

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

July 13, 2001

IN RE:	SHOW CAUSE PROCEEDING	)	Docket No. 97-00160
	AGAINST GASCO DISTRIBUTION	)	and
	SYSTEMS, INC.	)	Docket No. 97-00293

ORDER DENYING GASCO'S PETITION FOR RECONSIDERATION

Pursuant to Tenn. Code Ann. § 4-5-317, Gasco submitted a Petition for Reconsideration, in part, of the Hearing Officer's Initial Order issued on June 7, 2001. Gasco specifically requests that the Hearing Officer reassess the dates by which Gasco's fines are due. Gasco states the following in support of its request for relief: (1) Gasco's summer revenues are insufficient to pay unbudgeted expenses; and, (2) the Authority should take the size of Gasco into consideration when determining the timing of the payments of the fines.

After careful consideration and review of Gasco's request and the considerable amount of activity in this docket from early 1997 to the present, the Hearing Officer concludes, for the reasons set forth below, that the requirement that Gasco pay the fines by the due dates identified in the June 7, 2001, Order¹ is not unduly burdensome; and, therefore, Gasco's Petition is hereby denied.

¹ See *Initial Order of the Hearing Officer Requiring Compliance With the Authority's November 5, 1998, Order*, TRA Docket Nos. 97-00160 and 97-00293 (Jun. 7, 2001) (attached hereto).

Gasco's request to spread fine payments out over the next ten (10) months² because it "does not have adequate revenue during the summer to pay for large, unbudgeted expenses" is not convincing for several reasons.³ First, Gasco's characterization of the fines as an "unbudgeted expense" is, in the Hearing Officer's opinion, a bold and ineffective euphemism for management shortsightedness. Here, Gasco is constructively requesting that the Authority temporarily underwrite its lack of contingency preparation and its fiscal inattention. The record in this proceeding is unequivocally clear in signifying that Gasco was *on notice* that fines would be assessed under certain conditions that were completely within Gasco's control.⁴ Moreover, the record is equally clear that the conditions precedent that would trigger the payment of fines were conditions that Gasco could easily have avoided. Furthermore, it is the Hearing Officer's opinion that responsible financial, regulatory, and management practices necessarily dictated that Gasco account for fines, such as the fines assessed here, as contingent liabilities with the financial consequences projected into each succeeding operating period until such time that the liabilities, at issue here, were no longer a threat. The entirety of the record in this matter, together with the foregoing comments, provide a weightier counterpoint to Gasco's implication that the fines were unexpected. Very simply put, Gasco, here, seeks to convince the Authority that Gasco's failure to acknowledge and plan for a potential liability that has been pending for almost three (3)

² Gasco proposes to make payments as follows: August 31, 2001 - \$2,125.00; December 31, 2001 - \$2,212.50; and April 30, 2002 - \$2,212.50. *Gasco's Petition for Reconsideration* (Jun. 22, 2001).

³ See *Gasco's Petition for Reconsideration*, p. 1 (Jun. 22, 2001).

⁴ See *Initial Order of the Hearing Officer Requiring Compliance with Authority's November 5, 1998, Order*, p. 9 (Jun. 7, 2001).

years is a consequence of ill and unavoidable fortune. As the record demonstrates, that is not the case.

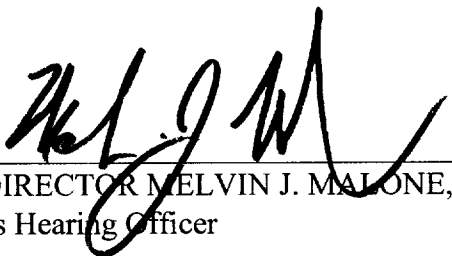
Next, Gasco's request for relief relies on its allegedly weakened cash flow position throughout the summer months during which revenues are curtailed by the seasonally expected decline in gas usage. There is little doubt that gas usage and its attendant revenues decline in summer months. That expected cyclical phenomenon alone, however, is insufficient in demonstrating a financial hardship that results in Gasco's inability to honor the Hearing Officer's June 7, 2001, Order. Gasco was relatively clear in pleading that it lacked off-peak-season revenue streams to pay for "unbudgeted expenses," but failed to offer any evidence to demonstrate that it lacked *overall* financial stability to pay the fines as ordered. Gasco, in its pleading, is silent with respect to its general financial fitness, notwithstanding the predictable and cyclical decline in revenue streams during the summer months.

