BAKER
DONELSON
BEARMAN, CALDWELL
& BERKOWITZ, PC

1800 REPUBLIC CENTRE
633 CHESTNUT STREET
CHATTANOOGA TENNESSEE 37450
PHONE 423 756 2010
FAX 423 756 3447

www bakerdonelson com

KASEY CANNON, LEGAL SECRETARY
Direct Dial (423) 209-4122
Direct Fax (423) 752-9525
E-Mail Address kcannon@bakerdonelson com

November 15, 2004

Tennessee Regulatory Authority
Attn: Chairman Pat Miller
c/o Sharla Dillon, Docket Manager
460 James Robertson Parkway
Nashville, TN 37243-0505

Via Federal Express
Priority Overnight Delivery

Re: In Re: Petition to Require Atmos Energy Corporation to Appear and Show Cause that Its Rates are Just and Reasonable and that it is Not Overearning in Violation of Tennessee Law
Tennessee Regulatory Authority Docket No. 04-00356

Dear Ms. Miller:

Please find enclosed the original and fourteen copies of Atmos Energy Corporation's Response to Show Cause Petition for filing in the above-referenced matter. Please stamp the extra enclosed copy "filed" and return it to me in the enclosed envelope.

If you have any questions about this filing please give me a call.

Sincerely,

Kasey Cannon,
Assistant to Misty Smith Kelley

/klc
Enclosures

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE:	)	
	)	
PETITION TO REQUIRE ATMOS	)	
ENERGY CORPORATION TO APPEAR	)	DOCKET NO. 04-00356
AND SHOW CAUSE THAT ITS RATES	)	
ARE JUST AND REASONABLE AND	)	
THAT IT IS NOT OVEREARNING	)	
IN VIOLATION OF TENNESSEE LAW	)	

ATMOS ENERGY CORPORATION'S RESPONSE TO SHOW CAUSE PETITION

Atmos Energy Corporation ("Atmos" or "the Company") hereby responds to the petition filed by the Attorney General, through the Consumer Advocate and Protection Division ("CAPD"), entitled Petition to Require Atmos Energy Corporation to Appear and Show Cause That Its Rates Are Just and Reasonable and That It Is Not Overearning in Violation of Tennessee Law ("Show Cause Petition").

By its Show Cause Petition, the CAPD is requesting that the TRA issue an order directing Atmos to appear before it and prove that its rates are just and reasonable. The Show Cause Petition makes no allegation that Atmos is earning more than the rate of return authorized by the TRA in the Company's last rate case. In fact, the CAPD attaches to its Show Cause Petition the Company's August 31, 2004 Form 3.03 report which demonstrates the Company's earnings are below its authorized rate of return.[1] Therefore, the Show Cause Petition is nothing more than a

---

[1] Attached as collective Exhibit A to this response are copies of the final orders in the Company's most recent rate cases, Docket Nos 92-02987 and 95-02258 In the 1992 rate case, the Company's overall rate of return was set at 11 03%, incorporating a 12 6% return on equity (Order in Docket No 92-02987 at App B) In the 1996

overt attempt by the CAPD to force Atmos to defend the TRA's decision in the Company's last rate case.

As demonstrated in the discussion below, the CAPD does not have the authority to initiate such a proceeding. Show cause proceedings may be initiated only by the TRA itself, under statutorily prescribed circumstances not present in this case. By its Show Cause Petition, the CAPD is attempting to avoid the heavy burden of proof the law places on parties challenging the reasonableness of rates set by the TRA by asking the TRA to excuse it from having to make any prima facie showing at all. Even if the CAPD's Show Cause Petition were to be treated as a petition to open an investigation or contested case regarding the validity of Atmos' authorized rate of return, the Show Cause Petition falls far short of the requirement that a party challenging the reasonableness of the TRA's rate decisions must come forward with convincing evidence of a material and substantial nature in order to overcome the presumption that the rates set by the TRA are valid. The sole basis the CAPD offers in support of its claim that Atmos' rate of return is unreasonable is the TRA's recent ruling in the Chattanooga Gas Company rate case, which is currently on appeal through a motion to reconsider. Regardless, the CAPD's position that the TRA's ruling in the Chattanooga Gas case is sufficient reason to impose that same rate on Atmos is a proposition that is completely inconsistent with the most basic principles of ratemaking.

For these reasons, the CAPD's Show Cause Petition should be denied and dismissed in its entirety.

---

case, the Company reached a black box settlement with the Public Service Commission Staff and the CAPD's predecessor, the Office of Consumer Advocate, for a revenue increase of $2,227,000 (Order in Docket No 95-02258 at p 7)

I. THE CAPD DOES NOT HAVE THE AUTHORITY TO INITIATE SHOW CAUSE PROCEEDINGS.

A. The CAPD lacks the statutory authority to initiate show cause proceedings, which is a power granted exclusively to the TRA.

The CAPD derives its authority solely from the legislature's statutory grant of power, which is contained in Tenn. Code Ann. § 65-4-118. Tenn. Op. Atty. Gen. No. 95-044 (the Consumer Advocate Division possesses only those powers granted to it by the legislature) (internal citations omitted); see also Tenn. Code Ann. § 65-5-110(b) (noting that the Consumer Advocate's authority is defined by Tenn. Code Ann. § 65-4-118). The CAPD's authority must be strictly construed, and the powers listed in the statute necessarily mean the exclusion of all powers not among those listed. Tenn. Op. Atty. Gen. No. 95-044 (finding, in response to the question of whether the Consumer Advocate could audit a public utility, that "the Consumer Advocate's power to obtain information is strictly constrained [by § 65-4-118]" and that "the Advocate is simply not empowered to acquire information by audit or any other method not specified by the General Assembly.").

When the required strict construction is applied to Tenn. Code Ann. § 65-4-118, it is evident that the extraordinary request contained within the CAPD's Show Cause Petition exceeds the CAPD's statutory authority. Tenn. Code Ann. § 65-4-118 is very clear with regard to the CAPD's right to initiate proceedings before the Authority. The statute provides, in pertinent part, that:

> The division may, with the approval of the attorney general and reporter, participate or intervene as a party in any matter or proceeding before the authority or any other administrative, legislative or judicial body **and initiate such proceeding, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, and the rules of the authority**.

Tenn. Code Ann. § 65-4-118 (emphasis added). Thus, under the terms of § 65-4-118, the CAPD may initiate any proceeding before the TRA that it is permitted under: (1) the terms of the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101 et seq. ("UAPA"); or (2) the TRA rules, which incorporate by reference the provisions of title 65 of the Tennessee Code defining the jurisdiction and procedure before the TRA, see Tenn. Comp. R. & Regs. 1220-1-2-.02. The UAPA, title 65, and the TRA rules all contain several provisions which:

> (1) identify the types of proceedings that may be brought before the TRA (e.g., a petition for declaratory ruling (§ 4-5-223); a complaint alleging discriminatory charges (§ 65-2-122));
>
> (2) specify who may initiate those proceedings (e.g., "any interested person" (§ 65-2-104); "a competing telecommunications service provider" (§ 65-5-109)); and
>
> (3) in some circumstances, delineate the standards of proof to be applied and allocate the burden of proof between the parties (e.g., a utility requesting a tariff change has the burden of proof to show the proposed change is reasonable (§ 65-5-103), a party requesting suspension of a telecommunications tariff must show a substantial likelihood of prevailing on the merits (§ 65-5-101))[2].

Notably, none of the provisions within the UAPA, title 65, or the TRA rules grant the CAPD, or any entity other than the TRA itself, the right to initiate show cause proceedings. Tenn. Code Ann. § 65-4-118 limits the CAPD's authority to initiate proceedings to those actions permitted by the UAPA and the TRA statutes and rules. While those provisions, for example, give the CAPD (or any party) the right to petition the TRA to open an investigation (§ 65-4-117), or to convene a contested case (Rule 1220-1-2- 02), that is not what the CAPD has requested by its Show Cause

[2] Earlier this year, Tenn Code Ann §§ 65-5-201 through 213 were renumbered §§ 65-5-101 through 113

Petition. Instead, the CAPD is attempting to avoid having to make any type of prima facie showing by shifting the burden of proof to Atmos and asking that the TRA require Atmos to defend the reasonableness of the TRA's decision in the Company's last rate case. Not surprisingly, the law does not grant the CAPD such extraordinary power. Instead, the legislature gave the TRA the exclusive authority to initiate show cause proceedings before the agency, under certain prescribed circumstances.

Specifically, Tenn. Code Ann. § 65-2-106, the show cause statute relied on by the CAPD, provides:

> The authority is empowered and authorized in the exercise of the powers and jurisdiction conferred upon it by law to issue orders **on its own motion** citing persons under its jurisdiction to appear before it and show cause why the authority should not take such action as the authority shall indicate in its show cause order appears justified **by preliminary investigation made by the authority under the powers conferred by law.** All such show cause orders shall fully and specifically state the grounds and bases thereof, and the respondents named in the orders shall be given an opportunity to fully reply thereto. Show cause proceedings shall otherwise follow the provisions of this chapter with reference to contested cases, except where otherwise specifically prohibited.

(emphasis added). This statute clearly sets up four requirements for show cause proceedings: (1) that the proceedings can be initiated only by the TRA's own motion; (2) that the TRA must conduct a preliminary investigation before issuing a show cause order; (3) that the show cause order must fully and specifically state the grounds and bases thereof; and (4) that the respondents named in the order be given opportunity to fully reply to the allegations contained in the order. See Builders Transp. Co. v. Public Svc. Comm'n, 1991 WL 169692 at *2 (Tenn. Ct. App Sept. 4, 1991) (holding show cause proceedings may be initiated only by TRA motion); Illinois Central Gulf RR Co. v. Tennessee Public Svc. Comm'n, 736 S.W.2d 112, 118 (Tenn. Ct. App. 1987) (holding that PSC's show cause order complied with statutory requirements because order was

based on PSC's own investigation, rather than on a presumed violation); see also 11/16/01 Order in TRA Docket No. 01-00808[3] at p. 11 (holding that because Tenn. Code Ann. § 65-2-106 requires the TRA complete an investigation before initiating show cause proceedings, the TRA may not initiate show cause proceedings on the motion of a complaining party).

None of those statutory requirements for show cause proceedings are met in this case. The TRA has not conducted the required preliminary investigation and has not made a motion on its own to initiate show cause proceedings against Atmos. Without the necessary prerequisite of a staff investigation, show cause proceedings cannot be initiated. Builders Transp. Co., 1991 WL 169692 at *2; Illinois Central Gulf RR Co., 736 S.W.2d at 118; 11/16/01 Order in TRA Docket No. 01-00808 at p. 11. The statutory show cause requirements must be fully complied with; the CAPD's Show Cause Petition cannot serve as a stand-in for the proper exercise of the TRA's regulatory discretion. See Tenn. Op. Atty. Gen. No. 95-044 (noting that the statutory grant of power to the CAPD contained in Tenn. Code Ann. § 65-4-118 does not constitute a legislative sanction for the CAPD to perform regulatory functions); Tenn. Op. Atty. Gen. 88-41 (holding that the statutory powers of the Attorney General's Office do not include the power to force the PSC to adhere to its opinions).

Because show cause proceedings are not among the actions the CAPD is permitted to bring under the UAPA or the TRA rules, it must be presumed that show cause proceedings are excluded from the legislature's statutory grant of power to the CAPD. State v. Harkins, 811 S.W.2d 79, 82 (Tenn. 1991). Even though the conspicuous absence of show cause power from the enumerated statutory powers of the CAPD is sufficient evidence, standing alone, to require

---

[3] A copy of this Order is attached as Exhibit B to this response

the conclusion that the CAPD lacks the power to initiate show cause proceedings, the unequivocal language of the show cause statute, Tenn. Code Ann. § 65-2-106, removes any scintilla of doubt from the equation. The TRA is the sole entity empowered to initiate show cause proceedings for matters within its jurisdiction, and the only way the TRA may exercise that extraordinary power is by complying with the mandatory requirements of the show cause statute. BellSouth Adver. & Publ'g Corp. v. Tennessee Regulatory Auth., 79 S.W.3d 506, 512 (Tenn. 2002). The statutes simply cannot be read to allow for any other result. As such, the CAPD lacks the authority to bring a show cause proceeding, and its Show Cause Petition must be dismissed.

B. The CAPD is attempting, through its Show Cause Petition, to improperly shift its burden of proof to Atmos.

The implausible nature of the CAPD's show cause request is all the more evident when it is examined within the context of show cause proceedings as a whole, and in particular, with regard to the shifting of the burden of proof requested by the CAPD.

1. History of Show Cause Proceedings Before the TRA.

In TRA proceedings, the party asserting the affirmative of a claim for relief has the burden of proof. Tenn. Code Ann. § 65-2-109; Tenn. Comp. R. & Regs. 1220-1-2-.16. A TRA show cause order shifts the burden of proof away from the party seeking relief and to the responding party named in the order. Id. Show cause proceedings which shift the burden of proof, as the TRA show cause proceedings do, are disfavored, and are permissible only where specifically authorized by the legislature. 56 Am.Jur.2d Motions, Rules and Orders § 46; Illinois Central Gulf RR Co. v. Tennessee Public Svc. Comm'n, 736 S.W.2d 112, 118 (Tenn. Ct. App. 1987) (noting that state legislature, not PSC, is the entity with the authority to shift the burden of proof as a matter of policy.) As discussed above, the legislature has given the TRA the exclusive

power to initiate show cause proceedings before it, and has placed certain procedural protections in place, including the requirement that the show cause be initiated on the TRA's own motion; that the TRA conduct a preliminary investigation; that the TRA issue an order which sets forth the specific grounds and bases for each allegation; and that the TRA provide a process which permits the respondent a full opportunity to address the allegations against it. Tenn. Code Ann. §65-2-106.

The power to issue show cause orders is an extraordinary one which, under Tennessee law, is limited to situations in which an authorized tribunal has made a determination, based on evidence revealed through investigation, that a violation of law has occurred. See, e.g., Tenn. Code Ann. § 8-49-102 (judge may issue show cause order for return of public officer records if judge is satisfied by oath of complainant and such other evidence that violation has occurred); Tenn. Code Ann. § 45-8-220 (commissioner may issue show cause order if he finds business licensee in violation of statutes); Tenn. Code Ann. § 50-6-412 (show cause order may issue when department of labor records and investigation reveal violation of workers compensation law); Eastern Amusement, Inc. v. State ex rel. Gay, 548 S.W.2d 876, 877 (Tenn. 1977) (court may issue show cause order in injunction proceedings if complaint is supported by sufficient affidavit evidence); Hines v. Sims, 2004 WL 1888944 at *2 (Tenn. Ct App. Aug. 24, 2004) (show cause order may issue if court finds party in contempt of court order). The preliminary determination of the tribunal replaces the prima facie showing normally required before the burden of proof shifts to the responding party. Without the preliminary determination of an authorized tribunal, or in the alternative, a prima facie showing by the complainant/petitioner, the burden of proof may not be shifted to the respondent. See Williams v. Pittard, 604 S.W.2d 845, 849-50 (Tenn. 1980) (holding that Board of Education's requirement that a teacher appear and show cause why

she should not be terminated was an improper shifting of the burden of proof which raised constitutional due process concerns).

The history of show cause proceedings before the TRA demonstrates the limited nature and applicability of the TRA's extraordinary burden-shifting power. Attached as Exhibit C to this response is a chart listing 19 show cause proceedings before the TRA over the past 16 years. This represents all the show cause proceedings that are electronically available, either through the TRA website, or legal databases. In none of the 19 cases represented on the chart did the TRA issue a show cause order in response to a motion or petition by a third party. In all but two of the cases, the TRA initiated the show cause proceedings on its own motion after TRA staff's preliminary investigation revealed violations of TRA rules or orders. See, e.g., In Re: Show Cause Proceeding Against EZ Talk Communications, LLC, Docket No. 03-00632 (staff investigation revealed violations of anti-slamming regulations); In Re: Gutter Guard of Tennessee, Inc., Docket No. 03-00082 (staff investigation revealed violations of do not call regulations).

