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BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION
NASHVILLE, TENNESSEE

June 18, 2018

IN RE:	)	
	)	
CHATTANOOGA GAS COMPANY	)	
PETITION FOR APPROVAL OF AN	)	
ADJUSTMENT IN RATES AND	)	**Docket No.**
TARIFF; THE TERMINATION OF	)	**18-00017**
THE AUA MECHANISM AND THE	)	
RELATED TARIFF CHANGES AND	)	
REVENUE DEFICIENCY	)	
RECOVERY; AND AN ANNUAL	)	
RATE REVIEW MECHANISM	)	

CHATTANOOGA GAS COMPANY
RESPONSE IN OPPOSITION TO
THE CONSUMER ADVOCATE'S MOTION TO COMPEL DISCOVERY

Chattanooga Gas Company ("Company" or "CGC"), pursuant to Rule 1220-01.02.11, of the rules of the Tennessee Public Utility Commission ("TPUC" or "Commission") and Rules 26.02, 26.03, and 37.01, Tennessee Rules of Civil Procedure, and T.C.A. § 65-5-103, hereby submits this Response in Opposition ("Response") to the Consumer Advocate's Motion to Compel Discovery ("Motion") since the requested additional discovery is irrelevant to the subject of this docket, not reasonably calculated to lead to the discovery of admissible evidence, and the benefit and expense of producing the requested electronically stored information outweighs the likely benefits, especially given the other information provided. CGC has been overly generous, lenient, and highly cooperative in responding to the extraordinary discovery demands made by the Consumer Protection and Advocate Division of the Office of the Attorney General ("CPAD" or "Consumer Advocate") – over 700 discrete discovery requests to date. But the discovery requests

subject to the Motion are a bridge too far and CGC must strongly oppose. To the extent necessary, CGC hereby also seeks a protective order from the Hearing Officer regarding the discovery sought in the Motion. In furtherance of this Response, CGC states as follows:

I. Introduction and Background

1. In order to fully understand CGC's objection to this Motion, it is necessary to have some context for the unprecedented discovery that has taken place to date without any previous motion practice before the Hearing Officer except for CPAD's initial request to serve more than 40 discovery requests. CGC's request in this docket is typical for a general revenue requirements rate case, but the volume and scope of discovery undertaken by CPAD is truly unprecedented and far beyond anything necessary to investigate CGC's rate request.

2. On February 15, 2018, CGC initiated this docket by filing its petition, supporting testimony, and minimum filing guidelines ("MFGs"). As filed, CGC requested rate relief, the recovery of the AUA revenue deficiency, and an annual rate review mechanism; the rate case part of the filing incorporated the lower tax rate and other impacts due to the passage of the 2017 Tax Act and Jobs legislation. On April 10, 2018, CGC formally withdrew its annual rate review and SEED tariff requests from any further consideration in this docket.

3. On the same day as filing this case, CGC provided CPAD a complete set of its filing documents, including the confidential information and the electronic spreadsheets supporting the MFGs. CGC first advised the CPAD of its intent to file a rate case in the fall of 2017, and otherwise kept the Consumer Advocate apprised of its projected filing date as it moved from December to January to February 15, 2018. While fully in possession of its entire case the day it was filed, the Consumer Advocate did not file its Petition to Intervene until March 9, 2018.

4. While this is CGC's first general rate case since 2009, there is nothing extraordinary or unusual with respect to CGC's requested rate relief. CGC is not seeking any changes in its rate structure. CGC is not requesting any new substantive programs. Unlike CGC's 2009 rate case, which sought a new rate design and other new policy initiatives, this is very much a typical revenue requirements rate case that simply follows the decisions rendered in CGC's last rate case order. With respect to the other matter remaining in this docket, the AUA revenue deficiency, this is also a very straight forward matter. Indeed, CGC has been discussing the need to terminate the AUA and recover the unpaid customer revenue deficiency with the CPAD and Commission for over two years, so CGC's issues with the AUA were well known prior to the submission of this case.

5. Since filing its case, CGC has represented that it would act in good faith to be responsive to CPAD's discovery, and it has. But the volume and scope of discovery by CPAD is unprecedented – 488 number requests constituting over 700 separate requests counting subparts.

