

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

IN RE:)
DOCKET TO EVALUATE ATMOS ENERGY)
CORPORATION'S GAS PURCHASES AND) **DOCKET NO. 07-00225**
RELATED SHARING INCENTIVES)

**MOTION TO COMPEL ATMOS ENERGY CORPORATION TO ANSWER THE
FIRST DISCOVERY REQUESTS OF THE CONSUMER ADVOCATE AND
PROTECTION DIVISION AND TO SUSPEND HEARING ON THE MOTION
WHILE THE PARTIES ATTEMPT TO RESOLVE THESE ISSUES**

Robert E. Cooper, Jr., Attorney General and Reporter for the State of Tennessee, by and through the Consumer Advocate and Protection Division ("Consumer Advocate"), pursuant to the amended procedural schedule entered by the Hearing Officer on July 2, 2007, hereby requests the Authority to compel Atmos Energy Corporation ("Atmos") to fully and completely respond to the first discovery requests of the Consumer Advocate set forth below.

The Consumer Advocate would note that at the time of the filing of this motion, it has not had ample opportunity to identify all of the discovery issues involving Atmos's responses to the Consumer Advocate's first discovery requests and also to discuss the substance of these issues with Atmos in an effort to resolve them without the intervention of the Hearing Officer. The Consumer Advocate files this motion in order to raise all known discovery issues involving the Consumer Advocate's first discovery requests so that its position on these requests may be procedurally protected. On February 21, 2008, the Consumer Advocate sent Atmos an electronic mail that set forth the discovery issues that are the subject of this motion and discussed these matters with Atmos on February 22, 2008.

Prior to the scheduled hearing on this motion, the Consumer Advocate plans to work with Atmos in an effort to resolve as many of these issues as reasonably possible; accordingly, the Consumer Advocate asks the Hearing Officer to suspend the hearing on these issues scheduled for February 29, 2008, while the parties attempt to resolve them. The Consumer Advocate has contacted counsel for Atmos and he is in agreement with the request to suspend the hearing on these issues.

STANDARD FOR DISCOVERY

Tennessee has a broad policy which favors the discovery of any relevant information:

Parties 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, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Tenn. R. Civ. P. 26.02(1). Thus, evidence does not have to be admissible to be discoverable as long as the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Today, it is through discovery rather than pleadings that the parties attempt “to find the truth and to prepare for the disposition of the case in favor of the party who is justly deserving of a judgment.” *Kuehne & Nagel, Inc. v. Preston, Skahan & Smith International, Inc.*, 2002 WL 1389615 at *3 (Tenn. Ct. App. 2002) (*quoting* Irving Kaufman, *Judicial*

Control Over Discovery, 28 F.R.D. 111, 125 (1962)). Accordingly, a party seeking discovery is entitled to obtain any information that is relevant to the case and not privileged. *See Id.* Consistent with Tennessee’s open discovery policy, the relevancy requirement is “construed broadly to encompass any matter that bears on, or that reasonably could lead to other matters that could bear on any of the case’s issues.” *Id.* Discovery therefore is not limited to the issues raised by the pleadings. *See Id.*, *see also Shipley v. Tennessee Farmers Mutual Ins. Co.*, 1991 WL 77540 at *7-8 (Tenn. Ct. App. 1991). A party may also use discovery to: define and clarify the issues; probe a variety of fact-oriented issues that are not related to the merits of the case; formulate and interject additional issues into the case which relate to the subject matter of the pleadings; and determine additional causes of actions or claims which need to be or can be asserted against a party or against third parties. *See Shipley*, 1991 WL 77540 at *7-8 (*quoting Vythoulkas v. Vanderbilt University Hospital*, 693 S.W.2d 350, 359 (Tenn. Ct. App. 1985)).

It is nonetheless recognized that the trial court may limit discovery under appropriate circumstances. Because of the broad policy favoring discovery, the trial court should not order limitations on discovery unless the party opposing discovery can demonstrate with more than conclusory statements and generalizations that the discovery limitations are necessary to protect the party from annoyance, embarrassment, oppression, or undue burden and expense. *See Duncan v. Duncan*, 789 S.W.2d 557, 561 (Tenn. Ct. App. 1991). The trial court should decline to limit discovery if the party opposing discovery cannot produce

specific facts to support the requested limitations. *See Id.* Moreover, given the liberal construction of discovery rules, the trial court should approach any request for limitations with common sense rather than with narrow legalisms, basing the reasonableness of any ordered limitations on the character of the information sought, the issues involved, and the procedural posture of the case. *See Id.* Rather than denying discovery outright, it is appropriate for the trial court to fashion remedies to discovery issues by balancing the competing interests and hardships of the parties and by considering whether there are less burdensome means for acquiring the requested information. *See Id.*

