BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

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

CONSUMER ADVOCATE'S MOTION FOR INTERLOCUTORY REVIEW

Robert E. Cooper, Jr., the Attorney General and Reporter for the State of Tennessee, through the Consumer Advocate and Protection Division (hereinafter "Consumer Advocate") and pursuant to the Rules of the Tennessee Regulatory Authority 1220–1-2-.06(6), respectfully requests an interlocutory review of the decision of the Hearing Officer at the May 5, 2009, Status Conference in Docket No. 07-00224. Specifically, the Consumer Advocate would respectfully ask the Hearing Officer to grant a review of her decisions by the Directors of the Tennessee Regulatory Authority with regard to Discovery Request No.'s 34, 49, 50, 51, and 77 of the Consumer Advocate's First Discovery Requests and Request No.'s 1 & 37 of the Consumer Advocate's Third Discovery Requests. Furthermore, the Consumer Advocate would respectfully request an expedited hearing on these issues because the Consumer Advocate's pre-filed surrebuttal testimony is due no later than June 10, 2009, under the current procedural schedule.

INTRODUCTION

A Status Conference was held before Hearing Officer Kelly Cashman-Grams on Tuesday, May 5, 2009, at 1:30 p.m. to hear the Consumer Advocate's Motion to Compel. The Consumer Advocate filed this Motion in relation to CGC's objections to its Third Discovery Requests and certain prior discovery requests which had been denied during the first status

conference in this Docket on April 24, 2008, prior to the filing of any testimony by CGC. The testimony of CGC's witnesses, as well as its responses to previous discovery requests created a change of circumstances in the present Docket, 07-00224, which required the answering of requests which had previously been considered irrelevant to these proceedings. After hearing the arguments of the parties and reconsidering the relevancy of prior Requests, the Hearing Officer ruled that Discovery Request No.'s 34, 49, 50, 51, and 77 of the Consumer Advocate's First Discovery Requests and Request No.'s 1 & 37 of the Consumer Advocate's Third Discovery Requests were not relevant to this Docket. The Consumer Advocate respectfully requests that an Interlocutory Review of this decision be heard by the Directors of the Tennessee Regulatory Authority for all of the following reasons.

REQUEST NO. 34

In Request No. 34 of the First Requests for Discovery propounded to Chattanooga Gas Company (hereinafter "CGC"), the Consumer Advocate requested copies of "asset management contracts between Sequent and entities other than CGC for the time period from January 1, 2004, through the present," which read as follows:

> 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;

Chattanooga Gas Company's Responses and Objections to Consumer Advocate's First Discovery Requests, p. 28 (April 11, 2008) (Emphasis Added). The Consumer Advocate

requested this information so that it could compare contracts Sequent had negotiated with non-affiliated third parties to the Asset Management Agreement between Sequent and CGC (hereinafter "AMA"). However, it has been the position of CGC and Sequent that any asset management contracts between Sequent and third parties are not relevant to this Docket and are outside the jurisdiction of the Tennessee Regulatory Authority (hereinafter "TRA"). It is important to note at this time that counsel for CGC has objected to this Request in the name of Sequent and not CGC.

As the TRA is aware, the State of 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) (Emphasis Added). Accordingly, a party seeking discovery is entitled to obtain any information that is relevant to the case and not privileged, 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)). The Court in Kuehne also provides us with the existing definition of relevancy in the State of Tennessee. 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. (Emphasis Added).

The TRA opened this Docket **"to consider issues concerning asset management and capacity release raised by the Consumer Advocate and Protection Division** of the Office of the Attorney General and the Chattanooga Manufacturer's Association," *Order Closing Phase II of Docket*, page 4, Docket No. 06-00175 (December 17, 2007) (Emphasis Added). The Consumer Advocate specifically stated:

> **the issues include asset management arrangements, the appropriate level of capacity subscription for which consumers are required to pay, the role of affiliates in managing and profiting from assets paid for by consumers, and the right of consumers to benefit from the assets for which they have paid,**

Consumer Advocate's Response to Discovery Objections, page 4, Docket No. 06-00175 (August 23, 2006) (Emphasis Added). Even CGC admitted the Request for Proposals (hereinafter "RFP")/AMA process is central to Docket 07-00224, during the May 5, 2009 Status Conference, *Transcript of Proceedings,* p.17:16-18 (May 5, 2009).

