

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

July 9, 2008

IN RE:

PETITION OF ATMOS ENERGY CORPORATION FOR
APPROVAL OF THE CONTRACT(S) REGARDING GAS
COMMODITY REQUIREMENTS, ETC.

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DOCKET NO.
08-00024

ORDER APPROVING CONTRACT REGARDING GAS COMMODITY REQUIREMENTS
AND MANAGEMENT OF TRANSPORTATION/STORAGE CONTRACTS

This matter came before Chairman Eddie Roberson, Director Tre Hargett and Director Ron 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 23, 2008, for consideration of Atmos Energy Corporation's *Motion for Approval of Contract Regarding Gas Commodity Requirements and Management of Transportation/Storage Contracts* filed on March 20, 2008.

BACKGROUND

On September 15, 2005, the TRA opened Docket No. 05-00253 upon the submission of the 2004-2005 Actual Cost Adjustment ("ACA") filing by Atmos Energy Corporation ("Atmos" or "AEC"). On April 21, 2006, an ACA Compliance Audit Report ("Audit Report") of Atmos for the twelve months ending June 30, 2005 was filed by Authority Audit Staff. At the May 15, 2006 Authority Conference, the panel assigned to that docket voted to adopt certain findings and recommendations in the Audit Report and directed Atmos to file all future proposed asset management agreements or renewals of current agreements for pre-approval by the Authority. The panel also directed the Audit Staff to meet with Atmos to discuss and resolve issues involving the selection of an asset manager and the effect of such on Atmos' performance-based

ratemaking (“PBR”) mechanism. Discussions between Atmos and Audit Staff were delayed due to contested proceedings in another docket. In the absence of such discussions, Atmos proceeded on April 5, 2007 to file a request to amend its PBR tariff to include requests for proposal (“RFP”) procedures for the selection of an asset manager. On June 25, 2007, the Authority approved Atmos’ tariff based on the fact that the RFP procedures were essentially the same as those that were approved for Chattanooga Gas Company and given the time frame in which Atmos seeks to issue its RFP.¹

This docket was opened on February 7, 2008, upon the filing of *Atmos Energy Corporation’s Preliminary Filing of Request for Proposals in Expectation that Atmos Will Seek Approval of Any Resulting Contract Once Bidding Process is Complete* (“*Preliminary Filing*”). In the *Preliminary Filing*, Atmos stated that it had issued RFPs to a number of companies on January 29, 2008 seeking “firm gas commodity requirements and management of transportation/storage contracts serving its Tennessee and Virginia areas.”² Atmos also stated that it would provide the RFP to any company requesting a copy of the RFP. The *Preliminary Filing* included a copy of the RFP and described how Atmos would go about publicizing its RFP.

On February 15, 2008, Stand Energy Corporation filed a *Petition to Intervene* (“*Petition*”) and *Motion to Stay* (“*Motion to Stay*”) in this docket. As grounds for its intervention request, Stand Energy stated in its *Petition* that it was a potential respondent to Atmos’ RFP and therefore had an interest in this docket in which the TRA would approve or deny the award of the contract. In its *Motion to Stay*, Stand Energy asked the Authority to stay Atmos’ RFP process

¹ Atmos Energy Corporation’s Annual Cost Adjustment (ACA) for the Twelve Months Ended June 30, 2005, TRA Docket No. 05-00253, *Order Approving Tariff*, p. 2 (December 6, 2007).

² *Atmos Energy Corporation’s Preliminary Filing Request for Proposals in Expectation that Atmos Will Seek Approval of Any Resulting Contract Once Bidding Process is Complete* (“*Preliminary Filing*”), p. 1 (February 7, 2008).

and this docket until the conclusion of Docket No. 07-00225,³ a docket in which Authority is examining Atmos' asset management arrangements.⁴

At the February 25, 2008 Authority Conference, the voting panel assigned to this docket convened a contested case and appointed General Counsel or his designee as Hearing Officer to handle any preliminary matters prior to the Hearing, including establishing an issues list, setting a procedural schedule and entering a protective order. Petitions to intervene were filed by the Atmos Intervention Group ("AIG") and the Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate") on February 25, 2008 and February 27, 2008, respectively.

On February 26, 2008, Atmos responded to Stand Energy's *Petition and Motion to Stay*. On February 29, 2008, the Hearing Officer entered an *Order Denying Motion to Stay*. In that Order, the Hearing Officer found that the RFP procedures used by Atmos in soliciting bids for an Asset Management Agreement ("AMA") were approved by the Authority in Docket No. 05-00253. Those RFP procedures became effective through Atmos' revised tariff filing on June 25, 2007. Further, the Hearing Officer noted that this docket, No. 08-00024, was opened on February 7, 2008 when Atmos filed its RFP and related documents in advance of submitting a proposed AMA for consideration by the Authority. The Hearing Officer concluded that the purpose of Docket No. 08-00024 is not for the Authority to evaluate Atmos' RFP, but for the Authority to evaluate whether Atmos complied with the RFP procedures in its tariff and determine whether to approve or deny the proposed AMA.

