

On November 16, 2009, CGC filed a petition for a general rate increase and filed a proposed protective order for entry in this docket. (*See Proposed Protective Order*

(filed Nov. 16, 2009) (“CGC’s Proposed Protective Order”)). This is the protective order that has been entered by the Tennessee Regulatory Authority (“TRA” or “Authority”) in all of CGC’s contested cases, including its audit dockets.

At the December 14, 2009 initial status conference in the present docket, the CAPD announced that it would not agree to the entry of CGC’s standard protective order and that the CAPD is seeking through this docket to change the language that the TRA uses in its protective orders in all TRA proceedings going forward. (*See* Transcript, at 10-11). The representations at the status conference were that the CAPD was only attempting to change two paragraphs of the standard protective order submitted by CGC. (*See id.* at 10). The Hearing Officer directed the CAPD to file its proposed model protective order that the CAPD is asking the TRA to adopt for all TRA proceedings going forward. (*See id.* at 12). On December 28, 2009, the CAPD filed its proposed model protective order.

On December 28, 2009, the Hearing Officer issued a Notice of Public Comment (“Notice”) in Docket 09-00183 inviting the public to comment on the CAPD’s proposed changes. The Notice sets forth that the CAPD’s proposed protective order “only makes changes to the language contained in paragraphs 1 and 10” of the standard protective order that CGC has submitted in its rate case. (*See* Notice).

ARGUMENT

- A. To change the TRA’s model protective order, a separate docket clearly identified for that purpose should be convened rather than including this industry-wide issue in CGC’s rate case.**

Upon reviewing the CAPD’s proposed model protective order and comparing it to the standard protective order that the TRA has traditionally entered in CGC’s contested

cases, there are more than two changes. CGC has attached hereto as Exhibit A a red-lined version that reflects all of the CAPD's proposed changes to CGC's standard protective order. CGC is concerned that the regulated community may be unclear about the full implications of the changes requested by the CAPD. First, it would be easy to disregard the Notice because it references a specific company's rate case docket. Traditionally, it has been the practice of the TRA to consider requested industry-wide changes in a separate docket rather than one company's docket. Second, the Notice indicates that the only changes are to paragraphs 1 and 10. However, as will be explained further in section C below, that is not the case.

Because the CAPD is proposing to change the way in which the TRA protects confidential information, the affected parties need to have the opportunity and time to properly review and present their comments and suggestions. The consideration of the TRA's model protective order should not be constrained by the schedule of CGC's rate case docket.

By convening a docket for the sole consideration of the CAPD's request to change the model protective order, the TRA will be assured that the implications of the changes on the entire regulated community are fully examined as well as whether there is actually a need to make such substantial changes. Additionally, all potentially affected parties will have the chance to work together to develop a model protective order that may truly work for a majority of the regulated community in a majority of situations.

- B. The standard protective order proposed by CGC in the present case has worked well in CGC's past contested case dockets and should continue to be entered until the TRA has the opportunity to adequately address the CAPD's industry-wide request through a separate proceeding.**

CGC believes that the standard protective order that the TRA has traditionally entered in all of CGC's contested cases has been working well. The Company only designates information as confidential after forming a good faith belief that the information contains or constitutes confidential information as set forth in the standard protective order that must be protected from public disclosure. Contrary to the CAPD's arguments, the standard protective order does not give the producing party absolute discretion to protect a broad swath of information by designating it as confidential. That would only be the case if the protective order offered the CAPD no opportunity to contest the Company's designations. Rather, the ability to contest a confidential designation serves as a check and balance and prevents the producing party from having absolute discretion.

The CAPD is not arguing that CGC has acted in bad faith in the current or past dockets in its confidentiality designations. If the CAPD believes that certain members of the regulated community are abusing the terms of protective orders, the CAPD should exercise its right to contest those allegedly abusive confidential designations. Then, the TRA can examine the designations and reign in any alleged abuses by individual entities. The TRA's traditional practices and procedures for balancing the needs for discovery of confidential information with the producing party's need for protection from the harm of public disclosure of confidential information, which have been working well, should not be changed solely because of the CAPD's perceptions of a few alleged bad actors.

CGC respectfully requests that the TRA enter the standard protective order as proposed by CGC in the current rate case. The Company has already submitted confidential information in good faith reliance upon its proposed standard protective order. To allow a change in the traditional practice in the middle of this case will potentially disrupt the proceedings and add unanticipated expenses for the Company to retrieve and object to the discovery of any confidential information potentially not protected under the CAPD's proposed model protective order.

- C. **Should the TRA consider this industry-wide issue in CGC's rate case docket, CGC believes that the effect of the CAPD's proposed changes, especially the proposed language for paragraphs 1, 10, and 23, will in essence eliminate the concept of a protective order and will frustrate discovery of confidential information at the TRA. Thus, the TRA should not adopt the language as presented by the CAPD.**

The CAPD, and thus the TRA's Notice for comments, represent that the only changes to the standard protective order submitted by CGC in this docket are to paragraphs 1 and 10. However, this is not the case as shown in Exhibit A. While the CAPD is proposing substantial changes to the standard protective order that the TRA has traditionally entered in CGC's contested case proceedings, CGC will only comment at this time on the most problematic changes that the CAPD is proposing.¹

1. **CAPD's Proposed Changes to Paragraphs 1 and 10 of CGC's Standard Protective Order**

Paragraph 1 of CGC's standard protective order sets forth the types of information that may be treated as confidential information. The standard protective order provides that information that a producing party deems in good faith to contain or constitute trade

¹ Additionally, it appears that there is some disagreement as to what is the TRA's current model protective order. It appears that the CAPD is trying to advance a model that is based in part upon extensive negotiations with Piedmont Natural Gas and/or other regulated entities in other dockets. CGC has not been a party to any of these alleged negotiations and only has knowledge of the standard protective order that has been entered by the TRA in CGC's dockets for at least over the past six years.

secrets, confidential research information, confidential development information, confidential financial statements, confidential data of third parties, or other commercially sensitive information may be designated as confidential. (See CGC's Proposed Protective Order, ¶1). The CAPD is requesting to change this language, in part, by adding that only information "protected by state or federal law, regulation or rule" may be designated as confidential.

