

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

December 2, 2008

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

**CHATTANOOGA GAS COMPANY'S MOTION TO STRIKE AND
OBJECTIONS TO PORTIONS OF DR. BROWN'S
DIRECT AND REBUTTAL TESTIMONY**

Chattanooga Gas Company ("CGC" or "Company") moves the Tennessee Regulatory Authority ("TRA" or "Authority") to strike the following portions of Dr. Brown's testimony which contain hearsay that should be excluded and given no probative value pursuant to Tenn. Code Ann. § 65-2-109:

- (1) Hearsay Statements from the Affidavit of Professor Richard J. Pierce filed in a FERC docket and quoted on page 6, line 21, through page 7, line 16 of Dr. Brown's pre-filed direct testimony (see discussion in Section I.A. below);
- (2) Hearsay testimony of William E. Wickman, East Tennessee Natural Gas Company's ("ETNG") Director of Marketing, from a FERC docket and quoted on page 30, line 15, through page 31, line 28, of Dr. Brown's pre-filed direct testimony (see discussion in Section I.B. below);
- (3) Hearsay testimony of William E. Wickman, East Tennessee Natural Gas Company's ("ETNG") Director of Marketing, from a FERC docket and quoted on page 66, line 30, through page 67, line 18, of Dr. Brown's pre-filed direct testimony (see discussion in Section I.B. below);
- (4) Hearsay testimony of William E. Wickman, East Tennessee Natural Gas Company's ("ETNG") Director of Marketing, from a FERC docket and quoted on page 14, lines 1-35, of Dr. Brown's pre-filed rebuttal testimony (see discussion in Section I.B. below);

- (5) Hearsay testimony of George Snyder, ETNG's Manager of Capacity Planning and Scheduling, from a FERC docket and quoted on page 60, line 16, through page 61, line 24, of Dr. Brown's pre-filed direct testimony, and Dr. Brown's opinion based on this hearsay testimony on page 61, lines 26-36 (see discussion in Section I.C. below);
- (6) Hearsay testimony of George Snyder, ETNG's Manager of Capacity Planning and Scheduling, from a FERC docket and quoted on page 65, line 6, through page 66, line 4, of Dr. Brown's pre-filed direct testimony (see discussion in Section I.C. below);
- (7) Hearsay testimony of James Yardley, Southern Natural Gas Company's ("SNG") President, from a FERC docket and quoted on page 51, line 14, through page 52, line 12, including the map of "SNG Pipeline Competition", of Dr. Brown's pre-filed rebuttal testimony (see discussion in Section I.D. below);
- (8) Intelligence Press Inc.'s hearsay filing from FERC Docket PL03-3 that is incorporated on page 71, lines 2-8, of Dr. Brown's pre-filed direct testimony (see discussion in Section I.E. below);
- (9) El Paso Electric Power Company's hearsay comments from FERC Docket RP07-511-000 and included on page 26, line 17, through page 28, line 18, and the chart I.F. below);
- (10) ETNG's filings in various FERC dockets appearing on the following pages in Dr. Brown's pre-filed direct testimony: page 53, line 5, through page 54, line 11; and page 56, lines 4-32 (see discussion in Section I.G. below);
- (11) ETNG's filings in various FERC Dockets appearing on the following pages in Dr. Brown's pre-filed rebuttal testimony: page 32; pages 33-34; page 35, line 29, through page 36, line 7; and page 49 (see discussion in Section I.G. below);
- (12) Excerpts from filings made by AGL Resources with the SEC and quoted on the following pages of Dr. Brown's pre-filed rebuttal testimony: p. 3; 4; 5; 7; 9-10; 15; 16, lns. 30-34; 17; 18; 19; 20; 21; 53; 56, ln. 5, through p. 57, ln.3; 61-62; 63-65; 66-68; 79 (see discussion in Section I.H. below); and
- (13) Stipulation filed in Georgia Service Commission Docket 24860-U and referenced in Dr. Brown's rebuttal testimony on page 12 and pages 76-77 (see discussion in Section I.I. below).

By excluding pre-filed testimony that is improper and unreliable before the hearing, the parties can avoid the time and expense of having to prepare for and address these improper issues at the hearing on the merits.

