

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

October 1, 2007

IN RE:)	
)	DOCKET NO.
PETITION OF ATMOS ENERGY CORPORATION)	07-00105
FOR APPROVAL OF ADJUSTMENT OF ITS RATES)	
AND REVISED TARIFF)	

ORDER DENYING JOINT MOTION FOR SUPPLEMENTAL
DISCOVERY RELATING TO RATE DESIGN

This matter is before the Hearing Officer upon the *Joint Motion for Supplemental Discovery Relating to Rate Design* ("Joint Motion") filed by Intervening Parties, Atmos Intervention Group ("AIG") and Stand Energy Corporation ("Stand") on September 21, 2007. The AIG and Stand requested that the Hearing Officer direct Atmos Energy Corporation ("Atmos") to provide the TRA and the parties a separate monthly cumulative distribution of sales volumes during the test period for each of the Company's rate schedules. AIG argued that the information could be readily produced, it was furnished by Atmos in the Company's last case, and is needed by AIG and Stand to translate their tariff recommendations into specific proposals.¹

PREHEARING CONFERENCE

A Prehearing Conference was convened at approximately 9:00 a.m. on September 27, 2007 and conducted pursuant to Tenn. Code Ann. §4-5-306. The Prehearing Conference was held for the purposes of addressing pending motions before the Hearing Officer, any agreements

¹ *Joint Motion for Supplemental Discovery Relating to Rate Design*, p. 1 (September 21, 2007).

or settlements, any procedural issues, scheduling details for the hearing, and other items that the parties need to address. The following parties participated:

Atmos Energy Corporation – **William Ramsey, Esq., A. Scott Ross, Esq.,** Neal & Harwell, PLC, 2000 One Nashville Place, 150 Fourth Avenue North, Nashville, TN 37219, and **Patricia J. Childers,** Vice President - Rates and Regulatory Affairs of the Kentucky/Mid-States Division of Atmos Energy Corporation, 810 Crescent Centre Drive, Suite 600, Franklin, TN 37067.

Consumer Advocate and Protection Division –**Timothy Phillips, Esq., Vance Broemel, Esq.** and **Joe Shirley, Esq.,** Office of the Attorney General, 425 5th Ave. N, John Sevier Building, P.O. Box 20207, Nashville, TN 37202.

Atmos Intervention Group (AIG) - **Henry M. Walker, Esq.,** Boulton, Cummings, Connors & Berry, PLC, 1600 Division Street, Suite 700, P.O. Box 340025, Nashville, TN 37203.

Stand Energy Corporation – **D. Billye Sanders, Esq.,** Waller, Lansden, Dortch & Davis, LLP, 511 Union Street, Suite 2700, Nashville, TN 37219.

The Hearing Officer first addressed the two outstanding motions, the *Joint Motion for Reconsideration of the Hearing Officer's Order Severing the Transportation Rate and Asset Management Issues* ("Motion for Reconsideration of the Hearing Officer's Severance Order") and the *Joint Motion for Supplemental Discovery Relating to Rate Design* ("Joint Motion"). The ruling on the *Motion for Reconsideration of the Hearing Officer's Severance Order* is being issued under a separate order. This order memorializes the oral ruling on the *Joint Motion* issued during the Prehearing Conference.

POSITIONS OF THE PARTIES

AIG and Stand filed their *Joint Motion for Supplemental Discovery Relating to Rate Design* on September 21, 2007. Under TRA Rule, Atmos is permitted seven (7) days to file its

response to the *Joint Motion*.² Atmos filed its response opposing the *Joint Motion* on September 25, 2007.

AIG and Stand stated that the parties have agreed in principle to a number of issues, including projected volumes in the test period. Given that agreement, Atmos is now able to project usage in each customer class and tariff group. If Atmos provides the requested information, AIG and Stand stated that their witnesses, Mr. Novak and Mr. Dosker, can design specific tariffs to present to the Authority. AIG and Stand argued that this information was provided by Atmos in another docket and can be readily produced. They also stated that this chart is a one-page document listing distribution of sales volumes for each rate schedule. Additionally, AIG stated that its expert witness, Mr. Novak cannot make specific recommendations without additional information.

Atmos responded to the *Joint Motion* by stating that the time period for requesting such information has passed with little over a week remaining until the hearing in this case, Atmos employees responsible for this case and their counsel should be allowed to spend their time preparing for hearing and not compiling information in response to discovery requests. Additionally, Atmos argues that the deadline for pre-filed testimony has passed³ and it has prepared and submitted its rebuttal testimony. Atmos also questions how the Intervenor plan to unveil such rate design proposals and specifically objects to any plans of the Intervenor to present such testimony at the hearing.

