

BEFORE THE TENNESSEE REGULATORY AUTHORITY AT

NASHVILLE, TENNESSEE

August 6, 2013

IN RE:

**DOCKET TO EVALUATE ATMOS ENERGY
CORPORATION'S GAS PURCHASES AND
RELATED SHARING INCENTIVES**

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**DOCKET NO.
07-00225**

ORDER APPROVING STIPULATION AND SETTLEMENT AGREEMENT

This matter came before Vice Chairman Herbert H. Hilliard, Director Kenneth C. Hill, and Director David F. Jones of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on June 17, 2013, for consideration of the *Stipulation and Settlement Agreement* ("*Settlement Agreement*") filed on May 7, 2013, by Atmos Energy Corporation ("Atmos" or the "Company") and the Consumer Advocate and Protection Division of the Office of Attorney General ("Consumer Advocate").

BACKGROUND

In TRA Docket No. 05-00253, the Authority's Audit Staff issued its compliance audit report on the 2004-2005 Actual Cost Adjustment filing of Atmos. The report included several recommendations related to asset management.¹ The panel assigned to that docket declined to approve the Audit Staff's recommendations, and instead directed Audit Staff and the Company to meet to discuss the effects of incorporating the asset management agreement into Atmos' Performance-Based Ratemaking Mechanism ("PBR").

¹ See *In re: Atmos Energy Corporation's Actual Cost Adjustment (ACA) for the Twelve Months Ended June 30, 2005*, Docket No. 05-00253, *Compliance Audit Report of Atmos Energy Corporation Actual Cost Adjustment*, pp. 14-16 (April 21, 2006).

TRA Docket No. 05-00258 was opened by the Authority upon the petition of the Consumer Advocate requesting an investigation into whether Atmos was over-earning in violation of state law.² During the discovery process, the Consumer Advocate asked questions concerning asset management and the PBR and possible imputation of earnings. Atmos objected, asserting that these topics were beyond the scope of the docket and would contradict the Authority's order in the audit docket. As a result, the panel bifurcated that docket and deferred the asset management issues to Phase II of the proceedings. Pursuant to the procedural schedule, the parties filed proposed issues for Phase II.

The parties were allowed to file briefs regarding the appropriate forum to address the Phase II issues. After reviewing the various options, the panel decided to close TRA Docket Nos. 05-00253 and 05-00258 and to open a new docket to address asset management issues common to both dockets. All parties to either of the previous dockets would be permitted to intervene automatically in the new docket.³

On September 26, 2007, TRA Docket No. 07-00225 was convened. A Pre-Hearing Conference was held on November 5, 2007 for the purpose of establishing a procedural schedule and addressing intervention requests. At the Conference, Atmos made an oral motion for an order allowing it to defer litigation costs associated with the docket for possible recovery from ratepayers

² See *In re: Petition of the Consumer Advocate to Open an Investigation to Determine Whether Atmos Energy Corp. Should Be Required by the Tennessee Regulatory Authority to Appear and Show Cause That Atmos Energy Corp. is Not Overearning in Violation of Tennessee Law and That It is Charging Rates That are Just and Reasonable*, Docket No. 05-00258, *Consumer Advocate's Petition to Open an Investigation to Determine Whether Atmos Energy Corp. Should Be Required by the TRA to Appear and Show Cause That Atmos Energy Corp. is Not Overearning in Violation of Tennessee Law and That It is Charging Rates That are Just and Reasonable* (September 16, 2005).

³ See *In re: Petition of the Consumer Advocate to Open an Investigation to Determine Whether Atmos Energy Corp. Should Be Required by the Tennessee Regulatory Authority to Appear and Show Cause That Atmos Energy Corp. is Not Overearning in Violation of Tennessee Law and That It is Charging Rates That are Just and Reasonable*, Docket No. 05-00258, *Order Closing Dockets and Moving Remaining Issues to a New Docket*, p. 8 (December 5, 2007).

at a later date. Concerned parties were directed to file briefs detailing any objections to the motion by November 19, 2007.⁴

A subsequent Status Conference was held on December 13, 2007 to finalize an issues list, rule on Atmos' oral motion to defer litigation costs and update the procedural schedule. The Hearing Officer determined that Atmos should be allowed to segregate and defer its legal costs, but emphasized that the determination to allow Atmos to recover these costs would be determined by the panel at a later date.⁵ A Hearing on the merits was tentatively set for August 2008.⁶

