

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

RECEIVED
2019 JAN 29 PM 12:22

UTILITY REGISTRATION

IN RE:

**DOCKET TO INVESTIGATE AND CONSIDER
MODIFICATIONS TO ATMOS ENERGY
CORPORATION'S ANNUAL RATE REVIEW
MECHANISM UNDER TENN. CODE ANN. 65-5-103(6)**

**DOCKET NO.
18-00112**

**PARTY STAFF'S OPPOSITION TO THE PETITION TO INTERVENE OF
CHATTANOOGA GAS COMPANY OR, IN THE ALTERNATIVE, MOTION FOR
RESTRICTIONS AND CONDITIONS FOR INTERVENTION**

The Party Staff respectfully opposes the intervention of Chattanooga Gas Company ("CGC", "Company") in this docket. CGC has not identified a factual or legal basis to intervene or demonstrated how the Company will be impacted by any decision made in this docket. The Staff's opposition is not intended to deny CGC the opportunity to present its own alternative regulatory mechanism proposal to the Commission. Nor is the Staff's opposition intended to be dismissive of any concern, input or experience CGC may have to offer. While the Party Staff does not question the good faith of the Company's rationale for seeking intervention, granting such intervention may establish a precedent lowering the bar for intervention that may impact future contested case proceedings, prove inefficient and create a chilling effect on settlement discussions.

The Party Staff is sensitive to CGC's announced intent to request an alternative rate mechanism and realizes the Company is attempting to obtain more certainty by participating in this proceeding. However, this docket centers on exploring methods to streamline the annual rate mechanism ("ARM") of Atmos Energy Corporation ("Atmos") that was first implemented in

Docket 14-00146, as agreed to by Atmos and the Consumer Advocate Unit of the Tennessee Attorney General's Office ("Consumer Advocate"). It is the position of the Party Staff that this docket will not be setting a standard or uniform mechanism applicable to any and all eligible public utilities. CGC has indicated its intent to elect for an ARM and will file its plan in a future docket within sixty days. That future proceeding is the forum for CGC to put forth its own specific ARM plan.

For the reasons herein, the Party Staff requests the Hearing Officer to deny the *Petition to Intervene*. In the alternative, the Party Staff proposes a limited intervention based on a series of conditions and requirements described herein.

PROCEDURAL BACKGROUND

Pursuant to Tenn. Code Ann. §65-5-103(d)(6), Atmos filed a request for an annual rate review mechanism in Docket 14-00146.¹ During the course of the proceeding, Atmos and the Consumer Advocate came to a compromise and submitted a settlement agreement. Neither CGC nor any other public utility were a party to Docket 14-00146 or the settlement that ultimately created the Atmos ARM. Under the settlement approved in Docket 14-00146, the Atmos ARM has a "two-step" or two docket process that includes a budget filing and reconciliation filing every year.² The settlement represented a "give and take" negotiation between Atmos and the Consumer Advocate that also included resolving a rate case.³ During the operation of the ARM, there have been disputes between Atmos and the Consumer Advocate concerning nuances and methodologies although the parties have worked well together to resolve or narrow the contested issues.

¹ See *In Re: Petition of Atmos Energy Corporation For a General Rate Increase Under T.C.A. 65-5-103(a) and Adoption of an Annual Rate Review Mechanism Under T.C.A. 65-5-103(d)(6)*, Docket 14-00146, *Order Approving Settlement*, (November 4, 2015).

² *Id.*

³ *Id.*

In Docket 18-00067, the Commission Staff requested information from the Consumer Advocate and Atmos regarding possible modification of the ARM process such as a shift to a “one-step” ARM process.⁴ Both the Consumer Advocate and Atmos, with reservations, were not opposed to entertaining a modification of the ARM. The parties requested “guidance” from the Commission as to the way forward. The Commission opened a new docket to examine and consider a one-step approach for the Atmos ARM and other changes to implement a more streamlined and transparent ARM. Members of the Commission Staff are now Party Staff to this docket.

A distinction must be noted here. This docket is distinct from any proceeding CGC may file requesting approval of an ARM plan. This docket is investigative and exploratory with respect to streamlining an existing ARM and is not subject to a strict statutory deadline. If and when CGC files a specific ARM proposal with the Commission, statutory requirements mandate a decision on the initial ARM proposal within 120 days. Any denial triggers another 60 day deadline. One has to consider the impact of granting CGC’s intervention potentially followed by the filing of an ARM plan by the Company in another docket. In such a scenario, one must weigh allowing one public utility to have the ability to litigate its position in two different dockets, one involving another utility and the other docket tied to a statutory deadline. With respect to limited Commission resources, Party Staff also has to consider the implications of acting as a party in one docket while potentially advising in another.

