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ATTACHMENTS

Attachment WHN-1	William H. Novak Vitae
Attachment WHN-2	CGC Experimental Rule on Large Customer Contracts

1 ***Q1. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND***
2 ***OCCUPATION FOR THE RECORD.***

3 A1. My name is William H. Novak. My business address is 19 Morning Arbor Place,
4 The Woodlands, TX, 77381. I am the President of WHN Consulting, a utility
5 consulting and expert witness services company.¹

6
7 ***Q2. PLEASE PROVIDE A SUMMARY OF YOUR BACKGROUND AND***
8 ***PROFESSIONAL EXPERIENCE.***

9 A2. A detailed description of my educational and professional background is provided
10 in Attachment WHN-1 to my testimony. Briefly, I have both a Bachelor's degree
11 in Business Administration with a major in Accounting, and a Master's degree in
12 Business Administration from Middle Tennessee State University. I am a
13 Certified Management Accountant and am also licensed to practice as a Certified
14 Public Accountant.

15
16 My work experience has centered on regulated utilities for over 35 years. Before
17 establishing WHN Consulting, I was Chief of the Energy & Water Division of the
18 Tennessee Public Utility Commission (the Commission) where I had either
19 presented testimony or advised the Commission on a host of regulatory issues for
20 over 19 years. In addition, I was previously the Director of Rates & Regulatory
21 Analysis for two years with Atlanta Gas Light Company, a natural gas
22 distribution utility with operations in Georgia and Tennessee. I also served for

¹ State of Tennessee, Registered Accounting Firm ID 3682.

1 two years as the Vice President of Regulatory Compliance for Sequent Energy
2 Management, a natural gas trading and optimization entity in Texas, where I was
3 responsible for ensuring the firm's compliance with state and federal regulatory
4 requirements.

5
6 In 2004, I established WHN Consulting as a utility consulting and expert witness
7 services company. Since 2004, WHN Consulting has provided testimony or
8 consulting services to state public utility commissions and state consumer
9 advocates in at least ten state jurisdictions as shown in Attachment WHN-1.

10
11 ***Q3. ON WHOSE BEHALF ARE YOU TESTIFYING?***

12 A3. I am testifying on behalf of the Consumer Advocate Unit (Consumer Advocate)
13 of the Office of the Tennessee Attorney General.

14
15 ***Q4. HAVE YOU PRESENTED TESTIMONY IN ANY PREVIOUS DOCKETS
16 REGARDING CHATTANOOGA COMPANY?***

17 A4. Yes. I've presented testimony in TPUC Docket Nos. U-85-7382, 88-01363, 90-
18 08876, 91-03765, 93-06946 and 18-00017 concerning rate cases involving
19 Chattanooga Gas Company (CGC or Company) as well as dockets for other
20 generic tariff and rulemaking matters. In addition, I previously advised the
21 Commission on special contract bypass issues involving CGC in Docket Nos. 97-
22 00262 to 97-00265 that were similar in scope to the current proceeding.

1 ***Q5. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS***
2 ***PROCEEDING?***

3 A5. My testimony will support and address the Consumer Advocate's positions and
4 concerns with respect to the Joint Request of CGC and Kordsa, Inc. (Kordsa) for
5 Approval of a Special Contract (the Joint Request).

6
7 ***Q6. WHAT DOCUMENTS HAVE YOU REVIEWED IN PREPARATION OF***
8 ***YOUR TESTIMONY?***

9 A6. I have reviewed the Joint Request filed on August 24, 2021, along with the
10 testimony and exhibits filed by CGC and Kordsa (the Parties) in this Docket. In
11 addition, I have reviewed the Parties' workpapers supporting the proposed Special
12 Contract. I have also reviewed the Parties' responses to the data requests
13 submitted by the Consumer Advocate. I have reviewed the Commission's Order,
14 as well as my own workpapers, related to revenue calculation for Kordsa in
15 Docket No. 18-00017 regarding CGC's last rate case. I have reviewed the
16 Commission's Order in Docket No. 99-00908 approving a Special Contract
17 between CGC and Dupont. I also reviewed the Commission's Order in Docket
18 No. 14-00118 approving a Special Contract between CGC and Volkswagen.
19 Finally, I reviewed the Commission Orders in Docket Nos. 97-00262 to 97-00265
20 disapproving the proposed Special Contracts between CGC and Archer Daniels
21 Midland Co., Velsicol Chemical Corp., Bunge Foods Corp. and Southern
22 Cellulose Products, Inc.

