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August 28, 2007

VIA HAND DELIVERY

Eddie Roberson, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37219

Re: In Re: Petition of Atmos Energy Corporation for Approval of
Adjustments to its Rates and Revised Tariff
Docket No. 07-00105
Pre-filed Testimony of John M. Dosker

Dear Chairman Roberson:

Enclosed you will find the Pre-filed testimony of John M. Dosker,
General Counsel for Stand Energy Corporation.

Sincerely,



D. Billye Sanders
Attorney for Stand Energy
Corporation

cc: John M. Dosker
Parties of Record

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

**IN RE: PETITION OF ATMOS)
ENERGY CORPORATION FOR)
APPROVAL OF ADJUSTMENTS) DOCKET NO. 07-00105
TO ITS RATE AND REVISED TARIFF)**

PRE-FILED TESTIMONY OF JOHN M. DOSKER

1 Q. Would you state your name, address and occupation for the record please?

2 A. My name is John Marshall Dosker. My address is 2716 McKinley Avenue,
3 Cincinnati, Ohio 45211. I am General Counsel for Stand Energy Corporation, a
4 natural gas supplier and marketing company. Stand Energy Corporation's
address is 1077 Celestial Street, Suite 110, Cincinnati, Ohio 45202-1629.

Q. Please provide a summary of your educational background?

5 A. I have a Bachelors Degree in Political Science from the University of Kentucky
6 and a Juris Doctor from Northern Kentucky University Salmon P. Chase College of
Law.

7 Q. Please provide a summary of your professional legal experience?

8 A. I have been licensed to practice law in Kentucky since 1987. I have served as a
9 Staff Attorney to a Kentucky Court of Appeals Judge for two years; practiced
10 law as a law clerk, associate and ultimately partner in a Martindale-Hubbell AV
11 rated law firm in the field of litigation representing individuals and
12 corporations for almost 10 years; and have been employed as In-House Counsel
13 and ultimately General Counsel for Stand Energy Corporation for nine years. I
14 am admitted to practice before the Courts of the Commonwealth of Kentucky,
United States District Court for the Eastern District of Kentucky and the
15 United States Supreme Court. I have the following published appellate
16 decisions *Historic Licking Riverside Civic Assoc. v. City of Covington, et al.*
Ky., 774 S.W.2d 436 (1989); *Huddleston v. Hughes*, Ky.App., 843 S.W.2d 901
17 (1992). *City of Covington v. Board of Trustees of Policemen's and Firefighters'*
18 *Retirement Fund*, Ky., 903 S.W.2d 517 (1995); *Kenton County Public Parks Corp.*
19 *v. Modlin*, Ky.App., 901 S.W.2d 876 (1995). I also authored a law review
20 article on Evidence: *The New Kentucky Rules of Evidence, Trojan Horse or*
21 *Improvement Over Common Law?* 20 N.Ky.L.Rev. 701 (Spring, 1993). Since coming
22 to Stand Energy, I have been involved in dozens of utility cases before the
Public Utility Commission of Ohio (PUCO); as well as the Kentucky Public
23 Service Commission (KPSC); Virginia State Corporation Commission (Virginia
SCC); and the Maryland Public Service Commission (MPSC). I have directed the
24 activities of outside counsel in regulatory proceedings in these states and
25 many others. I am also a former member of the North American Energy Standards
26 Board (NAESB) Executive Committee, Gas Supplier Segment.

23 Q. Have you ever submitted pre-filed testimony on behalf of Stand Energy
24 Corporation?

25 A. No, normally Mark Ward, Stand Energy's Vice-President of Regulatory Affairs,
26 with almost 30 years experience at Columbia Gas and another 10 years at Stand
27 Energy, would submit necessary testimony on behalf of Stand Energy Corporation.
However, Atmos Energy Corporation objected to Mr. Ward having access to
allegedly confidential information.

28 Q. What is the purpose of your testimony in this proceeding?

1 A. The purpose of my testimony is to adopt other testimony filed in this case and
2 to address issues related to rate design, transportation, asset management and
3 competition which may be partially or completely addressed in other dockets.
4 However, this is the only open docket involving Atmos in which Stand Energy has
5 presently been granted leave to intervene. Therefore, this testimony is
6 submitted to protect the record and to hopefully persuade the Tennessee
7 Regulatory Authority of the need to make changes to the Atmos transportation
8 tariffs and rules to benefit Stand Energy's customer, Harrison Construction
9 Co., and to foster a more competitive marketplace in the Atmos service
10 territory in Tennessee. Stand Energy is agent for Harrison Construction in
11 connection with its natural gas consumption and related issues. Harrison
12 Construction is also a customer of Atmos Energy Corporation.

13 Q. **Have you reviewed the pre-filed direct testimony of William H. Novak filed by
14 the Atmos Intervention Group?**

15 A. Yes, and Stand Energy would like to incorporate by reference and adopt Mr.
16 Novak's testimony and exhibits including but not limited to his proposed
17 solutions to the issues of rate design and his proposed Atmos transportation
18 tariff changes on behalf of our customer Harrison Construction.

19 Q. **What type of company is Harrison Construction?**

20 A. Harrison Construction company is an asphalt paving company that uses a large
21 quantity of natural gas to heat asphalt, but only when it is economically
22 priced and interstate pipeline capacity is available for the company to
23 transport gas. The last few years, Harrison Construction has reasonably
24 determined that purchasing natural gas from Atmos is usually not the least
25 expensive energy alternative for Harrison Construction to heat asphalt. Often
26 times even purchasing the natural gas "commodity" from Stand Energy Corporation
27 is not the least expensive fuel alternative for Harrison due to the high cost
28 of interstate pipeline capacity into the Atmos territory that is "released" for
resale.

Q. **What is "released capacity"?**

A. "Released capacity" is the right to move a stated quantity of natural gas on
the interstate pipeline that is "excess" or unneeded by the owner of the
capacity. The owner of the capacity has a "firm" or guaranteed right to use
the capacity when it chooses (except when a *force majeure* event such as a
hurricane or damage to the pipeline physically prevents the flow of gas).
Released capacity is usually "recallable" or "interruptible" by the owner of
the capacity. Released capacity is not a dependable method of transporting
gas, especially during the winter heating season from November through March of
each year.

Q. **Why doesn't Harrison Construction simply buy some "firm" interstate pipeline
capacity to transport its natural gas requirements?**

1 A. Although firm interstate pipeline capacity would guarantee Harrison the ability
2 to transport a stated quantity of natural gas everyday, Harrison Construction
3 doesn't burn gas everyday because they can only lay asphalt under certain
4 weather conditions. It would not be economical for Harrison Construction to
5 purchase firm interstate pipeline capacity that would often go unused or which
6 Harrison Construction would have to "release" and spend time trying to resell
7 to recoup some of the costs. Firm interstate or intrastate pipeline capacity
8 (also known as "transportation") is much more expensive than interruptible
9 pipeline capacity.

10 **Q. Is Cross Subsidization an issue in this proceeding?**

11 A. Yes. Cross-subsidization is an issue in every state where customers are
12 allowed or encouraged to participate in transporting natural gas. Stand
13 Energy and Harrison Construction support and applaud Mr. Novak's plea for cost-
14 based charges and rate design in the Atmos service territory in Tennessee, to
15 avoid having one class of customers from having interstate pipeline capacity
16 and storage costs subsidized by other classes of Atmos customers. It's basic
17 issues of fairness and economics.

