

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

December 16, 2014

IN RE:

**PETITION OF PIEDMONT NATURAL GAS COMPANY,
INC. TO ADJUST THE JUNE 30, 2012 ACA ENDING
BALANCE FOR PRIOR PERIOD ADJUSTMENTS**

)
) **DOCKET NO.**
) **13-00119**
)
)

ORDER DENYING MOTION FOR SUMMARY JUDGMENT

This matter came before Chairman James M. Allison, Director Kenneth C. Hill, and Director David F. Jones of the Tennessee Regulatory Authority (“Authority” or “TRA”), the voting panel assigned to this docket, at the regularly scheduled Authority Conference held on June 16, 2014 for consideration of *Piedmont Natural Gas Company, Inc.’s Motion for Summary Judgment* filed on February 26, 2014.

BACKGROUND

Piedmont Natural Gas Company, Inc. (“Piedmont” or the “Company”) makes an Actual Cost Adjustment (“ACA”) account filing with the Authority annually. This filing summarizes the cash purchases and payments of gas by Piedmont to the amount collected from customers for this net amount. Piedmont provides documentation, and TRA Audit Staff (“Staff”) audits this filing to ensure that customers are not over- or under-paying for the actual cost of gas. Any over- or under-recovery is eliminated through an ACA mechanism pursuant to Piedmont’s tariff. The ACA balance represents cash transactions, and the associated general ledger account of the Company reflects accrual transactions. Piedmont is responsible for the reconciliation of the ACA balance to the general ledger account.

On March 26, 2013, the Authority approved an over-collected amount of \$8,639,411.62 in the ACA account as reported by Staff's audit in Docket No. 12-00114 (ACA filing for the period of July 1, 2011 through June 30, 2012).¹ Piedmont filed its *Petition of Piedmont Natural Gas Company, Inc. for Accounting Order* ("Petition") on August 30, 2013. In its *Petition*, Piedmont seeks Authority approval to correct that reported balance in its deferred ACA account in order to maintain consistency between the ACA account and the costs as recorded in the associated general ledger account.² Specifically, Piedmont requests that the Authority find that the amount approved in TRA Docket No. 12-00114 was overstated by \$3,664,354.59, including interest, and authorize Piedmont to correct the ACA account balance to accurately reflect the cumulative impact of prior gas cost collections and payments by Piedmont.³

The Hearing Officer issued an *Order Establishing Procedural Schedule* on January 10, 2014. The procedural schedule provided for the filing of dispositive motions and supporting briefs on the following preliminary issues:

- 1) Whether the costs underlying the proposed adjustments in Piedmont's ACA account are legitimate gas costs eligible for inclusion in that account; and
- 2) Whether Piedmont's proposed ACA account adjustments are barred under the terms of the audit report approved by the TRA in Docket No. 07-00174.⁴

MOTION FOR SUMMARY JUDGMENT

Piedmont filed *Piedmont Natural Gas Company, Inc.'s Motion for Summary Judgment* ("Motion for Summary Judgment") and a brief in support of the motion on February 26, 2014. The Consumer Advocate and Protection Division of the Office of the Attorney General

¹ See *In re: Piedmont Natural Gas Company, Inc. Actual Cost Adjustment Account Filing for the Period July 1, 2011 – June 30, 2012*, Docket No. 12-00114, *Order Adopting ACA Audit Report of Tennessee Regulatory Authority's Utilities Division* (March 26, 2013).

² *Petition*, pp. 1-2 (August 30, 2013).

³ *Id.* at 2-3.

⁴ See *Order Establishing Procedural Schedule*, p. 1 (January 10, 2104).

(“Consumer Advocate”) filed the *Consumer Advocate and Protection Division’s Response to Piedmont Natural Gas Company, Inc.’s Motion for Summary Judgment* on March 7, 2014. On March 10, 2014, TRA Party Staff filed its *Objection to Piedmont Natural Gas, Inc.’s Motion for Summary Judgment (“Party Staff Objection”)*.

Oral arguments were held in this matter on May 5, 2014 in which the parties primarily reiterated the arguments made in the *Motion for Summary Judgment* and *Party Staff’s Objection*. The Consumer Advocate did not present oral arguments. A summary of the positions of the parties follows.

