

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESEE

September 23, 2009

IN RE:

DOCKET TO EVALUATE CHATTANOOGA GAS
COMPANY'S GAS PURCHASES AND RELATED
SHARING INCENTIVES

DOCKET NO.
07-00224

ORDER

This docket came before Chairman Sara Kyle, Director Eddie Roberson and Director Mary W. Freeman of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on August 24, 2009 for deliberations on this matter.

RELEVANT PROCEDURAL BACKGROUND

On July 9, 2007, the panel 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,¹ specifically, issues related to asset management and capacity release.² Additionally, the panel voted to permit the parties that had intervened in

¹ The Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate") and the Chattanooga Manufacturers Association were granted intervention in Docket No. 06-00175.

² *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).

Docket No. 06-00175 to file a petition to intervene in the new docket for the consideration of the Authority or Hearing Officer, as appropriate.³

On September 26, 2007, the Authority opened Docket No. 07-00224 for the evaluation of Chattanooga Gas Company's ("CGC" or "Company") gas purchases and related sharing incentives. On December 28, 2007, the Consumer Advocate and Protection Division of the Office of the Attorney General filed its *Petition to Intervene* in the docket. On January 25, 2008, the Authority filed its *Order Convening a Contested Case and Appointing a Hearing Officer*. On February 19, 2008, an *Order on February 11, 2008 Status Conference* was issued by the Hearing Officer in which the Consumer Advocate's intervention was granted and a procedural schedule was adopted.

On April 8, 2008, CGC filed a *Motion to Dismiss*. The *Consumer Advocate's Response To Chattanooga Gas Company's Motion To Dismiss For Failure To State A Claim Upon Which Relief Can Be Granted And For Lack Of Subject Matter Jurisdiction By The Tennessee Regulatory Authority ("Consumer Advocate's Response")* was filed on April 22, 2008. On June 20, 2008, the Authority issued its *Order Denying Motion to Dismiss*.

Both prior to and subsequent to the *Order Denying Motion to Dismiss*, the parties engaged in extensive activity in this docket, including four rounds of discovery, direct testimony from the Consumer Advocate, rebuttal testimony from both parties, supplemental testimony from CGC, surrebuttal testimony from the Consumer Advocate, and numerous motions. On June 16, 2009, the Hearing Officer issued the *Notice of Hearing and Pre-Hearing Conference* setting the Hearing on the matter for July 13, 2009. On July 2, 2009, the Consumer Advocate withdrew Dr. Steve Brown as a witness along with his direct, rebuttal, surrebuttal testimony and exhibits.

On July 8, 2009, the parties filed a proposed settlement agreement. On July 9, 2009, the Authority issued a *Notice of Administrative Notice*. On July 17, 2009, the Authority filed its *Order*

³ *Id.*

Affirming Hearing Officer's Order on Third Round Discovery Disputes, which memorialized the Authority's deliberations and decision that occurred at the regularly scheduled Authority Conference held on June 15, 2009.

THE HEARING AND POST HEARING FILINGS

The Hearing in this matter was held before the voting panel on July 13, 2009. Participating in the Hearing were the following parties and their respective counsel:

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.**, **T. Jay Warner, Esq.**, and **Mary White, Esq.**, Office of the Attorney General, P.O. Box 20207, Nashville, Tennessee, 37202.

The panel initially reviewed the proposed settlement agreement. Based on statements from counsel and the entire record, the panel found that the proposed settlement was not in the best interest of consumers, CGC, or the Authority's resources. Thereafter, the panel voted unanimously to reject the proposed settlement agreement and to proceed with the Hearing. Testimony was presented by Mr. Terry Buckner for the Consumer Advocate and Mr. Timothy Sherwood for the Company with each witness being subject to cross-examination. Each party filed a post-hearing brief on July 31, 2009.

