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August 23, 2011

filed electronically in docket office 8/23/11

Sharla Dillon, Docket Manager
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

VIA HAND DELIVERY

RE: Atmos Energy Corporation Incentive Plan Account (IPA)
for the Years 2001 through 2011

Dear Ms. Dillon:

Enclosed is a Petition for Approval of Incentive Plan Account Reports for the Period April 1, 2011 through March 31, 2011, being filed by Atmos Energy Corporation. The attachments to the Petition are being filed **under seal** in anticipation of the entry of a Protective Order. Please let me know if this presents any problems.

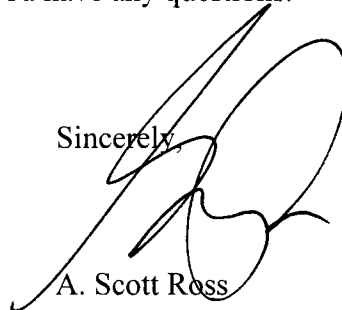
In accordance with TRA practice, I have enclosed an original and four copies and am also submitting an electronic version of the filing.

A proposed Protective Order is submitted herewith. The form of this Order is identical to the Order submitted in our most recent prior matter involving Atmos.

Please feel free to contact me if you have any questions.

Best regards.

Sincerely,



A. Scott Ross

ASR:prd

Enclosures

Sharla Dillon, Docket Manager
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Via Email: Vance Broemel, Esq. (w/ Non-Privileged Enclosures)
Cynthia Kinser, Esq. (w/ Non-Privileged Enclosures)
Douglas C. Walther, Esq. (w/ Non-Privileged Enclosures)
Patricia Childers (w/ Non-Privileged Enclosures)

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

IN RE:)
)
ATMOS ENERGY CORPORATION) **Docket No.** 11-00137
INCENTIVE PLAN ACCOUNT (IPA) FOR)
THE YEARS 2001 THROUGH 2011)

**PETITION FOR APPROVAL OF INCENTIVE PLAN ACCOUNT REPORTS
FOR THE PERIOD APRIL 1, 2001 THROUGH MARCH 31, 2011**

Atmos Energy Corporation ("Atmos") or ("Company") respectfully requests that the Tennessee Regulatory Authority approve the Company's Incentive Plan Account Reports for the period April 1, 2001 through March 31, 2011.

In support of this Petition, Atmos respectfully alleges as follows:

1. The full name and address of the principal place of business of the Company is:

Atmos Energy Corporation
5430 LBJ Freeway S 1800
Dallas, TX 75240

2. All correspondence and communications with respect with this Petition are to be sent to the following:

Patricia D. Childers
Vice President, Rates & Regulatory Affairs
Mid-States Division
Atmos Energy Corporation
810 Crescent Centre Drive, Suite 600
Franklin, TN 37067-6226
(615) 771-8301 – Facsimile

A. Scott Ross, Esq.
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Douglas C. Walther, Esq.
Associate General Counsel
Atmos Energy Corporation
P. O. Box 650205
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3. The Company's performance-based rate making ("PBRM") tariff has been in place since 1999. By its terms, the PBRM Tariff provides that it will continue until it is either terminated on notice by the Company, or "modified, amended or terminated by the Authority." Tariff Sheet 45.1. The Company's PBRM Tariff has not been terminated by the Authority, and has remained in force since its adoption in 1999.

4. The Atmos PBRM consists of two parts, a gas procurement incentive mechanism, and a capacity management incentive mechanism. Under the capacity management incentive mechanism, net incentive benefits are to be shared between the Company and customers on a 90% customer, 10% company basis. The PBRM contains an annual cap of \$1.25 million on overall incentive savings.

5. Following an audit of the Company's annual incentive plan account ("IPA") report for the period April 1, 2000 through March 31, 2001, Docket No. 01-00704 was opened to resolve an issue under the gas procurement incentive mechanism of the PBRM Tariff. Due to this dispute over how to calculate savings under the gas procurement incentive mechanism of the PBRM, Atmos and TRA Staff agreed to postpone filing of future IPA annual reports until Docket No. 01-00704 had been resolved. *See* Motion to Consolidate and for Approval of

Settlement Agreement at 3 (filed March 8, 2004). Unfortunately, a proposed settlement of the matter was opposed and litigation continued in Docket 01-00704 for several more years. Following an initial order of the Hearing Officer on March 14, 2006, an appeal to the Authority resulted in an order dated May 13, 2008 affirming in part and vacating in part the Hearing Officer's initial order, and directing further proceedings. Ultimately, the case concluded on August 26, 2008 by entry of an Agreed Order of Dismissal with Prejudice of all remaining claims in the case.

