filed electronically in docket office on 03/29/10

Before the

TENNESSEE REGULATORY AUTHORITY

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

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SUPPLEMENTAL TESTIMONY
OF
TERRY BUCKNER

****

March 29, 2010

Before the

TENNESSEE REGULATORY AUTHORITY

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

AFFIDAVIT

I, Terry Buckner, Regulatory Analyst, for the Consumer Advocate Division of the Attorney General's Office, hereby certify that the attached Supplemental Testimony represents my opinion in the above-referenced case and the opinion of the Consumer Advocate Division.

Terry Buckner

TERRY BUCKNER

Sworn to and subscribed before me
this 29th day of March, 2010.

EMILY KNIGHT
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY, TENN.
My Commission Expires AUG. 23, 2011

Emil Knight

NOTARY PUBLIC

My commission expires: Aug. 23, 2011

INTRODUCTION

Q. Please state your name for the record.

A. My name is Terry Buckner.

Q. By whom are you employed and what is your position?

A. I am employed by the Consumer Advocate and Protection Division ("Consumer Advocate") in the Office of the Attorney General for the State of Tennessee ("Office") as a Financial Regulatory Analyst.

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to supplement my direct testimony on two issues: (1) Chattanooga Gas Company's ("CGC" or "Company") request for legal fee recovery resulting from TRA Docket #07-00224 and (2) SouthStar transactions. This supplemental testimony is filed with the TRA in conjunction with the receipted discovery responses from CGC on March 22, 2010, with regard to legal fee recovery; discovery regarding SouthStar is still on-going as of the time of the filing of this testimony but it is appropriate to set forth my position on SouthStar at this time due to the nearness of the hearing date.

LEGAL FEES

Q. Please discuss CGC's proposed recovery of legal fees.

A. In this docket, the Hearing Officer for the TRA granted a motion by the Chattanooga Manufacturers Association ("CMA") to consider recovery of legal fees incurred by CGC in TRA Docket #07-00224.[1] Docket #07-00224 involved a review of CGC's asset management program; as a result of this case, the TRA ultimately ordered a triennial review of that program by an outside expert. CGC is proposing to recover the litigation costs from TRA Docket #07-00224 through a temporary rider over a three year period.[2] CGC states the legal fees from litigation total $744,744.[3]

Q. Has the TRA ever had a Docket addressing similar issues to TRA Docket # 07-00224?

A. Yes. The TRA addressed similar asset management issues in TRA Docket #05-00165 for Piedmont Natural Gas.

Q. Were any legal fees recovered in TRA Docket #05-00165?

A. No. The ratepayers were not charged for legal fees in which Piedmont Natural Gas and the Consumer Advocate

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[1] TRA Order dated February 11, 2010.
[2] CGC Direct Testimony, A. Hickerson, Page 20, Lines 30-32.
[3] CGC Direct Testimony, A. Hickerson, Page 20, Line 23.

ultimately agreed to a triennial review of Piedmont's asset management program resulting from the independent review of Piedmont's Performance Incentive Plan.

Q. What was the bid amount as selected by the TRA for the independent review in TRA Docket #05-00165?

A. $32,900.

Q. Were any legal fees recovered in TRA Docket #09-00104 in which Piedmont Natural Gas sought the implementation of a margin Decoupling Tracker?

A. No. Piedmont did not seek and the ratepayers were not charged for legal fees resulting from Piedmont's filing of a Margin Decoupling Tracker.

Q. Was the need for an independent review of CGC's gas purchase and incentive sharing programs at issue in TRA Docket #07-00224?

A. Yes. In fact, it was the main issue at hearing.

Q. Did the TRA order an independent review of CGC's gas purchases and incentive sharing in Docket #07-00224?

A. Yes.[4]

[4] TRA Orders dated September 23, 2009 and October 13, 2009.

Q. Are the legal fees proposed for recovery in this docket recurring operating expenses?

A. No. At a status conference in this docket, the TRA Hearing Officer asked, "Are past nonrecurring regulatory costs included in the projected attrition period expense?"[5] CGC answered, "No."[6] Moreover, the Company has agreed that "gas cost, asset management, and related concerns raised by the CAD and the CMA were not issues that the TRA has routinely or traditionally addressed in rate cases."[7]

Q. Should the TRA allow recovery from ratepayers for CGC's legal fees incurred in TRA Docket #07-00224?

A. No. As stated in our prior filings, the Consumer Advocate's position is that an award of legal fee recovery by the TRA "is not authorized under the existing law in the State of Tennessee, regardless of the docket or forum in which this issue is ultimately heard."[8] Moreover, it is retro-active rate making, which is clearly not appropriate for setting future rates to ratepayers, i.e., it is not proper under regulatory principles to use a single event in the past to set future rates.

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[5] TRA Status Conference, January 25, 2010, transcript Pages 97-98.
[6] *Id.*
[7] CGC Direct Testimony, A. Hickerson, Page 6, Lines 21-23.
[8] Consumer Advocate Response dated January 8, 2010, Page 10.

Q. Are past nonrecurring regulatory costs also included in the projected attrition period expense?

A. Yes. CGC has included approximately $398,000[9] of legal bills in its test period in the present docket and approximately $662,000[10] in its attrition year forecast. Consequently, it is reasonable to conclude that CGC is seeking recovery of approximately $775,000 from ratepayers through a rider mechanism **and** to set rates going forward on annual legal bills of approximately $662,000 for the attrition year. CGC seeks such a recovery of legal fees despite the fact that this amount is largely based on CGC's legal billings from Docket #07-00224, which was a "unique"[11] docket by CGC's own admission. This incorrect accounting procedure results in a double dipping into the ratepayer's pockets for legal billings.

When CGC was asked in the discovery process in this case to provide any non-recurring charges, such as "...Outside Service Expenses..." recorded in the twelve months ended 12/31/09[12], CGC's response was that none of the legal bills were non-recurring. In reliance on this response, the Consumer Advocate incorrectly included in its attrition year

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[9] TRA Docket #07-00224, Affidavit of Shannon Pierce, Exhibit A, filed October 6, 2009.
[10] CGC response to Consumer Advocate Discovery Request #64-1, Outside Services, Accounts #670402 and #670403.
[11] TRA Status Conference, January 25, 2010, transcript Page 75.
[12] Consumer Advocate Discovery Request #46.

forecast approximately $530,000[13] of legal bills from TRA Docket #07-00224.

Q. Does the Consumer Advocate now propose to correct its calculated revenue requirement due to the erroneous inclusion of legal bills incurred in TRA Docket #07-00224?

A. Yes. The Consumer Advocate proposes an amount of approximately $195,000[14] for outside services – legal bills. This amount is a three year average (2005-2007) of legal bills previous to the initiation of the TRA #07-00224 docket. The Consumer Advocate is of the opinion this amount is more representative of normal recurring legal expense for outside services. As a result, Outside Services Expense is reduced from the original filing amount of $1,442,709 to $1,046,501[15] for a difference of approximately $396,000.

As a result, the revenue requirement need in this Docket is only $41,409[16] without CGC's decoupling tracker mechanism and a rate reduction of $330,435[17] is called for if CGC's decoupling tracker mechanism is adopted by the TRA.

[13] TRA Docket #07-00224, Affidavit of Shannon Pierce, Exhibit A, filed October 6, 2009.
[14] Consumer Advocate work paper E-LGL-3 YR AVG.
[15] Consumer Advocate work paper, Revised E-OUTSIDE.
[16] Consumer Advocate revised exhibits.
[17] *Id.*

SOUTHSTAR

Q. Please summarize your concerns with SouthStar in this docket.

A. CGC, Sequent, and SouthStar are affiliated companies under the corporate umbrella of AGL Resources, Inc. All three companies are involved in transactions for the sale, lease, release or assignment of gas supply and storage assets (also known as "system capacity") of CGC. CGC's system capacity is entirely paid for by ratepayers. While Sequent does provide a guaranteed annual minimum payment in its asset management agreement with CGC, there is not an existing provision to allow reimbursement to CGC's ratepayers for profits from secondary transactions with an affiliate, such as SouthStar.

Q. Could you briefly describe your concerns regarding SouthStar if all revenues from SouthStar transactions involving CGC assets are not accounted for and any profits are not imputed to CGC?

A. Yes. In the Consumer Advocate's Motion to Compel filed January 20, 2010, the following hypothetical was set forth:

> For example, assume that Sequent Energy Management ("Sequent"), the asset manager

of CGC who has paid for the rights to CGC's natural gas assets, sells gas to SouthStar at a profit per unit of $2; then, SouthStar sells it to someone else at an additional $2 profit per unit. Under the sharing arrangement between Sequent and CGC, ratepayers would get one-half of the $2 profit from the sale to SouthStar, or $1. However, ratepayers get no portion of the subsequent sale by SouthStar. In this hypothetical, it would be the contention of the Consumer Advocate that the gas assets were really worth the additional $2 profit SouthStar received in the subsequent arm's-length transaction on the open-market, or a total of $4 profit, rather than just the $2 profit Sequent received in the affiliated transaction. Therefore, CGC's ratepayers should have gotten $2, half of the total $4 profit, rather than the $1 they actually received.

Q. Do other state jurisdictions have provisions to allow reimbursement for profits from secondary transactions?

A. Yes. For example, in the state of North Carolina, 75% of the net compensation from secondary market transactions is recorded in the LDC's PGA deferred account as a reduction of demand and storage charges. (State of North Carolina Utilities Commission Order Docket No. G-100 dated December 22, 1995, See Attachments).

Q. Does the TRA have the right to allow for reimbursement for profits from secondary transactions?

A. Yes. The TRA regularly has looked beyond corporate distinctions in its goal of setting just and reasonable rates. For example, when determining the cost of capital, the TRA uses the "double leveraging" method, whereby a parent's capital costs are taken into account in setting the affiliate's capital costs. Furthermore, the Supreme Court of Tennessee[18] opined:

> "we are....equally convinced that a regulatory body, such as the Public Service Commission, is not bound in all instances to observe corporate charters and the form of corporate structure or stock ownership in regulating a public utility, and in fixing fair and reasonable rates for its operations. The filing of consolidated reports by parent and subsidiary corporations, both for tax purposes and regulatory purposes, is so commonplace as to be completely familiar in modern law and practice. Considerations of "piercing the veil", which are involved in cases involving tort, misconduct or fraud, are largely irrelevant in the regulatory and revenue fields. In order for taxing authorities to obtain accurate information as to revenues and expenses, the filing of consolidated tax returns by affiliated corporations is frequently required, and rate-making and regulatory bodies frequently can

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[18] *Tennessee Public Service Commission et. al, v. Nashville Gas Company* 551S.W.2d 315, 319-320 (Tenn.1977).

> and do consider entire operating systems of utility companies in determining, from the standpoint both of the regulated carrier and the consuming public fair and reasonable rates of return."

Q. Are all sales of CGC's gas and capacity supply subject Federal Energy Regulatory Commission ("FERC") rules?

A. As of the time of the filing of this testimony, CGC has provided no proof of this. Furthermore, based on discussion with a person with knowledge of asset sales, it appears that FERC has jurisdiction over only interstate transactions.

Q. Even if CGC and Sequent claim to have followed all relevant FERC rules, is it possible they may have made a mistake that can only be discovered by providing a record of all secondary transactions?

A. Yes. For example, on June 30, 2009, Sequent failed to follow FERC rules and FERC fined Sequent with a civil penalty of $5,000,000 and fined Sequent $53,728 in disgorgement for violating §284.8(h) posting and bidding requirements, improper release and acquisition of discounted rate capacity through flipping transactions, violations of shipper-must-have-title requirements and violations of buy-sell transaction rules.[19]

Q. Why is the issue of secondary transactions for CGC's system capacity relevant to this proceeding?

A. The Consumer Advocate's duty is to pursue just and reasonable rates for the ratepayer. If all revenues from secondary transactions of CGC's system capacity are not recognized, then the ratepayers will be over charged for the cost of gas, i.e. unjust and unreasonable rates.

Q. What remedy does the Consumer Advocate seek from the TRA on the issue of secondary transactions for CGC's system capacity relevant to this proceeding?

