BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

June 9, 2010

IN RE:	)	
	)	
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**

ORDER DENYING MARGIN DECOUPLING TRACKER RIDER

This matter came before Director Mary W. Freeman, 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 January 25, 2010 for consideration of the *Petition of Piedmont Natural Gas Company, Inc. for Approval of Service Schedule No. 317 and Related Energy Efficiency Programs* ("*Petition*") filed on July 16, 2009. Through the *Petition*, Piedmont Natural Gas Company, Inc. ("Piedmont" or "Company") is requesting approval to implement energy efficiency and conservation programs and a Margin Decoupling Tracker ("MDT") mechanism.

TRAVEL OF THE CASE

Subsequent to the filing of Piedmont's *Petition*, the Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate") filed a *Complaint and Petition to Intervene* ("*Petition to Intervene*") on July 31, 2009. Piedmont filed *Piedmont Natural Gas Company, Inc.'s Opposition to the Complaint and Petition to Intervene by the Tennessee Consumer Advocate and Protection Division of the Attorney General* on August 10,

2009. The Consumer Advocate filed its response to the Company's opposition on August 21, 2009. At a regularly scheduled Authority Conference held on August 24, 2009, the panel voted unanimously to convene a contested case proceeding, to suspend the proposed tariff for ninety days, from September 1, 2009 to November 29, 2009, and to appoint the Authority's General Counsel or his designee to serve as Hearing Officer for the purpose of handling preliminary matters and preparing this matter for hearing before the panel.

The Hearing Officer issued an *Order Granting Intervention, Determining Issues, and Establishing Procedural Schedule* on October 13, 2009. On November 24, 2009, the Hearing Officer issued his *Order Granting Motion for Entry of a Protective Order and Modifying Procedural Schedule.* The *Notice of Hearing and Pre-Hearing Conference* was issued by the Hearing Officer on December 3, 2009, and the *Pre-Hearing Order* was issued on December 16, 2009.[1]

The parties undertook discovery, and subsequently Piedmont filed the Pre-filed Direct Testimony of David R. Carpenter, Russell A. Feingold, Steve Lisk and Frank Yoho on December 4, 2009. On the same day, the Consumer Advocate filed the Pre-Filed Direct Testimony of Terry Buckner, Christopher C. Klein and David Dismukes. On December 11, 2009, each of the Company's witnesses filed Pre-filed Rebuttal Testimony. The Company also filed the Pre-filed Rebuttal Testimony of David Dzuricky. The Consumer Advocate filed the Pre-filed Rebuttal Testimony of Terry Buckner on December 11, 2009.

[1] At the Pre-Hearing Conference held on December 14, 2009, the Hearing Officer informed the parties that Piedmont should have at least one of its witnesses prepared to address the Public Utility Regulatory Policies Act ("PURPA") standards as directed by the panel in Docket No. 09-00065. *Pre-Hearing Order*, p. 4 (December 16, 2009). *See also 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, *Order Declining to Adopt Standards in Instant Case*, pp. 3-4 (January 11, 2010).

THE HEARING AND POST-HEARING FILINGS

The Hearing was held on December 17-18, 2009. Participating in the Hearing on behalf of the parties were the following respective counsel:

> Piedmont Natural Gas Company – **James H. Jeffries IV, Esq.** and **Brian Heslin, Esq.**, Moore & Van Allen PLLC, 100 North Tryon Street, Suite 4700, Charlotte, North Carolina 28202-4003; **Erin M. Everitt, Esq.**, Bass, Berry and Sims PLC, 150 Third Avenue South, Suite 2800, Nashville, Tennessee 37201.
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> Consumer Advocate and Protection Division – **C. Scott Jackson, Esq.** and **Ryan L. McGehee, Esq.**, Office of the Attorney General, P.O. Box 20207, Nashville, TN 37202-0207.

The panel heard testimony from Company witnesses: Frank Yoho, Russell A. Feingold, David R. Carpenter, Steven L. Lisk and David Dzuricky. David E. Dismukes, Christopher C. Klein and Terry Buckner testified for the Consumer Advocate. No member of the public sought recognition during the Hearing, but various members of the public filed comments prior to the Hearing. Post-Hearing Briefs were filed on January 4, 2010.