23

1 ***Q7. PLEASE DESCRIBE THE RELIEF THAT THE PARTIES ARE ASKING***
2 ***FROM THE COMMISSION IN THEIR JOINT PETITION.***

3 A7. Among other things, the Parties are asking the Commission to approve their
4 proposed Special Contract at a rate of [REDACTED]
5 [REDACTED].² In addition, the Parties are asking that
6 any future changes to this proposed Special Contract rate resulting from either a
7 general rate case or an Annual Review Mechanism (ARM) adjustment [REDACTED]
8 [REDACTED].³ Finally, the Parties are asking that this proposed Special Contract be
9 approved by the Commission for a [REDACTED] period.⁴
10

11 ***Q8. PLEASE SUMMARIZE YOUR RECOMMENDATIONS AND CONCERNS***
12 ***IN THIS DOCKET.***

13 A8. Based upon the evidence presented by the Parties in this Docket, I recommend
14 that the Commission disapprove the proposed Special Contract. Specifically, the
15 threat of bypass does not appear to be imminent at this time. In addition, the
16 Special Contract rates proposed by the Parties would unfairly increase the charges
17 borne by other customers.
18

19 ***Q9. IF THE COMMISSION IS INCLINED TO APPROVE THE PROPOSED***
20 ***SPECIAL CONTRACT, DO YOU HAVE ANY FURTHER***
21 ***RECOMMENDATIONS FOR THE COMMISSION'S CONSIDERATION?***

² Exhibit 2 of the Joint Petition, Paragraph 4.1, Page 5 of 28.

³ *Id.* at 5.

⁴ Exhibit 2 of the Joint Petition, Paragraph 1, Page 3 of 28.

1 A9. Yes. If the Commission is persuaded by the evidence presented to approve the
2 proposed Special Contract, then I would recommend the following adjustments:

- 3 • Modification of Paragraph 1 of the proposed Special Contract restricting
4 the term of the Special Contract for five years [REDACTED].
- 5 • Modification of Paragraph 4.1 of the proposed Special contract limiting
6 future rate increases from either a base rate case or annual review
7 mechanism [REDACTED].
- 8 • Modification of Paragraph 30 of the proposed Special Contract restricting
9 assignment to other unaffiliated entities without prior consent of the
10 Commission.
- 11 • Deletion of Paragraph 33 of the proposed Special Contract allowing
12 Special Contract rates to be applied [REDACTED]
13 [REDACTED].

14

15 A detailed discussion for each of the issues that I've summarized here along with
16 my recommendations for their resolution follows.

17

18 *[Testimony continues on next page]*

1 I. COMMISSION REVIEW OF PREVIOUS SPECIAL CONTRACTS
2 WITH CHATTANOOGA GAS COMPANY
3

4 ***Q10. MR. NOVAK, HAS THE COMMISSION PREVIOUSLY CONSIDERED***
5 ***SPECIAL CONTRACTS WITH ANY INDUSTRIAL CUSTOMERS OF***
6 ***CGC?***

7 A10. Yes. Because of the significance of its industrial customer profile, the
8 Commission has considered a number of Special Contract proposals by CGC.
9 One of the earliest Special Contracts for CGC that I'm familiar with involved the
10 1966 Special Contract with CF Industries.⁵ More recently though, in 1998 the
11 Commission denied four proposed Special Contracts between CGC and Archer
12 Daniels Midland Co., Velsicol Chemical Corp., Bunge Foods Corp. and Southern
13 Cellulose Products, Inc. in Docket Nos. 97-00262 to 97-00265. In addition, the
14 Commission approved Special Contracts for CGC with Dupont in Docket No. 99-
15 00908 and with Volkswagen in Docket No. 14-00118.
16

17 ***Q11. PLEASE DESCRIBE THE PROPOSED SPECIAL CONTRACTS***
18 ***BETWEEN CGC AND ARCHER DANIELS MIDLAND CO., VELSICOL***
19 ***CHEMICAL CORP., BUNGE FOODS CORP. AND SOUTHERN***
20 ***CELLULOSE PRODUCTS, INC. IN DOCKET NOS. 97-00262 TO 97-00265***
21 ***THAT WERE DENIED BY THE COMMISSION.***

⁵ The original contract was actually entered into on July 6, 1966, between Chattanooga Gas Company and Farmer's Chemical Association. This contract was later assigned to CF Industries on May 20, 1976.

1 A11. These four dockets probably best represent the Commission's consideration of
2 qualifying criteria for approving Special Contracts. Prior to the filing of these
3 four dockets, CGC had made a tariff filing with the Commission that, among
4 other things, encompassed specific requirements for determining whether a
5 Special Contract was warranted.⁶ The Commission's decision in these four
6 dockets then set a precedent requiring a factual demonstration that:

- 7 1. Customer bypass is imminent;
- 8 2. Such bypass would be uneconomic;
- 9 3. The contract rates and terms are just and reasonable and are not unjustly
10 preferential or unduly discriminatory; and
- 11 4. The contract rates are the highest that could be negotiated.