**SPECIFIC DISCOVERY REQUESTS THAT
ARE THE SUBJECT OF THIS MOTION**

1. FIRST DISCOVERY REQUEST AEC2.

For the period January 1, 2004, through December 31, 2007, please provide a copy of each pipeline and/or storage invoice billed to AEC and/or AEM involving the transportation and storage assets of AEC managed, optimized, or used by AEM pursuant to the current “Gas Exchange and Optimization Services Agreement for the Service Areas in the States of Tennessee and Virginia” entered into by and between AEC and AEM as of April 1, 2004. [Request to both AEC and AEM.]

ATMOS RESPONSE TO REQUEST AEC2.

Subject to and without waiving its General Objections, AEC responds as follows: See attached electronic response labeled CAPD AEC02 (marked Highly Confidential), which includes both AEM invoices and commodity invoices. AEM will provide any invoices from interstate pipelines, etc. received by AEM.

MOTION TO COMPEL RESPONSE TO AEC2.

Atmos's answers to Request AEC2 and AEC23 commingle the transportation and storage invoices requested in AEC2 and the gas commodity invoices requested in AEC23. The Consumer Advocate requests Atmos to separate the commodity invoices from the transportation and storage invoices as originally requested in AEC2 and AEC23 in order to avoid any confusion about the nature of the invoices. The asset management agreement between Atmos and Atmos Energy Marketing, LLC ("AEM") deals strictly with AEM's management and use of Atmos's transportation and storage assets, which agreement is specifically referenced in Request AEC2. Because the Consumer Advocate has particular concerns about this agreement, which have been expressed in its prior pleadings filed in this docket, the Consumer Advocate desires to have the invoices related to this agreement specifically identified.

2. FIRST DISCOVERY REQUEST AEC13.

Please provide the monthly natural gas volumes purchased by or on behalf of AEC for AEC's Tennessee jurisdictional requirements for each month of the fiscal years ended September 30, 2005, September 30, 2006, and September 30, 2007, and for the months of October 2007 through December 2007.

ATMOS RESPONSE TO REQUEST AEC13.

Subject to and without waiving its General Objections, AEC responds as follows: Please see the attached electronic response labeled CAPD AEC13.

MOTION TO COMPEL RESPONSE TO AEC13.

Atmos's answer to Request AEC13 is unresponsive and incomplete. The information provided in the referenced electronic response labeled CAPD AEC13 does not appear to be the

natural gas volumes purchased for AEC's Tennessee jurisdictional requirements, which should include all regulated customers excluding transportation-only customers.

3. FIRST DISCOVERY REQUEST AEC16.

Please provide AEC's total throughput for the Tennessee jurisdiction for the last ten fiscal years ended September 30, 2007 (FYE 9/30/98 through FYE 9/30/07).

ATMOS RESPONSE TO REQUEST AEC16.

Subject to and without waiving its General Objections, AEC responds as follows: Please see the TN portion of the response to AEC 15.

MOTION TO COMPEL RESPONSE TO AEC16.

Atmos's answer to Request AEC16 is unresponsive and incomplete. The information provided in the referenced TN portion of Atmos's response to AEC15 does not appear to be the requested throughput data. Rather, the TN portion of Atmos's response to AEC 15 appears to be customer sales data. The pipeline throughput for any given period is typically larger than customer sales volumes due to items such as transportation and lost-and-unaccounted-for volumes. In addition to the customers sales data, the Consumer Advocate desires to have the throughput data in order to analyze the activity on the pipeline(s) serving the Tennessee jurisdiction.

4. FIRST DISCOVERY REQUEST AEC17.

Please provide AEC's total throughput for the Virginia jurisdiction for the last four fiscal years ended September 30, 2007 (FYE 9/30/04 through FYE 9/30/07).

ATMOS RESPONSE TO REQUEST AEC17.

Subject to and without waiving its General Objections, AEC responds as follows: Please see the VA portion of the response to AEC 15.

MOTION TO COMPEL RESPONSE TO AEC17.

Atmos's answer to Request AEC17 is unresponsive and incomplete. The information provided in the referenced VA portion of Atmos's response to AEC15 does not appear to be the requested throughput data. Rather, the VA portion of Atmos's response to AEC 15 appears to be customer sales data. The pipeline throughput for any given period is typically larger than customer sales volumes. In addition to the customers sales data, the Consumer Advocate desires to have the throughput data in order to analyze the activity on the pipeline(s) serving the Tennessee jurisdiction.