ISSUES AND POSITIONS OF THE PARTIES

The Authority adopted five issues for determination in the case.[2] Additionally, the 2007 PURPA standards were considered by the Authority in this docket. The parties' respective positions on each issue and the 2007 PURPA standards are set out below.

Issue 1: **What is the appropriate mechanism, or financial incentive, to insure that Piedmont's financial incentives are aligned with the state's energy conservation policy set out in 2009 Public Act 531, Section 53?**[3]

Piedmont: Piedmont asserts that Service Schedule No. 317, which proposes the MDT mechanism, satisfies all the requirements of Tennessee policy set out in Tenn. Code Ann. § 65-4-126 to align the Company's financial incentives with the interests of its customers. According to the Company, the decoupling proposal accomplishes this by "trueing [sic] up" the recovery of

[2] *See Order Granting Intervention, Determining Issues, and Establishing Procedural Schedule* (October 13, 2009).
[3] This Public Act is codified at Tenn. Code Ann. § 65-4-126.

average per customer margin in a way that assures the Company will recover exactly the right amount of fixed costs from its residential customers as determined by the TRA in a rate case. Piedmont asserts that the mechanism is neutral in that both over and under recoveries are trued up. It notes that the benefits to customers from the mechanism include: protecting against over-recovery of margin when customer usage is higher than projected; maintaining usage-based rates as preferred by customers; preserving gas cost savings benefits for customers associated with conservation; extending the time periods between rate cases by eliminating margin erosion from lower per customer usage; and permitting the Company to promote energy efficiency and conservation programs that will save customers money in lower utility bills. Piedmont states that the design also makes sense because it allows the recovery of fixed costs on a fixed basis. Piedmont also notes that decoupling is supported by a number of legislative enactments, including Tenn. Code Ann. § 65-4-126, as well as by a number of trade groups.[4]

Piedmont asserts that the Consumer Advocate's criticisms of the MDT as neither valid nor compelling. The Company states that rather than shifting risk to customers as asserted by the Consumer Advocate, the MDT will eliminate risk for both customers and the Company. Piedmont states that its proposal offers consumer protective measures that effectively eliminate any potential incremental risk to customers. Piedmont proposes the following consumer protective measures: adoption of the MDT on a trial basis for the shorter of three years or until the Company files its next general rate case, a cap on earnings during the trial period, and full payment (without cost recovery) for the Company's energy efficiency programs during the same time period. Finally, Piedmont asserts that the Consumer Advocate's alternative proposal, that

[4] *Brief of Petitioner Piedmont Natural Gas Company, Inc. in Support of Approval of Proposed Service Schedule No. 317 and Related Energy Efficiency Programs*, pp. 10-13 (January 4, 2010) (hereinafter "*Piedmont's Brief*").

the Authority disapprove the MDT and retain the Company's existing rate structure, is inconsistent with Tenn. Code Ann. § 65-4-126.[5]

Consumer Advocate: The Consumer Advocate proposes a lost base revenue mechanism[6] to align the Company's financial incentives with encouraging consumers to become more energy efficient. With such a mechanism, the Company's financial incentives are aligned with customers by making the utility whole for lost revenue attributable solely to the utility's energy conservation efforts and provides an incentive if the efforts are successful in producing cost-effective and measurable results.[7]

According to the Consumer Advocate, the Company's proposed MDT is not just and reasonable because it is an arbitrary mechanism that will raise the rates of consumers while generating for the Company a financial windfall that is out of proportion with the insignificant revenue loss generated from conservation programs. The benefits to consumers from decoupling are unknown. The Company's proposed weatherization and equipment rebate programs are modest in impact and scope, and the Company's annual cost for these programs is not significant in comparison to its revenues. On the other hand, the benefits to the Company through the proposed MDT are substantial. Had the mechanism been in place since Piedmont's last rate case in 2003, Piedmont's revenues would have grown by $19 million. Further, if the proposal is approved, the Company's rates will increase by $1.9 million over the next twelve months while the cost of the proposed conservation programs would result in only $20,000 in revenue loss to the Company. The Consumer Advocate states that the theory behind Piedmont's decoupling proposal is that if its profits are no longer dependent on sales volume, it no longer has a

