

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

July 27, 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**

**ORDER SUSPENDING TARIFFS, GRANTING MOTIONS TO INTERVENE
AND ESTABLISHING A PROCEDURAL SCHEDULE**

This matter came before Chairman Sara Kyle, Director Eddie Roberson and Director Ron Jones, of the Tennessee Regulatory Authority (“Authority” or “TRA”), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on July 10, 2006 for consideration of the *Petition* filed by Chattanooga Gas Company on June 30, 2006. During that Conference, the panel voted unanimously to proceed to convene a contested case proceeding and to appoint General Counsel or his designee as Hearing Officer for the purpose of preparing this matter for hearing, including handling preliminary matters and establishing a procedural schedule to completion.

BACKGROUND

On June 30, 2006, Chattanooga Gas Company (“CGC” or the “Company”) filed its *Petition* in which the Company seeks approval by the Authority of “an adjustment of rates and charges for natural gas service, the implementation of its comprehensive rate design proposal, which includes an Energy Conservation Plan and a Conservation and Usage Adjustment, and the

revision of its tariff.”¹ In the *Petition*, CGC requests that the Authority set a hearing and determine that “the existing rates of CGC are inadequate and that the rates proposed by the Company are fair, just, and reasonable and in the public interest.”² The *Petition* seeks to have CGC’s revised tariff, which would implement the proposed rates and rate design, effective as of January 1, 2007. Along with the *Petition*, CGC filed several tariffs containing the effective dates of July 31, 2006. CGC also filed a proposed Protective Order and proposed procedural schedule.

During the Authority Conference held on July 10, 2006, the panel instructed the Hearing Officer to consider including in the Procedural Schedule: (1) dates for settlement discussions between the parties and a report thereon to the Authority, and (2) bifurcation of the revenue requirement phase and the rate design phase of the case. CGC made subsequent filings in compliance with the TRA’s Minimum Filing Guidelines on July 7 and 14, 2006. On July 10, 2006, the Consumer Advocate and Protection Division of the Office of the Attorney General (“Consumer Advocate”) filed a Petition to Intervene. Chattanooga Manufacturers Association (“CMA”) filed a Petition to Intervene on July 19, 2006. CGC made an additional filing on July 25, 2006 providing supporting documentation.

PETITIONS TO INTERVENE

Criteria for Permitting Intervention

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;

¹ *Petition* at 1 (June 30, 2006).

² *Id.* at 8.

(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.

Under TRA Rule 1220-1-2-.06, any party opposing a motion in a contested case must file and serve a response to the motion within seven days of service of the motion.

Consumer Advocate

On July 10, 2006, the Consumer Advocate filed its Petition to Intervene. The Consumer Advocate asserts that the rate increases, changes and alterations sought by CGC may adversely affect consumers. The Consumer Advocate seeks intervention, stating that it is authorized to intervene in proceedings to represent the interests of Tennessee consumers pursuant to Tenn. Code Ann. § 65-4-118(c)(2)(A). The Petition to Intervene alleges that approval of CGC's *Petition* is not in the public interest because "such action would result in significantly higher rates for the distribution of natural gas. . . .The dollar amount of the requested increase is more than \$5.8 million annually."³ The Consumer Advocate states that it can protect the public interest in this regard only by participating in this proceeding. No party or person has filed an objection to or opposed the Consumer Advocate's intervention request.

The Hearing Officer finds that the legal rights and interests of Tennessee consumers may be determined in this proceeding and that the Consumer Advocate's petition is timely and its intervention will not impair the orderly and prompt conduct of these proceedings. For these reasons and applying the standards set forth in Tenn. Code Ann. § 4-5-310(a), the Hearing Officer grants the Consumer Advocate's Petition to Intervene.

³ *Petition to Intervene* at 2 (July 10, 2006).

