

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

April 8, 2019

IN RE:)	
)	
DOCKET TO INVESTIGATE AND CONSIDER)	DOCKET NO.
MODIFICATIONS TO ATMOS ENERGY)	18-00112
CORPORATION'S ANNUAL RATE REVIEW)	
MECHANISM UNDER TENN. CODE ANN. 65-5-)	
103(d)(6))	

ORDER DENYING THE PETITION TO INTERVENE FILED BY CHATTANOOGA GAS
COMPANY

This matter came before the Hearing Officer of the Tennessee Public Utility Commission (“Commission” or “TPUC”) at a Status Conference held on February 5, 2019, to consider the *Chattanooga Gas Company Petition to Intervene* (“*Petition to Intervene*”) filed on January 23, 2019.

RELEVANT BACKGROUND

In Docket No. 18-00067, the parties, Atmos Energy Corporation (“Atmos”) and the Consumer Advocate Unit of the Financial Division of the Tennessee Attorney General’s Office (“Consumer Advocate”), were asked to respond to three specific questions concerning modifications to Atmos’ Alternative Rate Review Mechanism (“ARM”). Both Atmos and the Consumer Advocate submitted pre-filed testimony in response to the questions posed to the parties concerning possible modification to the ARM process. In its *Order Approving 2018 Annual Rate Review Filing* issued on December 4, 2018, the Commission ordered that a new docket be opened to examine and consider a one-step approach for Atmos’ ARM and other changes and/or modifications

necessary to implement a more streamlined and transparent process. The Consumer Advocate filed a Petition to Intervene which was granted on January 25, 2019.

CGC's *PETITION TO INTERVENE*

On January 23, 2019, Chattanooga Gas Company ("CGC") filed a *Petition to Intervene* seeking to intervene in this docket pursuant to Commission Rule 1220-02-.08 and Tenn. Code Ann. § 65-5-103. CGC asserts that its legal rights may be "determined or affected by the Commission's determinations or orders in this docket regarding requirements for or modifications to the Atmos Energy Corporation's ("Atmos") annual rate review mechanism notwithstanding the fact that the scope of this docket purports to only address the annual rate review mechanism for Atmos."¹ CGC argues that while the docket may be focused specifically on Atmos, "any modifications to the Atmos annual review mechanism may have significant and far reaching ramifications for any other natural gas utility with an annual rate review mechanism" because the Commission hasn't promulgated any rules regarding alternative regulatory methods, or specifically, the annual rate review mechanism.² Since Atmos is the only natural gas utility with an annual rate review mechanism, CGC maintains that changes to the Atmos mechanism may be precedential for any other natural gas utility seeking to implement an annual rate review mechanism.³ According to CGC, it intends to file a petition for an annual rate review mechanism soon, and the Consumer Advocate has "offered to CGC the Atmos annual rate review mechanism as a model for the development of a CGC annual rate review mechanism."⁴ Thus, CGC argues, any modifications to Atmos' ARM would have an impact on any ARM CGC would propose and that may get approved. CGC states that being allowed to intervene would protect its interests for its annual rate review

¹ *Petition to Intervene*, p. 1 (January 23, 2019).

² *Id.* at 2.

³ *Id.* at 2-3.

⁴ *Id.* at 3.

mechanism as the Commission investigates any modifications to Atmos' ARM.⁵

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

On January 29, 2019, TPUC Party Staff filed *Party Staff's Opposition to the Petition to Intervene of Chattanooga Gas Company or, in the Alternative, Motion for Restrictions and Conditions for Intervention* ("Party Staff's Opposition") asking the Hearing Officer to deny CGC's *Petition to Intervene* or to impose conditions if intervention is granted. Party Staff states that this docket will not be setting a standard or uniform mechanism applicable to all public utilities, but rather, this docket deals with potential changes to Atmos' ARM.⁶ Party Staff points out "[t]he 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."⁷ Party Staff argues CGC has failed to establish a legal interest that may be determined in this docket because the current docket is "not determining the shape and form of an ARM for CGC, but rather examining the individual ARM plan of Atmos."⁸ Party Staff argues CGC's *Petition to Intervene* "has not articulated what impact a modification to the Atmos ARM may have on CGC's future proposal for an ARM."⁹ In addition, Party Staff expresses concern that allowing CGC to intervene could have a chilling effect on settlement negotiations. According to Party Staff, if CGC is allowed to intervene, it could expect the same type of agreement as Atmos or object to a settlement agreement reached between Party Staff and Atmos. Party Staff proposes that should the Hearing Officer allow CGC to intervene, such intervention should be restricted by

⁵*Id.*

⁶ *Party Staff's Opposition*, p. 2 (January 29, 2019).

⁷ *Id.* at 5.

⁸ *Id.* at 4-5.

⁹ *Id.* at 6.

imposing certain conditions.¹⁰ Party Staff states that if CGC agrees to the conditions set forth in *Party Staff's Opposition*, it will withdraw its opposition to CGC's intervention.

