

**BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION
NASHVILLE, TENNESSEE**

November 8, 2019

IN RE:

**CHATTANOOGA GAS COMPANY COMPLIANCE
FILING AND REPORT**

**DOCKET NO.
18-00035**

PROTECTIVE ORDER

To expedite the flow of filings, discovery, exhibits, and other information, and to facilitate the prompt resolution of disputes as to the confidentiality of information, to adequately protect information entitled to be kept confidential, and to ensure that protection is afforded only to Confidential Information so entitled, the Tennessee Public Utility Commission ("TPUC") hereby orders that:

1. For the purpose of this Protective Order ("Order"), the following definitions shall apply:

- a. "Confidential Information" means documents, testimony, or other information, regardless of its electronic, paper, or other form, which the Producing Party, in good faith, and based on reasonable inquiry, that contains proprietary, trade secrets, research, business development, or other commercially or personally sensitive information protected by state or federal law, regulation, or rule, and has been specifically designated in writing by the Producing Party as "Confidential Information."
- b. A "Producing Party" means the entity that provides Confidential Information to the TPUC, the Consumer Advocate,¹ or to a Party of Record pursuant to a lawful request in this Docket, whether the Producing Party is the creator of the Confidential Information or is the entity in physical possession of Confidential

¹ Hereinafter, as used in this Order, "Consumer Advocate" shall mean State of Tennessee, the Attorney General and its staff and the Consumer Advocate Unit in the Financial Division of the Tennessee Attorney General's Office.

Information created by a third person.

- c. A “Receiving Party” means the TPUC, Consumer Advocate, a court, or Party of Record receiving Confidential Information from a Producing Party in connection with this Docket, related appeals of this Docket, or future Dockets involving or implementing the matters or annual review mechanisms that are the subject of this Docket. If a Receiving Party makes summaries, notes, extracts, compilations, or other reproductions from or of any Confidential Information, such works using the Confidential Information shall also be entitled to protection under this Order as Confidential Information.

2. Any materials containing Confidential Information shall be clearly, conspicuously, and specifically labeled as “CONFIDENTIAL” including, as appropriate or technically feasible,² appropriate “CONFIDENTIAL” notations on each printed page for paper documents and PDF documents, in the file name of the electronic file, and on the computer disc or other media containing electronic information. Confidential Information shall be produced in a manner so that it is segregated and separate from non-confidential information. The information must be produced in a way that will clearly and conspicuously identify to others that it contains Confidential Information. Any information so designated shall be handled in accordance with this Order. Any designation of material as Confidential Information may be challenged under Paragraph 11 of this Order or as otherwise permitted by the Rules of Evidence and state law.

3. A Receiving Party subject to this Order, receiving Confidential Information, shall not disclose Confidential Information, except as set forth herein, and shall act in good faith in discharging his/her/its obligations hereunder. Subject to and without modifying the provisions of this paragraph, Confidential Information shall be disclosed only to the following persons:

- a. Counsel of Record for the Parties in this Docket and attorney associates, secretaries, financial and accounting and regulatory analysts, and paralegals actively engaged in assisting Counsel of

² If a Producing Party determines it is not technically feasible, it will affirmatively notify the Receiving Party of that fact and how the Producing Party alternately marked said Confidential Information.

Record in this Docket and any appeals therefrom;

- b. In-house counsel for the Parties;
- c. Officers, directors, or employees of the Parties of Record in this Docket, including the Consumer Advocate; provided, however, that Confidential Information shall be shown only to those persons who need knowledge of the Confidential Information for the purposes of this Docket, related appeals of this Docket, future Dockets involving or implementing the matters or annual review mechanisms that are the subject of this Docket, or for the Consumer Advocate in the discharge of statutory duties;
- d. TPUC's Commissioners and members of the staff of the TPUC; and
- e. Outside consultants and expert witnesses employed or retained by the Parties of Record or their counsel, who have access to Confidential Information solely for evaluation, testing, testimony, preparation for trial, or other services related to this Docket and related appeals, provided that if a Party of Record seeks to disclose Confidential Information to any outside consultant or expert witness, the Party of Record engaging such outside consultants and expert witnesses shall give four calendar days advance written notice to the Producing Party of the intention to disclose Confidential Information to its outside consultants or expert witnesses, naming such outside consultant or expert witness and providing the entity or their employers (as applicable) and business addresses. During such notice period, the Producing Party may move to prevent or limit disclosure for cause, in which case no disclosure shall be made until the TPUC, the Hearing Officer, the Administrative Law Judge, or court rules on the motion. Any such motion to withhold or limit access shall be filed within three business days after service of the notice to disclose. Any response shall be filed within three business days after service of the notice. Pre-hearing conferences may be called to address with the Parties any motions to limit or prevent disclosure. All service shall be by the fastest manner of email, hand delivery, or by facsimile. All filings by email in this Docket shall be followed up by delivering a hard copy of the filing to the Docket Manager of TPUC.

