BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

July 25, 2022

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

ORDER REQUIRING REVISED INTERRUPTIBLE MARGIN CREDIT RIDER TARIFF

This matter came before Chairman Kenneth C. Hill, Vice Chairman Herbert H. Hilliard, Commissioner Robin L. Morrison, Commissioner John Hie, and Commissioner David F. Jones of the Tennessee Public Utility Commission (the "Commission" or "TPUC"), the voting panel assigned to this docket, during a regularly scheduled Commission Conference held on May 9, 2022, to consider whether the incentive percentage of the Asset Management and Agency Agreement ("AMAA") of Chattanooga Gas Company's ("Chattanooga Gas", "CGC", or the "Company") should be modified and, if so, to what extent it should be modified. This matter was prompted by the filing of the *Petition for Tennessee Public Utility Commission To Modify Chattanooga Gas Company's Performance Based Ratemaking Mechanism* ("*Petition*") filed on December 23, 2020 by the Consumer Advocate Unit in the Financial Division of the Office of the Tennessee Attorney General ("Consumer Advocate").

BACKGROUND

Gas supply and management issues are complex and are subject to the demands of the market. Under the Company's Performance Based Ratemaking Mechanism ("PBRM"), the

Company's gas costs are fully recoverable if they fall within 1% of monthly benchmark indices, an issue that is not the subject of this docket. The focus of this docket is the related Interruptible Margin Credit Rider ("IMCR").

The IMCR represents a regulatory incentive to encourage a utility to market excess or idle gas assets on behalf of customers. In the simplest of terms, large natural gas public utilities often have gas and transportation assets, funded by customers, that are surplus to the needs of the customers. These idle assets are often marketed on behalf of customers in deals made between public utilities and gas marketers known as Asset Management and Agency Agreements ("AMAA"). Chattanooga Gas has used an affiliate, Sequent Energy Management ("Sequent"), as an asset manager over the years. Under the AMAA, an asset manager, such as Sequent, may utilize the Company's gas supply assets to generate capacity release revenues and off-system sales; further, the asset manager pays the Company an asset management fee under the agreement. The cost of the gas supply assets managed is paid entirely by customers. The fee paid to the Company under the AMAA is shared with a 50/50 split between the Company and the customers in a practice first approved with an IMCR tariff filing in 2003. The sharing percentage of the IMCR is the subject of this docket following the 2020 Review of Performance Based Ratemaking Mechanism Transactions and Activities ("2020 Exeter Report") by Exeter Associates, Inc. ("Exeter").

The Commission has invested time and resources in reviewing the asset management issues of the Company and other similar asset management programs under its jurisdiction. In 2007, the Commission opened Docket No. 07-00224 to address asset management and capacity issues raised by the Consumer Advocate and the Chattanooga Manufacturers Association ("CMA") in

Chattanooga Gas Company's 2006 rate case.[1] As part of the proceedings in Docket No. 07-00224, the Commission required CGC to submit asset management Request for Proposals ("RFP") for prior approval before putting them out for bid and required triennial reviews of capacity planning beginning in 2012, and the Commission set forth procedures and criteria for the triennial review process.[2]

The triennial review process that sprung from Docket No. 07-00224 has involved Exeter acting as an independent party reviewing the Company's relevant gas transactions over specific three-year periods. Exeter has provided comprehensive reviews of the transactions and activities associated with the Company's PBRM and the related IMCR in three separate triennial reviews. Exeter has been selected through an RFP process for each review. The Commission has found that the three Exeter reports submitted respectively in 2014, 2017, and 2020 provided valuable information and were a benefit to the Commission and customers.[3] Atmos Energy Corporation ("Atmos") and Piedmont Natural Gas Company ("Piedmont") are also subject to similar triennial reviews.[4]

As part of the review of CGC's triennial reviews, the Commission adopted the following procedures and practices in 2009 in Docket No. 07-00224:

> The independent consultant shall not propose changes to the structure of the PBRM itself; however, the TRA [Commission] Staff, CGC, or the CAD [Consumer Advocate] may use the report of the independent consultant as grounds for making

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[1] *In re: Petition of Chattanooga Gas Company For Approval of Adjustment Of Its Rates And Charges, Comprehensive Rate Design Proposal, And Revised Tariff*, Docket No. 06-00175, *Order Closing Phase II of Docket*, p. 3 (December 17, 2007).

