

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

October 28, 2009

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

**BRIEF OF CHATTANOOGA GAS COMPANY
REGARDING COST RECOVERY**

Pursuant to the Hearing Officer's October 23, 2009 Order, Chattanooga Gas Company ("CGC" or "Company") is filing this brief to address the two remaining issues before the Tennessee Regulatory Authority ("TRA" or "Authority"): (1) the amount of litigation costs incurred by CGC to defend against the issues raised by the Consumer Advocate and Protection Division ("CAPD") of the Office of Attorney General that the Company should be allowed to recover, and (2) the appropriate amortization period if any for the recovery of the approved litigation costs. CGC is only seeking to recover the costs and expenses incurred by outside counsel to defend this docket.

In the Pre-Hearing Order dated July 6, 2009, the Hearing Officer determined that the hearing on the merits was not the appropriate time to address the issue of cost recovery. (See Pre-Hearing Order (July 6, 2009), at 4). CGC was directed to file its proof of costs after the close of the proceedings. On August 26, 2009, the parties represented to the Hearing Officer by email that they believed that the parties could work together to file a stipulation as to the reasonableness of CGC's actual costs and thus avoid the time and additional expense of a lengthy procedural schedule. At that time, it was

believed that the parties would be able to resolve all issues and not have to litigate any issues regarding CGC's recovery of costs.

After much discussion with the CAPD and guidance obtained from the Hearing Officer, CGC filed with the TRA on October 6, 2009 the necessary paperwork for the TRA and the CAPD to review and determine the prudence and reasonableness of its fees and expenses incurred in light of the circumstances of this docket. This filing consists of the affidavits of J.W. Luna, L. Craig Dowdy, and Shannon Pierce, who attest to the reasonableness and accuracy of the fees and expenses incurred by Farmer & Luna, PLLC and McKenna, Long & Aldridge, PLC based on the necessary work performed and the services provided in this docket; charts categorizing the expenses incurred by the outside law firms; the confidential invoices of Farmer & Luna, PLLC and McKenna, Long & Aldridge, PLC for each month describing the services provided (which have been redacted when necessary to protect confidential attorney-client communications and/or attorney work product and are filed under seal pursuant to the March 4, 2008 Protective Order entered in this docket); and a chart reflecting payment by the Company of the outside law firms' submitted invoices. The Company provided the CAPD with drafts of portions of this filing on October 2, 2009.

After reviewing all of CGC's information, the CAPD has filed with the TRA a stipulation as to the cost recovery issues on which the parties agree. (See Stipulation (Oct. 28, 2009)). The CAPD has stipulated that it does not contest the accuracy of the total billing amounts submitted by CGC and that the CAPD has no basis to contest that either Farmer & Luna, PLLC or McKenna, Long & Aldridge, LLP did not perform all of the work described in their monthly billings in this docket. The CAPD has further

stipulated that the amount of costs allowed by the TRA should be recovered through the Performance Based Adjustment (“PGA”) Rule, Chapter 1220-4-7.¹

Unfortunately, the parties were unable to reach agreement on all cost recovery issues. The parties disagree as to the percentage amount of CGC’s total litigation costs that should be recovered. While the CAPD has stipulated that it is not contesting the accuracy or, in essence, the reasonableness of CGC’s incurring the expenses associated with defending the claims asserted by the CAPD in this docket, the CAPD and CGC disagree as to the amount of costs that CGC should be allowed to recover. As will be explained in this brief, CGC believes that, because of the particular circumstances in this docket, CGC should be allowed to recover all of its submitted costs which were prudently incurred in this docket.

I.

Preliminary Statement of CGC’s Position

This contested case proceeding was convened by the TRA so that the CAPD could litigate its perceived issues regarding CGC’s gas supply and capacity planning and asset management. Accordingly, the CAPD had the burden of proof on the substantive issues in this docket. However, after approximately two (2) years of litigation in this proceeding, including propounding and receiving discovery responses to over 226 data requests, the CAPD failed to meet that burden. In fact, on the issues of gas supply and capacity planning, the CAPD withdrew its pre-filed testimony regarding those issues and submitted no evidence at all. On the issues of asset management, the CAPD submitted limited evidence which was discredited at trial through cross-examination and the

