

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

March 11, 2008

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

ORDER ON MARCH 7, 2008 STATUS CONFERENCE

This matter came before the Hearing Officer upon several filings of the parties made pursuant to the Procedural Schedule and thereafter considered during a Status Conference on March 7, 2008.

RELEVANT PROCEDURAL BACKGROUND

In accordance with the Procedural Schedule attached to the Hearing Officer's *Order on February 11, 2008 Status Conference*, the Consumer Advocate filed its *Consumer Advocate's Statement of Claims and Issues* ("*Statement of Claims and Issues*") on February 20, 2008. On February 25, 2008, CGC filed its *Chattanooga Gas Company's Response to the CAPD's Statement of Claims and Issues* ("*Response to Statement of Claims and Issues*").

On February 27, 2008, the Hearing Officer issued a *Notice of Status Conference* setting a Status Conference on March 7, 2008. The notice states that the Status Conference is scheduled to finalize the issues list, consider any motions filed by the parties as set forth in the Procedural Schedule, resolve any disputes concerning the Protective Order, if needed, and any other matters preliminary to a hearing.

On February 28, 2008, the *Consumer Advocate's Motion for Leave to Serve More than Forty (40) Discovery Requests ("Motion for Additional Discovery")* was filed with the Authority. In its *Motion for Additional Discovery*, the Consumer Advocate, pursuant to TRA Rule 1220-1-2-.11, seeks leave to propound discovery in excess of the forty requests generally permitted by the Authority. Also on February 28, 2008, the Authority received *Chattanooga Gas Company's Motion to Accumulate and Defer Litigation Costs ("Motion to Accumulate and Defer Litigation Costs")*.

On March 4, 2008, the Company and the Consumer Advocate filed a proposed *Agreed Protective Order* with the Authority, which was adopted by the Hearing Officer and entered in the docket the same day. On March 5, 2008, the *Consumer Advocate's Response to Chattanooga Gas Company's Motion to Accumulate & Defer Litigation Costs ("Response to Motion to Accumulate and Defer Litigation Costs")* and *Chattanooga Gas Company's Response to the Consumer Advocate's February 28th Filing ("Response to Consumer Advocate's Motion for Additional Discovery")* were filed with the Authority.

MARCH 7, 2008 STATUS CONFERENCE

The Status Conference began as noticed at approximately 1:00 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 - J.W. Luna, Esq. and Jennifer L. Brundige, Esq., Farmer & Luna, PLLC, 333 Union Street, Suite 300, Nashville, TN 37201, and Archie Hickerson, Director, Regulatory Affairs, AGL Resources, Inc., 5100 E. Virginia Beach Blvd., Norfolk, VA 23502; and,

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

I. CGC’S MOTION TO ACCUMULATE AND DEFER LITIGATION COSTS

In its *Motion to Accumulate and Defer Litigation Costs*, CGC requests that the Hearing Officer enter a preliminary order allowing CGC to accumulate and defer its litigation expenses in this docket, and further asserts that such an order is necessary for both financial accounting and regulatory purposes. Additionally, CGC states that it seeks “as an ultimate issue in this proceeding to recover the costs incurred in this contested case proceeding from the ratepayers through the Purchased Gas Adjustment Rule (“PGA”), Chapter 1220-4-7,”¹ thereby acknowledging that a determination of whether such costs are recoverable from ratepayers is an issue for the Authority panel. In its *Response to Motion to Accumulate and Defer Litigation Costs*, the Consumer Advocate does not object to the inclusion of consideration of the potential recovery of litigation costs from ratepayers by CGC to the final issues list in this docket, nor to CGC’s tracking of costs for such purpose.

During the Status Conference, the Hearing Officer summarized the positions of the parties on the *Motion to Accumulate and Defer Litigation Costs* as set forth in the written pleadings filed with the Authority. The parties concurred with the Hearing Officer’s characterizations of their positions. The Hearing Officer then found that based on a review of the pleadings, arguments of counsel, and the lack of objection by the Consumer Advocate, CGC should be permitted to accumulate and defer its costs associated with this litigation. This determination however does not address the issue of whether CGC may recover these costs in the future from ratepayers. Recovery is a determination that the panel will make at a later date. Therefore, CGC’s *Motion to Accumulate and Defer Litigation Costs* is granted.

¹ *Motion to Accumulate and Defer Litigation Costs*, p. 2 (February 28, 2008).

II. CGC'S REQUEST FOR BRIEFING SCHEDULE ON MOTION TO DISMISS

During the Status Conference, CGC notified the Hearing Officer of its intention to file a motion to dismiss the docket with the Authority and requested approval of certain dates for the filing of party briefs. The Consumer Advocate stated that, without waiving potential arguments or objections that it may include in its written reply, at this time it had no objection to the dates proposed by CGC. Upon consideration of the comments of the parties, the Hearing Officer adopted the following dates for the submission of pleadings by the parties:

- CGC's motion is to be filed on **April 8, 2008**, and
- Consumer Advocate's reply is to be filed on **April 22, 2008**.

The Hearing Officer informed the parties that upon further determination they would be notified of the date for oral arguments or other administrative action to be taken on the motion.

III. ISSUES FOR CONSIDERATION

In its *Statement of Claims and Issues*, the Consumer Advocate identifies six categorical issues for the consideration of the Authority in the docket. In its *Response to Statement of Claims and Issues*, CGC objects to the "lack of specificity and vagueness of the claims and issues set forth by the CAPD"² and provides a response to each of the Consumer Advocate's six claims or issues in an Answer-like format.

