

WALLER LANSDEN DORTCH & DAVIS, LLP

NASHVILLE CITY CENTER
511 UNION STREET, SUITE 2700
NASHVILLE, TENNESSEE 37219-8966

(615) 244-6380
FAX: (615) 244-6804
www.wallerlaw.com

1901 SIXTH AVENUE NORTH, SUITE 1400
BIRMINGHAM, ALABAMA 35203-2623
(205) 214-6380

520 SOUTH GRAND AVENUE, SUITE 800
LOS ANGELES, CALIFORNIA 90071
(213) 362-3680

filed electronically in docket office 10/29/2007

D. Billye Sanders
(615) 850-8951
billye.sanders@wallerlaw.com

October 29, 2007

VIA HAND DELIVERY

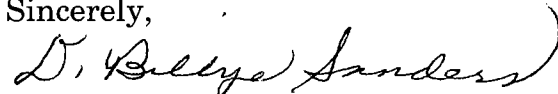
Eddie Roberson, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37219

Re: In Re: Petition of Atmos Energy Corporation for Approval of
Adjustments to its Rates and Revised Tariff
Docket No. 07-00105
Post Hearing Brief of Atmos Intervention Group and Stand Energy
Corporation

Dear Chairman Roberson:

Enclosed you will find the Post Hearing Brief of Atmos Intervention
Group and Stand Energy Corporation.

Sincerely,



D. Billye Sanders
Attorney for Stand Energy
Corporation

cc: John M. Dosker
Parties of Record

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

October 29, 2007

**IN RE: PETITION OF ATMOS ENERGY)
CORPORATION FOR APPROVAL OF)
ADJUSTMENT OF ITS RATES AND)
REVISED TARIFF**

Docket No. 07-00105

**JOINT POST HEARING BRIEF OF ATMOS INTERVENTION GROUP
AND STAND ENERGY CORPORATION**

The Atmos Intervention Group (“AIG”) and Stand Energy Corporation (“Stand Energy”) (collectively, the “Intervenors”) file this post-hearing brief in support of the rate design proposal recommended by AIG witness Hal Novak and Stand Energy witness John Dosker.

ISSUES

1. Whether the Tennessee Regulatory Authority (“TRA” or “Authority”) should adopt a meaningful declining block rate design for commercial and industrial customers as proposed by expert witness Hal Novak for Atmos Energy Corporation (“Atmos” or the “Company”) in this docket, which was filed in the record as Novak Supplemental Exhibit, Schedule 6 and attached hereto? (Yes)
2. Whether the TRA should order Atmos to file a class cost of service study with its next rate case? (Yes)

BACKGROUND

As the Tennessee Supreme Court explained in C.F. Industries v. Tenn. Public Service Commission, 599 S.W.2d 536, 542 (1980), “A fair rate of return to the regulated utility is one thing; the establishment of rates among various customer classes is quite another.” Unlike the

determination of a utility's annual revenue requirement, the process of designing rates to produce that revenue requirement is a discretionary function in which the agency is free to use its own "regulatory judgment and discretion." Id., at 543. The agency is not required to use a cost study and is not even bound by the parties' recommendations and evidence but, as the agency has sometimes done, may use its own expert judgment in designing rates in a manner not advocated by any party.

ARGUMENT

I. The TRA should require Atmos to implement a meaningful declining block rate structure for commercial and industrial customers that recognizes a very straight forward and well recognized principle: the more gas a customer uses, the less the cost per unit of serving that customer.¹ Volume discounts are a fact of life and recognized in the rates of virtually every utility in Tennessee. Atmos offers volume discounts in the majority of other states where the Company operates.² Atmos' rate structure in Tennessee was inherited from United Cities Gas when Atmos bought United Cities more than a decade ago. Those old tariffs have never been changed (in large part because Atmos never filed a rate case) and, as a result, Atmos never brought its Tennessee rate structure up-to-date.

The Company acknowledges that they are not opposed "in principle" to volume discounts.³ In fact, their current industrial tariffs contain three rate blocks, each with a declining

¹ Base rates that are being set in this case do not include the cost of gas. Base rates recover the cost of distribution of the gas.

