

**BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION
NASHVILLE, TENNESSEE**

IN RE:	)	
	)	
AUDIT OF ATMOS ENERGY	)	No. 19- <u>00053</u>
CORPORATION'S INCENTIVE PLAN	)	
ACCOUNT FOR THE PERIOD OF APRIL	)	
1, 2018 THROUGH MARCH 31, 2019	)	

PROPOSED PROTECTIVE ORDER

To expedite the flow of filings, exhibits and other information, and to facilitate the prompt resolution of disputes as to the confidentiality of information, adequately protect information entitled to be kept confidential and to ensure that protection is afforded only to information so entitled, the Tennessee Public Utility Commission ("TPUC") hereby orders that:

1. For the purpose of this Protective Order ("Order"), proprietary or confidential information, hereinafter referred to as CONFIDENTIAL INFORMATION, shall mean documents, testimony, or information in whatever form which the Producing Party, in good faith, and based on reasonable inquiry, deems to contain trade secrets, confidential research, development or other sensitive information protected by state or federal law, regulation or rule, and which has been specifically designated by the Producing Party. A Producing Party is defined as the Party creating the CONFIDENTIAL INFORMATION as well as the Party having actual physical possession of information produced pursuant to this Order.

2. All summaries, notes, extracts, compilations or other direct or indirect reproduction from or of any protected materials, shall be entitled to protection under this Order.

3. Documents containing CONFIDENTIAL INFORMATION shall be segregated from non-confidential information and be conspicuously and specifically labeled as “CONFIDENTIAL” on each page containing CONFIDENTIAL INFORMATION and on the cover page by the Producing Party. The documents must be produced in a way that will clearly identify to others that it contains CONFIDENTIAL INFORMATION.¹ Any document so designated shall be handled in accordance with this Order. The provisions of any document containing CONFIDENTIAL INFORMATION may be challenged under Paragraph 16 of this Order.

4. Any individual Party or non-Party subject to this Order, including Producing Parties or persons reviewing CONFIDENTIAL INFORMATION, shall act in good faith in discharging their obligations hereunder.

5. Parties or non-Parties subject to this Order shall include Atmos Energy Corporation and its affiliates (“Atmos”) and the Consumer Protection and Advocate Division of the Office of the Attorney General (“Attorney General”). Anything else in this Order to the contrary notwithstanding, if parties other than the Office of the Attorney General are permitted to intervene, they will be allowed access to Confidential Information only to the extent and under the conditions permitted by separate order consistent with this Order.

6. Subject to the exceptions noted in this Order, CONFIDENTIAL INFORMATION shall be disclosed only to the following persons:

- (a) Counsel of record for the Parties in this case and associates, secretaries, and paralegals actively engaged in assisting counsel of record in this docket and

¹ The Producing Party is required to provide substitute information clearly and conspicuously marked CONFIDENTIAL and/or provide segregated Confidential Information from non-confidential information within a reasonable time of a Person’s identification that Confidential information is not clearly and conspicuously marked CONFIDENTIAL, not marked CONFIDENTIAL at all, or is not segregated from non-confidential information.

any appeals therefrom;

- (b) In-house counsel for the Parties;
- (c) Officers, directors, or employees of the parties, including employees of the Office of the Tennessee Attorney General; provided, that such officers, commissioners, and/or employees shall be subject to the provisions of this Order, and shall not disclose such information further except as otherwise permitted under the terms of this Order.;
- (d) TPUC Commissioners and members of the Staff of the TPUC; and
- (e) Outside consultants and expert witnesses employed or retained by the parties or their counsel, who have access to CONFIDENTIAL INFORMATION solely for evaluation, testing, testimony, preparation for trial or other services related to this Docket, provided that to the extent that any Party seeks to disclose CONFIDENTIAL INFORMATION to any outside consultant or expert witness who is expected to testify on that Party's behalf, the Party shall give seven (7) days written notice to the Producing Party of intention to disclose CONFIDENTIAL INFORMATION. During such notice period, the Producing Party may move to prevent or limit disclosure for cause, in which case no disclosure shall be made until the TPUC, the Hearing Officer, the Administrative Law Judge or court rules on the motion. Any such motion shall be filed within three (3) days after service of the notice. Any response shall be filed within three (3) days after service of the notice. Pre-hearing conferences may be called to confer with the parties on the Motions to Limit Disclosure. All service shall be by the fastest method of hand delivery, facsimile or email. All filings by email in this Docket shall be followed up by delivering a hard copy of the filing to the Docket Manager of TPUC.

