

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**January 11, 2010**

<b>IN RE:</b>	)	
	)	
<b>APPROPRIATENESS OF IMPLEMENTATION OF</b>	)	<b>DOCKET NO.</b>
<b>PURPA STANDARD 5 (ENERGY EFFICIENCY)</b>	)	<b>09-00065</b>
<b>AND STANDARD 6 (RATE DESIGN</b>	)	
<b>MODIFICATION) FOR PIEDMONT NATURAL</b>	)	
<b>GAS COMPANY, CHATTANOOGA GAS</b>	)	
<b>COMPANY, AND ATMOS ENERGY COMPANY</b>	)	

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**ORDER DECLINING TO ADOPT STANDARDS IN INSTANT DOCKET**

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This docket came before Chairman Sara Kyle, Director Eddie Roberson and Director Kenneth C. Hill of the Tennessee Regulatory Authority (the “Authority” or “TRA”), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on December 14, 2009 to determine the appropriateness of the implementation of certain federal standards for gas utilities set forth in the Public Utility Regulatory Policies Act of 1978 (“PURPA”), as amended by the Energy Independence and Security Act of 2007 (“2007 Energy Act”), for Piedmont Natural Gas Company (“Piedmont”), Chattanooga Gas Company (“Chattanooga”) and Atmos Energy Company (“Atmos”).

**BACKGROUND**

PURPA was enacted in 1978 to “encourage (1) conservation of energy supplied by gas utilities; (2) the optimization of the efficiency of use of facilities and resources by gas utility systems; and (3) equitable rates to gas consumers of natural gas.”<sup>1</sup> PURPA originally contained

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<sup>1</sup> 15 U.S.C. § 3201(a)

two federal standards for gas utilities; two additional standards were added by the Energy Policy Act of 1992. The PURPA requirements apply to gas utilities with total annual retail sales greater than ten billion cubic feet using a baseline year of the calendar year immediately preceding passage of the 2007 Energy Act.<sup>2</sup> PURPA requires a “state regulatory authority (with respect to each gas utility for which it has ratemaking authority)” to adopt each standard or to state in writing that it has determined not to adopt such standard.<sup>3</sup> If a state regulatory authority declines to implement a standard, the agency must state in writing the reason for the decision and make that statement available to the public.<sup>4</sup>

The 2007 Energy Act amended PURPA by adding two additional standards that a state regulatory authority must consider and determine the appropriateness of their implementation with respect to each gas utility for which the agency has ratemaking authority.<sup>5</sup> These additional standards are codified at 15 U.S.C. § 3203(b)(5) through (6). In addition to the requirements of the 2007 Energy Act, the recently passed American Recovery and Reinvestment Act of 2009 (“ARRA”) requires that state regulatory authorities seek to implement policies similar to those described in the 2007 Energy Act in order to receive stimulus funds.<sup>6</sup>

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<sup>2</sup> 15 U.S.C. § 3201(b)

<sup>3</sup> 15 U.S.C. § 3203(c)

<sup>4</sup> *Id.*

<sup>5</sup> The PURPA guidelines only apply to natural gas utilities with retail sales greater than ten billion cubic feet annually. 15 U.S.C. § 3201(b)

<sup>6</sup> ARRA, Title IV Sec. 410 (a)(1) states: The applicable State regulatory authority will seek to implement, appropriate proceedings for each electric and gas utility, with respect to which the State regulatory authority has ratemaking authority, a general policy that ensures that utility financial incentives are aligned with helping their customers use energy more efficiently and that provide timely cost recovery and a timely earnings opportunity for utilities associated with cost-effective measurable and verifiable efficiency savings, in a way that sustains or enhances utility customers’ incentives to use energy more efficiently.

