

**IN THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:

**PETITION OF ATMOS ENERGY
CORPORATION FOR APPROVAL
AND ADJUSTMENT OF ITS RATES
AND REVISED TARIFF**

DOCKET NO. 07-00105

electronically filed 3:35pm on 8/13/07

MOTION TO SEVER

The Consumer Advocate moves the Hearing Officer to sever the research and development proposal sponsored by Gas Technology Institute (“GTI”) from the rate case at hand. Due to the complexities inherent in this rate case, the nature of GTI’s proposal, the questions of policy, equity and law entailed, the Consumer Advocate requests that GTI’s proposal be removed from consideration in this matter. A generic docket would be an appropriate forum in which the merits of GTI’s proposal could be scrutinized by all interested parties, including the Consumer Advocate, in the course of the hearing. Only then could a decision on the merits have an impact on an industry-wide scale. The Tennessee Regulatory Authority (“Authority”) has in past dockets taken this position in regards to GTI’s funding requests for research and development. Furthermore, funding for GTI is already under consideration in another docket focused on energy conservation.

BACKGROUND

According to representations made by GTI, the proposed surcharge is intended to replace a pipeline surcharge imposed by FERC in 1977. The FERC ordered surcharge was collected through the Purchase Gas Adjustment Mechanism from which GTI received funds expended for purposes

of research and development. In 1998, FERC directed that the surcharge be gradually phased out by the end of 2004. Since that time GTI has approached various state public service commissions with funding proposals for research and development, including the Authority. The merits of various GTI funding proposals have never been considered or determined by a hearing panel before the Authority during the course of a rate case.

ARGUMENT

I. A Rate Case Is An Inappropriate Forum For Considering GTI's Proposal

Rate making is a complex process. In the present case, Atmos Energy Corporation ("Atmos") alone has fourteen witnesses that have submitted testimony and will likely testify at the hearing on the merits. In addition, the Consumer Advocate and other Intervenors may have multiple witnesses called to provide testimony. Expert testimony by all interested parties could potentially cover a host of complex issues ranging from depreciation and utility accounting to customer service. Issues of such complexity are jealous in their desire for attention to detail.

A rate case is not an appropriate setting to consider GTI's request.¹ Under GTI's proposal, all consumers served by Atmos would be required to pay a surcharge based on the volume of gas consumed.² If the end result of this rate case included approval of the GTI surcharge, then the consumers of Atmos would be disproportionately and unfairly burdened whereas other similarly situated natural gas consumers would not. Consumers of other natural gas providers under the Authority's jurisdiction would not be subject to the surcharge thus singling out the consumers served

¹ *Order Granting Motion to Sever*, TRA Docket No. 04-00034, p.5 (August 24, 2004) (copy attached).

² TRA Docket No. 07-00105, Direct Testimony of Ron B. Edelstein, p. 23 lines 23-24 (May 4, 2007).

by Atmos. The result would be a situation in which similarly situated consumers would be treated differently. Without prejudice to the merits of GTI's proposal, the Consumer Advocate would submit that a surcharge or mandatory funding requirement for research and development should be considered in a forum that can accommodate all of the natural gas companies regulated by the Authority. Only in this manner could the merits of the proposal be examined by all interested parties and if approved, equitably applied to all Tennessee natural gas rate payers.

II. Recent Actions Of The Authority in Regards to GTI Proposals Recognize The Need For An Industry-Wide Approach

The Authority has already determined that a GTI funding proposal should not be considered in a rate case. In TRA Docket No. 04-00034, Chattanooga Gas Company ("CGC") petitioned the Authority for a rate increase. GTI intervened and Mr. Ron Edelstein filed direct testimony introducing a funding proposal to be shouldered by consumers to the benefit of GTI's research and development programs.³ The GTI proposal in TRA Docket No. 04-00034, and the present one in TRA Docket No. 07-000105, are in essence the same in concept and design in which both entail a surcharge to be paid by consumers based on the amount of gas consumed from which the proceeds will be applied to research and development.⁴ In acting upon and in granting a *Motion to Sever* filed by the Chattanooga Manufacturer's Association, the Hearing Officer concluded that "GTI's request requires a separate proceeding with greater participation from the industry and perhaps consumers

³ TRA Docket No. 04-00034, Direct Testimony of Ronald B. Edelstein, p. 28 (April 16, 2004).

