

1 **I. WITNESS IDENTIFICATION**

2 **Q. Please state your name and business address.**

3 A. Archie R. Hickerson, Ten Peachtree Place, Atlanta, Georgia 30309.

4 **Q. By whom and in what position are you employed?**

5 A. I am Director of Rates and Tariff Administration at Southern Company Gas
6 (formerly AGL Resources, Inc.). Southern Company Gas is the parent holding
7 company for four natural gas distribution companies, including Chattanooga Gas
8 Company. The other companies are in Georgia, Illinois, and Virginia.

9 **Q. On whose behalf are you testifying in this proceeding.**

10 A. I'm testifying on behalf of Chattanooga Gas Company ("CGC" or "Company").

11 **Q. Have you previously submitted testimony before the Tennessee Public Utility
12 Commission ("Commission") in this proceeding?**

13 A. Yes. I provided direct testimony and exhibits to the Commission in this proceeding.

14 **Q. What is the purpose of your rebuttal testimony?**

15 A. The purpose of my rebuttal testimony is to respond to the Direct Testimony of Mr.
16 David Dittmore provided in this proceeding, submitted on behalf of the Consumer
17 Advocate.

18 **Q. Are you sponsoring exhibits in connection with your rebuttal testimony?**

19 A. Yes, I have four exhibits:

20 Exhibit ARH-10, Consumer Advocate Fixed and Volumetric Increase.

21 Exhibit ARH-11, Consumer Advocate Rate Design -Impact on R-1 Customers.

22 Exhibit ARH-12, Current and Proposed Rates (based on GT-4).

1 Exhibit ARH-13, AFUDC Example.

2 **Q. How is your testimony presented?**

3 A. My testimony is presented in as follows:

- 4 • Section I-Witness Identification
- 5 • Section II –Rate Design
- 6 • Section III – Construction Work in Progress (CWIP) and the Allowance for
- 7 Funds During Construction (AFUDC).
- 8 • Section IV-Rebuttal to Mr. Dittmore-Supplemental Testimony

9 **Q. Could you briefly discuss the interactions with the Consumer Advocate**
10 **concerning this proceeding.**

11 A. Yes. The interactions with the Consumer Advocate Staff in this proceeding is very
12 different from previous rate proceedings. We have had both formal and informal
13 exchanges of information and meaningful discussion during virtual meetings
14 directly between members of the Consumer Advocate Staff and Company
15 personnel. I believe this process was beneficial to both parties and more efficient
16 than the exclusive reliance on formal written discovery requests and responses.
17 While we did respond to 96 individual formal discovery requests (not counting
18 subparts), the number is materially less than in previous proceedings. I also believe
19 that the reliance on known, historic information rather than projected or forecasted
20 revenues, expense, and investment was a material contributing factor to a less
21 contentious relationship. This reliance on historical information instead of the
22 traditional forward-looking regulatory forecast process is possible because of the

1 true-up mechanism included in the CGC Annual Review Mechanism (“ARM”).
2 The ARM appears to be achieving the goal of having a more efficient regulatory
3 process than in the past.
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5 **Section II –Rate Design**

6 **Q. On page 21 of his pre-filed Direct Testimony, Mr. Dittmore, explains:**
7 **“Therefore, I am supporting a rate design where the entire increase is spread**
8 **to the volumetric rates of the Company. The fixed customer charge rates**
9 **would not be increased in my proposal.” Is his proposal consistent with the**
10 **rate design that the Commission Adopted in CGC’s last rate case, Docket 18-**
11 **00017?**

12 **A. No. On page 73 of the January 15, 2019, Amended Order in Docket 18-00017 the**
13 **Commission found:**

14 The panel observed that with a significant portion of revenues
15 collected through volumetric charges, along with the fact that
16 customer usage is declining, it has become increasingly difficult for
17 all local distribution gas companies, including CGC, to maintain a
18 revenue stream sufficient to earn its authorized rate of return. In
19 addition, the panel found that CGC has no incentive to encourage
20 customers to use less gas and, in fact, CGC is incentivized to sell
21 more gas in order to generate additional revenues to increase
22 earnings. **In order to break the link of fixed cost recovery**

1 **through volumetric charges, the panel determined it is**
2 **necessary to approve and implement a rate design consisting of**
3 **rate increases to fixed monthly charges and fixed demand**
4 **charges**. Such a design allows recovery of fixed costs through
5 revenues that are more stable and predictable than those revenue
6 streams collected via volumetric usage, which may vary greatly
7 depending on weather and overall decline in customer usage due in
8 part to more efficient appliances and homes, programmable
9 thermostats and improving general customer awareness. (Emphasis
10 added.)

