

**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**

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DOCKET NO. 09-00183

electronically filed 4/5/10 at 3:25pm

**CONSUMER ADVOCATE'S STATEMENT IN OPPOSITION TO THE AFFIDAVIT OF
LANCE ROTH OF SEQUENT ON THE SOUTHSTAR/ AFFILIATE DISCOVERY
ISSUE**

Robert E. Cooper, Jr., the Attorney General and Reporter for the State of Tennessee, through the Consumer Advocate and Protection Division ("Consumer Advocate"), respectfully submits the following statement in opposition to the contentions set forth in the Affidavit of Lance J. E. Roth ("Roth affidavit") on behalf of Chattanooga Gas Company filed April 1, 2010. At issue is whether discovery regarding the sale of gas and capacity assets originally owned by Chattanooga Gas Company ("CGC") to companies affiliated with CGC should be allowed; in particular, the Consumer Advocate is seeking the discovery of information regarding the sale of CGC assets which are managed by CGC affiliate Sequent Energy Services ("Sequent") and then sold to CGC affiliate SouthStar Energy Services ("SouthStar") or other CGC affiliates (at times in discussion in this case, "SouthStar" has been used to mean not only SouthStar but all other CGC affiliates). The Consumer Advocate maintains that discovery regarding the sale of assets originally paid for by CGC ratepayers is necessary in order to ensure that all CGC revenues are

properly recorded; if all revenues are not recorded ratepayers will, in effect, be asked to pay higher rates than are just and reasonable.

The Hearing Officer has asked CGC for information in the form of sworn affidavit regarding the sale of CGC assets by Sequent to SouthStar or other CGC affiliates in order to allow him to determine whether the discovery request of the Consumer Advocate should be granted as set forth in the Consumer Advocate's pending Motion to Compel. As will be shown, the Roth affidavit fails to support CGC's position. Accordingly, the Consumer Advocate's Motion to Compel the discovery of SouthStar/affiliate information should be granted.

INTRODUCTION

In Roth's affidavit, filed in response to the Hearing Officer's request, he seeks to support earlier contentions by counsel for CGC that there is no need to examine information regarding sales to CGC affiliate SouthStar. Counsel for CGC's contention is that the sales of CGC assets to SouthStar or other CGC affiliates are governed by rules of the Federal Energy Regulatory Commission in such a way as to ensure that all sales of "gas" and "capacity" on the pipeline are made on the "open market" to the "highest bidder."

In fact, the essence of [Consumer Advocate witness] Mr. Buckner's testimony on pages 30-31, if true, would result in CGC and Sequent violating FERC rules which require the sale of **gas** and **capacity** supply to be placed on the **open market** and the sale to be made to the **highest bidder** (as long as the bidder has good contract and credit). To do otherwise, would lead to fines and other charges from FERC.

CGC's Objections to CAPD's Revised Second Set of Discovery Requests at page 6 (emphasis added). Significantly, this is the very passage referred to by the Hearing Officer at the status

conference of March 26, 2010, at which he requested CGC to supply an affidavit describing the sale of CGC assets to SouthStar or other CGC affiliates in such a way as to assure him that “nothing was going on.” In short, the Hearing Officer decided that if CGC could support the above contentions about the sale of gas and capacity on the “open market” to the “highest bidder,” he believed further discovery on SouthStar or other CGC affiliates was unwarranted. Excerpt of Transcript of Proceedings (“Excerpt of Proceedings”), March 26, 2010, at pages 2:10-18, 7-10, attached as **Exhibit 1**.

As will be shown below, however, Roth’s affidavit fails to support the assertions of CGC counsel that Sequent is following “FERC rules which require the sale of **gas and capacity** supply to be placed on the **open market** and the sale to be made to the **highest bidder** (as long as the bidder has good contract and credit).” CGC’s Objections to CAPD’s Revised Second Set of Discovery Requests at page 6 (emphasis added). Accordingly, the discovery on SouthStar or other CGC affiliates as propounded by the Consumer Advocate should be allowed to proceed and the Motion to Compel granted.

In particular, Roth’s affidavit fails to support the CGC position regarding the sale of gas commodity and capacity because:

1. The Roth affidavit is completely silent on the sale of gas commodity which counsel for CGC, as quoted above, asserted was regulated by FERC and required an “open market” sale to the “highest bidder.” The affidavit goes on at length about capacity, but there is no specific reference to FERC regulation of gas commodity.
2. The Roth affidavit at ¶ 10 admits that there are “**transactions involving CGC assets that may not be subject to FERC rules and regulations** [emphasis added],” thus undercutting the flat assertion by counsel for CGC that there are “FERC rules which require the sale of gas and capacity supply to be placed on the open market and the sale to be made to the highest bidder.” CGC’s Objections to CAPD’s Revised

Second Set of Discovery Requests at page 6 (emphasis added). The affidavit at ¶ 10 contends that transactions not subject to FERC rules “rarely occur”; “While such transactions rarely occur, with respect to transactions involving CGC assets that may not be subject to FERC rules and regulations” But it is the very essence of discovery to allow parties to follow up on such “rare” occurrences, rather than letting one party unilaterally decide what is “rare” and what is not. In addition, “rare” is a subjective term; what may be “rare” to Sequent may still be material to ratepayers. If however, relevant transactions are truly *de minimis*, the Consumer Advocate will acknowledge that fact.

