

**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)	

**NOTICE OF FILING OF AFFIDAVITS OF DR. DAVID DISMUKES AND EMILY
KNIGHT REGARDING CGC RESPONSE TO CAPD DISCOVERY REQUEST 173**

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 notice of filing and attached affidavits. The affidavits address the response of Chattanooga Gas Company ("CGC", "Company") to Discovery Request 173 of the Consumer Advocate. At the hearing in this matter of April 13, 2010, during cross-examination of Dr. Dismukes, counsel for the Company represented CGC had provided excel spreadsheets containing pre and post usage data for an energy conservation pilot program in Chattanooga.¹

Counsel for CGC requested Dr. Dismukes to agree, subject to check, that Mr. Luna had looked at the Response to Discovery Request 173 during a break in the hearing and that the pre-

¹ Tr. Vol. II., 483-485.

and post- Chattanooga usage was included and provided to the Consumer Advocate.² Dr. Dismukes agreed, subject to check.³

Since the hearing, Dr. Dismukes and the Consumer Advocate have reviewed the responses of the Company and cannot locate any documents or excel spreadsheets identified as responding to Discovery Request 173 that resembles what Counsel for the Company described during cross-examination. In the attached affidavit, Dr. Dismukes, having checked his records, withdraws his agreement subject to check that the information was provided. Emily Knight, filing an affidavit as the custodian of discovery records for Consumer Advocate, also reviewed the discovery responses provided and could not locate the data described by the Company.

The discovery request and the Company's response is as follows:

Discovery Request NO. 173:

Provide the annual energy savings and cost to date of each of the Company's current energy efficiency and energy conservation programs.

Response:

At the time of writing, no energy efficiency and conservation programs are now being conducted or offered by the Company for its customers.

The attachment CAPD 173-1 presents the estimated annual normalized energy savings and expenditures for all Chattanooga Gas Company sponsored attempts at pilot programs for the period 2006 through 2009. The data is based upon actual customer level data for all verified customers who have received a rebate from the Company during this period.

The Company response references only an attachment CAPD-1, which is a one page document of summary information. The Consumer Advocate has no reason to doubt the veracity of the Company's belief that actual pre- and post usage data was provided. However, it was not

² Tr. Vol. II, 517-518.

³ *Id.*

provided. The Consumer Advocate is convinced this omission was not an act of bad faith, but rather an inadvertent mistake. The attached affidavits are intended to clarify the record.

Respectfully submitted,

ROBERT E. COOPER, JR.
Attorney General and Reporter



Ryan L. McGehee BPR# 02559
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.
Bradley, Arant, Boult, Cummings LLP
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 7th day of May, 2010.



Ryan L. McGehee
Assistant Attorney General

BEFORE THE TENNESSEE REGULATORY AUTHORITY

In the Matter of the Petition of)
Chattanooga Gas Company for a)
General Rate Increase, Implementation)
of the EnergySMART Conservation)
Programs and Implementation of a)
Revenue Decoupling Mechanism)

DOCKET NO. 09-00183

State of Louisiana)
)
Parish of East Baton Rouge)
)
)
)
)

Affidavit Correcting
Statements Made Subject
to Check During the April
13, 2010 Public Hearing
before the TRA

- (1) David E. Dismukes, Ph.D. being of legal age and duly sworn on oath, states that I am the same David E. Dismukes who provided pre-filed Direct Testimony in the above-captioned proceeding identified by this Affidavit on the behalf of the Tennessee Office of the Attorney General, Consumer Advocacy and Protection Division ("CAPD").
- (2) I was cross examined about my Pre-filed Direct Testimony on the second day of the public hearing (April 13, 2010) before the Tennessee Regulatory Authority ("TRA" or "Authority") in Nashville, Tennessee.
- (3) During cross examination, I was questioned by outside counsel for Chattanooga Gas Company ("CGC" or "the Company") regarding my independent analysis of the Company's proposed energy efficiency measures, collectively referred to as the Company's EnergySMART program.

- (4) At hearing, the Company's outside counsel asserted that my energy efficiency savings estimates correcting for free-ridership and kickback effects overstates the potential reduction in cost effectiveness energy efficiency potentials since it uses a recent California-based study rather than data from CGC's recent pilot program.
- (5) The adjustments I made to the Company's over-stated estimates continue to be appropriate (collectively referred to as "net-to-gross adjustments") since it is my professional experience and expert opinion, that often, customers adopting energy efficiency measures (such as a high efficiency furnace), will substitute efficiency (lower bills) for comfort (higher usage) resulting in a reduction in natural gas savings that is lower than typical "deemed" savings developed from a strict engineering estimate.
- (6) The Company's outside counsel, as well as its expert on the subject, argued that CGC provided Chattanooga-specific information upon which this type of "net-to-gross" correction factor could be based. For instance, the Company's expert on this topic, Mr. Daniel J. Nikolich, noted in his pre-filed rebuttal:

That the Company is willing and able to provide the necessary data as shown by its response to CAPD discovery request number 173. In the response, the Company provided for all pilot rebate programs from 2006-2009 a complete data set identifying which program a customer received a rebate under, how much gas was used before the measure was taken, and how much gas was used afterwards, and a calculation of the change in normalized usage **by customer premise**, in the electronic spreadsheet version of the response, thereby demonstrating that the Company has the capacity and the willingness to provide the data that independent third party evaluation and monitoring would require.¹

¹Rebuttal Testimony of Daniel J. Nikolich, 4:1-9, emphasis added.

