BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

June 21, 2012

IN RE:	)	
	)	
TARIFF FILING BY PIEDMONT NATURAL GAS COMPANY TO ADJUST AND CORRECT THE APPLICABLE FRANCHISE FEE	)))	**DOCKET NO. 10-00033**

ORDER ON RECONSIDERATION

This matter came before Chairman Kenneth C. Hill, Director Sara Kyle and Director Mary W. Freeman of the Tennessee Regulatory Authority (the "Authority" or "TRA), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on May 7, 2012 for consideration of the *Petition for Reconsideration* filed by Piedmont Natural Gas Company, Inc. ("Piedmont" or "Company") on November 14, 2012 requesting that the Authority reconsider its decision regarding Piedmont's tariff to adjust the applicable rate used in the collection of the franchise fee it pays to the Metropolitan Government of Nashville ("Metro").

Background

On March 9, 2010, Piedmont filed a tariff with the Authority seeking to adjust the franchise fee percentage it charges its customers to recover the franchise fee it pays to Metro. Pursuant to its Franchise Agreement with Piedmont, Metro imposes a five percent (5%) franchise fee on all gross revenues of Piedmont, including revenue generated outside of Davidson County. The effective rate for collection of the Metro franchise fee is a projection and not based on actual usage. From year to year, there may be a difference between the actual collections and the actual payments due to changes in the number of Davidson County customers, as well as, changes in the overall percentage of revenues generated inside and outside of Davidson County.

During the April 12, 2010 Authority Conference, Piedmont's representative described the proposed tariff filed on March 9, 2010 as a filing that Piedmont makes with the TRA on a periodic basis to adjust the franchise fee percentage that is applied to bills of customers in Davidson County. Historically, Piedmont has filed its annual franchise fee adjustments on a regular basis. Prior to May 31, 2005, Piedmont adjusted the franchise fee percentage at annual or very close to annual intervals through filings with the TRA. These filings were made to true-up prior year over or under-collections of franchise fees by basing the calculation on the most recent Company revenues and number of Davidson County customers. At the time of the March 9, 2010 filing, the Company had not revised the Metro franchise fee percentage or made a filing with the TRA related to the Metro franchise fee since May 31, 2005.

The proposed tariff filed on March 9, 2010 sought 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. 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.

At the April 12, 2010 Authority Conference, 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. 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).[1] The panel reasoned that 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 and that Piedmont should be allowed to recover only the under-

[1] *See Order Approving, In Part, and Denying, In Part, Piedmont's Tariff Adjusting Franchise Fee* (October 28, 2011).

collected amounts incurred since May 31, 2005. [2] 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 their 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

On November 14, 2011, Piedmont filed its *Petition for Reconsideration* requesting that the Authority reconsider its October 28, 2011 Order disallowing under-collection of Franchise Fees prior to 2005 and dating back to pre-1996. Piedmont states that its March 2010 tariff filing was only a request to approve a footnote change adjusting the franchise fee percentage; it did not ask for or propose that the Authority should make a finding regarding the balance in the franchise fee account.[3] Further, Piedmont states that it did not have notice that the Authority was considering denying its accumulated franchise fees and did not have an opportunity to be heard on the matter.[4] On December 29, 2011, Piedmont's *Petition for Reconsideration* was granted and a hearing was held on February 13, 2012.

Piedmont's Position on Reconsideration

Mr. David R. Carpenter, Piedmont's Vice-President of Planning and Regulatory Affairs, submitted Pre-filed testimony on behalf of Piedmont and testified at the February 13th hearing. In his Pre-filed testimony, Mr. Carpenter states that the current mechanism for maintaining and adjusting franchise fee accounts was established by the March 12, 1983 Tennessee Public Service Commission ("TPSC") Order in Docket U-82-7190.[5] The TPSC Order states that "Commission Staff recommended that the Company establish a special account to handle fee collections payable and revise the franchise fee rate periodically to adjust for over and under-collections payable. The Commission adopts that

[2] *Id.*
[3] *See Petition for Reconsideration*, p. 3 (November 14, 2012).
[4] *Id.*
[5] David R. Carpenter, Pre-filed Direct Testimony, p. 4 of 17 (January 23, 2012).

recommendation." Mr. Carpenter asserts that Piedmont's actions were and are compliant with the Order.