18 **Q. Does Cross-Subsidization Promote Competition That Benefits Customers?**

19 A. No. Based on what I have seen in other states, cross-subsidization creates
20 competition between customer classes for a fair and equitable rate design which
21 usually damages the competitive environment because of the lack of regulatory
22 certainty and integrity. I believe this is the current state of the natural
23 gas market in the Atmos territory of Tennessee - competition between customer
24 classes. In terms of competition, the existence of cross-subsidization acts
25 as a barrier to gas marketers like Stand Energy whose start-up activities and
26 costs can be very expensive. Many companies will not take the risk of
27 incurring large legal and regulatory start up costs when regulatory uncertainty
28 exists or when the local distribution company (i.e., Atmos) has anti-
competitive programs in place.

Q. Does Stand Energy Corporation compete with Atmos Energy Corporation?

A. Absolutely not. Stand Energy Corporation does not have any pipe in the ground
in Tennessee and does not "deliver" natural gas to any customers within the
Atmos Energy Corporation service territory in Tennessee by virtue of a Stand
Energy gas distribution system. Stand Energy is a gas marketer or supplier.
Stand Energy takes title to gas and redelivers it to our customers in more than
10 states. Stand Energy has experience delivering gas to over thirty (30)
local distribution companies (LDC's) like Atmos Energy Corporation.

Q. Does Stand Energy Corporation compete with Atmos Energy Marketing?

A. Yes. Stand Energy does compete with Atmos Energy Marketing (hereinafter
"AEM"), a separate and distinct legal entity from Atmos Energy Corporation
(hereinafter "AEC") - a critical distinction in every other jurisdiction where
Stand Energy is actively marketing natural gas. Stand Energy is similar to

1 AEM except Stand Energy is privately owned and completely independent. AEM is
2 an unregulated subsidiary of its corporate parent, AEC. Harrison
3 Construction's parent company, which operates facilities in numerous other
4 states, has indicated that it has no difficulty economically transporting
natural gas to its facilities in other states.

5 **Q. What prevents the unregulated marketing arm of a regulated utility, such as**
6 **AEM, from sharing lawyers, employees, etc. of AEC, the regulated utility**
7 **parent, in other states?**

8 A. Most of the other states where Stand Energy Corporation serves customers have a
9 "Utility Code of Conduct" that has been adopted by the applicable State Utility
10 Regulatory Commission and/or legal ethics rules which prevent that type of dual
representation behavior whether at the legal level or the sales/operation
level. Even information sharing is prohibited to prevent bestowing a
competitive advantage upon the unregulated marketing subsidiary such as AEM.

11 **Q. Describe a typical state utility code of conduct?**

12 A. A typical utility code of conduct describes the permitted relationship between
13 a vertically integrated monopoly utility, such as AEC, and its regulated or
14 unregulated corporate affiliates or subsidiaries such as AEM. A typical
15 utility code of conduct will have mechanisms designed to prevent the incumbent
16 utility from raising barriers to competition by favoring their Affiliate and
17 disadvantaging all others. A typical state utility code of conduct is
18 modeled after FERC Order 497, but is usually more comprehensive - obligating
regulated gas utilities to provide the same services, information, and pricing
terms to all marketing entities (theirs and others) as well as restricting
personnel deployment, establishing complaint procedures, and allowing for
reporting and audit oversight.

19 **Q. Does a utility code of conduct help prevent "regulatory evasion"?**

20 A. Yes. Regulatory evasion refers to the forms of direct and indirect harm to
21 consumers caused by the exercise of market power by regulated utilities by the
22 regulated utilities' evasion of economically appropriate cost-based rate
23 regulation such as that advocated in this case for AEC by Mr. Novak.
24 Regulatory evasion is accomplished through anticompetitive discrimination by
25 regulated utilities in favor of their unregulated affiliates. Simply stated
26 this discrimination can occur in three ways: 1) purchases from affiliates at
27 inflated prices or; 2) sales to affiliates at below market prices or; 3) a
28 combination of both. For example, if AEC is purchasing gas from AEM this
practice is likely to increase AEC's costs (and rates) and discriminates
against independent suppliers of natural gas that offer lower prices for
equivalent or better service. If AEC is making preferential sales or provision
of services to AEM not available to other marketers, this practice will
increase the costs (and rates) of the utility while decreasing the costs and
increasing the profits of the Affiliate - AEM. Practices such as these also

1 discriminate against the competitors of AEM by charging them higher prices (for
2 services supplied by AEC) than the prices paid by AEM. These practices also
adversely affect customers of Stand and AEC, such as Harris Construction.

3 **Q. Is Atmos any different than any other regulated utility in this respect?**

4 A. No better and no worse. A rate-regulated parent company such as AEC with market
5 power has incentives to engage in such transactions. By shifting profits to
6 AEM, the affiliate, AEC evades rate regulation and exercises market power
7 resulting in its captive customers paying higher regulated rates to cover
inflated costs. This has been the documented experience of numerous other
states.

8 **Q. Are cost-based rate regulations alone sufficient to prevent abuses?**

9 A. No. A utility whose exercise of market power is constrained by cost-based
10 rate regulation also may find it profitable to evade rate regulation by cross-
11 subsidizing the costs of its unregulated affiliates. This often involves for
example selling to an affiliate at below-market prices or providing better
service to the affiliate than to competitors of the affiliate.

12 **Q. Has AEC's regulatory evasion increased AEM's market share?**

13 A. Stand Energy has not yet had the benefit of discovery, so I cannot answer that
14 question. However based upon Mr. Novak's testimony I am confident the
15 evidence will show that AEC is cross-subsidizing AEM which has allowed AEM to
16 increase its market share by profitably taking sales from equally efficient or
more efficient independent suppliers such as Stand Energy which are not
affiliated with any utility in any way.

17 **Q. Has Stand Energy experienced behavior by AEC and AEM employees in Tennessee
that would be a violation of the Utility Code of Conduct in other states?**

18 A. Yes, Stand Energy Corporation has observed predatory behavior in Tennessee by
19 both AEC and AEM employees. Within the last year, Stand Energy Corporation
20 approached several large industrial users of natural gas in Tennessee to
21 discuss purchasing their gas from Stand Energy Corporation. These customers
22 were very interested in the pricing that Stand Energy was able to quote them.
23 These same customers then contacted AEC (the utility) to confirm that AEC would
24 transport Stand Energy's gas to the appropriate delivery point on AEC's system
25 for the customer. These customers reported back to Stand Energy they were told
26 by AEC employees that AEC could not guarantee deliveries of Stand Energy's gas
27 - implying Stand Energy might not be a reliable supplier to the unknowing
28 customer. In another case, a potential customer was almost immediately
contacted by a representative of the unregulated marketing arm, AEM, stating
that AEM could match Stand Energy's pricing offer. The customer had never
spoken with AEM. I can only conclude that Stand Energy's price offer was
shared by AEC with AEM. This sort of predatory behavior is extremely anti-
competitive and a violation of federal anti trust laws.

1 Q. Is Stand Energy aware of other behavior by AEC in other states that is, or
2 may be, relevant to determinations the Authority is making in this case?

3 A. Yes, Stand Energy would ask the Tennessee Regulatory Authority to take legal
4 notice of the fact that in 2006 one of the Atmos entities hired one of the
5 three members of the Kentucky Public Service Commission in the middle of a
6 contested rate case involving the Kentucky Atmos utility! The case was
7 initiated by the Kentucky Attorney General's claim that Atmos (formerly Western
8 Kentucky Gas) was over-earning in Kentucky. See, *Office of the Attorney General*
9 *Commonwealth of Kentucky v. Atmos Energy Corporation*, Kentucky Public Service
10 Commission Case No. 2005-00057. "The Attorney General also points out for the
11 record that during the pendency of the instant complaint case against Atmos
12 Energy Corporation - and after the Commission's ruling severely limiting the
13 Attorney's [sic] General's scope of discovery - in the last week of July, 2006
14 then-Kentucky Public Service Commissioner Greg Coker resigned from the PSC to
15 accept a position with Atmos Energy Corporation." (Attorney General's Brief
16 Regarding Motion To Hold Procedural Schedule in Abeyance, filed February 26,
17 2007, page 8, fn 15). Attached hereto and incorporated herein as Exhibit 1.

