BEFORE THE TENNESSEE REGULATORY AUTHORITY

AT NASHVILLE, TENNESSEE

April 28, 2004

IN RE:	)	
	)	
UNITED CITIES GAS COMPANY, a Division of ATMOS ENERGY CORPORATION INCENTIVE PLAN ACCOUNT (IPA) AUDIT	)	**DOCKET NO. 01-00704**
	)	
IN RE:	)	
	)	
PETITION OF UNITED CITIES GAS COMPANY TO AMEND THE PERFORMANCE BASED RATEMAKING MECHANISM RIDER TO ITS TARIFF	)	**DOCKET NO. 02-00850**

ORDER GRANTING MOTION TO CONSOLIDATE AND TO APPROVE SETTLEMENT AGREEMENT IN PART, GRANTING MOTION FOR EXTENSION OF TIME TO RESPOND IN PART, AND SETTING PROCEDURAL SCHEDULE

This matter came before the Hearing Officer at a Status Conference held on April 22, 2004, to address various pending motions filed by the Parties in Docket Nos. 01-00704 and 02-00850. On March 8, 2004, the Staff of the Energy and Water Division of the Tennessee Regulatory Authority ("Staff") and United Cities Gas Company (hereinafter "Atmos Energy Corporation" or "Atmos") jointly filed a *Motion to Consolidate and to Approve Settlement Agreement.* In that motion, Staff and Atmos proposed a single agreement to settle the issues in both Dockets and requested consolidation of the two Dockets.

On March 26, 2004, the Consumer Advocate and Protection Division ("Consumer Advocate") filed a *Motion for Extension of Time to Respond to the Motion to Consolidate and to Approve Settlement Agreement*, which included a request for summary denial of the *Motion to Consolidate and to Approve Settlement Agreement* or, in the alternative, additional discovery and supporting material for the *Motion to Consolidate and to Approve Settlement Agreement* prior to the Consumer Advocate filing its response.[1]

At the Status Conference held on April 22, 2004, the Parties agreed to address the issue of consolidation of the Dockets separate from consideration of the issue of approval of the settlement agreement. The Hearing Officer found that Docket No. 01-00704 and Docket No. 02-00850 were significantly related and that consolidation of the Dockets would conserve resources and assist in bringing matters to a resolution. Therefore, the Hearing Officer granted the *Motion to Consolidate and to Approve Settlement Agreement* in part, but only to the extent that these Dockets were ordered to be consolidated and all future filings in these matters were ordered to occur in Docket No. 01-00704. The remainder of the motion requesting approval of the settlement agreement was held in abeyance pending additional discovery and a hearing.

In its *Motion for Extension of Time to Respond to the Motion to Consolidate and to Approve Settlement Agreement*, the Consumer Advocate requested summary denial of the *Motion to Consolidate and to Approve Settlement Agreement* or, in the alternative, additional discovery and supporting material for that motion prior to the Consumer

[1] As part of its *Motion for Extension of Time to Respond to the Motion to Consolidate and to Approve Settlement Agreement*, the Consumer Advocate also requested a decision on *United Cities Gas Company's Motion to Disqualify Witness*, filed by Atmos on May 14, 2002. After due consideration, the Hearing Officer denied *United Cities Gas Company's Motion to Disqualify Witness* at the Status Conference held on April 22, 2004 Therefore, although not specifically addressed in this Order, the Consumer Advocate's request for a decision was granted

Advocate filing its response. Staff and Atmos indicated no opposition to the Consumer Advocate's request for additional time to respond or for additional discovery limited to specific issues. Staff and Atmos opposed the request for summary denial and the request that their motion be supplemented with supporting material.

Based upon the arguments presented by the Parties, the Hearing Officer found the Consumer Advocate's request for additional time to respond and for additional discovery prior to that response was well-taken, but the Consumer Advocate's request for a summary denial of the joint motion and request for the joint motion to be supplemented with supporting material should be held in abeyance pending additional discovery and a hearing. Therefore, the *Motion for Extension of Time to Respond to the Motion to Consolidate and to Approve Settlement Agreement* was granted in part, but only to the extent of allowing additional discovery and an extension of time for the Consumer Advocate to respond.

By agreement of the Parties, additional discovery will be limited to the issue of "whether the proposed settlement agreement is in the public interest." The Consumer Advocate will include in its response: 1) its objections to the proposed settlement agreement; and 2) a discussion of whether the motion for approval of the settlement agreement should be summarily denied based upon the lack of agreement by all parties in this matter. The Consumer Advocate may discuss the burden of proof applicable to the *Motion to Consolidate and to Approve Settlement Agreement.*

Staff and Atmos were granted leave to file a reply to the Consumer Advocate's response pursuant to Tenn. Comp. R.& Regs. 1220-1-2-.06(3).

The Parties jointly presented a proposed procedural schedule, which was accepted by the Hearing Officer. The procedural schedule was ordered as indicated below:

April 30, 2004	Discovery requests, limited to the issue as set forth above, shall be filed with the TRA and served on all Parties.
May 4, 2004	Objections to Discovery Requests shall be filed with the TRA and served on all Parties.
May 7, 2004	Responses to Discovery Requests not objected to shall be filed with the TRA and served on all Parties.
May 10, 2004	Hearing on Objections to Discovery Requests shall begin at 10:30 a.m. (central). Schedule for Additional Responses to Discovery Requests may be set at this hearing.
May 17, 2004	Consumer Advocate's Response to the *Motion to Approve Settlement Agreement* shall be filed with the TRA by **12 noon** (central) and served on all Parties.
May 21, 2004	Reply by Atmos and Staff shall be filed with the TRA and served on all Parties.
June 8, 2004	Hearing shall begin at 11:00 a.m. (central)

All filings shall be due at the close of business on the dates indicated unless otherwise noted.

IT IS THEREFORE ORDERED THAT:

1. The *Motion to Consolidate and to Approve Settlement Agreement* filed by Atmos and the Staff of the Energy and Water Division is granted in part, in that Docket No. 01-00704 and Docket No. 02-00850 are hereby consolidated. The record in Docket No. 02-00850 shall be part of the record in Docket No. 01-00704 and all future filings

will occur in Docket No. 01-00704. Docket No. 02-00850 shall be deemed closed after entry of this Order.

2. The remainder of the *Motion to Consolidate and to Approve Settlement Agreement* filed by Atmos and the Staff of the Energy and Water Division shall be held in abeyance pending additional discovery and/or a hearing.

3. The *Motion for Extension of Time to Respond to the Motion to Consolidate and to Approve Settlement Agreement* filed by the Consumer Advocate is granted in part, in that the Consumer Advocate is hereby granted additional discovery and additional time to file a response, subject to the limitations agreed upon by the Parties.

4. The remainder of the *Motion for Extension of Time to Respond to the Motion to Consolidate and to Approve Settlement Agreement* filed by the Consumer Advocate is held in abeyance pending additional discovery and/or a hearing.

5. The Procedural Schedule set forth above is hereby adopted, subject to the conditions and limitations agreed upon by the Parties.

Jean A. Stone, Hearing Officer