



February 16, 2023

Electronically Filed in TPUC Docket Room  
on February 16, 2023 at 3:12 p.m.

Honorable Herb Hilliard, Chairman  
Tennessee Public Utility Commission  
Attention: Ectory Lawless, Esq., Docket Clerk  
Andrew Jackson State Office Building  
502 Deaderick Street, 4<sup>th</sup> Floor  
Nashville, Tennessee 37243-0001

Re: Docket No. 22-00004; *Chattanooga Gas Company's Petition for Approval of Tariff  
Amendments to its T-1, T02 and T-3 Tariffs*

Chairman Hilliard:

Enclosed please find two, separate filings from the Chattanooga Regional Manufacturers Association, both to be made in this docket: a Petition to Reconsider and a Motion to Take Administrative Notice. These filings have been provided to all parties and the Staff.

Please do not hesitate to contact me if you have any questions or concerns.

Sincerely,  
BRADLEY ARANT BOULT CUMMINGS LLP

A handwritten signature in blue ink, appearing to read "H. Walker", written over the printed name "Henry Walker".

Henry Walker  
Attorney for Chattanooga Regional Manufacturers Association

IN RE: )  
)  
)  
CHATTANOOGA GAS COMPANY )  
PETITION FOR APPROVAL OF )  
TARIFF AMENDMENTS TO ITS T-1, )  
T-2, AND T-3 TARIFFS )  
)

Docket No. 22-00004

A final order (“the Order”) was issued in this docket on February 1, 2023. Pursuant to T.C.A. §4-5-317, the Chattanooga Regional Manufacturers Association (“CRMA”) respectfully asks the Commission to reconsider three issues in that Order.

## SUMMARY

4895-7443-1056.1

raised by the Consumer Advocate. This will not require rebidding the project because CRMA will pay the additional costs, if any, of directing the auditor to answer those questions.

Second, the CRMA asks that the Commission increase from 20% to 50% the definition of “significant price variability” in CGC’s transportation tariffs. This modest change should satisfy all parties while accomplishing the agency’s goal of deterring gas marketers from “gaming” the current tariff.

Third, while the final Order states that the Commission “did not foreclose any future claim of discrimination with respect to gas supply” (at 46), the Order fails to make any findings or conclusions that could deter such discrimination. The obligation to prioritize “on system” over “off system” customers is a basic principle of utility law. In light of the undisputed evidence in this case that CGC transferred pipeline capacity to its asset manager for off-system sales while denying that it had any excess gas for sale to its interruptible customers, the agency’s final Order should make an express finding reprimanding the Company’s conduct and reiterating the utility’s obligation to serve its local customers first.

### **I. Expand the Scope of the Audit**

CGC’s management of its gas capacity has been a recurring issue at the Commission since at least 2006 (see Docket 06-00175). To address those issues, the Commission decided in 2009 to order a triennial review of CGC’s capacity management practices including the Company’s use of excess gas to make “off-system sales” as well as “such additional matters as may be reasonably identified” by the Commission, the Commission Advocate and the Company. Docket 07-00224, Order of Sept. 23, 2009.

Because of the recurring problems surrounding CGC’s refusal to offer incremental gas pursuant to its tariff and the inherent difficulty of evaluating the reasonableness of CGC’s

determination of whether and when incremental gas should be made available under the tariff, CRMA asked that the current, triennial audit include an investigation of CGC's implementation of its incremental gas tariff. Chattanooga Gas opposed the request. The Consumer Advocate's post-hearing brief did not address CRMA's request but the Consumer Advocate's expert witness, Mr. David Dittmore, testified that "it would be appropriate" for the auditor to address the incremental gas issue and that he "would not oppose that." Tr. at 166.

