

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

April 29, 2008

IN RE:)	
)	DOCKET NO.
DOCKET TO EVALUATE CHATTANOOGA)	07-00224
GAS COMPANY'S GAS PURCHASES AND)	
RELATED SHARING INCENTIVES)	

ORDER RE FIRST ROUND DISCOVERY DISPUTES

This matter is before the Hearing Officer upon the *Consumer Advocate's Motion to Compel* ("Motion to Compel") filed with the Tennessee Regulatory Authority ("TRA" or "Authority") on April 22, 2008. In the *Motion to Compel*, the Consumer Advocate and Protection Division of the Office of the Attorney General and Reporter for the State of Tennessee ("Consumer Advocate") requests that the TRA compel Chattanooga Gas Company ("CGC") to provide complete information responsive to several discovery requests. By agreement of parties, and adopted by the Hearing Officer, CGC agreed to forgo the filing of a written response to the *Motion to Compel*, opting instead to rely upon their initial objections provided in response to the requests and present oral argument during the Status Conference on April 24, 2008.

RELEVANT PROCEDURAL BACKGROUND

On March 18, 2008, in accordance with the Procedural Schedule, the Consumer Advocate filed its *First Discovery Requests of the Consumer Advocate and Protection Division to Chattanooga Gas Company* and its *Consumer Advocate's Motion for Leave to Serve More than Forty (40) Discovery Requests* with the Authority. On March 28, 2008, without objection

by CGC, the Hearing Officer granted the Consumer Advocate's request to serve additional discovery requests in the *Order Granting Consumer Advocate's Motion for Leave to Serve More than Forty (40) Discovery Requests*.

On April 11, 2008, CGC filed its *Chattanooga Gas Company's Responses and Objections to CAPD's First Discovery Requests*. On April 18, 2008, CGC filed responses to the Consumer Advocate's discovery request numbers 14, 15, 72, and 81. Thereafter, on April 18, 2008, upon the request of the parties, the Hearing Officer issued an *Order Granting Joint Request to Revise Procedural Schedule* permitting the Consumer Advocate to file its motion to compel discovery on April 22, 2008 rather than April 18, 2008 and eliminating provision for a written response to such motion by CGC. Additionally, on April 18, 2008, a *Notice of Status Conference* was issued confirming the scheduling of a Status Conference on April 24, 2008. On April 22, 2008, *Consumer Advocate's Motion to Compel* was filed with the Authority requesting that CGC be compelled to provide responses or supplemental responses to discovery.

APRIL 24, 2008 STATUS CONFERENCE

The Status Conference began at approximately 10:30 a.m. in the Hearing Room on the Ground Floor of the Tennessee Regulatory Authority at 460 James Robertson Parkway, Nashville, Tennessee. The parties in attendance were as follows:

CGC - J.W. Luna, Esq. and Jennifer L. Brundige, Esq., Farmer & Luna, PLLC, 333 Union Street, Suite 300, Nashville, TN 37201, and Archie Hickerson, Director, Regulatory Affairs, AGL Resources, Inc., 5100 E. Virginia Beach Blvd., Norfolk, VA 23502; and,

Consumer Advocate - Timothy Phillips, Esq. and Stephen R. Butler, Esq., Office of the Attorney General, P.O. Box 20207, Nashville, Tennessee, 37202.

At the request of the parties, the start of the Status Conference was delayed approximately thirty minutes from the noticed time in order to allow the parties to work together

in an attempt to resolve their disputes. Thereafter, upon commencement of the Status Conference, the parties reported that they had resolved their disputes concerning the following discovery request numbers: 14, 15, 52 in part, 53, 54, 63, 64, 70, 71, 72, 76, 77 in part, 78, and 81. The parties further agreed that oral argument would be confined to discovery request numbers 24, 28, 34, 35, 36, 46, 49, 50, 51, 52 in part, and 77 in part.

LEGAL FRAMEWORK

The process of discovery in contested cases before the TRA is governed by the Tennessee Rules of Civil Procedure.¹ According to Rule 26.02(1),

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Further, the Tennessee Court of Appeals has commented on relevancy as follows:

Relevancy is extremely important at the discovery stage. However, it is more loosely construed during discovery than it is at trial. The phrase “relevant to the subject matter involved in the pending action” has been construed “broadly to encompass any matter that bears on or reasonably could lead to any other matter that could bear on, any issue that is or may be in the case.”²

Nevertheless, Tennessee’s rules governing discovery do provide some limitations and protections. Specifically, Tenn. R. Civ. P. 26.02(1) provides:

The frequency or extent of use of the discovery methods set forth in subdivision 26.01 shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative or is obtainable from some other source that is more convenient, less burdensome or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the

¹ See Tenn. Comp. R. & Regs. 1220-1-2-.11(1).

² *Boyd v. Comdata Network, Inc.*, 88 S.W.3d 203, 220 n.25 (Tenn. Ct. App. 2002) (citations omitted) (quoting *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351, 98 S.Ct. 2380, 2389, 57 L.Ed.2d 253 (1978)).

information sought; or, (iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation.

Additionally, Rule 26.03 permits a court to issue protective orders as justice requires.³ In *Duncan v. Duncan*, the Tennessee Court of Appeals held that:

A trial court should balance the competing interests and hardships involved when asked to limit discovery and should consider whether less burdensome means for acquiring the requested information are available. If the court decides to limit discovery, the reasonableness of its order will depend on the character of the information being sought, the issues involved, and the procedural posture of the case (citations omitted).⁴

While Rule 37.01(2) permits a party to file a motion to compel if a party fails to answer an interrogatory, including providing an evasive or incomplete answer, "[d]ecisions to grant a motion to compel rest in the trial court's reasonable discretion."⁵

DISCOVERY REQUESTS

Financial Information

Question 24:

Please provide a complete copy of Sequent's book of profits and losses for Tennessee for the time period from January 1, 2004 through the present by calendar year, or copies of the documents whether or not they are kept in the form of a book.

