

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESEE**

**February 19, 2008**

**IN RE:**

**DOCKET TO EVALUATE**

**CHATTANOOGA GAS COMPANY'S GAS**

**PURCHASES AND RELATED SHARING**

**INCENTIVES**

**DOCKET NO.**

**07-00224**

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**ORDER ON FEBRUARY 11, 2008 STATUS CONFERENCE**

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This matter came before the Hearing Officer during a Status Conference on February 11, 2008 to establish a procedural schedule and to address any issues raised by the parties either through filings made prior to February 11, 2008, or orally during the Status Conference.

**RELEVANT PROCEDURAL BACKGROUND**

On July 9, 2007, the panel assigned to Docket No. 06-00175, *In re: Petition of Chattanooga Gas Company for Approval of Adjustment of Its Rates and Charges, Comprehensive Rate Design Proposal and Revised Tariff*, voted unanimously to approve *Chattanooga Gas Company's Request to Close Docket* and determined that a separate docket would be opened in which to consider matters raised by the intervening parties;<sup>1</sup> specifically, issues related to asset management and capacity release.<sup>2</sup> Additionally, the panel voted to permit the intervening parties in Docket No. 06-00175 to file a petition to intervene in the instant docket for the consideration by the Hearing

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<sup>1</sup> The Consumer Advocate and Protection Division of the Office of the Attorney General and the Chattanooga Manufacturers Association were granted intervention in Docket No. 06-00175.

<sup>2</sup> Transcript of Authority Conference, p. 31-36 (July 9, 2007).

Officer.<sup>3</sup> An *Order Closing Phase II of Docket* [06-00175] was issued on December 17, 2007 memorializing the panel's decision.<sup>4</sup>

On September 26, 2007, the Authority opened this docket, Docket No. 07-00224, for the evaluation of the Chattanooga Gas Company's ("CGC" or the "Company") gas purchases and related sharing incentives. On December 28, 2007, the Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate") filed its *Petition to Intervene* in the docket. On January 14, 2008, at a regularly scheduled Authority Conference, the panel voted unanimously to convene a contested case proceeding and to appoint the Authority's General Counsel or his designee to act as the Hearing Officer for the purpose of preparing this matter for hearing, including establishing an issues list and procedural schedule, ruling on intervention requests, and entering a protective order, as required.

On January 30, 2008, the Hearing Officer issued a *Notice of Status Conference*. The notice provided that any party desiring to participate in this proceeding should file a petition to intervene not later than February 7, 2008, and that petitions to intervene filed by that date would be considered at the status conference on February 11, 2008. The notice also stated that the primary purpose of the status conference is to establish a procedural schedule, but may include issues raised through filings submitted prior to February 11, 2008 or made orally during the Status Conference.

#### **FEBRUARY 11, 2008 STATUS CONFERENCE**

The Status Conference began as noticed following the regularly scheduled Authority Conference in the Hearing Room on the Ground Floor of the Tennessee Regulatory Authority at 460 James Robertson Parkway, Nashville, Tennessee. The parties in attendance were as follows:

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<sup>3</sup> *Id.*

<sup>4</sup> *In re: Petition of Chattanooga Gas Company for Approval of Adjustment of Its Rates and Charges, Comprehensive Rate Design Proposal and Revised Tariff*, TRA Docket No. 06-00175, *Order Closing Phase II of Docket* (December 17, 2007).

**CGC** - J.W. Luna, Esq. and Jennifer L. Brundige, Esq., Farmer & Luna, PLLC, 333 Union Street, Suite 300, Nashville, TN 37201;

**Consumer Advocate** - Timothy Phillips, Esq. and Stephen R. Butler, Esq., Office of the Attorney General, P.O. Box 20207, Nashville, Tennessee, 37202;

**Chattanooga Manufacturers Association (“CMA”)** – Henry M. Walker, Esq., Boulton, Cummings, Connors & Berry PLC, 1600 Division Street, Suite 700, Nashville, TN 37203.

While CMA has not yet filed a petition to intervene in the docket, Counsel for CMA informed the Hearing Officer that such a filing will be forthcoming upon the appropriate client confirmations.

#### **I. CONSUMER ADVOCATE’S PETITION TO INTERVENE**

In its *Petition to Intervene*, the Consumer Advocate states that it is concerned that the assets at issue in this docket may be sold for less than their fair market value, thereby depriving customers of CGC monetary funds that should be used to lower the rates they pay for natural gas service. Accordingly, the Consumer Advocate seeks intervention pursuant to Tenn. Code Ann. § 65-4-118, which authorizes the Consumer Advocate to intervene in proceedings to represent the interests of Tennessee consumers. The Consumer Advocate further states that it can protect the public interest only by participating in this proceeding. No party or person has filed any objection to or opposed the Consumer Advocate’s intervention request in the docket.