12

13 In each of these four dockets, the Commission found the following:

14 *Considering the evidence in the record, the testimony of the parties,*
15 *and the whole of the circumstances from the time the contract*
16 *negotiations began to the time of the execution of the contract, the*
17 *Authority concludes that the record in this cause does not support a*
18 *finding that customer bypass of the CGC distribution system is*
19 *imminent. Because the Authority concludes that there is insufficient*
20 *factual support for a threshold finding that customer bypass is*
21 *imminent, the Authority finds that there is no need to consider the*
22 *remaining issues at this time.*⁷
23

24 Of particular note, none of these four companies followed through with their
25 proposed bypass plans after the Commission's decision.

⁶ This tariff filing is included in Attachment WHN-2.

⁷ Commission Order in Docket No. 97-00262, Page 8, March 17, 1998. After the decision in these four dockets, CGC withdrew this tariff. However, the Company has included the salient points from this tariff in this current docket. See specifically the direct testimony of CGC witness Vette, Page Nos. 3-4.

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***Q12. PLEASE DESCRIBE THE SPECIAL CONTRACT APPROVED BY THE
COMMISSION BETWEEN CGC AND DUPONT IN DOCKET NO. 99-
00908.***

A12. The Special Contract between CGC and Dupont was approved by the Commission on July 18, 2000. This Special Contract included the following terms:

- A term of [REDACTED];
- A monthly customer charge of [REDACTED]; and
- Transportation charges of [REDACTED]
[REDACTED]
[REDACTED].⁸

However, in 2004, Dupont sold its textile business to Invista, a division of Koch Industries. It then appears that Invista sold the entire Chattanooga plant to Kordsa in May 2017. After approval of the original Special Contract with Dupont, CGC assigned the rates to the subsequent owners of this plant without Commission approval.⁹ On October 31, 2019, this Special Contract expired and was not renewed. In CGC's last rate case, approximately [REDACTED] was forecasted as annual revenue from the Dupont/Invista/Kordsa Special Contract.¹⁰

⁸ CGC response to Consumer Advocate discovery request CPAD-1-18a in TPUC Docket No. 18-00017.
⁹ When questioned about this assignment, CGC stated that the "[a]ssignment of the contract and/or the rates, terms, and conditions contained therein does not require the approval of the TPUC." See CGC response to Consumer Advocate Discovery Request 1-365 in TPUC Docket No. 18-00017.
¹⁰ TPUC Docket No. 18-00017, Consumer Advocate Revenue Workpaper R-34-1.00.

1 ***Q13. PLEASE DESCRIBE THE SPECIAL CONTRACT APPROVED BY THE***
2 ***COMMISSION BETWEEN CGC AND VOLKSWAGEN IN DOCKET NO.***
3 ***14-00118.***

4 A13. The Special Contract between CGC and Volkswagen was approved by the
5 Commission on March 9, 2015. The terms on this Special Contract included the
6 following:

- 7 • An initial term of [REDACTED], with
8 provisions for [REDACTED] after this date;
- 9 • A monthly customer charge of [REDACTED]; and
- 10 • A transportation charge of [REDACTED] for all usage.¹¹

11 In CGC's last rate case, approximately [REDACTED] was forecasted as annual revenue
12 from the Volkswagen Special Contract.¹²

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17 *[Testimony continues on next page]*
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¹¹ CGC response to Consumer Advocate discovery request CPAD-1-18b in TPUC Docket No. 18-00017.

¹² TPUC Docket No. 18-00017, Consumer Advocate Revenue Workpaper R-34-1.00.

II. CHATTANOOGA GAS COMPANY PROPOSED SPECIAL CONTRACT
WITH KORDSA

Q14. MR. NOVAK, PLEASE DESCRIBE THE PROPOSED SPECIAL CONTRACT BETWEEN CGC AND KORDSA IN THIS DOCKET.

A14. Among other things, the proposed Special Contract between CGC and Kordsa has the following terms:

-
- | Response | Percentage |
|--|------------|
| Current government is responsible | 13% |
| Previous government is responsible | 14% |
| Global factors (e.g., COVID-19 pandemic) | 73% |

Q15. MR. NOVAK, WHAT IS THE ANNUAL REVENUE IMPACT OF THE PROPOSED SPECIAL CONTRACT BETWEEN CGC AND KORDSA?

13 Exhibit 2 of the Joint Petition, Paragraph 1, Page No. 3.
14 Exhibit 2 of the Joint Petition, Paragraphs 4.1, Page Nos. 4-5.
15 Exhibit 2 of the Joint Petition, Paragraphs 4.1, Page Nos. 4-5.
16 Exhibit 2 of the Joint Petition, Paragraph 30, Page No. 25.
17 Exhibit 2 of the Joint Petition, Paragraph 33, Page No. 26.

