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BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE:	)	
	)	
REQUEST OF ATMOS ENERGY	)	**Docket No. 11-00034**
CORPORATION FOR APPROVAL	)	
OF CONRACT(S) REGARDING GAS	)	
COMMODITY REQUIREMENTS AND	)	
MANAGEMENT OF TRANSPORTATION/	)	
STORAGE CONTRACTS	)	

NOTICE OF FILING

Atmos Energy Corporation respectfully submits the attached Action Brief and Order Granting Authority from the Virginia State Corporation Commission, concerning the Agreement at issue in this case.

Respectfully submitted,

NEAL & HARWELL, PLC

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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, May 9, 2011

JOINT APPLICATION OF

ATMOS ENERGY CORPORATION AND
ATMOS ENERGY MARKETING, LLC

CASE NO. PUE-2011-00018

For authority to enter into a Gas Supply and Asset Management Agreement pursuant to the Affiliates Act, Va. Code § 56-76 *et seq.*

ORDER GRANTING AUTHORITY

On February 10, 2011, Atmos Energy Corporation ("Atmos") and Atmos Energy Marketing, LLC ("AEM"), (collectively "Applicants"), filed a joint application ("Application") with the State Corporation Commission ("Commission") requesting authority to enter into a Gas Supply and Asset Management Agreement ("GSAM Agreement") pursuant to the Affiliates Act, § 56-76 *et seq.* of the Code of Virginia ("Code"). The Applicants further requested interim authority to commence performance under the GSAM Agreement pending a final order on the Application from the Commission. On the same day, the Applicants filed a Motion for Protective Ruling ("Motion for Protective Ruling") pursuant to Rules 10 and 170 of the Commission's Rules of Practice and Procedure, 5 VAC 5-20-10 *et seq.*, regarding confidential information included in the Application and provided to the Commission Staff ("Staff") during its review process. On March 24, 2011, the Commission issued an Order Extending Time for Review and Granting Interim Authority ("March 24, 2011 Interim Order").

Atmos,[1] headquartered in Dallas, Texas, is one of the largest natural gas distribution companies in the United States. Atmos' operations include six (6) regulated natural gas

[1] Atmos is not a holding company. Atmos itself holds the certificate of public convenience and necessity to provide natural gas distribution service to customers in southwest Virginia.

distribution business units and a regulated natural gas pipeline business unit that provide service to approximately 3.2 million residential, commercial, industrial, and public authority customers in the following twelve (12) states: Colorado, Georgia, Illinois, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Tennessee, Texas, and Virginia. In Virginia, Atmos provides natural gas distribution service to approximately 22,719 customers located in Abingdon, Blacksburg, Bristol, Marion, Pulaski, Radford, Wytheville, and their environs.

AEM,[2] headquartered in Houston, Texas, provides a variety of natural gas management services to municipalities, natural gas utility systems, and industrial natural gas consumers located primarily in the Midwest and Southeast and to Atmos' Kentucky/Mid-States, Louisiana, and Mississippi regulated utility business units. AEM aggregates and purchases gas supplies, arranges transportation and storage logistics, and ultimately delivers gas to customers at competitive prices. To facilitate this process, AEM utilizes proprietary and customer-owned transportation and storage assets to provide various services its customers request, including furnishing natural gas supplies at fixed and market-based prices, contract negotiation and administration, load forecasting, gas storage acquisition and management services, transportation services, peaking sales and balancing services, capacity utilization strategies and gas price hedging through the use of financial instruments. AEM is a wholly owned subsidiary of Atmos Energy Holdings, Inc., which is a wholly owned subsidiary of Atmos.

Atmos and AEM are considered affiliated interests under § 56-76 of the Code. As such, Atmos is required to obtain prior approval from the Commission pursuant to the Affiliates Act for any agreement or arrangement between the companies for the provision of services, the exchange of property, rights, or things, or the purchase or sale of treasury bonds or stock.

[2] AEM was formerly known as Woodward Marketing, LLC ("Woodward"). In October 2003, Woodward merged with Trans Louisiana Gas Company and was renamed Atmos Energy Marketing, LLC.

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The proposed GSAM Agreement represents the fourth such agreement between Atmos and AEM since 1997. From 1997 through 2004 AEM's predecessor Woodward provided bundled gas supply and asset management services to Atmos.[3] In 2004, however, Atmos created a new affiliate, Atmos Energy Services, L.L.C., to provide energy administrative services and began to procure its own gas supplies from non-affiliated third-party suppliers.[4] In 2005, Atmos and AEM entered into a three (3)-year Gas Exchange and Optimization Services Agreement in which AEM provided only asset optimization services to Atmos.[5] In 2008, due in part to a FERC Order that encouraged local distribution companies to bundle gas procurement with capacity asset management, Atmos and AEM entered into a three (3)-year agreement in which AEM provided re-bundled gas supply, asset optimization, and functional services to Atmos.[6]

Atmos represents that it does not have the internal resources or the access to energy markets necessary to manage its pipeline and storage capacity assets ("Assets") effectively for the purpose of maximizing their economic value. Furthermore, Atmos asserts that competitively bidding the management of its Assets bundled with its commodity supply requirements produces greater value for ratepayers than what Atmos can provide on its own. Finally, Atmos represents that AEM, the winning bidder of its Request for Proposal ("RFP"), is experienced in gas supply,

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[3] *Application of United Cities Gas Company, For approval of transactions with an affiliate, Woodward Marketing, L.L.C.*, Case No. PUA-1996-00025, 1997 S.C.C. Ann. Rept. 144, Order Granting Approval (May 27, 1997).