The Commission denied CRMA's request to expand the scope of the audit to include the incremental gas issue. Noting that the audit contract had already been awarded, the agency explained its decision as follows (Order at 46):

"After having concluded this case, the voting panel is not convinced that Exeter should be directed to conduct additional or a deeper review on the issue at this time. Finally, the voting panel concludes that directing Exeter to fixate the upcoming triennial review on such claims well after the issuance of the triennial review RFP, the issuance of a contract, and without regard for any additional costs that the Company's ratepayers will ultimately bear, is not in the public interest." [1]

After the agency's oral deliberations in this docket but several weeks prior to the issuance of the Commission's Order, Mr. Dittmore sent an email on behalf of the Consumer Advocate's office to Mr. Jerry Mierzwa of Exeter Associates asking that the triennial audit address whether CGC has "unreasonably withheld gas" that could have been sold to interruptible customers and whether the Company has a financial incentive to transfer excess gas and pipeline capacity to its asset manager instead of making incremental gas available to its jurisdictional customers. Mr.

---

<sup>1</sup> Since there is nothing in the record of this case about when the triennial review RFP was issued, when a contract with the auditors was approved, or the costs of the audit, the Commission's explanation does not include any references to the evidentiary record as required by the Uniform Administrative Procedure Act. See T.C.A. §4-5-314(c). ("Findings of fact...shall be accompanied by a concise and explicit statement of the underlying facts of record to support the findings.")

Dittemore sent copies of the email to all parties and to the Commission Staff. The complete text of the email is as follows:

Jerry,

Please see the following language within the Company's existing T-1 tariff:

#### AUTHORIZED INCREMENTAL RATE

When the Company determines that volumes of gas are available to be purchased and transported to Customers under this Rate Schedule, then the Company shall, at its option, be authorized to charge the incremental rate Customers for such gas supply distributed to those Customers who have been offered and who have agreed to pay such incremental rate in lieu of having their gas service curtailed. <sup>[2]</sup> On days when gas is not being withdrawn from the Company's Liquid Natural Gas (LNG) facility for system supply, the incremental rate shall be the applicable index rate plus the variable pipeline charges. On those days when gas is being withdrawn from the LNG facility, the incremental rate will be increased to reflect the cost of gas used in the liquefaction and vaporization process.

The Consumer Advocate respectfully requests an expansion of the scope of work in the triennial review to include the following:

1. Has the Company unreasonably withheld gas that could otherwise have been sold to the Company's T-1 customers during the study period?
2. If such gas has been withheld, has the Company done so to ensure the continued availability of necessary gas supply to its firm customers, or has it permitted such excess gas to be marketed by a third-party, producing an indirect benefit to shareholders of the Southern Company?
3. Does the Company have a financial incentive to deny requests from T-1 customers for incremental gas sales as a result of its incentive mechanism.
4. Address the reliability of gas supply to CGC's firm customers if CGC increased its availability of gas to T-1 customers.
5. Address the financial implications to CGC's firm customers if CGC increased its availability of gas to T-1 customers.

Thank you for your consideration. If you have any questions regarding this request, please let me know.

David Dittemore  
Consultant on behalf of the Tennessee Attorney General's Office  
918-697-4475

---

<sup>2</sup> The tariff language was changed in 2020 and no longer includes "in lieu of having their gas service curtailed."

In sum, here is what the Consumer Advocate is asking:

**Has CGC unreasonably withheld incremental gas from its interruptible transportation customers and does the incentive plan adopted by the Commission encourage the Company to give priority to off-system sales over providing service to Tennessee customers?**

Those questions go to the heart of the incremental gas issue. Until they are addressed, neither the parties nor the Commission will have the information needed to reach – by settlement or by agency action – a just and reasonable solution.<sup>3</sup>

In the Order, the Commission explained its concerns that expanding the scope of the audit might require issuing another RFP, amending the recently approved contract with Exeter Associates and burdening ratepayers with additional costs. None of that should now matter. There is no reason to rebid the contract because CRMA will pay for any increase in the cost of the audit. Since the questions raised by Mr. Dittmore fall squarely within the scope of the audit,<sup>4</sup> there

---

<sup>3</sup> Once the auditor has completed his work, there are several potential ways to resolve the recurring problem of CGC's failure to implement the incremental gas tariff. One solution would be to require the Company to fulfill requests for incremental gas before diverting any gas or pipeline capacity to the asset manager. Another possible solution would be to amend the incremental gas tariff to increase the price of incremental gas to include a reasonable contribution to CGC's sharing plan.