The central issues in this Docket are whether Sequent, an affiliate of CGC, is properly managing the excess capacity purchased by the customers/rate payers of CGC, and whether the AMA between Sequent and CGC was negotiated in good faith, with the best interests of CGC's rate payers in mind. It is clear that asset management contracts between Sequent and entities other than CGC would be discoverable under the relevancy standard in the State of Tennessee. The only requirement is that the requested asset management agreements bear on the issues in the present Docket, or reasonably lead to other matters which could bear on the present Docket, Kuehne & Nagel, Inc., at 3. Contracts between Sequent and entities other than GCG during this

period go beyond this standard and are highly relevant to the present Docket. A review of Sequent's asset management contracts with other non-affiliated entities would serve as a baseline for comparison of the AMA between CGC and Sequent. This would allow the TRA and Consumer Advocate to compare the present AMA between Sequent and CGC with the terms of contracts negotiated by Sequent with non-affiliated, third-parties in arm's length transactions. The TRA would then be in a much better position to determine if the terms of the AMA between CGC and Sequent are equitable with regard to CGC's rate payers. Similarly, the TRA would be in an ideal position to decide if the terms of the AMA between Sequent and CGC are drafted more favorably with regard to CGC, Sequent, AGL, and their affiliates than are those contracts negotiated between Sequent and non-affiliated, third-parties.

A review of just the current asset management agreements between Sequent and other Local Distribution Companies (hereinafter "LDC") in the State of Tennessee, such as Piedmont Natural Gas (hereinafter "Piedmont"), would provide the TRA with some opportunity to compare asset management contracts having the same subject matter, and which were negotiated a relatively short time apart. This comparison would provide an unarguably objective basis by which to compare the AMA between Sequent and CGC. The only significant difference in the circumstances surrounding negotiations of Sequent's AMA with Piedmont and its AMA with CGC is the Piedmont AMA was negotiated with a non-affiliated corporation. Without access to Sequent's AMA's with non-affiliated corporations, there is no way for the TRA to compare the terms of the AMA between CGC and Sequent to exemplar contracts between non-affiliated entities, and there is not a substitute process by which the TRA could reliably determine if this AMA was drafted with the best interests of CGC's rate payers in mind.

CGC has argued the TRA lacks the jurisdictional authority to demand the production of Sequent's asset management agreements with entities other than CGC because Sequent is not a public utility provider in the State of Tennessee. On the other hand, as noted above, opposing counsel lodged the objection to this Request in the name of Sequent, not CGC. Clearly, this indicates counsel is representing the interests of both Sequent and CGC in this action. It would appear Sequent wishes to be considered a party and even represented by the counsel paid for by CGC's ratepayers whenever it is beneficial to do so, but wishes to remain immune from any authority of the TRA at all other times. However, the Supreme Court of the State of Tennessee has been quite clear on this point. In Bellsouth Advertising & Publishing Corporation v. Tennessee Regulatory Authority, et al., the Supreme Court held that the TRA has jurisdiction over the affiliates of a public utility, 79 S.W.3d 509, 513 (Tenn. 2002). This rule exists to prevent a regulated utility from contracting its duties to an affiliated corporation and, thereby, "escap[ing] the legal responsibilities thrust upon it." Id. In other words, CGC has chosen to have Sequent, an affiliated party, act as its asset manager rather than performing this function internally, but because Sequent is performing a task which would normally be the responsibility of CGC, Sequent is also subject to the authority of the TRA. Since Sequent has stepped into the shoes of CGC in this regard, its motives and business dealings are at issue, and, thus, Sequent is also subject to TRA scrutiny under the laws of the State of Tennessee.

