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IN THE TENNESSEE PUBLIC UTILITY COMMISSION
AT NASHVILLE, TENNESSEE

IN RE:	)	
	)	
DOCKET TO EVALUATE CHATTANOOGA GAS COMPANY'S PURCHASES AND RELATED SHARING INCENTIVES	)))	**Docket No. 20-00139**

CONSUMER ADVOCATE'S POST-HEARING BRIEF

The Consumer Advocate Unit in the Financial Division of the Office of the Tennessee Attorney General ("Consumer Advocate") respectfully submits this Post-Hearing Brief in response to the hearing in this docket.

REVENUES FROM CHATTANOOGA GAS COMPANY'S INCENTIVE PLAN FOR THE SALE OF GAS SUPPLY ASSETS SHOULD BE SHARED 75% FOR CONSUMERS AND 25% FOR THE COMPANY

INTRODUCTION

The present docket was initiated to evaluate the revenue sharing arrangements between consumers and Chattanooga Gas Company ("CGC" or the "Company") within the Company's Performance Based Ratemaking Mechanism ("PBRM"). Currently, revenues from the sale of certain gas supply assets managed by CGC are shared 50% / 50% between consumers and the utility.[1] The Consumer Advocate maintains that a 75% / 25% sharing arrangement is just and reasonable and should be adopted by this agency.

The gas supply assets at issue are capacity on the interstate gas pipeline and gas used in sales to entities other than retail customers (in addition, there is the fee paid by an asset manager to CGC for the right to manage the assets). CGC has capacity and gas available for sale because

[1] *Review of Performance Based Ratemaking Mechanisms Transactions and Activities,* p. 45, TRA Docket No. 07-00224 (June 30, 2020). The Tennessee Regulatory Authority, or TRA, is the predecessor agency to the TPUC, just as the Tennessee Public Service Commission predated the TRA. While the nomenclature has changed,

its gas supply plan for the year invariably has a certain amount in excess of expected usage.[2] Accordingly, the sharing plan was created in order to incentivize CGC to get the best available return for the sale of this capacity and gas.[3]

As part of a process known as the Triennial Review, Exeter Associates, Inc., an independent gas supply expert, made a study of the sharing arrangement between consumers and CGC.[4] In its report, Exeter concluded that the sharing arrangement should be changed from 50% / 50% to 75% for consumers / and 25% for CGC.

The Consumer Advocate, relying on the Exeter Report, requested that the sharing plan be changed to adopt the 75%/25% split recommended by Exeter.[5] A hearing on this matter was held on March 21, 2022.

A. THE PROOF IN THE RECORD SUPPORTS A 75% / 25% REVENUE SHARING ARRANGEMENT.

In making the case for the 75%/25% sharing, the Consumer Advocate relies primarily on the *Review of Performance Based Ratemaking Mechanism Transactions and Activities* prepared by Exeter Associates, Inc. for TPUC and the Consumer Advocate.[6] In this review, known as the Exeter Report, Exeter concluded that "a 75% customer / 25% utility sharing incentive would be more appropriate for CGC and reflect a reasonable balance of incentives."[7]

Exeter based its conclusion in favor of a 75%/25% split on its extensive experience in reviewing plans in other states as well as in Tennessee:

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the scope and function of these entitled has remained essentially the same.

2 *Post-Hearing Brief of the Consumer Advocate,* pp. 2-3, TRA Docket No. 07-00224 (July 31, 2009).

3 *Id*.

4 *Review of Performance Based Ratemaking Mechanisms Transactions and Activities,* pp. 43-47, TRA Docket No. 07-00224 (June 30, 2020).

5 *Petition for the Tennessee Public Utility Commission to Modify Chattanooga Gas Company's Performance Based Ratemaking Mechanism*, TPUC Docket No. 20-00139 (December 23, 2009).

6 *Review of Performance Based Ratemaking Mechanisms Transactions and Activities,* TRA Docket No. 07-00224 (June 30, 2020).

7 *Id.* at p.45.

> Exeter's experience in reviewing gas incentive mechanisms in jurisdictions other than Tennessee includes a now-terminated program of Nicor Gas Company in Illinois, and the terminated programs of Vectren North, Vectren South, and Citizens Gas & Coke Utility in Indiana. Exeter continues to review, on a quarterly basis, the Gas Cost Incentive Mechanism (GCIM) of Northern Indiana Public Service Company. In multiple jurisdictions in which Exeter regularly performs gas cost procurement reviews, capacity release revenues, off-system sales margins, and AMA fees are subject to sharing with the utility. These jurisdictions include Delaware, Louisiana, Massachusetts, Ohio, and Pennsylvania.[8]

It is clear from this statement by Exeter in its report that Exeter has extensive experience in reviewing the sharing arrangements in gas supply plans, listing by name five different companies and five different state jurisdictions where it has worked.