Chattanooga Manufacturing Association (“CMA”)

CMA also seeks leave to intervene in this matter. CMA asserts that it is a trade association in existence for 100 years and representing over 250 manufacturers. CMA alleges that approval of the Company’s request to adjust rates and charges “will adversely affect CMA ratepayers and others similarly situated.”⁴ CMA states that the increase in revenue amounting to \$5.8 million annually with other requested charges, as requested by CGC, “are not fair or reasonable nor in the best interests of CMA and other ratepayers.”⁵ CMA filed its Petition to Intervene on July 19, 2006. No party or person has filed an objection to or opposed CMA’s intervention request.

The Hearing Officer finds that the legal rights, duties, privileges, immunities or other legal interests of CMA may be determined in this proceeding. The Hearing Officer also finds that CMA’s petition is timely and that the interests of justice and the orderly and prompt conduct of these proceedings will not be impaired by granting intervention to CMA. For the above reasons, and applying the standards set forth in Tenn. Code Ann. § 4-5-310(a), the Hearing Officer grants the petition to intervene filed by CMA.

PROTECTIVE ORDER

CGC filed a proposed Protective Order on June 30, 2006 which is part of the docket file in this matter. Because entry of a Protective Order is necessary for the parties to view certain materials and for the exchange of discovery responses, the parties are instructed to proceed to discuss the entry of a Protective Order. The parties are ordered to notify the Hearing Officer no later than **August 9, 2006** whether the Protective Order, as proposed by CGC, may be entered or provide proposed modifying language for consideration by the Hearing Officer. A Protective Order will be entered no later than **August 16, 2006**.

⁴ *Petition of the Chattanooga Manufacturers Association for Leave to Intervene*, p. 2 (July 18, 2006).

⁵ *Id.*

PROCEDURAL SCHEDULE

The Hearing Officer has prepared a Procedural Schedule that reflects the instructions of the panel and acknowledges the need for the parties have sufficient time to prepare and respond to discovery requests. In voting to convene a contested case proceeding, the panel instructed the Hearing Officer to consider inclusion in the Procedural Schedule: (1) dates for settlement discussions between the parties and a report thereon to the Authority, and (2) bifurcation of the revenue requirement phase and the rate design phase of the case. The Hearing Officer has prepared a Procedural Schedule to completion of this docket that incorporates both of these considerations. The Procedural Schedule is attached to this Order as **Attachment A**.

The Procedural Schedule provides for two rounds of discovery in the first phase or revenue requirement phase and one round of discovery in the second phase or rate design phase. After the filing of pre-filed direct testimony and of pre-filed rebuttal testimony there are periods of time expressly designated for the parties to engage in settlement discussions. These designated time periods are not intended to be exclusive of or impede ongoing settlement discussions between the parties throughout the course of this matter. In the event that the issues in this matter are resolved in whole or in part, it is incumbent on the parties to notify the Authority as soon as practicable.

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.

In the *Petition*, CGC asks the Authority to “approve CGC’s revised tariff implementing the proposed rates and comprehensive rate design proposal, to become effective January 1, 2007...”⁶ By requesting a January 1, 2007 effective date, the Company is asking for the rates to be in effect six months from the filing of the *Petition*. The Company has proposed a procedural schedule which, by itself, lays out a path for review of and a decision on the rate increase request within a six month period from June 30, 2006. Nevertheless, the filing of the *Petition* and supporting data from June 30, 2006 through July 25, 2006, has left the proposed procedural schedule unworkable. The procedural schedule proposed by CGC sets forth a date of July 21, 2006 for discovery to commence with the filing of discovery requests. The schedule proposed by CGC does not take into account the fact that significant supporting data was not filed with the TRA on June 30, 2006 with the *Petition*.

While the Company is free to assert that the TRA’s Minimum Filing Guidelines for filing a rate case petition are not, in fact, mandatory requirements, CGC should not stretch its filings out over a period of time after June 30, 2006, and reasonably expect all such filings to come under the purview of a June 30, 2006 filing date. In fact, the Company has made filings that bear significantly on its request for an increase several weeks after the filing of the *Petition*.