[4] *Joint Application of Atmos Energy Corporation and Atmos Energy Services, L.L.C., For authority to enter into a services agreement pursuant to Chapter 4 of Title 56 of the Code of Virginia*, Case No. PUE-2004-00016, 2004 S.C.C. Ann. Rept. 436, Order Granting Authority (Apr. 28, 2004).

[5] *Joint Application of Atmos Energy Corporation and Atmos Energy Marketing, L.L.C., For authority to enter into a gas exchange and optimization services agreement pursuant to Chapter 4 of Title 56 of the Code of Virginia*, Case No. PUE-2005-00003, 2005 S.C.C. Ann. Rept. 389, Order Granting Authority (July 5, 2005).

[6] *Joint Application of Atmos Energy Corporation and Atmos Energy Marketing, L.L.C., For authority to enter into a gas supply and asset management agreement pursuant to the Affiliates Act, Va. Code § 56-76 et seq. and request for interim authority*, Case No. PUE-2008-00021, 2008 S.C.C. Ann. Rept. 498, Order Granting Authority (June 17, 2008).

planning, procurement, administration, and asset optimization, and was awarded the GSAM Agreement through an open and competitive bidding process.

Under the proposed GSAM Agreement, AEM will provide Atmos with bundled gas supply and asset management services from April 1, 2011, through March 31, 2014. AEM will provide Atmos' full gas requirements through city-gate delivered firm services that include index-based pricing, storage injection and withdrawal, exchange services, and delivered gas supply to facilitate deliveries from downstream storage or from supply areas where Atmos lacks sufficient firm pipeline capacity. AEM will also provide asset optimization services associated with Atmos' Assets. Finally, AEM will provide gas supply management services to coordinate Atmos' commodity supply requirements with the management of Atmos' Assets. As consideration for the right to manage and optimize Atmos' Assets, AEM will pay Atmos an upfront, fixed annual payment ("Annual Payment") due on or before April 25 of each year.

NOW THE COMMISSION, upon consideration of the Application and representations of the Applicants and having been advised by its Staff, is of the opinion and finds that the GSAM Agreement is in the public interest and should be approved, subject to certain conditions and requirements necessary to protect the public interest.

First, we are concerned with the timing of the Application. In both Case No. PUE-2008-00021 and the instant Application, Atmos requested interim authority to operate under the GSAM Agreement during the Application review process. We believe that Atmos needs to file timely affiliate applications. Therefore, we find that: (i) the approval in this case should extend through March 31, 2014, the expiration date of the GSAM Agreement; and (ii) any prospective application for renewal of the GSAM Agreement should be filed with the Commission no later than December 15, 2013.

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Second, we note that Atmos did not receive any outside bids for its asset management agreement ("AMA") RFP six (6) years ago. Therefore, we issued the following directive.

> (3) On a prospective basis, Atmos shall provide any AMA RFP to Energy Regulation Staff[7] prior to issuance and make an aggressive effort to expand Atmos' list of RFP bidders. Once the AMA RFP process is over, Atmos shall submit to Energy Regulation's Staff the AMA RFP's results, including a list of the parties that were invited to bid, the parties that actually bid, the winning bidder, and the reason(s) for the winner's selection.[8]

In response, Atmos implemented several changes to its RFP process, which included advertising in *Platts*, a major gas publication; expanding its RFP recipient list from eleven (11) potential suppliers to an electronic distribution of the RFP to more than 300 potential gas suppliers; and developing a web-based site for potential bidders to review and ask questions about Atmos' RFPs. The changes have increased both the number of bidders and the size of the bids. Given the significant improvement in Atmos' RFP results since 2005, we will continue the directive with one modification for this case. That modification, which recognizes Atmos' improved RFP process, consists of replacing the phrase "make an aggressive effort to expand Atmos' list of RFP bidders," with the phrase "continue to ensure that the RFP dissemination and bidding process remains robust."

Third, our prior Orders Granting Authority in Case Nos. PUE-2005-00003 and PUE-2008-00021 approving similar Atmos-AEM agreements contained specific directives that were designed to protect Atmos from paying more for pipeline substitution services and storage fill services under the agreements than what Atmos would incur if it were to procure its own gas or manage its own storage. Since the GSAM Agreement includes the same services, we believe

[7] "Energy Regulation Staff" refers to the Staff of the Commission's Division of Energy Regulation.

