BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

April 1, 2010

IN RE:	)
	)
PIEDMONT NATURAL GAS COMPANY	**) Docket No. 09-00093**
ACTUAL COST ADJUSTMENT (ACA) AUDIT	)

NOTICE OF FILING BY THE UTILITIES DIVISION OF THE TENNESSEE REGULATORY AUTHORITY

Pursuant to Tenn. Code Ann. §§ 65-4-104, 65-4-111 and 65-3-108, the Utilities Division of the Tennessee Regulatory Authority hereby gives notice of its filing of the Compliance Audit Report of the Actual Cost Adjustment (hereafter "ACA") Component of the Purchased Gas Adjustment Rule ("PGA Rule") for Piedmont Natural Gas Company (hereafter the "Company") in this docket and would respectfully state as follows:

1. The present docket was opened by the Authority to hear matters arising out of the audit of the Company's ACA filing for the period January 2008 through December 2008.

2. The Company's ACA filing was received on July 1, 2009, and Audit Staff ("Staff") completed its audit of same on March 11, 2010.

3. On March 12, 2010, the Utilities Division submitted its preliminary ACA audit findings to the Company via e-mail. The Company responded on March 30, 2010 via e-mail and this response has been incorporated into the final report. The Report is attached hereto as Exhibit A and is fully incorporated herein by this reference.

4. The Utilities Division hereby files its Report with the Tennessee Regulatory Authority for deposit as a public record and approval of the recommendations and findings contained therein.

Respectfully Submitted:

Michelle Ramsey

Michelle Ramsey
Utilities Division
Tennessee Regulatory Authority

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of April, 2010, a true and exact copy of the foregoing has been either hand-delivered or delivered via U.S. Mail, postage pre-paid, to the following persons:

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EXHIBIT A

COMPLIANCE AUDIT REPORT

OF

Piedmont Natural Gas Company

ACTUAL COST ADJUSTMENT

DOCKET NO. 09-00093

PREPARED BY

TENNESSEE REGULATORY AUTHORITY

UTILITIES DIVISION

April 2010

COMPLIANCE AUDIT

PIEDMONT NATURAL GAS COMPANY

ACTUAL COST ADJUSTMENT

DOCKET NO. 09-00093

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I. INTRODUCTION

The subject of this audit is Piedmont Natural Gas Company's ("Piedmont" "Company" or "PNG") compliance with the Actual Cost Adjustment and Refund Adjustment of the Purchased Gas Adjustment Rule ("PGA Rule") of the Tennessee Regulatory Authority ("TRA" or the "Authority"). The objective of the audit was to determine whether the Purchased Gas Adjustments ("PGA"), which are encompassed by the Actual Cost Adjustment ("ACA")[1], for the twelve (12) months ended December 31, 2008, were calculated correctly and were supported by appropriate source documentation.

II. AUDIT OPINION

On July 1, 2009, the TRA Audit Staff (hereafter "Staff") received PNG's ACA filing supporting the activity in its deferred gas cost account ("ACA Account") for the period January 1, 2008 through December 31, 2008. Staff's audit resulted in seven (7) findings.[2] The net amount of these findings is **$5,362,912.86 in over-recovered gas costs**. The Company's reported December 31, 2008 balance of **$13,221,317.90 in over-recovered** gas costs is increased by the $5,362,912.86 over-collected gas costs determined in this audit. The corrected balance in the ACA Account at December 31, 2008 is **$18,584,230.75 in over-recovered gas costs.** The primary cause of the large net finding in this audit is related to Finding #2, the recovery of hedging costs. With respect to the other findings related to the accounting for gas purchases and recoveries, the net amount of $192,759.21 in over-recovered gas costs represents less than one percent of its total gas invoices (approximately $211 million), and is therefore immaterial by comparison. Staff concludes that except for the findings noted in this report, PNG is correctly implementing its Purchased Gas Adjustment Rider as calculated in the Actual Cost Adjustment, in accordance with TRA rules for Piedmont Natural Gas Company.

III. BACKGROUND INFORMATION ON COMPANY AND GAS SUPPLIERS

Piedmont Natural Gas Company (local distribution company), with headquarters at 665 Mainstream Drive, Nashville, Tennessee, is an operating division of Piedmont Natural Gas Company (parent company), which has its headquarters at 4720 Piedmont Row Drive, Charlotte, North Carolina. On February 12, 2008, the Company notified the Authority of its intent to change the name under which it operates in Tennessee from Nashville Gas Company to its corporate name of Piedmont Natural Gas Company, Inc. The Authority issued an order on March 31, 2008 in Docket No. 08-00028 approving the change. Piedmont is a gas distributor that provides service to several communities in the Middle Tennessee area. The natural gas used to serve these areas is purchased from producers and marketers and transported to Piedmont's city gate through the interstate transmission facilities of Tennessee Gas Pipeline ("TGP"),

[1] The ACA is more fully described in Section V.
[2] Refer to Section VII for a description of the findings.

Columbia Gas Transmission Corporation ("CGTC"), Texas Eastern Gas Pipeline ("TETCO") and Midwestern Gas Transmission Company ("MGT").

IV. JURISDICTION OF THE TENNESSEE REGULATORY AUTHORITY

Tennessee Code Annotated ("T.C.A".) gave jurisdiction and control over public utilities to the Tennessee Regulatory Authority. T.C.A. §65-4-104 states that:

> The [A]uthority has general supervisory and regulatory power, jurisdiction, and control over all public utilities, and also over their property, property rights, facilities, and franchises, so far as may be necessary for the purpose of carrying out the provisions of this chapter.

Further, T.C.A. §65-4-105 grants the same power to the Authority with reference to all public utilities within its jurisdiction as chapters 3 and 5 of Title 65 of the T.C.A. have conferred on the Department of Transportation's oversight of the railroads or the Department of Safety's oversight of transportation companies. By virtue of T.C.A. §65-3-108, this power includes the right to audit:

> The department is given full power to examine the books and papers of the companies, and to examine, under oath, the officers, agents, and employees of the companies and any other persons, to procure the necessary information to intelligently and justly discharge its duties and carry out the provisions of this chapter and chapter 5 of this title.

The Utilities Division Staff of the TRA is responsible for auditing those energy, water and wastewater utilities under the Authority's jurisdiction to ensure that each company is abiding by Tennessee statute as well as the Rules and Regulations of the Authority. Michelle Ramsey and Pat Murphy conducted this audit.