Under no circumstances shall any CONFIDENTIAL INFORMATION be disclosed to or discussed with anyone associated with the marketing of services in known competition with the products, goods or services of the Producing Party.

7. Prior to disclosure of CONFIDENTIAL INFORMATION to any of the authorized persons, the counsel representing the Party who is to receive the CONFIDENTIAL INFORMATION shall notify the Party who is receiving the CONFIDENTIAL INFORMATION of this Order and

where it can be found on TPUC's website or provide a copy of this Order to the recipient Commissioner, staff member, employee or, officer, who shall be bound by the terms of this Order.

8. Prior to disclosure of CONFIDENTIAL INFORMATION to any outside consultant or expert witness employed or retained by a Party, counsel shall provide a copy of this Order to such outside consultant or expert witness, who shall sign an Affidavit in the form of attached as Exhibit A to this Order attesting that he or she has read a copy of this Order, that he or she understands and agrees to be bound by the terms of this Order, and that he or she understands that unauthorized disclosure of the documents labeled "CONFIDENTIAL" constitutes a violation of this Order. This Affidavit shall be signed in the presence of and be notarized by a notary public. Counsel of record for each Party shall provide the Producing Party a copy of each such Affidavit for retained experts expected to be called as a witness at the hearing of this matter and shall keep the Affidavits executed by all experts or consultants retained by that Party, whether or not expected to be called as a witness, on file (electronically or in paper) in their respective offices.

9. No person authorized under the terms herein to receive access to information testimony designated as CONFIDENTIAL INFORMATION shall be granted access until such person has complied with the requirements set forth in paragraphs 7 and 8 of this Order.

10. In no event shall the TPUC, Attorney General, the State of Tennessee or any other Party to this Order, be liable for any claims or damages resulting from the disclosure of information while not so labeled as "CONFIDENTIAL" at all, or not segregated from non-confidential information. The Party or non-Party who has produced such information shall notify the Recipient of the inadvertence in providing the CONFIDENTIAL INFORMATION in writing within five (5)

days of discovery of such inadvertence and the CONFIDENTIAL nature of the information and within a reasonable time provide substitute information clearly and conspicuously marked CONFIDENTIAL and segregated from non-Confidential Information.

11. An inadvertent failure to label a document as “CONFIDENTIAL” shall not constitute a waiver of confidentiality. The Party who has produced the document shall notify the Recipient of the document in writing of such inadvertent failure to label the document as CONFIDENTIAL. Upon such notice, pending resolution of a motion described below, Recipients will treat the subject document as CONFIDENTIAL INFORMATION. The Party by written motion or by oral motion at a Pre-Hearing Conference or at the Hearing on the merits may request designation of the information as CONFIDENTIAL, and Recipients shall then be governed by the order on the motion. An inadvertent failure to label information as CONFIDENTIAL, or to segregate it from non-confidential information shall not, in any way, affect the TPUC’s determination as to whether the information is entitled to CONFIDENTIAL status under this Order. The TPUC, the Hearing Officer, or Administrative Law Judge may, at his or her discretion, either before or during the Pre-Hearing Conference or Hearing on the merits of the Docket allow information to be designated CONFIDENTIAL and treated as such in accordance with the terms of this Order.