[8] Ordering Paragraph (3) of the July 5, 2005 Order Granting Authority in Case No. PUE-2005-00003. The Commission reiterated this directive in Case No. PUE-2008-00021.

that, with one clarifying modification, the directives remain necessary to safeguard the interests of ratepayers, and we will retain them for this case. That modification consists of replacing the phrase "procure gas for itself" with the phrase "procure gas on its own pipeline contracts."

Fourth, the GSAM Agreement allows for changes in the annual payment made by AEM to Atmos by April 25th each year of the term of the GSAM Agreement ("Annual Payment") should Atmos' portfolio of transportation and storage assets change. The Annual Payment is a key feature of AEM's winning bid and allowing a subsequent change to the Annual Payment without Commission oversight could threaten the perceived legitimacy of the RFP competitive bidding process. Therefore, we will require Atmos, thirty (30) days prior to any changes in the Annual Payment, to submit to the Commission's Director of Public Utility Accounting ("PUA Director") a report that describes the changes in the Annual Payment and the reasons for such changes. The Staff can then make a recommendation as to whether any further action is necessary. We previously included this requirement in Case No. PUE-2008-00021.[9]

Finally, we directed the Applicants in Case No. PUE-2009-00037,[10] in light of the turmoil experienced in global financial markets during 2008 and 2009, to provide information in the form of a risk monitoring schedule ("Risk Monitoring Schedule") to be included with its Annual Report of Affiliate Transactions ("ARAT"), which is submitted on April 1 of each year to the Commission's PUA Director. The Risk Monitoring Schedule provided: (i) Atmos' and AEM's quarter-by-quarter borrowings under their short-term credit facilities; (ii) Atmos' and AEM's quarter-by-quarter balances of collateral required to be posted with the New York Mercantile Exchange and other brokers; (iii) Atmos' and AEM's quarter-by-quarter open

[9] *See* Ordering Paragraph (7) of the June 17, 2008 Order Granting Authority in Case No. PUE-2008-00021.

[10] *Joint Application of Atmos Energy Corporation and Atmos Energy Marketing, LLC, For authority to modify gas supply and asset management agreement pursuant to the Affiliates Act, Va. Code § 56-76 et seq.*, Case No. PUE-2009-00037, 2009 S.C.C. Ann. Rept. 460, Order Granting Authority (Aug. 6, 2009).

positions related to their gas procurement, marketing, and trading activities; (iv) Atmos' and AEM's quarter-by-quarter credit ratings by the public rating agencies; and (v) Atmos' and AEM's quarter-by-quarter compliance relative to their loan covenants. Given the ongoing uncertainties in the global financial markets, we find that it is in the public interest for this directive to be continued in this case.

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Accordingly, IT IS ORDERED THAT:

(1) The Applicants' Motion for Protective Ruling is denied; however, we direct the Clerk of the Commission to retain the confidential information, to which the Motion for Protective Ruling pertains, under seal.[11]

(2) Pursuant to § 56-77 of the Code, Atmos and AEM are hereby granted authority to enter into the proposed GSAM Agreement as described herein and consistent with the findings set out above. The authority granted herein supersedes the authority granted in Case Nos. PUE-2008-00021 and PUE-2009-00037.

(3) Concurrent with the authority granted herein, the Applicants' interim authority to operate under the GSAM Agreement, which was granted in the March 24, 2011 Interim Order, is hereby terminated.

(4) The authority granted herein shall extend through March 31, 2014, the expiration date of the GSAM Agreement. Should Atmos wish to continue the GSAM Agreement with AEM beyond that date, further Commission approval shall be required. If the Applicants wish to avoid a break in service under the GSAM Agreement, any prospective application for renewal of the GSAM Agreement shall be filed no later than December 15, 2013.

[11] The Commission held the Applicants' Motion for Protective Ruling in abeyance. We note that the Commission has received no request for leave to review the confidential information filed in this proceeding. Accordingly, we deny the Motion for Protective Ruling as moot.

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(5) On a prospective basis, Atmos shall provide any AMA RFP to Energy Regulation Staff prior to issuance and continue to ensure that the RFP dissemination and bidding process remains robust. Once the AMA RFP process is over, Atmos shall submit to Energy Regulation Staff the AMA RFP's results, including a list of the parties that were invited to bid, the winning bidder, and the reason(s) for the winner's selection.

(6) Atmos' payments for pipeline substitution services shall be limited to the amount of gas cost charges that Atmos would incur if it were to procure gas on its own pipeline contracts.

(7) Atmos' payments for storage fill services shall be limited to the amount of storage charges that Atmos would incur if it were to manage its own storage.

(8) Thirty (30) days prior to any changes in the Annual Payment, Atmos shall submit a report to the PUA Director, which will describe the changes in the Annual Payment and the reasons for such changes. The Staff shall then advise the Commission as to whether any action is necessary pursuant to its continuing supervisory authority under § 56-80 of the Code to protect the public interest.

(9) The authority granted in this case shall have no ratemaking implications. Specifically, the authority granted herein shall not guarantee the recovery of any costs directly or indirectly related to the GSAM Agreement.

(10) Commission approval shall be required for any changes in the terms and conditions of the GSAM Agreement, including any successors or assigns.

