

**IN THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE: PETITION TO OPEN AN)	Filed Electronically in
INVESTIGATION TO DETERMINE)	Docket Office on 06/07/06
WHETHER ATMOS ENERGY CORP.)	@ 1:40pm
SHOULD BE REQUIRED BY THE TRA)	Docket No. 05-00258
TO APPEAR AND SHOW CAUSE THAT)	
ATMOS ENERGY CORP. IS NOT)	
OVEREARNING IN VIOLATION OF)	
TENNESSEE LAW AND THAT IT IS)	
CHARGING RATES THAT ARE JUST)	
AND REASONABLE)	

Atmos Energy Corporation's Motion for Protective Order

In a June 5, 2006 Notice of Filing and Status Conference in this docket, Chairman Jones as Hearing Officer directed the parties to submit a filing "detailing any dispute concerning the proposed protective order and the party's position with regard to the dispute."¹ Atmos Energy Corporation ("Atmos" or "Company") submits this Motion for Protective Order as its filing requested by Chairman Jones.

Based on the communications that have occurred between the parties over the past several days, it is Atmos' understanding that all parties have reached agreement on the proposed protective order with the exception of the Atmos Intervention Group. This filing will outline Atmos' position with regard to the objections raised by the Atmos Intervention Group to the proposed protective order.

¹ June 5, 2006 Notice of Filing and Status Conference, p. 1.

I. **THE HEARING OFFICER'S RULING ON ATMOS' OBJECTIONS TO THE
ATMOS INTERVENTION GROUP DISCOVERY MAY RENDER THE ISSUES
CONCERNING THE PROTECTIVE ORDER MOOT.**

Atmos Intervention Group's objections concern the treatment under the protective order of confidential trade secret material Atmos Intervention Group has requested related to activities of Atmos Energy Marketing, LLC ("AEM"), a non-regulated marketing affiliate of Atmos. As discussed more thoroughly below, Atmos has objected to that discovery as irrelevant and beyond the scope of this proceeding. If the Hearing Officer sustains the Company's objections, Atmos and the Atmos Intervention Group may be able to resolve its disagreement concerning the protective order, as the disagreement between the Company and the Atmos Intervention Group concerns only the treatment of confidential information related to AEM. If no such information is disclosed during discovery, the issues raised by the Atmos Intervention Group concerning the protective order are rendered moot.

AEM is a non-regulated company that provides gas supply procurement and asset management services to utilities, industrial facilities, power plants and gas producers in several states, including Tennessee. In 2003, Atmos issued a request for proposals for asset management services. As the successful bidder, AEM was awarded the contract and currently provides asset management services to Atmos in addition to its other customers.

In objecting to the proposed protective order, Atmos Intervention Group has insisted that it be allowed to share the confidential trade secret material it has requested related to AEM's activities with Mr. Earl Burton, a consultant who markets services in direct competition with AEM. As discussed more thoroughly in the following section, under Tennessee law, the confidential trade secret information may not be shared with Mr. Burton.

The issue of the protective order aside, the Atmos Intervention Group discovery concerning AEM activities and related issues is irrelevant and thus beyond the scope of legitimate discovery in this proceeding. As described by Chairman Jones, this docket was convened “for the purpose of establishing a fair and reasonable return for Atmos.”² The Report of Investigative Staff acknowledged as much by analyzing only those factors which impact the Company’s base rates and its authorized rate of return. The requests of Atmos Intervention Group seek information related to Atmos’ gas supply procurement and the management of the assets Atmos uses to secure that supply. Pursuant to the Authority’s Purchased Gas Adjustment (“PGA”) Rule, the costs Atmos incurs to procure a gas supply for its customers are not included in Atmos’ base rates and have no bearing on the Company’s authorized rate of return. Instead, the Authority regulates Atmos’ gas costs through: (1) regular PGA filings; (2) an annual Actual Cost Adjustment (“ACA”) audit conducted by TRA staff to verify the gas costs Atmos incurs and ensure the costs are correctly passed through to ratepayers; and (3) the Company’s Performance-Based Ratemaking Mechanism (“PBR”) put into place by the Authority’s orders in Docket No. 97-01364, which replaces the requirement that TRA Staff conduct annual audits of the prudence of the Company’s gas cost purchasing activities with an incentive based regulatory scheme. In the Company’s most recent ACA audit, Docket No. 05-00253, the Authority directed the Company to meet with TRA Staff to formulate a proposal to integrate the AEM contract into the Company’s PBR.³

The information requested by the Atmos Intervention Group is irrelevant to determining what the Company’s base rates and authorized rate of return should be, which is the sole purpose of this docket. The Report of Investigative Staff contains no foundational support that would justify expanding the scope of the docket to include a reexamination of the TRA’s orders in the

² Transcript of May 15, 2006 TRA Agenda Conference, p. 24.

³ Transcript of May 15, 2006 TRA Agenda Conference, p. 2.

