

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

IN RE:

**CHATTANOOGA GAS
COMPANY PETITION FOR
APPROVAL OF TARIFF
AMENDMENTS TO ITS
T-1, T-2 AND T-3 TARIFF**

Docket No. 22-0004

MOTION FOR LEAVE TO ISSUE MORE THAN FORTY DISCOVERY REQUESTS

The Chattanooga Regional Manufacturers Association ("CRMA"), pursuant to TPUC Rule 1220-1-2-.11(5)(a), hereby requests permission to issue the attached discovery requests to Chattanooga Gas Company. The attachment contains thirty-one questions but with subparts, the total exceeds forty questions. Therefore, CRMA files this motion and memorandum in support.

Respectfully Submitted,

By: 

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

IN RE:

**CHATTANOOGA GAS COMPANY
PETITION FOR APPROVAL OF
TARIFF AMENDMENTS TO ITS
T-1, T-2 AND T-3 TARIFF**

DOCKET NO. 22-0004

**MEMORANDUM IN SUPPORT OF CHATTANOOGA GAS COMPANY'S
MOTION FOR LEAVE TO ISSUE MORE THAN FORTY DISCOVERY REQUESTS**

The Chattanooga Regional Manufacturers Association ("CRMA"), pursuant to TPUC Rule 1220-01-02-.11(5)(a), hereby submits this Memorandum in Support of its *Motion for Leave to Issue More Than Forty Discovery Requests (Motion)* to Chattanooga Gas Company ("Company" or "CGC").¹

**RULES GOVERNING DISCOVERY BEFORE THE TENNESSEE PUBLIC UTILITY
COMMISSION**

Section 1220-1-2-.11 of the Tennessee Public Utility Commission ("TPUC") Rules, entitled *Discovery*, states in part, "Any party to a contested case may petition for discovery.... [D]iscovery shall be sought and effectuated in accordance with the Tennessee Rules of Civil Procedure." The Uniform Administrative Procedures Act provides the implementing mechanism: "[t]he administrative judge or hearing officer, at the request of any party, shall issue subpoenas,

¹ Most of the language in this memorandum is borrowed (with thanks), from similar memoranda filed by the Consumer Advocate Unit.

effect discovery, and issue protective orders, in accordance with the Tennessee Rules of Civil Procedure.”²

Tenn. R. Civ. P. 26.02 allows for broad discovery. Specifically, the rule provides that:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and electronically stored information, i.e. information that is stored in an electronic medium and is retrievable in perceivable form, and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(Emphasis added). Perhaps the most important underlying policy of discovery is “that discovery should enable the parties and the courts to seek the truth so that disputes will be decided by facts rather than by legal maneuvering.”³ Discovery should allow both the court and the parties to “have an intelligent grasp of the issues to be litigated and knowledge of the facts underlying them.”⁴ Accordingly, “[a] party seeking discovery is entitled to obtain information about any matter, not privileged, which is relevant to the subject matter involved, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party.”⁵

Under the Tennessee Rules of Civil Procedure, though, discovery may be limited in three narrow circumstances. Specifically, the Rules provide that:

The frequency or extent of use of the discovery methods set forth in subdivision 26.01 and this subdivision shall be limited by the court

² Tenn. Code Ann. § 4-5-311(a).

³ *White v. Vanderbilt Univ.*, 21 S.W.3d 215, 223 (Tenn. Ct. App. 1999).

⁴ *Vythoulkas v. Vanderbilt Univ. Hosp.*, 693 S.W.2d 350, 356 (Tenn. Ct. App. 1985) (internal citations omitted), *superseded on other grounds by statute*, Tenn. R. Civ. P. 26.02(4)(B), *as recognized in West v. Schofield*, 460 S.W.3d 113, 125 (Tenn. 2015).

