

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

December 7, 2007

IN RE:)	
)	
ATMOS ENERGY CORPORATION'S)	DOCKET NO.
TARIFF FILING TO MODIFY AND ADD)	07-00020
LANGUAGE REGARDING)	
TRANSPORTATION SERVICE)	
(TARIFF NO. 2007-0021))	

ORDER ON OUTSTANDING MOTIONS

This docket came before the Hearing Officer for consideration of the following outstanding motions: (1) the *Motion of SouthStar Energy Services LLC d/b/a Georgia Natural Gas to Withdraw as Intervenor* filed by SouthStar Energy Services LLC d/b/a Georgia Natural Gas ("SouthStar") on November 27, 2007; (2) *Stand Energy Corporation's Motion to Join Atmos Energy Marketing as a Party and Motion to Compel* filed by Stand Energy Corporation ("Stand") on November 30, 2007; and (3) the *Motion to Compel* filed by the Atmos Intervention Group ("AIG") on December 3, 2007.

I. RELEVANT PROCEDURAL HISTORY

On November 27, 2007, SouthStar filed a motion to withdraw from this proceeding as an intervenor. To date, no responses to the motion have been filed.¹

¹ Authority Rule 1220-1-2-.06(2) permits responses to preliminary motions to be filed seven (7) days following the service of the motion. Thus, responses to the motion were due on December 4, 2007.

On November 30, 2007, Stand filed *Stand Energy Corporation's Motion to Join Atmos Energy Marketing as a Party and Motion to Compel*. In the motion, Stand requested the following relief:

1. join Atmos Energy Marketing ("AEM") as a party;
2. extend for thirty (30) days all previously established deadlines, including the hearing dates;
3. compel Atmos Energy Corporation to respond to Interrogatories 1-6E., 1-6G., 1-7A., 1-10B., 1-11, 1-17, 1-18, and 1-19; and
4. direct Atmos Energy Corporation ("AEC") to serve Stand's General Counsel, John Dosker, the answers to the interrogatories that are the subject of the motion and all future discovery via electronic mail or overnight early morning delivery.²

On December 3, 2007, a *Notice of Filing* issued setting December 5, 2007, as the filing date for responses to Stand's motion. AEC filed a response on December 5, 2007. No other party responded. On December 6, 2007, Stand filed *Stand Energy Corporation's Reply in Support of Motion to Join Atmos Energy Marketing as a Party and Motion to Compel*.

On December 3, 2007, AIG filed its *Motion to Compel*. The cover letter attached to the motion included a request for permission to submit the late-filed motion.³ An e-mail sent on December 3, 2007, to the Hearing Officer and parties of record, further explained that AEC requested AIG to note in its cover letter "that if the Motion [to Compel] is allowed AEC should also be granted additional time to respond to the substance of the Motion. AIG concurs and would like to add that to the letter . . . recognizing again that this does not mean that AEC has agreed to the late filing."⁴ On December 4, 2007, a *Notice of Filing* notified AEC that it "shall have until **Thursday, December 6, 2007**, unless otherwise requested, to respond to the request

² *Stand Energy Corporation's Motion to Join Atmos Energy Marketing as a Party and Motion to Compel*, 6 (Nov. 30, 2007).

³ *Motion to Compel*, cover letter (Dec. 3, 2007).

⁴ *Notice of Filing* (Dec. 4, 2007) (quoting the text of the e-mail message in its entirety).

for permission to accept the late-filed *Motion to Compel* and the substance of the *Motion to Compel*.”⁵ AEC filed its response on December 5, 2007.

II. SOUTHSTAR’S MOTION

In its November 27, 2007, motion, SouthStar seeks to withdraw from this proceeding as an intervenor. In the motion, SouthStar explains that it has “determined that the cost to participate actively as a party in this proceeding is not justified by SouthStar’s current business activity on the Atmos system.”⁶ Given that there are no objections to the motion, I find that the motion should be granted.

