

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

**IN RE:**

<b>PETITION OF ATMOS ENERGY</b>	)	
<b>CORPORATION FOR APPROVAL OF</b>	)	
<b>ADJUSTMENT OF ITS RATES AND</b>	)	<b>DOCKET NO. 08-00197</b>
<b>REFISED TARIFF</b>	)	

---

**RESPONSES OF THE CONSUMER ADVOCATE AND PROTECTION DIVISION TO  
THE FIRST DISCOVERY REQUEST OF ATMOS ENERGY CORPORATION**

---

1. Please identify each person whom you expect to call as an expert witness at the hearing on the merits in this docket, and for each such expert witness:

- (a) Provide a complete educational, professional and employment history. Include in your response a complete disclosure of all aspects of the expert's education and employment background that you contend qualify the witness to render expert testimony on the issues on which he will testify in this case. Please be sure to include the date(s) applicable to each entry;
- (b) Separately for each expert witness, list all degrees, licenses, and certifications that the witness holds in any of the areas in which he will offer expert testimony in this case. Also include the entity that awarded the degree, license, or certification, and the year in which it was awarded;
- (c) Separately for each expert witness, list each published scholarly work (article, book chapter, book, etc.) that the witness has written on any of the subjects about which he will offer expert testimony in this case. Provide a citation to the work that includes the title, date, and publication. Indicate whether the work was subject to peer review before publication. Produce and separately identify all such works;
- (d) List all other scholarly works that each of your experts has written. Provide a citation to the work that includes the title, date, and publication. Indicate whether the work was subject to peer review before publication. Produce and separately identify all such works.
- (e) Separately for each expert witness, list and describe each scholarly presentation that the witness has made on any of the subjects about which he will offer expert testimony in this case. Provide the subject of the

presentation, the group to which the presentation was made, and the title and subject of the presentation. Produce and separately identify all written materials from each such presentation.

- (f) List and describe all other scholarly presentations that each of your experts has made. Provide the subject of the presentation, the group to which the presentation was made, and the title and subject of the presentation. Produce and separately identify all written materials from each such presentation.
- (g) Identify each matter in which the expert has testified or submitted pre-filed written testimony on any subject about which he intends to offer expert testimony in this case. For each matter, provide the name, docket number, forum, dates of testimony, whether the testimony was live or written, and the subjects on which the expert offered testimony in the case. Produce a copy of all such testimony (in electronic form if available).
- (h) Identify and produce any exhibits to be used in conjunction with each expert's testimony in this case; and
- (i) Produce each expert's entire file in this case, including all work papers, drafts, correspondence, spreadsheets, documents collected, summaries, charts, trade articles, journals, treatises, publications, file notes, chart notes, tests, test results, interview notes, and consultation notes provided to, reviewed by, utilized by, relied upon, created by, or produced by the expert witness in this matter. Where available, please provide working Excel files (or other data file types if applicable).

**RESPONSE:** Subject to and without waiving its objections filed on January 27, 2009, the Consumer Advocate responds as follows: See attached disk(s) containing responsive information and documents.

2. Produce copies of all hearing exhibits that you plan to introduce, use, or reference at the hearing on the merits in this docket.

**RESPONSE:** Subject to and without waiving its objections filed on January 27, 2009, the Consumer Advocate responds as follows: The Consumer Advocate has not yet identified the hearing exhibits in this docket.

3. Please provide computer files containing all documentation, workpapers, and calculations supporting the CAPD's pre-filed testimony. The workpapers and calculations should be in Excel 2003 working format with numbers, formulas and linked files provided.

**RESPONSE:** The supporting workpapers in Excel format were previously provided on January 16, 2009, and January 28, 2009.

4. Produce a copy of all hearing transcripts from, Docket 08-00039, In Re: Petition of Tennessee American Water Company, etc. Production in searchable electronic form is preferred if available.

**RESPONSE:** Subject to and without waiving its objections filed on January 27, 2009, the Consumer Advocate responds as follows: The Consumer Advocate understands that Atmos has received these transcripts from another source; however, the non-confidential portions of these transcripts are available from the TRA.

5. Please describe in detail with supporting calculations all of the steps the CAPD utilized in calculating the following amounts on the spreadsheet titled E-REC SUMMARY:

Column CAPD: Payroll \$3,324,590

Column ATMOS: Pension Expense \$757,237

Column CAPD: Pension Expense \$750,920

Column ATMOS: LTIP Expense \$359,058

Column CAPD: LTIP Expense \$301,048

Column ATMOS: Rate Case Expense \$130,270

Column CAPD: Rate Case Expense \$32,583

**RESPONSE:** The “Column CAPD: Payroll \$3,324,590” was computed by summing the salary and wage amounts provided in Atmos’ response to CAPD DR #19. The supporting calculations were provided previously in Dave Peters’ Workpaper E-PAY-3.

The “Column ATMOS: Pension Expense \$757,237” was computed by summing the Tennessee pension amounts by division for the test period ended June 30, 2008, provided in Atmos’ response to CAPD DR #27. The Tennessee pension amounts were computed by applying the Tennessee allocation factors for each division, which can be found in Thomas Petersen’s WP THP 6-1. See the supplemental workpaper on the enclosed disk for calculations.

The “Column CAPD: Pension Expense \$750,920” was computed by summing the Tennessee pension amounts by division for the test period ended September 30, 2008, provided in Atmos’ response to CAPD DR #27. The Tennessee pension amounts were computed by applying the Tennessee allocation factors for each division, which can be found in Thomas Petersen’s WP THP 6-1. See the supplemental workpaper on the enclosed disk for calculations.