After establishing its track record in states other than Tennessee, Exeter proceeded to analyze the sharing arrangements of two Tennessee gas companies, Piedmont Natural Gas ("Piedmont") and Atmos Energy Corporation ("Atmos").[9]

With regards to Atmos, Exeter found as follows:

> Under the Capacity Management Incentive Mechanism, to the extent Atmos is able to release transportation or storage capacity, or achieve savings from off-system sales, the associated revenues and margins are shared by Atmos' sales customers and Atmos on a 90% / 10% basis, respectively. During the period most recently reviewed by Exeter, all Capacity Management Incentive Mechanism savings were attributable to AMA fees. Under the PBRM, Atmos is subject to an overall combined annual cap on incentive savings or costs under both incentive mechanisms of $1.25 million. Atmos' share of PBRM savings was limited by the $1.25 million cap during each Plan Year of the period most recently reviewed by Exeter.[10]

With regards to Piedmont, Exeter found that:

> Under the supplier reservation fee component of the Plan, Piedmont is entitled to recover 100% of its gas supply reservation fees with no gain or loss potential. The capacity management component of the Plan provides that the revenues (margins) realized from capacity release and off-system sales activities, as well as AMA fees, be subject to the same 75% ratepayer / 25%

[8] *Id.* at p. 43.
[9] *Id.* at pp. 43-45.
[10] *Id.* at p. 44.

> Piedmont sharing procedures as commodity procurement cost component savings/losses. Piedmont's Plan includes a $1.6 million sharing cap.[11]

Thus, before turning to an examination of CGC's sharing plan, Exeter laid out its extensive experience in reviewing the plans of numerous companies in a wide variety of states. In addition, Exeter closely examined the sharing plans of two Tennessee companies, Atmos and Piedmont. Accordingly, Exeter clearly established its credentials as an expert in reviewing gas sharing plans. Furthermore, there is no evidence in the record challenging Exeter's expertise in reviewing gas supply plans including sharing plans. In concluding that the sharing percentage for CGC should be changed to 75%/25% from the current 50%/50%, Exeter found as follows:

> In other jurisdictions, sharing percentages that range from 90% customer / 10% utility to 75% customer / 25% utility have generally been adopted for AMA fees, capacity release revenues and off-system sales margins realized by the utility. In Tennessee, AMA fees realized by Atmos are subject to a 90% customer / 10% utility sharing incentive, and for Piedmont, a 75% customer / 25% utility sharing incentive. Exeter has observed no material differences in the resource efforts of natural gas utilities to generate AMA fees, capacity release revenues, or off-system sales margins under a 25% sharing incentive compared to a 10% sharing incentive, nor has Exeter observed a natural gas utility failing to devote sufficient resources to maximize these revenues/margins when provided a sharing incentive. An incentive mechanism should provide a utility with an incentive sufficient to ensure ratepayer benefits are maximized since it is resources paid for by ratepayers that are used to generate AMA fees, capacity release revenues, and off-system sales margins. Therefore, Exeter concludes that for AMA fees, a 75% customer / 25% utility sharing incentive would be more appropriate for CGC and reflect a reasonable balance of incentives. [12]

This citation from the Exeter Report provides an ample factual basis for Exeter's conclusion that a 75%/25% sharing is more appropriate than the current 50%/50%. Exeter referred to the sharing percentages of other jurisdictions in support of its conclusion. Exeter then carefully considered the possible impact on incentives and noted that it has seen no adverse

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[11] *Id.* at p. 45.
[12] *Id.* at p. 45.

effects from a 75%/25% sharing. Exeter, therefore, has fully done the evaluation it was tasked to do in its report.

CGC, through the pre-filed testimony of its witness, Mr. Becker, made a number of criticisms of the Exeter Report. The Consumer Advocate will set forth each of Mr. Becker's criticisms, followed by the Consumer Advocate response.

1. First, Mr. Becker claims:

> there is nothing in the Report that says that under the current 50/50 split that customers are being harmed or disadvantaged. Likewise, there is nothing that says that a change from 50/50 to 75/25 customers/utility that CGC's customers will derive any benefit or any better benefit over what it has now.[13]

RESPONSE:

The harm in the present 50%/50% sharing arrangement is that consumers are receiving too little and CGC is receiving too much. The point of utility regulation is for utilities to have the opportunity to earn a fair return on their investment.[14] In the present case, there is no evidence that CGC is not already being compensated for its investment. Thus, the sharing arrangement at issue is on top of CGC's return on investment and is intended only to give CGC an incentive to get the best price available for assets that are not needed by consumers at a particular time. It should not be viewed as a kind of bonus for CGC.