12. Any filings in this Docket that contain, quote, paraphrase, compile or otherwise disclose documents covered by the terms of this Order, or any information contained therein, shall be filed with the TPUC in sealed envelopes labeled “CONFIDENTIAL.” The filing party shall also include with the filing a public version of the papers with any CONFIDENTIAL INFORMATION redacted. Only the redacted public version may be placed in the TPUC’s public file and/or posted on

the TPUC website. Each sealed envelope shall be labeled to reflect the style and docket number of this Docket and to identify the subject matter of the content of the sealed envelope. The envelopes shall be maintained in a locked filing cabinet or may be converted to electronic format at the election of TPUC. The envelopes shall not be opened or their contents reviewed by anyone except upon order by the TPUC, Hearing Officer, or Administrative Law Judge after due notice to Counsel of Record. Notwithstanding the foregoing, the Commissioners and the Staff of the TPUC may review any paper filed as CONFIDENTIAL INFORMATION and labeled "CONFIDENTIAL" without obtaining an order of the TPUC, Hearing Officer, or Administrative Law Judge, provided the Commissioners and Staff maintain the confidentiality of the paper in accordance with the terms of this Order.

13. Information designated as CONFIDENTIAL INFORMATION and labeled "CONFIDENTIAL," in accordance with this Order, may be disclosed in testimony at the Hearing on the merits of this Docket and offered into evidence in any hearing related to this Docket, subject to the applicable Rules of Evidence and to such future orders as the TPUC, Hearing Officer, or Administrative Law Judge may enter. Any Party intending to use documents, information, or testimony designated as CONFIDENTIAL INFORMATION shall inform the Producing Party and the TPUC, Hearing Officer, or Administrative Law Judge, prior to the Hearing on the merits of the case, of the proposed use, and shall advise the TPUC, the Hearing Officer, or Administrative Law Judge, and the Producing Party before use of such information during witness examinations so that appropriate measures can be taken by the TPUC, Hearing Officer, or Administrative Law Judge to protect the confidential nature of the information.

14. Except for documents filed with the TPUC, all information covered by the terms of this Order that are disclosed to the Requesting Party shall be maintained separately in electronic or paper files labeled "CONFIDENTIAL" and labeled with reference to this Order at the offices of the requesting Party's Counsel of Record.

15. Nothing herein shall be construed as preventing any Party from continuing to use and disclose any information labeled as CONFIDENTIAL: (a) that is in the public domain, or (b) that subsequently becomes part of the public domain through no act of such Party, or violation of this Order, or (c) that is disclosed to it by a third party, where said disclosure does not itself violate any contractual or legal obligation or terms of this Order, or (d) that is independently developed by a Party, or (e) that is known or used by it prior to this Docket, or, or (f) if disclosure is otherwise required by state or federal law or by court order. The burden of establishing the existence of (a) through (f) shall be upon the Party attempting to use or disclose such information.

16. Any Party may contest the designation of any information as CONFIDENTIAL INFORMATION or PROTECTED SECURITY MATERIALS by a written or oral motion with the TPUC, Hearing Officer, Administrative Law Judge or the courts, as appropriate, for a ruling that the information should not be so treated. All information designated as CONFIDENTIAL INFORMATION or PROTECTED SECURITY MATERIALS, however, shall be maintained as such until the TPUC, Hearing Officer, Administrative Law Judge, or a court orders otherwise. A motion to contest must be filed not later than ten (10) days after receipt of the material designated CONFIDENTIAL INFORMATION or PROTECTED SECURITY MATERIALS or five (5) days prior to the Hearing on the merits, whichever date occurs later in time. Any reply seeking to protect

the status of their CONFIDENTIAL INFORMATION or PROTECTED SECURITY MATERIALS must be received not later than five (5) days prior to the Hearing on the merits. These limitations can be waived by TPUC in the public interest or to comply with state and federal law or a court order. Any reply seeking to protect the status of the CONFIDENTIAL INFORMATION or PROTECTED SECURITY MATERIALS must be received no later than three (3) business days prior to the hearing on the merits or as otherwise ordered by TPUC. Motions made and subsequent replies received within the three (3) days prior to the Hearing on the merits shall be presented to the TPUC at the Hearing on the merits for a ruling.

17. Nothing in this Order shall prevent any Party from asserting any objection to discovery.

18. Non-party witnesses shall be entitled to invoke the provisions of this Order by designating information produced for use in this action as CONFIDENTIAL INFORMATION pursuant to the terms of this Order.