POSITIONS OF THE PARTIES

PIEDMONT

Piedmont asks the panel to grant its *Motion for Summary Judgment* as to the preliminary issues and make the following findings:

- (a) the costs underlying the proposed adjustments in Piedmont’s ACA account are legitimate gas costs eligible for inclusion in that account; and (b) Piedmont’s proposed ACA account adjustments are not barred under the terms of the audit report approved by the TRA in Docket No. 07-00174.⁵

Piedmont asserts that the account balance in the ACA account is incorrect due to inadvertent errors and omissions from prior periods. According to Piedmont, it became aware there was a discrepancy between its book amount and ACA amount in early 2012.⁶ Until this time, Piedmont states that it believed the ACA and the book amounts were reconciled, and it avers that the difference in accounting methods, cash basis for the ACA and accrual basis for the general ledger had masked this difference.⁷ Piedmont also asserts that the lag in receiving approved ACA filings from the Authority attributed to the delay in discovering this difference.⁸

⁵ *Motion for Summary Judgment*, p. 2 (February 26, 2014).

⁶ *Petition*, pp. 3-4 (August 30, 2013).

⁷ *Id.*

⁸ *Id.*

Piedmont attributes the difference in book amounts and the ACA to five transactions. First, the 2006 ACA filing did not reflect the first demand payment to Midwestern Gas Pipeline in November 2006 in the amount of \$41,200.00 (plus interest of \$12,843.26).⁹ Second, the Company inaccurately included the 2005 estimate to actual variance in its 2006 ACA filing in the amount of \$309,357.47 (plus interest of \$122,280.80).¹⁰ Third, Piedmont included a wire payment for credit invoices which had already been included in prior ACA filings in the amount of \$699,266.65 (plus interest of \$217,982.06).¹¹ Fourth, confusion regarding payments to Tennessee Gas Pipeline and the asset manager resulted in ACA misstatements in the amount of \$692,137.60 (plus interest of \$259,715.81).¹² Fifth, the omission of a Firm Storage Market Area (“FSMA”) true-up adjustment with the asset manager in 2005 in the amount of \$966,432.32 (plus interest of \$343,138.62).¹³

Piedmont asserts that customers have benefited from these errors and omissions because they have paid a lower price for gas over this time period.¹⁴ Due to this error, Piedmont now seeks approval to adjust the ACA account balance by \$3,664,354.59, inclusive of interest.¹⁵

In the *Statement of Stipulated Facts* (“*Stipulation*”) filed on February 21, 2014, Piedmont and TRA Party Staff agreed about the Authority’s ACA filing and audit process.¹⁶ The parties also acknowledged that the Purchased Gas Adjustment (“PGA”) Rules, TRA Rule 1220-4-7-.03 *et seq.*, allows prior period adjustments to the ACA account balance.¹⁷ With the approval of the *Joint Final Report of Audit Staff and Piedmont Natural Gas Company* (“*Joint Final Report*”) in

⁹ *Id.* at 4.

¹⁰ *Id.*

¹¹ *Id.* at 5.

¹² *Id.*

¹³ *Id.* and *Motion for Summary Judgment*, p. 21 (February 26, 2014).

¹⁴ *Petition*, p. 6 (August 30, 2014).

¹⁵ This interest does not include the five-month delay due to Piedmont postponing this filing in hopes that it could be combined with its accumulated deferred income tax (“ADIT”) filing to refund customers over-collections in this account. *Petition*, p. 6 (August 30, 2013).

¹⁶ *Stipulation*, pp. 1-3 (February 21, 2014).

¹⁷ *Id.* at 4.

TRA Docket No. 07-00174, the parties agreed on the ending balance in the ACA account at December 31, 2006.¹⁸ According to the *Stipulation*, the parties also agreed that the ACA account balance was inaccurate and included Atmos' errors that have been carried forward through subsequent ACA filings with the Authority.¹⁹ The parties also stipulated that the proposed adjustments submitted by Piedmont represent legitimate gas costs and that the PGA Rules, TRA Rule 1220-4-7-.03, *et seq.*, allow for the calculation and recovery of interest on the monthly ACA account balance in a timely manner.²⁰ The parties, however, disagree on whether such gas costs are currently properly recoverable through the ACA account.²¹

