

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**December 5, 2013**

**IN RE:**

**PETITION OF ATMOS ENERGY CORPORATION TO  
REVISE PERFORMANCE BASED RATEMAKING  
MECHANISM RIDER IN TARIFF**

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**DOCKET NO.  
13-00111**

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**ORDER GRANTING TRA PARTY STAFF MOTION TO INTERVENE  
& ESTABLISHING PROCEDURAL SCHEDULE**

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This matter came before the Hearing Officer of the Tennessee Regulatory Authority (“TRA” or “Authority”) during a Pre-Hearing Conference held on November 20, 2013, to consider the *Motion to Intervene* filed by TRA Party Staff (“Party Staff”) on November 13, 2013, and, if necessary, amend the procedural schedule.

**PRE-HEARING CONFERENCE**

As noticed, the Pre-Hearing Conference began at approximately 1:30 p.m. in the Hearing Room on the Ground Floor of the Tennessee Regulatory Authority Building located at 460 James Robertson Parkway, Nashville, Tennessee. The parties were represented as follows:

**Atmos –A. Scott Ross, Esq.,** Neal & Harwell, PLC, 2000 One Nashville Place, 150 Fourth Avenue North, Nashville, Tennessee 37219;

**Consumer Advocate – Joe Shirley, Esq.,** Consumer Advocate and Protection Division of the Office of the Attorney General, P.O. Box 20207, Nashville, Tennessee 37202; and,

**TRA Party Staff - Shiva Bozarth, Esq.,** Tennessee Regulatory Authority, 460 James Robertson Parkway, Nashville, Tennessee 37243.

## ***I. Motion to Intervene***

In its *Motion to Intervene*, TRA Party Staff asserts that it has authority to “investigate, upon its own initiative ... any public utility as defined in §65-4-101.”<sup>1</sup> Party Staff states its participation is necessary because, “Atmos’ petition in this matter requests certain changes to its Tariff. Party Staff asserts that the Authority should consider any changes to Atmos’ tariffs alongside the Authority’s recent decision in TRA Docket No. 07-00225 as well as other previous dockets involving Atmos.”<sup>2</sup> According to Party Staff, its request to intervene as a party arose after Atmos objected to and failed to respond fully to certain data requests sent by TRA Advisory Staff on October 21, 2013, seeking information about the relatedness of the tariff changes proposed by Atmos to the Settlement Agreement filed in Docket No. 07-00225 which was approved and adopted by the Authority in resolution of that docket.<sup>3</sup> Party Staff contends that “the answers to these and other questions are essential to the TRA’s analysis of Atmos’ petition” and its participation in this docket is “essential to ensuring that all necessary discovery is conducted and the necessary issues are raised before the authority.”<sup>4</sup> Party Staff requests that it be allowed to intervene and that the procedural schedule “be amended to allow all parties sufficient time to adequately participate.”

On November 19, 2013, Atmos filed its *Opposition of Atmos Energy Corporation to Party Staff’s Request to Intervene and Modify the Procedural Schedule* (“*Atmos Opposition*”) asking that the Hearing Officer deny Party Staff’s *Motion to Intervene* because Party Staff’s delay in seeking to intervene has “significant negative consequences, both legal and practical” on

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<sup>1</sup> *Motion to Intervene*, p. 1 (November 13, 2013) (quoting Tenn. Code Ann. § 65-4-117(a)).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 2.

<sup>4</sup> *Id.*

the proceeding.<sup>5</sup> Atmos states that since so much time has passed since the docket was opened, “it raises a serious question whether Party Staff can meet the requirements of TCA § 4-5-304, and 1220-1-2-.21(5) (calling for staff participation to be determined “as soon as practicable after the commencement of any proceeding ...”).<sup>6</sup> According to Atmos, Party Staff “admittedly has participated in discussions concerning this matter with other members of the Utility Division staff.”<sup>7</sup> Atmos maintains that “such indirect communications with agency members is prohibited by section 4-5-304” because those members will also give advice to the panel of Directors assigned to this docket.<sup>8</sup>

In addition, Atmos states that Party Staff “admittedly participated in drafting the agency’s discovery requests to Atmos,”<sup>9</sup> and asserts that “it should be Party Staff’s obligation to establish a factual record to show that the requirements [of the UAPA and TRA Rules for participation] have been met.”<sup>10</sup> Finally, Atmos contends that “the net effect of Party Staff’s late entry into the proceedings would be to cause a long delay of the hearing of this matter, or to impose deadlines on the other parties that would be unworkable in light of the upcoming holiday period and existing commitments of their counsel to other matters.”<sup>11</sup>

Also on November 19, 2013, the Consumer Advocate filed its *Consumer Advocate and Protection Division’s Response to Party Staff’s Motion to Intervene* (“CAPD Response”). The Consumer Advocate asserted that “as long as the Authority and its staff observe and abide by the aforementioned [TRA rules and statutory] requirements, and the Party Staff adequately demonstrates its compliance with them, the Consumer Advocate does not object to the Party

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<sup>5</sup> *Atmos Opposition*, p. 1 (November 19, 2013).

<sup>6</sup> *Id.* at 2.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 3.

