filed electronically in docket office on 02/22/12

IN THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE

IN RE:	)	
	)	
AUDIT OF ATMOS ENERGY	)	
CORPORATION'S INCENTIVE PLAN	)	
ACCOUNT FOR PERIOD OF APRIL 1, 2004	)	**DOCKET NO. 11-00195**
THROUGH MARCH 31, 2007	)	
	)	

CONSUMER ADVOCATE'S BRIEF IN SUPPORT OF THE TRA STAFF'S COMPLIANCE AUDIT REPORT

The Consumer Advocate and Protection Division of the Tennessee Attorney General's Office ("Consumer Advocate") submits this Brief in support of the position taken by the Utilities Division of the Tennessee Regulatory Authority ("TRA Staff") in its Compliance Audit Report generally and more specifically with regard to Finding #1 described on pages 7 and 8 of the Compliance Audit Report which is Exhibit "A" to TRA Staff's Notice of Filing submitted in this Docket on November 10, 2011. For the reasons stated below, the Consumer Advocate supports the recommendation of TRA Staff that fees received from a third party asset manager should be eliminated from the Capacity Management savings claimed by Atmos Energy Corporation ("Atmos") in this Docket.

The narrow question being addressed in this Brief has to do with whether the fees paid to Atmos by its asset manager should be included in the amount to be shared by Atmos and its customers under the Capacity Management Incentive Mechanism or whether the benefit of those fees should go solely to Atmos' customers. It is the position of TRA Staff in Finding #1 that the tariff in place during the period reviewed by this audit (April 1, 2004 through March 31, 2007)

did not expressly authorize the inclusion of fees paid by a third party asset manager; that the use of a third party asset manager precludes calculation of "savings" associated with the asset management fees; and that the use of a third party asset manager does not provide the incentive to move beyond normal practices in exchange for the possibility of additional monetary reward. The Consumer Advocate supports the TRA Staff in each of these positions.

The first contention of the TRA Staff in Finding #1 is that the Atmos tariff in place during the audit period did not mention or anticipate Atmos' use of a third party asset manager to market the release of daily transportation and storage capacity. As such, any fees received by Atmos as a result of contracting with a third party asset manager are not included in the precise definition of the "associated savings" to be shared on a 90/10 basis with Atmos' customers (customers receive 90% of associated savings and Atmos retains 10%). As pointed out by TRA Staff, when the tariff was first devised in 1999, the practice of outsourcing the marketing of excess daily gas assets was unknown. Therefore, the plain language of the tariff laid out in Finding #1 makes no mention of the fees Atmos would later receive when it decided to outsource that function. Since the tariff does not authorize Atmos to include these fees in the profits to be shared by both Atmos and its customers, the payment for the right to manage the excess assets should go to the party that actually paid for those assets – namely Atmos' rate payers.

The second point raised by TRA Staff in support of their contention that the asset management fees should not be included in the sharing mechanism is the fact that there are no "savings" associated with the payment by the third party asset manager for the right to market the excess gas capacity. The sharing is to be calculated based on the savings or profit made on the sale of the excess capacity. Because a fee was never contemplated by the original tariff, it is

not accounted for or included in the terminology of what is to be shared by Atmos and its customers.

The third specific point raised by TRA Staff in their Compliance Audit Report is that the hiring of a third party asset manager does nothing to provide an incentive for Atmos to move beyond its normal practices and take a risk in the marketing of excess capacity that is to be rewarded by sharing in the savings generated by those risks. The retention of an outside third party to market those excess assets shifts the risk to the third party. Atmos, therefore, having taken no risk, should not share in that part of the transaction.

The TRA Staff is a party to this Docket and is filing its own Brief with the TRA stating in much greater detail the reasoning behind its findings in the Compliance Audit Report. The Consumer Advocate supports the TRA Staff in its position in this matter and in both the TRA Staff's well reasoned and very thorough Brief as well as in the Compliance Audit Report itself. The Consumer Advocate therefore requests the TRA find that under the language of the Atmos tariff in place prior to April 1, 2011, fees received from a third party asset manager are not to be included in the calculation under the Capacity Management Incentive Mechanism of funds to be shared with Atmos and that all such fees are to be for the benefit of Atmos' customers. The Consumer Advocate further requests that this finding be applied to all time periods prior to April 1, 2011 and not just to the years that are part of this audit.

RESPECTFULLY SUBMITTED,

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This the 22nd day of February, 2012.

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