BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION
NASHVILLE, TENNESSEE

February 23, 2021

IN RE:	)	
	)	
DOCKET TO COLLECT AND CONSIDER INFORMATION RELATING TO COMMISSION PRACTICE AND PROCEDURE FOR RULEMAKING ON TENN. R. & REGS. 1220-01-01, 1220-01-02, AND OTHER SECTIONS AS DETERMINED RELEVANT.	)	**Docket No. 21-00018**

CHATTANOOGA GAS COMPANY'S COMMENTS

Chattanooga Gas Company ("CGC" or "Company) hereby submits its Comments in response to the Notice of Rule Development Workshop on Commission Practice and Procedure, issued February 11, 2021 ("Notice"). Pursuant to the Commission's Notice seeking comments and proposals related to adding or amending Commission rules related to practice and procedure, CGC provides the following information:

I. Introduction and Background

1. CGC is incorporated under the laws of the State of Tennessee and is engaged in the business of transporting, distributing, and selling natural gas in the greater Chattanooga and Cleveland, Tennessee areas within Hamilton and Bradley Counties. CGC is a public utility pursuant to the laws of the State of Tennessee, and its public utility operations, including its rates, terms, and conditions of service, are subject to the jurisdiction of this Commission. CGC's principal office and place of business is located at 2207 Olan Mills Drive, Chattanooga, Tennessee 37421.

2. CGC requests that any parties filing comments or other pleadings in this docket kindly provide a copy to the following representatives on behalf of CGC:

J. W. Luna, Esq
Butler Snow LLP
150 3rd Avenue South, Suite 1600
Nashville, TN 37201
Telephone: (615) 651-6749
JW.Luna@butlersnow.com

Floyd R. Self, Esq.
Berger Singerman, LLP
313 North Monroe Street, Suite 301
Tallahassee, FL 32301
Telephone: (850) 521-6727
Email: fself@bergersingerman.com

Elizabeth Wade, Esq.
Chief Regulatory Counsel
Southern Company Gas
Ten Peachtree Place, NW
Atlanta, GA 30309
Telephone: (404) 584-3160
Email: ewade@southernco.com

Paul Teague
Director, External Affairs
Chattanooga Gas Company
2207 Olan Mills Drive
Chattanooga, TN 37421
Telephone: (404) 693-5986
Email: pteague@southernco.com

3. As a natural gas utility fully regulated by this Commission, the Company has had multiple different types of proceedings before the Commission over the last several years. CGC believes it is appropriate for the Commission to periodically review its practice and procedure rules, and appreciates the Commission undertaking this review at this time. Excluding presently pending dockets, CGC's recently litigated cases include a full revenue requirements rate case in 2018, a docket to implement the 2017 Tax Cuts and Jobs Act, a case to implement an alternative

regulatory method in 2019 known as CGC's Annual Review Mechanism ("ARM"), and CGC's first ARM case in 2020. CGC believes there are several areas of the Commission's rules that can and may be updated to implement changes that can facilitate the Commission's review of cases and lead to more efficient and cost-effective proceedings. CGC specifically responds to the Commission's invitation for comments based upon these recent experiences.

II. Rate Case Guidelines and MFRs

4. A little over 20 years ago, in a cooperative effort, the utility companies, the Consumer Advocate, and the Commission's Staff worked together to develop Minimum Filing Guidelines ("Guidelines") in an effort to provide the Commission and intervening parties information needed to review and investigate a utility's rate filing. The result was 99 items, many consisting of multiple parts, that were recommended to be provided when a utility filed a rate case. The primary objective in identifying minimum filing documents was to reduce the number of discovery requests issued by the Commission or parties in a rate case.

5. The Guidelines were not developed in an official Commission proceeding and they were not officially approved or adopted by the Commission. As indicated by the title, these were "guidelines" and not required filing requirements. As explained in the preface to the Guidelines:

> Notwithstanding the applicant's response to these requests, the TRA, and any potential intervenor, retain the right to submit and require responses to subsequent data requests on any relevant topic, including any topic covered in these requests. The failure to file any specific information **shall not be grounds for non-acceptance of the application or for an extension of the time intervals set forth in Tenn. Code Ann. §65-5-203.** However, should the applicant choose to respond to these requests, the TRA requests that the applicant explain any instance where a question is not responded to in full. The filing of the data requested here does not waive any objection as to the admissibility of the data in evidence. [Emphasis added.]

6. Notwithstanding the specific statement that the documents identified in the Guidelines were not required, over the years the Guidelines have effectively been treated as required. While this is not necessarily a bad development, there has been some variance from and differing opinions as to what documents are or would be responsive to the Guidelines.

