

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

May 31, 2007

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

ORDER GRANTING PETITIONS TO INTERVENE,
PERMITTING ADDITIONAL DISCOVERY REQUESTS,
ESTABLISHING A PROCEDURAL SCHEDULE
AND SUSPENDING TARIFFS

This matter is before the Hearing Officer, upon filings by the parties, to consider petitions to intervene, to establish a procedural schedule and to resolve certain preliminary matters.

TRAVEL OF CASE

On May 4, 2007, Atmos Energy Corporation (“Atmos” or the “Company”) filed its *Petition* in which the Company seeks approval by the Tennessee Regulatory Authority (“Authority” or “TRA”) for “an adjustment of its rates and charges for natural gas service for the purpose of obtaining a general increase in its rates and for the Authority to place into effect revised tariffs.”¹ Specifically, the Company seeks to “achieve an overall rate of return of 8.84% and a return on equity of 11.75%” on a rate base of \$188,920,055.² According to Atmos, such a result would require an increase in revenues of \$11,055,188.³

At a regularly scheduled Authority Conference held on May 15, 2007, Chairman Sara Kyle, Director Eddie Roberson, and Director Pat Miller of the TRA, the panel assigned to this

¹ *Petition* at 1 (May 4, 2007).

² *Id.* at 3.

³ *Id.*

docket, voted unanimously to convene a contested case proceeding and to appoint Director Eddie Roberson as Hearing Officer for the purpose of hearing preliminary matters, setting a procedural schedule to completion and preparing the matter for a hearing before the panel. During the Authority Conference, the panel further advised the Hearing Officer to consider scheduling the hearing in this matter in early October 2007.

On May 11, 2007, the Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate") filed a *Petition to Intervene*. No objection or opposition to the *Petition to Intervene* was filed. On May 15, 2007, following the regularly scheduled Authority Conference, the Hearing Officer held a brief meeting with the parties. At this meeting, the Hearing Officer, without objection or opposition from the Company, verbally granted the Consumer Advocate's *Petition to Intervene* and scheduled a Status Conference on May 25, 2007.

A Notice of Status Conference was issued on May 15, 2007. The Notice stated that the establishment of a procedural schedule, pending petitions for intervention filed in the docket, if any, and other relevant matters that may arise, would be matters for discussion during the Status Conference.

STATUS CONFERENCE

The Status Conference was convened at approximately 9:00 a.m. on May 25, 2007. In attendance at the Status Conference, the following parties were represented:

Atmos Energy Corporation – **William T. Ramsey, Esq.** and **Scott Ross, Esq.**, Neal & Harwell, PLC, 2000 One Nashville Place, 150 Fourth Avenue North, Nashville, TN 37219, and via telephone, **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.** and **Timothy Phillips, Esq.**, Office of the Attorney General, 425 5th Ave. N, John Sevier Building, P.O. Box 20207, Nashville, TN 37202.

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

PETITIONS TO INTERVENE

The Consumer Advocate and the Atmos Intervention Group (“AIG”) filed petitions to intervene on May 11, 2007 and May 24, 2007, respectively. The Consumer Advocate seeks intervention, stating that it is authorized to intervene in proceedings to represent the interests of Tennessee consumers pursuant to Tenn. Code Ann. § 65-4-118.⁴ The Consumer Advocate asserts that an increase in customer rates may not be warranted or that the amount of the requested increase may be too high and may not be just and reasonable under the attendant circumstances.⁵ The Consumer Advocate states that it can work to adequately protect the interests of Tennessee consumers only by intervening and participating in this proceeding.⁶

In its petition, AIG asserts that it is an informal group of customers, consisting of the same members who intervened in Docket No. 05-00258, and who purchase natural gas and/or gas transportation services from the Atmos Energy Corporation.⁷ Additionally, AIG states, “the proceeding will address, among other things, the terms and conditions under which AIG members purchase natural gas or gas transportation services” and that the “granting [of] this petition will not impair the interest of justice or the orderly and prompt conduct of these proceedings.”⁸ No party or person filed an objection to or opposed the intervention requests of the Consumer Advocate and AIG.

⁴ *Petition to Intervene*, at 1 (May 11, 2007).

⁵ *Id.*

⁶ *Id.*

⁷ *Petition to Intervene of Atmos Intervention Group* (May 24, 2007).