Mr. Carpenter further asserts that the filing by Piedmont on March 9, 2010 was not a rate filing, but was only a footnote change to implement recovery of amounts previously paid and projected to be paid to Metro Government. The filing was made out of respect to the Authority due to its supervisory powers and in no way inferred or exhibited a rate change to which the Authority had statutory power.[6] Mr. Carpenter explains that the March 2010 tariff filing was to recover a "current" balance in the franchise fee account.[7] The current balance is calculated by recording the payments to the Metro Government and the amounts recovered from ratepayers for these payments. Any over or under-recovery is demonstrated by the account balance. He goes on to assert that the franchise fee account operates similar to other Piedmont accounts where payments are made and recovery takes place over time, such as the gas cost recovery account.[8]

Mr. Carpenter argues there is no accounting principle that establishes or supports the decision of the Authority, and Piedmont did not represent in its May 2005 filing that the recovery percentages 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.[9] Piedmont states it is being forced to forfeit some of the payments made to Metro Government because of an imperfect methodology used to update the franchise percentage in the past.[10]

In its *Franchise Fee Reconsideration Brief* (*"Reconsideration Brief"*) filed with the Authority on February 8, 2012, Piedmont reiterates the testimony of Mr. Carpenter that the 2005 franchise filing by Piedmont was consistent with Tenn. Code Ann. § 65-4-105(e) and the guidance established in the TPSC Order No. U-82-7190.[11] In addition, Piedmont points out that the balance in the franchise fee

[6] *Id.* at 6 of 17.
[7] *Id.* at 8 of 17.
[8] *Id.* at 9-10 of 17.
[9] *Id.* at 10 of 17.
[10] *Id.* at 11.
[11] *Reconsideration Brief*, p. 6 (February 8, 2012).

account was not calculated on the basis of the cumulative under-collection but "was calculated on the imbalance resulting from credits and debits to the account during the immediately preceding franchise fee period without regard to the cumulative imbalance."[12] Further, Piedmont maintains that the Company "did not represent to the Authority in conjunction with its 2005 franchise fee adjustment filing that the proposed revised rates were intended to collect the cumulative imbalance in the account..."[13]

In its *Reconsideration Brief*, Piedmont also asserts that Tenn. Code Ann. § 65-4-105(e)[14] entitles Piedmont to recover franchise fee payments from customers and doesn't place any restriction on the timing of such recovery.[15] Piedmont states the language of the statute is directive in nature and doesn't grant any discretion to the Authority regarding franchise fee recovery. The Company argues that by denying Piedmont's recovery of the franchise fees, the TRA exceeded the power granted to it by the statute.[16]

Based on its arguments, Piedmont requested that the Authority vacate its April 12, 2010 ruling and order Piedmont to recover the current balance of the uncollected franchise fees through an amortization of the under-collected balance in the account.

May 7, 2012 Authority Conference

At a regularly scheduled Authority Conference held on May 7, 2012, the panel considered Piedmont's arguments. Piedmont interprets Tenn. Code Ann. § 65-4-105(e) as creating a simple pass-through mechanism for the collection of franchise fees, with no discretion reserved to the Authority, however, Piedmont admits that the franchise fee obligation in this situation is "unique" in that the correct franchise fee recovery cannot be determined until after the period for which the fee is due has been concluded. The mechanism put into place since 1983 to allow for this "unique" franchise fee

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[12] *See Reconsideration Brief*, p. 10 (February 8, 2012).
[13] *Id.* at 11.
[14] Tenn. Code Ann. § 65-4-105(e) reads:

> Any franchise payment ... made by a utility to a municipality ... shall, insofar as practicable, be billed pro rata to the utility customers receiving local service within the municipality or political subdivision receiving such payments, and shall not otherwise be considered by the Authority in fixing the rates and charges of the utility.

