

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

**IN RE:**

**CHATTANOOGA GAS  
COMPANY PETITION FOR  
APPROVAL OF ITS 2021  
ANNUAL RATE REVIEW FILING  
PURSUANT TO TENN. CODE  
ANN. § 65-5-103(d)(6)**

**Docket No. 22-00032**

**RESPONSE TO MOTION OF CHATTANOOGA GAS COMPANY TO STRIKE  
OR TRANSFER CERTAIN TESTIMONY**

The Chattanooga Regional Manufacturers Association ("CRMA") files this response to "Chattanooga Gas Company's Motion to Strike, or in the Alternative to Transfer, Certain of the Testimony of Chattanooga Regional Manufacturers Association." The response is filed pursuant to Rule 1220-01-02-.06 of the Tennessee Public Utility Commission (the "Commission").

**Discussion**

On January 6, 2022, Mr. Chance Donahue, Chairman of the Energy Committee at CRMA, emailed Mr. Paul Teague and others at Chattanooga Gas Company ("CGC" or "the Company") to ask if the Company had any excess gas in its LNG storage tanks to offer for sale to interruptible transportation customers pursuant to the Company's "incremental" gas tariff.<sup>1</sup> Late that evening, Mr. Teague responded that the gas stored in the Company's LNG tanks "is limited" and "is being carefully managed" in order to "meet peak day conditions for those customers who pay for the

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<sup>1</sup> See Exhibit A.

asset." Mr. Teague went on to say that since "this is the first week of January, it is much too early for CGC to consider offering supplemental sales of LNG inventory or supply to transportation customers."<sup>2</sup>

Just five days later, CGC's asset manager began diverting large amounts of CGC's gas to non-jurisdictional buyers. Each day, from January 11 through January 31, 2022, the asset manager diverted 12,000 to 15,000 dekatherms of gas that had been scheduled for delivery to CGC and replaced it with gas from the Company's LNG tanks.<sup>3</sup> Between January 11 and 31, the asset manager sold a total of 122,000 dekatherms of gas to off-system buyers on the open market. None of it went to CGC's interruptible transportation customers who had asked for and needed the gas.<sup>4</sup> Despite the email exchange between CRMA and Mr. Teague, CGC subsequently filed a report with the Commission falsely stating that no customers had asked to buy incremental gas on any day during January.<sup>5</sup>

CGC's actions clearly violate the utility's incremental gas tariff which states that the Company "shall" offer gas for sale to interruptible transportation customers when, in the

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<sup>2</sup> See Exhibit A.

<sup>3</sup> See CRMA's confidential Response number 5 to CGC's First Discovery Requests. The Response explains that between January 11 and January 31, 2022, CGC's asset manager was diverting 12,000 to 15,000 dekatherms a day from one of CGC's pipeline suppliers to non-jurisdictional buyers and replacing it with gas from the Company's LNG tanks. This process of diverting pipeline deliveries to off-system markets and replacing the gas with supplies from CGC's LNG facility is called a "sale by displacement." 2020 Exeter Report, Section 6.2, p. 46.

<sup>4</sup> During the month of January, CGC had a daily balancing order in effect on twenty-eight of thirty-one days. See Exhibit B.

<sup>5</sup> See Exhibit B.

reasonable exercise of the Company's judgment, such gas is available and not needed to serve CGC's firm customers.<sup>6</sup>

The Company's actions also violate its obligation to prioritize its jurisdictional ("on-system") customers over non-jurisdictional ("off-system") buyers. As the Tennessee Court of Appeals explained, CGC's asset manager may only market gas to non-jurisdictional buyers if the Company first determines that the gas is not needed by CGC's customers. Consumer Advocate & Protection Division v. Tennessee Regulatory Authority, 2012 WL 1964593 (Tenn. Ct. App. 2012). As the Court wrote, (slip opinion at 5),

If it is determined that some of the pipeline capacity assets that have been purchased [by CGC] will not be needed to meet the needs of the Gas Company's customers, the asset manager can market the excess assets to other jurisdictions.

Similarly, the 2020 Exeter Report states, "Off-system LNG sales are subordinate to serving CGC's on-system customers and are available only at CGC's sole discretion." 2020 Exeter Report, Section 4.2, Docket 07-00224.

