

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**May 14, 1997**

**NASHVILLE, TENNESSEE**

**IN RE:**

**APPLICATION OF NASHVILLE GAS COMPANY,  
A DIVISION OF PIEDMONT NATURAL GAS  
COMPANY, INC., FOR AN ADJUSTMENT OF ITS  
RATES AND CHARGES**

)  
)  
)  
)  
)  
)

**DOCKET NO. 96-00977**

---

**ORDER DENYING CONSUMER ADVOCATE'S  
MOTION FOR HEARING**

---

On May 31, 1996, Nashville Gas Company (here "Nashville Gas"), a Division of Piedmont Natural Gas Company, Inc., filed an application with the Tennessee Public Service Commission (here "Commission") seeking to increase its rates by approximately \$9.2 million. On July 1, 1996, the Commission was replaced with the Tennessee Regulatory Authority, (here "Authority") and on July 29, 1996, the case was recommenced before the Authority. A hearing was held on Nashville Gas' application on November 13 and 14, 1996. On December 17, 1996, the Authority approved an increase of approximately \$4.4 million to be effective January 1, 1997. On December 31, 1996, Nashville Gas notified the Authority in writing "that if a final order has not issued in the above captioned case on or before January 1, 1997, Nashville Gas intends to place its proposed rates into effect on January 1, 1997 as permitted by Section 65-5-203(b)(1) of the Tennessee Code." Nashville Gas further advised the

Authority that, in order to avoid any undue inconvenience to its customers, it would only place into effect that portion of its proposed rate increase that was approved by the Authority on December 17. On January 1, 1997, Nashville Gas placed the rates in effect as approved on December 17.

On February 11, 1997, the Consumer Advocate Division, Office of the Attorney General (here "Consumer Advocate") filed a motion "for a hearing regarding the statutory authority of Nashville Gas to implement rates on January 1, 1997." In that motion, the Consumer Advocate contended, among other things, that "Nashville Gas increased rates on January 1, 1997 without statutory authority but perhaps in reliance upon the voice vote of the TRA." The Consumer Advocate requested the Authority to "find that it must act through its written orders and that it has no retroactive rates making [sic] authority, and further that Nashville Gas must bear the risk of regulatory lag until a written order is entered or until its statutory right to initiate a rate increase becomes effective and that the company had no statutory authority to increase rates on January 1, 1997."

On February 19, 1997, Nashville Gas filed a response to the Consumer Advocate's motion. In that response, Nashville Gas argued that Section 65-5-203(b)(1) of the Tennessee Code permitted it to place all or any portion of its proposed increase in effect on December 1, 1996 (six months after its filing) but that it had nevertheless waited until January 1, 1997 (six months after the Authority was established) at which time it only placed that portion of its proposed increase into effect that had been approved by the Authority on December 17, 1996.

The Consumer Advocate's Motion was placed on the Authority's calendar for March 4, 1997. All parties were present and stated their position in oral argument. The Consumer Advocate reiterated its position as stated in its motion. Nashville Gas stated that it believed it had the authority to place the rates into effect on at least three grounds. First, Nashville Gas argued that since the rates were not suspended by the Commission, Nashville Gas was authorized to place all or any portion of the rates into effect on June 30, 1996 (while the Commission still had authority over this matter), Second, Nashville Gas contended that since the rates were not suspended by the Authority following recommencement of the case, Nashville Gas was authorized to place all or any portion of the rates into effect at any time prior to the Authority's issuance of a final order. Third, Nashville Gas repeated its contention that it was authorized to place the rates into effect under Section 65-5-203(b)(1). Associated Valley Industries stated that it did not take a position on the Consumer Advocate's motion.

A majority of the Directors have carefully considered the arguments of the parties and has concluded that the Consumer Advocate's motion should be denied. Our decision is consistent with our decision of December 17, 1996 and our Order of February 19, 1997 that the rates should become effective on January 1, 1997. Further, this decision is also consistent with the August 28, 1996 Order of the Court of Appeals of Tennessee in Consumer Advocate Division v. Tennessee Public Service Commission, 1996 WL 482970 (Aug. 28, 1996), where the court stated the following:

"Under these statutes the rates charged by a public utility are not always the product of a ratemaking proceeding in the Commission. New tariffs automatically become effective unless the Commission

elects to suspend them while conducting an investigation."

