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T.R.A. DOCKET ROOM

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July 6, 2007

Sharla Dillon, Docket Manager
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

VIA HAND DELIVERY

**RE: Petition of Atmos Energy Corporation for Approval of Adjustment of its
Rates and Revised Tariff, TRA Docket No. 07-00105**

**Tariff Filing to Modify and Add Language Regarding Transportation
Service, TRA Docket No. 07-00020**

**Petition of Atmos Energy Corporation for Approval of Tariff Establishing
Environmental Cost Recovery Rider, TRA Docket No. 07-00081**

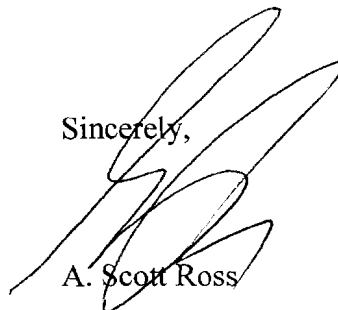
Dear Ms. Dillon:

Enclosed for filing in each of the above-referenced cases are the originals and four copies of Atmos Energy Corporation's Opposition to Motion to Consolidate Dockets.

Please give me a call if you have any questions.

Best regards.

Sincerely,



A. Scott Ross

ASR:meh

Enclosure

IN THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

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IN RE: TARIFF FILING TO MODIFY)
AND ADD LANGUAGE REGARDING)
TRANSPORTATION SERVICE)

TRA Docket No. 07-00020 TRA DOCKET ROOM

IN RE: PETITION OF ATMOS ENERGY)
CORPORATION FOR APPROVAL OF)
TARIFF ESTABLISHING ENVIRON-)
MENTAL COST RECOVERY RIDER)

TRA Docket No. 07-00081

IN RE: PETITION OF ATMOS ENERGY)
CORPORATION FOR APPROVAL OF A)
GENERAL RATE INCREASE)

TRA Docket No. 07-00105

ATMOS ENERGY CORPORATION'S
OPPOSITION TO MOTION TO CONSOLIDATE DOCKETS

Atmos Energy Corporation respectfully submits this response in opposition to the Motion to Consolidate Dockets. Consolidation would make these cases *more* complicated and expensive to resolve, not less, and consolidation would prejudice Atmos in a number of ways. Atmos, therefore, respectfully opposes the Motion to Consolidate.

Governing Rules. Authority Rule 1220-1-2-.22(2) provides that the authority or the hearing officer “may . . . consolidate cases . . . in order to further the just, efficient and economical disposition of cases consistent with the statutory policies governing the Authority.” Courts have similar discretion to consolidate cases, and in exercising such discretion a court “must balance” any increased efficiency consolidation may bring “against the potential for confusion or prejudice which may result.” *Solvent Chem Co. ICC v. E.I. DuPont de Nemours*, 242 F. Supp. 2d 196, 221 (W.D.N.Y. 2002). In the end, considerations of judicial economy “must yield to a paramount concern for a fair and

impartial trial.” *Id.* The burden of proof falls to the party *seeking* consolidation to show it is justified. *Id.* In this case, the balance tips decidedly against consolidation. Consolidating these matters would prejudice Atmos with no offsetting gain in efficiency. In fact, consolidation is likely to make these cases *more difficult* to resolve.

Confusion of Issues and Proof. Each of these cases involves evidence that would not be relevant or admissible in the others. This is particularly true with respect to financial testimony about certain costs and the manner in which they should be recovered. Consolidating the cases would mean trying to separate the evidence admissible in one proceeding but not relevant to the others. It is not clear whether, or how, this could be done. At a minimum, it would make it harder for everyone involved in trying these cases, and would create a substantial danger of needless confusion of the issues and evidence.

For example, in the Environmental Cost Recovery (ECR) matter (07-0081), Atmos seeks to recover non-recurring costs incurred to remediate certain environmental sites. Atmos has not sought to include these non-recurring costs in the general Rate Case (07-00105). It does not seek to base a general rate increase of indefinite duration upon these non-recurring costs. Instead, it simply seeks to recover these costs dollar for dollar over a fixed number of years through the use of a rider. Atmos filed the ECR case under a separate docket after attempting to raise it in the 05-0258 docket, where the Authority elected to defer consideration of ECR issues. As it stands, with the ECR and Rate Cases matters in separate dockets, it is easy to separate non-recurring environmental cleanup costs and testimony related to their recovery through a rider (relevant to the ECR case), from testimony and documents pertaining to test-year costs introduced to support a

general rate increase (relevant to the Rate Case). Consolidating the matters would only make it *harder* to keep matters straight. The effect would be to complicate, not simplify, the litigation. Ultimately, consolidation would prejudice Atmos by making it more difficult, if not impossible, for Atmos to maintain its request for distinct treatment of the costs at issue in the ECR matter.