The term of Director Ron Jones, who had been acting as Hearing Officer, expired on June 30, 2008, and the panel appointed the General Counsel or his designee to act as the new Hearing Officer to continue to prepare the case for Hearing.⁷ On November 13, 2008, the Consumer Advocate, on behalf of all parties, filed a letter in the docket file requesting that the Hearing Officer stay the proceedings pending a decision in TRA Docket No. 07-00224, which, although pertaining directly to Chattanooga Gas Company ("CGC"), involved issues similar to the issues in this docket.⁸ The parties anticipated that the decisions reached in TRA Docket No. 07-00224 would affect the course of this docket and could possibly lead to a settlement.⁹ The Hearing Officer issued an Order on November 20, 2008, granting the request.¹⁰

The Authority's Order in TRA Docket No. 07-00224 was issued on September 23, 2009.¹¹ Status updates were filed in this Docket at the request of the Hearing Officer on December 15, 2010, August 19, 2011, June 20, 2012, September 28, 2012, February 7, 2013 and April 10, 2013,

⁴ *Order on November 5, 2007 Pre-Hearing Conference*, pp. 7-8 (November 8, 2007).

⁵ *Order on December 13, 2007 Status Conference*, p. 5 (December 21, 2007).

⁶ *Id.* at Attachment B, p. 1 of 1.

⁷ *Order Appointing a New Hearing Officer*, p. 1 (July 25, 2008).

⁸ *See In re: Docket to Evaluate Chattanooga Gas Company's Gas Purchases and Related Sharing Incentives*, Docket No. 07-00224.

⁹ Letter from Vance L. Broemel to Kelly Cashman-Grams, p. 1 (November 13, 2008).

¹⁰ *Order Staying Docket*, p. 1 (November 20, 2008).

¹¹ *See In re: Docket to Evaluate Chattanooga Gas Company's Gas Purchases and Related Sharing Incentives*, Docket No. 07-00224, *Order* (September 23, 2009).

indicating that the parties had been meeting in an attempt to reach a settlement. The proposed *Settlement Agreement* was filed in this docket on May 7, 2013.

STIPULATION AND SETTLEMENT AGREEMENT

On May 7, 2013, Atmos and the Consumer Advocate filed the proposed *Settlement Agreement* for approval by the Authority. The *Settlement Agreement* is attached as Exhibit 1, and its terms and conditions are specified in their entirety therein.

Briefly, in the proposed *Settlement Agreement* the parties state that they acknowledge the Authority's decisions in Docket No. 07-00224 for CGC and Docket No. 05-00165 for Piedmont Natural Gas Company, Inc.,¹² and their negotiation discussions have centered on the Authority's prior decision in Docket No. 07-00224.¹³ The terms of the proposed *Settlement Agreement* include: (1) Atmos will undergo a comprehensive review by an independent consultant of the transactions and activities related to asset management beginning in the autumn of 2014;¹⁴ (2) the need for subsequent reviews will be determined by the Authority;¹⁵ (3) the independent consultant will issue a written report of its findings and conclusions by July 1, 2015, but those findings and/or recommendations will not be binding on any party or the Authority;¹⁶ (4) Atmos will recover its deferred legal expenses in the amount of \$88,122 from the ratepayers' share of asset management fees;¹⁷ (5) the *Settlement Agreement* will not have any precedential effect in any future proceedings before the Authority;¹⁸ and (6) if the Authority does not accept the proposed *Settlement Agreement*

¹² See *In re: Review of Nashville Gas Company's IPA Relating to Asset Management Fees*, Docket No. 05-00165, *Order Approving Settlement* (December 14, 2007).

¹³ *Stipulation and Settlement Agreement*, p. 2 (May 7, 2013).

¹⁴ *Id.* at 3.

¹⁵ *Id.* at 4.

¹⁶ *Id.* at 5.

¹⁷ *Id.*

¹⁸ *Id.* at 6.

in whole, without modification, the parties retain the right to terminate the *Settlement Agreement* and continue litigation of the matter.¹⁹

FINDINGS AND CONCLUSIONS

During the regularly scheduled Authority Conference held on June 17, 2013, the Consumer Advocate presented a brief summary of the *Settlement Agreement* on behalf of the parties. Both Atmos and the Consumer Advocate indicated all parties were in agreement with the terms of the Settlement Agreement.²⁰ After due consideration of the terms of the proposed *Settlement Agreement*, the panel found that the proposed *Settlement Agreement* was reasonable and should be approved. Therefore, the panel voted unanimously to approve the *Stipulation and Settlement Agreement* and to direct Atmos to file a tariff with the Authority within thirty days outlining the agreed-upon terms governing the comprehensive review of the transactions and activities related to Asset Management by an independent consultant.

