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July 22, 2004

VIA HAND DELIVERY

Pat Miller, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37219

Re: Petition of Chattanooga Gas Company for Approval of Adjustment of its Rates and Charges and Revised Tariff
Docket Number 04-00034

Dear Chairman Miller:

Enclosed are the original and 13 copies of Chattanooga Gas Company's (CGC's) Reply to the Responses of Chattanooga Manufacturers Association (CMA) and The Consumer Advocate and Protection Division of the Office of the Attorney General (CAPD) to CGC's Notice and Motion filed on July 9, 2004 in this docket. By order of July 12 of the Hearing Officer, CGC was given leave to file a reply on July 22.

On yesterday, July 21, the Hearing Officer called a telephone conference of the parties and requested that Chattanooga Gas Company agree to delay beyond August 1 putting its rates in effect, so that the rates would not go into effect prior to the TRA's decision in the case. It is CGC's position that it has a right under the statute to put its rates in effect as of August 1, as stated in the attached reply. However, as an accommodation to the Authority, CGC has agreed to delay putting the rates in effect until September 1, 2004 for billing cycles beginning on that date. In exchange for this accommodation, the Hearing Officer has approved stipulations regarding the procedural schedule to bring this matter to conclusion in a time frame in which refunds will not be required, if the TRA makes its decision prior to

September 30, 2004. It is our understanding that the hearing officer will issue an Order regarding this matter today.

CGC files this response because it does not want statements made by the parties in their responses left in the record uncontested. In addition, the CAPD raised issues unrelated to CAPD's Notice/Motion that were not addressed on the July 21 conference call.

Therefore, if the Order is filed as anticipated, the Directors will not need to address, the matters of the bond and the method of calculation of interest on refunds at the July 26, 2004 Authority Conference as previously requested by Chattanooga Gas.

Sincerely,

D. Billye Sanders

D. Billye Sanders
Attorney for Chattanooga Gas Company

DBS/hmd
cc: Archie Hickerson
Elizabeth Wade, Esq.
John Ebert, Esq.
Steve Lindsey
Parties of Record

CERTIFICATE OF SERVICE

I hereby certify that on this 22 day of July 2004, a true and correct copy of the foregoing document was delivered by hand delivery, email, facsimile or U.S. mail postage prepaid to the other Counsel of Record listed below.

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BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE:

PETITION OF CHATTANOOGA GAS COMPANY FOR APPROVAL OF ADJUSTMENT OF ITS RATES AND CHARGES AND REVISED TARIFF	))))	**DOCKET NO. 04-00034**

REPLY TO THE RESPONSES OF THE CHATTANOOGA MANUFACTURERS ASSOCIATION AND THE CONSUMER ADVOCATE AND PROTECTION DIVISION TO CHATTANOOGA GAS COMPANY'S JULY 9, 2004 NOTICE AND MOTION

Comes now Chattanooga Gas Company ("CGC"or the "Company") and files the following reply to the responses of Chattanooga Manufacturers Association ("CMA") and the Consumer Advocate and Protection Division of the Office of the Attorney General ("CAPD") to CGC's Notice and Motion filed with the Tennessee Regulatory Authority ("TRA" or "Authority") on July 9, 2004.

REPLY TO RESPONSE OF CHATTANOOGA MANUFACTURERS ASSOCIATION

CMA asks the authority to:

1. "deny the Company's request to place all of its proposed rates into effect on August 1, 2004, without posting a bond"[1] and

2. "to deny the Company's request that ratepayers ultimately bare the burden of costs that may be associated with refunds should the prehearing

[1] CMA Response p 1

increase subsequently be replaced by tariffs, charges and rates or a reduced rate schedule after a hearing and ruling by the Authority in this case."[2] After requesting that the TRA not allow the CGC to place its rates in effect without a bond, CMA later states that "CMA takes no position as to the Authority's exercise of its discretion to require a bond from the Company."[3] CMA also later avers "that an immediate implementation of a rate increase of any kind should not be granted as requested."[4]

TRA approval is *not* required in order for the Company to place into effect all or a portion of a proposed change in rates pursuant to TCA §65-5-203(b)(1), if the rates have been on file for six months and the company has notified the Authority in writing of its intention to place the rates into effect.[5] CGC's July 9, 2004 letter provided such notice. On July 19, pursuant to the Hearing Officer's July 12, 2004 Order, CGC filed a summary of rates that will have been on file for six months as of July 26, 2004 and of a tariff change that will not have been on file for six months as of July 26, 2004. As indicated in that summary, the filing that was made on February 27, 2004 corrected typographical errors in the weighting factors in the equation used to determine the index cost of gas for the cash out of monthly imbalances for T-1 and T-2 customers. CGC indicated that it would delay implementing the new cash out provision for monthly balances until August 27,