A. Following the North Carolina model, the Consumer Advocate proposes two alternative remedies: (1) 75% of all net profits from secondary transactions by SouthStar, from CGC's system capacity, be properly accounted for and reported to the TRA in CGC's next Purchased Gas Adjustment (PGA) and subsequent PGAs as a reduction of demand and storage charges for the purpose of computing the demand and storage charges to the ratepayers; or (2) 75% of all net profits from secondary transactions by SouthStar, from CGC's system

[19] In re Sequent Energy Management, L.P. and Sequent Energy Marketing, L.P., 127 FERC ¶ 61,320 (June 30, 2009).

capacity, be properly accounted for and reported to the TRA on an annual basis, effective January 1, 2010, and be incorporated into the next asset management and agency agreement for approval by the TRA.

Q. Please summarize your supplemental testimony?

A. As stated in our prior filings, the Consumer Advocate's position is that an award of legal fee recovery by the TRA "is not authorized under the existing law in the State of Tennessee, regardless of the docket or forum in which this issue is ultimately heard."[20] Moreover, it is retro-active rate making, which is clearly not appropriate for setting future rates to ratepayers.

In my opinion, it is unjust and unreasonable to allow CGC to recover approximately $775,000 from ratepayers through a rider mechanism **and** to set rates going forward projecting annual legal bills of approximately $662,000 for the attrition year.

Therefore, it is my expert opinion that the appropriate revenue requirement in this Docket is only $41,409[21], without CGC's decoupling tracker mechanism, and a rate reduction of $330,435[22] is called for if CGC's decoupling tracker mechanism is adopted by the TRA.

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[20] Consumer Advocate response dated January 8, 2010, Page 10.
[21] Consumer Advocate revised exhibits.
[22] *Id.*

Based upon my expertise, it is just and reasonable that 75% of all net profits from secondary transactions by SouthStar, from CGC's system capacity, be properly accounted for and reported to the TRA through the PGA as a reduction of demand and storage charges to the ratepayers.

Q. Does this conclude your testimony?

A. Yes, it does.

Before the

TENNESSEE REGULATORY AUTHORITY

IN RE:	)	
	)	
PETITION OF CHATTANOOGA GAS	)	
COMPANY FOR APPROVAL OF ITS	)	
RATES AND CHARGES, MODIFICATION	)	**DOCKET NO. 09-00183**
OF ITS RATE DESIGN, AND REVISED	)	
TARIFF	)	

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EXHIBITS
OF
TERRY BUCKNER

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March 29, 2010

OFFICE OF THE ATTORNEY GENERAL - STATE OF TENNESSEE
CONSUMER ADVOCATE AND PROTECTION DIVISION
THREE YEAR AVERAGE - OUTSIDE LEGAL & MISC LEGAL EXPENSES
CHATTANOOGA GAS COMPANY TRA DOCKET #09-00183
FOR THE PERIOD 2005 - 2006-2007

E-LGL-3 YR AVG

MONTH	ACCOUNT	2005	2006	2007	3 YEAR AVERAGE
JAN	670402	$18,498	$21,033	$2,304	
	670403	252	0	128	
FEB	670402	36,963	10,898	9,616	
	670403	0	512	163	
MAR	670402	51,502	6,976	3,601	
	670403	3,022	168	498	
APR	670402	(12,468)	6,713	27,639	
	670403	134	1	1,417	
MAY	670402	(26,146)	11,570	8,983	
	670403	1	396	270	
JUN	670402	22,608	29,475	31,323	
	670403	0	263	740	
JUL	670402	1,673	18,204	7,207	
	670403	849	1	561	
AUG	670402	33,552	12,881	13,193	
	670403	743	66	179	
SEP	670402	2,889	20,379	5,837	
	670403	396	705	9	
OCT	670402	11,288	101	6,312	
	670403	131	3	270	
NOV	670402	37,541	39,062	48,968	
	670403	340	0	312	
DEC	670402	28,917	(5,431)	26,807	
	670403	557	0	284	
ACCOUNT	670402	$206,817	$171,861	$191,790	
ACCOUNT	670403	6,425	2,115	4,831	
ACCOUNT TOTALS		$213,242	$173,976	$196,621	$194,613

OFFICE OF THE ATTORNEY GENERAL - STATE OF TENNESSEE
CONSUMER ADVOCATE AND PROTECTION DIVISION
OUTSIDE SERVICES EXPENSE SUMMARY
CHATTANOOGA GAS COMPANY TRA DOCKET #09-00183
FOR THE ATTRITION YEAR ENDED APRIL 2011

Revised
E-OUTSIDE

ACCOUNT#/ DESCRIPTION	A/ DIRECT 12/31/09 AMOUNTS		B/ INFLATION FACTOR	C/ GROWTH FACTOR	ATTR YR AMOUNTS	
620040 Outside Services - LNG Storage	2,950		47	16	3,013	
640204 Perform 3Year Survey-Contracto	5,366		86	29	5,480	
640206 Perform 5-Year Survey-Contract	88,606		1,418	473	90,496	
640211 Perform Survey-Bus Dist Cont	31,990		512	171	32,673	
640213 Perform Survey Trans.Pipe Cont	1,102		18	6	1,126	
640215 Perform Leak Sur. Other Cont	7,902		126	42	8,071	
640219 Right of Way Upkeep Contractor	47,750		764	255	48,769	
640233 Locate Mains and Svcs- Cont.	399,258		6,388	2,129	407,775	
640608 Activate Meter- Contractor	-		0	0	0	
640704 PT Meter Change Contractor	-		0	0	0	
640706 No Gas AGLC Work-Contractor	7,400		118	39	7,558	
645210 Repair and Maintain Mains Cont	11,462		183	61	11,707	
645211 Maintenance of Main Paving	52,842		845	282	53,969	
645215 Repair Damage Mains-Contractor	422		7	2	431	
645401 Maintain Reg. Stations- Cont	2,212		35	12	2,259	
645502 Maint. Meter SetsandReg. ProCont	11,695		187	62	11,945	
645710 Maintenance of Services-Contra	701		11	4	716	
645711 Maintenance of Service Paving	13,559		217	72	13,849	
650103 Meter Reading- Itron-Contracto	(0)	D/	(0)	(0)	(0)	
670200 Outside Svcs Employed	22,340		357	119	22,817	
670201 Outside Svc. -Printing	434		7	2	444	
670202 Outside Services Info Tech	71,971		1,152	384	73,506	
670402 Outside Legal Services	559,518		0	0	194,613	E/
670403 Miscellaneous Legal Services	18,961		0	0	0	
670850 Outside Services -Facilities	54,132		866	289	55,286	
Total	1,412,574		13,346	4,449	1,046,501	

A/ CGC response to Consumer Advocate DR #64.
B/ Consumer Advocate work paper E-GDP, 1.6% for 16 months growth.
C/ Consumer Advocate work paper R-CUST TREND, one half of .80% annual billing growth.
D/ CGC response to Consumer Advocate DR #46-1.
E/ Consumer Advocate workpaper E-LGL-3 YR AVG

Chattanooga Gas Company
Index to Schedules
For the Twelve Months Ended April 30, 2011

Chattanooga Gas Company
Revenue Deficiency (Surplus)
For the Twelve Months Ended April 30, 2011

Line No.		Consumer Advocate		CGC E/	Difference
1	Rate Base	$ 93,931,707	A/	$ 97,759,990	$ 3,828,283
2	Operating Income at Present Rates	6,828,717	B/	6,540,319	(288,398)
3	Earned Rate of Return (L 2 / L 1)	7.27%		6.69%	-0.58%
4	Fair Rate of Return	7.297%	C/	8.2819%	0.99%
5	Required Operating Income (L 1 x L 4)	$ 6,853,821		$ 8,096,385	$ 1,242,564
6	Operating Income Deficiency (Surplus) (L 5 - L 2)	25,104		1,556,066	1,530,961
7	Gross Revenue Conversion Factor	1.649441	D/	1.653518	0.004077
8	**Revenue Deficiency (Surplus)**	**$ 41,409**		**$ 2,572,993**	**$ 2,531,584**

A/ Schedule 2, Line 14.
B/ Schedule 3, Line 16.
C/ Schedule 8, Line 5.
D/ Schedule 7, Line 10.
E/ CGC Exhibits.

Chattanooga Gas Company
Rate Base
For the Twelve Months Ended April 30, 2011

Line No.	Additions:	A/ Consumer Advocate	B/ CGC	Difference
1	Utility Plant in Service	$ 202,717,046	$ 198,761,734	$ 3,955,312
2	Construction Work in Progress	(189,090)	4,655,182	(4,844,272)
3	Other	-	-	-
4	Working Capital	13,090,905	14,910,913	(1,820,008)
5	OPEBs	248,501	302,798	(54,297)
6		-	-	-
7	Total Additions	$ 215,867,362	$ 218,630,627	$ (2,763,265)
	Deductions:			
8	Accumulated Depreciation	$ 96,370,052	$ 96,171,548	$ 198,504
9	Contributions in Aid of Construction	1,508,644	1,561,644	(53,000)
10	Advances in Aid of Construction	286,394	286,394	-
11	Accumulated Deferred Tax	23,770,564	22,851,051	919,513
12	Other	-	-	-
13	Total Deductions	$ 121,935,654	$ 120,870,637	$ 1,065,017
14	Rate Base	$ 93,931,707	$ 97,759,990	$ (3,828,282)

A/ T. Buckner work paper, RB-SUM.
B/ CGC Direct Testimony, Exhibit RDH-3, Schedules 1-3.

Chattanooga Gas Company
Income Statement at Current Rates
For the Twelve Months Ended April 30, 2011

Line No.		Consumer Advocate		CGC D/		Difference
1	Revenues - Sales, forfeited discounts & other	$ 88,348,700	B/	$ 88,253,290		$ 95,410
2	Cost of Gas	58,634,548	B/	58,634,548		-
3	Gross margin on sales and service	$ 29,714,152	A/	$ 29,618,742		$ 95,410
4	AFUDC	210,826	C/	352,221		(141,395)
5	Operating Margin	$ 29,924,978		$ 29,970,963		$ (45,985)
6	Other Operation and Maintenance	$ 11,515,483	D/	$ 12,022,380		$ (506,897)
7	Interest on Customer Deposits	132,216	E/	132,216		-
8	Depreciation and Amortization Exp.	5,201,431	F/	5,119,444		81,987
9	Taxes Other Than Income	3,581,242	G/	3,710,522		(129,280)
10	State Excise Tax	450,659	H/	414,235	H/	36,424
11	Federal Income Tax	2,215,230	H/	2,031,847	H/	183,383
12	Total Operating Expense	$ 23,096,261		$ 23,430,644		$ (334,383)
13	Net Operating Income for Return	$ 6,828,717		$ 6,540,319		$ 288,398
14		-		-		-
15		-		-		-
16	Adjusted Net Operating Income	$ 6,828,717		$ 6,540,319		$ 288,398

A/ D. Peters work paper, Revenue.
B/ Per CGC Exhibit RDH-1, Schedule 1., Line 2
C/ T. Buckner work paper R-AFUDC.
D/ Schedule 4, Line 13.
E/ Per CGC Exhibit RDH-1, Schedule 1, Line 9.
F/ T. Buckner work paper E-DEP.
G/ Schedule 5, Line 7.
H/ Schedule 6, Lines 12 and 20.