In the remaining two cases, the TRA denied motions by third parties (AARP and Access Integrated Networks, Inc. ("AIN"), respectively) requesting that the TRA order BellSouth to appear and show cause why it should not be sanctioned for violation of the TRA rules governing telecommunication pricing. (11/16/01 Order in TRA Docket No. 01-0080 (AIN) (attached as Exhibit B to this Response); 10/20/01 Order in TRA Docket No. 98-0021 (AARP).) The TRA declined to reach the merits of AARP's motion, finding the motion was rendered moot by a ruling of the Tennessee Court of Appeals in a related case. (10/20/01 Order at p. 7.) In the second case, the hearing officer denied AIN's motion for a show cause order, finding that the TRA lacked the authority to initiate show cause proceedings in response to a motion by a third

party, because Tenn. Code Ann. § 65-2-106 requires that the TRA initiate show cause proceedings only after completing its own investigation. (11/16/01 Order at pp. 10-11 (attached hereto as Exhibit B.)) Therefore, the history of show cause proceedings before the TRA provides additional evidence of the limited nature of the TRA's power to initiate show cause proceedings, and further support for the plain reading of the show cause statute as prohibiting the relief requested by the CAPD's Show Cause Petition.

2. Burden Shifting in Show Cause Proceedings.

By its Show Cause Petition, the CAPD is raising a challenge to the reasonableness of the rate of return set by the TRA in Atmos' last rate case. Because the CAPD is the party seeking affirmative relief, it bears the burden of proving that Atmos' rate of return has been set at an unreasonable level. Tenn. Code Ann. § 65-2-109; Tenn. Comp. R. & Regs. 1220-1-2-.16. In this case, because the CAPD is challenging a previous ratemaking decision of the TRA, that burden is much higher than in any other petition for relief. The CAPD's Show Cause Petition is an attempt to avoid that heavy burden of proof. If granted, the CAPD's Show Cause Petition would violate the well-established standards regarding the appropriate burden of proof in case challenging the reasonableness of rates set by the TRA. As such, the CAPD's Show Cause Petition must be dismissed.

The Tennessee Supreme Court has specifically addressed the burden of proof for challenges to rates set by the TRA and has held that rates established by the TRA carry with them the presumption of validity accorded legislative decisions which can be overcome only with convincing evidence of a material and substantial nature:

> Thus this Commission as created has necessarily a body of experts who work for and with it to fix and carry out these rates. The product of this expert judgment in fixing these rates carries with their fixing a presumption of validity. When these rates are

> attacked there is a ***heavy*** burden on those who attacked them to make a ***convincing*** showing that the rates are invalid.

Southern Bell Telephone & Telegraph Co. v. Tennessee Public Svc. Comm'n, 304 S.W.2d 640, 649 (Tenn. 1957) (emphasis added); see also CF Indus. v. Tennessee Public Svc. Comm'n, 599 S W 2d 536, 540 (Tenn. 1980) (holding that the PSC is a legislative body with statutorily recognized experience, technical competence and specialized knowledge, and in order to overcome the presumption of validity accorded the PSC's ratemaking decisions, a party challenging the rate set by the PSC has the burden of proving, with substantial and material evidence, that the rates are unjust and unreasonable.) Therefore, the CAPD must produce convincing evidence of substantial and material nature in order to make a prima facie case to challenge the reasonableness of the rates the TRA has set for Atmos. CF Indus., 599 S.W.2d at 540; Southern Bell Telephone & Telegraph Co., 304 S.W.2d at 649. It is obvious from the CAPD's Show Cause Petition that it cannot meet its burden of proof. Instead, the CAPD is attempting to avoid having to make the required showing of proof by asking the TRA to apply its show cause power in a way that is not authorized by statute and is inconsistent with prior history and caselaw. The CAPD's entirely novel and unsubstantiated request should be denied.

II. THE CAPD'S SHOW CAUSE PETITION DOES NOT ALLEGE SUFFICIENT GROUNDS TO CONVENE A CONTESTED CASE OR TO OPEN AN INVESTIGATION AS TO THE REASONABLENESS OF ATMOS' RATE OF RETURN.

It is clear that the CAPD's Show Cause Petition attempts to initiate a proceeding the CAPD does not have the authority to bring. It is also clear that the CAPD's Show Cause Petition requests relief which is beyond the statutory power of the TRA; which is inconsistent with the prior history of TRA show cause proceedings; and which is prohibited by the caselaw governing the prima facie showing required for a challenge to established rates. For these reasons, the

CAPD's Show Cause Petition should be denied. Atmos requests that the TRA decline any demand on the part of the CAPD to convert the Show Cause Petition into a proceeding that the CAPD is authorized to bring, such as a petition requesting the TRA to open an investigation into a particular matter (Tenn. Code Ann. § 65-4-117), or a petition to convene a contested case (Rule 1220-1-2-.02). The CAPD has not requested such relief, and should be required to refile if it wishes to bring such an action. However, even if the TRA does treat the CAPD's Show Cause Petition as a petition for an investigation or to convene a contested case, there can be no doubt but that the CAPD's Show Cause Petition falls far short of the showing required to initiate an investigation or a contested case to challenge the reasonableness of the TRA's prior decisions setting Atmos' rate of return As such, the Show Cause Petition must be dismissed.

1. The CAPD has not made the prima facie showing required for general petitions seeking relief from the TRA.

The Tennessee Supreme Court has specifically addressed the showing required in CAPD petitions seeking relief from the TRA. In Consumer Advocate Division v. Greer, 967 S.W.2d 759 (Tenn. 1998), the Consumer Advocate petitioned the TRA to convene a contested case for the purpose of determining the justness and reasonableness of BellSouth's tariff filing introducing new optional local exchange service packages. Greer, 967 S.W.2d at 762. The Consumer Advocate's petition did not contain any specific factual allegations beyond the conclusory statements that the tariff was unjust and unreasonable and would prejudice Tennessee consumers. Id. The Court found that the Consumer Advocate's "vague and nonspecific" petition was clearly insufficient to justify convening a contested case. Id. The Court noted that requiring such specificity of allegation was consistent with the Consumer Advocate statute, Tenn. Code Ann. § 65-4-118(b)(2), which provides in relevant part that if the Consumer Advocate is

> without sufficient information to initiate a proceeding, it may petition the authority, after notice to the affected utility, to obtain information from the utility. The petition shall state with particularity the information sought and the type of proceeding that may be initiated if the information is obtained.

The Court found the Consumer Advocate's petition insufficient even though BellSouth had the ultimate burden of proof in that case to demonstrate the reasonableness of the tariff change under Tenn. Code Ann. § 65-5-103(a) ("[t]he burden of proof to show that increase, change, or alteration is just and reasonable shall be upon the public utility making the same."). Greer, 967 S.W.2d at 763.

The CAPD is using the same tactic in this case that it employed in the BellSouth matter appealed in Greer. The CAPD's Show Cause Petition is nothing more than conclusory statements totally lacking in factual support. The sole fact the Show Cause Petition alleges in support of its claim that Atmos' rate of return is too high is the fact that the TRA recently set a rate of return of 7.42 percent for Chattanooga Gas. The Show Cause Petition attaches the Affidavit of Stephen N. Brown which simply parrots the conclusory statements of the Show Cause Petition and adds one additional unsupported conclusion that "Tennessee's consumers who receive natural gas service from AEC are economically burdened with prices higher than needed for AEC to deliver services." (Brown Aff. ¶ 11.) Dr. Brown provides no support or basis whatsoever for his assumption. It is clear that the CAPD's Show Cause Petition is precisely the type of vague, unspecific, and conclusory complaint the Court found clearly insufficient in Greer.

2. The CAPD has not made the prima facie showing required for challenges to rates established by the TRA.

The standard of proof the CAPD must meet in this case is much higher than that imposed in Greer. Unlike the Consumer Advocate's complaint in Greer, the Show Cause Petition does not raise a challenge to a proposed tariff change on which the Company has the burden of proof.

The Show Cause Petition also does not allege that Atmos is in violation of TRA rules or orders. The Show Cause Petition actually does not attack Atmos' actions at all. Instead, the Show Cause Petition challenges the TRA's decision in the Company's last rate case. Since the Show Cause Petition is a challenge to the reasonableness of the rates set by the TRA, not only does the CAPD have the ultimate burden of proof, it must support its claim with convincing evidence of a material and substantial nature in order to overcome the presumption that the rates set by the TRA are just and reasonable. CF Indus., 599 S.W.2d at 540; Southern Bell Telephone & Telegraph Co., 304 S.W.2d at 649.

The sole fact the CAPD asserts in support of its claim that the rate of return the TRA set for Atmos is too high is the fact that the TRA recently set a rate of return of 7.42 percent for Chattanooga Gas Company. The CAPD's position that Atmos' rate of return must be set at the same numerical percentage as Chattanooga Gas is completely inconsistent with the most basic principles of ratemaking. If that were the case, every time the TRA entered an order in a rate case, it would have to conduct rate cases for all other companies in that industry to ensure all rates of return were identical.

As the TRA explained in the recent Chattanooga Gas Company Order, the TRA sets the rate of return through three steps: (1) determine the appropriate capital structure for the company; (2) determine the cost rates for each component of the capital structure (short-term debt, long-term debt, preferred equity, and common equity); and (3) compute the overall weighted cost of capital, which represents the fair rate of return. (10/20/04 Order in Docket No. 04-0034 at p. 39.) Thus, the rate of return for a particular company is inherently dependent upon that company's capital structure and that company's cost of capital, both debt and equity.

Tennessee-American Water Co. v Tennessee Public Svc Comm'n, 1985 Tenn. App. Lexis 2800 at *4 (Tenn. Ct. App. Apr. 11, 1985).

Once the TRA determines the company's projected capital structure, it computes the company's costs of debt and equity. Computing the company's cost of debt is fairly straightforward process using the company's historical financial records and future projections. To compute the company's cost of equity, the TRA must determine the return investors earn in other enterprises having risk levels which correspond to those of the company. Tennessee-American Water Co., 1985 Tenn. App. Lexis at * 5. Like the determination of capital structure, the computation of debt and equity costs must also be made on a company-specific basis. AARP v. Tennessee Public Svc. Comm'n, 896 S.W.2d 127, 132 (Tenn. Ct. App. 1994) (cautioning that "the critical inquiry is not the rate of return on equity of ***similar*** companies but the return on equity in enterprises having ***comparable risks***.") (emphasis added).

Contrary to the CAPD's one-size-fits-all approach, rates cannot be set industry wide. See Consumer Advocate Division v. Tennessee Regulatory Authority, 1998 Tenn. App. Lexis 428 at *13 (Tenn. Ct. App. July 1, 1998) (cautioning that "the proper rate of return is not a point on a scale"); Bluefield Waterworks v. Public Svc. Comm'n, 262 U.S. 679, 693 (1923) ("no proper rate can be established for all cases"). The TRA must set a rate of return that is just and reasonable. Tenn. Code Ann. § 65-5-101. A just and reasonable rate is one which permits the company to: (1) meet its costs of service and other expenses and operate successfully; (2) maintain its financial integrity; (3) attract capital; and (4) earn a return on its investment that is equal to that earned on investments in other companies with corresponding risks. (10/20/04 Order in Docket No. 04-0034 at pp. 39-40) (citing Bluefield Water Works v. Public Svc. Comm'n, 262 U.S. 679, 692 (1923)). Because the rate of return is so dependent on the financial

characteristics of the particular company at issue, Tennessee law ***requires*** that the TRA consider the company's particular financial condition in setting the company's rates. Tennessee Cable Television Assoc. v. Tennessee Public Svc. Comm'n, 844 S.W.2d 151, 160 (Tenn. Ct. App. 1992) ("the Commission must consider the adequacy of the company's service when it is fixing rates, and ***must consider*** the company's financial condition") (emphasis added); Tennessee-American Water Co., 1985 Tenn. App. Lexis 2800 at * 5 ("the Commission, in setting the utility's rate of return, ***must analyze*** the financial structure of the company to determine its capital requirements, its levels of debt, and the return an equity investor would expect to return.") (emphasis added).

Contrary to the CAPD's position, the fact that Chattanooga Gas and Atmos are both gas companies provides no support for the CAPD's position that the two companies are entitled to exactly the same rate of return. AARP, 896 S.W.2d at 132 In order to sustain its claim that the two companies' rates of return should be identical, the CAPD must come forward with convincing evidence of a material and substantial nature, CF Indus., 599 S.W.2d at 540; Southern Bell Telephone & Telegraph Co., 304 S.W.2d at 649, to show that Atmos and Chattanooga Gas: (1) share identical capital structures[4]; (2) have identical borrowing power and incur identical costs of debt; and (3) have comparable risks resulting in identical costs of equity, Tennessee-American Water Co., 1985 Tenn. App. Lexis 2800 at * 5; AARP, 896 S.W.2d at 132.

---

[4] The evidence presented in the Chattanooga Gas rate case by Dr Brown, the CAPD's witness and the source of the affidavit submitted in support of the Show Cause Petition, demonstrates that the historical capital structure reported in the 10-K reports for Atmos and Chattanooga Gas Company's parent, Atlanta Gas & Light, are significantly different (Brown Direct Test , Schedule 3, pp 1-2) For example, in December 2003, Atlanta Gas & Light reported 13 4% short term debt, while in September 2003, Atmos reported 6 4% short term debt While the historical reported numbers do not represent what the TRA would determine the projected future capital structure should be in a rate case, it is reasonable to conclude that there is wide variation between the capital structure of the two companies

The CAPD cannot meet its required burden of proof. Therefore, even if the Show Cause Petition is treated by the TRA as a petition for an investigation or contested case to challenge the reasonableness of the rate of return the TRA set for Atmos, the Show Cause Petition must be denied and dismissed in its entirety.

The status of the Chattanooga Gas Company rate case, which forms the entire basis for the CAPD's Show Cause Petition, provides further reason to dismiss the Show Cause Petition. Chattanooga Gas Company has filed a motion for reconsideration challenging the TRA's determination of rate of return, and more specifically, the TRA's ruling regarding the company's capital structure and return on equity. (Chattanooga Gas Mot. to Reconsider, attached hereto as Exhibit D.) The key elements forming the basis for the TRA ruling the CAPD touts as the sole grounds for its Show Cause Petition are the very same elements now being appealed. This appeal provides sufficient grounds, standing along, to deny the CAPD's Show Cause Petition.

III. CONCLUSION.

The CAPD's Show Cause Petition requests that the TRA issue a show cause order compelling Atmos to appear and defend the reasonableness of the rate of return set by the TRA in the Company's last rate case. The CAPD has no authority to bring such a proceeding. The TRA is the sole entity empowered to initiate show cause proceedings, and it must do so in accordance with statutory prerequisites that have not been met in this case. Even if the TRA were to treat the CAPD's Show Cause Petition as a petition for an investigation or to convene a contested case, the result is the same. Under no circumstances could the CAPD's Show Cause Petition be read as stating sufficient grounds to justify an investigation or contested case challenging the validity of the TRA's decision regarding Atmos' rate of return. The CAPD cannot force Atmos and the TRA to expend significant amounts of time and expense

investigating and litigating the reasonableness of the Company's rate of return on the bare allegation that a different rate of return has been set for another company. The fact that the rate of return relied on by the CAPD as the sole support for its request for relief is currently being appealed provides even further reason to deny the CAPD's Show Cause Petition.

For these reasons, the CAPD's Show Cause Petition must be denied with no relief granted to the CAPD.

BAKER, DONELSON, BEARMAN
CALDWELL & BERKOWITZ

Joe A. Conner, TN BPR # 12031
Misty Smith Kelley, TN BPR # 19450
1800 Republic Centre
633 Chestnut Street
Chattanooga, TN 37450-1800
(423) 209-4148
(423) 752-9549
mkelley@bakerdonelson com
Attorneys for Atmos Energy Corporation

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been mailed, postage prepaid, to the following parties of interest this 15th day of November, 2004.

Vance L. Broemel
Assistant Attorney General
Office of Attorney General
Consumer Advocate and Protection Division
P.O. Box 20207
Nashville, TN 37202

Richard Collier
General Counsel
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION
September 21, 1992 Nashville, Tennessee

IN RE: PETITION OF UNITED CITIES GAS COMPANY TO PLACE INTO EFFECT REVISED TARIFF SHEETS

DOCKET NO. 92-02987

O R D E R

This matter is before the Tennessee Public Service Commission upon the Petition of United Cities Gas Company for a rate increase of $2,896,960 in annual revenue. The Petition was filed on March 30, 1992, and was heard by the Commission on September 2, 1992, Commissioner Frank Cochran, and Commissioner Keith Bissell presiding.

Appearances were entered as follows:

For the Petitioner:

Jack M. Irion
Bomar, Shofner, Irion & Rambo
104 Depot Street, P.O. Box 129
Shelbyville, TN 37160

For the Intervenors
Associated Valley Industries Intervenor Group:

Daniel R. Loftus
Boult, Cummings, Conners & Berry
P.O. Box 198062
Nashville, Tn 37219

For the Commission Staff:

D. Billye Sanders, Assistant General Counsel
460 James Robertson Parkway
Nashville, TN 37243-0505

In addition, there were two Petitions to Intervene filed on behalf of Nashville Gas Company and Chattanooga Gas Company, both filed on September 1, 1992. Upon objection of the Staff and

recommendation of the Administrative Judge, these Interventions were denied as not having been timely filed.

