

# BASS

**BERRY • SIMS**<sub>PLC</sub>

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November 4, 2010

**Via Hand Delivery**

Chairman Mary W. Freeman  
c/o Sharla Dillon  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243

filed electronically in docket office on 11/04/10

**Re: *Petition of Piedmont Natural Gas Company, Inc. for Approval, Nunc Pro Tunc, of Negotiated Franchise Agreement with the City of Fairview, Tennessee Pursuant to Tennessee Code Annotated § 65-4-107***  
**Docket No. 10-00210**

Dear Chairman Freeman:

Attached you will find an original and five (5) copies of the Petition of Piedmont Natural Gas Company, Inc. for Approval, Nunc Pro Tunc, of Negotiated Franchise Agreement with the City of Fairview, Tennessee Pursuant to Tennessee Code Annotated § 65-4-107. Accompanying the petition is a check for the filing fee in the amount of \$25.00.

Please file the original and four copies of the document and stamp the additional copy as "filed," and return that file-stamped copy to me by way of our courier.

This Petition also is being filed today by way of email to the Tennessee Regulatory Authority Docket Manager, Sharla Dillon.

Should you have any questions concerning the enclosed, please do not hesitate to contact me at the email address listed above.

With kindest regards, I remain

Very truly yours,



R. Dale Grimes

RDG/smb

Enclosures

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

IN RE:

PETITION OF PIEDMONT NATURAL GAS )  
COMPANY, INC. FOR APPROVAL, *NUNC* )  
*PRO TUNC*, OF NEGOTIATED FRANCHISE )  
AGREEMENT WITH THE CITY OF FAIRVIEW, )  
TENNESSEE PURSUANT TO TENNESSEE )  
CODE ANNOTATED § 65-4-107 )

Docket No. 10-

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**PETITION OF PIEDMONT NATURAL GAS COMPANY, INC. FOR APPROVAL, *NUNC PRO TUNC*, OF NEGOTIATED FRANCHISE AGREEMENT WITH THE CITY OF FAIRVIEW, TENNESSEE PURSUANT TO TENNESSEE CODE ANNOTATED § 65-4-107**

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Piedmont Gas Company, Inc. ("Piedmont" or the "Company"), through counsel and pursuant to Tennessee Code Annotated § 65-4-107, hereby requests approval by the Tennessee Regulatory Authority ("Authority"), *nunc pro tunc*, of a negotiated franchise agreement between Piedmont and the City of Fairview, Tennessee ("Fairview" or the "City"). In support of its Petition, Piedmont respectfully shows unto the Authority as follows:

1. Piedmont Natural Gas Company, Inc. is incorporated under the laws of the State of North Carolina and is engaged in the business of transporting, distributing and selling natural gas in the States of Tennessee, North Carolina and South Carolina.

2. Piedmont's natural gas distribution business is subject to regulation and supervision by the Authority pursuant to Chapter 4 of Title 65 of the Tennessee Code Annotated.

3. Piedmont has its principal offices in Tennessee at 83 Century Boulevard, Nashville, Tennessee, and is engaged in the business of furnishing natural gas to customers located in Nashville and the remainder of Davidson County as well as portions of the counties of Cheatham, Dickson, Robertson, Rutherford, Sumner, Trousdale, Williamson, and Wilson and in certain incorporated towns and cities located therein.

4. Piedmont has previously provided natural gas service to the City of Fairview pursuant to a franchise agreement approved by the City and accepted by Piedmont. Pursuant to its terms, that franchise expired on February 16, 2009.

5. At or about the time the prior Fairview franchise expired, both Piedmont and the City of Fairview hired new personnel responsible for negotiating and managing franchise arrangements. These individuals were Eddie Davidson on behalf of Piedmont and Andrew Hyatt, City Manager, on behalf of Fairview. Beginning in May, 2010, Piedmont began efforts to renegotiate the Fairview franchise. A proposed Ordinance was subsequently submitted to the Fairview Board of Commissioners in June, 2010 but the Board had several concerns with the original draft Ordinance and the negotiation of those issues, revisions to the Ordinance, and subsequent review and approval by the Board of Commissioners took up most of the intervening period. Those efforts ultimately led to the approval and acceptance of the franchise attached hereto as Exhibit 1.

6. The negotiations which resulted in the new Fairview franchise involved the identification and resolution of a number of issues between Piedmont and Fairview. These negotiations were conducted in an arm's length manner and involved issues including the term of the franchise agreement and the exclusivity thereof, among others.

