

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

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

**ATMOS ENERGY CORPORATION'S RESPONSE TO
STAND ENERGY CORPORATION'S
MOTION FOR LEAVE TO FILE REPLY**

Atmos Energy Corporation respectfully submits this Response to Stand Energy's Motion for Leave to File a Reply to AEC's Response to Stand's Petition to Intervene.

On February 15, 2008, Stand filed its Petition to Intervene in this proceeding and its Motion to Stay. AEC filed its Response (the "Response") to Stand's pleadings on February 26, 2008, after requesting additional time from the Tennessee Regulatory Authority ("TRA") to file its response, which was granted by the TRA. On February 29, 2008, the Hearing Officer entered an order denying Stand's request to stay and reserved for later ruling the petitions to intervene of Stand, the Atmos Intervention Group ("AIG"), and the Consumer Advocate and Protection Division of the Tennessee Attorney General's Office ("CAPD"). AEC has objected to the intervention of Stand and AIG but does not object to the CAPD's intervention request.

"[I]ntervention in administrative proceedings is not of right, and administrative agencies have substantial discretion whether to grant or deny intervention." *Wood v. Metro Nashville & Davidson County*, 196 S.W.3d 152, 159 (Tenn. Ct. App. 2005). Stand argues that it should be permitted to intervene under the provisions of Tenn. Code Ann. § 4-5-310(a). But that provision requires, as a prerequisite to intervention, an intervention "petition [that] states facts

demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interest *may be determined* in the proceeding . . .”¹ Tenn. Code Ann. § 4-5-313(a)(2) (emphasis supplied). And even if an intervenor meets this prerequisite, the agency still retains discretion to deny intervention under subsection (3), which provides that intervention should be allowed only if the “administrative judge or hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.” Tenn. Code Ann. § 4-5-313(a)(3).

Stand does not even meet the threshold prerequisites of subsection (2) – it has not stated facts demonstrating that its legal interests “may be determined” in this proceeding. In fact, Stand does not even *argue* that it has a legal interest that “may be determined” in this proceeding. The most that Stand claims is that its “legal interest in having a level playing field . . . will be impacted,” and vaguely that this docket “will address issues that will directly affect” Stand’s interests. Even setting aside that Stand has utterly failed to support these conclusory legal assertions with any allegations of fact, as the statute requires, Stand’s claims do not meet the prerequisites required for intervention under 4-5-310. Stand does not claim any legal interest that “may be determined” in this proceeding.

In drafting section 4-5-310, the Tennessee legislature did not provide for intervention by anyone whose interests may be “affected” or “impacted” by an agency’s decision. Such a standard would open the door to intervention in agency decisions by practically any member of the public. Recognizing the danger of such open-ended public participation in agency adjudicative proceedings, Section 4-5-310 “strike[s] a balance between public participation in an administrative proceeding and the rights of the parties. The rights of the parties counterbalances

¹ The provision also allows for intervention by a petitioner who “qualifies as an intervenor under any provision of law,” i.e. under a separate statute allowing intervention, as would the Consumer Advocate, for example. Stand’s Reply does not argue that it qualifies for intervention in this manner.

the drive to let all interested persons participate.” *Wood, supra*, 196 S.W.3d at 159. This balance is struck around the specific language employed, which requires intervening parties to show that their legal interests “may be determined” in the proceeding.

This phrase – “may be determined” – is used throughout the Tennessee Code to reference decisions to be made on specific questions, questions that a statute is asking an agency or a court to decide. The phrase is used so often that a complete list will not be attempted here, but a few examples illustrate the point. Section 4-5-225 of the Uniform Administrative Procedures Act, governs declaratory judgments. It provides that “The legal validity or applicability of a statute, rule or order of an agency to specified circumstances *may be determined* in a suit for declaratory judgment in the chancery court of Davidson County . . .” Tenn. Code Ann. § 4-5-225(a) (emphasis supplied). The Tennessee Human Rights Act provides that “A person found to violate any of the provisions of this part is liable for . . . such other amount as *may be determined* by a jury or a court sitting without a jury . . . plus, in addition thereto, reasonable attorney’s fees and court costs as *may be determined* by the court.” Tenn. Code Ann. § 4-21-805(a)(2) (emphasis supplied). Section 6-51-301 provides for the transfer to a municipality of certain utility systems under certain circumstances and upon compensation paid “in such amount and in such manner as *may be determined* by the court.” Tenn. Code Ann. § 6-51-301(d). The Uniform Contribution Among Tortfeasors Act provides for the enforcement of contribution by motion “provided that, any issue as to indemnity *may be determined* at the hearing of such motion.” Tenn. Code Ann. § 29-11-104(b) (emphasis supplied). Section 56-1-312, dealing with certain student loan defaults, provides for a hearing but expressly limits the “issues that *may be determined* in such hearing.” Tenn. Code Ann. § 56-1-312(b)(2)(C) (emphasis supplied).

