

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

July 27, 2023

IN RE:	)	
	)	
CHATTANOOGA GAS COMPANY PETITION	)	DOCKET NO.
FOR APPROVAL OF TARIFF AMENDMENTS	)	22-00004
TO ITS T-1, T-2, AND T-3 TARIFFS	)	

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ORDER DENYING MOTION FOR RECONSIDERATION AND IMPLEMENTING A  
REPORTING REQUIREMENT

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This matter came before Chairman Herbert H. Hilliard, Commissioner Robin L. Morrison, Commissioner Clay R. Good, Commissioner Kenneth C. Hill,<sup>1</sup> 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 May 8, 2023, for consideration of the Chattanooga Regional Manufacturers Association’s (“CRMA”) *Petition to Reconsider* (“*Petition for Reconsideration*”) filed on February 16, 2023. In summary, the *Petition for Reconsideration* was denied.

**BACKGROUND**

CRMA is a trade association of manufacturers and other supporting businesses associated with the manufacturing sector based in and around Chattanooga and the surrounding communities.<sup>2</sup> Many of CRMA’s members are customers of Chattanooga Gas Company (“CGC” or “Company”). CRMA has previously intervened in several dockets concerning CGC’s rates and operations since

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<sup>1</sup> Commissioner Kenneth C. Hill was absent from the May 8, 2023 Commission Conference and did not participate in the deliberations or vote in this docket.

<sup>2</sup> *Petition of Chattanooga Regional Manufacturers Association for Leave to Intervene*, p. 1 (January 21, 2022).

2004.<sup>3</sup> CGC is a public utility authorized to transport, distribute, and sell natural gas in the Chattanooga area, Cleveland, and other areas within Hamilton and Bradley counties.<sup>4</sup> The Company is a wholly owned subsidiary of Southern Company Gas, a natural gas holding company that, in addition to CGC in Tennessee, is the parent company of regulated natural gas utilities in Georgia, Illinois, and Virginia.

The Company provides “firm” service to residential and business customers for which CGC assumes the responsibility for all aspects of gas supply for the customer. CGC also serves industrial customers, some of which have elected to purchase “interruptible” transportation service. Customers that have interruptible service are responsible for purchasing their own gas from a natural gas supplier of its own choice and arranging for that gas to be delivered to CGC’s city gate via interstate pipeline, usually under contract with a third-party marketer. Transportation service is provided under three tariffs: Interruptible Transportation Service (T-1), Interruptible Service with Firm Gas Supply Backup (T-2), and Low Volume Transport (T-3). Whether the Company has an obligation to provide backup service to an interruptible customer is dependent upon which tariff provision the customer elects to receive service.<sup>5</sup>

On April 20, 2021, the Company filed its second annual rate review under CGC’s Annual Review Mechanism (“ARM”) in Docket 21-00048.<sup>6</sup> As part of that docket, CGC proposed to change the Special Terms and Conditions sections of its T-1, T-2, and T-3 transportation tariffs, to provide incentives for transportation customers to refrain from either over-nominating or under-nominating gas on days when a balancing order was in effect. After recognizing that the proposed changes were

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<sup>3</sup> *Id.*

<sup>4</sup> *Order Approving Petition For Approval of Tariff Amendments To Its T-1, T-2, and T-3 Tariffs As Amended*, pp. 2-3 (February 16, 2023).

<sup>5</sup> *Id.* at 5-8, 46.

<sup>6</sup> *See In Re: Chattanooga Gas Company Petition for Approval of its 2020 Annual Rate Review Filing Pursuant to Tenn. Coe Ann. § 65-5-103(d)(6)*, Docket No. 21-00048, *Chattanooga Gas Company Notice of Withdrawal From Further Consideration in this Docket Certain Proposed T-1, T-2, and T-3 Tariff Changes*, pp. 1-2 (May 18, 2021).

controversial and did not impact the substance of the ARM docket, CGC withdrew the proposed tariff changes on May 18, 2021, with the stated intent to re-file on a later date.<sup>7</sup>

On January 14, 2022, CGC filed the *Petition for Approval of Tariff Amendments to its T-1, T-2, and T-3 Tariffs* (“*Petition*”). As a result of the *Petition*, the present docket was opened to consider the Company’s proposed tariff changes. After the *Petition* was filed in this docket, the Company filed its annual rate review under CGC’s ARM in Docket 22-00032. The CRMA intervened in Docket No. 22-00032 and presented testimony concerning use of the Company’s Liquid Natural Gas (“LNG”) facility and made claims of unlawful discrimination.<sup>8</sup> Among the relief sought by CRMA was that LNG gas be available to interruptible customers. Following the filing of a motion to strike by CGC on July 14, 2022, the parties in Docket No. 22-00032 ultimately agreed to move the LNG related issues to the present docket, Docket No. 22-00004, for consideration with the Company’s *Petition*.<sup>9</sup>