[2] *In re: Docket to Evaluate Chattanooga Gas Company's Gas Purchases And Related Sharing Incentives*, Docket No. 07-00224, *Order*, pp. 5-6 (September 23, 2009); *Order Regarding Triennial Review Procedures and Criteria*, p. 3 (October 13, 2009).

[3] *Id. Order Extending Triennial Review Process*, p. 4 (December 29, 2014); *Order Extending Triennial Review Process*, pp. 5-6 (November 9, 2017); *Order Concerning 2020 Triennial Review Process*, pp. 7-9 (October 27, 2020).

[4] *See In re: Review of Nashville Gas Company's Incentive Plan Account Relating to Asset Management Fees*, Docket No. 05-00165, *Order Approving Settlement*, p. 3 (December 14, 2007); *In Re: Docket to Evaluate Atmos Energy Corporation's Gas Purchases and Related Sharing Incentives*, Docket No. 07-00225, *Order Approving Stipulation and Settlement Agreement*, p. 4 (August 6, 2013).

> recommendations or proposed changes to the Authority [Commission], and the TRA Staff, CGC, or the CAD may support or oppose such recommendations or proposed changes. Any proposed changes to the structure of the PBRM resulting from the initial review or subsequent review, whether adopted by agreement or pursuant to a ruling of the Authority, shall be implemented on a prospective basis only beginning with the incentive plan year immediately following such agreement or ruling.[5]

No party sought reconsideration or review of the Commission's order establishing the triennial review procedures.

As part of Exeter's Report submitted in 2020, Exeter noted the level of the Company's sharing percentage of 50% of fees under the AMAA in comparison with other regulated Tennessee gas utilities and in other jurisdictions:

> In other jurisdictions, sharing percentages that range from 90% customer/10% utility to 75% customers/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.[6]

In comments responding to the 2020 Exeter Report in Docket No. 07-00224, the Consumer Advocate argued that the 50/50 split of AMAA fees should be modified.[7] The Commission

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[5] *Id., Order Regarding Triennial Review Procedures and Criteria*, Exhibit 1, p. 2 (October 13, 2009). The cited language uses the initials "TRA" for Tennessee Regulatory Authority, the Commission's previous name. The "CAD" refers to the Consumer Advocate Division which has since been reorganized at the Attorney General's Office as the Consumer Advocate Unit. "CGC" is Chattanooga Gas Company.

[6] David N. Dittemore, Pre-Filed Direct Testimony, Exhibit DND-3, p. 45 (October 11, 2021).

[7] *In re: Docket to Evaluate Chattanooga Gas Company's Gas Purchases And Related Sharing Incentives*, Docket No. 07-00224, *Consumer Advocate's Comments Concerning Chattanooga Gas Company's AMAA Triennial Review*, pp. 3-4 (July 9, 2020).

referred the Consumer Advocate to the procedures and process for potential modifications adopted in the *Order Regarding Triennial Review Procedures and Criteria* in 2009 in Docket No. 07-00224, indicating the Consumer Advocate could file a petition and use the 2020 Exeter Report.[8]

THE PETITION AND THE TRAVEL OF THIS CASE

On December 23, 2020, the Consumer Advocate filed the *Petition* requesting that the Commission open a docket to consider modification of the Company's PBRM. The Consumer Advocate sought to modify the IMCR sharing percentage to a 25%-Company/75%-Customer ratio and the establishment of a cap of $900,000 as the cap on the financial incentives the Company could retain under the IMCR.

