

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

**IN RE:** )  
 )  
**REQUEST OF ATMOS ENERGY** ) **Docket No. 08-00024**  
**CORPORATION FOR APPROVAL** )  
**OF CONTRACT(S) REGARDING GAS** )  
**COMMODITY REQUIREMENTS AND** )  
**MANAGEMENT OF TRANSPORTATION/** )  
**STORAGE CONTRACTS** )  
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**MEMORANDUM IN SUPPORT OF ATMOS ENERGY CORPORATION'S  
MOTION FOR APPROVAL OF CONTRACT REGARDING GAS  
COMMODITY REQUIREMENTS AND MANAGEMENT OF  
TRANSPORTATION/STORAGE CONTRACTS**

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Atmos Energy Corporation ("Atmos" or "AEC") respectfully submits this memorandum in support of the motion that Atmos filed on March 20, 2008 seeking approval of a contract with Atmos Energy Marketing, LLC ("AEM").<sup>1</sup> The contract is a bundled deal combining gas commodity supply and the management of AEC's transportation and storage contracts. AEC awarded the contract following a sealed competitive bidding process conducted in accordance with AEC's approved tariff. AEC chose AEM's bid because it contained the best price terms (i.e. the lowest overall net gas cost) and therefore the best value for Tennessee ratepayers. AEC has complied with all of the provisions of its approved tariff in conducting the bidding process and awarding the contract, and respectfully requests that the contract with AEM be approved.

AEC further requests that the confidential documents filed under seal in this matter be maintained under seal. As in the recent Chattanooga Gas matter,<sup>2</sup> the Consumer Advocate seeks

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<sup>1</sup> The Procedural Schedule in this matter calls for all parties to submit opening briefs on April 24, and response briefs on April 30.

<sup>2</sup> In Re Request of Chattanooga Gas Company for Approval of Asset Management Agreement, Case No. 08-00012.

to unseal and publicly disclose the winning bid. All of the parties to this case, including the Consumer Advocate, already have been provided a copy of the winning bid (and all other documents filed in this case). And all documents have been made available to the Authority and its staff. What the Consumer Advocate seeks to do is to publish AEM's winning bid on the Authority's web site – to make it freely available for all the world, including AEM's competitors.

Pursuant to the terms of a Protective Order entered in this matter, all of the bids, including the AEM bid, were filed under seal because they contain confidential business information. Publicly disclosing AEM's bid would cause pointless competitive harm to AEM, and ultimately have a chilling effect on AEC's ability to conduct competitive bidding in the future. The long-term impact would be to harm Tennessee ratepayers. In the recent Chattanooga Gas case, the Authority agreed that such information should remain under seal. Atmos merely seeks the same treatment here.

### **BACKGROUND**

The origins of this case can be traced back to a 2005 actual cost adjustment (ACA) audit conducted by TRA Staff. When Staff issued its audit report concerning the ACA component of AEC's purchased gas adjustment (PGA) in TRA Docket No. 05-00253 (the "2005 ACA Docket"), Staff expressed concern regarding the request for proposal (RFP) process that AEC had used in selecting and awarding a contract for an asset manager. At the time, there were no TRA-sanctioned procedures to govern the RFP process. After the process was complete and an asset management contract already had been awarded to Atmos Energy Marketing, Staff expressed concerns about some of the RFP procedures, as well as how the amount of the annual up-front payment under the AEC asset management contract compared to the asset management

deal entered into by Chattanooga Gas Company. As AEC pointed out, the prior AEC deal differed substantially from the prior Chattanooga deal, in that AEC's asset manager was not responsible for gas commodity supply, while Chattanooga's asset manager provided a bundled service consisting of both commodity supply and asset management.<sup>3</sup> The concerns expressed by Staff in its ACA report ultimately culminated in the opening of the "Phase II" docket now pending before the TRA (Docket No. 07-00225).

During the pendency of the 2005 ACA Docket, the Federal Energy Regulatory Commission (FERC) opened its Dockets Nos. RM06-21-000 and RM07-4-000 to solicit comments from gas market participants concerning asset management arrangements (AMAs) that involve the management and/or release of interstate pipeline and storage capacity. These two dockets ultimately resulted in the issuance by FERC of a Notice of Proposed Rulemaking (NOPR) in FERC Docket No. RM08-1 concerning AMAs in November of 2007.<sup>4</sup> In the NOPR, FERC specifically stated that bundling commodity supply with management of capacity assets (capacity release) by local distribution companies is in the public interest. Specifically, FERC has stated:

*The Commission finds that AMAs provide significant benefits to many participants in the natural gas and electric marketplaces and to the secondary natural gas market itself. The American Gas Association (AGA), for example, notes that AMAs are an important mechanism used by LDCs to enhance their participation in the secondary market, and states that the growth and development of AMAs may represent the largest change since the Commission's market review in the Order No. 637 proceeding. AMAs allow LDCs to increase the utilization of facilities and lower gas costs. They also provide the needed flexibility to customize arrangements to meet unique customer needs. One important benefit of AMAs is that they allow for the maximization of the value of capacity through the synergy of interstate capacity and natural gas as a commodity. As expressed by AGA:*

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<sup>3</sup> As it turns out, the recently-approved Chattanooga deal is now an asset-management only deal, while the AEC contract that is the subject of this case is a bundled deal involving both asset and commodity supply.

<sup>4</sup> *Promotion of a More Efficient Capacity Release Market*, 121 FERC ¶ 61,170 (Nov. 15, 2007).

*[AMAs] are widely utilized and provide considerable benefits, i.e. lower gas supply costs generated from offsets to pipeline capacity costs and gas supply arrangements more carefully tailored to the specific requirements of the market. These benefits are generated by assembling innovative arrangements in which the unbundled components – capacity, gas supply and other services – are combined in a manner such that the total value created by the arrangement exceeds the value of the individual parts.*

*AMAs are also beneficial because they provide a mechanism for capacity holders to use third party experts to manage their gas supply arrangements, an opportunity the LDCs did not have prior to Order No. 636. The time, expense and expertise involved with managing gas supply arrangements is considerable and thus many capacity holders, and LDCs in particular, have come to rely on more sophisticated marketers to take on their requirements. This results in benefits to the LDCs by allowing an entity with more expertise to manage their gas supply. The ability of LDCs to use AMAs as a means of relieving the burdens of administering their capacity or supply needs on a daily basis also works to the benefit of the entire market because that burden may at times result in LDCs not releasing unused capacity.*

*AMAs also provide LDCs and their customers a mechanism for offsetting their upstream transportation costs. AMAs often allow an LDC to reduce reservation costs that it normally passes on to its customers. They also foster market efficiency by allowing the releasing shipper to reduce its costs to the extent that its capacity is used to facilitate a third party sale that also benefits that third party (who gets a bundled product at a price acceptable to it).*

*LDCs are not the only entities that benefit from AMAs. Many other large gas purchasers, including electric generators and industrial users may desire to enter into such arrangements. For example, AMAs increase the ability of wholesale electric generators to provide customer benefits through superior management of fuel supply risk, allow generators to focus their attention on the electric market, and eliminate administrative burdens relating to multiple suppliers, overheads, capital requirements and the risks associated with marketing excess gas and pipeline imbalances.*

*More importantly, AMAs provide broad benefits to the marketplace in general. They bring diversity to the mix of capacity holders and customers that are served through the capacity release program, thus enhancing liquidity and diversity for natural gas products and services. AMAs result in an overall increase in the use of interstate pipeline capacity, as well as facilitating the use of capacity by different types of customers in addition to LDCs. AMAs benefit the natural gas market by creating efficiencies as a result of more load responsive gas supply, and an increased utilization of transportation capacity.*

*AMAs further bring benefits to consumers, mostly through reductions in consumer costs. AMAs provide in general for lower gas supply costs, resulting in ultimate savings for end use customers. The overall market benefits described above also inure to consumers.*

*These benefits have been recognized by state commissions and the National Regulatory Research Institute.*

*The Interstate Natural Gas Association of America (INGAA) agrees with the Marketer Petitioners and others that the Commission "should adapt its regulations to facilitate efficient and innovative marketing of capacity that have developed since Order No. 636," provided the Commission remains guided by the "principle of full transparency of the terms of such capacity release arrangements."*

*Based on this industry-wide support, the Commission believes that AMAs are in the public interest because they are beneficial to numerous market participants and the market in general. Accordingly, the Commission is proposing changes to its policies and regulations to facilitate the utilization and implementation of AMAs.<sup>5</sup>*

By 2007, AEC was looking ahead at having to do another RFP for an asset management agreement in Tennessee, as the existing agreement with Atmos Energy Marketing was set to expire on March 31, 2008. Yet, AEC still did not have a set of TRA-sanctioned RFP procedures to employ. In the meantime, Chattanooga Gas Company had proposed a tariff amendment setting-forth a set of RFP procedures for its own tariff, which ultimately were approved by the TRA. In light of the TRA's approval of these procedures for Chattanooga Gas, Atmos submitted a proposed tariff amendment of its own, seeking to adopt the same RFP procedures that had been approved for Chattanooga Gas.

By Order dated December 6, 2007 in Docket No. 05-00253, the Authority memorialized its prior approval of AEC's Request for Tariff Amendment to Incorporate Implementation of RFP Procedures for the Selection of an Asset Manager. The new Tariff provisions (which mirror those approved for Chattanooga Gas Company) set forth RFP procedures for the selection of an asset manager and/or gas provider. The procedures require Atmos to develop a written RFP defining the Atmos assets to be managed, detailing AEC's minimum service requirements, and describing the required content of bid proposals. *See* Atmos Gas Tariff No. 1 Revised Sheet

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<sup>5</sup> NOPR at 46-50 (citations omitted).

Nos. 45.3 and 45.4 (attached as Exhibit 1). The procedures impose seven criteria that must be met. These seven criteria specify the procedures by which an asset management contract is to be awarded through a sealed bidding process, including procedures for issuing a request for proposals, advertising of the request for proposals, and receipt and evaluation of bids.

As discussed in detail below, Atmos has complied with each of the seven tariff criteria for selecting an asset manager. In compliance with the RFP procedures in its tariff, Atmos developed an RFP for asset management and gas commodity requirement services. Because the Atmos system in the Bristol Tennessee / Virginia area crosses the state line, AEC's contract covers territory in both Tennessee and Virginia.<sup>6</sup> AEC's overarching concerns in connection with a new AMA for Tennessee and Virginia were (i) how to further increase the pool of potential RFP recipients and potential bidders, and (ii) how to comply with the FERC's anticipated rules governing AMAs, which would most likely become effective during the term of the new AMA.<sup>7</sup> Accordingly, AEC considered it prudent to bundle commodity supply with asset management, because asset managers/suppliers generally assign substantially more value to bundled arrangements rather than one that involves only managing interstate pipeline capacity and storage assets. In a further effort to foster larger interest and increase the number of competitive bids, AEC also structured the current RFP to facilitate bidding on two supply/asset management portfolios – the Middle Tennessee Area<sup>8</sup> and the East Tennessee/Virginia Area. AEC believes that the structure of the current RFP succeeded in fostering a larger interest.<sup>9</sup>

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<sup>6</sup> Atmos obtained interim authority from the Virginia Corporation Commission to proceed with the AEC / AEM contract on March 31, 2008, and is in the process of seeking final approval of the contract in Virginia. *See* Order Granting Interim Authority (dated March 31, 2008) (attached as Exhibit 2).

<sup>7</sup> *See* Response of Atmos Energy Corporation to TRA Staff's March 31, 2008 Data Request No. 2.

<sup>8</sup> The Middle Tennessee Area also includes Atmos' service area in Union City in Western Tennessee.

<sup>9</sup> Response, *supra*, Data Request No. 2.

The RFP was issued on January 29, 2008. The RFP called for a three-year agreement beginning April 1, 2008, to supply gas commodity requirements and manage AEC's transportation and storage contracts.<sup>10</sup>

On February 7, 2008, Atmos filed its Petition in this matter, attaching a copy of the RFP as an exhibit thereto. Even though the RFP process had not yet been completed, Atmos filed the Petition early in an effort to aid the Authority's consideration of any resulting contract. The previous contract was set to expire March 31, 2008.

Atmos initially sent the RFP to 37 recipients. A list of recipients was filed as an exhibit to the Atmos Petition in this matter. In addition, Atmos advertised the RFP in *Platt's Gas Daily* on February 6 and February 12. A copy of that advertising also was an exhibit to the Petition. After the initial waive of RFPs was sent, Atmos received a total of 25 additional requests to receive the RFP. A list of these 25 additional RFP recipients was included in the Response of Atmos Energy Corporation to TRA Staff's March 6, 2008 Data Request, Response No. 1.

Atmos ultimately received bids from NJR Energy, Sequent Energy, PPL Energy Plus, and Atmos Energy Marketing. Copies of the bids have been filed under seal in response to TRA Staff's March 6, 2008 Data Request.

In accordance with the RFP procedures set forth in its tariff, Atmos evaluated the bids received, and determined that the bid received from Atmos Energy Marketing afforded the best overall value to Tennessee rate payers (i.e. the lowest overall gas cost). Determining the lowest overall gas cost entailed a combined evaluation of overall commodity pricing, cost for city-gate delivered services, cost of functional services such as nominations and scheduling, and asset management payments to be received by AEC from the asset manager. All of these were evaluated as a whole to determine which bid would represent the lowest cost (best value) to

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<sup>10</sup> RFP ¶ 1.1. The RFP was filed as an exhibit to the Petition in this matter.

Tennessee ratepayers over the three-year term of the contract. AEC's evaluation of the bids is detailed in the bid analysis documents submitted as attachments to AEC's Motion for Approval of Contract.<sup>11</sup>

As explained below in more detail, AEC has complied with all of the RFP provisions of its approved tariff. Accordingly, AEC respectfully requests that the contract with AEC be approved by the Authority effective April 1, 2008.<sup>12</sup> The subject contract has been filed under seal. *See* Notice of Filing Amended Attachments (April 8, 2008), Exhibit A.