Pursuant to the TRA Rules, the discovery process, including protective orders, are governed by the Tennessee Rules of Civil Procedure. (See TRA Rule 1220-1-2-.11(1) ("discovery is to be sought and effectuated in accordance with the Tennessee Rules of Civil Procedure."); TRA Rule 1220-1-2-.11(10) ("Motions for protective orders filed pursuant to Tennessee Rules of Civil Procedure 26.03,")). Therefore, the TRA must look to the Tennessee Rules of Civil Procedure for guidance when entering protective orders. Rule 26.03 of the Tennessee Rules of Civil Procedure provides that:

for good cause shown, the court . . . may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following . . . (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way

(Emphasis added). Thus, courts have wide discretion to prevent or restrict the disclosure of certain information "when justice requires" and/or "for good cause shown". Pursuant to TRA Rules 1220-1-2-.11(1) & (10), the TRA has the same broad discretion to limit the disclosure of certain information, including "a trade secret or other confidential research, development, or commercial information," when justice so requires and/or for good cause shown. The Rules of Civil Procedure do not limit protection to only circumstances when a specific state or federal statute or rule provides specifically for the protection of the

confidential information. "When justice requires" and/or "for good cause shown" are much broader standards than the "state or federal law, regulation, or rule" standard which is being proposed by the CAPD. Tennessee Rule of Civil Procedure 26.03 clearly contemplates an equitable approach for protecting the disclosure of certain confidential information that would cause harm, annoyance, oppression, or undue burden or expense if publicly disclosed.

A majority of the business entities that appear before the TRA, while the TRA may deem them to be monopolies in their defined service areas, compete globally in a highly competitive business market for goods, services, and employees. Forcing the public disclosure of certain sensitive information will only reduce their abilities to compete for the best products, services, and human resources at the best value. In the end, the customers will be the ones who ultimately suffer from the public disclosure of confidential commercially sensitive information. The Tennessee Rules of Civil Procedure have fashioned a manner for allowing the free flow of information through discovery while protecting the public dissemination of confidential information. The Tennessee Rules of Civil Procedure do not contemplate the limitation requested by the CAPD that a confidential designation must be based on a specific statute rule or regulation.

The CAPD has also proposed the addition of subsection (f) to paragraph 10. Paragraph 10 enumerates certain limited situations when the CAPD may continue to use and disclose information that might otherwise be protected and/or designated as confidential. The CAPD is seeking to use and disclose information that "is otherwise not confidential under state or federal law, regulation, or rule." This amendment will in

essence obviate the usefulness of the TRA's model protective order. If the CAPD believes that the confidential information is not protected under state or federal law, regulation or rule, the CAPD might attempt to disclose the information in reliance upon proposed paragraph 10(f) rather than contesting the confidential designation before the TRA pursuant to paragraph 11 of the standard protective order. Once the confidential information has been disclosed, the damage will have been done.

The addition of subsection (f) to paragraph 10 will create much ambiguity and uncertainty for the producing party. The producing party should be able to rely upon the procedure for contesting a confidential designation as set forth in paragraph 11 of the standard protective order if the CAPD is contesting the designation. If the CAPD's proposed language for 10(f) is added to the model protective order, companies will be forced to object to the discovery of confidential information and seek additional protection from the TRA outside of the model protective order, which will cause greater time and resources to be expended on TRA proceedings and will delay a company's ability to timely provide discovery responses and confidential responses to minimum filing guidelines in rate cases.

2. CAPD's Proposed Changes to Paragraph 3 of CGC's Standard Protective Order

Pursuant to CGC's standard protective order, designated confidential information may only be disclosed to representatives of the parties who need to know because they are actively engaged in assisting counsel of record in preparing for the proceeding. (See CAPD's Proposed Protective Order, ¶ 3.c.). The CAPD proposes to delete this language and insert a new paragraph 3.c. that will allow disclosure to all officers, directors, or employees of any party.

The Chattanooga Manufacturers Association ("CMA") generally intervenes in CGC's rate cases, and the CAPD often seeks discovery of confidential customer information about CGC's commercial and industrial customers. There is no need for representatives of competing industry that may serve on the board of the CMA to have access to confidential information of other industry solely because they serve on the Board of the CMA. Rather, the disclosure should be limited to the officers, director, or employees of the CMA, if any, who are actively engaged in assisting the counsel of record in representing the CMA in the specific docket.

If the CAPD's proposed changes to 3.c. are adopted, the following underlined language should also be included in paragraph 3.c.:

c. officers, directors, or employees of the parties, including employees of the Attorney General, who are actively engaged in assisting counsel of record in preparing for this proceeding; provided that such officers, directors, and/or employees shall be subject to the provisions of this Protective Order, and shall not disclose such information further except as otherwise permitted under the terms of this Protective Order.

