BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION
NASHVILLE, TENNESSEE

Chattanooga Gas Company Petition for Approval of Tariff Amendments to T-1, T-2, and T-3	)))	Docket No. 22-00004

CHATTANOOGA GAS COMPANY'S
RESPONSE TO CRMA'S MOTION FOR SEQUESTRATION

Chattanooga Gas Company ("CGC" or "Company") files with the Tennessee Public Utility Commission ("Commission") this Response to the Chattanooga Regional Manufacturers Association's ("CRMA") Motion for Sequestration of CGC's witnesses ("Motion"), and in support of denying this Motion, CGC states:

1. CRMA seeks to exclude CGC's witnesses from the hearing room under Rule 615 Tennessee Rules of Civil Procedure ("the Rule"). Because the Motion misstates the applicable law and record and wholly fails to identify a justification consistent with the policy purpose underlying the Rule, the Motion should be denied.

2. First, despite CRMA's suggestion, the Rule is not applicable in proceedings before this Commission. As set forth in this Commission's governing law, Section 65-2-109(1), Tennessee Code, "The commission shall not be bound by the rules of evidence applicable in a court . . . ." With regard to sequestration, the Commission Rules governing contested proceedings directly recognize that whether witnesses should be excluded from the hearing room is entirely discretionary: "In the discretion of the Commission or the Hearing Officer or on motion of any party witnesses may be excluded from the hearing room prior to their testimony." R. 1220-01-02.16(6). Thus, CRMA has misstated the law applicable to this case – the Commission is not required to sequester upon request. While it may be "tradition" to exclude upon request, whether

the Commission exercises its discretion to exclude witnesses is an extreme restraint on a party that should be imposed only when there is a risk of witness contamination. Here, there is no risk.

3. As stated in *State v. Bane*, 57 S.W.3d 411, 423 (Tenn. 2001), the purpose of the Rule "is to prevent a witness from changing or altering his or her testimony based on testimony heard or facts learned from other testifying witnesses." *See also State v. Harris*, 839 S.W.2d 54, 68 (Tenn. 1992). The basis for the rule is that eyewitness testimony is usually considered unreliable and sometimes eyewitnesses may change their testimony based on the testimony of another witness. Here there is no eyewitness testimony. Moreover, all of the testimony in this case is **prefiled**. Witnesses are on the record, and discovery and other pre-trial events are all based upon the prefiled testimony of each party that will be sworn to at the hearing and come into the record. Moreover, all of CGC's witnesses are experts. Given the extensive CGC prefiled expert testimony that has been filed, there is simply no danger of any CGC witnesses being influenced by the cross examination of another CGC witness and changing their prefiled testimony.

4. The "credibility" examples cited by CRMA in its Motion only identify potential cross examination subjects for the hearing and not how CGC's witnesses can change their prefiled testimony. The credibility of a witness is always at issue and, if questioned, tested through cross examination, not sequestration. Again, because **testimony is prefiled**, the examples given by the Motion are untrue and addressed by CGC's prefiled rebuttal. For example, CRMA asserts that in January 2022, CGC diverted pipeline capacity to off-system customers and replaced that gas with inventory from the LNG tank. This is not a fact, but an opinion of CMRA witness Crist based upon his misinterpretation and incorrect conclusions drawn from certain data. As Mr. Becker and Bellinger explain in their prefiled panel rebuttal testimony, "CGC's asset manager did not divert gas that was scheduled for delivery to CGC. No gas scheduled for delivery on behalf of CGC was

replaced with gas from the Company's LNG tanks. There is simply no basis for this assertion. All of the LNG vaporized by CGC in January 2022 was used solely to serve firm customer demand." Becker/Bellinger Rebuttal at p. 27, l. 13-18. As these witnesses further explain, CRMA is confusing "pipeline capacity with gas scheduled for delivery. *The fact that CGC holds capacity for the transportation of gas on a pipeline does not mean that there has been any gas scheduled for delivery*." Becker/Bellinger Rebuttal at p. 28, l. 9-14 (emphasis added). There are other examples of the CRMA confusing gas supply with transportation capacity. The failure of the CRMA to accept or understand the prefiled testimony may lead to cross-examination. But there is absolutely zero risk of CGC's witnesses changing their prefiled testimony, and thus no basis for sequestering witnesses.

