

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

November 7, 2001

IN RE:

SHOW CAUSE PROCEEDING
AGAINST GASCO DISTRIBUTION
SYSTEMS, INC.

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DOCKET NOS. 97-00160
and 97-00293

ORDER DENYING PETITION FOR REVIEW

This matter came before the Tennessee Regulatory Authority (the "Authority") upon the *Petition for Review of Initial Order of the Hearing Officer* in this matter filed by Gasco Distribution Systems, Inc. ("Gasco"). For the reasons stated below, Gasco's Petition for Review is denied.

Background

On June 7, 2001, Director Melvin J. Malone, as Hearing Officer, issued an Initial Order in this matter. In the Initial Order, the Hearing Officer ordered Gasco Distribution Systems, Inc. ("Gasco") to pay \$4,425.00 to the Authority on or before August 1, 2001, and to pay \$2,125 to the Authority on or before December 31, 2001.¹

On June 22, 2001, Gasco filed a *Petition for Reconsideration of the Hearing Officer's Initial Order* (the "Petition for Reconsideration"). Also on June 22, Gasco filed a *Petition for Review of the Initial Order* (the "Petition for Review"). Both petitions were timely filed pursuant to Tenn. Code Ann. §§ 4-5-317(a) and 4-5-315(b).

¹ *Initial Order of the Hearing Officer Requiring Compliance with Authority's November 5, 1998, Order*, Docket Nos. 97-00160 and 97-00293 (June 7, 2001), p. 14. The Hearing Officer determined that penalties imposed in the Hearing Officer's November 5, 1998 Order in this matter but suspended upon certain conditions were due and payable upon Gasco's failure to meet those conditions.

Gasco's Petition for Reconsideration

Gasco's Petition for Reconsideration did not dispute the Hearing Officer's findings in the June 7, 2001 Initial Order. Gasco only requested that the payment schedule contained in the Initial Order be amended to allow Gasco more time to pay the fines that have been imposed.² As grounds for this request, Gasco asserted that "[b] ecause the great majority of Gasco's customers are residential and small business customers and use gas mostly during the winter months, Gasco does not have adequate revenue during the summer to pay for large, unbudgeted expenses, such as these fines, without affecting the company's quality of service."³

On June 29, 2001, a compromise payment schedule was offered by the members of the Authority Staff who are acting as a party in this matter in the *Staff Response to Petition for Reconsideration and Petition for Review of Initial Order* ("Staff Response to Reconsideration"). The Staff proposed that Gasco make payments on the following schedule:

August 1, 2001	\$3,425.00
December 31, 2001	\$3,125.00

Staff also stated that Gasco had made a \$2,425 overpayment which should assist in paying the remaining amounts.

On July 13, 2001, the Hearing Officer issued an Order denying Gasco's Petition for Reconsideration. The Hearing Officer found Gasco's stated reasons for its request for an altered payment schedule unconvincing. The Hearing Officer particularly questioned the implication that Gasco was not prepared to pay the fines, stating that "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."⁴ In addition, the Hearing officer stated that

² The Petition for Reconsideration asks that the payment schedule be amended to require Gasco to pay \$2,125 by August 31, 2001, \$2,212.50 by December 31, 2001, and \$2,212.50 by April 30, 2002.

³ Petition for Reconsideration, Docket Nos. 97-00160 and 97-00293, June 22, 2001, p. 1.

⁴ *Order Denying Gasco's Petition for Reconsideration*, Docket Nos. 97-00160 and 97-00293 (July 13, 2001), p. 2.

Gasco's reference to a reduced cash flow in the summer "is insufficient in demonstrating a financial hardship that results in Gasco's inability to honor" the Initial Order.⁵

The Hearing Officer further stated that Gasco "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."⁶ Finally, the Hearing Officer noted that the Authority has "generously granted leniency and has provided flexibility, on more than one occasion, far beyond what state law contemplates" in its prior actions regarding Gasco, but that Gasco "has, for whatever reason, failed to embrace, in total, the Authority's philanthropy."⁷

Gasco's Petition for Review

Pursuant to Tenn. Code Ann. § 4-5-315(b), upon the disposition of the Petition for Reconsideration, it is subsequently appropriate for the Authority to consider Gasco's Petition for Review. The entire text of Gasco's Petition for Review is as follows:

Pursuant to T.C.A. § 4-5-315, Gasco Distribution Systems, Inc. requests review of the Initial Order of the Hearing Officer issued in the above-captioned matter on June 7, 2001.⁸

Tenn. Code Ann. § 4-5-315(c) states that a "petition for appeal shall state its basis." Gasco's Petition for Review appears not to comply with this requirement as it makes no attempt to state a basis for appeal.

