

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

**IN RE:**

<b>ATMOS ENERGY CORPORATION</b>	)	
<b>TARIFF FILING TO MODIFY AND</b>	)	filed electronically 4/9/07 @ 2:57pm
<b>ADD LANGUAGE REGARDING</b>	)	
<b>TRANSPORTATION SERVICE</b>	)	
<b>(TARIFF NO. 2007-0021)</b>	)	<b>DOCKET NO. 07-00020</b>

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**ATMOS ENERGY CORPORATION'S RESPONSE TO  
COMPLAINT OF SOUTHSTAR ENERGY SERVICES LLC  
d/b/a GEORGIA NATURAL GAS**

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Atmos Energy Corporation, a Texas and Virginia corporation ("Atmos" or "Company"), files this its Response to the Complaint of Southstar Energy Services LLC d/b/a Georgia Natural Gas ("Complainant"), and, in support hereof, submits the following:

1. The full name and address of the principal place of business of Atmos are:

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2. All correspondence and communications with respect to this Response should be sent to the following:

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3. Atmos is incorporated under the laws of the State of Texas and Commonwealth of Virginia and is engaged in the business of transporting, distributing and selling natural gas in Bedford, Blount, Carter, Greene, Hamblen, Maury, Moore, Obion, Rutherford, Sullivan and Williamson Counties within the State of Tennessee. Atmos is a public utility pursuant to the laws of the State of Tennessee and its public utility operations within Tennessee are subject to the jurisdiction of the TRA. Atmos' utility operations within Tennessee are conducted through its Kentucky/Mid-States Division.

4. Atmos commenced this docket on January 10, 2007, by proposing changes to its transportation service tariff (Rate Schedule 260). These same changes had been previously proposed by Atmos in another docket, but the TRA concluded that the transportation tariff changes should be brought in another proceeding.<sup>1</sup> As a result, Atmos initiated this proceeding and proposed the following changes to its current Rate Schedule 260:

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<sup>1</sup> See Docket No. 05-00258, 10/25/06 Motion of Director Pat Miller, p. 15, adopted by vote of presiding panel per 11/2/06 Transcr. of Proceedings.

- Defining Maximum Daily Quantity (MDQ) and limiting daily nominations to the applicable MDQ
- Defining Operational Flow Order (OFO) and implementing provisions for OFOs
- Clarifying procedures used to calculate monthly cash-outs
- Implementing daily scheduling fees for daily imbalances outside a 10% tolerance
- Adding pooling provisions
- Changing lost and unaccounted for gas (L&U) from a 12-month historical to a flat 2%

**These proposed tariff changes will not result in additional revenue for Atmos.** Any additional revenue generated by the proposed changes will flow through to Atmos' firm sales customers under the Purchased Gas Adjustment mechanism; thereby reducing the gas costs those customers pay. The tariff changes are being proposed to provide Atmos with the necessary tools it needs to meet its obligation to ensure a reliable supply of gas for its firm sales customers, and to ensure that the firm sales customers are not subsidizing activities of transportation customers and third-party marketers.

5. Complainant, a third-party marketer that is jointly owned by Piedmont Natural Gas Company ("Piedmont") and AGL Resources, Inc. ("AGL") (the parent of Chattanooga Gas Company)<sup>2</sup> that presumably procures natural gas for transportation customers behind Atmos' city gate, alleges that the proposed tariff changes violate

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<sup>2</sup> See [www.southstarenergy.com](http://www.southstarenergy.com) where the following quote appears: *SouthStar Energy Services is owned by AGL Resources, Inc. and Piedmont Natural Gas Company – the two largest natural gas companies in the Southeast. Headquartered in Atlanta, we do business in Georgia as Georgia Natural Gas, in Florida as Florida Natural Gas and in the Carolinas as Piedmont Energy Company. Piedmont operates in Tennessee as Nashville Gas Company.*

certain provisions of Tennessee law including Tenn. Code Ann. §§ 65-4-115, 65-4-122 and 65-5-204. Complainant also alleges that the proposed tariff violates the guidelines for affiliate transactions adopted for Atmos by the TRA. Complainant is not a customer of Atmos and is not directly affected by the tariff changes proposed by Atmos. Instead, Complainant presumably represents the interests of its customers, who are transportation customers of Atmos.

