

**IN THE TENNESSEE PUBLIC UTILITY COMMISSION
AT NASHVILLE, TENNESSEE**

IN RE:)	
)	
PETITION OF ATMOS ENERGY)	
CORPORATION ANNUAL)	Docket No. 17-00091
RECONCILIATION OF ANNUAL)	
RATE REVIEW MECHANISM)	

**CONSUMER ADVOCATE'S MOTION IN LIMINE
TO EXCLUDE TESTIMONY ON AND CONSIDERATION OF
THE ISSUE OF AN ALLEGED TAX NORMALIZATION VIOLATION**

Herbert H. Slatery III, Attorney General and Reporter for the State of Tennessee, by and through the Consumer Protection and Advocate Division of the Office of the Attorney General (Consumer Advocate), pursuant to Tenn. R. Civ. Proc. 7.02 and Tenn. Comp. R. & Regs. 1220-1-2-.06, respectfully moves the Tennessee Public Utility Commission (Commission or TPUC) to exclude testimony on and consideration of the issue of an alleged tax normalization violation. For cause, the Consumer Advocate would show as follows:

1. On January 16, 2018, the Consumer Advocate and Atmos Energy Corporation (Atmos) appeared at the January TPUC Conference for a hearing on Atmos' Motion to Resubmit Reconciliation and Change Dates (Motion) in this Docket. After a significant amount of expert testimony and cross-examination, the Commission requested that the Parties prepare and file Post-Hearing Briefs. The Parties filed Post-Hearing Briefs on February 9, 2018. Atmos then filed a Response to the Consumer's Advocate's Post-Hearing Brief on February 16, 2018.

2. On February 26, 2018, the Parties appeared before the Commission, and the Commission panel voted 3-0 to deny Atmos' Motion. Tenn. Pub. Util. Comm'n., Transcript of Commission Conference on Feb. 26, 2018 (Commission Conference), at Page 4, lines 3-24. The

Commission also voted to hold Atmos' required February 1st budget filing in abeyance until completion of this Docket. *Id.*

3. In the deliberations on the Motion, the following exchange took place:

VICE CHAIRMAN MORRISON: This docket was opened upon the filing of Atmos' annual rate review mechanism reconciliation of actual results to projected test period results for the period ending May 31, 2017, adopted in TPUC Docket 17-00012.

Based on the evidentiary record in this proceeding, I move that Atmos' motion to resubmit reconciliation and change dates be denied. I further move that the required February 1st budget filing for Atmos continue to be held in abeyance until completion of this docket and that we proceed with the evidentiary hearing in this docket at the next commission conference.

Moreover, I find that since no rates will change at the conclusion of this docket, it is not the appropriate docket to resolve any potential tax normalization violations. Rather, any amount of revenue sufficiency or deficiency found in this docket will be carried forward for inclusion in the next annual rate review budget filing wherein rates will be changed. I so move.

DIRECTOR HILLIARD: Second, vote aye.

DIRECTOR JORDAN: Before I vote, I would like to commend counsel for the post trial briefs that were submitted. I looked at them very carefully. I thought they were very well written and very well argued. I vote aye.

Tenn. Pub. Util. Comm'n., Transcript of Commission Conference, Feb. 26, 2018, at Page 3, line 23 through Page 4, line 24. (Emphasis added)

4. Pursuant to the Commission's ruling and finding on February 26, 2018, the Consumer Advocate began preparations for an evidentiary hearing concerning the non-tax normalization violation issues in this Docket.

5. On March 12, 2018, the Consumer Advocate unexpectedly received service from Atmos of the Pre-Hearing Brief of Atmos Energy Concerning Tax Normalization (Pre-Hearing

Brief) in apparent direct contradiction to the Commission's ruling and finding. Atmos' Pre-Hearing Brief contains primarily legal arguments, with minimal supporting facts, concerning the issue of an alleged tax normalization violation.

6. Neither the Hearing Officer assigned to this case nor the Commission had requested Pre-Hearing Briefs on any matter. In addition, the Consumer Advocate notes that Pre-Hearing Briefs were not contained in the Procedural Schedule.

7. Because of the Commission's February 26th ruling and finding, any testimony or consideration concerning the issue of an alleged tax normalization violation is not relevant, improper, and outside the scope of this Docket. Addressing this issue again would be needlessly cumulative and a waste of the Commission's and the Parties' resources given the Commission's ruling and finding.

WHEREFORE, the Consumer Advocate respectfully asks the Commission to grant this Motion in Limine excluding any testimony on and consideration of the issue of an alleged tax normalization violation in this Docket.

RESPECTFULLY SUBMITTED,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via U.S. Mail or electronic mail upon:

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This the 26th day of March, 2018.



Wayne M. Iryin
Assistant Attorney General