3. The Roth affidavit is completely silent as to the exemption from “bidding requirements” for so-called short-term sales or other types of sales under 18 C.F.R. § 284.8(h)(1) (**attached as Exhibit 2**). The Consumer Advocate is aware that under FERC Order 712 asset managers such as Sequent (the party dealing with SouthStar in the transactions at issue in this case) are exempt from certain bidding requirements as between CGC and Sequent. FERC Order 712 (June 19, 2008), Docket No. RM08-1-000. The Consumer Advocate, maintains, however, that when Sequent deals with parties such as SouthStar, 18 C.F.R. § 284.8 still pertains and paragraph (h)(1)(v) provides that certain bidding requirements of § 284.8 do not apply to “[a] release for any period of 31 days or less.” Thus, it does not appear that all sales of capacity by Sequent are subject to bids from the “highest bidder” on the “open market.”
4. The Roth affidavit contains several statements in ¶ 6-7 as to the general business practices of his company, Sequent, but these statements do not address the specific question of the Hearing Officer as based on the assertions by counsel for CGC. And that question is whether Sequent is following “FERC rules which require the sale of **gas** and **capacity** supply to be placed on the **open market** and the sale to be made to the **highest bidder** (as long as the bidder has good contract and credit).” CGC’s Objections to CAPD’s Revised Second Set of Discovery Requests at page 6 (emphasis added).

1. The Roth Affidavit Is Completely Silent on the Sale of Gas Commodity

Central to the entire discussion as to whether the Consumer Advocate’s Motion to Compel the discovery of SouthStar/affiliate sales information should be granted is the statement made by counsel for CGC that the sale of gas commodity is regulated by FERC rules:

.... In fact, the essence of [Consumer Advocate witness] Mr. Buckner's testimony on pages 30-31, if true, would result in CGC and Sequent violating FERC rules which require the sale of **gas** and **capacity** supply to be placed on the **open market** and the sale to be made to the **highest bidder** (as long as the bidder has good contract and credit). To do otherwise, would lead to fines and other charges from FERC.

CGC's Objections to CAPD's Revised Second Set of Discovery Requests at page 6 (emphasis added). And, as previously mentioned, this assertion by counsel for CGC is at the heart of the Hearing Officer's decision at the status conference of March 26, 2010, at which he requested CGC to supply an affidavit describing the sale of CGC assets to SouthStar in such a way as to assure him that "nothing was going on." Excerpt of Proceedings at page 7:12-13. Thus, according to the Hearing Officer's ruling on March 26, 2010, if CGC could support the above contentions by counsel that the sale of gas and capacity was regulated by FERC and on the "open market" to the "highest bidder," he believed further discovery on SouthStar/affiliate was unwarranted. Excerpt of Proceedings at pages 2:10-18, 7-10, attached hereto as **Exhibit 1**.

Roth's affidavit, however, does not adequately support the contention by CGC counsel that the sale of gas commodity is subject to FERC rules or that there would be any FERC fines if sales were not made on the "open market" to the "highest bidder."

In fact, nowhere in the Roth affidavit is there any reference at all to the "open market." This is crucial because the concept of buying "gas" commodity on the "open market" was central to the Hearing Officer's trust in the assertions of counsel for CGC that "nothing was going on":

MR. HOTVEDT: Selling the **gas or capacity** supply. Because now this is – and this'll start to make a little bit more sense.

See, my problem with the Consumer Advocate's questions in all of this is you keep coming back to profit, and it's not about SouthStar's profit; it's about whether SouthStar got a deal, got a -- sweetheart deal. If they got a sweetheart deal, you have a right to pursue all this.

If they bought it in the **open market** the same way I did -- I could -- and they make a profit, hey, that's golden. That's business. Because if I bought it and I make a profit, you can't impute that back to CGC. Are we all --

Excerpt of Proceedings at page 6:5-18 (emphasis added).

Thus, it is clear that the Hearing Officer was looking for proof in an affidavit that "gas" was bought on the "open market". CGC, however, has failed to supply any such proof in the Roth affidavit. Accordingly, the Consumer Advocate's motion to Compel should be granted.

The Consumer Advocate's position about whether gas is sold in the open market and according to FERC rules as alleged by counsel for CGC is further supported by the attached affidavit of Terry Buckner. In this affidavit Mr. Buckner sets forth the results of his initial investigation into whether the sale of gas commodity is subject to FERC "open market" rules. The short answer is that no evidence was found supporting the contention that the sale of gas commodity is governed by any FERC "open market" rules. The affidavit of Terry Buckner is attached as **Exhibit 3**.