Under no circumstances shall any Confidential Information be disclosed to or discussed with anyone associated with the marketing of goods or services in known competition with the products, goods, or services of the Producing Party.

4. Prior to disclosure of Confidential Information to any of the authorized persons, the counsel representing the Receiving Party who is to receive the Confidential Information shall provide a copy of this Order to each person who is to review or take possession of such Confidential Information, who shall be bound by the terms of this Order. In addition to the foregoing, each such outside consultant or expert witness permitted access by this Order shall sign an Affidavit in the form attached as Exhibit A attesting that he or she has read a copy of this Order, that he or she understands and agrees to be bound by the terms of this Order, and that he or she understands that unauthorized disclosure of the information labeled “CONFIDENTIAL” constitutes a violation of this Order. This Affidavit shall be signed in the presence of and be notarized by a notary public. Counsel of Record for such consultants or experts shall timely thereafter provide the Producing Party a copy of each such Affidavit and retain a copy on file (electronically or in paper form) in their respective offices.

5. If any Producing Party subject to this Order inadvertently fails to label information as “CONFIDENTIAL” or to segregate in a manner in accordance with the provisions of this Order when producing such information, such failure shall not constitute a waiver of confidentiality, provided the Producing Party who has produced the information took reasonable steps to prevent the error and promptly notifies the Receiving Party³ of the error in writing within five days of discovery of such inadvertent failure to label the information as “CONFIDENTIAL” or to segregate. At that time, the Receiving Party will immediately treat the subject information as Confidential Information. In no event shall the State of Tennessee, TPUC, Attorney General, Consumer Advocate, or any Party of Record be liable for any alleged injury,

³ The Producing Party is required to provide substitute information clearly and conspicuously marked “CONFIDENTIAL” and provide segregated Confidential Information from non-Confidential Information within three business days from notice that the information provided was not marked “CONFIDENTIAL” at all or was not clearly and conspicuously marked CONFIDENTIAL, or is not segregated from non-Confidential Information.

claims, or damages resulting from the disclosure of information while not so labeled as “CONFIDENTIAL” or segregated. An inadvertent failure to label information as “CONFIDENTIAL” or to segregate it, shall not, in any way, affect the TPUC’s determination as to whether the information is entitled to Confidential Information status.

6. Any papers filed in this Docket that contain, quote, paraphrase, compile, or otherwise disclose information covered by the terms of this Order, shall be filed with the TPUC in sealed envelopes labeled “CONFIDENTIAL.” The filing Party shall also include with the filing a public version of the papers with any Confidential Information redacted. Only the redacted public version may be placed in the TPUC’s public file and/or posted on the TPUC website. Each sealed envelope shall be labeled to reflect the style and docket number of this proceeding and to identify the subject matter of the content of the sealed envelope. The envelopes shall be maintained in a locked filing cabinet or electronically secured. The envelopes shall not be opened or their contents reviewed by anyone except pursuant to this Order or upon separate order by the TPUC, Hearing Officer, or Administrative Law Judge after due notice to Counsel of Record. Notwithstanding the foregoing, the Commissioners and the staff of the TPUC may review any information filed as Confidential Information and labeled “CONFIDENTIAL” without obtaining an order of the TPUC, Hearing Officer, or Administrative Law Judge, provided the Commissioners and staff maintain the confidentiality of the information in accordance with the terms of this Order.

7. Information and testimony designated as Confidential Information and labeled “CONFIDENTIAL,” in accordance with this Order, may be utilized in testimony or cross-examination at the hearing on the merits of this Docket and offered into evidence in any hearing related to this Docket and appeal thereof, subject to the applicable Rules of Evidence and to such

future orders as the TPUC, Hearing Officer, or Administrative Law Judge may enter for such process or procedure that protects the confidentiality of the information. Any Receiving Party intending to use Confidential Information in pre-filed testimony, pleadings, cross-examination, summaries, demonstrative exhibits, or argument shall provide such reasonable notice under the circumstances as to inform the Producing Party and the TPUC, Hearing Officer, or Administrative Law Judge of the proposed use. In the case of pre-filed testimony, pleadings, and other writings, reasonable notice shall be three business days unless the circumstances require less notice. At the hearing, before the use of Confidential Information during witness examinations, Counsel of Record shall advise the TPUC, the Hearing Officer, or Administrative Law Judge, and the Producing Party of such intended use so that appropriate measures can be taken to protect the confidential nature of the information. For any hearings in the Docket, Counsel of Record for a Receiving Party may make such sufficient copies of Confidential Information for the use of the TPUC Commissioners and Staff, the Hearing Officer, or Administrative Law Judge, as well as the Producing Party and any witness to be cross examined, provided such materials are segregated from other materials, the materials are clearly marked as CONFIDENTIAL, and the Receiving Party takes such other reasonable measures under the circumstances to protect the confidentiality of such materials during their use. At the end of the hearing, the materials containing the Confidential Information shall be collected by the Receiving Party (except for any copy admitted into the record and retained by any Commissioner, the clerk/court reporter, or any other person authorized under this Order) and otherwise disposed of or handled as set forth herein.