7. On August 5, 2010, An Ordinance Granting a Limited Exclusive Franchise to Piedmont Natural Gas Company, Inc., Within the Corporate Limits of the City Of Fairview, Tennessee was executed by Mr. Ken Brison, Mayor of the City of Fairview. The original version of this approved franchise Ordinance delivered to Piedmont was not fully executed. This required Piedmont, upon realization of this fact, to return the franchise to the City for correction of this clerical mistake. The revised version of the franchise Ordinance was not received by Piedmont until several weeks ago. This ordinance grants the Company the right to construct, operate and maintain a gas utilities system within the City for the production, transmission,

distribution, and sale of gas to consumers and users within the City and to the City and any and all agencies and departments thereof. A copy of this Ordinance is attached hereto as Exhibit 1.

8. Piedmont submits that the franchise agreement is necessary and proper for the public convenience and properly conserves the public interest on at least the following grounds:

a. The franchise agreement establishes a twenty (20) year term arrangement which secures the provision of natural gas service to citizens, businesses and governmental institutions within the geographical areas identified on Exhibit A to the Ordinance.

b. The franchise agreement ensures the provision of high quality natural gas service by an established provider of such service.

c. The franchise agreement establishes adequate and proper mechanisms for access to public rights-of-way, new and existing customers, and existing service lines, transmission and distribution facilities and thereby ensures the protection of the property and citizenry of Fairview.

d. The Company shall pay franchise fees to the City on a quarterly basis in an amount equal to five percent (5%) of the annual gross revenues collected from all customers who are located and provided service by the Company within the geographical areas identified on Exhibit A to the Ordinance.

The testimony of Eddie Davidson, in support of these factors and the Fairview franchise in general, is being filed concurrently with the filing of this petition.

9. Pursuant to Tennessee Code Annotated § 65-4-107, the franchise agreement between Piedmont and Fairview must be approved by the Authority in order to be valid. Such approval is proper where, as here, the franchise is necessary and proper for the public convenience and properly conserves the public interest.

10. Piedmont hereby advises the Authority that pursuant to Tennessee Code Annotated § 65-4-105(e), Piedmont has in the past and intends in the future, insofar as practicable, to bill its customers subject to the franchise agreement on a pro rata basis for any "franchise payment or other payment for the use of public streets, alleys or other public places or any license, privilege, occupation or excise tax payment."

**REQUEST FOR APPROVAL NUNC PRO TUNC**

11. This franchise is one of several with "timing" issues that Piedmont identified in the Mt. Juliet franchise proceeding. The timing issues resulted from a number of factors including delays in completing negotiations with the municipalities involved in those agreements as well as some inconsistencies in Piedmont's administration of its franchise agreements in the context of changes in management structure for these documents. Piedmont has acted in a manner consistent with its previous franchise agreement, and with the proposed franchise agreement, at all times since February 16, 2009. All services provided by Piedmont to customers within the municipal limits of Fairview during the interim period have been provided at the rates and on the terms and conditions on file with and approved by the Authority.

12. Piedmont acknowledges and regrets the failure to file this franchise in a timely manner and has taken affirmative steps to ensure that such failures will not occur in the future. Piedmont submits that no customers or other parties have been harmed by the Company's oversight in this regard.

13. In order to provide for the uninterrupted provision of franchised service to Fairview, and in recognition of the requirement that franchised services by Piedmont within the boundaries of Tennessee municipalities must be approved by this Authority, Piedmont respectfully requests approval of the attached franchise agreement, *nunc pro tunc*, to be effective as of February 17, 2009.

WHEREFORE, Piedmont Natural Gas Company, Inc., respectfully requests that the Authority approve, to be effective as of February 17, 2009, the negotiated franchise agreement incorporated into the attached hereto as Exhibit 1.

Respectfully submitted this 4th day of November, 2010.

**Piedmont Natural Gas Company, Inc.**

By: *R. Dale Grimes*

R. Dale Grimes  
Bass, Berry & Sims PLC  
150 Third Avenue South, Suite 2800  
Nashville, Tennessee 37201  
Telephone: 615-742-6244


By: *James H. Jeffries IV*  
James H. Jeffries IV  
Moore & Van Allen PLLC *by RDG*  
Bank of America Corporate Center *w/permission*  
100 N. Tryon Street, Suite 4700  
Charlotte, NC 28202  
Telephone: 704-331-1079

STATE OF NORTH CAROLINA

**VERIFICATION**

COUNTY OF MECKLENBURG

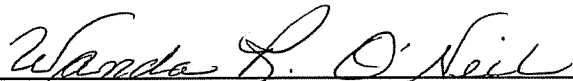
Jane Lewis-Raymond, being duly sworn, deposes and says that she is Vice President & General Counsel of Piedmont Natural Gas Company, Inc., that as such, she has read the foregoing Petition and knows the contents thereof; that the same are true of her own knowledge except as to those matters stated on information and belief and as to those she believes them to be true.