Company's PBR and ACA dockets and the setting of new policy with regard to extent of the Authority's regulation of asset management in the natural gas industry. Given the fact that the Authority has not previously regulated asset management in the gas industry, and that Atmos' asset management is currently the subject of contrary TRA orders, it is questionable as to whether such issues can be decided through a contested case procedure at all, as opposed to an industry-wide rulemaking. Tennessee Cable Assoc. v. Tennessee Pub. Serv. Comm'n, 844 S.W.2d 151, 161-62 (Tenn. Ct. App. 1992) (holding that rulemaking, as opposed to contested case procedures, is required if the agency's determination reflects new administrative policy that has not been previously expressed in any official and explicit order or rule.) In light of the extremely burdensome nature of the abbreviated procedural schedule in this docket and the limited opportunity Atmos would have to respond to any testimony concerning its asset management, expanding the scope of this proceeding beyond the foundation provided by the Staff Investigative Report raises serious due process concerns. See Williams v. Pittard, 604 S.W.2d 845, 849-50 (Tenn. 1980). The Atmos Intervention Group requests are beyond the scope of legitimate discovery in this proceeding, and the Company's objections should be sustained.

II. **THE OBJECTIONS OF ATMOS INTERVENTION GROUP TO THE PROPOSED PROTECTIVE ORDER ARE NOT WELL-FOUNDED.**

Last week, counsel for the Consumer Advocate circulated a draft of a proposed protective order to the parties for agreement or suggested revisions. On June 2, 2006, Atmos circulated proposed revisions to the Consumer Advocate draft. Attached as Exhibit A to this Motion is a redline document showing the suggested changes Atmos proposed.

The original Consumer Advocate draft contained a provision prohibiting the disclosure of confidential information to "anyone associated with the marketing of services in competition with

the producing party.” This provision is a routine protection included in several previous protective orders issued by the Authority.⁴

As reflected in the attached redline, in light of the requests of the Atmos Intervention Group aimed at AEM, Atmos submitted a proposed revision to that provision to clarify that confidential information may not be shared with anyone associated with the marketing of services in competition with “Atmos Energy Corporation and its affiliates or other producing party.”

Atmos also proposed a revision to the definition of “party” under the protective agreement to clarify that Mr. Earl Burton and his company, Tennessee Energy Consultants, was not entitled to access confidential information under the provisions pertaining to parties because Mr. Burton is not a party to this case. Despite the fact Mr. Burton has issued press releases and sent solicitations wherein he presents himself as the spokesperson for the Atmos Intervention Group⁵, Mr. Burton is not a customer of Atmos, and therefore is not a member of the Atmos Intervention Group that has been granted intervention in this matter. Rather, as counsel for Atmos Intervention Group confirmed in communications related to the protective order, Atmos Intervention Group intends to offer Mr. Burton as a consultant and/or expert witness in this docket.

It is only these revisions that (1) clarify that Mr. Burton is not a party to this case; and (2) confirm that the prohibition against the sharing of confidential information with competitors extends to competitors of both Atmos and AEM, that triggered the objections of the Atmos Intervention Group. This suggests that perhaps the Atmos Intervention Group recognizes the fact that Mr. Burton certainly qualifies as a competitor of AEM, if not Atmos, but had intended to avoid the protection of the competitor clause within the original draft of the protective order by applying an overly restrictive reading of the clause. Regardless of the original intent, Mr. Burton

⁴ See e.g., Docket Nos. 05-00165, 04-00034, 06-00093.

⁵ See May 12, 2006 Letter from Atmos filed in this docket.

is unquestionably a direct competitor of AEM, and as such, cannot have access to the confidential trade secret information the Atmos Intervention Group seeks in its discovery requests, which are devoted almost exclusively to issues related to AEM's activities within its competitive market.

The extent to which Mr. Burton competes with AEM is described in the Affidavit of Rob Ellis, attached as Exhibit B to this Motion. As described in the Affidavit, Mr. Burton is in the business of soliciting AEM's existing customers to contract for their gas supply from marketers other than AEM. As evident in the copies of Mr. Burton's solicitations attached to the Affidavit, Mr. Burton typically contacts the AEM customer, represents to the customer that AEM fees are too high, and offers to use his contacts with other suppliers to negotiate a better deal for the customer with a marketer other than AEM. As detailed in the Affidavit, Mr. Burton sends solicitations to a distribution list of AEM customers he has compiled. Like the example solicitation attached to the Affidavit, those communications contain offers to arrange services for the customer with competing marketers other than AEM. The Affidavit and attached solicitations demonstrate that targeting AEM customers and competing with AEM is a regular part of Mr. Burton's business. Moreover, as Mr. Ellis notes in his Affidavit, the discovery submitted by the Atmos Intervention Group appears to have been drafted for the specific purpose of aiding Mr. Burton's efforts to compete with AEM.

The information Atmos Intervention Group has requested qualifies as trade secrets and is therefore protected under Tennessee law. A trade secret is defined to include information which is maintained as confidential, which derives actual or potential economic value from not being generally known and readily ascertainable by other persons who can obtain economic value from its disclosure or use. Tenn. Code Ann. § 47-25-1702(4). As confirmed in the Affidavit, the details the Atmos Intervention Group seeks with regard to the identify of AEM's customers, the terms of

AEM's contracts, AEM's profits and other information concerning AEM's efforts to compete for gas supply contracts in Tennessee all constitute confidential information which is not generally known to AEM's competitors, and which is therefore economically valuable to AEM. AEM would suffer economic harm if that information were shared with Mr. Burton or any of its other competitors. As such, the information qualifies as a trade secret under Tennessee law.