- (7) My Pre-filed Direct Testimony noted that the Company had not provided any CGC-specific usage information to conduct a Chattanooga-specific net-to-gross adjustment. In lieu of this missing information, I used the relative experience (in percentage terms) from a recently-published seminal study from California on the issue which was provided to the Company per a data request issued to the CAPD.
- (8) I also testified during cross examination that (a) I directly reviewed the Company's Response to CAPD Data Request 173 ("CAPD DR 173") and (b) that CAPD DR 173 did not include the pre- and post-pilot period information asserted by the Company.
- (9) During cross examination, the Company's outside counsel provided me with a printed copy of the Response to CAPD DR 173 and asked me to agree that the print-out did in fact include pre- and post-pilot period data and information.
- (10) During this line of cross-examination, I again testified that the Company's Response to CAPD DR 173 was deficient and did not include pre- and post-pilot program data.
- (11) Later in cross examination, the Company's outside counsel asserted that the relevant data associated with CGC's pilot program was provided on a compact diskette ("CD") accompanying its response to CAPD DR 173 and that the hard copy provided earlier in questioning was not complete. Since I was unable to electronically review the CD on the stand, I was virtually forced to agree with

outside counsel, "subject to check," that the pre and post-pilot program usage data was included on the CD.²

- (12) My agreement was based upon the condition that the answer was "subject to check" and that I would verify the veracity of CGC counsel's claim, and correct the record should counsel's assertions and representations regarding the information provided in the Company's Response to CAPD DR 173 prove to be incorrect.
- (13) By this affidavit, I withdraw my agreement with CGC's counsel after having the opportunity to review the Company's Response to CAPD DR 173 in full. It continues to be my testimony, as asserted earlier, that the Company did not provide any pre- and post-customer-specific usage associated with its recent pilot program.
- (14) Attachment 1 to this Affidavit provides a full printed copy of the Company's Response to CAPD DR 173.
- (15) The excel spreadsheet contains one sheet or tab labeled "summary." This sheet was the only information provided by the Company and despite its label ("summary") suggesting a compilation or summary of additional usage information, no other data was included in the spreadsheet.
- (16) As I testified in the hearing, the Company's Response to CAPD 173 did not include:
 - Pre-pilot period usage data for each customer participating in the pilot program.

²Preliminary hearing transcript, April 13, 2010 at 517:6 and 518:6.

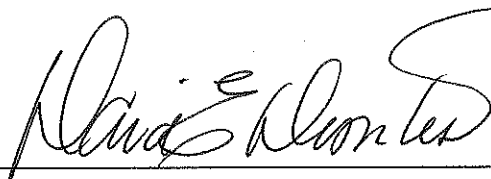
- Post-pilot usage data for each customer ("premise") participating in the pilot program.
- A comparison of pre and post-pilot period usage for participating customers on a per-premise basis as explicitly stated by Mr. Nickolich in his Pre-filed Rebuttal testimony.
- No customer/premise-specific usage data of any sort nor any sample statistics that examined the lowest observed baseline use per customer ("UPC"), the highest observed baseline UPC, the average baseline UPC nor any post-pilot program analysis that include similar sample statistics.

- (17) It is my expert and sworn opinion that, contrary to the assertions of outside counsel and Mr. Nickolich's rebuttal testimony, the Company did not provide the pre- and post-pilot period usage information on a per-participant basis for each of the relevant rebate offerings.
- (18) The only information that was provided to the CAPD in this matter, and was the source of debate during the year, has been the Company's Response to CAPD 173 which has been produced in full as Attachment 1 to this Affidavit. A direct review of this response indicates that only high level, summary information on total customer participation and potential engineering savings from each pilot program measure was provided. No customer-specific pre- and post-pilot period data was provided.
- (19) For instance, the block marked "A" in Attachment 1 (Company Response to CAPD 173) is nothing more than an annual listing of the number of pilot

program participants and does not list pre-program baseline usage, the range of that usage (i.e., highest baseline use per customer, lowest baseline use per customer, sample average use per customer). The block marked "B" lists the engineering estimates of potential therm savings per participants multiplied by the number of participants. Again, and more importantly, this does not provide the sample/survey information on pre- and post-pilot program usage needed to conduct a Chattanooga-specific "net-to-gross" analysis. This information is simply engineering savings multiplied by the number of participants listed in block A. Lastly, block "C" simply lists the program costs per measure, per year and has nothing to do with usage.