Further, CGC believes that Paragraph 3 must include language limiting the use of confidential information to the proceeding in which it is obtained. Based on the many changes that the CAPD is proposing that evidence its desire to disclose confidential information in future proceedings and forums (*see* discussion in sections C.3. and C.4. below), CGC believes that the TRA's model protective order should be clear that confidential information may only be used for purposes of the proceeding in which it is disclosed. This will ensure that a party in possession of sensitive confidential information will not be allowed to exploit that information for any purpose other than the

current proceeding. Thus, CGC requests that the underlined language be added to the first sentence of Paragraph 3 of the CAPD's proposed model protective order:

3. Subject to the exceptions noted below in this Paragraph 3, Confidential Information shall be used only for the purposes of this proceeding and shall be disclosed only to the following persons:

3. **CAPD's Proposed Changes to Paragraph 15 which is Paragraph 16 of CGC's Standard Protective Order**

The CAPD is proposing to change the standard practice regarding the destruction of confidential information at the end of the proceeding. CGC's standard protective order requires the parties automatically to either return to the counsel of the producing party the confidential information or certify to the counsel of the producing party that the confidential information has been destroyed after the proceeding is finished. (See CGC's Proposed Protective Order, at ¶16). The CAPD is proposing, in part, to change this procedure so that the parties either return the confidential information within fifteen (15) days of a request in writing by the producing party or certify that all confidential information has been destroyed.

Further, the CAPD is proposing to add language to paragraph 15 that will allow the CAPD to retain the confidential information once the proceeding has terminated after requesting permission from the TRA. CGC believes that this language should only be included in the protective order if (1) language is inserted in paragraph 15 that requires the CAPD to provide the producing party with written notice of its request to the TRA to retain the confidential information; (2) the model protective order contains CGC's proposed language for paragraph 3 that would limit use of confidential information only to the proceeding in which it is obtained; and (3) the CAPD's proposed language for

Paragraph 16 is not included in the model protective order (*see* discussion immediately following). These conditions are necessary so that the producing party knows when the CAPD is retaining confidential information and so that the confidential information is not exploited for any purpose other than the current proceeding.

4. **CAPD's Proposed Changes to Paragraph 16 which is Paragraph 17 of CGC's Standard Protective Order**

The CAPD is proposing to add a 5-year limitation on the protection of confidential information. CGC's standard protective order provides that the protective order will continue to protect confidential information after the termination of the proceeding. (*See* CGC's Proposed Protective Order, ¶17). The passage of time does not make confidential information no longer confidential. The purpose of a protective order is to allow the free exchange of information while still protecting sensitive information from public disclosure. There should be no limitation on the protection afforded by the protective order in a proceeding. Therefore, the 5-year limitation as proposed by the CAPD should not be included in a model protective order.

5. **CAPD's Proposed New Paragraph 19**

CGC's standard protective order does not contain the language proposed by the CAPD for new paragraph 19 of the model protective order. The CAPD's proposed language for paragraph 19 must be consistent with the CAPD's proposed language for paragraph 3. Under the CAPD's proposed model protective order, paragraph 19 could be interpreted to broaden the disclosure limitations placed in paragraph 3. The proposed language of paragraph 19 would allow the CAPD to disclose confidential information to any employee of the State of Tennessee while paragraph 3 limits disclosure to the employees of the Attorney General. Paragraph 19 needs to remain consistent with

paragraph 3 in that confidential information may only be disclosed to employees of the Attorney General and to persons who have signed a non-disclosure agreement pursuant to paragraph 4 of the protective order. Further, as explained in section C.2. above, paragraph 19 should also include the same limitation that CGC proposes for paragraph 3.c. – only employees of the Attorney General who are actively engaged in assisting counsel of record in preparing for this proceeding should be allowed to have access to the confidential information.

6. CAPD's Proposed New Paragraph 23

The CAPD's proposed language for the model protective order contains the requirement that the producing party upon receiving a request of the Attorney General must provide within five (5) days a written explanation of the details "including statutory authority" for the Company's designation of information as confidential. This language has not been part of CGC's standard protective order. While the Company is always willing to discuss confidentiality designations with the CAPD, requiring the Company to have to produce a legal brief to the CAPD upon the CAPD's request will only serve to add additional litigation costs without providing any resolution. Rather, the current procedure set forth in paragraph 11 of CGC's standard protective order adequately provides for challenges to confidentiality designation in an efficient and timely manner.

However, should the CAPD's proposed language be adopted, CGC believes the following additional changes should be included in paragraph 23 to make it less prejudicial to the producing parties. First, the CAPD should have to provide in its written request why it is questioning the producing party's designation. Then, the producing party will understand the CAPD's position and may be better able to resolve the situation.

Second, the five (5) day time period is less than the time period that the TRA rules traditionally allow for a party to respond to a motion. Thus, as provided in TRA Rule 1220-1-2-.06, the response time should be lengthened to seven (7) days unless additional time is otherwise requested from the TRA.

Lastly, the language “including statutory citations” must be removed from paragraph 23. As explained in section C.1. above, this language unnecessarily limits the standard that governs protective orders as set forth by the Tennessee Rules of Civil Procedure.

7. CAPD’s Proposed New Paragraph 23(a)

The CAPD is proposing to prevent a producing party from designating information as confidential if the documents “have been distributed to the public, consumers, or others”. The reference to “others” without significant qualification is vague and ambiguous and should be removed. For example, there are situations when confidential information may have been provided to another entity, such as a third party or an affiliated entity, pursuant to a protective order, non-disclosure agreement, contract, written or oral agreement, or practice. The confidential information continues to be maintained by the company and the other entity as confidential and is not subject to public disclosure. Under the CAPD’s proposed language, the Company may be forced to object to the discovery of this type of confidential information if there is any question about whether it is protected under the model protective order. Therefore, the undefined term “others” must be deleted.

Additionally, any proprietary customer information that the Company may provide to its customers or their marketers continues to remain confidential even though

it has been provided to the customer. It should be made clear that providing confidential information to a company's customer does not make the confidential information available to the public. CGC believes that without significant qualifications the last sentence in CAPD's proposed new paragraph 23 (which is not part of CGC's standard protective order) should not be included in any model protective order.