11 First, Mr. Dittmore does not define “fixed monthly” and “fixed demand” charges
12 the same as the Commission in Docket 18-00017. As explained in the Order, the
13 Commission increased only “fixed monthly charges and fixed demand charges.”

14 While he states on page 19 of his testimony that he proposes to spread the
15 entire increase to volumetric charges, Mr. Dittmore’s Exhibit DND-8, shows that
16 he is proposing to not only increase the monthly volumetric charges, but he also
17 proposes to increase the fixed monthly demand charges. This reclassifying the
18 fixed demand charges as volumetric charges isn’t explained.

19 **Q. Are the fixed demand charges variable?**

20 A. No. The fixed demand charge does not change on a monthly basis as do the
21 volumetric charges. For example, the fixed demand determinants for the large
22 commercial and industrial customers are established by contract or are the highest

1 demand day in any of the previous 11 billing months plus the current billing month
2 with the demand days being established only during the billing months of
3 November, December, January, February and March. The Medium Commercial
4 and Industrial (Rate Schedule C-2) demand is determined once a year based on the
5 prior year consumption. Once established, the demand determinant for the C-2
6 customers remains effective for a year.

7 **Q. Using the Commission's classification of fixed and volumetric rates, what**
8 **percentage of the increase proposed by the Consumer Advocate Unit will be**
9 **spread to fixed and volumetric rates?**

10 A. When the fixed monthly demand charges are classified consistent with the
11 Commission finding in Docket 18-00017, the Consumer Advocate is proposing to
12 allocate 15.5% of its recommended increase to fixed charges and 84.5% to the
13 monthly volumetric charges. The increase in fixed charge apply only to the
14 Commercial and Industrial customers.

15 **Q. What are the percent increases in the variable and fixed revenue is the**
16 **Consumer Advocate proposing for the different customer classification?**

17 A. The Consumer Advocate is proposing the following increase in monthly variable
18 and fixed monthly revenue when the charges as classified in accordance with the
19 Commission's Order in Docket 18-00017.

20

Rate Schedule	% Increase in Volumetric Charge Revenue	% Increase in Fixed Charge Revenue
Residential R-1	48 %	0
Residential Multi-Family Housing Service R-4	25.8%	0
Small Commercial and Industrial General Service C-1	36.8%	0
Medium Commercial and Industrial General Service C-2	16.8%	9.8%
Low Volume Transport T-3	13.9%	12.4%
Commercial and Industrial Large Volume F-1/T-2	14.2%	12.6%
Commercial and Industrial Large Volume F-1/T-2/T-1	13.9%	12.7%
Commercial and Industrial Large Volume T-1	14%	11%

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Source CGC Exhibit ARH-10.

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Q. How does the percentage of revenue recovered from fixed and volumetric rates under the Consumer Advocate’s proposal compare to the corresponding percentages recovered under the Order in Docket 18-00017?

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A. Prior to Docket 18-00017, approximately 56% of the cost of service was recovered through fixed charges, and approximately 44% was recovered through volumetric charges. Consistent with the objective of breaking the link of fixed cost recovery through volumetric charges, the Commission’s rate design resulted in approximately 58% being recovered through fixed charges and 42% being recovered through volumetric charges. The Consumer Advocate’s rate design more than reverses the progress toward breaking the link and by reducing the percentage recovered through fixed charges from approximately 58% to approximately 53%

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1 and increasing the percentage recovered through volumetric rates from 42% to
2 46.8%. See Exhibit ARH-10.

3 **Q. Are there potential adverse effects of increasing only the volumetric charges**
4 **for residential customers?**

5 A. Yes. When only the volumetric charge is increased, a customer with older, less
6 efficient heating equipment and a less well-insulated house who uses more gas than
7 the average customer will receive more of the impact of the increase. Under the
8 Consumer Advocate's proposal, a customer with average usage will see a 13.4%
9 increase, but a customer who has usage greater than the average will get a greater
10 percentage increase. For example, the non-gas charges for a customer who uses
11 20% more than average the customer, will not see a 13.4% increase but will have a
12 15% increase under the Consumer Advocate's proposed rates. See Exhibit ARH-
13 11.