III. STAND’S MOTION

A. Consideration of *Stand Energy Corporation’s Reply in Support of Motion to Join Atmos Energy Marketing as a Party and Motion to Compel*

Authority Rule 1220-1-2-.06(3) provides that “[n]o reply to a response shall be filed except upon leave given or upon the order of the Authority or Hearing Officer.”⁷ Stand did not seek leave to file the reply. Given that Stand did not comply with the rule and the fact that at the time the reply was filed this order was nearing completion, I conclude that consideration of Stand’s reply in preparing this order is not appropriate.

B. Joining AEM

Stand’s request to join AEM results from AEC’s responses to Stand’s Interrogatories 1-21 and 1-23. For ease of reference, the interrogatories and responses are as follows:

Interrogatory 1-21: “What assets (firm transportation and storage) of the Atmos Energy Company does Atmos Energy Marketing use to serve gas transportation customers?”⁸

⁵ *Id.* (emphasis in original).

⁶ *Motion of SouthStar Energy Services LLC d/b/a Georgia Natural Gas to Withdraw as Intervenor* (Nov. 27, 2007).

⁷ Authority Rule 1220-1-2-.06(3) (July 2006). This rule applies to preliminary motions or, more specifically, “[a]ny request for an action or ruling prior to a hearing on the merits in a contested case.” Authority Rule 1220-1-2-.06(1) (July 2006).

⁸ *Stand Energy Corporation’s First Set of Discovery to Atmos*, p. 32 (Nov. 7, 2007).

Response of Atmos: “Subject to and without waiving its General Objections, AEC responds as follows: AEC presumes that Stand means whether Atmos Energy Marketing uses any of the utility’s firm transportation or storage capacity on a connecting interstate pipeline to ensure commodity deliveries to AEC’s city gates on account of AEM’s customers behind those city gates. In response, AEC would respond that it does not know nor is it privy to what transportation or storage capacity is actually used by AEM (whether AEM’s directly held capacity or released capacity) in connection with such activities and that specific information would need to be obtained from AEM.”⁹

Interrogatory 1-23: “On Atmos Energy Corporation’s peak day, what capacity does Atmos Energy Marketing use to serve its transportation customers?”¹⁰

Response of Atmos: “Subject to and without waiving its General Objections, AEC responds as follows: See Response to Request 1-21.”¹¹

In its motion, Stand notes that it propounded Interrogatories 1-21 and 1-23 to “ascertain information regarding AEM’s use of AEC’s assets.”¹² Stand argues that AEC’s responses to these interrogatories necessitate that AEM be joined as a party to this proceeding pursuant to Rule 19.01 of the Tennessee Rules of Civil Procedure. Stand contends that the heart of its dispute with AEC is whether AEC is allowing AEM to obtain a competitive advantage. Further, Stand argues that AEC is attempting to shield itself by refusing to obtain information from AEM, an entity that is part of AEC’s non-utility division.¹³

AEC opposes Stand’s request to join AEM and asserts that the appropriate means of obtaining the information is via subpoena. In support of its position, AEC references its Tennessee Guidelines for United Cities Gas Company’s Affiliate Transactions and quotes the Guidelines as follows: “To the maximum extent practicable, the Company’s operating employees and the operating employees of its marketing affiliate must function independently of

⁹ *Responses and Objections of Atmos Energy Corporation to Stand Energy Corporation’s First Set of Discovery*, p. 33 (Nov. 27, 2007).

¹⁰ *Stand Energy Corporation’s First Set of Discovery to Atmos*, p. 34 (Nov. 7, 2007).

¹¹ *Responses and Objections of Atmos Energy Corporation to Stand Energy Corporation’s First Set of Discovery*, p. 35 (Nov. 27, 2007).

¹² *Stand Energy Corporation’s Motion to Join Atmos Energy Marketing as a Party and Motion to Compel*, p. 2 (Nov. 30, 2007).