Gasco also did not posit a compelling argument that payment of the fines, as ordered, would result in an erosion or deterioration of the Company's ability to provide quality service on a continuing basis. Given Gasco's acknowledgement that most gas usage occurs during the winter months, its claim that payment of the fines, as ordered, will affect its quality of service during the summer months, when gas volumes consumed are markedly decreased, is unconvincing. Absent a showing that there exists little or no correlation between service quality efforts during low-demand summer months and reduced demand during the summer months, Gasco's intimation to the contrary is wholly inadequate.

Finally, the Authority has committed a significant amount of time and resources in accommodating Gasco by crafting a plan and solution designed to enable Gasco to come into compliance with the Authority's Rules and Orders. The Authority has not only faithfully applied the statutory requirements of Tenn. Code Ann. § 65-4-116 whenever applicable, but has also generously granted leniency and has provided flexibility, on more than one occasion, far beyond what state law contemplates. In each instance, the Authority has acted in good faith. In each instance, the Company has, for whatever reason, failed to embrace, in total, the Authority's philanthropy. Gasco, nevertheless, is entitled to and has received every consideration due to it based on the record in this proceeding and state law.

IT IS THEREFORE ORDERED THAT:

1. Gasco's Petition for Reconsideration is hereby denied.



DIRECTOR MELVIN J. MALONE,
as Hearing Officer

Attest:



K. David Waddell
Executive Secretary

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

June 7, 2001

IN RE: SHOW CAUSE PROCEEDING) Docket No. 97-00160
AGAINST GASCO DISTRIBUTION) and
SYSTEMS, INC.) Docket No. 97-00293

INITIAL ORDER OF THE HEARING OFFICER REQUIRING COMPLIANCE
WITH AUTHORITY'S NOVEMBER 5, 1998, ORDER

This matter is before the Hearing Officer, Director Melvin J. Malone, on the merits for a determination of whether Gasco Distribution Systems, Inc., a subsidiary of The Titan Energy Group, Inc., is in violation of the *Order Affirming the October 1, 1998, Initial Order of Hearing Officer, In Re: Show Cause Proceeding Against Gasco Distribution Systems, Inc.*, TRA Docket Nos. 97-00160 and 97-00293 (Nov. 5, 1998).

The following are parties in this proceeding:

Henry Walker, Boulton, Cummings, Connors & Berry PLC, Post Office Box 198062, Nashville, Tennessee 37219, on behalf of Gasco Distribution Systems, Inc.

Gary Hotvedt, 460 James Robertson Parkway, Nashville, Tennessee 37243, on behalf of the Energy and Water Division Staff of the Tennessee Regulatory Authority.

Tim Phillips, 425 Fifth Avenue North, 2nd Floor, Nashville, Tennessee 37243-0491, on behalf of the Office of the Attorney General, Consumer Advocate and Protection Division.¹

¹ The preliminary investigation was assigned Docket No. 97-00160 and the show cause proceeding was assigned Docket No. 97-00293. The Consumer Advocate and Protection Division ("CAD") moved to intervene in both proceedings and such interventions were granted. Upon agreement, the dockets were consolidated.

ATTACHMENT

I. TRAVEL OF THE CASE

Gasco Distribution Systems, Inc. ("Gasco" or the "Company"), a subsidiary of The Titan Energy Group, Inc., is located in Jellico, Tennessee and is a gas distributor providing service to the City of Jellico. Gasco provides service to approximately 485 customers in Jellico.² On January 15, 1997, the Tennessee Regulatory Authority's Utility Rate Division issued a *Compliance Audit Report of Gasco Distribution Systems, Inc., Actual Cost Adjustment* for the period December 1, 1993 to June 30, 1996, (the "Audit Report").³ The primary purpose of compliance audits is to ensure compliance with the Uniform System of Accounts and with all rules, regulations, orders, and directives adopted by the Tennessee Regulatory Authority ("Authority" or "TRA").