Similarly, CGC's assertions that asset management contracts between Sequent and entities other than CGC may be confidential and Sequent might be damaged by releasing that information, are equally unfounded. As the TRA is already aware, the parties entered a Protective Order in this matter on March 4, 2008. Thus, any confidential information disclosed

by Sequent would be protected under the terms of that Protective Order, and neither Sequent nor CGC will be damaged in any way by the release of the requested information.

REQUEST NO.'S 49, 50 & 51

The Consumer Advocate has requested additional information with regard to both current and prior AMA's between CGC and Sequent. Specifically, in Request No.'s 49, 50, and 51 the Consumer Advocate requests the following:

> 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.
>
> 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.
>
> 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.

First Discovery Requests of the Consumer Advocate and Protection Division to Chattanooga Gas Company, p. 18 (March 18, 2008). CGC has objected to answering these Requests to the extent they request any information which relates to any prior AMA between Sequent and CGC on the grounds that this information is irrelevant to the present Docket. The Consumer Advocate asserts that any communications within CGC and its affiliates, including Sequent and AGL, regarding the selection of an asset manager, and the arrangements of the AMA's during this period of time are highly relevant to this Docket.

Each of these Requests asks for separate but related, and equally important, information. Request No. 49 asks for a description of the process by which CGC made the selection of Sequent as its asset manager and copies of any communications related to that selection, whether

internal or inter-affiliate. Request No.'s 50 & 51 ask for a description of all communications between CGC, AGL and any of their affiliates with regard to the asset manager selection process, as well as copies of those communications. The relevancy of these Requests is described more fully below.

Once again, the relevancy requirement in Tennessee 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.**" 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)) (Emphasis Added). The information requested in No.'s 49, 50, and 51 of the Consumer Advocate's First Requests for Discovery bear directly on the issues in this Docket.

All parties agree that the current AMA between Sequent and CGC is at issue in this case, but CGC argued at both the April 24, 2008 and May 5, 2009 Status Conferences that the prior AMAs were irrelevant. As evidenced by the statements of CGC's own witness, the prior AMA's of CGC contributed to the terms of the existing agreement between CGC and Sequent,

> When the TRA required CGC to competitively bid the most recent asset management agreement the Utility decided to maintain 50/50 sharing as before, but required a minimum annual guarantee from the asset manager,

Testimony of Tim Sherwood, pp. 16:21 – 17:1 (July 30, 2008). Despite CGC's claim that this information is irrelevant, a brief review of the testimony of CGC's witness, Tim Sherwood, will demonstrate its reliance upon this information in the present Docket. In Mr. Sherwood's testimony, he states:

> **through past asset management agreements, CGC has been very successful in returning very favorable gains to its customers. Over the past thirty-nine months, CGC's customers have received**

> **approximately $7.9 million for the non-jurisdictional sale of gas supply assets** that otherwise would have been sitting idle. These were very favorable results considering the small size of CGC with approximately 62,000 firm customers,

Testimony of Tim Sherwood, p. 17: 9-13 (July 30, 2008) (Emphasis Added). This statement alone makes it quite clear that Mr. Sherwood reviewed the prior asset management agreements of CGC as well as the documents related to those agreements, even after CGC's counsel argued they were not relevant to this Docket during the April 24, 2008 and May 5, 2009 Status Conferences. However, Mr. Sherwood's analysis of CGC's prior asset management agreements does not stop with the above testimony, he also stated:

> prior to utilizing asset management to extract value from the gas supply assets of CGC when not needed to serve its customers, CGC would either attempt to release capacity through the pipeline process or attempt to sell delivered gas to other customers. The margin derived to off-system sales were shared between the CGC and firm customers on a 50/50 basis.
>
> When GCG introduced asset management the 50/50 sharing concept remained, but with CGC's affiliate asset manager, Sequent, retaining the company's portion. **Given the success that asset management had at enhancing value, CGC came to the conclusion that continuing with this capacity optimization method was in the best interest of its customers.**
>
> When the TRA required CGC to competitively bid the most recent asset management agreement **the Utility decided to maintain 50/50 sharing as before, but required a minimum annual guarantee from the asset manager**, which would have to be paid regardless of the amount of value extracted from the assets. This would allow the bid process to result in a clear winner, since one bidder's offer of 60% to CGC might result in a lower value to customers than a more successful manager's offer of 50% to CGC.