14 **Q. How does CGC's proposed rate design compare to the Commission's rate**
15 **design adopted in Docket 18-00017?**

16 A. In this proceeding, CGC proposes to retain the relationship of 58% fixed and 42%
17 volumetric recovery that resulted from the rate design adopted by the Commission
18 in Docket 18-00017 by increasing all charge by the same percentage. While CGC
19 believes that the policy of moving toward breaking the link between recovery of
20 fixed cost through volumetric rates adopted by the Commission in Docket 18-
21 00017 continues to be in the public interest, it did not propose further movement in

1 this proceeding. The reversal of the progress made in the last case, as proposed by
2 the Consumer Advocate is not in the public interest.

3 **Q. Have you prepared a revised Exhibit ARH-1 to reflect current and proposed**
4 **rates to be consistent with Mr. Tucker’s Exhibit GT-4?**

5 A. Yes, I have. The rates revised to be consistent with Mr. Tucker’s Exhibit GT-4 are
6 shown on Exhibit ARH-12, in comparative format with the current rates and the
7 proposed rates as included in the initial ARM filing.

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9 **Section II – Construction Work in Progress (“CWIP”) and the Allowance for Funds**
10 **During Construction (“AFUDC”).**

11 **Q. In response to question 51 on page 22 of his pre-filed testimony Mr. Dittmore**
12 **explains: “AFUDC is the application of carrying charges while construction**
13 **expenditures are being incurred. These carrying charges terminate at such**
14 **time as the asset is closed and deemed to be providing service to ratepayers.”**
15 **Is this statement correct?**

16 A. The statement isn’t quite correct. He states that carrying charges terminate at such
17 time that the asset is **closed and deemed** to be providing service to ratepayers. It
18 isn’t necessary that a project be **closed** for the accrual of the AFUDC to terminate.
19 The requirement is that the accrual of AFUDC terminates when the asset is placed
20 in service. The Uniform System of Accounts (“USoA”) Plant Instruction 3(17)
21 includes the following footnote that makes it clear that AFUDC terminates when
22 the asset is placed in service:

1 Note: When a part only of a plant or project is placed in operation
2 or is completed and ready for service but the construction work as a
3 whole is incomplete, that part of the cost of the property placed in
4 operation, or ready for service, shall be treated as “Gas Utility Plant”
5 and allowance for funds used during construction thereon as a
6 charge to construction shall cease. Allowance for funds used during
7 construction on that part of the cost of the plant which is incomplete
8 may be continued as a charge to construction until such time as it is
9 placed in operation or is ready for service, except as limited in item
10 17, above.

11 **Q. If a project is in service, why wouldn't it be complete and closed?**

12 A. There could be several reasons. It could be that the project is completed to the point
13 that it can be put in-service, but that additional work is required for completion.
14 For example, the installation of a main may be completed, but restoration of
15 landscaping, pavement, etc. has not been completed. The project would remain in
16 Account 107 until all the work it is completed and closed, but there would be no
17 accrual of AFUDC. Another example may be a project is constructed by a
18 contractor or contractors. The work may be completed, and the asset placed into
19 service, but there are additional invoices that may not have been received and paid.
20 In such an instance the project could continue to be classified as Construction Work
21 in Progress until accounts with the contractor are settled. The accrual of AFUDC

1 would cease when the project was ready to go into service, but the project would
2 not be transferred from Construction Work in Progress until it is closed.

3 **Q. Mr. Dittmore defines Construction Work in Progress as: “plant that is under**
4 **construction (in fact, that phrase is the title used by the Company in its**
5 **Earnings Test exhibit to describe these expenditures). CWIP represents the**
6 **accumulation of costs during the construction of an asset at a given point in**
7 **time.” How is Construction Work in Progress defined in the USoA?**

8 A. The USoA is more detailed and provides additional information on how the account
9 operates. The text of USoA account 107 (Construction Work in Progress) provides
10 the following:

11 A. This account shall include the total of the **balances of work**
12 **orders for gas plant in process of construction.**

13 B. Work orders **shall be cleared from this account as soon as**
14 **practicable after completion of the job.** Further, if a project, such
15 as a gas production plant, a compressor station, or a transmission
16 line, is designed to consist of two or more units which may be placed
17 in service at different dates, any expenditures which are common to
18 and which will be used in the operation of the project as a whole
19 shall be included in gas plant in service upon the completion and the
20 readiness for service of the first unit. Any expenditures which are
21 identified exclusively with units of property not yet in service shall
22 be included in this account.

1 C. Expenditures on research, development, and demonstration
2 projects for construction of utility facilities are to be included in a
3 separate subdivision in this account. Records must be maintained to
4 show separately each project along with complete detail of the
5 nature and purpose of the research, development, and demonstration
6 project together with the related costs.