Chattanooga Gas Company
Operation & Maintenance Expenses
For the Twelve Months Ended April 30, 2011

Line No.		Consumer Advocate A/	CGC B/	Difference
1	Payroll Expense	$ 2,198,645	$ 2,147,475	$ 51,170
2	Employee Benefits	1,201,530	1,270,641	(69,111)
3	Benefits Capitalized	(92,776)	(101,369)	8,593
4	Fleet Services and Facilities Expense	833,649	861,624	(27,975)
5	Outside Services	1,046,501	1,468,230	(421,729)
6	Bad Debt Expenses	189,197	297,462	(108,265)
7	Sales Promotion Expense	13,818	23,006	(9,188)
8	Customer Service and Account Expense	5,930	5,280	650
9	Administrative and General Expenses	896,957	993,498	(96,541)
10	Admin & Gen. Salaries & Exp. Capitalized	(38,668)	(34,456)	(4,212)
11	Other Distribution and Storage Expense	625,098	574,178	50,920
12	AGL Service Company Allocations	4,635,602	4,516,810	118,792
		-	-	-
		-	-	-
		-	-	-
		-	-	-
		-	-	-
		-	-	-
		-	-	-
		-	-	-
		-	-	-
		-	-	-
		-	-	-
		-	-	-
		-	-	-
13	Total O&M Expense	$ 11,515,483	$ 12,022,380	$ (506,896)

A/ J. Hughes work paper, E-O&M SUM.
B/ CGC Direct Testimony, Exhbiti RDH-2, Schedule 2.

Chattanooga Gas Company
Taxes Other Than Income Taxes
For the Twelve Months Ended April 30, 2011

Line No.		Consumer Advocate	CGC B/	Difference
1	Property Taxes	$ 1,603,581	$ 1,727,603	$ (124,022)
2	State Gross Receipts Tax	699,928	698,074	1,854
3	Net Payroll Taxes	173,560	190,448	(16,888)
4	State Franchise Tax	675,947	666,172	9,775
5	Allocated Taxes Other Than Income	142,688	142,688	-
6	TRA Inspection Fee	285,537	285,537	-
7	Total Taxes Other Than Income Taxes	$ 3,581,242 A/	$ 3,710,522	$ (129,280)

A/ J. Hughes work paper, T-OTAX-1.
B/ CGC Direct Testimony, Exhibit RDH-2, Schedule 2.

Chattanooga Gas Company
Excise and Income Taxes
For the Twelve Months Ended April 30, 2011

Line No.		**Consumer Advocate**		**CGC**
1	Operating Margin	$ 29,924,978	A/	$ 29,970,963
2	Other Operation and Maintenance	11,515,483	E/	12,022,380
3	Depreciation and Amortization Expense	5,201,431	A/	5,119,444
4	Taxes Other Than Income	3,581,242	A/	3,710,522
5	NOI Before Excise and Income Taxes	$ 9,626,822		$ 9,118,617
6	less Interest on Customer Deposits	132,216	A/	132,216
7	less Interest Expense	2,570,535	B/	2,622,705
8	Pre-tax Book Income	$ 6,924,071		$ 6,363,696
9	Schedule M Adjustments	9,148	C/	9,148
10	Excise Taxable Income	$ 6,933,219		$ 6,372,844
11	Excise Tax Rate	6.50%		6.50%
12	Excise Tax	$ 450,659		$ 414,235
13	Pre-tax Book Income	$ 6,924,071		$ 6,363,696
14	Excise Tax	450,659		414,235
15	Schedule M Adjustments	9,148		9,148
16	FIT Taxable Income	$ 6,482,559		$ 5,958,609
17	FIT Rate	35.00%		35.00%
18	Subtotal FIT	$ 2,268,896		$ 2,085,513
19	Less: ITC Amortization	53,666	C/	53,666
20	Federal Income Tax Expense	$ 2,215,230		$ 2,031,847

A/ Schedule 3, Lines 1, 2, and 4.
B/ Rate Base * Weighted Cost of Debt
(Schedule 2, Line 14 * [Schedule 8 Line 1 + Line 2 + Line 3]).
C/ CGC Response FG #25-1-4.

Chattanooga Gas Company
Revenue Conversion Factor
For the Twelve Months Ended April 30, 2011

Line No.		Amount		Balance
1	Operating Revenues			1.000000
2	Add: Forfeited Discounts	0.003951	A/	0.003951
3	Balance			1.003951
4	Uncollectible Ratio	0.006367	B/	0.006392
5	Balance			0.997558
6	State Excise Tax	0.065000	C/	0.064841
7	Balance			0.932717
8	Federal Income Tax	0.350000	C/	0.326451
9	Balance			0.606266
10	Revenue Conversion Factor (1 / Line 9)			1.649441

A/ Forfeited discounts on gross revenues = forfeited discounts / gross revenues (excluding forfeited discounts)

	355,923	/	90,449,406	-	355,923	0.003951
B/ Uncollectible expenses on base revenues	189,197	/	29,714,152	(base revenues) =		0.006367

C/ Statutory rate

Chattanooga Gas Company
Cost of Capital
For the Twelve Months Ended April 30, 2011

Line No.		Ratio	Cost	Weighted Cost
1	Short Term Debt	10.00%	2.04%	0.204%
2	Long Term Debt	42.00%	6.03%	2.53%
3	Preferred Stock	0.00%	0.00%	0.00%
4	Stockholder's Equity	48.00%	9.50%	4.56%
5	Total	100.00%		7.297%

Source: Direct Testimony, Dr. Chris Klein

Chattanooga Gas Company
Index to Schedules
For the Twelve Months Ended April 30, 2011
Decoupling Mechanism Tracker In Effect

Chattanooga Gas Company
Revenue Deficiency (Surplus)
For the Twelve Months Ended April 30, 2011
Decoupling Mechanism Tracker In Effect

Line No.		Consumer Advocate		CGC E/	Difference
1	Rate Base	$ 93,931,707	A/	$ 97,759,990	$ 3,828,283
2	Operating Income at Present Rates	6,828,717	B/	6,540,319	(288,398)
3	Earned Rate of Return (L 2 / L 1)	7.27%		6.69%	-0.58%
4	Fair Rate of Return	7.057%	C/	8.2819%	1.23%
5	Required Operating Income (L 1 x L 4)	$ 6,628,385		$ 8,096,385	$ 1,468,000
6	Operating Income Deficiency (Surplus) (L 5 - L 2)	(200,332)		1,556,066	1,756,398
7	Gross Revenue Conversion Factor	1.649441	D/	1.653518	0.004077
8	**Revenue Deficiency (Surplus)**	**$ (330,435)**		**$ 2,572,993**	**$ 2,903,427**

A/ Schedule 2, Line 14.
B/ Schedule 3, Line 16.
C/ Schedule 8, Line 5.
D/ Schedule 7, Line 10.
E/ CGC Exhibits.

Chattanooga Gas Company
Rate Base
For the Twelve Months Ended April 30, 2011
Decoupling Mechanism Tracker In Effect

Line No.	Additions:	A/ Consumer Advocate	B/ CGC	Difference
1	Utility Plant in Service	$ 202,717,046	$ 198,761,734	$ 3,955,312
2	Construction Work in Progress	(189,090)	4,655,182	(4,844,272)
3	Other	-	-	-
4	Working Capital	13,090,905	14,910,913	(1,820,008)
5	OPEBs	248,501	302,798	(54,297)
6		-	-	-
7	Total Additions	$ 215,867,362	$ 218,630,627	$ (2,763,265)
	Deductions:			
8	Accumulated Depreciation	$ 96,370,052	$ 96,171,548	$ 198,504
9	Contributions in Aid of Construction	1,508,644	1,561,644	(53,000)
10	Advances in Aid of Construction	286,394	286,394	-
11	Accumulated Deferred Tax	23,770,564	22,851,051	919,513
12	Other	-	-	-
13	Total Deductions	$ 121,935,654	$ 120,870,637	$ 1,065,017
14	Rate Base	$ 93,931,707	$ 97,759,990	$ (3,828,282)

A/ T. Buckner work paper, RB-SUM.
B/ CGC Direct Testimony, Exhibit RDH-3, Schedules 1-3.

Chattanooga Gas Company
Income Statement at Current Rates
For the Twelve Months Ended April 30, 2011
Decoupling Mechanism Tracker In Effect

Line No.		Consumer Advocate		CGC D/		Difference
1	Revenues - Sales, forfeited discounts & other	$ 88,348,700	B/	$ 88,253,290		$ 95,410
2	Cost of Gas	58,634,548	B/	58,634,548		-
3	Gross margin on sales and service	$ 29,714,152	A/	$ 29,618,742		$ 95,410
4	AFUDC	210,826	C/	352,221		(141,395)
5	Operating Margin	$ 29,924,978		$ 29,970,963		$ (45,985)
6	Other Operation and Maintenance	$ 11,515,483	D/	$ 12,022,380		$ (506,897)
7	Interest on Customer Deposits	132,216	E/	132,216		-
8	Depreciation and Amortization Exp.	5,201,431	F/	5,119,444		81,987
9	Taxes Other Than Income	3,581,242	G/	3,710,522		(129,280)
10	State Excise Tax	450,659	H/	414,235	H/	36,424
11	Federal Income Tax	2,215,230	H/	2,031,847	H/	183,383
12	Total Operating Expense	$ 23,096,261		$ 23,430,644		$ (334,383)
13	Net Operating Income for Return	$ 6,828,717		$ 6,540,319		$ 288,398
14		-		-		-
15		-		-		-
16	Adjusted Net Operating Income	$ 6,828,717		$ 6,540,319		$ 288,398

A/ D. Peters work paper, Revenue.
B/ Per CGC Exhibit RDH-1, Schedule 1., Line 2
C/ T. Buckner work paper R-AFUDC.
D/ Schedule 4, Line 13.
E/ Per CGC Exhibit RDH-1, Schedule 1, Line 9.
F/ T. Buckner work paper E-DEP.
G/ Schedule 5, Line 7.
H/ Schedule 6, Lines 12 and 20.

TRA Docket No. 09-00183
REVISED Consumer Advocate Exhibits
Schedule 4

Chattanooga Gas Company
Operation & Maintenance Expenses
For the Twelve Months Ended April 30, 2011
Decoupling Mechanism Tracker In Effect

Line No.		Consumer Advocate A/	CGC B/	Difference
1	Payroll Expense	$ 2,198,645	$ 2,147,475	$ 51,170
2	Employee Benefits	1,201,530	1,270,641	(69,111)
3	Benefits Capitalized	(92,776)	(101,369)	8,593
4	Fleet Services and Facilities Expense	833,649	861,624	(27,975)
5	Outside Services	1,046,501	1,468,230	(421,729)
6	Bad Debt Expenses	189,197	297,462	(108,265)
7	Sales Promotion Expense	13,818	23,006	(9,188)
8	Customer Service and Account Expense	5,930	5,280	650
9	Administrative and General Expenses	896,957	993,498	(96,541)
10	Admin & Gen. Salaries & Exp. Capitalized	(38,668)	(34,456)	(4,212)
11	Other Distribution and Storage Expense	625,098	574,178	50,920
12	AGL Service Company Allocations	4,635,602	4,516,810	118,792
		-	-	-
		-	-	-
		-	-	-
		-	-	-
		-	-	-
		-	-	-
		-	-	-
		-	-	-
		-	-	-
		-	-	-
		-	-	-
		-	-	-
		-	-	-
13	Total O&M Expense	$ 11,515,483	$ 12,022,380	$ (506,896)

A/ J. Hughes work paper, E-O&M SUM.
B/ CGC Direct Testimony, Exhbiti RDH-2, Schedule 2.

Chattanooga Gas Company
Taxes Other Than Income Taxes
For the Twelve Months Ended April 30, 2011
Decoupling Mechanism Tracker In Effect

Line No.		Consumer Advocate		CGC B/	Difference
1	Property Taxes	$ 1,603,581		$ 1,727,603	$ (124,022)
2	State Gross Receipts Tax	699,928		698,074	1,854
3	Net Payroll Taxes	173,560		190,448	(16,888)
4	State Franchise Tax	675,947		666,172	9,775
5	Allocated Taxes Other Than Income	142,688		142,688	-
6	TRA Inspection Fee	285,537		285,537	-
7	Total Taxes Other Than Income Taxes	$ 3,581,242	A/	$ 3,710,522	$ (129,280)

A/ J. Hughes work paper, T-OTAX-1.
B/ CGC Direct Testimony, Exhibit RDH-2, Schedule 2.