Response:

Sequent does not maintain books of profit by state.

During the Status Conference, the Consumer Advocate stated that as result of their recent visit to Sequent's headquarters in Houston, Texas, they were told of the existence of information

³ Tenn. R. Civ. P. 26.02 & .03.

⁴ *Duncan v. Duncan*, 789 S.W.2d 557, 561 (Tenn. Ct. App. 1990).

⁵ *Kuehue & Nagel, Inc. v. Preston, Skahan & Smith International, Inc.*, 2002 WL 1389615, *5 n.4 (Tenn. Ct. App. June 27, 2002).

held by Sequent concerning profits and losses related to CGC assets.⁶ The Consumer Advocate asserts that review of this information is relevant and necessary in order to verify that Sequent's profits are in line with the sharing arrangements set forth in the asset management agreement between Sequent and CGC.⁷

CGC contends that its response was in conformity with the form of the question posed; however, after discussion with the Consumer Advocate, it now has a better understanding of what information the Consumer Advocate was attempting to elicit.⁸ As a compromise, CGC has offered to provide the Consumer Advocate with its IMCR filings which contain a month by month summary of transactions related to profit and loss information.⁹ CGC asserts that profit and loss information is recorded daily and production thereof would be so voluminous as to be overly broad and unduly burdensome.¹⁰

In accordance with the Hearing Officer's request, on April 25, 2008 via electronic mail, CGC advised that Sequent has the ability to provide profit and loss information concerning CGC from October 2004 to the present in an electronic format.¹¹ The Hearing Officer finds that profit and loss information is relevant and discoverable, and in light of the fact that it is able to be provided in an electronic format, its production will not be unduly burdensome. Therefore, the Hearing Officer hereby finds that the Consumer Advocate's *Motion to Compel* should be granted and CGC shall produce such information in electronic format.

⁶ Transcript of Status Conference, p. 11 (April 24, 2008).

⁷ *Id.* at 11 and 14.

⁸ *Id.* at 12.

⁹ *Id.*

¹⁰ *Id.* at 12-13.

¹¹ For reference, a copy of the electronic mail received by CGC on April 25, 2008 is attached hereto as **Exhibit A**.

Question 28:

Please produce copies of Sequent's general accounting ledger and related chart of accounts for the fiscal years ended December 31, 2004, December 31, 2005, December 31, 2006, and December 31, 2007.

Response:

Sequent objects to this question as not reasonably calculated to lead to the discovery of admissible evidence, overly broad and unduly burdensome, vague and ambiguous and seeking privileged, confidential, proprietary and/or trade secret information.

The Consumer Advocate asserts that Sequent's general accounting ledger and chart of accounts is relevant and necessary to an investigation of the issues presented in this docket.¹² The Consumer Advocate states that while it understands that the general ledger may contain broad categories of information, it believes that within the general ledger, there may exist discoverable information concerning Sequent's functioning as agent for CGC and profits generated from the use of CGC assets.¹³ Further, as the agent for a regulated utility, Sequent has willingly opened itself up to regulation by the TRA and any matter concerning its business should be available for scrutiny.¹⁴

CGC asserts that the general ledger is a high level accounting report from which it is not possible to segregate or differentiate information concerning CGC specific activities.¹⁵ Additionally, CGC contends that while Sequent may be the agent for CGC assets, it is not a regulated entity.¹⁶ Sequent is a private business and information concerning Sequent's business that it not related to management of CGC assets is not relevant or discoverable.¹⁷ Requiring Sequent to disclose highly confidential non-CGC business information simply because it is

¹² Transcript of Status Conference, p. 16 (April 24, 2008).

¹³ *Id.*

¹⁴ *Id.* at 19.

¹⁵ *Id.* at 17.

¹⁶ *Id.*

¹⁷ *Id.*

CGC's asset manager would have a chilling effect on the bidding process for asset management and future interactions with the industry.¹⁸

This docket has been initiated to evaluate CGC. The Hearing Officer finds that the general ledger, which according to CGC's assertions is not CGC specific and not able to be segregated to provide CGC-specific information, is not discoverable. The Consumer Advocate argued in part that it could not tailor its request because it did not know what information the general ledger contained. The related chart of accounts may provide detail from which the Consumer Advocate could make tailored requests in future rounds of discovery that would relate to CGC data or from which CGC information could be gleaned. Therefore, the Hearing Officer hereby finds that the Consumer Advocate's *Motion to Compel* should be denied as to production of Sequent's general ledger. The Hearing Officer grants the Consumer Advocate's *Motion to Compel* as to the request for the related chart of accounts.

Asset Management Contracts

Question 34:

Please provide copies of all asset management contracts between Sequent and entities other than CGC for the time period from January 1, 2004 through the present.

Response:

Sequent objects to this question as not reasonably calculated to lead to the discovery of admissible evidence, overly broad and unduly burdensome, vague and ambiguous and seeking privileged, confidential, proprietary and/or trade secret information.

Question 35:

Please provide copies of all asset management contracts between AGL affiliates and their asset managers for the time period from January 1, 2004 through the present.

¹⁸ *Id.* at 18.

Response:

Sequent objects to this question as not reasonably calculated to lead to the discovery of admissible evidence, overly broad and unduly burdensome, vague and ambiguous and seeking privileged, confidential, proprietary and/or trade secret information.