The “Column ATMOS: LTIP Expense \$359,058” was computed by summing the Tennessee LTIP amounts by division for the test period ended June 30, 2008, provided in Atmos’ response to CAPD DR #29. The Tennessee LTIP amounts were computed by applying the Tennessee allocation factors for each division, which can be found in Thomas Petersen’s WP THP 6-1. See the supplemental workpaper on the enclosed disk for calculations.

The “Column CAPD: LTIP Expense \$301,048” was computed by summing the Tennessee LTIP amounts by division for the test period ended September 30, 2008, provided in Atmos’ response to CAPD DR #29. The Tennessee LTIP amounts were computed by applying the Tennessee allocation factors for each division, which can be found in Thomas Petersen’s WP THP 6-1. See the supplemental workpaper on the enclosed disk for calculations.

The “Column ATMOS: Rate Case Expense \$130,270” was computed by adding the monthly amortization amounts for the test period ended June 30, 2008, derived from Thomas Petersen’s WP THP 7-3. The monthly amortization amounts were computed by taking the difference between the corresponding unamortized beginning balance and unamortized ending balance shown in Mr. Petersen’s workpaper. See the supplemental workpaper on the enclosed disk for calculations.

The “Column CAPD: Rate Case Expense \$32,583” was computed by adding the monthly amortization amounts for the test period ended September 30, 2008, derived from Thomas Petersen’s WP THP 7-3. The monthly amortization amounts were computed by taking the difference between the corresponding unamortized beginning balance and unamortized ending balance shown in Mr. Petersen’s workpaper. See the supplemental workpaper on the enclosed disk for calculations.

6. In this case as in other past cases, the Consumer Advocate’s witnesses offer forecasts of the utility’s future revenue and costs. Has the Consumer Advocate or any of its analysts ever reviewed or studied the accuracy of their past forecasts or forecasting methodologies? If so, provide a reasonable description of the methodology employed in each such review or study, the results thereof, and produce any reports, spreadsheets, or other documents related thereto.

**RESPONSE:** Subject to and without waiving its objections filed on January 27, 2009, the Consumer Advocate responds as follows: The Consumer Advocate does not routinely study the accuracy of past rate case forecasts by comparing the forecasts with reported results. Rather than comparing such forecasts with reported results, the Consumer Advocate routinely monitors

the financial performance of public utilities by examining the data reported by the utility in its TRA surveillance reports and comparing those results with the rates authorized by the TRA. During this monitoring, the Consumer Advocate considers the fact that a public utility has significant discretion over its operations and its financial reporting to the TRA. For example, a public utility may continue to report disallowed costs in its TRA surveillance reports, such as Long Term Incentive Pay (“LTIP”) and FAS 87 pension costs. Moreover, the timing and amount of any rate adjustment occurring during the monitoring period must be accounted for. Furthermore, the Consumer Advocate is often without sufficient information from a review of the TRA surveillance reports alone to adequately reconcile the propriety of reported results with authorized rates.

On a case-by-case basis, the Consumer Advocate may compare certain aspects of its past rate case forecasts with reported results. Records of such comparisons are not maintained, however. During the preparation of this rate case, the only comparison of past forecasts with reported results conducted by the Consumer Advocate was for the payroll capitalization rate. This comparison showed that for Docket 05-00258, the Consumer Advocate forecasted a payroll capitalization rate of 60.00% for the attrition year; that Atmos forecasted a payroll capitalization rate of 58.00% for the attrition year; and that the actual payroll capitalization rate for the attrition year was 60.09%. (See responsive information and documents regarding this comparison on the enclosed disk.) The data was not available to make this same comparison of the forecasted payroll capitalization rate with the actual rate for Docket 07-00105; however, a cursory review of available data showed that the difference between the forecasted rate and the actual rate was not likely to be significant for either the Consumer Advocate or Atmos. If additional comparisons of past forecasts with reported results are prepared by the Consumer Advocate during the course of

this case, the Consumer Advocate will produce them to Atmos via supplemental discovery responses.

7. Produce the final order(s) and any associated memorandum opinions in TRA Docket 96-00977.

**RESPONSE:** Subject to and without waiving its objections filed on January 27, 2009, the Consumer Advocate responds as follows: See responsive documents on the enclosed disk.

8. Produce a copy of the incentive plan referenced on page 8, line 1 of the pre-filed testimony of CAPD witness Dave Peters.

**RESPONSE:** Subject to and without waiving its objections filed on January 27, 2009, the Consumer Advocate responds as follows: The Consumer Advocate is not in possession of a copy of the incentive plan.

9. Produce all testimony (written or live) in TRA Docket 96-00977 that relates to the incentive plan referenced on page 8, line 1 of the pre-filed testimony of CAPD witness Dave Peters.

**RESPONSE:** Subject to and without waiving its objections filed on January 27, 2009, the Consumer Advocate responds as follows: See the Consumer Advocate's response to Request No. 1.

10. Do ratepayers benefit from a utility controlling expenses while continuing to provide safe and reliable natural gas service.

**RESPONSE:** Ratepayers may share in the benefits of a utility's efforts to control expenses under certain circumstances; however, in a rate-of-return regulated environment, such as in this case, shareholders may receive the benefits of such cost-controlling efforts. For example, when Atmos purchased United Cities Gas, the cost savings generated by the centralization and synergy of this acquisition inured to the shareholders due to the lack of any timely adjustment to customer rates. That is, the cost savings realized from the acquisition were not reflected timely in the customer's rates. See Consumer Advocate's Petition in TRA Docket #05-00258 (<http://www.state.tn.us/tra/orders/2005/0500258.pdf>.) Ratepayers may benefit from specific cost-control programs to the extent any resulting cost savings are measured and flowed through to the ratepayers. Regardless of whether specific cost-control programs are undertaken, the company's directors and managers have a continuing responsibility to operate the utility in a cost efficient manner.

