

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**February 29, 2008**

**IN RE:** )  
 )  
**PETITION OF ATMOS ENERGY CORPORATION** ) **DOCKET NO.**  
**FOR APPROVAL OF THE CONTRACT(S)** ) **08-0024**  
**REGARDING GAS COMMODITY REQUIREMENTS** )  
**AND MANAGEMENT OF TRANSPORTATION** )  
**STORAGE CONTRACTS** )

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**ORDER DENYING MOTION TO STAY**

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This matter is before the Hearing Officer upon the Motion to Stay filed by Stand Energy Corporation (“Stand Energy”) on February 15, 2008. After reviewing the filings in this docket and Docket Nos. 05-00253 and 07-00225, the Hearing Officer hereby denies the Motion to Stay based on the findings set forth below.

**Travel of this Case**

This docket was opened on February 7, 2008, upon the filing of *Atmos Energy Corporation’s Preliminary Filing Request for Proposals in Expectation that Atmos Will Seek Approval of Any Resulting Contract Once Bidding Process is Complete* (“*Preliminary Filing*”). In the *Preliminary Filing*, Atmos Energy Corporation (“Atmos”) states that it has issued requests for proposals (“RFPs”) to a number of companies on January 29, 2008, seeking “firm gas commodity requirements and management of transportation/storage contracts serving its Tennessee and Virginia areas.”<sup>1</sup> Atmos also states that it will provide

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<sup>1</sup> *Atmos Energy Corporation’s Preliminary Filing Request for Proposals in Expectation that Atmos Will Seek Approval of Any Resulting Contract Once Bidding Process is Complete* (“*Preliminary Filing*”), p. 1 (February 7, 2008).

the RFP to any company requesting a copy of the RFP and describes how Atmos will go about publicizing its RFP. The *Preliminary Filing* includes a copy of the RFP and provides as follows:

Once the RFP and bidding process has been completed, Atmos will seek approval of any resulting contract. The RFP and related documents are being submitted in advance in an effort to aid in the Authority's consideration of any resulting contract.<sup>2</sup>

On February 15, 2008, Stand Energy filed a *Petition to Intervene* ("Petition") and *Motion to Stay* ("Motion") in this docket. On February 19, 2008, Atmos filed a *Motion for Extension of Time to Respond* ("Motion for Extension") seeking additional time until February 29, 2008 to respond to the *Petition* and *Motion* filed by Stand Energy. On February 21, 2008, Stand Energy responded to Atmos' *Motion for Extension*, opposing the granting of any additional time to respond and stating that such an extension would result in negating Stand Energy's request for expedited treatment of its *Motion*.

During the next regularly scheduled Authority Conference held February 25, 2008, Chairman Eddie Roberson, Director Tré Hargett and Director Ron Jones, the panel assigned to this docket, voted unanimously to convene a contested case proceeding and to appoint General Counsel or his designee to act as the Hearing Officer to handle any preliminary matters prior to the Hearing, including any pending motions and entering a protective order. On February 25, 2008, the Atmos Intervention Group ("AIG") filed a *Petition to Intervene*. On February 26, 2008, Atmos filed a response to Stand Energy's *Petition* and *Motion*. The Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate") filed a *Petition to Intervene* in this docket on February 27, 2008.

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

## **Stand Energy's Petition and Motion and Atmos' Response**

In its *Petition*, Stand Energy states as grounds for its intervention the following,

Stand Energy is a potential respondent to the RFP that will result in the award of the contract to be approved in this docket. Even if Stand does not respond to the RFP, the contract that will be awarded will provide for the management of Atmos' assets and the terms of such management affect the gas market in Tennessee. Consequently, the determinations in this proceeding may affect [Stand's] legal rights, privileges, immunities, or other legal interests.<sup>3</sup>

The *Motion* filed by Stand Energy alleges several grounds in support of Stand Energy's request that the Authority stay the RFP process commenced by Atmos. Stand Energy states that a stay of proceedings should be ordered because the Federal Energy Regulatory Commission ("FERC") has opened a rulemaking proceeding in which the FERC is considering changes to rules relating to asset managers and that "the TRA should not approve the RFP and the award of a three-year asset management contract during the pendency of the FERC rulemaking proceeding, especially in light of the "regulatory out" language."<sup>4</sup> Stand Energy also asserts that the Authority is examining Atmos' asset management arrangements in TRA Docket No. 07-00225 and, as such, the Authority should hold this proceeding in abeyance until the completion of Docket No. 07-00225, at which time the Authority would have the benefit of hearing recommendations from the parties in Docket No. 07-00225.

