

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

**April 30, 2021**

<b>IN RE:</b>	)	
	)	
<b>DOCKET TO EVALUATE</b>	)	<b>Docket No.</b>
<b>CHATTANOOGA GAS COMPANY'S</b>	)	
<b>PURCHASES AND RELATED</b>	)	<b>20-00139</b>
<b>SHARING INCENTIVE</b>	)	
	)	

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**CHATTANOOGA GAS COMPANY  
ANSWER**

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Chattanooga Gas Company ("CGC" or "Company"), pursuant to Tennessee Public Utility Commission ("TPUC" or "Commission") Rule 1220-01-02-.03, and the Hearing Officer's *Order Establishing Issue to be Addressed in Docket and Setting Date for Response* issued on April 7, 2021 ("Issue Order"), hereby files its Answer to the December 23, 2020, Petition Of The Consumer Advocate Unit in the Financial Division of the Office of the Attorney General ("Consumer Advocate") To Modify Chattanooga Gas Company's Performance Based Ratemaking Mechanism ("Petition"). As set forth in Rule 1220-01-02-.03 and the Issue Order, CGC states as follows:

1. After the filing of the petition by the Consumer Advocate on December 23, 2020, the Consumer Advocate has agreed to limit this docket to a single issue and the Hearing Officer has so ordered the following single issue be considered: ***Should the sharing incentive percentage of Chattanooga Gas Company's Asset Management and Agency Agreement be modified and if so, what is the appropriate percentage?***

2. Given this single issue to be determined in this docket, CGC hereby responds to the Petition as follows:

Paragraph 1: Generally, admit, recognizing that the statutes more precisely define the duties of the Consumer Advocate.

Paragraph 2: Admit.

Paragraph 3: The pleadings speak for themselves in Docket 06-00176.

Paragraph 4: Admit.

Paragraph 5: The pleadings speak for themselves in Docket 07-00224.

Paragraph 6: Admit that the Consumer Advocate filed comments, but Deny the conclusions made by the Consumer Advocate in those comments.

Paragraph 7: Admit that the 2020 Triennial Review Order says what it says but Deny that the sharing percentage should be changed.

Paragraph 8: Admit that the 2020 Triennial Review Order is the best evidence of the Commission's statement but Deny that the Exeter Report provides a basis for changing the sharing percentage.

Paragraph 9: Admit that the Consumer Advocate has filed a Petition but Deny the relief the Consumer Advocate seeks.

3. In addition to its Answer, CGC notes that the Consumer Advocate bears the burden of proof in this matter since it is the party seeking to change an existing policy of the Commission that has been followed for more than eighteen (18) years. Even though the Commission acknowledged the right of the Consumer Advocate to initiate a proceeding to raise some or all of the issues identified in the Consumer Advocate's July 9, 2020, Comments, such a recognition is not a decision to change TPUC policy nor does it shift the burden to CGC to prove why the existing

policy should continue. In an analogous context considering which party had the burden of proof in a challenge to an existing, already approved Contract Service Arrangement (“CSA”) it was held that the party challenging such CSA would have the burden of proof. *In Re Bellsouth Telecommunications, Inc.*, 2000 WL 33770000 (Feb. 3, 2000). Likewise, the Consumer Advocate was held to have the burden of persuasion to show why the prior docket decision did not apply to the regulated entity. *In Re United Tel. Se., Inc.*, 2008 WL 704072 (Feb. 14, 2008). *See also, Tennessee Am. Water Co. v. Tennessee Regulatory Auth.*, 2011 WL 334678, at \*16 (Tenn. Ct. App. Jan. 28, 2011) (“There is also a presumption that the rates so established are correct and any party who attacks the Commission's findings has the burden of proving that they are illegal or unjust and unreasonable.”) (citing *CF Indus. v. Tennessee Pub. Serv. Comm’n*, 599 S.W.2d 536, 540 (Tenn. 1980)).

4. As set forth in the single issue to be determined, there are two separate burdens the Consumer Advocate bears. First, as the first part of the issue language asks, the Consumer Advocate bears the burden to demonstrate how and why the sharing percentage should be modified. Then, assuming it meets the first burden, the Consumer Advocate bears the additional burden of demonstrating not just an alternative percentage, but an “appropriate percentage” and why that percentage is better than the existing. *See, In Re Chattanooga Gas Co.*, 2009 WL 2501946 (Mar. 2, 2009) (“a party is required to carry its own burden of proof and is thus required to present relevant and reliable evidence sufficient to support its assertions.”). CGC asserts that the current asset management agreement has in the past and continues to work well and remains in the public interest.

WHEREFORE, CGC respectfully requests that the Consumer Advocate’s petition be denied, and that the sharing percentage not be changed.

Respectfully submitted,



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## **CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the foregoing Answer has been provided to the following via electronic mail on this the 30<sup>th</sup> day of April, 2021:

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