IN THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE:	)	
	)	
APPLICATION OF CHATTANOOGA GAS COMPANY, A DIVISION OF PIEDMONT NATURAL GAS COMPANY, INC., FOR AN ADJUSTMENT OF ITS RATES AND CHARGES, THE APPROVAL OF REVISED TARIFFS AND APPROVAL OF REVISED SERVICE REGULATIONS	)	**DOCKET NO. 04-00034**

CONSUMER ADVOCATE'S OBJECTIONS TO AND MOTION TO STRIKE PORTIONS OF RESPONSE TESTIMONY OF MICHAEL J. MORLEY REGARDING RECON-2 FILED APRIL 6, 2005

Comes the Consumer Advocate Division of the Office of the Attorney General (hereinafter "Consumer Advocate"), and hereby objects to and moves to strike portions of the Response Testimony of Michael J. Morley filed in support of Recon-2 on April 6, 2005.

Barring the attempted introduction of any new evidence by Chattanooga Gas in any response to this motion, the Consumer Advocate is ready to allow the TRA make a decision on the record as it stands without any additional hearing.

As grounds for these objections and the motion to strike, the Consumer Advocate would state as follows:

1 The response testimony of Mr. Morley goes far beyond his field of financial expertise, and sets forth numerous legal opinions as to the permissible scope of testimony by Consumer Advocate witness Dr. Steve Brown. In effect, Mr Morley seeks to limit the TRA to a

consideration of material on capital structure submitted by CGC and would exclude material submitted by Dr. Brown. In addition, Mr. Morley makes numerous personal attacks on Dr. Brown which the TRA should disregard and which should be stricken from the record.

2. The response testimony of Mr. Morley attempts to introduce new evidence to which the Consumer Advocate has no opportunity to respond. The Consumer Advocate maintains that the record in his case is closed (to be opened only upon proper request) and that this new evidence should not be considered. In particular, on page 15, lines 16-22, Mr. Morley makes numerous references to financing for the acquisition by AGLR of NUI as a means of explaining the justification for his proposed capital structure; important parts of this information related to NUI, however, are not in the record. In addition, on page 21, lines 2-8, of his testimony Mr. Morley refers for the first time to the capital structure of various AGLR utility subsidiaries as a means of supporting his proposed capital structure. None of this material was used by the Consumer Advocate (this information is set forth in MJM Support Response-1).

3. The response testimony of Mr. Morley contains numerous unsupported conclusions which, if allowed into the record, could lead to an erroneous decision by the TRA.

I. IMPROPER LEGAL OPINIONS AND PERSONAL ATTACKS

A. IMPROPER LEGAL OPINIONS

Even though Mr. Morley is being offered as an expert on financial matters, his testimony is replete with legal opinions about the scope of material that Chattanooga Gas claims should be considered by the TRA in this matter. In general, these opinions are editorial in nature and Mr. Morley cites no authority for offering opinions outside his field. Such opinions are improper and should not be considered by the TRA.

On page 2, lines 18-19, of his testimony, Mr. Morley states that:

> The sole issue to be addressed is AGL Resources Inc.'s ("AGLR") capital structure as set forth in Exhibit No. Recon-2. Accordingly, the majority of Dr. Brown's supplemental testimony is outside the scope of both Director Miller's motion and the only issue to be decided in CGC's Petition for Reconsideration — the actual capital structure that is consistent with the stated methodology.

First of all, these opinions as to the permissible scope of testimony are outside the expertise of a financial expert. Furthermore, the opinion is little more than an attempt to limit the evidence to be considered by the TRA to material submitted by Chattanooga Gas. The Consumer Advocate freely acknowledges that the present proceeding was instituted by a Petition for Reconsideration filed by Chattanooga Gas, and that the Consumer Advocate did not ask for reconsideration. This does not mean, however, that the only material to be considered is the new capital structure as proposed by Chattanooga Gas in Recon-2. What Chattanooga Gas through Mr. Morley appears to be arguing is that the Consumer Advocate can only offer comments on what Chattanooga Gas has proposed, and that the TRA can only give that proposed capital structure an up or down vote.

