BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

filed electronically 9/2/08

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

CONSUMER ADVOCATE'S MOTION TO COMPEL

Robert E. Cooper, Jr., the Attorney General and Reporter for the State of Tennessee, through the Consumer Advocate and Protection Division ("Consumer Advocate"), respectfully moves the Authority to compel Chattanooga Gas Company ("CGC") to fully and completely respond to the second set of discovery requests of the Consumer Advocate as set forth below.

INTRODUCTION

The discovery in dispute involves requests that generally seek information regarding the market value of the transportation and supply assets that are at issue in this docket, the superior advantage in the bidding process Sequent enjoys as an affiliate asset manager and the nature of use of assets CGC controls as a result of its relationship to rate-payers. Specifically, the Consumer Advocate requests the hearing officer compel responsive answers to the following requests: 2, 3, 5, 6, 7(a)-(d), 9(a) and 9(b).

STANDARD FOR DISCOVERY

Tennessee has a broad policy which favors the discovery of any relevant information:

> 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.

Tenn. R. Civ. P. 26.02(1). Thus, evidence does not have to be admissible to be discoverable as long as the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Today, it is through discovery rather than pleadings that the parties attempt "to find the truth and to prepare for the disposition of the case in favor of the party who is justly deserving of a judgment." *Kuehne & Nagel, Inc. v. Preston, Skahan & Smith International, Inc.*, 2002 WL 1389615 at *3 (Tenn. Ct. App. 2002) (*quoting* Irving Kaufman, *Judicial Control Over Discovery*, 28 F.R.D. 111, 125 (1962)). Accordingly, a party seeking discovery is entitled to obtain any information that is relevant to the case and not privileged. *See Id.* Consistent with Tennessee's open discovery policy, the relevancy requirement is "construed broadly to encompass any matter that bears on, or that reasonably could lead to other matters that could bear on any of the case's issues." *Id.* Discovery therefore is not limited to the issues raised by the pleadings. *See Id.*, *see also Shipley v. Tennessee Farmers Mutual Ins. Co.,* 1991 WL 77540 at *7-8 (Tenn. Ct. App. 1991). A party may also use discovery to: define and clarify the issues; probe a variety of fact-oriented issues that are not related to the merits of the case; formulate and interject additional issues into the case which relate to the subject matter of the pleadings; and determine additional causes of actions or claims which need to be or can be asserted against a party or against third parties. *See Shipley,* 1991 WL 77540 at *7-8 (*quoting Vythoulkas v.*

Vanderbilt University Hospital, 693 S.W.2d 350, 359 (Tenn. Ct. App. 1985)).

It is nonetheless recognized that the trial court may limit discovery under appropriate circumstances. Because of the broad policy favoring discovery, the trial court should not order limitations on discovery unless the party opposing discovery can demonstrate with more than conclusory statements and generalizations that the discovery limitations are necessary to protect the party from annoyance, embarrassment, oppression, or undue burden and expense. *See Duncan v. Duncan,* 789 S.W.2d 557, 561 (Tenn. Ct. App. 1991). The trial court should decline to limit discovery if the party opposing discovery cannot produce specific facts to support the requested limitations. *See Id.* Moreover, given the liberal construction of discovery rules, the trial court should approach any request for limitations with common sense rather than with narrow legalisms, basing the reasonableness of any ordered limitations on the character of the information sought, the issues involved, and the procedural posture of the case. *See Id.* Rather than denying discovery outright, it is appropriate for the trial court to fashion remedies to discovery issues by balancing the competing interests and hardships of the parties and by considering whether there are less burdensome means for acquiring the requested information. *See Id.*

SPECIFIC DISCOVERY REQUESTS THAT ARE THE SUBJECT OF THIS MOTION

CGC's responses reveal an attempt to answer the request propounded. Consequently, specific objections are not a concern. Instead, the Consumer Advocate's main complaint is CGC's lack of completeness in providing responsive answers. The Consumer Advocate has notified CGC of its concerns and hopes to reach an amicable resolution of its discovery concerns.

Requests Nos. 2 and 3: Even though directly asked, CGC does not identify by pipeline, the amount of gas going into LNG storage.

2. ADMIT: For each month from August 1, 2005 through July 31, 2008, CGC's LNG storage facilities never contained any natural gas delivered to CGC via the East Tennessee Natural Gas Pipeline (ETNG). If denied, identify by month the amount of natural gas placed into each storage site via the ETNG pipeline, the total cost of the natural gas placed into storage, a description of the individual components of total cost and the amount of each individual component.

RESPONSE: "Deny. Gas used for liquefaction into the LNG storage tank at the CGC peaking facility is not separately tracked by pipeline. However, due to the nature of system operations, the Company can confirm that some gas delivered via East Tennessee Natural Gas pipeline was delivered, liquefied and stored in the LNG tank. See the table below for the cost. "

3. ADMIT: For each month from August 1, 2005 through July 31, 2008, CGC's LNG storage facilities never contained any natural gas delivered to CGC via the Southern Natural Gas Pipeline (SONAT). If denied, identify by month the amount of natural gas placed into each storage site via the SONAT pipeline, the total cost of the natural gas placed into storage, a description of the individual components of total cost and the amount of each individual component.