18 Q. Is the information flowing back to Stand Energy from potential customers
19 consistent with statements made to Stand Energy Corporation by employees of AEC
20 and AEM?

21 A. No. When Stand Energy Corporation was finally able to reach AEC and AEM
22 representatives in positions of authority, they said exactly what they should
23 say - - that all gas delivered to the AEC system in conformance with approved
24 tariffs will be redelivered to customers in conformance with those tariffs.

25 Q. Does Atmos Energy have a Code of Conduct?

26 A. Western Kentucky Gas, a subsidiary of AEC and a regulated Kentucky utility,
27 claimed in a Kentucky PSC proceeding over nine (9) years ago in case No. 97-513
28 (See, Exhibit 2 attached hereto and incorporated herein) that AEC had a "Code
of Affiliate Conduct" in the State of Georgia. According to the Kentucky
Public Service Commission Order: "It [Atmos] also indicated that it voluntarily
follows this same code, **for the most part**, in transactions in other states."
Exhibit 2 at page 3. (Emphasis added).

29 Q. Have you ever seen the AEC Code of Conduct?

30 A. I have seen an amended and restated Atmos Code of Conduct, dated August 9, 2005
31 issued by Atmos Chairman Robert Best, attached hereto as Exhibit 3 to my
32 testimony. According to this document, AEC has internal rules against many
33 predatory practices including conflicts of interest, promoting competition and
34 fair dealing, and honesty with regulators and other government officials.
35 Therefore, a Utility Code of Conduct adopted by the Tennessee Regulatory
36 Authority for Atmos would simply serve to incorporate an existing AEC corporate
37 policy into Tennessee law and give the TRA the power to enforce it.

1 Q. Does Stand Energy support Mr. Novak's suggestion for a Transportation Storage
2 Option?

3 A. Yes. Placing gas in storage is one of the few ways to "physically hedge"
4 against natural gas price volatility. If AEC has excess storage capacity
5 available, as asserted by Mr. Novak - that asset should be maximized to benefit
6 the ratepayers who pay for it via a reduction of the Purchased Gas Adjustment
7 (PGA). Storage gas availability would also help all gas marketers mitigate
8 the disastrous affects of daily balancing penalties and operational flow order
9 (OFO) penalties proposed by AEC.

10 Q. Should AEC be allowed to impose balancing penalties on gas marketers and their
11 Tennessee customers when AEC is not penalized by the relevant interstate
12 pipeline for that same conduct?

13 A. No. In many states we have described the appropriate policy as "No Harm No
14 Foul". When penalties are incurred, they should be based upon, and related to,
15 actual costs incurred by AEC. If no additional costs are incurred by AEC, no
16 penalties should result. Any penalties imposed should be based only on the
17 costs incurred by AEC.

18 Q. Has Stand Energy ever seen an unregulated utility affiliate, such as AEM,
19 successfully manage the transportation assets of the host utility, in this case
20 AEC, to the benefit of ratepayers?

21 A. No. The most recent example we are aware of is in Ohio with Vectren, the
22 utility, and ProLiance, the unregulated affiliate and asset manager. ProLiance
23 simply could not stop helping itself to assets paid for by the Vectren
24 ratepayers. Now, only several years removed from the discovery of that bad
25 conduct, ProLiance is no longer managing Vectren's assets and Vectren is now
26 completely "exiting the merchant function" in Ohio.

27 Q. What affect would be realized by unbundling Atmos' interstate pipeline capacity
28 assets?

29 A. If Atmos' rates are redesigned consistent with Mr. Novak's suggestions, more
30 customers such as Harrison Construction will be able to transport gas and
31 reduce their costs and benefit from increased competition in the supply of gas.
32 Smaller non-transporting customers would also benefit if the revenues from gas
33 marketers were used to reduce interstate pipeline demand costs for the smaller
34 non-transporting customers as suggested by Mr. Novak.

35 Q. How important is telemetry for gas transportation customers?

36 A. Stand Energy's experience is that the utility, the customer and the gas
37 marketer/supplier can much better manage gas supply issues, especially on
38 systems with daily balancing requirements, with real-time gas measurement
39 (telemetry) from the customer's meter set. There are numerous types of
40 telemetry equipment available on the market. Basically it's a modem attached to
41 the gas meter with a phone line which sends a signal via the phone line or
42 internet to the gas supplier. The gas supplier then uses that data to adjust

1 gas deliveries, in real time, either up or down to avoid utility imbalance
2 penalties. Stand Energy believes that AEC should only be allowed to charge
3 customers the actual cost of the least expensive telemetry equipment capable of
4 performing the needed task. The amount and term of customer telemetry
5 payments should be reasonable and not restrictive. Operational Flow Order and
6 banking and balancing penalties should not be imposed until the large
7 transporting customers have telemetry installed and operational.

8 **Q. What result would Harrison Construction like to see in this case?**

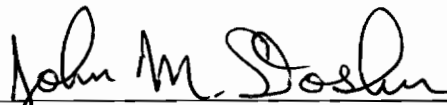
9 **A.** Harrison Construction would like to see Mr. Novak's suggestions incorporated
10 into the Atmos' tariffs and the TRA's rules relative to rate design,
11 transportation (interstate pipeline capacity), asset management and competitive
12 issues. The TRA should adopt a Code of Conduct or affiliate transaction
13 guidelines applicable to Atmos and its unregulated marketing affiliate, Atmos
14 Energy Marketing in order to prohibit anti-competitive behavior between AEC and
15 its marketing affiliate. The above-described improvements will promote a much
16 more competitive marketplace in the Atmos service territory in Tennessee that
17 will benefit not only Harrison Construction, but all of the Atmos ratepayers if
18 the rates and rules are properly and fairly designed.

19 **Q. Does this conclude your testimony?**

20 **A.** Yes.
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VERIFICATION

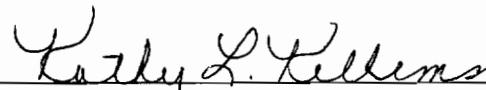
I, John M. Dosker, declare that I am authorized by Stand Energy Corporation to testify on its behalf, that I have prepared the foregoing written testimony and that the statements contained therein are true and correct to the best of my knowledge, information and belief.



John M. Dosker
General Counsel
Stand Energy Corporation

STATE OF Ohio)
COUNTY OF Hamilton)

Sworn to and subscribed before me this 24th day of August, 2007.



Notary Public
My Commission Expires: 2-7-2011

KATHY L. KELLEMS
Notary Public, State of Ohio
My Commission Expires
February 7, 2011

EXHIBIT 1

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

FEB 26 2007

PUBLIC SERVICE
COMMISSION

OFFICE OF THE ATTORNEY GENERAL
COMMONWEALTH OF KENTUCKY

Complainant

v.

ATMOS ENERGY CORPORATION

Respondent

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Case No. 2005-00057

ATTORNEY GENERAL'S BRIEF REGARDING MOTION TO HOLD
PROCEDURAL SCHEDULE IN ABEYANCE

Comes now the Attorney General, by and through his Office of Rate Intervention, and states as follows for his brief regarding the Commission's order dated February 16, 2007, requiring the parties to brief the issue of whether the Attorney General's motion to hold the procedural schedule for the instant case in abeyance pending final resolution of case no. 2006-00464 renders the instant case moot:

The Attorney General on February 1, 2005 filed the instant complaint alleging over-earning by Respondent. Atmos responded on February 11, 2006, denying any over-earning and moved to dismiss the complaint. On February 25, 2006⁶ the Attorney General filed his response, arguing that he had indeed established a prima facie case. In that response, the Attorney General noted that

Atmos simply refused to provide responses to some of his requests for information.¹

Despite the fact that the Attorney General established a prima facie case, and despite the obvious unwillingness of Atmos to cooperate, the Commission still did not issue a procedural schedule or any other order compelling Atmos' full responses. Moreover, the Commission failed to initiate an investigation as it is required to under KRS 278.260, and as precedence required.²

Months passed.

