

**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

TRA. Docket Room
05-00258
11

**CONSUMER ADVOCATE AND PROTECTION DIVISION'S OBJECTIONS TO
ATMOS ENERGY CORPORATION'S FIRST REQUESTS FOR INFORMATION**

The Office of the Tennessee Attorney General, by and through the Consumer Advocate and Protection Division, hereby submits its objections to Atmos Energy Corporation's First Requests for Information from the CAPD.

INTRODUCTION

In order to assist the Hearing Officer in his evaluation of this matter, the Consumer Advocate's objections to Atmos's discovery requests are divided into three parts. In Part I, the Consumer Advocate will set forth categories of specific objections applicable to particular discovery requests of Atmos. In Part II, the Consumer Advocate will set forth general objections applicable to the discovery responses of the Consumer Advocate in this matter. And in Part III, the Consumer Advocate will set forth its objections for each separate numbered discovery request, which, for the most part, will reiterate the objections set forth in Parts I and II. Thus, while the number of separate objections is quite large, the number of general principles involved is much more limited.

I. OBJECTIONS BY CATEGORY

A. Objection to Requests for Production of Documents and Communications

Exchanged Between the Consumer Advocate, TRA Investigative Staff, and AIG.

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). The Consumer Advocate objects to these requests on the grounds of the Common Interest Privilege, the Attorney-Client 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 between or among themselves and their attorneys on matters of common legal interest and 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 Work Product Doctrine also shields from disclosure information prepared or assembled by or on behalf of lawyers in anticipation of litigation. Tenn. R. Civ. P. 26.02(3).

The documents and communications exchanged between or among the Consumer Advocate, the TRA Investigative Staff, and AIG were done so in connection with actual or

anticipated litigation and in furtherance of a common interest or legal strategy in actual or anticipated litigation. Accordingly, Atmos's requests seek to discover privileged documents and communications that are not subject to disclosure under the Tennessee Rules of Civil Procedure. This objection goes to Request No. 1.

B. Objection to Requests for Production of All Documents Relied Upon, Referenced, Created, or Otherwise Reviewed in Preparation of Testimony.

Atmos has requested the production of all documents that witnesses for the Consumer Advocate "relied upon, referenced, created, or otherwise reviewed in preparation of [their] testimony." The Consumer Advocate objects to such requests on the grounds that they are overly broad, unduly burdensome, and unlikely to lead to the discovery of admissible evidence. Furthermore, these requests may seek the production of documents that are protected by the Work Product Doctrine.

The overall breadth of the requests propounded by Atmos constitutes an undue burden upon the Consumer Advocate. The Consumer Advocate does not track or maintain copies of all documents that its witnesses create or review in connection with this matter. Additionally, such requests may encompass documents created or assembled by or on behalf of the Consumer Advocate's attorneys in anticipation of litigation, which are protected from disclosure under the Work Product Doctrine. Tenn. R. Civ. P. 26.02(3).

Without waiving these objections, the Consumer Advocate states that the written testimony submitted by its witnesses and its responses to discovery in this docket will be complete in the sense that all necessary supporting documents, and all such documents "relied upon" by the Consumer Advocate for its position in this matter, either will be supplied or

appropriate citations to available documents made at the time of filing of testimony or responses to discovery, or that the documents will be in some manner submitted into the administrative record by a party to this matter. Additionally, the Consumer Advocate will produce Microsoft Excel files for all workpapers and exhibits that are currently maintained in this format. This objection goes to Request Nos. 2, 16, 19, 44, and 46.

C. Objection to Requests for Copies of Any Testimony Given Before the TRA.

Atmos has requested copies of documents constituting any testimony that witnesses for the Consumer Advocate have given before the TRA. The Consumer Advocate objects to such requests on the grounds that they are overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

Some witnesses for the Consumer Advocate have a long history of providing expert testimony in rate cases, which may go back as far as 30 years. The Consumer Advocate either does not have in its possession or control, or cannot locate without substantial effort, if at all, copies of all testimony that its witnesses have provided during their careers. Requiring the Consumer Advocate to track down all such testimony would be unduly burdensome and, moreover, likely would not lead to the discovery of admissible evidence in this matter. Furthermore, such testimony is available, if at all, through public sources that are equally available to Atmos.