Further, CGC requests that it be allowed to address and refute through sur-responsive testimony of Tim Sherwood the new concerns, assertions, and opinions that Dr. Brown has raised for the first time in his rebuttal testimony.

ARGUMENT

The pre-filed direct and rebuttal testimony of Dr. Stephen Brown, a witness for the Consumer Advocate and Protection Division (“CAPD”) of the Office of the Attorney General in the above-referenced docket, contains hearsay statements that must be stricken and given no probative value by the TRA. Throughout his pre-filed testimony, Dr. Brown incorporates statements, testimony, and materials of third parties filed in Federal Energy Regulatory Commission (“FERC”) dockets that have no bearing or relevance to the issues in the present TRA docket regarding CGC gas supply capacity and management of idle capacity assets.

Hearsay is an out-of-court statement (either written or oral) that is being offered into evidence to prove the truth of the matter asserted. See Tenn. R. Evid. 801(c). Hearsay is not admissible except as provided by the rules of evidence or by law. See Tenn. R. Evid. 802. While Tenn. Code Ann. § 65-2-109 provides that the TRA “may admit and give probative effect to any evidence which possesses such probative value as would entitle it to be accepted by reasonably prudent persons in the conduct of their affairs”, the partially quoted statements and materials of non-witnesses in Dr. Brown’s testimony are not the type of evidence that is reliable nor should be given any probative value by the TRA. These extraneous, partial statements and

materials of non-witnesses are irrelevant to the issues in the present TRA docket and are hearsay that cannot be subject to cross examination at the hearing.

Further, the TRA cannot judge the probative value of these statements because the TRA has only been provided with partial statements and materials taken out of context by Dr. Brown and used as justification for Dr. Brown's opinions and conclusions. As the TRA has not been provided with a full copy of the record in the dockets in which these statement and materials were filed, there is no evidence in the record that would allow the TRA to fully analyze the accuracy or determine the probative value of these hearsay statements and materials.¹ There is also no opportunity to cross-examine the authors of these statements. A reasonably prudent person would not give any probative effect to this type of hearsay evidence in conducting their affairs. Therefore, the TRA should exclude the portions of Dr. Brown's testimony that contain hearsay. Alternatively, if the TRA decides not to exclude the hearsay testimony, the TRA should follow Tennessee Rule of Evidence 106 and require the CAPD to introduce complete written copies of the statements and materials from which Dr. Brown is partially quoting and incorporating into his testimony, including an entire record of the dockets from which these statements and materials come. Then, upon review, the TRA should give the hearsay statements and materials no probative effect in making its decision regarding the issues in the present docket.

¹ Dr. Brown has not provided the record of these proceedings and has not even provided the full document from which he selectively has pulled the excerpts. Without the record from the proceedings, the TRA cannot effectively determine the veracity of the selective excerpts, the context in which they were made, whether they were revised or corrected during the proceeding, whether they were contradicted by other witnesses or documents, or whether they were impeached or called into question during cross-examination. The out-of-court witness will not be available for cross-examination in this proceeding. Accordingly, the hearsay testimony should not be allowed into this record. The CAPD could have presented additional witnesses in this proceeding that could have been cross-examined, and the CAPD elected not to do so. The hearsay safeguards that are meant to protect the reliability of the record on which a decision will be made in this proceeding should be followed by the TRA.

Additionally, Dr. Brown has raised in his rebuttal testimony new concerns that were not raised in his direct testimony and are not properly rebutting the pre-filed responsive testimony of Mr. Sherwood. As this information was not included in Dr. Brown's direct testimony, CGC has not had the opportunity to respond to these concerns. Pursuant to Tenn. Code Ann. § 65-2-109(3), CGC should be given the opportunity for sur-responsive testimony of Tim Sherwood during his direct testimony to address the following new issues:

- (1) The Management of Operating Balancing Agreements ("OBAs");
- (2) The "Long Term Value Proposition"; and
- (3) The facts regarding the Atlanta Gas Light Company Capacity Supply Plan Stipulation referenced incorrectly by Dr. Brown.

I. The following portions of Dr. Brown's testimony should be excluded as hearsay and as the type of evidence that is unreliable and should be given no probative effect.

