

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION
NASHVILLE, TENNESSEE

IN RE:)	
)	
CHATTANOOGA GAS COMPANY)	Docket No. 18-00035
COMPLIANCE FILING AND)	
REPORT)	
)	

CONSUMER ADVOCATE'S RESPONSES TO
CHATTANOOGA GAS COMPANY'S DISCOVERY REQUESTS

Comes now the Consumer Advocate Unit in the Financial Division of the Office of the Tennessee Attorney General ("Consumer Advocate") and hereby submits its Discovery Responses to Chattanooga Gas Company ("CGC" or "Company").

GENERAL OBJECTIONS TO DISCOVERY REQUESTS

The Consumer Advocate objects to the breadth and scope of CGC's discovery requests (including the Preliminary Matters and Definitions) on the grounds that some of the individual requests are overly broad, unduly burdensome, vague, ambiguous, and otherwise beyond the scope of permissible discovery under Rule 26. Further, some of the requests are objectionable because they seek the production of documents and/or information that are neither relevant to the issues/claims raised in this matter nor reasonably calculated to lead to the discovery of admissible evidence. In addition, some of the requests are objectionable because they seek documents and information that are protected from disclosure under the attorney-client and work product privileges. Without waiving any of these General Objections, the Consumer Advocate will respond to the individual document production requests as set forth below.

RESPONSES

1. Do you agree that the purpose of this docket is to prevent CGC from receiving windfall profits due to the reduction in the federal corporate tax rate from 35% to 21% resulting from the 2017 Tax Cuts and Jobs Act ("2017 Tax Act"). If not, please explain the Consumer Advocate's understanding as to the purpose of this docket.

RESPONSE:

The Consumer Advocate derives its understanding of the "purpose of this docket" in part from the Commission's *Order Opening an Investigation and Requiring Deferred Accounting Treatment* issued on February 6, 2018, in Docket No. 18-00001. Page 3 of the *Order* discusses that "Commission review and action is necessary in order to investigate to prevent utilities from receiving windfall profits." This statement is not an exhaustive account of the Commission's directive.

In addition, in TPUC Staff's *First Report and Recommendation Regarding Tax Impacts of the 2017 Tax Cuts and Jobs Act* in TPUC Docket No. 18-00001 (October 1, 2018), the Staff notes on page 1 the following:

In sum, the reduction in federal income tax rates creates excess deferred income taxes owed to utility customers. Additionally, the earnings of larger corporate utilities under the Commission's jurisdiction will generally increase due to the lowering of the corporate tax rate from 35% to 21%. Absent a mechanism to return these profits to consumers, service rates would remain at a level unreflective of lower costs, thereby potentially resulting in unreasonable rates.

2. How does the TPUC measure the profitability of a utility? In responding to this request, please identify the metric(s) to be used in such an assessment.

RESPONSE:

The Consumer Advocate cannot speak for the Tennessee Public Utility Commission regarding the various ways its Commissioners or Commission Staff may measure the profitability of a utility. It is possible that a utility's rate of return or return on equity may be considered by the Commission. Earnings since a utility's last rate case may be considered as well, along with the methodology utilized by the utility to determine its financial position. Ratemaking methodologies should also be examined to establish how a utility may earn up to its authorized rate of return. Rates of return are not intended to be guarantees.

3. Do you agree that a utility's authorized rate of return or return on equity is how the Tennessee Public Utility Commission measures the overall profitability of a utility? In responding to this request, explain your response.

RESPONSE:

Refer to the Consumer Advocate's Response to Item No. 2.

4. How many basis points above a utility's authorized rate of return does that utility's earnings become excessive or a windfall? Is there any other measure by which a utility's earnings would be excessive or a windfall? In responding to this request, explain your response.

RESPONSE:

Rates of return are authorized percentages from a regulatory commission and are not intended to be a guarantee. If a utility does not earn the entirety of its authorized rate of return in a year, it may elect to keep rates as they currently stand or request new rates from its regulator going forward. Any income, however, over a utility's authorized rate of return is excessive. Retention of tax savings, as well as retention of cancelled taxes (excess ADIT), which were paid for by ratepayers, would result in a "windfall" for Southern Company shareholders.