Without waiving these objections, the Consumer Advocate states that it will produce either the web-site addresses, hardcopies, or electronic files of pre-filed testimony provided by witnesses for the Consumer Advocate in the more recent, principal cases in which the witnesses have testified. This objection goes to Request Nos. 3, 18, and 47.

D. Objection to Requests for Attrition Year Information.

Atmos has requested witnesses for the Consumer Advocate to identify for each gas rate case in which the witness has been involved in any capacity (1) the date of the Order and (2) the attrition year used. Atmos also seeks additional attrition year information by requesting Consumer Advocate witness McCormac, in his 30 years of experience, and Consumer Advocate witness Brown, since 1995, to identify (1) the TRA's policies and procedures regarding the appropriate attrition year to be used in setting rates; (2) any case in which the TRA used an attrition year that was not forward looking from the date of the order; and (3) copies of testimony the witness presented where the witness testified on an attrition year. The Consumer Advocate objects to such requests on the grounds that they are overly broad and unduly burdensome.

With respect to Atmos's requests for certain rate case orders and associated attrition year information, the Consumer Advocate does not have these documents and information in its possession or control. The Company's data requests seek information and documents that are available through public sources, and it would be unduly burdensome and oppressive to require the Consumer Advocate to respond or produce documents that are equally available to the Company. Additionally, Atmos is just as capable as the Consumer Advocate to ascertain the TRA's policies and procedures regarding the appropriate attrition year to be used in setting rates. Finally, due to the long careers of Consumer Advocate witnesses McCormac and Brown, the Consumer Advocate either does not have in its possession or control, or cannot locate without substantial effort, if at all, copies of all testimony that these witnesses have provided. Requiring the Consumer Advocate to track down all such testimony would be unduly burdensome and, moreover, likely would not lead to the discovery of admissible evidence in this matter.

Furthermore, such testimony is available, if at all, through public sources that are equally available to Atmos.

Without waiving these objections, the Consumer Advocate states that it will produce either the web-site addresses, hardcopies, or electronic files of pre-filed testimony provided by witnesses McCormac and Brown in the more recent, principal cases in which the witnesses have testified. Additionally, Consumer Advocate witness McCormac does not recall the attrition years used for particular dockets or cases during his 30 years of experience; however, Mr. McCormac does recall that Tennessee has utilized both historical and forward-looking attrition years in the past. It is Mr. McCormac's further recollection that historical attrition years were utilized during periods of lower inflation relative to periods of higher inflation, during which forward-looking attrition years were utilized. This objection goes to Request Nos. 4, 21, 22, 45, 49, and 50.

II. GENERAL OBJECTIONS

A. The Consumer Advocate objects to the definitions and instructions contained in the data requests to the extent that the definitions and instructions attempt to impose on the Consumer Advocate a burden or obligation greater than that required by the *Tennessee Rules of Civil Procedure* and applicable statutes and regulations governing contested case hearings.

B. The Consumer Advocate objects to the data requests to the extent they call for information and the production of documents which are protected from disclosure by the attorney-client privilege, the common interest privilege, the work product doctrine or any other applicable privilege or protection. In particular, the Consumer Advocate objects to requests seeking its legal research related to pertinent statutes, rules, orders and case law. The Consumer Advocate objects to the data requests to the extent that the Company is attempting to impose on

the Consumer Advocate obligations with regard to identification of privileged documents beyond those required by the *Tennessee Rules of Civil Procedure* and applicable statutes and regulations governing contested case hearings.

C. The Consumer Advocate objects to the Company's data requests to the extent they seek information relating to matters not at issue in this litigation or to the extent they are not reasonably calculated to lead to the discovery of admissible evidence. By providing information in response to these requests, the Consumer Advocate does not concede that such information is relevant, material or admissible in evidence. The Consumer Advocate reserves all rights to object to the use of such information as evidence.

D. The Consumer Advocate objects to the Company's data requests to the extent that the Company is attempting to require the Consumer Advocate to provide information and produce documents beyond those in its possession, custody or control as that phrase is used in the *Tennessee Rules of Civil Procedure* and applicable statutes and regulations governing contested case hearings.

