

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

July 7, 2020

IN RE:)	
)	
CHATTANOOGA GAS COMPANY COMPLIANCE)	DOCKET NO.
FILING AND REPORT)	18-00035
)	

**ORDER ACCEPTING CHATTANOOGA GAS COMPANY’S
PETITION FOR RECONSIDERATION**

This matter came before Chair Robin L. Morrison, Vice Chair Kenneth C. Hill, and Commissioner John Hie of the Tennessee Public Utility Commission (“Commission” or “TPUC”) during the regularly scheduled Commission Conference held on June 15, 2020, to consider the *Petition for Reconsideration* filed by Chattanooga Gas Company (“CGC” or “Company”) on June 4, 2020. The Company and the Consumer Advocate Unit in the Financial Division of the Tennessee Attorney General’s Office (“Consumer Advocate”) were the parties in this matter.

BACKGROUND

The enactment of 2017 Tax Cuts and Jobs Act, Pub. L. No. 115-97 (“2017 Tax Act” or “TCJA”) reduced taxes paid by public utilities, including CGC. The hearing on the merits in this docket was held on February 18, 2020. Deliberations took place on March 9, 2020, and the *Final Order* was issued on May 20, 2020. In this docket, the Commission determined that Deferred Income Tax Expense Savings is \$843,810 and the Deferred Amortization of Excess

Accumulated Deferred Income Tax is \$1,000,900.¹ The aggregate amount of these regulatory liabilities is \$1,844,710 and represents a “tax savings” to be passed back to customers. The regulatory liability of \$1,844,710 was ordered to be amortized over a three-year period and incorporated into Chattanooga Gas Company’s Annual Rate Mechanism (“ARM”) filings with an unamortized balance reflected as a reduction in rate base.²

In its *Petition for Reconsideration*, the Company does not challenge the bulk of the Commission’s decision in this docket or 2017 Tax Act related, and ancillary, determinations made in the Company’s rate case. Rather, CGC seeks to expedite the return of the tax savings to its Tennessee customers in light of the current economic challenges presented by the COVID-19 pandemic.³ The Consumer Advocate has not yet voiced a position on the matter presented by the Company. As such, for purposes of whether to accept or outright deny the *Petition for Reconsideration*, no opposition has been filed.

FINDINGS AND CONCLUSIONS

Petitions for Reconsideration are guided by Tenn. Code Ann. § 4-5-317 and Commission Rule 1220-01-02-.20. Generally, a petition for reconsideration is granted or denied based upon the existing record before an agency. Here, the Company seeks reconsideration based upon “new evidence” for an issue that was fully litigated during the hearing on the merits. Tenn. Code Ann. § 4-5-317 (d) provides as follows:

An order granting the petition and setting the matter for further proceedings shall state the extent and scope of the proceedings, which shall be limited to argument upon the existing record, and no new evidence shall be introduced unless the party proposing such evidence shows good cause for such party's failure to introduce the evidence in the original proceeding.

¹ *Final Order*, pp. 1, 21 (May 20, 2020).

² *Id.*

³ *Petition for Reconsideration*, pp. 2-3 (June 4, 2020).

Thus, Tennessee law disfavors the introduction of new evidence unless a party can show good cause for that party's failure to introduce such evidence in the original proceeding. This prohibition allows for cases which have been fully litigated before an agency to have finality. Parties are not granted endless opportunities to re-litigate one or multiple issues based on new evidence in the same case *after* the hearing on the merits and the Commission's final order.

Here, the "new evidence" does not consist of specific data, facts, or sworn testimony, but rather the generalized claim of the economic impact of the COVID-19 pandemic on the Company's customers. One could quibble with the lack of specific factual and data-based evidence here from which a party could use to justify a request for reconsideration. Such a basis is a necessity. Nevertheless, this Commission has recognized the extraordinary circumstances the pandemic has created for customers following Governor Bill Lee's declaration of a public health emergency on March 12, 2020.⁴

At the time of the hearing in this matter, there was little indication that a far-reaching public health crisis was on the horizon. Such information might have impacted the positions of the parties and the Commission's decision with respect to the speed of the consumers' recovery of the tax savings. Given these unprecedented and extraordinary circumstances and the limited scope of the reconsideration sought, the Hearing Panel determined unanimously to accept the *Petition for Reconsideration* and directed the Hearing Officer to prepare the matter for a hearing.

IT IS THEREFORE ORDERED THAT:

1. The *Petition for Reconsideration* filed by Chattanooga Gas Company on June 4, 2020 is accepted. The Hearing Officer shall set this matter for a hearing.

2. Any party aggrieved by the Commission's decision in this matter may file a

⁴ See *In Re: Emergency Petition to Suspend Service Disconnections Filed by the Consumer Advocate Unit of the Financial Division of the Tennessee Attorney General*, Docket No. 20-00047.

Petition for Reconsideration with the Commission within fifteen (15) days from the date of this Order.

3. Any party aggrieved by the Commission's decision in this matter has the right to request 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.

Chair Robin L. Morrison, Vice Chair Kenneth C. Hill, and Commissioner John Hie concur with this decision.

ATTEST:

A handwritten signature in cursive script, appearing to read "Earl Taylor", written in black ink.

Earl R. Taylor, Executive Director