IN THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE

IN RE:	)	
DOCKET TO EVALUATE ATMOS ENERGY CORPORATION'S GAS PURCHASES AND RELATED SHARING INCENTIVES	)	**DOCKET NO. 07-00225**

STATEMENT OF CLAIMS OF THE CONSUMER ADVOCATE AND PROTECTION DIVISION

Robert E. Cooper, Jr., the Attorney General and Reporter for the State of Tennessee, by and through the Consumer Advocate and Protection Division of the Office of Attorney General ("Consumer Advocate"), pursuant to the Hearing Officer's November 8, 2007 Order on November 5, 2007 Pre-Hearing Conference ("Order"), hereby submits its statement of claims in the above-styled matter.

The Hearing Officer stated that the requirement to identify claims in this docket "is qualified, however, by recognition that the parties may not be able to fully describe their claims as to each issue without engaging in discovery." Order at 6. The Consumer Advocate does not waive its right to amend this statement of claims in the future. Additionally, this docket was established by the Authority "to evaluate Atmos Energy Corporation's gas purchases and related sharing incentives." The Audit Staff of the Authority has raised concerns in this regard. *See* pages 14-16 of the Compliance Audit Report of Atmos Energy Corporation issued by the Audit Staff of the Authority on April 21, 2006, in TRA Docket No. 05-00253. The Consumer Advocate does not believe it necessary to identify claims with regard to asset management issues or concerns already identified by the Authority.

I. IDENTIFICATION OF CLAIMS.

The Consumer Advocate identifies two claims with regard to the issues to be decided in this docket (these claims are subject to amendment as warranted by developments in the case):

1. The Consumer Advocate alleges that the customers of Atmos Energy Corporation ("Atmos") are not receiving fair compensation for the sale, lease, release, or assignment of gas supply and storage assets (also known as "system capacity") by Atmos to its affiliated asset manager, Atmos Energy Marketing, LLC ("AEM"), thereby depriving customers of money that should be used to lower their natural gas utility bills:

A. Through Atmos's incentive plan arrangement, Atmos's customers in Tennessee receive in the range of $270,000 to $500,000 per year for AEM's management or use of Atmos's gas supply and storage assets. This amount of compensation is unjust and unfair and is unreasonably low in comparison to the assets' fair market value and in comparison to the compensation received by the customers of other natural gas utilities pursuant to incentive plan arrangements regulated by the Authority.

B. Given the circumstances described in 1.A., above, it is more likely than not that Atmos has violated the Standards of Conduct that govern its business relationship with AEM (copy attached), including, but not necessarily limited to, Standards of Conduct Nos. 4, 5, 9, and 10.

C. Atmos and AEM share a common ownership. Through this affiliate relationship, Atmos has an economic incentive to maximize its own profits at the expense of others, including ratepayers. Atmos's gas supply and storage assets have value and Atmos turns over the management or use of these valuable assets to AEM in exchange for an asset management fee that is shared with Atmos's ratepayers. In order to maximize profits, Atmos has an economic incentive

to minimize the amount of the asset management fee shared with ratepayers for its affiliate's use of Atmos's assets. Without the Authority's regulatory oversight of this affiliate relationship, "it would be a simple matter, through the device of holding companies, spinoffs, or other corporate arrangements, to place the cream of a utility market in the hands of a parent or an affiliate, and to strip the marketing area of a regulated subsidiary of its most profitable customers." *Tennessee Pub. Serv. Comm'n v. Nashville Gas Co.*, 551 S.W.2d 315, 321 (Tenn. 1977).

2. The Consumer Advocate alleges that Atmos is more likely than not subscribing to too much system capacity relative to its jurisdictional requirements, thereby needlessly inflating customers' natural gas utility bills by charging them for more system capacity than is required to adequately serve them:

A. Atmos's natural gas deliveries from interstate pipelines do not reconcile to Atmos's natural gas sales in its tariffed areas. For Atmos's tariffed areas 2 and 4, the annual total natural gas sales (including transportation) is about 40% less than the annual natural gas deliveries from the East Tennessee Pipeline to Atmos in the same two areas.

B. Atmos's purchases of or subscriptions to system capacity are more likely than not exceeding the amount of system capacity that is needed to adequately serve the ratepayers' demand for natural gas utilities services.

C. Atmos and AEM share a common ownership. Through this affiliate relationship, Atmos has an economic incentive to maximize its own profits at the expense of others, including ratepayers. Because Atmos's system capacity consists of valuable assets that are turned over to its affiliate for profit-making activities and because the costs associated with this system capacity are paid for by ratepayers, Atmos has an economic incentive to maximize its profits by

purchasing or subscribing to more system capacity than is needed to adequately serve ratepayers. Without the Authority's regulatory oversight of this affiliate relationship, "it would be a simple matter, through the device of holding companies, spinoffs, or other corporate arrangements, to place the cream of a utility market in the hands of a parent or an affiliate, and to strip the marketing area of a regulated subsidiary of its most profitable customers." *Tennessee Pub. Serv. Comm'n v. Nashville Gas Co.*, 551 S.W.2d 315, 321 (Tenn. 1977).