8. Except for information filed with the TPUC, all information covered by the terms of this Order that are disclosed to the Receiving Party shall be maintained separately in files

labeled “CONFIDENTIAL” (electronically or in paper) and labeled with reference to this Order at the offices of the requesting Party’s Counsel of Record.

9. Nothing herein shall be construed as preventing any Party from continuing to use and disclose any information that:

- a. is in the public domain;
- b. subsequently becomes part of the public domain through no act of such Party, or violation of this Order;
- c. is disclosed to it by a third party, where said disclosure does not itself violate any contractual or legal obligation or terms of this Order;
- d. is independently developed by a Party; or
- e. is known or used by prior to this Docket.

The burden of establishing the existence of (a) through (e) shall be upon the entity attempting to use or disclose such information.

10. The designation of any information in accordance with this Order as constituting Confidential Information and the treatment of such information as confidential in compliance with this Order is not an admission or agreement by the State of Tennessee, the Attorney General or Consumer Advocate that the information constitutes or contains Confidential Information and shall not be deemed to be either a waiver of the State of Tennessee’s right to challenge such designation or an acceptance of such designation. The Producing Party agrees to designate information provided to the Consumer Advocate as Confidential Information only if it has a good faith basis for the claim. The Producing Party will upon request of the Consumer Advocate provide a written explanation of the details, including statutory authority that support its Confidential Information claim within five business days of a written request. The Producing Party also specifically agrees that it will not designate any

information as Confidential Information or label such information as “CONFIDENTIAL” if the information:

- a. has been distributed to the public, consumers or others; or
- b. is not maintained by the Producing Party in a manner that reflects it is CONFIDENTIAL.

11. Any Party of Record or non-Party may contest the designation of any information as Confidential Information by filing a motion with the TPUC, Hearing Officer, Administrative Law Judge, or the courts, as appropriate, and timely serving a copy on the Producing Party, for a ruling that the information or testimony should not be so treated. All information and testimony designated as Confidential Information, however, shall be maintained as such until the TPUC, Hearing Officer, Administrative Law Judge, or a court orders otherwise. A motion to contest must be filed not later than ten business days after receipt of the information designated Confidential Information, or ten business days prior to the Hearing on the merits, whichever date occurs later in time, unless the public interest demands otherwise. Any reply seeking to protect the status of its Confidential Information must be filed and served not later than five business days after the motion to contest. Motions made and subsequent replies received shall be resolved prior to the hearing by the Hearing Officer. Appeals of the Hearing Officer ruling or motions not resolved by the Hearing Officer shall be resolved by the Commissioners assigned to hear the Docket, either at the hearing on the merits, such other hearing the Commissioners may call, as otherwise agreed by the Parties, or as otherwise provided for by the Rules of Evidence or state law.

12. Nothing in this Order shall prevent any Party from asserting any objection to discovery.

13. Non-Party witnesses shall be entitled to invoke the provisions of this Order by

designating information disclosed or information produced for use in this Docket or related appeals as Confidential Information pursuant to the terms of this Order.

14. No person authorized under this Order to receive access to information, or testimony designated as Confidential Information shall be granted access until such person has complied with the requirements set forth in this Order.

15. Any person to whom disclosure or inspection is made in violation of this Order shall be bound by the terms of this Order.

16. Upon an order becoming final in this Docket and conclusion of any appeals resulting from such an order, all the filings, exhibits, and other materials designated as Confidential Information and all copies thereof shall, to the extent permitted by state law, be returned to counsel of the Producing Party within fifteen business days of a written request from the Producing Party, or counsel in possession of such documents shall certify to counsel of the Producing Party that all the filings, exhibits, and other materials designated as Confidential Information and all copies, notes, or other materials reflecting such Confidential Information have been destroyed. Notwithstanding the foregoing, the TPUC and the Consumer Advocate shall retain copies of material designated as Confidential Information (and all notes or other materials reflecting such Confidential Information) as may be necessary to maintain a complete record of this Docket intact, with each maintaining the responsibility to otherwise comply with the obligations to maintain such Confidential Information as confidential under the terms of this Order for so long as such Confidential Information is retained and maintained.

17. After termination of this Docket, the provisions of this Order relating to the confidential nature of information and testimony shall continue to be binding upon Parties hereto and their officers, directors, attorneys, employers, employees, agents, and/or others for five years

unless this Order is vacated or modified, and shall continue to be binding as set forth in paragraph 15 above as it relates to the TPUC and the Consumer Advocate.