The Authority has a obligation to protect AEM's trade secrets. The Tennessee Trade Secrets Act prohibits "misappropriation" of trade secrets, which is defined to include disclosure of trade secrets by persons (defined to include government agencies) with a duty to maintain confidentiality. Tenn. Code Ann. § 47-25-1702. Under these definitions, once the TRA is informed that information being submitted is trade secrets, the Authority could be deemed liable for misappropriation if it refused to protect the confidentiality of such information.

The requests submitted by the Atmos Intervention Group not only seek trade secret information protected under Tennessee law, but also appear to have been drafted for the specific purpose of aiding Mr. Burton's efforts to compete with AEM, which is an abuse of the regulatory process. See Givens v. Mullikin, 75 S.W.3d 383, 400 (Tenn. 2002) (holding that abuse of process refers to the use of legal process for an end other than that which it was designed to accomplish). The Authority should decline to aid in this abuse of the regulatory process by ordering the Company to turn over the trade secrets of its affiliate directly to its competitors. The objections raised by the Atmos Intervention Group insisting otherwise are not well-founded.

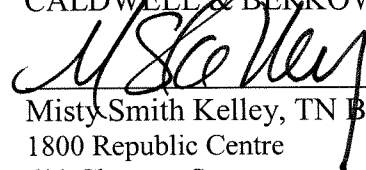
III. **CONCLUSION.**

The discovery submitted by the Atmos Intervention Group seeks confidential trade secret information protected by Tennessee law and appears to have been drafted for the specific purpose of aiding Mr. Burton's efforts to compete with AEM, which is an abuse of the regulatory process.

The discovery seeks information related to gas costs and AEM's activities in Tennessee, which have no relationship to the Company's base rates and authorized rate of return. The requests are therefore beyond the legitimate scope of this proceeding, and the Company's objections to those requests should be sustained. The revised protective order merely confirms that Mr. Burton is not a party to this docket, and that confidential information may not be shared with anyone associated with the marketing of services in competition with Atmos, AEM, or any other producing party. The objections of the Atmos Intervention Group to the protective order are not well-founded. Atmos therefore requests that the Hearing Officer sustain Atmos' objections to the Atmos Intervention Group discovery requests and enter the revised protective order submitted with this Motion in this docket.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been e-mailed or faxed and mailed to the following parties of interest this 7th day of June, 2006.

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**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:

In re: Petition to Open an Investigation to Determine
Whether Atmos Energy Corp. Should be Required by
the TRA to Appear and Show Cause That Atmos
Energy Corp. Is Not Overearning in Violation of)
Tennessee Law and That it Is Charging Rates That Are)
Just and Reasonable)

Docket No. 05-00258

PROPOSED PROTECTIVE ORDER

To expedite the flow of filings, exhibits and other materials, and to facilitate the prompt resolution of disputes as to the confidentiality of material, adequately protect material entitled to be kept confidential and to ensure that protection is afforded only to material so entitled, the Tennessee Regulatory Authority ("TRA") 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. 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. Documents containing CONFIDENTIAL INFORMATION shall be conspicuously and specifically labeled as "CONFIDENTIAL" on each page containing CONFIDENTIAL INFORMATION and on the cover page with the accompanying page numbers listed either on the cover or on a subject index page. The documents must be produced in a way that will clearly identify to others that it contains CONFIDENTIAL INFORMATION. The document must be accompanied by proof of confidentiality, that is, an Affidavit showing the cause of protection under this Order. The Affidavit may be reviewed by the Hearing Officer, Administrative Law Judge or the TRA for compliance with this paragraph. 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 12 of this Order.

2. Any individual or company subject to this Order, including producing parties or persons reviewing CONFIDENTIAL INFORMATION, shall act in good faith in discharging their obligations hereunder. Parties or nonparties subject to this Order shall include parties which are allowed by the TRA to intervene ~~subsequent to the date of entry of this Order in this~~ docket. With regard to the Atmos Intervention Group, whenever the terms "party" or "parties" appear in this Protective Order, such terms refer only to those industrial customers of Atmos Energy Corporation that have joined the Atmos Intervention Group, and do not include Tennessee Energy Consultants, Mr. Earl Burton, or any other third party or outside consultant or representatives.

3. 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 and the designated proceedings docket and 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, however, that CONFIDENTIAL INFORMATION shall be shown only to those persons having a need to know;
- (d) TRA Directors and members of the staff of the TRA;
- (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 five (5) 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 TRA, 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 hand delivery or by facsimile.

Under no circumstances shall any CONFIDENTIAL INFORMATION be disclosed to or discussed with anyone associated with the marketing of services in competition with the products, goods or services of the Atmos Energy Corporation and its affiliates or other producing party.

4. 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 provide a copy of this Order to the recipient Director, staff member, employee or, officer, who shall be bound by the terms of this Order. 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 that attached 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 in their respective offices.

