

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

July 2, 2007

IN RE:

**PETITION OF ATMOS ENERGY CORPORATION
FOR APPROVAL OF ADJUSTMENT OF ITS RATES
AND REVISED TARIFF**

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**DOCKET NO.
07-00105**

**ORDER DEFERRING DISCOVERY CONCERNING TRANSPORTATION TARIFF
AND ASSET MANAGEMENT ISSUES AND AMENDING THE PROCEDURAL
SCHEDULE**

This docket came before the Hearing Officer during a Status Conference held on June 25, 2007, at which time the Hearing Officer heard arguments on objections filed by Atmos Energy Corporation (“Atmos,” “AEC” or the “Company”) to discovery requests issued by the Consumer Advocate and Protection Division of the Office of the Attorney General (“Consumer Advocate”) and Atmos Intervention Group (“AIG”). Additionally, the Hearing Officer heard arguments on objections filed by the Consumer Advocate to discovery requests issued by Atmos.

BACKGROUND

On May 4, 2007, Atmos filed its *Petition of Atmos Energy Corporation for Approval of Adjustment of Its Rates and Revised Tariff* (“*Petition*”) in which the Company seeks approval by the Authority “for an adjustment of its rates and charges for natural gas service for the purpose of obtaining a general increase in its rates and for the Authority to place into effect revised tariffs.”¹ At a regularly scheduled Authority Conference on May 15, 2007, the panel assigned to this docket appointed Director Eddie Roberson as Hearing Officer for the purposes of preparing this

¹ *Petition* at 1 (May 4, 2007).

matter for hearing, including hearing preliminary matters and establishing a procedural schedule to completion.

On May 31, 2007, the Hearing Officer issued *Order Granting Petitions to Intervene, Permitting Additional Discovery Requests, Establishing Procedural Schedule and Suspending Tariffs*. As reflected in that Order, the Consumer Advocate and AIG sought and were granted intervention in this docket. Pursuant to the procedural schedule, the parties commenced discovery. The Consumer Advocate submitted discovery requests to Atmos on May 25, 2007. Atmos submitted its discovery requests to both the Consumer Advocate and AIG on May 31, 2007, and AIG submitted its requests to Atmos on June 1, 2007.

The Hearing Officer issued a *Notice of Status Conference* on June 11, 2007, setting a Status Conference for June 25, 2007, rather than June 15, 2007 as noted on the procedural schedule, for the purpose of addressing potential discovery disputes and any other pre-hearing matters. Additionally, any parties having any objections to discovery were directed to file written objections with the Authority no later than June 20, 2007. At the request of the parties, the Hearing Officer extended this deadline to 12:00 noon on June 22, 2007. On June 22, 2007, Atmos filed objections to certain discovery requests of the Consumer Advocate's and AIG's discovery and data requests. Also on June 22, 2007, the Consumer Advocate filed objections to the discovery requests of Atmos.

JUNE 25, 2007 STATUS CONFERENCE

The Status Conference was convened following the regularly scheduled Authority Conference on June 25, 2007. In attendance at the Status Conference, were the following party representatives:

Atmos Energy Corporation – **William T. Ramsey, Esq.** and **Scott Ross, Esq.**, Neal & Harwell, PLC, 2000 One Nashville Place, 150 Fourth Avenue North, Nashville, TN

37219, **Patricia J. Childers**, Vice President of Rates and Regulatory Affairs of the Kentucky/Mid-States Division of Atmos Energy Corporation and **Gregory K. Waller**, Vice President of Finance of the Kentucky/Mid-States Division of Atmos Energy Corporation, 810 Crescent Centre Drive, Suite 600, Franklin, TN 37067.

Consumer Advocate and Protection Division - **Vance Broemel, Esq.** and **Joe Shirley, Esq.**, Office of the Attorney General, 425 5th Ave. N, John Sevier Building, P.O. Box 20207, Nashville, TN 37202.

Atmos Intervention Group - **Henry M. Walker, Esq.**, Boulton, Cummings, Connors & Berry, PLC, 1600 Division Street, Suite 700, P.O. Box 340025, Nashville, TN 37203.

During the Status Conference, the parties presented their respective positions on certain categories of discovery objections. Specifically, the parties discussed discovery pertaining to the Company's transportation tariff, the issues of asset management, and capacity release. In addition, Atmos and the Consumer Advocate discussed a variety of general and "catch-all" discovery questions to which each objected.

TRANSPORTATION TARIFF

With regard to discovery on Atmos' transportation tariff, the Consumer Advocate stated that it expected to file a motion to consolidate three pending dockets filed by Atmos involving proposed rate increases: *In re: Tariff Filing to Modify and Add Language Regarding Transportation Service*, TRA Docket No. 07-00020, *In re: Petition of Atmos Energy Corporation for Approval of Tariff Establishing Environmental Cost Recovery Rider*, TRA Docket No. 07-00081, and the present docket, Docket No. 07-00105.² Additionally, the Consumer Advocate argued that the transportation rate design proposal may impact consumers' rates and, therefore, should be subject to discovery in this rate case. The Consumer Advocate further averred that the Company's responses to discovery questions regarding the proposed transportation tariff may prove useful in the preparation of its case in TRA Docket No. 07-

² Subsequent to the Status Conference, on June 26, 2007, the Consumer Advocate filed with the Authority its *Motion to Consolidate Dockets* in TRA Docket Nos. 07-00020, 07-00081, and 07-00105.

00020. AIG stated that it concurred with the position of the Consumer Advocate and urged that a decision resolving a consolidation motion be made as soon as possible.