6. Thereafter, at the direction of TRA Staff, the Company submitted its annual incentive plan account reports for informal review by Audit Staff. These reports, for the years 2001 through 2011, encompass the plan years following the year that was disputed in the above-referenced 01-00704 matter. In review of those reports, TRA Staff have questioned the Company's calculation of the capacity management incentive mechanism. Specifically, Staff have questioned the Company's right to include fees the company has received under its approved Asset Management Agreements. These annual fees compensate the Company for transportation and storage capacity that the Company has released on the secondary market to an asset manager.

7. In prior dockets involving both Atmos and Nashville Gas Company, TRA Staff have argued that the gas companies' PBRM Tariffs should not include fees received for capacity released to an asset manager. As to Atmos, TRA Staff raised the issue in their audit report concerning the Company's actual cost adjustment ("ACA") filing for the year ended June 30, 2005. In Item 2(c) of its audit recommendations, Staff recommended that the Authority open a separate docket to address the inclusion of asset management fees in the Company's PBRM. The Authority ultimately rejected this Staff recommendation, instead ordering that TRA Audit

Staff and the Company meet to discuss the effects of incorporating the asset management arrangement into the PBRM. Order Adopting ACA Audit Report Of The Tennessee Regulatory Authority's Utilities Division, Docket No. 05-00253 at 4 (December 7, 2006). Unfortunately, due to the pendency of Docket No. 05-00258 (Phase II), over a period of several years the Company and TRA Audit Staff were unable to meet and resolve these issues.

8. In the meantime, the Authority approved an amendment to the Chattanooga Gas Company tariff adopting RFP procedures for the selection of an asset manager. Looking ahead to the need to soon re-bid its own Asset Management Agreement, Atmos in turn moved to amend its own PBRM Tariff to include RFP procedures identical to those adopted by Chattanooga Gas. These were approved in Docket No. 05-00253. Recognizing that Atmos had not been able to meet with the TRA Staff to discuss revisions to its affiliate rules due to the pendency of Docket No. 05-00258, and that the requested RFP procedures were identical to those approved by the Authority for Chattanooga Gas in Docket No. 04-00402, the Authority approved the Company's request to add RFP procedures for the selection of an asset manager to the terms of the Atmos PBRM Tariff. *See* Order Approving Tariff, Docket No. 05-00253 (December 6, 2007).

9. Concurrently, the Authority closed Dockets 05-00253 and 05-00258 and ordered that a new docket be opened to address the unresolved issues from these two dockets. Order Closing Dockets And Moving Remaining Issues To New Docket, Docket Nos. 05-00253 and 05-00258 (December 5, 2007). The new docket, opened as Docket No. 07-00225, remains pending. And one of the issues in that case is whether the Atmos PBRM Tariff should be amended with respect to the treatment of capacity release fees received from an asset manager. *See* Order on November 5, 2007 Pre-Hearing Conference, Docket No. 07-00225 Attachment A ¶ 7 (November 8, 2007). The parties to that case are optimistic that a resolution of that matter will be reached in

the near term, following the general contours of resolutions that have been reached for Nashville Gas and Chattanooga Gas.

10. In Docket No. 08-00024, Atmos submitted its 2008-2011 Asset Management Agreement for approval, pursuant to the RFP procedures that had been adopted and approved as part of the Atmos PBRM Tariff. By Order dated July 9, 2008, the Authority found that Atmos had complied with its tariff requirements in its bidding and awarding of the AMA and that based upon the detailed bid evaluations provided by the Company that the AMA would benefit customers. The Authority voted unanimously to approve the new Asset Management Agreement. Order Approving Contract Regarding Gas Commodity Requirements And Management Of Transportation/Storage Contracts, Docket No. 08-00024 (July 9, 2008).

11. Atmos is not the only gas company with a PBRM tariff or an asset management agreement. Like Atmos, Nashville Gas Company has both, and like Atmos, Nashville Gas has recognized that asset management fees are in reality capacity release fees and should be included in the capacity release mechanism of the PBRM tariff. Indeed, TRA Audit Staff have made the same challenge to inclusion of asset management fees in the Nashville Gas PBRM that Staff have made as to the Atmos PBRM.

12. As with Atmos, resolution of the issue was ultimately assigned to a contested case proceeding (07-00225 for Atmos, and 05-00165 for Nashville). But the litigation with Nashville Gas took a different turn in one important respect. Whereas Atmos and TRA Staff had agreed to delay the filing of annual IPA reports pending resolution of Docket No. 01-00704, Nashville Gas continued to file its annual IPA reports. And, Nashville Gas continued to include capacity release fees received from its asset manager in its IPA filings despite opposition from TRA Audit Staff.

