

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

March 4, 2013

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**

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**DOCKET NO.
11-00210**

ORDER GRANTING PETITION FOR RECONSIDERATION

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 February 13, 2013, for consideration of the *Petition for Reconsideration* (“*Petition*”) filed by ConocoPhillips Company (“ConocoPhillips” or “COP”) on February 6, 2013. In the *Petition*, ConocoPhillips seeks reconsideration of the Authority’s January 23, 2013 *Order Denying Settlement Agreement* (“*Order*”).

BACKGROUND

ConocoPhillips filed the *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* (“*Complaint*”) with the Authority on December 20, 2011. In its *Complaint*, ConocoPhillips, a producer and marketer of natural gas and the designated third-party gas supply agent for Invista S.a.r.l. (“Invista”), a customer of Chattanooga Gas Company (“CGC”), 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 it was attempting to resolve the issues stated in the *Complaint* and the parties had agreed to engage in negotiations. In the event such negotiations failed, CGC stated that it would file a responsive pleading in the docket. On March 12, 2012, the Consumer Advocate and Protection Division (“Consumer Advocate”) filed a *Petition to Intervene*, which was granted by the Hearing Officer on March 13, 2012.¹ After a period of negotiations, on August 27, 2012, ConocoPhillips and CGC filed a *Proposed Settlement Agreement*, which the Consumer Advocate did not oppose.

The panel heard and considered the *Proposed Settlement Agreement* at a regularly scheduled Authority Conference held on November 8, 2012. As reflected in its *Order*, the majority of the panel voted to deny the *Proposed Settlement Agreement* in its entirety and found that the terms of the *Proposed Settlement Agreement* were not consistent with CGC’s existing tariffs and were not otherwise in the public interest. The majority further found that, as part of the *Proposed Settlement Agreement*, the parties proposed an amendment to the 1999 negotiated contract; therefore, if the parties wanted the Authority to consider the prospective changes to the contract, then discovery and filing of testimony on that issue would be needed before a hearing. As a result, the majority referred the docket back to the Hearing Officer to prepare the case for hearing, including establishing a procedural schedule.²

PETITION FOR RECONSIDERATION

ConocoPhillips filed its *Petition* on February 6, 2013, seeking reconsideration of the Authority’s January 23, 2013 *Order*. ConocoPhillips asserts that reconsideration should be granted because:

¹ On February 27, 2012, the assigned panel appointed a Hearing Officer to prepare the matter for hearing. See *Order Convening a Contested Case and Appointing a Hearing Officer*, p. 1 (February 29, 2012).

² Director Sara Kyle did not vote with the majority.

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.³

ConocoPhillips further states that "it appears to [ConocoPhillips] 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."⁴

On February 7, 2013, CGC filed *Chattanooga Gas Company's Response to ConocoPhillip's* (sic) *Petition for Reconsideration*, in which it states that CGC "continues to believe that the Proposed Settlement Agreement filed on August 27, 2012 is an appropriate resolution of this matter that benefits CGC's customers and is not a waiver of CGC's tariff."⁵ The Consumer Advocate filed its *Response in Opposition of the Consuner* (sic) *Advocate to the Petition for Reconsideration Filed by ConocoPhillips* on February 11, 2013, stating that the "proposed settlement requires the households and businesses of Chattanooga to fund a settlement payment to ConocoPhillips" and requesting that the *Petition* be denied.⁶

³ *Petition for Reconsideration*, p. 5 (February 6, 2013) (emphasis in original).

⁴ *Id.*

⁵ *Chattanooga Gas Company's Response to ConocoPhillip's* (sic) *Petition for Reconsideration*, p. 1 (February 7, 2013).

⁶ *Response in Opposition of the Consuner* (sic) *Advocate to the Petition for Reconsideration Filed by ConocoPhillips*, p. 2 (February 11, 2013).

Tenn. Code Ann. § 4-5-317 sets forth the procedure for reconsideration. Pursuant to subsection (a) of the statute, any party, within fifteen days after entry of a final order, may file a petition for reconsideration stating the specific grounds upon which relief is requested. Under subsection (c), if no action has been taken on the petition within twenty days, the petition is deemed to have been denied. If an order granting the petition and setting the matter for further proceedings is issued, pursuant to subsection (d) the new proceeding is limited to argument upon the existing record, and no new evidence can be introduced unless the party proposing such evidence shows good cause for such party's failure to introduce the evidence in the original proceeding.

During the regularly scheduled Authority Conference held on February 13, 2013, the panel voted unanimously to grant ConocoPhillips' *Petition* based on the procedure set forth in Tenn. Code Ann. § 4-5-317 and to address the merits of the reconsideration at a future conference.

IT IS THEREFORE ORDERED THAT:

The *Petition for Reconsideration* filed by ConocoPhillips Company is granted, the merits of which will be considered by the Authority at a future conference.

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

ATTEST:



Earl R. Taylor, Executive Director