Among other things, the Audit Report showed a net over recovery of gas costs from the ratepayers of Gasco in the amount of fifty-three thousand five hundred and thirty-six dollars and eighteen cents (\$53,536.18).⁴ The Audit Report also found that Gasco had failed to file quarterly financial reports and annual Actual Cost Adjustment ("ACA") filings required either by TRA rules or orders. According to the Audit Report, "Gasco Distribution Systems has had a history of slow compliance with the rules and regulations of the TRA. At this time, the Company has not submitted the quarterly reports (PSC - 3.04) for 9/30/94, 12/31/94, 3/31/95, 6/30/95, 9/30/95, 12/31/95, 3/31/96,

² Gasco also operates in Kentucky, Ohio, Pennsylvania, and West Virginia.

³ The TRA's then Utility Rate Division has since been divided into two separate divisions. The working group of the former Utility Rate Division responsible for gas, water and energy matters is currently the TRA's Energy and Water Division.

⁴ Of the total amount, thirty-one thousand two hundred fifty-five dollars and eighty-six cents (\$31,255.86) was due to noncompliance with the TRA's Purchased Gas Adjustment ("PGA") Rule and twenty-two thousand two hundred eighty dollars and thirty-two cents (\$22,280.32) was due to the unauthorized assessment upon customers of a minimum monthly charge.

6/30/96 and 9/30/96.” *Audit Report at 7.* In its responses to the Audit Report, Gasco acknowledged that it had not timely filed its quarterly reports as required by the TRA’s rules.⁵ Upon consideration of the Audit Report and the Company’s responses thereto, the Directors of the Authority unanimously decided to issue a show cause order against Gasco pursuant to Tenn. Code Ann. § 65-2-106 on March 4, 1997.

At a March 13, 1997, hearing on the show cause order, the parties requested a recess for settlement purposes and said request was granted. After the recess, the parties presented a settlement to the Authority, which settlement was memorialized and approved by order dated May 23, 1997. Pursuant to the *May 23, 1997, Order*, Gasco agreed to refund all over collections with interest, to file all required reports timely with the TRA, and to contribute six thousand two hundred and fifty dollars (\$6,250.00) toward system improvements for the benefit of customers without Gasco receiving any future recovery or earnings on such expenditures. Although the settlement was accepted, the Authority determined that this case should “remain open until December 31, 1997 at which time the TRA staff will make a determination as to the compliance with this agreement.” *May 23, 1997, Order at para. 14.*

At the December 16, 1997, Authority Conference, the Directors reviewed this matter in order to determine whether Gasco had complied in full with the *May 23, 1997, Order*. After reviewing the *November 24, 1997, Compliance Audit Report of Gasco Distribution Systems, Inc., Actual Cost Adjustment* issued by the TRA’s Gas, Water and Electric Division, the Directors unanimously concluded that a hearing was necessary to determine whether Gasco had in fact complied with the terms of the settlement and the

⁵ *Gasco’s Response to Audit Report* (Feb. 20, 1997).

May 23, 1997, Order, and appointed then Chairman Melvin J. Malone to sit as the Hearing Officer on the merits.

On September 17, 1998, Gasco and TRA Staff submitted a joint stipulation concerning the facts of this present proceeding. In the joint stipulation, Gasco conceded that subsequent to the issuance of the *May 23, 1997, Order*, Gasco failed to file its first and second quarterly reports for 1997 as required by TRA Rule 1220-4-1-.10.

After a public hearing, upon considering the record as a whole, the Hearing Officer found that Gasco had continuously engaged in a pattern and practice of not complying with TRA Rule 1220-4-1-.10. *See Initial Order of Hearing Officer, In Re: Show Cause Proceeding Against Gasco Distribution Systems, Inc.*, TRA Docket Nos. 97-00160 and 97-00293, p. 9 (Oct. 1, 1998). The Hearing Officer made the following findings of fact and conclusions of law:

- (1) As stipulated by the Parties, Gasco failed to file its first quarterly report for 1997, due May 31, 1997, on a timely basis and in fact filed the report one hundred and seventy-seven (177) days after the due date.
- (2) As stipulated by the Parties, Gasco failed to file its second quarterly report for 1997, due August 31, 1997, on a timely basis and in fact filed the report eighty-five (85) days after the due date.
- (3) The 1996 annual report was filed on July 7, 1997, ninety-seven (97) days after the due date.
- (4) Gasco has engaged in a pattern and practice of failing to comply with TRA Rule 1220-4-1-.10.
- (5) No fine shall be imposed with respect to the 1996 annual report.
- (6) As concerning the March 31, 1997, quarterly report, the fine shall be in the amount of eight thousand eight hundred and fifty dollars (\$8,850.00), payable to the Authority as set forth below. One

thousand dollars (\$1,000.00) payable on or before January 1, 1999; one thousand dollars (\$1,000.00) payable on or before January 1, 2000; and two thousand four hundred and twenty-five dollars (\$2,425.00) payable on or before January 1, 2001. The remaining amount, being four thousand four hundred and twenty five dollars (\$4,425.00), shall be due and payable to the Authority upon a finding that Gasco has not complied with TRA Rule 1220-4-1-.10 subsequent to the issuance of this order; provided, however, if Gasco complies with said rule up and until January 1, 2001, such remaining amount shall no longer be due and owing under any circumstances.

- (7) As concerning the June 30, 1997, quarterly report, the fine shall be in the amount of four thousand two hundred and fifty dollars (\$4,250.00), payable to the Authority as set forth below. Seven hundred and fifty dollars (\$750.00) payable on or before July 1, 1999; seven hundred and fifty dollars (\$750.00) payable on or before July 1, 2000; and six hundred and twenty-five dollars (\$625.00) payable on or before July 1, 2001. The remaining amount, being two thousand one hundred and twenty-five dollars (\$2,125.00), shall be due and payable to the Authority upon a finding that Gasco has not complied with TRA Rule 1220-4-1-.10 subsequent to the issuance of this order; provided, however, if Gasco complies with said rule up and until July 1, 2001, such remaining amount shall no longer be due and owing under any circumstances.

The TRA Directors affirmed the findings. *See Order Affirming the October 1, 1998, Initial Order of Hearing Officer, In Re: Show Cause Proceeding Against Gasco Distribution Systems, Inc.*, TRA Docket Nos. 97-00160 and 97-00293 (Nov. 5, 1998). (hereinafter the "*November 5, 1998, Order*"). In the normal course of its duties and responsibilities, the agency has tracked Gasco's compliance with both TRA Rule 1220-4-1.10 and the *November 5, 1998, Order*.

On or about January 19, 2001, only after having been contacted by the TRA concerning the non-receipt of past due quarterly reports, Gasco submitted a letter to the TRA explaining its failure to comply with both TRA Rule 1220-4-1.10 and the *November*

5, 1998, Order. Thereafter, TRA Docket Nos. 97-00160 and 97-00293 were publicly noticed on the Authority's February 21, 2001, Conference Agenda for consideration. At the February 21, 2001, Conference, the Authority preliminarily addressed the issue of whether Gasco has failed to comply with TRA Rule 1220-4-1.10 and the *November 5, 1998, Order*. Director Melvin Malone, continuing in his previous appointment as Hearing Officer, was asked to resolve this matter on the merits.

II. ARGUMENTS OF THE PARTIES

A. Gasco

In a letter dated February 26, 2001, Gasco acknowledges and does not contest that it has violated the Authority's *November 5, 1998, Order*. Furthermore, Gasco concedes that the Authority would likely impose the previously suspended fine of \$6,550 under the terms of that Order. Gasco does, however, petition the Authority to allow it to use a portion of the fine to assist certain customers in paying their winter gas bills,⁶ and to hold the remaining portion of the fine in abeyance until the conclusion of the Company's probationary period on July 1, 2001.

Although Gasco concludes, as a matter of law, that the TRA is without statutory authority to transfer fine payments to a utility's customer body, the TRA would, according to Gasco, commit no statutory foul by sanctioning an agreement among the parties that endorses a pledge by Gasco to make certain expenditures in lieu of a fine. In fact, Gasco draws, what is in its opinion, a precedent-establishing parallel between its

⁶ Gasco proposes to accomplish this via contributing the money to an IRS 501(c)(3) agency in Jellico that would, in turn, distribute funds to certain qualified ratepayers. Gasco contends that payments made to

instant proposal and a 1997 action taken by the Authority in which it approved a settlement agreement under which Gasco, in lieu of a fine, made a “contribution in aid of construction.” Finally, Gasco proposes a conference between itself, Staff, and the Consumer Advocate to work out the remaining details of a settlement.

