

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

April 30, 2009

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

CHATTANOOGA GAS COMPANY'S RESPONSE
TO THE CAPD'S MOTION TO COMPEL

Pursuant to the Hearing Officer's April 23, 2009 Order, Chattanooga Gas Company ("CGC" or "Company") files this response to the CAPD's motion to compel. As many of the issues raised by the Consumer Advocate and Protection Division ("CAPD") of the Office of the Attorney General and Reporter were decided by the Hearing Officer in April 2008, the Company respectfully requests that the CAPD's motion be denied. Further, the CAPD's motion should be denied to the extent that the CAPD's requests are overly broad, unduly burdensome, unduly cumulative, duplicative, and beyond the scope of discovery.

On April 29, 2009, the CAPD filed a "Notice of its *intention* to withdraw its Motion to Compel with regard to Discovery Requests 52, 53, 54, 63, and 78, from the First Discovery Requests propounded to CGC." See Notice of Strike[sic], in part, Consumer Advocate's Motion to Compel (filed April 29, 2009), at 1 (emphasis added). In the notice, the CAPD states that there is no need for CGC to respond to, or for the parties to present oral argument concerning, the portions of the CAPD's motion to compel regarding Request Nos. 52, 53, 54, 63, and 78. See id. Based on these representations, CGC is not responding to these portions of the CAPD's motion.

However, CGC reserves its right to respond should the CAPD not exercise its intentions to withdraw these portions of its motion.

CGC will continue to work with the CAPD to resolve the remaining discovery disputes if possible prior to the May 5th status conference.

I. The Hearing Officer has already decided the discovery disputes regarding Request Nos. 34, 49-51, and 77 of the CAPD's first set of discovery requests.

The CAPD is renewing its requests for certain information that the Hearing Officer has already determined not to be relevant to the issues in this docket. As these disputes have already been argued and decided by the Hearing Officer, the CAPD's renewed requests for the same information are improper. Contrary to the CAPD's assertions, there is nothing in this docket that would justify the Hearing Officer's reconsideration or overruling of the previously correctly-determined rulings on the relevance of these discovery requests. Therefore, for the following reasons, the CAPD's motion to compel regarding Request Nos. 34, 49-51, and 77 must be denied.

Request No. 34

During the first round of discovery, the CAPD sought to obtain copies of all asset management agreements between Sequent and other entities beyond CGC. CGC argued that Sequent's asset management contracts with private customers, municipal utilities and public utilities other than CGC are not relevant to this docket regarding CGC's regulated assets. See April 29, 2008 Order, at 8. Upon hearing the arguments, the Hearing Officer determined that "[w]hether 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." See id. at 9. The Hearing Officer denied the CAPD's request to the extent that

it required production of asset management contracts between Sequent and entities other than CGC or AGL affiliates. See id.

This docket involves CGC and its regulated assets. Sequent's asset management contracts with entities other than CGC continue not to be relevant to issues in this docket. Thus, the Hearing Officer's decision to deny the CAPD's request for this information is correct, and the CAPD's motion to compel regarding Request No. 34 should be denied.

Request Nos. 49-51

In Request Nos. 49-51 of the CAPD's first set of discovery requests, the CAPD sought certain information about the selection of Sequent as the asset manager for the current asset management agreement that commenced on April 1, 2008, and for past asset management arrangements. CGC answered these discovery requests regarding the current asset management agreement but objected to providing information about previous asset management arrangements. See April 29, 2008 Order, at 13. The CAPD did not dispute CGC's responses to these discovery requests regarding the current asset management agreement.

The issues set forth in this docket involve the current bidding process and the current asset management agreement. See id. Thus, the Hearing Officer found that information about prior asset management agreements between Sequent and CGC is not relevant to the issues in this docket. See id. at 14. The Hearing Officer's denial of the CAPD's request for this information is correct, and the CAPD's motion to compel regarding Request Nos. 49-51 should be denied.

Request No. 77

In the CAPD's first set of discovery requests, the CAPD requested production of the operating balancing agreement ("OBA") between Sequent and East Tennessee Natural Gas ("ETNG") Pipeline. See Request No. 77. CGC argued that Sequent's OBA with ETNG does not involve CGC's regulated assets and is not relevant to this docket. The Hearing Officer denied the CAPD's request to obtain a copy of the OBA between Sequent and ETNG. See April 29, 2008 Order, at 15-16.

The CAPD is once again moving to compel production of the OBA between Sequent and ETNG by claiming that there is conflict between CGC's response to Request No. 10.b. from the CAPD's second set of discovery requests and portions of Mr. Sherwood's responsive testimony. This clearly is not the case as the two involve separate asset management and gas supply concepts – (1) creating value through non-jurisdictional sales and (2) CGC's OBA.

