

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

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

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**PETITION FOR RECONSIDERATION**

Pursuant to TRA Rule 1220-1-2-.20, Conoco Phillips, the Petitioner/Complainant in this proceeding, respectfully requests Reconsideration of the action of the Tennessee Regulatory Authority taken at the Authority Conference on November 8, 2012, Order issued January 23, 2013, rejecting a Settlement Agreement submitted by Conoco Phillips (COP) and Chattanooga Gas Company (CGC), and not opposed by the Tennessee Attorney General, Consumer Advocate and Protection Division.

In support here of, COP would reiterate its position regarding the facts surrounding this matter.

Background

- COP has been the gas supply agent for Invista's (formerly DuPont's) Chattanooga plant, for many years. There have never been any penalties imposed during that entire time period.
- Gas volumes are nominated monthly by COP on Southern Natural Gas (Sonat) for delivery to Chattanooga Gas.
- Gas volumes are separately nominated by COP on Chattanooga Gas for delivery to the Invista plant under an interruptible transportation agreement included in a 1999 Special

Contract between CGC, Invista, and approved by the TRA. Invista is also an interruptible sales customer of Chattanooga Gas.

- The TRA approved 1999 Special Contract sets forth the rates and other terms and conditions pursuant to which CGC renders sales and transportation service of natural gas to the INVISTA plant. Pursuant to TRA Rule 1220-4-1-.07(1), the 1999 Negotiated Contract was approved by the TRA in Docket 99-00908. By its terms, the 1999 Negotiated Contract is confidential and has been filed and maintained as confidential pursuant to the terms of the Protective Order entered in this Docket 11-00210.

#### Scheduling Error

- For the months of December 2010 and January 2011 COP nominated, scheduled and physically delivered 2,250 Dth per day of gas intended for Invista to Sonat. However, the gas was mistakenly nominated by a COP scheduler to an incorrect Sonat delivery point instead of to CGC.
- For this same period, COP, assuming a correct Sonat nomination, nominated and scheduled the same volumes on CGC for delivery to Invista.
- Due to the incorrect Sonat delivery point the gas was not delivered to CGC by Sonat, even though the gas was physically in the Sonat system and available for delivery to CGC with a corrected COP nomination to Sonat.
- Throughout the period, COP closely monitored its deliveries into Sonat, and the burns at Invista to keep them in balance. At no time during this entire period did COP or Sonat suspect that there was a problem.
- On several days during the month of December, CGC posted notices on its Electronic Bulletin Board, to which COP specifically complied. Neither Invista nor COP knew that the nominated and scheduled volumes were not being delivered by Sonat to CGC as intended beginning December 1, 2010.
- It wasn't until January 6, 2011, that COP was notified by CGC's Mark Clay that no supply had been received since December 1, 2010 by CGC from Sonat to match COP's concomitant nomination on CGC to Invista.
- Upon notice from CGC on January 6, 2011, the Sonat nomination was immediately corrected for the following gas day.

#### Invista Plant Deliveries

- Notwithstanding the fact that CGC was not receiving expected volumes from Sonat for Invista's account, CGC delivered the nominated volumes of gas to the Invista plant Dec. 1, 2010 through Jan. 6, 2011, even during the Operational Flow Order days.
- For the month of January 2011, CGC allowed COP to schedule excess volumes later in the month in order to balance transportation receipts and deliveries for that month.
- At no time during the period in question did CGC receive any penalties from Sonat or its other pipeline supplier. Nor were deliveries of gas to CGC's firm or interruptible sales, or other transportation customers affected in any way by this scheduling mistake. In fact, CGC has informed COP that on no day during the time in question were CGC's interruptible sales under its I-1 Rate Schedule interrupted.

### Attempted Reconciliation

- Upon being notified by CGC on January 6, 2011 of the imbalance situation, which began on December 1, 2010, COP immediately investigated the matter and immediately contacted Sonat to rectify the situation.
- Sonat agreed to transfer the appropriate volumes that were erroneously scheduled during the period in question to the CGC storage account to correct the error and make all parties whole.
- On January 18<sup>th</sup> Sonat contacted all parties via email concerning the transfer. No parties declined the transfer.
- On January 19<sup>th</sup> the transfer was completed.
- January 25, 2011 COP was notified by email from CGC's Mark Clay that CGC's Manager of Operations was reversing the transfer.
- Following discussions between Invista, COP and CGC, in February 2011, Invista paid its CGC bill totaling in excess of \$711,000, under protest, retaining the right to seek relief from the penalties imposed.

