

**IN THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

**IN RE: TARIFF FILING TO MODIFY)
AND ADD LANGUAGE REGARDING) TRA Docket No. 07-00020
TRANSPORTATION SERVICE)**

**ATMOS ENERGY CORPORATION'S RESPONSE TO STAND ENERGY
CORPORATION'S MOTION TO JOIN ATMOS ENERGY MARKETING AS A PARTY
AND MOTION TO COMPEL**

Atmos Energy Corporation respectfully submits this response to the above-referenced motion filed by Stand Energy. Atmos opposes the motion to join Atmos Energy Marketing as a party in this case because it is simply unnecessary. Atmos does not object to Stand's request to extend all existing scheduling order deadlines, including the hearing date, for an additional thirty days.

As to Stand's motion to compel, Stand Energy has reformulated several requests so that Atmos now can understand what Stand is seeking. Atmos is compiling additional information in response to these discovery requests and will file its supplemental responses to these discovery requests within the week. This applies to Stand Interrogatory Nos. 1-6(e), 1-6(g), and 1-19. Atmos also is compiling a supplemental response to 1-7(a). For Stand Request 1-18, Atmos has answered the question posed. Requests 1-10(b), 1-11, and 1-17 seek information that is not relevant to the issues in this case. Particularly in view of Stand's limited role in Tennessee (Stand has no Tennessee customers, and has refused to identify any potential customers),¹ and its admitted role as a competitor of Atmos and/or Atmos Energy Marketing in other states,² Atmos

¹ See Response of Stand Energy to First Discovery Request of Atmos Energy Corporation, Nos. 1, 3.

² Stand Motion at 1.

should not be subjected to the burden of gathering and producing additional information to Stand that, while possibly useful to Stand in its business, is not relevant to the issues in this case.

I. Atmos Energy Marketing Need Not Be Joined As A Party.

Stand Energy seeks to join Atmos Energy Marketing so that Stand can obtain discovery from AEM. That is simply not necessary. Stand can request discovery from AEM by merely serving a document subpoena.

In its responses to Stand's discovery requests, AEC answered to the extent that it was able to do so with the information available to AEC. Atmos and its employees strive to comply with the Tennessee Guidelines for United Cities Gas Company's Affiliate Transactions, which provide in Paragraph 11: "To the maximum extent practicable, the Company's operating employees and the operating employees of its marketing affiliate must function independently of each other." Accordingly, AEM has been represented by its own counsel in proceedings before the TRA, as Stand is no doubt aware from prior involvement in such cases. AEM and its counsel would handle AEM's own responses to discovery requests seeking information in its possession.

This is not to say that Stand is without recourse for information in the possession of AEM. Nor is it necessary to join AEM. Stand may seek discovery from AEM simply by serving a document subpoena. Authority Rule 1220-1-2-.13 allows a party to obtain and serve a document subpoena on a non-party, as does Tenn. R. Civ. P. 45.02, which is incorporated along with the other discovery rules by virtue of Authority Rule 1220-1-2-.11. Rule 1220-1-2-.13 provides in relevant part: "At the request of any party, the chair of the Authority or the Hearing Officer shall issue signed subpoenas, including subpoenas duces tecum, in blank in accordance with the Tennessee Rules of Civil Procedure . . ." Rule 45.02 of the Tennessee Rules of Civil Procedure was amended in 2005 to allow for subpoenas seeking the production of documentary

evidence without the need to hold a deposition.³ Thus, it is wholly unnecessary to join AEM as a party to this case merely to seek discovery from AEM. Stand need only issue a document subpoena. It would of course be up to AEM and its separate counsel to respond to such a subpoena.

Atmos does not oppose Stand's request to extend the discovery and other deadlines by a period of thirty days.

II. Atmos Will Provide Supplemental Responses To Stand Interrogatory Nos. 1-6(e), 1-6(g), 1-19, and 1-7(a).

With respect to several of Stand's interrogatories, Atmos simply did not understand what Stand was asking. In its Motion to Compel, Stand revised these interrogatories to make them clearer. Atmos will respond by providing supplemental responses to these interrogatories, specifically Nos. 1-6(e), 1-6(g) and 1-19. These responses, if not filed contemporaneously with this Response, will be filed within the week. In addition, Atmos will supplement its response to Stand Request 1-7(a). Although Atmos believes that it answered the question that Stand asked in 1-7(a), Atmos will provide the additional information Stand requested in its motion. This supplemental response also will be provided within the week.