### **COMPLAINANT'S LACK OF STANDING**

6. As an initial matter, it should be noted that Atmos has no obligation to provide service to third-party marketers of natural gas. Atmos instead is obligated first and foremost, the same as both Nashville Gas and Chattanooga Gas, to ensure that firm sales customers (residential, commercial and public authority) receive natural gas to meet their consumption needs. Subject to this obligation, Atmos transports natural gas for large volume customers (and which gas they have typically purchased from or through a marketer) from the city gate to the customers' facilities.

7. Inasmuch as Atmos has no obligation to serve Complainant, then Complainant has no vested legal interest in this proceeding. Unlike the Atmos Intervention Group, which purports to be an informal coalition of actual transportation customers of Atmos, Complainant has not shown that it is such a coalition or that it is legally authorized to represent the interests of actual transportation customers of Atmos. Complainant appears to try and claim status as a "pool manager", but there are no pooling provisions available under Atmos' existing transportation tariff and Complainant accordingly cannot claim a right to intervene as such.

8. Complainant lacks standing to complain about the tariff changes proposed by Atmos and its complaint should therefore be dismissed. In the alternative, any relief requested by Complainant should be denied for the reasons hereinafter set forth.

#### **THE COMPLAINT'S BASELESS AFFILIATE ALLEGATION**

9. As a cornerstone of its complaint, Complainant alleges that Atmos' gas marketing affiliate, Atmos Energy Marketing (AEM), will presumably be exempt from the provisions of the new transportation tariff such as daily scheduling fees, monthly cash-outs and operational flow order (OFO) penalties. In fact, nothing could be further from the truth. **All marketers, including AEM, will be subject to the provisions of the new transportation tariff.** The proposed changes will ensure equal treatment for all marketers who desire to serve as pool managers for transportation customers behind Atmos' city gate.

#### **MAXIMUM DAILY QUANTITY**

11. Although the proposal in Atmos' revised tariff to prescribe a Maximum Daily Quantity (MDQ) for each transportation customer does not appear to be contested by Complainant<sup>3</sup>, it is noteworthy to briefly discuss this provision because it can impact the operation of the other provisions of the tariff.

12. An MDQ is the maximum volume of natural gas that a transportation customer can nominate for delivery into Atmos' distribution system on the customer's account on any given day. The customer can nominate amounts below and up to the MDQ, but cannot exceed the MDQ. The MDQ is customer-specific in that it is

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<sup>3</sup> Each of the other two regulated gas companies in Tennessee, which collectively own the Complainant, already have comparable provisions in their own transportation tariffs. See Nashville Gas Company Rate Schedules 313 and 314 where the term *maximum allowable daily deliveries* is used; and Chattanooga Gas Company Rate Schedules T-1 and T-2 where the term *daily contract entitlement* is used.

developed based upon historic metered volumes for existing customers and projected volumes for prospective customers. In the context of transportation services, the assignment of an MDQ for each transportation customer enables Atmos to more effectively manage available system capacity and maximize the availability of transportation service for those customers, both existing and prospective, who desire the service. This also aids Atmos in administering an Operational Flow Order (OFO) for purposes of allocating available capacity. The proposed language of the tariff limits a transportation customer's daily nominations to its applicable MDQ. This will ensure that Atmos is not obligated by contract or tariff to receive any quantity of gas on the customer's account greater than the MDQ in order to facilitate the Atmos' daily system capacity management.

13. What has happened on several occasions is that, when an OFO is in effect, the allocated interruptible or secondary firm deliveries volumes for the customer will be reduced to zero, but the customer will continue to burn gas. When the restriction is lifted, the transportation customer or their broker will over nominate the remaining part of the month to reduce the monthly cash-out. The MDQ will not allow that to happen. The MDQ is set to be the maximum volume the customer has burned or is capable of burning. The transportation customer and/or broker will not be allowed to "game" the system as some are doing now.<sup>4</sup> **This will require the transportation customer and/or broker to manage the delivered volumes and not rely on the Company and the non-transportation customers to pay for the cost that is created by the usage of**

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<sup>4</sup> For example, for the month of October 2006, one of Atmos' transportation customers underdelivered for the first 30 days of the month by 668 mcf. The customer increased its nomination for the 31<sup>st</sup> day of the month to 421 mcf in an attempt to bring the month into balance. However, the customer only used 54 mcf on the 31<sup>st</sup>. This resulted in an overdelivery into Atmos' system of 367 mcf on the 31<sup>st</sup>, more than 7 times the amount the customer actually used.

