

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

IN RE:

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

**ATMOS ENERGY CORPORATION'S RESPONSE TO
COMPLAINT OF ATMOS INTERVENTION GROUP**

Atmos Energy Corporation, a Texas and Virginia corporation ("Atmos" or "Company"), files this its Response to the Complaint of Atmos Intervention Group ("Intervention Group")¹ 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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Franklin, Tennessee 37067-6226

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

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¹ Atmos also incorporates by reference its Response to Complaint of Southstar Energy Services LLC, filed in this docket on April 9, 2007, as if fully set forth herein.

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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.² As a result,

² 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.

Atmos initiated this proceeding and proposed the following changes to its current Rate Schedule 260:

- 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 alleges that it is “an informal coalition of Tennessee customers who purchase natural gas and gas transportation services from Atmos.” (Complaint, fn. 1.)³

**THE COMPLAINT’S ALLEGATIONS ARE INCORRECT AND ITS
OBJECTIONS BASELESS**

6. By its Complaint, the Intervention Group opposes two elements of the proposed tariff revisions: (1) the daily scheduling fees; and (2) the \$25 per dekatherm penalty for unauthorized overruns during an OFO period. With regard to the shrinkage charge, Complainant acknowledges that the tariff merely clarifies a charge already included in Atmos’ tariff, but requests the opportunity to present evidence to have the charge eliminated. In support of its objections, Complainant relies on the following allegations: (1) the revenue from the fees and penalties will be a “windfall” to Atmos; and (2) AEM will not have to pay the proposed fees and penalties. As discussed more thoroughly below, all of the allegations made by the Intervention Group are simply incorrect and its objections baseless. Atmos will not receive any revenue from the fees and penalties to be charged under the revised tariffs,⁴ and AEM will be subject to the penalties on the same terms as any other marketer.

³ In Docket No. 05-00258, it was revealed that the Intervention Group was created by Mr. Earl Burton, whom the hearing officer found was a third party marketer in direct competition with AEM. (6/14/06 Order in Docket No. 05-00258 at p. 19.)

⁴ The Intervention Group alleges, incorrectly, that Atmos has “refused to disclose the additional revenue the company anticipates from imposing this new [OFO] penalty.” (Complt., p. 1 and fn. 4.) The Intervention Group’s allegation is simply false. In the data response referenced by the Intervention Group, Atmos stated that as follows:

Atmos hopes there will be no annual revenue from penalties to Operational Flow Orders. Customers will be notified of all OFO periods and will have an opportunity to change their nominations (deliveries) or usage patterns in order to stay within the 5% daily tolerance. In addition, Atmos is offering a Pooling Service which should help minimize OFO penalties for customer[s] in a given pool. Any dollars collected through the OFO penalties go back to our customers as a credit to gas costs.

(Jan. 31, 2007 Data Resp., p. 2.)

DAILY SCHEDULING FEES

7. Atmos proposes to add daily scheduling fees for any transportation customer who has a daily imbalance in excess of a 10% tolerance. The Intervention Group alleges that the fees are not cost based because the pipelines serving Atmos do not impose daily balancing fees or penalties. Such an allegation might be relevant if the tariff sought to impose additional costs on firm sales customers, but it does not. The tariff revisions address transportation customers, who do not receive their gas supply from Atmos. These transportation customers therefore do not contribute to the costs Atmos incurs in procuring and storing gas. Those costs are paid by Atmos' firm sales customers. The transportation customers who use more or less gas than they procure from third party suppliers, however, do benefit from Atmos' gas and storage the firm customers have paid for, and therefore, should pay their fair share of those costs.

8. The daily scheduling fee rate proposed in the tariff is 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:

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

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.

9. The Intervention Group also alleges that the revenues from the daily scheduling fees will be a "windfall" to Atmos. The Intervention Group's allegation is simply incorrect. **Atmos will not receive any revenue from any of the fees or penalties proposed in the revised tariffs.** Instead, all of the revenues will flow through to the Company's firm sales customers through the PGA and ACA mechanisms.