B. Consumer Advocate and Protection Division

In its February 28, 2001, Reply to Gasco’s letter, the CAD takes the position that not only should Gasco be required to pay the fine previously suspended during its current probationary period, but that the Authority should extend Gasco’s probationary period an additional year to July 1, 2002. Additionally, the CAD reasons that Gasco should be punished in whatever manner is appropriate to encourage absolute compliance with the Authority’s orders, rules, and regulations. In support of its austere orientation, the CAD suggests that Gasco’s noncompliance during its current probationary period signals a “disregard or concern for the rules and regulations of the Authority.” *CAD’s Reply to Gasco’s Original Proposal at 1* (Feb. 28, 2001).

C. TRA Staff (as a party to the proceeding)

The Authority Staff replied to Gasco’s letter on March 2, 2001. In its Response, Staff holds firm to its conviction that Gasco’s continuing noncompliance represents an abuse of the trust of this Authority, and that Gasco’s violation of the *November 5, 1998, Order* must result in the immediate payment of the suspended fine in the amount of \$6,550.

ratepayers in this manner should eliminate potential discrimination issues under Tenn. Code Ann. § 65-4-122 and would benefit the entire Jellico area.

Staff rejects Gasco's proposal to contribute part of the fine to an IRS 501(c)(3) organization for several reasons.⁷ First, Staff concludes that Gasco would ultimately benefit "by being allowed to in essence 'write off' the revenue it suspects it will lose anyway from customers who are unable to pay for their gas service." *TRA Staff's Reply to Gasco's Original Proposal at 2* (Mar. 2, 2001). Staff contends that allowing such discretion will not result in a penalty, and will likely, in fact, result in positive public relations for the Company. This outcome, Staff argues, is in perfect opposition to the behavior sought when influenced from the imposition or peril of fines. Second, Staff argues that Gasco's proposal is susceptible to challenge as unjust discrimination under Tenn. Code Ann. § 65-4-122 because the Company's plan will benefit less than 100% of Gasco's customers. Finally, Staff supports the imposition of additional fines in amounts of up to \$5,400 for the late filing of reports during the probationary period.

In the alternative, Staff suggests that Gasco's probationary period be extended an additional 3 years, until July 1, 2004, and that the additional fines be deferred during this period. The fines would become immediately due and payable in subsequent instances of noncompliance, but would, however, be forgiven upon demonstration of compliance with Rule 1220-4-1-.10 throughout the duration of the extended probationary period.

⁷ TRA Staff's Reply, filed March 2, 2001, was submitted in response to Gasco's February 26, 2001, letter in which the Company proposed to use a portion of the fine to "assist customers who may be having difficulty paying their winter bills." After Gasco was served with Staff's Reply and discovered Staff's opposition to the Company's proposal based, in part, on unjust discrimination under Tenn. Code Ann. § 65-4-122, the Company subsequently amended its proposal by letter dated March 9, 2001, to have payments made through a charitable organization. Staff did not respond to Gasco's new proposal; therefore, the Hearing Officer must conclude that Staff's silence is reflective of an unaffected position after having reviewed the Company's Amended Proposal. In fact, Staff's single official "response" subsequent to the filing of Gasco's Amended Proposal was as signatory to a joint stipulation wherein the parties agreed that the *Compilation Sheet* filed in this docket, reflecting the Quarterly Report filings and fines paid by Gasco, is accurate as of the date of the filing. *Joint Stipulation*, TRA Docket Nos. 97-00160 and 97-00293 (May 29, 2001).