Testimony of Tim Sherwood, pp. 16:11 – 17:4 (July 30, 2008) (Emphasis Added). A thorough reading of the above testimony demonstrates Mr. Sherwood has had an opportunity to review a

complete history of the asset management documentation of CGC and its affiliates, including documentation providing CGC's reasons for negotiating and/or maintaining specific provisions in both past and present AMA's with Sequent. It is equally clear from the statements above that Mr. Sherwood relied upon these documents in providing the cited testimony, despite allegations by counsel for CGC that this information was irrelevant.

A review of the record will show CGC finds it necessary to testify on the history of prior AMA's between CGC and Sequent, as well as the history of asset management within CGC, thus this subject is clearly relevant to the present Docket. As evidenced by the testimony of CGC's witness, Tim Sherwood, and the facts above, the prior AMA between CGC and Sequent bears directly on the negotiations and terms of the present AMA. This information speaks directly to the incentive of CGC, its affiliates, and employees to consider specific provisions within an AMA and to make asset management decisions that may or may not be in the best interests of its rate payers/customers. Therefore, this information is irrefutably relevant to this Docket.

REQUEST NO.'S 77 & 1

In Request No. 77 of the Consumer Advocate's First Discovery Requests and Request No. 1 of the Consumer Advocate's Third Discovery Requests, the Consumer Advocate requested a copy of the Operational Balancing Agreement (hereinafter "OBA") between Sequent and East Tennessee Natural Gas (hereinafter "ETNG"):

> 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.

> 1. In reference to Mr. Sherwood's supplemental testimony from page 17 line 7 to page 18 line 2, as well as CNG's prior responses to discovery, explain how "SEM uses fallow CGC ETNG transportation to make a delivered sale into Transco at the ETNG/Transco pipeline interconnect." Include in your reply an explanation of how Sequent uses "fallow CGC ETNG transportation" to make a delivered sale to Transco without utilizing CGC's OBA and provide a copy of Sequent's Operational Balancing Agreement with ETNG.

Both of the above Requests were triggered by the occurrence of other events in the discovery process. Request No. 77 was contingent upon an affirmative answer to the prior two discovery requests:

> 75. Is there a balancing agreement between CGC and East Tennessee which includes meter 59014?
>
> **Response:** Yes. Meter 59014 is a CGC firm delivery point.
>
> 76. Is there a balancing agreement between Sequent and East Tennessee?
>
> **Response: Sequent** objects to this question as not reasonably calculated to lead to the discovery of admissible evidence and seeking privileged, confidential, proprietary and/or trade secret information,

Chattanooga Gas Company's Responses and Objections to Consumer Advocate's First Discovery Requests, (April 11, 2008) (Emphasis Added). The affirmative response to Request No. 75 triggered Request No. 77 asking for a copy of Sequent's OBA with ETNG. This was due to location of meter 59014 with regard to both the ETNG and Transco System, and its strategic value in facilitating off-system sales of excess capacity into the Transco Pipeline. The need for the OBA in question is discussed more fully below. It is, once again, important to note that, like the objection to Request No. 34 discussed previously, counsel for CGC lodged the objection to Request No. 76 above on behalf of Sequent and not CGC.