[5] *Id.* at 14-16.
[6] A lost base revenue mechanism is a performance based mechanism that would allow the Company to recover its costs for energy conservation programs and recover non-gas revenues lost due to such programs. Additionally, the mechanism would allow the award of financial incentives for successful energy conservation programs. *Post-Hearing Brief of the Consumer Advocate*, p. 9 (January 4, 2010) (hereinafter "*Consumer Advocate's Brief*").
[7] *Consumer Advocate's Brief*, p. 9.

disincentive to encourage conservation. The Consumer Advocate asserts that there is no economic or academic treatise showing decoupling as a means or the only solution to encourage conservation.[8]

The Consumer Advocate further asserts that: 1) the evidence in the proceeding does not establish the need for decoupling; 2) one side-effect of decoupling is a weakening of the incentive for the utility to control costs; 3) Piedmont's proposed MDT does not comply with Tennessee's new conservation policy; and 4) the current regulatory framework and natural gas market provide the Company with sufficient financial incentive to encourage conservation. Should the Authority determine that a decoupling mechanism is warranted, the Consumer Advocate proposes that the Authority adopt the "Colorado Model," a decoupling mechanism substantially modified by the Colorado Public Utilities Commission to address concerns regarding the shift of risk to customers and maintenance of the incentive to the utility to control costs. The Consumer Advocate further notes that there are other safeguard modifications the Authority should consider if the Authority decides to adopt a decoupling mechanism, the safeguards proposed by Piedmont being insufficient.[9]

Issue 2: **If such mechanism or incentive is adopted, what is the appropriate customer usage level and/or margin to be used as the benchmark for Piedmont's proposed decoupling mechanism?**

Piedmont: The Company proposes to use four factors to true-up monthly actual normalized average per customer usage with the assumed normalized usage underlying the Company's approved volumetric rates. Piedmont further proposes to use the approved versions of these factors that were established in the Company's last rate case. One of the advantages of the MDT proposal is that it would extend the period of time between general rate cases. Because the expense of rate cases is largely borne by a utility's customers, Piedmont's customers would

[8] *Id.* at 11-12.
[9] *Id.* at 13-36.

benefit from avoiding unnecessary rate cases. Piedmont also asserts that because rate cases generally result in rate increases, it is not reasonable to adopt the Consumer Advocate's suggestion to convene a general rate case to implement the proposed MDT or to update three out of the four factors.[10]

Consumer Advocate: The Consumer Advocate asserts that in the event that the Authority adopts a decoupling mechanism, the determination of the appropriate benchmark for the mechanism is an essential element of that decision. Piedmont's proposal applies a benchmark from its last rate case in 2003. Applying that stale benchmark results in the undisputed financial impact of increasing Company revenues and raising the bills of residential customers by $1.9 million. The Consumer Advocate proposes that, at a minimum, a test year ending September 2009 is the most logical and sound benchmark available. The use of that test year would significantly lower the adverse financial impact on residential customers.[11]

Issue 3: Prior to implementing a decoupling mechanism, should Piedmont's earnings be evaluated?

Piedmont: The Company asserts that an earnings evaluation is not necessary prior to implementing the proposed MDT. The evidence presented by the Company at the hearing demonstrates that the Company has not been over-earning since its last rate case nor is it over-earning now. Piedmont's average annual rate of return for 2004-2008 was 8.43%, virtually identical to the rate of return of 8.42% approved in its last rate case in 2003. The 2009 rate of return was 7.47%, ninety-five basis points below its approved rate of return. Further, the Company projects that the overall rate of return would be less than 8% after implementation of

[10] *Piedmont's Brief*, pp. 20-23.
[11] *Consumer Advocate's Brief*, pp. 37-40.

the proposed MDT. Because the MDT mechanism is neutral in character, it cannot cause over-earnings.[12]

Consumer Advocate: The Consumer Advocate asserts that there is a need for a rate case prior to implementing a decoupling mechanism. The proposed decoupling mechanism tracks only one rate-making facet, the margin per customer based on the 2003 rate case settlement. This, by definition, is "single issue" ratemaking and is generally prohibited outside the context of a rate-making proceeding. The Consumer Advocate is concerned that the MDT will function more as a "bridge" between rate cases rather than encourage conservation. While Piedmont argues that rate cases are expensive for consumers, looking at such costs in context shows that the expenses from the 2003 rate case were amortized over three years and cost consumers roughly $100,000 annually. The Consumer Advocate argues that this figure pales in comparison to the $1.9 million Piedmont would receive within the next twelve months if the proposed MDT is approved.[13]

Issue 4: Does the implementation of a decoupling mechanism lower the business risk for Piedmont, thereby justifying an adjustment of its rate of return? If so, what method or evaluation tools should be utilized to quantify an appropriate adjustment to the rate of return?