19. To the extent permitted by state and federal law and regulations, any person to whom disclosure or inspection is made in violation of this Order shall be bound by the terms of this Order.

20. Upon an order becoming final in this Docket and conclusion of any appeals resulting from such an order, except as to the Attorney General and the TPUC, all the filings, exhibits and other materials designated CONFIDENTIAL INFORMATION, and all copies thereof, shall be returned to counsel of the Producing Party within fifteen (15) business days of a written request from the Producing Party, or counsel in possession of such information shall certify to counsel of the Producing Party that all the filings, exhibits and other materials designated as CONFIDENTIAL

INFORMATION and all copies thereof have been destroyed. To the extent permitted by law, the Attorney General may elect to retain the CONFIDENTIAL INFORMATION provided it continues to comply with the terms of this Order. Further, the TPUC shall retain copies of information designated as CONFIDENTIAL or PROTECTED SECURITY MATERIALS as may be necessary to maintain a complete record of this Docket intact.

21. After termination of this Docket, the provisions of this Order relating to confidential nature of CONFIDENTIAL INFORMATION, shall continue to be binding, upon Parties hereto and their officers, employers, employees, agents, and/or others for five (5) years unless this Order is vacated or modified or otherwise ordered by TPUC.

22. Nothing herein shall prevent entry of a subsequent order, upon an appropriate showing, requiring that any documents, information or testimony designated as CONFIDENTIAL INFORMATION shall receive protection other than that provided herein.

23. In addition to the other provisions of this Order, a Producing Party may designate and label as "PROTECTED SECURITY MATERIALS" documents and information related to security measures undertaken to protect public health and safety. The Producing Party shall provide access to PROTECTED SECURITY MATERIALS to TPUC Commissioners and members of the Staff of the TPUC and further only to authorized representatives of the Intervenor in this Docket. Authorized representatives shall be limited to the following: (a) one counsel of record and one other staff member or person under contract to the staff, each authorized in writing by a senior official of the TPUC to have such access; and with respect to any other party, and (b) two Counsels of Record, the Tennessee Attorney General, the Chief Deputy of the Office of the Tennessee Attorney General, the

Senior Deputy whose responsibility includes the Consumer Advocate duties, the Deputy Attorney General responsible for Consumer Advocate duties and two other persons, employed by or under contract to the Party, authorized by that Party in a written certification mutually agreeable to the Parties.

24. The Producing Party shall provide access by an authorized representative to PROTECTED SECURITY MATERIALS only after such authorized representative has executed an Affidavit in the form of that attached as Exhibit A to this Order and provided a copy to the Producing Party. Except with consent of the Producing Party: (a) access shall be at the offices of the Producing Party or its Counsel of Record and under supervision of the Producing Party; (b) PROTECTED SECURITY MATERIALS shall not be removed from the offices of the Producing Party or its counsel; and (c) no copies shall be provided to an authorized representative except as provided herein. Authorized representatives may make notes or memoranda from a review of the PROTECTED SECURITY MATERIALS and may remove such notes and memoranda. In all other respects such notes and memoranda shall remain PROTECTED SECURITY MATERIALS and subject to the provisions hereof. PROTECTED SECURITY MATERIALS shall be used only to assist TPUC Staff or any other Party to prepare for and to try this Docket and shall not be used for any other purpose in this or any other jurisdiction except as provided for in this Order.

25. Except as provided in this Order, the contents of PROTECTED SECURITY MATERIALS to which the TPUC Staff or other Party is given access, and any notes, memoranda, or any form of information or opinions regarding or derived from the PROTECTED SECURITY MATERIALS shall not be disclosed to anyone other than an authorized representative in accordance

with this Order, except that an authorized representative may disclose his or her conclusions or findings solely within, and for the purposes of, this Docket and in accordance with this Order. PROTECTED SECURITY MATERIALS shall not otherwise be published, disclosed or divulged except as expressly provided herein. The TPUC Staff and any other Party shall treat all notes and memoranda or opinions regarding or derived from the PROTECTED SECURITY MATERIALS as highly confidential and shall keep them in a secure location with access limited to an authorized representative and the contents of PROTECTED SECURITY MATERIALS and any information derived from them shall be considered highly confidential, and shall not be deemed public records. The TPUC Staff, any Party, Hearing Officer, or the TPUC Commissioners may discuss any position or conclusion regarding security expenditures and testimony in briefs, orders, pleadings, or hearings in this Docket in accordance with this Order.