Request No. 1 was propounded only after significant contradictions arose between the testimony of CGC's witness, Tim Sherwood, and its discovery responses. In its response to the Consumer Advocate's Second Discovery Requests, CGC stated:

> 10.(b). The $7.9 million CGC's customers have received does not include any compensation from Sequent for its use of CGC's assets to make non-jurisdictional sale of gas via the Transco pipeline. If denied fully explain your reply.
>
> **Response: Deny. CGC has no assets on the Transco Pipeline. There would be no direct non-jurisdictional sales of gas via the Transco pipeline. When SEM uses fallow CGC ETNG transportation to make a delivered sale into Transco at the ETNG/Transco pipeline interconnect (Cascade Creek),** that activity is captured on CGC's ETNG transport contract(s) and documented accordingly in the CGC's third party transportation book. Revenue is captured under the ETNG pipeline and cost is captured under the TGP pipeline (or ETNG pipeline if supply was bought on ETNG). Similarly if SEM uses fallow SNG transportation to make a delivered sale into Transco at the SNG/Transco market area pipeline interconnect (Jonesboro), that activity is captured on CGC's SNG Transport contract and documented accordingly in the CGC third-party transportation book. Revenue and cost is captured under the SNG pipeline. The gain from any such transaction would be shared with CGC's customers,

Chattanooga Gas Company's Responses and Objections to Consumer Advocate's Second Discovery Requests, pp. 21-22 (August 26, 2008) (Emphasis Added). The preceding response, provided in full, makes clear while CGC asserts that it has no assets on the Transco Pipeline and cannot make non-jurisdictional sales of excess capacity, Sequent (or "SEM" above) **does** have the ability to use "fallow CGC ETNG transportation to make a delivered sale into Transco at the ETNG/Transco pipeline." Id. Opposing counsel attempted to argue at the May 5, 2009, Status Conference that the Consumer Advocate had taken portions of the above quotation out of context

and attempted to construe a hypothetical response as a statement of fact. However, a review of the full text of this response, as provided above, will show that CGC/Sequent states unequivocally that while CGC has no assets on the Transco pipeline, Sequent has the capability to make deliveries into Transco via fallow CGC transportation. CGC even goes so far as to provide a specific location used by Sequent in these transactions, Cascade Creek. The only hypothetical statement in the above quotation is in relation to the use of fallow Sequent transportation for deliveries into the Transco pipeline by Sequent, an entirely different scenario. Additionally, Mr. Sherwood's testimony is in direct contradiction to the answer provided by CGC in response to Request 10(b):

> Dr. Brown is wrong in assigning the OBA with the ability to facilitate deliveries to delivery points on the ETNG system that are not within the firm rights of the Company. (Brown Rebuttal page 30, line 20-27). The OBA only allows CGC to balance deliveries with nominations across all of its **contracted** delivery points across all of its pipeline contracts in total rather than being balanced at the contract and gate station level. The OBA does not allow balancing of deliveries between CGC and its delivery points on ETNG and a delivery point into another pipeline such as the Saltville Storage, Patriot Pipeline or Transco. This is similar to how CGC allows its transportation customers to trade imbalance between each other on a monthly basis. The Company would not allow this between customers on two separate utility systems.
>
> **Therefore, Dr. Brown is wrong in implying that CGC can facilitate deliveries off system** because '...CGC could schedule more deliveries than it needs and the imbalance could be taken as a delivery at another point on ETNG's system...' (Brown Rebuttal page 30, line 20-23). **For this quote to be accurate, with relationship to CGC all delivery points must be points associated with the CGC's transportation agreement**,

Supplemental Testimony of Timothy Sherwood, pp. 17:7 – 18:2 (April 1, 2009) (Emphasis Added). Mr. Sherwood explicitly states CGC cannot facilitate deliveries off system unless all delivery points are "associated with the CGC transportation agreement." Id. The above

statement from Mr. Sherwood, combined with the prior answer provided by CGC, make it clear Sequent can do what CGC cannot, deliver excess CGC capacity to the Transco Pipeline for sale in a wider and generally more profitable market. Any such sales would necessarily be completed by use of Sequent's OBA with ETNG. Yet, CGC and Sequent asserted in both the April 24, 2008, and May 5, 2009, Status Conferences that Sequent's OBA with ETNG is irrelevant to the present Docket.