1 A15. [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]

Table 1 – Pro Forma Revenue Impact of Special Contract ¹⁸				
Year	Current Tariff	Special Contract	Discount Amount	Discount Percent
2018	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2019	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2020	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2021 (through June)	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Total	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

8

9 ***Q16. MR. NOVAK, IS KORDSA'S PROPOSED BYPASS OF THE CGC***
 10 ***DISTRIBUTION SYSTEM IMMINENT?***

11 A16. No. The bypass does not appear to be imminent for the following reasons:
 12 1. The individuals identified as being involved with this project on behalf of
 13 Kordsa do not appear to have the authority to either enter into a Special
 14 Contract, authorize the construction of a bypass pipeline, or submit
 15 testimony.
 16 2. There is no evidence demonstrating that Kordsa's Board of Directors has
 17 approved the funds for the construction of a bypass pipeline.

¹⁸ CGC response to Consumer Advocate Discovery Request 2-1.

1 3. There is no supporting evidence for Kordsa's calculated cost of a bypass
2 pipeline.

3 4. There is no supporting evidence that Kordsa has secured all of the right-
4 of-way easements for the construction of a bypass pipeline.

5

6 ***Q17. MR. NOVAK, EXPLAIN YOUR FIRST CONCERN THAT THE KORDSA***
7 ***REPRESENTATIVES IN THIS CASE LACK THE NECESSARY***
8 ***AUTHORITY FOR THIS MATTER.***

9 A17. The direct testimony of Kordsa witness Gibson indicates that he is the North
10 American Supply Chain Manager for Kordsa's facilities in Chattanooga,
11 Tennessee and Laurel Hill, North Carolina.¹⁹ Typically, the individual testifying
12 in these matters is someone who has authority to bind the Company on the
13 testimony that they are presenting. It is not clear that Mr. Gibson possesses this
14 authority.²⁰ Further, the two individuals actually executing the Special Contract
15 on behalf of Kordsa are the HR Manager and the Finance Manager.²¹ Again, it is
16 not clear that these two individuals have the authorization to enter into a [REDACTED]
17 [REDACTED] Special Contract that would be binding on Kordsa. Further, it would seem
18 that the proper authority figure testifying in this case would be the same as the
19 one executing the Special Contract on behalf of Kordsa, but that hasn't happened.
20 Finally, it appears that all three of these Kordsa representatives lack the authority

¹⁹ Direct testimony of Ben Gibson, Page 2, September 3, 2021.

²⁰ Although Mr. Gibson states in his affidavit of November 19, 2021 that the Chief Operating Officer has approved the construction of a bypass pipeline and that Kordsa's Board of Directors does not have to approve this capital project, there is no firsthand information that has been filed in this Docket by a Kordsa officer that has authority to bind the company to these statements.

²¹ Exhibit 2 of the Joint Petition, Paragraph 33, Page No. 27.

1 to approve the construction of a [REDACTED] bypass pipeline since
2 construction authorization is typically outside the responsibility of the Supply
3 Chain Manager, the Human Resources Manager and the Finance Manager.²²
4 Because of this lack of apparent authority to construct a bypass pipeline, to
5 negotiate a long-term contract, and to present testimony in this case, it does not
6 appear that bypass is imminent.
7

8 ***Q18. EXPLAIN YOUR NEXT CONCERN THAT KORDSA'S BOARD OF***
9 ***DIRECTORS HAVE NOT APPROVED THE CONSTRUCTION OF A***
10 ***BYPASS PIPELINE.***

11 A18. Typically, all public companies are required to have their capital budgets
12 approved by a board of directors, especially in cases where a material capital
13 expenditure is not directly associated with the Company's product line. However,
14 Kordsa's management has not presented the capital budget for the bypass pipeline
15 construction to its board of directors.²³ Because the board of directors has not
16 considered or authorized the construction of a bypass pipeline, it does not appear
17 that bypass is imminent.
18

²² [REDACTED]

²³ Kordsa response to Consumer Advocate Discovery Request 1-5.

1 **Q19. EXPLAIN YOUR CONCERN THAT THERE IS NO EVIDENCE**
2 **SUPPORTING KORDSA'S COST FOR CONSTRUCTING AND**
3 **OPERATING A BYPASS PIPELINE.**

4 A19. In his direct testimony, Kordsa witness Gibson states that the total costs of
5 building and operating a bypass pipeline would be about \$200,000 per year.²⁴ The
6 Consumer Advocate then requested the data supporting this \$200,000 annual cost.
7 The Company responded as follows:

8 *The figures shown in the chart supplied by Tennessee Energy*
9 *Consultants are rough estimates from Mr. Earl Burton based on his*
10 *experience advising Kordsa and other CGC customers. Kordsa has*
11 *no supporting work papers from T.E.C. The total costs of the tap*
12 *and pipeline are described in Response 2-14.²⁵ [Emphasis added.]*

13
14 Because Kordsa has no evidence supporting the cost of constructing and operating
15 a bypass pipeline, it does not appear that bypass is imminent. In addition, it is
16 unclear from the evidence in the record of exactly how a Special Contract rate
17 could have been negotiated between the Parties without review and consideration
18 of any supporting cost data.