Therefore, any money over and above the amount needed to incentivize CGC should go to the ratepayers to reduce the amount they pay on their bills, not to CGC shareholders.

[13] *Direct Testimony of George Becker* at 5:30 – 6:3 (December 8, 2021).

[14] *Bluefield Water Works & Improvement Co. v. Pub. Serv. Comm.,* 262 U.S. 679, 690, 43 S.Ct. 675 (1923) ("rates which are not sufficient to yield a reasonable rate of return on the property used at the time it is being used render the service are unjust, unreasonable, and confiscatory, and their enforcement deprives the public utility company of its property in violation of the Fourteenth Amendment"); *Federal Power Comm. V. Hope Natural Gas, Co.,* 320 U.S. 591, 605, 64 S.Ct.284 (1944) (utility has right to rates that allow it "to maintain its financial integrity, to attract capital, and to compensate its investors for the risks assumed").

2. Second, Mr. Becker claims:

> the entire basis for making the change is that Atmos and Piedmont have different sharing percentages than CGC. There is nothing in the Report indicating why the sharing percentages of Atmos or Piedmont are an appropriate surrogate for CGC other than the fact that all three are regulated by the TPUC.[15]

RESPONSE:

Contrary to Mr. Becker's assertion that the sharing percentages of Piedmont and Atmos form the "entire basis" for the proposed change to 75%/25% sharing, the Exeter Report explicitly refers to the sharing percentages in other states:

> In other jurisdictions, sharing percentages that range from 90% customer / 10% utility to 75% customer / 25% utility have generally been adopted for AMA fees, capacity release revenues and off-system sales margins realized by the utility.[16]

In addition, as stated above, the Exeter Report refers to Exeter's experience in reviewing nearly half-a-dozen companies in that many states. So, the idea that the Exeter Report is based solely on the sharing percentages of Atmos and Piedmont is without merit.

3. Third, Mr. Becker asserts that:

> in relying upon Atmos and Piedmont, each of them have mechanisms that are different from each other, and both are different than CGC's. There is no explanation or consideration for whether the differences in the mechanisms between Atmos and Piedmont are material or whether their differences from CGC are material.[17]

RESPONSE:

The Consumer Advocate does not dispute the fact that there are some differences between the asset sale programs of Atmos and Piedmont and the program of CGC. However, all of these programs at heart involve the sale of assets that are available because they are not

[15] *Direct Testimony of George Becker* at 5:4-7 (December 8, 2021).

[16] *Review of Performance Based Ratemaking Mechanisms Transactions and Activities,* p. 45, TRA Docket No. 07-00224 (June 30, 2020).

[17] *Direct Testimony of George Becker* at 6:13-17 (December 8, 2021).

needed by consumers at a particular time but have value for other users. Thus, the whole idea behind such programs is to provide an incentive to the utilities to get the highest value for those assets, without that incentive being higher than necessary. Accordingly, there is enough similarity in the programs for a comparison to be valid.

4. Fourth, Mr. Becker alleges:

> not only are the Atmos and Piedmont mechanisms different from each other and different from CGC, they each have different sharing splits – while Piedmont may have a 75/25 customer/utility split as Exeter is advocating for CGC, the Atmos mechanism is a 90/10 customer/utility split.[18]

RESPONSE:

The Consumer Advocate agrees that the sharing percentages of Atmos (75% / 25%) and Piedmont (90% / 10%) are different. However, it is obvious that both are significantly lower than the 50% / 50% sharing of CGC. Exeter, using its experience from reviewing numerous companies in many states, obviously made a judgement that a change to 75% / 25% was appropriate in the present case.

5. Fifth, Mr. Becker states:

> in proposing a change from a 50/50 split to a 75/25 split, there is no analysis, no consideration, and no review of any kind of how changing CGC's sharing from 50/50 to 75/25 will work as well or provide the same type of incentives as the 75/25 customer/utility split for Piedmont or as effectively as the 90/10 for Atmos.[19]

RESPONSE:

The response to this criticism has already been set forth in Item 1 above. In addition, the Consumer Advocate would note that Exeter found that sharing percentages do not lead to material differences in the efforts of utilities to get the best value for assets:

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[18] *Id.* at 6:19-22.
[19] *Id.* at 7:3-7.