8. CAPD's Proposed New Paragraphs 28 and 29

The CAPD's proposed language for new paragraphs 28 and 29 are not contained within CGC's standard protective order. If these paragraphs are adopted, the language needs to be changed so that it is clear that the time period for filing any petition for reconsideration (CAPD's proposed new paragraph 28) or petition to review (CAPD's proposed new paragraph 29) begins to run after any ruling pertaining the protective order rather than the date of the entry of the protective order as proposed by the CAPD.

9. Reservation of Rights

TRA Rule 1200-1-2-.11(12) affords the TRA the authority to adopt a model protective order and the discretion for when to use the model protective order. There will be situations when the model protective order, especially if the CAPD's proposed language for paragraphs 1, 10, and 23 are incorporated into a model protective order, will not provide the breadth allowed by Tennessee Rule of Civil Procedure 26.03 and cover necessary confidential information. For example, there may be a need to protect "Protected Security Materials", which are currently covered and protected under CGC's standard protective order, or "highly confidential information." Therefore, CGC reserves its right to seek additional protection as allowed by Tennessee Rule of Civil Procedure

26.03 and paragraph 17 of the CAPD's proposed protective order (or paragraph 18 of CGC's standard protective order).

CONCLUSION

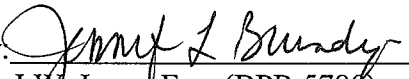
While CGC acknowledges the TRA's authority to modify and establish model protective orders, CGC believes that consideration of modifications to the TRA's model protective order should occur in a separate docket rather than CGC's rate case docket. Interested parties need to have the time and opportunity to review, comment, and work together to develop a model protective order. In the meantime, CGC respectfully requests that the TRA enter in the present docket the standard protective order that the TRA has traditionally entered in CGC's contested case proceedings and upon which CGC has been relying in good faith in producing confidential information since November 16, 2009.

Alternatively, should the TRA consider the industry-wide issue of changing the TRA's standard protective order, CGC requests that the TRA reject the CAPD's proposed changes for paragraphs 1, 10, and 23 (including the addition of paragraphs 23.a. & b.). CGC further requests that the TRA include the additional language and qualifications explained above should the TRA choose to adopt any of the CAPD's proposed language for paragraphs 3, 15, 16, 19, 28, and 29 for a model protective order.

Lastly, CGC believes that, should the TRA agree to the CAPD's request to modify the standard protective order used by CGC and to issue a model protective order to be used in all TRA proceedings going forward, the TRA should issue its proposed model protective order and afford the public an additional chance to comment on the TRA's proposed changes before they are finally adopted by the full TRA.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of January 2010, a true and correct copy of the foregoing was served on the persons below by electronic mail:

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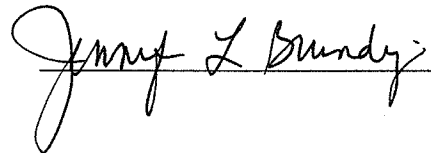


Exhibit A

Reflecting the Changes to CGC's Standard
Protective Order as Proposed by the CAPD

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

November 16, 2009

IN RE:

PETITION OF CHATTANOOGA GAS _____)

COMPANY FOR APPROVAL OF _____)

ADJUSTMENT OF ITS RATES AND _____) Docket No. 09 _____

CHARGES, MODIFICATION OF ITS _____)

RATE DESIGN, AND REVISED TARIFF _____)

PROPOSED PROTECTIVE ORDER

_____ To expedite the flow of filings, ~~discovery~~, exhibits and other materials, and to facilitate the prompt resolution of disputes ~~regarding~~ as to the confidentiality of the material, adequately protect material entitled to be kept confidential and to ensure that protection is afforded only to material so entitled, and ~~the parties being in agreement as to the entry of this Protective Order, the Hearing Officer, as appointed by the Tennessee Regulatory Authority ("TRA"),~~ hereby orders the following ~~that~~:

1. For the purpose of this Protective Order (the "Order"), proprietary or confidential information, hereinafter referred to as "CONFIDENTIAL INFORMATION" "Confidential Information", shall mean documents ~~and~~, testimony, or

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information in whatever form which the ~~producing party~~ Producing Party, in good faith, and based on reasonable inquiry, 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 protected by state or federal law, regulation or rule, and which has been specifically designated by the ~~producing party~~ Producing Party. A "Producing Party" is defined as the party creating the ~~confidential information~~ Confidential Information as well as the party having actual physical possession of the information produced pursuant to this Order. All summaries, notes, extracts, compilations or other direct or indirect reproduction from or of any protected materials, shall be entitled to protection under this Order. Documents containing ~~CONFIDENTIAL INFORMATION~~ Confidential Information shall be conspicuously and specifically marked labeled as confidential on the cover. "CONFIDENTIAL." The documents must be produced in a way that will clearly identify to others that it contains Confidential Information. Any document so designated shall be handled in accordance with ~~this~~ the Order. The provisions of any document containing ~~CONFIDENTIAL INFORMATION~~ Confidential Information may be challenged under Paragraph ~~4~~ 10 of this Order.

2. Any individual or company subject to this Order, including ~~producing parties~~ Producing Parties or persons reviewing ~~CONFIDENTIAL INFORMATION~~ Confidential Information, shall act in good faith in discharging their obligations hereunder. Parties or ~~nonparties~~ non-parties subject to this Order shall include ~~parties who are allowed by~~ Chattanooga Gas Company (the TRA "Company"), and the Consumer Advocate and Protection Division of the Office of the Tennessee Attorney General ("Attorney General").

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the Chattanooga Manufacturers Association ("CMA") and other parties permitted to intervene subsequent to the date of entry of this Protective Order.