Chattanooga Gas Company
Excise and Income Taxes
For the Twelve Months Ended April 30, 2011
Decoupling Mechanism Tracker In Effect

Line No.		Consumer Advocate		CGC
1	Operating Margin	$ 29,924,978	A/	$ 29,970,963
2	Other Operation and Maintenance	11,515,483	E/	12,022,380
3	Depreciation and Amortization Expense	5,201,431	A/	5,119,444
4	Taxes Other Than Income	3,581,242	A/	3,710,522
5	NOI Before Excise and Income Taxes	$ 9,626,822		$ 9,118,617
6	less Interest on Customer Deposits	132,216	A/	132,216
7	less Interest Expense	2,570,535	B/	2,622,705
8	Pre-tax Book Income	$ 6,924,071		$ 6,363,696
9	Schedule M Adjustments	9,148	C/	9,148
10	Excise Taxable Income	$ 6,933,219		$ 6,372,844
11	Excise Tax Rate	6.50%		6.50%
12	Excise Tax	$ 450,659		$ 414,235
13	Pre-tax Book Income	$ 6,924,071		$ 6,363,696
14	Excise Tax	450,659		414,235
15	Schedule M Adjustments	9,148		9,148
16	FIT Taxable Income	$ 6,482,559		$ 5,958,609
17	FIT Rate	35.00%		35.00%
18	Subtotal FIT	$ 2,268,896		$ 2,085,513
19	Less: ITC Amortization	53,666	C/	53,666
20	Federal Income Tax Expense	$ 2,215,230		$ 2,031,847

A/ Schedule 3, Lines 1, 2, and 4.
B/ Rate Base * Weighted Cost of Debt
(Schedule 2, Line 14 * [Schedule 8 Line 1 + Line 2 + Line 3]).
C/ CGC Response FG #25-1-4.

Chattanooga Gas Company
Revenue Conversion Factor
For the Twelve Months Ended April 30, 2011
Decoupling Mechanism Tracker In Effect

Line No.		Amount		Balance
1	Operating Revenues			1.000000
2	Add: Forfeited Discounts	0.003951	A/	0.003951
3	Balance			1.003951
4	Uncollectible Ratio	0.006367	B/	0.006392
5	Balance			0.997558
6	State Excise Tax	0.065000	C/	0.064841
7	Balance			0.932717
8	Federal Income Tax	0.350000	C/	0.326451
9	Balance			0.606266
10	Revenue Conversion Factor (1 / Line 9)			1.649441

A/ Forfeited discounts on gross revenues = forfeited discounts / gross revenues (excluding forfeited discounts)

	355,923	/	90,449,406	-	355,923	0.003951
B/ Uncollectible expenses on base revenues	189,197	/	29,714,152	(base revenues) =		0.006367

C/ Statutory rate

Chattanooga Gas Company
Cost of Capital
For the Twelve Months Ended April 30, 2011
Decoupling Mechanism Tracker In Effect

Line No.		Ratio	Cost	Weighted Cost
1	Short Term Debt	10.00%	2.04%	0.204%
2	Long Term Debt	42.00%	6.03%	2.53%
3	Preferred Stock	0.00%	0.00%	0.00%
4	Stockholder's Equity	48.00%	9.00%	4.32%
5	Total	100.00%		7.057%

Source: Direct Testimony, Dr. Chris Klein

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

OFFICIAL COPY

DOCKET NO. G-100, SUB 67

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

12-22-95

In the Matter of Accounting for Secondary Market Transactions By Natural Gas Local Distribution Companies	))	ORDER APPROVING STIPULATION

BY THE COMMISSION: On July 22, 1994, the Commission issued an Order in Docket No. G-100, Sub 63, adopting accounting procedures to be followed by the local distribution companies (LDCs), with respect to the net compensation they receive on certain transactions involving the sale of unutilized capacity rights. The Commission found that these transactions, known as buy/sell arrangements and capacity release transactions, are "clearly an integral part of managing gas system capacity rights." The Commission concluded that because Rule R1-17(k) guarantees full rate recovery of demand and storage charges, ratepayers should receive most of the net compensation from capacity sales that mitigate those costs. Accordingly, the Commission required the LDCs to record 90% of the net compensation from these transactions in their deferred accounts as a reduction of demand and storage charges for the purpose of the true-up under Rule R1-17(k)(4)(a).

On March 16, 1995, the Public Staff filed a Petition for Investigation in which it requested the Commission to institute an investigation into certain secondary market transactions which also involve the sale of unutilized capacity. In its Petition, the Public Staff stated that it was not prepared to recommend an accounting treatment for these transactions until it obtained a better understanding of the transactions.

On November 2, 1995, a Motion to Approve Stipulation and Stipulation was filed by the Public Staff, North Carolina Natural Gas Corporation (NCNG), Pennsylvania & Southern Gas Company (Penn and Southern), Piedmont Natural Gas Company, Inc., (Piedmont), Public Service Company of North Carolina, Inc. (Public Service), and Carolina Utility Customers Association, Inc. (CUCA).

In support of the Motion, the parties indicated that the Public Staff and the LDCs had met on several occasions to discuss an appropriate accounting for all interstate sales and transportation transactions entered into by an LDC involving use of its firm transportation or storage capacity rights on pipelines, the costs of which capacity are recovered from North Carolina utility customers under Rule R1-17(k) including, but not limited to, the transactions addressed in the Commission's Order of July 22, 1994, and transactions of the type referred to in the Public Staff's Petition for Investigation. As a result of these meetings, the parties stipulated and agreed as follows:

a. Effective November 1, 1995, each LDC shall record 75% of the net compensation received from secondary market transactions in its PGA deferred account as a reduction of demand and storage charges for the purpose of computing the demand and storage charges true-up required by Rule R1-17(k)(4)(a). For purposes of this rule, "secondary market transactions" means all interstate sales or transportation transactions entered into by an LDC involving use of its firm transportation or storage capacity rights on pipelines the costs of which capacity are recovered from North Carolina utility customers under Rule R1-17(k) including, but not limited to, buy/sell, capacity release, off system sales or other sale for resale transactions. For purposes of this rule, "net compensation" means the gross compensation received by an LDC from a secondary market transaction less all transportation charges, taxes and other costs, including all costs incurred by the LDC in connection with the purchase of the gas directly related to the transaction. In the case of a secondary market transaction between an LDC and its affiliate, "gross compensation" shall not be less than the gross compensation received in connection with the same or similar transactions between the LDC and non-affiliated parties. If a secondary market transaction involves firm capacity a portion of which is allocated to a jurisdiction other than North Carolina, the amount recorded in the LDC's North Carolina PGA deferred account shall be determined in the same manner as would be used to allocate such capacity to North Carolina if the capacity were not subject to a secondary market transaction.

b. The LDCs acknowledge that G.S. 62-51 authorizes the Public Staff to inspect the books and records of corporations affiliated with public utilities regulated by the Commission where such books and records relate either directly or indirectly to the provision of intrastate service by the utility, and this authorization extends both to books and records in the State of North Carolina and to books and records outside the State of North Carolina. The LDCs agree to cooperate with the Public Staff in complying with this statute, and the Public Staff agrees to cooperate with the LDCs to protect confidential and proprietary information inspected by the Public Staff pursuant to this statute.

The Stipulation further provided that to the extent the Order issued in respect of this Stipulation shall be inconsistent with any other Commission Order or any Commission-approved tariff or rider, the terms of the Order approving this Stipulation shall control. The parties to the Stipulation submitted that the Stipulation is in the public interest and requested that the Commission approve the Stipulation as soon as possible in order to permit it to become effective beginning November 1, 1995.

On November 16, 1995, the Attorney General filed a response to the proposed Stipulation arguing that the Commission should adopt the Stipulation with the modification that the net compensation to LDC shareholders from secondary market transactions should not be increased to 25%, and with the clarification that the Attorney General, as well as the Public Staff, should be authorized to inspect the books and records of affiliate corporations as discussed in the Stipulation.

On November 21, 1995, an Order was entered requesting that the parties participating in the Stipulation file comments in response to the Attorney General's filing of November 16, 1995. Comments have been filed by the stipulating parties as well as the Attorney General.

The Public Staff, in its comments, states that it is net compensation from secondary market transactions not expressly covered in Docket No. G-100, Sub 63, that can be expected to grow. Net compensation from grandfathered buy/sell transactions can only be expected to stagnate or decline and net compensation from capacity release transactions can be expected to decline significantly as the market becomes increasingly competitive. According to the Public Staff, unlike the procedures adopted in Docket No. G-100, Sub 63, which served their purpose well, the Stipulation in this docket anticipates the possibility of many new types of transactions. It accepts the principle that ratepayers are entitled to a substantial portion of the revenues from such transactions, while providing an incentive to the LDCs to be creative and aggressive in developing new markets for their products and services. It also provides for LDC cooperation with the Public Staff in fulfilling its responsibilities to monitor and investigate the activities of the LDCs and their affiliates.

Piedmont, Penn and Southern, NCNG, and Public Service filed joint comments in this matter. These parties argue that the Commission should approve the Stipulation as filed because it represents a reasonable and just compromise of the LDCs' and the public's interests for the following reasons:

1. Off-system sales and sales for resale transactions are fundamentally different than buy/sell and capacity release transactions and do not fall within the scope of the Commission's July 22, 1994 Order in Docket No. G-100, Sub 63.

2. The Stipulation reasonably accommodates the desires of both the LDCs and the public and is a judicious compromise of their respective interests.

3. The proposed sharing ratio of 75/25 is reasonable and within the range of approved ratios for similar transactions.

CUCA states that the ability of the LDCs to enter into secondary market transactions promise significant benefits to end-users and provides the LDCs with a way to mitigate the impact of higher interstate pipeline capacity costs; that any increase in the extent to which the LDCs engage in secondary market transactions will, under the terms of the Stipulation, reduce the interstate pipeline capacity costs which must be recovered from the LDCs' existing ratepayers; that the best way to encourage the LDCs to engage in an optimal level of secondary market transactions is to provide them with a monetary reward for doing so; and that the amount of the incentive provided in the Stipulation does not strike CUCA as sufficiently great to create a real risk that the LDCs will "overbuy" capacity.

The Attorney General, in his reply, asserts that all transactions under the proposed Stipulation -- the buy/sell and capacity release transactions explicitly covered by the Commission's Order in Sub 63 as well as the new transactions that have evolved since then--use capacity which has been fully paid for by ratepayers; that the Commission has already ruled that recovery of 10% of net compensation by the LDCs is fully adequate for virtually identical transactions; and that no party has presented a need or justification for increasing the already generous incentives established by the Commission.

The Commission notes from the comments filed that since the effective date of the Commission's Order in Docket No. G-100, Sub 63, the North Carolina LDCs have accounted for buy/sell and capacity release transactions in accordance with that Order. During this same period, however, the interstate natural gas market -- in conjunction with the advent of increasing competition on the interstate pipeline system and the continued unbundling required by FERC Order 636 -- has developed new mechanisms for the utilization of "excess" capacity. These "gray" or "secondary" market transactions include "sales for resale" and "off-system sales." These transactions may generally be characterized as the sale, assignment or use by the LDCs of certain firm transportation and storage capacity rights in conjunction with gas supplies to either buy or sell bundled city gate service. These transactions, according to the comments of the LDCs, bear little similarity to buy/sell or capacity release transactions addressed in Docket No. G-100, Sub 63.

While the Commission acknowledges that these secondary market transactions are somewhat different from the transactions previously addressed in Docket No. G-100, Sub 63, it is convinced that some sharing arrangement is appropriate. As pointed out by CUCA, any increase in the extent to which the LDCs engage in these types of transactions will reduce the capacity costs which must be recovered from ratepayers. Accordingly, the Commission is of the opinion that the expanded use of secondary market transactions by the LDCs which involve prudently incurred capacity costs is in the public interest and should be encouraged. The aggressive utilization of secondary market transactions will provide a means for the LDCs to minimize customer costs. Further, the Commission notes that the Stipulation accepts the principle that ratepayers are entitled to a substantial portion of the revenues from these transactions and that the scope of programs subject to revenue sharing will be substantially broadened to include <u>all</u> interstate sales or transportation transactions entered into by an LDC involving use of its firm transportation or storage capacity rights on pipelines the costs of which are recovered from North Carolina utility customers. The question before the Commission then becomes exactly what sharing ratio is appropriate. The Attorney General asserts that the appropriate percentage of net compensation for the LDCs to retain is 10% while the stipulating parties advocate a percentage of 25% for the LDCs.

