BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE: REQUEST OF ATMOS ENERGY CORPORATION FOR APPROVAL OF CONTRACT(S) REGARDING GAS COMMODITY REQUIREMENTS AND MANAGEMENT OF TRANSPORTATION AND STORAGE CONTRACTS	))))))	**TRA Docket No. 08-00024**

ATMOS ENERGY CORPORATION'S RESPONSE TO STAND ENERGY CORPORATION'S MOTION TO INTERVENE AND MOTION TO STAY

Comes now Atmos Energy Corporation ("AEC") and files this its Response in opposition to the Motion to Intervene and Motion to Stay (collectively, the "Motion") filed herein by Stand Energy Corporation ("Stand") and, in support, respectfully states as follows:

1. On December 6, 2007, the Tennessee Regulatory Authority ("TRA") entered an order in TRA Docket No. 05-00253 approving AEC's proposed tariff amendment to incorporate the implementation of request for proposal (RFP) procedures for the selection of an asset manager. The TRA had previously voted unanimously to approve the tariff proposed by AEC given that the RFP procedures outlined in the tariff are the same as those approved for Chattanooga Gas Company. AEC's revised tariff sheets incorporating the approved RFP procedures were filed effective November 29, 2007.

2. On January 29, 2008, AEC issued a request for proposals for gas commodity supply and asset management for the period of April 1, 2008 through March 31, 2011 with respect to AEC's distribution systems in Tennessee and Virginia (the

"Current RFP"). AEC's current asset management agreement with Atmos Energy Marketing, LLC ("AEM") expires on March 31, 2008. Although not required by the terms of its tariff or any rule of the TRA, AEC, at the request of TRA Staff, filed the RFP with the TRA on February 7, 2008, which is attached to AEC's *Preliminary Filing of Requests for Proposals in Expectation that Atmos will Seek Approval of any Resulting Contract Once Bidding Process is Complete.*

3. Stand subsequently filed two motions that are now before the TRA in this docket, although AEC has requested no form of action or relief by the TRA as of the date hereof with respect to the Current RFP. Stand's first motion is a request for permission to intervene in this docket predicated upon Stand's contention that the management and use of AEC's assets and its gas purchasing practices affect the competitive environment in Tennessee, and that any determination upon the Current RFP will affect Stand's legal rights, duties, privileges, immunities or other legal rights. Stand's second motion is a request that the TRA stay the entire RFP process pending the outcome of other proceedings pending before the TRA or the Federal Energy Regulatory Commission ("FERC").

4. At the outset, AEC strongly objects to Stand's attempted intervention in this docket as well as its attempts to disrupt an RFP process <u>that has already been approved by the TRA</u>. Stand was on AEC's initial list of Current RFP package recipients[1] and is being afforded the exact same opportunity as every other Current RFP recipient to submit a bid under the exact same circumstances and with the exact same publicly available information about AEC, the assets proposed for management, and the

[1] Stand acknowledges in its Motion to Stay that it received the Current RFP on January 30, 2008, which Stand contends was issued the first week of February. AEC actually issued the Current RFP on January 29, 2008.

state of the interstate capacity and supply markets as every other recipient of the Current RFP. Notwithstanding the complete parity in which Stand finds itself with respect to the Current RFP, Stand is not satisfied. Instead, it seeks to disrupt AEC's ability to obtain commodity supply and asset management bids, apparently in order to reduce competition in the marketplace in which Stand offers its services - the provision of gas marketing services to customers that receive transportation service from AEC.[2] Stand suggests that perhaps the current agreement with AEM could continue on a month-to-month basis. However, AEM has advised AEC that it does not desire to continue with the current agreement on such a basis and AEC is already under a requirement by the Virginia State Corporation Commission to end the current agreement by March 31, 2008. Stand also overlooks the fact that the Current RFP includes both commodity supply and asset management and that, under AEC's current asset management agreement with AEM, AEM is not the commodity supplier that AEC depends upon for its primary system requirements. In short, Stand would seek to have the TRA order a non-jurisdictional entity (AEM) to engage in a contractual relationship against its will and to provide services of a quantitatively different nature than those currently being provided under the existing contract. Clearly, this is not a viable "solution" to the harm that would result from a stay of the Current RFP.