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[2] Id

[3] Id , at p 3

[4] Id

[5] T C A § 65-5-203(b)(1) states in part "If the investigation has not been concluded and a final order made at the expiration of six (6) months from the date filed of any such increase, change or alteration, the utility may place the proposed increase, change or alteration, or any portion thereof, in effect at any time thereafter prior to the final authority decision thereon upon notifying the authority, in writing, of its intention so to do "

2004. Therefore, CMA's argument that the correction that was made on February 27 should not be implemented until August 27 is moot.

At first it appeared that the CMA's only concern with implementation of the proposed rates on August 1 was regarding the corrections that were made to the tariff on February 27, 2004. However, at the end of its response it argues that no rate increase should be allowed prior to the hearing. As pointed out above, CMA's argument that CGC should not be allowed to place rates in effect that will have been on file for six months on July 26 is misplaced and contrary to the statute.

In support of its argument, CMA says that the rate increase may be in effect for less than a month because the hearing is currently scheduled for August 23, 2004 and the Company should not be allowed to put in the rates for such a short period of time. However, the statute that allows CGC to put its rates into effect after being on file for six months without a hearing, contemplates that a rate case proceeding is in progress. Yet, the legislature allows implementation of the rate adjustments in spite of the fact that rates may be in effect for only a short time. Further, contrary to CMA's assertions, even if the hearing is held on August 23, it could be a month or more after that before a decision is rendered and an order is issued. After the conclusion of the hearing there is typically a briefing schedule (including time to receive the transcript from the court reporter), time for the directors to review the briefs and the record, a TRA conference where a decision is rendered and time for the agency to issue its final order.

The statute is clear that the Authority is not required to impose a bond. Once the Company puts the TRA on notice that it plans to put its rates into effect, "...the authority may require the utility to file with the authority a bond in an amount equal to the proposed annual increase conditioned upon making any refund ordered by the authority as hereinafter provided." (emphasis added) The TRA has discretion regarding a bond. CGC merely asks that the Authority not impose a bond requirement inasmuch as the bond will cost roughly $56,400 and the Company is credit worthy and has the financial ability to make any such refunds without the need for a bond.[6] CGC regularly makes refunds pursuant to the Purchase Gas Adjustment Rule without posting a bond and believes that it is capable of making refunds, if any, in the present case without the additional expense of posting a bond.

If the TRA requires CGC to post a bond, CGC asks that the cost of the bond be recovered in rates as an expense of the rate case. The cost of such a bond and/or the cost incurred in implementing any refund would properly be recorded as rate case expense as are the other costs incurred in such rate proceedings before the TRA.[7] The CGC is merely seeking to avoid this additional cost to its ratepayers and/or its stockholders when Chattanooga Gas Company has the wherewithal to make any refund.

It its letter dated July 9, CGC put the Authority and the parties on notice that it is requesting that it be allowed to recover in its rate case the incremental costs associated with recalculating and implementing any refund ordered by the

[6] The Company' financial statements are on file with this agency and in this docket
[7] *See* TRA Order in Docket No 97-00982, issued October 7, 1998, at page 17

TRA. It was not CGC's intention that the TRA would make a decision on this request at the July 26, 2004 Authority Conference. CGC believes that this expense is appropriately recovered as a rate case expense, and would justify this expense in the rate proceedings and would put on proof in support of costs, which the other parties may address in the context of the rate case. It is a long standing rate making principle that cost incurred by a utility during the course of a rate case are properly recognized as operating expenses through amortization over the period in which the resulting rates are expected to be in effect.[8] If the TRA elects to require CGC to post a bond, cost related to obtaining such a bond would be such a cost that would be recorded as deferred rate case cost to be amortized over the period that rates are anticipated to be in effect. CGC is not asking to increase rates above those requested in the filing made on January 26, 2004, but is simply requesting that such cost be included in the cost of service when the Directors evaluate the rates requested. Furthermore, if the hearing is held the week of August 23, 2004 and the TRA renders its decision prior to August 30, CGC will not have to issue refunds because its bills for billing cycles beginning August first are not issued until September 1. Therefore it can recalculate the bills (which will reflect gas provided beginning August 1) to reflect the rates in the Authority's decision.

