

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

IN RE:	April 6, 2018	)	
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ATMOS ENERGY CORPORATION - 2017 ARM		)	DOCKET NO.
RECONCILIATION FILING		)	17-00091

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ORDER DENYING CONSUMER ADVOCATE’S MOTION IN LIMINE

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This matter is before the Hearing Officer for consideration of the *Consumer Advocate’s Motion in Limine to Exclude Testimony on and Consideration of the Issue of an Alleged Tax Normalization Violation* (“*Motion in Limine*”) filed by the Consumer Protection and Advocate Division of the Office of the Attorney General (“Consumer Advocate”) on March 28, 2018. Atmos Energy Corporation (“Atmos” or “Company”) filed its *Response of Atmos Energy Corporation to Consumer Advocate’s Motion in Limine to Exclude Testimony and Consideration of Potential Tax Normalization Violations and Consumer Advocate’s Pre-Hearing Brief* (“*Atmos’ Response*”) on March 29, 2018. On April 3, 2018, the Hearing Officer held a Pre-hearing telephone conference with the parties to discuss the procedural aspects of the hearing and to hear arguments on the *Motion in Limine*.

**RELEVANT BACKGROUND**

On January 8, 2018, Atmos filed its *Motion to Resubmit Reconciliation and Change Dates* (“*Motion to Change Dates*”) requesting a change in the Annual Rate Review Mechanism (“ARM”) test year from June 1<sup>st</sup> through May 31<sup>st</sup> to October 1<sup>st</sup> through September 30<sup>th</sup> to align the test period with the Company’s fiscal year. At the Commission Conference held on January 16, 2018, a hearing was held on the *Motion to Change Dates*, and the parties submitted Post-

hearing Briefs on February 9, 2018. Subsequently, the hearing on Atmos' 2017 Annual Reconciliation was changed from March 19, 2018 to April 9, 2018 to allow additional time for the Consumer Advocate to prepare for a hearing that addressed the tax normalization issue.

On April 3, 2018, the Hearing Officer conducted a Pre-hearing Conference with the parties. During the Pre-hearing Conference, the parties reiterated arguments contained in the *Motion in Limine* and *Atmos' Response*. The Hearing Officer took the matter under advisement. On April 5, 2018, the Commission issued its *Order Denying Atmos Energy Corporation's Motion to Resubmit Reconciliation and Change Dates* ("Commission Order").

#### **CONSUMER ADVOCATE'S *MOTION IN LIMINE***

In its *Motion in Limine*, the Consumer Advocate seeks to "exclude testimony on and consideration of the issue of an alleged tax normalization violation."<sup>1</sup> The Consumer Advocate states that the panel found that rates would not change in this docket, and it is not the appropriate docket to resolve any potential tax normalization violations. According to the Consumer Advocate, based on the panel's finding, the Consumer Advocate began preparing for a hearing on the non-tax issues in this docket. Then, on March 12, 2018, Atmos filed the *Pre-Hearing brief of Atmos Energy Concerning Tax Normalization* ("*Pre-hearing Brief*"), which, according to the Consumer Advocate, was in "apparent direct contradiction to the Commission's ruling and finding."<sup>2</sup> The Consumer Advocate argues that Atmos' *Pre-hearing Brief* was not requested by the Hearing Officer or the Commission, nor were pre-hearing briefs contained on the Procedural Schedule. The Consumer Advocate states "[b]ecause of the Commission's February 26<sup>th</sup> 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."<sup>3</sup> The Consumer

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<sup>1</sup> *Motion in Limine*, p. 1 (March 26, 2018).

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

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

Advocate argues that 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.”<sup>4</sup>

#### ***ATMOS’ RESPONSE***

Atmos asks that the Consumer Advocate’s *Motion in Limine* be denied. Atmos states “[s]uch public interest considerations [the consequences of a potential tax violation on Atmos’ ratepayers] are certainly material. Evidence and argument concerning these tax normalization issues is relevant and admissible.”<sup>5</sup>

#### **FINDINGS AND CONCLUSIONS**

Prior to filing of its *Motion in Limine*, the Consumer Advocate did not have the benefit of the *Commission Order* which the Hearing Officer finds clarifies the Commission’s ruling on the *Motion to Change Dates*. In the *Commission Order*, the Commission states:

This is not the appropriate docket to correct through rates any potential normalization violation. Nevertheless, this docket will impact the budget filing originally required on February 1, 2018. Therefore the Commission must take into account whether there is a tax normalization issue and the resulting revenue sufficiency or deficiency, if any, that will be carried forward to the required budget filing.<sup>6</sup>

Further, the Commission stated “[t]his is an issue the Commission must continue to entertain, as well as consider the impact any ruling on this matter may have on other aspects of the ARM, other utilities operating under alternative rate regulation, and upon utility customers in this and, perhaps, in other proceedings.”<sup>7</sup>

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

<sup>5</sup> *Atmos’ Response*, p. 7 (March 29, 2018).

<sup>6</sup> *Commission Order*, pp. 14-15 (April 5, 2018).

<sup>7</sup> *Id.* at 15.

The Hearing Officer finds that the *Commission Order* clarifies that while any potential tax normalization violation should be *corrected* in the next rate proceeding, any potential tax normalization issue in this docket would have an impact on Atmos' budget filing that has been held in abeyance pending the conclusion of this docket. Therefore, the Commission needs to hear testimony on the tax normalization issue in this docket in order to make a determination of the impact of any potential revenue sufficiency or deficiency going forward.

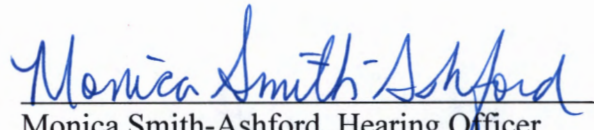
Further, the Hearing Officer finds that the Consumer Advocate is not prejudiced by allowing testimony on tax normalization at the April 9<sup>th</sup> hearing because tax normalization has been an issue in this docket from its inception. In addition, during a Status Conference with the parties on March 13, 2018, the Hearing Officer informed the parties that it was her understanding that at the March 19<sup>th</sup> hearing, the Commission expected to hear testimony on the tax normalization issue that has been raised in this docket. The Hearing Officer changed the target hearing date from March 19<sup>th</sup> to April 9, 2018 to provide the Consumer Advocate additional time to prepare for a hearing that included the tax normalization issue. The Consumer Advocate was also given until March 26, 2018 to file a Reply Brief to *Atmos'* *Pre-hearing Brief*.

Based on the foregoing findings, the Hearing Officer determines that the Consumer Advocate's *Motion in Limine* should be denied. The April 9<sup>th</sup> hearing in this matter on should include the issue of tax normalization.

**IT IS THEREFORE ORDERED THAT:**

1. The *Consumer Advocate's Motion in Limine to Exclude Testimony on and Consideration of the Issue of an Alleged Tax Normalization Violation* is denied.

2. Any party who wishes to seek interlocutory review of this Order is granted permission to do so.

  
Monica Smith-Ashford, Hearing Officer