In August of 1992, the Commission's Utility Service Division conducted a service hearing in Columbia (August 1), Maryville (August 30), Elizabethton (August 25) and Union City (August 27) to allow the public the opportunity to discuss the quality of service provided by United Cities Gas Company. The Director of the Utility Service Division presented a summary of the hearings to the Commission and indicated that they are investigating any concerns raised by the eight customers who attended.

The Commission considered the petition, exhibits, testimony of witnesses, and the resolution of the issues as described below at its Commission Conference held on September 18, 1992. In accordance with Tennessee Code Annotated §4-5-314, the Commission makes the following findings of fact and conclusions of law:

I. Description of Petitioner.

United Cities Gas Company ("United Cities," "Company," or "Petitioner") is a natural gas distribution company, organized and existing under the laws of the States of Illinois and Virginia. It operates franchises in the following areas of Tennessee which will be affected by the revised tariffs filed herewith, to-wit:

(1) Bristol, Tennessee, and environs in Sullivan County;

(2) Columbia, Tennessee, and environs in Maury County;

(3) Elizabethton, Tennessee, and environs in Carter County;

(4) Franklin and Nolensville, Tennessee, and environs in Williamson County;

(5) Greeneville, Tennessee, and environs in Greene County;

(6) Johnson City and Jonesboro, Tennessee, and environs in Washington County;

(7) Kingsport, Tennessee, and environs in Sullivan County;

(8) Lynchburg, Tennessee, and environs in Moore County;

(9) Maryville and Alcoa, Tennessee, and environs in Blount County;

(10) Morristown, Tennessee, and environs in Hamblen County;

(11) Murfreesboro, Tennessee, and environs in Rutherford County;

(12) Shelbyville, Tennessee, and environs in Bedford County;

(13) Spring Hill, Tennessee, and environs in Maury and Williamson County;

(14) Union City, Tennessee, and environs in Obion County.

United Cities last filed an application for general rate relief in the year 1989 in Docket No. U-89-10017. Since 1970, United Cities' rates have been subject to a Purchased Gas Adjustment (PGA) provision in its rate tariff which permits the Company to track increases or decreases in its purchased gas cost. This PGA has recently been revised pursuant to the generic proceeding in Docket No. G-86-1. United Cities' rates are also subject to an experimental Weather Normalization Adjustment (WNA) which was approved pursuant to the generic proceeding in Docket No. 91-01712.

II. Criteria for Establishing Just and Reasonable Rates.

The Commission has traditionally considered petitions such as this one, filed pursuant to Tennessee Code Annotated §65-5-203, in light of the following considerations:

1. The investment or rate base upon which the utility should be permitted to earn a fair rate of return.

2. The proper level of revenues for the utility.

3. The proper level of expenses for the utility.

4. The rate of return the utility should earn.

5. The safety, adequacy and efficiency of the services provided the utility.

III. Prehearing Conference and Resolution of Issues.

The parties attended a prehearing conference on August 27, 1992 conducted before Administrative Judge, Mack H. Cherry. Prior to this date the parties had held informal settlement negotiations and an agreement was reached between the Company and the Staff on capital structure and rate of return. At the prehearing conference various stipulations and positions were discussed, however, no additional stipulations were agreed upon. Following this prehearing conference a Prehearing Conference Order was filed with the Commission, and is attached as Appendix A to this Order.

On the date of the hearing, settlement of the case was reached as between the Commission Staff and United Cities Gas Company. Their agreement is fully set out in a stipulation filed with the Commission and attached to this Order as Appendix B. This stipulation is adopted and incorporated by reference as a part of

this Order. It should be noted that this stipulation is an agreement between the Staff and the Company only. The industrial Intervenors are not a party thereto. Upon representation of the parties that a complete settlement might be possible, the Commission allowed additional time for further discussions. These further discussions ultimately led to a settlement among all three parties on the issue of rate design. Once the rate design issue was resolved, it was announced at the hearing that the industrial intervenors (AVIG), while not necessarily supporting the stipulation agreement, between the Company and Staff, did not oppose the same.

IV. The Settlement.

A. Methodology and Underlying Principles.

The parties agreed at the outset, and it is specifically understood that their settlement represents a negotiated settlement in the public interest with respect to the various rate matters described below. Neither United Cities, the Commission, its Staff, nor the Intervenors shall be prejudiced or bound thereby in any other proceeding except as specifically provided herein. Neither United Cities, the Commission, its Staff, nor the Intervenors shall be deemed to have approved, accepted or agreed to any concept, methodology, theory, or principle underlying or supposed to underlie any of the matters provided for in said settlement except as specifically provided.

B. Revenue Deficiency.

For purposes of determining the revenue deficiency, and for no other purpose, the parties agreed to use as a starting point the Staff's test period, rate base, revenues, expenses, and rate of return. After extensive discussions the Company and the Staff agreed upon a revenue deficiency of $1,700,000. This figure is found in the Joint Exhibit attached to the stipulation, which Joint Exhibit is also adopted and incorporated by reference as a part of this Order. The Commission, upon consideration of all evidence, finds the settlement as to the revenue deficiency to be reasonable and approves the same.

C. Rate Design

Certain rate design issues are covered in the stipulations between the Company and the Staff, which are incorporated herein by reference. However, additional rate design issues were covered by the subsequent settlement between the Company, the Staff and Associated Valley Industries Group (AVIG) as follows:

The parties agreed that the rates of the industrial customers with a two part rate and interruptible and transportation customers should be reduced by $550,000. The commodity charge for the first 2,000 mcf would accordingly be reduced by $.054 per mcf (i.e. from $.95 to $.896) and for quantities over 2,000 mcf the rate would be reduced by $.11

per mcf (i.e., from $.76 to $.650). An equal percentage of the rate shift due to the reduction in rates for the above classes of customers will be spread among commercial and residential customers.

In reaching just and reasonable rates the Commission considers, among other things, the utility's total cost, the value of the service provided to individual customers or customer groups, the impact of the rate change on the various classes of customers, and customers' ability to convert to alternate fuels. Taking these factors into consideration, the rate design appears to be reasonable and is approved.

D. Other Issues.

The remaining issues in this proceeding were likewise settled as between United Cities and the Commission's Staff. Their agreements are set forth in the attached and incorporated stipulation to which reference is hereby made.

V. Commission Determination.

The Commission has fully reviewed the settlement as described above and finds it to be reasonable and in the public interest. Therefore, the Commission approves and ratifies the foregoing settlement and resolution of the issues as a whole and orders that the same be implemented as indicted below.

IT IS THEREFORE ORDERED:

1. That the Petition of United Cities Gas Company for a rate increase of $2,896,960 is denied.

2. That the Company shall file tariffs consistent with this Order and designed to produce $1,700,000 in additional annual revenue, to become effective as of October 1, 1992, for service rendered on and after that date.

3. That the stipulations between the Commission Staff and United Cities Gas Company which are attached as Appendix B are hereby approved as though copied into this Order verbatim.

4. That any party aggrieved with the Commission's decision in this matter may file a Petition for Reconsideration with the Commission within ten (10) days from and after the date of this Order; and

5. That any party aggrieved with the Commission's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within thirty (30) days from and after the date of this Order.

ATTEST:

EXECUTIVE DIRECTOR

CHAIRMAN

COMMISSIONER

COMMISSIONER

Appendix A

BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION
Nashville, Tennessee
September 2, 1992

IN RE: PETITION OF UNITED CITIES GAS COMPANY TO PLACE INTO EFFECT REVISED TARIFF SHEETS.

DOCKET NO. 92-02987

PRE-HEARING CONFERENCE ORDER

This Pre-hearing Conference was held pursuant to a Notice of Hearing and Procedural Schedule issued in this matter July 31, 1992.

The Pre-Hearing Conference took place August 27, 1992 in Nashville, Tennessee before Administrative Judge Mack H. Cherry. Representatives of United Cities Gas Company (Petitioner), the Associated Valley Industries Intervention Group (Intervener) and the Commission Staff attended.

The following determinations and agreements were reached.

I.

The hearing will commence at 10 a.m., September 2, 1992 at the Commission Hearing Room in Nashville as opposed to 9:30 a.m. reflected in the original Notice of Hearing.

II.

The parties agreed to provide stipulations which could be made a part of this Pre-hearing Conference Order not later than Monday afternoon, August 31, 1992. It was learned Monday that the parties had reached agreement. However, this agreement has not been reduced to writing at this time It will be submitted at the time of the hearing.

III.

Since the agreement between the parties has not yet been reduced to writing, there exists the contingency that any agreement might be premature. In the event the parties do not come to agreement as earlier anticipated, the parties

Appendix B

BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION
Nashville, Tennessee

IN RE: UNITED CITIES GAS COMPANY REQUEST FOR A RATE INCREASE
DOCKET NO. 92-02987

STIPULATIONS BETWEEN THE COMMISSION STAFF AND UNITED CITIES GAS COMPANY

At the prehearing conference on August 27, 1992, in this docket, the Administrative Judge instructed the parties to submit a list of stipulations and issues remaining in this docket. Subsequent to the prehearing conference all issues have been resolved as between the Commission Staff (Staff) and United Cities Gas Company (United Cities or Company). These stipulations are not, however, necessarily joined in by the Intervenor. As was anticipated at the prehearing conference, the other party in this case, Associated Valley Industries Intervention Group (AVIIG) did not participate in the development of these stipulations.

Stipulations

1. Methodology and Underlying Principles.

The parties agreed at the outset, and it is specifically understood that their settlement represents a negotiated settlement in the public interest with respect to the various rate matters described below. Neither United Cities, the Commission, its Staff, nor AVIIG shall be prejudiced or bound thereby in any other proceeding except as specifically provided

should be expected to first identify those issues on which they now agree as well as those issues on which they disagree. In this event, it should be anticipated that the Petitioner will first present testimony followed by the Intervener and the Commission Staff. Post hearing briefs would then be due September 10, 1992.

IV.

Interventions on behalf of Chattanooga Gas Company and Nashville Gas Company were filed September 1, 1992. These interventions have not been timely filed pursuant to T.C.A. Section 4-5-310 in that they were not filed seven days prior to the date of the hearing. However, the Commission may grant one or both of these interventions should it be found that the interventions are "in the interests of justice and shall not impair the orderly and prompt conduct of the proceedings". See T.C.A. Section 4-5-310(b).

ENTERED THIS 2nd DAY OF SEPTEMBER, 1992.

Mack H. Cherry

MACK H. CHERRY
ADMINISTRATIVE JUDGE

herein. Neither United Cities, the Commission, its Staff, nor AVIIG shall be deemed to have approved, accepted or agreed to any concept, methodology, theory, or principle underlying or supposed to underlie any of the matters provided for in said settlement except as specifically provided.

2. Revenue Deficiency.

The Company's original rate request was for a rate increase of $2,896,960. The initial filing incorporated an agreed-upon capital structure and overall rate of return of 11.03% (incorporating a return on equity of 12.60%), and this settlement likewise incorporates these returns. After extensive discussions the Company and the Staff have agreed upon a revenue deficiency of $1,700,000. The Company and Staff will prepare a joint exhibit showing calculations of the revenue deficiency.

3. FAS 106 Costs.

The parties have agreed that United Cities will be authorized to defer, as a regulatory asset, Other Postretirement Employee Benefits (OPEB) calculated in accordance with FAS 106, in excess of the current cash basis. (This amount shall be referred to as the deferred balance.) A generic proceeding will be initiated no later than the first quarter of 1993 to determine the manner in which these FAS 106 costs will be treated for ratemaking purposes. In that proceeding the Commission will decide whether an amount in excess of the current cash basis may be recovered. United Cities will be allowed to recover carrying

charges on any portion of the deferred balance as determined recoverable in the generic docket. Carrying charges will be computed on the same basis as such charges are presently computed for PGA balances.

4. Management Audit.

United Cities has agreed to a management audit on matters other than purchased gas costs which are currently being audited. Said audit shall be conducted by a nationally recognized accounting or consulting firm. The consultant shall be selected by the Commission upon recommendation of the Staff, with the right of the Company to object to said recommendation. The Company will be involved in the selection of the finalist list from which the Staff will make its recommendation, and any dispute between the Company and Staff during this process shall be resolved by the Commission. The costs of this audit, as specified in the consultant's contract, with carrying charges computed on the same basis as such charges are presently computed for PGA balances, shall be deferred until the Company's next rate case. The audit shall begin on or after April 1, 1993.

5. Accumulated Deferred Federal Income Taxed (ADFIT)

ADFIT are currently reflected on the Company's books on a Company-wide basis. The Company has agreed to separate future accruals of the Tennessee portion of ADFIT. The Company and Staff agreed to do a study to determine how, consistent with IRS

requirements, the current accrued balance will be separated to identify portions attributable to Tennessee.

6. Weather Normalization Adjustment.

The parties have agreed that the WNA methodology shall continue as specified in Docket No. 91-01712.

7. Depreciation Study.

The parties agree that the rates in the Company's Depreciation Study, filed as Exhibit 11 to the original filing, should be approved.

8. Tariff and Rate Design Issues.

a. The parties have agreed to the miscellaneous charges included on the attached Schedule 2.

b. The Company currently recovers 100% of margin loss that occurs as a result of negotiated rates. The parties have agreed to lower this recovery level to 90%.

c. The parties have agreed that the Company shall recover 90% of margin loss resulting from customers shifting from 2-part rates, as discussed in the next subsection, to interruptible rates. This recovery would be limited to only those customers eligible for the 2-part rate as of the effective date of the Commission's order adopting this stipulation. This margin recovery on such eligible 2-part rate customers will be in effect until the effective date of the Company's next rate case.

d. The Company agrees to implement a 2-part, demand-commodity rate schedule for those customers using 27,000 Mcf/year

or more. The commodity margin for this rate will be the Company's current interruptible margin.

e. An equal percentage of the agreed-upon revenue increase will be spread to all customers other than the demand-commodity, interruptible, and transportation customers.

f. The Company has agreed to require a one-time contribution in aid of construction for telemetering equipment and applicable taxes from all new customers on its large firm tariff and all transportation customers (new and existing).

g. Other agreed-to rates and/or tariff provisions include: (1) an experimental school rate to encourage the use of air conditioning equipment (Schedule 3), (2) an economic development rate to encourage new gas load and to promote jobs and industrial growth (Schedule 4), (3) tariff provisions applicable to mobile home parks, (4) balancing provisions applicable to transportation customers which mirror the similar provisions of the Company's upstream pipeline supplier.

9. Should the Commission modify the stipulations, the parties reserve the right to present testimony on the various issues raised in this case.

Respectfully submitted this 2nd day of September, 1992.

Jack Irion, Attorney
for United Cities Gas Company

D. Billye Sanders, Asst. Gen. Counsel
D. Billye Sanders
Assistant General Counsel

BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION

Nashville, Tennessee

November 20, 1995

IN RE: PETITION OF UNITED CITIES GAS TO PLACE INTO EFFECT REVISED TARIFF SHEETS

DOCKET NO. 95-02258

ORDER

This matter is before the Tennessee Public Service Commission upon the Petition of United Cities Gas Company for a rate increase of $3,950,613 in annual revenue. The Petition was filed on May 15, 1995, and was heard by the Commission on October 11, 1995. Sitting at the hearing were Chairman Keith Bissell, Commissioner Stephen O. Hewlett, and Commissioner Sara Kyle.

Appearances were as follows:

For the Petitioner:

Jack M. Irion
Bomar, Shofner, Irion & Rambo
P. O. Box 129
Shelbyville, TN 37160

For the Intervenors
Associated Valley Industries Intervenor Group:

Henry Walker
Boult, Cummings, Conners & Berry
414 Union Street
Suite 1660
Nashville, TN 37219

For the Intervenor
Consumer Advocate Division, Office of the Attorney General:

David Yates and Steven A. Hart
Consumer Advocate Division
404 James Robertson Parkway
Suite 1504
Nashville, TN 37243-0500

Special and Limited Appearance
For the Commission Staff :

Jeanne Moran, Legal Counsel
Tennessee Public Service Commission
460 James Robertson Parkway
Nashville, TN 37243-0505

The Commission has considered the Petition, Exhibits, testimony of witnesses, and the resolution of the issues as described below. In accordance with Tennessee Code Annotated § 4-5-314, the Commission makes the following findings of fact and conclusions of law:

I. Description of Petitioner:

United Cities Gas Company ("United Cities," "Company," or "Petitioner") is a natural gas distribution company, organized and existing under the laws of the States of Illinois and Virginia. It operates franchises in the following areas of Tennessee which will be affected by the revised tariffs filed herewith, to-wit:

(1) Bristol, Tennessee, and environs in Sullivan County;

(2) Columbia, Tennessee, and environs in Maury County;

(3) Elizabethton, Tennessee, and environs in Carter County;

(4) Franklin and Nolensville, Tennessee, and environs in Williamson County;

(5) Greeneville, Tennessee, and environs in Greene County;

(6) Johnson City and Jonesboro, Tennessee, and environs in Washington County;

(7) Kingsport, Tennessee, and environs in Sullivan County;

(8) Lynchburg, Tennessee, and environs in Moore County;

(9) Maryville and Alcoa, Tennessee, and environs in Blount County;

(10) Morristown, Tennessee, and environs in Hamblen County;

(11) Murfreesboro, Tennessee, and environs in Rutherford County;

(12) Shelbyville, Tennessee, and environs in Bedford County;

(13) Spring Hill, Tennessee, and environs in Maury and Williamson County;

(14) Union City, Tennessee, and environs in Obion County.