**AEC HAS COMPLIED WITH EACH OF  
THE SEVEN APPROVED TARIFF CRITERIA**

As detailed in response to TRA Staff's March 31, 2008 Data Requests, AEC has complied with each of the seven criteria set forth in AEC's approved tariff governing the procedures to be used in selecting an asset manager (AEC Second Revised Tariff Sheet Nos. 45.3 and 45.4, effective November 29, 2007). These are the same criteria that appear in the Chattanooga Gas Company tariff, and which the Authority recently considered in approving that company's selection of its affiliate Sequent Energy as an asset manager.

Each of the seven tariff criteria is set forth below, followed by an explanation of AEC's compliance. AEC provided this information in answer to Question 4 of TRA Staff's March 31, 2008 Data Request.

*Criteria 1 – In each instance in which Atmos Energy Corporation (Company) intends to engage the services of an asset manager to provide system gas supply requirements and/or manage its assets regulated by the Tennessee Regulatory Authority (TRA), the Company shall*

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<sup>11</sup> After discovering that the spreadsheet printouts may have gotten mixed up in AEC's original March 20 filing, out of an abundance of caution AEC re-filed the entire set on April 8, 2008. To avoid confusion, reference should be made to the Amended set of attachments filed on April 8, not to those originally filed on March 20.

<sup>12</sup> Because the old contract was expiring March 31, 2008, and the parties were unable to bring this matter to conclusion prior to that time, AEC and AEM have entered into a contract with service beginning April 1, 2008. The contract contains regulatory-out provisions that would allow it to be unwound in the event that it were not ultimately approved in both Tennessee and Virginia, the two states in which the contract is to be performed.



*develop a written request for proposal (RFP) defining the Company's assets to be managed and detailing the Company's minimum service requirements. The RFP shall also describe the content requirements of the bid proposals and shall include procedures for submission and evaluation of the bid proposals.*

The Company developed a written RFP that was sent out to prospective bidders on January 29, 2008, and a copy of which has previously been filed in this docket. The RFP specifically sets forth the specific service terms (Exhibit "A" to the RFP), defines the assets to be managed (Exhibit "C" to the RFP) and sets forth the Company's system requirements (Exhibit "D" to the RFP). Sections 5.0 through 5.4 of the RFP describe the content requirements of bid proposals and Sections 6.0 through 9.0 of the RFP describe the procedures for submission and evaluation of bid proposals. Section 2.0 describes the procedures for submission of requests for additional information from proposers.<sup>13</sup>

*Criteria 2 – The RFP shall be advertised for a minimum of thirty (30) days through a systematic notification process that includes, at a minimum, contacting potential asset managers, including past bidders and other approved asset managers, and publication in trade journals as reasonably available. This thirty (30) day minimum period may be shortened with the written consent of the TRA Staff to a period of not less than fifteen (15) days.*

The RFP period remained open for the period of January 29, 2008, through noon on February 29, 2008, which, exclusive of the first and last days of the period, was 30 days. The RFP was initially sent to 37 prospective bidders (including past supply bidders), many of which are within the top tier of natural gas asset managers and suppliers, including the approved asset manager for Chattanooga Gas Company. The RFP was advertised in Platt's *Gas Daily* on February 6, and February 11, 2008. In response to the advertisement in *Gas Daily*, the Company received an additional 25 requests for the RFP from prospective bidders. These additional

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<sup>13</sup> Response of Atmos Energy Corporation to TRA Staff's March 31, 2008 Data Request , pp. 10-11.

requests were processed by sending a copy of the RFP via electronic mail. No request was made to shorten the RFP period.<sup>14</sup>

*Criteria 3 – The procedures for submission of bid proposals shall require all initial and follow-up bid proposals to be submitted in writing on or before a designated proposal deadline. The Company shall not accept initial or follow-up bid proposals that are not written, or that are submitted after the designated proposal deadline. Following receipt of initial bid proposals, and on a non-discriminatory basis, the Company may solicit follow-up bid proposals in an effort to obtain the most overall value for the transaction.*

The RFP required all bid proposals to be in writing and to be submitted in a sealed envelope on or before noon on February 29, 2008 (RFP Section 9.0). Pursuant to Section 8.0 of the RFP, any proposal could be modified prior to the deadline by written request of the bidder, but no such requests were received by the Company. The Company did not receive any unwritten bids or bids that were submitted after the deadline. After the bidding period had closed, the Company did not solicit any additional bid proposals from any other parties, although the Company did solicit bid clarifications during the evaluation period from three of the four parties who submitted bids.<sup>15</sup>

*Criteria 4 – All initial and follow-up bid proposals shall be evaluated as they are received. The criteria for choosing the winning bid proposal shall include, at a minimum, the following: (a) the total value of the bid proposal; (b) the bidder's ability to perform the RFP requirements; (c) the bidder's asset management qualifications and experience; and (d) the bidder's financial stability and strength. The winning bid shall be the one with the best combination of attributes based on the evaluation criteria. If, however, the winning bid proposal is lower in amount than any other initial or follow-up bid proposal(s), the Company shall explain in writing to the TRA why it rejected each higher bid proposal in favor of the lower winning bid proposal. The Company shall maintain records demonstrating its compliance with the evaluation and selection procedures set forth in paragraph 4 above.*

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<sup>14</sup> Response of Atmos Energy Corporation to TRA Staff's March 31, 2008 Data Request, pp. 11-12.

<sup>15</sup> Response of Atmos Energy Corporation to TRA Staff's March 31, 2008 Data Request, p. 12.

Although each of the seven criteria was considered in the evaluation of the bids submitted by the four bidders, primary emphasis was placed upon evaluating the total value of each bid proposal. Specifically, management within the Company's Gas Supply Services group are familiar with all four bidders and recognize that they have the ability to perform the RFP requirements with respect to the portion of the RFP upon which they actually bid, that each bidder has substantial qualifications and experience in both gas supply and asset management and that each bidder has the requisite financial stability and strength to perform the RFP requirements.<sup>16</sup> The Company's analysis regarding the total value of each bid has been provided to TRA Staff and is more fully explained below and in the Company's Response to TRA Staff's March 24, 2008 Data Request and accompanying confidential attachments filed with the TRA on March 28, 2008. The Company chose the bid that afforded the most overall value to ratepayers, which in this case was the deal providing ratepayers with the lowest overall gas cost.<sup>17</sup> For purposes of Criteria No. 4, this can be characterized as the "highest" bid.<sup>18</sup> The Company has prepared and maintained records of the bid evaluations, which have been provided to TRA Staff and the parties.<sup>19</sup>

*Criteria 5 – An incumbent asset manager shall not be granted an automatic right to match a winning bid proposal. If the incumbent asset manager desires to continue its asset management relationship with the Company after the expiration of its asset management agreement, it shall submit a written bid proposal in accordance with the Company's RFP*

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<sup>16</sup> Each bidder is affiliated with publicly traded parent natural gas and/or electric utilities that are significant in size in terms of financial, assets, revenues and customers. Copies of annual and quarterly financial statements for these entities are available through the Securities and Exchange Commission's on-line EDGAR database at [www.sec.gov](http://www.sec.gov).

<sup>17</sup> The lowest overall gas cost entails a combined evaluation of overall commodity pricing, costs for city-gate delivered services, costs of functional services such as nominations, scheduling, etc., and asset management payments to be received. All of these are evaluated as a whole to ultimately determine which bid represents the lowest cost that ratepayers will pay over the three-year term.

<sup>18</sup> Because the winning bid was the bid providing the best overall price, the next to the last sentence of Criteria No. 4 does not apply in this case.

<sup>19</sup> Response of Atmos Energy Corporation to TRA Staff's March 31, 2008 Data Request, pp.12-14.

*procedures. The bid proposal shall be evaluated pursuant to the procedures set forth in paragraph 4 above.*

The incumbent asset manager (AEM) was not given any right to match, or even see, any other bid, and all bids were therefore submitted, opened and evaluated on equal footing. The incumbent was provided with a copy of the RFP as part of the original group of packages sent out by the Company on January 29, 2008, and the incumbent timely submitted a written bid in accordance with the requirements of the RFP. The incumbent's bid was evaluated using the same criteria as was used for evaluating every other bid as described in the response under Criteria 4 above.<sup>20</sup>

*Criteria 6 – The Company may develop additional procedures for asset management selection as it deems necessary and appropriate so long as such procedures are consistent with the agreed-upon procedures described herein.*

The Company adopted additional procedures in connection with the RFP that are not specifically set forth in the tariff. The included (i) a procedure and deadline for submission of questions during the 30-day open period (RFP Section 2.0) and (ii) a procedure for holding bids open after the submittal deadline for a 10-day evaluation period (RFP Section 6.0). As discussed below, AEC also included a confidentiality provision in Paragraph 7.0 of the RFP. With respect to the first procedure, the Company received a number of requests for additional information by electronic mail and timely responded to each request. Although the identity of the requestor was kept confidential, the Company's responses to the requests that were relevant to the RFP were sent to all RFP package recipients as of that date. With respect to the latter procedure, the 10-day period was the period of time the Company initially anticipated would be required to

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<sup>20</sup> Response of Atmos Energy Corporation to TRA Staff's March 31, 2008 Data Request, p. 14.

complete the bid analysis and evaluation process. However, the process actually took longer than expected due to the complexity of the RFP and the bids. At the Company's request, all bidders agreed to hold their bids open past the initial 10-day period until the Company completed its evaluation.<sup>21</sup>

*Criteria 7 – The Company shall retain all RFP documents and records for at least four (4) years and such documents and records shall be subject to the review and examination of the TRA staff. The Asset Manager shall maintain documents and records of all transactions that utilize the Company's gas supply assets. All documents and records of such transactions shall be retained for two years after termination of the agreement and shall be subject to review and examination by the Company and TRA Staff.*

The Company will comply with the record retention requirements set forth in Criteria 7 and will make them available for review and examination of the TRA Staff. The records retention requirements of the Asset Manager set forth in Criteria 7 are embodied in Section 8(G)(v) of the Transaction Confirmation attached to the Base Contract for which approval is being sought in this docket.<sup>22</sup>

#### **HOW AEC ANALYZED THE BIDS RECEIVED AND DETERMINED THAT THE AEM BID PROVIDES THE HIGHEST ECONOMIC VALUE TO TENNESSEE CONSUMERS**

As indicated above, AEC awarded the contract to the bidder that submitted the bid with the best economic terms – in this case, the lowest total cost. Atmos Energy Marketing submitted the lowest-cost bid and, therefore, was awarded the contract. This section provides more detail around exactly how AEC's gas supply group compared the economic terms of the bids received.

On February 29, 2008, a total of four bids received from prospective counterparties were opened by Atmos Gas Supply personnel in front of two witnesses.<sup>23</sup> All four bids were in

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<sup>21</sup> *Id.*, p. 15.

<sup>22</sup> Response of Atmos Energy Corporation to TRA Staff's March 31, 2008 Data Request, pp. 15-16.

<sup>23</sup> Response of Atmos Energy Corporation to TRA Staff's March 24, 2008 Data Request No. 2.

compliance with the guidelines established in the RFP, thus none were “rejected.” Following the opening of the bids, the evaluation process began and, during that process, bid clarifications were sought from three of the bidders. Due to the complexity of the structure of the transaction as well as the base of assets to be managed an extensive analysis was performed. An Excel spreadsheet containing the TN/VA RFP Analysis, with comparisons and Summary results, has been filed under seal.<sup>24</sup> In the most basic terms, the analysis prepared by Atmos is a comparison of the price variances between the bidding parties (as opposed to a “full cost” comparison). In other words, if a particular element of pricing is common to all bidding parties, that element is ignored, as it creates no variance in the gas cost to ratepayers. Also, because Atmos rarely purchases spot gas (i.e., swing or incremental gas), this pricing element is an immaterial part of the overall bids, and as such was excluded from the bid analysis of all parties. The focus of the analysis is on the price variances for the baseload supply requirements, storage activity and demand charges.

Because of changes that will occur over the course of the three-year term, the analysis was prepared for each year individually.<sup>25</sup> On the final Summary page of the TN/VA RFP Analysis, the results of each of the three years are compiled for a “Grand Total of Payment and Index Premium/(Discount)” for each company.

Within the each yearly analysis are three regional breakouts as follows:

- Area I: Western Tennessee (Union City)
- Area I: Middle Tennessee

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<sup>24</sup> Amended Attachments to Motion for Approval (filed April 8, 2008), Collective Exhibit B.

<sup>25</sup> Specifically, the contract transportation that was part of the CGT exchange for Middle Tennessee was under separate contract which expires 11/1/2008. This is replaced in the new agreement with city gate delivered service to Atmos’ CGT city gates and to Atmos’ TETCO city gates beginning 11/1/2008. Second, the TGP firm transportation contracts in Area II (East Tennessee/Virginia) expires 10/31/2010. This capacity will be renegotiated with the pipeline; however, the Zone 0 100 Leg will go away and will be replaced by alternate receipt points in Zone 1 500 Leg and 800 Leg. Also within the Analysis, to calculate fuel costs, the NYMEX Henry Hub gas futures settlement prices are used as the forward gas price for the months April 2008 – March 2011.