7 Note A: This account shall include certificate application
8 fees paid to the Federal Energy Regulatory Commission as
9 provided for in gas plant instruction 15.

10 Note B: Unsuccessful exploration and development costs
11 incurred on leases acquired after October 7, 1969, shall be
12 transferred to account 338, Unsuccessful Exploration and
13 Development Costs.

14 Mr. Dittmore's definition doesn't conflict with the USoA definition, but the USoA
15 definition provides additional detail and directs that the workorders are to be
16 cleared (moved) from the account as soon **as practicable after completion of the**
17 **job.**

18 There are two key phrases. The first "**as soon as practicable**" is in
19 recognition that once a project is completed it takes time to complete the paperwork
20 and close a project and transfer the investment to the proper plant account or to
21 Account 106 (Completed construction not classified—Gas). The other key phrase
22 is; "**after completion of the job.**" It is the completion of the job that determines

1 when a workorder or project is to be closed and the investment transferred from the
2 Construction Work in Progress account. For example, assume, as I previously
3 discussed, the project is the installation or replacement of a main that requires
4 excavation in the street as well as on private property. Such a project would include
5 the restoration of the payment as well as the private property to its original
6 condition. Once the main is constructed and the trench backfilled, the main may
7 very well be in service, but the project should not be closed, and the investment
8 transferred, until the restoration of the payment and other property is completed.
9 The job is to be completed before the workorder is closed and the investment is
10 transferred out of account 107 (Construction Work in Progress).

11 While Mr. Dittimore's definition that the CWIP is the accumulation of the
12 cost of constructing an asset at a given point in time is correct, it does not reflect
13 the operation of Account 107 as addressed in the USoA.

14 **Q. On page 24 of his pre-filed testimony, Mr. Dittimore explains during the 2019**
15 **historic base period, the AFUDC divided by the average balance in CWIP**
16 **resulted in a return well below the authorized rate of return. Is this evidence**
17 **of problem with the accounting for CWIP, or accounting for AFUDC?**

18 A. The answer is no to both. As I have explained, an asset may very well be in service
19 and not subject to the accrual of AFUDC before the job is completed, the workorder
20 or project closed, and the asset transferred out of the Construction Work in Progress
21 account. While the asset continues to be accounted for in the CWIP account, it is
22 being used to provide service to ratepayers and properly included in the rate base.

1 Since there is no AFUDC accrued after the plant is placed in service, dividing zero
2 (0) by the investment in the project will result in a 0 return on the investment. This
3 is not evidence that the accounting for CWIP and AFUDC is incorrect.

4 **Q. Also, on page 24 Mr. Dittmore explained that the low return computed by**
5 **dividing the AFUDC by the average balance in CWIP resulted in an earning**
6 **deficiency. Does an earnings deficiency as result of including the average**
7 **investment in CWIP in rate base and treating AFUDC as revenue indicate a**
8 **problem with the ratemaking methodology adopted by the regulatory agency?**

9 A. No, it doesn't indicate a problem with the ratemaking methodology. AFUDC is
10 accrued during the active construction of an asset, in order to provide a return on
11 the investment devoted to public service. Once an asset is placed in service, the
12 return on the investment is to be provided by the revenue from service provided to
13 ratepayers. If there is an earning deficiency when the asset is placed in service and
14 the AFUDC terminates, it is likely a function of the plant being constructed not
15 immediately generating additional revenue. For example, backbone facilities
16 constructed to alleviate capacity constraints within the system generally do not
17 immediately produce additional revenue. Similarly, replacement of bare steel and
18 cast-iron pipes, or other obsolete facilities, does not result in additional sales and
19 revenue. Once the project is placed in service, there is no AFUDC accrual or
20 additional revenue to provide the return on the investment resulting in the earning
21 deficiency. The ratemaking methodology is working properly. If there is a revenue

1 deficiency, it is because current rates are not adequate to provide the allowable
2 return on the investment devoted to public service.

