

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

July 6, 2009

IN RE:	)	
	)	DOCKET NO.
DOCKET TO EVALUATE CHATTANOOGA	)	07-00224
GAS COMPANY'S GAS PURCHASES AND	)	
RELATED SHARING INCENTIVES	)	

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PRE-HEARING ORDER

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This matter came before the Hearing Officer during a Pre-Hearing Conference with the parties, Chattanooga Gas Company ("CGC" or the "Company") and the Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate" or "CAPD") on June 29, 2009.

**RELEVANT PROCEDURAL BACKGROUND**

On July 9, 2007, the voting panel of the TRA assigned to *In re: Petition of Chattanooga Gas Company for Approval of Adjustment of Its Rates and Charges, Comprehensive Rate Design Proposal and Revised Tariff* (Docket No. 06-00175) 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 parties that had intervened in Docket No. 06-00175 to file a petition to intervene in the new docket for the

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<sup>1</sup> The Consumer Advocate and the Chattanooga Manufacturers Association ("CMA") were granted intervention in Docket No. 06-00175. Subsequently, the CMA did not file a petition to intervene or otherwise participate in the current docket.

<sup>2</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).

consideration of the Authority or Hearing Officer, as appropriate.<sup>3</sup> On September 26, 2007, the Authority opened this docket, Docket No. 07-00224, for the evaluation of CGC's gas purchases and related sharing incentives.

Following extensive preliminary proceedings in advance of the anticipated July 13, 2009 Hearing on the merits, and in accordance with the *Third Amended Procedural Schedule*, the parties each filed pre-hearing requests and motions with the Authority on June 22, 2009, including *Chattanooga Gas Company's Motion for Clarification Relating to Issues of Accumulated and Deferred Litigation Costs* ("Motion Relating to Litigation Costs"), *Chattanooga Gas Company's Request for the Authority to Take Administrative Notice of Certain Documents* ("Request for Administrative Notice"), *Motion to Take Administrative Notice* filed by the Consumer Advocate, *Consumer Advocate's Motion for Leave to Serve One Additional Discovery Request* ("Motion to Serve Additional Discovery"), and *Chattanooga Gas Company's Motion to Exclude Dr. Stephen Brown's Testimony for Failure to Meet Expert Witness Qualifications and Reliability Standards* ("Motion to Exclude Testimony").

On June 25, 2009, the following responses to the parties' requests and motions were filed: *Consumer Advocate's Response to Chattanooga Gas Company's Motion for Clarification Relating to Issues of Accumulated and Deferred Litigation Costs* ("Response to Motion Relating to Litigation Costs"), *Consumer Advocate's Response to Chattanooga Gas Company's Request for the Authority to Take Administrative Notice of Certain Documents* ("Response to Request for Administrative Notice"), *Chattanooga Gas Company's Response to the CAPD's Motion to Take Administrative Notice* ("Response to CAPD's Motion to Take Administrative Notice"), *Chattanooga Gas Company's Objection to the CAPD's One Additional Discovery Request* ("Response to Motion to Serve Additional Discovery"), and *Consumer Advocate's Response to*

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

*Chattanooga Gas Company's Motion to Exclude Dr. Stephen Brown's Testimony ("Response to Motion to Exclude Testimony").*

#### **PRE-HEARING CONFERENCE**

A *Notice of Hearing and Pre-Hearing Conference* was issued by the Hearing Officer on June 16, 2009 setting a Pre-Hearing Conference on Monday, June 29, 2009. Thereafter, on the noticed date, the Pre-Hearing Conference began at approximately 1:45 p.m. 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:

**CGC – L. Craig Dowdy, Esq.**, McKenna Long & Aldridge, LLP, 303 Peachtree Street, Suite 5300, Atlanta, GA 30308, and **J.W. Luna, Esq.** and **Jennifer L. Brundige, Esq.**, Farmer & Luna, PLLC, 333 Union Street, Suite 300, Nashville, TN 37201; and,

**Consumer Advocate – Vance L. Broemel, Esq.** and **T. Jay Warner, Esq.**, Office of the Attorney General, P.O. Box 20207, Nashville, Tennessee, 37202.

Pursuant to Tenn. Code Ann. § 4-5-306, the Pre-Hearing Conference was held to establish or resolve certain matters prior to the commencement of a Hearing on the merits, including any outstanding procedural matters and pending motions, the filing of stipulations/admissions of facts and documents, and the orderly conduct of the Hearing.

#### **I. Motions & Requests of the Parties**

##### ***A. Chattanooga Gas Company's Motion for Clarification Relating to Issues of Accumulated and Deferred Litigation Costs***

In its *Motion Relating to Litigation Costs*, CGC requests clarification and some direction concerning the proper time in which the Company should provide the Authority with proof concerning its accumulated and deferred litigation costs in this docket. In its *Response to Motion Relating to Litigation Costs*, the Consumer Advocate indicates agreement with the Company's

position that litigation costs may extend beyond the close of the proceeding and further asserts that the Hearing on the merits is not the proper time for addressing the issue of costs.