During the Status Conference, following inquiry of each of the six issues presented by the Consumer Advocate in this docket, the Hearing Officer referred the parties to the *Order Closing Phase II of Docket* [06-00175].³ In that Order, contemporaneously with the panel's decision to

² *Response to Statement of Claims and Issues*, p. 2 (February 25, 2008).

³ *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, *Order Closing Phase II of Docket* (December 17, 2007).

close the docket, it further determined that the issues raised by the Intervenor⁴ were appropriate for the consideration of the Authority, and considering the arguments of the parties, the panel ordered that a separate docket be opened and designated the current docket, Docket No. 07-00224, for the purpose of such review and consideration.

In Docket 06-00175, the Intervenor⁴s submitted Issues Lists for Phase II. Although that docket was suspended and later closed before those issues lists were finalized and approved, the lists involve and set out in detailed fashion the topics of asset management and capacity release. The Consumer Advocate stated that many of the issues submitted for consideration by the Intervenor⁴s in Docket No. 06-00175 continue to be applicable in this docket. The Hearing Officer informed the Consumer Advocate that a more detailed approach to the presentation of the issues will likely be helpful to the panel, and the Consumer Advocate agreed to revise and resubmit its proposed claims and issues in the docket. Thereafter, the Hearing Officer set the following schedule for filings concerning the final issues: Consumer Advocate's revised statement of claims and issues shall be filed by 10:00 a.m. on Tuesday, March 11, 2008 and CGC may file a reply to the revised claims and issues proposed by the Consumer Advocate by 4:30 p.m. on Wednesday, March 12, 2008.

Thereafter on March 11, 2008, the Hearing Officer received an electronic mail communication from the Consumer Advocate requesting an extension of time until 2:00 p.m. on Wednesday, March 12, 2008 for the filing of its revised statement of claims and issues. In an electronic mail response, CGC stated that it had no objection to allowing an extension of time and advised that it would require until 10:00 a.m. on Friday, March 14, 2008 to prepare its reply.

⁴ The Consumer Advocate and the Chattanooga Manufacturers Association were granted Intervention in Docket No. 06-00175.

In light of the agreement reached between the parties, the Hearing Officer granted the Consumer Advocate's request and hereby sets forth the following filing deadlines:

- Consumer Advocate's revised statement of claims and issues shall be filed no later than **2:00 p.m. on Wednesday, March 12, 2008**; and
- CGC may file a reply by **10:00 a.m. on Friday, March 14, 2008**.

IV. CONSUMER ADVOCATE'S MOTION FOR ADDITIONAL DISCOVERY

In its *Motion for Additional Discovery*, the Consumer Advocate, pursuant to TRA Rule 1220-1-2-.11, requests an allotment of 240 discovery requests and asserts that its motion should be granted due to the complexity of the subject matter, necessity of developing the record in light of the absence of an initial substantive filing in the docket, and Authority precedent. Further, the Consumer Advocate requests that the Hearing Officer require CGC to collect from Sequent Energy Management, L.P. ("Sequent"), CGC's Asset Manager and Company Affiliate, information and documents necessary to providing a full response to its discovery requests.

In its *Response to Consumer Advocate's Motion for Additional Discovery*, CGC opposes the Consumer Advocate's request for additional discovery requests and asserts that the Consumer Advocate has not complied with TRA Rule 1220-1-2-.11 because it failed to attach the proposed additional requests with its motion. Further, CGC contends that the Authority should evaluate specific discovery requests to prevent abuse and an expensive fishing expedition by the Consumer Advocate and that Docket No. 07-00225⁵ should not be used as a guide for determinations in this docket because the dockets involve different companies with unique facts.

Following lengthy oral argument by the parties on the *Motion for Additional Discovery*, the Hearing Officer determined that the motion should be denied and advised the Consumer Advocate to submit its discovery requests by March 18, 2008 in accordance with the Procedural

⁵ See *In re: Docket to Evaluate Atmos Energy Corporation's Gas Purchases and Related Sharing Incentives*, Docket No. 07-00225.

Schedule. Concurrently therewith, if its requests exceed forty, the Consumer Advocate should file the proper motion with the supplemental discovery requests attached for the consideration of the Hearing Officer.

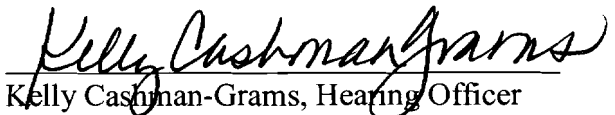
IT IS THEREFORE ORDERED THAT:

1. *Chattanooga Gas Company's Motion to Accumulate and Defer Litigation Costs* is granted insofar as it is permitted to accumulate and track its costs associated with this litigation; this determination does not address the issue of whether CGC may recover these costs in the future from ratepayers. Recovery is a determination that the panel will make at a later date.

2. The briefing schedule concerning Chattanooga Gas Company's forthcoming motion to dismiss is ordered as set forth herein.

3. The filing of revised claims and issues, and reply thereto if desired, is ordered as set forth herein.

4. The *Consumer Advocate's Motion for Leave to Serve More than Forty (40) Discovery Requests* is denied.


Kelly Cashman-Grams, Hearing Officer