

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**July 20, 2004**

**IN RE:** )  
 )  
**PETITION OF CHATTANOOGA GAS COMPANY** ) **DOCKET NO.**  
**FOR APPROVAL OF ADJUSTMENT OF ITS** ) **04-00034**  
**RATES AND CHARGES AND REVISED TARIFF** )

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**ORDER RESOLVING MOTIONS TO COMPEL**

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This docket is before the Hearing Officer following a status conference held on May 10, 2004 for the purpose of resolving several outstanding motions to compel discovery. The various motions, objections thereto, and rulings resolving the motions are set forth below.

**BACKGROUND**

Chattanooga Gas Company (“Chattanooga Gas” or “the Petitioner”) filed the *Petition of Chattanooga Gas Company for Approval of Adjustment of its Rates and Charges and Revised Tariff* (the “*Petition*”) on January 26, 2004. The *Petition* initially came before Chairman Deborah Taylor Tate, Director Pat Miller and Director Sara Kyle of the Tennessee Regulatory Authority (“TRA” or “the Authority”) at a regularly scheduled Authority Conference held on February 9, 2004. During that Conference the panel voted unanimously to suspend the *Petition* for ninety (90) days, from March 1, 2004 through May 29, 2004, and to appoint a Hearing Officer in this proceeding to hear preliminary matters prior to the Hearing, to rule on any petitions(s) for intervention, and to set a procedural schedule to completion.<sup>1</sup>

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<sup>1</sup> The *Petition* was subsequently re-suspended for an additional sixty (60) days through July 28, 2004. See *Order Re-Suspending Tariff For Sixty (60) Days* (May 28, 2004)

The Consumer Advocate and Protection Division of the Office of the Attorney General (“Consumer Advocate”) filed a petition to intervene on February 26, 2004. The Chattanooga Manufacturers Association (“CMA”) filed a petition to intervene on March 2, 2004. The Hearing Officer issued a *Notice of Status Conference* on April 13, 2004 setting a status conference for April 19, 2004. Gas Technology Institute (“GTI”) filed a petition to intervene on April 16, 2004.

During the April 19, 2004 Status Conference the Hearing Officer granted the interventions of the Consumer Advocate, CMA and GTI. Also during the April 19, 2004 Status Conference the Hearing Officer established a procedural schedule which was agreed to by the parties and which included a status conference to be held on May 10, 2004.

On April 23, 2004 the Consumer Advocate served discovery requests upon the Petitioner and GTI and filed the same with the Authority. On April 26, 2004 CMA served discovery requests upon the Petitioner and filed the same with the Authority.

On May 4, 2004 the Hearing Officer issued a *Notice of Status Conference* setting a status conference for May 10, 2004 pursuant to the procedural schedule previously agreed upon by the parties. The May 4, 2004 *Notice of Status Conference* directed the parties to meet in advance of the May 10, 2004 Status Conference and to attempt to reach agreement regarding the issues to be discussed and the additional dates to be included in the procedural schedule.

The parties made three filings on May 5, 2004: CMA filed its *Chattanooga Manufacturer’s Association Responses and Objections to Chattanooga Gas Company’s First Set of Data Requests* (“CMA Responses”); Chattanooga Gas filed its *Chattanooga Gas Company’s Responses to be [sic] the Discovery Requests of the Consumer Advocate and Protection Division*

of the Office of the Attorney General (“Chattanooga Gas Responses”); and the Consumer Advocate filed its *Reply to Data Requests of Chattanooga Gas Company to the Consumer Advocate and Protection Division* (“Consumer Advocate Responses”).

An agreed protective order was entered on May 6, 2004 for the purpose of expediting the flow of filings, discovery, exhibits and other materials; facilitating the prompt resolution of disputes regarding confidentiality of material subjected to discovery requests; and adequately protecting material entitled to such protection.

The *Consumer Advocate’s Motion to Compel Chattanooga Gas Company* (“Motion to Compel Chattanooga Gas”), Chattanooga Gas’ *Motion to Compel Discovery Responses from Intervenor Chattanooga Manufacturers Association* (“Motion to Compel CMA”) and *Motion to Compel Discovery Responses from the Consumer Advocate and Protection Division* (“Motion to Compel Consumer Advocate”) were filed on May 7, 2004.

Pursuant to the May 4, 2004 *Notice of Status Conference* and the previously agreed upon procedural schedule this matter came before the Hearing Officer on May 10, 2004 for the purposes of addressing discovery disputes, continuing the discussion of the issues in this matter, further establishing additional dates for the procedural schedule and setting a date for the Hearing of this matter.

The parties were represented at the May 10, 2004 Status Conference as follows:

Chattanooga Gas Company; **D. Billye Sanders, Esq.**, Waller Lansden Dortch & Davis, 511 Union Street, Suite 2100, Nashville, TN 37219-8966;

Chattanooga Manufacturers Association; **Henry Walker, Esq.**, Boulton, Cummings, Conners & Berry, 414 Union Street, #1600, P.O. Box 198062, Nashville, TN 37219-8062; **David C. Higney, Esq.** (via telephone), 633 Chestnut Street, 9<sup>th</sup> Floor, Chattanooga, TN 37450;

GTI; **Dale Grimes, Esq.**, Bass, Berry, & Sims, 315 Deaderick Street, AmSouth Center, Suite 2700, Nashville, TN 37238;

Consumer Advocate; **Vance Broemel, Esq.** and **Timothy Phillips, Esq.**, Officer of Attorney General, Consumer Advocate and Protection Division, P.O. Box 20207, Nashville, TN 37202.

