BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

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

POST-HEARING BRIEF OF ATMOS ENERGY CORPORATION

The Settlement Agreement in this matter leaves only one issue for the Authority to resolve: whether to go along with AIG and Stand Energy's insistence that Atmos design and implement new declining block rates for commercial and industrial customers.[1] For several reasons, the answer should be a resounding no:

- AIG and Stand have not actually done the work necessary to set specific rates under a declining block rate regime. They want Atmos hurriedly to cobble something together in the few days remaining before the November 19 tariff deadline. But trying to implement something new on such a crash basis raises a substantial risk that rates will be set wrong – that they will not produce the agreed revenue requirement. Having settled this case for roughly a third of what it sought, Atmos should not also have to bear this added risk of missing the agreed revenue requirement.
- The Settlement Agreement in this case represents a tremendous investment of time and resources. The last thing Atmos wants to see is for all of that hard work to be swept away by the last-minute adoption of sweeping new rate design changes. But that is exactly what will happen if a new rate structure, adopted without adequate study, causes Atmos

[1] All of the other issues raised by AIG and Stand either have been severed from this case, or were abandoned at the October 8 hearing in this matter. *See* October 8 Transcript Vol. I B at 16-17, 26.

to miss its agreed revenue requirement. Because in that event (whether Atmos under-earns or over-earns), the likely result is another rate case, and all of the work that has been invested in this case will have been for naught.

- AIG's witness opines generally that large customers should pay less for gas because it costs less to serve them. But AIG and Stand have offered nothing to flesh out these conclusory assertions – nothing to show what the cost of service actually is for any class of customers, or at any given volume of gas; nothing to show that any given declining block rate structure would be justified by a corresponding level of cost; nothing to support their request for a 50% price break for the largest customers; nothing from which to set any particular block rate on anything but an arbitrary basis.
- Declining block rates are nothing new, not the wave of the future, or even the present. Declining block rates present a number of problems, and in recent years, Atmos has seen a move away from declining block rates in a number of its other jurisdictions.
- Declining block rates hurt small commercial consumers. Small consumers end up paying more so that large consumers can pay less. Under AIG's proposal, well over 11,000 small commercial consumers would pay 15% more for gas than they would under the Atmos-Consumer Advocate Settlement Agreement. In fact, AIG's proposal would cause **more** of an increase for these consumers than the general rate increase included in the Settlement Agreement. Thousands of churches, schools, daycare centers, and other small consumers would pay more for their gas. And why? AIG and Stand have not even shown that their own members or customers would benefit.

For these reasons, Atmos respectfully submits that the Authority should decline AIG's invitation to require that Atmos develop and implement declining block rates in this case. Instead, the

Authority should adopt the rate design, and the specific rates, set-forth in Exhibit D to the Settlement Agreement between Atmos and the Consumer Advocate.

I. There is not enough time before the November 19 deadline.

Even if declining block rates were otherwise a good idea, there simply is not enough time to do them right, and Atmos should not be forced to bear the risk of doing them wrong.

AIG and Stand have not actually offered a concrete declining block rate proposal that the Authority could adopt in this case. The closest they have come is Mr. Novak's Supplemental Exhibit, which Mr. Novak concedes is not meant to be a concrete proposal for this case, but merely an example.[2] Mr. Novak was forced to take this position because during the months-long discovery period in this case, AIG and Stand did not obtain the information or do the analysis that one would need to develop a concrete rate design proposal for this case.[3] Instead, Mr. Novak turned to years-old data filed in the 05-00258 case.[4] If AIG or Stand had obtained the required information during discovery, then in his pre-filed testimony in this matter Mr. Novak could have done the work necessary to propose specific rates to achieve the revenue requirement requested in the Company's Petition in this matter. Had he done so, Atmos would have been able to examine his methodology and calculations, do its own workup, and submit rebuttal testimony. AIG's specific rate design proposal would have been subjected to development though the litigation process as intended. And once Atmos and the Consumer Advocate had reached an agreement on the overall revenue requirement, it would have been a simple matter to scale back Mr. Novak's specific rate-design proposal on a proportional basis to hit the agreed target. There would have been time to do the necessary analysis.

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[2] *See* October 8 Transcript Vol. I B at 29, 27, 34.
[3] *See Id.* at 30-31; October 8 Transcript Vol. I A at 56-57.
[4] *See, e.g.,* October 22 Transcript at 14.