Piedmont: Piedmont asserts that its business risk would not be lowered by the implementation of the MDT, and there is no justification to adjust its allowed rate of return on common equity. Even if the adjustment proposed by the Consumer Advocate (a 50 basis point reduction) was accepted, the Company argues that there is no starting point at which to make the calculation since there was no return on common equity set forth in the settlement agreement of the last rate case. Piedmont further argues that a number of factors make it not reasonably possible to conclude that the Company's overall business risk will be materially impacted by

[12] *Piedmont's Brief*, pp. 23-26.
[13] *Consumer Advocate's Brief*, pp. 40-43.

implementing the MDT or that its permissible return on common equity should be adjusted as a result. Finally, Piedmont states that the evidence indicates that Piedmont's overall return is well below its currently approved level and will remain so even after the adoption of the MDT.[14]

Consumer Advocate: The Consumer Advocate asserts that adoption of the decoupling mechanism will guarantee the Company's margin per customer and thereby reduce risk that Piedmont will fail to recover that margin. Applying a conservative estimate of 10% reduction in risk, the Consumer Advocate recommends that the Authority reduce Piedmont's allowable return on common equity by fifty basis points to offset the effect decoupling has on the Company's business risk.[15]

Issue 5: Should Piedmont be required to meet specific, verifiable, measurable energy efficiency goals and/or benchmarks for any approved conservation programs?

Piedmont: Piedmont states that its three proposed programs satisfy the policy requirements of Tenn. Code Ann. § 65-4-126: promoting timely cost recovery and timely earnings opportunities associated with cost-effective, measurable, and verifiable energy savings that sustain or enhance the ability of customers to use energy efficiently. Each of the programs is designed to help customers utilize energy more efficiently and is cost-effective as measured by one or more of the California Standard Practice Manual cost-effectiveness tests or by Piedmont's experience from implementing the programs in other states. Two of the three programs have built-in verification and measurement protocols. While the Customer Education program is not verifiable or directly measurable, it is potentially more cost-effective than the other two. Additionally, Piedmont has proposed not to seek either cost recovery or an earnings opportunity for these programs in the initial trial period.[16]

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[14] *Piedmont's Brief*, pp. 27-30.
[15] *Consumer Advocate's Brief*, pp. 46-47.
[16] *Piedmont's Brief*, pp. 30-31.

Piedmont asserts that the Consumer Advocate's criticism of the programs fails to acknowledge that the Company employed a consultant to analyze the programs and that the results of the analysis were positive. Neither did the Consumer Advocate recognize that the Company's low-income energy efficiency program was modeled on a successful federal program or that the Company has significant experience in implementing similar programs in North Carolina under the purview of the North Carolina Utilities Commission.[17]

Consumer Advocate: The Consumer Advocate asserts that Piedmont's proposed conservation programs are neither fully verifiable nor measurable and do not justify the implementation of a decoupling mechanism. Piedmont was not able to provide any Tennessee-specific estimates or data to quantify savings for the proposed weatherization program. According to the Consumer Advocate, Piedmont's analysis of the high efficiency equipment rebate program omitted a majority of the standard tests for such programs. Further, the Company did not attempt to provide any cost effectiveness testing for the proposed Consumer Education program.[18]

2007 PURPA STANDARDS

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--

[17] *Id.* at 30-33.
[18] *Consumer Advocate's Brief*, pp. 48-51.