During the May 10, 2004 Status Conference, the Hearing Officer heard argument from the parties regarding the *Motion to Compel Chattanooga Gas*, the *Motion to Compel CMA* and the *Motion to Compel Consumer Advocate* and subsequently ruled on these motions as set forth below:

**Motion to Compel Chattanooga Gas**

The *Motion to Compel Chattanooga Gas* sought to compel a response to Discovery Request No. 9 of the Consumer Advocate's April 23, 2004 discovery requests to Chattanooga Gas. Discovery Request No. 9 stated, "Provide a reconciliation of 'Shared Service Allocation' expense reported on the PSC Forms 3.03 filed with the TRA and forms U-9/C-3 filed with the SEC for the past five years."<sup>2</sup> In its response to Request No. 9 Chattanooga Gas stated that "The 'Shared Service Allocation' cost is not reported in the SEC Form U-9C-3)."<sup>3</sup>

In its *Motion to Compel Chattanooga Gas* the Consumer Advocate stated,

It is important to know whether this reconciliation can be made because [Chattanooga Gas] has allocated shared service costs to ratepayers in its filings but appears to be claiming that the "Shared Service Allocation" cost is not reported in the SEC Form U-9C-3. The Consumer Advocate requests this reconciliation even if the SEC form does not use the precise term "Shared Service Allocation."<sup>4</sup>

During the May 10, 2004 Status Conference Mr. Archie Hickerson of Chattanooga Gas explained,

The allocation or the costs that they ask to be reconciled is costs that's billed by the service company, AGL Services Company. AGL Services Company is not reporting under the U-9C, so the information – the allocation costs is not in the U-9C. Those are costs related to other affiliates and not what was requested.<sup>5</sup>

<sup>2</sup> *Motion to Compel Chattanooga Gas*, p 1 (May 7, 2004)

<sup>3</sup> *Chattanooga Gas Responses*, p 131 (May 5, 2004).

<sup>4</sup> *Motion to Compel Chattanooga Gas*, pp 1-2 (May 7, 2004)

<sup>5</sup> Transcript of Proceedings, p. 7 (May 10, 2004)

Mr. Mike Morley of Chattanooga Gas explained that the information which was the subject of Interrogatory No. 9 and which is reported to the TRA is in fact also reported to the SEC and that he believed the requested information was reported on SEC form U-5S.<sup>6</sup>

Based on the foregoing statements of the parties the Hearing Officer directed Chattanooga Gas to provide a response reconciling the information provided on PSC Form 3.03 with the information contained on any corresponding form filed on behalf of Chattanooga Gas with the SEC by 2:00 p.m. on Thursday, May 13, 2004.<sup>7</sup>

### **Motion to Compel CMA**

The *Motion to Compel CMA* sought to compel responses to Discovery Request Nos. 1 through 21 excepting Request No. 10. After reviewing the *Motion to Compel CMA* and the objections thereto, the Hearing Officer granted the motion as to Request Nos. 15, and 21. The Hearing Officer noted that CMA had indicated that additional information in Request Nos. 9, 11, 16, 17, 18 and 19 would be forthcoming and on that basis found no present need to rule regarding these requests.<sup>8</sup> The Hearing Officer partially granted Request Nos. 1, 2, 4, 12, 13, 14 and 20. The Hearing Officer denied the *Motion to Compel CMA* regarding Request Nos. 3, 5, 6, 7 and 8.<sup>9</sup>

### **Request No. 1**

Request No. 1 stated, "Please provide the name, address, telephone number and name of the president or other comparable officer of each member of the CMA."<sup>10</sup> CMA's response to Request No. 1 stated, "Subject to and without waiving its objections, CMA provides to the Company a reference to CMA's member companies which can be found at, generally speaking,

<sup>6</sup> Transcript of Proceedings, pp 9-10 (May 10, 2004)

<sup>7</sup> Transcript of Proceedings, pp. 10-11 (May 10, 2004)

<sup>8</sup> Transcript of Proceedings, pp 11, 41 (May 10, 2004).

<sup>9</sup> Transcript of Proceedings, pp. 11, 17, 27-28 (May 10, 2004).

<sup>10</sup> *Motion to Compel CMA*, p 2 (May 7, 2004).

www.cma1902.com/members.”<sup>11</sup> In the *Motion to Compel CMA* the Petitioner stated that this response was inadequate because the referenced “web site may be inaccurate or outdated, and it does not provide all the information requested.”<sup>12</sup> The Hearing Officer granted Request No. 1 to the extent that the Hearing Officer ordered CMA, to the best of its ability, to identify its member organizations and officers or other contact persons for each member organization.<sup>13</sup>

### **Request No. 2**

Request No. 2 stated, “Please provide a copy of the organizational document creating the CMA, e.g., the Charter or Articles of Organization.”<sup>14</sup> CMA’s response to Request No. 2 stated, “CMA objects on the grounds that Request No. 2 is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Further, the requested document is a public record available to Petitioner through the Tennessee Secretary of State’s Office.”<sup>15</sup> In the *Motion to Compel CMA* the Petitioner stated, “The requested information is both relevant and reasonably calculated to lead to admissible evidence. Further, even if the information requested were a public record, that is not a proper basis for objection to its discovery.”<sup>16</sup> The Hearing Officer partially granted Request No. 2 to the extent that the Hearing Officer ordered CMA to produce documents demonstrating its validity.<sup>17</sup>

### **Request No. 4**

Request No. 4 stated, “Please describe how CMA determines what positions it will take in the Chattanooga Gas Company rate proceeding, TRA Docket No. 04-00034. Your description

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<sup>11</sup> *CMA Responses*, p. 3 (May 5, 2004)

<sup>12</sup> *Motion to Compel CMA*, p. 2 (May 7, 2004)

<sup>13</sup> Transcript of Proceedings, pp. 11, 18 (May 10, 2004).

<sup>14</sup> *Motion to Compel CMA*, p. 2 (May 7, 2004).

<sup>15</sup> *CMA Responses*, p. 3 (May 5, 2004)

<sup>16</sup> *Motion to Compel CMA*, p. 3 (May 7, 2004)

<sup>17</sup> Transcript of Proceedings, p. 15 (May 10, 2004).

should include whether all the members vote on what positions are taken or whether this authority is delegated to others.”<sup>18</sup> CMA’s response to Request No. 4 stated,

CMA objects to Request No. 4 on the grounds that it is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. CMA further objects on the grounds that Request No. 4 encroaches upon the attorney-client privilege and seeks the mental conclusions and impressions of its attorneys, which are privileged and will not be provided. Subject to and without waiving its objections, CMA intends to provide the following general description concerning its intervention and opposition to the increase in rates which Chattanooga Gas Company would prefer unchallenged and unfettered: CMA considers the Petition filed, newspaper articles, comments from its members and other available information, and based upon all of the above makes a decision (through its Board of Directors) whether to seek authorization from the Tennessee Regulatory Authority to intervene. CMA has in the past retained the assistance of counsel and expert witnesses related to the regulated industry to assist it in understanding the requests made in the Petition, to counsel CMA with respect to the positions it should take and to assist in any challenge or opposition to the requested relief (including opposing increases and rates) if that is appropriate.<sup>19</sup>