Instead, AIG did not conduct the necessary discovery,[5] and Mr. Novak's pre-filed testimony submitted only hypothetical rate designs, with no specific rate numbers.[6] As a result, Mr. Novak submitted no analysis of resulting revenue, and made no effort to show that any particular rate design would achieve any particular level of revenue. And with nothing concrete to consider, the Atmos witnesses did not conduct any such analysis themselves.

Conceding that they have not done the analysis needed to set rates under a declining block rate regime in this case, AIG and Stand now ask the Authority to order that Atmos do their work for them.[7] Over a period of about two weeks, they want Atmos to do all of the work needed to analyze rate changes and set rates, re-write several tariffs, and prepare to start billing customers under a wholly-new rate regime for Tennessee commercial customers. There simply is not time to do this – at least not to do it in a careful, prudent way, such that Atmos would, at the end of the day, have some reasonable confidence that the rates set will achieve the agreed revenue requirement.[8]

As Pat Childers explained in her rebuttal testimony, Atmos has approximately 15,000 customers at issue in commercial rate schedules 220 and 230.[9] The natural gas usage of these customers would need to be analyzed monthly over a period of at least one year, which translates into a data set of approximately 185,000 bills. Analyzing a two-year period would yield more accurate projections.[10] Upwards of 98% of these customers' usage data would need to be weather normalized on a monthly basis, as their bills receive a weather normalization adjustment. This weather normalization process would be no small task, and would take a

[5] *See* October 8 Transcript Vol. I A at 57-58.
[6] *See* Novak Pre-Filed Testimony Exhibits AIG-1 through AIG-6 (rates listed as "$<TBD>").
[7] *See* October 8 Transcript Vol. I B at 21-22.
[8] *See* October 8 Transcript Vol I A at 56.
[9] Childers Rebuttal (10/17/07) at 5.
[10] *Id.*

considerable period of time to accomplish.[11] The Company would then need to study the impact of proposed rate design changes, a process that would be complicated by the fact that the Company has not advocated declining block rate structures in several years. At this point, the Company would have to set up an entirely new rate structure in its billing system, and perform a series of tests to ensure that the Company would be able to bill its customers accurately under the new rate design. It is simply not practical or realistic to expect that all of these tasks could be performed in a matter of weeks, prior to the November 19 deadline.[12] There is not enough time to get it all done.

Having settled the case for a rate increase of roughly a third of what it sought,[13] Atmos should not now be required to bear the additional burden and risk of setting rates under a new rate regime after what would be, of necessity, a quick and dirty (and ultimately incomplete) analysis and implementation. If declining block rates were adopted and the volumetric rates were set too low, Atmos would end up missing its agreed revenue requirement. And if that happened, it is Atmos that would bear the brunt of the loss. To be reasonably assured that it will not happen, certain steps must be followed and certain analyses performed.[14] Through no fault of its own, there simply is not enough time for Atmos to do declining block rates the right way. And particularly under these circumstances, Atmos should not be forced to bear the risk of doing them the wrong way, or the quick and dirty way.

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[11] *Id.*
[12] *Id.* at 6.
[13] *See* Settlement Agreement ¶¶ 5, 8. In its Petition, Atmos sought a revenue increase of $11,055,188. In the Settlement Agreement, Atmos agreed to accept $3,990,000.
[14] *See* Childers Rebuttal (10/17/07) at 6.

II. All of the work that went into the Settlement Agreement should not be jeopardized by last-minute rate design changes.

The Settlement Agreement in this case, reached between Atmos and the Consumer Advocate, represents a substantial investment of time and resources. Weeks of intensive negotiations followed a months-long discovery period involving a voluminous exchange of documents and analysis. A good many worked long and hard to bring this case to the point that meaningful settlement negotiations could occur, and then a good many more spent countless hours hammering out an agreement. It would be a shame and a waste to throw all of that away by making last minute changes.

But that is what could happen if Atmos is required to hurry up and implement a rate redesign before the November 19 deadline. As discussed above, there simply is not enough time to conduct the analysis necessary to set rates under a declining block rate regime – at least not enough time to do the job right. Not enough time to have reasonable assurance that the rate levels that are set will hit the agreed revenue requirement. If forced to establish declining block rates after some kind of quick and dirty review, there is a substantial likelihood that the revenue requirement will not be achieved.[15] And if that happens, whether it is because Atmos ends up earning substantially more or substantially less than the agreed revenue requirement, the likely result is that another rate case would end up being filed in short order.[16] We would end up right back where we started when this case was filed. All of the work that Atmos and the other parties have invested in reaching the many compromises embodied in the Settlement Agreement will have, in the end, amounted to nothing. Atmos urges the Authority to prevent this from happening by rejecting AIG and Stand's request, and instead implement the rate design set forth in Exhibit D to the Atmos-Consumer Advocate Settlement Agreement.