Following the filing of the *Petition*, the Hearing Officer convened a status conference on January 7, 2021, to determine the next steps to move the docket forward and agreed to have the parties engage in discussions while tolling the time for the Company to respond to the *Petition*.[9] At a status conference on March 30, 2021, the parties indicated that they agreed to narrow the focus of the docket to one issue:

> **Should the sharing incentive percentage of Chattanooga Gas Company's Asset Management and Agency Agreement be modified and if so, what is the appropriate percentage?[10]**

The Company's deadline to respond to the Consumer Advocate's *Petition* was set for April 30, 2021. The Company's response to the *Petition* asserted the current asset management agreement has continued to work well and remained in the public interest.[11]

On May 7, 2021, the Consumer Advocate filed a *Motion To Set Hearing* to set the hearing on the merits limited to oral arguments, rather than the traditional procedural process involving

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[8] *Id.*, *Order Concerning 2020 Triennial Review and Extending Review Process*, pp. 8-9 (October 27, 2020).
[9] *Order Tolling Time For Chattanooga Gas To File An Answer*, pp. 1-2 (January 21, 2021).
[10] *Order Establishing Issue to be Addressed in Docket and Setting Date for Response*, p. 2 (April 7, 2021).
[11] *Chattanooga Gas Company Answer*, p. 3 (April 30, 2021).

discovery and testimony, a motion opposed by the Company. On July 8, 2021, the Consumer Advocate filed its response to the Commission directive to prepare a joint proposed procedural schedule. The Consumer Advocate affirmed its position that the Exeter Report and the Commission's knowledge and expertise in this matter is sufficient for the Commission to render a decision in this docket. In addition, the Consumer Advocate represented to the Commission that it did not intend to file discovery or direct testimony and would rely on the Commission's guidance in establishing an appropriate procedural schedule.[12]

The Consumer Advocate's *Motion to Set Hearing* was denied. The Hearing Officer concluded a hearing in this matter was premature and that CGC's request for a traditional contested case hearing procedure should be granted.[13] On September 22, 2021, a joint procedural schedule was submitted, and the Hearing Officer established a procedural schedule that included the taking of discovery from Exeter, including a date for depositions.[14]

POSITION OF THE CONSUMER ADVOCATE

Pursuant to the procedural schedule, the Consumer Advocate filed the pre-filed direct testimony of its witness, David N. Dittemore, on October 11, 2021. Mr. Dittemore's testimony provided an overview of CGC's PBRM. The PBRM incorporates the IMCR to implement a 50% sharing of the gross profit margin resulting from transactions with non-jurisdictional customers, as well as Asset Management Fees, capacity release and off-system sales transactions.[15] The 2020 Exeter Report identified the CGC incentives provided by the PBRM and compares them to the incentives applicable to the mechanisms in place for Atmos and Piedmont.[16]

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[12] *Consumer Advocate's Response to Directive to Prepare a Joint Proposed Procedural Schedule*, pp. 2-3 (July 8, 2021).
[13] *Order Denying Consumer Advocate's Motion to Set Hearing and Requiring a Witness To Be Presented*, pp. 4-5 (August 25, 2021).
[14] *Order Establishing Procedural Schedule*, Exhibit A (October 22, 2021).
[15] David N. Dittemore, Pre-Filed Direct Testimony, pp 2-3 (October 11, 2021).
[16] *Id.* at 3-4.

The incentive mechanism of Atmos allows the utility to retain incentives or incur penalties based on comparing commodity costs to benchmark prices outside a dead-band. Benchmarks associated with city-gate purchases are adjusted to reflect avoided pipeline demand charges. The Company retains 10% of capacity release and off-system sales margins. The overall cap of the Company's incentives is $1.25 million.[17] Based on approximately 155,000 residential and commercial customers served, Atmos's incentive retention is approximately $8 per customer per year.[18]

Piedmont's incentive mechanism has a savings retention percentage of 25% for commodity costs that are less than a monthly benchmark price and capacity management costs that include asset management fees, capacity release revenues and off-system sales margins. The incentive savings cap is $1.6 million annually. Based on approximately 194,000 residential and commercial customers served, Piedmont's incentive retention is approximately $8.25 per customer per year.[19]

Mr. Dittemore notes that Exeter's Report indicated that retention rates range from 10%-25% in other states.[20] As such, the Consumer Advocate recommended that the Company's retention percentage for asset management fees, capacity release revenues and off-system sales be set at 25%. The Consumer Advocate further recommended an annual cap of $550,000, an amount that would approximate CGC's retention per customer per year at $8.25 based on its customer base, which is consistent with the caps of Atmos and Piedmont.[21]

