

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

August 17, 2018

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

ORDER GRANTING, IN PART, AND DENYING, IN PART, THE MOTION TO COMPEL
FILED BY THE
CONSUMER ADVOCATE

This matter came before the Hearing Officer of the Tennessee Public Utility Commission (“Commission” or “TPUC”) at a hearing held on June 19, 2018, to consider the *Consumer Advocate’s Motion to Compel Discovery* filed by the Consumer Protection and Advocate Division of the Office of the Attorney General (“Consumer Advocate” or “CPAD”) on June 12, 2018.

RELEVANT BACKGROUND

Chattanooga Gas Company (“CGC”) is a wholly-owned subsidiary of Southern Company Gas and is incorporated under the laws of Tennessee.¹ CGC is a public utility under the jurisdiction of the Commission and is in the business of transporting, distributing, and selling natural gas in the greater Chattanooga and Cleveland, Tennessee areas within Hamilton and Bradley Counties.² On February 15, 2018, CGC filed the *Chattanooga Gas Company Petition*

¹ *Petition*, p. 2 (February 15, 2018).

² *Id.*

for Approval of an Adjustment in Rates and Tariff; the Termination of the AUA Mechanism and the Related Tariff Changes and Revenue Deficiency Recovery; and an Annual Rate Review Mechanism (“*Petition*”). The Hearing Officer granted Petitions to Intervene filed by the Consumer Advocate and the Chattanooga Regional Manufacturers Association (“CRMA”) and issued a Procedural Schedule on March 23, 2018. On June 12, 2018, the Consumer Advocate filed the *Consumer Advocate’s Motion to Compel Discovery* (“*Motion to Compel*”).

CONSUMER ADVOCATE’S *MOTION TO COMPEL*

Pursuant to Tenn. R. Civ. P. 37.01 and TPUC Rule 1220-1-2-.11(9), the Consumer Advocate seeks to compel “accurate and complete answers to the Consumer Advocate’s discovery requests, specifically CPAD Requests 1-178 and 1-400.”³

Consumer Advocate Request 1-178 seeks information regarding the capital structure and cost rates on short term debt, long term debt, preferred stock, and common equity for the attrition year ending June 30 2019, for: ... (f) Southern Company, consolidated; and (g) Southern Company, parent only.”⁴ The Consumer Advocate states that the “Southern Company provides equity financing to Southern Company Gas, which provides financing generally for Chattanooga Gas. The Southern Company is the only entity whose stock is traded publicly.”⁵ The Consumer Advocate maintains that throughout the history of the TPUC, the Commissioners have “recognized the parent-subsidary relationships of regulated utilities owned by other companies, in part, by adopting the so-called double leverage capital structure for those utilities. The double-leverage capital structure substitutes the capital structure of the parent company for the equity portion of the subsidiary’s capital structure”⁶ According to the CPAD, this discovery

³ *Motion to Compel*, p. 1 (June 12, 2018).

⁴ *Id.* at 10.

⁵ *Id.* at 12.

⁶ *Id.*

request merely asks for information necessary to double-leverage the capital structure...”⁷

Consumer Advocate Request 1-400 seeks information regarding CGC’s allocated common plant costs. According to the Consumer Advocate, this information is “necessary to examine and analyze CGC’s relationships with its affiliates. Without this data the Consumer Advocate cannot perform the review and analysis that are required to come to a fully evaluated and supported position...”⁸ The Consumer Advocate argues that “the only methodology for establishing cost allocation in this case at this time has been provided by CGC – the Consumer Advocate must be provided the data requested so that it can test the Company’s methodology and, if appropriate develop a more accurate one.”⁹

CGC’S RESPONSE

On June 18, 2018, CGC filed its *Chattanooga Gas Company Response in Opposition to the Consumer Advocate’s Motion to Compel Discovery* (“CGC Response”) maintaining that the information requested by the Consumer Advocate is irrelevant to this docket, not calculated to lead to discovery of admissible evidence and the cost of producing the requested information outweighs the benefits.¹⁰ Regarding CPAD Request 1-178, CGC argues that Southern Company is not the parent of CGC but that Southern Company Gas is. Further, CGC maintains it continues to operate with its own management, headquarters, board of directors, and financial structure as it had prior to the acquisition of its parent company by Southern Company.¹¹ With regard to CPAD Request 1-400, CGC states that it has provided some of the information requested, but anything further “requires substantial work to develop the requested irrelevant reports.”¹² According to CGC, the CPAD request seeks information back to 2010, “on the theory

⁷ *Id.*

⁸ *Id.* at 15.

⁹ *Id.*

¹⁰ *CGC Response*, p. 1 (June 18, 2018).

¹¹ *Id.* at 12.