Based on the failure of the Roth affidavit to address the issue of whether "gas" is sold on the "open market" to the "highest bidder," CGC should be compelled to answer fully the discovery requests regarding SouthStar/affiliate transactions.

2. The Roth Affidavit Admits There Are Transactions Involving CGC Assets That May Not Be Subject to FERC Rules and Regulations

The Roth affidavit at ¶ 10 readily acknowledges that there are “**transactions involving CGC assets that may not be subject to FERC rules and regulations.**” (Emphasis added).

This admission clearly undercuts the flat assertion by counsel for CGC that there are:

FERC rules which require the sale of **gas** and **capacity** supply to be placed on the **open market** and the sale to be made to the **highest bidder** (as long as the bidder has good contract and credit). To do otherwise would lead to fines and other charges from FERC.

CGC’s Objections to CAPD’s Revised Second Set of Discovery Requests at page 6 (emphasis added).

The Roth affidavit attempts to soften this admission by stating that such FERC-less transactions are rare: “While such transactions rarely occur, with respect to transactions involving CGC assets that may not be subject to FERC rules and regulations” However, this use of the word “rarely” merely begs the question. It may well be that there are only a handful of such transactions, but surely it is better to have that determination made by the submission of actual data to the Consumer Advocate and the TRA rather than by a subjective statement of opinion in an affidavit.

The Consumer Advocate would stress that it has absolutely no reason to question the sincerity of the statement of Mr. Roth on this issue. Moreover, several persons at the Consumer Advocate have met and talked with Mr. Roth and have high regard for his business ability in the asset management market. That, however, is not the issue. The issue is whether his statement that transactions between Sequent and SouthStar that are not regulated by FERC “rarely occur”

is sufficient grounds to deny the Consumer Advocate's discovery request. The Consumer Advocate submits that it is not and requests that its motion to Compel be granted.

3. The Roth Affidavit Is Completely Silent as to the Effect of Exemption From Bidding Requirements of Short-Term Sales Under 18 C.F.R. § 284.8

In CGC's statement to the Hearing Officer regarding SouthStar discovery, counsel asserted that the sale of "gas" and "capacity supply" were placed on the "open market" and the sale made to the "highest bidder". However, FERC rules in 18 C.F.R. § 284.8 specifically exempt certain capacity transactions from bidding requirements; in particular releases under 31 days are exempted from provisions of § 284.8 otherwise applicable. 18 C.F.R. § 284.8(h)(1).

18 C.F.R. 284.8 (h)(1) provides as follows:

(h)(1) The following releases need not comply with the bidding requirements of paragraphs (c) through (e) of this section:

- (i) A release of capacity to an asset manager as defined in paragraph (h)(3) of this section;
- (ii) A release of capacity to a marketer participating in a state-regulated retail access program as defined in paragraph (h)(4) of this section;
- (iii) A release for more than one year at the maximum tariff rate; and
- (iv) A release for any period of 31 days or less.
- (v) If a release is exempt from bidding under paragraph (h)(1) of this section, notice of the release must be provided on the pipeline's Internet Web site as soon as possible, but not later than the first nomination, after the release transaction commences.

As can readily be seen, the sweeping statement by counsel for CGC that the sales of CGC gas and commodity assets by its asset manager are made to the "highest bidder" by FERC

regulations is subject to some very important exemptions. The Roth affidavit, however, fails to address the scope of these exemptions and how many apply to SouthStar transactions.

Accordingly, the Roth affidavit fails to meet the standard set forth by the Hearing Officer that CGC provide assurance that sales of its gas and capacity assets are so governed by FERC rules as to create an assurance that sales are on the “open market” to the “highest bidder.”

The position of the Consumer Advocate on the exemption from bidding requirement is also supported by the attached affidavit of Terry Buckner, **Exhibit 3**.

4. The General Statements as to the Business Practices of Sequent Are Not Relevant to the Hearing Officer’s Request

The Roth affidavit contains several statements in ¶ 6-7 as to the general business practices of his company, Sequent. These statements, however, do not address the specific question of the Hearing Officer, that is, whether Sequent is following “FERC rules which require the sale of **gas** and **capacity** supply to be placed on the **open market** and the sale to be made to the **highest bidder** (as long as the bidder has good contract and credit).” CGC’s Objections to CAPD’s Revised Second Set of Discovery Requests at page 6 (emphasis added). These statements, therefore, are irrelevant to the present inquiry.

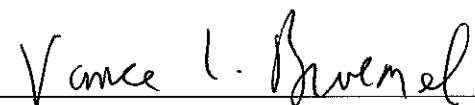
CONCLUSION

For the foregoing reasons, the Motion to Compel of the Consumer Advocate should be granted. The position stated by counsel for CGC that the sales of CGC gas and capacity are governed by FERC rules so as to ensure that sales are made on an “open market” to the “highest bidder” are not supported by the affidavit of Lance Roth.