A. Excerpts from Professor Richard J. Pierce's Affidavit filed in FERC Dockets RM98-10-000 and RM98-12-000 and quoted in Dr. Brown's testimony

On page 6, line 21, through page 7, line 16, of Dr. Brown's pre-filed direct testimony, Dr. Brown partially quotes from an affidavit of Professor Richard J. Pierce that was submitted in FERC Dockets RM98-10-000 and RM98-12-000 as part of Atlanta Gas Light Company's comments submitted in relation to its unbundled system and retail choice. The quoted portions of Professor Pierce's affidavit discuss Atlanta Gas Light Company's efforts to arrange for capacity sufficient to meet the peak day demands of its contractual obligations and minimize the costs associated with these activities.

In the quoted portions that appear in Dr. Brown's pre-filed testimony, Dr. Brown has inserted CGC into the quoted text even though the out-of-court testimony was not about CGC. This is extremely misleading as Professor Pierce's testimony did not involve analysis of CGC,

and CGC does not have an unbundled system. Additionally, the quotations in this portion of Dr. Brown's testimony are extremely misleading because Dr. Brown has provided no background or context for Professor Pierce's comments, nor does Dr. Brown provide a copy of the entire affidavit from which he has partially quoted. Dr. Brown has merely taken hearsay statements made by a non-witness in a completely different docket that did not involve CGC's gas supply and capacity assets or CGC's asset management arrangements and taken them out of context in an attempt to support his opinions in the current TRA docket. Professor Pierce is not a witness in this present docket and cannot be cross-examined about whether Dr. Brown has accurately and properly extrapolated about CGC from Professor Pierce's prior hearsay testimony. Additionally, Professor Pierce's statements are stale in that they were made approximately 10 years ago. This very fact should cause the TRA to exclude and/or give no probative value to these hearsay statements.

The quoted statements of Professor Pierce are clearly hearsay and should be excluded. Further, the partially quoted statements as they have been provided in Dr. Brown's pre-filed testimony are not reliable and would not be given any probative value by reasonably prudent persons in conducting their affairs.

If the TRA should attempt to give any weight to this evidence, the TRA should require the submission of the entire affidavit as well as the complete filings in the FERC Dockets. Without reviewing the entire FERC Dockets, the TRA will be unable to review the context within which the affidavit was filed, the weight given to the testimony by FERC, and the accuracy of the testimony as used by Dr. Brown to support his opinions in the present TRA docket.

B. Excerpts from the testimony of William E. Wickman, East Tennessee Natural Gas Company's ("ETNG") Director of Marketing, filed in FERC Docket RP00-469-007 and quoted in Dr. Brown's testimony

First, on page 30, line 15, through page 31, line 28, of Dr. Brown's pre-filed direct testimony, Dr. Brown provides quoted testimony regarding the Patriot Project that was submitted by William E. Wickman, ETNG's Director of Marketing, on November 15, 2003 in FERC Docket RP00-469-007. Dr. Brown has provided no background or context for Mr. Wickman's statements, nor has he provided a complete written copy of Mr. Wickman's testimony. Rather, Dr. Brown has quoted partial sentences and portions of Mr. Wickman's testimony filed in FERC Docket RP00-469-007 and then Dr. Brown has provided his own explanation and conclusions based on Mr. Wickman's out-of-court testimony.²

Dr. Brown is incorporating this hearsay into his own opinion testimony. The CAPD has not called Mr. Wickman as a witness in the present docket. Dr. Brown is using this hearsay out of context to attempt to provide factual evidence to support his opinions. This is inappropriate and is not the type of hearsay that a reasonable person would give any probative effect.

On page 14, lines 1-35, of Dr. Brown's rebuttal testimony, Dr. Brown re-quotes the exact same portions of Mr. Wickman's testimony that he previously quoted in his direct testimony on page 30, line 15, through page 31, line 28. As explained previously, this partial quoting of Mr. Wickman's testimony filed in a FERC docket is hearsay that should be excluded.