5. CRMA also asserts that in a prior docket CGC has taken a position inconsistent with its position in this docket. CRMA cites the proposed expanded use of the LNG facility to support firm needs that was stated in CGC's 2018 rate case and asserts that CGC's position in this case is inconsistent because of the 25,000 dekatherms of additional pipeline capacity over that previously available. Again, this "inconsistency" is discussed at length in the prefiled panel rebuttal testimony of Mr. Becker and Mr. Bellinger and illustrated in Exhibit GB-2. Becker/Bellinger Rebuttal at p. 23, l. 3 – p. 9. CGC has clearly explained that "At that time [the 2018 rate case], proceeding with a plan that intentionally projected an even greater use of the LNG plant was the only known option the company had. . . . For years the LNG plant was looked at as a general supply resource out of convenience because it was in fact all that CGC could leverage. Now, CGC has reasonably adequate level of firm transport to meet current system needs and future growth . . . ." Becker/Bellinger Rebuttal at p. 24, l. 7-8, 20-22. Again, this is an area CRMA may

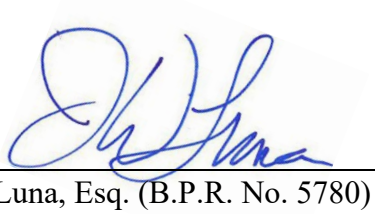
choose to cross on. But there simply is no risk that CGC's witnesses could change their prefiled testimony and no basis to sequester CGC's witnesses.

5. Based upon what is expressed in its Motion, CRMA's concerns appear to relate to the panel testimony of Mr. Becker and Mr. Bellinger. In this regard, CGC shall be presenting this panel testimony *first*, followed by the testimony of Ms. Ferrell and Mr. Hickerson. Thus, whatever concerns CRMA may have about witnesses influencing Mr. Becker and Mr. Bellinger, with them appearing as the very first witnesses in the hearing, this concern, however misplaced, means that sequestration is unnecessary and moot.

6. Recognizing that sequestration is ultimately a matter of discretion with the Commission, CGC notes that to the extent applicable, Tennessee Rule of Evidence 615 includes exceptions for a designated corporate representative and a necessary expert witness. *See* Advisory Comments to Rule 615 ("A 'party that is not a natural person' includes, among other entities, a corporation and the State of Tennessee."; "Such a witness might be an expert witness a lawyer needs to help the lawyer understand opposing testimony."). As the Vice President of Operations for CGC, Ms. Callaway Ferrell is thus entitled to remain in the hearing room as the Company's corporate representative. Similarly, Mr. Hickerson is undoubtedly an expert and, given the complexities of the issues presented, essential to counsel during the cross examination of witnesses Becker, Bellinger, and Ferrell to assist with understanding questions and assistance with any appropriate redirect. CRMA's reliance on a three-decades old Georgia case for the proposition that the exceptions to Rule 615 require those witnesses to testify first is completely inapplicable as current Tennessee law provides otherwise. *See Nicholson v. State*, 2022 WL 1194639, *7 (Tenn. Ct. App. 2022) (recognizing "no established law that the State's representative testify first").

WHEREFORE, none of the policy reasons applicable to sequestration apply in this matter because all of the testimony has been prefiled, and all of the CGC witnesses are experts. The issues raised by the Motion go to potential cross examination subjects, not the sequestration of experts who are not going to change their testimony. The CRMA's Motion is not only misleading and baseless, but moot. The Motion should be denied.

RESPECTFULLY SUBMITTED this 7th day of September, 2022,



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CERTIFICATE OF SERVICE

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