

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

May 13, 2022

IN RE:

JOINT REQUEST OF CHATTANOOGA GAS
COMPANY AND KORDSA, INC. FOR APPROVAL
OF SPECIAL CONTRACT

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DOCKET NO.
21-00094

ORDER APPROVING SPECIAL CONTRACT, AS MODIFIED

This matter came before Chairman Kenneth C. Hill, Vice Chairman Herbert H. Hilliard, Commissioner Robin L. Morrison, Commissioner Clay R. Good, and Commissioner John Hie 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 February 28, 2022 for consideration of the *Joint Request of Chattanooga Gas Company and Kordsa, Inc. for Approval of Special Contract* (“*Petition*”) filed on August 24, 2021.

BACKGROUND AND *PETITION*

On August 24, 2021, Chattanooga Gas Company (“Chattanooga”, “CGC” or “Company”) and Kordsa, Inc. (“Kordsa” or “Customer”) (together “the Joint Petitioners”) filed a *Petition* with the Commission for approval of a Special Contract (“Contract”), pursuant to Commission Rule 1220-04-01-.07.¹ The Joint Petitioners attached a public copy of the Contract, with confidential information redacted, as an exhibit to the *Petition*.² An unredacted copy of the Contract was filed with the Commission confidentially under seal.³ In support of its *Petition*, the Joint Petitioners

¹ *Petition* (August 24, 2021).

² *Id.* at Exh. 1.

³ *Id.* at 1.

submitted the Pre-Filed Direct Testimony of Ashley K. Vette, Manager of Rates and Tariff Administration for Southern Company Gas,⁴ and the Pre-Filed Direct Testimony of Ben Gibson, North American Supply Chain Manager for Kordsa.⁵

The *Petition* alleges Kordsa purchased the facility at its current location on or about May 30, 2017 from Invista, Inc. who had previously purchased the facility from du Pont. This Commission, by Order dated July 18, 2000, approved a special contract between CGC and du Pont for a twenty-year term commencing November 1, 1999 (“1999 Contract”).⁶ Kordsa acquired the property and facility during the twenty-year initial term of the 1999 Contract. CGC advised Kordsa that it would not renew the 1999 Contract, which expired on October 31, 2019. Since November 1, 2019, CGC has provided natural gas service to Kordsa under the terms of the Company’s applicable approved tariff.⁷

The *Petition* further states that Kordsa brings significant economic benefits to Tennessee by employing 233 persons in its nylon manufacturing facility and investing more than \$18 million in its Chattanooga operations. The Joint Petitioners assert that as Kordsa has expanded and improved its operations, access to affordable natural gas and natural gas transportation services has become critical. As a result, Kordsa began to explore the possibility of connecting to the interstate pipeline using its own natural gas pipeline subsequent to the expiration of the 1999 Contract. Kordsa’s efforts have included obtaining cost information to construct a bypass facility, obtaining the necessary right-of-way from the City of Chattanooga, and negotiating a contract with a construction company to begin work on the bypass pipeline.⁸

⁴ Ashley K. Vette, Pre-Filed Direct Testimony (September 3, 2021).

⁵ Ben Gibson, Pre-Filed Direct Testimony (September 3, 2021).

⁶ *Petition*, p. 3 (August 24, 2021); *See also In re: Application for Approval of Special Negotiated Contract with Chattanooga Gas Company and E.I. du Pont de Nemours Company*, Docket No. 99-00908, *Order Approving Application for Approval of Negotiated Contract with E.I. du Pont de Nemours Company* (July 18, 2000).

⁷ *Id.* at 3.

⁸ *Id.* at 3-4.