During the Status Conference, the Consumer Advocate advised the Hearing Officer that it wished to argue Questions 34 and 35 together, as one topic or subject, because both questions involve requests for copies of asset management contracts. First, the Consumer Advocate asserts that copies of asset management contracts involving Sequent and entities unrelated to CGC are relevant to making a determination as to whether or not the contract executed between Sequent and CGC is fair or a good deal for consumers.¹⁹ The Consumer Advocate states that CGC's asset management contract requires a 50/50 sharing with Sequent, and that Sequent may have an agreement in Georgia that is a more favorable 60/40 sharing arrangement.²⁰ The Consumer Advocate asserts that as part of the issues to be resolved in this docket it should be allowed to review all of Sequent's asset management contracts from 2004 to the present. Additionally, the Consumer Advocate asserts that the same argument and reasons apply for its request to review asset management contracts in existence between AGL affiliates and their asset managers.²¹

CGC contends that Sequent's asset management contracts with private customers, municipal utilities, and public utilities other than CGC are not relevant to its contract concerning CGC's regulated assets.²² Many variables in the creation of these contracts make them unlike the Sequent-CGC contract.²³ Further, most asset management contracts contain confidentiality provisions that are relied upon by private third parties and such confidentiality should be

¹⁹ *Id.* at 23-24.

²⁰ *Id.* at 24.

²¹ *Id.* at 24-25.

²² *Id.* at 26.

²³ *Id.*

appropriately maintained.²⁴ Therefore, CGC asserts that the request for such contracts is overbroad, unduly burdensome, and irrelevant. Further, as to the asset management contracts of other AGL affiliates, CGC contends that those contracts would not be comparable to CGC for a variety of reasons, including that they involve utilities in states other than Tennessee.²⁵

As stated above, this docket has been initiated to evaluate CGC. Whether or not Sequent has asset management contracts with entities other than CGC or its affiliates is not relevant to the issues for determination in this docket. Nevertheless, asset management contracts between AGL affiliates and their asset managers may be pertinent and contribute to an examination of affiliate transactions and relationships, an issue appropriate for evaluation in this docket.

Therefore, the Hearing Officer hereby finds that the Consumer Advocate's *Motion to Compel* should be denied as to production of asset management contracts between Sequent and entities other than CGC or AGL affiliates. Nevertheless, CGC shall be compelled to provide copies of the asset management contracts between all AGL affiliates and Sequent, and the asset management contracts between AGL affiliates and other asset managers to the extent that they are publicly available, or if not publicly available, CGC shall provide a list sufficiently identifying the asset managers utilized by each corresponding AGL affiliate.

Question 36:

Please explain how the sharing formula and percentages were determined for the asset management contracts between CGC and Sequent for the time period from January 1, 2004 through the present.

Response:

The sharing provisions included in the asset management agreement between CGC and Sequent for the period of January 1, 2004 – March 31, 2008 were negotiated by the parties. The sharing provisions in the agreement effective April 1, 2008 were determined through the RFP and bidding process included in CGC's Tariff approved by the Tennessee Regulatory Authority.

²⁴ *Id.*

²⁵ *Id.* 27-28.

The Consumer Advocate asserts that CGC's response to the above question is insufficient and that CGC should be required to provide more detail. Specifically, the Consumer Advocate requests information concerning how the sharing formula and percentages were negotiated.²⁶

CGC states that it has offered to revise its response to provide more explanation on the negotiation to include that the 50/50 sharing was based on CGC's Tariff, which had a 50/50 sharing for all system sales.²⁷ The Consumer Advocate rejected the additional explanation offered by CGC as insufficient, citing the need for even more detail on the negotiation of the sharing formula and percentage between Sequent and CGC.²⁸ The Consumer Advocate asserts that it is attempting to determine how the sharing formula and percentages were developed over time, thus, additional details concerning the negotiation of these items in the previous agreement is imperative.²⁹

In light of the arguments of counsel and foregoing discussion, the Hearing Officer finds that CGC shall provide a sufficiently detailed supplemental response to this question, as indicated during the Status Conference. The *Motion to Compel* as to this question is granted.

Affiliate Transactions & Relationships

Question 46:

Does CGC obtain competitive bids for information, assets, goods or services subsequently purchased from an affiliated entity? If not, document the reasons and circumstances for which CGC deems competitive bids are neither necessary or appropriate. If CGC does obtain such competitive bids, provide copies of documents showing such competitive bids.

Response:

CGC has demonstrated that it complied with the Authority's requirements with respect to competitively bidding its asset management agreement. To the extent this question seeks

²⁶ *Id.* at 30.

²⁷ *Id.* at 31-34.

²⁸ *Id.*

²⁹ *Id.*

additional information, CGC objects to this question as not reasonably calculated to lead to the discovery of admissible evidence, overly broad and unduly burdensome, vague and ambiguous and seeking privileged, confidential, proprietary and/or trade secret information.

The Consumer Advocate asserts that the above question is attempting to gain information relevant to the relationship occurring between affiliates, which is an issue included for determination in this docket.³⁰ CGC contends that this question is outside the scope of the issues in this docket, the issue that is relevant concerns whether, in accordance with its tariff, it competitively bids its asset management contract.³¹ Whether or not CGC issues or accepts competitive bids “on every other copy machine or goods and service is irrelevant.”³²

The Hearing Officer finds the information sought in the above question is relevant and discoverable within the scope of this docket, and is therefore, the *Motion to Compel* as to Question 46 is granted.

Question 49:

Explain in detail the process, including all communications, CGC went through in selecting Sequent as CGC’s asset manager for the period January 1, 2004 through the present.

