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IN THE TENNESSEE PUBLIC UTILITY COMMISSION
AT NASHVILLE, TENNESSEE

IN RE:	**)**	
	)	
REVIEW OF CHATTANOOGA GAS	**)**	
COMPANY'S PERFORMANCE BASED	**)**	**DOCKET NO. 07-00224**
RATEMAKING MECHANISM	**)**	
TRANSACTIONS AND ACTIVITIES	**)**	

CONSUMER ADVOCATE'S COMMENTS CONCERNING
CHATTANOOGA GAS COMPANY'S AMAA TRIENNIAL REVIEW

Herbert H. Slatery III, Attorney General and Reporter for the State of Tennessee, by and through the Consumer Advocate Unit in the Financial Division of the Office of the Attorney General ("Consumer Advocate"), respectfully files these *Comments* to the *Request of Chattanooga Gas Company for Approval of Asset Management and Agency Agreement and Gas Purchase and Sale Agreement* ("AMAA") for 2020. These *Comments* address the *Draft Report: Chattanooga Gas Review of Performance Based Ratemaking Mechanism Transactions and Activities* ("*Exeter Report*") submitted by Exeter Associates, Inc. ("Exeter") and filed in this Docket by CGC on June 30, 2020.

<u>COMMENTS</u>

The Consumer Advocate appreciates the detail and thoroughness of the *Exeter Report* and supports the recommendations set forth within the report. The Consumer Advocate also calls for the modification of the terms of the AMAA to be more line with industry standards and those adopted by Atmos and Piedmont.

I. The perpetual award of the RFP to a CGC affiliate sheds light on a disturbing lack of competition in the bidding process.

The report details how the current AMAA is consistently awarded to an affiliate of Chattanooga Gas Company, Inc. ("CGC") called Sequent Energy Management ("Sequent")[1] with virtually no third-party bidding. This lack of a robust bidding process raises significant questions of whether CGC's AMAA is in the public interest. The Consumer Advocate contends that actions taken by Sequent could just as easily be conducted by employees of CGC or its affiliate service company with associated profits assigned to CGC, either in whole or in part. Neither the Commission nor the Consumer Advocate have visibility into the actual profitability of CGC's assigned assets.[2]

We recommend the Commission expand Exeter's scope of work to address the reasons for a lack of third-party responses to CGC's RFP by non-affiliate bidders. The Consumer Advocate believes the lack of bids is a detriment to the interest of ratepayers. Sequent, an affiliate of CGC, has been selected as the AMAA vendor for nearly twenty years. The lack of RFP response may be an indication that non-affiliate bidders do not believe they have a legitimate opportunity to compete with CGC's affiliate for the AMAA award.

Due to this lack of a competitive bidding process, the Consumer Advocate urges the Commission to authorize a review of the transactions of Sequent in 2018-2019 to determine the

[1] According to its website, "Sequent Energy Management is a wholly owned subsidiary of Atlanta-based Southern Company Gas (NYSE: SO) and enjoys a strong financial profile, access to its parent company's key utility assets in North America, and extensive market knowledge and experience." http://www.sequentenergy.com/about-us (accessed June 22, 2020).

[2] In fact, during the entirety of 2019, CGC neither requested nor received any management reports associated with the Asset Management Agreement, which it had the right to request. *CGC Response to CA Discovery Request No. 1-23*, TPUC Docket No. 20-00049 (June 26, 2020). This example illustrates that the relationship, especially in terms of bidding, between Sequent and CGC is not necessarily arms-length in nature.

level of margins generated by it through the use of CGC assets.[3] There exists a lack of transparency within this affiliate transaction that is contrary to the public interest resulting from the consistent RFP award to CGC's affiliate Sequent. If an independent third-party were to win the contract, it could be concluded that there was truly a market-based result; however, such is not the case in this complex affiliated transaction.

Exeter also recommends important structural changes in the RFP process. As identified on page 46, Exeter recommends eliminating the uncertainty over the bidder's use of Excluded Assets. Currently, CGC can select the Asset Manager or another third party to utilize SONAT Excluded Assets. The Consumer Advocate supports the Exeter recommendation to eliminate such uncertainty within the RFP and indicate that the Asset Manager be able to utilize the Excluded Assets. This modification would be a move toward strengthening the RFP process and perhaps entice non-affiliates the opportunity to supply a response to the RFP.

II. CGC retains an excessive amount of the profits from the AMAA.

The existing AMAA structure permits Southern Company to profit in two ways. First, the Southern Company's subsidiary, Sequent, has consistently been awarded the AMAA contract with its affiliate CGC. While the magnitude of the margins generated by Sequent is unknown, it can be safely concluded that – with the sophisticated expertise at Sequent coupled with its unique knowledge of the system and the market as the long-time operator of these assets – significant margins are generated, perhaps even margins far in excess of the fees paid to CGC. Second, CGC retains 50% of the AMAA proceeds from the winning bidder. The result is the strong likelihood that CGC ratepayers are being credited with significantly less than 50% of the value of the AMAA assets.

[3] The Commission has broad authority over utilities within its jurisdiction, including the power to "investigate, upon its own initiative or upon complaint in writing, any matter concerning any public utility as defined in § 65-4-101." Tenn. Code Ann. § § 65-4-117(a)(1).

While we do not believe financial incentives should be necessary to encourage CGC to act in the interests of ratepayers (rather, the Company has an obligation to do so under the Regulatory Compact), we do not oppose an incentive structure that is properly balanced. As identified in the report, the incentive structure of CGC is entirely out-of-line with industry standards. Exeter has suggested that CGC collect a 75%/25% balance of sharing for AMAA fees. Further, Exeter points out that they have not noticed a difference in effort to achieve off-system revenues based upon the sharing percentage. The existing 50% retention of AMAA fees and off-system sales revenue is out of balance with industry norms and those of other Tennessee natural gas utilities. Therefore, the agreement should be modified.

III. The Consumer Advocate supports Exeter's recommendations to increase the available data and to investigate whether CGC's year-round capacity purchases are excessive.

The Consumer Advocate further supports the Exeter recommendation that CGC supply three-years of historical daily interstate pipeline usage data. Additionally, the Consumer Advocate supports a thorough investigation into whether year-round capacity purchases of CGC are excessive. Exeter raises this as an issue to be investigated rather than as a current flaw in the AMAA. It may be that seasonal capacity is not available or is more expensive than year-round capacity; however, Exeter has pointed out that overall capacity is excessive. The existing mechanism creates an incentive for CGC to maximize capacity purchases which then could be assigned to its affiliate for sale into the open market. The Consumer Advocate thus proposes that the Tennessee Public Utility Commission direct Exeter to conduct an additional review to confirm that CGC has elected the least-cost option consistent with maintaining sufficient, and not excessive, pipeline capacity necessary to meet peak load demand.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Consumer Advocate's Comments Concerning CGC's AMAA Triennial Review* was served via U.S. Mail or electronic mail upon:

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This the 9th day of July, 2020.

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