Based upon the information obtained from its bypass research, Kordsa approached CGC to discuss the potential of negotiating a new special contract. The parties engaged in good faith negotiations and developed the Contract attached to the *Petition*. The terms of the Contract would require Kordsa to obtain all its transportation and related services from CGC, including natural gas. The Contract incorporates certain terms and conditions of the Company's Rate Schedules F-1 (Commercial and Industrial Large Volume Firm Sales Service) and/or Rate Schedule T-2 (Interruptible Transportation Service with Firm Gas Supply Backup), and/or Rate Schedule T-1 (Interruptible Transportation Service).⁹ Further, the Joint Petitioners assert that the Contract allows Kordsa the right to elect to receive service under a future CGC standard tariff for which Kordsa would qualify in lieu of continuing to receive service under the Contract. Either party may cancel the Contract with thirty-days written notice following implementation of any law, rule, order, or regulations by a regulatory authority with jurisdiction that alters the terms of the Contract.

Finally, the Joint Petitioners allege that other CGC customers will not be adversely impacted by the approval of the Contract. The customers will benefit by Kordsa remaining a large industrial customer, thereby retaining Kordsa's contribution to common overhead.¹⁰

The Consumer Advocate Unit in the Financial Division of the Office of the Tennessee Attorney General ("Consumer Advocate") sought to intervene by a petition filed on October 1, 2021.¹¹ The Hearing Officer granted the intervention of the Consumer Advocate by order entered on October 20, 2021.¹² The Consumer Advocate submitted the Pre-Filed Direct Testimony of its witness, William H. Novak on November 22, 2021.

⁹ *Id.* at 4-5.

¹⁰ *Id.* at 5.

¹¹ *Consumer Advocate Petition to Intervene* (October 1, 2021).

¹² *Order Granting the Petition to Intervene Filed by the Consumer Advocate* (October 20, 2021).

Kordsa filed a motion seeking interim approval of the Contract on November 17, 2021, which CGC joined by letter.¹³ Kordsa submitted the Affidavit of Ben Gibson in support of its motion.¹⁴ The Consumer Advocate submitted a response in opposition to Kordsa's motion on November 23, 2021. Subsequently, the Hearing Officer denied Kordsa's motion by order entered on December 3, 2021.

The parties engaged in discovery through data requests and responses, as well as a public records request submitted to the Commission. In addition, the Joint Petitioners submitted the Rebuttal testimony of its witnesses, Ashley K. Vette and Ben Gibson. The Chattanooga Regional Manufacturers Association ("CRMA") submitted a letter to the Commission expressing its support for approval of the Contract, asserting that Kordsa's close proximity to the interstate gas pipeline legitimizes Kordsa's bypass threat and that losing Kordsa as a customer will cause CGC to implement higher rates for CRMA members.¹⁵

POSITION OF THE PARTIES

The Position of CGC

CGC submitted the testimony of its witness, Ashley K. Vette, Manager of Rates and Tariff Administration at Southern Company Gas. Ms. Vette testifies that Kordsa advised CGC of its intent to bypass CGC's system by constructing and operating its own natural gas facility. Kordsa provided information supporting its intent, including: securing an easement to install a pipeline to transport gas from the East Tennessee Natural Gas ("ETNG") pipeline to its facility; obtaining an agreement from ETNG to install a tap station; and, publishing an invitation for bids to construct the bypass facilities. Ms. Vette states that based upon the information provided, believing that

¹³ *Kordsa (Co-Petitioner) Motion to Grant Interim Approval of Special Contract, Subject to Hearing and True-Up* (November 17, 2021); see also *Letter to Chairman Kenneth C. Hill, Re: Approval of Kordsa, Inc. Special Contract, from Attorney J.W. Luna, Butler Snow, LLP* (November 18, 2021).

¹⁴ *Affidavit of Ben Gibson in Support of Kordsa "Motion to Grant Interim Approval of Special Contract, Subject to Hearing and True-Up"* (November 23, 2021).

¹⁵ Earl Burton, P.E. Via Email Public Comments Re: Kordsa Special Contract (December 20, 2021).