Accordingly, the Hearing Officer should order CGC to comply with the Consumer Advocate's discovery requests on SouthStar or other CGC affiliates as soon as possible. The Consumer Advocate recognizes that due to the April 12th hearing date reasonable modifications to the requests (such as shortening the number of years of data requested) may be needed and the Consumer Advocate is prepared to discuss those modifications as soon as possible.

Respectfully submitted,

ROBERT E. COOPER, JR.
Attorney General and Reporter


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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via first-class

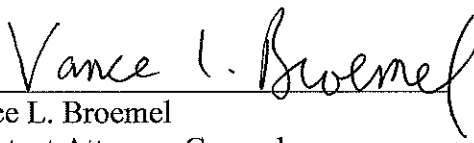
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This the 5th day of April, 2010.



Vance L. Broemel
Assistant Attorney General

EXHIBIT 1

BEFORE THE TENNESSEE REGULATORY AUTHORITY

IN RE:

PETITION OF CHATTANOOGA GAS COMPANY
FOR A GENERAL RATE INCREASE,
IMPLEMENTATION OF THE ENERGYSMART
CONSERVATION PROGRAMS AND
IMPLEMENTATION OF A REVENUE
DECOUPLING MECHANISM

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) Docket No.
) 09-00183
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EXCERPT OF

TRANSCRIPT OF PROCEEDINGS

Friday, March 26, 2010

APPEARANCES:

For Chattanooga Gas:

Mr. J. W. Luna
Ms. Jennifer L. Brundige

For the Chattanooga

Manufacturers Association:

Mr. Henry Walker

For the Consumer Advocate:

Mr. T. Jay Warner
Mr. C. Scott Jackson

Reported By:

Patricia W. Smith, RPR, CCR

1 (The aforementioned cause came on to
2 be heard on Friday, March 26, 2010, beginning at
3 approximately 1:34 p.m., before Gary Hotvedt, Hearing
4 Officer. The following is an excerpt of the
5 proceedings which were had, to-wit:)

6 (The following proceedings
7 began at approx. 2:37 p.m.)

8 MR. HOTVEDT: Okay. I've got some
9 remarks and some questions.

10 On page 6 of Chattanooga Gas Company's
11 Objections to CAPD's Revised Second Set of Discovery
12 Requests, CGC says, "In fact, the essence of
13 Mr. Buckner's testimony on page 30 to 31, if true,
14 would result in CGC and Sequent violating FERC rules
15 which require the sale of gas and capacity supply to be
16 placed on the open market and sale to be made to the
17 highest bidder. To do otherwise would lead to fines
18 and other charges from FERC."

19 I don't recall that you-all -- that
20 the Consumer Advocate responded to that proposition.

21 MR. WARNER: I can respond to it now,
22 if you would like.

23 MR. HOTVEDT: Yes, I would like you
24 to.

25 MR. WARNER: First, I'll start by

1 saying I am, by no means, an expert on FERC. I haven't
2 done anything with it, really.

3 But my basic understanding is that
4 FERC would govern interstate sales, not intrastate
5 sales. SouthStar is also doing business in Tennessee,
6 so this would not catch transactions that take place
7 between Chattanooga Gas and SouthStar wholly within the
8 state of Tennessee. So I guess I would disagree that
9 it completely captures those transactions.

10 MR. HOTVEDT: Ms. Brundige.

11 MS. BRUNDIGE: And I'm not an expert
12 on FERC. I apologize for that. But from my
13 understanding as -- on these capacity -- the capacity
14 would be put up on an electronic bulletin board, and
15 that's governed by the FERC rules.

16 So I don't know about this interstate
17 distinction, but, I mean, SouthStar would be -- you
18 wouldn't know why they were purchasing the gas assets,
19 whether they were gonna use them in Ohio or Georgia
20 or -- so they would be available just like they would
21 be to any other marketer, including other marketers in
22 the state of Tennessee like Mr. Burton.

23 MR. WARNER: If I may -- if I may
24 respond.

25 MR. HOTVEDT: Sure.

1 MR. WARNER: Well, I guess I would
2 just say that who SouthStar sells it to afterwards, I
3 guess, is a different situation. If it's assets from
4 the state of Tennessee, if it's intrastate sales, I
5 don't think FERC governs, period. Regardless of what
6 SouthStar does with them afterwards, then FERC would
7 kick in. And if they are, in fact, all sold through
8 market transactions that are regulated by FERC, that
9 would be one thing. But we don't know that. We still
10 haven't gotten this data. We still don't know how
11 they're sold, who they're sold to, and what amounts --
12 or if they're sold at all. We still haven't had the
13 "admit" question answered, so we're not to that level
14 of inquiry yet, and we don't know how it goes on
15 because those questions haven't been answered.

16 MR. HOTVEDT: Well, I beg to differ --
17 disagree. I think the question was answered. I think
18 it was denied at the last status conference. And, I
19 mean, you may not like that, but I think that's what --
20 Ms. Brundige did clearly go on the record and deny
21 that.