In its response to Staff's data request, Piedmont asserts that the errors and omissions in the ACA account balance were not known at the time of the 2006 ACA *Joint Final Report* in TRA Docket No. 07-00174 and were therefore not included in the *Joint Final Report* in that docket.²² Piedmont attests in its data response that the different accounting methods, cash for the ACA and accrual for the general ledger account, aided in the concealing of these errors until this time. Piedmont states:

...such corrections are appropriate because: (1) the ACA mechanism, as reflected by the TRA ACA Rule, is intended to capture and account for all gas cost transactions entered into by Piedmont; (2) the corrections sought in this case are necessary to accurately state the balance of Piedmont's ACA account which is also a requirement of the Authority's ACA Rule; (3) the adjustments sought herein are not barred because they were not resolved by prior Staff audits; (4) TRA Rule 1220-4-7-.03 specifically contemplates prior period adjustments to Piedmont's ACA account when necessary, and (5) the TRA has previously authorized such adjustments when appropriate and necessary, as is the case here.²³

¹⁸ *Id.* See also *In re: Nashville Gas Company, A Division of Piedmont Natural Gas Company, Inc., Actual Cost Adjustment Account Filing for the Twelve Months Ended December 31, 2006*, Docket No. 07-00174, *Joint Final Report of Audit Staff and Piedmont Natural Gas Company* (June 10, 2008).

¹⁹ *Id.* at 5.

²⁰ *Id.*

²¹ *Id.*

²² Response to TRA Staff Data Request No. 1 (November 5, 2013).

²³ *Id.*

TRA PARTY STAFF

Party Staff views the *Joint Final Report* as a settlement where give-and-take on the part of both parties took place. Negotiations in TRA Docket No. 07-00174 spanned eight months and resulted in a reduction of over-collections of \$1,517,791.34.²⁴ Party Staff argues that going back and re-adjusting the amounts in this settlement provides no incentive for parties to reach a settlement in future proceedings. Additionally, allowing the requested adjustment would be tantamount to retroactive ratemaking because it would change rates after an order dealing with the associated costs of those rates has been approved.²⁵

Party Staff avers that the Midwestern Gas Pipeline payment in November 2006 is a new invoice not included in TRA Docket No. 07-00174.²⁶ Therefore, it is an appropriate prior period adjustment.²⁷ Party Staff argues that it should, however, be filed in the next ACA audit as a prior period adjustment rather than adjusting the ACA account ending balance at June 30, 2012.²⁸ Party Staff agrees that the December 2005 estimate to actual variance is a correction of the ACA beginning balance at January 1, 2006.²⁹ This variance, however, was never questioned by Piedmont or Audit Staff and was included in the ACA account balance at December 31, 2006 in the *Joint Final Report* in TRA Docket No. 07-00174.³⁰ For this reason, Party Staff argues that it is not an appropriate prior period adjustment. Party Staff attests that the invoices supporting the Tennessee Gas Pipeline adjustments and the FSMA True-up are identical to the invoices submitted in TRA Docket No. 07-00174 and were included in the *Joint Final Report*. Additionally, Party Staff points out that Piedmont was informed in TRA Docket No. 06-00087

²⁴ *Party Staff's Responses to Discovery Request of Piedmont Natural Gas Company, Inc. to Party Staff*, p. 3 (February 5, 2014).

²⁵ *Id.* at 3-4.

²⁶ *Id.* at 6.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 6-7.

that the accrual accounting for the ACA was inappropriate, and Piedmont was directed to report actual amounts.³¹ Despite the Authority's directive, Piedmont continued to file its ACA on an accrual basis in its next filing, which serves as the catalyst for the adjustments proposed in this filing.³² For these reasons, Party Staff maintains that the Authority should reject these adjustments.³³ Party Staff maintains that if the Authority allows Piedmont to true-up the FSMA, it should be within the context of Piedmont's next ACA audit so that audit staff can perform an audit.³⁴

Party Staff points out that Audit Staff has never calculated a separate interest component on a prior period adjustment within the ACA filing.³⁵ Further, Party Staff argues that Piedmont has misinterpreted the PGA Rule to allow recovery of interest on a prior period adjustment from the time the error occurred to the time of correction.³⁶ Therefore, if the Authority approves any of the proposed adjustments, such adjustments should become a part of the next ACA filing and subject only to the current monthly interest calculation going forward.³⁷