¹ In previous filings, CGC has explained why the PGA is the appropriate mechanism for recovery in this docket. (See Brief of Chattanooga Gas Company (July 31, 2009), at 30-32; see also CGC’s Motion to Accumulate and Defer Litigation Costs (Feb. 28, 2008)). Since the CAPD is in agreement (see Hearing Tr., at 15; see also Stipulation (Oct. 28, 2009)), CGC will not discuss the recovery mechanism in this brief.

responsive testimony of CGC. After hearing and considering all of the evidence in this case, the TRA found that CGC subscribes to the appropriate level and mix of storage, peaking, and capacity assets. (See Order (Sept. 23, 2009), at 5). The TRA further determined that, while CGC's levels were appropriate at this time, changes in customer mix, weather, and usage patterns necessitated another review in 2013. (See id. at 5; see also Order (Oct. 13, 2009), at 2). The TRA made no negative findings as to the asset management issues.² The TRA also upheld the Hearing Officer's ruling for the Company to file for recovery of litigation costs at the completion of the docket. (See Order (Sept. 23, 2009), at 5).

The Company should be allowed to recover through the PGA the litigation expenses that it prudently incurred to defend against the claims made by the CAPD. This is not a case that was brought by the Company for economic gain. Rather, it was convened to consider the claims and issues raised by the CAPD regarding CGC's asset management and capacity supply planning practices. As the TRA found that CGC is acting appropriately, the Company has received no benefit or economic gain from this litigation. In fact, CGC was the prevailing party on all issues in this docket.

As explained in Section II. below, this case involved extensive litigation activity. There were four rounds of discovery, and CGC responded to over 226 data requests propounded by the CAPD. Three of the four rounds of discovery resulted in briefing and status conferences to resolve the CAPD's motions to compel. The CAPD filed direct testimony for its witness Terry Buckner and direct, rebuttal, and sur-rebuttal testimony for its witness Dr. Stephen Brown. CGC filed responsive testimony and sur-responsive

² The TRA ordered CGC to file its next RFP with the TRA prior to placing it out for bid. Before the last RFP, CGC tried to meet with the TRA Staff in advance of issuing the RFP. However, the Staff chose not to meet with CGC. The Company welcomes this opportunity afforded by the TRA.

testimony, which resulted after CGC moved for portions of Dr. Brown's rebuttal testimony to be stricken for improperly raising new issues for the first time during rebuttal. Dr. Brown's testimony did not contain any competent analysis that should have been performed to determine appropriate gas supply and capacity levels such as determining firm design day requirements and load duration curves. Rather, it consisted of hearsay statements and materials of third parties in pipeline documents not involving CGC to support Dr. Brown's speculations. After spending considerable time and resources to analyze the speculative theories presented by Dr. Brown in his over 135 pages of pre-filed testimony which contained no actual analysis based on CGC's data, CGC moved to disqualify Dr. Brown as an expert in the field of gas supply and capacity planning.

Before the Hearing Officer ruled on CGC's motion, the CAPD withdrew Dr. Brown's direct, rebuttal, and sur-rebuttal testimony which effectively withdrew all of the CAPD's testimony regarding the gas supply and capacity planning issues. While CGC made every effort to correct the CAPD's incorrect assumptions made in Dr. Brown's testimony and to address the inappropriate nature of his expert testimony, CGC had to expend time and resources to defend against Dr. Brown's theories and allegations that CGC had oversubscribed to storage, transportation, and peaking assets, only to have the CAPD voluntarily withdraw Dr. Brown's testimony ten (10) days before the hearing on the merits.

During the approximately two (2) years of this proceeding, CGC utilized every vehicle available to it to try to bring this docket to a conclusion and to reduce the litigation costs: CGC filed a motion to dismiss, filed a motion to exclude the

inappropriate hearsay portions from Dr. Brown's testimony, filed a motion to strike the CAPD's improper testimony raised for the first time during rebuttal, filed a motion to disqualify Dr. Brown as an expert in the field of gas supply and capacity planning, objected to the CAPD's many inappropriate discovery requests regarding the asset manager's entire business practice beyond its current asset management activities involving CGC's regulated assets, and engaged in numerous settlement discussions with the CAPD, the last of which resulted in a settlement agreement that was rejected by the TRA.³

Based on the unique facts and circumstances of this docket, CGC contends that the costs and expenses of defending against the accusations and claims raised by the CAPD are reasonable and were prudently incurred. As a result, CGC should be allowed to recover 100% of these prudently incurred costs and expenses over a three (3) year amortization period.