During the Pre-Hearing Conference, the Hearing Officer agreed that the Hearing on the merits would not be the appropriate time to raise the issue of or take proof on litigation costs, and directed CGC to file its proof of costs, which should include a summary of all of its litigation costs in this docket along with itemized supporting detail and a proposed method of recovery, after the close of the proceeding. Following such filing by CGC, the Hearing Officer anticipates issuing a procedural schedule consisting of discovery, testimony and a hearing before the panel.

***B. Chattanooga Gas Company's Request for the Authority to Take Administrative Notice of Certain Documents***

In its *Request for Administrative Notice*, CGC, pursuant to Tenn. Code Ann 4-5-313(6) and 65-2-109(2) and (4), requests that the Authority take administrative notice of certain documents located in TRA Docket 08-00012, and the Company's Tariff, which is on file with the Authority. In its *Response to Request for Administrative Notice*, the Consumer Advocate states that it has no objection to the Company's requests. Therefore, the Hearing Officer granted the Company's requests for administrative notice and informed the parties that the documents listed in CGC's filing would be administratively noticed by the Authority prior to commencement of the Hearing on the merits.

***C. Motion to Take Administrative Notice***

In its *Motion to Take Administrative Notice*, the Consumer Advocate requests that the Authority take administrative notice of an Order of the TRA approving the settlement agreement reached in Docket No. 05-00165, as well as certain orders of the Virginia State Corporation Commission concerning its Case No. PUE-2004-00111. In its *Response to Motion to Take Administrative Notice*, CGC objects to the Consumer Advocate's motion and asserts that, for a

variety of reasons, the documents of which the Consumer Advocate requests administrative notice lacks relevance to the issues in the docket currently pending before the Authority. One reason cited by CGC for the lack of relevance includes the non-precedential nature of the settlement documents themselves. Additionally, CGC asserts that the request is untimely, such that a grant of the motion would deprive CGC of its right to contest and rebut the facts contained within the documents proposed for administrative notice. Additionally, the parties presented oral argument on the merits of the motion during the Pre-Hearing Conference.<sup>4</sup>

Upon review of the filings, and having heard the oral arguments of the parties, the Hearing Officer found that the Consumer Advocate failed to assert and describe the specific facts of which it wished the Authority to take administrative notice, or to otherwise attach a copy of the particular documents listed in its motion, chiefly those documents relating to the Virginia State Corporation Commission Case No. PUE-2004-00111, for either the Hearing Officer's or the Authority's review. Therefore, the *Motion to Take Administrative Notice* was denied.

***D. Consumer Advocate's Motion for Leave to Serve One Additional Discovery Request and Consumer Advocate's One Additional Discovery Request***

In its *Motion to Serve Additional Discovery*, the Consumer Advocate states that in an effort to save the time and resources of the parties and TRA at Hearing, it requests permission to propound the following additional discovery question upon CGC:

In Exhibits 03 and 04 to Consumer Advocate witness Steven Brown's Surrebuttal Testimony, references are made to Third Parties using the ETNG and SONAT pipelines for the years 2003 and 2005 ("Third Parties" are defined by Steve Brown at page 7 of his Surrebuttal as "Transportation of Gas of Others Through Transmission Facilities," i.e. Transport Customers, as defined by FERC Form 2.") Please provide documentation for transactions between these Third Parties as listed on Exhibits 03 and 04, giving volumes of throughput and dates of transactions, if any, between these Third Parties and Chattanooga Gas Company where gas was transported "through transmission facilities" of Chattanooga Gas Company. If gas was not sent through transmission facilities of Chattanooga Gas

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<sup>4</sup> See Transcript of Proceedings, pp. 5-15 (June 29, 2009).

Company, please describe the nature of the transactions, if any, with these Third Parties. If you believe the Third Parties on Exhibits 03 and 04 are incorrect, please state the names of the Parties you believe to be the correct Third Parties and their respective volumes for the relevant years.

In its *Response to Motion to Serve Additional Discovery* objecting to the Consumer Advocate's request, CGC asserts that the discovery request is untimely and beyond the scope of the *Third Amended Procedural Schedule*. Further, CGC asserts that it does not possess documentation or information concerning transactions between third party consumers on CGC's system and their suppliers, and additionally, to the extent that the Consumer Advocate seeks information concerning the volume of gas transported by CGC to its own customers, such information, as requested, is beyond the Company's records retention policy and thus may no longer exist.

