

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**December 14, 2007**

<b>IN RE:</b>	)	
	)	<b>DOCKET NO.</b>
<b>GENERIC DOCKET FOR THE PURPOSE</b>	)	<b>05-00046</b>
<b>OF EXAMINING TRA RULES, POLICIES</b>	)	
<b>AND PROCEDURES IN LIGHT OF</b>	)	
<b>CURRENT TRENDS IN GAS</b>	)	
<b>INDUSTRIES</b>	)	

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**CONCURRING OPINION OF DIRECTOR RON JONES**

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The above-styled docket came before a panel of the Tennessee Regulatory Authority (“Authority”) at an Authority Conference held on February 26, 2007. During the Conference, the panel voted to administratively close the docket. In addition to this determination, Chairman Kyle, Director Roberson and Director Miller agreed that there are “no outstanding issues that require further action by the Authority at this time.”<sup>1</sup> Because I agree with the determination to administratively close the docket but disagree with the underlying finding that there are no outstanding issues, I file this separate concurring opinion.

On December 2, 2005, Director Deborah Taylor Tate produced her *Report on Workshop Meetings Held July 18, 2005 and October 2, 2005* (“Report”).<sup>2</sup> Her *Report* included ten recommendations, none of which, in my opinion, have been fully addressed to date.<sup>3</sup> It is my

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<sup>1</sup> *Order Closing Docket*, p. 3 (Dec. 14, 2007).

<sup>2</sup> *In re: Generic Docket for the Purpose of Examining TRA Rules, Policies and Procedures in Light of Current Trends in Gas Industries*, Docket No. 05-00046, *Report on Workshop Meetings Held July 18, 2005 and October 5, 2005* (Dec. 2, 2005).

<sup>3</sup> On December 12, 2005, Director Tate presented the recommendations to the panel and requested the immediate implementation of her suggested PGA rule revision. This request was considered moot due to the November 22, 2004, decision of the Directors delegating authority to the Chair to shorten the 30-day purchased gas adjustment notification requirement. Transcript of Authority Conference, pp. 11-13 (Dec. 12, 2005).

opinion that the recommendations constitute outstanding issues to be resolved; however, given my decisions related to those issues, it is also my opinion that there is no reason for this docket to remain open. I address each recommendation below.

**Recommendation A.1. Minimum Filing Guidelines: The Directors should initiate a docket for the purpose of creating mandatory filing requirements for initiating rate cases.**

It is my opinion that the panel should accept recommendation A.1. It is my understanding that the Authority currently uses guidelines that were informally developed. Such guidelines should be formalized and updated. For example, the minimum filing guidelines attached to the *Report* refer to Excel 97 rather than a generic reference to the most recent version of the software. The proper procedural vehicle, in my opinion, for formalizing and updating the guidelines is a rulemaking proceeding. Such a proceeding would afford interested entities an opportunity to comment.

**Recommendation A.2. PGA Notice Requirement: The TRA should open a rulemaking proceeding to consider modifying the notice period contained in 1220-4-7-.02(3) as follows: “Any revision in the PGA shall be filed with the Authority no less than three (3) business days prior to the settlement date for the NYMEX futures front-month gas contract.”**

It is my opinion that the panel should accept recommendation A.2. and include the topic in the rulemaking convened as a result of recommendation A.1. The Authority addressed the concerns expressed in the *Report* at its November 22, 2004, Authority Conference by delegating authority to the Chairman to shorten the 30-day notice requirement contained in Authority Rule 1220-4-7-.02(3).<sup>4</sup> It is my conclusion that although this process has worked well, it still requires extraordinary action by the Chair. Adopting the language included within Recommendation A.2. or similar language would alleviate the need for any extraordinary action and result in a rule that recognizes the current dynamics in the marketplace.

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<sup>4</sup> Transcript of Authority Conference, pp. 14-17 (Nov. 22, 2004).

