BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

February 26, 2010

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

ORDER ADDRESSING PROTECTIVE ORDER DISPUTE, GRANTING MOTION TO COMPEL, AND MODIFYING PROCEDURAL SCHEDULE

These matters came before the Hearing Officer at the Status Conference held on January 25, 2010. Based on the filings and arguments of the parties, the Hearing Officer makes certain findings as follows:

Protective Order

On November 16, 2009, Chattanooga Gas Company ("CGC" or "Company") filed a *Proposed Protective Order* ("PPO 1"). At a Status Conference held on December 14, 2009, the Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate") objected to certain parts of PPO 1, stated that PPO 1 allows a public utility too much discretion in designating documents as confidential, and requested permission to submit a modified protective order for use in both this case as well as on a going-forward basis in other contested case dockets. On December 28, 2009, the *Submission of Consumer Advocate's Proposed Protective Order* ("PPO 2") was filed with the Tennessee Regulatory Authority ("TRA" or "Authority").

Thereafter, on December 28, 2009, the Hearing Officer issued a *Notice of Public Comment* which invited public comment no later than January 19, 2010 on the opposing versions (PPO 1 versus PPO 2) of a "model" protective order to be considered by the Authority henceforth.[1] On January 19, 2010, the following comments were filed: CenturyLink's letter in response to the Notice of Public Comment ("CenturyLink"); *Atmos Energy's Comments Regarding the Proposed Model Protective Orders* ("Atmos"); *Tennessee American Water Company's Comments Regarding Model Protective Order* ("TAWC"); *Tennessee Rural Coalition's Comments Regarding Model Protective Order* ("Rural Coalition"); *Piedmont Natural Gas Company Inc.'s Comments Regarding Model Protective Order* ("Piedmont"); *Response to the CAPD's Proposed Changes to the Standard Protective Order* ("CGC"); *Comments on Proposed Protective Order* ("Consumer Advocate"); and AT&T Tennessee's letter in response to the Notice of Public Comment ("AT&T").

In their respective filings, CGC argued for the adoption of PPO 1, and the Consumer Advocate argued for the adoption of PPO 2. In a very comprehensive filing, Piedmont submitted its own version of a proposed protective order ("PPO 3") as well as a red-lined mark-up of the differences between PPO 3 and the Consumer Advocate's version, PPO 2. Interestingly enough, the comments filed by CenturyLink, Atmos, TAWC, Rural Coalition and AT&T either adopt or at least support Piedmont's comments as well as PPO 3. CGC made a compelling argument that the Authority should convene a separate docket specifically for the purpose of examining the issues surrounding the scope of protective orders, rather than looking at this industry-wide issue in CGC's rate case.

Given the number of responses from a variety of utilities regulated by the Authority, and given CGC's argument that its rate case should not be complicated by the addition of the broader

[1] TRA Rule 1220-1-2-.11(12) states: "The Authority may adopt, and from time to time modify, a model protective order, the use of which shall not be mandatory, but which shall provide guidance as to appropriate provisions of such orders."

protective order issue, during the Status Conference held on January 25, 2010, the Hearing Officer agreed that the "model" protective order issue should be considered in a separate docket, and stated that he would recommend such action to the Authority. As for the dispute between CGC and the Consumer Advocate in the instant docket, the parties agreed that they would try to negotiate an agreed protective order, and if they could not, would ask the Hearing Officer for a specific ruling. The Hearing Officer stated that the starting point for their negotiations should be based on PPO 1 because the Consumer Advocate had not convinced him that its proposed modification should be adopted. The Hearing Officer explicitly stated that the ruling in favor of PPO 1 applied to this case only and was not intended to have a precedential effect on any other docket.

On February 17, 2010, the Company and the Consumer Advocate filed a *Proposed Agreed Protective Order* with which the Chattanooga Manufacturer's Association ("CMA") concurred. The Hearing Officer entered the [Proposed] *Agreed Protective Order* on February 19, 2010. The Hearing Officer sincerely thanks the parties for their diligent work in reaching this agreement and resolving this dispute.

Based upon the foregoing, the Hearing Officer **recommends** that the Authority open a new docket to consider proposed modifications to the scope of protective orders issued in contested case proceedings and that all comments pertaining to such orders that have been filed in this docket be transferred to the new docket for consideration by the Authority.

