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December 17, 2003

Honorable Deborah Taylor Tate
Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

RE: PETITION OF CHATTANOOGA GAS COMPANY, NASHVILLE GAS COMPANY, A DIVISION OF PIEDMONT NATURAL GAS COMPANY, INC., AND UNITED CITIES GAS COMPANY, A DIVISION OF ATMOS ENERGY CORPORATION FOR A DECLARATORY RULING REGARDING THE COLLECTIBILITY OF THE GAS COST PORTION OF UNCOLLECTIBLE ACCOUNTS UNDER THE PURCHASED GAS ADJUSTMENT ("PGA") RULES
Docket No. 03-00209

Dear Chairman Tate:

Enclosed is an original and thirteen copies of our Post-Hearing Brief on the Motion for Summary Judgment in the above-referenced matter. Kindly file the attached in this docket. By copy of this letter, we are serving all parties of record. If you have any questions, please feel free to contact me at (615) 532-3382. Thank you.

Sincerely,

Shilina B. Chatterjee

Shilina B. Chatterjee
Assistant Attorney General
(615) 532-3382

Enclosures
cc: Kim Beals, Esq.
Hearing Officer
All Parties of Record

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IN THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE:	)	
	)	
PETITION OF CHATTANOOGA GAS COMPANY, NASHVILLE GAS COMPANY, A DIVISION OF PIEDMONT NATURAL GAS COMPANY, INC., AND UNITED CITIES GAS COMPANY, A DIVISION OF ATMOS ENERGY CORPORATION FOR A DECLARATORY RULING REGARDING THE COLLECTIBILITY OF THE GAS COST PORTION OF UNCOLLECTIBLE ACCOUNTS UNDER THE PURCHASED GAS ADJUSTMENT ("PGA") RULES	)	**DOCKET NO. 03-00209**

POST-HEARING BRIEF ON MOTION FOR SUMMARY JUDGMENT OF THE CONSUMER ADVOCATE & PROTECTION DIVISION OF THE OFFICE OF THE ATTORNEY GENERAL

Comes Paul G. Summers, the Attorney General and Reporter, through the Consumer Advocate and Protection Division of the Office of Attorney General (hereinafter "CAPD" or "Consumer Advocate") hereby submits their Post-Hearing Brief to the Motion for Summary Judgment. The Consumer Advocate appreciates the opportunity granted by the Tennessee Regulatory Authority ("TRA") to file a post-hearing brief in this proceeding. In this post-hearing brief, the Consumer Advocate responds to the questions presented from the bench during the December 11, 2003 oral arguments on the Motions for Summary Judgment in this proceeding.

QUESTION AS TO MODIFICATION OF FORMULAS

As to the modification of formulas , Director Jones asked the Petitioners the purpose of

pointing out the modification of formulas in the rule.[1] The modification of formulas section appears in 1220-4-7-.03 (1)(a)(4) and 1220-4-7-.03 (1)(b)(3). The modification refers to the two-part demand/commodity rate schedules within these sections. Although the TRA has the ability to modify formulas, modification is limited in scope under the PGA rules. The modification of formulas relates only to two sections of the PGA rules, the Gas Charge Adjustment and the Refund Charge Adjustment. Most importantly, there is no provision under the Actual Cost Adjustment (ACA) that allows for its modification. This is the critical component of the PGA mechanism that needs to be modified in order to grant the Petitioners the relief they are seeking. The relief that the Petitioners seek requires a change to the PGA rules as a whole and not just a change to the formulas.

QUESTION ON THE IMPLEMENTATION OF RELIEF GRANTED BY THE TRA IN DOCKET NO. 01-00802

The TRA, like most courts and tribunals, has the inherent authority to temporarily suspend the applicability of its rules to address extraordinary circumstances. In Docket No. 01-00802, the TRA concluded that a temporary suspension of the rules was warranted to grant the companies relief. However, the TRA was explicit in its direction that "each applicant shall revert to its usual tariff regulation by April 1, 2002."[2] Although the temporary nature of the relief is arguably consistent with the spirit of the rule, a permanent change of policy cannot be consistent with existing rules or consistent with the TRA's inherent theoretical authority to allow temporary

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[1] Transcript Excerpt of Proceeding, December 11, 2003, p. 2, lines 12-15.