Gasco's Memorandum

On July 18, 2001, Gasco filed a *Memorandum in Support of Petition for Review of Initial Order* (the "Memorandum"). In the Memorandum, unlike the Petition for Review itself, Gasco states a basis for its request that the Authority review the Initial Order of the Hearing Officer. The Memorandum essentially repeats the request and the grounds therefor that Gasco had stated

⁵ *Id.*, p. 3.

⁶ *Id.*

⁷ *Id.*, p. 4.

⁸ Petition for Review of Initial Order, Docket Nos. 97-00160 and 97-00293, June 22, 2001.

in its Petition for Reconsideration, but Gasco states in the Memorandum that it will accept a “third alternative payment schedule,”⁹ which is the compromise offered in the Staff Response to Reconsideration.

On July 20, 2001, the Staff filed a *Staff Response to Memorandum in Support of Petition for Review of Initial Order* (the “Staff Response to Memorandum”), in which the Staff states that while it proposed a “third alternative payment schedule,” it “feels very strongly that all payments relative to this docket should be made no later than December 31, 2001.”¹⁰ In the Staff Response to Memorandum, the Staff also notes that the timely filing of the Memorandum apparently has cured the deficiency of Gasco’s Petition for Review.

Findings and Conclusions

The Authority agrees that the Memorandum cures the deficiency in the Petition for Review. The Petition for Review, as amended, essentially relies upon the grounds stated in the Petition for Reconsideration, namely that Gasco “does not have adequate revenue during the summer to pay for large, unbudgeted expenses, such as these fines.”¹¹ The Authority finds, for the same reasons stated by the Hearing Officer in his July 13, 2001 Order Denying Gasco’s Petition for Reconsideration, that Gasco has not made a convincing case in support of this assertion and agrees with the other conclusions in the July 13, 2001 Order.¹² Accordingly, at the

⁹ Memorandum in Support of Petition for Review of Initial Order, Docket Nos. 97-00160 and 97-00293, July 18, 2001. Under this “alternative payment schedule,” Gasco is now asking for what amounts to a \$1,000 reduction in the amount it was ordered to pay by August 1, 2001 in the Initial Order.

¹⁰ Staff Response to Memorandum in Support of Petition for Review of Initial Order, Docket Nos. 97-00160 and 97-00293, July 20, 2001, p. 2.

¹¹ Petition for Reconsideration, Docket Nos. 97-00160 and 97-00293, June 22, 2001, p. 1.

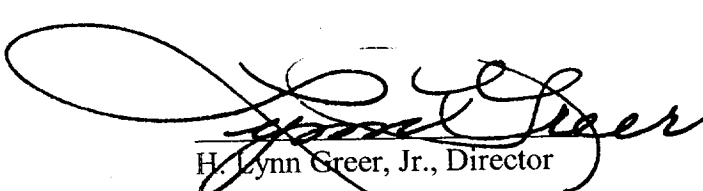
¹² At July 24, 2001 Authority Conference, Director Malone stated that during the four years he has served as Hearing Officer in this matter “the agency has been more than lenient and more than accommodating.” Director Malone further stated that “[t]o continue to defer to the wishes of the company, in my opinion, is not the step that would incent the company to comply with the rules of the agency.” Transcript of Authority Conference, July 24, 2001, pp. 10-11.

July 24, 2001 Authority Conference, a majority of the Authority's Directors voted to deny Gasco's Petition for Review.¹³

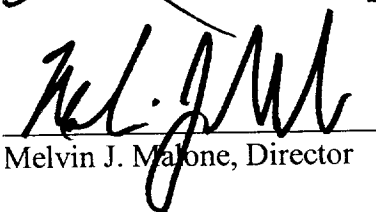
IT IS THEREFORE ORDERED THAT:

1. The Petition of Gasco Distribution Systems, Inc. for Review of the June 7, 2001 Initial Order of the Hearing Officer in this matter is denied.

Sara Kyle, Chairman



H. Lynn Greer, Jr., Director



Melvin J. Malone, Director

ATTEST:



K. David Waddell, Executive Secretary

***Chairman Kyle voted to grant Gasco's Petition for Review.

¹³ Chairman Kyle voted to grant Gasco's Petition for Review. Chairman Kyle stated that, if Gasco's Petition were approved, the quality of service to Gasco's customers would not be affected, while the Authority would still receive payment of the fines from Gasco. Transcript of Authority Conference, July 24, 2001, p. 9.