Consumer Advocate's Motion to Compel

The second matter that was addressed during the January 25, 2010 Status Conference was the *Consumer Advocate's Motion to Compel* ("Motion"), which was filed on January 20, 2010. In its Motion, the Consumer Advocate requested that CGC be compelled to respond to Request

Nos. 201[2] and 202[3] from the *Discovery Request of the Consumer Advocate to Chattanooga Gas Company*, filed January 6, 2010. In *Chattanooga Gas Company's Objections to CAPD's First Discovery Requests,* filed on January 13, 2010, CGC argues the following at pages 6-7:

> CGC objects to Request Nos. 201 and 202 as they seek information that is not relevant to a rate case proceeding. The CAPD is seeking information regarding capacity demand costs which are relevant to the gas cost and gas supply and capacity asset issues that have been litigated for the past two years in Docket 07-00224.
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> None of the information sought in Request Nos. 201 and 202 are relevant to base rates, the revenue requirement, or any rate design issues included in this rate case. Rather, all costs associated with capacity assets, as well as all revenues from CGC's asset manager's management of capacity assets, are handled through the Purchased Gas Adjustment ("PGA") Rule, and have already been litigated in Docket 07-00224. Accordingly, CGC objects to the request as not relevant, not reasonably calculated to lead to the discovery of admissible evidence, and overly broad and unduly burdensome.

In its Motion, the Consumer Advocate responds at pages 4-5 as follows:

> In these requests, the Consumer Advocate seeks to discover if CGC sold any of its "Capacity Demand Costs," directly or indirectly, to SouthStar, an affiliate of CGC, and, if so, what profit SouthStar may have earned on those transactions during the specified period. Upon information and belief, SouthStar is an affiliate of CGC who has a physical presence in Tennessee and is in the business of selling various natural gas assets which could be included in "Capacity Demand Costs." Obviously, if CGC sells its "Capacity Demand Costs" to SouthStar, who then sells those assets for a profit, those additional profits do not flow back to CGC's ratepayers, and ratepayers are not receiving the benefit of all of CGC's revenues, unless SouthStar's additional profits are imputed to CGC.
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> Similarly, if CGC sells its "Capacity Demand Costs" to an intermediary affiliate, such as Sequent, who then sells them to SouthStar, the profits from SouthStar's sales to a third party also should be imputed to CGC....

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[2] **REQUEST NO. 201** Admit of Deny: Capacity Demand Costs of Chattanooga Gas Company are sold directly or indirectly through Sequent Energy Management to SouthStar Energy Services, an AGL Resources subsidiary. For purposes of this and the following interrogatory only, "Capacity Demand Costs" shall be defined as gas commodity costs, interstate pipeline capacity, or any other costs associated with the gas supply plan of Chattanooga Gas Company.

If Denied, please describe what specific portions of the proceeding are denied and why they are inaccurate.

[3] **REQUEST NO. 202** If the preceding interrogatory is "admitted," how much profit was earned by SouthStar on the capacity demand costs purchased from Chattanooga Gas Company through Sequent Energy Management. Please provide your answer by year from the period of 2003 until the present.

At the January 25, 2010 Status Conference, both CGC and the Consumer Advocate fleshed out these arguments. Meanwhile, the Chattanooga Manufacturers Association ("CMA"), another intervenor in this docket, cited to the Hearing Officer a previous rate case wherein the Authority addressed a similar issue, and contended that the ruling in that case should be determinative of the outcome of the issue in this case. In his June 14, 2006 *Order Resolving Discovery and Protective Order Disputes and Requiring Filings* in Docket No. 05-00258, Chairman Ron Jones, acting as Hearing Officer, stated the following:

> As a general proposition, information related to the cost of gas, which includes the commodity and transportation costs offset by any revenues derived from use of the natural gas assets, is not relevant to this docket because such costs are not a factor used in calculating a company's rate base, operation and maintenance expenses, net operating income, rate of return, or base rates, all issues in this docket. Instead, gas costs are regulated independent of these items. Such costs are passed directly through to consumers via the PGA. Upon filing, the Authority audits gas cost recovery via the PGA using the ACA audit and assesses a surcharge or credit as necessary to ensure that only actually incurred natural gas costs are recovered from consumers. A second audit, the PBR audit, reviews the allocation of revenues or losses derived from the sale or purchase of natural gas between consumers and stockholders. Thus, information related solely to gas costs is not relevant to the determinations to be made in this docket.[4]

However, in ruling on discovery disputes concerning several requests from the Atmos Intervention Group for information from Atmos Energy Corp., the Hearing Officer overruled Atmos's objections to discovery that were based on lack of relevancy of the information being sought. On page 12 of that same Order, the Hearing Officer stated:

> As to the relevancy dispute, it can be comfortably concluded that the requested information is relevant in that it bears on, or reasonably could lead to other information that could bear on an issue in this docket. To explain, imputation of revenue issues do occur in the course of resolving rate cases. [Footnote 37: Atmos even noted during the status conference that in the recent Chattanooga Gas rate case imputation of revenues was an issue. *See* Transcript of Proceedings (June 8, 2006) (Status Conference).] A determination to impute revenues may affect the revenue requirement of the utility. [Footnote 38: In this case, the

[4] Petition of the Consumer Advocate to Open an Investigation to Determine Whether Atmos Energy Corp. Should be Required by the Tennessee Regulatory Authority to Appear and Show Cause that Atmos Energy Corp. is Not Overearning in Violation of Tennessee Law and that it is Charging Rates that are Just and Reasonable, Docket No. 05-00258, *Order Resolving Discovery and Protective Order Disputes and Requiring Filings,* p. 6 (June 14, 2006).