6. Thus, while the Order Establishing Procedural Schedule issued on March 23, 2018, designated a "First Round" and a "Second Round" of discovery from intervenors such as the CPAD, CGC has not held the Consumer Advocate to any artificial limits in discovery. Thus, CPAD has served six sets of formal discovery requests: March 20, 2018, a First Round constituting 198 numbered questions; April 13, 2018, a (First) Supplement to the First Round with 158 numbered questions; April 24, 2018, a Second Round with 73 numbered questions; May 11, 2018, a Second Supplement to the First Round with 38 numbered questions; May 16, 2018, a First Supplement to the Second Round with 8 numbered questions; and May 24, 2018, a Third Supplement to the First Round with 13 numbered questions.

7. CGC has not just acted in good faith to respond to this extraordinary number of discovery requests. CGC has also not sought protective orders and not forced CPAD to jump

through hoops by objecting to each supplemental set or demanding that CPAD obtain specific leave to serve more than 40 requests, counting subparts, each time they have filed more discovery. By not engaging in a "discovery war" through an extensive motion practice, the Consumer Advocate has been able to focus its energy exploring CGC's filing with extreme thoroughness.

8. But this is not the full scope of what has been going on in the discovery trenches. Again, as a part of CGC's stated desire to be transparent and cooperative in affording the Consumer Advocate with the full opportunity to examine CGC's case, the parties have engaged in various forms of informal discovery as more of a rapid-fire response when matters needed clarification. In this spirit, CGC and CPAD conducted a telephonic meeting on May 11, 2018, in which CGC's witnesses Archie Hickerson, Heath Brooks, and Gary Tucker were questioned for 90 minutes in a non-deposition format by CPAD's attorneys and witnesses about their respective testimonies, discovery responses, and sponsored MFGs.

9. Further in this spirit, on May 24 and 25, 2018, CGC brought its witnesses Archie Hickerson and Heath Brooks to the CPAD offices in Nashville. For most of Thursday and part of Friday morning, CPAD's witnesses and attorneys were able to ask questions and generally have a dialogue with these witnesses regarding their testimony, discovery responses, and MFGs.

10. Then again, on May 31 and June 1, 2018, CGC brought its witness Gary Tucker, along with Mr. Tucker's supervisor, Mr. Mike Morley, to CPAD's offices in Nashville. For most of Thursday and most of Friday morning CPAD's witnesses and attorneys were able to ask questions and generally discuss not just Mr. Tucker's testimony, discovery responses, and MFGs, but broader questions regarding the AGL Resources merger with Southern Company and related, larger perspective questions regarding cost allocations and shared services from Mr. Morley's more informed historic perspective. At these meetings, Mr. Tucker and Mr. Morley agreed to

provide CPAD with additional written documentation on approximately 10 different follow up items, which CGC has provided generally by updating previous discovery responses.

11. Finally, in its desire to be fully responsive, CGC has engaged in further informal discovery by which CPAD's witnesses have been able to email follow up questions regarding discovery responses. Typically, these are quick clarification questions like a document is missing from a response or the number on one spreadsheet does not tie to what should be the same number on a different spreadsheet.

12. While the sheer number of requests is extreme, the extraordinary volume of material sought is also unprecedented. A review of the CPAD's questions reveals that many of these requests are not merely for copies of documents already in existence or explanations for a number. Some requests asked for customer-specific information. Some requests have required extensive time to research and generate new reports with extensive data. Some requests sought information all the way back since the last rate case, data from 2010 through 2018.

13. When it came time to produce responses, the responses to the First Round physically took CGC three days to fully produce, and this was relying on producing everything electronically. The response to CPAD 1-80 was so large it could not be emailed or downloaded, and so it had to be sent on a disc overnight from Atlanta to Nashville since it was an electronic attachment that consisted of 195 folders with 596 files. In subsequent supplemental rounds, in order to keep the process moving forward on a timely basis, sometimes CGC counsel would email responses to CPAD counsel so as to not delay CPAD's receipt of new responses, updated responses, or further responses provided as a consequence of the Nashville meetings or other follow up requests emailed to CGC. The process and volumes of information involved has been anything but routine, but CGC has endeavored to be as timely and as responsive as possible.