RESPONSE: "Deny. Gas used for liquefaction into the LNG storage tank at the CGC peaking facility is not separately tracked by pipeline. However, due to the nature of system

operations, the Company can confirm that some gas delivered via Southern Natural Gas pipeline was delivered, liquefied and stored in the LNG tank. See the table below for the cost."

Request No. 5: CGC seems to admit to the request, but CGC is not explicit in its response. At page 8, lines 12-16, Mr. Sherwood testifies:

"As outlined in exhibit TSS-2, CGC maintains an amount of firm design day capacity to reliably meet the needs of customers with firm supply rights under certain extreme weather conditions, when the need for reliable natural gas service for space heating is most important to our customers. The only change that has been made to CGC's capacity since its purchase has been to reduce capacity."

ADMIT: a. CGC has not reduced storage capacity on the Tennessee Gas Pipeline. If denied, identify the amount of the reduction, the year and month in which the reduction occurred and the contracts involved in the reduction.

RESPONSE: a. "The Company has not found it beneficial to the customers of CGC to reduce the level of storage capacity on Tennessee Gas Pipeline needed to meet seasonal load, enhance supply reliability, and service weather swing requirement."

ADMIT: b. CGC has not reduced storage capacity on the Southern Natural Gas Pipeline. If denied, identify the amount of the reduction, the year and month in which the reduction occurred and the contracts involved in the reduction.

RESPONSE: b. "The Company has not found it beneficial to the customers of CGC to reduce the level of storage capacity on Southern Natural Gas Pipeline needed to meet seasonal load, enhance supply reliability, and service weather swing requirement."

Request No. 6. At page 13, lines 7-10, Mr. Sherwood testifies:

"More importantly, neither Southern Natural Gas nor East Tennessee have firm seasonal capacity posted as available on their systems and both have specifically refused to provide such service to CGC, if CGC were not willing to accept interruptions in service in the winter period or pay the same annual price for the service."

The Consumer Advocate requested CGC to:

a. Provide all documents supporting Mr. Sherwood's statement and identify the dates when such requests were made and the dates when such requests were refused.

CGC responded as follows:

a. "CGC reviews information posted on Southern Natural Gas and East Tennessee Natural Gas's electronic bulletin board ("EBB") for available capacity. During any number of discussions with pipeline representatives questions regarding available capacity may also be discussed. Neither has resulted in the Company identifying available seasonal capacity at this point. The EBBs for the pipelines can be accessed using the following links: [links ommitted]"

The Consumer Advocate's concern is that Mr. Sherwood used the phrasing "specifically refused" in his testimony, implying that at some time CGC made a direct request of SONAT and ETNG for seasonal capacity and that SONAT and ETNG replied with a refusal unless CGC were willing to accept winter interruptions or, in the alternative, pay the same annual amount of money to SONAT or ETNG, even though CGC would be taking less firm capacity. The Consumer Advocate asked for documents and dates to substantiate Mr. Sherwood's statements. No documents and no dates have been provided. Instead the Consumer Advocate is referred to the pipelines web sites.

Requests Nos. 7(a) and 7(b): At page 12, lines 3-15, Mr. Sherwood testifies:

"The company originally held a single firm transport contract on ETNG for 46,350 Dth/d. For added contract level flexibility the company negotiated with ETNG to break this single contract down into 3 separate contracts. Contracts 410203 for 13,000 Dth 410204 for 28,350 Dth/d and 410199 for 5,000 Dth/d. In total the contracted capacity matched the single contract being replaced. As a part of the negotiations with the pipeline to desegregate the capacity contract, the utility elected to move 5,000 Dth receipt capacity off of Ridgetop and move it to Hartsville. This capacity was destined to be turned back to the pipeline. Without breaking the capacity contract into 3 separate contracts any reduction would have to be made on a pro-rata basis across all the receipt and delivery points under contract. CGC did not want to proceed in that manner. The parties agreed to move receipt capacity off of Ridgetop to allow the pipeline to offer that capacity in the marketplace. So the pipeline was able to re-market capacity and the utility was able to reduce its contracted capacity per the pipeline's FERC approved tariff."

The Consumer Advocate requested CGC to:

a. Provide all documents identifying the date and time when CGC decided that its contract 33653 with ETNG should be subdivided into new contracts 410203, 410,204 and 410,299.

CGC responded as follows:

a. "The Company does not have date specific documents to provide that relates to its decision regarding contract 33653 with ETNG and its subdivision into contracts 410203, 410204, and 410199. The Company's decision to proceed in this way was the result of routine internal business planning meetings."

The Consumer Advocate's concern is that CGC's reply that it "does not have date specific documents to provide" is not responsive. To the extent that CGC has relevant documents which are not dated, whether they were created in routine internal business plan meetings or elsewhere, CGC should provide them in discovery. CGC's reply is non-responsive in view of information in the July 18 2008 email note from SEM to Mr. Sherwood. The email is provided to CAPD as the attachment for CGC's reply to Request No. 9(b) and says:

"CGC decided to turn back 5000 of East Tennessee capacity to reduce demand costs for CGC

customers. In early 2005, CGC worked with East Tennessee to prepare to turn back this capacity."

