

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

**April 30, 2008**

*In re: Request of Atmos Energy Corporation for )  
Approval of Contract(s) Regarding Gas Commodity )  
Requirements and Management of Transportation )  
Storage Contracts*

Docket No. 08-00024

**REPLY COMMENTS OF ATMOS INTERVENTION GROUP**

The Atmos Intervention Group ("AIG") joins in the reply comments submitted by the Consumer Advocate Division with the following additional remarks.

AIG strongly urges the TRA to make public the "winning" bid of AEM. That is the best way to protect the public interest in "guarding against favoritism and fraud." Marta v. Metro, 842 S.W.2d 611, 617 (Tenn. Ct. App., 1992).

The purpose of this bidding process is to maximize the benefit to ratepayers through the lease of these ratepayer funded assets to a non-regulated entity. The lease payments will be used to reduce the regulated price of gas purchased by monopoly customers of AEC. The bidding process, the selection of the winning bidder, and the final lease agreement all must be approved by the Authority. Therefore, for all intents and purposes, this is a government bidding process and is subject to the same "competitive bidding" requirements as any other local or state government bid in which public money is spent for the purchase of goods or services.

Tennessee courts have held that "competitive bidding has a legal meaning" and that meaning is expressed in state case law and statutes. State ex rel. v. Wright, 622 S.W.2d 807, 815 (Tenn., 1981). Those statutes and case law requirements are described in the Marta v. Metro and Leech v. Wright cases, cited above, and in Computer Shoppe v. State, 780 S.W.2d 729 (Tenn.

Ct. App. 1989). These three decisions contain an extensive discussion of the requirements and purpose of the "competitive bidding" requirements in Tennessee.

In order to insure that all bids are considered "honestly and fairly," competitive bidding statutes and case law recognize that disappointed bidders have the right to challenge a winning bid. Marta v. Metro, supra, 842 S.W. at 616-618. To do that, they must have the right to inspect the winning bid. Therefore, the statutory procedures governing the competitive bidding process require that bids be publicly opened and made available for inspection by anyone. For example, the statutes governing bids by departments of state government require that "all bids received by the department shall be publicly opened and examined." T.C.A. § 12-3-203(b). Similarly, the state statute governing competitive bidding by county officials states, "All sealed bids received shall be publicly opened" and that a record of all bids shall "be open to public inspection." T.C.A. § 5-14-108(i). The Tennessee Supreme Court in Leech v. Wright has explained that these statutory requirements contain "what the Legislature of the State clearly regards as the essentials of competitive bidding" applicable to government officials. 622 S.W.2d at 815.

The bidding procedures used by AEM to generate funds for ratepayers should be no different than the bidding processes used by government officials in Tennessee. The purpose of each procedure is the same i.e., to ensure that the public is protected from fraud and that all bidders are treated fairly. That cannot be done if the winning bid is kept secret.

Respectfully submitted,  
BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing is being forwarded via U.S. mail, to:

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on this the 30th day of April, 2008.

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Henry Walker