In the *Motion to Compel CMA* the Petitioner stated, “The information sought is reasonably calculated to lead to admissible evidence. The Company requests that the CMA identify the members of its board of directors.”<sup>20</sup> The Hearing Officer granted Request No. 4 to the extent that the Hearing Officer required CMA to produce the information requested regarding the members of the board of directors.<sup>21</sup>

### **Request No. 12**

Request No. 12 stated, “Produce a copy of all documents which relate or pertain to any factual information provided to, gathered by, utilized or relied upon by any witness that may appear on behalf of the Chattanooga Manufacturers Association in any hearing in this docket in evaluating, reaching conclusions or formulating an opinion in this matter.”<sup>22</sup> CMA’s response to

<sup>18</sup> *Motion to Compel CMA*, p. 4 (May 7, 2004)

<sup>19</sup> *CMA Responses*, p.4 (May 5, 2004)

<sup>20</sup> *Motion to Compel CMA*, p. 5 (May 7, 2004)

<sup>21</sup> Transcript of Proceedings, p. 22 (May 10, 2004).

<sup>22</sup> *Motion to Compel CMA*, p 9 (May 7, 2004)

Request No. 12 stated, "See Objection No. 11, above. CMA further objects to Request No. 12 to the extent that it seeks the identification of all documents which 'relate or pertain' to any factual information utilized or relied upon by proposed experts, as it is impossible to respond to such a broad question."<sup>23</sup> In the *Motion to Compel CMA* the Petitioner stated, "As per Rule 26.05 of the Tennessee Rules of Civil Procedure, CMA is under a continuing obligation to supplement its discovery responses. The Company reserves its right to file an additional motion to compel if CMA fails to meet its obligations. The Company further reserves the right to propound additional discovery after CMA's testimony is filed. At that time, the Company will be in a position to more narrowly frame its questions."<sup>24</sup> The Hearing Officer granted Request No. 12 to the extent that the request was amended to request only documents utilized or relied upon by any witness that may appear on behalf of CMA in any hearing in this docket in evaluating, reaching conclusions or formulating an opinion in this matter and with the understanding that such information will be provided upon CMA's identification of such a witness.<sup>25</sup>

### **Request No. 13**

Request No. 13 stated, "Produce copies of any and all testimony and exhibits entered in any proceeding pertaining to a regulated utility by any witness that may appear on behalf of the Chattanooga Manufacturers Association in any hearing in this docket."<sup>26</sup> CMA's response to Request No. 13 stated, "CMA objects to Request No. 13 on the grounds that it is overly broad and unduly burdensome in seeking 'any and all testimony and exhibits' from 'any proceeding pertaining to a regulated utility' by witnesses that may appear on behalf of CMA. Subject to and without waiving its objections, CMA intends to continue the generally accepted practice of

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<sup>23</sup> *CMA Responses*, p. 7 (May 5, 2004). CMA's response to Interrogatory No. 11 provided in pertinent part, "CMA objects to Request No. 11 on the grounds that it is overbroad, unduly burdensome and duplicative." *CMA Responses*, p. 6 (May 5, 2004)

<sup>24</sup> *Motion to Compel CMA*, p. 9 (May 7, 2004).

<sup>25</sup> Transcript of Proceedings, p. 30 (May 10, 2004)

<sup>26</sup> *Motion to Compel CMA*, p. 9 (May 7, 2004)



providing to the Petitioner a list of proceedings in which any expert witness CMA intends to call has provided testimony pertaining to a regulated utility.”<sup>27</sup> In the *Motion to Compel CMA* the Petitioner stated, “As per Rule 26.05 of the Tennessee Rules of Civil Procedure, CMA is under a continuing obligation to supplement its discovery responses. The Company reserves its right to file an additional motion to compel if CMA fails to meet its obligations.”<sup>28</sup> The Hearing Officer granted Request No. 13 to the extent that the Hearing Officer directed that CMA will provide the identity of its witnesses and a list of all proceedings in which such witnesses have testified and that, upon receiving this information, the Company will amend and narrow the scope of its request.<sup>29</sup>

#### **Request No. 14**

Request No. 14 stated, “Produce a copy of all articles or papers written by or co-written by any witness that may appear on behalf of the Chattanooga Manufacturers Association in any hearing in this docket, whether published or not.”<sup>30</sup> CMA’s response to Request No. 14 stated “CMA objects to Request No. 13 [sic] on the grounds that it is overly broad and unduly burdensome in seeking “all articles or papers written or co-written by the witness” by witnesses that may appear on behalf of CMA. Subject to and without waiving the objection, CMA intends to continue the generally accepted practice providing [sic] to the petitioner a list of proceedings in which any expert witness CMA intends to call has provided testimony pertaining to a regulated utility.”<sup>31</sup> In the *Motion to Compel CMA* the Petitioner stated that CMA’s response to Request No. 14 was unresponsive.<sup>32</sup> The Hearing Officer granted Request No. 14 to the extent that the Hearing Officer directed that CMA will provide the identity of its witnesses and a list of

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<sup>27</sup> *CMA Responses*, p 7 (May 5, 2004).

<sup>28</sup> *Motion to Compel CMA*, p. 10 (May 7, 2004)

<sup>29</sup> Transcript of Proceedings, pp 33-35, 41 (May 10, 2004)

<sup>30</sup> *Motion to Compel CMA*, p 10 (May 7, 2004).

<sup>31</sup> *CMA Responses*, pp 7-8 (May 5, 2004)

<sup>32</sup> *Motion to Compel CMA*, p. 10 (May 7, 2004)

all proceedings in which such witnesses have testified and that, upon receiving this information, the Company will amend and narrow the scope of its request.<sup>33</sup>

### **Request No. 15**

Request No. 15 stated, “Produce copies of all stipulations or settlement agreements entered into by the Chattanooga Manufacturers Association in any proceeding before the Tennessee Regulatory Authority since 1996.”<sup>34</sup> CMA’s response to Request No. 15 stated, “CMA objects to Request No. 15 on the grounds that it is irrelevant, overly broad, unduly burdensome, vague, ambiguous, and that stipulations or agreements, if any, entered into by CMA and accepted by the Tennessee Regulatory Authority are public records equally or more available to the Company.”<sup>35</sup> In the *Motion to Compel CMA* the Petitioner denied CMA’s objections and stated, “the requested information is not equally or more available to the Company; it is more appropriately available from CMA. The fact that such information is public record is not a proper basis for objection.”<sup>36</sup> After reviewing the *Motion to Compel CMA* and the objections thereto, the Hearing Officer granted Request No. 15.