II. General Response and Authority to Deny the Motion

14. CGC respects the CPAD's role in this process and its need to conduct meaningful discovery, but the right to conduct discovery is not unlimited. The guiding principle in discovery is that the material sought must be "relevant to the subject matter involved in the pending action" and "the information sought appears reasonably calculated to lead to the discovery of admissible evidence." Rule 26.02(1), Tenn. R. Civ. Pro. Further, with respect to electronically stored information, the requesting party must show good cause "where the party requesting discovery shows that the likely benefit of the proposed discovery outweighs the likely burden or expense, taking into account the amount in controversy, the resources of the parties, the importance of the issues, and the importance of the requested discovery in resolving the issues." *Id.* As the Advisory Committee Note for the 1984 amendment to paragraph 1 states, "The Commission is of the view that unbounded discovery can and has led to abuse. The court can limit unnecessary and unduly burdensome discovery under the criteria set forth in the amendment." CGC shall more fully discuss below with respect to each specific request how the information sought by CPAD 1-178 and CPAD 1-400 should not be compelled because the requests fail to meet these standards.

15. CGC did not merely object to CPAD's discovery on 1-178 and 1-400 and walk away. Rather, each of these requests sought extensive production of documents some of which were in fact provided by CGC. The issue now before the Hearing Officer is whether two of the documents requested under CPAD 1-178 subparts (f) and (g) should be produced and whether under CPAD 1-400 the documents produced in response to subparts (a) through (d) should be expanded beyond the data and documents already provided. As is discussed specifically below with respect to each request, the requested information is irrelevant, not reasonably calculated to

lead to the discovery of admissible evidence, and production is unnecessarily burdensome, not important to the issues, and not necessary to resolve the issues in this case.

16. Furthermore, as CGC discussed in Section I above, contrary to statements made by the CPAD in its Motion on page 8, there is no "complexity of the issues" that "justify substantial discovery." The very few materials requested in CPAD 1-178 and CPAD 1-400 that have not been provided have not deterred CPAD from testing the merits of CGC's proposed rates given the overwhelming volume of other information requested and provided. This is a general rate case using the same rate structure as approved in CGC's last rate case with no new policy initiatives. It's essentially a math problem involving verification of the formulas and inputs while applying past approved rate design principles. The rules cited in the Motion do not authorize some extra or "substantial" level of discovery, even if this is CGC's first rate case in eight years and the amount of the increase may be larger than past cases.

17. Finally, at page 9 of its Motion, CPAD argues that since CGC "is part of the largest public utility conglomerates in the United States" that "CGC and its affiliates should not be allowed to limit discovery." It must be very clearly understood that CGC has not flatly refused to provide affiliate information. CGC has in fact provided a substantial volume of affiliate information, in connection with its responses to both CPAD 1-178 and CPAD 1-400 as well as in numerous other responses. CGC has provided affiliate information when such information is relevant to CGC's proposed rates. For example, in CPAD 1-178, CGC provided AGL Resources/Southern Company Gas affiliate cost of capital information because CGC's financing is provided by those affiliates. The issue presented in the Motion is whether holding company cost of capital information should be compelled. Similarly, in CPAD 1-400 CGC provided affiliate transaction reports, allocation factors, and other affiliate information that enables CPAD to check

CGC allocations. The issue presented in the Motion is whether CGC should be compelled to generate reports and produce a full 8 years of data that extends far beyond the historic test year all the way back to the conclusion of the last rate case. Again, CGC has only objected and not provided information not relevant, not reasonably calculated to lead to the discovery of admissible evidence, and where the burden to produce far outweighs any benefit that may be obtained from creating the irrelevant and unnecessary information requested. Nothing in the limited objections CGC has presented in CPAD 1-178 and CPAD 1-400 prevent the Consumer Advocate from providing its "valuable recommendations" in this matter. The application of these discovery rules to the specific claims made by CPAD in its Motion are more fully addressed in the subsections that follow.