**unauthorized gas.** The MDQ will also prevent a customer, or broker, who has under-delivered for the majority of the month from dumping excess gas into the Company's system over the last few days of the month in order to stay in balance.<sup>5</sup>

### **OPERATIONAL FLOW ORDERS**

14. Complainant opposes the OFO provisions of Atmos' revised tariff on the grounds that there is no cost basis for the penalty of \$25 per dekatherm for unauthorized overruns during an OFO period. As with all of its other arguments, Complainant again misses the mark entirely.

15. An OFO is an order issued by Atmos for a specific period of time such as a day or several days for a designated operational area, or a designated customer or group of customers within a designated operational area that Atmos reasonably believes are causing the condition necessitating the OFO, or to alleviate conditions which threaten or could threaten the safe operation or integrity of Atmos' system. An OFO could also be issued to maintain operations required to provide efficient and reliable firm service under various circumstances, such as when delivery system pressure or other unusual conditions are reasonably expected, or when one or more upstream pipelines call an operational flow order that creates conditions on Atmos' system.

16. Atmos proposes to include provisions which will allow it to issue an OFO that will require a transportation customer to take delivery of an amount of natural gas that is no more or no less than the daily amount being received from the Connecting Pipeline Company (the upstream interstate pipeline) for the customer's account. Any daily amount delivered to the customer that is more or less than the amount received by

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<sup>5</sup> Atmos would note that at least one customer that Complainant represents has been out of monthly balance by 8%, 47%, 2%, 27%, 32%, 17%, 10% and 7% for the months of May through December 2006, with very few intra-month nomination changes, and basically doing nothing to keep this account in balance.

Atmos from the Connecting Pipeline Company for the customer's account outside of a 5% daily tolerance will be penalized at a rate of \$25 per dekatherm, plus the *Gas Daily* index price for the respective Connecting Pipeline Company. Any revenue generated through this provision by Atmos would be credited back to firm sales customers through the actual cost adjustment mechanism (ACA) of the purchased gas adjustment clause (PGA).

17. Maintaining the integrity and reliability of its system is a primary concern of Atmos, and is especially critical during the heating season. Where multiple parties are responsible for delivering supplies to Atmos' city gates on behalf of customers, system integrity and safety could be compromised if a transportation customer fails to deliver gas to meet the customer's daily requirements. The responsibility to deliver enough gas to maintain system reliability in such a case falls on Atmos. During OFO periods, Atmos relies on all resources available to it, including both upstream capacity as well as storage. These resources, and especially the local facilities, will typically operate at maximum capacity during such periods. Under-deliveries outside of the prescribed 5% tolerance zone by transportation customers during OFO periods clearly put Atmos' system at peril, because it must acquire sufficient gas commodity supplies to meet firm requirements. System integrity is put at particular risk during OFO periods, when reliability is critical and greater potential exists for market indices to fluctuate significantly. Accordingly, the OFO imbalance penalty level is an important component in ensuring system integrity and reliability. The penalty level must be sufficient, without being overly punitive, to serve as an effective incentive for transportation customers to comply during OFO periods. The penalty proposed by Atmos accomplishes this purpose. Transportation customers can



avoid the penalty by simply staying within the proposed 5% tolerance, which is eminently reasonable. In addition, transportation customers have the ability to increase their nominations daily, even intra-day in some cases, to bring more gas online to stay in balance and avoid penalties. If transportation customers do not wish to engage in the active management of their gas supply, they always have the option of returning as a sales customer and allowing Atmos to manage the gas supply. Because any penalties associated with the OFO flow back through the PGA, the proposed revisions ensure that the transportation customers who exceed the 5% tolerance reimburse firm sales customers for the use of their gas.<sup>6</sup>

18. All of this being said, it is important to note that the proposed tariff states that a \$25 per dekatherm (which is equal to \$2.50 per Ccf) penalty *shall be* charged. This is consistent with Atmos' current transportation tariff which states that it is a companion to whatever tariff the customer is/was on when it does not transport. If that tariff is interruptible (which is the case with the vast majority of Atmos' larger customers) then any curtailment overrun may be charged a penalty of \$2.50 per Ccf, which is the equivalent of \$25.00 per dekatherm. Thus, the new provision is merely an extension and clarification of the existing provision already covering most larger customers.