⁴ *Id.*, TRA Docket No. 07-00105, Direct Testimony of Ron B. Edelstein, p. 23 lines 23-24 (May 4, 2007).

than will be afforded in this docket.”⁵

Since that ruling, the Authority convened a specific generic proceeding in TRA Docket No. 05-00046 to discuss policies, procedures and rules affecting the natural gas industry. Funding for GTI was among the issues discussed. The workshops hosted by the Authority among the industry, GTI and the Consumer Advocate, resulted in a *Report* which, among other things, recommended that the “gas companies and GTI should propose an industry-wide method of funding Research and Development for further consideration in this docket.”⁶ However, no proposal for an industry-wide method of funding was filed or brought forth by either GTI or the industry in that matter. TRA Docket No. 05-00046 was subsequently closed by the Authority.⁷

Currently, funding for GTI is being considered in TRA Docket No. 06-00309 in which the natural gas industry, GTI and the Consumer Advocate are participating. In a proceeding that has involved discussions of how best to implement a low-income conservation program, GTI has fully participated and has expressed its desires for funding of research and development. The pertinent fact remains that Chairman Roberson’s *Motion* in that particular proceeding contemplates a contribution from public utilities to GTI for research and development.⁸ Yet, GTI has persisted in continuing its proposal in the rate case at hand. Given that the Authority has determined in two separate matters that GTI funding should be considered in an industry-wide docket and that a third

⁵ *Order Granting Motion to Sever*, TRA Docket No. 04-00034, p.4 (August 24, 2004) (copy attached).

⁶ TRA Docket No. 05-00046, *Report on Workshop Meetings Held July 18, 2005 and October 5, 2005*, p. 9.

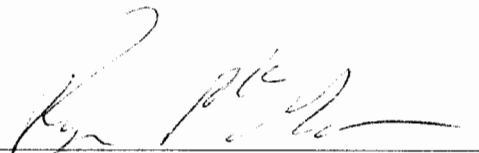
⁷ Transcript of Authority Conference: February 26, 2007, p. 5-10.

⁸ TRA Docket No. 06-00309, *Chairman Roberson’s Motion* (July 6, 2007).

docket is considering the possibility of another form of funding to benefit GTI, the Consumer Advocate would submit that the proper course of action in this matter is to sever GTI's proposal from this rate case. The merits of GTI's proposal should be examined in an industry-wide forum which will produce a decision on the merits. Only then could the possible implementation of the mechanisms for consumer funded research and development be applied fairly to Tennessee's consumers.

Wherefore, Petitioner asks the Authority to grant the Motion to Sever.

RESPECTFULLY SUBMITTED,

A handwritten signature in black ink, appearing to read 'Ryan L. McGehee', is written over a horizontal line.

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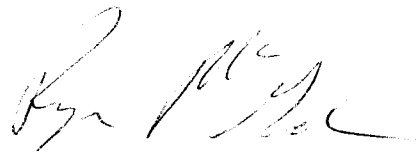
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via U.S. Mail or facsimile on August 13, 2007 to:

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BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

August 24, 2004

IN RE:

**PETITION OF CHATTANOOGA GAS COMPANY)
FOR APPROVAL OF ADJUSTMENT OF ITS)
RATES AND CHARGES AND REVISED TARIFF)**

**DOCKET NO.
04-00034**

**ORDER GRANTING MOTION TO SEVER
OF THE CHATTANOOGA MANUFACTURING ASSOCIATION**

This matter is before the Hearing Officer upon the *Motion to Sever* filed by the Chattanooga Manufacturing Association ("CMA"). CMA is seeking to sever from this action a request by the Gas Technology Institute ("GTI") to collect from all customers of Chattanooga Gas Company ("Chattanooga" or the "Company") a surcharge for "research and development." GTI filed its request to be considered by the Tennessee Regulatory Authority ("TRA" or "Authority") as a part of Chattanooga's rate case. This Order reflects an earlier determination by the Hearing Officer severing GTI's request for relief from this docket.