### **Request No. 20**

Request No. 20 stated, “Produce copies of all documents or work papers, prepared by or provided to any witness that may appear on behalf of the Chattanooga Manufacturers Association in any hearing in this docket that relate to the volume of gas projected to be purchased or transported during the July, 2004 – June, 2005 attrition period by any member of the Chattanooga Manufacturers Association.”<sup>37</sup> CMA’s response to Request No. 20 stated, “See

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<sup>33</sup> Transcript of Proceedings, pp. 33-35, 41 (May 10, 2004).

<sup>34</sup> *Motion to Compel CMA*, p. 10 (May 7, 2004)

<sup>35</sup> *CMA Responses*, p. 8 (May 5, 2004)

<sup>36</sup> *Motion to Compel CMA*, pp. 10-11 (May 7, 2004)

<sup>37</sup> *Motion to Compel CMA*, p. 13 (May 7, 2004).

General Objection No. 2; subject to and without waiving all objections, none at this time.”<sup>38</sup> In its *Motion to Compel CMA* the Petitioner stated, “As per Rule 26.05 of the Tennessee Rules of Civil Procedure, CMA is under a continuing obligation to supplement its discovery responses. The Company reserves its right to file an additional motion to compel if CMA fails to meet its obligations.”<sup>39</sup> The Hearing Officer granted Request No. 20 to the extent that the Hearing Officer directed that CMA will provide the identity of its witnesses and a list of all proceedings in which such witnesses have testified and that, upon receiving this information, the Company will amend and narrow the scope of its request.<sup>40</sup>

### **Request No. 21**

Request No. 21 stated, “Please provide the name, employer, position/title, business address and telephone number of any witness(es) that will testify on behalf of CMA in this docket.”<sup>41</sup> In its response to Request No. 21 CMA stated

CMA objects to Request No. 21 on the grounds that it encroaches upon the attorney-client privilege and seeks the mental impressions and conclusions of its attorneys, which are privileged and will not be provided. CMA further objects on the grounds that Request No. 21 is premature, in that testimony is not yet due from CMA, who was only granted intervention status into this docket after a hearing on April 19, 2004. Subject to and without waiving its objections, CMA intends to determine whether it will need to file testimony, and, if so, will file testimony containing the requested information on or before the deadline set forth in the Scheduling Order.<sup>42</sup>

In its *Motion to Compel CMA* the Petitioner stated, “The identity of witnesses is not privileged. As per Rule 26.05 of the Tennessee Rules of Civil Procedure, CMA is under a

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<sup>38</sup> *CMA's Responses*, p. 9 (May 5, 2004) General Objection No 2 to *CMA's Responses* stated, “CMA objects to the data requests to the extent they call for information and the production of documents which are protected from disclosure by the attorney-client privilege, the attorney work product doctrine or any other applicable privilege or protection. CMA objects to the Company's data requests to the extent that the Company is attempting to impose on CMA obligations with regard to identification of privileged documents beyond those required by the Tennessee Rules of Civil Procedure and applicable statutes and regulations governing contested case hearings

<sup>39</sup> *Motion to Compel CMA*, p. 14 (May 7, 2004)

<sup>40</sup> Transcript of Proceedings, pp 33-35, 41 (May 10, 2004)

<sup>41</sup> *Motion to Compel CMA*, p. 14 (May 7, 2004).

<sup>42</sup> *CMA's Responses*, p. 10 (May 5, 2004).

continuing obligation to supplement its discovery responses.”<sup>43</sup> After reviewing the *Motion to Compel CMA* and the objections thereto, the Hearing Officer granted the motion as to Request No. 21.

### **Motion to Compel Consumer Advocate**

The *Motion to Compel Consumer Advocate* sought to compel responses to Discovery Request Nos. 1 through 16. After reviewing the *Motion to Compel Consumer Advocate* and the objections thereto, the Hearing Officer granted the motion as to Request No. 12. The Hearing Officer partially granted Request Nos. 6, 7, 9, 11, and 14 as set forth below. The Hearing Officer denied the *Motion to Compel CMA* regarding Request Nos. 4, 5 and 8. The Hearing Officer held the *Motion to Compel Consumer Advocate* in abeyance regarding Request Nos. 1, 2, 3, 10, 12 and 13 pending the filing of testimony and as set forth below.

### **Request No. 1**

Request No. 1 stated, “Provide detailed workpapers, cross referenced to source documents, which show the computation of each amount on the CAPD’s exhibits to be filed in this docket that is different from the corresponding amount presented on Chattanooga Gas Company’s exhibits filed in this docket.”<sup>44</sup> In its response to Request No. 1 the Consumer Advocate stated,

The CAPD is still continuing its investigation in this matter; in particular the CAPD is awaiting responses to its discovery requests. Accordingly, no exhibits have been prepared. If exhibits are prepared, they will be attached to pre-filed testimony from a CAPD witness which will be provided to CGC. To the extent this requests calls for anything more than the testimony and exhibits of CAPD witnesses, the CAPD objects on the ground that it is overly broad and burdensome because any relevant information will be provided in the pre-filed testimony which will be filed well in advance of the hearing on the merits. Furthermore, any assessment of the differences between the testimony of the witnesses of the CAPD and CGC is the legal burden of each party and is, therefore, the work

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<sup>43</sup> *Motion to Compel CMA*, p 14 (May 7, 2004)

<sup>44</sup> *Motion to Compel Consumer Advocate*, p 3 (May 7, 2004).

product of the party and subject to the work product doctrine and attorney-client privilege limiting discovery.<sup>45</sup>

In its *Motion to Compel Consumer Advocate* the Petitioner stated, "As per Rule 26.05 of the Tennessee Rules of Civil Procedure, the CAPD is under a continuing obligation to supplement its discovery responses. The Company reserves its right to file an additional motion to compel if CAPD fails to meet its obligations. In addition, the Company reserves the right to propound additional discovery requests after the testimony is filed."<sup>46</sup>

The Hearing Officer held the *Motion to Compel Consumer Advocate* in abeyance regarding Request Nos. 1 pending the filing of testimony.<sup>47</sup>