Finally, our decision is consistent with the provisions of Tenn. Code Ann. § 65-5-203(b)(1).

**IT IS THEREFORE ORDERED:**

1. That the Consumer Advocate's motion for a hearing is denied;
2. That any party aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within ten (10) days from and after the date of this Order; and
3. That any party aggrieved by the Authority's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Division, within sixty (60) days from and after the date of this Order.

  
CHAIRMAN

  
DIRECTOR

\_\_\_\_\_  
DIRECTOR

ATTEST:

  
EXECUTIVE SECRETARY

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

May 14, 1997

**IN RE:        APPLICATION OF NASHVILLE GAS COMPANY, A  
              DIVISION OF PIEDMONT NATURAL GAS COMPANY,  
              INC., FOR ADJUSTMENT OF ITS RATES AND CHARGES**

**DOCKET NO. 96-00977**

---

**OPINION OF DIRECTOR MALONE CONCURRING IN THE RESULT ON  
ORDER DENYING CONSUMER ADVOCATE'S MOTION FOR HEARING**

---

While I agree with the ultimate decision of the majority rendered on the Consumer Advocate's Motion for Hearing, which motion was heard on March 4, 1997, I am compelled to write separately because I disagree with the rationale expressed by the majority on March 4, 1997, and the *Order Denying Consumer Advocate's Motion for Hearing* (the "Order").

It is uncontroverted that the original petition filed by Nashville Gas Company ("NGC") on May 31, 1996, ceased to exist on June 30, 1996. In Re: Commencement of Proceedings Before the Tennessee Regulatory Authority of Matters Pending Before the Public Service Commission on June 30, 1996, Administrative Order No. 1, Tennessee Regulatory Authority (July 18, 1996) ("At a regularly-scheduled Authority Conference on July 9, 1996, the Directors discussed the means by which the agency would accept any petitioner's request to *refile and recommence any case pending before the Public Service Commission on June 30, 1996, such case having ceased to exist along with the Tennessee*

*Public Service Commission . . . by Chapter 305 of the Public Acts of 1995.”*) (Emphasis added); In Re: Final Disposition of All Business Pending on June 30, 1996, Tennessee Public Service Commission (June 28, 1996) (“Pursuant to Chapter 305 of the Public Acts of 1995, all business pending before the Tennessee Public Service Commission on June 30, 1996, ceases to exist, along with the agency.”). See also Consumer Advocate Division v. H. Lynn Greer, et al., No. 01A01-9607-BC-00302 (Tenn. Ct. App. September 19, 1996) (“As a result of legislative action in 1995, the TPSC and all pending contested case proceedings would cease to exist on 30 June 1996.”); Opinion of the Office of the Attorney General, State of Tennessee, to Commissioner Melvin J. Malone, May 31, 1996. Pursuant to Administrative Order No. 1 of the Tennessee Regulatory Authority (“TRA”), NGC filed a petition to recommence the May 31, 1996, petition for a rate increase with the TRA on July 29, 1996.

As stated in the Order, the Directors of the TRA rendered their decisions in this case on December 17, 1996. In a December 31, 1996, letter to the TRA, NGC notified the TRA that “if a final order has not issued in the above captioned case on or before January 1, 1997, Nashville Gas Company intends to place its proposed rates into effect on January 1, 1997 as permitted by Section 65-5-203(b)(1) of the Tennessee Code.” (Emphasis added).<sup>1</sup> Again by letter dated January 13, 1997, to the Consumer Advocate Division, NGC restated its reliance upon T.C.A. § 65-5-203(b)(1). Finally, in its response to the Consumer Advocate’s Motion for Hearing, which response was filed on February

---

<sup>1</sup> T.C.A. § 65-5-203(b)(1) permits a public utility to place an increase in rates into effect if the TRA has not concluded an investigation and a final order has not been issued six (6) months from the date the public utility filed for such an increase.