III. There Was No Waiver of Objection on CPAD 1-178

18. As an initial matter, CGC did not waive its objection to CPAD 1-178, and if it did originally, any such waiver was cured in its subsequent attempts of the parties to discuss a resolution of the requested discovery and in the updated responses CGC provided. CPAD's Motion with respect to CGC's response to CPAD 1-178 is only for CGC's objections to subparts (f) and (g), which request "forecasted capital structure and cost rates for short term debt, long term debt, preferred stock, and common equity for the attrition year ending June 30, 2019" for both Southern Company consolidated and Southern Company parent only entities. Southern Company is not the parent of CGC, but rather the unregulated holding company parent to Southern Company Gas, whose information was provided in response to CPAD 1-178; Southern Company Gas is the parent of CGC.

19. The first problem with CPAD's waiver argument is that the rule of civil procedure CPAD is relying upon for particularity in objections is Rule 26.02(5), Tenn. R. Civ. Pro. However,

this is the rule regarding "Claims of Privilege or Protection of Trial Preparation Materials" which is not at issue in CGC's objection. CGC did not and is not objecting to this request on the basis of privilege or work product.

20. CPAD's second argument is made pursuant to Rule 34.02, Tenn. R. Civ. Pro., the correct rule on production. But Rule 34.02 only requires if a request is objected to that the objecting party shall state "the reasons for the objection." There is no requirement for particularity or for any "magic words" in making such an objection. Thus, in context, CGC complied with this requirement in the initial response it made. Since CPAD quoted only part of CGC's objection, it is helpful to read CGC's response in its entirety:

> The Company's [CGC] financing is provided by AGL Resources, Inc. consolidated (prior to July 1, 2016) and Southern Company Gas, consolidated (since July 1, 2016). Therefore, Southern Company, consolidated and parent are not the appropriate level of the determination of the cost of capital for Chattanooga Gas Company in this proceeding.

21. Any person reading this statement can understand that CGC is not providing the requested Southern Company consolidated and parent only cost of capital information and why – CGC does not receive its financing from Southern Company but rather from AGL Resources/Southern Company Gas, and CGC did provide the forecasted cost of capital for Southern Company Gas. CPAD likewise clearly understood this to be an objection. CGC acknowledges that unlike other responses that included objections that were more legalistically drafted to include the word "objection" in the response and the notation that "objection provided by Counsel," the initial response to CPAD 1-178 as filed did not. However, knowing this to be an objection, CPAD immediately followed up on this response with CGC counsel to determine if agreement could be reached on producing this information. In response to those requests, CGC

on May 21, 2018, and again on June 6, 2018, twice further revised its response to state with greater particularity the reasons for objecting and not responding.

22. In view of the actual, complete response to subparagrahs (f) and (g), the subsequent course of conduct between the parties, and the subsequent more detailed objections requested by CPAD, there was no waiver. To the extent there may be a waiver, then CGC has demonstrated good cause so as to grant relief from any waiver.

IV. CPAD 1-178, Southern Company Forecast Irrelevant & Unnecessary

23. CPAD's Motion to Compel with respect to CGC's response to CPAD 1-178(f) and (g) is seeking information CGC and its local distribution company ("LDC") natural gas affiliates have *never before* provided to any public utility commission or party because such information is holding company information and not CGC parent information. As CGC indicated in its June 6, 2018, further revised response:

> CGC objects to this request in that it seeks information and/or documents from other entities that are not within CGC's possession, custody, or control. Moreover, this request is not reasonably calculated to lead to the discovery of admissible evidence nor is the subject matter of the request relevant to the subject matter of this action as set forth in the Petition to the extent this request is seeking projected or forecasted capital structure and costs associated with Southern Company Parent and Southern Company Consolidated. CGC affiliated companies Nicor Gas and Florida City Gas have objected in their respective rate cases to providing the projected or forecasted capital structure and costs associated with Southern Company Parent and Southern Company Consolidated, and Nicor Gas and Florida City Gas have not produced such information.

24. Underlying this request for the forecasted capital structure of Southern Company is the desire to investigate the financing source of CGC, since CGC is not a publicly traded company. In that regard, CGC has provided Southern Company Gas forecasted cost of capital, which is the parent of CGC. As the objection states, CGC receives all of its financing from Southern Company

Gas and the historic and forecasted information has been provided to the Consumer Advocate. The holding company does not provide CGC with financing.