POSITION OF THE PARTIES

Consumer Advocate: The Consumer Advocate argues that, although CGC's asset management agreement compares favorably to those of Atmos Energy Corporation and Nashville Gas Company,⁴ agreements exist in other states with more favorable sharing arrangements.⁵ Accordingly, the Consumer Advocates suggests that the sharing percentage in CGC's asset

⁴ Buckner direct p. 10

⁵ Buckner direct p. 14

management agreement be changed from 50% for CGC and 50% for the asset manager, Sequent, to 85% for CGC and 15% for Sequent.⁶ The Consumer Advocate further contends that Chattanooga should share 90% of its 85% share of asset management profits with its customers, resulting in a final allocation of asset management profits of 76.5% for customers, 15% for the asset manager, and 8.5% for CGC.⁷ The Consumer Advocate adds that establishing this sharing structure prevents CGC from sharing 50% of Asset Management Agreement profits if a non-affiliate asset manager is chosen as is currently allowed by its tariff.⁸

The Consumer Advocate argues that the bidding process is not entirely fair and reasonable because the criteria for evaluating the winning bid are ambiguous.⁹ The Consumer Advocate also expressed concerns about the content of the Request for Proposal (“RFP”) and suggests that the TRA review the contract before it is placed out for bid.¹⁰ The Consumer Advocate contends that because Sequent retains a portion of the profits from managing CGC’s assets, CGC necessarily receives less than market value for those assets.¹¹

The Consumer Advocate withdrew its witness and all testimony on the issue of the proper level and mix of storage, peaking and transportation capacity.

CGC: CGC criticizes the Consumer Advocates’ analysis of sharing percentages based on the size of the sample and the lack of detail regarding the terms of the agreement to determine if the contracts are truly comparable. Additionally, CGC argues that the sharing percentages in the current asset management agreement were reached through a competitive bidding process and approved by the TRA. CGC contends that changing the terms of the agreement would negate the

⁶ Terry Buckner Direct Testimony, p. 13.

⁷ *Id.*, p. 14.

⁸ *Id.*, pp. 26-27.

⁹ *Id.*, p. 21.

¹⁰ *Id.*, p. 22.

¹¹ *Id.*, p. 23

benefits customers expect to receive.¹² CGC opines that the current audits performed by TRA Staff as well as the TRA Directors' discretion to review CGC's capacity levels and asset mix at any time provide sufficient oversight and safeguards.¹³

CGC asserts that it subscribes to the proper level and mix of storage, peaking and transportation capacity.

FINDINGS AND CONCLUSIONS

The panel deliberated this matter at the regularly scheduled Authority Conference held on August 24, 2009. Based on the entire record, the panel unanimously voted as follows:

1. CGC shall submit future asset management RFPs for approval prior to placing them out for bid.

2. CGC subscribes to an appropriate level and mix of storage, peaking and transportation capacity.

3. While CGC's asset mix appears reasonable at this time, changes in customer mix, weather, and usage patterns necessitate periodic review of CGC capacity planning. Therefore, a triennial review of capacity planning shall occur beginning in 2012 with the selection of an independent consultant. Implementation of this triennial review requires the adoption of procedures and processes; therefore, the parties shall provide comments regarding the proposed procedures/criteria¹⁴ within ten days.

4. The Hearing Officer's ruling that CGC file for recovery of litigation costs upon completion of this docket is upheld.

¹² Timothy Sherwood, Rebuttal Testimony, p. 18.

¹³ *Id.*, p. 14

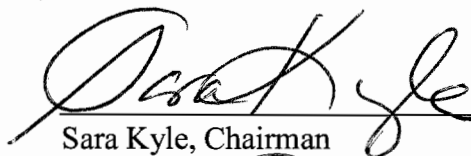
¹⁴ Policies and procedures were distributed to the parties at the Authority Conference. Copies of the same are attached to this Order as Exhibit 1.


IT IS THEREFORE ORDERED:

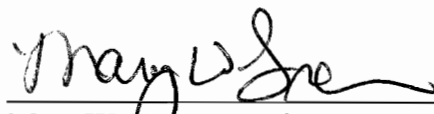
1. Chattanooga Gas Company shall submit future asset management Request for Proposals for approval prior to placing them out for bid.

