

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

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

CONSUMER ADVOCATE'S OBJECTION AND MOTION TO EXCLUDE EXHIBITS

INTRODUCTION

Robert E. Cooper, Jr., the Attorney General and Reporter for the State of Tennessee, through the Consumer Advocate and Protection Division ("Consumer Advocate"), respectfully objects and moves to exclude exhibits offered to supplement direct testimony.

ARGUMENT

On December 1, 2008, Chattanooga Gas Company ("CGC") filed "Chattanooga Gas Company's Filing of Exhibits for Use During Direct and Re-direct Testimony at the Hearing on the Merits" of this matter. The Consumer Advocate objects to CGC's intended use of the exhibits referenced in items 2 through 15 of CGC's filing.

CGC's attempt to supplement the direct testimony of Tim Sherwood is untimely and prohibited by the standard practice before the Tennessee Regulatory Authority ("TRA"). Specifically, a party at the hearing of contested dockets is permitted to have its witnesses summarize direct testimony, but may not offer new support for that testimony. This standard was approved as recently as August 26, 2008, in the Tennessee American Water Company rate case, TRA Docket No. 08-00039. Attached is a copy of the pertinent pages from the transcript (pages 1563, 1573-1575) and reprinted here:

[Witness] Now switching to the next subject, the weather normalization, if you look at my testimony, I cite the rather simple fact that the weather normalization

adjustment doesn't make sense. It doesn't make sense because it assumes that the - - reasonably, that the month that has the most weather - - water consumption is July. Well, the second is not August, as one would expect. It's September. And for commercial customers, it's October.

That's not rational. September is not nearly as hot and I wouldn't think nearly as dry as August, which is the other hot month of the year. Now the company uses a methodology based on what's called PDSI, Palmer Drought Severity Index, and there's some troubles with this. One is that drought is not like temperature. Temperature, you know how hot it is on any given day, and that really isn't particularly influenced by how hot it was on the previous day.

Mr. Grimes: Excuse me, Mr. King. I hate to interrupt, but I don't believe this is within the scope of his direct testimony, prefiled.

Witness: Well, I'm trying to explain. That's all.

Mr. McGehee: As the practice was last week, people have been referencing cross-examination of other witnesses and other witnesses following up with reference to that and going into that.

The Witness: I'm sorry. Let me explain why I'm raising this.

Director Roberson: Wait just a second. Response?

Mr. Grimes: Yes, sir, Your Honor. We just object to them going into something that was not in the prefiled testimony. This is a subject that Mr. King did not even touch on one way or the other, even though it was in Dr. Spitznagel's original direct testimony. It was very clear he was relying on the Palmer Drought Severity Index, and this witness said nothing about that in his response, testimony.

Mr. McGehee: These issues came up in cross-examination of Dr. Spitznagel, and as far as the practice was back in Chattanooga, what we were doing is when issues came up in cross-examination of witnesses, other witnesses were - - those issues would be brought up again with other witnesses and, for example, Mr. Miller would comment on a witness - - excuse me - - on another issue that came up in cross-examination.

Director Roberson: Okay. Excuse me just a minute. I'm going to sustain the objection. This is a period where he summarizes his testimony that he's already given. That doesn't mean that through cross-examination these issues cannot be addressed, he cannot have an opinion, but let's stick with the summary of your testimony at this juncture.

The Witness: Well, if that's the case, I'm pretty much finished. I was

responding to the rebuttal and also issues that had come up in cross-examination of Dr. Spitznagel, but I had been informed by my counsel this was appropriate. But if not, I'm happy to finish up.

The reasons for the approach adopted by the TRA are simple. Pre-filed testimony of the highly technical subject area, which the TRA reviews, is vital to understanding the complexities each docket presents. This process serves the need for judicial economy, discourages trial by ambush, and aids in a balanced review of contested matters.