II. IDENTIFICATION OF ISSUES.

In paragraph 26 of the Settlement Agreement Between Atmos Energy Corporation and the Consumer Advocate and Protection Division filed on September 26, 2007, in TRA Docket No. 07-00105, which was approved by the Authority on October 8, 2007, Atmos and the Consumer Advocate agreed to litigate in this docket the issue regarding the matching of natural gas sales with natural gas deliveries raised in the pre-filed Testimony of Steve Brown on De-Coupling Issues filed on August 20, 2007, in TRA Docket No. 07-00105. This issue relates to the claim identified in 2.A., above. At this time, the Consumer Advocate contends that the issues set forth in Attachment A of the Hearing Officer's Order are adequate otherwise.

III. REQUESTS FOR RELIEF.

The Consumer Advocate's claims may be redressed by the Authority's granting of such relief as may be warranted in the circumstances. In particular, the Consumer Advocate requests the following remedies (subject to amendment as warranted by developments in the case):

1. Repeal or termination of Atmos's performance incentive plan.

2. Cancellation of the asset management contract or arrangement existing between Atmos and AEM.

3. Proscription of the use of an asset manager that has an affiliate relationship with Atmos, including AEM.

4. Implementation of new or revised standards of conduct governing the relationship between Atmos and AEM (or other affiliates), including, but not confined to, standards of conduct establishing minimum standards for accounting, record-keeping, reporting, enforcement, audit, and third-party rights with respect to affiliate transactions involving regulated assets, goods, or services.

5. Enforcement of new, revised, or existing standards of conduct through an audit of Atmos and AEM's affiliate transactions by the Authority staff or an independent auditor reporting to the Authority.

6. Establishment of requests for proposals ("RFP") or bid procedures, including third-party bid procedures, for selection of asset managers, with special focus on procedures for evaluation of bids and/or selection of any entity affiliated with Atmos, including AEM.

7. Imputation of profits to Atmos's regulated operations that are generated from AEM's or any other affiliate's management or use of Atmos's assets.

8. Revision of the performance incentive plan to include the consumers' sharing of profits generated by AEM or any other asset manager related to the management or use of Atmos's assets.

9. Revision of the performance incentive plan to include increased sharing for consumers of a market-based value for Atmos's assets that are sold, leased, released, or assigned to AEM or any other asset manager.

10. Establishment of procedures to be used to evaluate Atmos's gas supply plan, which may include independent review of the plan by a consultant reporting to the Authority.

11. Assessment of civil penalties and/or customer refunds for any established violations of law, company tariffs, or Authority orders, rules, or standards of conduct.

12. Performance of periodic independent reviews of Atmos's performance incentive plan by a consultant reporting to the Authority.

13. Such other relief as may be deemed appropriate in the circumstances or permitted by state law.

IV. THERE ARE NO THRESHOLD OR LEGAL ISSUES THAT ARE DISPOSITIVE OF THIS CASE.

The Consumer Advocate does not believe that there are any threshold or legal issues identified so far that would affect the progression of this docket to a resolution on its merits. The two claims alleged by the Consumer Advocate -- that ratepayers are not receiving fair or reasonable compensation for the sale, lease, release, or assignment of Atmos's gas supply and storage assets and that Atmos has subscribed to too much system capacity in light of its jurisdictional requirements and ratepayers' needs -- are claims that have not been decided previously by the Authority and that will require a factual inquiry to resolve. The Consumer Advocate's claims, therefore, are not subject to dismissal as a matter of law. *See Office of the Atty. Gen. v. Tennessee Reg. Auth.*, 2005 WL 3193684, *9-*11 (Tenn. Ct. App., Nov. 29, 2005); *Office of the Atty. Gen., Consumer Adv. & Prot. Div. v. Tennessee Reg. Auth.*, 2007 WL 2316458, *3-*5 (Tenn. Ct. App. Aug. 13, 2007).

Moreover, the issues and subissues related to the Consumer Advocate's claims (subject to amendment), as identified herein and in Attachment A to the Hearing Officer's Order, will generally require factual determinations to answer. While the issue concerning the Authority's authority to impute to Atmos all or a portion of the profits AEM generates through its management or use of

Atmos's assets may, at first glance, appear to be a threshold or legal issue, it is not. This issue is not dispositive of this case because it relates to only one of several potential remedies that could redress the Consumer Advocate's claims. Although the broader question of the Authority's jurisdiction over AEM's management or use of Atmos's assets has not been raised, the Authority's jurisdiction in this regard is well-settled law. *See Tennessee Pub. Serv. Comm'n v. Nashville Gas Co.*, 551 S.W.2d 315, 318-322 (Tenn. 1977); *BellSouth Adver. & Publ'g Co. v. Tennessee Reg. Auth.*, 79 S.W.3d 506, 515-516 (Tenn. 2002).