There are 99 requests that comprise the Minimum Filing Guidelines for the commencement of rate cases. The Minimum Filing Guidelines (“MFG”) were established in 2002 as a collaborative effort of Chattanooga Gas Company, Atmos Energy Corporation, Nashville Gas Company, the Consumer Advocate and the TRA. While it is understood by all participants in the formation of the MFG that these guidelines are not inflexible requirements, it is equally understood that proper analysis of a rate increase filing cannot begin in the absence of the significant documentation and information necessary to support the requested rate

⁶ *Petition* at 8.

adjustment. The MFG is designed to expedite the gathering of critical information so that a complex rate case can be resolved within the statutory guidelines of Tenn. Code Ann. § 65-5-103. When more complete and comprehensive information is provided at the time of filing a petition for a rate increase or adjustment, the process of reviewing and resolving the request is efficient and expeditious. The proverbial “squeeze” on the process occurs when the “filing” of the rate increase request extends over a period of time and the review process is strictly confined within the six month statutory guideline.

In its *Petition* filed on June 30, 2006, CGC acknowledged that it was filing only a part of the supporting documentation required by the MFR.

19. Along with this *Petition*, CGC is filing part of the Minimum Filing Requirements (“MFRs”), including some under protective seal pending the entry of a Protective Order. CGC expects to file the remaining MFRs on or before July 14, 2006.⁷

A review of the filing in this docket reveals that of the 99 components or requests in the MFG, sixty-four, or roughly two thirds, of the requests were provided with the filing on June 30, 2006. Thirty-three requests were provided over the next two weeks with twenty of those requests being submitted to the TRA on July 14, 2006. The remaining two requests were filed on July 25, 2006. Of the twenty requests filed on July 14, 2006, the information provided in ten of those requests is significant to commencing a meaningful analysis of the requested increase. These ten delayed responses involve the following documentation:

- #21 - General Ledger
- #25 - Detailed Company work papers supporting the filing
- #26 - Affiliate transactions
- #32 - Changes by industrial customers from one rate class to another
- #34 - Weather normalization work papers
- #42 - Expenses broken down by account number and removing payroll

⁷ *Petition* at 7 (June 30, 2006).

#56 - Direct and allocated expenses broken down
#61 - Federal Income Tax data
#65 - Plant additions
#66 - Special projects – plant

Of the two requests filed on July 25, 2006, one (#44) is crucial to the price out of salary and wages, a component which constitutes one of the largest operating costs of the utility.

In the opinion of the Hearing Officer, the underlying purpose and function of the adoption and implementation of the MFG are obscured when filings required by the MFG are delayed or stretched out over a period of time, especially in the instance of significant data and documentation supporting the rate increase request. In this instance, while CGC certainly did not ignore the MFG, significant information was not submitted at the time of the filing on June 30, 2006. The significant data was being filed up through July 25, 2006. Because this data is available to the Company to support the proposed increase at the time it is requested, the Hearing Officer sees no reason why the data could not have been filed with the *Petition* on June 30, 2006. Delayed filing of the significant supporting information does not permit parties or the TRA to have equal footing in access to information over which the Company has control. Such delay also impacts the ability of parties to proceed with discovery through the preparation of their discovery requests. For these reasons, the Procedural Schedule, with the bifurcated proceeding, carries this matter into January, 2007 for completion.

To facilitate the flow of the discovery process in this matter, the Hearing Officer encourages the parties to follow the requirements of TRA Rule 1220-1-2-.11(5)(a) and make every effort to file a motion seeking permission to serve more than forty requests in advance of serving the discovery requests that exceed in number the forty request limit. TRA Rule 1220-1-2-.11(5)(a) provides:

No party shall serve on any other party more than forty (40) discovery requests including subparts without first having obtained leave of the Authority or a Hearing Officer. Any motion seeking permission to serve more than forty (40) discovery requests shall set forth the additional requests. The motion shall be accompanied by a memorandum establishing good cause for the service of additional interrogatories or requests for production. If a party is served with more than forty (40) discovery requests without an order authorizing the same, such party need only respond to the first forty (40) requests.