Since the Commission had still not issued any ruling on this matter, the Attorney General on September 13, 2005 moved for an immediate ruling that Atmos was over-earning, to establish a procedural schedule, to determine the amount of the excessive over-earning, and to reduce the rates charged prospectively to reasonable amounts. The Attorney General *urged* the Commission to rule on this matter:

"Given the delay that has already occurred since the filing of the Complaint, it is impossible to afford the Attorney General and other interested parties sufficient time to conduct meaningful discovery, hold a hearing and issue a decision prior to the beginning or end of this heating season. Under a system governed by the [filed] rate doctrine, justice delayed becomes justice denied. To provide reasonable rates prospectively, the Attorney General respectfully demands that a procedural schedule and hearing immediately be established in this docket."³

¹ Response brief of February 25, 2005, pp. 2-3; citing In the Matter of Kanawha Hall v. Equitable Production Co. (2004-00307), order of Oct. 2, 2004, pp. 2-3.

² *Id.* at p. 6, *see* in particular n. 4.

³ Attorney General's Response Brief of September 13, 2005, at p. 2.

The Attorney General made this motion in the fall of 2005, shortly after Hurricane Katrina hit the U.S. Gulf coast, which set in motion some of the most significant gas price increases in U.S. history. The Attorney General brought to the Commission's attention the impending adverse impact that lay ahead for ratepayers:

"Given . . . that the approaching winter will present ratepayers with significant increases for the natural gas cost portion of their bills, it is imperative that the Commission rule that the company is overearning and immediately set in course a procedural schedule and hearing to reduce the non-gas rates so that customers are not burdened with the support of inflated earnings for Atmos on top of increases in gas prices." ⁴

More months passed.

From the time of the filing of the instant complaint (February 1, 2005) until the time the Commission finally ruled on the Attorney General's request for a procedural schedule (February 2, 2006), average natural gas prices in Kentucky rose from \$10.61/mcf to \$14.48/mcf, an increase of 36.48%.⁵ But the Commission did not rule on the Attorney General's motion until the height of the gas crisis, in February 2006, one full year after the Attorney General filed the instant complaint.

It was not until February 2, 2006, however, that the Commission agreed that the Attorney General had established a prima facie case, and issued a procedural schedule. Nonetheless, the Commission's staff, in an informal

⁴ Id.

⁵ Source: U.S. Energy Information Administration;
http://tonto.eia.doe.gov/dnav/ng/ng_pri_sum_dcu_nus_m.htm

conference held on February 14, 2006, resulting with the issuance of the procedural schedule, began that conference by asking the Atmos representatives whether they planned on filing a rate case. Although that informal conference was held in a case alleging over-earning, it immediately became evident that the writing was on the wall – the Commission had already made up its mind that it would never make any finding of over-earning (despite the fact that the Commission never initiated an investigation [as is required under KRS 278.260] nor any other measures designed to objectively determine the facts).

Pursuant to the procedural schedule, the Attorney General issued discovery requests that sought, *inter alia*, pro forma adjustments to the historic test period ending Sept. 30, 2005. On March 30, 2006 Atmos filed a motion to quash production of these pro forma adjustments, claiming they were “irrelevant,” and “speculative.” The Attorney General responded to this motion on April 7, 2006,⁶ noting:

“Regardless of who claims the rate is unreasonable and, consequently, who bears the burden of proof, **only the utility** is in possession of the necessary facts to make the analyses of revenues and expenses that will allow the determination of whether the rate is reasonable. Because the utility is the only party in possession of the facts pertaining to its expenses and revenues, it is the challenging party that bears the burden of producing the information upon which the analyses are to be conducted, including the production of information not already in existence. Were it otherwise, KRS 278.260 would be just empty words incapable of providing relief. Requiring the utility to produce this information, since it is the only party in possession of the data necessary to perform the requisite analyses, does not change the

⁶ The Attorney General notes for the record that this pleading is not contained on the PSC website.

burden of proof; rather, it simply provides the evidentiary basis for making the determination.”⁷ [emphasis added]

The Attorney General further noted that failure to allow him to pursue the pro forma adjustments would hobble his attempts to discover the necessary information to develop his case, participate in a meaningful hearing, and exercise his statutorily mandated right and duty to represent Atmos’ Kentucky ratepayers.⁸

Quite remarkably, however, the Commission ultimately granted Atmos’ request to avoid having to respond to the pro forma adjustments, by limiting the temporal scope of the data sought to only the test year and the immediate preceding year.⁹ Both Atmos and the Commission knew well that the Attorney General would not be able to fully establish Atmos’ over-earning without the data from those pro forma adjustments.¹⁰ The Commission’s ruling granting Atmos’ motion to quash was made all the more remarkable by the fact that in a prior utility complaint case, the Commission reserved to itself the right to obtain the same sort of data originating outside the test year.

In particular, in Case No. 9859 (In the Matter of: An Investigation Into the Reasonableness of the Earnings of Brandenburg Telephone Company Inc.),¹¹ the Commission initiated an investigation pursuant to KRS 278.260 into the utility’s

⁷ *Id.* at pp. 3-4.

⁸ *Id.* at pp. 6-7.

⁹ See Order of May 9, 2006, pp. 3-5.

¹⁰ See Supplemental Testimony of Robert Henkes, pp. 4-11; see also Attorney General’s Responses to PSC Staff’s Discovery Requests, nos. 1-3.

¹¹ The Commission stated expressly that its investigation of Brandenburg’s earnings was being conducted pursuant to KRS 278.260 in its order dated 20 July 1988, page 1.

earnings. The utility was required to respond to four sets of information requests in addition to filing its response showing the reasons why its rates should not be reduced to achieve a more reasonable return on its investment.¹² Like the information requests posed by the Attorney General in the instant case, the information requests posed by the Commission itself in Brandenburg demanded the utility to produce information not already in existence, produce information and conduct analyses based on assumptions it might not otherwise choose to use, and to produce information that both pre- and post-dated the test year.¹³

The Commission saw fit to require such information under Brandenburg, but not in the instant case. Instead, the Commission in the instant case

¹² See Order of 4 May 1988, page 1.