United Cities last filed an application for general rate relief in the year 1992 in Docket No. 92-02987. Since 1970, United Cities' rates have been subject to a Purchased Gas Adjustment (PGA) provision in its rate tariff which permits the Company to track increases or decreases in its purchased gas cost. This PGA has periodically been revised pursuant to the generic proceeding in Docket No G-86-1 and also United Cities' Application To Establish An Experimental Performance-Based Ratemaking Mechanism (Incentive Ratemaking) in Docket No. 95-01134. United Cities' rates are also subject to a Weather Normalization Adjustment (WNA). Said WNA was modified and made permanent pursuant to the Commission's Order of June 21, 1994 in the generic proceeding in Docket No. 91-01712.

II. Criteria for Establishing Just and Reasonable Rates.

The Commission has traditionally considered petitions such as this one, filed pursuant to Tennessee Code Annotated § 65-5-203, in light of the following considerations:

1. The investment or rate base upon which the utility should be permitted to earn a fair rate of return.

2. The proper level of revenues for the utility.

3. The proper level of expenses for the utility.

4. The rate of return the utility should earn.

5. The safety, adequacy and efficiency of the services provided by the utility.

III. Prehearing Conference; Hearing; Resolution of Issues

The parties attended a prehearing conference on October 2, 1994, conducted by Administrative Judge Ralph B. Christian, II. Prior to the date of the prehearing, there had been informal settlement negotiations, however, no settlements had been reached at the time of the prehearing conference. Nor were there any settlements of any contested issues at the prehearing conference. The parties did agree to certain adjustments which were in the nature of a correction of errors or of a correction of methodology. But beyond these minor adjustments, no resolution of contested issues was reached.

This matter came on for hearing, as stated above, on October 11, 1995. Counsel for the various parties identified their prefiled testimony and exhibits. The first witness called was John Antonuk, whose presence was obtained by the Commission's Staff. Mr. Antonuk was the project manager for the management audit conducted pursuant to the Company's agreement in its last general rate case, Docket No 92-02987. Mr. Antonuk was examined by the parties concerning the findings of the management audit team and whether those findings should be applied in a rate case environment. He also was questioned as to the detail of the findings and whether they could be tied to the test period.

Following Mr. Antonuk's testimony, the Company presented witnesses, Gene C. Koonce, Michael R. Walker, David P. Vondle, and Morris H. Jacobs. Following a recess, the Commission's Staff made a special and limited appearance for the purpose of discussing and explaining a settlement reached by the Commission Staff with the Petitioner in regard to the

management audit mentioned hereinabove. That settlement and the Commission's action thereon are discussed below. The Staff's witness for this limited purpose was William H. Novak.

Following Mr. Novak's testimony, the Company continued with witnesses, Walter S. Hulse III and James B. Ford. Following these witnesses, as set out hereinbelow, there were further settlement discussions which eliminated the need for further witnesses to take the stand. At the conclusion of the hearing, the parties moved for the admission of all prefiled testimony and Exhibits, and this motion was granted.

Prior to the hearing, the Company and the Staff reached an agreement as to certain issues arising from the Company's management audit mentioned hereinabove. This agreement was reached without the concurrence of the intervenors. The Commission's Staff, as stated above, made a special and limited appearance for the purpose of presenting and explaining this settlement. The settlement, in the form of a Stipulation and Agreement dated October 6, 1995, was admitted into the record as Exhibit No. 26 and is attached as Appendix A to this Order. The Commission's action upon this Stipulation and Agreement is described below:

During various recesses at the hearing, the parties continued settlement discussions. Upon representation of the parties that a complete settlement might be possible, the Commission allowed additional time for further discussions. Subsequently, the parties announced to the Commission that they believed an overall settlement on revenue deficiency could be reached if the Commission could give an indication of what its action would be upon the aforementioned Stipulation and Agreement attached hereto as Appendix A. This settlement involved $1,502,000 of proposed disallowances. The settlement would permit the Company to recover those amounts in return for the Company's agreement as to certain accounting and reporting practices, all as set forth in Appendix A.

The Commission indicated that it believed that the Company had borne the burden of proof on these issues and that the Stipulation and Agreement attached hereto as Appendix A should be approved as part of any overall settlement. The Commission did, however, indicate that its action should not be viewed as any indication that the Company should close any customer service centers in any of the neighborhoods or areas that are currently served, or where those currently exist. The Company agreed to continue to study these issues, but stated that its general philosophy was to continue on a town-oriented customer service approach (see the discussion on this point at pages 195-197 of the official transcript).

Thereafter, the parties announced that a settlement had been reached on revenue deficiency. This settlement involves what is commonly referred to as a "black box settlement", whereby the issues are settled by agreeing upon a bottom line revenue deficiency without any elaboration as to the resolution of specific contested issues. The Company did file as a part of this case recovery of SFAS 106 costs in accordance with Docket No. 92-14631 (C) and the Compliance Audit Report dated September 13, 1995. No exceptions were filed to recovery of the SFAS 106 costs.

The parties stated that they would continue to discuss the issue of rate design and would present an overall settlement, including rate design, or would request an additional short hearing from the Commission on this one issue. The Commission approved this approach, and then the hearing was adjourned.

IV. The Settlement.

A. Methodology and Underlying Principles.

The parties agreed at the outset, and it is specifically understood that their settlement represents a negotiated settlement in the public interest with respect to the various rate matters described. Neither United Cities, the Commission, its Staff, nor the Intervenors shall be prejudiced or

bound thereby in any other proceeding except as specifically provided herein. Neither United Cities, the Commission, its Staff, nor the Intervenors shall be deemed to have approved, accepted or agreed to any concept, methodology, theory, or principle underlying or supposed to underlie any of the matters provided for in said settlement except as specifically provided.

B. Revenue Deficiency.

After extensive discussions, the Company and the intervenors agreed upon a revenue deficiency of $2,227,000, which figure includes the sum of $1,502,000 that is the subject of the Stipulation and Agreement attached hereto as Appendix A. The Commission, upon consideration of all evidence, finds the settlement as to revenue deficiency to be reasonable and approves the same.

C. Rate Design.

By letter dated October 24, 1995, the Office of the Consumer Advocate notified the Commission that as of that date the parties had been unable to reach an agreement on rate design. The Commission, therefore, set this matter for a further hearing on November 7, 1995. At this hearing, however, it was announced that in the interim period an agreement on rate design had been reached. Under the terms of said agreement, the Company's interruptible industrial customers and customers billed at interruptible rates (Rate Schedules 240 and 250) would receive a rate increase equivalent to $0.050 per Mcf. The remaining portion of the revenue deficiency discussed in Subsection B would be spread in equal percentages to the remaining customer classes (See Appendix B). Subsequent to the November 7, 1995, hearing, it was determined that there was a misunderstanding as to the exact agreement with regard to the interruptible customer class. The parties' agreement was for a $0.050 increase to the interruptible customer class as a whole. The Company and the industrial intervenors also agreed to certain changes within that customer class. The Consumer Advocate took no position about changes within the interruptible industrial class so

long as the total revenue to be recovered from that class did not change. The changes outlined below only affect rates within the interruptible class and do not affect the total revenue to be recovered from that class. The changes are (1) the customer surcharge is increased from $280 to $310; (2) usage in the first rate block is increased by $0.10 per Mcf; (3) usage in the second rate block is increased by $0.021 per Mcf; and (4) a new third rate block price of $.329 per Mcf is created for usage over 50,000 Mcf per month. In reaching just and reasonable rates the Commission considers, among other things, the utility's total cost, the value of the service provided to individual customers or customer groups, the impact of the rate change on the various classes of customers, and customers' ability to convert to alternate fuels. Taking these factors into consideration, the rate design appears to be reasonable and is approved, subject to the submission and approval of appropriate tariff sheets.

D. Transition Costs.

By Order dated February 9, 1995, the Commission, upon it own Motion, opened a generic docket to determine the appropriate allocation of FERC Order No. 636 costs (commonly referred to as transition costs) of gas utilities in Tennessee. This generic docket was assigned Docket No. 94-04478. By further Order dated June 29, 1995, in the said Docket No. 94-04478, the Commission approved a settlement of this matter as to United Cities Gas Company. Said settlement provided, *inter alia*,

> "No final resolution of the transition cost issue should be made without consideration of the impact of the company's pending rate case. Therefore, the transition cost issue should be addressed during the rate design portion of the company's rate case."

Said settlement provided that United Cities should, effective August 1, 1995, begin charging all interruptible customers a transition cost surcharge of $0.050 per Mcf. At the hearing on

V. Commission Determination.

The Commission has fully reviewed the settlement in all its parts, as described above, and finds it to be reasonable and in the public interest. Therefore, the Commission ratifies and approves the foregoing settlement and resolution of the issues as a whole and orders that the same be implemented as indicated below.

IT IS THEREFORE ORDERED:

1. That the Petition of United Cities Gas Company for a rate increase of $3,950,613 is denied.

2. That the stipulation between the Commission Staff and United Cities Gas Company which is attached as Appendix A is hereby approved as though copied into this Order verbatim.

3. That the Company shall file tariff sheets designed to produce $2,227,000 in additional annual revenue and in accordance with this Order and the agreements approved hereby, said tariff sheets to become effective as of November 15, 1995, for service rendered on and after that date.

4. That any party aggrieved with the Commission's decision in this may file a Petition for Reconsideration with the Commission within ten (10) days from and after the date of this Order; and

5. That any party aggrieved with the Commission's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from and after the date of this Order.

CHAIRMAN

COMMISSIONER

COMMISSIONER

November 7, 1995, the parties announced that they had agreed that this transition cost surcharge to interruptible customers should be increased to $0.088 (See Appendix B). To the extent that the transition costs are increased to the interruptible customers, they shall be decreased to the remaining customer classes. The Commission, upon consideration of all evidence, finds the settlement as to transition costs to be reasonable and approves the same.

E. Other Tariff Issues.

Certain other tariff issues were also agreed to by the parties. It was agreed that the Company's existing Sales Adjustment Mechanism (SAM) applicable to its customer, Goodyear Tire & Rubber Company, located in Union City, Tennessee, should be continued as at present. The Company proposed that it implement a zero-based Purchase Gas Adjustment (PGA). In a zero-based PGA, all gas costs are removed from base rates and are included in the PGA. All parties agreed to this change provided that in the Company's future tariff filings it will show not only the base rate and the PGA, but also the combined rate. The Company agreed to this condition. This issue has no revenue impact. Certain other tariff changes were also sought by the Company in its filing and by way of certain changes announced at the hearing on November 7, 1995. These changes were minor in nature and were unopposed by any other party. None of said changes has any significant revenue impact. The Commission finds the aforementioned resolutions of tariff issues reasonable and the same are hereby approved. The parties also agree that the summer rate for residential customers will remain in effect.

F. Other Issues.

The remaining issues in this proceeding were likewise settled as between United Cities and the parties, and these settlements are incorporated in the above-described "black box settlement" as to revenue deficiency.

ATTEST:

EXECUTIVE DIRECTOR's OFFICE

APPROVED FOR ENTRY:

BOMAR, SHOFNER, IRION & RAMBO

By: Jack M. Irion

Jack M. Irion
Attorney for United Cities Gas Company

BOULT, CUMMINGS, CONNERS & BERRY

By: Henry Walker JMI by permission

Henry Walker
Attorney for Associated Valley
Industries Intervenor Group

CONSUMER ADVOCATE DIVISION,
OFFICE OF THE ATTORNEY GENERAL

By: David W. Yates JMI by permission

David W. Yates
Associate Consumer Advocate

Before The
Tennessee Public Service Commission
Nashville, Tennessee

In the Matter of: Petition of United Cities Gas Company To Place Into Effect Revised Tariff Sheets	)	Docket No. 95-02258

STIPULATION AND AGREEMENT

United Cities Gas Company (UCGC) and the Staff of the Tennessee Public Service Commission (Staff) hereby enter into this Stipulation and Agreement (S & A) for the purpose of resolving all issues, except the non-compete/consulting and equity funding fees, relating to the management audit which impacts the revenue requirement of UCGC. In order to avoid litigating and settling the $1,502,000 adjustment proposed by Consumer Advocate (CA), UCGC and Staff hereby agree to the following:

1. UCGC will by year-end make a good faith effort to modify the PSC 3.03 monthly report to include in rate base the assets leased between UCG Energy (Energy) and UCGC with corresponding adjustments for rental expense, depreciation expense and income taxes. The Company will provide a detailed report on a monthly basis which shows the calculation of the above information.

2. Both UCGC and Staff agree that the information necessary to calculate the proper accumulated deferred federal income tax on the leased assets is readily available for inclusion in subsequent rate case and this resolves the concern in the management audit finding 2.12-1.

3. The issues concerning the Company's management audit will be deemed to be resolved and no further adjustments, ratemaking or otherwise, except the non-compete/consulting and equity funding fees, will be proposed or made in any future proceedings before the Tennessee Public Service Commission.

4. The terms set forth in the Stipulation and Agreement are the results of negotiations among the signatory parties. Because the terms are

interdependent, if the Commission does not approve and adopt all of the terms of this Stipulation and Agreement, this Stipulation and Agreement shall be void and no signatory shall be bound by any of the agreement or provisions hereof.

5. This agreement may be executed in several counterparts and all so executed shall constitute but one and the same instrument binding all parties thereto, notwithstanding that all parties are not signatory to the same counterpart, each shall be fully effective as an original.

Executed this 6th day of October, 1995.

James G. Sager
Senior Manager Accounting/Regulatory Affairs
UNITED CITIES GAS COMPANY

William H. Novak
Manager of Energy and Water
Tennessee Public Service Commission

APPENDIX B

Settlement = $2,227,000

Class of Service	Per MCF — Base Rate Increase (Decrease)	Per MCF — Transitition Cost Increase (Decrease)	Per MCF — Overall Increase (Decrease)
Residential A/	$ 0.167	$ (0.0280)	$ 0.139
Commercial (220)	0.141	$ (0.0280)	$ 0.113
Industrial - Firm	0.114	$ (0.0280)	$ 0.086
Interruptible	0.050	$ 0.0380	$ 0.088

REVISED

A/ Maintain summer/ winter rate differential.

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

November 6, 2001

IN RE:	)	
	)	
COMPLAINT OF ACCESS INTEGRATED NETWORK, INC. AGAINST BELLSOUTH TELECOMMUNICATIONS, INC.	)	**DOCKET NO. 01-00808**
	)	
	)	
IN RE:	)	
	)	
COMPLAINT OF XO TENNESSEE, INC. AGAINST BELLSOUTH TELECOMMUNICATIONS, INC.	)	**DOCKET NO. 01-00868**

ORDER

This docket came before the Hearing Officer appointed by the Tennessee Regulatory Authority ("Authority") for consideration of the following. 1) the Authority's suggestion that Docket Nos. 01-00808 and 01-00868 be consolidated; 2) the parties' disputes over the language of the protective order, 3) the *Motion to Open Show Cause Proceeding* filed by Access Integrated Networks, Inc ("AIN") in Docket No 01-00808; 4) petitions to intervene filed by the Consumer Advocate and Protection Division of the Office of the Attorney General and Reporter ("Consumer Advocate") in Docket Nos 01-00808 and 01-00868, and 5) motions to take discovery filed in Docket Nos. 01-00808 and 01-00868 by AIN and XO Tennessee, Inc. ("XO") on November 1, 2001.