5. If any party or non party subject to this Order inadvertently fails to label documents as "CONFIDENTIAL" in accordance with the provisions of this Order when producing such documents, such failure shall not constitute a waiver of confidentiality, provided the party or non party who has produced the document shall notify the recipient of the document in writing within five (5) days of discovery of such inadvertent failure to label the document as "CONFIDENTIAL." At that time, the recipients will immediately treat the subject document as CONFIDENTIAL INFORMATION. In no event shall the TRA, or any other party to this Order,

be liable for any claims or damages resulting from the disclosure of a document while not so labeled as "CONFIDENTIAL." An inadvertent failure to label a document as "CONFIDENTIAL" shall not, in any way, affect the TRA's determination as to whether the document is entitled to CONFIDENTIAL INFORMATION status.

6. If any party or non party subject to this Order inadvertently fails to label documents as "CONFIDENTIAL" in accordance with the provisions of this Order when producing such documents and such failure is not discovered in time to provide five (5) days notification to the recipient of the confidential nature of the documents referenced in the paragraph above, the failure shall not constitute a waiver of confidentiality and a party by written motion or by oral motion at a Pre hearing Conference called for the purpose or at the Hearing on the merits may request designation of such documents as CONFIDENTIAL INFORMATION, and if the motion is granted by the Hearing Officer, Administrative Law Judge, or the TRA, the recipients shall immediately treat the subject documents as CONFIDENTIAL INFORMATION. The TRA, Hearing Officer, or Administrative Law Judge may also, at his or her discretion, either before or during the Pre hearing Conference or Hearing on the merits of the case, allow information to be labeled "CONFIDENTIAL" and treated as such in accordance with the terms of this Order.

7. Any papers filed in this proceeding 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 TRA in sealed envelopes labeled "CONFIDENTIAL." The filing party shall also include with the filing a public version of the papers with all CONFIDENTIAL INFORMATION redacted. Only the redacted public version may be placed in the TRA's public

file and/or posted on the TRA website. Each sealed envelope labeled "CONFIDENTIAL" shall also be labeled to reflect the style and docket number of this proceeding and to identify the subject matter of the content of the sealed envelope. The envelopes shall be maintained in a locked filing cabinet. The envelopes shall not be opened or their contents reviewed by anyone except upon order by the TRA, Hearing Officer, or Administrative Law Judge after due notice to counsel of record. Notwithstanding the foregoing, the Directors and the staff of the TRA may review any paper filed as CONFIDENTIAL INFORMATION and labeled "CONFIDENTIAL" without obtaining an order of the TRA, Hearing Officer, or Administrative Law Judge, provided the Directors and staff maintain the confidentiality of the paper in accordance with the terms of this Order.

8. Documents, information and testimony 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 proceeding and offered into evidence in any hearing related to this action, subject to the applicable Rules of Evidence and to such future orders as the TRA, 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 TRA, Hearing Officer; or Administrative Law Judge, prior to the Hearing on the merits of the case, of the proposed use, and shall advise the TRA, 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 TRA, Hearing Officer, or Administrative Law Judge to protect the confidential nature of the information.

9. Except for documents filed with the TRA, all documents covered by the terms of this Order that are disclosed to the requesting party shall be maintained separately in files labeled "CONFIDENTIAL" and labeled with reference to this Order at the offices of the requesting party's counsel of record.

10. Nothing herein shall be construed as preventing any party from continuing to use and disclose any information (a) that is in the public domain, or (b) that subsequently becomes part of the public domain through no act of such party, or (c) that is disclosed to it by a third party, where said disclosure does not itself violate any contractual or legal obligation, or (d) that is independently developed by a party, or (e) that is known or used by it prior to this proceeding. The burden of establishing the existence of (a) through (e) shall be upon the party attempting to use or disclose such information.

11. Any party may contest the designation of any document or information as CONFIDENTIAL INFORMATION by filing a motion with the TRA, Hearing Officer, Administrative Law Judge or the courts, as appropriate, for a ruling that the documents, information, or testimony should not be so treated. All documents, information and testimony designated as CONFIDENTIAL INFORMATION, however, shall be maintained as such until the TRA, Hearing Officer, Administrative Law Judge, or a court orders otherwise. A motion to contest must be filed not later than ten (10) days prior to the Hearing on the merits. Any reply seeking to protect the status of their CONFIDENTIAL INFORMATION must be received not later than five (5) days prior to the Hearing on the merits. Motions made and subsequent replies received within the five (5) days prior to the Hearing on the merits shall be presented to the TRA at the Hearing on the merits for a ruling.

12. Nothing in this Order shall prevent any party from asserting any objection to discovery other than an objection based upon the grounds of confidentiality.

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

14. No person authorized under the terms herein to receive access to documents, information, or testimony designated as CONFIDENTIAL INFORMATION shall be granted access until such person has complied with the requirements set forth in paragraph 4 of this Order.

15. Any person to whom disclosure or inspection is made in violation of this Order shall be bound by the terms of this Order.

