

**IN THE TENNESSEE REGULATORY AUTHORITY  
AT NASHVILLE, TENNESSEE**

**IN RE:**

**ATMOS ENERGY CORPORATION  
INCENTIVE PLAN ACCOUNT (IPA)  
FOR THE YEARS 2001 THROUGH  
2011**

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Filed electronically in  
TRA Docket Room  
09/22/11

**DOCKET NO. 11-00137**

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**MOTION TO DISMISS THE PETITION OF ATMOS ENERGY**

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Robert E. Cooper, Jr., Attorney General and Reporter for the State of Tennessee, by and through the Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate"), pursuant to Tenn. Code Ann. § 65-4-118, respectfully moves the Tennessee Regulatory Authority ("TRA" or "Authority") to dismiss Atmos Energy Corporation's ("Atmos") *Petition for Approval of Incentive Plan Account Reports for the Period April 1, 2001 through March 31, 2011*. Based upon review of the *Response of the TRA Staff to Atmos Energy Corporation's Motion to Consolidate Dockets 11-00137 and 11-00158* filed on September 19, 2011, the Consumer Advocate respectfully submits the petition by Atmos should be dismissed as this matter is not ripe for a contested case and review by the Directors of the TRA.

**I. THE AUTHORITY'S STAFF HAS NOT COMPLETED THE AUDIT PROCESS**

It is Tennessee consumers that pay, as a pass-through charge on their bills outside of base rates, for the natural gas purchased by Tennessee's regulated natural gas utilities. It is through a routine process of TRA staff audits that the Authority acquires the ability to monitor and audit

the Performance Based Rate-making (“PBR”) annual reports of each regulated natural gas company in order to help insure the benefits of prudent gas purchases and management by utilities such as Atmos are shared with consumers. The Actual Cost Adjustment (“ACA”) and Incentive Plan Report (“IPA”) audits conducted by the TRA Staff for regulated natural gas companies comprise an essential function of the Authority. It is the normal course of business for the Authority’s audit staff to audit PBR annual reports filed by regulated utilities as required by their tariffs, have discussions with utilities, and request and review supporting documentation. The end result of this process is the issuance of a TRA audit staff report with findings and conclusions for consideration by the Authority.

Not all of the PBR audits for 2001 through 2011 for Atmos have been completed. According to the Authority’s audit staff, only three years of the ten year period have been completed or prepared for issuance. Therefore, the contested case seeking approval of *ten* annual reports sought by Atmos turns this routine process on its head. Moreover, the three years completed, 2001 through March 31, 2004, are apparently not subject to dispute. The remaining seven years “may” end in dispute between the TRA audit staff and Atmos. Given that not all of the audits have been completed, the process and relief sought by Atmos is simply not ripe for consideration in a contested case by the Authority.

## **II. THE PROCEDURAL COURSE PROPOSED BY ATMOS IS NOT EFFICIENT**

The request of Atmos will not streamline any potential dispute. Rather it will cause delays, disrupt the audit process and increase regulatory costs for an issue which is not yet ripe for consideration by the Authority. The suggestion by Atmos that the Consumer Advocate should intervene and negotiate a settlement, prior to the completion of the TRA Staff’s work, is simply placing the cart before the horse. It usurps the invaluable role of the TRA staff in the audit

process. Moreover, the fact the audits are not complete is in no way a reflection on the TRA Staff as the filing of the annual reports by Atmos has been delayed since the end of Docket 01-00704. Pursuing a contested case, when the audits are not complete, while asking parties to negotiate, will only add further delay.

In addition to these practical considerations, the specific terms and design of Atmos's PBR tariff requires an orderly audit process which allows the Authority audit staff to make accurate calculations for resetting the "deadband" every three years. Making such calculations and adjustments, which impacts every following annual report and audit, requires an orderly process rather than a contested proceeding.

The Consumer Advocate submits the procedural course proposed by the TRA audit staff is the appropriate course for the Authority to adopt. It allows for an orderly audit process and unfettered communication between the utility and the audit staff. It is the understanding of the Consumer Advocate, with regard to excess capacity, that there is no dispute for the first three years and the resulting audits are complete. If there is a dispute regarding the remaining seven years after the TRA Staff has completed its work, Atmos will have a forum and a contested case can be convened and negotiations between parties could begin. Furthermore, dismissing Atmos's petition is not prejudicial to the utility. Atmos is free to challenge the audits of the Authority when they are complete.

### **III. THE PROCEDURAL COURSE PROPOSED BY ATMOS DELAYS REFUNDS TENNESSEE CONSUMERS ARE ENTITLED TO**

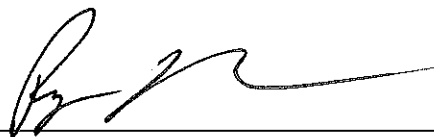
Based on the TRA's Staff Response in this docket, there is no dispute between the TRA Staff and Atmos for the IPA audits for the years 2001 through March 31, 2004. The end result of these completed audits provides a refund for consumers, a refund for which Atmos has no

dispute. However, subjecting these undisputed audits to a contested case proceeding will only further delay the refund Tennessee consumers are entitled to.

#### **IV. CONCLUSION**

For the reasons herein, the Consumer Advocate respectfully asks the Authority to dismiss the petition of Atmos.

RESPECTFULLY SUBMITTED,



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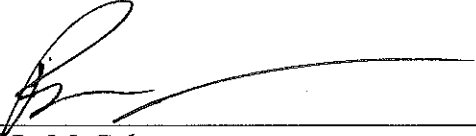
Dated: Sept. 22, 2011.

CERTIFICATE OF SERVICE

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

A. Scott Ross  
Neal & Harwell, PLC  
150 Fourth Avenue North,  
Suite 2000  
Nashville, TN 37219-2498

This the 22<sup>nd</sup> day of Sept., 2011.

  
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Ryan L. McGehee