- Area II: East TN/VA

The analysis sheet for each region provides the Normal Monthly Baseload Purchases, the Daily Supply Requirements by pipe/zone, and the Monthly Storage Injections and Withdrawals. These volumes are utilized to calculate the impact of the commodity index price variances (i.e., the premiums or discounts to index) as well as the index based delivered supply charges and certain demand charges contained within the bids. These index based “price outs” are found on the lower half of each detail bid analysis sheet. The far right column of each analysis sheet totals the monthly amounts and sums the total for each bidder.<sup>26</sup>

Some bidding parties elected to include charges for delivered supply and/or demand charges within the “Index Based Commodity Bid” area of the bid sheet, or within the “Comments and special provisions” area of the bid sheet, as opposed to making a bid for such services in the “Annual Upfront Payment Bid” area of the bid sheet. In such instances, these charges are included for analysis on the detail bid analysis pages along with the commodity pricing analysis. The line items for delivered supply and demand charges are clearly labeled as such. For the final summary analysis, they are brought forward along with the rest of the index-based prices into the final Summary analysis sheet on the line labeled “Total Premium/(Discount) to Index.”<sup>27</sup>

For those bidding parties who elected to include the value of such services to Atmos as an “Annual Upfront Bid,” these upfront amounts are entered only on the final page titled “Summary Bid Analysis,” on the line labeled “Annual Value of Services Provided to Atmos.” Likewise, the bidding parties’ amounts for upfront payment to Atmos for the “Annual Value of Assets

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<sup>26</sup> Response of Atmos Energy Corporation to TRA Staff’s March 24, 2008 Data Request No. 2., pp. 3-4

<sup>27</sup> *Id.*, p. 4

Provided by Atmos to Proposer” are entered only on the final page titled “Summary Bid Analysis,” on the line labeled accordingly.<sup>28</sup>

The “Summary Bid Analysis” sheet then tallies for each bidding party the total of the Index Based Bid Premium/(Discount), the Annual Value of Services Provided to Atmos, and the Annual Value of Assets Provided to Proposer, for the three-year term of the agreement. The bidder having the lowest “Grand Total of Payment and Index Premium/(Discount)” was awarded the contract.<sup>29</sup> As indicated above, the best bid was the one submitted by Atmos Energy Marketing.

**THE CONFIDENTIAL MATERIALS FILED UNDER THE  
PROTECTIVE ORDER IN THIS CASE SHOULD REMAIN PROTECTED**

In the recent case involving Chattanooga Gas Company (Docket No. 08-00012), the Consumer Advocate argued that the winning asset management bid submitted by Chattanooga’s affiliate Sequent Energy was not entitled to protection as confidential business information and should be subject to uncontrolled public disclosure. The Authority disagreed, holding that the winning Sequent bid was properly designated as confidential and should remain protected.<sup>30</sup> AEC anticipates that the Consumer Advocate will make the same arguments here – that it will seek to unseal the winning AEM bid, just as it sought to unseal the winning Sequent bid. For the same reasons that it rejected the Consumer Advocate’s position on this issue in the Chattanooga Gas case, the Authority should reject it here.

As in the Chattanooga Gas case, the bidding parties in this case submitted their bids under a promise that their confidential business information would remain confidential.<sup>31</sup>

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<sup>28</sup> *Id.*

<sup>29</sup> *Id.*, p. 5.

<sup>30</sup> See Excerpt of Transcript of Authority Conference, February 25, 2008 at 54 (Attached hereto as Exhibit 3).

<sup>31</sup> The Request for Proposal provides in relevant part: “A proposal may include data which the respondent may not want disclosed to the public or used by Atmos for any purpose other than proposal evaluation. . . . Such data filed



Accordingly, after consultation with the parties, the Hearing Officer entered a Protective Order in this matter providing for the protection of confidential information.<sup>32</sup> This Protective Order contains typical provisions providing that discovery responses and other filings containing confidential information will be filed under seal, and will not be subject to public disclosure.<sup>33</sup>

The Protective Order defines “Confidential Information” as follows:

‘CONFIDENTIAL INFORMATION’ shall mean documents and information in whatever form which the producing party, in good faith, deems to contain or constitute trade secrets, confidential commercial information, confidential research, development, financial statements, confidential data of third parties, or other commercially sensitive information, and which has been specifically designated by the producing party.<sup>34</sup>

Pursuant to the terms of the Protective Order, AEC designated the bids received as Confidential Information, including the winning bid submitted by AEM. Pursuant to the terms of the Protective Order, therefore, these materials have been filed under seal.

It bears emphasis that the Authority, its staff, and the Consumer Advocate all have had full access to all of the documents filed in this matter, including all of the Confidential Information that has been filed under seal. Atmos has not sought to prevent the Authority or the Consumer Advocate from having access to any of the information or documents they have requested to evaluate and advance their positions in this matter. By statute, the Consumer Advocate has been given “the duty and authority to represent the interests of Tennessee consumers of public utilities services.” Tenn. Code Ann. § 65-4-118(b)(1). And in fulfilling this role, the legislature contemplated that the Advocate would need to have access to confidential business information that should not be disclosed to the general public, expressly granting the

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for regulatory requests shall be filed as confidential information.” RFP ¶ 7.0 at 6. The RFP is attached as an Exhibit to the Petition in this matter.

<sup>32</sup> See Protective Order entered March 26, 2008.

<sup>33</sup> See Protective Order ¶ 8.

<sup>34</sup> Protective Order, ¶ 1.

Consumer Advocate authority to enter into agreements regarding “the nondisclosure of trade secrets and other confidential commercial information obtained by the division.” Tenn. Code Ann. § 65-4-118(d). In light of the fact that their statutory representative (the Consumer Advocate) already has had full access to *all* of the confidential information submitted in this case, it is difficult to understand what practical benefit Tennessee consumers would stand to gain from having the winning AEM bid unsealed and posted on the Authority’s web site.

On the other hand, publicly disclosing AEM’s confidential bid not only will cause harm to AEM, but also in the long run will harm Tennessee consumers by discouraging bidders the next time that AEC (or any other Tennessee utility) must put a contract out for competitive bidding. Moreover, the approved RFP tariff provisions do not provide for public disclosure of the bids received, including the winning bid.

As AEC explained in its responses to the Consumer Advocate’s First Discovery Requests, the sealed bidding process is only effective if bidders are assured that their bids are submitted to AEC on a confidential basis and retain that status, inasmuch as disclosure of their information could be a “detriment to the competitive nature of the entire bidding process.”<sup>35</sup> The bids were submitted under a promise of confidentiality, which was part of the RFP that was issued in this case.<sup>36</sup> If AEC were forced to break that promise by unsealing the bids in this matter, it would have a very significant and negative chilling impact on future bids.<sup>37</sup> The end result would be fewer bids submitted, a less competitive bidding process, and ultimately higher costs for Tennessee consumers.<sup>38</sup> Notably, this would be the case even if it were several years

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<sup>35</sup> Response of Atmos Energy Corporation to First Discovery Request of the Consumer Advocate and Protection Division No. 5.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

before the next bidding process occurred, because even after the passage of several years.<sup>39</sup> The bids submitted in this RFP contain valuable information about how the bidder evaluated the RFP through the pricing and service terms offered.<sup>40</sup> And this information would be valuable to bidders in a future auction, even one occurring several years from now.<sup>41</sup>

As discussed in detail above, AEC conducted the RFP and bidding process in this case in strict accordance with the approved procedures of its tariff. These procedures mirror those adopted, approved, and recently employed by Chattanooga Gas, and which were the subject of Docket 08-00012 approving the award of Chattanooga's asset management contract to its affiliate, Sequent Energy. The approved RFP procedures do not preclude AEC, and did not preclude Chattanooga, from offering to maintain the confidentiality of the bids and other confidential information submitted by the participants. Nor do the approved procedures require publication of the winning bid or the resulting contract. To the contrary, the approved RFP tariff procedures simply require that the utility retain the RFP documents for a period of four years.<sup>42</sup>

And the approved tariff procedures expressly allow the utility to "develop additional procedures for asset management selection as it deems necessary and appropriate so long as such procedures are consistent with the agreed-upon procedures described herein."<sup>43</sup> Pursuant to this directive, AEC's RFP expressly provided that confidential information submitted by respondents "shall be filed as confidential information."<sup>44</sup> Recognizing that respondents would be more willing to participate in the bidding with assurance that their confidential information would not thereby be disclosed to the general public (including competitors), AEC complied with the tariff

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<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> RFP Tariff, Criteria 7, *supra*.

<sup>43</sup> *Id.*, Criteria 6.

<sup>44</sup> RFP, ¶ 7.0.

provisions and reasonably included this provision in the RFP. The RFP respondents in turn submitted their bids under the representation that their confidentiality would be preserved. Having complied with all of the provisions included in the approved RFP tariff, AEC submits that the confidentiality of information submitted by the bidders should be maintained as promised.

It bears repeating that the Consumer Advocate raised the same issue, under the same RFP tariff provisions, in the recent case involving the Chattanooga Gas asset management RFP. In that case, the Authority determined that the winning Sequent bid was properly designated as confidential and filed under seal. Atmos merely seeks the same result on the same issue here.

### **CONCLUSION**

AEC conducted the subject RFP process in strict accordance with its approved tariff. AEC chose AEM's bid over the others received because AEM submitted the bid with the best economic terms. Accordingly, Atmos respectfully requests that the Authority approve the contract.

AEC further requests that the documents filed under seal in this matter pursuant to the Protective Order be maintained under seal. In this regard, AEC simply asks the Authority to rule as it did in the recent case involving Chattanooga Gas Company, where the same issue was raised and the Authority decided that confidentiality should be maintained.

Respectfully submitted,

**NEAL & HARWELL, PLC**

By: 

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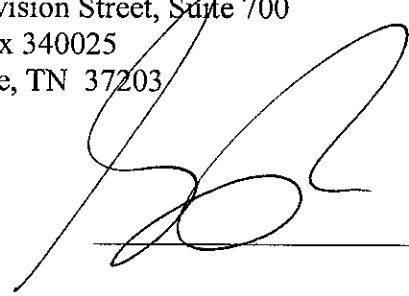
*Counsel for Atmos Energy Corporation*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been served, via the method(s) indicated below, on the following counsel, this the 24<sup>th</sup> day of April, 2008.

<input type="checkbox"/> Hand	Vance Broemel, Esq.
<input type="checkbox"/> Mail	Joe Shirley, Esq.
<input type="checkbox"/> Fax	Office of Tennessee Attorney General
<input type="checkbox"/> Fed. Ex.	425 Fifth Avenue, North, Third Floor
<input checked="" type="checkbox"/> E-Mail	P. O. Box 20207
	Nashville, TN 37202-0207

<input type="checkbox"/> Hand	Henry M. Walker, Esq.
<input type="checkbox"/> Mail	Boult, Cummings, Conners, & Berry, PLC
<input type="checkbox"/> Fax	1600 Division Street, Suite 700
<input type="checkbox"/> Fed. Ex.	P. O. Box 340025
<input checked="" type="checkbox"/> E-Mail	Nashville, TN 37203



# **AEC – EXHIBIT 1**

**ATMOS ENERGY CORPORATION****Affiliate Transactions**

The following guidelines present the minimum conditions deemed necessary to ensure that affiliate transactions between the Company and its affiliate(s) do not result in a competitive advantage over others providing similar services. These guidelines will remain in effect as long as the Company is operating under a performance based ratemaking plan. We note that these guidelines may fail to anticipate certain specific methods by which such advantages may be conferred by the Company on its marketing affiliates. All parties should be aware that to the extent such instances arise in the future, they will be judged according to this stated intent.

**Definitions:**

Terms used in these guidelines have the following meanings:

1. Affiliate, when used in reference to any person in this standard, means another person who controls, is controlled by, or is under common control with, the first person.
2. Control (including the terms "controlling", "controlled by", and "under common control with"), as used in this standard, includes, but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of a company. Under all circumstances, beneficial ownership of more than ten percent (10%) of voting securities or partnership interest of an entity shall be deemed to confer control for purposes of these guidelines of conduct.
3. Marketing, as used in this standard, means selling or brokering natural gas to any person or entity, including the Company, by a seller that is not a local distribution company.

**RFP Procedures for Selection of Asset Manager and/or Gas Provider:**

1. In each instance in which Atmos Energy Corporation (Company) intends to engage the services of an asset manager to provide system gas supply requirements and/or manage its assets regulated by the Tennessee Regulatory Authority (TRA), the Company shall develop a written request for proposal (RFP) defining the Company's assets to be managed and detailing the Company's minimum service requirements. The RFP shall also describe the content requirements of the bid proposals and shall include procedures for submission and evaluation of the bid proposals.
2. The RFP shall be advertised for a minimum period of thirty (30) days through a systematic notification process that includes, at a minimum, contacting potential asset managers, including past bidders and other approved asset managers, and publication in trade journals as reasonably available. This thirty (30) day minimum period may be shortened with the written consent of the TRA Staff to a period of not less than fifteen (15) days.
3. The procedures for submission of bid proposals shall require all initial and follow-up bid proposals to be submitted in writing on or before a designated proposal deadline. The Company shall not accept initial or follow-up bid proposals that are not written, or that are submitted after the designated proposal deadline. Following receipt of initial bid proposals, and on a non-discriminatory basis, the Company may solicit follow-up bid proposals in an effort to obtain the most overall value for the transaction.

- N
4. All initial and follow-up bid proposals shall be evaluated as they are received. The criteria for choosing the winning bid proposal shall include, at a minimum, the following: (a) the total value of the bid proposal; (b) the bidder's ability to perform the RFP requirements; (c) the bidder's asset management qualifications and experience; and (d) the bidder's financial stability and strength. The winning bid proposal shall be the one with the best combination of attributes based on the evaluation criteria. If, however, the winning bid proposal is lower in amount than any other initial or follow-up bid proposal(s), the Company shall explain in writing to the TRA why it rejected each higher bid proposal in favor of the lower winning bid proposal. The Company shall maintain records demonstrating its compliance with the evaluation and selection procedures set forth in paragraph 4 above.
- N
5. An incumbent asset manager shall not be granted an automatic right to match a winning bid proposal. If the incumbent asset manager desires to continue its asset management relationship with the Company after expiration of its asset management agreement, it shall submit a written bid proposal in accordance with the Company's RFP procedures. The bid proposal shall be evaluated pursuant to the procedures set forth in paragraph 4 above.
- N
6. The Company May develop additional procedures for asset management selection as it deems necessary and appropriate so long as such procedures are consistent with the agreed-upon procedures described herein.
- N
7. The Company shall retain all RFP documents and records for at least four (4) years and such documents and records shall be subject to the review and examination of the TRA staff. The Asset Manager shall maintain documents and records of all transactions that utilize the Company's gas supply assets. All documents and records of such transactions shall be retained for two years after termination of the agreement and shall be subject to review and examination by the Company and the TRA Staff.

