

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

IN RE: PETITION OF CHATTANOOGA GAS COMPANY FOR APPROVAL OF ITS RATES AND CHARGES, MODIFICATION OF ITS RATE DESIGN, AND REVISED TARIFF)))))))	DOCKET NO. 09-00183
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CONSUMER ADVOCATE’S MOTION TO COMPEL

Robert E. Cooper, Jr., the Attorney General and Reporter for the State of Tennessee, through the Consumer Advocate and Protection Division (“Consumer Advocate”), respectfully moves the Tennessee Regulatory Authority (“TRA” or “Authority”) to compel Chattanooga Gas Company (“CGC”) to fully and completely respond to its discovery requests as set forth below:

INTRODUCTION

The discovery still in dispute involves requests that seek information regarding the potential sale of CGC’s “Capacity Demand Assets,” as defined below, to its affiliate SouthStar Energy Services (“SouthStar”), either directly, or by and through other affiliated companies, which might artificially understate CGC’s profits and, thereby, overstate the need for the rate increase proposed in this docket. Specifically, the Consumer Advocate requests the hearing officer compel responsive answers to the following requests: 201 and 202 from the *Discovery Request of the Consumer Advocate to Chattanooga Gas Company*, January 6, 2010.

PROCEDURAL HISTORY

On January 13, 2010, CGC filed its *Objections to CAD's First Discovery Requests*. At that time, CGC objected to the Consumer Advocate's discovery requests Nos. 201 and 202 on the grounds that these requests were not relevant to the present rate case and were overly burdensome. In response, the Consumer Advocate filed its *Motion to Compel* on January 20, 2010, with regard to these discovery requests. The parties presented oral argument at a status conference before the Hearing Officer on January 25, 2010, following the regularly scheduled Authority conference.

After taking into consideration the arguments of both parties, Hearing Officer Hotvedt issued an order in relation to these discovery requests on February 26, 2010. Hearing Officer Hotvedt found that, in compliance with the discovery standard in the State of Tennessee, "the information sought in Request Nos. 201 and 202 is reasonably calculated to lead to evidence that could be admissible in a rate case proceeding," and that neither request of the Consumer Advocate was overly broad or unduly burdensome. Therefore, the Hearing Officer granted the Consumer Advocate's Motion and ordered CGC to provide responses within 10 days of that Order. On March 3, 2010, CGC responded to Discovery Request No. 201 by stating "Deny. Chattanooga Gas Company does not sell capacity demand costs," *Correspondence of Jennifer L. Brundige*, p. 2, March 3, 2010.

CGC'S ANSWERS ARE NON-RESPONSIVE

The Consumer Advocate has filed this Motion to Compel with regard to CGC's non-responsive answers to the following Discovery Requests:

REQUEST NO. 201 Admit or Deny: Capacity Demand Costs of Chattanooga Gas Company are sold directly or indirectly through Sequent Energy Management

to SouthStar Energy Services, an AGL Resources subsidiary. For purposes of this and the following interrogatory only, "Capacity Demand Costs" shall be defined as gas commodity costs, interstate pipeline capacity, or any other costs associated with the gas supply plan of Chattanooga Gas Company.

If Denied, please describe what specific portions of the preceding are denied and why they are inaccurate.

REQUEST NO. 202 If the preceding interrogatory is "admitted," how much profit was earned by SouthStar on the capacity demand costs purchased from Chattanooga Gas Company through Sequent Energy Management. Please provide your answer by year from the period of 2003 until the present.

Counsel for CGC responded to this discovery request, No. 201, and the Hearing Officer's order by stating, "Deny. Chattanooga Gas Company does not sell capacity demand costs." Id. As a result, CGC similarly failed to answer Request No. 202. Id. However, a review of CGC's previous statements and testimony will reveal that CGC does in fact sell "capacity demand costs," even as the company's representatives have defined the term. Thus, it is the contention of the Consumer Advocate that these answers are, at best, non-responsive and at worst, a misstatement of facts already in the record.

CCG has repeatedly demonstrated that they understood the definition of "Capacity Demand Costs," as set forth in the Consumer Advocate's discovery request No. 201, to include such items as gas commodity costs and costs associated with a gas supply plan. Accordingly, their statement that CGC "does not sell capacity demand costs," runs contrary to all the facts in the record of both Dockets 09-00183 and the previous Docket 07-00224, which CGC repeatedly cited during the January 25, 2010 Status Conference. Specifically, Jennifer Brundige, counsel for CGC, stated:

Based on the definition that they're [the Consumer Advocate] setting forth, capacity demand costs are dealing with gas

commodity costs and costs associated with the gas supply plan. And we've been involved in Docket 07-00224 for over two years. That docket dealt with issues pertaining to gas supply capacity assets and the costs associated with them, as well as the gains that were generated and that would flow back through the PGA to Chattanooga's customers.