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[15] Childers Rebuttal (10/17/07) at 6.

[16] *Id.*; see also October 8 Transcript Vol. I A at 56; October 22 Transcript at 23-24.

III. AIG and Stand have offered no proof from which to set particular declining block rates on anything other than an arbitrary basis.

AIG and its witness argue that declining block rates should be adopted because the cost to serve large customers is less than the cost of serving small customers. But aside from this naked opinion, AIG offers nothing to support its position.[17] The record contains nothing to show the cost of serving any particular class of customers, large or small; nothing to show how much the cost of service declines as volume increases, if it does decline; nothing to show whether costs decline in simple linear fashion, or even whether they decline steadily as volume increases; nothing from which one could tie any particular block rate to any particular level of cost or cost decline. AIG has offered nothing to suggest that the cost to serve customers in its third rate block is 50% of what it costs to serve the smaller customers – nothing to justify charging these customers half of what the small commercial customers pay. But that is what they have requested in their rate design.

In short, AIG and Stand have offered nothing from which one rationally could determine how much of a price break larger consumers should get and at what volume level, if they should get a price break at all. They base their position upon the argument that costs decline as volume increases, yet they have offered nothing but naked opinion to support this factual position.

AIG has argued that a factual record is not necessary, that the Authority can, in substance, create a rate design out of thin air if it so chooses. As a legal matter this is something of an overstatement. While there may be no general requirement that the Authority receive and consider cost of service data in every rate case, or every time it arrives at a rate design, *CF Indus.*

[17] Mr. Novak testified that AIG "suspect[s] that the industrial and commercial classes are subsidizing the residential class," but offered nothing to support this suspicion, much less anything to show that large industrial customers are subsidizing small commercial customers, or to **quantify** this fact if it is true so that particular rate discounts could be justified. *See* October 8 Transcript Vol. I B at 20.

V. Tenn. Pub. Serv. Comm., 599 S.W.2d 536, 542 (Tenn. 1980), the Authority does not have unbounded freedom to base a decision on proof not shown by the record. "Findings of fact shall be based exclusively upon the evidence of record in the adjudicative proceeding and on matters officially noticed in that proceeding. The agency member's experience, technical competence and specialized knowledge may be utilized in the evaluation of evidence."[18] As the Tennessee Supreme Court summarized, the Authority "may consider all relevant circumstances shown by the record, all recognized technical and scientific facts pertinent to the issue under consideration and may superimpose upon the entire transaction its own expertise, technical competence and specialized knowledge."[19]

AIG urges the Authority to adopt its declining block rate proposals on the argument that they are justified by the lower cost of serving large volume customers. But they offer nothing to prove their assertions. While the Authority is not required to consider cost of service data in every rate design case, it is not free to adopt a particular rate design based upon a factual finding of lower costs for larger volume users when there is no proof to show that this is, in fact, true. When a party urges the Authority to adopt a rate design based upon lower costs of service, then that party must come forward with proof to support its factual position. Because AIG and Stand have not done that here, the Authority should not adopt their proposed declining block rate design.

And even if the Authority **could** design block rates in the absence of a factual record, that would not mean that it **should** do so. Atmos submits that if declining block rates are to be adopted because the cost of service is lower for large-volume users, then there should be facts in the record to show that. Discovery should be done, and testimony prepared, rebutted, and cross-

[18] Tenn. Code Ann. § 4-5-314(d).
[19] *CF Indus.*, 599 S.W.2d at 543.

examined to show, for example, whether and how much costs actually do decline as volumes increase, and what it actually costs to serve different types of large and small volume gas customers. Only then would there be a rational basis from which to design a designing block rate structure.