The Hearing Officer finds that the legal rights and interests of Tennessee consumers may be determined in this proceeding, the Consumer Advocate’s petition is timely, and its intervention will not impair the orderly and prompt conduct of these proceedings. For the foregoing reasons, the Hearing Officer grants the Consumer Advocate’s *Petition to Intervene*. At this time, no other petitions to intervene have been filed in the docket.

#### **II. PROCEDURAL SCHEDULE**

In the *Notice of Status Conference*, the parties were instructed to be prepared to discuss the procedural schedule and to consider the appropriate timing for filing of various pleadings, discovery

and pre-filed testimony. On February 11, 2008, prior to commencement of the Status Conference, the *Consumer Advocate's Proposed Procedural Schedule* was filed with the Authority. During the Status Conference, the parties informed the Hearing Officer that they had discussed the *Consumer Advocate's Proposed Procedural Schedule* in advance of the Status Conference and were in agreement therewith.

The goals of the procedural schedule are to efficiently move this docket toward deliberations on the issues raised by the parties and to provide the parties a reasonable and adequate amount of time to conduct discovery, prepare and submit pre-filed testimony and prepare for Hearing. With slight modification, the Hearing Officer adopts the proposed Procedural Schedule, attached as **Exhibit A**. As any hearing date is subject to the approval of the panel, the Procedural Schedule does not include a hearing date at this time. Further, as with any schedule, the effectiveness of this Procedural Schedule is directly dependent upon the extent of cooperation on the part of the parties in meeting the individual benchmark dates.

**A. CHARACTERIZATION OF MATTERS FOR RESOLUTION**

During the Status Conference, CGC stated that the presentation and flow of the docket would be better served if the Consumer Advocate and other intervening parties, if any, filed claims for relief, to which the Company could file responses, in lieu of the submission of generic issues lists by each party. In response, the Consumer Advocate asserted that this docket was opened by the TRA to evaluate CGC's gas purchases and related sharing incentives, and therefore, issues lists are consistent with the type of docket established by the Authority.

In Docket No. 06-00175, the panel determined that a separate docket would be opened in which asset management and capacity release issues may be considered in the context of a contested case proceeding.<sup>5</sup> Further, in designating the Authority's General Counsel or his designee

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<sup>5</sup> *Id.*

to prepare this docket for a Hearing, the panel directed the Hearing Officer to oversee, among other things, the establishment of an issues list.

The Authority has established another docket, Docket No. 07-00225,<sup>6</sup> which is substantially similar in nature to the current docket. The question of whether to characterize the matters for resolution in the docket as claims or issues was raised in Docket No. 07-00225. In that docket, the Hearing Officer determined that the parties were “required to identify their claims with regard to the issues to be decided in this docket. . . .”<sup>7</sup> Further, the Hearing Officer recognized that “the parties may not be able to fully describe their claims as to each issue without engaging in discovery.”<sup>8</sup> In Docket No. 07-00225, the Hearing Officer has required the parties to file claims in addition to the issues list approved previously by the panel in Docket No. 05-00258, as well as supplement new issues proposed by the parties for resolution in the docket.

It is important to note that the travel of Docket No. 07-00225 is not identical to this docket, and particularly, the panel in that docket had approved a Phase II Issues List prior to opening Docket No. 07-00225. In Docket No. 06-00175, the docket that precipitated the instant docket, neither the Hearing Officer nor the panel ruled upon the issues proposed for Phase II of that docket prior to its closure. Nevertheless, the Hearing Officer finds that the actions taken in Docket No. 07-00225 provide guidance for the management and administration of this docket.

Therefore, upon consideration of the travel of the instant docket, the comments of the parties, and Authority action taken in Docket No. 07-00225, the Hearing Officer hereby directs that the parties file a *Statement of Claims and Issues* that sets forth with specificity their claims, as well as any other issues, concerning asset management, capacity release, and related sharing incentives

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<sup>6</sup> *In re: Docket to Evaluate Atmos Energy Corporation's Gas Purchases and Related Sharing Incentives*, TRA Docket No. 07-00225.

<sup>7</sup> *In re: Docket to Evaluate Atmos Energy Corporation's Gas Purchases and Related Sharing Incentives*, TRA Docket No. 07-00225, *Order on November 5, 2007 Pre-Hearing Conference*, p.6 (November 8, 2007).

<sup>8</sup> *Id.*

proposed for resolution by the panel. All claims and issues to be decided by the panel should be framed in the form of a question. The deadlines for the initial filing by the Consumer Advocate and other Intervenors, as appropriate, and for the response by CGC have been incorporated into the Procedural Schedule attached to this Order.

### **III. DEFERRAL OF LITIGATION COSTS**

During the Status Conference, CGC requested that the Authority enter an order allowing it to accumulate and to defer any litigation costs associated with this docket. CGC stated that it was not seeking a pronouncement as to whether the costs will be recoverable at this time, only approval as a preliminary matter to defer litigation costs that it incurs as a result of its participation in this docket. CGC agreed that the determination of whether litigation costs are recoverable would be an issue for determination by the panel. The Consumer Advocate responded to CGC's request, stating that as this was the first time that it had heard of any request by CGC for deferral of litigation costs, it was unable to provide a substantive response.

