

STATE OF TENNESSEE

Office of the Attorney General



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May 16, 2002

Mr. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

Re: Audit of United Cities Gas Company's
Incentive Plan Account (IPA) for the
Period of April 1, 2000 through March 31, 2001
Docket No. 01-00704

Dear Mr. Waddell:

Enclosed is an original and thirteen copies of the Consumer Advocate and Protection Division's response to United Cities Gas Company's Motion to Disqualify Witness in the above-referenced matter. Copies are being furnished to counsel of record for interested parties.

Sincerely,

TIMOTHY C. PHILLIPS
Assistant Attorney General

cc: Counsel of Record
55107

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

IN RE: AUDIT OF UNITED CITIES)	DOCKET NO. 01-00704
GAS COMPANY'S INCENTIVE PLAN)	
ACCOUNT (IPA) FOR THE PERIOD OF)	
APRIL 1, 2000 THROUGH MARCH 31,)	
2001)	

**THE CONSUMER ADVOCATE AND PROTECTION DIVISION'S RESPONSE TO
UNITED CITIES GAS COMPANY'S MOTION TO DISQUALIFY WITNESS**

The Authority, as a precautionary measure, has directed Mr. Dan McCormac to not advise it on matters pertaining to this proceeding.¹ Contrary to United Cities Gas Company's (UCG) refrain, this militates in favor of Mr. McCormac being allowed to testify. Because UCG has made no showing to overcome the presumption that Mr. McCormac is a competent witness,² UCG's motion should be summarily rejected.

UCG's assertion that Mr. McCormac's prior employment by the Consumer Advocate and Protection Division and that his entirely appropriate previous testimony operate to disqualify him as a witness because UCG apparently does not like that testimony is meritless. UCG's generalized assertion that the Directors would taint the integrity of the process and violate the

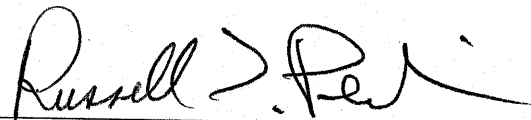
¹Contrary to the tenor of UCG's motion, the Consumer Advocate and Protection Division is not aware of any ruling by the Authority excluding Mr. McCormac from performing advisory functions or any finding by the Authority that Mr. McCormac has conducted himself improperly in any respect.

²See, e.g., Rule 601, Tennessee Rules of Evidence; *State v. Caruthers*, 35 S.W. 3d 516 (S.Ct. 2000).

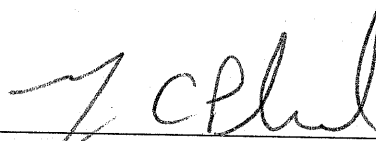
Code of Ethical Conduct of the Directors by allowing Mr. McCormac to testify is patently insubstantial and unsupported by any authority.

UCG has not asserted anything specific that would come close to meeting its burden to overcome the presumption of competence or that would remotely warrant disqualifying Mr. McCormac as a witness. UCG's motion to disqualify Mr. McCormac as a witness, therefore, should be summarily denied.

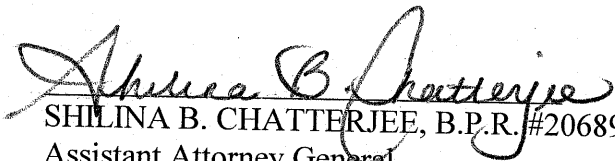
Respectfully submitted,



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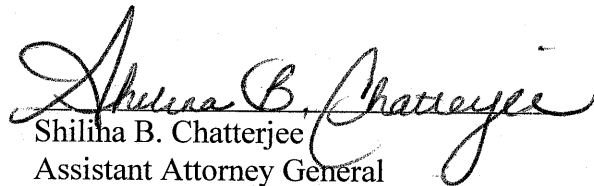
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via facsimile and U.S. Mail on May 16, 2002.

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