

**Before the  
Tennessee Regulatory Authority**

**Docket No. 10-** 00127

**Petition of Piedmont Natural Gas Company, Inc. for Approval,  
*Nunc Pro Tunc*, of Negotiated Franchise Agreement with  
Mt. Juliet, Tennessee Pursuant to TCA § 65-4-107**

**Testimony  
of  
David R. Carpenter**

**On Behalf Of  
Piedmont Natural Gas Company, Inc.**



**June 25, 2010**

1 **Q. Please state your name and business address.**

2 A. My name is David Carpenter. My business address is 4720 Piedmont  
3 Row Drive, Charlotte, North Carolina.

4 **Q. By whom and in what capacity are you employed?**

5 A. I am employed by Piedmont Natural Gas Company, Inc. ("Piedmont" or  
6 the "Company") as Managing Director, Regulatory Affairs.

7 **Q. Please describe your educational and professional background.**

8 A. I have a B.S. degree from Furman University in 1977. In 1983, I  
9 completed the requirements for and became a Certified Public  
10 Accountant in North Carolina. In 1980, I was employed by Deloitte,  
11 Haskins and Sells as a staff accountant, and I was promoted to senior  
12 assistant in 1981. I was employed by Piedmont in 1982 as Supervisor of  
13 Property Records and in 1990 was promoted to Manager of Financial  
14 Reporting and Property Records. I was promoted to manager of Rate  
15 Administration in 1993 and in February 2003 was promoted to Director  
16 of Rates. I was promoted to my current position in July 2006.

17 **Q. Have you previously testified before this Authority or any other**  
18 **regulatory authority?**

19 A. Yes. I have previously testified before this Authority as well as before  
20 the North Carolina Utilities Commission and the Public Service  
21 Commission of South Carolina.

22 **Q. What is the purpose of your testimony in this proceeding?**

23 A. The purpose of my testimony is to present information to the Authority

1 relating to the franchise agreement entered into between Piedmont  
2 Natural Gas Company and the City of Mt. Juliet, Tennessee.

3 **Q. Could you please explain the circumstances that caused a need for a**  
4 **franchise agreement between Piedmont and Mt. Juliet?**

5 A. Yes. Under Section 65-26-101 of the Tennessee Code Annotated,  
6 Piedmont is required to have the consent of the City of Mt. Juliet, in the  
7 form of a municipal ordinance, in order to enter onto the streets and  
8 alleys of Mt. Juliet for the purpose of placing, maintaining, or expanding  
9 its natural gas distribution and transmission facilities. Piedmont has  
10 been providing natural gas service to the City of Mt. Juliet for the  
11 previous ten years pursuant to such a consent incorporated into City  
12 Ordinance 96-7. Pursuant to the terms of that Ordinance, the existing  
13 authorization to enter onto the property of the City of Mt. Juliet and to  
14 provide natural gas service therein expired in 2006. As such, under  
15 Tennessee law, a new franchise agreement was necessary in order for  
16 Piedmont to continue its provision of service to the City of Mt. Juliet  
17 after that date.

18 **Q. When did Piedmont begin pursuing a new franchise arrangement**  
19 **with Mt. Juliet?**

20 A. Piedmont started discussions with Mt. Juliet in 2005 for the purpose of  
21 initiating negotiations for a new franchise arrangement.

22 **Q. What was the result of those negotiations?**

23 A. These negotiations were successful as evidenced by an approved

1 Ordinance No. 2006-10 attached hereto as Exhibit \_\_\_\_ (DRC-1) and  
2 incorporated herein by reference. This ordinance renews Piedmont's  
3 franchise arrangement with the City of Mt. Juliet for a period of ten (10)  
4 years.

5 **Q. What are the primary provisions of the new franchise ordinance?**

6 A. The new franchise ordinance provides that in exchange for the right to  
7 provide service to customers within the municipal limits of Mt. Juliet  
8 and for access to the streets and public rights-of-way within the City,  
9 Piedmont agrees to continue to pay an annual franchise fee (in quarterly  
10 installments) of 5% of the gross receipts attributable to gas sales within  
11 the Mt. Juliet city limits during the ten year term of the agreement, and  
12 to comply with certain procedures with respect to the conduct of its  
13 business within the City's corporate limits.

14 **Q. Is Piedmont satisfied with the negotiated resolution of these issues?**

15 A. Yes. Both parties were ultimately able to agree with the negotiated  
16 result and that result is reflected in Ordinance No. 2006-10 which was  
17 approved by the City Council of Mt. Juliet on its second reading on  
18 March 13, 2006 and subsequently accepted by Piedmont.

