

**BEFORE THE  
TENNESSEE REGULATORY AUTHORITY**

**PREPARED REBUTTAL TESTIMONY  
OF  
ARCHIE R. HICKERSON**

**IN RE:  
CHATTANOOGA GAS COMPANY  
DOCKET NO. 09-00183**

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

1    **Q.     Please state your name, position, and address.**

2    A.     Archie R. Hickerson, Director-Regulatory Affairs, AGL Services Company. My  
3           business address is 150 West Main Street, Suite 1510, Norfolk, Virginia 23510.

4  
5    **Q.     Are you the same Archie Hickerson who previously provided prepared direct**  
6           **testimony in this proceeding?**

7    A.     Yes, I am.

8  
9    **Q.     What is the purpose of your rebuttal testimony?**

10   A.     The purpose of my rebuttal testimony is to present information for Chattanooga  
11           Gas Company (“CGC” or the “Company”) in response to the direct testimony of  
12           Consumer Advocate and Protection Division (“Consumer Advocate”) witness  
13           Buckner addressing the recovery of litigation costs incurred in docket # 07-00224.

14  
15   **Q.     Mr. Buckner compares TRA docket 07-00224 to TRA Docket #05-00165, and**  
16           **states that the TRA addressed similar asset management issues. Do you agree**  
17           **these were similar?**

1 A. No. Docket #05-00165 dealt with the Nashville Incentive Plan that involves  
2 sharing the saving that occurs when the company purchases gas at less than the  
3 benchmark price. In fact docket #05-00165 sprang from the TRA Staff's audit of  
4 Nashville Gas Company's Incentive Plan Account for the Plan Year Ended June  
5 30, 2004 Docket # 04-00290 and was initiated to address how the flat fee paid by  
6 Nashville Gas' asset manager was to be treated in conjunction with the incentive  
7 plan. CGC doesn't have an incentive plan like Nashville Gas that provides for the  
8 saving from purchasing gas below a benchmark. In addition the asset  
9 management agreements are very different. Nashville receives a flat fee from its  
10 asset manager established through a competitive bidding process for the use of its  
11 fallow assets. CGC's asset manager acts as an agent for the Company in  
12 completing non-jurisdictional transactions using CGC fallow gas supply assets  
13 and is compensated by retaining 50% of the gain from these transactions,  
14 provided that CGC has received a guaranteed minimum. Both dockets did deal to  
15 a degree with asset management agreements, but to classify them as similar, is an  
16 over simplification.

17  
18 **Q. When asked if legal fees were recovered in docket #05-00165, Mr. Buckner**  
19 **answers, no. Was the recovery of litigation cost an identified issue in docket**  
20 **#05-00165?**

21 A. No. From my review of the information posted on the Authority's website  
22 concerning the docket and discussions with representatives of Piedmont Natural

1 Gas, the recovery of litigation cost was not an issue identified in docket #05-  
2 00165.

3

4 **Q. Did the Authority consider the recovery of litigation cost in docket #05-**  
5 **00165?**

6 A. The recovery of litigation cost was not addressed in any order or settlement in  
7 docket #05-00165. It does not appear that the recovery of litigation cost was  
8 considered in that docket.

9

10 **Q. Has the Authority ever considered litigation cost in a proceeding?**

11 A. Yes. Litigation cost is normal operating cost and is routinely included in the  
12 regulatory expense included in the cost of service when rates are set. For  
13 example, a utility such as Chattanooga Gas Company can not change its rates,  
14 modify its tariffs, or implement a special contract without approval of the  
15 Authority. Obtaining such approval requires a proceeding before the Authority  
16 and the services of an attorney.

17

18 **Q. Mr. Buckner contends that the need for an independent review of CGC's gas**  
19 **purchase and incentive sharing programs was the main issue in docket #07-**  
20 **00224. Is he correct?**

21

22 A. When asked if the need for an independent review of CGC's gas purchases and  
23 incentive sharing program was an issue in docket # 07-00224, Mr. Buckner

1 responded that it was the main issue at the **hearing**. It may be that the Consumer  
2 Advocate considers the Consumer Advocate's request for an independent review  
3 as the main issue at the hearing since on July 2, 2009 (eleven days before the  
4 hearing) the CAD had withdrawn the majority of its testimony relating to almost  
5 all of the issues established by the TRA for the proceeding. I do not know how  
6 Mr. Buckner determined that the need for an independent review was the main  
7 issue in docket #07-00224. I would point out such a need was not included in the  
8 issues list adopted by the Hearing Officer's March 17, 2008 Order. The issues  
9 that were adopted in the docket are:

- 10 1. Should the current CGC sharing mechanism for profits from the sale, lease  
11 or release of capacity and any other gas supply assets, be revised? If so,  
12 how?  
13
- 14 2. Is the current bidding process fair and reasonable?  
15
- 16 3. How is a FERC-mandated payment accounted for, and is it fair to  
17 consumers?  
18
- 19 4. What is the appropriate level and mix of firm transportation, peaking and  
20 storage capacity?  
21
- 22 5. Has CGC oversubscribed to storage and transportation capacity assets to  
23 handle its jurisdictional requirements?  
24
- 25 6. What safeguards should exist to ensure CGC subscribes to the proper level  
26 of capacity?  
27
- 28 7. Have CGC's storage injections been prudent with regard to timing of  
29 costs?  
30
- 31 8. Have CGC's sales and purchase of natural gas been prudent and should  
32 safeguards be put in place to ensure least cost purchasing of natural gas?  
33 If so, what should these safeguards be?  
34
- 35 9. Is CGC currently utilizing its gas storage assets to maximize benefits to  
36 ratepayers?  
37

- 1 10. Is the amount paid by Sequent for the right to utilize or market assets,  
2 which are paid for by the customers of CGC, representative of the fair  
3 market value of such assets?  
4  
5 11. Is it proper to impute to CGC all or a portion of the profits Sequent  
6 generates through its management of CGC's idle gas supply assets and  
7 excess capacity?  
8  
9 12. What regulatory approval should occur in the event that assets are added  
10 or removed from the asset mix set forth in the asset management  
11 agreement? What affiliate guidelines should be in place if those assets are  
12 subsequently purchased by an affiliate or parent company?  
13  
14 13. Are current affiliate guidelines sufficient? If no, in what ways(s) should  
15 they be amended?  
16  
17 14. If the CGC were to engage in asset management itself, how should the  
18 Tennessee Regulatory monitor CGC's asset management activities?  
19  
20 15. Should CGC be able to recover litigation costs incurred as a result of its  
21 participation in this docket from ratepayers in the future?  
22

23 I believe that if the CAD considered the need for an independent review as the  
24 main issue in the proceeding, the CAD would have subsequently filed a motion to  
25 have it included in the issues list set by the Hearing Officer.  
26

27 **Q. When the Consumer Advocate Division filed its list of proposed issues in**  
28 **docket 07-00224, did it identify the need for an independent review as the**  
29 **primary issue?**  
30

31 **A.** No. On February 20, 2008 the CAD filed its list of proposed issues. Of those  
32 proposed, only Issue #4 referred to an independent consultant.

33  
34 Should the TRA establish periodic audits or reviews of CGC's system  
35 capacity arrangements and gas supply plans to be performed by the TRA or by

1 an independent consultant for the purpose of evaluating the facts relevant to  
2 analyzing efficiency and fairness? If so, what should they be?

3  
4 Even here the CAD stated: "Should the TRA establish periodic audits or reviews  
5 of CGC's system capacity arrangements and gas supply plans to be performed by  
6 the **TRA** or by an independent consultant." Apparently, at that time, the CAD  
7 was satisfied with having the TRA audit or review the Company's system  
8 capacity arrangement and gas supply plans. Mr. Buckner doesn't explain who at  
9 the CAD determined that the primary issue was the need for an independent  
10 review of CGC's gas purchase and incentive sharing programs, or when it was  
11 determined that this was the primary issue. Perhaps if the CAD had  
12 communicated earlier that this was its primary issue, the matter could have been  
13 resolved much earlier, and the Company, the Authority, and the CAD could have  
14 saved a great deal of time and money. The primary issue from the Company's  
15 perspective was responding to unfounded allegations by the CAD of wrong doing  
16 by Chattanooga Gas Company and its asset manager. The Company does not  
17 object to the TRA's review of the Company's gas supply plans, the asset  
18 management procedures, and sharing of the gain whenever the Authority  
19 determines that such a review is needed. The Company, however, does not agree  
20 with a process that would result in the automatic engagement of a consultant that  
21 would unnecessarily increase cost for our customers. CGC has always understood  
22 that the TRA has the authority to direct that such a review be undertaken, when  
23 the Authority determines a review is needed. In fact, the current asset  
24 management agreement approved by the Authority in docket 08-00012 provides:

1 21.3 The Parties expressly recognize that both the Company and the TRA  
2 have audit rights with respect to any and all financial and/or physical  
3 transactions undertaken in connection with this Agreement. As such the  
4 Asset Manager must provide work space for said audit(s) and appropriate  
5 personnel at its own expense.  
6

7 21.4 Asset Manager shall provide the Company and/or TRA the  
8 opportunity for periodic local reviews of Asset Manager operations, as  
9 may be required by the Company and/or the TRA.  
10