The Consumer Advocate, however, has every right to challenge that proposed capital structure, including the right to submit, as Dr Brown did, a capital structure that he believes most accurately represents a capital structure based on AGLR itself. In his testimony at the hearing in this case, Dr. Brown advocated using a capital structure based on comparable companies, as did Chattanooga Gas expert Mr. Morin; their main disagreement was over the choice of comparable companies. In its Order of October 20, 2004, however, the TRA chose not to use comparable companies, and stated that the "panel found that AGLR was the appropriate company to reference for determining the cost of equity for CGC and that the capital structure of AGLR was the relevant capital structure for CGC because the parent company's decisions controlled to a great extent the

ultimate capital structure and overall cost of capital of its subsidiary." TRA Order at 43.

In its Petition for Reconsideration, Chattanooga Gas has presented one way of figuring the capital structure of AGLR, a way that uses financial information not verified by an independent third party. The Consumer Advocate has every right to challenge that method, and one of the ways the Consumer Advocate has done so is to present its determination of the AGLR capital structure based on financial information that was verified by an independent third party.

It should be noted that Mr. Morley's seeming assurance as to the exact method to be used for determining the capital structure in this case stands in sharp contrast to the statement of his attorney, Mr. Dowdy. During the oral argument on the Petition for Reconsideration, Mr. Dowdy expressed his uncertainty as to what methodology the TRA used:

> And so the company, in terms of having notice of the methodology utilized in this proceeding for capital structure was only aware of it after reading the order. And I will state that even there — and I plan to get on this more in terms of when we argue the merits of reconsideration — but even there if you look at the order — and I think it's primarily pages 43 through 45 or 46 of the order — it is still not clear exactly what methodology this Authority utilized.

TRA Hearing Transcript, December 13, 2004, at 105:17-106:1. Mr. Morley, the non-attorney, however, seems to have no doubt as to what methodology the TRA used and what evidence is proper to consider in light of that methodology. At the very least there is conflict between spokespersons for Chattanooga Gas on this issue.

Moreover, the record of the hearing in this case makes it clear that Mr. Morley and Chattanooga Gas accepted and proposed themselves the use of the consolidated financial statements of AGLR in determining its capital structure well before the TRA used a similar method. Thus, during testimony in this proceeding, Mr. Morley stated as follows:

> Cost of debt financing and our capital structure [sic]. The short-term debt was based on — or our short-term debt percentage of 4.3 percent was based on the estimated working capital needs of Chattanooga Gas Company.
>
> The long-term debt and preferred stock ratios of 40.1 percent and 8.7 percent respectively were based on the consolidated capital structure on AGL Resources as were those debt costs.

Hearing Transcript, August 24, 2004, Vol. II, at 25:19-26:2 (emphasis added).

The very premise of Chattanooga Gas's Petition for Reconsideration is Chattanooga Gas's surprise that the TRA would use a three year average of the verified consolidated capital structure of AGLR to determine the capital structure in this rate case. It is now clear from an examination of the record, however, that the information relied upon by the TRA was placed into the record by Mr. Morley and Dr. Brown and should not be a surprise to anyone.

In conclusion, the TRA should disregard Mr. Morley's improper attempt to limit the scope of this proceeding. The evidence presented by Dr. Brown, including the evidence of an AGLR capital structure using verified financial information, is not outside the scope of this Petition for Reconsideration and should be considered by the TRA.

