

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

March 29, 2012

IN RE:

**COMPLAINT OF CONOCOPHILLIPS COMPANY
FOR AN ORDER DETERMINING
CONOCOPHILLIPS NOT LIABLE FOR PENALTIES
AND CHARGES ASSESSED BY CHATTANOOGA
GAS COMPANY, OR, IN THE ALTERNATIVE,
PETITION FOR SPECIAL RELIEF**

DOCKET NO.
11-00210

ORDER ON MARCH 13, 2012 STATUS CONFERENCE

This matter came before the Hearing Officer of the Tennessee Regulatory Authority (“TRA” or the “Authority”) during a Status Conference requested by the parties, ConocoPhillips Company (“ConocoPhillips” or the “Company”), Chattanooga Gas Company (“CGC”), and the Consumer Advocate and Protection Division of the Office of the Attorney General (“Consumer Advocate”) held on March 13, 2012. The Status Conference was held for the purposes of considering the issues to be addressed, discussing any stipulations or agreements of the parties, and to establish a protective order and procedural schedule, as needed. In addition, the Hearing Officer considered a petition to intervene filed by the Consumer Advocate on March 12, 2012.

PROCEDURAL BACKGROUND

On December 20, 2011, a *Complaint of ConocoPhillips Company for an Order Determining ConocoPhillips Not Liable for Penalties and Charges Assessed by Chattanooga Gas Company, or, in the Alternative, Petition for Special Relief* (“*Petition*”) was filed with the Authority by ConocoPhillips. In its *Petition*, ConocoPhillips, a producer and marketer of natural gas and the designated third-party gas supply agent for Invista Inc., a CGC customer, seeks relief

from certain penalties imposed on it by CGC for failure to supply natural gas in accordance with an Authority approved tariff. On January 13, 2012, CGC filed a *Notice of Intent to File* stating that in an attempt to resolve the issues in the *Petition*, the parties have agreed to engage in negotiations. In the event that such negotiations fail, CGC stated that it would file a responsive pleading in the docket file no later than February 29, 2012.

During a regularly scheduled Authority Conference held on February 27, 2012, the Authority panel voted unanimously to convene a contested case proceeding and appoint General Counsel or his designee to act as Hearing Officer to prepare the matter for hearing before the panel.¹ On March 1, 2012, the Hearing Officer issued a *Notice of Status Conference* setting a Status Conference on March 13, 2012, as requested by the parties. On March 12, 2012, the parties filed a *Proposed Protective Order* for the consideration of the Hearing Officer. On the same day, the Consumer Advocate filed a *Petition to Intervene* requesting to intervene in the proceedings.

MARCH 13, 2012 STATUS CONFERENCE

The Status Conference began as noticed at approximately 1:00 p.m. in the Hearing Room on the Ground Floor of the Tennessee Regulatory Authority at 460 James Robertson Parkway, Nashville, Tennessee. The parties in attendance were as follows:

ConocoPhillips – Thomas E. Midyett, Jr., Esq., Southeastern Advocacy, 318 Erin Drive, Suite 2A, Knoxville, TN 37919;

CGC – J.W. Luna, Esq., Farmer & Luna, PLLC, 333 Union Street, Suite 300, Nashville, TN 37201; and

Consumer Advocate – Vance Broemel, Esq. and Ryan McGehee, Esq., Office of the Attorney General, Consumer Advocate & Protection Division, P.O. Box 20207, Nashville, Tennessee, 37202.

¹ *Order Convening a Contested Case Proceeding and Appointing a Hearing Officer* (February 29, 2012).

I. Consumer Advocate's Petition to Intervene

Tenn. Code Ann. § 4-5-310(a) of the Uniform Administrative Procedures Act ("UAPA") sets forth certain criteria to be considered by the Hearing Officer when granting petitions to intervene: timeliness of the petition, that the petitioner has demonstrated facts that its legal rights, duties, privileges, immunities or other legal interest may be determined or its qualification as an intervenor under provision of law, and that the interests of justice and orderly and prompt conduct of the proceedings will not be impaired.²

In its *Petition to Intervene*, the Consumer Advocate seeks intervention pursuant to Tenn. Code Ann. § 65-4-118, which authorizes the Consumer Advocate to intervene in proceedings to represent the interests of Tennessee consumers in accordance with the UAPA and rules of the Authority.³ The Consumer Advocate asserts that it should be granted intervention in this proceeding on behalf of the public interest because, as the penalties imposed by CGC are not treated as revenue but passed onto consumers in the form of lower rates, any relief granted to ConocoPhillips may adversely affect consumers. The Consumer Advocate further asserts that only by participating in this proceeding can it work adequately to protect the interests of consumers. During the Status Conference, ConocoPhillips and CGC each stated that it did not object to the Consumer Advocate's intervention request.

Thereafter, finding that the legal rights and interests of Tennessee consumers may be determined in this proceeding, the petition is timely and qualifies under provision of law for intervention, and will not impair the orderly and prompt conduct of these proceedings, the Hearing Officer granted the Consumer Advocate's *Petition to Intervene*.