II.

Unique Procedural and Factual Background of this Case

The TRA voted to convene this contested case proceeding (Docket 07-00224) to address the CAPD's issues regarding CGC's gas supply and capacity planning and asset management. (See Order (Sept. 23, 2009), at 1-2). An issues list was adopted by the Hearing Officer which consisted of fourteen (14) issues brought by the CAPD and only one (1) issue (i.e., cost recovery) brought by the Company. (See Order Setting Issues List (March 17, 2008), Exhibit A).

³ Prior to the TRA convening this contested case at the request of the CAPD, in an effort to provide the CAPD with information and a better understanding of CGC's asset management practices and to avoid expensive dockets initiated by the CAPD like the present one, CGC's asset manager at CGC's request hosted the CAPD, along with the TRA Staff, at its Houston offices to provide a first-hand demonstration of asset management activities involving CGC's assets and to answer questions about the process, including the transparency and protections utilized when handling CGC's gas supply assets.

In this case, CGC was placed in the position of defending its actions and the Authority's current approved procedures, and CGC acted prudently in doing so.

A. CGC's Motion to Dismiss

On April 8, 2008, CGC filed a motion to dismiss the claims and issues set forth in the Issues List by the CAPD for failure to state a claim that was ripe and upon which relief could be granted. (See Motion to Dismiss (April 8, 2008)). CGC argued that the TRA had been doing its job and protecting the ratepayers of CGC by reviewing and taking action concerning CGC's gas supply assets annually through CGC's ACA audit and Incentive Plan audit. (See id. at 1). CGC also argued that the TRA had already settled in past dockets the claims and issues regarding the current asset management agreement, the RFP process, and the Company's affiliate transaction guidelines that the CAPD was again raising in this docket. (See id. at 2-3, 4-7). Thus, CGC believed that the CAPD was precluded from re-litigating these settled issues in the present docket as there had been no errors made by the TRA or changed circumstances to warrant their re-litigation. (See id. at 2). Additionally, CGC argued that its new Asset Management Agreement that became effective on April 1, 2008 was binding for a term of at least three years upon the TRA's approval of the contract on February 25, 2008, and any issues concerning the bidding of a future asset management arrangement were premature and were not ripe for the TRA's consideration. (See id.). CGC contended that, if the Company's motion to dismiss was not granted in whole, then the contested case proceeding should be limited to the gas supply and capacity planning issues. (See id. at 15).

During oral argument on May 5, 2008, counsel for CGC explained that an extraordinary amount of resources were being expended to re-litigate the CAPD's issues which were nothing more than a wild goose chase and were bringing nothing of value to its customers. (See Excerpts from Transcript of May 5, 2009 Authority Conference for Docket 07-00224, at 10-13). The CAPD argued that, based on the legal standards for reviewing a motion to dismiss, the TRA had to accept all of the CAPD's allegations as true, and thus the TRA had to dismiss the Company's motion. (See id. at 17). The TRA denied CGC's motion to dismiss as well as its request to narrow the docket to only issues regarding CGC's gas supply and capacity planning. (See Order (June 20, 2008), at 10).

B. CAPD's Improper Testimony and Withdrawal of All Testimony Regarding CGC's Gas Supply and Capacity Planning Issues Before the Hearing on the Merits

On May 30, 2008, the CAPD filed its direct testimony. CAPD witness Terry Buckner testified about the issues related to the asset management agreement. CAPD witness Dr. Stephen Brown testified about the gas supply and capacity planning issues. Dr. Brown's original testimony consisted of eighty (80) pages. On July 30, 2008, CGC filed responsive testimony of Tim Sherwood. On October 13, 2008, the CAPD filed rebuttal testimony of Dr. Brown that consisted of eighty (80) pages.

