

REG-11

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

September 19, 2011

IN RE:)	
)	
ATMOS ENERGY CORPORATION)	Docket No. 11-00137
INCENTIVE PLAN ACCOUNT (IPA) FOR)	
THE YEARS 2001 THROUGH 2011)	
)	
AND)	
)	
IN RE:)	
)	
AUDIT OF ATMOS ENERGY CORPORATION'S)	Docket No. 11-00158
("ATMOS") INCENTIVE PLAN ACCOUNT FOR)	
FOR PERIOD OF APRIL 1, 2001 THROUGH)	
MARCH 31, 2004)	

**RESPONSE OF TRA STAFF TO ATMOS ENERGY CORPORATION'S
MOTION TO CONSOLIDATE DOCKETS 11-00137 AND 11-00158**

The Audit Staff of the Utilities Division ("the Staff") of the Tennessee Regulatory Authority ("TRA" or "Authority") respectfully submits the following response to Atmos Energy Corporation's ("Atmos" or "Company") *Motion to Consolidate* filed on September 14, 2011 in Dockets No. 11-00137 and No. 11-00158. For the reasons stated below, the Staff disputes certain assertions made by Atmos in its *Motion* and opposes Atmos's request that these two dockets be consolidated.

At the conclusion of the contested case in Docket No. 01-00704, Atmos was ordered to file all outstanding annual Performance Based Ratemaking reports under its

PBR tariff.¹ At that time, there were seven (7) annual reports outstanding, namely those for the period April 1, 2001 through March 31, 2008. Atmos delayed its filing of these reports until 2011; consequently, there are now ten (10) annual reports outstanding. In September of 2010, Atmos personnel contacted Staff and requested a meeting to discuss the filing of these reports. Since that time, Staff has had frequent communications with and/or met with Atmos personnel in order to gather and review the necessary documentation, from Atmos, to support the annual reports. In consultation with Atmos personnel, Staff considered various approaches to efficiently complete the required audits. The options ranged from auditing three (3) years at a time to auditing all ten (10) years in one filing. Since the first three (3) years contained no disputed issues, Staff proposed separating the audits into the first three (3) years followed by the remaining seven (7) years. This proposal was motivated by Staff's determination that an overcollection known to be due customers as of March 31, 2004 should be refunded, without further delay.

Based on representations made by Atmos personnel, Staff was anticipating that the Company would soon file the first three (3) annual reports with the Authority for audit, when Atmos changed course and filed a petition in Docket No. 11-00137 requesting that the Authority approve all ten (10) annual reports "in all respects".² That approval, if granted, would authorize Atmos to include asset management payments (which began in year four) for sharing under the terms of its current Performance Based Ratemaking

¹ *In Re: Audit of United Cities Gas Company's Incentive Plan Account (IPA) for the Period of April 1, 2000 through March 31, 2001*, Docket No. 01-00704, *Initial Order of Hearing Officer on the Merits*, 37 (March 14, 2006). Although the Initial Order was reversed in part as to the proposed TIF tariff amendment, the voting panel did not reverse those rendering clauses of the Initial Order that related to the existing PBR tariff.

² *In Re: Atmos Energy Corporation Incentive Plan Account (IPA) for the Years 2001 through 2011*, Docket No. 11-00137, Petition, page 8 (August 23, 2011).

Mechanism Rider.³ The inclusion or exclusion of these payments is likely to be a contested issue for years four (4) through ten (10).

On September 8, 2011, Staff requested that a docket be opened for the purpose of issuing an audit report for the first three (3) years (April 1, 2001 through March 31, 2004) so that customers could begin receiving their refund. The audit is complete and Staff and Atmos have agreed on the ending balance in the IPA Account at March 31, 2004. The report is ready to be placed on the first conference agenda in October for consideration by the Directors. Therefore, Staff avers that, contrary to Atmos' claim, it would not be "more efficient and less expensive" to address these years within the context of Docket No. 11-00137.⁴ In addition, although Staff is a party to contested case audit dockets, Staff is not a party in Docket No. 11-00137. Therefore, Staff would be precluded, absent further action from the Authority, from conducting its audits and issuing audit reports within that docket.

This situation creates additional prejudice to Staff's clearly established role under the PBR tariff and presents an additional reason for denying Atmos's Motion to Consolidate. Consolidating the two dockets, or for that matter, allowing Docket No. 11-00137 to have priority over any aspect of the normal audit process, would unnecessarily and improperly interfere with the Staff's performance of its duties, which are mandated by Atmos's PBR tariff. It is standard procedure for Staff to conduct these audits and participate as a party. By opening Docket No. 11-00158 and proceeding with the audit process, the TRA will be affording the same treatment to Atmos as it has done for all other gas companies' incentive plans that Staff audits.

³ Atmos is in effect asking the Authority to approve ten (10) years of annual reports en masse without audit.

⁴ *Motion to Consolidate*, page 2 (September 14, 2011).

A unique aspect of Atmos's incentive plan is that it requires re-setting the deadband (the area within which there are no incentive savings or losses) every three (3) years, based upon the most recent audited result.⁵ The accurate calculation of incentive sharing cannot be determined absent the orderly sequential auditing of the annual reports. Considering all ten (10) years, as Atmos requests, would prevent Staff from calculating the deadband properly.

Staff's audit of the sharing calculations contained in the fourth annual report has also been completed at this time. Once the Authority rules on Staff's audit report in Docket No. 11-00158, Staff is ready to issue its report on year four. The asset management issue that Atmos raises in Docket No. 11-00137 does not arise until the fourth year. Therefore, Atmos can voice its objections to Staff's finding on the asset management issue in the audit report on year four and request relief in Docket No. 11-00158 on the very issue it is raising in Docket No. 11-00137. Once the Authority makes that decision, the remaining six (6) annual reports can be audited quickly.

Staff avers that the annual reports must be audited by Staff in order for the Authority to have evidence upon which to base its approval. Staff's practice has been to audit all annual reports for all the gas companies.⁶ Staff then issues an audit report that is brought before the panel of Directors for their approval. Staff maintains that the filing of the *Petition* in Docket No. 11-00137 should not exempt Atmos from this orderly audit process. Contrary to Atmos's assertion in its *Motion*, the audits in question here can be

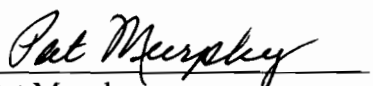
⁵ "...At the end of each three-year period, the deadband will be readjusted to 1% below the most recent **annual audited results** of the incentive plan." [emphasis added] Performance Based Ratemaking Mechanism Rider, 2nd Revised Sheet No. 45.2.

⁶ ACA Audits and IPA Audits.

completed expeditiously and the relief sought by Atmos can be efficiently addressed through the audit process.

Based on the discussion set forth above, Staff respectfully requests that Atmos's motion to consolidate Docket No. 11-00158 with Docket No. 11-00137 be denied.

Respectfully submitted,


Pat Murphy
Deputy Chief of Utilities Division

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served as indicated on the person or persons listed below on the 19th day of September, 2011.

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