3. ~~CONFIDENTIAL INFORMATION shall be used only for the purposes of this proceeding, and shall be expressly limited and~~ Subject to the exceptions noted below in this Paragraph 3, Confidential Information shall be disclosed only to the following persons:

(a) ~~Counsel.~~ counsel of record for the parties and other legal counsel for the parties in this case and associates, secretaries, and paralegals actively engaged in assisting outside counsel of record in this proceeding; docket and any appeals there from;

~~(b)~~ b. in-house counsel for the parties;

c. officers, directors, or employees of the parties, including employees of the Attorney General; provided that such officers, directors, and/or employees shall be subject to the provisions of this Protective Order, and shall not disclose such information further except as otherwise permitted under the terms of this Protective Order;

d. TRA Directors and members of the staff of the TRA;

~~(e) Representatives of the parties who need to know because they are actively engaged in assisting counsel of record in preparing for this proceeding; and~~

~~(d) Outside.~~ outside consultants and expert witnesses employed or retained by the parties or their counsel, who ~~need have~~ have access to ~~CONFIDENTIAL INFORMATION~~ Confidential Information solely for evaluation, testing, testimony, preparation for trial or other services related to this docket, provided that to the extent that any party seeks to disclose ~~CONFIDENTIAL INFORMATION~~ Confidential Information to any outside consultant or expert witness who is expected to testify on that ~~party's~~ party's behalf, the party shall give five (5) days written notice to the Producing Party of intention to disclose ~~CONFIDENTIAL INFORMATION.~~ Confidential Information. During such notice period, the Producing Party may move to prevent or limit disclosure for cause, in which case no disclosure shall be made until the TRA, the ~~Hearing Officer~~ hearing officer, the ~~Administrative Law Judge~~ administrative law judge or court rules on the motion. Any such motion shall be filed within three (3) days after service of the notice. Any response shall be filed within three (3) days after service of the ~~Motion.~~ A Pre-hearing conference notice. Prehearing conferences may be called to confer with

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the parties on the Motions to Limit Disclosure. All service shall be by hand delivery or by facsimile; and

~~Underf.~~ notwithstanding anything else to the contrary, under no circumstances shall any ~~CONFIDENTIAL INFORMATION~~ Confidential Information be disclosed to or discussed with anyone associated with the marketing of products, goods or services that may be in competition with the products, goods or services of the Producing Party or the Producing Party's customers. Counsel for the parties are expressly prohibited from disclosing ~~CONFIDENTIAL INFORMATION~~ produced by another party to their respective clients, except for in-house counsel and persons who need to know in order to assist counsel of record with preparation of the case.

4. Prior to disclosure of ~~CONFIDENTIAL INFORMATION~~ the Confidential Information to any employee or associate counsel for a party, TRA Director, or TRA staff member, of the authorized persons, the counsel representing the party who is to receive the ~~CONFIDENTIAL INFORMATION~~ Confidential Information shall provide a copy of this ~~the~~ Order to the recipient employee, associate counsel, TRA Director or, staff member, employee or, officer, who shall be bound by the terms of this Order. Prior to disclosure of ~~CONFIDENTIAL INFORMATION~~ Confidential Information to any outside consultant or expert witness employed or retained by a party, counsel shall provide a copy of this Order to such outside consultant or expert witness, who shall sign an ~~Affidavit~~ affidavit in the form of that attached to this Order attesting that he or she has read a copy of this Order, that he or she understands and agrees to be bound by the terms of this Order, and that he or she understands that unauthorized disclosure of the documents labeled "CONFIDENTIAL" constitutes a violation of this Order. ~~This (the "Affidavit").~~ The Affidavit shall be signed in the presence of and be notarized by a notary public. Counsel of record for each party shall provide the Producing Party a copy of each such Affidavit and shall keep the Affidavits executed by the ~~parties'~~ parties' experts or consultants on file in their respective offices.

5. If any party or non-party subject to this Order inadvertently fails to ~~designate~~ label documents as CONFIDENTIAL in accordance with the provisions of this

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Order when producing ~~the~~such documents ~~this, such~~ failure shall not constitute a waiver of confidentiality, provided the party or non-party who has produced the document shall notify the recipient of the document in writing within five (5) days of discovery of such inadvertent failure to ~~designate~~label the document as CONFIDENTIAL. At that time, the recipients will immediately treat the subject document as ~~CONFIDENTIAL~~ Confidential Information. In no event shall the TRA, or ~~any other Party to this Order,~~ Attorney General be liable for any claims or damages resulting from the disclosure of a document ~~provided~~ while not so labeled as "CONFIDENTIAL". ~~An inadvertent failure to designate~~label a document as CONFIDENTIAL, shall not, in any way, affect the ~~TRA's~~ TRA's determination as to whether the document is entitled to ~~CONFIDENTIAL~~ Confidential Information status.

6. If any party or non-party subject to this Order inadvertently fails to ~~designate~~label documents as ~~CONFIDENTIAL~~ Confidential Information in accordance with the provisions of this Order when producing such documents and ~~the~~such failure is not discovered in time to provide ~~a~~ five (5) daydays notification to the recipient of the confidential nature of the documents referenced in the paragraph above, the failure shall not constitute a waiver of confidentiality and a party by written motion or by oral motion at a Pre-Hearing~~hearing~~ Conference called for the purpose or at the Hearing on the merits may request designation of ~~the~~such documents as ~~CONFIDENTIAL~~ Confidential Information, and if the motion is granted by the Hearing Officer, Administrative Law Judge, or the Authority~~TRA~~, the recipients shall immediately treat the subject documents as ~~CONFIDENTIAL~~ Confidential Information. The ~~Tennessee Regulatory Authority, the~~ TRA, Hearing Officer, or Administrative Law Judge may also, at his or her discretion, either before or during the Pre-Hearing~~hearing~~ Conference or Hearing on the ~~Merits~~merits of the

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case, allow information to be designated ~~CONFIDENTIAL~~ labeled Confidential Information and treated as such in accordance with the terms of this Order.