[17] The Atmos cap was incorrectly stated as $1.25 million rather than $2.0 million by Mr. Dittemore, an error he corrected in his Pre-Filed Rebuttal Testimony, p. 6 (December 22, 2021).
[18] David N. Dittemore, Pre-Filed Direct Testimony, p. 4 (October 11, 2021).
[19] *Id.* at 5.
[20] *Id.*; See also *Notice of Docket Filing of Responses to Requests for Information*, Response to Request 3(c) (November 5, 2021).
[21] *Id.*

POSITION OF THE COMPANY

Gregory Becker, Director of Capacity Planning for Southern Company Gas, filed pre-filed direct testimony on December 8, 2021. In responding to the pre-filed testimony of David Dittemore, as well as the Exeter Report relied on by Mr. Dittemore, Mr. Becker testified that he relied on the information provided in responses to discovery questions by Exeter consultant, Mr. Jerome Mierzwa. The Company also included Exhibit GB-1, a copy of the July 15, 2003, Commission letter to CGC approving the change to the IMCR tariff to implement the 50% sharing incentive for all non-sales transactions between CGC and non-jurisdictional customers.[22]

According to Mr. Becker, the Company's IMCR tariff was amended effective January 1, 2003, to include the sharing of margins generated under the Asset Management Agreement from capacity release and off-system sales made by the Asset Manager. There is no sharing of CGC's commodity costs that takes place under the PBRM. In Docket No. 07-00224, the Commission ordered CGC to submit future asset management RFPs for prior approval by the Commission. Additionally, a review of the transactions and activities related to CGC's PBRM was required every three years by an independent consultant and subject to the procedures and criteria in the October 13, 2009, Commission Order. There have been three triennial reviews conducted by Exeter in 2014, 2017, and 2020 respectively.[23]

In his response to the Exeter Report's conclusions with respect to changing CGC's sharing percentage, Mr. Becker described six areas that he considered problematic:

1. There is no evidence to support a change. There is nothing in Exeter's Report that states customers are being harmed under the current 50/50 sharing or that they would derive better benefits under a 75 customer/25 utility sharing.
2. The only basis for making a change is that Atmos and Piedmont have different sharing percentages than CGC. There is nothing in Exeter's Report explaining why the sharing

[22] Gregory Becker, Pre-Filed Direct Testimony, p. 2 (December 8, 2021).
[23] *Id.* at 3-4.

percentages of Atmos and Piedmont are appropriate for CGC. Both are more than twice the size of CGC and have different customer mixes and unique service territories.

3. All three regulated utilities have different incentive mechanisms. The Report does not explain whether these differences are material with respect to CGC.
4. Atmos and Piedmont have different sharing percentages from each other. No attempt has been made to reconcile these differences or explain why a 75/25 sharing is appropriate for CGC.
5. There has been no analysis of the implementation or effectiveness in changing CGC's sharing from 50/50 sharing to 75/25 sharing.
6. Using a 75/25 sharing for CGC is arbitrary. While Exeter states it has not observed any material differences between a 90/10 split and a 75/25 split, the Report offers no reason to support a 75/25 sharing as appropriate for CGC.[24]

The Company further claimed the Exeter Report is based on stale information. The reported sharing incentives for Atmos changed in Docket No. 16-00028 when the Commission approved a settlement agreement on January 17, 2017. The settlement made significant changes to the sharing percentages and increased the annual cap from $1.25 million to $2.0 million.[25] CGC maintains that each utility's situation is different and should be evaluated on its own merits, not by copying the sharing percentages of other utilities.[26]

With respect to the cap proposed by the Consumer Advocate, the Company asserted Mr. Dittemore provided no independent analysis or additional evidence to support changing the percentages or placing an annual cap on revenues retained by CGC. The Exeter Report made no such recommendation. Mr. Becker questioned whether the Exeter Report alone is enough to justify such a change.[27]

