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October 23, 2009

VIA EMAIL AND HAND DELIVERY

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

**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 Reply to the Consumer Advocate and Protection Division Response to Piedmont's Opposition to the Consumer Advocate's 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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**REPLY OF PIEDMONT NATURAL GAS  
TO THE CONSUMER ADVOCATE’S RESPONSE TO PIEDMONT’S OPPOSITION 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 Reply to the Consumer Advocate and Protection Division of the Office of the Attorney General’s (“Consumer Advocate”) Response to Piedmont’s Opposition to the Motion Requesting Permission to Issue More Than Forty Discovery Requests (“Consumer Advocate’s Response”).

**DISCUSSION**

The Consumer Advocate’s Response misperceives the rationale behind Piedmont’s opposition and neglects the primary issue underlying the Consumer Advocate’s pending motion: Whether the Consumer Advocate has established good cause to justify issuing over one hundred discovery requests to address the five issues identified by the Hearing Officer? Rule 1220-1-2.11(5)(a) of the Rules of the Tennessee Regulatory Authority (“Rules”) requires that the Consumer Advocate establish “good cause” in order to obtain permission to issue discovery requests in excess of the allotted forty (40) requests. Even taking the Consumer Advocate’s Response along with its

initial motion under consideration, the Consumer Advocate has not demonstrated why it requires this excessive number of discovery requests — totaling more than 20 individual data requests per issue — to obtain sufficient information regarding Piedmont's relatively straightforward proposal in this proceeding.

In its response, the Consumer Advocate focuses on whether its discovery requests may be relevant to the identified issues and notes that Piedmont did not object to the requests on the basis of relevancy. The Consumer Advocate misses the point. Piedmont's objections were not based on relevancy and Piedmont maintains its right to generally and specifically object to the Consumer Advocate's individual discovery requests as provided in the Authority's Rules.<sup>1</sup> Instead, Piedmont's opposition is premised on the fact that the Consumer Advocate not only has issued an excessive number of discovery requests, but that some of those additional requests relate to issues that are not even under consideration in this proceeding. Further, the relevancy of the collateral issues is neither dispositive nor particularly significant where the Consumer Advocate has issued almost three times the maximum number of discovery requests. In other words, a mere explanation of relevancy is neither responsive to Piedmont's opposition nor sufficient to overcome the Rule's limit of 40 data requests. If that was the threshold requirement for serving excessive data requests, as the Consumer Advocate suggests, then the Rule's limit would be effectively meaningless because a party could issue a potentially unlimited number of discovery requests, so long as it could show that the additional requests bore some relevancy to the subject matter of the proceeding.

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<sup>1</sup> Pursuant to the Hearing Officer's *Order Granting Intervention, Determining Issues, and Establishing a Procedural Schedule* dated October 13, 2009, Piedmont's responses and objections to the discovery requests are due on October 29, 2009.

The Consumer Advocate cites to Tennessee law and further suggests that Piedmont must demonstrate that responding to over one hundred discovery requests is unduly burdensome to the Company. For example, the Consumer Advocate cites to Piedmont's revenue in Tennessee to contend that Piedmont has the resources necessary to answer the excessive discovery requests. In doing so, the Consumer Advocate improperly attempts to shift the burden onto Piedmont, abdicating its own responsibility under the requirement to justify the need to issue more than forty (40) discovery requests pursuant to Rule 1220-1-2.11(5)(a). Piedmont maintains that responding to over one hundred discovery requests in the allotted time is unduly burdensome and that the Authority's own Rule supports that contention. The Company's revenue should not factor into the analysis whether the Consumer Advocate has met its own burden on this issue. Such an analysis would vitiate the Rules that limit the issuing party's number of discovery requests. The salient point is that the Consumer Advocate has failed to establish why it needs more than twenty data requests per issue set for hearing to address Piedmont's proposals. In the absence of good cause, which has not been shown, the Hearing Officer and Authority should deny the Consumer Advocate's pending Motion to issue any additional discovery requests.<sup>2</sup>

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<sup>2</sup> Piedmont respectfully rejects, as legally and procedurally inappropriate, the Consumer Advocate's proposal that Piedmont representatives be required to communicate about the pending discovery requests with the Consumer Advocate's expert witness without counsel present. Piedmont acknowledges that the Consumer Advocate has the right to pursue discovery in this proceeding consistent with the Authority's Rules; however, in the context of formal discovery in a contested case proceeding, it is entirely inappropriate to seek discovery through a process that would exclude counsel as a means of circumventing the Authority's Rules.

This the 23rd day of October, 2009.

*R. D. Grimes*

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*by RDG  
w/permission*


*Attorneys for Piedmont Natural Gas*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of **Piedmont's Reply to the Consumer Advocate's Response to 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 23 day of October, 2009.

  
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