The parties in this docket, including the Consumer Advocate Unit in the Financial Division of the Office of the Tennessee Attorney General (“Consumer Advocate”), engaged in discovery and filed pre-filed testimony.<sup>10</sup> The Company and the Consumer Advocate supported changes to CGC’s T-1, T-2, and T-3 tariffs to increase penalties as an incentive for transportation customers to avoid over-nominating gas when a balancing order is in effect.<sup>11</sup> CRMA claimed that the Company held on to excess capacity, proposed a gas supply pool for transportation customers, and sought guaranteed access to the Company’s assets for interruptible customers.<sup>12</sup> In summary, CRMA has sought a ruling that would require the Company to sell gas supply and gas assets to transportation customers that

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<sup>7</sup> *Id.* at 3-4.

<sup>8</sup> See *In Re: Chattanooga Gas Company Petition for Approval of its 2020 Annual Rate Review Filing Pursuant to Tenn. Code Ann. § 65-5-103(d)(6)*, Docket No. 22-00032, *Order Approving Chattanooga Gas Company’s Revised 2021 Annual Rate Review Filing Pursuant to Tenn. Code Ann. §65-5-103(d)(6)*, pp. 9-10 (October 28, 2022).

<sup>9</sup> *Id.* at 15.

<sup>10</sup> *Order Approving Petition For Approval of Tariff Amendments To Its T-1, T-2, and T-3 Tariffs As Amended*, pp. 10-37 (February 16, 2023).

<sup>11</sup> *Id.* at 7-9.

<sup>12</sup> *Id.* at 12-18.

have elected to be responsible for procuring their own gas supply, as provided in the Company's tariffs.

On September 12, 2022, a hearing on the merits was convened by the assigned voting panel. Following the filing of post-hearing briefs, on November 7, 2022, during a regularly scheduled Commission Conference, the panel deliberated on the merits of the petition. Thereafter, the panel adopted the Company's proposed tariff language, as amended by the Consumer Advocate. The panel found that there was little persuasive evidence to authorize a radical change in how the Company manages its gas supply or to shift substantial risk to firm customers from those that have chosen to be responsible for managing their own gas supply. Finally, the panel was not persuaded that the Commission should interfere in the triennial review process at such a late date and declined to direct Exeter Associates ("Exeter"), an independent third party, to examine CRMA's concerns.<sup>13</sup>

#### **PETITION FOR RECONSIDERATION OF THE CRMA**

On February 1, 2023, the Commission issued its final order in the docket. On February 16, 2023, CRMA filed the *Petition for Reconsideration*, which presented three issues for reconsideration by the panel:

##### **1. Direct Exeter to Investigate Whether the Company is Applying its Tariff Fairly**

First, CRMA sought reconsideration of the Commission's decision to decline CRMA's request to expand the scope of the on-going CGC triennial review audit in order to address whether the Company has reasonably interpreted and implemented its "incremental gas" tariff for interruptible transportation customers. All three large gas companies under the Commission's jurisdiction, Chattanooga Gas Company, Atmos Energy Corporation, and Piedmont Natural Gas Company,

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<sup>13</sup> *Id.* at 45-46.

undergo triennial reviews of their gas supply practices by an independent third party that submits an audit report to the Commission.

The current triennial review for CGC was subject to an RFP and concluded with a contract for audit with Exeter. The current review began in the Fall of 2022. The triennial review process originates from Commission Docket No. 07-00224, wherein, following a hearing in which CRMA did not participate, certain procedures and a collaborative process between the Consumer Advocate, the Commission Staff, and the Company was established for conducting the triennial review process.<sup>14</sup>

Late in this docket, CRMA took the position that Exeter should be required to investigate the incremental gas issue as part of the triennial review. While the scope of triennial review is fairly broad, CRMA's request was unique in that it asked the Commission to step in and direct a third party auditor to pursue a specific area of inquiry. The Commission denied the request to direct Exeter to focus its review or implement an independent investigation into whether the Company was correctly applying its tariff. The Commission concluded there was no compelling evidence to direct the Exeter to fixate on CRMA's claims this late in the review process which could delay the auditor's report and create extra expense that is ultimately paid by customers.<sup>15</sup>

On reconsideration, CRMA relied on a request emailed directly to the Exeter auditor by the Consumer Advocate in the weeks after the Commission's deliberations but before the written order was issued in this case. In the email sent December 22, 2022, the Consumer Advocate requested that Exeter examine whether the Company has unreasonably withheld gas that could have been sold to

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<sup>14</sup> *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*, pp. 3-4 (December 17, 2007); *In Re: Docket To Evaluate Chattanooga Gas Company's Gas Purchases And Related Sharing Incentives*, Docket No. 07-00224, *Order*, p. 5 (September 23, 2009).

