BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

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

CONSUMER ADVOCATE'S RESPONSE TO CGC'S MOTION IN LIMINE TO STRIKE THE SOUTHSTAR TESTIMONY OF MR. BUCKNER

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 response to Chattanooga Gas Company's ("CGC") Motion in Limine to strike the testimony of Terry Buckner regarding SouthStar issues.

Despite CGC's assertions to the contrary, the Consumer Advocate's questions about transactions involving CGC affiliate SouthStar have nothing whatsoever to do with re-opening the CGC asset management case, TRA Docket No. 07-00224. The SouthStar issue is about affiliate transactions, not the asset management agreement between Sequent and CGC. That docket is over and the Consumer Advocate obtained the outside review it sought. It is CGC, not the Consumer Advocate, who keeps bringing up the asset management docket.

Moreover, the Consumer Advocate would be requesting to examine the transactions between Sequent and SouthStar and any other affiliates of CGC whether or not an asset management program existed. The asset management agreement simply has nothing to do with affiliate transactions and CGC has pointed to no provision in the asset management agreement covering such affiliate transactions.

CGC also argues that the SouthStar/affiliate transaction issue is outside the issues of a rate case because Mr. Buckner's proposal for SouthStar revenues relates to the PGA not to base rates. There is nothing, however, that limits a rate case to so-called base rate issues. For example, on April 6, 2010, the TRA Directors, TRA Staff, and the parties traveled to Chattanooga for public comments including comments on quality of service which is not a base rate issue. In addition, part of CGC's proposed conservation program in this case is intended to be paid for by money from the CGC asset management plan which flows through the PGA, i.e., it does not affect base rates. Direct Testimony of Steve Lindsey at page 11:10-12 ("CGC is proposing that the costs associated with the Low-Income Home Weatherization Program be funded out of CGC's asset manager in accordance with the Interruptible Margin Credit in CGC's tariff."). Thus, the allegation by CGC that anything related to the PGA is outside the bounds of a rate case is without any foundation.

Most importantly, CGC in this rate case is attempting to recover legal fees from litigating what CGC itself has repeatedly called a PGA/gas cost issue from the asset management case, Docket 07-00224. For example, in its pleading opposing putting the issue of legal fees in this rate case, CGC stated that "[t]he costs incurred by CGC in Docket 07-00224 are no different; thus, CGC is requesting that these costs be considered as part of the PGA". CGC's Response in

Opposition to the CMA's Request to Combine Docket 07-00224 with Docket 09-00183, January 8, 2010, at page 5 (footnote omitted). However, now that these legal fees are in the rate case, CGC has created a "rider" set forth in the Direct Testimony of Archie Hickerson in an attempt to make the legal fees recoverable as part of rates. Since CGC is apparently comfortable with this rider approach, the Consumer Advocate is similarly ready to propose a rider to recover any imputed revenues from SouthStar transactions. The Consumer Advocate had hoped to defer the final development of its position on imputed revenues until it had all the relevant documents; thus, the Supplemental Testimony of Mr. Buckner in which he suggests recovery of imputed revenue through the PGA was largely shaped by the necessity of putting forth a position that could be articulated without using extensive underlying financial data. But it is manifestly unfair for CGC to seek to strike the testimony of a witness for his failure to fully use data that the company continues to withhold.

Moreover, the Consumer Advocate is still confident in asserting that any revenues resulting from SouthStar transactions would, in fact, be revenues to CGC, although they would be "washed out" since they would be used to reduce the cost of gas on consumers' bills if the PGA approach set forth by Mr. Buckner in his Supplemental Testimony is accepted by the TRA. Thus, revenues from affiliate transactions would be revenues but not part of the revenue requirement if the PGA approach of Mr. Buckner as currently stated is used.

In addition, in its Motion in Limine CGC completely neglected to respond to the point that Tennessee law clearly supports looking at affiliate transactions when determining how much consumers should pay for their services. See, e.g., Tennessee Public Service Commission v.

