

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

April 19, 2006

IN RE:

**APPLICATION OF ESG PIPELINE (JC), LLC
FOR A CERTIFICATE OF CONVENIENCE AND
NECESSITY TO OPERATE A PROCESSED
METHANE GAS DISTRIBUTION SYSTEM
IN JOHNSON CITY, TN**

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**DOCKET NO.
05-00244**

ORDER GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

This matter came before Chairman Ron Jones, Director Pat Miller and Director Sara Kyle of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on January 10, 2006 for consideration of the *Application of ESG Pipeline (JC), LLC for a Certificate of Convenience and Necessity to Operate a Processed Methane Gas Distribution System in Johnson City, Tennessee ("Petition")* filed on August 31, 2005.

THE PETITION

On August 31, 2005, ESG Pipeline (JC), LLC ("ESG-JC" or the "Company") filed its application for a Certificate of Public Convenience and Necessity ("CCN") to construct and operate a pipeline to distribute processed methane gas from the Iris Glen Landfill, located in Johnson City, Tennessee, to a single industrial customer, Mountain Home Energy Center, LLC ("Mountain Home"). The landfill is owned by the City of Johnson City ("Johnson City"). The proposed pipeline will be constructed entirely within the city limits of Johnson City.

The *Petition* states that Biofuels, LLC (“Biofuels”) will build and operate a processing plant on land leased from Johnson City. Biofuels will purchase landfill gas from Johnson City, and the processing plant will then extract and process the methane gas. ESG-JC will purchase the processed methane gas and distribute it through its pipeline to initially one industrial customer, but eventually to as many as four (4) industrial customers¹ located within Johnson City. ESG-JC proposes to charge its industrial customer for transportation services only, the terms and conditions of which are detailed in the Transportation Services Agreement between ESG-JC and Mountain Home executed on August 19, 2005. The cost of the methane gas is determined by the Landfill Gas Purchase and Sale Agreement between Biofuels and Johnson City, executed on April 7, 2005.

Biofuels, ESG-JC, and Mountain Home are all subsidiaries of Energy Systems Group, LLC (“ESG”), which in turn is a wholly owned non-regulated subsidiary of the Vectren Corporation (“Vectren”), a holding company located in Evansville, Indiana. According to ESG-JC, the financing needed to construct the pipeline will be obtained either from ESG or Vectren.

APPLICABLE STATUTES

Tenn. Code Ann. § 65-4-201 (2004) requires public utilities to obtain a CCN from the Authority. In reviewing an application, the Authority must find sufficient evidence that the applicant possesses the resources and capabilities to construct and operate a public utility system in Tennessee.

On June 7, 2005, Chapter 361 of the Public Acts of 2005 became effective, which amended Tennessee Code Annotated, Title 65, Chapter 28 by adding Part 2, which is called

¹ The number of customers will depend on the amount of methane gas that can be extracted and processed to meet the fuel needs of the customers.

the *Landfill Methane Development Act*. This new legislation addresses the use of landfill gas as an alternative fuel for natural gas, and places the construction and operation of the pipeline for the transportation of methane gas and the rates and charges for the transport of methane gas under the jurisdiction of the Authority.² The construction and operation of a plant to process and treat landfill gas and the sales price of the methane gas by the supplier, however, are not regulated by the TRA or any other state agency.³ Therefore, the Authority's prime responsibility in this docket is to determine whether to approve a CCN for ESG-JC to construct and operate a pipeline for the transport of methane gas and consider the special contract between ESG-JC and Mountain Home for the transportation service provided.⁴

SPECIAL CONTRACT

As part of the Petition, ESG-JC also submitted for approval a Transportation Service Agreement⁵ ("special contract") between ESG-JC and Mountain Home for the transportation only of the methane gas. The special contract was entered into on August 19, 2005 and has an initial term of five (5) years. Thereafter, the special contract may continue on a month to month basis unless terminated by either party.

The proposed rates are found in Exhibit A to the special contract. The price is \$0.75 per MMBTU, with a monthly customer charge of \$310.00, which is charged regardless of usage. The Authority reviewed and took administrative notice of the transportation rates charged by Atmos Energy Corporation, Chattanooga Gas Company, Nashville Gas Company as well as ESG-JC, using the Company's estimated sales volumes for the first six months of operation, and found that the total monthly bill would be comparable among the four

² Tenn. Code Ann. § 65-28-205 (Supp. 2005).

³ Tenn. Code Ann. § 65-28-204 (Supp. 2005)

⁴ The TRA also has jurisdiction over ESG-JC for pipeline safety, to ensure the Company abides by the requirements of the Pipeline Safety Act of 1968 and TRA Rules. Tenn. Code Ann. §§ 65-28-104(3) and (6) (2004), and 65-28-106 (2004).