The two issues that CGC asks the Authority to decide on July 26 are: (1) whether CGC should post a bond in an amount equal to the proposed annual increase conditioned upon making any refund ordered by the authority; and (2) whether the method for calculating the interest on refunds to customers, if any,

[8] TRA Order in Docket No 97-00982

shall be the same method used to compute interest on refunds under the TRA's Purchase Gas Adjustment Rule 1220-4-7-.03(1)(b)2(vii).

In summary, CMA's argument that the tariff changes that were made on February 27, 2004 should not be placed in effect until August 27, 2004 is moot, because the company has already stated it will not implement the cash out provisions in question until August 27. CMA's argument that the TRA should not allow implementation of the rates that have been on file for six months as of July 26, 2004 is contrary to the statute and is a request for relief that the Authority cannot grant. CMA's request that the TRA deny CGC's request that the ratepayers bear the cost associated of implementing refunds, if any, is not ripe for decision. Consequently, CGC respectfully requests and reserves the right to make additional arguments regarding this issue in its testimony and at hearing. CMA makes no argument that justifies the imposition of a bond and does not comment on the method for calculating interest on refunds. Therefore CGC respectfully requests that the TRA not require a bond and determine that the method for calculating interest on any refunds due to customers should be the same as the method used under the PGA rule.

REPLY TO THE CONSUMER ADVOCATE AND PROTECTION DIVISION

The CAPD in its response states that: "to the extent that the TRA determines that Tennessee law allows Chattanooga Gas to put its proposed rate into effect prior

to a rate case hearing, it should be allowed to do so."[9] As stated above in the Reply to CMA's response, it is the position of CGC that the law allows CGC to place the rates into effect that have been on file for six months as of July 26, 2004. Therefore, Chattanooga Gas should be allowed to do so.

The CAPD states that

> "the consumer advocate does not believe that a bond should be required of Chattanooga Gas so long as the period without bond does not extend beyond the time that the TRA makes a decision in rate-making proceeding."[10]

While the CGC appreciates that the CAPD does not believe that a bond should be required pending the TRA's decision in the rate-making proceeding, CGC does not agree with the proposed condition of the CAPD that the period without bond should not extend beyond the time the TRA makes a decision in the rate-making proceeding. Once the TRA issues a final order in this proceeding, Chattanooga Gas Company intends to abide by such order, subject to its rights under the law, including the right to request reconsideration, appeal and/or a stay pending an appeal. Chattanooga Gas Company contemplates that the TRA will specify in its decision any refunds or adjustments that are to be made. It is unclear why and unreasonable that the CAPD would request that CGC be required to obtain a bond after the TRA's decision is rendered. Should CGC or any other party file for reconsideration or an appeal, the TRA or the appellate court could decide the question of whether a bond is appropriate at that time. However, the Company

[9] CAPD Reply, at p 1.
[10] Id , at p 2

considers the bond to be a credit issue, and does not believe that a bond would be warranted even pending appeal.

As stated above in the Reply to CMA, it is CGC's intent that the issue of the recovery of expenses incurred in putting the rates into effect prior to the hearing will be adjudicated as part of the rate case, which is consistent with the CAPD's position in its Reply. [11]

CGC is tempted to ignore the trite comment made at the bottom of page 2 of the CAPD Reply. However, one never knows when consideration will be given to a comment that a party deems irrelevant, thus CGC addresses it. The CAPD stated:

> that Chattanooga Gas is eager to waive the rule regarding a bond although it was completely unwilling to relax a TRA rule regarding the 40 question limit on discovery requests when the consumer advocate sought to ask more than 40 questions."[12]

There is definitely a distinction between Rule 1220-1-2-.11(5)(a) that says:

> No party shall serve on any other party more than forty (40) discovery requests including subparts without first having obtained leave of the Authority or a Hearing Officer (emphasis added)

and the provision in TCA 65-5-203(b)(1) that says that the utility may place the proposed rates in effect upon notification to the Authority

> provided, that the Authority may require the utility to file with the Authority a bond... (emphasis added).