Nashville Gas Company, 551 S.W2d 315, 317 (Tenn.1977), where the Tennessee Supreme Court warned against allowing utilities to remove the "cream" of revenues from regulatory scrutiny:

> ...it seems to us that the subsidiary in actuality is nothing more than an operating division of the parent. Management decisions, for legitimate reasons, may have placed the industrial sales and the facilities requisite therefor in the parent company, but this does not prevent a public regulatory body from considering them as part of one operating system and taking them into account in determining the proper rate base and rate structure of the subsidiary. Otherwise, it would be a simple matter, through the device of holding companies, spin-offs, or other corporate arrangements, to place the cream of a utility market in the hands of a parent or an affiliate, and to strip the marketing area of a regulatory subsidiary of its most profitable customers. *See* Industrial Gas Co. v. Public Utilities Comm'n of Ohio, 135 Ohio 408, 21 N.E.2d 166 (1939).

It is true that the Consumer Advocate, in its witness testimony, has proposed making any necessary adjustments through the PGA because this is likely the most reasonable course of action under the circumstances and in the absence of any underlying financial information. It should be noted, however, that this would differ from current PGA items in that the affiliate transactions in question are not currently reviewed in the audit of CGC's PGA. Rather, the Consumer Advocate is proposing the inclusion of a new item in the PGA, in order to ensure that the rates charged to CGC's customers are properly structured. You will note that the Supreme Court's opinion citing Industrial Gas Company clearly refers to "rate structure," rather than revenue requirement, or other similar language. The reason for this is clear; this sort of affiliate transaction, which could fall in the gaps of current regulation by either FERC or the TRA, is just the type contemplated by the Supreme Court in handing down this ruling and the reason that the Court has mandated that the TRA should consider all affiliate transactions in determining proper

rates. To hold otherwise would allow the utility to continue such affiliate transactions in an unregulated gray area.

Finally, it should be remembered that the Hearing Officer has already ruled that the SouthStar/affiliate material requested by the Consumer Advocate is relevant:

> However, in ruling on discovery disputes concerning several requests from the Atmos Intervention Group for information from Atmos Energy Corp, the Hearing Officer overruled Atmos's objections to discovery that were based on lack of relevancy of the information being sought. On page 12 of that same Order, the Hearing Officer stated:
>
> > As to the relevancy dispute, it can be comfortably concluded that the requested information is relevant in that it bears on, or reasonably could lead to other information that could bear on an issue in this docket. To explain, imputation of revenue issues do occur in the course of resolving rate cases. [Footnote 37: Atmos even noted during the status conference that in the recent Chattanooga Gas rate case imputation of revenues was an issue. *See* Transcript of Proceedings (June 8, 2006) (Status Conference).] A determination to impute revenues may affect the revenue requirement of the utility. [Footnote 38: In this case, the amount of revenues imputed to the revenue requirement of Atmos could be zero. For example, it could be determined that the imputed AEM revenues should be treated as gas costs thereby reducing the amount of gas costs to be recovered from ratepayers and having no affect on the revenue requirement.] To the extent that AIG seeks to put forth an argument that the Authority should impute AEM's revenues to Atmos and thereby reduce Atmos's revenue requirement, the requested information is critical. Therefore, Atmos's argument on this point is rejected.

> Because Hearing Officer Jones's ruling was not reversed by the Authority, the Hearing Officer's Order in Docket No. 05-00258 can serve as precedent on the issue of permitting discovery, in a rate case, of information about an affiliate's revenue - - revenue which could in turn be imputed to the utility.
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> Order addressing Protective Order Dispute, Granting Motion to Compel and Modifying Procedural Schedule, February 26, 2010, at pages 5-6. (Footnote omitted.)

Accordingly, the Hearing Officer should deny CGC's Motion in Limine to strike the SouthStar portion of Mr. Buckner's testimony.

Respectfully submitted,

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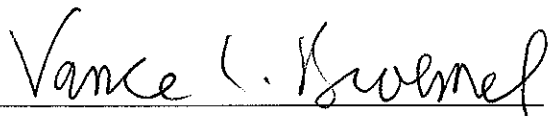

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CERTIFICATE OF SERVICE

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 7th day of April, 2010.

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