### **Travel of the Case**

At a Status Conference duly noticed on May 27, 2009 and held on June 3, 2009,<sup>7</sup> it was determined that the most expedient manner in which to proceed was for each party to submit comments regarding its position regarding the appropriateness of implementing the 2007 PURPA standards in Tennessee. Atmos filed its comments on August 3, 2009. Piedmont, Chattanooga and the Consumer Advocate filed their respective comments on August 4, 2009. At a Status Conference, duly noticed on August 31, 2009 and held on September 9, 2009, the Hearing Officer directed the parties to file additional statements within two weeks. Thereafter, the requested additional filings were made by Atmos on September 21, 2009, Chattanooga and Piedmont on September 23, 2009, and the Consumer Advocate on September 25, 2009. The Hearing Officer filed a *Report and Recommendation of the Hearing Officer* (“*Hearing Officer Report*”) on December 3, 2009. The *Hearing Officer Report* is attached as Exhibit 1 and is hereby incorporated by reference as if it was set out herein.

### **FINDINGS AND CONCLUSIONS**

The Hearing Officer recommended that, based on the unanimity of the comments of the parties, it appeared that the PURPA standards would best be dealt with in individual, company-specific dockets. At the December 14, 2009 Authority Conference, representatives of each natural gas company confirmed for the panel their plans for addressing the PURPA standards. Piedmont’s representative, Pia Powers, stated that Piedmont would address the standards in Docket No. 09-00104.<sup>8</sup> Chattanooga’s representative, J.W. Luna, Esq., stated that Chattanooga

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<sup>7</sup> Also, on June 3, 2009, the Consumer Advocate and Protection Division of the Office of the Attorney General (“Consumer Advocate”) filed a petition to intervene. No objections to the intervention were filed.

<sup>8</sup> See *In re: Petition of Piedmont Natural Gas, Inc. to Implement a Margin Decoupling Tracker (MDT) Rider and Related Energy Efficiency and Conservation Programs*, Docket No. 09-00104.

would address the standards in its pending docket, 09-00183,<sup>9</sup> and Atmos' representative, Scott Ross, Esq., stated that Atmos would address the standards through a general rate case which it expected to file within the next year. The representative of the Consumer Advocate, Ryan McGhee, Esq., stated that the Consumer Advocate would address the standards through the companies' individual dockets. Thereafter, the panel voted unanimously to adopt the recommendation in the *Hearing Officer's Report* and declined to adopt the PURPA standards in the instant docket but rather to consider the appropriateness of the standards in company-specific dockets.

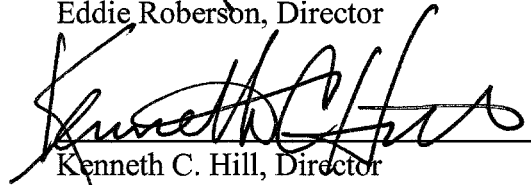
**IT IS THEREFORE ORDERED:**

1. The *Report and Recommendation of the Hearing Officer* is hereby adopted. *The Report and Recommendation of the Hearing Officer* is attached as Exhibit 1 and is hereby incorporated by reference as if it was set out herein.

2. The 2007 PURPA standards shall be addressed in individual, company-specific dockets rather than being addressed in the instant docket.

  
Sara Kyle, Chairman

  
Eddie Roberson, Director

  
Kenneth C. Hill, Director

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<sup>9</sup> See *In re: Petition of Chattanooga Gas Company for a General Rate Increase, Implementation of the EnergySMART Conservation Programs and Implementation of a Revenue Decoupling Mechanism*, Docket No. 09-00183.

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**December 3, 2009**

**IN RE:**

**APPROPRIATENESS OF IMPLEMENTATION OF  
PURPA STANDARD 5 (ENERGY EFFICIENCY) AND  
STANDARD 6 (RATE DESIGN MODIFICATION)  
FOR PIEDMONT NATURAL GAS COMPANY,  
CHATTANOOGA GAS COMPANY, AND ATMOS  
ENERGY COMPANY**

**DOCKET NO.  
09-00065**

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**REPORT AND RECOMMENDATION OF HEARING OFFICER**

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**BACKGROUND**

The Public Utility Regulatory Policies Act ("PURPA") was enacted in 1978 to "encourage (1) conservation of energy supplied by gas utilities; (2) the optimization of the efficiency of use of facilities and resources by gas utility systems; and (3) equitable rates to gas consumers of natural gas."<sup>1</sup> PURPA originally contained two federal standards for gas utilities; two additional standards were added by the Energy Policy Act of 1992. The PURPA requirements apply to gas utilities with total annual retail sales greater than ten billion cubic feet using a baseline year of the calendar year immediately preceding passage of the 2007 Energy Act.<sup>2</sup> PURPA requires a "state regulatory authority (with respect to each gas utility for which it has ratemaking authority)" to adopt each standard or to state in writing that it has determined not to adopt such standard.<sup>3</sup> If a state regulatory authority declines to implement a standard, it must state in writing the reason for the decision and make that statement available to the public.<sup>4</sup>