16. Upon an order becoming final in this proceeding and conclusion of any appeals resulting from such an order, all the filings, exhibits and other materials designated as CONFIDENTIAL INFORMATION and all copies thereof shall be returned to counsel of the party who produced the filings, exhibits and other materials within fifteen (15) days of a written request from the producing party, or counsel in possession of such documents 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. Subject to the requirements of Paragraph 7 above, the TRA shall retain copies of information designated as Confidential or Protected Security Materials as may be necessary to maintain the record of this cause intact.

17. After termination of this proceeding, the provisions of this Order relating to the secrecy and confidential nature of confidential documents, information and testimony 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.

18. 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.

19. In addition to the other provisions of this Order, ~~Nashville Gas Company, a division of Piedmont Natural Gas Company, Inc.~~ Atmos Energy Corporation and its affiliates (the "Company") may designate and label as "PROTECTED SECURITY MATERIALS" documents and information related to security measures undertaken to protect public health and safety. The Company shall provide access to PROTECTED SECURITY MATERIALS to TRA Directors and members of the staff of the TRA and further only to authorized representatives of the Intervenor in this docket. Authorized representatives shall be limited to the following: 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 TRA to have such access; and with respect to any other party, two counsel of record, the Tennessee Attorney General and the Chief Deputy of the Office of the Tennessee Attorney General and a single other person, employed by or under contract to the party, authorized by that party in a written certification mutually agreeable to the parties.

20. The Company 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 to this Order and provided a copy to the Company. Except with consent of the Company: (i) access shall be at the offices of the Company or its counsel of record and under supervision of the Company; (ii) PROTECTED SECURITY MATERIALS shall not be removed from the offices of the Company or its counsel; (iii) 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 TRA staff or any other party to prepare for and to try this proceeding and shall not be used for any other purpose in this or any other jurisdiction.

21. Except as provided in this Order, the contents of PROTECTED SECURITY MATERIALS to which the TRA 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 proceeding and in accordance with this Order. PROTECTED SECURITY MATERIALS shall not otherwise be published, disclosed or divulged except as expressly provided herein. The TRA 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 TRA staff, any party, Hearing Officer, or the TRA Directors may discuss any position or conclusion regarding security expenditures and testimony in briefs, orders, pleadings, or hearings in this proceeding in accordance with this Order.

22. Upon written request from the Company within one (1) month from the conclusion of this proceeding or any judicial review proceedings involving security related expenditures, the TRA staff and any party will either return any PROTECTED SECURITY MATERIALS, any notes or memoranda related thereto or any copies thereof to the Company or certify to the Company in writing that all such notes, memoranda or copies have been destroyed. Any electronic copies of PROTECTED SECURITY MATERIALS made by authorized representatives shall be eliminated.

23. 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.

24. The Attorney General and his staff agree to keep confidential commercial information and/or trade secrets 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.

25. The Attorney General and his staff may make copies of confidential commercial information or trade secrets or 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.

26. To the extent permitted by state law, the Attorney General will provide timely notice of filing or disclosure in the discharge of the duties of the Office of the Attorney General and Reporter, pursuant to Tenn. Code Ann. § 10--7--504(a)(5)(C) or any other law, regulation or rule, so that the Company may take action relating to disclosure.

27. 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" by the Company, the Attorney General will notify the Company 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 Company an opportunity to challenge said subpoena or request or to make arrangements to preserve the confidentiality of the confidential commercial information labeled as "CONFIDENTIAL" by the Company that is subject to such request.

28. The designation of any information, documents or things in accordance with this Order as constituting or containing confidential or proprietary information and the Attorney General's or his staff's treatment of such material as confidential or proprietary 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 commercial information or trade secret information 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 Company agrees to designate information, documents or things provided to the Attorney General as confidential commercial information or trade secret if it has a good faith basis for the claim. The Company will upon request of the Attorney General or his staff provide a written explanation of the details, including statutory authority, that support its confidential commercial information or trade secret claim within five (5) days of a written request. The Company also specifically agrees that it will not designate any documents as CONFIDENTIAL INFORMATION 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 Company as confidential commercial information or trade secrets.

29. Nothing in this Order shall prevent the Attorney General from using the CONFIDENTIAL INFORMATION 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 Company or from discussing with any consumer any materials that he or she allegedly received from the Company or confirming that a consumer actually received the materials.

30. The terms of the foregoing paragraphs 23 through 29 do not apply to PROTECTED SECURITY MATERIALS as set forth in paragraphs 19 through 22 of this Order.

31. All information, documents and things 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 TRA or court hearing, trial, motion or proceeding of this matter, subject to the provisions of this Order and the applicable Rules of Evidence. The party who produced the information, documents and things designated as CONFIDENTIAL INFORMATION or PROTECTED SECURITY MATERIALS agrees to stipulate to the authentication of such information, documents and things in any such proceeding.

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

33. 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 TRA or Intervenors.

34. Any party aggrieved with the TRA's decision in this matter may file a Petition for Reconsideration with the TRA within fifteen (15) days from and after the date of this Order.

35. Any party aggrieved with the TRA's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from and after the date of this Order.