E. The Consumer Advocate objects to the Company's data requests to the extent they seek information and documents that are readily available through public sources or are in the Company's own possession, custody or control. It is unduly burdensome and oppressive to require the Consumer Advocate to respond or produce documents that are equally available to the Company.

F. The Consumer Advocate's objections and responses to these requests are based on information now known to it. The Consumer Advocate reserves the right to amend, modify or supplement its objections and responses if it learns of new information.

G. The Consumer Advocate's objections and responses to these requests are made without waiving or intending to waive the right to object to the use of any information provided in this response in any subsequent proceeding or trial of this or any other action. The Consumer Advocate's responses to these requests are also not a waiver of any of the foregoing objections or any objections it has made or may make with respect to any similar, related, or future data request, and the Consumer Advocate specifically reserves the right to interpose any objection to further requests notwithstanding any response or lack of objection made in this response.

H. The Consumer Advocate objects to any request seeking all documents reviewed by its witnesses over an undefined time period. Such a request is ambiguous, overly broad, burdensome and is not likely to lead to the discovery of admissible evidence.

I. The Consumer Advocate expressly incorporates these general objections into its objections and responses to discovery in this matter.

III. OBJECTIONS BY REQUEST NUMBER

REQUEST NO. 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: The Consumer Advocate objects to this request on the grounds of the Common Interest Privilege, the Attorney-Client 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 between or among themselves and their attorneys on matters of common legal interest and 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 Work Product Doctrine also shields from disclosure information prepared or assembled by or on behalf of lawyers in anticipation of litigation. Tenn. R. Civ. P. 26.02(3).

The documents and communications exchanged between or among the Consumer Advocate, the TRA Investigative Staff, and AIG were done so in connection with actual or anticipated litigation and in furtherance of a common interest or legal strategy in actual or anticipated litigation. Accordingly, Atmos's requests seek to discover privileged documents and communications that are not subject to disclosure under the Tennessee Rules of Civil Procedure.

QUESTIONS TO CAPD WITNESS MICHAEL D. CHRYSLER

REQUEST NO. 2. Please produce all DOCUMENTS that you (Michael D. Chrysler) relied upon, referenced, created, or otherwise reviewed in preparation of your testimony. This request includes all work papers, reference sources, financial information, discovery responses, e-mails and other materials. Please produce working Microsoft Excel files for all work papers and exhibits.

OBJECTION: The Consumer Advocate objects to this request on the grounds that it is overly broad, unduly burdensome, and unlikely to lead to the discovery of admissible evidence. Furthermore, this request may seek the production of documents that are protected by the Work Product Doctrine.

The overall breadth of the request propounded by Atmos constitutes an undue burden upon the Consumer Advocate. The Consumer Advocate does not track or maintain copies of all documents that its witnesses create or review in connection with this matter. Additionally, this request may encompass documents created or assembled by or on behalf of the Consumer Advocate's attorneys in anticipation of litigation, which are protected from disclosure under the Work Product Doctrine. Tenn. R. Civ. P. 26.02(3).

Without waiving these objections, the Consumer Advocate states that the written testimony submitted by its witnesses and its responses to discovery in this docket will be complete in the sense that all necessary supporting documents, and all such documents "relied upon" by the Consumer Advocate for its position in this matter, either will be supplied or appropriate citations to available documents made at the time of filing of testimony or responses to discovery, or that the documents will be in some manner submitted into the administrative record by a party to this matter. Additionally, the Consumer Advocate will produce Microsoft Excel files for all workpapers and exhibits that are currently maintained in this format.

REQUEST NO. 3. 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: The Consumer Advocate objects to this request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

Witnesses for the Consumer Advocate have a long history of providing expert testimony in rate cases. The Consumer Advocate either does not have in its possession or control, or cannot locate without substantial effort, if at all, copies of all testimony that its witnesses have provided during their careers. Requiring the Consumer Advocate to track down all such testimony would be unduly burdensome and, moreover, likely would not lead to the discovery of admissible evidence in this matter. Furthermore, such testimony is available, if at all, through public sources that are equally available to Atmos.

Without waiving these objections, the Consumer Advocate states that it will produce either the web-site addresses, hardcopies, or electronic files of pre-filed testimony provided by witnesses for the Consumer Advocate in the more recent, principal cases in which the witnesses have testified.