5. In support of its request to stay the Current RFP, Stand states this will allow the parties (including Stand) in TRA Docket No. 07-00225 (the "Asset

[2] AEC's transportation customers do not buy their gas from AEC, but instead purchase those supplies from a marketer or other supplier. Additionally, AEC's current transportation tariff, Rate Schedule 260, specifically provides that transportation customers are responsible for arranging for their own transportation on the interstate pipeline upstream of AEC's city gate. As a result, these customers do not pay PGA rates that include either commodity or demand. Accordingly, the Current RFP does not affect or involve transportation customers.

Management Docket") an opportunity to provide their recommendations to the TRA regarding the relationship between AEC and its asset manager and could affect the framework of the arrangement with a third-party asset manager as well. However, in the Asset Management Docket, Director Ron Jones, who is the presiding hearing officer in that docket, recently entered an order in which he stated: "...the intervention of Stand, while welcome, is not necessary to the resolution of this docket."[3] Stand once again overstates its role and importance. The TRA is perfectly capable of evaluating the Current RFP and any resulting contract and, in fact, the Company is required by the terms of its tariff to seek the TRA's approval. While Stand may be a successful natural gas marketer, it is <u>not</u> an advisor to the TRA nor does it have the authority or expertise to instruct the Company how to structure RFPs or acquire gas commodity for its utility operations. In connection with the Current RFP, the only obligation, if any, that AEC has to prospective bidders such as Stand, AEM, or any other marketer is to provide them with an opportunity to submit a bid through a competitive process that has been approved by AEC's regulator. Accordingly, Stand's intervention or participation herein is not necessary to the resolution of this docket.

6. Furthermore, from a practical perspective, allowing potential bidders, most of whom of necessity will not be the winning bidder, to intervene in the docket seeking approval of the winning bid will set bad precedent. For example, what access would an intervening competitor such as Stand be given to the confidential sealed bids submitted by each of the bidding parties under a promise of confidentiality by AEC? Such bids contain information that the bidding parties consider to be confidential, and which undoubtedly would not have been submitted if it were to be thrown open to

[3] Order on Protective Order Disputes (Feb. 14, 2008), p. 14.

competitors. Should each of the bidding parties nonetheless be permitted to see all of the other bids simply by filing a petition to intervene? What meaningful purpose would be served by allowing such interventions in a proceeding of this type?

7. Stand also suggests that the Current RFP be stayed pending the outcome of a rulemaking by the FERC on asset management arrangements. Although AEC is a participant in that FERC docket individually and as a member of the American Gas Association, it does not know when any final rules will be announced by FERC regarding asset management. In fact, the current docket to which Stand refers actually has its genesis in other dockets before FERC that began over a year ago in FERC Docket Nos. RM06-21-00 and RM07-4-000. Specifically, the FERC issued a request for comments in January 2007 concerning whether changes in any of FERC's capacity release policies were needed. Those two dockets ultimately culminated in the current FERC Docket[4] wherein FERC issued a Notice of Proposed Rulemaking ("NOPR") to address asset management agreements involving the release of interstate pipeline capacity. Specifically, FERC proposes to lift the maximum rate ceiling on capacity release transactions with a term of one year or less and to exempt all prearranged capacity releases associated with asset management agreements from its prohibition against tying and from the bidding requirements through the interstate pipeline's electronic bulletin board.[5] In the NOPR, FERC expressly recognized the benefits of asset management agreements (referred to as AMAs) that include both capacity release and supply and that such transactions should be facilitated when it stated:

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[4] *Promotion of a More Efficient Capacity Release Market,* 121 FERC ¶ 61,170 (Nov. 15, 2007).
[5] NOPR at 71.

The Commission finds that AMAs provide significant benefits to many participants in the natural gas and electric marketplaces and to the secondary natural gas market itself. The American Gas Association (AGA), for example, notes that AMAs are an important mechanism used by LDCs to enhance their participation in the secondary market, and states that the growth and development of AMAs may represent the largest change since the Commission's market review in the Order No. 637 proceeding. AMAs allow LDCs to increase the utilization of facilities and lower gas costs. They also provide the needed flexibility to customize arrangements to meet unique customer needs. One important benefit of AMAs is that they allow for the maximization of the value of capacity though the synergy of interstate capacity and natural gas as a commodity. As expressed by AGA:

> *[AMAs] are widely utilized and provide considerable benefits, i.e. lower gas supply costs generated from offsets to pipeline capacity costs and gas supply arrangements more carefully tailored to the specific requirements of the market. These benefits are generated by assembling innovative arrangements in which the unbundled components – capacity, gas supply and other services – are combined in a manner such that the total value created by the arrangement exceeds the value of the individual parts.*

AMAs are also beneficial because they provide a mechanism for capacity holders to use third party experts to manage their gas supply arrangements, an opportunity the LDCs did not have prior to Order No. 636. The time, expense and expertise involved with managing gas supply arrangements is considerable and thus many capacity holders, and LDCs in particular, have come to rely on more sophisticated marketers to take on their requirements. This results in benefits to the LDCs by allowing an entity with more expertise to manage their gas supply.

The ability of LDCs to use AMAs as a means of relieving the burdens of administering their capacity or supply needs on a daily basis also works to the benefit of the entire market because that burden may at times result in LDCs not releasing unused capacity.

AMAs also provide LDCs and their customers a mechanism for offsetting their upstream transportation costs. AMAs often allow an LDC to reduce reservation costs that it normally passes on to its customers. They also foster market efficiency by allowing the releasing shipper to reduce its costs to the extent that its capacity is used to facilitate a third party sale that also benefits that third party (who gets a bundled product at a price acceptable to it).

LDCs are not the only entities that benefit from AMAs. Many other large gas purchasers, including electric generators and industrial users may desire to enter into such arrangements. For example, AMAs increase the ability of wholesale electric generators to provide customer benefits through superior management of fuel supply risk, allow generators to focus their attention on the electric market, and eliminate administrative burdens relating to multiple suppliers, overheads, capital requirements and the risks associated with marketing excess gas and pipeline imbalances.

More importantly, AMAs provide broad benefits to the marketplace in general. They bring diversity to the mix of capacity holders and customers that are served through the capacity release program, thus enhancing liquidity and diversity for natural gas products and services. AMAs result in an overall increase in the use of interstate pipeline capacity, as well as facilitating the use of capacity by *different types of customers in addition to LDCs. AMAs benefit the natural gas market by creating efficiencies as a result of more load responsive gas supply, and an increased utilization of transportation capacity.*

AMAs further bring benefits to consumers, mostly through reductions in consumer costs. AMAs provide in general for lower gas supply costs, resulting in ultimate savings for end use customers. The overall market benefits described above also inure to consumers. These benefits have been recognized by state commissions and the National Regulatory Research Institute.

The Interstate Natural Gas Association of America (INGAA) agrees with the Marketer Petitioners and others that the Commission "should adapt its regulations to facilitate efficient and innovative marketing of capacity that have developed since Order No. 636," provided the Commission remains guided by the "principle of full transparency of the terms of such capacity release arrangements."

Based on this industry-wide support, the Commission believes that AMAs are in the public interest because they are beneficial to numerous market participants and the market in general. Accordingly, the Commission is proposing changes to its policies and regulations to facilitate the utilization and implementation of AMAs.[6]

8. Based upon FERC's policy statements in the NOPR supporting AMAs, AEC structured the Current RFP as a commodity supply and asset management arrangement. In a further effort to foster larger interest and increase the number of competitive bids, AEC also structured the Current RFP to facilitate bidding on two

[6] NOPR at 46-50 (citations omitted).

supply/asset management portfolios – the Middle Tennessee Area[7] and the East Tennessee/Virginia Area. AEC believes that the structure of the Current RFP has succeeded in fostering a larger interest. Although the Current RFP was originally sent to 37 prospective counterparties, AEC has received and processed requests for a copy of the Current RFP from an additional 21 prospective counterparties to date.

9. In recognition that existing regulations may change and in order to facilitate flexibility in a changing regulatory environment, AEC issued the Current RFP with what is commonly referred to as "regulatory out" language. Specifically, the Current RFP contemplates that the contract(s) ultimately awarded will include language that affords the parties an opportunity to restructure their deal if, for example, it does not comport with the AMA rules ultimately adopted by FERC. If the parties were unable to satisfactorily restructure their deal, then it would be unwound. Without a regulatory out provision, AEC was concerned that prospective bidders, who might otherwise be willing to submit bids, would not do so without the benefit of a contractual provision addressing regulatory uncertainty. Regulatory out clauses are not uncommon contract clauses, particularly where one or both of the parties is subject to regulation that may affect the performance of the contract or the economic benefits thereof.[8] Even FERC has acknowledged that regulatory out clauses are often typical for many corporate agreements in the energy and power industry.[9]

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[7] The Middle Tennessee Area also includes AEC's service area in Union City in Western Tennessee.

