

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

January 8, 2010

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

**CHATTANOOGA GAS COMPANY'S RESPONSE IN OPPOSITION
TO THE CMA'S REQUEST TO COMBINE
DOCKET 07-00224 WITH DOCKET 09-00183**

Chattanooga Gas Company ("CGC" or "Company") files this response in opposition to the Chattanooga Manufacturers Association's ("CMA") motion to transfer the cost recovery issue that is pending before the Tennessee Regulatory Authority ("TRA" or "Authority") in Docket 07-00224 into the Company's current rate case Docket 09-00183. The CMA has mischaracterized CGC's request in Docket 07-00224.

First, CGC is not seeking a rate increase or even dealing with a rate case issue in Docket 07-00224. Rather, Docket 07-00224 has involved issues concerning gas supply and capacity related costs, including the revenues generated from non-jurisdictional transactions associated with capacity assets, which are governed by the Purchased Gas Adjustment ("PGA") Rule, not rate making principles. Second, CGC, at this time, has not argued that it should recover legal fees pursuant to Tenn. Code Ann. § 4-5-325. However, CGC reserves the right to do so if the TRA determines that gas related costs, including the costs incurred to disprove the charges that the Company oversubscribes to

gas supply and capacity assets and thus inflates gas costs on its customers' bills, are not recoverable through the PGA.¹

The CMA should not be allowed to mischaracterize the cost recovery issue that has been presented to the TRA in Docket 07-00224 by filing a motion in a totally unrelated docket. If the CMA wishes to address the Company's cost recovery issue, it should have intervened in Docket 07-00024. The CMA has had notice of both the docket and the Company's cost recovery issue since no later than February 11, 2008, when the cost recovery issue was raised during the initial status conference. After participating in that initial status conference on February 11, 2008, the CMA chose not to intervene in Docket 07-00224, but instead chose to sit on the sidelines and allow a contested case to be litigated for two (2) years without intervening and participating. Now that the sole remaining issue in the docket has been briefed, orally argued, and is pending before the TRA for deliberation, the CMA attempts to circumvent the intervention rules in that docket by incorrectly re-characterizing the issue into a rate making issue. However, the Company has consistently asserted that, since gas costs are recoverable through the PGA and since CGC is seeking the recovery of gas-related costs, the PGA is the appropriate mechanism for recovery, and the Attorney General has agreed. To allow a non-party at the end of a docket to re-direct the sole remaining issue that the TRA has taken under advisement into another separate docket and re-characterize that remaining issue will make intervention rules meaningless and will create much uncertainty and unnecessary expense for parties in contested cases.

¹ The TRA ultimately ruled for CGC and determined that CGC subscribes to an appropriate level and mix of gas supply and capacity assets. (See Order (filed Sept. 23, 2009 in Docket 07-00224), at 5).

CGC respectfully requests that the CMA's motion be denied and that the cost recovery issue as presented by the Company be properly considered by the TRA in Docket 07-00024 where issues pertaining to CGC's gas and capacity supply costs have been litigated for over two (2) years.

BACKGROUND

Docket 07-00224 was initiated for the CAPD and the CMA to pursue any claims against the Company relating to asset management and capacity release issues. (See Order Closing Phase II of Docket 06-00175 (filed Dec. 17, 2007)). During the February 11, 2008 initial status conference in Docket 07-00224, attorneys for CGC, the CAPD, and the CMA attended and participated in the status conference. In fact, the CMA's long-standing attorney Henry Walker represented that, while a petition to intervene had not been submitted, such a filing would be forthcoming. (See Order on February 11, 2008 Status Conference (filed Feb. 19, 2008), at 3).

At the February 11, 2008 initial status conference, the Hearing Officer directed the parties to file their statements of claims and issues setting forth their specific claims against CGC concerning asset management and capacity release issues that would be decided by the TRA. (See id. at 5-6). At that same conference, CGC requested that the TRA enter an order to allow it to accumulate and defer litigation costs associated with the gas cost issues being pursued in Docket 07-00224 so that it could later seek recovery of these costs. (See id. at 6). As the CMA's attorney participated in the February 11, 2008 initial status conference, the CMA has had notice of the proceedings in Docket 07-00224 and of the Company's request for cost recovery. Notwithstanding Mr. Walker's representations, the CMA never filed a petition to intervene in Docket 07-00224.