¹³ Included among the Commission's information requests were requests for:

- (a) An amended Pro Forma income statement having as its starting point the end of the test period which pro formed the items for the 12 month period following the test period where the required computation of expenses and revenues were to be done in accord with the parameters established by the Commission in its information request (*See* Order of 19 June, 1987, pp. 1-2.);
- (b) Detailed workpapers showing all amounts used to arrive at end of period and pro forma adjustments, including an explanation as to how the base amounts were developed and brought forward and what data constituted the basis for the adjustment (*Id.*, pp. 2-3);
- (c) Information predating and postdating the test year period (*See* Order of 22 July 1987, p. 1, 2);
- (d) Information not already in existence in response to the request to normalize revenues within the test period (*Id.*, p. 2);
- (e) Information not already in existence and subsequent to the test year in response to a request to estimate hearing expenses (*Id.*, p. 4);
- (f) Information supporting projections of income and investment levels during and subsequent to the test year, account balances subsequent to the test year as available, and the treatment of uncollectible accounts for years prior to the test year (*See* Order of 19 June 1987, p. 2);
- (g) Information supporting projected wage increases subsequent to the test year, projected rates of growth in certain expenses, and an analysis of the change in costs and expenses when certain changes in billing were anticipated to begin after the test year (*Id.*, p. 3);
- (h) Analysis of changes seen when comparing Annual Reports and the test year income and pro forma statements, information not in existence (*Id.*, p. 4); and
- (i) Analysis of the dollar impact of a theoretical depreciation study on test period depreciation expense, information not in existence that assumes facts other than those the utility would voluntarily assume (*Id.*, p. 5).

responded to the Attorney General's argument regarding the Brandenburg precedent by stating that the complainant bears the burden of proof, and that " . . . requiring it [Atmos] to provide pro forma adjustments at this time would inappropriately shift the burden of proof from the Complainant."¹⁴ The Commission thereby confused and intermingled the burden of proof with the burden of production. The effect of this confusion was to eviscerate KRS 278.260 to render it meaningless – anyone can make a complaint allegation, **but by definition** the complaint will fail because the precedential effect of this ruling precludes complainants from obtaining meaningful discovery. The Commission has thereby created a dual system of justice in which it can obtain all the information it chooses, but precludes a complainant from doing likewise. Perhaps worse yet, this ruling provides shelter to utility companies from any outside scrutiny. Such results are wholly contrary to the statute's plain meaning, and more importantly, run afoul of even basic notions of simple justice, due process and equal protection.

Moreover, the Commission has quite simply failed to adhere to its own statutory duty to initiate an investigation as mandated in KRS 278.260. The record shows the Commission never tendered any discovery requests to Atmos – none at all. Prudent regulatory oversight would dictate that when a complainant has established a prima facie case that the regulated entity earned well in excess of the level of return set by the regulatory agency, then that agency would want

¹⁴ Order of May 9, 2006, p. 3.

to determine why the agency failed to reach this same conclusion. After all, the Attorney General's establishment of a prima facie case of Atmos' over-earning was based in large part upon the same financial data Atmos submitted to the Commission.¹⁵ Yet instead of inquiring further to determine why the Commission itself did not reach the same conclusion, the Commission not only failed to investigate, but worse yet nailed the door shut so that no one else could shed the light of day on the issue.¹⁶

Despite the fact the Attorney General had established a prima facie case for over-earning, the Commission's orders essentially precluded him from being able to establish the over-earning. And now Atmos, perhaps via invitation of the Commission's comments at the February 14, 2006 informal conference, has filed a rate case. Atmos' ratepayers, however, will not be able to receive any refunds for the period of over-earning, due to the dictates of the filed rate doctrine.

On November 17, 2006, Atmos moved the Commission to dismiss the instant case as being moot, since it just recently filed a rate case. The Commission denied Atmos' motion.¹⁷ The Attorney General had argued that he does not bear

¹⁵ The Attorney General also notes that Atmos settled a case in Colorado involving charging consumers excessive rates. Additionally, the Texas Railroad Commission staff recently recommended a ruling requiring Atmos to reduce its rates by \$23,000,000, and issue a refund of \$2.6 million. Furthermore, the Tennessee Regulatory Authority is also investigating allegations of over-earning (docket no. 05-00258): <http://www2.state.tn.us/tra/dockets/0500258.htm>.

¹⁶ The Attorney General also points out for the record that during the pendency of the instant complaint case against Atmos Energy Corporation – and after the Commission's ruling severely limiting the Attorney's General's scope of discovery – in the last week of July, 2006 then-Kentucky Public Service Commissioner Greg Coker resigned from the PSC to accept a position with Atmos Energy Corporation. See article from Lexington Herald Leader, Sept. 21, 2006: <http://www.topix.net/content/kri/4221816453219141866526103877812443334670>.

¹⁷ See Order of February 9, 2007.

the burden of proof in this proceeding, and that instead KRS 278.260 mandates that the Commission initiate an investigation. However, the Commission overruled this argument, instead arbitrarily finding that the Attorney General was an “applicant” (a provision not found in KRS 278.260), and therefore bore the burden of proof (despite the fact that the statute says nothing about the complainant bearing the burden of proof).¹⁸

The Commission also in its Order dated February 9, 2007 established a revised procedural schedule. The revised order in the instant case has strict deadlines that butt up against the deadlines set forth in the Atmos rate case procedural schedule, which the Commission issued on the same day the procedural schedule in the instant case was filed. On February 13, 2007 the Attorney General filed a motion to hold the procedural schedule in the instant case in abeyance, given the fact that its principal expert in both the instant case, and the Atmos rate case (2006-00464) was due to be out of the country, and given the Attorney General’s extraordinarily heavy work load and the small staff of his Office of Rate Intervention.

The Commission responded to this motion by ordering the parties to file briefs on what it deemed the issue of whether such motion makes the instant case moot. The Attorney General respectfully suggests that the Commission is moving with circuitous logic. If the instant case is to any degree made moot by the filing of Atmos’ new rate case, it is due to the one-year delay by the

¹⁸ Id.

Commission in failing to take any measures to investigate the allegation of over-earning, and to issue a procedural schedule. This Commission has already done everything it can to shape the parameters of this case so that the Attorney General simply has no way of discovering sufficient evidence of Atmos' over-earning during the relevant periods. The deck was stacked long ago, and this Commission in its order of February 13, 2007 placed the final nail in the coffin.

The Attorney General simply cannot complete the task which the Commission demands of him under the current procedural schedule regarding Atmos as so ordered on February 12, 2007. The Attorney General believes that the one-year delay by the Commission to take any action at all in the instant case means it is highly unlikely that Atmos' ratepayers will receive any monetary relief from Atmos' over-earning in the period complained of. Even if the Commission should issue a finding of over-earning, any potential rate adjustment is likely to be illusory given the concurrent pendency of Atmos' rate case.

WHEREFORE, the Attorney General respectfully: (a) renews his request for the Commission to require Atmos to submit the pro forma adjustments as originally requested; (b) requests that the Commission reconsider its previous finding that the Attorney General as complainant bears the burden of proof in the instant proceeding, as such finding is contrary to the plain meaning of KRS 278.260; and (c) hold the procedural schedule in abeyance pending resolution of Atmos' rate case (2006-00464).

Respectfully submitted,

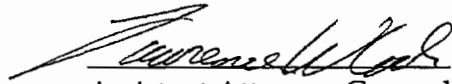
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Notice of Serving and Filing in Paper and Electronic Medium

Per Instruction 2 (d) of the Commission's 3 March 2006 Order, Counsel submits for filing, by hand delivery to Beth O'Donnell, Executive Director, Public Service Commission, 211 Sower Blvd., Frankfort, KY 40601, the original and five copies of the document in paper medium. Counsel also submits a copy of the document in electronic medium by e-mailing the document to pscfilings@ky.gov and Beth.O'Donnell@ky.gov. 26 February 2007 is the date for the filing and service in paper and electronic medium.



Assistant Attorney General

EXHIBIT 2

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

MODIFICATION TO WESTERN KENTUCKY)	
GAS COMPANY, A DIVISION OF ATMOS)	
ENERGY CORPORATION (WKG) GAS COST)	CASE NO. 97-513
ADJUSTMENT TO INCORPORATE AN)	
EXPERIMENTAL PERFORMANCE-BASED)	
RATEMAKING MECHANISM (PBR))	

ORDER

On December 19, 1997, Western Kentucky Gas Company ("Western") filed its application with the Commission to include an experimental performance-based rate-making ("PBR") mechanism in its tariffs. During a three-year experimental period, the proposed PBR would provide an incentive for Western to lower its gas cost to the fullest extent possible. Western's gas procurement performance would be measured against market-based benchmarks, with Western and its customers sharing equally in any savings achieved or expenses incurred as measured against the established benchmark. The PBR mechanism proposed by Western had an effective date of January 19, 1998. The Commission suspended the tariff for five months and held a hearing on May 6, 1998. The Office of the Attorney General ("AG") and Kentucky Industrial Utility Customers ("KIUC") were granted intervention in the proceeding.

