

BEFORE THE TENNESSEE REGULATORY AUTHORITY

Nashville, Tennessee

October 6, 2006

IN RE:)	
)	
PETITION OF THE CONSUMER)	DOCKET NO.
ADVOCATE TO OPEN AN)	05-00258
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)	

**ORDER ADOPTING PHASE TWO ISSUES AND
MODIFYING THE PHASE TWO PROCEDURAL SCHEDULE**

This docket came before the Hearing Officer for consideration of the proposed issues filed by Atmos Energy Corporation (“Atmos”), the Consumer Advocate and Protection Division of the Office of the Attorney General (“Consumer Advocate”), and the Atmos Intervention Group (“AIG”) on September 12, 2006 and the *Response of Chattanooga Gas Company to the Issues Proposed for Phase II* (“*Response*”) filed by Chattanooga Gas Company (“CGC”) on September 25, 2006 and the related comments filed by Tennessee Regulatory Authority (“Authority”) Investigative Staff (“Investigative Staff”), Atmos Energy Marketing, LLC (“AEM”), Atmos, the Consumer Advocate and AIG.

I. Relevant Procedural History

On July 13, 2006, the Hearing Officer issued an *Order Addressing Intervention of AEM and the Procedural Schedules for Phases One and Two*. In the order the Hearing Officer established a procedural schedule that required the filing of proposed issues for Phase Two on September 12, 2006.¹ Pursuant to the procedural schedule, Atmos, the Consumer Advocate, and AIG filed proposed issues for Phase Two. As a result of the need to discuss the proposed issues with the parties, a *Notice of Status Conference* was issued scheduling a Status Conference for 10:00 a.m. on September 26, 2006. Attached to the notice, was the *Docket No. 05-00258 – Phase Two Issues List*, which included all of the issues proposed by the parties. On September 25, 2006, CGC filed its *Response* in which it stated that “it would be more appropriate for the TRA to consider these issues in a rulemaking proceeding than to establish an industry-wide policy regarding asset management through individual company’s rate cases.”²

The Status Conference was convened on September 26, 2006, at 10:00 a.m. as noticed and the following party representatives were in attendance:

Investigative Staff – Gary Hotvedt, Esq., Tennessee Regulatory Authority, 460 James Robertson Parkway, Nashville, Tennessee 37243;
AEM – Melvin J. Malone, Esq., Miller & Martin LLP, 1200 One Nashville Place, 150 4th Avenue North, Nashville, Tennessee, 37219;
Atmos – Misty Smith Kelley, Esq. and Clinton P. Sanko, Esq., Baker, Donelson, Bearman, Caldwell & Berkowitz, 1800 Republic Centre, 633 Chestnut Street, Chattanooga, Tennessee, 37450;
Consumer Advocate – Vance Broemel, Esq. and Joe Shirley, Esq., Office of the Attorney General, P.O. Box 20207, Nashville, Tennessee, 37202;
AIG – Henry Walker, Esq., Boulton, Cummings, Connors & Berry, PLC, 1600 Division Street, Suite 700, Nashville, Tennessee 37203; and
CGC – J.W. Luna, Esq. and Jennifer Brundige, Esq., Farmer & Luna, 333 Union Street, Suite 300, Nashville, Tennessee 37201.

¹ *Order Addressing Intervention of AEM and the Procedural Schedules for Phases One and Two*, Attachment A (July 13, 2006).

² *Response of Chattanooga Gas Company to the Issues Proposed for Phase II*, 1 (Sept. 25, 2006).

During the Status Conference, there was general agreement that the *Docket No. 05-00258 – Phase Two Issues List* accurately described the issues for Phase Two. The parties also agreed, however, that additional issues may need to be listed as the procedural schedule progresses.³ At the conclusion of the issues list discussion, the parties were given until September 29, 2006 within which to file comments on CGC’s *Response*.

Atmos, AEM, AIG, the Consumer Advocate, and the Investigative Staff filed comments on CGC’s *Response*. On October 6, 2006, simultaneously with the issuance of this order, the Hearing Officer issued the *Recommendation of the Hearing Officer Regarding the Dismissal of Phase Two and the Need for a Rulemaking* (“*Recommendation*”). In the *Recommendation*, it was recommended that the Panel stay the course as originally established during the June 26, 2006 Authority Conference deliberations and resolve the Phase Two issues in a contested case proceeding in Docket No. 05-00258.⁴

II. Findings and Conclusions

It is the determination of the Hearing Officer that in the event that the Panel adopts the *Recommendation*, it will be necessary to formally adopt issues for Phase Two. Moreover, given the timing of the next Authority Conference and the current deadlines in the procedural schedule, it is necessary to modify the procedural schedule.