<sup>15</sup> *Order Approving Petition For Approval of Tariff Amendments To Its T-1, T-2, and T-3 Tariffs As Amended*, pp. 45-46 (February 16, 2023).

the Company's T-1 customers.<sup>16</sup> On reconsideration, CRMA asserted that the parties and the Commission will not have the information needed to reach a settlement or agency determination until such questions are addressed.<sup>17</sup> Furthermore, CRMA stated that it will pay for any extra costs associated with the review.

## **2. Implement a “Compromise Proposal” on the Definition of “Significant Price Variability”**

Second, on reconsideration, CRMA sought to propose a “compromise proposal” to define the term “Significant Price Variability.” The term and its definition are significant in the tariff in that when there is “significant price variability,” the Company may issue a daily balancing order. During the docket proceedings, the Consumer Advocate proposed to define the term as daily pricing that exceeds the most recent first of the month pricing identified by Gas Daily at the Henry Hub by 20%. The Company agreed with the proposed definition and was adopted by the Commission.<sup>18</sup>

In its post-hearing brief, CRMA proposed a definition based on a percentage of 100%. On reconsideration, CRMA proposed a “compromise proposal” to use the same definition as that adopted by the Commission, but increasing the percentage from 20% to 50%. CRMA submits that 50% would serve as a deterrent for those that might game the system and is a more “realistic” definition of “significant price volatility.”<sup>19</sup>

## **3. Direct Chattanooga Gas Company to offer Gas Supply to T-1 Customers**

Finally, CRMA alleged that the Company refuses to sell incremental gas because it has a financial incentive to divert pipeline capacity to the asset manager for off-system sales rather than use that

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<sup>16</sup> *Petition to Reconsider*, pp. 4-5 (February 16, 2023).

<sup>17</sup> *Id.* at 5.

<sup>18</sup> *Order Approving Petition For Approval of Amendments to its T-1, T-2, and T-3 Tariffs As Amended*, p. 45 (February 1, 2023).

<sup>19</sup> *Petition to Reconsider*, pp. 5-6 (February 16, 2023).

capacity for the benefit of its T-1 customers.<sup>20</sup> CRMA seeks a ruling from the Commission that would direct the Company to offer gas to T-1 customers after the needs of firm customers have been satisfied.<sup>21</sup>

#### **OPPOSITION TO CRMA’S PETITION FOR RECONSIDERATION**

On February 23, 2023, the Company filed an objection to the *Petition for Reconsideration*. First, the Company asserted that the Consumer Advocate’s email sent to Exeter on December 22, 2022, does not qualify as a public record or as evidence that can be the subject of administrative notice.<sup>22</sup> Further, the Company argued that the Consumer Advocate’s email is not new evidence and that without new evidence, there is no new evidentiary basis for the Commission to reconsider its decision. Moreover, the Company contended that CRMA’s use of the email is misleading in that it does not include the emailed response of the Company sent on January 6, 2023.<sup>23</sup> The Company asserted that the Consumer Advocate did not pursue expanding the scope of the audit after the Company objected, and for the record, quoted the Commission’s unanimous motion from the transcript of the proceedings in which it declined to expand the scope of the triennial review. Thus, with respect to CRMA’s request to expand the scope of triennial review, the Company asserted there was no new evidence supporting reconsideration and that no action was taken by the Consumer Advocate or Exeter after the exchange of emails.

In response to CRMA’s compromise proposal to amend the definition of “significant price variability,” the Company asserted that there existed no factual or legal support to increase the definition from 20% to 50%.<sup>24</sup> The Company offered that if CRMA provides information in the

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<sup>20</sup> *Id.* at 5-7.

<sup>21</sup> *Id.* at 8-9.

<sup>22</sup> *Chattanooga Gas Company’s Response in Opposition to Chattanooga Regional Manufacturers Association’s Motion to Reconsider*, pp 3-5 (February 23, 2023).