Although CGC requested a "waiver" of the bond, there is no requirement that a bond be imposed. Therefore, the Authority is not refraining from enforcing a

[11] Id P 3
[12] Id P 2

requirement in this situation as the term "waiver" implies. The Company should not be penalized, prejudiced or repeatedly chastised for taking advantage of rules and laws that are consistent with its interests. Further, it is not CGC's role to relax the TRA rule limiting discovery requests. That authority is left with the Authority or the Hearing Officer as clearly stated in the rule. The Hearing Officer ruled on the CAPD's motion on July 12 and allowed additional discovery requests. It is unclear why the CAPD continues to raise an issue that was resolved in its favor. This issue is moot.

Finally, CAPD has raised an issue that was not a part of CGC's Letter/Motion filed on July 9, 2004. In its Response, the CAPD states that AGL Resources' ("AGLR") "*recent acquisition* of a gas company, NUI Corporation, by Chattanooga Gas's parent company, AGL Resources, Inc. ...has created, in effect, a new application" (emphasis added). Contrary to the CAPD's claim, AGLR has not yet acquired NUI Corporation ("NUI"). As announced in the news release attached as Exhibit 1 to the CAPD's filing, AGLR has signed an agreement to acquire the outstanding stock of NUI. However, the agreement is subject to multiple closing conditions. As plainly stated in the news release:

> The transaction is subject to the approval of NUI's shareholders, the Securities and Exchange Commission, the state regulatory agencies of New Jersey, Florida, Maryland and Virginia, the expiration of the Hart-Scott-Rodino waiting period and various other closing conditions.

In addition, there are numerous closing conditions in the merger agreement which is on file on the Securities and Exchange Commission's website as AGL's Form 8-K,

dated July 15, 2004.

Even if the closing had occurred, it would not require CGC to file a new application, as suggested by the CAPD. Although the stock of CGC is owned by AGLR, CGC is the public utility that provides service in Chattanooga and the surrounding areas in Hamilton and Bradley Counties in Tennessee; the entity that was granted a Certificate of Public Convenience and Necessity by order of the Tennessee Public Service Commission on September 2, 1988 in Docket U-88-7566; the entity that is under the jurisdiction of the Tennessee Regulatory Authority; and the entity that filed a petition to increase rates on January 26, 2004. CGC's parent company, AGLR, is a Public Utility Holding Company regulated by the United States Securities and Exchange Commission. AGLR's purchase of the stock of another entity does not alter the petition that CGC filed before the TRA on January 26, 2004.

The CAPD further states that the acquisition will materially impact AGL Services' cost allocations to the various AGLR subsidiaries. As explained above, the acquisition has not yet occurred and is subject to multiple closing conditions. The announcement has not impacted the allocation of costs. Further, there will be no impact on any allocations until (and unless) the purchase is completed, and NUI has been integrated into AGLR's operations. At this time any impact is speculative and will not occur until an unknown date in the future.

Moreover, the CAPD's reference to NUI Energy Brokers (NUIEB) is also misplaced. NUIEB has ceased trading and is in the process of winding down its

operations. It will not be part of any operations that continue after approval and completion of any acquisition by AGLR. As evidenced from Exhibit 2 to the CAPD's filing, the investigations by the New Jersey Attorney General's Office and the New Jersey Board of Public Utilities referenced by the CAPD were concluded and settled prior to AGLR's agreement to purchase the outstanding stock of NUI.

In summary, AGLR has not yet acquired NUI and thus, any discussion regarding the possible impact on cost allocations is speculative. Further, the CAPD's concern with respect to NUIEB is unfounded as NUIEB will not be part of any operations that continue after closing of the transaction.

CONCLUSION

The law allows CGC to place its rates into effect after being on file for 6 months. No party has expressed a reason why CGC should be required to post a bond to secure payment for any refunds that the TRA may order. The Company is credit worthy and therefore should not be required to post a bond. No party has raised a concern or commented on CGC's proposal that interest on any refunds be calculated in the same manner as interest on refunds under the PGA. The Company believes this methodology is reasonable and should be adopted in this case. While the Company believes that the cost of implementation of any refunds should be recovered through rates, the TRA need not decide this issue on July 26.[13]

[13] Note that after a telephone conference with the Hearing Officer and the representatives of the parties, GGC, as an accommodation to the Authority, agreed to delay the effective date of its rates for billing cycles beginning September 1, 2004 and anticipates an order of the Hearing Officer to be filed later today memorializing the stipulations regarding such agreement *See* cover letter accompanying this filing

Respectfully submitted,

Chattanooga Gas Company

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