² See Tenn. Code Ann. § 4-5-310(a) (2011).

³ See Tenn. Code Ann. § 65-4-118 (2004).

II. Protective Order

During the Status Conference, the parties informed the Hearing Officer that they were in agreement as to the language and terms of the proposed protective order filed on March 12, 2012, which is identical in substance to the protective order utilized in CGC's most recent rate case. The Hearing Officer advised the parties that their proposed protective order was acceptable and would be entered in the docket file.⁴

III. Request for TRA Staff to Assist Parties and/or Participate in Negotiations

In response to a request initiated by ConocoPhillips, there was extensive discussion during the Status Conference concerning whether and under what circumstances TRA staff members might participate as a party, or otherwise, in the settlement negotiations of the parties. ConocoPhillips stated that, in its view, the case involves the interpretation of a contract, which is a legal issue, and alternatively, a request for equitable relief. Further, to avoid the time and expense of litigating its *Petition*, it desired to resolve the issue expediently and amicably, if possible. To that end, ConocoPhillips stated that the parties had been engaged in discussions but had not yet finalized a settlement agreement, and in order to do so, asserted that TRA staff should be brought into the negotiations for their assistance, agreement, or further debate.

The Consumer Advocate stated that it did not oppose such participation by TRA staff members and agreed that it could be helpful as the issues were technical in nature. Nevertheless, it understood that such participation by TRA staff members was discretionary. Concurring with the other parties, CGC also stated that it believed that TRA staff's participation in settlement discussions would be of assistance to the parties. Further, CGC clarified that it had no financial stake in the resolution of the matter because the fines paid by ConocoPhillips pass through

⁴ On March 14, 2012, the Hearing Officer entered a *Protective Order* in the docket file that was materially unchanged from that proposed by the parties.

directly to the benefit of consumers. As such is the case, CGC stated that it too would like the matter to be resolved as quickly as possible and also believed that it would be helpful if simply one staff member were designated to participate in settlement discussions, provide some analysis and offer suggestions, in order to encourage settlement. In the event a settlement was not reached and the case proceeded to litigation, that staff member would be precluded from participating in the case in an advisory role to the Authority.

While both CGC and the Consumer Advocate referred in a general way to the Authority's considerations and process concerning staff participation during the Status Conference, for the sake of clarification, the Hearing Officer provides additional discussion herein. The TRA's staff is a limited and valuable resource of the Authority, and TRA Rule 1220-1-2-.21 makes clear that in contested case proceedings like the one in this docket, TRA staff's participation as a party is discretionary.⁵ In practice, such participation could be initiated by a petition to intervene, but more commonly occurs upon notice. Even if staff did not become a "party," but was merely designated to assist the parties in their negotiations, the staff member so designated would thereafter be precluded from participating in an advisory role and would be barred from advising the Directors in this matter. Nevertheless, in any proceeding in which the staff will participate as a party, the Chair of the Authority, specifically, is charged with identifying those staff members for the record.⁶

Upon considering the arguments of the parties, the Hearing Officer during the Status Conference informed the parties that the TRA staff does not typically participate as party in contested cases like the one presented in this docket, but that the Chief of the Utilities Division for the Authority would be notified of the parties' request. As this case involves the technical

⁵ Tenn. R. & Regs. 1220-1-2-.21.

⁶ Tenn. R. & Regs. 1220-1-2-.21(5).

expertise of staff members reporting to the Chief of the Utilities Division for the Authority, whether and/or which staff member(s) to designate to assist the parties in negotiations, along with the ramifications of such designation, are considerations that come initially within the purview of the Chief. The parties are advised to continue in their negotiations and case preparation on the premise that staff will not assist or participate as a party, unless or until notice of staff's election to so assist and/or the Chair of Authority identifies in the docket file certain staff members as participating as a party.

IV. Procedural Schedule

During the Status Conference, CGC presented a general procedural timeline for the consideration of the Hearing Officer and parties. Initially, the parties would like a set period of time to continue in negotiations, preferably with the assistance of a TRA staff member. After the expiration of the time for negotiations, if no settlement had been reached, CGC would file a responsive pleading, a round of discovery accompanied by a short turnaround time for responses, followed by dispositive motions to the Authority. The parties agreed that testimony was not likely to be necessary as the issues for resolution is a legal, rather than factual, but did not preclude the filing of testimony in the event that a dispositive motion did not resolve the matter.

As the parties agreed that only a partial procedural schedule was needed at this time but had not yet discussed amongst themselves what dates would be appropriate, the Hearing Officer advised the parties to prepare a joint proposed procedural schedule and file it for consideration no later than March 23, 2012.

IT IS THEREFORE ORDERED THAT:

1. The *Petition to Intervene* filed by the Consumer Advocate and Protection Division of the Office of the Attorney General is granted.

2. The parties shall file a joint proposed procedural schedule for the consideration of the Hearing Officer no later than **March 23, 2012**.


Kelly Cashman-Grams, Hearing Officer