Response:

In compliance with the procedures in CGC’s Tariff approved by the TRA, employees of AGL Services Company’s Gas Control, Regulatory, and Legal Departments, acting on behalf of CGC, developed a written Request for Proposal (RFP) defining the company’s assets to be managed, detailing the Company’s minimum service requirements, describing the content requirements of the bid proposals, and the procedures for submission and evaluation of the bid proposals. After approval by senior management of CGC, the RFP was provided to twenty seven potential asset managers and the TRA Staff on November 20, 2007. In addition, advertisements inviting other potential asset managers to submit proposals were published in Platts Gas Daily publication on November 27, 2007 and December 11, 2007. (A confidential copy of the RFP provided to the potential bidders and the TRA Staff and, a confidential copy of the list of potential bidders was previously provided in TRA Docket 08-00012.)

³⁰ *Id.* at 35.

³¹ *Id.*

³² *Id.*

As a result of request from potential bidders the supplemental information included on Attachment A was provide to potential bidders on December 12, 2007.

Responses to the RFP that were received by 12:00 noon, December 21, 2007, as provided in the RFP, were evaluated between that date and January 3, 2007. On January 4, 2007, Sequent Energy Management was notified that it was the successful bidder. (Copies of the confidential responses from all the bidders were previously provided in TRA Docket 08-00012 in response to the TRA Staff's Discovery Request #3.)

To the extent this request seeks information related to the previous asset management agreement, CGC objects as not reasonably calculated to lead to the discovery of admissible evidence, overly broad and unduly burdensome, vague and ambiguous and seeking privileged, confidential, proprietary and/or trade secret information.

Question 50:

Describe in detail all communications between CGC, AGL, and any affiliate of CGC concerning the asset management arrangements for the period from January 1, 2004 to the present.

Response:

As addressed in the response to request item 49, employees of AGL Services Company's Gas Control, Regulatory, and Legal Departments, acting on behalf of CGC, developed a written Request for Proposal (RFP) that defined the Company's assets to be managed, detailing the company's minimum service requirements, describing the content requirements of the bid proposals, and the procedures for submission and evaluation of the bid proposals. Sequent Energy Management, an affiliate of CGC, was included in the group of potential bidders that were provided a copy of the RFP on November 20, 2007. On December 12, 2007 supplemental information was provided to the potential bidders, including Sequent Energy Management. On January 4, 2008 Sequent was notified that its proposal had been accepted. After Sequent was notified that it was the successful bidder there was communication with Sequent addressing the procedural schedule for obtaining approval and discussion concerning what information included in the AMA agreement that should be classified as confidential. There was no communication between CGC and other affiliates concerning the AMA.

To the extent this request seeks information related to the previous asset management agreement, CGC objects as not reasonably calculated to lead to the discovery of admissible evidence, overly broad and unduly burdensome, vague and ambiguous and seeking privileged, confidential, proprietary and/or trade secret information.

Question 51:

Provide all documents of all communications between CGC, AGL and any affiliate of CGC concerning the asset management arrangements for the period from January 1, 2004 to the present.

Response:

The RFP provided to Sequent was filed in TRA Docket 08-00012, and the supplemental data provided to potential bidders is included in response to question 50. Attached is a copy of an e-mail sent to Sequent providing the procedural schedule for TRA Dockets 08-00012 and 07-00224.

To the extent this request seeks information related to the previous asset management agreement, CGC objects as not reasonably calculated to lead to the discovery of admissible evidence, overly broad and unduly burdensome, vague and ambiguous and seeking privileged, confidential, proprietary and/or trade secret information.

Concerning Discovery Questions 49, 50, and 51, the Consumer Advocate asserts that the most prior asset management agreement, which is the only past agreement encompassed within the time period stated in the question, is relevant to a determination of the evolution of the current asset management agreement that is currently in place.³³ Thus, communications concerning this agreement are discoverable and relevant to a determination of the issues. Further, the Consumer Advocate asserts that the previous agreement ended March 31, 2008 – which is not the ancient past – and it is only attempting to elicit recent communications concerning the prior asset management agreement.³⁴ The Consumer Advocate asserts that such information is relevant and helpful to understanding of the current agreement.³⁵

CGC opposes the production or response of any information concerning previous asset management agreements, including the asset management agreement that terminated on March 31, 2008.³⁶ The issues for determination in this docket encompass the current bidding process and the current asset management agreement – not prior agreements.³⁷ Further, CGC contends that the Consumer Advocate's request for all communications is overly broad and unduly

³³ *Id.* at 37.

³⁴ *Id.* at 39-40.

³⁵ *Id.*

³⁶ *Id.* at 38-39.

³⁷ *Id.*

burdensome.³⁸ The Consumer Advocate states that the questions have been narrowly tailored and its request for all communications cannot be limited to particular types or kinds.³⁹

The Consumer Advocate does not dispute CGC's answers to these questions insofar as they address the current asset management agreement. The Hearing Officer hereby finds that the previous asset management agreement between CGC and Sequent is not relevant to the issues presented in this docket. Prior agreements executed between CGC and Sequent were not the result of an RFP process, nor were affiliate guidelines in place at the time. Therefore, the *Motion to Compel* should be denied as to these questions.

Question 52:

Describe in detail the work history of all Sequent employees for the past ten years.

Response:

Sequent objects to this question as not reasonably calculated to lead to the discovery of admissible evidence, overly broad and unduly burdensome, vague and ambiguous and seeking privileged, confidential, proprietary and/or trade secret information.

The Consumer Advocate and CGC were able to reach agreement on a resolution of their disputes concerning this question to the extent that it includes current employees of Sequent who worked for affiliated utilities.⁴⁰ CGC agreed to provide information concerning current employees. Information, specifically names and periods of employment, of past employees beginning from 2001 to the present remained in dispute during the Status Conference and oral arguments were limited to this point.