V. DESCRIPTION OF PURCHASED GAS ADJUSTMENT RULE

Actual Cost Adjustment Audits:

The PGA Rule can be found in Chapter 1220-4-7 of the Rules of the Tennessee Regulatory Authority. The PGA Rule permits a gas company to recover, in a timely fashion, the total cost of gas purchased for delivery to its customers and to assure that a company does not over-collect or under-collect gas costs from its customers. The PGA consists of three major components:

1. **The Actual Cost Adjustment ("ACA")**
2. **The Gas Charge Adjustment ("GCA")**

3. **The Refund Adjustment ("RA")**

The ACA is the difference between the revenues billed customers by means of the GCA and the cost of gas invoiced the Company by suppliers plus margin loss (if allowed by order of the TRA in another docket) as reflected in the Deferred Gas Cost account. The ACA then "trues-up" the difference between the actual gas costs and the gas costs recovered from customers through a surcharge or a refund. The RA refunds the "true-up" along with other supplier refunds. For a more complete definition of the GCA and RA, please see the PGA Formula in Appendix A.

Section 1220-4-7-.03(2) of the PGA Rule requires:

> Each year, the Company shall file with the [Authority] an annual report reflecting the transactions in the Deferred Gas Cost Account. Unless the [Authority] provides written notification to the Company within one hundred eighty (180) days from the date of filing the report, the Deferred Gas Cost Adjustment Account shall be deemed in compliance with the provisions of these Rules. This 180-day notification period may be extended by mutual consent of the Company and the [Authority] Staff or by order of the [Authority].

Prudence Audit of Gas Purchases:

Section 1220-4-7-.05 of the PGA Rule requires, unless otherwise ordered by the Authority, an "Audit of Prudence of Gas Purchases" by a qualified consultant. This specialized audit evaluates and reports annually on the prudence of any gas costs included in the PGA. In Docket 96-00805, Nashville Gas was authorized to operate under a Performance-Based Ratemaking Mechanism ("PBR" or "Incentive Plan"), beginning July 1, 1998, and continuing each year unless terminated by the Company or the Authority. For each year that the mechanism was in effect, the requirements of Section 1220-4-7-.05 of the PGA Rule was waived. On December 14, 2007, the TRA issued an order in Docket 05-00165 approving a revised Incentive Plan for Nashville Gas, effective July 1, 2006. This revised Incentive Plan replaces the annual prudence review of the Company's gas purchasing activities.

VI. SCOPE OF ACTUAL COST ADJUSTMENT AUDIT

The ACA audit is a limited compliance audit of PNG's ACA Account. The audit goal is to verify that the Company's calculations of gas costs incurred and recovered are materially correct,[3] and that the Company is following all Authority orders and directives with respect to its calculation of the ACA Account balance. On November 26, 2008 the Company filed a PGA to change the ACA factor to begin refunding the unaudited balance in the ACA Account at October 31, 2008, effective January 1, 2009. On January 29, 2009, Piedmont filed a PGA to update its

[3] The audit goal is not to guarantee that the Company's results are 100% correct. Where it is appropriate, Staff utilizes sampling techniques to determine whether the Company's calculations are materially correct. Material discrepancies would dictate a broadening of the scope of Staff's review.

ACA factor to reflect the unaudited balance in the ACA Account at November 30, 2008, effective March 1, 2009.[4]

To accomplish the audit goal, Staff reviewed gas supply invoices, as well as supplemental schedules and other source documentation provided by the Company. Where appropriate, Staff requested additional information to clarify the filing.

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[4] Due to the reorganization that took place at the Company and the contested issues in the audit covering the calendar year 2006 (Docket No. 07-00174), the annual filings of the Company have been temporarily disrupted. The filing for calendar year 2007 was not filed until December 18, 2008 and the current filing for calendar year 2008 was not filed until July 1, 2009. The Company hopes to file its ACA for the calendar year 2009 by the end of June 2010, and to file its calendar year 2010 ACA close to on schedule next year, depending on the date the current audit is finalized. Two PGA filings were made that covered portions of the current audit period. Usually, companies file to surcharge or refund the balance in the ACA Account within a couple months following the close of an audit period. However, PNG's filing schedule to implement its new ACA factors has been temporarily disrupted as well.

VII. ACA AUDIT FINDINGS

The result of the Staff's audit was a **net over-recovery of $5,362,912.86** which has the effect of increasing the Company's over-recovered balance at December 31, 2008 by this amount. A summary of the account as filed by the Company and as adjusted by the Staff is shown below, followed by a detailed description of each finding.

SUMMARY OF THE ACA ACCOUNT:

	Company	Staff	Difference (Findings)
Commodity Balance at 1/1/08	($ 3,044,019.59)	($ 3,044,019.59)	$ 0.00
Plus Gas Costs	209,777,403.06	204,100,861.50	($5,676,541.56)
Minus Recoveries	219,463,468.32	219,060,714.29	(402,754.03)
Ending Balance before Interest	($12,730,084.85)	($18,003,872.38)	($5,273,787.53)
Plus Interest	($ 574,107.44)	($ 653,724.15)	($ 79,616.71)
Commodity Balance at 12/31/08	($13,304,192.29)	($18,657,596.53)	($5,353,404.24)
Demand Balance at 1/1/08	$ 2,172,784.29	$ 2,172,784.29	$ 0.00
Plus Gas Costs	7,255,394.61	7,255,394.61	0.00
Minus Recoveries	9,385,825.17	9,394,995.77	9,170.60
Ending Balance before Interest	$ 42,353.73	$ 33,183.13	($ 9,170.60)
Plus Interest	$ 40,520.66	$ 40,182.65	($ 338.02)
Demand Balance at 12/31/08	$ 82,874.39	$ 73,365.78	($ 9,508.62)
Total ACA Ending Balance at 12/31/08	($13,221,317.90)	($18,584,230.75)	($5,362,912.86)

Note: A negative number indicates an over-recovery of gas costs.

SUMMARY OF FINDINGS:

				See page
FINDING #1	Commodity gas cost	$ (5,131.12)	Over-recovery	6
FINDING #2	Hedging Costs	(5,170,153.65)	Over-recovery	7
FINDING #3	Storage Costs	(501,256.79)	Over-recovery	14
FINDING #4	Commodity Recoveries	402,754.03	Under-recovery	15
FINDING #5	Interest – Commodity	(79,616.71)	Over-recovery	16
FINDING #6	Demand Recoveries	(9,170.60)	Over-recovery	17
FINDING #7	Interest – Demand	(338.02)	Over-recovery	18
	Net Result	**$ (5,362,912.86)**	**Over-recovery**	

FINDING #1:

Exception

The Company overstated its Commodity gas cost.

