

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

<b>IN RE:</b>	)	
	)	
<b>PETITION OF CHATTANOOGA GAS</b>	)	
<b>FOR GENERAL RATE INCREASE,</b>	)	<b>DOCKET NO. 09-00183</b>
<b>IMPLEMENTATION OF THE</b>	)	
<b>ENERGY SMART CONSERVATION</b>	)	
<b>PROGRAMS, AND IMPLEMENTATION OF</b>	)	
<b>A REVENUE DECOUPLING MECHANISM</b>	)	

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**CONSUMER ADVOCATE'S MOTION CHALLENGING  
THE CONFIDENTIALITY OF CHATTANOOGA GAS COMPANY'S LITIGATION  
BILLINGS AND RATE CASE EXPENSES**

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Robert E. Cooper, Jr., the Attorney General and Reporter for the State of Tennessee, through the Consumer Advocate and Protection Division ("Consumer Advocate"), and in compliance with the Protective Order submitted to the Tennessee Regulatory Authority ("TRA" or "the Authority") in Docket 09-00183, respectfully moves the TRA to order that the billings of counsel submitted by Chattanooga Gas Company ("CGC") in support of its litigation expenses in Docket 07-00224 no longer be treated as confidential under the controlling Protective Order, that any such billings of counsel for CGC be full, complete and without redaction, and that the amount of CGC's rate case expense in Docket 09-00183 no longer be treated as confidential under the Protective Order.

As required by the Protective Order in Docket 09-00183, the Consumer Advocate has offered to "meet and confer" with counsel for CGC. That offer has been accepted and the parties are currently scheduled to meet at 1:30 p.m. on Monday, March 22, 2010. Should the parties reach a resolution on one or more of these issues at the scheduled meeting, the Consumer

Advocate will notify the TRA of our intention to withdraw all or a portion of this Motion. However, in light of the fact that the next status conference on any discovery issues is set for Wednesday, March 24, 2010, the Consumer Advocate is filing this Motion now in order to ensure that all parties have an opportunity to adequately respond prior to that time.

### **INTRODUCTION**

This Motion flows from the confidential billings of legal counsel submitted by CGC on October 6, 2009, in support of its request for recovery of litigation costs in Docket 07-00224. Specifically, Farmer & Luna, PLLC, submitted heavily redacted billings of \$467,148.62, in its capacity as counsel of CGC; additionally, the law firm of McKenna, Long & Aldridge, LLP, has billed CGC \$205,109.71 as of August 31, 2009.

On February 1, 2010, the Authority issued an Order granting the Motion of Chattanooga Manufacturer's Association ("CMA") requesting that CGC's request for recovery of litigation costs in Docket 07-00224 be combined with CGC's requested rate increase in Docket 09-00183. Additionally, on March 8, 2010, during a conference call between the TRA and the parties, the Authority ordered that the billings submitted on October 6, 2009, in Docket 07-00224, be moved into the record of Docket 09-00183 subject to the Protective Order already in effect in Docket 09-00183. The Consumer Advocate has complied with Paragraph 11 of the Protective Order in this docket and offered to "meet and confer with the Producing Party" on this matter. The Consumer Advocate now moves for the TRA to remove these bills from the designation "confidential" under the Protective Order in this docket and, therefore, be moved into the public record of Docket 09-00183, *Protective Order*, p.7 ¶11 (February 19, 2010). Similarly, that removal from confidentiality should include the removal of any redactions currently present on those records, as no portion of the records would remain "confidential," unless, after an *in camera* review by the Hearing Officer, the TRA finds any portion of those billings to actually be protected by an asserted privilege.

In addition, on March 5, 2010, CGC filed additional testimony from Archie R. Hickerson regarding its request for recovery of litigation costs. In that testimony, Mr. Hickerson stated that since August 31, 2010, CGC has incurred additional litigation billings of \$72,485.48, *Testimony of Archie R. Hickerson*, p.20:20-23 (March 5, 2010). While this total was not labeled confidential by CGC and was publicly filed, CGC has not yet submitted billings in support of this number. On March 15, 2010, the Consumer Advocate submitted a discovery request for any billings of counsel that may support the additional legal expenses of \$72,485.48, referred to in Mr. Hickerson's testimony. *Id.* At present, these billings have not been submitted by CGC, as they are not yet due. However, in order to achieve judicial economy and make the most effective use of the Authority's time, the Consumer Advocate has already complied with Paragraph 11 of the Protective Order in this docket and offered to "meet and confer with the Producing Party" on this matter. The Consumer Advocate moves that these amounts be prevented from being labeled "confidential" under the applicable Protective Order in Docket 09-00183 and that, upon their receipt by the Authority, these billings be moved directly into the public record of this docket, *Protective Order*, p.7 ¶11. In addition, the Consumer Advocate would again move that this inclusion in the public record require the removal of any redactions as no part of the records would remain confidential, unless, after an *in camera* review by the Hearing Officer, the TRA finds any portion of those billings to actually be protected by an asserted privilege.