19 **Q. What happened after Mt. Juliet enacted Ordinance 2006-10?**

20 A. Under Section 65-4-107 of the Tennessee Code Annotated, Ordinance  
21 2006-10 is required to be approved by this Authority and should have  
22 been promptly filed with this Authority for such approval.  
23 Unfortunately, however, that did not occur due to an unintended and

1 inadvertent administrative oversight. Accordingly, the Company is now  
2 filing this Petition for Authority approval of the Mt. Juliet franchise.

3 **Q. What was the nature of this oversight?**

4 A. The oversight involved a missed “hand-off” with respect to the Mt.  
5 Juliet franchise between a departing Piedmont employee and the new  
6 employees assuming responsibility for handling franchise agreements  
7 with respect to the Mt. Juliet franchise. This missed “hand-off” resulted  
8 in the Company’s failure to recognize the fact that Mt. Juliet had not  
9 been submitted for approval to the Authority as it should have been.

10 **Q. What steps has the Company taken to address this administrative**  
11 **oversight?**

12 A. Since this time the Company has implemented new processes and  
13 procedures to keep this from happening again.

14 **Q. Has the Company identified any other franchises requiring action**  
15 **before the Authority?**

16 A. Yes, we are negotiating two other franchise agreements, Fairview and  
17 Laverne, designed to replace prior “expired” agreements that are  
18 currently being negotiated. These franchises will be filed with the  
19 Authority once the negotiations are complete and the ordinances are  
20 approved by the respective municipal governments.

21 **Q. What factors have resulted in the delay in filing franchises with the**  
22 **Authority?**

23 A. The factors that delay the process vary with each franchise. It is often

1 difficult to negotiate and finalize franchise agreements due to the  
2 changing nature of the personnel of the local government entity involved  
3 in the negotiations, the pull of other municipal business for which such  
4 personnel are responsible, as well as the ever changing budgetary  
5 considerations faced by cities. It is also not uncommon for the parties to  
6 experience substantial delay in trying to work out differences in the  
7 proposed form and terms of proposed franchises. In one recent example,  
8 the Company started with a standard 3 page document as a first draft,  
9 but received a 16 page revised version as the first draft from the city.

10 **Q. What leverage does the Company have to force this process to a**  
11 **faster conclusion?**

12 A. Almost none. While termination of service to customers within the city  
13 limits would be the ultimate leverage, Piedmont does not believe that  
14 such action (or even the threat of such action) would be responsible or in  
15 the public interest. As a consequence, Piedmont is often forced to move  
16 at the speed dictated by the municipality, even when that results in a  
17 “gap” in approved franchise agreements.

18 **Q. Are there process changes you have implemented internally that will**  
19 **be helpful in proactively addressing franchise issues so as to move**  
20 **the process along as best you can?**

21 A. Yes. As I noted previously, the Company has implemented several  
22 process changes to clearly define responsibilities. We will also attempt  
23 to back up our timelines so that we begin discussions with the cities

1 much earlier in the process, well before franchise expiration dates, so  
2 that we can finalize negotiations in a timely manner but we will still be  
3 dependent on each city's timeliness in responding and participating in  
4 the franchise process.

5 **Q. What is Piedmont's position regarding the Mt. Juliet Franchise?**

6 **A.** Piedmont has acted in accordance with the franchise, as well as the  
7 others referenced above, since its execution by continuing to provide  
8 service to customers within the city of Mt. Juliet, by abiding by the  
9 City's requirements with respect to access to roads and rights-of-way,  
10 and by paying Mt. Juliet the franchise fee contemplated by the franchise.  
11 The rates and charges for such service have at all times been those on  
12 file with and approved by the Authority. As a result, the citizens of Mt.  
13 Juliet have benefited from the continued provision of safe, reliable  
14 natural gas service at reasonable rates and the positive, active  
15 engagement by Piedmont in their community – most recently including  
16 the restoration work and community outreach we conducted in  
17 association with the flooding.

18 **Q. What is the standard to be utilized by the Authority in determining**  
19 **whether to approve Ordinance 2006-10?**

20 **A.** My understanding is that under the statute, the Authority is authorized to  
21 approve the Ordinance if it finds that it "is necessary and proper for the  
22 public convenience and properly conserves the public interest."