Discussion

In January 2008, the Company included $5,131.12 of Overrun Storage Charges in both Commodity gas costs and Storage charges. This amount should have only been included in the Storage charges, resulting in a duplication of the booked cost. The result of this finding is a **decrease in** Commodity gas costs **of $5,131.12(Over-recovery).**

Company Response

The Company is in agreement with the above Audit Staff findings in the amount of $5,131.12 and will adjust its records accordingly.

FINDING #2:

Exception

The Company overstated its recoverable hedging costs.

Discussion

For the audit period, Piedmont booked $9,552,373.78 in total hedging related costs to the ACA Account to be recovered from ratepayers. This amount included $7,340,483.78 in hedging transaction costs and $2,211,890 in net losses on closed positions. After reviewing the documentation provided, Audit Staff determined there was an additional $155 in hedging transaction costs and $35,300 in net gains on closed positions that were not accounted for in the amounts reported above. The corrected amount for the audit period is $7,340,638.78 in hedging transaction costs and $2,176,590 net losses on closed positions.

The tariff governing the amount of hedging related costs that can be recovered from ratepayers is Piedmont's Service Schedule No. 316, Performance Incentive Plan. A copy of this tariff is attached to the report as Exhibit 1. The tariff states that "The Company may engage in hedging transactions within the PGA/ACA mechanism. **Costs related to hedging transactions may be recovered through the ACA account; provided, however, that such costs recovered through the ACA account shall not exceed one percent (1%) of total annual gas costs.** Costs related to hedging transactions recoverable through the ACA account shall be defined as all direct, transaction related costs arising from the Company's prudent efforts to stabilize or hedge its commodity gas costs including, without limitation, brokerage fees, margin requirements, and the costs of financial instruments. **All monthly gains and losses shall be (credited)/debited to the ACA account.** [Emphasis Added]"[5]

The Company included its total hedging transaction costs, as well as net gains and losses, in the ACA for recovery from ratepayers, failing to apply the 1% recovery cap to the hedging transaction costs. The tariff distinguishes those costs that can be recovered 100% and those costs that can be recovered up to a cap of 1% of the total annual gas costs. Monthly gains and losses are recoverable at 100%. All other costs related to hedging transactions are subject to a maximum recovery of 1% of annual gas costs. Gas costs for the audit period include $211,107,618.58 in commodity costs and $9,455,394.61 in demand costs for a total annual gas cost of $220,563,013.19. The 1% threshold of total annual gas costs would therefore calculate to $2,205,630.13. This amount plus the $2,176,590.00 net loss for the period results in $4,382,220.13 that is eligible for recovery from rate payers. Staff, therefore, reduced the Company's original filing by $5,170,153.65.[6]

The effect (excluding interest) of Staff's adjustment is a **decrease in the Company's reported Commodity gas cost of $5,170,153.65 (Over-recovery).**

[5] Service Schedule No. 316, Performance Incentive Plan, page 4.

[6] $9,552,373.78 in the Company's original filing minus $4,382,220.13 allowable expense equals $5,170,153.65 over-recovery of gas costs.

Company Response

Staff's proposed adjustment of Piedmont Commodity gas costs in this Finding consists of (1) a disallowance of certain non-margin related hedging costs arising from out-of-period hedging transactions ($1,574,764), and (2) a disallowance of certain hedging related margin costs incurred by Piedmont during the review period ($3,560,244). The Company disagrees with the first component of Staff's proposed adjustment but agrees with the second.

Background.

For background purposes, it is important to note that this is the first ACA audit following full implementation of the Performance Incentive Plan settlement in Docket No. 05-00165. That settlement made significant changes to the operation of Piedmont's Performance Incentive Plan. It is apparent from Staff's audit and Piedmont's response set forth below that Staff and Piedmont have slightly different interpretations of several of the Plan provisions. Piedmont believes that its interpretations of the Plan are both reasonable and appropriate and, perhaps most importantly, consistent with the purpose and intent of the settlement and the practical operation of the Plan. Piedmont also believes that it would be eminently unfair to deny Piedmont recovery of significant costs actually incurred by Piedmont during the ACA period because of the discovery, after the fact, that Staff has a differing interpretation of some aspects of the Plan language.

Piedmont Disputes Staff's Disallowance of Non-Margin Related Hedging Costs.

As is discussed in detail below, the Company disagrees with Staff's disallowance of other non-margin related hedging costs on the grounds that Staff has misattributed costs associated with hedges that cover a future review period to the current review period. In analyzing Piedmont's disagreement with Staff it is important to focus on the purpose and intent of the Incentive Plan settlement with regard to hedging. This intent was to create a known framework whereby the Company could implement an effective hedging plan for the benefit of its customers without creating undue risk for its shareholders.[7] The very nature of any hedging plan is to implement protective measures for future periods. Restricting recovery of hedging costs incurred in the current period only instead of the period for which the hedge is targeted serves to render the hedging plan either highly risky or ineffective, neither of which is desirable or intended. In order to manage a hedging plan that will achieve the desired objective of stabilizing gas costs for customers, hedging costs must be attributed to the year for which the underlying hedges provide protection, not the year in which such costs are initially incurred. Since all hedging transactions engaged in by Piedmont provide price protection for a specific target month and year, this attribution is readily calculable.

During the period covered by Staff's audit, Piedmont engaged in hedging transactions which provided price protection to its Tennessee customers for up to 24 months from the date of the hedging transaction. These hedges were undertaken as a result of the operation of Piedmont's Hedging Plan, which indicated that by historic standards prevailing futures prices for natural gas out to a period of 24 months were highly favorable. The need to incur hedging costs associated with future periods is an inherent aspect of any meaningful hedging plan given that the purpose of hedging is to provide price protection for a future period. In light of this fact, and in order to manage an effective plan, Piedmont utilizes a target year approach to placing hedges and incurring hedging costs. This approach involves calculating the total annual gas costs for the most recent audited Incentive Plan year and then applying that known cap calculation to Piedmont's hedging activities for the next Incentive Plan year, ensuring that the 1% cap is never exceeded during any Incentive Plan year.[8] This method (1) allows Piedmont to manage the fact that ongoing hedging transactions can span up to a 24 month period which can impact 3 different annual review periods, and (2) matches hedging costs incurred with the period for which the hedges provide protection. We are concerned that the Staff's methodology assumes that all hedging transactions are made and closed within a single ACA annual review period – which is not the case. If Piedmont were forced to account for hedging costs based on Staff's

[7] Hedging is conducted solely for the benefit of Piedmont's ratepayers. Piedmont's Hedging Plan is intentionally designed to provide no financial upside or opportunity for the Company.