Staff's participation as a party to this case.”<sup>12</sup> In addition, the Consumer Advocate did not object to amending the procedural schedule “as long as the Consumer Advocate is also given a fair opportunity to conduct discovery and a reasonable time to respond to the Party Staff's testimony by filing amended testimony, rebuttal testimony or other appropriate filings as the circumstances may warrant.”<sup>13</sup>

## **FINDINGS AND CONCLUSIONS**

Tenn. Code Ann. § 4-5-310(a) sets forth the following criteria to be considered in reviewing a petition to intervene in Authority proceedings:

- (a) The administrative judge or hearing officer shall grant one (1) or more petitions for intervention if;
  - (1) The petition is submitted in writing to the administrative judge or hearing officer, with copies mailed to all parties named in the notice of the hearing, at least seven (7) days before the hearing;
  - (2) The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of the law; and
  - (3) The administrative judge or hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.<sup>14</sup>

Further, TRA Rule 1220-1-2-.21 gives designated TRA staff members the authority to participate in contested case proceedings as a party.

Therefore, upon review and due consideration, the Hearing Officer finds that Party Staff is qualified to participate as an intervenor in this proceeding when it is designated to do so in

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<sup>12</sup> *CAPD Response*, p. 2 (November 19, 2013).

<sup>13</sup> *Id.*

<sup>14</sup> *See also* Tenn. Code Ann. § 65-2-107: “All persons having a right under the provisions of the laws applicable to the authority to appear and be heard in contested cases as defined in this chapter shall be deemed parties to such proceedings for the purposes of this chapter. In addition, the authority may upon motion allow any interested person to intervene and become a party to any contested case.”

accordance with TRA Rule 1220-1-2-.21. Further, the Hearing Officer finds that Party Staff's motion was timely filed and its intervention shall not impair the interests of justice or the orderly and prompt conduct of the proceedings.<sup>15</sup> For these reasons, the Hearing Officer agrees that Party Staff should be permitted to intervene, but also finds it appropriate that such intervention be limited to the discrete issue articulated by Counsel for Party Staff during the Pre-Hearing Conference concerning the impact upon or relatedness between the resolution of Docket No. 07-00225 ordered by the Authority and the tariff changes now proposed by Atmos in this docket.<sup>16</sup> In addition, in accordance with Tenn. Code Ann. § 4-5-304(e), Ms. Murphy should file an affidavit in the record by November 25, 2013, describing all written communications received, all written responses to the communications, and the substance of all oral communications, all responses made, and the identity of each person participating in any ex-parte communication.<sup>17</sup>

## ***II. PROCEDURAL SCHEDULE***

The goals of any procedural schedule are to efficiently move the docket toward resolution while providing the parties a reasonable and adequate amount of time to conduct discovery, prepare and submit pre-filed testimony, and prepare for a Hearing on the merits. The Hearing Officer reminds the parties that as with any schedule, the effectiveness of the revised procedural schedule in this matter is directly dependent upon the extent of cooperation on the part of the parties in meeting the individual benchmark dates. Incorporating the revisions to the procedural schedule proposed by the parties during the Pre-Hearing Conference, the Hearing Officer adopts the *Revised Procedural Schedule* attached as **Exhibit A**.

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<sup>15</sup> The Procedural Schedule issued by the Hearing Officer on September 18, 2013 targeted a January hearing date; however, due to other matters pending before the Authority, the Hearing Officer informed the parties at the Pre-Hearing Conference that, at this time, the earliest possible date for a hearing in this matter would be February. See Transcript of Proceedings, pp. 26-28 (November 20, 2013).

<sup>16</sup> See *In re: Docket to Evaluate Atmos Energy Corporation's Gas Purchases and Related Sharing Incentives*, Docket No. 07-00225, *Order Approving Stipulation and Settlement Agreement* (August 6, 2013).


<sup>17</sup> Tenn. Code Ann. § 4-5-304(e) (2013).

**IT IS THEREFORE ORDERED THAT:**

1. TRA Party Staff is granted leave to intervene in this proceeding limited to the discrete issue articulated by Counsel for TRA Party Staff during the Pre-Hearing Conference concerning the impact upon or relatedness between the resolution of Docket No. 07-00225 and the tariff changes now proposed by Atmos Energy Corporation in this docket, and shall receive copies of any notices, orders, or other documents herein.

2. TRA Party Staff shall file an Affidavit of Pat Murphy as to all ex-parte communications conforming to Tenn. Code Ann. § 4-5-304(e), by November 25, 2013, as ordered herein.

3. The *Revised Procedural Schedule*, attached to this Order as Exhibit A, is adopted in full force and effect.

  
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Kelly Cashman-Grams, Hearing Officer

**Docket No. 13-00111**  
**December 5, 2013**

**Revised Procedural Schedule**

<b>Due Date</b>	<b>Filing</b>
December 2, 2013	Pre-filed testimony by TRA Party Staff
December 17, 2013	Discovery Requests to TRA Party Staff by Atmos and CAPD
January 6, 2014	Discovery Responses by TRA Party Staff
January 17, 2014	Pre-filed rebuttal testimony by Atmos and CAPD
TBD	Pre-Hearing Conference
TBD	Hearing on the Merits before the TRA Panel

**Exhibit A**