¹³ *Id.* at 3.

each other.”¹⁴ AEC next references Authority Rule 1220-1-2-.13 and Rule 45.02 of the Tennessee Rules of Civil Procedure in support of its position that Stand may seek to obtain the necessary information directly from AEM via subpoena.¹⁵

Authority Rule 1220-1-2-.06 permits a hearing officer to order oral argument on a preliminary motion.¹⁶ In my opinion oral argument is necessary prior to ruling on the request to join AEM. Such oral argument will be held during a status conference on December 13, 2007, immediately following the status conference scheduled at 9:00 a.m. in Docket No. 07-00225. Stand is directed to address in detail during oral argument the basis for its contention that Rule 19.01 of the Tennessee Rules of Civil Procedure requires the joinder of AEM as a party in this docket and to address the authority of the Tennessee Regulatory Authority to join AEM. AEC and Stand will each have thirty (30) minutes for argument with Stand proceeding first and being allowed to reserve a portion of its time for rebuttal. Although this dispute thus far has been between Stand and AEC, in my opinion, the resolution of this dispute could affect the manner in which AIG and the Consumer Advocate and Protection Division (“CAPD”) prosecute their cases. Therefore, AIG and the CAPD should be permitted to participate in oral argument at their choosing, but that their argument should be limited to ten (10) minutes each and should follow Stand’s initial argument.

¹⁴ *Atmos Energy Corporation's Response to Stand Energy Corporation's Motion to Join Atmos Energy Marketing as a Party and Motion to Compel*, p. 2 (Dec. 5, 2007) (quoting paragraph 11 of Tennessee Guidelines for United Cities Gas Company’s Affiliate Transactions). The second and last sentence of paragraph 11 reads: “For the purposes of these guidelines, operating employees are those who are in any way involved in identifying and contracting with customers; locating gas supplies, making any and all arrangements with intervening pipelines and in any way managing or facilitating those contracted services.” Atmos Energy Corporation T.R.A. NO. 1, 2nd Revised Sheet No. 45.5, Effective May 5, 2007.

¹⁵ *Atmos Energy Corporation's Response to Stand Energy Corporation's Motion to Join Atmos Energy Marketing as a Party and Motion to Compel*, pp. 2-3 (Dec. 5, 2007)

¹⁶ Authority Rule 1220-1-2-.06(4) (July 2006).

C. Extending the Procedural Schedule

In Stand's motion, the company requests "that all existing deadlines, including the hearing date, be extended for 30 days or for such time necessary for the TRA to rule on this motion and allow Stand Energy an opportunity to obtain the requested information from AEM."¹⁷ In its response, Atmos does not oppose Stand's extension request.¹⁸

The current procedural schedule provides that discovery responses required to be filed as a result of rulings on motions to compel should be filed by December 11, 2007, and that the Intervenor's pre-filed testimony be filed on December 17, 2007. Given the decision to hold oral argument prior to ruling on the request to join AEM, the December 17, 2007, deadline is now unachievable. Moreover, it is unknown at this time what the appropriate date for the filing of further testimony will be. Therefore, I find that the procedural schedule with the exception of the December 11, 2007, filing date should be held in abeyance. If possible, further procedural dates will be set during the December 13, 2007, Status Conference.

D. Compel Atmos to Respond to Interrogatories 1-6E., 1-6G., 1-7A., 1-10B., 1-11, 1-17, 1-18, and 1-19

1. Interrogatories 1-6E., 1-6G., 1-7A., and 1-19.

Stand requests that AEC be compelled to respond to Interrogatories 1-6E., 1-6G., 1-7A., and 1-19.¹⁹ In its response to Stand's motion, AEC states that based on the clarification of the interrogatories provided by Stand in its motion it will provide supplemental responses to Interrogatories 1-6E., 1-6G., 1-7A., and 1-19. AEC's agreement to supplement its responses

¹⁷ *Stand Energy Corporation's Motion to Join Atmos Energy Marketing as a Party and Motion to Compel*, p. 3 (Nov. 30, 2007).