III. In Response To Stand Interrogatory 1-18, Atmos Has Answered The Question That Stand Asked.

In Stand's Interrogatory 1-18, it asked:

Excluding periods of operational flow orders ("OFOs"), please identify the financial harm to Atmos' firm sales customers that has occurred over the past 12 months because of daily imbalances of transportation customers?

³ Rule 45.02 now provides: "A subpoena may command a person to produce and permit inspection and copying of designated books, papers, documents, or tangible things, or inspection of premises with or without commanding the person to appear in person at the place of production or inspection. When appearance is not required, such subpoena shall also require the person to whom it is directed to swear or affirm that the books, papers, documents, or tangible things are authentic to the best of that person's knowledge, information, and belief and to state whether or not all books, papers, documents, or tangible things responsive to the subpoena have been produced for copying or inspection. Copies of the subpoena must be served pursuant to Rule 5 on all parties, and all material produced must be made available for inspection or copying by all parties."

In its response, Atmos answered the question that was asked by identifying the financial harm to Atmos' firm sales customers: "On any day transportation customers are out of balance, Atmos must use its assets to balance the system. Assets are paid for by the firm sales customers." Atmos answered Stand's question; the harm to sales customers was identified. In its motion to compel, Stand actually seeks the answer to another question. Stand now seeks to have AEC quantify this harm in some way. At this point, AEC does not know exactly how it would go about trying to answer Stand's new question. But having received an answer to the question that Stand actually posed, Stand's motion to compel the answer to a new question should be denied.

IV. Stand Requests 1-10(b), 1-11, and 1-17 Seek Information That Is Not Relevant To The Issues In This Case.

Discovery is limited to matters that are "relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party . . ." Tenn. R. Civ. P. 26.02. "[T]hough the scope of discovery is broad, it does have limits. The basic positive touchstone is relevance, including the reasonable possibility that the information sought would lead to admissible evidence." *Johnson v. Nissan North America, Inc.*, 146 S.W. 3d 600, 605 (Tenn. Ct. App. 2004) (internal quotations omitted).

To determine relevance, one must determine the issues involved in the case, and to do that, the place to turn is the pleadings, which set forth the claims and defenses of the parties. Atmos filed this case to obtain certain amendments to its current transportation tariff. As summarized in the pre-filed testimony of Danny P. Bertotti, Atmos seeks five revisions to the existing tariff:

► Defining the term “maximum daily quantity” (MDQ) and limiting daily nominations to the applicable MDQ (Rate Schedule 260, Subsection (B)(iv), Second Revised Tariff Sheet No. 21);

► Defining Operational Flow Order (OFO) and implementing provisions for OFOs (Rate Schedule 260, Subsection (C)(v)(e), Second Revised Tariff Sheet Nos. 23 and 24);

► Clarifying procedures to calculate monthly cash-outs (Rate Schedule 260, Subsection (C)(v)(c), Second Revised Tariff Sheet No. 22);

► Implementing daily scheduling fees for daily imbalances outside of a ten percent tolerance for under or over nominated quantities (Rate Schedule 260, Subsection (C)(v)(d), Second Revised Tariff Sheet No. 23);

► Adding pooling provisions (Rate Schedule 260, Subsection (E), original Tariff Sheet No. 24.1).⁴

Pre-filed Testimony of Danny P. Bertotti (filed October 25, 2007) at 6-7.

In response to AEC’s proposed tariff amendments, Stand Energy and AIG filed Complaints defining the issues from their perspective. *See* Complaint of Atmos Intervention Group Against Atmos Energy Corporation (filed April 2, 2007); Reply to Atmos Energy Corporation’s Response to Petition to Intervene of Stand Energy Corporation and Complaint of Stand Energy Corporation (filed May 14, 2007). In its Complaint, AIG objected to each of the amendments sought by Atmos, with the exception of the proposed pooling provision. Stand objected to the proposed scheduling fees for daily transportation imbalances, and to the use of the word “may” rather than “shall” in the language for the proposed revision. Stand summarized:

⁴ Atmos originally also sought to amend the tariff provisions relating to Lost and Unaccounted-for (L&U) Gas. The Hearing Officer subsequently granted an unopposed motion to amend by which Atmos abandoned this proposed tariff amendment.