On March 12, 2008, Stand Energy filed a Notice of Withdrawal of its petition to intervene. On March 20, 2008, the Hearing Officer issued an Order granting the petitions to

³ TRA Docket No. 07-00225, In Re: Docket to Evaluate Atmos Energy Corporation's Gas Purchases and Related Sharing Incentives.

⁴ Stand Energy also argued that a stay of proceedings should be ordered because the Federal Energy Regulatory Commission ("FERC") has opened a rulemaking proceeding in which the FERC is considering changes to rules relating to asset managers.

intervene filed by AIG and the Consumer Advocate and set a Status Conference for March 28, 2008. The Hearing Officer made revisions to a proposed protective order submitted by Atmos and entered the Protective Order in this docket on March 26, 2008.

On March 20, 2008, Atmos filed its *Motion for Approval of Contract Regarding Gas Commodity Requirements and Management of Transportation/Storage Contracts*, which initiated the review process. Atmos provided its AMA as an exhibit to the *Motion*. Initially, Atmos filed both its *Motion* and exhibits, including the AMA under seal. Later, Atmos filed a public version of the *Motion* but the exhibits thereto remained under the protective order entered in this docket.

During the Status Conference held on March 28, 2008, the issues to be addressed by the TRA were discussed. Atmos argued that the sole issue to be decided by the TRA is whether Atmos complied with the provisions of its tariff as those provisions relate to the RFP process and the issuance of the AMA. The Consumer Advocate described two categories of issues that should be considered in this docket. One set of issues would address the RFP process and the awarding of the AMA and would include a review of the terms and conditions of the contract to determine whether there are provisions which could cause harm to consumers or others. The Consumer Advocate also raised the issue of public disclosure of information and documentation filed in this docket under seal by Atmos. The Consumer Advocate characterized the other category of issues as issues relating to the appropriate sizing and valuation of Atmos' gas supply assets and the appropriate sharing of the value of those assets with consumers. The Consumer Advocate agreed that these issues could be addressed in Docket No. 07-00225.

On April 18, 2008, the Hearing Officer issued the *Order Establishing Issues and Procedural Schedule*, which reflected the agreements of the parties. Upon consideration of the filings by the parties and the agreements they had reached on some matters, the Hearing Officer narrowed the issues to be addressed in the instant docket to the three described below.

1. Whether Atmos has complied with its Tariff requirements in bidding and awarding of the contract for gas commodity requirements and management of transportation storage contracts submitted for approval of the Tennessee Regulatory Authority?
2. Whether the Asset Management and Agency Agreement submitted for approval of the Tennessee Regulatory Authority should be approved for the benefit of Atmos' customers?
3. Whether it is proper for Atmos to designate certain filings in this docket as confidential and therefore under the Protective Order?⁵

In an attempt to expedite the proceedings in this docket, the parties agreed to file briefs in lieu of pre-filed and live testimony.⁶ Initial briefs on the issues were filed on April 24, 2008, with reply briefs being filed on April 30, 2008. Oral arguments were held before the panel during the May 5, 2008 Authority Conference.

POSITION OF THE PARTIES

The Consumer Advocate took no position on issues #1 and #2; however, the Consumer Advocate stated that it found nothing to indicate improprieties in the RFP process. Although the Consumer Advocate expressed concerns over whether the structure of the asset management agreement represents the optimal relationship, the Consumer Advocate stated that the issue of a sharing versus flat fee arrangement in the AMA can be dealt with more appropriately in Docket No. 07-00225.⁷ AIG joined in the Consumer Advocate's initial filing and filed a reply brief on the issue of public disclosure of the terms of the AMA.

⁵ *Order Establishing Issues And Procedural Schedule*, Exhibit A, (April 18, 2008). The Hearing Officer further determined that issues concerning valuation of gas supply assets and consumer benefits that should flow from those assets would not be addressed in this docket because of judicial and administrative economy. The Hearing Officer specifically recognized that the Consumer Advocate was not waiving these issues by not asserting them and could reasonably expect to have these issues addressed in Docket No. 07-00225.

⁶ *Order Establishing Issues And Procedural Schedule*, p. 5, (April 18, 2008).

⁷ *Consumer Advocate's Brief*, pp. 1-2.

Issue #1 - Tariff Requirements

Atmos states that it has complied with each of the seven tariff criteria governing the RFP procedures for selection of an asset manager. The criteria can be divided into two general categories: those related to the RFP process and those related to the evaluation of the bids.

RFP Process

Atmos' tariff requires that AMAs be placed out for bid using an RFP. The RFP must be written, define the Company's assets to be managed, detail the Company's minimum service requirements, describe the content requirements of the bid proposals, include procedures for submission and evaluation of the bid proposals, and be open for a minimum period of thirty days. The Company is required to send the RFP to potential asset managers.⁸ On January 29, 2008, Atmos issued an RFP meeting these criteria to thirty-seven companies.⁹ Atmos is also required to publish the RFP in trade journals as reasonably available.¹⁰ On February 6, 2008 and February 12, 2008, the RFP was published in Platt's Gas Daily, resulting in inquiries from twenty-five additional companies.¹¹

Atmos' tariff requires that all bids be submitted in writing prior to the deadline and allows Atmos to solicit follow-up bids in a non-discriminatory manner. All bids received were in writing prior to the deadline. Atmos asked clarifying questions of the bidders but did not solicit follow-up bids.¹² The incumbent provider was not provided the opportunity to match any bid proposals.¹³

⁸ Atmos Energy Corporation, Tariff No. 1, 2nd Revised Sheet Nos. 45.3 and 45.4.