22 I'm trying to figure out --

23 Ms. Brundige --

24 Well, here's my confession. I'm not
25 a -- I'm not up on FERC rules either. How's that?

1 Would somebody from Chattanooga Gas --
2 would a witness from Chattanooga Gas be willing to
3 testify under oath that, in fact -- that CGC and
4 Sequent do, in fact, sell anything that they sell on
5 the open market?

6 MS. BRUNDIGE: I would have -- would
7 we put a witness on -- let me just make sure I
8 understand.

9 MR. HOTVEDT: Yes.

10 MS. BRUNDIGE: Would Chattanooga Gas
11 put a witness on to testify under oath that Chattanooga
12 sells -- whether to -- to admit that Chattanooga sells
13 on the open market?

14 MR. HOTVEDT: That's correct.
15 Chattanooga or Sequent -- that any of these sales to
16 SouthStar would be only on the open market.

17 You can think about that for a minute.

18 MS. BRUNDIGE: Well, I -- I guess I
19 need to consult with the witness -- I mean, to consult
20 with the company to the extent that they have somebody
21 that would know.

22 MR. HOTVEDT: Well, I guess what I'm
23 saying is you have said that in your pleading. That's
24 nice that you've said that in a pleading. I'd like to
25 see if Chattanooga Gas, as the utility, would take that

1 as a public -- would actually verify that as a public
2 statement. That's what I'd like to know.

3 MS. BRUNDIGE: Selling what on the
4 open market?

5 MR. HOTVEDT: Selling the gas or
6 capacity supply. Because now this is -- and this'll
7 start to make a little bit more sense.

8 See, my problem with the Consumer
9 Advocate's questions in all of this is you keep coming
10 back to profit, and it's not about SouthStar's profit;
11 it's about whether SouthStar got a deal, got a -- got a
12 sweetheart deal. If they got a sweetheart deal, you
13 have a right to pursue all this.

14 If they bought it in the open market
15 the same way I did -- I could -- and they make a
16 profit, hey, that's golden. That's business. Because
17 if I bought it and I make a profit, you can't impute
18 that back to CGC. Are we all --

19 MR. WARNER: Absolutely.

20 MR. HOTVEDT: Correct?

21 So it's only if -- it's only -- see,
22 it's not about the profit. It's about the transaction.
23 It's about whether SouthStar gets a sweetheart deal
24 through Sequent. Okay?

25 Now, that's -- now, that's what I

1 haven't heard asked yet. And that's why I've been
2 struggling with -- I sort of understand where you guys
3 are going, but I haven't really liked the questions
4 that you've been asking, because -- because I think
5 that's the germane question.

6 MR. WARNER: I guess, to be fair, we
7 just -- we haven't wanted to imply that anything
8 negative is going on. And that's been sort of the
9 attempt to draft them the way we have.

10 MR. HOTVEDT: And I appreciate that.
11 And what I keep seeing from the pleadings from
12 Ms. Brundige is that they're saying that nothing is
13 going on. And what I guess I'm saying is, I'd like to
14 have a witness from CGC swear under oath that nothing
15 is going on.

16 MS. BRUNDIGE: When you say that,
17 would it be good enough to have an affidavit from
18 somebody? Or would it have to be a witness to put on
19 testimony to have to come --

20 MR. HOTVEDT: I think we need somebody
21 that they can cross-examine. I mean, I think that's
22 your opportunity right there.

23 MR. WARNER: Absolutely.

24 MS. BRUNDIGE: But, once again, I
25 would have to check with --

1 MR. HOTVEDT: Oh, yeah, I understand
2 that.

3 MS. BRUNDIGE: But I guess the problem
4 is because it's the witnesses that were available in
5 the 2000 -- to the 07-224 docket, potentially, that
6 you're dragging back in, to have to open up all of the
7 issues from that docket.

8 MR. HOTVEDT: I'm -- I'm not trying to
9 reopen 224. I'm simply saying that you have made a
10 contention here that I support, but I want to -- I want
11 somebody other than the attorney stating that this is
12 the case, because in which case I think we've gone far
13 enough. If you can't do this, then I think they get
14 some more discovery.

15 Do you see what I'm saying?

16 MS. BRUNDIGE: Sure.

17 MR. HOTVEDT: I -- I -- I mean, that's
18 really what's going to twist the motion to compel.
19 Because if this is, in fact, true, I think we have
20 reached the end of the line, guys. If -- okay?

21 If you can't -- if it's not true, I
22 think they get to fish some more. And I think they
23 sort of almost -- and this is the other thing I wanted
24 to read, because I think you've done it from the
25 opposite side.

1 In the Consumer Advocate's Motion to
2 Compel with Regard to Chattanooga Gas Company's
3 Objections to the Consumer Advocate's Supplemental
4 Discovery Requests and Revised Second Set of Discovery
5 Requests -- phew -- on page 18, "It is imperative that
6 the Consumer Advocate receive answers to these
7 discovery requests in order to ensure that all capacity
8 demand costs or gas supply assets sold by CGC to
9 SouthStar are at full market value --"

10 MR. WARNER: Right.

11 MR. HOTVEDT: Boom. That's it. It's
12 full market value.

13 See, and then you get into profits.
14 And I don't think profits is the issue. It's the
15 market value.

16 "-- before they are again sold by
17 SouthStar on the open market; if not, SouthStar is
18 improperly recording profits."