In this case, Atmos' efforts to control costs must be viewed in light of its request to increase its shared service expenses by 18%, as well as to increase its overall expenses by 12%.

11. List each case in which CAPD witness Terry Buckner has provided testimony (written or live) regarding a forecast of operating revenues for a company, by revenue class or in total. For each such case, provide the following information: utility name, docket number, the timeframe used to calculate the forecast, the operating revenue forecast recommended by Terry Buckner; the utility's operating revenue forecast. You may limit your response to the time period since Terry Buckner has been employed by the Tennessee Public Service Commission.

**RESPONSE:** Subject to and without waiving its objections filed on January 27, 2009, the Consumer Advocate responds as follows: See the Consumer Advocate's response to Request



No. 1.

12. List each case in which CAPD witness Terry Buckner has provided testimony (written or live) regarding the cost of service for a company. For each such case, provide the following information: utility name, docket number, the cost of service recommended by Terry Buckner; the utility's requested cost of service. You may limit your response to the time period since Terry Buckner has been employed by the Tennessee Public Service Commission.

**RESPONSE:** Subject to and without waiving its objections filed on January 27, 2009, the Consumer Advocate responds as follows: See the Consumer Advocate's response to Request No. 1.

13. List each case in which CAPD witness Terry Buckner has provided testimony (written or live) on subject matter other than operating revenue forecast or cost of service. For each such case, provide the following information: utility name, docket number, the subject matter addressed by Terry Buckner. You may limit your response to the time period since Terry Buckner has been employed by the Tennessee Public Service Commission.

**RESPONSE:** Subject to and without waiving its objections filed on January 27, 2009, the Consumer Advocate responds as follows: See the Consumer Advocate's response to Request No. 1.

14. List each case in which CAPD witness Dave Peters has provided testimony (written or live). For each such case, provide the following information: utility name, docket number, the subject matter addressed by Dave Peters.

**RESPONSE:** CAPD witness Dave Peters has not previously provided testimony in

public utility rate hearings.

15. Provide a detailed description of Dave Peters' work experience at the TRA, at Dell Computers and at Nortel Networks.

**RESPONSE:** CAPD witness Dave Peters has not previously worked at the TRA. Mr. Peters' work experience at Dell Computers and at Nortel Networks is described in Mr. Peters' resume, which is provided in response to Request No. 1.

16. Please provide a copy of all testimony (written or live) in TRA Docket 99-00994 that relates to pension contributions, pension funding, and/or pension expense recovery.

**RESPONSE:** Subject to and without waiving its objections filed on January 27, 2009, the Consumer Advocate responds as follows: The Consumer Advocate did not file or offer testimony in TRA Docket 99-00994. The settlement agreement in that docket, which addresses the issues in that case, can be accessed via the Internet at the following URL: <http://www.state.tn.us/tra/orders/1999/990099422.pdf>.

17. Describe in detail the analysis performed by Dave Peters that forms the basis of his belief expressed on Page 12, Lines 2 and 3 of his pre-filed testimony that "I believe that it [a three – year amortization of rate case expense] is more likely to reflect the actual pace of rate cases that can be expected in the future."

**RESPONSE:** This belief is based on the actual pace of rate case amortization expense adopted in the last two Atmos rate cases, TRA Dockets 05-00258 and 07-00105.

18. Provide a listing of “prior TRA decisions” referred to on Page 12, line 1 in the pre-filed testimony of CAPD witness Dave Peters. For each, include the date, case style, docket number, and the date and title of the order or other pleading in which the decision is reflected in the record. Produce a copy of each such decision.

**RESPONSE:** Subject to and without waiving its objections filed on January 27, 2009, the Consumer Advocate responds as follows:

- A. In Re: Petition of the Consumer Advocate to Open an Investigation to Determine Whether Atmos Energy Corp. should be Required by the Tennessee Regulatory Authority to Appear and Show Cause that Atmos Energy Corp. is Not Overearning in Violation of Tennessee Law and that it is Charging Rates that are Just And Reasonable, TRA Docket 05-00258, Director Miller’s Motion at <http://www.state.tn.us/tra/orders/2005/0500258jz.pdf> (Written Order Unavailable) and pleadings at <http://www.state.tn.us/tra/orders/2005/0500258jz.pdf>.
- B. In Re: Petition of Tennessee American Water Company to Change and Increase Certain Rates and Charges so as to Permit it to Earn a Fair and Adequate Rate of Return on its Property Used and Useful in Furnishing Water Service to its Customers, TRA Docket 06-00290, Order at <http://www.state.tn.us/tra/orders/2006/0600290hv.pdf> and pleadings at <http://www.state.tn.us/tra/orders/2006/0600290hv.pdf>.
- C. In Re: Petition of Tennessee American Water Company to Change and Increase Certain Rates and Charges so as to Permit it to Earn a Fair And Adequate Rate of Return on its Property Used and Useful in Furnishing Water Service to its Customers, TRA Docket 08-00039, Order at <http://www.state.tn.us/tra/orders/2008/0800039we.pdf> and pleadings at <http://www.state.tn.us/tra/orders/2008/0800039we.pdf>.

19. Describe in detail the analysis performed by CAPD witness Dave Peters that forms the basis of his opinion contained on Page 11, Lines 11 and 12 that “this growth rate [in shared services and division general office] ... is unwarranted, unjust, and unreasonable.”

**RESPONSE:** This opinion is based on the comparison of Atmos’ expense growth rate with Mr. Peters’ analysis of recent inflation factors, which was provided in Mr. Peters’ Workpaper E-GDP, as well as Mr. Peters’ review of Terry Buckner’s analysis of customer

growth, which was provided in Mr. Buckner's Workpaper R-Total Customer Trend, neither of which support Atmos' expense growth rate. Furthermore, this opinion is based on Mr. Peters' review of Atmos' response to CAPD DR #38, particularly the response's failure to adequately describe the assumptions that support Atmos' expense growth rate, as was requested.