> (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.
>
> For purposes of applying the provisions of this subtitle to this paragraph, any reference in this subtitle to the date of enactment of this Act shall be treated as a reference to the date of enactment of this paragraph.[19]

Piedmont: Piedmont asserts that it has addressed the first standard in that the proposed MDT separates fixed cost recovery from the variable volume of transportation and sales. The other rate design principles need further study and further examination in other dockets. The energy efficiency standards require further attention in future dockets.[20]

Consumer Advocate: In regard to the decoupling standard PURPA requires, the Consumer Advocate urges the TRA to reject the standard for the reasons stated during the proceeding. Further, the Authority should exercise caution in adopting the federal standards as doing so can weaken the discretion the state legislature has given the TRA to regulate public utilities.[21]

FINDINGS AND CONCLUSIONS

The panel made the following findings regarding the issues set out in this docket.[22] The panel first considered Issue Numbers 1 and 5.

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[19] 15 U.S.C. § 3203(b)(5)-(6).
[20] Transcript of Hearing, v. I, pp. 132-133 (December 17, 2009).
[21] *Consumer Advocate's Brief*, p. 52.
[22] Director Freeman made the motion that was the basis of the panel's actions. Director Roberson and Director Hill concurred with the motion. However, each Director made specific comments setting out their individual deliberations on the matter.

Issue 1: What is the appropriate mechanism, or financial incentive, to insure that Piedmont's financial incentives are aligned with the state's energy conservation policy set out in 2009 Public Act 531, Section 53?

Issue 5: Should Piedmont be required to meet specific, verifiable, measurable energy efficiency goals and/or benchmarks for any approved conservation programs?

As to these two issues, the panel found that Piedmont failed to present sufficient evidence to justify a need for a new financial incentive in order to comply with state and federal law regarding conservation while earning a just and reasonable rate of return. The Authority must be able to determine the benefit to consumers before permitting Piedmont an additional financial incentive.

The panel also found that Piedmont's decoupling mechanism proposal failed to meet the requirements of the Federal American Recovery and Reinvestment Act of 2009 and Tennessee's policy on energy conservation as set out in 2009 Public Act 531, Section 53. These laws require the implementation of cost-effective, measurable and verifiable efficiency savings in a way that sustains or enhances utility customers' incentives to use energy more efficiently. The conservation programs proposed by Piedmont lack specificity and measurements that would allow a determination as to whether conservation would actually be achieved.

Next, the panel considered Issue Numbers 2 and 3.

Issue 2: If such mechanism or incentive is adopted, what is the appropriate customer usage level and/or margin to be used as the benchmark for Piedmont's proposed decoupling mechanism?

Issue 3: Prior to implementing a decoupling mechanism, should Piedmont's earnings be evaluated?

The panel found that before the Authority can determine whether Piedmont's decoupling mechanism should be implemented, it is imperative that Piedmont's earnings be evaluated to insure that the Company does not exceed its approved rate of return. Because Piedmont's last

rate case was filed in 2003, the information pertaining to Piedmont's revenues is stale. The lack of current information makes it more appropriate for the Authority to consider Piedmont's proposal for a decoupling mechanism in the context of a rate setting proceeding. Evaluating Piedmont's request in a rate case would allow for the consideration of all factors relative to the Company's earnings, as well as, allow an evaluation of the potential impact on consumers before approving the implementation of a decoupling mechanism.

The panel next considered Issue Number 4.

Issue 4: Does the implementation of a decoupling mechanism lower the business risk for Piedmont, thereby justifying an adjustment of its rate of return? If so, what method or evaluation tools should be utilized to quantify an appropriate adjustment to the rate of return?

The panel found that the Authority is not in a position to examine the impact of a decoupling mechanism on Piedmont's business risk based on information that is seven years old. There are many different forms of decoupling, and each presents a different impact on revenue and business risks. There is no "one size fits all" formula for implementing a decoupler. The Authority must conduct a review of all current, relevant information pertaining to a Company's financial position and take into account many factors before determining the appropriate decoupling mechanism, if any, that should be implemented by a company.

After making these findings, the panel voted unanimously to deny Piedmont's *Petition* to implement the MDT and the accompanying tariff. The panel then considered the issue of whether the 2007 PURPA standards should be adopted for Piedmont. The panel found that the evidence in the record was insufficient to evaluate whether the PURPA standards concerning energy efficiency and rate design should be adopted for Piedmont. Thereafter, the panel voted unanimously that Piedmont should address the PURPA standards in its next general rate case or other proceeding Piedmont initiates with the Authority.

ADDITIONAL COMMENTS BY PANEL

Additionally, each Director provided individual comments related to the issues raised in this docket.