The Consumer Advocate asserts that in this question it is trying to elicit information which would determine to what degree the entities overlap in employee resources or function

³⁸ *Id.* at 40.

³⁹ *Id.* at 42-43.

⁴⁰ *Id.* at 43.

independently.⁴¹ CGC contends that it has offered a compromise as to current employees, and that information concerning past employees is not relevant.⁴² Additionally, attempting to track down past employees to advise or obtain permission to release information is unduly burdensome.⁴³

The Hearing Officer finds that the *Motion to Compel* as to the remaining dispute on the narrowed request for the names and periods of employment of past employees should be granted.

Operating Balance Agreements

Question 77:

See attachment hereto identified as **Exhibit B** for the text of Question 77 propounded by the Consumer Advocate and response thereto provided by CGC.

The Consumer Advocate and CGC were able to agree on a partial resolution of their disputes concerning this question. CGC agreed to provide the Operating Balance Agreements between CGC and East Tennessee Natural Gas Pipeline and between AGL and East Tennessee Natural Gas Pipeline. During the Status Conference, a dispute remained between the parties as to production of the Operating Balance Agreement between Sequent and East Tennessee Natural Gas Pipeline and oral argument was limited to this point.

The Consumer Advocate asserts that Sequent is CGC's asset manager, its agent, and therefore, it has opened itself up to broad review by the TRA.⁴⁴ Further, a review of all of the Operating Balance Agreements, including the one between Sequent and East Tennessee Natural Gas Pipeline, will contribute to a greater understanding of the way asset management works.⁴⁵ The Consumer Advocate states that CGC's assets, which are being utilized by Sequent, are paid

⁴¹ *Id.* at 43-44.

⁴² *Id.* at 44.

⁴³ *Id.*

⁴⁴ *Id.* at 45-46.

⁴⁵ *Id.* at 46.

for by consumers and information concerning the way in which Sequent deals with pipelines and pipeline matters is relevant.⁴⁶

CGC contends that CGC's regulated assets are at issue in this docket and, maintaining its stated objection, it has offered to revise its response to this question. CGC states that while Sequent does have an Operating Balance Agreement with East Tennessee Natural Gas Pipeline the agreement "does not and can't by definition include any points covered by the balancing agreement for Chattanooga Gas and Atlanta Gas and Light Company. So this agreement isn't going to have anything to do with Chattanooga Gas' assets."⁴⁷

The Hearing Officer finds that the *Motion to Compel* on the remaining dispute of the parties concerning production of the Operating Balance Agreement between Sequent and East Tennessee Natural Gas Pipeline should be denied.

IT IS THEREFORE ORDERED THAT:


1. The *Consumer Advocate's Motion to Compel* discovery request 24 is GRANTED.
2. The *Consumer Advocate's Motion to Compel* discovery request 28 is DENIED as to the production of Sequent Energy Management's General Ledger, but GRANTED as to the request to produce the related Chart of Accounts.
3. The *Consumer Advocate's Motion to Compel* discovery request 34 is DENIED as to production of asset management contracts between Sequent and entities other than CGC or AGL affiliates.
4. The *Consumer Advocate's Motion to Compel* discovery request 35 is GRANTED such that CGC shall be compelled to provide copies of the asset management contracts between all AGL affiliates and Sequent, and the asset management contracts between AGL affiliates and

⁴⁶ *Id.* at 48.

⁴⁷ *Id.* at 47.

other asset managers to the extent that they are publicly available, or if not publicly available, CGC shall provide a list sufficiently identifying the asset managers utilized by each corresponding AGL affiliate.

5. The *Consumer Advocate's Motion to Compel* discovery request 36 is GRANTED.
6. The *Consumer Advocate's Motion to Compel* discovery request 46 is GRANTED.
7. The *Consumer Advocate's Motion to Compel* discovery requests 49, 50, and 51, are DENIED.
8. The *Consumer Advocate's Motion to Compel* discovery request 52 limited to the remaining dispute on the request for the names and periods of employment of past employees is GRANTED.
9. The *Consumer Advocate's Motion to Compel* discovery request 77 limited to production of the Operating Balance Agreement between Sequent and East Tennessee Natural Gas Pipeline is DENIED.


Kelly Cashman-Grams, Hearing Officer

Kelly Grams - Docket 07-00224

From: "Jennifer L. Brundige" <jbrundige@farmerluna.com>
To: "Grams, Kelly" <Kelly.Grams@state.tn.us>
Date: 4/25/2008 4:17 PM
Subject: Docket 07-00224
CC: "Timothy Phillips" <Timothy.Phillips@state.tn.us>, "Butler, Stephen" <Stephen.Butler@state.tn.us>, "J W. Luna" <jwluna@farmerluna.com>

Hearing Officer Cashman-Grams:

You directed Chattanooga Gas Company ("CGC") to provide you with information about Sequent's ability to provide the CGC Book in electronic format. CGC has learned that Sequent would be able to provide CGC Book information from October 2004 forward in an electronic format (i.e., Excel). Please let me know if you need additional information.

Jennifer

Jennifer L. Brundige, Esq.
Farmer & Luna, PLLC
333 Union Street
Suite 300
Nashville, TN 37201
(615) 254-9146 (main)
(615) 254-7123 (facsimile)
jbrundige@farmerluna.com

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Question 77:

If the response is "Yes" to either of the two requests immediately above, then provide copies of all Operating Balance Agreements between CGC and East Tennessee Natural Gas Pipeline, between Sequent and East Tennessee Natural Gas Pipeline, and between AGL and East Tennessee Natural Gas Pipeline.