² "Yes, the Company has declining block rates in over half the states in which it operates." Pat Childress Pre-filed Surrebuttal Testimony, page 3, line 1.

³ Pat Childress Testimony, Transcript, Vol. I A, page 44, line 18-21.

rate.⁴ Unfortunately, those rate blocks have not been changed in over a decade. The threshold for the third rate block is so high, that there are no customers who qualify for the third rate block and the Company witnesses did not know why that rate block was created in the first place.⁵ Similarly, the Company's commercial rates have two rate blocks, but the difference between the two is so slight that, in effect, all commercial customers pay the same, regardless of usage. No other major regulated gas company in Tennessee has that kind of flat-rated commercial tariff.⁶ No other gas company regulated by the TRA has failed to recognize that volume discounts more closely reflect the costs of providing service than flat rates.

Because Atmos itself offers volume discounts in a majority of the other states where it operates, the Company cannot seriously oppose the adoption of volume discounts in Tennessee. They say that they do not have time to re-design their rates and argue that it would somehow be unfair for smaller customers to pay more per unit of gas than larger customers. Neither point is valid. In any rate case, the TRA ultimately decides the issue of rate design and orders the utility to submit revised tariffs reflecting the agency's decision. Despite, the witnesses' statements that the Company would not have time to analyze customer volumes in time to design the rates proposed by the Intervenor, Mr. Bertotti was able to gather and analyze information about the volumes of Atmos customers for his surrebuttal testimony in less than 9 days (October 8th was

⁴ Under Atmos' current industrial tariff, inherited from United Cities, there are three rate blocks: (1) the first 20,000 Ccfs per month, (2) the next 48,000 and (3) over 500,000 Ccfs per month. There is no usage in the third block. The Intervenor has proposed four rate blocks: (1) the first 10,000 Ccfs, (2) the next 21,000, (3) the next 60,000 and (4) over 91,000 Ccfs per month. See Novak supplemental exhibit, Schedule 6. Both Nashville and Chattanooga also have four blocks for industrial customers. Id.

⁵ Pat Childress Testimony, Transcript, Vol. I A, page 55, line 6-44; Danny Bertotti Testimony, Transcript, Vol. I A, page 67, line 15-p. 68 line 8.

⁶ Chattanooga has four rate blocks for commercial customers. Novak supplemental exhibit, Schedule 5. The Intervenor propose three rate blocks for Atmos' commercial customers. Id.

the date of the initial hearing; the surrebuttal was filed on October 17th.). On numerous occasions, this agency and its predecessor, the Tennessee Public Service Commission, have ordered a new revenue requirement and a new rate design less than a week before the date that a utility planned to put its increased rates into effect. No cases were found where any gas company has claimed that it was unable to project the usage of its customer classes in order to design tariffs reflecting the agency's decision to allow it to collect higher rates from its customers.

As Mr. Novak testified on October 22, 2007, the Company has ample time to implement his suggested rate design.⁷ Mr. Novak has experience both at the TRA and in the gas industry designing gas rates.⁸ He knows what is required. A gas usage distribution analysis for the test period on commercial and industrial customers can be done in short order.⁹ In contrast, both the rate design witnesses from Atmos testified that the actual work of designing new rates would be done by others in the Company and that neither of them would actually participate in that work.¹⁰ Mr. Novak's testimony is more convincing.

Both Atmos witnesses also pointed out that offering volume discounts would benefit larger commercial customers at the expense of small ones.¹¹ However, neither witness denied

⁷ William Novak Testimony, Transcript Vol. II, page 10, line 12 - page 12 line 21.

⁸ William Novak Pre-filed Direct Testimony, page 1 lines 6-19.

⁹In explaining the source of the data used to come up with his rate design in the supplemental exhibit that was filed on Oct. 4, 2007 and what is needed from the Company in this case, Mr. Novak stated, "This is based on data the Company has readily available to it and was able to easily produce to us on a timely basis in the last rate case" William Novak Testimony, Transcript Vol. I B, page 22, lines 2-4; see also Vol. I B, page 21-23 lines 1-17.