(11) The authority granted herein shall not preclude the Commission from exercising the provisions of §§ 56-78 and 56-80 of the Code hereafter.

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(12) The Commission reserves the right to examine the books and records of any affiliate in connection with the authority granted herein, whether or not such affiliate is regulated by the Commission.

(13) Atmos shall include all transactions associated with the GSAM Agreement in its ARAT submitted to the PUA Director on or before April 1 of each year, which deadline may be extended administratively by the PUA Director. Atmos shall include with the ARAT a Risk Monitoring Schedule that contains the information set forth in our findings above.

(14) In the event that Atmos' annual informational filings or general or expedited rate case filings are not based on a calendar year, then Atmos shall include the affiliate information contained in its ARAT in such filings.

(15) There appearing nothing further to be done, this case shall be dismissed from the Commission's docket of active cases, and the papers filed herein shall be placed in the Commission's file for ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Richard D. Gary, Esquire, and Charlotte P. McAfee, Esquire, Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074; and a copy hereof shall be delivered to the Commission's Office of General Counsel and Divisions of Public Utility Accounting and Energy Regulation.

SUSAN D. LARSEN
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KENT K. PETERSON
DEPUTY DIRECTOR

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STATE CORPORATION COMMISSION
DIVISION OF PUBLIC UTILITY ACCOUNTING

PUE-2011-00018
April 26, 2011

ACTION BRIEF
(REDACTED VERSION)

TO: CHAIRMAN JUDITH WILLIAMS JAGDMANN
COMMISSIONER MARK C. CHRISTIE
COMMISSIONER JAMES C. DIMITRI

RE: JOINT APPLICATION OF ATMOS ENERGY CORPORATION AND ATMOS ENERGY MARKETING, LLC, FOR AUTHORITY TO ENTER INTO A GAS SUPPLY AND ASSET MANAGEMENT AGREEMENT PURSUANT TO THE AFFILIATES ACT, VA. CODE § 56-76 *ET SEQ.*

BACKGROUND:

Atmos Energy Corporation ("Atmos"),[1] which is headquartered in Dallas, Texas, is one of the largest natural gas distribution companies in the United States. Atmos' operations include six (6) regulated natural gas distribution business units and a regulated natural gas pipeline business unit that provide service to approximately 3.2 million residential, commercial, industrial, and public authority customers in the following twelve (12) states: Colorado, Georgia, Illinois, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Tennessee, Texas, and Virginia. In Virginia, Atmos provides natural gas distribution service to approximately 22,719 customers located in Abingdon, Blacksburg, Bristol, Marion, Pulaski, Radford, Wytheville, and their environs. Through non-regulated affiliates, Atmos provides natural gas management and marketing services to municipalities, other local gas distribution companies, and industrial customers located primarily in the Midwest and Southeast as well as natural gas transportation and storage services to certain of its regulated divisions and to third parties. For the fiscal year ending September 30, 2010, Atmos reported consolidated revenues of $4.79

[1] Atmos is not a holding company. Atmos itself holds the certificate of public convenience and necessity to provide natural gas distribution service to customers in Southwest Virginia.

billion and net income of $206 million. Atmos employs 4,714 people, and its market capitalization is approximately $3.15 billion.

Atmos Energy Marketing, LLC ("AEM"),[2] which is headquartered in Houston, Texas, provides a variety of natural gas management services to municipalities, natural gas utility systems, and industrial natural gas consumers located primarily in the Midwestern and Southeastern states, and to Atmos' Kentucky/Mid-States, Louisiana, and Mississippi regulated utility business units. AEM aggregates and purchases gas supplies, arranges transportation and storage logistics and ultimately delivers gas to customers at competitive prices. To facilitate this process, AEM utilizes proprietary and customer-owned transportation and storage assets to provide various services their customers request, including furnishing natural gas supplies at fixed and market-based prices, contract negotiation and administration, load forecasting, gas storage acquisition and management services, transportation services, peaking sales and balancing services, capacity utilization strategies and gas price hedging through the use of financial instruments. AEM is a wholly owned subsidiary of Atmos Energy Holdings, Inc., which is a wholly owned subsidiary of Atmos.

Atmos and AEM are considered affiliated interests under § 56-76 of the Code of Virginia ("Code"). As such, Atmos is required to obtain prior approval from the State Corporation Commission ("Commission") pursuant to Chapter 4 of Title 56 ("Affiliates Act") of the Code for any agreement or arrangement between the companies for the provision of services, the exchange of property, rights, or things, or the purchase or sale of treasury bonds or stock.

PROPOSAL:

On February 10, 2011, Atmos and AEM (collectively, "Applicants") filed a joint application ("Application") requesting authority to enter into a three (3)-year contract for the purchase and sale of natural gas supply and asset management services ("GSAM Agreement"). The Applicants further requested interim authority to commence performance under the proposed GSAM Agreement pending a final order on the Application from the Commission. On the same day, the Applicants filed a Motion for Protective Ruling ("Motion for Protective Ruling") pursuant to Rules 10 and 170 of the Commission's Rules of Practice and Procedure, 5 VAC 5-20-10 *et seq.*, regarding confidential information included in the Application and provided to the Commission Staff ("Staff") during its review process. On March 24, 2011, the Commission issued an Order Extending Time for Review and Granting Interim Authority ("Interim Order").