Response

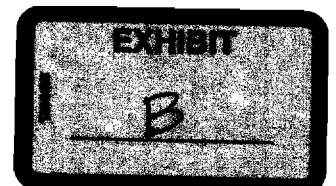
**Rate Schedule LMS-PA
Load Management (Pooling Area) Service**

1. AVAILABILITY

- 1.1 Transporter shall provide a monthly balancing service to parties (herein referred to as "Balancing Parties") who have executed an Operational Balancing Agreement ("OBA") for use at receipt points. A Receipt Point OBA will be available to:
- (a) the operator of connecting facilities at a receipt point(s) on Transporter's system;
 - (b) a pipeline operator whose facilities interconnect with Transporter's system;
 - (c) A supply aggregator ("Aggregator") who has obtained consent from two or more receipt point operators authorizing the Aggregator to operate such points, which authorization shall include, but not be limited to, changing physical flow at receipt points; provided however that the sum of all the MDROs at all points covered by one Aggregator's Balancing Agreement shall not exceed 5,000 Dth.

2. APPLICABILITY

The terms, conditions, and charges set forth in this Rate Schedule governing daily variances and monthly balancing shall apply to all gas flowing through meters covered by a Receipt Point OBA. A Receipt Point OBA may cover an unlimited number of points designated as Primary Receipt Points under FT-A and/or FT-GS Agreement(s), or an unlimited number of points designated as Primary Receipt Points under an FT-L Agreement, subject to the limitation in Section 1.1(c) above. A single Receipt Point OBA may not cover points on that portion of Transporter's system designated as an Incremental Lateral and points on that portion of Transporter's system not designated as an Incremental Lateral.



3. SCHEDULING AND CONFIRMATION BY BALANCING PARTY

The Balancing Party will submit confirmations to Transporter via LINK® by Transporter's confirmation deadline(s) set forth in Section 15 of Transporter's General Terms and Conditions. The Balancing Party's confirmation shall specify the quantity to be transported by each Shipper to or from Balancing Party's receipt point.

4. DAILY VARIANCES

- 4.1 The daily variance shall be the difference between the total Scheduled Quantity at that point and the actual quantity delivered into Transporter's system at that point on any day.

Issued by: D. A. McCallum, Director, Rates and Tariffs

Issued on: August 16, 2006

Effective on: October 29, 2006

Filed to comply with order of the Federal Energy Regulatory Commission, Docket No. CP05-413-000, issued February 8, 2006, 14 FERC ¶ 61,122

East Tennessee Natural Gas, LLC

FERC Gas Tariff

Third Revised Volume No. 1

First Revised Sheet No. 192

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Rate Schedule LMS-PA
Load Management (Pooling Area) Service (Continued)

- 4.2 A Balancing Party may be subject to an Action Alert Penalty or a Balancing Alert Penalty for quantities delivered above the Daily Limit as set forth in Section 5.

- 4.3 Based upon the best information available, a Balancing Party shall take action to correct any imbalances occurring during the month by making adjustments in nominations or receipts. If Balancing Party fails to take such corrective action, then Transporter may, upon 48 hours notice, adjust Balancing Party's scheduled receipts over the remainder of the calendar month in order to maintain a balance of receipts and nominations.

5. DELIVERIES IN EXCESS OF DAILY LIMIT

- 5.1 On any day on which Transporter has issued an Operational Flow Order ("OFO") affecting Balancing Party's point pursuant to Section 14 of Transporter's General Terms and Conditions, and Balancing Party delivers gas in excess of the Daily Limit

applicable to the receipt point, such Balancing Party shall be subject to an Action Alert Penalty or a Balancing Alert Penalty, as applicable, as set forth in Section 14.9 of Transporter's General Terms and Conditions for each dth of excess quantities delivered beyond a two percent allowable variation. The Daily Limit shall be stated in the OFO.

- 5.2 In addition to the remedy set forth in 5.1 above, in the event Balancing Party delivers gas in excess of the Daily Limit applicable to the receipt point and Transporter believes it is necessary to take actions (i.e., buying or selling gas, etc.) to maintain system integrity or to prevent interrupting firm service, Transporter shall have the right, but not the obligation, to take such remedial actions as it deems necessary. If Transporter takes these actions, it shall be made whole by the Balancing Party that failed to observe the Daily Limit for all costs that Transporter incurs.
- 5.3 Any penalty revenue collected by Transporter pursuant to this Section 5 will be credited to Non-offending LMS-PA Balancing Parties pursuant to Section 47.4 of the General Terms and Conditions of this FERC Gas Tariff.

6. IMBALANCE TRADING

LMS-PA Balancing Parties will be allowed to trade imbalances occurring during the month.

Transporter shall allow LMS-PA Balancing Parties to trade imbalances with other LMS-MA or

LMS-PA Balancing Parties within the same Operational Impact Area, as defined in Section

1

of the General Terms and Conditions, if the two Balancing Parties' imbalances are offsetting balances for the month, such that the net imbalance for each Balancing Party after the completion of the trade would be reduced to a quantity closer to zero. A Balancing Party may trade any imbalance with another Balancing Party, provided that the trade shall not result in a transportation path which crosses a Posted Point of Restriction, as defined in Section 1 of the General Terms and Conditions, for that month.

A Transportation Component for each imbalance to be traded will be calculated and applied pursuant to Section 8.4 of Rate Schedule LMS-MA.

