

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

October 10, 2006

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T.R.A. DOCKET ROOM

*In re: Petition to Open an Investigation to Determine
Whether Atmos Energy Corp. Should be Required by
the TRA 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*

Docket No. 05-00258

*In re: Atmos Energy Corporation Actual Cost
Adjustment ("ACA") Audit¹*

Docket No. 05-00253

**RESPONSE OF ATMOS INTERVENTION GROUP TO
SEPTEMBER 29, 2006, FILING OF ATMOS ENERGY CORPORATION**

Summary

The Atmos Intervention Group ("AIG") submits this response to the September 29, 2006, filing of Atmos Energy Corporation ("Atmos"). In that filing, Atmos asks the Authority to order its advisory Staff to meet with Atmos to discuss problems raised by the Staff in a recent audit of the Company (Docket No. 05-00253). On June 26, 2006, the Authority decided that those audit issues will be addressed in this rate case (Docket No. 05-00258). In light of that decision, the Staff has refused to discuss the audit issues with Atmos until the conclusion of the rate case. Unhappy with the Authority's June 26 decision, Atmos asks that the agency to change its mind and, in doing so, repeats the same arguments which the TRA has already rejected.

¹ This response discusses issues pending before the Authority in two cases, docket nos. 06-00253 and 06-00258 and is therefore being filed in both dockets. Although AIG is not a party to Docket 05-00253, AIG is filing a copy of this response in that docket as required by T.C.A. §4-5-304(c).

Background

On April 21, 2006, the Staff released an audit report which was highly critical of the “asset management agreement” between Atmos and its affiliate, Atmos Energy Marketing (“AEM”). Following a ten-day bidding process in which AEM was the sole bidder, Atmos signed an agreement to lease control of its regulated pipeline and storage assets to AEM. In exchange for a small payment to Atmos, AEM has used those assets to earn millions in profits, none of which benefits Tennessee ratepayers. As the TRA Staff auditors concluded, “Staff has concerns that Tennessee ratepayers are not receiving a fair amount for the use of the assets they have paid for.” Staff Audit Report, at 5.

On May 15, 2006, the Authority orally directed its Staff to meet with Atmos to discuss issues raised in the audit concerning the asset management agreement. The Authority said it would decide at a later time whether to convene a contested case to address those issues.

In a separate, unrelated proceeding, the TRA opened this rate case, Docket 05-00258, to address Atmos’ excessive earnings. AIG and the Consumer Advocate Division, supported by the TRA’s Investigative Staff, all concluded that Atmos’ sweetheart arrangement with AEM needed to be addressed in the rate case. If, as Staff auditors suspected, AEM had siphoned off profits which should have been paid to ratepayers, the Authority could recapture all or a portion of that money in this rate proceeding. The Hearing Officer agreed and, in a report issued June 14, 2006, held that issues concerning the asset management agreement, including the possible use of AEM’s profits to reduce the rates paid by Atmos customers, had been properly raised in the rate case and could be addressed in this docket.

Atmos immediately appealed, arguing to the Authority that the concerns raised by the Staff auditors about the asset management agreement should not be addressed in this rate case. Referring back to the Authority’s May 15 decision in the audit docket, the Company insisted that consideration of the asset management agreement in the rate case “requires that the Authority rescind its [oral] order in the

Company's latest ACA audit, Docket No. 05-00253, which ordered the Company to work with Staff' to resolve the issues raised in the audit. "Atmos Motion for Expedited TRA Review of Hearing Officer Order," June 16, 2006, at 7.

The Authority rejected Atmos' argument and voted to split the rate case into two parts, Phase 1 and Phase 2, and allow the parties to address in Phase 2 the issues which had been raised by Staff auditors concerning the asset management agreement. See TRA agenda conference, June 26, 2006, (summarized in Hearing Officer's Order of July 13, 2006, at pp. 2-3).

Argument

Unhappy with the Authority's decision, Atmos now tries to take a second bite of the apple. First, the Company sent a letter to the TRA Staff proposing a meeting to discuss issues which are now part of this rate case. In light of the Authority's June 26 decision, the Staff properly declined to meet with Atmos until after the conclusion of Phase 2 of the rate case. Atmos then filed a motion asking the Authority to direct the Staff to meet with the Company.

The latest filing by Atmos is nothing more than a reiteration of the Company's previous argument that the Authority's May 15 instructions to the Staff remain in effect regardless of subsequent developments in the rate case. But as the Staff correctly understood and as Atmos itself implicitly recognized in its earlier pleading, the TRA's June 26 decision to include the asset management issues in this rate case necessarily precludes any negotiations between Atmos and the advisory Staff regarding those same issues until after the rate case is over. The Authority has already decided that the auditors' concerns over the asset management agreement should be made part of this rate case. There is no reason for the agency to change its mind. After all, a rate case is the only kind of proceeding in which the Authority can force Atmos to reduce its prices and potentially recoup for ratepayers some of the profits that have been siphoned off by Atmos' unregulated affiliate. Such an order cannot be made through an

audit or a rulemaking, as Atmos is undoubtedly aware. Atmos' persistent efforts to move these audit issues out of the rate case is simply a strategy to prevent the Authority from taking any meaningful action to correct the apparent abuses noted by the Staff in the April 21 audit report.

Conclusion

For these reasons, the Authority should, once again, reject Atmos' latest effort to push this rate case off course and either dismiss Atmos' motion or, if necessary, reaffirm the agency's June 26, 2006, decision that these issues will be addressed in Phase 2 of this rate case.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: 
Henry M. Walker (No. 000272)
1600 Division Street, Suite 700
P.O. Box 340025
Nashville, Tennessee 37203
(615) 252-2363

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing is being forwarded via email and U.S. mail, postage prepaid, to:

Vance L. Broemel
Office of the Attorney General
Consumer Advocate and Protection Division
P.O. Box 20207
Nashville, TN 37202
vance.broemel@state.tn.us

Joe A. Conner
Misty Smith Kelley
Baker, Donelson, Bearman & Caldwell
1800 Republic Centre
633 Chestnut Street
Chattanooga, TN 37450-1800
mkelley@bakerdonelson.com
jconner@bakerdonelson.com

Patricia J. Childers
VP-Regulatory Affairs
Atmos/United Cities Gas Corp.
810 Crescent Centre Drive, Ste. 600
Franklin, TN 37064-5393
pat.childers@atmosenergy.com

J. W. Luna
Farmer & Luna
333 Union Street, Ste. 300
Nashville, TN 37201
jwlunc@farmerluna.com

Gary Hotvedt
Tennessee Regulatory Authority
460 James Robertson Pkwy.
Nashville, TN 37243-0505
gary.hotvedt@state.tn.us

Melvin J. Malone
Miller & Martin
2300, One Nashville Place
150 4th Avenue North
Nashville, TN 37219-2433
mmalone@millermartin.com

on this the 10 day of October 2006.


Henry M. Walker