⁹ *Memorandum In Support Of Atmos Energy's Motion For Approval Of Contract Regarding Gas Commodity Requirements And Management Of Transportation/Storage Contracts*, p. 7 (April 24, 2008).

¹⁰ Atmos Energy Corporation, Tariff No. 1, 2nd Revised Sheet Nos. 45.3 and 45.4.

¹¹ *Memorandum In Support Of Atmos Energy's Motion For Approval Of Contract Regarding Gas Commodity Requirements And Management Of Transportation/Storage Contracts*, p. 7 (April 24, 2008).

¹² *Memorandum In Support Of Atmos Energy's Motion For Approval Of Contract Regarding Gas Commodity Requirements And Management Of Transportation/Storage Contracts*, p. 10 (April 24, 2008).

¹³ *Memorandum In Support Of Atmos Energy's Motion For Approval Of Contract Regarding Gas Commodity Requirements And Management Of Transportation/Storage Contracts*, p. 12 (April 24, 2008).

Bid Evaluation

Atmos received four bids¹⁴ which, according to Atmos' tariff, must be evaluated on the following criteria: "(a) the total value of the bid proposal; (b) the bidder's ability to perform the RFP requirements; (c) the bidder's asset management qualifications and experience; and (d) the bidder's financial stability and strength."¹⁵ Atmos' tariff also requires that the asset manager maintain documents and records of all transactions that utilize the Company's gas supply assets and allow the Company and the TRA Staff to review and examine those documents.¹⁶ The proposed AMA contains language similar to tariff language establishing this requirement.

Atmos states that it placed an emphasis on the value of the bid since each bidder has substantial qualifications and experience and possesses the requisite financial stability and strength. Atmos provided a link to the annual reports of the bidders' parent companies.¹⁷ Atmos submitted extensive analysis of the bids with its *Motion for Approval of Contract Regarding Gas Commodity Requirements and Management of Transportation/Storage Contracts* and in response to Staff data requests.

Issue # 2 - Consumer Benefit

Atmos asserted that it awarded the contract to the bidder who submitted the bid with highest economic value for Tennessee consumers. Atmos provided a detailed analysis of the economic terms of each of the four bids that were submitted. Ultimately, Atmos determined that Atmos Energy Marketing had submitted the lowest cost bid.¹⁸

¹⁴ Atmos received bids from NJR Energy ("NJR"), PPL Energy Plus, Sequent Energy Management, and Atmos Energy Marketing, LLC ("AEM"). *Memorandum In Support Of Atmos Energy's Motion For Approval Of Contract Regarding Gas Commodity Requirements And Management Of Transportation/Storage Contracts*, p. 7 (April 24, 2008).

¹⁵ Atmos Energy Corporation, Tariff No. 1, 2nd Revised Sheet Nos. 45.3 and 45.4.

¹⁶ Atmos Energy Corporation, Tariff No. 1, 2nd Revised Sheet Nos. 45.3 and 45.4.

¹⁷ *Memorandum In Support Of Atmos Energy's Motion For Approval Of Contract Regarding Gas Commodity Requirements And Management Of Transportation/Storage Contracts*, p. 11 (April 24, 2008).

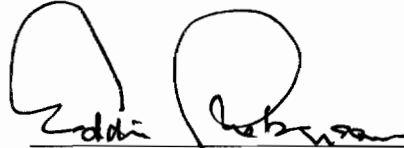
¹⁸ *Id.*, p. 13.

FINDINGS AND CONCLUSIONS

Based upon the argument of counsel and the entire record, the panel found that Atmos had complied with the Tariff requirements in bidding and awarding the AMA. The panel further found that based on the detailed bid evaluation provided by the Company that the AMA benefits customers. Based on these findings, the panel voted unanimously to approve the contract regarding the Company's gas commodity requirements and management of its transportation and storage contracts. Regarding the issue that the parties briefed concerning the confidentiality of the contract, the panel voted to defer deliberations on that issue until the next Authority Conference on July 14, 2008.

IT IS THEREFORE ORDERED THAT:

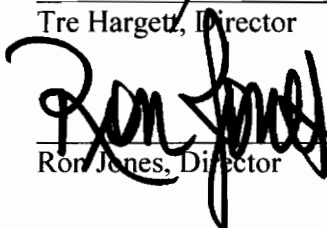
1. The *Motion for Approval of Contract Regarding Gas Commodity Requirements and Management of Transportation/Storage Contracts* filed by Atmos Energy Corporation Gas on March 20, 2008 are approved.
2. Deliberations on the issue of the confidentiality of the approved contract are deferred until the July 14, 2008 Authority Conference.



Eddie Roberson, Chairman



Tre Hargett, Director



Ron Jones, Director

6-30-08