19
20 **Q20. NEXT EXPLAIN YOUR CONCERN THAT THERE IS NO EVIDENCE**
21 **THAT KORDSA HAS SECURED ALL OF THE NECESSARY RIGHT-OF-**
22 **WAY EASEMENTS FOR THE CONSTRUCTION OF A BYPASS**
23 **PIPELINE.**

24 A20. Kordsa witness Gibson included a bypass study from 2019 as Exhibit 1 to his
25 testimony. This bypass study considered three different routes for a bypass

²⁴ Direct testimony of Ben Gibson, Page 6, September 3, 2021.

²⁵ Kordsa response to Consumer Advocate Discovery Request 2-8.

1 pipeline, with each route requiring a combination of both public and private right-
2 of-way easements.²⁶ While Mr. Gibson included a public easement agreement
3 with the City of Chattanooga as Exhibit 2 to his testimony, no such agreements
4 were provided for any of the required privately-owned easements. Consequently,
5 the Consumer Advocate requested a copy of all privately-owned easements that
6 had been secured by Kordsa for the bypass pipeline. Kordsa initially responded
7 that no privately-owned easements were necessary.²⁷ When the Consumer
8 Advocate pointed out that the bypass study mentions that all bypass routes
9 required privately-owned easements, Kordsa responded as follows:

10 *The final route of the pipeline was adjusted so that the only easement*
11 *needed for this project was the easement to cross land owned by the*
12 *city between the ETNG tap and land owned by Kordsa where the*
13 *Kordsa wastewater plant is located...The only easement needed is*
14 *the one from the city.*²⁸
15

16 However, this data response contradicts the Company's own bypass study stating
17 that privately-owned easements were required. As a result, it is not clear from the
18 evidence in this Docket whether the Company in fact has obtained all of the right-
19 of-way easements necessary to construct a bypass pipeline. Since it is unclear if
20 the right-of-way easements have been acquired, then it does not appear that
21 bypass is imminent.
22

23 **Q21. MR. NOVAK, BASED UPON THESE CONSIDERATIONS, IS IT YOUR**
24 **OPINION THAT BYPASS OF THE CGC SYSTEM IS NOT IMMINENT?**

²⁶ Exhibit 1, Page 6 of the direct testimony of Ben Gibson.

²⁷ Kordsa response to Consumer Advocate Discovery Request 1-11.

²⁸ Kordsa response to Consumer Advocate Discovery Request 2-12.

1 A21. Based upon each of the concerns described above, it does not appear that bypass
2 is imminent.

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A22. Bypass threats can pose many complex regulatory and economic concerns and are not to be treated lightly. As a result, the Commission's consideration of a potential pipeline bypass case requires a demonstration through credible evidence that bypass is indeed feasible. A thorough review of this evidence then needs to be evaluated by the Commission in order to consider genuine potential bypass candidates from those perpetuating the illusion of bypass simply to secure lower rates.

Based upon the evidence presented by the Parties in this Docket, I recommend that the Commission disapprove the proposed Special Contract. Specifically, as described above, the threat of bypass does not appear to be imminent at this time. In addition, the Special Contract rates proposed by the Parties would unfairly increase the charges borne by CGC's other customers.

A23 Yes. If the Commission is persuaded by the evidence presented to approve the proposed Special Contract, then I would recommend the following adjustments:

1 • **Modification of Paragraph 1 of the proposed Special Contract**

2 **restricting the term of the Special Contract for five years** [REDACTED]

3 [REDACTED]

4 Although the Commission did approve the previous Dupont Special

5 Contract for [REDACTED] in Docket No. 99-00908, the Volkswagen

6 Special Contract in Docket No. 14-00118 was only approved with an

7 initial term of [REDACTED]. Further, the qualifying criteria

8 for Special Contracts limits the contract term to just five years.²⁹ I would

9 therefore recommend that the Commission also limit the effective period

10 of this Special Contract to no more than five years from the date of the

11 Commission's Order.

12

13 • **Modification of Paragraph 4.1 of the proposed Special contract**

14 **limiting future rate increases from either a base rate case or annual**

15 **review mechanism to** [REDACTED]

16 The Parties have included this provision to shield Kordsa from the full

17 impact of any future increases from rate cases or annual review

18 mechanism (ARM) adjustments. However, CGC now expects that its

19 future ARM filings will require annual revenue adjustments of

20 approximately \$6.8 million from 2022 through 2024.³⁰ I believe this type

21 of rate design change is best considered within each rate case and ARM

22 docket instead of limiting the impact within this bypass docket. I

²⁹ Attachment WHN-2, Page No. 2, Item F.

³⁰ Commission Order in Docket No. 21-00048, Page No. 6.

therefore recommend that the Commission delete the provisions of Paragraph 4.1 that limit the amount of any future rate change from a rate case or ARM docket.