In light of the foregoing, the Hearing Officer instructed CGC to file its request in the form of a motion including all citations and documentation to support its position by February 28, 2008. The Consumer Advocate is permitted to file objections to CGC's motion, if any, by March 5, 2008. These deadlines have been incorporated into the Procedural Schedule attached to this Order.

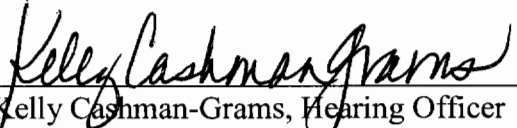
### **IT IS THEREFORE ORDERED THAT:**

1. The *Petition to Intervene* filed by the Consumer Advocate and Protection Division of the Office of the Attorney General on December 28, 2007 is hereby granted. The Consumer Advocate may participate in this proceeding as its interests require and receive copies of any notices, orders or other documents filed herein.

2. The Procedural Schedule, attached to this Order as **Exhibit A**, is adopted and is in full force and effect. Any request to alter this schedule shall be in writing and state whether any party objects to the proposed alteration.

3. Unless otherwise ordered, all filings shall be made by 2:00 p.m. on the date due indicated as required by Authority Rule 1220-1-1-.11(1).

4. A motion clarifying the oral request of Chattanooga Gas Company to defer costs associated with the litigation of this docket, and responses to the motion, if any, shall be filed with the Authority as set forth in the Procedural Schedule attached to this Order.

  
Kelly Cashman-Grams, Hearing Officer

**IN RE: DOCKET TO EVALUATE CHATTANOOGA GAS COMPANY'S GAS PURCHASES  
AND RELATED SHARING INCENTIVES**

**DOCKET NO. 07-00224**

**PROCEDURAL SCHEDULE**

<b>Due Date</b>	<b>Filing</b>
February 20, 2008	Statement of Claims and Issues by Consumer Advocate and Other Interveners (By close of business - 4:30 p.m.)
February 25, 2008	Response to Statement of Claims and Issues by CGC, including any additional matters to be proposed for inclusion in the final issues list
February 28, 2008	CGC's Motion to Defer Litigation Costs
March 4, 2008	Agreed Protective Order (or if agreement is not reached, each party shall file a brief detailing the disputed issues or provisions, its position, and a proposed protective order)
March 5, 2008	Responses to CGC's Motion to Defer Litigation Costs
March 7, 2008	Status Conference (to finalize the issues list, consider CGC's Motion to Defer Litigation Costs, and to resolve any disputes concerning the Protective Order)
March 18, 2008	First Round Discovery Requests Due
April 11, 2008	First Round of Discovery Responses and Objections
April 18, 2008	First Round Motions to Compel
April 22, 2008	First Round Responses to Motions to Compel
April 24, 2008	Status Conference (to resolve discovery disputes, if necessary)
May 1, 2008	First Round of Supplemental Discovery Responses (if ordered)
May 23, 2008	Pre-Filed Testimony of Consumer Advocate and Other Interveners
May 30, 2008	Second Round of Discovery Requests
June 20, 2008	Second Round Discovery Responses and Objections
June 26, 2008	Second Round Motions to Compel
June 30, 2008	Second Round Responses to Motions to Compel

**Exhibit A**



**IN RE: DOCKET TO EVALUATE CHATTANOOGA GAS COMPANY'S GAS PURCHASES  
AND RELATED SHARING INCENTIVES**

**DOCKET NO. 07-00224**

**PROCEDURAL SCHEDULE (Continued)**

<b>Due Date</b>	<b>Filing</b>
July 2, 2008	Status Conference (to resolve discovery disputes, if necessary)
July 9, 2008	Second Round Supplemental Discovery Responses (if ordered)
July 30, 2008	Pre-Filed Direct and Rebuttal Testimony of Chattanooga Gas Company
August 5, 2008	Third Round Discovery Requests
August 26, 2008	Third Round Discovery Responses and Objections
September 2, 2008	Third Round Motions to Compel
September 4, 2008	Third Round Responses to Motions to Compel
September 8, 2008	Status Conference (to resolve discovery disputes, if necessary)
September 15, 2008	Third Round Supplemental Discovery Responses (if ordered)
September 29, 2008	Pre-Filed Rebuttal Testimony of Consumer Advocate and Other Intervenors
October 6, 2008	Exchange and File Hearing Exhibits
October 9, 2008	Objections to Hearing Exhibits
October 13, 2008	Pre-Hearing Conference
Late October	Hearing on the Merits (Subject to Panel Availability and Approval)
Mid November	Post-Hearing Briefs (To be set by the Panel)

**Exhibit A**