The Commission recognizes, as noted in the comments of the LDCs, that this sharing ratio must serve two functions: it must compensate the LDCs for the additional administrative burden and operational complexities that can be attendant to negotiating and administering secondary market transactions, and it must provide an adequate incentive for LDCs to actively seek such transactions. For present purposes, the Commission concludes that the 25% sharing as provided for in the Stipulation will provide the LDCs with an adequate incentive to aggressively utilize secondary market transactions and is within a range of reasonableness.

Based upon the foregoing, the Commission concludes that the terms as set forth in the November 2, 1995 Stipulation are just and reasonable and in the public interest. They provide for the application of a fair and reasonable sharing mechanism to <u>all</u> secondary market transactions, they provide a means to lower capacity charges paid by North Carolina natural gas customers, and, accordingly, they should be approved at this time. However, the Commission notes that the appropriate sharing ratio is a matter of judgment and that the Commission has little experience on which to base their judgment at this time. The Commission will monitor the effect of the sharing ratio approved herein in the context of our annual review proceedings for the LDCs' gas costs. If experience demonstrates that a different sharing ratio might serve the ends of justice, the Commission reserves the right to revisit this issue and to reconsider our decision on this point prospectively.

IT IS, THEREFORE, ORDERED that the Stipulation filed with the Commission on November 2, 1995, providing for the accounting for secondary market transactions by natural gas local distribution companies, as set forth hereinabove, is hereby approved effective November 1, 1995, subject to the Commission's right to revisit the issue of the appropriate sharing ratio prospectively.

ISSUED BY ORDER OF THE COMMISSION.

This the 22nd day of December 1995.

NORTH CAROLINA UTILITIES COMMISSION

Geneva S. Thigpen

(SEAL)

Geneva S. Thigpen, Chief Clerk

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. G-100, Sub 63

OFFICIAL COPY
9-22-94

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Accounting for Buy/Sell and Capacity Release Transactions by the Natural Gas Local Distribution Companies) ORDER ADOPTING ACCOUNTING PROCEDURES

HEARD IN: The Hearing Room of the Commission, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina on Monday, June 20, 1994, at 2:00 p.m.

BEFORE: Commissioner Laurence A. Cobb, Presiding, Chairman Ralph A. Hunt, and Commissioners William W. Redman, Charles H. Hughes, Allyson K. Duncan, and Judy Hunt

APPEARANCES:

For Piedmont Natural Gas Company, Inc.:

Jerry W. Amos, Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P., Post Office Box 26000, Greensboro, North Carolina 27420

For Public Service Company of North Carolina, Inc.:

William A. Davis, II, Tharrington, Smith & Hargrove, 209 Fayetteville Street Mall, Raleigh, North Carolina 27601

For North Carolina Natural Gas Corporation:

Donald W. McCoy, McCoy, Weaver, Wiggins, Cleveland & Raper, Post Office Box 2129, Fayetteville, North Carolina 28302

For Carolina Utility Customers Association, Inc.:

Sam J. Ervin, IV, Byrd, Byrd, Ervin, Whisnant, McMahon & Ervin, P.A., Post Office Drawer 1269, Morganton, North Carolina 28680-1269

For the Using and Consuming Public:

Antoinette R. Wike, General Counsel, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: On July 19, 1993, the Public Staff filed a Petition in this docket asking the Commission to establish interim accounting procedures for "buy/sell transactions" between natural gas local distribution companies (LDCs) and their transportation customers.

In support of its Petition, the Public Staff stated that FERC Order 636 requires, among other things, that interstate natural gas pipelines implement a capacity release program as part of their restructuring. Under a capacity release program, the holders of firm capacity rights on the interstate pipeline, such as LDCs, will sell those rights during off-peak periods to others, such as large industrial plants, who are in the same delivery zone as the LDC or upstream. Transco has filed a restructuring plan to comply with Order 636. FERC has indicated that it will allow "grandfathering" of buy/sell agreements in place before the effective date of the capacity release program. A buy/sell transaction is an arrangement whereby an LDC buys gas from a shipper (such as an industrial end user) at a pooling point on the interstate pipeline system, transports the gas using its firm transportation rights on the pipeline system, sells the gas back to the shipper at its city gate interconnection, and then transports the gas to the end user on its system in accordance with its transportation tariffs. The transaction allows the end user to save on transportation of its gas and allows the LDC to receive compensation that would otherwise have been paid to the interstate pipeline.

By its Petition, the Public Staff asked the Commission to order the LDCs to record 90% of the net compensation on buy/sell transactions in their respective deferred accounts as a reduction of demand and storage charges for purposes of the true-up required by Commission Rule R1-17(k)(4)(a). This treatment would apply 90% of net compensation to the benefit of ratepayers and allow the LDCs to retain 10% as an incentive to sign buy/sell agreements in time for "grandfathering." Net compensation was defined as the gross compensation received by an LDC from a shipper for a buy/sell transaction less all transportation charges, taxes, and other costs, including the LDC's purchase price of the gas involved, directly related to the buy/sell transaction. The Public Staff stated that it would work with the LDCs on procedures to be followed after restructuring.

North Carolina Natural Gas Corporation (NCNG) and Pennsylvania and Southern Gas Company (Penn and Southern) agreed to the interim procedures proposed by the Public Staff.

Piedmont Natural Gas Company, Inc. (Piedmont) filed a response requesting that the Commission authorize it to enter into buy/sell agreements and defer 100% of the revenues from such agreements pending further Commission ruling. Public Service of North Carolina, Inc. (Public Service) filed a response arguing that it should be permitted to retain 100% of the revenues or, alternatively, suggesting a 50-50 split of the revenues or deferral of 100% of the revenues pending further Commission order. NCNG filed a response supporting the Public Staff's position.

On August 30, 1993, the Commission issued an Order establishing interim procedures which authorized the LDCs to enter into buy/sell agreements. The Order provided that Piedmont and Public Service should defer 100% of the net compensation from such agreements subject to the Commission's further order. NCNG and Penn and Southern were required to follow, on a provisional basis, the procedures proposed by the Public Staff and agreed to by them. The procedures for NCNG and Penn and Southern were made provisional to insure that all LDCs can be treated alike when a final decision is made. The Order further provided that the Public Staff and the LDCs should report to the Commission before October 31, 1993, on their negotiations with respect to the appropriate accounting procedures for the capacity release program of Transco and that the Commission would issue a further order in this docket dealing with the proper accounting and distribution of buy/sell revenues and capacity release revenues.

On October 28, 1993, the Public Staff filed a report on its negotiations with the LDCs regarding the appropriate accounting procedures for Transco's capacity release program. The Public Staff indicated that only NCNG had agreed to a 90/10 split of capacity release revenues and that further negotiations would likely prove futile.

As a result of such report, the Commission issued an Order on November 10, 1993, requiring the parties to file comments addressing (1) what relief each party wishes the Commission to order with respect to the proper accounting and distribution of buy/sell revenues and capacity release revenues and (2) what procedure each party recommends to resolve this docket. Comments were filed, and they are summarized below.

By Order dated May 18, 1994, the Commission scheduled oral argument dealing with the proper accounting and distribution of buy/sell revenues and capacity release revenues. The Order further provided that NCNG and Penn and Southern should, on a provisional basis, continue to follow the interim accounting procedures on buy/sell and capacity release transactions as proposed by the Public Staff and agreed to by them and that Piedmont and Public Service should continue to place 100% of net compensation from buy/sell and capacity release transactions in a deferred account subject to further order of the Commission.

Oral argument was held on the date indicated above. Penn & Southern offered a letter setting forth its position in lieu of its appearance at the oral argument.

In its comments filed in this docket and arguments before the Commission, the Public Staff states that Rule R1-17(k)(4)(a) requires each LDC to record in its deferred account, on a monthly basis, the difference between the demand and storage charges billed to customers and the actual demand and storage charges. Rule R1-17(k)(5)(d) allows the LDC to adjust its rates to refund or collect balances accumulated in the Deferred Account. The effect of Rule R1-17(k) is that the amount recovered from customers is trued-up to actual demand and storage charges incurred by the LDCs.

The Public Staff argues that buy/sell transactions involve the sale of unutilized capacity rights by an LDC to a shipper and therefore affect the true-up of demand and storage charges that is required by Rule R1-17(k). Further, the Public Staff points out that buy/sell transactions are similar in substance to Transco's capacity release program, which became effective with Transco's restructuring. Capacity release will result in a reduction to the LDC's capacity bill from Transco for the cost of the released capacity and thus the capacity costs recovered from customers pursuant to G.S. 62-133.4 and Rule R1-17(k). According to the Public Staff, its proposal to record the net compensation received on buy/sell transactions as a credit to the cost of gas is clearly consistent with what occurred when the capacity release program became effective. The issue then is not whether there is a reduction in the cost of gas but how much of the reduction should be recognized for purposes of computing the demand and storage charge true-up.

The Public Staff argues that since 100% of prudently incurred demand costs are recovered from ratepayers through the true-up mechanism, it is reasonable to give ratepayers the benefit of revenues that mitigate those costs. To argue as some of the LDCs have done that buy/sell and capacity release are unrelated to the cost of gas is to ignore the fact that the FERC adopted the capacity release program expressly to mitigate the impact of the straight fixed-variable rate design method for pricing firm transportation service on the LDCs and their customers.

Piedmont, in its filings and arguments, suggests that FERC has jurisdiction over buy/sell and capacity release revenues in that these revenues come from the transportation or sale of gas in interstate commerce and the Natural Gas Act gives FERC jurisdiction over the transportation and sale of gas in interstate commerce. Piedmont also questions the Commission's jurisdiction to require an LDC to refund revenues in the absence of a general rate case or general rulemaking docket. Piedmont points out that the Commission has refused in the past to consider changes in one item of cost or revenue outside the context of a general rate case where all changes can be reviewed.

Piedmont's position in this docket would be to allow the LDCs to retain 100% of the compensation associated with these transactions until the next general rate case where a reasonable sharing could be determined. It further suggests that a sharing of approximately 50/50 may be appropriate, but it would not be willing to agree to 90/10 as proposed of the Public Staff.

Public Service states that under buy/sell arrangements, it bills and receives revenues for the service it is providing to transportation customers and its capacity costs are unaffected by these transactions. According to Public Service, the net effect of these transactions is to generate additional or incremental revenues and the Commission has never held that the effect of such incremental revenues is in some way a "reduction" of the Company's "costs" that must be flowed back to ratepayers. The prevailing view of the Commission has been that changes in revenues or costs arising between rate cases are properly reflected in the next such proceeding, not outside of a general rate case.

In settlement discussions with the Public Staff, Public Service contended that 100% of the revenues should be retained by the Company, but in an effort to reach an accommodation proposed a 50/50 sharing arrangement which would have entailed substantial benefits for both the Company and ratepayers.

With respect to the "threshold legal questions" raised by Piedmont, Public Service does not contest the jurisdiction of the Commission, but believes the appropriate forum for resolution of these issues is in an LDC's next general rate case.

NCNG, in its comments filed in this docket, recommends that the 90/10 sharing arrangement that was previously approved by the Commission on an interim basis be continued for all future buy/sell and capacity release activity in which NCNG receives some compensation for its unutilized firm transportation rights.

According to NCNG, the 90/10 sharing arrangement can be achieved through accounting procedures whereby the net compensation received from capacity release and buy/sell agreements would be applied as a credit to gas costs. Then, to account for the customers' portion, 90% of the net compensation would be reflected in the monthly fixed cost recovery true-up. This would result in recording the customers' portion in the Deferred Gas Cost Account - All Customers for future distribution through a purchased gas adjustment filing.

NCNG points out that the 90/10 sharing arrangement is fair in that all customers pay the pipeline fixed cost, which have increased as a result of the straight fixed-variable (SFV) rate design mandated by the FERC in Order 636. Both Transco and Columbia have adopted SFV rate design, thus fixed charges to NCNG and its customers have increased substantially since September 1992, when Transco adopted SFV. At the same time, buy/sell and capacity assignment transactions increase NCNG's administrative costs and add yet another element of risk in gas supply planning and acquisition. NCNG should be compensated for its additional costs and risk.