> Exeter has observed no material differences in the resource efforts of natural gas utilities to generate AMA fees, capacity release revenues, or off-system sales margins under a 25% sharing incentive compared to a 10% sharing incentive, nor has Exeter observed a natural gas utility failing to devote sufficient resources to maximize these revenues/margins when provided a sharing incentive.[20]

In addition, Mr. Becker testified that CGC would continue to provide safe and reliable services even if its sharing percentage as reduced.[21]

6. Finally, Mr. Becker asserts:

> "using 75/25 is completely arbitrary."[22]

RESPONSE:

Given the fact of Exeter's documented experience in reviewing other companies in other states; its history of reviewing utilities in Tennessee; and its well laid out references to sharing percentages across the industry, the charge of arbitrariness is without foundation.

In addition to requesting a change in the sharing plan to 75% / 25%, the Consumer Advocate also requested an annual cap of $550,000 flowing to CGC.

In his pre-filed testimony, Mr. Dittemore set forth his position on the cap:

> I recommend that the Company retention percentage associated with asset management fees, capacity release revenues, and off-system sales be set at 25% with an annual cap of $550 thousand, implemented on a prospective basis. This cap is in line with the Company's peers, both within and outside of Tennessee. The annual cap approximates Company retention of $8.25 per customer and is consistent with the caps of both Atmos and Piedmont.[23]

The cap justified by Mr. Dittemore is just and reasonable.

B. TPUC IS NOT LIMITED TO POSITIONS TAKEN BY THE PARTIES BUT MAY RELY ON ITS OWN EXPERIENCE AND EXPERTISE.

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[20] *Review of Performance Based Ratemaking Mechanisms Transactions and Activities,* p. 45, TRA Docket No. 07-00224 (June 30, 2020).

[21] Transcript of Commission Conference at 59:3-7 (March 21, 2022).

[22] *Direct Testimony of George Becker* at 7:9 (December 8, 2021).

[23] *Direct Testimony of David N. Dittemore,* p. 5 (October 11, 2021).

As set forth in Section A above, the Consumer Advocate maintains that the Exeter Report, as referred to and relied upon in the testimony of David Dittemore, is sufficient to support a finding that the sharing percentage should be changed to 75% / 25%. However, TPUC is also entitled to use "its own experience, technical competence, and specialized knowledge in coming to a decision in this case."[24]

In CF Industries, the Tennessee Supreme Court described how TPUC is not "hamstrung by the naked record":

> Thus, the Public Service Commission in rate making and design cases is not solely governed by the proof although, of course, there must be an adequate evidentiary predicate. The Commission, however, is not hamstrung by the naked record. It may consider all relevant circumstances shown by the record, all recognized technical and scientific facts pertinent to the issue under consideration and may superimpose upon the entire transaction its own expertise, technical competence and specialized knowledge. Thus focusing on the issues, the Commission decides that which is just and reasonable. This is the litmus test – nothing more, nothing less.[25]

In the present case, TPUC has the experience of reviewing the sharing plans of Atmos and Piedmont. In addition, TPUC has filed a Notice of Administrative Notice in which it took administrative notice of the following dockets:

1. Docket No. 05-00165, In Re: Review of Nashville Gas Company's IPA Relating to Asset Management Fees.
2. Docket No. 07-00224, In Re: Docket to Evaluate Chattanooga Gas Company's Gas Purchases and Related Sharing Incentives.
3. Docket No. 16-00028, In Re: Petition of Atmos Energy Corporation to Revise Performance Based Ratemaking Mechanism Tariff.[26]

Accordingly, the facts and methodologies contained in the Dockets may serve as the basis or part of the basis for a TPUC decision.

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[24] CF Industries v Tenn. Pub. Serv. Comm., 599 S.W.2d 536, 543 (Tenn. 1980).
[25] *Id*.
[26] *Notice of Administrative Notice,* TPUC Docket No. 20-00139 (August 27, 2021).

In *Tennessee American Water Company v. Tennessee Regulatory Authority*, the Court held that "[t]he TRA has the discretion to utilize an historical test period, a forecast period, a combination of these when necessary, or any other accepted method of ratemaking necessary to give a fair rate of return."[27] Similarly, in the present case, TPUC has the discretion to utilize the method that gives a fair sharing arrangement between consumers and CGC.

Thus, given the facts presented in the Exeter Report, the material and experience gained from the three dockets cited in the *Notice of Administrative Notice*, TPUC's expertise and specialized knowledge, TPUC has ample support for a finding that the sharing plan should be changed from 50%/50% to 75%/25%.

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[27] *Tennessee American Water Company v. Tennessee Regulatory Authority*, 2011 WL 334678, at *17-18 (Tenn.Ct.App. Jan 28, 2011).

CONCLUSION

For the foregoing reasons, the sharing percentage between consumers and CGC should be changed to 75%/25%, and an annual cap of $550,000 should be put on revenues CGC can receive under the plan.

RESPECTFULLY SUBMITTED,

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This the 14th day of April, 2022.

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