<sup>23</sup> *Id.* at 4-5.

<sup>24</sup> *Id.* at 9.

future on how the tariff impacts interruptible customers, then the Company may be willing to work collaboratively with CRMA and interruptible customers. In response to CRMA's claim of discrimination, the Company pointed out it has discretion under the tariff to decide whether to offer incremental gas after evaluating several factors, including but not limited to, the time of year or during winter, inventory on hand, and forecasts. In January of 2022, CGC determined it was too early in the winter to offer incremental gas.<sup>25</sup> The Company argued CRMA has not presented any new evidence to bolster CRMA's allegations.

The Consumer Advocate did not file a response to the *Petition for Reconsideration* and has neither opposed nor supported the arguments of CRMA or Company.

#### **STANDARD OF REVIEW**

The Uniform Administrative Procedures Act ("UAPA") establishes the process for a party to request reconsideration of an agency order in Tenn. Code Ann. § 4-5-317 and reiterated in TPUC Rule 1220-01-02-.20. Generally, these provisions provide that when a party files a petition for reconsideration, the matter shall be disposed of by the same person or persons rendering the original order. Argument is limited to the existing record, but new evidence may be considered if the party proposing such evidence for consideration shows good cause for failure to introduce the evidence in the original proceeding.<sup>26</sup>

#### **FINDINGS AND CONCLUSIONS**

Deliberations on the *Petition for Reconsideration* by the panel took place during the regularly scheduled Commission Conference on May 8, 2023. Based upon the entire evidentiary record, including the filings made by the parties on reconsideration, the panel voted unanimously to deny the *Petition for Reconsideration*. No new material or substantive evidence has been introduced into the

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<sup>25</sup> *Id.* at 9-10.

<sup>26</sup> Tenn. Code Ann. § 4-5-317. *See also* Tenn. R. & Regs. 1220-01-02-.20.



record that persuades the panel to reconsider the decision in this matter. The email correspondence between the Consumer Advocate and Exeter on December 22, 2022, is not substantial or material evidence that would justify relitigating this matter or otherwise convince the panel to direct Exeter to examine and investigate CRMA's claims.<sup>27</sup> Furthermore, CRMA's offer of "compromise" is not material or substantial evidence that supports changing the tariffs as approved in this docket. A final order in a Commission docket is a ruling on the merits of the case before it and not an invitation to any party to negotiate with the Commission to alter or change the result.

Nevertheless, having reviewed the record and its decision, the panel found that going forward the Company should provide quarterly reports to the Commission to document when daily balancing orders have been imposed due to Significant Price Variability, as defined in the tariff. The reports should also include the percentage of volatility at the time of the order and be filed in this docket. The reports will allow the Commission to monitor the application of the new tariff language more closely. For administrative efficiency, the Company may file one annual report with a breakout of quarterly data and submit the report in this docket contemporaneously with its Annual Rate Review.

**IT IS THEREFORE ORDERED THAT:**

1. The *Petition for Reconsideration* filed by Chattanooga Regional Manufacturers Association on February 16, 2023 is DENIED.
2. Chattanooga Gas Company is directed to file an annual report with a quarterly breakdown as to when daily balancing orders were imposed because of Significant Price Variability, as defined in the tariff now in effect, and should also include the percentage of volatility at the time of the balancing order.

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<sup>27</sup> Following deliberations in the is matter on May 8, 2023, *Exeter's Review of Performance Based Ratemaking Mechanism Transactions and Activities*, was filed by Chattanooga Gas Company on June 30, 2023. See *In re: Review of Chattanooga Gas Company's Performance Based Rate-making Mechanism Transactions and Activities*, Docket No. 07-00224.

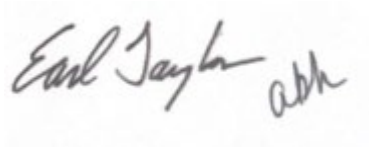
3. Any person who is aggrieved by the Commission's decision in this matter has the right to judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from the date of this Order.

**FOR THE TENNESSEE PUBLIC UTILITY COMMISSION:**

**Chair Herbert H. Hilliard,  
Commissioner Robin L. Morrison,  
Commissioner Clay R. Good, and  
Commissioner John Hie concurring.**

None dissenting.

**ATTEST:**

A handwritten signature in dark ink, appearing to read "Earl Taylor" followed by a smaller, less legible signature or initials "abh".

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**Earl R. Taylor, Executive Director**