CMA's Motion to Sever

At a Status Conference held in this docket on April 19, 2004, GTI's petition for intervention was granted without objection from any of the parties. Nevertheless, during the Status Conference, questions were raised by the Hearing Officer and the parties regarding the actual relief being sought by GTI in this docket. Those questions generated a discussion as to whether GTI's request should be considered in a separate docket or a bifurcated proceeding. To assist in the determination of this issue, counsel for GTI was directed to file a letter detailing the

current amount of the charge for research and development being assessed by gas companies and whether GTI is seeking an assessment as a part of a basic rate increase or a part of a purchase gas adjustment ("PGA") charge. In addition, the parties agreed during the Status Conference that the issue of the manner in which GTI's request should be considered could be addressed through a motion to sever that request from this proceeding.

GTI filed its letter on April 22, 2004 and stated that the current rate of the Federal Energy Regulation Commission ("FERC") surcharge is 0.56 cents per Dth.¹ GTI explained that in 1998 the FERC surcharge rate was 1.74 cents per Dth, but that the rate decreased through the years as FERC decided to transfer to state jurisdictions the authority for funding research and development. The current rate of 0.56 cents per Dth became effective January 1, 2003 and will end December 31, 2004, after which there will no longer be a FERC surcharge for research and development. In its letter of April 22, 2004, GTI stated that its request seeks to re-establish the 1998 FERC surcharge rate and to collect those charges from Chattanooga's customers through the Company's PGA or a similar mechanism.

CMA filed a *Motion to Sever* ("Motion") GTI's request on April 23, 2004. In that Motion, CMA recounted the history of the FERC-ordered surcharge which was originated in 1977. In 1998, FERC determined that the surcharge would be gradually decreased to the point of being phased out at the end of 2004. CMA argues that the issue of imposing a surcharge for research and development should not be considered as part of this proceeding because customers of Chattanooga could be required to pay a disproportionate amount of the surcharge at a rate of 1.7 cents while customers of other regulated gas utilities would be paying a rate of 0.56 cents or potentially no surcharge at all. CMA suggests that a rulemaking proceeding would be the

¹ A Dth or Dekatherm is a thermal unit of energy equal to 1,000,000 Btus, that is, the equivalent of 1,000 cubic feet of gas having a heating context of 1,000 Btus per cubic foot. Btu or British Thermal Unit refers to the energy required to raise the temperature of one pound of water by one degree Fahrenheit, under standard pressure. See, *Natural Gas Industry Glossary of Terms* (American Public Gas Association)

appropriate mechanism for the TRA to use in establishing a uniform rate and collection procedure for all regulated carriers. According to CMA, "...only in that manner, can the TRA achieve a result that is fair to all regulated carriers and customers."²

On April 30, 2004, Chattanooga filed a letter supporting CMA's Motion. In its letter, Chattanooga stated, "Severing this issue and addressing it in a rulemaking or generic docket would facilitate the full participation of other regulated gas utilities that have no interest in the rate proceeding of [Chattanooga]."³ In addition, Chattanooga asserted that such a docket would ensure a uniform surcharge for all regulated gas utility customers and eliminate the potential that Chattanooga's customers might pay more than their fair share of the fee.