In its Motion to Strike or Transfer, CGC asks the Commission not to consider the Company's tariff violation in this "ARM" (Annual Review Mechanism) docket, arguing that the Company's obligation to offer incremental gas to interruptible transportation customers is not relevant to any of the issues now before the Commission.

CGC is incorrect.

The purpose of this proceeding is to "true up" CGC's annual return on the Company's rate base. The rate base includes gas storage facilities that are paid for by all jurisdictional customers,

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<sup>6</sup> In Docket 18-00017, CGC witness Archie Hickerson agreed with counsel for CRMA that although the tariff requires the Company to offer gas "at its option," CGC must "reasonably" exercise its discretion in interpreting the tariff and the reasonableness of the Company's actions is subject to review by the Commission.

including interruptible transportation customers.<sup>7</sup> Pursuant to state law and the substantive criteria adopted by the Commission for its review of CGC's annual ARM filing, the Company is allowed to earn a return on its storage assets as long as the assets are "used and useful" in the provision of service to CGC's customers.<sup>8</sup>

As demonstrated by the Company's conduct in January, 2022, CGC has effectively eliminated the incremental gas tariff. In light of the Company's decision during that month to sell large amounts of gas on the open market, there should be no dispute that CGC's winter gas supply "significantly exceeds its requirements." See the 2020 Exeter Report, Section 5.4, Docket 07-00224.<sup>9</sup> Nevertheless, CGC has not offered to sell incremental gas to its on-system customers in over two (2) years despite customer requests. Based on these facts and other evidence that will be introduced at the upcoming hearing, CRMA will ask that the Commission deduct from CGC's rate base a significant and appropriate dollar amount to reflect the fact that the Company's storage assets are not "used and useful" for supplying incremental gas in accordance with the Company's tariff.

CRMA is clearly entitled to seek such relief in this docket. The Commission may not approve an adjustment in rates in an ARM proceeding unless the agency finds that the assets in the Company's rate base are "used and useful" in providing service and that an adjustment in rates to pay for those assets is "in the public interest." T.C.A. § 65-5-103(d)(5). It is not in the public

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<sup>7</sup> As shown in CGC's Response 1-11 to CRMA's discovery in Docket 22-00004, the Company is currently spending more than \$16 million on improvements to its LNG storage system. These costs are recovered through base rates collected from all on-system customers, including interruptible transportation customers.

<sup>8</sup> The 2019 Settlement Agreement (Docket 19-00047) describes the ARM review process. The Agreement states in Section 12d that the Commission may exclude from rate base any plant additions that are not "used and useful" in CGC's regulated operations.

<sup>9</sup> See footnote 11 for a discussion of concerns previously raised by the Consumer Advocate and Exeter Associates over CGC's excess gas supply. Those concerns were first raised by the Advocate in 2007 and have been raised in each of the three Exeter audits.

interest to increase rates to transportation customers in order to pay for millions of dollars in improvements to the Company's LNG network if CGC is not using its LNG facilities to serve the same customers who are paying for it.

In addition to asking for a reduction in rate base, CRMA will ask that the Commission to make express findings that CGC violated both its tariff and its obligation to its customers by unreasonably refusing to sell excess gas to its jurisdictional customers while, at the same time, selling gas to non-jurisdictional buyers. Such findings may allow CGC's customers to file suits and recover damages from CGC.

Finally, in light of these violations, the Commission should open a "show cause" proceeding pursuant to T.C.A. § 65-2-106 to determine appropriate penalties and remedies for the Company's conduct.

The incremental gas issue is also relevant to this docket under Section 16 of the 2019 Settlement Agreement (Docket 19-00147). That section allows the Commission to make prospective changes in CGC's annual ARM filing. Given the importance of the incremental gas issue in the Company's last general rate case (Docket 18-00017) and the promises regarding that issue that were made—but not kept—by the Company.<sup>10</sup> CRMA asks the Commission to impose

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<sup>10</sup> In Docket 18-00017, CRMA raised these same concerns over the Company's failure to abide by its incremental gas tariff. CGC witness Mr. James Bellinger (who is also testifying in this docket) acknowledged that CGC had not sold any incremental gas to CGC's interruptible customers since January, 2014 but acknowledged that in recent years CGC had provided a large amount of incremental gas to CGC's unregulated affiliate, Pivotal LNG, for sale to non-jurisdictional customers. Unrepentant, Mr. Bellinger refused even to acknowledge that CGC has an obligation to implement its tariff regarding the sale of incremental gas in a "reasonable" manner.