B. PERSONAL ATTACKS

From the very outset, Mr. Morley's testimony shows a personal animosity to Dr. Brown that cannot be allowed to go unchallenged. On page 3, lines 1-3, Mr. Morley states that Dr. Brown's testimony is "rash." On the same page, lines 14-16, Mr. Morley claims that Dr. Brown's "continued attacks on AGLR's integrity are unprofessional and demonstrates [sic] a lack of understanding of basic ratemaking principles and practices." These and other similar statements are improper and should be stricken from the record. See also page 5, lines 6-15 ("Dr. Brown either does not understand the reporting requirements and public filings of AGLR, or he is simply trying to mislead

the Authority . . . . [His testimony] is dangerous, reckless and simply not appropriate."); page 20, line 10 ("Consistent with the wild accusations of his direct testimony . . . ."); page 23, line 5 ("reckless position, regardless of fact or principle"); and page 28, lines 3-8 (". . . he recklessly attacks the integrity and ethics of AGLR . . ."; " . . . misleading information and conspiracy theories.").

II. NEW EVIDENCE

The testimony of Mr. Morley attempts to introduce new evidence to which the Consumer Advocate has no opportunity to respond. As stated previously, the Consumer Advocate maintains that the record in this case is now closed. Accordingly, the TRA should strike all new evidence offered by Mr. Morley.

On page 15, lines 16-22, Mr. Morley makes numerous references to financing for the acquisition by AGLR of NUI as a means of explaining the justification for his proposed capital structure; crucial parts of this information related to NUI, however, are not in the record. Mr. Morley's point appears to be that the financing for the acquisition of NUI has not had the effect on the AGLR capital structure described by Dr. Brown. But in the process of disagreeing with Dr. Brown, Mr. Morley introduces the new assertion that "[f]urthermore, AGLR terminated the bridge facility [for the financing of the NUI acquisition] in December, shortly after the acquisition of NUI." Morley Response at 15:16-17. The Consumer Advocate, however, will have no opportunity to respond to this assertion and explore its impact on the capital structure as proposed by Chattanooga Gas.

In addition, on page 21, lines 2-8, of his testimony Mr. Morley refers for the first time to the capital structure of various AGLR utility subsidiaries as a means of supporting his proposed capital

structure. None of this material was used by the Consumer Advocate nor has much of it appeared in the record before (this information is set forth in MJM Support Response-1). The Consumer Advocate did obtain related capital structure information after filing a Freedom of Information Act (FOIA) request with the SEC; as a result of that request AGLR provided certain information directly to the Consumer Advocate, with the proviso that Chattanooga Gas considered such information proprietary and confidential. Now, however, Chattanooga Gas through Mr. Morley is attempting to introduce new information.

In particular, in Mr. Morley's Exhibit MJM Support Response-1 we hear for the first time of the following companies and their capital structures: City Gas of Florida; Elkton; and Elizabethtown. It is presumed that Mr. Morley has attached this information regarding the capital structures in support of his position. But given the status of this proceeding, how can the Consumer Advocate respond? Does Mr. Morley expect the TRA staff to accept this material at face value? This is not the proper way to conduct a rate case.

The TRA has given Chattanooga Gas a wide berth with respect to the introduction of new evidence in this case. The record in this docket must be closed at some point. To allow Chattanooga Gas to introduce new evidence at this point would be to encourage litigation strategy based on sandbagging The introduction of new evidence at this rebuttal stage is simply not proper.

Mr. Morley's use of this new material regarding the capital structure of certain AGLR subsidiaries is particularly problematic with regard to his statements about the subsidiary VNG (Virginia Natural Gas). On page 21, line 21 through page 22, line 22, Mr. Morley criticizes Dr. Brown's use of a 35% equity ratio for VNG. Mr. Morley attempts to rebut this figure by arguing that it should be 54.94% instead ("VNG's equity for regulatory purposes is 54.94%, not 35.5% as

asserted by Dr. Brown.") Morley Response at 22:19-20. This 54.94% figure, however, comes from a document not previously introduced and to which the Consumer Advocate will have no opportunity to respond.