<sup>4</sup> The RFP states that the winning bidder should "anticipate provision of the following services...Review and analysis of the transactions undertaken by CGC or its affiliates relative to...Asset management as reported in CGC's annual Interruptible Margin Credit Rider ("ICMR") filings...[and] Off-system sales as reported in CGC's annual IMCR filings..." RFP issued by CGC on October 15, 2022, at 1. In other words, the auditor has already been

should be no need to amend the contract with the auditors, but even if an amendment is necessary, CRMA will, as stated, pay the cost of the additional work.

Under these circumstances, the Commission cannot reasonably deny the requests of the Consumer Advocate and CRMA that the triennial audit address Mr. Dittimore's five questions.

## **II. Compromise Proposal on the Definition of "Significant Price Variability"**

At the recommendation of the Consumer Advocate, the Commission amended CGC's transportation tariffs to allow the Company to issue a "daily balancing order" (which means that the amount of gas a transportation customer is scheduled to receive should approximately equal the amount of gas that the customer actually takes) not only when the Company has "operational" concerns but also during periods of "significant price volatility." At the suggestion of Mr. Dittimore, the Commission defined "significant price volatility" as a difference of at least 20% between the gas price on any day of the month and the price on gas on the first day of that month.

The purpose of this tariff amendment is to prevent customers from "gaming" the system during times when the price of gas spikes as it did in February 2021, when the price reached \$15 and \$16 dollars a decatherm. Consumer Advocate's Post Hearing Brief at 5. Those prices were three to four times higher than first-of-the-month prices. CRMA does not object to allowing CGC to issue a daily balancing order when gas prices increase significantly but suggests a compromise that all parties should find acceptable.

Instead of defining "significant price volatility" as a 100% increase, which CRMA proposed in its post-hearing brief, or as a 20% increase as proposed by Mr. Dittimore, the Commission should use a 50% increase in price as the definition of "significant price volatility." A 50% threshold would deter customers from gaming the system in the event of a significant, mid-

---

instructed to examine the relationship between CGC and the asset manager, especially concerning "asset management" and "off-system sales."

month price hike but would avoid the issuance of daily balancing orders during times of ordinary, minor price changes.

Attached to this brief is a copy of Exhibit 2 that was also attached to CRMA's post hearing brief. It shows that during the eight-month period January 1, 2022, through August 31, 2022, gas prices fluctuated by small amounts. During this period, the daily price was 20% or more higher than the price on the first of the month on thirty-four days. However, there was not a single day during that period when the daily price was 50% higher than the price on the first of the month.

There is no reason to believe that CGC should have issued a daily balancing order on each of those thirty-four days to prevent customers from gaming the system. Mr. Dittmore presented no such evidence and honestly admitted that his 20% figure was "subjective." Tr. 158.

Under these circumstances, the Commission should adopt a compromise figure of 50%. That is a more realistic definition of "significant price volatility" than 20% and is a compromise that all parties should agree is reasonable.

### **III. Discriminatory Conduct**

CGC's tariff requires the Company to offer "incremental gas for sale to interruptible customers" when, in the Company's reasonable judgment, "volumes of gas are available to be purchased and transported to customers." Since CGC was taken over by the Southern Company in 2015, CGC has refused on virtually every occasion to offer any incremental gas to requesting customers, insisting each time that the Company had no excess gas available.

On January 6, 2022, some of CRMA's interruptible customers again asked CGC to sell them interruptible gas pursuant to CGC's tariff. The Company refused, stating that it was "much too early" in the winter season to consider offering incremental gas to interruptible transportation customers. Nevertheless, on each day from January 11 through January 31, 2022, CGC diverted

12,000 to 15,000 decatherms of pipeline capacity to its asset manager so that the asset manager could make off-system sales.