V. ATMOS'S REQUEST FOR A DEFERRAL ORDER IS PREMATURE.

Atmos seeks a deferral order allowing it to capitalize the costs associated with litigating this docket. Atmos claims that such an order is required by paragraph 9 of Financial Accounting Standard ("FAS") No. 71 before it may properly defer these litigation costs in its accounts. Atmos's request for a deferral order is premature.

The Consumer Advocate has no objection to Atmos's tracking and accumulating its litigation costs for this case, nor does the Consumer Advocate object to including as an issue in this docket the question of whether such litigation costs should be totally or partially recovered from ratepayers. However, the requested deferral order is not needed to accomplish either of these things.

Paragraph 9 of FAS No. 71, which is quoted on page 8 of the Hearing Officer's Order, provides that costs of a public utility may be capitalized <u>if it is probable</u> that an amount at least equal to the capitalized costs will be recovered through regulated rates. Paragraph 9 further provides that the rate actions of a regulator may provide the reasonable assurance needed for the utility to record the deferred-costs asset under FAS No. 71. At this point in the proceedings, however, the Authority has made no determination as to whether Atmos will be allowed to recover the litigation costs from

ratepayers. Accordingly, paragraph 9 of FAS No. 71 does not require the entry of a deferral order at this time.[1] If the Authority later determines that Atmos's costs of litigating this case should be totally or partially recovered from ratepayers, entry of a deferral order at that time may be appropriate.[2]

RESPECTFULLY SUBMITTED,

ROBERT E. COOPER, JR., B.P.R. #10934
Attorney General and Reporter
State of Tennessee

VANCE L. BROEMEL, B.P.R. #11421
Senior Counsel

JOE SHIRLEY, B.P.R. #22287
Assistant Attorney General
Office of the Attorney General
Consumer Advocate and Protection Division
P.O. Box 20207
Nashville, Tennessee 37202
(615) 741-3549

Dated: November 19, 2007

[1] Indeed, since there has been no determination about Atmos's recovery of litigation costs from ratepayers, it would be improper for Atmos to book a deferred-costs asset under FAS No. 71.

[2] If the Hearing Officer determines to enter a deferral order before it is decided whether Atmos will be allowed to recover the litigation costs from ratepayers, the Consumer Advocate would request the Hearing Officer to state explicitly in the deferral order that issuance of the order is not a pronouncement on whether the costs will be recovered from ratepayers in the future and that such decision is an issue for the hearing on the merits, notwithstanding paragraph 9 of FAS No. 71.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via first-class U.S. Mail, postage prepaid, or electronic mail upon:

Patricia Childers
Vice President, Rates & Regulatory Affairs
Mid-States Division
Atmos Energy Corporation
810 Crescent Centre Drive, Suite 600
Franklin, Tennessee 37067-6226
pat.childers@atmosenergy.com

William T. Ramsey
A. Scott Ross
Neal & Harwell PLC
One Nashville Place, Suite 2000
150 Fourth Avenue North
Nashville, Tennessee 37219
ramseywt@nealharwell.com
sross@nealharwell.com

Douglas C. Walther
Associate General Counsel
Atmos Energy Corporation
5430 LBJ Freeway, Suite 1800
Dallas, Texas 75240
douglas.walther@atmosenergy.com

Melvin J. Malone
Miller & Martin PLLC
1200 One Nashville Place
150 Fourth Avenue North
Nashville, Tennessee 37219
mmalone@millermartin.com

D. Billye Sanders
Waller, Lansden, Dortch & Davis LLP
511 Union Street, Suite 2700
P.O. Box 198966
Nashville, Tennessee 37219-8966
billye.sanders@wallerlaw.com

Henry M. Walker
Boult, Cummings, Conners & Berry PLC
1600 Division Street, Suite 700
P.O. Box 340025
Nashville, Tennessee 37203
hwalker@boultcummings.com

R. Dale Grimes
David R. Esquivel
Bass, Berry & Sims PLC
AmSouth Center
315 Deaderick Street, Suite 2700
Nashville, Tennessee 37238-3001
dgrimes@bassberry.com
desquivel@bassberry.com

This the 19th day of November, 2007.

