

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

IN RE:)	
)	Docket No. 08-00024
PETITION OF ATMOS ENERGY)	
CORPORATION FOR APPROVAL OF)	
THE CONTRACT(S) REGARDING GAS)	
COMMODITY REQUIREMENTS AND)	
MANAGEMENT OF TRANSPORTATION/)	
STORAGE CONTRACTS)	
)	

CONSUMER ADVOCATE’S RESPONSE TO AEC’S SUPPLEMENTAL BRIEF

Robert E. Cooper, Jr., the Attorney General and Reporter for the State of Tennessee, through the Consumer Advocate and Protection Division of the Office of the Attorney General (“Consumer Advocate”), respectfully submits this response to the supplemental brief of Atmos Energy Corporation (“AEC”) which was filed in this docket on July 9, 2008.

AEC asserts that the undisputed record, including the affidavit of Mark H. Johnson that was submitted yesterday contemporaneously with AEC’s supplemental brief, demonstrates the need for keeping the annual contract amount a secret. The Consumer Advocate disagrees.

AEC’s submission of the supplemental brief and Johnson affidavit undercuts the agreed procedural order entered in this docket on April 18, 2008. The parties have conducted discovery and have argued their cases. Indeed, the Consumer Advocate has argued that AEC’s stated need for secrecy of the annual contract amount is without merit because: (1) the annual contract amount does not meet the definition of “trade secret” under Tennessee law; (2) the assets that are the subject of the contract are paid for by AEC’s customers and the annual contract amount is substantially for the

benefit of these customers; (3) AEC has awarded the exclusive right to Atmos Energy Marketing (“AEM”) to manage AEC’s assets over a three-year period; thus, there will be no competitive bidding for these assets until the contract expires; (4) at the expiration of the contract’s three-year term, the annual contract amount will be stale because the value of particular gas supply assets change significantly over such periods of time due to the volatility in natural gas marketing; (5) the significant change in the value of assets over time is demonstrated by the significant difference in the annual contract amounts of the previous contract between AEC and AEM and the contract under review in this docket; (6) public policy reasons favor disclosure of the annual contract amount; and (7) AEC has voluntarily disclosed the annual contract amount to the public when it suited its needs to do so, which seriously undermines its argument for secrecy in this case. *See* Consumer Advocate’s Brief at 7-15; Consumer Advocate’s Reply Brief at 3-4. The facts supporting the Consumer Advocate’s arguments are in the public record and the record of this case, many of which can be taken from the face of the contract itself. Accordingly, AEC’s assertion that the record is undisputed in favor of keeping the annual contract amount a secret is simply incorrect.

Furthermore, if the Authority intends to rely on the late-filed Johnson affidavit for deciding the merits of the pending secrecy issue (or any other issue), the Consumer Advocate would request that it first be allowed to cross-examine Mr. Johnson and, if necessary, offer a rebuttal witness. A party cannot merely file an affidavit immediately prior to the Authority’s decision of a particular issue and then unilaterally claim that the factual assertions made therein are undisputed. *See Tennessee Consumer Advocate v. Tennessee Regulatory Authority*, 1997 WL 92079 (Tenn. Ct. App. Mar. 5, 1997) (“This Court concludes that the Commission committed a violation of basic principles of fairness in failing to afford the Consumer Advocate reasonable access to the materials to be

considered and reasonable opportunity to cross-examine or otherwise impeach the origin of such materials.”).

Respectfully submitted,



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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:

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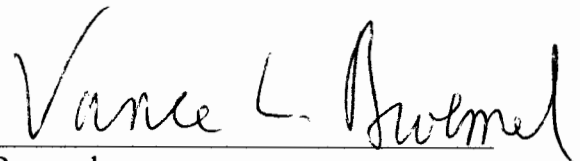
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This the 10th day of July, 2008.



#121448

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