

**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

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DOCKET NO. 09-00104

**CONSUMER ADVOCATE'S MEMORANDUM IN SUPPORT OF MOTION
REQUESTING PERMISSION TO ISSUE MORE THAN FORTY DISCOVERY
REQUESTS TO PIEDMONT**

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), hereby submits this memorandum in support of its request for permission to issue more than forty discovery requests to Piedmont Natural Gas Company, Inc. ("Piedmont" or "Company"). When a party seeks to serve discovery requests which exceed the initial limit of forty (40) discovery requests, TRA Rule 1220-1-2-.11(5)(a) requires a party to seek leave of the Hearing Officer and to file a memorandum establishing good cause for service of the additional discovery requests. The Consumer Advocate's discovery requests have been filed concurrently with this memorandum and motion. For good cause, the Consumer Advocate would show as follows;

**I. The Implementation of the State's New Conservation Policy Requires Additional
Substantive Information and Data Beyond That Provided in Piedmont's Petition**

Central to this docket is the energy conservation policy newly enumerated by the Tennessee General Assembly in Section 53 of Public Chapter 531.

The general assembly declares that the policy of this state is that the Tennessee regulatory authority will seek to implement, in

appropriate proceedings for each electric and gas utility, with respect to which the authority has rate making authority, a general policy that ensures that utility financial incentives are aligned with helping their customers use energy more efficiently and that provides timely cost recovery and a timely earnings opportunity for utilities associated with cost-effective measurable and verifiable efficiency savings, in a way that sustains or enhances utility customers' incentives to use energy more efficiently.

The policy statement is very broad and leaves it to the discretion of the Authority to investigate and formulate specific practices to carry out this very general policy. To a great extent, this docket is a matter of first impression for the Authority. In this matter, Piedmont has proposed a decoupling mechanism, similar to that in place in the Company's North Carolina jurisdiction. In a report, dated October 2, 2008, the North Carolina Utilities Commission ("Commission") concluded Piedmont's decoupling mechanism, known as the Customer Utilization Tracker ("CUT") allowed the Company to recover roughly \$50 million from residential and small business consumers over a three year period.¹

The Commission reported that the results of energy conservation programs had little impact on customer usage, but rather the bulk of the CUT's adjustments were due to high natural gas prices and the effects of Hurricane Katrina. While Piedmont's customer base in North Carolina is much larger than that in Tennessee, the financial impact and the circumstances under which the CUT collected revenue from consumers are long term consequences the Consumer Advocate would submit are relevant to Piedmont's Tennessee decoupling proposal. As such, additional information is needed by the Consumer Advocate in order to make an informed evaluation.

¹ A copy of the referenced report is attached. The CUT differs from Piedmont's proposed mechanism in Tennessee in that the WNA was terminated in North Carolina. The CUT in North Carolina collects revenue from consumers for weather adjustments also, accounting for roughly half of the report's total figure of \$99.1 million in CUT adjustments due to Piedmont from North Carolina customers from 2005-2008. Piedmont's proposal in Tennessee does not seek to terminate the WNA.

Furthermore, modifications to the Company's proposed mechanism or even alternative innovations may be appropriate in order to satisfy the public interest and implement an effective general policy. Moreover, the State's new policy calls for cost effective conservation programs that produce measurable energy efficiency savings. Under Piedmont's proposal, Tennessee consumers will be held liable for slightly in excess of one million dollars in funding for the Company's conservation programs over a three year period. Thus, the Consumer Advocate has an interest in ascertaining whether the Company's proposed energy efficiency and conservation programs are cost-effective, administered effectively, and provide measurable savings for consumers as required by state policy.

On October 8, 2009, the Consumer Advocate submitted a list of seven issues for consideration in this docket. What follows is a listing of the seven issues with accompanying statements supporting the request for additional discovery exceeding the forty (40) question limit.

1. Whether the implementation of Piedmont's proposed decoupling mechanism guarantees and stabilizes revenues and lowers the business risk of Piedmont, thus justifying an adjustment to the rate of return.

A decoupling mechanism reduces the risk of the Company to the extent it guarantees a fixed level of revenues. Thus, additional discovery information addressing business risk and factors affecting the Company's return on equity is needed in order to evaluate and determine whether approval of the proposed decoupling mechanism would necessitate an adjustment to the return on equity.

2. Whether the customer usage level set in Piedmont's last rate case in Docket 03-00313 is an appropriate benchmark for truing up and normalizing Piedmont's decoupling mechanism or whether more recent customer usage levels should be utilized.

a. A decoupling mechanism that applies a customer usage benchmark from 2003 may not be appropriate. Additional information is required to evaluate the benchmark proposed by Piedmont and to determine and calculate the rate adjustment impacting the rates paid by consumers.

b. Additional information is needed to determine whether more recent customer usage levels would be a better and more appropriate benchmark and to calculate the decoupling mechanism's financial impact on the utility and Tennessee consumers.

c. Additional information is needed in order to both project the financial impact of Piedmont's proposed decoupling mechanism and to determine and evaluate the results of the mechanism using test periods from the past.

3. Whether modifications to Piedmont's proposed decoupling mechanism are required in order to balance the interests of consumers and Piedmont as required by the State's policy.

a. Additional information is needed to evaluate and determine whether modifications to the Company's mechanism are required to insure Piedmont's proposed decoupling mechanism does not allow the Company to earn a return more than that authorized by the Authority.

b. Additional information is needed to evaluate and determine whether additional revenue, for example, from customer growth, should be taken into account in implementing a decoupling mechanism.

c. Additional information is needed to evaluate the need for and the development of modifications to the Company's proposal in order to balance the interests of consumers and the utility.

