

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

July 25, 2006

*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

**OBJECTIONS OF ATMOS INTERVENTION GROUP TO ATMOS ENERGY
CORPORATION'S FIRST REQUESTS FOR INFORMATION**

The Atmos Intervention Group ("AIG") objects to Atmos Energy Corporation's First Request for Information from the AIG as follows.

QUESTION 1. PRODUCE all DOCUMENTS related to the ATMOS Show Cause Petition, the Staff investigative report, or to these proceedings which were exchanged by and between any member of one or more of the following: (i) the CAPD, (ii) the STAFF, and/or the INTERVENTION GROUP. This request includes all DOCUMENTS, as defined above, including e-mails, correspondence, notes, memoranda, drafts, edits, and other COMMUNICATIONS between or among the foregoing PERSONS.

OBJECTION: Atmos has requested the production of all documents and communications related to the Atmos Show Cause Petition, to the TRA Staff investigative report, or to these proceedings that were exchanged between any member of one or more of the following: the Consumer Advocate; the TRA Investigative Staff; and/or the Atmos Intervention Group (AIG). AIG objects to these requests on the grounds of the Common Interest Privilege and the Work Product Doctrine.

The Attorney-Client Privilege encourages full and frank communications between attorneys and their clients by sheltering their communications from compulsory disclosure. Tenn. Code Ann. §23-3-105; *see also Boyd v. Comdata Network, Inc.*, 88 S.W.3d 203, 212-213 (Tenn. Ct. App. 2002). The Common Interest Privilege

extends the Attorney-Client Privilege to a litigation group by permitting participants of the group “to communicate among themselves and with their attorneys on matters of common legal interest for purposes of coordinating their legal strategy.” *Boyd*, 88 S.W.3d at 214; *see also Gibson v. Richardson*, 2003 WL 135054 at *5 (Tenn. Ct. App. Jan 17, 2003). The Common Interest Privilege protects all such communications from disclosure. *Id.*

The documents and communications exchanged between or among the Consumer Advocate, the TRA Investigative Staff, and AIG were done so in connection with anticipated litigation and in furtherance of a common interest or legal strategy in actual or anticipated litigation. These documents and communications were not distributed outside that group. Therefore these documents and communications are protected from disclosure under the Common Interest Privilege.

This requested information is also protected from discovery by the Work Product Doctrine which “prevents litigants from taking a free ride on the research and thinking of their adversary’s lawyer.” *Boyd*, 88 S.W.3d at 219. The materials sought were prepared in anticipation of litigation and were prepared with and under the supervision of AIG’s counsel and consultants. The information reflects the mental impressions, conclusions, opinions or legal theories of AIG’s counsel and consultants. *Id.*, at 221.

QUESTION 2. Produce copies of DOCUMENTS constituting any testimony (whether prefiled testimony or transcripts of live testimony) which you have given before the Tennessee Regulatory Authority.

OBJECTION: AIG objects on the ground that this question is overly burdensome and irrelevant. Over his career, Mr. Novak has testified dozens of times but has not participated in a rate case involving Atmos (or its predecessor) since the company’s last rate case a decade ago. Furthermore, the requested information should be publicly available at the Tennessee Regulatory Authority.

QUESTION 3. Produce all DOCUMENTS relating to any communications between the INTERVENTION GROUP and Earl Burton. In addition, please state whether Earl Burton reviewed Hal Novak’s testimony? If so, please include in your production all DOCUMENTS RELATING OR REFERRING TO any edits, additions, changes, or other communications with Earl Burton regarding Hal Novak’s testimony.

OBJECTION: See Objection to Question 1.

QUESTION 12. For each customer that you are representing in this proceeding please **IDENTIFY**:

- (i) The customer name and place of business;
- (ii) The monthly and annual volume;
- (iii) Whether they are currently transporting;
- (iv) Whether they are eligible to transport; and
- (v) Whether they are firm or interruptible.

OBJECTION: AIG objects to this request as being burdensome and irrelevant. It is burdensome in that Atmos Energy Corp. already has the requested information about each of its customers.

QUESTION 14. Have you (Hal Novak) ever worked with or consulted with Earl Burton on any previous occasions? Please **IDENTIFY** all such occasions and all customers of Earl Burton with whom you have had contact.

OBJECTION: AIG objects that this question has no relevance to the determination of Atmos' rate or rate design. AIG also objects on the grounds set forth in the Objection to Question 1.