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<sup>1</sup> 15 U.S.C. § 3201(a)

<sup>2</sup> 15 U.S.C. § 3201(b)

<sup>3</sup> 15 U.S.C. § 3203(c)

<sup>4</sup> *Id.*

The Energy Independence and Security Act of 2007 ("2007 Energy Act") amended PURPA by adding two additional standards that a state regulatory authority must consider and determine the appropriateness of their implementation with respect to each gas utility for which the agency has ratemaking authority. These additional standards are codified at 15 U.S.C. § 3203(b)(5) through (6). In addition to the requirements of the 2007 Energy Act, the recently passed American Recovery and Reinvestment Act of 2009 ("ARRA") requires that state regulatory authorities seek to implement policies similar to those described in the 2007 Energy Act in order to receive stimulus funds.<sup>5</sup>

At the regularly scheduled Authority Conference on May 18, 2009, in order to comply with the 2007 Energy Act and ensure that the State of Tennessee is eligible to receive stimulus funds, the panel voted unanimously to open a docket for the purpose of considering and determining the appropriateness of implementation of the standards contained in 15 U.S.C. § 3203(b)(5) and (6) as they relate to Piedmont Natural Gas Company ("Piedmont"), Chattanooga Gas Company ("Chattanooga"), and Atmos Energy Company ("Atmos"). The panel further voted to appoint the Authority's General Counsel or his designee as Hearing Officer in this docket for the purpose of hearing preliminary matters and preparing the matter for a hearing before the panel.

#### **Travel of the Case**

At a Status Conference held on June 3, 2009, it was determined that the most expedient manner in which to proceed was for each party to submit comments setting forth its position regarding the appropriateness of implementing the 2007 PURPA standards in Tennessee. Atmos filed its comments on August 3, 2009. Piedmont and Chattanooga filed their respective comments on August 4, 2009. The Consumer Advocate and Protection Division of the Office of the Attorney General

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<sup>5</sup> ARRA, Title IV Sec. 410 (a)(1): The applicable State regulatory authority will seek to implement, appropriate proceedings for each electric and gas utility, with respect to which the State regulatory authority has ratemaking authority, a general policy that ensures that utility financial incentives are aligned with helping their customers use energy more efficiently and that provide timely cost recovery and a timely earnings opportunity for utilities associated with cost-effective measurable and verifiable efficiency savings, in a way that sustains or enhances utility customers' incentives to use energy more efficiently.

("Consumer Advocate") intervened in this docket and filed comments on August 4, 2009. At a Status Conference held on September 9, 2009, the Hearing Officer directed the parties to file additional statements within two weeks. Thereafter, the requested additional filings were made by Atmos on September 21, 2009, Chattanooga and Piedmont on September 23, 2009, and the Consumer Advocate on September 25, 2009.

#### **THE 2007 PURPA AMENDMENTS**

The 2007 Energy Act created the following new PURPA standards:

- (5) Energy efficiency.--Each natural gas utility shall--
  - (A) integrate energy efficiency resources into the plans and planning processes of the natural gas utility; and
  - (B) adopt policies that establish energy efficiency as a priority resource in the plans and planning processes of the natural gas utility.
- (6) Rate design modifications to promote energy efficiency investments.--
  - (A) In general.--The rates allowed to be charged by a natural gas utility shall align utility incentives with the deployment of cost-effective energy efficiency.
  - (B) Policy options.--In complying with subparagraph (A), each State regulatory authority and each nonregulated utility shall consider--
    - (i) separating fixed-cost revenue recovery from the volume of transportation or sales service provided to the customer;
    - (ii) providing to utilities incentives for the successful management of energy efficiency programs, such as allowing utilities to retain a portion of the cost-reducing benefits accruing from the programs;
    - (iii) promoting the impact on adoption of energy efficiency as 1 of the goals of retail rate design, recognizing that energy efficiency must be balanced with other objectives; and
    - (iv) adopting rate designs that encourage energy efficiency for each customer class.<sup>6</sup>

