

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**August 18, 2006**

**IN RE:**

**PETITION OF CHATTANOOGA GAS COMPANY TO  
INCREASE RATES, INCLUDING A COMPREHENSIVE  
RATE DESIGN PROPOSAL AND REVISED TARIFF**

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**DOCKET NO.  
06-00175**

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**ORDER MODIFYING PROCEDURAL SCHEDULE**

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This matter is before the Hearing Officer for consideration of certain filings by the Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate") and Chattanooga Gas Company ("CGC" or the "Company") relating to the procedural schedule established in the Hearing Officer's Order of July 27, 2006 and the issuance of a protective order.

**PROCEDURAL SCHEDULE**

In voting to convene a contested case proceeding, the Directors of the Tennessee Regulatory Authority ("Authority" or "TRA") assigned to this docket instructed the Hearing Officer to consider settlement discussions between the parties and bifurcation of the revenue requirement and the rate design components in establishing a procedural schedule. On July 27, 2006, the Hearing Officer issued the *Order Suspending Tariffs, Granting Motions to Intervene and Establishing a Procedural Schedule* ("Order"), which incorporates both of these considerations. The Procedural Schedule set forth in the *Order* established that the hearing and determination of this matter would be bifurcated into two phases: revenue requirement and rate

design. The Procedural Schedule established a filing schedule for discovery and pre-filed testimony in each phase.<sup>1</sup> The dates in the Procedural Schedule were established in recognition of the filing dates of certain materials in support of the Company's Petition after June 30, 2006, and the ability of the intervening parties to proceed with discovery. The parties were instructed in the *Order* to file any objections to the Procedural Schedule with the Hearing Officer no later than five (5) days from the date of the *Order*.

On August 1, 2006, the Consumer Advocate filed its *Objection to Proposed Scheduling Order* ("*Objection*"), stating that

the proposed scheduled [sic] submitted by the Hearing Officer does not in a practical sense actually take into account the difficulties caused by the late filings on the part of CGC. Further, no substantive reason is apparent in the record for bifurcating the rate design issue in the manner envisioned by the proposed scheduling order. Additionally, there are numerous issues that may have been overlooked, which the Consumer Advocate intends to raise.<sup>2</sup>

In addition to objecting to the Procedural Schedule, the Consumer Advocate asked for an opportunity to discuss an alternative schedule with the parties. The Consumer Advocate stated that the Chattanooga Manufacturers Association ("CMA") is in agreement with the *Objection*.

On August 2, 2006, CGC filed its *Response to Hearing Officer's Order Establishing a Procedural Schedule* ("*CGC's Response*"). CGC expressed concerns regarding the bifurcation process, the manner in which certain issues would be addressed and particular dates set forth in the Procedural Schedule. As was requested by the Consumer Advocate, CGC also expressed a desire to meet with the parties to develop a schedule and address concerns regarding specific issues. CGC asked the Hearing Officer to permit

the parties to meet and clarify their understanding of the issues to be addressed in the two phases set forth in the Hearing Officer's Procedural Schedule and to recommend a joint proposal that will allow the case to be completed within six

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<sup>1</sup> For these reasons, the Procedural Schedule, with the bifurcated proceeding, carries this matter into January, 2007 for completion.

<sup>2</sup> *Objection to Proposed Scheduling Order* (August 1, 2006), p. 1.

months from CGC's filing of the Petition as required by law.<sup>3</sup>

In its *Response*, CGC stated that representatives of the Consumer Advocate and CMA would meet on August 4, 2006 to discuss proposing to the Hearing Officer, “. . . a schedule that will provide a full and fair opportunity for all parties to present their case and allow a final order in the time frame required by law.”<sup>4</sup>

The parties confirmed with the Hearing Officer that they were meeting on August 4, 2006 to develop an alternative procedural schedule. On August 4, 2006, a Notice of Filing was issued at the direction of the Hearing Officer instructing the parties to file an agreed procedural schedule no later than August 8, 2006 and stating that all dates in the Procedural Schedule issued by the Hearing Officer on July 27, 2006 would remain in effect absent approval of an alternative schedule by the Hearing Officer. On August 8, 2006, the Consumer Advocate informed the Hearing Officer that an alternative proposed schedule would be filed on August 9, 2006.

The parties filed a *Joint Proposed Procedural Schedule* (“*Joint Filing*”) on August 9, 2006. In the *Joint Filing*, the parties recited the following agreements:

The Parties have agreed that traditional rate design issues, including the class cost of service study, should be considered during the revenue requirement phase. Further, the Parties have agreed that the Company's proposed Energy Conservation Plan (“ECP”), including recovery of costs associated with the ECP, and Conservation Usage Adjustment (“CUA”), including the rate design for the CUA, will be considered in Phase II.

The Parties have agreed to include in the proposed Procedural Schedule a proposed date for an Authority ruling for Phase I on or before December 31, 2006, that will allow rates to be effective by January 1, 2007. Likewise, the Parties have agreed to include in the proposed Procedural Schedule a proposed date for an Authority ruling for Phase II on a conservation plan and its associated rate design. All Parties reserve the right to raise any and all objections to any additional issues that may be proposed for Phase II.<sup>5</sup>

In addition to the foregoing agreements, CGC stated that because the TRA reviews gas costs and

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<sup>3</sup> *Response to Hearing Officer's Order Establishing a Procedural Schedule* (August 2, 2006), p. 2.

<sup>4</sup> *Id.*, at 4.