Exeter consultant, Mr. Jerome Mierzwa, provided written responses and supporting

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[24] *Id*. at 5-7.
[25] *Id.* at 8: In his pre-filed testimony, Mr. Becker claimed the sharing percentages for Atmos had changed from a 90/10 split to a 75/25 split. The percentage for sharing the asset management fees for Atmos remains a 90/10 split. *See In re: Petition of Atmos Energy Corporation to Revise Performance Based Ratemaking Mechanism Tariff*, Docket No. 16-00028, *Order Approving Settlement Agreement*, pp. 7-10 (March 28, 2017).
[26] *Id*. at 7-8.
[27] *Id.* at 9-10.

documents to discovery requests of Chattanooga Gas, after which the Company did not think it necessary to take his deposition. Mr. Becker summarized his opinion of the additional information acquired through discovery:

1. The Exeter Report relied on Atmos and Piedmont since they are regulated by this Commission;

2. Exeter did not look at any utilities with a 50/50 sharing;

3. Exeter did not consider whether differences under a 50% sharing versus 25% or 10% were material;

4. Mr. Mierzwa's Rebuttal Testimony in a Nicor docket in Illinois states it is not proper to compare Nicor's gas costs to those of other Illinois utilities, since each utility is different and gas cost incentive programs are not the same;[28]

From these responses, Mr. Becker concluded the Commission should not set policy for CGC because another utility does something different.[29] In summary, Mr. Becker claimed that the Exeter Report and Mr. Dittemore's testimony failed to answer the following basic questions:

1. What is the harm of the current 50/50 sharing incentive?
2. What are the benefits of changing to a 75 customer/25 utility sharing incentive?
3. Why is a 75 customer/25 utility sharing better than 50/50 or 90/10?
4. Will the proposed 75 customer/25 utility sharing result in increased revenues to be shared?

Mr. Becker concluded his pre-filed testimony by recommending that the Commission "should stick with what has worked without issue since the IMCR tariff with sharing was first put into effect in 2003."[30]

CONSUMER ADVOCATE REBUTTAL TESTIMONY

Pursuant to the procedural schedule, the Consumer Advocate filed the Rebuttal Testimony

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[28] *Id.* at 12-13.
[29] *Id*. at 13.
[30] Direct Testimony of Gregory Becker, p. 13 (December 8, 2021).

of David N. Dittemore on December 22, 2021. Mr. Dittemore asserted that the central question in this docket is what sharing percentage should be applied to the CGC's PBRM to derive the greatest benefit for CGC customers. In his consideration of the appropriate sharing percentage, he excluded the interest of CGC shareholders based on the regulatory compact that underlies utility regulation.[31] Mr. Dittemore stated that he was unaware of any legal obligation to extend the regulatory compact to suggest a utility is entitled to earn margins on Asset Management Fees, capacity release transactions, or off-system sales.

An underlying assumption for the sharing mechanism is that by permitting the utility to retain a portion of these margins for the benefit of its shareholders, the utility will devote more effort to maximizing such margins to the benefit of its customers. While Mr. Dittemore did not challenge this assumption, he pointed out that as a matter of public policy, a utility should work to provide service for the benefit of customers at the lowest possible cost without need for additional financial incentives.[32]

With respect to the Company's assertion that no customer harm has been shown, Mr. Dittemore opines that the "harm" results from excessive compensation to shareholders that would otherwise be credited to CGC's captive customers to lower their gas costs.[33] With respect to Mr. Becker's claims that there is no support to show that a change to a 75/25 customer/utility split will benefit or provide better benefit to customers, Mr. Dittemore, points to the fact that Exeter has observed no difference in the ability of a utility to generate AMA fees, capacity release revenues or off-system sales margins under a 25% sharing incentive compared to a 10% sharing incentive.[34] Likewise, Exeter has not observed a utility failing to use sufficient resources to maximize

[31] David N. Dittemore, Pre-Filed Rebuttal Testimony, pp. 1-2 (December 22, 2021).
[32] *Id.* at 2.
[33] *Id.* at 3.
[34] *Id.* at 4-5.

revenues/margins whether provided an incentive or not. Mr. Dittemore's position is that the purpose of the incentive mechanism is not only to provide an opportunity to improve its profit margins but to maximize margins for the benefit of customers by reducing cost of service.[35]