Kordsa was capable of bypass, CGC and Kordsa negotiated the terms for a new special contract. The Contract has rates greater than CGC's incremental cost to serve Kordsa and are reasonable based upon the bypass information provided by Kordsa. The Contract also anticipates the possibility of CGC providing additional services in the future, which will increase the value to both parties. Ms. Vette summarizes the terms of the Contract and states that it addresses the application of the Annual Review Mechanism or rate case filing to the Contract to ensure Kordsa's rates do not become unjustly preferential over CGC's other customers. Ms. Vette further states that the anticipated revenue will exceed the Company's incremental cost to serve Kordsa and that CGC's other customers will benefit by Kordsa's contribution to common costs instead of losing Kordsa as a customer and losing the contribution to common costs. Ms. Vette urges approval of the Contract.¹⁶

The Position of Kordsa

Kordsa submitted the testimony of its witness, Ben Gibson, North American Supply Chain Manager for Kordsa. Mr. Gibson provides information regarding the natural gas requirements of its Chattanooga plant and Kordsa's plans to construct a natural gas pipeline to connect the plant directly to the interstate pipeline. He requests approval of the proposed Contract on behalf of Kordsa. Mr. Gibson testifies that Kordsa's natural gas transportation costs increased substantially subsequent to the expiration of the 1999 Contract.¹⁷ He states that the ETNG pipeline is only 2,500 feet from Kordsa's facilities. Therefore, Kordsa has conducted a feasibility study of building a pipeline to connect the facility directly to the ETNG pipeline and determined that it could construct its own pipeline for approximately \$1.5 million and substantially reduce its gas costs. Mr. Gibson further states that Kordsa has obtained the required easements and confirmed that ETNG would

¹⁶ Ashley K. Vette, Pre-Filed Direct Testimony, pp. 4-6 (September 3, 2021).

¹⁷ Ben Gibson, Pre-Filed Direct Testimony, pp. 3-5 (September 3, 2021).

provide a tap at the requested location. Kordsa has solicited and received bids to construct the pipeline. Mr. Gibson testifies that if the Commission does not approve the proposed Contract, Kordsa will proceed with the bypass project.¹⁸ According to Mr. Gibson, the negotiated rates are preferable to the tariff rates, and that while the Contract allows for rate increases each year, such increases would likely not occur if a bypass facility was constructed and operated by Kordsa. Kordsa believes that the proposed Contract is advantageous to itself and to CGC's other customers. Mr. Gibson urges the Commission to approve the proposed Contract.¹⁹

The Position of the Consumer Advocate

The Consumer Advocate submitted the testimony of its witness, William H. Novak on November 22, 2021. Mr. Novak recommends that the Commission disapprove the proposed Contract based upon his conclusions that the threat of bypass does not appear to be imminent and the proposed rates would unfairly increase the charges to other customers.²⁰ Mr. Novak testifies that he calculates the impact of the proposed Contract to result in reduced revenues for CGC, as a result of the large discount in tariff rates.²¹ Mr. Novak discusses four reasons to support his conclusion that the bypass does not appear imminent: the authority of Kordsa representatives to negotiate and bind Kordsa to the Contract; the lack of approval from Kordsa's board of directors; the lack of evidence supporting the estimated construction and operation costs of the bypass; and the lack of sufficient right-of-way easements. Based upon these reasons, Mr. Novak asserts that the evidence does not show that bypass is feasible, and therefore, the Commission should not approve the proposed Contract.²² Mr. Novak further recommends the following modifications to the proposed Contract if the Commission determines that the Contract should be approved: limit

¹⁸ *Id.* at 5.

¹⁹ *Id.* at 6-7.

²⁰ William H. Novak, Pre-Filed Direct Testimony, pp. 3-4 (November 23, 2021).

²¹ *Id.* at 11.