CGC, pursuant to the Rules and Regulations of the TRA, does not benefit from penalties such as these. Such penalties are credited to CGC's ACA and credited to CGC's customers via its PGA. CGC's ACA is an on-going account which is reconciled annually.

### The 1999 Special Contract

As background, the Special Contract between Invista and CGC was entered into in 1999 to avoid Invista's predecessor leaving the CGC system and directly attaching to an available interstate pipeline and thus bypassing CGC. In fact, the 1999 Special Contract is the only such contract on the CGC system. Such bypass would have resulted in CGC, and its customers, losing the benefit of all revenues received from this large industrial customer. While not a party to this proceeding, Invista has participated in the extensive negotiations leading up to the Settlement Agreement filed herein, and has agreed to amend the Special Contract, subject to TRA approval, in order to clarify certain provisions of the Special Contract going forward, and in order to clearly reiterate the rights and benefits of each party to the Special Contract. By its terms, should the 1999 Special Contract be changed by either CGC or the TRA without Invista's specific agreement, Invista can cancel the Contract and bypass CGC if it chooses.

Should this Settlement Agreement not be approved as filed, the agreed amendment to the Special Contract becomes void and CGC, its customers, and the TRA lose the benefit of the clarity gained from such amended language as provided for in the Settlement Agreement.

COP respectfully submits that this valuable benefit to CGC, the customers of CGC, and the TRA was overlooked by the Directors in their decision to reject the Settlement Agreement, and

thus void the agreed upon amendment to the 1999 Special Contract contained in the Settlement Agreement.

### The Settlement Agreement

To be perfectly clear, the proposed Settlement Agreement herein does NOT request the waiver of any TRA tariff, nor does it impose on the customers of CGC any costs or expense resulting from the scheduling error of COP. In fact, the carefully framed Settlement Agreement assures that CGC and its customers are fully protected.

The Agreement provides that:

*Pursuant to the terms of the 1999 Negotiated Contract, the volumes of natural gas in question for December 2010 and January 2011 shall be re-characterized as I-1 sales volumes. As a result, the penalties and charges that CGC assessed against INVISTA shall be reduced so that CGC recovers from INVISTA the cost of gas and base rates for the gas that CGC sourced and delivered to INVISTA during December 2010 and January 2011. This will allow CGC to recover for its residential and commercial customers all costs associated with COP's nomination error, including the costs associated with utilizing the LNG facility. As shown on Confidential Settlement Attachment C, the charges for the 30,736.8 Dth of natural gas billed to INVISTA at the \$15/Dth Penalty rate in December 2010 and the charges for the 47,686.9 Dth billed to INVISTA at the Cashout rate of \$5.2506/Dth in December 2010 will be canceled and re-billed at \$4.7130/Dth to allow CGC to recover through this settlement the commodity cost of gas delivered to INVISTA. The charges for the 1,563 Dth of natural gas billed to INVISTA at the \$15/Dth Penalty rate in January 2011 will be canceled and re-billed at \$4.5088/Dth to allow CGC to recover through this settlement the commodity cost of gas delivered to INVISTA. The January 2011 bill will also be adjusted to recognize 40 Dth of gas provided at the Rate Schedule F-1 PGA Rate of \$4.462 on the days that daily balancing orders were posted. A corresponding credit will be made to the Penalty Gas charged to INVISTA in January 2011. As shown on Confidential Settlement Attachment C, the December 2010 bill will be reduced by \$341,826.01, and the January 2011 bill will be reduced by \$16,813.98 for a total reduction of \$358,639.99 for the two month period. (Emphasis added).*

The Settlement Agreement further provides:

*With the settlement agreement set forth herein, CGC's residential and commercial customers will be made whole for the costs incurred by CGC's sourcing gas to INVISTA because of COP's error and will not be harmed by this settlement.*

**Nothing in this Proposed Settlement Agreement shall be deemed to be a waiver of any of the provisions of CGC's Tariff.** (Emphasis added).

## Discussion

The January 23, 2013 TRA Order rejecting the carefully drafted Settlement Agreement states on Page 3 "...that CGC's tariff does not allow for a waiver of penalties and charges for any customer mistakes, even mistakes that are unintentional." However, the Settlement Agreement does **NOT** request such a waiver, and the Settlement Agreement does **NOT** constitute a waiver of CGC's tariff. Invista, and its agent COP, and CGC operate under a Special TRA approved Contract which sets out both the rates and terms under which CGC will provide transportation services and sales services to Invista. The Special Contract provides that Invista, or its agent COP, does NOT pay the customer charge or the transportation rate set forth in CGC's tariff for gas transported by CGC. The Special Contract further provides that Invista, or its agent, may purchase natural gas from CGC. As set forth in Paragraph 14 A. of the Settlement Agreement, the settlement re-characterizes the volumes of gas in question as sales volumes pursuant to the Special Contract. This arrangement, as provided for in the Settlement Agreement, is proper and allowable under the provisions of the Special Contract, and in no way violates or waives any of CGC's tariff provisions. The Settlement Agreement is based on the Special Contract, and **NOT** CGC's tariff. Based on the factual circumstances surrounding the nomination error and the existence of the Special Contract (which is the only such Contract on the CGC System), this is an entirely unique situation.