2. A triennial review of capacity planning shall occur beginning in 2012 with the selection of an independent consultant. The parties shall provide comments regarding the proposed procedures/criteria for such triennial review (attached as Exhibit 1) within ten days.

3. The Hearing Officer's ruling that CGC file for recovery of litigation costs upon completion of this docket is upheld.


Sara Kyle, Chairman


Eddie Roberson, Director


Mary W. Freeman, Director

Docket 05-00165, *Review of Nashville Gas Company's Incentive Plan Account Relating to Asset Management Fees*, Exhibit A wherein it states: ["CGC" is substituted for "NGC" or "Company"]:

Triennial Review

A comprehensive review of the transactions and activities related to the Performance-Based Ratemaking Mechanism (PBRM") shall be conducted by an independent consultant once every three years. The initial triennial review shall be started in the autumn of 2012 and subsequent triennial reviews shall be conducted every third year thereafter. The TRA Staff, the CAD, and CGC shall make an effort to maintain a list of no less than five (5) mutually agreeable independent consultants or consulting firms qualified to conduct the aforementioned review. Any dispute concerning whether an independent consultant shall be added to the list shall be resolved by the TRA Staff, after consultation with CGC and the CAD. For each review, the TRA Staff shall select three (3) prospective independent consultants from that list. Each such consultant shall possess the expertise necessary to conduct the review. The TRA Staff shall provide the list of prospective independent consultants to the CGC and the CAD via e-mail. CGC and the CAD shall have the right, but not the obligation, to strike one (1) of the prospective independent consultants from the list by identifying the stricken consultant in writing to the TRA Staff within thirty (30) days from the date the list is e-mailed. The TRA Staff shall select the independent consultant from those remaining on the list after CGC's and the CAD's rights to strike have expired. The cost of the review shall be reasonable in relation to its scope. Any and all relationships between the independent consultant and CGC, the TRA Staff and/or the CAD shall be disclosed and the independent consultant shall have had no prior relationship with either CGC, the TRA Staff, or the CAD for a least the preceding five (5) years unless CGC, the TRA Staff and CAD agree in writing to waive this requirement. The TRA Staff, the CAD and CGC may consult amongst themselves during the selection process; provided, however, that all such communications between the parties shall be disclosed to any party not involved in such communication so that each party may participate fully in the selection process.

The scope of the triennial reviews may include all transactions and activities related either directly or indirectly to the PBRM as conducted by CGC or its affiliates, including, but not limited to, the following areas of transactions and activities: (a) natural gas procurement; (b) capacity management; (c) storage; (d) hedging; (e) reserve margins; and (f) off-system sales. The scope of each triennial review shall include a review of each of the foregoing matters as well as such additional matters as may be reasonable identified by CGC, the TRA Staff, or the CAD relative to the operation or results of the PBRM.

CGC, the TRA Staff, or the CAD may present documents and information to the independent consultant for the independent consultant's review and consideration. Copies

of all such documents and information shall be presented simultaneously to the independent consultant and all other parties.

The independent consultant shall make findings of fact, as well as identify and describe areas of concern and improvement, if any, that in the consultant's opinion warrant further consideration; however, the independent consultant shall not propose changes to the structure of the PBRM itself. The independent consultant shall complete and issue a written report of its findings and conclusions by July 1 of the year immediately following the triennial review. The report deadline may be waived by the written consent of the TRA Staff, CGC, and the CAD.

The independent consultant shall not propose changes to the structure of the PBRM itself; however, the TRA Staff, CGC, or the CAD may use the report of the independent consultant as grounds for making recommendations or proposed changes to the Authority, and the TRA Staff, CGC, or the CAD may support or oppose such recommendations or proposed changes. Any proposed changes to the structure of the PBRM resulting from the initial triennial review or subsequent triennial reviews, whether adopted by agreement or pursuant to a ruling of the Authority, shall be implemented on a prospective basis only beginning with the incentive plan year immediately following such agreement or ruling.

The cost of the triennial reviews shall be paid initially by CGC and recovered through the ACA account. The TRA Staff may continue its annual audits of the PBR and the ACA account and the triennial reviews shall not in any way limit the scope of such annual audits.