In restricting intervention to petitioners whose legal interests “may be determined” in an agency proceeding, Section 4-5-310 places certain limits around participation by the general public in agency proceedings, in order to achieve a balance between public participation and the rights of the parties to such proceedings. That statutory balance requires that an intervenor show that its own legal interests “may be determined,” i.e. may be decided by the agency as part of the proceeding at issue. In this case, Stand’s vague claim that its commercial interest in a “level playing field for marketers” may somehow be affected by the Authority’s decision whether to approve an asset management contract for AEC does not establish any kind of legal interest of Stand’s that will be adjudicated in this case.

Stand’s primary claim to holding a recognizable right to intervene in the proceeding is predicated on its alleged participation in the Tennessee gas market as an independent gas marketing firm. However, Stand fails to articulate any specific legal interest that may be determined in this case. Although Stand has some alleged grievances that are being addressed in other dockets pending before the TRA and identified in AEC’s Response, AEC respectfully submits that general complaints about the Tennessee gas market and Stand’s ability to compete in that market are insufficient to justify intervention in this docket.² The purpose of this docket is for the TRA to review, and hopefully approve, a gas supply and asset management agreement under which AEC will purchase gas for its firm sales customers in Tennessee and Virginia, as well as derive value for those customers through the asset manager’s use of firm capacity and storage assets. Stand has absolutely no interest in those assets, Stand is not a customer of AEC, Stand is not a supplier of AEC, Stand has not (to AEC’s knowledge) been retained by the TRA

² For instance, in *Wood v. Metropolitan Nashville & Davidson County Government*, 196 S.W.2d 152 (Tenn App. 2005), the Tennessee court of appeals upheld an agency’s denial of the request for intervention by a concerned citizen in a regulatory proceeding, holding that there was no legal authority supporting the proposition that a party with general grievances must be permitted to intervene.

or the CAPD as an advisor or consultant, and Stand does not serve any customers in Tennessee who purchase gas from AEC. Actually, what Stand wants to achieve is some form of relief from the TRA in the form of requiring AEC to revise its transportation tariff eligibility threshold and to make AEC's storage available to transportation customers and marketers in order to create a new market for Stand and other marketers in Tennessee based on the tariff design advocated by an AIG witness in AEC's recent general rate proceeding in TRA Docket No. 07-00105.³ Stand is again urging the same thing in TRA Docket No. 07-00020 involving changes proposed by AEC to its Rate Schedule 260 transportation tariff. At the hearing in TRA Docket No. 07-00105, both AIG and Stand abandoned their proposals regarding transportation eligibility and the transportation storage option and instead advocated a declining-block rate structure for certain customer classes that was denied by the TRA. Stand nonetheless has re-urged these abandoned proposals in TRA Docket No. 07-00020. In essence what Stand is arguing is that, for those marketers that do not wish to engage in the competitive RFP process for gas supply and asset management for AEC in Tennessee, the TRA should review whether the contract is fair to them.

Stand simply has not shown any legal interest that "may be determined" by the Authority's decision whether to approve an asset management contract in this case. Stand does not meet the prerequisites for intervention under 4-5-310(a)(2). And even if it did, the Authority still could – and should – deny intervention under subsection (3). To allow intervention under subsection (3) one would have to determine that allowing Stand to intervene in this case, and by extension every other entity who may want to change some aspect of the "competitive environment" to better suit its business, would not impair the "interests of justice" or the "orderly

³ In that docket, AIG proposed to lower the AEC transportation service threshold to 4,000 Ccf per year, to implement a transportation storage service option to transportation customers and their marketers, and several other tariff charges. See *Pre-Filed Testimony of William H. Novak*, dated August 21, 2007. Stand also advocated AIG's proposals.

and prompt conduct of the proceedings.” Tenn. Code Ann. § 4-5-310(a)(3). Atmos respectfully submits that this problem is exactly why the CAPD has been granted statutory authority to intervene. Tenn. Code Ann. § 65-4-118. Atmos does not object to the CAPD’s intervention in this matter. But it respectfully submits that Stand Energy’s petition to intervene should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

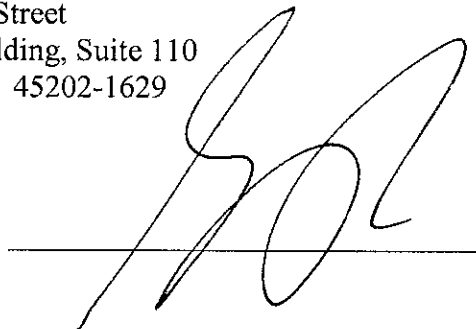
I hereby certify that a copy of the foregoing has been served, via the method(s) indicated below, on the following counsel, this the 12th day of March, 2008.

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A handwritten signature in black ink, appearing to read 'JD', is written over a horizontal line.