Under the proposed GSAM Agreement, AEM will provide Atmos with bundled gas supply and asset management services ("Bundled Services") from April 1, 2011, through March 31, 2014. AEM will provide Atmos' full gas requirements through city-gate delivered firm services ("Gas Supply Services") that include index-based pricing, storage injection and withdrawal, exchange services, and delivered gas supply to facilitate deliveries from downstream storage or from supply areas where Atmos lacks sufficient firm pipeline capacity. AEM will also

[2] AEM was formerly known as Woodward Marketing, LLC ("Woodward"). In October 2003, Woodward merged with Trans Louisiana Gas Company and was renamed Atmos Energy Marketing, LLC.

provide asset optimization services ("Asset Optimization Services") associated with Atmos' pipeline and storage capacity assets ("Assets"). Finally, AEM will provide gas supply management services ("Functional Services") to coordinate Atmos' commodity supply requirements with the management of Atmos' Assets. As consideration for the right to manage and optimize Atmos' Assets, AEM will pay Atmos an upfront, fixed annual fee due on or before April 25th of each year.

DISCUSSION:

Case Background

The proposed GSAM Agreement represents the fourth such agreement between Atmos and AEM in fourteen (14) years. From 1997 through 2004, AEM's predecessor, Woodward Marketing, LLC, provided bundled gas supply and asset management services to Atmos.[3] In 2004, however, Atmos created a new affiliate, AES, to provide energy administrative services and began to procure its own gas supplies from non-affiliated third party suppliers.[4] In 2005, Atmos and AEM entered into a three (3)-year Gas Exchange and Optimization Services Agreement ("GEOS Agreement"), in which AEM provided only Asset Optimization Services to Atmos.[5] In 2008, due in part to a Federal Energy Regulatory Commission Order that encouraged local distribution companies to bundle gas procurement with capacity asset management, Atmos and AEM entered into a three (3)-year agreement in which AEM provided re-bundled Gas Supply, Asset Optimization, and Functional Services to Atmos.[6]

Contract Details

The proposed GSAM Agreement has three parts.

I. Base Contract

The first part of the proposed GSAM Agreement is a standard North American Energy Standards Board Base Contract ("Base Contract") dated April 1, 2008, which is the same Base Contract approved in Case No. PUE-2008-00021. The purpose of the Base Contract is to set

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[3] *Application of United Cities Gas Company, For approval of transactions with an affiliate, Woodward Marketing, L.L.C.*, Case No. PUA-1996-00025, 1997 S.C.C. Ann. Rept. 144, Order Granting Approval (May 27, 1997).

[4] *Joint Application of Atmos Energy Corporation and Atmos Energy Services, L.L.C., For authority to enter into a services agreement pursuant to Chapter 4 of Title 56 of the Code of Virginia*, Case No. PUE-2004-00016, 2004 S.C.C. Ann. Rept. 436, Order Granting Authority (Apr. 28, 2004).

[5] *Joint Application of Atmos Energy Corporation and Atmos Energy Marketing, L.L.C., For authority to enter into a gas exchange and optimization services agreement pursuant to Chapter 4 of Title 56 of the Code of Virginia*, Case No. PUE-2005-00003, 2005 S.C.C. Ann. Rept. 389, Order Granting Authority (July 5, 2005).

[6] *Joint Application of Atmos Energy Corporation and Atmos Energy Marketing, L.L.C., For authority to enter into a Gas Supply and Asset Management Agreement pursuant to the Affiliates Act, Va. Code § 56-76 et seq. and Request for Interim Authority*, Case No. PUE-2008-00021, 2008 S.C.C. Ann. Rept. 498, Order Granting Authority (June 17, 2008).

forth the general terms and conditions of the GSAM Agreement in order to facilitate the execution of individual gas purchase and sale transactions.

II. Special Provisions Attachment

The second part of the proposed GSAM Agreement is a Special Provisions attachment ("Special Provisions") dated April 1, 2008, which is the same Special Provisions attachment approved in Case No. PUE-2008-00021. The purpose of the Special Provisions attachment is to modify some of the general terms and conditions of the Base Contract. Most of the modifications to the Base Contract are minor. For example, the Applicants replace all of the Base Contract's transaction procedures with essentially the same procedures written in conversational English. A few changes are more substantive. For example, Subsection 3.5, which is added to the Performance Obligation section, requires that the compensation for nonperformance of a firm commitment due to Force Majeure is the payment by the nonperforming party to the injured party of the difference between the contract price and the First of the Month delivery price published in the Inside FERC Gas Market Report times the contract quantity of gas not delivered or received. Another change occurs in Subsection 14.13 of the Miscellaneous section, which provides that if the index used to determine the price for a transaction ceases to be available, the parties agree to promptly negotiate a mutually satisfactory alternate price or reference publication.

