IN THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE

IN RE:	)	
	)	
Petition of Piedmont Natural Gas Company, Inc. for Approval of Service Schedule No. 317 and Related Energy Efficiency Programs	)	**DOCKET NO. 09-00104**

CONSUMER ADVOCATE'S MEMORANDUM IN SUPPORT OF MOTION TO REMOVE CONFIDENTIAL DESIGNATION OF CERTAIN DOCUMENTS

Robert E. Cooper, Jr., Attorney General and Reporter for the State of Tennessee, by and through the Consumer Advocate and Protection Division ("Consumer Advocate"), pursuant to TRA Rule 1220-1-2-.11(5) (a) and Paragraph 11 of the Protective Order entered in this Docket, hereby submits this Memorandum in Support of its request to remove the Confidential designation of certain materials provided by Piedmont Natural Gas Company, Inc. (Piedmont) during discovery.

During the discovery process in this Docket, Piedmont has produced certain documents, calculations and other materials that they have designated as Confidential under the terms of the Protective Order in place in this matter. After having reviewed the materials so designated, the Consumer Advocate now requests that the Confidential designation be removed from a small number of the many items labeled as Confidential by Piedmont in order that they may be used freely in the course of this proceeding. The specific documents are detailed below.

Generally, whether to modify a Protective Order to remove the Confidential designation from documents or the like involves a balancing of the competing interests at work in the case. In *Ballard v. Herzke*, 924 S.W.2d 652 (Tenn. 1996), the Supreme Court laid out those factors

beginning at page 658 when it focused on the need of the public to know versus the privacy expectations of private parties. Where litigation involves only private parties and involves issues only of concern to them, then the scale weighs heavily in favor of keeping material confidential. However, as the Court in *Ballard* stated, where the information sought to be sealed is of public concern then that must be weighed against the need or the desire of a party to keep it confidential. That weighing will be discussed below for each category of documents sought to be de-classified.

Company Decoupling Projections. The first item that the Consumer Advocate seeks to have removed from Confidentiality is the information contained in Piedmont's responses to Discovery Requests 27, 28 and 29. Those responses contain information with Piedmont's projections relating to how decoupling would have affected Piedmont's financial performance had it been in place over certain time periods already passed. Among other things these show how Piedmont's return on equity would have been changed had decoupling already been implemented. Where Piedmont's data shows how its revenues and its return on equity would have been significantly enhanced by decoupling in the past, it is supremely relevant and essential for the Authority to be able to review that information in the open and for ratepayers to see how their rates will be affected in the future if Piedmont's proposal is adopted going forward.

Because the information noted by Piedmont as Confidential in those responses is of significant public concern and interest, and consequently because the risk of embarrassment or competitive disadvantage to Piedmont is low or non-existent, then the equities weigh in favor of removing the designation for those responses. In order to adequately review and deliberate on the effect that decoupling will have on Piedmont's revenue and other financial performance, the Authority needs for the historical precedent for that decision to be part of the public debate. In a

recent similar deliberation in Rhode Island, the Public Utilities Commission there expressly discussed the effects decoupling would have had if implemented earlier in arriving at their decision of whether and in what form to adopt the decoupling proposal of the utility in that case. See Decision and Order of Rhode Island Public Utilities Commission in Docket No. 3943 filed on January 29, 2009 at page 70 (A copy of the full Order was provided to Piedmont during discovery. Due to the length of the Order and for the sake of convenience, the relevant pages are attached to this Memorandum). There is no compelling reason to continue the classification of the information contained in Piedmont's responses to discovery requests 27, 28 and 29 as confidential and the public's concern over that information outweighs any need that Piedmont might have to keep the designation. Therefore, the Confidential designation on those responses should be removed.

Bond and Other Rating Reports. The Consumer Advocate also seeks to have Confidential designation for the Bond Rating Report and other rating reports filed in response to Discovery Request 30 similarly removed. The Bond Report was prepared by Standard & Poor's rating service and appears to be available to companies, investors and other people beyond just Piedmont. Other information in response to Request 30 is from the American Gas Association, Moody's, Davidson & Co. and Merrill Lynch. This information also appears to be of a type available to investors and others outside of Piedmont. As such, the information and analysis is not protected by any privilege and can already be accessed by others outside of the parties to this Docket. Once again, because it contains information that is essential to the ratepayers of Piedmont and the public at large to understand the effects that Piedmont's decoupling plan will have on their rates and on the return that Piedmont earns, the equities weigh strongly in favor of these reports prepared by outside rating agencies having their Confidential tag removed. There

simply is nothing confidential about how Wall Street views Piedmont and the effects that decoupling will have on its bottom line and its bond rating.