In Request No. 10.b. of the CAPD's second set of discovery requests, the CAPD asked CGC to admit that customers did not receive value for Sequent's use of CGC assets to make non-jurisdictional sale of gas via the Transco Pipeline. The request required CGC to explain fully any denial. CGC denied this request and explained hypothetically that, when Sequent uses fallow CGC assets to make a delivered sale into Transco at the ETNG/Transco Pipeline interconnect, the value would be captured for CGC and its customers. Contrary to the CAPD's position in its motion to compel, the Company was not admitting that Sequent uses CGC's fallow assets to make a non-jurisdictional sale of gas via the Transco Pipeline. This was not information in the Company's knowledge. In fact, the Company explained to the CAPD in its response to Request No. 10.b. that no

direct non-jurisdictional sales of gas via the Transco Pipeline would occur, which is consistent with Mr. Sherwood's testimony. The Company's response was simply made to clarify that, if CGC assets were combined with other non-CGC assets managed by Sequent to make off-system sales, CGC customers would benefit and receive value for the use of CGC's assets.

In Mr. Sherwood's responsive testimony, he clarifies Dr. Brown's inaccuracies and misunderstandings regarding the operation of CGC's OBA with ETNG. Mr. Sherwood does not discuss Sequent's OBA with ETNG, which is not relevant to the issues in the docket. Further, CGC does not have possession, custody, or control of Sequent's OBA since it does not cover CGC's regulated assets.

The issue of the relevance of Sequent's OBA with ETNG was litigated and decided in April 2008. After argument at the April 24, 2008 status conference, the Hearing Officer correctly determined that Sequent's OBA was not relevant to this docket which involves CGC's regulated assets that are covered by CGC's OBA with ETNG. Thus, the CAPD's motion to compel on this dispute must be denied.

II. The CAPD's motion to compel regarding CGC's objections to Request Nos. 1, 2, 17, 21, 23, 35, and 37 of the CAPD's third set of discovery requests must be denied.

CGC continues to rely upon its objections as stated in its April 22, 2009 filing and incorporates those arguments herein by reference. The Company further would show that for the following reasons the CAPD's motion to compel should be denied.

Request No. 1

CGC objected to Request No. 1 of the CAPD's third set of discovery requests for two reasons. First, CGC objected to the form of the request which is misleading, in part,

because it takes quoted language out of context. Because the procedural schedule requires the Company to file its objections before its responses to the discovery requests are due, CGC had to assert objections to preserve arguments at the hearing on the merits. CGC is objecting to the form but will attempt to respond to the request without waiving this objection.

Second, CGC objected to Request No. 1 to the extent the CAPD is again seeking a copy of the OBA between Sequent and ETNG. Through the CAPD's motion to compel, the CAPD is seeking production of Sequent's OBA through a prior discovery request (Request No. 77 of the CAPD's first set of discovery requests) and also through a new discovery request (Request No. 1 of the CAPD's third set of discovery requests). Since Request No. 77 and Request No. 1 seek the same information, the Company relies upon the arguments set forth above in Section I regarding Request No. 77.

As the dispute concerning Sequent's OBA has already been litigated and decided (see April 29, 2008 Order, at 15-16), the Hearing Officer's determination that Sequent's OBA is not relevant to the issues being litigated in this docket should be upheld, and the CAPD's motion to compel denied.

Request No. 2

In part, the CAPD asks CGC to identify the company who was the delivery point operator for certain points if CGC was not the delivery point operator in a given year. If CGC should determine that it has not been a delivery point operator for a certain year, CGC might not possess information about the identity of the delivery point operator. That information would be in the possession of the pipeline company. Because the procedural schedule requires the Company to file its objections before its responses to the

discovery requests are due, CGC objected out of an abundance of caution in case it does not have in its possession, custody, or control the information necessary to answer this part of the CPAD's discovery request.

Request Nos. 17, 21, and 23

CGC objects to Request Nos. 17, 21, and 23 to the extent that they require CGC to generate new data that was not used by CGC to create Exhibit TSS-08. CGC will produce the data that it generated and used in creating Exhibit TSS-08.

CGC filed Exhibit TSS-08 to respond to inaccurate positions taken by Dr. Brown (Dr. Brown's Rebuttal, at page 32-33). In his rebuttal testimony, Dr. Brown performed an analysis using monthly data beginning with August 1, 2005. CGC created Exhibit TSS-08 to respond to Dr. Brown's analysis by using monthly data for the same period starting with August 2005. Dr. Brown chose the period of time and the type of data to use for his analysis and the Company responded based on the parameters Dr. Brown had established. To the extent Dr. Brown seeks new data to expand or change his analysis, this would be beyond the scope of sur-rebuttal testimony as it would not respond to Mr. Sherwood's responsive testimony but rather would expand Dr. Brown's original testimony.