¹⁸ *Atmos Energy Corporation's Response to Stand Energy Corporation's Motion to Join Atmos Energy Marketing as a Party and Motion to Compel*, p. 2 (Dec. 5, 2007).

¹⁹ *Stand Energy Corporation's Motion to Join Atmos Energy Marketing as a Party and Motion to Compel*, pp. 3-4, 6 (Nov. 30, 2007).

renders this portion of Stand's motion moot. Therefore, the request to compel AEC to respond to Interrogatories 1-6E., 1-6G., 1-7A., and 1-19 is dismissed without prejudice.

2. The Relevancy Disputes: Interrogatories 1-10B., 1-11, and 1-17

a. Relevancy Generally

A party "may obtain discovery regarding any matter, not privileged, which is 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."²⁰ The information sought need not be admissible if it is reasonably calculated to lead to admissible evidence.²¹ The Tennessee Court of Appeals has commented on relevancy as follows:

Relevancy is extremely important at the discovery stage. However, it is more loosely construed during discovery than it is at trial. The phrase "relevant to the subject matter involved in the pending action" has been construed "broadly to encompass any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case."²²

Rule 37.01 permits a party to file a motion to compel if a party fails to answer an interrogatory, including providing an evasive or incomplete answer.²³ "Decisions to grant a motion to compel rest in the trial court's reasonable discretion."²⁴

b. Interrogatory 1-10B.

Interrogatory 1-10B.: "With respect to the total Tennessee Load served by Atmos, please respond to the following: . . . B. Identify the total Tennessee revenue to each affiliate identified in (A)(ii) above, as a result of the transaction between Atmos and Atmos' Affiliate described in (A)(i) and (A)(iii) above."²⁵

²⁰ Tenn. R. Civ. P. 26.02(1) (Vol. 1 2007).

²¹ *Id.*

²² *Boyd v. Comdata Network, Inc.*, 88 S.W.3d 203, 220 n.25 (Tenn. Ct. App. 2002) (citations omitted) (quoting *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351, 98 S.Ct. 2380, 2389, 57 L.Ed.2d 253 (1978)).

²³ See Tenn. R. Civ. P. 33.01, 37.01(2) (Vol. 1 2007).

²⁴ *Kuehne & Nagel, Inc. v. Preston, Skahan & Smith International, Inc.*, 2002 WL 1389615, *5 n.4 (Tenn. Ct. App. June 27, 2002).

²⁵ *Stand Energy Corporation's First Set of Discovery to Atmos*, p. 20 (Nov. 7, 2007).

Response of Atmos: “In addition to its General Objections, AEC objects to this request on the grounds that information sought is irrelevant to the subject matter of this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence.”²⁶

In its motion, Stand asserts that the amount of revenue received by AEM is relevant and discoverable because the charge for services should be based on costs.²⁷ In response, AEC argues that the request is not relevant to the issues presented by this case. AEC lists as the issues the alterations requested by the tariff as set forth in the testimony of Mr. Bertotti and the statement of issues of Stand and AIG in their respective pleadings. AEC specifically notes that Stand’s only objections were to the proposed scheduling fees and the use of discretionary language.²⁸ AEC further argues that a relevance determination must take into consideration the burden of discovery versus the needs of the case. Thereafter, AEC characterizes Stand’s interest in this case as thin and argues that such an interest should tip the scales in favor of denying further discovery.²⁹ AEC also states that if the information is relevant to any proceeding, it would be relevant to Docket No. 07-00225, *In re: Docket to Evaluate Atmos Energy Corporation’s Gas Purchases and Related Sharing Incentives*.³⁰ As to Interrogatory 1-10B., specifically, AEC argues that Stand’s explanation of “its theory of relevance falls short of identifying how information regarding AEM’s revenues is connected to the issues in this case.”³¹

I must reject Stand’s argument. Stand’s argument is conclusory and, as a result, fails to adequately support Stand’s contention that AEM’s revenues are relevant. To explain, Stand

²⁶ *Responses and Objections of Atmos Energy Corporation to Stand Energy Corporation’s First Set of Discovery*, p. 21 (Nov. 27, 2007).

