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October 19, 2009

VIA EMAIL AND HAND DELIVERY

Chairman Sara Kyle  
c/o Ms. Sharla Dillon  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243

filed electronically in docket office on 10/20/09

**Re: Petition of Piedmont Natural Gas, Inc. for Approval of Service Schedule  
No. 317 and Related Energy Efficiency Programs**  
*Docket No. 09-00104*

Dear Chairman Kyle:

Enclosed please find an original and five (5) copies of the Piedmont Natural Gas, Inc.'s Opposition to the Consumer Advocate and Protection Division Motion Requesting Permission to Issue More Than Forty Discovery Requests for filing in Docket No. 09-00104. This document also has been transmitted electronically to the Tennessee Regulatory Authority Docket Manager, Sharla Dillon.

Please stamp one copy as "filed" and return to me by way of our courier. Should you have any questions concerning any of the enclosed, please do not hesitate to contact me.

With kindest regards, I remain

Very truly yours,



R. Dale Grimes

Enclosures

cc: Hon. Mary Freeman (*w/o enclosure*)  
Hon. Eddie Roberson, Ph.D. (*w/o enclosure*)  
Hon. Kenneth C. Hill (*w/o enclosure*)  
James H. Jeffries, Esq.

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

IN RE:	)	
	)	
PETITION OF PIEDMONT NATURAL GAS	)	
COMPANY, INC. FOR APPROVAL OF	)	Docket No. 09-00104
SERVICE SCHEDULE NO. 317 AND	)	
RELATED ENERGY EFFICIENCY	)	
PROGRAMS	)	

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**OPPOSITION OF PIEDMONT NATURAL GAS, INC.  
TO THE CONSUMER ADVOCATE'S MOTION REQUESTING  
PERMISSION TO ISSUE MORE THAN FORTY DISCOVERY REQUESTS**

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Piedmont Natural Gas Company, Inc. ("Piedmont" or the "Company"), through counsel, respectfully submits the following Opposition to the Consumer Advocate and Protection Division of the Office of the Attorney General's ("Consumer Advocate") Motion Requesting Permission to Issue More Than Forty Discovery Requests.

**INTRODUCTION**

On October 13, 2009, the Consumer Advocate served one hundred and twenty (120) data requests, including sub-parts, on Piedmont ("Discovery Requests"). Pursuant to the Hearing Officer's *Order Granting Intervention, Determining Issues, and Establishing a Procedural Schedule* ("Order"), Piedmont's responses to the discovery requests are due on October 29, 2009. The Consumer Advocate concurrently filed a motion seeking leave to exceed the allowable forty (40) discovery requests. The Consumer Advocate contends that Piedmont's proposed decoupling mechanism involves a broad energy conservation policy initiative, which justifies the need for additional information. In support of its position, the Consumer Advocate reiterates its

statement of seven issues that it initially submitted for consideration in this Docket. The Hearing Officer, however, previously considered the Consumer Advocate's list of issues and limited further determination in this Docket to five pertinent issues. Consequently, many of the Consumer Advocate's discovery requests to Piedmont relate to issues no longer under consideration in this Docket. Further, the Consumer Advocate has not justified its need to serve three times the maximum allowable discovery requests to address the remaining issues. Accordingly, Piedmont objects and opposes the Consumer Advocate's Motion and Memorandum seeking permission to serve additional discovery requests.

### **DISCUSSION**

Rule 1220-1-2-.11(5)(a) of the Rules of the Tennessee Regulatory Authority ("Rules") prohibits the service of more than forty (40) discovery requests including subparts without first obtaining leave of the Authority or a Hearing Officer. Any motion seeking permission to exceed forty (40) discovery requests "must set forth the additional requests" and "shall be accompanied with a memorandum establishing good cause" for the additional requests. Rule 1220-1-2-.11(5)(a). In an attempt to establish good cause, the Consumer Advocate's Memorandum in Support re-submits its seven issues for consideration in this Docket. The Consumer Advocate then asserts that it requires additional information related to the seven identified issues. The Consumer Advocate, however, neglects to identify the additional requests that it contends are necessary and specifically related to each of its seven issue statements or to provide any substantive discussion supporting its need to take additional discovery.