**Recommendation A.3. Submission of Proposed Orders:** TRA Staff should consult with other state commissions and report to the Directors regarding the efficiencies and accuracies recognized through the inclusion of proposed orders in contested case proceedings.

**Recommendation A.4. TRA Staff Role in Contested Case Proceedings:** (a) The Chief of the Utility Division should draft internal guidelines for Staff in each of its roles, as advisor and as a party pursuant to Rule 1220-1-2-.21. (b) Division Chiefs should review and update these guidelines at least annually. (c) These guidelines should be provided and explained to new TRA Staff as part of orientation. The guidelines should contain procedures for Staff to maintain accurate written records of communications with interested parties, instructions for filing records of communication with interested parties, the type of record to be kept and any other process or procedures to insure predictability, uniformity and appropriate communications with industry representatives.

It is my opinion that the panel should reject recommendations A.3. and A.4. The concerns that resulted in the crafting of these recommendations are adequately addressed through the Authority's rules and statutes and can be further addressed on a case-by-case basis by a hearing officer and/or the panel assigned to a particular docket.

**A.5. Protection of Proprietary or Confidential Information:** To reduce the regulatory burden on the industry and to streamline existing processes for the protection of proprietary information of regulated companies, TRA Legal Staff should prepare draft statutory language that provides the TRA with an exception from the Open Records Act that is similar to the statutory exceptions provided to other state agencies.

It is my opinion that the panel should accept recommendation A.5. While I do not fully agree with each of the conclusions offered by Director Tate, I am of the opinion that the agency would benefit from a clear, statutory directive on this issue.

**B.1. Pipeline Replacement:** The TRA Staff should review individual pipeline replacement programs with the respective gas company and make recommendations to the Directors. A major focus of this review should be the development of a "pipeline replacement tracker" to effectuate timely, efficient and accountable pipeline replacement.

It is my opinion that the panel should accept recommendation B.1. This is a safety recommendation. The Authority should take this opportunity to make certain that all cast iron and/or bare steel replacement programs are reviewed and understood, whether within or outside of a rate proceeding.

**B.2. Service Quality Standards:** The TRA should encourage all regulated gas companies to voluntarily file service quality metrics and implement a simple procedural schedule for the Consumer Services Division to review these filings on a regular basis.

It is my opinion that the panel should accept recommendation B.2. As I explained on October 26, 2006, when deliberating Docket No. 05-00258: “Service metrics provide clear signals as to the level of service paid for and provided and, as such, provide clear customer benefits.”<sup>5</sup> I believe this to be true today as well, and I am of the opinion that accepting the recommendation would be a step in the right direction.

**B.3. Conservation and Education:** The TRA and the gas companies should continue outreach efforts regarding the high cost of gas this winter and how consumers can benefit from conservation measures and low income programs.

**B.4. Low-Income Assistance Programs:** The gas companies should file in this docket information regarding the methods of funding low-income assistance programs utilized by other states.

**B.5. Research and Development:** The gas companies and GTI should propose an industry-wide method of funding Research and Development for further consideration in this docket.


It is my opinion that the panel should accept recommendations B.3, B.4, and B.5 and consider them in the context of on-going initiatives such as the Tennessee Home Energy Conservation Task Force. The Authority has a wonderful opportunity to develop a more permanent and formalized approach to conservation initiatives and to place Tennessee at the forefront of these issues. This first or fifth fuel, depending on perspective, will likely play an extremely important role in regulation for years into the future, particularly given utilities’ interest and support for the National Action Plan on Energy Efficiency.

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<sup>5</sup>Transcript of Proceedings, p. 12 (Oct. 26, 2006).

### **Conclusion**

In conclusion, it is my opinion that the recommendations contained in the *Report* remain outstanding and are deserving of the Authority's consideration. Having addressed those recommendations in a manner that results in future actions being considered in different proceedings, it is my opinion that it is appropriate to administratively close the docket.

  
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Ron Jones, Director