[2] Order Approving Deferral of Uncollectible Accounts, January 29, 2002, *In Re Application of United Cities Gas Company, A Division of Atmos Energy, Inc., Nashville Gas Company, A Division of Piedmont Natural Gas Company, Inc. and Chattanooga Gas Company for Approval of Deferred Accounting*, Docket No. 01-00802, p. 6.

measures in extraordinary circumstances. In the current docket, the TRA has not urged the companies to change their collection policies and there are not extraordinary, temporary circumstances. Therefore, the TRA is bound to follow its current rules and the public policy embedded in those rules.

It seems that the implementation of the relief granted by the TRA in Docket No. 01-00802 was accomplished by the TRA through its general statutory authority under Tenn. Code Ann. §65-4-104.[3] The TRA granted relief to the Petitioners based upon their submission of an application seeking deferred accounting for uncollectible accounts. The circumstances at that time necessitated that some relief be granted to the Petitioners and the TRA proceeded accordingly. Since the TRA had requested that the gas companies carry customers through the winter, the TRA believed it was just and reasonable to grant relief to the gas companies. It is undisputed that the uncollectibles rose abnormally due to a multitude of factors. However, the present matter is not the same as the situation that occurred in Docket No. 01-00802. The Consumer Advocate does not believe it should second guess the actions of the TRA in Docket No. 01-00802. At that time, the result was proper, although the reasoning may have been flawed.

The action taken by the TRA in Docket No. 01-00802 was a one-time measure in extraordinary circumstances and specifically stated it in the order. The TRA may have had no other choice in that docket other than to grant relief and merely cited to the intent of the rules in order to grant the relief in that one instance due to the mitigating circumstances. Further, this

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[3] Tenn. Code Ann. §65-4-104 states: The authority has general supervisory and regulatory power, jurisdiction, and control over all public utilities, and also over their property, property rights, facilities, and franchises, so far as may be necessary for the purpose of carrying out the provisions of this chapter. However, such general supervisory and regulatory power and jurisdiction and control shall not apply to street railway companies.

does not warrant relief be granted to Petitioners in this docket to the Petitioners on a permanent basis under the guise that it is consistent with the intent of the PGA rules because the TRA granted temporary relief in Docket No. 01-00802.

It is inappropriate for the gas utilities to now use that docket to twist a grant of temporary relief into a permanent change. The fact that consumers absorbed the impact of the difficulties which were the subject of Docket No. 01-00802 does not imply that this extreme remedy should be made permanent. The TRA helped all interested and aggrieved parties through a very difficult time resulting from a convergence of several factors. Gas volatility was not the only consideration in Docket No. 01-00802.[4] The winter of 2000-2001 started with a much colder than normal November and December which depleted inventories ahead of schedule. Prior warm winters had caused a decline in drilling activities. Gas production capacities were quickly sold out. Speculation and other factors may have also contributed to the quick spike to unprecedented levels for those who had not already purchased enough gas for the winter months. These factors combined with the concerns of the TRA for the health and welfare for the citizens of the State of Tennessee led to a policy decision to allow the gas companies, at that time, to defer uncollectible accounts expense through the PGA mechanism.

In Docket No. 01-00802, the TRA made it clear to the Petitioners that although they were

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[4] Despite the fact that the Petitioners stated that the facts presented in the expert affidavits were immaterial and that the respective motions for summary judgment should be determined based on a matter of law, Petitioners consistently referred to the Affidavit of Archie Hickerson at the hearing concerning the volatility of gas prices and the high cost of gas and how that necessitated including uncollectible accounts expense in the PGA mechanism. Therefore, the CAPD would urge the TRA to give as much consideration to the Affidavit of Daniel W. McCormac as it does the Affidavit of Archie Hickerson regarding this subject matter.

granting relief under the PGA rules and it should not be misconstrued to be the relief that could be obtained in the future under the PGA rules. The TRA did not envision using the PGA rules as a vehicle for the gas companies to include uncollectible accounts expense on a long-term or permanent basis. Docket No. 01-00802 is not precedent for granting the relief sought by the Petitioners. Further, a proper reading of the PGA rule permits no argument supportive of the Petitioners' claim in this docket.