[8] It is significant to this process that the annual period for Piedmont's Incentive Plan, under which Piedmont is authorized to hedge and recover hedging costs, runs from July to June whereas the ACA audit period is January through December.

methodology then the desired benefits of the plan could not be realized. For example, if Piedmont is restricted to recovery of hedging costs within discrete ACA periods then Piedmont will never be able to hedge gas prices for January and would only be able to engage in very limited hedging from a time perspective for February and March of each year. This would render the hedging plan largely ineffective because Piedmont could not hedge for the period of highest consumption by its customers.

A schedule illustrating the "rolling" nature of Piedmont's hedging transactions and how the costs of those transactions tie to individual Incentive Plan year caps is shown below. This schedule demonstrates that Piedmont, as required by Service Schedule No. 316, has not exceeded the 1% cap for its hedging costs during this period when those costs are properly assigned to the period of the underlying hedging transactions.

Tennessee Hedging Plan
IPA Period
Methodology
In Millions $

		Annual Gas Costs	Hedging Target Cap	Costs at 12/31/2008
IPA Period Methodology				
Base Period 1	7/2005 - 6/2006	197.00		
Base Period 2	7/2006 - 6/2007	155.00		
Base Period 3	7/2007 - 6/2008	162.90		
Target Period Costs 1	7/2008 - 6/2009		1.97	1.80
Target Period Costs 2	7/2009 - 6/2010		1.55	1.20
Target Period Costs 3	7/2010 - 6/2011		1.63	0.10

Piedmont understands that in the context of an annual ACA audit, the determination of whether Piedmont has exceeded the 1% cap on hedging costs in any given Incentive Plan year is not completely apparent. In order to alleviate any concerns that Piedmont might have exceeded such cap, Piedmont agrees to provide Staff with an updated schedule in the form shown above in each future ACA audit.

Piedmont would also note that Staff's conclusion that Piedmont exceeded the 1% hedging cost cap with respect to non-margin related hedging costs during the ACA review period is facially inconsistent with the conclusions of the independent consultant who reviewed Piedmont's activities under its hedging plan for the same period covered by Staff's audit. That consultant, Exeter Associates, who was selected by the Staff as part of the triennial Performance Incentive Plan review process, reached the following conclusions about Piedmont's hedging activities during the review period (which included the period covered by the ACA audit):

> 1. "Hedging transaction costs included amounts paid for financial instruments such as option, and recovery was limited to 1 percent of the Company's total annual gas costs."[9]
>
> 2. "Exeter agrees that Piedmont adhered to the hedging activities approved under the Plan."[10]
>
> 3. "Piedmont was in technical compliance with the terms and conditions of the Performance Incentive Plan during the review period."[11]

Based on the foregoing, Piedmont respectfully submits that Staff's conclusion that Piedmont has exceeded the 1% cap on recoverable hedging costs with respect to non-margin related costs in its audit report is mistaken. Piedmont further submits that no adjustment is appropriate to Piedmont's Commodity cost of gas in this review for such non-margin hedging costs because Piedmont has stayed within the 1% cap on gas costs when hedging costs are properly allocated to the target period of the underlying transactions. This conclusion is bolstered by the report of Exeter Associates which finds that Piedmont was in compliance with its Plan and adhered to the hedging activities approved under that plan.

<u>Piedmont Agrees with Staff's Proposed Adjustment for Hedging Related Margin Requirements in Excess of the 1% Cap</u>.

[9] Report of Exeter Associates filed in Docket No. 05-00165 on February 23, 2010, at p. 40.
[10] Report of Exeter Associates filed in Docket No. 05-00165 on February 23, 2010, at p. 45.
[11] Id. at p. 46.

The Company agrees with Staff's adjustment to the review period Commodity gas costs identified above to the extent it is based upon a disallowance of margin requirements in excess of the 1% annual sales volume cap on hedging costs set forth in Service Schedule No. 316. In this case, the Staff adjustment excludes certain review period margin requirements associated with hedging transactions which, under Piedmont's Service Schedule No. 316, are classified as hedging costs subject to the 1% cap. The Company also agrees with Staff that any actual gains and losses on hedging transactions, which occur when those hedging transactions are ultimately closed, are to be recorded in the Company's ACA account as a gain or loss without being subject to any cap.

Conclusion

Based on the foregoing, Piedmont believes that the appropriate adjustment to Piedmont's Commodity gas costs (which captures "excess" margin requirements in excess of the 1% cap but appropriately attributes hedging costs to the periods covered by the underlying hedging transactions) is $3,560,244 as compared to Staff's proposed adjustment of $5,135,008, each as shown below.

Calculation of Recoverable Hedging Costs

	Staff	Company
Hedging Costs	3,170,424	1,595,660
Margin Requirements	4,170,214	4,170,214
Total Costs	7,340,638	5,765,874
1% Cap	2,205,630	2,205,630
Amount Over Cap	5,135,008	3,560,244

Staff Rebuttal to Company Response

Staff has reviewed the Company's response to this audit finding. While the circumstances that affected the Company's hedging transactions during this ACA audit period may not have been anticipated during the negotiations that gave rise to the settlement in Docket No. 05-00165 and there may be some merit to the Company's current argument, Staff is bound by the plain language of the tariff. There is nothing in the tariff language that directs Staff to look outside of the twelve (12) month period covered by the audit.

In its Conclusion, Piedmont presents a table showing a comparison of the Company's calculation of the amount over the (1%) cap to the Staff's calculation stated in its finding. Total costs that should be subject to the cap according to Piedmont's response is $5,765,874. Total costs recorded in the deferred gas cost account (ACA Account) and therefore subject to the cap is $7,340,638 as shown in the "Staff" column. The difference between the amount booked and the amount shown in the Company's response is in the non-margin hedging costs. In its discussion, Piedmont explains that of the $3,170,424 in non-margin hedging costs, $1,595,660 is attributable to the current audit period subject to the $2,205,630 cap and $1,574,764 is attributable to a future period.

Without commenting on the Company's interpretation of the tariff language, Staff points out that regardless of the appropriateness of attributing a portion of the non-margin hedging costs to a future period, Piedmont booked the entire amount to the current period; therefore, the total amount must be subjected to the 1% cap.