3 **Q. In responding to a question on page 27 of his pre-field testimony, Mr.**
4 **Dittemore explains:**

5 **Let's assume a construction project is initiated July 1, 2019 and**
6 **accrues costs at the rate of \$100,000 per month for twelve**
7 **months, at which point it is completed and placed into service,**
8 **thereby resulting in a total project cost of \$1.2 million. The**
9 **Company will accrue AFUDC each month based upon the**
10 **cumulative balance of construction costs. Within the ARM**
11 **calculation, the construction costs are summed at the end of the**
12 **period and averaged over the entire period base period,**
13 **resulting in a Rate Base component for these costs of \$300,000**
14 **(the average CWIP balance associated with this project over the**
15 **entire base period). With the provision of carrying charges**
16 **within the ARM, the Company would begin accruing a full**
17 **return on the \$300,000 balance in computing its ARM results.**
18 **Meanwhile, the \$600,000 CWIP balance at January 1 will**
19 **continue to also accrue AFUDC charges into the year 2020,**
20 **increasing the overall cost of the construction project and**
21 **essentially generating a continuing AFUDC return on**
22 **construction costs of which a portion is also in Base Rates.**

1 **Will the accrual of AFUDC on the CWIP balance at the at the end of 2019**
2 **during 2020 have an adverse impact on CGC’s customers?**

3 A. In response to CGC Discovery Request 14, Mr. Dittmore revised the Rate Base
4 Component downward from \$300,000 to \$175,892. I will not address errors in the
5 calculation of the rate base component, but based on the example he provided, the
6 rate base component at the end of 2019 should be \$163,626. Setting this difference
7 aside his argument is not valid. On page 26 he is asked:

8 **Q. 61 DOES THIS COMPUTATION RESULT IN AN**
9 **OVERSTATEMENT OF BOTH AFUDC AND PLANT-IN-**
10 **SERVICE?**

11 **A. 61 Yes.**

12 His response to the question is wrong. The rate base component at the end of 2019
13 doesn’t impact the accrual of AFUDC or ultimately the Plant-In-Service. As shown
14 on Exhibit ARH-13, if you compute the AFUDC as he assumed that the project
15 began on June 2019 and is in-service July 1, 2020 as in his example, the AFUDC
16 accrued in 2019 would be \$10,726, and AFUDC accrued in 2020 would be \$32,799
17 for a total of \$43,561. If it is assumed that the project isn’t constructed during the
18 last half of 2019 and the first half of 2020, but that it begins January 2020 and is in-
19 service January 1, 2021, the total accrued AFUDC in 2020 is \$43,561. In both
20 scenarios the accrued AFUDC would total \$43,561 and the amount that is moved
21 into plant in service would be \$1,243,561.

1 **Q. Based on his example, would there be overstated Depreciation, a cost borne by**
2 **the ratepayers, as he states in response to his question 62 on page 27 of his pre-**
3 **filed testimony?**

4 A. No. For there to be an overstatement of Depreciation, Plant in Service would have
5 to be overstated. As I have previously explained, the rate base component at the
6 end of 2019 doesn't impact the accrual of AFUDC or ultimately the Plant-In-
7 Service. Mr. Dittmore's response is incorrect.

8 **Q. On page 28, Mr. Dittmore testifies:**

9 **The AFUDC revenue mentioned earlier in my testimony is**
10 **included within the calculation of Income Tax Expense, both in**
11 **the Company's and the Consumer Advocate's Income Tax**
12 **Expense calculation, consistent with the terms of the CGC**
13 **settlement Agreement in Docket. Thus, the after-tax amount of**
14 **AFUDC is even lower than referenced earlier. However,**
15 **AFUDC is not subject to taxation by the IRS, but instead the**
16 **revenue received by the Company associated with the return of**
17 **and on accumulated AFUDC is taxed at the time it is received.**
18 **If AFUDC and CWIP are retained as above the line items within**
19 **the Company's ARM, the parties should address the**
20 **appropriate treatment of AFUDC within the Income Tax**
21 **Expense calculation.**

22 **Is this statement correct?**

1 A. No, it is not completely correct. While he is correct that the equity component of
2 AFUDC is not subject to Income Tax, his statement that both the Company and the
3 Consumer Advocate include the AFUDC in the computation of the Income Tax
4 Expense is incorrect. As shown on the Consumer Advocate's own Exhibit
5 Schedule 9, Line 10, the Consumer Advocate has excluded the equity component
6 of the AFUDC from the computation of both Federal Income tax and Tennessee
7 State Excise tax. Since capitalized interest reduces the amount of interest that is
8 deductible for income tax purpose, it isn't necessary to exclude the interest
9 component of AFUDC from the Income and Excise Tax calculation. The
10 Company also made the same adjustment in its calculation of Federal Income Tax
11 and Tennessee Excise Tax. It isn't clear what Mr. Dittmore means by his statement
12 that the parties should address the appropriate treatment of AFUDC within the
13 Income Tax Expense calculation.