25. CPAD asserts that it needs the Southern Company forecasted information in order to present a "double-leverage capital structure" for CGC. While the Motion implies a long history of the Commission looking at double-leverage capital structures, the Consumer Advocate has cited to only one case, the recent Kingsport Power case in Docket No. 16-00001. But this case is not a precedent and not relevant to what CPAD's Motion is now seeking to compel from CGC because the forecasted capital structure information produced in 16-00001 was the information *for the parent of Kingsport*. What CPAD is seeking to compel from CGC is not the parent information of CGC but rather *the holding company information of the parent of CGC*. Thus, there is no precedent for producing holding company forecasted capital structure and costs when parent company information has been provided.

26. CPAD asserts that since CGC has acknowledged that this information exists, it is not burdensome to produce. But there are two problems with this argument. First, there is forecasted capital structure and costs for Southern Company consolidated and Southern Company parent-only, but this information is no longer accurate because of the recent announcement[1] of the sale of various Florida-based assets by Southern Company, including the sale of Gulf Power, a regulated electric utility, and Florida City Gas, a regulated LDC natural gas utility. So, there is no existing forecast for Southern Company that would be useful. Second, this forecast information is not CGC's to produce as it belongs to the holding company. CGC has produced the historic

[1] The Southern Company press release is available at: https://investor.southerncompany.com/information-for-investors/latest-news/latest-news-releases/press-release-details/2018/Southern-Company-Announces-Sale-of-Certain-Florida-Assets-to-NextEra-Energy/default.aspx.

capital structure information for Southern Company pursuant to request CPAD 1-177. But forecasted information of Southern Company necessarily involves that company's business plan and other operational aspects of the larger holding company business that are beyond the scope of CGC's operations as an LDC natural gas utility.

27. The uselessness of the Southern Company forecasted holding company information to CGC's capital structure in this docket is also apparent from CPAD's own motion. As CPAD acknowledges at page 10 of its Motion, Southern Company is one of the largest utility holding companies in the United States. Today, Southern Company includes both natural gas LDC companies, such as Atlanta Gas, Nicor Gas, and CGC, as well as electric generation and distribution utilities, such as Georgia Power and Alabama Power, that include nuclear, coal, solar, and natural gas electric generation resources. Thus, the mix of utilities, fuel sources, and geography make Southern Company somewhat unique in the industry and not very useful in understanding the capital structure of a gas-only LDC utility.

28. Moreover, as CGC has stated in its Further Response to CPAD 1-7 (April 19, 2018), Southern Company's acquisition of AGL Resources ("AGLR") "was not motivated by the desire to increase cost efficiencies. Rather, the AGLR acquisition was driven by the Southern Company's desire to add natural gas infrastructure to meet customers' growing needs." Thus, the capital structure for the holding company may be very different from, and irrelevant to, that of CGC and CGC's natural gas parent. If Southern Company was the immediate parent of CGC, we would not be having this discussion. But Southern Company is not the parent of CGC, Southern Company Gas is. As CGC represented to the Commission at the time CGC's parent was being acquired by Southern Company, post-acquisition AGL Resources would continue to operate as it had in the past with its own management, headquarters, board of directors, and financial structure. Other

than renaming AGL Resources as Southern Company Gas, those representations remain true. See further, CGC's Further Response to CPAD 1-7 (April 19, 2018). So Southern Company Gas is where CPAD should be focused.

29. In the final analysis, CPAD's Motion is seeking information for a holding company over which the TPUC has no jurisdiction and for which there is no precedent for producing because such information is irrelevant and unnecessary. Dr. Vander Weide, CGC's expert witness issue, did not use the holding company in preparing his cost of capital testimony or exhibits, and such information is not necessary to analyze, assess, or create your own cost of capital for CGC. Moreover, the forecasted Southern Company consolidated and parent information that does exist is rendered useless because of the recent asset sales. Accordingly, the Motion with respect to CPA 1-178(f) and (g) should be denied.