7. Any papers filed in this proceeding that contain, quote, paraphrase, compile or otherwise disclose documents covered by the terms of this Order, or any information contained therein, shall be filed ~~and maintained in~~ with the TRA Docket Room in sealed envelopes ~~marked~~ labeled CONFIDENTIAL ~~and~~. The filing party shall also include with the filing a public version of pre-filed testimony with any Confidential Information redacted. In the TRA's files, each sealed envelope shall be labeled to reflect the style and docket number of this proceeding, the docket number, the contents of the envelope sufficient and to identify its the subject matter and this Protective Order. The of the content of the sealed envelope. Further, the envelopes at the TRA shall be maintained in a locked filing cabinet. The envelopes shall not be opened or their contents reviewed by anyone except upon order of by the TRA, Hearing Officer hearing officer, or ~~Administrative Law Judge~~ administrative law judge after due notice to counsel of record. Notwithstanding the foregoing, the ~~Directors~~ directors and the ~~Staff~~ staff of the TRA may review any paper filed as Confidential Information and labeled CONFIDENTIAL without obtaining an order of the TRA, ~~Hearing Officer~~ hearing officer, or ~~Administrative Law Judge~~ administrative law judge, provided the ~~Directors~~ directors and ~~Staff~~ staff maintain the confidentiality of the paper in accordance with the terms of this Order.

8. Documents, information and testimony designated as Confidential Information and labeled CONFIDENTIAL ~~or PROTECTED SECURITY MATERIALS (as defined in Paragraph 19)~~, in accordance with ~~this the~~ the Order, may be ~~used~~ disclosed in testimony at the ~~Hearing~~ hearing on the merits of this proceeding and offered into evidence ~~used in any~~ hearing related to this action in a manner that protects the confidentiality of the information,

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subject to the ~~Tennessee Rules~~applicable rules of Evidence~~evidence~~ and to such future orders as the TRA, the ~~Hearing Officer, or the Administrative Law Judge~~hearing officer, or administrative law judge may enter. Any party intending to use documents, information, or testimony designated ~~CONFIDENTIAL or PROTECTED SECURITY MATERIALS~~as Confidential Information shall inform the Producing Party and the TRA, the ~~Hearing Officer, or the Administrative Law Judge~~hearing officer, or administrative law judge, prior to the ~~Hearing~~hearing on the ~~Merits~~merits of the case, of the proposed use~~;~~, and shall advise the TRA, the ~~Hearing Officer, or the Administrative Law Judge~~hearing officer, or administrative law judge, and the Producing Party before use of ~~the~~such information during witness examinations so that appropriate measures can be taken by the TRA, the ~~Hearing Officer, or the Administrative Law Judge~~hearing officer, or administrative law judge to protect the confidential nature of the information.

9. Except for documents filed ~~in~~with the TRA ~~Docket Room~~, all documents covered by the terms of ~~this~~the Order that are disclosed to the requesting party shall be maintained ~~separately in files marked~~labeled CONFIDENTIAL and labeled with reference to this Order at the offices of the requesting ~~party's~~party's counsel of record, ~~kept in a secure place and returned to the Producing Party pursuant to Paragraph 16 of this Order.~~

10. Nothing herein shall be construed as preventing any party from continuing to use and disclose any information (a) that is in the public domain, or (b) that subsequently becomes part of the public domain through no act of, or violation of the terms herein, any party subject to this Order, or (c) that is disclosed to it by a third party, where said disclosure does not itself violate any contractual or legal obligation or terms of this Order, or (d) that is independently developed by a party, or (e) that is known or used by it prior to this proceeding~~-,~~ or (f) is otherwise not confidential under state or federal

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law, regulation or rule. The burden of establishing the existence of (a) through (e) shall be upon the party attempting to use or disclose ~~the~~such information.

11. Any party may contest the designation of any document or information as ~~CONFIDENTIAL or PROTECTED SECURITY MATERIALS~~ Confidential Information by filing a ~~Motion~~motion with the TRA, ~~Hearing Officer, Administrative Law Judge~~hearing officer, administrative law judge or the courts, as appropriate, for a ruling that the documents, information, or testimony should not be so treated. All documents, information and testimony designated as ~~CONFIDENTIAL or PROTECTED SECURITY MATERIALS~~ Confidential Information, however, shall be maintained as such until the TRA, ~~the Hearing Officer, the Administrative Law Judge~~hearing officer, administrative law judge, or a court orders otherwise. A ~~Motion~~motion to contest must be filed not later than ~~fifteen (15)~~five (5) days after receipt of the material designated Confidential Information or ten (10) days prior to the ~~Hearing~~hearing on the ~~Merits~~merits, whichever date occurs later in time or as otherwise ordered by the TRA. Any ~~Reply from the Company~~reply seeking to protect the status of their ~~CONFIDENTIAL INFORMATION or PROTECTED SECURITY MATERIALS~~ the Confidential Information must be received not later than ~~ten (10)~~five (5) days prior to the ~~Hearing~~hearing on the ~~Merits~~merits or as otherwise ordered by the TRA. Motions made and subsequent replies received within the five (5) days prior to the Hearing on the merits shall be presented to the Authority TRA at the Hearing hearing on the Merits merits for a ruling.

