

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

September 23, 2014

IN RE:)	
)	DOCKET NO.
PETITION OF ATMOS ENERGY CORPORATION)	14-00081
TO ESTABLISH AN ANNUAL RATE REVIEW)	
MECHANISM PURSUANT TO TENNESSEE CODE)	
ANNOTATED 65-5-103(D)(6))	

ORDER GRANTING CONSUMER ADVOCATE’S PETITION TO INTERVENE

This matter is before the Hearing Officer of the Tennessee Regulatory Authority (“Authority” or “TRA”)¹ upon a *Petition to Intervene* filed by the Consumer Advocate and Protection Division of the Office of the Tennessee Attorney General (“Consumer Advocate”) on September 10, 2014.

BACKGROUND

Atmos Energy Corporation (“Atmos”) is a public utility subject to the jurisdiction of the Authority that provides natural gas service to approximately 132,000 residential, commercial, and industrial customers in Tennessee. On August 28, 2014, Atmos filed a *Petition to Adopt Statutory Annual Review of Rates and Tariff with Procedures for Statutory Annual Rate Review* (“*Petition*”) seeking to opt into the annual rate review procedure established under Tenn. Code Ann. § 65-5-103(d)(6). In its *Petition*, Atmos asserts that it will earn an equity return of 8.87% for the initial annual period of review and that an overall increase of approximately \$2.5 million in base rates is necessary in order to bring the

¹ During the regularly scheduled Authority Conference held on September 15, 2014, the voting panel of Directors assigned in this docket voted unanimously to convene a contested case proceeding and appoint General Counsel or her designee to act as Hearing Officer to handle any preliminary matters arising in the proceeding.

Company's equity return to 10.1%, as was approved by the Authority in Atmos' last general rate case in Docket No. 12-00064.² Atmos requests that its new rates take effect on January 1, 2015, and adjusted each January 1 thereafter, until the annual review plan is terminated in accordance with Tenn. Code Ann. § 65-5-103(d)(6)(D).³ Under the statute, the Authority has authority to consider and implement alternative regulatory methods allowing utility rate reviews and cost recovery in lieu of a general rate case proceeding, and render a final determination on such requests no later than one hundred twenty (120) days from the initial filing by the public utility.⁴

PETITION TO INTERVENE

In its *Petition to Intervene*, the Consumer Advocate seeks to intervene in this docket pursuant to Tenn. Code Ann. § 65-4-118, which qualifies the Consumer Advocate to intervene in proceedings before the Authority for the purpose of representing the interests of Tennessee consumers of public utility services. The Consumer Advocate asserts that customers may be adversely affected by the proposed rate increase and annual review mechanism set forth in Atmos' *Petition* and the determinations of the Authority related thereto. As such, it seeks to intervene in these proceedings to represent the interests of the consumers served by Atmos. In conclusion, the Consumer Advocate states that only by participating in this proceeding can it work to adequately protect the interests of consumers.⁵

FINDINGS & CONCLUSIONS

TRA Rule 1220-01-02-.08 sets forth the ways in which requests to intervene in contested cases before the Authority are to be made and considered, as follows:

² *Petition*, p. 3 ¶¶ 6-7 (August 28, 2014); and see Schedule 1 to *Petition* (August 28, 2014).

³ *Petition*, p. 3 ¶¶ 7-8 (August 28, 2014).

⁴ Tenn. Code Ann. §§ 65-5-103(d)(1)(A) and 65-5-103(d)(6)(C) (Supp. 2014).

⁵ *Petition to Intervene* (September 3, 2014).