There is no way to fully reconcile the language in the order since the TRA stated that it was not to be a change in policy and the relief granted to the gas companies was purely in response to the extraordinary circumstances at that time. However, the Rule does not allow for this recovery on a permanent basis. The TRA acted in a manner that they thought, at that time, was consistent with the intent of the PGA rule.

Ultimately, the TRA may have stated that the action they took was consistent with the intent of the PGA rules, but it was not to be permanent or ongoing. From a policy standpoint, the TRA made it clear that the PGA mechanism would not include uncollectible accounts expense on a permanent basis. From a legal standpoint, the plain language of the PGA does not support a permanent change in practice. There is no way to fully reconcile the statement with the rest of the order since the TRA clearly stated that it was not to be a change in policy and the relief granted to the gas companies was purely in response to extraordinary circumstances. But most importantly, it is clear that the PGA rules do not allow for recovery of uncollectible accounts on a permanent basis.

Based on the extraordinary circumstances in Docket No. 01-00802, the TRA effectively granted a waiver or a temporary suspension to the Petitioners for a one-year period. Although

the language in the order does not state that the TRA waived their rule, the practical effect of the deferral granted was a waiver of the rule. In any event, the companies are not seeking a deferral here and consequently whatever authority the TRA had to grant a deferral in Docket No. 01-00802 is not invoked here.

The TRA has the discretion, granted by the legislature, to promulgate rules in which to carry out regulation of the Petitioners. In Docket 01-00802, the TRA effectively granted a waiver, allowing the Petitioners to defer uncollectible accounts that they had incurred during the winter of 2000-2001 because the TRA was aware that they had asked that the Petitioners be "compassionate" in how they go about collecting unpaid gas bills due to the extraordinary circumstances of that winter. When the Petitioners applied for the deferral, the TRA felt compelled to grant the petition based on the fact that the TRA had earlier weighed-in and asked the Petitioners to rearrange their business practices and policies. Director Greer stated at that time, after moving for approval of the petition, that he did "not expect approval of such a petition to become common practice."[5] The TRA weighed the circumstances and ruled that it was fair and just to allow such a remedy because the Petitioners had honored the TRA's request. This is a completely different scenario from what the Petitioners are requesting in the present proceeding in which the circumstances of the winter of 2000-2001 are not present. In addition, the Petitioners are seeking a permanent change in policy and practice where the TRA has already stated that they will not change policy and would not allow such relief on a permanent basis.

The comments on the record together with the language of the order in Docket No. 01-00802 clearly describe that the TRA never intended the relief they granted to be precedent for a

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[5] Transcript of Director's Conference, November 6, 2001. p. 33.

permanent change but rather a "one-time" action to remedy the losses that the Petitioners had incurred because they had honored the request of the TRA.

QUESTION CONCERNING THE GAS COMPANIES ABILITY TO RECOVER 100 PERCENT OF ITS GAS COSTS

Director Jones asked the Consumer Advocate "you are not opposing the companies' ability to recover 100 percent of its gas costs, but what you are suggesting is that in your opinion it should be accomplished through a rulemaking rather than through this PGA mechanism, is that correct?"

The Consumer Advocate does not dispute that the PGA mechanism was established for the sole purpose for the gas companies to recover their prudently incurred gas costs "in a timely fashion" through billing allowance and adjustment. However, the PGA mechanism is strictly for recovery of gas costs. Under the PGA rules, recovery occurs when the gas costs are billed to consumers. It is an accounting rule and does not purport to regulate the collection efforts of the gas companies. Also, uncollectible accounts expense are not gas costs. Once billed, gas costs become revenues. Further, it should be noted that uncollectible accounts expense are expenses that are controllable by the company. There are various measures that the gas companies can undertake such as collection efforts, change in policies and customer service initiatives to mitigate high uncollectible accounts expense.

QUESTION CONCERNING WEATHER NORMALIZATION ADJUSTMENT BEING CONSIDERED MARGIN LOSS

The TRA allowed inclusion of the WNA in accordance with the "margin loss" provision in the Actual Cost Adjustment (ACA) portion of the PGA rule. It was considered a margin loss and the PGA rules explicitly provide for margin losses to be included in the ACA by order of the

TRA.