QUESTION 16. Produce all **DOCUMENTS** constituting, **RELATING OR REFERRING** to engagement agreements and other communications between the **INTERVENTION GROUP** and William H. Novak (or WHN Consulting).

OBJECTION: See Objection to Question 14.

QUESTION 17. How much are you [Hal Novak] being paid for your services in this case? Please **IDENTIFY** your hourly rate, how many hours you spent preparing your testimony, and the total billings in this case to date.

OBJECTION: See Objection to Question 14.

QUESTION 18. Who is paying your invoices for your work in this case? Produce all DOCUMENTS constituting, RELATING OR REFERRING TO any payments made to Hal Novak or WHN Consulting for services rendered in this case, including but not limited to copies of all drafts, checks, invoices, and billing letters.

OBJECTION: See Objection to Question 14.

QUESTION 19. IDENTIFY all PERSONS with whom you spoke or consulted about your testimony before you filed it. Specifically, and without limitation of the foregoing, please IDENTIFY:

- (i) All PERSONS at Berkline who you spoke to;
- (ii) All PERSONS at Koch Foods who you spoke to;
- (iii) All PERSONS on the STAFF that you spoke to;
- (iv) All PERSONS at the CAPD that you spoke to; and
- (v) Whether you spoke to Earl Burton.

OBJECTION: See Objection to Question 1.

QUESTION 32. On page 12 of your testimony, you state "I have reviewed [the prefiled testimony and exhibits of the CAPD] for this case. AIG agrees with the CAPD's calculation of revenue surplus for this case and recommends [sic] that it be adopted by the TRA." Please IDENTIFY:

- (i) Exactly when you received the CAPD's testimony;
- (ii) How long you took to review it;
- (iii) What independent analysis you did of their conclusions and approach;
- (iv) Anything that you do not agree with;
- (v) Whether you reviewed the STAFF's prefiled testimony and exhibits;
- (vi) What independent analysis you did of STAFF's conclusions and approach;
- (vii) Anything in the STAFF's analysis that you do not agree with;
- (viii) All DOCUMENTS which were provided by you by the CAPD or the STAFF related to this proceeding.

Specifically, please produce all DOCUMENTS comprising, RELATING OR REFERRING TO the exact copy of the prefiled testimony and exhibits that you were given to review, and all communications with any PERSON at the CAPD or STAFF with whom you discussed your testimony prior to filing.

OBJECTION: See Objection to Question 1.

QUESTION 34. During your tenure as Chief of the Energy and Water Division of the Tennessee Regulatory Authority, “where [you] had either presented testimony or advised the Authority on a host of regulatory issues for over 19 years” please IDENTIFY:

- (i) The TRA’s policies and procedures with regard to the appropriate attrition year to be sued in setting rates;
- (ii) Any case in which the TRA used an attrition year that was not forward looking from the date of the order; and
- (ii) Provide copies of any testimony, which you presented during those 19 years where you have testified on an attrition year.

OBJECTION 34 (ii) and (iii). See Objection to Question 2.

QUESTION 35. During your tenure as Director of Rates and Regulatory Analysis “for two years with Atlanta Gas Light Company, a natural gas distribution utility with operations in Georgia and Tennessee,” and youR service “for two years as the Vice President of Regulatory Compliance for Sequent Energy Management, a natural gas trading and optimization company in Texas,” please IDENTIFY:

- (i) The TRA’s policies and procedures with regard to the appropriate attrition year to be used in setting rates;
- (ii) Any case in which the TRA used an attrition year that was not forward looking from the date of the order; and
- (iii) Provide copies of any testimony which you presented during those 4 years where you testified on an attrition year.

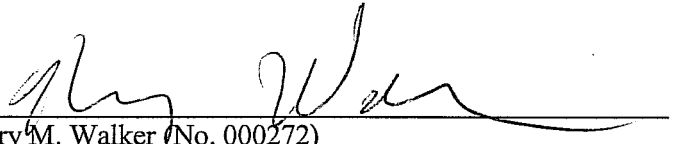
OBJECTION 35 (ii) and (iii). See Objection to Question 2.

QUESTION 36. For each gas rate in Tennessee in which you have been involved in any capacity, please IDENTIFY the date of the Order and the attrition year used.

OBJECTION: See Objection to Question 2.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: 
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing is being forwarded via email and U.S. mail, postage prepaid, to:

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on this the 25 day of July 2006.


Henry M. Walker