

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

July 26, 2010

IN RE:

**REQUEST OF CHATTANOOGA GAS COMPANY
FOR APPROVAL OF AN RFP FOR AN ASSET
MANAGEMENT AGREEMENT AND A GAS
PURCHASE AND SALES AGREEMENT**

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**DOCKET NO.
10-00049**

**ORDER GRANTING PETITION TO INTERVENE AND
REFLECTING ACTIONS TAKEN AT JUNE 7, 2010, JUNE 21, 2010
AND JULY 13, 2010 STATUS CONFERENCES**

This matter is before the Hearing Officer for the purpose of preparing this docket for consideration by the Tennessee Regulatory Authority ("Authority" or "TRA") of the Request for Proposal for an Asset Management Agreement and a Gas Purchase and Sales Agreement filed by Chattanooga Gas Company on April 9, 2010.

BACKGROUND

The TRA first ordered Chattanooga Gas Company ("CGC" or "Company") to file its Asset Management Agreement ("AMA") for Authority approval in Docket No. 03-00516. In approving the AMA in that docket, the Authority found that CGC had acted in good faith and required CGC to file with the Authority any subsequent AMA for approval in advance of the commencement date of that AMA. On January 14, 2008, CGC filed an AMA for consideration by the Authority in Docket No. 08-00012. In that docket, the Authority considered and ruled on a number of issues raised by the parties pertaining to bidding process and the terms of the AMA itself. The Authority approved the AMA between CGC and Sequent Energy Management, LLC filed in Docket No. 08-00012 and ordered that CGC file a notice with the Authority, one year

prior to the expiration of the initial three year term of the AMA, as to CGC's intent to exercise its option to extend the AMA.¹

The current AMA, as approved in Docket No. 08-00012, resulted from a Request for Proposal ("RFP") issued by CGC on November 20, 2007. The Company's Performance-Based Ratemaking tariff² set forth procedures to be followed in the RFP process but did not require the pre-approval by the Authority of the RFP itself. In Docket No. 07-00224, the RFP process and other asset management activities were opened to further review, and the TRA concluded that CGC must submit all future asset management RFPs to the Authority for prior approval before sending them out for bid.³

This docket was opened upon the filing by CGC on March 31, 2010 notifying the Authority of its intention to issue an RFP for asset management services pursuant to its tariff. The current AMA was approved with an initial three-year term expiring March 31, 2011. On April 9, 2010, CGC filed its RFP in this docket for the TRA's approval.

On May 10, 2010, the Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate") filed a *Petition to Intervene*. The Consumer Advocate seeks intervention, stating that it is authorized to intervene in proceedings to represent the interests of Tennessee consumers pursuant to Tenn. Code Ann. § 65-4-118 and that it can protect the interests of consumers only by participating in this proceeding.⁴ CGC did not file an objection to or oppose the intervention request of the Consumer Advocate.

This matter initially came before Chairman Sara Kyle, Director Eddie Roberson and Director Kenneth C. Hill of the TRA, the voting panel assigned to this docket, at a regularly

¹ See *In re: Request of Chattanooga Gas Company for Approval of Asset Management Agreement*, Docket No. 08-00012, *Order Approving Asset Management and Agency Agreement* (July 15, 2008).

² See Section titled *RFP Procedures for Selection of Asset Manager and/or Gas Provider*, Revised Sheets 56B and 56C.

³ See *In re: Docket to Evaluate Chattanooga Gas Company's Gas Purchases and Related Sharing Incentives*, Docket No. 07-00224, *Final Order*, p. 6 (September 23, 2009).

⁴ *Petition to Intervene*, pp. 1 and 4 (May 10, 2010).

scheduled Authority Conference held on May 24, 2010 for consideration of CGC's proposed RFP. During that Conference, the panel voted unanimously to convene a contested case proceeding and to appoint Director Kenneth C. Hill as Hearing Officer for the purpose of preparing this matter for hearing, including handling preliminary matters, entering a protective order and establishing a procedural schedule to completion.

JUNE 7, 2010 STATUS CONFERENCE

Pursuant to a Notice issued on May 28, 2010, the Hearing Officer convened a Status Conference on June 7, 2010 to coordinate the preparation of a procedural schedule and a protective order and to discuss discovery in this docket. In attendance at the Status Conference were:

Chattanooga Gas Company – **J. W. Luna, Esq.** and **Jennifer Brundige, Esq.**,
Luna Law Group, PLLC, 333 Union Street, Suite 300, Nashville, TN 37201;
Archie Hickerson, AGL Resources, Inc., 150 W. Main Street, Suite 1510,
Norfolk, VA 23510.