THE CONSUMER ADVOCATE'S MOTION FOR MORE DEFINITE STATEMENT

On January 31, 2019, the Consumer Advocate filed *The Consumer Advocate's Motion for More Definite Statement* ("Consumer Advocate's Motion") stating CGC's *Petition to Intervene* is vague and ambiguous regarding the facts establishing CGC's legal rights, duties, privileges, or other legal interests that would allow the Consumer Advocate to frame a response to the *Petition to Intervene*. The Consumer Advocate seeks an Order directing CGC to file a more definite statement regarding the allegations in its *Petition to Intervene*.

RESPONSE OF ATMOS ENERGY CORPORATION TO CHATTANOOGA GAS COMPANY'S PETITION TO INTERVENE

On January 31, 2019, Atmos filed its *Response of Atmos Energy Corporation to Chattanooga Gas Company's Petition to Intervene* ("Atmos' Response"). Atmos stated it "recognizes the merit of the concerns raised by TPUC Staff and the Consumer Advocate concerning the request of Chattanooga Gas to intervene and participate as a party in this proceeding."¹¹ Atmos stated it did not object to CGC's participation in the docket to attend discussions among the parties and receive information that may be helpful to CGC in its ARM proceeding "in the manner suggested by TPUC Staff or by other means, and subject to the entry of an appropriated confidentiality order."¹²

FEBRUARY 5, 2019 STATUS CONFERENCE

Since a number of issues were brought out in the parties' filings that needed to be discussed, including suggestions regarding possible conditions on CGC's intervention, the Hearing Officer

¹⁰ See *id.* at 8.

¹¹ *Atmos' Response* (January 31, 2019).

¹² *Id.*

convened a Status Conference on February 5, 2019. All parties were represented at the Status Conference. During the Status Conference, CGC clarified its position and the rationale for filing the *Petition to Intervene*. CGC stated it was concerned about being bound by decisions in Atmos' ARM docket when it seeks to implement its ARM since Atmos is the only other utility with an annual rate review mechanism. CGC wanted to be assured that when it files its ARM, CGC's ARM would be evaluated by the Commission on its own merits and not be constrained by provisions of Atmos' annual rate review mechanism. The discussions among the parties and clarification of CGC's *Petition to Intervene* at the Status Conference rendered the *Consumer Advocate's Motion* moot.

FINDINGS & CONCLUSIONS

Under Tenn. Code Ann. § 65-2-107, "All persons having a right under the provisions of the laws applicable to the commission 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 commission may upon motion allow any interested person to intervene and become a party to any contested case." Along with its own statutes and rules, contested case proceedings before the Commission are governed by the provisions of Tenn. Code Ann. § 4-5-101, *et seq.*, known as the Tennessee Uniform Administrative Procedures Act ("UAPA"). Tenn. Code Ann. § 4-5-310 establishes the following criteria for granting petitions to intervene:

(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.¹³

Similarly, TPUC Rule 1220-01-02-.08 directs that requests for intervention before the Commission be made and considered as follows:

- (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.

The Hearing Officer is persuaded by the arguments set forth in the *Party Staff's Opposition* and finds that CGC has failed to establish that its legal rights, duties, privileges, immunities or other legal interests may be determined in this proceeding such that would qualify CGC as an intervenor in this docket. The Commission opened this docket to examine modifications to Atmos' annual rate review mechanism, specifically, not the annual rate review mechanism in general. CGC has failed to specifically articulate what legal interest it has in this docket other than it plans to file an annual rate review mechanism and "any modifications to the Atmos annual review mechanism may have significant and far reaching ramifications for any other natural gas utility with an annual rate review mechanism."¹⁴ CGC maintains it has concerns because the Commission does not have any "procedural or substantive rules regarding the overall implementation of the alternative regulatory

¹³ Tenn. Code Ann. § 4-5-310.

¹⁴ *Petition to Intervene*, p. 2 (January 23, 2019).

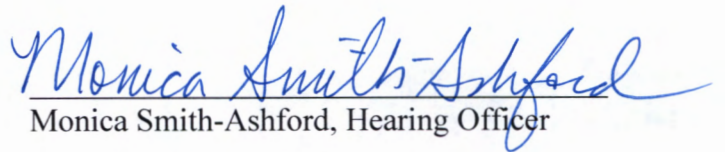
methods statute or specifically regarding the annual rate review mechanism.”¹⁵

One size does not fit all when it comes to alternative regulatory methods and there is not a specific formula or method for implementing alternative regulatory methods, including an annual rate review, set forth in statute. A utility is free to propose the type of alternative regulatory method that would work best for its business, and the Commission will then make a determination based on evidence presented and vote accordingly. While it is true that Atmos is the only utility with an annual rate review mechanism, however, the Hearing Officer finds that it does not follow that the possibility of CGC filing an annual rate review in the future would somehow give CGC standing to intervene in the docket examining modifications to Atmos’ ARM. Further, as TPUC Party Staff aptly points out, allowing CGC to intervene in this docket could cause a serious procedural quagmire regarding the timing of this docket and a CGC ARM docket, which is required to be decided in 120 days.

THEREFORE, upon due consideration, the Hearing Officer concludes that the legal rights, duties, privileges, immunities or other legal interest of CGC will not be determined in this proceeding and its *Petition to Intervene* should be denied.

IT IS THEREFORE ORDERED THAT:

The *Chattanooga Gas Company Petition to Intervene* is **DENIED**.


Monica Smith-Ashford, Hearing Officer

¹⁵ *Id.* at 2-3.