**Standards of Conduct:**

The Company must conduct its business to conform to the following standards:

1. If there is discretion in the application of tariff provisions, then the Company must apply such provisions relating to any service being offered in a consistent manner to all similarly situated entities.
2. The Company must strictly enforce a tariff provision for which there is no discretion in the application of the provision.
3. The Company must process all similar requests for services in the same manner and within the same period of time.
4. The Company may not give its marketing affiliate preference over nonaffiliated companies in natural gas supply procurement activities.
5. The Company may not give its marketing affiliate preference over nonaffiliated companies in its upstream capacity release activities.



## **AEC – EXHIBIT 2**

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION

AT RICHMOND, MARCH 31, 2008

JOINT APPLICATION OF

ATMOS ENERGY CORPORATION

and

ATMOS ENERGY MARKETING, LLC

CASE NO. PUE-2008-00021

For authority to enter into a Gas Supply and  
Asset Management Agreement pursuant to the  
Affiliates Act, Va. Code § 56-76 *et seq.* and  
Request for Interim Authority

ORDER GRANTING INTERIM AUTHORITY

On March 21, 2008, Atmos Energy Corporation ("Atmos") and Atmos Energy Marketing, LLC ("AEM") (collectively "Applicants") filed a joint application ("Application") with the State Corporation Commission ("Commission") requesting authority to enter into a Gas Supply and Asset Management Agreement ("Agreement") pursuant to the Affiliates Act, Va. Code § 56-76 *et seq.*, and also requested approval of interim authority to commence performance immediately under the Agreement pending a final order on the Application from the Commission.

The Applicants represent that the request for interim authority is caused by a timing issue. The Commission directed Atmos in a prior case<sup>1</sup> to utilize a more competitive Request for Proposal ("RFP") bidding process when the Agreement was next renewed. Therefore, Atmos issued 62 RFPs and received 4 competitive bids, which according to Atmos required extensive evaluation. The Applicants were only able to file the Application ten days before the Commission's approval of the prior Agreement expires on March 31, 2008.

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<sup>1</sup> *Joint Application of Atmos Energy Corporation and Atmos Energy Marketing, LLC, For authority to enter into a Gas Exchange and Optimization Services Agreement pursuant to Chapter 4 of Title 56 of the Code of Virginia, Case No. PUE-2005-00003 (Order Granting Authority, July 5, 2005), 2005 S.C.C. Ann. Rep. 389).*

DOCUMENT CONTROL

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NOW THE COMMISSION, upon consideration of the Application, is of the opinion and finds that the request for interim authority to commence performance immediately under the Agreement pending final order on the Application should be granted. The Commission further finds that such interim approval shall not affect determinations made concerning Applicants' filing of its purchased gas adjustment rider tariffs.

Accordingly, IT IS ORDERED THAT:

- (1) Applicants are hereby granted interim authority to commence performance immediately under the Agreement pending further order of the Commission.
- (2) The interim authority granted in the preceding ordering paragraph shall not affect determinations made concerning Applicants' filing of its purchased gas adjustment rider tariffs.
- (3) This case is continued for further order of the Commission.

AN ATTESTED COPY hereof shall be sent to: Richard D. Gary, Esquire, and Charlotte P. McAfee, Esquire, Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074; Mark Johnson, Atmos Energy Marketing, LLC, 13430 Northwest Freeway, Suite 400, Houston, Texas 77040; Douglas C. Walther, Atmos Energy Corporation, P.O. Box 650205, Dallas, Texas 75265-0205; and the Commission's Office of General Counsel and the Divisions of Public Utility Accounting, Energy Regulation, and Economics and Finance.

A True Copy  
Teste:

*Joel H. Peck*  
Clerk of the  
State Corporation Commission

# **AEC EXHIBIT 3**

BEFORE THE TENNESSEE REGULATORY AUTHORITY

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EXCERPT OF TRANSCRIPT OF AUTHORITY CONFERENCE

Monday, February 25, 2008

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APPEARANCES:

TRA Docket Manager:	Ms. Sharla Dillon
For Aeneas Communications:	Mr. Henry Walker
For AT&T Tennessee:	Mr. Guy Hicks
For CAPD:	Mr. Timothy Phillips Mr. Steve Butler
For Chattanooga Gas:	Mr. J.W. Luna Ms. Jennifer Brundige
For Condo Villas of Gatlinburg Association:	Mr. Wayne Campbell
For High Tech Crime Institute, Inc. (via telephone):	Mr. Stephen Pearson
For Jackson Energy Authority:	Mr. Mark Smith
For Sprint Nextel Corp.:	Mr. Melvin Malone
For TRA Staff:	Mr. Richard J. Collier Ms. Shilina Brown Mr. Carsie Mundy

Reported By:  
Jennifer B. Carollo, RPR, CCR

<p style="text-align: right;">Page 2</p> <p>1 INDEX</p> <p>2 DOCKET DISPOSITION PAGE</p> <p>3 SECTION 4 - JONES, KYLE, AND ROBERSON</p> <p>4 08-00012 Approved 2-1 48</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 people with us in the audience to answer questions.</p> <p>2 Shall I introduce them at this time too?</p> <p>3 CHAIRMAN ROBERSON: I don't think so.</p> <p>4 Only when -- as needed.</p> <p>5 MS. BRUNDIGE: Jennifer Brundige with</p> <p>6 Chattanooga Gas.</p> <p>7 CHAIRMAN ROBERSON: Okay. We have</p> <p>8 had briefs that have been filed, and we're ready for</p> <p>9 oral arguments on the parties. I'll ask each party</p> <p>10 if -- how much time that you believe that you'll need</p> <p>11 to present your arguments. How much time do you think</p> <p>12 you'll need?</p> <p>13 MR. LUNA: If Mr. Walker earlier</p> <p>14 could do it in 10 minutes, surely we can do it in 10</p> <p>15 minutes.</p> <p>16 CHAIRMAN ROBERSON: Okay.</p> <p>17 DIRECTOR KYLE: Well, I don't know if</p> <p>18 I'd be comparing myself to Mr. Walker, Mr. Luna.</p> <p>19 CHAIRMAN ROBERSON: Is that okay,</p> <p>20 Mr. Butler? Ten minutes?</p> <p>21 MR. BUTLER: That's fine.</p> <p>22 CHAIRMAN ROBERSON: Okay. Mr. Luna.</p> <p>23 MR. LUNA: Thank you, Mr. Chairman.</p> <p>24 First, as I said, we have a number of people here from</p> <p>25 Chattanooga Gas. We tried -- with time being of the</p>
<p style="text-align: right;">Page 3</p> <p>1 (The aforementioned Authority</p> <p>2 Conference came on to be heard on Monday, February 25,</p> <p>3 2008, beginning at approximately 1:00 p.m., before</p> <p>4 Chairman Eddie Roberson, Director Sara Kyle, Director</p> <p>5 Tre Hargett, and Director Ron Jones. The following is</p> <p>6 an excerpt of the proceedings were had, to-wit:)</p> <p>7</p> <p>8</p> <p>9 MS. DILLON: Next, we have Docket No.</p> <p>10 08-00012, Chattanooga Gas Company. Request of</p> <p>11 Chattanooga Gas Company for approval of asset</p> <p>12 management agreement. Oral argument and consideration</p> <p>13 of agreement.</p> <p>14 CHAIRMAN ROBERSON: Would the</p> <p>15 parties, please, come forward?</p> <p>16 If we could, let's begin with</p> <p>17 Mr. Phillips. Please introduce yourself and who you</p> <p>18 represent.</p> <p>19 MR. PHILLIPS: I'm Timothy Phillips</p> <p>20 with the Tennessee Attorney General's Office, the</p> <p>21 Consumer Advocate and Protection Division.</p> <p>22 MR. BUTLER: Steve Butler also with</p> <p>23 the Consumer Advocate.</p> <p>24 MR. LUNA: J.W. Luna representing</p> <p>25 Chattanooga Gas. Mr. Chairman, we have a number of</p>	<p style="text-align: right;">Page 5</p> <p>1 essence on this approval of this contract, we tried to</p> <p>2 anticipate as many of the questions that each of you</p> <p>3 might have. So we have a number of folks with us</p> <p>4 today. We have the planning analyst that worked on</p> <p>5 this contract. We have in-house counsel with us. We</p> <p>6 have the managing director of the gas supply and</p> <p>7 capacity planning. And we have Archie Hickerson who is</p> <p>8 almost always here with us. And we think -- we tried</p> <p>9 to anticipate all of your questions, and we hope we</p> <p>10 have the right personnel here that can -- I'm sure I</p> <p>11 can't answer them all, but we hope to have the right</p> <p>12 people here who can answer any questions you might</p> <p>13 have.</p> <p>14 Before I begin, I want to thank the</p> <p>15 staff, your staff, for all of their work on this</p> <p>16 project with us. We've been working on this now -- I</p> <p>17 noticed this morning, it's been since January of '06.</p> <p>18 So over two years we've been working to get to this</p> <p>19 date. And your staff has been tremendously cooperative</p> <p>20 in working with us through this RFP process, and we</p> <p>21 want to thank each of them who are here and a lot of</p> <p>22 them have been involved, and we thank them. I want to</p> <p>23 especially thank your hearing officer on this,</p> <p>24 Ms. Cashman-Grams, who has kept our feet to the fire.</p> <p>25 We've been on a tight time frame. We've been filing</p>

2 (Pages 2 to 5)

1 briefs with less than 48 hours' notice, but she has  
2 taken her mission seriously to get this before you in  
3 this timely manner, and we want to thank her for her  
4 courtesy as well.

5 We really think that -- Chattanooga  
6 Gas thinks it's a fairly simple issue. We thought that  
7 from the beginning. And she's tired of hearing me say  
8 that, but she has to hear it one more time because I'm  
9 not sure you've heard it yet that we think it's very  
10 simple. We have been working on this RFP and this new  
11 contract for assets management since -- as I said,  
12 since, I believe, January 23rd of '06, when you ordered  
13 it done in an earlier docket. And we brought before  
14 you a program. We have followed all of the RFP  
15 procedures that we laid out that have been approved by  
16 this Authority. We followed them to the T. We have  
17 the people here who did that on our behalf. We have  
18 brought before you a contract that we think brings  
19 outstanding value to our customers. We think it's a  
20 tremendous benefit to Chattanooga customers. And we  
21 just think all the -- the terms in the contract that's  
22 before you taken as a whole should be approved. It's  
23 proper. And we think it should have been over, quite  
24 frankly, some time ago, and so we can go ahead and  
25 bring the great value to our customers that this

1 contract provides.

2 The Consumer Advocate has obviously  
3 taken a little different position, or we wouldn't be  
4 here today. And so in their latest brief they filed  
5 the other day, they accused us of not replying to their  
6 issues. And I thought I would take the remainder of  
7 my -- that's simply our argument I had that I  
8 presented. How simple it is before. But I thought I'd  
9 respond to some of the issues that they brought up in  
10 their filings before you.

11 One, they've taken exception to a  
12 three-year deal, a three-year contract. They think it  
13 should be one or two years. We have Mr. Sherwood, Tim  
14 Sherwood, who is our top guy who is the expert on this  
15 and who is here if you have any questions as far as  
16 that goes. We are absolutely convinced, Chattanooga  
17 Gas is, that a three-year or four-year term for asset  
18 management is the ideal time to get us our best values  
19 for our customers. Not one year as the Consumer  
20 Advocate seems to imply. And we believe that the  
21 documents we filed before you under seal that you've  
22 had a chance to look at and all of the data and the  
23 great contract that we put before you with the benefit  
24 for our customers proves our point as well as that a  
25 three- or four-year term is the ideal term for asset

1 management. We can go into that in whatever detail you  
2 want. If there's any questions, but we just believe  
3 that it positions us in the marketplace the best as an  
4 asset manager to get the best value for our customers,  
5 and we're absolutely convinced and believe if you have  
6 any questions on that area from our folks that you'll  
7 be as convinced as we are. And any change in that term  
8 would be a substantial and material altering of the RFP  
9 as it was bid, and thus we just wouldn't have a  
10 contract if we -- if there were any changes in that  
11 term. So we believe that the -- the value is the best  
12 at the -- at the period of time that we put out the bid  
13 and that we got the bids back for.

14 There's been an objection raised to  
15 what I think the Consumer Advocate has called -- the  
16 next issue that they raised is the cooperation  
17 provision that's in the contract. And I want to point  
18 out at the beginning on that, obviously, we did not  
19 know who was going to win this contract. It went out  
20 to a number of folks. I think over 50 folks received  
21 the proposals that we sent out. We had several who  
22 replied. You know of those exact numbers; it's in the  
23 data that's been provided to you.

24 And we believe that -- that this  
25 particular agreement is appropriate to have in there

1 because it's necessary for Chattanooga Gas and whatever  
2 asset manager may have won this contract that we have  
3 constant, consistent, and unfiltered communication  
4 between us and the asset manager so we'd have a good  
5 cooperative atmosphere there.

6 It's never intended -- and we want to  
7 point that out. We've said that in our brief; that  
8 it's never intended -- this is a deal -- an agreement  
9 between Chattanooga Gas and Sequent, the successful  
10 bidder of our asset management contract. This has  
11 nothing to do with this Authority or to carry out your  
12 responsibilities. At any time, you can get whatever  
13 information through the appropriate channels from  
14 anybody you want to get it from. It's just the  
15 relationship between us and our asset manager.