⁵ *State ex. rel. Flowers v. Tenn. Trucking Ass’n Self Ins. Grp. Tr.*, 209 S.W.3d 602, 615 (Tenn. Ct. App. 2006) (internal citations omitted).

if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative or is obtainable from some other source that is more convenient, less burdensome or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or, (iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation.⁶

The narrowness of these exceptions is supported by the fundamental principle of “*expressio unius est exclusio alterius*,” which translates as “the expression of one thing implies the exclusion of ... things not expressly mentioned.”⁷ Thus, a court may not limit discovery if the requests do not fall into one of these three categories.⁸

In the context of the exceptions noted above, the Commission's Rules require that a party obtain leave from the Commission before serving more than forty discovery requests.⁹ Leave is obtained by filing a motion and an accompanying “memorandum establishing good cause” for additional discovery.¹⁰ The Commission is granted the power to create such a rule under Tenn. Code Ann. § 4-5-311(c): “The agency may promulgate rules to further prevent abuse and oppression in discovery.” However, this ability is constrained by the requirement that the Commission comply with the Tennessee Rules of Civil Procedure, as directed by the Commission's own Rule 1220-01-02-.11, as well as, Tenn. Code Ann. § 4-5-311(a). Consequently, it follows that “abuse or oppression in discovery” is defined as one of the three permissible reasons for limiting discovery as specifically described in Tenn. R. Civ. P. 26.02(1).

⁶ Tenn. R. Civ. P. 26.02(1).

⁷ See *Wells v. Tenn. Bd. of Regents*, 231 S.W.3d 912, 917 (Tenn. 2007) (applying the *expressio unius* principle to a state statute).

⁸ See *Id.*

⁹ *Tenn. Comp. R. & Regs Rule 1220-01-02-.11(5)(a)* (April 2018).

¹⁰ *Id.*

Thus, when TPUC Rules are read in conjunction with the Tennessee Code Annotated and the Tennessee Rules of Civil Procedure, it becomes clear that a motion for additional discovery may not be denied unless the additional discovery requests violate one of the three provisions contained in Tenn. R. Civ. P. 26.02(1).

A. The Discovery Sought Is Not Unreasonably Cumulative or Duplicative

Under the first prong of Tenn. R. Civ. Pro. 26.02(1), the Commission may limit discovery if “the discovery sought is unreasonably cumulative or duplicative or is obtainable from some other source that is more convenient, less burdensome or less expensive.” In the event that any requested data appears to have been produced in response to another question or may be more readily available from some other source, CRMA is willing to discuss and work with CGC to clarify, alter, amend or (if necessary) withdraw a discovery request that is unreasonably cumulative or duplicative.

B. The CRMA Has Not Had Ample Opportunity by Discovery to Obtain the Information Sought

As described above, a second circumstance under which a judge or hearing officer may limit discovery would only occur if “the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought.”¹¹ There has been no opportunity for discovery by the CRMA prior to the discovery that is being requested today to which this *Memorandum* and the associated *Motion* relate. Thus, it cannot be said that CRMA has had “ample opportunity” for discovery in this action.

¹¹ Tenn. R. Civ. Pro. 26.02(1).

C. The Discovery Sought Is Not Unduly Burdensome or Expensive

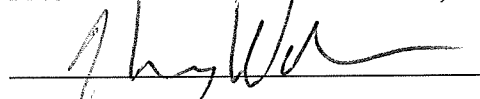
The discovery sought will not be unduly burdensome or expensive to CGC, taking into account the needs of this Docket. This is the first opportunity for CRMA to develop in-depth knowledge of CGC's policies concerning the management of gas supply and pipeline capacity. These complex issues are directly relevant to CGC's concerns presented in Mr. Hickerson's pre-filed testimony as justification for the proposed tariff changes.

Furthermore, CGC is a subsidiary of the Southern Company, one of the largest public utility groups in the country. Given CGC's resources, the Company cannot reasonably claim that these are "limitations" on CGC's ability to respond to CRMA's discovery.

CONCLUSION

For all of the foregoing reasons, CRMA respectfully requests that the Commission grant its *Motion for Leave to Issue More Than Forty Discovery Requests*.

RESPECTFULLY SUBMITTED,



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**FIRST ROUND OF DISCOVERY REQUESTS OF
THE CHATTANOOGA REGIONAL MANUFACTURERS ASSOCIATION**

The Chattanooga Regional Manufacturers Association ("CRMA"), having been granted intervention in the above-captioned proceeding, submits the following discovery requests to Chattanooga Gas Company ("CGC").

DEFINITIONS

A. "The Company," "CGC" and "Chattanooga" all refer to the Chattanooga Gas Company, as well as its agents, attorneys, representatives or any other person acting or purporting to act on its behalf.

B. "And" and "or" shall be construed conjunctively or disjunctively as necessary to make the interrogatory inclusive rather than exclusive. The singular shall include the plural, and vice-versa, where appropriate.