#### **COMMENTS OF THE PARTIES**

##### **Atmos**

Atmos noted that the 2007 PURPA amendments have created controversy before most regulatory agencies for several years. With a predominant rate design that results in the majority of revenues being driven by volume, the utility, its customers and its shareholders are at odds when promoting energy conservation. When lower volumes are sold, the utility receives less revenue to

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<sup>6</sup> 15 U.S.C. § 3203(b)(5)-(6).

meet its operating and infrastructure requirements and the expectations of shareholders.<sup>7</sup>

As early as 2006, the Authority created a Task Force to address these very issues. ARRA also deals with these issues by conditioning receipt of stimulus funds on a governor's certification that its state's regulatory authority will implement a general policy aligning utility financial incentives with helping customers use energy more efficiently – including timely cost recovery and a timely earnings opportunity for the utility. Further, the Tennessee General Assembly enacted Tenn. Code Ann. § 65-4-126 which adopts the policy set forth in ARRA. Atmos requests that the Authority allow each natural gas utility to implement these policies through “utility-specific proposals submitted by the utility during a general rate case or in another proceeding specific to each utility rather than seeking to implement a ‘one size fits all’ approach.”<sup>8</sup>

Atmos plans to incorporate the PURPA amendments through appropriate proposals in the context of a general rate case. Atmos is monitoring the proceeding of Piedmont<sup>9</sup> regarding a “decoupling mechanism” and the Authority's ruling in that docket may influence the nature and/or timing of any proposal that Atmos may make. Atmos has no plans to file prior to the Spring of 2010.<sup>10</sup>

### **Chattanooga**

Chattanooga states that the new PURPA standards and ARRA share the same goal of promoting energy conservation by ensuring utilities' financial incentives are aligned with helping customers be more energy efficient and providing timely cost recovery and earnings opportunity associated with cost-effective programs to encourage customers to be more energy efficient. Tennessee has already complied with ARRA by enacting Tenn. Code Ann. § 65-4-126 which requires the Authority to determine an appropriate proceeding for implementing the policy set out in the new statute. It should not be assumed that “one size fits all” when considering how to implement the

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<sup>7</sup> *Comments of Atmos Energy Corporation*, p. 2 (August 3, 2009).

<sup>8</sup> *Id.* at 2-3.

<sup>9</sup> *Petition of Piedmont Natural Gas Company, Inc. to Implement a Margin Decoupling Tracker (MDT) Rider and Related Energy Efficiency and Conservation Programs*, Docket No. 09-00104.

<sup>10</sup> Letter from Patricia J. Childers, AP- Rates & Regulatory Affairs, September 21, 2009.

policy. Chattanooga further recommends that the policy be implemented on an individual utility basis through a utility's general rate case or in a separate proceeding convened for the purpose of considering a utility's implementation. Further, the Authority should consider directing each utility to speak to how it plans to deal with the policy and to establish a date certain when each of the utilities will be required to have addressed the policy either in a rate case or some other specific proceeding.<sup>11</sup> Chattanooga states that it will deal with this policy in its next rate case, which will be filed no later than May 28, 2010.<sup>12</sup>

### **Piedmont**

Piedmont, while supportive of several of the principles set out in the 2007 PURPA standards, believes the issues are best evaluated on a case by case basis in the context of a specific proceeding such as Piedmont's recent request for approval of a margin decoupling mechanism in Docket No. 09-00104. This would avoid inherent risks involved with adopting a "one size fits all" approach.<sup>13</sup>

Piedmont supports several of the federal rate design principles, specifically including the adoption of rate designs that align utility incentives with the implementation of cost-effective energy efficiency programs. Piedmont notes that Tennessee has recently committed itself to a similar policy through the Governor's certification made as a part of receiving ARRA funds and through the enactment of Tenn. Code Ann. § 65-4-126.<sup>14</sup>

Piedmont does not believe it is necessary or appropriate to expressly adopt the federal energy efficiency principles in this docket. Piedmont already takes energy efficiency resources into account in its processes, and as set out in Docket 09-00104, it has proposed to implement several conservation programs. Tennessee law already gives the TRA authority to consider and rule on these matters and

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<sup>11</sup> *Comments of Chattanooga Gas Company*, pp. 4-5 (August 4, 2009).