V. CPAD 1-400

30. The real issue with 1-400 is not that CGC objected and refused to respond. Rather CPAD's objection is that CGC has not produced enough information, while not offering any substantive explanation for how or why affiliate data for CGC's 45 to 55 affiliate companies,[2] none of which are regulated by this Commission, will enable it to better evaluate CGC's rate request. Moreover, none of the requested reports exist in a ready form that can be produced without further work by the relevant personnel. Thus, CGC has created and produced some responsive information with respect to the CPAD 1-400 requests, but anything further requires substantial work to develop the requested irrelevant reports. While CPAD's justification that it needs to "test the Company's common plant cost allocation methodology" may be true, such

[2] The number varies only because of the point in time for which information is being sought, not because the number of entities is unknown.

testing does not require Nicor Gas customer counts or Atlanta Gas income statements back to 2010, among other irrelevant information. The only entity allocating costs to CGC is the services company. Thus, CPAD's attempt to pull in all the other CGC affiliates who don't allocate costs to CGC and force CGC to create the detailed and multifaced reports its seeks by this Motion should be denied.

31. One of the big problems with this request is that it seeks information back, all the way back to 2010 on the theory that everything since the last rate case is at issue. But everything since the last rate case is not on the table for review. The statutes and rules for a general rate case permit CGC to file data for an historic year and a projected year, which CGC has done. Unquestionably, requests for information regarding those test years is fair game, and CGC has so responded. But CPAD has offered no justification for why data all the way back to 2010 is relevant, will lead to the discovery of relevant information, or that the benefit and expense of producing data from this lengthy period of time prior to the historic test year outweighs the likely benefits, especially given all of the other information provided. As is addressed more fully below for each subpart of this request, CGC did provide some of this information, just not the entire 8-year period.

32. In addition to seeking information back to 2010, it now appears that CPAD is seeking to expand its requests through the Motion to ask for additional information on a monthly basis beyond that in the original request. While subpart (b) of this request explicitly asked for "the monthly allocation factor" for each CGC affiliate, it now appears that the Motion is seeking to compel monthly data for customer counts, income statements, and net investment for the 45 to 55 affiliate companies, none of which are regulated by this Commission, monthly for 8 years or 96

months. If CPAD is seeking to expand this scope of its request, such an effort is inappropriate for a motion to compel, and this request for monthly data should be denied.

33. Looking more closely at the original scope of CPAD-1-400, on its face this multipart request is very deceptive. A simple review of the request does not reveal the magnitude of what is being asked for or the extensive processes that must be undertaken to extract this information, especially the older information, from CGC and all 45 to 55 affiliates' electronic databases and generate the reports.

34. This request begins with the innocuous opening, "Refer to the Company's response to CPAD 1-336 regarding allocated plant and provide the following information." But CPAD 1-336 seeks further information associated with CGC's MFG 71-1, which details CGC's allocated costs for the time periods relevant to this case, the historic test year and the projected or attrition test year. MFG 71-1 consisted of an Excel spreadsheet that is approximately 39 pages (if printed at 100% size so you can read it). MFG 71-1 is a part of the response to MFG-71 which requests:

> Provide the investment, accumulated depreciation, and deferred FIT on all property that is owned by an affiliate of the LDC, its Parent, Multi-State Utility, or Affiliated Utility Service Company, where applicable and leased or allocated to the LDC or Multi-state Utility. An operating division of a Multi-State Utility is not an affiliate.

CGC has not contested the scope of material requested by MFG-71, and CGC has fully complied with the documentation required by this MFG and further fully complied with CPAD's discovery request CPAD 1-336.

35. However, CPAD 1-400 takes the information CGC provided in MFG-71 and in response to CPAD 1-336 and expands the scope of data requested far beyond CGC's historic and projected test years. CGC shall now examine each of the subpart requests within CPAD 1-400 in

order to understand what CGC has provided as well as how each request has gone so much further beyond the permissible bounds of discovery.

36. For Subpart (a) of CPAD 1-400, the request was for the following: "Identify each entity that was allocated costs from AGL Services Company (GL29) from January 2010 through December 2017." CGC's response in full was as follows:

> CGC objects to this request in that it is overly broad, unduly burdensome, expensive, oppressive, and excessively time consuming and not reasonably calculated to lead to the discovery of admissible evidence nor is the information being sought relevant to the subject matter of this docket as set forth in the Petition. Notwithstanding the foregoing and without waiving its objections, CGC states:
>
> Subject to and without waiving this objection, please see the Company's revised response to CPAD-1-148 for a copy of the Company's affiliate transaction report for the twelve-month ending period September 2017. This report provides service company costs allocated to affiliate companies by service provider. Additionally, please refer to the Company's initial response to CPAD 1-148, attachments 1-148a – 1-148c, which provide, by month and by affiliate, allocated comparisons of actual to budget allocated costs for 2015 – 2017. These attachments provide the affiliates that were allocated costs during those three years.