It appears to Petitioner that the Panel either ignored or overlooked this important fact in reaching its decision on November 8, which oversight was reaffirmed in the TRA Order of January 23, 2013.

Again, the facts of this case are simple and uncontroverted. A COP scheduler made a data entry mistake as humans occasionally do. Immediately upon being made aware of this mistake, COP and its pipeline transporter immediately attempted to rectify the error in a way which would have made CGC and its customers completely whole. CGC, in compliance with its TRA tariff, was unable to agree to the rectification of the scheduling error, leaving COP no choice but to seek the relief requested in its Complaint/Petition for Special Relief filed herein.

As a bit of history, penalties such as the one here were first adopted by the Tennessee Public Service Commission in the mid-1970's as a means of insuring compliance with curtailment orders during times of gas curtailments. Penalties for noncompliance with tariffs have continued to the present, and are designed to prevent unscrupulous players from taking unfair advantage of rules, regulations and tariffs. Such penalties were designed to be penal in nature to discourage "bad acts." No "bad act" occurred in this situation.

The bottom line of this case is an effective penal "fine" of hundreds of thousands of dollars to COP for a simple, honest, human data entry mistake. Put in perspective, fines and penalties of hundreds of thousands of dollars are typically levied in criminal and civil cases and applied to parties who are guilty of some type of fraud or other serious law or ethical violation. Such is simply not the case here. COP clearly made no effort to "game the system", it had no ulterior motive to make the error in question, and it simply does not deserve the several hundred thousand dollar penalty levied on it.

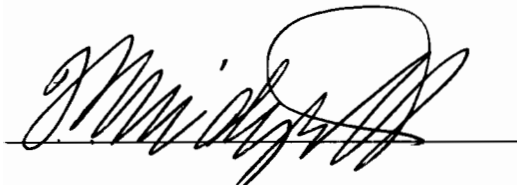
As was mentioned at the November 8 Conference, simply because the customers of CGC have been credited with the amount of this "fine" pursuant to CGC's PGA, there is no reason to deny COP special relief from such an onerous penalty of hundreds of thousands of dollars. The Settlement Agreement filed herein gives COP some relief, while providing a real benefit to CGC and its customers.....all without the TRA or CGC waiving its tariff. Such benefit will be lost if the Authority does not reconsider its rejection of the Settlement Agreement, and approve the Settlement Agreement as filed.

The Settlement Agreement fully protects CGC's customers from any adverse consequence of COP's scheduling error, and gives the TRA, Invista, and CGC and its customers clarity of the 1999 Special Contract going forward.

A very real effect of the Directors rejection of the Settlement Agreement between Conoco Phillips and Chattanooga Gas, and not opposed by the Tennessee Attorney General's Office of Consumer Affairs, will be to cause protracted and expensive litigation before the TRA, as well as possible further appeals in the courts. The costs of such litigation will ultimately be borne by CGC's customers and the TRA.

For all of the above reasons, ConocoPhillips respectfully requests that the Authority reconsider its rejection of the Settlement Agreement proposed by Petitioner ConocoPhillips, Chattanooga Gas Company, and not opposed by the Tennessee Attorney General, Consumer Advocate and Protection Division

Respectfully submitted,

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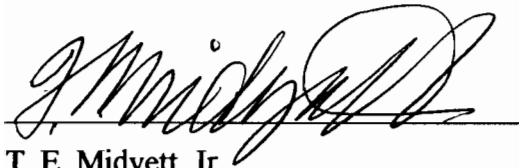
T. E. Midyett, Jr. (BPR # 3961)  
Attorney for Petitioners  
318 Erin Drive, Suite 2A  
Knoxville, Tennessee 37919  
(865)766-0106

February 6, 2013

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Petition has been forwarded to Attorney J. W. Luna, Counsel for Chattanooga Gas Company, and to Attorneys Ryan McGehee and Vance Bromell of the Office of the Tennessee Attorney General.

This 6th day of February, 2013.

A handwritten signature in black ink, appearing to read "T. E. Midyett, Jr.", is written over a horizontal line.

T. E. Midyett, Jr.  
Attorney for Conoco Phillips