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January 10, 2008

VIA HAND DELIVERY

Honorable Ron Jones, Hearing Officer
c/o Sharla Dillon, Docket & Records Manager
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

filed electronically in docket office on 01/11/08

**RE: Docket to Evaluate Atmos Energy Corporation's Gas Purchases and Related
Sharing Incentives, TRA Docket No. 07-00225**

Dear Hearing Officer Jones:

Enclosed please find *Atmos Energy Marketing, LLC's Preliminary Response in Opposition to Motion of Stand Energy Corporation and Request for Leave to File Affidavits of John Dosker and Mark Ward* for filing in the above-captioned docket. The required original and thirteen (13) copies will be submitted at a later time.

If you have any questions or require additional information, please let us know.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'M. J. Malone', written over the printed name.

Melvin J. Malone

clw

c: Parties of Record

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

IN RE:)	
)	
DOCKET TO EVALUATE)	
ATMOS ENERGY CORPORATION'S)	
GAS PURCHASES AND RELATED)	DOCKET NO. 07-00225
SHARING INCENTIVES)	
)	
)	
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**ATMOS ENERGY MARKETING, LLC's PRELIMINARY RESPONSE IN
OPPOSITION TO MOTION OF STAND ENERGY CORPORATION AND REQUEST
FOR LEAVE TO FILE AFFIDAVITS OF JOHN DOSKER AND MARK WARD**

Atmos Energy Marketing, LLC ("AEM"), by and through its undersigned counsel, hereby submits this *Preliminary Response In Opposition to Motion of Stand Energy Corporation and Request for Leave to File Affidavits of John Dosker and Mark Ward*. For the reasons set forth herein, AEM respectfully requests the Tennessee Regulatory Authority ("TRA" or "Authority") to deny both Stand Energy Corporation's ("Stand") motion and its request.¹

I. BACKGROUND

On December 21, 2007, the Hearing Officer entered an *Order on the Protective Order Dispute Process* ("Order") in this matter.² In the *Order*, the parties were directed to either file an agreed protective order or, if no agreement is reached, a statement of the disputed issues along with the parties' positions on January 4, 2008.³ Further, the *Order* expressly directed the parties as follows: "Whatever the form of the filings to be made on January 4, 2008, all parties shall

¹ AEM received a copy of Stand's motion and request on the afternoon of January 10, 2008. Given the delayed submission of Stand's motion and request and the fact that the Status Conference to consider and resolve the outstanding disputes on the protective order is tomorrow, AEM has not had an adequate opportunity to prepare a detailed response and does not hereby waive its opportunity to due process in that regard.

² See *Order on the Protective Order Dispute Process*, TRA Docket No. 07-00225 (Dec. 21, 2007).

³ *Id.*

clearly detail the disputes and set forth their positions with specificity.” On January 4, 2008, the parties, unable to agree upon a protective order, submitted their respective positions.

II. DISCUSSION AND ARGUMENT

First, with respect to Stand’s request for leave to file the affidavits of John Dosker and Mark Ward, Stand has already had an opportunity to file any affidavits that it wished to file on January 4, 2008. The *Order* expressly requested the parties to submit their positions with specificity, in whatever form, on January 4, 2008. Stand is seeking, in effect, an alteration of the *Order* and/or the proverbial “second bite at the apple.” To the extent it desired to do so, Stand should have submitted any affidavits in support of its positions on or before January 4, 2008.⁴

Next, Stand argues that “AEM is attempting to protect documents without (1) identifying the discovery requests that allegedly seek these purportedly confidential documents and (2) providing any general or specific information regarding the subject matter of the documents in which AEM is attempting to protect.”⁵ Stand’s contention here misses the mark. Normally, a protective order is entered into BEFORE discovery requests are served, as will be the case with both the second and third rounds of discovery in this docket. With two (2) rounds of discovery remaining, AEM, at this time, cannot possibly fully know the scope of potentially confidential trade secrets and commercially sensitive information that might be implicated in this matter. Moreover, paragraph 10 of AEM’s EXHIBIT A (AEM’s January 4, 2008, Brief) provides a mechanism for any party to contest the designation of any document or information as

⁴ See also, e.g., December 20, 2007, Letter to the Hearing Officer, TRA Docket No. 07-00225 (“Atmos Energy Marketing, LLC, Atmos Energy Corporation, *Stand Energy Corporation*, the Consumer Advocate and Protection Division and Atmos Intervention Group have agreed that they will either submit an Agreed Protective Order or competing drafts of proposed Protective Orders (or competing provisions), *along with any desired support*, to the Hearing Officer on or before 2:00 p.m. on January 4, 2008.”) (emphasis added).