Transcript of Proceedings, p. 32, January 25, 2010 (emphasis added). While the Consumer Advocate does not agree that this discovery request is irrelevant to the present rate case, at no time has any party disputed this definition of "capacity demand costs." Furthermore, one need look no farther than discovery request No. 201 itself to remove all doubt as to what is meant by "Capacity Demand Costs." In that request, the Consumer Advocate stated "for purposes of this and the following interrogatory [No. 202] only, 'Capacity Demand Costs' shall be defined as gas commodity costs, interstate pipeline capacity, **or any other costs associated with the gas supply plan of Chattanooga Gas Company,**" *Discovery Requests of the Consumer Advocate to CGC*, pp. 64-65, January 6, 2010 (emphasis added). Mrs. Brundige accurately stated that this definition includes costs associated with the "capacity supply plan." In light of the preceding and the oral arguments presented during the January 25, 2010 conference, CGC clearly understood that the Consumer Advocate was requesting an admission or denial that CGC sold "capacity demand assets," otherwise defined as "assets related to the gas supply plan of Chattanooga Gas Company," to SouthStar Energy Services, either directly or by and through an affiliate, as evidenced by the previously-cited definition of "capacity demand costs" given by CGC's counsel during the January 25, 2010 proceeding. *Id.*

No party could reasonably disagree as to the proper definition of "capacity demand costs," so this leaves only the question of whether CGC has engaged in the sale of such costs. Taking into account the testimony of experts and the statements of counsel provided in this

Docket and in Docket 07-00224, CGC's claim that it does not sell "capacity demand costs" is quite simply incorrect. A review of the *Brief of Chattanooga Gas Company*, filed in Docket 07-00224, will show that the entire purpose of Docket 07-00224 was to review CGC's system of selling "fallow gas supply assets," *supra*, July 31, 2009. Specifically, CGC stated in its brief that "the weight of the evidence supports a finding that CGC's current RFP procedures have worked properly to ensure that CGC's customers are receiving a fair return on CGC's fallow gas supply assets used in non-jurisdictional transactions." *Id.* at 20. In fact, CGC goes on to spend a substantial portion of its brief describing the adequacy of the return its customers received on the sale of those assets. *Id.* at 23-28; *supra*.

It is patently obvious that CGC does, in fact, "sell capacity demand costs," despite its response to discovery request No. 201, *Letter of Jennifer Brundige*, p.2. Given the arguments asserted by CGC in its *Brief* in Docket 07-00224 and in its oral argument on January 25, 2010, CGC also clearly understood the meaning of "capacity demand costs" as used in discovery request Nos. 201 and 202. Thus, it would appear that CGC's failure to responsively answer these requests, as ordered by the Hearing Officer, is an effort to engage in the parsing of words as to the meaning of "capacity demand cost." If that is the case, this behavior is especially egregious in the current matter given the truncated time table with which the parties are working and the impending deadline for the direct testimony of the Consumer Advocate.

In conclusion, the Consumer Advocate would simply ask that CGC comply with the Hearing Officer's order. As this motion has demonstrated, no party at the January 25, 2010 conference, could have any reasonable doubt as to the meaning of "capacity demand costs" as used in discovery requests Nos. 201 and 202. Similarly, for all the reasons stated above, there

can be no doubt that CGC does, in fact, sell "capacity demand costs." If CGC does not sell capacity demand costs, as explicitly defined above, to its affiliate SouthStar Energy Services, either directly or by and through another affiliate, the Consumer Advocate would ask that their response to discovery request No. 201 reflect that fact. Alternatively, if such inter-affiliate sales do occur, the Consumer Advocate would ask CGC to disclose that fact as well as the amounts of those sales as outlined in discovery request No. 202.

WHEREFORE, the Consumer Advocate respectfully requests that the Authority enter an order compelling CGC to produce full and complete answers to the Consumer Advocate's discovery requests Nos. 201 and 202, as outlined above.

Respectfully submitted,



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CERTIFICATE OF SERVICE


I hereby certify that a true and correct copy of the foregoing was served via first-class U.S. Mail, postage prepaid, or electronic mail upon:

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This the 5th day of March, 2010.



T. Jay Warner
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