

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

November 29, 2005

IN RE:

**PETITION OF NASHVILLE GAS COMPANY, A DIVISION
OF PIEDMONT NATURAL GAS COMPANY, INC. FOR
APPROVAL OF NEGOTIATED FRANCHISE AGREEMENT
WITH THE METROPOLITAN GOVERNMENT OF THE CITY
OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE**

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**DOCKET NO.
04-00097**

ORDER APPROVING FRANCHISE AGREEMENT

This matter came before Chairman Deborah Taylor Tate, Director Pat Miller and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this Docket, at a Hearing held on April 29, 2004 for consideration of the *Petition of Nashville Gas Company for Approval of Negotiated Franchise Agreement with the Metropolitan Government of Nashville and Davidson County Pursuant to TCA § 65-4-107* (the "Petition") filed by Nashville Gas Company, a division of Piedmont Natural Gas Company, Inc. ("Piedmont" or the "Company").

BACKGROUND

The Company or its predecessors have provided natural gas service to the City of Nashville and Davidson County, Tennessee ("Nashville") since approximately 1911.¹ The Company's existing franchise agreement was approved by the Tennessee Public Service Commission in 1974 for a thirty-year period to expire on May 2, 2004.² The Company and Nashville began negotiating the franchise agreement under consideration in this docket in June

¹ *Direct Testimony of Thomas G. Cross*, p. 2 (April 27, 2004)

² *Id.*

of 2003. On March 30, 2004, the Company filed a new franchise agreement for approval by the Authority.

Piedmont's Petition

In its *Petition* filed on March 30, 2004, Piedmont requests Authority approval, pursuant to Tenn. Code Ann. § 65-4-107 (Supp. 2003), of a new franchise agreement (the "Agreement") between the Company and Nashville. The Agreement was incorporated into Nashville City Ordinance BL2003-36 (the "Ordinance"), which was signed by the Mayor of Nashville on December 3, 2003. The Company accepted the Ordinance in writing on December 11, 2003. A copy of the Ordinance was attached to the *Petition* as Exhibit A. The Ordinance grants the Company the right to provide natural gas service in the City of Nashville and in greater Davidson County for a term of ten years.³

April 21, 2004 Meeting of the Panel

On April 15, 2004, the Authority issued a *Notice of Convening Panel* on April 21, 2004. The Notice further directed any person interested in participating in this docket to file a petition to intervene no later than April 19, 2004.⁴ Pursuant to the April 15, 2004 Notice, the *Petition* was considered on April 21, 2004 for the purpose of convening a contested case, appointing a hearing officer and setting a date for a hearing on the merits. At the time of the April 21, 2004 meeting of the panel, no interventions had been filed.⁵ The Company was represented at the April 21, 2004 meeting by the following counsel:

James H. Jeffries IV, Esq.; Nelson, Mullins, Riley & Scarborough, LLP, Bank of America Corporate Center, Suite 2400, 100 Tryon Street, Charlotte, NC 28202

³ Section 9 of Ordinance BL2003-36 (Exhibit A to the *Petition*) renews the franchise for a ten year period. Section 9 also provides for four additional consecutive five-year periods that do not become effective except by prior resolution of the Metropolitan Council for Nashville and Davidson County and contingent upon payment by the Company of certain fees as detailed therein. See *Petition*, Exhibit A, p. 4 (March 30, 2004).

⁴ *Notice of Convening Panel* (April 15, 2004).

⁵ Transcript of Proceedings, pp. 4, 11 (April 21, 2004).

Ross I. Booher, Esq.; Bass, Berry & Sims, PLC, AmSouth Center, Suite 2700, 315 Deaderick Street, Nashville, TN 37230

During the meeting the voting panel voted unanimously to convene a contested case and appoint the Authority's General Counsel or his designee as Hearing Officer for the purpose of preparing this matter for hearing on the merits before the voting panel.⁶ Counsel for the Company represented that, although the existing franchise agreement between the parties would expire on May 2, 2004, the Company would continue providing natural gas service in Nashville and Davidson County during any interim period prior to Authority approval of a new franchise agreement.⁷

Requirement of and Standards for Authority Approval

Tenn. Code Ann. § 65-4-107 (Supp. 2003) provides that no grant of a privilege or franchise from the State or a political subdivision of the State to a public utility shall be valid until approved by the Authority. Approval pursuant to Tenn. Code Ann. § 65-4-107 (supp. 2003) requires a determination by the Authority, after hearing, that "such privilege or franchise is necessary and proper for the public convenience and properly conserves the public interest."⁸ Tenn. Code Ann. § 65-4-107 (supp. 2003) further provides that in considering such privilege or franchise, the Authority "shall have the power, if it so approves, to impose conditions as to construction, equipment, maintenance, service or operation as the public convenience and interest may reasonably require."⁹