IT IS THEREFORE ORDERED THAT:

1. The *Stipulation and Settlement Agreement*, which was entered into between Atmos Energy Corporation and the Consumer Advocate and Protection Division, a copy of which is attached to this Order as Exhibit 1, is approved and adopted, and incorporated into this Order as if fully rewritten herein.
2. Atmos Energy Corporation is directed to file a tariff with the Authority within thirty days outlining the agreed upon terms governing the comprehensive review of the transactions and activities related to Asset Management by an independent consultant.
3. Any party aggrieved by the decision of the Tennessee Regulatory Authority in this matter may file a Petition for Reconsideration within fifteen (15) days of the date of this Order.

¹⁹ *Id.* at 7.

²⁰ See Transcript of Proceedings, p. 70 (June 17, 2013). Atmos Energy Marketing, LLC filed a letter in the docket on June 5, 2013 stating it did not object to the *Settlement Agreement*. The Atmos Intervention Group was not a party to the *Settlement Agreement*, but did not file an objection.

4. Any party aggrieved by the decision in this matter has the right to judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days of the date of this Order.

Vice Chairman Herbert H. Hilliard, Director Kenneth C. Hill, and Director David F. Jones concur.

ATTEST:



Earl R. Taylor, Executive Director

EXHIBIT 1

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

IN RE:

**DOCKET TO EVALUATE ATMOS
ENERGY CORPORATION'S GAS
PURCHASES AND RELATED
SHARING INCENTIVES**

DOCKET NO. 07-00225

STIPULATION AND SETTLEMENT AGREEMENT

For the sole purpose of settling this case, Tennessee Regulatory Authority ("TRA" or "Authority") Docket No. 07-00225, Robert E. Cooper, Jr., the Tennessee Attorney General and Reporter, through the Consumer Advocate and Protection Division ("Consumer Advocate") and Atmos Energy Corporation ("Atmos" or "the Company") respectfully submit this Stipulation and Settlement Agreement ("Settlement Agreement"). Subject to Authority approval, the Consumer Advocate and Atmos (collectively, the "Parties") agree to the following:

BACKGROUND

1. Atmos is incorporated under the laws of the State of Texas and the Commonwealth of Virginia and is engaged in the business of transporting, distributing and selling natural gas in Bedford, Blount, Carter, Greene, Hamblen, Maury, Moore, Obion, Rutherford, Sullivan and Williamson Counties within the State of Tennessee, with its principal Tennessee office and place of business located at 810 Crescent Centre Drive, Suite 600, Franklin, Tennessee 37067-6226.

2. The Tennessee public utility operations of Atmos are subject to the jurisdiction of the TRA, pursuant to Chapter 4 of Title 65 of the Tennessee Code Annotated.

3. Docket No. 07-00225 was convened as a "Phase II" proceeding by the Authority based on the recommendations related to asset management which were made by the TRA's Staff audit of the ACA filing of Atmos in Docket No. 05-00253 and issues raised by the Consumer Advocate and the Atmos Intervention Group in Docket No. 05-00258.¹

4. The Parties to this Settlement Agreement acknowledge the Authority's decision in Docket No. 07-00224, a Phase II proceeding for Chattanooga Gas Company, and Docket No. 05-00165, a Phase II proceeding for Piedmont Natural Gas Company. Accordingly, the Parties have focused settlement discussions on the Authority's decision in Docket No. 07-00224.

5. The Parties to this Settlement Agreement have engaged in substantial discovery. The Company also has provided information informally in response to questions from the Consumer Advocate and its witnesses, and has responded to additional discovery requests from TRA Staff. The Parties have undertaken extensive discussions and "give and take" negotiations to resolve all known disputed issues in this case. As a result of the information obtained during discovery and the discussions between the Parties, and for the purpose of avoiding further litigation and resolving this matter upon acceptable terms, the Parties have reached this Settlement Agreement. In furtherance of this Settlement Agreement, the Parties have agreed to the settlement terms set forth below.

SETTLEMENT

6. Based upon the exchange of information and discussions described above, and in order to resolve this case through settlement and avoid the need for further litigation and expenses for all Parties and without waiving any positions asserted in this Docket, the Parties have agreed to the following terms.

¹ Docket 05-00253; 05-00258, *Order Closing Dockets and Moving Remaining Issues to a New Docket*, December 5, 2007, pp. 1-4.