² Dr. Brown continues his discussion of the Patriot Project in question number and answer no. 16 in Dr. Brown's testimony (located on page 31, line 33, through page 32, line 6), which contains multiple hearsay materials. Dr. Brown states that his answer to question no. 16 is based on "ETNG's filings with FERC" to conclude that there was 260,000 dths of capacity on Patriot and that seven subscribers used 196,000 dths of the capacity. However, Dr. Brown does not specifically reference where this information comes from and references no FERC dockets from which he has specifically obtained the information. Further, on page 32, line 1, Dr. Brown has inserted a chart of this information. It is unclear whether this is a chart that he obtained in "ETNG's filings with FERC" or whether he has compiled this information himself. As a result, this testimony should be deemed to be hearsay and stricken.

Further, Dr. Brown incorporates a portion of the second page of a letter dated August 17, 2005 to Secretary Magalie R. Salas that appears to have been filed in FERC Docket RP05-157-005. The letter discusses the acquisition of NUIEB by AGL Resources. This letter is hearsay that should be excluded. Alternatively, if it is not excluded, the TRA should require that a complete written copy of the letter be provided along with Dr. Brown's testimony.

On page 66, line 30, through page 67, line 18, of Dr. Brown's direct testimony, Dr. Brown again quotes portions of William E. Wickman's testimony filed on August 15, 2000 in FERC Docket RP00-469-000. Once again, Dr. Brown has merely quoted two partial paragraphs from pages 9 and 10 of Mr. Wickman's August 15th testimony and has provided no context for the statements other than to argue that Mr. Wickman's factual testimony supports Dr. Brown's opinions. This testimony should be excluded as hearsay and as unreliable evidence that a reasonably prudent person would give no probative effect. If it is not excluded, the TRA should require Dr. Brown to submit a full written copy of Mr. Wickman's hearsay testimony as well as the complete filings in the FERC Docket. Only upon a complete review of the FERC docket to determine the context for Mr. Wickman's testimony and the treatment of the testimony by FERC can the TRA begin to determine whether the excerpted portions have been accurately portrayed in Dr. Brown's testimony and whether to give any probative weight to the testimony.

C. Excerpts from the testimony of George Snyder, ETNG's Manager of Capacity Planning and Scheduling, filed in FERC Docket RP00-469-007 and quoted in Dr. Brown's testimony

On page 60, line 16, through page 61, line 24, of Dr. Brown's direct testimony, Dr. Brown partially quotes the testimony of George Snyder, ETNG's Manager of Capacity Planning and Scheduling, from FERC Docket RP00-469-007. Once again, Dr. Brown has provided no background or context for Mr. Snyder's statements, nor has he provided a complete written copy of Mr. Snyder's testimony.

For all of the reasons stated in Sections I.A. and I.B. above, this portion of Dr. Brown's testimony contains hearsay and should be stricken. Additionally, the opinion that Dr. Brown makes on page 61, lines 26-36, should be stricken because it is based on Mr. Snyder's hearsay testimony.

Further, on page 65, line 6, through page 66, line 4, of Dr. Brown's direct testimony, Dr. Brown re-quotes certain portions of Mr. Snyder's testimony that he previously quoted on page 60, line 16, through page 61, line 24. This should be stricken for all of the reasons explained above.

As explained in Sections I.A. and I.B. above, if the TRA decides not to exclude this unreliable testimony, the TRA must determine the probative effect to give this hearsay testimony. To do so, the TRA will need to review the entire FERC docket to review the context and accuracy of Mr. Snyder's filing and the credence given by FERC to the filing in its ultimate decision in the FERC docket.

D. Excerpts from the testimony of James Yardley, Southern Natural Gas Company's ("SNG") President, filed in FERC Docket 99-496 and quoted in Dr. Brown's rebuttal

On page 51, line 14, through page 52, line 12, including the map of "SNG Pipeline Competition", of Dr. Brown's rebuttal testimony, Dr. Brown partially quotes testimony of Mr. Yardley, the President of SNG, regarding SNG's pipeline competitors. This testimony and map was taken from testimony provided by Mr. Yardley in a 1999 FERC docket (99-496) approximately ten years ago.

