BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

IN RE:	**February 11, 2010**	
PETITION OF CHATTANOOGA GAS COMPANY FOR A GENERAL RATE INCREASE, IMPLEMENTATION OF THE ENERGYSMART CONSERVATION PROGRAMS AND IMPLEMENTATION OF A REVENUE DECOUPLING MECHANISM	)	**DOCKET NO. 09-00183**

INITIAL ORDER GRANTING MOTION TO COMBINE

This matter came before the Hearing Officer at the Status Conference held on January 25, 2010. On December 29, 2009, the *Motion of Chattanooga Manufacturers Association to Combine the Request of Chattanooga Gas for Reimbursement of Legal Fees in Docket 07-00224 with the Request of Chattanooga Gas for a General Rate Increase in Docket 09-00183* ("CMA's Motion to Combine") was filed in this docket. On January 8, 2010, *Chattanooga Gas Company's Response in Opposition to the CMA's Request to Combine Docket 07-00224 with Docket 09-00183* ("CGC's Response") as well as the *Response of the Consumer Advocate to the Motion of Chattanooga Manufacturer's Association to Combine the Request of Chattanooga Gas for Reimbursement of Legal Fees in Docket 07-00224 with the Request of Chattanooga Gas for a General Rate Increase in Docket 09-00183* ("Consumer Advocate's Response") were both filed in this docket. The *Motion and Reply Brief of Chattanooga Manufacturer's Association* ("CMA's Reply Brief") was filed on January 13, 2010. By Notice dated January 15, 2010, oral argument on all of these filings was scheduled to be heard during the January 25, 2010 Status Conference.

During the Status Conference held on January 25, 2010, the parties summarized the points put forth in their filings, argued their respective positions, and answered several questions tendered by the Hearing Officer. Briefly stated, their respective positions are as follows.

Chattanooga Manufacturer's Association ("CMA") argues that the Tennessee Regulatory Authority ("TRA" or "Authority") does not have the statutory authority to award attorney's fees, a position, CMA contends, that is confirmed by the Middle Section of the Court of Appeals in *Kingsport Power Company v. Tennessee Public Service Commission and Kingsport Power Users Association*, an unpublished opinion dated June 13, 1984. Therefore, the request for recovery of approximately $700,000 in legal fees allegedly incurred by Chattanooga Gas Company ("CGC" or "Company") in litigating Docket No. 07-00224 can only be considered within the confines of a rate case, such as the instant docket, No. 09-00183. In the context of rate making, the TRA has the statutory authority to set just and reasonable rates that allow a utility to recover its prudent costs of providing service, but such statutory authority also invokes the requirement of public notice, a hearing, and the opportunity for ratepayers to comment on the utility's rates and services during the rate case.

The Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate") agrees with CMA that the TRA has no statutory authority to award legal fees, but argues that in whichever docket this issue is presented (and it takes the position that it can be presented in either docket), these are simply litigation fees unrelated to the instant rate case,[1] they cannot be considered a just and reasonable cost of providing service, and such legal fees cannot be awarded under any circumstance.

Chattanooga Gas Company contends that the legal fees at issue should be categorized as "gas-related costs" and collected from the ratepayers pursuant to the Purchased Gas Adjustment

[1] The Hearing Officer is of the opinion that Docket No. 07-00224, the docket in which the legal fees were incurred, stemmed from CGC's previous rate case, Docket No. 06-00175. *See Order Denying Motion To Dismiss*, Docket No. 07-00224 (June 20, 2008).

("PGA") rules, which are located in Chapter 1220-4-7 of the TRA Rules. Specifically, TRA Rule 1220-4-7-.05(1)(a)(3) provides:

> The amount paid to the consultant by an LDC [local distribution company] shall be recorded in the LDC's Deferred Gas Cost Account and shall be recovered through the procedures set forth in these PGA rules.

The Company argues that these fees were incurred in Docket No. 07-00224 as a direct result of litigation involving an investigation of CGC's gas purchases and related sharing incentives, and as such, the legal fees at issue should be treated no differently than as a "consultant" expense, and therefore flowed through the PGA and recovered as a gas cost.

The Hearing Officer is sympathetic to CGC's argument, in as much as the legal fees at issue were clearly incurred defending, not advocating, its current practices and procedures relating to gas purchases and sharing incentives, and therefore, could be characterized as gas-related costs. Nevertheless, CGC's argument breaks down when one examines the precise definition of "gas costs," which is the very first definition in the PGA rules. TRA Rule 1220-4-7-.01(1) provides:

> "Gas Costs" shall mean the total delivered cost of gas paid or to be paid to Suppliers, including, but not limited to, all commodity/gas charges, demand charges, peaking charges, surcharges, emergency gas purchases, over-run charges, capacity charges, standby charges, gas inventory charges, minimum bill charges, minimum take charges, take-or-pay charges and take-and-pay charges, storage charges, service fees and transportation charges and any other similar charges which are paid by the Company to its gas suppliers in connection with the purchase, storage or transportation of gas for the Company's system supply.

This definition of "gas costs" is simply too narrow to allow these litigation fees to be classified as "gas-related costs." Further, the term "consultant" as used in the PGA rules does not appear to contemplate the employment of attorneys and the expenses incurred from litigation.

Nevertheless, the fact that the disputed litigation fees do not fit within the definition of gas costs *per se* does not preclude considering whether such fees are prudent costs incurred in providing service. In the context of a rate case, legal fees and regulatory expenses are regularly

evaluated, and if considered as valid and prudent, they are included as a portion of the overall cost of service for recovery through base rates. As such, the Hearing Officer finds that the prudency of the expenses in dispute in this matter should be considered within a rate case, and because Docket No. 09-00183 is presently ongoing, it is both practical and efficient to combine the request for reimbursement for such legal fees with the request for a rate increase in this docket.[2] Therefore, CMA's Motion to Combine is well taken and hereby granted.

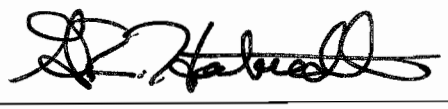
Understanding the controversial nature of this decision, the Hearing Officer grants herein permission to any aggrieved party to file an interlocutory appeal of this decision to the panel without need to file a motion with the Hearing Officer.[3]

Finally, in Part C of CGC's Response, the Company proposes that if these costs are considered in a rate case, they still should be treated as gas costs for purposes of recovery through the PGA. CMA agrees that this is a possible solution, while the Consumer Advocate objects to any recovery. If recovery of any of the disputed regulatory expenses is permitted by the Authority, this Hearing Officer is of the opinion that the costs be amortized over a finite period of years, to be determined by the panel.

IT IS THEREFORE ORDERED THAT:

1. CMA's Motion to Combine is hereby granted.

2. Any aggrieved party is granted permission to file an interlocutory appeal of this decision to the panel without filing a motion with the Hearing Officer.



Gary Hotvedt, Hearing Officer

[2] *See* TRA Rule 1220-1-2-.22(2).
[3] *See* TRA Rule 1220-1-2-.06(6).