20. Identify each and every specific cost in the shared services division and in the KY/Mid-States division general office that the Consumer Advocate's witnesses determined was not just, reasonable, and prudently incurred. For each such identified cost, please describe the basis for such determination.

**RESPONSE:** Subject to and without waiving its objections filed on January 27, 2009, the Consumer Advocate responds as follows: The Consumer Advocate has not examined each and every specific cost in the shared services division and in the KY/Mid-State division general office. The burden of proving that such costs are just, reasonable, and prudently incurred rest with the company. The Consumer Advocate's method of reviewing petitions for rate increases is evidenced by the Consumer Advocate's pre-filed testimony.

21. Describe in detail all of the steps utilized in calculating or otherwise determining the recommended \$619,143 adjustment to O&M expense reflected on Page 11, Line 7 of the pre-filed testimony of CAPD witness Dave Peters.

**RESPONSE:** The \$619,143 adjustment to O&M expense is attributable to the different expense growth rates used by Atmos and the Consumer Advocate for forecasting a general basket of Other O&M expenses. The general basket of Other O&M expenses consists of total O&M expenses less payroll, pensions, Long Term Incentive Pay (LTIP), rate case expense, and

uncollectible expense. Payroll, pensions, LTIP, rate case expense, and uncollectible expense were forecasted individually. The general basket of Other O&M expenses was forecasted by applying a general Other O&M expense growth rate consisting of the latest-available GDP inflation factor plus one-half of the average annual customer growth rate for the last four years. The GDP analysis is shown on Mr. Peters' Workpaper E-GDP. The average annual customer growth rate analysis is shown on Mr. Buckner's Workpaper R-Total Customer Trend. The application of the general Other O&M expense growth rate to the general basket of Other O&M expenses is shown in Mr. Peters' workpapers, in particular the workpapers listed in Mr. Peters' Index of Workpapers, pp. 14-80. This procedure produced an aggregate adjustment of \$619,143 for the general basket of Other O&M expenses, which is summarized on Mr. Peters' Workpaper E-Rec Summary.

22. List each case in which Steve Brown has provided testimony (written or live) regarding cost of capital or rate of return. For each such case, provide the following information: utility name; docket number; jurisdiction; short term debt cost recommended by Dr. Brown; long term debt cost recommended by Dr. Brown; equity cost of capital recommended by Dr. Brown; short term debt cost recommended by the utility's witness; long term debt cost recommended by the utility's witness; equity cost of capital recommended by the utility's witness. Aside from the request for case name, docket number, and jurisdiction (which should be provided for all cases in which Dr. Brown has provided testimony regarding cost of capital or rate of return), you may limit your response to the time period since Dr. Brown has been employed by the Consumer Advocate.

**RESPONSE:** Subject to and without waiving its objections filed on January 27, 2009, the Consumer Advocate responds as follows: See attached disk(s) containing responsive information and documents.

23. In this case, Steve Brown relies upon the discounted cash flow (DCF) method to establish his recommended return on equity for Atmos, indicating that in his view the DCF method is superior to the capital asset pricing model (CAPM). For each other case in which Dr. Brown has offered testimony (written or live) regarding a utility's cost of equity or return on equity, provide the case name, docket number, and jurisdiction, and indicate the method by which Dr. Brown derived his opinion on the cost of equity and/or return on equity. If Dr. Brown utilized either the DCF and/or CAPM methods, please indicate which one he used as the basis for his opinion.

**RESPONSE:** Subject to and without waiving its objections filed on January 27, 2009, the Consumer Advocate responds as follows: See attached disk(s) containing responsive information and documents.

24. List each undergraduate, graduate, or other academic course in which Steve Brown received education that tends to make Dr. Brown an expert regarding the cost of equity or return on equity for a utility. For each such course, provide the course title, the institution at which Dr. Brown took the course, the year(s), and the final grade that Dr. Brown received.

**RESPONSE:** Subject to and without waiving its objections filed on January 27, 2009, the Consumer Advocate responds as follows: See attached disk(s) containing responsive information and documents. The Consumer Advocate has requested information from the

pertinent educational institutions, but has not received the information. The Consumer Advocate will supplement this response.

25. List each case in which Steve Brown has provided testimony (written or live) regarding capital structure. For each such case, provide the following information: utility name; docket number; short term debt percentage recommended by Dr. Brown; long term debt percentage recommended by Dr. Brown; equity percentage recommended by Dr. Brown; short term debt percentage recommended by the utility's witness; long term debt percentage recommended by the utility's witness; equity percentage recommended by the utility's witness. You may limit your response to the time period since Dr. Brown has been employed by the Consumer Advocate.

**RESPONSE:** Subject to and without waiving its objections filed on January 27, 2009, the Consumer Advocate responds as follows: See attached disk(s) containing responsive information and documents.

26. In this case, Dr. Brown indicates that his recommended capital structure is based upon the five year average capital structure of a group of "comparable companies." For each other case in which Dr. Brown has offered testimony (written or live) regarding capital structure, provide the case name and docket number and a description of the method by which Dr. Brown derived his recommended capital structure. If Dr. Brown derived his recommended capital structure by reference to a group of comparable companies, for each such case separately list the comparable companies utilized by Dr. Brown. You may limit your response to the time period since Dr. Brown has been employed by the Consumer Advocate.

**RESPONSE:** Subject to and without waiving its objections filed on January 27, 2009, the Consumer Advocate responds as follows: See attached disk(s) containing responsive information and documents.