⁸ *Id.* at 1.

Tenn. Code Ann. § 4-5-310(a) sets forth the following criteria for granting petitions to intervene:

(a) The administrative judge or hearing officer shall grant one (1) or more petitions for intervention if;

(1) The petition is submitted in writing to the administrative judge or hearing officer, with copies mailed to all parties named in the notice of the hearing, at least seven (7) days before the hearing;

(2) The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of the law; and

(3) The administrative judge or hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.

Under TRA Rule 1220-1-2-.06, any party opposing a motion in a contested case must file and serve a response to the motion within seven days of service of the motion.

During the Status Conference, and previously on May 15, 2007 as to the Consumer Advocate's request, the Hearing Officer found that the legal rights and interests of the Consumer Advocate and AIG may be determined in this proceeding and that the interventions will not impair the orderly and prompt conduct of these proceedings. For these reasons and applying the standards set forth in Tenn. Code Ann. §4-5-310(a), the Hearing Officer granted the petitions of the Consumer Advocate and AIG.

DISCOVERY MATTERS

During the Status Conference, the Consumer Advocate requested that it be permitted to propound more than forty questions in its discovery requests. TRA Rule 1220-1-2-.11(5)(a) provides:

No party shall serve on any other party more than forty (40) discovery requests including subparts without first having obtained leave of the Authority or a

Hearing Officer. Any motion seeking permission to serve more than forty (40) discovery requests shall set forth the additional requests. The motion shall be accompanied by a memorandum establishing good cause for the service of additional interrogatories or requests for production. If a party is served with more than forty (40) discovery requests without an order authorizing the same, such party need only respond to the first forty (40) requests.

The Consumer Advocate stated that there exists a need to propound additional discovery requests due to the inherent complexity of a rate case and the fact that Atmos is proposing new and potentially controversial changes. Counsel for the Company did not object to the Consumer Advocate's request to propound approximately 148 questions, and stated that Atmos would agree to the number of questions proposed by the Consumer Advocate so long as it was permitted sufficient time in which to respond. Subsequently, during a brief recess of the Status Conference, the parties were able to come to a mutual agreement on this issue.

Additionally on May 25, 2007, pursuant to TRA Rule 1220-1-2-.11(5)(a), the Consumer Advocate filed its *Motion for Leave to Serve Additional Discovery Requests* and a *Memorandum in Support of Leave to Serve Additional Discovery Requests* (together referred to herein as "*Motion for Leave to Serve Additional Discovery*") along with approximately 135 numbered discovery requests to be propounded on the Company. This Order encompasses both the agreement between the parties at the Status Conference on this issue and the Consumer Advocate's subsequent *Motion for Leave to Serve Additional Discovery* filed with the Authority. Accordingly, the Hearing Officer approves the parties' agreement allowing the Consumer Advocate to propound additional discovery and grants the Consumer Advocate's *Motion for Leave to Serve Additional Discovery*.

During the discussion pertaining to additional discovery, the Consumer Advocate represented that approximately twenty or so questions involved asset management and related issues. In response to the Hearing Officer's inquiry, the Consumer Advocate conceded that these

asset management issues may overlap or be identical to those previously raised and currently pending in Docket Nos. 05-00258 and 05-00253, and on which the Authority has heard oral argument and deliberation of the issues by the Panel is pending. The parties advised the Hearing Officer that they would attempt to reach agreement on the appropriate topics for inclusion in this docket. Accordingly, the Hearing Officer deferred a decision on this matter pending a report by the parties on their discussions.

PROCEDURAL SCHEDULE

In voting to convene a contested case proceeding, the panel assigned to this docket instructed the Hearing Officer to proceed to establish a procedural schedule which would contemplate a Hearing on the merits of the *Petition* during the first week of October 2007. During the Status Conference, both the Company and the Consumer Advocate presented proposed procedural schedules for the Hearing Officer's consideration. After discussion of the proposed schedules, the parties requested an opportunity to discuss the schedules in an attempt to reach an agreement between themselves. Accordingly, the Hearing Officer permitted a brief recess of the Status Conference.