C. "Communication" means any transmission of information by oral, graphic, written, pictorial, or otherwise perceptible means including, but not limited to, telephone conversations, letters, memoranda, electronic correspondence, meetings and personal conversations.

D. "Document" means, in the broadest sense possible, any medium upon which information has been recorded or retrieved, whether in draft or final form, and includes the original and each copy thereof if the copy contains additional material or is not identical to the original, which is in your or your agent's possession, custody or control or which was, but is no longer, in your or your agent's possession, custody or control.

E. The word "identify" with respect to:

- (1) any natural person, means to state the full name; telephone number; and the last known residence and business addresses of the person and that person's relationship, whether business, commercial, professional, or personal with you;
- (2) any legal person, business entity or association, means to state the full name; telephone number; and last known address of such person or entity;
- (3) any document, means to state the type of document (e.g., a letter); the title; the subject matter; the date the document bears and the date it was written; and
- (4) any oral communication, means to state the date when and the place where it was made; the identity of the person who made it; the identity of the

person to whom it was made; the identity of any other person or persons who were present or who heard it; and the substance of it.

F. "Person" shall mean an individual, partnership, proprietorship, corporation, association, and any other kind of business or legal entity.

G. "Relates to" means constitutes, contains, records, discusses, summarizes, discloses, and/or refers to, in whole or in part.

H. "Petition," "case," "proceeding," and "docket" refer to the above-captioned docket.

INSTRUCTIONS

1. To the extent that the information sought is incorporated or contained in a document, please identify the document.

2. If you object to a question on the basis of privilege, state in detail the facts on which you base your objection. If you claim a document is privileged, identify the document and state the basis for the privilege.

3. These interrogatories shall be deemed to be continuing and to require supplemental answers to the extent required by the Tennessee Rules of Civil Procedure and the rules of the Tennessee Regulatory Authority.

FIRST ROUND OF DISCOVERY REQUESTS

1. Please provide the dates of operation flow orders (“OFO”) that Chattanooga Gas Company (“CGC”) was subject to for the last three years, April 1, 2019 through March 31, 2022. Indicate the pipeline that issued the order, indicate if the order was for under/over delivery, and indicate any penalties that CGC incurred as a result of under/over-deliveries.
2. Please provide the dates of daily balancing orders issued by Chattanooga Gas Company (CGC) for the last three years, April 1, 2019 through March 31, 2022. Please indicate if the order was issued to address an under or over delivery.
3. Please provide a current list of all assets (pipeline capacity, storage, other) CGC has contracted for to provide for delivery requirements in Chattanooga Gas. Provide this for the assets that were effective at any time during April 1, 2019 through March 31, 2022.
4. Please describe the nature of CGC’s contract for FTNN Service with Southern Natural Gas Company. How does this service buffer CGC from OFO imbalance penalties on Southern Natural Gas Company?
5. For February 2021, provide a daily list of the following:
 - a) CGC total metered sales volume
 - b) Deliveries by pipeline
 - c) Gas Supply volumes and costs. Please breakdown as follow
 1. Gas volumes purchased under first of month index
 2. Storage withdrawal
 3. Gas Daily purchase.
 4. LNG supplies.
6. For April 1, 2019 through March 31, 2022 provide the total number of penalty volumes and penalty revenues that were billed to CGC’s interruptible transportation and interruptible sales customers, broken down by rate schedule.
7. For the month of February 2021, provide a daily storage detail (withdrawals/injections) of all of CGC’s interstate storage assets. Indicate the location and pipeline system where storage assets are located.
8. For April 1, 2019 through March 31, 2022 provide a monthly inventory of CGC’s LNG gas storage, injections and withdrawals and Weighted Average Cost of Gas of the inventory.
9. Please provide the total daily deliverability provided by Chattanooga Gas Company (CGC) from the connecting interstate pipelines for April 1, 2019 through March 31, 2022. Indicate the amount of that deliverability to satisfy the needs of the firm sales and firm transportation customers for each day in dekatherms.