16 A hypothetical -- and I think -- that  
17 I've come up with in discussing this is -- of course,  
18 since an affiliate won the bid, it's a little  
19 different. But we didn't know who would have won it,  
20 as I said earlier. But, nevertheless, one of the  
21 things we thought about in putting this contract out  
22 that was bid -- the whole contract was what was bid  
23 upon in total was if there were some maybe change in  
24 our asset portfolio that maybe -- Chattanooga Gas  
25 determined it wasn't in Chattanooga Gas for part of the

1 assets to be managed by a set manager or maybe our  
2 pipeline capacity or maybe a better idea or  
3 hypothetical would be our liquid -- our liquid -- our  
4 LNG facility. If we decided to take that out of the  
5 management part of the contract, we really wouldn't  
6 like our asset manager to come into you and object and  
7 take a policy position contrary to what we thought was  
8 in our best -- in the -- in our best provision and also  
9 for our customers. So that's one of the ideas that  
10 went in that being in the contract that we proposed and  
11 that was bid upon and successfully won. And that --  
12 there are other examples, but that's the one that I  
13 think drives home our position on that the best.

14 Another issue the Consumer Advocate  
15 has brought up was the early termination provision in  
16 the contract that -- Chattanooga Gas believes that over  
17 the years that through communications with potential  
18 bidders and asset manager providers, it's become clear  
19 that these parties would participate in asset  
20 management if their business -- would not participate  
21 necessarily as compared to if their business became  
22 regulated by the TRA or some other authority due to  
23 this contract. So we believe that having that in the  
24 contract promoted participation by potential asset  
25 managers in the bidding process, and thus to maximize

1 the level of participation in this process we included  
2 this provision in the contract that has been proposed.

3 Once again, we're not saying this  
4 Authority doesn't have any ability to regulate the  
5 asset itself. You regulate the asset itself through  
6 us, through Chattanooga Gas, and that's clear that you  
7 have that ability, and nothing in this would take away  
8 from that ability. It would be our responsibility to  
9 provide you whatever information you may request and  
10 require under the rules and regulation of the  
11 Authority.

12 There are a few other issues if I can  
13 address -- I don't know on my timing exactly, but the  
14 Consumer Advocate raised an issue of subsequent  
15 modifications to the terms of the agreement by  
16 nonparties to the agreement. We believe that the bid  
17 clearly projected the greatest net benefit to  
18 Chattanooga Gas and its customers. And we believe that  
19 the agreement as laid out there is a binding agreement  
20 if approved by this Authority between two parties. And  
21 it binds the two parties for the three-year term of  
22 this agreement. And I mentioned this before the  
23 hearing officer at our last procedural conference or  
24 one of our conferences that if I had done this  
25 contract, I may have done it differently. If she had

1 done the contract, we may have done it differently. If  
2 General Butler had prepared this contract, he may have  
3 prepared it differently. Ten different lawyers, ten  
4 different business people may have prepared it ten  
5 different ways, but what you have before you is a good  
6 contract prepared by the attorneys that did prepare it  
7 and put it out in the commercial marketplace, and  
8 that's what was bid upon. And that's what was  
9 successfully bid upon and that's the contract before  
10 you and what we submit the contract that should be  
11 approved.

12 I guess the final two issues as I  
13 understand the briefs of the Consumer Advocate is that  
14 they believe that the annual minimum guarantee that you  
15 are aware of that's laid out should not be  
16 confidential. We strongly -- Chattanooga Gas strongly  
17 believes that that should be maintained confidential  
18 for a number of reasons. One, and foremost, is that's  
19 the way we bid it. We laid out to all of these  
20 bidders, Participate in our process, and we'll maintain  
21 your bid confidentially. So it's just fundamental  
22 fairness that we live up to our end of the deal that we  
23 do what we can to protect the bid that they laid out  
24 and try to maintain that as confidential.

25 And it's just -- it would have -- our

1 second point on that. It would have a chilling effect  
2 on future RFPs. If bidders can't trust us that we  
3 maintain their information confidential as we promised  
4 them through the process, through the RFP procedures  
5 that had been laid out a long time in advance, approved  
6 by you in advance, approved by the staff and others in  
7 advance, that's the procedures that we followed and  
8 followed them -- there's never been any -- I don't  
9 think the Consumer -- Consumer Advocate has raised a  
10 single issue that we didn't follow them to a T. And  
11 we've laid them out to bidders. They need to be able  
12 to rely upon our promises that their bids will remain  
13 confidential. They don't -- they're bidding these all  
14 over the country all the time. They don't need the  
15 competitive disadvantage of their competitors knowing  
16 what they bid here in Chattanooga, Tennessee, on future  
17 bids.

18 And, furthermore, if we were to rebid  
19 this three years from now, we do not need the chilling  
20 effect that the -- we'd have to tell bidders; we can't  
21 protect your information. It wasn't protected before.  
22 We can't protect it going forward. It would be a  
23 tremendous chilling effect upon bidders in the future  
24 as well as to those bidders in the marketplace today,  
25 but for us going forward, it would be a chilling effect



1 in the future.

2 And there's been no showing  
3 whatsoever by the Consumer Advocate that the public  
4 would not benefit -- would benefit by the revealing of  
5 this information in Chattanooga, Tennessee. There's  
6 not one iota of information before this Authority --  
7 we've laid out our beliefs where the harm would be in  
8 the future and currently to the bidders, and there's  
9 not been any evidence or anything brought forth that  
10 the consumers in Chattanooga -- I'm not talking about  
11 somewhere else, but consumers in Chattanooga,  
12 Tennessee; there's been no showing that that they would  
13 benefit whatsoever by the revealing of this  
14 information.

15 Sometimes I wonder if -- if the  
16 Consumer Advocate in their proceedings here recognize  
17 that you're here protecting the public and doing a  
18 doggone good job of doing it. You're protecting the  
19 people in Chattanooga, Tennessee. You're looking at  
20 the numbers. You know they're good numbers, and you're  
21 doing your job to protect them. Putting a number out  
22 in the public I don't think benefits anyone. And  
23 there's been no showing that it benefits anyone. By  
24 your approval of our contract and the numbers that's  
25 out there will show that the public is being protected

1 in Chattanooga. And we strongly -- and strongly argue  
2 that it should remain confidential.

3 I think the final issue to skip over  
4 was perhaps they mention that maybe we shouldn't extend  
5 this contract from three years to maybe seven years  
6 without some further proceeding. I would submit to you  
7 that we expect there will be some proceeding before  
8 that's extended. I don't think it would be prudent  
9 today to say what that should be. Maybe a notice of  
10 intent to extend filed sometime in advance to give this  
11 Authority a chance to review that notice to extend, and  
12 if you don't act, then we go forward. Or something  
13 along that nature. But we've got a couple of years to  
14 work on it and many other dockets to come, and I would  
15 submit that we address that at a later date when we  
16 know what the market conditions are at that time, and  
17 we can address what's appropriate at that time; and it  
18 doesn't need to be addressed today.

19 In conclusion, Chattanooga Gas has  
20 followed the rules. We followed our RFP to a T. We  
21 have a good asset management agreement before you, and  
22 we respectfully ask that it be approved today so there  
23 will be no lapse in the services that we're providing  
24 to our customers.

25 CHAIRMAN ROBERSON: Thank you.

1 Mr. Butler?

2 DIRECTOR KYLE: Mr. Butler, I just  
3 hope that you'll address what Mr. Luna just talked to.  
4 We've had the bidding process, and then you raise this  
5 issue. And I want you to just address that in your  
6 remarks. We'll save it to the end, and we'll give you  
7 a little bit more time, but, you know, we can't change  
8 the process once all that -- once we get started and  
9 move down, you know, the road. We can't -- it's not  
10 like you're playing checkers with your eight year old  
11 who changes the rules down -- you know, halfway down  
12 the game. You just can't do that. So I want you to  
13 address where I'm missing the boat on something that's  
14 so obvious to me.

15 MR. BUTLER: Okay. Thank you,  
16 Director Kyle. I'd also like to thank the staff and  
17 the hearing officer and also the directors for hearing  
18 us today on this issue. And specifically to your  
19 concern, Director Kyle, this contract was put up for  
20 TRA approval, and there was a docket opened. And at  
21 the point that I reviewed the contract was in January  
22 of this year. So I didn't -- I didn't see the  
23 contract, review it until that time. And so just -- to  
24 the extent that there's a timing issue, I mean, that's  
25 all I can say about that.

1 But as far as the proceeding here  
2 today, this -- this docket was opened and the TRA did  
3 order Chattanooga Gas Company to appear before the TRA  
4 for approval of the contract. And so what I did when I  
5 reviewed it, and other people at the Consumer Advocate  
6 also, we just flagged some concerns. And these were  
7 concerns that we believe that the TRA should at least  
8 consider as it deliberates.

9 DIRECTOR KYLE: Well, I will. But I  
10 just want your side of the argument that after these  
11 bids came in, did you want the process changed on how  
12 we obtained -- on how we -- how they obtained the bids?

13 MR. BUTLER: Well, the concerns that  
14 we've raised and that we put in our brief, in our reply  
15 brief, don't specifically address the bidding process,  
16 and so, I mean, that's where that is at this point.  
17 We -- we don't have specific concerns at this point  
18 about the bidding process if that's an answer to your  
19 question. I'll begin --

20 DIRECTOR KYLE: I just don't -- then  
21 it's just fine with you? We're up -- y'all are  
22 together? Maybe y'all have been talking past each  
23 other.

24 MR. BUTLER: Well, the concerns that  
25 we raised were not specifically addressed to the

1 bidding process, and so we haven't raised concerns  
2 about the way that Chattanooga Gas followed their  
3 tariff. We're not disputing that they -- that they  
4 violated their tariff or anything of that nature.

5 DIRECTOR KYLE: Right. Okay.

6 MR. BUTLER: Thank you. I'll begin  
7 with the confidentiality issue, and this is on the  
8 contract, page 7, paragraph 4. Under Tennessee law,  
9 confidential business information is analyzed under the  
10 doctrine of trade secrets, and that is consistently  
11 applied by Tennessee courts. And basically what the  
12 courts say is that trade secrets are the only type of  
13 confidential business information.

14 Under the context of this case which  
15 is -- we're under a Rule 26 protective order, the case  
16 of Lovell v. American Honda Motor Company, which is a  
17 decision of the Tennessee Supreme Court, establishes  
18 a -- standards for claiming trade secrets. And here  
19 again, we're talking about the annual guaranteed  
20 minimum. What the Tennessee Supreme Court said was  
21 that the company claiming the trade secret has to show,  
22 quote, a clearly defined and very serious injury to the  
23 business or to state it differently, great competitive  
24 disadvantage and irreparable harm.

25 At this point, I'd like to make it

1 clear that the Consumer Advocate is not seeking public  
2 disclosure of all of the bids. We're not doing that.  
3 We understand the concerns that bidders might have in  
4 terms of the confidentiality of their bids. But what  
5 we're seeking here today is if the contract is  
6 approved, and the annual guaranteed minimum is a part  
7 of that contract, which it would be if it was approved,  
8 that the annual guaranteed minimum is no longer just a  
9 bid; it's the annual guaranteed minimum. And that is a  
10 fact that we believe consumers of Chattanooga Gas  
11 Company should have a right to see.

12 I think it's important for the TRA to  
13 consider the fact that the consumers of Chattanooga Gas  
14 Company paid for the assets at issue 100 percent,  
15 dollar for dollar, penny for penny through the PGA.  
16 And so the idea that consumers don't have an interest  
17 in seeing this information I think is incorrect.

18 Furthermore, the annual guaranteed  
19 minimum is substantially for the benefit of the  
20 consumers, and so the idea that they shouldn't be able  
21 to see it, I disagree with that. And I disagree with  
22 the idea that consumers have no interest in knowing  
23 what the annual guaranteed minimum would be for the  
24 part of the money that they get back for the assets  
25 that they have paid for 100 percent through the PGA.

1 And as far as the annual guaranteed  
2 minimum, it is for a specific system. It is for  
3 Chattanooga Gas Company's pipeline capacity and storage  
4 assets that are unique to Chattanooga Gas. It also  
5 covers a unique period of time. In this case three  
6 years, possibly seven years. And so I don't see how  
7 another company could use that information against  
8 Sequent or against Chattanooga Gas because by the time  
9 they could use it three years later or seven years  
10 later, it would be stale. And it's -- again, it's for  
11 unique assets. Assets that are unique to Chattanooga  
12 Gas Company. And, again, paid for dollar for dollar by  
13 Chattanooga Gas's customers.

14 I'd like to address something that  
15 the Chattanooga Gas Company put in its reply brief  
16 which was well, consumers don't really need to see the  
17 annual guaranteed minimum because they can -- they can  
18 get on the TRA Web site and look at the Interruptible  
19 Margin Credit Rider, IMCR as they call it; that's on  
20 page 10 of the Chattanooga Gas Company's reply brief.  
21 Well, I was intrigued by that comment, and so I tried  
22 to find that information on the TRA Web site. And I  
23 can't say with absolute certainty that it's not there,  
24 but I couldn't find it. I looked for it. I ran  
25 searches on Interruptible Margin Credit Rider, IMCR. I

1 looked at the latest Chattanooga Gas ACA docket, and I  
2 couldn't find information that would be in any way  
3 comparable to the annual guaranteed minimum.

4 And so what we're asking for on that  
5 issue is the TRA in its order on this case that if the  
6 contract is approved that the annual guaranteed minimum  
7 should be disclosed to the public.