Director Freeman made the following remarks as a part of her deliberations:

> As a nation, we are becoming increasingly aware that we need to expand our energy sources. This can be done either by developing [new sources of energy] or by conserving our current sources and ideally, through both methods. We have to change our way of thinking and way of doing things in order to develop innovative and environmentally friendly energy solutions.
>
> I want to thank Piedmont for recognizing the importance of conservation and for trying to find ways to encourage consumers to conserve energy. I also want to thank the Consumer Advocate of the Attorney General's Office for intervening in this docket. And, finally, I would like to thank the TRA Staff for their diligence in analyzing the docket.
>
> Last year, Piedmont brought decoupling legislation before the General Assembly, and the General Assembly determined that more information was needed and chose to study the issue. With this [*Petition*], it is abundantly clear to me that Piedmont circumvented the Authority last year when it filed legislation in the General Assembly, and now, after the General Assembly expressed a desire to study the decoupling issue, Piedmont is attempting to circumvent the General Assembly by filing its [*Petition*] with the TRA. With that being said, we are where we are.
>
> This issue is before the Authority and we need to act prudently to insure that all relevant information is available to evaluate the effect of a decoupling mechanism on Piedmont's earnings. It is crucial that the Authority strike a balance between the rights of consumers and the right of the Company to earn a fair and reasonable rate of return.[23]

Although Director Roberson seconded Director Freeman's motion to deny the tariff and not to adopt the PURPA standards, he disagreed with some of her reasons and instead offered the following comments as a part of his deliberations:

> This petition is the first opportunity this Authority has had to address the statute enacted by the legislature last year establishing the state policy of promoting energy conservation by requiring the TRA in an appropriate proceeding to ensure that there is a proper alignment of regulated utilit[ies']

[23] Transcript of Deliberations, pp. 18-20 (January 25, 2010).

financial interest to promote said policy. The legislature established the policy but allowed the TRA wide latitude in how and when to implement it.

I will state that there is no reference to decoupling in the statute that was enacted.

I have reviewed the evidentiary record in this docket, and I believe that the company's existing [rate design] that was approved in the 2003 rate case, taken in isolation, has difficulty in meeting the statutory criteria for the proper alignment of the [C]ompany's financial incentives with helping customers use energy more efficiently. However, I do not believe that the [C]ompany's margin decoupling tracker does so either.

One concern I have [with this] mechanism is that it appears to eliminate or significantly reduce the positive effect of regulatory lag. In theory, regulatory lag provides an incentive for utilities to operate efficiently in order to maximize profits. For a monopoly, this concept is very important, and any new rate design adopted by the Authority for a monopoly should not forgo the benefits of this traditional ratemaking principle. Also the risk between utility and consumer needs to be more properly balanced.

It is my opinion that the margin decoupling tracker fails to provide adequate consumer safeguards. While I appreciate the [C]ompany's effort to address needed safeguards in Mr. Yoho's rebuttal testimony, I still believe it came up lacking.

I also do not believe this docket is the appropriate proceeding that the statute requires. To consider such a dramatic change in rate design as proposed by the [C]ompany, at a minimum, the TRA needs to have current usage and financial data from the [C]ompany and not data almost seven years old from a 2003 rate case where conservation was not considered. Testimony in this case and in my own observations and experience proves to me that much has changed and new facts must be considered.

In my opinion, a rate case would be a more appropriate proceeding because we would have access to up-to-date revenue, financial, customer account and usage data needed to make relevant and valid findings.

While rate cases are expensive, the comprehensive examination of a utility's finances is essential to ensure that a fair and balanced decision is rendered. Piecemeal ratemaking, as is proposed in this proceeding, can lead to the setting of rates based upon incomplete or inaccurate assumptions. Without question, the proposed tariff impacts residential rates and the [C]ompany's risks, which would be more appropriately considered in the context of the TRA's general ratemaking authority through a rate case.

A rate case would allow the Authority to consider alternative rate designs where sufficient consumer safeguards are in place. We could also consider ways to implement any required or needed changes incrementally to reduce any potential rate shock.

I am a true believer in energy conservation and strongly support the statute passed last year by the General Assembly. Energy conservation is good public policy, and the TRA can and should play an important role in encouraging all consumers to better conserve energy.