27. List each undergraduate, graduate, or other academic course in which Steve Brown received education that tends to make Dr. Brown an expert on the appropriate capital structure for a utility. For each such course, provide the course title, the institution at which Dr. Brown took the course, the year(s), and the final grade that Dr. Brown received.

**RESPONSE:** Subject to and without waiving its objections filed on January 27, 2009, the Consumer Advocate responds as follows: See attached disk(s) containing responsive information and documents. The Consumer Advocate has requested information from the pertinent educational institutions, but has not received the information. The Consumer Advocate will supplement this response.

28. Produce and separately identify all of the 10-K reports or other audited financial information for comparable companies (or potential comparable companies) that Steve Brown reviewed in connection with this case.

**RESPONSE:** See attached disk(s) containing responsive information and documents.

29. Produce and separately identify all unaudited financial information that Steve Brown reviewed in connection with this case.

**RESPONSE:** Subject to and without waiving its objections filed on January 27, 2009, the Consumer Advocate responds as follows: See attached disk(s) containing responsive



information and documents. See also, SEC form 424B2 for Atmos Filed December 2006 with the SEC.

30. What is the source of the data used to create the table of “Shares Outstanding and Method To Increase Shares OutStanding [sic.]” appearing on page 27 of Steve Brown’s direct testimony in this matter? Produce and separately identify the source data.

**RESPONSE:** SEC Form 10-Ks for each comparable company from 2001 forward. See attached disk(s) containing responsive information and documents.

31. What is the source of the data used to create the tables labeled “Cost of Equity: DCF Model,” appearing on page 40 of Steve Brown’s direct testimony in this matter? Produce and separately identify the source data.

**RESPONSE:** SEC Form 10-Ks for each comparable company. See attached disk(s) containing responsive information and documents.

32. Identify every case in which the Tennessee Regulatory Authority, the Tennessee Public Service Commission, or any other court or regulatory body in any jurisdiction has adopted the capital cost recommended in testimony offered by Steve Brown. For each such case, provide the case name, docket number, jurisdiction, indicate whether Dr. Brown’s recommended capital cost was contested by the utility, and provide the capital cost that was recommended by Dr. Brown and adopted by the agency.

**RESPONSE:** None.

33. Identify every case about which the Consumer Advocate or any of its witnesses or analysts have knowledge in which the Tennessee Regulatory Authority, the Tennessee Public Service Commission, or any other utility regulatory body has adopted a total weighted capital cost of 6.5% or lower, or an equity cost of 7.8% or lower. For each such case, provide the case name, jurisdiction, docket number, the name of the utility involved, and the weighted capital cost and equity cost that was adopted in the case.

**RESPONSE:** None.

34. Identify by the URL and produce a copy of each internet web page that Steve Brown reviewed in his work on this case, including those that he reviewed and ultimately decided not to utilize in support of his testimony.

**RESPONSE:** Subject to and without waiving its objections filed on January 27, 2009, the Consumer Advocate responds as follows: Those URLs used in testimony have been indicated in testimony. For the URLs reviewed but not used see attached disk(s) containing responsive information and documents.

35. Up through the submission of his written direct testimony in this case, how many hours did Steve Brown spend working on this case? Of those, how many hours did Dr. Brown spend searching for and reviewing information on the internet?

**RESPONSE:** Exact times are difficult to estimate. However, Dr. Brown estimates that he has spent over 300 hours in his work related to this docket and over 30 hours on the internet.

36. In his written direct testimony, Steve Brown quotes a number of people and/or organizations that are neither parties nor witnesses in this case. Separately for each, produce and separately identify the full source material from which the quoted portion was excerpted; and produce and separately identify all other statements by each such person and/or organization that Dr. Brown reviewed but did not quote in his direct testimony.

**RESPONSE:** Subject to and without waiving its objections filed on January 27, 2009, the Consumer Advocate responds as follows: See attached disk(s) containing responsive information and documents.

37. Has the University of Denver ever offered post-graduate degrees (i.e. masters or PhDs) in economics? Did the University of Denver offer such degrees when Dr. Brown studied there?

**RESPONSE:** Subject to and without waiving its objections filed on January 27, 2009, the Consumer Advocate responds as follows: As indicated in credentials section, Dr. Brown has a Ph. D in International Relations with specialty in International Economics. While Dr. Brown was studying at the University of Denver the school did not offer a Ph. D within the economics.

38. In his work for the following entities (Tri-State Generation and Transmission Association, Arizona Electric Cooperative, Houston Lighting & Power, Iowa Utilities Board), did Steve Brown ever offer written or live testimony concerning a utility's cost of capital or capital structure? If so, identify each case in which he offered such testimony, and provide the case name, jurisdiction, utility involved, and the capital cost and capital structure that Dr. Brown recommended in his testimony.

**RESPONSE:** Subject to and without waiving its objections filed on January 27, 2009, the Consumer Advocate responds as follows: See attached disk(s) containing responsive information and documents. Dr. Brown recalls the following: Arizona Electric Power, 1 case, written testimony 1982 or 1983. No other information available at this time. Houston Lighting and Power, live testimony 1984 or 1985. No other information available at this time.

39. Identify each statistical method utilized by Steve Brown in connection with the opinions offered by him in this case, identify the page of Dr. Brown's written testimony in which the analysis or its results are discussed, and explain how each method was used in this case.

**RESPONSE:** Averages. See attached disk(s) containing responsive information and documents.

40. Provide data on the percentage of revenues Energen, Equitable, ONEOK, Questar, and Equitable receive from the sale of oil. **Reference: Brown, p. 3, lines 18 – 20.**

**RESPONSE:** Subject to and without waiving its objections filed on January 27, 2009, the Consumer Advocate responds as follows: See attached disk(s) containing responsive information and documents. In particular, the information the Consumer Advocate has is contained in the SEC 10-Ks provided in workpapers.