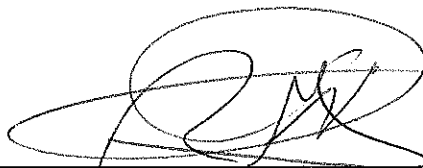
- (20) In conclusion, I retract my agreement, "subject to check," offered during the hearings, that the Company's Response to CAPD-173 provided the appropriate pre- and post-pilot period data on a per participant basis upon which a Chattanooga-specific net-to-gross adjustment factor could be developed.

SIGNATURES AND SEAL



David E. Dismukes, Ph.D.

SUBSCRIBED AND SWORN TO before me, the undersigned Notary Public,
this 26th day of April 2010.



ROBERT G. GUSHROMANI

Notary Public #50540

7330 HIGHLAND RD

#B-7

BATON ROUGE, LA 70808

(Address of Notary)

(SEAL)

My Commission Expires:

FOR LIFE

DISMUKES AFFIDAVIT -- ATTACHMENT 1

Chattanooga Gas Company Energy Conservation Programs

Number of Participants

	2006	2007	2008	2009
High Efficiency				
90% Furnace	15	34	42	34
Tankless Water Heater	23	52	23	11
High Efficiency Storage Water Heater (0.62 EF+)				
Programmable Thermostat				
Low Income Weatherization				
sub-Total High Efficiency	38	86	65	45
Standard Efficiency				
80% Furnace	81	242	71	
Water Heater/Furnace				
Water Heater	80	31	20	
Furnace				
sub-Total Standard Efficiency	161	273	91	
Total	199	359	156	45

A =

The information provided here simply lists the number of participants in the pilot program and does not include pre- and post-pilot program usage.

Estimated Annual Therm Savings

	2006	2007	2008	2009
High Efficiency				
90% Furnace	761	4,765	4,608	3,625
Tankless Water Heater	4,076	5,114	474	967
High Efficiency Storage Water Heater (0.62 EF+)				
Programmable Thermostat				
Low Income Weatherization				
sub-Total High Efficiency	4,837	9,878	5,082	4,592
Standard Efficiency				
80% Furnace	9,112	17,832	4,461	
Water Heater/Furnace				
Water Heater	12,711	2,659	569	
Furnace				
sub-Total Standard Efficiency	21,823	20,491	5,030	0
Total	26,660	30,369	10,112	4,592

B =

The information provided here simply lists the engineering estimates of savings times number of participants in the pilot program and does not include pre- and post-pilot program usage. This information does not compare a pre-pilot level of baseline usage to post-pilot actual usage.

Annual Program Costs

	2006	2007	2008	2009
High Efficiency				
90% Furnace	\$ 5,400	\$ 13,900	\$ 12,500	\$23,500.00
Tankless Water Heater	\$ 10,100	\$ 5,600	\$ 6,400	\$ 7,000
High Efficiency Storage Water Heater (0.62 EF+)				
Programmable Thermostat				
Low Income Weatherization				
sub-Total High Efficiency	\$ 15,500	\$ 19,500	\$ 18,900	\$30,500.00
Standard Efficiency				
80% Furnace	\$ 14,100	\$ 69,200	\$ 16,000	
Water Heater/Furnace				
Water Heater	\$ 15,900	\$ 14,200	\$ 2,000	
Furnace				
sub-Total Standard Efficiency	\$ 30,000	\$ 83,400	\$ 18,000	
Outreach, Promotion and Education Expenses	n/a	\$ 157,157	\$ 140,766	\$ 16,391
Total	\$ 45,500	\$ 260,057	\$ 177,666	\$ 46,891

C =

The information provided here simply lists the costs of offering the pilot program

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

IN RE:

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

DOCKET NO. 09-00183

AFFIDAVIT OF EMILY KNIGHT

STATE OF TENNESSEE

COUNTY OF DAVIDSON


1. I am an Administrative Secretary in the Consumer Advocate and Protection Division ("Consumer Advocate") of the Attorney General's Office for the State of Tennessee.
2. I receive, organize and maintain all discovery documents received by this Office with regard to the above-captioned matter.
3. To the best of my knowledge, information and belief, the two attached pages are the only documents received at this Office in response to question 173 of the Discovery Request of the Consumer Advocate to Chattanooga Gas Company.

Further affiant saith not.

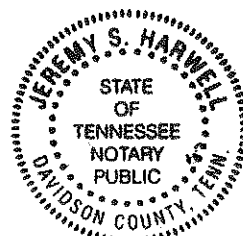


Emily Knight

Sworn to and subscribed before me
this 7th day of May, 2010.



Notary Public
My commission expires 8/23/2011



My Commission Expires AUG. 23, 2011