¹⁰ Pat Childress Testimony, Transcript, Vol. I A, page 41, line 21-page 42, line 12; page 50, lines 1-18. Danny Bertotti Testimony, Transcript, Vol. I A, page 65, lines 15-20.

¹¹ Pat Childress Pre-filed Rebuttal Testimony, page 5, lines 28-29; Danny Bertotti Testimony, Transcript, Vol. I A, page 69, lines 11-16; Bertotti Pre-filed Surrebuttal, page 2, lines 5-6.

that it costs more to serve a smaller customer than a larger one.¹² The Atmos witnesses appear to recognize that volume discounts are consistent with cost-based rates. However, the Company simply refuses to put this principle into practice in Tennessee by moving its rates in the direction of costs and beginning to send accurate pricing signals to customers. Surprisingly, Atmos' surrebuttal testimony states that giving high volume commercial customers lower rates would send a wrong signal regarding consumption,¹³ when in fact, it is Atmos' proposal whereby large volume commercial customers provide subsidies to smaller commercial customers that sends the wrong signal and fails to recognize the decreasing incremental cost of providing distribution services.¹⁴ As a matter of policy, the TRA should make the recommended step toward cost-based rates.

II. The TRA should require Atmos to file a class cost of service study with its next rate case. A class cost of service study is an analysis of the cost associated with providing distribution service to each class of customers, i.e. residential, small commercial, large commercial and industrial customers. Such a study will provide important information to the TRA, the Company and its customers regarding the costs caused by the various classes of customers, and the extent to which one customer class is providing subsidies to others.

¹² Pat Childress Testimony, Transcript, Vol. I A, page 44, lines 6-21.

¹³ Pat Childress Pre-filed Surrebuttal Testimony

¹⁴ When asked if it is fair to charge small commercial customers more than large commercial customers, Mr. Novak replied: "Well, it goes back to who's causing the cost...as you use more volumes the cost to serve you goes down." William Novak Testimony, Vol. I B, page 25, lines 9-12. "To tell a large customer you are going to have to pay the same unit rate no matter how much gas you've burned if you're on a particular rate schedule as our smallest customer or the same for industrial, we just don't feel that's appropriate and not feasible in this age for gas utilities." Novak Testimony, Vol. I B, page 25, lines 3-18. "As we pointed out, as you use more gas, it costs less and less to serve you. Currently, the larger customers are required to subsidize the smaller customers. So we are trying to fix that here." Novak Testimony, Vol. II, page 8, lines 17-21. Mr. Novak further testifies that the Companies proposed rate structure has nothing to do with conservation and sending the correct signals to customers. Novak Testimony, Vol. II, page 9, line 14 – page 10, line 14.

AIG's expert witness made it clear that a class cost of service study is not required to implement the rate design recommended by AIG and Stand in this docket.¹⁵ It is important to clarify any confusion between a class cost of service study and an analysis of the distribution of volumes between the different classes of customers during the test period. An analysis of distribution of volumes between the customers determines or predicts, based upon past usage, what percentage of gas will be distributed to a particular class of customers in the test period. An analysis of the distribution of volumes between customers in the various rate schedules has to be done with any rate design that is adopted.

Atmos and/or its predecessor, United Cities Gas Company have not filed a class cost of service study in Tennessee for at least 26 years.¹⁶ The Company did not object to performing a class cost of service study, in fact the Company has filed such studies in other states, but Ms. Childers testified that Atmos has not been requested to perform a class cost of service study by the TRA.¹⁷ To insure that such a study is done in Tennessee, AIG and Stand request that the TRA order the Company to file a class cost of service study with its next rate case.¹⁸

CONCLUSION

There is no "correct" way to design rates. Mr. Novak and Mr. Dosker proposed one method of using declining block rates similar to the tariffs of Chattanooga Gas. The TRA may design another method. The Agency may order Atmos to adopt declining block rates immediately or it may order Atmos to move toward the use of volume discounts over a period of

¹⁵ William Novak Testimony, Vol. I B, page 19, line 19- page 20 line 22; page 21, lines 1-9; see also *CF Industries, Supra.*, at 543.

¹⁶ Pat Childress Testimony, Transcript, Vol. I A, page 39, lines 3-13.