Consumer Advocate – **Mary Leigh White, Esq.**, **T. Jay Warner, Esq.** and
Terry Buckner, Office of the Attorney General, Consumer Advocate and
Protection Division, P.O. Box 20207, Nashville, TN 37202-0207.

PETITION TO INTERVENE

The Hearing Officer first considered the *Petition to Intervene* filed by the Consumer Advocate. Tenn. Code Ann. § 4-5-310(a) sets forth the following criteria for granting petitions to intervene:

- (a) The administrative judge or hearing officer shall grant one (1) or more petitions for intervention if;
 - (1) The petition is submitted in writing to the administrative judge or hearing officer, with copies mailed to all parties named in the notice of the hearing, at least seven (7) days before the hearing;
 - (2) The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of the law; and

- (3) The administrative judge or hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.

Applying the standards set forth in Tenn. Code Ann. § 4-5-310(a) and hearing no opposition from CGC, the Hearing Officer granted the *Petition to Intervene* filed by the Consumer Advocate.

PRELIMINARY MATTERS

1. **ISSUES** - The parties stated that they were already engaged in productive discussions and considered the only issue in this docket to be that of whether to approve the Company's RFP.

2. **PROCEDURAL SCHEDULE** - The parties expressed the desire for a streamlined proceeding and stated that they were working toward an agreement to be presented within a three to four week period. If the parties cannot reach a settlement agreement, they would present comments in the docket for consideration by the Hearing Officer. Counsel for CGC shared the Company's proposed timeline for the RFP and AMA process. Setting January 1, 2011 as the proposed date to have the AMA executed and delivered, the Company would need to have the AMA awarded pursuant to the RFP by October 31, 2010. CGC estimated that it needed approximately seventy-five days to process the RFP, which meant that the Company would need a decision by the Authority on the RFP by August 16, 2010.

3. **DISCOVERY** - When questioned by the Hearing Officer, the Consumer Advocate stated that because the parties are of the opinion that this matter could be handled informally, the parties did not see a need for discovery in this docket.

PROTECTIVE ORDER. The parties filed a Proposed Agreed Protective Order on June 3, 2010. The Hearing Officer confirmed with counsel during the Status Conference that the parties

had no objections to the proposed protective order. The Hearing Officer thereafter entered the Agreed Protective Order for use in this matter.

In keeping with a streamlined schedule, the Hearing Officer proceeded to schedule the next Status Conference for June 21, 2010 in order that the parties could provide an update as to the progress of their informal settlement discussions.

JUNE 21, 2010 STATUS CONFERENCE

Pursuant to a Notice issued on June 15, 2010, the Hearing Officer convened a Status Conference on June 21, 2010. In attendance at the Status Conference were:

Chattanooga Gas Company – **J. W. Luna, Esq.** and **Jennifer Brundige, Esq.**,
Luna Law Group, PLLC, 333 Union Street, Suite 300, Nashville, TN 37201;
Archie Hickerson, AGL Resources, Inc., 150 W. Main Street, Suite 1510,
Norfolk, VA 23510.

Consumer Advocate – **Mary Leigh White, Esq.**, Office of the Attorney General,
Consumer Advocate and Protection Division, P.O. Box 20207, Nashville, TN
37202-0207.

The parties reported to the Hearing Officer that they were continuing to make progress in working toward a resolution of this matter. Specifically, however, the parties alerted the Hearing Officer that there were several issues discussed in Docket No. 08-00012, the docket in which the current AMA was approved, that the Consumer Advocate wanted to raise in this docket so as to not waive those issues. The three policy issues were described as relating to:

1. the cooperation paragraph - (Paragraph 14);
2. the early termination paragraph - (Paragraph 18); and
3. the confidentiality provisions in Paragraph 15.

Inasmuch as these issues were thoroughly briefed and argued by the parties in Docket No. 08-00012, CGC and the Consumer Advocate agreed that the parties would not submit any additional filings with respect to those issues, and the Hearing Officer, in making a decision as to those issues, could rely upon the positions of the parties as set forth in Docket No. 08-00012. As

to other issues raised by the Consumer Advocate, the parties informed the Hearing Officer that they were working to resolve them informally.

The Hearing Officer advised the parties that he would review the materials filed in Docket No. 08-00012 in considering the three issues raised by the Consumer Advocate. The Hearing Officer also informed the parties that another Status Conference would be set in the near future to keep this docket moving forward.