Vance L. Broemel
Senior Counsel

#112575

ATTACHMENT I

TENNESSEE GUIDELINES FOR UNITED CITIES GAS COMPANY'S AFFILIATE TRANSACTIONS

The following guidelines present the minimum conditions deemed necessary to ensure that affiliate transactions between United Cities Gas Company (hereafter "United Cities" or "Company") and its affiliate(s) do not result in a competitive advantage over others providing similar services. The effective date of these guidelines is April 1, 1999, and said guidelines will remain in effect as long as United Cities is operating under a performance based ratemaking plan. We note that these guidelines may fail to anticipate certain specific methods by which such advantages may be conferred by the Company on its marketing affiliates. All parties should be aware that to the extent such instances arise in the future, they will be judged according to this stated intent. This Agreement has three parts: Definitions, Standard of Conduct and Complaint procedures.

Definitions

Terms used in these guidelines have the following meanings:

1. Affiliate, when used in reference to any person in this standard, means another person who controls, is controlled by, or is under common control with, the first person.

2. Control (including the terms "controlling", "controlled by", and "under common control with"), as used in this standard, includes, but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of a company. Under all circumstances, beneficial ownership of more than ten percent (10%) of voting securities or partnership interest of an entity shall be deemed to confer control for purposes of these guidelines of conduct.

3. Marketing, as used in this standard, means selling or brokering natural gas to any person or entity, including the Company, by a seller that is not a local distribution company.

Standards of Conduct

The Company must conduct its business to conform to the following standards:

1. If there is discretion in the application of tariff provisions, then the Company must apply such provisions relating to any service being offered in a consistent manner to all similarly situated entities.

2. The Company must strictly enforce a tariff provision for which there is no discretion in the application of the provision.

3. The Company must process all similar requests for services in the same manner and within the same period of time.

4. The Company may not give its marketing affiliate preference over nonaffiliated companies in natural gas supply procurement activities.

5. The Company may not give its marketing affiliate preference over nonaffiliated companies in its upstream capacity release activities.

6. The Company may not disclose to its marketing affiliate any information that the local distribution company receives from a non-affiliated marketer, unless the prior written consent of the parties to which the information relates has been voluntarily given.

7. To the extent the Company provides information related to its natural gas supply activities and upstream capacity release activities, it must do so contemporaneously to all nonaffiliated marketers, that have submitted a written request for such information to the Company.

8. To the extent the Company provides information related to natural gas services being offered to a marketing affiliate, it must do so contemporaneously to all non-affiliated marketers, that have submitted a written request for such information to the Company.

9. In transactions that involve either the purchase or receipt of information, assets, goods or services by the Company from an affiliated entity, the Company shall document both the fair market price of such information, assets, goods, and services and the fully distributed cost to the Company to produce the information, assets, goods or services for itself.

10. When the Company purchases information, assets, goods or services from an affiliated entity, the Company shall either obtain competitive bids for such information, assets, goods or services or demonstrate why competitive bids were neither necessary nor appropriate.

11. To the maximum extent practicable, the Company's operating employees and the operating employees of its marketing affiliate must function independently of each other. For the purposes of these guidelines, operating employees are those who are in any way involved in identifying and contracting with customers, locating gas supplies, making any and all arrangements with intervening pipelines and in any way managing or facilitating those contracted services.

12. The Company must maintain its books of accounts and records separately from those of its affiliate.

13. If the Company offers a discount to an affiliated marketer, it must make a comparable offer contemporaneously available to all similarly situated non-affiliated marketers.

14. The Company may not condition or tie its agreement to release its dedicated, stored, inventoried or optioned gas or supply contracts or upstream transportation and storage contracts to an agreement with a producer, customer, end-user or shipper relating to any service by its marketing affiliate, any services offered by the Company on behalf of its marketing affiliate, or any services in which its marketing affiliate is involved.

15. Prearranged, non-posted, capacity release transactions may not be entered into with any affiliate of the Company in any two consecutive thirty-day periods.

16. The Company must maintain a written log of tariff provision waivers which it grants. It must provide the log to any person requesting it within 24 hours of request. Any waivers must be granted in the same manner to the same or similar situated persons.

17. The Company shall maintain sufficiently detailed records that compliance with these guidelines can be verified at any time.

Complaints

Any party may file a complaint relating to violations of these guidelines.

1. Any customer, marketer, or other interested third-party may file a complaint with the Tennessee Regulatory Authority ("TRA" or "Authority") relating to alleged violations of the affiliate standards set forth in these guidelines. At or before the time of filing, the complainant shall serve a copy of the complaint on the Company.

2. Within ten (10) days of service of the complaint upon the Company, the Company shall file a written response to the complaint with the TRA.

3. The TRA may hold hearings on any complaint filed or may take such other action (as it may deem appropriate), including requesting further information from the parties or dismissing the complaint.

4. After notice and opportunity for a hearing, should the Authority find that the Company has violated the standards contained in these guidelines, the TRA may impose any penalty or remedy provided for by law.