19 I would agree with that. But if
20 SouthStar is just a better businessman --

21 MR. WARNER: Right.

22 MR. HOTVEDT: -- then you don't impute
23 those products back to -- those profits back to CGC.

24 MR. WARNER: And as I was saying, it's
25 just -- it's difficult to craft the question without

1 attempting to allege, and that's not what we're trying
2 to do. But we have -- we feel like we have to
3 investigate the possibility.

4 MR. HOTVEDT: I think it's fair, and I
5 think we've had the counsel warrant that. And now all
6 I'm saying is, before I rule, you know, to either
7 continue this or not, if I can get some assurance from
8 Ms. Brundige -- in other words, you can check with the
9 client and see if somebody is willing to stick their
10 hand up under oath and do that -- then I'm going to
11 deny the motion to compel, because I think that's the
12 end of the inquiry.

13 If you can't do that, if there is
14 something else going on, the Consumer Advocate gets to
15 continue to look.

16 Is that -- is that fair, guys?

17 MR. WARNER: It's fair, in my opinion.

18 MS. BRUNDIGE: (Counsel moves head up
19 and down.)

20 MR. HOTVEDT: So if you would sort of
21 file something next week and let me know whether, you
22 know, you have a witness that's available to do that,
23 that will really just answer the question.

24 Mr. Walker, did you --

25 MR. WALKER: No, no, we could -- we

1 could put the witness on at our next prehearing
2 conference on the 6th in Chattanooga.

3 MR. HOTVEDT: No, I don't think you
4 want to do that.

5 MR. WARNER: Also, I just wanted to
6 ask, do you want to hear any testimony about the --
7 there was one issue that sort of got lumped in with 13
8 through 26 that was sort of a separate question. It's
9 not really SouthStar. It's a question of, we asked
10 Chattanooga Gas to identify the party who, I guess,
11 would be providing the answer. And I don't know if you
12 want to hear argument on that separately, or what. I
13 just wanted to point that out.

14 MR. HOTVEDT: Well, I'll just ask --

15 MS. BRUNDIGE: I can clarify.

16 MR. HOTVEDT: Yeah.

17 MS. BRUNDIGE: I think -- it wasn't
18 clear, but what we meant was to the extent that it
19 requires attorney -- we're not going to answer if
20 there's an attorney-client privilege or work product
21 element to it, but we will identify who answered the
22 question. But we are objecting in case --

23 MR. HOTVEDT: Okay.

24 MS. BRUNDIGE: -- if there was a -- if
25 there was an attorney-client communication. But I

1 think some of the questions --

2 MR. HOTVEDT: But you will identify
3 the -- the --

4 MS. BRUNDIGE: Yes.

5 MR. HOTVEDT: -- the person that
6 responds? Okay. That's -- I mean, if you'll do that,
7 that's, I think, what we needed to do.

8 Let me just go off the record for a
9 minute. Do you want to just take five minutes, you
10 know, just -- okay. Let's run back and talk to staff.

11 (Recess taken from 2:49 to
12 2:52 p.m.)
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1 REPORTER'S CERTIFICATE

2 STATE OF TENNESSEE)

3 COUNTY OF DAVIDSON)

4 I, Patricia W. Smith, Registered
5 Professional Reporter, with offices in Nashville,
6 Tennessee, hereby certify that I reported the foregoing
7 proceedings at the time and place set forth in the
8 caption thereof; that the proceedings were
9 stenographically reported by me; and that the foregoing
10 proceedings constitute a true and correct transcript of
11 said proceedings to the best of my ability.

12 I FURTHER CERTIFY that I am not
13 related to any of the parties named herein, nor their
14 counsel, and have no interest, financial or otherwise,
15 in the outcome or events of this action.

16 IN WITNESS WHEREOF, I have hereunto
17 affixed my official signature and seal of office this
18 29th day of March, 2010.

19
20
21
22 PATRICIA W. SMITH, REGISTERED
23 PROFESSIONAL REPORTER AND NOTARY
PUBLIC FOR THE STATE OF TENNESSEE

24 My Commission Expires:

25 May 8, 2012

EXHIBIT 2

C

Effective: December 31, 2008

Code of Federal Regulations Currentness

Title 18. Conservation of Power and Water Resources

Chapter I. Federal Energy Regulatory Commission, Department of Energy

Subchapter I. Other Regulations Under the Natural Gas Policy Act of 1978 and Related Authorities

■ Part 284. Certain Sales and Transportation of Natural Gas Under the Natural Gas Policy Act of 1978 and Related Authorities (Refs & Annos)■ Subpart A. General Provisions and Conditions**→ § 284.8 Release of firm capacity on interstate pipelines.**

(a) An interstate pipeline that offers transportation service on a firm basis under subpart B or G of this part must include in its tariff a mechanism for firm shippers to release firm capacity to the pipeline for resale by the pipeline on a firm basis under this section.