Dr. Brown's direct and rebuttal testimony contained hearsay and incorporated extraneous partial statements, testimony, and materials of third parties that had no bearing or relevance to the issues in this docket and could not be subjected to cross-examination at the hearing on the merits. Basically, Dr. Brown's testimony consisted of hearsay statements and materials filed in FERC pipeline documents strung together to create his own substantive testimony. CGC believed that the TRA was unable to analyze the

accuracy of, or determine the probative value of, the hearsay statements and materials because Dr. Brown had taken them out of context and had failed to provide full copies of the records in which the statements and materials were originally filed. (See CGC's Motion to Strike (Dec. 2, 2008), at 4). Therefore, CGC moved the Hearing Officer to strike the hearsay portions of Dr. Brown's testimony, or alternatively, to require Dr. Brown, at the very least, to attach complete copies of the hearsay portions as exhibits to his testimony rather than improperly incorporating them directly into his testimony and to file complete copies of the administrative records that contained the quoted statements and materials. (See id. at 1-3; see also CGC's Reply (Jan. 27, 2009), at n.3). The Hearing Officer ordered that Dr. Brown's testimony be stricken and allowed the CAPD to re-file Dr. Brown's testimony by replacing the objected-to quotations, documents, and materials with proper citations and attach as exhibits complete copies of the documents from which the quotations were extracted including orders of the agency, FERC, or commission that addressed the referenced statements and materials. (See Order on Feb. 9, 2009 Status Conference (March 2, 2009), at 20-21, 25-26).

CGC further objected to Dr. Brown's rebuttal testimony in that it raised at least three new issues that were not included in his direct testimony. (See CGC's Motion to Strike (Dec. 2, 2008), at 13-14). CGC requested that it be allowed to address and refute this new testimony through sur-responsive testimony of Mr. Sherwood. (See id.). The Hearing Officer considered and adopted the amended procedural schedule proposed by the parties which allowed CGC to file sur-responsive testimony to address the new issues raised for the first time by Dr. Brown in his rebuttal testimony. (See Order on Feb. 9, 2009 Status Conference (March 2, 2009), at 12). The CAPD's improper testimony led to

another round of testimony, a fourth round of discovery, and the subsequent withdrawal of the bulk of the CAPD's testimony.

In its sur-responsive testimony, CGC provided testimony which consisted, in part, of regression analysis and design day duration curves. Even though the CAPD had not filed analysis typical of the type used to make gas supply and capacity planning decisions, CGC decided that it needed to utilize its data produced in discovery and explain its gas supply and capacity planning decisions. While CGC did not have the burden of proof in this docket, it became apparent that CGC would have to do more than defend this case and would have to put forth the type of reliable evidence upon which the TRA could base a decision regarding CGC's gas supply and capacity planning.⁴ (See CGC's Brief (July 31, 2009), at 17-19).

All of Dr. Brown's testimony, including the twenty-one (21) pages of his sur-rebuttal, merely contained speculative theories that were unsupported either by fact or by competent analysis. At times, Dr. Brown argued that CGC had subscribed to too much capacity solely for the benefit of its shareholders. At other times, Dr. Brown argued that CGC improperly turned back 5,000 dekatherms of capacity in 2007. Based on Dr. Brown's testimony, it appeared that Dr. Brown believed that any decision made by CGC's gas supply and planning employees was inappropriate and was made for improper purposes. However, Dr. Brown never performed any type of credible and competent analysis to support any of his speculative opinions and theories.

⁴ Because of the convoluted and peculiar type of testimony filed by Dr. Brown that was not the type of evidence or analysis performed by experts in the field of gas supply and capacity planning, CGC decided it would be prudent and more cost effective to engage additional outside counsel with experience in dealing with complex gas supply and capacity planning issues and involved with pipeline dockets. Thus, in late October 2008, the law firm of McKenna, Long & Aldridge entered the case to assist in trying to interpret the incomprehensible testimony of Dr. Brown and respond to the ridiculous and outrageous nature of Dr. Brown's testimony.

Subsequently, CGC moved to exclude the expert testimony of Dr. Brown. CGC argued that Dr. Brown did not have qualifications that would authorize him to testify as an expert about the discrete subjects at issue in this docket. (See CGC's Motion to Exclude Dr. Brown's Testimony (June 22, 2009), at 5). CGC further argued that the CAPD failed to lay, and was frankly unable to lay, the requisite foundation for Dr. Brown's expert testimony because of the type of piecemeal hearsay material that Dr. Brown had incorporated into his testimony and was using as the basis of his opinions. CGC contended that experts in the field of gas supply and capacity planning would rely upon actual data involving CGC's assets and would perform analysis to determine the appropriate firm design day requirements and load duration curves at a minimum. (See id. at 8). The CAPD admitted that Dr. Brown was not an expert in gas supply and capacity planning but rather was being submitted as an expert in regulatory economics with experience in reviewing regulatory data and providing opinion commentary. (See CAPD's Response (June 25, 2009), at 3, 5).