The Company will provide the CAPD with the data generated to create Exhibit TSS-08. However, it is unduly burdensome and beyond the scope of discovery to require the Company to perform the additional analysis requested by the CAPD when the Company was merely responding to Dr. Brown's initial analysis. The CAPD has propounded three rounds of discovery, including approximately 169 discovery requests,

on CGC. It has been afforded ample opportunity to develop its case. The CAPD's motion to compel as to these requests should be denied.

Request No. 35

The Company understands its duty to seasonally supplement in accordance with the Tennessee Civil Rules of Procedure and will provide supplementations when necessary in accordance with the Tennessee Rules of Civil Procedure. The Company objects to this request to the extent that it places additional requirements on CGC such as time deadlines or supplementation requirements beyond the Tennessee Rules of Civil Procedure.

Request No. 37

The CAPD already has in its possession, custody, and control the information that it is seeking in Request No. 37 regarding CGC's RFP process and the selection of CGC's current asset manager. This issue has been fully litigated in Docket 08-00012, in which the CAPD intervened, propounded discovery requests, and received discovery from the Company. To the extent that the CAPD no longer has the information obtained from Docket 08-00012 in its possession, custody, or control, the information sought is readily available through the TRA's public records.

To require CGC to re-produce this information is unduly burdensome, unreasonably cumulative and duplicative. Further, CGC has already responded to requests for much of this information by the CAPD in the first round of discovery. See CGC's responses to CAPD First Round Request Nos. 49, 50, 51, 53, & 54. As the bidding process and selection process was concluded by January 2008 and the TRA has fully reviewed the process for selecting CGC's current asset manager and approved the

current asset management agreement that commenced on April 1, 2008, there have been no changed circumstances or new information. The information sought by the CAPD is the very issue litigated in Docket 08-00012. The CAPD's motion to compel discovery regarding Request No. 37 should be denied as unduly burdensome, unduly redundant and duplicative.

III. The CAPD's motion to compel regarding the agreements reached for Request Nos. 1-9 from the CAPD's first set of discovery requests must be denied.

Request Nos. 1-9

Request Nos. 1-9 generally seek information about the identity of the Company's witnesses, the exhibits that will be relied upon at the hearing on the merits, the facts that the Company will assert at the hearing, and all documents that support the Company's positions. The Company objected to these requests, in part, as being premature because, at the time of filing its first set of discovery responses in March 2008, the CAPD had not filed its pre-filed testimony setting forth its positions in this matter and CGC had not prepared its responsive testimony. The CAPD and the Company agreed to handle Request Nos. 1-9 in the manner that they have handled similar requests in the past.

In past cases, the CAPD has agreed to limit the overly broad questions such as Nos. 1(d), 5, 6, 7, and 9 to require identification of only the documents or information *relied upon* by the witnesses in their testimony or in responses to discovery requests. In accordance with this agreement, the Company takes the position that, to the best of its knowledge, it has produced all such documents in its pre-filed testimony and exhibits and in its responses to discovery requests. The Company understands its continuing duty to supplement should it identify additional documents or should additional issues arise.

Further regarding Request Nos. 1-4, the Company believes that it has provided the agreed upon information through its pre-filed testimony and exhibits and through its discovery responses.

In Request No. 8, the CAPD asks the Company, in part, to identify what evidence it will object to as being inadmissible at the hearing on the merits. CGC objects to this request because it seeks the mental impressions of CGC's attorneys regarding Tennessee Rules of Civil Procedure and Evidence. This request does not seek factual information from CGC that is designed to lead to the discovery of admissible evidence.

In conclusion, for all of the foregoing reasons, CGC respectfully requests that the Hearing Officer deny the CAPD's motion to compel.

Respectfully submitted,

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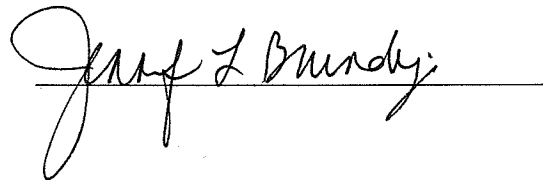
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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of April 2009, a true and correct copy of the foregoing was served on the persons below by electronic mail:

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A handwritten signature in cursive script, reading "Jeff L. Brundage", is written over a horizontal line.