Age Group	Number of People Vaccinated (Approximate)
5	95
6	90
7	45
8	95
9	100
10	90
11	45

Year	Percentage of respondents
13	100%
14	98%
15	72%
16	98%
17	98%
18	100%
19	98%
20	100%
21	22%

23 Q24. DOES THIS COMPLETE YOUR TESTIMONY?

1 A24. Yes, it does. However, I reserve the right to incorporate any new information that
2 may subsequently become available.

**IN THE TENNESSEE PUBLIC UTILITY COMMISSION
AT NASHVILLE, TENNESSEE**

IN RE:

**JOINT REQUEST OF CHATTANOOGA
GAS COMPANY AND KORDSA, INC.
FOR APPROVAL OF SPECIAL
CONTRACT**

DOCKET NO. 21-00094

AFFIDAVIT

I, William H. Novak, on behalf of the Consumer Advocate Unit of the Attorney General's Office, hereby certify that the attached Direct Testimony represents my opinion in the above-referenced case and the opinion of the Consumer Advocate Unit.


WILLIAM H. NOVAK

Sworn to and subscribed before me
this 19th day of November, 2021.


NOTARY PUBLIC

My commission expires: September 28, 2022

ATTACHMENT WHN-1

William H. Novak Vitae

William H. Novak

19 Morning Arbor Place
The Woodlands, TX 77381

Phone: 713-298-1760

Email: halnovak@whnconsulting.com

Areas of Specialization

Over thirty-five years of experience in regulatory affairs and forecasting of financial information in the rate setting process for electric, gas, water and wastewater utilities. Presented testimony and analysis for state commissions on regulatory issues in four states and has presented testimony before the FERC on electric issues.

Relevant Experience

WHN Consulting – September 2004 to Present

In 2004, established WHN Consulting to provide utility consulting and expert testimony for energy and water utilities. WHN Consulting is a “complete needs” utility regulation firm able to provide clients with assistance in all areas of utility rate analysis. Since 2004, WHN Consulting has provided assistance to public utility commissions and state consumer advocates in over ten state jurisdictions. Some of the topics and issues that WHN Consulting has presented testimony for include net metering, alternative rate regulation, revenue requirement calculations in rate cases, class cost of service studies, rate design, deferred income tax calculations, purchased gas costs, purchased power costs, and weather normalization studies.

Sequent Energy Management – February 2001 to July 2003

Vice-President of Regulatory Compliance for approximately two years with Sequent Energy Management, a gas trading and optimization affiliate of AGL Resources. In that capacity, directed the duties of the regulatory compliance department, and reviewed and analyzed all regulatory filings and controls to ensure compliance with federal and state regulatory guidelines. Engaged and oversaw the work of a number of regulatory consultants and attorneys in various states where Sequent has operations. Identified asset management opportunities and regulatory issues for Sequent in various states. Presented regulatory proposals and testimony to eliminate wholesale gas rate fluctuations through hedging of all wholesale gas purchases for utilities. Also prepared testimony to allow gas marketers to compete with utilities for the transportation of wholesale gas to industrial users.

Atlanta Gas Light Company – April 1999 to February 2001

Director of Rates and Regulatory Analysis for approximately two years with AGL Resources, a public utility holding company serving approximately 1.9 million customers in Georgia, Tennessee, and Virginia. In that capacity, was instrumental in leading

Atlanta Gas Light Company through the most complete and comprehensive gas deregulation process in the country that involved terminating the utility's traditional gas recovery mechanism and instead allowing all 1.5 million AGL Resources customers in Georgia to choose their own gas marketer. Also responsible for all gas deregulation filings, as well as preparing and defending gas cost recovery and rate filings. Initiated a weather normalization adjustment in Virginia to track adjustments to company's revenues based on departures from normal weather. Analyzed the regulatory impacts of potential acquisition targets.

Tennessee Regulatory Authority – Aug. 1982 to Apr 1999; Jul 2003 to Sep 2004

Employed by the Tennessee Regulatory Authority (formerly the Tennessee Public Service Commission) for approximately 19 years, culminating as Chief of the Energy and Water Division. Responsible for directing the division's compliance and rate setting process for all gas, electric, and water utilities. Either presented analysis and testimony or advised the Commissioners/Directors on policy setting issues, including utility rate cases, electric and gas deregulation, gas cost recovery, weather normalization recovery, and various accounting related issues. Responsible for leading and supervising the purchased gas adjustment (PGA) and gas cost recovery calculation for all gas utilities. Responsible for overseeing the work of all energy and water consultants hired by the TRA for management audits of gas, electric and water utilities. Implemented a weather normalization process for water utilities that was adopted by the Commission and adopted by American Water Works Company in regulatory proceedings outside of Tennessee.