10. The Intervention Group's allegation that AEM will not have to pay these fees is also incorrect. **As with all of the proposed tariff revisions, AEM will have to comply on the same terms and conditions as any other third party marketer, and if AEM fails to comply, AEM will be subject to the same fees and penalties as any other marketer.**

11. 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.

OPERATIONAL FLOW ORDERS

12. 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.

13. 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 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 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.⁵ **Any revenue generated through this provision by Atmos would be credited back to firm sales customers through the**

⁵ The Intervention Group's filing seemed to imply that hourly penalties would be imposed, which is simply incorrect. The revised tariff requires the customer to take an amount that is no more than "the hourly or daily amount being received by the Company." (2nd Revised Sheet No. 23.) However, the tariff imposes a penalty only if the customer exceeds a "5% **daily** tolerance." (*Id.*) (emphasis added.) Currently, none of the pipelines serving Tennessee provide for hourly nominations, although some pipelines do so in other areas. Therefore, currently it would be impossible to even determine what a customer's hourly amount would be, much less impose a penalty on that basis. The reference to hourly requirements was included in the revised tariff to clarify that customers must comply with the nominations they make with the pipeline, regardless of whether those nominations are made hourly or daily.

actual cost adjustment mechanism (ACA) of the purchased gas adjustment clause (PGA).

14. 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% daily 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% daily 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.⁶

15. 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.

16. Furthermore, the 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, 4th Revised Sheet No. 52A) call for overrun penalties of either \$15 per dekatherm or the average daily

⁶ Evidence exists that transportation customers, including members of the Intervention Group, 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.

index plus \$5 per dekatherm. The penalty rates for all three gas companies have already been approved by the TRA.

17. **As with all of the proposed tariff revisions, AEM will have to comply with the OFO provisions on the same terms and conditions as any other third party marketer, and if AEM fails to comply, AEM will be subject to the same fees and penalties as any other marketer.**

POOLING SERVICE

18. 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. The Intervention Group does not oppose this provision. (Compl., fn. 3.)

19. 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.

20. Contrary to the Intervention Group’s allegation that it will be “impossible” for transportation customers to avoid imbalance fees and penalties, the pooling provision, together with the permitted tolerances, provide transportations customers with more than enough tools to effectively manage their gas supply, especially in light of the fact that the customers and their brokers have the ability to change their nominations daily, even intra-

daily in some cases, in order to stay within the permitted tolerances and thus avoid any imbalance fees or penalties. Transportation service is an option afforded to qualifying customers who presumably have the necessary resources to manage their own gas supply and therefore do not need to depend on Atmos' system supply. If transportation customers or their brokers do not wish to devote the necessary resources to actively manage their gas supply, they always have the option of relying on Atmos to perform the service for them by returning as a sales customer. What the transportation customers should not be able to do is rely on the supply resources provided by Atmos' firm sales customers without also sharing some of the costs for those resources. The proposed tariff revisions will ensure transportation customers who benefit from the Atmos system supply pay their fair share.

**THE AUTHORITY IS UNDER NO MANDATE TO CONVENE A CONTESTED
CASE IN THIS DOCKET**

21. The Intervention Group's allegation that a contested case is mandated in this docket is incorrect. Atmos has proposed a tariff change which will not result in any additional revenue to the Company. The proposed revisions will impact the payment of gas costs only, and will not change base rates. Therefore, this docket is not a request for a general base rate increase, and the requirements that base rates be set by contested case and noticed in the newspaper have no application to this docket.

22. On February 15, 2007, Atmos voluntarily sent a letter to all customers who may be affected by the revised provisions. The letter attached a copy of the proposed tariff and summarized the revised provisions. A sample of that notification letter was filed on February 21, 2007 in this docket.

CONCLUSION

23. 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.

24. 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.

25. 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 new 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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