²⁷ *Stand Energy Corporation’s Motion to Join Atmos Energy Marketing as a Party and Motion to Compel*, p. 5 (Nov. 30, 2007).

²⁸ *Atmos Energy Corporation’s Response to Stand Energy Corporation’s Motion to Join Atmos Energy Marketing as a Party and Motion to Compel*, pp. 5-6 (Dec. 5, 2007).

²⁹ *Id.* at 6.

³⁰ *Id.* at 6-7.

³¹ *Id.* at 7.

asserts that the “charge for services should be based on cost.” I must assume that the cost Stand refers to are AEC’s cost. Assuming this to be true, Stand fails to explain the connection between AEC’s cost and AEM’s revenue. In my opinion, this disconnect is fatal to Stand’s claim of relevancy; therefore, the request to compel a response to Interrogatory 1-10B. should be denied.

c. Interrogatory 1-11

Interrogatory 1-11: “With regard to Atmos’ relationship with Atmos Energy Marketing please respond to the following: A. Identify any agreement and contract document between Atmos and Atmos Energy Marketing. B. Identify any written agreement and contract document that superseded or were successors to the agreement Identified in (A) above. C. For the years 2004, 2005, and 2006, (i) Identify the total revenues generated by Atmos Energy Marketing under the agreement Identified in (A) above, (ii) Identify how revenues identified in (i) are allocated among the recipient(s) of that revenue, (iii) for the revenue Identified in (i), categorize and Identify the nature of the transaction that generated the revenues, such as, for example, revenues from utilized pipeline capacity transactions, revenues from commodity transactions, revenues from hedges and options, etc.”³²

Response of Atmos: “In addition to its General Objections, AEC objects to this request on the grounds that information sought is irrelevant to the subject matter of this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence.”³³

Stand asserts that the purpose of this docket is “to determine the proper structure and fairness of the AEC transportation tariffs.”³⁴ Based on this assertion, Stand contends that AEM’s revenue and allocation of the same is relevant and review of the information will allow Stand to propose alternatives.³⁵ AEC’s response is the same as that offered for Interrogatory 1-10B. Briefly, AEC asserts: (1) the request is not relevant to the issues presented by this case; (2) the burden of discovery outweighs Stand’s thin interest in this case; (3) if the information is relevant

³² *Stand Energy Corporation’s First Set of Discovery to Atmos*, p. 21 (Nov. 7, 2007).

³³ *Responses and Objections of Atmos Energy Corporation to Stand Energy Corporation’s First Set of Discovery*, p. 5 (Nov. 27, 2007).

³⁴ *Stand Energy Corporation’s Motion to Join Atmos Energy Marketing as a Party and Motion to Compel*, p. 5 (Nov. 30, 2007).

³⁵ *Id.*

to any proceeding, it would be relevant to Docket No. 07-00225; and (4) Stand's explanation of "its theory of relevance falls short of identifying how information regarding AEM's revenues is connected to the issues in this case."³⁶

Once again, I find that Stand has failed to demonstrate that AEM's revenue and, in this instance, the allocations thereof are relevant to the determination of the proper structure and fairness of AEC's transportation tariff. Moreover, I am unable to determine based on my knowledge of the record as whole that the requested information is relevant. Therefore, I conclude that the request to compel a response to Interrogatory 1-11 should be denied.

d. Interrogatory 1-17

Interrogatory 1-17: "Please respond to the following: A. Please Identify any person that Atmos, or any Affiliate including Atmos Energy Marketing, has hired from a Public Utility Commission, Public Service Commission, State Regulatory Authority or other similar state entity over the past five years. B. Please identify all regulatory matters, by case number, that You, or any of Your Affiliates had pending before the regulatory agency or body at the time of the hiring of any such person identified in (A) above from the regulatory agency or body."³⁷