Because of these concerns CGC's attorney made the following announcement at the conclusion of the Company's case:

And then, finally, to Mr. Walker's concerns in cross-examination from some of those large customers, and I'm sure others as well, this incremental gas issue - - what's available, what's not, what's really going on there. We would also like to make a proposal for a monthly reporting

new oversight mechanisms and reporting requirements to ensure that these tariff violations will not happen again. From this time forward, the incremental gas issue should be a part of every ARM filing and every triennial audit until the Commission orders otherwise.

### Conclusion

Based on the long history of this issue and CGC's most recent conduct, it is clear that the Company will not comply with its tariff unless ordered to do so.<sup>11</sup> The purpose of this docket is to

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mechanism that would, in essence, capture the number of inquiries by day, volumes that were requested each day, and the volumes that were approved . . . that were for sale, and that way the staff and the Consumer Advocate, and the association would have means of seeing exactly what it is that the company is doing with respect to this incremental gas, making it available to the large industrial customers and other customers that are interested. So we'll detail that information in our posthearing brief, but we look forward to the opportunity going forward to work with the staff and other parties to develop, and where approval by you is necessary, bring that back but, otherwise institute some of these reporting mechanisms in order to help facilitate our transparency on those issues.

Transcript of August 22, 2018, at 21-22. Similarly, CGC promised in its post-hearing brief (at 28), "When additional gas in excess of CGC's system needs [*sic.*], it can be made available."

<sup>11</sup> Concerns over CGC's excess spending on gas supply were first raised by the Consumer Advocate in Docket 07-00224. As the Advocate explained in its post-hearing brief in that docket at p. 5, "[T]he transportation and storage assets obtained by CGC are more than that which is required to meet the needs of its customers on a daily basis." Adopting the Advocate's recommendation, the Commission ordered "a triennial review of [CGC's] capacity planning" conducted by an independent consultant. Order issued September 23, 2009, at 5. Each of the subsequent triennial audits conducted by Exeter Associates found that CGC had excess gas capacity. In 2014, Exeter found that "even under severe weather conditions... CGC maintains capacity resources in excess of its requirements at most other times" and "[d]uring a winter in which severe weather conditions are experienced... would only require use" of approximately 25% of its maximum LNG storage inventory. 2014 Exeter Report, Section 5.3, Docket 07-00224. Similarly, the 2017 Report found that CGC "maintains capacity resources in excess of its requirements at most other times" and that even during a winter "in which severe conditions are experienced," CGC would be expected to use about 50% of its maximum LNG inventory. 2017 Exeter Report, Section 5.3, Docket 07-00224. The most recent Exeter Report adds the word "significantly," finding that CGC "maintains capacity resources significantly in excess of its requirements at most other times." 2020 Exeter Report, Section 5.3, Docket 07-00224. In the latest Report, Exeter states that during a severe winter, CGC would use "**only approximately 5%** of its maximum LNG storage inventory" (emphasis added), *i.e.*, only about 60,000 dekatherms out of 1.2 million, and that CGC's winter season capacity resources are "**nearly twice** the requirements anticipated under severe weather conditions." Emphasis added. *Id.*

Since the 2020 Exeter Report was completed, CGC has acquired even more pipeline capacity. Effective February 1, 2022, CGC has an additional 25,000 dekatherms per day, an increase of about 20% in pipeline capacity. Letter from Archie Hickerson to David Foster, February 10, 2022, Docket 21-00134.

ensure that CGC is appropriately compensated for providing gas service to its jurisdictional customers in accordance with the Company's tariffs. CGC has failed in that obligation, and this is the appropriate docket in which to address that failure.