### **Request No. 2**

Request No. 2 stated, "Provide copies of any written communications and complete details of any other communications that any member of the CAPD staff has had with any Chattanooga Gas Company customer or a consultant employed by any such customer relative to this docket. The information provided should include identification of the parties to the communication."<sup>48</sup> In its response to Request No. 2 the Consumer Advocate stated, "The CAPD objects to this request on the ground that it calls for information protected by the attorney work product doctrine and the attorney-client privilege. Any communications with any CGC customer or consultant employed by such customer would be made as part of trial preparations and in anticipation of litigation and are, therefore, protected under Rule 26 of the Tennessee Rules of Civil Procedure."<sup>49</sup> In its *Motion to Compel Consumer Advocate* the Petitioner stated, "The information requested is not privileged and is not attorney work product. Even if it were, it is discoverable pursuant to rule 26.02(3) of the Tennessee Rules of Civil Procedure. Without

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<sup>45</sup> *Consumer Advocate Responses*, p 4 (May 5, 2004)

<sup>46</sup> *Motion to Compel Consumer Advocate*, p. 4 (May 7, 2004)

<sup>47</sup> Transcript of Proceedings, pp 44, 51-52 (May 10, 2004).

<sup>48</sup> *Motion to Compel Consumer Advocate*, p 4 (May 7, 2004).

<sup>49</sup> *Consumer Advocate Responses*, pp. 4-5 (May 5, 2004)

waiving its right to a full response, the Company requests that the CAPD at a minimum be compelled to identify any customer of the Company that it has communicated with relative to this docket and the date of the communication.”<sup>50</sup>

The Hearing Officer held the *Motion to Compel Consumer Advocate* in abeyance regarding Request No. 2 pending the filing of testimony to determine if the filed testimony is based upon communications with customers or consultants employed by customers.<sup>51</sup>

### **Request No. 3**

Request No. 3 stated, “Produce copies of any written communications received by the CAPD from any Chattanooga Gas Company customer relative to this docket. The information provided should include identification of the parties to the communication.”<sup>52</sup> In its response to Request No. 3 the Consumer Advocate stated, “The CAPD objects to this request on the ground that it calls for information protected by the attorney work product doctrine and the attorney-client privilege. Any communications with any CGC customer or consultant employed by such customer would be made as part of trial preparations and in anticipation of litigation and are, therefore, protected under Rule 26 of the Tennessee Rules of Civil Procedure.”<sup>53</sup> In its *Motion to Compel Consumer Advocate* the Petitioner stated an identical reply as it provided to the Consumer Advocate’s objection to Request No. 2.<sup>54</sup>

The Hearing Officer held the *Motion to Compel Consumer Advocate* in abeyance regarding Request No. 3 pending the filing of testimony to determine if the filed testimony is based upon communications with customers or consultants employed by customers.<sup>55</sup>

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<sup>50</sup> *Motion to Compel Consumer Advocate*, p. 5 (May 7, 2004)

<sup>51</sup> Transcript of Proceedings, pp. 51-52 (May 10, 2004)

<sup>52</sup> *Motion to Compel Consumer Advocate*, p. 5 (May 7, 2004).

<sup>53</sup> *Consumer Advocate Responses*, p. 5 (May 5, 2004).

<sup>54</sup> *Motion to Compel Consumer Advocate*, p. 6 (May 7, 2004)

<sup>55</sup> Transcript of Proceedings, pp. 51-52 (May 10, 2004).

#### **Request No. 4**

Request No. 4 stated, "Provide complete details of any discussions or communications that any CAPD employee or any witness that may appear on behalf of the CAPD in any hearing in this docket has had concerning this docket with any person not presently employed by the Office of the Tennessee Attorney General and Reporter, who is not a paid consultant of the CAPD. The information provided should include identification of the parties to the communication."<sup>56</sup> In its response to Request No. 4 the Consumer Advocate stated, "The CAPD objects to this request on the ground that it calls for information protected by the attorney work product doctrine and the attorney-client privilege. Any communications with any Company customer or consultant employed by such customer, or other person, would be made as part of trial preparations and in anticipation of litigation and are, therefore, protected under Rule 26 of the Tennessee Rules of Civil Procedure."<sup>57</sup> In its *Motion to Compel Consumer Advocate* the Petitioner stated an identical reply as it provided to the Consumer Advocate's objection to Request Nos. 2 and 3.<sup>58</sup>

The Hearing Officer denied the *Motion to Compel Consumer Advocate* regarding Request No. 4 on the basis that Request No. 4 violates the work product privilege.<sup>59</sup>

#### **Request No. 5**

Request No. 5 stated, "Produce copies of any written communications relating to this docket that any CAPD employee or witness that may appear on behalf of the CAPD in any hearing in this docket issued to or received from any person not presently employed by the Office of the Tennessee Attorney General and Reporter, who is not a paid consultant of the

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<sup>56</sup> *Motion to Compel Consumer Advocate*, p. 6 (May 7, 2004).

<sup>57</sup> *Consumer Advocate Responses*, pp. 5-6 (May 5, 2004)

<sup>58</sup> *Motion to Compel Consumer Advocate*, p. 7 (May 7, 2004)

<sup>59</sup> Transcript of Proceedings, pp. 52-57 (May 10, 2004)

CAPD. The information provided should include identification of the parties to the communication.”<sup>60</sup> The Consumer Advocate’s response to Request No. 5 stated, “The CAPD objects to this request on the ground that it calls for information protected by the attorney work product doctrine and the attorney-client privilege. Any communications with any CGC customer or consultant employed by such customer, or other person, would be made as part of trial preparations and in anticipation of litigation and are, therefore, protected under Rule 26 of the Tennessee Rules of Civil Procedure.”<sup>61</sup> In its *Motion to Compel Consumer Advocate* the Petitioner stated an identical reply as it provided to the Consumer Advocate’s objection to Request Nos. 2, 3 and 4.<sup>62</sup>

The Hearing Officer denied the *Motion to Compel Consumer Advocate* regarding Request No. 5 on the basis that Request No. 5 violates the work product privilege.<sup>63</sup>

#### **Request No. 6**

Request No. 6 stated, “Produce copies of all documents or things shown to, delivered to, received from, relied upon, or prepared by any witness that may appear on behalf of the CAPD in any hearing in this docket, which are related to the witness(es)’ expected testimony in this case, whether or not such documents are supportive of such testimony, including without limitation all documents or things provided to that witness for review in connection with testimony and opinions. Please indicate which witness identified in question 15 below received, relied upon or prepared the documents/information provided.”<sup>64</sup> In its response to Request No. 6 the Consumer Advocate stated

The CAPD is still continuing its investigation in this matter; in particular the CAPD is awaiting responses to its discovery requests. Accordingly, witnesses

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<sup>60</sup> *Motion to Compel Consumer Advocate*, p. 7 (May 7, 2004).