Response of Atmos: "In addition to its General Objections, AEC objects to this request on the grounds that information sought is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence."³⁸

In its motion, Stand argues that it is entitled "to discovery [of] information reasonably calculated to lead to the discovery of admissible evidence." Stand continues that "[w]hether Atmos Energy has been involved in prior, similar proceedings and whether AEC now employs any of the individuals that were involved in those proceeding can clearly lead to the discovery of

³⁶ *Atmos Energy Corporation's Response to Stand Energy Corporation's Motion to Join Atmos Energy Marketing as a Party and Motion to Compel*, pp. 5-7 (Dec. 5, 2007).

³⁷ *Stand Energy Corporation's First Set of Discovery to Atmos*, p. 28 (Nov. 7, 2007).

³⁸ *Responses and Objections of Atmos Energy Corporation to Stand Energy Corporation's First Set of Discovery*, p. 29 (Nov. 27, 2007).

admissible testimony.”³⁹ AEC’s response is similar to that offered for Interrogatory 1-10B. Briefly, AEC asserts: (1) the request is not relevant to the issues presented by this case; (2) the burden of discovery outweighs Stand’s thin interest in this case; and (3) if the information is relevant to any proceeding, it would be relevant to Docket No. 07-00225.⁴⁰ AEC adds that “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,” which evidence would not be admissible.⁴¹

In this instance, it is my opinion that the information could lead to other information that could bear on an issue that is or may be in the docket.⁴² For example, knowledge of previous similar proceedings in other jurisdictions involving AEC and its employees could provide insight into the appropriateness of the tariff offered in this proceeding. Therefore, I conclude that the request to compel a response to Interrogatory 1-17 should be granted.

3. Interrogatory 1-18

Interrogatory 1-18: “Please respond to the following: A. 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?”⁴³

Response of Atmos: “Subject to and without waiving any General Objections, AEC responds as follows: A. 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.”⁴⁴

³⁹ *Stand Energy Corporation’s Motion to Join Atmos Energy Marketing as a Party and Motion to Compel*, p. 5 (Nov. 30, 2007).

⁴⁰ *Atmos Energy Corporation’s Response to Stand Energy Corporation’s Motion to Join Atmos Energy Marketing as a Party and Motion to Compel*, pp. 5-7 (Dec. 5, 2007).

⁴¹ *Id.* at 7.

⁴² See *Boyd v. Comdata Network, Inc.*, 88 S.W.3d 203, 220 n.25 (Tenn. Ct. App. 2002) (citations omitted) (quoting *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351, 98 S.Ct. 2380, 2389, 57 L.Ed.2d 253 (1978)).

⁴³ *Stand Energy Corporation’s First Set of Discovery to Atmos*, p. 29 (Nov. 7, 2007).

⁴⁴ *Responses and Objections of Atmos Energy Corporation to Stand Energy Corporation’s First Set of Discovery*, p. 30 (Nov. 27, 2007).

In its motion, Stand contends that AEC “failed to give a full and complete answer to Interrogatory 1-18.”⁴⁵ Specifically, Stand asserts that AEC did not respond to the financial harm component of the interrogatory.⁴⁶ AEC responds that it answered the interrogatory by identifying the harm to sales customers and that the motion should be denied. AEC also argues that Stand is now asking AEC to quantify the harm - a new question. As to quantification, AEC responds: “AEC does not know exactly how it would go about trying to answer Stand’s new question.”⁴⁷

The interrogatory asks AEC to “please identify the financial harm to Atmos’ firm sales customers.” The interrogatories define the term “identify” as requiring the respondent to “provide the requested information as the context requires it.”⁴⁸ I find that it is reasonable to read the text of the interrogatory as requesting a quantifiable response. This conclusion results from the fact that the interrogatory asks the respondent to “identify the financial harm,” not to identify the cause of the financial harm. I also recognize, however, that quantification of the financial harm may be involved and most likely subject to many assumptions. Nonetheless, AEC should attempt to quantify the harm as well as explain the methodology used to produce the quantification.⁴⁹

My conclusion that AEC should provide a quantifiable response is buttressed by the fact that AEC when supporting the need for its tariff relies on the proposition that firm sales customers’ gas must be used when transportation customers’ demands are not balanced. The

⁴⁵ *Stand Energy Corporation’s Motion to Join Atmos Energy Marketing as a Party and Motion to Compel*, p. 5 (Nov. 30, 2007).