Atmos argued that discovery of tariff-related information should be excluded in this docket for several reasons. First, the Company will be initiating a Request for Proposals (“RFP”) process, i.e., re-bidding of the contracts, for transportation and asset management agreements with potential affiliates. The Company’s stated position on this issue implies that it believes that the RFP may resolve some previous concerns of the intervenors. Next, Atmos argued that as the transportation tariff is not a component of this docket, it is not an element to be proved in this rate case; therefore, permitting discovery on this issue will serve only to unduly burden the parties by creating unnecessary work that is unrelated to this case. In its written objections filed with the Authority, Atmos further offers, “[i]n the alternative, if transportation tariff issues are to be included in this docket, AEC would move to bifurcate and defer discovery on those issues.”³

Considering the arguments of the parties as well as the posture of this docket, the Hearing Officer finds that discovery concerning transportation type issues should be deferred pending a decision on the motion to consolidate. Once a ruling has been issued on that motion, the Hearing Officer will decide whether and when such discovery may occur.

ASSET MANAGEMENT, CAPACITY RELEASE AND OTHER RELATED ISSUES

During the Status Conference, the parties presented arguments on the question of whether discovery should proceed on issues related to asset management and capacity release, otherwise referred to as “Phase II” issues. The Consumer Advocate argued that discovery requests on these topics should be allowed, and that while these matters are currently pending before the authority

³ *Atmos Energy Corporation’s Objections to Atmos Intervention Group’s First Round of Discovery*, p. 1-2 (June 27, 2007).

in other dockets, no decision has been rendered. The Consumer Advocate stated that it simply wants an opportunity to address and be heard on these matters. AIG voiced its support for the arguments of the Consumer Advocate, and further commented that oral arguments have been given by the parties and that these matters are ripe for a decision.

Atmos objects to the inclusion of asset management and capacity release issues in this docket, and thus, objects to engaging in discovery on these issues. The Company contends that questions pertaining to the appropriate forum for addressing and resolving these types of issues are already pending before the Authority. Additionally, in its written objections filed with the Authority, Atmos recommends that in the alternative, these issues be bifurcated and that discovery be deferred until resolution of the revenue portion of the case is completed.⁴

Considering the arguments of the parties and administrative economy and efficiency of the Authority, the Hearing Officer finds that discovery of asset management, capacity release, and other related issues should be deferred.

OTHER DISCOVERY

Atmos and the Consumer Advocate filed objections regarding specific discovery requests that solicit a variety of information and documents. Overall, these requests pertain to the revenue portion of the rate case, some of which may be characterized as generalized and/or “catch-all” types of requests. After some discussion, the parties stated that they would attempt resolution of these requests and report their progress to the Hearing Officer by the close of business on June 26, 2007.⁵ Additionally, the Hearing Officer directed that following receipt of responses to discovery and after meeting and conferring, if the parties are unable to resolve their


⁴ *Atmos Energy Corporation's Objections to First Discovery Requests of the Consumer Advocate and Protection Division*, p. 2 (June 27, 2007).

⁵ On June 26, 2007, Atmos and the Consumer Advocate made a joint filing advising the Hearing Officer that they had reached agreement on the disputed discovery requests. The parties further confirmed that should additional disputes arise, a motion to compel discovery will be filed in accordance with the Hearing Officer's Order.

disputes to these discovery requests, a motion to compel discovery should be filed no later than 12:00 noon on July 10, 2007. Responses to motions to compel, if any, shall be filed no later than 12:00 noon on July 11, 2007. Accordingly, the Hearing Officer amends the Procedural Schedule to reflect this ruling and attaches the *Amended Procedural Schedule*, as **Exhibit A**. As with any schedule, the effectiveness of this procedural schedule is dependent not only on the degree to which parties cooperate or delay in meeting the individual benchmark dates, but also the spirit of cooperation and accommodation demonstrated by the parties during the discovery process. The Hearing Officer is appreciative of the efforts of all parties to adhere strictly to the dates in the procedural schedule, and especially, to work together to resolve any matters that may arise.

IT IS THEREFORE ORDERED THAT:

1. The discovery of transportation tariff related issues shall be deferred pending a final decision on the motion to consolidate filed by the Office of the Attorney General, Consumer Advocate and Protection Division.
2. The discovery of asset management, capacity release and other related issues shall be deferred.
3. The Procedural Schedule is revised to accommodate additional time for the filing of Motions to Compel Discovery and Responses thereto, if any, and the Amended Procedural Schedule, attached to this Order as **Exhibit A**, is hereby adopted and is in full force and effect.


Chairman Eddie Roberson,
as Hearing Officer

***Atmos Energy Corporation for Approval
of Adjustment of Its Rates and Revised Tariff***

TRA DOCKET NO. 07-00105

AMENDED PROCEDURAL SCHEDULE

May 25, 2007	Initial Status Conference
May 25, 2007	CAPD Discovery Requests Due ⁶
June 1, 2007	Company and Other Intervenors' Discovery Due
June 7, 2007	Agreed Protective Order Filed by Parties
June 25, 2007	STATUS CONFERENCE
July 6, 2007	Discovery Responses Due
July 10, 2007	Motions to Compel Due (12:00 noon)
July 11, 2007	Responses to Motions to Compel Due (12:00 noon)
July 12, 2007	STATUS CONFERENCE (2:00 p.m.)
August 21, 2007	Intervenors' Pre-Filed Testimony Due
September 21, 2007	Company's Pre-Filed Rebuttal Testimony Due
September 27, 2007	PRE-HEARING CONFERENCE
October 3-5, 2007	Hearing on the Merits (Subj. to Panel Approval)
October 19, 2007	Post-Hearing Briefs Due

EXHIBIT A

⁶ Any party may request permission of the Hearing Officer for additional discovery upon a showing of good cause.