The scheduling order in this matter contemplates a specific path. Although, the use of pre-filed testimony draws the presentation of proof out over a longer time period, it is similar to any trial. The plaintiff/prosecutor is allowed to present their case. Subsequently, the defense enters the proof it wishes. Strategic decisions are made on the part of the defense as to how much proof to present. Similarly, CGC chose to submit testimony on July 30, 2008, which frankly suffers from a lack of support. The Consumer Advocate then had the opportunity to propound discovery and respond in the rebuttal phase, much as the utility is normally able to do in a rate case. If CGC is allowed to supplement its direct testimony at this stage, the Consumer Advocate will have lost the opportunity to adequately discover and respond as envisioned by the normal practice and standards set by the TRA and specifically as set out in the scheduling order. CGC does not get surrebutal.

Mr. Sherwood's direct testimony focused on the issues in this matter as CGC chose. On page 1 of Mr. Sherwood's direct testimony, he specifically claims to "address the items on the issues list filed in this docket." His testimony is, however, only an overview. CGC strategically chose to address the issues from 30,000 feet. Dr. Brown's rebuttal testimony simply provides specific detail on the issues covered by Mr. Sherwood. The exhibits are generated after filing of testimony. The exhibits contain few cites to the testimony, abbreviations with reference or explanation, and no explanation of why this data was not submitted in the direct testimony. This is an attempt at surrebuttal, providing specific responses to issues which CGC dealt with in such a

casual manner in filing testimony as to be non-responsive. Specifically, the Consumer Advocate asks the Hearing Officer to note the following:

1. Exhibit Title: "Mr. Sherwood's pre-filed exhibits." OBJECTION: None.
2. Exhibit Title: "Any document that has been filed, exchanged and/or referenced in the present docket, including but not limited to documents exchanged or referenced in response to discovery requests or in any pre-filed testimony." OBJECTION: This reference is vague, the scope of which is endless. The Consumer Advocate does not object to the use of exhibits attached to the pre-filed testimony of Mr. Sherwood.
3. Exhibit Title: "CGC Load Duration Curve." OBJECTION: CAPD objects to this exhibit. Mr. Sherwood makes no direct or indirect reference in his testimony to a load duration curve. This exhibit is new, its content is not discoverable by CAPD, and the exhibit is an attempt by CGC to supplement Mr. Sherwood's pre-filed testimony.
4. Exhibit Title: "CGC Design Day Regression – Straight Regression." OBJECTION: CAPD objects to this exhibit. Mr. Sherwood uses the term "regressions" just one time in his testimony, at page 3 line 6 of his direct testimony. He provided no other references or illustrations to regression. This exhibit is new, its content is not discoverable by CAPD, and the exhibit is an attempt by CGC to supplement Mr. Sherwood's pre-filed testimony.
5. Exhibit Title: "CGC Design Day Regression with Bend." OBJECTION: CAPD objects to this exhibit. Mr. Sherwood uses the term "regressions" just one time in his testimony, at page 3 line 6 of his direct testimony. He provided no other references or illustrations to regression. This exhibit is new, its content is not discoverable by CAPD, and the exhibit is an attempt by CGC to supplement Mr. Sherwood's pre-filed testimony.
6. Exhibit Title: "CGC ETNG OBA Balances." OBJECTION: CAPD objects to this exhibit. Mr. Sherwood makes no direct or indirect reference in his testimony to CGC's balancing agreement with the East Tennessee Natural Gas Pipeline (ETNG). This exhibit is new, its content is not discoverable by CAPD, and the exhibit is an attempt by CGC to supplement Mr. Sherwood's pre-filed testimony. Dr. Brown discussed East Tennessee Natural Gas Pipeline's Balancing Agreement extensively in his direct testimony from pages 53-64, pointing out that such an agreement allowed CGC and Sequent to mix their respective assets. Regarding Issue 8 set by the Hearing Officer, Dr. Brown concluded that "the mixing" of CGC and SEM assets was one factor in his conclusion that CGC had "probably not" been prudent. Mr. Sherwood had ample opportunity to respond to Dr. Brown's testimony on balancing agreements, but Mr. Sherwood chose not make a single mention of a balancing agreement with ETNG. The Exhibit is a response to Dr. Brown's rebuttal testimony. This Exhibit is especially misleading because it has columns of data with titles such as "Alloc Del Qty"

