

BEFORE THE TENNESSEE REGULATORY AUTHORITY

Nashville, Tennessee

June 22, 2006

IN RE:)	
)	
PETITION OF THE CONSUMER)	DOCKET NO.
ADVOCATE TO OPEN AN)	05-00258
INVESTIGATION TO DETERMINE)	
WHETHER ATMOS ENERGY CORP.)	
SHOULD BE REQUIRED BY THE)	
TENNESSEE REGULATORY)	
AUTHORITY 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)	

**ORDER GRANTING PERMISSION TO PROCEED WITH INTERLOCUTORY
APPEAL AND GRANTING EXTENSION OF TIME TO FILE RESPONSES TO
DISCOVERY REQUESTS**

This docket came before the Hearing Officer upon the filing of *Atmos Energy Corporation's Motion for Expedited TRA Review of Hearing Officer Order*). Although the primary purpose of the motion is to request that the panel review and reverse the Hearing Officer's *Order Resolving Discovery and Protective Order Disputes and Requiring Filings* ("Discovery Order"), it also contains two additional requests for consideration by the Hearing Officer: (1) a request for permission to proceed with an interlocutory appeal¹ and (2) a request for extension of time within which to file responses to discovery requests.²

¹ *Atmos Energy Corporation's Motion for Expedited TRA Review of Hearing Officer Order*, 1 n.1 (Jun. 19, 2006).

² *Id.* at 2.

I. REQUEST FOR PERMISSION TO PROCEED WITH AN INTERLOCUTORY APPEAL

Permission to proceed with an interlocutory review of the Discovery Order is required by the Authority Rule 1220-1-2-.06(6). The rule requires that permission be sought from the Hearing Officer when a party wishes to have the Authority review a hearing officer's decision on a preliminary motion.³ The Discovery Order memorializes the Hearing Officer's decision on such a preliminary matter.⁴ Given the subject of the Discovery Order and the text of Rule 1220-1-2-.06(6), application for permission to proceed with a review by the panel must be made to the Hearing Officer.

In accordance with Rule 1220-1-2-.06(6), Atmos sought permission to proceed with an interlocutory review of the Discovery Order.⁵ Such permission to proceed shall not, according to the rule, be unreasonably withheld.⁶ It is the opinion of the Hearing Officer that it is reasonable to allow Atmos the opportunity to argue its position before the panel. To explain, Atmos contends that the Discovery Order inappropriately expands the scope of the docket,⁷ an argument rejected by the Hearing Officer based on a review of the May 15, 2006 deliberations of the panel.⁸ Given that the resolution of this issue ultimately requires a determination of what the panel intended to include within the scope of this docket and that there is disagreement as to that intent, it is reasonable to permit the panel the opportunity to clarify that intent through the requested interlocutory review. Based on these conclusions, the Hearing Officer determines that permission to proceed with an interlocutory review by the panel should be granted.

³ Tenn. Comp. R & Regs 1220-1-2-.06(6) (Rev. July 2003).

⁴ As explained in the Discovery Order, the parties were not required to file motions, but instead agreed during the May 22, 2006 Status Conference that discovery disputes would be brought to the hearing officer orally at a subsequent status conference. *Order Resolving Discovery and Protective Order Disputes and Requiring Filings*, 5 n.10 (Jun. 14, 2006). Thus, the Hearing Officer analogizes the decision made in the Discovery Order to one rendered on a preliminary motion to compel.

⁵ *Atmos Energy Corporation's Motion for Expedited TRA Review of Hearing Officer Order*, 1 n.1 (Jun. 19, 2006).

⁶ Tenn. Comp. R & Regs 1220-1-2-.06(6) (Rev. July 2003).

⁷ *Atmos Energy Corporation's Motion for Expedited TRA Review of Hearing Officer Order*, 1 (Jun. 19, 2006).

⁸ *Order Resolving Discovery and Protective Order Disputes and Requiring Filings*, 12 (Jun. 14, 2006).


II. REQUEST FOR EXTENSION OF TIME WITHIN WHICH TO FILE RESPONSES TO DISCOVERY REQUESTS

Atmos requests that the date for filing responses to the discovery requests that are the subject of the Discovery Order be extended until the panel issues a ruling on the interlocutory review.⁹ It is the opinion of the Hearing Officer that it would be inconsistent with the above decision to grant permission to proceed with an interlocutory review to require production of the information that is the subject of that review in advance of a decision by the panel. Therefore, the Hearing Officer concludes that the date for responding to the requests that are the subject of the Discovery Order should be extended until the panel rules on Atmos's motion.

IT IS THEREFORE ORDERED THAT:

1. The request of Atmos Energy Corporation to proceed with an interlocutory review of the *Order Resolving Discovery and Protective Order Disputes and Requiring Filings* is granted.

2. The request of Atmos Energy Corporation to extend the time for filing responses to the discovery requests that are the subject of the *Order Resolving Discovery and Protective Order Disputes and Requiring Filings* until the panel resolves *Atmos Energy Corporation's Motion for Expedited TRA Review of Hearing Officer Order* is granted



Ron Jones, Chairman
Acting as Hearing Officer¹⁰

⁹ *Atmos Energy Corporation's Motion for Expedited TRA Review of Hearing Officer Order*, 2 (Jun 19, 2006).

¹⁰ During the May 15, 2006 Authority Conference, a panel of the Tennessee Regulatory Authority consisting of Chairman Ron Jones and Directors Sara Kyle and Pat Miller unanimously voted to appoint Chairman Jones as the Hearing Officer to prepare this docket for a hearing by the panel. Transcript of Proceedings, May 15, 2006, pp. 29-39 (Authority Conference).