

Gary Hotvedt - Objections of TRA Investigative Staff in Docket # 05-00258

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Subject: Objections of TRA Investigative Staff in Docket # 05-00258
CC: Foster, David; Greene, Paul; Kettles, Jerry

Ms. Dillon - - Please file the attached document on behalf of the TRA Investigative Staff in **Docket # 05-00258**. Thank you. - - Gary Hotvedt

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**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

**TRA INVESTIGATIVE STAFF OBJECTIONS TO ATMOS ENERGY CORPORATION'S
FIRST REQUESTS FOR INFORMATION FROM THE STAFF**

The TRA Investigative Staff ("Staff") objects to Atmos Energy Corporation's First Request for Information from the Staff 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). The TRA Investigative Staff 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 Work Product Doctrine also shields from disclosure information prepared or assembled by 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 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 Staff’s counsel. The information reflects the mental impressions, conclusions, opinions or legal theories of Staff’s counsel. *Id.*, at 221.

Respectfully submitted,

By: 

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been forwarded by electronic mail to the following parties on the 25th day of July, 2006.

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