and "Alloc Rec Qty." Assuming that "Alloc" is a short-hand expression for "Allocated," Mr. Sherwood did not discuss or reveal any "allocation" process related to energy deliveries at ETNG's delivery points. The data underlying the exhibit is not discoverable.

7. Exhibit Title: "CGC's ETNG Scheduled Receipts & Imbalance Quantity" OBJECTION: CAPD objects to this exhibit. Mr. Sherwood makes no direct or indirect reference in his testimony to "CGC's ETNG Scheduled Receipts." This exhibit is new, and its content is not discoverable by CAPD. The exhibit is an attempt by CGC to supplement Mr. Sherwood's pre-filed testimony and is misleading regarding the subject of "imbalance." Dr. Brown's rebuttal testimony, pages 35- 42 discussed imbalance as a comparison between scheduled energy deliveries and actual energy deliveries. This Exhibit relates imbalances to "Receipts" rather than deliveries. Nowhere in Dr. Brown's testimonies or Mr. Sherwood's testimony is there discussion of "receipt" imbalances. The Exhibit broaches a brand new item never before in the record.

8. Exhibit Title: "CGC ETNG Operator Allocation Summary Report for 2007" OBJECTION: CAPD objects to this exhibit. Mr. Sherwood makes no direct or indirect reference to "CGC's ETNG Scheduled Receipts & Imbalance Quantity" in his testimony. This Exhibit is especially misleading in two respects. The title appearing in the upper left corner, "Chattanooga Gas Company ETNG Operator Allocation Summary Report for 2007" suggests that CGC is the operator of the ETNG delivery points, but Dr. Brown's direct testimony pages 49-50 establishes that Atlanta Gas Light is the operator of the delivery points. Mr. Sherwood had ample opportunity to respond to Dr. Brown's testimony that AGLR, not CGC, was the operator of the delivery points, but Mr. Sherwood offered no reply on this matter. The Exhibit also has columns of data with titles such as "Allocated Quantity." In his testimony Mr. Sherwood did not discuss or reveal any "allocation" process related to energy shipped to CGC via ETNG. The data underlying the exhibit is not discoverable and is an attempt by CGC to supplement Mr. Sherwood's pre-filed testimony.

9. Exhibit Title: "CGC GDA Price Comparison for Delivered Supply." OBJECTION: CAPD objects to this exhibit. This exhibit is new, and its content is not discoverable by CAPD. Dr. Brown's direct testimony, page 72, replies to the Hearing Officer's Issue 8, "Have CGC's sales and purchases of natural gas been prudent and should safeguards be put in place to ensure least cost purchasing of natural gas? If so, what should these safeguards be?" saying "My answer is 'probably not' because of several factors." Mr. Sherwood had ample opportunity to respond to Dr. Brown's testimony that CGC was probably not engaging in least cost purchasing, but Mr. Sherwood did not offer a response to Dr. Brown's conclusion.

10. Exhibit Title: "CGC FROM Delivered Prices to CGC Gate." OBJECTION: CAPD objects to this exhibit. This exhibit is new, and its content is not discoverable by CAPD. Dr. Brown's direct testimony, page 72, replies to the Hearing Officer's Issue 8, "Have CGC's sales and purchases of natural gas been prudent and should safeguards be put in place to ensure least cost purchasing of

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11. Exhibit Title: "CGC Delivered Supply Cost NORA Lateral Receipt Point" OBJECTION: CAPD objects to this exhibit. This exhibit is new, and its content is not discoverable by CAPD. Dr. Brown's direct testimony, page 72, replies to the Hearing Officer's Issue 8, "Have CGC's sales and purchases of natural gas been prudent and should safeguards be put in place to ensure least cost purchasing of natural gas? If so, what should these safeguards be?" saying "My answer is 'probably not' because of several factors." Mr. Sherwood had ample opportunity to respond to Dr. Brown's testimony that CGC was probably not engaging in least cost purchasing, but Mr. Sherwood did not offer a response to Dr. Brown's conclusion.

