

**IN THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE**

IN RE:

**PETITION OF CHATTANOOGA GAS
COMPANY FOR APPROVAL OF ITS
RATES AND CHARGES,
MODIFICATION OF ITS RATE DESIGN,
AND REVISED TARIFF**

DOCKET NO. 09-00183

**RESPONSE OF THE CONSUMER ADVOCATE TO THE MOTION OF
CHATTANOOGA GAS COMPANY TO EXTEND THE USAGE ADJUSTMENT AND
CONSERVATION PROGRAMS APPROVED BY THE AUTHORITY**

Robert E. Cooper, Jr., Attorney General and Reporter for the State of Tennessee, by and through the Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate"), respectfully submits a response to the motion of Chattanooga Gas Company ("CGC", "Company") to extend the decoupling mechanism otherwise known as the Alignment and Usage Adjustment ("AUA") mechanism and the "energySMART" energy conservation programs approved by the Tennessee Regulatory Authority ("TRA", "Authority") in this docket three years ago. The Company further requests the earnings cap built into the decoupling mechanism be modified. The Consumer Advocate opposes a three year extension of the experimental period for the AUA and energySMART programs and any modification to the cap prior to a thorough review by the Authority.

It is not in the public interest to extend or modify the AUA and energy conservation programs without a review. Moreover, the latest 3.03 report submitted by the Company to the Authority indicates the Company is earning more than its authorized rate of return. Extending

the AUA and modifying the cap on AUA recovery of revenues when the Company is over-earning is not just and reasonable, sound regulatory policy or in the interest of ratepayers.

INTRODUCTION

The basis of the Authority's approval of the Company's AUA mechanism and energy conservation program was set forth by the Tennessee General Assembly. The energy conservation policy of Tennessee for regulated natural gas and electric utilities was enacted in Public Chapter 531 in 2009. Section 53 of Public Chapter 531, which is codified within Tenn. Code Ann. § 65-4-126, provides as follows:

The general assembly declares that the policy of this state is that the Tennessee regulatory authority will seek to implement, in appropriate proceedings for each electric and gas utility, with respect to which the authority has rate making authority, a general policy that ensures that utility financial incentives are aligned with helping their customers use energy more efficiently and that provides timely cost recovery and a timely earnings opportunity for utilities associated with cost-effective measurable and verifiable efficiency savings, in a way that sustains or enhances utility customers' incentives to use energy more efficiently.

While the Tennessee General Assembly's instruction to the Authority is broad as to how to align incentives for gas and electric utilities to encourage energy conservation, natural gas utilities in this state have focused strictly on decoupling mechanisms such as the AUA. Because a portion of revenue collected by a gas utility is based on how much consumers use, it has been argued by some that utilities need guaranteed revenues in order to remove a disincentive to encourage energy conservation. In the simplest of terms, decoupling mechanisms guarantee a public utility recovery of revenue on an average per customer basis for any reduction in usage of natural gas for any reason. However, as the Authority has concluded in prior cases, such

mechanisms shift business risk to consumers and weaken regulatory incentives for monopolies to control costs.¹

While decoupling is packaged as an effort to encourage energy conservation, the practical effect of the mechanism is to insulate a utility's revenues from a decrease in revenue and customer usage for any economic or business reason. Rates are raised for reduced revenue collections from consumers whether reduced usage is the result of economic conditions, price elasticity of the commodity or participation in energy conservation programs. The loss of revenue utilities experience from reduced customer usage due to energy conservation programs has historically been insignificant.²

In Docket 09-00183, a rate case, CGC's decoupling mechanism, the AUA, was presented along with other Straight Fixed Variable rate designs as meeting the alignment goals of the state's new energy conservation policy. The Company further proposed the AUA eliminated the need for the Weather Normalization Adjustment ("WNA") as the AUA already compensated for all impacts on revenue. CGC also presented a number of energy conservation programs which required consumer funding while also proposing Company contributions.

The Consumer Advocate opposed the AUA on a number of practical, regulatory and policy grounds and recommended a series of alternative rate designs and proposals, including consumer safeguards if a decoupling mechanism were authorized.³ The Consumer Advocate also opposed the elimination of the WNA because it would create the opportunity for permanency for the AUA and cause confusion among customers.⁴ Moreover, the WNA

¹*Direct Testimony of Dr. David Dismukes*, March 10, 2010, pp. 32-34; 62-63, discussing the Authority's decisions in Docket 05-00258 and Docket 09-00104.

²*Direct Testimony of Dr. David Dismukes*, March 10, 2010, p. 44.

³*Direct Testimony of Dr. David Dismukes*, March 10, 2010, pp.32-91; *Post-Hearing Brief of the Consumer Advocate*, pp. 57-90.

⁴*Direct Testimony of Dr. David Dismukes*, March 10, 2010, p. 69-70.

adjustments would allow interested parties to have a more accurate picture of the new revenue generated from consumers by the AUA independent of weather considerations.