Before the Hearing Officer ruled on CGC's motion to exclude Dr. Brown's testimony, the CAPD withdrew all of Dr. Brown's testimony on July 2, 2009, only ten (10) days before the scheduled July 13, 2009 hearing on the merits. (See CAPD's Notice of Withdrawal of Dr. Brown as a Witness (July 2, 2009)). Upon the withdrawal of Dr. Brown's pre-filed testimony, the CAPD had no testimony regarding its issues raised concerning CGC's gas supply and capacity planning. The only evidence before the TRA was the Company's testimony that explained the basis and the analysis behind the Company's gas supply and capacity planning decisions, upon which the Company ultimately prevailed at the hearing on the merits.

C. Discovery and Status Conferences

As explained above, this contested case proceeding involved four rounds of discovery. During three rounds, the CAPD was afforded the opportunity to propound data requests on the Company, which totaled in excess of 226 data requests. CGC filed objections to many of the CAPD's discovery requests as the requests were overly broad and not relevant to the issues in this docket. The CAPD filed motions to compel for each discovery round. The Hearing Officer convened status conferences, heard the parties' oral arguments, and ruled on the CAPD's motions to compel. CGC prevailed on a majority of its objections raised in the CAPD's motions to compel and argued before the Hearing Officer at the status conferences. (See Orders (dated April 29, 2008, Sept. 12, 2008, and May 21, 2009)).

CGC was provided one round of discovery to propound requests on the CAPD. CGC asked the CAPD approximately forty (40) discovery requests regarding the CAPD's initial pre-filed direct testimony. The Company accepted all of the CAPD's objections and did not file a motion to compel.

During the fourth round of overall discovery (i.e., the CAPD's third round) which resulted because of the CAPD's improper rebuttal testimony, the CAPD asked for documents and information that the Hearing Officer had previously determined were not relevant during the CAPD's first round of discovery. CGC renewed its objections to these requests and relied upon the Hearing Officer's well-reasoned April 29, 2008 Order denying the CAPD's requests. In its motion to compel regarding the fourth round of discovery, the CAPD also included a renewed motion to compel discovery from its first round of discovery even though the Hearing Officer had already determined that those

denied first round requests were not relevant to the issues in this docket. CGC had to expend time and resources to re-argue these already settled issues. In a well-reasoned forty-eight (48) page order, the Hearing Officer found that there were no changed circumstances to overrule the April 29, 2008 Order from the first round of discovery and that the information requested by the CAPD was not relevant to the issues in the present docket. (See Order on Third Round Discovery Disputes (May 21, 2009)). The CAPD moved for an interlocutory review of the Hearing Officer's May 21, 2009 Order by the TRA panel. This required the Company to file a response in opposition to the CAPD's motion for interlocutory review and to prepare for oral argument before the TRA panel. (See CGC's Response in Opposition to the CAPD's Motion for Interlocutory Review (June 2, 2009)). The TRA panel ultimately upheld the Hearing Officer's May 21, 2009 Order. (See Excerpts from the June 15, 2009 Authority Conference).

The status conferences in this docket often led to heated arguments. In fact during an early status conference on March 7, 2008 to consider initial motions regarding the deferral of costs for accounting purposes and the number of discovery requests that the CAPD should be allowed to serve and to finalize the issues list, the CAPD argued that the Company was engaging in the defense tactics of an accused criminal and compared the CAPD to a prosecutor. (See Transcript of March 7, 2008 Status Conference, at 26-29). The CAPD's statements during this status conference reflect the overall tone and nature with which the issues and claims in this docket were pursued. (See id. at 19-45). From the beginning, the CAPD was on a mission to find any evidence to support Dr. Brown's speculative theories that the Company was not engaging in proper activities through its asset management and gas supply and capacity planning practices. Dr. Brown

never filed any analysis that he could have performed using data produced by CGC during discovery to support his speculations. Instead, he relied upon documents and statements filed in federal pipeline dockets that had nothing to do with CGC or its regulated assets. Because of the initial tone and the CAPD's litigation strategy, CGC predicted during this early status conference that this docket would be nothing more than a wild goose chase by the CAPD and would provide no economic benefit to CGC. The tone through the majority of this litigation and the manner in which the CAPD chose to pursue its claims were stubbornly litigious.