III. Transaction Confirmations Attachment

The third part of the proposed GSAM Agreement is a Transaction Confirmations attachment ("Confirmations") dated April 1, 2011, which describes the specific Gas Supply, Asset Optimization, and Functional Services provided by AEM to Atmos.

i) Gas Supply Services

Prior to October 15th and March 15th of each plan year, Atmos will provide AEM with its Winter and Summer Plan Requirements. The Winter Plan covers the months of November through March, and the Summer Plan covers the months of April through October. The Plan Requirements describe the monthly flowing quantities of natural gas to be invoiced at the various transporter delivery points for Atmos' distribution systems and specify Atmos' estimated injections and withdrawals of natural gas from storage. The specific Gas Supply Services in the proposed GSAM Agreement consist of twelve (12) billable plans for providing flowing gas, delivered gas supply, and gas exchange services to Atmos' Area 1 (West Tennessee and Middle Tennessee) and Area 2 (East Tennessee and Virginia) distribution service areas. The plans are summarized below.

1) Area 1 – West Tennessee Flowing Gas AEM will sell TGT[7] Zones 1 and SL priced baseload and swing supply gas to Atmos to meet its city gate flowing gas requirements in West Tennessee.

[7] Texas Gas Transmission.

2) Area 1 – Middle Tennessee Flowing Gas AEM will sell CGT[8] Mainline and TETCO[9] Rockies Express Clarington, Ohio priced baseload and swing supply gas to Atmos to meet its city gate flowing gas requirements in Middle Tennessee.

3) Area 1 – Barnsley Delivered Supply AEM will provide a delivered gas supply to Barnsley storage of up to 15,000 MMBtu/day[10] for both baseload and swing storage injections via TGT or ANR.[11]

4) Area 1 – Barnsley Supply Exchange AEM will provide delivered gas supply to Atmos' Area 1 city gates via: (i) TGT (West Tennessee) and (ii) CGT, CGT ML,[12] and /or TETCO (Middle Tennessee), in exchange for equivalent Barnsley storage withdrawal quantities delivered by Atmos at the Barnsley withdrawal point in TGT Zone 3.

5) Area 1 – Incremental CGT/TETCO Delivered Supply AEM will provide a delivered gas supply to Atmos' city gates in Middle Tennessee for incremental quantities (up to 20,000 MMBtu/day in the aggregate) from either CGT or TETCO in excess of Atmos' firm CGT or TETCO entitlements, as applicable.

6) Area 1 – Dominion Delivered Supply AEM will provide a delivered supply of up to 2,288 MMBtu/day to Dominion storage at Oakford for aggregate baseload and swing storage injections per the terms of the Plan Requirements.

7) Area 2 – Flowing Gas AEM will sell TGP[13] Zone 1 500 Leg, TGP Zone 1 800 Leg, TGP Zone 0 100 Leg, and SNG[14] priced baseload and swing gas supply to Atmos to meet its city gate flowing gas requirements in Area 2.

8) Area 2 – NORA Delivered Supply AEM will provide a delivered gas supply of up to 4,295 MMBtu/day at NORA into ETNG[15] for aggregate baseload and swing quantities.

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[8] Columbia Gulf Transmission.

[9] Texas Eastern Transmission Co.

[10] Million British Thermal Units per Day.

[11] ANR Pipeline Company.

[12] Columbia Gulf Transmission Mainline pool.

[13] Tennessee Gas Pipeline.

[14] Southern Natural Gas Company.

[15] East Tennessee Natural Gas.

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9) Area 2 – Jewell Ridge Delivered Supply AEM will provide a delivered gas supply of up to 10,000 MMBtu/day at ETNG Jewell Ridge for aggregate baseload and swing quantities in accordance with Section 8.G(ii).

10) Area 2 – TETCO into ETNG Delivered Supply AEM will provide a winter delivered supply of up to 1,500 MMBtu/day into ETNG at TETCO Hartsville for aggregate baseload and swing quantities in accordance with Section 8.G(ii).

11) Area 2 – TGP into ETNG Delivered Supply AEM will provide a winter delivered supply of up to 3,365 MMBtu/day into ETNG at TGP Ridgetop for aggregate baseload and swing quantities in accordance with Section 8.G(ii).

12) Area 2 – Storage Fill AEM will provide flowing gas under Plan No. 7 for storage fill in Area 2 at four locations. The storage quantity for the TGP FS-MA, Caledonia, Saltville (ETNG), and ETNG LNG[16] storage fields is 835,674 MMBtu, 500,000 MMBtu, 370,000 MMBtu, and 339,900 MMBtu, respectively. By the end of the summer storage injection period, AEM is required to have Atmos' physical storage filled to the lesser of 90% or Atmos' Winter Plan requirements. Subject to certain operational parameters, transporter tariffs, and peak day requirements, AEM will have discretion over how storage will be filled and how much gas will be withdrawn.

ii) Asset Optimization Services

The Asset Optimization Services in the proposed GSAM Agreement consist of specialized operational and financial strategies employed by AEM to generate revenues from Atmos' unutilized Assets.[17] These asset optimization strategies include, but are not limited to, activities such as capacity releases, financial derivative transactions, physical gas exchanges, pipeline substitutions, and storage arbitrage. AEM represents that it will assume the obligations and risks that may lead to financial loss as well as the potential for financial gain associated with the use and management of Atmos' Assets. AEM also states that it will bear sole financial responsibility for any imbalance or overrun penalty, daily scheduling fee, cost, charge, or cash-out cost assessed as a result of an over-delivery or under-delivery of gas, except to the extent directly caused by carrying out Atmos' gas supply requirements. Should AEM default on its obligations under the GSAM Agreement and Atmos decides to terminate the GSAM Agreement, AEM will be responsible for any costs, including price differentials and reasonable legal fees, associated with Atmos' efforts to replace the contracted services and gas supply.

