

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

September 6, 2011

IN RE:

PETITION OF CHATTANOOGA GAS COMPANY
FOR APPROVAL OF NEGOTIATED FRANCHISE
AGREEMENT WITH THE CITY OF CHATTANOOGA,
TENNESSEE PURSUANT TO TENNESSEE CODE
ANNOTATED 65-4-107

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DOCKET NO.
11-00048

ORDER APPROVING FRANCHISE AGREEMENT
AND SETTLEMENT AGREEMENT

This matter came before Chairman Mary W. Freeman, Director Eddie Roberson and Director Sara Kyle of the Tennessee Regulatory Authority (the “Authority” or “TRA”), the voting panel assigned to this Docket, at a Hearing held on June 6, 2011 for consideration of the *Petition of Chattanooga Gas Company for Approval of Negotiated Franchise Agreement with the City of Chattanooga, Tennessee Pursuant to Tennessee Code Annotated § 65-4-107* (the “*Petition*”) filed by Chattanooga Gas Company (“CGC” or “Company”) on April 8, 2011. With the *Petition*, CGC filed a copy of City of Chattanooga Ordinance No. 12480,¹ which grants a franchise to CGC to provide service to the City of Chattanooga (“Chattanooga” or “City”), and the Pre-Filed Direct Testimony of Larry Buie, Region Manager for CGC. On May 23, 2011, the Consumer Advocate and Protection Division of the Office of the Attorney General (“Consumer Advocate”) filed a *Petition to Intervene* in this proceeding.

PETITION

The Company seeks Authority approval of the negotiated franchise agreement between CGC and the City as required by Tenn. Code Ann. § 65-4-107. Prior to January 31, 2010, CGC provided

¹ *Petition*, Exhibit A (April 8, 2011).

service to the City pursuant to a thirty (30) year franchise agreement. City Ordinance 7746 was approved by the City and accepted by the Company in 1980. The parties began negotiations for renewal of CGC's franchise authority prior to the expiration of the previous franchise agreement.² The resulting franchise agreement (City Ordinance 12480) was passed by the Chattanooga City Council on March 1, 2011, approximately 14 months following the expiration of the previous franchise agreement. The Company states that it has continued to operate and make franchise payments in accordance with the prior agreement.³ The new agreement initiates a ten (10) year term, effective January 21, 2011. Pursuant to the new franchise agreement, the Company will pay the City on a quarterly basis a percentage of the annual gross receipts from sales of any type to the Company's customers within the city limits for the right to serve those customers.⁴ The percentage will be 3.15% in 2011 and 2012, 4.15% in 2013 and 2014, and 5.15% in 2015 and beyond.

REQUIREMENT OF AND STANDARDS FOR AUTHORITY APPROVAL

Tenn. Code Ann. § 65-4-107 provides that no grant of a privilege or franchise from the State or a political subdivision of the State to a public utility shall be valid until approved by the Authority. Approval pursuant to Tenn. Code Ann. § 65-4-107 requires a determination by the Authority, after hearing, that "such privilege or franchise is necessary and proper for the public convenience and properly conserves the public interest." Tenn. Code Ann. § 65-4-107 further provides that in considering such privilege or franchise, the Authority "shall have the power, if it so approves, to impose conditions as to construction, equipment, maintenance, service or operation as the public convenience and interest may reasonably require."

HEARING

On May 26, 2011, the Hearing Officer issued a *Notice of Hearing* setting this matter for hearing during the Authority Conference scheduled for June 6, 2011. On June 3, 2011, the Company

²*Petition*, p. 2 (April 8, 2011).

³Larry Buie, Pre-filed Direct Testimony, p. 3 (April 8, 2011).

⁴*Petition*, p. 4 (April 8, 2011).

filed proof of publication of its notice of hearing as required by TRA Rule 1220-4-1-.05. The Hearing was held on June 6, 2011. In attendance at the Hearing were the following:

Chattanooga Gas Company: **J. W. Luna, Esq.**, Luna Law Group, 333 Union Street, Suite 300, Nashville, TN 37201; and **Archie Hickerson**, Director of Regulatory Affairs, AGL Services Company, 150 West Main Street, Suite 1510, Norfolk, VA 23510.

Consumer Advocate: **Ryan McGehee, Esq.**, Consumer Advocate and Protection Division, Office of the Attorney General, 425 5th Avenue North, Nashville, TN 37243-0491.