5. If a utility is earning below its authorized rate of return, and as a result of a reduction in the federal corporate tax rate the utility's earnings are still below its authorized rate of return, would the utility be experiencing excessive or windfall profits? In responding to this request, explain your response.

RESPONSE:

Objection. The Consumer Advocate objects to this request on the grounds that it requires the Consumer Advocate to speculate as to a position that is only hypothetical at this point. In addition, before the Consumer Advocate can intervene in any matter, it must seek permission from the Attorney General pursuant to Tenn. Code Ann. § 65-4-118; therefore, issues are analyzed, and approval is given, for intervention based on facts rather than conjecture. This request further seeks to have the Consumer Advocate reveal its deliberative process and work product.

Notwithstanding the foregoing objection, the Consumer Advocate would respond as follows:

In the situation described in the request, a utility's revenues still may be excessive, and the utility may be experiencing windfall profits. A utility company should not have a guaranteed revenue or guaranteed rate of return. Instead, a utility recovers money from consumers for its investments, debts it takes on, and operations-related expenses. If a utility does not recover its authorized rate of return from customers based on its operations, funds paid by ratepayers and meant to pass through the utility for federal income taxes should not be used to manufacture a result.

Further, the utility company described in the request should not profit from funds paid by ratepayers and intended for payment to the federal government. And as the TPUC

Staff noted in its *First Report and Recommendation Regarding Tax Impacts of the 2017 Tax Cuts and Jobs Act* in TPUC Docket No. 18-00001 (October 1, 2018):

In sum, the reduction in federal income tax rates creates excess deferred income taxes owed to utility customers. Additionally, the earnings of larger corporate utilities under the Commission's jurisdiction will generally increase due to the lowering of the corporate tax rate from 35% to 21%. Absent a mechanism to return these profits to consumers, service rates would remain at a level unreflective of lower costs, thereby potentially resulting in unreasonable rates.

6. If as a result of a reduction in the federal corporate tax rate a utility was still earning below its authorized rate of return, could that utility file for a general rate case and seek an increase in rates in order to have an opportunity to earn its rate of return? In responding to this request, explain your response.

RESPONSE:

Objection. The Consumer Advocate objects to this request on the grounds that it requires the Consumer Advocate to speculate as to a position that is only hypothetical at this point; furthermore, the speculation is to what a “utility” would do, and the Consumer Advocate is not in a position to make such a speculation. In addition, before the Consumer Advocate can intervene in any matter, it must seek permission from the Attorney General pursuant to Tenn. Code Ann. § 65-4-118; therefore, issues are analyzed, and approval is given, for intervention based on facts rather than conjecture. This request further seeks to have the Consumer Advocate reveal its deliberative process and work product.

Notwithstanding the foregoing objection, the Consumer Advocate would respond as follows:

Should a regulated utility company be dissatisfied with its current rate structure, it may elect to file a general rate case to increase its rates, and a regulatory commission may

examine the utility's request and determine whether the utility's request is appropriate (as the Tennessee Public Utility Commission considered regarding CGC in Docket No. 18-00017). After a general rate case proceeding, a regulatory commission may then raise, lower, or maintain rates going forward; however, a regulatory commission may not go back to a previous period and award additional revenue to a utility company in contradiction to the rate previously on file with the regulatory commission.

7. For purposes of this request, assume the following:

- Tax Cuts and Jobs Act required an increase in the corporate tax rate from 35% to 49% as opposed to a decrease from 35% to 21%, and
- Chattanooga Gas was in an over earning position in 2018.

(a) Would the Consumer Advocate's positions and methodologies currently used in this proceeding be the same? (b) Would the Consumer Advocate object to full recovery of the impact in the increase in the income tax rate regardless of the earnings position of Chattanooga Gas?

RESPONSE:

Objection. The Consumer Advocate objects to this request on the grounds that it requires the Consumer Advocate to speculate as to a position that is only hypothetical at this point. In addition, before the Consumer Advocate can intervene in any matter, it must seek permission from the Attorney General pursuant to Tenn. Code Ann. § 65-4-118; therefore, issues are analyzed, and approval is given, for intervention based on facts rather than conjecture. This request further seeks to have the Consumer Advocate reveal its deliberative process and work product.