JULY 13, 2010 STATUS CONFERENCE

The Hearing Officer convened a Status Conference on July 13, 2010 pursuant to the agreement of the parties and a Notice issued on July 9, 2010. In attendance at the Status Conference were:

Chattanooga Gas Company – **J. W. Luna, Esq.**, Luna Law Group, PLLC, 333 Union Street, Suite 300, Nashville, TN 37201. **Shannon Pierce, Esq.** and **Archie Hickerson**, AGL Resources, Inc., 150 W. Main Street, Suite 1510, Norfolk, VA 23510, participated telephonically.

Consumer Advocate – **Mary Leigh White, Esq.**, **T. Jay Warner, Esq.** and **Terry Buckner**, Office of the Attorney General, Consumer Advocate and Protection Division, P.O. Box 20207, Nashville, TN 37202-0207.

Initially, the Hearing Officer addressed several disputed issues identified by the parties during the Status Conference on June 21, 2010. Specifically, three of their five concerns involved the following sections of the agreement: the cooperation clause (paragraph 14), the confidentiality clause (paragraph 15), and the early termination clause (paragraph 18). These three issues initially arose during the proceedings in Docket No. 08-00012, wherein the Company petitioned the TRA for approval of its AMA with Sequent. In that docket, upon review and consideration of the issues, the Authority ruled in favor of CGC as to these issues. Nevertheless, the Consumer Advocate has requested that these issues be revisited in this docket. The parties agreed during the June 21, 2010 Status Conference the Hearing Officer could review

the materials filed in Docket No. 08-00012 with respect to those issues and that nothing new would be presented by the parties for consideration in this docket.

The Hearing Officer stated that after reviewing the record in Docket No. 08-00012, he was comfortable relying on the Authority's order that was issued in that docket, which found: (1) the cooperation section of the asset management agreement does not affect the TRA's powers and duties under Title 65, Chapter 4, Part 1; (2) that CGC could terminate the agreement if so ordered by the Authority in the event that any fundamental flaws were found in the agreement or the TRA discovers the occurrence of any inappropriate affiliate transactions, and therefore, that the early termination paragraph of the agreement was not improper; and (3) that confidential designation of the dollar amount of the Annual Guaranteed Minimum is proper.⁵

After advising the parties of his decision, the Hearing Officer discussed with the parties the progress of negotiations and the possibility of setting this matter on the next Authority Conference scheduled for July 26, 2010 in light of the anticipated deadline of August 15, 2010 for approval of the RFP.⁶ The parties stated that they would work toward filing a stipulation regarding the RFP in advance of the July 26, 2010 Authority Conference. The parties were informed that such a stipulation would need to be filed no later than July 21, 2010.

⁵ Specifically as to the confidentiality issue, the Authority's Order in Docket No. 08-00012 reflected:

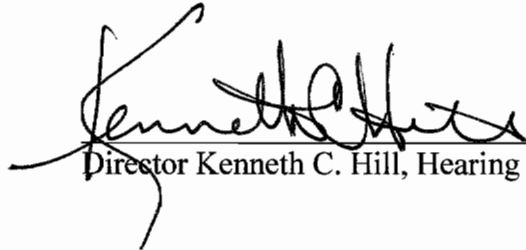
Finally, a majority of the panel found that the dollar amount of the Annual Guaranteed Minimum is properly designated as confidential. TRA Rule 1220-1-1-.01(3)(g) defines proprietary information as including documents and information "... which the producing party in good faith deems to contain or constitute trade secrets, confidential research or development or commercially sensitive information." The authority of the TRA to issue protective orders in contested case proceedings is established in Rule 26.03 of the Tennessee Rules of Civil Procedure as applied to administrative contested cases through the Uniform Administrative Procedures Act, specifically Tenn. Code Ann. § 4-5-311(a). It is clear that the protective order process and Tenn. Code Ann. § 65-3-109 provide authority by which the TRA may maintain the confidentiality of certain information. (footnotes omitted)

Order Approving Asset Management and Agency Agreement, p. 8 (July 15, 2008).

⁶ The Hearing Officer informed the parties that the next Authority Conference after July 26, 2010 might be August 23, 2010.

IT IS THEREFORE ORDERED THAT:

1. The Consumer Advocate is granted leave to intervene and receive copies of any notices, orders or other documents herein.
2. The Hearing Officer's rulings as to the three issues raised by the Consumer Advocate are as reflected herein.
3. This matter is set for consideration by the Authority during the July 26, 2010 Authority Conference. In the event that CGC and the Consumer Advocate reach an agreement as to the RFP, the parties shall file a Joint Stipulation in this docket no later than July 21, 2010.⁷



Director Kenneth C. Hill, Hearing Officer

⁷ On July 20, 2010, the parties filed a Joint Stipulation agreeing to the approval of the RFP as amended therein.