SEM's ability to recall timing and establish a reference point for CGC's contract-changes initiated by CGC itself suggests that dated-documents may be available within the parent company or other subsidiaries. CGC should make an effort to discover and retrieve such documents and provide them in discovery.

In his testimony Mr. Sherwood used the phrasing "originally held a single firm transport contract," implying the single contract had been sufficient to meet CGC's needs as CGC itself had judged. Further, Mr. Sherwood used the phrasing "for added contract level flexibility", implying that some factor caused a change in CGC's assessment that "a single firm transport contract" was meeting CGC's needs. The single firm contract had been originally executed in 1993, then renewed in 2000 with no changes, then terminated in May 2006, 6 months ahead of the scheduled termination date. There was a change in CGC's assessment of contract 33653.

Whether the change was planned and discussed in internal business plan meetings or elsewhere, CGC should provide the documents in discovery to provide a full explanation of the facts and considerations, as requested.

Request No. 7(b):

The Consumer Advocate requested: Provide a full explanation of the facts and considerations which caused CGC to decide that its contract 33653 with ETNG should be subdivided into new contracts 410203, 410,204 and 410,299.

CGC responded as follows:

b. "Mr.Sherwood's original testimony explained the facts and considerations which caused CGC

to subdivide contract 33653 into contracts 410203, 410204, and 410199. That testimony is shown here:

'For added contract level flexibility the Company negotiated with ETNG to break this single contract down into 3 separate. Contracts 410203 for 13,00*0 Dth/d, 410204 for 28,350 Dth/d, and 410199 for 5,000 Dth/d. In total the contracted capacity matched the single contract being replaced. As a part of negotiations with the pipeline to disaggregate the capacity contract, the utility elected to move 5,000 Dth of receipt capacity off of Ridgetop and move it to Hartsville. This capacity was destined to be turned back to the pipeline. Without breaking the capacity contract into 3 separate contracts any reduction would have to be made on a pro-rata basis across all the receipt and delivery points under contract. CGC did not want to proceed in that manner.'"

This reply is non-responsive, as explained in the discussion regarding Request No. 7(a).

Requests Nos. 7(c) and 7(d): Neither reply appears to be a full explanation of the requested "facts and considerations."

QUESTION: c. Provide a full explanation of the facts and considerations which caused CGC to decide "to move 5,000 Dth/d receipt capacity off of Ridgetop."

RESPONSE: c. "East Tennessee Natural Gas agreed to subdivide the contracts as previously described knowing CGC planned on turning the capacity back to them. To facilitate this potential loss of revenue the parties agreed to shift 5,000 Dth/d of Ridgetop receipt entitlements to an alternative point. By moving off of Ridgetop it freed up capacity that ETNG knew it could re-sell to other shippers. It is in both party's best interest for the pipeline to contract for as much firm transport capacity as possible across its system to spread the cost of service as completely as possible.

QUESTION: d. Provide a full explanation of the facts and considerations which caused CGC to decide to keep 4,899 Dth/d receipt capacity at Dickenson County Receipt Point in Virginia.

RESPONSE: d. "CGC elected to retain the 4,899 Dth/d of receipt capacity from Dickenson

County Receipt Point in Virginia to provide a level of geographic supply diversity. Supply diversity was introduced and discussed in the Company's response to Data Request # 1 herein."

Requests Nos. 9(a) and 9(b): The reply is non-responsive and Response 9(b) leaves the impression that Mr. Sherwood knew nothing of Sequent's efforts at Ridgetop until July 18 2008 and that the attachment to 9(b) is Mr. Sherwood's only source of "understanding."

9. At page 12, line 22 to page 13 line 2, Mr. Sherwood testifies:

"It is CGC's understanding that Sequent had placed a request for a receipt point shift for existing capacity in the pipeline's firm service queue. When the capacity became available it was awarded by the pipeline to the parties in the queue in accordance with the provisions of the pipeline's FERC approved tariff."

QUESTION: a. Provide a full explanation of the circumstances which led to CGC's understanding, as described by Mr. Sherwood.

RESPONSE: a. "Mr. Sherwood asked Sequent and they explained the process they went through to make the receipt point change."

QUESTION: b. Provide copies of any communications to or from CGC where such communications assisted CGC to establish its understanding as described by Mr. Sherwood.

RESPONSE: b. "A note to Mr. Sherwood from Sequent is attached."

WHEREFORE, the Consumer Advocate respectfully requests that the Authority enter an order compelling CGC to produce full and complete answers to the Consumer Advocate's discovery requests.

Respectfully submitted,

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Certificate of Service

I hereby certify that a true and correct copy of the foregoing was served via first-class U.S. Mail, postage prepaid, electronic mail, or hand delivery, upon the parties of record in this case on September 2, 2008.

Timothy C. Phillips

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