41. With respect to Dr. Brown's testimony at page 3, lines 32 – 35, please respond to the following questions.

- a. Confirm that a company's "cost of equity" is defined as the return investors expect to receive on other investments of the same risk.

- b. Confirm that the cost of equity is determined in the capital markets, not by the Alabama Public Service Commission.
- c. Confirm that the Alabama Public Service Commission determines the allowed return on equity (“ROE”), not the cost of equity.
- d. Explain in detail why the method of setting Alagasco’s allowed ROE in Alabama disqualifies Energen as a comparable company.

**Reference: Brown, p. 3, lines 32 – 35.**

**RESPONSE:**

- a. Confirm.
- b. Deny
- c. Deny,
- d. The return is set on a forward basis without a contested case to examine evidence.

42. With respect to Dr. Brown’s testimony at page 9, lines 1 – 31, and page 10, lines 1 – 9, please provide the following:

- a. Confirm that Dr. Brown included New Jersey Resources in his comparable group.
- b. Confirm that New Jersey Resources receives only 37 percent of its income from natural gas distribution activities.
- c. Confirm that New Jersey Resources Energy Services accounts for more than 60 percent of New Jersey Resources’ income.
- d.

**Reference: Brown, p. 9, lines 1 – 31, and p. 10, lines 1 – 9.**

**RESPONSE:**

- a. Confirm.
- b. Confirm.

c. Confirm.

43. Provide information on the percent of income Energen, Equitable, ONEOK, and Questar obtain from combined regulated natural gas distribution, regulated pipeline, and energy marketing segments. **Reference: Brown, p. 4, line 19 to p. 6, line 10.**

**RESPONSE:** Subject to and without waiving its objections filed on January 27, 2009, the Consumer Advocate responds as follows: This information has been provided in testimony and in SEC Form 10ks.

44. Provide a list of all rate cases in Tennessee where the Tennessee Regulatory Authority used the average book value capital structure for a group of comparable companies as the appropriate capital structure for setting rates for the target company. **Reference: p. 12, lines 20 – 22.**

**RESPONSE:** None.

45. Confirm that the January 16, 2009, issue of *The Value Line Investment Survey Selection & Opinion* indicates that the prime rate as of January 7, 2009, is 3.25 percent and that the prime rate as of October 8, 2008, was 4.50 percent. **Reference: Brown, p. 12.**

**RESPONSE:** Subject to and without waiving its objections filed on January 27, 2009, the Consumer Advocate responds as follows: The Consumer Advocate does not have access to the source material.

46. With reference to Dr. Brown's testimony at page 16, line 8, through page 19, lines 32, please respond to the following information requests:

- a. Dr. Brown claims that investors rely on capital structures that have been verified by independent auditors. What evidence does the Consumer Advocate have to support the proposition that investors rely only on capital structures that have been verified by independent auditors? Produce and separately identify all such evidence.
- b. As a publicly-traded company, is Atmos Energy required to file quarterly financial statements (10-Qs) with the Securities and Exchange Commission?
- c. Do Atmos Energy's 10-Qs contain information on the Company's capital structure?
- d. Does Dr. Brown contend that investors do not rely on capital structure information contained in Atmos Energy's quarterly financial statements filed with the SEC?
- e. If the answer to part (d.) is yes, explain why the SEC requires Atmos Energy and other publicly-traded companies to file quarterly financial statements.

**Reference: Brown, p. 16, line 8, to p. 19, line 32.**

**RESPONSE:**

- a. See AEC's own emphasis on audited data as representative of its financial condition per the AEC's SEC form 424B2 which is referenced in Dr. Brown's testimony
- b. Yes
- c. Yes.
- d. Yes, investors who make long-term investments rely on annual audited statements instead of relying on a report that is for three months and not audited.
- e. The SEC does not like surprises. They use the quarterly reports for their own monitoring purposes which have been supplemented by Sarbanes Oxley.

47. With respect to Dr. Brown's testimony at p. 19, lines 29 – 32, please provide the following information:

- a. Identify and produce any evidence supporting the proposition that the Tennessee Regulatory Authority relies only on "audited balance sheets" to set rates for public utilities in Tennessee.
- b. Are there any instances in which the Tennessee Regulatory Authority relies on un-audited balance sheets to set rates for public utilities in Tennessee?
- c. Identify and produce any evidence supporting the proposition that the Tennessee Regulatory Authority considers "audited balance sheets" and use of balance sheets for comparable companies to be two principles "central to ratemaking" in Tennessee.

**Reference: Brown, p. 19, lines 29 -32.**

**RESPONSE:**

- a. The TRA uses various considerations to set rates. See attached disk(s) containing responsive information and documents.
- b. See a above.
- c. At page 58 of its Final Order in Docket 04-00034 the Authority concluded that the average of AGL's audited capital structure for last three fiscal years was appropriate to set a capital structure. The Authority said: "the Authority approves a capital structure consisting of 16.40 % short-term debt at 2.31% cost; 37.90% of long-term debt at 6.74% cost; 10.20% of preferred equity at 8.54% cost; and 35.50% of common equity at 10.20% return on equity. Applying this method to the current docket and using AEC's audited capital structures in the last three fiscal years gives a capital structure of 6.80% short-term debt, 49.60% of long-term debt, 43.6% of common equity.



48. With reference to Dr. Brown's testimony at page 14 and at page 22, lines 10 – 16, please provide the following information:

- a. Identify and produce any evidence supporting the proposition that the Tennessee Regulatory Authority typically relies on "spot" interest rates, that is, interest rates as of a single day, to determine the allowed interest rate on short-term debt to set rates for public utilities.
- b. Identify and produce any evidence supporting the proposition that the interest rate on Atmos Energy's short-term debt is based on an average of the one-month, three-month, and six-month LIBOR interest rate.
- c. Provide data on the average one-month, three-month, and six-month LIBOR interest rates over the twelve months ending December 31, 2008.