⁴ See *In Re: Petition of Atmos Energy Corporation For Approval of Its 2018 Annual Rate Review Filing Pursuant to Tenn. Code Ann. §65-5-103(d)(6)*, Docket 18-00067, *Order Approving 2018 Annual Rate Review Filing*, pp. 7-9, (December 4, 2018).

I. ARGUMENT AGAINST INTERVENTION

A. This Docket Is Limited to The ARM of Atmos and CGC Has No Standing

The Party Staff respectfully questions the underlying standing of CGC to intervene in the present docket. The U.A.P.A. provides the following requirements for intervention of a party in a contested case proceeding.

- (a) The administrative judge or hearing officer shall grant one (1) or more petitions for intervention if:...
- (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 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.

Tenn. Code Ann. § 4-5-310(a). The Party Staff respectfully submits CGC has not demonstrated that it has a legal interest that may be determined in this docket.

CGC's *Petition* asserts that any modification to the Atmos ARM "will reasonably and likely have a significant impact on CGC" and only through intervention will CGC be able to "protect its substantial and material interests" for its own ARM. This broad claim is based on the presumption that it is the intent of the parties and the Commission to establish a one size fits all ARM in the present docket. However, the Commission opened the docket with a narrow goal of examining the ARM of Atmos.

The doctrine of standing precludes courts from adjudicating an action at the insistence of one whose rights have not been invaded or infringed. *American Civil Liberties Union of Tennessee*, 195 S.W. 3d 612, 619 (Tenn.2006) (internal citations omitted). Here, this docket is

not determining the shape and form of an ARM for CGC, but rather examining the individual ARM plan of Atmos.

The term “annual rate review” is not uniformly defined under Tennessee law. The plain language of the numerous options available pursuant to Tenn. Code Ann. § 65-5-103(d) indicates alternative rate mechanisms are elective and that proposals and mechanisms can be tailored to individual companies.⁵ Individual ARM plans are proposed by the electing public utility, not the Commission or other parties. In totality, the various outlines of mechanisms available pursuant to Tenn. Code Ann. § 65-5-103(d) recognizes that each utility may be unique and that modifications can be made to individual ARM plans. Moreover, the structure and nuances of each alternative rate mechanism the Commission has approved for utilities such as Piedmont Natural Gas Company, Tennessee American Water Company and Atmos pursuant to Tenn. Code Ann. §65-5-103(d) are not uniformly applicable to CGC or any other public utility. In short, no two ARMs may be equal.

This docket was opened to investigate and determine whether modifications, including a “one-step” filing, are necessary to the ARM of Atmos established in Docket 14-00146; it was not opened to explore and establish an industry wide model for Tennessee public utilities. ARM plans and alternative rate-making in general are not confined to two large natural gas utilities. If CGC has material and substantial interests at stake sufficient enough to intervene in this docket, then seemingly all public utilities have the same justification to intervene. There may well come a time when the Commission’s experience with alternative rate-making will demand an industry wide rule-making proceeding to address unanticipated issues and outcomes. However, this is not the docket to adopt a uniform set of rules, procedures and policies for all public utilities eligible for alternative regulatory rate treatment.

⁵ Tenn. Code Ann. § 65-5-103(d)(6)(D)(iii), and (7).

B. Chattanooga Gas Company's Position and Interest Regarding the ARM of Atmos are Unknown

CGC has not articulated specifically what its interest in this docket is. For example, it is unknown whether CGC opposes a one-step process for Atmos or takes a position that no modification should take place at all. The Atmos ARM has a documented history readily available to the public and interested parties to allow for general assessments of the Atmos ARM, its impact and any drawbacks. However, the *Petition to Intervene* has not articulated what impact a modification to the Atmos ARM may have on CGC's future proposal for an ARM.

C. Chattanooga Gas Company's Intervention Could Impair a Settlement

Atmos and the Consumer Advocate have indicated a willingness to work collaboratively together in this docket. With respect, the Party Staff understands and appreciates the urge of CGC to intervene as it has indicated its desire to implement an annual rate review plan of its own. Nevertheless, the chilling effect of an outside public utility intervening to weigh in upon the annual rate review plan of another public utility is problematic at best. Settlement discussions often involve give and take negotiations based on specific facts. Adding a party to the mix that may be negotiating on a different set of facts or expects the "same deal" another public utility negotiates may prove counter protective to a settlement. Moreover, a party that is granted intervention has the power to object to a settlement between other parties.⁶ The ability for one outside party to object to a settlement or otherwise delay a resolution to the docket represents significant and undue leverage.