REQUEST NO. 4. For each gas rate case in which you have been involved in any capacity, please IDENTIFY:

- (i) The date of the Order; and
- (ii.) The attrition year used.

OBJECTION: The Consumer Advocate objects to this request on the grounds that it is overly broad and unduly burdensome.

With respect to Atmos's requests for certain rate case orders and associated attrition year information, the Consumer Advocate does not have these documents and information in its

possession or control. The Company's data requests seek information and documents that are available through public sources, and it would be unduly burdensome and oppressive to require the Consumer Advocate to respond or produce documents that are equally available to the Company. Additionally, Atmos is just as capable as the Consumer Advocate to ascertain the TRA's policies and procedures regarding the appropriate attrition year to be used in setting rates.

REQUEST NO. 16. Please produce all DOCUMENTS that you relied upon, referenced, created, or otherwise reviewed in preparation of your testimony. This request includes all work papers, reference sources, financial information, discovery responses, and other materials. Please produce working Microsoft Excel files for all work papers and exhibits.

OBJECTION: The Consumer Advocate objects to this request on the grounds that it is overly broad, unduly burdensome, and unlikely to lead to the discovery of admissible evidence. Furthermore, this request may seek the production of documents that are protected by the Work Product Doctrine.

The overall breadth of the request propounded by Atmos constitutes an undue burden upon the Consumer Advocate. The Consumer Advocate does not track or maintain copies of all documents that its witnesses create or review in connection with this matter. Additionally, this request may encompass documents created or assembled by or on behalf of the Consumer Advocate's attorneys in anticipation of litigation, which are protected from disclosure under the Work Product Doctrine. Tenn. R. Civ. P. 26.02(3).

Without waiving these objections, the Consumer Advocate states that the written testimony submitted by its witnesses and its responses to discovery in this docket will be complete in the sense that all necessary supporting documents, and all such documents "relied

upon” by the Consumer Advocate for its position in this matter, either will be supplied or appropriate citations to available documents made at the time of filing of testimony or responses to discovery, or that the documents will be in some manner submitted into the administrative record by a party to this matter. Additionally, the Consumer Advocate will produce Microsoft Excel files for all workpapers and exhibits that are currently maintained in this format.

QUESTIONS TO CAPD WITNESS DAN MCCORMAC

REQUEST NO. 18. 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: The Consumer Advocate objects to this request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

Witnesses for the Consumer Advocate have a long history of providing expert testimony in rate cases. The Consumer Advocate either does not have in its possession or control, or cannot locate without substantial effort, if at all, copies of all testimony that its witnesses have provided during their careers. Requiring the Consumer Advocate to track down all such testimony would be unduly burdensome and, moreover, likely would not lead to the discovery of admissible evidence in this matter. Furthermore, such testimony is available, if at all, through public sources that are equally available to Atmos.

Without waiving these objections, the Consumer Advocate states that it will produce either the web-site addresses, hardcopies, or electronic files of pre-filed testimony provided by witnesses for the Consumer Advocate in the more recent, principal cases in which the witnesses

have testified.

REQUEST NO. 19. Please produce all DOCUMENTS that you (Dan McCormac) relied upon, referenced, created, or otherwise reviewed in preparation of your testimony. This request includes all work papers, reference sources, financial information, discovery responses, e-mails and other materials. Please produce working Microsoft Excel files for all work papers and exhibits.

OBJECTION: The Consumer Advocate objects to this request on the grounds that it is overly broad, unduly burdensome, and unlikely to lead to the discovery of admissible evidence. Furthermore, this request may seek the production of documents that are protected by the Work Product Doctrine.

The overall breadth of the request propounded by Atmos constitutes an undue burden upon the Consumer Advocate. The Consumer Advocate does not track or maintain copies of all documents that its witnesses create or review in connection with this matter. Additionally, this request may encompass documents created or assembled by or on behalf of the Consumer Advocate's attorneys in anticipation of litigation, which are protected from disclosure under the Work Product Doctrine. Tenn. R. Civ. P. 26.02(3).