HEARING OFFICER

95687

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

In re: Petition to Open an Investigation to Determine)
Whether Atmos Energy Corp. Should be Required by)
the TRA to Appear and Show Cause That Atmos)
Energy Corp. Is Not Overearning in Violation of)
Tennessee Law and That it Is Charging Rates That Are)
Just and Reasonable)

Docket No. 05-00258

AGREEMENT TO COMPLY WITH PROTECTIVE ORDER

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

DATE

NAME

STATE OF _____)

COUNTY OF _____)

Personally appeared before me, _____, a Notary Public,
_____ with whom I am personally acquainted, 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: _____

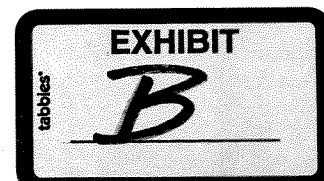
**IN THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE: PETITION TO OPEN AN)	
INVESTIGATION TO DETERMINE)	
WHETHER ATMOS ENERGY CORP.)	
SHOULD BE REQUIRED BY THE TRA)	Docket No. 05-00258
TO APPEAR AND SHOW CAUSE THAT)	
ATMOS ENERGY CORP. IS NOT)	
OVEREARNING IN VIOLATION OF)	
TENNESSEE LAW AND THAT IT IS)	
CHARGING RATES THAT ARE JUST)	
AND REASONABLE)	

Affidavit of Rob Ellis

I, Rob Ellis, after first being duly sworn according to law, hereby depose and say that:

1. I am beyond the age of majority, am competent to make this Affidavit, and have personal knowledge of the matters stated within this Affidavit.
2. I am employed by Atmos Energy Marketing, LLC ("AEM") as Senior Vice President of Marketing. I am based out of AEM's Franklin, Tennessee office.
3. AEM is a non-regulated affiliate of Atmos Energy Corporation. AEM is a full service natural gas marketing company that provides gas supply procurement and asset management services to utilities, industrial facilities, power plants and gas producers in several states, including Tennessee. In 2003, Atmos Energy Corporation issued a request for proposals for asset management services. AEM was the successful bidder and currently provides asset management services to Atmos Energy Corporation in addition to its other customers.
4. In the course of my employment with AEM, I have become familiar with Mr. Earl Burton and his company, Tennessee Energy Consultants. The aspect of Mr. Burton's business that I am most familiar with is the consulting services he provides to industrial and municipal clients



with regard to contracting with marketers for gas supply. Mr. Burton regularly competes with AEM for these gas supply contracts.

5. Typically, Mr. Burton offers to assist the industrial or municipal client in selecting a marketer and negotiating a contract with that marketer for gas supply. The market for such gas supply contracts is highly competitive. Many of Mr. Burton's clients are located in East Tennessee. AEM has numerous industrial and municipal customers in East Tennessee and throughout the state that have contracted with AEM for their gas supply.

6. Mr. Burton regularly contacts industrial and municipal customers with existing contracts with AEM and represents that the rates charged by AEM are too high, and that he can negotiate a better deal for the customer with a supplier other than AEM. Mr. Burton typically negotiates a fee for his services that includes a percentage of any savings the customer achieves as a result of entering into a contract with a supplier other than AEM. Attached as collective Exhibit 1 to this Affidavit are copies of solicitations Mr. Burton sent to both current and prospective AEM customers offering to arrange service for the customer with suppliers other than AEM. These solicitations are typical of the type Mr. Burton sends to AEM customers and prospects.

7. Included within collective Exhibit 1 is a October 19, 2004 e-mail Mr. Burton sent to a distribution list Mr. Burton has compiled consisting of existing AEM customers, as well as prospective customers of AEM. Mr. Burton sends similar communications to the AEM customer list he has compiled, which like the example attached, offer to negotiate better contracts for the customer with competing marketers other than AEM.

8. Also included within collective Exhibit 1 is a copy of a July 11, 2005 letter Mr. Burton sent to a current AEM customer. In that letter, Mr. Burton represents that he is very involved in consulting with AEM customers "to identify gas marketer practices that are costing

Tennessee gas users hundreds of thousands per year.” Mr. Burton’s letter continues by accusing AEM of mismanagement of assets, and stating that “I am confident that Tennessee Energy Consultants can assist you by objectively auditing the current procurement activities of your supplier [AEM] and facilitate [sic] competition by soliciting other gas suppliers to bid on you [sic] gas requirements.” Mr. Burton closes by offering to take a fee based on a percentage of the customer’s savings. The July 11, 2005 is typical of his frequent communications with AEM customers and confirms that a regular part of Mr. Burton’s business is competing with AEM by soliciting AEM customers to change to a different marketer for their gas supply needs.

9. Also included within collective Exhibit 1 is a copy of an August 18, 2005 letter Mr. Burton sent to an existing AEM customer. In that letter, Mr. Burton states, in reference to AEM, that “I hope you understand the wisdom of hiring someone like Tennessee Energy Consultants who is objective to reducing your costs in lieu of a gas marketer that is an affiliate of the largest gas distribution company in the United States.” It is obvious from this statement that Mr. Burton is in direct competition with AEM for this customer’s business.