13. In Nashville Gas Docket No. 03-00489, TRA Audit Staff argued that fees received from an asset manager should be excluded from the incentive plan calculation under the terms of the Nashville Gas PBRM Tariff. Audit Staff recommended that the Authority suspend the Nashville Gas incentive plan pending resolution of whether asset management fees should be included. Nashville Gas opposed this recommendation, and ultimately the Authority rejected it. Nashville Gas was ordered to file a proposal to remedy the areas of concern. And of particular importance here, the Authority refused to suspend the Nashville Gas incentive plan while these issues were being addressed. *See* Order Adopting, In Part, IPA Compliance Audit Report Of Tennessee Regulatory Authority's Energy And Water Division, Docket No. 03-00489 at 2 (October 1, 2004). In the meantime, Nashville Gas would continue to receive credit under its incentive plan for fees received from its asset manager.

14. In the following year, TRA Audit Staff again objected to the Nashville Gas IPA Report, again arguing that asset management fees should not be included. Staff again recommended that the Authority suspend the Nashville Gas incentive plan, pending the outcome of a separate docket to resolve whether asset management fees should be included in the PBRM Tariff. Nashville Gas opposed these recommendations, and the Authority ultimately rejected them, declining to suspend the Nashville Gas incentive plan. The Authority approved the Nashville Gas incentive plan filing for the plan year under review, and ordered that a separate docket be opened to resolve the question whether asset management fees should be included in the Nashville Gas PBRM. In the meantime, however, the Authority declined to suspend the operation of the Nashville Gas incentive plan account or to disallow the inclusion of asset management fees pending resolution of this separate docket. Order Adopting Incentive Plan

Account Filing Of Nashville Gas Company For Year Ended June 30, 2004, Docket No. 04-00290 (September 6, 2005).

15. In subsequent years, Nashville Gas continued to include asset management fees in its annual IPA filings. In response, TRA Audit Staff adopted the position that although they believed that the Nashville Gas tariff language and the original intent of the incentive plan did not allow for inclusion of asset management payments, Staff would not make an audit finding on this issue because the Authority had decided to address this issue separately in Docket No. 05-00165. In the meantime, the Audit Reports did not recommend that asset management fees be excluded from the Nashville Gas incentive plan account. The Authority ultimately agreed, and approved the Nashville Gas IPA filing in its entirety, including the asset management payments it had received. Order Adopting Incentive Plan Account Filing Of Nashville Gas Company For Year Ended June 30, 2005, Docket No. 05-00268 (July 13, 2006). A similar result was reached for the following plan year. Order Adopting Incentive Plan Account Filing Of Nashville Gas Company For Year Ended June 30, 2006, Docket o. 06-00220 (July 16, 2007).

16. In sum, the incentive plan accounts of Nashville Gas Company and Atmos both consist of two main parts, a gas procurement incentive mechanism and a capacity management incentive mechanism. Under the capacity management incentive mechanism, both companies have sought to include asset management fees, in recognition of the fact that such fees are payments for capacity release transactions that fall within the PBRM tariff provisions. For both companies, TRA Audit Staff have objected to the inclusion of asset management fees. For both companies, the Authority has ordered that this issue be resolved in a separate docket. For Nashville Gas, it was Docket No. 05-00165. For Atmos, the issue remains pending in Docket No. 07-00225. In the meantime, pending resolution of the separate docket, Nashville Gas

continued to file its annual incentive plan account reports and to include asset management fees in the incentive plan calculation. As to Nashville Gas, the Authority ruled that it could continue to include asset management fees in its IPA calculations and continue to recover under its incentive plan on that basis. The annual filing of Atmos Energy's IPA reports was deferred pending resolution of Docket No. 01-00704. Now that Docket 01-00704 has been resolved, and the Company has filed its IPA Reports for the intervening years, Atmos merely seeks the same interim relief that was afforded to Nashville Gas. That is, pending resolution of the issue in Docket No. 07-00225, Atmos respectfully submits that, like Nashville Gas, it should be entitled to include asset management fees in its incentive plan account and to recover in accordance with the terms thereof.

17. Atmos respectfully submits its incentive plan account reports for the years April 1, 2001 through March 31, 2011. These are submitted herewith under seal pursuant to the terms of a Protective Order to be entered in this matter. Atmos respectfully submits that these incentive plan account reports comply with the terms of the Company's PBRM Tariff and respectfully requests that they be approved in all respects.

WHEREFORE, ATMOS RESPECTFULLY PRAYS:

1. That a contested case be convened in this matter;
2. That the Consumer Advocate and Protection Division of the Tennessee General be permitted to intervene if they so choose;
3. That the Company's incentive plan account reports for the period April 1, 2001 through March 31, 2011 be approved in all respects; and
4. That Atmos be granted such other relief as may be warranted.

Respectfully submitted,

NEAL & HARWELL, PLC

By: 

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150 Fourth Avenue, North
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(615) 726-0573 – Facsimile

Counsel for Atmos Energy Corporation

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 23 day of August, 2011.

- () Hand
- () Mail
- () Fax
- () Fed. Ex.
- (☒) E-Mail

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