26. Upon written request from the Producing Party within one (1) month from the conclusion of this Docket or any judicial review proceedings involving security related expenditures, the TPUC Staff and any Party will either return any PROTECTED SECURITY MATERIALS, any notes or memoranda related thereto and any copies thereof to the Producing Party or certify to the Producing Party in writing that all such notes, memoranda and copies have been destroyed. Any electronic copies of PROTECTED SECURITY MATERIALS made by authorized representatives shall be eliminated. However, the TPUC shall retain copies of information designated as PROTECTED SECURITY MATERIALS as may be necessary to maintain a complete record of this Docket intact.

27. The Attorney General and his staff have authority to enter into non-disclosure

agreements pursuant to Tenn. Code Ann. § 65-4-118 which are consistent with state and federal law, regulations and rules.

28. The Attorney General and his staff agree to keep CONFIDENTIAL INFORMATION and PROTECTED SECURITY MATERIALS in a secure place and will not permit them to be seen by any person who is not an employee of the State of Tennessee, the Office of the Attorney General and Reporter, or a person who has signed a Non-Disclosure Agreement.

29. The Attorney General and his staff may make copies of CONFIDENTIAL INFORMATION and PROTECTED SECURITY MATERIALS and any portion thereof. To the extent permitted by state and federal law, regulations and rules, all notes utilizing supporting information shall be subject to the terms of this Order to the extent factual assertions are derived from the supporting information.

30. To the extent permitted by state law, the Attorney General's Office may provide timely notice of any public records request so the Producing Party may take any action it deems appropriate. The Attorney General may, consistent with the discharge of its duties, handle information received pursuant to this Order accordant with Tenn. Code Ann. § 10-7-504(a)(5)(C) or any other law, regulation or rule.

31. The obligations of the Attorney General and his staff under this Order are further subject to the state's Public Records Act and other open records statutes. Nothing in this Order is intended to violate or alter the state's Public Records Act or Freedom of Information Act ("FOIA"). In the event that the Attorney General or member of his staff is served with a subpoena, public records request, FOIA request, or other request that calls for the production of confidential

commercial information labeled as “CONFIDENTIAL INFORMATION” or “PROTECTED SECURITY MATERIALS” by the Producing Party, the Attorney General will notify the Producing Party by notifying the undersigned of the existence of the subpoena, public records request, FOIA request, or other request, at least five (5) business days before responding to the request to the extent permitted by state law and orders of a court, as long as the Attorney General or his staff is able to respond to the request within a reasonable time. The Attorney General or his staff may elect to wait to produce such information as allowed by state law in order to provide the Producing Party an opportunity to challenge said subpoena or request or to make arrangements to preserve the confidentiality of the confidential commercial information labeled as “CONFIDENTIAL INFORMATION” or “PROTECTED SECURITY MATERIALS” by the Producing Party that is subject to such request.

32. The designation of any information in accordance with this Order as constituting “CONFIDENTIAL INFORMATION” or “PROTECTED SECURITY MATERIALS” and the Attorney General’s or his staff’s treatment of such material as confidential in compliance with this Order is not an admission or agreement by the Attorney General or his staff that the material constitutes or contains CONFIDENTIAL INFORMATION protected by state or federal law and shall not be deemed to be either a waiver of the State’s right to challenge such designation or an acceptance of such designation. The Producing Party agrees to designate information provided to the Attorney General as CONFIDENTIAL INFORMATION and PROTECTED SECURITY MATERIALS if it has a good faith basis for the claim. The Producing Party will upon request of the Attorney General or his staff provide a written explanation of the details, including statutory

authority that support its CONFIDENTIAL INFORMATION and PROTECTED SECURITY MATERIALS claim within five (5) days of a written request. The Producing Party also specifically agrees that it will not designate any documents as CONFIDENTIAL INFORMATION and PROTECTED SECURITY MATERIALS or label such documents as “CONFIDENTIAL” if the documents:

- (a) have been distributed to the public, consumers or others; or
- (b) are not maintained by the Producing Party as CONFIDENTIAL INFORMATION and PROTECTED SECURITY MATERIALS.

