

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

September 2, 2005

FILED⁴

DEC 19 2005

IN RE:

PETITION OF CHATTANOOGA GAS COMPANY,
NASHVILLE GAS COMPANY, A DIVISION OF
PIEDMONT NATURAL GAS COMPANY, INC., AND
UNITED CITIES GAS COMPANY, A DIVISION OF
ATMOS ENERGY CORPORATION FOR A
DECLARATORY RULING REGARDING THE
COLLECTIBILITY OF THE GAS COST PORTION OF
UNCOLLECTIBLE ACCOUNTS UNDER THE
PURCHASED GAS ADJUSTMENT (PGA) RULES

) Missouri Public
) Service Commission

) DOCKET NO.
) 03-00209

) Exhibit No. 41
) Case No(s) 6-2006-0181
) Date 12-06-05 Rptr XF

ORDER EXTENDING EXPERIMENTAL PERIOD

This matter came before Chairman Pat Miller, Director Deborah Taylor Tate and Director Ron Jones of the Tennessee Regulatory Authority ("Authority" or "TRA"), the voting panel assigned to this Docket, at a regularly scheduled Authority Conference held on April 4, 2005 to determine if the Authority's modification of the Refund Adjustment Formula for Chattanooga Gas Company, Inc., Nashville Gas Company, and United Cities Gas Company (collectively the "Gas Companies" or "Petitioners") was successfully implemented and whether it should either be altered or permanently adopted in the TRA rules.

BACKGROUND

On March 17, 2003, the Gas Companies filed a *Petition for Declaratory Ruling*¹ pursuant to Tenn. Code Ann. § 65-2-104 (2004), Tenn. Code Ann. § 4-5-223 (1998) and Tenn. Comp. R. & Regs. 1220-1-2-.06, asking the Authority for a ruling that the gas cost portion of uncollectible accounts was properly recoverable pursuant to Tenn. Comp. R. & Regs. 1220-4-7, the Purchase

¹ The Gas Companies amended the *Petition for Declaratory Ruling* on July 31, 2003. See *Amendment to Petition for Declaratory Ruling* (July 31, 2003).

Gas Adjustment ("PGA") Rules.² The Gas Companies sought to recover the gas cost portion of net write-offs for each fiscal year in their PGA. Until their next general rate cases, the Gas Companies suggested that, to the extent the gas costs portion of net write-offs for a fiscal year exceeded the gas cost portion of uncollectible accounts allowed in their base rates, the unrecovered portion would be included in the Gas Companies' individual Actual Cost Adjustment ("ACA") filings. The Gas Companies would remain at risk for the distribution cost (margin) portion included in base rates. However, to the extent the gas costs portion of net write-offs for a fiscal year were less than the gas cost portion of uncollectible accounts included in their base rates, the difference would be credited to customers through the Gas Companies' ACA filings. The Petitioners asked the Authority for a ruling that, in future rate cases, only the non-gas portion of uncollectible accounts would be included in their base rates, while the gas costs portion would be collected along with all other gas costs through the PGA and reconciled with the ACA filing.³

The Consumer Advocate filed a *Petition to Intervene* on April 21, 2003, which was granted by the Authority on April 24, 2003. Subsequently, the Consumer Advocate filed a *Motion for Summary Judgment by the Consumer Advocate & Protection Division of the Office of the Attorney General* ("Consumer Advocate's Motion") and a *Memorandum in Support of Motion for Summary Judgment by the Consumer Advocate & Protection Division of the Office of the Attorney General* on October 1, 2003. The Consumer Advocate argued that: (1) a plain reading of the rules did not allow for recovery of the gas cost portion of the uncollectible accounts; (2) TRA precedent allowed for waiver or alteration of policy and rules only upon

² The objectives of the PGA are to permit any gas utility to recover, in timely fashion, the total cost of gas purchased for delivery to customers and to assure that the gas utility did not over-collect or under-collect gas costs from its customers. Tenn R & Regs 1220-4-7-02(1). In the past, uncollected gas costs have been recovered through the base utility tariff rates instead of the PGA mechanism.

³ See *Petition for Declaratory Ruling*, p. 4 (March 17, 2003).

evidence of extraordinary circumstances; and (3) a rulemaking proceeding was the appropriate mechanism for the relief the Petitioners were seeking.