[16] liquefied natural gas.

[17] The term "unutilized Assets" refers to utility pipeline and storage capacity that is temporarily idle; i.e., not being used to meet system supply.

iii) Functional Services

The Functional Services in the proposed GSAM Agreement consist of administrative services provided by AEM to manage Atmos' gas supply. The Functional Services, which are the same as those approved in Case No. PUE-2008-00021, are listed below.

1) AEM will supply firm gas consistent with Atmos' plan requirements, Atmos' nominations, and the GSAM Agreement.

2) AEM will schedule quantities of gas on transporters. AEM will dispatch gas to Atmos, subject to transporter operating conditions, events of Force Majeure or other instructions from Atmos, and act in Atmos' best interests by using least cost supply services first. Atmos may request documentation to substantiate this optimal dispatching and provide such documentation in response to regulatory requests.

3) AEM will provide monthly invoicing for all gas purchased by Atmos. The invoices will show daily scheduling fees plus all commodity, fuel, imbalance, and cash-out charges owed by Atmos in sufficient and reasonable detail as required.

4) AEM will provide a summary nominations worksheet to Atmos' gas control department containing the current day nominations plus nominations for the following five days by 2:00 p.m. (Central Time), regardless of whether changes are anticipated.

5) AEM will provide routine and timely documentation and maintain adequate and sufficient records of all gas supply and services provided to Atmos. The records will be maintained for a period of not less than two years after the expiration of the delivery period.

6) AEM will conduct weekly progress status meetings (in-person or by teleconference) to provide historic consumption updates, current and projected plan balance updates, and future load forecasting.

7) AEM will provide load forecasting, which includes daily load forecasting as necessary to minimize transporter daily scheduling fees.

Bid Analysis

[redacted]

[redacted]

Asset Management Fee

[redacted]

Prospective Changes in Managed Assets and the Management Fee

The proposed GSAM Agreement contains a provision that provides guidelines for dealing with any changes in Atmos' Assets while under AEM's management. Should Atmos amend an existing transportation or storage service contract or add or dispose of transportation or storage capacity that is not a replacement or an extension of its Assets, then Atmos and AEM will evaluate jointly whether the change affects the value of the Assets and whether the management fee should be adjusted. Similarly, if Atmos is required by a regulatory agency to permanently release any portion of its Assets, then Atmos and AEM will evaluate jointly whether the management fee needs to be reduced.

Early Termination

The proposed GSAM Agreement contains an Early Termination clause, which provides that either party may terminate the agreement if: i) a court or governmental agency reverses, withdraws, or modifies any law, regulation order, ruling, opinion or other determination that proves unacceptable for proceeding under the GSAM Agreement; ii) such change causes the impacted party to incur any material capital or operating cost, or loss of opportunity, related to

18 [redacted]

19 [redacted]

20 [redacted]

the provision or receipt of services under the GSAM Agreement; and iii) the parties are unable, after good faith negotiations, to renegotiate the GSAM Agreement to comply with the change and maintain the same level of service or benefit.

Accounting

Atmos will account for the monthly invoiced gas supply that it receives from AEM by utilizing the following accounts:

Account	Type of Transaction
8040	Gas Purchases
8045	Transportation to City Gate
8580	Transportation Demand
8580	Transportation Commodity
8580	Storage Demand
8580	Capacity Release Credits

Atmos will account for gas storage transactions with AEM by utilizing the following accounts:

Account	Type of Transaction
1641	Gas Stored Underground
8081	Gas Withdrawn from Storage – Injection/Withdrawn
8082	Gas Delivered to Storage – Injection/Withdrawn

Atmos will initially book the upfront, annual management fee by debiting Account 131 (Cash) and crediting Account 191 (Unrecovered Purchase Gas Recoveries). From there, the credit will flow through the appropriate gas costs via the ACA mechanism.

Conclusion:

Atmos represents that it does not have the internal resources or the access to energy markets necessary to manage its pipeline and storage capacity assets effectively for the purpose of maximizing their economic value. Furthermore, Atmos asserts that competitively bidding the management of its pipeline and storage capacity assets bundled with its commodity supply requirements produces greater value for ratepayers than what Atmos can provide on its own. Atmos represents that AEM, the winning bidder of its RFP, is experienced in gas supply, planning, procurement, administration, and asset optimization, and was awarded the GSAM Agreement through an open and competitive bidding process. Based on the Applicants' representations and the data gathered from Staff's inquiries, Staff believes that the proposed GSAM Agreement is in the public interest and should be approved subject to certain requirements described below.