²² *Id.* at 12-17.

the term of the contract to five (5) years; delete provisions that limit future rate increases to a maximum of 5.0%; modify provisions concerning assignment of the contract to require Commission approval of assignment to an unaffiliated entity; and, delete provisions that would apply the Contract rate retroactively to the filing date of the *Petition*.²³

Rebuttal Testimony

Ms. Vette provided rebuttal testimony on behalf of CGC wherein she disagrees with Mr. Novak's recommendation to deny approval of the Contract between CGC and Kordsa. Ms. Vette states the Contract is a reasonable compromise that benefits all customers and is therefore in the public interest. She further states that Kordsa, through both Mr. Gibson's testimony and informal meetings, has made clear that Kordsa will commence bypass construction unless the Contract is approved.²⁴ Ms. Vette also responds to the Contract adjustments recommended by Mr. Novak. She testifies that the longer term of the Contract keeps Kordsa on the CGC system at rates that will remain above cost. She also disagrees with the recommendation on removal of the proposed rate increase limit, asserting that rate increases in the Annual Review Mechanism ("ARM") are anticipated to be atypical over the next three (3) years due to extraordinary capital investments. She agrees that each special contract is unique and is therefore, willing to seek Commission approval prior to assignment of the Contract to an unaffiliated entity. Finally, Ms. Vette asserts that the provision applying the contract rates retroactively to the date of the filing of the *Petition* is agreed upon by the parties to the Contract and is appropriate considering the facts of the case. Ms. Vette urges approval of the Contract.²⁵

Mr. Gibson also submitted rebuttal testimony on behalf of Kordsa in response to Mr. Novak's testimony. Mr. Gibson testifies that he reports directly to the Chief Operating Officer for

²³ *Id.* at 17-19.

²⁴ Ashley K. Vette, Pre-Filed Rebuttal Testimony, pp.1-2 (December 3, 2021).

²⁵ *Id.* at 3-5.

Kordsa's North and South American operations. Mr. Kadir Toplu, COO, has approved the bypass project and no board approval is required. He provides an affidavit from Amy Mohn, Finance Manager and Treasurer for Kordsa, confirming that she is a corporate officer authorized to sign contracts for the project and that corporate board approval is not required since the cost of the project is less than \$5 million.²⁶ Mr. Gibson also states that a design change in the route of the pipeline changed the necessity for easements across property owned by the City of Chattanooga and another piece of privately-owned property to just require an easement on the city property, which has already been obtained.²⁷ He further states that he disagrees with Mr. Novak's questioning of the adequacy of evidence concerning the cost estimates of the bypass project provided by Kordsa and points out that Mr. Novak does not dispute the conclusions that CGC and Kordsa have asserted that the construction of the bypass line will be more economical to Kordsa than paying tariff rates of CGC.²⁸ Kordsa has no objection to requiring Commission approval for assignment of the Contract to an unaffiliated entity. However, Kordsa disagrees with Mr. Novak's remaining recommendations. First, Mr. Gibson states that Kordsa requests a longer term consistent with the term utilized in the 1999 Contract. He further states that requiring Kordsa to agree that the Commission may allocate all or any part of a rate increase to the Contract rate would render the Contract meaningless and is therefore unacceptable. According to Mr. Gibson, Kordsa should not be penalized for the delay of approval since the filing of the *Petition* at a cost of \$13,000 to \$15,000 for each month the new rate is not approved. Therefore, Mr. Gibson asserts that the negotiated rate should be made effective as of the date of the filing of the *Petition*.²⁹ Mr. Gibson concludes his testimony by stating that bypass is definitely imminent if the Contract is not

²⁶ Ben Gibson, Pre-Filed Rebuttal Testimony, pp. 2-3, Attachment 1 (December 3, 2021).

²⁷ *Id.* at 3, Attachment 2.

²⁸ *Id.* at 3-4.

²⁹ *Id.* at 4-5.

approved and that approval is in the short-term and long-term interest of Kordsa, CGC, and CGC's ratepayers.³⁰

STANDARD FOR COMMISSION APPROVAL

TPUC Rule 1220-04-01-.07, states:

Special contracts between public utilities and certain customers prescribing and providing rates, services and practices not covered by or permitted in the general tariffs, schedules or rules filed by such utilities are subject to supervision, regulation and control by the Commission. A copy of such special agreements shall be filed, subject to review and approval.