1   **Q.   In your opinion, are the franchise terms set forth in Ordinance**  
2       **2006-10 necessary and proper for the public convenience and in the**  
3       **public interest?**

4   **A.   Yes, on a number of grounds.**

5       First, the new franchise terms reflected in Ordinance 2006-10 will  
6       establish a ten year arrangement through which the current and future  
7       residents, business enterprises and governmental facilities located within  
8       Mt. Juliet will be able to receive, under the supervisory jurisdiction of  
9       the Authority, the benefits of continuing natural gas service provided by  
10      Piedmont. This arrangement will help ensure the continuing availability  
11      of high quality natural gas service to Mt. Juliet for the foreseeable  
12      future.

13      Second, the new franchise facilitates the provision of such natural gas  
14      service to Mt. Juliet by an established and proven provider of that  
15      service well known to both Mt. Juliet and this Authority and possessing  
16      the requisite expertise, facilities, systems and gas supply and  
17      transportation assets necessary to provide such service.

18      Third, the new franchise arrangement establishes adequate and proper  
19      mechanisms for access by Piedmont to public rights of way, new and  
20      existing customers, and existing service lines, transmission and  
21      distribution facilities. These mechanisms help to ensure that Piedmont is  
22      able to provide both adequate and efficient service and to comply with  
23      the requirements of this Authority to ensure the safety and protection of



1 residents and property within Mt. Juliet.

2 Fourth, the new franchise arrangement provides an incentive for  
3 Piedmont to invest in infrastructure needed to provide improved and  
4 expanded service within Mt. Juliet by ensuring that Piedmont will have  
5 the right to provide service within these areas for a sufficient period in  
6 order to permit Piedmont the opportunity to recover the capital  
7 investment in such facilities under the rates approved by the Authority.

8 Fifth, payment of the franchise fees provided for in the new franchise  
9 agreement, in addition to Piedmont's ongoing duty to repair excavation  
10 work as it is performed, will act to offset long term road maintenance  
11 expenses that may be incurred by Mt. Juliet during the term of the new  
12 franchise arrangement and will help support the provision of municipal  
13 services by Mt. Juliet to its citizens.

14 **Q. Are any of these factors supporting approval of the Mt. Juliet**  
15 **franchise ordinance diminished or harmed by the delay in**  
16 **presenting this franchise to the Authority for approval?**

17 **A.** No. The franchise ordinance has operated in accordance with its terms  
18 since the expiration of the previous franchise agreement and the citizens  
19 and the City of Mt. Juliet have reaped the benefits of the franchise  
20 ordinance described above during that period. Piedmont has similarly  
21 benefited from the agreement during this period. To my knowledge, no  
22 harm or disadvantage to Piedmont, Mt. Juliet, or the public in general  
23 has resulted from the failure to file this ordinance in a timely manner.

1 We have implemented new processes and procedures to ensure that  
2 franchise negotiations, document executions and filings are made on a  
3 timely basis.

4 **Q. Could you please summarize your thoughts on the public**  
5 **convenience issue?**

6 A. Yes. Approval of the new franchise arrangement between Piedmont and  
7 Mt. Juliet will ensure that the residents, businesses and governmental  
8 entities residing and operating within Mt. Juliet continue to receive high  
9 quality, safe, and reliable natural gas service at economic rates from a  
10 provider with a long and successful history of providing that service to  
11 these areas. The franchise ordinance also provides substantial  
12 protections to the citizens of Mt. Juliet while concurrently offering  
13 Piedmont a positive incentive to provide ongoing and expanded natural  
14 gas service to this area. That service will contribute to a stable  
15 infrastructure and expanded economic opportunity and will be beneficial  
16 to customers by bringing the desirable attributes of natural gas service to  
17 Mt. Juliet for some time into the future.

18 **Q. Do you know of any facts that would indicate that the new franchise**  
19 **arrangement reflected in Ordinance No. 2006-10 is not in the public**  
20 **interest?**

21 A. No.

22 **Q. What are you asking the Authority to do in this proceeding?**

23 A. Based on the facts discussed above, we are asking the Authority to

1        approve the new franchise agreement between Piedmont and the City of  
2        Mt. Juliet as reflected in Ordinance No. 2006-10 to be effective March  
3        13, 2006.

4        **Q.     Does this conclude your testimony?**

5        A.     Yes it does.

# **EXHIBIT \_\_ (DRC-1)**

I certify this to be a true and exact copy of the files and records of the City of Mt. Juliet.  
Ordinance 2006-10 passed March 13, 2006.

