

STATE OF TENNESSEE

Office of the Attorney General



ROBERT E. COOPER, JR.
ATTORNEY GENERAL AND REPORTER

CORDELL HULL AND JOHN SEVIER STATE
OFFICE BUILDINGS

MAILING ADDRESS
P.O. BOX 20207
NASHVILLE, TN 37202

LUCY HONEY HAYNES
CHIEF DEPUTY ATTORNEY GENERAL

LAWRENCE HARRINGTON
CHIEF POLICY DEPUTY

BILL YOUNG
SOLICITOR GENERAL

TELEPHONE (615) 741-3491
FACSIMILE (615) 741-2009

August 21, 2012

Ms. Jean Stone
General Counsel
c/o Sharla Dillon
Docket Manager
Tennessee Regulatory Authority
460 James Robertson Pkwy.
Nashville, TN 37243-0505

Re: *Petition of Atmos Energy Corporation for a General Rate Increase*
Docket No. 12-00064

Dear Ms. Stone:

As discussed at the status conference yesterday, the Consumer Advocate and Protection Division of the Attorney General's Office ("Consumer Advocate") agrees to the protective order proposed by Atmos Energy Corporation in order to advance the docket. As in other dockets, we agree not to challenge certain provisions in the protective order to avoid litigation expenses for all parties. But the Consumer Advocate reserves the right to address our concerns in future matters before the Authority.

Sincerely,

A handwritten signature in black ink, appearing to read "Ryan L. McGehee".

Ryan L. McGehee
Assistant Attorney General

CC: all parties of record in Docket 12-00064

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

IN RE:)	
)	
PETITION OF ATMOS ENERGY)	DOCKET NO. 12-00064
CORPORATION FOR ADJUSTMENT)	
OF RATES)	

**UNOPPOSED MOTION FOR LEAVE TO ISSUE MORE THAN FORTY DISCOVERY
REQUESTS**

The Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate"), pursuant to TRA Rule 1220-1-2-.11(5)(a), hereby submits this motion requesting permission to issue more than forty discovery requests to Tennessee American Water Company ("TAWC" or "Company"). Pursuant to TRA Rule 1220-1-2-.11(5)(a), the Consumer Advocate seeks leave of the Hearing Officer by motion and has filed a memorandum establishing good cause for service of the additional discovery requests and the discovery requests themselves. Atmos has no objection to this motion.

RESPECTFULLY SUBMITTED,



RYAN L. MCGEHEE (BPR #25559)
Assistant Attorney General
Office of the Attorney General
Consumer Advocate and Protection Division
P.O. Box 20207
Nashville, Tennessee 37202-0207
(615) 532-5512

Dated: August 21, 2012.

CERTIFICATE OF SERVICE

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

Patricia Childers, Vice President
Rates & Regulatory Affairs
Mid-States Division
Atmos Energy Corporation
810 Crescent Centre Drive, Ste. 600
Franklin, TN 37067-6226

A. Scott Ross, Esq.
Neal & Harwell, PLC
2000 One Nashville Place
150 Fourth Avenue North
Nashville, TN 37219-2498

Ellen T. Weaver, Esq.
Senior Attorney
Atmos Energy Corporation
P.O. Box 650205
Dallas, TX 75265-0205

This the 21st day of August, 2012.



RYAN L. MCGEHEE

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

IN RE:)	
)	
PETITION OF ATMOS ENERGY)	DOCKET NO. 12-00064
CORPORATION FOR ADJUSTMENT)	
OF RATES)	

**MEMORANDUM IN SUPPORT OF THE CONSUMER ADVOCATE'S MOTION FOR
LEAVE TO ISSUE MORE THAN FORTY DISCOVERY REQUESTS**

The Consumer Advocate and Protection Division ("Consumer Advocate"), pursuant to TRA Rule 1220-1-2-.11(5)(a) and the direction of the Hearing Officer, hereby submits this memorandum in support of its *Motion for Leave to Issue More Than Forty Discovery Requests* to Atmos Energy Corporation ("Atmos" or "Company"). For good cause, the Consumer Advocate would show as follows:

Following the filing of a petition to increase rates by Atmos on June 22, 2012, the Consumer Advocate and Atmos entered into informal procedural discussions in order to advance the docket in the absence of a quorum of TRA Directors and the convening of a contested case. On July 20, 2012, the Consumer Advocate submitted forty one ("41") discovery requests. Atmos did not object to the submission of 41 questions. On August 17, 2012, the Company filed responses to the requests of the Consumer Advocate. While the Consumer Advocate is reviewing the responses filed by Atmos, there has been no objection to the number of discovery requests submitted by the Consumer Advocate.

Section 1220-1-2-.11 of the Rules of the Tennessee Regulatory Authority (“R. TRA”), entitled *Discovery*, states in part, that “any party to a contested case may petition for discovery...discovery shall be *sought and effectuated* in accordance with the Tennessee Rules of Civil Procedure”. Furthermore, Tennessee Code Annotated § 4-5-311(a) states that “the administrative judge or hearing officer, at the request of any party, shall issue subpoenas, effect discovery, and issue protective orders, in accordance with the Tennessee Rules of Civil Procedure” Rule 26.02 of the Tennessee Rules of Civil Procedure, governing discovery, provides that:

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 electronically stored information.

Tenn. R. Civ. Pro. 26.02, *Discovery Scope and Limits* (Emphasis added). Perhaps the most important policy of discovery is that discovery should enable the parties and the court to seek the truth so that disputes will be decided by facts rather than legal maneuvering, *White v. Vanderbilt University.*, 21 S.W. 3d 215, 223 (Tenn. Ct. App. 1999). Discovery should allow both the court and the parties to have an intelligent grasp of the issues to be litigated and knowledge of the facts underlying them. *Vythoulkas v. Vanderbilt University Hospital*, 693 S.W. 2d 350, 356 (Tenn. Ct. App. 1985). Further, discovery is not confined to the issues raised in the pleadings, for discovery itself may be used to clarify and define the issues in controversy. *Id.* at 359. Accordingly, a party seeking discovery is entitled to obtain information about any matter, not privileged, which is relevant to the subject matter involved, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party. *State ex. Rel. Flowers v.*

Tennessee Trucking Assoc. Self Insurance Group Trust, 209 S.W. 3d 602, 615 (Tenn. Ct. App. 2006).

The Tennessee Rules of Civil Procedure go on to specify the situations in which discovery may be limited by the presiding judge or hearing officer:

the frequency or extent of use of the discovery methods set forth in subdivision 26.01 and this subdivision **shall be limited by the court if it determines that:** (i) the discovery sought is unreasonably cumulative or duplicative or is obtainable from some other source that is more convenient, less burdensome or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or, (iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation.

Id. (Emphasis added). Applying the fundamental principal of "*expressio unius est exclusio alterius*," which translates as "the expression of one thing implies the exclusion of ... things not expressly mentioned," a court may not limit discovery if the requests do not fall into one of these three categories, *Wells v. Tennessee Board of Regents*, 231 S.W.3d 912, 917 (Tenn. 2007).

In this matter, the Consumer Advocate respectfully submits the discovery sought is reasonable and necessary under Tennessee law and the needs of the case.

CONCLUSION

For all of the foregoing reasons, the Consumer Advocate asks that the Authority grant its *Motion for Leave to Issue More Than Forty Discovery Requests*.

RESPECTFULLY SUBMITTED



RYAN MCGEHEE (BPR #025559)
Assistant Attorney General
Office of the Attorney General
Consumer Advocate and Protection Division
P.O. Box 20207
Nashville, Tennessee 37202-0207
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