7. Based upon these experiences, if the Commission determines that having a minimum set of filing requirements for rate cases would be appropriate, usually referred to as Minimum Filing Requirements ("MFRs"), the current Guidelines are a good beginning. However, considering the length of time since the Guidelines were developed, and changes in the general utility operating environment since, it is recommended that there be a detailed review with input from the Commission Staff, the Consumer Advocate, any other interested persons, and the utilities in order to develop a comprehensive but reasonable set of MFRs. In undertaking such an effort, one of the primary goals should be to provide the necessary and reasonable support to document a utility's request while simultaneously reducing the need for additional discovery requests during the rate case. Quite simply, by providing all the key documents and back up support documents with the filing, discovery thereafter should be for the purpose of clarifying and explaining what was filed, and not to further require additional new information through the discovery process.

III. Alternative Regulatory Methods Case MFRs

8. Just as CGC recognizes the need for supporting information to be provided in rate proceedings, there is a similar need FOR cases conducted pursuant to the alternative regulatory methods statutes adopted by the General Assembly and codified at Tennessee Code Annotated Section 65-5-103(d)(1)(A). In this regard, the General Assembly has specifically provided in

Tennessee Code Section 65-5-103(d)(1)(B): "For all alternative regulatory methods, the commission is authorized to develop minimum filing requirements . . . ."

9. Consistent with this policy, in reaching a settlement in CGC's alternative regulatory methods case, CGC, Party Staff, and the Consumer Advocate built upon the Guidelines for rate cases and agreed upon a specific set of documents that CGC was to submit along with its petition and testimony as a part of each ARM case. In approving these minimum filing documents for CGC's future ARM Dockets, in the October 7, 2019, Order issued in Docket 19-00047, the Commission explained:

> The ARM plan submitted by the Company with its Petition served as the basis for the agreed upon ARM plan, incorporating a number of changes upon which the parties agreed. In general, the Settlement Agreement provides the **structure and requirements** for reviewing both the ARM filing and reconciliation to arrive at the true-up rate adjustment or rate reset.

Exhibit A to the Settlement Agreement, that was incorporated into the Order, is comprised of 41 pages that provide in detail the minimum filing requirements for CGC's annual ARM filings. The objective of developing the detailed requirements was to aid in the annual review and to reduce the reliance on discovery requests issued by parties participating in the annual review.

10. Since the alternative regulatory methods adopted under Tennessee Code Annotated Section 65-5-103(d)(l)(A) for each utility are specific to that utility and will vary from utility to utility, it is appropriate that the minimum filing requirements for each utility be tailored to each utility's specific plan. The requirements should be developed in conjunction with the development of the alternative regulatory plan and approved in the docket that the alternative regulatory method is approved for the specific utility.

IV. Discovery

11. A general rate case by its nature involves a comprehensive review of a utility's

income and expenses for at least one-year, and sometimes a two-year period of data, reflecting an historic base year and a projected or attrition test year. If it has been many years since a utility's last rate case, there may be an inclination to review additional data from the intervening years since the last rate case. This was CGC's experience with its 2018 rate case in Docket No. 18-00017, where it had been some 9 years since its last rate case in 2009. In fact, CGC received discovery requests from the Consumer Advocate that sought multiple years of data, and in some cases requests for data back to 2010.

12. As previously discussed, the development of the Minimum Filing Guidelines was an effort to reduce the need for discovery request. CGC in fact sought to file all of the documentation required by the Guidelines with its rate case petition and testimony to initiate its 2018 rate case. But submitting all of the documents identified in the Guidelines does not always seem to be helpful in reducing discovery requests. In seeking to compel discovery from CGC late in its rate case, the Consumer Advocate wrote:

> the **magnitude of the rate increase** that CGC is requesting – as well as the riders CGC seeks – and the **complexity of the issues** in the general rate case justify **substantial discovery** by the Consumer Advocate. The Consumer Advocate's discovery requests reflect the need for a **substantial amount of information** that is needed to analyze and consider the **substantial and complex requests** made by CGC.

Docket No. 18-00017, Consumer Advocate's Motion to Compel Discovery, at 8 (June 12, 2018) (emphasis added). By the end of CGC's 2018 rate case, the Consumer Advocate served more than 800 discrete discovery requests (counting subparts).

13. CGC recognizes that even with the filing of the documents identified in the Guidelines that the limitation set forth in Commission Rule 1220-01-02-.11(5), that "[n]o party shall serve on any other party more than forty (40) discovery requests including sub-parts without

first having obtained leave of the Commission or a Hearing Officer," may not be very realistic. Again, in CGC's rate case, the Consumer Advocate's initial set of discovery was for 198 numbered requests, not accounting for subparts. CGC did not object to this number, and even went so far as to state in its March 27, 2018, Response to the Consumer Advocate's Motion for Leave to Issue More than Forty Discovery Requests that the Consumer Advocate could issue a second set not to exceed 40 more questions, including subparts. The Consumer Advocate subsequently issued a first supplemental request to the First Discovery Requests consisting of 158 more requests (not counting subparts), a Second Set of Discovery with 73 numbered requests (not counting subparts), a Second Supplement to the First Discovery Requests consisting of 38 requests (not counting subparts), a First Supplement to the Second Discovery Request consisting of 8 requests (not counting subparts), and a Third Supplement to the First Discovery Requests consisting of 13 requests (not counting subparts).