<sup>12</sup> *Response of Chattanooga Gas Company*, p. 1 (September 23, 2009). Since filing this response, Chattanooga has filed a general rate case proceeding. See *Petition of Chattanooga Gas Company for Approval of Its Rates and Charges, Modification of Its Rate Design, and Revised Tariff*, Docket No. 09-00183.

<sup>13</sup> *Comments of Piedmont Natural Gas Company, Inc.*, pp. 2-3 (August 4, 2009).

<sup>14</sup> *Id.* at 3-4.

additional federal authority is not needed.<sup>15</sup>

### **Consumer Advocate**

The Consumer Advocate maintains that the Authority is not required to adopt the 2007 PURPA standards, only consider them. In-depth analysis is needed before adopting any such standards. The TRA has already been very active with conservation policy since 2006. In addition, the TRA has broad authority regarding rate design, and the recent enactment of the policy statement in Tenn. Code Ann. § 65-4-126 authorizes the Authority to implement ratemaking and design mechanisms to encourage conservation. Therefore, the Consumer Advocate asserts that the Authority need not adopt the PURPA standards at this time but rather should examine them in the context of specific proposals in appropriate proceedings to implement the state's new conservation policy.<sup>16</sup>

In appropriate proceedings, the Consumer Advocate will offer proposals to help consumers save energy while allowing utilities to earn a fair return. For example, the Consumer Advocate has intervened in Docket No. 09-00104 in which Piedmont seeks to implement a customer usage tracking mechanism. The Consumer Advocate seeks a result that will appropriately balance the interests of consumers and the utility, and will propose safeguards to ensure that the financial benefit to the company is accompanied by appropriate energy savings. The Consumer Advocate looks forward to working with interested parties in appropriate proceedings for implementation of measures consistent with Tenn. Code Ann. § 65-4-126.<sup>17</sup>

### **RECOMMENDATION OF THE HEARING OFFICER**

The parties in this docket have expressed unanimity in their position that the 2007 PURPA standards are best considered on a case by case basis in either a general rate case or other appropriate proceeding filed by the individual utility. The Hearing Officer is persuaded that while the PURPA


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<sup>15</sup> *Id.* at 4-5. See also *Written Statement of Piedmont Natural Gas Company, Inc. Regarding Compliance with Federal Energy Efficiency Planning and Rate Design Standards*, pp. 7-8 (September 23, 2009).

<sup>16</sup> *Comments of the Consumer Advocate*, pp. 1-2 (August 4, 2009).

<sup>17</sup> *Statement of the Consumer Advocate on Implementing Conservation Measures in Tennessee*, pp. 1-3. (September 25, 2009).

standards embody broad, laudable principles which seek to promote energy efficiency and conservation - issues that have been a priority of the Authority for several years – it is most appropriate to consider these principles on an individual basis for each natural gas utility. Therefore, the Hearing Officer recommends that the Authority not adopt these PURPA standards *in this docket*, but rather consider the appropriateness of the implementation of the standards in utility-specific dockets. The Hearing Officer further recommends that the panel call the parties forward at the Authority Conference during which this Report is considered to respond to any questions that the panel may have regarding each utility's plans to bring these important policy issues before the Authority in a timely manner.<sup>18</sup>

A handwritten signature in black ink, appearing to read 'Gary Hotvedt', written over a horizontal line.

Gary Hotvedt, Hearing Officer

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<sup>18</sup> As noted earlier, Piedmont and Chattanooga have dockets currently pending before the Authority which can serve as such a vehicle. See Docket No. 09-00104 and 09-00183, respectively. Atmos has stated it will address these policy issues in the context of a general rate case, which it has no plans to file prior to Spring 2010.