12. Exhibit Title: "Total Heating Degree Days and Highest Single Day." OBJECTION: CAPD objects to this exhibit. Mr. Sherwood makes no direct or indirect reference in his testimony to a load duration curve. This exhibit is new, its content is not discoverable by CAPD, and the exhibit is an attempt by CGC to supplement Mr. Sherwood's pre-filed testimony.

13. Exhibit Title: "CGC Stylized Map." OBJECTION: CAPD objects to this exhibit. Mr. Sherwood makes no direct or indirect reference in his testimony to a load duration curve. This exhibit is new, its content is not discoverable by CAPD, and the exhibit is an attempt by CGC to supplement Mr. Sherwood's pre-filed testimony.

14. Exhibit Title: "CGC Purchased Gas Volumes by Pipeline." OBJECTION: CAPD objects to this exhibit. Mr. Sherwood makes no direct or indirect reference to "Purchased Gas Volumes By Pipeline", "Gross Purchases" or "Net Deliveries" in his testimony. This exhibit is new, its content is not discoverable by CAPD, and the exhibit is an attempt by CGC to supplement Mr. Sherwood's pre-filed testimony. Dr. Brown, in his direct testimony from pages 12-15, discusses the amount of usage by pipeline, and usage by tariff class. Mr. Sherwood had ample opportunity to raise the issues of "Gross Purchases" and "Net Deliveries" at the time of his testimony but did not.

15. Exhibit Title: "CGC Gas by Pipeline & Third Party Gas by Pipeline " OBJECTION: CAPD objects to this exhibit. Mr. Sherwood makes no direct or indirect reference in his testimony to "Third Party Gas." The data underlying the exhibit is not discoverable. Dr. Brown, in his direct testimony from pages 41-42, discusses the amount of firm capacity held by industrial customers for the delivery of energy to delivery points where CGC itself also receives energy. Mr. Sherwood had ample opportunity to introduce the subject of "third parties" in his response to Dr. Brown's testimony, but Mr. Sherwood chose not to make a single mention of "third parties" in his testimony. Furthermore, the amount of "third party" energy deliveries shown in the Exhibit is inconsistent with the data shown in Dr. Brown, in his direct testimony from pages 41-42.

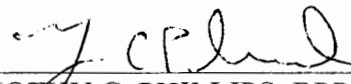
16. Exhibit Title: "ETNG System Map (provided only in hard copy)"
OBJECTION: None.

17. Exhibit Title: "CGC Tariff (on file with the TRA and not attached)"
OBJECTION: None.

CONCLUSION

In consideration of the foregoing, the Consumer Advocate requests that the specific exhibits be excluded from the evidentiary record in this docket.

Respectfully submitted,



TIMOTHY C. PHILLIPS, BPR No. 12751

Senior Counsel

Tennessee Attorney General's Office

Consumer Advocate & Protection Division

P.O. Box 20207

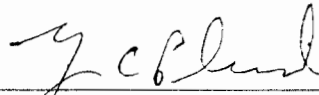
Nashville, Tennessee 37202-0207

Phone: (615) 741- 8700

Facsimile: (615) 532-2910

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 December 3, 2008.

A handwritten signature in cursive script, appearing to read "T C Phillips", written over a horizontal line.

