

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

**August 21, 2006**

<i>In re: Petition to Open an Investigation to</i>	)	
<i>Determine Whether Atmos Energy Corp. Should be</i>	)	
<i>Required by the TRA to Appear and Show Cause</i>	)	Docket No. 05-00258
<i>That Atmos Energy Corp. is Not Overearning in</i>	)	
<i>Violation of Tennessee Law and That it is Charging</i>	)	
<i>Rates That are Just and Reasonable</i>	)	

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**TRA INVESTIGATIVE STAFF MOTION FOR PERMISSION  
TO SEEK INTERLOCUTORY REVIEW OF  
ORDER RESOLVING SECOND ROUND DISCOVERY DISPUTES**

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Pursuant to Tennessee Regulatory Authority ("Authority") Rule 1220-1-2-.06(6), the TRA Investigative Staff ("Staff") respectfully moves for permission from the Hearing Officer to seek interlocutory review by the Authority of the *Order Resolving Second Round Discovery Disputes* ("Order") entered by the Hearing Officer on August 11, 2006.

Specifically, Staff seeks permission to appeal to the Authority that part of the *Order* that overrules Staff's objection to Atmos Energy Corporation's ("Atmos") discovery Request No. 1, which states:

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.

Staff responded to Atmos' discovery request as follows, and hereby incorporates that response into this motion:

While complying with the Hearing Officer's oral directive of July 27, 2006, the TRA Investigative Staff continues its objection to this Question 1, and specifically reserves the right to appeal the written order to the full panel of Directors, both to prevent the use at hearing of the following supplied documents and so that such directive does not become precedent for the Authority. To wit, TRA Investigative Staff reiterates its objection as follows. 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.

Subject to this continuing objection, the requested documents are Bates numbered 1-2484 and 3486-3488.

The Hearing Officer overruled the Staff’s objection based on the “common interest privilege” and the “work product doctrine” due to his conclusion that “it is apparent that there is no common interest such that the parties cooperated in furtherance of a joint strategy” (*Order* at 12).

The joint legal strategy and common interest of the parties, particularly between the Staff and the Consumer Advocate and Protection Division “(CAPD)”, should be apparent from the two thousand four hundred eighty-seven (2,487) pages of documents that were exchanged between Staff and CAPD during their joint preparation of discovery and pre-filed testimony, and that have now been provided to Atmos. Because Staff believes that these pages are largely irrelevant to the merits of this case and does not believe that Atmos will attempt to use them during the hearing, Staff is not requesting an expedited review of the *Order*, but instead requests to put these objections on the record before the entire voting panel at the start of the hearing.

If Atmos attempts to use these documents at hearing, rather than argue these objections over each document during the hearing, Staff can raise a brief objection for each offered document and the Authority can hear full and detailed arguments concerning the joint legal strategy at the conclusion of the hearing, and then decide whether to strike all such documents and resulting testimony based on the common interest privilege and/or work product

doctrine. If Atmos makes no attempt to use any of these documents, valuable time of the Authority will not have been consumed prior to or during the hearing. The Authority can then decide to hear this appeal at a more opportune time, at which time the review would be limited to whether this ruling has any precedential value and how it could have a chilling effect on future interaction between the Staff and CAPD or other parties.

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 21st day of August, 2006.

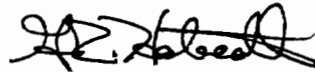
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Electronically filed with the TRA Docket Room on August 21, 2006.