As ordered by the Hearing Officer, the CAPD filed the claims that it has asserted against CGC and the issues that it has litigated against CGC for the past two (2) years. Included among the CAPD's assertions was the claim that "CGC is subscribing to too much system capacity relative to its jurisdictional requirements thereby unfairly inflating customers' natural gas utility bills by charging them for more system capacity than is required to adequately serve their gas supply needs." (See CAPD's Identification of Issues, Claims, and Remedies (filed March 12, 2008), at 5). The TRA has allowed CGC to accumulate for accounting purposes all costs related to Docket 07-00224 so that CGC could seek to recover these gas-related costs through the PGA. (See Order on March 7, 2008 Status Conference (filed March 11, 2008), at 3). CGC has always maintained that the litigation costs incurred in Docket 07-00224 are related to gas and capacity costs that are governed by the PGA and thus should be recoverable through the PGA. The CAPD has previously agreed with this recovery mechanism.

In November 2009, CGC filed a petition for a rate increase in the present Docket 09-00183. The rate case does not include the cost recovery issue raised in Docket 07-00224, which the Company is seeking to recover through the PGA, not through rates.

ARGUMENT

As stated above, the CMA has mischaracterized CGC's request for cost recovery.

- A. CGC is not seeking a rate increase or even dealing with a rate case issue in Docket 07-00224. Rather CGC is seeking to recover costs related to gas supply and capacity costs through the PGA.**

In Docket 07-00224, the TRA has considered issues related to gas and capacity costs including CGC's gas supply and capacity planning process and the level and mix of gas supply and capacity assets maintained by CGC to adequately serve its customers.

The TRA has traditionally reviewed and handled all costs associated with gas supply and capacity assets, as well as all revenues generated from non-jurisdictional transactions associated with capacity assets, through the PGA, Chapter 1200-4-7. As an example, the TRA has recognized the costs incurred by a company to engage an outside consultant to perform a prudency audit of gas and capacity supply related costs are to be included in its PGA and has allowed companies to recover those costs and expenses through the PGA. See Rule 1220-4-7-.05.

The costs incurred by CGC in Docket 07-00224 are no different; thus, CGC is requesting that these costs be considered as part of the PGA.² The PGA operates outside of ratemaking, and the direct pass-through of gas costs operates solely as a function of the PGA. Therefore, the costs that CGC has incurred in Docket 07-00224 dealing with issues related to gas costs and gas supply assets should be allowed to pass through the PGA.³

² Because the CAPD chose the process of convening a contested case to assert its allegations of improper conduct related to CGC's gas supply and capacity assets and gas costs, and because the CAPD solely relied upon its improper expert testimony, CGC spent over two (2) years trying to convince the CAPD of the problems and inaccuracies in its testimony and theories, including inviting the CAPD to its asset manager's offices in Houston. In the end, because of the litigious nature of the docket, CGC was forced to file legal motions to exclude all of the CAPD's expert testimony regarding gas supply and capacity planning issues, which the CAPD withdrew just ten (10) days before the hearing on the merits. Then, at the hearing on the merits, CGC presented substantial testimony to the TRA regarding its gas supply and capacity planning process, and in the end, the TRA determined that CGC subscribed to an appropriate level and mix of gas supply and capacity assets. As a result, CGC can continue to pass the gas costs associated with its gas supply and capacity assets directly to its firm customers through the PGA. The costs incurred to prevail in Docket 07-00224 are analogous to consultant costs that would have been incurred had the CAPD decided to pursue another process. Rather, the CAPD decided to advance inappropriate and incorrect testimony and theories to support its claims for almost two years.

³ These costs will be offset against the credits that CGC has been able to obtain through its asset management program and flow through the PGA. A decision to allow cost recovery to occur through the PGA in Docket 07-00224 will have no effect on the rate case or on CGC's rates. Further, Tennessee Gas Pipeline Company has been ordered by FERC to return money to various companies including CGC for certain environmental remediation costs. Any cost recovery that the TRA allows in Docket 07-00224 will likely be offset from these credits which will pass through the PGA to CGC's firm customers. The issue of allowing cost recovery of gas-related costs through the PGA only affects CGC's firm customers. The industrial customers that comprise the majority of the membership of the CMA are not firm customers as they receive only transportation services from CGC and thus will not be beneficially or adversely affected by the decisions in Docket 07-00224.

As explained in detail in CGC's brief regarding cost recovery (filed in Docket 07-00224 on October 28, 2009, at pages 4 -14), Docket 07-00224 has dealt with a very unique set of facts and circumstances relating to the procurement of natural gas and the capacity required to transport the gas through the interstate system. Therefore, CGC is asking that it be allowed to recover these specific costs through the PGA. The CAPD through its filings and arguments has likewise agreed that the PGA is the proper mechanism to recover prudently incurred costs in Docket 07-00224. (See Stipulation Regarding CGC's Requested Cost Recovery (filed Oct. 28, 2009), at 2). The Company's rate case filed in this present docket does not include the cost recovery issue raised in Docket 07-00224. As the cost recovery issue is not part of the current rate case filed by the Company in Docket 09-00183, the CMA's argument regarding improper public notice is also a mischaracterization. In Docket 07-00224, proper public notice has been given by the TRA of all hearings and all proceedings. The CMA has had ample notice and opportunity to intervene and participate at the appropriate time in Docket 07-00224 over the past two (2) years.