Party Staff witness, Ms. Pat Murphy, states that staff consistently accepts new invoices that have been paid but not presented or recovered in an ACA filing.³⁸ According to Party Staff, the Midwestern invoice presented in this docket is new and should be presented in the next ACA filing for consideration to recover.³⁹ Piedmont has stated that the estimate to actual variance was included in the 2006 filing because it was not aware Staff had adjusted Piedmont's 2005 filing to remove the estimate to actual variance. Party Staff counters Piedmont's argument by stating that

³¹ *Id.* at 8.

³² *Id.*

³³ *Id.* at 9.

³⁴ *Id.* at 7-10.

³⁵ *Id.* at 11.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Party Staff's Objection to Piedmont Natural Gas, Inc.'s Motion for Summary Judgment*, Affidavit of Pat Murphy, p. 3 (March 10, 2014).

³⁹ *Party Staff's Objection to Piedmont Natural Gas, Inc.'s Motion for Summary Judgment*, p. 1 (March 10, 2014).

the Audit Report in TRA Docket No. 06-00087 clearly states that Staff made adjustments to remove all accruals and properly record actual gas costs.⁴⁰ Ms. Murphy states that this Audit Report for the period ending December 31, 2005 and its balance was approved by the Authority, and Piedmont used this ending balance as its beginning balance at January 1, 2006.⁴¹ Party Staff argues that the adjustments Piedmont is proposing for Tennessee Gas Pipeline appear to be duplicates of those presented in the ACA filing for 2006 and the reconciliation schedules during negotiations in TRA Docket No. 07-00174.⁴² Additionally, Staff's Audit Finding No. 15 in TRA Docket No. 07-00174 reduced the ACA Demand balance by an identical amount, and Piedmont did not oppose this finding.⁴³ The FSMA adjustment is identical to the Audit Finding No. 7 in TRA Docket No. 07-00174, and Piedmont did not oppose this finding.⁴⁴ In her Affidavit, Ms. Murphy reiterates that the PGA Rules do not allow for a retroactive calculation of interest.⁴⁵

STANDARD FOR SUMMARY JUDGMENT

Summary judgment is appropriate only when: 1) no genuine issues with regard to the material facts relevant to the claim or defense contained in the motion remain to be tried and 2) the moving party is entitled to a judgment as a matter of law on the undisputed facts.⁴⁶ The moving party bears the burden of proving that its motion satisfies these requirements.⁴⁷

In reviewing a motion for summary judgment, the evidence and all reasonable inferences drawn from the evidence must be viewed in a light most favorable to the non-moving party.⁴⁸

⁴⁰ *Id.* at 5 (quoting Affidavit of Pat Murphy).

⁴¹ *Party Staff's Objection to Piedmont Natural Gas, Inc.'s Motion for Summary Judgment*, p. 5, and Affidavit of Pat Murphy, p. 4 (March 10, 2014).

⁴² *Id.* at 5-6.

⁴³ *Id.* at 2-3.

⁴⁴ *Id.* at 3. Party Staff does state that based on the accounting problems of PNG a detailed true-up of inventory balances should occur in the next ACA audit.

⁴⁵ *Party Staff's Objection to Piedmont Natural Gas, Inc.'s Motion for Summary Judgment*, p. 5, and Affidavit of Pat Murphy, p. 7 (March 10, 2014).

⁴⁶ *See Penley v. Honda Motor Co.*, 31 S.W.3d 181, 183 (Tenn. 2000); *see also* Tenn. R. Civ. P. 56.04.

⁴⁷ *See Downen v. Allstate Ins. Co.*, 811 S.W.2d 523, 524 (Tenn. 1991).

⁴⁸ *See Webber v. State Farm Mut. Auto. Ins. Co.*, 49 S.W.3d 265, 269 (Tenn. 2001).