<sup>5</sup> *Joint Proposed Procedural Schedule* (August 9, 2006), p.2.

related revenues through an annual actual cost adjustment audit and because the TRA is reviewing the treatment of CGC's asset management agreement and related revenue in TRA Docket Nos. 04-00402, 04-00403, 05-00321 and 05-00322,

CGC believes that these dockets are more appropriate forums for addressing the treatment of asset management agreements and the related revenue. . . .CGC acknowledges that the [Consumer Advocate] and CMA believe that these issues are more appropriately addressed in Phase II of the present docket.<sup>6</sup>

The *Joint Filing* proposes a procedural schedule that commences with the filing of the first round of discovery on August 11, 2006 and concludes with a Hearing on the merits from December 6 through December 8, 2006. The last filing deadline is the submission of pre-filed rebuttal testimony on November 14, 2006, three weeks before the proposed Hearing date.

The Hearing Officer is appreciative of the collaborative effort of the parties in analyzing the issues in this docket and in jointly proposing a procedural schedule that expedites the process. In contrast to the Procedural Schedule set forth in the July 27, 2006 *Order*, the parties have separated certain issues from consideration of the revenue requirement and rate design and bifurcated those issues into a second proceeding that would commence after the conclusion of the first proceeding in which the revenue requirement and rate design are determined.

The emphasis of the proposed procedural schedule is to conclude deliberations on the revenue requirement and rate design by the end of December, 2006.<sup>7</sup> The Hearing Officer encourages determination of these issues within the six-month period, however, the proposed

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<sup>6</sup> *Id.*, at 2-3.

<sup>7</sup> CGC asserts that the TRA is "required by law" to conclude this matter within a six-month period from the filing of CGC's Petition. However, Tenn. Code Ann. § 65-5-103 provides for a nine month period for the Authority which to conclude the matter. As stated in the *Order* of July 27, 2006,

Tenn. Code Ann. § 65-5-103 provides that any rate "increase, change or alteration" may not be placed into effect until the expiration of six months following the date on which that increase, change or alteration was filed with the TRA. In addition, Tenn. Code Ann. § 65-5-103 provides that the TRA may require the Company to put into place a bond representing the amount of the increase in the event the Company seeks to put any increase, change or alteration into effect six months after filing. (*Order*, at 5.)

Tenn. Code Ann. § 65-5-103(b)(1) permits the Company to place the proposed rates into effect under bond after six months. Tenn. Code Ann. § 65-5-103(a) provides nine months for the investigation by the TRA.

schedule does not take into account the conduct of business or the working schedule of the Authority during the months of November and December. The proposed schedule simply does not provide sufficient time for the Authority to conduct the Hearing, analyze the evidence presented and deliberate on the issues of the revenue requirement and rate design. For this reason, the Hearing Officer cannot accept or approve the proposed procedural schedule in its entirety. The Hearing Officer hereby establishes a Modified Procedural Schedule, attached as **Exhibit A**, for resolution of the revenue requirement and rate design components of this docket and which further includes hearing dates of **November 28 through November 30, 2006** for the determination of those components. The dates for propounding discovery, for filing, and for status conferences are adopted as proposed by the parties. As with any schedule, the effectiveness of this Modified Procedural Schedule is directly dependent upon the extent of cooperation or delay in meeting the individual benchmark dates.

#### **PROTECTIVE ORDER**

CGC filed a proposed protective order on June 30, 2006. In the Order issued by the Hearing Officer, the parties were instructed to notify the Hearing Officer no later than August 9, 2006, whether the Protective Order, as proposed by CGC, may be entered or alternatively, to provide proposed modifying language. On August 9, 2006, the Consumer Advocate filed an objection to CGC's proposed protective order and offered an alternative protective order as a model for use in this docket. Thereafter, the Hearing Officer was notified that the parties were working together on language for a protective order, and on August 17, 2006, an Agreed Protective Order was submitted to the Hearing Officer for consideration. The Hearing Officer is reviewing the language of the Agreed Protective Order and will issue a Protective Order separate from this Order.

### **STATUS CONFERENCE**

Inasmuch as the parties have commenced discovery under the dates in the Modified Procedural Schedule and the Modified Procedural Schedule provides for a Status Conference to be held on August 23, 2006, the Hearing Officer hereby sets a Status Conference for **Wednesday, August 23, 2006** to commence following the conclusion of the Authority Conference being held at 1:00 p.m. on that date.

### **IT IS THEREFORE ORDERED THAT:**

1. The Modified Procedural Schedule, attached to this Order as **Exhibit A**, governing the revenue requirement and rate design components of this docket, is hereby adopted and is in full force and effect.

2. A Status Conference will be held following the Authority Conference scheduled at 1:00 p.m. on **Wednesday, August 23, 2006**.

  
J. Richard Collier, Hearing Officer

**MODIFIED PROCEDURAL SCHEDULE  
TRA DOCKET NO. 06-00175**

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|-----------------------------|------------------------------------------------------------------------|
| <b>August 11, 2006</b>      | <b>1<sup>st</sup> Round of Discovery Due</b>                           |
| <b>August 17, 2006</b>      | <b>Discovery Objections Due</b>                                        |
| <b>August 23, 2006</b>      | <b>Status Conference</b>                                               |
| <b>September 5, 2006</b>    | <b>Discovery Responses Due</b>                                         |
| <b>October 9, 2006</b>      | <b>Intervenors' Pre-Filed Testimony Due</b>                            |
| <b>October 16, 2006</b>     | <b>2<sup>nd</sup> Round of Discovery Due</b>                           |
| <b>October 20, 2006</b>     | <b>Discovery Objections Due</b>                                        |
| <b>October 26, 2006</b>     | <b>Status conference (Parties will report on settlement talks)</b>     |
| <b>October 31, 2006</b>     | <b>Discovery Responses Due</b>                                         |
| <b>November 14, 2006</b>    | <b>Company's Pre-Filed Rebuttal Testimony Due</b>                      |
| <b>November 28-30, 2006</b> | <b>Hearing on the Merits (Includes Traditional Rate Design Issues)</b> |