8 Another issue that we raised is the  
9 cooperation section of the contract which is on page  
10 10, paragraph 14. And, basically, what it says to  
11 paraphrase, the asset manager cannot provide written or  
12 oral testimony inconsistent with positions of  
13 Chattanooga Gas Company to the TRA or to the FERC. And  
14 when we saw that, we thought it raised public policy  
15 concerns because the TRA, the FERC, and the Consumer  
16 Advocate have public interest functions. And I think  
17 it's interesting that Chattanooga Gas Company here  
18 today argued that, well, they need a cooperative  
19 atmosphere between Chattanooga Gas Company and Sequent.  
20 They need unfettered communication. Well, I mean, I  
21 think the TRA should be able to expect cooperation from  
22 Sequent and also unfettered communication.

23 And so what we're asking for here  
24 is -- and the company may not even have too much  
25 objection to this. I don't know based on their

1 comments here today. What we're asking for is -- is  
2 the TRA in its order to say that the cooperation  
3 section does not limit the testimony, discovery,  
4 information, or documents available from the asset  
5 manager to the TRA, the FERC, the Consumer Advocate, or  
6 any other government entity functioning in the public  
7 interest.

8 Moving on now to the early  
9 termination provision related to the TRA's  
10 jurisdiction. The -- that's the -- in the contract,  
11 page 14, paragraph 18.1. And it says that the asset  
12 manager can attempt to terminate the contract if the  
13 TRA determines that the asset manager is subject to TRA  
14 jurisdiction. That raised concerns with the Consumer  
15 Advocate because to some extent, at least, there has to  
16 be some TRA jurisdiction in this area. Again, we're  
17 talking about assets that are paid for by Chattanooga  
18 Gas's consumers. And we're not saying here that the  
19 asset manager is a regulated public utility in the same  
20 way that Chattanooga Gas Company is. So if that's all  
21 this provision means, that's fine. And perhaps that  
22 could be clarified in the TRA's order. But there is a  
23 statute -- Tennessee statute that very clearly says  
24 that the TRA has jurisdiction over public utilities and  
25 also over their property, property rights, facilities,

1 and franchises. And that's something that this asset  
2 manager, any asset manager, needs to understand and  
3 accept. And so we think that could be dealt with in  
4 the TRA's order by saying that the early termination  
5 provision regarding the TRA's jurisdiction does not  
6 limit and is not implicated by the TRA's jurisdiction  
7 over Chattanooga Gas Company's property, property  
8 rights, facilities, and franchises.

9 The final issue that we'll address  
10 here today is the term of the contract, and this has  
11 some nuances because of the extension. This -- you can  
12 find this term in the contract, page 9, paragraph 11.  
13 There is a three-year term. And there is a four-year  
14 extension, and the four-year extension is by mutual  
15 agreement of Chattanooga Gas Company and Sequent. It  
16 doesn't provide for any TRA approval. It just requires  
17 the mutual agreement of those two parties. So,  
18 basically, if the parties want -- if Sequent and  
19 Chattanooga Gas want, they have a seven-year contract.  
20 That's a very long time particularly in this field  
21 where the values have -- and the practices of the  
22 industry have changed significantly over what would  
23 appear to me to be short periods of time in relative  
24 terms.

25 The problem that we have with the

1 three -- it's not that the -- that, you know, the  
2 three -- Mr. Luna said that three years or four years  
3 is ideal for one of these types of agreements. I can't  
4 dispute that. I don't know if that's true or not. I  
5 can't dispute it. But that's not the problem that we  
6 have. The problem that we have -- the concern that we  
7 have is that there is a new docket that's just getting  
8 underway. It's Docket 07-00224. And I assume and hope  
9 that that docket will be completed long before three  
10 years is over. And so, I mean, the purpose of that  
11 docket, as I understand it, is to look closely at the  
12 asset management arrangement. And so, I mean, what if  
13 we get to the end of that and we see problems and  
14 perhaps even the TRA sees problems, are our hands tied?  
15 Is the TRA's hands tied? Well, we think -- we think  
16 that they shouldn't be.

17 Now, the other problem that we have  
18 with the term is the four-year extension. And the way  
19 it works, as I read the contract, is that six months  
20 before the end of the three-year term, the parties,  
21 Sequent and Chattanooga Gas, can agree to extend the  
22 contract. And that's why I put in my brief one year  
23 before the end of the three-year contract that one year  
24 before that time is up, Chattanooga Gas should have to  
25 file a notice and a request for TRA approval of the

1 extension. And the reason I said one year is because  
2 it's really only six months because the agreement  
3 between Sequent and Chattanooga Gas occurs six months  
4 before that deadline. So that would give six months to  
5 the TRA to consider that request.

6 So what we're asking for on the term  
7 of the contract, basically two pieces of this, if  
8 Chattanooga Gas Company and Sequent want an  
9 extension -- wants a four-year extension, Chattanooga  
10 Gas must file a notice with the TRA no later than one  
11 year prior to the expiration of the initial three-year  
12 term seeking TRA approval of the extension. And  
13 also -- and, I think, this is implied in the contract,  
14 but I think the TRA's order on this docket should make  
15 it clear that TRA approval of the three-year term does  
16 not limit the TRA's ability to discontinue the contract  
17 prior to the end of the three-year term and does not  
18 limit the ability of the TRA to change Chattanooga Gas  
19 Company's asset management arrangements prior to the  
20 end of the three-year term. Again, that is connected  
21 directly to the existence of Docket No. 07-00224, which  
22 again, I assume and hope will be concluded before the  
23 end of the three-year term.

24 And thank you for considering our  
25 issues.

1 CHAIRMAN ROBERSON: Thank you.  
2 Mr. Luna, you've got a couple of minutes for rebuttal.  
3 Would you like to --

4 MR. LUNA: Yes, Mr. Chairman, I  
5 would. I'd go in reverse order if I could. The last  
6 thing he mentioned I --

7 CHAIRMAN ROBERSON: Pull your mike up  
8 a little closer.

9 MR. LUNA: Yeah. I'm sorry,  
10 Mr. Chairman. I'd like to go in reverse order. The  
11 last thing he mentioned I think is a key issue that the  
12 Consumer Advocate wants to lock down that there may be  
13 some subsequent actions through another docket that can  
14 impair a three-year contract. Well, we'll get into  
15 that in that docket, but we think the U.S. Constitution  
16 and the Tennessee Constitution on the impairment of  
17 contracts may have something to say about that in that  
18 docket, and we'll probably be filing a motion to  
19 dismiss on that docket before too long anyway for  
20 failure to state a cause of action. But we'll get into  
21 that at that time.

22 The biggest issue though in looking  
23 at that docket today is -- I want to repeat is back to  
24 the first thing. The three-year contract is what gets  
25 us our value. Our asset manager needs to know that

1 they have our assets available to them. That they can  
2 do their thing. They can find us the greatest value  
3 for those assets over the three years. So they can't  
4 live in jeopardy of having anything less than three  
5 years. They need to be able to make commitments for  
6 that period of time. So hanging something over their  
7 head that they don't have that commitment once they  
8 have this approved contract, they have a contractual  
9 ability to manage our assets for us in our agency  
10 agreement that we have for that period of time. So  
11 that would be very important for me to keep that --  
12 we'll -- available to argue. As I mentioned earlier --

13 DIRECTOR KYLE: Well, that's --

14 MR. LUNA: Excuse me.

15 DIRECTOR KYLE: Mr. Luna, that's  
16 exactly where I am, and that benefits the consumers.

17 MR. LUNA: Absolutely.

18 DIRECTOR KYLE: Sorry. That does  
19 benefit the consumers, whereas the CAD -- you know, I  
20 want to be as fair as I can to understand how does your  
21 way benefit the consumers? In other words, I'm trying  
22 to understand this. And I think it is as Mr. Luna was  
23 saying that they've got to know what they have to deal  
24 with; and, therefore, people would deal with them, and  
25 it benefits the ratepayers, our citizens of the state

1 of Tennessee. How would your way benefit the  
2 ratepayers?

3 MR. BUTLER: Well, again, the reason  
4 that we have concerns about the three-year term is that  
5 the TRA has opened this docket, the 07-00224, for the  
6 purpose of examining the asset management arrangements  
7 of Chattanooga Gas Company in detail. And at this  
8 point in time, we don't know what that docket will --  
9 will show us. We don't know what discovery will tell  
10 us. We don't know what the analysis will be. We don't  
11 know what the testimony will be. And so we don't know  
12 if we get to the end of that docket where we'll be in  
13 terms of the analysis of the asset management  
14 arrangement. So I guess what I -- the point here is  
15 the uncertainty of it. And so we have -- we have  
16 significant uncertainty. And so if we get to the end  
17 of the docket and then there are problems --

18 DIRECTOR KYLE: So you can't really  
19 refute what he's saying?

20 MR. BUTLER: At this time, I can't.

21 DIRECTOR KYLE: Okay. I'm sorry,  
22 Mr. Luna. But thank you for letting me interpret.

23 MR. LUNA: Yes. I'll only make two  
24 more points and quit belaboring it. The  
25 confidentiality of this guaranteed minimum bid is very,

1 very important. The general said something about it  
2 would be stale information in three years and all that;  
3 that's missing the point. I know I did a bad job in  
4 articulating my point. But that's missing the point.  
5 What we did, we told these bidders we're going to keep  
6 you confidential, and we will be reneging on what we  
7 told them. And they're bidding in other markets. This  
8 is -- they're bidding in other markets, not just -- he  
9 said they were going to keep the second, third, fourth,  
10 and the other bidders, but the winner needs to be kept  
11 confidential too. They're bidding other markets as we  
12 speak, and it's just not treating them fairly.

13 More important than that, though, is  
14 the chilling effect in the future on doing business  
15 with Chattanooga Gas in Tennessee. We rebid this --  
16 say the deal is not good three years from now for us or  
17 for Sequent, and we don't want to go forward, and we do  
18 another RFP, we have chilled the participation. And  
19 that's the point I haven't been able to get through  
20 from the beginning. It's not that the information is  
21 stale. You chill participation in the process. And we  
22 have experts here if you want to ask them questions.  
23 Just don't take my advocacy position. They're here to  
24 present that.

25 And I won't belabor it. I could go

1 over other points. Very simply, though, you hit the  
2 nail on the head. The contract we're here today was  
3 part of the RFP they don't object to. The contract was  
4 part of the RFP that was laid out there. The only new  
5 information you have are three things, two  
6 signatures -- ours, Sequent, and the guaranteed  
7 minimum. Otherwise, the contract was out there when we  
8 put the RFP out there that they don't have a problem  
9 with.

10 CHAIRMAN ROBERSON: Thank you. Let  
11 me ask a few questions. Is there -- Mr. Luna, is there  
12 a change of law language in the -- in the agreement?

13 MR. LUNA: I'm sure there is.  
14 Ms. Brundige is the expert --

15 CHAIRMAN ROBERSON: Well, I guess  
16 I -- I was confused because you raised constitutional  
17 protections that this is a contract; you just can't  
18 change it. But I was thinking there was a change of  
19 law section in the contract that if there are changes  
20 as a result of 07-224, that those could be addressed if  
21 the Authority had a change of law.

22 MR. LUNA: There's lots of provisions  
23 of that nature in there, yes, Mr. Chairman; you're  
24 correct. That is a contract between us and Sequent.  
25 That's our rights versus their rights and not

1 of tangentially affect this agreement, and those are  
2 what these provisions were meant to address. Not --  
3 not -- not necessarily picking back up this agreement  
4 and revisiting it once it became effective. But it's  
5 just dealing with the business and TRA constantly  
6 making orders -- issuing orders and making decisions.

7 CHAIRMAN ROBERSON: And for sure  
8 the -- after the three years, what kind of changes can  
9 be made after the three years for the extension to go  
10 into effect, if any?

11 MR. LUNA: Mutual both for  
12 Chattanooga Gas and our asset manager has to mutually  
13 agree that it's in their individual best interest to go  
14 forward, and that's just the contract between us and  
15 them. I assume at that point in time, the Authority  
16 would want some kind of proceeding here. We've got  
17 some ideas in our mind. That was my point that closer  
18 to the end of that three years, we -- I'm sure that we  
19 can come up, working with your staff, with an  
20 appropriate proceeding that you would feel comfortable  
21 that's protecting the public, if I followed your  
22 question.

23 CHAIRMAN ROBERSON: Well, I think  
24 General Butler mentioned a year before the contract  
25 expires to file something with us. Have you thought

1 necessarily our rights versus a third party and a third  
2 entity. I'm not saying we would. We just don't know  
3 what might come out of that docket. It's been so  
4 farfetched now. There's no -- we can't understand  
5 where it's going. But if something comes out of there  
6 that one or both or either party can't live with and  
7 the value needs to go forward, we may want to argue  
8 that you don't have the authority, maybe some  
9 impairment of contract. I mean, that's just wild  
10 speculation on everybody's part. The bottom line is  
11 this contract just needs to be approved as is, and  
12 we'll cross all of those bridges on down the line if  
13 they were to come up.

14 CHAIRMAN ROBERSON: Ms. --

15 MS. BRUNDIGE: Brundige.

16 CHAIRMAN ROBERSON: -- Brundige.

17 MS. BRUNDIGE: You're right.

18 There -- throughout this it does have some -- some  
19 discussion about if they're valid orders that the TRA  
20 could -- could issue. And, basically, you're writing  
21 this, you know, as an attorney looking forward. And  
22 what that means is you could make a decision that  
23 doesn't talk to the asset management agreement that is  
24 before you, but the TRA could make a policy decision or  
25 some other decision maybe about assets that could kind

1 about the appropriate time to give the Authority  
2 notice?

3 MR. LUNA: I'm thinking something --  
4 that year is probably about right. What we would like  
5 to couch it I'm thinking -- and, once again, we'd need  
6 to talk to the client. We've had some superficial  
7 conversations about it. Something along the line: We  
8 could file a notice of intent if the parties wanted to  
9 go forward.