III. GASCO'S PROPOSED SETTLEMENT

Gasco's Amended Proposal to contribute money to a 501(c)(3) charitable agency in Jellico, Tennessee in lieu of a fine must fail for several reasons.⁸ First, and most importantly, Gasco has either misread or misunderstood the *November 5, 1998, Order*. The Order is clear in that it has *already imposed* the maximum fines payable, and has unambiguously indicated *to whom* the fines are payable.⁹ The imposition of these fines, *under the terms* of the *November 5, 1998, Order*, are not now negotiable. Gasco's confusion apparently results from its failure to recognize the self-effectuating nature of the fines under the terms of that Order. The Order states very succinctly that a portion of Gasco's fines would be forgiven if compliance is achieved; and, conversely, would be "due and payable" if compliance with the Order is ignored. The *November 5, 1998, Order*, in effect, gave Gasco the "key to the jailhouse door" when it allowed Gasco to avoid paying a portion of the fines imposed in the Order by making timely filings during the probationary period. The Order itself provided Gasco with the ability to influence its own destiny and Gasco, as demonstrated by its acts of continued noncompliance, has chosen. Having so chosen, Gasco is now bound by the terms of the *November 5, 1998, Order*.

⁸ Gasco originally proposed to make contributions to selected ratepayers who were having difficulty paying their winter gas bills, but amended its proposal after discovering Staff's (as a party to this proceeding) opposition to the proposal on the grounds of unjust discrimination under Tenn. Code Ann. § 65-4-122.

⁹ "As concerning the March 31, 1997, quarterly report, **the fine shall be** in the amount of eight thousand eight hundred and fifty dollars (\$8,850.00), **payable to the Authority** as set forth below. . . The remaining amount, being four thousand four hundred and twenty five dollars (\$4,425), shall be due and payable to the Authority upon a finding that Gasco has not complied with TRA Rule 1220-4-1-.10 subsequent to the issuance of this order[.]" (emphasis added). *November 5, 1998, Order at 4-5*. The Order contains similar language regarding the June 30, 1997, quarterly report, although for a different dollar amount.

Second, according to Gasco, the Authority's hand is legally stayed from transferring fine money directly to ratepayers. Gasco is, however, alternatively of the opinion that the Authority would be acting within its legal discretion by sanctioning an arrangement amongst the parties that resulted in the forgiveness of a fine in favor of some other agreed upon commitment to be fulfilled by the company.¹⁰ Although Gasco, in its March 9, 2001, letter, proposed a conference with Staff and the Consumer Advocate to work out a settlement, there has not been to date a settlement, a notice of on-going negotiations, or any other jointly submitted remedial document submitted to the Authority for consideration. Gasco's failure to have deliberated with the parties is certainly perplexing since no order, decision, or enabling act from the Authority was necessary as a prerequisite to Gasco's entering into discussions or negotiations with the other parties. It is worth noting, however, that both the Staff's and the CAD's filings, submitted subsequent to Gasco's letter, suggest strongly that these parties disfavor alternative treatments in lieu of a fine.¹¹

Third, it is not sufficiently clear how Gasco's Amended Proposal rebuts the presumption that unjust discrimination would ensue in violation of Tenn. Code Ann. § 65-4-122. Succinctly stated, Gasco proposes that it be allowed to make a contribution to a 501(c)(3) charitable agency in Jellico, and that the agency would then be responsible for distributing the contribution to area residents. This shifting of fiscal custodianship does

¹⁰ Gasco's position is that "[a]lthough the TRA does not have the statutory authority to impose a 'fine' and give that money to customers, the TRA and the parties can . . . agree to make other types of payments in lieu of a fine." *Gasco's Original Proposal at 1* (Feb. 26, 2001).

¹¹ See *CAD's Reply to Gasco's Original Proposal* (Feb. 28, 2001); and *TRA Staff's Reply to Gasco's Original Proposal* (Mar. 2, 2001).

little to alter the characteristics of Gasco's intended recipient constituency.¹² Whether funds are disbursed by Gasco directly or disbursed by a third party 501(c)(3) charitable agency does not, unfortunately, transform a narrowly targeted restrictive beneficiary class into a universally endowed class of customers that can be deemed as being representative of all of Gasco's ratepayers. This fundamental reality is fatal to any claim that *all* of Gasco's customers would benefit directly or indirectly *merely* by substituting agents through whom payments would be made. As such, Gasco's Amended Proposal does not strengthen or rehabilitate its original position in stemming a challenge of unjust discrimination under Tenn. Code Ann. § 65-4-122.