Such a factual record was not developed in this case. As the parties who advocate adopting declining block rates, the burden fell to AIG and Stand, not Atmos, to develop this record. The Authority's own rules state that "the burden of proof shall be on the party asserting the affirmative of an issue."[20] AIG and Stand have simply failed to carry their burden of proof. They have developed no proof to flesh out their naked claims of declining costs, and nothing from which the Authority rationally could set particular declining block rates on anything other than an arbitrary basis. Whether or not the Authority **could** set declining block rates in this case, it certainly **should not** do so on the present record. [21]

IV. Atmos has seen a trend away from declining block rates in other jurisdictions.

AIG has argued that flat rates are old fashioned, and that the way to update the Company's rate design is to require it to establish declining block rates in Tennessee. In fact, however, there is nothing new or better about declining block rates. They have been around since the 1940s, and were predominant during the 1950s to 1970s when supplies of natural gas were adequate, and the industry's focus was on encouraging consumption.[22] Their acceptance is far from universal. Declining block rates are much more complicated to design and administer.[23] They send customers an anti-conservation message – pay less if you consume more.[24] They

[20] TRA Rule 1220-1-2-.16(2).
[21] Nor is the Authority required to set rates based upon the costs of service. As *CF Industries* makes clear, the Authority would be free to reject AIG's argument for lower rates based on lower costs **even if** AIG had offered proof of lower costs. 599 S.W.2d at 541 ("cost of service is not an exclusive method of determining rate design").
[22] Childers Rebuttal (10/17/07) at 4.
[23] Childers Rebuttal (10/17/07) at 2.
[24] *Id.* at 4.

reward customers who have uneven load profiles (who use much more gas during the winter heating months) because such customers end up having a larger portion of their gas volume billed at the lowest tiered rate.[25] And they mean higher gas bills for small consumers.[26]

In recent years, declining block rates have been abandoned by a number of the Company's other jurisdictions. In the Company's 2007 Missouri case, all rate blocks were eliminated for commercial and industrial customers in favor of a flat commodity charge on all rate schedules.[27] In 2005 in Mississippi, the declining block rate design was removed from all rate schedules.[28] In 2006, block rates were eliminated from the Company's largest Texas division.[29] The Company has flat rates for all customer classes in Illinois, Virginia, and Colorado, as a result of proceedings in those states within the last 7 years. In 2005, the Georgia PSC approved a flat commodity charge rate design for all customer classes except for the Company's interruptible customers using over 270,000 Ccf annually.[30]

AIG likes to argue that other utilities in Tennessee have some declining block rates, so Atmos should too. Well, Atmos does have declining blocks in its Rate Schedule 250,[31] and under the Settlement Agreement Exhibit D, larger customers under Rate Schedule 230 pay a lower rate than those under Schedule 220.[32] The Atmos blocks are not the same as Chattanooga or Nashville Gas, but neither are the declining blocks that AIG advocates here. Importantly, AIG's proposed declining block rates reach the third tier (which pays 50% of what the first tier pays) at a level of only 5,000 Ccf per month. The Chattanooga Gas rates, by contrast, reach the

[25] Bertotti Rebuttal (10/17/07) at 5.
[26] *Id.* at 4-5.
[27] *Id.* at 3.
[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] *See, e.g.*, October 8 Transcript Vol. I A at 56.
[32] October 8 Transcript, Vol. I A at 42-44, 47-48.

50% tier at three times this volume level, 15,000 Ccf.[33] This is significant because AIG's rate structure would force more customers into the third (50%) rate block, which would mean that more dollars would end up being shifted from large volume users to small users. And there is little uniformity among the other gas utilities. Memphis Gas Light & Water has two rate blocks for certain customers.[34] Nashville Gas and Chattanooga Gas have four.[35] In Kentucky, Louisville Gas and Electric has flat volumetric rates for all customers, while Atmos has declining blocks, which were implemented some time ago.[36] Each utility is unique, and the fact that some other utilities may have more rate blocks than Atmos does not support the adoption of AIG's declining block rate proposal for Atmos in this case.

V. Declining block rates hurt small commercial consumers.

According to its own witness, AIG's declining block rate proposal is a "zero-sum game."[37] Small commercial gas users must pay more so that large users can pay less.[38] There is simply no way around this fact.[39] The point of AIG's declining block rate proposal is to give lower gas rates to large gas users. The only way to pay for these price reductions is to raise gas rates for small users.[40]

AIG's proposal would raise rates for more than 11,696 small commercial consumers by more than 15% over the rates set-forth in the Settlement Agreement between Atmos and the Consumer Advocate.[41] More than 75% of consumers under commercial industrial rate schedules 220 and 230 use less than 3,000 Ccf of gas per year, and therefore necessarily would pay more