~~12. Nothing in this Order shall prevent any party from asserting any objection to discovery other than an objection based upon grounds of confidentiality. In the event the Consumer Advocate and Protection Division of the Office of the Attorney General becomes a party to this proceeding, nothing in this Order is intended to limit or expand the statutory authority of the Attorney General or the Consumer Advocate and Protection Division as expressed~~

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~~in T.C.A. § 10-7-504(a) titled Confidential Records, and T.C.A. § 65-4-118 titled Consumer Advocate and Protection Division. The Attorney General will provide timely notice of filing or intent to disclose in the discharge of the duties of the Office of the Attorney General and Reporter, pursuant to T.C.A. § 10-7-504(a)(5)(C), so that the Producing Party may take action relating to disclosure.~~

~~_____ The obligations of the Attorney General under this Order are further subject to Tennessee's Public Records Act. Nothing in this Order is intended to violate Tennessee's Public Records Act or Freedom of Information Act ("FOIA"). In the event that the Attorney General is served with a subpoena, public records, freedom of information act request, or other request that calls for the production of CONFIDENTIAL INFORMATION, the Attorney General, will notify the Producing Party by notifying the undersigned of the existence of the subpoena, public records request, FOIA request, or other request, at least five (5) days before responding to the request. Following the five day notice period, the Attorney General may elect to wait to produce such information as allowed by state law in order to provide the Producing Party an opportunity to challenge said subpoena or request or to make arrangements to preserve the confidentiality of the CONFIDENTIAL INFORMATION that is subject to such request.~~

~~_____ 13. 12. Non-party witnesses shall be entitled to invoke the provisions of this Order by designating information disclosed or documents produced for use in this action as CONFIDENTIAL, in which event the provisions of this Order shall govern the disclosure of information or documents provided by the non-party witness. A non-party witness' designation of information as CONFIDENTIAL may be challenged under Paragraph 11 their action as Confidential Information pursuant to the terms of this Order.~~

~~14. 13. No person authorized under the terms herein to receive access to documents, information, or testimony designated as CONFIDENTIAL Confidential Information~~

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shall be granted access until such person has complied with the requirements set forth in Paragraph 4 of this Order.

1514. Any person to whom disclosure or inspection is made in violation of this Order shall be bound by the terms of this Order.

1615. Upon an order becoming final in this proceeding ~~or~~ and conclusion of any appeals resulting from such an order, all the filings, exhibits and other materials ~~and~~ information designated CONFIDENTIAL or PROTECTED SECURITY MATERIALS Confidential Information and all copies thereof shall be returned to counsel ~~for~~ of the party who produced ~~(or originally created)~~ the filings, exhibits and other materials, within fifteen (15) days. ~~Subject to the requirements of Paragraph 7 above, the TRA may retain copies of information designated as CONFIDENTIAL or PROTECTED SECURITY MATERIALS as may be necessary to maintain the record of this case intact. Counsel who received the filings, exhibits and other materials, designated as CONFIDENTIAL or PROTECTED SECURITY MATERIALS of a written request from the Producing Party, or counsel in possession of such documents shall certify to counsel for~~ of the Producing Party that all the filings, exhibits and other materials, plus designated as Confidential Information and all copies or extracts, notes or memorandums from the filings, exhibits and other materials, and all copies of the extracts from the filings, exhibits and other materials thereof have been delivered to counsel for the Producing Party or destroyed and that. If requested to return any electronic copies of CONFIDENTIAL INFORMATION or PROTECTED SECURITY MATERIALS received or mentioned by the receiving Confidential Information, the Attorney General may request the permission of the TRA to retain the Confidential Information if it deems it appropriate in the discharge of its duties or in the public interest. The requirements of this paragraph shall become operative immediately upon any party have been eliminated (including any intervenor) who withdraws

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or otherwise ceases to be a party to the case, even though the case itself may continue to be pending. Subject to the requirements of Paragraph 7 above, the TRA shall retain copies of information designated as confidential as may be necessary to maintain the record of this cause intact.

17.16. After termination of this proceeding, the provisions of this Order relating to the secrecy and confidential nature of ~~CONFIDENTIAL DOCUMENTS or PROTECTED SECURITY MATERIALS~~confidential documents, information and testimony shall continue to be binding, upon parties ~~herein~~hereto and their officers, employers, employees, agents, and/or others for five (5) years unless this Order is vacated or modified or otherwise ordered by the TRA.

18.17. Nothing herein shall prevent a party from seeking further protection for particular documents or prevent entry of a subsequent order, upon an appropriate showing, requiring that any documents, information or testimony designated as ~~CONFIDENTIAL~~Confidential Information shall receive protection other than that provided herein.

19. ~~In addition to the other provisions of this Order, Chattanooga Gas Company ("the Company") may designate and label as "PROTECTED SECURITY MATERIALS" documents and information related to security measures undertaken to protect public health and safety. The Company shall provide access to PROTECTED SECURITY MATERIALS to TRA Directors and members of the staff of the TRA and further only to authorized representatives of the intervenors in this docket. Authorized representatives shall be limited to the following: in the event that TRA staff becomes a party, one counsel of record and one other staff member or person under contract to the staff, each authorized in writing by a senior official of the TRA to have such access; and with respect to any other party, two counsel of record and a single other person, employed~~

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~~by or under contract to the party, authorized by that party in a written certification mutually agreeable to the parties.~~

~~20. The Company shall provide access to an authorized representative to PROTECTED SECURITY MATERIALS only after such authorized representative has executed an Affidavit in the form of that attached to this Order and provided a copy to the Company. Except with consent of the Company: (i) access shall be at the offices of the Company or its counsel of record and under supervision of the Company; (ii) PROTECTED SECURITY MATERIALS shall not be removed from the offices of the Company or its counsel; (iii) no copies shall be provided to an authorized representative except as provided herein. Authorized representatives may make notes or memoranda from a review of the PROTECTED SECURITY MATERIALS and may remove such notes and memoranda. In all other respects such notes and memoranda shall remain PROTECTED SECURITY MATERIALS and subject to the provisions hereof. PROTECTED SECURITY MATERIALS shall be used only to assist TRA staff or any other party to prepare for and to try this proceeding and shall not be used for any other purpose in this or any other jurisdiction.~~