⁴⁶ *Id.*

⁴⁷ *Atmos Energy Corporation’s Response to Stand Energy Corporation’s Motion to Join Atmos Energy Marketing as a Party and Motion to Compel*, p. 4 (Dec. 5, 2007).

⁴⁸ *Stand Energy Corporation’s First Set of Discovery to Atmos*, p. 3 (Nov. 7, 2007). The remaining text of the definition does not apply to the subject matter to be identified. *See id.*

⁴⁹ For example, it is reasonable to expect AEC to have information on the quantity of gas that is paid for by firm sales customers and used to offset transportation customers’ imbalances. Moreover, it is reasonable to expect that AEC could estimate the cost of the gas at the time it was used to offset negative imbalances, the cost of gas retained by AEM as a result of positive imbalances, and the cost of gas initially purchased by ratepayers.

insinuation being that firm sales customers are harmed.⁵⁰ Given AEC reliance on the harm that may befall firm sales customers at the hands of transportation customers, it is reasonable to direct AEC to provide to the best of its ability a quantifiable assessment of that harm.

E. Service on Stand's General Counsel

In its motion, Stand requests: "that AEC be ordered to serve the answers to the interrogatories that are the subject of its motion to compel and all future discovery by electronic mail or via overnight early morning delivery to Stand's General Counsel, John Dosker (who is not located in Nashville), instead of by regular U.S. mail."⁵¹ AEC does not specifically address this request in its response. Given the lack of objection to the request, I find that the request should be granted.

IV. AIG's MOTION

On November 7, 2007, AIG submitted Question 12 to Atmos. The question states: "From January 1, 2006 through August 31, 2007, provide the total gas volumes by month that were transported by Atmos Energy Corporation in their Georgia regulated markets, including a

⁵⁰ AEC witness Danny P. Bertotti states in his pre-filed testimony: "By limiting this volume to the level the transportation customer can actually consume, the Company avoids having to inject excess gas delivered for the customer into the Company's storage system, which has been paid for by the Company's sales customers." *See Pre-Filed Testimony of Danny P. Bertotti on Behalf of Atmos Energy Corporation*, pp. 8-9 (Oct. 25, 2007). Mr. Bertotti also states:

The Company's firm storage on the interstate system is paid for by firm sales customers. Since the Company utilizes this storage to manage daily imbalances to avoid penalties, transportation customers who go outside the allotted 10% tolerance are befitting from the use of storage assets paid for by firm sales customers.

See Pre-Filed Testimony of Danny P. Bertotti on Behalf of Atmos Energy Corporation, pp. 12-13 (Oct. 25, 2007). AEC witness Patricia J. Childers similarly states in her pre-filed testimony:

Because a Rate Schedule 260 customer acquires its own gas commodity, it does not contribute to gas costs. However, when a transportation customer fails to comply with the terms of Rate Schedule 26, the Company must use system supply gas and/or interstate pipeline and storage assets to continue to provide service to the transportation customer lest curtailment to that customer should occur.

See Pre-Filed Testimony of Patricia J. Childers on Behalf of Atmos Energy Corporation, p. 4 (Oct. 25, 2007).