Respectfully submitted,

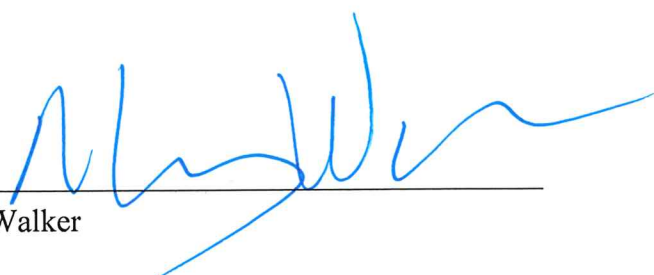
By: \_\_\_\_\_



Henry Walker (B.P.R. No. 000272)  
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Nashville, TN 37203  
Phone: 615-252-2363  
Email: [hwalker@bradley.com](mailto:hwalker@bradley.com)

### CERTIFICATE OF SERVICE

I hereby certify that I have on this 21<sup>st</sup> day of July, 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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Henry M. Walker



## **Exhibit A**

**Walker, Henry**

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**From:** Chance Donahue <Chance.Donahue@kordsa.com>  
**Sent:** Thursday, January 6, 2022 10:15 AM  
**To:** Teague, Paul M.; Leath, Paul C.  
**Cc:** Walker, Henry; Megan King (mking@tennam.com); (earl.burton@aeedinc.com)  
**Subject:** Request for Incremental Gas  
  
**Importance:** High

**CAUTION — EXTERNAL EMAIL**

Dear Paul/Paul,

With cold temperatures tomorrow, we are expecting high natural gas prices; and Chattanooga Gas could help manufacturer's by offering up incremental gas. It was our understanding in the last rate case that Chattanooga Gas would begin offering incremental gas to Chattanooga customers. It seems very reasonable since our LDC rates are been increased to pay for LNG upgrades in recent rate adjustments and we have yet to see a return. We would appreciate you inquiring with your gas supply folks and see if incremental could be offered starting Friday.

Sincerely,

Chance Donahue  
CRMA Energy Committee

Chance Donahue  
Power Engineer

A: 4501 North Access Road  
Chattanooga TN 37415-9990  
T: 423-643-2746



[www.kordsa.com](http://www.kordsa.com)  
[www.reinforcer.com](http://www.reinforcer.com)



**Walker, Henry**

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**From:** Teague, Paul M. <pteague@southernco.com>  
**Sent:** Thursday, January 6, 2022 10:23 AM  
**To:** Chance Donahue; Leath, Paul C.  
**Cc:** Walker, Henry; Megan King (mking@tennam.com); (earl.burton@aeedinc.com)  
**Subject:** RE: Request for Incremental Gas

**CAUTION ? EXTERNAL EMAIL**

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Thanks for reaching out Chance. I'll send this along to Gas Supply and let you know what I hear back.

**Paul Teague, P.E.**  
Director, External Affairs  
Chattanooga Gas

404.693.5986 mobile  
[pteague@southernco.com](mailto:pteague@southernco.com)



**From:** Chance Donahue <Chance.Donahue@kordsa.com>  
**Sent:** Thursday, January 6, 2022 11:15 AM  
**To:** Teague, Paul M. <pteague@southernco.com>; Leath, Paul C. <pleath@southernco.com>  
**Cc:** Walker, Henry <HWALKER@bradley.com>; Megan King (mking@tennam.com) <mking@tennam.com>; (earl.burton@aeedinc.com) <earl.burton@aeedinc.com>  
**Subject:** Request for Incremental Gas  
**Importance:** High

**EXTERNAL MAIL: Caution Opening Links or Files**

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Dear Paul/Paul,

With cold temperatures tomorrow, we are expecting high natural gas prices; and Chattanooga Gas could help manufacturer's by offering up incremental gas. It was our understanding in the last rate case that Chattanooga Gas would begin offering incremental gas to Chattanooga customers. It seems very reasonable since our LDC rates are been increased to pay for LNG upgrades in recent rate adjustments and we have yet to see a return. We would appreciate you inquiring with your gas supply folks and see if incremental could be offered starting Friday.

Sincerely,

Chance Donahue  
CRMA Energy Committee

**Walker, Henry**

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**From:** Teague, Paul M. <pteague@southernco.com>  
**Sent:** Thursday, January 6, 2022 8:55 PM  
**To:** Chance Donahue  
**Cc:** Walker, Henry; Megan King (mking@tennam.com); (earl.burton@aeedinc.com); Leath, Paul C.  
**Subject:** RE: Request for Incremental Gas

**CAUTION ? EXTERNAL EMAIL**

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Chance,

See below from our Gas Supply group. This position is consistent with discussions we had this past spring/summer with TPUC staff around Asset Management issues and changes to how we solicit RFPs for an Asset Manager.