Also in attendance at the Hearing were representatives from the City of Chattanooga: Bill Payne, the City engineer for the City of Chattanooga; Michael McMahan, Esq., the City attorney for the City of Chattanooga; and Patrick Bobo, Esq., assistant City attorney for the City of Chattanooga.

At the commencement of the Hearing, the panel voted unanimously to grant the Consumer Advocate's petition to intervene. The panel then proceeded to hear the testimony in support of the *Petition*. Archie Hickerson testified during the Hearing on behalf of the Company. Mr. Hickerson adopted the pre-filed testimony of Larry Buie, who was unable to attend the Hearing, and which stated that the new franchise agreement is necessary and proper and properly serves the public interest because it:

1. Maintains availability of high quality natural gas to citizens of Chattanooga for the foreseeable future;
2. Facilitates the provision of such natural gas service to customers within the city limits of Chattanooga by an established and proven provider of that service well known to both the City and this Authority and possessing the requisite expertise, facilities, systems and gas supply and transportation assets to provide such service;
3. Establishes adequate and proper access to public rights-of-way in order to ensure CGC is able to provide adequate, efficient and safe service;
4. Provides an incentive for CGC to invest in infrastructure needed to improve and expand service within the City; and

5. Acts to offset long-term road maintenance expenses that may be incurred by the City during the term of the new agreement and will help support the provision of municipal services by the City to its citizens.⁵

Archie Hickerson supplemented Mr. Buie's pre-filed testimony with his summary of the terms of the franchise agreement between the Company and the City and the Settlement Agreement entered into between the Company and the Consumer Advocate filed on June 2, 2011. Mr. Hickerson testified as follows regarding the agreement reached with the Consumer Advocate:

In the last rate case, Docket No. 09-00183, \$365,000 was included in the attrition year as costs for the franchise fee paid to the City of Chattanooga that was embedded in the rates that were ultimately approved. This settlement will provide that the customers' bill will be reduced by a credit of .26 cents per therm that will apply to each therm of gas sold and distributed by Chattanooga Gas.

The fee -- the .26 was computed by dividing the \$365,000 by the volume used to set rates which was 141,320,373 therms. That was volumes of gas that was used in the last rate case. The credit will remain in place until the Authority resets the Chattanooga rates in the next rate case.⁶

Following the testimony offered by the Company, the panel provided an opportunity for members of the public to provide comments. No one sought recognition to speak at the Hearing.

FINDINGS AND CONCLUSIONS

The Franchise Agreement between the Company and the City continues a long standing partnership in a community where the Company has extensive operations that rely on the use of the public rights-of-way. The Franchise Agreement provides the Company with the necessary access to public rights-of-way to ensure reliable and safe natural gas service to customers. The new Franchise Agreement is the result of extensive arms length negotiations.

Based upon the testimony and the administrative record of the docket as a whole, the panel found that the Franchise Agreement is necessary and proper for the public convenience and promotes the public interest. The panel then voted unanimously to approve CGC's *Petition* to enter into a

⁵ Larry Buie, Pre-filed Direct Testimony, pp. 5-6 (April 8, 2011).

⁶ Transcript of Proceedings, p. 50 (June 6, 2011).

Franchise Agreement with the City, with an effective date of July 1, 2011. The panel further voted unanimously to approve the Settlement Agreement between the Company and the Consumer Advocate, effective July 1, 2011.


IT IS THEREFORE ORDERED THAT:

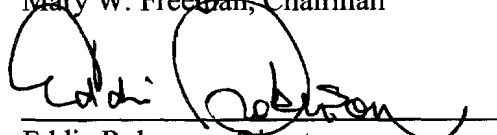
1. The *Petition of Chattanooga Gas Company for Approval of Negotiated Franchise Agreement with the City of Chattanooga, Tennessee Pursuant to Tennessee Code Annotated § 65-4-107* is approved and shall be effective July 1, 2011.

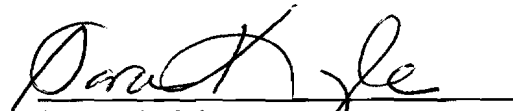
2. The Settlement Agreement between Chattanooga Gas Company and the Consumer Advocate and Protection Division of the Office of the Attorney General filed on June 2, 2011 is approved and shall be effective July 1, 2011.

3. Any party aggrieved with the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within fifteen (15) days from the date of this Order.

4. Any party aggrieved with the Authority's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from the date of this Order.


Mary W. Freeman, Chairman


Eddie Roberson, Director


Sara Kyle, Director