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<sup>6</sup> Evidence exists that transportation customers have taken advantage of the absence of daily imbalance penalties in the current system, to the detriment of the firm sales customers. For example, in December 2006 and February 2007, East Tennessee gas pipeline called for an OFO which reduced a particular transportation customer's gas allocation to zero. However, the customer continued to use gas on those days, even though no gas was delivered on their behalf. By default, it was Atmos who provided the gas used by the customer on those days, which Atmos has to pull out of storage. The transportation customer's bills show that the customer made nominations for the end of the month in amounts far larger than the customer could actually use, in an attempt to balance out the gas taken during the OFO period. The customer was not charged any penalties, and did not pay for the expense incurred in covering the volumes of gas Atmos had to pull from storage to serve the customer during the OFO period, nor the expense incurred to inject the excess gas into storage at the end of the month. Those costs were paid by Atmos firm sales customers through the PGA. Had the customer purchased additional gas rather than relying on Atmos' stored gas paid for by firm sales customers, the customer would likely have had to pay a higher price.

19. Furthermore, the existing transportation tariffs for both Nashville Gas (Rate Schedule 313, page 9 of 10, #4) and Chattanooga Gas (Rate Schedule T-2, revised sheet no. 31C and their Schedule for Limiting and Curtailing Gas Service, 4<sup>th</sup> Revised Sheet No. 52A) call for overrun penalties of either \$15 per dekatherm or the average daily index plus \$5 per dekatherm. The penalty rates for all three gas companies have already been approved by the TRA. Atmos has not heard Complainant to voice any concern over the similar rates charged by its parent entities.

### **MONTHLY CASH-OUTS**

20. Complainant also alleges that its customers may incur significant rate increases if Atmos is permitted to include the cash-out mechanism in the proposed revisions to its transportation tariff.<sup>7</sup> In other words, transportation customers may have to pay more for using Atmos' system supply gas in circumstances where they have under-nominated or they may not be permitted to dump excessive amounts of gas into Atmos' system at month's end to reconcile an imbalance.

21. The provision proposed in the tariff is designed to deter a transportation customer from taking gas in excess of the level it has delivered to Atmos and which would have an adverse impact upon system supply. It is also designed to prevent a transportation customer from taking advantage of the gas paid for by Atmos' firm sales customers as a hedge against the volatile monthly swings in natural gas prices.

22. Moreover, transportation service is an option afforded to qualifying customers who presumably can manage their own gas supply needs and do not need to depend upon Atmos' system supply. If a transportation customer has a negative

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<sup>7</sup> Contrary to Complainant's contention that the cash-out rate is not cost-based, Atmos' proposed tier rate matches the tier rate of East Tennessee Natural Gas (ETNG), Atmos' strictest interstate pipeline in Tennessee, and the pipeline which supplies a significant portion of Atmos' gas supply for the state.

imbalance, then it has taken from Atmos' system supply and should be required to pay a premium to reimburse firm sales customers for that gas. If the customer has a positive imbalance, then it has caused more gas to be delivered into Atmos' system than it needs and that Atmos does not necessarily need, inasmuch as Atmos' system supply plan does not anticipate augmentation of supply through transportation customer positive imbalances. Accordingly, Atmos' firm service sales customers (and particularly residential), should not be required to purchase the transportation customer's excess volumes at any sort of premium. Sales and purchases by Atmos through cash-outs will be reconciled through the PGA, so those customers who pay the bill for system supply reap any benefit from the new cash-out mechanism.

23. The owners of the Complainant, Piedmont and AGL, have recognized the benefit of monthly cash-outs. The following chart summarizes the provisions of the other two Tennessee gas distribution companies' tariff cash-out provisions with that proposed by Atmos herein:

<u>Balance range</u>	<u>Atmos</u>	<u>Nashville</u>	<u>Chattanooga</u>
0% - 5%	0%	0%	0%
5% - 10%	15%	20%	0%
10% - 15%	30%	30%	20%
15% - 20%	40%	40%	40%
20% +	50%	50%	50%

Effectively, then, if Atmos understands Complainant's arguments correctly, it is perfectly legitimate for Complainant's parent entities to have monthly cash-outs, but it is unacceptable for Atmos to have a similar provision because it will impede Complainant's ability to use Atmos' system supply for the benefit of Complainant's sales customers.