Notwithstanding the foregoing objection, the Consumer Advocate would respond as follows:

The Consumer Advocate would consider and propose a position to address the situation in a fair and equitable manner; however, the outcome of the docket would still be bound by the filed rate doctrine. It must be understood, however, that, in order for the Company to defer the increased tax expense on its books, it would either have to seek an accounting order from TPUC, or TPUC would establish on its own volition a generic docket requiring a deferred regulatory asset to be established to capture the increased income tax expense costs (similar to the establishment of the regulatory liability pursuant to its Order in TPUC Docket No. 18-00001). This would, by necessity, be done prior to knowing 2018 operating results. This request, however, does not indicate whether to assume the 2018 over-earnings reflect the higher Income Tax Expense, or whether the request assumes a deferred regulatory asset, thus protecting earnings in 2018 from the higher income tax expense. It is unreasonable to assume a utility would decide not to seek a regulatory order to establish a regulatory asset to defer a significant cost increase that is outside its control.

8. With respect to the other four large utilities subject to the TPUC's February 6, 2018, Order in Docket No. 18-00001 (i.e., Atmos Energy, Kingsport Power, Piedmont Natural Gas, and Tennessee American Water), did the TPUC ultimately reduce rates for each of these utilities in their individual tax dockets? For each such utility for which rates were reduced, was that utility earning below its authorized rate of return for 2018 before rates were reduced? As applicable, please explain your answer and identify the documents relied upon.

RESPONSE:

Objection. The Consumer Advocate objects to the request on the grounds that it is vague, ambiguous, unduly burdensome, and oppressive. The matters referred to in this request are publicly available from the Tennessee Public Utility Commission, and CGC can

retrieve those decisions and conduct its own legal research and analysis. This request further seeks documents and/or information that is work product and stems from the Consumer Advocate's deliberative process.

Notwithstanding the foregoing objection, the Consumer Advocate believes that TPUC did reduce rates for all four of the utilities referenced in the request. Regarding the deferred account that is the subject of this proceeding, the Consumer Advocate believes that none of the other four large Tennessee utilities was allowed by TPUC to retain any portion of these funds, nor was there a consideration of their earnings status in the resolution of the tax savings for those entities without an approved ARM mechanism.

Tennessee-American Water Company has a portion of its tax docket still in litigation, but a settlement agreement, which was accepted by the Commission, partially resolved that Docket. Refer to TPUC Docket No. 18-00039 and the Commission's *Order Approving Stipulation and Settlement Resolving Phase One of the Docket* issued on October 25, 2019, and publicly available.

Concerning Atmos Energy Corporation, refer to TPUC Docket No. 18-00034 and the Commission's *Order Approving Joint Petition to Approve Stipulation and Settlement Agreement* issued on June 24, 2019, and publicly available.

Concerning Piedmont Natural Gas Company, refer to TPUC Docket No. 18-00040 and the Commission's *Order Approving Stipulation and Partial Settlement Agreement and Adjudicating Contested Issues Presented by the Parties* issued on August 6, 2019, and publicly available.

Concerning Kingsport Power Company, refer to TPC Docket No. 18-00038 and the Commission's *Order Approving Stipulation and Settlement Agreement* issued on April 18, 2019, and publicly available.

9. To the extent the Consumer Advocate is presently aware, did other state utility commissions address the effect of the lower federal corporate tax rate by always reducing rates? Specifically, is the Consumer Advocate aware of any situations in other states where a utility was earning below its authorized rate of return and the utility was able to retain the revenues associated with the tax savings for 2018 or other years and not reduce rates or be required to take other offsets (depreciation, riders, etc.)?

RESPONSE:

Objection. The Consumer Advocate objects to this request for how “other state utility commissions address the effect of the lower federal corporate tax rate by always reducing rates” and for “situations in other states where a utility was earning below its authorized rate of return and the utility was able to retain the revenues associated with the tax savings for 2018 or other years and not reduce rates or be required to take other offsets (depreciation, riders, etc.)” as vague, ambiguous, overly broad, unduly burdensome, oppressive, and calling for information that is publicly available and obtainable from other sources that are more convenient, less burdensome, and less expensive. This request further seeks documents and/or information that is work product and stems from the Consumer Advocate’s deliberative process.

