

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

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

**COMMENTS OF ATMOS ENERGY MARKETING, LLC
TO THE RESPONSE OF CHATTANOOGA GAS COMPANY TO THE ISSUES
PROPOSED FOR PHASE II**

During the September 26, 2006, Status Conference in the above-captioned matter, the Hearing Officer ordered that any party wishing to submit a written response to the *Response of Chattanooga Gas Company to the Issues Proposed for Phase II* should file such response on or before September 29, 2006. Atmos Energy Marketing, LLC ("AEM"), by and through its undersigned counsel, respectfully submits these comments. In sum, it is the reasoned position of AEM that the appropriate manner for which the Tennessee Regulatory Authority ("TRA" or "Authority") to address the *Response of Chattanooga Gas Company to the Issues Proposed for Phase II* is to submit the same for consideration by the presiding panel in TRA Docket No. 05-00258.

I.

TRAVEL OF THE CASE

A brief recitation of the travel of this case is necessary. At a November 7, 2005, Authority Conference, the presiding panel in TRA Docket No. 05-00258 granted the request of the Consumer Advocate and Protection Division of the Office of the Tennessee Attorney General to conduct an investigation regarding the earnings of Atmos Energy Corporation (“Atmos” or “AEC”).¹ On April 24, 2006, the TRA’s Investigative Staff issued the *Report and Recommendation of Investigative Staff* in TRA Docket No. 05-00258. After consideration of the *Report and Recommendation of Investigative Staff* on May 15, 2006, the panel accepted the report and decided to proceed with this docket in an adjudicatory manner.²

At a regularly scheduled Authority Conference on June 26, 2006, the presiding panel in this contested case docket bifurcated this matter into two (2) phases, the second of which involves AEC’s asset management agreement, AEM revenue imputation, other income reported on AEC’s SEC 10K report and Atmos’ performance based ratemaking mechanism.³ In the *Procedural Order on Phase II*, the Hearing Officer directed the parties to submit Proposed Issues List on September 12, 2006, and scheduled a Status Conference for September 26, 2006. On September 19, 2006, the Hearing Officer issued a Notice of Status Conference, with a combined Proposed Issues List attached thereto. On September 25, 2006, Chattanooga Gas Company (“CGC”) filed its *Response of Chattanooga Gas Company to the Issues Proposed for Phase II* (“CGC’s

¹ Order Granting Petition and Commencing Investigation, *In Re: Petition of the Consumer Advocate to Open An Investigation to Determine 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*, TRA Docket No. 05-00258 (Mar. 23, 2006). Unless otherwise specifically noted, all citations herein relate to the aforesaid TRA Docket.

² *Order Accepting Recommendation of Investigative Staff and a Appointing Hearing Officer*, TRA Docket No. 05-00258, p. 5. (Aug. 2, 2006).

³ *TRA Transcript of Proceeding (Authority Conference)*, TRA Docket No. 05-00258, pp. 27-29 (June 26, 2006). See also *Order Addressing Intervention of AEM and the Procedural Schedules for Phases One and Two*, TRA Docket No. 05-00258, pp. 2-3 (July 13, 2006) (hereinafter the *Procedural Order on Phase II*).

Response”). In sum, CGC asserts that because the Phase II issues will likely impact all natural gas utilities regulated by the TRA, it would be more appropriate for the Authority to consider said issues in a rulemaking proceeding.⁴

III.

DISCUSSION AND ANALYSIS

Citing *Tennessee Cable Television Association v. Tennessee Public Service Commission*,⁵ CGC contends that the issues concerning asset management in Phase II of this docket must be addressed via a rulemaking, as opposed to a contested case.⁶ Subsequent to *CGC Response*, Investigative Staff in TRA Docket No. 05-00258 has also publicly declared that, under the particular circumstances presented, a rulemaking is the more appropriate forum for the resolution of the Phase II issues.⁷

As noted earlier, after consideration of the *Report and Recommendation of Investigative Staff* on May 15, 2006, the presiding panel in TRA Docket No. 05-00258 accepted the report and decided to proceed with this docket in an adjudicatory manner. Since the determination to accept the *Report and Recommendation of Investigative Staff* and the determination of the manner in which to proceed in this docket after such acceptance were made by a vote of the presiding panel, it follows by a proper application of Authority procedure that any request relative to the foregoing should be heard by the presiding panel.

⁴ *CGC Response*, TRA Docket No. 05-00258, p. 1.

⁵ 844 S.W.2d 151 (Tenn. Ct. App. 1992), *app. denied* (Dec. 7, 1992).

⁶ *CGC Response*, TRA Docket No. 05-00258. Although CGC requests in the alternative that the agency clarify that “Nothing should be decided in the Atmos case that will become policy and be implemented for the other natural gas utility companies[.]” it would be virtually impossible, if not imprudent, for the Authority to affirmatively and prospectively declare that it would adhere to such a request. *Id.* at 2.

⁷ *TRA Transcript of Proceeding (Status Conference)*, TRA Docket No. 05-00258, pp. 10-12 (Sept. 26, 2006) (“I wanted to respond to the filing that Chattanooga Gad made yesterday afternoon And, frankly, the investigative staff actually thinks this is an excellent idea, and actually thinks that Phase Two really should be turned into a rulemaking.”) (Counsel for Investigative Staff).

CGC's Response does not relate either to a pre-hearing item delegated to the Hearing Officer for resolution in preparing this matter for hearing or to an action taken solely by the Hearing Officer in his "pre-hearing" capacity. Rather, *CGC's Response* concerns a vote taken by the presiding panel. As such, the appropriate forum to consider *CGC's Response* is before the presiding panel, of which the Hearing Officer is a member.

Irrespective of the eventual outcome of the Authority's consideration of *CGC's Response*, in order to effectively administrate this docket consistent with TRA practice, *CGC's Response* should be set for consideration by the presiding panel.⁸

IV.

CONCLUSION

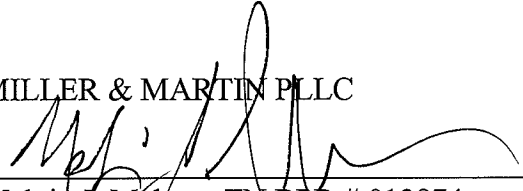
For the foregoing reasons, AEM maintains that consideration of the *Response of Chattanooga Gas Company to the Issues Proposed for Phase II* should docketed, as soon as

⁸ Generally, while a Pre-Hearing Officer may resolve via initial order, among other things, certain pending motions in the docket to which he or she is assigned, it is not customary for the Pre-Hearing Officer to consider matters seeking to materially and substantively alter a course previously established by a presiding panel.

practicable, before the presiding panel in TRA Docket No. 05-00258.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been e-mailed or faxed and mailed to the following parties of interest this 27th day of September, 2006.

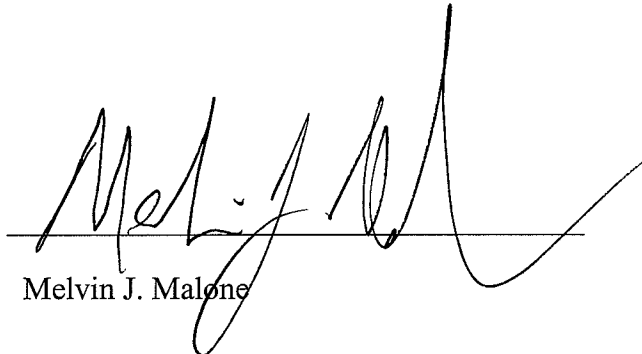
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