

BEFORE THE TENNESSEE REGULATORY AUTHORITY

IN RE:)	
PETITION OF ATMOS ENERGY)	
CORPORATION TO REVISE PERFORMANCE)	Docket No. 13-00111
BASED RATEMAKING MECHANISM RIDER IN)	
TARIFF)	

**CONSUMER ADVOCATE'S REQUEST TO CROSS-EXAMINE PURSUANT TO
TENN. CODE ANN. § 4-5-313(2)**

The Consumer Advocate and Protection Division of the Office of the Attorney General, in response to the Tennessee Regulatory Authority's *Tennessee Code Annotated Section § 4-5-313 Notice*, hereby requests to cross-examine the affiant Pat Murphy pursuant to Tenn. Code Ann. § 4-5-313(2). This request is not necessarily based on the content of the affidavit but as a means of preserving the right of the Consumer Advocate to develop evidence as fully as possible.

Further, the Consumer Advocate requests clarification of the application of the Hearing Officer's order setting a procedural schedule to the Tennessee Regulatory Authority's proposal to allow an expert witness employed by the Tennessee Regulatory Authority ("TRA"), Pat Murphy, to testify by affidavit. The proposed use of the affidavit to introduce evidence is not provided for under the Hearing Officer's order setting a procedural schedule since the order only provided for pre-filed testimony. The Consumer Advocate, therefore, requests the Hearing Officer to rule on whether the affidavit may be filed for its stated purpose of introducing evidence for the TRA Directors' consideration in this matter. If the Hearing Officer determines that the affidavit may be filed for such purpose and that the affidavit may be filed in addition to or instead of pre-filed testimony, then the Consumer Advocate reserves its rights to not only cross-examine the affiant as requested above, but also to ask discovery questions regarding the

affidavit and to respond to the affidavit through rebuttal testimony or other appropriate filings, all of which are consistent with the procedural schedule ordered by the Hearing Officer.

The Consumer Advocate would also note that the TRA's *Tennessee Code Annotated § 4-5-313 Notice* of the affidavit of Pat Murphy was submitted on behalf of "the Tennessee Regulatory Authority, by and through the Legal Division," not on behalf of the TRA Party Staff, and signed by Shiva K. Bozarth. Mr. Bozarth and Ms. Murphy, however, are also members of the TRA Party Staff as set forth in a Memorandum filed in this docket on November 8, 2013. It is the understanding of the Consumer Advocate that the TRA Party Staff is generally "walled off" from the TRA Directors and advisory staff when participating in a contested case. The Consumer Advocate, therefore, requests the Hearing Officer to require clarification of the capacity of the person or entity filing the *Tennessee Code Annotated § 4-5-313 Notice*. If the *Notice* and accompanying affidavit are being filed on behalf of anyone other than the TRA Party Staff, then the Consumer Advocate reserves its right to object to the filing of the affidavit for evidentiary purposes.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Vance L. Broemel", is written over a horizontal line.

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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:

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This the 27th day of November, 2013.



Vance L. Broemel