In general, a special contract providing for discounted transportation rates in order to avoid a potential customer bypass of the utility's system is subject to additional scrutiny, in which the Commission must find, based upon criteria established by precedent, that:

1. Customer bypass is imminent;
2. Customer bypass would be uneconomic;
3. Special contract rates and terms are just and reasonable and such terms are not unjustly preferential or unduly discriminatory; and,
4. The special contract rates are the highest that could be negotiated.

THE HEARING

The Hearing in this matter was held before the voting panel of Commissioners during the regularly scheduled Commission Conference on February 28, 2022, as noticed by the Commission on February 18, 2022. Participating in the Hearing were:

Chattanooga Gas Company – J.W. Luna, Esq. Butler Snow, The Pinnacle at Symphony Place, 150 3rd Avenue South, Suite 1600, Nashville, TN 37201; Floyd R. Self, Esq., Berger Singerman, LLP, 313 N. Monroe St., Suite 301, Tallahassee, FL 32301; Ashley K. Vette, Manager of Rates and Tariff Administration for Southern Gas Company, Ten Peachtree Place, Atlanta, GA 30309.

Kordsa, Inc. – Henry M. Walker, Esq., Bradley Arant Boult Cummings, LLP, Roundabout Plaza, 1600 Division Street, Suite 700, Nashville, TN 37203; Ben Gibson, North American Supply Chain Manager, 4501 N. Access Rd. Chattanooga, TN 37315.

³⁰ *Id.* at 6.

Consumer Advocate – Vance L. Broemel, Esq. and Karen Stachowski, Esq., Office of the Tennessee Attorney General, P.O. Box 20207, Nashville, TN 37202-0207; William H. Novak, 19 Morning Arbor Place, The Woodlands, TX 77381.

During the Hearing, Ms. Vette ratified and summarized her Pre-Filed Testimony submitted on behalf of CGC and was subject to cross-examination as well as questions from the panel and Commission Staff. Mr. Gibson ratified and summarized his Pre-Filed Testimony submitted on behalf of Kordsa, making one correction concerning the total estimated cost for construction of the bypass pipeline. He was then subject to cross-examination and to questions from the panel and from Commission Staff. Mr. Novak testified on behalf of the Consumer Advocate, ratifying and summarizing his Pre-Filed Testimony. Mr. Novak was then subject to cross-examination and to questions from the panel and from Commission Staff. The Commission then invited members of the public to offer comments on this docket, but no one sought recognition to offer comment.

FINDINGS AND CONCLUSIONS

In its *Petition*, CGC and Kordsa have requested that the Commission approve a special contract pursuant to TPUC Rule 1220-04-01-.07. The Commission analyzes the special contract request utilizing the established precedential criteria: 1. Customer bypass is imminent; 2. Bypass would be uneconomic for the Company; 3. The proposed contract rates are just and reasonable; and 4. The special contract rates are the highest that could be negotiated. Mr. Novak, the Consumer Advocate's witness, concludes that Kordsa's bypass of the CGC system does not appear to be imminent and therefore, the Contract should not be approved. He reaches this conclusion because the individuals involved in the project do not appear to have appropriate company authority to enter the special contract or authorize construction of a bypass pipeline, the lack of approval of Kordsa's board of funding needed for the bypass project, the lack of supporting evidence of the calculated cost of the bypass pipeline, and the lack of evidence that Kordsa has obtained all necessary easements for the bypass pipeline. Mr. Gibson, in his Pre-Filed Rebuttal Testimony,

responds to each of Mr. Novak's reasons, providing additional supporting evidence relative to each of these concerns. Mr. Gibson concludes by stating the bypass pipeline project is indeed imminent and that Kordsa is prepared to go forward with the project if the Contract is not approved and has been prepared since June 2021. The panel considered the direct and rebuttal testimonies, as well as the data responses provided by CGC, and unanimously found that the Kordsa bypass of the CGC system is imminent.