<sup>61</sup> *Consumer Advocate Responses*, p. 6 (May 7, 2004).

<sup>62</sup> *Motion to Compel Consumer Advocate*, p. 7 (May 7, 2004).

<sup>63</sup> Transcript of Proceedings, pp 52-57 (May 10, 2004).

<sup>64</sup> *Motion to Compel Consumer Advocate*, p. 8 (May 7, 2004)



have not yet been determined nor have they prepared their testimony for this case. If testimony is prepared, it will be provided to CGC when pre-filed testimony is filed and documents relied upon by the witnesses will be made available to CGC. To the extent this request calls for anything more than the testimony and exhibits of CAPD witnesses, the CAPD objects on the ground that it is overly broad and burdensome because any relevant information will be provided in the pre-filed testimony which will be filed well in advance of the hearing on the merits.”<sup>65</sup>

In its *Motion to Compel Consumer Advocate* the Petitioner stated, “As per Rule 26.05 of the Tennessee Rules of Civil Procedure, the CAPD is under a continuing obligation to supplement its discovery responses. The Company reserves its right to file an additional motion to compel if CAPD fails to meet its obligations. In addition, the Company reserves the right to narrow its request once CAPD has filed its testimony.”<sup>66</sup>

The Hearing Officer granted Request No. 6 to the extent that the Hearing Officer directed that the Consumer Advocate will provide the identity of its witnesses and a list of all proceedings in which such witnesses have testified with its pre-filed testimony and that, upon receiving this information, the Company will amend and narrow the scope of its request to request documents or things relied upon or prepared by any witness.<sup>67</sup>

#### **Request No. 7**

Request No. 7 stated, “Produce a copy of all documents which relate or pertain to any factual information provided to, gathered by, utilized or relied upon by any witness that may appear on behalf of the CAPD in any hearing in this docket in evaluating, reaching conclusions or formulating an opinion in this matter. Please indicate which witness identified in question 15 below received, relied upon or prepared the documents/information provided.”<sup>68</sup> The Consumer Advocate’s response to Request No. 7 was identical to its response to Request No. 6.<sup>69</sup> In its

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<sup>65</sup> *Consumer Advocate Responses*, pp 6-7 (May 5, 2004)

<sup>66</sup> *Motion to Compel Consumer Advocate*, p. 9 (May 7, 2004)

<sup>67</sup> Transcript of Proceedings, p 59 (May 10, 2004).

<sup>68</sup> *Motion to Compel Consumer Advocate*, p. 9 (May 7, 2004)

<sup>69</sup> *Consumer Advocate Responses*, p 7 (May 5, 2004)

*Motion to Compel Consumer Advocate* the Petitioner stated an identical reply as it provided to the Consumer Advocate's objection to Request No. 6.<sup>70</sup>

The Hearing Officer granted Request No. 7 to the extent that the Hearing Officer directed that the Consumer Advocate will provide the identity of its witnesses and a list of all proceedings in which such witnesses have testified with its pre-filed testimony and that, upon receiving this information, the Company will amend and narrow the scope of its request to request factual information utilized or relied upon by any witness.<sup>71</sup>

### **Request No. 8**

Request No. 8 stated, "Produce copies of any and all testimony entered in any regulatory proceeding by any witness that may appear on behalf of the CAPD in any hearing in this docket."<sup>72</sup> In its response to Request No. 8 the Consumer Advocate stated, "This request is overly broad and burdensome. Furthermore, there is no demonstration by CGC that all such testimony is relevant to this case. Finally, any such testimony is available in the public record at the TRA. Without waiving these objections, the CAPD has filed testimony in the following recent rate cases: Nashville Gas, TRA Docket No. 03-00313; and Tennessee American Water, TRA Docket No. 03-00118."<sup>73</sup> In its *Motion to Compel Consumer Advocate* the Petitioner stated,

This request does not seek information that is overly broad or burdensome. Further, the fact that such testimony is in the public record at the TRA is not a proper basis for objection. The Company does not know who the CAPD's witnesses will be. Some of the CAPD's witnesses may have testified in other jurisdictions. Even if the Company knew who the witnesses were, the records at the TRA are not indexed by witness names. Many records at the TRA are not on the agency's web site and cannot even be searched by company name. Finally, even if the information were readily available in public records (which is not the case), the CAPD is the party that can verify the dockets in which the particular witnesses have testified. At a minimum, the CAPD should provide a list of dockets in which each of its witnesses have testified.<sup>74</sup>

<sup>70</sup> *Motion to Compel Consumer Advocate*, p. 10 (May 7, 2004)

<sup>71</sup> Transcript of Proceedings, p. 59 (May 10, 2004).

<sup>72</sup> *Motion to Compel Consumer Advocate*, p. 10 (May 7, 2004)

<sup>73</sup> *Consumer Advocate Responses*, p. 8 (May 5, 2004)

<sup>74</sup> *Motion to Compel Consumer Advocate*, pp. 10-11 (May 7, 2004)

The Hearing Officer denied the *Motion to Compel Consumer Advocate* regarding Request No. 8.<sup>75</sup>

**Request No. 9**

Request No. 9 stated, “Produce a copy of all articles or papers written by or co-written by any witness that may appear on behalf of the CAPD in any hearing in this docket, whether published or not.”<sup>76</sup> In its response to Request No. 9, the Consumer Advocate stated, “Such material as is available will be made available at the CAPD’s office once witnesses have been determined.”<sup>77</sup> In its *Motion to Compel Consumer Advocate* the Petitioner stated, “The CAPD’s answer is vague and unresponsive.”<sup>78</sup>

The Hearing Officer granted the *Motion to Compel Consumer Advocate* to the extent that the Consumer Advocate shall make copies of the requested information available to the extent that it is not unduly burdensome to do so; further, the Consumer Advocate will provide the identity of its witnesses and a list of all proceedings in which such witnesses have testified with its pre-filed testimony and, upon receiving this information, the Company will amend and narrow the scope of its request.<sup>79</sup>

**Request No. 10**

Request No. 10 stated, “Produce copies of all surveys of Chattanooga Gas Company’s or other regulated gas utility’s customers conducted by or on behalf of the CAPD.”<sup>80</sup> In its response to Request No. 10 the Consumer Advocate stated, “The CAPD objects to this request on the ground that it calls for information protected by the attorney work product doctrine and the attorney-client privilege. Any surveys conducted by the CAPD would be made as part of

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<sup>75</sup> Transcript of Proceedings, p. 42 (May 10, 2004)

<sup>76</sup> *Motion to Compel Consumer Advocate*, p. 11 (May 7, 2004).