10 CHAIRMAN ROBERSON: Okay.

11 MR. LUNA: And give a -- give maybe  
12 30 days to respond. I don't want to go through what  
13 we've been through the last several weeks fighting  
14 over -- with all due respect to the Consumer Advocate,  
15 we've wasted a lot of time and effort and money on  
16 something we think is very simple. And we don't want  
17 to get into that process again. If everybody believes  
18 it's a great thing going forward, let's file the notice  
19 and go forward.

20 My point being we can address that  
21 two years from now what the proper process rather than  
22 speculate today what it might be then.

23 CHAIRMAN ROBERSON: So several of the  
24 suggestions of the Consumer Advocate, would they  
25 necessitate a change in the RFP? And if they did

1 necessitate, would you have to rebid the whole  
2 contract? I mean, you talk about some of the  
3 proprietary information that -- you gave that as an  
4 assurance in the RFP. And if you went back and changed  
5 that, would you have to resubmit -- go through the  
6 whole process from --

7 MR. LUNA: Perhaps. We would -- we  
8 don't know. We'd have to evaluate what those changes  
9 would be.

10 CHAIRMAN ROBERSON: Okay.

11 MR. LUNA: We would have to, but it's  
12 not just us. Sequent might find something to be  
13 material.

14 CHAIRMAN ROBERSON: Right.

15 MR. LUNA: We believe this is such a  
16 great benefit to our customers, we don't want to open  
17 the door to allow our asset manager to have second  
18 thoughts, just to be quite frank with you. We would  
19 like this just approved as is. All of the issues  
20 brought up, that you just brought up -- the extension  
21 period -- we can address that on down the line outside  
22 the contract. Clearly we can do that on what this  
23 Authority would want in the future before we go forward  
24 on an additional four years. We can easily address  
25 that. My proposal was rather than trying to come up

1 with something today, we come up with that two years  
2 from now; what that process ought to be rather than  
3 today.

4 CHAIRMAN ROBERSON: Mr. Butler, do  
5 you have any comments on the questions I raised?

6 MR. BUTLER: Well, in terms of two  
7 years from now, I mean, I think that -- I would prefer  
8 that -- I think the Consumer Advocate would prefer that  
9 the order that the TRA enters pursuant to this  
10 proceeding here would have the procedure set forth so  
11 that two years from now we don't -- you know, we  
12 don't -- we're all confused about what happens next. I  
13 just think it should be clear on the front end.

14 CHAIRMAN ROBERSON: Thank you. Any  
15 other questions?

16 DIRECTOR JONES: I have some,  
17 Chairman. The first thing I want to clear up,  
18 Mr. Luna, is on this question of confidentiality. You  
19 repeated over and over that -- that the amounts that --  
20 that you did not want to disclose had to do with the  
21 amount of the bid itself. As I read your contract, I  
22 read that the amount that you're seeking to redact is  
23 the annual guaranteed minimum. And that's the amount  
24 that goes back to ratepayers?

25 MR. LUNA: That is correct,

1 Mr. Jones.

2 DIRECTOR JONES: Okay. So we're  
3 talking about two different amounts here? You're  
4 talking about the bid amount and the annual guaranteed  
5 minimum. We're talking about a different dollar  
6 amount.

7 MR. LUNA: No. No, Director Jones.

8 It's the same -- it's the same number that I -- maybe I  
9 used inarticulate language, but we're talking about the  
10 guaranteed minimum. That's the only number in the  
11 contract that I -- it's just the one -- as I mentioned  
12 in my concluding arguments, the only thing that's not  
13 in the RFP are the signatures of the two parties and  
14 this number. It is the guaranteed minimum amount that  
15 we're talking about.

16 DIRECTOR JONES: And so are you using  
17 that amount synonymous with the bid amount?

18 MR. LUNA: Yes, Director Jones, I am.

19 DIRECTOR JONES: So, Mr. Butler, do  
20 you understand that to be the same thing?

21 MR. BUTLER: Well, it's only  
22 synonymous to the extent that the winning bid becomes,  
23 if approved, the annual guaranteed minimum. But if the  
24 contract is approved, it's no longer a bid. It's the  
25 annual guaranteed minimum established by the TRA and

1 this contract for the benefit of consumers for the  
2 assets that they have paid 100 percent for.

3 DIRECTOR JONES: So there's an  
4 agreement that it starts out as the bid amount?

5 MR. BUTLER: Well, the --

6 DIRECTOR JONES: And then it converts  
7 to this annual amount?

8 MR. BUTLER: It's -- it starts out as  
9 a bid, and I don't think it's -- it's -- I don't think  
10 it's simply a bid after it becomes the annual  
11 guaranteed minimum. I think at that point it's the  
12 annual guaranteed minimum.

13 DIRECTOR JONES: Okay. And so that  
14 I'm clear, we're talking about an amount that's  
15 different than the sharing amount that will be  
16 determined in the IMCR order.

17 MR. LUNA: The sharing amount is  
18 already outlined in the procedure. It's a 50-50  
19 sharing and that is a public -- that's in our tariff.

20 DIRECTOR JONES: Okay.

21 MR. LUNA: So that is a public  
22 number. I didn't realize that was the number you were  
23 talking about.

24 DIRECTOR JONES: Okay. On the -- you  
25 made a comment that you might file in Docket 07-00224 a

1 motion to dismiss for failure to state a cause. If  
 2 there's no provision established with respect to this  
 3 contract to evaluate the results of the 07-00224  
 4 docket, that seems to be self-fulfilling. I mean, if  
 5 we have this docket open to consider these asset  
 6 management issues for Chattanooga Gas, if we foreclose  
 7 our ability to consider those results, it seems as  
 8 though it's self-fulfilling that -- that you would  
 9 automatically be able to prevail on such a motion.

10 MR. LUNA: I'm not sure I follow  
 11 that, Director Jones. I probably shouldn't have said  
 12 what I did earlier. I just read this morning what they  
 13 just filed in that other docket. I keep saying, What's  
 14 the beef here? What's -- but we don't want to try 224  
 15 here today. But we keep saying -- we don't understand  
 16 what's even being litigated in 224; thus I can't  
 17 speculate what effect it might have here since I have  
 18 no idea exactly what issues would -- what are -- the  
 19 claims that are trying to be resolved in the other  
 20 docket. It would be pure speculation how it might  
 21 affect this contract. And we probably don't need to  
 22 speculate today.

23 DIRECTOR JONES: Uh-huh. So that I'm  
 24 clear, in this agreement that I believe you stated was  
 25 part of the RFP process that -- is it your position

1 that no matter what the terms are in it, that the  
 2 bidders responded to that that should be accepted in  
 3 whole or rejected in whole? Regardless of the --  
 4 regardless of the provisions that are contained in  
 5 that -- in that agreement.

6 MR. LUNA: We believe that's what's  
 7 before the Authority -- that would be a simple solution  
 8 to what's before the Authority. A good solution for  
 9 our customers. We bring value through this contract,  
 10 and we believe that is an appropriate decision for this  
 11 Authority at this time. Whether we want to talk about  
 12 whether we have a typo in there, we ought to -- I know  
 13 this is not what you're talking about, Director Jones,  
 14 but hypothetically -- whether we're changing a "the" to  
 15 an "an" or something like that, that might be one  
 16 thing. But any material or substantial change or  
 17 issues like that, our asset manager might not live with  
 18 that, and we'd be speculating what they would or  
 19 wouldn't. Why go there when we've got them bringing  
 20 great value; there's not been any objection raised  
 21 whatsoever to the process we followed and what we done.  
 22 We've got a good contract before you, and it seems a  
 23 very appropriate decision for this Authority is just to  
 24 approve it.

25 DIRECTOR JONES: Let me ask you with

1 respect to a couple of the issues or concerns that the  
 2 Consumer Advocate raised. One is on the cooperation  
 3 provision and one is on jurisdiction. In both  
 4 instances in your reply brief, you had to restate what  
 5 you meant by the plain language that's in your  
 6 agreement. And I have to say with respect to the  
 7 cooperation provision, I mean, it very plainly says and  
 8 states in there that the asset manager and its  
 9 affiliate shall be prohibited from providing written or  
 10 oral testimony before any court or regulatory body.  
 11 And then it goes on to say the asset manager and its  
 12 affiliates shall be prohibited from filing rebuttal  
 13 testimony or protest in response to any filing made by  
 14 the company at any regulatory body including but not  
 15 limited to the TRA.

16 If you didn't intend to bind or to  
 17 restrict the TRA in the manner used by these words, why  
 18 wouldn't you just change it to reflect what the intent  
 19 is? I know you're not familiar -- you may not be  
 20 familiar with an instance that we just had here  
 21 recently at the Authority, but we had a company that  
 22 came before us and stated that it would not make --  
 23 stated it's intent to not have any layoffs after it --  
 24 after it was granted a particular contract. Soon after  
 25 receiving that contract despite what it said what its

1 words meant, it immediately proceeded to layoff  
 2 employees. So their intent in the plain language was  
 3 different, but what it relied on was the language in  
 4 its agreement and not the intent that it filed with us  
 5 in the brief.

6 So why would you not make this very  
 7 explicit?

8 MR. LUNA: I think Mr. Sherwood would  
 9 have to answer that question on the substance of why  
 10 it's in there. I tried to do my best earlier to  
 11 outline the possibility of an asset manager being  
 12 disappointed that we decide that they don't have as  
 13 much assets to manage as they hoped they would have,  
 14 and if we made that in the best interest of our company  
 15 and our customers, we wouldn't really appreciate them  
 16 coming before this Authority filing that we want to  
 17 manage more assets. So that's -- that was the intent.  
 18 And we clearly laid out -- there's no intent here. And  
 19 it wouldn't be binding if it was, but there's no intent  
 20 here to prevent this Authority from doing its job.  
 21 When you do your job and you're going to need  
 22 information from Sequent or whoever would have won this  
 23 bid -- we didn't know who was going to win it --  
 24 they're going to comply with that information. And  
 25 we're going to help them comply with that information.



1 There's no intent to prevent this Authority from  
2 getting the information you need to do your job or the  
3 Consumer Advocate, the Attorney General, from doing  
4 their jobs. It never was intended that way. It's  
5 clearly not in there. It wouldn't be appropriate to do  
6 so. But we don't want a -- our asset manager --  
7 whoever it might have been -- coming in trying to  
8 dictate policies and making policy arguments before  
9 this Authority that's not in our customers' best  
10 interest. That's why Mr. Sherwood put it in there, and  
11 the attorneys who wrote it up.

12 DIRECTOR JONES: And I guess my  
13 question is: Why would this not plainly state what you  
14 just stated as opposed to reading the way it does?

15 MS. BRUNDIGE: This contract is  
16 between Chattanooga Gas and Sequent, and it's not meant  
17 to -- to define Chattanooga Gas and TRA's relationship  
18 which is why some of these issues are not in this  
19 contract. So when this was drafted, it wasn't drafted  
20 from that perspective.

21 DIRECTOR JONES: And it's my guess  
22 that your response would be consistent with that with  
23 respect to the jurisdiction question? That's between  
24 you and your --

25 MS. BRUNDIGE: It is.

1 DIRECTOR JONES: -- manager? It was  
2 never intended --

3 MS. BRUNDIGE: Right.

4 DIRECTOR JONES: Okay. Does this  
5 contract -- forgive me for not knowing this, but does  
6 it have any provisions in there for addendums?

7 MR. BUTLER: Is that a question  
8 directed to --

9 DIRECTOR JONES: Yes, to Mr. Luna and  
10 Ms. Brundige.

11 MR. LUNA: I thought we could -- had  
12 people here that could answer any question. We didn't  
13 anticipate that one. Let me check.

14 DIRECTOR JONES: Okay.

15 MR. LUNA: We may have to get back  
16 with you on that.

17 MR. SHERWOOD: I'm an employee. I'm  
18 not exactly -- I apologize. I'm not exactly sure what  
19 you mean by --

20 MR. LUNA: Mr. Jones, may we bring  
21 forth Mr. Tim Sherwood who is --

22 DIRECTOR JONES: Yes, absolutely.

23 MR. LUNA: Who is the managing  
24 director for --

25 MR. SHERWOOD: Hello. Yeah, I

1 apologize. I'm not exactly sure what you mean by  
2 "addendums." Obviously, any contract -- and I'm not an  
3 attorney -- and I don't have expertise in legal  
4 matters. But obviously any agreement in which the  
5 parties would have a mutual consent to modify some  
6 portion of the agreement they could theoretically  
7 modify some portion of the agreement. There's also --  
8 in any agreement that's as complex as an asset  
9 management agreement, which they do have a lot of  
10 complex terms and conditions associated with them,  
11 there can be opportunities for us to have an agreed to  
12 interpretation of how a provision is meant to work in  
13 its practical detail. And on occasion, we will write  
14 effectively almost like a memo to the agreement to say  
15 when we say that you'll provide us timely pricing  
16 information -- and I'm using this just as an example --  
17 that that means that we'll get it within 48 hours or  
18 something like that. So we do have that kind of thing.  
19 If an addendum means something beyond that or has a  
20 specific legal meaning, I -- I'm probably not qualified  
21 to answer that.

22 DIRECTOR JONES: Okay. So let me ask  
23 you: This agreed to provision as to how a particular  
24 provision might work, would that include the clarifying  
25 language that was submitted in your reply brief with

1 respect to what -- the cooperation provision, the  
2 intent of the cooperation provision?

3 MR. SHERWOOD: Well, again -- and  
4 like I said, I can't make a -- I can't make a legal  
5 statement on it. I can tell you what our intent was at  
6 least when I was asking attorneys to draft the  
7 agreement for us, and it was as Mr. Luna stated. In  
8 the past former employers I had when we had asset  
9 managers who frankly weren't affiliates of the company  
10 this was quite frankly a greater issue in which we  
11 might want to do something like reduce our capacity,  
12 and they wouldn't want us to reduce our capacity  
13 because it meant less capacity for them to manage, and  
14 they would potentially say that they would -- they  
15 thought they might have to get involved in our case  
16 before the commission arguing the alternative side.  
17 And we said, well, this isn't conducive of a healthy  
18 asset manager/client relationship.