On October 27, 2003, the Gas Companies filed the *Petitioner's Motion for Summary Judgment* ("Petitioners' Motion"), *Petitioners' Statement of Undisputed Facts in Support of Their Motion for Summary Judgment*, and *Petitioners' Response in Opposition to the Motion for Summary Judgment of the Consumer Advocate and Protection Division*. The Gas Companies argued that: (1) the intent of the PGA Rules was to permit gas companies to recover their total gas costs; (2) the *Petition for Declaratory Ruling* was not moot as alleged by the Consumer Advocate⁴ and was properly before the TRA pursuant to Tenn. Code Ann. § 65-2-104 (2004), Tenn. Code Ann. § 4-5-222 (1998) and Tenn. Comp. R. & Regs. 1220-1-2-.05 inasmuch as the Petitioners sought a ruling with respect to the applicability of the PGA Rules to their factual circumstances; (3) a waiver of the PGA rules was not necessary to allow recovery of the gas cost portion of uncollectible accounts; and (4) the interpretation of the PGA Rules sought by the Petitioners did not require a rulemaking proceeding.

The Consumer Advocate filed a *Reply Memorandum to Petitioners' Response in Opposition to the Motion for Summary Judgment by the Consumer Advocate and Protection Division* on November 3, 2004 and a *Response in Opposition to the Petitioners' Motion for Summary Judgment* on November 20, 2003. Oral arguments on the motions for summary judgment were held before the voting panel on December 11, 2003. The parties filed post-hearing briefs on December 17, 2003.

⁴ The Consumer Advocate alleged that because the rules did not allow inclusion of uncollectible accounts, a declaratory order seeking an interpretation concerning the gas portion of uncollectible accounts related to the PGA was moot. See *Memorandum in Support of Motion for Summary Judgment by the Consumer Advocate and Protection Division of the Office of the Attorney General*, p. 2 (October 1, 2003).

At a regularly scheduled Authority Conference on February 9, 2004, the Authority denied the *Consumer Advocate's Motion*⁵ and determined that the Gas Companies were entitled to summary judgment as a matter of law as to several issues. Specifically, the Authority determined that the intent of the PGA Rules was to allow for recovery of all gas costs, including those costs that were billed and uncollectible. The Authority further found that although the PGA Rules as written generally reflected the stated intent of the rules to allow for recovery of all gas costs, the Refund Adjustment Formula set forth in Tenn. Comp. R. & Regs. 1220-4-7-.03(1)(b)1. did not provide for the recovery of the gas costs portion of uncollectible accounts and therefore did not reflect that intent. Additionally, the TRA determined that pursuant to Authority Rule 1220-4-7-.03(1)(b)3. it could modify its own Refund Adjustment Formula without a waiver of a rule or a rulemaking proceeding. The Authority also found that the *Petition for Declaratory Ruling* was not moot and was properly before the TRA.

Ultimately, the TRA denied the *Petition for Declaratory Ruling*, as amended.⁶ This decision was based on the Authority's finding that the Refund Adjustment Formula set forth in Tenn. Comp. R. & Regs. 1220-4-7-.03(1)(b)1. of the PGA Rules did not provide for the recovery of the gas costs portion of uncollectible accounts, nor did the mere existence of a procedure for the modification of the Refund Adjustment Formula, absent such a modification by the Authority, allow for the recovery of the gas costs portion of uncollectible accounts.

⁵ Director Jones did not agree with this conclusion. Instead, he found that in its motion for summary judgment, the Consumer Advocate asserted that a "plain reading of the PGA Rules showed that uncollectible accounts were not included within the framework of the PGA Rules." *Motion for Summary Judgment by the Consumer Advocate & Protection Division of the Office of the Attorney General*, p 1 (October 1, 2003). Although Director Jones agreed that a plain reading of the PGA Rules demonstrated that the intent of the rules was to allow gas companies to recover all of their gas costs, including the gas cost portion of uncollectible accounts, he did not agree that the factors for calculating gas costs set forth in the rules included the gas cost portion of the uncollectible accounts. Thus, he concluded that the Consumer Advocate's assertion was correct in part, and it should have been granted summary judgment as to this narrow issue. In fact, to find otherwise negated the need to modify the Refund Adjustment Formula.

⁶ *Order Denying Consumer Advocate's Motion for Summary Judgment, Granting, in Part, and Denying, in Part, Petitioners' Motion for Summary Judgment, Denying Petition for a Declaratory Ruling and Modifying Refund Adjustment Formula*, p 2 (February 9, 2005).

However, the Authority found that the Refund Adjustment Formula should be modified to reflect the intent of the PGA Rules by allowing for the recovery of uncollected gas costs that were both billed and determined to be uncollectible. As a result, the following formula was adopted and applied with regard to the Petitioners in this Docket in place of the Refund Adjustment Formula found in Tenn. Comp. R. & Regs. 1220-4-7-.03(1)(b)1.:

$$FirmRA = \frac{(DR_1 - DR_2)}{(SFR)} + \frac{(CR_1 - CR_2 \pm CR_3 \pm U \pm i)}{(STR)}$$

$$Non - FirmRA = \frac{(CR_1 - CR_2 \pm CR_3 \pm U \pm i)}{(STR)}$$

Where U = The difference in the actual gas cost portion of Uncollectible Expense from that approved in the last rate case.