**Reference: p. 14, and p. 22, lines 10 - 16.**

**RESPONSE:**

- a. See TRA Docket Number 04-00034.
- b. Refer to page 15 of Dr. Brown's testimony, where Ms. Sherwood identifies LIBOR as the underlying market rate.
- d. All interest rates for imminent debt are very low and expected to remain so. LIBOR interest rates over the past 12 months are available within the public domain.

49. With reference to Dr. Brown's testimony at pp. 28 – 33, please provide the following information:

- a. Confirm that the reference on p. 28, line 19, should p. 29 rather than p. 31.
- b. Confirm that the five fiscal years referenced in the chart on p. 29 are 2003, 2004, 2005, 2006, and 2007 for those companies whose fiscal years end December 31; and that the five fiscal years referenced in the chart on p. 29 are 2004, 2005, 2006, 2007, and 2008 for those companies whose fiscal years end in either September or October.

- c. Confirm that the average common equity ratio for the comparable companies shown on p. 29 has increased from 43.96 percent at the end of the earliest fiscal year to 47.33 percent at the end of the most recent fiscal year.
- d. Confirm that five of Dr. Brown's eight comparable companies have fiscal years ending December 31, that two companies have fiscal years ending September 30, and one company has a fiscal year ending October 31.
- e. Confirm that natural gas distribution companies typically use short-term debt to finance seasonal inventories of natural gas.
- f. Confirm that natural gas distribution companies typically have significantly higher short-term debt balances at the beginning of the winter heating season (that is, the fourth quarter of each calendar year) than at other times.
- g. If (f.) cannot be confirmed, provide data in an Excel spreadsheet with formulae intact on the average capital structure for each of Dr. Brown's comparable companies at the end of each quarter for the most recent five year period.

**Reference: Brown, pp. 28 - 33.**

**RESPONSE:** Subject to and without waiving its objections regarding subsection (g) of the request filed on January 27, 2009, the Consumer Advocate responds as follows:

- a. Yes.
- b. Yes.
- c. Yes.
- d. Yes.
- e. Deny. Short term debt is used for a "myriad of things" including the financing of acquisitions and other uses when the cost of short-term debt is less than the cost of long-term debt. In Docket 05-00258, Ms. Sherwood testified:

“So you'd first have to back out short-term debt. And in some of those years, short-term debt had gone up. In some years, it's a relatively small percentage, but, again, that's a function of seasonality and natural gas prices, and there's a myriad of things that affect that, but it floats up and down. It tends to be highest in the September and the December quarters.”[Docket No.05-00258 TRANSCRIPT OF PROCEEDINGS THURSDAY, AUGUST 31, 2006 VOLUME VIII P. 13 L. 1-8.]

- f. Deny. In its previous rate case before the TRA, Docket 07-00258, Atmos’s cost of capital witness presented the following data in Schedule DAM-9 where Atmos’s balance in December 2006 was just \$154 million, far lower than the other months:

October, 2005	\$292,500,000
November, 2005	\$346,255,000
December, 2005	\$399,450,000
January, 2006	\$407,275,000
February, 2006	\$346,900,000
March, 2006	\$262,475,000
April, 2006	\$238,875,000
May, 2006	\$222,350,000
June, 2006	\$297,550,000
July, 2006	\$298,225,000
August, 2006	\$292,086,000
September, 2006	\$383,386,000
October, 2006	\$406,125,000
November, 2006	\$393,475,000
December, 2006	\$154,650,000

g. Dr. Brown performed no such analysis.

50. With reference to Dr. Brown's testimony at pp. 34 - 38, please provide the following information:

- a. Confirm that the standards for just and reasonable rates for utility services have been established in *Bluefield Water Works and Improvement Co. v. Public Service Commission* and *Federal Power Commission v. Hope Natural Gas Co.*
- b. Confirm that in the *Bluefield Water Works* case, the Court states:

A public utility is entitled to such rates as will permit it to earn a return upon the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility, and should be adequate, under efficient and economical management, to maintain and support its credit, and enable it to raise the money necessary for the proper discharge of its public duties. [*Bluefield Water Works and Improvement Co. v. Public Service Comm'n.* 262 U.S. 679, 692 (1923)].

**Reference: Brown, p. 34 – 38.**

**RESPONSE:**

- a. Generally, yes. However, there is much to setting rates not specifically set out in the case law referenced here.
- b. Generally, yes. However, there is much more to setting rates not specifically set out in the case law referenced here. Consider the statement in the American Gas Association's, "Gas Rate Fundamentals, 3rd. Edition," P. 109, that Atmos has no constitutional right to profits such as

are realized or anticipated in highly profitable enterprises or speculative ventures:

**Rate of Return—Bluefield Water Works, 1923**

In the *Bluefield Water Works and Improvement Company vs. Public Service Commission of West Virginia* (262 U.S. 679), the Supreme Court in 1923 indicated that state commissions must consider similar economic factors in determining the rate of return as in the rate base determination prescribed in *Smyth vs. Ames*. In this case, the Supreme Court said:

"A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economic management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties."

51. With reference to Dr. Brown's testimony at pp. 39 - 47, please provide the following information:

- a. Confirm that the DCF model is based on the assumption that a company's current stock price is equal to the present value of investors' expected future cash flows from investing in the stock.
- b. Identify and produce all studies performed by Dr. Brown to support his view that investors would use the average historical dividend growth from 2003 to 2008 to estimate future cash flow growth from their investments in stocks.
- c. Identify and produce all studies performed by Dr. Brown to support his hypothesis that "the markets full impact on investors" can be determined by considering the periods January 2, 2004, to January 2, 2009, and January 2, 2006, to January 2, 2009. [Brown at 43.]