Company Advertising Budget. The final item for which that the Consumer Advocate seeks to have the Confidential designation removed is the information contained in Piedmont's response to Discovery Request 35 that details how much Piedmont spent on advertising over a five year period. Where Piedmont is proposing as part of its decoupling mechanism to spend money on consumer education for energy efficiency, it is essential for the rate payers of Piedmont and the public at large to know how much, if any, of the proposed consumer education they are being asked to pay for is really new spending. Only by analyzing past expenditures on advertising and energy efficiency promotions can the Authority know how much Piedmont is offering to spend in new advertising to promote energy efficiency in order to be able to properly weigh Piedmont's request for a guaranteed return. Before Piedmont's ratepayers are asked to foot the bill for new energy efficiency program advertisements, ostensibly in their own interest, they should be able to see how much advertising Piedmont is already doing, especially since they are already paying for it as part of general rates already in effect. Finally, as a monopoly provider of natural gas in its tariff area, Piedmont has no competitor who could take the information Piedmont seeks to keep confidential and use it to Piedmont's detriment. As the balancing called for in *Ballard* shows, the public's interest in how their rate money is spent outweighs Piedmont's need or desire to keep its advertising budget confidential. With no true competitor, Piedmont is in no position to be harmed by the disclosure and the public interest in knowing the figures is substantial.

Summary. The Consumer Advocate, on behalf of Piedmont's ratepayers, seeks to have the Confidential designation for three limited groups of documents removed. The first is the data

showing how decoupling would have affected Piedmont's earnings had it been previously implemented. Before the ratepayers are asked to foot the bill for energy conservation, they should be able to see, and the Authority should be able to deliberate in the open with the data that best shows how Piedmont will benefit financially from this proposal. Piedmont, as a publicly regulated monopoly utility, has no natural competitor who could take the requested information and use it against Piedmont. There is no law, rule or regulation which makes this information confidential. On the other hand, ratepayers need to see how their hard earned dollars will benefit Piedmont.

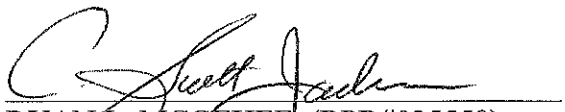
Documents prepared by rating agencies and other similar reviewers of Piedmont and the natural gas industry are available to many outside of these proceedings. As such, Piedmont has little or no expectation that the information contained in their response to Discovery Request 30 will be held as private or Confidential and the public concern over what is contained in those reports outweighs any such expectation by Piedmont.

Finally, before the ratepayers of Piedmont are asked to foot the bill for energy conservation measures including public education, they are entitled to see how much Piedmont is already spending on such measures, especially since those sums are covered by the general rates that they are already paying to Piedmont. Piedmont has no competitor who could take the information contained in response to Discovery Request 35 and use it to Piedmont's detriment and the public interest in knowing where its rate dollars are spend outweigh any desire that Piedmont has to keep this information as Confidential.

The Consumer Advocate therefore asks that the Authority to remove the Confidential designation on the documents or classes of documents described above.

Respectfully Submitted,

ROBERT E. COOPER, JR., (BPR#010934)
Attorney General and Reporter



RYAN L. MCGEHEE, (BPR#025559)
Assistant Attorney General
C. SCOTT JACKSON, (BPR#011005)
Senior Counsel
Office of the Attorney General
Consumer Advocate and Protection Division
P.O. Box 20207
Nashville, Tennessee 37202-0207
Telephone: (615) 532-5512
Fax: (615) 741-1026

Dated: December 7th, 2009.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Memorandum was served via U.S. Mail or electronic mail upon:

Jane Lewis-Raymond
Piedmont Natural Gas Company, Inc.
P.O. Box 33068
Charlotte, NC 28233

R. Dale Grimes
Bass, Berry & Sims PLC
315 Deaderick Street, Suite 2700
Nashville, TN 37238-3001

James H. Jefferies IV
Moore & Van Allen PLLC
100 North Tryon Street, Suite 4700
Charlotte, NC 28202-4003

This the 7th day of December, 2009.

C. Scott Jackson
Senior Counsel

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE:

APPLICATION FOR RATE CHANGE
PURSUANT TO R.I.G.L. §§ 39-3-10 AND
39-3-11 OF NARRAGANSETT ELECTRIC
D/B/A NATIONAL GRID

DOCKET NO. 3943

DECISION AND ORDER

DATED: January 29, 2009

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE:

NATIONAL GRID GAS APPLICATION TO IMPLEMENT NEW RATES — DOCKET NO. 3943

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The Company states that the "primary reason for the Company's [decoupling] proposal is to advance the goal of achieving greater energy efficiency in the State of Rhode Island." Ex. NGrid-2 at 13 (Stavropoulos). Yet there is little or no evidence in the record to demonstrate how or why this would occur. The Company has not identified any new conservation or energy efficiency initiatives that it would undertake in the event that decoupling were approved. No party presented any study or analysis of additional energy efficiency that decoupling would produce in Rhode Island.