14 Q. **On page 23 of his pre-filed testimony Mr. Dittmore explains:**

15 **The impact of inclusion of the AFUDC/CWIP issue produces a**
16 **much greater revenue requirement deficiency in the ARM**
17 **docket than it did in the Company's last rate case (Docket No.**
18 **18-00017), which warrants a second look at this issue. While the**
19 **parties had to look to the last rate case to establish**
20 **methodologies for the ARM, after the establishment of the ARM**
21 **and going forward, this is not necessarily a requirement.**

1 **Was the ratemaking methodology that include the inclusion of CWIP in rate**
2 **base and treating AFUDC as revenue adopted for the first time in CGC’s last**
3 **rate case (Docket No. 18-00017)?**

4 A. No. The inclusion of the average balance of CWIP in rate base and the treatment
5 of AFUDC as revenue is the same methodology used in CGC’s previous rate cases
6 in Docket 09-00183, Docket 06-00178, and Docket 04-00034, as well as all
7 previous dockets that I remember. It’s the standard methodology used in rate
8 proceedings in Tennessee.

9 **Q. How long has this methodology been used in Tennessee?**

10 A. I don’t know. I’ve been involved in regulatory proceedings in Tennessee for a
11 little over 44 years. I don’t know how long this methodology was used before I
12 began working for the Tennessee Public Service Commission in 1976.

13 **Q. On page 25, Mr. Dittmore explains:**

14 **Admittedly, whether to recognize the linked items of AFUDC**
15 **and CWIP in revenue requirement calculations is a grey area;**
16 **however, inclusion of these components is not required to arrive**
17 **at just and reasonable rates. In other words, rates based upon**
18 **the exclusion of CWIP and AFUDC within the revenue**
19 **requirement calculation would comply with the Commission**
20 **mandate to adopt just and reasonable rates.**

21 **Do you agree?**

22 A. No. Reasonable rates allow a utility to earn a fair and reasonable return on its
23 investment devoted to public use. The balance in the CWIP is such an investment.

1 The accrual of AFUDC provides the return while an asset is actively under
2 construction but ceases once the project is ready to provide service. Once the asset
3 goes into public service, the rates charged customers produce the revenue to provide
4 the return. If the rates are not adequate, the return on the investment will be less
5 than the authorized return resulting in a revenue deficiency.

6
7 **Section III-Rebuttal to Mr. Dittmore-Supplemental Testimony**

8 **Q. The following question and answer are on page 6 of Mr. Dittmore's**
9 **supplemental testimony:**

10 **Q. DO YOU BELIEVE THE MAGNITUDE OF LEGAL**
11 **COSTS INCURRED ASSOCIATED WITH THE ARM**
12 **DOCKET IS IN CONFLICT WITH ONE OF THE**
13 **STATED GOALS OF THE ARM THAT LEGAL COSTS**
14 **SHOULD BE LESS THAN THE TRADITIONAL**
15 **METHOD OF RATEMAKING REQUIRING RATE**
16 **CASES?**

17 **A. Yes. One important goal of the ARM legislation was the belief**
18 **that legal costs associated with regulatory proceedings would**
19 **be less than similar costs which would be incurred under**
20 **traditional regulation. I do not believe this perceived benefit**
21 **from the ARM was achieved by the Company in 2019.**

22 **When did the Commission Approve CGC's ARM?**

1 A. August 12, 2019.

2 **Q. Was CGC operating under the ARM for most of 2019?**

3 A. No.

4 **Q. Would you expect the benefit of reduced regulatory proceeding costs because**
5 **of alternative regulation to be realized before the utility was operating under**
6 **alternative regulation?**

7 A. No. I agree with Mr. Dittmore that one of the perceived benefits of alternative
8 regulation (either an ARM or riders), as provided in Tenn. Code Ann. § 65-5-
9 103(d)(6), is a reduction in the cost of regulatory rate proceedings. However, the
10 ARM proceeding, Docket 19-00047, was not a rate proceeding. Docket 18-00035
11 addressing Excess Deferred Income Tax was initiated before CGC had filed for the
12 approval of an ARM and would not have been impacted by the ARM. I don't
13 understand how it would be expected that the ARM would have reduced regulatory
14 cost in 2019, since the first annual ARM filing was not made until May 29, 2020.