(b)(1) Firm shippers must be permitted to release their capacity, in whole or in part, on a permanent or short-term basis, without restriction on the terms or conditions of the release. A firm shipper may arrange for a replacement shipper to obtain its released capacity from the pipeline. A replacement shipper is any shipper that obtains released capacity.

(2) The rate charged the replacement shipper for a release of capacity may not exceed the applicable maximum rate, except that no rate limitation applies to the release of capacity for a period of one year or less if the release is to take effect on or before one year from the date on which the pipeline is notified of the release. Payments or other consideration exchanged between the releasing and replacement shippers in a release to an asset manager as defined in paragraph (h)(3) of this section are not subject to the maximum rate.

(c) Except as provided in paragraph (h) of this section, a firm shipper that wants to release any or all of its firm capacity must notify the pipeline of the terms and conditions under which the shipper will release its capacity. The firm shipper must also notify the pipeline of any replacement shipper designated to obtain the released capacity under the terms and conditions specified by the firm shipper.

(d) The pipeline must provide notice of offers to release or to purchase capacity, the terms and conditions of such offers, and the name of any replacement shipper designated in paragraph (b) of this section, on an Internet web site, for a reasonable period.

(e) The pipeline must allocate released capacity to the person offering the highest rate and offering to meet any other terms and conditions of the release. If more than one person offers the highest rate and meets the terms and conditions of the release, the released capacity may be allocated on a basis provided in the pipeline's tariff, provided however, if the replacement shipper designated in paragraph (b) of this section offers the highest rate, the capacity must be allocated to the designated replacement shipper.

(f) Unless otherwise agreed by the pipeline, the contract of the shipper releasing capacity will remain in full force and effect, with the net proceeds from any resale to a replacement shipper credited to the releasing shipper's reservation charge.

(g) To the extent necessary, a firm shipper on an interstate pipeline that offers transportation service on a firm basis under subpart B or G of this part is granted a limited-jurisdiction blanket certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act solely for the purpose of releasing firm capacity pursuant to this section.

(h)(1) The following releases need not comply with the bidding requirements of paragraphs (c) through (e) of this section:

(i) A release of capacity to an asset manager as defined in paragraph (h)(3) of this section;

(ii) A release of capacity to a marketer participating in a state-regulated retail access program as defined in paragraph (h)(4) of this section;

(iii) A release for more than one year at the maximum tariff rate; and

(iv) A release for any period of 31 days or less.

(v) If a release is exempt from bidding under paragraph (h)(1) of this section, notice of the release must be provided on the pipeline's Internet Web site as soon as possible, but not later than the first nomination, after the release transaction commences.

(2) When a release of capacity is exempt from bidding under paragraph (h)(1)(iv) of this section, a firm shipper may not roll over, extend or in any way continue the release to the same replacement shipper using the 31 days or less bidding exemption until 28 days after the first release period has ended. The 28-day hiatus does not apply to any re-release to the same replacement shipper that is posted for bidding or that qualifies for any of the other exemptions from bidding in paragraph (h)(1) of this section.

(3) A release to an asset manager exempt from bidding requirements under paragraph (h)(1)(i) of this section is any pre-arranged release that contains a condition that the releasing shipper may call upon the replacement shipper to deliver to, or purchase from, the releasing shipper a volume of gas up to 100 percent of the daily contract demand of the released transportation or storage capacity, as provided in paragraphs (h)(3)(i) through (h)(3)(iii) of this paragraph.

(i) If the capacity release is for a period of one year or less, the asset manager's delivery or purchase obligation must apply on any day during a minimum period of the lesser of five months (or 155 days) or the term of the release.

(ii) If the capacity release is for a period of more than one year, the asset manager's delivery or purchase obligation must apply on any day during a minimum period of five months (or 155 days) of

each twelve-month period of the release, and on five-twelfths of the days of any additional period of the release not equal to twelve months.

(iii) If the capacity release is a release of storage capacity, the asset manager's delivery or purchase obligation need only be up to 100 percent of the daily contract demand under the release for storage withdrawals or injections, as applicable.

(4) A release to a marketer participating in a state-regulated retail access program exempt from bidding requirements under paragraph (h)(1)(ii) of this section is any prearranged capacity release that will be utilized by the replacement shipper to provide the gas supply requirement of retail consumers pursuant to a retail access program approved by the state agency with jurisdiction over the local distribution company that provides delivery service to such retail consumers.