Timothy C. Phillips
Senior Counsel

BEFORE THE TENNESSEE REGULATORY AUTHORITY

IN RE:

PETITION OF TENNESSEE AMERICAN
WATER COMPANY TO CHANGE AND
INCREASE CERTAIN RATES AND
CHARGES SO AS TO PERMIT IT TO
EARN A FAIR AND ADEQUATE RATE
OF RETURN ON ITS PROPERTY USED
AND USEFUL IN FURNISHING WATER
SERVICE TO ITS CUSTOMERS

DOCKET NO.
08-00039

TRANSCRIPT OF PROCEEDINGS

Tuesday, August 26, 2008

VOLUME XV

APPEARANCES:

For TAWC: Mr. R. Dale Grimes
Mr. Ross I. Bocher

For COC: Mr. Frederick L. Hitchcock
Mr. Michael A. McMahan

For CAPD: Mr. Timothy C. Phillips
Ms. Cynthia E. Kinser
Mr. Ryan L. McGehee

For CMA: Mr. Henry Walker
Mr. David C. Higney

For TRA: Mr. Jerry Kettles

Reported By:
Carol A. Nichols, RDR, CRR, CCR

1 whether any other states have changed. My partner,
2 Michael Majoros, and I have been carrying on a crusade
3 throughout the country to try and get rid of this faulty
4 methodology which is costing ratepayers in not just
5 water but gas and electric rates billions of dollars.

6 Now switching to the next subject, the
7 weather normalization, if you look at my testimony, I
8 cite the rather simple fact that the weather
9 normalization adjustment doesn't make sense. It doesn't
10 make sense because it assumes that the -- reasonably,
11 that the month that has the most weather -- water
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13 August, as one would expect. It's September. And for
14 commercial customers, it's October.

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16 nearly as hot and I wouldn't think nearly as dry as
17 August, which is the other hot month of the year. Now
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20 troubles with this. One is that drought is not like
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22 given day, and that really isn't particularly influenced
23 by how hot it was on the previous day.

24 MR. GRIMES: Excuse me, Mr. King. I
25 hate to interrupt, but I don't believe this is within . . .

1 the scope of his direct testimony, prefiled.

2 THE WITNESS: Well, I'm trying to
3 explain. That's all.

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5 week, people have been referencing cross-examination of
6 other witnesses and other witnesses following up with
7 reference to that and going into that.

8 THE WITNESS: I'm sorry. Let me
9 explain why I'm raising this.

10 DIRECTOR ROBERSON: Wait just a second.
11 Response?

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13 just object to them going into something that was not in
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15 did not even touch on one way or the other, even though
16 it was in Dr. Spitznagel's original direct testimony.
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18 Severity Index, and this witness said nothing about that
19 in his response, testimony.

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21 cross-examination of Dr. Spitznagel, and as far as the
22 practice was back in Chattanooga, what we were doing is
23 when issues came up in cross-examination of witnesses,
24 other witnesses were -- those issues would be brought up
25 again with other witnesses and, for example, Mr. Miller

1 would comment on a witness -- excuse me -- on another
2 issue that came up in cross-examination.

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4 just a minute.

5 I'm going to sustain the objection.

6 This is a period where he summarizes his testimony that
7 he's already given. That doesn't mean that through
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9 cannot have an opinion, but let's stick with the summary
10 of your testimony at this juncture.

11 THE WITNESS: Well, if that's the case,
12 I'm pretty much finished. I was responding to the
13 rebuttal and also issues that had come up in
14 cross-examination of Dr. Spitznagel, but I had been
15 informed by my counsel this was appropriate. But if
16 not, I'm happy to finish up.

17 DIRECTOR ROBERSON: Okay.

18 BY MR. MCGEHEE:

19 Q. Mr. King, could you briefly summarize your
20 qualifications?

21 A. Well, I got in the consulting testifying
22 business in 1968, so that's now what, 40 years I've been
23 doing this. I have a 13-page listing of my appearances
24 before regulatory commissions. As regards depreciation,
25 the bulk of my testimony, I've been testifying on that