<sup>77</sup> *Consumer Advocate Responses*, p. 8 (May 5, 2004).

<sup>78</sup> *Motion to Compel Consumer Advocate*, p. 11 (May 7, 2004)

<sup>79</sup> Transcript of Proceedings, pp. 61-63 (May 10, 2004)

<sup>80</sup> *Motion to Compel Consumer Advocate*, p. 11 (May 7, 2004)

trial preparations and in anticipation of litigation and are, therefore, protected under Rule 26 of the Tennessee Rules of Civil Procedure.”<sup>81</sup> In its *Motion to Compel Consumer Advocate* the Petitioner stated, “The information requested is not privileged and is not attorney work product. Even if it were, it is discoverable pursuant to Rule 26.02(3) of the Tennessee Rules of Civil Procedure. Without waiving its right to a full response, the Company requests that the CAPD at a minimum be compelled to identify the name of any customer contacted, method of contact, and survey instrument. If the CAPD issues a survey to customers, the instrument is in the public domain and thus cannot be claimed as privileged.”<sup>82</sup>

The Hearing Officer held the *Motion to Compel Consumer Advocate* in abeyance regarding Request No. 10.<sup>83</sup>

#### **Request No. 11**

Request No. 11 stated, “Produce copies of all stipulations or settlement agreements entered into by the CAPD and any public utility regulated by the Tennessee Regulatory Authority since 1996.”<sup>84</sup> In its response to Request No. 11 the Consumer Advocate stated, “This request is overly broad and burdensome. Furthermore, there is no demonstration by CGC that all such agreements or stipulations are relevant to this case. Finally, any such material is available in the public record at the TRA. Without waiving these objections, the CAPD has filed agreements in the following recent rate cases: Nashville Gas, TRA Docket No. 03-00313; and Tennessee American Water, TRA Docket No. 03-00118.”<sup>85</sup> In its *Motion to Compel Consumer Advocate* the Petitioner stated, “This request does not seek information that is overly broad or burdensome. Further, the fact that such stipulations and settlement agreements are in the public

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<sup>81</sup> *Consumer Advocate Responses*, p. 8 (May 5, 2004)

<sup>82</sup> *Motion to Compel Consumer Advocate*, p. 12 (May 7, 2004).

<sup>83</sup> Transcript of Proceedings, p. 70 (May 10, 2004)

<sup>84</sup> *Motion to Compel Consumer Advocate*, p. 12 (May 7, 2004).

<sup>85</sup> *Consumer Advocate Responses*, p. 9 (May 5, 2004).

record at the TRA is not a proper basis for objection. Without waiving its right to seek additional information in the future, the Company agrees to limit its present request to copies of all stipulations or settlement agreements entered into between the CAPD and any regulated gas company since 1996.”<sup>86</sup>

The Hearing Officer granted the *Motion to Compel Consumer Advocate* regarding Request No. 11 to the extent that the Consumer Advocate shall provide the TRA docket numbers regarding settlement agreements to which it was a party and which were filed with the TRA from 1996 to 2004.<sup>87</sup>

### **Request No. 12**

Request No. 12 stated, “If the CAPD proposes a rate design that is different from the design proposed by Chattanooga Gas Company, produce copies of all workpapers, cross referenced to source documents, which support the CAPD’s proposed rate design.”<sup>88</sup> In its response to Request No. 12 the Consumer Advocate stated,

The CAPD is still continuing its investigation in this matter; in particular the CAPD is awaiting responses to its discovery requests. Accordingly, no rate design has been proposed. If a rate design is proposed, it will be attached to or made part of pre-filed testimony from a CAPD witness which will be provided to CGC. To the extent this request calls for anything more than the testimony and exhibits of CAPD witnesses, the CAPD objects on the ground that it is overly broad and burdensome because any relevant information will be provided in the pre-filed testimony which will be filed well in advance of the hearing on the merits. Furthermore, any assessment of the differences between rate designs is the legal burden of each party and is, therefore, the work product of the party and subject to the work product doctrine and attorney client privilege limiting discovery.<sup>89</sup>

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<sup>86</sup> *Motion to Compel Consumer Advocate*, pp. 12-13 (May 7, 2004)

<sup>87</sup> Transcript of Proceedings, p. 72 (May 10, 2004).

<sup>88</sup> *Motion to Compel Consumer Advocate*, p. 13 (May 7, 2004)

<sup>89</sup> *Consumer Advocate Responses*, p. 9 (May 5, 2004)

In its *Motion to Compel Consumer Advocate* the Petitioner stated, “The request does not seek information that is overly broad or burdensome. The information requested is necessary to verify or disprove any rate design proposed by the CAPD.”<sup>90</sup>

The Hearing Officer held the *Motion to Compel Consumer Advocate* in abeyance regarding Request No. 12 pending the filing of testimony.<sup>91</sup>

### **Request No. 13**

Request No. 13 stated, “Identify any paid consultants(s) that the CAPD has or will consult with regarding this docket.”<sup>92</sup> In its response to Request No. 13 the Consumer Advocate stated, “The CAPD objects to this request on the ground that it calls for information protected by the attorney work product doctrine and the attorney-client privilege. Any communications with any consultant would be made as part of trial preparations and in anticipation of litigation and are, therefore, protected under Rule 26 of the Tennessee Rules of Civil Procedure.”<sup>93</sup> In its *Motion to Compel Consumer Advocate* the Petitioner stated, “The Company asserts that disclosure of the identity of a consultant would not violate the attorney-client privilege.”<sup>94</sup>

The Hearing Officer held the *Motion to Compel Consumer Advocate* in abeyance regarding Request No. 13 pending the filing of testimony.<sup>95</sup>

### **Request No. 14**

Request No. 14 stated, “Identify any consultants that the CAPD contacted regarding this docket, but did not hire.”<sup>96</sup> The Consumer Advocate’s response to Request No. 14 was identical to its response to Request No. 13.<sup>97</sup> In its *Motion to Compel Consumer Advocate* the Petitioner

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<sup>90</sup> *Motion to Compel Consumer Advocate*, p. 13 (May 7, 2004).