Those facts are undisputed.<sup>5</sup>

It is not hard to understand why CGC would prefer to divert pipeline capacity to the asset manager for off-system sales rather than use that capacity to transport incremental gas for sale to its local customers. While the Commission sets a cap on the amount of profit the utility can make selling gas at regulated rates to Chattanooga customers, there is no cap on the profits that CGC can make from off-system sales by the asset manager. One-fourth of the money received by the utility from the asset manager is kept by the utility's stockholders, allowing the stockholders to earn a return higher than the profit ceiling set by the Commission. Those extra profits also benefit company executives whose bonuses rise with the company's stock price. Tr. at 53-84.

While CGC's motivations are clear, it is harder to understand why the Commission allows CGC to get away with this. The primary legal obligation of a public utility is to provide service to its jurisdictional customers. Even the contract between Chattanooga Gas and the asset manager recognizes that the asset manager's primary obligation is to assure that Chattanooga Gas has sufficient gas to satisfy the utility's "full gas supply requirements, whether for firm, interruptible

---

<sup>5</sup> CGC does not deny that in January, 2022, the Company agreed to transfer a substantial amount of pipeline capacity to the asset manager for off-system sales. At the same time, CGC told its interruptible transportation customers that there was no incremental gas available for sale because the Company's gas supplies might later be needed to serve firm customers. Caught doing one thing while saying another, the Company has tried to confuse the issue by insisting that no gas was transferred from its LNG tank to the asset manager and that no purchased gas – only pipeline capacity – was transferred to the asset manager. That, of course, is a diversion. The incremental gas tariff states that the CGC "shall" supply incremental gas "[w]hen the Company determines that volumes of gas are available to be purchased and transported to customers." CGC had excess pipeline capacity and could have used it to supply gas to its interruptible transportation customers. The Company choose not to do so because the Company's executives mistakenly believed that CGC's contract with the asset manager required CGC to turn over to the asset manager all pipeline capacity that is not needed to serve firm customers. Those executives did not know (until the contract language was read to them at the hearing) that the contract states that CGC's full, gas supply requirements – to serve both firm and interruptible customers – must be met before any gas or pipeline capacity can be transferred to the asset manager. Tr. at 53-84. There is no dispute about the underlying facts, only a difference over whether CGC's conduct was wrong.

or operational needs” (emphasis added) before any gas or pipeline capacity can be taken by the asset manager. The CGC executives who decide whether to sell incremental gas to interruptible transportation customers were not even aware of that language in the contract until CRMA’s counsel read it to them at the hearing. It is obvious that they have not been following the contract’s provisions. *Id.*

CRMA does not expect to agree with the Commission in every case. On some issues, such as how to spread a utility’s rate increase among various classes of customers, CRMA understands that the Commission may sometimes place the interests of residential customers over commercial and industrial users. But when gas is in short supply and the utility, having met its obligations to firm customers, faces the choice of offering gas to its customers in Tennessee or transferring the gas to its asset manager for sale in other jurisdictions, the Commission should make it crystal clear that Tennessee customers always come first.

CRMA appreciates the difficulty of determining whether or not CGC has acted reasonably in its implementation of its incremental gas tariff. That is why the Commission should ask Exeter Associates to address the issue in its audit before deciding what, if any, action the agency should take. Moreover, CRMA also appreciates the Commission’s statement in the Order that CRMA may bring to the agency’s attention “future claims of discrimination with respect to gas supply.” Unless, however, the Commission makes a clear statement that CGC’s tariffed obligations to its Tennessee customers take precedence over off-system sales by the asset manager, there is little point in bringing a discrimination case to the agency’s attention.

## **CONCLUSION**

For these reasons, CRMA asks that the Commission (1) take judicial notice of the Consumer Advocate’s support for an expanded audit and direct that the triennial audit be expanded

– at CRMA’s expense – to include the questions raised by the Consumer Advocate (2) amend CGC’s transportation tariff to increase the volatility threshold from 20% to 50%; and (3) make a finding of fact that in January, 2022, CGC diverted pipeline capacity to its asset manager while refusing to offer incremental gas for sale to its interruptible transportation customers; make a conclusion of law that such conduct is discriminatory; and issue a statement of policy that such conduct must not happen again.