[8] In its Motion to Stay, Stand suggests that AEC's proposed language is not in the best interests of the asset manager, the TRA or AEC's ratepayers. Under Stand's proposal, as discussed more particularly hereinafter, AEC's capacity assets will essentially sit idle during the pendency of the FERC's rulemaking on AMAs and the Asset Management Docket before the TRA.

[9] *Alliance Companies, et al.*, 91 FERC ¶61,152, 61,582 (May 18, 2000). Such clauses are also typical in new facilities contracts between a pipeline and a customer, and FERC recognizes that, even if the contract is with an affiliate, that does not necessarily mean that it should be evaluated any differently than a contract with a third party. *N.E. Hub Partners, L.P.*, 90 FERC ¶61,142, 61,451 (Feb. 10, 2000).

10. In an effort to cast confusion and suspicion around the regulatory out language contained in the Current RFP, Stand takes yet another opportunity in this docket to address information that AEC disclosed in a filing made with the Securities and Exchange Commission in December of 2007. This filing disclosed that AEC and AEM have received data requests from FERC regarding short-term interstate pipeline capacity release transactions.[10] As AEC responded in discovery requests recently filed in the Asset Management Docket, these data requests do not concern capacity assets that are used to serve customers in Tennessee or Virginia. AEC also informed the parties in that docket through its discovery responses that the FERC's inquiry is being conducted on a confidential basis under 18 CFR §1.b(9). Stand's intimation that the regulatory out language in the Current RFP is to recognize potential regulatory action by FERC involving AEM and that this proceeding should be stayed presumes that (i) AEM intends to bid on the Current RFP, and (ii) AEM will be selected as the new asset manager/supplier. AEC will not know who intends to bid until bids are actually received or who will be selected as supplier/asset manager until after all bids received have been evaluated.

11. Stand also levels an allegation at AEC that the Current RFP contains requirements that favor AEM and that AEM may be the only marketer that can fulfill them. As an example, Stand contends that the Current RFP requires the asset manager to displace gas from the Texas Gas Transmission Pipeline ("TGT") to Columbia Gulf Transmission Pipeline ("CGT") and to provide its own capacity delivery up to 50,000 dekatherms of gas per day and that CGT is fully subscribed. A review of CGT's index of

[10] Stand has also raised this issue in testimony filed in the proceeding initiated by AEC to revise its transportation tariff in TRA Docket No. 07-00020, although it has nothing to do with that docket either.

customers on its electronic bulletin board reveals that there are a number of gas marketers that have been sent a copy of the Current RFP and who hold significant amounts of capacity on CGT that are equal to or greater than that required by the terms of the Current RFP.[11] Is AEC's commercial process of selecting a supplier/asset manager to be disrupted simply because Stand may not have the ability to meet this requirement while there may be other marketers who can? AEC believes that the only answer is a resounding "no".

12. Despite all of Stand's allegations about the need for action by the TRA in the form of staying this proceeding to protect ratepayers, Stand's real goal appears to be completely different. In AEC's recent general rate case before the TRA in Docket No. 07-00105, and again in the proceeding involving proposed changes to AEC's transportation docket in TRA Docket No. 07-00020, Stand promoted a concept that AEC's pipeline transportation and storage capacity should be "unbundled" and made available for use by marketers such as Stand. AEC believes that is also the ultimate goal of Stand in its participation in the Asset Management Docket and in this docket, and that Stand has no real interest in bidding on the Current RFP.[12] Instead, Stand wants flexible access to AEC's firm capacity assets[13] at discounted rates, outside of an AMA, so that it can benefit financially by selling gas to transportation customers served by AEC's distribution system in Tennessee.[14] As far as AEC is aware, Stand does not provide gas

[11] https://www.columbianavigator.com/Ebb/.

[12] Although Stand has stated in the Asset Management Docket that it is a privately owned company with almost $200 million in annual sales, AEC doubts that Stand has the financial wherewithal to bid on a supply/asset management deal the size or sophistication of the Current RFP.

[13] Stand has already gone on record that it is not interested in using released capacity because it is not as reliable, and that primary firm capacity purchased from the pipeline is costly.

