

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

December 29, 2011

IN RE:

TARIFF FILING BY PIEDMONT NATURAL GAS
COMPANY TO ADJUST AND CORRECT THE
APPLICABLE FRANCHISE FEE

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DOCKET NO.
10-00033

ORDER GRANTING PETITION FOR RECONSIDERATION

This matter came before the Tennessee Regulatory Authority (the "Authority" or "TRA") at the regularly scheduled Authority Conference held on November 21, 2011, for consideration of the *Petition for Reconsideration* ("Petition") filed by Piedmont Natural Gas Company, Inc. ("Piedmont" or "the Company") on November 14, 2011. In the *Petition*, Piedmont seeks reconsideration of the Authority's October 28, 2011 *Order Approving, In Part, and Denying, In Part, Piedmont's Tariff Adjusting Franchise Fee* ("Order").

Background

Piedmont filed a proposed tariff change on March 9, 2010, seeking to adjust the applicable percentage for the collection of the Metro franchise fee by reducing the franchise fee percentage applicable to customers metered inside of Davidson County from 6.11% to 6.08%, to recover net under-collections of \$2,911,943 incurred prior to 1996 forward through May 31, 2009.¹ The Company sought to recover these amounts over a ten (10) year period with the annual amortized amount of under-recovery included in the Company's proposed 6.08% franchise fee.² At the time of the March 9, 2010 filing, the Company had not revised the Metro

¹ Under-collection occurs when the amounts collected from customers are less than those owed to Metro. See *Order*, p.3 (October 28, 2011).

² *Order*, p.3 (October 28, 2011).

franchise fee percentage or made a filing with the TRA related to the Metro franchise fee since May 31, 2005.³

The panel considered the proposed tariff at a regularly scheduled Authority Conference held on April 12, 2010.⁴ As reflected in its *Order*, the panel found that the rates established in the May 2005 filing were set on a going forward basis and accounted for all prior under-collections that were attributable to projected versus actual revenues during the period preceding May of 2005.⁵ To allow Piedmont to recover under-collected fees related to the period prior to May 2005 resulting from a Company error would be inappropriate and unfair to consumers. For this reason, the panel determined that Piedmont should be allowed to recover only the under-collected amounts incurred since May 2005. The panel found it reasonable to allow Piedmont to recover \$1,675,205 in under-collected franchise fees, which represented the amount from the end of Piedmont's last filing (May 31, 2005) through the most current data available (October 31, 2009). While the under-collected franchise fees were accumulated over a four-and-one-half year period, the panel determined that this recovery should be spread over a twelve-month period. Based on these findings, the panel voted unanimously to approve a 6.93% Metro franchise fee for Piedmont effective May 1, 2010. In addition, the panel voted to require that Piedmont file annual tariff revisions for the Metro franchise fee, including all supporting documentation and calculations, no later than April 1 of each year.

Petition for Reconsideration

Tenn. Code Ann. § 4-5-317 sets forth the procedure for reconsideration. Pursuant to subsection (a) of the statute, any party, within fifteen days after entry of a final order, may file a

³ *Id.* at 2.

⁴ The panel consisted of Director Mary W. Freeman, Director Eddie Roberson and Director Kenneth C. Hill. Following the resignation of Director Roberson, this docket was reassigned to the panel of Chairman Kenneth C. Hill, Director Sara Kyle and Director Mary W. Freeman.

⁵ *Order*, p. 3 (October 28, 2011).

petition for reconsideration stating the specific grounds upon which relief is requested. Under subsection (c), if no action has been taken on the petition within twenty days, the petition is deemed to have been denied. If an order granting the petition and setting the matter for further proceedings is issued, pursuant to subsection (d) the new proceeding is limited to argument upon the existing record, and no new evidence can be introduced unless the party proposing such evidence shows good cause for such party's failure to introduce the evidence in the original proceeding.

Piedmont filed its *Petition* on November 14, 2011, seeking reconsideration of the Authority's October 28, 2011 *Order*. The Company asserts that reconsideration should be granted because "1) the procedures used to arrive at the Authority's ordered forfeiture of Piedmont's franchise fee repayment rights did not provide Piedmont with adequate notice and an opportunity to be heard; and 2) the facts and law underlying this matter support a different result" than that set forth in the *Order*.⁶ Piedmont states that it is prepared to demonstrate to the Authority that its ruling precluding Piedmont from recovering the full amount of its franchise fees should be modified because: "A) it is at odds with the statutory scheme established for the payment and recovery of such fees; B) it is based on a mistaken conceptualization of the balance in Piedmont's franchise fee account as dating back to prior to 1996 when, in fact, it was a current balance; C) it is not consistent with the nature of the relief sought in this proceeding; D) it is, effectively, confiscatory in nature because it is not based on statutory or other legal authority which provides the Authority with the jurisdiction to take such action."⁷ The Company further states that in support of its *Petition*:

Piedmont witness David Carpenter will explain that, consistent with the procedures recommended by Staff and adopted by the Tennessee Public Service Commission, Piedmont made a periodic filing to change its franchise fee recovery rate in order to establish

⁶ *Petition for Reconsideration*, pp. 4-5 (November 14, 2011).

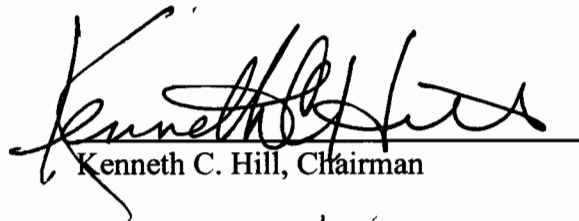
⁷ *Id.* at 8.

a reasonable franchise fee recovery rate for its Metro Government customers going forward that included an amortization of the current under-recovered balance in its franchise fee account. Mr. Carpenter will also explain that Piedmont simply proposed a footnote modification to adjust the applicable rate for the collection of the franchise fee to the new rate. Finally, Mr. Carpenter will explain the activity in Piedmont's franchise fee account that led to the current under-recovered balance and will compare and contrast the activity in that account with other similar accounts maintained by Piedmont, such as its gas cost deferred account.⁸

During the regularly scheduled Authority Conference held on November 21, 2011, the Directors voted unanimously to grant Piedmont's *Petition* based on the procedure set forth in Tenn. Code Ann. § 4-5-317 and TRA Rule 1220-1-2-.20 and to address the merits of the reconsideration at a future conference.

IT IS THEREFORE ORDERED THAT:

The *Petition for Reconsideration* filed by Piedmont Natural Gas Company, Inc. is granted, the merits of which will be considered by the Authority at a future conference.


Kenneth C. Hill, Chairman


Sara Kyle, Director


Mary W. Freeman, Director

⁸ *Id.* at 7-8.