Respectfully submitted,



Henry Walker  
Attorney for Chattanooga Regional Manufacturers Assoc.

Daily Henry Hub Prices from January 1 through August 31, 2022

# Daily Gas Pricing History

Day of month	TGP 500 22-Aug Index	TGP 500 22-Jul Index	TGP 500 22-Jun Index	TGP 500 22-May Index	TGP 500 22-Apr Index	TGP 500 22-Mar Index	TGP 500 22-Feb Index	TGP 500 22-Jan Index
1	8.83	8.74	8.88	7.19	5.23	4.49	6.25	3.87
2	8.425	8.880	8.405	6.830	5.495	4.285	5.595	3.570
3	8.060	8.335	8.605	6.830	5.520	4.300	5.330	3.570
4	8.050	8.335	8.830	7.305	5.520	4.580	6.110	3.570
5	7.835	8.335	8.355	7.985	5.520	4.660	5.555	3.535
6	8.590	8.335	8.355	8.315	5.615	4.740	5.220	3.715
7	8.335	7.005	8.355	8.315	5.035	4.740	5.220	3.805
8	8.335	7.695	9.030	8.335	6.185	4.740	5.220	3.885
9	8.335	6.840	9.185	8.335	5.970	4.785	4.345	3.815
10	7.645	6.270	9.430	8.335	6.200	4.670	4.310	3.815
11	7.840	6.270	8.130	7.325	6.200	4.495	4.020	3.815
12	7.885	6.270	8.860	6.676	6.200	4.540	3.805	4.085
13	8.400	8.600	8.660	7.475	6.365	4.675	3.900	4.025
14	8.625	8.625	8.660	7.435	6.570	4.675	3.900	4.020
15	8.625	8.880	8.920	7.580	6.705	4.675	3.900	4.050
16	8.625	7.045	7.680	7.580	6.845	4.535	4.015	4.260
17	8.465	8.845	7.760	7.580	6.845	4.300	4.210	4.260
18	9.235	8.845	7.845	8.010	6.845	4.550	4.330	4.280
19	9.320	8.845	7.430	8.235	6.845	4.730	4.580	4.260
20	9.215	7.835	7.430	8.385	7.895	4.730	4.495	4.405
21	9.015	7.465	7.430	8.175	7.070	4.730	4.495	4.680
22	9.015	7.390	7.430	8.030	6.840	4.730	4.495	4.090
23	9.015	8.015	6.960	8.030	6.790	4.625	4.495	3.985
24	9.765	8.185	8.905	8.030	6.445	4.685	4.410	3.965
25	9.855	8.185	8.770	8.235	6.445	5.130	4.495	3.965
26	9.420	8.165	8.455	8.720	6.445	5.035	4.720	4.120
27	9.565	8.650	8.455	9.190	6.455	5.370	4.485	4.100
28	9.640	8.900	8.455	9.070	6.750	5.370	4.465	4.305
29	9.640	8.380	8.505	8.295	6.870	5.370	4.465	4.475
30	9.640	8.440	8.845	8.295	6.765	5.400		5.540
31	9.430	8.440	7.005	8.295	6.755	5.270		5.640
	9.435	8.440		8.295		5.325		5.640
20% Band	10.596	8.088	10.658	8.628	6.276	5.376	7.500	4.784

Days Lighted in Yellow where the daily pricing exceeded 20% of the First of Month Index.

34 0 0  
20% 50% 100%

## CERTIFICATE OF SERVICE

I hereby certify that I have on this 16<sup>th</sup> day of February, 2023, a copy of the foregoing document was served on the parties of record, via electronic email transmission and regular U.S.

Mail, postage prepaid, addressed as follows:

  
Henry Walker