Based on the above discussion, Staff maintains that its audit finding is correct and does not change its opinion regarding the amount of hedging costs allowable for recovery in the current audit period.

FINDING #3:

Exception

The Company overstated its Storage Costs.

Discussion

The Company filed separate schedules for Storage accounts FSMA, FSPA, FSSNASH and LNG to report Storage Inventory activities. In October 2008, the Company made withdrawal adjustments to each of the inventory schedules in order to true up the storage balances. The result of these adjustments was a decrease in Storage costs of $354,371.67 for FSMA Storage, a decrease in Storage cost of $19,133.50 for FSSNASH Storage and an increase in Storage costs of $2,065.76 for FSPA Storage. These amounts, however, were not booked to the ACA account. Additionally, a negative $4,821.99 adjustment for LNG Storage was removed from the inventory schedule, after the Company indicated it was inappropriate.

Since these were prior period adjustments, the adjustments should have been made at the beginning of the audit period which was in January 2008 to accurately reflect the amount of interest on the ACA Account. Staff moved these adjustments to January 2008 on the inventory schedules, and recalculated the cost of inventory activities for all 12 months of the audit period based on the new withdrawal rates. Staff then included adjusting withdrawal charges of negative $360,171.87 for FSMA Storage, negative $140,068.07 for FSSNASH Storage and negative $704.19 for FSPA Storage in the ACA Account in January 2008.

One additional adjustment to the ACA was required due to the removal by the Company of the adjustment in the LNG Storage schedule. Removal of the adjustment caused a change in the withdrawal rates going forward, resulting in a Staff adjustment to the withdrawal charges of negative $43.98 in October 2008, a negative $70.84 in November 2008 and a negative $197.84 in December 2008 in the ACA Account.

The result of the above adjustments was a decrease in Commodity gas costs of **$501,256.79.** This represents an **over-recovery of gas costs**.

Company Response

The Company is in agreement with the above Audit Staff findings in the amount of $501,256.79 and will adjust its records accordingly.

FINDING #4:

Exception

The Company overstated its Commodity gas cost recoveries.

Discussion

The Commodity ACA recoveries are calculated by multiplying the sales volumes by the applicable Commodity ACA surcharge/(refund) rate. Using the schedules in the format provided by the Company to document the ACA recoveries, Staff could not verify that the Company's calculation of the $4,439,584.88 reported as the amount of Commodity ACA surcharges for audit period were accurate. At the request of Staff, the Company provided additional information which showed total Commodity ACA surcharges of $4,036,830.85 for the audit period. The result is that the Company reported **$402,754.03** more in Commodity ACA surcharges than it actually received. The effect is an **Under-recovery of** Commodity gas costs.

Company Response

The Company is in agreement with the above Audit Staff findings in the amount of $402,754.03 and will adjust its records accordingly.

FINDING #5:

Exception

The Company understated the amount of interest due to customers in the Commodity component of the ACA filing.

Discussion

Staff adjusted the Company reported Commodity ACA interest due from adjustments #1 - #4 above. The result of this finding is an **increase to reported interest due to customers of $79,616.71 (Over-recovery).**

Company Response

The Company disagrees with Audit Staff's calculation of interest from adjustments #1 - #4 above as a result of Piedmont's disagreement with Audit Staff Finding No. 2. Piedmont calculates that the correct adjustment to interest expense to reflect its position on Finding No. 2 is an over-recovery of $37,242.80.

Staff Rebuttal to Company Response

As stated in the Staff rebuttal to Finding #2, Staff could not change its opinion regarding the inclusion of hedging costs. Staff, therefore, cannot change its audit opinion regarding the additional **$79,616.71** of interest due to customers.

FINDING #6:

Exception

The Company understated its Demand gas cost recoveries.

Discussion

The Demand gas cost recoveries for "Sale for Resale" customers is calculated by multiplying the demand determinants of tariff rate 310 by the Demand PGA rate. During all 12 months of the audit period, the Company used incorrect demand determinants of tariff rate 310. The result of this error is an increase of **$6,572.47** in the Demand gas cost recoveries **(Over-recovery).**

The Demand ACA Surcharge for "Sale for Resale" customers is calculated by multiplying the demand determinants of tariff rate 310 by the Demand ACA Surcharge rate. In the same way as Demand gas cost recoveries, the company used incorrect demand determinants of tariff rate 310 for the audit period. The result of this error is an increase of **$2,598.13** in the Demand gas cost recoveries **(Over-recovery).**

The net effect (excluding interest) of Staff's adjustments is an increase in the Company reported Commodity gas cost recoveries of **$9,170.60(Over-recovery).**

Company Response

The Company is in agreement with the above Audit Staff findings in the amount of $9,170.60 and will adjust its records accordingly.

FINDING #7:

Exception

The Company understated the amount of interest due to customers in the Demand component of the ACA filing.

Discussion

Staff recalculated interest based upon the audit finding #6 above. Demand interest due to the customers was **understated by $338.02(Over-recovery)**. Staff made the adjustment to the ACA Account to reflect this amount.

Company Response

The Company is in agreement **with** the above Audit Staff findings in the amount of $338.02 and will adjust its records accordingly.

VIII. CONCLUSIONS AND RECOMMENDATIONS

Staff reviewed the gas costs and recoveries of Piedmont Natural Gas Company for the 12-month period ended December 31, 2008. As reported in the body of this report, Staff concludes that the Purchased Gas Adjustment mechanism, as calculated in the Actual Cost Adjustment, appears to be working properly and in accordance with the TRA rules for PNG. Staff's audit procedures revealed seven monetary findings reported in Section VII. with which the Company concurs except Findings #2 and #5. In this report, Staff was compelled to refute Company misrepresentations regarding our position as to the proper methodology that must be used in the required treatment of Hedging Costs. Despite our Hedging Cost issues with the methodologies utilized by the Company in the ACA filing, Staff acknowledges a good professional working relationship with Company personnel. Staff stands ready to assist the Company with future regulatory filings as needed.

Based on the Company's filing and the audit adjustments by Staff, the net balance in the ACA Account as of December 31, 2008 is a negative \$18,584,230.75.[12] This means that as of December 31, 2008, the Company had over-collected this amount from its customers. This balance will become the beginning balance at January 1, 2009 in the Company's next ACA filing, thereby correcting all errors noted in this report. **Staff requests the Authority's approval of the Company's adjusted ACA Account balance as stated in this report.**

Recommendation:

Currently the ACA audit cycle follows a calendar year, from January through December and the IPA[13] audit period is on a July through June audit cycle. Due to the intimate relationship of the two audits, the mismatch in audit cycles presents a problem to Staff. Information needed to audit the ACA Account balance may not be readily available for certain months and a similar issue in the audit of the IPA Account balance. Staff intends to discuss with Piedmont the possibility of transitioning the audit of the ACA Account to a July through June cycle. This would probably entail looking at an 18-month period on a one-time basis. While that may not be possible for the 2009 audit year due to the delays experienced in this audit, Staff would like to strive to that end in the following audit.