According to Stand Energy,

...continuing with the RFP process prior to conclusion of the FERC rulemaking proceeding and TRA's investigation into [Atmos'] asset management arrangement (TRA Docket No. 07-00225) might perpetuate and/or increase any inequity or harm currently being suffered by ratepayers, market participants and potential market participants.<sup>5</sup>

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<sup>3</sup> *Petition to Intervene*, pp. 1-2, (February 15, 2008).

<sup>4</sup> *Stand Energy's Motion to Stay*, p. 3 (February 15, 2008). Stand's "regulatory out" language refers to a provision in the RFP which governs situations where regulations may render the asset management agreement unenforceable.

<sup>5</sup> *Id.*, p. 4.

For the above stated reasons, Stand Energy asks the Authority to stay Atmos' RFP process and this docket until the conclusion of the FERC rulemaking docket and TRA Docket No. 07-00225.

In its response to Stand Energy's *Petition* and *Motion*, Atmos refers to an Authority order entered in Docket No. 05-00253 in which the Authority approved an Atmos tariff amendment incorporating RFP procedures for selecting an asset manager. Atmos asserts that its proposed RFP procedures were approved because they are the same RFP procedures the Authority approved for Chattanooga Gas Company and that Atmos' approved procedures were filed in a revised tariff which became effective on November 29, 2007. Atmos points out that Stand Energy has filed its *Petition* and *Motion* in the absence of Atmos requesting any action by or relief from the Authority relative to its RFP. Atmos also sets forth arguments opposing Stand Energy's suggestion that the Authority hold this docket in abeyance pending the outcomes of the FERC rulemaking docket and TRA Docket No. 07-00225. Atmos counters by stating the timing of the outcome of the FERC rulemaking is too indefinite and that the Authority is capable of rendering a decision regarding Atmos' asset management agreement in this docket without delaying that decision until the conclusion of Docket No. 07-00225. Further, beyond these arguments, Atmos explains, ". . . if the Current RFP process were brought to a halt, this would jeopardize [Atmos'] commodity needs and its storage refill, because no commodity supply RFP separate from asset management has been issued by [Atmos]."<sup>6</sup>

### **Finding and Conclusions**

A review of TRA Docket Nos. 05-00253 and 07-00225, both of which have been referenced in the filings of Stand Energy and Atmos relating to the *Motion*, reveals the

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<sup>6</sup> *Atmos Energy Corporation's Response to Stand Energy Corporation's Motion to Intervene and Motion to Stay*, p. 13 (February 26, 2008).

following. On September 15, 2005, the Authority opened Docket No. 05-00253 upon the submission of Atmos' 2004-2005 Actual Cost Adjustment ("ACA") filing. On April 21, 2006, an ACA Compliance Audit Report of Atmos for the twelve months ending June 30, 2005 was filed by Authority Audit Staff. At the May 15, 2006 Authority Conference, the panel assigned to that docket voted to adopt certain findings and recommendations in the Audit Report and directed the Audit Staff to meet with Atmos to discuss and resolve issues involving the selection of an asset manager and the effect of such on Atmos' performance-based ratemaking ("PBR") mechanism. As discussions were delayed due to the commencement and contested proceedings in another docket, Atmos proceeded, on April 5, 2007, to file a request to amend its PBR tariff to include RFP procedures for the selection of an asset manager. On June 25, 2007, the Authority approved Atmos' tariff ". . . given the fact that these RFP procedures are in essence the RFP procedures that were approved for Chattanooga Gas Company and given the time frame in which Atmos seeks to issue its RFP."<sup>7</sup>

During an Authority Conference held on November 6, 2006, the panel in Docket No. 05-00253 and in the contested case proceeding, Docket No. 05-00258, voted to have the parties in those dockets brief the question of whether the asset management issues and the resolution of those issues should be addressed in Docket No. 05-00253 or Docket No. 05-00258. Briefs were filed on November 20, 2006 and oral argument was heard by the panel on March 26, 2007. After duly considering the arguments of the parties, the panel determined on August 20, 2007 to close Docket Nos. 05-00253 and 05-00258 and create a new docket for the purpose of considering the asset management issues which had arisen in both dockets. As