5. FIRST DISCOVERY REQUEST AEC18.

Please provide AEC's total throughput for the Midstates jurisdictions for the last four fiscal years ended September 30, 2007 (FYE 9/30/04 through FYE 9/30/07).

ATMOS RESPONSE TO REQUEST AEC18:

AEC objects to providing any information for states other than TN and VA because such information is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to this objection and also subject to and without waiving its general objections the throughput information for TN and VA has been provided in response to AEC15 above.

MOTION TO COMPEL RESPONSE TO AEC18.

Atmos's answer to Request AEC18 is unresponsive and incomplete. Atmos's objection that the requested Midstates information is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence is without merit. Tennessee is in Atmos's Midstates division. The Consumer Advocate requested the Midstates information because the Consumer Advocate may use it to perform allocations to Tennessee. During the Consumer Advocate's preliminary investigation

of this matter, it became apparent that certain sales, cost, and profit information may not be available on a Tennessee-specific basis. It therefore appears likely that the Consumer Advocate will have to perform some allocations in this case; accordingly, it needs to gather relevant information to perform these allocations.

6. FIRST DISCOVERY REQUEST AEC23.

Please provide a copy of each invoice involving the purchase of natural gas commodity for AEC's Tennessee jurisdiction during the last four fiscal years ended September 30, 2007 (FYE 9/30/04 through FYE 9/30/07).

ATMOS RESPONSE TO REQUEST AEC23.

Subject to and without waiving its General Objections, AEC responds as follows: Please see the attached files labeled CAPD AEC02 provided in response to AEC2.

MOTION TO COMPEL RESPONSE TO AEC23.

Please refer to Motion to Compel Response to AEC2, above.

7. FIRST DISCOVERY REQUEST AEC24.

Please provide a copy of all documents and communications received by AEC and/or AEM from the Federal Energy Regulatory Commission ("FERC") in connection with FERC's investigation into possible violations of the FERC's posting and competitive bidding regulations for prearranged released firm capacity on natural gas pipelines. [Request to both AEC and AEM.]

ATMOS RESPONSE TO REQUEST AEC24.

Subject to and without waiving its General Objections, AEC responds as follows: AEC objects to this request because the data requests received by AEC from FERC do not concern interstate pipeline or storage capacity used to supply Tennessee or Virginia customers, and this

request therefore seeks information that is neither relevant to this proceeding nor reasonably calculated to disclose or lead to the discovery of relevant evidence. AEC further objects to this request because the investigation is being conducted by the FERC under applicable federal law and the investigation, and because information provided by AEC (which is highly confidential, non-public information) to FERC in connection with such investigation, is nonpublic under the provisions of 18 CFR Sec. 1b.9.

MOTION TO COMPEL RESPONSE TO AEC24.

Atmos's answer to Request AEC24 is unresponsive and incomplete. The FERC's investigation encompasses competitive bidding regulations for prearranged released firm capacity on natural gas pipelines. This docket involves an evaluation of Atmos's incentive plan arrangement, which also encompasses the release of firm capacity on natural gas pipelines into a competitive marketplace. In Atmos's answer, it avers that the FERC investigation does not concern interstate pipeline or storage capacity used to supply Tennessee or Virginia customers; thus, according to Atmos, the requested information is neither relevant to this proceeding nor reasonably calculated to disclose or lead to the discovery of relevant evidence. The Consumer Advocate desires to verify Atmos's assertion and requests that Atmos be required to document that the FERC investigation does not concern interstate pipeline or storage capacity used to supply Tennessee or Virginia customers. The Consumer Advocate is willing to view such documentation at Atmos's offices without making any copies or notes concerning the documentation.

8. FIRST DISCOVERY REQUEST AEC25.

Please provide a copy of all documents and communications submitted by AEC and/or AEM to the Federal Energy Regulatory Commission ("FERC") in connection with FERC's investigation

into possible violations of the FERC's posting and competitive bidding regulations for prearranged released firm capacity on natural gas pipelines [Request to both AEC and AEM].

ATMOS RESPONSE TO REQUEST AEC25.

Subject to and without waiving its General Objections, AEC responds as follows: AEC incorporates by reference its response to AEC 24.

MOTION TO COMPEL RESPONSE TO AEC25.

Please refer to Motion to Compel Response to AEC24, above.

9. FIRST DISCOVERY REQUEST AEC29.

For each month of AEC's fiscal year ended September 30, 2007, and the months of October through December 2007, provide the total monthly volumes billed by tariff by Atmos to its customers in Tennessee for each of the following areas defined in the company's tariff filed with the Tennessee Regulatory Authority: Areas 1, 2, 3 and 4.