Atmos argued that it has had to prepare and disclose testimony in advance of the hearing to allow sufficient time for the other parties to prepare for cross-examination and Atmos should

² TRA Rule 1220-1-2-.06(2) Any party opposing a motion shall file and serve a response within seven (7) days after service of the motion. The Authority or Hearing Officer may shorten or extend the time for responding to any motion.

³ *Response of Atmos Energy Corporation to Joint Motion for Supplemental Discovery Relating to Rate Design*, p. 1 (September 25, 2007).

be allowed the same. The previously agreed upon procedural schedule set deadlines for discovery, prefiled direct and rebuttal testimony and Atmos is entitled to receive AIG and Stand's testimony as ordered in the procedural schedule.

FINDINGS AND CONCLUSIONS

The Tennessee Rules of Civil Procedure provide that 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." The information sought need not be admissible if it is reasonably calculated to lead to admissible evidence." Nevertheless, the Rules of Civil Procedure governing discovery provide some limitations and protections for parties. Rule 26.02 of the Rules of Civil Procedure permits a court to limit discovery under certain circumstances, such as undue burden.

Rule 26.02 provides that discovery can be limited if the party seeking discovery has had ample opportunity during the course of discovery in the action to obtain the information sought. AIG and Stand filed the *Joint Motion* on September 21, 2007 seeking supplemental discovery of a chart with separate monthly cumulative distribution of sales volumes during the test period for each of the Company's rate schedules and stated that they needed additional information to make specific recommendations of how rates are structured. The Prehearing Conference was scheduled for September 27, 2007 and the hearing in this matter was scheduled for October 4, 2007.⁴ This late request for discovery has been filed less than two weeks prior to the hearing in this docket and would result in undue prejudice to Atmos.

⁴ On September 28, 2007, a *Notice of Rescheduling the Hearing* from October 4, 6 and 8, 2007 to October 8-9, 2007 was issued by the TRA in this docket.

AIG and Stand filed its *Joint Motion* seeking supplemental discovery on September 21, 2007. Discovery requests were due by AIG and Stand on June 1, 2007, discovery responses from the company were due on July 6, 2007, Motions to Compel were due on July 10, 2007, Intervenor's Pre-filed testimony was due on August 21, 2007 and the Company's Pre-filed Rebuttal Testimony was due on September 21, 2007. During the course of over three months, AIG and Stand had the opportunity to make discovery requests and seek supplemental discovery. However, AIG and Stand did not make supplemental discovery requests during the past three month period. AIG and Stand's request for supplemental information is being made after the discovery period has concluded and all prefiled and rebuttal testimony has been filed. A procedural schedule was issued in this docket and there was a period for discovery and the filing of testimony. Atmos prepared its prefiled and rebuttal testimony in advance of the hearing and AIG and Stand are also required to abide by the same timeframe. The time period for making discovery requests, requesting supplemental discovery, and filing testimony has expired. AIG and Stand have not demonstrated a substantial need of the materials in preparation of the case and have not demonstrated that it cannot obtain the information by other means.

After consideration of the motion and the arguments, the Hearing Officer agrees with the arguments presented by Atmos and denies the *Joint Motion* for supplemental discovery based on the undue burden upon Atmos, the untimeliness of the request, and in the interests of justice.


During the Status Conference, AIG disagreed with the Hearing Officer's ruling and stated that the ruling is based on a misunderstanding of the facts and would like to appeal the decision

of the Hearing Officer denying the *Joint Motion*.⁵ AIG requested that the panel in this docket review the Hearing Officer's decision. Authority Rule 1220-1-2-.06(6) provides that a party that seeks interlocutory review by the Authority of a Hearing Officer's decision on a preliminary motion shall make application by motion to the Hearing Officer and that "[p]ermission for interlocutory review shall not be unreasonably withheld." Due to the impending hearing date in this docket, it is necessary to expedite granting of the request for interlocutory review.

Therefore, the Hearing Officer grants permission to AIG's oral request for appeal to the panel and hereby grants permission for AIG to file a motion to appeal to the panel. In order for the panel to review this matter, it will be necessary for AIG to file such motion for appeal to the panel by Wednesday, October 3, 2007 and Atmos may file its response to such motion by 12 p.m. on Friday, October 5, 2007 so the panel in this docket can render a ruling on the hearing date.

IT IS THEREFORE ORDERED THAT:

1. The *Joint Motion for Supplemental Discovery Relating to Rate Design* filed by AIG and Stand is hereby denied;
2. AIG is granted permission to appeal the decision in this Order to the panel in this docket.
3. AIG shall file its motion for appeal to the panel by Wednesday, October 3, 2007 and Atmos may file its response to such motion by 12 p.m. on Friday, October 5, 2007.


Chairman Eddie Roberson,
as Hearing Officer

⁵ Transcript of Proceedings, September 27, 2007, p. 7 (Prehearing Conference).