Sheila S. Luckett 12/14/06  
Sheila S. Luckett, CMC – City Recorder

**ORDINANCE** 2006-10

**AN ORDINANCE GRANTING TO NASHVILLE GAS COMPANY, ITS SUCCESSORS AND ASSIGNS THE RIGHT, PRIVILEGE, AUTHORITY AND CONSENT TO PLACE, CONSTRUCT, ERECT, ACQUIRE, EXTEND, MAINTAIN, REPAIR, AND RELOCATE GAS LINES, WORKS, MAINS, APPARATUS AND ALL NECESSARY FIXTURES UNDER, THROUGH, ALONG AND ACROSS THE STREETS, ROADS, ALLEYS, BRIDGES AND VIADUCTS, WITHIN THAT PORTION OF THE LIMITS OF THE CITY OF MT. JULIET, TENNESSEE, IN WILSON COUNTY, AS HEREINAFTER DESCRIBED, FOR THE PURPOSE OF CONVEYING, TRANSPORTING, DISTRIBUTING, SELLING AND SUPPLYING FUEL GAS INCLUDING BUT NOT LIMITED TO NATURAL, MANUFACTURED AND MIXED GAS.**

NOW THEREFORE, BE IT ORDAINED by the CITY OF MT. JULIET, TENNESSEE

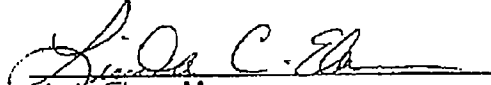
**Section 1.** The Nashville Gas Company, a division of Piedmont Natural Gas Company, Inc. (the "Company"), be, and is hereby granted the right, privilege, authority and franchise to place, construct, erect, acquire, extend, maintain, repair, relocate and operate gas lines, works, mains, apparatus and all necessary fixtures, connections and appurtenances under, through, along and across any of the streets, roads, alleys, bridges and viaducts now or hereafter owned, dedicated or used within the city limits of the City of Mt. Juliet as they now or hereafter may exist and to sell and distribute natural gas, in the City of Mt. Juliet as the boundaries thereof are now established and may hereafter be extended in accordance with the Franchise Agreement (Exhibit A) attached hereto and incorporated herein. The rights and privileges herein granted shall inure to the Company, its successors and assigns. This Ordinance cancels and supersedes all prior Ordinances passed by the City of Mt. Juliet concerning Company and repeals Ordinance 98-7.

**Section 2.** Nothing in this Ordinance shall be construed as a surrender by the CITY of its right or power to pass ordinances regulating the use of its streets.

**Section 3.** In case of conflict between this Ordinance or any part hereof, and the whole or part of any existing Ordinance of the City, the conflicting Ordinance is repealed to the extent of the conflict but no further.

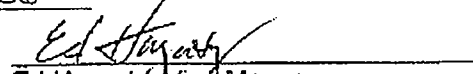
If any section, clause, provision or portion of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect any other section, clause, provision or portion of this Ordinance. This ordinance shall take effect on the earliest date allowed by law.

PASSED:

  
Linda Elam, Mayor

FIRST READING  
SECOND READING

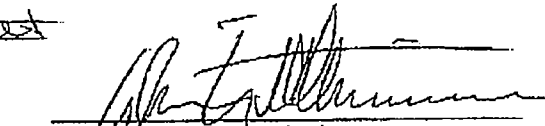
2/27/06  
3/13/06

  
Ed Hagerty, Vice Mayor

ATTEST:


  
Ray Justice, Commissioner

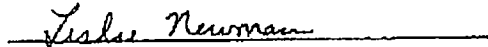
  
Sheila Luckett, Recorder

  
Ed Hagerty, Commissioner  
SL Glen Linthicum

Jim Bradshaw, Commissioner

APPROVED AS TO FORM:

  
Robert G. Shearer, City Manager

  
Leslie Newman  
City Attorney

## EXHIBIT A

### GAS FRANCHISE AGREEMENT

A franchise agreement by and between the CITY OF MT. JULIET, TENNESSEE, ("CITY") a municipal corporation under the laws of Tennessee and the NASHVILLE GAS COMPANY, a division of PIEDMONT NATURAL GAS COMPANY, INC. (the "COMPANY"), granting Company the right to convey, transport, distribute, sell and supply fuel gas including but not limited to natural, manufactured and mixed gas within the corporate limits of the CITY.