Western's goals for its PBR plan are lower regulatory costs, up-front regulatory oversight as opposed to after-the-fact prudence reviews, successful cost management, an environment in concert with the transition to a more competitive local service structure, and

improving service quality which benefits each customer group. It also cited objectives of sending clear signals through establishment of benchmark standards, using market-based benchmarks to assure prudent performance, and using external criteria to provide a better measurement of performance.

Western's proposed PBR plan includes most components of its gas cost. The mechanism is composed of three distinct mechanisms and a balancing adjustment. Part A is an incentive mechanism for gas commodity costs. Part B is an incentive mechanism for pipeline transportation costs, which includes capacity release. Part C is an incentive mechanism for off-system sales. Part D is the balancing adjustment which will true up the over- and under-collection of amounts billed through Parts A through C.

After considering the evidence of record in this case and being advised, the Commission finds that:

1. Western's PBR Part A – Gas Commodity Costs should be approved as proposed, with the understanding that no labor-related expenses or those typically classified as O&M expenses will be recovered through the Gas Cost Adjustment ("GCA") mechanism.

2. Western's PBR Part B – Transportation Costs should be approved as proposed with the understanding that the benchmark for pipeline transportation costs should be calculated using any discounted rate that it is currently being charged by any pipeline supplier, so that it does not immediately profit from simply maintaining the status quo. Western indicated at the hearing that its intention was to so calculate this benchmark.

As previously stated, no labor-related or O&M expenses are to be recovered through the GCA.

3. Western's PBR Part C – Off-system Sales should be approved as proposed, with no labor-related or O&M expenses to be included for recovery through the GCA. Additionally, the tariff correction proposed by Western at the hearing of this case should be approved so that the Out-of-Pocket Storage Costs associated with Tennessee Gas Pipeline No-Notice Service will be priced at the average price of the gas in storage.

4. Western's Part D – Balance Adjustment should be approved as proposed.

5. Due to the experimental nature of this program, reporting requirements should be imposed. To properly monitor this mechanism, Western should file a quarterly report containing details of each transaction entered into along with spreadsheets and all supporting schedules intended to be used for tracking transactions for each component of the PBR. Affiliate transactions should be separately identified. Western should include with its reports a narrative explanation of transactions, including any use of financial instruments and hedging activities, and with special attention given to transportation opportunities chosen and rejected.

6. In a letter dated May 18, 1998 addressed to the Commission's General Counsel, Western stated that its parent, Atmos Energy Corporation, operates under a "Code of Affiliate Conduct" in the state of Georgia. It also indicated that it voluntarily follows this same code, for the most part, in transactions in other states. In order to ensure that affiliate transactions are conducted "at arm's length" pending the Commission's adoption of an appropriate code of conduct for all utilities, Western should comply with

every section of the Code for Affiliate Conduct which is required by the Georgia Public Service Commission.

7. During the hearing and in correspondence concerning this case, the AG requested that Western provide its customers with a circular explaining the PBR mechanism and the effect the mechanism will have on their rates. The AG also requested that a 1-800 telephone number be listed on the bill so that customers can call with questions about the mechanism. During the hearing and in correspondence, Western indicated that it had no conceptual problems with these requests. Western should file into the record of this proceeding the circular it prepares for its customers and verify that a 1-800 number has been published, on bills or in the circular, for customers who have questions about the program.

IT IS THEREFORE ORDERED that:

1. Western's proposed Experimental Performance-Based Ratemaking Mechanism as approved herein is approved for a period of three years effective on and after the date of this Order.

2. Within 30 days of the date of this Order, Western shall file its revised tariffs reflecting the Experimental Performance-Based Ratemaking Mechanism as approved herein.

3. Western shall file reports as directed herein.

4. Within 60 days of the date of this Order, Western shall file with this Commission the circular it prepares to inform its customers of the PBR.

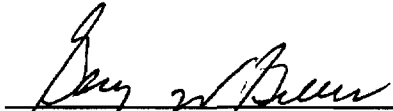
5. At the end of the experimental period Western shall file with this Commission the cumulative results of the PBR program along with its assessment of its success in realizing its stated goals and objectives.

Done at Frankfort, Kentucky, this 1st day of June, 1998.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

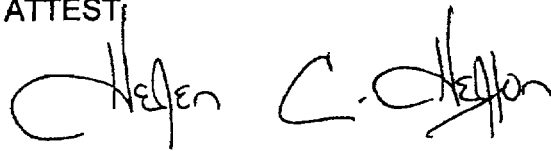

Executive Director

EXHIBIT 3



Robert W. Best
Chairman, President and CEO

Message to All Directors, Officers and Employees of Atmos Energy Corporation

The Atmos Energy Corporation Code of Conduct begins with our deep commitment to fairness, mutual respect and participation, which are reflected in the principles set forth in this Code. We also are committed to abide by the letter and spirit of all laws and regulations that apply to our business. Any violations of the Code of Conduct by employees will be grounds for appropriate disciplinary action, including possible termination. Executive officers and outside directors are responsible to the Company's Audit Committee and the full Board of Directors for any such violations.

This Code of Conduct is designed to be a framework within which decisions confronting our directors, officers and employees must be made and it applies to all directors, officers and employees of Atmos Energy Corporation. Once you have read this Code of Conduct, all directors, officers and employees must sign and date the related declaration and return it to the Legal Department in Dallas, Texas.

It is my firm belief that if we adhere to the principles reflected in this Code, we can prosper and truly be proud of our achievements. I am pleased to provide you with this Code and to share with you this commitment to the highest standards of business ethics at Atmos Energy Corporation.

Sincerely,

Robert W. Best

ATMOS ENERGY CORPORATION CODE OF CONDUCT

Guidance and Resources

The Company's success depends in part on each director, officer and employee abiding by the principles in this Code of Conduct. Accordingly, directors, officers and employees are encouraged to read the Code in full. The Company has available a number of resources, people and processes to answer your questions and to provide guidance in interpreting any provision of this Code of Conduct.

Directors may direct any questions or concerns or report any suspected violations of this Code of Conduct to the General Counsel of the Company, who has been designated by the Board of Directors as the Company's Corporate Compliance Officer. Directors must also report any known or suspected violations of the Code to the Chairman of the Audit Committee. Officers and employees may direct questions or concerns, and may report any suspected violations of this Code of Conduct, to your supervisor, any member of management, the Legal Department or the Corporate Compliance Officer. All information provided, including your identity, will be kept confidential to the greatest extent possible unless required to be disclosed by law or for safety purposes. Additionally, the Company has engaged a firm to receive reports on an anonymous basis of any suspected violations of the Code of Conduct through the Atmos Energy Compliance Hotline. The toll-free number for the Hotline is 1-866-543-4065. Any suspected violations of the Code of Conduct may also be reported anonymously over the Internet at the Atmos Energy Compliance Reporting Website at:

<https://www.compliancehelpline.com/welcomeAtmosEnergy.jsp>.

Respect for People

Each director, officer and employee is important to the success of the Company and must be treated fairly and with respect. Being treated fairly means that individuals are judged according to their own merits and not according to arbitrary factors. The Company is committed to providing a work environment that is free from discrimination and/or harassment of any type, including without limitation, discrimination and/or harassment on the basis of race, color, religion, gender, age, national origin, sexual orientation, citizenship status, disability, or veteran's status. All directors, officers and employees are expected to treat others equitably and fairly. The Company is an equal opportunity employer in hiring and promotion practices, benefits and wages.