The remedy Stand Energy seeks is the removal of the daily scheduling fees from the tariff or, in the alternative, removal of the discretionary language from the tariff and the substitution of mandatory language applicable to all shippers on the Atmos Tennessee Distribution System.

Complaint of Stand Energy Corporation at 4. Stand and AIG have not amended their Complaints.

In addition to a bare relevance determination, Rule 26 also contemplates a balancing analysis that weighs the burden of further discovery against the needs of the case. *See* Tenn. R. Civ. P. 26.02(1). This marginal cost, marginal benefit analysis is to take into account “the importance of the issues at stake in the litigation.” *Id.* In this vein, it is relevant to consider the extent of Stand’s interest in this proceeding, or lack thereof. Atmos directed interrogatories to Stand intended to determine exactly that. In response, Stand conceded that it has had no Tennessee customers and no revenue from Tennessee operations in the past two years, and refused to identify any potential Tennessee customers. *See* Response of Stand Energy Corporation to First Discovery Requests of Atmos Energy Corporation, Nos. 1, 3, 5. In short, any impact on Stand of the tariff amendments that Atmos has requested would, at this point, be extremely theoretical – one might even say speculative. Stand does not have any Tennessee transportation customers. And Stand would never be a transportation customer subject to the amended tariff provisions. Stand is a marketer, not a customer.

If there is any doubt about the propriety of AEC’s relevance objections, Stand’s thin interest in this case should tip the balance in AEC’s favor.

The requests to which Atmos has objected on grounds of relevance (1-10(b), 1-11, and 1-17) seek information that simply is not relevant to the issues raised by the proposed tariff amendments that Atmos seeks in this case. In the main, Stand seeks information that, if relevant to any proceeding, would be relevant to the Asset Management issues pending in the docket

styled *In re: Docket to Evaluate Atmos Energy Corporation's Gas Purchases and Related Sharing Incentives*, Docket No. 07-00225. Stand seeks other irrelevant information as well.

Stand Request 1-10(b) seeks information on AEM's Tennessee revenue. Stand Request 1-11 seeks information regarding the agreements between AEC and AEM, and further information regarding AEM revenues. These matters simply have no relevance to the issues in this case, and Stand's request should be denied. Stand's effort, in its Motion to Compel, to explain its theory of relevance falls short of identifying how information regarding AEM's revenues is connected to the issues in this case. Stand's explanation provides little more than the naked assertion that the information should be considered relevant because Stand considers it to be relevant. AEC respectfully disagrees. If Stand's requests would be relevant anywhere, they would be relevant in the Asset Management docket, not in this case.

Stand Request 1-17 should serve to illustrate just how little weight should be given to Stand's assertion that a request seeks relevant information. In this request, Stand seeks to learn whether Atmos, in the past five years, has hired anyone from a state public utility commission, and, if so, whether Atmos had matters pending before such commission at the time any such hiring activity took place. Atmos is unable to conceive of any possible theory of relevance for this information. Stand has not provided one. In its Motion to Compel, Stand merely states, without further explanation, that such information in its view can "clearly lead to the discovery of admissible testimony." Stand Motion at 5. The only possible use that one could make of information responsive to Stand's request would be to make an *ad hominem* attack on Atmos. Such evidence would not be admissible. *See generally* Tenn. R. Evid. 404(b); Tenn. Code Ann. §§ 65-2-104, 4-5-313, Authority Rule 1220-1-2-.16(1). That Stand contends it is relevant and discoverable should indicate that such assertions from Stand mean nothing at all.

CONCLUSION

For the foregoing reasons, Atmos submits that Stand Energy's Motion to Join Atmos Energy Marketing as a Party should be denied because it is simply unnecessary. Atmos does not object to Stand's request to extend all existing scheduling order deadlines, including the hearing date, for an additional thirty days. As to Stand's Motion to Compel, Atmos will provide supplemental responses to the requests outlined above in response to Stand's reformulated questions. As to the remainder of Stand's Motion to Compel, Atmos respectfully submits that Stand's motion should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served, via the method(s) indicated below, on the following counsel of record, this the 5 day of December 2007.

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