[12] SUMMARY OF THE ACA ACCOUNT, page 5.

[13] Incentive Plan Account audit.

APPENDIX A

PGA FORMULA[14]

The computation of the GCA can be broken down into the following formulas:

$$\text{Firm GCA} = \frac{D + DACA}{SF} - DB + \frac{P + T + SR + CACA}{ST} - CB$$

$$\text{Non-Firm GCA} = \frac{P + T + SR \;\; CACA}{ST} - CB$$

where

GCA	=	The Gas Charge Adjustment in dollars per Ccf/Therm, rounded to no more than five decimal places.
D	=	The sum of all fixed Gas Costs.
DACA	=	The demand portion of the ACA.
P	=	The sum of all commodity/gas charges.
T	=	The sum of all transportation charges.
SR	=	The sum of all FERC approved surcharges.
CACA	=	The commodity portion of the ACA.
DB	=	The per unit rate of demand costs or other fixed charges included in base rates in the most recently completed general rate case (which may be zero if the Company so elects and the Commission so approves).
CB	=	The per unit rate of variable gas costs included in base rates in the most recently completed general rate case (which may be zero if the Company so elects and the Commission so approves).
SF	=	Firm Sales.
ST	=	Total Sales.

[14] Pursuant to Docket 03-00209, the PGA Formula has been amended to include the gas cost portion of uncollectible accounts.

The computation of the RA can be computed using the following formulas:

$$\text{Firm RA} = \frac{DR1 - DR2}{SFR} + \frac{CR1 - CR2 + CR3 + i}{STR}$$

$$\text{Non-Firm RA} = \frac{CR1 - CR2 + CR3 + i}{STR}$$

where

RA	=	The Refund Adjustment in dollars per Ccf/Therm, rounded to no more than five decimal places.
DR1	=	Demand refund not included in a currently effective Refund Adjustment, and received from suppliers by check, wire transfer, or credit memo.
DR2	=	A demand surcharge from a supplier not includable in the GCA, and not included in a currently effective Refund Adjustment.
CR1	=	Commodity refund not included in a currently effective Refund Adjustment, and received from suppliers by check, wire transfer, or credit memo.
CR2	=	A commodity surcharge from a supplier not includable in the GCA, and not included in a currently effective Refund Adjustment.
CR3	=	The residual balance of an expired Refund Adjustment.

i = Interest on the "Refund Due Customers" account, using the average monthly balances based on the beginning and ending monthly balances. The interest rates for each calendar quarter used to compute such interest shall be the arithmetic mean (to the nearest one-hundredth of one percent) of the prime rate value published in the "Federal Reserve Bulletin" or in the Federal Reserve's "Selected Interest Rates" for the 4th, 3rd, and 2nd months preceding the 1st month of the calendar quarter.

SFR = Firm sales as defined in the GCA computation, less sales under a transportation or negotiated rate schedule.

STR = Total sales as defined in the GCA computation, less sales under a transportation or negotiated rate schedule.

Exhibit 1

SERVICE SCHEDULE NO. 316
Performance Incentive Plan

Applicability

The Performance Incentive Plan (the Plan) replaces the annual reasonableness or prudence review of the Company's gas purchasing activities overseen by the Tennessee Regulatory Authority (Authority or TRA). The Plan does not preclude the Authority from conducting an independent investigation into or examination of any aspect of the Plan or the Company's conduct thereunder. The Plan is designed to provide incentives to the Company in a manner that will produce rewards for its customers and its stockholders and improvements in the Company's gas procurement and capacity management activities. Each plan year will begin July 1. The annual provisions and filings herein would apply to this annual period. The Plan will continue until the Plan is either (a) terminated at the end of a plan year by not less than 90 days notice by the Company to the Authority or (b) the Plan is modified, amended or terminated by the Authority on a prospective basis.

Overview of Structure

The Plan establishes a predefined benchmark index to which the Company's commodity cost of gas is compared. It also addresses the recovery of gas supply reservation fees and the treatment of off-system sales and wholesale interstate sale for resale transactions. The net incentive benefits or costs will be shared between the Company's customers and the Company on a 75%-customers / 25%- stockholders basis for the Plan year commencing on July 1, 2006.

The Plan also is designed to encourage the Company to actively market off-peak unutilized transportation and storage capacity on pipelines in the secondary market. It also addresses the sharing of asset management fees paid by asset managers, and other forms of compensation received by the Company for the release and/or utilization of the Company's transportation and storage assets by third-parties. The Company shall notify the TRA Staff and the Consumer Advocate and Protection Division of the Office of the Attorney General (CAD) of all "other forms of compensation" prior to inclusion of such compensation in the Plan. The net incentive benefits or costs of such activities will be shared between the Company's customers and the Company utilizing a 75%-customers / 25%-stockholders formula commencing on July 1, 2006.

Every three years the Company's activities under the Plan will be reviewed comprehensively by an independent consultant. The first triennial review shall occur in the autumn of 2008. The scope of the review may include all transactions and activities related to the Performance Incentive Plan, including, but not limited to, natural gas procurement, capacity management, storage, hedging, reserve margins, and off-system sales.

The Company is subject to a cap on overall incentive gains or losses of $1.6 million annually. In connection with the Performance Incentive Plan, the Company shall file with the Authority Staff, and supply a copy to the Consumer Advocate and Protection Division of the Tennessee Attorney General (CAD), and update each year, a Three Year Supply Plan. The Company will obtain firm capacity and/or gas supply pursuant to such plan.

Commodity Costs

Each month the Company will compare its *total city gate commodity and cost of gas*[1] to a benchmark dollar amount. The benchmark gas cost will be computed by multiplying total actual purchase quantities for the month by a price index. The monthly price index is defined as:

$$I = F_f(P_0K_0 + P_1K_1 + P_cK_c + \ldots P_\alpha K_\alpha) + F_0O + F_dD;\ \text{where}$$
$$F_r + F_0 + F_d = 1;\ \text{and}$$

I = the monthly city gate commodity gas cost index.