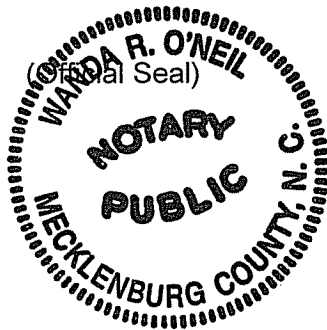
  
Jane Lewis-Raymond

Mecklenburg County, North Carolina

Signed and sworn to before me this day by Jane Lewis-Raymond

Date: 11/3/10

  
Wanda R. O'Neil, Notary Public



My commission expires: April 26, 2011

# **EXHIBIT 1**

**CITY OF FAIRVIEW**

Bill # 2010-04

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE GRANTING A LIMITED EXCLUSIVE FRANCHISE  
TO PIEDMONT NATURAL GAS COMPANY, INC., WITHIN THE  
CORPORATE LIMITS OF THE CITY OF FAIRVIEW, TENNESSEE.**

**WHEREAS**, it appears to the Board of Commissioners of the City of Fairview, Tennessee, that the franchise agreement previously granted to Piedmont Natural Gas Company, Inc., and or its successors has expired and that the best interest of all the citizens of the City of Fairview, Tennessee will be served by the granting to Piedmont Natural Gas Company, Inc., a franchise to operate within upon and below the streets of the City of Fairview, Tennessee within its existing or future corporate boundaries.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF  
COMMISSIONERS OF THE CITY OF FAIRVIEW, TENNESSEE, AS  
FOLLOWS;**

**I. DEFINITIONS**

**1.01 As used in this Ordinance, the following terms, words and phrases shall have the meanings respectively ascribed to them in this section:**

"Company" shall mean Piedmont Natural Gas Company, Inc., a corporation organized under the laws of the State of North Carolina and authorized to do business in the State of Tennessee, and any successor in interest to Piedmont Natural Gas Company, Inc. under this franchise Ordinance.

"City" or "City of Fairview" shall mean:

The City of Fairview, a municipal corporation located in Williamson County, Tennessee,

The area within the territorial city limits of the City of Fairview and within the extraterritorial area surrounding the City to the extent it may be lawfully included as presently or hereafter fixed by law or ordinance, or

The Board of Commissioners of the City of Fairview or any officer or agent duly authorized in acting on behalf of the City as a municipal corporation, as indicated by the context by which the term is used;

"Board of Commissioners" shall mean the governing body of the City of Fairview;

"Gas" when used as an unqualified term shall mean either natural or artificial gas, by whatever process or processes derived or manufactured, or both such gases either separately or a mixture of them.

"Notice" All notices required to be delivered to the City or Company shall be delivered to the Current City Hall of the "City" and to the Corporate Headquarters of the "Company." Notices shall be delivered or by Registered or Certified Mail. Notices sent by Registered or Certified Mail shall be deemed received when they are placed into the hands of the United States Postal Service and the Receipt stamped and returned to the Sender.

## II. FRANCHISE GRANTED

2.01 The Company is hereby granted the limited - exclusive right to construct, operate and maintain a gas utilities system within the Town for production, transmission, distribution and sale of gas to consumers and users within the Town and to the Town and any and all agencies and departments thereof. The franchise granted to The Company shall be exclusive except if any entity seeking gas service from The Company shall be denied said service for any reason by The Company the City shall have the right to allow but is not required to allow another provider of gas service to serve the customer's property located upon the map and parcel number within the City notwithstanding the provisions of the right of exclusivity. Said exclusive right to provide service to the refused map and parcel number only having been waived by The Company by refusing service to the particular map and parcel number. Such a waiver shall not apply to any other map and parcel numbers located within the Corporate Boundaries of the City and the limited exclusive right to provide service to all other customers within the City is preserved unless expressly refused service by The Company. Should any customer within the corporate limits of the city whose property is refused gas service by The Company not obtain said service to a particular map and parcel number located within the corporate limits of the City from another source and The Company having previously denied service to a particular map and parcel number of property located within the Corporate Boundaries of the City determine that The Company will provide service to a particularly previously denied map and parcel number property then and in that event the exclusive right to provide service to the previously denied customer shall be restored to The Company upon connection of the customer to the service lines of the Company.