The Company's incentive or disincentive to embrace conservation initiatives in the absence of decoupling was the subject of conflicting testimony. A Company witness testified that incentives influence utility behavior, and that decoupling would cause the Company to reach for the stars in developing new conservation initiatives. Tr. 10/22/08 at 28 (Stavropoulos). Certain intervenors also testified that decoupling could be expected to induce the Company to more aggressively pursue conservation and energy efficiency. Tr. 10/23/08 at 68-69, 88 (Kaplan). On the other hand, the Division's expert witness testified that while decoupling might affect the Company's behavior, it would not necessarily have any impact. The Division's expert suggested several reasons why financial incentives might not affect the Company's behavior at all. Tr. 10/21/08 at 208 (Oliver).

The fact that decoupling may eliminate a disincentive for the Company to promote conservation, even if true, does not necessarily translate into any significant reduction in consumption above what would have been achieved as a result of local and national economic pressures, technology improvements, and other extrinsic factors. Regardless of decoupling, most customers will have an incentive to conserve because reduced usage translates directly into lower

commodity charges for the customer, and commodity costs currently account for over two thirds of the average residential bill.

Revenue decoupling would protect the Company from revenue declines attributable to any cause, not only energy conservation and efficiency efforts. Ex. DIV-5 at 37 (Rothschild) (decoupling would "significantly reduce the non-diversifiable risks exposure to NG investors by a revenue stream that would be essentially unaffected by swings in economic conditions in the service territory."). Decoupling would reduce the Company's revenue risk to zero, and shift the risk of revenue variations to ratepayers. Tr. 10/22/08 at 76 (Stavropoulos). While the record includes substantial evidence of the benefits of decoupling to the Company, the evidence that decoupling will benefit ratepayers is largely speculative. Indeed, the record reflects the significant financial impact on ratepayers that decoupling might have. Over the last four years, revenue decoupling would have resulted in an additional $34 million of payments to the Company. Ex. TEC-RI-3 (NGrid Response to TEC-RI Data Request 1-7); Tr. 9/26/08 at 100 (Simpson) ("If the revenue decoupling mechanism had been in effect for all rate classes the net effect would have been the $34 million that Mr. Farley calculates.").

The Company is already protected from revenue variations caused by unusually cold or warm weather, through the weather normalization adjustment. It is also allowed to adjust demand charges for medium, large and extra large commercial and industrial customers based on usage during the prior winter. The Company is also allowed to recover its commodity cost and, as a result of this docket, to reconcile its expenses for pension and PBOP costs and for the accelerated capital replacement program. These mechanisms already protect the Company against unanticipated revenue shortfalls in many areas, and mitigate the need for full decoupling.

Certain intervenors emphasize that other utility regulators have approved decoupling, and suggest that the Commission should follow their example. *See, e.g.*, CLF Post-Hearing Mem. at 10-11. The decisions of other regulatory bodies are not evidence that decoupling would materially contribute to energy conservation and efficiency in Rhode Island. Over time, the adoption of decoupling in other states may produce concrete evidence of ratepayer benefits that could reasonably be expected to occur in Rhode Island, but that has not yet occurred.

After careful consideration of the evidence and arguments presented by the parties and intervenors, the Commission finds that the Company has not carried its burden of proof on the proposed RDM. The parties agree that full revenue decoupling would be a significant change in traditional ratemaking policy in Rhode Island. To adopt full revenue decoupling, the Commission needs more than speculative assertions that it would promote additional conservation or energy efficiency. The record reflects that decoupling is still relatively new and untested in the United States, having only been approved by fifteen states, many of them within one to two years. Ex. TEC-RI-3 (NGrid Response to data request TEC 1-77); *see* Ex. CLF-3 (Mass. Department of Public Uitlities); Ex. CLF-5 (North Carolina Utilities Commission); Ex. CLF-7 (Maryland Public Service Commission); Ex. CLF-8 (New York Public Service Commission). The impact of full decoupling on utility behavior and on ratepayers is not clear.

Traditional ratemaking has worked well in the past. The Commission is responsible for reviewing utility operations, and a full base rate case where witnesses are subject to examination and cross-examination is a valuable opportunity to look at the entire operation of the Company. Revenue decoupling may have the undesirable consequence of further enlarging