

the opportunity to fully develop those issues prior to the final Hearing and Deliberations. This first round of discovery is the only opportunity for the Consumer Advocate to question the Company and elicit the underlying rationale behind the many conclusions the Company relies upon in its filings prior to the submission of the Consumer Advocate's Pre-Filed Direct Testimony. In order to develop the numerous and contested issues in this Docket, the Consumer Advocate seeks to serve and have the company respond to significantly more than the 40 requests allowed of right in the Authority's rules. The Authority's Rules contemplate that the 40 request limit can be modified or waived for good cause shown. The many complex and compound issues in this Docket are, in and of themselves, good cause to allow the Consumer Advocate to serve the discovery requests that accompany this memorandum.

II. This Docket Is More Than Just a Rate Case

In its Petition, the Company is asking the Authority to increase in its rates by \$2,600,000. The Consumer Advocate must review all of the justifications proffered by the Company to support that significant new expense to Chattanooga ratepayers. The Company is also asking the Authority to fundamentally change the way the Company recovers its costs from its ratepayers. The Company is doing this by asking the Authority to adopt a revenue decoupling mechanism which it has designed and named the Alignment and Usage Adjustment ("AUA") mechanism whereby the Company can assure itself of receiving revenues from customers no matter what the aggregate level of gas usage by those customers. The Company offers the AUA in the name of energy conservation. It also is proposing to adopt an energy conservation program it named energySMART. Because the Company is seeking this fundamental change in the design of its rates, the Consumer Advocate must investigate the proposal to see what effect it might have on consumers and to insure that it actually does align the interests of the Company and consumers

as called for in Tennessee's new energy policy recently enacted as TCA § 65-4-126. Although one other gas utility has sought to adopt a decoupling mechanism, as of the filing of these requests no decision has been reached by the Authority as to if or in what form any such mechanism will be allowed. As such, the issue of decoupling is still one of first impression and great import to Tennessee ratepayers.

III. This Docket Contains Many Issues Which Require Exploration

Any rate increase request of the size sought by the Company in this Docket presents many issues and sub-issues upon which the Company relies to support its contention that it must have the increase in order to cover its costs and make a fair return. This Docket is no exception. The Company pre-filed the testimony of eight witnesses and hundreds of pages of documents and financial data carefully crafted to support the Company's position. This first round of discovery is the Consumer Advocate's one opportunity to probe the reasoning behind the conclusions and decisions proffered by the Company to support its contentions before the Consumer Advocate must submit its own Pre-Filed Direct Testimony. Careful and complete questions are the only way to fully examine the rationale behind the Company's Petition. It is also the Consumer Advocate's only means of adducing which issues it will contest and litigate in this Docket.

In addition to the rate case, this Docket also has the Company's request for the implementation of the AUA, a decoupling mechanism. This is an issue of much debate over the past year and presents new and controversial issues for the Authority to decide. In order to explore the workings of and rationale for the AUA mechanism sought by the Company, the Consumer Advocate must be free to question the Company on all aspects of the AUA as well as other alternatives that may have been considered and discarded by the Company. Additionally,

the Company proposes its energySMART conservation program. Once again, the Consumer Advocate has this one opportunity to look at all aspects of that program before deciding what, if any, experts it needs to retain and before submitting its Pre-Filed Direct Testimony. The mere fact that this Docket contains a request for a multi-million dollar increase in consumer rates justifies the Authority allowing sufficient discovery to fully examine the need for such an increase. But in this Docket the Company also asks the Authority to adopt a new energy conservation plan and that plan must also be fully examined to insure that it is measurable and verifiable as required by TCA § 65-4-126. Finally, the Company is asking the Authority to fundamentally change the way it recovers its costs from consumers, also in the name of energy conservation. Before any such sweeping change is adopted, the Consumer Advocate must be allowed, on behalf of Chattanooga ratepayers, to fully review the workings of the AUA and the effects it will have on both consumers' pocketbooks and energy use in Tennessee. All of these reasons preponderate in favor of allowing the Consumer Advocate to submit, and requiring the Company to respond to, the discovery requests submitted simultaneously with this memorandum.

IV. Tennessee Law Favors Discovery

The Consumer Advocate has a statutory right to investigate the reasonableness and the long-term consequences for consumers of the Company's proposed large rate increase, energy conservation proposal and decoupling mechanism. Tenn. Code Ann. § 65-4-118. The first and perhaps most important policy of discovery is that discovery should enable the parties and the court to seek the truth so that disputes will be decided by facts rather than legal maneuvering. *White v. Vanderbilt University*, 21 S.W. 3d 215, 223 (Tenn. Ct. App. 1999). Discovery should allow both the court and the parties to have an intelligent grasp of the issues to be litigated and

knowledge of the facts underlying them. *Vythoulkas v. Vanderbilt University Hospital*, 693 S.W. 2d 350, 356 (Tenn. Ct. App. 1985). Furthermore, discovery is not confined to the issues raised in the pleadings, for discovery itself may be used to clarify and define the issues in controversy. *Id.* at 359.

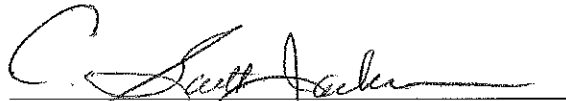
Accordingly, a party seeking discovery is entitled to obtain information about any matter, not privileged, which is relevant to the subject matter involved, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party. *State ex. Rel. Flowers v. Tennessee Trucking Assoc. Self Insurance Group Trust*, 209 S.W. 3d 602, 615 (Tenn. Ct. App. 2006). The relevancy requirement is broadly construed to include any matter that bears on, or that reasonably could lead to other matters that could bear on, any of the case's issues. *Id.* If a party's discovery goes too far, however, the court may limit the discovery sought if it is unduly burdensome or expensive, but must take into account the needs of the case, the amount in controversy, the importance of the issues at stake, limitations on the parties' resources, and whether less burdensome means for acquiring the requested information is available. *Id.* Nonetheless, Tennessee law favors discovery. *Id.*

The Hearing Officer should consider that the subject matter of this docket has far-reaching and long-term consequences for both consumers and the Company. Further, the determinations in this docket may guide future proposals from other gas utilities seeking to comply with Tennessee's new conservation policy. Finally, the number of discovery requests served by the Consumer Advocate in this Docket, while significantly more than 40, is in line with the number of requests approved in other Authority Dockets of similar dollar value and import. Given the need for additional information, the size of the rate increase sought by the Company, the broad scope of the State's new energy conservation policy which neither endorses

nor prohibits decoupling and the potential financial impact of the Company's proposal on Tennessee consumers, the Consumer Advocate would respectfully request the Motion to Exceed Forty (40) Discovery Requests be granted and the full complement of requests submitted by the Consumer Advocate be allowed.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via U.S. Mail or electronic mail upon:

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This the 6th day of January, 2010.


C. Scott Jackson