



asset management agreement resulted from an RFP process. VNG's prior asset management agreement that was at issue in Case No. PUE-2004-00111 was negotiated between VNG and Sequent. The agreement involves different types of assets, different amounts of assets, different geographic location of assets, and different limitations and conditions that are placed on the use of the assets by the contracting party.

The effect of granting the CAPD's motion would be to admit into evidence facts that CGC would not be afforded the opportunity to contest or rebut at the hearing on the merits. The CAPD has waited approximately one and a half years, just three weeks before the hearing on the merits, to reference the two Virginia Commission orders and Staff Report concerning VNG. At this late stage in the proceeding, CAPD has not submitted any prefiled testimony regarding the documents and CGC has not submitted testimony from any witness about the VNG proceeding. Further, a witness with direct knowledge of these VNG proceedings has not been participating in this TRA case to provide testimony or answer questions about the documents requested by the CAPD for administrative notice. Because of the CAPD's delay in introducing this information, CGC will not be afforded its right pursuant to Tenn. Code Ann. § 4-5-313(6)(B) to contest and rebut the facts and materials if the TRA takes administrative notice.

Additionally, the information that the CAPD is seeking to be admitted into evidence pertains to VNG's *prior* asset management agreement. The Virginia Commission has moved past the issues in the 2004 case, and those issues are no longer relevant to VNG's current asset management agreement that was approved by the Virginia Commission on March 30, 2009,<sup>1</sup> nor relevant to the negotiation process that

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<sup>1</sup> A copy of the 2009 Asset Management Agreement between VNG and Sequent was provided to the CAPD as an update to CAPD First Round Discovery Request No. 35 on May 12, 2009.

was utilized to secure the current asset management agreement for VNG. Again, as stated above, the assets and conditions for optimizing the VNG assets are vastly different from the assets and conditions for optimizing the CGC assets.

If the TRA should determine to take administrative notice of these historical Virginia Commission orders, CGC believes that the factual record should also contain the most current information about the process that was utilized for VNG's 2009 asset management agreement and the Virginia Commission's approval of the resulting agreement. Specifically, CGC requests that the TRA order the CAPD to stipulate to the fact that in Virginia there is no requirement for VNG to seek competitive bids and no ongoing requirement for an independent consultant to review VNG's capacity supply plan, the asset management agreement, or the asset management process, and that the Virginia Commission approved a new asset management agreement for VNG in March 2009 for a term of three years.

Additionally, in its motion, the CAPD has requested that the TRA take administrative notice of the TRA's Order Approving the Settlement between Nashville Gas Company and the CAPD in TRA Docket 05-00165. CGC objects to the CAPD's request on the basis that the settlement agreement between Nashville Gas and the CAPD is not relevant to the current proceedings involving CGC. First, the settlement agreement which is incorporated into the TRA's Order Approving the Settlement was negotiated between the CAPD and Nashville Gas to resolve the CAPD's issues in a contested case involving Nashville Gas Company's incentive plan. The settlement agreement that the CAPD facilitated in part dictated certain terms of any asset management agreement that Nashville Gas entered into with an asset manager. According to the provisions of the

settlement agreement, the parties agreed that the settlement should not be cited by any of the parties to the settlement or any other entity as binding precedent in any other Authority proceeding. Therefore, the settlement agreement is not relevant to the issues in the present case.

In conclusion, CGC requests that the TRA deny the CAPD's Motion to Take Administrative Notice in its entirety. If the TRA decides to take administrative notice of the Virginia Commission orders and Staff Report, CGC requests that the TRA order the CAPD to stipulate to the fact that in Virginia there is no requirement for VNG to seek competitive bids and no on-going requirement for an independent consultant to review VNG's capacity supply plan, the asset management agreement, or the asset management process, and that the Virginia Commission approved a new asset management agreement for VNG in March 2009 for a term of three years.

Respectfully submitted,

FARMER & LUNA, PLLC

By: Jennifer Brundige  
J.W. Luna, Esq. (BPR 5780)  
Jennifer L. Brundige, Esq. (BPR 20673)  
333 Union Street, Suite 300  
Nashville, TN 37201  
(615) 254-9146

and

L. Craig Dowdy  
L. Craig Dowdy, Esq.  
McKenna Long & Aldridge LLP  
303 Peachtree Street, Suite 5300  
Atlanta, GA 30308  
(404) 527-4180

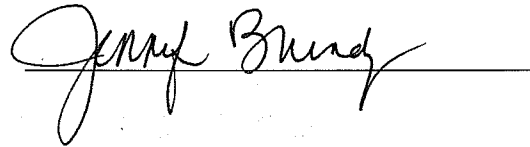
*Attorneys for Chattanooga Gas Company*

CERTIFICATE OF SERVICE

I hereby certify that on this 25<sup>th</sup> day of June 2009, a true and correct copy of the foregoing was served on the persons below by electronic mail:

Kelly Cashman-Grams  
Hearing Officer  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243-00505

Cynthia Kinser, Deputy  
Vance L. Broemel  
Mary L. White  
T. Jay Warner  
Consumer Advocate and Protection Division  
Office of Attorney General  
2<sup>nd</sup> Floor  
425 5<sup>th</sup> Avenue North  
Nashville, TN 37243-0491

A handwritten signature in cursive script, appearing to read "Jenny Brundage", is written over a horizontal line.