- d. Identify and produce all studies performed by Dr. Brown to support his view that because investors received little or no capital gains from their investment in Atmos Energy's stock from January 2, 2004, to January 2, 2009, and January 2, 2006, to January 2, 2009, they do not expect to receive any capital gains on investments in Atmos Energy's stock in the future.

**Reference: Brown, pp. 39 – 47.**

**RESPONSE:**

- a. Confirm where the future cash flows are those from the company.
- b. The purchase of stock in the comparable companies, given that regulated distribution activities are fundamental for each company, dividend history is important. Refer to Mr. Best's statement: "Also, we are extremely proud of achieving a significant milestone for our company despite the uncertainty in the financial markets in our economy. Yesterday, our board of directors declared our 100th consecutive cash dividend, which was also our 21st annual dividend increase" which appears in the transcript of AEC's press conference of November 2008.
- c. The full impact is based on Dr. Brown's selection of a holding period in the absence of Dr. Vander Weide providing a start date and an end date.
- d. Recent past performance indicates near future performance. Refer to Mr. Best's statement in 51. b above. Also, AEC has provided nothing in this case or the public domain to indicate AEC will reverse its performance.

52. With reference to Dr. Brown's testimony at pp. 55 - 57, Dr. Brown claims that Dr. Vander Weide's DCF results are a "recycling" of a 2003 analysis performed on behalf of Pacific Gas & Electric in a proceeding before the FERC. As support for his assertion, Dr. Brown compares an image of Dr. Vander Weide's 2003 DCF analysis on behalf of PG&E to his DCF analysis in this proceeding.

- a. Are the companies in the two DCF analyses the same?

- b. Are the dividends in the two DCF analyses the same?
- c. Are the stock prices the same?
- d. Are the growth rates the same?
- e. Are the DCF results the same for each company that is in both analyses?
- f. Did Dr. Vander Weide provide evidence for Atmos Energy in FERC Docket No. ER-04-242-000 in November 2003? [See p. 59, lines 8 – 12.

**Reference: Brown, pp. 55 – 57.**

**RESPONSE:**

- a. Nine companies are common in both DCF analyses
- b. The dividends are substantially the same because those in Dr. Vander Weide's 2008 analysis are just a continuation of those in 2003 that would have to be adjusted for stock splits if there were any.
- c. No the stock prices are not identical.
- d. No the growth rates are not identical.
- e. No.
- f. No.

53. With reference to Dr. Brown's testimony on page 65, please provide the following information:

- a. Please identify the FERC witness whose testimony Dr. Brown cites on p. 64, lines 3 – 6.
- b. On whose behalf was this witness providing testimony?
- c. Please provide the testimony to which Dr. Brown refers, including all schedules and supporting work papers.

- d. Identify and produce any evidence to support the proposition that the Tennessee Regulatory Authority relies on the FERC methods cited by Dr. Brown to estimate the cost of equity for public utilities.

**Reference: Brown, p. 65.**

**RESPONSE:**

- a. J Peter Williamson
- b. SFPP, L.P.
- c. Provided in workpapers. See attached disk(s) containing responsive information and documents
- d. The TRA uses various considerations to set rates, at its choosing.

54. With reference to Dr. Brown's testimony at pp. 67 - 70, please provide the following information:

- a. Confirm that JDS Uniphase is not a public utility.
- b. Confirm that the cited testimony from Dr. Vander Weide in the JDS Uniphase securities litigation was unrelated to determining JDS Uniphase's cost of equity.
- c. Confirm that Mr. Barnich is not a cost of capital expert.
- d. Confirm that Mr. Barnich is a lawyer and has no academic degrees in finance or economics.
- e. Confirm that Mr. Barnich stepped down as Chairman of the Illinois Commerce Commission shortly after it was revealed to the public that he had numerous inappropriate telephone conversations with the Chairman of Commonwealth Edison at a time when Commonwealth Edison had proceedings in evidence before the Illinois Commerce Commission.



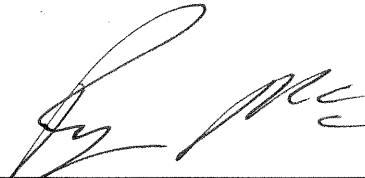
- f. Confirm that Dr. Vander Weide concluded and testified that there was no evidence to support Plaintiff's claims against the defendant JDS Uniphase in the cited securities litigation.
- g. Confirm that the jury found in favor of the defendant JDS Uniphase in the referenced case.

**Reference: Brown, pp. 67 - 70.**

**RESPONSE:**

- a. Confirm
- b. Deny. Dr. Vander Weide examined investors's expectations of an equity return.
- c. Unknown
- d. Unknown
- e. Unknown
- f. Unknown
- g. Unknown

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

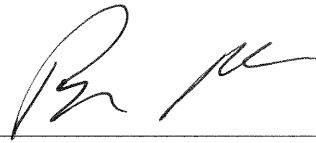


Ryan L. McGehee  
Assistant Attorney General  
Office of the Tennessee Attorney General  
Consumer Advocate and Protection Division  
P.O. Box 20207  
Nashville, Tennessee 37202-0207

**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 of record, this the 5<sup>th</sup> day of February, 2009.

William T. Ramsey  
A. Scott Ross  
2000 One Nashville Place  
150 Fourth Avenue, North  
Nashville, TN 37219-2498

A handwritten signature in black ink, appearing to read 'R. McGehee', is written above a horizontal line.

Ryan L. McGehee