

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

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

**OPPOSITION OF ATMOS ENERGY CORPORATION TO
PARTY STAFF'S REQUEST TO INTERVENE
AND MODIFY THE PROCEDURAL SCHEDULE**

Late in the case, Party Staff now seeks to intervene. Unfortunately, Party Staff's delay has significant negative consequences, both legal and practical. Atmos Energy Corporation respectfully opposes the Party Staff's request to intervene and modify the procedural schedule.

This case was filed on August 13, 2013. After a hearing officer was appointed and the Consumer Advocate intervened, a Status Conference was held on September 18, 2013. TRA Staff attended, although they did not participate. A procedural schedule was established targeting a January 2014 hearing date, and setting a December 18, 2013 pre-hearing conference. Deadlines were established for discovery requests (October 7), discovery responses (October 28), direct testimony from intervenors (November 20), and rebuttal testimony from the Company (December 13). Staff failed to comply with any of the deadlines, and Party Staff now seeks to rework those that remain. Staff's discovery requests to Atmos were not served until October 21 (two weeks late). And Party Staff's Motion to Intervene seeks to bootstrap Staff's own late discovery requests into a reason to further delay this case.

Beyond the obvious scheduling problem, the passage of so much time in this case raises a serious question whether Party Staff can meet the requirements of TCA § 4-5-304, and 1220-1-2-.21(5) (calling for staff participation to be determined “as soon as practicable after the commencement of any proceeding . . .”). Section 4-5-304 prohibits a person who is a witness in the case from communicating “directly or indirectly” with an agency member “regarding any issue in the proceeding.” It should be Party Staff’s obligation to establish a factual record to show that such requirements have been met. *See, e.g.*, TCA § 4-5-304(e) (requiring a factual record of communications). Any intervener bears the burden to set forth with particularity those facts that demonstrate his right to intervene. TRA Rule 1220-1-2-.08. And “[i]ntervention may be denied or delayed for failure to provide such specific facts.” *Id.* Party Staff are in sole possession of the facts that determine whether compliance with the referenced statutory requirements can be achieved in this case. Party Staff should have to establish on the record a factual basis to conclude that participating as a party and providing testimony in this case would comply with the requirements of these statutory and rule provisions.

It would appear that Party Staff could not make the required showing of compliance in this case. In preliminary discussions among counsel, Party Staff has conceded involvement in this matter that should disqualify participation as a party. Party Staff admittedly has participated in discussions concerning this matter with other members of the Utility Division staff. Those other Staff members will, in turn, provide advice to agency members in this case. And such indirect communications with agency members is prohibited by section 4-5-304. Party Staff also admittedly participated in drafting the agency’s discovery requests to Atmos.

From a scheduling standpoint, Party Staff’s late request to participate in this case would have significant scheduling consequences. If allowed to intervene, Party Staff then seeks to

delay the November 20 deadline for intervenors to file testimony. There is no reason that Party Staff could not have complied with this deadline, aside from Staff's own delay in serving discovery and deciding to participate in this case in accordance with the Procedural Schedule set months ago. If Party Staff does file testimony, Atmos would request a fair opportunity to conduct discovery and submit rebuttal testimony in response to any testimony from Party Staff. It appears that the Consumer Advocate will request the same. The net effect of Party Staff's late entry into this case would be to cause a long delay of the hearing of this matter, or to impose deadlines on the other parties that would be unworkable in light of the upcoming holiday period and existing commitments of their counsel to other matters.

And finally, Atmos must respectfully disagree with any suggestion in the Staff's Motion that Atmos did not fully answer Agency Staff's discovery requests. In paragraph 4 of their Motion, Party Staff asserts that in its responses to Agency Staff's discovery requests Atmos "objected to answering certain questions," and suggests that Party Staff needs to intervene in part to obtain answers to these discovery requests. To the contrary, Atmos fully answered all of the Agency Staff's discovery requests. Indeed, the word "object" appears only once in the Atmos responses, in response to request number 1. That request was five sentences of argument, followed by a question that Atmos answered. In its response, prior to answering the question posed, Atmos noted and preserved its objection to the lengthy preliminary argument on the ground that it "assumes facts not in evidence," which is the proper evidentiary objection to questions posed in such a fashion. Atmos fully answered Agency Staff's discovery requests, including this one, and would note its strong disagreement with any suggestion to the contrary.

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 of record, this the 19th day of November, 2013.

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