2.02 The Company is hereby granted the limited - exclusive right (subject to the provisions outlined in paragraph 2.01), authority and privilege to construct and install, operate, maintain, lay or relay, renew, replace and repair gas pipes, mains, pipelines, conduits, regulators, connections and services thereto, in, through, across, along and under streets, avenues, roads, public alleys, lanes, parks and squares, and other public places and ways in the City for the production, pumping, handling, transmission, distribution and sale of gas for any and all purposes, subject to the terms and conditions hereinafter set forth in this Ordinance.

2.03 Whenever the Company wishes to enter upon any street, lane or public place for the purpose of constructing, replacing or repairing any gas mains, pipes, or other appliances, it shall notify the town, file a plan or map of the proposed work, if practicable, and comply with all provisions of any ordinances related to utility excavations in City right-of-way before commencing same. Whenever the Company causes any opening, excavation or alteration to be made in any street, lane or public place within the Town in the construction, operation or maintenance of any of its pipelines or other appliances owned or used by it, the Company shall repair and restore such portions of such streets, lanes or public places to the same condition in which it found them as nearly as practicable. Additionally, if the Company shall fail to restore the area to its approximate former condition within a reasonable period of time no less than thirty working days after notification by the City, the City shall proceed to restore such streets, lanes and public places as nearly as practicable to their original condition and the City shall submit a statement of the costs for this restoration to the Company. The Company agrees to pay the City for these costs within thirty days.

2.03.1 Whenever the Company shall cause any opening, excavation or alteration to be made in any street, lane or public place within the City in the construction, operation or maintenance of any of its pipelines or other appliances owned or used by it, the Company shall comply with all safety regulations required by federal, state and local laws.

2.04 In the event it becomes necessary or expedient for the City to change the course or grade of any street, lane or public place in which the Company is maintaining gas mains, pipes or other appliances and fixtures, upon reasonable (reasonable is defined to be not less than sixty (60) days before the initiation of any change as contained within this section) written request of the City, the Company will remove or change the location or depth of such main, pipes or other appliances and fixtures, at its own expense, as necessary to conform to the proposed street alteration. However, the Company shall be reimbursed its relocation costs whenever such reimbursement is authorized by a Federal or State statute, for either urban renewal development or street relocation. Provided the reimbursement funds are provided by the State or Federal Government. In no instance or circumstance, will the city be or become liable for such relocation expenses.

**2.05 This franchise is granted for a term of twenty (20) years beginning February 17, 2009 and ending at midnight February 17, 2029. Not with standing the provisions of the twenty (20) year term of this franchise the City may exercise the option to terminate the franchise granted herein at the ten (10) year anniversary date (February 17, 2019) of this franchising document and the fifteen (15) year anniversary date (February 17, 2024) of this franchise document by the passage and delivery to the Company by either February 17, 2019 or February 17, 2024 of an Ordinance duly passed by the City's Board of Commissioners clearly stating the City Governing Body's desire to terminate the Franchise Agreement. Prior to implementing the option to terminate, the City must notify the Company in writing pursuant to Section 1.01, "Notice" of this agreement of the intent to**

terminate the agreement not less than ninety (90) days prior to the consideration of an Ordinance to terminate the agreement.

The Company hereby expressly waives any right or privilege it has or may have to terminate this Franchise Agreement prior to the expiration of the twenty (20) year period for which it is granted.

If the option to terminate the Franchise Agreement is not exercised timely by the City this Franchise Agreement shall continue unabated to the next option date or the termination limit of the Franchise Agreement whichever event shall be the last to occur. This franchise supersedes any and all former rights or franchises of the Company to operate a gas utilities system in the City with respect to all acts and things done or admitted to be done, on or after February 17, 2009.

2.06.1 The COMPANY hereby agrees to indemnify, defend, and hold harmless the City, its elected officials, officers, boards, commissions, and employees, against any and all claims and liabilities arising from the Company's, and its assignees or licensees, activities or Gas System, including reasonable attorneys fees and court costs.

2.07 The Company shall not be obligated to the City or any of its departments or agencies for any tax, license fee, other fee, or any other payment whatsoever, relating to the rights granted herein, other than that which is levied by state law.

2.08 The Company is hereby granted the right during the existence of this franchise to mortgage or hypothecate this franchise, together with all rights and privileges there under and any right or interest therein, as security for indebtedness, subject to acceptance by any legal successor in interest of the obligations, duties, liabilities, limitations and prohibitions set out herein and subject to the approval by the Tennessee Regulatory Authority or other governmental agency whose approval is required by law. The Company shall not assign or transfer its rights under this agreement, provided, however, that this provision shall not prohibit the Company from assigning its rights hereunder to the surviving corporation in any corporate reorganization in which the Company is a party.