III. UNSUPPORTED ALLEGATIONS AND CONCLUSIONS

In the course of his testimony, Mr. Morley makes numerous unsupported allegations and conclusions. The Consumer Advocate objects to these allegations and moves that they be stricken from the record on the basis that they lack a sufficient foundation to support their probative value.

1. There is no support for Mr. Morley's assertion that "[r]egulatory agencies generally use unaudited information more than they use audited financial information.." Morley Response at 11:20-21. What is the basis for this statement? Which regulatory agencies is Mr. Morley referring to? As set forth above, Mr. Morley and Dr. Brown disagree as to the use of verified versus unverified financial information. Mr. Morley should not be permitted to support his position for the use of unverified information by such a conclusory statement.

2 There is no support for Mr. Morley's assertion that "[m]ost objective accountants and financial analysts would agree that a 5% variance [in a forecast] is reasonable and would view my projected capital structures as credible." Morley Response at 17:21-18:1. Who are these accountants he is referring to? Would Mr. Morley accept a 5% variance in all the categories of the capital structure in this case?

3. There is no support for Mr. Morley's assertion that Dr. Brown's use of financial information for the month of December or the so-called "single point in time " approach "contradicts basic ratemaking principles and procedures . . . . " Morley Response at 13:18-22. Mr. Morley's conclusion is wrong. Dr. Brown's capital structures do not rely on and never have relied on a "single

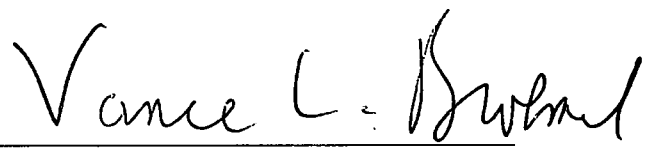
point in time." Again, Mr. Morley has referred grandly to something "everyone" knows, but has given no support for that assertion. When the TRA made its initial finding as to the capital structure in this case, presumably using a three year average for AGLR, that information was based on year -end verified information. Was the TRA violating "basic ratemaking principles and procedures? Obviously not. In fact, the TRA's use of three years of verified financial information makes eminent sense compared to Chattanooga Gas's proposed use of 12-15 months of unverified information and estimates and projections.

4. There is no support for Mr. Morley's assertion that "the basis for most of his [Dr. Brown's] arguments in his direct case and supplemental testimony also is unaudited information. . ." Morley Response at 11:11-12. Again, Mr. Morley's conclusion is wrong and without support.

5. There is no support for Mr. Morley's assertion that " [a] revenue increase is not the same thing as a rate increase," an assertion made by Mr. Morley in his attempt to explain how AGLR could have told investors it had received a $1.3 million rate increase, when, in fact, it had received a rate increase of only $642,777. Morley Response at 25:4-15. In what sense is a revenue increase not the same as a rate increase? Mr. Morley provides no basis for his opinion.

In this matter of misstating the amount of the rate increase ordered by the TRA, the record is abundantly clear. Exhibit A clearly shows Mr. Morley appropriately using the term "rate increase" in his testimony to describe the amount of $642,777, while the very same term, "rate increase," is applied to the amount of $1.3 million in the SEC Form 8-K. Exhibit A also shows Chattanooga Gas/Mr. Morley rounding the "rate increase" of $642,777 to $1 million, but the "rate increase" of $1.3 million is not rounded to $1 million.

Respectfully submitted,



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Dated: April 22, 2005

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Consumer Advocate's Objections to and Motion to Strike Portions of Response Testimony of Michael J. Morley Regarding Recon-2 has been served via first-class U.S. Mail, postage prepaid, this 22 day of April 2005, upon:

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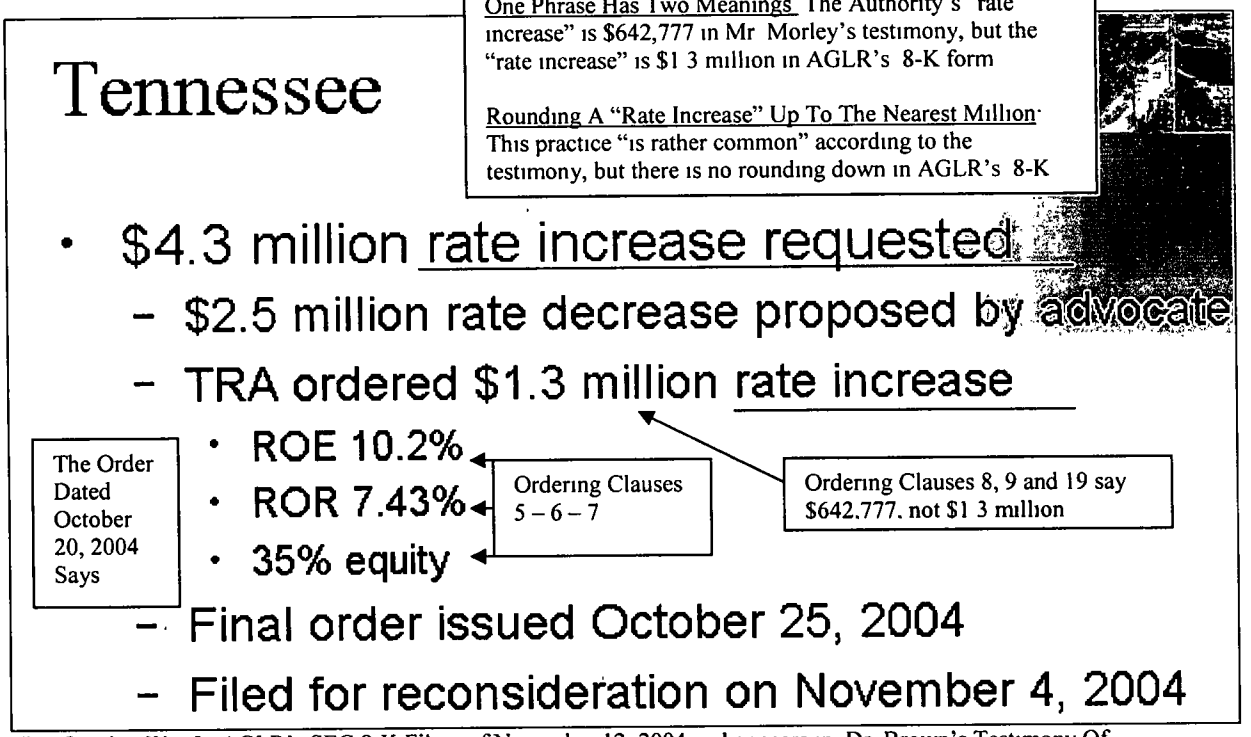
Exhibit A To CAPD's Objections And Motion To Strike

From Mr. Morley's Testimony Of April 6, 2005, Page 25, lines 16 - 21

16	Q.	**Dr. Brown also claims that AGLR misrepresented the ordered rate increase**
17		**in its 10-K filed February 15, 2005. Is this correct?**
18	A	No It is rather common for companies to round numbers up or down and to use
19		the term "approximately" when reporting financial information In this instance,
20		AGLR simply rounded $642,777 to $1 million and reported the information as
21		"approximately $1 million."

One Phrase Has Two Meanings The Authority's "rate increase" is $642,777 in Mr Morley's testimony, but the "rate increase" is $1 3 million in AGLR's 8-K form

Rounding A "Rate Increase" Up To The Nearest Million This practice "is rather common" according to the testimony, but there is no rounding down in AGLR's 8-K



The Order Dated October 20, 2004 Says

Ordering Clauses 5 – 6 – 7

Ordering Clauses 8, 9 and 19 say $642.777. not $1 3 million

This Graphic Was In AGLR's SEC 8-K Filing of November 12, 2004 and appears in Dr Brown's Testimony Of March 30, 2005, at page 32 The Graphic now has additional notations