19 And so the reason for the language --  
20 which is the only thing I can really speak to because  
21 I'm not an attorney on that -- from that perspective --  
22 was to avoid having them initiate or come out  
23 specifically against something because we believe our  
24 decisions are in the best interest of Chattanooga  
25 customers. And we don't want our asset management



1 relationship to end up thwarting our efforts to do what  
2 we think are in the best interest of the customers by  
3 them getting involved in those cases.

4 I believe we don't intend any  
5 difference in the nature of information that has been  
6 shared from our asset manager in the past. The level  
7 of discussion, on-site visits, reviews, audits, none of  
8 that language is meant in any way to inhibit the TRA'S  
9 ability to get that information or our responsibility  
10 as the utility to provide information that the TRA  
11 needs to make sure that the business is being done  
12 properly. And maybe we get the information from --  
13 from the asset manager as opposed to the asset manager  
14 giving it directly to the TRA possibly, but, obviously,  
15 we're regulated by the TRA. So what the TRA tells us  
16 to do, we're going to do. I mean, that's -- I --  
17 that's not very articulate. But that's -- I'm not a --  
18 my background isn't law, but that's what we do, you  
19 know.

20 DIRECTOR JONES: Okay. Thank you.  
21 On the -- Mr. Luna, I have one final question. There  
22 was some discussion about the period over which -- the  
23 benefit of the -- of the asset -- the asset manager and  
24 yours. Is that -- is that time period identified based  
25 on a study that you submitted in this docket or

1 experience? Or is that anecdotal or --

2 MR. LUNA: I hoped you would ask  
3 that. Mr. Sherwood can answer that very well. With  
4 your permission.

5 DIRECTOR JONES: Oh, absolutely.

6 MR. SHERWOOD: I apologize. Could  
7 you restate it? I just want to make sure I understood  
8 the question.

9 DIRECTOR JONES: There was some  
10 discussion over which the benefit --

11 MR. SHERWOOD: Oh, so why is it three  
12 years?

13 DIRECTOR JONES: -- is provided --  
14 yeah. Three -- whether it's three years, four years,  
15 or two years. I think the question was asked of  
16 Mr. Butler of his being able to prove or disprove it.

17 MR. SHERWOOD: Yeah.

18 DIRECTOR JONES: And I was wondering  
19 whether -- whether you have some factual basis on which  
20 you've based that statement?

21 MR. SHERWOOD: Yeah. Okay. Director  
22 Jones, I know -- yes, the reason that we had selected  
23 three or four years, quite frankly -- and we went with  
24 three as the initial and four as the possible extension  
25 is -- there's a couple of issues. One of the aspects

1 of this agreement which we felt was important to our  
2 customers and important for being able to determine  
3 whether we really were receiving the best overall bid  
4 in the RFP process was to make the asset manager have  
5 to commit to a minimum value. And that's the bid that  
6 we're talking about as the annual minimum guarantee.  
7 And, therefore, while the sharing is 50-50 -- and we  
8 certainly hope that the sharing that ultimately results  
9 is much higher than the annual minimum guarantee;  
10 that's all it is, a minimum guarantee. Our hope is  
11 that the asset manager will extract much more value and  
12 the value will be higher than that.

13 The thing that gives them the best  
14 opportunity to, one, provide the most overall value and  
15 the highest minimum bid is knowing that they have the  
16 assets to manage over a succeeding number of years.  
17 And there's a couple of reasons why that increases  
18 value and why there's ultimately really a term limit at  
19 this point in time in the marketplace to how long that  
20 should be.

21 One of the issues is is that  
22 there's -- a significant amount of asset management  
23 value is derived from storage management. That's  
24 either filling storage, utilizing storage, and  
25 swapping -- quite frankly, swapping contracts for

1 storage back and forth when that storage is not needed  
2 by the customers of Chattanooga. So a lot of times  
3 that's in the summer periods when the power plant lows  
4 are on and all of these different kinds of things.  
5 They can manage the assets to drive -- to get that  
6 value out and return value back to the customers.

7 Oftentimes, the time -- when you get  
8 the greatest opportunity for those differentials are at  
9 changes from one season to the next. So as we're  
10 coming out of this winter season, if your agreement  
11 ends right hard stop at the end of this agreement, you  
12 have to clear up all of your transactions by the end of  
13 that season even though the next summer -- this summer,  
14 for example, might be providing a lot of opportunity to  
15 take positions -- financial positions you have on that  
16 storage off at this time and reset them on the  
17 summertime and increase the value even greater of what  
18 you might be able to get from the contract. That's why  
19 one-year agreements, quite frankly, provide such poor  
20 financial performance because the asset manager doesn't  
21 know and is unable to take advantage of those. And  
22 that's why, obviously, even every day we get this  
23 agreement approved sooner than March 31st provides that  
24 opportunity for whatever positions the asset manager  
25 has in place, if they're the incumbent, to reset those

1 positions and extract more value.

2       So effectively the longer term you  
3 have on that, the more of that you can do. And you  
4 also -- the -- you guys know this very well. The gas  
5 business is very volatile and gas prices change a great  
6 deal. A lot more than any of us would like, but the  
7 reality of it is that volatility can result in there  
8 being a great deal of value in asseting -- in the asset  
9 management at one year and much less in the next.

10       Well, having a longer term agreement  
11 creates kind of an actuarial kind of a risk abatement  
12 for the asset manager that if they're going to  
13 guarantee a minimum value, they frankly may lose money  
14 in one of the three years, but they believe that over  
15 time they'll be able to do it. It's like an insurer.  
16 If you get a lot of claims at a particular point in  
17 time for that point in time, you may lose money, but  
18 your expectation is you're going to have customers over  
19 a long period of time, and the market will return to a  
20 normalcy state, and you'll be able to extract that  
21 value. So that's why the term helps improve the value  
22 for our customers.

23       The reason three or four years  
24 appears to be the limit is right now, the NYMEX market,  
25 that trades natural gas futures, is really only liquid

1 for about 36 to 48 months. If you go out past that  
2 time, there's not much opportunity to trade forward  
3 five and six and seven years out. There's --  
4 technically, NYMEX trades ten years, but realistically  
5 you can't go out and put positions on because there's  
6 not something -- you know, it's not like the stock  
7 market. You can only sell stock if someone is willing  
8 to buy it. You can only buy when someone is will to  
9 sell it. Well, that's the way the gas market works.  
10 And you get into those extended futures; there's not  
11 somebody to take the other side of a transaction. You  
12 could say I'd be willing to sell an \$8 future in five  
13 years from now, but if nobody is willing to buy it,  
14 there is not a market for that. And that's part of  
15 what the limiting factor is. So that's why three to  
16 four years was why we were looking at it's being the  
17 terms that we thought created the greatest overall  
18 value to the customers. The highest minimum is always  
19 going to produce them the best value because they get  
20 the 50-50 share if it's higher. And so we wanted the  
21 minimum to be as high as it could possibly be, and  
22 that's why we set up the contract terms and the periods  
23 the way we did.

24       DIRECTOR JONES: Okay. Thank you,  
25 sir. And what -- and I -- forgive me. What is your

1 name again?

2       MR. SHERWOOD: It's Tim Sherwood.

3       DIRECTOR JONES: Tim Sherwood. Thank  
4 you, Mr. Sherwood. No more questions, Mr. Chairman.

5       CHAIRMAN ROBERSON: Any other  
6 questions? Okay. I think it's time then for the  
7 directors to decide are we ready to deliberate? Do you  
8 want to take a short recess? Or what's the will of the  
9 panel?

10       DIRECTOR JONES: Well, I'm --

11       DIRECTOR KYLE: I'm ready.

12       DIRECTOR JONES: Well, no, I'm not.

13 I think we need to take a --

14       CHAIRMAN ROBERSON: Okay.

15       DIRECTOR JONES: Because there's a  
16 lot of information given in here.

17       CHAIRMAN ROBERSON: Okay. How long  
18 do you think, Director Jones? What do you suggest?

19       DIRECTOR JONES: I could -- I could  
20 probably pull it together in about 10 minutes.

21       CHAIRMAN ROBERSON: Okay. Let's  
22 reconvene then. Let's take a 10 minute and reconvene  
23 at 15 after three. Thank you.

24       (Recess taken from 3:07 to  
25 3:16 p.m.)

1       CHAIRMAN ROBERSON: Okay. We're back  
2 on the record. Well, I have a motion that I'll start  
3 with if the directors would like for me to proceed or  
4 if one would --

5       DIRECTOR KYLE: Well, is it short?

6       CHAIRMAN ROBERSON: It's not too bad,  
7 believe it or not.

8       DIRECTOR KYLE: Well, mine is real  
9 short.

10       CHAIRMAN ROBERSON: Do you want to --  
11 do you want to take a shot at it?

12       DIRECTOR KYLE: I will.

13       CHAIRMAN ROBERSON: Okay.

14       DIRECTOR KYLE: Mine is so short.

15 Okay. I move for approval of the Chattanooga Gas  
16 Company's asset management agreement. And I further  
17 move to require the Chattanooga Gas Company to file  
18 with the Authority for approval of the four-year  
19 extension one year prior to the expiration of the asset  
20 management agreement. I so move. Can you be any  
21 shorter or --

22       CHAIRMAN ROBERSON: Um.

23       DIRECTOR KYLE: You can just say yes,  
24 I agree.

25       CHAIRMAN ROBERSON: Well, I -- I

1 agree -- I agree with that. Let me -- let me just add  
2 that -- and I think it's implied in your motion -- that  
3 I find that the dollar amount of the annual guaranteed  
4 minimum should be properly designated as confidential.

5 DIRECTOR KYLE: Yes, sir.

6 CHAIRMAN ROBERSON: And that -- I  
7 would also like to add that -- as a friendly amendment  
8 that the agreement in no way affects the TRA's  
9 jurisdiction over Chattanooga Gas, and other than that,  
10 I think we're in agreement.

11 DIRECTOR KYLE: That's great. And I  
12 vote yes on the amendment.

13 DIRECTOR JONES: I have slightly  
14 different requirements in mine, but I'll start out by  
15 noting that although I have no specific motion that  
16 modifies the contract, I'll note that changing the  
17 period for a one-year notice prior to expiration is a  
18 modification of the contract. So once that door is  
19 open, I perhaps should drive through it, but -- but I  
20 will not at this point.

21 However, while there is not an agreed  
22 to provision as to how these provisions work,  
23 consistent with the briefs that were filed by the  
24 company, I think our order -- our order should  
25 definitely and certainly reflect the concerns that have

1 been raised here and many of which have apparently been  
2 addressed in a reply brief, in oral argument, stating  
3 the intent of what that language means. And I think  
4 the Authority's order should clearly indicate the  
5 comments that were made here today with respect to that  
6 intent. And to the extent that there is any subsequent  
7 problem or question raised with respect to that  
8 specific language, then our order will be able to  
9 harmonize that language with any activities that occur  
10 at a later date that may be inconsistent with the  
11 intent of that language. So I think our order should  
12 reflect that.

13 With respect to the dollar amount of  
14 the annual guaranteed minimum profit -- minimum  
15 properly designated as confidential by Chattanooga Gas  
16 Company, it's my position that the ratepayer payments  
17 are not confidential. I just don't see how that money  
18 could be confidential. I think that it's a very poor  
19 precedent to approve agreements with that type of  
20 clause in them. And it's certainly contrary, in my  
21 opinion, to the public interest with respect to  
22 disclosure of ratepayer-funded activities. But I am  
23 sensitive to this whole idea of having potential  
24 bidders not respond to an RFP process. So I don't  
25 think there's a question as to whether there's any

1 particular advantage that a ratepayer will enjoy as a  
2 result of disclosure. I think it's a question of  
3 setting a precedent that when we have a use of  
4 ratepayer-funded types of activities to suggest that  
5 somehow that money or those amounts should not be seen  
6 by -- by anyone. But I will note here that -- that any  
7 filings that are made at this agency are filed under  
8 the Public Records Act. And I think that to the extent  
9 that disclosure is sought that it would go through the  
10 same process as anything else that's filed here under  
11 proprietary agreement or a protective order. We do so  
12 presume it to be so until it is indeed challenged and  
13 then a determination is made as to how and what manner  
14 that information will be disclosed. So I think there  
15 is mechanism by which if that information is needed or  
16 should be made known, then that mechanism could be  
17 activated and those -- and that confi -- so-called  
18 confidential information could be accessed.

19 I think and I -- here with Issue No.  
20 4, is the cooperation section properly included in the  
21 asset management and agency agreement? Again, our  
22 order should reflect the intent articulated here today  
23 by the company and in its brief. And I think the same  
24 is true with respect to the issue, issue five. And I  
25 think with respect to issue six, the motion that

1 prevailed already included an amendment to the  
2 agreement, and that amendment, of course, requires a  
3 one-year notice prior to expiration. Those are my  
4 comments.

5 CHAIRMAN ROBERSON: Thank you. Okay.  
6 Next matter.

7 (Excerpt of Proceedings  
8 concluded.)  
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## REPORTER'S CERTIFICATE

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have no interest, financial or otherwise, in the  
outcome or events of this action.

IN WITNESS WHEREOF, I have hereunto affixed  
my official signature and seal of office this 29th day  
of February, 2008.

JENNIFER B. CAROLLO,  
REGISTERED PROFESSIONAL  
REPORTER, CERTIFIED COURT  
REPORTER, AND NOTARY PUBLIC  
FOR THE STATE OF TENNESSEE

My Commission Expires:

June 1, 2008