Summary judgment is appropriate only when both the facts and the inferences to be drawn from the facts permit a reasonable person to reach only one conclusion.⁴⁹

In determining whether a genuine issue of material fact exists for purposes of summary judgment, the Tennessee Supreme Court has established the following standard:

... the trial court must take the strongest legitimate view of the evidence in favor of the nonmoving party, allow all reasonable inferences in favor of that party, and discard all countervailing evidence. Then, if there is a dispute as to any material fact or any doubt as to the conclusions to be drawn from that fact, the motion must be denied.... At the summary judgment stage the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.... [T]he issues that lie at the heart of evaluating a summary judgment motion are: (1) whether a factual dispute exists; (2) whether the disputed fact is material to the outcome of the case; and (3) whether the disputed fact creates a genuine issue for trial.⁵⁰

FINDINGS AND CONCLUSIONS

At the regularly scheduled Authority conference held on June 16, 2014, the panel considered Piedmont's *Motion for Summary Judgment*. In its *Motion for Summary Judgment*, Piedmont explains in great detail the adjustments it seeks to make to its ACA account and the reasons it took several years to discover its mistakes. In contrast, Piedmont spends very little time establishing that its claims meet the standard for granting a summary judgment. Piedmont argues that the underlying facts it has presented establish a prima facie case for making the adjustments and because none of the Party Staff's arguments are sustainable, the Authority should grant Piedmont's *Motion for Summary Judgment*. The Authority disagrees. The burden of proof is on Piedmont to establish that there is no genuine issue of material fact in order to sustain its *Motion for Summary Judgment*, and based on the standards for granting Summary Judgment, Piedmont has failed to carry its burden with regard to the preliminary issues in this docket.

⁴⁹ See *Carvell v. Bottoms*, 900 S.W.2d 23, 26 (Tenn. 1995).

⁵⁰ See *Intermodal Cartage Co., Inc. v. Cherry*, 227 S.W.3d 580, 587-88 (Tenn. Ct. App. 2007).

Piedmont asserts that its proposed ACA adjustments are not barred under the terms of the *Joint Final Report* approved by the TRA in Docket No. 07-00174.⁵¹ Party Staff denies Piedmont's assertion and instead maintains that this fact is in dispute and is material to the issues in this docket. Party Staff argues that adjustments 2, 3, 4 & 5 were previously litigated and, therefore, Piedmont is barred from re-litigating this issue. Piedmont disagrees. In its brief, Piedmont acknowledges that TRA Docket No. 07-00174 resolved all pending issues between Audit Staff and Piedmont in that proceeding but disagrees with Party Staff about the impact of the agreement in that docket.⁵² While Party Staff maintains the *Joint Final Report* was a settlement agreement, Piedmont denies that it was such. Instead, Piedmont asserts that it was not denoted as a settlement agreement nor does it contain provisions such as a waiver and release of claims normally expected in settlement agreements.⁵³ This dispute between Piedmont and Party Staff is certainly a material fact that must be decided before the Authority can determine whether Piedmont should be allowed to make the requested adjustments and is essential to the determination of the docket.

Further, even if there were not a dispute related to a genuine issue of material fact and the Authority granted Piedmont's motion on the preliminary issues, Piedmont would not be entitled to a judgment in its favor as a matter of law. The TRA has the authority to make prior period adjustments and has made such adjustments in previous dockets. However, no law requires that the Authority make such adjustments. The Authority, after considering the facts in a docket, is authorized, but not required, to make prior period adjustments if it is in the public interest to do so.

⁵¹ See *Brief in Support of Piedmont Natural Gas Company, Inc.'s Motion for Summary Judgment*, p. 22 (February 26, 2014).

⁵² *Id.* at 24-25.

⁵³ *Id.* at 26-27.

At the regularly scheduled Authority Conference held on June 16, 2014, the panel considered Piedmont's *Motion for Summary Judgment*. Based on the record and the arguments of the parties, the panel found that there is a genuine issue of material fact in this docket and, therefore, Piedmont is not entitled to judgment as a matter of law. Thereafter, the panel voted unanimously to deny Piedmont's *Motion for Summary Judgment*.

IT IS THEREFORE ORDERED THAT:

1. *Piedmont Natural Gas Company, Inc.*'s *Motion for Summary Judgment* is denied.
2. The Hearing Officer is directed to continue to prepare this matter for a hearing before the panel.

Chairman James M. Allison, Director Kenneth C. Hill, and Director David F. Jones concur.

ATTEST:



Earl R. Taylor, Executive Director