- (1) Petitions for intervention shall be granted in accordance with T.C.A. § 4-5-310 and T.C.A. § 65-2-107.
- (2) A petition for intervention shall set forth with particularity those facts that demonstrate that the petitioner's legal rights, duties, privileges, immunities or other legal interests may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of law. Intervention may be denied or delayed for failure to provide such specific facts.
- (3) A petition for intervention shall be filed at least seven (7) days prior to the date of the contested case hearing.⁶

In addition to its own Rules and statutes, contested case proceedings before the Authority are governed by the provisions of the Uniform Administrative Procedures Act (“UAPA”) found at Tenn. Code Ann. § 4-5-101, *et. seq.* As noted in the above Rule, the Authority shall grant petitions to intervene according to the standards provided under the UAPA, Tenn. Code Ann. § 4-5-310, and as provided in the Authority’s statutes at Tenn. Code Ann. § 65-2-107. Further, Tenn. Code Ann. § 4-5-310 establishes the following criteria for mandatory and permissive or discretionary intervention, as follows:

- (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 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.
- (b) The agency may grant one (1) or more petitions for intervention at any time, upon determining that the intervention sought is in the interests of justice and shall not impair the orderly and prompt conduct of the proceedings.⁷

⁶ Tenn. Comp. R. & Regs. 1220-01-02-.08.

⁷ Tenn. Code Ann. § 4-5-310.

In addition, the Hearing Officer may, at any time, limit or impose conditions upon an intervenor's participation.⁸ Finally, 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 (7) days of service of the motion.

Under Tenn. Code Ann. § 4-5-310(a)(1) and TRA Rule 1220-01-02-.08(3), to be considered timely, a petition for intervention must be filed at least seven (7) days prior to the date of the contested case hearing. Therefore, as the date for a hearing in this docket has not yet been established, the Hearing Officer considers the Consumer Advocate's *Petition to Intervene* timely-filed. Both Tenn. Code Ann. 4-5-310(a)(2) and TRA Rule 1220-01-02-.08(2) require that a petition to intervene state facts, with particularity, demonstrating a legal right or interest held by the petitioner that may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of law. Tenn. Code Ann. § 65-4-118(b)(1), provides a general basis for the qualification of the Consumer Advocate as an intervenor for the purpose of representing those consumers of public utility services that have legal rights or interest that may be determined in a proceeding before the TRA, as follows:

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.⁹

Thus, subject to the approval of the Attorney General, and upon demonstrating compliance with the UAPA and the TRA's Rules, Tenn. Code Ann. § 65-4-118(b)(1) enables the Consumer Advocate to intervene as a party in proceedings before the TRA to represent the

⁸ Tenn. Code Ann. § 4-5-310(c).

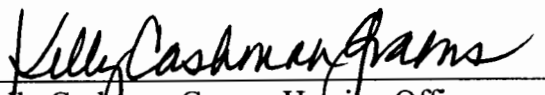
⁹ Tenn. Code Ann. § 65-4-118(b)(1).

interests of the utility consumers. The statute does not, however, confer an automatic or absolute right upon the Consumer Advocate to participate in this or any other of the Authority's proceedings.

Finally, Tenn. Code Ann. 4-5-310(a)(3) requires that the Hearing Officer grant a petition for intervention only upon determining that "the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing intervention." Upon due consideration, the Hearing Officer finds that the *Petition to Intervene* is timely-filed, the Consumer Advocate qualifies as an intervenor under law, and that its intervention should not impair the interests of justice or the orderly and prompt conduct of the proceedings. In addition, during the Status Conference held on September 23, 2014, Atmos stated that it had no objection to the Consumer Advocate's request to intervene in these proceedings. For all of the foregoing reasons, the Hearing Officer finds that the Consumer Advocate's request to intervene should be granted.

IT IS THEREFORE ORDERED THAT:

- 1) The *Petition to Intervene* filed by the Consumer Advocate and Protection Division of the Office of the Attorney General is granted.
- 2) The Consumer Advocate and Protection Division of the Office of the Attorney General may intervene and participate as a party in this proceeding and, as such, shall receive copies of any notices, orders, or other documents filed herein.


Kelly Cashman-Grams, Hearing Officer