(i) [Reserved by 73 FR 37092]

[57 FR 36217, Aug. 12, 1992; Order 577, 60 FR 16983, April 4, 1995; 60 FR 30187, June 8, 1995; Order 637, 65 FR 10220, Feb. 25, 2000; Order 637-A, 65 FR 35765, June 5, 2000; Order 712, 73 FR 37092, June 30, 2008; Order 712-A, 73 FR 72714, Dec. 1, 2008; 73 FR 79628, Dec. 30, 2008]

SOURCE: 44 FR 52184, Sept. 7, 1979; 51 FR 9186, March 18, 1986; 52 FR 28467, July 30, 1987; 53 FR 14923, April 26, 1988; 53 FR 50938, Dec. 19, 1988; 54 FR 52394, Dec. 21, 1989; 55 FR 6631, Feb. 26, 1990; 56 FR 14851, April 12, 1991; 56 FR 50245, Oct. 4, 1991; 57 FR 36217, Aug. 12, 1992; 57 FR 46495, 46501, Oct. 9, 1992; 57 FR 57959, Dec. 8, 1992; Order 637, 65 FR 10220, Feb. 25, 2000, unless otherwise noted.

AUTHORITY: 15 U.S.C. 717-717w, 3301-3432; 42 U.S.C. 7101-7352; 43 U.S.C. 1331-1356.

18 C. F. R. § 284.8, 18 CFR § 284.8

Current through March 25, 2010; 75 FR 14360

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END OF DOCUMENT

EXHIBIT 3

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

IN RE:)	
)	
PETITION OF CHATTANOOGA GAS)	
COMPANY FOR APPROVAL OF ITS)	DOCKET NO. 09-00183
RATES AND CHARGES, MODIFICATION)	
OF ITS RATE DESIGN, AND REVISED)	
TARIFF)	

AFFIDAVIT OF TERRY BUCKNER

STATE OF TENNESSEE)	
)	
COUNTY OF DAVIDSON)	

After having been duly sworn, I do hereby depose and aver as follows:

1. I am a Financial Regulatory Analyst for the Consumer Advocate and Protection Division of the Office of the Attorney General and Reporter ("Office"). I have filed testimony in TRA Docket No. 09-00183 and am prepared to be a witness in this case. Among other issues I have submitted testimony on, I have testified about transactions between Sequent Energy Marketing ("Sequent"), the asset manager for Chattanooga Gas Company ("CGC"), and SouthStar Energy Services ("SouthStar"), an affiliate of CGC and Sequent. It is my position that 75% of the profits from the transactions between SouthStar and its customers, using assets originating from CGC, should be imputed to CGC's ratepayers because CGC ratepayers have paid for these assets.

2. On March 31, 2010, and April 5, 2010, I spoke with persons at the Federal Energy Regulatory Commission ("FERC") regarding transactions such as those between Sequent and SouthStar, and SouthStar and its customers. Based on my conversations with these persons and my review of certain FERC regulations, particularly 18 C.F.R. § 284.8, it is my understanding that FERC rules do not govern the sale of gas commodity between Sequent and SouthStar or SouthStar and its customers so as to require "open market" sales to the "highest bidder". I have also reviewed the FERC website and found no rules governing such commodity sales on the "open market" to the "highest bidder".

3. As a result, based on these conversations with persons at FERC and my own review, I am unaware of any FERC requirement for Sequent as asset manager of CGC to sell gas on an "open market" to the "highest bidder".

4. In addition, on March 30, 2010, I spoke with Scott Shields, who is a principal at Morgan Shields Consulting (832-876-9903), a natural gas consultant firm in Houston, Texas. I asked him questions about FERC regulation of commodity sales between companies such as Sequent and SouthStar and SouthStar and its customers. I was told by Mr. Shields that he believed that FERC did not regulate such transactions as commodity sales by Sequent.

5. On page 6 of Chattanooga Gas Company's Objections to the Consumer Advocate's Revised Second Set of Discovery Requests, CGC says,

In fact, the essence of Mr. Buckner's testimony on page 30 to 31, if true, would result in CGC and Sequent violating FERC rules which require the sale of gas and capacity supply to be placed on the open market and sale to be made to the highest bidder. To do otherwise would lead to fines and other charges from FERC.

Based on my conversations with FERC personnel and Mr. Shields, I believe this statement by CGC is incorrect because FERC does not regulate the sale of "gas" in this manner.

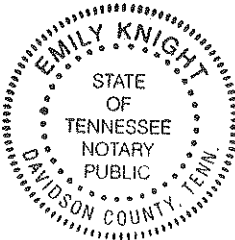
6. Furthermore, in my conversation with persons at FERC on March 31, 2010, and April 5, 2010, I was directed to 18 C.F.R. § 284.8(h)(1) which sets forth exemptions from certain bidding requirements, particularly for transactions under 31 days. Accordingly, it is my understanding that the regulation by FERC of capacity release for sales by Sequent to SouthStar under 31 days are exempt from the bidding requirements of paragraphs (c) through (e) of 18 C.F.R. § 284.8

FURTHER AFFIANT SAITH NOT.


TERRY BUCKNER

Sworn to and subscribed before me
on this the 5th day of April, 2010.


NOTARY PUBLIC



My commission expires:

Aug. 23, 2011

My Commission Expires AUG. 23, 2011