15 **Q. The following question and answer are on page 5 of Mr. Dittmore's**
16 **supplemental testimony:**

17 **Q. IN YOUR DIRECT TESTIMONY YOU EXPRESSED**
18 **CONCERNS OVER THE LEVEL OF LEGAL COSTS**
19 **INCURRED IN 2019. AFTER REVIEWING THE**
20 **COMPANY'S INVOICES, DO YOU STILL BELIEVE THE**
21 **COMPANY'S COSTS INCURRED IN 2019 WERE HIGH?**

22 **A. Yes. The Company spent \$247,028 in the CGC ARM**

1 **investigation, an astonishing sum for a docket that was largely**
2 **collaborative and resulted in a settlement between the parties.**
3 **In that docket, intervening parties including the Consumer**
4 **Advocate did not even file pre-filed direct testimony; the**
5 **Company was not required to file rebuttal testimony; and the**
6 **parties did not engage in any preparation for contested hearing**
7 **because a contested hearing did not take place. I am not**
8 **proposing an adjustment to eliminate these costs consistent with**
9 **language in the Stipulation and Settlement Agreement between**
10 **the parties that costs incurred in the docket would be recovered**
11 **over a three-year period.**

12 **Was the ARM Docket a conventional proceeding before the Commission?**

13 A. No. The ARM filing in Docket 19-00047 was the first of its kind. While Piedmont
14 Natural Gas, Tennessee-American Water had approved riders, and Atmos Energy
15 had an ARM as provided in Tenn. Code Ann. § 65-5-103(d), CGC’s proposed ARM
16 was different from previously approved alternative regulatory mechanisms. Atmos
17 had been operating under an ARM that continued to use forecasted or budgeted
18 revenue, expenses, and investment. CGC’s ARM was the first annual rate review
19 proposal to rely on historic, known data. The Atmos ARM also required two filings
20 a year; one a reconciliation for a historic base period and the other based on
21 forecasted or projected information. The forecasted or projected proceedings had
22 many of the characteristics of a traditional rate proceeding except on an accelerated

1 schedule. Before CGC developed its proposal, it was apparent that the two annual
2 filing models were not reducing the regulatory burden as intended when Tenn. Code
3 Ann. § 65-5-103(d)(6) became law. The Commission initiated a review to
4 determine if the Atmos ARM could be modified to include only one annual filing.
5 CGC's goal from the beginning was to develop and get approved an ARM that
6 would streamline the regulatory process and avoid problems that had been
7 encountered with the previous model. The group charged with the task of
8 developing the ARM model included CGC employees, AGSC employees, and our
9 attorneys, including both outside firms whose bills Mr. Dittmore reviewed. I
10 believe that we were successful. The advance work by the team working on the
11 ARM resulted in what Mr. Dittmore described as a:

12 docket that was largely collaborative and resulted in a settlement
13 between the parties. In that docket, intervening parties including the
14 Consumer Advocate did not even file pre-filed direct testimony; the
15 Company was not required to file rebuttal testimony; and the parties
16 did not engage in any preparation for contested hearing because a
17 contested hearing did not take place.

18 If the detailed work had not been performed by Company employees and the
19 outside attorneys, this proceeding would probably have been much more
20 contentious, resulting in far more discovery requests, as well as testimony, by the
21 Consumer Advocate. Since Docket 19-00047 was not a rate proceeding but was
22 the development of a regulatory method that is to be followed for years into the

1 future, it is not appropriate to characterize the ARM proceeding the same as a
2 traditional rate case and evaluate the resulting legal cost in the same manner.

3 **Q. The following question and answer are on page 9 of Mr. Dittimore's pre-filed**
4 **supplemental testimony:**

5 **Q. DO YOU HAVE RECOMMENDATIONS CONCERNING**
6 **HOW LEGAL COSTS ASSOCIATED WITH ARM**
7 **DOCKETS SHOULD BE RECOVERED IN FUTURE**
8 **PROCEEDINGS?**

9 **A. Yes. The ARM mechanism was voluntarily elected by the**
10 **Company. The mechanism was not forced upon the**
11 **Company by the Commission. The Company believed it was**
12 **in its interests to pursue this regulatory mechanism. I do not**
13 **believe ratepayers should incur one hundred percent of**
14 **ARM related costs in future ARM filings. Instead, it is**
15 **appropriate to split such costs equally between ratepayers**
16 **and shareholders in future annual filings. This treatment**
17 **will ensure appropriate corporate oversight over such costs,**
18 **will properly assign a portion of these non-required legal**
19 **costs to shareholders, and will acknowledge that CGC's**
20 **shareholders benefit a great deal from the ARM mechanism.**

21 **Was Tenn. Code Ann. § 65-5-103(d)(6) adopted for the benefit of Company or**
22 **was it adopted because it is in the public interest?**