¹⁷ Pat Childress Testimony, Transcript, Vol. I A, page 40, lines 2-10.

¹⁸ William Novak Pre-filed Direct Testimony, page 12 lines 3-12.

time. In any event, it is time for the Authority to require Atmos to update its tariffs for the first time since Atmos moved into Tennessee more than ten years ago. The customers of Atmos deserve the same volume discounts that the customers of Nashville Gas and Chattanooga Gas have been receiving for years.

Respectfully Submitted:

STAND ENERGY CORPORATION

By: *D. Billye Sanders*
D. Billye Sanders
Waller Lansden Dortch & Davis, LLP
511 Union Street, Ste. 2700
Nashville, TN 37219
PH: (615) 850-8951

ATMOS INTERVENTION GROUP

By: *Henry Walker by DBS with permission*
Henry Walker
Boult Cummings Conners & Berry, PLLC
1600 Division Street, Ste. 700
P.O. Box 340025
Nashville, TN 37203
PH: (615) 252-2363

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 29th day of October, 2007.

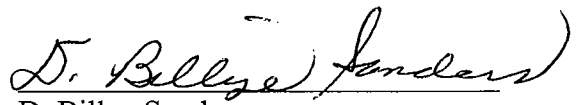
William T. Ramsey, Esq.
A. Scott Ross, Esq.
Neal & Harwell, PLC
2000 One Nashville Place
150 Fourth Avenue North
Nashville, TN 37219-2498

John Paris, President
Kentucky/Mid-States Division
Atmos Energy Corporation
2401 New Hartford Road
Owensboro, KY 42303

Douglas C. Walther
Associate General Counsel
Atmos Energy Corporation
Post Office Box 650205
Dallas, TX 75265-0205

Pat Childers
VP-Regulatory Affairs
Atmos/United Cities Gas Corp.
810 Crescent Centre Drive, Ste 600
Franklin, TN 37064-5393

Vance L. Broemel
Joe Shirley
Robert E. Cooper, Jr.
Office of the Attorney General
Consumer Advocate and Protection Division
PO Box 20207
Nashville, TN 37202


D. Billye Sanders

Atmos Intervention Group
Comparison of Monthly Usage Blocks for Industrial Customers

Schedule 6

	<u>Dkt</u>	<u>%</u>
Chattanooga Gas Company:		
Step 1 - First 1500 Dkt/Month	11,404,376	14.72%
Step 2 - Next 2500 Dkt/Month	15,566,488	20.09%
Step 3 - Next 11000 Dkt/Month	25,769,410	33.26%
Step 4 - Over 15000 Dkt/Month	24,744,556	31.93%
Total	<u>77,484,830</u>	<u>100.00%</u>

Rate Design Volumes Adopted by the TRA in Docket 06-00175.

	<u>Dkt</u>	<u>%</u>
Nashville Gas Company:		
Step 1 - First 1500 Dkt/Month	2,637,903	27.58%
Step 2 - Next 2500 Dkt/Month	1,791,305	18.73%
Step 3 - Next 5000 Dkt/Month	1,400,506	14.64%
Step 4 - Over 9000 Dkt/Month	3,736,442	39.06%
Total	<u>9,566,156</u>	<u>100.00%</u>

Rate Design Volumes Adopted by the TRA in Docket 03-00313.

Atmos Energy Corporation:

Current Tariff:

	<u>Ccf</u>	<u>%</u>
Step 1 - First 20000 Ccf/Month	18,632,993	32.10%
Step 2 - Next 480000 Ccf/Month	39,414,869	67.90%
Step 3 - Over 500000 Ccf/Month	0	0.00%
Total	<u>58,047,862</u>	<u>100.00%</u>



AIG/Stand Energy Proposed Tariff:

	<u>Ccf</u>	<u>%</u>
Step 1 - First 10000 Ccf/Month	9,682,383	16.68%
Step 2 - Next 21000 Ccf/Month	15,742,580	27.12%
Step 3 - Next 60000 Ccf/Month	21,982,725	37.87%
Step 4 - Over 91000 Ccf/Month	10,640,173	18.33%
Total	<u>58,047,861</u>	<u>100.00%</u>

Source: Schedule 4