After approximately two (2) years of prudently expending valuable resources to defend against the CAPD's wild goose chase, the Company appreciates the TRA's full review of the Company's gas supply and capacity planning and asset management practices and its determination that the Company subscribes to the appropriate level and mix of gas supply assets and is acting appropriately.

III. Argument

Based on the unique facts and circumstances of this docket and the manner in which this contested case was convened, CGC should be allowed to recover 100% of the costs and expenses that it incurred to defend this case. As explained in Section II. above, these costs and expenses were prudently incurred based on the claims and allegations asserted by the CAPD and the manner in which they were pursued. CGC is not opposed to recovering 100% of its costs in equal portions over three (3) years.

This contested case was not convened upon a petition filed by the Company. Rather, Docket 07-00224 was convened by the TRA so that the CAPD could litigate its claims and issues raised against CGC regarding gas supply and capacity planning and

asset management issues. However, at the hearing on the merits after years of pursuing speculative theories about CGC's inappropriate and improper practices, the CAPD presented no evidence of these alleged improper practices and instead focused its testimony on the CAPD's unsubstantiated belief that the TRA Staff had limited expertise on reviewing gas supply and capacity requirements issues and thus needed the assistance of a third party independent reviewer to perform these regulatory functions and should impose the same requirements on CGC from the settlement negotiated between Nashville Gas and the CAPD in Docket 05-00165. (See Hearing Tr., at 93).

This case was not brought by the Company for its benefit. Rather, it was brought by the CAPD who initially filed testimony that accused CGC, in part, of having an inappropriate level and mix of capacity and of having motives for contracting for too much capacity solely to maximize the profits of its affiliate asset manager. After conducting a hearing on the merits and considering CGC's testimony (which was the only testimony before the TRA on gas supply issues), the TRA ruled in favor of CGC and determined that CGC had the appropriate level and mix of capacity assets. None of the CAPD's claims and issues in this docket were decided against the Company. Thus, CGC is the prevailing party on all issues.

Over the years, CGC's customers have received benefit from CGC's gas supply and capacity planning and asset management practices. Through careful planning, the customers are ensured that they will have access to a reliable natural gas service on extreme cold weather days, including peak design days. They have received credits on their bills for the gains that CGC's asset manager has been able to return by utilizing CGC's assets in non-jurisdictional transactions when such assets are not needed to

provide service to CGC's customers.. This docket confirmed that CGC's gas supply planning and asset management activities are appropriate and benefit CGC's customers. CGC is allowed to continue its current practices. No additional economic gain has been afforded to CGC or to its shareholders by the litigation conducted in this docket.

As explained above in Section II., CGC was placed in the position of defending its actions and the TRA's current approved procedures. CGC acted prudently in vigorously doing so. As evidenced in CGC's filing of an objection and motion to strike the hearsay portions of Dr. Brown's testimony, CGC was forced to take affirmative action to have the CAPD correct its improperly filed testimony and to afford CGC the opportunity to respond to new issues that were improperly raised by Dr. Brown for the first time in his rebuttal testimony. This improper testimony led to another round of testimony, a fourth round of discovery, and the subsequent withdrawal of all of Dr. Brown's testimony. After objecting to many improper discovery requests, CGC responded to over 226 data requests and provided the CAPD with volumes of requested data. This data, however, was not used by Dr. Brown to perform the type of analysis typical of experts in the field to support his conclusions about CGC's gas supply and capacity planning practices. In the end, all of the time and resources expended by the Company to defend against the claims and speculative theories asserted by Dr. Brown became moot when the CAPD voluntarily withdrew all of Dr. Brown's testimony ten (10) days before the hearing on the merits, leaving the CAPD with no testimony regarding the claims it raised concerning gas supply and capacity planning. CGC should not be penalized for having to defend this docket and respond to the allegations and speculative theories that the CAPD chose to pursue and then chose to withdraw. CGC acted

reasonably and prudently; thus, its costs and expenses were reasonably and prudently incurred, and CGC should be allowed to recover 100% of its litigation costs through the PGA.

