

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**September 18, 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 CONSUMER ADVOCATE'S PETITION 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 Status Conference on September 18, 2013, held in order to rule on intervention requests filed in the docket file, determine the issues to be considered by the voting panel of Directors, and establish a procedural schedule to completion in the docket.

**BACKGROUND**

On August 13, 2013, pursuant to Tenn. Code Ann. § 65-4-104 and TRA Rule 1220-4-1-.06, Atmos Energy Corporation ("Atmos" or the "Utility") filed a *Petition to Revise Performance Based Ratemaking Mechanism Rider in Atmos Energy Corporation's Tariff* ("*Petition*") seeking the Authority's approval to revise certain provisions of its Performance-Based Ratemaking Mechanism (the "PBRM") tariff rider.<sup>1</sup> During the regularly scheduled Authority Conference held on September 9, 2013, the voting panel of Directors voted unanimously to convene a contested case proceeding and to appoint General Counsel or her designee to serve as Hearing

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<sup>1</sup> *Petition to Revise Performance Based Ratemaking Mechanism Rider in Atmos Energy Corporation's Tariff* (August 13, 2013). Atmos attached a draft copy of its proposed PBRM tariff rider, as revised, which is identified as Exhibit 1.

Officer in this matter. On September 10, 2013, the Hearing Officer issued a *Notice of Status Conference* setting an initial status conference on September 18, 2013, and requiring that any person desiring to participate in the conference file a petition to intervene. On September 16, 2013, the Consumer Advocate and Protection Division of the Office of the Attorney General (“Consumer Advocate”) filed its *Petition to Intervene* pursuant to Tenn. Code Ann. § 65-4-118.

#### **STATUS CONFERENCE**

As noticed, the Status Conference began at approximately 2:30 p.m. in the Hearing Room on the Ground Floor of the Tennessee Regulatory Authority 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; and,

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

#### ***I. Petition to Intervene***

In its *Petition to Intervene*, the Consumer Advocate seeks to intervene in these proceedings pursuant to Tenn. Code Ann. § 65-4-118, which authorizes the Consumer Advocate to intervene in proceedings before the Authority in order to represent the interests of Tennessee consumers of public utility services.<sup>2</sup> In its *Petition to Intervene*, the Consumer Advocate asserts that the changes proposed by Atmos to its PBRM tariff rider may affect the interests of consumers. The Consumer Advocate states that only by participating in this proceeding can it work to adequately protect the interests of consumers.

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<sup>2</sup> Tenn. Code Ann. § 65-4-118(b)(1) states, “The consumer advocate division has the duty and authority to represent the interests of Tennessee consumers of public utilities services. The division may, with the approval of the attorney general and reporter, participate or intervene as a party in any matter or proceeding before the authority or any other administrative, legislative or judicial body and initiate such proceeding, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, and the rules of the authority.”

Further, 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>3</sup>

Under TRA Rule 1220-1-2-.06, any party opposing a motion in a contested case must file and serve a response to the motion within seven days of service of the motion. In this instance, Atmos has not filed an objection in the docket file and, further, affirmed during the Status Conference that it had no opposition to the Consumer Advocate's request to intervene.

Therefore, upon due consideration, the Hearing Officer finds that the legal rights and interests of Tennessee consumers of public utility services may be affected in this proceeding, the Consumer Advocate's petition is timely filed, and its intervention shall not impair the interests of justice and the orderly and prompt conduct of the proceedings. For these reasons, the Hearing Officer hereby grants the Consumer Advocate's *Petition to Intervene*.

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

The goals of any procedural schedule are to efficiently move the docket toward a resolution while providing the parties a reasonable and adequate amount of time to conduct


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<sup>3</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."

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 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 proposed procedural schedule submitted by the parties, the Hearing Officer with slight modification adopts the *Procedural Schedule* attached as Exhibit A.

**IT IS THEREFORE ORDERED THAT:**

1. The Consumer Advocate and Protection Division of the Office of the Attorney General is granted leave to intervene in this proceeding and shall receive copies of any notices, orders, or other documents herein.
2. The *Procedural Schedule*, attached to this Order as Exhibit A, is adopted in full force and effect.

  
Kelly Cashman-Grams, Hearing Officer

## **Procedural Schedule – Docket No. 13-00111**

(September 18, 2013)

<b>Due Date</b>	<b>Filing/Action</b>
September 18, 2013	Initial Status Conference @ 2:30 p.m.
October 7, 2013	Discovery Requests Issued by Parties* Discovery shall be conducted in accordance with TRA Rule 1220-1-2-.11. Copies of discovery requests and responses exchanged between the parties shall be filed with the Authority.
October 28, 2013	Deadline for Responses to Discovery*
November 1, 2013	Motions to Compel Discovery (if any)**
November 6, 2013	Response(s) to Motions to Compel (if any)**
TBD	Status Conference on Discovery Motions (if needed)
November 20, 2013	Pre-Filed Direct Testimony (Intervenor)*
December 13, 2013	Pre-Filed Rebuttal Testimony (Utility Petitioner)*
December 18, 2013	Pre-Hearing Conference (following the conclusion of the Authority Conference scheduled to begin at 1:00 p.m.)
TBD	Hearing on the Merits (Target date: January AC)

\* General Filings & Testimony are to be filed no later than 4:00 p.m. CST on the designated due date.

\*\* Motions & Responses to Motions must be filed by 2:00 p.m. CST on the designated due date.

**Exhibit A**