Absence of Significant Overlapping Evidence. These three cases involve distinct issues and evidence. This is not a situation in which consolidation would save the parties from having to present the same proof over and over in a series of cases. The Transportation matter (07-0020) involves a revenue-neutral request to change certain provisions of one tariff, in an effort to counteract certain abuses. Because the request is entirely revenue-neutral, it can be implemented independently of any decision on AEC's request for a general rate increase (in the Rate Case). And the issues and evidence pertaining to these particular Transportation Tariff amendments will not overlap to any significant degree with what needs to be presented in the Rate Case. Similarly, evidence in the ECR docket will focus specifically on environmental cleanup costs Atmos has incurred, and will not need to be presented in the Rate Case. In its motion to consolidate, the Consumer Advocate does not identify *any* evidence that it contends would overlap or have to be repeated if these three cases were to remain separate. While it nakedly asserts that consolidation would "promote judicial economy," the Consumer Advocate offers nothing to support this statement. In fact, judicial economy would be better served by keeping these three cases separate.

Different Counsel. Atmos is represented by different counsel in the Transportation matter (Misty Smith Kelley of Baker Donelson), than in the other two

matters (Bill Ramsey and Scott Ross of Neal & Harwell). As a result, consolidating these matters would further prejudice Atmos by defeating its choice of counsel.

Different Parties. Southstar is a party in the Transportation docket only. The same held true for Stand Energy until after the Motion to Consolidate was filed. Stand Energy then petitioned to intervene in the Rate Case. Neither is a party in the ECR docket. From what little they have filed, it appears that Stand and Southstar are interested in the Transportation tariff changes Atmos has requested, and that their interests would be protected in the Transportation docket, particularly if efforts to bring the transportation tariff issues into other dockets can be resisted. Adding new parties and lawyers to the ECR and Rate Case dockets – which will result if these matters are consolidated – will only make these matters more complicated, time consuming, and difficult to resolve.

Different Case Expense Treatment. In the Rate Case, Atmos seeks to recover its case expenses (attorneys' fees, etc.). By contrast, Atmos has not sought to recover case expenses in the ECR and Transportation matters. Consolidating these cases will make it impossible to separate expenses incurred in the three separate matters, and will either make it incredibly difficult to figure the appropriate level of case expense in the Rate Case, or will result in a net increase in the level of case expense recovery sought, as time spent litigating Transportation and ECR issues is inevitably combined with time spent on Rate Case issues. This presents yet another reason why the cases should remain separate.

A Streamlined Case Is Easier To Resolve. As a general proposition, adding issues, parties, and lawyers to a case makes it harder to resolve, whether the resolution

comes through a trial or a settlement. The experience of docket number 05-00258 should stand as a testament to this basic truth. At present, these three cases address three distinct sets of issues. Each can be litigated separately in a streamlined fashion and either tried to conclusion, or resolved among the parties who have an actual interest in its outcome. Trying them separately will not take any longer than trying them together. Keeping them separate will make the whole exercise simpler, cleaner, and less contentious.

CONCLUSION

For these reasons, Atmos respectfully submits that the Motion to Consolidate should be denied.

Respectfully submitted,

NEAL & HARWELL, PLC

By: 

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*Counsel for Atmos Energy
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CERTIFICATE OF SERVICE

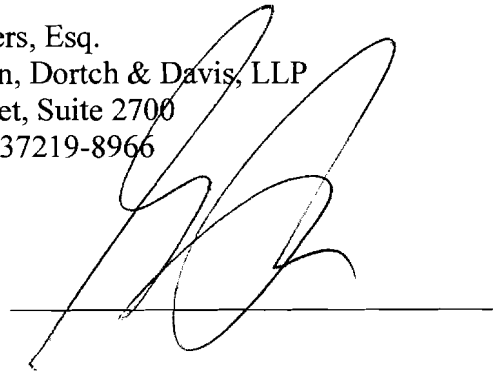
I hereby certify that a copy of the foregoing has been served, via the method(s) indicated below, on the following counsel of record, this the 6th day of July 2007.

<input type="checkbox"/> Hand	Vance Broemel, Esq.
<input checked="" type="checkbox"/> Mail	Joe Shirley, Esq.
<input type="checkbox"/> Fax	Office of the Attorney General
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<input checked="" type="checkbox"/> E-Mail	P. O. Box 20207
	Nashville, TN 37202

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A handwritten signature in black ink, appearing to be "D. Sanders", is written over a horizontal line.