- B. CGC, at this time, has not argued that it should recover legal fees pursuant to Tenn. Code Ann. § 4-5-325; however, CGC reserves the right to do so if the TRA determines CGC's gas-related costs are not recoverable through the PGA.**

The CAPD has agreed with and has not challenged the recovery of CGC's costs related to gas supply and capacity assets through the PGA. Therefore, CGC has not argued for recovery under Tenn. Code Ann. § 4-5-325. However, if the CAPD should reverse its position and argue that the PGA is not the proper mechanism for recovery of CGC's costs and/or the TRA should determine that the PGA is not the proper mechanism

for recovery, CGC reserves its right to seek recovery from the State under Tenn. Code Ann. § 4-5-325.

- C. **Alternatively, if the TRA decides to combine the dockets and to allow the CMA to circumvent the intervention rules, the TRA should immediately decide the cost recovery issue as presented by the Company, not as re-characterized by the CMA.**

Alternatively, if the TRA determines that it will allow the CMA to circumvent the intervention rules and order the transfer of CGC's unrelated cost recovery issue dealing with the PGA to be transferred and litigated in CGC's rate case docket, the Company believes that the TRA should decide the issue as presented by the Company – the recovery of gas-related costs through the PGA – not as presented by the CMA. Only upon an adverse determination of the issue of cost recovery through the PGA can the Company determine whether it will seek recovery of legal fees pursuant to Tenn. Code Ann. § 4-5-325 or whether to incorporate these issues into its petition for a general increase in rates.

If the TRA considers the substance of the CMA's brief, the CMA has misstated the holding by the Tennessee Court of Appeals in Kingsport Power Company v. Tennessee Public Service Commission, an unpublished opinion. The Court of Appeals remanded the case because the Court of Appeals was asked to review and determine the accuracy of a Tennessee Public Service Commission ("PSC") order that was never presented to the Court. Apparently, the PSC's order and the administrative transcript were not filed with the Trial Court or the Court of Appeals for consideration. The PSC order was never reviewed by a court. Based on the somewhat confusing facts presented in the unpublished opinion, it appears that the Kingsport Power Users Association petitioned the PSC to recover its legal fees from the utility, Kingsport Power Company,

pursuant to a federal statute, 26 U.S.C. §2632. The Kingsport Power Company case appears not to address gas cost issues or the PGA. Rather, it deals with a federal statute that CGC has not raised in Docket 07-00224.

Before the TRA in Docket 07-00224 is the issue of whether the TRA will allow the Company to recover the costs incurred to prevail in showing that its gas supply and capacity assets and thus its gas costs are appropriate and prudent. The Company is requesting that, based on the unique circumstances of Docket 07-00224 (which have been fully briefed by the Company in Docket 07-00224 (see CGC's Brief Regarding Cost Recovery)), the TRA allow the Company to recover its gas-related costs through the PGA.

CONCLUSION

In summary, CGC opposes the transfer of the remaining issue pending in Docket 07-00024 to the unrelated present rate case docket. In Docket 07-00224, CGC has asked the TRA to allow it to recover through the PGA the costs incurred to prevail in showing that its gas supply and capacity assets and thus its gas costs are appropriate and prudent. In that docket, the CAPD has heretofore agreed to this mechanism of recovery. CGC is not currently seeking recovery through rates and has not included the cost recovery issue in its petition for a general rate increase in the present docket. Further, CGC, at this time, has not moved to recover legal fees through Tenn. Code Ann. § 4-5-325 but reserves its right to do so pending the Authority's decision.

The CMA has attempted to re-characterize and re-direct the Company's cost recovery issue raised by CGC and incorporate it into CGC's rate case in order to circumvent the intervention rules. The CMA has had notice of Docket 07-00224 and of

the cost recovery issue since no later than February 11, 2008 when its attorney attended and participated in the initial status conference. However, the CMA never intervened in Docket 07-00224. The Company respectfully requests that the TRA deny the CMA's motion and enter a ruling in Docket 07-00224 on the issues as presented by the Company which are currently pending before the TRA.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of January 2010, a true and correct copy of the foregoing was served on the persons below by electronic mail:

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