I. PROCEDURAL HISTORY

AIN filed a complaint against BellSouth Telecommunications, Inc. ("BellSouth") on September 18, 2001. The complaint was assigned Docket No. 01-00808. According to the complaint, on August 27, 2001, a representative of Berry Direct, acting on behalf of BellSouth, offered a customer three free months of service in exchange for enrolling in the "BellSouth Key Business Discount Program " AIN further alleged that the tariff applicable to the "BellSouth Key Business Discount Program" does not include three free months of service.[1] AIN asserted that this offer violates Authority Rule 1220-4-8-.09(2)(c)(3) and the discriminatory pricing provisions of Tenn. Code Ann. § 65-4-122 and, therefore, requested the Authority issue a show cause order pursuant to Tenn. Code Ann. § 65-2-106.[2]

BellSouth filed its answer to AIN's complaint on October 2, 2001. BellSouth admitted that it engaged Berry Direct to market the "BellSouth 2001 Key Business Discount Program."[3] BellSouth further admitted that a representative of Berry Direct sent the customer a fax, the cover sheet of which stated: "This will also give you three mos, 1st – 6th – 12th, no charge in each business – Fax right back!"[4] BellSouth also admitted three free months of service is not within the "BellSouth 2001 Key Business Discount Program."[5] In further answering the complaint, BellSouth stated that it is the policy of BellSouth to offer services in conformance with tariffs and that it has suspended all marketing by Berry Direct [6]

---

[1] *See In re Complaint of Access Integrated Network, Inc Against BellSouth Telecommunications, Inc* , Docket No 01-00808, *Complaint of Access Integrated Networks, Inc* , paras 4 & 5 (Sept 18, 2001)

[2] *See id* at paras 6 & 7

[3] *See id* , *Answer of BellSouth Telecommunications, Inc* , para 3 (Oct 2, 2001)

[4] *Id* at para 4

[5] *See id* at para. 5

[6] *See id* at para 4

XO filed its complaint against BellSouth on October 9, 2001. This complaint was assigned Docket No. 01-00868. XO alleged that on September 5, 2001 a BellSouth Senior Account Executive offered to provide a customer with service pursuant to the "BellSouth Key Business Discount Program" and to include three free months of service.[7] As in AIN's complaint, XO asserted that this offer violates Authority Rule 1220-4-8-.09(2)(c)(3) and the discriminatory pricing provisions of Tenn. Code Ann. § 65-4-122 and, therefore, requested the Authority issue a show cause order pursuant to Tenn. Code Ann. § 65-2-106.[8]

BellSouth filed its answer to XO's complaint on October 25, 2001. BellSouth admitted that a BellSouth representative contacted the customer on September 5, 2001 and sent the customer a fax that contained language regarding three free months of service.[9] BellSouth denied that the Authority should issue a show cause order citing the fact that BellSouth has suspended "all of these sales activities by Berry Direct and BellSouth to Tennessee customers."[10]

In the midst of the complaint and answer process, AIN filed a *Motion to Open Show Cause Proceeding* in Docket No. 01-00808. In the motion, AIN referenced its complaint filed in Docket No. 01-00808, the complaint filed in Docket No. 01-00868, and a third instance that allegedly occurred in Southhaven, Mississippi.[11] After further discussion, AIN asserted that the Authority has a legal duty to enforce laws under its jurisdiction and has not previously hesitated to open show

---

[7] *See In re Complaint of XO Tennessee, Inc Against BellSouth Telecommunications, Inc* , Docket No. 01-00868, *Complaint of XO Tennessee, Inc* , para 4 (Oct 9, 2001).

[8] *See id* at paras 6 & 8

[9] *See id* , *Answer of BellSouth Telecommunications, Inc* , para 3 (Oct 25, 2001)

[10] *Id* at para 8

[11] *See In re Complaint of Access Integrated Network, Inc Against BellSouth Telecommunications, Inc* , Docket No 01-00808, *Motion to Open Show Cause Proceeding*, p 1 (Oct 16, 2001)

cause proceedings and impose sanctions.[12] AIN concluded by asserting that this "matter is far broader than a dispute between BellSouth and a competing carrier."[13]

BellSouth filed its response to the *Motion to Open Show Cause Proceeding* on October 24, 2001 BellSouth asserted that the motion should be dismissed because the allegations set forth in the motion are the subject of XO's and AIN's complaints and explained that there is nothing to gain from convening another docket.[14]

On October 24, 2001, the Consumer Advocate filed petitions to intervene in both dockets. In each petition, the Consumer Advocate asserted that its intervention is on behalf of Tennessee consumers who will be adversely affected by price discrimination In the petition filed under Docket No. 01-00808, the Consumer Advocate stated: "The possibility that misrepresentations may be more pervasive concerns the Attorney General and therefore, he believes an investigation is necessary and appropriate under the existing circumstances."[15]

On October 26, 2001, BellSouth filed its non-proprietary responses to the Authority's data requests issued on October 12, 2001. BellSouth explained that it would file its proprietary responses upon the entry of a protective order. On October 26, 2001, AIN and XO filed a letter stating that they believed the proposed protective order entered should be amended to permit the distribution of proprietary information to "other, appropriate state and federal agencies."[16] BellSouth filed a

---

[12] *See id* at 3-4

[13] *Id* at 5

[14] *See id*, *BellSouth's Response to Access Integrated Network, Inc.'s Motion to Open Show Cause Proceedings*, pp 1-2 (Oct 24, 2001)

[15] *E g*, *id*, *Attorney General's Petition to Intervene*, pp 2-3 (Oct 24, 2001)

[16] *E g*, *id*, Letter of AIN and XO, p 1 (Oct 26, 2001)

responsive letter on November 1, 2001. BellSouth disagreed with AIN and XO's request and asked that the Authority enter the standard protective order.[17]

On November 1, 2001, AIN and XO filed motions to take discovery. AIN and XO attached identical requests to their respective motions. In addition, both complainants requested that the Authority order BellSouth to respond within ten days.[18] BellSouth filed its response to the motions on November 2, 2001 objecting to the ten-day response period requested by AIN and XO.[19]

II. FINDINGS AND CONCLUSIONS

A. Consolidation

During the deliberations in Docket No. 01-00868 on October 23, 2001, the Directors unanimously voted to appoint a hearing officer to decide that case on its merits and instructed the appointee to determine whether Docket Nos. 01-00808 and 01-00868 should be consolidated.[20] Upon review of the record, it is apparent that AIN's and XO's complaints require resolution of the same legal and similar factual issues and request the same relief. The Hearing Officer finds that there is no need for these dockets to proceed independently of one another. In fact, proceeding in that manner would be unnecessarily duplicitous and could result in inconsistent outcomes. Therefore, the Hearing Officer concludes that Docket Nos. 01-00808 and 01-00868 should be consolidated. Docket No. 01-00808 shall be deemed closed after entry of this Order therein, the record in Docket No 01-00808 shall be made a part of the record in Docket No. 01-00868 and all future filings shall be entered under Docket No. 01-00868.

---

[17] *See, e g , id ,* Letter of BellSouth, p 1 (Nov 1, 2001)

[18] *See, e g , id , Motion to Take Discovery*, p. 1 (Nov 1, 2001)

[19] *See, e g , id , BellSouth Telecommunications Inc 's Objection to Discovery Response Deadline Sought by Access Integrated Network, Inc ,* p 2 (Nov 2, 2001)

[20] *See In re Complaint of XO Tennessee, Inc Against BellSouth Telecommunications, Inc .* Docket No 01-00868 Transcript of Proceedings, Oct 23, 2001, p 23 (Authority Conference)

B. Petitions to Intervene

Tenn. Code Ann. § 4-5-310(a) sets forth the following criteria for granting petitions to intervene:

> (a) The administrative judge or hearing officer shall grant one (1) or more petitions for intervention if:
>
> (1) The petition is submitted in writing to the administrative judge or hearing officer, with copies mailed to all parties named in the notice of the hearing, at least seven (7) days before the hearing;
>
> (2) The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of the law; and
>
> (3) The administrative judge or hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.[21]

Each of the Consumer Advocate's petitions is timely filed; substantiates that the legal interests represented by the Consumer Advocate may be determined in this matter; and demonstrates that the interests of justice and the orderly and prompt conduct of this matter should not be impaired by allowing the interventions Additionally, BellSouth did not object to the petitions. Therefore, pursuant to Tenn. Code Ann § 4-5-310(a). the petitions should be granted such that the Consumer Advocate may participate in this proceeding as its interests require and receive copies of any notices, orders or other documents filed in this docket

C. Protective Order

The parties have raised an issue over the contents of the protective order through letters addressed to the General Counsel AIN and XO state: "We believe the proposed order should be amended so that any proprietary information produced in these dockets concerning BellSouth's illegal marketing efforts may be made available to other, appropriate state and federal agencies

[21] Tenn Code Ann § 4-5-310(a) (1998)

subject to the confidentiality rules of those other agencies "[22] In support of their request, AIN and XO noted that a similar amendment had been made to the protective order entered in Docket No. 01-00362, *In re Docket to Determine the Compliance of BellSouth Telecommunications, Inc.'s Operations Support Systems with State and Federal Regulations*. BellSouth responded by stating: "BellSouth strongly disagrees and respectfully requests that you enter the standard protective orders proposed by BellSouth."[23] BellSouth also distinguished Docket No. 01-00362 as involving regional issues.

The parties' letters imply that a proposed order was filed in this docket. A review of the records in both dockets reveals, however, that none of the parties have filed a proposed protective order. Nevertheless, the Hearing Officer is of the opinion that this dispute may be resolved without reference to the actual document.

AIN and XO correctly note that the Pre-Hearing Officer in Docket No. 01-00362 did grant a motion for protective order, which included a protective order containing a provision allowing for information to be used in other regulatory commissions' proceedings.[24] BellSouth did not oppose the entry of the protective order in Docket No. 01-00362 and stated that "it makes sense to use these things on a region-wide basis."[25] The Hearing Officer finds that the determination in Docket No. 01-00362 is distinguishable from the facts and circumstances of this case The issues involved in these dockets are not regional issues Instead, they involve Tennessee consumers and violations of Tennessee's laws and administrative rules.

---

[22] *In re Complaint of Access Integrated Network, Inc Against BellSouth Telecommunications, Inc* , Docket No. 01-00808. Letter of AIN and XO, p 1 (Oct 26, 2001)

[23] *Id* , Letter of BellSouth, p 1 (Nov 1, 2001)

[24] *See In re Docket to Determine the Compliance of BellSouth Telecommunications, Inc 's Operations Support Systems with State and Federal Regulations*, Docket No 01-00362, *Order Resolving Discovery Disputes*, pp 5-6 (Oct 17, 2001)

[25] *Id* , Transcript of Proceedings, Oct 9, 2001, pp 49-50 (Pre-Hearing Conference)

the complaints do not specify which Authority Rules BellSouth has allegedly violated Lastly, it is unclear whether the Authority may dispose of cases involving violations of Tenn. Code Ann. § 65-4-122.

1. Relief Requested

In the complaints, AIN and XO asserted a set of facts and alleged that, based on those facts, BellSouth appears to have violated Tenn. Code Ann. § 65-4-122, which prohibits discriminatory pricing, and TRA Rule 1220-4-8-.09(2)(c)(3).[29] As relief, AIN and XO requested the Authority issue a show cause order pursuant to Tenn. Code Ann. § 65-2-106 and take such other action as the Authority finds necessary and appropriate.[30] The *Motion to Open Show Cause Proceeding* filed by AIN requests slightly different relief Specifically, the motion asks the Authority to "open a show cause proceeding to **investigate** whether BellSouth Telecommunications, Inc. ("BellSouth") has engaged in a pattern of anticompetitive and discriminatory conduct by marketing services under terms and conditions which are inconsistent with the carrier's tariffs "[31]

Tenn. Code Ann. § 65-2-106 sets forth the circumstances under which this agency may issue a show cause order. That section provides:

> The authority is empowered and authorized in the exercise of the powers and jurisdiction conferred upon it by law to issue orders on its own motion citing persons under its jurisdiction to appear before it and show cause why the authority should not take such action as the authority shall indicate in its show cause order appears **justified by preliminary investigation made by the authority under the powers conferred upon it by law**. All such show cause orders shall fully and specifically state the grounds and bases thereof, and the respondents named therein shall be given an opportunity to fully reply thereto. Show cause proceedings shall otherwise follow the provisions of this chapter with reference to contested cases, except where otherwise specifically provided [32]

---

[29] *See, e g , id , Complaint of Access Integrated Networks, Inc* , p 2 (Sept 16, 2001)
[30] *See id* at 3
[31] *Id , Motion to Open Show Cause Proceeding*, p 1 (Oct 16, 2001) (emphasis added)
[32] Tenn Code Ann § 65-2-106 (Supp 2000) (emphasis added).

Additionally, it has not been the general practice of this agency to enter protective orders permitting proprietary information to be given to other federal or state agencies. This practice is evidenced by the fact that counsel in Docket No. 01-00362 felt it necessary to bring the alteration to the attention of the Pre-Hearing Officer in the motion for protective order. Moreover, including the amendment requested by AIN and XO would result in a protective order that could prove difficult to enforce. To explain, if there is an alleged violation of the confidentiality rules of another state, then there may also be a violation of the protective order entered in this docket This agency may then be called upon to review and construe another states' confidentiality rules and orders. Lastly, the parties have not asserted nor is there any reason to believe that another federal or state agency would be unable to obtain any of the information filed in this docket in that federal or state agency's own proceeding. Based on the foregoing, the Hearing Officer determines that the protective order shall be filed without the additional language proposed by AIN and XO.

D. Motions to Take Discovery

During the October 23, 2001 Authority Conference, the Directors unanimously appointed General Counsel or his designee to act as Hearing Officer in Docket No. 01-00868 and instructed the Hearing Officer to attempt to resolve the complaint within sixty (60) days of its filing. XO filed its complaint on October 9, 2001; thus, the sixty (60) day period expires on December 10, 2001.

Given the expedited period for resolution, it is also necessary to expedite discovery. In their motions to take discovery, AIN and XO filed their discovery requests and asked the Hearing Officer to require BellSouth to file its responses within ten days of the filing of the requests. That date is November 12, 2001. BellSouth does not object to having discovery in its responses to the motions, but, instead, objects to the November 12, 2001 due date. BellSouth contends it is entitled to thirty

(30) days pursuant to the Rule 33 of the Tennessee Rules of Civil Procedure and Authority Rule 1220-1-2-.11(1).

Rule 33 of the Tennessee Rules of Civil Procedure requires a party to respond to interrogatory requests within thirty (30) days of service.[26] Authority Rule 1220-1-2-.11(1) provides that "discovery shall be sought and effectuated in accordance with the Tennessee Rules of Civil Procedure" when attempts at informal discovery have failed.[27] Nevertheless, Authority Rule 1220-1-1-.05 provides: "For good cause, including expediting the disposition of any matter, the Authority may waive the requirements or provisions of any of these rules in a particular proceeding, on motion of a party or on its own motion, except when a rule embodies a statutory requirement."[28]

The Hearing Officer finds that there is good cause in this case to shorten the response period. As previously stated, it is incumbent upon the Hearing Officer to see that every effort is made to resolve these complaints on or before December 10, 2001. If BellSouth were permitted to respond to discovery on December 1, 2001, as it requested, this goal would certainly be out of reach. Therefore, the Hearing Officer concludes that the motions to take discovery shall be granted and BellSouth shall respond to discovery on or before Friday, November 16, 2001.

E. Issues raised by the Complaints and the *Motion to Open Show Cause*

Given the expeditious review ordered for these complaints, the Hearing Officer finds that there is a need to clarify the relief requested and available and to obtain answers to certain inquiries before proceeding to the filing of testimony and a hearing. To explain, a reading of the complaints and *Motion to Open Show Cause Proceeding* reveals inconsistencies in the relief requested. Also,

---

[26] Tenn R Civ P 33 (Vol 1 2001)
[27] Authority Rule 1220-1-2- 11(1) (Sept 2000 Rev)
[28] *Id* 1220-1-1- 05(1) (Sept 2000 Rev.)

The language of this section indicates that an investigation must precede the issuance of a show cause order. Thus, the actual remedy available as a result of the filing of the complaints and the *Motion to Open a Show Cause Proceeding* must be the opening of an investigation.