Finally, in its initial rate case filing on November 16, 2009, CGC declared that the amount of its rate case expense in Docket 09-00183 was also confidential. The Consumer Advocate similarly contests the confidentiality of CGC's rate case expense in Docket 09-00183. Once again, the Consumer Advocate has already complied with Paragraph 11 of the Protective Order in this docket and offered to "meet and confer with the Producing Party" on this matter and now moves the TRA to remove CGC's estimated rate case expense from the designation of

“confidential” under the Protective Order in this docket and, thus, be moved into the public record of Docket 09-00183.

### **POSITION OF THE CONSUMER ADVOCATE IN BRINGING THIS MOTION**

The Consumer Advocate is of the opinion that there is simply no reason to permit the billings of counsel for CGC in Docket 07-00224 to be deemed confidential under the Protective Order. Furthermore, if CGC is going to ask ratepayers to be solely responsible for its litigation costs in Docket 07-00224, then ratepayers have a right to see what they are being asked to pay. Almost all companies perform a reasonableness review of litigation billings it receives from counsel prior to their payment; why then should ratepayers be expected to pay these same bills without having a similar opportunity for a reasonableness review? It is simply inequitable to ask ratepayers to pay the bills of counsel when they have never had an opportunity to review the reasonableness of those bills, or, as CGC would request, to even see the bills at all.


In addition, major sections of the bills already submitted by CGC on October 6, 2009, were redacted, removing almost any explanation for significant portions of the bills submitted. In fact, the redactions in the billings submitted by CGC are so extensive that the burden of proof should be on CGC to show why any redactions are necessary and proper in this matter. For this reason, both the legal bills already submitted by CGC and those that it will submit in response to the Consumer Advocate’s discovery filed on March 15, 2010, should be filed in the public record without redaction.

Similarly, the Consumer Advocate can find no reason to justify CGC’s labeling of its estimated rate case expenses in Docket 09-00183 as “confidential” under the Protective Order. It is highly unusual for CGC to make such a designation in its rate case filing. The amount of a utility’s estimated rate case expense is a key component of a rate case filing and, traditionally, a contested issue at the hearing on the merits or in proposed settlements between the parties. To

allow a declaration that this number is now “confidential” would require the closing of significant portions of the Hearing on the Merits to the public, including most likely the opening and closing statements of the parties in which this expense will likely be discussed. Furthermore, the utility is once again asking ratepayers to make public comment about a rate case in which they are asked to pay for the company’s rate case expense, without ever even having seen the amount that CGC is requesting for this expense. While the utility may benefit in the form of avoiding public scrutiny on the amount of the expenses for which it seeks reimbursement, allowing this figure to remain “confidential” would lead to an unjust result for CGC’s ratepayers.

**WHEREFORE**, the Consumer Advocate respectfully moves that the Authority enter an order removing the label of confidentiality and all redactions from the billings of counsel submitted by CGC in support of its request for litigation expenses in Docket 07-00224, and enter an order removing the confidentiality of CGC’s estimated rate case expense in Docket 09-00183, unless, after an *in camera* review by the Hearing Officer, the TRA finds any portion of those billings to actually be protected by an asserted privilege.

Respectfully submitted,



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**T. JAY WARNER, B.P.R. # 026649**  
Assistant Attorney General  
Office of the Tennessee Attorney General  
Consumer Advocate and Protection Division  
P.O. Box 20207  
Nashville, Tennessee 37202-0270  
Phone: (615) 532-9299  
Fax: (615) 741-1026

### 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:

J.W. Luna, Esq.  
Jennifer Brundige, Esq.  
Farmer & Luna  
333 Union Street  
Suite 300  
Nashville, TN 37201

Henry M. Walker, Esq.  
Boult, Cummings, Conners & Berry, PLC  
1600 Division Street, Suite 700  
Nashville, TN 37203

Hearing Officer Gary Hotvedt  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505

This the 19<sup>th</sup> day of March, 2010.

  
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T. Jay Warner  
Assistant Attorney General