Penn & Southern suggests that any additional revenues to the company arising out of buy-sell transactions should be treated as additional revenue of Penn & Southern and considered in conjunction with Penn & Southern's next general rate case. According to Penn & Southern, this approach is both consistent with the nonexistent nature of such costs currently (or in the foreseeable future) as well as Penn & Southern's suggestion that the cost and accounting issues relative to these transactions cannot be known at this time. Also, it further provides a ready mechanism for disposing of these issues in connection with established procedures without creating additional accounting and administrative costs associated with such transactions, the cost of which will ultimately be borne by Penn & Southern's customers.

Carolina Utility Customers Association, Inc. (CUCA) in its filings and arguments before the Commission, suggests that the Commission's decision should be based upon an analysis of three different factors. First, the Commission should recognize the validity of the Public Staff's concern that allowing the LDCs to retain 100% of all buy/sell and capacity release revenues creates a risk that the utilities will overcollect their capacity costs. Secondly, the Commission should recognize that the overall revenues which the utilities receive as the result of buy/sell and capacity release arrangements are intended to cover the cost of the LDCs' interstate pipeline capacity used by the end-user involved in the buy/sell or capacity release arrangements, to reimburse the LDCs for the administrative costs of facilitating and implementing such buy/sell and capacity release transactions, to compensate the LDCs for any increased gas supply risks, and to provide the LDCs' stockholders with a return. Thirdly, the Commission should recognize that most businesses, including local distribution companies, are reluctant to enter into new fields of endeavor and that the LDCs should not be discouraged from entering into buy/sell or capacity release arrangements because of overly-restrictive state-level ratemaking practices.

Further, CUCA states the present record does not permit the Commission to determine the exact portion of the gross compensation which will be received by each LDC in connection with particular buy/sell or capacity release transactions that effectively reimburses the utility for the use of its interstate pipeline capacity.

CUCA suggests that the Commission adopt a 50/50 sharing arrangement on an interim basis with the understanding that the appropriate treatment of buy/sell and capacity release revenues would be considered in-depth in each LDC's next general rate case.

On July 8, 1991, the General Assembly of North Carolina enacted Chapter 598 of the 1991 Sessions Laws. Sections 7 and 8 of the legislation repealed G.S. 62-133(f) and added a new statute, G.S. 62-133.4, which authorizes gas cost adjustment proceedings for the LDCs. Section (k) of Rule R1-17 was adopted to set forth the procedures by which the LDCs can file to adjust their rates pursuant to G.S. 62-133.4. The express intent of those rules, as stated therein, is to permit the LDCs to recover 100% of their prudently incurred gas costs applicable to North Carolina operations. "Gas costs" were defined to mean the total delivered cost of gas paid to suppliers, including but not limited to all commodity/gas charges, demand charges... and any other similar charges in connection with the purchase, storage or transportation of gas for the LDC's system supply.

Buy/sell arrangements and capacity release transactions involve the selling by the LDCs of their unutilized capacity rights, and are clearly an integral part of managing gas system capacity rights. The effect of Rule R1-17(k) is that demand and storage charges recovered from customers are trued-up to the actual demand and storage charges incurred by the LDCs. Accordingly, the Commission concludes that since Rule R1-17(k) guarantees the LDCs full recovery from ratepayers of every dollar spent for capacity, it is only reasonable that ratepayers should receive most of the net compensation received from the sale of capacity. Therefore, the Commission will require the LDCs to record 90% of the net compensation on buy/sell and capacity release transactions in their respective deferred accounts as a reduction of demand and storage charges for the purposes of computing the demand and storage charges true-up required by Commission Rule R1-17(k)(4)(a). This treatment will apply 90% of the net compensation to the benefit of ratepayers and allow the LDCs to retain 10%. The Commission recognizes that FERC Order No. 636 has created new operational and purchasing responsibilities for the LDCs. For this reason, the Commission finds appropriate a sharing of benefits based on the percentages used by the FERC for refunding interruptible transportation revenues from Transco to its firm customers. Since the LDCs' capacity release and buy/sell service offerings will compete directly with Transco's interruptible transportation service, a similar sharing is logical.

In reaching its conclusion in this matter, the Commission agrees with the LDC's position that changes in one element of costs/revenues generally should be reviewed in the context of a rate case where all changes may be considered. However, under Rule R1-17(k), the Commission has provided for a dollar-for-dollar true-up on a monthly basis outside of a rate case of all prudently incurred capacity costs incurred by the LDCs. Accordingly, it seems appropriate to give ratepayers the benefit of compensation that mitigate those costs. FERC implemented the capacity release program to mitigate the impact of its straight fixed-variable rate design on the LDCs and provide an opportunity for cost reductions by the LDCs. Further, with respect to capacity release, the compensation will actually be reflected as a credit on the LDC's bills from Transco.

With respect to the jurisdictional issues raised in this proceeding, the Commission recognizes that FERC has jurisdiction over the sale and transportation of gas in interstate commerce and the Commission's decision herein is not intended to usurp such jurisdiction or discourage the LDCs from entering into transactions of the nature involved herein. In reaching its decision herein, the Commission is of the opinion that the sharing arrangement authorized will provide the necessary encouragement and opportunity for cost reductions by the LDCs which can benefit the LDCs as well as the ratepayers. The General Assembly has given the Commission broad authority to change rates outside a general rate case as changes in the cost of gas supply and transportation require, including the authority to define the word "cost". G.S. 62-133.4. Under NCUC Rule R1-17(k) implementing this statute, ratepayers pay the full cost of firm interstate capacity rights prudently purchased by the LDCs.

IT IS, THEREFORE, ORDERED that the LDCs shall record 90% of the net compensation on buy/sell transactions and capacity release transactions entered into on and after August 30, 1993, in their respective deferred accounts as a reduction of demand and storage charges for the purposes of computing the demand and storage charges true-up required by Commission Rule R1-17(k)(4)(a) as hereinabove provided.

ISSUED BY ORDER OF THE COMMISSION.

This the 22nd day of July 1994.

NORTH CAROLINA UTILITIES COMMISSION

Gail L. Mount

(SEAL)

Gail L. Mount, Deputy Clerk

Inter-corp. transactions

H

Supreme Court of Tennessee.
TENNESSEE PUBLIC SERVICE COMMISSION et al., Appellants-Defendants,
v.
NASHVILLE GAS COMPANY, Appellee-Plaintiff.
March 21, 1977.

Gas utility filed complaint alleging that rate structure authorized by Tennessee Public Service Commission was confiscatory. The Equity Court, Davidson County, Ben H. Cantrell, Chancellor, resolved most of disputed issues in favor of Commission and generally approved its order, but as to issues which were resolved in favor of utility, Commission appealed. The Supreme Court, Harbison, J., held that: (1) operations and revenues of parent corporation were a proper and relevant consideration for Commission in fixing reasonable rates for subsidiary; (2) a fundamental principle of rate making was not violated by Commission when it failed to separate interstate from intrastate operations where it was clear that Federal Power Commission only partially regulated operations of parent and that prices charged by parent to its customers were not regulated; (3) it was within jurisdiction of Commission to determine that it did not have enough information about present contracts, depreciation schedules, and historical costs to determine extent to which industrial sales of parent were to be taken into account in fixing appropriate rates for subsidiary, and (4) expenses which subsidiary allegedly incurred in counsel fees, consulting fees, and other charges in preparation and presentation of its case were to be reconsidered by Commission with a view toward further explanation or supporting testimony.

Reversed as to issues involved in appeal and remanded.

West Headnotes

[1] Gas 190 ⚷14.3(2)

190 Gas
190k14 Charges
190k14.3 Administrative Regulation
190k14.3(2) k. Federal Power Commission. Most Cited Cases

Prices which parent corporation charged subsidiary for natural gas were subject to regulation by Federal Power Commission and, though volumes and priorities of natural gas sold by parent to its three large industrial customers were also subject to regulation by Commission, prices at which such gas was sold to those industries were not subject to regulation by Commission. T.C.A. § 65-403; Natural Gas Act, § 1 et seq., 15 U.S.C.A. § 717 et seq.; U.S.C.A.Const. art. 1, § 8, cl. 3.

[2] Commerce 83 ⚷62.2

83 Commerce
83II Application to Particular Subjects and Methods of Regulation
83II(B) Conduct of Business in General
83k62.2 k. Gas. Most Cited Cases

Provisions of Natural Gas Act were not designed to remove from states substantial regulation of natural gas industry, but rather were designed to provide federal regulation in certain areas which were not subject to state jurisdiction under interstate commerce clause. T.C.A. § 65-403; Natural Gas Act, § 1 et seq., 15 U.S.C.A. § 717 et seq.; U.S.C.A.Const. art. 1, § 8, cl. 3.

[3] Gas 190 ⚷1

190 Gas
190k1 k. Power to Control and Regulate. Most Cited Cases

Dual regulation is clearly contemplated both by terms of Natural Gas Act and by cases interpreting it. T.C.A. § 65-403; Natural Gas Act, § 1 et seq., 15 U.S.C.A. § 717 et seq.; U.S.C.A.Const. art. 1, § 8, cl. 3.

[4] Gas 190 ⚷1

190 Gas
190k1 k. Power to Control and Regulate. Most Cited Cases
Inasmuch as parent corporation of subject utility was regulated by Federal Power Commission as to volumes and priorities of natural gas sold by it to three large industrial customers in area, it was inappropriate for Tennessee Public Service Commission to undertake such regulation, but inasmuch as prices charged by parent corporation were not regulated, it was beyond question that Tennessee Public Service Commission had jurisdiction and authority to regulate those prices directly if it saw fit to do so. T.C.A. § 65-403; Natural Gas Act, § 1 et seq., 15 U.S.C.A. § 717 et seq.; U.S.C.A.Const. art. 1, § 8, cl. 3.

[5] Corporations 101 ⚷1.6(1)

101 Corporations
101I Incorporation and Organization
101k1.6 Particular Occasions for Determining Corporate Entity
101k1.6(1) k. In General. Most Cited Cases
Tennessee Public Service Commission is not bound in all instances to observe corporate charters and form of corporate structure or stock ownership in regulating a public utility and in fixing fair and reasonable rates for its operations. T.C.A. §§ 4-507 et seq., 65-220.

[6] Commerce 83 ⚷62.2

83 Commerce
83II Application to Particular Subjects and Methods of Regulation
83II(B) Conduct of Business in General
83k62.2 k. Gas. Most Cited Cases
Operations and revenues of parent corporation were not an improper and irrelevant consideration for Tennessee Public Service Commission in fixing reasonable natural gas rates for subsidiary, even though direct sales of parent corporation to industrial customers in area were a part of interstate commerce by reason of parent's being a natural gas company subject to federal Natural Gas Act, where sales were essentially local in nature and were expressly subject to state gross receipts tax and, though parent was regulated by Federal Power Commission as to volumes and priorities of natural gas sold to industrial customers, prices charged by parent to those customers were not regulated and it was beyond question, therefore, that Tennessee Public Service Commission was vested with jurisdiction and authority to regulate those prices directly if it saw fit to do so. T.C.A. § 65-403; Natural Gas Act, § 1 et seq., 15 U.S.C.A. § 717 et seq.; U.S.C.A.Const. art. 1, § 8, cl. 3.

[7] Commerce 83 ⚷62.2

83 Commerce
83II Application to Particular Subjects and Methods of Regulation
83II(B) Conduct of Business in General
83k62.2 k. Gas. Most Cited Cases
Statute exempting from state regulation public utilities "engaged in interstate commerce for the government or regulation of which jurisdiction is vested in the interstate commerce commission or other federal board or commission" did not operate to preclude Tennessee Public Service Commission from regulating prices on which gas was sold by parent corporation to three large industrial customers in area, notwithstanding that sales were part of interstate commerce, where operations of parent corporation were only partially regulated by Federal Power Commission and state and federal statutes operated to afford a complete system of dual regulation of natural gas industry. T.C.A. § 65-403; Natural Gas Act, § 1 et seq., 15 U.S.C.A. § 717 et seq.; U.S.C.A.Const. art. 1, § 8, cl. 3.