The Consumer Advocate has requested the OBA between Sequent and ETNG because this agreement may provide significant incentive for CGC to schedule more capacity than needed, which can be transferred via this OBA through strategic operation points into the ETNG system and, ultimately, to the Transco Pipeline. Further, without a review of Sequent's ETNG OBA it is not possible for the TRA to determine the quantity of excess capacity which might be transferred via any such strategic points, and therefore, it is not possible to properly evaluate what level of improper incentive CGC and its affiliates may have to over-purchase natural gas and act in a manner that is not in the best interests of CGC's rate payers. Once again, the relevancy requirement in Tennessee 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**." 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)) (Emphasis Added).

For the reasons stated above, the OBA between Sequent and ETNG bears directly on the central issues of this Docket, which is well beyond the defined standard of relevance. At the very least, a review of Sequent's OBA with ETNG "reasonably could lead to other matters that

could bear on any of the case's issues." Id. A thorough understanding of Sequent's means and method of selling CGC's customer's excess capacity is absolutely essential to determining what disincentive may exist for CGC and its affiliates to act responsibly in purchasing appropriate quantities of natural gas. Therefore, any argument that this information is not relevant to the present Docket is wholly without merit.

Additionally, any argument that the OBA between Sequent and ETNG is confidential and non-discoverable because Sequent is not a utility provider under the jurisdiction of the TRA is also without merit. Counsel for CGC once again lodged an objection on behalf of Sequent, rather than CGC, in Request No. 75, provided above. Counsel is effectively arguing while Sequent is not subject to TRA jurisdiction when it is inconvenient or damaging to do so, Sequent is capable of appearing as a party whenever it is beneficial. As stated previously, in Bellsouth Advertising & Publishing Corporation v. Tennessee Regulatory Authority, et al., the Supreme Court held that the TRA has jurisdiction over the affiliates of a public utility, 79 S.W.3d 509, 513 (Tenn. 2002). This is because Sequent has stepped into the shoes of CGC in its role as asset manager, and, therefore, its motives and business dealings are also subject to TRA scrutiny under the laws of the State of Tennessee. Additionally, the Protective Order entered between the parties on March 4, 2008, would protect any potentially confidential information in the OBA between Sequent and ETNG. Therefore, there is no risk of harm to the parties involved as a result of releasing this information for review by the TRA.

REQUEST NO. 37

In Request No. 37 of the Third Requests for Discovery propounded to CGC, the Consumer Advocate requested a narrative describing the employees and affiliates of CGC involved in the asset manager selection process, as well as the factors evaluated in that process;

> 37. With regard to the Selection of Sequent as the asset manager of CGC, Mr. Sherwood says in his supplemental testimony at page 24 lines 17-20:
>
> > Sequent was selected as the asset manager for CGC as a result of a tariff based RFP process in which they were the party offering the highest minimum annual guaranteed payment to CGC's customers.
>
> In view of this statement, please provide a detailed narrative of the "tariff based RFP process" used to select CGC's asset manager as well as a listing of any other asset managers who may have participated in this process within the last five years; include in your answer the factors that are reviewed in selecting an asset manager, the weight assigned to each of those factors, which company and employees make the selection of an asset manager, whether or not any company other than CGC is involved in the selection process in any way, whether or not any company other than CGC provides advice or guidance in the selection process, a listing of participating asset managers' in the selection process by year, and any and all documents which support any part of your answer, were used in drafting your answer, that evidence the existence of selection criteria, or that more fully describe this process.