The Company did not identify any other utilities that have a 50/50 sharing mechanism.[36] Mr. Dittemore pointed out the Exeter Report concluded other states that have the sharing percentages generally range from 90% customer/10% utility to 75% customer/25% utility. According to Mr. Dittemore, Mr. Becker failed to explain why CGC should be entitled to a 50% retention of incentive margins or how customers are better off under a 50/50 sharing. To justify remaining at the current sharing rather than changing to one more in line with industry standards, Mr. Dittemore asserted that the Company would have to determine what margins CGC would have generated if its retention percentage were reduced from 50% to 25%.[37] The Company put forth no suggestion on how such a hypothetical would be reached. Mr. Dittemore testified that there is no evidence that CGC would fail to diligently pursue best outcome in securing AMA fees and off-system margins, thereby shirking its responsibilities to customers as a public utility and monopoly provider of essential services. Mr. Dittemore also pointed out that while CGC had the opportunity to provide comments to Exeter's recommendation at the time it was filed, the Company chose not to do so.[38]

Mr. Dittemore acknowledged the error in his pre-filed direct testimony that was identified by the Company and agreed that the annual cap for Atmos was increased from $1.25 million to $2.0 million in Docket No. 16-00028. Based on the amendment to his testimony, Mr. Dittemore's corrected cost per customer per year approved for Atmos is $13. Using $13, rather than the $8 he

[35] *Id.* at 3.
[36] *Id.* at 4.
[37] *Id.*
[38] *Id.* at 5-6.

originally testified to, and based on a customer base of approximately 69,000, the new overall cap recommended by the Consumer Advocate for CGC would be set at $900,000.[39]

THE HEARING

The hearing was noticed by the Commission on March 11, 2022 and held during the regularly scheduled Commission Conference on March 21, 2022. Appearances were made by the following:

> Chattanooga Gas Company, Inc. – J.W. Luna, Esq., Butler Snow LLP, 150 3rd Ave. South, Suite 1600, Nashville, Tennessee 37201; Floyd R. Self, Esq., Berger Singerman, LLP, 313 North Monroe Street, Suite 301, Tallahassee, Florida 32301.
>
> Consumer Advocate Unit – Karen Stachowski, Esq, Vance Broemel, Esq., Financial Division of the Office of the Tennessee Attorney General and Reporter, Post Office Box 20207, Nashville, Tennessee, 37219.

Mr. Gregory Becker testified on behalf of Chattanooga Gas and was subject to cross-examination. Mr. David Dittemore testified on behalf of the Consumer Advocate and was subject to cross-examination. Members of the public were given an opportunity to offer comments, but no one sought recognition to do so. Pursuant to a procedural schedule, the Consumer Advocate and the Company submitted post-hearing briefs. The hearing panel deliberated this matter on May 9, 2022, during the Commission's regularly scheduled conference.

FINDINGS & CONCLUSIONS

The issue before the hearing panel is whether the incentive percentage of CGC's AMAA should be modified and to what extent should it be modified. Based on the administrative record, the hearing panel voted unanimously that the sharing percentage of the Company's AMAA be modified to a 25%-Company and 75%-Customer ratio. The panel directed the Company to file a revised IMCR tariff reflecting its decision.

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[39] *Id.* at 6.

Public utilities have a fiduciary duty to act on their customers' behalf and in the best interests of their customers with respect to service, safety, and supply. This is never more present than when gas utilities, such as Chattanooga Gas, act on behalf of customers in managing gas supply assets, assets paid for by Tennessee customers. Thus, the Commission expects a gas utility to act prudently in acquiring and managing gas assets in balance with ensuring customers have access to a supply of affordable gas. Adding a financial incentive for a utility to prudently acquire and manage gas assets is not a substitute for the utility's fiduciary duty, but rather a tangible benefit of the performance of its duty. As a matter of policy set by the Commission, the major regulated gas utilities in Tennessee have been afforded a financial incentive that benefits stockholders and does not offset revenue deficiencies when the Commission sets rates. This financial incentive has no impact on the fundamental regulated revenues, expenses, and rate of return built into the rates of Chattanooga Gas or any other large regulated natural gas utility in Tennessee.