It is CGC's understanding that the CAPD is currently taking the position that CGC should be allowed to recover no more than fifty percent (50%) of the litigation costs reasonably incurred to defend this docket. The CAPD has stipulated to the amount of total litigation costs, and thus is not taking issue with the reasonableness of the total costs incurred by CGC to defend this case. The CAPD appears to base its position on a maximum 50% recovery, in part, on the TRA's decision in the last Tennessee American Water Company ("TAWC") rate case, Docket 08-00039.

In that rate case, the TRA clearly took into consideration when making its decision regarding the recovery of rate case expenses that the proceeding was a rate case brought by the utility TAWC. (See Order (filed Jan. 13, 2009 in Docket 08-00039), at 25 ("The panel found that it is appropriate for the shareholders to bear some of the expenses of the Company's *rate case*." (emphasis added))). Additionally, the facts of that case led the TRA to determine that not all of the rate case expenses were reasonably incurred. TAWC filed its rate case (Docket 08-00039) on March 14, 2008, less than one year after receiving the TRA's ruling on May 17, 2007 for a rate increase in its previous rate case (Docket 06-00290). The large projection of rate case expenses by TAWC, especially after having received a rate increase less than one year prior to filing its next rate case, were unique factual circumstances that the TRA apparently considered in determining the prudence of the rate case expenses and thus deciding to have TAWC's shareholders pay for part of TAWC's rate case expenses. Because of the unique circumstances of

TAWC's last rate case, there is no implication that the TRA has adopted a policy only to allow recovery of 50% of rate case expenses for all future rate cases. Rather, the TRA commented in another rate case docket that TAWC's rate case expenses were unreasonable and thus were not borne by the ratepayers alone. (See Excerpts from Transcript of May 18, 2009 Authority Conference for Docket 08-00202).

The current proceeding involving CGC is completely inapposite. Docket 07-00224 is not a rate case proceeding brought by the Company; rather, it involves gas costs, including the costs associated with the purchase, storage, or pipeline transportation of gas for the utility system, which are recoverable from customers through the PGA. The Company did not initiate the proceeding and has not received any benefit as an outcome of this docket. CGC was successful in defending against the allegations raised by the CAPD that CGC was improperly oversubscribing to capacity and inappropriately managing CGC's regulated assets. However, CGC has received no additional benefit from the outcome in Docket 07-000224. All of the expenses and costs of defending this docket were prudently incurred to answer the speculative and atypical arguments and testimony put forth by the CAPD, particularly through the testimony of Dr. Brown which was ultimately withdrawn.

Additionally, to the extent that the CAPD believes that there is precedent for the TRA only to allow 50% recovery of litigation costs, CGC does not agree. In Docket 08-00202, the TRA accepted a *settlement agreement* between a utility and the CAPD that provided for a recovery of 75% of the rate case expenses of that *rate case*. Further, the CAPD's reliance on Nashville Gas Docket 05-00165 to justify no recovery of litigation costs is flawed. In that docket, the TRA accepted a settlement agreement between

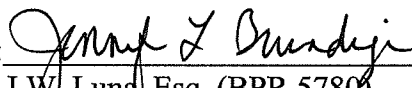
Nashville Gas and the CAPD that did not include a provision for recovery of costs. There is no evidence that cost recovery was placed on the list of issues that were litigated in that docket. The fact that an arm's length negotiation between Nashville Gas and the CAPD did not include recovery of costs should in no way preclude CGC from recovering 100% of its prudently incurred costs, especially when CGC placed cost recovery on the issues list for this docket. CGC was not a party to the Nashville Gas Docket nor a party to the settlement agreement between the CAPD and Nashville Gas. CGC should not be penalized because of issues not pursued in a settlement by different parties in a completely unrelated docket. Also, CGC's current docket was resolved not by settlement agreement but rather by the TRA's consideration of the issues, the testimony, and the record after a hearing on the merits. The stipulation by the parties in this docket and a finding by the TRA that the costs and expenses were prudently incurred necessitate the recovery of 100% of the costs through the PGA.

IV. **Conclusion**

Based on the facts and circumstances in this docket, the litigation costs incurred by the Company to defend against the claims and issues brought by the CAPD were prudent, and thus 100% of CGC's litigation costs are recoverable through the PGA. The Company does not oppose recovering its costs equally over three (3) years.

Respectfully submitted,

Luna Law Group, PLLC

By: 
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 w/ permission by JB
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 28th day of October 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
2nd Floor
425 5th Avenue North
Nashville, TN 37243-0491

Jeff L Brundage