10. Did the Consumer Advocate agree that all of the issues associated with the 2018 Tax Act were to be addressed in CGC’s rate case in Docket No. 18-00017? If not, please explain why.

RESPONSE:

The Consumer Advocate agrees that, prior to the contested hearing in Docket No. 18-00017, the parties agreed to litigate issues related to the 2017 Tax Cuts and Jobs Act in that proceeding. Not all tax-related issues, however, were resolved in that proceeding. For more discussion of this item, refer to the Hearing Officer's *Order Establishing Issues for Consideration* in this Docket, issued on June 27, 2019, and publicly available.

11. In CGC's rate case in Docket No. 18-00017, did the Consumer Advocate, in its testimony, brief, and other filings, address, state, discuss, or otherwise advocate its position with respect to all of the 2018 Tax Act issues it believed were relevant and necessary to be addressed by the TPUC? If not, please explain what was omitted and why it was not addressed.

RESPONSE:

The Consumer Advocate did present positions related to the 2017 Tax Cuts and Jobs Act during the course of Docket No. 18-00017. To the extent some issues were not resolved in that proceeding, the Consumer Advocate believes it is only proper that all remaining issues related to the 2017 Tax Cuts and Jobs Act be litigated in this Docket No. 18-00035, which was opened prior to the Company filing its general rate case and remains open to address such issues.

12. Does the Consumer Advocate agree that in CGC's rate case final order, the Amended Order issued January 15, 2019, in Docket No. 18-00017, that the only issue expressly sent back to this docket, Docket No. 18-00035, was the EDIT issue that has been identified as Issue 1 in this proceeding by the Order Establishing Issues, issued June 27, 2019? If the Consumer Advocate believes any other issue was expressly referred back to this docket, please provide the page number of the Amended Order and quote the language making such a referral.

RESPONSE:

The Consumer Advocate agrees that “the EDIT issue . . . identified as Issue 1 in this proceeding by the *Order Establishing Issues [for Consideration]*” was referenced on page 55 of the Commission’s *Amended Order* in Docket No. 18-00017, but the Consumer Advocate disagrees with the Company’s contention that other issues not considered or addressed by the Commission are excluded from consideration in this Docket, which was established to address issues related to the 2017 Tax Cuts and Jobs Act.

13. Identify any TPUC (or predecessor agencies to the TPUC) orders that Mr. Dittemore relied upon for his testimony regarding the application of the filed rate doctrine.

RESPONSE:

Mr. Dittemore relied on his knowledge and extensive utility experience in his discussion of the filed rate doctrine, along with the sources cited in Mr. Dittemore’s testimony. No TPUC or predecessor agency orders were utilized in that analysis. While this is the case for pre-filed expert testimony, the Consumer Advocate reserves the right to utilize such orders, along with any other precedent, in its legal argument.

14. Identify any Tennessee judicial decisions that Mr. Dittemore relied upon for his testimony regarding the application of the filed rate doctrine.

RESPONSE:

Mr. Dittemore relied on his knowledge and extensive utility experience in his discussion of the filed rate doctrine, along with the sources cited in Mr. Dittemore’s testimony. No specific Tennessee judicial decisions concerning the filed rate doctrine were utilized in that analysis. While this is the case for pre-filed expert testimony, the Consumer

Advocate reserves the right to utilize such decisions, along with any other precedent, in its legal argument.

15. Identify any non-Tennessee regulatory agency orders or judicial decisions that Mr. Dittemore relied upon for his testimony regarding the application of the filed rate doctrine.

RESPONSE:

Mr. Dittemore relied on his knowledge and extensive utility experience in his discussion of the filed rate doctrine, along with the sources cited in Mr. Dittemore's testimony. No specific non-Tennessee regulatory agency orders or judicial decisions concerning the filed rate doctrine were utilized in that analysis. While this is the case for pre-filed expert testimony, the Consumer Advocate reserves the right to utilize such orders or decisions, along with any other precedent, in its legal argument.

RESPECTFULLY SUBMITTED,



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CERTIFICATE OF SERVICE

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This the 20th day of December, 2019.



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