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PETITION OF ATMOS ENERGY CORPORATION TO REVISE PERFORMANCE BASED RATEMAKING MECHANISM RIDER IN TARIFF

[illegible]

PARTY STAFF RESPONSE TO REQUESTS TO CROSS EXAMINE

Affidavit v. Question and Answer Testimony

- 1

3. Tenn. Comp. R. & Regs. 1220-1-2-.16(3) states that instead of presenting witnesses under oral examination “the direct or redirect examination of such witness **may** be presented in written, question-and-answer form.”(Emphasis added). Nothing in this rule precludes the use of affidavits.
4. The statutory authority is clear that affidavits are admissible in administrative hearings.¹
5. There is certainly no prejudice to any party by filing testimony by affidavit as opposed to filing written question-and-answer testimony.

Discovery and Rebuttal Testimony

6. The Advocate requests that it be allowed to conduct discovery and provide rebuttal testimony.
7. It was Party Staff’s understanding that both the Advocate and Atmos would have an opportunity to conduct discovery and submit rebuttal testimony in this matter.
8. As stated at the pre-hearing conference in this matter Party Staff agrees that the other parties should be entitled to discovery and rebuttal testimony.

Necessary Correction

9. The Advocate’s Request correctly notes that there was a misstatement in the Tenn. Code Ann. §4-5-313 notice sent on November 25, 2013. Undersigned counsel incorrectly stated “Comes now the Tennessee Regulatory Authority, by and through the Legal Division, and hereby serves notice pursuant to Tenn. Code Ann. § 4-5-313 as follows:”

¹ Tenn. Code Ann. §4-5-313(2) states “[a]t any time not less than ten (10) days prior to a hearing or a continued hearing, any party shall deliver to the opposing party a copy of any affidavit such party proposes to introduce into evidence....”

10. This was an error and the sentence should have read “Comes now the Tennessee Regulatory Authority, Party Staff and hereby serves notice pursuant to Tenn. Code Ann. §4-5-313:” The undersigned acknowledges the mistake and wants to clarify for the record that in this matter he represents Party Staff and is not working in an advisory capacity for the agency.

Unspecified Objections


11. Atmos’ raises unspecified objections to the affidavit of Pat Murphy.²
12. Without knowing the basis for these objections Party Staff is unable to respond at this time. However, Party Staff reserves the right to respond to any future objections that Atmos or the Advocate put forward.

Witness Availability

13. Party Staff will make Pat Murphy available for cross-examination at the hearing in this matter.

Party Staff respectfully requests that Atmos’ and the Advocates’ objections be over ruled.

Submitted this the 3rd day of December, 2013.



Shiva K. Bozarth, BPR # 022685
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

² Atmos’ Request, paragraph 1


CERTIFICATE OF SERVICE

The undersigned hereby certifies that I have served a copy of the foregoing document on the following persons by U.S. Mail:

Scott Ross
2000 One Nashville Place
150 Fourth Avenue North
Suite 2000
Nashville, Tennessee 37219

Joe R. Shirley
Assistant Attorney General
Office of Attorney General
Consumer Advocate and Protection Division
P.O. Box 20207
Nashville, TN 37202

This the 4th day of December, 2013.



Shiva K. Bozarth