⁵¹ *Stand Energy Corporation's Motion to Join Atmos Energy Marketing as a Party and Motion to Compel*, p. 6 (Nov. 30, 2007).

breakdown of these volumes transported between affiliate and non-affiliate suppliers.”⁵² On November 27, 2007, Atmos responded to AIG’s discovery questions and, with regard to Question 12 specifically stated: “In addition to its General Objections, AEC objects to this request on the grounds that the information sought is irrelevant and is not reasonably calculated to lead to the discovery of admissible evidence.”⁵³

In the *Motion to Compel*, AIG explains that the purpose of its request is to “determine the level of competition among marketers in AEC’s service area in Georgia.”⁵⁴ AIG explains that Atmos has a daily balancing penalty in Georgia, and that an “examination of the level of competition in that state may indicate whether the imposition of a similar daily balancing fee in Tennessee would deter competitors from other, non-affiliated marketers.”⁵⁵ Atmos filed its response to the *Motion to Compel* on December 5, 2007. In the response, Atmos agrees to provide the requested information within the week.⁵⁶

AEC has agreed to produce the requested information. Given AEC’s agreement, I find that AIG’s requests to late-file its *Motion to Compel* and AIG’s *Motion to Compel* are moot and should be dismissed without prejudice.

⁵² *Atmos Intervention Group’s First Round of Discovery to Atmos Energy Corporation*, 16 (Nov. 7, 2007); *Motion to Compel*, 1 (Dec. 3, 2007).

⁵³ *Responses and Objections of Atmos Energy Corporation to Atmos Intervention Group’s First Round of Discovery*, 17 (Nov. 27, 2007).

⁵⁴ *Motion to Compel*, 1 (Dec. 3, 2007).

⁵⁵ *Id.*

⁵⁶ *Atmos Energy Corporation’s Response to AIG’s Motion to Compel* (Dec. 5, 2007).

IT IS THEREFORE ORDERED THAT:

1. The *Motion of SouthStar Energy Services LLC d/b/a Georgia Natural Gas to Withdraw as Intervenor* filed by SouthStar Energy Services LLC d/b/a Georgia Natural Gas on November 27, 2007, is granted.

2. Oral argument on the request to join Atmos Energy Marketing will be held during a status conference on December 13, 2007 immediately following the status conference scheduled at 9:00 a.m. in Docket No. 07-00225. The particulars of oral argument shall be as described herein and in the *Notice of Status Conference* issued along with this order.

3. The procedural schedule with the exception of the December 11, 2007, due date is held in abeyance.

4. The requests to compel Atmos Energy Corporation to respond to Interrogatories 1-6E., 1-6G., 1-7A., and 1-19 contained in *Stand Energy Corporation's Motion to Join Atmos Energy Marketing as a Party and Motion to Compel* are dismissed without prejudice.

5. The requests to compel Atmos Energy Corporation to respond to Interrogatories 1-10B. and 1-11 contained in *Stand Energy Corporation's Motion to Join Atmos Energy Marketing as a Party and Motion to Compel* are denied.

6. The request to compel Atmos Energy Corporation to respond to Interrogatories 1-17 contained in *Stand Energy Corporation's Motion to Join Atmos Energy Marketing as a Party and Motion to Compel* is granted.

7. The request to late-file the *Motion to Compel* and the *Motion to Compel* filed by the Atmos Intervention Group on December 3, 2007 are dismissed without prejudice.

8. The request contained in *Stand Energy Corporation's Motion to Join Atmos Energy Marketing as a Party and Motion to Compel* with regard to service on Mr. Dosker is

granted, and Atmos Energy Corporation is ordered serve the answers to 1-6E., 1-6G., 1-7A., 1-17 and 1-19 and all future discovery on Stand Energy Corporation's General Counsel, John Dosker, by electronic mail or via overnight early morning delivery.



Ron Jones, Director
Acting as Hearing Officer⁵⁷

⁵⁷ The panel voted to appoint Director Jones as the hearing officer to hear this docket on the merits during the July 9, 2007, Authority Conference. See Transcript of Authority Conference, pp. 38-39 (July 9, 2007). Note that the November 19, 2007, *Order Granting Motion to Amend* incorrectly states in footnote 4 that the panel appointed the hearing officer to prepare this matter for hearing by the panel.