In response, CGC admits the RFP/AMA selection process is central to this Docket, but stated that it had already provided this information in Docket No. 08-00012, *Transcript of Proceedings,* p.17:16-18; pp. 31:13 – 32:1 (May 5, 2009). Specifically, CGC said that the Consumer Advocate "already has in its possession, custody, and control the information that it is seeking in Request No. 37," *Chattanooga Gas Company's Response to the Consumer Advocate's Motion to Compel*, p. 8 (April 30, 2009). Further, CGC alleged to require it to "re-produce this

information [was] unduly burdensome, unreasonably cumulative and duplicative." Id. However, the Consumer Advocate would aver that CGC has not provided the information requested in this narrative at any point in either Docket No. 08-00012, or in the present Docket (No. 07-00224).

The request in question seeks to gain additional information about CGC's selection of an asset manager, specifically about the parties who may have been involved in that decision, in light of Mr. Sherwood's reliance upon this process to act as a safeguard against inequity in the selection process, see *Supplemental Testimony of Timothy Sherwood*, pp. 24:18 – 25:2 (April 1, 2009). Further, the Consumer Advocate does not know what conversations, processes, or transactions, if any, may take place between affiliated corporations in the selection of CGC's asset manager; therefore, this question was necessarily drafted in a way to ensure the discovery of all employees and/or inter-company involvement in the selection process. The Consumer Advocate does not deny some overlap between this question and Docket No. 08-00012 is possible but unavoidable, and that fact alone hardly raises this Request to the level of being "unduly burdensome" on CGC.

As the Consumer Advocate suggested during the May 5, 2009 Status Conference, CGC is more than welcome to respond to this question by citing to specific documents which it has provided in this or any other docket which may provide any of the very specific information requested in Request No. 37. In this way, the parties may avoid any incidental overlap with prior dockets before the TRA and, at the same time, remove any overly burdensome portions of this question that may exist. However, it is insufficient to merely state that this question was previously answered in another docket, without providing specificity. At the very least, CGC should be required to cite the specific documents which it asserts contain this information, and

that no additional information exists at present. To allow CGC to ignore this Request simply because there may be some incidental and unavoidable overlap between it and the subject matter of a previous docket, would result in a situation in which CGC is excused from providing relevant information because it once litigated a similar matter before the TRA. It is certainly not overly burdensome for CGC to provide a specific reference to the document or documents that it feels fully answers this question. Certainly the information requested is important enough to require some answer from CGC as it bears on the central issues in the present Docket.

CONCLUSION

The Consumer Advocate would respectfully request the TRA grant an Interlocutory Review of Hearing Officer Cashman-Grams' decision with regard to Discovery Request No.'s 34, 49, 50, 51, and 77 of the Consumer Advocate's First Discovery Requests and Request No.'s 1 & 37 of the Consumer Advocate's Third Discovery Requests pursuant to the Rules of the Tennessee Regulatory Authority 1220–1-2-.06(6). Additionally, the Consumer Advocate's pre-filed surrebuttal testimony is due no later than June 10, 2009; therefore, the Consumer Advocate would respectfully request an expedited hearing on these issues in order to ensure that adequate time is provided for the consideration of any new evidence that may be produced by CGC as a result of this Motion;

WHEREAS, the Consumer Advocate respectfully requests that the Hearing Officer grant a review of her May 5, 2009, Status Conference decision by the Directors of the Tennessee Regulatory Authority with regard to the above named requests and for the above reasons; and

WHEREAS, the Consumer Advocate respectfully requests that this matter be heard as quickly as possible to ensure adequate time for the consideration of any additional evidence prior to the filing of the Consumer Advocate's surrebuttal testimony.

Respectfully submitted,

T. JAY WARNER, B.P.R. # 026649
Assistant Attorney General
Office of the Attorney General
Consumer Advocate and Protection Division
P.O. Box 20207
Nashville, Tennessee 37202
(615) 532-9299

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, or electronic mail upon:

J.W. Luna, Esq.
Jennifer Brundige, Esq.
Farmer & Luna
333 Union Street
Suite 300
Nashville, TN 37201

Kelly Cashman-Grams
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

This the 19th day of May, 2009.

T. Jay Warner
Assistant Attorney General