7. A comprehensive review of the transactions and activities related to Asset Management shall be conducted by an independent consultant. The initial review shall be started in the autumn of 2014 and any subsequent reviews determined to be necessary and appropriate by the TRA at the conclusion of the initial review shall be conducted at the order of the Authority.

8. The TRA Staff, the Consumer Advocate, and Atmos shall make an effort to maintain a list of no less than five (5) mutually agreeable independent consultants or consulting firms qualified to conduct the aforementioned initial review. Any dispute concerning whether an independent consultant shall be added to the list shall be resolved by the TRA Staff, after consultation with Atmos and the Consumer Advocate.

9. For the initial review, the TRA Staff shall select three (3) prospective independent consultants from that list. Each such consultant shall possess the experience and expertise necessary to conduct the initial review. The TRA Staff shall provide the list of prospective independent consultants to Atmos and the Consumer Advocate via electronic mail. Atmos and the Consumer Advocate shall each have the right, but not the obligation, to eliminate one (1) of the prospective independent consultants from the list by identifying the consultant to be eliminated in writing to the TRA Staff within thirty (30) days from the date the list is e-mailed. The TRA Staff shall select the independent consultant from those remaining on the list after Atmos's and the Consumer Advocate's rights to eliminate have expired.

10. The cost of the review shall be reasonable in relation to its scope. Any and all relationships between the independent consultant and Atmos, the TRA Staff and/or the Consumer Advocate shall be fully disclosed and the independent consultant shall have had no prior relationship with either Atmos, the TRA Staff, or the Consumer Advocate for at least the

preceding five (5) years unless Atmos, the TRA Staff and Consumer Advocate agree in writing to waive this requirement. The TRA Staff, the Consumer Advocate and Atmos may consult amongst themselves during the selection process; provided, however, that all such communications between the Parties shall be disclosed to each Party not involved in such communication in advance so that each Party may participate fully in the selection process.

11. If, after the initial review, the TRA determines that there are material changes in the variables of the Company, such as customer mix and usage patterns, it may at that time order a subsequent review. If a subsequent review is ordered, the scope of the subsequent review will be established at the time that it is ordered, and the TRA will determine at that time whether an outside consultant is needed, provided that if a consultant is to be employed, the consultant will be selected in the manner set-forth above. The Consumer Advocate will be permitted to participate in the process and review the report of any subsequent review.

12. The scope of the initial review and any subsequent reviews ordered by the TRA may include all transactions and activities related either directly or indirectly to Asset Management, including, but not limited to, the following categories of transactions and activities: (a) natural gas procurement; (b) capacity management; (c) storage; (d) hedging; (e) reserve margins; and (f) off-system sales. The scope of each review shall include a review of each of the foregoing matters, as well as, such additional matters as may be reasonably identified by Atmos, the TRA Staff, or the Consumer Advocate relative to Asset Management.

13. Atmos, the TRA Staff, or the Consumer Advocate may present documents and information to the independent consultant for the independent consultant's review (and subsequent reviews) and consideration. Copies of all such documents and information shall be presented simultaneously to the independent consultant and all other Parties.

14. The independent consultant shall complete and issue a written report of its findings and conclusions by July 1 of 2015. The report deadline may be waived by the written consent of the TRA Staff, Atmos, and the Consumer Advocate. The independent consultant shall make findings of fact, as well as identify and describe areas of concern and improvement, if any, that in the consultant's opinion warrant further consideration. Atmos, the TRA Staff, and/or the Consumer Advocate may cite the independent consultant's report to the Authority in support of recommendations or proposed changes, and the TRA Staff, Atmos, or the Consumer Advocate may support or oppose such recommendations or proposed changes.

15. The independent consultant's findings and/or recommendations shall not be binding on any Party or on the Authority, and in any proceeding in which the consultant's findings or recommendations may be considered, the Authority shall give all issues *de novo* consideration. Any changes to the Asset Management Agreement, the bidding process, the assets under management, or otherwise, whether adopted by agreement or pursuant to a ruling of the Authority, shall be implemented on a prospective basis only, and following normal expiration of any affected agreements.

16. The reasonable and prudent cost of the independent consultant's review shall be paid initially by Atmos and recovered through the ACA account. The TRA Staff may continue its annual audits of the performance-based ratemaking ("PBR") and the Annual Cost Adjustment ("ACA") account, and the review shall not in any way limit the scope of such annual audits.