14. While CGC would have been well within its rights to object and force motions to compel for every one of these additional discovery sets, and in retrospect probably should have done so, CGC was attempting to not be overly litigious and the Company did not want to engage the Hearing Officer in multiple, on-going discovery battles. But all of this was against the backdrop of having first provided all of the documents set forth in the Guidelines, which CGC did comply with except for one or two minor oversights. As Mr. Hickerson later testified in the case:

> In my 42-year career, I have been involved in excess of 100 rate cases, and the quality and quantity of data CGC has provided in this case is as good as if not better than what I have seen in most cases, and it certainly complies with the Company's obligation to support and document its rate request. [Docket No. 18-00017, CGC Hickerson Rebuttal, at 3, Lines 1-5.]

15. There must be a balance with discovery. From the utility's perspective, preparing responses to discovery, let alone a high volume of discovery requests, requires time and costs

money, ultimately a cost the ratepayers must bear. While a utility may more than adequately meet its burden of proof when looking at the totality of the utility's case – including minimum filing documents, pre-filed testimony and exhibits, and the petition and affidavits – appropriate discovery may be needed. CGC acknowledges that 40 requests including subparts may not be appropriate for a rate case or alternative regulatory methods case. If the Commission chooses to move forward in revising the number of permissible discovery requests without seeking leave from the Hearing Officer, then whatever that number may be, the final number authorized should recognize and be constrained to the extent the Commission also adopts minimum filing requirements or a designated set of required documents in addition to testimony and exhibits.

16. Finally, the Commission may want to consider providing further guidance regarding the scope of discovery. For example, discovery requests should reasonably relate to the case presented to the Commission for its approval, and clearly identify the information that being sought and what it relates to in the case. The Commission may want to consider a uniform set of definitions or otherwise require parties to follow standard definitions of terms. Whenever possible, discovery requests should cite to the specific testimony or exhibit when clarification or documentation is being sought. Finally, requesting parties should only seek documentation or analyses that already exist, and utilities should not be required to perform analyses or provide documents it does not prepare in the normal course of business.

V. "Informal Discovery" or Discovery Meetings

17. Since CGC's 2018 rate case, the Company has found a great deal of success in working with the Consumer Advocate through an informal discovery process or more simply, meetings between the parties to discuss the case, both before and after discovery and at certain inflection points in the case. While a utility may spend months preparing its case, which it

considers a picture of clarity, intelligent people can disagree about the information presented and what it means.

18. In this regard, a meeting of the parties for an hour or two in person or virtually where the utility can provide an overview of the case and answer question can and has gone a long way in facilitating an understanding of that case that helps to both limit and sharpen formal written discovery. Likewise, such a meeting following the production of discovery responses can and has helped to clarify the information provided and resolved basic questions and misunderstandings which has facilitated the overall discovery process and even settlement. A two-hour meeting can literally save dozens of hours in researching, drafting, reviewing, and filing responses to written discovery.

19. Similarly, allowing witnesses to email or even phone each other to answer basic fact questions, can save hours of work. Simple fact checking matters when exchanged in real time can save hours of wasted time and even more hours of preparing and serving questions, and drafting and serving answers. CGC's practice recently in some matters has been to allow direct contact between witnesses without attorney involvement, with the discretion and understanding that if the requested information is more than confirming or fixing basic facts, then the requesting party should send an email with the attorneys included or seek formal written discovery. This process can significantly streamline the case preparation process.

20. The Commission should not mandate such informal discovery or discovery meetings. But in any revisions of the rules, the Commission may want to consider including discovery meetings and direct witness contact as an optional tool for parties to use where it makes sense under the circumstances. Likewise, Hearing Officers should be able to suggest that parties

engage in such meetings, especially where there may be an actual or perceived large number of discovery requests.

VI. Conclusion

WHEREFORE, CGC appreciates the Commission's invitation to provide comments regarding these important issues of practice and procedure before the Commission. CGC looks forward to participating in the February 25, 2021, informal workshop and any further proceedings the Commission may conduct in this docket. CGC anticipates having Mr. Archie Hickerson and Mr. Paul Teague available to participate along with counsel.

Respectfully submitted this 23rd day of February, 2021.

/s/ J.W. Luna
J. W. Luna, Esq. (No. 5780)
Butler Snow LLP
150 3rd Avenue South, Suite 1600
Nashville, TN 37201
(615) 651-6749
(615) 651-6701 facsimile
JW.Luna@butlersnow.com

and

Floyd R. Self, Esq. (Fla. Bar # 608025)
Berger Singerman LLP
313 North Monroe Street, Suite 301
Tallahassee, Florida 32301
Direct Telephone: (850) 521-6727
Facsimile: (850) 561-3013
Email: fself@bergersingerman.com

Attorneys for Chattanooga Gas Company