In determining whether Kordsa's bypass of the CGC system is uneconomic, the Commission must consider the effect that such bypass would have on the remaining CGC ratepayers. Kordsa provided information concerning the investment of over \$18 million in its Chattanooga operations and the employment of more than 233 people in manufacturing jobs. Kordsa is one of CGC's largest customers, contributing substantially to the fixed costs of the utility. The loss of Kordsa as a customer would result in the loss of significant annual contribution to CGC's incremental costs, which would have a detrimental effect on the remaining CGC ratepayers. Based upon this evidence, the panel unanimously found that a Kordsa bypass is uneconomic.

Next, the Commission must determine whether the Contract's proposed rates are just and reasonable. The Contract establishes a monthly customer charge, a per dekatherm transportation charge for all usage, and is subject to the terms and conditions established in CGC's Rate Scheduled T-1. Kordsa has provided evidence that while the proposed Contract rates are less than the tariff rates, the proposed rates are higher than those established in the expired 1999 Contract serving the same property. Information contained in Mr. Novak's testimony supports this assertion. In addition, CGC provided analysis to Commission Staff in response to a data request, that shows that the proposed rates produce revenues above CGC's incremental cost to serve Kordsa, and

therefore, continues to provide a contribution to common overhead costs. Based upon this evidence, the panel unanimously found that the proposed rates are just and reasonable.

Finally, the Commission considers whether the proposed rates are the highest that could be negotiated. CGC and Kordsa have testified that the parties negotiated in good faith. It is generally assumed that whenever two independent parties negotiate an arms-length transaction, the negotiated rate is the highest that could be achieved. There is no evidence that the parties have colluded or that the parties are affiliated in some manner. Therefore, the panel unanimously found that the proposed rates are the highest that could be negotiated.

Next, the Commission considers the Consumer Advocate's recommended modifications to the Contract. The first of these recommendations is to limit the term of the contract to five (5) years. Mr. Novak's support for this recommended modification is CGC's Experimental Rule on Large Customer Contracts. Ms. Vette responded that a longer term is reasonable based upon the terms approved by the Commission in the 1999 Contract. In addition, CGC asserts that a longer term is the best way to keep Kordsa on the system with rates that contribute to the benefit of other ratepayers. Based upon the testimony and evidentiary record, the panel is unpersuaded that a longer contract term is not appropriate for this customer. Therefore, the voting panel unanimously found that the proposed term for the Contract is reasonable.

The Consumer Advocate's second recommendation is to delete provisions in Paragraph 4.1 that limit the amount of any future rate change from a rate case or ARM proceeding. Paragraph 13 contains similar language that limits the amount of any future change from a rate case or ARM proceeding. The Commission possesses broad power and discretion in designing just and reasonable rates.³¹ The Commission's authority permits it to adjust the rates contained in special

³¹ See *Powell Tel. Co. v. Tennessee Pub. Serv. Comm'n*, 660 S.W.2d 44, 46 (Tenn. 1983); *Am. Ass'n of Retired Persons v. Tennessee Pub. Serv. Comm'n*, 896 S.W.2d 127, 133 (Tenn. Ct. App. 1994).

contracts between a regulated public utility and its customers.³² In designing rates, the Commission is not required to consider only cost of service, and may, when considering other factors, such as the intrinsic value of service, spread rate adjustments across customer classes as it reasonably deems appropriate, even if the Commission's rate design results in an unequal allocation of rate adjustments among customers.³³ The Contract at issue in this docket seeks to limit the Commission's power and discretion with regard to the rate design of any future rate adjustments to Kordsa. While the Contract provisions may permit Kordsa to terminate the Contract should the Commission order Kordsa to pay more in the future than it should want to pay, provisions that would seek to limit the Commission's authority and discretion with regard to rate design have the potential to increase costs for other customers in future proceedings. In addition, the Commission would be unwise to approve a self-imposed limitation on its ratemaking authority in general, particularly in a long-term contract. Limiting the future revenues of the Company for the duration of the Contract through special rate caps applicable to one customer, without consideration of the long-term costs of the Company, which are unknown and could impact the economic viability of the contract over its term, would be poor ratemaking policy. For these reasons, the panel voted unanimously that approval of the Contract should be made contingent upon agreement by CGC and Kordsa to remove contract provisions contained in Paragraphs 4.1 and 13 that would limit any future rate increases to Kordsa.