10. I have reviewed a copy of the Atmos Intervention Group’s First Round of Discovery submitted in this docket. In my opinion, the majority of the requests submitted by Atmos Intervention Group appear to have been drafted for the specific purpose of aiding Mr. Burton’s efforts to compete with AEM.

12. The data requests submitted by the Atmos Intervention Group seek information which AEM maintains as confidential trade secrets. The information is valuable to AEM, and would harm AEM economically if it were made public or if it were shared with Mr. Burton or other competitors of AEM.

FURTHER AFFIANT SAITH NOT.

Rob Ellis
Rob Ellis

STATE OF Louisiana

COUNTY OF Orleans

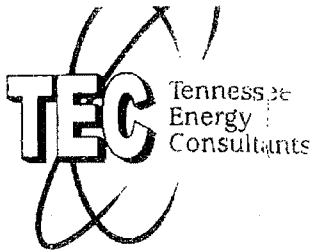
Personally appeared before me, Rob Ellis, a Notary Public in and for said State and County, Rob Ellis, the within named affiant, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that he executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and seal at office, on this 7th day of June, 2006.

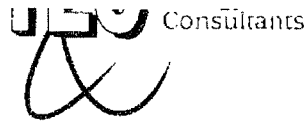
[Signature]
Notary Public
DENIA W. MORRIS
#82356

My Commission Expires:

LIFETIME



Natural Gas - Energy
Agents
Manager/
Engineers



stopped by to introduce myself
I am helping [redacted]
gas purchasing. They are not getting
the best deal on the market.

Profile:

Mission Statement: To provide users with the objective of minim of facility improvements and mai

I work with several shippers on EAST TN, & new gas producers that will have cheaper gas on East TN

Differentiating Value: Without requirements, energy users are fac Consultants (TEC) will provide a experience, and engineering resou services to energy users.

CAN I come up sometime to disc how I can save you on costs [redacted] was not utilizing their gas storage. Picked up thousands

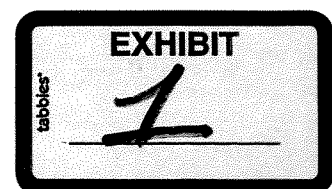
Principle Owner: Earl Burton I

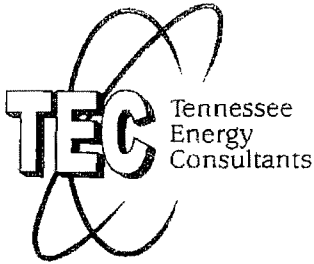
- Professional Engineer: Tenne
- Masters in Business Administ
- 4 Years Experience in Tenness
- 18 Years Gas Industry Experie
- Extensive Gas Rates and Tarif
- Member of American Society
- Chartered Gas Consultant- Gas Technology Institute
- Extensive Natural Gas System and Operating Experience
- Extensive Account Management skills and accounting knowledge.
- System knowledge of gas utility billing, firm and major accounts.

Thanks
Earl Burton

Services

- Energy auditing
- Review requirements, develop contract terms with suppliers.
- Review requirements, select optimum rate tariff
- Coordinate supply and schedule deliveries
- Develop strategic purchasing plans to mitigate risk and smooth volatility
- Audit Invoices, verify payment approval, and request refunds





July 11, 2005

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Dear Mr. Busby,

It was a pleasure to meet with you and [REDACTED] to discuss natural gas supply options for [REDACTED]. We look forward to working with [REDACTED] and appreciate your willingness to consider competitive options that will reduce costs for natural gas customers of [REDACTED].

As we discussed, my experience as rate manager with Chattanooga Gas Company gives me valuable insight into the various costs of natural gas service for municipalities, LDC's and industrial gas users. I work with other natural gas shippers that manage assets on Texas Eastern and East Tennessee, and I am confident that the natural gas costs can be significantly reduced by bidding out [REDACTED] gas requirements.

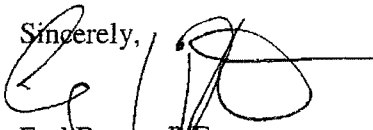
I have been very involved with auditing and overseeing natural gas marketer activities in Tennessee, and have worked with the Tennessee Regulatory Authority, Chattanooga Manufacturer's Association and industrial endusers served by Atmos Energy to identify gas marketer practices that are costing Tennessee gas users hundreds of thousands per year. Some of these activities include mismanagement of storage assets or siphoning the value of storage and diverting this profit to marketing affiliates, and subscribing to more capacity and pipeline assets needed and using this in other markets for profit.

What measures can [REDACTED] undertake to ensure that their customers are receiving the lowest gas costs? I am confident that Tennessee Energy Consultants can assist you by objectively auditing the current procurement activities of your supplier and facilitate competition by soliciting other gas suppliers to bid on you gas requirements.

What will this cost [REDACTED]? I would like to meet with [REDACTED] and work out a fee arrangement including one that is performance based and pays TEC only if my efforts result in reducing natural gas transportation rates for [REDACTED].
[REDACTED]

I have enclosed a draft agreement with a scope of work that I recommend that [REDACTED] should include in my agreement. I look forward to discussing this proposal with you, and begin working on this project as soon as we can agree to terms.