18. Nothing herein shall prevent entry of a subsequent order, upon an appropriate showing, requiring that any information or testimony designated as Confidential Information shall receive protection other than that provided herein.

19. The Consumer Advocate and his staff have authority to enter into non-disclosure agreements pursuant to Tenn. Code Ann. § 65-4-118 which are consistent with state and federal law, regulations and rules.

20. To the extent permitted by state law, the Consumer Advocate will provide reasonable prior notice of filing or disclosure in the discharge of the duties of the Office of the Attorney General and Reporter, pursuant to Tenn. Code Ann. § 10-7-504(a)(5)(C) or any other law, regulation or rule, so that the Company may take action relating to disclosure.

21. Notwithstanding anything to the contrary in this Order, the obligations of the Consumer Advocate and TPUC under this Order are further subject to the State of Tennessee's Public Records Act and other open records statutes. For the avoidance of doubt, nothing in this Order is intended to violate or alter the State of Tennessee's Public Records Act or Freedom of Information Act ("FOIA"). In the event that the Consumer Advocate, TPUC, or any Party of Record that is a government entity subject to such public records laws is served with a subpoena, public records request, FOIA request, or other request that calls for the production of information labeled as "CONFIDENTIAL" by the Producing Party, the government entity receiving such request will notify Counsel of Record for the Producing Party of the existence of the subpoena, public records request, FOIA request, or other request, at least five business days before responding to the request to the extent permitted by state law and orders of a court, as long as the

government entity is able to respond to the request within a reasonable time. The government entity may elect to wait to produce such information as allowed by state law in order to provide the Producing Party an opportunity to challenge said subpoena or request, or to reach an accommodation with the entity seeking access to the Confidential Information that preserves the confidentiality of the Confidential Information.

22. Nothing in this Order shall prevent the Attorney General from using the Confidential Information received for investigative purposes in the discharge of the duties of the Office of the Attorney General and Reporter. Additionally, nothing in this Order shall prevent the Attorney General from informing state officials and third parties of the fact of an investigation, or as needed, to conduct an investigation. Without limiting the scope of this paragraph, nothing in this Order shall prevent the Attorney General from contacting consumers whose names were provided by the Producing Party or from discussing with any consumer any information that he or she allegedly received from the Producing Party or confirming that a consumer actually received the information.

23. All information designated as Confidential Information and produced in accordance with this Order may be disclosed in testimony or offered into evidence at any TPUC or court hearing, trial, motion or proceeding of this matter or related appeals, subject to the provisions of this Order, and the applicable Rules of Evidence and any order the TPUC may enter to protect the confidentiality of said information offered at any hearing or other proceeding. The Producing Party who designated the information as Confidential Information agrees to stipulate to the authenticity of such information in any such proceeding and related appeals. If any Party identified information in the Confidential Information that indicates that unlawful (civil or criminal) conduct has occurred or may occur, nothing in this Order shall prevent such

Party from reporting such alleged conduct to the appropriate law enforcement or regulatory authority.

24. Confidential Information is subject to this Order which is entered pursuant to Rule 26 of the Rules of Civil Procedure and to the Tennessee Public Records Act, as set forth in the language of Tenn. Code Ann. Section 10-7-503(a)(2)(A) "... unless otherwise provided by state law."

25. Nothing in this Order is intended to nor shall restrict, limit or alter federal or state laws, regulations, or rules.

26. This Order shall be construed subject to the laws of the State of Tennessee, conflicts of law notwithstanding.

27. No person subject to this Order shall be required to appear outside any venue in the State of Tennessee regarding this Order or any alleged violations of this Order.

28. Any person who has signed an Affidavit attached as Exhibit A or is otherwise bound by the terms of this Order shall continue to be bound by this Order even if no longer engaged by the TPUC or any Party of Record.

IT IS HEREBY ORDERED.



Monica Smith-Ashford, Hearing Officer

Entered the 8th day of November 2019.

EXHIBIT A

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION
AT NASHVILLE, TENNESSEE

IN RE:

CHATTANOOGA GAS COMPANY COMPLIANCE
FILING AND REPORT

)
)
) DOCKET NO.
) 18-00035

AGREEMENT TO COMPLY WITH PROTECTIVE ORDER

I have reviewed the Protective Order entered in the above-captioned Docket and agree to abide and be bound by its terms. I understand that unauthorized disclosure of information labeled "CONFIDENTIAL" will be a violation of the Order.

DATE

NAME

STATE OF _____)

COUNTY OF _____)

Personally appeared before me, _____, a Notary Public,
_____ with whom I am personally acquainted, who
acknowledged that he executed the within instrument for the purposes therein contained.

WITNESS my hand, at office, this _____ day of _____, _____.

NOTARY PUBLIC

My Commission Expires: _____