"The CGC LNG inventory is limited and it is being carefully managed by CGC to provide reliable deliverability to meet peak day conditions for those customers who pay for the asset. Being that this is the first week of January, it is much too early for CGC to consider offering supplemental sales of LNG inventory as supply for transportation customers. The LNG inventory may be needed to meet peak demand conditions as the heating season progresses."

This may evolve later on in the season, and as we understand more on the availability of our interstate gas.

**Paul Teague, P.E.**  
Director, External Affairs  
Chattanooga Gas

404.693.5986 mobile  
[pteague@southernco.com](mailto:pteague@southernco.com)



**From:** Chance Donahue <Chance.Donahue@kordsa.com>  
**Sent:** Thursday, January 6, 2022 11:15 AM  
**To:** Teague, Paul M. <pteague@southernco.com>; Leath, Paul C. <pleath@southernco.com>  
**Cc:** Walker, Henry <HWALKER@bradley.com>; Megan King (mking@tennam.com) <mking@tennam.com>; (earl.burton@aeedinc.com) <earl.burton@aeedinc.com>  
**Subject:** Request for Incremental Gas  
**Importance:** High

**EXTERNAL MAIL: Caution Opening Links or Files**

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Dear Paul/Paul,

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Sincerely,

Chance Donahue  
CRMA Energy Committee

Chance Donahue  
Power Engineer



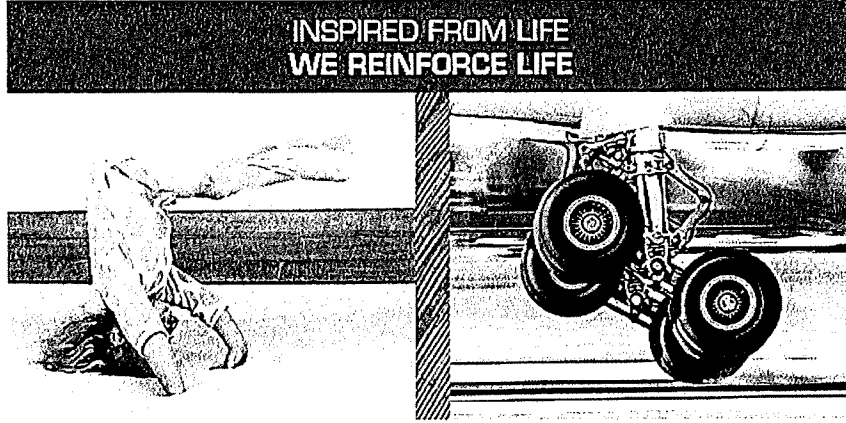
A: 4501 North Access Road  
Chattanooga TN 37415-9990  
T: 423-643-2746

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## **Exhibit B**

**Chattanooga Gas  
Incremental Gas Report  
January - 2022**

<b>Date</b>	<b>Chattanooga Gas Daily Balancing Order For Over Burns In Effect</b>	<b>Interruptible Customer Request For Incremental Gas Supply</b>	<b>Chattanooga Gas Incremental Gas Supply Offered</b>	<b>Chattanooga Incremental Volume Offered</b>
01-01-2022	No	No	No	0
01-02-2022	Yes	No	No	0
01-03-2022	Yes	No	No	0
01-04-2022	Yes	No	No	0
01-05-2022	Yes	No	No	0
01-06-2022	Yes	No	No	0
01-07-2022	Yes	No	No	0
01-08-2022	Yes	No	No	0
01-09-2022	Yes	No	No	0
01-10-2022	Yes	No	No	0
01-11-2022	Yes	No	No	0
01-12-2022	Yes	No	No	0
01-13-2022	No	No	No	0
01-14-2022	No	No	No	0
01-15-2022	Yes	No	No	0
01-16-2022	Yes	No	No	0
01-17-2022	Yes	No	No	0
01-18-2022	Yes	No	No	0
01-19-2022	Yes	No	No	0
01-20-2022	Yes	No	No	0
01-21-2022	Yes	No	No	0
01-22-2022	Yes	No	No	0
01-23-2022	Yes	No	No	0
01-24-2022	Yes	No	No	0
01-25-2022	Yes	No	No	0
01-26-2022	Yes	No	No	0
01-27-2022	Yes	No	No	0
01-28-2022	Yes	No	No	0
01-29-2022	Yes	No	No	0
01-30-2022	Yes	No	No	0
01-31-2022	Yes	No	No	0