The fundamental position of the Company in this docket is that neither the Exeter Report, nor the Consumer Advocate, nor any combination thereof, has provided sufficient evidence to support a change in the percentage of sharing. The Company stands on this proposition alone with little interest in demonstrating why the 50% sharing percentage is an appropriate financial incentive for its stockholders. The Company further claims there has been no demonstration of customer harm and making any change in the sharing percentage would be arbitrary. The hearing panel disagrees.

Regarding the balancing of incentives between the customers and shareholders, it is important to note that the gas supply assets that are being managed are paid for by customers since the entire cost is flowed through to customers through the Purchase Gas Adjustment ("PGA") mechanism and related Actual Cost Adjustment ("ACA") account. Thus, the appropriate level of incentives should be examined from the standpoint of the shareholders having no investment in these assets. The incentives are simply to motivate and reward the Company for leveraging its fallow gas supply assets to create value for customers who have paid the entire cost of the assets.

Despite certain differences, all the incentive programs in Tennessee involve the management and sale of fallow assets that are available because they are not needed by customers at the time with the objective of providing an incentive to managers to obtain the best value for the assets. Further, these programs generally recognize that such value may be generated through capacity release, off-system sales, or asset management fees. It is the common purpose of these programs that provides for a valid comparison. In this regard, Exeter found that the various industry sharing percentages of these plans, as well as the sharing percentages of the plans for Piedmont Natural Gas and Atmos Energy, do not lead to material differences in the utilities' efforts to obtain the best value for its fallow gas supply assets through such plans. Additionally, the Company confirmed that CGC would continue to provide safe and reliable service to customers should its sharing percentage be reduced.[40]

The record in this docket indicates that a 50/50 sharing percentage is an outlier among regulated Tennessee public utilities and would represent an outliner in multiple jurisdictions. While the asset management programs of Tennessee's regulated gas utilities have differences, the hearing panel finds no material difference that would justify maintaining a 50/50 split for Chattanooga Gas. While one can argue that a larger percentage for a utility would be a greater incentive and inspire better performance, it must be observed that it is the market for natural gas assets, a market neither the Commission nor the Company has control over, and the market is the greatest driving factor in the returns gained from asset management activities.

[40] Consumer Advocate's Post-Hearing Brief, pp. 7-8 (April 14, 2022).

With respect to harm to customers, the percentage of proceeds of fees the customers receive from the AMAA is applied to the gas costs that all customers pay thereby lowering their bill. Hence, the larger the amount the customers receive, the more rate relief they can receive. All customers of regulated natural gas public utilities are captive and are subject to a state regulated monopoly. The panel finds there is no basis for maintaining a 50% sharing percentage that is double the amount of one of the Company's closest peers in Tennessee and penalizes similarly situated customers.

With regard to establishing a cap on the monetary amount of incentives CGC may retain under the IMCR, a review of CGC's incentive plan activity for the past three years suggests that, unlike Piedmont Natural Gas and Atmos Energy, CGC does not yet have enough incentive plan activity to invoke the proposed cap of $900,000. Based on the record, the hearing panel finds there is no need at this time to establish a cap on the amount of incentives the Company may retain under the IMCR.

Further, the panel finds that this docket was limited in scope and does not address any potential recovery from ratepayers of legal fees incurred in this matter. Any such recovery should be reviewed in a future rate filing such as the Company's annual rate review or in a future rate case.

IT IS THEREFORE ORDERED THAT:

1. Chattanooga Gas Company's Interruptible Margin Credit Rider tariff shall be amended to provide a 75% Customer and 25% Company split in proceeds from transactions with non-jurisdictional customers that rely on Chattanooga Gas Company's gas supply assets.

2. Chattanooga Gas Company shall file a revised Interruptible Margin Credit Rider tariff reflecting this decision.

3. Any party aggrieved by the Commission's decision in this matter may file a Petition for Reconsideration with the Commission within fifteen (15) days from the date of this Order.

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

FOR THE TENNESSEE PUBLIC UTILITY COMMISSION:

Chairman Kenneth C. Hill,
Vice Chairman Herbert H. Hilliard,
Commissioner Robin L. Morrison,
Commissioner John Hie, and
Commissioner David F. Jones concurring.

None dissenting.

ATTEST:

Earl Taylor

Earl R. Taylor, Executive Director