SECTION 1. NASHVILLE GAS COMPANY, a division of PIEDMONT NATURAL GAS COMPANY, INC. (the "COMPANY"), be, and is hereby granted the right, privilege, authority and franchise to place, construct, erect, acquire, extend, maintain, repair, relocate and operate gas lines, works, mains, apparatus and all necessary fixtures, connections and appurtenances under, through, along and across any of the streets, roads, alleys, bridges and viaducts now or hereafter owned, dedicated or used within the city limits of the CITY as they now or hereafter may exist and to sell and distribute natural gas, in the CITY as the boundaries thereof are now established and may hereafter be extended. The rights and privileges herein granted shall inure to the COMPANY, its successors and assigns. This Ordinance cancels and supersedes all prior Ordinances passed by the CITY concerning COMPANY and repeals Ordinance 96-7.

SECTION 2. No person, company or corporation shall be permitted to make any connections with any of the distribution pipes or service pipes of said company unless duly authorized by it. In making repairs or constructing new work, the said company shall have the right to shut off the gas and keep the same shut off for such time as may be necessary to accomplish this purpose.

SECTION 3. This franchise shall be for a term of TEN (10) YEARS from the date of acceptance.

SECTION 4. The COMPANY, in installing, maintaining and inspecting its pipes and other equipment for transmitting gas to the consumers of the CITY shall so install, repair, and maintain said system with as little interference as reasonably necessary. When said pipes and other equipment have been installed, repaired or inspected, said streets, alleys, sidewalks and other public places shall be restored to their original condition. All pavement and sidewalk replacement required to accomplish this end shall be accomplished by the COMPANY at its own expense, through its own forces or by the employment of competent contractors so as to restore or leave the streets or alleys in as nearly as possible the same condition as they were prior to the excavation.

SECTION 5. The Company's rates and prices for gas sold pursuant to this franchise and all services rendered and to be rendered and the conditions thereof for such service shall be in accordance with the requirements and subject to the approval of the Tennessee Regulatory Authority, and it is understood and agreed and made an express condition thereof that the COMPANY shall have the right to exercise the privileges herein granted without the payment of any special taxes, levies or assessments, other than general

property and ad valorem taxes equally applicable to the ownership of property within the CITY.

SECTION 6. In consideration of the right, privilege and franchise herein granted, the COMPANY shall pay to the CITY an amount equal to five percent (5%) of the annual gross revenues from all customers who are located within the limits of the CITY. The payment of the fee shall be due on a quarterly basis, and the first payment shall be made by the COMPANY on or before July 31, 2006. Thereafter, payment shall be due on the last day of the month following each calendar quarter. The payment of such fee and the recovery thereof by the COMPANY shall be pursuant to T.C.A. § 65-4-105(e).

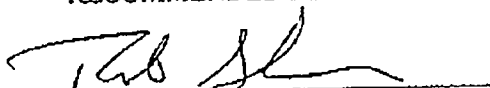
SECTION 7. In the event of acceptance of this Ordinance by the Nashville Gas Company, as hereinbefore provided in Section 3 and the effectiveness of the Ordinance occurs as hereinbefore provided in Section 8, then this franchise shall be submitted to the Tennessee Regulatory Authority for approval pursuant to Tenn. Code Ann. Section 65-4-107.

SECTION 8. The COMPANY shall indemnify the CITY against, and assume all liability for, damages which may arise or accrue to the CITY for any injury to persons or property from the doing of any work herein and operating the system authorized or the neglect of the COMPANY or any of its employees to comply with any ordinance regulating the use of the streets of the CITY and the acceptance by the COMPANY of this Ordinance, shall be an agreement by it to pay to the CITY any sum of money which the CITY may become liable for by reason of such injury.

SECTION 9. The COMPANY will be furnished a certified copy of this Ordinance upon its adoption and the said COMPANY shall file with the City Recorder its acceptance of this Ordinance within thirty (30) days from the date when it shall take effect.

SECTION 10. Nothing in this Agreement shall be constructed as a surrender by the CITY of its right or power to pass ordinances regulating the use of its streets.

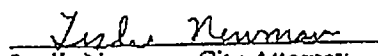
RECOMMENDED FOR APPROVAL:

  
Rob Shearer, City Manager

CITY OF MT. JULIET

  
Honorable Linda Elam, Mayor

APPROVED AS TO LEGALITY  
OF FORM AND COMPOSITION

  
Leslie Newman, City Attorney

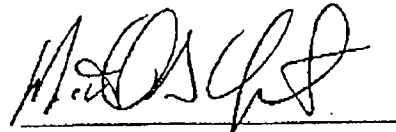
ATTEST:

  
Shiela Lockett, City Recorder

NASHVILLE GAS COMPANY



[Notarization provision]

A handwritten signature in black ink, appearing to read "Michael H. Yount", written over a horizontal line.

By:

Michael H. Yount  
Sr. VP operations  
Piedmont Nat. Gas  
1-17-07