

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

October 1, 2007

IN RE:

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

)
)
)
)
)
)
**DOCKET NO.
07-00105**

**ORDER DENYING MOTION FOR RECONSIDERATION OF ORDER SEVERING
THE TRANSPORTATION TARIFF AND ASSET MANAGEMENT ISSUES**

This docket is before the Hearing Officer upon the filings of the parties, and in particular, a *Motion for Reconsideration of Order Severing the Transportation Tariff and Asset Management Issues* (“*Motion for Reconsideration of the Hearing Officer’s Severance Order*”) filed by Stand Energy Corporation (“Stand”) and Atmos Intervention Group (“AIG”) (collectively, “Movants”) on September 18, 2007, requesting the Hearing Officer to reconsider his Order issued on September 13, 2007 wherein certain issues involving Atmos Energy Corporation’s (“Atmos”) Transportation Tariff¹ and asset management, capacity release and related matters, are severed from the present case proceeding. Additionally, on September 24, 2007, the *Response of Atmos Energy Corporation to Motion for Reconsideration of Order Severing the Transportation Tariff and Asset Management Issues* (“*Response to Motion for Reconsideration of Severance Order*”) asserting opposition of such reconsideration was filed with the Tennessee Regulatory Authority (“TRA” or “Authority”). This Order serves to memorialize, and set forth more fully, the abbreviated verbal articulation of the Hearing

¹ For purposes of clarification, specifically, the items in Atmos’ Tariff Sheets 21 through 24.2 (Schedule 260 Transportation Service) as relate to pooling, penalties and imbalances are severed from the case proceeding in Docket No. 07-00105.

Officer's denial of the *Motion for Reconsideration of the Hearing Officer's Severance Order* presented before the parties at the Pre-Hearing Conference on September 27, 2007.

POSITION OF THE PARTIES

In the *Motion for Reconsideration of the Hearing Officer's Severance Order*, Stand and AIG contend that the Hearing Officer should reconsider the ruling set forth in the *Order Severing the Transportation Tariff & Asset Management Issues* ("Severance Order"), issued September 13, 2007, because a "proper resolution of the transportation and asset management issues will result in rate reductions for ratepayers;" in a rate case docket there exists a "statutory deadline by which the decision must be made;" and, "since rates are set prospectively and cannot be reduced retroactively, the ratepayers can never recapture . . . over earnings . . ."² Finally, the parties complain that, as of the date of the filing, although the Authority ordered a new docket to be opened for consideration of the asset management issues, such action had not yet occurred, and that movement in the transportation tariff docket, Docket No. 07-00020, has been slow.³

In its *Response to Motion for Reconsideration of Severance Order*, Atmos argues that the motion of Stand and AIG effectively asks the Hearing Officer to "reverse multiple prior rulings in which the Authority and the Hearing Officer have determined that the asset management and transportation tariff issues should be litigated and resolved in separate dockets."⁴ Additionally, Atmos contends that as no discovery of these particular issues has been conducted, incorporating them into this case "at this late stage will do nothing but delay . . . resolution."⁵ Further, that the

² *Motion for Reconsideration of the Hearing Officer's Severance Order*, p.1 (September 18, 2007).

³ *Id.* at pp 2-3.

⁴ *Response to Motion to Reconsideration of Severance Order*, p.1 (September 24, 2007).

⁵ *Id.* at 2.

“asset management and transportation can be litigated more effectively and efficiently in the separate cases that have already been opened for that purpose.”⁶

FINDINGS AND CONCLUSIONS

The *Severance Order* references and is consistent with previous rulings of the Authority made on July 9, 2007 and August 20, 2007. In accordance with the Authority’s ruling on July 9, 2007, a contested case proceeding has been initiated in Docket No. 07-00020 for the consideration of Atmos Tariff No. 2007-0021 to modify and add language regarding transportation service. In that docket, a Hearing Officer has been appointed and a Procedural Schedule has been set as agreed to by the parties. Additionally, as ordered by the Authority at its August 20, 2007 Authority Conference, in its deliberations in Docket Nos. 05-00253 and 05-00258,⁷ a contested case proceeding has been commenced in Docket No. 07-00225 for the purpose of evaluating Atmos’ gas purchases and related sharing incentives (i.e., asset management, capacity release and related matters).

Further, the discovery phase of the instant case is completed and all pre-filed direct and rebuttal testimony has been submitted. During the period of time allotted for discovery, which was agreed upon by the parties, the transportation and asset management issues were specifically deferred in this docket. As a result, concluding that a proper resolution of these issues will result in rate reductions for which ratepayers will have suffered a loss of opportunity for the recovery of over earnings, as is asserted by the Movants, is not supported by the record in the current docket. To undertake consideration of these issues in this docket, at this point, would cause

⁶ *Id.*

⁷ See *In re: Atmos Energy Corporation’s Annual Cost Adjustment (ACA) For the Twelve Months Ending June 30, 2005*, Docket No. 05-00253 and *In re: Petition of the Consumer Advocate to Open an Investigation to Determine Whether Atmos Energy Corporation Should Be Required by the TRA to Appear and Show Cause That Atmos Energy Corporation Is Not Overearning In Violation of Tennessee Law and That It Is Charging Rates That Are Just and Reasonable*, Docket No. 05-00258.

undue and needless delay and may jeopardize the Authority meeting the statutory deadline for rendering a decision. This is particularly true since appropriate forums, i.e., Docket Nos. 07-00020 and 07-00225, have already been opened specifically for the consideration of these issues as previously referred to herein.

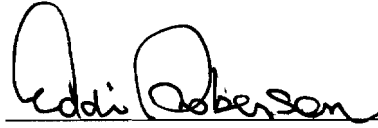
Finally, it is true that a statutory deadline is imposed on the resolution of rate cases before the Authority, and that the imposition of such a deadline may, at times, serve to spur action on the part of the parties and the Authority. Nevertheless, the Hearing Officer disagrees with the argument set forth or otherwise implied in the *Motion for Reconsideration of the Hearing Officer's Severance Order* that the existence of a statutory deadline lends support, or provides a persuasive or compelling reason, for the inclusion of either transportation or asset management issues in this docket. The mere existence of a statutory deadline, rather than a deadline imposed by the Authority or the parties themselves, should not be a basis for any decision to include or exclude any particular issue in a case. Furthermore, despite arguing that these issues would be addressed in a more expeditious fashion, due to the statutory deadline imposed in this docket, Stand and AIG admit that their proposed alternative procedural schedule fails to comply with this statutorily-imposed deadline.⁸

For the foregoing reasons, the Hearing Officer finds that judicial economy and efficiency is better served by moving forward in this as well as the other dockets described above, to the end that unnecessary delays in the resolution of these important issues may be avoided. Therefore, the *Motion for Reconsideration of the Hearing Officer's Severance Order* is hereby denied.

⁸ *Motion for Reconsideration of the Hearing Officer's Severance Order*, p.5 (September 18, 2007).

IT IS THEREFORE ORDERED THAT:

The *Motion for Reconsideration of Order Severing the Transportation Tariff & Asset Management Issues* filed by Stand Energy Corporation and Atmos Intervention Group is denied.

A handwritten signature in black ink, appearing to read "Eddie Roberson", is written over a horizontal line.

Director Eddie Roberson,
as Hearing Officer