11 As I explained in my direct testimony, the Company agrees with the Authority's  
12 decision in its October 13, 2009 Order that it **will determine, after the 2013**  
13 **review, the requirement of any future review.**  
14

15 **Q. Of the 15 issues identified by the Hearing Officer in docket # 07-00224, how**  
16 **many were proposed by Chattanooga Gas Company?**

17 **A. Only issue # 15.**

18 Should CGC be able to recover litigation costs incurred as a result of its  
19 participation in this docket from ratepayers in the future?  
20

21 **Q. In response to being asked if the TRA should allow recovery of the legal fees**  
22 **incurred in docket #07-00224, Mr. Buckner answers in part; "No. As stated**  
23 **in our prior filings, the Consumer Advocate's position is that an award of**  
24 **legal fee recovery by the TRA "is not authorized under the existing law in the**  
25 **State of Tennessee, regardless of the docket or forum in which this issue is**  
26 **ultimately heard." In Footnote 8 he references the January 8, 2010 filing that**  
27 **refers to *Kingsport Power v. Tennessee Public Service Commission* case. Were**  
28 **you employed by the Tennessee Public Service Commission when the**  
29 **Kingsport Power case was before the Commission?**

1

2 A. Yes. In that case, the Kingsport Power Users Association intervened in the  
3 proceeding before the Commission. The Association asked to recover, from the  
4 utility, the litigation cost it incurred in the proceeding before the Commission.  
5 The case did not address the recovery of the litigation cost incurred by the utility  
6 in the proceeding before the Commission, but addressed the recovery of legal cost  
7 by a third party intervener such as the CAD and CMA in this proceeding.

8

9 **Q. Do you know if the Consumer Advocate Division has always held the position**  
10 **that an award of legal fee recovery by the TRA “is not authorized under the**  
11 **existing law in the State of Tennessee, regardless of the docket or forum in**  
12 **which this issue is ultimately heard?”**

13

14 A. Apparently not. The proposed settlement agreement jointly filed by the  
15 Consumer Advocate Division and Chattanooga Gas Company on July 8, 2009 in  
16 docket #07-00224 provided that Chattanooga Gas Company was to recover the  
17 litigation costs subject to a cap of \$500,000. It does not appear that the Consumer  
18 Advocate Division would agree to the recovery, if at that time, it believed that the  
19 recovery was not authorized under existing law.

20

21 **Q. Mr. Buckner also contends that the recovery would be retroactive**  
22 **ratemaking. Do you agree?**

23



1 A. No. It is not. This is no more retroactive than the deferral of gas to be recovered  
2 in a future period or crediting customers for over recovery of gas cost that  
3 occurred in a past period. The cost of a rate case is routinely deferred during the  
4 rate proceeding and amortized over a future period. In docket # 07-00224, CGC  
5 requested that it be allowed to defer, for regulatory purposes, the cost and to  
6 amortize and recover it over a future period. Here it again appears that the CAD  
7 has changed its position. On July 8, 2009, the recovery was not considered  
8 retroactive rate making.

9

10 **Q. Mr. Buckner also contends that CGC is seeking to recover the litigation cost**  
11 **through the rider and to include an excessive amount of litigation cost in**  
12 **future rates. Will you comment?**

13

14 A. Mr. Buckner is correct that the Company is requesting to recover cost incurred in  
15 docket # 07-00224 through the rider. The Company is not proposing to recover  
16 the cost through the rider and through base rates. The Company is proposing to  
17 recover through base rates the legal cost that is anticipated during the attrition  
18 period. Because of the excessively litigious atmosphere that currently exists in  
19 Tennessee, I agree with Mr. Buckner that we anticipate that we will incur a large  
20 amount of regulatory legal costs in the attrition period and future periods. I have  
21 been involved in regulation in Tennessee for approximately 34 years. During that  
22 time, I have worked for the Public Service Commission, the Consumer Advocate,  
23 and for the utility. While I was on the Public Service Commission Staff, we had

1 the reputation of being one of most in-your-face regulatory staffs in the country.  
2 That reputation continued when members of the Commission staff moved from  
3 the PSC to the Consumer Advocate Division. The regulatory atmosphere, that  
4 existed during the time that I was employed by the PSC and the CAD does not  
5 compare to the litigious atmosphere that exists today. While CGC would like to  
6 reduce its costs, we have no reason to believe that we will not continue to incur  
7 the level of legal costs that we have incurred in the recent past. Therefore, I  
8 believe that the amount of legal costs included in the attrition period is accurate  
9 and reasonable.

10 **Q. Does this conclude your testimony?**

11 **A. Yes.**

12