[8] Commerce 83 ⚷62.2

83 Commerce
83II Application to Particular Subjects and Methods of Regulation
83II(B) Conduct of Business in General

83k62.2 k. Gas. Most Cited Cases
Tennessee Public Service Commission, in considering operations and revenues of parent corporation in fixing reasonable rates for subsidiary, did not violate a fundamental principle of rate making by failing to separate interstate from intrastate operations, where subsidiary was entirely subject to regulation by Commission and direct sales of parent to industrial customers were also subject to such regulation. T.C.A. § 65-403; Natural Gas Act, § 1 et seq., 15 U.S.C.A. § 717 et seq.; U.S.C.A.Const. art. 1, § 8, cl. 3.

[9] Public Utilities 317A ⚷165

317A Public Utilities
317AIII Public Service Commissions or Boards
317AIII(B) Proceedings Before Commissions
317Ak165 k. Evidence. Most Cited Cases
(Formerly 317Ak15)
Tennessee Public Service Commission was entirely justified in acting within its jurisdiction in determining that it did not have enough information about present contracts, depreciation schedules, historical costs and the like to determine the extent to which the industrial sales of the parent corporation should be taken into account in fixing appropriate rates for the subsidiary. T.C.A. § 65-403; Natural Gas Act, § 1 et seq., 15 U.S.C.A. § 717 et seq.; U.S.C.A.Const. art. 1, § 8, cl. 3.

[10] Gas 190 ⚷14.3(3)

190 Gas
190k14 Charges
190k14.3 Administrative Regulation
190k14.3(3) k. Proceedings in General. Most Cited Cases
Expenses which utility claimed to have incurred in counsel fees, consulting fees, and other charges in preparation and presentation of its case in rate hearing were to be reconsidered by Tennessee Public Service Commission with a view toward further explanation and supporting testimony. T.C.A. § 65-403.
***316** Eugene W. Ward, Gen. Counsel, T.P.S.C., T. E. Midyett, Jr., Asst. Gen. Counsel, T.P.S.C., Larry D. Woods, Jinx S. Thomas, Nashville, for appellants-defendants.

John W. Kelley, Jr., Leslie B. Enoch, II, Nashville, William W. Bedwell, Washington, D.C., for appellee-plaintiff.

OPINION

HARBISON, Justice.

Appellee, Nashville Gas Company, is a gas distributing company, serving Metropolitan Nashville and portions of several adjacent counties in Middle Tennessee. It ***317** is a Tennessee corporation, engaged solely in intrastate commerce, and is a public utility subject to the jurisdiction of and regulation by the Tennessee Public Service Commission.

All of the stock of appellee is owned by another Tennessee corporation, Tennessee Natural Gas Lines, Inc., which is publicly held. This corporation is a "natural gas company" within the meaning of the federal Natural Gas Act of 1938,[FN1] but it is such only because it sells natural gas to its wholly-owned subsidiary, Nashville Gas Company, for resale. Otherwise, it is a domestic corporation operating wholly within the boundaries of the state. Other than its subsidiary, it has three other customers to which it makes direct sales of natural gas, all of these being large industries situated in Davidson County and being within the area authorized to be served by the subsidiary, Nashville Gas Company, under its certificate of convenience and necessity. [FN2]

FN1. 15 U.S.C.A. s 717 et seq.

FN2. The subsidiary was apparently not franchised by the City of Nashville to sell outside the city limits, and it did not receive a franchise from local government to serve all of Davidson County until the advent of Metropolitan Government in 1963.

Nevertheless it was certificated by the Commission to serve Nashville and its environs in the 1930s or before, and it made sales outside the Nashville city limits under that certificate long before 1963. Its franchised territory under local government and its certificated area by the Commission are not and have never been identical.

Tennessee Natural Gas Lines, Inc., does not have a certificate from the state Commission. Since it is a "natural gas company" within the meaning of the federal statute, its operations are regulated by the Federal Power Commission, to the extent of the jurisdiction of that Commission. It is undisputed, however, that the Federal Power Commission does not fix the prices which Tennessee Natural Gas Lines, Inc., charges to its direct industrial customers in the Nashville area, nor does it have jurisdiction to do so under present statutory provisions.

On January 16, 1975, appellee, Nashville Gas Company, made application to the Tennessee Public Service Commission for an emergency rate increase, seeking additional revenues in order to enable it to meet the requirements of a maturing bond issue. Temporary rate increases were authorized and put into effect, under bond, on March 13, 1975. On April 14, 1975 appellee filed with the Commission an application for a general permanent rate increase, and the two matters were consolidated for hearing and disposition.

Extensive hearings were held and a voluminous record compiled before the Commission in September and October 1975. On October 14, the Commission entered an order finding that Nashville Gas Company was entitled to a rate structure which would yield 13.5% return on common equity and 12.14% return on its rate base. In order to accomplish this return, the Commission found that appellee required additional annual gross revenues of $3,056,132.00. The emergency rate increases under bond were found to produce $1,909,088.00 of this amount, and these increases were made permanent. The Commission found that an additional $1,147,044.00 in gross revenues, over the bonded revenues, were required. It authorized tariffs to produce this additional revenue subject, however, to an offset or reduction by the revenues received by the parent corporation, Tennessee Natural Gas Lines, Inc., from its direct industrial sales within the Nashville area. The Commission found that the appellee had declined to furnish it with the necessary data to compute accurately the amount of this offset or reduction, referred to in the record as an "imputation adjustment". It directed appellee immediately to file with the Commission additional data which the Commission felt necessary in order for it to determine the effect of the operations of the parent upon the authorized rate structure of the subsidiary. One member of the Commission dissented as to this portion of the order, stating that he regarded the operations of the parent corporation as entirely separate and distinct from those of the subsidiary; therefore, he considered irrelevant and illegal the additional information ordered by the majority.

***318** Continuing its refusal to furnish the requested data, appellee filed a petition for certiorari to the Chancery Court pursuant to T.C.A. s 65-220, [FN*] and also filed an original complaint in that court, alleging that the rate structure authorized by the Commission was confiscatory.

FN* Neither party has cited the Uniform Administrative Procedures Act, T.C.A. ss 4-507 et seq. However, its application would not affect the issues presented to us.

Both before the Commission and in the Chancery Court there were numerous contested issues, involving many factors and considerations which go into the complex process of utility rate making. The Chancellor resolved most of the disputed issues in favor of the Commission and generally approved its October 14, 1975 order, with two exceptions. The two issues which he resolved in favor of appellee form the basis of the present appeal to this Court by the Commission.

The Chancellor held that the Commission was in error in taking into consideration the operations and revenues of the parent corporation, Tennessee Natural Gas Lines, Inc., and in directing the filing of additional data concerning its industrial sales in Davidson County, holding that these were an improper and irrelevant consideration in fixing reasonable rates for the subsidiary. He also resolved in favor of appellee a disputed issue concerning the reasonableness of expenses and fees incurred in the present rate proceedings. We will consider these two issues separately.[FN3]

FN3. In support of its assignments of error, appellant Commission has attached as "Exhibits" to its brief a number of documents not introduced in evidence in the Commission hearings or before the Chancellor. This is improper practice, and we sustain appellee's Motion to Strike these documents and the references thereto in appellant's brief. No consideration has been given to them by the Court.

I. The Parent-Subsidiary Issue

[1] It is clear from the record in this case that the prices which the parent corporation, Tennessee Natural Gas Lines, Inc., charges its subsidiary for natural gas are regulated by the Federal Power Commission. Also regulated by that Commission are the volumes and priorities of natural gas sold by the parent to its three large industrial customers in the Nashville area. The prices at which such gas is sold to these industries is not, however, regulated by the Federal Power Commission nor, under the settled interpretation of the Natural Gas Act, are those prices subject to regulation by that Commission. See Federal Power Commission v. Transcontinental Gas Pipe Line Corp., 365 U.S. 1, 81 S.Ct. 435, 5 L.Ed.2d 377 (1961); Cities Service Gas Co. v. U. S., 500 F.2d 448, 205 Ct.Cl. 16 (1974).

[2][3] It is also well settled that the Natural Gas Act was not designed to remove from the states substantial regulation of the natural gas industry, but rather it was designed to provide federal regulation in certain areas which were not subject to state jurisdiction under the interstate commerce clause of the United States Constitution. Dual regulation is clearly contemplated both by the terms of the federal statute and by the cases interpreting it. Memphis Natural Gas Co. v. McCanless, 183 Tenn. 635, 194 S.W.2d 476 (1946), appeal dismissed, 329 U.S. 670, 67 S.Ct. 99, 91 L.Ed. 591 (1946).

In the case of Panhandle Eastern Pipe Line Co. v. Public Service Commission of Indiana, 332 U.S. 507, 68 S.Ct. 190, 92 L.Ed. 128 (1947), the United States Supreme Court expressly held that direct sales to industrial customers by an interstate pipe line carrier are subject to regulation by state utility commissions, even though such sales are a part of interstate commerce. See also Panhandle Eastern Pipe Line Co. v. Michigan Public Service Commission, 341 U.S. 329, 71 S.Ct. 777, 95 L.Ed. 993 (1951), where an interstate pipe line was required to obtain a certificate of convenience and necessity from a state commission before making direct industrial sales to natural gas customers. There the Court said:

". . . the sale and distribution of gas to local customers made by one engaged in interstate commerce is 'essentially*319 local' in aspect and is subject to state regulation without infringement of the Commerce Clause of the Federal Constitution, article 1, s 8, cl. 3. In the absence of federal regulation, state regulation is required in the public interest." 341 U.S. at 333, 71 S.Ct. at 779.

[4] Since, in the present case, the parent corporation, Tennessee Natural Gas Lines, Inc., is regulated by the Federal Power Commission as to volumes and priorities, it would not be appropriate for the local Commission to undertake such regulation. Inasmuch as the prices charged by the parent corporation to its customers are not regulated, however, we think that it is beyond question that the Tennessee Public Service Commission has jurisdiction and authority to regulate those prices dir-

ectly, if it should see fit to do so.

We have previously pointed out that the parent corporation is in "interstate commerce" solely and exclusively because of the language of the federal Natural Gas Act, 15 U.S.C.A. s 717 et seq. which places under the Federal Power Commission sales in interstate commerce for resale. Were it not for the sales made by the parent directly to its subsidiary for resale, the entire system of the parent and the subsidiary would be wholly intrastate, and would be subject to regulation in its entirety by the Tennessee Public Service Commission. The parent corporation does not operate across state lines, but its pipeline taps onto an interstate pipeline in Cheatham County, Tennessee, and brings natural gas into Davidson County, where it is sold to the subsidiary and to the three industrial customers.

Tennessee Natural Gas Lines, Inc. has no operating employees. Nashville Gas Company has some three hundred and forty-two operating employees. These perform various tasks for the parent as well as the subsidiary, and the parent reimburses the subsidiary for their services. The two corporations have common officers and directors, some of the officers being wholly paid by the subsidiary and some of them being paid by the parent. The parent acquired all of the stock of the subsidiary in 1945, and has held it continuously since that time.

The dissenting member of the Public Service Commission felt that it was improper for the Commission to consider any of the operations and sales of the parent, because of the separate corporate structure and because the parent is engaged in interstate commerce, subject to federal regulation. He also felt that it was improper to "pierce the corporate veil" because there was no evidence of fraud, misconduct or impropriety in the management and operation of the two companies.

We are in agreement with the latter statement of the Commissioner, and because of certain statements and comments made in the briefs and in the record we feel constrained to state that we find no evidence whatever of any misconduct, illegality or impropriety in any of the management decisions and transactions which are reflected in this record. The decisions by the management of the two companies to have the direct sales made to industrial customers by the parent, rather than the subsidiary, were based upon legitimate financial and corporate concerns at the time, probably including the fact that the sales were not subject to federal regulation and had not in fact been regulated locally. There were many other considerations which entered into the decisions, however, all of which were justified from a management and financial standpoint.