[33] *See* Bertotti Rebuttal (9/21/07) at 3; October 8, 2007 Transcript Vol. I A at 60-61, Vol. I B at 34.
[34] Childers Rebuttal (10/17/07) at 4.
[35] *Id.*
[36] *Id.*
[37] October 8 Transcript Vol. I B at 31.
[38] *Id.*
[39] October 8 Transcript Vol. I B at 33; October 2 Transcript at 15.
[40] *See id*; *see also* Bertotti Rebuttal (10/17/07) at 6.
[41] *See* Bertotti Rebuttal (10/17/07) at 2; October 8 Transcript Vol. I B at 33.

for gas under the AIG proposal.[42] These customers would see a larger increase in volumetric rates from AIG's declining block rate proposal (15%) than from the general rate increase Atmos ultimately obtained in the Settlement Agreement (10.7% for Schedule 220 customers).[43] [44]

As Mr. Bertotti outlined in his rebuttal testimony, the net result of AIG's declining block rate proposal will be higher gas rates for thousands of small commercial customers. Those paying more under AIG's proposal would include over:

- 800 churches and other places of worship;
- 400 healthcare locations;
- 300 schools;
- 200 government buildings; and
- 40 daycare centers.[45]

And what do AIG and Stand offer to explain why thousands of small businesses should pay more for their gas than they would under the Atmos - Consumer Advocate Settlement? As discussed above, they argue that large consumers cost less to serve, but have offered no proof to support this naked opinion. AIG and Stand have not even shown that their own members or customers would benefit from their declining block rate proposal. Stand has *no* Tennessee customers, and Stand's witness refused to testify about how rate changes would benefit any potential customers.[46] AIG's witness, Mr. Novak, admitted that he had not examined the gas

[42] Bertotti Rebuttal (10/17/07) at 2.
[43] Compare Current Tariff Rate ($0.1851) with Settlement Agreement Exhibit D Rate ($0.2049) with Novak Supplemental Rebuttal Exhibit Schedule 1 Step 1 Rate ($0.2370).
[44] Schedule 230 customers actually see a decrease in their volumetric rate of 10.58% under the terms of the Settlement Agreement.
[45] Bertotti Rebuttal (10/17/07) at 6.
[46] October 8 Transcript Vol. I B at 12.

usage patterns of AIG's own members, and could not say which of them, if any, would benefit from his declining block rate proposal.[47]

CONCLUSION

In their Settlement Agreement, Atmos and the Consumer Advocate allocated the general rate increase equally across all customer classes. This is the most equitable approach, and the one that was adopted and set-forth in Exhibit D to the Settlement Agreement. Atmos submits that this is the right approach, and that the Authority should reject AIG's request to take from small consumers and give to large ones. The Authority should reject the request for declining block rates, and should adopt the rate design set forth in Exhibit D to the Settlement Agreement.

The new rates should be made effective for bills rendered on and after November 19, 2007.

Respectfully submitted,

NEAL & HARWELL, PLC

By: _____

William T. Ramsey, #9245
A. Scott Ross, #15634
2000 One Nashville Place
150 Fourth Avenue, North
Nashville, TN 37219-2498
(615) 244-1713 – Telephone
(615) 726-0573 – Facsimile

Counsel for Atmos Energy Corporation

[47] October 8 Transcript Vol. I B at 36.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served, via the method(s) indicated below, on the following counsel of record, this the 29 day October 2007.

( ) Hand
(✓) Mail
( ) Fax
( ) Fed. Ex.
(✓) E-Mail

Vance Broemel, Esq.
Office of the Attorney General
Consumer Advocate and Protection Division
P. O. Box 20207
Nashville, TN 37202

( ) Hand
(✓) Mail
( ) Fax
( ) Fed. Ex.
(✓) E-Mail

Henry M. Walker, Esq.
Boult, Cummings, Conners, & Berry, PLC
1600 Division Street, Suite 700
P. O. Box 340025
Nashville, TN 37203

( ) Hand
(✓) Mail
( ) Fax
( ) Fed. Ex.
(✓) E-Mail

D. Billye Sanders, Esq.
Waller Lansden Dortch & Davis, LLP
Nashville City Center
511 Union Street, Suite 2700
Nashville, TN 37219-8966

( ) Hand
(✓) Mail
( ) Fax
( ) Fed. Ex.
(✓) E-Mail

John M. Dosker, General Counsel
Stand Energy Corporation
1077 Celestial Street
Rockwood Building, Suite 110
Cincinnati, OH 45202-1629