Finally, Gasco's proposal ignores the fact that it is being *fined* for violation of an Authority Order and Rule. A fine by definition is punitive in nature and loses its intended effectiveness if transformed into an alternative penalty that results in a direct or peripheral benefit to the company. Actions that serve to diminish the punitive nature of a fine, once ordered, can only serve to dissuade future compliance with the Authority's orders. It is challenging enough, in instances of first impression, for the Authority to grant leniency or forgiveness to a company after it has been found to have repeatedly violated this agency's rules, regulations, and orders. It does, however, border on intellectual anarchy to continue a grant of leniency or forgiveness to a company that has engaged in a continuing practice of violating state law, such as Gasco has done here.

¹² Although Gasco's Amended Proposal states that "[the charitable] agency will then be responsible for distributing . . . contributions . . . based on the agency's own criteria," *Gasco's Amended Propopsal at 1* (Mar. 9, 2001). Gasco's Amended Proposal lacks any statement that the charitable agency's selection criteria would materially vary from Gasco's Original Proposal "to assist customers who may be having difficulty paying their winter gas bills." If this were not the case, the charitable organization could conceivably provide assistance to Jellico residents that are not, in fact, Gasco customers. This potential

Gasco has for some time been afforded the privilege of the trust of this agency, and has for some time taken that trust for granted. The requirement that Gasco now pay its fine in full, without variation from the Authority's *November 5, 1998, Order*, is the consequence of Gasco's own actions.

For the reasons given above, Gasco's request is denied in total.

IV. CONSIDERATION OF THE IMPOSITION OF FINES

Due to Gasco's failure to timely submit its second and third quarterly reports for the year 2000, this matter is before the agency for a determination on whether Gasco violated the *November 5, 1998, Order* and, if so, what, if any, action should be taken by the Authority.¹³ Gasco does not dispute its failure to timely file its second and third quarterly reports.¹⁴ *TRA Transcript of Director's Conference, February 21, 2001, pp. 38-9* ("[W]e don't dispute it.")(Mr. Walker speaking on behalf of Gasco); ("I'm not offering no excuses for why we were late.")(Mr. Brothers speaking on behalf of Gasco).¹⁵ See also *Joint Stipulation* (May 29, 2001).

Many times before the Tennessee Public Service Commission, and now the Tennessee Regulatory Authority, Gasco has repeatedly committed, in one form or another, to properly comply with the rules and orders of the Authority. Moreover, in the

outcome would serve only to buttress a challenge of unjust discrimination under Tenn. Code Ann. § 65-4-122, contrary to the result Gasco propounds with its Amended Proposal.

¹³ The Authority, herein, limits its decision to Gasco's violation of the Authority's *November 5, 1998, Order*. Although Gasco's late filings acted as the catalyst for this review, no action is, at this time, being considered with respect to the late filings themselves which constitute independent violations of the Authority's Rules. To the extent an action is warranted, it will be considered in a separate proceeding.

¹⁴ See *Joint Stipulation* (May 29, 2001).

¹⁵ Likewise, Gasco does not dispute the untimely filing of its fourth quarterly report for 1998 and its first quarterly report for 2000. *TRA Transcript of Director's Conference, February 21, 2001, p. 38* ("[W]e

May 23, 1997, Order, Gasco expressly and unequivocally declared that it would “file all required reports timely with the TRA.”

The Hearing Officer has previously noted that Gasco has “demonstrated a willful pattern and practice of failing to comply with TRA Rule 1220-4-1-.10” and “an alarming pattern and practice of failing to respond to TRA Staff’s requests to comply with the same.” *October 1, 1998, Initial Order at p. 8*. Further, in the *October 1, 1998, Initial Order*, Gasco was admonished that “compliance with TRA Rule 1220-4-1-.10 is not optional or discretionary. Strict compliance is required and expected.” *Id.* Even still, Gasco was the beneficiary of punitive temperance and leniency in the *October 1, 1998, Initial Order* and in the *November 5, 1998, Order*.

As before, in spite of its express agreement and commitment to do otherwise, Gasco has continued its pattern and practice of noncompliance with TRA Rule 1220-4-1-.10. As stated in the *October 1, 1998, Initial Order*, “[a]t some point in time, such continued pattern must be deemed to involve some degree of either intent or willful disregard.” *Id. at 6*. The current issues must be considered in light of Gasco’s unfortunate history of non-compliance.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

For the foregoing reasons, and based upon the entire record in this matter, the Hearing Officer finds that:

don't dispute it.”)(Mr. Walker speaking on behalf of Gasco); (“I’m not offering no excuses for why we were late.”)(Mr. Brothers speaking on behalf of Gasco); and Joint Stipulation.