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Rate Schedule LMS-PA
Load Management (Market Area) Service (Continued)

Transporter will provide the ability to post and trade imbalances at any time during the gas flow month, and until the seventeenth Business Day after the end of the month during which the imbalances occurred. To facilitate the trading process, Transporter will, upon receipt of an LMS-PA Balancing Party's authorization, post an LMS-PA Balancing Party's imbalance quantity on its Web site. Authorizations to Post Imbalances that are received by Transporter by 11:45 a.m. will be effective by 8:00 a.m. the next Business Day (central clock time). An Authorization to Post Imbalances will remain in effect until cancelled by the LMS-PA Balancing Party. Imbalances previously authorized for posting will be posted as they become available, but no later than the ninth Business Day of the month; however, Transporter will not be required to post zero imbalances. The information posted will identify the LMS-PA Balancing Party, the contract number, the Operational Impact Area and the gas flow month applicable to the posted imbalance quantity. Transporter will provide to all Customers the ability to view, and upon request, download posted imbalance information.

Transporter shall enable the imbalance trading process by (i) receiving the Request for Imbalance Trade, (ii) receiving the Imbalance Trade Confirmation, (iii) sending the Imbalance Trade Notification to all affected parties, and (iv) reflecting the trade prior to or on the next monthly Shipper Imbalance or cash-out. When trading imbalances, the quantity to be traded must be specified. After receipt of an Imbalance Trade Confirmation, Transporter will send the Imbalance Trade Notification to the initiating trader and the confirming trader no later than noon (central clock time) on the next Business Day. Imbalance trades can only be withdrawn by the initiating trader and only prior to the confirming trader's confirmation of the trade. Imbalance trades are considered final when confirmed by the confirming trader and effectuated by Transporter. Transporter shall update the LMS-PA Balancing Party's imbalance data to reflect any final trades of imbalance quantities no later than 9:00 a.m. CT on the next Business Day after the trade is finalized.

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Rate Schedule LMS-PA
Load Management (Pooling Area) Service (Continued)

7. MONTHLY IMBALANCES

- 7.1 The LMS-PA Balancing Party's monthly imbalance shall be the net total of daily variances from all points covered by the LMS-PA Balancing Party's OBA(s) adjusted for make-up quantities and imbalance trading transactions, with the exception that monthly imbalances created on that portion of Transporter's system not designated as an Incremental Lateral shall not be netted against monthly imbalances created on that portion of Transporter's system designated as an Incremental Lateral. Unless Transporter and the Balancing Party mutually agree to correct the imbalance in kind on a nondiscriminatory basis, each month Transporter and the Balancing Party shall "cash out" any imbalance between Scheduled Quantities and actual receipts. To determine the % monthly imbalance, Transporter shall divide the lesser of the monthly imbalance based on Operational Data or the actual monthly imbalance by the total scheduled quantities for all days of the month for all points covered by the Balancing Agreement, then multiply by 100.
- 7.2 (a) If the monthly imbalance is due to an excess of actual receipts relative to scheduled quantities, then the monthly imbalance shall be considered a "positive" imbalance and Balancing Party/Shipper shall sell to Transporter, and Transporter shall buy from the Balancing Party/Shipper, in accordance with the formula listed in Section 7.2(a) of this Rate Schedule. If the monthly imbalance is due to a deficiency in actual receipts relative to scheduled quantities, then the monthly imbalance shall be considered a "negative" imbalance and Transporter shall sell to the Balancing Party/Shipper, and Balancing Party/Shipper shall buy from Transporter, in accordance with the formula listed in Section 7.2(a)(ii).

The amounts due hereunder shall be paid in accordance with

Section 16 of the General Terms and Conditions of
Transporter's FERC Gas Tariff.

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Rate Schedule LMS-PA

Load Management (Pooling Area) Service (Continued)

- (i) The Balancing Party or Shipper (hereinafter referred to as the "Party") and Transporter shall "cash out" the actual monthly imbalance at the applicable price described below.
 - (A) For each month, the monthly "Low Price" or "LP" for each Market Area shall be established by taking the lowest weekly Market Area Region Price ("MARP") set forth in Tennessee's tariff pursuant to its Rate Schedule LMS-MA established for the Market Area applicable to the month.
 - (B) For each month, the monthly "High Price" or "HP" for each Market Area shall be established by taking the highest weekly MARP established for the Market Area applicable to the month.
 - (C) For each month, the monthly "Average Price" or "AP" for each Market Area shall be determined by taking the simple arithmetic average of the weekly MARP figures established for the Market Area applicable to the month.

In the event that these prices are no longer available or valid, Transporter will file to change its tariff and may, at its discretion, select a representative price in the interim period, subject to refund. In the event that a more representative posting is established, Transporter will file to change its tariff.

- (ii) For all Parties whose % monthly imbalance is less than or equal to 5% (as

calculated according to Section 7.1 of this Rate Schedule) or whose monthly imbalance (either actual or operational) is less than or equal to 1,000 Dth, the following definitions shall apply to the formula under which the Parties' imbalance volumes are "cashed out":

- "Total Positive Imbalance" or "P" shall mean the absolute value ("abv") of the sum of all actual positive imbalances under Section 7.2(a) of this Rate Schedule LMS-PA.
- "Total Negative Imbalance" or "N" shall mean the abv of the sum of all actual negative imbalances under Section 7.2(a) of this Rate Schedule LMS-PA.
- "Net Pipeline Imbalance" or "I" shall mean the difference between the Total Positive Imbalances and the Total Negative Imbalances ($I = P - N$).
- Each of the imbalances (P, N, and I) shall be calculated once, no later than the first billing of cash outs after the close of the month.