The parties are in agreement that the *Docket No. 05-00258 – Phase Two Issues List* attached to the *Notice of Status Conference* accurately describes the issues for Phase Two, but that additional issues may need to be listed as the procedural schedule progresses.⁵ I accept this

³ Transcript of Status Conference, pp. 4-5, 7-12 (Sept. 26, 2006).

⁴ *Report and Recommendation of the Hearing Officer Regarding the Dismissal of Phase Two and the Need for a Rulemaking*, 17 (October 6, 2006).

⁵ Transcript of Status Conference, pp. 4-5, 7-12 (Sept. 26, 2006).

agreement of the parties, but, as mentioned during the Status Conference,⁶ am of the opinion that an additional issue should be added regarding what constitutes retroactive ratemaking. This issue is added as 5(g) with the intention of ensuring that arguments on the definition of retroactive ratemaking are presented to the Panel prior to Phase Two being submitted to the Panel for deliberations.

As a result of the decision to submit the issues raised by CGC's *Response* to the Panel, the procedural schedule, which includes a deadline for the filing of discovery requests of October 13, 2006, requires modification. Therefore, the procedural schedule is modified as follows:

Action	Current Deadline	New Deadline
Discovery Requests Filed	October 13, 2006 – Friday	October 19, 2006 – Thursday
Discovery Objections Filed	October 20, 2006 – Friday	October 26, 2006 – Thursday
List of Disputed Discovery Requests with Party's Position Filed	October 25, 2006 – Wednesday	October 31, 2006 – Tuesday
Status Conference on Disputed Discovery Requests (if necessary)	October 27, 2006 at 10:00 a.m. – Friday	November 2, 2006 at 10:00 a.m. – Thursday

All other dates remain as set forth in the July 13, 2006, *Order Addressing the Intervention of AEM and the Procedural Schedules for Phases One and Two*.

IT IS THEREFORE ORDERED:

1) In the event that the Panel considers the Hearing Officer's *Report and Recommendation of the Hearing Officer Regarding the Dismissal of Phase Two and the Need for a Rulemaking* filed on October 6, 2006 during the October 16, 2006 Authority Conference and determines that a contested case shall continue in Phase Two as contemplated by the June 26,

⁶ *Id.* at 13.


2006 deliberations, then the issues listed in the *Docket No. 05-00258 – Phase Two Issues List* (attached here to as **Attachment A**) shall be adopted as the issues to be addressed in Phase Two.

The list may be amended as necessary by order of the Hearing Officer or the Panel

2) The procedural schedule is modified as set forth in this order.

3) Objections to the procedural schedule modifications set forth in this order shall be

filed by **Wednesday, October 11, 2006 at 2:00 p.m.**



Ron Jones, Director
Acting as Hearing Officer⁷

⁷ During the May 15, 2006 Authority Conference, a panel of the Tennessee Regulatory Authority consisting of Chairman Sara Kyle and Directors Ron Jones and Pat Miller unanimously voted to appoint Director Jones as the Hearing Officer to prepare this docket for a hearing by the Panel. Transcript of Authority Conference, pp. 29-39 (May 15, 2006).