The Consumer Advocate also recommends that Paragraph 30 of the Contract be modified to specify that Commission approval is required for assignment of the Contract by Kordsa because each special contract is unique to that entity. Both Ms. Vette and Mr. Gibson, witnesses for the Joint Petitioners, state they do not object to including a provision requiring Commission approval

³² See *C.F. Indus. v. Tenn. Pub. Serv. Comm'n*, 599 S.W.2d 536 (Tenn. 1980).

³³ *Id.*

for assignment of the Contract. The panel voted unanimously that the approval of the Contract should be made contingent upon inclusion of a provision in Paragraph 30 requiring Commission approval of assignment of the Contract.

Finally, the Consumer Advocate recommends the Contract be modified by deleting Paragraph 33, which would make the contract rates effective upon the filing of the *Petition* in this docket through a one-time credit to Kordsa. CGC and Kordsa characterize the application of the one-time credit as a “true-up” of the contract rate. However, the calculation in the Contract is differentiated from the type of “true-up” occurring in an ARM, capital recovery rider, or other various alternative regulatory and deferred accounting programs, in that these true-ups are calculated according to methodologies established by rule or tariff approved by the Commission for prospective application, whereas the one-time credit contemplates a retroactive application. Notwithstanding the retroactive ratemaking concern, the special contract rule requires a regulated utility to charge a customer the tariffed rate until a special agreement has been filed and approved upon review by the Commission. The application of the one-time credit seeks to circumvent this sound ratemaking policy by establishing a non-tariff rate applicable to a period of time occurring prior to the Commission’s approval of a special contract rate. Therefore, the panel voted unanimously that the approval of the Contract should be made contingent upon removal of the one-time credit provision contained in Paragraph 33, making Contract rates effective concurrent with the Commission’s approval.

Finally, the panel concluded that the Contract will benefit Tennessee ratepayers and otherwise serve the public interest. Therefore, the panel unanimously voted to approve the Contract between CGC and Kordsa, as amended by the contingent modifications described herein. The panel directed CGC and Kordsa to notify the Commission whether or not the parties will agree to

the specified modifications as expeditiously as possible. If the parties agree to the modifications, the parties are directed to file an amended Contract compliant with the Commission's order.³⁴

IT IS THEREFORE ORDERED THAT:

1. The *Joint Request of Chattanooga Gas Company and Kordsa, Inc. for Approval of Special Contract* filed on August 24, 2021, is approved, contingent upon agreement by Chattanooga Gas Company and Kordsa, Inc. to the following modifications to the Special Contract:

- a. Removal of the contract provisions in Paragraph 4.1 and Paragraph 13 that would limit any future rate increases to Kordsa, Inc.;
- b. Inclusion of a provision in Paragraph 30 that requires approval by the Commission for any assignment of the Contract; and
- c. Removal of the one-time credit provision contained in Paragraph 33 of the Special Contract.

2. The special contract rates shall become effective on a prospective basis concurrent with the filing of an amended contract consistent with the Commission's decision in this Order.

3. Chattanooga Gas Company and Kordsa, Inc. are directed to notify the Commission of their decision to accept or reject the contract modifications required by this Order as expeditiously as possible.

4. Any person who is 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.

³⁴ The parties agreed to the Commission's required modifications subsequent to the Hearing and prior to the publication of this Order. The parties filed an amended Contract on March 11, 2022. This Order does not state whether the amended Contract filed complies with this Order. The Commission directs Commission Staff to make such determination and notify the parties.

5. Any person who is 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 Clay R. Good, and
Commissioner John Hie concurring.**

None dissenting.

ATTEST:

A handwritten signature in cursive script, reading "Earl Taylor", written in black ink.

Earl R. Taylor, Executive Director