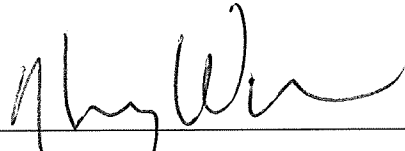
10. Referencing Mr. Hickerson's testimony page 4, lines 7-9 where he explains CGC has no firm obligation to supply gas, please confirm there were no gas sales to CGC's T-1 or I-1 customers for April 1, 2019 through March 31, 2022. If there were gas sales provide daily volumes.
11. Please provide CGC's annual capital expenditures attributable to improvements in CGC's LNG plant and associated pipeline improvements to increase throughput deliveries to CGC's system, for 2019 through 2021, and forecast for 2022.
12. Indicate what year the capital expenditures described above were included in CGC's annual ARM filing and the impact of those rate increases on each customer class.
13. Provide a copy of the Company's current long term capital improvement plan.
14. Please provide a list of Southern Company Gas subsidiaries or affiliates that have asset assignment included in their rate tariffs attributable to any gas transportation programs, including residential customer choice or asset managers.
15. Provide the penalty revenue that was received and identify the portion of that revenue that was credited to the PGA account for the period April 1, 2019 through March 31, 2022 for each month.
16. For April 1, 2019 through March 31, 2022 provide a calculation of the daily penalty charges by customer that would be applicable if CGC's proposed tariff is approved without alteration.
17. Provide an itemization of the CGC's customers additions for the last three years by rate class. Provide CGC's forecast of customer additions used to project future throughput requirements through 2023.
18. As referenced in Rate Schedule T-1, provide the Company's Schedule for Limiting and Curtailing Gas Service as filed with the Tennessee Public Utility Commission, along with supporting documents. Provide all gas supply planning documents, including but not limited to the system supply plans for the past three seasons, and the current season and the forecast season.
19. With regard to filed Rate Schedule T-2 and based on the current natural gas requirements of the T-1/I-1 Interruptible Sales Class, what would CGC need to do to accommodate requests from every customer in this class to switch to the F-1/T-2 rate large firm rate?
20. Provide copies of all emails of Company personnel that address flow orders (either upstream pipeline or system balancing/curtailment orders) for November 1, 2020 through March 31, 2021. For emails, identify the job function of the Company employee.

21. Regarding Mr. Hickerson's testimony page 7 line 17- 19, list all actions the Company took in response to flow orders issued by interstate pipelines during February 2021. Please identify and describe in detail each of the actions. The response shall include all dates on which such actions were taken, identification of the interstate pipeline(s) that such volumes were expected to be delivered on, and the volumes for each date. In the case of term supply volumes that were delivered, identify and describe the contract price(s) for those volumes. In the case of storage volumes that were withdrawn, identify and describe the price(s) for those volumes.
22. What portion of Chattanooga Gas's commercial and industrial load is transportation load vs. sales gas (as an absolute amount and percentage)?
23. Please identify in the tariff how Chattanooga Gas calculates a Supplier's Minimum Daily Quantity and Maximum Daily Quantity. What data set is used, i.e., what year and/or month's usage data? Provide all Company documents that describe the process.
24. What are the criteria for reaching a peak system design day as referenced in Rate Schedule T-3?
25. What number of customers and percentage by rate class have daily metering? Explain the capabilities of the meters with regard to provision of real time data.
26. At what time does the Company provide the customer of the amount of gas the customer consumes on any given day. How could information be provided on a real-time basis?
27. Provide an unredacted copy of the June 2020 Exeter report.
28. Referencing tariff rate T-1 as described on Tenth revised sheet No. 30B, section "Authorized Incremental Rate", explain the process the Company uses to determine if it will offer incremental gas to satisfy the needs of the customer pursuant to the tariff. On what days during the period of November 1, 2018 through March 31, 2021, was there any occasion where you informed customers that incremental gas was available? Provide the days and volume of incremental gas supplied, Provide gas volumes and costs on such days, along with the WACOG of LNG gas available.
29. On the following dates did you receive requests for incremental gas: January 6, 2022, February 5, 2022. What actions were taken?
30. Explain what portion of LNG facility and commodity costs are recovered through base rates and what portion are recovered through the PGA. Provide details based on the WACOG for 2021.
31. Please provide a monthly summary of LNG sales for 2018-2021. Include:
 - a. Dates
 - b. Quantities

- c. Sales price
- d. Revenues
- e. Revenues credited to GCR customers and explain the basis for determination of the amount credited
- f. Revenues retained by the Company.

Respectfully Submitted,

By: _____



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CERTIFICATE OF SERVICE

I hereby certify that I have on this 8th day of April, 2022, a copy of the foregoing document was served on the parties of record, via electronic email transmission and regular U.S. Mail, postage prepaid, addressed as follows:

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