As a result of the modification of the Refund Adjustment Formula, the Petitioners were allowed to recover their actual uncollected gas costs in excess of the amounts of uncollected gas costs that were approved in the last rate case for each of the Gas Companies or were required to refund the amounts that are less than the uncollected gas costs that were forecast in the Gas Companies' most recent rate cases. Pursuant to Tenn. Code Ann. § 65-4-111(a) (2004), the Gas Companies were required to adjust their accounting to record and segregate their uncollectible expenses into gas cost and margin components. At the February 9, 2004 Authority Conference, the Authority also ordered that this Docket be left open for approximately one (1) year, at which time the panel was to reconvene to determine if these changes were successfully implemented and whether they should either be altered or permanently adopted in the TRA rules.

FINDINGS AND CONCLUSIONS

Since the February 9, 2004 Authority Conference, which was the effective date of the change to the Refund Adjustment Formula, only two of the three Gas Companies have submitted their annual ACA filing for audit by the Authority. Only one company included the uncollected

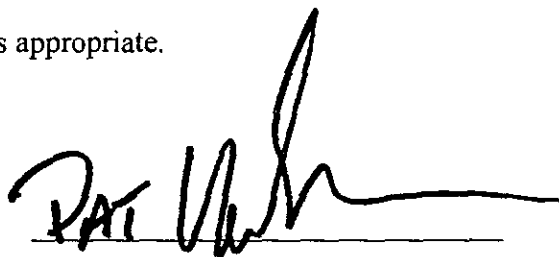
gas costs for the period between March 2004 through June 2004. As a result, the Authority currently lacks adequate information upon which to base a final decision with regard to this issue. Therefore, the Authority finds that the experimental period should be extended for approximately one (1) year. In that period, the Authority will be able to complete an audit of each company's deferred gas cost account since the implementation of the modified formula. Further, the Gas Companies are hereby directed to file with the Authority, no later than June 1, 2005, a joint proposal setting forth detailed procedures on accounting for uncollectible gas cost recovery within the ACA annual filing. Specifically, the proposal should address the following: (1) the use of common terminology between the companies; (2) allocation of payments made on written-off accounts between gas cost and margin; (3) treatment of late fees, taxes, and other charges; (4) treatment of fees paid to third-party collection agencies; (5) timing of charges to the ACA account; (6) methodology for netting eligible uncollected gas costs with gas costs portion of the allowance for uncollectible accounts included in the base rates; and (7) all other activities that the Authority Staff deems appropriate.

IT IS THEREFORE ORDERED THAT:

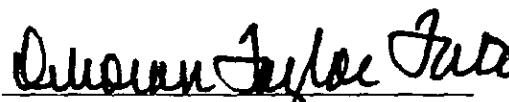
1. This Docket will remain open for one (1) year to determine if the modified Refund Adjustment Formula was successfully implemented by the Petitioners in this Docket. At the end of one (1) year, the panel in this docket shall reconvene as soon as practicable to consider whether such modified formula should either be altered or permanently adopted in the TRA rules through a rulemaking proceeding or otherwise; and

2. The Petitioners are hereby directed to file with the Authority, no later than June 1, 2005, a joint proposal setting forth detailed procedures on accounting for uncollectible gas cost recovery within the actual cost adjustment annual filing. These procedures should address the following: (1) the use of common terminology between the companies; (2) allocation of

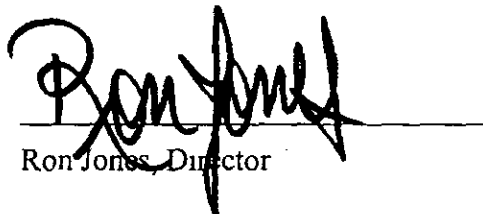
payments made on written-off accounts between gas cost and margin; (3) treatment of late fees, taxes, and other charges; (4) treatment of fees paid to third-party collection agencies, (5) timing of charges to the ACA account; (6) methodology for netting eligible uncollected gas costs with gas costs portion of the allowance for uncollectible accounts included in the base rates; and (7) all other activities that the Authority Staff deems appropriate.

A handwritten signature in black ink, appearing to read "Pat Miller", written over a horizontal line.

Pat Miller, Chairman

A handwritten signature in black ink, appearing to read "Deborah Taylor Tate", written over a horizontal line.

Deborah Taylor Tate, Director

A handwritten signature in black ink, appearing to read "Ron Jones", written over a horizontal line.

Ron Jones, Director