<sup>91</sup> Transcript of Proceedings, p. 75 (May 10, 2004)

<sup>92</sup> *Motion to Compel Consumer Advocate*, p. 14 (May 7, 2004)

<sup>93</sup> *Consumer Advocate Responses*, p. 10 (May 5, 2004)

<sup>94</sup> *Motion to Compel Consumer Advocate*, p. 14 (May 7, 2004).

<sup>95</sup> Transcript of Proceedings, p. 76 (May 10, 2004).

<sup>96</sup> *Motion to Compel Consumer Advocate*, p. 14 (May 7, 2004)

<sup>97</sup> *Consumer Advocate Responses*, p. 10 (May 5, 2004)

stated, "The Company asserts that disclosure of the identity of a potential witness would not violate the attorney-client privilege."<sup>98</sup> The Hearing Officer granted the *Motion to Compel Consumer Advocate* to the extent that, upon the filing of testimony, the Company would modify the request to identify persons the Consumer Advocate contacted regarding this docket, did not hire, but did receive advice from upon which the Consumer Advocate relied.<sup>99</sup>

**Request No. 15**

Request No. 15 stated, "Identify each witness that will testify on behalf of the CAPD in this docket."<sup>100</sup> In its response to Request No. 15 the Consumer Advocate stated, "The CAPD is still continuing its investigation in this matter; in particular the CAPD is awaiting responses to its discovery requests. Accordingly, witnesses have not yet been determined nor have they prepared their testimony for this case. If testimony is prepared, it will be provided to the Company when pre-filed testimony is filed well in advance of the hearing on the merits. In the spirit of cooperation, however, the CAPD would state that it is considering using the following persons as witnesses:

Steve Brown, Economist  
PO Box 20207, Nashville, TN 37202-0207  
615 741-3132

Daniel W. McCormac, Coordinator of Analysts  
PO Box 20207, Nashville, TN 37202-0207  
615 741-2935

Mark H. Crocker, Analyst  
PO Box 20207, Nashville, TN 37202-0207  
615 741-8727

Mike Chrysler, Analyst  
PO Box 20207, Nashville, TN 37202-0207  
615 741-8726<sup>101</sup>

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<sup>98</sup> *Motion to Compel Consumer Advocate*, p. 14 (May 7, 2004)

<sup>99</sup> Transcript of Proceedings, p. 78 (May 10, 2004).

<sup>100</sup> *Motion to Compel Consumer Advocate*, p. 15 (May 7, 2004)

<sup>101</sup> *Consumer Advocate Responses*, pp 10-11 (May 5, 2004).

In its *Motion to Compel Consumer Advocate* the Petitioner stated, "As per Rule 26.05 of the Tennessee Rules of Civil Procedure, the CAPD is under a continuing obligation to supplement its discovery responses. The Company reserves its right to file an additional motion to compel if CAPD fails to meet its obligations."<sup>102</sup>

The Hearing Officer deemed the Consumer Advocate's response to Request No. 15 as responsive and on that basis denied the *Motion to Compel Consumer Advocate* regarding this request.<sup>103</sup>

### **Request No. 16**

Request No. 16 stated, "Identify the issues that each witness named in question 15 will address in his/her testimony."<sup>104</sup> In its response to Request No. 16 the Consumer Advocate stated,

The CAPD is still continuing its investigation in this matter; in particular the CAPD is awaiting responses to its discovery requests. Accordingly, witnesses have not yet been determined nor have they prepared their testimony for this case. If testimony is prepared and filed, it will be provided to the Company. This testimony will contain the issues to be covered by the witness. To the extent this request calls for anything more than the testimony and exhibits of CAPD witnesses, the CAPD objects on the ground that it is overly broad and burdensome because any relevant information will be provided in the pre-filed testimony which will be filed well in advance of the hearing on the merits.<sup>105</sup>

In its *Motion to Compel Consumer Advocate* the Petitioner stated, "As per Rule 26.05 of the Tennessee Rules of Civil Procedure, the CAPD is under a continuing obligation to supplement its discovery responses. The Company reserves its right to file an additional motion to compel if CAPD fails to meet its obligations. In addition, the Company reserves the right to propound additional discovery requests after the testimony is filed."<sup>106</sup>

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<sup>102</sup> *Motion to Compel Consumer Advocate*, p. 16 (May 7, 2004)

<sup>103</sup> Transcript of Proceedings, p. 79 (May 10, 2004)

<sup>104</sup> *Motion to Compel Consumer Advocate*, p. 16 (May 7, 2004)

<sup>105</sup> *Consumer Advocate Responses*, pp 11-12 (May 5, 2004)

<sup>106</sup> *Motion to Compel Consumer Advocate*, p. 16 (May 7, 2004).



The Hearing Officer held the *Motion to Compel Consumer Advocate* in abeyance regarding Request No. 16 pending the filing of testimony.<sup>107</sup>


**IT IS THEREFORE ORDERED THAT:**

1. The *Consumer Advocate's Motion to Compel Chattanooga Gas Company*, as amended, is granted as set forth herein.

2. Chattanooga Gas Company's *Motion to Compel Discovery Responses from Intervenor Chattanooga Manufacturers Association* is granted in part and denied in part as set forth herein.

3. Chattanooga Gas Company's *Motion to Compel Discovery Responses from the Consumer Advocate and Protection Division* is granted in part and denied in part as set forth herein.

4. The information responsive to requests that were compelled, but not amended, at the May 10, 2004 status conference is due on May 17, 2004.<sup>108</sup> To the extent that the parties have not provided the remaining information compelled pursuant to this Order, such information shall be served upon the requesting party no later **2:00 p.m. on Monday, July 26, 2004**. Copies shall be served on all parties and filed with the Authority on the date the responses are served.

  
J. Richard Collier, Hearing Officer

*with permission*  
RC

<sup>107</sup> Transcript of Proceedings, p. 80 (May 10, 2004).

<sup>108</sup> Transcript of Proceedings, p. 84 (May 10, 2004).