4. Whether Piedmont's decoupling mechanism is the most appropriate mechanism for carrying out the State's energy conservation policy, contained in Section 53 of Public Chapter 531, or if an alternative mechanism is more appropriate to fulfill the policy goals established by the General Assembly.

Given the broadness of the State's new policy, additional information is needed to determine whether decoupling is the appropriate mechanism to fulfill the State's policy or if an alternative mechanism or practice is required.

5. Whether the proposed decoupling mechanism or any alternative proposal should take into account the impact of natural gas market prices on customer usage.

Additional information, including historic data, is needed to evaluate and determine whether Piedmont's proposed decoupling mechanism should take into account the general relationship between customer usage and the market price of natural gas.

6. Whether the conservation programs proposed by Piedmont will achieve cost-effective results and measurable and verifiable efficiency savings in a way that sustains or enhances utility customers' incentives to use energy more efficiently.

Additional information is needed to determine the cost-effectiveness of Piedmont's proposed conservation programs, the ability of the Company to provide measurable and verifiable results from such programs, and the financial impact on company revenues from the resulting customer usage levels of those consumers participating in the programs.

7. Whether the TRA should set specific, verifiable, known and measurable energy efficiency goals and benchmarks for any energy efficiency or conservation program approved.

Additional information is needed to determine whether the Authority should set goals or benchmarks for consumer-funded conservation programs in order to provide incentives for effective programs and penalties for programs which fail.

Thus, the Consumer Advocate requires additional information which is in the hands of the Company in order to place these issues before the Authority in the context of Piedmont's specific circumstances and the specific proposals in this docket. Further, the information requested is needed to allow the Consumer Advocate to make an informed evaluation of Piedmont's proposal and its impact on the Company's Tennessee consumers.

II. The Consumer Advocate Has Only One Round of Discovery In This Proceeding

At the September 28, 2009, status conference, Piedmont expressed its position that this matter should have a hearing date in December. Further, the Authority has indicated that a hearing should take place prior to the beginning to 2010 legislative session in January. Although the Consumer Advocate would desire additional time to study the details, facts and potential impact of decoupling on the interests of consumers, the Consumer Advocate has worked with Piedmont to expedite the hearing in this docket.

Under the agreed procedural schedule proposed by the Consumer Advocate and Piedmont, discovery is limited to one round prior to the simultaneous filing of pre-filed direct and rebuttal testimony. Thus, the discovery requests filed concurrent with this memorandum are the only vehicle the Consumer Advocate has to gather pertinent facts in order to fully represent the interests of consumers. Furthermore, the Consumer Advocate is filing this memorandum and

motion to exceed the forty (40) question limit and the discovery requests themselves in advance of the due date set for discovery requests in order to advance the proceeding and allow Piedmont additional time to provide complete discovery responses.

III. Tennessee Law Favors Discovery

The Consumer Advocate has a statutory right to investigate the reasonableness and the long term consequences for consumers of the Company's proposed decoupling mechanism. Tenn. Code Ann. § 65-4-118. The first and perhaps most important policy of discovery is that discovery should enable the parties and the court to seek the truth so that disputes will be decided by facts rather than legal maneuvering. *White v. Vanderbilt University*, 21 S.W. 3d 215, 223 (Tenn. Ct. App. 1999). Discovery should allow both the court and the parties to have an intelligent grasp of the issues to be litigated and knowledge of the facts underlying them. *Vythoulkas v. Vanderbilt University Hospital*, 693 S.W. 2d 350, 356 (Tenn. Ct. App. 1985). Furthermore, discovery is not confined to the issues raised in the pleadings, for discovery itself may be used to clarify and define the issues in controversy. *Id.* at 359.

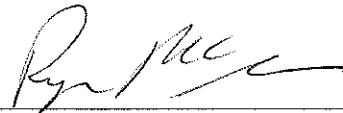
Accordingly, a party seeking discovery is entitled to obtain information about any matter, not privileged, which is relevant to the subject matter involved, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party. *State ex. Rel. Flowers v. Tennessee Trucking Assoc. Self Insurance Group Trust*, 209 S.W. 3d 602, 615 (Tenn. Ct. App. 2006). The relevancy requirement is broadly construed to include any matter that bears on, or that reasonably could lead to other matters that could bear on, any of the case's issues. *Id.* If a party's discovery goes too far, however, the court may limit the discovery sought if it is unduly burdensome or expensive, but must take into account the needs of the case, the amount in controversy, the importance of the issues at stake, limitations on the parties' resources,

and whether less burdensome means for acquiring the requested information is available. *Id.* Nonetheless, Tennessee law favors discovery. *Id.*

The Hearing Officer should consider that the subject matter of this docket has far-reaching and long-term consequences for both consumers and Piedmont. Further, the determinations in this docket may guide future proposals from other gas utilities seeking to comply with Tennessee's new conservation policy. Given the need for additional information, the broad scope of the State's new policy which neither endorses nor prohibits decoupling, the potential financial impact of Piedmont's proposal on Tennessee consumers, and the potential scheduling of a hearing in December, the Consumer Advocate would respectfully request the Motion to Exceed Forty (40) Discovery Requests be granted.

Respectfully Submitted,

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Dated: October____, 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:

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This the 13 day of October, 2009.



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