F_f = the fraction of gas supplies purchased in the first-of-the-month market which are transported to the city gate under the Company's FT service agreements.

P = the Inside FERC Gas Market Report price index for the first-of-the-month edition for a geographic pricing region, where subscript 0 denotes Tennessee Gas Pipeline (TGP) Rate Zone 0; subscript 1 denotes TGP Rate Zone 1; subscript C denotes Columbia Gulf Transmission (CGT) - mainline, and subscript α denotes new incremental firm services to which the Company may subscribe in the future.[2] The indices used for calculating Midwestern capacity shall be those produced by Natural Gas Intelligence for monthly purchases and Gas Daily for daily purchases. The commodity index prices will be adjusted to include the appropriate pipeline

[1] Gas purchases associated with service provided under Texas Eastern Transmission Company Rate Schedule SCT shall be excluded from the incentive mechanism. The Company will continue to recover 100 percent of these costs through its PGA with no profit or loss potential. Extension or replacement of such contract shall be subject to the same competitive bidding procedures that will apply to other firm gas supply agreements. In addition, the Plan will measure storage gas supplies against the benchmark index during the months such quantities are purchased for injection. For purposes of comparing such gas purchase costs against the monthly city gate index price, the Company will exclude any commodity costs incurred downstream of the city gate to storage so that the Company's actual costs and the benchmark index are calculated on the same basis.

[2] To the extent that the Company renegotiates existing reservation fee supply contracts or executes new reservation fee supply contracts with commodity pricing provisions at a discount to the first-of-the-month price index, the Company shall modify the monthly commodity price index to reflect such discount.

maximum firm transportation (FT) commodity transportation charges and fuel retention to the city gate under the Company's FT service agreements.[3]

K = the fraction (relative to total maximum daily contract entitlement) of the Company's total firm transportation capacity under contract in a geographic pricing region, where the subscripts are as above.[4]

F_o = the fraction of gas supplies purchased in the first-of-the-month spot market which are delivered to the Company's system using transportation arrangements other than the Company's FT contracts.

0 = the weighted average of Inside FERC Gas Market Report first-of-the-month price indices, plus applicable IT rates and fuel retention, from the source of the gas to the city gate, where the weights are computed based on actual purchases of gas supplies purchased by the Company and delivered to the Company's system using transportation arrangements other than the Company's FT contracts.

F_d = the fraction of gas supplies purchased in the daily spot market.

D = the weighted average of daily average index commodity prices taken from Gas Daily for the appropriate geographic pricing regions, where the weights are computed based on actual purchases made during the month. The commodity index prices will be adjusted to include the appropriate transportation commodity charges and fuel retention to the city gate.

Gas Supply Reservation Fees

The Company will continue to recover 100% of gas supply reservation fee costs through its PGA with no profit or loss potential. For new contracts and/or contracts subject to renegotiation during the Plan year, the Company will solicit bids for gas supply contracts containing a reservation fee.

[3] Capacity released for a month shall be excluded from the benchmark calculation for that month, excluding capacity released under an agreement where the Company maintains city gate delivery rights for the released capacity during such month.

[4] Because the aggregate maximum daily contract quantities in the Company's FT contract portfolio vary by month over the course of the year, the weights will be recalculated each month to reflect actual contract demand quantities for such month. The contract weights, and potentially the price indices used, will also vary as the Company renegotiates existing or adds new FT contracts. As new contracts are negotiated, the Company shall modify the index to reflect actual contract demand quantities and the commodity price indices appropriate for the supply regions reached by such FT agreements. Citygate benchmark calculations shall be computed utilizing the Company's Design Day delivery requirements (deliveries required on a peak day).

Off-System Sales And Sale For Resale Transactions

Margin on off-system sales and wholesale sale-for-resale transactions using the Company's firm transportation and capacity entitlements (the costs of which are recovered from the Company's ratepayers) shall be credited to the Plan and will be shared with ratepayers. Margin on such sales will be defined as the difference between the sales proceeds and the total variable costs incurred by the Company in connection with the transaction, including transportation and gas costs, taxes, fuel, or other costs. For purposes of gas costs, the Company will impute such costs for its related supply purchases at the benchmark first-of-the-month or daily index, as appropriate, on the pipeline and in the zone in which the sale takes place. The difference between the Company's actual costs and such index price is taken into account under the Plan. After deducting the total transaction costs from the sales proceeds, any remaining margin will be credited to commodity gas costs and shared with customers on a 75%- customer / 25%-stockholders basis.

Capacity Management

To the extent the Company is able to release transportation or storage capacity, or generate transportation or storage margin associated with off-system or wholesale sales-for-resale, the associated cost savings and/or asset management fees, or other forms of compensation associated with such activities, shall be shared by the Company and customers according to the following sharing formula: 75%-customers / 25%-stockholders. The Company shall notify the TRA Staff and the Consumer Advocate and Protection Division of the Office of the Attorney General (CAD) of all "other forms of compensation" prior to inclusion of such compensation in the Plan.

Hedging Activities

The Company may engage in hedging transactions[5] within the PGA/ACA mechanism. Costs related to hedging transactions may be recovered through the ACA account; provided, however, that such costs recovered through the ACA account shall not exceed one percent (1%) of total annual gas costs. Costs related to hedging transactions recoverable through the ACA account shall be defined as all direct, transaction related costs arising from the Company's prudent efforts to stabilize or hedge its commodity gas costs including, without limitation, brokerage fees, margin requirements, and the costs of financial instruments. All monthly gains and losses shall be (credited)/debited to the ACA account.

Determination of Shared Saving

Each month during the term of the Plan, the Company will compute any gains or losses in accordance with the Plan. If the Company earns a gain, a separate Incentive Plan Account (IPA) will be debited with such gain. If the Company incurs a loss, that same IPA will be credited with such loss. During a Plan year, the Company will be limited to overall gains or losses totaling $1.6 million. Interest shall be computed on balances in the IPA using the same interest rate and methods as used in the Company's Actual Cost Adjustment (ACA) account. The offsetting

[5] Hedging transactions, as used herein, shall include but not be limited to futures contracts, financial derivative products, storage swap arrangements, or other private agreements to hedge, manage or reduce gas costs.

entries to IPA gains or losses will be recorded to income or expense, as appropriate. At its option, however, the Company may temporarily record any monthly gains in a non-regulatory deferred credit balance sheet account until results for the entire plan year are available.