Pre-filed Testimony Kim R. Conklin

Piedmont filed the *Direct Testimony of Kim R. Cocklin* with its *Petition* on March 30, 2004. Mr. Cocklin is employed by Piedmont as Senior Vice President, General Counsel and Chief Compliance Officer. In his pre-filed testimony Mr. Cocklin, stated that the Company

⁶ *Id* at 4-5

⁷ *Id* at 10

⁸ Tenn Code Ann § 65-4-107

⁹ *Id*

began discussions with Nashville in June of 2003 regarding the initiation of negotiations for a new franchise agreement.¹⁰ The initial discussions of the parties revealed that from early in their negotiations each party desired that service be continued by the Company¹¹ Mr. Cocklin stated that subsequently, Nashville was represented by the New York law firm of Hawkins, Delafield and Wood regarding the individual provisions of the new franchise agreement.¹² Mr. Cocklin stated that he was primarily responsible for negotiating on behalf of the Company specific provisions of the new franchise agreement.¹³

Mr. Cocklin described the issues that arose during the course of the negotiation of the new franchise agreement as including

(1) whether the extension agreement needed to be revocable or irrevocable in nature, (2) the amount, derivation and manner of franchise fee payments; (3) certain surety and indemnification provisions proposed by the Metropolitan Government; (4) compliance with various requirements of the City Historical Commission and other governmental agencies responsible for planning, zoning, preservation, and similar matters; (5) franchise fee certification requirements; (6) dispute resolution provisions; and (7) the timing of franchise fee payments.¹⁴

Mr. Cocklin stated his belief that, although neither party received everything it wanted from the negotiations, both parties agreed to the negotiated result as reflected in the Agreement approved by Nashville on December 2, 2003 and accepted by the Company on December 11, 2003.¹⁵ Mr. Cocklin stated that Nashville's Ordinance incorporating the Agreement was approved by more than a three-fifth's majority of the citizens of Nashville voting on the issue in an election held on February 10, 2004. The results of the February 10, 2004 vote were confirmed by Nashville on February 23, 2004.¹⁶

¹⁰ *Direct Testimony of Kim R. Cocklin*, p. 2 (March 30, 2004)

¹¹ *Id.* at 3

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 3-4

¹⁵ *Id.* at 4-5

¹⁶ *Id.* at 5

Mr. Cocklin stated the following in support of his opinion that the terms of the Agreement are necessary and proper for the public convenience and in the public interest:

First, the new franchise terms reflected in Ordinance BL2003-36 will establish a long-term arrangement through which the current and future residents, business enterprises and governmental facilities located within Nashville and Davidson County will be able to receive, under the supervisory jurisdiction of the Authority, the benefits of continuing natural gas service provided by the Company for an extended period. This arrangement will help ensure the continuing availability of high-quality natural gas service to Nashville and Davidson County for the foreseeable future.

Second, the new franchise facilitates the provision of such natural gas service to Nashville and Davidson County by an established and proven provider of that service well known to both the Metropolitan Government and this Authority and possessing the requisite expertise, facilities, systems and gas supply and transportation assets necessary to provide such service.

Third, the new franchise arrangement establishes adequate and proper mechanisms for access by the Company to public rights-of-way, new and existing customers, and existing service lines, transmission and distribution facilities. These mechanisms help to ensure that Nashville Gas is able to provide both adequate and efficient service and to comply with the requirements of this Authority to ensure the safety and protection of residents and property within Nashville and Davidson County.

Fourth, the various other protective provisions set forth in the new franchise arrangement provide useful and important tools for the Metropolitan Government to ensure that its citizens are benefited and not economically harmed by the activities of Nashville Gas within Nashville and Davidson County.

Fifth, the new franchise arrangement provides an incentive for Nashville Gas to invest in infrastructure needed to provide improved and expanded service within Nashville and Davidson County by ensuring that the Company will have the right to provide service within these areas for a sufficient period in order to permit Nashville Gas the opportunity to recover the capital investment in such facilities under the rates approved by the Authority.

Sixth, payment of the franchise fees provided for in the new franchise agreement, in addition to Nashville Gas' ongoing duty to repair excavation work as it is performed, will act to offset long-term road maintenance expenses that may be incurred by the Metropolitan Government during the term of the new franchise arrangement.