In this docket, the Petitioners are not seeking recovery of a "margin loss." They are seeking recovery of increased "Customer Accounts Expense." Any changes in Customer Accounts Expenses, such as Uncollectible Accounts expense, do not cause margin loss. Therefore, the ACA mechanism would not allow for recovery of anything other than the cost of gas and margin losses (if allowed by TRA order in another docket).

QUESTION CONCERNING A STATEMENT THAT THE CONSUMERS ARE BEING ASKED TO PAY THE BILLS OF THOSE WHO DID NOT PAY THEIR BILLS AND WOULD IT NOT BE THE SAME RESULT UNDER ANY METHOD OF TREATING UNCOLLECTIBLES?

Including uncollectible accounts in the PGA mechanism would not be the same method of treating uncollectibles in the base rates. In normal ratemaking used over at least the last 33 years, Uncollectible Accounts expense has been treated the same as any other customer accounts expense. These non-gas operating expenses are examined for reasonableness in conjunction with the review of all operating revenues, expenses and investments. If the examination of all of the expenses shows that the expenses are just and reasonable, then and only then are they allowed to be included in the cost of service or base rates of the company. Under the PGA mechanism, the just and reasonableness of uncollectible accounts would not be subject to review.[6]

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[6] As stated in the Affidavit of Daniel W. McCormac filed with the Response in Reply to Opposition of Petitioners' Motion for Summary Judgment, lines 192 - 200:

Q. Is it a fact that some of the bills are never paid?

A. Yes.

Q. How are these unpaid bills treated for ratemaking purposes?

A. "Account 904 - Uncollectible Accounts" expense is an ordinary cost of conducting business and is included along with other "Customer Accounts Expenses" in setting the base rate in a rate case. During a rate case, all controllable expenses are examined closely to assure the reasonableness of the expense levels. There is no detailed separation in the accounts to divide Uncollectible Accounts into gas and other. Such a separation can only be estimated.

QUESTION ABOUT THE STATEMENT MADE BY MS. CHATTERJEE CONCERNING THE RULEMAKING WAS THE PREFERRED AND BEST WAY

Tennessee law has a strong preference for a rulemaking when an alteration of rules or policy is necessary. Although the TRA is not required to convene a rulemaking in this proceeding, the Consumer Advocate urges that convening a rulemaking or denying the petition are the only options in the face of the Petitioners' admitted attempt to effect a permanent change of policy. Tennessee law nonetheless is more favorable of this option wherein all interested parties may comment on proposed rules and modifications. Further, rulemaking affords the parties certain protections. Specifically, notice and the opportunity to be heard. In this case, the Petitioners are seeking a declaratory order and it would not be proper for the TRA to grant the relief they seek through a declaratory order. A declaratory order is an inappropriate tool for creating or modifying rules. Declaratory orders are used by courts to clearly lay out for a petitioning party the obligations imposed by a statute, order or rule. In most cases, this is done when a statute or rule is new and untested by affected parties. In this case, the Petitioners have known their rights and obligations for decades under the PGA rules. It is interesting to point out that the Petitioners were among the parties which helped write these rules in a rulemaking proceeding and operated under the rules without including uncollectible accounts expense. The Consumer Advocate is not urging the TRA to open a rulemaking in this matter. Merely, that using a declaratory order would not be the proper procedure to alter a rules and a long standing policy and potentially establishes an improper precedent for the TRA.

RESPECTFULLY SUBMITTED,

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Dated: December 17, 2003

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via hand delivery or facsimile on December 17, 2003.

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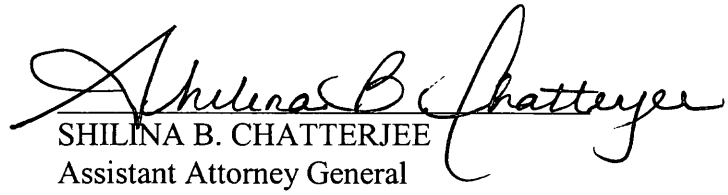

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