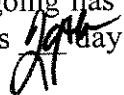
(3) Finally, even if the Hearing Officer determines that he does have the authority to rule on whether a rulemaking is required, under the unique circumstances presented, comity and the orderly and effective administration of Authority dockets demand that the issue of whether a rulemaking should be convened be addressed by the full presiding panel.

For these reasons, Atmos respectfully requests that the Hearing Officer decline to rule on these issues, and instead set the matter for prompt determination by the presiding panel.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been hand-delivered, e-mailed or faxed and mailed to the following parties of interest this  day of September, 2006.

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