17. Separately, Atmos shall recover legal expenses in the amount of \$88,122 associated with its Phase II dockets from the consumers' share of asset management fees, including any up-front fees that may be obtained, in a manner consistent with the recovery of similar fees by Piedmont and CGC. Atmos provided a detail of its attorneys' fees, which the

Consumer Advocate reviewed. A copy of the attorneys' fees is attached as Exhibit A as confidential pursuant to the Protective Order in this Docket.

18. All pre-filed testimony and exhibits of the Parties are introduced into evidence without objection, and the Parties waive their right to cross-examine all witnesses with respect to all such pre-filed testimony. If, however, questions should be asked by any person, including a Director, who is not a party to this Settlement Agreement, the Parties may present testimony and exhibits to respond to such questions and may cross-examine any witnesses with respect to such testimony and exhibits.

19. The Parties agree to support this Settlement Agreement before the Authority and in any hearing, proposed order, or brief conducted or filed in this proceeding; provided, however, that the settlement of any issue provided for herein shall not be cited as precedent by any of the Parties hereto in any unrelated or separate proceeding or docket before the Authority. The provisions of this Settlement Agreement are agreements reached in compromise and solely for the purpose of settlement of this matter. They do not necessarily reflect the positions asserted by any party, and no party to this Settlement Agreement waives the right to assert any position in any future proceeding, in this or any other jurisdiction.

20. This Settlement Agreement shall not have any precedential effect in any future proceeding or be binding on any of the Parties in this or any other jurisdiction except to the limited extent necessary to implement the provisions hereof.

21. The Parties agree and request the Authority to order that the settlement of any issue pursuant to this Settlement Agreement shall not be cited by the Parties or any other entity as binding precedent in any other proceeding before the Authority or any court, state or federal.

22. The terms of the Settlement Agreement have resulted from extensive negotiations between the signatories and the terms hereof are interdependent. The Parties jointly recommend that the Authority issue an order adopting this Settlement Agreement in its entirety without modification.

23. If the Authority does not accept the Settlement Agreement in whole, the Parties are not bound by any position or term set forth in this Settlement Agreement. In the event that the Authority does not approve this Settlement Agreement in its entirety, each of the signatories to this Settlement Agreement will retain the right to terminate this Settlement Agreement. In the event of such action by the Authority, within twenty (20) business days, any of the signatories to this Settlement Agreement would be entitled to give notice of exercising its right to terminate this Settlement Agreement; provided, however, that the signatories to this Settlement Agreement could, by unanimous consent, elect to modify this Settlement Agreement to address any modification required by, or issues raised by, the Authority. Should this Settlement Agreement terminate, it would be considered void and have no binding precedential effect, and the signatories to this Settlement Agreement would reserve their rights to fully participate in all relevant proceedings notwithstanding their agreement to the terms of this Settlement Agreement.

24. By agreeing to this Settlement Agreement, no Party waives any right to continue litigating this matter should the Settlement Agreement be rejected by the Authority in whole or in part.

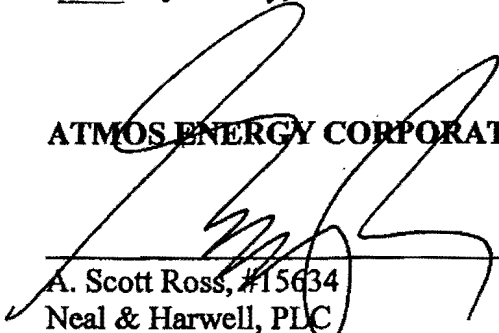
25. No provision of this Settlement Agreement shall be deemed an admission of any Party. No provision of this Settlement Agreement shall be deemed a waiver of any position asserted by a Party in this Docket.

26. Approval by the Authority of the provisions of this Settlement Agreement shall not be construed as a waiver of the Authority's decisions in any matter, proceeding or policy decision or constitute an endorsement by the Authority.

27. This Settlement Agreement shall be governed by and construed under the law of the State of Tennessee and any applicable federal law, Tennessee choice of law rules notwithstanding.

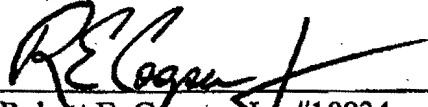
The foregoing is agreed and stipulated to this 7th day of May, 2013.

ATMOS ENERGY CORPORATION

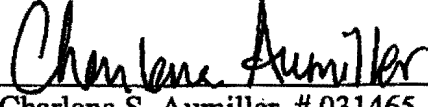


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