Seventh, the affirmative vote of more than three-fifth's of the electorate voting on the issue in the February 10, 2004 Presidential Primary provides conclusive evidence that the new franchise arrangement is in the public interest.¹⁷

Pre-filed Testimony of Thomas G. Cross

On April 27, 2004, Piedmont filed the *Direct Testimony of Thomas G Cross*, a staff attorney for the Metropolitan Government of Nashville and Davidson County. In his pre-filed testimony Mr. Cross stated:

From the perspective of the Metropolitan Government it is important that any utility business operated within the jurisdictional limits of Nashville and Davidson County be properly authorized by the Metropolitan Government. This authorization . . . serves to ensure that utility providers have appropriate arrangements with the Metropolitan Government to ensure that the provision of their services will not harm the public interest.¹⁸

Further, Mr. Cross described the nature and extent of the negotiations between Nashville and the Company that culminated in the Agreement being considered in this docket.

While neither the Metropolitan Government nor the company received exactly what they wanted in this franchise, it represents a freely negotiated and comprehensive resolution of the various parties' interests in this situation. From the perspective of the Metropolitan Government, it ensures the continuous and uninterrupted provision of high-quality natural gas service to Nashville and Davidson County by a provider with substantial experience in providing such service. The new franchise, through its various provisions, will also help protect the interests of the citizens and residents of Nashville and Davidson County for the term of the agreement.¹⁹

Mr. Cross explained that the Agreement was put before the Council of the Metropolitan Government of Nashville and Davidson County, approved at each of three readings before the Council, and signed by the Mayor of Nashville on December 3, 2003.²⁰ The Company accepted the new Agreement on December 11, 2003.²¹ Mr. Cross testified that the Agreement was

¹⁷ *Id* at 6-7

¹⁸ *Direct Testimony of Thomas G Cross*, p 1-2 (April 27, 2004).

¹⁹ *Id* at 4

²⁰ *Id* at 3

²¹ *Id*

approved by the citizens of Nashville and Davidson County by greater than a 60% margin of those voting on the issue in the February 10, 2004 election.²²

According to Mr. Cross, the franchise payments received by Nashville from the Company under the Agreement are an important revenue source for Nashville and will be used to carry out the Metropolitan Government's business, including the provision of services to the general public.²³ Mr. Cross stated that Authority approval of the Agreement would allow the citizens of Nashville to

continue to receive safe and economic natural gas service from Nashville Gas under the substantial protections provided by the franchise. That service will assist in providing stable infrastructure and increased economic opportunity to Nashville and Davidson County for the term of the [Agreement].²⁴

The April 29, 2004 Hearing on the Merits

On April 29, 2004, a hearing was held before the voting panel for the purpose of allowing the Company and Nashville to introduce evidence in support of their request for approval of the *Petition*, the Agreement, and the Ordinance. The Company was represented at the April 29, 2004 Hearing by the following counsel:

R. Dale Grimes, Esq.; Bass, Berry & Sims, PLC, AmSouth Center, Suite 2700, 315 Deaderick Street, Nashville, TN 37238

James H. Jeffries IV, Esq.; Nelson, Mullins, Riley & Scarborough, LLP, Bank of America Corporate Center, Suite 2400, 100 Tryon Street, Charlotte, NC 28202

At the Hearing, Mr. Cocklin and Mr. Cross adopted their pre-filed testimony filed on March 30, 2004 and April 27, 2004, respectively.²⁵ Both witnesses responded to questions from the voting panel.

²² *Id*

²³ *Id* at 5

²⁴ *Id* at 5-6

²⁵ *Transcript of Proceedings*, pp 5-7, 45 (April 29, 2004).

FINDINGS AND CONCLUSIONS

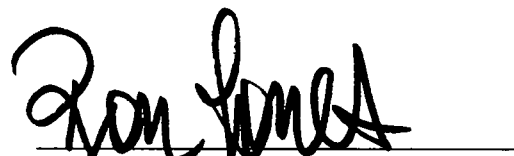
The Agreement between Piedmont and Nashville continues a long-standing franchise arrangement in a community where Piedmont's extensive operations rely on the use of the public rights-of-way. This franchise arrangement, which was undisputed, has been and continues to be of mutual benefit to Piedmont, its customers, and the community. Based on a review of the record in this docket and the testimony presented at the Hearing on the merits of the *Petition*, the voting panel found that the Agreement is necessary and proper for the public convenience and properly conserves the public interest. Accordingly, the panel voted unanimously to approve the Agreement pursuant to Tenn. Code Ann. § 65-4-107 (Supp. 2003).

IT IS THEREFORE ORDERED THAT:

The *Petition of Nashville Gas Company for Approval of Negotiated Franchise Agreement with the Metropolitan Government of Nashville and Davidson County Pursuant to TCA § 65-4-107* and the proposed franchise agreement submitted as an exhibit thereto and contained in Nashville Ordinance BL2003-36 are approved.


Deborah Taylor Tate, Chairman


Pat Miller, Director


Ron Jones, Director