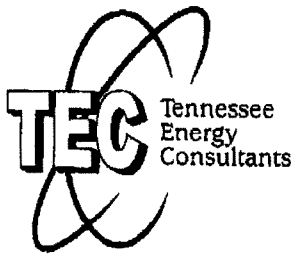
Sincerely,

A handwritten signature in black ink, appearing to be 'Earl Burton', with a long horizontal stroke extending to the right.

Earl Burton P.E.

Tennessee Energy Consultants

423-421-3732



100 E. 10th Street Suite 401 • Chattanooga, TN 37403 • (423) 421-5742

August 18, 2005

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] 58

Dear [REDACTED]

I have reviewed the East Tennessee and Texas Eastern invoicing for [REDACTED] and would present the following initial costs items that need to be addressed.

- Significant savings can be achieved by dispatching the lowest costs natural gas every month. The savings per dekatherm that can be secured can be as much as \$.50 per dekatherm.
- I have indentified the costs of transportation, and can calculate the margins earned by Atmos Energy Marketing margins. This should give [REDACTED] some leverage in negotiating transport rates.
- Reservation charges are charged based on year round charges acquired by Atmos Energy Marketing. The charges for Tennessee Pipeline are considerably higher than prevailing marketing prices for release capacity on this pipeline. These discounts should flow to [REDACTED] if Atmos Energy Marketing is purchasing capacity at discounted rates.
- Natural gas prices were fixed on Nymex index. An alternate index can be used to save [REDACTED] as much as \$.05 to \$.08 per dekatherm on all fixed volumes.

Strategy: Tennessee Energy Consultants will not make any quick recommendations regarding changing suppliers. With the information that I can provide through a detailed audit findings, this will allow us to negotiate better costs with Atmos Energy Marketing, and will prompt them to move gas from the lowest costs source, and reduce transportation costs.

[REDACTED] long term strategy to begin the 2nd Quarter of 2006 should be to review some other proposals from competitive suppliers, and allow Atmos an opportunity to keep your business. Competition for [REDACTED] business will reduce rates for your residential, commercial and industrial customers. I have considerable experience with working with other shippers on East Tennessee that serve existing municipalities. I know how to structure these competitive offers from other suppliers, however we would interview each

supplier and the municipalities they serve, and provide assurance that [REDACTED] is 100% comfortable with another supplier before any change is made.

Compensation: I have forwarded a performance agreement to [REDACTED] for review. I would be glad to work with [REDACTED] in whatever compensation arrangement that you are most comfortable with which could include a fixed retainer or performance fee based on savings. Upon reviewing your arrangement with Atmos Energy Marketing, I am confident that I can be fairly compensated on a percent of overall savings. I believe that my services will be needed on an ongoing basis to ensure that your costs are minimized.

I hope you understand the wisdom on hiring someone like Tennessee Energy Consultants who is objective to reducing your costs in lieu of a gas marketer that is an affiliate of the largest gas distribution company in the United States. I am confident that considerable savings can be flowed to your residential, commercial and industrial customers.

Sincerely,



Earl Burton P.E.

Tennessee Energy Consultants
423-421-3732

[REDACTED]

[REDACTED]
From: [REDACTED]
Sent: Monday, January 03, 2005 1:24 PM
To: [REDACTED]
Subject: FW: Interstate Transport rates to East Tennessee

-----Original Message-----

From: Earl Burton (mailto:eburton@aeedinc.com)
Sent: Tuesday, October 19, 2004 11:00 AM
To: [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED];
[REDACTED]; Energy Contact; Energy Contact; Energy Contact; Energy Contact; Energy
Contact; Energy Contact; Energy Contact; Energy Contact; Energy Contact; Energy Contact;
Energy Contact; Energy Contact; Energy Contact; Energy Contact; [REDACTED]; [REDACTED]od;
[REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED];
[REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED];
[REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED];
[REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED];
Subject: Interstate Transport rates to East Tennessee

Customers may consider a firm interstate service for this winter for a little more than interruptible service.

Firm interstate will give customers a contractual entitlement for natural gas delivered each day during the winter without interruptions on natural gas.

Customers may consider the risks of high fuel oil and propane gas for this winter.

Costs: Winter: (Nov-Mar) Approximately Nymex plus \$.40 or below based on load factor.
Summer(Apr-Oct) Nymex plus \$.20 or below.

Transport parties would be other marketers managing interstate assets in East Tennessee and other Tennessee gas pipelines for municipalities and other interests.

Sincerely,

Earl Burton P.E.
423-421-3732

Tennessee Energy Consultants is owned and operated by Earl Burton P.E., previous rate manager with Chattanooga Gas Company with 18 years experience in natural gas. Earl Burton is a registered Professional Engineer (BSME Georgia Tech 84), and has MBA from University of Tennessee Chattanooga. Earl Burton is also an associate of Advanced Energy Engineering and Design, Inc. a local full service engineering and facility management company. Tennessee Energy Consultants manages energy costs for over 20 customers in Chattanooga, East Tennessee and Georgia. Clients also include Shaw Industries and the State of Tennessee.