Following the recess and upon reconvening the Status Conference, the parties presented the Hearing Officer with a jointly-proposed procedural schedule and asserted to the Hearing Officer that all parties were in agreement with the schedule and timelines set forth therein. Upon review and consideration of the jointly-proposed procedural schedule, the Hearing Officer finds that it sufficiently moves this docket toward deliberations on the issues referenced in the *Petition* and provides the parties with a reasonable and adequate amount of time to conduct discovery, prepare and submit pre-filed testimony and prepare for hearing.

Therefore, the Hearing Officer hereby adopts the parties' jointly-proposed procedural schedule, attached as **Exhibit A**, and establishes it as the Procedural Schedule in this docket. As with any schedule, the effectiveness of this Procedural Schedule is directly attributable to the extent of cooperation or delay on the part of the parties in meeting the individual benchmark dates.

PROTECTIVE ORDER

During the Status Conference on May 25, 2007, the parties advised the Hearing Officer that they would submit a proposed agreed protective order no later than June 7, 2007. Upon review and consideration of the parties' proposed agreed protective order, the Hearing Officer will enter a Protective Order separate from this Order.

SUSPENSION OF TARIFFS

Atmos' *Petition* requests an effective date of the tariffs to be November 1, 2007. However, the tariffs filed with Atmos' *Petition* on May 4, 2007 are marked with an effective date of June 4, 2007. Tenn. Code Ann. § 65-5-103 permits the Authority to suspend any increase, change, or alteration initially for a period of three months from the proposed effective date of the increase, change, or alteration. Nevertheless, during the Status Conference, the Company agreed to suspend its proposed tariffs until November 19, 2007 and stated that it will not place the tariffs into effect prior to November 19, 2007 even though this date goes beyond the six month period set forth in Tenn. Code Ann. §65-5-103.⁹ Therefore, the Hearing Officer hereby suspends the

⁹ Tenn. Code Ann. §65-5-103(b)(1) provides,

If the investigation has not been concluded and a final order made at the expiration of six (6) months from the date filed of any such increase, change or alteration, the utility may place the proposed increase, change or alteration, or any portion thereof, in effect at any time thereafter prior to the final authority decision thereon upon notifying the authority, in writing, of its intention to do so; provided that the authority may require the utility to file with the authority a bond in an amount equal to the proposed annual increase conditioned upon making any refund ordered by the authority as provided in subsection (b)(2).

effective dates of the tariffs filed with the *Petition* until November 19, 2007.

IT IS THEREFORE ORDERED THAT:


1. The Consumer Advocate and Protection Division, Office of the Attorney General, is hereby granted leave to intervene and receive copies of any notices, orders or other documents herein.

2. The Atmos Intervention Group is hereby granted leave to intervene and receive copies of any notices, orders or other documents herein.

3. The Consumer Advocate and Protection Division, Office of the Attorney General, is permitted to propound its initial discovery requests, which exceed the number prescribed in TRA Rule 1220-1-2-.11(5)(a), as agreed to by Atmos Energy Corporation, and the Consumer Advocate's *Motion for Leave to Serve Additional Discovery* is granted.

4. The Procedural Schedule, attached to this Order as **Exhibit A**, is hereby adopted and is in full force and effect.

5. The tariffs filed by Atmos Energy Corporation with its *Petition* are hereby suspended until **November 19, 2007**.



Director Eddie Roberson,
as Hearing Officer

***Atmos Energy Corporation for Approval
of Adjustment of Its Rates and Revised Tariff***

TRA DOCKET NO. 07-00105

PROCEDURAL SCHEDULE

May 25, 2007	Initial Status Conference
May 25, 2007	CAPD Discovery Requests Due ¹⁰
June 1, 2007	Company and Other Intervenors' Discovery Due
June 7, 2007	Agreed Protective Order Filed by Parties
June 15, 2007	STATUS CONFERENCE
July 6, 2007	Discovery Responses Due
July 11, 2007	STATUS CONFERENCE
August 21, 2007	Intervenors' Pre-Filed Testimony Due
September 21, 2007	Company's Pre-Filed Rebuttal Testimony Due
September 27, 2007	PRE-HEARING CONFERENCE
October 3-5, 2007	Hearing on the Merits (Subj. to Panel Approval)
October 19, 2007	Post-Hearing Briefs Due

EXHIBIT A

¹⁰ Any party may request permission of the Hearing Officer for additional discovery upon a showing of good cause.