### **DAILY SCHEDULING FEES**

24. Complainant alleges that Atmos incurs no daily balancing penalty or fee from the upstream interstate pipelines that provide service to Atmos and that there is therefore no cost basis to justify imposition of these fees. Complainant, a third-party with absolutely no first-hand knowledge of the operations of Atmos' distribution system, completely misses the mark with its argument – Atmos is not their gas supplier.

25. Atmos proposes to add daily scheduling fees for any daily imbalance in excess of a 10% tolerance. The daily scheduling fee rate will be calculated based on the costs Atmos' firm sales customers incur for all storage services used to provide daily balancing. These provisions are designed to pass on the costs of storage services to those transportation customers benefiting from the service and to offset the costs of storage incurred by the Company's firm sales service ratepayers. Furthermore, because Atmos' costs associated with storage will vary from time to time, a pre-defined rate per volumetric unit of gas would not be flexible enough to account for cost increases or decreases. As a result, Atmos proposes to implement a daily scheduling fee which is based upon the following formula:

$$([annual\ storage\ demand\ charges/MDWQ]/365) + (annual\ storage\ capacity\ charges/total\ capacity) + average\ injection\ and\ withdrawal\ costs$$

Thus, the formula contemplates the reimbursement in an amount exactly equal to Atmos' actual costs for storage. These storage costs, which are borne by the Company's firm sales customers, are filed with the Authority and audited by Authority Staff annually.

26. The amount of the fees proposed by Atmos is reasonable because it is based upon Atmos' cost. The assessment of the fees is reasonable because it requires transportation customers that go outside of the 10% tolerance to make a reasonable contribution to gas costs paid by firm sales service customers. Any revenues derived by Atmos from scheduling fees will be credited to those firm customers through the ACA.

### **POOLING SERVICE**

27. To ensure that transportation customers have full access to the tools they need to manage their supply, Atmos has included the ability for a group of customers to designate a "pool manager". Essentially, the pooling service will allow a third-party gas marketer, which has been appointed by a group of transportation customers served under this rate schedule, to aggregate the volumes of all customers in the pool for purposes of the cash out, scheduling fee and operational flow order provisions of the tariff. Atmos would enforce these provisions on the pool, rather than on each individual transportation customer.

28. Pooling could reduce potential cash out charges, daily scheduling fees and operational flow order penalties to customers in the pool by offsetting one customer's positive imbalance with another customer's negative imbalance. It appears that Complainant does not contest this provision of the tariff.

29. Atmos submits that the interests of marketers, to the extent they actually have any legal interest in this proceeding, and the transport customers they purport to represent are more than adequately protected through the pooling provision and/or the permitted tolerances provided in the revised tariff.

## CONCLUSION

30. Complainant lacks any standing to assert that the proposed tariff provisions are in any way unjust, unfair or discriminatory. The proposed tariff provisions effectively prohibit a third-party marketer from manipulating balances on Atmos' distribution system to the detriment or at the cost of firm sales service ratepayers.

31. Atmos also submits that the Complainant should not be heard to complain that it is unfair for Atmos to implement many of the same transportation tariff provisions already in place for Chattanooga Gas and Nashville Gas, Complainant's parent companies.

32. The tariff provisions proposed by Atmos are just and reasonable for the reasons already specifically addressed. If Atmos' affiliate AEM serves as a pool manager for any transportation customers behind Atmos' city gate, then the provisions of the tariff will be enforced against AEM in the same manner that they will be enforced against Complainant or any other pool manager.

33. Finally, Atmos believes that the real question is whether the real customers who pay the costs for system supply benefit from the provisions of the revised tariff. The answer is a resounding yes. All revenue derived by Atmos from administering the provisions of the tariff is credited through the PGA for the benefit of firm sales service ratepayers.

WHEREFORE, Atmos prays:


1. That the Complainant's request for relief be denied and that the TRA approve the tariff previously filed herein by Atmos.

2. That to the extent the Authority determines that further proceedings are necessary in this matter, that such proceedings be conducted on an expedited basis so that the proposed changes can be implemented as soon as possible.

2. That Atmos be granted such other and/or further relief as may be warranted.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

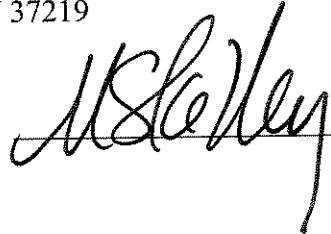
I hereby certify that a true and correct copy of the foregoing has been served via U.S. Mail, postage prepaid, upon the following this the 9th day of April, 2007:

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