Only one corporation allocates costs to CGC and that is AGL Services Company ("AGSC"). The services company allocates costs to various entities besides CGC. Thus, in this response CGC directed the Consumer Advocate to the revised response to CPAD 1-148 in which CGC provided responsive documentation through the affiliate transaction report for the 12-month period ending September 2017. In addition, the three attachments to CPAD 1-148 provided affiliate allocations by month for a three-year period. Anything beyond these materials is not relevant, not reasonably calculated to lead to the discovery of admissible evidence, and not worth the burden and expense of production when weighed against the unlikely benefits of production.

37. Subpart (b) of CPAD 1-400 went further and asked for 8 years of data: "For each entity identified above, provide the annual income statement from 2010 through 2017 in the same format as the "(D) & (E) Inc Stmt All (12.2017)" tab of the response to CPAD 1-336, along with the monthly allocation factor for each entity." CGC's provided a detailed objection along with a substantive response:

> CGC objects to this request in that it seeks information and/or documents from other entities that are not within CGC's possession, custody, or control. This request is overly broad, unduly burdensome, expensive, oppressive, and excessively time consuming and not reasonably calculated to lead to the discovery of admissible evidence nor is the information being sought relevant to the subject matter of this docket as set forth in the Petition. This request is seeking detailed financial information regarding every company allocated costs by AGL Services Company, none of which, other than CGC, are subject to the jurisdiction of this Commission. The time periods and level of detail requested is irrelevant. Notwithstanding the foregoing and without waiving its objections, CGC states:
>
> Please see the Company's response to CPAD-1-144 for the allocation factors used by the Company to allocate service company costs. The response provides the end use customers, which are used to allocate costs from certain service providers to the distribution utilities of GAS.
>
> Also see the Company's response to CPAD-1-347. This response includes the composite ratio allocation and its components. This includes the income statement requested in part (b) above and net investments, requested in part (d) above, which includes total assets less intercompany accounts as a component of the composite ratio. Finally, it is important to note that the company does not have allocation factors by entity as requested in part (b) above. Rather, AGSC allocates costs by service provider, and the allocation factors used are dependent on the service provider providing the services. Please refer to CPAD 1-13 for the services agreement, specifically Exhibit I of the agreement which is the Policies and Procedures Manual for allocating costs from AGSC to its affiliates receiving

> services. This manual provides the list of service providers and the specific services they provide as well as the allocation factor used by each service provider.

38. This detailed response reflects several key matters. First, as a part of the objection, it explains that the request is seeking detailed financial information for all of CGC's affiliates none of which are regulated by the TPUC. Moreover, the objection addresses the excessiveness of the information being sought – for the monthly allocation factor for each entity that means 96 data points for 45 to 55 corporations not regulated by this commission – this is the definition of irrelevance, and the burden of producing it outweighs any potential benefit.

39. But notwithstanding this objection, CGC did provide some of the information requested that was readily available. In referencing CPAD to CGC's response to CPAD 1-347, this response included the operating margin and operating expenses for 2016 and 2017, but it does not provide the full income statement for each. To obtain income statements for all affiliated entities for 8 years does not provide any relevant information nor lead to the discovery of admissible evidence. CPAD states it needs this information to analyze its relationships with its affiliates, but reviewing those statements does not tell you anything about CGC and how costs have been allocated to it from the services company, which is the only entity allocating costs to CGC. Again, CGC has fully provided detailed information regarding the services company allocations to CGC. As for the monthly allocation factor for each entity, CGC stated in its filed response that

> The company does not have allocation factors by entity as requested in part (b) above. Rather, AGSC allocates costs by service provider, and the allocation factors used are dependent on the service provider providing the services. Please refer to CPAD 1-13 for the services agreement, specifically Exhibit I of the agreement which is the Policies and Procedures Manual for allocating costs from AGSC to its affiliates receiving services. This manual provides the list of

service providers and the specific services they provide as well as the allocation factor used by each service provider.