~~21. Except as provided in this Order, the contents of PROTECTED SECURITY MATERIALS to which the TRA staff or other party is given access, and any notes, memoranda, or any form or information or opinions regarding or derived from the PROTECTED SECURITY MATERIALS shall not be disclosed to anyone other than an authorized representative in accordance with the Order, except that an authorized representative may disclose his or her conclusions or findings solely within, and for the purposes of, this proceeding and in accordance with this Order. PROTECTED SECURITY MATERIALS shall not otherwise be published, disclosed or divulged except as expressly provided herein. The TRA Directors, TRA staff and any other party shall treat all notes memoranda or opinions regarding or derived from the PROTECTED SECURITY MATERIALS as highly confidential and shall keep them in a secure location with access limited to~~

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~~an authorized representative, and the contents of PROTECTED SECURITY MATERIALS and any information derived from them shall be considered highly confidential, and shall not be deemed public records. The TRA staff, any party, Hearing Officer, or the TRA Directors may discuss any position or conclusion regarding security expenditures and testimony in briefs, orders, pleadings, or hearings in this proceeding without disclosing protected information to the public in accordance with this Order.~~

18. The Attorney General and its staff have authority to enter into non-disclosure agreements pursuant to Tenn. Code Ann. § 65-4-118 which are consistent with state and federal law, regulations and rules.

19. The Attorney General and its staff agree to keep Confidential Information in a secure place and will not permit them to be seen by any person who is not an employee of the State of Tennessee, the Office of the Attorney General and Reporter, or a person who has signed a Non-disclosure Agreement.

20. The Attorney General and its staff may make copies of Confidential Information and any portion thereof. To the extent not prohibited by state and federal law, regulations and rules, all notes utilizing supporting information shall be subject to the terms of this Order to the extent factual assertions are derived from the supporting information.

21. To the extent not prohibited by state law, the Attorney General will provide timely notice of filing or disclosure in the discharge of the duties of the Office of the Attorney General and Reporter, pursuant to Tenn. Code Ann. §10-7-504(a)(5)(C) or any other law, regulation or rule, so that the Company may take action relating to disclosure.

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22. Confidential Information is subject to this Protective Order, which is entered pursuant to the Tennessee Rules of Civil Procedure. If any person or entity subject to this Amended Protective Order, other than the Producing Party, receives a request or subpoena seeking the disclosure or production of "Confidential Information," such person or entity shall give prompt written notice to the TRA Hearing Officer and the Producing Party within not more than five (5) days of receiving such a request, subpoena or order and: (i) shall response to the request, subpoena or order, in writing, stating that the Confidential Information is protected pursuant to this Protective Order and (ii) shall not disclose or produce such Confidential Information unless and until subsequently ordered to do so by a court of competent jurisdiction. This Protective Order shall operate as an exception to the Tennessee Public Records Act, as set forth in the language of Tenn. Code Ann. § IO-7-503(a) " ... unless otherwise provided by state law." Because this Protective Order is issued pursuant to the Tennessee Rules of Civil Procedure, this Order creates an exception to any obligations of the Attorney General and its staff, as to the Public Records Act and other open records statutes as to Confidential Information.

23. The designation of any information, documents or things in accordance with this Order as constituting Confidential Information and the Attorney General's or its staff's treatment of such material as confidential or proprietary in compliance with this Order is not an admission of agreement by the Attorney General or its staff that the material constitutes or contains confidential commercial information or trade secret information and shall not be deemed to be either a waiver of the state's right to challenge such designation or an acceptance of such designation. The Producing Party agrees to designate information, documents or things provided to the Attorney General as Confidential Information only if it has a good faith basis for the claim. The Producing

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Party will upon request of the Attorney General or its staff provide a written explanation of the details, including statutory authority that support its designation of specified Confidential Information claim within five (5) days of a written request. The Producing Party also specifically agrees that it will not designate any documents as Confidential Information or label such documents as CONFIDENTIAL if the documents:

- a. have been distributed to the public, consumers or others; or
- b. are not maintained by the Company as Confidential Information.

24. Nothing in this Order shall prevent the Attorney General from using the Confidential Information received for investigative purposes in the discharge of the duties of the Office of the Attorney General and Reporter. Additionally, nothing in this Order shall prevent the Attorney General from informing state officials and third parties of the fact of an investigation, as needed, to conduct the investigation. Without limiting the scope of this paragraph, nothing in the Order shall prevent the Attorney General from contacting consumers whose names were provided by the Company or from discussing with any consumer any materials that he or she allegedly received from the Company or confirming that a consumer actually received the materials.

25. All information, documents and things designated as Confidential Information and produced in accordance with this Order may be disclosed in testimony or offered into evidence at any TRA or court hearing, trial, motion or proceeding of this matter, subject to the provisions of this Order, including Paragraph 7, and the applicable rules of evidence and any order the TRA may enter to protect the confidentiality of information offered at any hearing or other proceeding. The party who produced the information, documents and things designated as Confidential Information agrees to stipulate to the authentication of such information, documents and things in any such

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proceeding. If any party identified information in the Confidential Information that indicates that illegal conduct (civil or criminal) has occurred or may occur, nothing in the Order shall prevent such party from reporting such alleged conduct to the appropriate law enforcement or regulatory agency.

26. Nothing in this Agreement is intended to restrict or alter federal or state laws, regulations or rules.

27. Any person who has signed a non-disclosure certificate or is otherwise bound by the terms of this Order shall continue to be bound by this Order and/or certificate even if no longer engaged by the TRA or Intervenors.

28. Any party aggrieved with the TRA's decision in this matter may file a Petition for Reconsideration with the TRA within fifteen (15) days from and after the date of this Order.

29. Any party aggrieved with the TRA's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from and after the date of this Order.