

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

October 18, 2007

IN RE:)	
)	DOCKET NO.
PETITION OF ATMOS ENERGY CORPORATION)	07-00105
FOR APPROVAL OF ADJUSTMENT OF ITS RATES)	
AND REVISED TARIFF)	

ORDER GRANTING MOTION TO FILE SUPPLEMENTAL EXHIBIT

This matter is before the Hearing Officer upon the filing of a *Motion to File Supplemental Exhibit* ("Motion") by Atmos Intervention Group ("AIG") with the Tennessee Regulatory Authority ("TRA" or "Authority") on October 4, 2007, requesting permission to file a supplemental exhibit to the direct pre-filed testimony of Mr. William H. Novak, witness for AIG. On October 5, 2007, Atmos Energy Corporation ("Atmos" or the "Company") filed its *Response of Atmos Energy Corporation to Atmos Intervention Group's Motion to File Supplemental Exhibit* ("Response") and AIG filed its *Reply of Atmos Intervention Group* ("Reply") with the Authority. In light of these filings, the Hearing Officer issued a *Notice of Pre-Hearing Conference* ("Notice") on October 5, 2007, setting the matter for consideration on October 8, 2007.

MOTION TO FILE SUPPLEMENTAL EXHIBIT

In its *Motion*, AIG requests the Authority's approval to file a supplemental exhibit to the direct pre-filed testimony of AIG witness, Mr. Novak, and to present testimony on its contents at the Hearing. AIG argues that the supplemental exhibit was initially proposed and referenced in the Pre-Filed Direct Testimony of Mr. Novak and that the exhibit "shows how the tariffs of

Atmos should be designed to produce \$3,990,000 in additional annual revenue [as set forth by the parties in the *Settlement Agreement* currently pending approval of the Authority]¹ and shows Mr. Novak's proposed changes to the commercial and industrial rates, assuming that the TRA agrees, (as all parties recommend) to spread the increase across-the-board. [Footnote omitted]"² Finally, AIG contends that it has submitted the proposed supplemental exhibit at this time, rather than in its post-hearing brief, "to expedite the TRA's consideration of the rate design issue raised by Mr. Novak and to allow the TRA and other parties to view this information prior to the hearing . . ."³

In its *Response*, Atmos opposes the *Motion* stating that it "represent[s] an eleventh hour effort to submit material long after the deadlines for prefiled direct and rebuttal testimony has passed, and only days before the hearing in this matter."⁴ Additionally, Atmos argues that "[b]ecause AIG did not seek discovery of the information it would need to set rates for the test period applicable to this case, Mr. Novak has used outdated information that was submitted in the last case (05-00258),"⁵ and thus, the proposed supplemental exhibit is unreliable. Atmos concludes that consideration of this material by the Authority will require that Atmos perform an updated rate distribution analysis, which comprises information previously sought by AIG in its unsuccessful *Joint Motion for Supplemental Discovery Relating to Rate Design*.⁶ Finally, Atmos contends that the *Motion* should be denied because allowing the proposed filing "will either deny Atmos any reasonable opportunity to study and submit proof in response to AIG's rate proposals,

¹ On October 8, 2007, prior to the commencement of the Hearing in this matter the voting panel assigned to this docket voted unanimously to approve the *Settlement Agreement*.

² *Motion*, p. 1 (October 4, 2007).

³ *Id.* at 2.

⁴ *Response*, p. 1 (October 5, 2007).

⁵ *Id.* at 2.

⁶ The *Joint Motion for Supplemental Discovery Relating to Rate Design* filed by AIG and Stand Energy Company on September 21, 2007 was denied by the Hearing Officer by Order issued on October 1, 2007.

or will cause a substantial delay in the resolution of this matter . . .”⁷

In its *Reply*, AIG argues that “the objection filed by Atmos reflects a misunderstanding of the rate design process and the purpose of the supplemental exhibit.”⁸ In support of this allegation, AIG cites the Tennessee Supreme Court case *C.F. Industries v. Tenn. P.S.C.*⁹ for the proposition that in the designing of rates the Authority may utilize its regulatory judgment and discretion.¹⁰ Further, AIG asserts that the proposed exhibit is not intended to expand the evidentiary record; rather, it is offered for the purpose of illustrating the rate design methodology that has already been set forth in the Pre-Filed Testimony of Mr. Novak.¹¹ Finally, AIG argues that it had to file the proposed supplemental exhibit at this time due to filing of the *Settlement Agreement* by Atmos and the Consumer Advocate. AIG asserts that a specific and detailed rate design could not have been developed until the revenue requirement of the Company was determined.¹²

PRE-HEARING CONFERENCE

A Pre-hearing Conference was convened at approximately 8:30 a.m. on October 8, 2007.