2. Authority Rules

In the complaints, AIN and XO contend that BellSouth violated Authority Rule 1220-4-8-.09(2)(c)(3).[33] This rule does not prescribe, however, a specific violation. The rule merely establishes a duty on behalf of incumbent local exchange carriers to adhere to other Rules in chapter 1220-4-8 pertaining to: 1) "the provision of nondiscriminatory interconnection with other providers under reasonable terms and conditions"; 2) "the compliance with price floor and cost imputation restrictions on the pricing of competitive services", and 3) "compliance with applicable tariff and special contract provisions."[34] In the request for relief, AIN and XO request a show cause order issue in regard to violations of Authority Rules in general. A more definite statement of the grounds for violation is necessary in order to determine whether AIN and XO are entitled to relief. This conclusion is further justified by Rule 1220-1-2-.09(1)(a), which provides. "A formal complaint filed against a public utility regulated by the Authority shall . . . enumerate each statute allegedly violated by the defendant."[35]

3. Tenn. Code Ann. § 65-4-122

AIN and XO contend that BellSouth's actions violate Tenn. Code Ann. § 65-4-122 Subsection (e) of this section provides: "An action may be brought by any person against any person or corporation, owning or operating such public service company in Tennessee, for the violation of

---

[33] *See, e g , In re Complaint of Access Integrated Network, Inc Against BellSouth Telecommunications, Inc* , Docket No 01-00808, *Complaint of Access Integrated Networks, Inc* , p 2 (Sept 16, 2001)

[34] Authority Rule 1220-4-8- 09(2)(c)(3) (Aug 1999, Rev)

[35] *Id* 1220-1-2- 09(1)(d) (Sept 2000, Rev)

this section, **before any court having jurisdiction to try the same.**"[36] Before proceeding with this claim, the Hearing Officer finds that there is an issue as to whether the Authority has subject matter jurisdiction over claims arising from Tenn Code Ann. § 65-4-122. Therefore, it is necessary for the parties to submit legal briefs on the issue of whether the Authority is a court for the purposes of Tenn. Code Ann. § 65-4-122.

F. Procedural Schedule

In an effort to see that these complaints are resolved by December 10, 2001, the Hearing Officer adopts the following procedural schedule, including any aforementioned due dates:

• Proposed Protective Order Signed by All Parties	**Friday, November 9, 2001**
• Briefs on Tenn. Code Ann. § 65-4-122 and AIN and XO's More Definite Statement	**Tuesday, November 13, 2001**
• Responses to Discovery Requests	**Friday, November 16, 2001**
• Pre-Filed Direct Testimony	**Monday, November 26, 2001**
• Pre-Filed Rebuttal Testimony	**Thursday, November 29, 2001**
• Pre-Hearing Conference	**Friday, November 30, 2001 at 9:00 a.m.**
• Hearing	**Monday, December 3, 2001 through completion**[37]

[36] Tenn Code Ann § 65-4-122(e) (Supp 2000) (emphasis added)

[37] The Hearing Officer is aware that a hearing is presently scheduled in Docket No 01-00362, *In re Docket to Determine the Compliance of BellSouth Telecommunications, Inc 's Operations Support Systems With State And Federal Regulations* for these dates

6. The remedy available as a result of the filing of the *Complaint of Access Integrated, Inc.*, *Complaint of XO Tennessee, Inc.* and the *Motion to Open a Show Cause Proceeding* is the opening of an investigation.

7. Access Integrated Networks, Inc. and XO Tennessee, Inc. shall file a more definite statement enumerating the specific statutes and/or Authority rules allegedly violated by BellSouth Telecommunications, Inc

8. Parties shall submit legal briefs on the issue of whether the Authority is a "court" as that term is used in Tenn. Code Ann. § 65-4-122.

9. Any party aggrieved with the Hearing Officer's decision in this matter may file a Petition for Reconsideration with the Hearing Officer within fifteen (15) days of the date of this Order.

Julie M. Woodruff, Hearing Officer

ATTEST:

K. David Waddell, Executive Secretary

IT IS THEREFORE ORDERED THAT:

1. Docket Nos. 01-00808 and 01-00868 are consolidated. Docket No. 01-00808 shall be deemed closed after entry of this Order therein, the record in Docket No. 01-00808 shall be a part of the record in Docket No. 01-00868 and all future filings shall be entered under Docket No. 01-00868

2. The petitions to intervene filed on October 24, 2001 by the Consumer Advocate and Protection Division of the Office of the Attorney General and Reporter are granted. The Consumer Advocate and Protection Division may participate in this proceeding as its interests require and the parties shall serve the Consumer Advocate with copies of any notices, orders or other documents filed in this docket

3. All filings shall be made in accordance with the procedural schedule set forth herein. Filings shall be filed in the Executive Secretary's office by 2:00 p.m. on the specified date as provided for in Rule 1220-1-1-.11 and served on each of the parties via hand-delivery or facsimile. Testimony of witnesses shall be filed individually, separately paginated, and contain the caption of the case on the first page.

4. The request of Access Integrated Networks, Inc. and XO Tennessee, Inc. to include certain language in the protective order is denied.

5. The motions to take discovery filed by Access Integrated Networks, Inc. and XO Tennessee, Inc. on November 1, 2001 are granted. Discovery responses shall be served via hand-delivery or facsimile and filed in the Executive Secretary's office on the date specified in the procedural schedule.

History of Show Cause Proceedings Before the TRA[1]

TRA Docket No.	Case Style	Basis for Investigation or Show Cause	How Initiated
03-00632	In Re: Show Cause Proceeding Against EZ Talk Communications, LLC for Violations of Tenn. Code Ann. § 65-4-125 and Tenn. Rules & Regs. 1220-4-2-.56	staff investigation revealed violations of telecommunications anti-slamming rules	TRA Motion
03-00528	In Re: Show Cause Against Delta Phone, Inc.	investigation opened on alleged violations of telecomunications rules	TRA Motion
03-00082	In Re: GutterGuard of Tennessee, Inc.	staff investigation revealed violation of do not call regulations	TRA Motion
01-00868 and 01-00808	In Re: Complaint of XO Tennessee, Inc. Against BellSouth Telecommunications, Inc. and Complaint of Access Integrated Networks, Inc. Against BellSouth Telecommunications, Inc.	complaint of competing telecommunications providers; request for show cause order denied	Request for show cause order denied because no TRA Motion
01-00244	In Re: Show Cause Proceeding Against Jeremy Haskins Insurance Company	staff investigation revealed violation of do not call regulations	TRA Motion
00-00170	In Re: Petition to Require BellSouth Telecommunications, Inc. to Appear and Show Cause That Certain Sections of Its General Subscribers Tariff and Private Line Services Tariff Do Not Violate Current State and Federal Law	staff investigation revealed violations of telecommunications law and regulations	TRA Motion

[1] This chart is not intended to be a comprehensive list of show cause proceedings before the TRA, but instead represents those proceedings that are electronically available from the TRA website or other legal databases

99-00793	In Re: Show Cause Against U.S. Republic Communications, Inc.	staff investigation revealed violations of telecommunications law and regulations	TRA Motion
99-00794	In Re: Show Cause Against Excel Telecommunications, Inc.	staff investigation revealed violations of telecommunications law and regulations	TRA Motion
99-00273	In Re: Year 2000 Compliance of Public Utilities In the State of Tennessee	staff investigation revealed violation of TRA Y2K compliance orders	TRA Motion
98-00740	In Re: Show Cause Against LCI International, Inc. d/b/a Qwest Communications Services	staff investigation revealed violations of telecommunications law and regulations	TRA Motion
98-0021	In Re: Petition for Investigation and/or Show Cause Order to Determine the Just and Reasonableness of Rates Charged by BellSouth Telecommunications, Inc.	petition of competing telecommunications provider; petition denied as moot	Petition for show cause denied as moot
98-00018	In Re: Minimum Rate Pricing, Inc.	staff investigation revealed violations of telecommunications law and regulations	TRA Motion
97-00160 and 97-00293	In Re: Show Cause Proceeding Against Gasco Distribution Systems, Inc.	staff investigation revealed violations of TRA orders and regulations	TRA Motion
95-01684	In Re: South Central Bell Telephone Company	staff investigation revealed violations of telecommunications law and regulations	TRA Motion
93-9024 and 94-01211	In Re: Limited Operator Surcharges for Calls from Jails and Prisons	staff investigation revealed excessive charges; show cause order dismissed on	TRA Motion

93-9024 and 94-01211	In Re: Limited Operator Surcharges for Calls from Jails and Prisons	staff investigation revealed excessive charges; show cause order dismissed on motion of respondents; investigation opened	TRA Motion
93-07998	In Re: Show Cause Order to Amend the Special Access Tariffs of Local Exchange Telephone Carriers to Provide Educational Discounts	staff investigation revealed excessive charges	TRA Motion
93-07799	Show Cause Proceeding v. Certified IXCs to Provide Toll Free, County-wide Calling	staff investigation revealed violations of telecommunications law and regulations	TRA Motion
U-88-7572	In Re: Alltel Tennessee, Inc.	staff investigation revealed double counting of expenses	TRA Motion
U-88-7551	In Re: Show Cause Proceeding to Amend the Billing and Collection Tariffs of South Central Bell, United Inter-Mountain and General Telephone Companies	staff investigation revealed violations of telecommunications law and regulations	TRA Motion

WALLER LANSDEN DORTCH & DAVIS, PLLC

WALLER LANSDEN DORTCH & DAVIS PLLC
THE CHESAPEAKE BUSINESS CENTRE
1616 WESTGATE CIRCLE SUITE 106
BRENTWOOD TENNESSEE 37027 8019
(615) 844 6212

WALLER LANSDEN DORTCH & DAVIS LLP
AFFILIATED WITH THE PROFESSIONAL LIMITED LIABILITY COMPANY
520 SOUTH GRAND AVENUE SUITE 800
LOS ANGELES CALIFORNIA 90071
(213) 362 3680

NASHVILLE CITY CENTER
511 UNION STREET, SUITE 2700
POST OFFICE BOX 198966
NASHVILLE, TENNESSEE 37219-8966
(615) 244-6380
FAX (615) 244-6804
www.wallerlaw.com

WALLER LANSDEN DORTCH & DAVIS PLLC
809 SOUTH MAIN STREET
POST OFFICE BOX 1035
COLUMBIA TENNESSEE 38402 1035
(931) 388 6031

D. Billye Sanders
(615) 850-8951
billye.sanders@wallerlaw.com

November 4, 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
Petition for Reconsideration

Dear Chairman Miller,

Enclosed you will find the original and 13 copies of Chattanooga Gas Company's Petition for Reconsideration of the Authority's October 20, 2004 Order in the above referenced docket. The Company respectfully requests that its Petition be granted for the reasons set forth in the Petition.

Sincerely,

D. Billye Sanders

D. Billye Sanders
Attorney for Chattanooga Gas Company

cc: Parties of Record
Steve Lindsey
Archie Hickerson
Elizabeth Wade, Esq.
Jeff Brown, Esq.

1062859 1

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE:	)	
	)	
PETITION OF CHATTANOOGA GAS	)	
COMPANY FOR APPROVAL OF	)	DOCKET NO. 04-00034
ADJUSTMENT OF ITS RATE AND	)	
CHARGES AND REVISED TARIFF	)	
	)	
	)	

PETITION FOR RECONSIDERATION

Chattanooga Gas Company ("CGC") respectfully petitions the Tennessee Regulatory Authority ("TRA" or "Authority") for Reconsideration of its October 20, 2004 Order in the above-referenced docket (the "Order"), pursuant to TCA §4-5-317 and TRA Rule 1220-1-2.20 because the Authority's decision regarding the fair rate of return set forth in the Order is: (1) in violation of constitutional and legal provisions; (2) arbitrary and capricious; (3) made upon unlawful procedure; and (4) unsupported by evidence which is both substantial and material in light of the entire record. In support of its Petition for Reconsideration, CGC states the following:

I. INTRODUCTION

The extremely low rate of return adopted in the Order violates the standards set forth by the U.S. Supreme Court in *Bluefield Water Works & Improvement Co v Public Service Comm'n of West Virginia*, 262 U.S. 679 at 692-93, 43 S.Ct. 675 (1923) and *FPC v. Hope Natural Gas Co.*, 320 U.S. 591 at 605, 64 S.Ct. 281 (1944) in that it fails to provide CGC a just and reasonable return which will enable it "to operate successfully, to maintain its financial integrity, to attract capital, and to compensate investors for the risk assumed." *Federal Power Commission v Hope Natural Gas Co*, at 605 The low rate of return resulted in large part by the derivation of a capital structure for CGC which is inconsistent with the Authority's stated

methodology, not supported by the record evidence, in violation of the attrition period, and in violation of due process constitutional provisions. This material error is compounded by the extremely low return on equity selected by the Authority. Accordingly, CGC seeks reconsideration and requests that the Authority modify the capital structure to be, at a minimum, consistent with the methodology stated in the Order. CGC also requests the Authority modify the return on equity to be more reflective of the returns expected for companies comparable to CGC.

II. THE TRA'S STATED METHODOLOGY DOES NOT PRODUCE THE CAPITAL STRUCTURE ADOPTED IN THE ORDER.

During the proceeding, the Company recommended that the Authority adopt a "stand alone" approach which would have utilized CGC's own capital structure. The Authority rejected the use of CGC's capital structure and instead decided to use the capital structure of CGC's parent AGL Resources, Inc. ("AGLR"). In its Order, the TRA states that the capital structure is based on AGLR's capital structure *and* is consistent with a prior CGC case, i.e, TRA Docket No. 97-00982 and other previous decisions of the Tennessee Public Service Commission ("TPSC ")[1]. However, a review of the record and those cases reveal the capital structure adopted in the Order is in fact neither.

A. The Capital Structure is Not AGLR's Capital Structure.

The Order states: "...the panel found that AGLR's capital structure was the appropriate capital structure for the determination of CGC's cost of capital."[2] However, the panel did not

[1] The Order pp 43-45

[2] The Order, page 44

actually adopt AGLR's capital structure. Rather, the Order adopted the following capital structure:

Short-term debt	16.4 %
Long-term debt	37.9 %
Preferred Stock	10.2 %
Common equity	35.5 %
Total Capitalization	100.0 %[3]

Not only is this *not* AGLR's capital structure, it is not even found in the exhibit that is cited in the Order as the source of "AGLR's capital structure." The Order identifies Dr. Steven Brown's Pre-filed Direct Testimony, Exhibit CAPD-SB, Schedule 3, Page 1 of 11 (July 26, 2004) as the source.[4] However, the capital structure set forth above is not reflected anywhere on this exhibit. Rather, Exhibit CAPD-SB, Schedule 3 sets forth AGLR's capital structure at 3 different points in time, i.e., December 31, 2003, December 31, 2002, and December 31, 2001. On none of these three dates is AGLR's capital structure consistent with the capital structure adopted by the Authority, and the Order does not provide any details or support regarding how the numbers were derived.

B. The Capital Structure is Not Consistent with the Attrition Period, CGC's Last Rate Case, or other TRA Orders.

More importantly, based on the TRA's stated methodology, it would be inappropriate to even use Exhibit CAPD-SB. Significantly, none of the capital structures presented on Exhibit CAPD-SB, Schedule 3 reflect AGLR's current capital structure, the capital structure at August 30, 2004 when the panel deliberated the matter and adopted the capital structure as set forth in

[3] The Order, pp 58-59

[4] The Order p 45, footnote 89.

the October 20, 2004 Order, or the capital structure reasonably expected to be in place during the attrition period ended June 30, 2005 as adopted by the Authority.

In CGC's last rate case, TRA Docket No. 97-00982, the TRA adopted a *projected* average capital structure of the parent for the attrition period[5]. If the TRA uses the same methodology used in Docket No. 97-00982, which it stated it intended to do in this case, the resulting projected capital structure, as addressed more fully below in Paragraph Numbers 9 and 10, would be:

Short term debt	4.07%
Long Term debt	40.24%
Preferred stock	9.47%
Common Equity	46.22%
Total Capitalization	100.00%[6]

Consequently, this is the capital structure that is consistent with the panel's decision that CGC's cost of capital should be based on AGLR's capital structure and should be consistent with the methodology adopted by the Authority in CGC's last rate case in Docket No. 97-00982. In addition, in Docket No U-82-7175, another CGC rate case, the TPSC used "an

[5] *In re Petition of Chattanooga Gas Company to Place into Effect a Revised Natural Gas Tariff* TRA, Docket No. 97-00982, Testimony of Gerald A Hinesley, page 10 (copy attached as Exhibit No Recon-1) and Order in Docket No 97-00982, dated October 7, 1998 pp 49-50 The TRA refers to the Order in Docket No 97-00982 in the Order in the present Docket There is a reference to the taking of administrative notice of the '97 docket in the transcript Vol. VI pp 52-53 However, it is unclear from the transcript whether the Authority took administrative notice of the entire record in that Docket or just the order. If the Authority did not take such notice, CGC respectfully, requests that the Authority take official notice of the entire record in Docket No 97-00982 inasmuch as the panel has relied on information in that Docket in its findings in the present Docket

[6] The projected average capital structure for the twelve months ended June 30, 2005 is the average of the actual capital structure of June 30, 2004 and September 30, 2004 and the projected capital structure at December 31, 2004, March 31, 2005 and June 30, 2005

average capital structure for the 12 months ending December 31, 1983.[7] In that proceeding, the 12 months ending December 31, 1983 was the attrition period.