First, Staff remains concerned with the timing of the GSAM Agreement applications. In both Case No. PUE-2008-00021 and the instant Application, Atmos required interim authority to operate under the GSAM Agreement during the Application review process. Staff believes that

Atmos needs to file timely affiliate applications. Therefore, Staff believes that: (i) the Commission's approval in this case should extend through March 31, 2014, the expiration date of the GSAM Agreement; and (ii) any prospective application for renewal of the GSAM Agreement should be filed with the Commission by no later than December 15, 2013.

Second, Atmos did not receive any outside bids for its asset management agreement ("AMA") RFP six years ago. Therefore, the Commission issued the following directive.

> (6) On a prospective basis, Atmos shall provide any AMA RFP to Energy Regulation Staff prior to issuance and make an aggressive effort to expand Atmos' list of RFP bidders. Once the AMA RFP process is over, Atmos shall submit to Energy Regulation's Staff the AMA RFP's results, including a list of the parties that were invited to bid, the parties that actually bid, the winning bidder, and the reason(s) for the winner's selection.[21]

In response, Atmos implemented several changes to its RFP process, which included advertising in Platts, a major gas publication; expanding its RFP recipient list from eleven (11) potential suppliers to an electronic distribution of the RFP to more than three hundred (300) potential gas suppliers, and developing a Web-based site for potential bidders to review and ask questions about Atmos' RFPs. Given the significant improvement in Atmos' RFP results since 2005,[22] Staff believes that with one modification, the directive should be reiterated for this case. That modification, which recognizes Atmos' improved RFP process, consists of replacing the phrase "make an aggressive effort to expand Atmos' list of RFP bidder," with the phrase "continue to ensure that the RFP dissemination and bidding process remains robust."

Third, the Commission's prior two Atmos-AEM orders contained specific directives that were designed to protect Atmos from paying more for pipeline substitution services and storage fill services under the prior agreements than what Atmos would incur if it were to procure its own gas or manage its own storage. Since the 2011 Agreement includes the same services, Staff believes that with one clarifying modification, the directives remain necessary to safeguard the interests of ratepayers and that they should be reiterated for this case. That modification consists of replacing the phrase "procure gas for itself"[23] with the phrase "procure gas on its own pipeline contracts."

Fourth, the 2011 Agreement allows for changes in the Annual Payment should Atmos' portfolio of transportation and storage assets change. The Annual Payment is a key feature of AEM's winning bid, and allowing a subsequent change to the Annual Bid without Commission oversight could threaten the perceived legitimacy of the RFP competitive bidding process. Therefore, Staff believes that, thirty (30) days prior to any changes in the Annual Payment,

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[21] See Ordering Paragraph (6) of the Order Granting Authority in Case No. PUE-2005-00003. The Commission reissued the directive in Case No. PUE-2008-00021.

[22] [redacted]

[23] See Ordering Paragraph 5 of the June 17, 2008, Order Granting Authority in Case No. PUE-2008-00021.

Atmos should be required to submit to the Commission's PUA Director a report that describes the changes in the Annual Payment and the reasons for it. Staff can then make a recommendation as to whether any further action is necessary. Staff notes that the Commission approved this requirement in Case No. PUE-2008-00021.

Finally, the Commission, in light of the turmoil experienced in global financial markets during 2008 and 2009, directed Atmos and AEM in Case No. PUE-2009-00037[24] to provide a Risk Monitoring Schedule to be included with its Annual Report of Affiliate Transactions ("ARAT"), which is submitted on April 1st of each year to the Commission's Director of Public Utility Accounting. The Risk Monitoring Schedule provided: (i) Atmos' and AEM's quarter-by-quarter borrowings under their short-term credit facilities; (ii) Atmos' and AEM's quarter-by-quarter balances of collateral required to be posted with the New York Mercantile Exchange and other brokers; (iii) Atmos' and AEM's quarter-by-quarter open positions related to their gas procurement, marketing, and trading activities; (iv) Atmos' and AEM's quarter-by-quarter credit ratings by the public rating agencies; and (v) Atmos' and AEM's quarter-by-quarter compliance relative to their loan covenants. Given the ongoing uncertainties in the global financial markets, Staff believes that it is in the public interest for this directive to remain in place.

RECOMMENDATION:

Staff recommends approval of the proposed GSAM Agreement subject to the requirements set forth above. Staff shared a draft of its action brief with the Applicants, and they did not object to Staff's recommendations.

Robert F. Sartelle

Robert F. Sartelle
Principal Public Utility Accountant

[24] *Joint Application of Atmos Energy Corporation and Atmos Energy Marketing, LLC, For authority to modify gas supply and asset management agreement pursuant to the Affiliates Act, Va. Code § 56-76 et seq.*, Case No. PUE-2009-00037, 2009 S.C.C. Ann. Rept. 460, Order Granting Authority (Aug. 6, 2009).