33. Nothing in this Order shall prevent the Attorney General from using the CONFIDENTIAL INFORMATION and PROTECTED SECURITY MATERIALS received for investigative purposes in the discharge of the duties of the Office of the Attorney General and Reporter. Additionally, nothing in this Order shall prevent the Attorney General from informing state officials and third parties of the fact of an investigation, as needed, to conduct the investigation.

Without limiting the scope of this Paragraph, nothing in this Order shall prevent the Attorney General from contacting consumers whose names were provided by the Producing Party or from discussing with any consumer any information that he or she allegedly received from the Producing Party or confirming that a consumer actually received the information.

34. CONFIDENTIAL INFORMATION and PROTECTED SECURITY MATERIALS are subject to this Order which is entered pursuant to Rule 26 of the Tennessee Rules of Civil Procedure and to the Tennessee Public Records Act, as set forth in the language of Tenn. Code Ann. § 10-7-503(a)(2)(A) “. . . unless otherwise provided by state law.”

35. All information designated as CONFIDENTIAL INFORMATION or PROTECTED SECURITY MATERIALS and produced in accordance with this Order may be disclosed in testimony or offered into evidence at any TPUC or court hearing, trial, motion or proceeding of this Docket, subject to the provisions of this Order, including Paragraph 13, and the applicable Rules of Evidence and any order the TPUC may enter to protect the confidentiality of information offered at any hearing or other proceeding. The party who produced the information designated as CONFIDENTIAL INFORMATION or PROTECTED SECURITY MATERIALS agrees to stipulate to the authentication of such information, documents and things in any such proceeding. If any Party identified information in the CONFIDENTIAL INFORMATION or PROTECTED SECURITY MATERIALS that indicates that unlawful conduct (civil or criminal) has occurred or may occur, nothing in the Order shall prevent such Party from reporting such alleged conduct to the appropriate law enforcement or regulatory agency.

36. Nothing in this Order is intended to restrict or alter federal or state laws, regulations or rules.

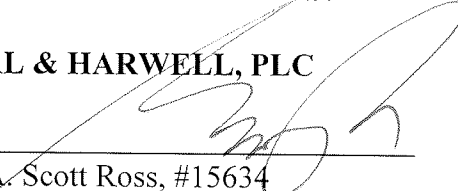
37. Any person who has signed a non-disclosure certificate or is otherwise bound by the terms of this Order shall continue to be bound by this Order and/or certificate even if no longer engaged by the TPUC or Intervenors.

HEARING OFFICER

This _____ day of _____, 2019.

SUBMITTED FOR ENTRY:

NEAL & HARWELL, PLC

By: 

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Counsel for Atmos Energy Corporation

EXHIBIT A

**BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION
NASHVILLE, TENNESSEE**

IN RE:)
)
AUDIT OF ATMOS ENERGY) **No. 19-**_____
CORPORATION'S INCENTIVE PLAN)
ACCOUNT FOR THE PERIOD OF APRIL)
1, 2018 THROUGH MARCH 31, 2019)

AGREEMENT TO COMPLY WITH PROTECTIVE ORDER

I have reviewed the Protective Order entered in this Docket and agree to abide and be bound by its terms. I understand that unauthorized disclosure of information labeled "CONFIDENTIAL" or "PROTECTED SECURITY MATERIALS" will be a violation of the Protective Order.

DATE

NAME

STATE OF _____)

COUNTY OF _____)

Personally appeared before me, _____, a Notary Public,
_____ with whom I am personally acquired, who acknowledged that
he executed the within instrument for the purposes therein contained.

WITNESS my hand, at office, this _____ day of _____, _____.

NOTARY PUBLIC

My Commission Expires: _____