**1. The Consumer Advocate's additional discovery requests relate to issues outside the scope of issues identified by the Hearing Officer.**

As previously stated, the Hearing Officer considered the Consumer Advocate's proposed issue list and limited the scope of the Docket's consideration. In his Order, the Hearing Officer "focus[ed] the parties on the pertinent issues of this case" by adopting a list of five issues. Order at 2. Therefore, and as an initial matter, the Hearing Officer and Authority should prohibit additional discovery requests that relate to any issues no longer under consideration in this Docket. For example, the Consumer Advocate identifies its Issue 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." The Consumer Advocate then states that it requires additional information related to "additional revenue from customer growth" and "to evaluate the need for and the development of modifications" to Piedmont's proposed decoupling mechanism. This particular issue is no longer under consideration and any related discovery requests that exceed the limit of forty (40) should be prohibited.

Further, the Consumer Advocate re-submits its Issue 5 in support of its motion: "Whether the proposed decoupling mechanism or any alternative proposal should take into account the impact of natural gas market prices on customer usage." The Consumer Advocate then attempts to justify its request for additional information, including Piedmont's historic data, related to this issue. The Consumer Advocate also re-submits its Issue 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." The Consumer Advocate accordingly requests additional information "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." Assumedly, several of the Consumer Advocate's additional discovery requests relate to the three extraneous and aforementioned issues. Due to the large number of discovery requests in excess of the allowable forty (40), the Hearing Officer and the Authority should prohibit any additional discovery requests that specifically relate to these identified issues.

**2. The Consumer Advocate's additional discovery requests are overly burdensome and should be denied.**

To the extent that the additional discovery requests apply to the issues identified by the Hearing Officer, the Consumer Advocate has failed to justify the need for eighty (80) discovery requests over the Rules' maximum allowable number. The Consumer Advocate refers to Tennessee case law that supports the allowance of broad and open discovery. See Mem. at 7-8. The Consumer Advocate claims that 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 7 (citing *Vythoulkas v. Vanderbilt Univ. Hosp.*, 693 S.W.2d 350, 359 (Tenn. Ct. App. 1985)). Further, the Consumer Advocate asserts that a party seeking discovery "is entitled to obtain information about any matter, not privileged, which is relevant to the subject matter involved. . . ." *Id.* (citing *State ex. rel. Flowers v. Tenn. Trucking Ass'n Self Ins. Group Trust*, 209 S.W. 3d 602, 615 (Tenn. Ct. App. 2006)).

In this matter, however, the Hearing Officer has clarified and defined the issues for consideration. Order at 2. Accordingly, the Consumer Advocate should not be

allowed to serve broad discovery requests that may relate collaterally to the state's energy conservation policy. More importantly, the discussion here is not whether the individual discovery requests are fairly relevant to the issues; the question is whether the Consumer Advocate has justified the immense number of additional discovery requests it has served upon Piedmont. On this issue, Tennessee courts consistently have discouraged and prohibited overly burdensome discovery. See *State ex. rel. Flowers*, 209 S.W.3d at 615. The Courts recognize that "there is a far greater cost in complying with a discovery request than in making a discovery request." *Id.* "A trial court should balance the competing interests and hardships involved when asked to limit discovery and should consider whether less burdensome means for acquiring the requested information are available." *Duncan v. Duncan*, 789 S.W.2d 557, 561 (Tenn. Ct. App. 1990).

The Consumer Advocate has failed to justify its request for three times the allowable number of discovery requests. By sheer number, the discovery requests, which are due on October 29, are overly burdensome. Further, Piedmont should not be required to respond to discovery requests that address issues no longer under consideration. The Hearing Officer and Authority should deny the Consumer Advocate's request for permission to serve additional discovery requests and relieve Piedmont of the burden of responding to any discovery requests that exceed the allowable forty (40) requests.

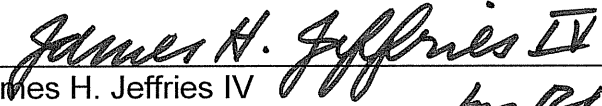
This the 19th day of October, 2009.



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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of **Piedmont's Opposition to the Consumer Advocate's Motion Requesting Permission to Issue More Than Forty Discovery Requests** was served upon the parties in this action by depositing a copy of the same in the United States Mail, First Class Postage Prepaid, addressed as follows:

Ryan L. McGehee  
C. Scott Jackson  
Assistant Attorney General  
Office of the Consumer Advocate and Protection Division  
Post Office Box 20207  
Nashville, Tennessee 37202

This the 19 day of October, 2009.

  
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