¹² *Id.* at 13.

that everything since the last rate case is at issue. But everything since the last rate case is not on the table for review.”¹³ CGC states that it has provided some of the information that was readily available but not information for the entire 8- year period, as requested by CPAD. CGC argues that the Consumer Advocate’s requests are designed to delay the proceedings, by “seeking discovery that is irrelevant, not reasonable 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.”¹⁴

FINDINGS AND CONCLUSIONS

I. GENERAL DISCOVERY PRINCIPLES

Pursuant to Commission Rule 1220-1-2-.11, when informal discovery is not practicable, any party to a contested case proceeding may petition for a discovery schedule and, thereafter, discovery shall be sought and effectuated in accordance with the Tennessee Rules of Civil Procedure. The Rules of Civil Procedure permit discovery through oral or written depositions, written interrogatories, production of documents or things, and requests for admission.¹⁵ Through these instruments, a party “may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party.”¹⁶ The information sought need not be admissible if it is reasonably calculated to lead to admissible evidence.¹⁷ The Tennessee Court of Appeals has commented on relevancy as follows:

Relevancy is extremely important at the discovery stage. However, it is more loosely construed during discovery than it is at trial. The phrase “relevant to the subject matter involved in the pending action” has been construed “broadly to

¹³ *Id.* at 14.

¹⁴ *Id.* at 21.

¹⁵ Tenn. R. Civ. P. 26.01.

¹⁶ *Id.* at 26.02(1).

¹⁷ *Id.*

encompass any matter that bears on or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case.”¹⁸

Further, parties may learn of information related to books, documents or other tangible items as well as the identity and location of individuals with knowledge of a discoverable matter.¹⁹ However, Tennessee’s rules do provide some limitations. Rule 26.02 permits a court to limit discovery under certain circumstances, such as undue burden, and Rule 26.03 permits a court to issue protective orders as justice requires.²⁰ In *Duncan v. Duncan*, the Tennessee Court of Appeals held that:

A trial court should balance the competing interests and hardships involved when asked to limit discovery and should consider whether less burdensome means for acquiring the requested information are available. If the court decides to limit discovery, the reasonableness of its order will depend on the character of the information being sought, the issues involved, and the procedural posture of the case (citations omitted).²¹

Rule 37.01 permits a party to file a motion to compel if a party fails to answer an interrogatory, including providing an evasive or incomplete answer.²² “Decisions to grant a motion to compel rest in the trial court’s reasonable discretion.”²³

At the hearing on the *Motion to Compel* held on June 19, 2018, the parties presented their arguments to the Hearing Officer. After the hearing, the Hearing Officer communicated her ruling via email to the parties. Based on the record and the arguments of the parties, the Hearing Officer found that it was reasonable and consistent with previous Commission dockets to grant the Consumer Advocate’s request with respect to Request 1-178. The Commission has used data for the capital structure and debt cost of parent companies in previous rate proceedings. Not only

¹⁸ *Boyd v. Comdata Network, Inc.*, 88 S.W.3d 203, 220 n.25 (Tenn. Ct. App. 2002) (citations omitted) (quoting *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351, 98 S.Ct. 2380, 2389, 57 L.Ed.2d 253 (1978)).

¹⁹ Tenn. R. Civ. P. 26.02(1).

²⁰ *Id.* at 26.02 & .03.

²¹ *Duncan v. Duncan*, 789 S.W.2d 557, 561 (Tenn. Ct. App. 1990).

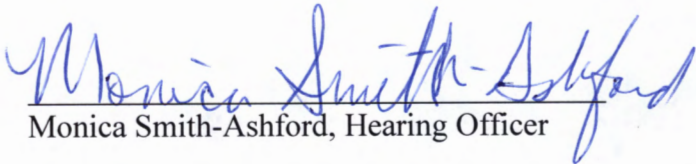
²² Tenn. R. Civ. P. 37.01(2).

²³ *Kuehne & Nagel, Inc. v. Preston, Skahan & Smith International, Inc.*, 2002 WL 1389615, *5 n.4 (Tenn. Ct. App. June 27, 2002).

is such information required by the Consumer Advocate, but such information is necessary for the Commission to evaluate and make a determination on CGC's *Petition*. With regard to the CPAD Request 1-400, the Hearing Officer granted this request, in part. The Hearing Officer was persuaded by the Consumer Advocate's arguments with regard to the relevancy of the requested information. However, the Hearing Officer found that requiring CGC to produce such information dating back to 2010 was not necessary. The Hearing Officer finds that it is reasonable for CGC to provide the requested data from January 2013 through December 2017.

IT IS THEREFORE ORDERED THAT:

1. The *Consumer Advocate's Motion to Compel Discovery* filed by the Consumer Protection and Advocate Division of the Office of the Attorney General is granted, in part, and denied, in part.
2. Consumer Advocate Request 1-178 is granted.
3. Consumer Advocate Request 1-400 is denied, however, Chattanooga Gas Company must respond to Request 1-400 by providing the requested data from January 2013 through December 2017.



Monica Smith-Ashford, Hearing Officer