

**IN THE TENNESSEE PUBLIC UTILITY COMMISSION
AT NASHVILLE, TENNESSEE**

IN RE:)
)
JOINT REQUEST OF CHATTANOOGA)
GAS COMPANY AND KORDSA, INC.) **DOCKET NO. 21-00094**
FOR APPROVAL OF SPECIAL)
CONTRACT)
)

**RESPONSE IN OPPOSITION TO KORDSA, INC.'S MOTION TO GRANT INTERIM
APPROVAL OF SPECIAL CONTRACT, SUBJECT TO HEARING AND TRUE-UP**

The Consumer Advocate Unit in the Financial Division of the Office of the Attorney General (“Consumer Advocate”), by and through counsel, pursuant to Tenn. Code Ann. § 65-4-118, hereby files its Response in Opposition (“Response”) to Kordsa, Inc.’s (“Kordsa”) Motion to Grant Interim Approval of Special Contract, Subject to Hearing and True-Up, filed November 17, 2021 (“Motion”). The Motion seeks to work around the established regulatory process for approval of special contracts. In support of the Consumer Advocate’s opposition to the Motion, the Consumer Advocate states as follows:

PROCEDURAL BACKGROUND

On August 24, 2021, Kordsa and Chattanooga Gas Company (“CGC”) filed their Joint Petition requesting approval of a negotiated special contract for natural gas services between CGC and Kordsa (the “Special Contract”).¹ CGC is not currently serving Kordsa under the terms of a special contract but under CGC’s current approved tariff.² On October 1, 2021, the Consumer Advocate moved to intervene in this Docket, which intervention was subsequently granted by the

¹ Joint Request of Chattanooga Gas Company and Kordsa, Inc. for Approval of Special Contract (“Joint Petition”), TPUC Docket No. 21-00094 (Aug. 24, 2021).

² *Id.* at p. 2.

Commission. On November 22, 2021, William H. Novak filed direct testimony on behalf of the Consumer Advocate.³

ARGUMENT

1. Kordsa's Motion, which seeks the Commission's approval on an interim basis of the Special Contract between Kordsa and CGC, subject to a hearing at a later date and a rate "true-up" if necessary,⁴ should be denied for three main reasons. First, temporary approval of the Special Contract would serve only to benefit a private entity, Kordsa, not the public—which is a requisite for the Commission's approval of special contracts. Notably, Kordsa has not provided any caselaw support that such interim approval would be appropriate.⁵ Second, because this Docket is a contested case, only the traditional hearing process will provide adequate and fair consideration of the matter. Third, Kordsa's Motion for the Commission to enter interim rates is moot because the matter is ripe for hearing.

2. First, approving the Special Contract on an interim basis would solely benefit Kordsa, not the public interest. Special contracts are intended to be approved only in unique circumstances that further the public interest⁶ based upon the following criteria: (1) whether "bypass is imminent"; (2) whether "such bypass would be uneconomic"; (3) whether "the contract

³ Direct Testimony of William H. Novak (Public Version) on Behalf of the Consumer Advocate Unit of the Financial Division of the Office of The Tennessee Attorney General, TPUC Docket No. 21-00094 (Nov. 22, 2021).

⁴ Motion at p. 1. On November 18, 2021, CGC joined "in the request to conditionally approve the Kordsa special contract at the Commission Conference scheduled for December 6, 2021, subject to a final decision and, if necessary, true up." Letter to Chairman Kenneth C. Hill, Re: Approval of Kordsa, Inc. Special Contract, from Attorney J.W. Luna, Butler Snow, LLP, TPUC Docket No. 21-00094 (Nov. 18, 2021).

⁵ In its Motion at p. 3, fn. 5, Kordsa cites *A.A.R.P. v. Tennessee Public Service Commission*, 896 S.W. 2d 127 (Tenn. Ct. App. 1994) for the proposition that a "true-up" does not violate the prohibition against retroactive ratemaking. In *A.A.R.P.*, however, there was no "true-up"; instead, the rate was adjusted on a going-forward basis and there was no going back to adjust any revenue overage or deficiency. 896 S.W. 2d 127 at 134. ("The regulatory reform plan [at issue in the case], however, does not require refunds to customers nor does it provide for rates to be adjusted retroactively. Neither does the quoted portion of the order. Both speak in prospective terms.").

⁶ For example, in TRA Docket No. 10-00142, the Commission approved a special contract because it "meets the intent of TRA Rule 1220-4-1-0.7 and furthers the public interest because it benefits Piedmont and its other customers and provides the incentives needed for DuPont to transition from the use of coal as its main fuel source to natural gas." Order Granting Approval of Special Contract, p.4, TRA Docket No. 10-00142 (Dec. 21, 2010).

rates and terms are just and reasonable and not unjustly preferential or unduly discriminatory”; and (4) whether “the contract rates are the highest that could be negotiated.”⁷ Furthermore, TPUC Rule 1220-4-1-.07 provides that special contracts are subject to review and approval by TPUC, and 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 agreement shall be filed, subject to review and approval.

3. Here, approval of the Special Contract on an interim basis would serve only to benefit Kordsa, a private entity, not the public as a whole. It would be inappropriate and against precedent for the Commission to approve the proposed Special Contract on a contingent basis without undergoing a full consideration of the evidence presented in the record to determine if approval of the Special Contract would be overall in the public interest. Kordsa has failed to provide any legal support for why approval for interim rates set forth in the Special Contract would be appropriate at this time.

4. Second, Kordsa’s Motion should be denied because only the traditional hearing process will provide adequate and fair consideration of the matter. The Consumer Advocate’s intervention in this matter and opposition to the Special Contract initiated a “contested case” as defined by Tennessee law and the applicable rules of the Commission.⁸ Title 4, chapter 5 of the Tennessee Code (“UAPA”) defines “contested case” as, in pertinent part, “a proceeding . . . in which legal rights, duties or privileges of a party are required by any statute or constitutional provision to be determined by an agency after an opportunity for a hearing.” Kordsa’s Motion seeks to temporarily circumvent the traditional UAPA hearing process. In order to have a fair

⁷ Order Granting Approval of Special Contract, pp. 3-4, TRA Docket No. 10-00015 (Oct. 28, 2010).

⁸ Tenn. Code Ann. § 4-5-102(3); Tenn. Comp. R. & Regs. § 1220-01-02-.02.

hearing, there needs to be an opportunity for the Commission to take into consideration the Consumer Advocate's direct testimony and the other evidence presented in this Docket, which is accomplished through a traditional hearing process, not a decision based solely on Kordsa's instant Motion.

5. Third, Kordsa's Motion should be denied because it is moot. Indeed, in Kordsa's Motion, its states that "[b]oth Kordsa and CGC are prepared now for hearing this matter on the merits."⁹ Now that the Consumer Advocate's testimony is filed, there is no further action needed on the part of the parties for the Commission to hear this Docket and Kordsa's Motion for interim rates should be denied as moot. Otherwise, permitting CGC to implement interim rates when this matter is ripe for Commission consideration would unnecessarily complicate this proceeding.

CONCLUSION

WHEREFORE, the Consumer Advocate respectfully requests that Kordsa's Motion to Grant Interim Approval of Special Contract, Subject to Hearing and True-Up be denied.

RESPECTFULLY SUBMITTED,



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⁹ Motion, p.2, TPUC Docket No. 21-00094 (Nov. 17, 2021).

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via electronic mail,
with a courtesy copy provided via U.S. mail, upon:

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This the 23rd day of November, 2021.



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