All parties must serve discovery requests, objections and responses on the parties at the time of filing such with the TRA. All filings shall be made in the TRA docket room and shall be due at **2:30 p.m.** on the filing date. Any motions for extending the filing dates must be made in writing, stating the grounds for the request and certifying that the request has been discussed with all parties in this matter. All motions shall be filed in the TRA docket room with a copy served on the Hearing Officer.

SUSPENSION OF TARIFFS

A number of the tariffs filed with CGC's *Petition* on June 30, 2006 are marked with an effective date of July 31, 2006. Tenn. Code Ann. § 65-5-103 permits the Authority to suspend any increase, change, or alteration initially for a period of three months from the proposed effective date of the increase, change, or alteration. Because the hearing and determination of CGC's proposed increase, change or alteration in tariffs cannot be completed by the proposed effective dates of the tariffs, the Hearing Officer hereby suspends the effective dates of the tariffs filed with the *Petition* for a period of three months from the proposed effective dates or until **October 31, 2006.**

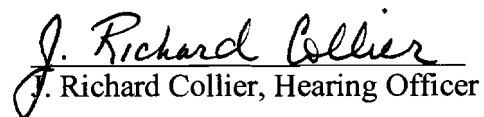
IT IS THEREFORE ORDERED THAT:

1. The Consumer Advocate and Protection Division, Office of the Attorney General, and Chattanooga Manufacturers Association are hereby granted leave to intervene and receive copies of any notices, orders or other documents herein.

2. The *Petition* and the effective dates of the tariffs filed with the *Petition* by Chattanooga Gas Company are hereby suspended for a period of three months from the proposed effective dates or until **October 31, 2006**.

3. The parties are shall notify the Hearing Officer no later than **August 9, 2006** whether the Protective Order, as proposed by CGC, may be entered or provide proposed modifying language for consideration by the Hearing Officer. A Protective Order will be entered no later than **August 16, 2006**.

4. The hearing and determination of this matter is hereby bifurcated into two phases: revenue requirement and rate design. The Procedural Schedule governing both phases shall be as set forth in **Attachment A** to this Order. Any party objecting to the Procedural Schedule shall file such objections with the Hearing Officer no later than five (5) days from the date of this Order.


J. Richard Collier, Hearing Officer

PROCEDURAL SCHEDULE

TRA Docket No. 06-00175

Phase I: Revenue Requirement

1 st Round Discovery Requests Filed	August 9, 2006
Objections to 1 st Requests Filed	August 19, 2006
1 st Round Discovery Responses Filed	September 6, 2006
Pre-Filed Direct Testimony Filed	September 27, 2006
Settlement Discussions (per Authority Order)	September 27, 2006 - October 4, 2006
Parties Report on Status of Negotiations	October 4, 2006
2 nd Round Discovery Requests Filed	October 4, 2006
Objections to 2 nd Requests Filed	October 6, 2006
2 nd Round Discovery Responses filed	October 13, 2006
Pre-Filed Rebuttal Testimony Filed	October 23, 2006
Settlement Discussions (per Authority Order)	October 23, 2006 - October 27, 2006
2 nd Report on Status of Negotiations	October 27, 2006
Hearing on Revenue Requirement (including Closing Arguments)	Week of October 30, 2006 (Subject to Panel Approval)

Phase II: Rate Design

Discovery Requests on Rate Design Filed	December 8, 2006
Discovery Responses on Rate Design Filed	December 15, 2006
Pre-Filed Direct Testimony on Rate Design	December 22, 2006
Hearing on Rate Design	Week of January 2, 2007 (Subject to Panel Approval)
Oral Arguments or Joint Proposal From Parties on Rate Design	January 9, 2007