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<sup>7</sup> Atmos Energy Corporation's Annual Cost Adjustment (ACA) for the Twelve Months Ended June 30, 2005, TRA Docket No. 05-00253, *Order Approving Tariff*, p. 2 (December 6, 2007).

a result, Docket No. 07-00225 was opened. Those parties who had participated in the two closed dockets were permitted to intervene in Docket No. 07-00225. Those parties include Atmos, Stand Energy, Atmos Intervention Group and the Consumer Advocate, all of which are currently actively participating in Docket No. 07-00225. On December 21, 2007, the Hearing Officer in Docket No. 07-00225 issued an order establishing an extensive list of issues to be considered in that docket.<sup>8</sup>

The Hearing Officer finds that the RFP procedures to be used by Atmos in soliciting bids for an asset management agreement were approved by the Authority in Docket No. 05-00253 and became effective through Atmos' revised tariff filing. Atmos filed its RFP and related documents in this docket on February 7, 2008 in advance of submitting a proposed asset management agreement in this docket for consideration by the Authority. Docket No. 08-00024 is not a docket to evaluate Atmos' RFP, therefore Atmos' RFP filing on February 7, 2007 and the RFP process is not the subject of the review by the Authority. Docket No. 08-00024 has been opened for the purpose of the Authority to review and evaluate and then approve or deny the proposed asset management agreement. The RFP process is merely one factor which will be considered in reviewing the proposed agreement.

Atmos' filing of the RFP was made “. . . in an effort to aid in the Authority's consideration of any resulting contract.” The proceeding in this docket will commence with the filing of the proposed asset management agreement. Stand Energy's *Petition to Intervene* is premature and its *Motion to Stay* the RFP process in this docket is misplaced. Stand Energy's *Petition* was filed before any agreement has been filed for consideration by the Authority. As such, the *Petition to Intervene* must be understood as a request by Stand Energy to intervene in the RFP process and, by its *Motion to Stay*, prevent the RFP process

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<sup>8</sup> See Docket to Evaluate Atmos Energy Corporation's Gas Purchases and Related Sharing Incentives, TRA Docket No. 07-00225, *Order on December 13, 2007 Status Conference* (December 21, 2007 ) (Attachment A).

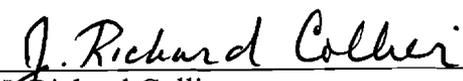
from moving forward. As a potential bidder, Stand Energy's attempt to impede the RFP process is not proper.

On February 25, 2008, the Authority convened a contested case in this docket. The stage is set for the filing of the proposed asset management agreement after Atmos has received proposals and awarded a contract. AIG and the Consumer Advocate have filed their petitions to intervene. Those petitions seek intervention in the contract approval process and not in the RFP process. Based on these findings, the Hearing Officer concludes that the *Motion to Stay* filed by Stand Energy is not well-founded and should be denied. Stand Energy's *Petition to Intervene* will be considered at a later date in a separate order along with the petitions to intervene filed by AIG and the Consumer Advocate.

The *Motion for Extension* filed by Atmos requested additional time until February 29, 2008 to respond to Stand Energy's *Petition* and *Motion*. Under the TRA Rules of Procedure, a response to the *Petition* and *Motion* would be due February 22, 2008. Atmos filed its *Motion for Extension* on February 19, 2008, prior to the due date for a response. Inasmuch as Atmos' request was filed prior to the due date, and the actual response was filed on February 26, 2008, the Hearing Officer grants the *Motion for Extension nunc pro tunc*.

**IT IS THEREFORE ORDERED THAT:**

1. Stand Energy Corporation's *Motion to Stay* is denied.
2. The petitions to intervene filed by Stand Energy, Atmos Intervention Group and the Consumer Advocate will be considered at a later date in a separate order.
3. Atmos Energy Corporation's *Motion for Extension of Time* is granted *nunc pro tunc*.

  
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J. Richard Collier,  
General Counsel as Hearing Officer