Without waiving these objections, the Consumer Advocate states that the written testimony submitted by its witnesses and its responses to discovery in this docket will be complete in the sense that all necessary supporting documents, and all such documents "relied upon" by the Consumer Advocate for its position in this matter, either will be supplied or appropriate citations to available documents made at the time of filing of testimony or responses

to discovery, or that the documents will be in some manner submitted into the administrative record by a party to this matter. Additionally, the Consumer Advocate will produce Microsoft Excel files for all workpapers and exhibits that are currently maintained in this format.

REQUEST NO. 21. In your 30 years of experience, including serving “sixteen years with the Tennessee Public Service Commission, including one year as Technical Assistant to the Commissioners,” serving “two years as Chief of Energy and Water at the Tennessee Regulatory Authority (“TRA”),” and serving “ten years with the Office of the Attorney General,” please IDENTIFY:

- (i.) The TRA’s policies and procedures during that time 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 30 years where you have testified on an attrition year.

OBJECTION: The Consumer Advocate objects to this request on the grounds that it is overly broad and unduly burdensome.

With respect to Atmos’s requests for certain attrition year information, the Consumer Advocate does not have these documents and information in its possession or control. The Company’s data requests seek information and documents that are available through public sources, and it would be unduly burdensome and oppressive to require the Consumer Advocate to respond or produce documents that are equally available to the Company. Additionally, Atmos is just as capable as the Consumer Advocate to ascertain the TRA’s policies and procedures regarding the appropriate attrition year to be used in setting rates. Finally, due to the

long careers of Consumer Advocate witnesses McCormac and Brown, the Consumer Advocate either does not have in its possession or control, or cannot locate without substantial effort, if at all, copies of all testimony that these witnesses have provided. Requiring the Consumer Advocate to track down all such testimony would be unduly burdensome and, moreover, likely would not lead to the discovery of admissible evidence in this matter. Furthermore, such testimony is available, if at all, through public sources that are equally available to Atmos.

Without waiving these objections, the Consumer Advocate states that it will produce either the web-site addresses, hardcopies, or electronic files of pre-filed testimony provided by witnesses McCormac and Brown in the more recent, principal cases in which the witnesses have testified. Additionally, Consumer Advocate witness McCormac does not recall the attrition years used for particular dockets or cases during his 30 years of experience; however, Mr. McCormac does recall that Tennessee has utilized both historical and forward-looking attrition years in the past. It is Mr. McCormac's further recollection that historical attrition years were utilized during periods of lower inflation relative to periods of higher inflation, during which forward-looking attrition years were utilized.

REQUEST NO. 22. For each gas rate case in which you have been involved in any capacity, please IDENTIFY:

- (i.) The date of the Order; and
- (ii.) The attrition year used.

OBJECTION: The Consumer Advocate objects to this request on the grounds that it is overly broad and unduly burdensome.

With respect to Atmos's requests for certain rate case orders and associated attrition year

information, the Consumer Advocate does not have these documents and information in its possession or control. The Company's data requests seek information and documents that are available through public sources, and it would be unduly burdensome and oppressive to require the Consumer Advocate to respond or produce documents that are equally available to the Company. Additionally, Atmos is just as capable as the Consumer Advocate to ascertain the TRA's policies and procedures regarding the appropriate attrition year to be used in setting rates.

QUESTIONS FOR CAPD WITNESS TERRY BUCKNER

REQUEST NO. 44. Please produce all DOCUMENTS that you (Terry Buckner) relied upon, referenced, created, or otherwise reviewed in preparation of your testimony. This includes all work papers, reference sources, financial information, discovery responses, e-mails and other materials. Please produce working Microsoft Excel files for all work papers and exhibits.

OBJECTION: The Consumer Advocate objects to this request on the grounds that it is overly broad, unduly burdensome, and unlikely to lead to the discovery of admissible evidence. Furthermore, this request may seek the production of documents that are protected by the Work Product Doctrine.

The overall breadth of the request propounded by Atmos constitutes an undue burden upon the Consumer Advocate. The Consumer Advocate does not track or maintain copies of all documents that its witnesses create or review in connection with this matter. Additionally, this request may encompass documents created or assembled by or on behalf of the Consumer Advocate's attorneys in anticipation of litigation, which are protected from disclosure under the Work Product Doctrine. Tenn. R. Civ. P. 26.02(3).