Achieving [comprehensive energy] conservation requires all participants -- consumers, the private sector, government, and utilities -- to buy in and promote the policy. I look forward to continuing work on implementing state policy.[24]

Director Hill made the following remarks as a part of his deliberations:

At the outset, I would like to say thank you to the TRA staff for the fine work that they've done as we've gone through this process.

And, I want to thank the staff and attorneys for Piedmont Natural Gas, as well as the Consumer Advocate and Protection Division of the Attorney General's Office for their hard work in preparing for this docket [and] for the frank discussion both sides offered to us during this time.

Specifically, I commend everyone for the professional manner in which they conducted themselves through the entire process.

Piedmont spent a great deal of its time, both on paper and during the hearing itself, arguing that Tennessee's recently adopted conservation policy codified in TCA 65-4-126 is a clear statement of policy strongly supporting decoupling.

I agree with the Consumer Advocate that this view is highly unwarranted. There is no evidence that decoupling is the only method by which to achieve the conservation goal set out by the legislature – that the ["]TRA seek to implement…a general policy that ensures that utility financial incentives are aligned with helping their customers use energy more efficiently.["]

In fact, the decoupling plan presented by Piedmont may have the opposite effect. A customer's incentive to conserve is getting a lower bill in the mail. Under Piedmont's proposed rate structure, a consumer's usage may decrease – and I say may, because there's no evidence that Piedmont's proposed

[24] *Id.*at 25-28.

conservation programs will have any positive effect – but that consumer's bill may look the same as it did the month before and the month before that or nearly so.

The decoupling plan promoted by Piedmont may be an incentive for the utility to conserve since it will continue earning at a specific return on equity, but the consumers will have no incentive.

Piedmont argues that decoupling will assist in its continuing to earn its approved return. This reason is, as oft-repeated in its briefs and filings, as the previously mentioned conservation policy. If Piedmont were indeed losing profits because of declining usage, why has it not come to the TRA with a traditional rate case before now? Decline in customer usage is not a new trend. It's been going on for a couple of decades.

Piedmont attempts to argue that decoupling is neutral in character, but there's no evidence to support that. The utility points out that decoupling is considered by researchers to be reasonable and enjoys widespread acceptance.

While a number of states may have adopted decoupling, I believe that Tennessee's new conservation policy requires the TRA to look beyond a one-size fits all answer.

As it has been presented to me thus far, I cannot agree that decoupling is beneficial to consumers.

I would like to applaud Mr. Frank Yoho for his testimony regarding the fact that though his [C]ompany has a disincentive to promote conservation, it is simply doing the right thing by promoting conservation. I wholeheartedly agree that it is the right thing to conserve.

I appreciate the conservation programs that Piedmont proposed, but I am concerned that the programs were included as somewhat of a pot sweetener.

For example, Piedmont's weatherization program would only have helped approximately 40 customers a year. For a [C]ompany that serves about 150,000 in Tennessee, the offer seemed a bit lacking, to be only serving 40.

I do sympathize with the plight of Piedmont and other natural gas companies. I understand that competing with other suppliers, particularly electric, is not always a fair contest. Perhaps, then, utilities should look at how to change their business model instead of focusing so singularly on their profit margins.

While the Consumer Advocate attacks Piedmont for presenting its proposal as a sort of a type of "bail-out," I would like to point out that Piedmont does not need a bail-out. It is a well-run company and known to be highly efficient.

These are difficult times, but I am encouraged by the strength of Piedmont and other utilities such as Piedmont. However, I cannot support a single-issue piecemeal ratemaking using stale numbers from 2003. I encourage Piedmont to address this issue in its next case.[25]

IT IS THEREFORE ORDERED THAT:

1. The *Petition of Piedmont Natural Gas Company, Inc. for Approval of Service Schedule No. 317 and Related Energy Efficiency Programs* is hereby denied.

2. The 2007 PURPA standards shall be addressed by Piedmont in its next general rate case or other proceeding Piedmont initiates with the Authority.

3. Any party aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within fifteen days from the date of this Order.

4. Any party aggrieved by the Authority's decision in this matter has the right to judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty days from the date of this Order.

Mary W. Freeman, Director

Eddie Roberson, Director

Kenneth C. Hill, Director

[25] *Id.* at 28-32.