⁵ *Stand Energy Corporation’s Motion to Cross Examine Rob Ellis and Request for Leave to File Affidavits of John Dosker and Mark Ward*, TRA Docket No. 07-00225, pp. 1-2 (Jan. 10, 2008) (“*Stand’s Motion and Request*”).

confidential information.⁶ Thus, if outside counsel for Stand reasonably believes that it is absolutely necessary for an in-house representative of Stand to review AEM confidential information, said outside counsel may timely file a motion requesting the same with the Authority.

Third, Stand maintains that “AEM’s Brief . . . makes conclusory statements regarding the scope of Stand’s in-house counsel, John Dosker’s duties. . . . Based on AEM’s conclusory statements regarding Mr. Dosker’s duties, Stand respectfully requests leave to file the Affidavit of John Marshall Dosker[.]”⁷ A review of AEM’s January 4, 2008, Brief, clearly reveals that the foregoing assertions by Stand are in error. In addition to the legal authority cited in its brief, AEM outlined, with particularity, the testimony of John Dosker previously submitted to the TRA and relied upon the same in its January 4, 2008, Brief.⁸ Therefore, it is inaccurate, to say the least, to refer to the statements in *AEM’s Brief*, with respect to John Dosker, as merely conclusory.⁹

Finally, to the extent the Authority concludes that Tenn. Code Ann. § 4-5-313(2) is applicable in the context of a Status Conference and a protective order dispute, Rob Ellis’ January 2008 affidavit is not essential to the resolution of the protective order language disputes at hand in a manner favorable to AEM. On the record before it, the agency may resolve the outstanding protective order disputes in a manner consistent with AEM’s previously offered positions without resorting to Mr. Ellis’ January 2008 affidavit.¹⁰ In the interest of moving this

⁶ See *Atmos Energy Marketing, LLC’s Brief on Protective Order Disputes*, TRA Docket No. 07-00225, EXHIBIT A, p. 7, ¶ 10 (Jan. 4, 2008) (“*AEM’s Brief*”).

⁷ *Stand’s Motion and Request* at 2.

⁸ *AEM’s Brief* at 10-12.

⁹ The same applies to Mark Ward. *Id.* at 12, n. 50.

¹⁰ As of the filing of this *Preliminary Response*, counsel for AEM has not been able to reach Rob Ellis.

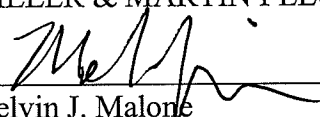
matter forward, should the agency conclude that Tenn. Code Ann. § 4-5-313(2) is applicable, AEM, if necessary, will proceed without the January 2008 Affidavit of Rob Ellis.¹¹

III. CONCLUSION

For the foregoing reasons, the Authority should reject Stand's untimely motion and request, made on the eve of the Status Conference to resolve protective order disputes.

Respectfully Submitted,

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It is not Mr. Ellis' January 2008 affidavit itself that makes the information requested in the relevant discovery requests confidential and proprietary. The requested documents and information, in and of themselves, are in fact confidential and proprietary.

¹¹ *Stand's Motion and Request* is not based upon nor does it otherwise challenge EXHIBIT C to *AEM's Brief*.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been sent electronically to the following parties of record this 10th day of January, 2008.

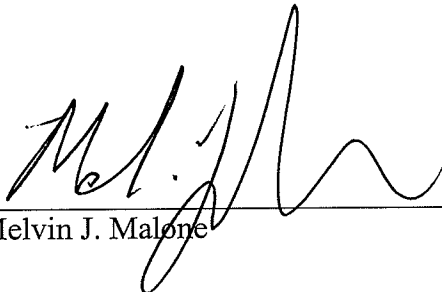
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