

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

January 23, 2013

IN RE:)	
)	
COMPLAINT OF CONOCOPHILLIPS)	
COMPANY FOR AN ORDER DETERMINING)	DOCKET NO.
CONOCOPHILLIPS NOT LIABLE FOR PENALTIES)	11-00210
AND CHARGES ASSESSED BY CHATTANOOGA)	
GAS COMPANY, OR, IN THE ALTERNATIVE,)	
PETITION FOR SPECIAL RELIEF)	

ORDER DENYING SETTLEMENT AGREEMENT

This matter came before Chairman James M. Allison, Director Kenneth C. Hill and Director Sara Kyle of the Tennessee Regulatory Authority (the “Authority” or “TRA”), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on November 8, 2012 for consideration of the *Proposed Settlement Agreement* filed on August 27, 2012 by ConocoPhillips Company (“ConocoPhillips” or “COP”) and Chattanooga Gas Company (“CGC” or “Company”) (together, the “Parties”). As more fully described herein, and for the reasons set forth, the panel voted unanimously to deny the *Proposed Settlement Agreement* in its entirety.

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, was seeking 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 such negotiations fail, CGC stated it would file a responsive pleading in the docket by a date certain.

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 13, 2012, the Hearing Officer granted the Petition to Intervene filed by the Consumer Advocate and Protection Division of the Office of the Attorney General (“Consumer Advocate”).² Over the course of the proceedings, the Parties requested multiple extensions of the Procedural Schedule to allow for ongoing settlement negotiations. On August 27, 2012, the Parties filed a *Proposed Settlement Agreement* for consideration by the Authority.

NOVEMBER 8, 2012 HEARING

This matter came before the voting panel to hear and consider the *Proposed Settlement Agreement* at a regularly scheduled Authority Conference held on November 8, 2012. The parties in attendance were as follows:

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

Chattanooga Gas Company – J.W. Luna, Esq. and Jennifer Brundidge, 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.

During the November 8, 2012 Conference, the Parties presented the *Proposed Settlement Agreement* for consideration by the voting panel. The *Proposed Settlement Agreement* contains a provision that ConocoPhillips would not be held liable for penalties and cash-out charges assessed by

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

² *See Order on March 13, 2012 Status Conference* (March 29, 2012).

CGC for the months of December 2010 and January 2011. The panel found that CGC's tariff does not allow for a waiver of penalties and charges for any customer mistakes, even mistakes that are unintentional. Further, the panel found that penalties were put in place to deter customers from creating imbalances that potentially affect CGC's system integrity and jeopardize its ability to serve firm customers. And, it would not be in the public interest to set a precedent of waiving such penalties and fees. Thereafter, the majority of the panel voted to deny the *Proposed Settlement Agreement* finding that its terms are not consistent with CGC's existing tariffs and are not otherwise in the public interest. The majority further found that if the parties would like the Authority to consider prospective changes to the 1999 negotiated contract included as part of the *Proposed Settlement Agreement*, then discovery and filing of testimony on that issue may be needed before proceeding to hearing. For these reasons, the majority of the panel referred the docket back to the Hearing Officer to prepare the case for hearing, including establishing a procedural schedule.³

IT IS THEREFORE ORDERED THAT:

1. The *Proposed Settlement Agreement* filed by ConocoPhillips Company and Chattanooga Gas Company is denied.
2. This docket is referred back to the Hearing Officer to prepare for Hearing, including establishing a procedural schedule.

Chairman James M. Allison and Director Kenneth C. Hill concur. Director Sara Kyle dissents.

ATTEST:



Earl R. Taylor, Executive Director

³ Director Sara Kyle voted in opposition stating she disagreed that the *Proposed Settlement Agreement* violated CGC's tariff and cited concerns about the cost to the parties in litigating this docket. Transcript of Proceedings - Complete, pp. 60-61 (November 8, 2012).