⁵ *Petition*, Exhibit #3.

companies. As the total monthly bill for ESG-JC would be less than the total monthly bill for two of the three natural gas companies, the Directors found these rates to be reasonable.

THE DECEMBER 12, 2005 HEARING

On December 2, 2005, the TRA issued a Notice of Hearing in this matter to be held on December 12 following the regularly scheduled Authority Conference. Appearing on behalf of the Company were Attorney Henry Walker, Daniel Harsh (Vice President of ESG and ESG-JC) and Dennis Bollinger (Director of Clean Fuel Projects for ESG), and representing Johnson City was Phil Pindzolla, Director of Public Works. There were no intervenors in this case and no members of the public requested to comment on the Petition.

Mr. Harsh adopted the prefiled testimony of Mr. James Adams, President of ESG. In his live testimony, Mr. Harsh stated that ESG has the managerial, technical and financial ability to build and operate the pipeline. Mr. Harsh described the business operation of Mountain Home (the industrial customer of ESG-JC) and explained that methane gas will replace the natural gas currently used to produce heat, air conditioning, and chilled and heated water. Since Mountain Home provides the energy needs of the VA Hospital and some East Tennessee State University (ETSU) buildings, located on the VA Hospital campus, the use of a cheaper fuel will lower the energy bills for the VA and ETSU. Mr. Harsh testified that the Company would abide by all TRA safety regulations. Further, he stated that Atmos Energy was the only energy provider in Johnson City, but it provided only natural gas, not methane gas.

FINDINGS AND CONCLUSIONS

Officers of ESG-JC and ESG attested to the need for a provider of processed methane gas in Johnson City. Not only will the methane provide a cheaper fuel alternative to industrial

users, it will provide a new source of revenue to Johnson City from the sale of its landfill gas to Biofuels. There are no other providers of methane gas in Johnson City and the Company will not be in competition or interfere with any distribution lines belonging to Atmos Energy, which has a franchise with Johnson City to deliver natural gas.

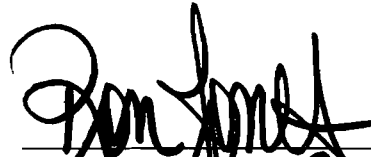
The officers of ESG-JC and ESG satisfactorily attested to the financial, technical and managerial resources available to ESG-JC in the construction and operation of the pipeline. The Company satisfactorily responded to all general, financial and safety questions posed to it by the Authority. Johnson City is in favor of this project and all contracts are in place between Johnson City, Biofuels, ESG-JC and Mountain Home. The special contract with Mountain Home provides transportation rates that are comparable to Atmos Energy, Chattanooga Gas Company, and Nashville Gas Company, the three largest regulated providers of natural gas in Tennessee, and therefore, are reasonable, subject to future evaluation at the point when more mature operating information becomes available.

There are no intervenors in this case and there have been no comments offered by the public. Johnson City will benefit from the \$1 million or more additional annual revenue from the sale of its landfill gas and the customers of Mountain Home will benefit from lower energy bills resulting from the use of a cheaper fuel source.

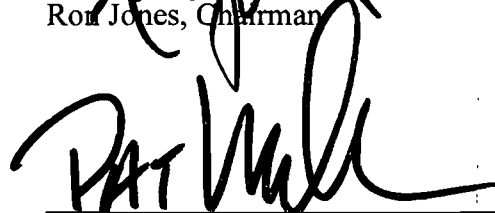
Therefore, the Directors unanimously concluded that ESG-JC meets the statutory requirements of Tenn. Code Ann. § 65-4-201 and the *Landfill Methane Development Act*, and approved ESG-JC's application for a CCN to construct and operate a pipeline for the processed methane gas distribution system in Johnson City, Tennessee. The Authority also unanimously approved the special contract between ESG-JC and Mountain Home for the transportation of methane gas from the supplier to Mountain Home.

IT IS THEREFORE ORDERED THAT:

1. Administrative notice is taken of the effective transportation rates of Atmos Energy Corporation, Chattanooga Gas Company, Nashville Gas Company;
2. ESG's application for Certificate of Public Convenience and Necessity to construct and operate a processed methane gas distribution system in Johnson City, Tennessee is granted; and
3. The special contract between ESG Pipeline (JC), LLC and Mountain Home Energy Center, LLC for transportation service is approved.



Ron Jones, Chairman



Pat Miller, Director



Sara Kyle, Director