Without waiving these objections, the Consumer Advocate states that the written testimony submitted by its witnesses and its responses to discovery in this docket will be complete in the sense that all necessary supporting documents, and all such documents “relied upon” by the Consumer Advocate for its position in this matter, either will be supplied or appropriate citations to available documents made at the time of filing of testimony or responses to discovery, or that the documents will be in some manner submitted into the administrative record by a party to this matter. Additionally, the Consumer Advocate will produce Microsoft Excel files for all workpapers and exhibits that are currently maintained in this format.

REQUEST NO. 45. For each gas rate case in Tennessee which you have been involved in any capacity, please IDENTIFY:

- (i.) The date of the Order; and
- (ii.) The attrition year used.

OBJECTION: The Consumer Advocate objects to this request on the grounds that it is overly broad and unduly burdensome.

With respect to Atmos’s requests for certain rate case orders and associated attrition year information, the Consumer Advocate does not have these documents and information in its possession or control. The Company’s data requests seek information and documents that are available through public sources, and it would be unduly burdensome and oppressive to require the Consumer Advocate to respond or produce documents that are equally available to the Company. Additionally, Atmos is just as capable as the Consumer Advocate to ascertain the TRA’s policies and procedures regarding the appropriate attrition year to be used in setting rates.

QUESTIONS FOR CAPD WITNESS STEVE BROWN

REQUEST NO. 46. Please produce all DOCUMENTS that you (Steve Brown) relied upon, referenced, created, or otherwise reviewed in preparation of your testimony. This request includes all work papers, reference sources, financial information, discovery responses, e-mails and other materials. Please produce working Microsoft Excel files for all work papers and exhibits.

OBJECTION: The Consumer Advocate objects to this request on the grounds that it is overly broad, unduly burdensome, and unlikely to lead to the discovery of admissible evidence. Furthermore, this request may seek the production of documents that are protected by the Work Product Doctrine.

The overall breadth of the request propounded by Atmos constitutes an undue burden upon the Consumer Advocate. The Consumer Advocate does not track or maintain copies of all documents that its witnesses create or review in connection with this matter. Additionally, this request may encompass documents created or assembled by or on behalf of the Consumer Advocate's attorneys in anticipation of litigation, which are protected from disclosure under the Work Product Doctrine. Tenn. R. Civ. P. 26.02(3).

Without waiving these objections, the Consumer Advocate states that the written testimony submitted by its witnesses and its responses to discovery in this docket will be complete in the sense that all necessary supporting documents, and all such documents "relied upon" by the Consumer Advocate for its position in this matter, either will be supplied or appropriate citations to available documents made at the time of filing of testimony or responses to discovery, or that the documents will be in some manner submitted into the administrative

record by a party to this matter. Additionally, the Consumer Advocate will produce Microsoft Excel files for all workpapers and exhibits that are currently maintained in this format.

REQUEST NO. 47. 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: The Consumer Advocate objects to this request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

Witnesses for the Consumer Advocate have a long history of providing expert testimony in rate cases. The Consumer Advocate either does not have in its possession or control, or cannot locate without substantial effort, if at all, copies of all testimony that its witnesses have provided during their careers. Requiring the Consumer Advocate to track down all such testimony would be unduly burdensome and, moreover, likely would not lead to the discovery of admissible evidence in this matter. Furthermore, such testimony is available, if at all, through public sources that are equally available to Atmos.

Without waiving these objections, the Consumer Advocate states that it will produce either the web-site addresses, hardcopies, or electronic files of pre-filed testimony provided by witnesses for the Consumer Advocate in the more recent, principal cases in which the witnesses have testified.

REQUEST NO. 49. On page 27 of your testimony, you state that since 1995 you have served as “an economist in the Consumer Advocate and Protection Division (CAPD) of the Attorney General’s Office,” you “have also appeared as a witness for CAPD in several cases

before the Tennessee Regulatory Authority.” 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 years where you have testified on an attrition year.

OBJECTION: The Consumer Advocate objects to this request on the grounds that it is overly broad and unduly burdensome.

