

**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
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

TRA DOCKET ROOM

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**CONSUMER ADVOCATE'S RESPONSE IN OPPOSITION TO DIRECTOR MILLER'S
MOTION FOR RECONSIDERATION OF TRA DECISION TO OPEN AN
INVESTIGATION INTO ATMOS'S OVEREARNINGS**

On November 7, 2005, the Tennessee Regulatory Authority ("TRA") granted 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. Granting that Petition to Open an Investigation meant that Tennessee consumers would receive a review by the TRA of the prices charged by Atmos for natural gas. The Consumer Advocate believes that Atmos is overcharging Tennessee consumers by at least \$10 million a year and the Consumer Advocate provided voluminous proof with its Petition to Open an Investigation to back up those charges. If, however, the TRA reconsiders its decision to grant the Petition to Open an Investigation, that review will be delayed or may never take place.

The Consumer Advocate readily acknowledges that its charges that Atmos is overearning by at least \$10 million a year are subject to dispute. That is why the Consumer Advocate asked the TRA to look at the information the Consumer Advocate submitted with its Petition and make a decision. If the TRA with all its experience and dedicated staff finds that Atmos's rates are just and reasonable then so be it. But the people of Tennessee at least deserve an investigation and an answer.

When the TRA granted the Consumer Advocate's Petition to Open an Investigation by a 3-0 vote on November 7, 2005, it stated the following about the factors to consider in deciding whether to open an investigation:

The panel acknowledged that there is no express statute or case law establishing a standard to apply when determining whether to grant or deny a request to initiate an investigation. Rather, such a decision is a discretionary determination, and in exercising that discretion the panel should weigh several factors. The harm that might result from not taking action in the event the allegations in the *Petition* are in fact true must be considered along with the ability of the petitioner to substantiate its claim without Authority intervention and the harm that may result to the entity that is the subject of the inquiry.

Order Granting Petition and Commencing Investigation (March 23, 2006) at page 9.

These factors were met on November 7, 2005, and there is nothing in the record of this case to indicate that the same factors are not still present. Certainly the "harm that might result" is still present since the Consumer Advocate estimates that consumers are being overcharged by some \$833,333 per month.

Director Miller's Motion for Reconsideration does state that the TRA's decision to open an investigation into Atmos's overcharges should be reconsidered "[b]ecause of various correspondence filed in this docket since our deliberations." One item of correspondence in this docket was a letter of February 7, 2006, from the Consumer Advocate. However, any concerns expressed in that letter

were adequately and succinctly addressed by the letter of February 27, 2006, from Chairman Jones assuring the Consumer Advocate that the investigation was a “top priority of the agency.” The appropriateness of Chairman Jones’s response was noted by Director Miller at the TRA Conference of March 20, 2006 (“Further -- and I think the chair responded by — appropriately by saying that he assured the parties that the investigation is a top priority with this agency and is being conducted in a deliberate and timely manner, which I think was the appropriate response.”). TRA Transcript, March 20, 2006, at pages 4-5. The Consumer Advocate did not respond to Director Jones’s letter but takes this opportunity to thank Chairman Jones for his unambiguous reply that the investigation was one of the TRA’s priorities and that “this agency will work diligently to ensure that the investigation is properly concluded.”

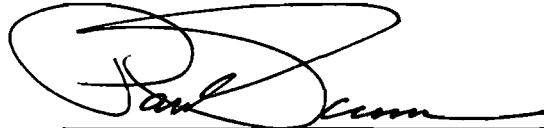
Finally, the Consumer Advocate urges the TRA to avoid the appearance that it is ending the investigation in reaction to some unspecified statement in public comment or discussion of this case. If investigations are ended because of such statements, there will be a clear chilling effect in public utility matters. In addition, stopping the investigation in this way would deprive consumers of an inquiry, to which the TRA has already committed extensive resources, on grounds apparently unrelated to the merits of the case.

Rather than end the investigation, the Consumer Advocate urges the TRA to take up Director Miller’s suggestion made at the TRA Conference of March 20, 2006, to hear from all interested parties as to the best method to proceed. TRA Transcript at page 6. The Consumer Advocate recognizes the complexity of the matter before the TRA but has every confidence that the TRA’s show cause investigation is on track and is the most expeditious way to handle this matter at this time.

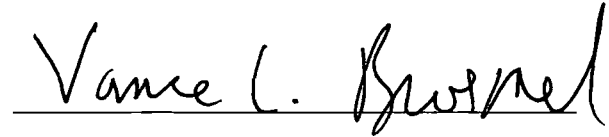
CONCLUSION

For the foregoing reasons, the Consumer Advocate urges the TRA not to reconsider its decision to open an investigation into Atmos's overearnings.

RESPECTFULLY SUBMITTED,



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Dated: March 28th, 2006

CERTIFICATE OF SERVICE

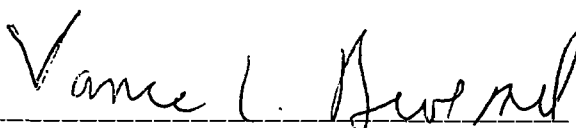
I hereby certify that a true and correct copy of the foregoing was served via hand delivery or facsimile on March 28th, 2006.

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