The Parties' actual imbalance volumes shall be "cashed out" according to the following formula:

(A) If $I > \text{or} = \text{zero}$ then:

- Price for negative imbalances and imbalances less than or equal to 1,000 Dth = AP
- Price for positive imbalances =

$$(\text{abv}(I) \times LP) + (N \times AP)$$

P

P

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Load Management (Pooling Area) Service (Continued)

(B) If $I < \text{zero}$ then:

- Price for negative imbalances =

$$\frac{(\text{abv}(I) \times \text{HP})}{N} + \frac{(P \times \text{AP})}{N}$$
- Price for positive imbalances and imbalances less than or equal to 1,000 Dth = AP

(iii) For all Parties whose % monthly imbalance is greater than 5% (as calculated according to Section 7.1 of this Rate Schedule) and greater than 1,000 Dth, the actual negative imbalance volumes shall be "cashed out" according to the following formula:

Imbalance Tier	Price
0 - 5%	100% of HP
> 5% - 10%	115% of HP
> 10% - 15%	130% of HP
> 15% - 20%	140% of HP
> 20% -	150% of HP

For purposes of determining the tier at which an imbalance will be cashed out, the price will apply only to volumes within a tier. For example, if there is a 7% imbalance, volumes that make up the first 5% of the imbalance are priced at 100% of the HP. Volumes making up the remaining 2% of the imbalance are priced at 115% of the HP.

(iv) For all Parties whose % monthly imbalance is greater than 5% (as calculated according to Section 7.1 of this Rate Schedule) and greater than 1,000 Dth, the actual positive imbalance volumes shall be "cashed out" according to the following formula:

Imbalance Tier	Price
0 - 5%	100% of LP

> 5% - 10%	85% of LP
> 10% - 15%	70% of LP
> 15% - 20%	60% of LP
> 20% -	50% of LP

For purposes of determining the tier at which an imbalance will be cashed out, the price will apply only to volumes within a tier. For example, if there is a 7% imbalance, volumes that make up the first 5% of the imbalance are priced at 100% of the LP. Volumes making up the remaining 2% of the imbalance are priced at 85% of the LP.

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Rate Schedule LMS-PA
 Load Management (Pooling Area) Service (Continued)

- (b) Access to Information - Transporter will make available within one Business Day following the day of gas flow the best information it has concerning the total physical receipts. Transporter will also make available by electronic means the best information it has concerning the scheduled and allocated receipts at all receipt points. This information will include electronic gas measurement data at meters where such data is used for billing purposes (Electronic Data). Transporter will designate where Electronic Data is available. No later than 11:00 a.m. Central Time on the third full Business Day following the day of gas flow, the information regarding the scheduled and allocated receipts shall become "Operational Data" and Operators will be entitled to rely on the Operational Data for purposes of correcting imbalances during the month. Imbalances will be cashed out on the basis of actual

receipts and scheduled quantities; provided that the Imbalance Tier and tiered pricing associated with imbalances will be based upon the lesser of (1) the monthly operational imbalance reported by Transporter based upon the Operational Data or (2) the monthly imbalance based upon actual receipts and receipts at such locations; provided that, if the monthly imbalance reported by Transporter as of the 20th day of the calendar month based upon Electronic Data is subsequently adjusted during the remainder of the month and (1) such adjustments materially increase the level of the imbalance and (2) the Balancing Party did not have adequate time to correct the imbalance by adjusting nominations or receipts, then the Imbalance Tier associated with imbalances at points where Electronic Data is available will be based upon the lesser of (a) the imbalance reported as of the 20th day of the calendar month plus the imbalance reported for each subsequent day in the calendar month or (b) the monthly imbalance based upon actual receipts at such points to the extent the Balancing Party documents the situation. Notwithstanding anything to the contrary, if the Electronic Data at any point is inaccurate, through no fault of Transporter, but rather as the result of the action or inaction of third parties, then the Imbalance Tier associated with monthly imbalances occurring at such points will be based upon actual receipts.

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Rate Schedule LMS-PA
Load Management (Pooling Area) Service (Continued)

- (c) Limitation on Tiered Pricing - Any imbalances caused by an event of force majeure as set forth in Section 24 of the

General Terms and Conditions of Transporter's FERC Gas Tariff or caused by Transporter's actions (1) will not be included in the calculation of the total monthly imbalance for purposes of determining the appropriate cash-out level and (2) will be cashed out at the 0-5% tolerance level, as set forth in 7.2 above.

- (d) Operational Integrity - Nothing in this Section 7 shall limit Transporter's right to take action as may be required to adjust receipts and deliveries of gas in order to alleviate conditions that threaten the integrity of its system.

8. DISPOSITION OF CHARGES

At the conclusion of each annual period, Transporter will determine the net cashout activity under its LMS Rate Schedules and Section 8 of Rate Schedule PAL. In the event that charges collected by Transporter under its cashout provisions exceed the actual cost of providing service under this Rate Schedule, Transporter shall credit such excess revenues to all eligible Balancing Parties. Credits shall be applied based on volumes transported during the past year. Any credits due hereunder shall be made within 45 days following approval by the Federal Energy Regulatory Commission of Transporter's report and refund plan concerning such credits. To the extent that the cashout activity in any annual period results in a negative balance, such balance will be carried forward and applied to the next annual determination of cashout activity. Within 150 days after each anniversary of the Implementation Date, Transporter will file a report and refund plan with the Commission.

9. GENERAL TERMS AND CONDITIONS

- 9.1 Shipper shall provide Transporter with such information as is needed to meet the requirements placed on Transporter by regulation, rule, and/or order by any duly authorized agency. Furthermore, any terms or conditions not specified in this Rate Schedule shall be determined consistent with the General Terms and Conditions of Transporter's FERC Gas Tariff, which are incorporated into this Rate Schedule.
 - 9.2 In the event of a conflict between the provisions of this Rate Schedule and Transporter's General Terms and Conditions, the provisions of Transporter's General Terms and Conditions shall govern.
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