> amount of revenues imputed to the revenue requirement of Atmos could be zero. For example, it could be determined that the imputed AEM revenues should be treated as gas costs thereby reducing the amount of gas costs to be recovered from ratepayers and having no affect on the revenue requirement.] To the extent that AIG seeks to put forth an argument that the Authority should impute AEM's revenues to Atmos and thereby reduce Atmos's revenue requirement, the requested information is critical. Therefore, Atmos's argument on this point is rejected.[5]

Because Hearing Officer Jones's ruling was not reversed by the Authority, the Hearing Officer's Order in Docket No. 05-00258 can serve as precedent on the issue of permitting discovery, in a rate case, of information about an affiliate's revenue -- revenue which could in turn be imputed to the utility.

This Hearing Officer takes no position on whether an affiliate's revenue may be imputed for purposes of this rate case. Nor is this Hearing Officer determining that such information (if it exists) will be admissible at the hearing on the merits. Nevertheless, following the above-described discovery ruling as precedent, this Hearing Officer finds that in the instant docket, the information sought in Request Nos. 201 and 202 is reasonably calculated to lead to evidence that could be admissible in this rate case proceeding.[6]

As for CGC's objections that these requests are overly broad and burdensome, Request No. 201 is a request for admission requiring a simple "admit or deny," and therefore is neither overly broad nor burdensome. Request No. 202, while perhaps not the most artfully drafted question, is reasonably specific and should not be burdensome to answer, should such an answer be required by the response to Request No. 201. For these reasons, the Hearing Officer overrules CGC's objections and grants the Consumer Advocate's Motion.

Modification to Procedural Schedule

Due to scheduling circumstances, the Procedural Schedule established in the Hearing Officer's Order of December 23, 2009 is modified as follows:

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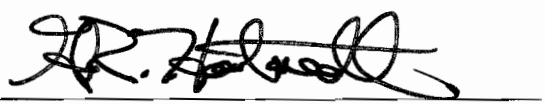
[5] *Id.* at 12.
[6] *See* Tenn. R. Civ. P 26.02(1).

March 10, 2010	**Intervening parties Pre-filed Direct Testimony**
March 16, 2010	**Second round of discovery requests**
March 18, 2010	**Objections to discovery (if necessary)**
March 22, 2010	**Motions to Compel (if necessary)**
March 24, 2010	**Status Conference (if necessary)**
March 29, 2010	**Intervening parties' response to second round of discovery requests**
April 5, 2010	**CGC's Rebuttal Testimony and CGC's response to second round of discovery requests**
April 5, 2010	**Pre-Hearing Motions (including any proposed settlement agreement)**
April 6, 2009 -- 5:30 pm	**Pre-Hearing Conference in Chattanooga**[7]
April 6, 2010 -- 6:00 pm	**Public Service Standard Hearing in Chattanooga**
April 12-14, 2010 -- 10:00 am	**Hearing on the Merits in Nashville**[8]

IT IS THEREFORE ORDERED THAT:

1. The *Consumer Advocate's Motion to Compel* is hereby granted, and Chattanooga Gas Company shall respond to Request Nos. 201 and 202 within 10 days of the date of this Order.

2. The Procedural Schedule is modified as set forth above.



Gary Hotvedt, Hearing Officer

[7] The Pre-Hearing Conference and Service Standard Hearing will be held in the Hamilton County Court House, Room 402, 625 Walnut Street, Chattanooga, Tennessee 37402.

[8] In the proposed procedural schedule, the parties suggested that the Authority set a "settlement hearing before the panel" 2-3 days prior to the Hearing on the Merits, if necessary. While the Hearing Officer understands the reason for such a request, it must be pointed out that the Authority (as well as CGC) has an obligation to notify the public of the dates and times of all hearings that may affect their rates. Therefore, the Hearing Officer admonishes the parties to file any proposed settlement no later than **April 5, 2010**, when other pre-hearing motions are due. Such a proposed settlement could then be preliminarily discussed at the Pre-Hearing Conference and an appropriate schedule could then be set without interfering with the public's right to notice.