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

**May 12, 2006**

*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

**COMMENTS OF ATMOS INTERVENTION GROUP**

The Atmos Intervention Group ("AIG"), a group of large customers who purchase natural gas from Atmos Energy Corporation, submit the following comments in response to the "Report and Recommendation of Investigative Staff" filed with the Authority on April 24, 2006.

The Report of the Investigative Staff confirms the findings of the Consumer Advocate Division set forth in the CAD's Petition filed September 16, 2005. The pattern of excess earnings identified by the Consumer Advocate for the twelve-month period ending September 30, 2004, has continued through the twelve-month period ending September 30, 2005. Based on that evidence, the Authority has a clear legal duty to take action to reduce the company's earnings.

The Report suggests that the Authority initiate a contested case proceeding in which the Authority's Staff, participating as a party, will present evidence concerning the carrier's current earnings and what its prospective rates ought to be. State law expressly provides for this type of agency-initiated rate case. See T.C.A. §65-5-101(a).

The Report also states that it would be premature for the Authority to issue a "show cause" order pursuant to T.C.A. §65-2-106 because the Staff has not yet done a forecast of the

company's earnings or a more detailed, rate-of-return analysis. Report, at 17. The Report implies that a show cause proceeding might properly be initiated after such additional investigation has been completed.

As a matter of law, AIG believes that the findings in the Staff's Report are sufficient to support the issuance of a show cause order.<sup>1</sup> If, however, the Authority adopts the Staff's recommendation to initiate a proceeding under T.C.A. §65-5-101, AIG may ask the Authority to reconsider the issuance of a show cause order after the Staff has completed its forecast and rate-of-return analysis.

Once the Authority opens a contested case, it is critical that the Authority proceed expeditiously. A Hearing Officer should be appointed with instructions to move this matter forward as quickly as possible consistent with the requirements of due process. Atmos has every reason to delay these proceedings; the company's customers have every reason to push this matter to a quick decision. AIG respectfully suggests that if the Hearing Officer is one of the Directors, it may help discourage dilatory tactics. The Authority should issue a strong message to the Hearing Officer and the parties that a firm procedural schedule should be established and that unnecessary delays will not be tolerated.<sup>2</sup>

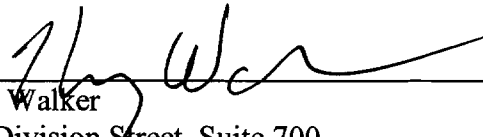
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<sup>1</sup> See AARP v. Tennessee Public Service Commission, 896 S.W.2d 127 (Tenn. Ct. App. 1994) cert. den. Feb. 27, 1995. The AARP case also includes a discussion of one method of capturing a utility's excess earnings without violating the prohibition against retroactive ratemaking. Id., at 134. AIG is presently researching whether the Court's holding on this issue may also be applicable to Atmos.

<sup>2</sup> Atmos' argument (filed May 10, 2006) that the law requires the Authority to hold two separate proceedings before ordering Atmos to reduce rates provides further evidence that the company wants to drag these proceedings out for as long as possible. There is, of course, no such requirement. Any contested case proceeding that concludes by finding that the company's rates are not "just and reasonable" would necessarily have to determine what rates would meet that standard. See T.C.A. §65-5-101.

Respectfully submitted,

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By:   
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**CERTIFICATE OF SERVICE**

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

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on this the 12 day of May, 2006.

  
Henry Walker