The purpose of testimony is to provide credible evidence based on a person's first-hand knowledge or expertise. Hearsay testimony cannot properly be used by a witness as the basis or substitute for first-hand factual knowledge. Further, pursuant to Tenn. Code Ann. § 65-2-109, this kind of strung-together hearsay testimony is not the kind of evidence that a reasonable prudent person would give probative value in conducting their business affairs.

For all of the reasons stated in Sections I.A. and I.B. above, Mr. Yardley's hearsay testimony should be stricken from Dr. Brown's rebuttal testimony. If the TRA decides to allow

the hearsay testimony, the TRA should determine that it has no probative value. If the TRA decides to give the hearsay testimony any probative value, the TRA must review the complete testimony of Mr. Yardley as well as review the entire FERC docket in which the testimony was filed for understanding of the context of the filing and how FERC treated such testimony.

E. Intelligence Press Inc.'s filing in FERC Docket PL03-3 that is incorporated into Dr. Brown's testimony.

On page 71, lines 2-8, of Dr. Brown's direct testimony, Dr. Brown includes an image from Intelligence Press Inc.'s filing in FERC Docket PL03-3. Yet again, Dr. Brown incorporates hearsay material into his testimony and he provides no background or context for the material, nor has he provided a complete copy of Intelligence Press Inc.'s filing from which to determine the probative weight, if any, to give this hearsay material.

For all of the reasons stated in Sections I.A. and I.B. above, Intelligence Press Inc.'s hearsay material should be stricken. Alternatively, if the hearsay testimony is not excluded and the TRA contemplates giving it any probative value, the TRA must properly have before it the complete written filing of Intelligence Press Inc. as well as all of the filings in FERC Docket PL03-3 to determine the context, accuracy, and treatment afforded to Intelligence Press Inc.'s filing. Further, upon review of the complete filing, the TRA should determine that this hearsay material is not the type of evidence that should be given any probative value pursuant to Tenn. Code Ann. § 65-2-109.

F. El Paso Electric Power Company's Initial Comments on Technical Conference filed in FERC Docket RP07-511-000 and included in Dr. Brown's testimony

On page 26, line 17, through page 28, line 18, and the chart on page 29, of Dr. Brown's rebuttal testimony, Dr. Brown introduces for the first time in his rebuttal testimony statements made by El Paso Electric Power Company in FERC Docket RP07-511-000. While Dr. Brown's

rebuttal testimony does not set forth a question, it appears that Dr. Brown is testifying on pages 26-29 about balancing processes and El Paso Electric Power Company's testimony about its efforts to "hunt zero". This is a new concern that Dr. Brown has raised for the first time in his rebuttal testimony.

Dr. Brown has provided hearsay statements from an unrelated FERC docket without providing any background or context for the partially quoted hearsay testimony and without providing a complete written copy of the hearsay testimony and a complete copy of the filings made in that FERC docket.

For all of the reasons stated in Sections I.A. and I.B. above, Dr. Brown's testimony regarding El Paso Electric Power Company, including the partially quoted hearsay testimony, should be stricken. If the hearsay and improper rebuttal testimony is not excluded, the TRA should require Dr. Brown to file the complete comments of El Paso Electric Power Company as well as all filings in FERC Docket RP07-511-000 to provide context for the partially quoted testimony so that the TRA can properly determine what probative value if any to give to this hearsay testimony. Upon review of the complete FERC docket, the TRA should determine that this hearsay testimony has no probative value pursuant to Tenn. Code Ann. § 65-2-109.

Additionally, if the TRA does not exclude this testimony, the TRA should allow CGC to address these new concerns first raised by Dr. Brown on rebuttal through sur-responsive testimony of Tim Sherwood.

G. Specific ETNG Filings in FERC Dockets should be stricken and/or given no probative value.

Dr. Brown has included partial excerpts from various filings made by ETNG with FERC which are hearsay and should be stricken from Dr. Brown's testimony. They are as follows:

- ETNG's filing in FERC Docket RP00-469-000, on page 53, line 5, through page 54, line 11, of Dr. Brown's direct testimony;
- ETNG's comments in FERC Docket RP00-469-000, on page 56, lines 4-32, of Dr. Brown's direct testimony;
- ETNG's filing of March 24, 2004 with FERC, on page 32 of Dr. Brown's rebuttal testimony;
- ETNG's filing of April 3, 2006 with FERC, on pages 33 – 34 of Dr. Brown's rebuttal testimony;
- ETNG's comments in FERC Docket RP00-469-010, on page 35, line 29, through page 36, line 7, of Dr. Brown's rebuttal testimony; and
- ETNG Settlement with customers regarding demand rates on page 49 of Dr. Brown's rebuttal testimony.