With respect to Atmos’s requests for certain attrition year information, the Consumer Advocate does not have these documents and information in its possession or control. The Company’s data requests seek information and documents that are available through public sources, and it would be unduly burdensome and oppressive to require the Consumer Advocate to respond or produce documents that are equally available to the Company. Additionally, Atmos is just as capable as the Consumer Advocate to ascertain the TRA’s policies and procedures regarding the appropriate attrition year to be used in setting rates. Finally, due to the long careers of Consumer Advocate witnesses McCormac and Brown, the Consumer Advocate either does not have in its possession or control, or cannot locate without substantial effort, if at all, copies of all testimony that these witnesses have provided. Requiring the Consumer Advocate to track down all such testimony would be unduly burdensome and, moreover, likely would not lead to the discovery of admissible evidence in this matter. Furthermore, such testimony is available, if at all, through public sources that are equally available to Atmos.

Without waiving these objections, the Consumer Advocate states that it will produce

either the web-site addresses, hardcopies, or electronic files of pre-filed testimony provided by witnesses McCormac and Brown in the more recent, principal cases in which the witnesses have testified. Additionally, Consumer Advocate witness McCormac does not recall the attrition years used for particular dockets or cases during his 30 years of experience; however, Mr. McCormac does recall that Tennessee has utilized both historical and forward-looking attrition years in the past. It is Mr. McCormac's further recollection that historical attrition years were utilized during periods of lower inflation relative to periods of higher inflation, during which forward-looking attrition years were utilized.

REQUEST NO. 50. For each gas rate case in which you have been involved in any capacity, please IDENTIFY:

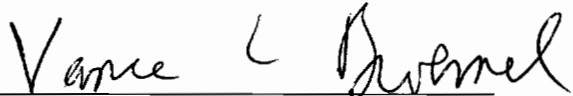
- (i.) The date of the Order; and
- (ii.) The attrition year used.

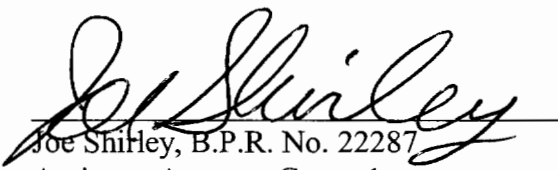
OBJECTION: The Consumer Advocate objects to this request on the grounds that it is overly broad and unduly burdensome.

With respect to Atmos's requests for certain rate case orders and associated attrition year information, the Consumer Advocate does not have these documents and information in its possession or control. The Company's data requests seek information and documents that are available through public sources, and it would be unduly burdensome and oppressive to require the Consumer Advocate to respond or produce documents that are equally available to the Company. Additionally, Atmos is just as capable as the Consumer Advocate to ascertain the TRA's policies and procedures regarding the appropriate attrition year to be used in setting rates.

Respectfully submitted,

Paul G. Summers
Attorney General
State of Tennessee


Vance L. Broemel, B.P.R. No. 11421
Senior Counsel


Joe Shirley, B.P.R. No. 22287
Assistant Attorney General
Office of the Attorney General
Consumer Advocate and Protection Division
P.O. Box 20207
Nashville, TN 37202
(615) 741-8733

#97733

CERTIFICATE OF SERVICE

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

Henry Walker
1600 Division Street, Suite 700
P.O. Box 340025
Nashville, Tennessee 37203

Gary Hotvedt
Tennessee Regulatory Authority
460 James Robertson Pkwy.
Nashville, TN 37243-0505

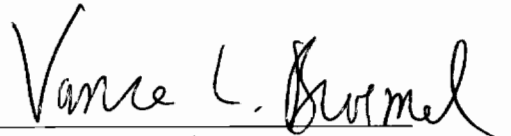
Joe A. Conner
Misty Smith Kelley
Baker, Donelson, Bearman & Caldwell
1800 Republic Centre
633 Chestnut Street
Chattanooga, TN 37450-1800

Patricia J. Childers
VP-Regulatory Affairs
Atmos/United Cities Gas Corp.
810 Crescent Centre Drive, Ste. 600
Franklin, TN 37064-5393

J.W. Luna
Farmer & Luna
333 Union Street Suite 300
Nashville, Tennessee 37201

Melvin J. Malone
Miller & Martin
2300 One Nashville Place
150 4th Avenue North
Nashville, Tennessee 37219

on this the 25th day of July, 2006.


Vance L. Broemel