Education

B.A, Accounting, Middle Tennessee State University, 1981
MBA, Middle Tennessee State University, 1997

Professional

Certified Public Accountant (CPA), Tennessee Certificate # 7388
Certified Management Accountant (CMA), Certificate # 7880
Former Vice-Chairman of National Association of Regulatory Utility Commission's Subcommittee on Natural Gas

Witness History for William H. Novak, CPA Selected Cases

State	Company/Sponsor	Year	Assignment	Docket
Louisiana	CenterPoint Energy/Louisiana PSC	2011	Audit of PGA Filings from 2002 - 2008 of CenterPoint Arkla	<u>S-32534</u>
	CenterPoint Energy/Louisiana PSC	2011	Audit of PGA Filings from 2002 - 2008 of CenterPoint Entex	<u>S-32537</u>
	Louisiana Electric Utilities/Louisiana PSC	2012	Technical Consultant for Impact of Net Meter Subsidy on other Electric Customers	<u>R-31417</u>
Tennessee	Aqua Utilities/Aqua Utilities	2006	Presentation of Rate Case on behalf of Aqua Utilities	<u>06-00187</u>
	Almos Energy Corporation/Almos Intervention Group	2007	Rate design for Industrial Intervenor Group	<u>07-00105</u>
	Bristol TN Essential Services/BTES	2009	Audit of Cost Allocation Manual	<u>05-00251</u>
	Chattanooga Manufacturers Association/CMA	2009	Spokesperson for Industrial Natural Gas Users before the Tennessee State Legislature	<u>HB-1349</u>
	Piedmont Natural Gas Company/Tennessee AG	2011	Rate Case Audit - Revenue, Class Cost of Service Study & Rate Design	<u>11-00144</u>
	Tennessee-American Water Company/Tennessee AG	2012	Rate Case Audit - Revenues, Rate Base, Class Cost of Service Study and Rate Design	<u>12-00049</u>
	Tennessee-American Water Company/Tennessee AG	2013-2017	Alternative Regulation - Audit of Budget & True-up Filings, Rate Design	<u>16-00126</u>
	Piedmont Natural Gas Company/Tennessee AG	2013-2017	Alternative Regulation - Audit of Budget & True-up Filings, Rate Design	<u>16-00140</u>
	Piedmont Natural Gas Company/Tennessee AG	2014	Audit of Recovery of Compressed Natural Gas Infrastructure Costs	<u>14-00086</u>
	Piedmont Natural Gas Company/Tennessee AG	2014	Audit of Accumulated Deferred Federal Income Tax	<u>14-00017</u>
	Almos Energy Corporation/Tennessee AG	2014	Rate Case Audit - Revenues, O&M Expenses, Rate Base and Rate Design	<u>14-00146</u>
	Almos Energy Corporation/Tennessee AG	2015-2017	Alternative Regulation - Audit of Budget & True-up Filings, Rate Design	<u>16-00105</u>
	B&W Gas Company/B&W	2015	Presentation of Rate Case on behalf of B&W Gas Company	<u>15-00042</u>
	AEP & Kingsport Power/Tennessee AG	2015	Audit of Storm Costs and Rate Recovery	<u>15-00024</u>
	AEP & Kingsport Power/Tennessee AG	2016	Rate Case Audit - Revenue, Rate Base, Class Cost of Service Study & Rate Design	<u>16-00001</u>
Alabama	Jefferson County (Birmingham) Wastewater/Alabama AG	2013	Bankruptcy Filing - Allowable Costs and Rate Design	<u>2009-2318</u>
Illinois	Peoples & North Shore Gas Cos./Illinois Commerce Comm.	2007	Management Audit of Gas Purchasing Practices	<u>06-0556</u>
	Southwestern Public Service Co./New Mexico PRC	2010	Financial Audit of Fuel Costs for 2009 and 2010	<u>09-00351-JT</u>
	National Grid/New York PSC	2011	Audit of Affiliate Relationships and Transactions	<u>10-M-0451</u>
Ohio	Ohio-American Water Company/Ohio Consumers' Counsel	2010	Rate Case Audit - Class Cost of Service and Rate Design	<u>09-0391-W5-AIR</u>
	Vectren Energy Delivery of Ohio/Ohio Consumers' Counsel	2008	Rate Case Audit - Class Cost of Service and Rate Design	<u>07-1080-GA-AIR</u>
	Duke Energy-Ohio/Public Utilities Commission of Ohio	2009	Focused Management Audit of Fuel & Purchased Power (FPP Riders)	<u>07-0723-EL-JNC</u>
Texas	Center Point Energy/Texas AG	2009	Rate Case Audit - Class Cost of Service and Rate Design	<u>07-0723-EL-JNC</u>
	Sharyland Utilities/St. Lawrence Cotton Growers Assn.	2017	Rate Case Audit - Class Cost of Service and Rate Design	<u>07-0723-EL-JNC</u>
North Carolina	Aqua Utilities/PSS Legal Fund	2011	Rate Case Audit - Class Cost of Service and Rate Design	<u>PUC 45414</u>
Washington DC	Washington Gas Light Co./Public Service Comm of DC	2011	Audit of Tariff Rider for Infrastructure Replacement Costs	<u>W-218, Sub-319</u>
NARUC	National Association of Regulatory Utility Commissioners	2015	Presentation of Regulatory Issues with Net Metering Customers on Rates of Electric Utilities	<u>1027</u>

NOTE: Click on Docket Number to view testimony/report for each case where available.