Safety

The Company assigns the highest priority to the safety of its directors, officers, employees, customers and the public and maintains a comprehensive employee safety program for the prevention of workplace accidents. Each officer and employee must abide by Company procedures and safe work practices and use all appropriate personal protective equipment. Health and safety information must be accurately recorded, and any violations of health and safety laws or regulations must immediately be reported to a supervisor or through the Company's Compliance Hotline or the Compliance Reporting Website. No officer or employee will be discriminated against in any way for having brought any safety concerns to the attention of management. No director, officer or employee may possess or use weapons on Company premises or in the conduct of Company business.

Drugs and Alcohol

The Company and our customers expect all officers and employees to report to work fit for duty. Being fit for duty means being mentally and physically able to perform our jobs in a safe, efficient and reliable manner. The Company strictly prohibits the unlawful use, possession, manufacture or distribution of any controlled substances on Company property, on Company time or while using Company-supplied vehicles. The Company also prohibits the abuse of legal drugs or medications that may impair performance. The Company retains the right to search all Company property. Any confiscated illegal substances or material evidence will be turned over to appropriate authorities as required by law.

Conflicts of Interest

To maintain the highest degree of integrity in the conduct of the Company's business as well as the independent judgment and actions of all directors, officers and employees, no director, officer or employee should engage in any activity or advance any personal interest that conflicts, or appears to conflict, with the interests of the Company. A conflict of interest is any situation in which a director, officer or employee has two or more duties or interests which are mutually incompatible and may conflict with the proper and impartial discharge of such person's duties, responsibilities or obligations to the Company. For example, an employee may not work for a competitor or supplier of the Company without the Company's knowledge and consent.

Directors should disclose to the Chairman of the Audit Committee and to the Corporate Compliance Officer all situations in which they, or members of their immediate families, have a significant direct or indirect financial interest in others who have transactions with the Company, other than minor investments in large publicly-owned companies. Officers and employees should disclose to their supervisors all situations in which they, or members of their immediate families, have a significant direct or indirect financial interest in others who have transactions with the Company, other than minor investments in large publicly-owned companies. You also must be sensitive to issues of security, confidentiality and conflicts of interest if your spouse or another member of your immediate family is a competitor or supplier of the Company or is employed by one. You should disclose such a situation to your supervisor.

Gifts and Entertainment

The giving and receiving of gifts or entertainment by any director, officer or employee of the Company or by members of his or her immediate family can potentially create problems for such person and the Company. Such acts may be construed as attempts to influence the performance of duties or to favor certain individuals or companies. It is our policy that no director, officer or employee or a member of his or her immediate family

may request, accept or give any gifts or entertainment, the giving or receipt of which violates any law, rule or regulation. Any gift that could create an obligation to the donor or recipient or influence the business relationship with the donor or recipient should not be accepted or offered. The Legal Department must be consulted prior to providing gifts or entertainment to third parties, including candidates for public office, public officials or government employees.

Competition

All of the Company's activities are governed by federal and state antitrust and trade regulation statutes. There are many types of activities that in some cases may be violations of federal and state antitrust laws.

For example, certain types of discussions, meetings or arrangements with competitors of the Company, and any agreement, whether formal or informal, or any joint activity involving the Company and any other party, the intent or effect of which is to fix prices, allocate markets or otherwise reduce competition, may violate the antitrust laws. Competitive information must be gathered with care, in accordance with all applicable laws. We must conduct all relations with competitors, including social activities, as if they were completely in the public view. Competitor relations may later be subject to probing examination and unfavorable interpretation.

Fair Dealing

Each director, officer and employee shall attempt to deal fairly and in good faith with each of the Company's customers, shareholders, employees, regulators, suppliers, competitors and others. No director, officer or employee shall in any way attempt to take or take unfair advantage of any person through concealment, manipulation, misrepresentation, fraud, misuse of confidential information or any other unfair dealing practice or act.

Company Assets

Each director, officer and employee has a duty to safeguard Company assets, including cash, inventories, physical plants and equipment, computers, computer software, records, customer information, manpower and Company names and trademarks. Company assets should be used for Company business only.

Corporate Opportunities

No director, officer or employee may (i) personally take for himself or herself opportunities that he or she may discover through the use of Company property, information or position; (ii) use Company property, information or position for personal gain; or (iii) compete directly or indirectly with the Company in the conduct of its business. Directors, officers and employees owe a duty to the Company to advance the Company's interests when the opportunity arises.

Confidential Information

Much of the information the Company uses is confidential, privileged, proprietary or of competitive value to the Company. This confidential information may have been developed by the Company or may belong to others. We are required to keep it confidential. In both instances, we must be careful to guard against disclosure of the information to any individuals outside the Company. All directors, officers and employees must exercise the utmost care when dealing with confidential information and are responsible for maintaining the confidentiality of such information, including Company computer systems and sensitive employee information, such as salary, bonus or performance appraisal data.

The obligation to treat this information as confidential does not end when the director, officer or employee is no longer associated with the Company. No director, officer or employee may disclose any confidential information to a new employer or to any other party after ceasing to be associated with the Company.

Compliance with Laws, Rules and Regulations

The Company is committed to abide by the letter and spirit of all laws, rules and regulations that apply to our business and to our employees, including insider trading laws. For example, from time to time you may receive information about the Company, one of its affiliates, or about another company with whom we do business, that could be valuable to an investor if it were made public. No director, officer or employee may use such "insider" non-public information when trading or recommending securities. No director, officer or employee may buy or sell securities of the Company when in possession of "material nonpublic information" relating to the Company. In addition, directors, officers and employees should also be very careful not to disclose such information to family, friends or any person outside the Company who could act on such information, even if the director, officer or employee receives no benefit from the actions.

Examples of inside information include dividend changes; stock splits or additional offerings; earnings or loss estimates; information relating to possible mergers, acquisitions or sales; developments in major litigation; or other items of Company-wide impact such as financing plans, major contracts or expansion plans.

Accuracy in Documentation

Books and records are to be kept according to generally accepted accounting principles. Accurate and auditable records of all financial transactions must be maintained. Officers and employees must ensure that all Company documents are completed accurately, fully and timely and are properly authorized. The making of false or misleading entries, records or documentation is strictly prohibited. Officers and employees must cooperate fully with the Accounting and Financial Reporting departments, as well as our independent public accountants, by providing

complete and accurate information to them to ensure that all of the Company's books and records are accurate. Pursuant to the provisions of the Company's "Employee Complaint Procedures for Accounting and Auditing Matters," attached hereto as Appendix A, all officers and employees of the Company may report any good-faith complaints regarding accounting and auditing matters directly to the General Counsel, as the Corporate Compliance Officer of the Company, or on an anonymous basis by calling the Company's Compliance Hotline at 1-866-543-4065 or reporting such complaint over the Internet at the Company's Compliance Reporting Website at <https://www.compliance-helpline.com/welcomeAtmosEnergy.jsp>. Such procedures have been established by the Company's Audit Committee of the Board of Directors, in accordance with the provisions of the Sarbanes-Oxley Act of 2002 and related rules of the United States Securities and Exchange Commission.

Questionable Payments Policy

No director, officer or employee may participate in the unethical receipt or payment of Company funds or the maintenance of any unrecorded cash or non-cash funds or assets for the purpose of any such receipts or payments. No director, officer or employee shall take part in any improper payments, bribes, kickbacks or influence payments to any government officials, employees or agents, the purpose of which is to obtain favored treatment with respect to the Company's business or operations.

Honesty with Regulators and Other Government Officials

As a company engaged in the public utility business, a number of federal and state commissions, agencies and other governmental entities extensively regulate us. We must ensure that no inaccurate or misleading reports, certifications, claims or statements are made to any government agency or officials. When dealing with government officials and personnel, directors, officers and employees should also avoid even the appearance of impropriety. Activities must be avoided that could be perceived as attempts to improperly influence and obtain or reward favorable treatment.