Following the rate case hearing in Docket 09-00183, the Authority adopted the AUA for application to the residential (R-1) and commercial (C-1) class customers for a three year experimental period. The WNA was eliminated and the Company's fixed monthly charges were increased to lessen the risk of under-recovery of fixed costs by the Company. The Authority adopted a cap on AUA rate increases of 2% of margin revenues as recommended by the Consumer Advocate.

The *Order* clearly requires a three year experimental or "trial period", a report by the Company indicating the impact on the Company and residential and commercial customers.⁵ The *Order* also provided that the TRA Staff and NRRI would develop a set of measurements to evaluate the programmable thermostat and education programs.⁶ The AUA and energySMART are the pioneering initiatives of the state's energy conservation program. No other regulated natural gas or electric utility has any similar program.

The Request by the Company is Untimely

The *Order* was published on November 8, 2010, and has never been modified nor has any party requested reconsideration until now. The *Order* did not provide for extending the AUA or the energySMART programs. In essence, the Company's request to extend the authorization of the AUA and energySMART without meeting the requirements of the *Order* is ultimately an untimely motion to reconsider.

⁵ *Order*, November 10, 2010, p. 57.

⁶ *Id.*; CGC indicates in its *Motion* the TRA Staff did not reach an agreement with NRRI to do so until April, 2013. None of this information has been previously disclosed. The Consumer Advocate has not been privy to communications between CGC and the TRA.

The Consumer Advocate Opposes A Three Year Extension of the AUA

The three year extension proposed by the Company would result in an “experimental” period of six years without an examination of the impact of the AUA on the households and businesses served by the Company. Moreover, CGC’s motion is the first indication the TRA, the Consumer Advocate and the public have of the financial impact of the AUA. In light of previous TRA decisions rejecting decoupling mechanisms such as the AUA, the initial granting of a three year experimental period was generous. Extending the AUA an additional three years without a factual review of its impact is not in the public interest. CGC’s proposed alternative, namely investing in the Company the discretion to determine when the AUA would be presented for review to the Authority prior to the expiration of an additional three year experimental period, is equally not in the public interest.

One of the fundamentals of the Consumer Advocate’s opposition to full revenue decoupling mechanisms has been the impact of such mechanisms on the ability of a public utility to exceed authorized returns. Based on the latest 3.03 report filed by CGC on April 1, 2013, the Company is earning an overall return of 8.32% for the last twelve months reported, well above the rate of return of 7.53% authorized by the TRA.⁷ Without a thorough review, it is not known the extent to which the AUA has contributed to excess earnings. While the AUA is likely not the only contributing factor to CGC earning more profits than approved by the TRA, authorizing the AUA for an additional three years is simply not in the public interest.

The Consumer Advocate Opposes A Modification To The Cap

CGC is earning beyond the rate of return authorized by the Authority based on the latest 3.03 report filed with the Authority on April 1, 2013. Even with the safeguard imposed on the AUA based on 2% of margin revenues, the Company has exceeded the Authority’s authorized

⁷ Order, November 8, 2010, p.45.

rate of return. Thus, the Company's request to shift the 2% cap for margin revenues for residential and commercial customers to gross revenue amounts to no cap to protect consumers at all. The difference between a 2% cap on margin and gross revenues is substantial. Without a review of the AUA and the Company's earnings the granting of this modification would benefit only the Company to the detriment of households and business customers of the Chattanooga service area.

**The Consumer Advocate Opposes a Three Year Extension of Consumer
Funding for the Energy Conservation Programs**

The Consumer Advocate supports the goals of energy conservation programs. However, such programs should be cost effective and provide measureable and verifiable savings. The programmable thermostats and education program provided to consumers are not free. Consumers have been funding the cost of the energy conservation programs. Even with the funding contribution of \$150,000.00 by CGC, consumers were ordered by the Authority to contribute \$275,000.00 over the three years of the experimental period the programs were expected to run. The *Order* of the Authority further required consumers to fund an additional \$20,000.00 donation annually for research and development of consumer oriented "natural gas devices and strategies." This raises the projected cost to consumers over the last three years to \$335,000.00.

It is unknown whether this significant amount of money has truly benefited the households and businesses required to subsidize these initiatives. Before considering the renewal of the energySMART program, the Authority must conduct a thorough review to ensure any approved energy conservation is cost-effective and produces measurable and verifiable energy saving for consumers as part of Tennessee's energy conservation policy. Without the benefit of a thorough review to ensure such programs are cost-effective and produce verifiable

and measureable results, the mandatory requirement for consumers to fund the energy conservation programs more closely resembles a tax rather than an investment that may yield results.

RESPECTFULLY SUBMITTED,

A handwritten signature in black ink, appearing to read "R. McGehee", is written over a horizontal line.

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Dated: May 3rd, 2013.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Response was served via U.S. Mail or electronic mail upon:

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This the 3rd day of May, 2013.



Ryan L. McGehee