Not only would such a capital structure be consistent with the TRA's stated methodology and CGC's last rate case, it would also be consistent with established principles of utility rate making law which require adjustments for known and reasonably anticipated changes.[8] In the *South Central Bell* case cited in footnote 8, the Tennessee Court of Appeals stated that "...the test period results must be adjusted to take into account known changes that are likely to occur in the immediate future. ...To ignore these expenses and changes reasonably certain to occur fails to follow the basic purpose of rate making; to set rates for the future."[9]

Similarly, in the Order issued in Docket Numbers 93-04818, 94-00388 and 94-00389 regarding United Telephone-Southeast Inc., the TPSC used a June 30, 1993 capital structure because it contained short term debt. The staff witness who recommended this capital structure testified that it was more representative of the capital structure that the company would have

---

[7] *In re Petition of Chattanooga Gas Company to Place into Effect a Revised Natural Gas Tariff and to Amend Special Contract*, Docket No U-82-7175, Order dated December 13, 1982, pp 7-8 At the time of this case Chattanooga Gas Company was not a subsidiary It was a division of Jupiter Industries, Inc

[8] *South Central Bell Telephone v Tennessee Public Service Commission*, 579 S W 2d 429, (TN Ct App 1979) In TPSC Docket No U-85-7338 the TPSC adopted the capital structure of Tennessee-American Water Company as of the test period, i e., as of December 31, 1984 The Commission concluded that the December 31, 1984 capital structure was appropriate because it was based on the latest balance sheet date available *See In re Petition of Tennessee-American Water Company to Place into effect a Revised Tariff*, Docket Number U-85-7338, Order pp. 15-16 CGC does not advocate the use of the test period capital structure as of one point in time because CGC's capital structure changes throughout the year. The use of an average based upon the attrition period is more reasonable because short-term debt is high at the end of the fourth quarter due to short-term borrowings during the heating season Conversely, short-term debt is low during other periods when certain operational expenses are lower Such cyclical fluctuations in short-term debt may not necessarily apply or be as material to a water company, such as Tennessee-American as for a natural gas distributor

[9] *Id , at p 6*

during the three-year period for which its rates were being set[10]. Consistent with the TRA's Order in CGC's last rate case in Docket No. 97-00982 , the TPSC did not rely strictly on historical information but recognized the need to utilize the capital structure that is reasonably anticipated to be in place during the period in which the rates will be in effect.

In accordance with the cases discussed above, the capital structure adopted in the Order should reflect known or reasonably anticipated changes to AGLR's capital structure. However, it does not. Specifically, Dr. Brown's Exhibit CAPD-SB, Schedule 3, Page 1 of 11 identifies AGLR's capital structure at December 31, 2001, at December 31, 2002, and at December 31, 2003. As evident from that exhibit, AGLR's equity percentage increased from 31.6% at December 31, 2001 to 41.4% at December 31, 2003. The capital structure adopted in the Order reflects an equity percentage of only 35.5% Also, as explained in AGLR's 10-Q Report for the quarter ended March 31, 2003 to the Securities and Exchange Commission (which was also filed with the TRA in this Docket in response to the Minimum Filing Guideline #17), in February 2003 AGLR issued 6.4 million shares of common stock resulting in net proceeds of approximately $136.7 million increase in equity. Neither of the capital structures at December 31, 2001 nor at December 31, 2002 as presented on Dr. Brown's Exhibit reflect this known change in equity Neither of the capital structures presented on the Exhibit reflect more recent changes in equity and debt recorded on AGLR's books.

[10] *In re Earnings Investigation of United Telephone-Southeast, Inc,* Docket No 03-04818, *Petition of United Telephone-Southeast, Inc to Extend for One Year its Participation Under the Existing Regulatory Reform Plan,* Docket No 94-000384, and *Petition of United Telephone-Southeast, Inc for Conditional Election for Alternative Regulation,* Docket No 94-00389, Order dated December 30,1994, p 6. In the United Telephone-Southeast case the rates were set for three years as opposed to one year in the Chattanooga Gas Company cases

III. THE TRA'S FAILURE TO ADOPT A CAPITAL STRUCTURE BASED ON ITS STATED METHODOLOGY OR UPON EVIDENCE IN THE RECORD RESULTS IN LEGAL INFIRMITIES.

As stated above, the capital structure adopted in the Order results in an extremely low rate of return which violates the standards set forth by the U.S. Supreme Court in the *Bluefield* and *Hope* cases cited above. In addition, the TRA's stated methodology does not produce the capital structure adopted in the Order. Moreover, the Order does not explain how the TRA actually derived the capital structure it utilized for AGLR. Thus, the capital structure is unsupported by substantial and material evidence in the record, violates due process principles, is arbitrary and capricious and was made upon unlawful procedure because CGC was deprived of an opportunity to address the reasonableness of the methodology during the proceeding.[11] In *Tennessee American Water Company v. Tennessee Public Service Commission* the Court of Appeals reversed and remanded the decision of the Public Service Commission that provided a rate of return outside the scope of evidence and provided no explanation for the agency's reliance on its own expertise.[12] In the *Tennessee American* case, the Court said:

> An agency acts arbitrarily when it unreasonably rejects evidence such as expert opinion, ... Or when its members act on speculation or disregard uncontradicted testimony without stating a valid reason for doing so.[13]

The Court further stated that:

> The Commission may not, however avoid the duty to explain its decision and to base the decision on substantial evidence in the record by mere assertion of its expertise. .... When an agency

[11] *Tennessee-American Water Company vs Tennessee Public Service Commission*, 1985 Tenn App LEXIS 2800, Tenn Ct App April 11, 1985

[12] *Id*

[13] *Id* At page 4

> exercises its discretion or relies on its expertise, it should provide a clear explanation of its action[14].

Because neither of the capital structures recommended in the record were adopted and the agency has not given an explanation of how the capital structure it adopted was derived, CGC has been deprived of an opportunity to address the reasonableness of the methodology. Moreover, since no party to the proceeding entered testimony that addressed a proposed capital structure that resembled the structure adopted in the Order, CGC had no opportunity to provide rebuttal testimony, cross-examine the proponent of the structure, or otherwise provide evidence relative to the proposal. As a result, CGC has been denied procedural due process with respect to a matter for which no evidence was presented in these proceedings. In *Steele v Metropolitan Board of Zoning Appeals* the Tennessee Court of Appeals reversed an agency decision because the agency failed to place in the record information that it considered, thus preempting the Court from reviewing evidence considered by the agency in reaching its decision.[15] In the *Steele* case the Court of Appeals said:

> As a general rule, for reasons as fundamental as due process, an agency may not base its decision on evidence or information outside the record.[16]

The Court went on to say that:

> Agencies may, of course, consider facts that were developed in a prior proceeding but only if the information from the prior proceeding is put into evidence at the hearing before the agency

---

[14] *Id*

[15] *Steele v Metropolitan Board of Zoning Appeals,* 1986 WL 3985 (Tenn Ct App), at p 3

[16] *Id*

> *and the parties are given a chance for rebuttal.*[17] (emphasis added)

The rule of law in the *Steele* case is codified in T.C.A § 4-5-313(6) with respect to official notice. T.C.A. § 4-5-313 (6) states in part:

> Parties must be notified before or during the hearing, or before the issuance of any initial or final order that is based in whole or in part on facts or material noticed, of the specific facts or material noticed and the source thereof, *including any staff memoranda and data*, and *be afforded an opportunity to contest and rebut the facts or material so noticed.* (emphasis added)

In *McNiel v Tennessee Board of Medical Examiners*, the Tennessee Court of Appeals overruled the decision of the agency because it was not supported by substantial and material evidence. The Court said the agency failed to put into the record evidence of the special knowledge of the board members upon which the board apparently relied.[18] The Court stated that if the agency takes official notice of facts within its knowledge, it must do so consistent with the standard in the Administrative Procedures Act (APA).[19] The Court said that: "A court obviously cannot review knowledge, however expert, that is only in the minds of one or more members."[20] The Court stated that the agency had not properly complied with the requirements of taking official notice of its own expertise:

> There is no record that petitioners were notified that the members of the Board would consider as evidence those matters of expert information known to them, or as to which they held an opinion; and no record appears that such information or opinion was disclosed at the hearing *with opportunity to cross-examine and*

---

[17] *Id*

[18] *McNiel v Tennessee Board of Medical Examiners*, 1997 WL 92071 (Tenn Ct App)

[19] *Id* , at pp 6-7

[20] *Id* , p 6

> *contradict.* (emphasis added) Under the circumstances, the undisclosed expertise of the Board cannot substitute for lack of evidence.[21]

Therefore, if the Authority does not believe the capital structure is in error, as suggested by CGG, and does not adopt the capital structure that CGG proposes in this Petition as the capital structure of AGLR using the methodology used in Docket No. 97-00982, then CGC respectfully requests an explanation of the methodology used by the TRA in deriving the AGLR capital structure and an opportunity to respond to the methodology adopted by the Authority.

IV. RELIEF SOUGHT TO ADDRESS LEGAL INFIRMITIES OF CAPITAL STRUCTURE

CGC continues to believe that the stand alone capital structure presented in its testimony in this proceeding is the appropriate capital structure and urges its adoption by the Authority. However, if the TRA continues to support the capital structure of the parent AGLR, then the TRA should use the projected average capital structure for the attrition period which is consistent with the stated methodology in the Authority's Order. As stated above, this is the methodology used by the Authority in CGC's last rate case in Docket No. 97-00982. The resulting capital structure utilizing this methodology is shown below and is also shown above in Paragraph 5.

[21] *Id*, at p 7

Short term debt	4.07%
Long Term debt	40.24%
Preferred stock	9.47%
Common Equity	46.22%
Total Capitalization	100.00 %[22]

Because this methodology was not presented by any party to the proceeding, the data necessary to calculate the average capital structure for the attrition period is not in the record. Therefore, consistent with TRA § 1220-1-2-.20, CGC seeks to present new evidence which would consist of the quarterly capital structures of AGLR during the attrition period and the resulting calculation of the projected average capital structure, a copy of which is provided as Exhibit No. Recon-2. In addition, CGC proposes to present Mr. Mike Morley as a witness to authenticate the exhibit. The lack of an opportunity to address this methodology during the proceeding provides a good cause basis for the introduction of new evidence on reconsideration.

In the alternative, if the Authority does not desire to have new evidence introduced on reconsideration, CGC suggests that the Authority utilize the capital structure as of the midpoint of the attrition period. The midpoint of the attrition period is December 31, 2004 and the projected capital structure for AGLR was provided in response to Data Request Number 6 of the TRA, Econ # 2 set of data requests which is part of the record. The projected capital structure for AGLR as of December 31, 2004 is as follows:

[22] The projected average capital structure for the twelve months ended June 30, 2005 is the average of the actual capital structure of June 30, 2004 and September 30, 2004 and the projected capital structure at December 31, 2004, March 31, 2005 and June 30, 2005.

Short term debt	9.96%
Long Term debt	37.74%
Preferred stock	9.12%
Common Equity	43.18%
Total	100.00%[23]

However, this is not the preferred alternative because utilization of a single point of December 31 of any year gives an inaccurate view of the capital structure of a gas utility. The capital structure at that point in time of any year reflects higher short-term debt due to increased operating costs during the winter heating season.

V. THE RATE OF RETURN ON EQUITY FAILS TO PROVIDE A FAIR RATE OF RETURN AND IS OUT OF LINE WITH RECENT DECISIONS.

The low rate determined by the TRA for return on equity also fails to provide CGC a return which enables it to maintain its financial integrity, attract capital, and compensate its investors for assumed risk. Accordingly, the Order violates the standards set forth in the *Hope* and *Bluefield* cases of the U.S. Supreme Court cited above In addition, the return on equity of 10.20% adopted in the Order is out of line with the returns on equity adopted this year for gas utilities. As demonstrated in CGC's Supplemental Response to Discovery Request Number 15 of the CAPD which was filed on August 18, 2004, there had been seven (7) gas utility decisions on equity returns prior to the Order. Of the decisions, only one was lower than 10.20% with six (6) of the decisions being higher. Significantly, four (4) of the decisions were between 10.90% and 12.00%, in keeping with the 11.25% return on equity requested by CGC in this proceeding. Accordingly, CGC respectfully requests the Authority reconsider and adopt an 11.25% return on equity.

[23] Exhibit No Recon-3 sets forth the supporting calculations of the protected capital structure as of December 31, 2004 for AGLR based on information provided in CGC's response to Data Request Number 6 of the TRA, Econ #2 set of data requests

VI. CONCLUSION

For the foregoing reasons, CGC respectfully requests that the TRA grant this Petition for Reconsideration and reconsider the capital structure and return on equity previously adopted in this proceeding. CGC respectfully requests that the Commission modify and amend the Order to correct and eliminate the errors described in this Petition by providing CGC the relief set forth herein and by providing CGC such further and other relief as the Authority may deem proper.

Respectfully submitted,

Chattanooga Gas Company

By: D. Billye Sanders

D. Billye Sanders, Esq.
Waller Lansden Dortch & Davis
A Professional Limited Liability Company
511 Union Street, Suite 2700
Nashville, TN 37219-8966
(615) 244-6380

Attorney for Chattanooga Gas Company

CERTIFICATE OF SERVICE

I, hereby certify that on this 4th day of November, 2004, a true and correct copy of the foregoing was delivered by hand delivery, or U.S. mail postage prepaid and email to the other Counsel of Record listed below.

D. Billye Sanders

D. Billye Sanders, Esq.

Vance Broemel
Assistant Attorney General
Tim Phillips
Assistant Attorney General
Office of Attorney General
Consumer Advocate and Protection Division
2nd Floor
425 5th Avenue North
Nashville, TN 37243-0491
Timothy.Phillips@state.tn.us
Vance.Broemel@state.tn.us

Mailing address:
P.O. Box 20207
Nashville, TN 37202

David C. Higney, Esq.
Grant, Konvalinka & Harrison, P.C.
633 Chestnut Street, 9th Floor
Chattanooga, TN 37450-0900
423-756-8400 (phone)
423-756-0643 (Fax)
dchigney@gkhpc.com

Henry M. Walker, Esq.
Boult Cummings, Conners & Berry, PLC
414 Union Street, Ste 1600
Nashville, TN 37219
615-244-2582 (phone)
615-252-6380 (fax)
hwalker@boultcummings.com

Dale Grimes, Esq.
Bass, Berry & Sims PLC
AmSouth Center
Suite 2700
315 Deaderick Street
Nashville, TN 37238
dgrimes@bassberry.com

Exhibit No. Recon.-1

BEFORE THE

TENNESSEE REGULATORY AUTHORITY

DIRECT

TESTIMONY

OF

GERALD A. HINESLEY

IN RE:

CHATTANOOGA GAS COMPANY

DOCKET NO. 97-00982

Direct Testimony of Gerald A. Hinesley

Q. Please state your name and occupation.

A. I am Gerald A. Hinesley, Vice President and Controller of AGL Resources Service Company.

Q. What are your principal responsibilities as Vice President and Controller?

A. I have overall responsibility for the accounting functions of AGL Resources Inc. (AGLR), and all of its subsidiaries including Atlanta Gas Light Company and Chattanooga Gas Company hereinafter referred to as the Company or Chattanooga.

Q. Please outline your educational and professional training and experience.

A. I received a B.B.A. from the University of Georgia in 1981 with a major in accounting. I have been associated with AGL Resources Inc. and its predecessor company, Atlanta Gas Light Company, continuously since December 1978 in various capacities, primarily in the Accounting Department. I have been successively, Staff Accountant, Assistant Manager-Financial Accounting, Director-Financial and Accounting Services and Director-Corporate Accounting. I was named Controller in 1996 and Vice President and Controller in 1997. I am a Certified Public Accountant in Georgia.

Q. Have you previously submitted testimony for Chattanooga to this Authority?

A. No, I have not.

Q. What is the subject of your testimony?

A. I will present various financial and accounting data in support of Chattanooga's filing in this proceeding.

Q. Have you prepared an exhibit which shows these data?

A. Yes, I am sponsoring Exhibit No. 5 which contains various schedules. This exhibit was prepared under my supervision and direction.

Q. What is the purpose of Exhibit No. 5?

A. The primary purpose of Exhibit No. 5 is to present and support Chattanooga's additional revenue requirement based upon the forward-looking test year ending September 30, 1998.