The parties presented oral argument on the motion during the Pre-Hearing Conference, at which time the Consumer Advocate indicated that it had spoken with counsel for CGC concerning this issue and, while he appreciated the response that he received, would still like a response to the discovery request if at all possible. Nonetheless, the Consumer Advocate additionally indicated that if such information was not available or was burdensome to obtain, he would accept such explanation in resolution of the request for discovery.<sup>5</sup> Thereafter, the Hearing Officer denied the *Motion to Serve Additional Discovery*.

***E. Chattanooga Gas Company's Motion to Exclude Dr. Stephen Brown's Testimony for Failure to Meet Expert Witness Qualifications and Reliability Standards***

In its *Motion to Exclude Testimony*, CGC asserts that the Authority should exclude the Consumer Advocate's witness, Dr. Brown, as an expert witness in this proceeding because he does not qualify according to applicable law. Further, CGC asserts that Dr. Brown's testimony

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<sup>5</sup> See Transcript of Proceedings, pp. 16-20 (June 29, 2009).

should be excluded because the analyses and methodology employed therein are not reliable, not of the type utilized or conducted by gas supply and capacity experts in the industry or field, and does not substantially assist the trier of fact (the voting panel) in understanding the evidence or determining a fact in issue in this case.

In its *Response to Motion to Exclude Testimony*, the Consumer Advocate admits that Dr. Brown is not an expert in gas supply and capacity planning, and asserts that Dr. Brown's expertise in "Regulatory Economics," which includes experience reviewing data of regulated entities, sufficiently qualifies him as an expert for the purpose of providing testimony and recommendations upon which the Authority may rely in reaching decisions on the issues in this docket. Further, the Consumer Advocate asserts that Dr. Brown's testimony satisfies the "loosened evidentiary standard"<sup>6</sup> applicable to the TRA as set forth in Tenn. Code Ann. §§ 65-2-109 and 4-5-313.

The parties presented additional and detailed oral argument on the merits of the motion during the Pre-Hearing Conference.<sup>7</sup> Following oral arguments, the Hearing Officer advised the parties that the filings and arguments on the motion would be taken under advisement and a decision thereon deferred briefly. On July 2, 2009, prior to the Hearing Officer's issuance of this Order, the *Consumer Advocate's Notice of Withdrawal of Dr. Steve Brown as a Witness* ("*Notice of Withdrawal of Witness*") was filed with the Authority. The *Notice of Withdrawal of Witness* effectively renders moot the *Motion to Exclude Testimony* and obviates the need for a ruling thereon by the Hearing Officer.

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<sup>6</sup> *Consumer Advocate's Response to Chattanooga Gas Company's Motion to Exclude Dr. Steven Brown's Testimony*, p. 9 (June 25, 2009).

<sup>7</sup> See Transcript of Proceedings, pp. 20-68 (June 29, 2009).

## II. Order of Proof

Finally, the length and timing of the order of proof was discussed. The following order of the hearing was then established and agreed upon:

Opening Statement:	Consumer Advocate (20 minutes)
Opening Statement:	CGC (20 minutes)
<b>Consumer Advocate witness</b>	<b>Terry Buckner</b>
Cross-examination	CGC
Questions	TRA Staff <sup>8</sup>
Re-direct examination	Consumer Advocate
<b>CGC witness</b>	<b>Timothy Sherwood</b>
Cross-examination	Consumer Advocate
Questions	TRA Staff
Re-direct examination	CGC
<b>Comments from the public</b>	if any
Closing Statement:	Consumer Advocate (20 minutes)
Closing statement:	CGC (20 minutes)

The parties agreed that any of the above witnesses would be subject to recall for rebuttal purposes. Additionally, the parties requested the opportunity to make closing statements, but not in lieu of their submission of post-hearing briefs. The timeframe for filing post-hearing briefs following receipt and filing of the transcript of the hearing shall be determined by the Authority panel.


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<sup>8</sup> While the Directors may ask questions at any time, the parties agreed to allow Staff of the TRA to directly question a witness between cross and re-direct examination.



**IT IS THEREFORE ORDERED THAT:**

1. *Chattanooga Gas Company's Motion for Clarification Relating to Issues of Accumulated and Deferred Litigation Costs* is GRANTED, and Chattanooga Gas Company is directed to file proof of the accumulated and deferred litigation costs it has incurred in this docket after the close of this proceeding. Such proof of costs shall include a summary of all incurred litigation costs along with itemized supporting detail thereof and a proposed method for recovery of the costs.
2. *Chattanooga Gas Company's Request for the Authority to Take Administrative Notice of Certain Documents* is GRANTED.
3. The Consumer Advocate's *Motion to Take Administrative Notice* is DENIED.
4. *Consumer Advocate's Motion for Leave to Serve One Additional Discovery Request* is DENIED.
5. The order of hearing is adopted as set forth herein above.
6. The Hearing on the merits in this docket will commence promptly at **9:00 a.m. on Monday, July 13, 2009**, and continue through July 14, 2009, as needed.

  
Kelly Cashman-Grams, Hearing Officer