(1) Gasco failed to file its fourth quarterly report for 1998, due March 1, 1999, on a timely basis and in fact filed the report eleven (11) days after the due date. TRA Staff accepted the Company's excuse for the untimely filing.

(2) Gasco failed to file its first quarterly report for 2000, due May 31, 2000, on a timely basis and in fact filed the report twenty-two (22) days after the due date. TRA Staff accepted the Company's excuse for the untimely filing.

(3) Gasco failed to file its second quarterly report for 2000, due August 31, 2000, on a timely basis and in fact filed the report twenty-six (26) days after the due date.

(4) Gasco failed to file its third quarterly report for 2000, due November 30, 2000, on a timely basis and in fact filed the report forty-nine (49) days after the due date.

(5) Gasco has engaged in a pattern and practice of failing to comply with TRA Rule 1220-4-1-.10.

(6) The Authority's previous forbearance in the *November 5, 1998, Order* in an effort to positively encourage future compliance by Gasco has proven substantially ineffective.

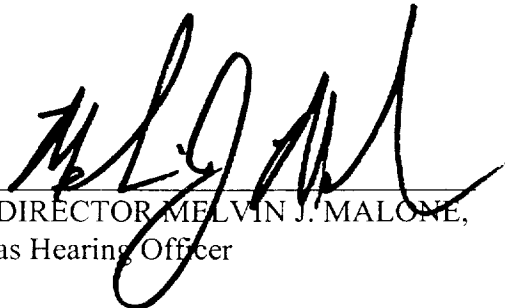
(7) As a result of Gasco's failure to timely submit its second and third quarterly reports for the year 2000, the Hearing Officer finds that under the terms of the *November 5, 1998, Order* emanating from Gasco's failure to timely submit its March 31, 1997, quarterly report, the fines suspended in that Order are now due and payable. Based upon the terms of the *November 5, 1998, Order*, the amount due for said violation is four thousand four hundred and twenty five dollars (\$4,425.00). This amount is due and payable in full to the Authority on or before August 1, 2001.

(8) As concerning Gasco's failure to timely submit its second and third quarterly reports for the year 2000, the Hearing Officer finds such failure a violation of the *November 5, 1998, Order* emanating from its failure to timely submit its June 30, 1997, quarterly report. Based upon the terms of the *November 5, 1998, Order*, the amount due for said violation is two thousand one hundred and twenty-five dollars (\$2,125.00). This amount is due and payable in full to the Authority on or before December 31, 2001.

IT IS THEREFORE ORDERED THAT:

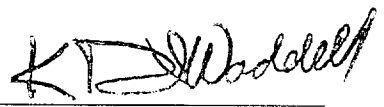
1. Gasco shall comply with this Order and cease and desist from its pattern and practice of non-compliance with TRA Rule 1220-4-1-.10.
2. Gasco shall remit the fines imposed herein to the Authority as stated herein.
3. Any party aggrieved by this initial decision may file a Petition for Reconsideration with the Tennessee Regulatory Authority within fifteen (15) days from and after the date of this Order. Such petition shall be considered by the Hearing Officer presiding herein.
4. Any party aggrieved by the decision of the Hearing Officer in this matter may also file a Petition for Appeal pursuant to Tenn. Code Ann. § 4-5-315 with the Tennessee Regulatory Authority within fifteen (15) days from and after the date of this order.
5. Additionally, if the TRA or any of the parties herein do not seek review of this Initial Order within the time prescribed by Tenn. Code Ann § 4-5-315, this Order shall become the Final Order.
6. That any party aggrieved by the decision of the Hearing Officer in this matter has the right to judiciary review by filing a Petition for Review with the Tennessee Court of Appeals, Middle Section, within sixty (60) days from and after the date of this Initial Order.

7. That any time for the filing of a Petition for Review, Appeal, or Reconsideration of this Initial Order shall commence to run from the date of the entry of this Initial Order.



DIRECTOR MELVIN J. MALONE,
as Hearing Officer

Attest:



K. David Waddell
Executive Secretary