Environmental Commitment

It has been and will continue to be the intent of the Company to conduct business in an environmentally responsible manner. The Company is committed to minimizing the release of any substance that may cause environmental damage; minimizing the creation of waste and disposing of all waste through safe and responsible methods; and minimizing environmental risks by employing safe technologies and operating procedures and by being prepared to respond appropriately to accidents and emergencies. The consequences of failing to adhere to our environmental policy may be serious. The Company, as well as individual directors, officers and employees, may be liable not only for the costs of cleaning up pollution resulting from the Company's and our employees' activities, but also for significant civil and criminal penalties.

Political Activities

A number of laws govern the Company's behavior in the political arena. We must be careful to obey these laws. No corporate funds, assets, materials or services may be used to support a particular candidate or political party except as provided by, and in compliance with, all applicable laws and regulations. All directors, officers and employees are encouraged to exercise their rights as citizens to vote. Any director, officer or employee who serves in a public office does so as an individual and not as a representative of the Company. Interested persons are encouraged, but not required, to join political action committees formed by their peers. Under no circumstances shall any director, officer or employee be compensated or reimbursed for any personal political contribution.

Compliance with the Code of Conduct

The Audit Committee of the Board of Directors and the Management Committee of the Company have the responsibility for administering the provisions of the Code of Conduct. However, the day to day responsibility for interpretation and coordination of this Code of Conduct has been delegated to the Corporate Compliance Officer and the Legal Department.

All directors, officers and employees benefit from an atmosphere of ethical conduct. Every director, officer and employee has a duty to adhere to this Code. Directors and officers shall report, in person or in writing, any known or suspected violations of laws, governmental regulations or provisions of this Code to the Corporate Compliance Officer. Directors also must report any known or suspected violations to the Chair of the Company's Audit Committee.

All employees who are aware of suspected misconduct, illegal activities, fraud, abuse of Company assets or violations of the provisions of this Code of Conduct are responsible for reporting such matters to their supervisors, any available management personnel, the Legal Department or the Corporate Compliance Officer. As discussed above under "Accuracy in Documentation," all officers and employees of the Company must submit any good-faith complaints regarding accounting and auditing matters directly to the General Counsel, as the Corporate Compliance Officer of the Company. These contacts may be made anonymously by calling the Company's Compliance Hotline at 1-866-543-4065 or over the Internet at the Company's Compliance Reporting Website at:

<https://www.compliance-helpline.com/welcomeAtmosEnergy.jsp>.

If you choose to identify yourself, your identity will be kept strictly confidential to the extent possible. No retaliatory action of any type, including discharge, demotion, suspension, harassment or discrimination in any manner, will be taken toward those directors, officers or employees who bring forward a complaint. Complaints will be taken seriously and will be subject to thorough internal investigation to the extent required, and to appropriate corrective actions, including disclosure to appropriate authorities.

Waivers

The provisions of this Code may be waived for directors or executive officers, including the Company's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, only by a resolution of the Company's Audit Committee. The provisions of this Code may be waived for employees who are not directors or executive officers by the Company's Chairman of the Board and Chief Executive Officer. Any waiver of this Code granted to a director or executive officer, including the Company's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, will be publicly disclosed as required by the listing standards of the New York Stock Exchange and the applicable rules of the Securities and Exchange Commission.

Summary

This Code of Conduct is intended to emphasize the commitment to integrity and fairness by the Company, its Board of Directors and its officers. The Code is not intended to be a complete list of acceptable and unacceptable actions, but merely provides general guidance as to how the Company expects directors, officers and employees to conduct themselves. This Code of Conduct does not constitute a contract of employment or create any contractual rights in favor of the Company or any of its employees. It may be necessary to update or modify this Code to ensure that the Company's Corporate Compliance Program remains effective. The Company reserves the right to modify, eliminate or add to the provisions of this Code of Conduct, with or without advance notice. However, any such amendments to this Code will be publicly disclosed as required by the listing standards of the New York Stock Exchange and the applicable rules of the Securities and Exchange Commission.

If you have any questions about the Code of Conduct, consult your supervisor, any member of Company management, the Legal Department or the Corporate Compliance Officer. You may also call the Company's Compliance Hotline at 1-866-543-4065 or contact us over the Internet at the Company's Compliance Reporting Website at:

<https://www.compliance-helpline.com/welcomeAtmosEnergy.jsp>.

Approved by the Board of Directors

Amended and Restated August 9, 2005

APPENDIX A

Employee Complaint Procedures for Accounting and Auditing Matters

Any employee of Atmos Energy Corporation or its subsidiaries (collectively, the "Company") may submit a good-faith complaint regarding accounting and auditing matters to the management of the Company without fear of dismissal or retaliation of any kind. The Company is committed to achieving compliance with all applicable securities laws and regulations, accounting standards, accounting controls and audit practices. The Company's Audit Committee will oversee treatment of employee concerns in this area.

In order to facilitate the reporting of employee complaints, the Company's Audit Committee has established the following procedures for (1) the receipt, retention and treatment of complaints regarding accounting, internal accounting controls, or auditing matters ("Accounting Matters") and (2) the confidential, anonymous submission by employees of concerns regarding questionable accounting or auditing matters.

Receipt of Employee Complaints

- Employees with concerns regarding Accounting Matters may report their concerns to the General Counsel of the Company.
- Employees may forward complaints on a confidential or anonymous basis to the General Counsel through the Company's Compliance Hotline at 1-866-543-4065 or over the Internet at the Company's Compliance Reporting Website at:
<https://www.compliance-helpline.com/welcomeAtmosEnergy.jsp>.

Scope of Matters Covered by These Procedures

The procedures relate to employee complaints relating to any questionable accounting or auditing matters, including, without limitation, the following:

- fraud or deliberate error in the preparation, evaluation, review or audit of any financial statement of the Company;
- fraud or deliberate error in the recording and maintaining of financial records of the Company;
- deficiencies in, or noncompliance with, the Company's internal accounting controls;
- misrepresentation or false statement to or by a senior officer or accountant regarding a matter contained in the financial records, financial reports or audit reports of the Company; or
- deviation from full and fair reporting of the Company's financial condition.

Treatment of Complaints

- Upon receipt of a complaint, the General Counsel will (i) determine whether the complaint actually pertains to Accounting Matters and (ii) when possible, acknowledge re-ceipt of the complaint to the sender.
- Complaints relating to Accounting Matters will be reviewed under Audit Committee direction and oversight by the General Counsel, Internal Audit function or such other persons as the Audit Committee determines to be appropriate. Confidentiality will be maintained to the fullest extent possible, consistent with the need to conduct an adequate review.
- Prompt and appropriate corrective action will be taken when and as warranted in the judgment of the Audit Committee.
- The Company will not discharge, demote, suspend, threaten, harass or in any manner discriminate against any employee in the terms and conditions of employment based upon any lawful actions of such employee with respect to good-faith reporting of complaints regarding Accounting Matters or otherwise as specified in Section 806 of the Sarbanes-Oxley Act of 2002.

Reporting and Retention of Complaints and Investigations

The General Counsel will maintain a log of all complaints, tracking their receipt, investigation and resolution and shall prepare a periodic summary report thereof for the Audit Committee. Copies of complaints and such log will be maintained in accordance with the Company's document retention policy.

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing will be emailed and/or mailed by first class mail to the following parties of record on this 28th day of August, 2007.

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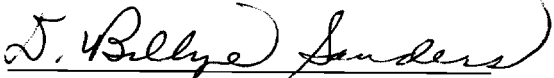
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