Gains or losses accruing to the Company under the Plan will form the basis for a rate increment or decrement to be filed and placed into effect separate from any other rate adjustments to recover or refund such amount over a prospective twelve-month period. The Company is subject to a cap on overall incentive gains or losses of $1.6 million annually.

T Each year, effective November 1, the rates for all customers, excluding transportation customers who receive no direct benefit from any gas cost reductions resulting from the plan, will be increased or decreased by a separate rate increment or decrement designed to amortize the collection or refund of the June 30 IPA balance over the succeeding twelve month period. The increment or decrement will be established by dividing the June 30 IPA balance by the appropriate volumetric billing determinants for the twelve months ended June 30. During the twelve month amortization period, the amount collected or refunded each month will be computed by multiplying the billed volumetric determinants for such month by the increment or decrement, as applicable. The product will be credited or debited to the IPA, as appropriate. The balance in the IPA will be tracked as a separate collection mechanism. Subject to approval by the TRA, the Company may also propose to refund positive IPA balances on an intra-year basis
T by making direct bill credits to all customers (except transportation customers) where such direct bill credit would be beneficial to customers.

Filing with the Authority

The Company will file calculations of shared savings and shared costs quarterly with the Authority not later than 60 days after the end of each interim fiscal quarter and will file an annual report not later than 60 days following the end of each plan year. Unless the Authority provides written notification to the Company within 180 days of the annual reports, the Incentive Plan Account shall be deemed in compliance with the provisions of this Service Schedule. The Authority Staff may expand the time for consideration of the annual reports by up to an additional sixty (60) days upon written notification to the Company or longer by mutual agreement or upon a showing of good cause.

Periodic Index Revisions

Because of changes in the natural gas marketplace, the price indices utilized by the Company, and the composition of the Company's purchased gas portfolio may change. The Company shall, within sixty (60) days of identifying a change to a significant component of the mechanism, provide notice of such change to the Authority. Unless the Authority provides written justification to the Company within sixty (60) days of such notice, the price indices shall be deemed approved as proposed by the Company.

Gas Supply Incentive Compensation Program

The Company has in place a Gas Supply Incentive Compensation Program (the Program) designed to provide incentive compensation to selected Gas Supply non-executive employees involved in the implementation of the the Company's Incentive Plan and Secondary Marketing Programs in a manner consistent with the benefits achieved for customers and shareholders through improvements in gas procurement and secondary marketing activities. Participants in the program receive incentive compensation as recognition for their contribution to the customers and shareholders of the Company through lower gas costs and gains related thereto. Performance measures are established for the Program each year.

During the time this tariff is in effect, the Company will continue to have in place the Gas Supply Incentive Compensation Program, as detailed to the Authority, as it relates to the Company's Incentive Plan. The Company will advise the Authority in writing of any changes to the Program, and unless the Company is advised within 60 days, said changes will become effective. The Authority may expand the time for consideration of such changes upon written notification to the Company. No filing for prior approval is required for changes in the performance measures.

Triennial Review

A comprehensive review of the transactions and activities related to the Performance Incentive Plan shall be conducted by an independent consultant once every three years. The initial triennial review shall be conducted in the autumn of 2008 and subsequent triennial reviews shall be conducted every third year thereafter. The TRA Staff, the CAD, and the Company shall make an effort to maintain a list of no less than five (5) mutually agreeable independent consultants or consulting firms qualified to conduct the aforementioned review. Any dispute concerning whether an independent consultant shall be added to the list shall be resolved by the TRA Staff, after consultation with the Company and the CAD. For each review, the TRA Staff shall select three (3) prospective independent consultants from that list. Each such consultant shall possess the expertise necessary to conduct the review. The TRA Staff shall provide the list of prospective independent consultants to the Company and the CAD via e-mail. The Company and the CAD shall have the right, but not the obligation, to strike one (1) of the prospective independent consultants from the list by identifying the stricken consultant in writing to the TRA Staff within thirty (30) days from the date the list is e-mailed. The TRA Staff shall select the independent consultant from those remaining on the list after the Company's and the CAD's rights to strike have expired. The cost of the review shall be reasonable in relation to its scope. Any and all relationships between the independent consultant and the Company, the TRA Staff, and/or the CAD shall be disclosed, and the independent consultant shall have had no prior relationship with either the Company, the TRA Staff, or the CAD for at least the preceding five (5) years unless the Company, the TRA Staff and the CAD agree in writing to waive this requirement. The TRA Staff, the CAD and the Company may consult amongst themselves during the selection process; provided, however, that all such communications between the parties shall be disclosed to any party not involved in such communication so that each party may participate fully in the selection process.

The scope of the triennial reviews may include all transactions and activities related either directly or indirectly to the Performance Incentive Plan as conducted by the Company or its affiliates, including, but not limited to, the following areas of transactions and activities: (a) natural gas procurement; (b) capacity management; (c) storage; (d) hedging; (e) reserve margins; and (f) off-system sales. The scope of each triennial review shall include a review of each of the foregoing matters as well as such additional matters as may be reasonably identified by the Company, the TRA Staff, or the CAD relative to the operation or results of the Performance Incentive Plan.

The Company, the TRA Staff, or the CAD may present documents and information to the independent consultant for the independent consultant's review and consideration. Copies of all such documents and information shall be presented simultaneously to the independent consultant and all other parties.

The independent consultant shall make findings of fact, as well as identify and describe areas of concern and improvement, if any, that in the consultant's opinion warrant further consideration; however, the independent consultant shall not propose changes to the structure of the Performance Incentive Plan itself. The independent consultant shall complete and issue a written report of its findings and conclusions by July 1 of the year immediately following the triennial review. The report deadline may be waived by the written consent of the TRA Staff, the Company, and the CAD.

The independent consultant shall not propose changes to the structure of the Performance Incentive Plan itself; however, the TRA Staff, the Company, or the CAD may use the report of the independent consultant as grounds for making recommendations or proposed changes to the Authority, and the TRA Staff, the Company, or the CAD may support or oppose such recommendations or proposed changes. Any proposed changes to the structure of the Performance Incentive Plan resulting from the initial triennial review or subsequent triennial reviews, whether adopted by agreement or pursuant to a ruling of the Authority, shall be implemented on a prospective basis only beginning with the incentive plan year immediately following such agreement or ruling.

The cost of the triennial reviews shall be paid initially by the Company and recovered through the ACA account. The TRA Staff may continue its annual audits of the IPA and the ACA account, and the triennial reviews shall not in any way limit the scope of such annual audits. The CAD retains all of its statutory rights, and the triennial reviews shall not in any way affect such rights.