Q. Please describe the content of Exhibit No. 5.

A. Schedules 1 through 3 of the Exhibit contain the Balance Sheet, Statement of Income and Detail of Operating and Maintenance Expenses for the twelve-month period ended September 30, 1996. Schedules 4 through 10 of the Exhibit are based upon forecasts of the various financial data.

Q. What is the basis of the forecasts used for the test year ending September 30, 1998?

A. The forecasts of customer growth and volumes of gas sold for the general service and interruptible customers is covered in Mr. Fred Carillo's testimony. The forecast of the related operating revenues for customer classes is covered in Ms. Lisa Howard Wooten's testimony. The Company's most recent Construction Forecast is the source of the construction expenditure forecast for the test year. The construction forecast is updated each year for planning purposes based upon a thorough review of all capital expenditure plans. The forecast of Operating and Maintenance Expenses consists of three parts, payroll expenses, expenses other than payroll and shared services expenses allocated to Chattanooga. To derive payroll costs for the test year, Chattanooga must project test year employment levels and then apply expected salary increases through the end of the test year to current wage levels. The test year forecast includes 100 employees. This is the

minimum level of employees we feel is needed to maintain service at adequate levels.

Q. What level of salary increases were used to arrive at the forecast of total expenses for the test year?

A. The Company has forecast salary increases ranging from 2.5%-3.5% for non-exempt, non-bargaining unit employees and 4.5% for exempt employees. These increases are based upon the most current market forecasts of comparable rates available to us. The overall increase forecast for the test year is 3.3% compared with the average increase of 3.5% in the survey of market data.

Q. Why were exempt employees' pay increased by 4.5%?

A. The market data indicates that employees within this group are paid below the market for these positions. A 4.5% increase, which is slightly above the market average increase of 3.8% for this group of employees, will begin to move these employees closer to the market average pay for these positions.

Q. What increases were forecast for bargaining unit employees?

A. The Company has forecast no increases for the bargaining unit employees. Instead, lump sum payments of $500 paid to each bargaining unit employee is included in the forecast consistent with the bargaining unit agreement signed in 1996.

Q. How were non-payroll costs forecast?

A. The forecast of most non-payroll costs was accomplished by applying a growth and inflation factor to the September 30, 1996 balances, excluding payroll, in each expense account. It is, however, necessary to forecast separately certain accounts that are known to be affected by more or less than the general changes in the growth and inflation factors.

Q. What was the basis used for the growth and inflation factors?

A. The growth factor was based upon the net customer additions forecast from September 1996 through the test year ending September 30, 1998. The growth factor used was 8.95%. The inflation factor used was based upon the forecasted increase in the average Consumer Price Index (CPI) for the year ended 1996 through 1998. The increase in the average CPI forecast for this period is 6.67% based upon information provided by the College of Business Administration, Economic Forecasting Center of Georgia State University.

Q. Please describe the estimates of operation and maintenance expenses which were not forecast using the growth and inflation factors.

A. The experience rate for the twelve months ended February 1997 (the most recent twelve-month period) for uncollectible accounts was applied to test year residential and commercial revenues to forecast the test year uncollectible accounts expense. Property and Liability insurance costs were forecast using data obtained from the Company's insurance brokers. Pension expense was forecast by the Plan Actuary for the test period. Employee health insurance costs were forecast using a projected trended rate of 10% based on information from A. Foster Higgins and Company, Inc.. Postretirement Benefits Other Than Pensions (required by FAS 106) were forecast by the Plan Actuary. Postemployment Benefits costs (required by FAS 112), were forecast using information provided by John Hancock Mutual Life Insurance Company for the cost of benefits entitled to employees for Long Term Disability.

Q. Has the Company filed a detail of the test year operation and maintenance expenses?

A. Yes. A detail of all accounts and adjustments is provided in the Company workpapers.

Q. Please explain the calculation of shared services expenses allocated to Chattanooga and the reason for the increase from the levels historically allocated.

A. The methodology used to allocate shared services is covered in Mr. Jim Kissel's testimony. As explained in Mr. Harry Thompson's testimony, Atlanta Gas Light Company has recently undergone significant changes which have had a direct impact on Chattanooga. These changes have resulted in the consolidation of several of Chattanooga's departments and functions with those of AGLR or its subsidiaries including Atlanta Gas Light Company. These functions include information systems, accounting, engineering, customer service, rates and dispatch. The consolidation of these areas means that the associated costs are now being allocated to Chattanooga rather than being directly charged.

Q. Are there other changes that have had an impact on the allocation?

A. Yes. As a result of the shared services study, we determined that there were several areas of the company that were performing services for Chattanooga for which no expenses were being allocated. These areas included such things as treasury, accounts payable, mail center, gas control, human resources and others. In effect, Chattanooga had been receiving the benefit of these services "free of charge". As a result of the consolidation of functions and the findings from the shared services study, the allocation of expenses has increased from $1,259,082 in fiscal 1996 to $5,226,872 requested in this case.

Q. How were Taxes Other Than Income forecast?

A. In most cases, current or projected rates are applied to projected tax basis balances to forecast the tax expenses. For example, current payroll tax rates are applied to projected payroll to arrive at payroll tax expense for the test year. The actual ad valorem tax rates are applied to projected assessment balances for each taxing

district to arrive at ad valorem tax expense for the test year. The Tennessee Franchise Tax is forecast in the same manner.

Q. What rate was used to calculate Federal Income Tax expense for the test year?

A. A thirty five (35) percent rate was used.

Q. What depreciation rates were used to arrive at test year depreciation expense?

A. As discussed in the testimony of Mr. Don Roff, a depreciation study completed in March 1997 reveals a slight overall decrease in the composite depreciation rate for Chattanooga. The new rates developed in the study are used in the test year forecast of depreciation expense. It should be noted that the methodology is consistent with the methodology allowed by the Authority in Docket No. 91-03765.

Q. How much did the rates decrease?

A. Based on depreciable plant balances at September 30, 1996, the overall composite rate decreased from 3.66% to 3.61%.

Q. Why have you included the Acquisition Adjustment in this filing?

A. As discussed in Mr. Royse's testimony, the customers of Chattanooga Gas Company have enjoyed several benefits since the acquisition. These benefits have included cost savings, improved service quality, greater system reliability and enhanced operational efficiencies.

Q. What is the impact of the inclusion of the Acquisition Adjustment on this case?

A. The Company is seeking cost of service recovery of approximately $411,000 for the annual amortization expense and the inclusion of approximately $9.6 million in rate base for the unamortized portion of the Acquisition Adjustment.

Q. Will you please explain schedules 1 through 3 of your Exhibit?

A. Schedules 1 through 3 are the Balance Sheet, Statement of Income and Detail of Operating and Maintenance Expenses for the twelve-month period ended September 30, 1996. These schedules reflect actual data for the twelve month period, which is used as the starting point for this filing.

Q. Please explain Schedule 4 the Projected Statement of Income.

A. Schedule 4 is a presentation of actual Utility Operating Income for the twelve months ended September 30, 1996. These actual numbers are presented in Column (b). The projected Test Year Adjustments, Column (c) are then applied to Column (b) to arrive at the Projected Test Year results. Column (e) shows the Company's estimated Utility Operating Income without a rate increase. The additional revenue requirement and related pro-forma adjustments in Column (f) were applied to the Test Year results to arrive at Utility Operating Income on a pro-forma Test Year basis. Column (h) shows the income statement effects of the requested rate increase in the amount of $4,422,610. Column (h) is a pro-forma income statement for the Test Year that reflects all of the adjustments shown on the schedule. It shows the Company's Operating Revenues would be $36,608,313 and Operating Income applicable to Rate Base would be $9,742,473.

Q. Please explain Schedule 5, Revenue Deficiency.

A. Schedule 5 presents the calculations of the revenue deficiency if the Company's rates remain at present levels. The fair rate of return of 9.61% is applied to the projected Net Rate Base of $101,378,492 to arrive at the required Operating Income of $9,742,473. Operating Income at present rates of $7,027,287 is subtracted from the Required Operating Income to arrive at the Operating Income Deficiency of $2,715,186. The gross revenue conversion factor, calculated in

Schedule 6, of 1.628842 is applied to the Operating Income Deficiency to arrive at a total Revenue Deficiency of $4,422,610.

Q. What is the purpose of the calculations in Schedule 6, Revenue Conversion Factor?

A. This factor is derived for the purpose of grossing up operating revenues to cover the additional taxes, forfeited discounts and uncollectible accounts that result from the additional revenues. This factor reflects experience rates and tax rates projected to be in effect during the test period.

Q. Please explain the computation of Federal Income Taxes and Tennessee Excise Taxes contained in Schedule 7.

A. This schedule is in support of the Tennessee Excise and Federal Income Tax amounts reflected on schedule 4. The statutory rate of 6% is applied to the pre-tax book income at present and proposed rates to arrive at $303,810 and $570,440, respectively, for Tennessee Excise Tax. The excise tax amounts are subtracted from the pre-tax book income to arrive at the Federal Taxable Income amounts for the present and proposed rates. The Federal Income Tax rate of 35% is applied to the amounts to arrive at the Federal Income Tax expense of $1,665,893 and $3,127,915 respectively.

Q. Please explain your Computation of Average Rate Base as reflected on Schedule 8.

A. The components of Rate Base for the forward-looking test year are based upon the Rate Base as it existed at September 30, 1996, adjusted for known and projected changes to arrive at the Average Rate Base for the test year. Average Utility Plant In Service including construction-work-in-progress increased $14,032,268, which includes projected gross additions of $8,407,640 for 1997 and $7,722,585 for 1998. Projected utility plant retirements of $781,323 and $772,235 for 1997 and

1998, respectively, are deducted to arrive at the test-year average utility plant balance of $140,014,935. As discussed previously in my testimony, the company is seeking recovery of the acquisition adjustment. The gross acquisition adjustment balance added to rate base is $13,355,565. Working Capital, as calculated on Schedule 8, pages 2 through 4, is added to Utility Plant to arrive at a total Average Gross Rate Base of $159,569,226.

Q. How is Working Capital calculated?

A. The calculation of Working Capital of $6,198,726 is shown on pages 2 through 4 of Schedule 8. Line 1 of Schedule 8, page 2 of 4, represents the average daily cash balance of $2,373,422 for the period of October 1, 1995, through September 30, 1996. Lines 2 though 7 are twelve month average balances of Materials and Supplies of $453,221, Gas Inventories-LNG of $1,539,858, Gas Inventories-Underground Storage of $3,879,286, Deferred Rate Case Expense of $200,668, Prepayments of $1,189,348, Other Accounts Receivable of $92,027, and Lead Lag Study results of $1,736,716. The results of the Lead Lag are covered in more detail in the testimony of Mr. Greg Aliff. The total of the items listed above is $11,464,545. From this total the projected twelve month average balances of Reserve for Uncollectibles of $278,723, Other Reserves of $549,562, Customer Deposits of $3,766,190 and Accrued Interest on Customer Deposits of $671,344 are deducted to arrive at the Working Capital amount of $6,198,726. The total of Utility Plant in Service of $140,014,935 added to the Unamortized Acquisition Adjustment of $13,355,565 plus the Working Capital of $6,198,726 requirement results in a total Average Gross Rate Base of $159,569,226.

Q. Please continue with your explanation of how Rate Base was derived.

A. From this Average Gross Rate Base of $159,569,226 is deducted Accumulated Depreciation of $46,569,377; Contributions in Aid of Construction of $1,908,645; Customer Advances for Construction of $384,855; and Accumulated Deferred Income Taxes of $5,131,816. The Average Accumulated Depreciation increased $7,390,964 and includes depreciation provisions of $4,607,476 for 1997 and $4,877,899 for 1998. Net plant retirements of $1,653,128 including cost of removal less salvage, for the two periods are deducted to arrive at test year average reserve for depreciation of $46,569,377. The test-year Average Net Rate Base totals $101,378,492 after deducting the above items.

Q. What is the basis for the Cost of Capital of 9.61% as reflected on Schedule 9?

A. Schedule 9 reflects the projected average capitalization of the Company for the test year ending September 30, 1998 The projected September 30, 1998, capital structure of Atlanta Gas Light Company is used as a basis for projecting the September 30, 1998, capital structure and cost of debt of Chattanooga Gas Company.

Q. Why was the capital structure projected in this manner?

A. Chattanooga has only common equity and short term debt in its capital structure. Chattanooga has no long term debt and its short term debt is arranged through its parent, AGLR. There are no plans for Chattanooga to issue debt in its own name in the foreseeable future. Since AGLR owns all of the common stock of Chattanooga including common stock equity and retained earnings, Chattanooga is completely dependent on AGLR for all of its financing needs. The source of all of Chattanooga's financing is AGLR, therefore the appropriate capital structure would be that of AGLR. In the Company's last two general rate case filings in Docket No. 93-06946 and 95-02116, based upon the findings of the Commission

Staff, the Commission approved the use of AGLR's capital structure as being appropriate for that of Chattanooga.

Q. How is the cost of common equity derived?

A. The basis for the Test-Year cost of common equity of 12.25% is explained in testimony presented by Dr. Victor L. Andrews.

Q. What is the purpose of Schedule 10.

A. Schedule 10 consists of two pages that summarize test-year and pro forma adjustments. The adjustments contained on Schedule 10 are assigned an adjustment number for easy cross-referencing to Schedule 4. A brief explanation is given for each adjustment. The total effect of these test-year and pro forma adjustments can be cross-referenced to Columns (d) and (f) of Schedule 4.

Q. Does this filing contain full and adequate support, with complete explanation of the adjustments relating to Exhibit No. 5 referred to, in your testimony?

A. Yes. Exhibit No. 5 along with the Schedules reflecting each adjustment and the Company's workpapers, fully support and explain the adjustments outlined in my testimony.

Q. Mr. Hinesley, does this complete your testimony in this rate proceeding?

A. Yes.

AFFIDAVIT

State of Tennessee)
)
County of Hamilton)

Personally, appeared before the undersigned authority, Gerald A. Hinesley, who after being duly sworn states on oath that he is the same Gerald A. Hinesley whose prepared testimony and exhibits accompany this Affidavit; that he is authorized to make this Affidavit; that he is familiar with the contents of the foregoing testimony on behalf of Chattanooga Gas Company to the Tennessee Regulatory Authority; and that the facts stated therein are true to the best of his knowledge, information and belief.

Gerald A. Hinesley

Gerald A. Hinesley

Sworn to and subscribed before me this

28th day of April, 1997.

Loreen C. Morris

Notary Public

My Commission Expires:

4/30/97

(NOTARY SEAL)

Chattanooga Gas Company
TRA Docket 04-00034

Exhibit No. Recon-2

AGL Resources Average Capital Structure Twelve Months Ended June 30, 2005
Percent of Total

Class of Capital	6/30/2004	9/30/2004	12/31/2004	3/31/2005	6/30/2005	Twelve Months Ended June 30, 2005
						Average
Short Term Debt	7 31%	2 17%	5 95%	1 21%	3 72%	4 07%
Total Long Term Debt	34 85%	43 26%	40 43%	41 91%	40 78%	40 24%
Preferred Stock	10 09%	9 44%	9 13%	9 46%	9 21%	9 47%
Common Equity	47 75%	45 13%	44 49%	47 42%	46 29%	46 22%
	100 0%	100 0%	100 0%	100 0%	100 0%	100 0%

	Qtr Ended 6/30/2004	Qtr Ended 9/30/2004	Qtr Ended 12/31/2004	Qtr Ended 3/30/2005	Qtr Ended 6/30/2005
Short Term Debt	$ 161 0	$ 51 0	$ 144 7	$ 28 3	$ 89 6
Total Long Term Debt	767	1,017	983	983	983
Preferred Stock	222	222	222	222	222
Common Equity a/	1,051	1,061	1,082	1,112	1,116
Total	$ 2,201 0	$ 2,109 0	$ 2,323 5	$ 2,137 5	$ 2,202 3

a/ Amounts have been adjusted to exclude "other comprehensive income" related to AGLR's consolidated accrued pension liability and other items not yet recognized as expense

Chattanooga Gas Company **Exhibit No. Recon-3**
TRA Docket 04-00034
AGL Resources Projected Capital Structure as of December 31, 2004

Class of Capital	(A) Amount	(B) Percent
Short Term Debt	$ 243,700	9 96%
Total Long Term Debt	922,936	37 74%
Preferred Stock	222,913	9 12%
Common Equity	1,056,000	43 18%
Total Capitalization	$ 2,445,549	100 00%

(A) Data provided in response to TRA Data Request ECON #2, Question 6, Schedule 6-1, Part A

(B) Calculated capital structure based on data provided in **(A)**