GTI filed its *Response of Gas Technology Institute to Chattanooga Manufacturers Association's Motion to Sever* ("Response") on April 30, 2004. In its *Response*, GTI asserts that "[t]he issue of a surcharge for research and development, whether through base rates or the PGA, bears a significant relationship to the determination of appropriate customer rates."⁴ While GTI asks that the Authority proceed with consideration of its request in this docket, GTI supports, in the alternative, the convening of a generic docket in the event that its request is severed from this docket. GTI does not dispute that the TRA could institute rulemaking proceedings; however, GTI proposes that a generic docket is a more appropriate and more efficient way to address the issue of research and development surcharges in Tennessee.

By commencing a generic proceeding, the Authority can bring the issue to finality. Given the importance of the issue of funding research and development activities for the benefit of end user natural gas consumers, the use of a generic proceeding is decidedly preferable to rule-making.⁵

² *Motion to Sever*, p. 2 (April 23, 2004)

³ *Response of Chattanooga Gas Company to Motion to Sever Filed by Chattanooga Manufacturers' Association*, p. 1 (April 30, 2004)

⁴ *Response of Gas Technology Institute to Chattanooga Manufacturers Association's Motion to Sever*, p. 1 (April 30, 2004)

⁵ *Id.*, p. 2

Discussion

According to the testimony of Ronald B. Edelstein, Director of State Regulatory Programs for GTI, the organization formally known as GRI was formed in 1977 by natural gas local distribution companies and pipeline companies in agreement with the FERC. The initial research efforts of GTI were focused primarily in the area of increasing the supply and lowering the cost of acquiring natural gas. In the 1980s and 1990s, GTI devoted nearly half of its budget to end-use research and development, focusing on increased-efficiency heating equipment and the development of efficiency technologies through combining power generation and uses for waste heat.⁶ According to Mr. Edelstein, although the FERC determined to discontinue the surcharge by the end of 2004, an initiative has begun with the FERC to establish a second national program for funding GTI's activities.⁷

On May 5, 2004, GTI responded to discovery requests propounded by Chattanooga and the Consumer Advocate and Protection Division of the Office of the Attorney General. In its responses, GTI proposes several requirements which the TRA might adopt as to the billing, collection, audit and reporting functions relating to GTI's requested surcharge.⁸ The testimony of Ronald B. Edelstein and GTI's responses to discovery, together with GTI's acknowledgement that its request could best be addressed in a separate docket, lead the Hearing Officer to the conclusion that the *Motion to Sever* should be granted.

From the information provided by GTI in this docket, GTI's request requires a separate proceeding with greater participation from the industry and perhaps consumers than will be afforded in this docket. Moreover, the details of GTI's plan for funding, research and oversight

⁶ See Testimony of Ronald B. Edelstein, p. 4-5 (April 16, 2004)

⁷ *Id.*, p. 28-29

⁸ Gas Technology Institute Response to Chattanooga Gas Company's Data Request No. 6, TRA Docket No. 04-00034 (May 5, 2004); Gas Technology Institute Response to Consumer Advocate and Protection Division's Discovery Request Nos. 1, 6, and 11, TRA Docket No. 04-00034 (May 5, 2004)

should be fully explored in a docket that will allow for attention to such particular details. A rate hearing involving only one gas utility is not the appropriate setting for considering GTI's assessment request. In addition, GTI has not articulated a basis for the TRA's authority to implement a surcharge on some gas utilities operating in the State of Tennessee while other non-regulated utilities may not be subjected to similar surcharge.

IT IS THEREFORE ORDERED THAT:

1. The Chattanooga Manufacturing Association's *Motion to Sever* the request of the Gas Technology Institute is granted.

2. Gas Technology Institute's request may be considered by the Authority in a separate docket opened as either a rulemaking proceeding or a generic proceeding for the purpose of determining whether the TRA has the authority to establish a surcharge for research and development and, if so, the manner in which to proceed to establish a uniform rate and a uniform collection and distribution procedure for utilities operating in Tennessee.


J. Richard Collier, Hearing Officer