[5] Having said this, we are, on the other hand, equally convinced that a regulatory body, such as the Public Service Commission, is not bound in all instances to observe corporate charters and the form of corporate structure or stock ownership in regulating a public utility, and in fixing fair and reasonable rates for its operations. The filing of consolidated reports by parent and subsidiary corporations, both for tax purposes and regulatory purposes, is so commonplace as to be completely familiar in modern law and practice. Considerations of "piercing the veil", which are involved in cases involving tort, misconduct or fraud, are largely irrelevant in the regulatory and ***320** revenue fields. In order for taxing authorities to obtain accurate information as to revenues and expenses, the filing of consolidated tax returns by affiliated corporations is frequently required, and rate-making and regulatory bodies frequently can and do consider entire operating systems of utility companies in determining, from the standpoint both of the regulated carrier and the consuming public fair and reasonable rates of return.

In some of the federal cases most relied upon by appellee in its brief, the courts have considered parent and subsidiary corporations as a group or as an operating system, and have considered for rate-making purposes many aspects of inter-company relationships, including sales between affiliated companies, expenses charged and the like. Thus, in the case of Smith v. Illinois Bell Telephone Co., 282 U.S. 133, 51 S.Ct. 65, 75 L.Ed. 255 (1930), relied upon by appellee for the proposition that intrastate and interstate revenues, property and expenses must be allocated in fixing utility rates, the Supreme Court of the United States set aside and reversed a district court order which had found confiscatory certain rates set by an Illinois regulatory commission. The Court remanded the case for further proof and specific findings as to the reasonableness of charges made to the regulated intrastate company by its interstate parent and an interstate affiliate, the parent owning 99% of the stock of both the regulated company and the affiliated corporation, Western Electric Company.

In that case, the Court expressly held that the relationship between the subsidiary, its parent and its sister corporation demanded "close scrutiny" even though it recognized that separate corporate structures and operations should be observed. In that case the Court referred to Western Electric Company as "virtually the manufacturing department" of the entire system, and its net profits were specifically required to be taken into consideration in connection with the rates of the intrastate company, Illinois Bell Telephone Company, then under consideration.

Similarly, in Colorado Interstate Gas Co. v. Federal Power Commission, 324 U.S. 581, 65 S.Ct. 829, 89 L.Ed. 1206 (1945), the Federal Power Commission treated two separate companies, subsidiaries of larger oil companies, as having been "operated as a single enterprise." 324 U.S. at 588, 65 S.Ct. 829. In that case transactions by which leaseholds had been transferred to a subsidiary were ignored, and certain interstate wholesale rates were required to be reduced because of an excess of revenues over cost. The Court said:

"The fact that the negotiations between Southwestern and Standard were at arm's length has no bearing on the present problem. The end result is that property has been transferred at a write-up from one of Southwestern's pockets to another. The impact on consumers of utility service of write-ups and inflation of capital assets through intercompany transactions or otherwise is obvious. The prevalence of the practice in the holding company field gave rise to an insistent demand for federal regulation." 324 U.S. at 608, 65 S.Ct. at 841.

See also Cities Service Gas Co. v. Federal Power Commission, 424 F.2d 411 (10th Cir. 1969), cert. dismissed, 400 U.S. 801, 91 S.Ct. 9, 27 L.Ed.2d 33 (1970); Cities Services Gas Co. v. Federal Power Commission, 155 F.2d 694 (10th Cir. 1946), cert. den., 329 U.S. 773, 67 S.Ct. 191, 91 L.Ed. 664 (1946).

[6] Even though the direct sales of the parent corporation in the present case are a part of interstate commerce, by reason of the parent's being a natural gas company subject to the federal Natural Gas Act, these sales are essentially local in nature and have been expressly held to be subject to a state gross receipts tax. Tennessee Natural Gas Lines, Inc. v. Atkins, 199 Tenn. 468, 287 S.W.2d 67 (1956).

***321** The appellee insists that the Tennessee Public Service Commission has no jurisdiction over the direct sales of its parent to the industrial customers because in 1969 the Commission dismissed proceedings which it had initiated contemplating possible total regulation of the parent. We find the contention of the appellee to be unpersuasive. Whether or not the Commission could or could not regulate all phases of the operations of the parent corporation, we think it unquestionable from the federal cases construing the Natural Gas Act that the Tennessee Commission does have authority to regulate the prices charged in these direct industrial sales. We do not regard the 1969 proceedings as having any significance with respect to the present rate case.

[7] Appellee contends further, however, that the Tennessee statutes themselves prohibit the Commission from regulating interstate commerce, citing T.C.A. s 65-403. This statute exempts from state regulation public utilities "engaged in interstate commerce for the government or regulation of

which jurisdiction is vested in the interstate commerce commission or other federal board or commission."

We have already noted that the Federal Power Commission only partially regulates the operations of the parent corporation, and certainly both the state statutes and the federal Natural Gas Act contemplate a complete system of dual regulation of the natural gas industry.

Finally it is insisted on behalf of appellee that the industrial sales were contracted by the parent, and the pipelines and facilities built at the expense of the parent, wholly separate from the subsidiary, and at a time when the subsidiary could not financially have afforded the capital outlay necessary to enable it to make these sales.

There is no question but that the two companies have had in the past separate historical development, and we have already stated that we find no illegality whatever in the management decisions which resulted in the present situation. It must be remembered, however, that Nashville Gas Company is wholly owned by Tennessee Natural Gas Lines, Inc. Throughout the record and throughout its brief on appeal, appellee stresses the frequent subsidization of the subsidiary by the parent over the years, and it seems to us that the subsidiary in actuality is nothing more than an operating division of the parent. Management decisions, for legitimate reasons, may have placed the industrial sales and the facilities requisite therefor in the parent company, but this does not prevent a public regulatory body from considering them as part of one operating system and taking them into account in determining the proper rate base and rate structure of the subsidiary. Otherwise, it would be a simple matter, through the device of holding companies, spinoffs, or other corporate arrangements, to place the cream of a utility market in the hands of a parent or an affiliate, and to strip the marketing area of a regulated subsidiary of its most profitable customers. See Industrial Gas Co. v. Public Utilities Comm'm of Ohio, 135 Ohio 408, 21 N.E.2d 166 (1939).

[8] Throughout the lengthy involved hearings reflected in the record in this case, much information concerning the parent corporation and its sales was introduced into the record. The Commission felt, however, that it did not have enough information about present contracts, depreciation schedules, historical costs and the like to determine the extent to which the industrial sales of the parent should be taken into account in fixing appropriate rates for the subsidiary. We cannot, therefore, at this time know what significance, if any, the Commission will ultimately give to the data which it requested, but we believe that the Commission was entirely justified and acting within its jurisdiction in taking these into account. From such information as is already contained in the record, it appears ***322** that the parent corporation receives substantial profits from these sales, reflecting a net return on the equity capital of the consolidated enterprise not greatly less than that which the Commission found necessary and proper for the subsidiary alone.[FN4]

> FN4. The general rate increase proposed in this case did not involve residential customers. Its effect, therefore, will be to raise the rates charged to industrial and commercial customers of the subsidiary, and it therefore seems particularly relevant that consideration should be given to the revenues received by the parent from its industrial sales in the same marketing area.

[9] The Chancellor held that the Commission had violated a fundamental principle of rate making in failing to separate interstate from intrastate operations. He stated that even if the parent and subsidiary were merged into one corporation, such allocation would still have to be made. This, however, overlooks the fact that if the two corporations were merged, there would be no interstate commerce involved at all, because there would be no "sales for resale" and the entire system would be an intrastate distributing company.

While the principle referred to by the Chancellor is a well-recognized and fundamental one, it is usually applied in cases where a regulatory body has only partial jurisdiction over a utility, or where a utility company has separate non-utility operations, not subject to regulation. Such a situation is not presented in the present case, where the subsidiary is entirely subject to regulation by the Tennessee Public Service Commission, and the direct sales of its parent are also subject to such regulation.

The decree of the Chancellor in this case is reversed, insofar as it dealt with the parent-subsidiary relationship, and this cause will be remanded to the Chancery Court, with directions to refer it to the Commission for the production by the Nashville Gas Company of the information ordered to be supplied by the Commission, and further consideration by the Commission after that information has been supplied.

II. Rate Case Expenses

The Commission authorized the applicant Nashville Gas Company to include in its cost of services $100,000.00 for expenses incurred in counsel fees, consulting fees and other charges in the preparation and presentation of this case. By an exhibit, filed several days after the close of the hearings before the Commission, appellee claimed $203,420.00 in expenses, more than double the amount allowed by the Commission. In its complaint in the chancery court, appellee alleged that it was never given a hearing on its late-filed exhibit, and that the action of the Commission was unreasonable. The Chancellor found no evidence contrary to that contained in the exhibit and allowed the entire amount of claimed expenses, to be amortized over a three-year period.

[10] Since we have ordered a remand of this case to the Commission, we think that the item of expenses should also be reconsidered by the Commission, with both the appellee and the commission staff having an opportunity to present such additional evidence as they desire. We are not prepared to accept some of the items contained in the late-filed exhibit, nor do we believe that the Commission was obligated to do so, at least without some explanation or supporting testimony. We think a further hearing on this entire issue would be appropriate.

The decree of the Chancery Court is reversed as to the two issues involved on this appeal, and the cause is remanded to that Court for reference to the Commission as above indicated. Costs incident to the appeal to this Court will be taxed to appellee. ***323** All other costs will be fixed by the Chancel- lor.

COOPER, C. J., and FONES and BROCK, JJ., concur.
HENRY, J., not participating.
Tenn. 1977.
Tennessee Public Service Commission v. Nashville Gas Co.
20 P.U.R.4th 66, 551 S.W.2d 315

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127 FERC ¶ 61,322 (June 30, 2009)		resulting from violations of §284.8(h) posting and bidding requirements, improper release and acquisition of discounted rate capacity through flipping transactions.
In re ProLiance Energy, LLC, 127 FERC ¶ 61,321 (June 30, 2009)	$3,000,000 Civil Penalty $195,959.44 Disgorgement	Civil penalty and compliance reporting resulting from violations of §284.8(h) posting and bidding requirements, improper release and acquisition of discounted rate capacity through flipping transactions, violations of shipper-must-have-title requirements and violations of buy-sell transaction rules
In re Sequent Energy Management, L.P. and Sequent Energy Marketing, L.P., 127 FERC ¶ 61,320 (June 30, 2009)	$5,000,000 Civil Penalty $53,728.18 Disgorgement	Civil penalty and compliance reporting resulting from violations of §284.8(h) posting and bidding requirements, improper release and acquisition of discounted rate capacity through flipping transactions, violations of shipper-must-have-title requirements and violations of buy-sell transaction rules.
In re Piedmont Natural Gas Co. Inc., 127 FERC ¶ 61,319 (June 30, 2009)	$1,250,000 Civil Penalty	Civil penalty and compliance reporting resulting from violations of §284.8(h) posting and bidding requirements, improper release and acquisition of discounted rate capacity through flipping transactions.
In re Puget Sound Energy, 127 FERC ¶ 61,070 (April 22, 2009)	$800,000 Civil Penalty	Civil penalty and compliance reporting resulting from violations of 18 C.F.R. §284.8(h) posting and bidding requirements, improper release and acquisition of discounted rate capacity through flipping transactions and self-reported violations of shipper-must-have-title requirements.
In re Anadarko Petroleum Corp., 127 FERC ¶ 61,069 (April 22, 2009)	$1,100,000 Civil Penalty $232.423.40 Disgorgement	Civil penalty, disgorgement and compliance reporting resulting from violations of 18 C.F.R. §284.8(h) posting and bidding requirements, improper release and acquisition of discounted rate capacity through flipping transactions.
In re Louisville Gas and Electric Co., 127 FERC ¶ 61,068 (April 22, 2009)	$350,000 Civil Penalty	Civil penalty and compliance reporting resulting from violations of 18 C.F.R. §284.8(h) posting and bidding requirements, improper release and acquisition of