18, 1997, NGC once again reiterated its right to place the rate increase into effect under §65-5-203(b)(1).

I disagree with the majority's rationale on two crucial points. First, as acknowledged by the Directors of the TRA in Administrative Order No. 1 of the TRA, all business pending before the TPSC on June 30, 1996, ceased to exist on June 30, 1996. Since NGC's original petition was pending before the TPSC on June 30, 1996, it ceased to exist at that time. The case was recommenced before the TRA on July 29, 1996. It was my opinion at the December 17, 1996, TRA Conference, and it remains my opinion today, that this case began on July 29, 1996, the date on which NGC recommenced its original petition before the TRA pursuant to Administrative Order No. 1 of the TRA.<sup>2</sup> Based upon the comments made at the March 4, 1997, TRA Conference in support of the decision to deny the Consumer Advocate's Motion for Hearing, it appears that the majority considered NGC's petition to have been filed on or before July 1, 1996.<sup>3</sup> I cannot support the rationale of the majority because it is inconsistent with a previous order of the TRA. Having acknowledged in Administrative Order No. 1 that all cases pending before the TPSC on June 30, 1996, ceased to exist on June 30, 1996, and possessing full

---

<sup>2</sup> Transcript of December 17, 1996, TRA Conference, pp. 69 and 114. See also Transcript of March 4, 1997, TRA Conference (hereinafter March 4, 1997, Transcript), pp. 120, 122, 131-132.

<sup>3</sup> At the March 4, 1997, TRA Conference, Director Kyle stated that "The statute says if there is no decision within six months after the company files, the company can put those rates, under bond, into effect. . . . The statute says they can put those rates into effect in six months." March 4, 1997, Transcript, pp. 117-118. These statements refer to T.C.A. §65-5-203(b)(1). Since it was Director Kyle's motion that passed immediately subsequent to the aforesaid comments, it appears that the motion was based upon §65-5-203(b)(1). See March 4, 1997, Transcript, pp. 118-119. For clarification, I asked after the motion passed "What date are you stating that Nashville Gas had the legal right to put those rates into effect?" and Director Kyle responded "Six months after they made their filing." March 4, 1997, Transcript, p. 119. Thus, it is clear that Director Kyle was relying upon §65-5-203(b)(1).

knowledge that NGC's petition to recommence was filed on July 29, 1996, I am baffled as to how the majority concluded that NGC's petition was filed on or before July 1, 1996.

Second, as shown above, the case began before the TRA on July 29, 1996. Thus, under §65-5-203(b)(1), if the TRA had not completed its investigation and issued a final order in this case six (6) months after July 29, 1997, NGC could have placed its rates into effect on January 29, 1997, but not before that time. I held this position with respect to §65-5-203(b)(1) on December 17, 1996, and I hold this opinion today as well.<sup>4</sup> Based upon the comments made at the March 4, 1997, TRA Conference in support of the decision to deny the Consumer Advocate's Motion for Hearing and the Order, it appears that the majority concluded that §65-5-203(b)(1) permitted NGC to place its rates into effect on January 1, 1997.<sup>5</sup> Again, because the majority failed to acknowledge and give any credence to the above-referenced Opinion of the Attorney General's Office, and because the majority failed to act consistent with the agency's own administrative order, I am unable to join in their rationale.

Therefore, to the extent the majority relied upon §65-5-203(b)(1) in denying the Consumer Advocate's Motion for Hearing and upholding NGC's right to place its rates into effect on January 1, 1997, I believe the majority erred. Nonetheless, notwithstanding my disagreement with the majority regarding the application of §65-5-203(b)(1) in this


---

<sup>4</sup> See supra footnote 2.

<sup>5</sup> See supra footnote 3.



case, I believe that NGC had the right to place its rates into effect on January 1, 1997, on other grounds. Therefore, I concur in the result only.

  
\_\_\_\_\_  
DIRECTOR MELVIN J. MALONE

ATTEST:

  
\_\_\_\_\_  
EXECUTIVE SECRETARY