If the TRA decides to allow this hearsay, the TRA should give this hearsay testimony no probative effect, particularly without first reviewing the complete dockets and all filings made within these dockets

H. Excerpts from AGL Resources' Filing with the SEC included in Dr. Brown's Rebuttal

In Dr. Brown's rebuttal testimony, he refers to partial filings made by AGL Resources with the SEC. See Brown Rebuttal, at p. 3; 4; 5; 7; 9-10; 15; 16, lns. 30-34; 17; 18; 19; 20; 21; 53; 56, ln. 5, through p. 57, ln.3; 61-62; 63-65; 66-68; 79. These portions of Dr. Brown's testimony should be excluded as hearsay testimony. To the extent that these are determined to be admissible, the TRA should ensure that the following safeguards are in place to determine what probative effect if any to give to these filing. First, the TRA should require that the CAPD submit the entire exhibit and the entire SEC filing from which the partially quoted materials comes. Second, the TRA should allow CGC to address this new information through sur-responsive testimony of Tim Sherwood pursuant to Tenn. Code Ann. § 65-2-109(3).

I. Georgia Public Service Commission's Stipulation referenced in Dr. Brown's Rebuttal

Dr. Brown has referenced in his rebuttal testimony for the first time a stipulation filed in Georgia Public Service Commission Docket 24860-U, regarding Atlanta Gas Light Company's capacity supply plan and the reduction in the design day for Rome, Georgia. See Brown Rebuttal, at p. 12 and pp. 76-77. These portions of Dr. Brown's testimony should be excluded as hearsay. To the extent that the TRA allows the admission of this hearsay testimony in the present docket, the TRA should require the CAPD to submit a complete written copy of the stipulation as well as all filings in Docket 24860-U. All of this information is necessary for the TRA to determine the context and full extent of what the stipulation means. Additionally, the TRA should allow CGC to respond to these new concerns raised by Dr. Brown in his rebuttal through sur-responsive testimony of Tim Sherwood.

II. As Dr. Brown has raised new concerns in his rebuttal testimony that were not included in his direct testimony, CGC should be afforded the opportunity to respond through sur-responsive testimony.

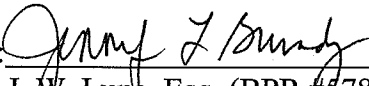
Much of Dr. Brown's rebuttal testimony is merely further elaboration and reiteration of his direct testimony through which he raises new concerns that should have been part of his direct testimony. As these new concerns were not specifically raised in his direct testimony, CGC has not been afforded the opportunity to respond to and/or explain the new concerns raised by Dr. Brown. Pursuant to Tenn. Code Ann. § 65-2-109(3), CGC should be afforded its right to present sur-responsive testimony of Tim Sherwood to address the following new concerns:

- (1) The Management of Operating Balancing Agreements (Dr. Brown's Rebuttal, pp. 26-29 and 35-42);
- (2) The "Long Term Value Proposition" (Dr. Brown's Rebuttal, pp. 2-12; 16-25; and 60-68); and

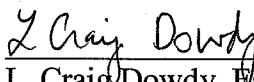
- (3) The facts regarding the Atlanta Gas Light Company Capacity Supply Plan Stipulation referenced incorrectly by Dr. Brown (Dr. Brown's Rebuttal, pp. 12, 76-77).

In conclusion, CGC respectfully requests that the hearsay portions of Dr. Brown's testimony be excluded and given no probative effect by the TRA. Further, CGC requests that it be allowed to address and refute through sur-responsive testimony of Tim Sherwood the new concerns, assertions, and opinions raised by Dr. Brown in his pre-filed rebuttal testimony.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been forwarded by electronic mail on this the 2nd day of December, 2008, to the following:

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