⁶ See *In Re: United Cities Gas Company, Atmos Energy Corporation, Incentive Place Account (IPA) Audit and Petition of United Cities Gas Company to Amend The Performance Based RateMaking Mechanism Rider*, Docket No. 01-00704, *Order Granting in Part and Denying in Part Consumer Advocate's Renewed Motion to Summarily Deny Motion to Approve Settlement Agreement and Alernatively To Treat the Motion as a Motion for Summary Judgment and Denying Motion to Approve Settlement Agreement*, pp. 3-4 (August 12, 2004), (citing *Harbor v. Brown* 732 S.W. 2d 598, 599 (Tenn. 1987)).

The Party Staff is not asserting that CGC intends to be an obstacle, nevertheless where there is uncertainty of purpose coupled with certainty of possibility, parties must consider all consequences the intervention of an outside party entails.

D. Granting Intervention Here May Create an Unintended Precedent

One has to consider the precedent that granting intervention here would create. If a public utility has the right to weigh in on the ARM of another public utility, then the same right arguably exists for a public utility to intervene in the rate case of another public utility to litigate a rate-making methodology that could possibly be used in an ARM. Granting intervention here may lead to unintended application for the Commission in the future.

E. Granting Intervention in this Docket Would Allow CGC Dual Proceedings to Pursue its Interests

CGC has indicated it will be filing a request for an ARM with the Commission, perhaps as soon as sixty days. While the parties to the present docket are working in a cooperative manner and there is the possibility there may be a resolution, there is no expectation at present that this docket will be completed within sixty days. The Hearing Officer should consider the implications of granting CGC's intervention in this docket knowing that CGC has committed to petitioning in another docket for an ARM. Intervention here will allow CGC to litigate its interests in a dual track toward achieving its own ARM plan. In this light, CGC's intervention could impact whether the members of the Party Staff in this docket could be removed from an advisory role in CGC's future ARM docket filing. The Commission does not have unlimited staff resources. If intervention is granted, at a minimum, CGC should commit to postponing plans to request an ARM until this docket is resolved.

II. ALTERNATIVE CONDITIONS AND RESTRICTIONS FOR INTERVENTION

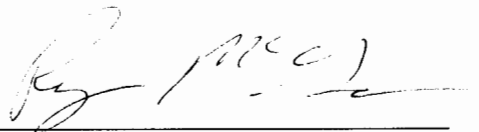
Pursuant to Tenn. Code Ann. § 4-5-310(c), the Hearing Officer may impose conditions upon an intervenor's participation in a proceeding. In the alternative to a denial of CGC's intervention, the Party Staff respectfully submits that any intervention granted in this docket for CGC should be restricted. If CGC agrees to, at a minimum, the following conditions and restrictions, the Party Staff will withdraw its initial objection:

1. With respect to any settlement negotiation in this docket, CGC agrees to not hold any settlement position taken by any party against any party in any future docket involving CGC;
2. CGC will not request an ARM until deliberations in this docket are complete or would otherwise withdraw from this Docket forty five (45) days before the filing for an ARM by CGC;
3. CGC agrees that any intervention granted is for informational and collaborative purposes only and will not assert any right to oppose any settlement reached by the other parties in this docket;
4. CGC will agree to abide by any protective order in this docket and forgo the right to challenge a "confidential" designation; and
5. CGC agrees that any member of Party Staff to this docket will not be precluded from serving in an advisory role to the Commission in any future CGC ARM related docket.

Party Staff believes these restrictions are reasonable and, at a minimum, would allow CGC to participate in an informational capacity without disrupting the present docket or create a lasting impact on subsequent matters before the Commission. The Party Staff would have no objection to any addition restrictions the Hearing Officer may impose. In addition, the Hearing Officer

may wish to consider additional restrictions on CGC's participation should this Docket depart from the collaborative nature displayed by the parties thus far.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Ryan McGehee", written over a horizontal line.

Ryan McGehee, B.P.R. 025559
Tennessee Public Utility Commission
Party Staff
502 Deaderick Street, 4th Floor
Nashville, TN 37243
(615) 770-1078

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document has been served by electronic mail, postage pre-paid U.S. first-class mail, and/or delivering a copy by hand, upon the following person(s):

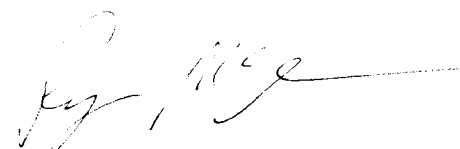
Scott Ross, Esq.
Neal & Harwell, PLC
1201 Demonbreum Street
Suite 1000
Nashville, TN 37203

Karen H. Stachowski, Esq.
Office of the Attorney General
P.O. Box 20207
Nashville, TN 37202-0207

J.W. Luna, Esq.
Luna Law Group, PLLC
L&C Tower, 22nd Floor
401 Church Street
Nashville, TN 37219

Floyd R. Self, Esq.
Berger Singerman, LLP
313 North Monroe Street, Suite 301
Tallahassee, FL 32301

On this the _____ day of _____, 2019



Ryan McGehee, B.P.R. # 025559