The following parties were represented at the Pre-hearing Conference:

Atmos Energy Corporation – **William T. Ramsey, Esq.** and **A. Scott Ross, Esq.**, Neal & Harwell, PLC, 2000 One Nashville Place, 150 Fourth Avenue North, Nashville, TN 37219, and **Patricia J. Childers**, Vice President - Rates and Regulatory Affairs of the Kentucky/Mid-States Division of Atmos Energy Corporation, 810 Crescent Centre Drive, Suite 600, Franklin, TN 37067.

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

⁷ *Id.*

⁸ *Reply*, p. 1 (October 5, 2007).

⁹ *C.F. Industries v. Tenn. P.S.C.*, 599 S.W.2d 536 (1980).

¹⁰ *Supra.*, citing *C.F. Industries* at 543.

¹¹ *Id.* at 2, 3.

¹² *Id.*

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

Stand Energy Corporation – **D. Billye Sanders, Esq.**, Waller Lansden Dortch and Davis, 511 Union Street, Suite 2700, Nashville, TN 37219.

During the Pre-hearing Conference, the Hearing Officer afforded the parties the opportunity to present oral argument on the *Motion to File Supplemental Exhibit*. In support of its *Motion*, AIG reiterated the arguments presented in its written briefs and stated further that the proposed supplemental exhibit is offered for illustrative purposes only and not as substantive evidence. Additionally, AIG contends that as it has submitted the proposed supplemental exhibit prior to the hearing and did not present it for the first time in its post-hearing brief, such timing precludes a claim of violation of due process by Atmos. During the Pre-hearing Conference, Stand Energy Corporation voiced support for the *Motion* and stated that the Directors would likely find the proposed supplemental exhibit helpful and desire access to such information.


In response, Atmos expanded upon the arguments in opposition to the *Motion* set forth previously in its written brief. Further, Atmos takes its position that as Mr. Novak is an expert witness, his testimony is to be considered factual evidence, and thus, AIG's assertion that the proposed supplemental exhibit is illustrative in nature is inaccurate. Atmos further contends that as the proposed supplemental exhibit is, in fact, late-filed evidence in the record, Atmos is effectively deprived of its rightful opportunity to effectively cross examine Mr. Novak and present meaningful rebuttal evidence.

Following a brief recess, and after consideration of the written briefs and oral argument presented by the parties, the Hearing Officer found that the *Motion* of AIG should be granted. Further, pending the approval of the *Settlement Agreement* by the voting panel of Directors, a Hearing on the rate design portion of the case should proceed as scheduled. Further, the Hearing

would reconvene and continue after Atmos has been given an opportunity to prepare for cross-examination of Mr. Novak and submit rebuttal testimony. To accommodate this schedule, the Hearing Officer determined that AIG witness, Mr. Novak, will be the final witness presented on October 8, 2007 and that the witness will be available for additional cross-examination when the Hearing reconvened on October 22, 2007. Also, Atmos would have the opportunity to present additional rebuttal witnesses if it desires to do so on October 22, 2007. Finally, by agreement of the parties, AIG shall provide a copy of its proposed supplemental exhibit in Excel format in a timely manner to Atmos.

IT IS THEREFORE ORDERED THAT:

1. The *Motion to File Supplemental Exhibit* filed by Atmos Intervention Group is granted;
2. Atmos Energy Corporation shall have an opportunity to fully cross examine the witness for AIG at Hearing and present an additional rebuttal witness, if it chooses to do so;
3. If it decides to present rebuttal testimony on the Supplemental Exhibit, Atmos Energy Corporation shall prepare and file such rebuttal testimony by October 18, 2007;
4. To accommodate the ruling of the Hearing Officer, the Hearing that began on October 8, 2007 shall be reconvened on October 22, 2007;
5. Post-hearing briefs of the parties shall be filed by November 5, 2007.


Chairman Eddie Roberson,
as Hearing Officer