[14] Stand has indicated in discovery responses filed in TRA Docket No. 07-00020 that it does not currently have any customers in Tennessee who receive transportation service from AEC. The only customer that Stand has in Tennessee that could potentially use natural gas does not do so because it utilizes another fuel.

service anywhere to the type of firm sales customers (*e.g.* residential) that pay the cost of the capacity assets.

13. Even if Stand were legitimately interested in bidding on the Current RFP, its allegation that the Current RFP should be stayed because there is uncertainty in the marketplace is unfounded. There is always uncertainty in the marketplace in one form or another, whether regulatory, economic, weather related, etc. Stand, like any other recipient of the Current RFP, can fully choose to participate or not participate, and its participation will be on an equivalent basis with every other bidder. While Stand contends that the Current RFP will impact the Tennessee market, staying the Current RFP will in fact remove competition from that market thereby enhancing Stand's competitive position. It is highly inappropriate to use a regulatory process to exclude competition from the market based entirely on speculative and undefined allegations of "harm".

14. Unlike Stand, AEC, as a regulated utility, has a paramount obligation to meet the needs of its firm sales customers in Tennessee at all times and at prudent prices and terms. This obligation entails securing adequate supplies of gas commodity and obtaining additional value for capacity assets that are paid for by AEC's ratepayers. AEC could adopt Stand's proposal and await the outcome of both the FERC's rulemaking docket on AMAs as well as the TRA's Asset Management Docket.[15] Under Stand's proposal, underutilized capacity will likely sit idle inasmuch as AEC is not adequately

Stand has also conceded that this customer could, if it elected to buy gas from Stand, utilize interruptible transportation on the interstate pipeline system to deliver its gas to AEC's city gate.

[15] AEC respectfully submits that the outcome of this docket will have no impact on transaction structures involving AMAs that concern interstate pipeline capacity other than perhaps the sufficiency of the utility's RFP procedures and whether that process achieved a fair value for the ratepayers, the utility's methods of forecasting supply and capacity requirements, whether the utility has oversubscribed to capacity or other issues of gas cost prudence on the part of the utility. FERC has the exclusive federal authority to regulate interstate pipeline capacity and the release thereof and any AMA will ultimately have to comply with FERC's rules.

staffed to actively engage in and manage capacity release transactions. Furthermore, AEC does not engage in transactions typically referred to as "off-system" sales, meaning sales to customers who are not located behind AEC's city gates but at another point on an interstate pipeline on which AEC holds firm capacity, which could potentially generate additional revenue from the use of AEC's excess capacity.[16] Again, AEC's marketing activities focus on customers that receive service from AEC and it is not adequately staffed to obtain nor can it effectively compete for such business. AEC instead relies upon an asset manager, presumably with the expertise and its own customer base, for these activities.

15. More importantly, if the Current RFP process were brought to a halt, this would jeopardize AEC's commodity needs and its storage refill, because no commodity supply RFP separate from asset management has been issued by AEC. The reason the Current RFP was structured as a bundled bid is discussed above.

16. Stand is attempting to impede an orderly RFP process that the TRA has already approved, not only for AEC but also for Chattanooga Gas Company. On February 25, 2008, the TRA approved an AMA for Chattanooga with an affiliate that entails both commodity supply and asset management, and AEC is unaware of any intervention in that docket by Stand.[17] Why should one marketer (Stand) that has no customers in Tennessee and whose own goals run contrary to reliable and economic gas service for AEC's ratepayers be allowed to interfere with the supply to over 152,000

[16]In an example used by FERC, an LDC such as AEC might be looking to shed underutilized summer capacity but it does not have the capability to identify and contract with an electric generator that needs summer gas, whereas an asset manager would likely be much better equipped to handling the logistics and risks associated with such an off system sale by AEC. NOPR at p. 49.

[17] *Request of Chattanooga Gas Company for Approval of Asset Management Agreement,* TRA Docket No. 08-00012.

customers in Tennessee and Virginia when the RFP process employed by AEC is the same as Chattanooga's? The answer is clear. The TRA should remove Stand as an impediment to this process, and deny Stand's baseless motions to intervene and to stay and allow AEC to fulfill its obligations to its customers.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served, via the method(s) indicated below, on the following counsel of record, this the 26 day of February, 2008.

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