40. For subpart (c) of CPAD 1-400, the request was: "For each entity identified above, provide the annual number of customers from 2010 through 2017." Here, what CPAD is seeking is the number of customers for each of CGC's affiliates, some of which are regulated local gas distribution companies like CGC, some of which are unregulated businesses, some of which have no customers at all, and all of which are not subject to the jurisdiction of the TPUC. Quite simply, the number of customers by year from 2010 to 2017 for each of the 45 to 55 affiliates is not relevant to the subject of this docket nor likely to lead to admissible evidence.

41. CGC's response and objection to subpart (c) were the same as that provided for subpart (b), and so some responsive information was provided. Specifically, in referencing CPAD to the response to CPAD 1-144, this response included budget 2018 data that does include customer numbers. Moreover, in terms of CPAD's ability to test those allocation factors that rely upon customer numbers, data from 2010, or 2011, or any other year other than the historic and projected test years is simply irrelevant.

42. Finally, for subpart (d) of CPAD 1-400, the request was: "For each entity identified above, provide the annual net investment (plant less accumulated depreciation) from 2010 through 2017." CGC's response and objection to subpart (d) were the same as that provided for subpart (b), and so some responsive information was provided. In this case, CGC referred CPAD to the response to CPAD 1-347, which provides annual net investment as a component of total assets, and assets less receivables for year 2016-2017. Again, there is no justification by CPAD for how or why annual net investment for 8 years for each CGC affiliate is relevant to an investigation of CGC's historic or projected test years.

43. In the final analysis, the scope and reach of CPAD 1-400 may on its face seem innocent and easy to produce, but it is not. It seeks to reach back and pull in data for every year since CGC's last rate case and to pull in every affiliate's data. This is wrong. Further, the information CPAD is requesting is presumably an attempt to develop alternative allocation methodologies to those that have been used by AGSC since its creation in 2000, and these methodologies have been examined in three prior CGC rate cases in the state of Tennessee without issue. The requests contained in CPAD 1-400 are beyond the scope of permissible discovery. Accordingly, the Hearing Officer should deny the Motion to Compel.

VI. Conclusion

44. The scope of discovery requests to date is unprecedented in CGC's experience. CPAD has now served more than double the number of discovery requests as it served in CGC's last rate case, which involved significant rate design and policy issues that are absent from this case.

45. No party, including CGC, has unlimited resources. The rate making process is not designed to permit a party to ask every question it may have; otherwise the case would never end. The Tennessee General Assembly recognized that a utility's advocacy for a rate increase must be balanced with the rights of the Commission and parties to probe and explore the requested relief, but it set a nine-month statutory maximum for that process. As a part of that balancing process, the General Assembly also recognized that utilities under-earning should be allowed to put rates into effect on an interim basis after six months if the case has not been decided. Inherent in the regulatory bargain underlying regulated utilities is that a utility should be provided the opportunity to earn a reasonable return, and the six-month interim rates statute provides such an opportunity subject to the final decision in the case. CGC has waived putting rates into effect after six months

so long as the Commission conducts its hearing on this matter in August and renders a decision in September so that permanent rates can be put into effect October 1, 2018. The subject of the requests subject to CPAD's Motion are designed to delay these proceedings in violation of T.C.A. § 65-5-103 by seeking discovery that is irrelevant to the subject of this docket, not reasonably calculated to lead to the discovery of admissible evidence, and, given the burden of creating the CPAP 1-400 information, not likely of producing any relevant or useful information.

WHEREFORE, Chattanooga Gas Company respectfully requests that the Hearing Office deny the Consumer Advocate's Motion to Compel.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 18th of June, 2018, a true and correct copy of the foregoing was served on the persons below by electronic mail:

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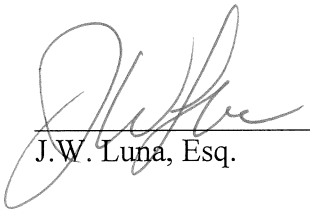

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