ATMOS RESPONSE TO REQUEST AEC29.

Subject to and without waiving its General Objections, AEC responds as follows: See response to AEC 15. However, the Company does not maintain the information according to the rate areas referenced in this request.

MOTION TO COMPEL RESPONSE TO AEC29.

Atmos's answer to Request AEC29 is unresponsive and incomplete. The customer volumes by tariff provided in the referenced response to AEC15 are not provided on a monthly basis as requested. Rather the volumes supplied in response to AEC15 are annual volumes. Additionally, the customer volumes by tariff provided in the referenced response to AEC15 are not provided by Areas 1, 2, 3, and 4 as requested. Although Atmos states in its response that it does not maintain

monthly volumes billed by tariff by Areas 1, 2, 3, and 4, its tariffs specifically provide for these areas, which are described in the tariffs, and the Consumer Advocate has obtained this information by area from Atmos in previous cases, in particular docket number 07-00105. Atmos's tariff also requires it to track monthly volumes by area in order to apply the weather normalization adjustment rider (T.R.A. No. 1, 1st Revised Sheet Nos. 50-51).

10. FIRST DISCOVERY REQUEST AEC31.

For each month of AEC's fiscal years ending September 30, 2004, through September 30, 2007, and the months of October through December 2007, provide the total monthly volumes billed by Atmos to its customers in Virginia.

ATMOS RESPONSE TO REQUEST AEC31.

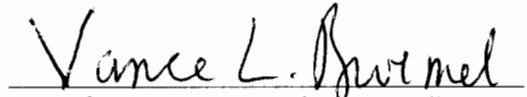
Subject to and without waiving its General Objections, AEC responds as follows: See the response to AEC15 of FY04-FY07 data, and see the attached response labeled CAPD AEC 31 containing October through December 20078 data.

MOTION TO COMPEL RESPONSE TO AEC31.

Atmos's answer to Request AEC31 is unresponsive and incomplete. The customer volumes by tariff provided in the referenced response to AEC15 are not provided on a monthly basis as requested. Rather the volumes supplied in response to AEC15 are annual volumes.

WHEREFORE, the Consumer Advocate respectfully requests that the Authority enter an order compelling Atmos to produce full and complete answers to the Consumer Advocate's discovery requests on or before March 7, 2008.

RESPECTFULLY SUBMITTED,



VANCE L. BROEMEL, B.P.R. #11421

Senior Counsel

Office of the Attorney General

Consumer Advocate and Protection Division

P.O. Box 20207

Nashville, Tennessee 37202

(615) 741-8733

Dated: February 25th, 2007

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via first-class U.S. Mail, postage prepaid, or electronic mail upon:

Patricia Childers
Vice President, Rates & Regulatory Affairs
Mid-States Division
Atmos Energy Corporation
810 Crescent Centre Drive, Suite 600
Franklin, Tennessee 37067-6226
pat.childers@atmosenergy.com

William T. Ramsey
A. Scott Ross
Neal & Harwell PLC
One Nashville Place, Suite 2000
150 Fourth Avenue North
Nashville, Tennessee 37219
ramseywt@nealharwell.com
sross@nealharwell.com

Douglas C. Walther
Associate General Counsel
Atmos Energy Corporation
5430 LBJ Freeway, Suite 1800
Dallas, Texas 75240
douglas.walther@atmosenergy.com

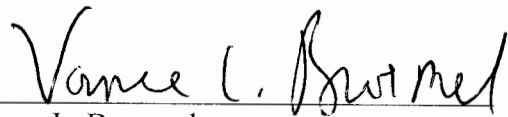
Melvin J. Malone
Miller & Martin PLLC
1200 One Nashville Place
150 Fourth Avenue North
Nashville, Tennessee 37219
mmalone@millermartin.com

D. Billye Sanders
Waller, Lansden, Dortch & Davis LLP
511 Union Street, Suite 2700
P.O. Box 198966
Nashville, Tennessee 37219-8966
billye.sanders@wallerlaw.com

Henry M. Walker
Boult, Cummings, Conners & Berry PLC
1600 Division Street, Suite 700
P.O. Box 340025
Nashville, Tennessee 37203
hwalker@boultcummings.com

John M. Dosker
General Counsel
Stand Energy Corporation
Rockwood Building, Suite 110
1077 Celestial Street
Cincinnati, Ohio 45202-1629
jdosker@stand-energy.com

This the 25th day of February, 2008.


Vance L. Broemel
Senior Counsel

#115434