2.09 The Company shall pay to the City an amount equal to five percent (5%) of the annual gross revenues collected from all customers who are located and provided service by the Company within the geographical areas identified on Exhibit A. The payment of the fee shall be on a quarterly basis, and the first payment shall be made by the Company within sixty (60) days after the approval by the TRA of the Ordinance. Thereafter, payment of such fee and the recovery thereof by the Company shall be pursuant to Tenn. Code Ann. Section 65-4-105(e).

### III. ACCEPTANCE OF FRANCHISE

This Ordinance shall be submitted to the Tennessee Regulatory Authority pursuant to Tenn. Code Ann. Section 65-4-107 for approval and shall take effect from the day and date of its passage, but only after it has been accepted in all its terms and revisions by the Company, in writing, within sixty (60) days after its passage; otherwise, the same shall be null and void and of no effect.

**BE IT FURTHER ORDAINED**, If any sentence, clause, phrase or paragraph of this Ordinance is declared to be unconstitutional by any Court of competent jurisdiction, such holding will not affect any other portion of this Ordinance.

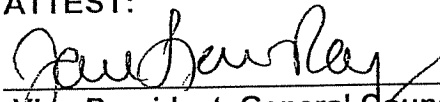
**BE IT FINALLY ORDAINED**, that this Ordinance shall take effect fifteen days (15) days after its first passage or upon second reading, whichever is later, the public welfare requiring it and shall be subject to the provisions herein contained in the "Acceptance of Franchise" section of this Ordinance.

PIEDMONT NATURAL GAS COMPANY, INC.

BY: 

Senior Vice President - Utility Operations

ATTEST:



Vice President, General Counsel, Corporate  
Secretary and Chief Compliance Officer

CITY OF FAIRVIEW

BY: 

Mayor

ATTEST:



City Recorder

STATE OF ~~TENNESSEE~~ NORTH CAROLINA

COUNTY OF Mecklenburg

This is to certify that on the 9<sup>th</sup> day of September, 2010, before me came Michael H. Yount, with whom I am personally acquainted, who, being by me duly sworn, says that he is the Senior Vice President - Utility Operations of Piedmont Natural Gas Company, Inc., and Jane R. Lewis-Raymond, with whom I am personally acquainted, who, being by me duly sworn, says that she is the Vice President, General Counsel, Corporate Secretary and Chief Compliance Officer of Piedmont Natural Gas Company, Inc.; that the Senior Vice President - Utility Operations and Vice President, General Counsel, Corporate Secretary and Chief Compliance Officer subscribed their names thereto, and the Company's corporate seal was affixed, all with the consent of the Board of Directors of the Company.

Witness my hand and official seal, this the 9<sup>th</sup> day of September, 2010.

Wanda R. O'Neil  
Notary Public

My Commission expires: April 26, 2011

STATE OF TENNESSEE

COUNTY OF ~~COUNTY~~ WILLIAMSON

This 19<sup>th</sup> day of August, 2010, personally came before me, Larry D. Cantrell, City Attorney of the City of Fairview, Tennessee who, being by me duly sworn, says that he knows the common seal of the City of Fairview and he is acquainted with Ken Brison, Mayor of this City, and that he saw the Mayor sign the foregoing instrument, and that he affixed the City's seal to this instrument and he signed his name in attestation of the execution of this instrument in the presence of the Mayor of this Town.

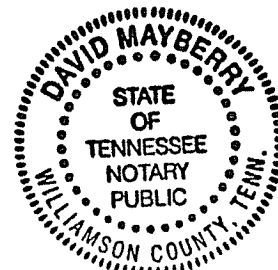
Witness my hand and official seal, this the 19<sup>th</sup> day of August, 2010.

David Mayberry  
Notary Public

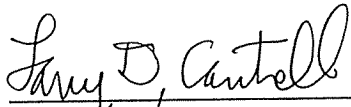
ATTEST:

Larry D. Cantrell  
Larry D. Cantrell, Fairview, City Attorney

My Commission Expires: Dec 3, 2013



Approved as to Form:

  
Larry D. Cantrell, Fairview, City Attorney

Passed first reading: August 5<sup>th</sup>, 2010

Passed second reading: August 19<sup>th</sup> 2013

# EXHIBIT A

**Fairview, TN**  
March 25, 2009

- Streets  
..... Private Roads  
Parcel  
Corporate Limits