1 A. The annual rate review method created by Tenn. Code Ann. § 65-5-103(d)(6) is for
2 the benefit of customers. The law was enacted to allow the Commission (at the time
3 the TRA to adopt more streamlined regulatory processes that the Commission finds
4 to be in the public interest. During the legislative process, the TRA strongly
5 supported the legislation. In Docket 19-00047 the Commission found that CGC’s
6 proposed Annual Review Mechanism is in the public interest, but now the
7 Consumer Advocate proposes to penalize CGC by arbitrarily excluding 50% of the
8 legal cost incurred in a rate proceeding. The Consumer Advocate’s argument is
9 that because a utility elected to opt into a regulatory method provided for in a statute
10 that the Tennessee General Assembly and the Governor enacted, that the utility
11 should not be allowed to recover the full cost of having legal representation in a
12 proceeding before the Commission. Such an exclusion is not appropriate. The
13 adoption of alternative regulation does not change the regulatory principle that a
14 utility is allowed to recover its prudently incurred costs, including regulatory
15 expenses. Unlike a non-regulated business, CGC can’t adjust its rates without filing
16 and participating in a proceeding before the Commission. The Consumer Advocate
17 is proposing to arbitrarily exclude half of the legal costs incurred in a proceeding
18 that is required to allow the utility to continue operations. The standard for
19 disallowing recovery of an operating expense is that such cost is not prudent or is
20 otherwise not necessary.

21 **Q. On page 10 of his pre-filed supplemental testimony Mr. Dittmore is asked: “Do**
22 **you have recommendations concerning how legal costs associated with the**

1 **triennial review should be treated within future arm dockets?” In his response,**
2 **he states:**

3 **“Yes. The Company's existing Asset Management Agreement**
4 **permits it to retain fifty percent of the proceeds its AMA**
5 **agreements. I recommend the Commission require that fifty**
6 **percent of the Company's legal costs associated with the**
7 **triennial review (a component of the AMA process) be assigned**
8 **to shareholders. This modification would then synchronize the**
9 **benefits of the AMA with its associated costs. It is unbalanced to**
10 **require ratepayers to incur one hundred percent of the legal**
11 **costs associated with the triennial review when shareholders**
12 **enjoy one-half of the underlying benefits of the AMA.”**

13 **Do you have any comments on his proposal?**

14 A. Yes, there are a couple of errors in his answer that need to be corrected. First, he
15 classifies the triennial review as “a component of the AMA process.” This is
16 incorrect. The triennial review is not a component of the AMA process. The
17 triennial reviews were Ordered in Docket 07-00224 (Docket to Evaluate
18 Chattanooga Gas Company’s Gas Purchases and Related Sharing Incentive) which
19 is much broader than the AMA process. The Triennial Reviews include, but are
20 not limited to, the review of the benchmarks used to evaluate CGC’s gas purchases,
21 CGC’s management of its gas storage inventories including both the gas stored in
22 CGC’s on system LNG facility and inventories stored on the interstate pipelines,

1 CGC's supply portfolio, CGC's design day forecast, and the off-system sales of
2 LNG. None of these are part of the AMA. To illustrate the relationship of the
3 AMA to the Triennial Review, the most recent Triennial Review Report consisted
4 of 69 pages. Approximately 2 pages addressed the AMA.

5 Mr. Dittmore's statement that: "The Company's existing Asset
6 Management Agreement permits it to retain fifty percent of the proceeds its AMA
7 agreements" is also incorrect. The Asset Management Agreement does not address
8 the sharing of the AMA fee. The AMA fee is shared in accordance CGC's Tariff
9 Sheet No. 48.

10 I also point out that in 2010 the Consumer Advocate appealed the TRA's
11 Order in Docket 09-00183 that allowed CGC to recover the legal expense incurred
12 in Docket 07-00224, which was the origin of the Triennial reviews. In Docket 07-
13 00224, the Consumer Advocate agreed in a settlement that CGC could recover the
14 legal cost incurred in that proceeding. After agreeing that CGC could recover the
15 legal cost, the Consumer Advocate changed its position and argued in Docket 09-
16 00183 that TRA could not legally allow CGC to recover the expense. After the
17 TRA rejected the Consumer Advocate's argument and approved the recovery of the
18 expense in Docket 09-00183, the Consumer Advocate filed an Appeal. The Court
19 of Appeals, like the TRA, rejected the Consumer Advocates argument and affirmed
20 the TRA's Order that allowed the recovery of the legal expense. It appears that the
21 Consumer Advocate is now trying to achieve in part what it could not achieve in

1 the rate case that was decided by the TRA in 2010 and by the Court of Appeals in
2 2011.

3 **Q. Does this conclude your rebuttal testimony?**

4 A. Yes.

5