Docket No. 05-00258 – Phase Two Issues List

1. How is Atmos Energy Corporation compensated for the sale, lease, or release of capacity and is that compensation fair to consumers?
 - a. What is the bidding process for the sale, lease, or release of capacity?
 - b. What asset management arrangements or contracts are or have been in place with regard to capacity?
 - c. How are FERC-mandated payments handled?
2. What exactly is the amount of total capacity and what amount of capacity is available for the sale, lease, or release to third parties or affiliates or divisions of Atmos Energy Corporation?
 - a. What is the appropriate level of capacity?
 - b. What has been the record of capacity planning in the past?
 - c. What are the future plans?
3. What is the relation between Atmos Energy Corporation and Atmos Energy Marketing and any other affiliate or division of Atmos Energy Corporation?
 - a. the appropriate relation between parent and affiliate or division
 - b. communications between parent and affiliate or division
 - c. the number of overlapping employees
 - d. the record keeping of the parent and affiliate or division
4. Are consumers receiving fair compensation for the assets related to the sale, lease, or release of capacity for which they have paid?
5. Does the Tennessee Regulatory Authority have the authority to impute to Atmos Energy Corporation all or a portion of the profits Atmos Energy Corporation's separate, non-regulated affiliate corporation, Atmos Energy Marketing, generates through its management of Atmos Energy Corporation's idle gas supply assets?
 - a. If yes, may the Tennessee Regulatory Authority impute those profits to lower Atmos Energy Corporation's revenue requirement for base rates even though the assets are part of Atmos Energy Corporation's gas supply procurement activities, which under established Tennessee Regulatory Authority policy are separately regulated through the Purchased Gas Adjustment mechanism, and not through base rates?
 - b. If the Tennessee Regulatory Authority imputes Atmos Energy Marketing asset management profits to lower Atmos Energy Corporation's revenue requirement for base rates, must the Tennessee Regulatory Authority treat other similarly situated gas companies in a like manner? Can such imputation be accomplished in a contested case, or is a rulemaking required?
 - c. Does the Tennessee Regulatory Authority have the authority to impute Atmos Energy Marketing's asset management profits to Atmos Energy Corporation even though there is no requirement for gas companies to engage in asset management?
 - d. If the Tennessee Regulatory Authority's decision in Phase Two of this docket results in a decision by Atmos Energy Marketing to exercise its right to terminate its asset management contract with Atmos Energy Corporation, can the Tennessee Regulatory Authority order Atmos Energy Corporation to engage in asset management itself? If so, how will the Tennessee Regulatory Authority provide for Atmos Energy Corporation to recover the costs of engaging in those activities,

- and how will the Tennessee Regulatory Authority monitor Atmos Energy Corporation's compliance? Would prudency audits be required?
- e. If the Tennessee Regulatory Authority orders that a portion of the Atmos Energy Marketing asset management profits be imputed to Atmos Energy Corporation, how will the agency determine what percentage of Atmos Energy Marketing revenues are derived from the Atmos Energy Corporation regulated Tennessee assets, versus what percentage are derived from Atmos Energy Corporation regulated assets in other states, or from Atmos Energy Marketing's own separately owned assets?
 - f. If the Tennessee Regulatory Authority orders that a portion of the Atmos Energy Marketing asset management profits be imputed to Atmos Energy Corporation, how will the agency determine the portion of Atmos Energy Marketing revenues that constitute profit and what portion Atmos Energy Marketing must use to meet the costs it incurs?
 - g. What constitutes retroactive ratemaking?
 - h. If the Tennessee Regulatory Authority orders that a portion of the Atmos Energy Marketing asset management profits be imputed to Atmos Energy Corporation, how will the Tennessee Regulatory Authority determine this amount consistent with the prohibition against retroactive ratemaking? Would the Tennessee Regulatory Authority have to reach a determination as to the amount of profit Atmos Energy Marketing will make in a particular future time period? If the Tennessee Regulatory Authority orders that a percentage of the Atmos Energy Marketing profits be imputed to Atmos Energy Corporation, how will the Tennessee Regulatory Authority monitor compliance? Would it require regular audits from Tennessee Regulatory Authority Staff? Does the Tennessee Regulatory Authority have the authority to audit non-regulated affiliates such as Atmos Energy Marketing?
6. Did Atmos Energy Corporation comply with the Guidelines for Affiliate Transactions entering into the existing asset management contract with Atmos Energy Marketing? If so, does the Tennessee Regulatory Authority have the Authority to invalidate the existing contract or change the terms of the existing contract? If the contract is invalidated, is Atmos Energy Marketing entitled to a refund of all or a portion of the annual lump sum fee it pays under the contract for the right to manage Atmos Energy Corporation's assets that is currently flowed through 100% to consumers?
 7. Should Atmos Energy Corporation share in the lump sum fee it receives from Atmos Energy Marketing under the terms under the asset management contract through its existing Performance Based Ratemaking ("PBR") plan? If so, how would such a change affect the balance of incentives in the current PBR plan? If the Tennessee Regulatory Authority orders that all or a portion of Atmos Energy Marketing asset management profits be imputed to Atmos Energy Corporation, how would the balance of the incentives in the current PBR be affected? Would such action render the PBR plan ineffective or invalid? Would such action require reversal of the Authority's orders in the PBR dockets?
 8. Whether Atmos Energy Corporation has oversubscribed to storage and capacity assets to handle the Company's jurisdictional requirements?
 9. Whether Atmos Energy Corporation is currently utilizing its gas storage assets to maximize benefits to ratepayers?