[15] *Id.* at 12.
[16] *Id.* at 13-14.

recovery is not a simple pass-through as argued by the Company, and Piedmont has not previously objected to the Authority or its predecessor, the TPSC, reviewing and approving these tariff filings. It is only now when the Authority has disapproved of a filing that Piedmont has raised a jurisdictional objection.

As previously noted, it is the uniqueness of the Metro franchise agreement that led to the TPSC requiring the Company to establish a special account and allowing for periodic adjustments due to under or over-recovery. The argument that the Authority cannot review the accuracy of those adjustments that it has allowed to be created is without merit. The Authority is not using the franchise fee payment to fix a rate or charge of the utility, as argued by the Company, which is not allowed under Tenn. Code Ann. § 65-4-105(e). Instead, the Authority is merely reviewing the accuracy of the calculations made in the franchise fee account which it required to be established in 1983. This type of review of the franchise fee account is similar to the Authority's review of the similar deferred gas cost account. The Authority is ensuring that the correct amounts are being paid and received according to the mechanism already in place.

When Piedmont filed for approval of the franchise fee percentage change in May 2005, the unrecovered amount was represented as the "current" balance based on payments and collections recorded in the franchise fee account up to that time. That balance would have included the cumulative under or over-collections since the franchise fee account was established. The additional $1.6 million approved in this docket allowed recovery of the "current" balance in the franchise fee account based on payments and collections of franchise fees from May 2005 forward through October 2009. Mr. Carpenter states the filing in May 2005 was based on incorrect calculations because it only included the current filing period at that time. As such, it did not include balances carried forward from previous accounting periods. He states, however, that the filing in this docket is based on a corrected methodology that includes all historical amounts.

At the hearing held on February 13, 2012, Piedmont was asked to provide documentation to support its claims. On February 24, 2012, Piedmont provided documentation supporting payments and recoveries for the periods after May 2005. TRA Staff then requested that the Company provide the same type of documentation for franchise fee payments for the periods prior to May 2005. The Company submitted documentation supporting payments to Metro dating back to the year 2000 and documentation supporting franchise fees paid by Davidson County customers back to December 2002. Piedmont reported that it did not have copies of franchise tariff filings made prior to the year 2002.

Findings and Conclusions

Based on the record and explanations provided by Piedmont and its witness, the panel finds the franchise fee true-up filings made by Piedmont were flawed in that they were not trued-up to the running balance in the franchise fee account as they should have been and did not account for all prior under-collections. Therefore, the Authority should reconsider its disallowance of under-recovered amounts existing prior to the May 2005 tariff filing should be reconsidered.

The data provided by Piedmont for the years 2002 through May 2005 shows a complete record of payments and collections for the period, and the panel finds that the Company did experience under-collection of $523,859 for this period. The panel voted unanimously to allow recovery of the under-collected amounts from 2002 through May 2005.

Regarding the amounts paid by Piedmont prior to 2002, the panel found that the documentation is incomplete for the Company's combined payments and collections. Since the amounts prior to 2002 cannot be verified, the panel found that the ratepayers should not be responsible for paying past under-collected franchise fees without appropriate supporting documentation. Thereafter, based on the evidence presented at the hearing held on February 13, 2012 and the supporting documentation filed subsequently by the Company, the panel voted unanimously that Piedmont be permitted to recover an additional $523,859 in under-collected Metro franchise fees for the period of 2002 through May 31,

2005. This amount shall be included in the calculation of Piedmont's next filing with the Authority to true-up the franchise fee.

IT IS THEREFORE ORDERED THAT:

1. Piedmont Natural Gas Company, Inc. is permitted to increase the approved under-recovered balance in its franchise fee account by $523,859, which is the amount of Metropolitan Government of Nashville Franchise Fees under-collected during the period 2002 to 2005 as documented by the Company.

2. Piedmont Natural Gas Company, Inc. shall include this additional amount in the calculation in its next filing with the Tennessee Regulatory Authority to true-up the franchise fee rate.

Kenneth C. Hill, Chairman

Sara Kyle, Director

Mary W. Freeman 6/08/12

Mary W. Freeman, Director