ATTACHMENT WHN-2
CGC Experimental Rule on
Large Customer Contracts

LARGE CUSTOMER CONTRACTS - EXPERIMENTAL RULE

The Company may enter into negotiated contracts for sales and/or transportation service for large commercial or industrial customers receiving service under Tariff Rate Schedules L-1, I-1, T-1 and T-2 pursuant to this provision. Contracts may be for firm or interruptible service and shall be designed to avoid uneconomic bypass which would be detrimental to ratepayers. Uneconomic bypass may include both physical bypass and long-term fuel bypass.

- A. The Company and the contracting customer shall jointly petition the Authority for approval of a special contract under this rule. The petition shall include a copy of the contract, a detailed analysis containing all data, supported by appropriate work papers, demonstrating why the contract is necessary to prevent uneconomic bypass. The petition shall also include an estimate of the Company's net gain (or loss) in annual revenue resulting from this contract and an affirmative statement from the petitioners that the contract is consistent with this rule and with the provisions of Tenn. Code Ann. §§ 65-4-122 and 65-5-204. A copy of the petition shall be filed with the Consumer Advocate Division, Office of the Attorney General.
- B. If jointly requested by the petitioners, the Authority may, upon filing, order that the contract price be kept confidential pursuant to T.C.A. § 65-3-109. The petitioners shall submit any proposed confidentiality order to the Authority at the time the petition is filed. The confidentiality order shall remain in effect for the duration of the contract unless modified or withdrawn by the Authority following notice to the petitioners and the opportunity for a hearing if requested.
- C. To approve a discounted long-term natural gas transportation service contract, designed to avoid system bypass, the Authority must find factually that (1) customer bypass is imminent, (2) such bypass would be uneconomic, (3) the contract rates and terms are just and reasonable and are not unjustly preferential or unduly discriminatory under T. C. A. § 65-5-204, and (4) that the contract rates are the highest that could be negotiated. In determining the credibility of the threat of bypass, the Authority will look at the whole of the circumstances from the time the contract negotiations begin to the time of contract execution, but not subsequent to execution.
- D. The price terms provided in any contract entered into by the Company under this rule shall not be less than the marginal cost of providing service nor greater than the filed tariff rate generally applicable to such service.
- E. The contract may become effective upon the date requested in the filing, subject to review and the setting of a hearing by the Authority, if deemed necessary. Any such hearing shall be held within 90 days of filing of the petition. If the Company does not file all the information required by Paragraph A above, the 90 day deadline will be extended for the number of days taken by the Company to provide that additional data to the Authority or the Consumer Advocate Division.

LARGE CUSTOMER CONTRACTS - EXPERIMENTAL RULE (Continued)

- F. The initial term of contracts pursuant to this rule shall not be less than one year and shall not exceed five years. The contracts may be renewed upon Authority Approval, subject to the factual standards of Paragraph A.
- G. The Company may separately identify, purchase on the behalf of and assign wellhead gas supply to a customer under contracts developed pursuant to this rule. Where a wellhead gas supply is assigned to a customer, the gas costs and revenues associated with that supply shall not be included in calculations made in accordance with the Purchased Gas Adjustment Provision. Where interstate transportation is assigned to a customer, the costs and revenues from the interstate transportation component under the contract shall be included in the calculations made in accordance with the Purchased Gas Adjustment Provision.
- H. Contracts will incorporate by reference the applicable tariff provisions required to implement the service provided under this contract; provided, however, that parties may negotiate such other reasonable and appropriate terms and conditions which are entered into under this procedure.
- I. The accounting and ratemaking treatment for revenues pursuant to this procedure until the next rate case will be as follows:
 - (1) The net change in gross margin (gain or loss) caused by a change in rates under this provision will be shared equally on a prospective basis between a) the Company and b) all firm transportation and firm sales volumes other than those governed by this procedure.
 - (2) The net change in gross margin will be measured for each customer by subtracting a) the gross margin received during the first twelve months after the application of new rates designed under this procedure from b) the gross margin received for twelve months immediately preceding the application of this procedure or the gross margin used for that customer in the most recent rate case test period, whichever is most current. Any ratemaking treatment will be addressed in the next company rate case following the approval of any special contract.
 - (3) Such sharing shall be recovered by addition to or subtraction from the balancing account of the PGA.
- J. This rule shall not apply to any negotiated rates on a temporary basis to meet fluctuating competitive fuels prices. This provision shall have no impact on month-to-month agreements entered into pursuant to approved tariff provisions.